PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, MEMBER
HELEN COX, MEMBER
GLENDA NOGAMI STREUFERT, MEMBER
JERRY ORNELLAS, MEMBER
LORI OTSUKA, MEMBER

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'23 JUN 20 P3:42

OFFICE OF THE COUNTY CLERK
COUNTY OF KAUAI

- **The Planning Commission Meeting will be at:**

  Office of Boards and Commissions
  4444 Rice Street, Suite 300
  Lihue, HI 96766

- **Oral testimony** will be taken on specific agenda items, **at the public meeting location** indicated on the meeting agenda.

- **Written testimony** indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to planningdepartment@kauai.gov or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be posted as testimony to the Planning Commission's website prior to the meeting (https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

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 & COMMISSIONS AT (808) 241-4917 OR ADAVIS@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.

PLANNING COMMISSION MEETING NOTICE AND AGENDA
Tuesday, June 27, 2023
9:00 a.m. or shortly thereafter
Līhu'e Civic Center, Office of Boards and Commissions
4444 Rice Street, Suite 300, Līhu'e, Kaua'i, Hawai'i

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Planning Commission

1. None for this Meeting.

E. RECEIPT OF ITEMS FOR THE RECORD

1. None for this Meeting.

F. HEARINGS AND PUBLIC COMMENT

1. **Continued Agency Hearing**

   a. None for this Meeting.

2. **New Agency Hearing**

   a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-11) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Kealoha Road in Kapa'a, situated approximately 200 feet east of its intersection with Keaka Road and further identified as 1004 Kealoha Road, Tax Map Key: (4) 4-5-001:012, affecting an area of approximately 10,125 square feet = **Craig and Jill Schwed.**

      1. Director's Report Pertaining to this Matter.

   b. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-10), CLASS IV ZONING PERMIT (Z-IV-2023-10), USE PERMIT (U-2023-7) to allow construction of public shared use path extending from Nāwiliwili Park to Ahukini Landing and associated improvements involving a new comfort station, drainage ways, protective fencing and paved parking area, and SHORELINE SETBACK VARIANCE PERMIT (SSV-2023-1) to deviate from the shoreline setback requirement involving properties along makai side of the Lihue Airport, further identified as Tax Map Keys: 3-5-001:004, 005, 008, 009, 085, 092, 102, 128, 158 & 160; 3-7-002:001 (Por.) and affecting a total area of approx. 9.2 acres = **County of Kaua'i, Department of Public Works**. [Director's Report Received 4/25/2023.]

      1. Director's Report Pertaining to this Matter.

3. **Continued Public Hearing**

    a. None for this Meeting.

4. **New Public Hearing**

    a. None for this Meeting.

G. CONSENT CALENDAR

1. **Status Reports**

    a. None for this Meeting.

2. **Director's Report for Project(s) Scheduled for Agency Hearing**

    a. None for this Meeting.

3. **Class III Zoning Permits**

    a. CLASS III ZONING PERMIT (Z-III-2023-11) to allow interior renovations to an existing 2-story single-family residence that would convert an existing guest house into a bedroom addition on a parcel situated on the makai side of the Weke Road in Hanalei, approximately 600 feet west of the Weke Road/Mahimahi Road intersection, further identified as 5418 Weke Road, Tax Map Key: 5-5-004:013, containing a total area of 16,885 square feet = **Concora Cliffs.**

        1. Director's Report Pertaining to this Matter.

H. GENERAL BUSINESS MATTERS

1. In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4)5-5-001: 040 containing 12,197.0 square feet, **Patrick & Patricia Turley**, Contested Case No. CC-2023-1.

    a. Hearing Officer's Report and Recommendation of Contested Case related to the Planning Director's decision to deny the Renewal Application and Forfeit TVRNCU #4250 for the reasons therein.
    b. Petitioners' Exceptions to Hearing Officer's Report and Recommendation of Contested Case; Request for Oral Argument; Certificate of Service.
    c. Respondent Planning Department of the County of Kaua'i Support of Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service.

2. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2021-8) for the development of an affordable housing project involving the construction of seventeen (17) housing units containing 8 duplexes and a single-family residence, and associated site improvements involving 2 parcels in Waipōuli, located along the makai side of Kūhiō Highway in the vicinity of property identified as 4-870 Kūhiō Highway, further known as Tax Map Keys: 4-3-009:051 & 071, and containing a total area of 36,861 square feet = **Kaua'i Habitat for Humanity.**

    a. Request for Time Extension from Kauai Habitat for Humanity dated June 5, 2023
    b. Director's Report Pertaining to this Matter.

3. Class IV Zoning Permit Z -IV- 2015 -39, Use Permit U- 2015 -38 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Nohea Street within the Kakela Makai Subdivision in Kalaheo, situated approx. 450 ft. west of its intersection with Kakela Makai Drive and further identified as 1196 Nohea Street, Tax Map Key 2 -3- 023: 119, and containing a total area of 10, 017 sq. ft. = **David & Melinda Murray.**

    a. Letter (5/14/2023) from Dave & Mindy Murray requesting cancellation and withdrawal of Class IV Zoning Permit Z-IV-2015-39 and Use Permit U-2015-38.
    b. Memorandum of Clerk of the Commission (6/5/2023) recommending approval to cancel and withdraw Class IV Zoning Permit Z-IV-2015-39 and Use Permit U-2015-38.

4. In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4287 (Mau Loa Ohana) for the Failure to timely renewal by April 18, 2023, **Edmund & Linda Gregoire**, 4650 Amio Road, TMK 26011019, Koloa, Kauai, appeal received on June 2, 2023, for referral to Board and Commissions as Contested Case File No. CC-2023-4. The renewal packet was hand delivered to the Department on April 28, 2023.

    a. Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287 letter dated 5/3/2023.
    b. Letter (6/2/2023) from Jonathan Parrish, The Parrish Collection, LLC requesting petition to appeal.
    c. Petition to Appeal of the Decision of the Planning Director, Exhibits 1-6; Certificate of Service dated (6/2/2023)
    d. Memorandum of the Clerk of the Commission Memorandum (6/5/2023) recommending referral of the matter to a Hearings Officer for hearing of the appeal.

5. Kaua'i County Housing Director Presentation.

I. COMMUNICATION

1. None for this Meeting.

J. COMMITTEE REPORTS

1. **Subdivision Committee**

a. Preliminary Subdivision Extension Request

1. Subdivision Application No. S-2017-6
   Moloa'a Valley Homeowners, LLC.
   Proposed 7-lot Subdivision
   TMK: (4) 4-9-011: 013
   Kawaihau, Kaua'i

2. Subdivision Application No. S-2021-7
   5425 Pa'u A Laka, LLC.
   Proposed 2-lot Consolidation and Resubdivision into 4-lots
   TMK: (4) 2-8-014: 032
   Kōloa, Kaua'i

3. Subdivision Application No. S-2022-6
   Kukui'ula Development Company, LLC./
   MP Kaua'i HH Development Fund, LLC.
   Kukui'ula Parcel HH Subdivision
   Proposed 3-lot Consolidation and Resubdivision into 51-lots
   TMK: (4) 2-6-019: 026, 029, 031
   Kōloa, Kaua'i

4. Subdivision Application No. S-2022-8
   BBCP Kukui'ula Parcel X, LLC. Et. Al.
   Kukui'ula Parcel X Subdivision
   Proposed 2-lot Consolidation and Resubdivision into 4-lots
   TMK: (4) 2-6-015: 010, 011
   Kōloa (Makai), Kōloa, Kaua'i

b. Final Subdivision Map Approval

1. Subdivision Application No. S-2022-5
   Morton L. Cohen Family Trust
   Proposed 2-lot Boundary Adjustment
   TMKs: (4) 4-4-013: 034, 035
   Kapa'a and Waipouli, Kawaihau, Kaua'i

K. UNFINISHED BUSINESS (For Action)

1. None for this meeting.

L. NEW BUSINESS (For Action)

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-11) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Kealoha Road in Kapa'a, situated approximately 200 feet east of its intersection with Keaka Road and further identified as 1004 Kealoha Road, Tax Map Key: (4) 4-5-001:012, affecting an area of approximately 10,125 square feet = **Craig and Jill Schwed**.

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M. EXECUTIVE SESSION

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matters:

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2023-11) to allow construction of a new single-family dwelling unit on a parcel situated along the makai side of Kealoha Road in Kapa'a, situated approximately 200 feet east of its intersection with Keaka Road and further identified as 1004 Kealoha Road, Tax Map Key: (4) 4-5-001:012, affecting an area of approximately 10,125 square feet = **Craig and Jill Schwed.**

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4. In the Matter of Petition to Appeal Decision of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4)5-5-001: 040 containing 12,197.0 square feet, **Patrick & Patricia Turley**, Contested Case No. CC-2023-1.

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6. Class IV Zoning Permit Z -IV- 2015 -39, Use Permit U- 2015 -38 to allow conversion of an existing residence into a homestay operation on a parcel located along the mauka side of Nohea Street within the Kakela Makai Subdivision in Kalaheo, situated approx. 450 ft. west of its intersection with Kakela Makai Drive and further identified as 1196 Nohea Street, Tax Map Key 2 -3- 023: 119, and containing a total area of 10, 017 sq. ft. = **David & Melinda Murray.**

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8. Subdivision Application No. S-2017-6
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   Kōloa, Kaua'i

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    MP Kaua'i HH Development Fund, LLC.
    Kukui'ula Parcel HH Subdivision
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    Proposed 2-lot Consolidation and Resubdivision into 4-lots
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    Kōloa (Makai), Kōloa, Kaua'i

12. Subdivision Application No. S-2022-5
    Morton L. Cohen Family Trust
    Proposed 2-lot Boundary Adjustment
    TMKs: (4) 4-4-013: 034, 035
    Kapa'a and Waipouli, Kawaihau, Kaua'i

13. In re: The Community Association of Poipu Aina Estates, Appellant vs. County of Kaua'i Planning Commission; HPM Building Supply, Appellees, Fifth Circuit Court Civil Case No. 5CCV-22-0000055 and In Re: Pacific Resource Partnership, Appellant vs. County of Kaua'i Planning Commission, HPM Building Supply, John Does 1-10; et al., Appellees, Fifth Circuit Court Civil Case No. 5CCV-22-0000049 and Case No. 5CCV-22-0000060. Litigation Update from the Office of the County Attorney.
    a. Case No. 5CCV-22-0000055 (Administrative Appeal); Findings of Fact, Conclusions of Law and Order; Certificate of Service.
    b. Case No. CASE NO. 5CCV-22-0000049; CASE NO. 5CCV-22-0000060; (Consolidated) (Agency Appeal); Findings of Fact, Conclusions of Law and Order.

N. ANNOUNCEMENTS

1. Topics for Future Meetings.

   The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on July 11, 2023. The Planning Commission anticipates this meeting to be held in-person at the Līhu'e Civic Center, Office of Boards and Commissions, 4444 Rice Street, Suite 300, Līhu'e, Kaua'i, Hawai'i. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

L. ADJOURNMENT

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

SPECIAL MANAGEMENT AREA (SMA) MINOR DETERMINATIONS

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
Approved (04.10.2023)	SMA(M)-2023-19	Līhu'e (3-2-003:058 Unit 13)	After the fact grading and construction. / Gravel and concrete driveway (95 feet long by 10 feet wide), boulder wall.

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

June 27, 2023
SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2023-42	Steven Harmsen Manager SEC106 & SEC 107 LLC	2-8-019:006	Kōloa	Construction of upper floor lanai. / Rocky shoreline required setback 60 feet. Proposed addition approximately 190 feet from evidenced shoreline.
SSD-2023-43	Peter Whalley TR and Hong/Roh Living TR	4-3-007:008 Unit 1 and Unit 2	Kapa'a	Construction of two (2) single-family dwellings. / Non abutting shoreline property. Required setback 123 feet. Development is set approximately 420 feet from the evidenced shoreline.
SSD-2023-44	Bruce Holdings LLC	5-8-011:049	Hanalei	Construction of a new ADU. / Shoreline certified, required setback 88 feet. ADU shall outside of shoreline setback area.
SSD-2023-45	Try Slow LLC	5-8-008:034	Hanalei	Repairs / Repair work deemed unsubstantial. (Cottage 1)
SSD-2023-46	Try Slow LLC	5-8-008:034	Hanalei	Repairs / Repair work deemed unsubstantial. (Cottage 2)

SSD-2023-47	Try Slow LLC	5-8-008:034	Hanalei	Repairs / Repair work deemed unsubstantial. (Cottage 3)
SSD-2023-48	Try Slow LLC	5-8-008:034	Hanalei	Repairs / Repair work deemed unsubstantial. (Cottage 4)
SSD-2023-49	Pilaa International LLC	5-1-003:006	Kilauea	Construction of a pool shade structure and associated site utility improvements. / Proposed project is located at a distance of 450 feet and on an elevated cliff bluff approximately 100 feet above mean sea level.
SSD-2023-50	Red Lake Management S A	5-2-01:012	Kilauea	Construction of a swimming Pool and pool equipment area. / Project located on a high cliff bluff approximately 100 feet above mean sea level. Project is also located approximately 340 feet away from evidenced shoreline.
SSD-2023-51	Coconut Coast Partners	4-3-002:012	Kapa'a	Interior repairs of Lanai Guest Wing Building/ Development are 170 feet outside of the 100-foot shoreline setback area.
SSD-2023-52	Coconut Coast Partners	4-3-002:012	Kapa'a	Interior repairs of Lei Guest Wing Building/ Development are 70 feet outside of the 100-foot shoreline setback area.
SSD-2023-53	Makahuena Preferred A LLC et. Al.	2-8-021:041	Kōloa	Construction of a single-family dwelling with accessory structures/ Project located on a high cliff bluff. Project is also located outside of the required of

				the 100-foot shoreline setback area.
SSD-2023-54	Princeville Sealodge	5-4-005:007	Princeville	Repair of exterior cedar shingle siding. / Development on 150-foot-high cliff bluff and outside of the required 100-foot setback for rocky shoreline parcels.

BELLES GRAHAM PROUDFOOT WILSON & CHUN, LLP

JONATHAN J. CHUN (2928-0)
3135 Akahi Street, Suite A
Lihue, Kauai, Hawaii 96766
Telephone: (808) 245-4705
Facsimile: (808) 245-3277
Email: lan@kauai-law.com

Attorney for Applicants
CRAIG SCHWED and
JILL SCHWED

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In The Matter Of The Application of CRAIG SCHWED and JILL SCHWED, for a Special Management Area Use Permit for real property identified as Tax Key No.: (4) 4-5-001:012 at Kapaa, District of Kawaihau, Island and County of Kauai, State of Hawaii, and containing an area of 10,125 square feet, more or less.	CLASS IV ZONING PERMIT Z-2023- __ SPECIAL MANAGEMENT AREA USE PERMIT SMA(U)-2023-_____ **APPLICATION; EXHIBIT LIST; EXHIBITS "A" – "I"**

F.2.a.

JUN 27 2023

APPLICATION FOR A CLASS IV ZONING PERMIT
AND A SPECIAL MANAGEMENT AREA USE PERMIT

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APPLICATION

COME NOW, CRAIG SCHWED and JILL SCHWED, Applicants in the above-captioned proceedings, by and through their undersigned attorneys, and hereby submit the following Application:

SECTION 1. APPLICANTS/OWNERS/AGENT/SUBJECT PROPERTY.

1.1 Applicants. The Applicants in this matter (hereinafter referred to as the "Applicants"), CRAIG SCHWED and JILL SCHWED, are residents of the Island and County of Kauai, State of Hawaii, and are the owners of the above-referenced property (hereinafter referred to as the "Subject Property"), pursuant to that certain Warranty Deed dated December 13, 2018 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-69340002, a copy of which is attached hereto as ***Exhibit "A"***.

1.2 Authorized Agent. Jonathan J. Chun of Belles Graham LLP has been authorized to file this Application on the Applicants' behalf. A copy of the Authorization is attached hereto as ***Exhibit "B"***.

1.3 Subject Property. The land which is the subject of this Application is identified as Tax Key No.: (4) 4-5-001:012 located at Kapaa, Island and County of Kauai, State of Hawaii. The Subject Property contains 10,125 square feet (more or less). Its street address is 1004 Kealoha Road, Kapaa, Hawaii 96746.

SECTION 2. LOCATION AND LAND USE DESIGNATIONS OF SUBJECT PROPERTY.

2.1 Location. The Subject Property is shown in relation to the surrounding properties located on the tax plat map for Tax Key No.: (4) 4-5-001 attached hereto as ***Exhibit "C"***. Its general area on the island of Kauai is shown on ***Exhibit "D"***.

2.2 Land Use Designations. The respective State Land Use Commission ("SLUC"), Kaua'i General Plan, County of Kauai Comprehensive Zoning Ordinance ("CZO"), and other relevant land use designations for the Subject Property are as follows:

a. SLUC. The Subject Property is located within the SLUC Urban District, and has been located in the SLUC Urban District the establishment of the SLUC Districts.

b. Kaua'i General Plan. The Subject Property is located in the November 2018 Kaua'i General Plan's Neighborhood General Designation.

c. Heritage Resources. The Subject Property is not located near any identified Heritage Resources. The closest heritage resource to the Subject Property is the coral reefs immediately off shore adjacent to the County's Moanakai Road.

d. CZO. The Subject Property is zoned Residential (R-20).

e. Development Plan Area. The Subject Property is not located within any Development Plan Area.

f. Special Management Area. The Subject Property is located within the Special Management Area ("SMA") of the County of Kauai.

g. Shoreline. The Subject Property is located within 500 feet of the edge of vegetation along the sandy beach fronting the makai portion of Moanakai Road. The School of Ocean and Earth Sciences and Technology of the University of Hawaii's Erosion Map for the Kapaa area is attached as ***Exhibit "E".*** The map shows that transect 422KE, which is the transect nearest the Subject Property has a historical erosion rate of -0.66 ft/yr.

h. Violations. There are no land use violations affecting the Subject Property.

i. Land Use Permits. The existing house on the Subject Property was built in 1925. No land use permit has been issued for the Subject Property since the original construction of the house.

SECTION 3. PAST, PRESENT AND PROPOSED USES OF SUBJECT PROPERTY.

3.1 Present Uses. The existing dwelling, constructed in approximately 1925, is being used as a single-family dwelling. The County's Real Property Tax Division classified the Subject Property for 2023 as homestead.

3.2 Past Uses. After being initially constructed in approximately 1925, the existing dwelling on the Subject Property was used for single family dwelling purposes.

3.3 Proposed Use. The Applicant proposes to construct a second single-family dwelling on the Subject Property. The new dwelling will be approximately 576 square feet with a 96 square foot outdoor deck. The proposed second dwelling will be located mauka (west) of the existing single-family dwelling adjacent to Kealoha Road. The proposed dwelling will have one bedroom, one bathroom, a kitchen and a living room. The Applicants currently reside in the existing single-family dwelling and intend to continue to reside in that house. The Applicants propose to offer the second dwelling as a long term rental. The Subject Property is zoned Residential (R-20) and is 10,125 square feet in size. Under the CZO, it is entitled to four units.

The Subject Property is currently served by an existing DOH approved individual wastewater system (hereinafter "septic" or "IWS") that will serve both dwellings. The existing dwelling has three bedrooms, and the proposed dwelling will have only one bedrooms. The approved IWS is designed to handle up to five (5) bedrooms. Attached as ***Exhibit "D"*** is the plot plan for the Subject Property showing the existing dwelling, the proposed second dwelling, the

existing IWS, the existing driveway access and the location of the two uncovered parking stalls for the proposed second dwelling (shown as triangles).

With the existing dwelling, the existing driveway and proposed second dwelling with the proposed outdoor deck, the total lot coverage will be 3,496 square feet, or 34.5% of the total land area of 10,125 square feet, well below the 60% maximum allowed by Section 8-4.3(d)(3) of the Kauai County Code ("KCC").

Attached as ***Exhibit "F"*** is a floor plan for the proposed second dwelling and ***Exhibit "G"*** shows the elevations of the building from four different perspectives.

SECTION 4. DESCRIPTION OF SUBJECT PROPERTY AND OF SURROUNDING LANDS.

4.1 Surrounding Property. The Subject Property is surrounded by residential uses (see ***Exhibit "H"***, which is an aerial photograph showing the Subject Property and its existing dwelling, along with a number of other dwelling structures along the mauka side of Kealoha Road. Immediately makai of the Subject Property is a developed residential parcel, which contains a single family residential dwelling (on the makai side of Moanakai Road).

4.2 Description of Subject Property. The Subject Property is composed of generally level land with a dwelling built around approximately 1925. The Applicants propose a second dwelling that will be used as a long term rental (currently, the Applicants live in the existing three bedroom dwelling).

SECTION 5. PERMITS REQUESTED AND REQUIRED.

5.1 SMA Permit. Notwithstanding that the Special Management Area Rules and Regulations of the County of Kauai ("SMA Rules") specifically authorize the issuance of an SMA Minor if a "development" is proposed ("development" being defined, in this situation, as a "[c]hange in density . . . of land") that is not in excess of $500,000.00 (see Section 7.3(A) and (B)

of the SMA Rules), it would appear that an SMA Minor permit would be appropriate. The Planning Department, however, has determined that any dwelling on a lot of record above the first dwelling is, for the purposes of application of the SMA Rules, may have a "significant adverse effect on the Special Management Area". As such, an SMA Use Permit is being sought by the Applicants.

SECTION 6. IMPACTS OF DEVELOPMENT.

6.1 Botanical Resources and Wildlife. The Development will have no significant impact on any endangered or protected wildlife or vegetation in the area. The Subject Property has been in residential use since approximately 1925 when County records indicate that the existing dwelling was constructed.

6.2 Historical Resources. The Applicants are not aware of any archaeological, cultural or historical resources on the surface of the Subject Property which will be affected by the Development. However, the Applicants will follow and implement any recommendations of the State Historic Preservation Division ("SHPD"). Furthermore, in the event of inadvertent historic site or burial discovery in the future, the Applicants will immediately contact the SHPD.

6.3 Air Quality/Noise. The Development will have little or no impact on the air quality and ambient noise levels in the area. All vehicles or equipment used by the Applicant in connection with the expanded lining of the containment area and the installation of the new tanks, will be properly muffled, housed and maintained to reduce any noise impacts or emission impacts. The Environmental Protection Agency (EPA) and State of Hawaii air quality standards will not be exceeded. Hours of work shall be compliant with any requirements of the State Department of Health and/or the County Department of Public Works.

6.4 Flooding and Drainage. The Subject Property is located within Flood Zone X, as indicated by the Flood Insurance Rate Map 150002-0204F). The new construction will meet all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1 of the Kauai County Code ("KCC"). The Development will have no impact on flooding on or around the Subject Property.

6.5 Utilities. Currently available utilities are electricity (from Kauai Island Utility Cooperative), potable water (from the Department of Water), natural gas from Hawaii Gas, and telephone, cable and internet connections through Spectrum. Any requirements for installation/connection of utilities for the proposed dwelling shall be addressed by the Applicants.

6.6 Wastewater Treatment and Disposal. The existing dwelling is currently served by an approved IWS. No sewer service is available in the area.

6.7 Solid Waste. Solid waste generated by the office use on the Subject Property shall be processed by the Department of Public Works, Solid Waste Division.

6.8 Fire and Police Services/Schools. Fire and police services in the vicinity are located in Kealia and Waipouli, respectively. The proposed development of the Subject Property will not significantly increase the need for existing fire and police services any more than each new single family dwelling increases such need.

6.9. Schools. The closest schools are Kapaa Elementary, Kapaa Middle and Kapaa High Schools. However, this is not the type of development that will result in any than a *de minimax* increase in enrollment at any of the schools.

6.10 Economics. The development will have the following economic impacts:

a. Jobs. The development will result in the creation of no additional permanent job positions. Some construction jobs are expected to result during the construction

phase, but the numbers of jobs created will be nominal (as it is with any average single family dwelling).

b. Housing. The development does not trigger the imposition of any Workforce Housing requirements under Chapter 7A, Kauai County Code (the Housing Policy for the County of Kauai).

c. Property Values. Since the fair market value of real property is based on the value of the land and physical improvements, the completion of the Development will certainly increase the value of the Property (the existing improvement is assessed at the homestead rate, but the proposed dwelling will be more than likely classified as residential). However, it should not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties.

6.11 Population. The development is not expected to result in an increase in the island's population (since the proposed second dwelling will only contain one bedroom, however, it is reasonable to expect that once the second dwelling is rented, there will be a few more people in the neighborhood).

6.12 Traffic Circulation. Traffic to the Subject Property can enter through Kealoha Road. Kealoha Road connects to Kuhio Highway at four different points along its length. No measurable increase in traffic will result by the addition of one bedroom dwelling.

6.13 Heritage Resources. The East Kauai Heritage Resources Map (Figure 5-13, General Plan) does not place the Subject Property in any special classification. The proposed Development, then, does not conflict with any special classification of designation under the East Side Heritage Resources Map.

The proposed Development will be no more intrusive than any of the other dwellings along Kealoha Road. The proposed second dwelling is small in size (under a 1,000 square feet) and is comparable to a guest house. Attached as ***Exhibit "G"*** is the drawing showing the elevations of the proposed second dwelling from four different perspectives. As can be seen, at its highest point at the peak of the structure, is 16' 7 1/2" (the dwelling portion is elevated 4' above grade). The Development is fully consistent with its Heritage Resource Designation.

6.14 On-site Parking. Two uncovered parking stalls (shown as two triangles on ***Exhibit "D"***) are designated within the Subject Property for use by the proposed second dwelling and there is sufficient vacant land area that will remain to accommodate parking for guests

SECTION 7. SLUC CONSIDERATIONS.

7.1 SLUC Urban District. The Subject Property is located entirely in the SLUC Urban District. Section 205-2(b), Hawaii Revised Statutes ("HRS") specifies that activities and uses in the Urban District shall include those as provided for by ordinances or regulations of the counties within which the Urban District is situated.

7.2 Development's Compliance With SLUC Urban District Standards. The proposed Development involves the construction of a second dwelling unit. The County zoning of Residential (R-20), as well as Chapter 8, Article 15, KCC, allows such use. As such, the proposed Development will be in conformity with the nature and type of uses allowed under Section 205-2(b), HRS.

SECTION 8. GENERAL PLAN CONSIDERATIONS.

8.1 Kauai General Plan Land Use Designations. The current General Plan designates the Subject Property in the "Neighborhood General" land use designation (East Kauai Land

Use Map Figure 5-6). The policies governing such lands are set forth in Section 2.2. of the Kauai General Plan, which provides in relevant part as follows:

> **"5. Neighborhood General.** The Neighborhood General Designation applies to the walkshed surrounding Neighborhood Centers. This designation is intended for medium intensity mixed-use environments that support the town core with housing, services, parks, civic/institutional, home occupation, and commercial uses. Buildings in this designation are mostly detached, with some attached, 1-2 stories in height that can accommodate a range of multi-family housing types. Actions for the Neighborhood Center designation are found in the following Chapter 3 sectors: Housing, Shared Spaces, and Land Transportation."

8.2 Goals. The overall Goals contained in Section 1.3 of the General Plan, and the Applicant's compliance therewith, are as follows:

a. Goal 1 – A Sustainable Island. The second proposed dwelling is not being developed for transient vacation rental purposes and is intended to provide housing for long term renters. The ability to occupy a dwelling on property by full-time residents is necessary and is a touchstone of what constitutes a sustainable island community.

b. Goal 2 – A Unique and Beautiful Place. The proposed second dwelling is a small-sized dwelling for long term rental. The total square footage of the proposed dwelling is 576 square feet with an outdoor deck of 96 square feet. This is consistent with the existing homes in the neighborhood. For example, the house immediately to the south of the Subject Property (TMK (4) 4-5-001-011) is only 764 square feet in size and the house immediately to west of the Subject Property, across Kealoha Road (TMK (4) 4-5-001-024 is only 876 square feet. Small sized homes within this area is a quintessential example of homes befitting residents of the island, and is fully in keeping with, and will not detract from, the unique quality of island living, nor the beauty of the neighborhood.

c. Goal 3 – A Healthy and Resilient People. The proposed second dwelling will have minimal visual impacts and will have no negative impacts on historic sites or Hawaiian cultural practices. It is the place where the planned renters can plan to live, within walking or biking distance from jobs in the busy Kapaa urban area.

d. Goal 4 – An Equitable Place, with Opportunity for All. Providing much needed residential rental homes in the Kapaa area will provide residents with an opportunity to live and work within the Kapaa area.

8.3 Policies. The Policies contained in Section 1.4 of the General Plan, and the Applicant's compliance therewith, are as follows:

a. Manage Growth to Preserve Rural Character. The proposed second dwelling will not detract from the small town characteristics of Kapaa. The small home is consistent with other dwellings in the area, and will not be viewed as a poor fit for the neighborhood.

b. Provide Local Housing. The proposed second dwelling is intended by the Applicant to be used for long term rental to meet Kauai's local housing needs.

c. Recognize the Identity of Kaua'i's Individual Towns and Districts. The proposed second dwelling is appropriately sized for the Kealoha Road neighborhood, which is a small residential area, and will not detract from the sense of community.

d. Design Healthy and Complete Neighborhoods. The Applicants' proposed second dwelling contributes to a complete neighborhood, because it will be used as a long term rental for Kauai residences, and will contribute to the stability and health of the neighborhood community.

e. Make Strategic Infrastructure Investments. The Applicants' proposed second dwelling does not make any strategic infrastructure investments for the neighborhood, and the Applicants are not relying on any government provided infrastructure.

f. Reduce the Cost of Living. This small development will not help reduce the cost of living of the island's population, but it will provide a much needed rental for residence, especially for a renter who works within the Kapaa area. Having a place to live close to where the person works will reduce the person's monthly travel expenses for gas and car maintenance.

g. Build a Balanced Transportation System. The addition of a single family dwelling in Kapaa will not increase traffic or congestion problems. It could ease traffic if the Applicants' renter also works in the Kappa area. The proposed second dwelling is also in an area where a renter could easily bicycle or walk to the store or shopping areas.

h. Protect Kaua'i's Scenic Beauty. The proposed second dwelling will have minimal, if any, negative visual impacts.

i. Uphold Kaua'i as a Unique Visitor Destination. The true uniqueness of Kauai's rural areas is manifested by the presence of modest or small homes housing the local population. The proposed home will not be ostentatious or a poor fit for the community, and will give visitors the sense of a sense of community that is pleasant and low-key.

j. Help Business Thrive. There will be no negative or positive impacts to business from the addition of one single family dwelling for the owners of the Subject Property.

k. Help Agricultural Lands Be Productive. The Subject Property is not within an Agricultural district, and will neither contribute to, nor detract from, the productivity of any agricultural lands on the island.

l. Protect Our Watersheds. The proposed second dwelling will have no negative impacts on any watershed areas.

m. Complete Kaua'i's Shift to Clean Energy. The proposed second dwelling will incorporate an on demand gas water heater and another appliance for the second dwelling in compliance with HRS Section 196-6.5

n. Prepare for Climate Change. The Applicants had requested that their architect, in consideration of climate change, design a home elevated (not a flood requirement). Because the shoreline is but one street away, they are aware that some protection needed to be designed.

o. Respect Native Hawaiian Rights and Wahi Pana. The proposed second dwelling will have no substantial impacts on any historic sites, Hawaiian traditional and cultural practices, or access to streams, shorelines, or areas associated with Hawaiian religious, traditional or cultural practices.

p. Protect Access to Kaua'i's Treasured Places. The proposed second dwelling will have no impact on the public's access to streams, the shoreline, trails, recreational areas, or places associated with Hawaiian religious, cultural, or traditional practices.

q. Nurture Our Keiki. The proposal here is for a single family dwelling, which, aside from the Applicants' own children, will not provide for or diminish nurturing the young people of Kaua'i.

r. Honor Our Kūpuna. The proposed second dwelling will neither honor nor dishonor or discredit the Kūpuna of Kaua'i.

s. Communicate with Aloha. The scheduling of this Application before the Planning Commission will allow the public to participate in the planning and decision-making

process for the proposed second dwelling. The Applicants have also walked around their neighborhood and informed all of their neighbors about the proposed new dwelling out of respect for their neighbors.

8.4 Objectives & Actions by Sectors. The ten (10) Sectors contained in Section 3.0 of the Kaua'i General Plan (which represent the areas that must be considered in policy implementation), and the Applicant's compliance therewith, are as follows:

a. The Watershed. The proposed second dwelling will have no negative impacts on the natural, historic, cultural, or environmental qualities of, or resources within, the Watershed areas, or access thereto. The actual footprint of the second dwelling is small and the land coverage for the entire project is well under the 60% limitation imposed by the CZO.

b. Housing. The proposed second dwelling can provide housing for local residents.

c. Transportation. The proposed second dwelling will not result in increased traffic and will have no negative impact on Kaua'i's transportation infrastructure. The second dwelling unit only contains one bedroom and the Subject Property is within walking or biking distance of stores and shops within the Kappa area.

d. Infrastructure & Services. The proposed second dwelling will not require the construction of additional governmental infrastructure nor require additional government services for the island of Kaua'i.

e. Shared Spaces. The proposed second dwelling is not intended to be a Shared Space (defined as "civic space" or areas used for everyday community activities such as shopping, recreation and socializing).

f. Economy. Except for the short-term benefit to the contractors involved in designing and constructing the proposed second dwelling, once completed, the second dwelling will not be a driving force in the island economy.

g. Heritage Resources. The proposed second dwelling will have no substantial visual impacts on surrounding lands, and no substantial impacts on historic sites, Hawaiian cultural or traditional practices, or access to streams, shorelines, areas associated with Hawaiian cultural or traditional practices, recreational areas or other special places. The addition of a second dwelling on the Subject Property will not negatively impact any special features or resources that are shown on the East Kaua'i Heritage Resources Map (Kaua'i General Plan Figure 5-13).

h. Energy Sustainability. This single family dwelling will not contribute to, nor diminish, energy sustainability for the island.

i. Public Safety & Hazards Resiliency. The proposed second dwelling has been designed to be elevated from ground level, even though it is not required to be so elevated, based on the Applicant's desire that their home not negatively impact public safety in the event of any flood hazards (i.e., tsunami inundation). The Subject Property is approximately 297 feet from the Kapaa shoreline and is designated as being situated in Flood Zone X.

j. Opportunity & Health For All. The proposed dwelling will not contribute to, or otherwise diminish, opportunities for other citizens, but it does contribute to the quality of life for the Applicant, and to their resiliency and health for so long as they are capable of living without assistance.

8.5 Development's Compliance with Kaua'i General Plan Standards. The proposed development involves the addition of one dwelling in a low-density residential area, which is fully compatible with and appropriate for the General Plan's designation for the area.

SECTION 9. CZO ZONING DISTRICT CONSIDERATIONS.

9.1 CZO Residential District. The Subject is zoned Residential (R-20). The uses that are specifically permitted in the CZO R-20 District are set forth in Sections 8-2.4(a)(1), (a)(2), and 8-2.4(c) and (d) as follows:

> (1) Single family detached dwellings
> (2) Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger
> (3) Two (2) multiple family dwelling units or two (2) single family attached dwelling units upon a parcel of record as of June 30, 1980
> (4) Public and private parks and home businesses
> (5) Adult family boarding and family care homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community in which the proposed use is located.

9.2 Development's Compliance with CZO Residential District Standards. The proposed Development involves adding a second dwelling to the Subject Property, which is specifically authorized by Chapter 8, Article 15, KCC.

SECTION 10. SMA CONSIDERATIONS.

10.1 Recreational Resources. There are no public recreational opportunities that were previously available on the Subject Property. The Development will not have any negative impact on any public recreational opportunities located on or near the Subject Property. The Development is not located on the shoreline (it is, however, within the 500' distance established by Section 8-27.1(b), KCC), and will not overburden the use of, nor restrict access to, any shoreline areas.

10.2 Historic Resources. The Development will have no impact on any known historic, cultural or archaeological resources located on the Subject Property. However, as stated above, the Applicants will protect and preserve any historic resources that may be found as a result of the Development and comply with any requirements of the State Historic Preservation Division.

10.3 Scenic and Open Space Resources. The Development will have no negative impact on the scenic and open space resources on and around the Subject Property. The Development will be compatible with and blend in with the uses and structures located in the surrounding area. The Development will not interfere with any views to or along the shoreline and will not involve alterations to existing landforms. The Development will not interfere with views from the nearest coastal roadway (which in this area would be Moanakai Road, which is makai of the Subject Property) to the shoreline.

10.4 Coastal Ecosystems. The Subject Property is not located along any streams or the shoreline.

10.5 Economic Uses. The Development will create short-term economic benefits associated with the construction/installation work. After completion, the Development will be used as a long term rental. No negative impacts to the economy are anticipated.

10.6 Coastal Hazards. As shown on the County of Kauai's flood insurance rate map (Flood Insurance Rate Map 150002-000204F), the Development is to located in Flood Zone X. The Development will have no contributory impact on flooding on or around the Subject Property.

10.7 Managing Development/Public Participation. The Development activities on the Subject Property are complimentary to, and consistent with, past, present and future development in this area of Kauai. The Development will not result in an irrevocable commitment

to the loss or destruction of any natural or cultural resources. The Development is not part of a larger development that will have cumulative effects on the environment; or that will involve a commitment for larger actions.

10.8 Beach Protection/Marine Resources. The proposed second dwelling on the Subject Property is approximately 297 feet from the vegetation line of the property fronting the beach. The Development will have no impact on the shoreline or beach areas located in the Kapaa area. The Development will not involve any development within the beach or coastal area which would have any impact on marine or coastal resources. That stretch of beach in the area where the Subject Property is located is protected by a rock revetment.

10.9 Value of Development. The Development involves activities with a value of less than $500,000.00 (approximately $241,256.45). See ***Exhibit "I"***, which is the contractor's estimate.

SECTION 11. SHORELINE SETBACK ASSESSMENT

11.1 Erosion Rate Not Established. Kapaa Beach area has been covered under the School of Ocean and Earth Sciences and Technology ("SOEST") mapping for the island of Kauai (see ***Exhibit "E"***), which shows a historical accretion rate for Transect 422KE of -0.66ft/yr. There are two parcels (TMK (4) 4-5-001-007) and Moanakai Road, which is owned by the County of Kauai that separates the Subject Property from shoreline.

SECTION 12. HRS CHAPTER 343 (ENVIRONMENTAL IMPACT STATEMENTS).

The Development is not subject to the provisions of Chapter 343, HRS, as it does not involve the use of State or County lands; does not involve lands within the SLUC Conservation District; does not involve land within the shoreline area as defined in Section 205A-41, HRS; does not involve any historic site as designated in the national or State registers; does not involve lands

in the Waikiki Special District; does not propose the reclassification of any SLUC Conservation District lands; and does not propose construction of new, or expansion or modification of, any helicopter facilities.

SECTION 13. NATIVE HAWAIIAN ISSUES.

The Development will have no impact on any known traditional or customary practices of native Hawaiians. Since 1953, the Subject Property was in residential use. There are no special gathering practices taking place on or upon the Subject Property that will be affected. The Development will not detrimentally affect access to any streams, the shoreline or other adjacent areas, or gathering along any streams, the shoreline or in the ocean. There are no known religious practices taking place within the Subject Property. The Development will have no negative impact on any cultural or historic sites or resources located within the Subject Property. The Applicants have contacted a representative from the Kauai Burial Council and a prior Moku Representative under the State of Hawaii Aha Moku Advisory Committee.

SECTION 14. SUMMARY OF COMPLIANCE WITH APPLICABLE LAND USE DESIGNATIONS.

14.1 SLUC. The Development activities on the Subject Property will be compatible with the SLUC Urban District designation. Section 205-2(b), HRS.

14.2 Kaua'i General Plan. The Development activities on the Subject Property will be compatible with the General Plan Neighborhood General Designation parameters. General Plan, Section 2.2.

14.3 CZO. The Development activities on the Subject Property will be compatible with the CZO Residential (R-20) zoning. Sections 8-2.4(a)(1), (a)(2), (c) and (d), KCC.

14.4 SMA. The Development activities on the Subject Property will fulfill the provisions of the SMA Rules in that:

a. The Development will have no effect on public access to publicly owned or used beaches and recreational areas.

b. No wildlife or endangered plant or animal species are located on the Subject Property.

c. Provisions for solid and liquid waste treatment, disposition and management will be developed in order to minimize adverse effects on the Special Management Area.

d. Alteration to existing land forms or vegetation and the construction of structures will cause minimum adverse effects to water resources and scenic and recreational amenities, and will minimize danger of floods, wind damage, storm surge, landslides, erosion, siltation, or failure in the event of earthquake.

e. The Development will not require dredging, filling, or altering any bay, estuary, salt marsh, river mouth, slough or lagoon.

f. The Development will not reduce the size of any beach or other area useable for public recreation.

g. The Development will not reduce or impose restrictions upon public access to tidal and submerged lands, beaches, portions or rivers or streams within the Special Management Area and the mean high tide line where there is no beach.

h. The Development will not substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast;

i. The Development will not adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, or potential or existing agriculture uses of land.

j. The Development will not have any substantial environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interests.

k. The Development is consistent with the objectives, policies, and guidelines set forth in HRS Chapter 205A and Sections 3.0 and 4.0 of the SMA Rules.

l. The Development is consistent with permitted uses in the SLUC Urban District, the Kauai General Plan and the CZO.

14.5 Shoreline Setback. The Development meets shoreline setback requirements.

SECTION 15. CONCLUSION.

The Applicants respectfully request the Planning Commission of the County of Kauai grant the Applicants the requested Special Management Area Use Permit for the construction of their second dwelling.

DATED: Lihue, Kauai, Hawaii, April 14, 2023.

BELLES GRAHAM LLP

By _____
JONATHAN J. CHUN
Attorneys for Applicants
CRAIG SCHWED and JILL SCHWED

EXHIBIT LIST
(CRAIG SCHWED AND JILL SCHWED APPLICATION)

EXHIBIT	DESCRIPTION
A	Warranty Deed
B	Authorization (Applicant)
C	Tax Plat Map
D	General Location Map/Plot Plan
E	Erosion Map
F	Floor Plan
G	Elevation Plan
H	Aerial Photograph Depicting Existing Dwelling and Other Dwelling Structures
I	Architect's Estimate

1419

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
December 26, 2018 8:01 AM
Doc No(s) A-69340002

/s/ LESLIE T. KOBATA
REGISTRAR

1 1/2 KEO
B-33264849

Conveyance Tax: $1,550.00

LAND COURT | REGULAR SYSTEM

AFTER RECORDATION, RETURN ORIGINAL BY: MAIL (X) PICK-UP ( )
Craig Schwed and Jill Schwed
P.O. Box 223300
PMB 266
Princeville, HI 96722
Esc. #6828009015-RK

Tax Map Key No.: (4) 4-5-001-012 Total Pages: 10

WARRANTY DEED

PARTIES TO DOCUMENT

GRANTOR: DYLAN H. HOWARTH and MATTHEW H. HOWARTH and JOAN H. HOWARTH

GRANTEE: CRAIG SCHWED and JILL SCHWED

THIS DEED, made this 13th day of December, 2018, by DYLAN H. HOWARTH, single, and MATTHEW H. HOWARTH and JOAN H. HOWARTH, husband and wife, of Kapaa, Hawaii, hereinafter collectively called the "Grantor," in favor of CRAIG SCHWED and JILL SCHWED, husband and wife, whose address is P.O. Box 223300, PMB 266, Princeville, Hawaii 96722, hereinafter collectively called the "Grantee;"

EXHIBIT "A"

WITNESSETH

That for TEN AND NO/100 DOLLARS ($10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as **TENANTS BY THE ENTIRETY**, in fee simple:

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

This conveyance and the warranties of the Grantor are expressly declared to be in favor of the Grantee, as **tenants by the entirety, their assigns, and the survivor of the Grantee and his or her heirs, devisees, personal representatives, and assigns.**

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

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

AND, in consideration of the premises, the Grantor does hereby covenant and agree to and with Grantee that Grantor is lawfully seized in fee simple of the real property described in Exhibit "A" and is the absolute owner of said personal property (if any) and that Grantor's title to all of said property is free and clear of and from all encumbrances other than those mentioned in Exhibit "A"; that Grantor has good right to sell and convey said property as aforesaid and that Grantor will WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons except as aforesaid.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees, corporations or limited liability companies, and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

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

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Grantor has executed this instrument.

DYLAN H. HOWARTH

"Grantor"

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On December 13, 2016, before me personally appeared DYLAN H. HOWARTH, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 12/13/2016 Number of Pages: 6
Description of Document: Warranty Deed

ROCHELLE KEOHO NOTARY PUBLIC 04-558 STATE OF HAWAII

Signature: _____
Name: _____
Notary Public, State of Hawaii, _____ Circuit

My commission expires: Rochelle Keoho
State of Hawaii, Fifth Circuit
My Commission Expires: July 21, 2021

MATTHEW H. HOWARTH

JOAN H. HOWARTH

"Grantor"

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On December 11, 2018, before me personally appeared MATTHEW H. HOWARTH, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: undated Number of Pages: 6
Description of Document: Warranty Deed

ROCHELLE KEOHO NOTARY PUBLIC 04-558 STATE OF HAWAII

Signature: _____
Name: _____
Notary Public, State of Hawaii, _____ Circuit

My commission expires: Rochelle Keoho ~~State of Hawaii, Fifth Circuit~~ My Commission Expires: July 21, 2021

STATE OF HAWAII)
) SS:
COUNTY OF KAUAI)

On December 11, 2018, before me personally appeared JOAN H. HOWARTH, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: undated Number of Pages: 6
Description of Document: Warranty Deed

ROCHELLE KEOHO NOTARY PUBLIC 04-558 STATE OF HAWAII

Signature: _____
Name: _____
Notary Public, State of Hawaii, _____ Circuit

My commission expires: Rochelle Keoho ~~State of Hawaii, Fifth Circuit~~ My Commission Expires: July 21, 2021

EXHIBIT "A"

All of that certain parcel of land (being all of the land described in and covered by Land Patent Grant No. 9418 to Manuel Borde), situate, lying and being at Kapaa, in the District of Puna, Island and County of Kauai, State of Hawaii, being Lot No. 42 of the tract of land known as the "KAPAA TOWN LOTS, SECOND SERIES" as shown on Government Survey Registered Map No. 2450, Sixth Land District, and thus bounded and described:

Beginning at the West corner of this lot and the North corner of Lot 41, on the East side of Kealoha Road, the coordinates of said point of beginning referred to Government Survey Trig. Station "NONOU" being 1767.0 feet North and 12247.66 feet East, as shown on Government Survey Registered Map No. 2450, and running by true azimuths:

1.	195°	20'	75.0	feet along Kealoha Road;
2.	285°	20'	135.0	feet along Lot 43;
3.	15°	20'	75.0	feet along Lot 64;
4.	105°	20'	135.0	feet along Lot 41 to the point of beginning and containing an area of 10,125 square feet, more or less.

Being the premises acquired by:

WARRANTY DEED

Recorded :	September 2, 2015 in the Bureau of Conveyances, State of Hawaii, as Document No. A57230587
Grantor :	LINDA A. EYESTONE, wife of Larry Eyestone, and CAROL SUEKO SHIN, unmarried, and PAUL FRIEDRICHS and ILONA HOLCOMB, as Trustees of the Friedrichs-Holcomb Family 2014 Trust, dated May 20, 2014, and GARY T. SHIRAKI and EVELYN I. SHIRAKI, as co-Trustees under that certain unrecorded Joint Trust Agreement known as the Gary T. Shiraki and Evelyn I. Shiraki Joint Revocable Trust dated October 13, 2014
Grantee :	DYLAN H. HOWARTH, single, and MATTHEW H. HOWARTH and JOAN H. HOWARTH, husband and wife, as Joint Tenants

SUBJECT, HOWEVER, TO:

1. Mineral and water rights of any nature in favor of the State of Hawaii.

2. Covenants, conditions, restrictions, reservations, agreements, obligations, easements and other provisions set forth in Land Patent Grant No. 4318, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or natural origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c) or Section 515-6, HRS.

TOGETHER WITH all furniture, fixtures, appliances, and other items listed on Purchase Contract with a Reference Date of November 17, 2018 executed by and between the Grantor and Grantee for the sale and purchase of the above described premises, which by reference is incorporated herein.

END OF EXHIBIT "A"

AUTHORIZATION

CRAIG SCHWED and JILL SCHWED (hereinafter "Applicants) hereby authorize Jonathan J. Chun, Esq. to act on their behalf and to file and process any and all applications necessary to obtain any governmental permits relating to the real property known as the Lot 42, Kapaa Town Lots, 2d Series, located at 1004 Kealoha Road, Kapa, Kauai, Hawaii, identified by Kauai Tax Map Key No. (4) 4-5-001:012, including, but not limited to, the following: Building permits, grading permits, use permits, variance permits, zoning permits, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.

DATED: 1-31-2023.

CRAIG SCHWED

JILL SCHWED

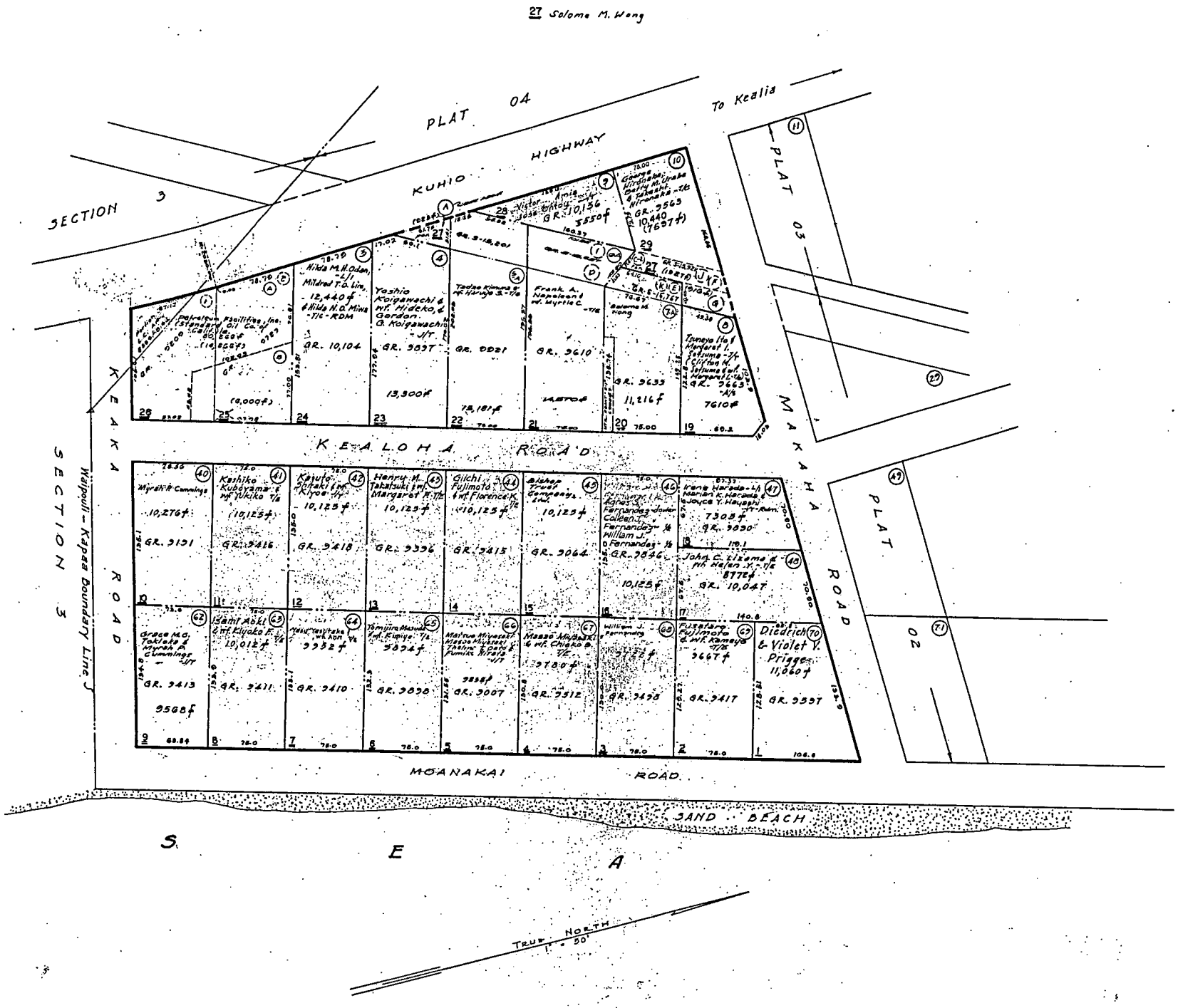


EXHIBIT "C"

Dripped Parcels: 68, ...

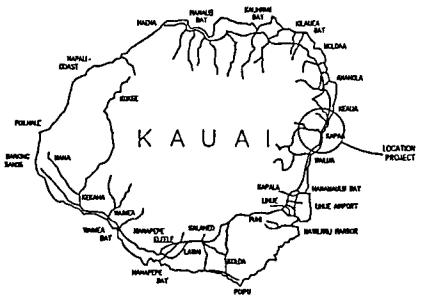
TOWN LOTS, 2ND SERIES, KAWAIHAU, KAUAI

SUBJECT TO CHANGE

TAXATION MAPS BUREAU
TERRITORY OF HAWAII
TAX MAP
FOURTH DIVISION

ZONE	SEC.	PLAT
4	5	01

CONTAINING 2-1 PARCELS
SCALE: 1 in. = 50 ft.
PRINTED

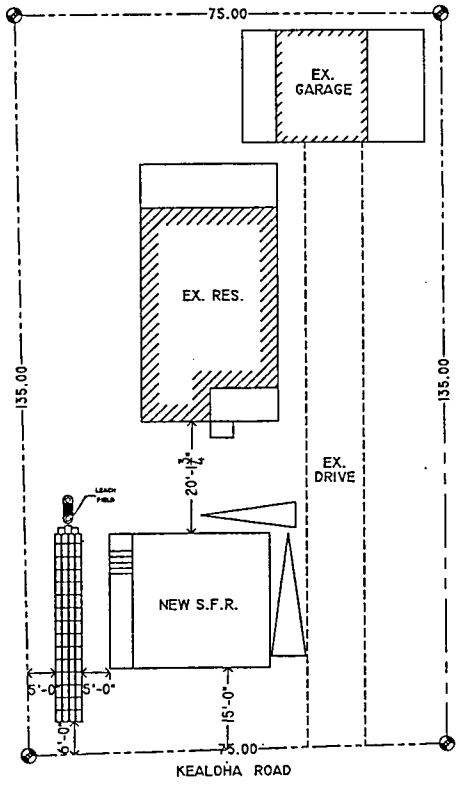


VICINITY MAP

DRAWING INDEX	
SHEET #	DESCRIPTION
A01	NOTES & SITE PLAN
A02	FLOOR PLAN, ELECTRICAL & INT. ELEVATIONS
A02	EXT ELEVATIONS
S01	FOUNDATION, FLOOR & ROOF FRAMING PLAN
S02	BUILDING SECTIONS

KAPAA, KAUA'I, HAWAII
4-5-01 :12

LOT SIZE:	10,125 SQ-FT
EX. RESIDENCE:	1,104 SQ-FT
EX. DRIVE:	1,080 SQ-FT
EX. GARAGE:	640 SQ-FT
NEW 2ND RESIDENCE:	576 SQ-FT
NEW DECK:	96 SQ-FT
TOTAL:	3,496 SQ-FT
LOT COVERAGE:	34.5%



01 SITE PLAN
1"=15'-0"

Project Name and Address
NEW 2ND RESIDENCE FOR SCHWED

KAPAA, KAUA'I, HI
TMK: 4 - 5 - 01 : 012

Scale: AS NOTE
Date:
Sheet: A01

EXHIBIT "D"

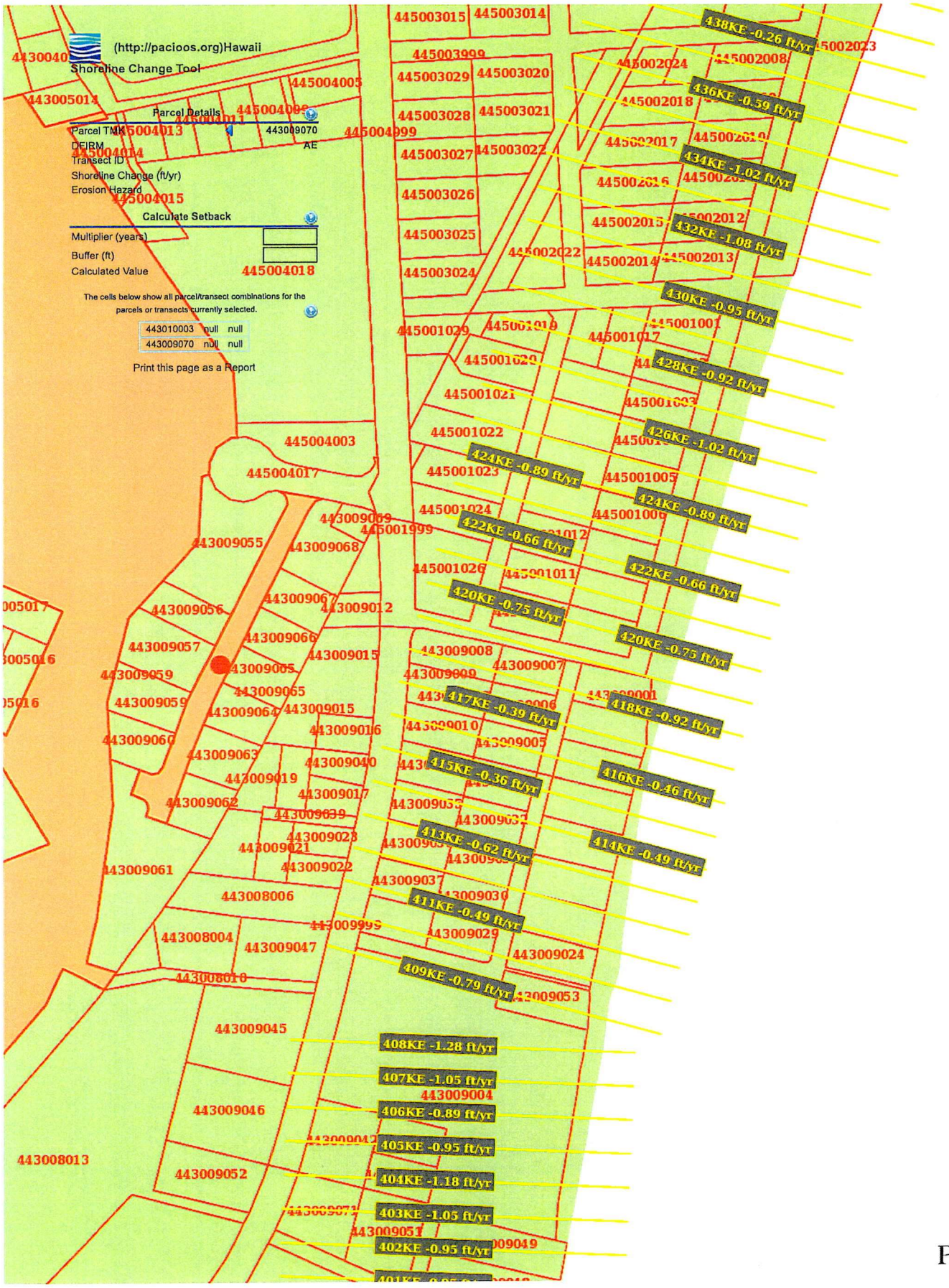
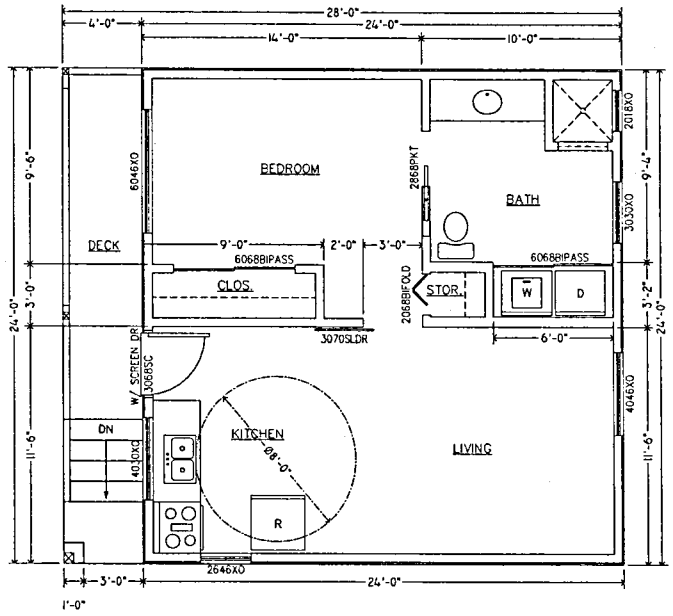
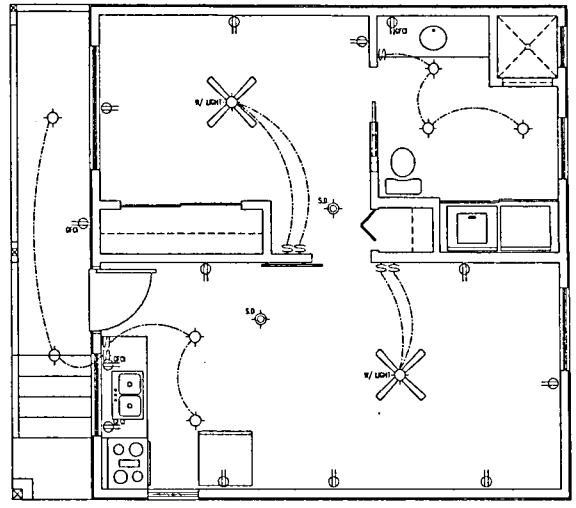

(http://pacioos.org)Hawaii
Shoreline Change Tool
Parcel Details
Parcel TMK
443009070
DFIRM
AE
Transect ID
Shoreline Change (ft/yr)
Erosion Hazard
Calculate Setback
Multiplier (years)
Buffer (ft)
Calculated Value
445004018
The cells below show all parcel/transect combinations for the parcels or transects currently selected.
443010003 null null
443009070 null null
Print this page as a Report
438KE -0.26 ft/yr
436KE -0.59 ft/yr
434KE -1.02 ft/yr
432KE -1.08 ft/yr
430KE -0.95 ft/yr
428KE -0.92 ft/yr
426KE -1.02 ft/yr
424KE -0.89 ft/yr
424KE -0.89 ft/yr
422KE -0.66 ft/yr
422KE -0.66 ft/yr
420KE -0.75 ft/yr
420KE -0.75 ft/yr
417KE -0.39 ft/yr
418KE -0.92 ft/yr
415KE -0.36 ft/yr
416KE -0.46 ft/yr
413KE -0.62 ft/yr
414KE -0.49 ft/yr
411KE -0.49 ft/yr
409KE -0.79 ft/yr
408KE -1.28 ft/yr
407KE -1.05 ft/yr
406KE -0.89 ft/yr
405KE -0.95 ft/yr
404KE -1.18 ft/yr
403KE -1.05 ft/yr
402KE -0.95 ft/yr
PacIOOS (http://pacioos.org)

EXHIBIT "E"



01 FLOOR PLAN
3/8"=1'-0"

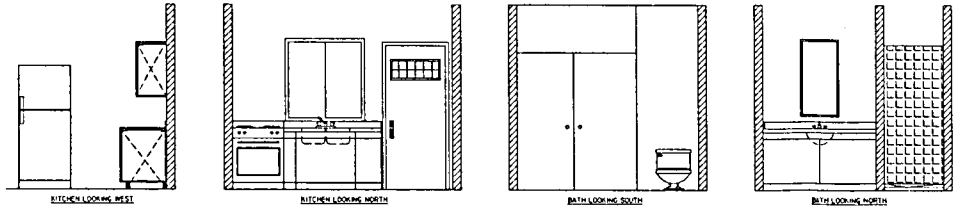


02 ELECTRICAL PLAN
3/8"=1'-0"

NOTE: 1. ALL RECEPTACLES SHALL BE AFCI PROTECTED PER 210.12 AS PER CHECKLIST ITEM #14F
2. RECEPTACLES IN BATHROOMS AND CARPORT SHALL BE GFCI PROTECTED PER CHECKLIST ITEM 14D

ELEC. SYMBOL LEGEND

- RECESSED LIGHT
- SCONCE WALL MOUNT
- LIGHT SWITCH
- POWER PATH
- 110V OUTLET
- GROUND FUSE IN CIRCUIT 110V
- 220V OUTLET
- FLORESCENCE LIGHT
- CEILING FAN W/ LIGHT
- SMOKE DETECTOR
- RECESSED LIGHT W/ FAN



03 INTERIOR ELEVATIONS
3/8"=1'-0"

NEW 2ND RESIDENCE FOR SCHWED

KAPAA, KAUA'I, HI
TMK: 4 - 5 - 01 : 012

AS NOTE

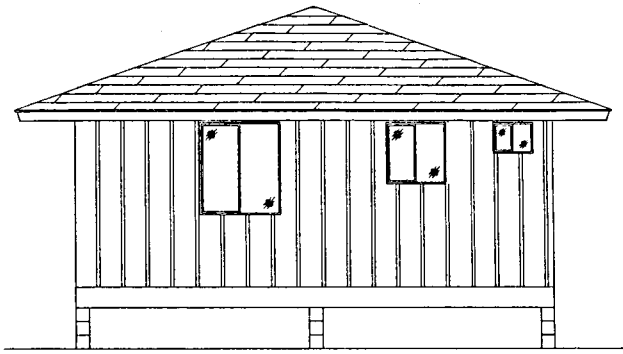
A02

EXHIBIT "F"

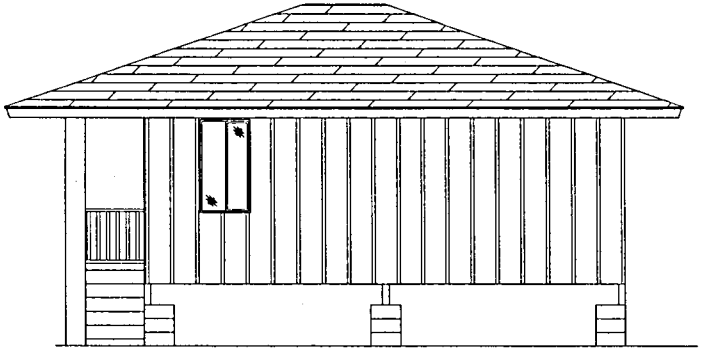
EXHIBIT "G"



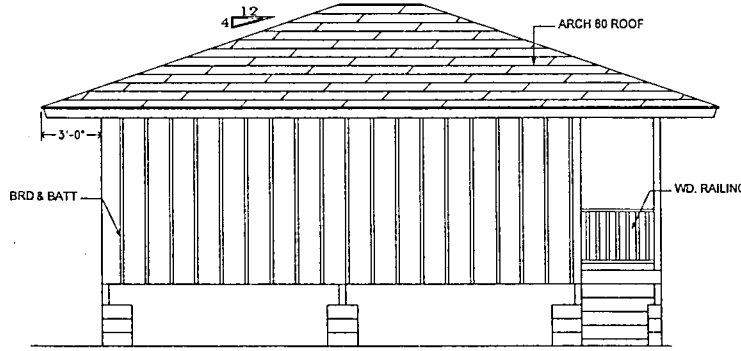
01 FRONT ELEVATION
3/16"=1'-0"



02 REAR ELEVATION
3/16"=1'-0"



03 R. SIDE ELEVATION
3/16"=1'-0"



04 L. SIDE ELEVATION
3/16"=1'-0"

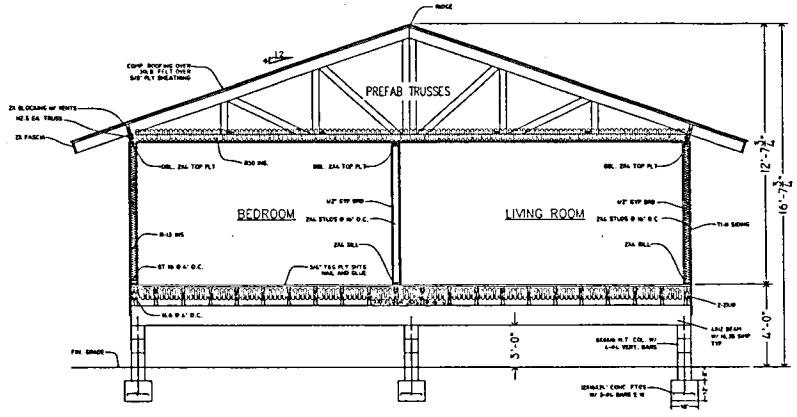
NEW 2ND RESIDENCE FOR SCHWED

KAPAA, KAUA'I, HI
TMK: 4 - 5 - 01 : 012

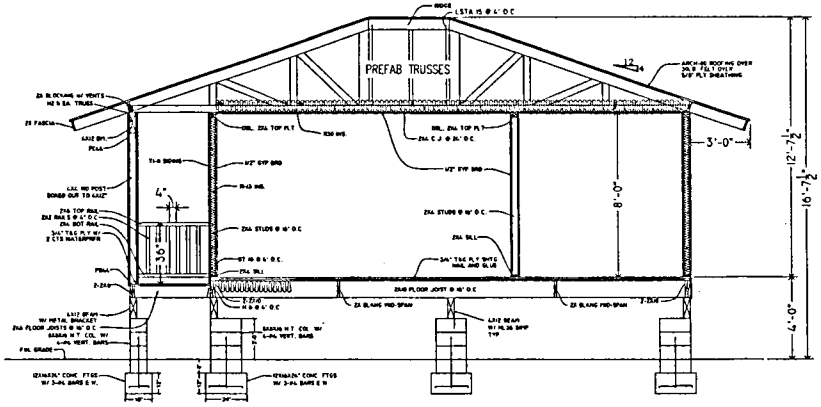
AS NOTE

A03

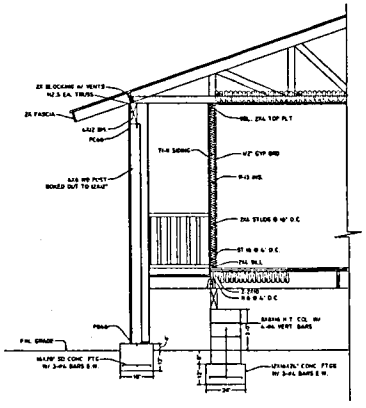
NOTE: KAUAI SEA LEVEL RISE CONSTRAINT DISTRICT VIEWER SHOWS NO PASSIVE FLOODING HAZARD FOR THE PROPERTY FOR A 3.2 SEA LEVEL RISE. AND THE ANNUAL HIGH WAVE RUN UP HAZARD ELEVATION FOR THE PROPERTY IS 1'.



A BUILDING SECTION A
3/8"=1'-0"



B BUILDING SECTION B
3/8"=1'-0"



C BUILDING SECTION C
3/8"=1'-0"

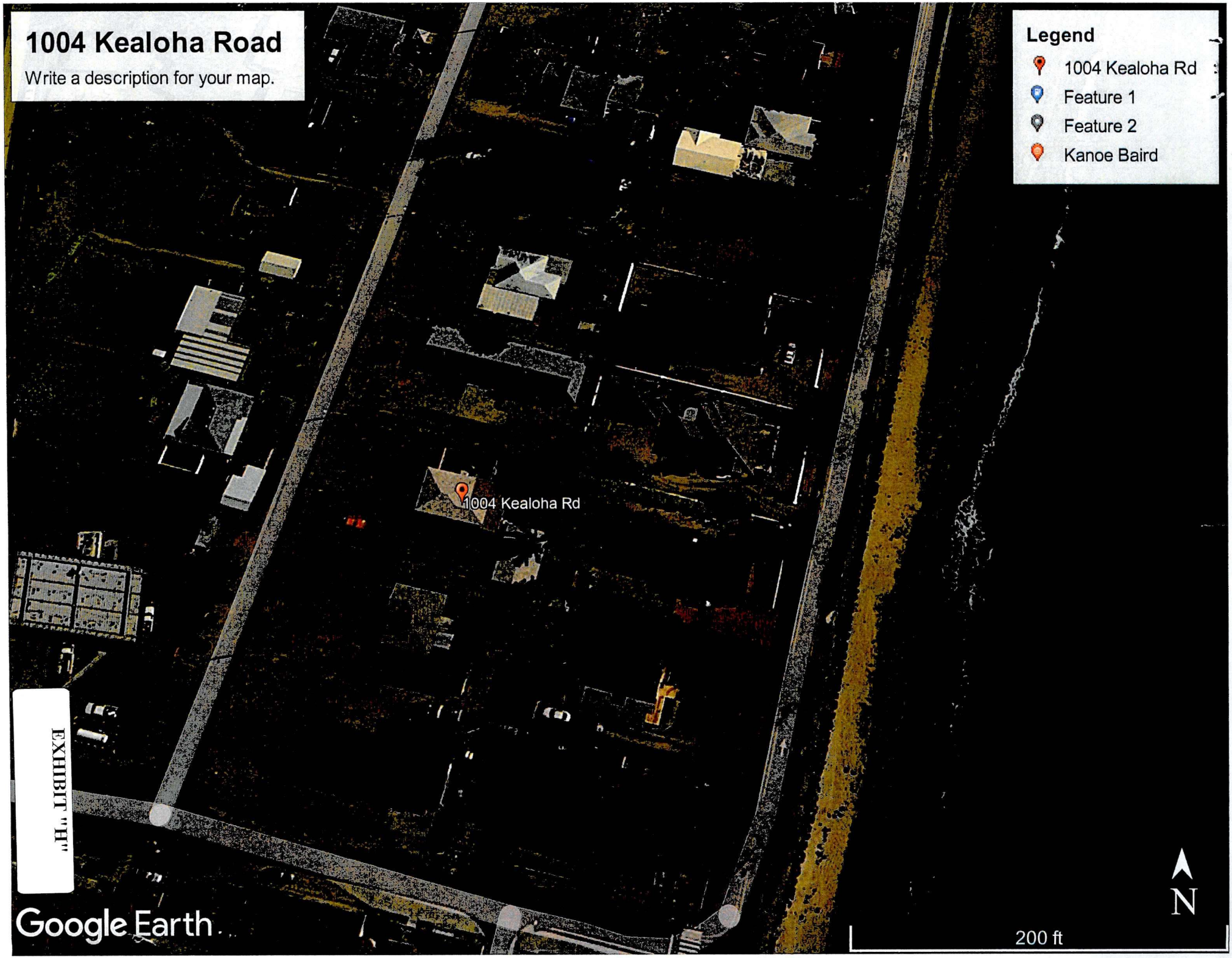
NEW 2ND RESIDENCE FOR SCHWED

KAPAA, KAUA'I, HI
TMK: 4 - 5 - 01 : 012

Scale: AS NOTE

Date:

S02


1004 Kealoha Road
Write a description for your map.
Legend
1004 Kealoha Rd
Feature 1
Feature 2
Kanoe Baird
1004 Kealoha Rd
EXHIBIT "H"
Google Earth
200 ft
N

ESTIMATE

Arnett Bros Construction LLC,
BC-37792-0
P.O.Box 953
Kapaa, HI 96746

arnettbrosconstruction@gmail.com
(808) 346-3662

Craig and Jill Schwed

Bill to
Craig and Jill Schwed
1004 Kealoha Rd
Kapaa, HI 96746

Estimate details
Estimate no.: 1002
Estimate date: 1/16/23

	Product or service		Amount
1.	**Complete Home Build** Complete home build @ $400 sq ft includes all materials and labor. Foundation Framing Roofing Ext siding/trim installation windows and doors electrical plumbing drywall ext/interior painting interior trim and cabinetry flooring	576 units × $400.00	$230,400.00

Subtotal	$230,400.00
Sales tax	$10,856.45
Total	**$241,256.45**

Note to customer

Mahalos you for your business.

EXHIBIT "I"

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of a Special Management Area Use Permit to allow the construction of a single-family residence.
Permit Application Nos.	Special Management Area Use Permit SMA(U)-2023-11
Name of Applicant(s)	CRAIG & JILL SCHWED Jonathan J. Chun, Authorized Agent

II. PERMIT INFORMATION

PERMITS REQUIRED	
☐ **Use Permit**	
☐ **Project Development Use Permit**	
☐ **Variance Permit**	
☐ **Special Permit**	
☐ **Zoning Permit Class** ☐ IV ☐ III	
☒ **Special Management Area Permit** ☒ Use ☐ Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, a SMA Use Permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" as defined in Section 1.4F; and (2) is in excess of $500,000.
AMENDMENTS	
☐ **Zoning Amendment**	
☐ **General Plan Amendment**	
☐ **State Land Use District Amendment**	

Date of Receipt of Completed Application: May 3, 2023
Date of Director's Report: June 13, 2023
Date of Public Hearing: June 27, 2023

F.2.a.1.
JUN 27 2023

Deadline Date for PC to Take Action (60TH Day): August 12, 2023

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located directly behind the Texaco gas station (formerly Chevron) in Kapa'a, and approximately 1,500 feet south of the Lihi Park, approximately 200 feet east of the Keaka Road/Kealoha Road intersection.		
Tax Map Key(s):	(4) 4-5-001:012	**Area:**	10, 125 square feet

ZONING & DEVELOPMENT STANDARDS	
Zoning:	Residential (R-20)
State Land Use District:	Urban
General Plan Designation:	Neighborhood General
Height Limit:	Thirty (30) feet maximum
Max. Land Coverage:	Residential (R-20) = 90%
Front Setback:	10'-0"
Rear Setback:	Five (5) feet or ½ the wall plate height whichever is greater
Side Setback:	Five (5) feet or ½ the wall plate height whichever is greater
Community Plan Area:	Kapa'a-Wailua Development Plan
Community Plan Land Use Designation:	N/A
Deviations or Variances Requested:	N/A

IV. LEGAL REQUIREMENTS

Section 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations:	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Sections 8.0, 9.0, and 10.0 of the Special Management Area Rules and Regulations. The application was received on **May 3, 2023**, and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
Public Hearing Date:	June 27, 2023

V. PROJECT DESCRIPTION AND USE

The project site is located at 1004 Kealoha Road in Kapa'a and further identified as TMK: (4) 4-5-001:012 containing a total area of 10,125 square feet. The county zoning designation of the project site is Residential District (R-20). There is an existing single-family dwelling and a detached garage on the subject parcel. As represented, the residence dates back to 1925.

The proposed development involves the construction of a second residence approximately 576 square feet (SF) in size with a 96 SF outdoor deck. It will be located along the frontage of Kealoha Road. It will feature one bedroom, one bathroom, kitchen and a living area. The proposed one-story dwelling will be constructed on a post & pier foundation, with a hip roof line and composition shingle roof finish (refer to Exhibit "G" of the Application).

It is noted that based on the zoning and area of the parcel, it is eligible for a total of four (4) residential units.

VI. APPLICANT'S REASONS/JUSTIFICATION

Refer to Application.

VII. ADDITIONAL FINDINGS

1. The parcel is identified as Lot 42 of the Kapa'a Town Lots, 2nd Series and it is approximately 1,500 feet south of the Lihi Park in Kapa'a. The primary access to the property is along Kealoha Road.

2. The State Land Use District (SLUD) designation for this parcel is "Urban", which allows for urban growth in a specified area.

3. Moanakai Road and another parcel is situated between the shoreline and the project site. The subject site is also within the 500-foot shoreline setback threshold, as recognized in the County's shoreline setback requirements contained in Chapter 8, Article 27 of the Kaua'i County Code (1987), as amended. The required setback for the proposed dwelling is 87 feet from the shoreline. As proposed the proposed dwelling is approximately 200+ feet from the shoreline area (refer to Exhibit "H" of the Application).

4. The General Plan designation (GP) is "Neighborhood General". Neighborhood General Designation applies to the walkshed surrounding Neighborhood Centers. This designation is intended for medium intensity mixed-use environments that support the town core with housing, services, parks, civic/institutional, home occupation, and commercial uses.

5. The subject parcel is located within the Zone "AE" of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM). Zone "AE" is susceptible to 1% annual chance of flooding hazards. This parcel is also within the extreme tsunami evacuation zone. In addition, the subject site is within the County of Kauai's Sea Level Rise Constraint District.

6. The topography is relatively flat, and no grading of the project area will occur. Existing drainage patterns on the property will not be affected.

7. Special Management Area (SMA)

   In addressing the issues of the Special Management Area and its objectives and policies, the following aspects will be considered and evaluated:

   a. Recreational Resources

   b. Cultural/ Historic Resources

   c. Scenic resources

   d. Coastal Hazard

   e. Coastal Ecosystem

   Furthermore, the proposal does not:

   - Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough or lagoon;

   - Reduce the size of any beach or other area usable for public recreation;

   - Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, and streams within the SMA; and

   - Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agriculture uses of land.

8. CZO Development Standards
   The proposed development is subjected to the standards prescribed in Sections 8-4.3, 8-4.5, 8-9.2, and Chapter 8 Article 12:

   A. **Setback Requirements:** Front property line setbacks are ten feet (10'-0") with a side and rear property line setback of five feet (5'-0") or half the distance of the plate height whichever is greater.

   B. **Setback between buildings:** The distance between buildings shall be ten (10) feet minimum.

   C. **Parking Requirements:** The applicant shall provide a minimum of two (2) off-street parking spaces for the proposed dwelling.

D. **Lot Coverage:** Pursuant to Section 8-4.3(d) of the CZO, the allowable land coverage within the Residential (R-20) zoning district shall not exceed ninety percent (90%). As represented in Exhibit "D" of the Application, the total land coverage is approximately 3,496 SF or 34.5% of the parcel area.

E. **Sea Level Rise Constraint:** A portion of the subject parcel is located within the County of Kauai's Sea Level Constraint District (S-SLR) which requires new construction for residential structures to be elevated at least two (2) feet above from the top of the Sea Level Rise Flood Elevation (SLRFE) of one (1) foot. The additional 2 feet shall be calculated from the top of the SLRFE to the bottom of the lowest horizontal structural member. The SLRFE information is not shown in the exterior elevations exhibit provided.

F. **Building Height:** No single family detached or single family attached dwelling, or accessory structure shall be more than two (2) stories above and one (1) story below from the finished grade at the main entry, over twenty (20) feet measured from the finished grade at the main entry to the highest exterior wall plate line, and over thirty (30) feet to the highest point of the roof measured at each point along the building from the finished grade at the main entry.

G. **Density:** The subject parcel is currently identified as Tax Map Key (4) 4-5-001:012, Lot 42. Based on the area and zoning of the parcel, a total of four (4) residential units is permissible.

VIII. AGENCY COMMENTS

See attached Exhibit "A"

IX. PRELIMINARY EVALUATION

In evaluating the Applicant's request to allow the proposed development, the following items are being considered.

1. General Plan
   The proposed development satisfies the following policies of the General Plan, as taken from Section 1.3 and 1.4:

   A. 1.3, entitled "VISIONS AND GOALS"

      1) **Goal #1 "Sustainable Island"** – As represented, the proposed dwelling is not intended to be utilized as a Transient Vacation Rental (TVR) unit, but to provide for long-term housing. As proposed, the amount of land coverage would be well below the permissible 90% of the parcel area.

      2) **Goal #2 "Unique and Beautiful Place"** – The proposed dwelling is in character with the surrounding residences in the neighborhood. As designed, it should not detract

from the unique quality of island living nor the beauty of the immediate neighborhood.

3) **Goal #3 "A Healthy and Resilient People"** – The subject site is in close proximity to the Kapa'a Shared Use path at Lihi Park and is walking distance to public transportation bus lines and shopping centers.

4) **Goal #4 "An Equitable Place, with Opportunity for All"** – As noted above, the subject site of the proposed dwelling is walking distance to parks, shopping centers, and public transportation bus lines. Potential employment opportunities can be easily accessed by bike or walking.

B. Section 1.4, entitled "POLICIES TO GUIDE GROWTH"

1) **Policy #1 "Manage Growth to Preserve Rural Character"** – The proposed dwelling is in an existing residential area that is within a walkable or biking distance to the Kapa'a Town Core area. The proposed residence should not detract from the small-town characteristics of Kapa'a Town, and it is consistent with other dwellings in the neighborhood.

2) **Policy #2 "Local Housing"** – The Applicant represents that the proposed dwelling will be utilized as a long-term rental to assist in providing housing inventory.

3) **Policy #3 "Recognize the Identity of Kauai's Individual Towns and Districts"** – The proposed dwelling is similar in design style as the surrounding area. The dwelling would have minimal negative impacts to the existing rural character of the area.

4) **Policy #4 "Design Healthy and Complete Neighborhoods"** – As previously noted, the project site is close proximity to the Kapa'a Shared Use path at Lihi Park and is walking distance to public transportation bus lines and shopping centers. The project would contribute to the stability and health of the neighborhood community.

5) **Policy #6 "Reduce the Cost of Living"** – While this development would not help in reducing the cost of living of the island's population, it would provide much needed rental housing for local residents. It would offer an opportunity for a resident who resides within the Kapa'a area to live closer to their workplace, as a result, reducing the resident's monthly travel expenses.

6) **Policy #8 "Protect Kauai's Scenic Beauty"** – The subject site is located mauka of Moanakai Road within an existing residential area. Views from "Baby Beach" and Lihi Park would have minimal negative impacts, if any.

7) **Policy#14 "Prepare for Climate Change"** – The subject site of the proposed dwelling is located within the County of Kauai's Sea Level Rise Constraint District (SLRCD). As designed, the proposed dwelling would have to meet all the requirements of the SLRCD and comply with existing overall height standards for residential dwellings.

2. Native Hawaiian Traditional and Cultural Rights

The subject site has been previously developed and in residential use since the mid 1920's. The Applicant has reached out and contacted persons familiar with the area. The inquiry to these individuals requested if they had any knowledge of on-going Native Hawaiian and Traditional Cultural Rights practices or activities on the project site or in the vicinity of the area.

The Applicant has consulted with two representatives who have historical knowledge of the area and based on the available information, it was concluded that traditional agriculture and aquaculture practices would not be affected or impaired by the proposed development.

As such, the project involving a previously developed parcel should have no impact on any known Hawaiian traditional or customary practices for the following reasons:

A. There are no known traditional or customary practices of native Hawaiians that are presently occurring within the Project Site.

B. There are no special gathering practices taking place within any portion of the Project Site.

C. The Project will not detrimentally affect access to any streams; access to the shoreline or other adjacent shoreline areas; or gathering along any streams, the shoreline or in the ocean.

D. There are no known religious practices taking place within the project site.

E. There are no known pre-contact cultural or historic sites or resources located within the project site.

F. There are no known burials within the petition area.

3. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA Rules and Regulations, the following aspects are taken into consideration:

A. Public Access and Coastal Recreation – The existing residence is in proximity to Lihi Park, Baby Beach, and the Kapa'a Shared Use Bike and Pedestrian Path. The property is located on the mauka side of Moanakai Road and no public access is located on the subject property nor within the area.

B. Cultural/Historical Resources – As represented, there is no visible evidence of cultural/historical uses on the parcel. Ground disturbance would occur during the construction of the dwelling for the post & pier foundation. Although still a

possibility, the Applicant does not anticipate cultural deposits to be found.

C. Scenic and Open Space Resources – Lihi Park, Baby Beach, and the Kapa'a Shared Use Bike and Pedestrian Path are located near the proposed dwelling site. The proposed dwelling is located mauka of Moanakai Road and would have minimal impacts to the scenic and open space resources of the surrounding area. The subject area is currently a residential neighborhood and the proposal is consistent with the surrounding development.

D. Coastal Hazards – The subject parcel is located within the Zone "X" of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) and within the County of Kauai's Sea Level Rise Constraint District (SLRCD). Based on the County of Kauai's Sea Level Rise Constraint District Viewer, the subject site is impacted by an annual high wave run up of one (1) foot. To comply with the County of Kaua'i SLRCD requirement, the lowest horizontal structural member would be a minimum of two (2) feet above the Sea Level Rise Flood Elevation (SLRFE). It is also noted that the subject parcel is situated within a Tsunami Evacuation Zone.

E. Coastal Ecosystems – The subject property has been extensively disturbed by previous activities and developed lands surrounding the site. As a result, there are no known rare, threatened or endangered, plant or animal species or critical habitats located within the project site. However, the proposed development should be required to conform to the requirements of the County Department of Public Works (DPW) regarding drainage and runoff concerns from the proposed development, as well as the State Department of Health (DOH) regarding limitations on the existing individual wastewater system.

4. CZO Development Standards
As proposed, the project complies with the building height, setback, and off-street parking requirements for development within the Residential (R-20) zoning district, as specified in Sections 8-4.3 & 8-4.5 the Comprehensive Zoning Ordinance (CZO), respectively.

In reviewing the exterior elevations provided in the application, it is noted that the lowest horizontal structural member would have to be a minimum of two (2) feet above the Sea Level Rise Flood Elevation (SLRFE) of 1 foot. Therefore in order to ensure that the development complies with the height requirements under the County of Kauai's Sea Level Rise Constraint District, the Applicant should work closely with the Planning Department prior to building permit application.

X. PRELIMINARY CONCLUSION

Based on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area Rules and Regulations in that:

1. The development will not have any substantial adverse environmental or ecological effect.

2. The development is consistent with the objectives/goals/policies of the County General Plan,

the Comprehensive Zoning Ordinance, and other applicable ordinances.

Furthermore, the proposal DOES NOT:

- involve dredging, filling, or otherwise altering any bay, estuary, salt marsh, river mouth, slough or lagoon;
- reduce the size of any beach or other area usable for public recreation;
- reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers or streams within the special management area; and
- adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries or existing agricultural uses of land.

The proposed development should not have any detrimental impact to the environment or the surrounding area and be in compliance with the criteria outlined for the granting of a Special Management Area Use Permit. The Applicant should institute the "Best Management Practices" to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

XI. PRELMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion it is hereby recommended Special Management Area Use Permit SMA(U)-2023-11 to be **APPROVED**. If approved, the following conditions shall be implemented:

1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.

2. The lowest horizontal structural member of the dwelling unit shall be a minimum of two (2) feet above the Sea level rise flood elevation (SLRFE), which is 1 foot. The Applicant shall work closely with the Planning Department prior to submittal of building permit application in order to ensure that the development complies with the height requirements under the County of Kauai's Sea Level Rise Constraint District.

3. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed dwelling shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to building permit application.

4. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/

historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.

5. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward-facing, shielded lights. Spotlights aimed upward or spotlighting of structures shall be prohibited.

6. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.

7. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.

8. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.

9. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low-energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.

10. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.

11. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for JUNE 27, 2023 whereby the entire record should be considered prior to decision-making. The entire record should include but not be limited to:

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

By _____
DALE A. CUA
Planner

Approved & Recommended to Commission:

By _____
KA'ĀINA S. HULL
Director of Planning

Date: June 2, 2023

EXHIBIT "A"

(Agency Comments)

For reference

County of Kaua'i
Planning Department
4444 Rice St., Suite A473 Lihue, HI 96766
(808) 241-4050

FROM: Kaaina S. Hull, Director Planner: Dale Cua 5/10/2023

SUBJECT: Special Mgt Area Permit SMA(U)-2023-11
Tax Map Key: 450010120000
Applicant: Craig & Jill Schwed
Second Single-family Dwelling

TO:

- ☐ State Department of Transportation - STP
- ☐ State DOT - Highways, Kauai (info only)
- ☐ State DOT - Airports, Kauai (info only)
- ☐ State DOT - Harbors, Kauai (info only)
- ☑ State Department of Health
- ☐ State Department of Agriculture
- ☐ State Office of Planning
- ☐ State Dept. of Bus. & Econ. Dev. Tourism
- ☐ State Land Use Commission
- ☑ State Historic Preservation Division
- ☐ State DLNR - Land Management
- ☐ State DLNR - Forestry & Wildlife
- ☐ State DLNR - Aquatic Resources
- ☐ State DLNR - Conservation & Coastal Lands
- ☐ Office of Hawaiian Affairs
- ☑ County DPW - Engineering
- ☐ County DPW - Wastewater
- ☐ County DPW - Building
- ☐ County DPW - Solid Waste
- ☐ County Department of Parks & Recreation
- ☑ County Fire Department
- ☑ County Housing Agency
- ☐ County Economic Development
- ☑ County Water Department
- ☐ County Civil Defense
- ☑ County Transportation Agency
- ☐ KHPRC
- ☐ U.S. Postal Department
- ☐ UH Sea Grant
- ☑ Other: Office of Hawaiian Affairs

FOR YOUR COMMENTS (pertaining to your department)

No concerns for Fire at this time

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/27/2023 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!

JOSH GREEN M.D.
GOVERNOR OF HAWAII

KENNETH S. FINK, M.D., M.G.A., M.P.H
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
3040 Umi St. Lihue
Hawaii 96766

COUNTY OF KAUAI
'23 MAY 23 P2:44
PLANNING DEPT.

DATE: May 18, 2023

TO: **To Whom It May Concern:**

FROM: Janet M. Berreman, M.D., M.P.H.,
District Health Officer (Acting for District Environmental Health Program Chief)

SUBJECT: RESPONSE_Craig & Jill Schwed_TMK : 4-5-01:12

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: https://health.hawaii.gov/epo/landuse/. Contact information for each Branch/Office is available on that website.

Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

Clean Air Branch

1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.
2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established

wherever possible.

3. Standard comments for the Clean Air Branch are at: https://health.hawaii.gov/epo/landuse/

Clean Water Branch

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55: https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standardcomments/.

Hazard Evaluation & Emergency Response Office

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: https://health.hawaii.gov/epo/landuse/.

Indoor and Radiological Health Branch

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at https://health.hawaii.gov/irhb/asbestos/.

Safe Drinking Water Branch

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of: 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related the Safe Drinking Water program: https://health.hawaii.gov/sdwb/.
2. Standard comments for the Safe Drinking Water Branch can be found at: https://health.hawaii.gov/epo/landuse/.

Solid & Hazardous Waste Branch

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H and 342I, and HAR Chapters 11-58.1, and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse and recycling are preferred

options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.

3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: https://health.hawaii.gov/epo/landuse/.

Wastewater Branch

By Revised Statue 11-62-31.1 If the parcel is less than 10,000sq feet, an individual onsite waste-water unit may not be possible for future construction. Please contact Sina Pruder at the DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at doh.wwb@doh.hawaii.gov.

Sanitation / Local DOH Comments:

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control," shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

Other

1. CDC - Healthy Places - Healthy Community Design Checklist Toolkit recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Kauai District Health Office at 808-241-3492.

Janet Berreman

Janet M. Berreman, MD, MPH, FAAP
Kauai District Health Officer
Office Phone: (808) 241-3614

Applications for:
Special Management Area (SMA) Permit
Shoreline Setback Variance (SSV) Determination
Zoning Use Permit – Class 4

County of Kauai – Department of Planning

Nāwiliwili-Ahukini Bike Path

Lihue District, County of Kauai
Lihue, Kauai, Hawaii
Tax Map Key (TMK):
(4) 3-5-001: 005, 008, 009, 092, 109, 102, 128, 158, 160 &
(4) 3-7-002: 999

Prepared For:
County of Kauai
Department of Public Works
Division of Roads Maintenance and Construction
4444 Rice Street, Suite 275
Lihue, Hawaii 96766

R. M. TOWILL CORPORATION
SINCE 1930
2024 North King Street, Suite 200
Honolulu, Hawaii 96817
1-20987-00P

September 2022 - Revised January 2023

F.2.b.

June 27, 2023

Applications for:
Special Management Area (SMA) Permit
Shoreline Setback Variance (SSV) Determination
Zoning Use Permit – Class 4

Nāwiliwili-Ahukini Bike Path

Lihue District, County of Kauai
Lihue, Kauai, Hawaii
Tax Map Key (TMK): (4) 3-5-001: 005, 008, 009, 092, 109, 102, 128, 158, 160 & (4) 3-7-002: 999

January 2023

Prepared for:

County of Kauai
Department of Public Works
Division of Roads Maintenance and Construction
4444 Rice Street, Suite 275
Lihue, Hawaii 96766

Prepared by:

R.M. Towill Corporation
2024 North King Street, Suite 200
Honolulu, Hawaii 96817

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- Archaeological Literature Review and Field Inspection, June 2008.
- Archaeological Inventory Survey, September 2009.

Exhibit 16 – Ka Pa'akai Analysis
Exhibit 17 – NHPA 106 and 6E Consultation Timeline and Correspondence

Exhibits Volume II
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Section I
Application Checklist

APPLICATION CHECKLIST

	Content	**Notes**
a.	Pre-Application Meeting with Department of Planning	Phone call with Department of Planning on September 2, 2021.
b.	Completed Zoning Permit Application	Section II
c.	Completed SMA Assessment Form	Section III
d.	Completed SSV Determination Form	Section IV
e.	Project Description	Section V
f.	Scaled Drawings:	Section VII
	• Site/Plot Plan	Section VII – Exhibit 8
	• Location Map	Section VII – Exhibit 1
	• Building Floor Plans	N/A
	• SMA Boundary Line	Section VII – Exhibit 6
	• Flood Hazard Boundaries (if applicable)	Section VII – Exhibit 12
g.	Fees	N/A – County of Kauaʻi Project
h.	Certified Shoreline Survey (if applicable)	Section VII – Exhibit 7
i.	Photos (labeled and keyed to general site map)	Section VII – Exhibit 5
Add	New Bridge and Culvert Drainage Crossing	Section VII – Exhibit 9
Add	HRS 343 Finding of No Significant Impact	Section VII – Exhibit 13
Add	HRS 6E Compliance	Section VII – Exhibit 14
Add	Archaeological Inventory Survey Documents	Section VII – Exhibit 15
Add	Ka Pa'akai Analysis	Section VII – Exhibit 16
Add	HRS 343 Environmental Assessment and Appendices	Section VII – Exhibit 17

Section II
Zoning Permit Application

DEPARTMENT OF PLANNING

STANDARD ZONING PERMIT APPLICATION

One (1) original; If providing plans, five (5) sets, including original, required.
Fees vary based on permits required and range from $30 to over $1000.
Proof of 100% fee ownership rights or authorized agent must be attached.

Check One: ☐ Paper Plans ☐ Electronic Plans

This application shall be filled out by all seeking Zoning, Use, Variance, SMA Use or PDU permits pursuant to the Kauai County Code, Hawai'i Revised Statutes Chapter 205A and all relevant rules and regulations of the Planning Commission and Department. Supplemental information may be attached to form. SMA applications may also require additional SMA assessment forms.

DEPARTMENT USE ONLY				
Zoning				Intake By:
Use				
Variance				Intake Date:
SMA				
PDU				Acceptance Date/By:
TOTAL FEE:				
Additional Fees:				
Receipt Number				
Building Permit No.				
Associated Permits (e.g. SSD)				

Permitting fees may be made via cash or check. All checks shall be made out to: **"Director of Finance"**

Complete Information Below			
Tax Map Key Number	(4) 3-5-001 & (4) 3-7-002	Condominium Number	N/A
Applicant Name(s)	County of Kauai, Department of Public Works, Div. of Roads Maintenance & Construction		
Property Address	N/A		
Mailing Address	4444 Rice Street, Suite 275 Lihu'e, Hawai'i 96766		
Parcel Area	N/A	Contact Phone	808-241-4906
Zoning Designation	Class IV	Contact Email (if applicable)	wlord@kauai.gov

Applicant Declarations (incorrect responses may slow your permit review)

Please place an "X" under Yes or No under the following:

		YES	NO	Staff Verification
1	Is this property located in the Special Management Area (SMA)?	x		
2	Is this property part of a Condominium Property Regime (CPR)?		x	
3	Is this property within 500 feet of the shoreline?	x		
4	Is this property within the Agriculture Zoning District?	x		
5	Is there a structure on the property that is 50 years old or older?	x		
6	Do you have an Additional Dwelling Unit Certificate?		x	
7	Is this a permit for an after-the-fact construction or activity?		x	
8	I hold at least a 100% property interest in the property.		x	
9	Are you an agent for the property owner?	x		
10	Has a similar application been previously denied?		x	
11	Is this an application for an agriculture structure under 200 square feet		x	
12	Are there known burials on the site?		x	
13	Are you using water not provided by a domestic water system?		x	
14	Does existing grade under building footprint change by 2' or more in any direction?	x		
15	The proposed residential unit is a Multi-Family Dwelling Unit?		x	
16	Is this a conversion of a legally existing single-family dwelling unit into a multi-family two dwelling unit?		x	
17	Is this structure a guest house?		x	
18	Does guest house contain a kitchen?		x	

1. What is the proposed construction and/or intended use of the structure or parcel (may attach additional info)? Paved, temporary and movable multi-use coastal path from Ninini Point to Ahukini Landing with connections to Ahukini Street and Ninini Point Street. See Supplemental Info.
2. If this is not the first dwelling unit on the subject property identified on this application, please state how many dwelling units presently exist: N/A

Submittal Checklist

Please **INITIAL** under "Yes" or not applicable "N/A" regarding each of the statements:

		YES	NA	Staff Verification
1	All plot plans I have submitted are drawn to scale.	Yes		
2	I have ensured all TMK numbers are visible on all plan sheets.	Yes		
3	Any plans I have submitted clearly show all structures and setback dimensions.	Yes		
4	My plans provide lot coverage calculations	Yes		
5	I have ensured kitchens are marked with the 8' radii required by the Planning Department's Administrative Rules.		N/A	
6	Because this application involves a CPR, the plot plan shows all existing structures.		N/A	
7	Building plate does not exceed 20 feet from the finished grade at entry.		N/A	

Acknowledgements - Please **INITIAL** next to each of the statements:

I UNDERSTAND:	Initial Here
Additional fees and/or the submittal of other application forms may be necessary to complete this application for acceptance and processing.	WL
Tender of fees by the County does not imply acceptance of this application.	WL
Errors in self-declaration or missing or incomplete information will delay acceptance and processing of your application.	WL
Any purposeful misrepresentations in this application may result in delay, denial, permit revocation, violations, fines and even criminal prosecution.	WL

The owner and/or authorized representative is hereby made aware that the construction, work, use or activity approved in this permit shall be subject to inspection by Planning Department personnel. The applicant is advised that inspection may occur prior to or during construction and use to ascertain the activity is conducted in compliance with the law. Further, I am a duly authorized agent or have 100% ownership rights.

OWNER/AGENT SIGNATURE: Digitally signed by Wade L Lord Date: 2022.09.30 16:50:17 -10'00' DATE: September 30, 2022

FOR PLANNING DEPARTMENT USE ONLY (THIS CONSTITUTES PERMIT IF FILLED OUT BY DEPT.):

APPROVED ☐ DENIED ☐ BY: _____ DATE: _____

DIRECTOR'S CONDITIONS OF APPROVAL (staff to **initial** next to applicable conditions):

This permit shall expire if no building is issued within one (1) year after the approval date and/or if construction does not start within one (1) year of building permit issuance.	
Director's standard conditions for non-residential agricultural structures (attach)	
Should any archaeological or historic resources be discovered during ground disturbing/construction work, all work in the area of the find shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.	
Additional Conditions (State):	

Section III
Special Management Area (SMA) Permit Assessment Application Form

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

I. Part A

APPLICANT INFORMATION			
Applicant:	808-241-4906		
Address:	444 Rice Street, Suite 275 Līhu'e, Hawai'i 96766	Phone:	444 Rice Street, Suite 275
Applicant's Status: (Check one)			
☑ Owner of the Property	(Holder of at least 75% of the equitable and legal title)		
☐ Lessee of the Property	Lessee must have an **unexpired and recorded** lease of five (5) years or more from the date of filing of this application. If not, Owner(s) must provide a Letter of Authorization.		
☑ Authorized Agent	Attach Letter of Authorization		
Contact Person:	Wade Lord	Address:	444 Rice Street, Suite 275
Phone:	808-241-4906		Līhu'e, Hawai'i 96766
Email:	wlord@kauai.gov		

PROJECT INFORMATION (attach additional sheets if necessary)			
Site Address:	See Supplemental Information.	Tax Map Key:	See
		Lot Area:	Supplemental
State Land Use District:	See Supplemental Information.	County Zoning:	Information.
General Plan Designation:	See Supplemental Information.		
Nature of Development:	Public access coastal shared-use path. See Supplemental Information.		

* **NOTE**: An Environmental Assessment in accordance with HRS Chapter 343 is required for actions requiring a Shoreline Setback Variance (SSV). Please contact the Planning Department for further information.

Valuation of Development: $12,706,524
(Estimate Attached)

Date of Application: September 2022 - Rev. January 2023

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

II. Part B

The petitioner shall be responsible for filing the following required information with the department before an application is considered complete:

1. A **written** description of the proposed project, location and a statement of reasons/justification for project.
2. If property abuts a shoreline, a certified shoreline survey conducted by a registered land surveyor within 6 months of an application shall be submitted, when required by the Planning Agency.
3. A plot plan of the property, drawn to scale, with all proposed and existing structures and other pertinent information. Also, preliminary building sketch plans are to be submitted.
4. Any other plans or information requirements by the Director.

   Note: An Environmental Assessment or Environmental Impact Statement that has been declared adequate under the National Environmental Policy Act (NEPA) or under Chapter 343, HRS, may constitute a valid filing under this section.
5. Project Assessment:

   a. Description of the area and environment involved including flora and fauna, and other features;

   See Supplemental Information.

   b. Description of the existing land uses of the project site and surrounding areas;

   See Supplemental Information.

   c. Description of how the proposed project will affect the area involved and surrounding areas. Specifically the assessment should evaluate if the proposal:

	YES	NO
i. Involves an irrevocable commitment to loss or destruction of any natural or cultural resources, including but not limited to, historic sites, Special Treatment Districts as established by the County of Kauai Comprehensive Zoning ordinance, view planes or scenic corridors as outlined in the Community Development Plans, and recreation areas and resources;	☐	☑

Discussion:

See Supplemental Information.

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

ii. Curtails the range of beneficial uses of the environment; YES ☑ NO ☐

Discussion:

See Supplemental Information.

iii. Conflicts with the County's or the State's long-term environmental policies or goals; YES ☐ NO ☑

Discussion:

See Supplemental Information.

iv. Substantially affects the economics or social welfare and activities or the community, County or State; YES ☑ NO ☐

Discussion:

See Supplemental Information.

v. In itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions; YES ☐ NO ☑

Discussion:

See Supplemental Information.

vi. Substantially affect a rare threatened, or endangered species of animal or plant, or its habitat; YES ☐ NO ☑

Discussion:

See Supplemental Information.

vii. Detrimentally affects air or water quality or ambient noise levels; or YES ☐ NO ☑

Discussion:

See Supplemental Information.

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

		YES	NO
viii.	Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water or coastal water;	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
ix.	May have a major effect on the quality of the environment or affect the economic or social welfare of the area; and	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
x.	Would possibly be contrary to the policies and guidelines of the Rules and Regulations, the County's General Plan, Development Plans, and Zoning and Subdivision Ordinances.	☐	☑

Discussion:

See Supplemental Information.

d. Evaluation of the proposed development relative to the objective and policies as contained in Chapter 205A, HRS; and Section 3.0 of the Special Management Area (SMA) Rules and Regulations: (complete following questionnaire)

RECREATIONAL RESOURCES:	Objective Provide coastal recreation opportunities accessible to the public.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

		YES	NO
1.	Will the proposed development adversely affect coastal resources uniquely suited for recreational activities that cannot be provided in other areas?	☐	☐

Discussion:

See Supplemental Information.

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

2. Will the project require replacement of coastal resources having significant recreational value, including but not limited to surfing sites, sandy beaches and fishing areas, when such resources will be unavoidably damaged by the proposed development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable? YES ☐ NO ☐

Discussion:

See Supplemental Information.

3. Is the project site near a State or County Park? YES ☑ NO ☐

Discussion:

See Supplemental Information.

4. Will the proposed development affect an existing public access to or along the shoreline? YES ☑ NO ☐

Discussion:

See Supplemental Information.

5. Will the proposed development provide public access to and/or along the shoreline? YES ☑ NO ☐

Discussion:

See Supplemental Information.

6. Will the proposed development encourage expanded recreational use of County, State, or federally owned or controlled shoreline lands and waters having recreational value? YES ☑ NO ☐

Discussion:

See Supplemental Information.

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

		YES	NO
7.	Will the development generate point or non-point sources of pollution that will affect recreation value of coastal area?	☐	☑

Discussion:

See Supplemental Information.

HISTORICAL RESOURCES:	Objective Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the Special Management Area that are significant in Hawaiian and American history and culture.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

		YES	NO
1.	Is the project site within a Federal, State and/or County designated historical/cultural district?	☐	☑

Discussion:

See Supplemental Information.

		YES	NO
2.	Is the project site listed on or nominated to the Hawaii or National Register of Historic Places?	☐	☑

Discussion:

See Supplemental Information.

		YES	NO
3.	Does the project site include land(s) which have not been previously surveyed by an archaeologist?	☐	☑

Discussion:

See Supplemental Information.

		YES	NO
4.	If an archeological survey has been conducted for the project site, has the survey been submitted to the State Historic Preservation Office for review and recommendations?	☑	☐

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

Discussion:

See Supplemental Information.

		YES	NO
5.	Has any site survey revealed any information on historic or archaeological resources? (Please provide a copy or reference of survey)	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
6.	Is the project site within or near a Hawaiian fishpond?	☐	☑

Discussion:

See Supplemental Information.

		YES	NO
7.	Is the project located within or near a historic settlement area? (Cemeteries, burials, heiaus, etc.)	☑	☐

Discussion:

See Supplemental Information.

SCENIC & OPEN SPACE RESOURCES:	Objective Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

		YES	NO
1.	Does the project site abut or affect a valued scenic resources or landmark within the SMA?	☑	☐

Discussion:

See Supplemental Information. Part B.

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

		YES	NO
2.	Does the proposed development affect existing shoreline open space and scenic resources?	☑	☐

Discussion:

See Supplemental Information. Part B.

		YES	NO
3.	Does the proposed development involve alteration to natural landforms and existing public views to and along the shoreline?	☑	☐

Discussion:

See Supplemental Information. Part B.

		YES	NO
4.	Is the project compatible with the visual environment?	☑	☐

Discussion:

See Supplemental Information. Part B.

		YES	NO
5.	Does the proposed action involve the construction of structures visible between the nearest coastal roadway and the shoreline?	☑	☐

Discussion:

See Supplemental Information. Part B.

		YES	NO
6.	Is the project site within the Shoreline Setback Area (20 or 40 feet inland from the shoreline)?	☐	☑

Discussion:

See Supplemental Information. Part B.

COASTAL ECOSYSTEMS:	Objective Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

1. Is the project site a habitat for endangered species of flora and fauna? YES ☑ NO ☐

Discussion:

See Supplemental Information.

2. Will the proposed development adversely affect valuable coastal ecosystems of significant biological or economic importance? YES ☑ NO ☐

Discussion:

See Supplemental Information.

3. Will the proposed involve disruption or degradation of coastal water ecosystems through stream diversions, channelization, and similar land and water uses? YES ☐ NO ☑

Discussion:

See Supplemental Information.

4. Will the proposed development include the construction of special waste treatment facilities, such as injection wells, discharge pipes, septic tank systems or cesspools? YES ☑ NO ☐

Discussion:

See Supplemental Information.

5. Is there a wetland on the project site? YES ☑ NO ☐

Discussion:

See Supplemental Information.

6. Is the project site situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary? YES ☐ NO ☑

Discussion:

See Supplemental Information.

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

ECONOMIC USES:	Objective Provide public or private facilities and improvements important to the State's economy in suitable locations.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

1. Does the project involve a harbor or port? YES ☐ NO ☑

Discussion:

See Supplemental Information.

2. Is the proposed development related to or near to an existing major hotel, multi-family, or condominium project? YES ☑ NO ☐

Discussion:

See Supplemental Information.

3. Does the project site include agricultural lands designated for such use? YES ☑ NO ☐

Discussion:

See Supplemental Information.

4. Does the proposed development relate to commercial fishing or seafood production? YES ☐ NO ☑

Discussion:

See Supplemental Information.

COASTAL HAZARDS:	Objective Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

Check either "Yes" or "No" for each of the following questions. If your answer below is "**Yes**" or "**No**" it is necessary to elaborate by providing comments in the "Discussion" section below the question.

COUNTY OF KAUA'I
DEPARTMENT OF PLANNING

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

		YES	NO
1.	Is the project site within a potential tsunami inundated area as depicted on the National Flood Insurance Rate maps (FIRM)?	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
2.	Is the project site within a potential flood inundation area according to a FIRM?	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
3.	Does the project comply with the requirements of the Federal Flood Insurance Program?	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
4.	Has the project site or nearby shoreline areas experienced shoreline erosion?	☑	☐

Discussion:

See Supplemental Information.

		YES	NO
5.	Have any seawalls/revetments/etc. been constructed or exist in the immediate vicinity?	☐	☑

Discussion:

See Supplemental Information.

SPECIAL MANAGEMENT AREA (SMA) PERMIT ASSESSMENT

PROJECT ASSESSMENT:	

e. Evaluation of the impacts which cannot be avoided and mitigating measures proposed to minimize that impact:

Discussion:

See Supplemental Information.

f. Evaluation of the proposed development relative to Section 4.0 of the SMA Rules and Regulations in accordance with the following aspects:

i. Substantial adverse environmental or ecological effects;

Discussion:

See Supplemental Information.

ii. Consistency or compliance of the proposed development relative to the goals and objectives of Chapter 205A, HRS; and Section 3.0 of the SMA Rules and Regulations; and

Discussion:

See Supplemental Information.

iii. Consistency or compliance of the proposed development relative to the County General Plan, Development Plan, and Zoning Ordinances.

Discussion:

See Supplemental Information.

Wade Lord, Program Administrative Officer — September 30, 2022

[name], [title] — Date

Section IV
Shoreline Setback Variance (SSV) Determination Form

PLANNING DEPARTMENT
SHORELINE SETBACK APPLICATION

FOR OFFICIAL USE ONLY:	
SSD 202___ - ____	
Acceptance Date:	
Website Posting Date:	
Determination Date:	
Planning Commission Date:	
Expiration Date:	
Planner Assigned:	

Instructions: File all information requested under Part A for processing the Determination of Applicability (§8-27.1), including signature page. Fill out Parts A and B if you know that your parcel will require a Certified Shoreline Survey, due to the proximity to the shoreline. If you are proposing a permitted structure or subdivision within the shoreline setback area fill in Part C. For applications involving a variance, complete Part D.

Applicant Information

Applicant: County of Kaua'i, Department of Public Works

Mailing Address: 444 Rice Street, Suite 275
Līhu'e, Hawai'i 96766

Phone: 808-241-4906

Email: wlord@kauai.gov

Applicant's Status: (Check one)

☑ Owner of the Property	(Holder of at least 100% of the equitable and legal title)
☐ Authorized Agent	Attach Letter of Authorization

Transmittal Date: September 30, 2022

Project Information (attach additional sheets, if necessary)

County Zoning District: AG, C, I-G, I-G/STP, O, R2

Tax Map Key(s): See Supplemental

Building Permit Number: _____
(If building plans submitted)

Land Area: See Supplemental

Nature of Development: (Description of proposed structure or subdivision)	Construction of a publicly accessible shared-use bicycle/pedestrian path. See Supplemental Information.

NO PERMITS WILL BE ISSUED WITHOUT PLANNING COMMISSION ACCEPTANCE, EXCEPT AS PROVIDED IN §8-27.8(c)(8)

Part A

Shoreline Setback Determination of Applicability (§8-27.1)

Check all that apply, fill in applicable information. Any box checked must be accompanied by additional information, photos and/or documentation.

1. Property is Abutting the Shoreline
   - ☑ Proposed project's approximate distance from shoreline (based on aerial map): var. 60 to 300 ft.
2. Property is Not Abutting the Shoreline
   - ☐ Proposed project's approximate distance from shoreline (based on aerial map): _____ ft.
3. Additional Information:
   - ☐ Shoreline Change (Erosion/Accretion) Rate: rocky shore ft./year
     (Information available here: Kauai Shoreline Change (arcgis.com))
   - ☐ Number and description of parcels (including roads, buildings, structures) between Shoreline and this parcel:

The path passes through undeveloped land on 5 shoreline, agricultural parcels that are currently not in agricultural use. See Supplemental Information.

PLANNING DEPARTMENT
SHORELINE SETBACK APPLICATION

☑ Topography (undulating, flat, slope, etc.) and ground elevation of subject parcel (Lowest and Highest elevations)

Gentle slope toward a 10-ft to 30-ft high cliff above a rocky shoreline. Low = 17 ft. High = 96 ft. See Supplemental Info.

☐ Shoreline type (e.g. beach, dune, rocky, sandy with rocky outcropping, etc.)

Rocky, boulders and cobbles

☑ Artificially armored Shoreline
- ☐ If checked, what type of armoring (e.g. seawall, revetment, bulkhead): _____
- ☑ Is the armoring permitted/authorized? _____
- ☐ Date of authorization (attach copy of authorization letter): _____

☑ Is property in coastal floodplain (if checked, what zone)? VE (22-24)

☐ Has this property been subject to coastal hazards (i.e. flooding, erosion, tsunami, etc.) in the past?

No

PLEASE NOTE:

Any misrepresentation of information in this shoreline setback application will result in revocation of this determination and may result in fines and criminal prosecution.

Applicant's Signature

Digitally signed by Wade L Lord
Date: 2023.01.17 15:07:22 -10'00'

September 30, 2022

Signature Date

Applicability (to be completed by Planning Department)
☐ **Setback Determination necessary.** Requirements of Ordinance No. 979 are applicable.
☐ **Setback Determination is NOT necessary.** Requirements of Ordinance No. 979 are not applicable.
_____ Planning Director or designee Date

If **Part A** has been deemed that a Determination will be necessary, the additional information will be required for submission of this application.

Part B

☐ A non-refundable processing fee of **one hundred dollars ($100.00)** shall accompany a request for determination. (§8-27.8(e))

☑ An aerial map/image (ex. Google Maps or Google Earth) with a line drawn from the shoreline/vegetation line (approximate shoreline) to the proposed project and the calculated distance in feet.

☐ A detailed Plot Plan **to scale** with all existing and proposed structures including driveways, visible lot coverage, setbacks and measurement details, fences, gates, and walls, etc.

☑ Coastal Hazard Disclousre Statement Form

PLANNING DEPARTMENT
SHORELINE SETBACK DETERMINATION

Exemption Determination

☐ **Exemption 1**

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

☐ **Exemption 2**

Pursuant to §8-27.7, those structures and uses found exempt in Table 3 (see pg. 7) including repairs and renovations to a lawfully existing structure, including nonconforming structures, provided that:

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

(B) The repairs DO NOT constitute a substantial improvement of the structure; and

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

☐ Letter from the Department of Public Works stating that the proposed project does **NOT** constitute "Substantial Improvement," pursuant to §8-27.2 (If applicable, will require valuation of project).

Exemption Determination (to be completed by Planning Department)

☐ Pursuant to §8-27.3 the Kaua'i County Code, 1987 as amended, the Planning Department hereby certifies the proposed structure(s) or subdivision(s) as exempt from those shoreline setback determination requirements established under §8-27.8.

☐ Pursuant to §8-27.7 the Kaua'i County Code, 1987 as amended, the proposed structure(s) is permitted within the shoreline setback area. While exempt from those shoreline setback determination requirements established under §8-27.8, the proposed structure(s) is subject to the conditions of §8-27.7(b). (See pg. 8)

_____

Planning Director or designee Date

☐ **Additional comments/conditions:**

PLANNING DEPARTMENT
SHORELINE SETBACK DETERMINATION

Part C

Shoreline Setback Determination (§8-27.8)

(This document is the request for a shoreline setback structure or subdivision determination form.)

Please complete this section if you are proposing a structure or subdivision that is *not* exempt (pursuant to Part B) and requires a certified shoreline. Determination of applicability (**Part A**) from the Planning Director shall first be obtained.

Certified Shoreline

Select the appropriate option:

☑ Certified Shoreline

- ☑ Survey Map (showing Certified Shoreline, Shoreline Setback, and Structure(s) OR Subdivision)
- ☐ Average Lot Depth: >1,000 ft.
- ☑ Setback (Table 1 or Table 2): 100 ft.

☑ Affidavit: Statement of inability to certify shoreline, pursuant to §8-27.3(d)

_____

Planning Director or its designee Date

Public Projects less than $125,000

☐ Public Projects less than $125,000 Declaration ((§8-27.8(c)(2))

_____

Planning Director or designee Date

- ☐ Certified Shoreline Required
- ☑ Certified Shoreline Not Required

Describe proposed structure(s), including but not limited to the landscaping plan (please attach):

See

Explain how the proposed structure is in compliance with §8-27.8(c)(2) (attach additional information if necessary):

Supplemental

PLANNING DEPARTMENT
SHORELINE SETBACK VARIANCE

Part D

Shoreline Setback Variance (§8-27.9)

This part is the request for a shoreline setback variance. In addition to the documentation and information requested in Parts A, B, and C, the Applicant applying for a variance is required to submit all required information, per §8-27.9 listed in the checklist below.

- ☐ A non-refundable administrative fee of three hundred dollars **($300.00)**.
- ☐ Certification from the owner or lessee of the lot which authorizes the application for variance;
- ☐ An environmental assessment and or EIS, if required, prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai‘i;
- ☑ The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure or subdivision and/or landscaping is to be located; or operation is to occur (attach information);
- ☐ A site plan of the shoreline setback area, drawn to scale, showing:
  - ☐ Existing natural and man-made features and conditions within;
  - ☑ Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
  - ☐ The certified shoreline and the shoreline setback line (submitted under **Part B**);
  - ☐ Contours at a minimum interval of two (2) feet unless waived by the Director; and
  - ☑ Proposed development and improvements showing new conditions with a typical section (if a structure).
- ☐ A copy of the certified shoreline survey map of the property (submitted under **Part B**);
- ☑ Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance (attach written statement);
- ☑ Analysis and report of coastal erosion rates and coastal processes; and
- ☐ Any other information required by the Director (listed below).

Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under §8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation and the grantor shall be subject to the penalties set forth in this Article 3.

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

PLANNING DEPARTMENT
SHORELINE SETBACK INFORMATION

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

LOTS INCLUDED IN KAUA'I COASTAL EROSION STUDY

Average Lot Depth	Setback Line
Less than 140 feet (<140 feet)	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet (140-220 feet)	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus 40
Greater than 220 feet (>220 feet)	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- 100 feet from the certified shoreline

View erosion rate maps from the County website at
Kaua'i Coastal Erosion Study Update 2020
Kauai Shoreline Change (arcgis.com)

Table 2. (*This table is included for illustrative purposes only.*)
Lots Not Included in the Kaua'i Coastal Erosion Study.

LOTS NOT INCLUDED IN KAUA'I COASTAL EROSION STUDY

Setback Calculation	
(Average Lot Depth – 100/2+40) Subject to the Following:	
1	For lots with naturally *occurring rocky shorelines*, the shoreline setback line shall be **no less than 40 feet**.
2	For all other lots, the shoreline setback line shall be **no less than 60 feet**.
3	*For all lots*, the **maximum** setback that can be required **shall be 100 feet**.

Non-Abutting Lots. If an Applicant is unable to secure permission from the abutting landowner to complete a certified shoreline for a non-abutting lot within approximately five hundred fifty (550) feet of the shoreline, the Planning Director may, pursuant to §8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

PLANNING DEPARTMENT
SHORELINE SETBACK INFORMATION

Table 3. This table is presented for **Exemption 3** (§8-27.7).

Permitted Structures within the shoreline setback area	
(a)	The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.
(1)	Existing conforming or legally nonconforming structures.
(2)	Structure that received a shoreline variance or administrative approval prior to February 26, 2008.
(3)	A structure that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
(4)	"Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
(5)	A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations that results in no interference with natural beach processes and is anchillary or associated with one of the following sites: (A) A Hawaiian fish pond; (B) A publicly owned and legal boating, maritime, or water sports recreational facility.
(6)	Repairs to a lawfully existing structure, including nonconforming structures, provided that: (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes; (B) The repairs do not constitute a substantial improvement of the structure; (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law; and (D) The Planning Director determines that the proposal complies with the definition of "repair" under Sec.8-1.5, Kaua'i County Code 1987, as amended.
(7)	Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
(8)	A structure approved by the Director as a minor structure.
(9)	Qualified demolition of existing structures.
(10)	Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
(11)	Scientific studies and surveys, including archaeological surveys.
(12)	Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by the law to declare an emergency.
(13)	Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within thirty (30) days following the completion of the film production.
(14)	Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.

(15)	Repair and/or rebuiding of existing public park facilities, excluding shoreline armoring structures or improvements.
(b)	The following conditions shall apply to any new structure or any substantial improvement permitted in the shoreline setback area:
(1)	All new structures shall by constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua‘i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
(2)	The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua‘i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.
(3)	The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than forty feet (40’) from the shoreline.
(4)	Unless otherwise provided, all new structures and/or landscaping shall not: (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade of the shoreline setback area.
(5)	All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along to the shoreline.
(6)	The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit. (Ord. No. 979, December 5, 2014; Ord. No. 1088, February 4, 2021)

PLANNING DEPARTMENT
SHORELINE SETBACK INFORMATION

COASTAL HAZARD DISCLOSURE STATEMENT FORM

Ahukini Rd. to Ninini Point St., Lihue, Hawaii, 96766, TMK:(4) 3-5-001: 5, 8, 9, 92, 102, 109, 128, 158, 160 and 3-7-002: 999

Project Address and TMK Number (the "Property"), and Shoreline Setback Permit Number

Construction of a public shared-use path and shared-used road to connect Ahukini Pt., Ninini Pt. and Lihue Airport.

Scope of Construction for the Project or Description of Work

Disclosure: THE PROPERTY OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE PROPERTY MAY BE SUBJECT TO COASTAL HAZARDS AS DEFINED UNDER KAUA'I COUNTY CODE (KCC) SECTION 8-27.1. THESE COASTAL HAZARDS MAY LIMIT THE ABILITY TO DEVELOP THE PROPERTY AND FUTURE DEVELOPMENT MAY BE SUBJECT TO FURTHER RESTRICTIONS AND LIMITATIONS PURSUANT TO KCC CHAPTER 8, ARTICLE 27, AS AMENDED, AS WELL AS FEDERAL, STATE, AND COUNTY LAWS AND REGULATIONS THAT GOVERN COASTAL PROPERTIES. Additional information can be obtained from the County of Kaua'i Planning Department (https://www.kauai.gov/Government/Departments-Agencies/Planning-Department/Shoreline-Setback) including but not limited to links to the State of Hawaii, Department of Land and Natural Resources, Flood Hazard Assessment Tool and the State of Hawai'i Sea Level Rise Viewer.

Declaration: I declare under penalty of perjury and under the laws of the State of Hawai'i (Unsworn Falsification HRS §710-1063) that I am the property owner for the address listed above, I personally filled out the above information, that the foregoing is true and correct, and I certify its accuracy.

***The property owner signature is required to be notarized when property owner is not present at time of submitting the permit application. In lieu of notarization, the Planning Department will accept forms that are electronically signed using secure software that verifies the identity of the user (e.g., DocuSign or Adobe Sign).*

Property Owner Name (print)	Property Owner Signature	Date
Wade Lord	Digitally signed by Wade L Lord Date: 2023.01.17 15:11:36 -10'00'	January 17, 2023

**** Attach Notary Jurat ****

PLANNING DEPARTMENT
SHORELINE SETBACK INFORMATION

COASTAL HAZARD DISCLOSURE STATEMENT FORM

Ahukini Rd. to Ninini Point St., Lihue, Hawaii, 96766, TMK:(4) 3-5-001: 5, 8, 9, 92, 109, 128, 158, 160 and 3-7-002: 999

Project Address and TMK Number (the "Property"), and Shoreline Setback Permit Number

Construction of a public shared-use path and shared-used road to connect Ahukini Pt., Ninini Pt. and Lihue Airport.

Scope of Construction for the Project or Description of Work

Disclosure: THE PROPERTY OWNER ACKNOWLEDGES AND UNDERSTANDS THAT THE PROPERTY MAY BE SUBJECT TO COASTAL HAZARDS AS DEFINED UNDER KAUA'I COUNTY CODE (KCC) SECTION 8-27.1. THESE COASTAL HAZARDS MAY LIMIT THE ABILITY TO DEVELOP THE PROPERTY AND FUTURE DEVELOPMENT MAY BE SUBJECT TO FURTHER RESTRICTIONS AND LIMITATIONS PURSUANT TO KCC CHAPTER 8, ARTICLE 27, AS AMENDED, AS WELL AS FEDERAL, STATE, AND COUNTY LAWS AND REGULATIONS THAT GOVERN COASTAL PROPERTIES. Additional information can be obtained from the County of Kaua'i Planning Department (https://www.kauai.gov/Government/Departments-Agencies/Planning-Department/Shoreline-Setback) including but not limited to links to the State of Hawaii, Department of Land and Natural Resources, Flood Hazard Assessment Tool and the State of Hawai'i Sea Level Rise Viewer.

Declaration: I declare under penalty of perjury and under the laws of the State of Hawai'i (Unsworn Falsification HRS §710-1063) that I am the property owner for the address listed above, I personally filled out the above information, that the foregoing is true and correct, and I certify its accuracy.

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Property Owner Name (print)	Property Owner Signature	Date
Kauai District Airports Manager, Craig Davis	Craig H. Davis Digitally signed by Craig H. Davis Date: 2023.01.31 13:18:20 -10'00'	1/31/2023

**** Attach Notary Jurat ****

Section V
Supplemental Information

SUPPLEMENTAL INFORMATION

Applications for:
Special Management Area (SMA) Permit Assessment
Shoreline Setback Variance Determination
Zoning Use Permit – Class 4

County of Kauai
Department of Planning

Nāwiliwili-Ahukini Shared-Use Path Project

Līhuʻe, Kauaʻi, Hawaiʻi

TMK: (4) 3-5-001: 005, 008, 102, 159, 160 & (4) 3-7-002: 999

September 2022

PART A.

Applicant:

Applicant / Owner	Agent
County of Kauaʻi (COK) Department of Public Works (DPW) Division of Roads Maintenance and Construction 4444 Rice Street, Suite 275 Līhuʻe, Hawaiʻi 96766	R. M. Towill Corporation 2024 North King Street, 200 Honolulu, HI 96819

Contact Person:

Applicant / Owner	Agent
Wade Lord, Program Manager 808-241-4906 wlord@kauai.gov	Jim Niermann, AICP Planning Project Coordinator 808-842-1133 jimn@rmtowill.com

Project Information:

Site Address:

Within the SMA, the project site consists of the following:

- a continuous 8- to 12-foot wide shared-use path within a 22-foot-wide public access right-of-way alignment along an approximately 17,000-linear foot (lf) segment of the shoreline between Ahukini Point and Ninini Point; and,
- an approximately 1,200-lf segment of Ahukini Road within the SMA incorporated into the path system as a shared-use route.

Additional path segments are located outside of the SMA that connect Ahukini Point to Līhu'e International Airport, connect Ninini Point to Kūhiō Highway and provide public access through the Timbers Kaua'i Resort and Marriott Kaua'i Beach Resort properties.

See **Section VII, Exhibit 1 – Project Location Map.**

TMKs:

Segment A: (4) 3-5-001: 004, 005*, 008*, 009, 085, 092, 102*, 128, 158 & 160*

Segment G: (4) 3-5-001: 008*, 085, 092, 158, & 160*; and (4) 3-7-002: 001, & 999*

(* in SMA)

Lot Area:

Total area of the proposed path alignment within the SMA is approximately 400,400 sf or 9.2 acres:

- Segment A: approximately 374,000 sf or 8.6 acres (17,000 lf x 22-ft right-of-way width). Path segment A requires construction of a new concrete path with drainage crossings.
- Segment G: approximately 26,400 sf or 0.6 acres (1,200 lf x 22-ft right-of-way width). Path Segment G will use the existing, paved Ahukini Road as a signed and striped shared-use route.

Of the total project area within the SMA, an approximately 8,080-lf segment of the path, totaling 177,760 sf or 4.1 acres, is located within the State Land Use (SLU) Conservation District and thus outside of the COK's authority related to shoreline setback requirements [1].

In addition, the following path segments that are part of the project are located outside of the SMA:

- an approximately 350-lf segment to provide access to a future comfort station at Ninini Point, also within the SLU Conservation District and outside of the SMA;
- an approximately 2,000-lf segment that completes the path connection from Ninini Point to Ninini Point Street; and,
- shared-use road segments on:
    - Ahukini Road to Līhu'e International Airport;

[1] The COK has regulatory authority over all areas within the SMA, in accordance with HRS Chapter 205A. SMA areas overlaid by the State Land Use (SLU) Conservation District are also under the authority of the State of Hawai'i, Department of Land and Natural Resources (DLNR), Office of Conservation and Coastal Land (OCCL). Within the SLU Conservation District, shoreline setback requirements are established and enforced by the OCCL, not by COK. In addition, a Conservation District Use Permit (CDUP) approved by DLNR is required for planned improvements within the SLU Conservation District areas.

- Kā'ana Street from Kāpule Highway to Līhuʻe International Airport; and
- Ninini Point Street to Kāpule Highway.

State Land Use Districts:

Conservation, Urban, Agricultural (See **Section VII, Exhibit 2 – State Land Use Districts**)

Kaua'i General Plan Land Use Designation:

Path segments within the SMA are within the following land use designations:
Transportation
Parks and Recreation
Agriculture

Path segments outside the SMA are within the following land use designations:
Transportation
Urban Center
Golf Course
Agriculture

County Zoning Districts:

Path segments within the SMA are within the following zoning districts:
Agriculture (AG)
Conservation I
Industrial-General/ Special Treatment District (I-G/ST-P)

Path segments outside of the SMA are within the following zoning districts:
Agriculture (AG)
Conservation I
Industrial-General (I-G)
Industrial-General/ Special Treatment District (I-G/ST-P)
Open (O)
Residential – 2 dwellings per acre (R2)

See **Section VII, Exhibit 3 – County of Kauaʻi Zoning.**

Nature of Development:

The project involves the construction of a public, shared-use path and shared-used road system for bicycles and pedestrians to connect Ahukini Landing, Ninini Point, Līhuʻe International Airport, Timbers Kauaʻi Resort and Līhuʻe Town to the Ka Ala Hele Makālae Coastal Path System.

All of the proposed improvements will be undertaken outside of the 60-foot shoreline setback.

Valuation of Development:

Valuation of development is in 2022 dollars. See **Section VII, Exhibit 4 – Preferred Alignments Cost Estimate**.

Nāwiliwili-Ahukini Shared-Use Path – Phase A Segments	In SMA	Outside SMA	Total
A – Coastal Path – Ahukini Landing to Ninini Point to Ninini Point Street	$12,622,922	$1,954,811	$14,577,734
A1 – Ninini Point Path and Comfort Station	$0	$1,908,506	$1,908,506
B - Coastal Path - Ninini Point to Kalapakī Beach	By Others		$0
C - Shared-Use Road – Ninini Point Street - Ninini Point to Kāpule Highway	$0	$433,136	$433,136
D – Shared-Use Path - Kāpule Highway to Ho'olaule'a Way (Limo Road)	By Others		$0
G - Shared-Use Road - Ahukini Landing to Līhu'e Airport	$83,602	$390,141	$473,743
H - Shared-Use Path Bike Depot - Līhu'e Airport to Kāpule Highway	$0	$1,441,531	$1,441,531
	$12,706,524	$6,128,124	$18,834,648

PART B.

1. Project Description, Location, and Justification

The County of Kaua'i (COK), Department of Public Works (DPW) plans to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nāwiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke Ala Hele Makālae*, the 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The project is being undertaken in phases: A, B1, B2, B3 and B4.

The proposed action that is the subject of this application is Phase A of the Nāwiliwili-Ahukini Shared-Use Path Project and consists of the following path segments:

Preliminary Coastal Path Alignment

Segment A – Ahukini Landing to Ninini Point Lighthouse to Ninini Point Street. The total length of this segment is approximately 19,350 lf, of which approximately 17,000 lf is located within the SMA. This segment will be constructed as a 10- to 12-foot-wide concrete path. **Segment A** details include:

i. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.
ii. The concrete path will be pigmented to match the color of the native soil and be compatible with the appearance of the natural setting.
iii. A 3-foot-wide vegetated shoulder will be created on each side of the path. Use drought tolerant native or indigenous plant species that are common to the local area. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.
iv. Grading and excavation required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs.
v. Separation between the path and road will be provided as necessary by means of bollards constructed of boulders, timber, or concrete, or other physical barrier to prevent motor vehicle access on the concrete path. Bollards and/or barriers will be designed and installed to be secure against dislodging by vehicle winch and to have minimal visual impact in the landscape. Public motor vehicle access on the existing dirt road will remain as a permitted use. See **Figure 1 – Path Cross Section**.

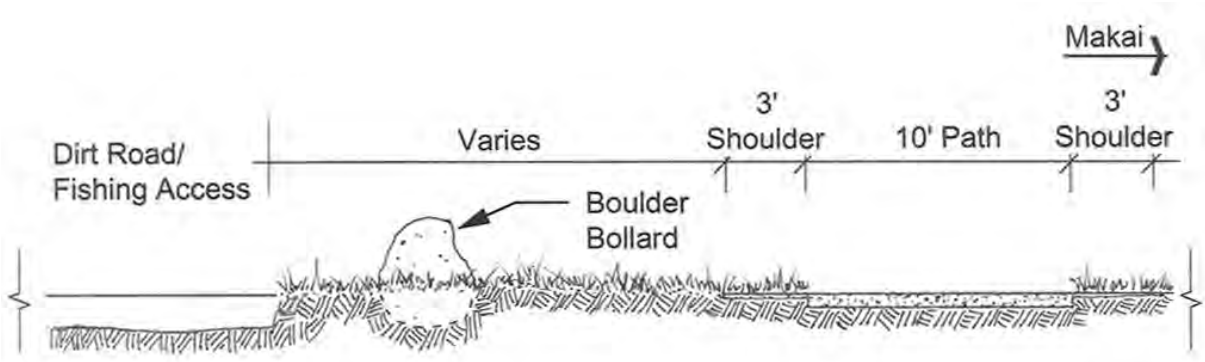


Figure 1 – Path Cross Section

vi. Access across the concrete path will be provided at select locations to allow motor vehicle access to fishing spots on the shoreline. Bollards will be installed at crossings to prevent motor vehicle access onto the concrete path. Fishing sites that will be accessible to motor vehicles are identified in **Section VII, Exhibit 5** – Site Photos. All other fishing sites along the coast will remain accessible by foot.

vii. The path will cross four drainageways, two within the SMA and two outside of the SMA. The drainageways are identified from north to south as Drainageways #1 through #4:

a. Drainageway crossings #1 and #2 are located outside of the SMA and make use of the existing graded dirt access road and culverts. At these locations, the existing drainage culverts may be retained as-is or modified and/or widened as necessary to accommodate the path and/or joint use of the existing crossing with the existing dirt road, to be determined during design.

b. Drainageway crossing #3 is located within the SMA and more than 120 feet from the shoreline. At this location, a pre-fabricated bridge span, approximately 140 feet in length, will be installed across the unimproved drainage way. The pre-fabricated bridge will require excavation and the construction of concrete abutments to support the placement of the pre-fabricated bridge span. The bridge will provide 8 to 12 feet of clear travel width. Safety railings shall be a minimum of 42 inches in height with vertical rail component spacings a maximum of 6 inches in width. The aesthetic appearance of the bridge will be determined during the design phase and will be similar in appearance to other pre-fabricated bridges used elsewhere by the COK. Excavated and disturbed areas will be stabilized with vegetative ground cover.

c. Drainage crossing #4 is located within the SMA and within the SLU Conservation District. At this location, the existing drainage culvert will be widened on the mauka side to accommodate shifting the existing dirt road mauka and constructing an 8- to 12-foot-wide path segment along the makai side of the existing dirt road corridor outside of the 60-foot shoreline setback line. The widening will require grading, fill and construction of either (i) a sloped embankment or (ii) a new retaining wall approximately 100 feet in length and 5 to 8 feet in height along the mauka side of the existing road to widen support the path

and road corridor widening. In addition, improvements will include installation of a minimum 42-inch-high safety railing, and extension of the existing box culvert inlet to the face of the new embankment or retaining wall. Fill material will be placed to create the embankment or will be placed behind the new retaining wall to create a widened surface to support realignment of the existing dirt road and construction of the proposed shared-use path. Excavated and disturbed areas will be stabilized with ground cover vegetation.

viii. Protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala Golf Course Hole 13 and/or around Wedge-tail Shearwater nesting areas. Fencing will be designed to prevent dogs from entering protected areas. Fence materials and construction will be selected for durability in the harsh coastal environment. An inspection / maintenance program will be prepared by the COK to ensure that the fence remains intact and in good condition and that necessary repairs are made in a timely fashion. Approximately 1,000 lf of the fence will be within the SMA and an additional 2,000 lf will be outside of the SMA.

ix. A comfort station will be constructed at Ninini Point Lighthouse with men's and women's lavatories, drinking fountain, and lighting. The proposed comfort station is located outside of the SMA, however power and water utilities that serve the comfort station will cross through the SMA within the existing airport perimeter road corridor. Comfort station program details include:

   d. Locate the comfort station at the site of the former lighthouse caretaker's residence to take advantage of a previously disturbed building site.
   e. Base the building design on native architectural forms or natural land forms.
   f. Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
   g. Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.
   h. Use an individual wastewater system or composting toilet for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.

x. A paved parking area will be developed at the Ninini Point Lighthouse with space for 10 automobiles. The parking lot will be located outside of the SMA.

xi. Interpretive signage will be installed at Ninini Point, outside of the SMA, describing:

   a. The history of Nāwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport.
   b. The natural history of the area, including surrounding landmarks and natural features (e.g. Ha'upu, Nāwiliwili, and Kalapakī), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nēnē).
   c. Identify views and points of interest.

xii. Within the SMA, signage will be provided as necessary to inform path users about safety, orientation, conservation efforts, user's responsibilities, regulatory restrictions and other relevant information.

xiii. Gates will be installed at the path entrance at Ahukini Landing and on the airport perimeter road (Ninini Point Street) to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security

xiv. Utility pull-boxes that serve airport facilities and that are located near the shared-use path will be modified so that they can be locked against vandalism and theft.

xv. No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ahukini Landing and Ninini Point, except for proposed improvements at Ninini Point.

Shared-use Road Segments:

- Segment C – Ninini Point Street from the Segment A Connection to Kāpule Highway. This segment is located outside of the SMA.
- Segment D – Kāpule Highway / Ninini Point Street Intersection to Ho'olaule'a Way. This segment is located partially within the SMA and will be constructed by the landowner as a condition of a separate SMA Permit. [2]
- Segment G – Ahukini Point to Lihue Airport. An approximately 1,200 lf portion of this segment is within the SMA.
- Segment H – Lihue Airport to Kāpule Highway. This segment is located outside of the SMA. Improvements include striping, stenciling, signage and installation of bike storage lockers.

For the shared-use road segments, improvements will consist of striping and/or stenciling the existing paved roadways and the installation of "shared-use" road signage.

Summary of Phase A path segments in the SMA

Phase A segments located within the SMA and included in this permit include:

- Segment A – approximately 17,000-lf portion along the shoreline, including 8,080 lf located within and 8,920 lf located outside of the SLU Conservation District.
- Segment G – approximately 1,200-lf portion on Ahukini Road

Summary of Phase A path segments outside of the SMA

- Segment A – approximately 2,000-lf portion connecting to Ninini Point Road and an additional 350-lf path segment that connects the path to the proposed comfort station near the Ninini Point Lighthouse.
- Segment C – approximately 10,200-lf portion of Ninini Point Road between Kāpule Highway and Segment A
- Segment G – approximately 5,000-lf portion on Ahukini Road to the airport

[2] COK Bill 2831 (2021) approved amendments to zoning conditions in COK Ordinance No. PM-2006-383, as amended by Ordinance No. PM-2009-394.for Tower Kaua'i Lagoons Sub 1, LLC, 2014 Kaua'i Lagoons Golf, LLC, Tower Kaua'i Lagoons Land, LLC, and Tower Kaua'i Lagoons Sub 7, LLC (Applicant). Bill 2831 Condition 21 requires the Applicant to report on conditions of approval under Special Management Area Use Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the development of public access improvements, including public beach access, for pedestrian and non-motorized traffic.

- Segment H – approximately 2,000-lf of combined segments at the airport

Phase A segments located within the SMA that are not included in this permit include:

- Segment B – An approximately 5,600-lf segment that is being constructed entirely by Timbers Resort in accordance with Condition No. 9 of Amendment to Special Management Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning permit Z-IV-2005-30 and Special Permit SP-2008-4; and Condition No. 7 of Zoning Ordinance No. PM-2006-383.
- Segment D – An approximately 2,000-lf portion is within the SMA. The entire segment will be constructed by Timbers Resort under a separate SMA permit.

See **Section VII, Exhibit 6 – Special Management Area Map**

Future project phases not included in this application

The DPW plans to undertake additional phases of the Nāwiliwili-Ahukini Shared-Use Path system in the future as circumstances allow. The future phases include the following:

Phase B1 – Ninini Point Road / Kāpule Highway Intersection to Nāwiliwili Railroad Bridge, consisting of the following path segments:

- Segment E – Kauaʻi Marriott to Nāwiliwili Railroad Bridge and Beach Park.

Phase B2 – Nāwiliwili Railroad Bridge and Nāwiliwili Beach Park Improvements;

- Segment F – Nāwiliwili Beach Park Improvements

Phase B3 – Nāwiliwili Beach Park to Nāwiliwili Small Boat Harbor and Niumalu Park;

- Segment O – Nāwiliwili Beach Park to Niumalu Beach Park (Rice Street to Wilcox Road / Kānoa Street / Waʻapā Road / Niumalu Road)
- Segment P – Niumalu Road to Nāwiliwili Small Boat Harbor

Phase B4 – Secondary Segments through Lihue Town.

- Segment I – Ahukini Road – Kāpule Highway to ʻUmi Street
- Segment J – Kāpule Highway – Ahukini Road to Rice Street
- Segment K – Molokoa Public Facility Center and Vidinha Stadium Complex
- Segment L – Līhuʻe Civic Center Connections
- Segment M – Rice Street

Project Rationale

The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport.

The existing road system that connects Nāwiliwili Bay, Līhuʻe, and the towns along the windward coast of Kauaʻi provides scant accommodation for non-motorized modes of transportation. Until the development of *Ke Ala Hele Makālae* was initiated, there had been no dedicated system of paths or lanes for pedestrians and bicyclists to travel between employment centers, parks, and the towns and major civic facilities in the region. Within the subject project corridor, existing pedestrian sidewalks, bike lanes, and paths remain disconnected and ancillary to the motorized vehicle roadways. As a result,

there is little to encourage residents and visitors to use non-motorized vehicles as a viable means of transportation. Only the most intrepid bicyclists travel the narrow shoulders along Kāpule and Kūhiō Highway. The project corridor along the coast is currently open for enjoyment by the public. The segment between Ahukini Landing and Ninini Point in particular provides a wild, open-space coastal experience, relatively untouched by development, located minutes from downtown Līhuʻe. However, the existing dirt access road and informal trails to the shoreline are unimproved and difficult to navigate without an off-road vehicle. Access to this resource is prohibitively difficult to many members of the public.

The purpose of the project is to support transportation alternatives to the automobile, to provide non-motorized path facilities for pedestrians and cyclists for recreation and fitness, and to preserve coastal areas and access. In addition, the project is being developed to enhance the quality of life for Kauaʻi's residents by providing a safe and enjoyable place for families, friends, and individuals to play, socialize, and experience the beauty of the coastal open spaces. The project seeks to address access availability to a variety of users of different ages, physical condition, and age levels. Finally, implementation of the Nāwiliwili – Ahukini Shared-Use Path Project will help fulfill the State Department of Transportations' Bike Plan Hawaiʻi, which identifies the need for transportation improvements that support non-motorized modes of travel.

2. Shoreline Certification

A shoreline survey was certified by the Department of Land and Natural Resources on September 9, 2022. Copies of the certified shoreline survey map and photographs are attached in **Section VII,** as **Exhibit 7 – Shoreline Survey**.

3. Plot Plan and Building Plans

The proposed Segment A shoreline path alignment is shown in **Section VII, Exhibit 8 – General Site Plan.**

Plot plans and building plans have not been prepared for this project: No buildings are proposed within the SMA.

Preliminary schematic plan and elevation drawings for the proposed pre-fabricated bridge at drainage crossing #3 are provided in **Exhibit 9.** Details of the proposed pre-fabricated bridge will be determined during design.

The proposed comfort station at Ninini Point is located outside of the SMA. The comfort station will be designed in conformance with the design recommendations in the Final Environmental Assessment:

1. Locate the comfort station at the site of the former lighthouse caretaker's residence to take advantage of a previously disturbed building site.
2. Base the building design on native architectural forms or natural land forms.
3. Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
4. Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes).

Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.

5. Use an individual wastewater system for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.
6. Develop a paved parking area at the Ninini Point Lighthouse with space for 10 automobiles.
7. Provide interpretive signage at Ninini Point describing:
   - The history of Nāwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport.
   - The natural history of the area, including surrounding landmarks and natural features (e.g. Ha'upu, Nāwiliwili, and Kalapakï), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nēnē).
   - Identify views and points of interest.

Design of the comfort station will also be subject to design review in accordance with the National Historic Preservation Act, Section 106 mitigation commitments:

1. The COK DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house (SIHP Site 50-30-11-208) to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The COK DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan prepared for the project as part of the National Historic Preservation Act (NHPA) Section 106 mitigation commitments.

4. Other Information required by the Director

HRS 343

In compliance with HRS, Chapter 343, COK prepared an Environmental Assessment for the project and issued a Finding of No Significant Impact (FONSI) dated January 12, 2018. **Section VII, Exhibit 13 – Finding of No Significant Impact.**

County Zoning

The pathway alignment will pass through the following most COK land use zoning districts. **See Section VII, Exhibit 3 – County of Kaua'i Zoning Districts.**

Agriculture (AG)
Conservation (C)
Industrial-General (I-G)
Industrial-General/ Special Treatment District (I-G/ST-P)
Open (O)
Residential – 2 dwellings per acre (R2)

The bike path acts as both a public transportation facility and an open space recreational resource. In one capacity or the other, the proposed pathway is a permitted use in all COK land use zones :

Special Treatment District- Public
The Līhuʻe Airport parcel is zoned Industrial General with a Special Treatment District-Public overlay (IG/ST-P). A Zoning Use Permit – Class 4 is required where the path falls within this district.

The project is consistent with the ST-P zoning as it is a pathway network that will provide multimodal transportation for public use and preserve public access to coastal areas. Where the path falls within ST-P district, the path alignment will primarily follow existing roadways, with the exception of portions of Segment A located along the coastline. Improvements in the ST-P will not substantially change the form or appearance of structures or land.

Path segments within the Līhuʻe Airport IG/ST-P area will be subjected to additional conditions to protect people and property. The COK consulted with the DOT-A, Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Air Traffic Control regarding the planned project improvements. A list of recommendations and mitigation measures developed through consultation are incorporated into the shared-use path plan. See I**tem 5.C.10** below for a description of proposed mitigation measures related to airport operations.

Tsunami District
Recreational facilities are a permitted use within the tsunami district. All structures and developments will be subject to additional construction and development standards, if required, as provided in Section 15-1, Flood Plain Management, Kauaʻi County Code.
Shore District

Shore District
Recreational facilities are a permitted use within the shore district. All proposed development will be subject to development standards and permitting requirements as provided in Section 8-13 of the Kauaʻi County Code, and Chapter 205 Hawaiʻi Revised Statutes.

Shoreline Setback Variance Determination
Proposed project improvements are subject to review pursuant to KCC Section 8-27 (Ordinance 1088), Shoreline Setbacks and Coastal Protection. All permanent path structures and features will be located mauka of the 60-foot shoreline setback line, but the majority of the improvements will be located withing the 100-foot shoreline setback. Project development might require limited work activities within the shoreline setback, including access by construction personnel and equipment, temporary placement of construction stormwater controls (best management practices), grading to accommodate the path alignment, and permanent vegetative ground cover to stabilize soils along the path. These activities within the shoreline setback will be determined during the design phase and are expected to be minimal in scope. Project activities and ground stabilization improvements located within the shoreline setback will be designed to meet criteria for temporary and minor improvements permitted within the shoreline setback, pursuant to KCC Section 8-27.7 (a)(4) and (8).

5. Project Assessment

a. Description of the area and environment involved including flora and fauna and other features;

Fauna

Birds

Field surveys have identified four listed species of endangered or protected birds in the project area. The four listed species were the Hawaiian Goose, or Nēnē (*Branta sandvicensis*), Hawaiian Duck, or Koloa (*Anas wyvilliana*), the Hawaiian endemic sub-species of the Common Moorhen, or ʻAlae ʻula (*Gallinula chloropus sandvicensis*), and the Hawaiian Coot, or ʻAlae keʻokeʻo (*Fulica alai*). All four species were seen in and around the Timbers Resorts (formerly Kauaʻi Resorts) property, located immediately to the west of the Līhuʻe Airport main runway.

A population of Nēnē (*Branta sandvicensis*) geese has been identified to the west of Līhuʻe Airport, on property belonging to the Department of Transportation. Nēnē are known to inhabit scrubland, grassland, golf courses, and open lowland country. Their breeding season is from November to April. Nēnē conceal their nests under bushes and prefer to nest in the same area. Nēnē goslings are flightless for about 11 to 14 weeks after hatching. These characteristics render them vulnerable to dogs and feral cats. Family groups remain in the breeding ground about a month after goslings can fly, at which time they roam surrounding areas searching for food. The U.S. Fish & Wildlife Service (USFWS) and the State of Hawaii Department of Land and Natural Resource (DLNR), Division of Forestry and Wildlife (DOFAW) monitor, and when necessary, translocate portions of this Nēnē flock due to concerns over the potential Bird Air Strike Hazards posed by the geese to aircraft using the Līhuʻe Airport.

A number of other resident native avian species including both resident and migratory species were recorded. These native and indigenous species include the Hawaiian endemic sub-species of the Short-eared Owl, or Pueo (*Asio flammeus sandwichensis*), and the resident, Black-crowned Night-Heron, ʻAukuʻu (*Nycticorax hoactli*), as well as the migratory Pacific Golden-Plover, or Kōlea (*Pluvialis fulva*), and Ruddy Turnstone, or ʻAkekeke (*Arenaria interpres*).

A significant nesting colony of Wedge-tailed Shearwater, or ʻUaʻu kani, (*Puffinus pacificus*) is present adjacent to a portion of the path, between Ninini Point Lighthouse, and Ninini Beach. The colony extends from just above the high-water mark, inland, onto the flats above the cliff face. Wedge tailed Shearwaters are not protected under either federal or State of Hawaiʻi endangered species statutes, they are protected under the federal Migratory Bird Treaty Act. Additionally, both the endangered Hawaiian Petrel, or ʻUaʻu (*Pterodroma sandwichensis*), and the threatened Newell's Shearwater, or ʻAʻo (*Puffinus auricularis newelli*) overfly the project area on an annual basis on their way back and forth to their colonies located inland.

Mammals

An endangered Hawaiian Hoary Bat (*Lasiurus cinereus semotus*) was found foraging in the project area near the Timbers Resorts Ocean Course golf course. This species though endangered is generally considered to be fairly common on Kauaʻi. It occupies a variety of habitats, including native forest, agricultural lands, residential and lowland areas, so its occurrence in the project area is not unexpected.

The USFWS and National Marine Fisheries Service (NMFS) note that the federally protected Hawaiian Monk Seal (*Monachus schauinislandi*) has used the coastal regions of the project as a birthing and pup-rearing site. In addition, near shore waters are frequented by various dolphin and whale species.

Other mammals recorded in the project area include non-native species of cats, dogs, pig, European house mice and at least one species of rat.

Reptiles
Green sea turtles (*Chelonia mydas*) and hawksbill turtles (*Eretmochelys imbricata*) frequent the near-shore waters along the project corridor to forage, and are known to haul-out at the sandy beaches along the coastline.

Critical Habitat
There is no designated critical habitat in the project area.

Impacts and Mitigation
Based on consultation with the USFWS, NMFS, DOFAW and Division of Aquatic Resources (DAR), the COK and Federal Highway Administration (FHWA) determined that the project may affect, but is not likely to adversely affect Endangered Species Act (ESA) listed and protected species. Moreover, there is no critical habitat in the project area, and none will be affected by the project.
The proposed project will have mitigations measures which includes:

- Avoiding vegetated areas along coastal bluff and will follow the south segment of the airport perimeter road.
- Installing protective fencing along the path segment between Ninini Point and Timbers Resorts' "Shops at Hōkūala" and/or around Wedge-tail Shearwater nesting areas.
- No lighting will be installed along the pathway between Ahukini Landing and Ninini Point. The proposed comfort station at Ninini Point will include full-cut off nighttime lighting. The COK will provide the USFWS with an opportunity to review the comfort station lighting design prior to final design and construction.
- Installing signs at appropriate intervals and locations along the path.
- Conducting surveys for nesting birds by a qualified biologist during construction.
- Following Best Management Practices (BMPs) for Construction activities to minimize impacts on protected resources.

Flora
There is no significant flora in the project area. Vegetation along the proposed bike/pedestrian corridor is dominated by non-native and invasive species.

Impacts and Mitigation
Construction of the proposed path is not anticipated to result in adverse impacts to any protected plant species and no negative impact to plant habitats or specific plant communities along the corridor is expected. Landscaping will be implemented along the developed path segments to improve soil retention and promote filtration of any storm water runoff from the path. No irrigation is proposed along the path segment between Ahukini Landing and Ninini Point.

Topographic Features

The majority of the project is located on a plateau area makai of the Līhuʻe International Airport within the ahupuaʻa of Kalapakī and Hanamaulu. The plateau area slopes gently downward west to east towards the ocean at an average 8 percent slope. The coastline from Ahukini to Ninini consists of cliffs that drop 20 to 30 feet to a cobble shoreline in most areas. The proposed path alignment undulates across the sloping plateau.

Impacts and Mitigation:

No significant impacts to soils or topography are expected to result from this project. Grading and excavations required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades in order to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs. Erosion control measures will be employed during construction. Following project completion, permanent soil stabilization will be achieved through landscaping with various plant materials and ground covers.

Coastal Waters

The marine waters adjacent to the Ahukini to Nāwiliwili portion of the path are classified as Class A waters by the DOH, HAR, Chapter 54, Water Quality Standards. Class A waters are protected for recreational purposes and aesthetic enjoyment.

Impacts and Mitigation:

No significant impacts to surface waters are expected to result from the project. Construction activities will be conducted in compliance with Hawaiʻi Administrative Rules (HAR) 11-54 Water Quality Standards; HAR 11-55, Water Pollution Control; COK grading and erosion control standards; and other standards as prescribed by law. A National Pollutant Discharge Elimination Systems (NPDES) permit will be obtained for the project and best management practices (BMPs) will be employed to prevent soil loss and sediment and pollutant discharges from work sites. BMPs will include structural (e.g., silt fences, berms, barriers, filter fabric), vegetative (e.g., grass, mulch, ground cover, soil stabilization), and management measures (e.g., project scheduling and phasing, material storage and equipment maintenance procedures, BMP monitoring), as necessary.

The path project will include drainage control measures to minimize impacts to nearshore waters from runoff discharges. Proposed design features include:

The path will be designed to follow natural contours as much as possible and will not exceed maximum slope standards established by AASHTO for shared-use paths, which allows maximum running slopes of 5%.

Path surfaces will have a cross-slope to encourage sheet-flow of runoff water and prevent concentrating flows down the center. Shoulders adjacent to the path will be vegetated to further slow runoff, capture sediments and promote drainage infiltration.

Drought tolerant native or indigenous plant species that are common to the local area will be specified for landscaping used in erosion control measures. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.

Three existing culverts and one new bridge span will be used to cross the flow lines of four existing drainage ways. Small drain pipes will be installed as needed to convey flows from smaller existing drainage channels across the pathway. There will be no modification to existing drainage patterns.

b. Description of the existing land uses of the project site and surrounding area.

The Segment A path corridor goes through undeveloped, former agricultural land located along the coast makai of Līhuʻe International Airport and passes through portions of the airport property owned by the State of Hawaiʻi. Existing land uses along the Segment A path alignment include undeveloped open space, fallow agricultural land, shoreline fishing, and recreational off-road vehicle activity. Portions of the proposed alignment follow an existing dirt road to take advantage of existing drainage culvert crossings at three locations. Near Ninini Point, the proposed path alignment follows a segment of the Līhuʻe Airport perimeter security road around the south-west end of Runway 17-35 before connecting with the existing Ninini Point Street.

Several airport navigational aids and related utilities are located outside of the airport perimeter fence near the Segment A corridor. These facilities include an Airport Surveillance Radar (ASR) Site located at the approximate mid-point of Runway 17-35 and setback approximately 400 feet from the shoreline, and the airport Middle Marker (MM) Navigational Aid located at Ninini Point.

Ninini Point was the site of a lighthouse operated by the United States Coast Guard. The lighthouse structure still exists, however other original structures have been removed. The site is accessible from Ninini Point Street.

Segment G follows Ahukini Road from the Ahukini Landing comfort station to Līhuʻe Airport. Adjacent land uses include open space, airport operations, helicopter operations, air cargo, vehicle storage, County Refuse Transfer Station, vacant sugar cane fields, former University of Hawaiʻi tropical fruit disinfection facility, recreational boat landing, and shore fishing. The Ahukini Road corridor transitions from undeveloped agricultural lands to airport industrial development with urban street improvements. Segment G ends at the north end of the airport terminal.

Segment C follows Ninini Point Street between Ninini Point and Kāpule Highway. serves as a perimeter road around the south boundary of Līhuʻe Airport, and separates the airport from Timbers Resort property. Land uses adjacent to Segment C include open space, airport operations, general industrial, and resort residential and recreational uses including the resort golf course and horse stables.

Segments B and D will be developed by Timbers Resort under a separate entitlement process. These segments are located within the resort property.

c. Description of how the proposed project will affect the area involved and surrounding areas. Specifically the assessment should evaluate if the proposal:

		Yes	No
1	***Involves an irrevocable commitment to loss or destruction of any natural or cultural resource, including, but not limited to historic sites, Special Treatment Districts as established by the County of Kauai Comprehensive Zoning Ordinance, view planes or scenic corridors as outlined in the Development Plans, and recreation areas and resources;***		X

Discussion:
The project is not foreseen to cause any loss or destruction of natural or cultural resources. Improvements in the Special Treatment District will not substantially change the form or appearance of structures or land and will not obstruct any view planes or scenic corridors.

The natural and cultural resources along the path corridor have historically been used for subsistence gathering, fishing social gatherings and recreation. In addition, the coastal areas have been used in the past for illegal dumping and other illicit activities that have had an adverse effect on the natural environment. The path improvements will occupy some segments of existing social trails, dirt road and limited vegetated areas along the coastline, but will provide the same access function as those trails and road while making enjoyment of the resources along the shoreline available to a wider range of people, including those with more limited physical abilities, such as the very young and the aged. The path will be aligned to avoid sensitive natural resources, erosion-prone conditions, and historic and cultural features. View corridors toward and from the ocean will not be impacted by construction of the path, which will be installed at grade.

No adverse effects to archaeological or historical sites will result from planned shared-use path improvements. Mitigation measures, including preservation in place, avoidance, data recover, adaptive re-use, and on-site and on-call monitoring are proposed to ensure that identified resources are not adversely affected. Should any archaeologically or historically significant artifacts, or other indicators of previous on-site activity be uncovered during the construction phase, their treatment will be conducted in strict compliance with the requirements of the State DLNR.

2	***Curtails the range of beneficial uses of the environment***		X

Discussion:
The proposed shared-use path system will result in irretrievable use of the physical environment occupied by the improvements; however, the use of the path will improve public access along the

shoreline thereby enhancing the range of beneficial uses of the coastal environment. Benefits include preservation of coastal access and open space in perpetuity, preservation of access to fishing sites, provision of a new public resource for recreation, fitness activities, and socializing, and opportunities for public education through exposure to the natural, historic and scenic resources along the path and related interpretive and informational signage. The path and related amenities occupy a very small amount of space within the larger landscape, leaving extensive tracts of coastal land open for open space or other uses.

3	***Conflicts with the County's or the State's long-term environmental policies or goals;***	**X**

Discussion:
There are currently no foreseen conflicts with the COK's or state's long-term environmental policies or goals. The proposed bike-pedestrian shared-use path project is consistent with the Environmental Policies established in Chapter 344, Hawai'i Revised Statutes (HRS).

4	***Substantially affects the economic and social welfare and activities or the community, or State;***	**X**

Discussion:
The proposed project will provide a significant and positive impact on the Kaua'i community in the short term with employment opportunities, and in the long term with enhanced and improved recreational opportunities that promote health and wellness, preservation of public coastal access, and shared-use path infrastructure to support alternatives to motor vehicle transportation.

5	***In itself has no significant adverse effect but cumulatively has considerable effect upon the environment or involves a commitment for larger actions;***	**X**

Discussion:
The project has no considerable effect on the environment, nor does it create/involve a commitment for larger actions. The proposed project is part of a larger vision to build a continuous coastal path for the benefit of the residents and visitors to the island of Kaua'i. The overall plan for the *Ke Ala Hele Makālae* coastal path system between Nāwiliwili and Anahola is being phased. Each phase is studied and evaluated in relation to the whole and as a self-contained project. Implementation of the Nāwiliwili-Ahukini segment of the shared-use path will not commit resources for or compel the construction of any other phase. The proposed shared-use path improvements constructed under this project function as a stand-alone facility to provide logical connectivity and access between Nāwiliwili, Ahukini, the airport, Vidinha Stadium, and

Līhuʻe town. Connecting this segment of the path to the larger coastal trail system will have a positive cumulative impact by increasing the range of opportunities for using alternatives to motor vehicle transportation to link additional residential, recreational, transit and employment centers.

6	***Substantially affects a rare, threatened or endangered species of animal or plant, or its habitat;***	**X**

Discussion:
No endangered plant or animal species will be affected by the project (See also Part B, 5.a. of this application). Mitigation measures developed by specialists in biology, zoology and botany, in consultation with the state federal regulatory authorities will be implemented to prevent adverse impacts to protected birds and mammals known to inhabit the project area.

7	***Detrimentally affects air or water quality or ambient noise levels; or***	**X**

Discussion:
There are no air quality or noise issues surrounding this project. Mitigation measures will be taken during construction to prevent runoff from entering the ocean or streams. The project path will include drainage control measures to minimize impacts to nearshore waters from runoff discharges. Proposed design features include designing the path to follow natural contours as much as possible, constructing surfaces with a cross-slope to encourage sheet-flow of runoff water and prevent concentrating flows down the center. Shoulders adjacent to the path will be vegetated to further slow runoff, capture sediments and promote drainage infiltration.

8	***Affects an environmentally sensitive area, such as a flood plain, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh water, or coastal waters;***	**X**

Discussion:
The path is not likely to suffer damage by its location within an environmentally sensitive area. No construction will occur within FEMA/FIRM flood zones, with the exception of an approximately 1,000 lf segment of the at-grade path and associated bollards and signage located within the VE zone at Ahukini Point. Design and construction of proposed path improvements will be performed in compliance with Kauaʻi County Code, Section 8-12: Flood Districts.

Potential effects related to erosion, including earth-work near the coastline will be mitigated by the implementation of construction BMPs in compliance with the Hawaiʻi Administrative Rules (HAR) 11-54 Water Quality Standards; HAR 11-55 Water Pollution Control, and COK grading and erosion control standards. Long-

term impacts related to coastal erosion will be mitigated by the path design and drainage features.

9 May have a major effect on the quality of the environment or affect the economic or social welfare of the area; and **X**

Discussion:
Impacts to air and water quality, noise levels, natural resources, and land use associated with construction will be minimal and short-term. Mitigation measures will be employed as practicable to further minimize potentially detrimental effects to the environment resulting from project activities. The project does not involve substantial degradation of environmental quality. Factors affecting public health, including air quality, water quality, and noise levels, are expected to be remain largely as-is following development of the path system; impacts will be limited to the construction period and intermittent and short-term in nature. See also **Item 4** above.

10 Would possibly be contrary to the policies and guidelines of the Rules and Regulations, the County's General Plan, Development Plans, and Zoning and Subdivision Ordinances. **X**

Discussion:
The proposed action is in conformance with the guidelines of the Rules and Regulations, The County General Plan, Līhuʻe Development Plan, and Zoning and Subdivision Ordinances.

According to the County's General Plan's Līhuʻe Land Use Map, the project area lies within the Urban Center, Resort, Golf Course Agriculture, and Transportation Districts. The project is consistent with County goals, policies, and standards and permitted uses within each of these Land Use Designations.

The project is aligned with the Kauaʻi General Plan Vision and Goals for a *Sustainable Island*, a *Healthy and Resilient People*, a *Unique and Beautiful Place*, and *an Equitable Place with Opportunity for All.* The proposed project supports the following General Plan policies:

- *Policy #4: Design Healthy and Complete Neighborhoods*
- *Policy #5: Make Strategic Infrastructure Investments*
- *Policy #6: Reduce the Cost of Living*
- *Policy #7: Build a Balanced Multimodal Transportation System*
- *Policy #8: Protect Kauaʻi's Scenic Beauty*
- *Policy #14: Prepare for Climate Change*
- *Policy #15: Respect Native Hawaiian Rights and Wahi Pana*
- *Policy #16: Protect Access to Kauaʻi's Treasured Places*

See Section F.3 below for detailed discussion of the project's consistency with the Kauaʻi General Plan and Līhuʻe Community Plan.

Special Treatment Districts

Portions of path segments A, C, G and H are located within the Līhuʻe Airport area, in lands zoned Industrial General with a Special Treatment – Public (ST-P) overlay.

The Kauaʻi County Code, Section 8-11.1, established the purpose for the Special Treatment Districts as:

> *The Special Treatment District specifies the additional performance required when critical or valuable social or aesthetic characteristics of the environment or community exist in the same area as a parcel where particular functions or uses may be developed.*
>
> 1. *To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.*
>
> 2. *To ensure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public.*
>
> 3. *To ensure that development within those applicable areas is constructed in a manner that safely mitigates impacts from coastal hazards, including but not limited to sea level rise, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms.*
>
> 4. *Any of these districts may overlap any Use Districts, creating accumulated regulations that more nearly relate to the conditions of the specific location where the development or use may occur. (Ord. No. 935, November 14, 2012; Ord. No. 1085, December 3, 2020)*

The ST-P is defined in Kauaʻi County Code, Section 8-11.2 as:

> *All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public, or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses.*

The project is consistent with the ST-P zoning as it is a pathway network that will provide multimodal transportation for public use and preserve public access to coastal areas. Path segments will be constructed in a manner that will minimize adverse impacts to the environment and would be designed to follow the American Association of State Highway and Transportation Officials (AASHTO) Guide for the Development of Bicycle Facilities (2012); 36 Code of Federal Regulations (CFR) Part 1190, Proposed Guidelines for Pedestrian Facilities in the Public Right-of-Way, (July 26, 2011), and Shared Use Paths Supplemental Notice, (February 13, 2013), Architectural and Transportation Barriers Compliance Board; 36 CFR Part 1191, Architectural Barriers Act (ABA) Accessibility Guidelines for Outdoor Developed Areas (effective November 25, 2013); and Americans with Disabilities Act Accessibility Guidelines (ADAAG) (2002 as Amended). Where the path falls within ST-P district, the path alignment will primarily follow existing roadways, with the exception of portions of Segment A located along the coastline. Improvements in the ST-P will not substantially change the form or appearance of structures or land.

Path segments along and within the Līhuʻe Airport area will be subjected to additional conditions to protect people and property. The COK consulted with the DOT-A, Federal Aviation Administration (FAA), Transportation Security Administration (TSA), and Air Traffic Control regarding the planned project improvements. A list of recommendations and mitigation measures developed through consultation and incorporated into the shared-use path plan. Mitigation measures include:

1. As a matter of airport security, the shared-use path alignment will be aligned as far away from the airport perimeter and as close to the shoreline as possible. Airport authorities note that use of the shared-use path by the public will enhance security by adding eyes and cell phones to what is an otherwise an un-supervised area.
2. In the limited segments where the shared-use path alignment follows existing public access on the airport perimeter road, the path will be constructed as a separated, 10- to 12-foot-wide concrete path on the makai side of the motor-vehicle travel way. An intervening barrier, such as boulder bollards or guardrail, will be installed for safety purposes to prevent motor vehicles from accessing the pathway. Bollards or barriers will be designed to withstand dislodging by vehicle winch.
3. Public access to the shoreline will be subject to closure by County, State or Federal agencies in the event of an airport incident or security concern. Event response protocols will be developed between Airport authorities, the County government, Civil Defense, and other emergency response services.

4. Gates will be located at the path entrance at Ahukini Landing and on Ninini Point Street near the driveway to Timbers Resorts' Shops at Hōkūala to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security.
5. The Airport Surveillance Radar (ASR) site is located more than 100 feet mauka of the preferred path alignment and separated by intervening topography and vegetation. Path construction activities are not expected to adversely impact the site. No utility pull-boxes are expected to be affected by the preferred path alignment. Pull-boxes located near the shared-use path will be modified so that they can be locked against vandalism and theft. Use of the path may result in increased awareness of the site, but does not facilitate access to the site that does not already exist via the public access dirt road. Signage positioned at the perimeter of the ASR site will be maintained to alert the public of the penalties of interfering with ASR facilities.
6. The proposed comfort station and shared-use path at Ninini Point will be sited and designed in consultation with the FAA Hawaiʻi District Office and in compliance with design requirements for the Middle Marker navigational aid. No improvements will be developed that will adversely impact the function of the Middle Marker. Signage positioned at the perimeter of the Middle Marker location will be maintained to alert the public of the penalties of interfering with ASR facilities.
7. Path facilities will be maintained by the COK DPW. Department of Parks and Recreation (DPR) Rangers will be responsible for patrolling the path and enforcing COK ordinances. The COK Police Department will respond to calls for service on the path system from COK Rangers and the public.
8. Ahukini Road (Path Segment G) between Ahukini Landing and the airport terminal is designated as a signed, shared-use bicycle route. No special improvements for this segment are proposed as part of the shared-use path system. Pedestrian and bicycle access will use street improvements (sidewalks, signed bike lanes) as planned and developed by DOT-A, airport tenants, and adjacent landowners.
9. Ahukini Road between the terminal and Kāpule Highway (Path Segment H-2) is designated as a signed, shared-use bicycle route in the preferred alternative.
10. No shared-use path alignments will be routed through the airport terminal or parking area. A path connection will be provided from Kā'ana Street to a "bike depot" located away from the terminal building in the open space area near the U. S. Post Office. From the bike depot, a pedestrian path will connect to the airport terminal building.

11. The airport bike depot design will include a covered pavilion with bicycle racks to provide secure, sheltered space for storing bicycles. Transparent bicycle storage lockers (e.g., plexiglass or wire mesh) will not be included unless reviewed and approved by the DOT-A and TSA. The bike depot will be an airport facility operated and maintained by DOT-A.
12. Continuing consultation with the FAA will include filing an online request for an aeronautical review of planned improvements via the FAA website.

The COK will continue to consult with Airport authorities, including DOT-A, FAA, TSA, and Air Traffic Control during the design stage of the project. Project construction plans affecting airport facilities will be submitted to airport authorities for review and comment. No other mitigation measures are recommended or required.

d. Evaluation of the proposed development relative to the objectives and policies as contained in Chapter 205-A, HRS, and Section 3.0 of the Special Management Area (SMA) Rules and Regulations:

RECREATIONAL RESOURCES

Objective: Provide coastal recreational opportunities accessible to the public.

		Yes	No
1	***Will the proposed development adversely affect coastal resources uniquely suited for recreational activities that cannot be provided in other areas?***		**X**

Discussion:
The proposed project will not adversely affect any coastal resources. The impacts that do occur will be of short duration and limited to the construction phase of the project. Public access to the shoreline is available through multiple separate roads/paths. Upon the project's completion the access to these coastal resources will be greatly improved, and allow the public a wider variety of recreational activities as well as locations. The project will provide new pedestrian and bicycle access to the coastline between Ahukini and Ninini Point. Currently, the Ahukini to Ninini Point coastline is used as a popular fishing area. Public access is provided by an unimproved dirt road that follows an existing twenty-foot-wide easement. Coastal access will be maintained for fishermen and other recreational users via this easement.

Interpretive signage will be placed along the project corridor educating users on the important natural and recreational resources throughout the coastal area and ways to aid in the

		Yes	No
	conservation and protection of those resources. Water quality will be protected during construction through the application of BMPs in accordance with National Pollutant Discharge Elimination System (NPDES) permit regulations. Proposed improvements will not alter existing drainage patterns.		
2	***Will the project require replacement of coastal resources having significant recreational value, including but not limited to surfing sites and sandy beaches and fishing areas when such resources will be unavoidably damaged by the proposed development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable?***		**X**
	Discussion: The project does not require replacement of any coastal resources having significant recreational value. No surfing sites, sandy beaches or fishing areas will be damaged by the development. The project will not create new access paths to existing fishing areas along the shoreline. The proposed action will involve the development of certain recreational resources along the shoreline that will improve lateral public access for health, wellbeing and enjoyment. This will increase the recreational value for areas affected along the project corridor. The project will not require compensation to the State for additional resources.		
3	***Is the project site near a State or County Park?***	**X**	
	Discussion: The overall shared-use paths are located near Līhuʻe County Park, Vidinha Stadium, Nāwiliwili Beach Park, and Niumalu Park. Segment A and G are located near Ahukini Recreational Pier State Park. There are no anticipated adverse impacts to these recreational resources.		
4	***Will the proposed development affect an existing public access to or along the shoreline?***	**X**	
	Discussion: Due to the nature of the project parts of the roads may be closed and or detoured for short periods of time, creating a slight inconvenience to the public. This inconvenience will be mitigated through effective notifications (i.e., road signs and public service announcements). Existing access for fishing will also be preserved, however motor vehicle access to fishing spots will be limited to five designated locations where vehicles		

		Yes	No
	can cross the path. The entire coastline will remain unimpeded for non-motorized vehicle and pedestrian access.		
5	***Will the proposed development provide public access to and/or along the shoreline?***	**X**	
	Discussion: After completion of the proposed project, public access to and along the shoreline will be significantly enhanced. The project is being developed to preserve public access to coastal and shoreline areas. The project includes facilities for recreational use (covered picnic/fishing areas, foot paths, comfort stations) that will benefit residents and visitors alike. The new path will facilitate easier access for pedestrians and bicyclists to the Ahukini to Ninini Point shoreline. Path improvements will conform with Americans with Disabilities Act (ADA) accessibility standards to ensure that individuals with disabilities are also able to enjoy these coastal areas.		
6	***Will the proposed development encourage expanded recreational use of County, State, or federally owned or controlled shoreline lands and waters having recreational value?***	**X**	
	Discussion: After project completion access to areas of County, State, and Federally owned or controlled shoreline lands and waters having recreational value will be greatly improved. It is expected that the public will be better enabled to enjoy/utilize these areas.		
7	***Will the development generate point or non-point sources of pollution that will affect recreation value of coastal area?***		**X**
	Discussion: BMPs will be employed during the construction activities to prevent the generation of point and non-point pollutant sources. As part of the BMPs the affected roads will be kept clean on a daily basis as to mitigate any type of storm-water runoff. During construction, project activities will be conducted in compliance with HAR 11-54 Water Quality Standards: HAR 11-55 Water Pollution Control, and COK grading and erosion control standards.		

HISTORICAL RESOURCES

Objective: Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

		Yes	No
1	***Is the project site within a Federal, State, and/or County designated historic/cultural district?***		X

Discussion:
The project site is not located within a Federal, State, and/or County Designated historic/cultural district.

2	***Is the project site listed on or nominated to the Hawaii or National Register of Historic Places?***		X

Discussion:
Four studies were prepared to help identify historic properties, assess potential effects, and develop recommended mitigation measures for the entire project area. The four studies include:

1. *Archaeological Literature Review and Field Inspection Report for the Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili , Kalapakī, Hanamāʻulu, Ahupuaʻa, Līhuʻe District (Puna Moku), Island of Kauaʻi,* Chris 0Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawaiʻi, June 2008.

2. *Cultural Impact Evaluation for Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili, Kalapakī, Hanamāʻulu Ahupuaʻa, Līhuʻe District (Puna Moku), Island of Kauaʻi,* Mishalla Spearing, Chris Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawaiʻi, June 2008.

3. *Archaeological Inventory Survey Report for the Nāwiliwili – Ahukini Bike Path Project, Nāwiliwili , Kalapakī, Hanamāʻulu Ahupuaʻa, Līhuʻe District, Kauaʻi Island,* Kendy Altizer and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawaiʻi, September 2009, revised March 2010, revised April 2010, revised November 2013.

4. *Architectural Inventory Survey and National Register Eligibility Evaluation for Nāwiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauaʻi,* Mason Architects, Inc., for R. M. Towill Corporation, Honolulu, Hawaiʻi, July 2009.

The archaeological inventory survey investigation documented 15 historic sites within path Segment A, between Ahukini Landing and Ninini Point, including sites previously identified during the field reconnaissance and literature review. The sites

are identified in **Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table**. Of the 15 historic sites identified, the following nine are considered to be significant historic properties according to the criteria established for the Hawai'i Register of Historic Places.

1. Site 50-30-11-2086 (CSH 3) consists of the remnants of two terraces interpreted as associated with pre-contact habitation. Site 50-30-11-2086 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).

2. Site 50-30-11-2087 (CSH 5) is a series of features interpreted as being associated with Nāwiliwili Harbor Light. Site 50-30-11-2087 is assessed as significant under Criterion C (embodies the distinctive characteristics of a type, period, or method of construction, represents the work of a master, or possesses high artistic value) and Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

3. Site 50-30-11-2088 (CSH 6) is the foundation of a historic communications tower present on the 1910 U.S. Geological Survey map. Site 50-30-11-2088 is interpreted as associated with historic communications practices and is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

4. Site 50-30-11-2089 (CSH 7) is a possible burial mound and is interpreted as associated with historical burial practices. Site 50-30-11-2089 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).

5. Site 50-30-11-2090 (CSH 8) is an artillery gun emplacement and is interpreted as associated with historic military operations. Site 50-30-11-2090 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

Yes **No**

6. Site 50-30-11-2092 (CSH 10) is an outhouse and cesspool interpreted as associated with historical residential housing. Site 50-30-11-2092 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

7. Site 50-30-11-2094 (CSH 12) is the remnants of a terrace interpreted as associated with pre-contact habitation. Site 50-30-11-2094 is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).

8. Site 50-30-11-2095 (CSH 13) is a scatter of shell midden with a subsurface cultural layer. CSH 13 is interpreted as a pre-contact activity area and is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history) and Criterion E (value to the native Hawaiian people due to associations with cultural practices).

9. Site 50-30-11-2103 (CSH 16) is the remnants of five foundations associated with a historic industrial complex present near Ahukini Landing. It is assessed as significant under Criterion D (have yielded, or may be likely to yield information important in prehistory or history).

Nine sites are deemed eligible to the Hawaiʻi Register of Historic Places, five are recommended for preservation, and no further work is recommended for the remaining four sites. Site 50-30-2089 will be addressed by a Data Recovery Program, in compliance with HAR 13-13-278, prior to commencement of construction activities. This program will consist of a Data Recovery Plan, appropriate fieldwork, and a Data Recovery Report. Should human remains be identified, they will be considered previously identified and SHPD and the Kauaʻi Island Burial Council will be consulted for the appropriate treatment, per HRS 13-300-31. A Preservation Plan, prepared in compliance with HAR 13-13-277, is recommended to address the remaining four sites (50-30-11-2086, -2090, -2094 and -2103) that are recommended for preservation. An archaeological monitoring program, prepared in compliance with HAR 13-13-279, is also recommended with a combination

		Yes	No
	of on-site and on-call monitoring during all ground disturbing activities related to this project.		
3	***Does the project site include land(s) which have not been previously surveyed by an archaeologist?***		**X**
	Discussion: No, the project site does not include land that has not been previously surveyed by an archeologist.		
4	***If an archaeological survey has been conducted for the project site, has the survey been submitted to the State Historic Preservation Office for review and recommendations?***	**X**	
	Discussion: Yes, the Archaeological Inventory Survey conducted by Cultural Surveys Hawai'i (CSH) was accepted by SHPD on January 21, 2014, as final and approving the agreed-upon mitigation measures. **See Section VII – Exhibit 14.**		
5	**Has any site survey revealed any information on historic or archaeological resources? (Please provide a copy of reference of survey)**	**X**	
	Discussion: Yes, the following surveys conducted for the entire project area are provided in **Section VII – Exhibit 15**: *10. Archaeological Literature Review and Field Inspection Report for the Nāwiliwili – Ahukini Bike/Pedestrian Path Project, Nāwiliwili , Kalapakī, Hanamāʻulu, Ahupuaʻa, Līhuʻe District (Puna Moku), Island of Kauaʻi,* Chris Monahan and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawaiʻi, June 2008. *11. Archaeological Inventory Survey Report for the Nāwiliwili – Ahukini Bike Path Project, Nāwiliwili , Kalapakī, Hanamāʻulu Ahupuaʻa, Līhuʻe District, Kauaʻi Island,* Kendy Altizer and Hal Hammatt, Cultural Surveys Hawaii, Kailua, Hawaiʻi, September 2009, revised March 2010, revised April 2010, revised November 2013.		
6	***Is the project site within or near a Hawaiian fishpond?***		**X**
	Discussion: There is no Hawaiian fishpond near or within the project area.		

		Yes	No
7	***Is the project located within or near a historic settlement area? (Cemeteries, burials, heiaus, etc.)***	**X**	

Discussion:
The above-mentioned studies conducted for the entire project area, in the Historical Resources section of this application, resulted in 27 identified historic properties. Of those 27 identified historic properties, 18 are within the SMA near segment A and G. **See Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table and Exhibit 16 – Ka Paʻakai Analysis.**

According to the 2008 archaeological literature review and field inspection report prepared by Cultural Surveys Hawaiʻi for the entire project area, there are two heiaus located near Segment A. The two heiaus are the Ninini Heiau (SIHP No. 50-30-11-100) and Ahukini Heiau(SIHP No. 50-30-11-101). Ninini point is a scenic lookout that is home to a historic structure as well as a heiau, which is not located in the SMA. Ninini Heiau was previously destroyed in the early 1900's. Ahukini Heiau is located at Ahukini Point midway from Ninini to Ahukini Landing and was destroyed by erosion and Hurricane Iniki in 1993.

There is one historic mound / possible burial (SIHP No. 0-30-11-2089) identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point near Segment A.

As an outcome of the NHPA Section 106 consultation process, the FHWA has determined that there will be "no adverse effect" to historic properties identified within the Area of Potential Effect (APE). The APE is established for the NHPA and is determined to be all the proposed primary and secondary pathway corridors. The APE consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhuʻe Airport, Kauaʻi Lagoons and Marriott Resort, Nāwiliwili Park and Harbor, and Niumalu Park and all lands in the vicinity of these alignment options from the western shoulder of the mauka (inland) corridor east to the ocean.

The "no adverse effect" determination is rendered based on the recommendations summarized in **Section VII, Exhibit 10 – State Historic Sites Figure and No Adverse Effect Table** and because the path will be aligned to avoid these historic properties.

SCENIC & OPEN SPACE RESOURCES

Objective: Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.

1 Does the project site abut or affect a valued scenic resources or landmark within the SMA? **Yes**

Discussion:
The path alignment follows the undeveloped shoreline between Ahukini Landing and Ninini Point. The shoreline is valued by the public as open, undeveloped coastal space close to and accessible from Līhuʻe Town. This stretch of coastline offers sweeping views of the east shore of Kauaʻi, from Carter Point and Kawai Point to the south to Ahukini Point to the north. The historic Ninini Point lighthouse is a landmark within this coastal landscape, outside of the SMA.

The proposed path will not adversely affect the valued scenic resources or landmarks within the SMA. The path and related signage and bollards will be apparent within the visual setting, but will be designed to minimize their visual presence. The path concrete will be dyed or stained to match the color of the native soil. No lighting will be used along the coastal alignment within the SMA. Signage will be kept to the minimum required for public information and education.

2 Does the proposed development affect existing shoreline open space and scenic resources? **Yes**

Discussion:
The proposed path improvements will be apparent within the open space setting of the coastline, but will not be obtrusive and will not detract from the open space setting and scenic resources. The path improvements will be designed to visually blend with the natural landscape. The path geometry will curve and undulate with the topography. The path materials will be colored to match existing terrain. Signage will be kept to the minimum required for public safety, information and education. The path is expected to provide more convenient access to the coastal open space and scenic resources for a wider variety of people of all ages and abilities. Educational signage will help to enhance appreciation of the scenic resources along the coast.

3 Does the proposed development involve alteration to natural landforms and existing public views to and along the shoreline? **Yes**

Discussion:
Path construction will require grading and excavation to establish design grades and cross-slopes that meet ADA accessibility standards. The path alignment will be designed as much as possible in harmony with the existing topography to minimize the amount of earth movement. The project does not involve significant alteration of natural land forms that would change the character and feel of the terrain or alter existing public views to and along the shoreline.

4 Is the project compatible with the visual environment? **Yes**

Discussion:
The proposed path will be compatible with the visual environment. The path will be an at-grade feature designed to curve and undulate within the existing topography. Path materials will be colored to match the existing land hues in the natural landscape. Ground cover plants will also be selected for suitability within the existing landscape.

5 Does the proposed action involve the construction of structures visible between the nearest coastal roadway and the shoreline? **Yes**

Discussion:
The path project includes construction of a 10- to 12-foot wide, at-grade concrete path and installation of signage, bollards and fencing (for protection of nesting sea birds and Nēnē). In addition, a pre-fabricated bridge will be installed across a natural dry-gulch drainageway approximately 75 feet from the shoreline. These features will be visible from Ahukini Road and Ninini Point Street.

6 Is the project site within the Shoreline Setback Area (20 or 40 feet inland from the shoreline)? **No**

Discussion:
The path alignment between Ahukini Point and Ninini Point varies between 60 feet and 300 feet in distance from the certified shoreline. No project improvements will occur within 40 feet from the shoreline. The County of Kaua'i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at 3-foot intervals. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.

COASTAL ECOSYSTEMS

Objective: Protect valuable coastal ecosystems from disruption & minimize adverse impacts on all coastal ecosystems.

1 Is the project site a habitat for endangered species of flora and fauna? **Yes**

Discussion:
Although there is no designated critical habitat in the project area, the following protected species are recorded in the area: the Hawaiian Monk Seal (*Monachus schauinislandi*), Hawaiian hoary bat (*Lasiurus cinereus semotus*), green sea turtles (*Chelonia mydas*) hawksbill turtles (*Eretmochelys imbricata*) Hawaiian Goose, or Nēnē (*Branta sandvicensis*), Hawaiian Duck, or Koloa (*Anas wyvilliana*), the Hawaiian endemic sub-species of the Common Moorhen, or 'Alae 'ula (*Gallinula chloropus sandvicensis*), and the Hawaiian Coot, or 'Alae ke'oke'o (*Fulica alai*). See Part B, 5.a. of this application.

2 Will the proposed development adversely affect valuable coastal ecosystems of significant biological or economic importance? **No**

Discussion:
During construction, BMPs will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. Measures to prevent sediment discharge in storm water runoff during construction will be in place and functional before project activities begin and will be maintained throughout the construction period. Runoff and discharge pollution prevention measures will be incorporated into site-specific BMP plan by the project contractor.

3 Will the proposed involve disruption or degradation of coastal water ecosystems through stream diversions, channelization, and similar land and water uses? **No**

Discussion:
Project activities do not involve alterations to stream channels or other water bodies or water sources. The project involves construction activities near coastal bodies of water. During construction, BMPs will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. The permit requires implementation of BMPs, including site management measures and physical controls (e.g. diversion

berms, silt fences, detention ponds) to reduce pollutants in construction storm water runoff and ensure that the project complies with State water quality standards.

4 Will the proposed action include the construction of special waste treatment facilities, such as injection wells, discharge pipes, septic tank systems or cesspools? **Yes**

Discussion:
Waste treatment facilities are not proposed within the SMA as part of the project phase (Phase A) that is the subject of this SMA permit application. However, a comfort station is proposed outside of the SMA at Ninini Point as part of path segment A. The comfort station at Ninini Point will require construction of an individual wastewater aerobic or septic system, or a compost system for wastewater treatment and disposal until such time as a COK collection system connection is available. These waste treatment system will be carefully monitored/maintained to ensure proper waste disposal and prevent pollutant discharges.

In a future phase of the overall Nāwiliwili-Ahukini Shared Use Path project, Phase B2, which is not part of this SMA application, a new comfort station is proposed at Nāwiliwili Beach Park where COK sewer collection system connection is available.

5 Is there a wetland on the project site? **Yes**

Discussion:
According to the USFWS, segment A and G are located adjacent to Estuarine and Marine Wetland habitat, classified as a M2RSN, and Riverine habitat, classified as a R4SBCx. Segment A is also located near Kauai Lagoons which is a lake habitat, classified as a L1UBHh and Mokihana Freshwater Pond which is classified as a PUBHx. See **Section VII, Exhibit 11 – Wetland Map.**

The FHWA completed informal consultation with the USFWS, NMFS, State DLNR Division of Forestry in compliance with ESA Section 7(a)(2) and 50 CFR Part 402, Subpart B. Based on the consultation, the FHWA determined that the project may affect, but is not likely to adversely affect ESA-listed and protected species. The USFWS concurred with the FHWA determination by letter dated January 21, 2009. The NMFS concurred with the FHWA determination by letter dated January 16, 2009. **See Exhibits Volume II, Exhibit 18, HRS 343 FEA, Appendix B, Federal Consultation Correspondence.**

The shared-use path does not encroach on any of the wetland areas, the ACOE indicated that a Jurisdictional Determination is not required. The bike path will be routed around wetland resources and will be stay in the existing rights-of-way.

Construction activities will be conducted in compliance with HAR 11-54 Water Quality Standards; HAR 11-55, Water Pollution Control; COK grading and erosion control standards; and other standards as prescribed by law. A NPDES permit will be obtained for the project and BMPs will be employed to prevent soil loss and sediment and pollutant discharges from work sites. With implementation of the BMPs, there are no significant impacts to wetlands expected to result from the project.

6 Is the project site situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary? **No**

Discussion:
The project site is not situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary.

ECONOMIC USES
Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

1 Does the project involve a harbor or port? **No**

Discussion:
Phase A of the project, that is the subject of this application, does not involve a harbor or port. A future phase of the overall Nāwiliwili – Ahukini Shared-Use Path Project, Phase B3, that is not part of this SMA permit application, will provide shared-use path connectivity to Nāwiliwili Harbor and Small Boat Harbor.

2 Is the proposed development related to or near to an existing major hotel, multi-family, or condominium project? **Yes**

Discussion:
The project site is located near the Kaua'i Marriott Resort, The Royal Sonesta, and Timbers Resorts. Construction activities will be of a short duration and will not create appreciable inconveniences to the existing facilities or associated activities. Visitors of the hotel will benefit from the completion of development, through convenient accessibility to the surrounding coastline, scenic locations, and picnic/fishing areas.

3 Does the project site include agricultural lands designated for such use? **Yes**

Discussion:
The project site includes areas designated as agricultural lands. The pathway does not pass through actively cultivated agricultural lands. Where it passes through land zoned for

agricultural, it will follow existing access corridors or align adjacent to the coastal bluff and will not reduce the amount of land used for agricultural purposes.

4 Does the proposed development relate to commercial fishing or seafood production? **No**

Discussion:
The project does not relate to commercial fishing or seafood production.

COASTAL HAZARDS

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, and subsidence.

1 Is the project site within a potential tsunami inundation area as depicted on the National Flood Insurance Rate maps (FIRM)? **Yes**

Discussion:
The project site is within a potential tsunami inundation area. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) (FEMA/FIRM panels 1500020 -326F, -327F, -328F and -329F effective date November 26, 2010) indicates that the project corridor passes through a special flood hazard area inundated by 100-year flood: Between Ahukini Landing and Ninini Point, flood elevations are designated as VE (in which flood elevations of 13-24 feet msl have been determined). The project corridor also passes through Zone X which has been determined to be outside the .2% annual chance floodplain. See **Section VII, Exhibit 12 – FEMA/FIRM Maps.**

2 Is the project site within a potential flood inundation area according to a FIRM? **Yes**

Discussion:
The FEMA/FIRM panels 1500020 -326F, -327F, -328F and -329F effective date November 26, 2010, indicates that the project corridor passes through a special flood hazard areas inundated by 100-year flood: Between Ahukini Landing and Ninini Point, flood elevations are designated as VE (in which flood elevations of 13-24 feet msl have been determined). The project corridor also passes through Zone X which has been determined to be outside the .2% annual chance floodplain. See **Section VII, Exhibit 12 – FEMA/FIRM Maps.**

3 Does the project comply with the requirements of the Federal Flood Insurance Program? **Yes**

Discussion:
The project complies with the requirements of the Federal Flood Insurance Rate Program. The comfort station at Ninini Point will be located outside of the FEMA VE Zone, which has a range identified on the FIRM of 14 feet. Path improvements within the VE zone at Ahukini Landing will be limited to at-grade path segments, bollards and signage; no vertical structures are proposed within the VE. The proposed comfort station will be based on the latest Uniform Building Code building standards. The path and amenities will be designed to withstand flood occurrences as estimated by FEMA and in compliance with County Code requirements.

4	***Has the project site or nearby shoreline areas experienced shoreline erosion?***	**No**

Discussion:
Due to the rocky character of the coastal bluff, the Ahukini Landing to Ninini Point segment is generally stable. The State Department of Transportation, Airports Division recently completed site restoration and slope stabilization work on a closed landfill located along approximately 600 lf of the coastline a mile south of Ahukini Point that had been gradually sloughing off debris into the ocean. A portion of path segment A crosses the restored area within the SMA. According to the Atlas of Natural Hazards in the Hawaiian Coastal Zone, published by the United States Geological Survey, the erosion hazard assessment is moderately low in the project corridor extending from Ahukini Landing to Nāwiliwili Harbor. A Kauaʻi Shoreline Change Map has not been prepared for this segment of the shoreline.

5	***Have any seawalls/revetments/etc. been constructed or exist in the immediate vicinity?***	**Yes**

Discussion:
There are no seawalls/revetments/etc. within the immediate vicinity of segments A and G.

e. Evaluation of impacts which cannot be avoided and mitigating measures proposed to minimize that impact.

Discussion:

Visual Impacts: The proposed shared-use path will not have an adverse impact on scenic resources or view planes and will not obstruct sight lines from surrounding areas to visual landmarks. The path will create new opportunities for the public to access and enjoy the open space of the coastline. many new scenic points to the surrounding area after development. Building materials and colors, lighting design, and landscape screening will be selected and designed to blend into the natural surroundings. Similarly, path surfaces will be colored to match the surrounding native soil, either through applied coloring or through natural staining from existing soils.

Light Pollution: Permanent lighting will be added at the comfort station. Exterior lighting can disorient nocturnally flying seabirds, especially fledglings on their way to sea in the summer and fall. Mitigation to prevent impacts to seabirds include no lighting will be installed along the pathway between Ahukini Landing and Ninini Point. The proposed comfort station at Ninini Point will include full-cut off nighttime lighting. The COK will provide the USFWS with an opportunity to review the comfort station lighting design prior to final design and construction. Designed lighting will be kept to the minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Permanent light sources will be shielded and angled downward to eliminate glare that could disturb or disorient animals. Downward facing, shielded lights will be used for night work throughout the construction period. Nighttime work will cease during the seabird fledging season from October 1 through December 15.

f. Evaluation of the proposed development relative to Section 4.0 of the SMA Rules and Regulations in accordance with the following aspects:

1. Substantial adverse environmental or ecological effects.

Discussion:

The proposed project is not anticipated to involve a substantial degradation of environmental quality. Planning and design for the project includes mitigation measures to prevent or minimize potential impacts. Potential environmental effects will be limited primarily during the construction phase. Once construction is complete, any environmental impact is nominal. The new development is not expected to result in any significant changes over pre-existing environmental conditions. Construction will be conducted in accordance with COK and State environmental rules and regulations concerning air, water, noise, and coastal, cultural, floral and faunal resources. No substantial adverse environmental or ecological effects will result from the project.

2. Consistency or compliance of the proposed development relative to the goals and objectives of Chapter 205A, HRS and Section 3.0 of the SMA Rules and Regulations; and

Discussion:

The project follows the objectives and policies set forth in Chapter 205A-2, HRS, and Special Management Area guidelines contained in HRS Section 205A-26.

The following is an assessment of the project with respect to the objectives and policies as set forth in Chapter 205(A)-2, HRS:

1. Recreational resources.

(A) Improve coordination and funding of coastal recreational planning and management; and

(B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:

(i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;

(ii) Requiring replacement of coastal resources having significant recreational value including, but not limited to, surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the State for recreation when replacement is not feasible or desirable;

(iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;

(iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;

(v) Ensuring public recreational uses of COK, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;

(vi) Adopting water quality standards and regulating point and nonpoint sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;

(vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and

(viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, and county authorities; and crediting such dedication against the requirements of section 46-6.

Discussion:

The project is federally funded and coordinated through County of Kauaʻi Department of Public Works for the purpose of improving recreational coastal access. The Nāwiliwili-Ahukini Shared-Use Path is part of the larger *Ke Ala Hele Makālae* pathway system that will link coastal recreational resources between Anahola and Nāwiliwili.

The project will provide new pedestrian and bicycle access to the coastline between Ahukini and Ninini Point. Currently the Ahukini to Ninini Point coastline is used as a popular fishing area. Public access is provided by an unimproved dirt road that follows an existing twenty-foot-wide easement. Coastal access will be maintained for fishermen and other recreational users via this easement.

The improvements along this segment will include a twelve-foot-wide concrete bike path with directional and interpretive signage. A comfort station is planned at Ninini Point, outside of the SMA.

Interpretive signage will be placed along the project corridor educating users on the important natural and recreational resources throughout the coastal area and ways to aid in the cultural conservation and protection of those resources.

Water quality will be protected during construction through the application of Best Management Practices in accordance with National Pollutant Discharge Elimination System (NPDES) permit regulations. Proposed improvements will not alter existing drainage patterns.

2. Historic resources:

(A) Identify and analyze significant archaeological resources;

(B) Maximize information retention through preservation of remains and artifacts or salvage operations; and

(C) Support state goals for protection, restoration, interpretation, and display of historic resources.

Discussion:

An archaeological field inspection, archaeological inventory survey, architectural inventory survey, and cultural impact evaluation prepared for the project identify known historic properties, as well as areas along the path routes where the potential for encountering previously unknown cultural or historic properties is higher. The preferred path alignment is routed to avoid known archaeological and historic sites. The final alignment will be established during the design phase when ground topography will be used to precisely locate known historic properties and ensure they are avoided by the path. Proposed mitigation measures include avoidance, preservation in place, data recovery, and on-site and on-call archaeological monitoring during construction activities. Path improvements include installation of signs to communicate interpretive and regulatory information to path users concerning the history of the area, the presence of cultural and historic resources, and ongoing efforts to preserve and learn from the physical remains of our predecessors.

3. Scenic and open space resources:

(A) Identify valued scenic resources in the coastal zone management area;

(B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;

(C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and

(D) Encourage those developments that are not coastal dependent to locate in inland areas.

Discussion:

The project conforms to the Coastal Zone Management Program Objective 3, Scenic and Open Space, which encourages the protection, preservation and where desirable, restoration or improvement of the quality of coastal scenic and open space resources. The Līhuʻe Community Plan designates the coastline between Ahukini and Ninini Point as a major scenic geographical feature. The Kauaʻi County General Plan has designated this area as open space/conservation.

The project corridor will be designed to maintain visual quality and open space. The project path will be constructed at grade and will not obstruct the view of or from the coastline. No structures will be built along the coastline between Ahukini and Ninini Lighthouse in order to maintain open space and the visual resources of the area. The proposed comfort station at Ninini Point will be sited and designed to blend into the surrounding landscape.

4. Coastal ecosystems;

(A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;

(B) Improve the technical basis for natural resource management;

(C) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;

(D) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs;

(E) Promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution control measures.

Discussion:

The project is not part of a coastal ecological management program but will include interpretive signage to educate the public about significant habitats, threatened and endangered species, and preservation efforts. Project activities do not involve alterations to stream channels or other water bodies or water sources.

During construction, best management practices will be employed in compliance with NPDES permit requirements to prevent pollutant discharge in storm water runoff. Discharge pollution prevention measures will be installed for each project action as required by project activities. Measures to prevent sediment discharge in storm water runoff during construction will be in place and functional before project activities begin and will be maintained throughout the construction period. Runoff and discharge pollution prevention measures will be incorporated into site-specific Best Management Practices (BMP) plan by the project contractor.

5. Economic uses;

(A) Concentrate coastal dependent development in appropriate areas;

(B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor industry facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and

(C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:

(i) Use of presently designated locations is not feasible;

(ii) Adverse environmental effects are minimized; and

(iii) The development is important to the State's economy.

Discussion:

There are no Hawaiʻi Visitors Bureau (HVB) designated tourist destinations located in the coastal areas of the project. However, additional areas within the coastal zone that are promoted by the HVB as tourist destinations include: Ahukini Landing, Kalapakī Beach and the Kauaʻi Marriott Resort and Timbers Resorts' Hōkūala Golf Course.

The project would provide bicycle access linking visitors at the Kauaʻi Marriott and Timbers Resort and visitors arriving at Līhuʻe International Airport to Līhuʻe town center and Ahukini Landing. The project will also provide connection to the *Ke Ala Hele Makālae* shared-use path system with access to the coastal towns of Kapaʻa, Wailua, Waipouli, Keālia, and Anahola. Bike paths also have the potential to provide economic stimulus where they provide linkage between commercial districts, as part of a recreational and multimodal commuter system. In addition bike paths may attract a growing number of eco-tourists looking for more activity and nature-oriented vacations.

The project has been assessed for social, visual, and environmental impacts in accordance with Chapter 343, Hawaiʻi Revised Statutes. With the implementation of mitigation measures outlined in the Environmental Assessment, no adverse impacts are expected to result from this project.

6. Coastal hazards;

(A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;

(B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint source pollution hazards;

(C) Ensure that developments comply with requirements of the Federal Flood Insurance Program; and

(D) Prevent coastal flooding from inland projects.

Discussion:

Long-term impacts due to coastal erosion will be minimized by the initial design of the path. Grading and excavations required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades in order to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs. Erosion control measures will be employed during construction. Following project completion, permanent soil stabilization will be achieved through landscaping with various plant materials and ground covers. In addition, the path will be constructed of concrete or other durable all-weather surface to minimize potential for erosion.

Natural hazards endemic to all of Hawai'i, including Kaua'i, involves tsunami action. There have been four episodes since 1946. These occurrences happened in 1946, 1957, 1960 and 1964 respectively. The run-up heights vary from 1 foot to 14 feet. Strong trade wind events are responsible for the majority of large wave action along the eastern coast of Kaua'i. Passing hurricanes have generated the highest wave heights along the east facing shores and may coincide with a high tide and typically generate a strong storm surge. The wave action generated by hurricanes 'Iwa (1982) and 'Iniki (1992) varied from 10-20 feet.

The Hawaiian Islands are seasonally affected by Pacific hurricanes from the late summer to early winter months. The island of Kaua'i has been affected twice since 1982 by devastating hurricanes, 'Iwa in 1982 and 'Iniki in 1992. It is difficult to predict these natural occurrences, but it is reasonable to assume that future events will occur. The project site is, however, no more or less vulnerable than the rest of the island to the destructive winds and torrential rains associated with hurricanes.

The project is not expected to exacerbate flooding or effect flood zone areas, as identified by Federal Emergency Management Agency Flood Insurance Rate Maps. The path will be designed outside of the flood zone when possible. The path and amenities will be designed to withstand flood occurrences as estimated by FEMA and in compliance with County Code requirements.

7. Managing Development;

(A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;

(B) Facilitate timely processing of applications for development permits and resolve overlapping or conflicting permit requirements; and

(C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

Discussion:

The project corridor lies within the State Land Use category of Urban, Agricultural, and Conservation. Land uses within the Urban and Agricultural designations are subject to regulation by the COK. Land uses with in the Conservation district are subject to regulation by the Department of Land and Natural Resources (DLNR). A Conservation District Use Application will be submitted to DLNR for path facilities within the Conservation District.

All work activities will be conducted in compliance with Federal, State, and COK rules and regulations.

8. Public participation;

(A) Promote public involvement in coastal zone management processes;

(B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal issues, developments, and government activities; and

(C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

Discussion:

The project has been developed through a public outreach process that includes three public informational meetings to develop the preferred path alignment and amenities. Two of the three meetings have been conducted and were broadcast on the Kaua'i public access television station, Ho'o'ike. The third meeting will be held during the permitting process. A public hearing before the Planning Commission will be conducted as part of the SMA permit approval process. Additionally, public notice of the proposed action is provided through publication of the draft and final environmental assessment, Shoreline Certification Application, and SMA permit application in the Office of Environmental Quality Control (OEQC) Bulletin. As part of the environmental review process, the public had an opportunity to review and comment on the project during the 30-day public review period for the Draft Environmental Assessment. In addition, two public outreach meetings were conducted as part of the NHPA Section 106 consultation process to identify historic and cultural resources and practices.

9. Beach protection;

(A) Locate new structures inland from the shoreline setback to conserve open space, minimize interference with natural shoreline processes, and minimize loss of improvements due to erosion;

(B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and

(C) Minimize the construction of public erosion-protection structures seaward of the shoreline.

Discussion:

Within the SMA, all project improvements will be constructed mauka of the 60-foot shoreline setback line and aligned to take advantage of existing topographic conditions that will minimize grading, as well as scenic views of the coastal area. All segments of the proposed path will be constructed of concrete and colored to match the native soil and blend into the natural setting. The concrete path will be constructed with saw-cuts spaced every 3 feet so that individual panels can be relocated in the future if necessary. Vegetative groundcover will be planted along each side of the path to stabilize soils, reduce stormwater runoff velocity and capture sediment. The path alignment will be designed to minimize the amount of grading and cut and fill required. The path surface will be designed with cross-slopes to direct runoff as sheet flow to the sides of the path rather than concentrating flows down the middle. No segment of the path will encroach into areas where it will interrupt shoreline processes. A description of the proposed path improvements is provided above in **Part B.1**. The path alignment in relation to the shoreline setback is shown in **Exhibit 8**.

At drainage crossing #3, which is located within the SMA, a new pre-fabricated bridge structure is proposed at drainage crossing #3 (see **Exhibit 8**). The bridge improvements will require construction of concrete bridge abutments to support the pre-fabricated span. Ground surface disturbed by excavation and project activities will be stabilized with vegetative ground cover. All work on the pre-fabricated bridge will be located mauka of the shoreline setback.

At drainage crossing #4, which is located within the SMA and SLU Conservation District, proposed modifications to widen the existing culvert crossing will be conducted on the mauka side of the existing dirt road. Required work activities include grading and construction of either (i) a sloped embankment or (ii) a new retaining wall approximately 100 feet in length and 5 to 8 feet in height along the mauka side of the existing road to widen support the path and road corridor widening, extension of the existing box culvert inlet to the face of the new embankment or retaining wall, and placement of fill material to create a flat surface to support the realignment of the existing road in the mauka direction and construction of an 8- to 12-foot wide concrete shared-use path along the makai side of the realigned dirt road. No improvements will be undertaken makai of the existing dirt road alignment. Ground surface disturbed by excavation and project activities will be stabilized with vegetative ground cover. These culvert modifications will not interfere with existing recreational and waterline activities, but will enhance public access to shoreline areas for recreation and enjoyment.

In addition, one new comfort station is proposed at Ninini Point outside of the SMA and shoreline setback. The comfort station building will be sited away from the shoreline and situated to conserve open space.

Project improvements along the coastline will be limited to the path and drainage crossing structures described above, as well as limited signage for public safety, information and education. All features will be designed to avoid interference with natural processes and to withstand natural hazards, including erosional forces. Planned improvements will have a minimal impact on the environment.

10. Marine resources;

(A) Ensure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;

(B) Coordinate the management of marine and coastal resources and activities to improve effectiveness and efficiency;

(C) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;

(D) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

(E) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources

Discussion:

All work activities will be conducted in compliance with Federal, State, and COK environmental rules and regulations. The project will not otherwise impact marine resources and does not involve research, or technological development related to the coastal and marine environments. Mitigation measures proposed for the protection of coastal fauna, particularly sea birds, sea turtles, and the protected Hawaiian monk seal, have been developed in consultation with the USFWS, NMFS, and DOFAW. See **Exhibits Volume II, Exhibit 18, HRS 343 FEA, Appendix B, Federal Consultation Correspondence.**

3. Consistency or compliance of the proposed development relative to the County General Plan, Development Plan, and Zoning Ordinances.

The proposed project will be developed in conformance with the Kaua'i General Plan's Vision and Goals (Section 1.3), Policies (Section 1.4), and Land Transportation Policies and Actions (Section 3).

Kaua'i General Plan, Section 1.3, Vision and Goals
The project is aligned with the Kaua'i General Plan, Section 1.3 Vision and Goals:

A Sustainable Island – Growing responsibly to meet the needs of current and future generations without depleting resources.

- *Kaua'i is a sustainable island, rooted in principles of aloha and mālama 'āina, and remarkable in its thriving ecosystems.*
- *Kaua'i is a place where conservation and restoration of land and water resources provide the foundation of sustainable policies for land use, energy, infrastructure, society, and economy.*

Discussion:

The coastal shared-use path meets the needs of current and future generations by supporting a multimodal transportation system that accommodates alternatives to

internal combustion automobiles that rely on non-renewable energy resources. The path system will engender greater understanding and appreciation of Kaua'i's remarkable ecosystems by connecting path users directly with the windward side's coastal environments and conditions. The path will include interpretive and educational signage to educate the public about the coastal ecosystems and about natural and cultural resource conservation and preservation efforts that perpetuate the spirit of aloha and mālama 'āina.

A Healthy and Resilient People – Increasing health, vitality, and resilience of communities through improving the natural, built, and social environment and responding to impacts from climate change.

- *Kaua'i is a place with healthy people and vibrant community life, safe facilities for walking and biking, places to gather and socialize, and venues for arts and culture.*
- *Kaua'i is a resilient community that shares kuleana in planning for the future, proactively responding to and preparing for changes, and providing for the needs of people from keiki to kūpuna.*
- *Kaua'i is a place that supports agriculture and a diversity of farming practices and produces food and other products that contribute to Kaua'i's self-sufficiency.*

Development of the shared-use path directly supports the vision of increasing the health, vitality and resiliency of Kaua'i's communities by improving the built and social environment. The shared-use path will create a safe and pleasant pedestrian and bicycle facility that will connect people to the island's coastline and residential, commercial and employment centers, and will support and encourage more physically active lifestyles by making these destinations accessible by foot and bicycle. The shared-use path system, where it is already in use, has become a common location for island residents to gather, socialize and connect with each other. Physically active lifestyles and social connection are key pillars of a healthy community.

The shared-use path will contribute to Kaua'i's resiliency by supporting a multimodal transportation system that reduces the islands' reliance on non-renewable energy now and into the future. In addition to improving quality of life by providing additional and healthier transportation options for residents to choose from, multimodal transportation systems create diverse and redundant transportation alternatives that can minimize disruptions in the event of non-renewable energy shortages or in the wake of natural or human-made disasters, all of which contribute to greater island resiliency. In addition, the shared-use path will be designed to be resilient against the projected effects of climate change, including increased intensity of storm events and related erosional forces from stormwater runoff and wave energy. Path facilities will be constructed outside of a 60-foot setback from the shoreline and topographically elevated. The Path alignment and design will preserve existing drainage patterns as much as possible and will be profiled to prevent concentration of runoff flows that could contribute to erosion. Path shoulders will be stabilized with vegetative groundcover to hold the soil and slow stormwater runoff velocity.

The proposed path will not directly support agricultural resources or farming practices. Much of the coastal path alignment passes through lands zoned for agriculture, but that are currently unused. The path improvements will occupy a small portion of these lands, but will not prevent the use of these lands for agriculture. Interpretive programming along the path corridor could be used to educate the public about agriculture and farming practices and their importance to island resiliency, self-sufficiency and food security.

A Unique and Beautiful Place – Stewardship and protection of the natural, cultural, social, and built environment assets that are of value to the community.

- *Kaua'i is a place of distinctive natural beauty that honors its Native Hawaiian heritage, values historic places, and is shaped by diverse languages and cultural traditions.*
- *Kaua'i is an island of unique communities that are united in a common vision and in care for their neighbors and 'ohana*
- *Kaua'i is a place where rural character and natural landscapes are preserved through compact, walkable communities separated by scenic and functional open spaces.*
- *Kaua'i is a place that welcomes visitors, providing adequate facilities and a variety of cultural and recreational opportunities while maintaining the principles of aloha and mālama 'āina.*

Discussion:

The shared-use path was conceived, in part, as a means of preserving public access to coastal areas ahead of development pressures following the cessation of large-scale sugar operations on coastal agricultural lands on Kaua'i. This was in recognition of the importance to Kaua'i's residents of natural coastal areas and the myriad resources and activities that occur there. Planning and development of the *Ke Ala Hele Makālae* coastal path system, including the subject project, has been guided by an ethic of stewardship and protection of the natural, cultural, social and built environment. The path alignment, design and development conditions were created through consultation with the public and the Kānaka Maoli community. The resulting mitigation commitments by the County of Kaua'i and its federal and state funding partners, include: avoidance of sensitive cultural and historic sites located along the path corridor; public education about Native Hawai'i culture and heritage, Kaua'i island's history, and natural resources through interpretive programs and signage; and context sensitive design of path features to blend in and minimize visual impacts in the open, natural landscape along the coast.

The proposed project will complete a key connection in the overall *Ke Ala Hele Makālae* shared-use path system by linking the Lydgate to Ahukini path segment with Līhu'e Town and the Līhu'e International Airport. In doing so, it will unite the windward communities with the commercial services, employment centers, and interisland and international transportation hubs in Kaua'i's urban center, and likewise connect Līhu'e's residents to the windward communities through a functional, enjoyable and healthy alternative transportation and recreation facility. With similar benefit, the proposed shared-use path will create new opportunities for visitors to Kaua'i to experience the island's culture, history and natural beauty

while doing so with a reduced carbon footprint that is consistent with the principles of aloha and mālama ʻāina.

An Equitable Place with Opportunity for All – Fostering diverse and equitable communities with vibrant economies, access to jobs and housing, and a high quality of life.

- *Kaua'i is an island of economic opportunity where businesses, cottage industries, and entrepreneurs thrive, and where youth have broad access to education, enrichment, and economic opportunity.*
- *Kaua'i is a place where housing for all ages and income levels is integrated into the fabric of each community, and where people can live close to work and services.*

Discussion:

The proposed path segment, as an integral part of the overall *Ke Ala Hele Makālae* shared-use path system, will create new economic opportunities by incentivizing Kaua'i's businesses, cottage industries and entrepreneurs to identify new ways to provide goods and services to path users. The path will also open new opportunities to service visitors to Kaua'i through bicycle rentals and walking and bicycle tours using the path system.

Although the path segment that is the subject of this SMA permit application does not pass through urbanized or commercial areas, the overall path system within which it is a key connecting segment will create additional local and regional economic opportunities by generating patronage and commerce at businesses located along other segments of the path and at destinations made accessible by the Nāwiliwili to Ahukini segment.

In a small, but significant way, the shared-use path system, including the subject project, fosters equitable communities by supporting multimodal transportation and reduced dependence on automobiles for access to jobs and housing; in particular, it does so by making less costly modes of transportation, namely walking, bicycling and the use of other non-internal-combustion mobility devices, a safe and viable option for people across a greater range of ages, physical abilities and economic levels.

General Plan, Section 1.4, Policies the Guide Growth

The proposed project is aligned with the following specific General Plan policies

Policy #4: Design Healthy and Complete Neighborhoods "Ensure new and existing neighborhoods have safe roads and functional parks, as well as access to jobs, commerce, transit, and public services."

Discussion:

The proposed project will complete a key connection between other path segments along windward Kaua'i and the Līhu'e town core and Līhu'e International Airport. The shared-used path system will provide connectivity and safe routes to walk or bike between residential areas, job centers, public services, transportation, transit facilities and recreational areas. By accommodating alternative modes of

transportation that rely on physical activity, the path will also promote public health and wellbeing.

Policy #5: Make Strategic Infrastructure Investments "New government investment should support growth areas and include priority projects as identified in Community Plans. Funding at all levels of government (Local, State, and Federal) is becoming increasingly limited. Just like a family on a budget, government must live within its means. With this in mind, difficult decisions must be made as to how limited funds are spent. Infrastructure needs include parks, water, wastewater, solid waste, and transportation. Recognizing reduced funding, we must direct infrastructure investment as a means to direct growth to the areas most suitable for development. With economics as a key aspect of sustainability, establishing infrastructure investment priorities in alignment with our vision is essential."

Discussion

The proposed path project represents a strategic, value-based investment in an infrastructure project that aligns with and supports the following aspects of the Kauaʻi General Plan and the Līhuʻe Community Plan vision:

- Create a balanced, multi-modal transportation system that improves local and regional connectivity;
- Create economic opportunities and equitable communities;
- Improve island resiliency;
- Preserve coastal environments and historic and cultural resources; and
- Encourage active lifestyles and improve public health.

Moreover, the project is part of the Ke Ala Hele Makālae coastal path system, which is identified and recommended for completion in the Kauaʻi General Plan.

Due to the comprehensive and integrated array of benefits across multiple scales (individual, local and regional) and jurisdictions, the overall Ke Ala Hele Makālae project has consistently merited state and federal funding to leverage and augment the County's infrastructure investments.

Policy #6: Reduce the Cost of Living "Reduce the combined costs of housing and transportation, which consume more than 60 percent of Kauaʻi's average household income. Do this by connecting housing to jobs and by providing a diversity of housing types and affordable transportation options."

Discussion

The proposed shared-use path will help reduce the cost of living for Kauaʻi's windward communities by providing an alternative and more affordable mode of transportation that connects these communities to urban and suburban centers of employment, commerce, education, essential services and major transportation hubs, as well as to families and friends. The option to walk, bicycle or use other non-motorized devices (e.g., skateboards), offers a much more affordable mode of transportation compared to the cost of owning and operating an automobile and can help reduce transportation costs to Kauaʻi's households.

Policy #7: Build a Balanced Multimodal Transportation System "Reduce congestion conditions through strategic infrastructure improvements and increase multimodal transportation options."

Discussion:

Improving traffic circulation and reducing congestion are identified as goals in the General Plan. This project directly addresses these General Plan policy and goals by creating infrastructure that supports alternatives to the automobile within a multimodal transportation system. The project will provide safe, non-motorized vehicle facilities for pedestrians and cyclists to access residential areas, employment and service centers, recreation areas, and natural coastal areas. The path facility will help relieve congestion on public roadways by supporting peoples' choice to use alternative vehicle modes instead of internal combustion automobiles for commuting, socializing and recreating at a local and regional level. This project directly addresses the General Plan recommendation for transportation system improvements along the *Ke Ala Hele Makālae* path to Līhuʻe.

Policy #8: Protect Kauaʻi's Scenic Beauty
"Protect the island's natural beauty by preserving the open space and views between towns."

Discussion:

The coastline between Ahukini Landing and Ninini Point is designated as a conservation area in the General Plan. The proposed project will be designed to maintain visual quality and open space. The project path will be constructed at-grade and will not obstruct the view of or from the coastline. No structures will be built along the coastline between Ahukini and Ninini Point in order to maintain the open space character of the area and avoid affecting views and visual resources. The proposed comfort station at Ninini Point will be sited and designed to blend into the surrounding landscape to minimize its visual presence in the landscape.

Policy #14: Prepare for Climate Change
"Prepare for impacts to the island economy, food systems, and infrastructure that will be caused by climate change."

Discussion:

The path alignment is designed to follow existing, natural land contours as much as possible in order to minimize grading and avoid disrupting existing drainage patterns and impounding or concentrating stormwater runoff flows. The proposed project will use vegetative ground cover to permanently stabilize soils, reduce stormwater runoff velocities and minimize the potential for erosion. In addition, the path will be constructed of concrete and/or other durable all-weather surface for resiliency to withstand the effects of major storm events, which are projected to decrease in frequency, but increase in intensity with climate change. All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kauaʻi requirements.

The subject path segment will connect communities along windward Kauaʻi with Kauaʻi's urban center in Līhuʻe and with Līhuʻe International Airport. In doing so, it will contribute to the creation of a multimodal transportation system that will strengthen transportation infrastructure redundancy and resiliency to better

withstand potential impacts from climate change, including flood and wind damage from stronger storm events, and more volatile markets and shortages in non-renewable energy.

Policy #15: Respect Native Hawaiian Rights and Wahi Pana
"Perpetuate traditional Native Hawaiian rights and protect public trust resources and cultural sites in all land use development and activities."

Discussion:

The project applicant has conducted consultations as part of the NHPA, Section 106 process with kūpuna from the project area who have knowledge of traditional cultural practices and resources, and has conducted background studies, including an archaeological inventory survey, cultural impact assessment, and Ka Pa'akai Analysis, to identify public trust resources and cultural sites and uses, and to develop appropriate mitigation measures as necessary. All known cultural and historical resources within the proposed path vicinity will be avoided and left undisturbed by routing the path alignment away from them and, in some cases, establishing protective buffers. In addition, the proposed project will develop educational programming and install interpretive signage along the project corridor to educate users about cultural resources and practices, and history within the project area, as well as ways to aid in the conservation, protection and perpetuation of those resources. See **Exhibits 14 through 17** for additional information and project documentation on this subject.

Policy #16: Protect Access to Kauaʻi's Treasured Places
"Protect access to and customary use of shoreline areas, trails, and places for religious and cultural observances, fishing, gathering, hunting, and recreational activities, such as hiking and surfing."

Discussion:

The *Ke Ala Hele Makālae* coastal path system was conceived as a means of preserving public access to shoreline areas following the closure of large-scale sugar cultivation in agricultural lands along Kauaʻi's coastline. Community and government leaders recognized the potential transformation of these lands by private development and have diligently worked to protect access to and customary use of shoreline areas by the public by developing the coastal, shared-use path system. The subject project is a key segment of this system. In addition to connecting East Kauaʻi communities to Līhuʻe Town, the path will preserve access to the undeveloped coastal areas between Ahukini Landing and Ninini Point. These areas are customarily used for fishing, gathering and recreational activities. The proposed path improvements will ensure that existing access to favored fishing sites along this stretch of coastline is not hindered. Planned improvements include five crossings for motor vehicles, protected by bollards, to allow vehicular access to preferred fishing sites that were identified by the fishing community during the project planning and Environmental Assessment phase. In addition, the path is designed so as not to obstruct or prevent pedestrian or bicycle access to other fishing or recreational sites along the shoreline, nor will it direct attention to those sites. The project will include interpretative and informational signage with content regarding conservation efforts, regulatory restrictions, safety, and wayfinding where appropriate.

General Plan Section 3, Sector III, Land Transportation

The proposed project supports the General Plan recommendation for the development of a "balanced" multimodal transportation system that links roadway networks, bicycle facilities, pedestrian facilities and transit with land use decisions. The shared-use path is a key part of the envisioned multimodal system and directly addresses the General Plan goals for a transportation system that accommodates a broader range of roadway users (by age, economic level and physical ability) while reducing congestion and supporting sustainability goals of reducing single occupancy vehicle (SOV) trips and increasing walking and bicycling as viable transportation modes.

The proposed project is recommended as one of the actions under General Plan, *Land Transportation, Action 5, Bicycle Program, Project 2*: "*Complete the Ke Ala Hele Makālae path from Anahola to Līhu'e".*

Līhu'e Community Plan

The proposed project supports the Līhu'e Community Plan (LCP) vision, policy objectives and goals for *Connectivity (Section 2.4.3)* by improving transportation connections within and between communities for a broad range of users, and *Multimodal Transportation (Section 2.4.6)* by developing transportation infrastructure that encourages and supports the choice to walk or bike as a viable alternative mode of transportation to SOV automobiles.

The project is consistent with the following LCP Policies and Guidelines:

Section 5.3 – Heritage Resources
Heritage resources include important landforms that have ecological, recreational, cultural and scenic value. LCP policies call for preservation of these resources:

- *Encourage development around the natural constraints of topography (e.g., gulches, steep slopes).*
- *Preserve viewsheds and scenic qualities of features including views of Hā'upu Ridge, Kālepa Ridge, and Kilohana Crater.*
- *Preserve important archaeological sites and historic sites within the Līhu'e District as identified in Chapter 3 and on the Heritage Resources Map in the General Plan.*

Discussion:

The proposed path is aligned and will be designed to follow the existing topography as much as possible in order to minimize ground disturbance, preserve existing land forms and drainage patterns, and minimize visual presence within the coastal landscape. The project does not include vertical structures or features within the SMA, with the exception of limited signage used for public information, education and interpretation of coastal ecology, history and cultural sites and practices. The project will preserve archaeological and historic sites through avoidance and through interpretive signage developed in

consultation with the Kaua'i Historic Preservation Review Commission and Kānaka Maoli community.

Section 5.4 – Transportation
The LCP references the Kaua'i Multimodal Land Transportation Plan (MLTP) as the basis for land transportation goals and policies and project recommendations. Goals include:

- *Provide connectivity between settlement areas through a multimodal approach*
- *Increase vehicle miles traveled (VMT) by other than the automobile;*
- *Retain VMT by automobiles at 2010 levels;*

Discussion:

The proposed project is a key link in the Ke Ala Hele Makālae system that will connect East Kaua'i settlement areas and Līhu'e Town through a multi-modal shared-used path network. The path will encourage and support the increased use of bicycles and walking as safe and viable alternatives to the automobile for local and regional trips. In this way, the project will help increase VMT by other than automobiles and help reduce overall VMT by automobiles.

The LCP identifies the following programs for bicycle and pedestrian facilities.

Town Connector Trails

- *Connect Puhi-Līhu'e-Hanamā'ulu*
- *Use separated paths where feasible*

Town and Village Bicycle Lanes

- *Give priority to bicycle facilities within "Safe Routes to School" and transit corridors*
- *Connect local destinations*
- *Provide access to separated paths*
- *Give low priority to low-speed, low volume local streets*

Coastal Trails and Other Multiuse Trails

- *Connect recreational and outdoor destinations to housing and lodging areas*
- *Support longer distance commuting*
- *Give visitors an alternative to driving*

Discussion:

The proposed project includes development of a separated shared-use path system where feasible, specifically in the undeveloped lands between Ahukini Landing and Ninini Point. Where a separated path is not feasible, the project proposes uses striping and signage to designate existing roads as shared-use roadways.

The proposed path segments that are part of the subject project will complete a key connection of the Ke Ala Hele Makālae path system that will connect Līhu'e to other settlements along East Kauai, including Hanamā'ulu, via the coastal path system. The system will improve bicycle and pedestrian access to recreational

and outdoor destinations, as well as to housing areas, employment and commercial centers and other essential civic service centers. The subject project will offer visitors access to coastal areas between Ahukini and Ninini Point without the need to use an automobile, and, as part of the Ke Ala Hele Makālae system, will make the windward settlements of Kauaʻi, from Līhuʻe to Anahola, accessible to visitors by bicycle and foot.

The proposed project is identified in LCP Figure 5-7 as part of the coastal trail system within the proposed bicycle facilities network that is envisioned to provide regional connectivity to East Kauaʻi for bicycle commuters, recreational cyclists, and cyclists of all ages.

Section 5.9 – Climate Change
The LCP guidance related to Climate Change is based on the Sea Grant College Center for Island Climate Change Adaptation Policy (ICAP), which recommends planning for a one-foot rise in sea level by 2050 and a three-foot rise by 2100. The LCP recommends that structures and facilities in the Nāwiliwili area be eventually moved in a more mauka direction and that there either be no new facilities or that any built be designed for up to six feet rise in sea level. Specific LCP Climate Change Policies that are relevant to the subject project include the following:

- *Reduce the sensitivity to climate change and alter exposures and increase resilience to cope with change*
- *Avoid or minimize coastal resource impacts when addressing risks to new or existing development.*
- *Require development proposals to include analysis of coastal hazard impacts and include mitigation measures where applicable.*
- *Consider multiple scenarios of sea level rise and associated flooding, wave inundation, and erosion impacts when developing and approving Capital Improvement Projects.*
- *Take into consideration the impacts of climate change (higher temperatures, sea level rise, extremes in rainfall as floods or drought, and potential increases in tropical storm frequency or severity) in land use, development, and planning*

Discussion:

The proposed project is consistent with LCP policies for climate change adaptation. The shared-use path system will increase Kauaʻi's resilience to climate change by contributing to the development of a multimodal transportation system. Multimodal transportation networks provide system redundancy and accommodate alternative transportation modes that support adaptation strategies in the event that roadway infrastructure, gas imports or the energy market generally are impacted by climate-related events and trends.

The proposed path alignment and improvements are designed to minimize coastal resource impacts and impacts to the path infrastructure. The proposed path alignment is located entirely outside of the 60-foot shoreline setback. The proposed path ranges in elevation from approximately 17 feet to 50 feet above mean sea level (msl). The proposed path improvements are located atop a rocky coastal bluff above a shoreline that is almost exclusively bedrock and/or rocky

intertidal shore and therefore is at low risk for shoreline erosion. Two of the proposed drainage crossings (drainage crossings #1 and #2) will use existing culvert crossings located more than 300 feet from the shoreline at an elevation greater than 45 feet above msl. The proposed new pre-fabricated bridge structure across drainage crossing #3 will be located approximately 150 feet from the shoreline at an elevation of approximately 60 feet above msl. Drainage crossing #4 will involve extending an existing culvert crossing on the mauka side away from the shoreline. Drainage crossing #4 is located approximately 60 feet from the shoreline at an elevation of approximately 28 feet above msl. The path will be constructed of concrete with saw-cuts every 3 feet, consistent with County practices. The alignment will be designed as much as possible to follow existing topography in order to minimize changes to existing drainage patterns and land forms, and to reduce impacts to coastal resources generally. Path improvements along the coast will be limited to the at-grade concrete path and signage, with the exception of a comfort station proposed outside of the SMA at Ninini Point and protective fencing between the path and shearwater sea bird nesting areas inland from Ninini Point. These planning and design considerations and mitigation measures were identified based on an assessment of coastal hazard impacts in the project corridor, including shoreline change analysis conducted by Jim O'Connel, University of Hawai'i (UH) Sea Grant, which included consultation with Dr. Chip Fletcher, head of the UH Coastal Geology Group.

Kauaʻi Multimodal Land Transportation Plan (MLTP)

The project directly supports the objectives of the MLTP, which provides the framework for land transportation system recommendations in both the Kauaʻi General Plan and the Līhuʻe Community Plan. The MLTP outlines steps the County of Kauaʻi will take to achieve a balanced multimodal transportation system through the planning horizon year of 2035. The MLTP proposes programs for bicycle and pedestrian facilities as part of a multimodal system, including completion of the shared-use coastal path system of which the subject project is a part. MLTP polices relevant to the subject project include:

1. A balanced, multimodal transportation system that provides choice, flexibility and resiliency in personal access and circulation for all.
2. A transportation system that supports economic vitality and provides affordable access to jobs and economic opportunity.
3. A transportation system that supports and enhances public health.
4. A transportation system planned and designed to protect and enhance the island's natural landscapes and environmental quality.
5. A transportation system that makes efficient use of energy and is less dependent on imported petroleum.
6. A transportation system that will be maintained in a state of good repair.
7. A transportation system that protects and enhances the cultural values of Kauaʻi, the rural character of the island and a high quality of life.

Discussion:

The proposed project supports the MLTP policies and objectives for development of a balanced, multimodal transportation system. See the detailed discussion

above regarding consistency with Kauaʻi General Plan and Līhuʻe Community Plan visions, goals and policies that are based on the MLTP.

County of Kauaʻi Zoning Ordinances

The project will also be developed in conformance with the COK Zoning Ordinances. The proposed pathway is a permitted use in all COK land use zones including the Tsunami District, Shore District, Special Treatment District-Public, and Special Treatment District Flood.

As described above in Part B, Project Description, all structures, while limited in scope and impact will be subject to additional construction and development standards in the Kauaʻi County Code, as required.

Section VI
Volume I Exhibits:

Exhibit 1
Project Location Map

Exhibit 2
State Land Use Districts

Exhibit 3
County of Kaua'i Zoning

Exhibit 4
Preferred Alignments Cost Estimate

Exhibit 5
Site Photos

Exhibit 6
Special Management Area Map

Exhibit 7
Shoreline Survey

Exhibit 8
General Site Plan

Exhibit 9
New Bridge and Culvert Drainage Crossing

Exhibit 10
State Historic Sites Figure and No Adverse Effect Table

Exhibit 11
Wetland Map

Exhibit 12
FEMA/FIRM Map

Exhibit 13
HRS 343 Finding of No Significant Impact

Exhibit 14
HRS 6E Historic Preservation Compliance

Exhibit 15
Archaeological Inventory Survey Documents

Exhibit 16
Ka Pa'akai Analysis

Exhibit 17
NHPA 106 and 6E Consultation and Correspondence

Exhibit 1
Project Location Map



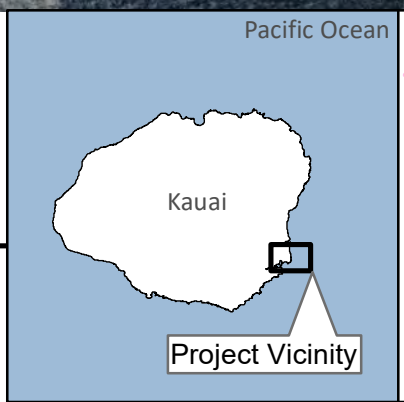
Project Location Map

Nāwiliwili - Ahukini Shared-Use Path
Phase A
County of Kaua‘i
Līhu‘e, Kaua‘i, Hawai‘i

R. M. Towill Corporation

0 900 1,800 Feet

1 in = 1,800 feet



Legend

- Segments B and D By Others
- Segments A,C,G, and H By County of Kaua'i
- Comfort Station
- Bike Depot
- Tax Map Key

GIS Tax Map Key Layer Source:
Hawaii Statewide GIS Program. County of Kauai, 2014.

Exhibit 2
State Land Use Districts



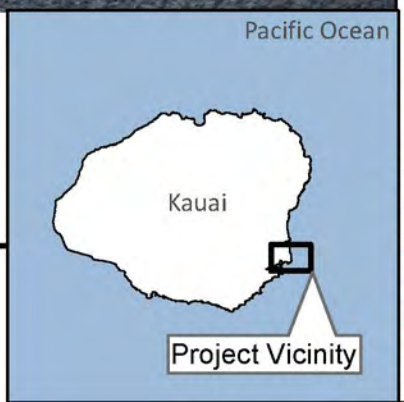
State Land Use Districts

Nāwiliwili - Ahukini Shared-Use Path
Phase A
County of Kaua'i
Līhu'e, Kaua'i, Hawai'i

R. M. Towill Corporation

0 900 1,800 Feet

1 in = 1,800 feet



Legend

- Segments B and D By Others
- Segments A,C,G, and H By County of Kaua'i
- Comfort Station
- Bike Depot

State Land Use Districts

- A
- C
- U

GIS State Land Use Districts Layer Source:
Hawaii Statewide GIS Program. County of Kauai, August, 2018.

Exhibit 3
County of Kauaʻi Zoning Districts

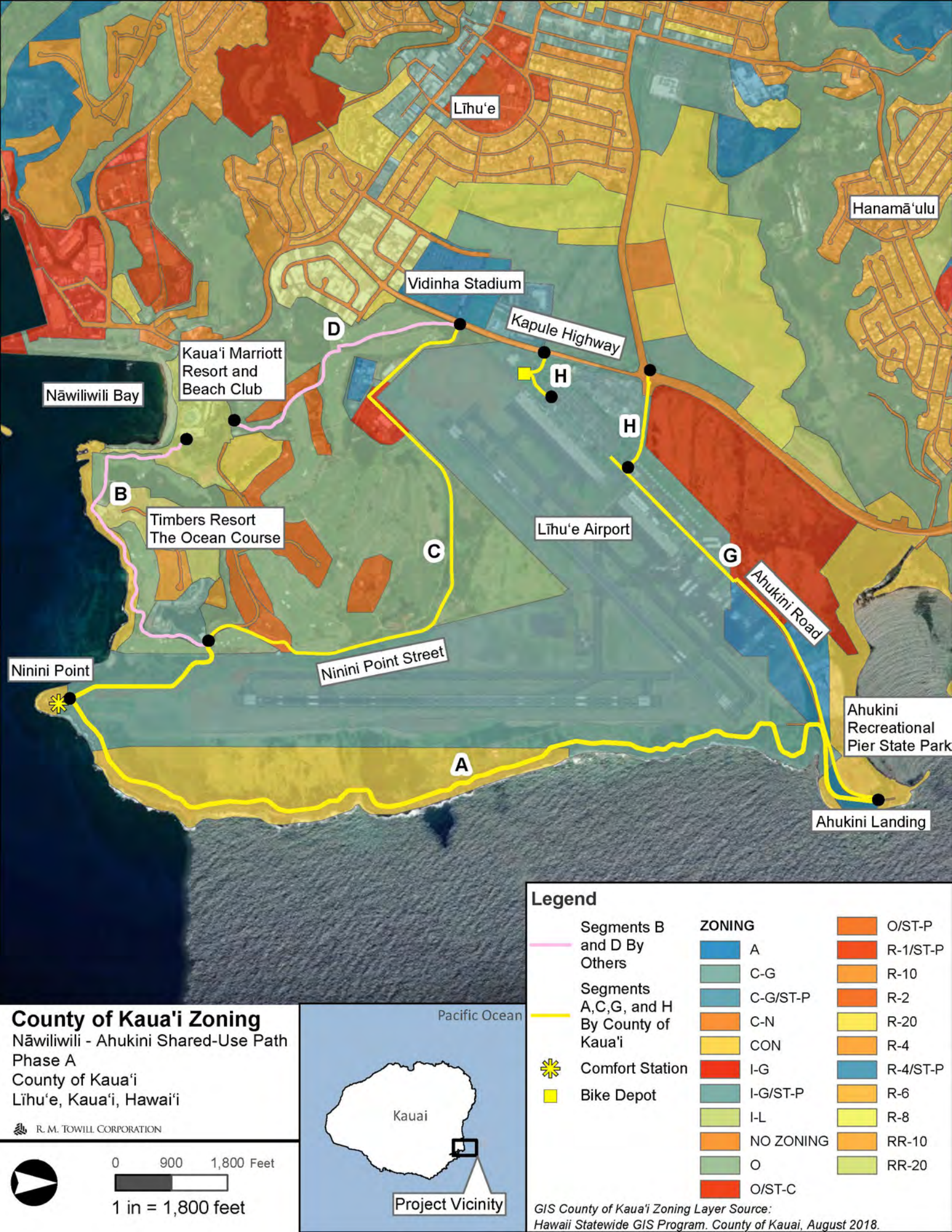

Līhu'e
Hanamā'ulu
Vidinha Stadium
Kapule Highway
D
H
H
Kaua'i Marriott Resort and Beach Club
Nāwiliwili Bay
B
Timbers Resort The Ocean Course
C
Līhu'e Airport
G
Ahukini Road
Ninini Point
Ninini Point Street
A
Ahukini Recreational Pier State Park
Ahukini Landing
Legend
Segments B and D By Others
Segments A,C,G, and H By County of Kaua'i
Comfort Station
Bike Depot
ZONING
A
C-G
C-G/ST-P
C-N
CON
I-G
I-G/ST-P
I-L
NO ZONING
O
O/ST-C
O/ST-P
R-1/ST-P
R-10
R-2
R-20
R-4
R-4/ST-P
R-6
R-8
RR-10
RR-20
GIS County of Kaua'i Zoning Layer Source:
Hawaii Statewide GIS Program. County of Kauai, August 2018.
County of Kaua'i Zoning
Nāwiliwili - Ahukini Shared-Use Path
Phase A
County of Kaua'i
Līhu'e, Kaua'i, Hawai'i
R. M. Towill Corporation
0 900 1,800 Feet
1 in = 1,800 feet
Pacific Ocean
Kauai
Project Vicinity

Exhibit 4
Preferred Alignments Cost Estimate

Nāwiliwili - Ahukini Shared Use Path Project
Phase A - Ahukini Landing to Ninini Point with Connections to Kapule Highway
Development Valuation Summary

	Development Costs [1]		
Nāwiliwili-Ahukini Shared-Use Path - Phase A Segments	**In SMA**	**Outside SMA**	**Total**
Segment A - Coastal Path from Ahukini Landing to Ninini Point to Ninini Point Street	$6,025,406	$8,552,327	$14,577,734
Segment A1 - Ninini Point Path and Comfort Station	$0	$1,908,506	$1,908,506
Segment B - Coastal Path - Ninini Point to Kalapakī Beach	By Others		$0
Segment C - Shared-Use Road - Nini Point Street from Ninini Point to Kapule Highway	$0	$433,136	$433,136
Segment D - Kapule Highway / Ninini Point Street Intersection to Kaua'i Marriott (Limo Road)	By Others		$0
Segment G - Shared-Use Road - Ahukini Landing to Līhu'e Airport	$83,602	$390,141	$473,743
Segment H - Shared-Use Path Bike Depot - Līhu'e Airport to Kapule Highway	$0	$1,441,531	$1,441,531
	$6,109,008	$12,725,640	$18,834,648

s

AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR

ALTERNATE PRELIMINARY COST ESTIMATE

					April 17, 2008	February 18, 2022
					Escalation Rate: [1]	2.354
	Quantity	Unit	Description	Unit Price	Total	Escalated Total
CORRIDOR I - AHUKINI LANDING TO NAWILIWILI BEACH PARK						
SEGMENT A - AHUKINI LANDING TO NININI POINT						
	Base - Comfort Station at Ninini Point Lighthouse					
	2,300	SF	Asphalt concrete parking lot. 4" thick A.C. pavement and 6" thick base course layer	$15	$34,500	$81,213
	4,200	SF	12' Wide concrete shared use path (350 LF) out of SMA	$15	$63,000	$148,302
	LS	LS	Temporary erosion control	L.S.	$5,000	$11,770
	LS	LS	2-1/2" Meter and box	L.S.	$102,500	$241,285
	LS	LS	Comfort Station. (Including drinking fountain, sink, hose bibb, and compost outhouse)	L.S.	$500,000	$1,177,000
			Subtotal		$705,000	$1,659,570
			Contingency (15%)		$105,750	$248,936
			TOTAL		$810,750	$1,908,506
	Alternate A1 - Closest to Shore Line					
	LS	LS	Clearing and grubbing	L.S.	$300,000	$706,200
	24,000	SF	12' Wide concrete shared use path (2,000 LF) out of SMA	$15	$360,000	$847,440
	96,960	SF	12' Wide concrete shared use path (8,080 LF) in CD	$15	$1,454,400	$3,423,658
	107,040	SF	12' Wide concrete shared use path (8,920 LF) in SMA	$15	$1,605,600	$3,779,582
	LS	LS	Drainage Crossing - 1 Culvert crossing improvements (3-24")	L.S.	$140,000	$329,560
	LS	LS	Drainage Crossing - 2 Culvert crossing improvements (54")	L.S.	$130,000	$306,020
	LS	LS	Drainage Crossing - 3 Prefab aluminum bridge, 60' span. Including abutments.	L.S.	$200,000	$470,800
	LS	LS	Drainage Crossing - 4 (southernmost) Retrofit existing 10'x6' concrete box culvert	L.S.	$600,000	$1,412,400
	LS	LS	Fishermen access points	L.S.	$20,000	$47,080
	LS	LS	Temporary erosion control	L.S.	$575,000	$1,353,550
			SUBTOTAL		$5,385,000	$12,676,290
			Contingency (15%)		$807,750	$1,901,444
			TOTAL		$6,192,750	$14,577,734

Source:

[1] Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/

KAUAI BIKE PATH
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR
ALTERNATE PRELIMINARY COST ESTIMATE

					April 17, 2008	February 18, 2022
					Escalation Rate: [1]	2.354
	Quantity	Unit	Description	Unit Price	Total	Escalated Total
CORRIDOR I - AHUKINI LANDING TO NAWILIWILI BEACH PARK						
SEGMENT C - NININI POINT TO KAPULE HIGHWAY						
				$810,750		
	Alternate 1 - Striping and Signage for Shared-Use Road			$6,192,750		
	6,200	LF	Signage and striping for shared-use road	$25	$155,000	$364,870
- 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/						
		LS	Temporary erosion control	L.S.	$5,000	$11,770
			Subtotal		$160,000	$376,640
			Contingency (15%)		$24,000	$56,496
			TOTAL		$184,000	$433,136

Source:

[1] Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/

KAUAI BIKE PATH
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR
ALTERNATE PRELIMINARY COST ESTIMATE

					April 17, 2008	February 18, 2022
					Escalation Rate: [1]	2.354
	Quantity	Unit	Description	Unit Price	Total	Escalated Total
CORRIDOR II - AHUKINI LANDING TO LIHUE CIVIC CENTER						
SEGMENT G - LIHUE AIRPORT TO KAPULE HIGHWAY						
	Alternate G1 - Ahukini Road shared-use - Ahukini Landing to Airport					
	1,200	LF	Striping and signage for shared use road - In SMA	$25	$30,000	$70,620
- 2022. ht	5,600	LF	Striping and signage for shared use road.	$25	$140,000	$329,560
	LS	LS	Temporary erosion control	L.S.	$5,000	$11,770
			Subtotal		$175,000	$411,950
			Contingency (15%)		$26,250	$61,793
			G1 TOTAL		$201,250	$473,743

Source:

[1] Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/

KAUAI BIKE PATH
AHUKINI -- CIVIL CENTER -- NAWILIWILI HARBOR
ALTERNATE PRELIMINARY COST ESTIMATE

					April 17, 2008	February 18, 2022
					Escalation Rate: [1]	2.354
	Quantity	Unit	Description	Unit Price	Total	Escalated Total
CORRIDOR II - AHUKINI LANDING TO LIHUE CIVIC CENTER						
SEGMENT H - LIHUE AIRPORT TO KAPULE HIGHWAY						
	Alternate H1 - North End of Līhu'e Airport to Kapule Highway					
	17,000	SF	10' Wide concrete shared use path (1,200 + 500 LF)	$15	$255,000	$600,270
- 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/						
		LS	Temporary erosion control	LS	$5,000	$11,770
	LS	LS	Culvert crossing	L.S.	$260,000	$612,040
	LS	LS	Bike depot	L.S.	$50,000	$117,700
	LS	LS	Temporary erosion control	L.S.	$5,000	
			Subtotal		$320,000	$753,280
			Contingency (15%)		$48,000	$112,992
			H1 TOTAL		$368,000	$866,272
	Alternate H2 - South End of Lihue Airport to Kapule/Ka`ana St. Intersection					
	10,500	SF	10' Wide concrete shared use path (1,050 LF)	$15	$157,500	$370,755
	LS	LS	Bike Depot	L.S.	$50,000	$117,700
	LS	LS	Temporary erosion control	L.S.	$5,000	$11,770
			Subtotal		$212,500	$500,225
			Contingency (15%)		$31,875	$75,034
			H2 TOTAL		$244,375	$575,259

Total H1 and H2 **$1,441,531**

Source:

[1] Construction Analytics - Building Cost Index - Construction Inflation 2005 - 2022. https://edzarenski.com/2016/10/24/construction-inflation-index-tables-e08-19/

Exhibit 5
Site Photos


Rice St
51
56
Lihue Airport
24 - 29
34 & 35
41 & 42
40
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36 & 37
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30 - 33
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Photo 1: Ahukini Road, start of Path A, facing south.

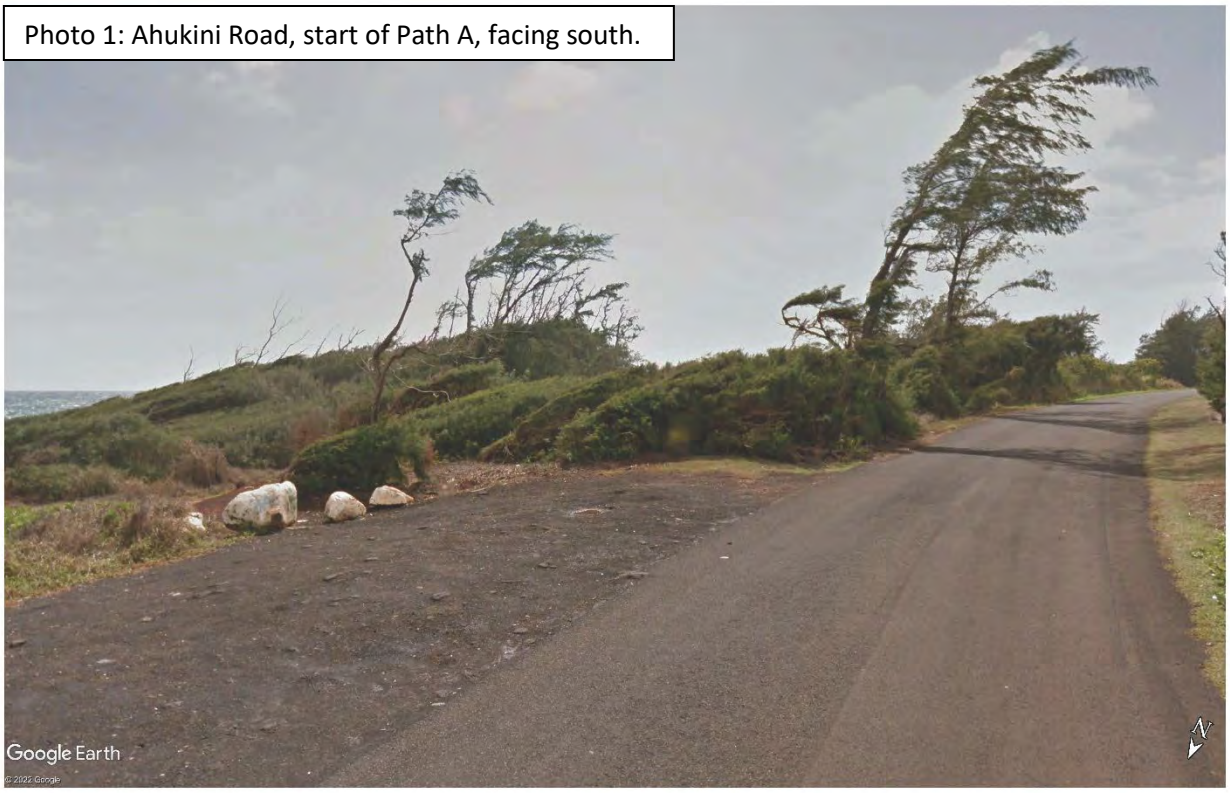


Photo 2: Ahukini Road, intersection of Path A and G, facing west.

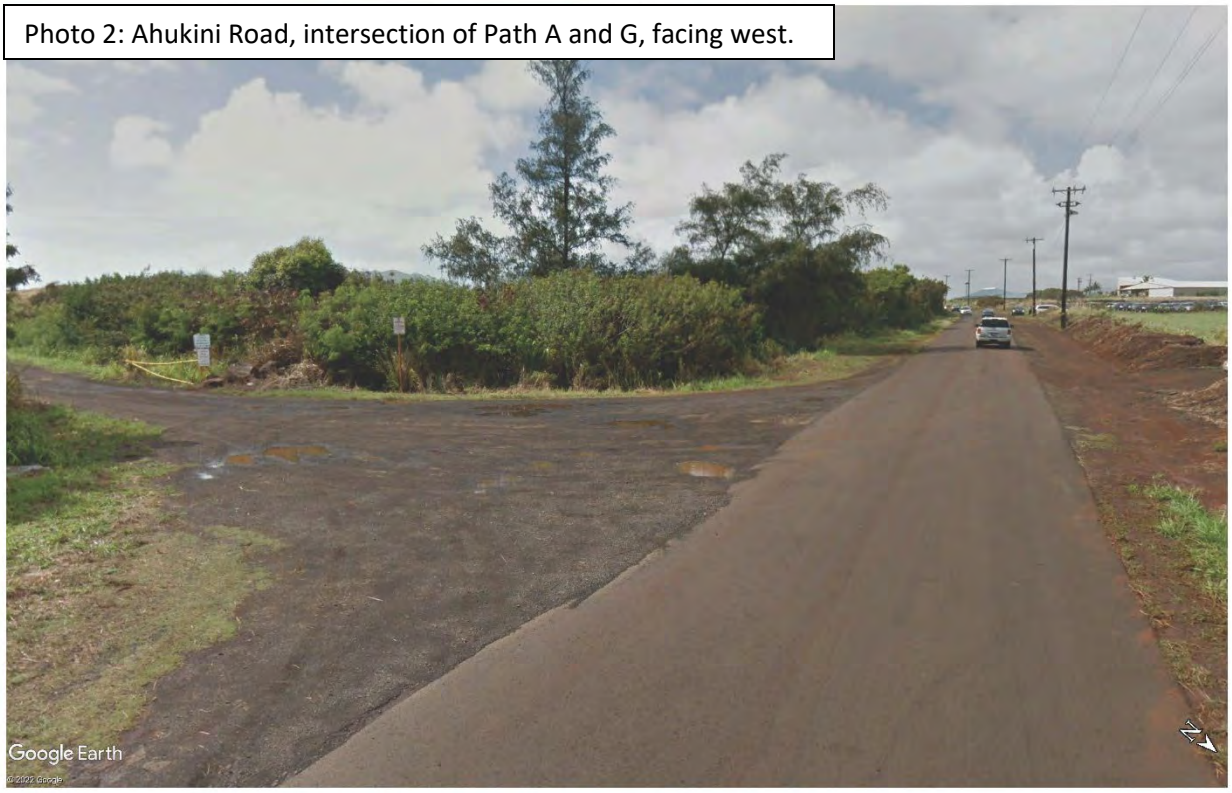


Photo 3: Ahukini Road, intersection of Path A and G, facing south.

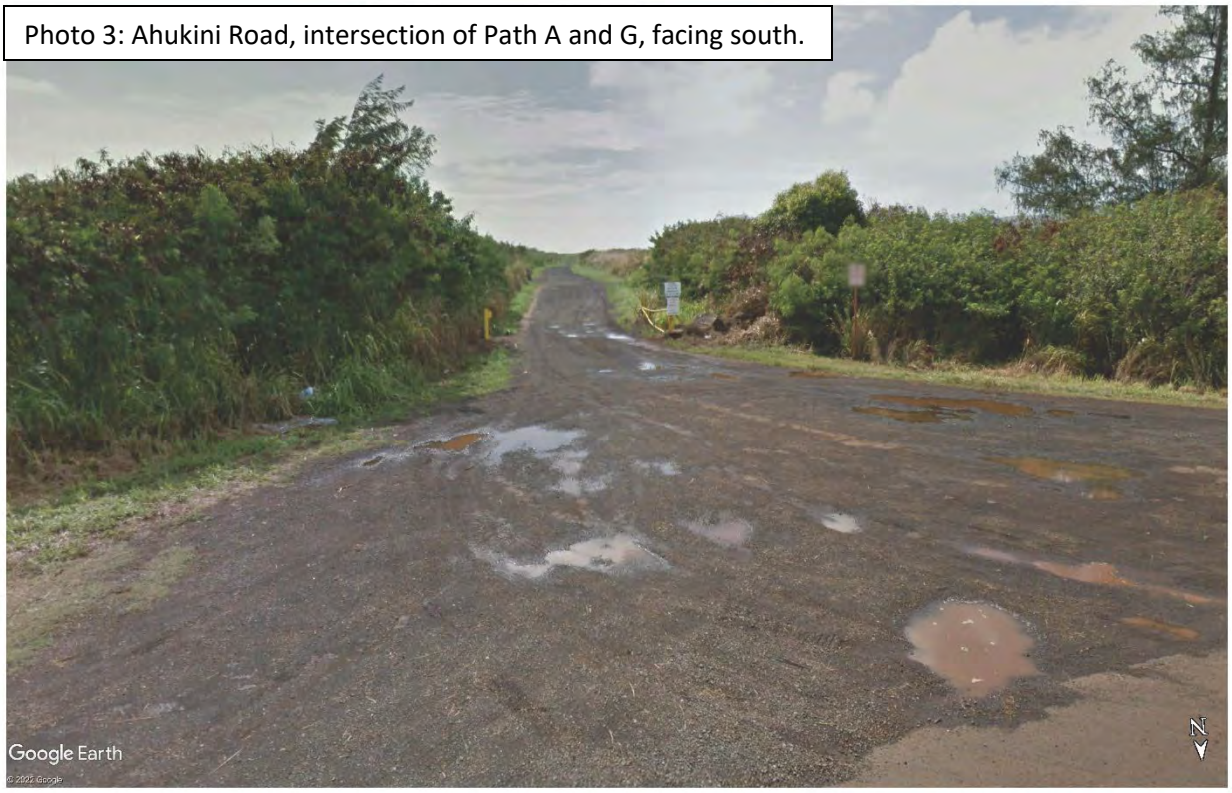


Photo 4: Path A, facing east.



Photo 5: Path A, facing south.

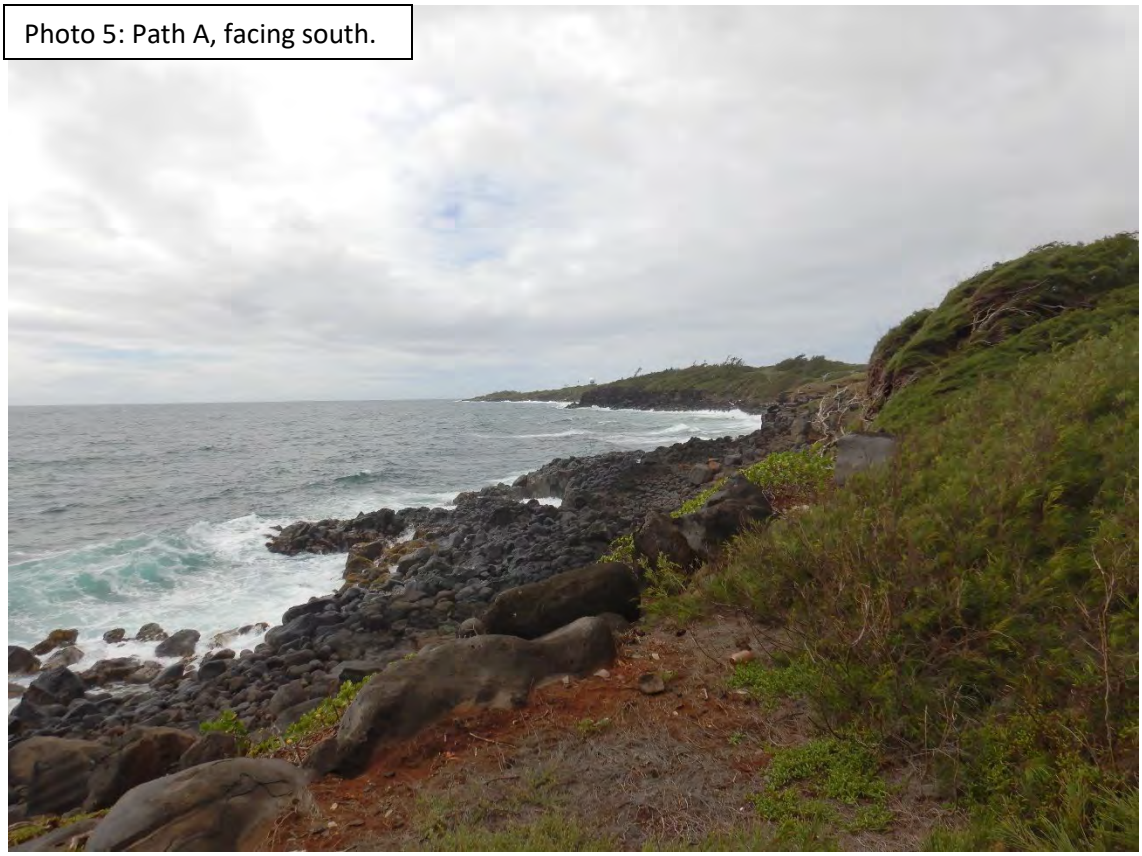


Photo 6: Path A, facing south.



Photo 7: Path A, Bridge crossing, facing south.



Photo 8: Path A, facing east.



Photo 9: Path A, facing north.

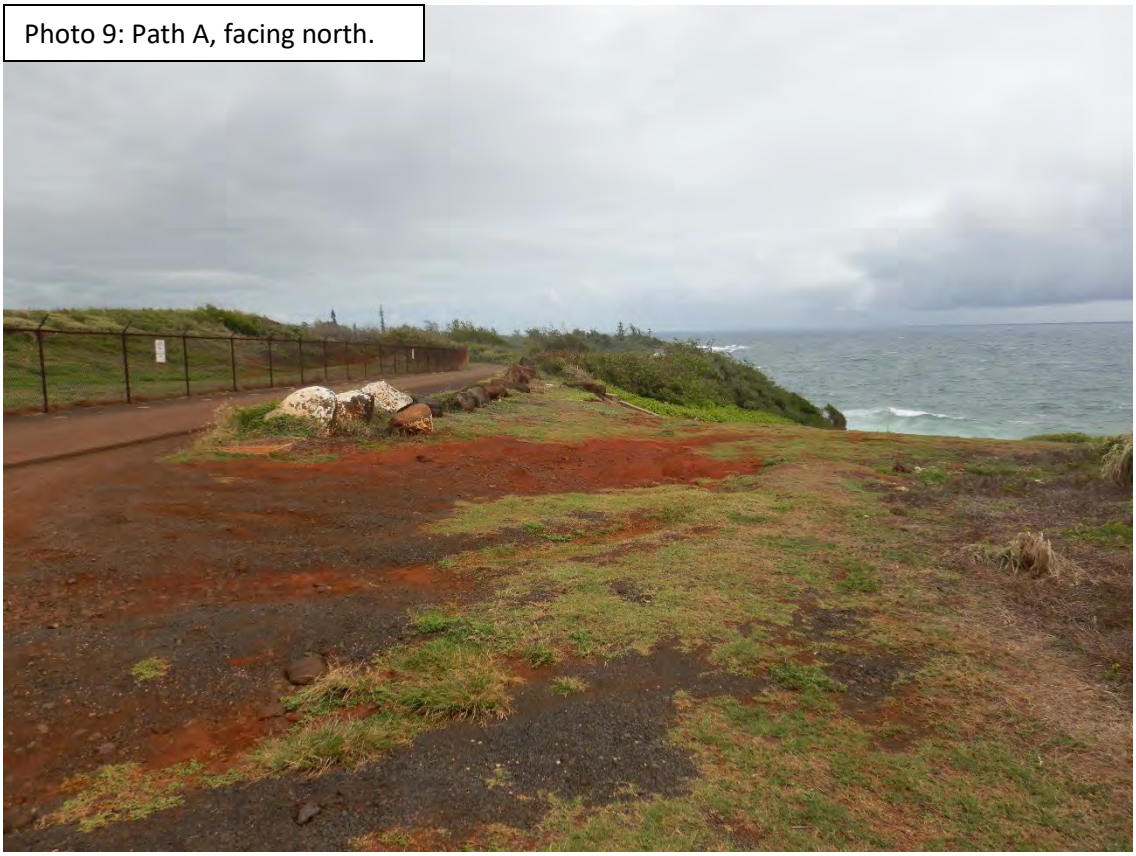


Photo 10: Path A, facing south.



Photo 11: Path A, facing south.

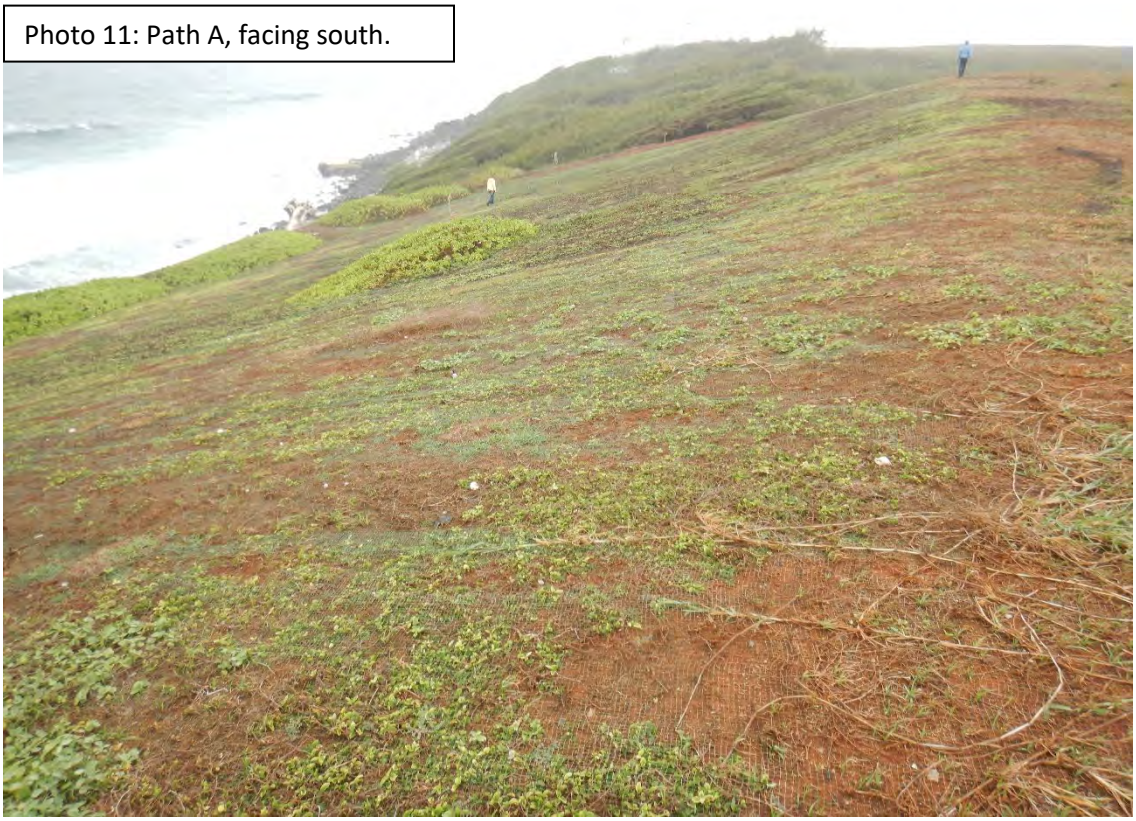


Photo 12: Path A, bridge crossing, facing west.



Photo 13: Path A, facing north.



Photo 14: Path A, public access, facing northeast.



Photo 15: Path A, encampment, facing south.

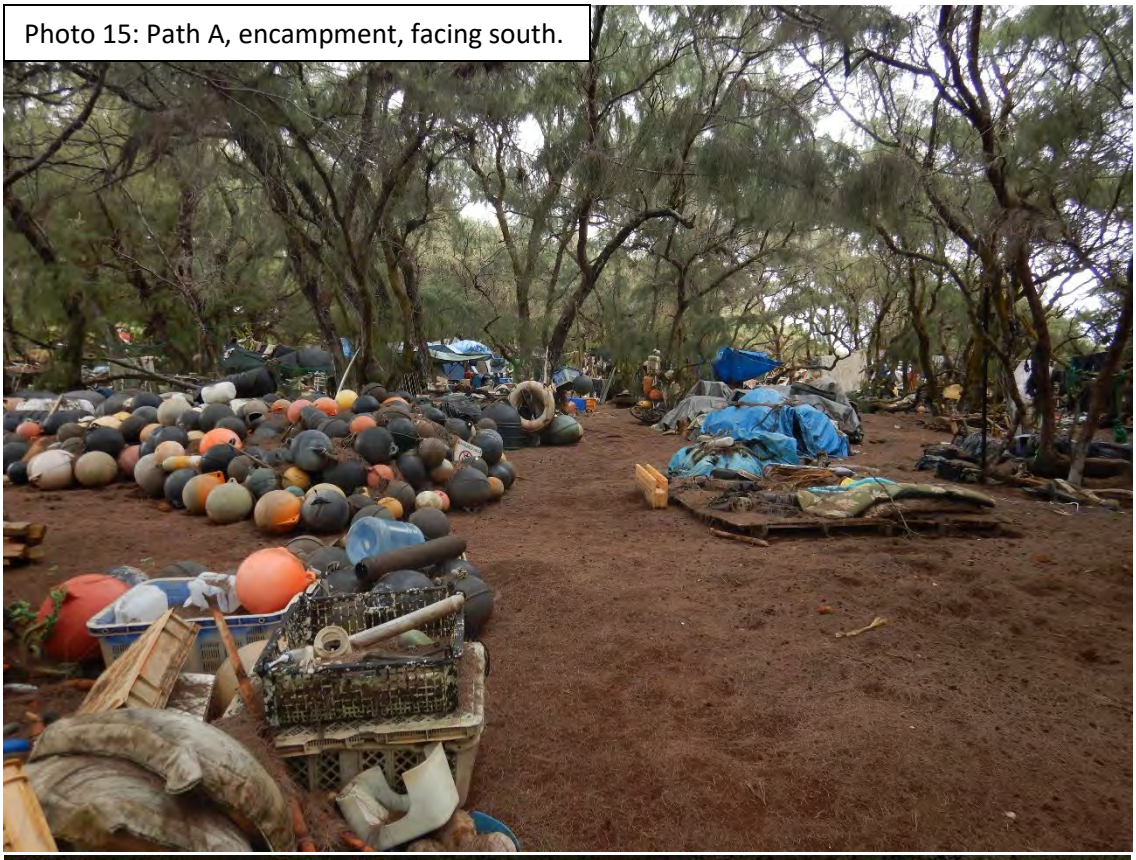


Photo 16: Path A, fishing access 1, aerial.



Photo 17: Path A, bridge crossing, facing east.



Photo 18: Path A, facing south.



Photo 19: Path A, fishing access 2, aerial.



Photo 20: Path A, facing north.



Photo 21: Path A, fishing access 3, aerial.



Photo 22: Path A, fishing access 4, aerial.



Photo 23: Path A, fishing access 5, aerial.



Photo 24: Path A, facing southwest.

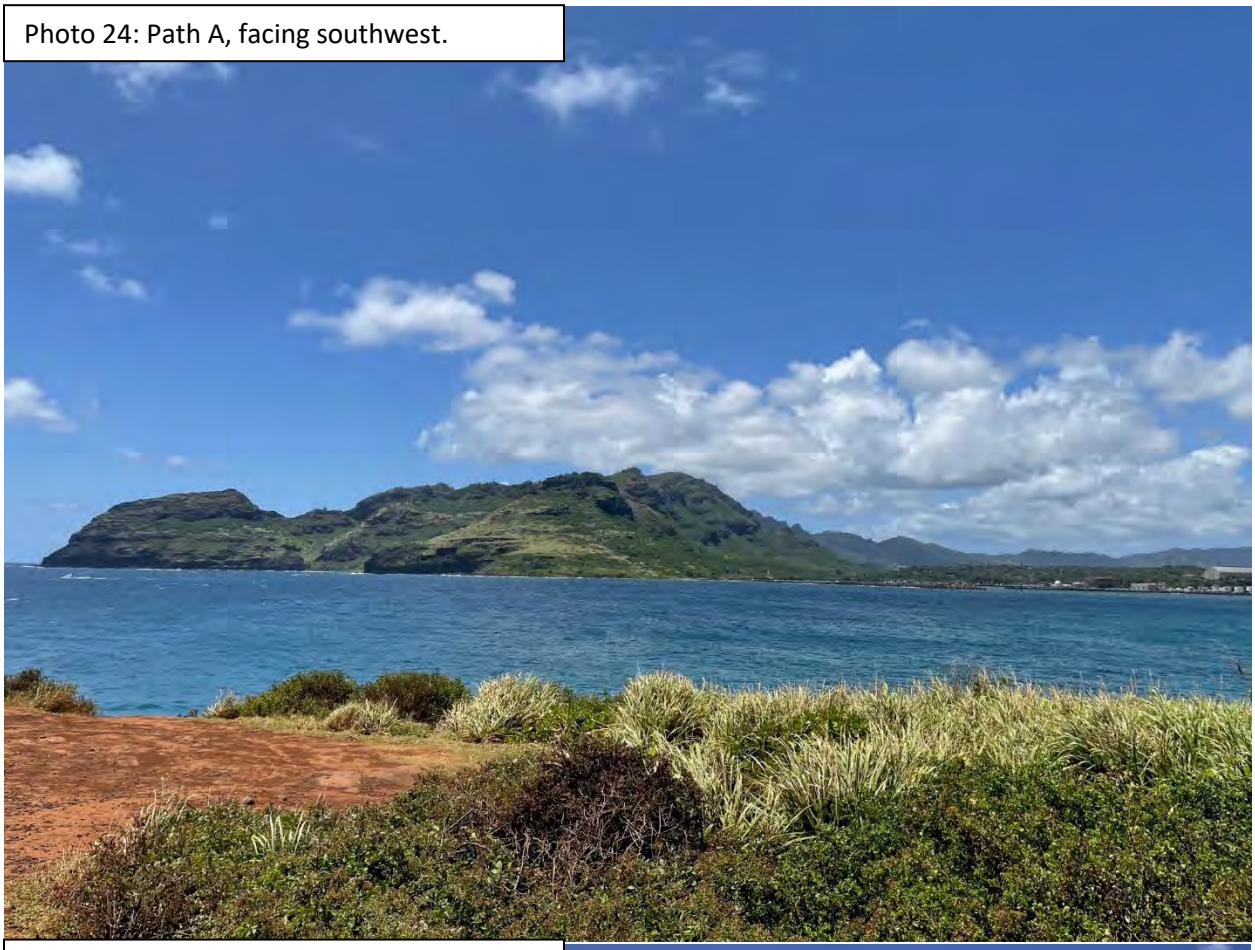


Photo 25: Path A, facing southwest.

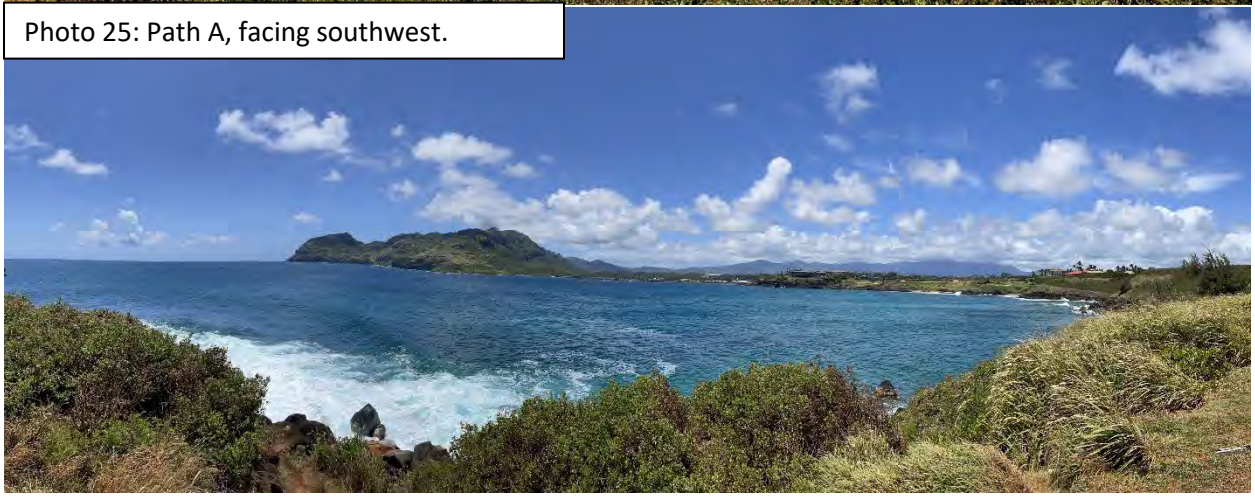


Photo 26: Path A, facing south.



Photo 27: Path A, facing south.



Photo 28: Path A, facing northwest.



Photo 29: Path A, facing south.



Photo 30: Path A, Ninini Point Street, facing northwest.



Photo 31: Path A, Ninini Point Street, facing northwest.



Photo 32: Path A, facing east.



Photo 33: Path A, facing east.



Photo 34: Path A, Ninini Point Street, facing northwest.



Photo 35: Path A, Ninini Point Street, facing northwest.



Photo 36: Path A, Ninini Point Street, facing northwest.



Photo 37: Path A, Ninini Point Street, facing northwest.



Photo 38: Path A, Ninini Point Street, facing northwest.



Photo 39: Path A, Ninini Point Street, facing north.



Photo 40: Path A, Ninini Point Street, facing northwest.



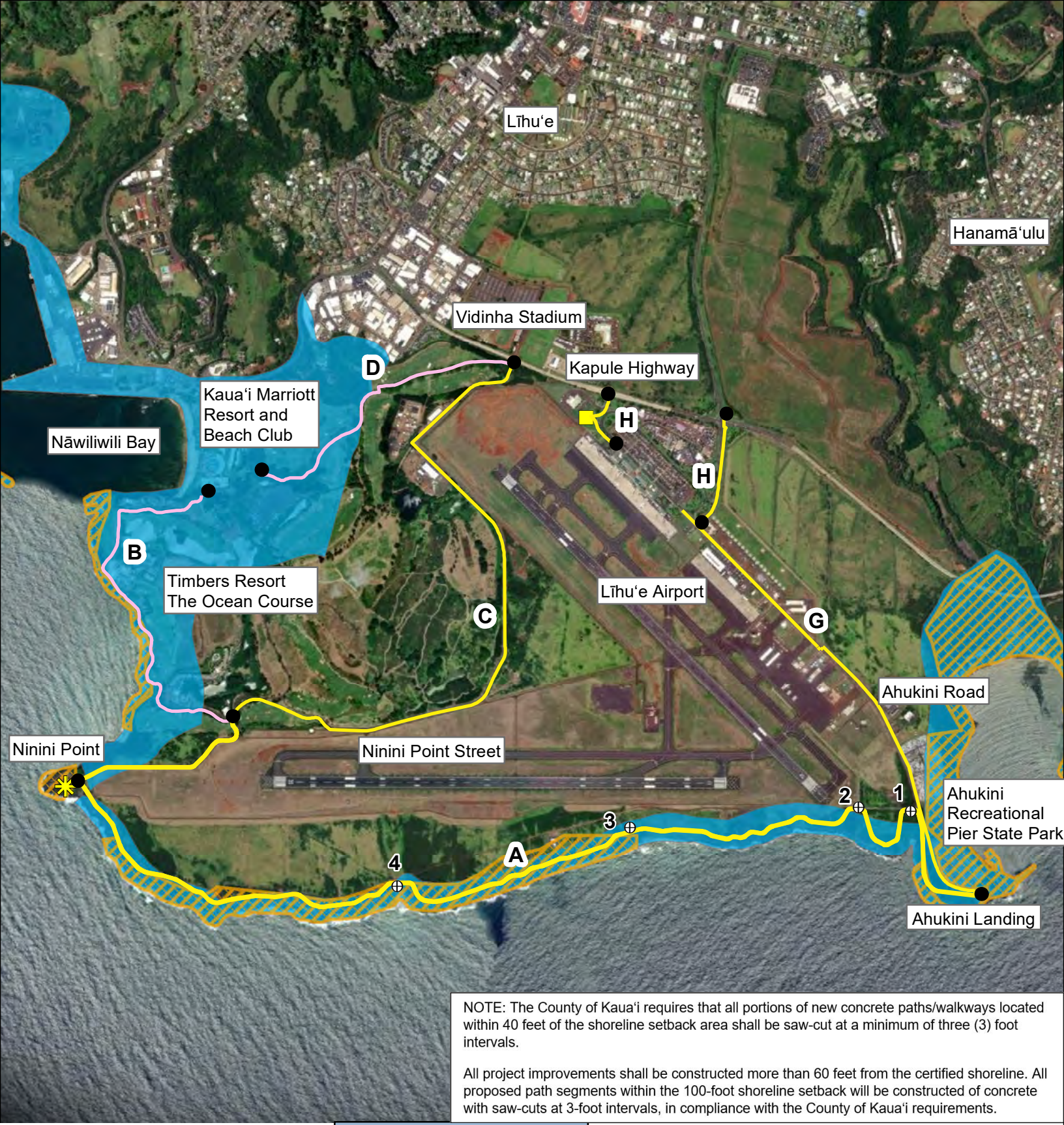
Photo 41: Path A, Ninini Point Street, facing west.



Photo 42: Path A, Ninini Point Street, facing west.



Exhibit 6
Special Management Area Map



NOTE: The County of Kaua‘i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at a minimum of three (3) foot intervals.

All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua‘i requirements.

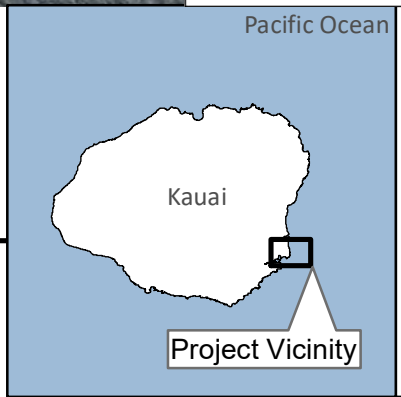
Special Management Area

Nāwiliwili - Ahukini Shared-Use Path
Phase A
County of Kaua‘i
Līhu‘e, Kaua‘i, Hawai‘i

R. M. Towill Corporation

0 900 1,800 Feet

1 in = 1,800 feet

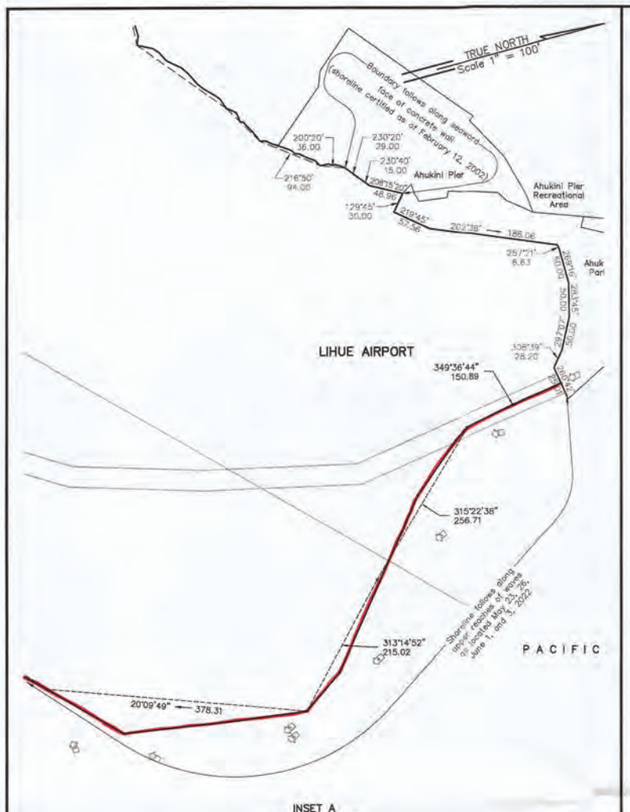


Legend

- Segments B and D By Others
- Segments A,C,G, and H By County of Kaua'i
- ⊕ Drainage Crossings
- Comfort Station
- Bike Depot
- Special Management Area
- Conservation District

GIS County of Kaua'i Zoning Layer Source: Hawaii Statewide GIS Program. County of Kauai, August 2018.

Exhibit 7
Shoreline Survey



The shoreline as delineated in red is hereby certified as the shoreline as of

SEP - 9 2022

Chairperson, Board of Land and Natural Resources

DENNIS M. ESAKI
LICENSED PROFESSIONAL LAND SURVEYOR
No. 4383
HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION

Signature
ESAKI SURVEYING & MAPPING, INC.
EXPIRES: APRIL 30, 2024

GRAPHIC SCALE
400 0 200 400 800 1600
(IN FEET)
1 inch = 400 ft.

SHORELINE SURVEY

Portions of R.P. 4480, L.C. Aw. 7713, Ap. 2, Part 1 to V. Kamamalu and R.P. 4481, L.C. Aw. 7713, Ap. 2, Part 7 to V. Kamamalu

KALAPAKI & HANAMAULU, LIHUE (PUNA), KAUA'I, HAWAI'I

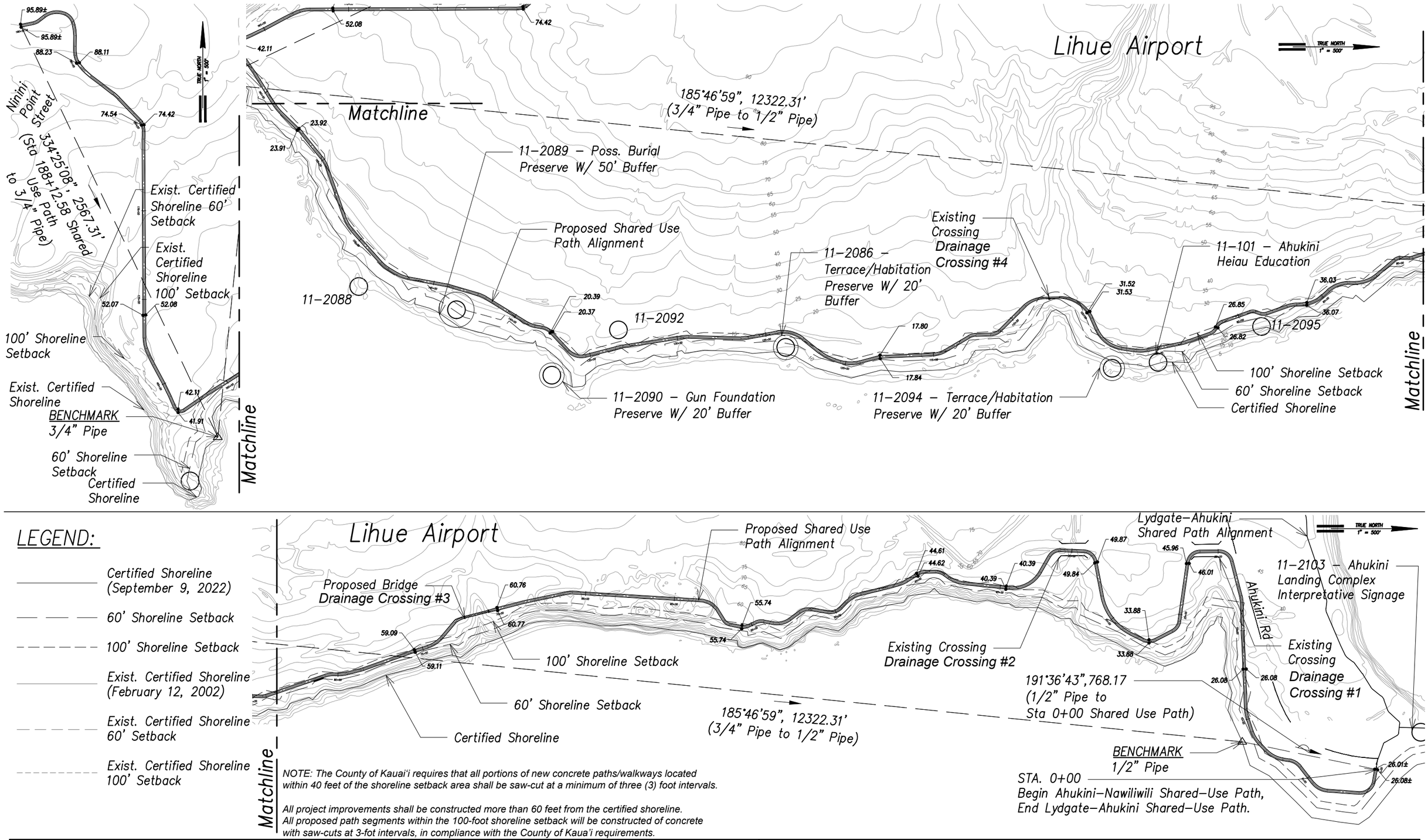
TMK: (4) 3-5-01: 102, 05, 08, 09, 92, 109, 111, 158, 159, 160

Prepared for: R M Towill Corp.

Date of Survey: May 23, 26, June 1, and 3, 2022

SHEET 1 OF 2

Exhibit 8
General Site Plan



LEGEND:

- Certified Shoreline (September 9, 2022)
- 60' Shoreline Setback
- 100' Shoreline Setback
- Exist. Certified Shoreline (February 12, 2002)
- Exist. Certified Shoreline 60' Setback
- Exist. Certified Shoreline 100' Setback

NOTE: The County of Kauai'i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at a minimum of three (3) foot intervals.

All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-fot intervals, in compliance with the County of Kaua'i requirements.

Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management
R. M. TOWILL CORPORATION
808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494

North

500' 250' 0 500' 1000'

SCALE: 1" = 500'

Nawiliwili-Ahukini Shared-Use Path

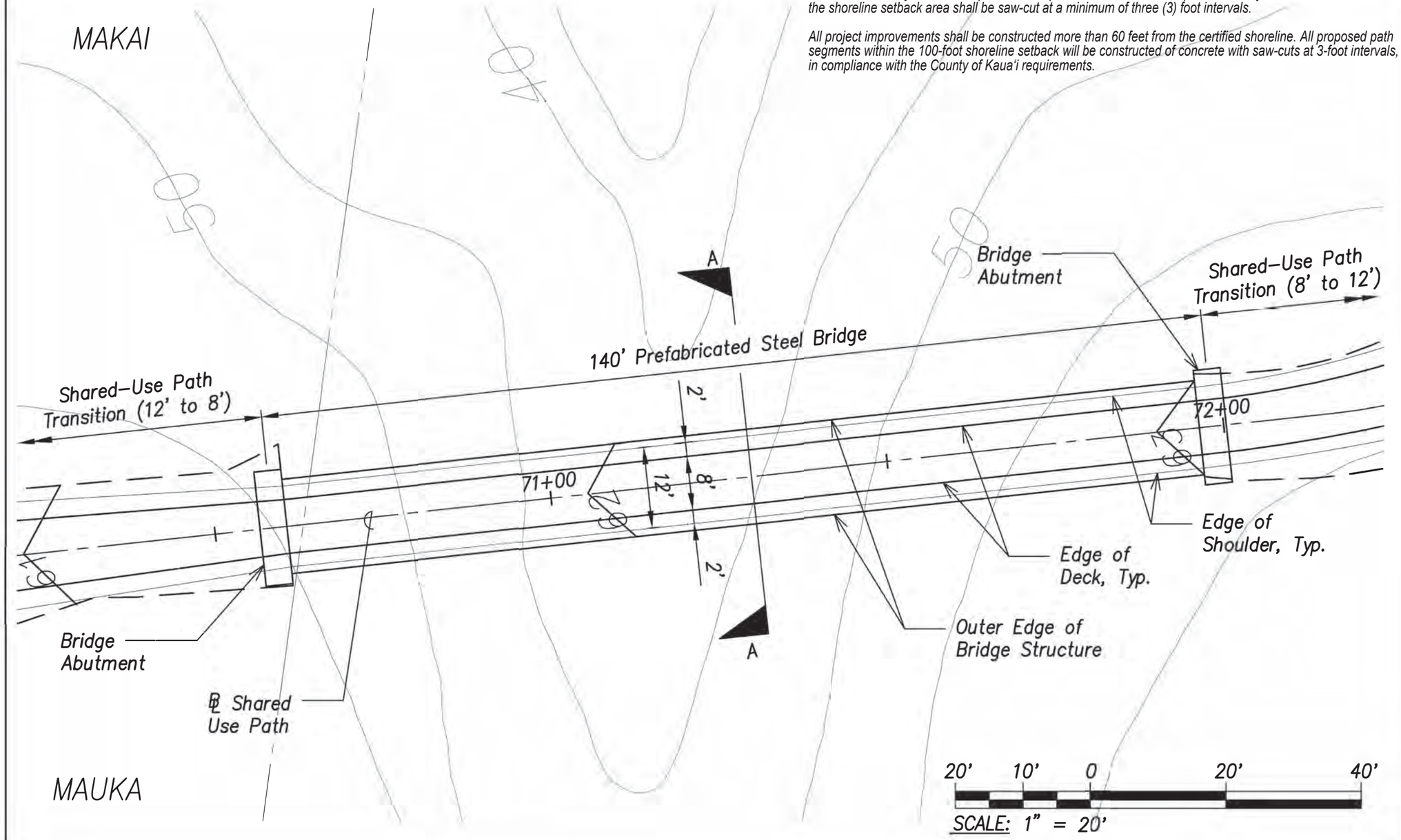
General Site Plan

Figure 1

Exhibit 9
Bridge and Culvert Drainage Crossing

NOTE: The County of Kaua'i requires that all portions of new concrete paths/walkways located within 40 feet of the shoreline setback area shall be saw-cut at a minimum of three (3) foot intervals.

All project improvements shall be constructed more than 60 feet from the certified shoreline. All proposed path segments within the 100-foot shoreline setback will be constructed of concrete with saw-cuts at 3-foot intervals, in compliance with the County of Kaua'i requirements.



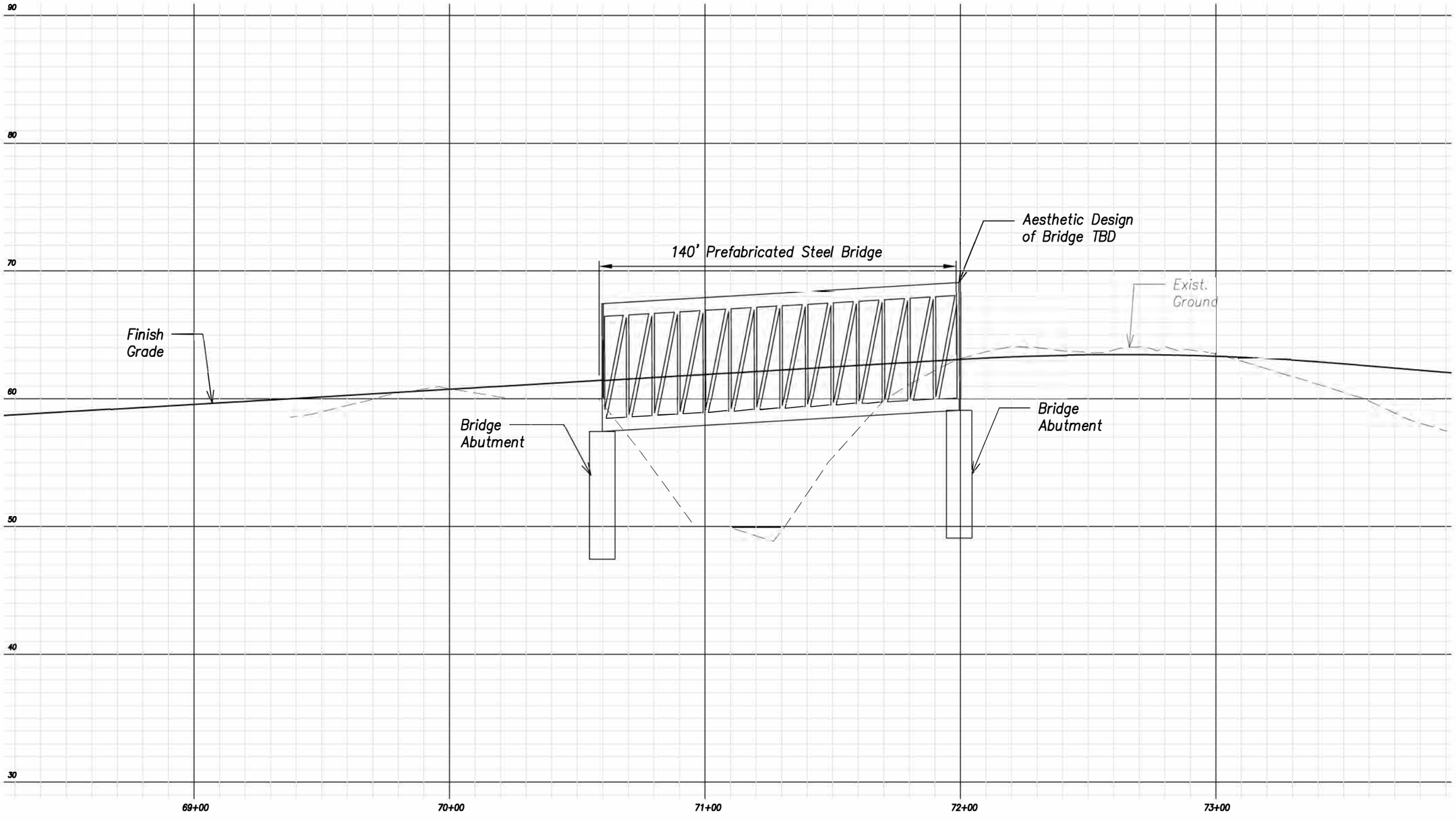
NAWILIWILI–AHUKUNI SHARED USED PATH

Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management
R. M. TOWILL CORPORATION
808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819–3494

North

PLAN – BRIDGE CROSSING (STA. 70+59 TO STA. 71+98)

Drainage Crossing #3



Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management
R. M. TOWILL CORPORATION
808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819-3494

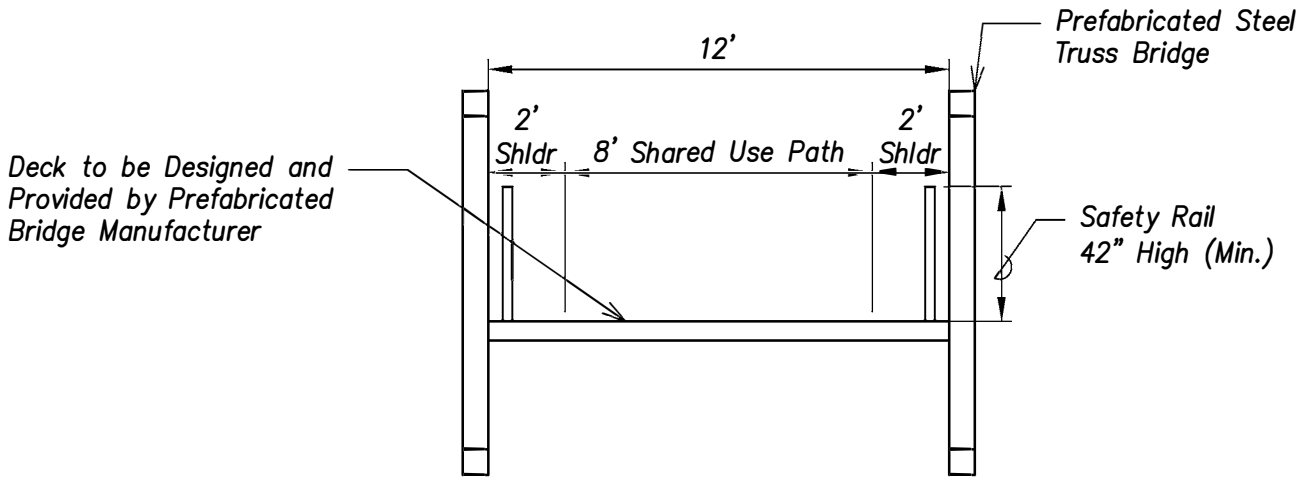
H: 40 20 0 40 80
V: 8 4 0 8 16

NAWILIWILI–AHUKUNI SHARED USED PATH

ELEVATION – BRIDGE CROSSING (STA. 70+59 TO STA. 71+98)

Drainage Crossing #3

Figure X-X





Section A–A – Bridge Crossing

SCALE: 1" = 5'



SCALE: 1" = 5'

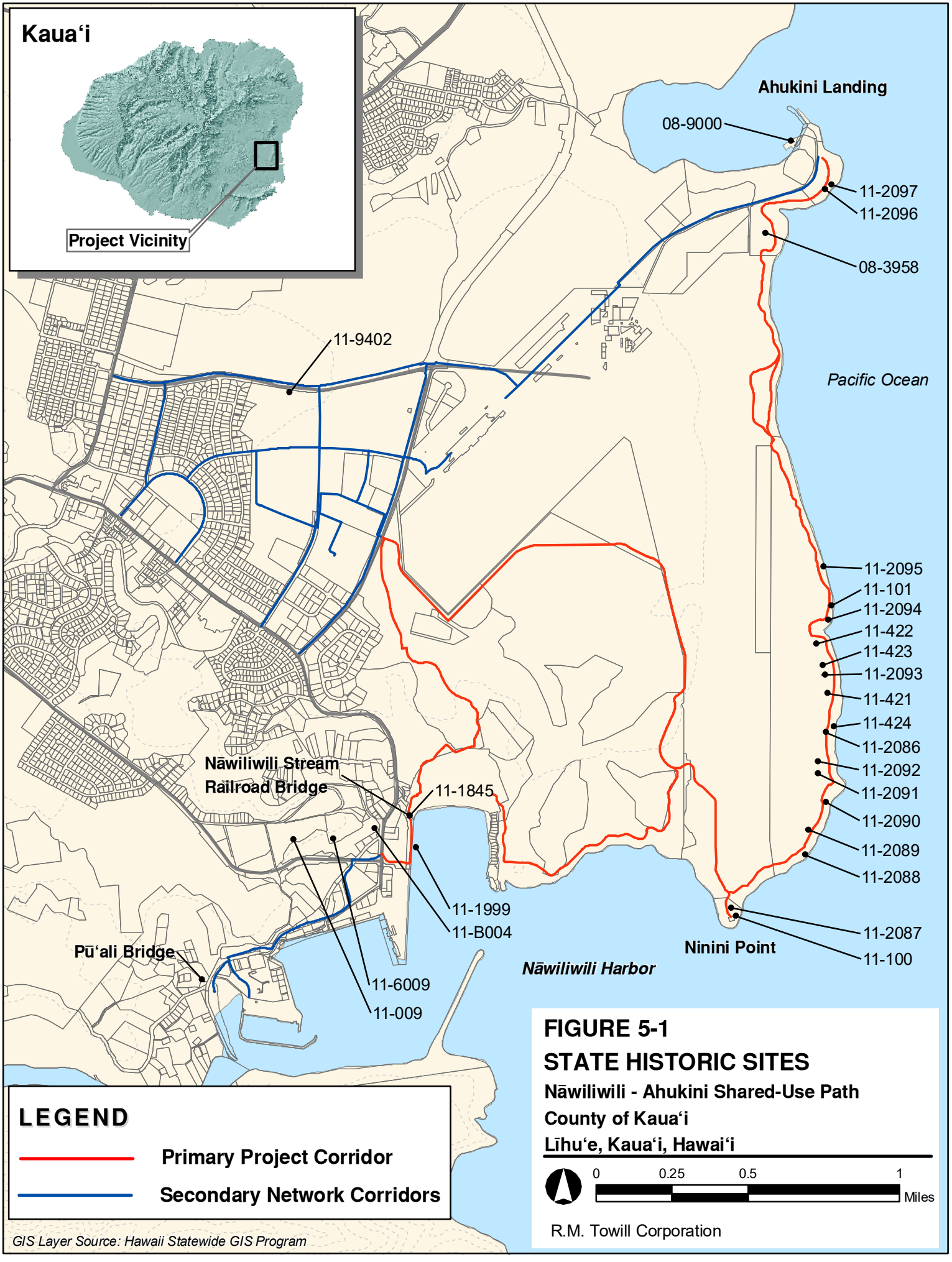
NAWILIWILI–AHUKUNI SHARED USED PATH

Planning – Engineering – Environmental Services – Photogrammetry – Surveying – Construction Management
R. M. TOWILL CORPORATION
808 842 1133 2024 North King Street Suite 200 Honolulu Hawaii 96819–3494

SECTION – BRIDGE CROSSING

Drainage Crossing #3

Exhibit 10
State Historic Sites Figure and No Adverse Effect Table


Kaua'i
Project Vicinity
Ahukini Landing
08-9000
11-2097
11-2096
08-3958
11-9402
Pacific Ocean
11-2095
11-101
11-2094
11-422
11-423
11-2093
11-421
11-424
11-2086
11-2092
11-2091
11-2090
11-2089
11-2088
11-2087
11-100
Ninini Point
Nāwiliwili Stream
Railroad Bridge
11-1845
11-1999
11-B004
11-6009
11-009
Pū'ali Bridge
Nāwiliwili Harbor
LEGEND
Primary Project Corridor
Secondary Network Corridors
GIS Layer Source: Hawaii Statewide GIS Program
FIGURE 5-1
STATE HISTORIC SITES
Nāwiliwili - Ahukini Shared-Use Path
County of Kaua'i
Līhu'e, Kaua'i, Hawai'i
0
0.25
0.5
1
Miles
R.M. Towill Corporation

"No Adverse Effect" for the following historic properties within the APE

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park.
50-30-11-100	Ninini Heiau	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	n/a
11-B004	Historic Cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence)	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work.
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work.
50-30-11-2093*	Plantation-era ditch drainage	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation	Preservation. Avoid with a 20-foot buffer.

"No Adverse Effect" for the following historic properties within the APE

50-30-11-2095*****	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*****	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*****	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.
--	Pū'ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.

***** Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, 2010, 2014).

Exhibit 11
Wetland Map



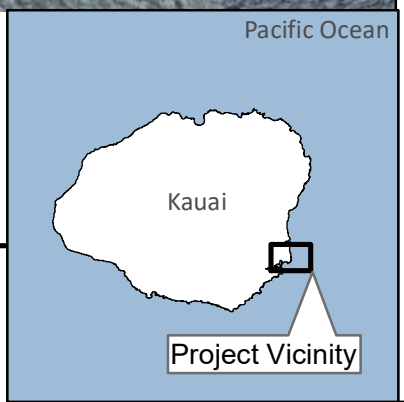
Wetland Map

Nāwiliwili - Ahukini Shared-Use Path
Phase A
County of Kaua‘i
Līhu‘e, Kaua‘i, Hawai‘i

R. M. Towill Corporation

0 900 1,800 Feet

1 in = 1,600 feet



Legend

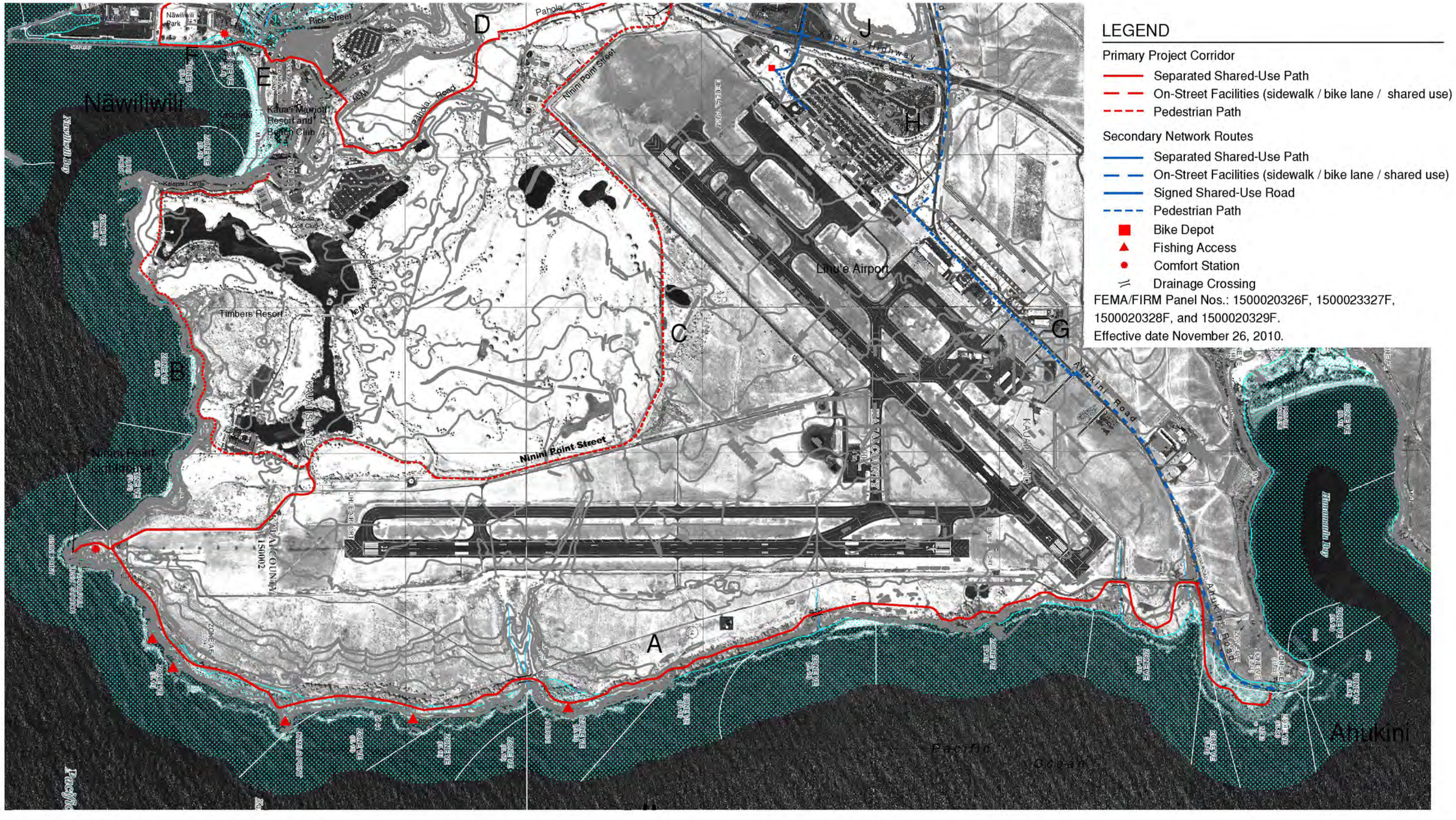
- Segments B and D By Others
- Segments A,C,G, and H By County of Kaua'i
- Comfort Station

Wetlands

- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Riverine

GIS Wetland Layer Source:
U.S. Fish and Wildlife Service National Wetlands Inventory

Exhibit 12
FEMA/FIRM Map



Nāwiliwili - Ahukini Shared-Use Path
County of Kaua'i
Līhu'e, Island of Kaua'i, Hawai'i

FIGURE 3-3: FEMA-FIRM Map

0 250 500 1000 1500 Feet

R. M. Towill Corporation

Exhibit 13
HRS 343 Finding of No Significant Impact

NĀWILIWILI – AHUKINI SHARED-USE PATH
Federal Aid Project No. CMAQ-0700(57)
County of Kaua'i, Hawai'i

Final Environmental Assessment/
Finding of No Significant Impact
Submitted Pursuant to Hawai'i Revised Statutes, Chapter 343

State of Hawai'i, Department of Transportation, Highways Division
County of Kaua'i, Department of Public Works

12/8/17
Date of Approval

For County of Kaua'i, Department of Public Works

1/12/18
Date of Approval

For State of Hawai'i, Department of Transportation

The following persons may be contacted for additional information concerning this document:

Jade Butay, Interim Director Department of Transportation State of Hawaii 869 Punchbowl Street Honolulu, HI 96813 Ph. (808) 587-2150	Lyle Tabata, Acting County Engineer Department of Public Works County of Kauai 4444 Rice Street, Suite 275 Lihue, HI 96766 Ph. (808) 241-4992

This Final Environmental Assessment (FEA) documents an evaluation of potential impacts from a proposed coastal, shared-use path from Nāwiliwili Park to Ahukini Landing in Līhu'e District on the island of Kaua'i. A path segment is also proposed between Nāwiliwili Park and Niumalu Park. Additional path segments will connect the coastal path to the Līhu'e Airport and Līhu'e Civic Center. The proposed project will consist of a 10- to 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors will provide additional connections through urban areas. Path improvements and amenities will include separated crossings at major drainage ways, educational signage, a comfort station at Ninini Point, adaptive reuse of the Nāwiliwili Stream Railroad Bridge, and various improvements at Nāwiliwili Park to be coordinated with the park's master plan. The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers. The project is not anticipated to have significant adverse impact to water quality, air quality, existing utilities, noise levels, social welfare, historic properties, or wildlife habitat. Measures to mitigate short-term and long-term impacts are available and will be implemented in accordance with applicable regulations and/or consultation with appropriate agencies. Anticipated effects will be temporary and will not adversely impact the environmental quality of the area. Therefore, a Finding of No Significant Impact (FONSI) has been issued under HRS, Chapter 343.

Exhibit 14
HRS 6E Historic Preservation Compliance

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 21, 2014

Mr. David W. Shideler
Cultural Surveys Hawai'i, Inc.
P.O. Box 1114
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187
DOC NO: 1401SL17
Archaeology

Dear Mr. Shideler:

SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review– Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

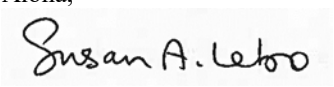
The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriottt Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.

Please contact me at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov if you have any questions or concerns regarding this letter.

Aloha,



Susan A. Lebo, PhD
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	"d" and "e"	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	"c" and "d"	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	"d"	No further work
50-30-11-2089	Historic mounds, possible burial	D	"d" and "e"	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	"d"	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	"d"	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	"d" and "e"	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	"d" and "e"	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	"d"	Preservation, educational signage

DEPARTMENT OF PUBLIC WORKS
TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER
BOYD GAYAGAS, DEPUTY COUNTY ENGINEER

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

September 28, 2021

TO: Alan Downer PhD, Administrator
State Historic Preservation Division
Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, Hawai'i 96707
via: https://shpd.hawaii.gov/hicris

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)
Nāwiliwili – Ahukini Shared-Use Path Project
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu
Federal Aid Project Number: CMAQ-0700 (57)
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae,* the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

***** Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

SIHP No.	Site Description	Eligibility Criteria*	Aspects of Integrity
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

III. EFFECT DETERMINATION

DPW offers a "effect, with proposed mitigation commitments" determination for this project.

IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

Table 3

No Adverse Effect for the following historic properties within the APE

SIHP No.	Site Description	Mitigation Commitment
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
    a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
    b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
    c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the

treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
   a. Interpretive signage will address the themes of each of the historic sites identified near the project.
   b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
   c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
   d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

V. FEDERAL FUNDING

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa
Acting County Engineer

cc: Emma Kawamoto , HDOT

TO: Alan Downer PhD, Administrator
State Historic Preservation Division
Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, Hawai'i 96707
via: https://shpd.hawaii.gov/hicris

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)
Nāwiliwili – Ahukini Shared-Use Path Project
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu
Federal Aid Project Number: CMAQ-0700 (57)
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW, agency) submits this letter to respectfully inform the State Historic Preservation Division (SHPD) that in accordance with Hawai'i Administrative Rules (HAR) §13-275-3(e) and §13-275-7(c)(2) the DPW concludes that the SHPD concurs with the DPW's Hawai'i Revised Statutes (HRS) Section 6E Historic Preservation review determination of "effect, with proposed mitigation commitments" for this project. HAR §13-275-3(e) states that should the SHPD not reply in writing within the time set in the HAR for historic preservation review, the SHPD is presumed to concur with the agency's submittal. HAR §13-275-7(c)(2) sets 45 days for the SHPD to respond to an effect determination. The DPW uploaded the HRS 6E effect determination to the SHPD HICRIS system on October 4, 2021. More than 300 days have passed since the DPW's submittal. The HICRIS log number is L59ESRVG5JKL. The SHPD Project Log No. is 2020PR33182.

The following is a summary of the project, identification of historic properties, basis for the effect determination, and proposed mitigation measures.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae,* the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

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various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

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50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
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* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

III. EFFECT DETERMINATION

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2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
    a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
    b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
    c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any

human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.

6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and

consultation with the Lovell ‘Ohana regarding unrecorded easement documents.

5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pū‘ali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pū‘ali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pū‘ali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker’s house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
    a. Interpretive signage will address the themes of each of the historic sites identified near the project.
    b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
    c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
    d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

V. FEDERAL FUNDING

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

cc: Emma Kawamoto , HDOT

Exhibit 15
Archaeological Inventory Survey Documents

Archaeological Literature Review and Field Inspection, June 2008.
Archaeological Inventory Survey, September 2009.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 21, 2014

Mr. David W. Shideler
Cultural Surveys Hawai'i, Inc.
P.O. Box 1114
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187
DOC NO: 1401SL17
Archaeology

Dear Mr. Shideler:

SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review– Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

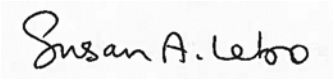
The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriottt Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.

Please contact me at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov if you have any questions or concerns regarding this letter.

Aloha,



Susan A. Lebo, PhD
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	"d" and "e"	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	"c" and "d"	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	"d"	No further work
50-30-11-2089	Historic mounds, possible burial	D	"d" and "e"	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	"d"	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	"d"	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	"d" and "e"	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	"d" and "e"	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	"d"	Preservation, educational signage

DEPARTMENT OF PUBLIC WORKS
TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER
BOYD GAYAGAS, DEPUTY COUNTY ENGINEER

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

September 28, 2021

TO: Alan Downer PhD, Administrator
State Historic Preservation Division
Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, Hawai'i 96707
via: https://shpd.hawaii.gov/hicris

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)
Nāwiliwili – Ahukini Shared-Use Path Project
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu
Federal Aid Project Number: CMAQ-0700 (57)
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae,* the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

***** Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

SIHP No.	Site Description	Eligibility Criteria*	Aspects of Integrity
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

III. EFFECT DETERMINATION

DPW offers a "effect, with proposed mitigation commitments" determination for this project.

IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

Table 3

No Adverse Effect for the following historic properties within the APE

SIHP No.	Site Description	Mitigation Commitment
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
    a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
    b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
    c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the

treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
   a. Interpretive signage will address the themes of each of the historic sites identified near the project.
   b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
   c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
   d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

V. FEDERAL FUNDING

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa
Acting County Engineer

cc: Emma Kawamoto , HDOT

Exhibit 16
Ka Pa'akai Analysis

***Ka Pa'akai* Analysis**

Article XII, Section 7 of the Hawai'i Constitution obligates the State and it's political subdivisions to protect the reasonable exercise of customarily and traditionally exercised rights of native Hawaiians to the extent feasible when granting permits and approvals under State law. In order to effectuate the State's obligation to protect native Hawaiian customary and traditional practices while reasonably accommodating competing land use interests, the Hawai'i Supreme provided the following analytical framework as an outcome of *Ka Pa'akai O Ka'aina v. Land Use Commission (94 Hawai'i 31, 7 P.3d 1068, September 11, 2000)*. The framework is referred to as *Ka Pa'akai Analysis* and consists of three parts:

1. Identify the scope of "valued cultural, historical and natural resources" in the petition area, including the extent to which traditional and customary rights and practices are exercised in the affected area;
2. Determine the extent to which those resources, including traditional and customary native Hawaiian rights, will be affected or impaired by the proposed action; and
3. Identify feasible actions, if any, that should be taken by the applicant to reasonably protect Native Hawaiian rights and practices if they are found to exist.

Project Description:

The County of Kaua'i, Department of Public Works (DPW) plans to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nāwiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of Ke ala Hele Makalae, the 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The project will be undertaken in five phases: A, B1, B2, B3 and B4. Phase A is currently in the permitting stage. Phases B1 through B4 will be undertaken later as circumstances allow.

The proposed Phase A of the Nāwiliwili-Ahukini Shared-Use Path Project and consists of the following path segments:

Preliminary Coastal Path Alignment:

- **Segment A** – Ahukini Landing to Ninini Point Lighthouse to Ninini Point Street. The total length of Segment A is 19,000 lf.

This segment will be constructed as a 10- to 12-foot-wide concrete path. Segment A details include:

- The concrete path will be pigmented to match the color of the native soil and be compatible with the appearance of the natural setting.
- The concrete path will be constructed with saw-cuts spaced every 5 feet so that individual panels can be relocated in the future if necessary.
- A 3-foot-wide vegetated shoulder will be created on each side of the path. Use drought tolerant native or indigenous plant species that are common to the local area. If site conditions do not support the establishment and growth of native or indigenous plant species, other non-invasive species may be substituted to ensure soil stability and erosion protection.
- Grading and excavation required for construction of the path and related amenities will be designed to minimize the amount of cut and fill required. The path alignment was selected to take advantage of natural grades to meet ADA accessibility standards for slopes with a minimal amount of ground disturbance and related costs.

- One pre-fabricated bridge span will be installed across an existing drainage way. Three existing drainage culverts will be modified and widened as necessary to accommodate the path and/or joint use of the existing crossing with the existing dirt road, to be determined during design.
- Separation between the path and road will be provided as necessary by means of bollards constructed of boulders, timber, or concrete, or other physical barrier to prevent motor vehicle access on the concrete path. Bollards and/or barriers will be designed and installed to be secure against dislodging by vehicle winch and to have minimal visual impact in the landscape. Public motor vehicle access on the existing dirt road will remain as a permitted use.
- Access across the concrete path will be provided at select locations to allow motor vehicle access to fishing spots on the shoreline. Bollards will be installed at crossings to prevent motor vehicle access onto the concrete path. All other fishing sites along the coast will remain accessible by foot.
- Approximately 3,000 lf of protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala Golf Course Hole 13 and/or around Wedge-tail Shearwater nesting areas. Fencing will be designed to prevent dogs from entering protected areas. Fence materials and construction will be selected for durability in the harsh coastal environment. An inspection / maintenance program will be prepared by the County to ensure that the fence remains intact and in good condition and that necessary repairs are made in a timely fashion.
- A comfort station will be constructed at Ninini Point Lighthouse with men's and women's lavatories, drinking fountain, and lighting. Comfort station program details include:
  - Locate the comfort station at the site of the former lighthouse caretaker's residence to take advantage of a previously disturbed building site.
  - Base the building design on native architectural forms or natural land forms.
  - Use natural materials and colors for exterior surfaces to minimize visual impacts. Avoid use of bright or reflective colors.
  - Keep exterior lighting to a minimum required for safety and security. Lighting will use low-intensity sources that emit long wavelength light (e.g. yellow or amber globes). Light sources will be shielded or angled downward to eliminate glare that would disturb or disorient animals.
  - Use an individual wastewater system or composting toilet for wastewater disposal. Electrical power will be supplied by existing overhead utility lines or photovoltaic cells. A water line will be installed with connection to a water service main on Ninini Point Street.
- A paved parking area will be developed at the Ninini Point Lighthouse with space for 10 automobiles.
- Interpretive signage will be installed at Ninini Point describing:
  - The history of Näwiliwili Harbor and historic and cultural resources in the vicinity: Hawaiian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport.
  - The natural history of the area, including surrounding landmarks and natural features (e.g. Ha'upu, Näwiliwili, and Kalapakï), unique flora and fauna and marine animals, and protected bird species known from the area, (e.g. nesting colonies of Wedge-tail Shearwater and Nënë).
  - Identify views and points of interest.

- Signage will be provided as necessary to inform path users about safety, orientation, conservation efforts, user's responsibilities, regulatory restrictions and other relevant information.
- Gates will be installed at the path entrance at Ahukini Landing and on the airport perimeter road (Ninini Point Street) to facilitate closure of the coastal area in the event of an airport incident or security operation. Signs at the gate will inform the public of access restrictions related to airport operations and security
- Utility pull-boxes that serve airport facilities and that are located near the shared-use path will be modified so that they can be locked against vandalism and theft.
- No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ahukini Landing and Ninini Point, except for proposed improvements at Ninini Point.

Shared-use Road Segments:

- Segment C – Ninini Point Street from the Segment A Connection to Kapule Highway.
- Segment D – Kapule Highway / Ninini Point Street Intersection to Ho'olaule'a Way. This will be constructed by the landowner.
- Segment G – Ahukini Point to Lihue Airport on Ahukini Road.
- Segment H – Lihue Airport to Kapule Highway. Improvements include striping, stenciling, signage and installation of bike storage lockers.

For the shared-use road segments, improvements will consist of striping and/or stenciling the existing paved roadways and the installation of "shared-use" road signage.

Phase A segments that are to be constructed by Timbers Resort include:

- Segment B – An approximately 5,600-lf segment that is being constructed entirely by Timbers Resort in accordance with Condition No. 9 of Amendment to Special Management Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning permit Z-IV-2005-30 and Special Permit SP-2008-4; and Condition No. 7 of Zoning Ordinance No. PM-2006-383.
- Segment D – An approximately 2,000-lf portion is within the SMA. The entire segment will be constructed by Timbers Resort under a separate SMA permit.

Project Rationale:

The project will benefit residents and visitors by preserving coastal access; creating a new safe recreational resource; supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport; and promoting health and wellness.

The existing road system that connects Nāwiliwili Bay, Līhuʻe, and the towns along the windward coast of Kauaʻi provides scant accommodation for non-motorized modes of transportation. Until the development of Ke Ala Hele Makalae was initiated, there had been no dedicated system of paths or lanes for pedestrians and bicyclists to travel between employment centers, parks, and the towns and major civic facilities in the region. Within the subject project corridor, existing pedestrian sidewalks, bike lanes, and paths remain disconnected and ancillary to the motorized vehicle roadways. As a result, there is little to encourage residents and visitors to use non-motorized vehicles as a viable means of transportation. Only the most intrepid bicyclists travel the narrow shoulders along Kapule and Kuhio Highway. The project corridor along the coast is currently open for enjoyment by the public. The segment between Ahukini Landing and Ninini Point in particular provides a wild, open-space coastal experience, relatively untouched by development, located minutes from downtown Līhuʻe. However, the existing dirt access

road and informal trails to the shoreline are unimproved and difficult to navigate without an off-road vehicle. Access to this resource is prohibitively difficult to many members of the public.

The purpose of the project is to support transportation alternatives to the automobile, to provide non-motorized path facilities for pedestrians and cyclists for recreation and fitness, and to preserve coastal areas and access. In addition, the project is being developed to enhance the quality of life for Kaua'i's residents by providing a safe and enjoyable place for families, friends, and individuals to play, socialize, and experience the beauty of the coastal open spaces. The project seeks to address access availability to a variety of users of different ages, physical condition, and age levels. Finally, implementation of the Nāwiliwili – Ahukini Shared-Use Path Project will help fulfill the State Department of Transportations' Bike Plan Hawai'i, which identifies the need for transportation improvements that support non-motorized modes of travel.

Consultation

On behalf of the Applicant, County of Kaua'i, planning consultant, R. M. Towill Corporation (RMTC), conducted consultation as part of the National Historic Preservation Act (NHPA), Section 106 process with kūpuna from the project area who have knowledge of traditional cultural practices and resources in the petition area, and conducted background studies, including an archaeological inventory survey and archaeological literature review and field inspection. The information from that consultation research is used as the basis for this the *Ka Pa'akai Analysis*.

The following individuals and Native Hawaiian organizations, kūpuna and cultural practitioners (NHO's) provided comments through meetings conducted for the NHPA Section 106 Consultation Process.

Office of Hawaiian Affairs (OHA) and Native Hawaiian Historic Preservation Council (NHHPC)

Consultation with OHA and the NHHPC resulted in the following outcomes:

- OHA clarified that their role is to ensure that all interested Hawaiian's have an opportunity to participate in the consultation process in a manner that satisfies them.
- Several additional NHOs, individuals and organizations were identified by OHA and the NHHPC as potential consulting parties. All of the recommended names were added to the consultation list and attempts were made to contact them.
- No new information regarding historic properties was identified.
- General concern was raised about potential impacts to Native Hawaiian burials.
- Concern was raised about potential impacts to traditional Hawaiian marine resources from the opening of the path and increased access to coastal areas.
- Concern was raised about closure of motor vehicle access to fishing spots along the coastline.
- Recommendation was made for continued consultation with interested NHOs during the design stage, particularly with respect to the development of an interpretive/educational program for cultural and historic sites in the project corridor.

OHA and the NHHPC were represented at the April 26, 2012 NHPA Section 106 Community Consultation meeting by Ms. Kaliko Santos and Mr. Chris Kauwe respectively.

- Mr. Kauwe reiterated concerns about impacts to traditional Hawaiian marine resources and displacement of Hawaiians from opening of the path. He recommended possible adoption of a Konohiki system of resource management and rule enforcement. Mr. Kauwe is not opposed to the path project.
- Ms. Santos helped identify seven additional Hawaiian families in the project region who NHO meeting participants recommended be contacted. All seven families were interviewed subsequent to the meeting. Five of the interviewees expressed no concerns regarding construction of the path.

Two of the interviewees expressed concern about the proposed path: (i) restricting access to fishing sites, and (ii) generally furthering modern development of the island and comprising the Hawaiian culture, the Hawaiian people, and the Hawaiian islands.

Ms. Cheryl Lovell-Obatake[1]

- September 07, 2008 letter from Ms. Cheryl Lovell-Obatake commenting on the project EA.
- February 08, 2010 letter responding to Ms. Lovell-Obatake's comments.
- April 02, 2012 letter from Hawai'i Department of Transportation (HDOT) to Ms. Lovell-Obatake summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kaua'i to Ms. Lovell-Obatake inviting her to participate in a NHPA Section 106 community consultation meeting.

Ms. Lovell-Obatake attended the April 26, 2012 NHPA Section 106 Community Consultation Meeting for the project. Consultation with Ms. Lovell-Obatake resulted in the following outcomes:

- Ms. Lovell-Obatake requested to be consulted during the land acquisition stage of the project with respect to unrecorded title to the land possessed by her family.
- Concern expressed over impacts to water quality from runoff from the bike path.
- Recommendation that Paukini Rock be included in interpretation /educational programming related to Nāwiliwili Harbor.
- Ms. Lovell-Obatake requested to be consulted during the development of interpretive educational programming for the path project.
- No additional information regarding historic properties or cultural practices.
- Ms. Lovell-Obatake passed away on August 1, 2014.

Ms. Waldeen Palmeira

At the recommendation of OHA, RMTC contacted Ms. Palmeira as part of the NHPA Section 106 consultation process.

- May 06, 2010 notes from phone call between RMTC and Ms. Palmeira. Ms. Palmeira provided names of six NHOs to contact. Attempts were made to contact all six individuals.
- May 07, 2010 email from RMTC to Ms. Palmeira transmitting project information, copies of correspondence with the NHHPC, NHO consultation contact list, and a copy of the CIE report.
- April 02, 2012 letter from HDOT to Ms. Palmeira summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kaua'i to Ms. Palmeira inviting her to participate in a NHPA Section 106 community consultation meeting.

Consultation with Ms. Palmeira resulted in the following outcomes:

- Ms. Palmeira expressed opposition to the path project and is highly critical of the process for including NHOs in project consultation. She recommended that a consultation meeting(s) be held with Native Hawaiians to discuss the project.
- Ms. Palmeira expressed concern for the cumulative impacts of the overall Ke Ala Hele Makalae path project.
- Ms. Palmeira did not provide new information about historic properties in the project area.
- Ms. Palmeira identified six additional NHOs to be contacted as part of the project. The six individuals were added to the consultation contact list and attempts were made to contact them.

[1] Ms. Cheryl Lovell-Obatake deceased in 2014. Any further consultation should be directed to the representative of the Obatake family.

Ms. Palmeira did not attend the April 26, 2012 NHPA Section 106 Community Consultation meeting. However, two of the NHOs she recommended to include in the contact list (Ms. Aunty Nani Rogers and Ms. Wilma Holi) did attend the meeting.

Ms. Kaʻiulani Edens-Huff
At the recommendation of OHA, RMTC contacted Ms. Kaʻiulani Edens-Huff as part of the NHPA Section 106 consultation process.

- May 10, 2010 notes from phone call between RMTC and Ms. Edens-Huff.
- May 10, 2010 email from RMTC to Ms. Edens-Huff transmitting project information, copies of correspondence with the NHHPC, and NHO consultation contact list.
- April 02, 2012 letter from HDOT to Ms. Edens-Huff summarizing the findings of the NHPA Section 106 Consultation to date and inviting participation in ongoing consultation.
- April 16, 2012 letter from County of Kauaʻi to Ms. Edens-Huff inviting her to participate in a NHPA Section 106 community consultation meeting.

Consultation with Ms. Edens-Huff resulted in the following outcomes:

- Ms. Edens-Huff expressed opposition to the path project in all its locations and forms. She is highly critical of the project purpose of enhancing coastal access. The benefit is not to the Hawaiian people.
- Ms. Edens-Huff will participate in the NHPA 106 process as a Hawaiian Kingdom subject and considers the U. S. Government to be the occupier of a sovereign Hawaiian nation.
- Ms. Edens-Huff recommended that we arrange a meeting with the Hawaiian community to discuss the project and listen to concerns.
- Ms. Edens-Huff did not provide new information about historic properties in the project area and did not identify any additional NHOs to be contacted, deferring to Ms. Palmeira's recommendations.

Note that Ms. Edens-Huff did not attend the April 26, 2012 NHPA Section 106 Community Consultation meeting.

Additional NHOs Identified during the April 26, 2012 NHPA Section 106 Community Meeting
Seven individuals/families were identified by NHO participants Aunty Nani Rogers, Wilma Holi[2], and Kaliko Santos at the April 26, 2012 NHPA Section 106 Community Consultation Meeting. They include Joe Polan[3], Stanley Oana, Lester Matsushima, Leopold Durant, Roland Durant, Jacob Pia, and Laola Peahu Rapozo.

Interviews were conducted with these individuals on June 13, 15, and 27, 2012. The outcomes of the interviews are as follows:

- Mr. Stanley Oana identified the Hanamā`ulu Pier and railroad bridge, both located outside of the Nāwiliwili – Ahukini project area, as historically significant. He recommended restoring and preserving those historic sites. Mr. Oana also identified the presence of taro loʻi and fish ponds in the valley on both sides of Hanamā`ulu Stream and recommended restoration of those agricultural uses. This area is also outside of the Nāwiliwili-Ahukini project area. Mr. Oana knows of no heiau sites. He is aware of present use of the coastal areas for fishing.

[2] Ms. Wilma Holi deceased in 2018. Any further consultation should be directed to the representative of the Holi family.
[3] Mr. Joe Polan deceased in 2017. Any further consultation should be directed to the representative of the Polan family.

- Mr. Joe Polan identified the former locations of the sugar storage area, Standard Oil facility and gas tanks, and Harbor Master Bertram's residence at Nāwiliwili Harbor. He further noted that the McCann family owns property on the right side of Nāwiliwili Bay. He identified no other historic properties or traditional uses.
- Lester Matsushima's maternal great grandfather (Wahinealohakeo) was the *konohiki* (headman) of Hanamā`ulu Ahupua`a. Mr. Matsushima's grandfather's house was located in the center of the beach along Hanamā`ulu Bay. Mr. Matsushima spent much of his childhood there. Mr. Matsushima's parents worked on and off for the Honokai Plantation. According to Mr. Matsushima, the Plantation Manager's house also was located on the bay. During the interview, Mr. Matsushima stated 2 fishponds were located within Hanamā`ulu Bay, on either side of the bay; a fishing spot was located on the point on north side of Hanamā`ulu Bay; *copra* (coconut) was harvested in the area, and *lo`i* also were located in the area. Mr. Matsushima also stated the Pu`ali`i family had one of the fishponds, that sharks were the Pu`ali`i family *`aumakua*; and that a shark feeding hole was located on the north side of Hanamā`ulu Bay. Mr. Matsushima stated that the Plantation Railroad tracks were near-by; there was no battle field in Hanamā`ulu Bay; and that the area used to be comprised of sand dunes, but tsunami of 1947 wiped out the dunes.
- Leopold Durant currently lives in the village of Kapaia, northwest of Hanamā`ulu Bay. According to Mr. Durant, cultural sites in the vicinity include an *`akilolo* (wrasse fish) fishing area on top of bluff; *lo`i*; and a fishing spot. Mr. Durant knew of the fishing spot, *hake nalu* (shark feeding hole) and of the coconut (*copra*) harvesting Lester Matsushima spoke of. Mr. Durant also said Lester Matsushima had *kuleana* land in the area. Mr. Durant's concern regarding the Kauai bike path was that the bike path may restrict access to Ahukini Point and restrict access to fishing.
- Roland Durant was present during the interview with his father and offered to be interviewed. Roland Durant strongly feels that everything (*lo`i*; *ahu*, etc.) is connected to the land and to the Hawaiian people and culture.
- Jacob Pia, a friend of the Durant family, present during the interviews with Leopold and Roland Durant, also offered to be interviewed. Mr. Pia is a freediver who indicated he was familiar with the coastal area of Hanamā`ulu Bay as he frequently dives in this area. Mr. Pia Knew of the 2 fishponds Lester Matsushima spoke of. Mr. Pia also mentioned the *ahu hale,* for locating fish and schools of fish, on Ahukini Point and a fresh water spring. Mr. Pia's family grew watercress on the point on the north side of Hanamā`ulu Bay. Mr. Pia also knew of the *kilo* (fishing spot) on the north side of Hanamā`ulu Bay that Mr. Matsushima spoke of, as well as a *kilo* on the south side of the bay; and on the bottom side of Kawaihau Stream, a spring, and *lo`i* are still there. In addition, Mr. Pia indicted there could be *heiau*, a birthing area; and petroglyphs in the general area.
- Laola Peahu Rapozo was born in Nāwiliwili, grew up, and moved *mauka*. Mrs. Rapozo stated there were taro patches (*lo`i*) above the Hanamā'ulu Railroad Bridge; the Hanamā'ulu Dairy was in the area where the Hilton Hotel currently is located. Mrs. Rapozo also said the area along stream in Hanamā`ulu was farmed and that World War II military bunkers were located along the coastline. The Wailua Golf Course area was battleground with villages during the pre-Contact Period (pre-1778) and that Plantation-Era habitation occurred on south bank of Hanamā`ulu Stream. She had a friend who had lived there and remembered having to take boat to house. Mrs. Rapozo also mentioned that the Pia and Kane families lived by Hanamā`ulu Bay and that sharks were the families' *`aumakua*. Mrs. Rapozo thinks bike paths, in general, are a good thing as they provide access to areas otherwise inaccessible and unseen.

In summary, seven long-term, culturally knowledgeable of the project area were interviewed for the project at the request of Native Hawai'i organization participants of the April 26, 2012 Community Consultation Meeting. Five of the interviewees expressed no concerns regarding the construction of the

bike path. One of the five interviewees with no concerns believed that the bike path would enrich the community by providing access to the beautiful coastal views which are currently inaccessible and/or unnoticed. Two of the interviewees expressed concerns regarding the construction of the bike path. One concern pertained to continued access to Ahukini Point and restricted access to fishing in the Hanamā`ulu. The second individual who expressed concerns regarding the construction of the bike path believed that development, in general, compromised the Hawaiian culture, the Hawaiian people, and the Hawaiian Islands.

Ka Pa'akai Analysis Determination

The following determination is based on the information provided in the interviews with Native Hawaiian kūpuna and cultural practitioners from the project area, the archaeological inventory survey and archaeological literature review and field inspections prepared for project, and documentation of current conditions in the petition areas.

Cultural Resources and Traditional Cultural Practices

Early consultation with Native Hawaiian organizations and kūpuna from the project area identified the following issues of interest or concern to Native Hawaiians:

- Expressed concern about impacts to water quality from runoff from the bike path.
- Expressed general concern about potential impacts to Native Hawaiian burials.
- Expressed concern about potential impacts to traditional Hawaiian marine resources from the opening of the path and increased access to coastal areas.
- Expressed concern about displacement of Hawaiians as a result of opening of the path.
- Expressed general concern that development, in general, compromises the Hawaiian culture, the Hawaiian people, and the Hawaiian Islands.
- Expressed concern about closure of motor vehicle access to customary fishing spots along the coastline.
- Expressed concern about maintaining continued access to Ahukini Point and Hanamaulu for customary fishing and gathering practices.
- Recommendation was made to consider adoption of a Konohiki system of resource management and rule enforcement.
- Expressed interest in developing appropriate interpretation /educational programming related to Paukini Rock in Nāwiliwili Harbor,
- Emphasized the importance of including Native Hawaiian cultural practitioners in the development of interpretive and educational programing.
- Emphasized the importance of continuing to consult with interested Native Hawaiian kūpuna and cultural practitioners during project development.

The primary customary and traditional practices identified through the consultation relate to access to marine resources along the coastline and nearshore waters for fishing and gathering, and traditional stewardship of those resources to support the perpetuation of the Hawaiian people and culture.

No other specific customary and traditional practices were shared by the participants.

Land Tenure and Land Commission Award (LCA) Properties

The following information is from Section 3.6.1 of the *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a Līhu'e District, Kaua'i*, dated January 2014, prepared by Cultural Surveys Hawai'i.

Land Commission Awards

The following information regarding Land Commission Awards is excerpted from the *Final Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project, January 2014* prepared by Cultural Surveys Hawai'i, Inc.

Hanamā'ulu
Land Commission documents for Hanamā'ulu describe *lo'i*, *kula*, and house sites along both sides of the Hanamā'ulu River, extending from the shore up to the village of Kapaia. *Kula* and *lo'i* lands are often included together in one *'āpana* (portion of a claim), with house sites belonging to separate *'āpana*, slightly removed from the floodplain.

There are four claims in the back bay area of Hanamā'ulu and two claims for house lots (LCA 3650 and 3653) near the beach, south of Kapule Highway. Most of the *kuleana* claims for Hanamā'ulu are located in lands that have been under sugar cane cultivation for much of the 20th century; occasionally, traditional artifacts can still be found in the cane fields.

Kalapakī
In Kalapakī Ahupua'a, *kalo* (taro) *lo'i* claims were on the north side of Nāwiliwili River (the *wauke* land in Claim 3907 on the south side of the river being the sole exception) and along the smaller drainages of Kalapakī and Koena'awa, where there were also reportedly springs. Two streams, Koena'awa-nui and Koena'awa-iki, were also identified in the claims, but neither is named on current maps. These two streams, however, can be seen in an undated photograph on file at the Kaua'i Museum (see Figure 1).

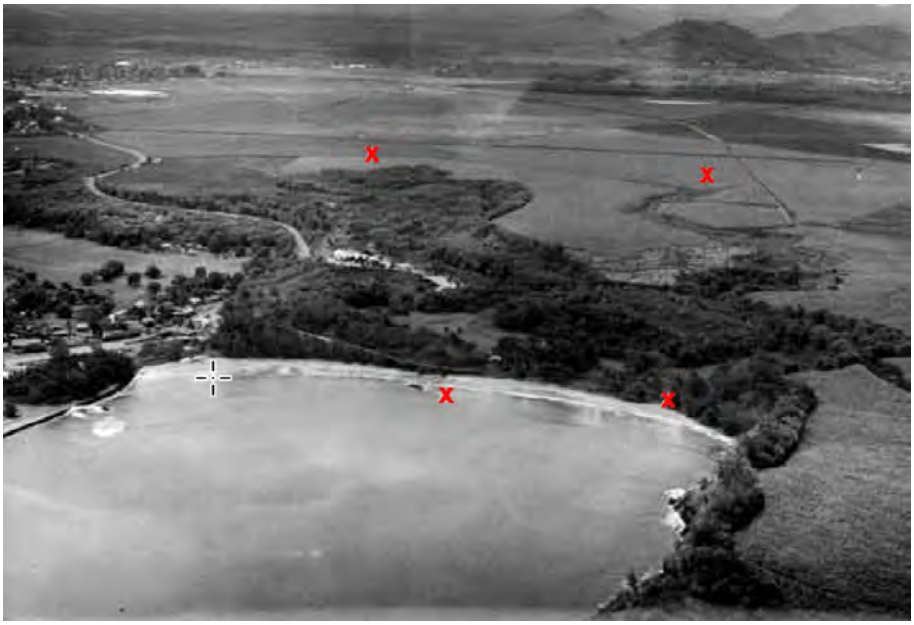


Figure 1 – Kalapakī Bay, showing location of two streams and their outlets (red Xs) to Kalapakī Bay; Koena'awa nui stream is on the left and Koena'awa iki is on the right (undated photograph in Kaua'i Museum files, see http:www.hawaii.edu/environment.ainakumuwai.html)

Most Kalapakī claimants lived at the shore in the *kulana kauhale,* or village, of Kalapakī, located near Nāwiliwili Bay. Several claimants describe their village house lots in relation to the fishponds of Koena'awa (Koena'awai-nui and Koena'awa-iki). There is also a description of the *muliwai*, or estuary, of Koena'awa-nui.

Claim 3640 mentions a footpath for the '*ili* of Limawela near the shore at the boundary between Hanamā'ulu and Kalapakī. These documents therefore indicate a north/south path along the shoreline, and other paths going inland from the shore, which is a traditional transit pattern for Kaua'i *ahupua'a*.

Paulo Kanoa, Governor of Kaua'i at the time of the Māhele, claimed both the *ahupua'a* of Hanamā'ulu and Kalapakī but was awarded neither. Instead, Victoria Kamāmalu was awarded both *ahupua'a* under LCA (Land Commission Award) No. 7713:2. A portion of this award (7713:2 part 7) includes land within the present project area. Following the death of Victoria Kamāmalu in 1866, Princess Ruth Ke'elikōlani inherited her lands. In 1870, Ke'elikōlani sold large portions of her Kalapakī and Līhu'e lands to William Hyde Rice of Lihue Plantation. In addition, in 1870, Paul Isenberg purchased the *ahupua'a* of Hanamā'ulu from J.O. Dominis, which includes the land of the present airport area. William Hyde Rice made subsequent land purchases from Princess Ruth in 1879:

> William Hyde Rice, who already had his own home on the hill east of the mill, bought a large makai section of the ahupuaa of Kalapaki from Princess Ruth in 1879 and there conducted the Lihue Ranch. In later years he sold most of this land to the plantation. (Damon 1931:747)

The large tracts of inland areas (*kula*), not in the river valleys or at the shore, are not described in the claims but were probably in use. This *kula* land at the time of the Māhele belonged to Victoria Kamāmalu. Land use is not elaborated in her claims for Hanamā'ulu or Kalapakī. Traditional *kula* resources for all claimants would have been medicines, herbs, construction materials such as *pili* grass and trees for building houses, canoes, and perhaps lithic materials for tools. Sweet potatoes and other dryland crops, such as *wauke*, probably were cultivated in patches throughout the area at one time or another.

Nāwiliwili

Victoria Kamāmalu was awarded over two thousand acres of Nāwiliwili Ahupua`a (LCA 7713), along with much of Niumalu, Ha'ikū and Kīpū, as well as Kalapakī and Hanamā'ulu. In addition to Kamamalu's large award at Nāwiliwili, there were many smaller *kuleana* awards. According to Hammatt and Creed (1993):

Within the valley floor and adjacent to the alluvial plain [in Nāwiliwili] … are 14 land Commission Awards for which there are testimonies available in the Land Commission records. The awards vary in size between one to two acres and are generally around one acre. The majority of land recorded is for *lo'i* (wetland agriculture) but *kula* (dryland plots) are present as are a few houselots.

In all there are 54 *lo'i* recorded. Each award is generally two to three *lo'i* plots. The largest award comprised eight *lo'i*; a single award consisted of one *lo'i.* All awards contained *lo'i* and nine of the fifteen total awards had *kula* lots. Without exception, the nine awards containing *kula* mention only one *kula* per award. This is of interest because it shows that the alluvial plain was not entirely dedicated to wetland planting and that a small *kula* lot was essential for subsistence agriculture. Some awards at Nāwiliwili mention houselots along the shoreline.

Historic Properties

The County of Kaua'i identified numerous historic properties within the project area (see Figure 2). Project plans have been modified to avoid potential effects to historic properties and to create opportunities for education and interpretation.

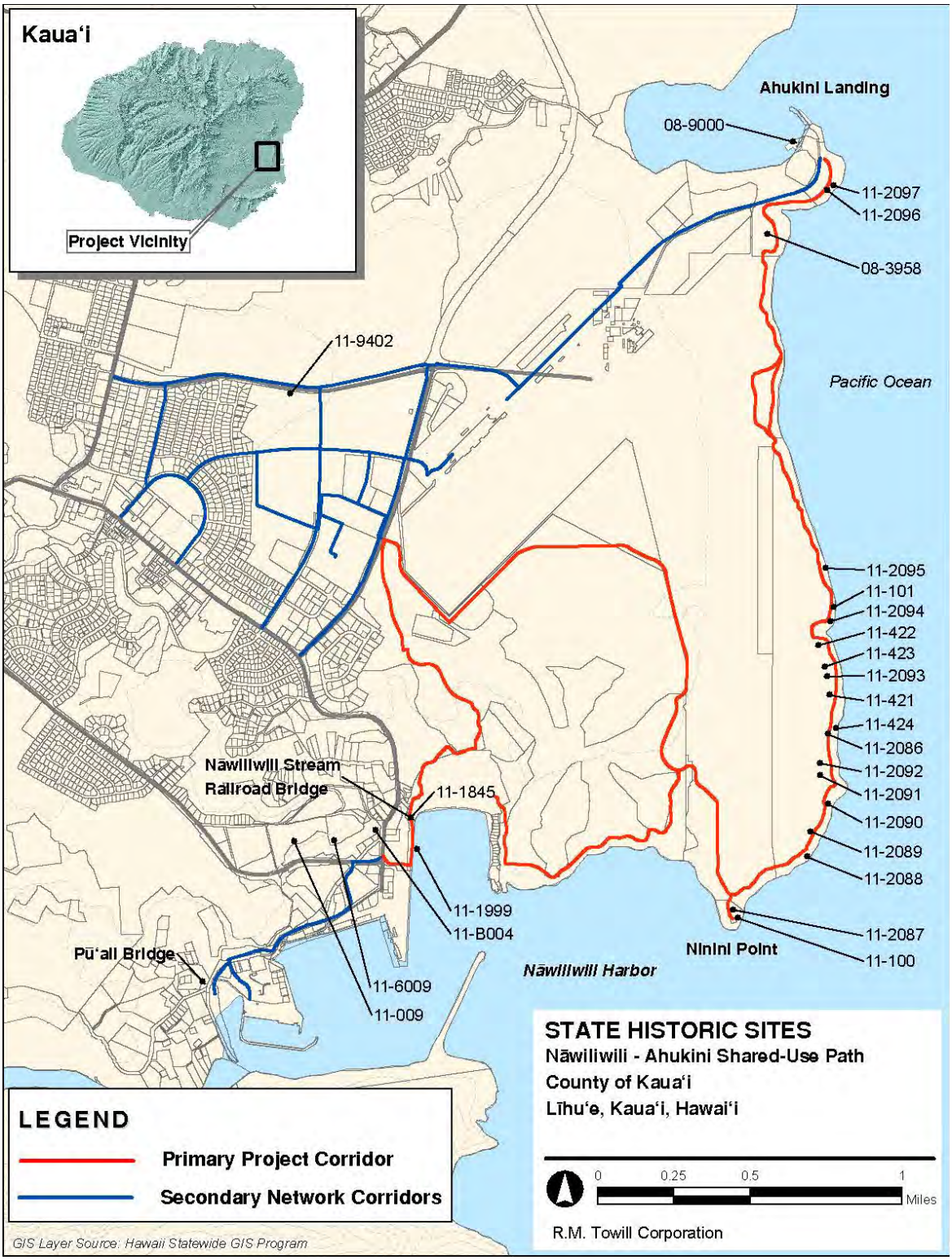


Figure 2 - State Historic Sites

Table 1
Historic Properties Located within the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nāwiliwili; A large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park
50-30-11-100	Ninini Heiau, near Nāwiliwili Harbor Light. Previously destroyed.	Documented by Thrum as destroyed (Bennett, 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Nāwiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. . On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a
50-30-08-9402	Historic Building Remnant at Site **of** Radio Station KIVM	n/a
11-B004	Historic Cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot

Table 1
Historic Properties Located within the Project Area

		buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.
--	Pū'ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.

***** Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, April 2010).

Mitigation Policies

The County of Kauai will ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources and cultural practices:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental AIS, in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.

2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
   a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
   b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
   c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For SIHP Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and Kauai Niihau Islands Burial Council in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE (see Figure 3).
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
    a. Interpretive signage will address the themes of each of the historic sites identified near the project.
    b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
    c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
    d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

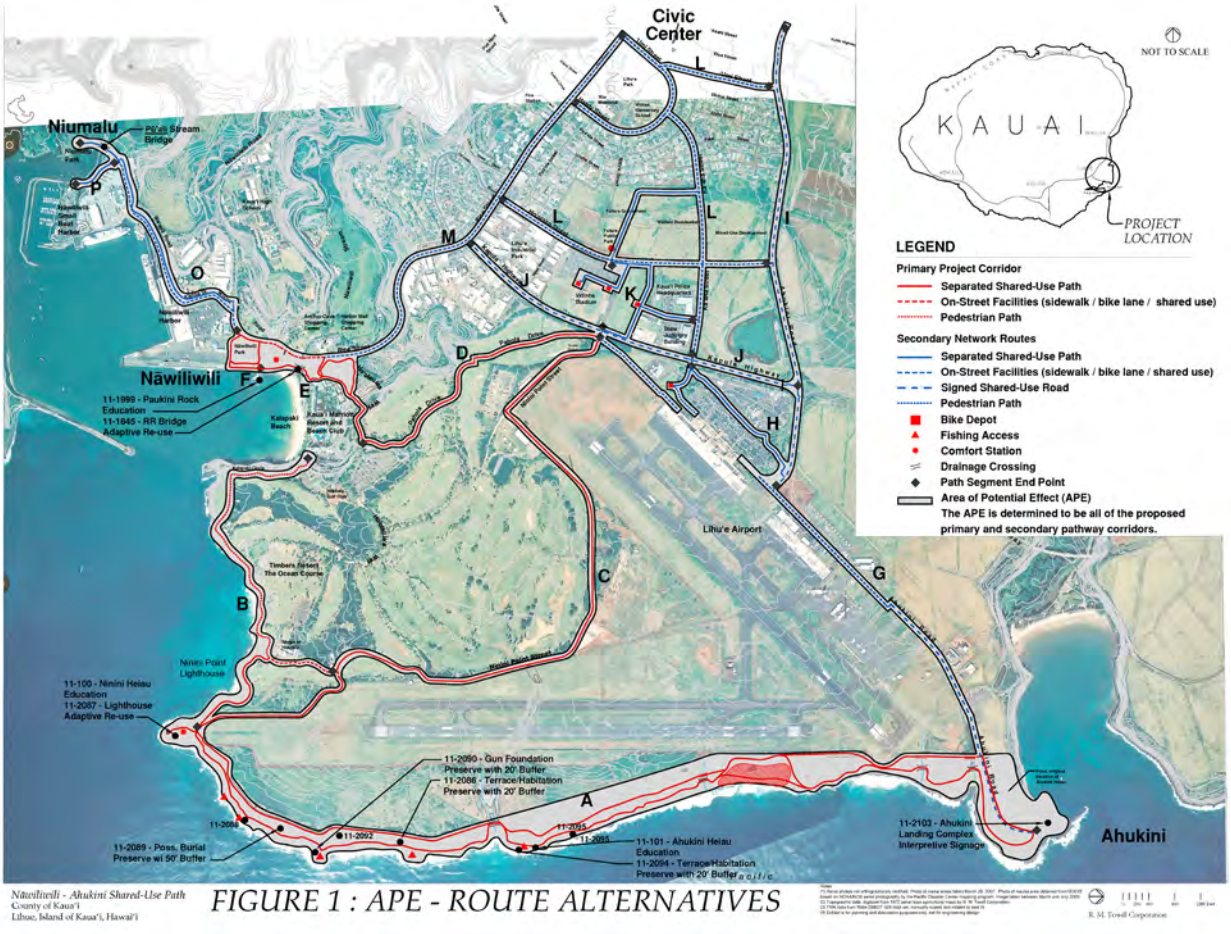


Figure 3 - APE - ROUTE ALTERNATIVES

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

<u>Determination</u>

The project will preserve and ensure continued access to the shoreline and coastal areas and will not impose conditions that would prevent traditional and customary fishing, gathering, or other subsistence practices. The project will be designed with drainage features and vegetation ground cover to control and treat storm water runoff and prevent pollutant discharges that could degrade coastal water quality. Interested Native Hawaiian kūpuna and cultural practitioners will continue to be consulted throughout the design and development of the path project.

Based on consultation with kupuna and Native Hawaiian cultural practitioners with knowledge regarding native Hawaiians' exercise of customary and traditional practices in the project area and vicinity, and the findings of the resource studies, and the mitigation commitments developed through those consultations, the proposed Nāwiliwili-Ahukini Shared-Use Path Project is not anticipated to affect the rights customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupuaʻa tenants who are descendants of native Hawaiians, and does not affect or impair any Hawaiʻi State Constitution, Article XII, Section 7 uses, or the feasibility of protection of those uses.

Exhibit 17
NHPA 106 and 6E Consultation Timeline and Correspondence

Project Chronology
National Historic Preservation Act (NHPA) Section 106 Consultation and
Hawai‘i Revised Statutes (HRS) Section 6E Historic Preservation Review Process

Nawiliwili to Ahukini Landing Bike/Pedestrian Path, CMAQ-0700(57)

Date	Event
February 2007	Notice to Proceed with project issued to project consultant, R. M. Towill Corporation (RMTC)
May 2008	Initial request for NHPA 106 consultation sent by letter to preliminary list of agencies, Native Hawaiian organizations (NHOs) and individuals.
2008 through 2009	Continued informal consultation with original and additional agencies, NHOs and individuals identified through the NHPA 106 process.
June 2009	Archaeological Inventory Survey (AIS) prepared by Cultural Surveys Hawai‘i, Inc.
October 1, 2009	NHPA 106 consultation put on hold pending guidance from Federal Highways Administration (FHWA) and the Advisory Council for Historic Preservation (ACHP) regarding NHPA 106 consultation with Native Hawaiian organizations (NHOs), State Historic Preservation Officer (SHPO) review of project AIS to support NHPA 106 process, and Office of Hawaiian Affairs' (OHA) participation in NHPA 106 consultation.
April 22, 2011	ACHP Draft guidelines for Hawai‘i NHPA 106 consultation process issued to County of Kaua‘i (COK) and Hawaii Department of Transportation, Highways Division (HDOT-HWY). Continue contact with participating NHOs.
September 2011 – April 2012	Consultant contract amended to provide further Section 106 work requested by FHWA to assure consistency with the new draft guidelines from the ACHP for consultation with NHOs.
April to July 2012	FHWA and COK conduct Section 106 consultation with NHO's in accordance with ACHP guidelines, including NHPA 106 public consultation meetings and individual interviews. COK and consultant finalize NHPA 106 consultation documents, prepare NHPA 106 Memorandum of Agreement (MOA) for review by SHPD, FHWA and HDOT.
July 2, 2012	FHWA NHPA 106 Authorization letter to SHPO.
July 25, 2012	FHWA issues letter requesting SHPO's concurrence with NHPA 106 effect determination and review of the proposed NHPA 106 MOA.
August 28, 2012	SHPD responds to FHWA's Section 106 concurrence request with request for additional information. Additional documentation required.
November 9, 2012	COK, HDOT meeting with SHPO to resolve outstanding NHPA 106 Consultation mitigation commitments.
December 4, 2012	COK and consultant follow up with SHPO on response to NHPA 106 effect determination and MOA. Consultant revises MOA to address SHPO comments.

Date	Event
December 13, 2012	FHWA and SHPO review revised NHPA 106 documents and MOA.
January 2013	Consultant revises NHPA 106 MOA and FHWA effect determination letter to address FHWA comments. Consultant tracks SHPD review of project AIS, updates administrative record for NHPA 106 consultation, and prepares draft notification and invitation to ACHP to participate in MOA.
February 25, 2013	FHWA sends letter to ACHP with notification of NHPA 106 effect determination and invitation to participate in MOA.
February 26, 2013	Consultant submitted NHPA 106 Consultation supporting documents to FHWA.
April 5, 2013	FHWA sends effect determination letter to SHPO requesting concurrence on the Section 106 determination of adverse impact with mitigation measures to prevent the disturbance to historic properties or resources to the extent possible, and sends revised draft NHPA Section 106 MOA also submitted to SHPO for review. COK submits Section 106 MOA to HDOT for processing.
April 10, 2013	ACHP responds to FHWA that they are not participating in the consultation process. Notes requirement to complete MOA and file it with SHPO.
November 2013	Consultant contract amended to provide additional time for further Section 106 work.
November 12, 2013	Final AIS submitted to SHPO.
December 18, 2013	Revised NHPA 106 MOA submitted by COK to HDOT and FHWA. Consultant resubmitted NHPA 106 consultation docs and MOA to SHPO for action. Waiting on SHPO response to NHPA 106.
December 27, 2013	Consultant revised NHPA 106 MOA addressing additional SHPO comments and re-submitted to COK, HDOT, FHWA and SHPO.
January 21, 2014	State Historic Preservation Division (SHPD) accepts AIS as complete.
March 25, 2014	COK, HDOT, FHWA, Consultant meeting to update NHPA 106 consultation status. Draft NHPA 106 MOA redistributed to COK and FHWA for review. Waiting for SHPO response to the NHPA 106 MOA.
March 2014	Waiting on SHPO action on NHPA 106 MOA and effect determination. Consultant contract amended to provide additional time for further Section 106 work.
February 11, 2015	COK, HDOT, FHWA and consultant meeting to update project status.
March – Sept. 2015	Periodic phone communication with SHPO to check status of NHPA 106 review.
September 2, 2015	Revise NHPA 106 MOA to include HHF as a concurring party and HDOT as signatory.
November 5, 2015	COK, HDOT, FHWA and consultant meeting to update status of project. Waiting on SHPO to respond to current draft NHPA 106 MOA.
January 12, 2016	Consultant contact SHPO for status of NHPA 106 MOA review.

Date	Event
January 19, 2016	COK letter to Historic Hawai‘i Foundation (HHF) to invite participation in the NHPA 106 MOA as a concurring party.
March 14, 2016	COK submits a revised draft NHPA Section 106 MOA to SHPO for review. No response from SHPD through
May 2016	Coordination meeting with COK, DOT-HWY, FHWA and SHPD. No resolution of MOA.
August 2016 to June 2018	Periodic inquiries to SHPD for response to draft MOA.
June 2018	Coordination meeting with COK, DOT-HWY and SHPD. No resolution of MOA.
November 2018 to November 2019	Coordination among COK, DOT-HWY, FHWA and SHPD to change the NHPA 106 effect determination from “adverse effect with mitigation” to “no adverse effect”. Also, coordinate with SHPD to withdraw recommendation for data recovery for SIHP -2089, due to proposed mitigation of avoidance with a 50-foot buffer. Iterative revisions to modify the FHWA effect determination letter, coordinated with DOT-HWY and FHWA.
December 2019	Meeting with COK, DOT-HWY, FHWA and SHPD to request to delete data recovery for 50-30-11-2089 and to request to change effect determination and delete MOA requirement.
December 2019 to January 2020	SHPD reviewing request.
February to May 2020	SHPD approves request to change NHPA 106 effect determination and eliminate the MOA and eliminate data recovery for SIHP 50-30-11-2089. Iterative revisions and processing revised concurrence request letter with FHWA. Letter sent in May.
June 2020	SHPO concurs with FHWA effect determination.
May to September 2021	Restart work. Prepare HRS 6E effect determination letter from COK to SHPD.
September 28, 2021	COK HRS 6E letter submitted to SHPD.
September 2021 to December 2022.	Routine inquiries by DOT-HWY, COK and consultant to SHPD for response to HRS 6E effect determination concurrence request letter. Waiting SHPD response.

U.S. Department of Transportation
Federal Highway Administration

Hawaii Federal-Aid Division

300 Ala Moana Blvd, Rm 3-306
Box 50206
Honolulu, Hawaii 96850
Phone: (808) 541-2700
Fax: (808) 541-2704

April 3, 2013

In Reply Refer To:
HDA-HI

Mr. William J. Aila, Jr.
Chairperson and State Historic Preservation Officer
Hawaii Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, HI 96707

Subject: National Historic Preservation Act Section 106 Consultation
Nāwiliwili – Ahukini Shared-Use Path Project
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i
Ahupua'a of Nāwiliwili, Kalapakī, and Hanamā'ulu
Federal-aid Project Number CMAQ-0700 (57)
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Aila:

In accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended, the Federal Highway Administration (FHWA) requests the State Historic Preservation Officer's (SHPO) concurrence on the effect determination for the proposed improvements. The FHWA is rendering an adverse effect determination for the subject project.

The FHWA intends to provide funds for the proposed improvements. Therefore, the FHWA has required the State of Hawaii Department of Transportation (HDOT) and County of Kaua'i to comply with the National Environmental Policy Act, NHPA, and other federal requirements. The FHWA has authorized the HDOT and the County of Kauai to act on behalf of the FHWA regarding the NHPA Section 106 notification and consultation.

Overview of the Undertaking

The FHWA, HDOT, and County of Kaua'i, Department of Public Works (DPW), plan to develop a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing in Līhu'e District on the island of Kaua'i. A path segment is also proposed between Nāwiliwili Park and Niumalu Park. Additional path segments will connect the coastal path to the Līhu'e Civic Center and Līhu'e Airport. The project is a key segment of *Ke ala Hele Makalae,* the 16-mile

Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update.

The County of Kaua'i will construct, own, and operate the facility. The project will be funded through the HDOT using FHWA funds. The project is, therefore, considered a federal undertaking subject to consultation requirements in accordance with Section 106 of the NHPA and 36 Code of Federal Regulations (CFR), Part 800.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors will provide additional connections through urban areas. Path improvements and amenities will include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nāwiliwili Stream Railroad Bridge, and various improvements at Nāwiliwili Park to be coordinated with the park's master plan. The project will benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

The FHWA, HDOT, and County of Kaua'i DPW have conducted consultations for the subject project with Native Hawaiian organizations (NHOs) and other consulting parties in compliance with NHPA Section 106. This letter is submitted to the SHPO to request concurrence with the FHWA's effect determination regarding historic properties in the subject project's area of potential effects (APE) for the purpose of satisfying NHPA Section 106 consultation requirements.

For the proposed project, the APE is determined to be all of the proposed primary and secondary pathway corridors, as depicted on Figure 1 in the enclosed report summarizing the NHPA 106 Consultation. Historic properties identified within the APE are shown on Figure 2 of the report.

Consultation Overview

The FHWA delegated NHPA Section106 Consultation activities to the HDOT; the HDOT, in turn allowed the coordination of NHPA Section 106 activities to be administered by the County of Kaua'i. The County of Kaua'i acted on behalf of the FHWA in NHPA Section 106 consultations with the State Historic Preservation Division (SHPD), the Office of Hawaiian Affairs (OHA), the Native Hawaiian Historic Preservation Council (NHHPC), the Kaua'i Historic Preservation Review Commission (KHPRC), and other county, state, and federal agencies, NHOs, and private parties. The FHWA remains responsible for all findings and determinations charged to the agency in the review process.

The NHPA Section 106 consultation process conducted for this project is documented in the enclosed report. The report includes a list of all consulted parties, a summary of comments received, agency responses, and outcomes. Written correspondence, minutes from public consultation meetings, notes from personal interviews with consulted parties, including NHOs, records of public notices, and project information that was provided to the public are appended to the report.

Historical, Cultural, and Archaeological Background

The project area is located between the two main bays and streams of Nāwiliwili and Hanamā'ulu. These two streams, which drain the slopes of Kilohana, were once home to thousands of native Hawaiians living a traditional subsistence lifestyle. The *ahupua'a* of Hanamā'ulu, Kalapakī and Nāwiliwili were permanently inhabited and intensively used in precontact times, based on a large amount of archaeological, historical, and oral-historical documentation. The coastal areas were the locus of permanent house sites and temporary shelters, *heiau*, including *ko'a* and *kū'ula*, and numerous trails. There were fishponds at Kalapakī and Nāwiliwili. Before the historic era, there were villages at Kalapakī, Nāwiliwili, and the mouth of the Hanamā'ulu Stream. The upland areas of these *ahupua'a* contained native forests and were cultivated with crops of *wauke* (paper mulberry, *Broussonetia papyrifera*), *'uala* (sweet potatoes, *Ipomoea batatas*), and *ipu* (bottle gourd). Legends and historic documentation elaborate on many of these important natural resources. The archaeological record of the Līhu'e District indicates a date range of circa A.D. 1100 to 1650 for pre-contact Hawaiian habitations (Walker et al. 1991).

Early historic accounts of the area are limited to travelers, missionaries, and survey expeditions. They describe this side of Kaua'i as having good land that is mostly unoccupied with lots of grass, trees, and streams (Damon 1931). Whaling and sandalwood were short-lived commercial enterprises, and part of a transitional period to a cash crop economy. Missionaries settled in Līhu'e in the 1840s and built the first infrastructure of the area, consisting of schools and churches. Cash crops were attempted in the form of cotton, which proved unsuccessful. The missionaries also tried to move the local inhabitants of the shore to higher, more fertile agricultural lands. The first commercial agriculture was attempted in the late 1830s by Governor Kaikio'ewa, but was not consistent or successful until after the *Māhele* of the 1850s.

The middle 19th century brought the *Māhele*, and commercial sugar cane agriculture, which firmly established Līhu'e's place in state and global economic markets. In 1870, the Līhu'e Plantation Company bought approximately 17,000 acres of undeveloped land in Hanamā'ulu, which were then used to grow sugar cane and to capture and deliver water to both plantations. Later, in 1870, George N. Wilcox started the first sugar cane plantation in Hanamā 'ulu, the Hanamaulu Plantation (Dorrance and Morgan 2000). In 1898, Hanamaulu Plantation was merged into Līhu'e Plantation. Commercial sugar cane agriculture continued in Līhu'e until 2000, when it and the Kekaha Sugar Co. were permanently shut down. The nearby Kipu Plantation, founded in 1907, operated until 1942 (Dorrance and Morgan 2000).

The beginning of the 20th century brought big changes as Nāwiliwili Harbor was proposed as a deep water harbor for the island of Kaua'i. The harbor was dredged and the dredge material was used to fill in the wharf areas. A breakwater was also constructed in the harbor and was completed after much debate in the legislature. The Nāwiliwili Harbor Light was also upgraded during this time. Nāwiliwili Harbor was utilized by the sugar plantations; however, it was not until after a tidal wave devastated Ahukini Landing in the late 1940s that Nāwiliwili Harbor was used almost exclusively for sugar cane and other commercial transport. Līhu'e Airport was opened outside of Līhu'e town in 1949, further extending transportation options for local residents. The airport sits on approximately 850 acres of former sugarcane fields. The addition of the airport brought an increase in tourist traffic to Kaua'i which has had a major economic

impact to the island. The airport has been continually upgraded through the years and continues to serve as Kaua'i's only public airport.

Thrum and Bennett conducted the first island wide archaeological surveys in the early part of the 20th century. The early surveys of this area of Kaua'i documented a number of *heiau* which, at the time of survey, were only remnants or already destroyed (Thrum 1907). Other types of sites observed during these early surveys include dune burials and Paukini Rock, which is now under water in Nāwiliwili Bay. Most of the previous archaeological work in and around the project area has been conducted only within the last 30 years. Later research of the area documented pre-contact habitation sites and activity areas, additional burials, and infrastructure related to the plantation era. Of particular note to the current project are the Cultural Surveys Hawaii (CSH) surveys of 1988 and 1990 which covered approximately 50 percent of the current project area (Hammatt 1988 and 1990). The survey documented five sites related to prehistoric activity and plantation era infrastructure. A CSH survey conducted in 1998 reported structures related to Ahukini Landing and portions of this survey fall within the current project area (Creed et al. 1999). A survey by Bell et al. (2006) of various lands around the airport documented one site, a historic piggery, which is located approximately 150 m east of the path alignment, near the north end of runway 3-21. .

Prior to the extensive land alteration caused by over a century of commercial agricultural activities, portions of the project area would likely have contained historic properties related to habitation and coastal resource exploitation. These historic properties would have included both permanent and temporary habitation terraces, activity areas, and burial mounds. Subsurface precontact cultural deposits within the project area may consist of midden, artifact scatters, and possible human remains. Remnants of post-contact agricultural infrastructure are also likely to exist within the project area and may include terraces, historic artifact scatters, and water control features. Other historic infrastructure, including the remains of single family residences and commercial structures, may be present and there is also a possibility of encountering WWII-era military infrastructure. Previously identified historic properties within the current project area consist of pre-contact habitation remnants and historic infrastructure related to commercial agriculture and ranching activities.

Summary of Archaeological Sites within the APE

For the proposed project, the APE is determined to be all of the proposed primary and secondary pathway corridors, as depicted on the enclosed Figure 1. Historic properties identified within the APE are shown on the enclosed Figure 2. A report that summarizes the NHPA Section106 consultation process and findings of the archaeological studies conducted for the project is also enclosed for your reference. A summary description of the archaeological sites is also provided in the following effect determination discussion.

Effect Determination

Based on an analysis, site observations, and consultation with the SHPD, the OHA, the NHHPC, the KHPRC, and other county, state, and federal agencies, NHOs, and private parties, the FHWA has determined that there will be an adverse effect on the following historic property.

Adverse Effect for the following historic property within the APE

SIHP No.	Site Description	Recommendations
50-30-11-1845	Nāwiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines stipulated in a memorandum of agreement.

The adverse effect determination is being rendered because adaptive reuse of the Nāwiliwili Stream Railroad Bridge to carry a segment of the shared-use path will require modifications to the original bridge structure. The adverse effect will be mitigated through the application of historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch.

The FHWA has determined that there will be no adverse effect for the following historic properties identified within the APE. The no adverse effect determination is being rendered based on the recommendations summarized in the following table and because the path will be aligned to avoid these historic properties.

No Adverse Effect for the following historic properties within the APE

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nāwiliwili; a large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nāwiliwili Beach Park
50-30-11-100	Ninini Heiau. Near Nāwiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated. No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated. No further work.
50-30-11-424	Oval terrace alignment	Previously recorded. No further work.
50-30-11-1999	Paukini Rock (in Nāwiliwili Bay)	Previously recorded. Describe in interpretive display.

No Adverse Effect for the following historic properties within the APE

50-30-11-6009	Nāwiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	n/a Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-08-9402	Historic building remnant at site of radio station KIVM	Avoid.
11-B004	Historic cemetery near Nāwiliwili Park	Avoid.
50-30-11-2086*	Pre-contact terrace habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic mounds. Possible burial.	Preserve in place. Avoid site by establishing a 50-foot buffer. Data recovery program to be undertaken before path construction begins.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic septic outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact scatter activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic drainage ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic drainage ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic industrial complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

No Adverse Effect for the following historic properties within the APE

--	Pū'ali (Niumalu) Bridge	Avoid existing bridge with a buffer. Buffer distance to be determined by the SHPD, Architectural Branch.

* Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point (CSH, April 2010).

Mitigation Policies

Mitigation measures during the construction of the proposed improvements have been and will continue to be implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources. The following mitigation measures have been or will be implemented, at a minimum:

- If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
- If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

The HDOT and County of Kaua'i will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

Additionally, enclosed is a draft memorandum of agreement (MOA) to be executed among the FHWA and SHPO, with the County of Kaua'i participating as an invited signatory. The MOA stipulates terms under which the undertaking will be implemented in order to avoid, minimize and/or mitigate its effects on historic properties.

We request your concurrence with the FHWA's effect determination and ask for a written response within thirty (30) days of receipt of this letter in accordance with 36 CFR Part 800.3(c)(4). We appreciate your assistance with this important transportation project.

If you have any questions, please feel free to contact me at (808) 541-2316 or by email at meesa.otani@dot.gov. Thank you for your assistance.

Sincerely yours,

Meesa T. Otani
Environmental Engineer

Enclosures: Figure 1 – Proposed Path Routes
Figure 2 – Historic Properties in the APE
Report summarizing NHPA Section 106 Consultations
Draft MOA among the FHWA, SHPO, and County of Kaua'i

cc: Mr. Doug Haigh, Kaua'i DPW, Building Division (w/ enclosures)
Mr. Jim Niermann, R. M. Towill Corporation (w/o enclosures)
Ms. Christine Yamasaki, HDOT-HWY-D (w/o enclosures)
Ms. Holly Yamauchi, HDOT, HWY-D (w/o enclosures)
Mr. Todd Nishioka HDOT

NEIL ABERCROMBIE
GOVERNOR OF HAWAII

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
INTERIM FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

January 21, 2014

Mr. David W. Shideler
Cultural Surveys Hawai'i, Inc.
P.O. Box 1114
Kailua, HI 96734

LOG NO: 2013.6321, 2014.00187
DOC NO: 1401SL17
Archaeology

Dear Mr. Shideler:

SUBJECT: Chapter 6E-8 and National Historic Preservation Act (NHPA) Section 106 Review– Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats

Thank you for the opportunity to review this revised report titled *Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i Island TMK: (4) 3-5-001:004, 008, 027, 060, 083, 085, 102, 118, 128, 159, and 160 por. and various rights-of-way between various plats* (Altizer and Hammatt, November 2013). We received this revised draft on November 12, 2013 (Log No. 2013.6321). We subsequently determined the archaeological inventory survey (AIS) report did not indicate the project is a federal undertaking and did not include significance assessments using National Register criteria (January 3, 2014; email from Lebo to Shideler). We received the newly-revised AIS (Altizer and Hammatt, January 2014) and accompany materials via email on January 12 and 18, 2014 (Log No. 2014.00187).

The Federal Highway Administration (FHWA) is funding the State of Hawai'i Department of Transport's (HDOT) and County of Kaua'i Department of Public Work's (DPW) plan to develop the Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawai'i Master Plan – Bike Plan Hawai'i*, and in the 2003 *Bike Plan Hawai'i* update. Due to Federal Highway Administration (FHWA) funding through the State of Hawai'i Department of Transportation (HDOT), this project is a federal undertaking requiring compliance with Section 106 of the National Historic Preservation Act (NHPA), and 36 Code of Federal Regulations (CFR) Part 800.

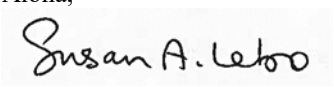
The current AIS was conducted at the request of R.M. Towill Corporation for portions of the Nāwiliwili-Ahukini Bike Path Project, which is located in coastal and near coastal portions of three ahupua'a in Līhu'e District: Hanamā'ulu, Kalapakī, and Nāwiliwili. The 6-mile (10 km) project area is one section of a larger 17-mile (27.4 km) project to connect Nāwiliwili with Anahola. The Area of Potential Effect (APE) for the current AIS consists of both alignment-option corridors linking Ahukini Landing, Nāwiliwili Harbor Light, Līhu'e Airport, Kaua'i Lagoons and Marriottt Resort, Nāwiliwili Park and Harbor, and Niumalu Park. The APE also includes all lands in the vicinity of these alignment options from the western shoulder of the *mauka* (inland) corridor east to the ocean. A pedestrian survey consisting of 100% coverage at 5-10 m intervals was conducted within the APE.

The AIS report provides good discussions of the project, consultation, cultural and historic background research, previous investigations, field and laboratory methods and findings, as well as the significance assessments and recommendations. The AIS investigations identified 15 historic properties, of which 9 are assessed as potentially being affected by the project and also as being eligible for listing on the National/Hawai'i Registers of Historic Places (Table 1). In 2012, the FHWA rendered an adverse effect determination for the Nāwiliwili Stream Railroad Bridge (SIHP # 50-30-11-1845) and a determination that the current AIS project would have no adverse effect on the archaeological historic properties within the project area (Nickelson to Aila, July 25, 2012). The archaeological historic properties are being addressed in a Memorandum of Agreement to be submitted to the Advisory Council on Historic Preservation. The recommended mitigation measures will reduce the project's potentially adverse effect on these significant historic properties.

The revisions made to this document adequately address the major concerns raised in our prior correspondence (April 21, 2010, Log No. 2010.0723, Doc. No. 1004NM62; November 9, 2012, SHPD and CSH consultation, Lebo and Shideler; January 3, 2014, email from Lebo to Shideler; and January 18, 2014, email from Shideler to Lebo). The archaeological inventory survey report meets the requirements of the *Secretary of Interior Standards for Archaeological Documentation* and Hawaii Administrative Rule §13-276-5. It is accepted by SHPD. Please send one hardcopy of the document, clearly marked FINAL, along with a copy of this review letter and a text-searchable PDF version on CD to the Kapolei SHPD office, attention SHPD Library.

Please contact me at (808) 692-8019 or at Susan.A.Lebo@hawaii.gov if you have any questions or concerns regarding this letter.

Aloha,



Susan A. Lebo, PhD
Oahu Lead Archaeologist

Table 1. Sites Assessments using National/Hawaii-Register Significance Criteria and HAR §13-275-6 Significance Criteria, and Site Recommendations

SIHP	Description	Significance Criteria		Recommendation
		NR/HR	HAR §13-275-6	
50-30-11-422	Plantation wall	Not significant	Not significant	No further work
50-30-11-423	Plantation wall	Not significant	Not significant	No further work
50-30-11-2086	Pre-Contact habitation terrace	D	"d" and "e"	Preservation, avoid with 20-ft buffer
50-30-11-2087	Historic lighthouse and associated habitation remnants	C and D	"c" and "d"	Preservation of remaining structure; adaptive reuse
50-30-11-2088	Military concrete slab base of communications tower	D	"d"	No further work
50-30-11-2089	Historic mounds, possible burial	D	"d" and "e"	Preservation in place; avoid w/50-ft buffer; data recovery prior to construction
50-30-11-2090	Military structural foundation, gun emplacement	D	"d"	Preservation; avoid w/20-ft buffer
50-30-11-2091	Historic habitation foundation	Not significant	Not significant	No further work
50-30-11-2092	Historic septic, outhouse and cesspool	D	"d"	No further work
50-30-11-2093	Plantation ditch	Not significant	Not significant	No further work
50-30-11-2094	Pre-/Post-Contact habitation terrace	D	"d" and "e"	Preservation; avoid w/20-ft buffer
50-30-11-2095	Pre-Contact scatter, activity area	D	"d" and "e"	No further work
50-30-11-2096	Historic ditch	Not significant	Not significant	No further work
50-30-11-2097	Historic ditch	Not significant	Not significant	No further work
50-30-11-2103	Historic structural foundations, industrial complex	D	"d"	Preservation, educational signage

Date: 01/21/14 CSH Job Code: NAWILIWILI 4

Submittal Sheet for Historic Preservation Review Filing Fees

State Historic Preservation Division

Department of Land and Natural Resources

Agency/Firm (Requesting Review): Cultural Surveys Hawai'i Inc.

Contact: David Shideler

Phone: (808) 262-9972 Fax: (808) 262-4950

Address: P.O. Box 1114 Kailua, HI 96734

Email: dshideler@culturalsurveys.com

Title of Report/Plan:

Final Archaeological Inventory Survey Report for the Nāwiliwili-Ahukini Bike Path Project, Federal Aid Project Number CMAQ-0700(57), Nāwiliwili, Kalapakī, and Hanamā'ulu Ahupua'a, Līhu'e District, Kaua'i, TMKs: [4] 3-5-01:4, 8, 27, 60, 83, 85, 102, 118, 128, 159, and, 160 por. and various rights-of-way between various plats (Altizer and Hammatt 2014)		
Island Kaua'i	**District** Līhu'e	**Ahupua'a** Nāwiliwili, Kalapakī, and H
TMK [4] 3-5-01:4, 8, 27, 60, 83, 85, 102, 118, 128, 159, and, 160 por. and various rights-of-way between various plats		
Acreage Inventoried		**Number of new sites inventoried**
6 linear miles		13 new (2 previously identified; 15 total)

Submittal Plan/Report Fee & Type: (All reports or plans submitted to the SHPD for review shall be accompanied by the appropriate fee in accordance with HAR§13-275-4 and §284-4).

____		Check if Report is a Re-Submittal (no fee charged)
X		Final Report with CD
____	$25	Literature Review & Field Check
____	$50	Archaeological Assessment
____	$150	Archaeological Inventory Survey Plan
____	$450	Archaeological, Architectural or Ethnographic Survey Report
____	$150	Preservation Plan
____	$25	Monitoring Plan
____	$150	Archaeological Data Recovery Plan
____	$250	Burial Treatment Plan
____	$100	Archaeological Monitoring Report, if resources reported
____	$450	Archaeological Data Recovery Report
____	$450	Ethnographic Documentation Report
____	$25	Burial Disinterment Report
____	$50	Osteological Analysis Report

RECEIVED
HISTORIC PRES. DIV.
DEPT OF LAND &
NATURAL RESOURCES
2014 JAN 24 P 12:13

Fee Total: 0.00 (make checks payable to "Hawaii Historic Preservation Special Fund")

For Office Use Only:

Date Received	Payment Method
	Cash $
	Check Check No:
Log No.	Receipt Issued:

U.S. Department of Transportation
Federal Highway Administration

Hawaii Federal-Aid Division

300 Ala Moana Blvd, Rm 3-306
Box 50206
Honolulu, Hawaii 96850
Phone: (808) 541-2700
Fax: (808) 541-2704

May 12, 2020

In Reply Refer To:
HDA-HI

Ms. Suzanne D. Case
State Historic Preservation Officer and Chairperson
Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, HI 96707

Subject: National Historic Preservation Act Section 106 Effect Determination
Nawiliwili – Ahukini Shared-Use Path Project
Lihue District (Puna Moku), Island of Kauai, Hawaii
Ahupuaa of Nawiliwili, Kalapaki, and Hanamaulu
Federal-aid Project Number: CMAQ-0700(57)
Tax Map Key(s): (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Waapa Roads; 3-2-04:1, 2, 3 & Waapa Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02: Kaana Street, Hardy Street, Rice Street, & Umi Street; 3-6-08: Waapa Road, Nawiliwili Stream; and 3-7-02: Ahukini Road

Dear Ms. Case:

The Federal Highway Administration (FHWA), in cooperation with the State of Hawaii Department of Transportation (HDOT) and the County of Kauai Department of Public Works (DPW), is planning the Nawiliwili – Ahukini Shared-Use Path project. In accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (2006), the FHWA requests the State Historic Preservation Officer's (SHPO) concurrence on the effect determination for the proposed improvements. The FHWA has made a no adverse effect determination for the proposed project.

This request is in follow up to previous correspondence dated April 3, 2013 and revises the previous determination of adverse effect to State Inventory of Historic Places (SIHP) Site No. 50-30-11-1845, the Nawiliwili Stream Railroad Bridge. The FHWA has determined that the proposed preservation and adaptive reuse of the bridge to carry a section of the shared-use path would have no adverse effect because all modifications to the original bridge structure would be reversible and would be mitigated through the application of historic preservation design guidelines developed in consultation with the State Historic Preservation Division (SHPD), Architectural Branch.

Description of the Undertaking and Area of Potential Effect

The County of Kauai DPW plans to develop a coastal shared-use path between Nawiliwili Park and Ahukini Landing in the Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae,* the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

For the proposed project, the Area of Potential Effect (APE) is determined to be all the proposed primary and secondary pathway corridors, as depicted on Figure 1 (enclosed). Historic properties identified within the APE are shown on Figure 2 (enclosed). In a letter dated March 29, 2012, HDOT requested SHPO concurrence with the APE, but no response from SHPO was received. SHPD issued a letter to FHWA dated August 28, 2012 (Log No.2012.2561, Doc. No. 1208RS56) which acknowledges the APE, and issued a letter to the project archaeologist, Mr. David Shideler of Cultural Surveys Hawaii, Inc. (CSH), dated January 21, 2014 (Log No.2013.6321, 2014.00187, Doc. No. 1401SL17) which also acknowledges the APE.

Steps Taken to Identify Historic Properties

To identify historic properties in the APE, the FHWA, HDOT, and County of Kauai DPW conducted background studies including archaeological inventory surveys, cultural impact assessment and architectural inventory survey; and conducted public meetings and individual consultations for the subject project with Native Hawaiian Organizations (NHOs) and other consulting parties in compliance with National Historic Preservation Act, Section 106. As part of the special studies, CSH archaeologists conducted background research including a review of previous archaeological studies on file at SHPD; review of documents at Hamilton Library of the University of Hawaii at Manoa, the Hawaii State Archives, the Mission Houses Museum Library, the Hawaii Public Library, and the Archives of the Bishop Museum; study of historic photographs at the Hawaii State Archives and the Archives of the Bishop Museum; and study of historic maps at the Survey Office of the Department of Land and Natural Resources. Historic maps and photographs from the CSH library were also consulted. In addition, Mahele records were examined from the Waihona Aina database (www.waihona.com).

Four studies were prepared to help identify historic properties within the APE, assess potential effects, and develop recommended mitigation measures.

Four key studies were prepared to identify historic properties in the APE:

a. An Archaeological Literature Review and Field Inspection Report (LRFI) was conducted for the entire APE.

b. A Cultural Impact Evaluation was conducted for the entire APE, including consultation with Native Hawaiian Organizations (NHOs) and cultural practitioners.

c. An Archaeological Inventory Survey (AIS) was conducted for the coastal alignment corridor between Ahukini Point and Ninini Point (portion of Segment A-1), including limited subsurface testing as necessary within the footprint of planned improvements involving ground disturbing activities (e.g. bridge abutments, culvert crossing). The SHPD accepted the AIS as final and approved the agreed-upon mitigation measures by letter to CSH dated January 21, 2014.

d. An Architectural Inventory Survey was prepared for two historic bridges located within the proposed alignments: (1) a historic railroad bridge over Nawiliwili Stream, and (2) Niumalu Bridge, a narrow, single-lane concrete bridge that spans Puali Stream.

These reports documented 26 historic properties in the APE, including pre-contact cultural resources and post-contact historical structures.

Summary of NHPA Section 106 Consultation Work

Native Hawaiian organizations, agencies, and community members were contacted in order to identify potentially knowledgeable individuals with cultural expertise and/or knowledge of the project area and vicinity. The organizations consulted include SHPD, the Office of Hawaiian Affairs (OHA), Native Hawaiian Historic Preservation Council (NHHPC), the Historic Hawaii Foundation (HHF), and Kauai Island organizations pertinent to the proposed project area including the Kauai/Niihau Islands Burial Council (KNIBC), Kauai Historical Preservation Review Commission (KHPRC), Kauai Historical Society (KHS), State Department of Land and Natural Resources Kauai Land Division, Kauai Paths, Royal Order of Kamehameha, Kaumualii Chapter No. 3, Kale O Kauai, and other county, state, and federal agencies, NHOs, and private parties.

Ten culturally knowledgeable individuals with long-term ties to the project area were interviewed for the NHPA Section 106 consultation process. These interviews resulted in the identification of two historic properties within the APE:

a. Paukini Rock (SIHP No. 50-30-11-1999) – Which will be avoided by the undertaking and is recommended to be included in interpretation /educational programming related to Nawiliwili Harbor.
b. Ahukini Landing (SIHP No. 50-30-11-2103) – Which is documented in the project AIS and is recommended to be included in interpretation /educational programming related to Ahukini Point.

Description of Historic Properties within the APE

There are 26 historic properties documented in the APE. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

Table 1
State Historic Sites Located in the APE

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	n/aAvoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work

Table 1
State Historic Sites Located in the APE

SIHP No.	Site Description	Recommendations
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

* Historic sites identified during the AIS of the coastal area between Ahukini Landing and Ninini Point.

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

SIHP No.	Site Description	Eligibility Criteria*	Aspects of Integrity
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

Undertaking's Effects on Historic Properties

Table 3 lists each eligible historic property and describes the basis for a determination of no adverse effect by the Undertaking on the qualities that make the historic property eligible.

Table 3
State Historic Sites Located in the APE and Basis for No Adverse Effect

SIHP No.	Site Description	Basis for No Adverse Effect
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	The existing structure will be preserved and will be adaptively reused for a segment of the path in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. The new bridge deck and railings proposed for the Undertaking will be designed to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	The undertaking will preserve this historic property through the implementation of a 20-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, and feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	The existing structures will be preserved and will be adaptively reused as a feature of interest and will be included in interpretive signage along the adjacent path segment. The path design will be integrated with the lighthouse facility in accordance with historic preservation design guidelines developed in consultation with the SHPD,

		Architectural Branch. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	The undertaking will preserve this historic property through the implementation of a 50-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, and materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer and interpretive signage. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.

Copies of Summaries Provided by Consulting Parties

Please see enclosed Attachment A for copies of consultation notifications meeting notes, and correspondence with consulting parties including letters from people and organizations requesting to be consulting parties and documentation of comments participants have had on the identification of historic properties in the APE.

Effect Determination

Based on our analysis, site observations, and consultation with the SHPD, KNIBC, OHA, the NHHPC, the KHPRC, the KHS, the HHF, county, state, and federal agencies, NHOs, and private parties, and the recommendations summarized in **Table 4** below, the FHWA has determined that the proposed undertaking has no adverse effect to historic properties identified within the APE.

Table 4

No Adverse Effect for the following historic properties within the APE

SIHP No.	Site Description	Recommendations
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

Mitigation Policies

The FHWA shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary

Network Routes" located in interior lands prior to the design and construction of those alignments.

2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
   a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
   b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
   c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
    a. Interpretive signage will address the themes of each of the historic sites identified near the project.
    b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
    c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
    d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.

2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

The HDOT and County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

Section 4(f) of the U.S. Department of Transportation Act of 1966

Section 4(f) of the U.S. Department of Transportation Act of 1966 established the requirement for the consideration of park and recreational lands, wildlife and waterfowl refuges, and historic sites in transportation project development. The law, now codified in 49 U.S.C. §303 and 23 U.S.C. §138, is implemented by the FHWA through 23 CFR 774.

Section 4(f) stipulates that the Federal Highway Administration (FHWA) and other U.S. DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply:

- There is a feasible and prudent avoidance alternative to the use of land; and the action includes all possible planning to minimize harm to the property resulting from such use; or
- The Administration determines that the use of the property will have a *de minimis* impact.

Under Section 4(f), the impacts of a transportation project on a historic site that qualifies for Section 4(f) protection may be determined to be *de minimis* if:

1. FHW has considered the views of any consulting parties participating in the consultation required by Section 106 of the NHPA;
2. The SHPO is informed of FHWA's intent to make a *de minimis* impact finding based on their written concurrence in the Section 106 determination of no adverse effect; and
3. The Section 106 process results in a determination of no adverse effect with the written concurrence of the SHPO.

Based on the above information, the FHWA is notifying SHPO of it's intent to make a *de minimis* impact based on SHPO's concurrence with the no adverse effect determination for all of the historic properties listed in **Table 4**.

The FHWA is requesting SHPO's concurrence with the no advers effect determination for the Nawiliwili – Ahukini Shared-Use Path project. If the SHPO objects to the no adverse effect determination, please inform us within 30 days of receipt of this letter. In the absence of a SHPO response by this date, the FHWA will assume the SHPO concurs with this determination and will proceed with the undertaking.

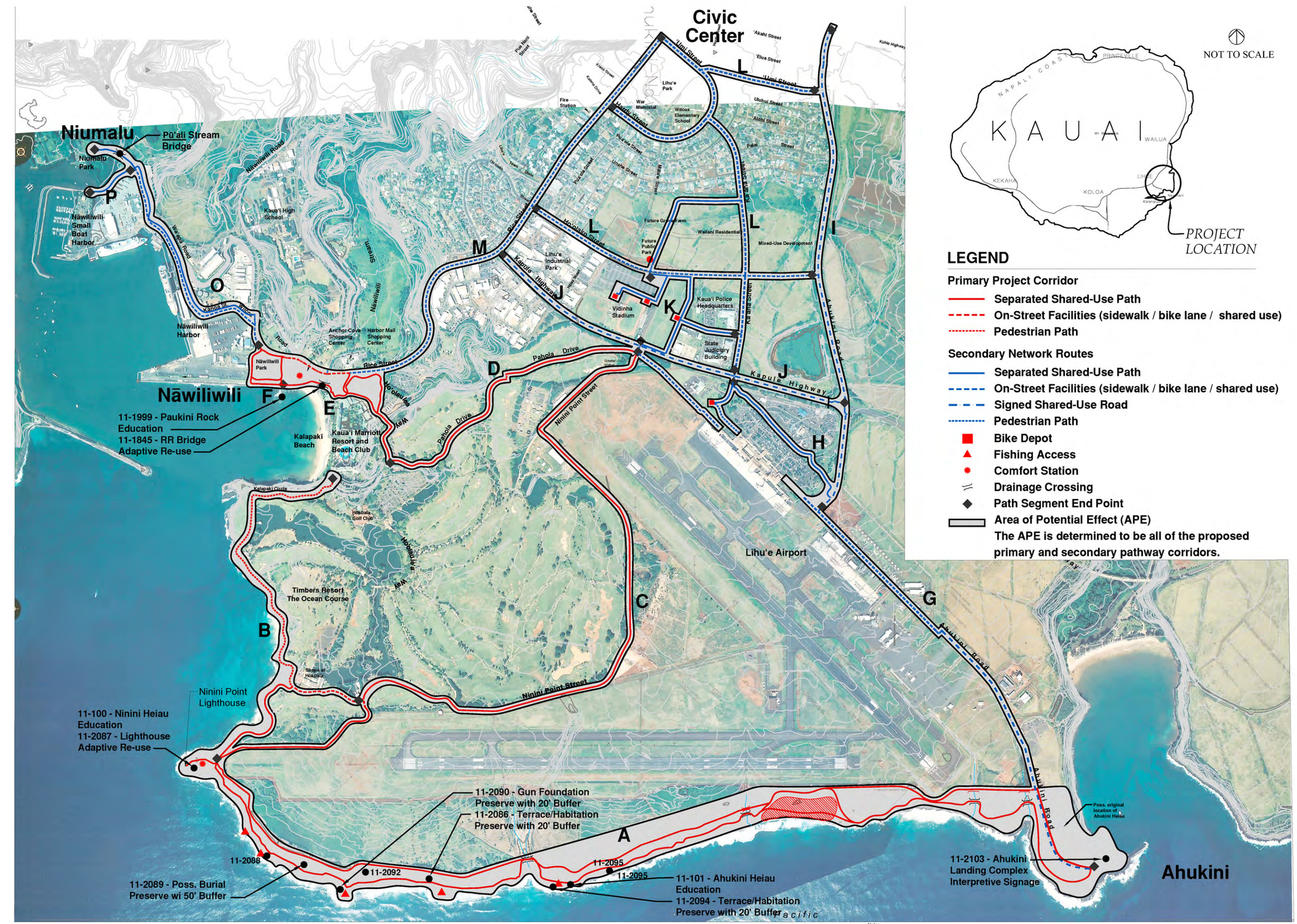
If you have any questions, please feel free to contact me at (808) 541-2316 or by email at meesa.otani@dot.gov. Thank you for your assistance.

Sincerely yours,

Meesa Otani
Environmental Engineer

Enclosures

cc: Emma Kawamoto, HDOT, HWY-DD
Misako Mimura, HDOT, HWY-DE
Doug Haigh, Kauai DPW, Building Division
Jim Niermann, R. M. Towill Corporation



LEGEND

Primary Project Corridor

- Separated Shared-Use Path
- On-Street Facilities (sidewalk / bike lane / shared use)
- Pedestrian Path

Secondary Network Routes

- Separated Shared-Use Path
- On-Street Facilities (sidewalk / bike lane / shared use)
- Signed Shared-Use Road
- Pedestrian Path
- Bike Depot
- Fishing Access
- Comfort Station
- Drainage Crossing
- Path Segment End Point
- Area of Potential Effect (APE)

The APE is determined to be all of the proposed primary and secondary pathway corridors.

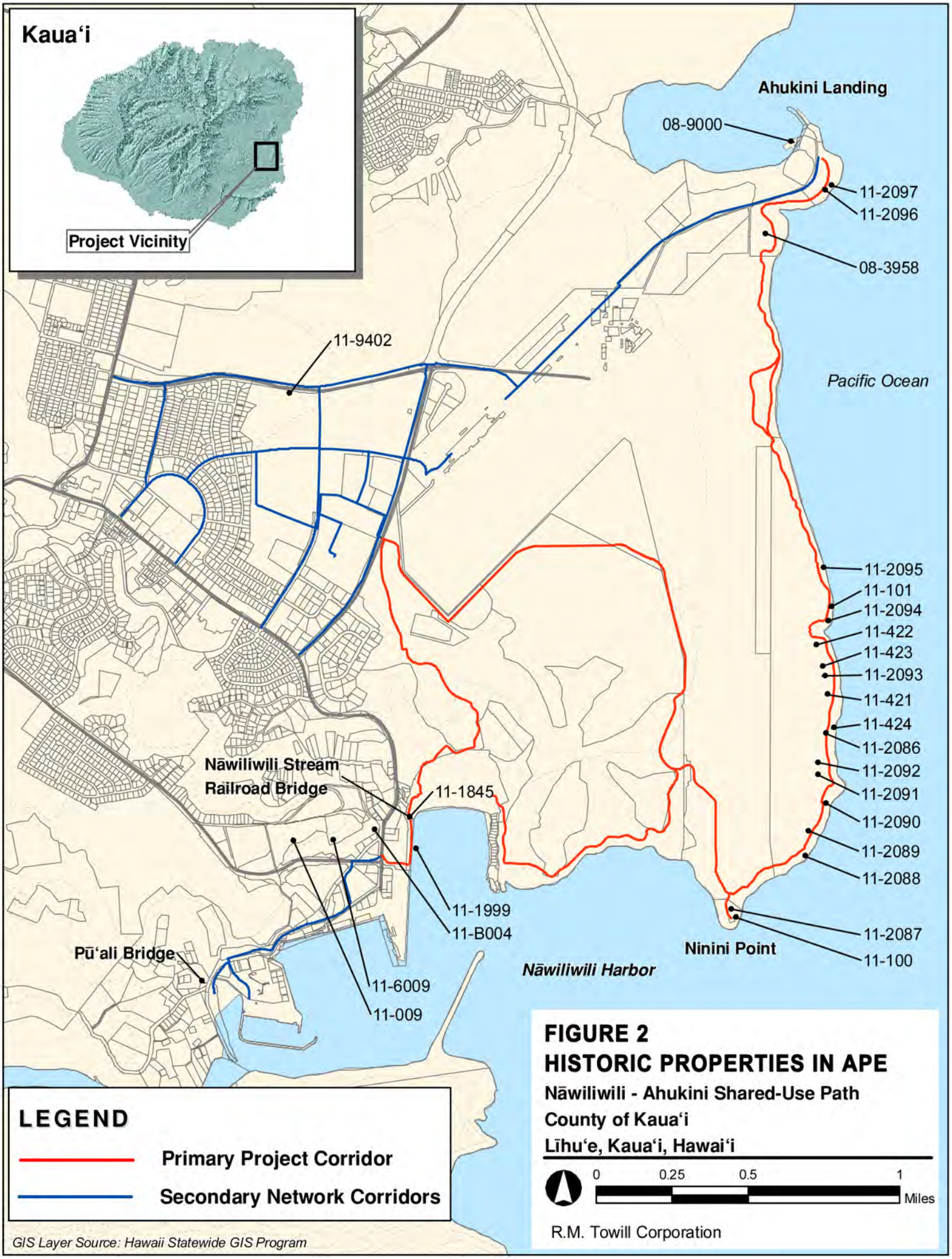
Nāwiliwili - Ahukini Shared-Use Path
County of Kaua'i
Līhue, Island of Kaua'i, Hawai'i

FIGURE 1 : APE - ROUTE ALTERNATIVES

Notes:
(1) Aerial photos not orthographically rectified. Photo of makai areas taken March 28, 2007. Photo of mauka area obtained from SOEST based on NOAA/NOS aerial photography by the Pacific Disaster Center mapping program. Image taken between March and July 2000.
(2) Topographic data digitized from 1972 aerial topo agricultural maps by R. M. Towill Corporation.
(3) TMK data from State DBEDT GIS data set, manually scaled and rotated to best fit.
(4) Exhibit is for planning and discussion purposes only, not for engineering design.

0 200 400 800 1200 Feet

R. M. Towill Corporation


Kaua'i
Project Vicinity
Ahukini Landing
08-9000
11-2097
11-2096
08-3958
11-9402
Pacific Ocean
11-2095
11-101
11-2094
11-422
11-423
11-2093
11-421
11-424
11-2086
11-2092
11-2091
11-2090
11-2089
11-2088
11-2087
11-100
Ninini Point
Nāwiliwili Harbor
Nāwiliwili Stream
Railroad Bridge
11-1845
11-1999
11-B004
11-6009
11-009
Pū'ali Bridge
LEGEND
Primary Project Corridor
Secondary Network Corridors
FIGURE 2
HISTORIC PROPERTIES IN APE
Nāwiliwili - Ahukini Shared-Use Path
County of Kaua'i
Līhu'e, Kaua'i, Hawai'i
0
0.25
0.5
1
Miles
R.M. Towill Corporation
GIS Layer Source: Hawaii Statewide GIS Program

DAVID Y. IGE
GOVERNOR OF
HAWAII

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
KAKUHIHEWA BUILDING
601 KAMOKILA BLVD., STE 555
KAPOLEI, HI 96707

June 12, 2020

IN REPLY REFER TO:
Log No.: 2020.01075
Doc. No.: 2006SH10
Archaeology
Architecture

Meesa T. Otani, Environmental Engineer
Federal Highways Administration
U.S. Department of Transportation
300 Ala Moana Boulevard
Room 3-306, Box 50206
Honolulu, Hawai'i 96850
Email: Meesa.Otani@dot.gov

Dear Meesa Otani:

SUBJECT: **National Historic Preservation Act (NHPA) Section 106 Review – Request for Concurrence with the Revised Effect Determination Nawiliwili – Ahukini Shared-Use Path Project Ref. No. HDA-HI, Federal Aid Project No. CMAQ-0700(57) Nawiliwili, Kalapaki, and Hanamaulu Ahupua'a, Lihue District, Island of Kaua'i TMK: (4) 3-2-002:001 and Niumalu Road, (4) 3-2-003 Niumalu and Waapa Roads; (4) 3- 2-004:001, 002, 003 and Waapa Road, (4) 3-5-001:004, 005, 008, 027, 102, 117, 118, (4) 3-5-002:002, (4) 3-6-002 Kaana Street, Hardy Street, Rice Street, and Umi Street, (4) 3-6-008 Waapa Road, Nawiliwili Stream, and (4) 3-7-002 Ahukini Road**

The State Historic Preservation Division (SHPD) received a letter dated May 12, 2020 from Federal Highway Administration (FHWA) to request the State Historic Preservation Officer's (SHPO's) concurrence with a revised effect determination for the Nawiliwili–Ahukini Shared-Use Path project on the island of Kaua'i. The SHPD received this submittal on May 12, 2020; FHWA granted a review-period extension to SHPD through June 18, 2020 (Email Correspondence Meesa Otani [FHWA] to Stephanie Hacker [SHPD]).

According to the subject letter, the County of Kauai Department of Public Works (DPW) plans to develop a coastal shared-use path between Nawiliwili Park and Ahukini Landing in the Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of Ke ala Hele Makalae, the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawaii Master Plan – Bike Plan Hawaii, and in the 2003 Bike Plan Hawaii update. The proposed HDOT project will receive funding from the Federal Highways Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y). The proposed project is subject to compliance with Section 106 of the NHPA and historic preservation review under Hawaii Revised Statutes (HRS) §6E-8.

The planned project consists of a 12-foot-wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan.

The FHWA's notes this letter comes as a follow up to previous correspondence dated April 3, 2013 and revises the previous determination of adverse effect due to impacts to State Inventory of Historic Places (SIHP) Site No. 50-30-11-1845, the Nawiliwili Stream Railroad Bridge. The FHWA has determined that the proposed preservation and adaptive reuse of the bridge to carry a section of the shared-use path would have no adverse effect because all modifications to the original bridge structure will be reversible and will be mitigated through the application of historic preservation design guidelines developed in consultation with the State Historic Preservation Division (SHPD), Architecture Branch.

The Area of Potential Effects (APE) has been determined to be all the proposed primary and secondary pathway corridors, as depicted on Figure 1 accompanying FHWA's letter; historic properties identified within the APE are shown on Figure 2.

To identify historic properties in the APE, the FHWA, HDOT, and the County of Kauai DPW conducted background studies including archaeological inventory surveys, cultural impact assessment and architectural inventory survey and conducted public meetings and individual consultations for the subject project with Native Hawaiian Organizations (NHOs) and other consulting parties in compliance with Section 106. A total of 26 historic properties were identified within the APE, 9 of which were determined to be significant per Hawai'i Administrative Rules (HAR) §13-275-6 as well as eligible to be listed on the National Register for Historic Places (NRHP).

The historic properties determined significant under Chapter 6E and eligible for listing on the NRHP are listed in the table below (derived from FHWA's letter) along with FHWA's basis for why the criteria of *adverse effect* were found inapplicable as well as the proposed actions to avoid, minimize, and mitigate adverse effects.

SIHP No.	Description	Basis for no adverse effect
50-30-11-1845	Nawiliwili Stream Railroad Bridge. Constructed 1931.	The existing structure will be preserved and will be adaptively reused for a segment of the path in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. The new bridge deck and railings proposed for the Undertaking will be designed to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, feeling and association.
50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.
50-30-11-2086	Pre-contact Terrace Habitation	The undertaking will preserve this historic property through the implementation of a 30- foot buffer during project implementation. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, and feeling.

SIHP No.	Description	Basis for no adverse effect
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	The existing structures will be preserved and will be adaptively reused as a feature of interest and will be included in interpretive signage along the adjacent path segment. The path design will be integrated with the lighthouse facility in accordance with historic preservation design guidelines developed in consultation with the SHPD, Architectural Branch. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds; possible burial	The undertaking will preserve this historic property through the implementation of a 50-foot buffer. On this basis, the Undertaking will not diminish the integrity of the historic property's location, setting, and materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	The undertaking will preserve this historic property through the implementation of a 20-foot buffer and interpretive signage. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historical terrace habitation	The undertaking will preserve and avoid this historic property with a 20-foot buffer. Information about this historic property will be included in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	The undertaking will avoid this historic property and will include information about the property in interpretive signage along the nearby path segment. On this basis, the Undertaking will not diminish the integrity of the historic property's location, design, setting, materials, feeling and association.

FHWA also provided the following text describing the proposed treatment of the identified historic properties:

The FHWA has committed to the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey
   1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) §13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
   2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR §13-275. Unless the SHPD objects [to the proposed mitigation commitments specified in the AIS] within 45 days after receipt of such Plan [sic; AIS], the County DPW shall ensure that its [proposed mitigation] provisions are implemented.

B. Archaeological Monitoring Plan
   1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR §13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.

2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements: a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties
1. To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities.
2. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2089, a possible burial mound, the County DPW shall provide a 50- foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.
6. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR §13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945
1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge."

6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge
1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087
1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains
1. The County DPW shall prepare appropriate documents as required to address the treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR §13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan/Interpretive Plan
1. The County DPW shall prepare a Preservation Plan in accordance with HAR §13-277 for SIHP 50-30-11-2086 (habitation terrace), SIHP Site 50-30-2089 (possible burial mound), SIHP 50-30-11-2090 (gun emplacement foundation), SIHP 50-30-11-2094 (pre/post-contact habitation terrace), and SIHP 50-30-11-2103 (industrial complex).
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions: a. Interpretive signage will address the themes of each of the historic sites identified near the project. b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path. c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage. d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities
   1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
   2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 "Procedures for Property Treatment of Burial Sites and Human Skeletal Remains."

The SHPD has determined the proposed alterations to the Nawiliwili Stream Railroad Bridge will be differentiated from the old; therefore, the new bridge deck and railings are compatible with the essential form and integrity of the historic property and its environment will be unimpaired. The design, workmanship, materials, location, setting, association, and feeling of the proposed project will not affect the integrity of the historic property. The historic character of the property will be retained and preserved. Additionally, the SHPD notes the alterations and additional interpretive signage along the path will comply with the *Secretary of the Interior's Standards for Preservation* guidelines.

The FHWA has determined proposed undertaking will not diminish the integrity of the nine historic properties listed in the table above and therefore the proposed project will result in *no adverse effect*. **The SHPO concurs.**

The SHPD looks forward to receiving a draft supplemental archaeological inventory survey report meeting the requirements of HAR §13-276-5, an archaeological monitoring plan meeting the requirements of HAR §13-279-4, and a draft preservation plan meeting the requirements of HAR §13-277 for SHPD review and acceptance prior to the start of project work. Additionally, the SHPD looks forward to the opportunity to comment on the proposed interpretive signage.

The SHPD acknowledges the FHWA's notification of its intent to make a *de minimis* impact based on SHPO's concurrence with the no adverse effect determination for all the historic properties.

Please contact Julia Flauaus, Architectural Historian, at (808) 692-8029 or julia.flauaus@hawaii.gov for matters regarding architectural resources. Please contact Stephanie Hacker, Historic Preservation Archaeologist IV, at Stephanie.Hacker@hawaii.gov or at (808) 692-8046 for matters regarding archaeological resources or this letter.

The FHWA, DPW, and the HDOT are the offices of record for this undertaking. Please maintain a copy of this letter with your environmental review record for this undertaking.

Aloha,

Alan Downer

Alan S. Downer, PhD
Administrator, State Historic Preservation Division
Deputy State Historic Preservation Officer

cc: Doug Haigh, Kauai DPW (DHaigh@kauai.gov)
Emma Kawamoto, HDOT (Emma.g.Kawamoto@hawaii.gov)
Misako Mimura, HDOT (Misako.k.Mimura@hawaii.gov)
Julia Flauaus, SHPD (Julia.Flauaus@hawaii.gov)

DEPARTMENT OF PUBLIC WORKS
TROY K. TANIGAWA, P.E., ACTING COUNTY ENGINEER
BOYD GAYAGAS, DEPUTY COUNTY ENGINEER

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

September 28, 2021

TO: Alan Downer PhD, Administrator
State Historic Preservation Division
Department of Land and Natural Resources
601 Kamokila Boulevard, Suite 555
Kapolei, Hawai'i 96707
via: https://shpd.hawaii.gov/hicris

SUBJECT: Historic Preservation Review , Chapter 6E-8, Hawai'i Revised Statute (HRS)
Nāwiliwili – Ahukini Shared-Use Path Project
Līhu'e District (puna moku), Island of Kaua'i, Hawai'i
Ahupua'a of Nāwiliwili, Kalapakī , and Hanamā'ulu
Federal Aid Project Number: CMAQ-0700 (57)
Tax Map Key Numbers: (4) 3-2-02:1 & Niumalu Road; 3-2-03: Niumalu & Wa'apā Roads; 3-2-04:1, 2, 3 & Wa'apā Road; 3-5-01:4, 5, 8, 27, 102, 117, 118; 3-5-02:2; 3-6-02:Kā'ana Street, Hardy Street, Rice Street, & 'Umi Street; 3-6-08: Wa'apā Road, Nāwiliwili Stream; and 3-7-02: Ahukini Road

Dear Mr. Downer,

The County of Kaua'i, Department of Public Works (DPW) submits this letter to provide a project summary for the State Historic Preservation Division (SHPD) review per Hawai'i Revised Statutes (HRS) Chapter 6E-8 in connection with the Nawiliwili – Ahukini Shared-Use Path project.

The DPW, plans to develop a coastal, shared-use path between Nawiliwili Park and Ahukini Landing in Lihue District on the island of Kauai. A path section is also proposed between Nawiliwili Park and Niumalu Park. Additional path sections would connect the coastal path to the Lihue Civic Center and Lihue Airport. The project is a key section of *Ke ala Hele Makalae,* the 16-mile Nawiliwili to Anahola Shared-Use Path proposed in the 1994 *State of Hawaii Master Plan – Bike Plan Hawaii*, and in the 2003 *Bike Plan Hawaii* update.

The planned project consists of a 12-foot wide concrete shared-use coastal path. Bike lane and sidewalk improvements to existing and planned street corridors would provide additional connections through urban areas. Path improvements and amenities include separated crossings at major drainage ways, educational and informational signage, a comfort station at Ninini Point, adaptive reuse of the Nawiliwili Stream Railroad Bridge, and various improvements at Nawiliwili Park to be coordinated with the park's master plan. The project would benefit residents and visitors by preserving coastal access, creating a new safe recreational resource and supporting alternative modes of transportation to connect key community centers, including residential neighborhoods, commercial centers, parks, and the airport and harbor.

Per HRS Chapter 6E-8 and Hawai'i Administrative Rules (HAR) Chapter 13-275, the DPW offers the following documentation:

I. IDENTIFICATION AND INVENTORY OF HISTORIC PROPERTIES

There are 26 historic properties documented in the project area. The historic properties are listed by SIHP number in **Table 1** along with recommended mitigation measures that were developed in consultation with SHPD and consulting parties as part of the NHPA 106 consultation process:

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-009	Kuhiau Heiau. Nawiliwili; A large paved *heiau*, whose enclosure covered an area of about four acres; long since destroyed.	Previously documented. No further work. Describe in interpretive display at Nawiliwili Park
50-30-11-100	Ninini Heiau. near Nawiliwili Harbor Light. Previously destroyed.	Documented as destroyed by Thrum (in Bennett 1931). Describe in interpretive display.
50-30-11-101	Ahukini Heiau, near Ahukini Point midway between Ninini Point and Ahukini Landing. Previously recorded foundations not re-located, likely destroyed by erosion and Hurricane Iniki in 1993.	Describe in interpretive display.
50-30-11-421	Midden Scatter of marine shells	Previously recorded. No further work.
50-30-11-422*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-423*	Remnant/probable cattle wall	Previously recorded and site updated No further work.
50-30-11-424	Oval Terrace Alignment	Previously recorded. No further work.
50-30-11-1845	Historic Railroad Bridge	Preserve existing structure. Retrofit new deck and railings as part of shared-use path project.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-11-6009	Nawiliwili Cemetery	Avoid.
50-30-08-3958	Historic remnants of a piggery.	Previously recorded. No further work.
50-30-08-9000	Ahukini Landing	Avoid
50-30-08-9402	Historic Building Remnant at Site of Radio Station KIVM	Avoid
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087*	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.

Table 1
State Historic Sites Located in the Project Area

SIHP No.	Site Description	Recommendations
50-30-11-2088*	Military Concrete slab. The base of a communications tower.	Data recovered and recorded. No further work.
50-30-11-2089*	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090*	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2091*	Historic habitation foundation.	Data recovered and recorded. No further work
50-30-11-2092*	Historic Septic Outhouse and cesspool	Data recovered and recorded. No further work
50-30-11-2093*	Plantation-era ditch drainage.	Data recovered and recorded. No further work.
50-30-11-2094*	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2095*	Pre-contact Scatter Activity area	Data recovered and recorded. No further work.
50-30-11-2096*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2097*	Historic Drainage Ditch	Data recovered and recorded. No further work.
50-30-11-2103*	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

***** Historic sites identified during the archaeological inventory survey of the coastal area between Ahukini Landing and Ninini Point.

II. EVALUATION OF SIGNIFICANCE

Of the 26 documented historic properties in the APE, the following 9 properties listed in **Table 2** retain aspects of historic integrity that qualify the property for the National Register:

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

SIHP No.	Site Description	Eligibility Criteria*	Aspects of Integrity
50-30-11-1845	Historic Railroad Bridge. Constructed 1931.	A, C	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	A, B, D, E	Location, setting, feeling and association.

Table 2
State Historic Sites in the APE that Retain Aspects of Historic Integrity

50-30-08-9000	Ahukini Landing. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.
50-30-11-2086*	Pre-contact Terrace Habitation	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence). Constructed 1933.	C, D	Location, design, setting, materials, workmanship, feeling and association.
50-30-11-2089	Historic Mounds. Possible Burial.	D, E	Location, setting, materials.
50-30-11-2090	Military. Structural foundation for gun emplacement. Constructed in 1942.	D	Location, design, setting, materials, workmanship, feeling.
50-30-11-2094	Pre-contact/historic terrace habitation.	D, E	Location, design, setting, materials, workmanship, feeling.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp. Constructed prior to 1927.	D	Location, design, setting, materials, feeling and association.

* Eligibility Criteria for inclusion on the National Historic Register (Criteria A through D) and on the State of Hawaii Register of Historic Places (Criterion E).

III. EFFECT DETERMINATION

DPW offers a "effect, with proposed mitigation commitments" determination for this project.

IV. PROPOSED MITIGATION COMMITMENTS

The DPW will commit to the following measures to avoid, minimize and mitigate any significant impacts to the historic properties along Nāwiliwili-Ahukini Shared-Use Path. Mitigation measures for specific historic sites are summarized in **Table 3**. Additional commitments are listed below.

Table 3

No Adverse Effect for the following historic properties within the APE

SIHP No.	Site Description	Mitigation Commitment
50-30-11-1845	Nawiliwili Stream Railroad Bridge	Preserve existing structure. Adaptive reuse in accordance with historic preservation design guidelines

		developed in consultation with the SHPD, Architectural Branch. Design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without damaging the existing bridge structure.
50-30-11-1999	Paukini Rock (in Nawiliwili Bay)	Previously recorded. Describe in interpretive display.
50-30-08-9000	Ahukini Landing	Avoid. Refer to SIHP # 50-30-11-2103 below.
50-30-11-2086*	Pre-contact Terrace Habitation	Preservation. Avoid with a 20-foot buffer.
50-30-11-2087	Historic Lighthouse and associated habitation (caretaker's residence).	Preserve remaining structure. Adaptive re-use of the site and educational signage.
50-30-11-2089	Historic Mounds. Possible Burial.	Preserve in place. Avoid site by establishing a 50-foot buffer.
50-30-11-2090	Military. Structural foundation for gun emplacement.	Preserve in place. Avoid site by establishing a 20-foot protective buffer. Install educational signage.
50-30-11-2094	Pre-contact/historic terrace habitation.	Preservation. Avoid with a 20-foot buffer.
50-30-11-2103	Historic Industrial Complex: Ahukini Landing, Ahukini Terminal and Railway Co. Station, Standard Oil Facility, Ahukini Camp	Install educational signage.

The DPW shall ensure that the following measures are implemented to avoid and minimize potential impacts to archaeological, cultural, and historic resources:

A. Supplemental Archaeological Inventory Survey

1. The County DPW shall prepare a Supplemental Archaeological Inventory Survey (AIS), in accordance with Hawaii Administrative Rules (HAR) 13-13-276, for the "Secondary Network Routes" located in interior lands prior to the design and construction of those alignments.
2. The AIS shall be submitted by the County DPW, after review by the FHWA and HDOT, to the SHPD for review, including opportunity for public comment, in accordance with HAR 13-13-275. Unless the SHPD objects within 45 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

B. Archaeological Monitoring Plan

1. The County DPW shall develop an archaeological monitoring plan (AMP), in accordance with HAR 13-13-279, with a combination of on-site and on-call monitoring during all ground-disturbing activities related to the Undertaking.
2. If determined to be necessary by the SHPD, a supplemental AMP will be prepared for future work to construct secondary path alignments, based on the findings of a supplemental AIS to be prepared for those secondary alignments.
3. The AMP shall include provisions for addressing burial treatment that are to be implemented in the event of an inadvertent find during construction activities.
4. The AMP will be developed and implemented by a qualified archaeologist, meeting the Secretary of the Interior's Professional Qualifications Standards for Archeology (Federal Register, Vol. 48, No. 190, page 44738-9).
5. The AMP will include the following major elements:
    a. Archaeological monitoring provisions and procedures to be implemented during the course of the Undertaking's implementation; and
    b. Specific levels of archaeological monitoring determined to be appropriate for each path section, and
    c. A follow-up monitoring report for the Undertaking shall be submitted to the SHPD. The monitoring report, containing the location and description of any human burial remains discovered during the course of the Undertaking, shall remain confidential and the precise location data may be provided in a separate confidential index.
6. The AMP shall be submitted by the County DPW, after review by HDOT and FHWA, to the SHPD for a 30-day review. Unless the SHPD objects within 30 days after receipt of such Plan, the County DPW shall ensure that its provisions are implemented.

C. Mitigation Measures for Historic Properties

To reduce the potential for adverse effects on historic properties, the County DPW shall ensure that the following mitigation measures are incorporated in the design of the Undertaking and in effect prior to commencement of ground disturbing activities:

1. For State Inventory of Historic Places (SIHP) Site 50-30-11-2086, a pre-contact habitation terrace, the County DPW shall provide a 30-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
2. For SIHP Site 50-30-2089, a possible burial mound, the County DPW shall provide a 50-foot preservation buffer in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
3. For SIHP Site 50-30-11-2090, a World War II era military gun emplacement related to the defense of Kauai Island, the County DPW shall provide a 20-foot preservation buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
4. For SIHP Site 50-30-11-2094, a pre-contact habitation terrace, the County DPW shall provide a 20-foot buffer and educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.
5. For SIHP Site 50-30-11-2103, a historic industrial complex at Ahukini Point, the County DPW shall provide educational signage in accordance with a Preservation Plan prepared in compliance with HAR 13-13-277 and approved by SHPD.

D. Adaptive Reuse of Nawiliwili Stream Railroad Bridge, SIHP Site 50-30-11-1945

1. The County DPW shall consult with the SHPD during the design phase of the

Undertaking to ensure that the adaptive reuse of the bridge complies with historic preservation design criteria approved by the SHPD Architectural Branch.
2. The County DPW shall design and construct the new bridge deck and railings proposed for the Undertaking to be independent of the existing bridge such that the new bridge components can be removed, if necessary, without doing major damage to the existing bridge structure.
3. The KHPRC and HHF shall be given the opportunity to provide comments on the design of proposed modifications to Nawiliwili Stream Railroad Bridge at the preliminary and pre-final stages.
4. During right-of-way certification and land acquisition for the Undertaking, the County DPW shall conduct research to determine ownership of the Nawiliwili Stream Railroad Bridge and approaches, including a title search, Land Commission Award research, review of County files related to the bridge and related easements, and consultation with the Lovell ʻOhana regarding unrecorded easement documents.
5. The County DPW shall replace all references to "Duke's Bridge" in the project documentation with "Nawiliwili Stream Railroad Bridge".
6. Prior to undertaking modifications to the Nawiliwili Stream Railroad Bridge, the County DPW shall prepare Historic American Engineering Record (HAER) or Historic American Building Survey (HABS) documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD. HAER or HABS documentation will be submitted to SHPD for review and forwarded to the National Park Service for inclusion in the Library of Congress.
7. The County DPW shall develop interpretive signage for the Nawiliwili Stream Railroad Bridge in accordance with the Interpretive Plan described below in item H.

E. Mitigation for Pūʻali (Niumalu) Bridge

1. The County DPW shall consult with the SHPD during the design phase of the Undertaking to ensure that an adequate buffer is maintained between the Pūʻali (Niumalu) Bridge and a new, shared-use path bridge.
2. Prior to undertaking modifications to the Pūʻali (Niumalu) Bridge, the County DPW shall prepare HAER or HABS documentation to supplement the *Architectural Inventory Survey and National Register Eligibility Evaluation for Nawiliwili Stream Railroad Bridge and Niumalu Bridge, Island of Kauai* final report dated July 2009, if deemed appropriate by the architectural branch staff of the SHPD.

F. Design Review for Proposed Comfort Station near Ninini Point Lighthouse, SIHP Site 50-30-11-2087

1. The County DPW shall consult with the SHPD during development of design plans for a proposed comfort station at the former site of the Ninini Point Lighthouse caretaker's house to determine appropriate design of structures.
2. The SHPD, KHPRC and HHF shall be given the opportunity to provide comments on the design of the proposed comfort station at the preliminary and pre-final stages.
3. The County DPW shall develop educational signage for Ninini Point in accordance with the Interpretive Plan described below in item H.

G. Treatment of Burial Sites and Human Remains

1. The County DPW shall prepare appropriate documents as required to address the

treatment of any burials or other human remains encountered in the course of this project.
2. Documentation concerning the treatment of burials or human remains shall be prepared and processed with the SHPD and KNIBC in accordance with HAR 13-13-300.
3. The pertinent provisions of any such documents shall be executed prior to the completion of the undertaking.

H. Preservation Plan / Interpretive Plan

1. The County DPW shall prepare a Preservation Plan in accordance with HAR 13-13-277 for SIHP 50-30-11-2086 – habitation terrace, SIHP Site 50-30-2089 - possible burial mound, SIHP 50-30-11-2090 – gun emplacement foundation, SIHP 50-30-11-2094 – pre/post-contact habitation terrace, and SIHP 50-30-11-2103 – industrial complex.
2. The Preservation Plan shall address interim and long-term preservation and educational and interpretive signage to be provided along multi-use path. Proposed interim preservation measures for the four sites will be submitted to SHPD for review and approval prior to the initiation of ground altering activities within the APE.
3. The County DPW shall consult with the SHPD, KHPRC, HHF, the Kauai Path organization and Native Hawaiian organizations who actively participated in the NHPA Section 106 consultation process in developing the interpretive signage associated with this Undertaking. Interpretive signage will be developed under the following conditions:
   a. Interpretive signage will address the themes of each of the historic sites identified near the project.
   b. Interpretive signage and programming may be developed in stages for various segments of the multi-use path.
   c. The SHPD will have 60 days from receipt of the submitted interpretive signage materials to review, revise, and approve the proposed signage.
   d. Development and implementation of interpretive signage improvements can proceed concurrently or after construction of improvements under this Undertaking.
4. The Preservation Plan shall be submitted to the SHPD for review and approval prior to implementation.

I. Mitigation during Construction Activities

1. If cultural materials are discovered during construction, all earth-moving activity within and around the immediate discovery area will be diverted until a qualified archaeologist can assess the nature and significance of the find.
2. If human remains are discovered, Hawaii Administrative Rules Title 13. Subtitle 13, Chapter 300 states that further disturbances and activities shall cease in any area or nearby area suspected to overlie remains, and SHPD and Police Department will be contacted. The appropriate process would then proceed in conformance with Hawaii Administrative Rules §13-300 Subchapter 4 “Procedures for Property Treatment of Burial Sites and Human Skeletal Remains.”

The County of Kauai will prevent the disturbance or taking of any historic property or resource to the extent possible by instituting these mitigation measures and enforcing their implementation by contractors.

V. FEDERAL FUNDING

The proposed project will be funded from a combination of Federal and County funds. The project will receive funding from the Federal Highway Administration (FHWA) and is therefore a federal undertaking as defined in 36 CFR 800.16(y).

Consultation under Section 106 of the National Historic Preservation Act (NHPA) has been completed for the project. The SHPO concurred with FHWA's finding of "no adverse effect" determination in a letter dated June 12, 2020 (Log No.: 2020.01075, Doc. No.: 2006SH10).

Sincerely,

Troy K. Tanigawa
Acting County Engineer

cc: Emma Kawamoto , HDOT

Section VI
Volume II Exhibits:

Exhibit 18
HRS 343 EA with Appendices

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of Class IV Zoning Permit, Use Permit, Special Management Use Permit, and Shoreline Setback Variance to allow the construction of the Nāwiliwili-Ahukini Shared-Use Path.
Permit Application Nos.	Class IV Zoning Permit Z-IV-2023-10 Use Permit U-2023-7 Special Management Area Use Permit SMA(U)-2023-10 Shoreline Setback Variance SSV-2023-1
Name of Applicant(s)	COUNTY OF KAUA'I, APPLICANT R.M. TOWILL CORPORATION, AUTHORIZED AGENT

II. PERMIT INFORMATION

PERMITS REQUIRED	
☒ **Use Permit**	Pursuant to Article 11, Section 8-11.3 of the KCC, 1987 as amended, a Use Permit is required to allow any development, structures or uses within the Special Treatment District (ST).
☐ **Project Development Use Permit**	
☒ **Variance Permit**	Pursuant to Section 8-27.9 of the KCC (1987), a Shoreline Setback Variance Permit is required to allow a prefabricated bridge within the shoreline setback area.
☐ **Special Permit**	
☒ **Zoning Permit Class** ☒ IV ☐ III	Pursuant to Section 8-3.1 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement in applying for a Use Permit.
☒ **Special Management Area Permit** ☒ Use ☐ Minor	Pursuant to Section 205A of the Hawaii Revised Statutes (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, a SMA Use Permit is required as defined in Section 7.3(C) of the SMA Rules and Regulations where the Director finds that the proposal (1) is a "Development" as defined in Section 1.4F; and (2) is in excess of $500,000.
AMENDMENTS	
☐ **Zoning Amendment**	

☐ General Plan Amendment	
☐ State Land Use District Amendment	

Date of Receipt of Completed Application: March 15, 2023
Date of Director's Report: April 26, 2023
Date of Public Hearing: May 9. 2023
Deadline Date for PC to Take Action (60TH Day): June 25, 2023

III. PROJECT DATA

PROJECT INFORAMTION			
Parcel Location:	The proposed shared-use path traverses through various parcels between Nāwiliwili Park, along the eastern coastal area of Ninini Point, to Ahukini Landing back up to Kapule Highway (See Section VI, Exhibit 1, Project Location Map).		
Tax Map Key(s):	(4) 3-5-001:005, 008, 009, 092, 102, 158, 160; (4) 3-7-002:999	**Area:**	967.48 acres (total)
ZONING & DEVELOPMENT STANDARDS			
Zoning:	Open (O), Industrial- General/ Special Treatment Public (IG-ST-P) Industrial-General (I-G), Conservation (CON), and Agriculture (A)		
State Land Use District:	Agricultural (A), Urban(U), Conservation (CON)		
General Plan Designation:	Natural, Transportation, Parks & Recreation		
Height Limit:	N/A		
Max. Land Coverage:	N/A		
Parking Requirement:	N/A		
Front Setback:	N/A		
Rear Setback:	N/A		
Side Setback:	N/A		
Community Plan Area:	Līhu'e Community Plan		
Community Plan Land Use Designation:	N/A		
Deviations or Variances Requested:	Shoreline Setback		

IV. LEGAL REQUIREMENTS

Section 8-3.1(f), KCC:	This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1 (f), relating to the provision of the Planning Director's report and recommendation on the subject

	proposal within sixty (60) days of the filing of a completed application. The application was received on March 15, 2023, and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
Public Hearing Date:	May 9, 2023

V. PROJECT DESCRIPTION AND USE

The proposed project is a key section of *Ke Ala Hele Makālae*, a sixteen (16) mile Nāwiliwili to Anahola Shared-Use Path that was initially proposed in the 1994 State of Hawai'i Master Plan-Bike Plan Hawai'i, and in the 2003 Bike Plan Hawai'i update. The project is being set in phases: A, B1, B2, B3, and B4.

Phases B1, B2, B3, and B4 are not included in these application's request for approval, the proposed action of this application is for Phase A only. Phase A of the Nāwiliwili-Ahukini Shared-Use Path which consists of the Segments A, C, E, F, G and H.

Segment A Coastal Path Alignment's proposed route is approximately 19, 350 linear feet (LF), of which 17,000 LF is located within the Special Management Area (SMA). The route runs through Ahukini Landing to Ninini Point lighthouse to Ninini Point Street. This segment will be constructed as ten (10) to twelve (12) foot wide concrete walks. The path alignment was selected to take advantage of the natural grade to meet American with Disabilities Act (ADA) accessibility standards for slopes with minimal ground disturbance and to related costs. The path along Segment A and the road will be separated as necessary by means of bollards constructed out of boulder/ timber placement, and concrete, or any physical barrier to deter motor vehicle access on the concrete path. Motor vehicle access shall be permitted on the exiting dirt road shall remain. (See Supplemental Information, Part B., Figure 1-Path Cross Section). Only a few select areas for access to fishing will be allowed to be accessed by motor vehicle (See Section VII, Exhibit 5-Site Photos). All other fishing areas would still be accessible on foot.

As represented, the path will cross and impact four (4) drainage ways. As noted on Section VII, Exhibit 6-Special Management Area Map, drainage 1 and 2 are outside of the SMA Area. Improvements to drainageways 1 and 2 would remain as-is or be widened to accommodate the width of the path. It would be determined at such time the design becomes finalized. Drainageway 3 is located within the SMA area and improvements to this area will include a prefabricated bridge that would span, approximately 140 feet in length. The bridge would provide 8 to 12 feet of clear travel width. Drainageway 4 is also located within the SMA area. The existing culvert will be widened on the mauka side to accommodate grading work as well as construction of an eight (8) to twelve (12) foot wide path segment along the makai side of the existing dirt road corridor. The widening will require grading, fill, and construction of either a sloped bank or new retaining wall that would be approximately 100 feet in length and 5 to 8 feet in height situated along the mauka side of the existing road path. There will be a 42-inch-high safety railing and an extension of the existing box culvert inlet to the face of the new embankment.

Protective fencing will be installed along the path segment between Ninini Point and Timbers Resorts Hōkūala golf course to prohibit dogs from entering the property.

A total of ten (10) paved parking stalls and a comfort station will be constructed at Ninini Point Lighthouse with men's and women's facilities, drinking fountain, and lighting. The proposed parking lot and comfort station is located outside of the SMA area.
Gates will be installed at the path entrance at Ahukini Landing on the airport perimeter road and be shut in cases of an airport incident or security operation. Signs on the gate will notify the public of access restrictions due to airport or security operations.

Interpretive signage will be installed along the pathway to inform and educate the public of the history of Nāwiliwili Harbor, Hawai'ian settlement patterns, Ninini Heiau and Kuhiau Heiau, and development of Līhu'e Airport. Signage will also provide information on the natural history of the area, including surrounding landmarks and natural features such as unique flora and fauna and marine animals. Safety, orientation, conservation efforts, user's responsibilities, regulatory restrictions, and other relevant information.

No picnic pavilions, picnic tables, or bike racks will be installed along the path corridor between Ninini Point and Ahukini Landing.

Segments C, G, and H are part of the Shared-use Road Segment. The shared use road segments, improvements will consist of striping, and/or stenciling the existing paved roadways and installation of "shared-use road signage. A description of the respective segments are as follows:

- Segment C- Ninini Point Street from Segment A, connection to Kāpule Highway.
- Segment G- Ahukini Point to Līhu'e Airport.
- Segment H- Līhu'e to Kāpule Highway stenciling, signage and installation of Bike Storage lockers.

VI. APPLICANT'S REASONS/JUSTIFICATION

Please refer to the application.

VII. ADDITIONAL FINDINGS

1. The proposed path corridor goes through undeveloped, former agricultural land located along the coast makai of Līhu'e Airport. Existing land uses include undeveloped open space, fallow agricultural land, shoreline fishing, and recreational off-road vehicle activity.

2. The majority of the project is located in a plateau area makai of the Līhu'e airport within the ahupua'a of Kalapakī and Hanamā'ulu. The topography of the area is gently sloped downward west to east makai of the property. The coastline from Ahukini to Ninini consists of cliffs approximately twenty (20) to thirty (30) feet in height down to a rocky shoreline. The project traverses State Land Use Districts (SLUD) "Agricultural, Conservation, and Urban. The

project also traverses through General Plan (GP) designations of Parks and Recreation, Golf, Natural, Urban Center, and Transportation.

3. Segment A of the proposed development is shoreline property and within the 500 feet shoreline setback threshold. This segment will be subjected to the County's shoreline setback requirements contained in Chapter 8, Article 27 of the Kaua'i County Code (1987), as amended. The applicant submitted a Shoreline Setback Determination SSD-2023-39 and presented to the May 9th, 2023 Planning Commission. A Shoreline Variance is requested for the prefabricated bridge at drainageway No. 3, approximately seventy-five (75) feet away from the shoreline. The shoreline setback for this structure is a minimum of 100 feet.

4. The project site is within the extreme tsunami inundation area. The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) indicates that the project between Ahukini Landing and Ninini Point is designated as Zone "VE" Coastal High Hazard Area. The project corridor also passes through Zone "X" designation which has been determined to be outside the .2% annual chance of flooding.

5. Special Management Area (SMA)
   In addressing the issues of the Special Management Area and its objectives and policies, the following aspects will be considered and evaluated:

   a. Recreational Resources

   b. Cultural/ Historic Resources

   c. Scenic Resources

   d. Coastal Ecosystems

   e. Coastal Hazards

   Furthermore, the proposal does not:

   - Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough or lagoon;

   - Reduce the size of any beach or other area usable for public recreation;

   - Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers , and streams, within SMA; and

   - Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

6. Comprehensive Zoning Ordinance (CZO) Standards

The proposed development is subjected to standards prescribed in CZO Sections 8-7.3, 8-8.2, 8-9.2, and 8-11.4 respectively.

The proposed development is a shared-use path that traverses through several various County Zoning designations. The standards prescribed in the above-mentioned sections of the Comprehensive Zoning Ordinance (CZO) pertains to residential and commercial building standards such as setbacks, setback between buildings, and building heights to which none is applicable to the new development. However, the project involves the construction of a new comfort station that is situated within State Land Use Conservation. The County of Kaua'i has no land use jurisdiction within this area. Given the size of the parcels involved, the proposed development would not exceed land coverage within its respective County zoning districts.

7. Use Permit

   a. Pursuant to Article 11 of the Comprehensive Zoning Ordinance (CZO), Chapter 8 of the Kauai County Code (1987), all uses, structures, or development shall require a Use Permit for parcels with the County Zoning designation of Special Treatment-Public (ST-P). the Use Permit Procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations of a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit the uses if proper integration cannot be assured. Section 8-3.2 of the CZO specifies a Use Permit may be granted only if the Planning Commission finds that the use meets the following criteria:

      1) The use must be a compatible use;
      2) The use must not be detrimental to persons or property in the area;
      3) The use must not cause substantial environmental consequences; and
      4) The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.

8. Shoreline Setback Variance Permit
   Pursuant to Sec. 8-27.10 (a)(7) Criteria for approval of a variance.

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

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

In accordance with Section 8-3.3 of the Kaua'i County Code (KCC), a Variance shall be granted only if it is found that because of special circumstances applicable to the property, such as size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and precludes the property from reasonable use if the regulations are applied.

The Applicant is seeking to deviate from the shoreline setback requirement of 100 feet. The proposal involves a pre-fabricated bridge that would be located within 75 feet of the certified shoreline.

VIII. AGENCY COMMENTS

Agency comments are forthcoming.

IX. PRELIMINARY EVALUATION

In evaluating the applicant's request to construct the proposed development, the following should be considered:

1. General Plan
   The proposed development satisfies the following policies of the General Plan, as taken from Section 1.3 and 1.4:

   a. Section 1.3, entitled "VISIONS AND GOALS"

      1) Goal #1 "Sustainable Island" – The coastal shared- use path would meet the needs of current and future generations by supporting a multimodal transportation system other than the use of gas operated motorized vehicles that rely on non-renewable energy resources. The path would promote a chance for visitors and kama'āina to have access to Līhue's eastern coastal area.

      2) Goal #2 "Unique and Beautiful Place" – The proposed development is part of the overall *Ke Ala Hele Makālae* shared-use path system which would connect the Lydgate and Ahukini path segment with Līhu'e Town and the Līhu'e Airport. Consultation with the public and Kānaka Maoli community created conditions and mitigation measures to avoid sensitive cultural and historic sites located along the path's corridor and to provide educational and interpretive programs with signage along the path to highlight Native Hawai'i culture and heritage.

      3) Goal #3 "Healthy and Resilient People" – The proposed pedestrian and bicycle shared-use path would create a safe and pleasant connection of Kaua'i's eastern coastline to residential and commercial areas. The shared-use path would encourage a more physical lifestyle by providing a multimodal transportation system that provides an alternative to the use of gas operated vehicles.

      4) Goal #4" An Equitable Place, with Opportunity for All" – The shared-use path system, including the subject development, would support multimodal transportation that would reduce the reliance of gas operated vehicles. The path would link the Līhu'e and Kapa'a- Wailua area where economic opportunities by generating patronage and commerce at businesses located along other segments of the path.

   b. Section 1.4, entitled POLICIES TO GUIDE GROWTH"-

1) Policy #4 "Design Healthy and Complete Neighborhoods" – The proposed path is a key component to the linking of other path segments along the eastern coast of Kaua'i. The shared-use path system would provide connectivity of safe routes to walk or bike to existing town centers, residential areas, public services, and public transportation lines.

2) Policy #5 "Make Strategic Infrastructure Investments" – The proposed development aligns with and supports the Kaua'i General plan and Līhu'e Community Plan's vision:

   - Create a balanced, multi-modal transportation system that improves local and regional connectivity;
   - Create economic opportunities and equitable communities;
   - Improve island resiliency;
   - Preserve coastal environments and historic and cultural resources; and
   - Encourage active lifestyles and improve public health.

   The Kaua'i General Plan identifies and recommends the completion of the *Ke Ala Hele Makālae* path system.

3) Policy #6 "Reduce the Cost of Living" – The proposed shared-use path would help by providing alternative means of transportation besides the use of gas operated vehicles to connect communities to urban and suburban centers of the island. The option to walk, bicycle, or the use of other non-motorized devices (e.g.: skateboards), offers an affordable mode of transportation.

4) Policy #7 "Build a Balanced Multimodal Transportation System" – The proposed project would provide a multimodal transportation system for pedestrians and cyclists. The path facilities would provide access to residential areas, employment and service centers, and recreational areas to Kaua'i's coastlines.

5) Policy #8 "Protect Kauai's Scenic Beauty"- The project path would be designed to maintain visual quality and open space along the coastal area between Ninini point to Ahukini Landing. The proposed comfort station at Ninini Point will be sited and designed to blend in with the surrounding environment.

6) Policy #14 "Prepare for Climate Change" – The proposed shared-use path is designed to follow the existing natural land contours as much as possible to minimize grading and avoid disturbing existing drainage patterns. The concrete walkways would be constructed more than sixty (60) feet away from the certified shoreline. Any portion of the public shared-use path that is less than forty (40) feet away from certified shoreline shall not be reinforced and shall be cut in three (3) foot intervals.

7) Policy #15 "Respect Native Hawaiian Rights and Wahi Pana" – The applicant consulted Kūpuna with knowledge of any known on going traditional cultural practices and resources within the area. The applicant also conducted background studies, including an Archaeological Inventory Survey (AIS), a Cultural Impact Assessment (CIA), and a Ka

Pa'akai Analysis. All known cultural and historical resources within the project area would be avoided and left undisturbed by routing the path alignment away from sensitive cultural and historic resources. The proposed project also includes educational programming and installing interpretive signage along the project corridor to educate path users about cultural resources and practices and historic information of the project area.

8) Policy #16 "Protect Access to Kauai's Treasured Places" – The *Ke Ala Hele Makālae* coastal path was designed to preserve public access to shoreline areas. The subject development is a key segment of this system to connect East Kaua'i communities to Līhu'e Town. The path would preserve access to undeveloped coastal areas between Ahukini and Ninini Point. These areas are customarily used for fishing, gathering and recreational activities. The proposed path improvements would ensure that existing access to favored fishing sites along the coastal area is not hindered or restricted.

2. Native Hawaiian Traditional and Cultural Rights

The proposal involves a coastal, shared-use path between Nāwiliwili Park and Ahukini Landing that runs along the eastern coastline of Kaua'i. Additional path sections are being proposed between Nāwiliwili Park to Nīumalu Park and Līhu'e Civic Center to Līhu'e Airport. As previously mentioned, this project is a key section to the *Ke Ala Hele Makālae*, a 16-mile Nāwiliwili to Anahola Shared-Use Path proposed in the 1994 State of Hawai'i Master Plan-Bike Plan Hawai'i, and in the 2003 Bike Plan Hawai'i update. The project will be undertaken in five (5) phases: A, B1, B2, B3, and B4. This application is for Phase A only. Phases B1 through B4 are yet to be determined.

Through the National Historic Preservation Act (NHPA), Section 106 process, the applicant's consultant R.M. Towill Corporation (RMTC) conducted consultation with kūpuna from the project area with knowledge of traditional cultural practices and resources in the petition area. A list of Native Hawai'ian Organizations, kūpuna, cultural practitioners, and individuals can be found in Exhibit 16 "Ka Pā'akai Analysis" Page 4 of the application.

Based on the available information, traditional agriculture and aquaculture practices would not be affected or impaired by the proposed development.

The individuals and organizations who are familiar with the area and evaluating historical information that was available to the department, the department finds that the proposed Project involving the shared-use path traversing through various parcels should have no impact on any known Hawaiian traditional or customary practices for the following reasons:

a. There are no known traditional and customary practices of native Hawai'ians that are presently occurring within the project path's area.

b. There are no special gathering practices taking place within the projects path area.

c. The project will not detrimentally affect any access to any streams, access to the shoreline or in the ocean.

d. There are no known religious practices taking place within the project path's area.

e. There are no known pre-contact cultural or historic sites or resources located within the project paths area. Any known

f. All known cultural and historical resources within the project area would be avoided and left undisturbed by routing the path alignment away from sensitive cultural and historic resources.

The primary customary and traditional practices identified through the consultation process pertain to access to marine resources along the coastline and nearshore waters for fishing and gathering.

No other specific customary and traditional practices were shared by the participants.

3. SMA Rules and Regulations

The County of Kaua'i (COK) SMA Rules and Regulations contains objectives, policies and guidelines designed to protect coastal resources. With the SMA, special considerations are given to recreational opportunities, cultural and historic resources, scenic qualities, and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objectives of the SMA rules and regulations, the following aspect are taken into consideration:

a. Public Access and Coastal Recreation – The proposed project would significantly enhance public access to coastal and shoreline areas along the paths route. The project would include facilities such as a ten (10) car parking lot area, comfort station, pedestrian/ bike path, and interpretive and educational signage. During construction, parts of the roads may be closed or detoured for a short period of time. The public will be notified via road signs and public service announcements for this inconvenience. Existing access for fishing will also be preserved, however motor vehicle access to fishing spots will be limited to five (5) designated locations where vehicle access can cross the path.

b. Cultural/ Historic Resources – Four studies were prepared to help identify historic properties, assess the potential effects, and develop recommended mitigation measures for the entire project area. The Archaeological Inventory Survey (AIS) identified a total of twenty-seven (27) historic sites in the project area, fifteen (15) of those historic sites are located within path Segment A. The sites along with mitigation measures are identified in Section VII, Exhibit 10 -State Historic Sites Figure and Adverse Effect table in the application. Nine (9) out of fifteen (15) of the historic sites are considered to be significant historic properties according to the criteria established for the Hawai'i Register of Historic Places.

In the 2008 archaeological literature review and field inspection report prepared by Cultural Surveys Hawai'i for the entire project identified two (2) heiaus located near segment A. The two (2) heiaus are the Ninini Heiau (SIHP No. 50-30-11-100) which is out of the SMA area and was previously destroyed in the early 1900's and Ahukini

Heiau (SIHP No. 50-30-11-101) which is located at Ahukini Point Midway from Ninini to Ahukini landing. The Ahukini Heiau was destroyed by erosion and Hurricane Iniki in 1993.

One historic mound/ possible burial (SHIP No. 0-30-11-2089) identified during the archaeological inventory survey of the coastal area near Segment A.

Through the NHPA Section 106 consultation process, the FHWA has determined that there will be "no adverse effect" based on the recommendations summarized in Section VII, Exhibit 10- State Historic Sites Figure and No Adverse Effect Table. The shared-use multi path will be aligned to avoid these historic properties.

c. Scenic and Open Space Resources – The shoreline path alignment follows the undeveloped coastal space in close proximity and accessible to Līhu'e Town. Signage and bollards would be designed to minimize their visual presence. The path would be dyed to match the color of the native soil. No lighting will be used along the coastal alignment within the SMA. It is anticipated that the proposed path should have minimal negative impacts to the scenic and open space resources in the surrounding area.

d. Coastal Ecosystems – Through the studies previously conducted, it was determined that there is no designated critical habitat in the project area. However the following protected species such as the Hawai'ian Monk Seal, Hawaiian hoary bat, green sea turtles, hawksbill turtles, the Nēnē (Hawai'ian goose), Koloa (Hawai'ian duck), the Hawai'ian endemic subspecies of the 'Alae 'ula (common moorhen), and the 'Alae ke'oke'o (Hawai'ian Coot) are recorded in the area. In compliance with NPDES Permit requirements, measures to prevent sediment discharge in storm water run-off during construction will be in place and functional before any project activities begin. The proposed project does not involve alterations to stream channels or other water bodies or water sources. The shared-use path does not encroach on any wetland areas and is not situated in or abutting a Natural Area Reserve or Wildlife Refuge or Sanctuary.

e. Coastal Hazards – According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the project corridor is Zone "VE" costal high hazard area with some portions of the project within Zone "X". (See Section VII, Exhibit 12- FEMA/ FIRM maps). The proposed path is located on a coastal rocky shoreline bluff and is generally stable. The comfort station is located outside of Zone "VE", path improvements located within the Zone "VE" portion will be limited to at grade path segments, bollards, and signage; no other structures are proposed.

4. Use Permit

The proposed request is to be evaluated pursuant to Section 8-3.2 of the Kaua'i County Code (KCC), 1987, as amended, relating to the standards of issuance for a Use Permit.

a. A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity,

or use in particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort, and general welfare of persons residing or working the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

1) The use must be a compatible use;
2) The use must not be detrimental to the persons or property in the area;
3) The use must not cause substantial environmental consequences; and
4) The use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.

b. Based on the foregoing, the following aspects are considered:

1) Compatible Use – The proposed development is a shared-use concrete path. As noted in the Director's Report, potion of the shred-use path traverse through a parcel holding a County Zone designation of ST-P. As such, the proposed use is compatible with the surrounding uses and is not expected to impact urban activities in the area.

5. Variance Permit

In consideration the proposed shoreline setback deviation, the following criteria is noted:

a. Pursuant to Section 8-3.3 of the CZO, KCC (1987) as amended, Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he or she cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the Variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a Variance.

b. Based on the above, the following aspect is contemplated:

1) Special Circumstances – The Applicant is seeking a deviation from the requirement shoreline setback for a prefabricated bridge located at drainageway No. 3 with a proposed setback of 75 feet. The shoreline setback variance involves a 25-foot departure from the required setback of 100 feet for rocky shoreline parcels with an average lot depth over 220 feet. As represented, the bridge is part of the shared-use path to be used by the

public. The necessity for the deviation is due to the existing topography of the land in that area since it determines the placement of the bridge. While it is not considered a minimal departure from the standards, it is necessary to facilitate a public improvement, and it is directly involved with the safety and welfare of the general public.

X. PRELIMINARY CONCLUSION

Based on the foregoing, it is concluded that through proper mitigative measures, the proposed development can be considered, and it complies with the policies and guidelines of the Special Management Area and Regulations in that:

1. The development will not have any substantial adverse environment or ecological effect.

2. The development is consistent with the objectives/ goals/ policies of the County General Plan, the Comprehensive Zoning Ordinance, and other applicable ordinances.

Furthermore, the proposal DOES NOT:

a. Involve dredging, filling, or otherwise altering any bay, estuary, salt march, river mouth, slough, or lagoon;

b. reduce the size of any beach or other area usable for public recreation;

c. reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, or streams, within the special management area; and

d. adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, or existing agricultural uses of land.

In addition, the Planning Department concludes the following:

1. The project will not have significant adverse impacts to the environment or the surrounding area. The proposal is generally in compliance with the criteria outlined for the granting of a Use Permit, Variance Permit, and Class IV Zoning Permit; and

Finally, the proposed development should not have any detrimental impact on the environment or the surrounding area, and in compliance with the criteria outlined for the granting of the various permits noted above. However, the Applicant should institute the "Best Management Practices" to ensure that the proposed development does not generate additional impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

XI. PRELMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of the Nāwiliwili-Ahukini shared-use path and associated structures under Class IV Zoning Permit Z-IV-2023-10, Use Permit U-2023-7, Special Management Area Use Permit SMA(U)-2023-10, and Shoreline Setback Variance Permit SSV-2023-1 be **approved** with the following conditions:

1. The proposed development shall be constructed as represented. Any changes to the development shall be reviewed by the Department of Planning to determine whether Planning Commission review and approval is required.

2. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/ historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division, and the County of Kaua'i, Department of Planning to determine mitigation measures.

3. The applicant shall develop and utilize Beast Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project abutting properties.

4. The applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.

5. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.

6. The applicant is advised that prior to construction, additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).

7. The Planning Commission reserves the right to add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be addressed.

8. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or

activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for May 9, 2023, whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

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

By _____
ROMIO IDICA
Planner

Approved & Recommended to Commission:

By _____
KA'ĀINA S. HULL
Director of Planning

Date: 4/25/2023

DEPARTMENT OF PLANNING

STANDARD ZONING PERMIT APPLICATION

One (1) original; If providing plans, five (5) sets, including original, required.
Fees vary based on permits required and range from $30 to over $1000.
Proof of 100% fee ownership rights or authorized agent must be attached.

Check One: ☐ Paper Plans ☐ Electronic Plans

This application shall be filled out by all seeking Zoning, Use, Variance, SMA Use or PDU permits pursuant to the Kauai County Code, Hawai'i Revised Statutes Chapter 205A and all relevant rules and regulations of the Planning Commission and Department. Supplemental information may be attached to form. SMA applications may also require additional SMA assessment forms.

DEPARTMENT USE ONLY				
Zoning				Intake By:
Use				
Variance				Intake Date:
SMA				
PDU				Acceptance Date/By:
TOTAL FEE:				
Additional Fees:				
Receipt Number				
Building Permit No.				
Associated Permits (e.g. SSD)				

Permitting fees may be made via cash or check. All checks shall be made out to: **"Director of Finance"**

Complete Information Below			
Tax Map Key Number	(4) 5-5-004:013	Condominium Number	N/A
Applicant Name(s)	Concora Cliffs, LLC		
Property Address	5418 A Weke Rd. Hanalei, HI, 96714		
Mailing Address	c/o Cades Schutte P.O. Box 1205 Lihue, HI 96766		
Parcel Area	0.3876 acres	Contact Phone	(808) 521-9297
Zoning Designation	Open (O)	Contact Email (if applicable)	mtrask@cades.com

Applicant Declarations (incorrect responses may slow your permit review)

Please place an "X" under Yes or No under the following:

		YES	NO	Staff Verification
1	Is this property located in the Special Management Area (SMA)?	x		
2	Is this property part of a Condominium Property Regime (CPR)?		x	
3	Is this property within 500 feet of the shoreline?	x		
4	Is this property within the Agriculture Zoning District?		x	
5	Is there a structure on the property that is 50 years old or older?		x	
6	Do you have an Additional Dwelling Unit Certificate?		x	
7	Is this a permit for an after-the-fact construction or activity?		x	
8	I hold at least a 100% property interest in the property.		x	
9	Are you an agent for the property owner?	x		
10	Has a similar application been previously denied?		x	
11	Is this an application for an agriculture structure under 200 square feet		x	
12	Are there known burials on the site?		x	
13	Are you using water not provided by a domestic water system?		x	
14	Does existing grade under building footprint change by 2' or more in any direction?		x	
15	The proposed residential unit is a Multi-Family Dwelling Unit?		x	
16	Is this a conversion of a legally existing single-family dwelling unit into a multi-family two dwelling unit?		x	
17	Is this structure a guest house?		x	
18	Does guest house contain a kitchen?			

G.H.A.L.
JUN 27 2023

1. What is the proposed construction and/or intended use of the structure or parcel (may attach additional info)? Renovations to an existing single-family residence
2. If this is not the first dwelling unit on the subject property identified on this application, please state how many dwelling units presently exist: N/A

Submittal Checklist

Please **INITIAL** under "Yes" or not applicable "N/A" regarding each of the statements:

		YES	NA	Staff Verification
1	All plot plans I have submitted are drawn to scale.	x		
2	I have ensured all TMK numbers are visible on all plan sheets.	x		
3	Any plans I have submitted clearly show all structures and setback dimensions.	x		
4	My plans provide lot coverage calculations	x		
5	I have ensured kitchens are marked with the 8' radii required by the Planning Department's Administrative Rules.		x	
6	Because this application involves a CPR, the plot plan shows all existing structures.		x	
7	Building plate does not exceed 20 feet from the finished grade at entry.	x		

Acknowledgements - Please **INITIAL** next to each of the statements:

I UNDERSTAND:	Initial Here
Additional fees and/or the submittal of other application forms may be necessary to complete this application for acceptance and processing.	MT
Tender of fees by the County does not imply acceptance of this application.	MT
Errors in self-declaration or missing or incomplete information will delay acceptance and processing of your application.	MT
Any purposeful misrepresentations in this application may result in delay, denial, permit revocation, violations, fines and even criminal prosecution.	MT

The owner and/or authorized representative is hereby made aware that the construction, work, use or activity approved in this permit shall be subject to inspection by Planning Department personnel. The applicant is advised that inspection may occur prior to or during construction and use to ascertain the activity is conducted in compliance with the law. Further, I am a duly authorized agent or have 100% ownership rights.

OWNER/AGENT SIGNATURE: _____ DATE: 1/27/23

FOR PLANNING DEPARTMENT USE ONLY (THIS CONSTITUTES PERMIT IF FILLED OUT BY DEPT.):

APPROVED ☐ DENIED ☐ BY: _____ DATE: _____

DIRECTOR'S CONDITIONS OF APPROVAL (staff to **initial** next to applicable conditions):

This permit shall expire if no building is issued within one (1) year after the approval date and/or if construction does not start within one (1) year of building permit issuance.	
Director's standard conditions for non-residential agricultural structures (attach)	
Should any archaeological or historic resources be discovered during ground disturbing/construction work, all work in the area of the find shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.	
Additional Conditions (State):	

PLANNING DEPARTMENT
COUNTY OF KAUA'I

GENERAL SUBMITTAL REQUIREMENTS

The following is a list of General Application requirements for Class III and IV Zoning Permits, Use Permits, Project Development Use Permits, Variance Permits, Special Permits, and Special Management Area Permits (SMA). In preparing Applications for permit applications or petitions, please provide an exhibit and/or page reference for the application submittal, information, and documents requested. Zoning Permit Application Forms, Special Management Assessment Forms, and Special Treatment District Checklist are also available at the Planning Department, 4444 Rice Street, Suite A473, Līhu'e, Hawai'i 96766.

Pre-permit application consultation with the Planning Department and various County and State Agencies are recommended.

Instructions for Petitions for General Plan Amendments, State Land Use District Boundary Amendments (15 acres or less) and Zoning Amendments, are also available at the Planning Department.

An original plus one copy of the following items shall be submitted for review by the Planning Department for suitability for processing based on the attached checklist. Upon deeming the application suitable for agency review, the Planning Department will contact the applicant to request the additional number of application packets needed to complete the land use application for processing. The applicant shall provide 12 copies of the final application form and supporting information to complete the application for processing in accordance with Section 8-3.1(f) of the Kauai County Code, 1987, as amended.

Application shall be deemed complete when the above requirements have been satisfied and the following have been received:

1. Twelve (12) copies of the *FINAL* application.
2. Non-refundable filing fee payable to the COUNTY OF KAUAI, DIRECTOR OF FINANCE.
3. The filing fees are as follows:
   - State Land Use District Boundary Amendment = $150.00
   - General Plan Amendment = $600.00
   - Zoning Amendment = $300.00
   - Special Permit = $150.00
   - Use Permit, Project Development Use Permit, Variance Permit = $300.00
   - Class III Zoning Permit = $200.00
   - Class IV Zoning Permit = $800.00
   - Special Management Area Use Permit = $1,476.46
   - Special Management Area Minor Permit = $150.00
   - Shoreline Setback Variance Permit = $300.00
4. Digital copy (.PDF preferred) of entire transmittal including documents & exhibits on a CD or DVD.

☐ Incomplete _____

_____

☐ Application Deemed Complete as all information has been submitted and necessary fees have been paid.

By: _____ Date: _____

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766
TEL (808) 241-4050 FAX (808) 241-6699

GENERAL CLASS III & IV ZONING REQUIREMENTS CHECKLIST	
Project Name:	TMK: (4)
Applicant(s):	Permit Nos.

REQUIRED INFORMATION

	APPLICANT & PROPERTY INFORMATION	Exhibit and/or Page Number	Staff Comments
1	Zoning Permit Application Form or Petition for Amendments. The Application Form or Petition shall be completed and provide the required information pertaining to the property, such as: Tax Map Key number(s), State Land Use District Designation (SLUD), General Plan Designation, and County Zoning Designation.	attached	
2	Documents that verify ownership of the property under the subject application(s), or that the Applicant is the Authorized Agent o the property owner(s).	x	
3	If the Applicant is not the owner(s) of the subject parcel, then a notarized written authorization for the application by the owner shall be included. Said authorization shall include the owner's name, mailing addresses, contact information (i.e. phone number, cell number, email address)	n/a	
4	Agent's name, mailing address, and contact information (i.e. phone number, cell number, email address)	x	

	GRAPHIC & SCHEMATIC REQUIREMENTS	Exhibit and/or Page Number	Staff Comments
5	Location Map identifying the project site, adjacent roadway, and identifying landmarks.	x	
6	Schematic Site Development Plan of Plot Plans drawn to scale that identify the following:		
	o Property lines and easements with its dimensions, total land or parcel area calculations;	x	
	o County and SLUD Zoning and General Plan Designation areas of the property and applicable densities;	x	
	o Flood Zone(s) and required elevations;	x	
	o Location, size, and dimensions of all existing and proposed buildings, structures, improvements and uses;	x	
	o Building setback distances to property lines, between buildings, right-of-ways, and parking lots;	x	
	o Proposed Lot Coverage calculations and areas;	x	
	o Topographic information showing existing features, conditions and drainage patterns, and proposed grading & finished grade elevations, and drainage patterns;	x	
	o Location of environmentally sensitive areas, habitat and botanical features which include, but are not limited to, wetlands, streams, rock outcroppings, endangered plants and animals, and exceptional trees;	n/a	
	o Existing and proposed landscaping which depicts open spaces, plantings and trees;	n/a	
	o Existing and proposed roadways, and accesses to the project site; and	x	
	o Certified Shoreline, shoreline setback lines, stream and other setback lines.	n/a	

7	Conceptual Building Plans (drawn to scale):		
	o All existing and/or proposed building elevations with finished material called out. Exterior Elevations shall identify the existing and finished grade;	X	
	o Building heights, maximum wall plate height, cross sections that are drawn to scale and clearly define the architectural character of the development; and	X	
	o Floor plans of all buildings and typical unit types for multi-family projects;	x	

WRITTEN REQUIREMENTS		Exhibit and/or Page Number	Staff Comments
8	A Report or Statement addressing the following:		
	o Description of the proposed project and proposed uses, operations and management of the proposed use which includes, but is not limited to, proposed employee housing plan, hours of operation;	X	
	o Summary of Permits (i.e. Use Permit, Variance Permit, Special Permit, Class IV Zoning etc.) or Land Use Amendments requested, and the application section of the Kaua'i County Code or regulation citing the specific standards and criteria for granting of the permit or amendment being requested;	x	
	o Policies and Objectives of the General Plan; the provisions of the Community Development Plan applicable to the application (including design standards and application requirements); the provisions of the applicable zoning district; and an analysis of the extent to which the application, if granted, conforms to these provisions of the applicable district; and an analysis of the extent to which the application, if granted, conforms to these policies, objectives and provisions;	X	
	o Detailed land use history of the parcel, which includes but is not limited to, former and existing State and County land use designations, violations and uses;	X	
	o Status reports of all Zoning Amendment ordinance conditions, existing Land Use Permit conditions, and Subdivision Application conditions pertaining to the project site;	X	
	o Analysis of the secondary impacts of the proposed use on the surrounding area, which includes but is not limited to, increases in property value, population, housing, community services and facility needs, secondary jobs and employment generated, and compatibility with the surrounding uses;	x	
	o Water source, supply and distribution system analysis, which includes but is not limited to, methods of irrigation that exists on the parcel and proposed for the application, location and use of groundwater and non-potable water sources;	X	
	o Sewage Disposal Analysis – A description of a proposed method of sewage disposal;	x	
	o Solid Waste Disposal Analysis – A description of a proposed method of solid waste disposal, including methods for recycling, reclamation and waste stream diversion; and	X	
	o Description of environmentally sensitive areas, habitat and botanical features, which includes but is not limited to, wetlands streams, rock outcroppings, endangered plants and animals, and exceptional trees.	X	
9	A completed evaluation form or written comments from the County Housing Division relative to the County's housing requirements, pursuant to Ordinance No. 860.	n/a	

ADDITIONAL INFORMATION (SUBJECT TO DIRECTOR'S DETERMINATION)

APPLICANT & PROPERTY INFORMATION		Exhibit and/or Page Number	Staff Comments
10	Title Report necessary for the project site. Title Insurance will be mandatory for all affected Kuleana parcel(s).	n/a	

GRAPHIC & SCHEMATIC REQUIREMENTS		Exhibit and/or Page Number	Staff Comments
11	Schematic Site Development Plans of Plot Plans drawn to scale, which identify the following:		
	o Location of existing or required access to shoreline or traditional site either on property or adjacent to; and	n/a	
	o Certified Shoreline, shoreline setback lines, stream and other setback lines.	n/a	

12	Three (3) dimensional drawings of models, which clearly indicates the relation of the proposed development to other uses and structure within the surrounding area, and show the development in the context of significant viewplanes.	n/a	
13	Dated photographs of the project site, existing structures, and the surrounding area.	n/a	

WRITTEN REQUIREMENTS		Exhibit and/or Page Number	Staff Comments
14	Additional information to the included in the required report:		
	o Preliminary archaeological and historical data;	x	
	o A preservation/mitigation plan;	n/a	
	o Traffic Impact analysis showing level of service with and without the project, when required by the State Department of Transportation OR County Department of Public Works;	n/a	
	o A Transportation Master Plan, which includes vehicle, pedestrian and other forms of circulation to adjacent services and destinations;	n/a	
	o For parcel located in SLUD Agricultural or County Agriculture zoning district, an assessment of the impact which the proposed use may have on agricultural use of the parcel, which includes but is not limited to, feasibility analysis of potential agricultural uses suited for the project site;	n/a	
	o A Water Master Plan, which aligns to the goals of the 2020 Water Plan for Kaua'i;	n/a	
	o A baseline study and preservation/mitigation plan for environmentally sensitive areas and endangered species habitat;	n/a	
	o A summary of all meetings held between the Applicant and any community or residential group that may be impacted by the Applicant's proposal, the issues raised at these meetings, and any proposed mitigation measures by the Applicant to deal with the raised concerns;	n/a	
	o For properties adjacent to the shoreline or containing traditional access or sites requiring access – A Preservation/Mitigation Plan detailing how access will be allowed and managed;	n/a	
	o For projects near the shoreline, riparian areas or wetlands, or those involving intensive landscaping or turf management, such as golf courses – Identification and assessment of chemicals and fertilizers used, including but not limited to, detailing effects upon surface, underground and marine water resources and neighboring properties and surrounding flora & fauna. If applicable, provide a mitigation plan and maintenance program and schedule;	n/a	
	o For properties listed on the Kaua'i Historic and Non-Historic Resource Inventory – An inventory and description of historic features on the property;	n/a	
	o Proposed Employee Housing Plan; and	n/a	
	o Description of sustainable strategies incorporated into project, including but not limited to, strategies to reduce water and energy and material consumption, promote alternative forms of transportation, reduce wastewater and storm runoff, waste stream diversion and encourage the preservation of function ecosystem, i.e. LEEDS, Los Impact Design, Green Building principles, recycling, composting, BMP's, etc..	n/a	

ADDITIONAL PERMITS		Exhibit and/or Page Number	Staff Comments
15	For projects located within the Special Treatment District – The Applicant shall comply with necessary requirements of Section 8-11.5 of the KCC, and provide information noted in the Special Treatment District Checklist.	n/a	
16	For projects located within the Special Management Area (SMA) – The Applicant shall complete & submit an SMA Assessment application of the proposed development.	n/a	
17	For properties located within 500 feet of the shoreline – The Applicant shall comply with the requirements of Section 8-27 of the KCC, entitled "Shoreline Setback and Coastal Protection," and provide the necessary information contained in the Shoreline Setback checklist.	n/a	
18	If applicable, the petition requirements and content for a Special Permit, pursuant to Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, and Chapter 205 of the Hawai'i Revised Statutes (HRS).	n/a	
19	A Finding of No Significant Impact (FONSI) or Final Environmental Impact Statement (EIS), when required by Chapter 343 of the Hawai'i Revised Statutes (HRS).	n/a	

CADES SCHUTTE
A Limited Liability Law Partnership

MAUNA KEA TRASK 8418
P.O. Box 1205
Lihu'e, HI 96766
Telephone: (808) 521-9297
Facsimile: (808) 540-5015
Email: mtrask@cades.com

Attorneys for Applicants
CONCORA CLIFFS, LLC.

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

In the Matter of the Application Of CONCORA CLIFFS, LLC, for a Class III Zoning Permit, for Real Property Situated at Hanalei, Kaua'i, Hawai'i, Described as Lot 12-A Waioli Beach Lots Subdivision, and Identified by Kaua'i Tax Map Key No. (4) 5-5-004:013, Containing an Area of 16,885 sf. More or Less.	CLASS III ZONING PERMIT Z-III-_____ **APPLICATION FOR CLASS III ZONING PERMIT; EXHIBIT LIST; EXHIBITS "A" - "G"**

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APPLICATION

Comes now, CONCORA CLIFFS, LLC ("**Applicant**"), by and through their undersigned attorneys, and hereby submits the following application to renovate portions of an existing single-family residential dwelling unit ("**SFR**") as described herein (the "**Project**").

SECTION 1. APPLICANTS/SUBJECT PROPERTY OWNERS.

1.1 Applicants. The Applicant has authorized Mauna Kea Trask of Cades Schutte LLP to file this application. *See,* Exhibit "A".

1.2 Property. This application concerns that certain parcel of land being Lot 12-A of the Waioli Beach Lots subdivision, located in Hanalei, Kaua'i, Hawai'i, and is further identified as Kaua'i Tax Map Key ("**TMK**") No. (4) 5-5-004:013 (the "**Property**"). The Property is approximately 0.3876 acres, or 16,885 sq. ft. A copy of the TMK Map and aerial photograph showing the Property with the existing structures is attached as Exhibit "B."

1.3 Ownership. Applicant owns the Property as shown in Exhibit "B".

SECTION 2. LOCATION & LAND USE DESIGNATIONS OF THE PROPERTY.

2.1 Location. The Property is located in Hanalei, Kaua'i, Hawai'i.

2.2 Land Use Designations. The State Land Use Commission ("**SLUC**"), Kaua'i General Plan ("**General Plan**"), County of Kaua'i Comprehensive Zoning Ordinance ("**CZO**"), and other relevant land use designations for the Property are described as follows:

a. SLUC. The Property is located in the SLUC Urban District. *See*, Exhibit "C-1".

b. Kaua'i General Plan. The Property is located in the Kauai General Plan Natural Land Use Designation. *See,* Exhibit "C-2".

c. CZO. The Property is within the County of Kauai Open (O) zoning District. *See,* Exhibit "C-3".

d. Development Plan Area. The Property is located within the North Shore special planning area. *See,* Exhibit "C-4".

e. Special Management Area. The Property is located within the County's Special Management Area ("**SMA**"). *See,* Exhibit "C-5".

f. Constraint District. According to the Kauai Sea Level Rise Constraint District Viewer, the Property is not within the Sea Level Rise Constraint District (S-SLR). *See,* Exhibit "C-6".

g. Heritage Resources. As shown in General Plan Figure 5-14, North Shore Heritage Resource Map, the Property is in the general vicinity of various important natural, scenic, or historical features. *See,* Exhibit "C-7". However, on or about February 16, 2018, Applicant caused an archaeological due diligence report to be prepared for the Property. *See,* Exhibit "C-8". The report found nothing to indicate that there would be any historic preservation concerns with respect to the development of the Property. Further, the likelihood of encountering intact Precontact and/or early Historic Period subsurface deposits is minimal; and there are no intact historic architectural resources present on the Property.

h. Flood Zone. The Property is within the non-special flood hazard area Zone "XS". *See*, Exhibit "C-9".

i. Shoreline Setback. The Property does not abut the shoreline. *See,* Exhibit "B". The County of Kauai's Waioli Beach Park lies between the Property and the shoreline. *Id.* The existing single-family residence is approximately 222.87 ft. from the shoreline. *See,* Exhibit "C-10"). According to the UH Manoa School of Ocean & Earth Science & Technology ("**SOEST**") Hawai'i Shoreline Study ArcGIS Web Map, the Property fronts Hanalei Transects #166 and

#167, and the shoreline is accreting between 1.7 ± 1.9 ft/yr. and 1.7 ± 2.0 ft/yr. with 95% conf. respectively. *See,* Exhibit "C-11".

j. Violations. There are no known land use and zoning violations on the Property.

k. Visitor Destination Area. The Property is not within the Visitor Destination Area ("**VDA**") and the Applicant does not have a Non-Conforming Transient Vacation Rental Use Certificate.

l. Soils. According to the National Resources Conservation Service ("**NRCS**") Web Soil Survey, a sliver of the makai portion of the Property consists of Beaches (BS) soils, whereas the remainder of the Property is comprised of Mokuleia fine sandy loam (Mr). *See,* Exhibit "C-12".

SECTION 3. PAST, EXISTING AND PROPOSED USES OF THE PROPERTY.

3.1 Prior Land Use and Zoning Permits. According to a review of relevant County of Kauai Planning Department ("**Department**") records and files, the Property was part of the original Territory of Hawaii Waioli Beach Lots subdivision in 1912. In August 1988, Michael and Jeanette Antone as owners of both Lot 12 and 13 consolidated and re-subdivided the lots into Lots 12-A and 13-A. The following land use permits pertain to the Property:

a. Z-240-89. On August 25, 1988, the Department approved Z-240-89 to build the existing single-family dwelling and garage building located on the Property.

b. Z-946-04. On April 13, 2004, the Department approved Z-946-04 to renovate the existing two-story residence.

c. Z-453-15. On December 10, 2014, the Department approved Z-453-15 for interior renovations to the existing single-family residence. Applicant is of the understanding that on November 26, 2014, the Department issued a Shoreline Setback Exemption Determination related to this project.

a. Z-247-17. On November 2, 2016, the Department approved Z-247-17 to build a 6-foot-high lava rock wall, set back six feet from the property line bordering Weke Road. Applicant is of the understanding that the Department issued the after-the-fact SMA Minor permit SMA(M)-2017-9 related to this project.

3.2 Existing Uses. The Property is currently "fully-developed" and contains a two-story house and a garage with a guest house (no kitchen) above. *See,* Exhibit "D" at A-001. The single-family residence and the garage building are not connected. The total current lot coverage of the Property is 3,808.76 sf.

3.3 Proposed Uses. Applicant is proposing to demolish and remove structures attached to the garage/guest house building, join the second floor of the single-family residence to the guest house unit, and make interior alterations to portions of the second floor of the existing structures (the "**Project**"). The purpose of the Project is to extinguish the existing guest house unit by incorporating it into the second floor of the single-family residence. The Project will not affect the existing footprint of any structure, nor will it increase the current lot coverage.

The Project will consist of several steps. First, Applicant will remove the staircase and lanai attached to the garage/guest house building. *See,* Exhibit "D" at A-101 and A-103. Applicant will then connect the southeastern portion of the second floor of the single-family residence to the guest house unit via a second-floor hallway bridge, thus extinguishing the separate guest house unit. *Id.* at A-103. Applicant will then renovate the interiors of the guest house and the single-family residence. *Id.* at A-103 and A-104. The interior renovations to the existing guest house unit will convert it into a bedroom nest area for use by Applicant's family.

No renovations or alterations will be made to the first floor of the single-family residence or the garage, and no subsurface work is required. Although the addition of the second-floor

hallway bridge will increase the enclosed area of the second floor by 245.09 sf., the removal of the guest house staircase and lanai will actually result in a decrease of the exterior covered area of the home by 183.05 sf.

According to licensed architect Kanoa Chung, the Project is estimated to cost $238,000.00. *See,* Exhibit "E".

SECTION 4. SUBJECT PROPERTY AND SURROUNDING LANDS.

4.1 Location. The Property is located makai of Weke Road in Hanalei and mauka of the County's Waioli Beach Park.

4.2 Surrounding Uses The Property is surrounded by high-end residences, non-conforming transient vacation rental uses, and government facilities, including county parks, the Hanalei base yard and Hanalei Elementary School.

SECTION 5. PERMITS REQUESTED AND REQUIRED.

5.1 Class III Zoning Permit. According to Departmental Determination DD-2022-42, Applicant must obtain a Class III zoning permit for the Project. *See*, Exhibit "F".

5.2 SMA Permit. According to Departmental Determination DD-2022-42, the Project is not considered "Development" as defined in Section 1.4 F of the County's SMA Rules and Regulations. *Id.* As such, an SMA Permit is not required for the Project.

5.1 Shoreline Setback. According to Shoreline Setback Determination SSD 2022-49, although the Property is within 500 ft. of the shoreline, the Department has determined that the Project is exempt from the shoreline setback determination requirements established under CZO §8-27.8. *See,* Exhibit "G". The Department posted Shoreline Setback Determination SSD 2022-49 on the July 12, 2022 County Planning Commission ("**Commission**") agenda. *Id.*

SECTION 6. IMPACTS OF DEVELOPMENT.

6.1 Botanical Resources. The Property is part of a subdivision that was developed over one hundred years ago in the early 20th century. The Property is "fully developed", i.e., it is zoned and used for residential purposes with existing dwellings, improvements, and infrastructure. There are no botanical resources located on the Property beyond its current landscaping, and the Project will not have any impact on any nearby botanical resources.

6.2 Historical Resources. As stated above, the 2018 archaeological due diligence report found nothing to indicate that there would be any historic preservation concerns with respect to the development of the Property. *See,* Exhibit "C-8". Further, the likelihood of encountering intact Precontact and/or early Historic Period subsurface deposits is minimal, and there are no intact historic architectural resources present on the Property.

6.3 Air Quality/Noise. The Project will have little or no impact on the air quality and ambient noise levels in the area. Air quality and ambient noise levels may be affected at a very minimal level during the actual construction activities. All vehicles or equipment used by Applicants for the construction will be properly muffled, housed and maintained to reduce any noise impacts or emission impacts. The Environmental Protection Agency ("**EPA**") and State of Hawaii Department of Health air quality standards will not be exceeded.

6.4 Flooding and Drainage. The Property is within the Non-Special Flood Hazard Area Zone XS. *See,* Exhibit "C-9". The Project meets all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1, of the Kauai County Code, 1987.

6.5 Utilities. The Property is currently receiving all necessary utility services.

a. Potable Water. The Property obtains water service from the County of Kauai Department of Water.

b. Electric/Communications. The Property obtains electric service from Kauai Island Utility Cooperative and communication services from Hawaiian Telcom, Inc. Existing electric and communications are presently adequate to provide the demand for such services that will be generated by the Project.

6.6 Wastewater Treatment and Disposal. The Property is serviced by an individual wastewater septic system.

6.7 Solid waste Disposal. Solid waste collection is provided by the County. Project waste will be taken to the County's refuse transfer stations or disposal in the County's landfill as appropriate.

6.8 Governmental Services. Applicant does not anticipate the Project will have any impacts to existing governmental services:

a. Fire & Police Services. County Fire and Police services are located in Princeville, approximately 1.7 miles away. The Project will not significantly increase the need for existing Fire and Police services.

b. Schools. Hanalei Elementary School is approximately 600 ft. mauka of the Property. The Project will not impact enrollment or operations of Hanalei Elementary School.

6.9 Economics. Applicant anticipates the Project will have the following economic impacts:

a. Jobs. The Project will result in the creation of temporary construction jobs.

b. Housing. The Project will not result in the need for additional housing.

c. Property Values. Fair market value of real property is based on the value of the land and any physical improvements. However, given the scope of the Project, Applicant does not anticipate the Project will have any measurable effect on the value of nearby properties.

6.10 Population. Applicant does not believe the Project will result in an increase in population.

6.11 Traffic Circulation. The Property is served by Weke Rd. The Project will not measurably affect or increase traffic on Weke Road.

6.12 Heritage Resources. As stated above in section 2.2.g, the Property is in the general vicinity of various important natural, scenic, or historical features. *See,* Exhibit "C-7". Pursuant to Applicant's archaeological due diligence report, the Property does not contain any Heritage Resources and the Project itself will not have any adverse effect on any nearby Heritage Resources. *See,* Exhibit "C-8". The preservation of beach access and wahi pana for traditional cultural practices is required under the General Plan. *See,* General Plan at 96. The Property is located between Amaama Rd. and He'e Rd., both of which provide public access to the County's Waioli Beach Park, and as such the Project will not affect beach access or access to any other public trust resources in Hanalei.

SECTION 7. SLUC CONSIDERATIONS.

7.1 SLUC Urban District. The Property is located within the SLUC Urban District. Residential uses are permitted within the SLUC Urban District.

SECTION 8. GENERAL PLAN CONSIDERATIONS.

8.1 Kauai General Plan Visions and Goals. The Project is consistent with the Visions and Goals of the General Plan.

a. Goal # 1: A Sustainable Island. The Project is consistent with the requirements of Goal # 1 of the General Plan. The Project will not endanger natural systems that support life: air, water, soil, and living organisms. General Plan at 33. The Project will not affect Hanalei's carrying capacity with regard to resources, such as parks, roads, and public infrastructure. *Id.*

Finally, the Project is located within an existing subdivided residential lot that has adequate infrastructure to accommodate current and anticipated needs. *Id.*

b. Goal # 2: A Unique and Beautiful Place. The Project is consistent with Goal # 2 of the General Plan and will not adversely affect the care and protection of the treasured resources, traditions, and qualities of the natural, built, and human environment of Hanalei. *Id.* at 34. The Project will not adversely affect endemic or endangered species, historic structures, archaeological sites, cultural traditions, beliefs, practices, or legendary places of Hanalei. *Id.* Finally, the Project will not affect nearby public trust resources, nor will it affect access thereto. *Id.* at 34.

c. Goal # 3: A Healthy and Resilient People. General Plan Goal # 3 recognizes that health is influenced by the built environment, including the ability to walk or bicycle to key destinations, and to access the recreational areas that support active lifestyles. *Id.* at 35. The Project is consistent with these principles and will not interfere with the community's access to or use of Hanalei Bay. The Project will not adversely affect the walkability of Hanalei or the preservation of nearby natural areas. *Id.* The Property is not in the County Sea Level Rise Constraint district, nor is it within a Special Flood Hazard Area, and as such it will not adversely affect the preparation for and recovery from natural disasters or other disruptive events. *Id.*

d. Goal # 4: An Equitable Place, with Opportunity for All. Goal # 4 of the General Plan aims to foster diverse and equitable communities with vibrant economies, access to jobs and housing, and a high quality of life. *Id.* at 36. However, Goal # 4 is not simply about economic opportunity. Goal # 4 recognizes that reversing Kaua'i's trending inequity means ensuring Kaua'i residents, regardless of factors such as geographic location, age, race, gender, and economic status, have access to, *inter alia*, opportunities for recreation and enjoyment of shared

spaces; and making sure that planning and land development decisions do not unfairly burden disadvantaged groups. *Id* at 36. The Project is located on a lot that has been fully developed since 1988. The Project will support temporary construction jobs during the tenure of the development itself. Finally, the Project will not adversely affect public parking or access to the County's Waioli Beach park specifically or to Hanalei Bay generally.

8.2 Kauai General Plan Policies and Objectives to Guide Growth. The General Plan contains nineteen (19) polices to guide growth that articulate the County's path forward toward meeting the community's vision and goals of sustainability, unique character, resilience, and equity. These policies guide objectives and actions within the General Plan and inform the General Plan Future Land Use Map.

a. Policy # 1: Manage Growth to Preserve Rural Character. The Project is consistent with Policy # 1 because it is contained within a subdivision that has been in existence since the early 20th century. The Project will not result in any increase in density or use of the Property specifically or Hanalei in general, and thus will not adversely affect Kauai's rural character. General Plan at 38.

b. Policy # 3: Recognize the Identity of Kauai's Individual Towns and Districts. The Project is consistent with Hanalei's distinct character. The Project is a renovation of an existing single-family residence that will actually decrease the current lot coverage by 183.05 sf. The Project will not interfere with Hanalei's many costal access opportunities which provide both access to Hanalei Bay and lateral access along the shoreline.

c. Policy # 4: Design Healthy and Complete Neighborhoods. General Plan Policy # 4 seeks to guide growth in a way that combats the recent trend of health problems in Hawaii, attributed in part to increasing levels of sedentary lifestyles. The Project will not interfere with

the access to or use of Waioli Beach Park, nor will it interfere with residents' ability to increase physical activity on a daily basis, thereby reducing health risks.

d. Policy # 7: Build a Balanced Multimodal Transportation System. The Project is consistent with Policy # 7. The Project will not adversely affect the County's Multimodal Land Transportation Plan (2013), nor will it adversely affect community pedestrian access opportunities to and along Hanalei Bay.

e. Policy # 8: Protecting Kauai's Scenic Beauty. The Project is consistent with Policy #8. Because the Project involves the renovation of an existing single-family residence, it will not adversely affect the natural views of Hanalei Bay or Hihimanu, Namolokama, and Mamalahoa mountains.

f. Policy # 9: Uphold Kaua'i as a Unique Visitor Destination Area. The Project is consistent with Policy # 9. The Project is not within the VDA, nor does the Property possess a non-conforming transient vacation use certificate. Thus, the Project will not add to any visitor impacts on infrastructure or to the Hanalei community.

g. Policy # 14: Prepare for Climate Change. The Project is consistent with Policy # 14 and will not contribute to or exacerbate concerns regarding rising sea levels along Hanalei Bay. The Project involves renovations to an existing single-family residence that, according to county and federal resources, will not be affected by sea level rise or coastal flooding.

h. Policy # 15: Respect Native Hawaiian Rights and Wahi Pana. Applicant's archaeological due diligence report found nothing to indicate that there would be any historic preservation concerns with respect to the development of the Property. Further, the likelihood of encountering intact Precontact and/or early Historic Period subsurface deposits is minimal, and there are no intact historic architectural resources present on the Property. *See*, Exhibit "C-8".

The Property is fully developed and therefore no traditional and customary Native Hawaiian practices are being performed thereon. The Project will not adversely affect any traditional and customary Native Hawaiian practices that are being performed in any other locale of Hanalei.

i. Policy # 16: Protect Access to Kauai's Treasured Places. The Project is consistent with Policy # 16 in that it will not adversely affect access to and customary use of the shoreline area, trails, and places along Hanalei Bay point for religious and cultural observances, fishing, gathering, and/or other ocean recreational and subsistence activities.

8.3 Kauai General Plan Natural Land Use Designation. The Property is located in the Kaua'i General Plan Natural Land Use Designation. *See,* Exhibit "C-2". Actions for the Natural designation are found in the following Chapter 3 sectors of the General Plan: The Watershed, Shared Spaces, and Heritage Resources. The Project is consistent with the Natural designation in that it will not adversely affect Hanalei's limited development capacity, nor will it adversely affect topography, vulnerability to hazards, sensitive resources, or other land use constraints.

8.4 Project Compliance with Kauai General Plan Standards. The Project involves renovating an existing single-family residence within a subdivision that is over 100 years old. Therefore, the Project itself will have no significant impact on the surrounding environment. The Project is consistent with neighboring residential and non-conforming transient accommodation uses and will not have a significant adverse effect to the surrounding neighborhood. As such, the Project complies with the General Plan's policy for the Natural Land Use Designation and is consistent with the General Plan's development standards.

SECTION 9. CZO OPEN DISTRICT CONSIDERATIONS.

9.1 CZO Open District. The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the

recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities. CZO § 8-9.1.

9.2 Development's Compliance with CZO Open District Standards. The renovation of single-family residences and accessory structures are permitted uses within the Open (O) zoning district pursuant to CZO § 8-2.4(s) (1) & (9). The Project will result in a 183.05 sf. decrease of the existing lot coverage. The Project itself will have no significant impact on the surrounding environment and is compatible with existing residential and non-conforming transient vacation rental uses surrounding the Property. Further, the Project will not adversely affect coastal access or subsistence and recreational uses of Hanalei Bay. Therefore, the Project complies with CZO § 8-9.1 and will not adversely affect the preservation, maintenance, or improvements of the essential characteristics of Hanalei, the essential functions of physical and ecological systems of Hanalei, or the forms and forces of Hanalei that significantly affect the general health, safety, and welfare of the North Shore.

SECTION 10. NORTH SHORE DEVELOPMENT PLAN CONSIDERATIONS.

10.1 Community Plan Goals and Objectives. The goals and objectives of the North Shore Development Plan ("**NSDP**") includes in relevant part, that the use, location and design of all future development must be compatible with the low-key rural Hawaii character of Hanalei Town. NSDP at 18.

10.2 Compliance with Development Plan Standards. The Project is consistent with the goals and objectives contained in the NSDP. The Project will not increase the size of the existing single-family residence, and the design, layout and outside appearance of the proposed renovations are compatible with the low-key rural Hawaii character of Hanalei Town. The Project will decrease the current lot coverage of the existing structure and will not adversely affect coastal access and open space along Hanalei Bay.

SECTION 11. SMA CONSIDERATIONS.

As stated above in section 5.2, according to Departmental Determination DD-2022-42 the Project is not considered "Development" as defined in Section 1.4 F of the Special Management Area Rules and Regulations of the County of Kaua'i State of Hawai'i ("**SMA Rules**"), and as such no SMA permit is required for the Project. *See,* Exhibit "F".

Nonetheless, the Project will not have any significant adverse environmental or ecological effect to the SMA, including but not limited to the potential cumulative impact of individual developments, each of which taken by itself might not have a significant adverse effect, and the elimination of planning options.

Further, the Project is and will be compatible with existing uses both on the Property and in the areas surrounding the Property and is consistent with the SMA Guidelines contained in HRS § 205A-26 and Section 4.0 of the SMA Rules.

SECTION 12. HRS CH 343 ENVIRONMENTAL IMPACT STATEMENT CONSIDERATIONS.

12.1 HRS Chapter 343. HRS Ch. 343 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain specified activities. The Project does not constitute an action for which an Environmental Assessment and/or an Environmental Impact Statement must be prepared pursuant to HRS § 343-5.

SECTION 13. IMPACTS TO NATIVE HAWAIIAN TRADITIONAL AND CUSTOMARY PRACTICES.

13.1 Existence of Traditional and Customary Practices. Under Article XII, Section 7 of the Hawaii State Constitution, the State of Hawai'i:

> *[R]eaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights.*

For the purpose of practicing [Native Hawaiian] traditional and customary rights, practitioners may gather anywhere that those rights have been traditionally and customarily exercised in that manner – on land that is less than "fully developed." David M. Forman and Susan K. Serrano, Ho'ohana Aku, a Ho'ola Aku: A Legal Primer for Traditional and Customary Rights in Hawaii, December 2012; citing, *Public Access Shoreline Hawaii ("PASH") v. Hawaii County Planning Commission*, 79 Haw. 425, 903 P.2d 1246.

In the landmark decision *Ka Pa'akai O Ka 'Aina v Land Use Commission*, 94 Haw. 31, 7 P.3d 1068 (2000), the Hawai'i Supreme Court provided an analytical framework for addressing the preservation and protection of customary and traditional native practices specific to Hawaiian communities. The court decision established the following three-part process relative to evaluating such potential impacts.

> *1. Identify whether any valued cultural, historical, or natural resources are present; and identify the extent to which any traditional and customary native Hawaiian rights are exercised;*
>
> *2. Identify the extent to which those resources and rights will be affected or impaired by the proposed action; and*
>
> *3. Specify the feasible action, if any, to be taken by the regulatory body to reasonably protect native Hawaiian rights if they are found to exist.*

However, if property is deemed "fully developed," i.e., lands zoned and used for residential purposes with existing dwellings, improvements, and infrastructure, it is always "inconsistent" to permit the practice of traditional and customary Native Hawaiian rights on such property. *State v. Hanapi*, 89 Haw. 177, 970 P.2d 485 (1998). To allow the exercise of such rights on developed lands "would so conflict with understandings of property, and potentially lead to such disruption, that [the court] could not consider it anything short of absurd" and "would conflict with [the court's] understanding of the traditional Hawaiian way of life in which

cooperation and non-interference with the well-being of other residents were integral parts of the culture." *Kalipi v. Hawaiian Trust Co., 66 Haw. 1, 656 P.2d 745* (1982).

As stated above, the Property is zoned and used for residential purposes with existing dwellings, improvements, and infrastructure. Thus, the Property is deemed fully developed. *State v. Hanapi*, 89 Haw. 177, 970 P.2d 485. Given the law regarding practice of Native Hawaiian customary and traditional rights on "fully developed" lands, the Project will not affect any Native Hawaiian customary and traditional rights protected under Article XII, Section 7 of the Hawai'i State Constitution.

SECTION 14. CONCLUSION.

Applicant respectfully requests the Planning Department:

1. Find that the Project will not have any substantial environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

3. Find that the Project is consistent with permitted uses in the SLUC Urban District, the Kauai General Plan, the North Shore Development Plan, and the CZO; and

4. Approve the issuance of a Class III Zoning Permit for the development on the Property as described herein, subject to such reasonable conditions as the Planning Department shall impose.

DATED: Lihue, Kauai, Hawaii, January 24 2023.

CADES SCHUTTE LLP

MAUNA KEA TRASK

Attorneys for Applicant
CONCORA CLIFFS, LLC

EXHIBIT LIST

Exhibit	Exhibit Description
A	Applicant Authorization
B	TMK Map
C-1	State Land Use District Map
C-2	Kauai County General Plan Land Use Designation Map
C-3	Hanalei Zoning Map
C-4	North Shore Development Plan Land Use Map
C-5	Special Management Area Map
C-6	County Sea Level Rise Constraint District Map
C-7	Kauai County General Plan North Shore Heritage Resource Map
C-8	Archaeological Due Diligence report
C-9	Flood Hazard Assessment Report
C-10	Shoreline distance map
C-11	Shoreline erosion map
C-12	Natural Resource Conservation Services (NRCS) Lot 4 Soil Survey Map
D	Project Plans
E	Cost Estimate
F	DD 2022-42
G	SSD 2022-49

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April 22, 2022

TO WHOM IT MAY CONCERN:

Cades Schutte LLLP is authorized on behalf of Concora Cliffs LLC (owner of the property located at 5418 Weke Rd. Hanalei, HI 96714, identified as TMK No. (4) 5-5-004:013), to submit any and all assessments, determination requests, and/or permit applications of any kind to the County of Kaua`i and State of Hawai`i relative to the above referenced property.

Concora Cliffs LLC

DocuSigned by:

By:_ 5CD692D5BFFF4F3... __

Its: Authorized Signatory

EXHIBIT A

County of Kaua'i
State of Hawai'i



Overview



Legend

- Parcels
- CPR Units
- Roads

Parcel ID	550040130000	**Situs/Physical Address**	5418 WEKE RD	**Total Market Value**	$10,540,500	**Last 2 Sales Date**	**Price**	**Reason**
Acreage	0.3876	**Mailing Address**	CONCORA CLIFFS LLC 15 E 26TH ST STE 602 NEW YORK NY 10010	**Total Assessed Value**	$10,540,500	3/6/2018	$14000000	MULTIPLE DWELLINGS
Class	RESIDENTIAL			**Total Exemptions**	$0	12/14/2009	$4945788	MULTIPLE DWELLINGS
				Total Net Taxable Value	$10,540,500			

Brief Tax Description LOT 12-A WAIOLI BEACH LOTS 16885 SF DES

(Note: Not to be used on legal documents)

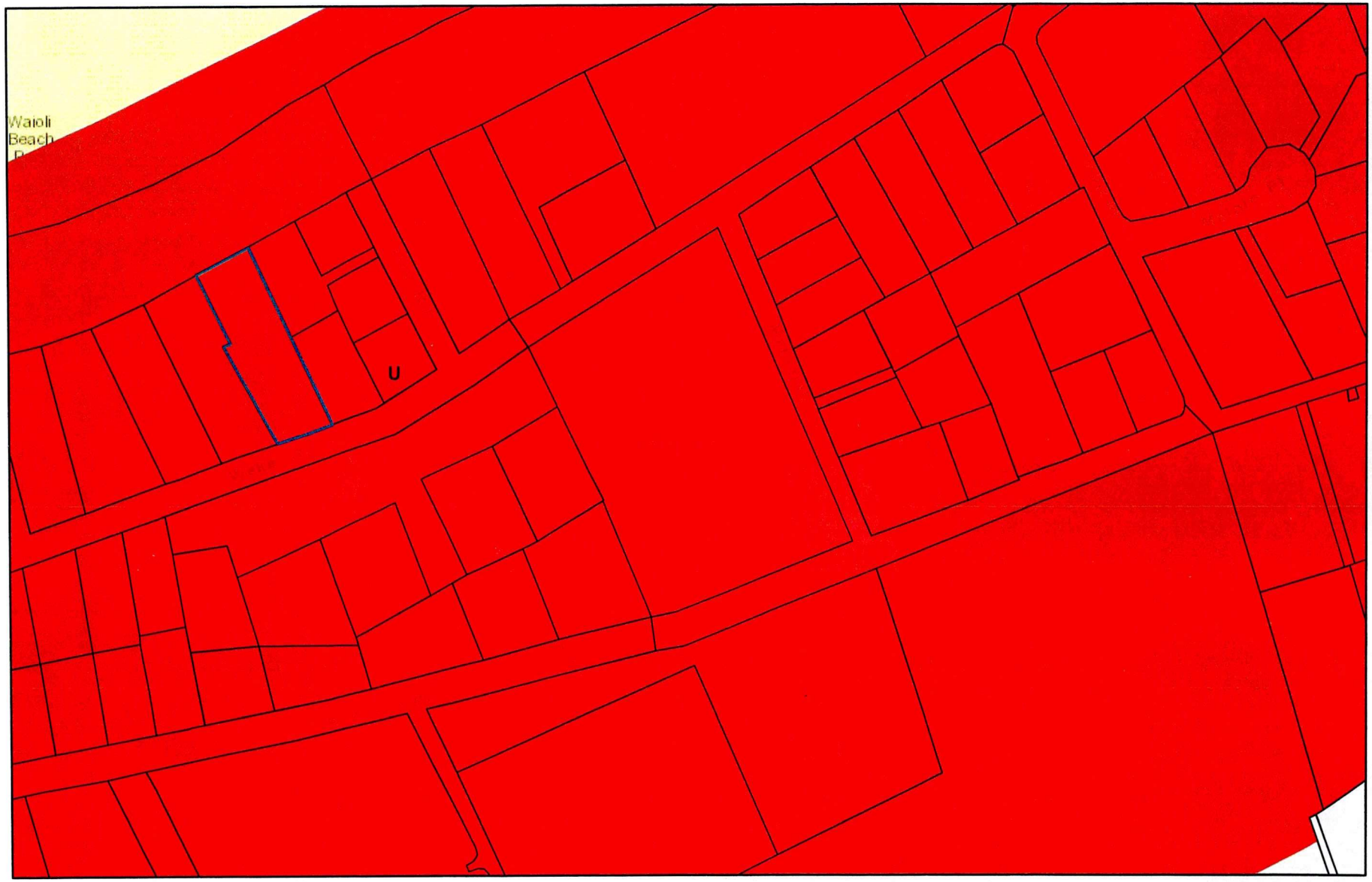
The Geographic Information Systems (GIS) maps and data are made available solely for informational purposes. The GIS data is not the official representation of any of the information included, and do not replace a site survey or legal document descriptions. The County of Kauai (County) makes or extends no claims, representations or warranties of any kind, either express or implied, inluding, without limitation, the implied warranties of merchantability and fitness for a particular purpose, as to the quality, content, accuracy, currency, or completeness of the information, text, maps, graphics, links and other items contained in any of the GIS data. In no event shall the County become liable for any errors or omissions in the GIS, and will not under any circumstances be liable for any direct, indirect, special, incidental, consequential, or other loss, injury or damage caused by its use or otherwise arising in connection with its use, even if specifically advised of the possibility of such loss, injury or damage. The data and or functionality on this site may change periodically and without notice. In using the GIS data, users agree to indemnify, defend, and hold harmless the County for any and all liability of any nature arising out of or resulting from the lack of accuracy or correctness of the data, or the use of the data.

Date created: 3/15/2022
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Developed by Schneider GEOSPATIAL

EXHIBIT B

Hawaii SLUD Locator



April 18, 2022

TMK Parcels

State Land Use Districts

Urban

Agricultural

1:2,257

0 0.02 0.04 0.07 mi

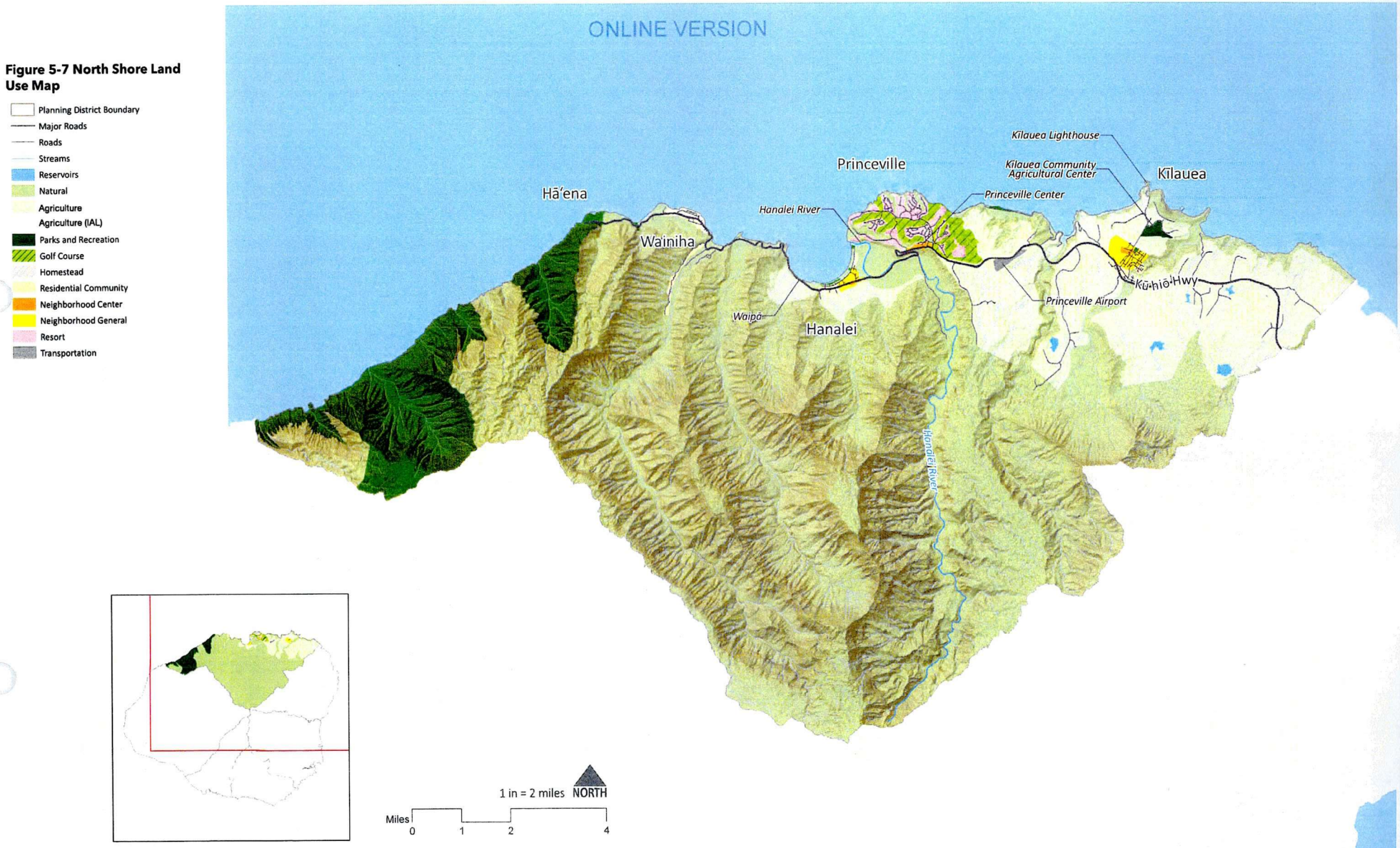
0 0.03 0.06 0.11 km

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

EXHIBIT C

ONLINE VERSION

Figure 5-7 North Shore Land Use Map



ONLINE VERSION

EXHIBIT C-02

SPECIAL PLANNING AREA NORTH SHORE

KAUAI COUNTY

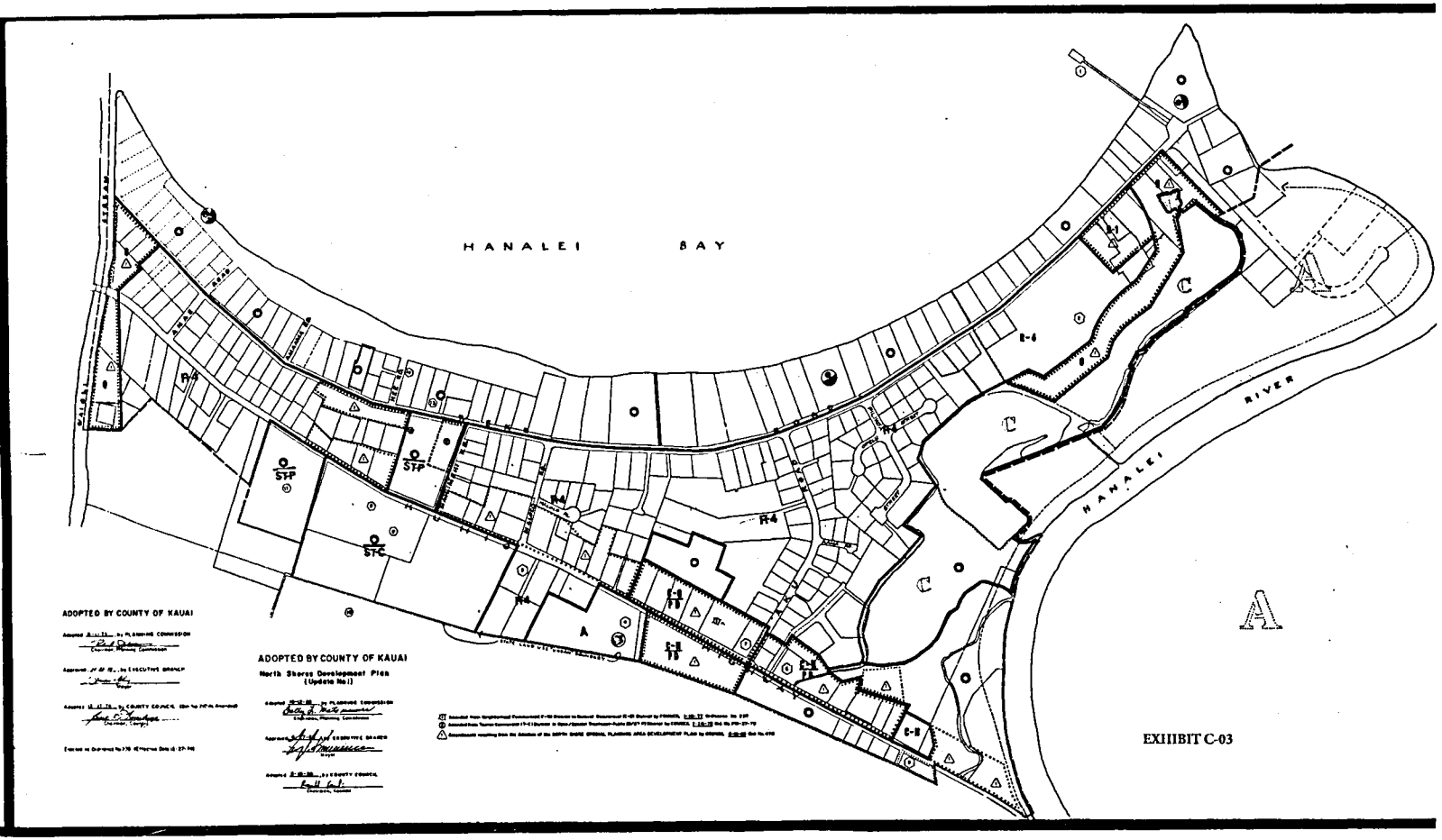
ZONING MAP ZM-HA700

NALEI TOWN

LEGEND

(C) NATURE CONSERVATION	R-2 RESIDENTIAL
O OPEN DISTRICT	R-4 RESIDENTIAL
A AGRICULTURE DISTRICT	C N NEIGHBORHOOD COMMERCIAL
(P) PRESERVATION	R R RESORT
(E) EXISTING PARK	ST-P SPECIAL TREATMENT
--- STATE LAND USE BOUNDARY	ST-C SPECIAL TREATMENT
	ST-R SPECIAL TREATMENT

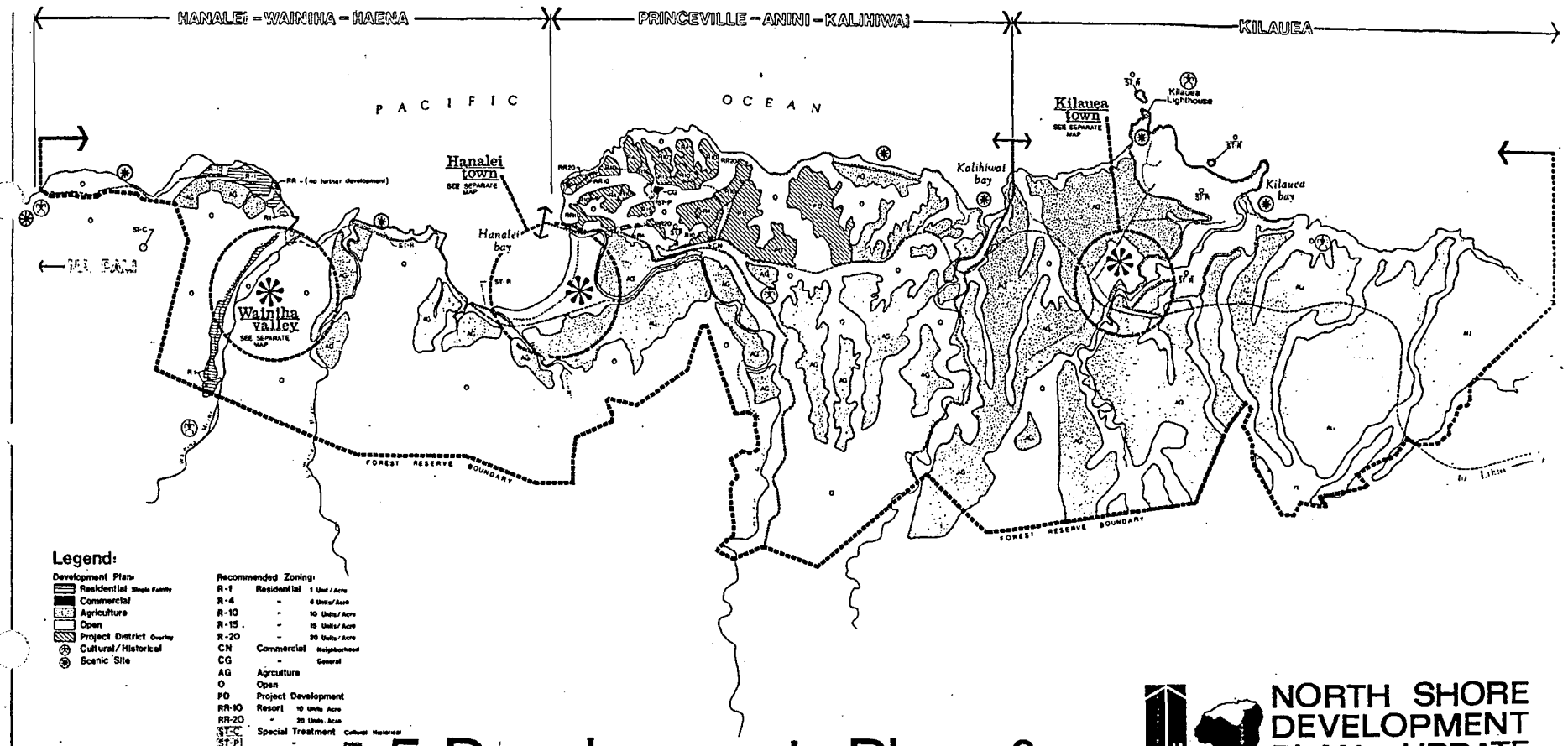




ADOPTED BY COUNTY OF KAUAI

ADOPTED BY COUNTY OF KAUAI
North Shores Development Plan
(Update No.)

EXHIBIT C-03



5. Development Plan & Recommended Zoning

NORTH SHORE DEVELOPMENT PLAN UPDATE

county of kauai

Planning Department

Wilson Okamoto & Associates

1000 2000 4000 10,000 feet

50 300 acres

EXHIBIT C-04

Hawaii SMA Locator



April 18, 2022

TMK - Neighbor Islands

Special Management Area (SMA)

EXHIBIT C-05

1:1,128

0 0.01 0.01 0.03 mi

0 0.01 0.03 0.05 km

Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand),

Parcels and CPRs

Annual High Wave Run Up Elevations

Contour Elevations (feet)

6+
6
5
4
3
2
1

Passive Flooding Elevations

Contour Elevations (feet)

6
5
4
3
2
1

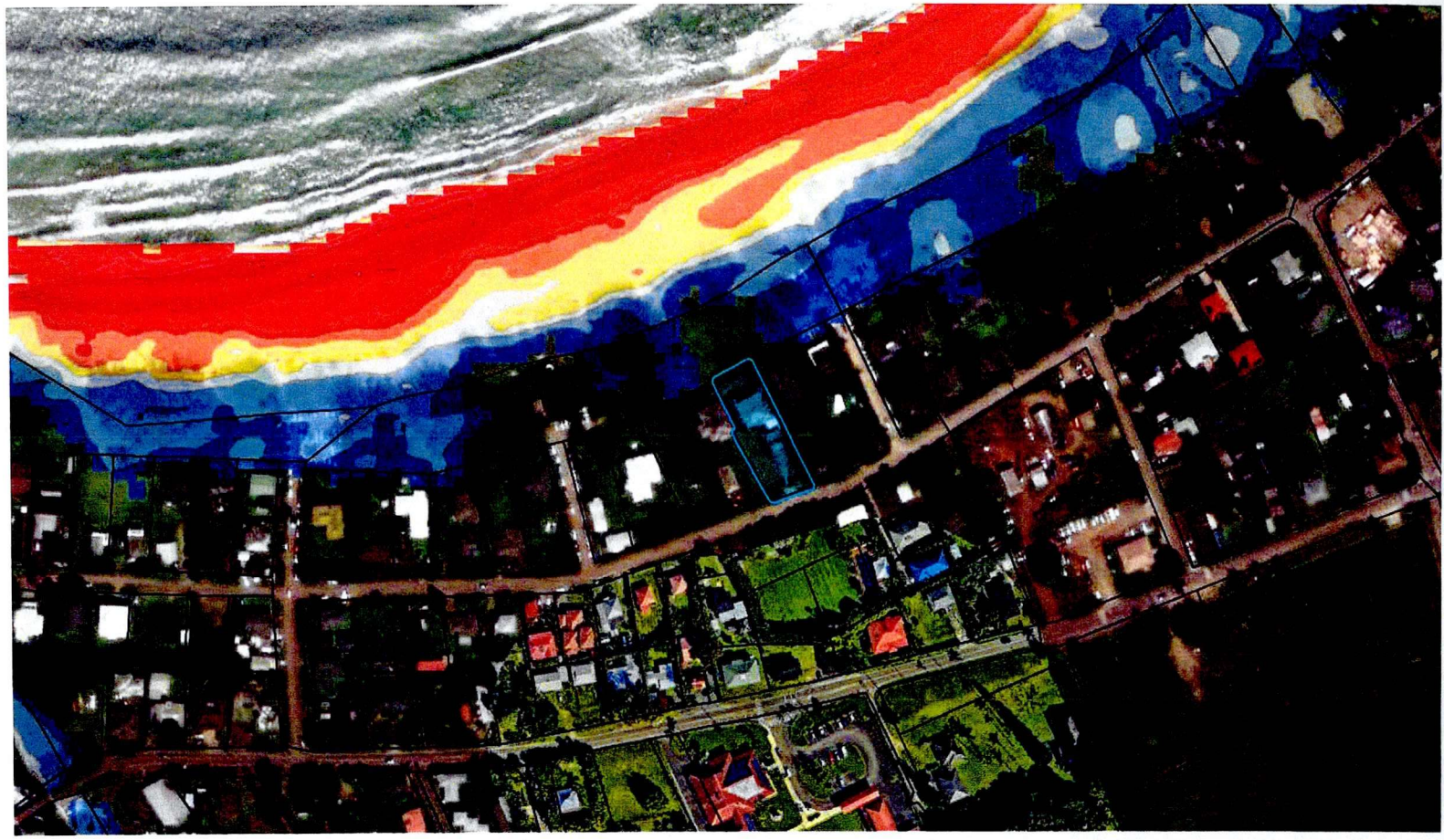


EXHIBIT C-06

ONLINE VERSION

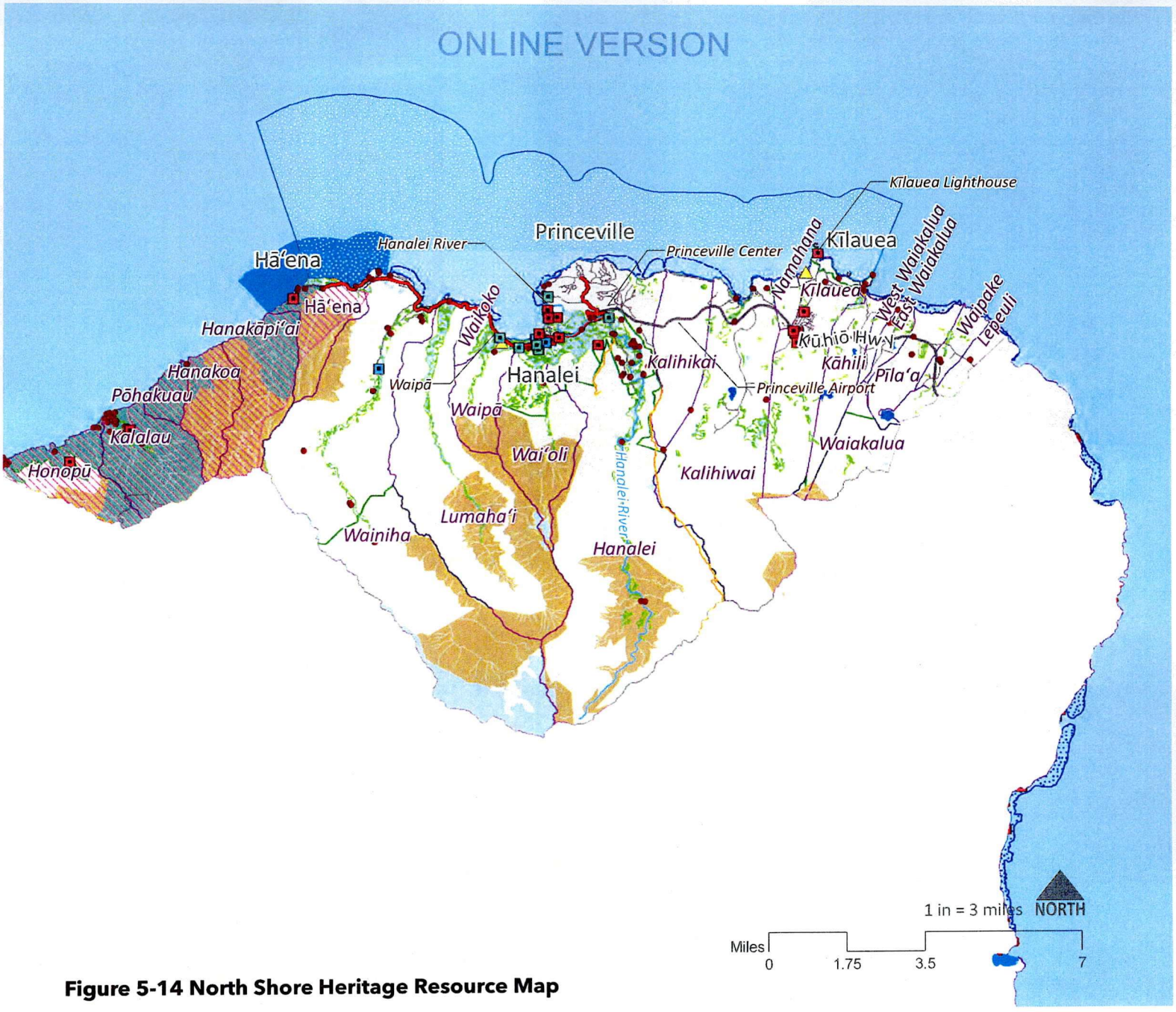


Figure 5-14 North Shore Heritage Resource Map

Registered Historic Sites
- State
- National
- State & National
- Cultural Features
- Priority Public Access Points
- Fish Ponds
- Streams & Waterbodies
- Major Roads
- Roads

- Historic Belt Road
- Trails
- Planning District Boundary
- Ahupua'a Boundaries
- Wetlands
- Coral Reefs
- Regulated Fishing Areas
- State & County Parks
- Preserves

- Reservoirs
- Traditional Cultivation Areas
- Sand Dunes
- Open Space Acquisition Priorities
- Critical Habitat

Threatened & Endangered Species
- High Density
- Very High Density

EXHIBIT C-07

ONLINE VERSION

ASM affiliates

Archaeology • History • Ethnography • Architectural History

February 16, 2018 PN-29790

Roy A. Vitousek III.
Cades Schutte, Limited Liability Law Partnership
75-170 Hualālai Road, Suite B-303
Kailua-Kona, Hawai'i 96740

Dear Randy:

As requested, on behalf of your client, ASM Affiliates (ASM) conducted an archaeological due diligence study of five parcels (TMK: (4) 5-5-004:012, 013, 018, 019, 021) in Wai'oli Ahupua'a, Halele'a District, Island of Kaua'i (Figures 1 and 2). In an effort to provide a comprehensive analysis, the scope of work for the current study included background archival research of the records on file at the State Historic Preservation Division, a review of historic maps on file at the State Land Survey Division, a data search of the Waihona 'Āina and Kīpuka *Māhele* and Land Grant databases, and a field inspection of the parcels to assess the potential for significant archaeological and architectural resources.

Based on a review of the archival material and my field inspection, I found nothing to indicate that there would be any historic preservation concerns with respect to the purchase and any possible future development on the subject parcels. As will be elaborated on below, the likelihood of encountering intact Precontact and/or early Historic Period subsurface deposits in minimal; and there are no intact historic architectural resources present. The background information obtained from the archival sources is presented below, followed by a presentation of the results of the field inspection.

Subject Property Land Tenure History

The subject property consists of five separate Tax Map parcels (TMK: (4) 5-5-004:012, 013, 018, 019, 021) (see Figure 2). Parcels 012 and 013 are situated on the seaward (*makai*) side of Weke Road and were created as part of the Wai'oli Beach Lots subdivision implemented by the Territorial Government beginning in 1912. These beach lots were surveyed in 1912 and sold in 1914 (Attachment A). A 1912/14 map (Figure 3) indicates that Parcel 013 was sold to A.R. Glaisyer as Grant 6116 and Parcel 012 was sold to Albert Spencer Wilcox as Grant 6117. Glaisyer was the Deputy Territorial Veterinarian for Kaua'i. In addition to the Grant 6116 beach lot, the Glaisyer's appear to have had multiple residences on Kaua'i (in Līhu'e based on a September 30,1913 social note in the Garden Island newspaper, and later in Kalaheo as indicated by a June 6, 1922 social note in the Garden Island newspaper):

> Dr. A. R. Glaisyer, assistant territorial veterinarian, was stricken with heat prostration at Makaweli last Monday afternoon. The unfortunate affair occurred at one of the plantation stables, and the doctor was immediately conveyed to the hospital, Dr. Kellei taking him in hand. Mrs. Glaisyer was sent for and by the following morning the doctor was able to be brought to his **home in Lihue** and at present is rapidly improving though yet confined to his bed.
>
> BRIDGE GIVEN BY MR. AND MRS. A. R. GLAISYER Mrs. A. R. Glaisyer entertained a number of friends at a very enjoyable bridge at her **home in Kala-heo** last Thursday afternoon. The rooms where the guests played were attractively decorated for the occasion with beautiful flowers from Ms. Glaisyer's own garden.

Albert Spencer Wilcox was born to missionary parents in Hilo, Hawai'i in 1844. In 1846 the family relocated from the Hilo Mission on the Big Island to the Wai'oli Mission on Kaua'i. Wilcox started a small sugar plantation in Waipā, but by 1876 it had failed. In 1877 he was hired to manage the sugar mill and

820 Mililani Street, Suite 700, Honolulu, Hawaii 96813 (808) 439-8089 Fax: (808) 439-8087
507A East Lanikaula Street, Hilo, Hawaii 96720 (808) 969-6066 Fax: (808) 443-0065
www.asmaffiliates.com

EXHIBIT C-08

plantation at Hanamā'ulu, where he prospered for more than two decades. Wilcox also served as representative from Kaua'i to the legislature of the Hawaiian Kingdom from 1887 to 1892. In the 1880s he invested in a sugar operation in Kekaha in western Kaua'i, and founded the Inter-Island Steam Navigation Company. He parlayed his good fortunes and in 1895 purchased Princeville making it a cattle ranch. In 1903 Wilcox formed the Hanalei Land Company, and when the Territorial Government made beach lots along Hanalei Bay available for purchase, he acquired several including the current Parcel 012.

Parcels 018, 019, and 021 are located on the inland (*mauka*) side of Weke Road (see Figure 2). Parcel 019 was awarded to Naniho as a *kuleana* lot (LCAw. 10309:2) during the *Māhele* of 1848 (see Culture-Historical Background below); Parcel 021 was awarded to Kaupe as a *kuleana* lot (LCAw. 9081:3); Parcel 018 appears to have been created from remnant lands although a review of historic maps (see Figure 3; Figure 4) indicates that the parcel boundaries may overlap with other *kuleana* lots (i.e., LCAw. 9273:1 to Kawahine and 10317:3 to Naiwi). All of these awards were for house lots and the recipients were also awarded other plots that were used for agricultural purpose (see Figure 4). The *Māhele* records (Attachment B) provide the names of the claimants, the nature of the land use, and supporting testimony verifying the claims. A 1937 map associated with a neighboring Land Count Application (App 1129) perhaps shows the most correlation of parcel boundaries (Figure 5).

Culture-Historical Background for Wai'oli

Historical records describe how during the conquest of the Hawaiian Islands by Kamehameha I, the ruling chief of Kaua'i (Kaumuali'i) avoided personal defeat through a peaceable transfer of power. He established a will that left Kaua'i to Kamehameha upon Kaumuali'i's death. Although subject to Kamehameha during the remainder of his life, Kaumuali'i retained leadership over the island. Kamehameha died five years before Kaumuali'i.

Upon Kaumuali'i's death in 1824 his agreement to Kamehameha was honored. Rather than the traditional reassignment of lands to local chiefs, the O'ahu powers selected and installed Kaumuali'i's nephew (Kahalaia) as the new chief of Kaua'i. The O'ahu chief Kalanimoku was sent to Kaua'i to inform the local chiefs. The local chiefs rebelled, and a bloody one-sided battle ensued. Well-armed and well-trained warriors were sent to Kaua'i from O'ahu and Maui to support Kalanimoku. The ill-prepared farmers of Kaua'i were easily defeated, and Kaua'i came under the direct rule of the young king (Kamehameha III). Kaikiohewa was appointed governor and the lands were re-divided with the best tracts going to the "loafers and hangers-on (*palaualelo*) of O'ahu and Maui." Thus, the old order of political power on Kaua'i was dissolved and displaced by a new society of land managers who came from O'ahu and Maui.

Social order in Wai'oli was also altered in the early 1830s with arrival of Western missionaries and the establishment of the Wai'oli Mission situated to the southwest of the subject property. The Mission school attracted scores of Hawaiians who relocated to Wai'oli from elsewhere on Kaua'i, many of whom were provided with land for residential and agricultural purposes.

These sociopolitical transformation was affirmed and codified by the *Māhele* of 1848, during which the land interests of the King (Kamehameha III), the high-ranking chiefs, and the low-ranking chiefs, the *konohiki,* were defined. The chiefs and *konohiki* were required to present their claims to the Land Commission to receive awards for lands provided to them by Kamehameha III. They were also required to provide commutations to the government in order to receive royal patents on their awards. The lands were identified by name only, with the understanding that the ancient boundaries would prevail until the land could be surveyed. During the *Māhele* all lands were placed in one of three categories: Crown Lands (for the occupant of the throne), Government Lands, and *Konohiki* Lands. All three types of land were subject to the rights of the native tenants (*kuleana*) therein. Wai'oli Ahupua'a was awarded as *konohiki* land to Mikahela Kekauonohi, who relinquished the land in lieu of commutations for other awards she received, to the kingdom government. Within Wai'oli, there were numerous *kuleana* claims made for house lots and garden plots (see Figure 4), by both long time inhabitants and residents that arrived in conjunction with the Wai'oli Mission and school post 1831.

Collectively, the *Māhele* records provide a glimpse into the social environment in 1850s Wai'oli. There were twenty-six claims made for house lots, twenty-seven claims made for dryland cultivation areas (*kula*), and roughly 154 taro *lo'i* were reported to have been in use along with three complex irrigation systems. Three fishponds were identified and the Wai'oli Mission award included a framed school house, a native church, pasture lands along the Wai'oli River, and a 4-acre taro patch. Figure 4 portrays the *Māhele*-era landscape, and a an 1894 map (Figure 6) shows the precursor of Weke Road as a trail and identifies modern-day Kūhiō Highway as the Government Road.

In 1986, Carol Silva prepared *A Comprehensive Chronicle of Land Use; Hanalei Valley, Kaua'i; through 1940.* She documents and summarizes the changing land use in the area from subsistence farming to commercial agricultural production. In a 1987 follow-up study prepared by the "1000 Friends" organization, seven Cultural Landscape Periods were defined for the greater Hanalei area based on the primary agricultural pursuits of the inhabitants. Correlated with the Periods are crops of importance, prominent landscape features, and predominant ethnicity (Table 1). The pattern that emerges is interesting, and perhaps belies the deterministic nature of the environment, which was well suited for taro pondfield cultivation.

Table 1. Cultural landscape chronology: Hanalei Valley.

Period Dates	*Primary Crop*	*Landscape Features*	*Predominant Ethnicity*
Precontact pre-1770s	Taro, Breadfruit	*'auwai, lo'i,* terraces	Native Hawaiian
Early Western Contact 1770s-1848	Taro	*'auwai, lo'i*	Native Hawaiian, Caucasian
Missionaries, Agricultural Experiments 1830s-1860s	Coffee, Sugar, Silk	Fencing, Tree plantings, Early roads	Caucasian, Chinese
Agricultural Stabilization 1860s-1890s	Sugar, Rice	Plantations, Ornamental planting, Road system, Ferries, Early bridges	Chinese, Japanese, Caucasian
Agricultural Transition 1890s-1930s	Rice, Taro	Wetland agricultural fields and patches, Bridges	Chinese, Japanese
Consolidation 1930s-1960s	Taro, some rice	Loss of rice mills, pondfield abandonment, *'auwai* stabilization	Japanese, Chinese
Increased Mechanism 1960-1980s	Taro	Increased field systems, *'auwai* improvement	Japanese-American, Native Hawaiian, Caucasian

While the two coastal parcels within the current study area have likely always been a sandy beach dune, and the three more inland parcels were historically part of a coastal habitation zone, historical sources suggest that prior to the twentieth century the area immediately back from the coastal habitation zone was part of a larger tract of unutilized marshland or swamp. As Damen put it in 1931, and as supported by the *Māhele* records discussed above:

> According to old residents, the natives would go into the valleys to mahiai, or farm, during the day, and return at night to their homes on the beach. Remains of these terraced taro-lands are still to be found far up in the valleys where no one now lives. The great stretch of lowland between the Hanalei and Waioli rivers, now planted to rice fields, was in the old days an undrained swamp.

Previous archaeology

Early archaeological research on Kaua'i was conducted in 1906 by Thomas Thrum. He recorded two *heiau* (traditional temple sites) in Wai'oli Ahupua'a and a third in neighboring Waipā Ahupua'a, which may actually have been in Wai'oli based on the results of a 1931 study conducted by Wendell Bennett. Bennett carried out an extensive recording and documentation of sites throughout Kaua'i, which included the *heiau* sites in Wai'oli Ahupua'a.

In 1972, Timothy Earle conducted a district-wide survey and recording of agricultural features. He documented several irrigation features and fields (*lo'i*) in Halele'a District, and within Wai'oli all of the taro *lo'i* systems were recorded to be 200 meters or more inland from Kūhiō Highway. Earle's work highlighted that within Wai'oli Ahupua'a the traditional taro *lo'i* were replaced with the cultivation of coffee and rice by the end of the nineteenth century.

In 1979, archaeological excavation was performed at the Wai'oli Mission Hall by Cultural Surveys Hawai'i. This work provided information about the history of the missionary church from 1832 to the twentieth century. And in 1987, William Kikuchi prepared as study of fishpond on Kaua'i in which he described six ponds that were used for taro cultivation and the raising of fish and shellfish, and an additional five ponds near the shoreline whose functions were not historically recorded. *Māhele* data indicates that these ponds were in use in 1848, but by 1852 some had fallen out of use and ceased to exist.

Between 1994 and the present, several parcels in the general vicinity of the current study area have been investigated archaeologically; all but three of these were inland of Weke Road. On the seaward side of Weke Road to the northeast of the current study area, TMK: (4) 5-5-001:009 was subject to an inventory survey with subsurface testing that produced negative results with respect to archaeological properties. Five parcels (TMKs: (4) 5-5-001:039, 040, 041, 042, 043) on the inland side of Weke Road, also to the northeast of the current study parcel, produced negative results with respect to archaeological properties as wll. To the east of the current study parcel, on TMKs: (4) 5-5-010: 004 and 065, no significant archaeological resources were encountered during a subsurface investigation. During an extensive study of a roughly 8.5 acre parcel (TMK: (4) 5-5-002:046) also located inland and east of the current study area, a widespread subsurface cultural deposit and several burials were found. An inadvertent burial find was made within TMK: (4) 5-5-003:035 along Malolo Road, two lots inland from Weke Road. This was an isolated find, but there was reason to believe that other burials existed elsewhere on the parcel. In 2004, archaeological monitoring was conducted on two parcel (TMK: (4) 5-5-004:0009 and 010) located on the seaward side of Weke Road immediately to the west of Parcels 012 and 013 of the current study area. This study resulted in no findings of traditional artifacts, burials, or cultural deposits; a few historic bottles and butchered cow bones were found. Most recently, during inventory survey and monitoring on several parcels (TMK: (4) 5-5-005:009, 010, 011, 012, 027) forming a single-family residential compound to the west of the current study area at the termination of Weke Road, no archaeological sites were found seaward of Weke Road, but several burials were identified between the driveway extension of Weke Road and Wai'oli Stream.

Field Inspection

On February 12, 2018, Robert B. Rechtman Ph.D. conducted a thorough surface reconnaissance of the subject property along with an inspection of the existing residential structures. There are no extant historic architectural resources on the property; all of the existing buildings are modern in origin. The portion of the property seaward of Weke Road is a gated/fenced landscaped residential compound with four residential structures (Figures 7, 8, and 9) situated between Weke Road and the Wai'oli Beach Park (Figure 10). There is no reason to suspect that there are any buried archaeological deposits in this area.

The majority of the portion of the property that lies inland of Weke Road is gated/fenced and has been transformed into a playground (Figure 11), open field (Figure 12), and pool area (Figure 13); with one newly constructed cottage (Figure 14). This entire area has been subject to substantial ground alteration (Figure 15) and, although situated in an area that once supported residential *kuleana* activity, has a low likelihood of containing intact cultural deposits.

A small western projection of Parcel 018 outside of the gated portion of the property is used as a driveway and yard area (Figure 16) for the neighboring Parcel 042 (see Figure 2). It also appears that the fencing between the subject property and Parcel 042 does not extend along the property line, but rather Parcel 042 enjoys use of the western extreme of Parcel 021. A larger eastern projection of Parcel 018 extends in front of Parcels 017 and 016 (see Figure 2), with a recorded easement for driveway purposes to Parcel 017 and a storage shed in front of Parcel 017 (Figure 17). The area in front of Parcel 016 is a landscaped lawn area

with a driveway (Figure 18) across Parcel 018 to Parcel 016. This driveway use does not appear to be within a formally recorded easement.

In summary, while any future development plans that involve a HRS Chapter 6E trigger may require historic preservation review by the State Department of Land and Natural Resources, and possible monitoring of subsurface disturbance, I do not believe that there are any archaeological resources on the property that would present significant development constraints.

I would like to thank you and your client for the continued opportunity to provide you with our services. Should you have any question, or would like further information please feel free to contact me.

Regards,

Bob Rechtman, Ph.D.
Principal Archaeologist

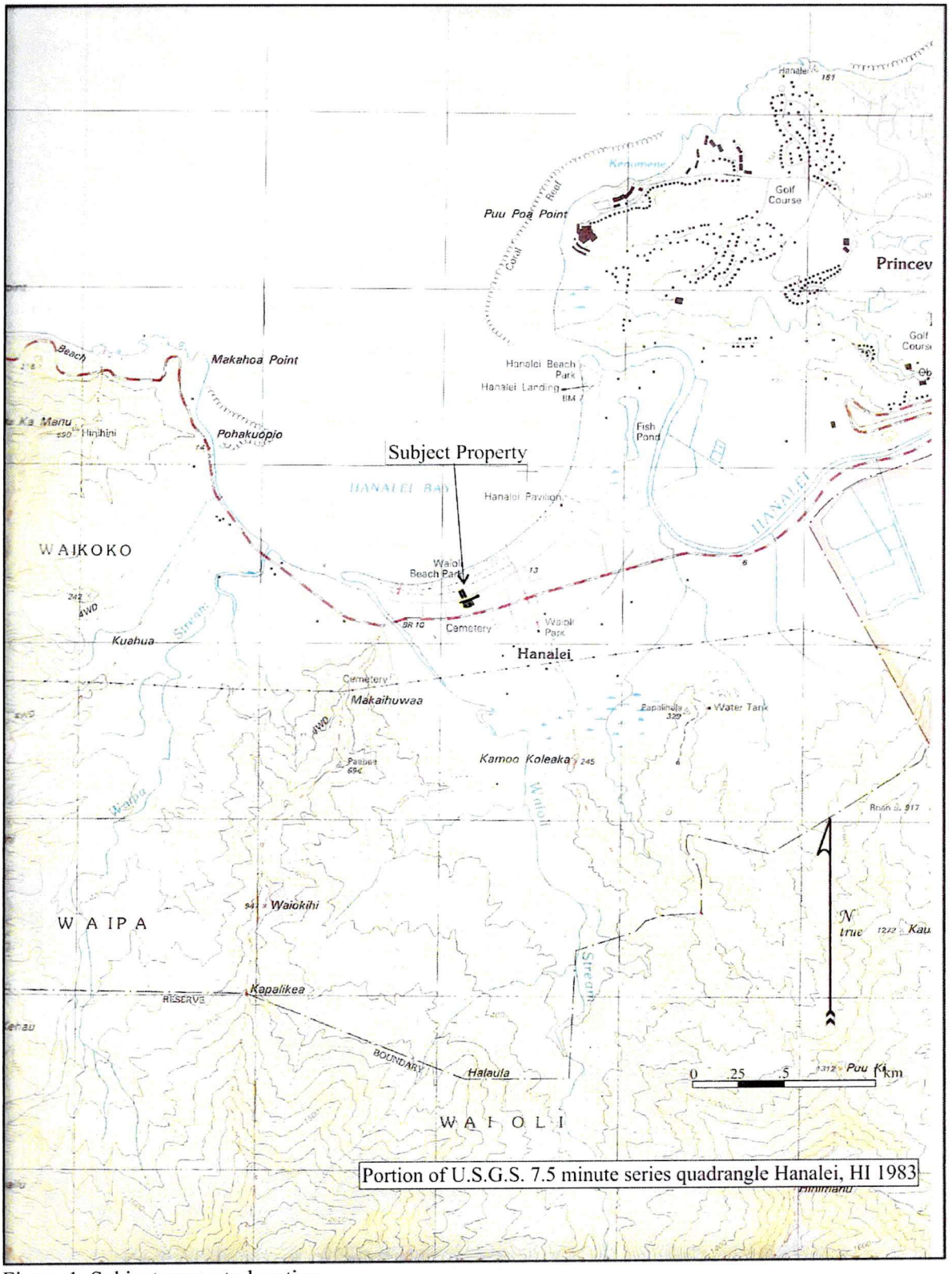


Figure 1. Subject property location.

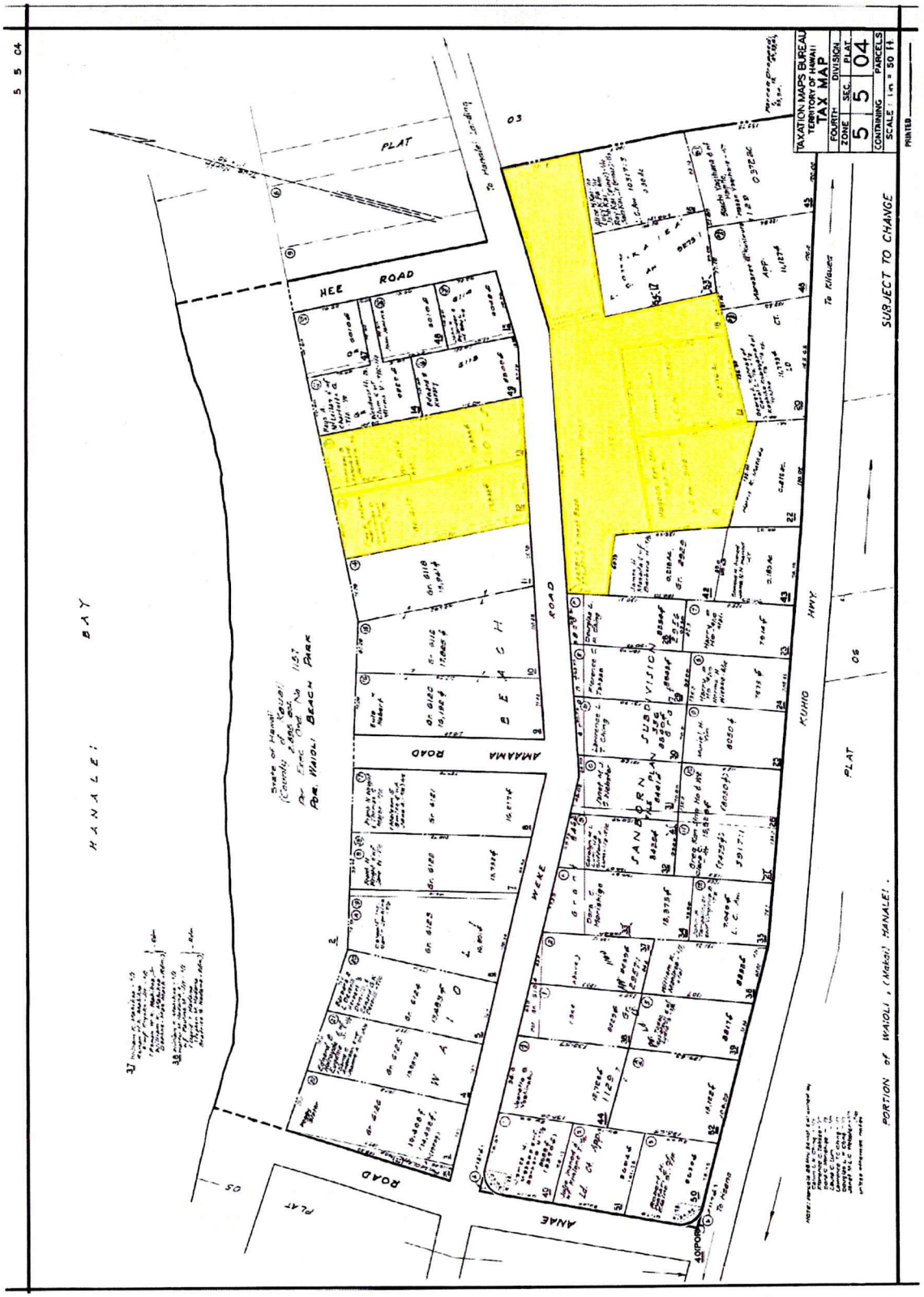


Figure 2. Tax Map Key 4-5-5-004 showing subject property (shaded yellow).

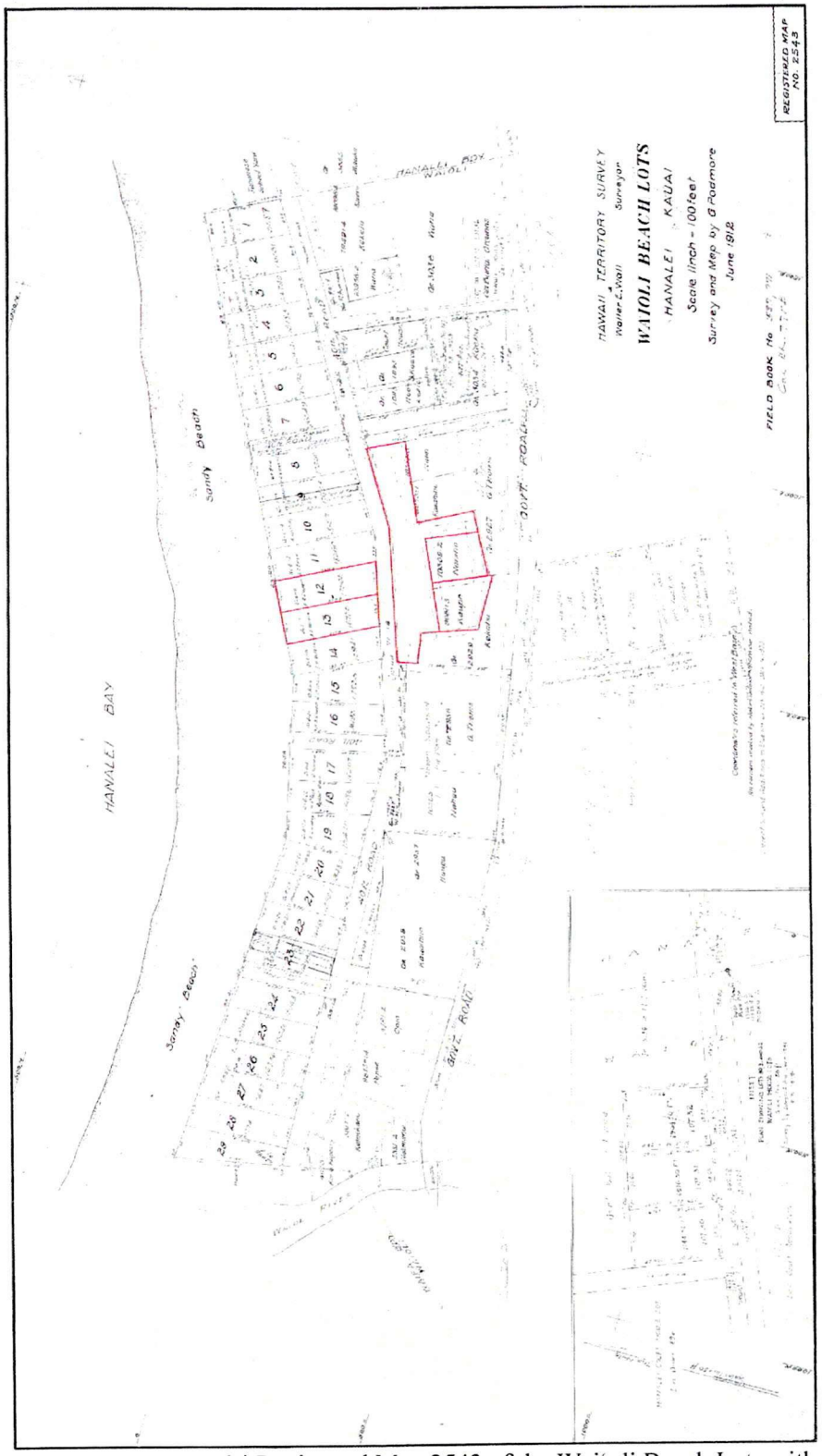


Figure 3. 1912 Hawai'i Registered Map 2543 of the Wai'oli Beach Lots with subject property outlined in red.

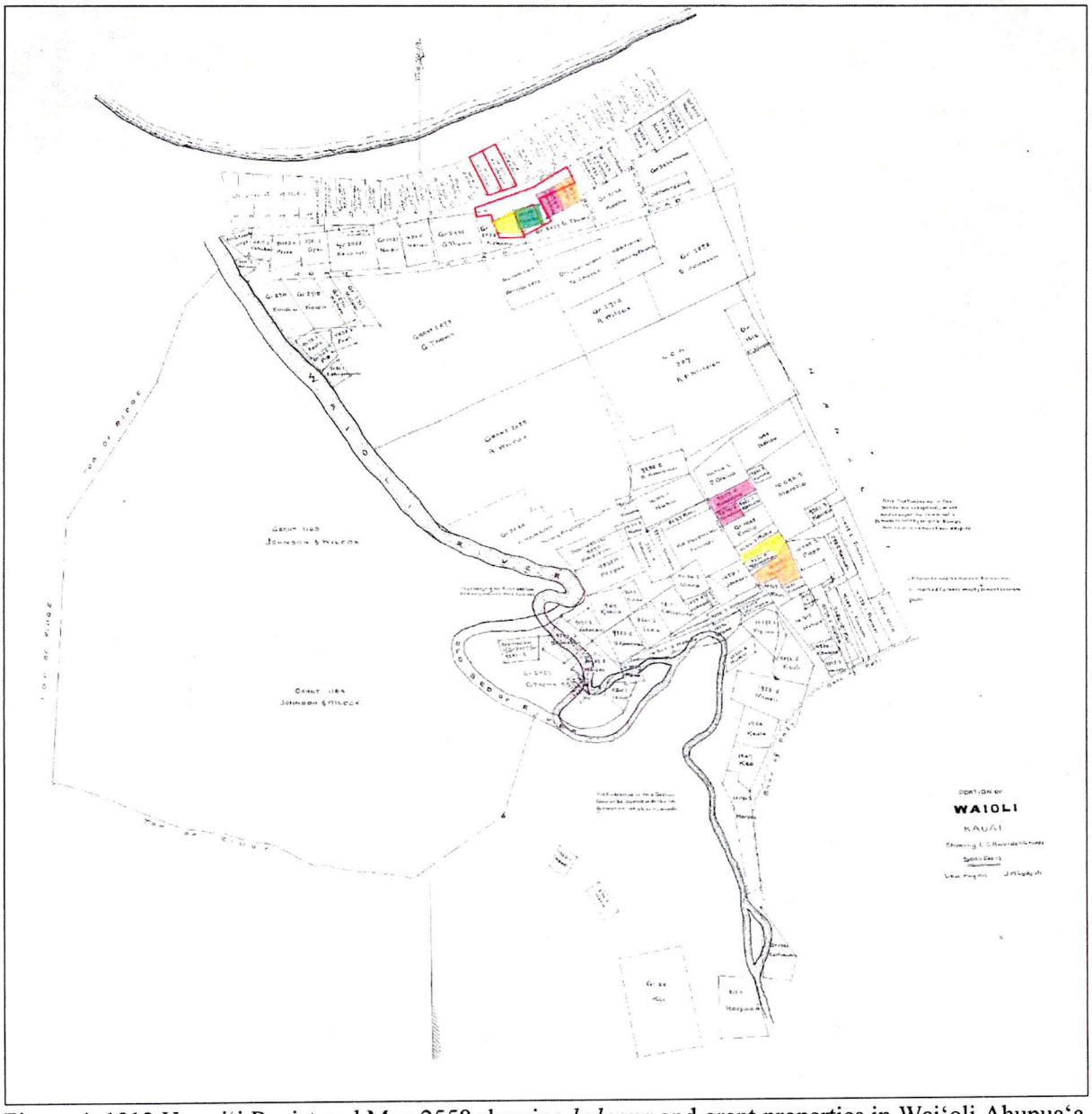


Figure 4. 1912 Hawai'i Registered Map 2558 showing *kuleana* and grant properties in Wai'oli Ahupua'a, current property outlined in red. Kaupe's *kuleana* in yellow, Naniho's *kuleana* in green, Kawahine's *kuleana* in purple, and Naiwi's *kuleana* in orange.

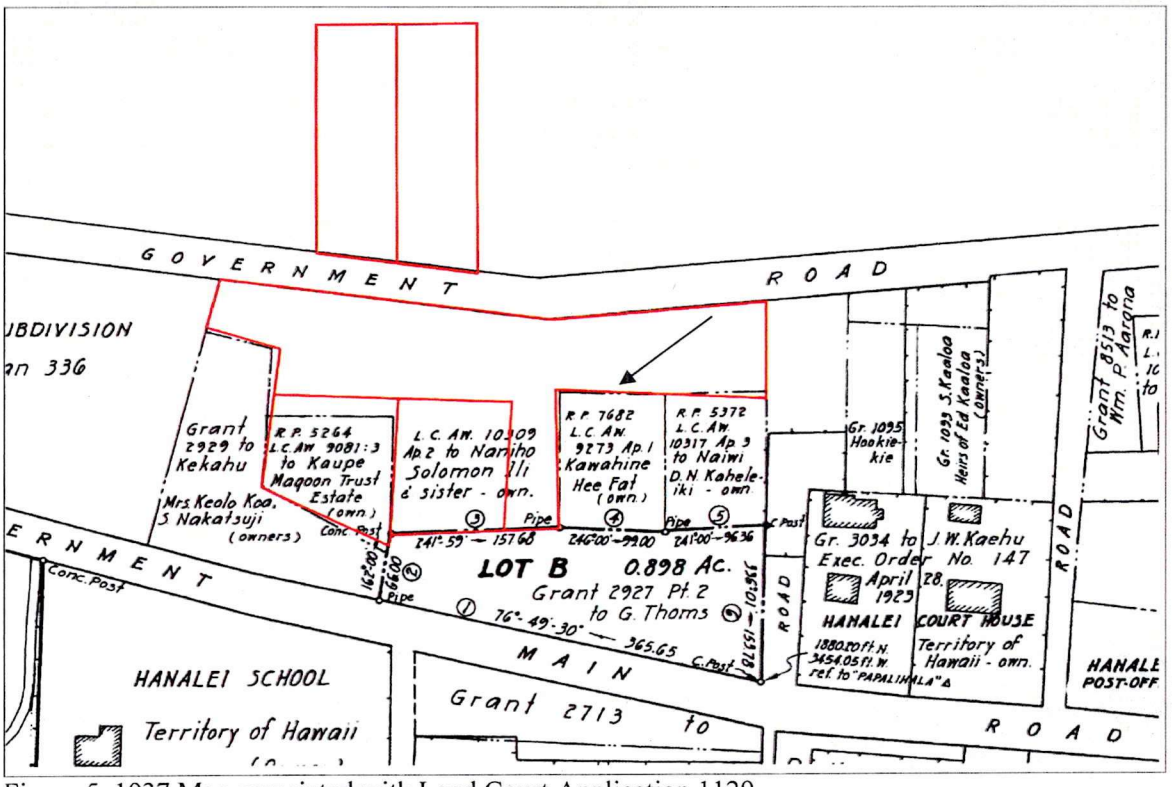


Figure 5. 1937 Map associated with Land Court Application 1129.

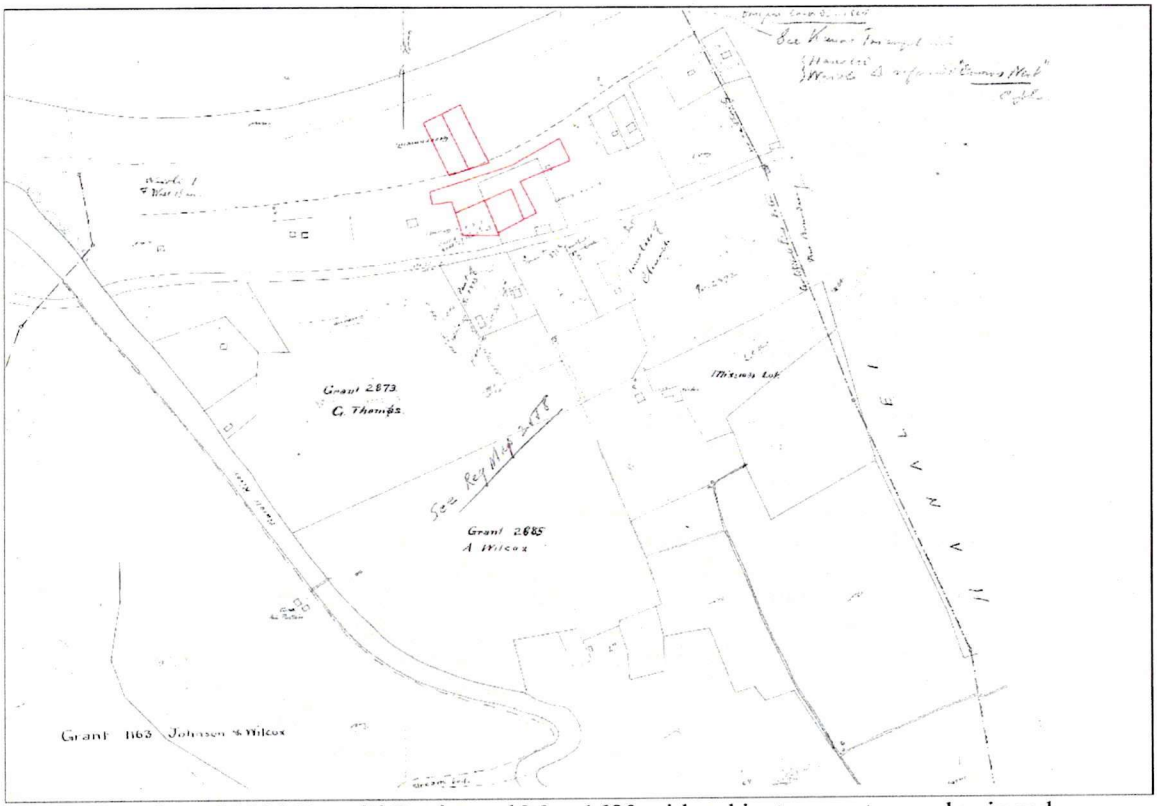


Figure 6. Portion of 1894 Hawai'i Registered Map 1680 with subject property overlay in red.

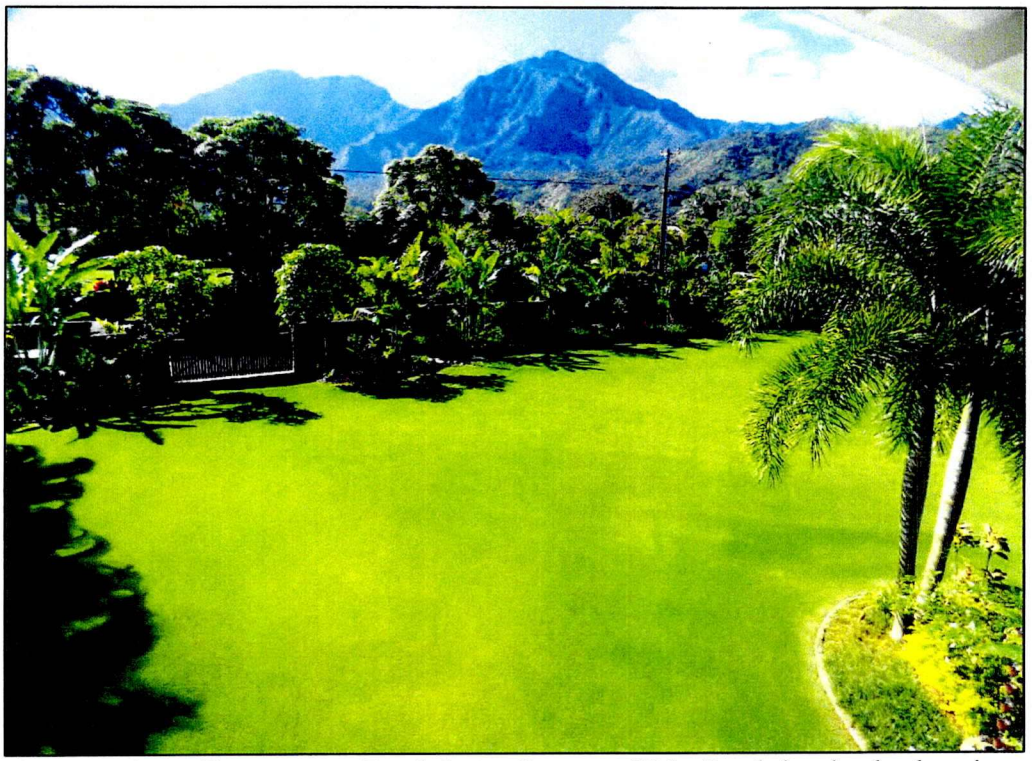


Figure 7. View of lawn area on Beach Lots adjacent to Weke Road showing landscaping.

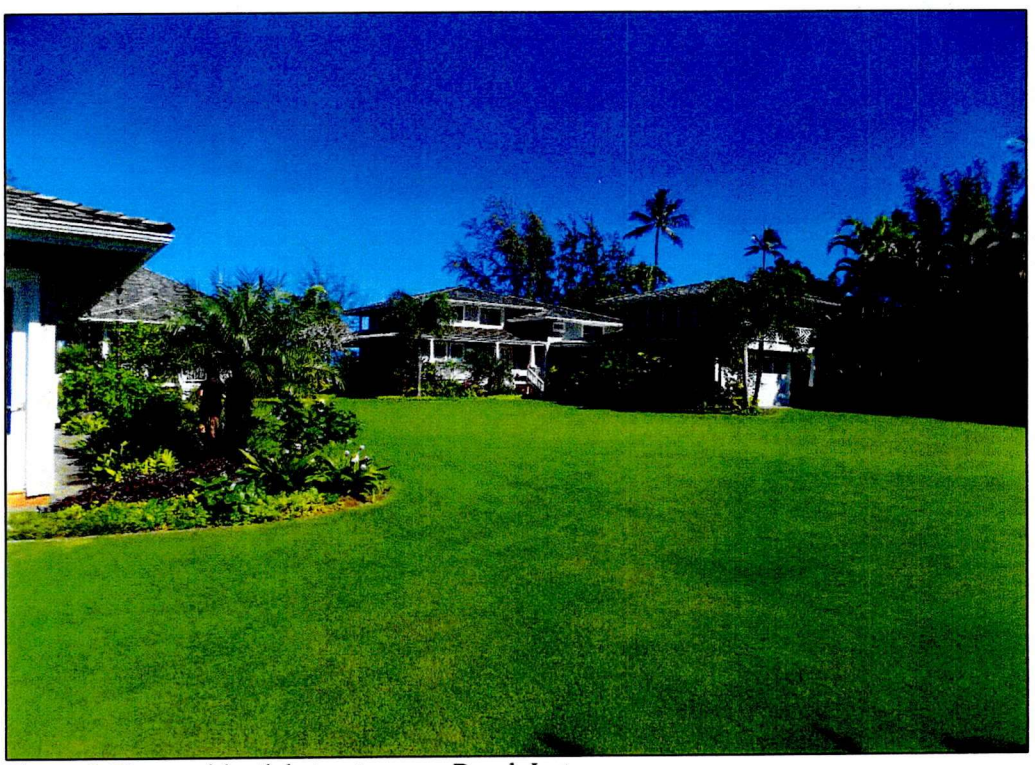


Figure 8. New residential structures on Beach Lots.



Figure 9. Residential structures and landscaping on Beach Lots.

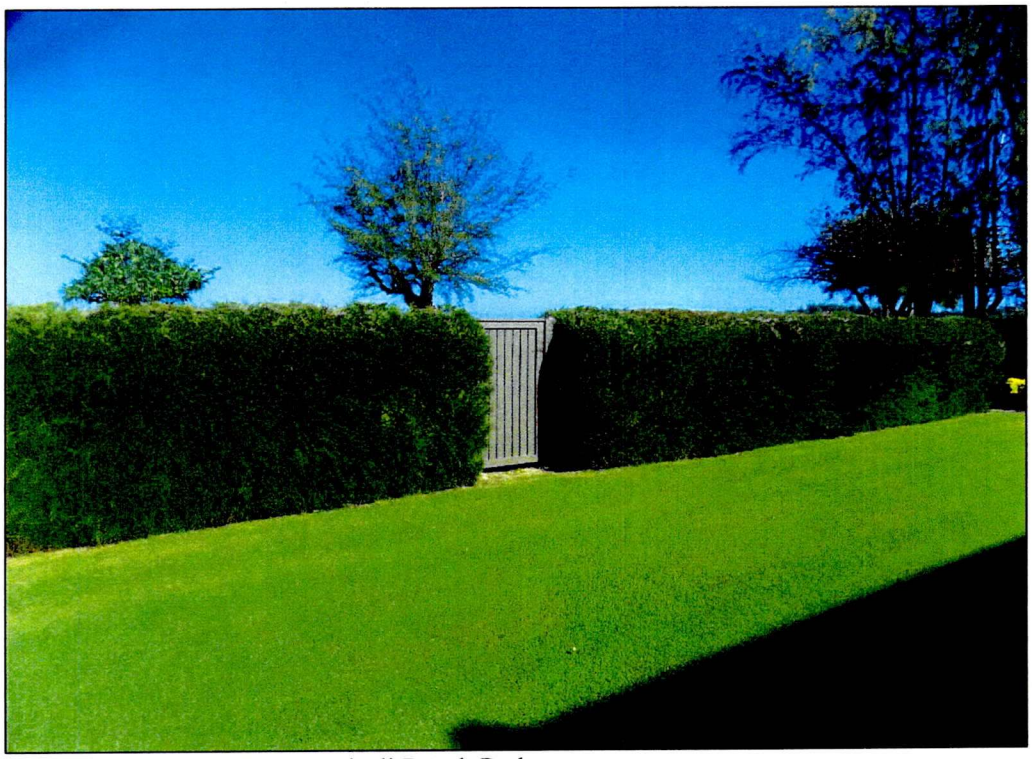


Figure 10. Gate leading to Wai'oli Beach Park.



Figure 11. Playground structure on Parcel 018 inland of Weke Road.



Figure 12. Manicured field across Parcels 019 and 021 inland of Weke Road.



Figure 13. Pool on portion of Parcel 018, built in elevated and filled area.

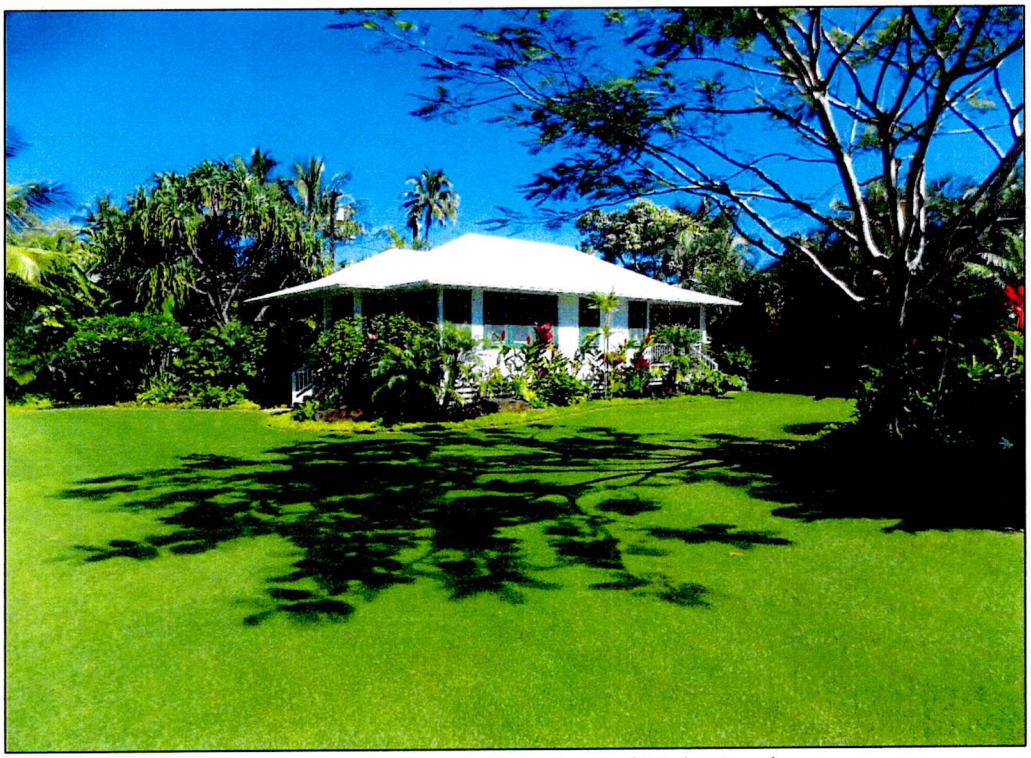


Figure 14. Newly built cottage on Parcels 018 inland of Weke Road.

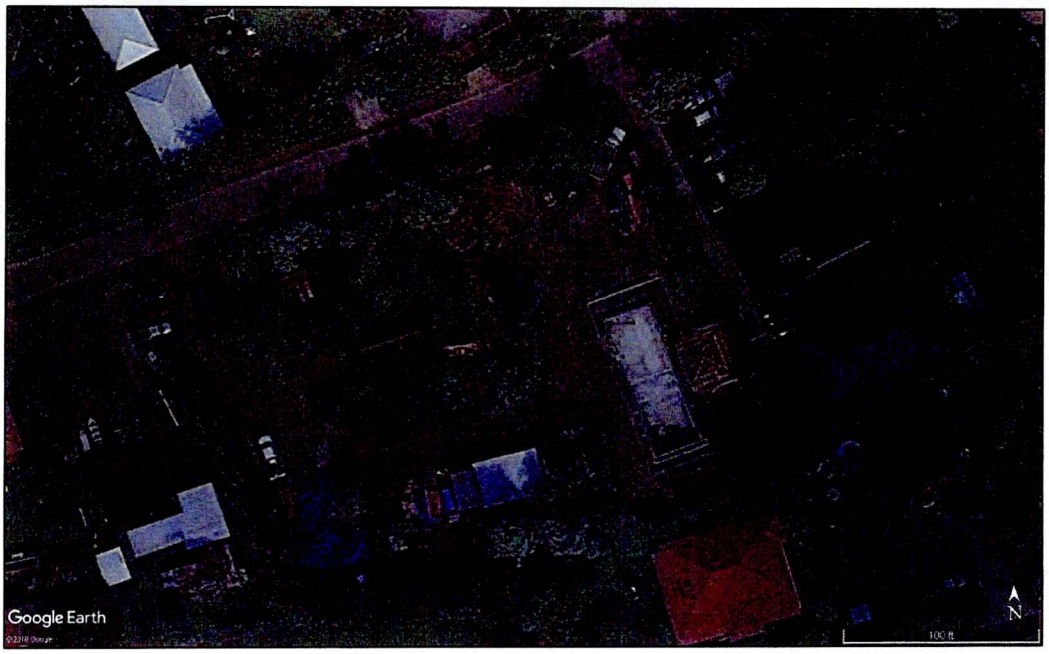


Figure 15. 2013 aerial image of construction activity on Parcels 18, 19, and 21.

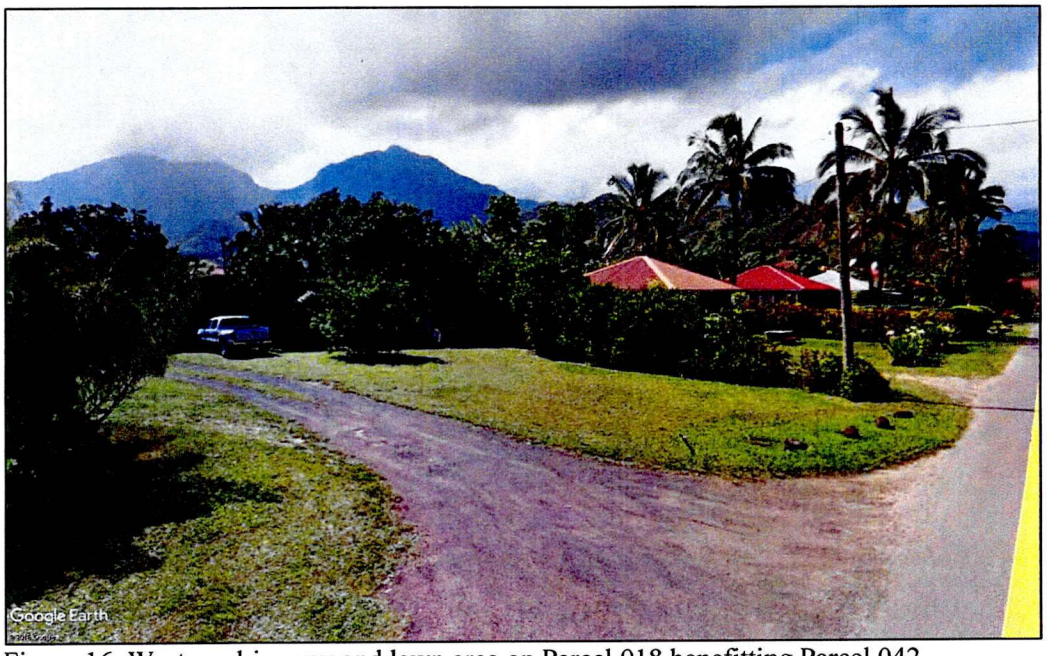


Figure 16. Western driveway and lawn area on Parcel 018 benefitting Parcel 042.



Figure 17. Shed (background) and driveway easement (foreground) in front of Parcel 017.



Figure 18. Eastern driveway and lawn area on Parcel 018 benefitting Parcel 016.

ATTACHMENT A – Grant 6116 and 6117 Survey Records

Lot 12
Waioli Beach Lots
Hanalei, Kauai.

Copy furnished Land Office
Jan. 21 1918.

Gr 6116 A. R. Glasgow

File in Carton 12.
12

Territory of Hawaii,

Office of the Government Survey.

Honolulu, T. H., July 12, 1912

Lot 12.
Waioli Beach Lots,
Hanalei, Kauai.

Beginning at a stake at the ~~Northeast~~ *East* corner of this lot and the ~~Northwest~~ *West* corner of Lot 11, the coordinates of said point referred to Government Survey Trig. Station "West Base " being 242.22 feet North and 482.28 feet East, as shown on Government Survey Registered Map No. 2543. and running by true azimuths:-

1. 333° 20' 238.6 feet along Lot 11 to a stake;
2. 71° 18' 75.7 feet along North side of road to a stake;
3. 153° 20' 228.2 feet along Lot 13 to a stake;
4. 243° 20' 75.0 feet along beach reserve to the point of beginning.

Area 17505 Square Feet.

L. Godmore
Assistant Government Surveyor.

Lot 13
Waiau Beach Lots
Honolulu, Hawaii

Aff furnished Land Office
Jan 24 1912
Gr 6117 G. S. Wilcox

File in Carton 12.
13

Territory of Hawaii,

Office of the Government Survey.

Honolulu, T. H., July 12, 1912.

Lot 13.
Waioli Beach Lots,
Hanalei, Kauai.

Beginning at a stake at the North[redacted] corner of this lot and the West corner of Lot 12, the coordinates of said point referred to Government Survey Trig. Station "West Base" being 208.56 feet North and 415.26 feet East, as shown on Government Survey Registered Map No. 2543, and running by true azimuths:-

1. 333° 20' 228.2 feet along Lot 12 to a stake;
2. 71° 18' 75.7 feet along North side of road to a stake;
3. 153° 20' 217.8 feet along Lot 14 to a stake;
4. 243° 20' 75.0 feet along beach reserve to the point of beginning.

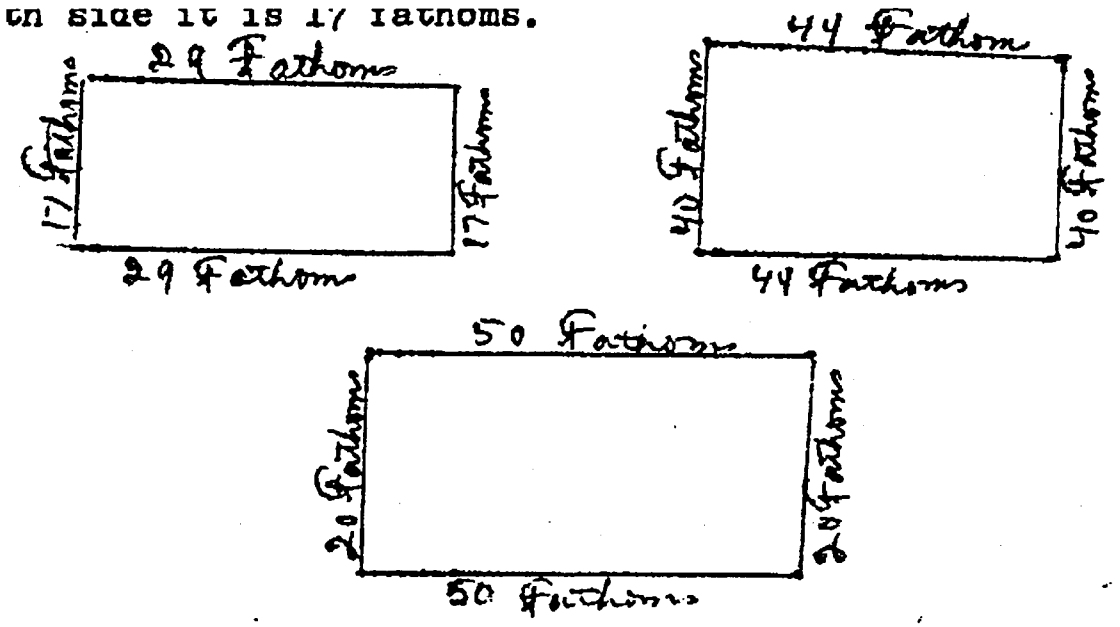
Area 16725 Square Feet.

E. Podmore
Assistant Government Surveyor.

ATTACHMENT B – Land Commission *Māhele* Records.

No. 9081, Kaupe
N.R. 409v9

Greetings to the Land Commissioners sitting on the island of Oahu: I hereby explain my claim for a house lot and my occupancy at Waioli on the island of Kauai. On the west side it is 29 fathoms, and adjoins close to Kalohiau's lot, on the east side it is 29 fathoms and is close to Naniho's lot, on the south side it is 17 fathoms, on the north side it is 17 fathoms.



These are the three lo`i which I possess at Waioli; their dimensions are shown in the diagram. There is also a kula for these three lo`i, which is 37 fathoms long by 29 fathoms wide, a circumference of 132 fathoms.
KAUPE

F.T. 11-12v12
No. 9081, Kaupe, Claimant

Pepee, sworn, says I know the lands of Kaupe in Waioli. They consist of three parts as follows.

No. 1 is a house lot in Waioli.
No. 2 is 7 lois in moo "Lupe" & some kula adjoining in "Aikahala."
No. 3 is 3 lois called "Kapailoli."

No. 1 is bounded:
Mauka by road from church to jail – Waioli
Napali by road separating house lot of Lohiau
Makai by road on sea beach
Koolau by house lot of Kulou.

No. 2 is bounded:
Mauka by Bakeke's lois
Napali by pali called "Hakualoa"
Makai by Nawaioni's loi
Koolau by Waioli River.

No. 3 is bounded:
Mauka by pali called Waikunono
Napali by Government kula
Makai by Government kula
Koolau by Nika's kula.

The claimant received these lands from her parents in the days of Davida Papohaku previous to 1840. I do not know that her title has ever been disputed.

Kulou, sworn, says I know the lands of Kaupe in Waioli & all that Pepee has testified is true.

N.T. 9-10v12
No. 9081, Kaupe

Pepee, sworn, he has seen Kaupe's ten lois and a house lot in three sections including the house lot. Seven lois are in the moo of Luha in Waioli with an adjoining pasture and three lois are in Kapaloli.

Boundaries of the house lot are:

Section 1:
Mauka by Government road
Napali by Between Lohiau and Kaupe's place is a road
Makai by Government road
Koolau by Kulou's lot.

Section 2 - Seven loi.
Mauka by Pakeke's land
Napali by Hokualoa pali
Makai by Wainioi land
Koolau by Waioli river.

Section 3 - 3 lois.
Mauka by Waikunono pali
Napali by Government pasture
Makai by Government pasture
Koolau by Nika pasture.

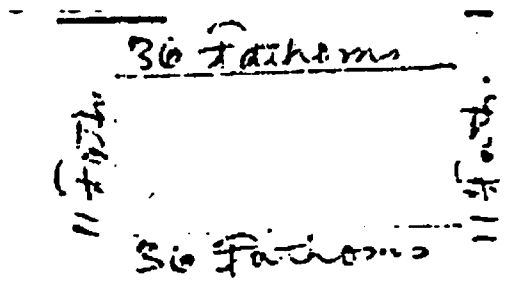
Land and house lot from Kaupe's parents during the time of D. Papohaku,

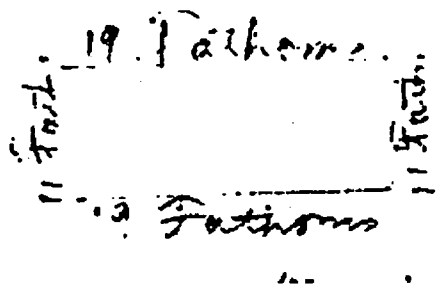
Kulou, sworn, he has known in the same way as Pepee has related.

[Award 9081; R.P. 5264; Kapailoli Waioli Halelea; 1 ap.; 36 rods; Lupe Waioli Halelea; 2 ap.; 1 Ac 1 rood]

No. 9273, Kawahine, Waioli, Kauai, January 20, 1848
N.R. 445v9

Greetings to the Land Commissioners on the island of Oahu: I hereby explain my claim of occupancy at Waioli on the island of Kauai. /My Lot measures/ 33 fathoms on the east side, along Naiwi's lot, 23 fathoms on the west side along Naniho's lot, on the south and north the width is 16 fathoms. The circumference of the lot is 78 fathoms. my two lo`i at Waioli /are shown on the diagram/. There is no kula.





F.T. 32-33v12
No. 9273, Kawahine, Claimant

Pepee, sworn, says I know Claimant's lands in Waioli. They consist of 5 pieces.

No. 1 is a house lot in "Kaumaikahiki."
No. 2 is 3 lois in "Kapuoni."
No. 3 is 2 lois in "Kaluaoopu."
No. 4 is a small piece of kula in Moakohaka.
No. 5 is a small piece of kula in Ahau.

No. 1 is bounded:
Mauka by Government kula
Napali by Naniho's house lot
Makai by road on sea beach
Koolau by Naiwi's house lot.

No. 2 is bounded:
Mauka by Emelia's loi
Napali by Nuku's loi
Makai by Konohiki's koele
Koolau by D. Oleloa's loi.

No. 3 is bounded:
Mauka by Pipiwai's loi
Napali by Nuku's kula
Makai by Pipiwai's loi
Koolau by ditch of Waioli.

No. 4 is bounded:
Mauka by Government kula
Napali by Government kula
Makai by Government kula
Koolau by Government kula.

No. 5 is bounded:
Mauka by Government kula
Napali by Government kula
Makai by Kahookane's kula
Koolau by Nawaioni's loi.

These lands were given by D. Papohaku previous to 1837 & have been held in peaceable possession till this time.

Mareko, sworn, says I know Claimant's lands. I have heard Papee's testimony & it is all true.

N.T. 34-35v12
No. 9273, Kawahine

Pepee, sworn, he has seen Kawahine's house lot slightly, it is [in] the first section. 3 lois adjoining the house lot is section 2. There are two lois by the sand dunes and adjoining Kaluaoopu. A pasture is at point Koleaka and this is section 4. Ahau is section 5.

Section 1:
Mauka by Government pasture
Napali by Naniho's lot
Makai by Government road
Koolau by Naiui's lot.

Section 2 - 3 lois.
Mauka by Emeria's land
Napali by Nuku's land
Makai by Konohiki koele
Koolau by D. Oleloa's land.

Section 3 - (2) Kaluaoopu.
Mauka by Pipiwai's land
Napali by Nuku's pasture
Makai by Pipiwai's land
Koolau by Waioli ditch.

Section 4 - Mauka and all around by Government pasture.

Section 5 - Pasture.
Mauka and Napali by Government pasture
Makai by Kahookane's pasture
Koolau by Nawaioni's land.

Lands from D. Napohaku before 1837, no disputes.

Mareko, sworn, he has seen all of Kawahine's land exactly as Pepee has related.

[Award 9273; R.P. 7682; Ahau Waioli Halelea; 1 ap.; 16 rods; Kapuoni Waioli Halelea; 3 ap.; 2 roods 22 rods; Kaunaikahiki Waioli Halelea; 1 ap.; 1 rood 8 rods]

No. 10309, Naniho
N.R. 275v9

The Land Commissioners, greetings and peace: I hereby state to you my claim. I, Naniho, a subject living at Waioli on the island of Kauai, have lived here a long time. I hereby state my claim for a land mauka of Waioli, named Kaohe. There are 10 small lo`i, and also a loko, and my house lot. The length is 30, and the width is 25, that is the size which I state to you. Some land is overgrown. I have a claim to all these things at this time.
I am, respectfully, your humble servant,
NANIHO
Waioli, Kauai,
January 17, 1848

F.T. 4v12
No. 10309, Naniho, Claimant

Nuku, sworn, says I know the land of the Claimant. It consists of one house lot in Waioli & 1 fish pond.

No. 1 The house lot is bounded:
Mauka by road from church to jail
Napali by house lot of Kaupe
Makai by road on beach
Koolau by house lot of Punimaa.

No. 2 is the fish pond & is bounded:
Mauka by the Konohiki's land
Napali by ¦Waikanono¦ creek
Makai by ¦Waikanono¦ creek
Koolau by dry lois in ¦Kaohe.¦
The name of this fish pond is ¦Opahale.¦

The claimant received these lands from D. Papohaku about 1835 & his title was never disputed up to his death in 1849. His heir is his son, Kulou.

Mimo, sworn, says I am the brother of Naniho. The testimony of Nuku is true.

N.T. 3v12
No. 10309, Naniho

Nuku, sworn, he has seen claimant's house lot and pond in Waioli.

Section 1 - House lot.
Mauka Leading to church road
Napali by Kaupe house lot
Makai by Government road
Koolau by Kaawa's house lot.

Section 2
Mauka by pond.
Napali by Waikunono stream
Makai by Waikunono stream
Koolau by Kaohi ili land.

Land from D. Papohaku in 1844.

Naniho died in 1849, Koulou, his son is his heir. He has seen Naniho's land in the same way as Nuku.

[Award 10309; Waioli Halelea; 1 ap.; 1 rood 11 rods; Opahale Waioli Halelea; 1 ap.; 1 rood]

No. 10317, Naiwi, Waioli, Kauai, January 8, 1848
N.R. 279v9

The Land Commissioners, greetings to you all: I, Naiwi, a subject of Hawaii living at Kaumaikahiki at Waioli on the island of Kauai, have lived here for 12 years, from 1835.

Diagram not found

See the diagram above, those are the boundaries in fathoms, by my figures. The boundaries shown in the diagram are not equal and the diagram is, so also is the land. I measured this claim on the 18th of January.
A respectful farewell to you all,
NAIWI

F.T. 33-34v12
No. 10317, Naiwi, Claimant

Papee, sworn, says I know lands of Naiwi in Waioli. They consist of 3 pieces:

No. 1 is a house lot in "Kaumaikahiki."

No. 2 is 4 lois in "Kaukiuki."
No. 3 is 4 lois in "Lanipoa" & some kula adjoining.

No. 1 is bounded:
Mauka by Government kula
Napali by Kawahine's house lot
Makai by road on beach
Koolau by road separating Government House.

No. 2 is bounded:
Mauka by Nawaioni's loi & Government koele
Napali by Waioli ditch
Makai by Kaupe's loi
Koolau by Namaka's & Nihoa's lois.

No. 3 is bounded:
Mauka by Kaupe's loi
Napali by Government kula
Makai by Waioli River
Koolau by Waioli River.

These lands (except the house lot) have been held since the time that Mr. Whitney was Konohiki (about 1833) & the House lot since the time of Daniela Papohaku (about 1837). No one has disputed the title up to this time.

Meriko, sworn, says I know Claimant's lands & all that Pepee has testified is true.

No. 10317, Naiwi
N.T. 35-36v12

Pepee, sworn, he has seen claimant's land.

Section 1 - House lot.

Section 2 - Four lois in Kaukiuki, toward the sea.

Section 3 - 4 lois mauka with an adjoining pasture the name of which is Lanipoa in Waioli.

Section 1 - In Ulihale of Waioli.
Mauka by Government pasture
Napali by Kawahine's lot
Makai by Government road
Koolau by from church, government road.

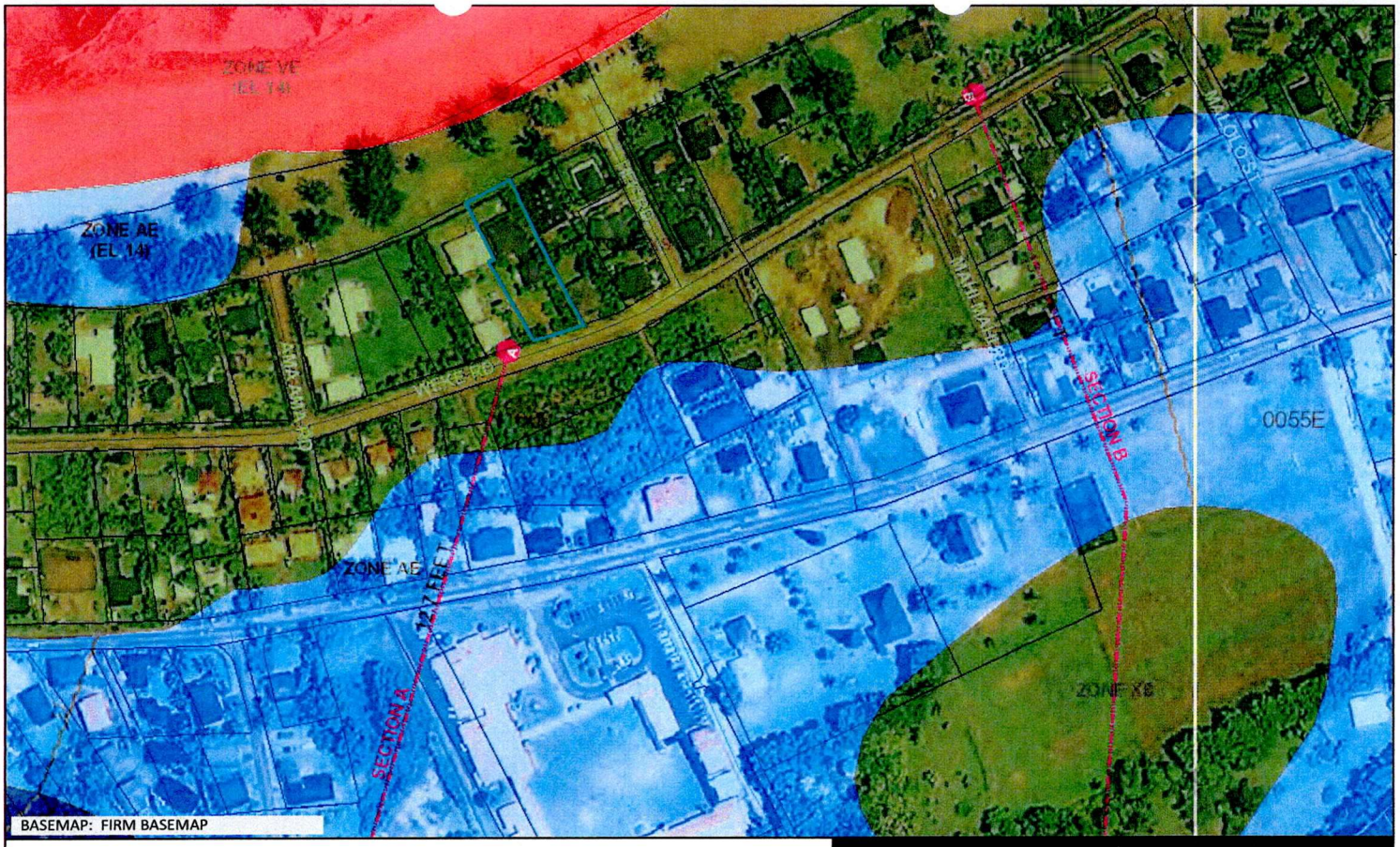
Section 2:
Mauka by Waioli land / government land
Napali by Kaupe's land
Makai by Levi's land/Nihoa's land
Koolau by Waioli ditch.

Section 3 - 4 lois and Uihoa's land.
Mauka by Kaupe's land
Napali by Government pasture
Makai by Waioli river
Koolau by Waioli river.

Naiui's lands from Kuwaha after the death of Kaumualii, no disputes or objections.
The house lot was received at the time of D. Papohaku.

Mareko, sworn, verifies all of Pepee's statements concerning all of Naiui's land.
Waioli, 16 Feb. 1850.

[Award 10317; R.P. 5372; Kaukiuki Waioli Halelea; 1 ap.; 2 roods 23 rods; Lanipoa Waioli Halelea; 2 ap.; 2 Ac 2 roods 13 rods]



Flood Hazard Assessment Report

www.hawaiinfip.org

Property Information

COUNTY:	KAUAI
TMK NO:	(4) 5-5-004:013
WATERSHED:	WAIOLI
PARCEL ADDRESS:	ADDRESS NOT DETERMINED HANALEI, HI 96714

Notes:

Flood Hazard Information

FIRM INDEX DATE:	FEBRUARY 26, 2021
LETTER OF MAP CHANGE(S):	NONE
FEMA FIRM PANEL:	1500020035E
PANEL EFFECTIVE DATE:	SEPTEMBER 16, 2005

THIS PROPERTY IS WITHIN A TSUNAMI EVACUTION ZONE: YES
FOR MORE INFO, VISIT: http://www.scd.hawaii.gov/

THIS PROPERTY IS WITHIN A DAM EVACUATION ZONE: NO
FOR MORE INFO, VISIT: http://dlnreng.hawaii.gov/dam/

0 200 400 ft

Disclaimer: The Hawaii Department of Land and Natural Resources (DLNR) assumes no responsibility arising from the use, accuracy, completeness, and timeliness of any information contained in this report. Viewers/Users are responsible for verifying the accuracy of the information and agree to indemnify the DLNR, its officers, and employees from any liability which may arise from its use of its data or information.

If this map has been identified as 'PRELIMINARY', please note that it is being provided for informational purposes and is not to be used for flood insurance rating. Contact your county floodplain manager for flood zone determinations to be used for compliance with local floodplain management regulations.

FLOOD HAZARD ASSESSMENT TOOL LAYER LEGEND

(Note: legend does not correspond with NFHL)

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD - The 1% annual chance flood (100-year), also know as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. SFHAs include Zone A, AE, AH, AO, V, and VE. The Base Flood Elevation (BFE) is the water surface elevation of the 1% annual chance flood. Mandatory flood insurance purchase applies in these zones:

	Zone A: No BFE determined.
	Zone AE: BFE determined.
	Zone AH: Flood depths of 1 to 3 feet (usually areas of ponding); BFE determined.
	Zone AO: Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined.
	Zone V: Coastal flood zone with velocity hazard (wave action); no BFE determined.
	Zone VE: Coastal flood zone with velocity hazard (wave action); BFE determined.
	Zone AEF: Floodway areas in Zone AE. The floodway is the channel of stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without increasing the BFE.

NON-SPECIAL FLOOD HAZARD AREA - An area in a low-to-moderate risk flood zone. No mandatory flood insurance purchase requirements apply, but coverage is available in participating communities.

	Zone XS (X shaded): Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.
	Zone X: Areas determined to be outside the 0.2% annual chance floodplain.

OTHER FLOOD AREAS

	Zone D: Unstudied areas where flood hazards are undetermined, but flooding is possible. No mandatory flood insurance purchase apply, but coverage is available in participating communities.

EXHIBIT C-09

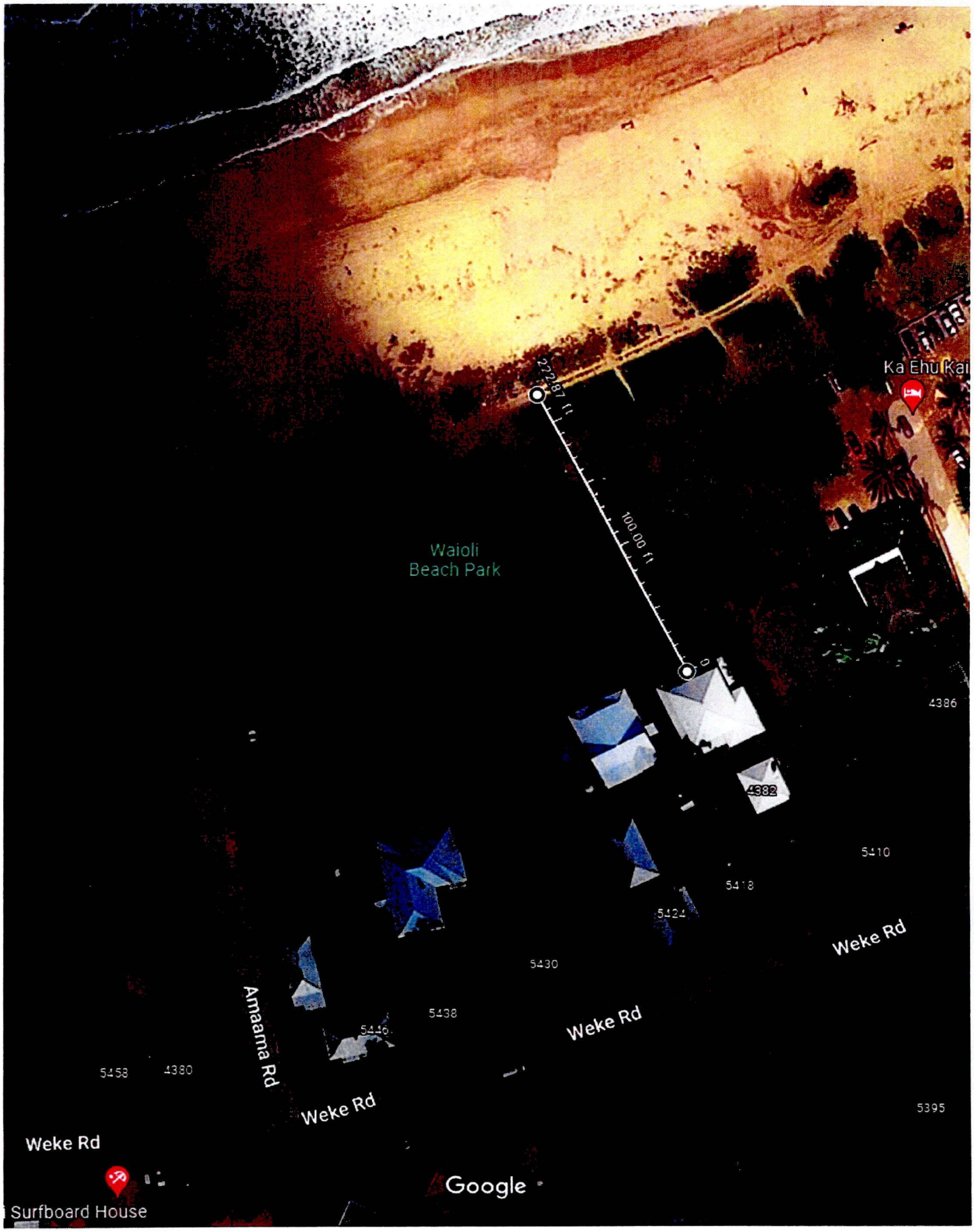

Waioli
Beach Park
Ka Ehu Kai
27287 ft
100.00 ft
4386
4382
5410
5418
5424
5430
5438
5446
5458
4380
Amaama Rd
Weke Rd
Weke Rd
Weke Rd
Weke Rd
5395
Surfboard House
Google

EXHIBIT C-10

Hawai'i Shoreline Study ArcGIS Web Map



4/18/2022, 1:50:59 PM

Low water mark

01_08_2008

02_03_2002

03_04_1988

04_10_1975

07_27_1987

09_25_2006

09_27_1999

10_16_1963

10_26_1969

11_22_1950

12_03_196212_03_1962

12_09_2014

12_21_1997

1930

Historical Rate Transect (ft)

0.000001 - 5.896675

Future erosion polygon 0.5 ft by 2030

Future erosion polygon 1.1 ft by 2050

Future erosion polygon 2.0 ft, 2075

Future erosion polygon 3.2 ft, 2100

Mosaic Footprints

EXHIBIT C-11

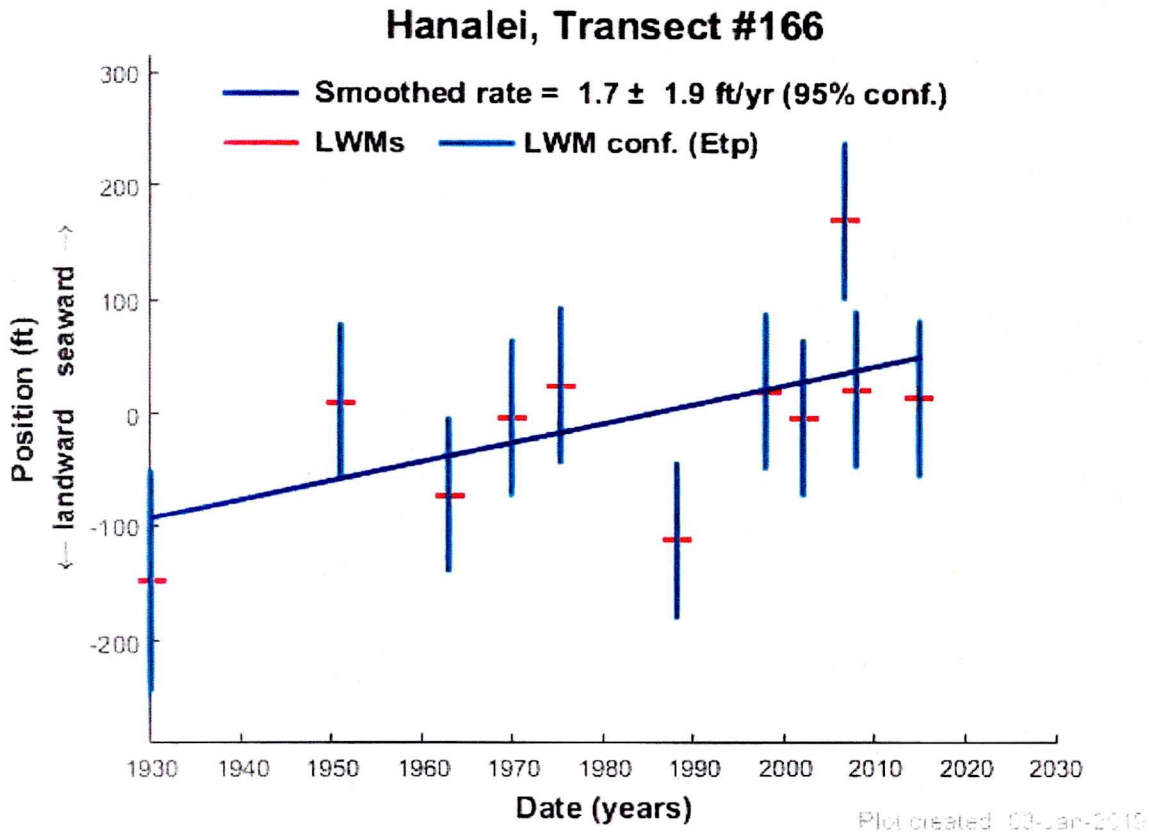
1:2,257

0 0.03 0.05 0.1 mi

0 0.04 0.08 0.16 km

Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

Coastal Geology Group
Resource Mapping Hawaii | University of Hawai'i at Mānoa


Hanalei, Transect #166
Smoothed rate = 1.7 ± 1.9 ft/yr (95% conf.)
LWMs
LWM conf. (Etp)
Position (ft)
← landward seaward →
300
200
100
0
-100
-200
1930
1940
1950
1960
1970
1980
1990
2000
2010
2020
2030
Date (years)
Plot created: 03-Jan-2016

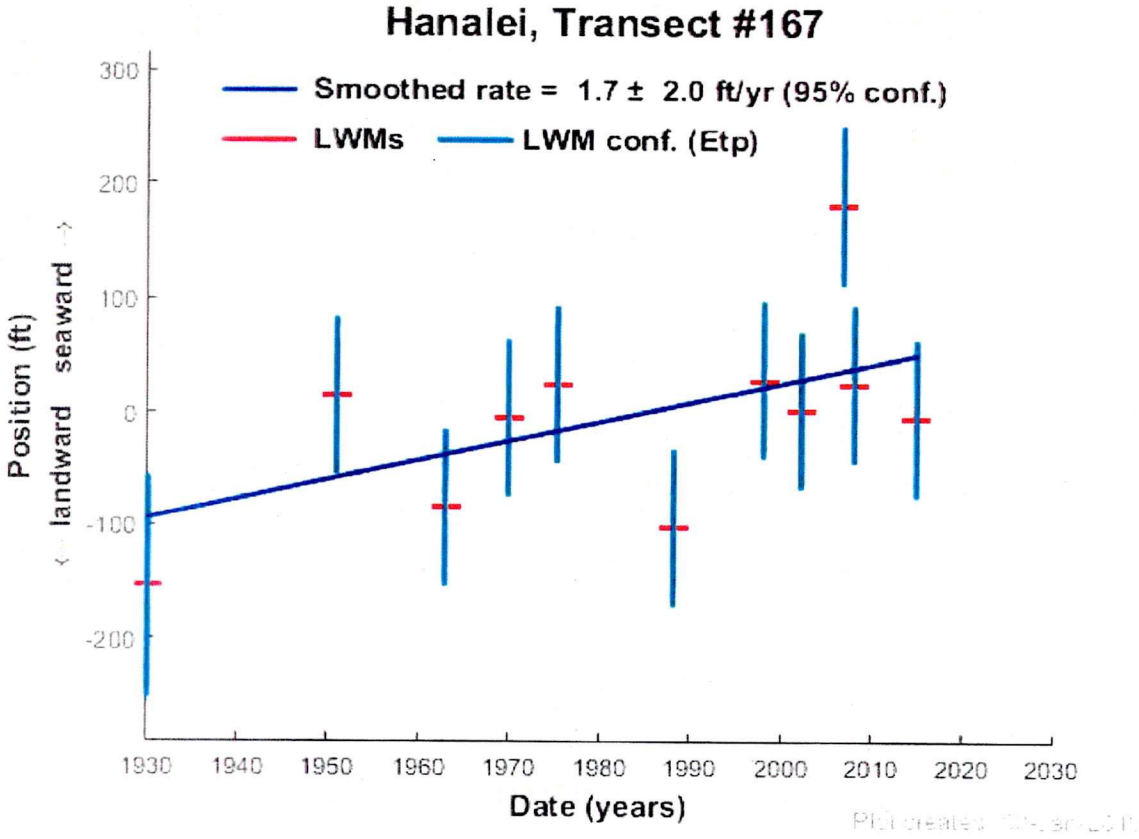
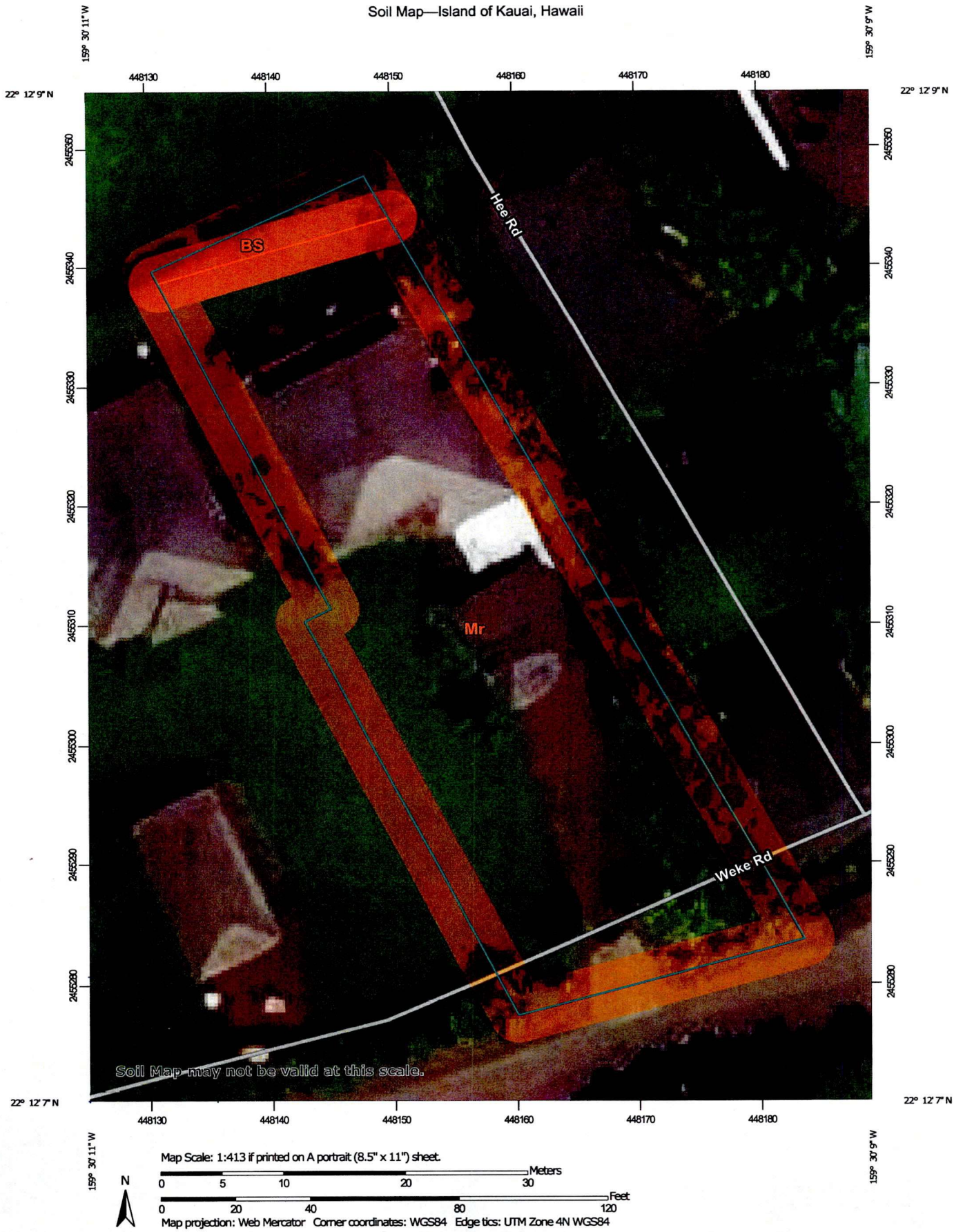

Hanalei, Transect #167
Smoothed rate = 1.7 ± 2.0 ft/yr (95% conf.)
LWMs
LWM conf. (Etp)
Position (ft)
← landward seaward →
300
200
100
0
-100
-200
1930
1940
1950
1960
1970
1980
1990
2000
2010
2020
2030
Date (years)

EXHIBIT C-12

Soil Map—Island of Kauai, Hawaii



Map Scale: 1:413 if printed on A portrait (8.5" x 11") sheet.

N

Meters: 0 5 10 20 30

Feet: 0 20 40 80 120

Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 4N WGS84

MAP LEGEND

Area of Interest (AOI)
- Area of Interest (AOI)

Soils
- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points

Special Point Features
- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot
- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features

Water Features
- Streams and Canals

Transportation
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads

Background
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Island of Kauai, Hawaii
Survey Area Data: Version 17, Aug 30, 2022

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Jan 29, 2017—Oct 11, 2020

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
BS	Beaches	0.0	3.2%
Mr	Mokuleia fine sandy loam	0.4	96.8%
Totals for Area of Interest		**0.4**	**100.0%**

5418 WEKE RD RENOVATION

PROJECT DIRECTORY

OWNER	CONCORA CLIFFS, LLC 5418 WEKE RD HANALEI, HI 96714
ARCHITECT	KANOA CHUNG NOHO WORKSHOP 1970 KOLO RD KILAUEA, HI 96754 (808) 651-4979 KANOA@NOHOWORKSHOP.COM
STRUCTURAL ENGINEERING CONSULTANT	JAMES WARNING, S.E. GLAT ENGINEERING, INC. 1164 KILAUEA AVE, SUITE 202 HILO, HI 96720 (808) 854-1440 JAMES@GLATENG.COM

SHEET INDEX

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PROJECT INFORMATION

PROJECT ADDRESS	5418 WEKE RD HANALEI, HI 96714
TMK	(4) 5-5-004-013 0000
ACRES	HALEIWA
A-HUPUA`A	WAIOLI
NEIGHBORHOOD CODE	55-461
PROPERTY SIZE	0.3976 ACRES 16,865 SF
ZONING	OPEN
BUILDING USE	SINGLE-FAMILY RESIDENCE
OCCUPANCY GROUP	RESIDENTIAL
CONSTRUCTION TYPE	V-B
CLIMATE ZONE	1
FLOOD ZONE	X, MINIMAL FLOOD HAZARD
EFFECTIVE WIND SPEED	160 MPH 3SAR
EXPOSURE CATEGORY	C
SEISMIC CATEGORY	B
ROOF LIVE LOAD	40 PSF
FLOOR LIVE LOAD	20 PSF
SPRINKLERED	NO
BUILDING CODE BASIS	-2017 INTERNATIONAL BUILDING CODE -20 2 INTERNATIONAL RESIDENTIAL CODE -20 2 UNIFORM PLUMBING CODE -2017 NFPA 1 WITH AMENDMENTS -20 2 CAL GREEN -20 5 INTERNATIONAL ENERGY CONSERVATION CODE -20 7 NATIONAL ELECTRICAL CODE NOTE A L CODE TO INCLUDE LOCAL AMENDMENTS
IECC COMPLIANCE	TROPICAL (MIXED FUELS) (4 4CT) R-13 WALL INSULATION + HIGH EFF WALLS (+ 2) R-30 ROOF INSULATION (+ 1) HOUSE FLOOR AREA @ 2,560 SF (+ 1) TOTAL POINTS + 4
SCOPE OF WORK	RENOVATION OF EXISTING SINGLE FAMILY RESIDENCE
GENERAL NOTES	- ALL LISTINGS SIZE CONDITIONS AND DIMENSIONS TO BE VERIFIED AND FIELD VERIFIED ON SITE - CONTRACTOR TO VERIFY AND COORDINATE SITE CONDITIONS WITH OWNER AND ARCHITECT

GENERAL BUILDING INFORMATION

EXISTING AREA:

EXISTING, ENCLOSED AREA

1ST FLOOR MAIN	2,388 19
2ND FLOOR MAIN	849 72
GARAGE	554 93
	4,592 84 SF

EXISTING, OUTDOOR AREA

1ST FLOOR COVERED DECK	830 16
2ND FLOOR COVERED DECK	352 93
	1,162 09 SF
	5,754 93 SF

NEW AREA:

NEW, ENCLOSED AREA

1ST FLOOR MAIN	2,388 19
2ND FLOOR MAIN	2,094 8
GARAGE	554 93
	4,837 93 SF

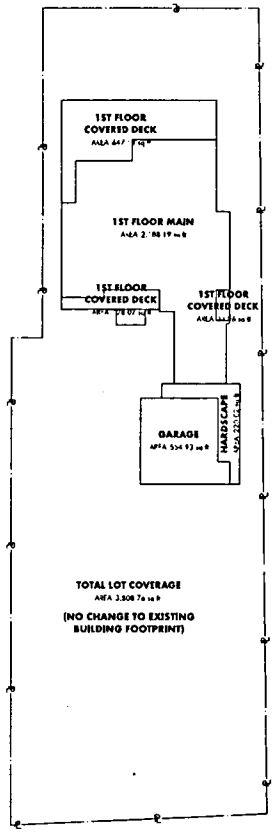
NEW, OUTDOOR AREA

1ST FLOOR COVERED	830 16
2ND FLOOR COVERED	169 88
	979 04 SF
	5,816 97 SF

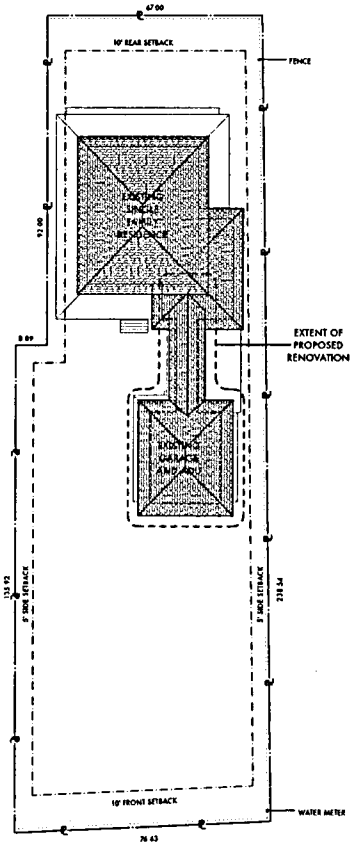
***LOT COVERAGE INFROMATION**

BUILDING FOOTPRINT (INCLUDES ALL ENCLOSED AREAS, DECKS & WALKS)	3,808 76
TOTAL LOT COVERAGE	3,808 76
LOT AREA	6,885
LOT COVERAGE AS %	27 33%

***NO CHANGE TO EXISTING BUILDING FOOTPRINT**



1 SITE AREAS
SCALE: 1/16" = 1'-0



1 SITE PLAN
SCALE: 1/16" = 1'-0

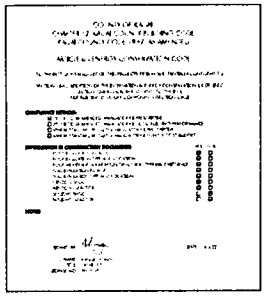


EXHIBIT D

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CERTIFICATION

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NO. 18731
EXP 4/30/23
HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION IN THE STATE OF HAWAII, USA

CONSULTANT

PROJECT

HANALEI RESIDENCE

5418 WEKE RD
HANALEI, HI 96714
TMK: (4) 5-5-004-013 0000

PROJECT NUMBER: 21015

ISSUE DATE: 03 31/22

DRAWING ISSUE

△ [illegible]

TITLE SHEET & SITE PLAN

A-001

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

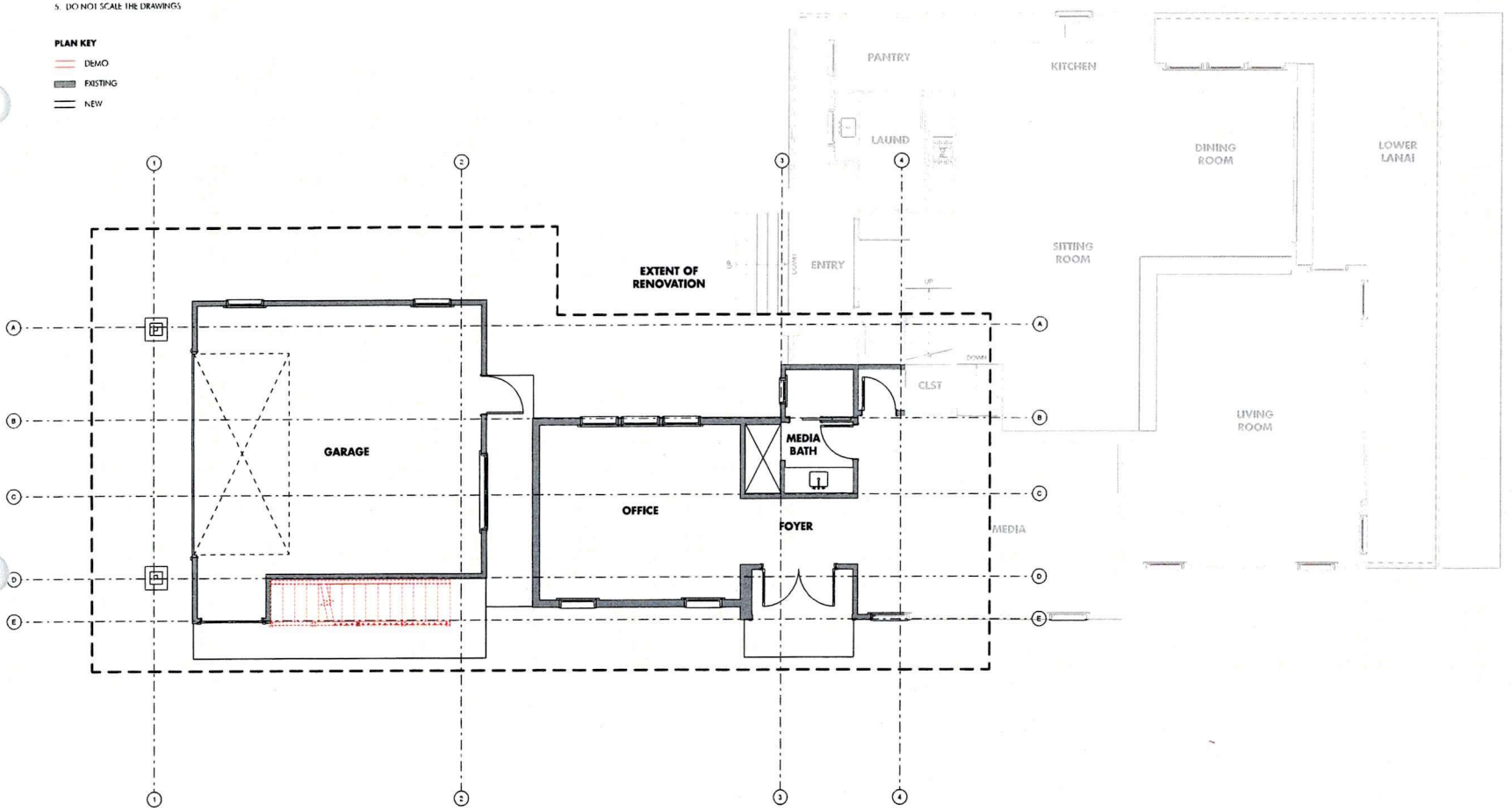
3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.

4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES

5. DO NOT SCALE THE DRAWINGS

PLAN KEY

- DEMO
- EXISTING
- NEW



1 FIRST FLOOR DEMO PLAN

SCALE: 1/4" = 1'-0"

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THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION

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TMK: (4) 5-5-004-013:0000

PROJECT NUMBER: 21015

ISSUE DATE: 03/31/22

DRAWING ISSUE:

△ 4/30/22 PERMIT SUBMITTAL

FIRST FLOOR DEMO PLAN

A-101

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

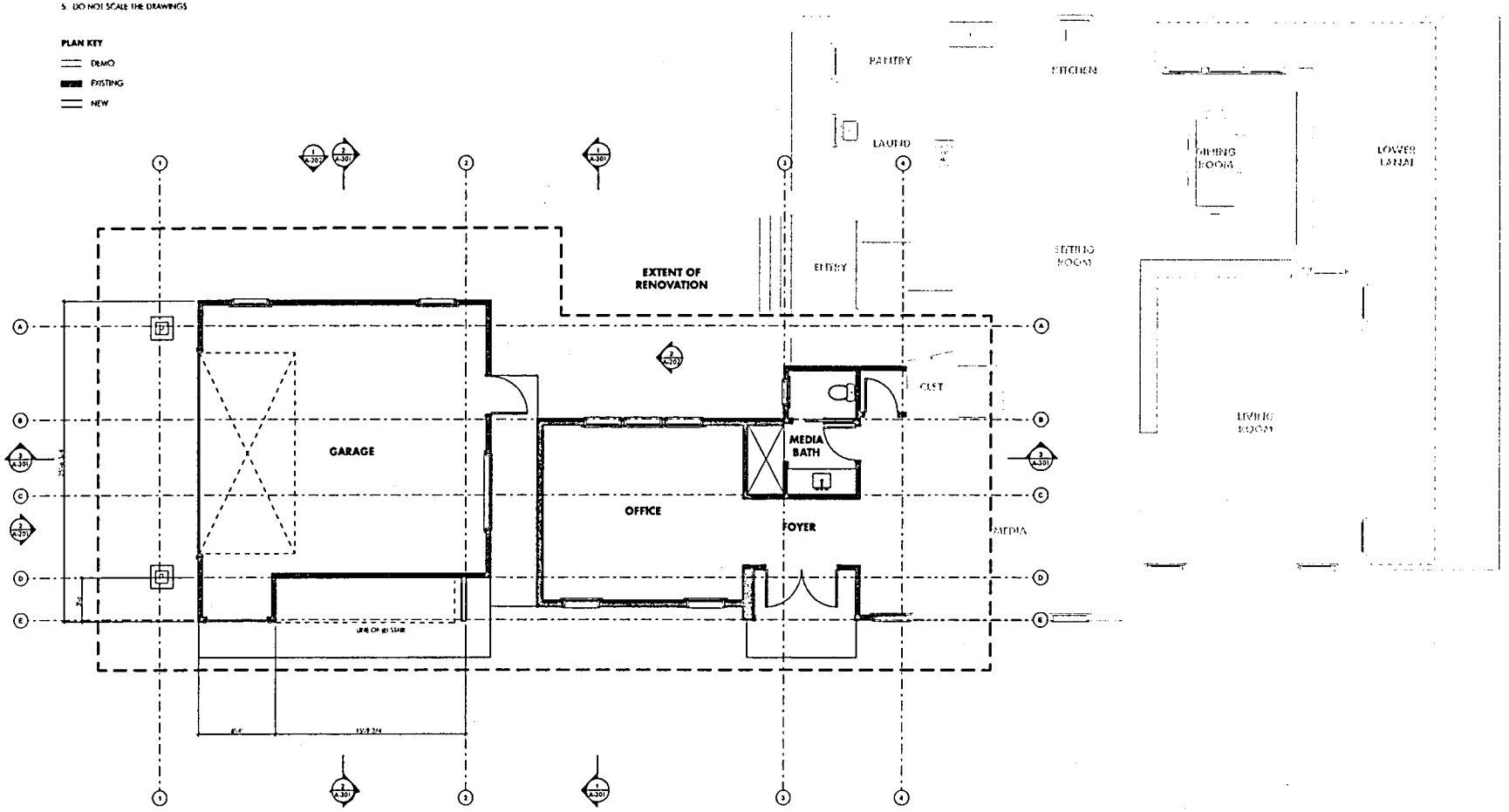
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4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES.

5. DO NOT SCALE THE DRAWINGS.

PLAN KEY

- DEMO
- EXISTING
- NEW



1 FIRST FLOOR PLAN

SCALE: 1/4" = 1'-0"

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TMK: (4) 5-5-004:013 0000

PROJECT NUMBER: 21015

ISSUE DATE: 03/31/22

DRAWING ISSUE

△ [redacted]

FIRST FLOOR PLAN

A-102

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

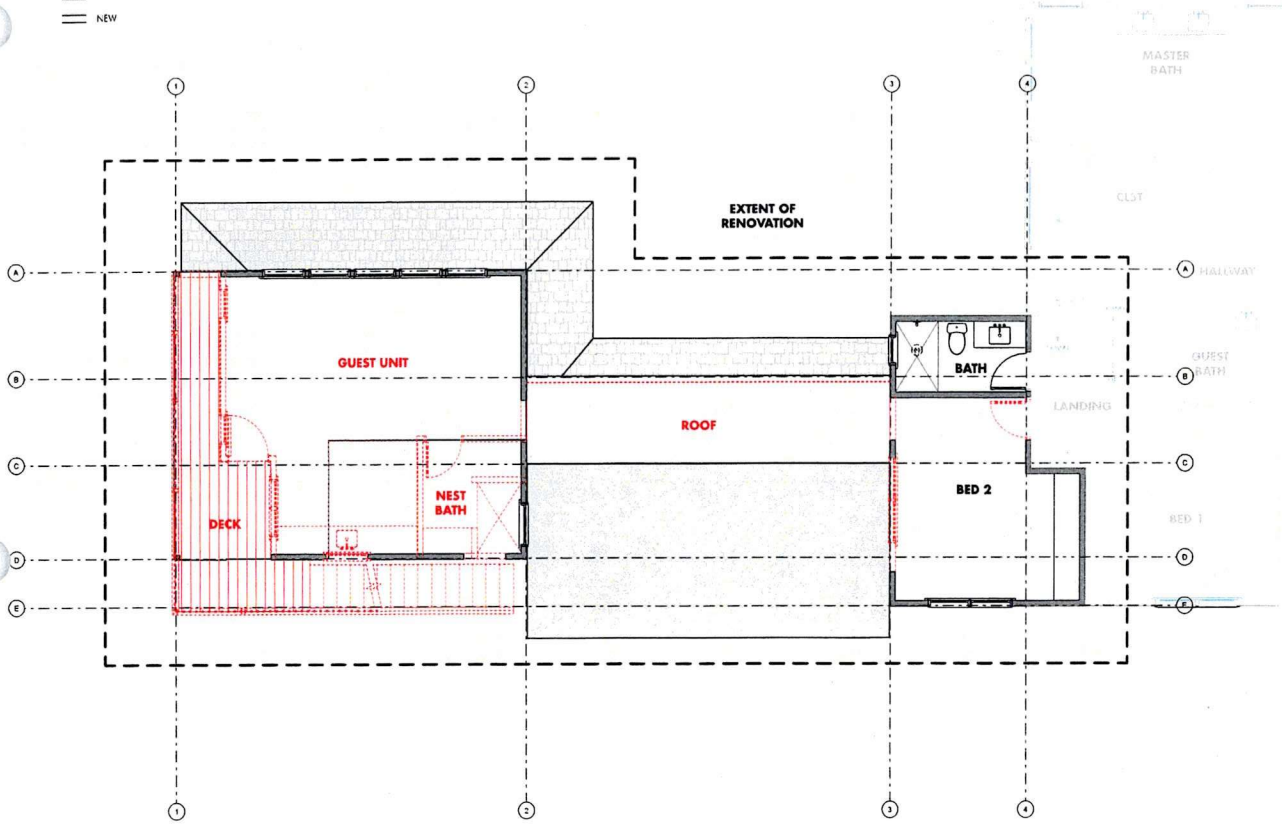
3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.

4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES

5. DO NOT SCALE THE DRAWINGS

PLAN KEY

- DEMO
- EXISTING
- NEW



1 SECOND FLOOR DEMO PLAN

SCALE: 1/4" = 1'-0"

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THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE OVERSEEN BY ME OR UNDER MY SUPERVISION.

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TMK: (4) 5-5-004-013:0000

PROJECT NUMBER: 21015

ISSUE DATE: 03/31/22

DRAWING ISSUE:

△ [redacted]

SECOND FLOOR DEMO PLAN

A-103

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

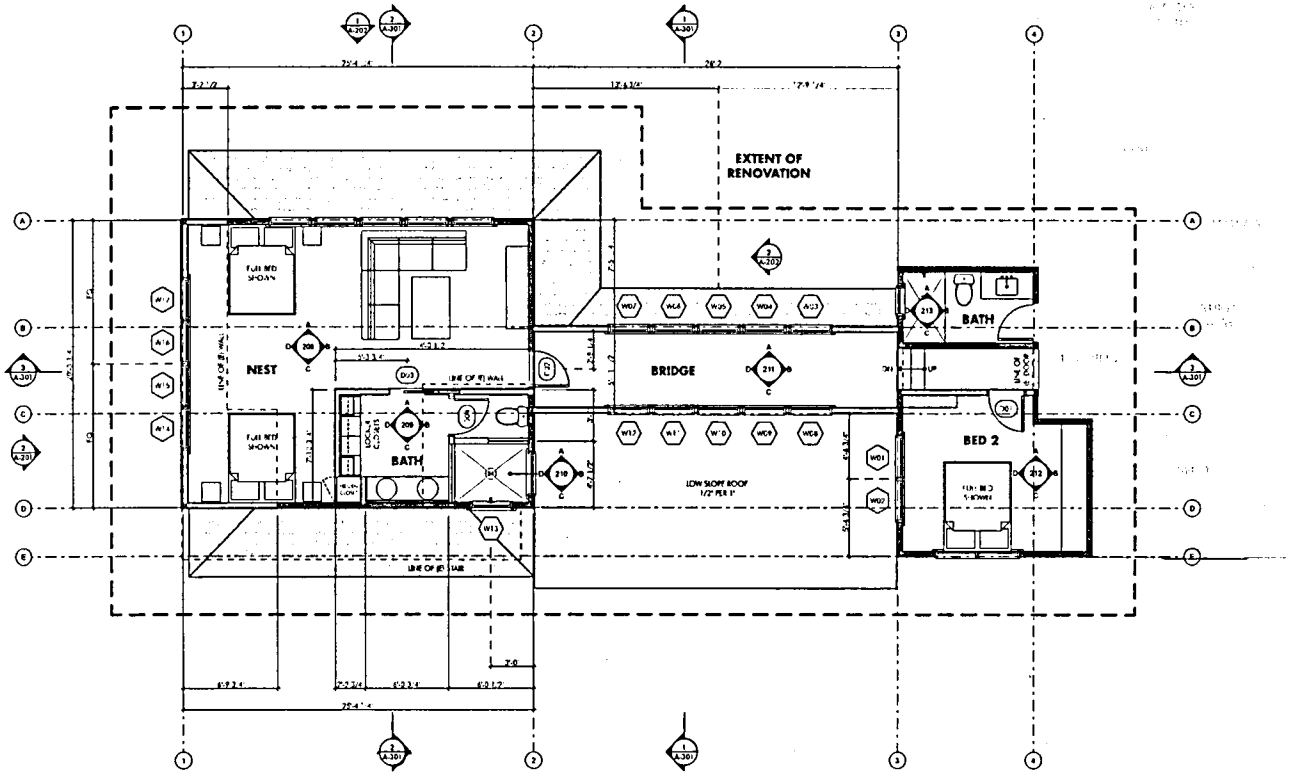
3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.

4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES

5. DO NOT SCALE THE DRAWINGS

PLAN KEY

- DEMO
- EXISTING
- NEW



1 SECOND FLOOR PLAN

SCALE 1/4" = 1'-0"

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BY 4/31/22
STATE OF HAWAII

THIS ITEM WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THE PROJECT WILL BE UNDER MY OBSERVATION

CONSULTANT

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TMK: (4) 5-5-004-013 0000

PROJECT NUMBER: 21015

ISSUE DATE: 03 31/22

DRAWING ISSUE

△ [redacted]

SECOND FLOOR PLAN

A-104

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

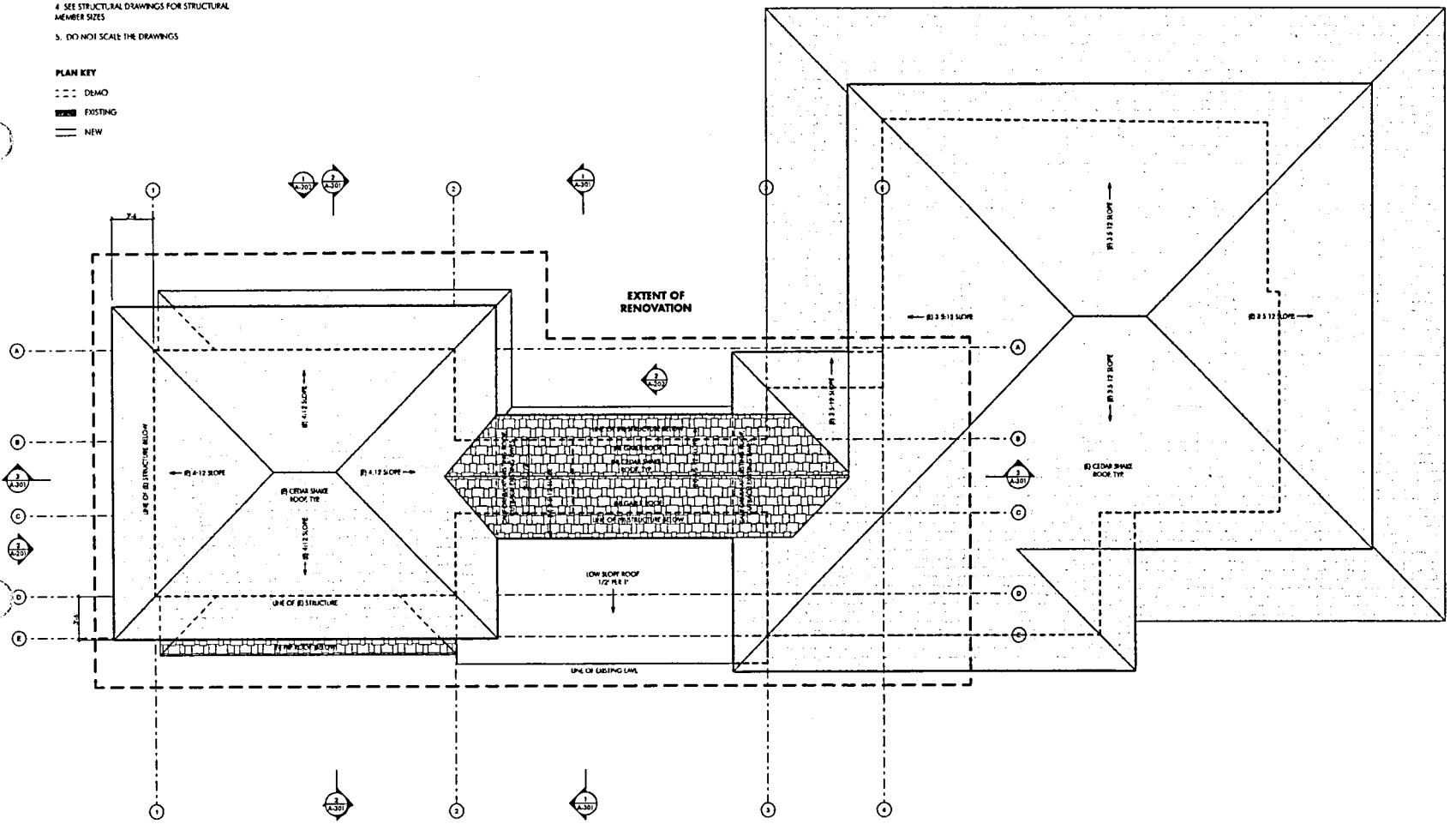
3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.

4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES

5. DO NOT SCALE THE DRAWINGS

PLAN KEY

- DEMO
- EXISTING
- NEW



1 ROOF PLAN

SCALE 1/4" = 1'-0"

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HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISORY AND CONTROL OF THIS PROJECT HAS BEEN MY RESPONSIBILITY

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PROJECT NUMBER 21015

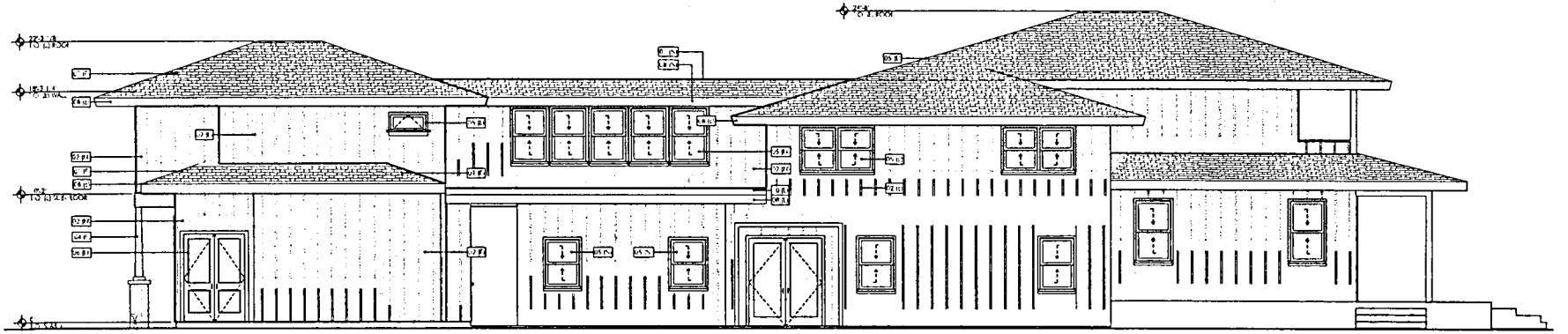
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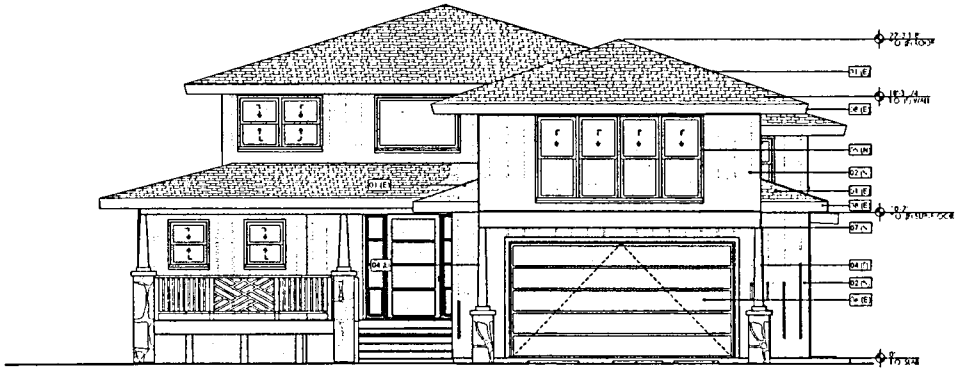
ROOF PLAN

A-105



1 NORTH ELEVATION

SCALE 1/4" = 1'-0"



2 EAST ELEVATION

SCALE 1/4" = 1'-0"

ELEVATION AND SECTION KEYNOTES

- WOOD SHAKE ROOFING, SEE BUILDING SECTION
- BOARD AND BATTEN WOOD SIDING
- RAMPER STRUCTURAL, WITH WOOD CASING
- COLUMN PER STRUCTURAL, WITH WOOD CASING
- WINDOW PER SCHEDULE
- DOOR PER SCHEDULE
- ATTIC VENT
- WOOD FASCIA, VERIFY SIZE BY LOCATION
- CONCRETE FOUNDATION

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.
2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.
3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.
4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES.
5. DO NOT SCALE THE DRAWINGS.

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NO. 16731
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TMK: (4) 5-5-004-013 0000

PROJECT NUMBER: 21015

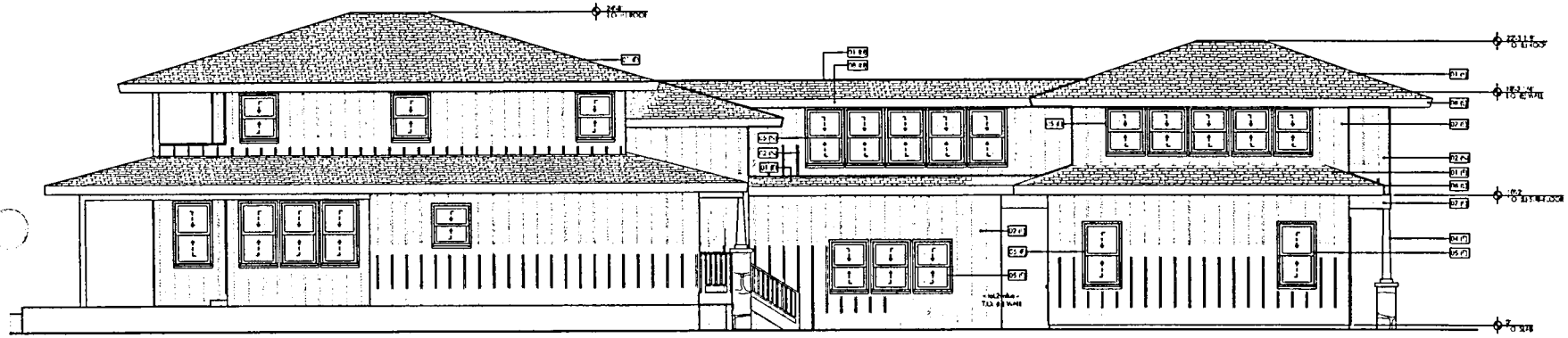
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DRAWING ISSUE

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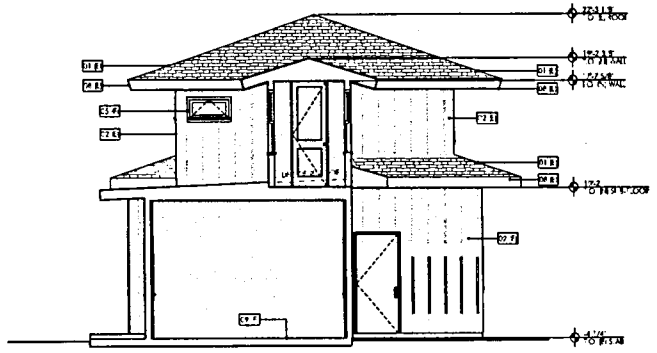
EXTERIOR ELEVATIONS

A-201



1 SOUTH ELEVATION

SCALE: 1/4" = 1'-0"



2 WEST ELEVATION

SCALE: 1/4" = 1'-0"

ELEVATION AND SECTION KEYNOTES

- W1 WOOD SHAKE ROOFING, S-OFF BY LOCATION
- W2 BOARD AND BATTEN WOOD SIDING
- W3 BEAM PER STRUCTURAL, WITH WOOD CASING
- W4 COLUMN PER STRUCTURAL, WITH WOOD CASING
- W5 WINDOW PER SCHEDULE
- W6 DOOR PER SCHEDULE
- W7 BELLY BAND
- W8 WOOD FASCIA, VERIFY GUTTER BY LOCATION
- W9 CONCRETE FOUNDATION

NOTES:

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5. DO NOT SCALE THE DRAWINGS

ARCHITECT

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EXP. 4/30/23
HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION, AND COMPLIES WITH THE PROJECT WILL BE UNDER MY OBSERVATION

CONSULTANT

PROJECT

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5418 WEKE RD
HANALEI, HI 96714
TMK: (4) 5-5-004-013:0000

PROJECT NUMBER: 21015

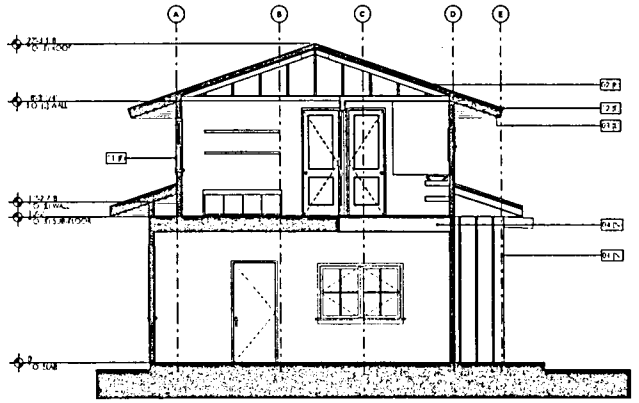
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DRAWING ISSUE:

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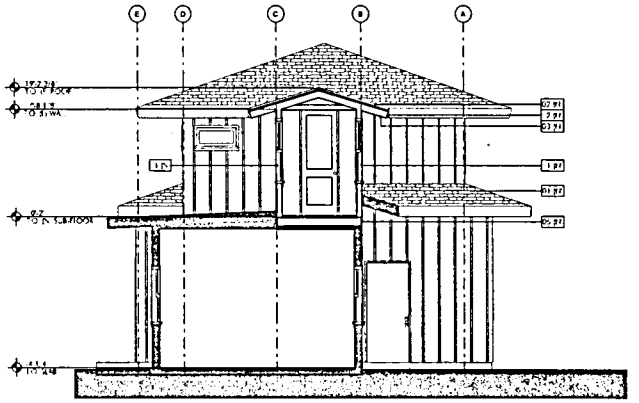
EXTERIOR ELEVATIONS

A-202



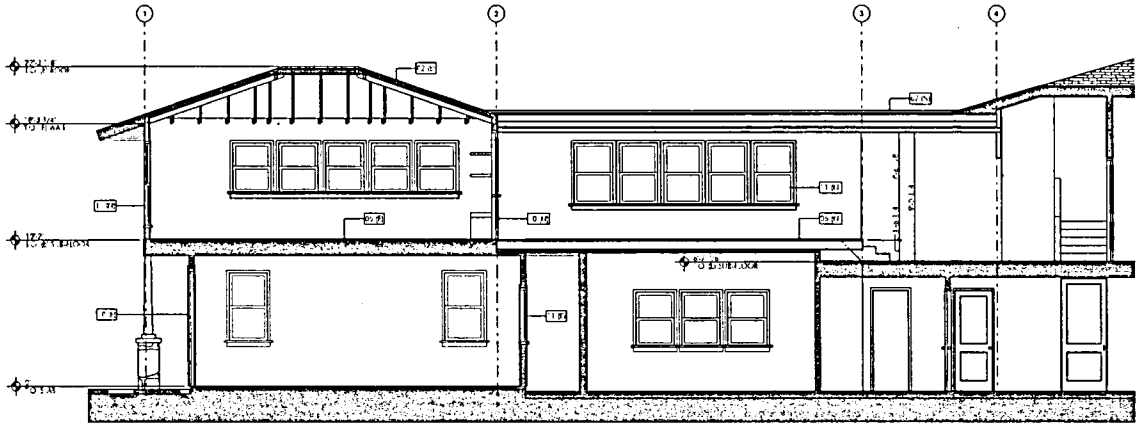
2 SHORT SECTION B

SCALE 1/4" = 1'-0"



1 SHORT SECTION A

SCALE 1/4" = 1'-0"



3 LONG SECTION A

SCALE 1/4" = 1'-0"

NOTES:

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3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED
4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES
5. DO NOT SCALE THE DRAWINGS

PLAN KEY

- DEMO
- EXISTING
- NEW

SECTION KEYNOTES

- 01 BOARD AND BATTEN EXTERIOR SIDING OVER WATERPROOF MEMBRANE OVER WOOD FRAMING PER STRUCTURAL, PAINTED OVER R-15 BATT INSULATION, GYP BOARD INTERIOR WALLS
- 02 STANDING SEAM METAL ROOF OVER WATERPROOF MEMBRANE OVER ROOF SHEATHING OVER TRUSSES OVER GYP BOARD CEILING BELOW
- 03 ENTRY DOOR PER ALS
- 04 TILE FLOORING OVER CONCRETE SLAB ON GRADE OVER CAPILLARY BREAK OVER COMPACTED GRAVEL OVER VAPOR BARRIER OVER INSULATION OVER FOOTING PER STRUCTURAL
- 05 PAINTED FASCIA OVER WOOD SHEATHING AND FRAMING PER STRUCTURAL, GYP BOARD CEILING BELOW
- 06 FINISHED EXTERIOR CONCRETE FLOOR SLAB PER STRUCT
- 07 FINISHED INTERIOR CONCRETE FLOOR SLAB PER SPECIFICATIONS
- 08 WOOD CASING OVER SHEAR PER STRUCTURAL
- 09 WOOD CASING OVER COLUMN PER STRUCTURAL
- 10 DOOR PER SCHEDULE
- 11 WINDOW PER SCHEDULE
- 12 WOOD FASCIA, GUTTER IN LOCATION

ARCHITECT

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E: [redacted]

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5418 WEKE RD
HANALEI, HI 96714

CERTIFICATION

KANOA T K CHUNG
LICENSED PROFESSIONAL ARCHITECT
NO 18731
BY WEST
HAWAII, U.S.A.

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND I ACCEPT RESPONSIBILITY FOR ITS CONTENT. COPYRIGHT OF THIS PROJECT WILL BE SHARED BY OWNER AND ME

CONSULTANT

PROJECT

HANALEI RESIDENCE

5418 WEKE RD
HANALEI, HI 96714
TMK: (4) 5-5-004-013 0000

PROJECT NUMBER: 21015

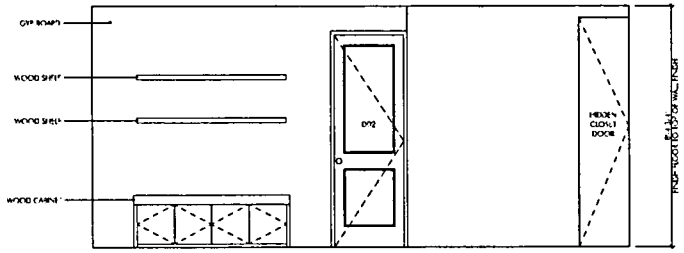
ISSUE DATE: 03 31/22

DRAWING ISSUE

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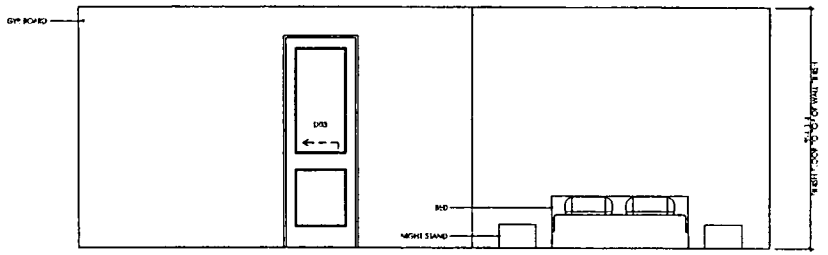
SECTIONS

A-301



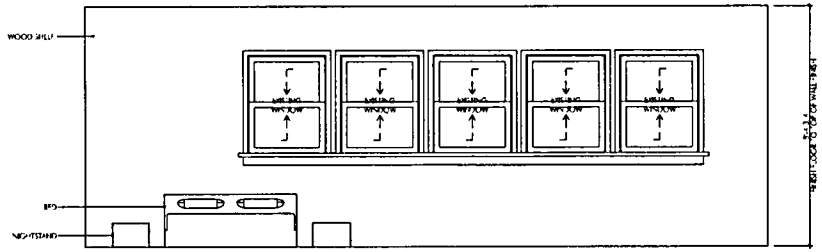
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SCALE 1/2" = 1'-0"



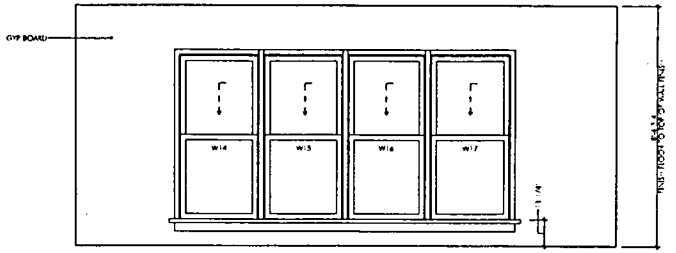
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SCALE 1/2" = 1'-0"



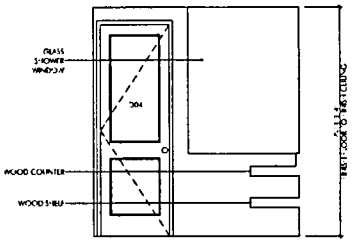
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SCALE 1/2" = 1'-0"



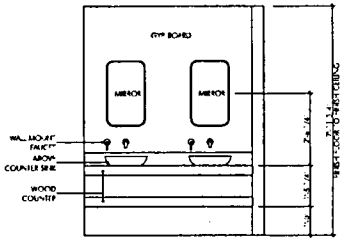
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SCALE 1/2" = 1'-0"



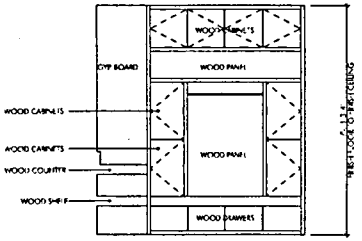
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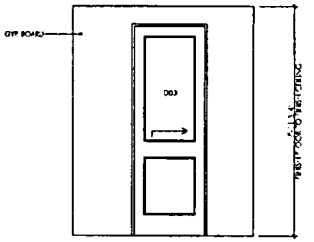
5 E 209

SCALE 1/2" = 1'-0"



7 S 209

SCALE 1/2" = 1'-0"



8 W 209

SCALE 1/2" = 1'-0"

ARCHITECT

noho 工作坊

NOHO WORKSHOP
KANOA CHUNG
ARCHITECT, AB-18731
1970 KOKO RD
KILAUEA, HI 96754
P: [redacted]
E: [redacted]

CLIENT

CONCORA CLIFFS, LLC

5418 WEKE RD
HANALEI, HI 96714

CERTIFICATION



CONSULTANT

PROJECT

HANALEI RESIDENCE

5418 WEKE RD
HANALEI, HI 96714
TMK: (4) 5-5-004-013.0000

PROJECT NUMBER: 21015

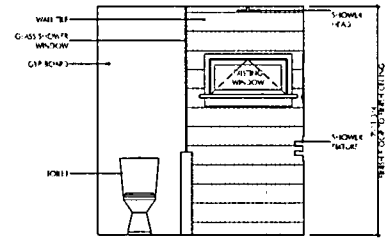
ISSUE DATE: 03.31.22

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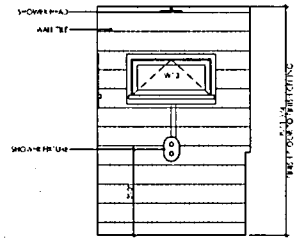
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INTERIOR ELEVATIONS

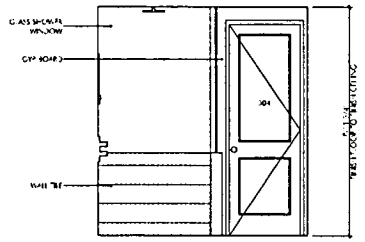
A-401



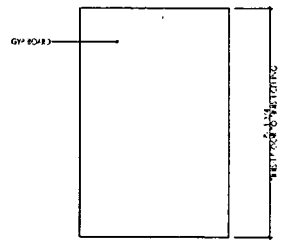
N N 210
SCALE 1/2" = 1'-0"



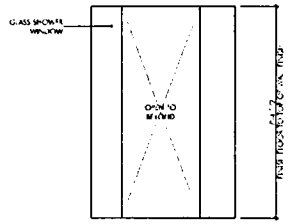
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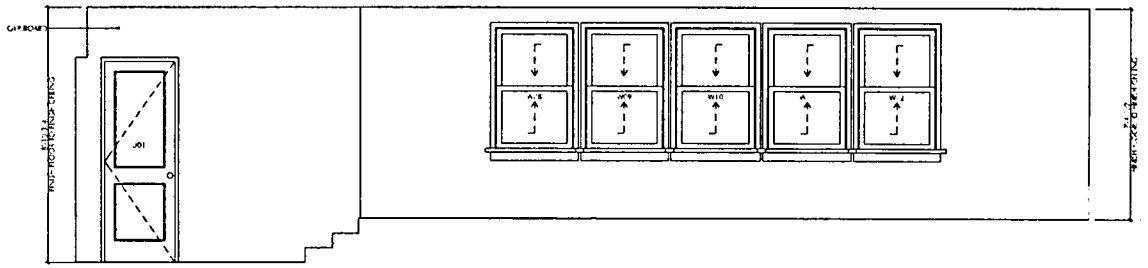
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SCALE 1/2" = 1'-0"



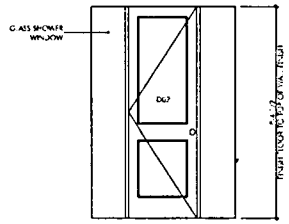
W W 210
SCALE 1/2" = 1'-0"



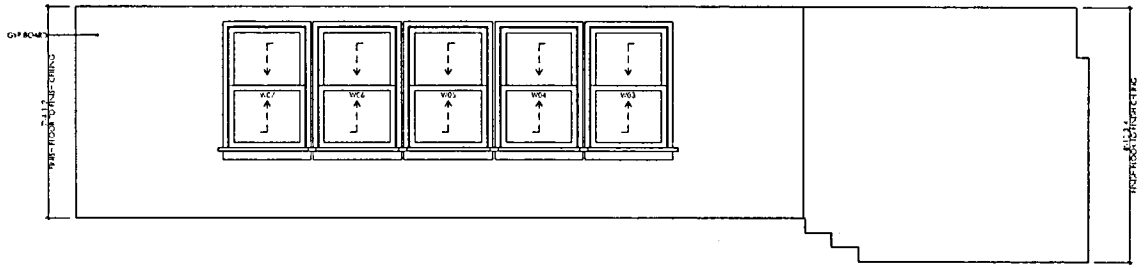
N N 211
SCALE 1/2" = 1'-0"



E E 211
SCALE 1/2" = 1'-0"



S S 211
SCALE 1/2" = 1'-0"



W W 211
SCALE 1/2" = 1'-0"

ARCHITECT

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P: [redacted]
E: [redacted]

CLIENT

CONCORA CLIFFS, LLC

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HANALEI, HI 96714

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KANOA T.K. CHUNG LICENSED PROFESSIONAL ARCHITECT NO. 18731 OF HAWAII U.S.A.

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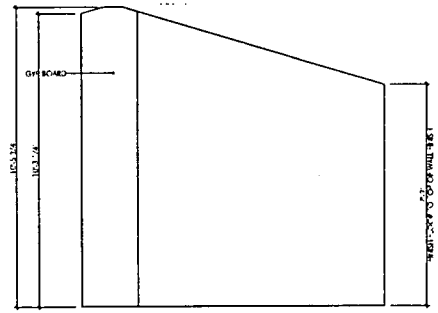
ISSUE DATE: 03 31/22

DRAWING ISSUE

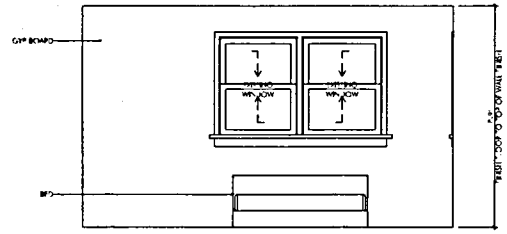
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INTERIOR ELEVATIONS

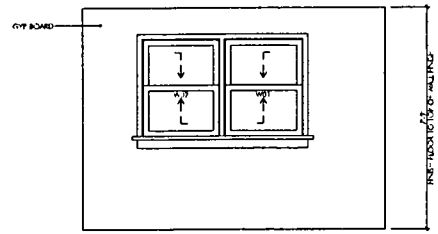
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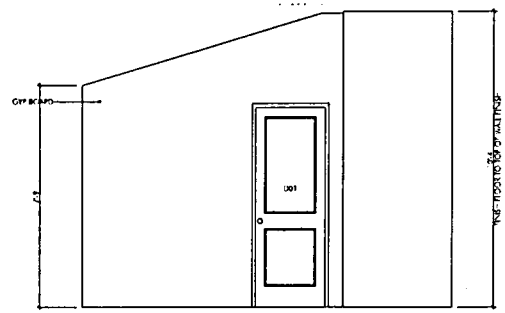
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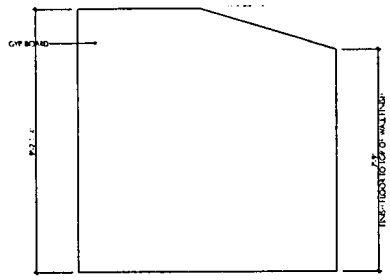
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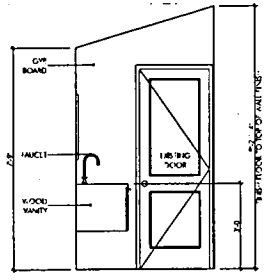
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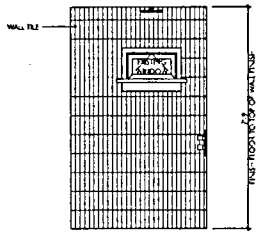
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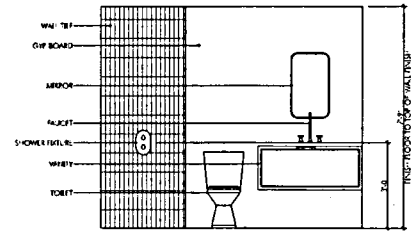
E E 213



N N 213



S S 213



W W 213

ARCHITECT

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P: (808) 651-4479
E: KANOA@NOHOWORKSHOP.COM

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HAWAII, U.S.A.

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PROJECT

HANALEI RESIDENCE

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HANALEI, HI 96714
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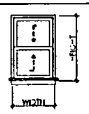
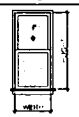
INTERIOR ELEVATIONS

A-403

WINDOW SCHEDULE

ID	ROOM NAME	ROOM #	Position	SIZES		TYPE	MATERIAL (INT/EXT)	MANUFACTURER	DETAILS			RATINGS				Tempered	REMARKS
				UNIT DIMENSIONS (WxH)	ROUGH OPENING (WxH)				HEAD DETAIL	JAMB DETAIL	SILL DETAIL	FIRE	STC	SHGC	U-value		
W01	BED 2	203	Exterior	3'-0" x 3'-0"	3'-0 1/2" x 3'-0 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W02	BED 2	203	Exterior	3'-0" x 3'-0"	3'-0 1/2" x 3'-0 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W03	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W04	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W05	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W06	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W07	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W08	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W09	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W10	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W11	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W12	BRIDGE	211	Exterior	3'-0" x 4'-6"	3'-0 1/2" x 4'-6 1/4"	A	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W13	BATH	213	Exterior	3'-0" x 1'-6"	3'-0 1/2" x 1'-6 1/4"	C	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W14	WEST	212	Exterior	3'-0" x 6'-0"	3'-0 1/2" x 6'-0 1/4"	B	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W15	WEST	212	Exterior	3'-0" x 6'-0"	3'-0 1/2" x 6'-0 1/4"	B	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W16	WEST	212	Exterior	3'-0" x 6'-0"	3'-0 1/2" x 6'-0 1/4"	B	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	
W17	WEST	212	Exterior	3'-0" x 6'-0"	3'-0 1/2" x 6'-0 1/4"	B	—	CUSTOM	—	—	—	—	—	0.25	≤ 0.40	☐	

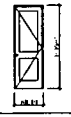
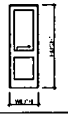
WINDOW LEGEND

TYPE	A	B	C
VIEW			
NOTES			

DOOR SCHEDULE

ID	ROOM NAME	ROOM #	POSITION	SIZES		ORIENTATION	TYPE	MATERIAL (INT/EXT)	MANUFACTURER	DETAILS			RATINGS				Tempered	REMARKS
				UNIT DIMENSIONS (WxH)	ROUGH OPENING (WxH)					HEAD DETAIL	JAMB DETAIL	SILL DETAIL	FIRE	STC	SHGC	U-value		
D01	BED 2	203	Interior	2'-8" x 7'-1"	2'-8" x 7'-1 3/4"	SWING	B	SC WOOD	CUSTOM				Approx		0.25	≤ 0.40	☐	
D02	BRIDGE	211	Interior	2'-8" x 7'-0"	2'-8" x 7'-0 1/4"	SWING	B	SC WOOD	CUSTOM				Approx		0.25	≤ 0.40	☐	
D03	BATH	213	Interior	2'-1 1/2" x 7'-6 1/4"	2'-2" x 7'-6 1/2"	POCKET	A	SC WOOD	CUSTOM				Approx		0.25	≤ 0.40	☐	
D04	BATH	213	Interior	2'-8" x 7'-0"	2'-8" x 7'-0 1/4"	SWING	B	SC WOOD	CUSTOM				Approx		0.25	≤ 0.40	☐	

DOOR LEGEND

TYPE	B	A
VIEW		
NOTES		

ARCHITECT

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1970 KOLO RD
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P: [redacted]
E: [redacted]

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PROJECT NUMBER: 21015

ISSUE DATE: 03 31/22

DRAWING ISSUE

△ [redacted]

DOOR AND WINDOW SCHEDULES

A-601

NOTES:

1. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND CONDITIONS AT SITE PRIOR TO COMMENCEMENT OF CONSTRUCTION.

2. ALL OMISSIONS OR CONFLICTS BETWEEN THE VARIOUS ELEMENTS OF THE WORKING DRAWINGS AND/OR THE SPECIFICATIONS SHALL BE BROUGHT TO THE ATTENTION OF THE ARCHITECT BEFORE PROCEEDING WITH ANY WORK INVOLVED.

3. DIMENSIONS ARE FROM FACE OF STRUCTURE UNLESS OTHERWISE NOTED.

4. SEE STRUCTURAL DRAWINGS FOR STRUCTURAL MEMBER SIZES

5. DO NOT SCALE THE DRAWINGS

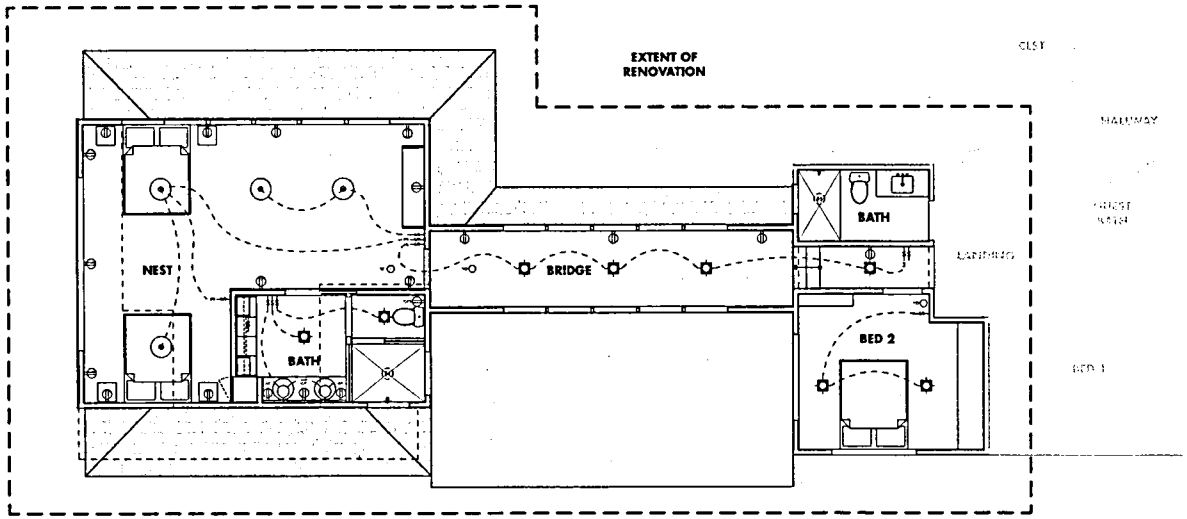
PLAN KEY

- DEMO
- EXISTING
- NEW

ELEVATION KEYNOTES

- 110 V OUTLET
- WATERPROOF 110V OUTLET
- GROUND FAULT CIRCUIT INTERRUPTER OUTLET IN 110V CIRCUIT
- OUTLET WITH ELEVATION ABOVE FLOOR
- PLUGS FLP OUTLET
- 220 V OUTLET
- MOTOR MOUNT OUTLET
- HOSE BIB
- GAS CONNECTION
- ON-DEMAND WATER HEATER
- WATER FILTRATION
- SMOKE AND CO DETECTOR
- BREAKER PANEL
- ELECTRIC METER
- WATER TANK
- TELEPHONE
- CABLE TV

- RECESSED CAN LIGHT, HIGH EFFICACY LAMP
- WATERPROOF RECESSED CAN LIGHT, HIGH EFFICACY LAMP
- WALL MOUNTED SCONCE, HIGH EFFICACY LAMP
- SURFACE MOUNTED LIGHT / PENDANT, HIGH EFFICACY LAMP
- VANITY LIGHT, HIGH EFFICACY LAMP
- INTEGRATED LIGHT AND EXHAUST FAN, HIGH EFFICACY LAMP
- EXHAUST FAN
- SPECIALTY DOWNLIGHT, HIGH EFFICACY LAMP
- YARD LIGHT, LOW VOLTAGE
- LIGHT SWITCH
- 3-WAY LIGHT SWITCH
- DIMMER LIGHT SWITCH
- POWER PATH
- 4' LED WRAP CEILING LIGHT
- CEILING FAN (● INDICATES WITH LIGHT & HIGH EFFICACY LAMP WHERE APPLICABLE)



1 SECOND FLOOR ELECTRICAL PLAN

SCALE: 1/4" = 1'-0"

ARCHITECT

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DRAWING ISSUE:

△ [redacted]

SECOND FLOOR ELECTRICAL PLANS

E-102

STRUCTURAL OBSERVATION

Code Program
Structural Observation

STRUCTURAL OBSERVATION PROGRAM
AND DESIGNATION OF THE
STRUCTURAL OBSERVER

PROJECT ADDRESS: 5418 WEKE RD, HANALEI, HI 96714
Owner:
Architect: NOHO WORKSHOP
Engineer: Derek Wavering Structural Engineering

STRUCTURAL OBSERVATION
(only checked items are required)

Firm or individual to be responsible for the Structural Observation:
Name: Derek Wavering, S.E. Phone: (818) 874-1445 Calif. Registration: S6230

FOUNDATION	WALL	FRAME	DIAPHRAGM
☒ Footing, Stem Walls, Piers	☐ Concrete	☐ Steel Moment Frame	☐ Concrete
☐ Mat Foundation	☐ Masonry	☐ Steel Braced Frame	☐ Steel Deck
☐ Caisson, Piles, Grade Beams	☒ Wood	☐ Concrete Moment Frame	☒ Wood
☐ Stemp'd/Retain'g Foundation Millside Special Anchors	☐ Others:	☐ Masonry Wall Frame	☐ Others:
☐ Others:		☐ Others:	

DECLARATION OF OWNER
I, the Owner of the project, declare that the above listed firm or individual is hired by me to be the Structural Observer.

Signature Date

EPOXY ANCHORS AND DOWELS IN CONCRETE

1. DRILLED RESIN ANCHORS AND DOWELS SHALL BE INSTALLED IN ACCORDANCE W/ THE MANUFACTURER'S RECOMMENDATIONS.
2. DRILLED RESIN ANCHORS AND DOWELS SHALL NOT BE USED TO RESIST VIBRATORY OR SHOCK (IMPACT) LOADS.
3. MINIMUM ANCHOR OR DOWEL EMBEDMENT SHALL BE AS INDICATED IN THE APPROPRIATE ICC REPORT REQUIRED UNLESS OTHERWISE INDICATED ON THE DRAWINGS.
4. ALL RESIN ANCHORS SHALL BE ASTM A36 ALL-THREADED ROD, EXCEPT AS NOTED OTHERWISE ON THE DRAWINGS OR IN THE SPECIFICATIONS. ALL DOWELS TO BE ASTM A615 GRADE 60, EXCEPT AS NOTED OTHERWISE ON DRAWINGS OR IN THE SPECIFICATIONS.
5. DRILLED ANCHORS AND DOWELS SHALL BE HIT HILTI HIT-HY 200-SD ADHESIVE ANCHOR SYSTEM AS MANUFACTURED BY HILTI, INC. (ICC REPORT ESR-3322, LARR 26628), SIMPSON SET-XP ADHESIVE ANCHOR SYSTEM AS MANUFACTURED BY SIMPSON (ICC REPORT ESR-3500, LARR 25744) OR APPROVED EQUAL.
6. CONTINUOUS SPECIAL INSPECTION IS REQUIRED DURING INSTALLATION OF ALL RESIN ANCHORS AND DOWELS.
7. WHEN INSTALLING ANCHORS IN EXISTING REINFORCED CONCRETE OR MASONRY, EXERCISE CAUTION TO AVOID CUTTING OR DAMAGING THE EXISTING REINFORCING BARS.
8. THE TESTING AGENCY SHALL PERFORM TENSION LOAD TESTS ON ANCHORS AND DOWELS AS INDICATED IN THE SPECIFICATIONS.
9. ANCHORS AND DOWELS SPECIFICALLY INDICATED AS "NO TEST REQUIRED" ON THE DRAWINGS DO NOT REQUIRE TENSION LOAD TESTS.
10. TESTING AGENCY SHALL DEVELOP AND UTILIZE AN EFFECTIVE METHOD OF FIELD MARKING LOCATIONS OF PASSED AND FAILED ANCHOR OR DOWEL TESTS.
11. RESIN DOWELS INSTALLED IN NORMAL-WEIGHT (STONE AGGREGATE) OR LIGHT-WEIGHT CONCRETE SHALL BE TESTED TO THE FOLLOWING VALUES. TENSION TEST LOADS ARE BASED ON THE MINIMUM OF 50 PERCENT OF THE CONCRETE ULTIMATE STRENGTH OF ANCHOR IN TENSION OR 80 PERCENT OF ANCHOR YIELD STRENGTH OF THE DOWELS. CAPACITIES ARE CALCULATED BASED ON APPROVED ICC REPORT.
12. DRILLED RESIN ANCHORS AND DOWELS SHALL HAVE EDGE DISTANCE ≥ 1.5* EMBEDMENT.

CONSTRUCTION PROCEDURE NOTES

1. ALL WALLS AND ALL FLOOR AND ROOF MEMBERS SHALL BE SECURELY SHORED AND BRACED AT ALL TIMES DURING CONSTRUCTION.
2. KEY AND DOWEL POUR JOINTS AS SHOWN ON THE PLANS. ANY DEVIATION FROM POUR JOINTS SHOWN ON THE PLANS MUST BE APPROVED BY THE ENGINEER AND THE BUILDING DEPARTMENT.
3. NO PIPES OR DUCTS SHALL BE EMBEDDED INTO STRUCTURAL MEMBERS UNLESS SO SHOWN ON THE PLANS OR APPROVED BY THE ENGINEER.
4. VERIFY ALL DIMENSIONS AND CONDITIONS ON THE JOB.
5. REFER TO ARCHITECTURAL PLANS FOR FLOOR DEPRESSIONS, OPENINGS, SLOPES, DRAINS, CURBS, PADS, EMBEDDED ITEMS, NON-BEARING PARTITIONS, STAIR HANGERS, ETC. REFER TO MECHANICAL AND ELECTRICAL PLANS FOR SLEEVES, OPENINGS, AND HANGERS FOR PIPES, DUCTS AND EQUIPMENT.
6. ANY DEVIATION FROM APPROVED SET OF STRUCTURAL DRAWINGS SHALL BE APPROVED BY THE ENGINEER OF RECORD AND THE BUILDING DEPARTMENT.

CONCRETE

1. ALL CONCRETE HAS BEEN DESIGN USING ACI 318-14 AND THE 2018 IBC REQUIREMENTS. ALL CONCRETE SHALL DEVELOP THE FOLLOWING COMPRESSIVE STRENGTHS AT 28 DAYS:

NORMAL WEIGHT CONCRETE	28 DAYS	MAX W/C RATIO
FOOTINGS	2500 PSI	0.45

* NO MORE THAN ONE CLASS OF CONCRETE SHALL BE ON THE JOB SITE AT ANY TIME.

2. ALL EXPOSED CORNERS ON EDGES OF COLUMNS, PIERS, WALLS, BEAMS, ETC., SHALL BE FORMED W/ A 3/4" CHAMFER UNLESS OTHERWISE NOTED ON DRAWINGS.
3. CONSTRUCTION JOINTS SHALL BE LOCATED WHERE SHOWN AND, IF NOT SHOWN, WHERE DIRECTED BY THE ARCH'L AND APPROVED BY SEOR AND ABC. THEY SHALL BE LOCATED SO AS TO LEAST IMPAIR THE STRENGTH OF THE STRUCTURE AND TO MINIMIZE SHRINKAGE. PROVIDE DOWELS AND KEYS AS DETAILED AND DIRECTED, AND THOROUGHLY CLEAN AND REMOVE LAITANCE FROM SURFACES BEFORE PROCEEDING W/ THE NEXT PLACEMENT.
4. CONTRACTOR SHALL SUBMIT CONSTRUCTION JOINT LAYOUT FOR REVIEW.
5. REFER TO ARCH'L DRAWINGS FOR ALL REQUIRED WATERPROOFING, DAMP PROOFING, FLASHING, REGLETS, NAILERS, ROOFING, TYPE AND LOCATION OF FLOOR FINISHES, FLOOR DEPRESSIONS, CURBS, PADS AND OTHER DETAILS.
6. SUBMIT CONCRETE MIX DESIGNS (INCLUDING AGGREGATE DATA, AGGREGATE GRADATIONS, WATER TESTS, CEMENT DATA, CEMENT CUBE STRENGTH AND CYLINDER STRENGTH TEST RESULTS FOR THE CONCRETE. ALL DATA SHALL BE SUBMITTED FOR REVIEW AND APPROVED PRIOR TO ITS USE. CONCRETE MIXES SHALL BE DESIGNED BY A QUALIFIED TESTING LABORATORY APPROVED BY ABC AND CERTIFIED BY A REGISTERED HAWAII PROFESSIONAL ENGINEER.
7. THE CONCRETE SHALL CONTAIN AN ACCEPTABLE WATER REDUCING/PLASTICIZING ADMIXTURE. NO CALCIUM CHLORIDE SHALL BE USED IN CONCRETE.
8. ALL CONCRETE AGGREGATES AND CEMENT SHALL BE FROM A SINGLE SOURCE ACCEPTABLE TO THE ARCH'L. ALL CEMENT SHALL CONFORM TO ASTM C150, TYPE I OR TYPE II LOW ALKALI, AGGREGATES FOR STONE CONCRETE SHALL CONFORM TO ALL REQUIREMENTS AND TESTS OF ASTM C-33 AND PROJECT SPECIFICATIONS. CONCRETE EXPOSED TO EARTH SHALL BE TYPE II/V CEMENT AND SHALL COMPLY W/ THE REQUIREMENTS FOR MODERATE SULFATE EXPOSURE AS SPECIFIED IN THE 2018 IBC AND ACI 318-11. CONCRETE AGGREGATES FOR LIGHT-WEIGHT CONCRETE SHALL CONFORM TO ASTM C-330.
9. CONCRETE MIXING OPERATION SHALL CONFORM TO ASTM C-94. CONCRETE PLACEMENT SHALL CONFORM TO ACI STANDARD 304 AND PROJECT SPECIFICATIONS.
10. CONTRACTOR IS RESPONSIBLE FOR ALL CONCRETE PLACING SEQUENCES AND CONSTRUCTION PROCEDURES FOR ALL CONCRETE WORK. ACCOUNT FOR TEMPERATURE DIFFERENTIALS AND SHRINKAGE OCCURRING DURING THE CONSTRUCTION PHASE UNTIL THE BUILDING IS PERMANENTLY IN A MECHANICALLY CONTROLLED ENVIRONMENT.
11. CONTRACTOR SHALL REVIEW MECHANICAL, ELECTRICAL, PLUMBING AND BUILDING SERVICES DRAWINGS. COORDINATE AND INSTALL SIZES, NUMBER AND LOCATION OF ALL SLEEVES OR OPENINGS REQUIRED. SLEEVES SHALL BE SET FOR ALL SERVICES PRIOR TO CONCRETE PLACEMENT. NO CORING OR CUTTING OF CONCRETE AFTER PLACEMENT WILL BE PERMITTED W/OUT THE PRIOR WRITTEN APPROVAL OF STRUCTURAL ENGINEER OF RECORD. NO PIPE OR DUCT SHALL BE EMBEDDED INTO STRUCTURAL MEMBERS UNLESS SHOWN ON THE PLANS OR APPROVED BY THE ENGINEER.
12. CONSTRUCTION JOINTS IN ALL FOUNDATIONS, WALLS, SUPPORTED SLABS AND FLOOR CONSTRUCTION FRAMING SHALL NOT BE FURTHER THAN 100 FEET IN LENGTH.
13. ALL CONSTRUCTION JOINTS IN WALLS OR OTHER ELEMENTS NOT HAVING PREFORMED KEYS, SHALL BE WIRE BRUSHED, ROUGHED TO A MINIMUM 1/4" AMPLITUDE, CLEANED AND MOISTENED IMMEDIATELY PRIOR TO PLACEMENT OF NEW CONCRETE.
14. SEE MECHANICAL, PLUMBING AND ELECTRICAL DRAWINGS FOR ALL CONDUITS IN SLABS. CONDUITS SHALL BE RUN GENERALLY AT MID-DAY. PARALLEL CONDUITS SHALL BE SPACED AT THREE DIAMETERS OR CENTERS MINIMUM. CONDUIT SIZES SHALL NOT EXCEED 1/6TH OF THE SLAB THICKNESS AND SHALL BE LOCATED AT MID-HEIGHT OF THE SLAB. PREPARE AND SUBMIT TO THE ARCH'L & ENGINEER FOR REVIEW AND APPROVAL OF LOCATION OF CONDUITS, PULL BOXES AND OTHER ITEMS EMBEDDED IN STRUCTURAL CONCRETE. CONDUITS SHALL NOT BE PLACED IN METAL DECK SLABS.
15. ALL MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION EQUIPMENT SHALL BE SECURELY ANCHORED TO STRUCTURAL CONCRETE W/ CAST-IN-PLACE ANCHORS OR MECHANICAL OR ADHESIVE ANCHORS OR EXISTING MEMBERS. ANCHORS SHALL BE DESIGNED FOR A MINIMUM LATERAL FORCE OF 0.3 TIMES THE WEIGHT OF THE EQUIPMENT APPLIED AT CENTER OF MASS, IN ADDITION TO OTHER LOADING CONDITIONS.
16. NON-SHRINK CEMENT GROUT SHALL HAVE A MINIMUM 28 DAYS COMPRESSIVE STRENGTH OF 6000 PSI.
17. SEE PROJECT SPECIFICATIONS FOR ADDT'L REQUIREMENTS.

ADHESIVE AND EXPANSION ANCHORS NOTES

1. EXPANSION ANCHORS SHALL BE SIMPSON STRONG TIE INC. CARBON STEEL STRONG-BOLT 2 OR TITEN HD. (ICC ESR 3037, 2713) AND (LARR 25491, 25743). WITH DIAMETER AND EMBEDMENT LENGTH AS SHOWN ON THE DRAWINGS. INSTALL PER THE MANUFACTURER'S RECOMMENDATIONS (U.N.O.) ON THE DRAWINGS.
2. ANCHORING ADHESIVE SHALL BE SIMPSON SET-XP LARR 25744 (ICC ESR-3500) PER THE MANUFACTURER'S RECOMMENDATIONS, (U.N.O.) ON THE DRAWING (U.N.O.) ON THE DRAWINGS.
3. ALL THREADED RODS SHALL BE A307 OR. C RODS, U.N.O.

STRUCTURAL OBSERVATION NOTES:

1. STRUCTURAL OBSERVATION IS REQUIRED FOR THIS PROJECT IN ACCORDANCE WITH 2018 IBC 1704.6. STRUCTURAL OBSERVATION IS THE VISUAL OBSERVATION OF THE STRUCTURAL SYSTEM BY A LICENSED DESIGN PROFESSIONAL FOR GENERAL CONFORMANCE TO THE APPROVED CONSTRUCTION DOCUMENTS. STRUCTURAL OBSERVATION DOES NOT WAIVE THE RESPONSIBILITY FOR THE REQUIRED INSPECTIONS BY THE CITY.
2. THE OWNER SHALL EMPLOY A LICENSED DESIGN PROFESSIONAL TO PERFORM STRUCTURAL OBSERVATION SITE VISITS, AND TO ISSUE ALL STRUCTURAL OBSERVATION REPORTS.
3. THE STRUCTURAL OBSERVER SHALL PERFORM SITE VISITS AT THOSE STEPS IN THE PROGRESS OF THE WORK THAT ALLOW FOR CORRECTION OF DEFICIENCIES WITHOUT SUBSTANTIAL EFFORT OR UNCOVERING OF THE WORK INVOLVED. THE FOLLOWING SIGNIFICANT CONSTRUCTION STAGES REQUIRE A SITE VISIT AND AN OBSERVATION REPORT FROM THE STRUCTURAL OBSERVER:

CONSTRUCTION STAGES	ELEMENTS/CONSTRUCTION TO BE OBSERVED
FOUNDATIONS	PRIOR TO POURING FIRST CONCRETE FOOTINGS
WOOD FRAMING	AT SHEAR WALLING SHEARWALLS, PRIOR TO APPLICATION OF DRYWALL AT EACH LEVEL. AFTER NAILING FLOOR/ROOF DIAPHRAGM AT EACH LEVEL.
FINISHED STRUCTURAL SYSTEM	FINAL OBSERVATION OF THE COMPLETED STRUCTURE

4. NOTIFY ENGINEER AT LEAST 48 HOURS IN ADVANCE OF THE ABOVE CRITICAL STAGES OF CONSTRUCTION SO THAT THE ENGINEER MAY SCHEDULE VISITS FOR STRUCTURAL OBSERVATIONS.
5. THE STRUCTURAL OBSERVER SHALL PREPARE A STRUCTURAL OBSERVATION REPORT FOR EACH STAGE OF CONSTRUCTION OBSERVED. THE CITY OF HANALEI "STRUCTURAL OBSERVATION REPORT" FORM, OR A SIMILARLY FORMATTED REPORT, SHALL BE USED FOR ALL STRUCTURAL OBSERVATION REPORT.
6. IF THE CITY'S FORM IS NOT USED, REPORTS SHALL BE ON STRUCTURAL OBSERVER'S LETTERHEAD, STATE SITE ADDRESS, PLAN CHECK & PERMIT NUMBERS, STAGES & ELEMENTS OBSERVED, DATE OBSERVED, & COMPLETE CONTACT INFORMATION FOR STRUCTURAL OBSERVER.
7. ALL STRUCTURAL OBSERVATION REPORTS, REGARDLESS OF FORM USED, SHALL INCLUDE THE THE LICENSED STAMP & SIGNATURE OF THE STRUCTURAL OBSERVER RESPONSIBLE FOR THE PROJECT.
8. EACH STRUCTURAL OBSERVATION REPORT SHALL BE GIVEN TO THE OWNER OR OWNER'S REPRESENTATIVE, PROJECT CONTRACTOR, AND THE BUILDING INSPECTOR.
9. THE CONTRACTOR SHALL RESOLVE ALL DEFICIENCIES NOTED IN THE FINAL STRUCTURAL OBSERVATION REPORT ISSUED PRIOR TO FINAL INSPECTION OR ACCEPTANCE OF STRUCTURAL WORK BY THE BUILDING INSPECTOR.
10. THE FINAL STRUCTURAL OBSERVATION REPORT SHALL STATE THAT THE STRUCTURAL SYSTEM CONFORMS TO THE APPROVED CONSTRUCTION DOCUMENTS & THAT ALL PREVIOUSLY OBSERVED DEFICIENCIES HAVE BEEN CORRECTED.
11. FINAL INSPECTION OR OTHER ACCEPTANCE OF THE STRUCTURAL SYSTEM BY THE CHIEF BUILDING OFFICIAL, OR DESIGNEE, WILL NOT OCCUR UNTIL THE FINAL STRUCTURAL OBSERVATION REPORT IS RECEIVED.
12. THE LICENSED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE SHALL PREPARE ALL CONSTRUCTION DOCUMENT CHANGES RELATING TO THE STRUCTURAL SYSTEMS. REVIEW & APPROVAL OF SUCH CHANGES BY THE CHIEF BUILDING OFFICIAL, OR DESIGNEE, SHALL BE OBTAIN BY THE DESIGN PROFESSIONAL AND/OR CONTRACTOR PRIOR TO INSTALLATION AND/OR CONSTRUCTION OF SAID CHANGES.

DESIGN BASIS

THE DESIGN IS IN ACCORDANCE WITH THE [2018 HAWAII BUILDING CODE (HBC)], AND THE LATEST LOCAL MUNICIPALITY BUILDING CODE.
0 PROVIDED FOR THE FOLLOWING LOADS:

1. OCCUPANCY CATEGORY: II
2. LIVE LOADS:

RESIDENTIAL	40 PSF
UNOCCUPIED ROOF	20 PSF

3. DEAD LOADS ARE PER THE SELF WEIGHT ASSEMBLY.
4. WIND LOADS:
ULTIMATE DESIGN WIND SPEED = V = 100 MPH
EXPOSURE = C
Iw = 1.0
5. SEISMIC LOADS: (BASED ON THE EQUIVALENT LATERAL FORCE PROCEDURES)
RISK CATEGORY II
SITE CLASS = D (DEFAULT)
Ie = 1.0
Ss = 0.15, S1 = 0.055
Fa = 1.6, Fv = 2.4
Sds = 0.303, Sd1 = 0.088
SEISMIC DESIGN CATEGORY=B
X AND Y DIRECTION WOOD STRUCTURE
DUCTILITY FACTOR, Rx AND Ry = 6.5 (LIGHT FRAME WALLS SHEATHED WITH PLYWOOD.)
REDUNDANCY, ΘMx = 1.0, REDUNDANCY, ΘMy = 1.0
OVERSTRENGTH FACTOR, Ωo = 2.5, Ωy = 2.5
LATERAL DISPLACEMENT AMPLIFICATION FACTOR, Cdx = 4.0, Cdy = 4.0

REINFORCEMENT NOTES:

1. ALL TYPICAL REINFORCING BARS NOT PART OF THE LFRS SHALL CONFORM TO ASTM A-615, GRADE 60, UNLESS NOTED OTHERWISE ON THE DRAWINGS. PROVIDE CERTIFICATES SHOWING COMPLIANCE WITH REQUIRED HIGH RECYCLED CONTENT FOR REINFORCING STEEL, 25% RECYCLED CONTENT, MINIMUM.
2. ALL REINFORCEMENT THAT IS PART OF THE LFRS WHICH INCLUDES SHEARWALLS, MF COLUMNS, MF BEAMS, GRADE BEAMS AND DIAPHRAGM CHORDS AND COLLECTORS SHALL BE ASTM A-706 [Fy=60ksi]. ASTM A615 GRADE 60 STEEL MAY BE USED ON THE LFRS SYSTEM IF THAT STEEL IS PROVEN, BASED ON MILL TESTS, TO HAVE A YIELD STRESS THAT IS NOT MORE THAN 7KSI MORE THAN GRADE 60 STEEL AND THE RATIO OF THE ACTUAL TENSILE STRENGTH TO THE ACTUAL YIELD STRENGTH IS AT LEAST 1.25. SAID PROOF SHALL BE PROVIDED TO EOR.
3. SPIRALS REINFORCEMENT SHALL BE COLD DRAWN BARS CONFORMING TO ASTM A-82.
4. WELDED REBAR TO COMPLY WITH ASTM A-706 [Fy=60 KSI] AND WELDING SHALL CONFORM TO AWS D1.4. WELDING TO BE DONE BY WELDERS CERTIFIED BY BUILDING DEPARTMENT.
5. WELDED WIRE FABRIC SHALL BE MADE OF COLD DRAWN WIRE AND SHALL CONFORM TO ASTM A-185 [Fy=65 KSI]. MINIMUM LAP AT SPLICES OF 12 INCHES. PROVIDE MESH IN FLAT SHEETS ONLY. ROLLED MESH IS NOT ACCEPTABLE. OFFSET END-LAPS IN ADJACENT SHEETS TO PREVENT CONTINUOUS LAPS.
6. #5 AND LARGER REINFORCING BARS SHALL NOT BE SPLICED EXCEPT AS LOCATED AND DETAILED ON THE DRAWINGS. #4 AND SMALLER BARS WITH LENGTHS NOT SHOWN SHALL BE CONTINUOUS. PROVIDE CLASS 'B' SPLICE UNLESS NOTED OTHERWISE. ALL BARS IN MASONRY SHALL BE CONTINUOUS, LAPPING PER SCHEDULE ON PLANS.
7. HORIZONTAL WALL REINFORCING SHALL BE STAGGERED 3"-0" WHERE VERTICAL BARS SHALL NOT BE SPLICED EXCEPT AT HORIZONTAL SUPPORTS, SUCH AS FLOOR OR ROOF, UNLESS DETAILED OTHERWISE. ALL BARS ENDING AT THE FACE OF A WALL, COLUMN, OR BEAM SHALL EXTEND TO WITHIN 3" OF THE FAR FACE AND HAVE A 90 DEGREE HOOK, UNLESS OTHERWISE SHOWN.
8. BARS SHALL BE FIRMLY SUPPORTED AND ACCURATELY PLACED AS REQUIRED BY THE ACI STANDARDS, USING TIE AND SUPPORT BARS IN ADDITION TO REINFORCEMENT SHOWN WHERE NECESSARY FOR FIRM AND ACCURATE PLACING. PROVIDE BUNDLES TO MATCH ALL REINFORCEMENT AT FOUR INCHES, UNLESS SHOWN OR NOTED OTHERWISE. ALL BUNDLES AND BOLTS SHALL BE ACCURATELY SET IN PLACE BEFORE PLACING CONCRETE. NO WELDING OF REINFORCEMENT (INCLUDING TACK WELDING) SHALL BE DONE UNLESS SHOWN ON THE DRAWINGS OR APPROVED BY THE ENGINEER.
9. IN WALL REINFORCING, CURTAINS CONTAINING VERTICAL AND HORIZONTAL BARS OF THE SAME SIZE, VERTICAL BARS SHALL BE PLACED CLOSEST TO THE WALL SURFACE. IN CURTAINS WHICH VERTICAL AND HORIZONTAL BARS ARE OF DIFFERENT SIZES OR SPACING, THE LAYER WITH THE MOST STEEL SHALL BE PLACED CLOSEST TO THE NEAR SURFACE.
10. ALL BARS INTERRUPTED BY STRUCTURAL STEEL SHALL EXTEND TO WITHIN 1" OF STRUCTURAL STEEL FLANGE OR WEB AND HAVE A 90 DEGREE HOOK, UNLESS OTHERWISE SHOWN.
11. DRAWINGS SHOW TYPICAL REINFORCING CONDITIONS. CONTRACTOR SHALL PREPARE DETAILED PLACEMENT DRAWINGS OF ALL CONDITIONS SHOWING QUANTITY, SPACING, SIZES, CLEARANCES, LAPS, INTERSECTIONS, AND COVERAGE REQUIRED BY THE STRUCTURAL DETAILS, APPLICABLE CODE, AND TRADE STANDARDS. CONTRACTOR SHALL NOTIFY REINFORCING INSPECTOR OF ANY ADJUSTMENTS FROM TYPICAL CONDITIONS WHICH ARE PROPOSED IN PLACEMENT DRAWINGS TO FACILITATE FIELD PLACEMENT OF REINFORCING STEEL AND CONCRETE.
12. REBAR BENDS SHALL BE MADE COLD. REBARS SHALL NOT BE BENT AFTER ANY PORTION OF THE BAR IS ENCASED IN CONCRETE.
13. ALL LAP SPLICES ARE CLASS 'B' LAP SPLICES UNLESS NOTED OTHERWISE.
14. ALL WALL FOOTING REINFORCEMENT SHALL BEND AROUND ALL CORNERS AND EXTEND 36 BAR DIAMETERS OR 18 INCHES WHICHEVER IS LARGER. UNLESS NOTED OTHERWISE.
15. ALL SLABS ON GRADE LESS THAN 6" IN THICKNESS SHALL BE REINFORCED WITH #4 REBARS AT 36 INCHES ON CENTERS EACH WAY, UNLESS NOTED OTHERWISE. PROVIDE ONE (1) LAYER OF 6X6/W2.9XW2.9 WELDED WIRE FABRIC CONTINUOUS FOR EVERY 3" ARCHITECTURAL CONCRETE FILLS ABOVE THE STRUCTURAL SLAB.
16. ALL MECHANICAL, PLUMBING AND ELECTRICAL EQUIPMENT PADS LESS THAN 6" THICK SHALL BE REINFORCED WITH AT LEAST ONE (1) LAYER OF 6X6/W2.9XW2.9 WELDED WIRE FABRIC AND HOOK HOOKED DOWELS (#3 AT 12" ON CENTERS) INTO THE STRUCTURAL SLAB. UNLESS NOTED OTHERWISE. FOR PADS GREATER THAN 6 INCHES THICK, USE REINFORCING AS SHOWN ON THE DETAIL.
17. ADDITIONAL REINFORCEMENT SHALL BE PROVIDED AROUND ALL SLAB AND WALL OPENINGS INCLUDING DIAGONAL REINFORCEMENT EXCEPTION.
18. DEFORMED BAR ANCHORS: ASTM A-496, WITH MINIMUM SHEAR AND PULLOUT CAPACITIES THAT MEET OR EXCEED THOSE VALUES LISTED FOR NELSON D2L DEFORMED BAR ANCHORS.
19. CONCRETE SHEAR ANCHORS: NELSON FLOOR HEADED ANCHOR STUDS (ICBO #1896) CONFORMING TO ASTM A-108. STUDS SHALL BE AUTOMATICALLY END WELDED IN THE FIELD. ALL WELDS SHALL BE MADE IN ACCORDANCE WITH THE MANUFACTURER'S RECOMMENDATIONS.
20. ALL STRUCTURAL CONCRETE ELEMENTS REQUIRE REINFORCEMENT SINCE NO PLAIN CONCRETE HAS BEEN ASSUMED IN THE STRUCTURAL DESIGN.
21. REINFORCING STEEL SHALL HAVE THE FOLLOWING MINIMUM COVERAGE. PLACE BARS AS NEAR TO THE CONCRETE SURFACE AS THESE MINIMUMS PERMIT WHEREVER POSSIBLE, UNLESS NOTED OTHERWISE:

----CONCRETE POURED AGAINST EARTH_____3"
----FORMED CONCRETE IN CONTACT WITH EARTH_____3"
----EXTERIOR FACE OF WALLS_____2"
----ALL OTHER WALL FACES_____1"
----BEAMS_____1-1/2" (2" FOR EXTERIOR)
----REINFORCED SLABS_____1" (2" FOR EXTERIOR)
----COLUMNS_____1-1/2" (2" FOR EXTERIOR)
----POST TENSIONED SLABS_____1" BOTTOM - 2" TOP

GENERAL

1. ALL NEW CONSTRUCTION SHALL COMPLY WITH THE CONTRACT DOCUMENTS, THE [2018 HAWAII BUILDING CODE (HBC)], AND THE LATEST LOCAL MUNICIPALITY BUILDING CODE.
2. REFER TO SPECIFICATIONS FOR COMPLETE REQUIREMENTS. THE MORE STRINGENT REQUIREMENT BETWEEN THE SPECIFICATION AND THE DRAWINGS SHALL CONTROL WHERE IN CONFLICT.
3. TYPICAL DETAILS AND GENERAL NOTES APPLY TO ALL PARTS OF THE WORK EXCEPT WHERE SPECIFICALLY DETAILED OR NOTED OTHERWISE (UNO).
4. THE STRUCTURAL DRAWINGS ILLUSTRATE THE NEW STRUCTURAL REMARKS. REFER TO ARCHITECTURAL, MECHANICAL AND ELECTRICAL DRAWING FOR NON-STRUCTURAL ITEMS WHICH REQUIRE SPECIAL PROVISIONS DURING THE CONSTRUCTION OF THE STRUCTURAL MEMBERS.
5. REFER TO ARCHITECTURAL PLANS FOR FLOOR DEPRESSIONS, OPENINGS, SLOPES, DRAINS, CURBS, PADS, EMBEDDED ITEMS, NON-BEARING PARTITIONS, ETC. REFER TO MECHANICAL AND ELECTRICAL PLANS FOR SLEEVES, OPENINGS, AND HANGERS FOR PIPES, DUCTS AND EQUIPMENT.
6. THE CONTRACTOR SHALL VERIFY AND BE RESPONSIBLE FOR ALL DIMENSIONS AND CONDITIONS WHICH IMPACT THE WORK. FIELD VERIFY SIZES, ELEVATIONS, WALL LOCATIONS, ETC. PRIOR TO FABRICATION.
7. DRAWING SCALES ARE GIVEN AS A GUIDE FOR FINISH, JOINT CONTROLLING ON COLUMN GRID CENTERLINE UNLESS NOTED OTHERWISE. DO NOT SCALE THE DRAWINGS.
8. CONTRACTOR SHALL CAREFULLY REVIEW THE DRAWINGS TO IDENTIFY THE SCOPE OF WORK REQUIRED, VISIT THE SITE TO DELATE THE SCOPE OF WORK TO EXISTING CONDITIONS, AND DETERMINE THE EXTENT TO WHICH THOSE CONDITIONS AND PHYSICAL SURROUNDINGS WILL IMPACT THE WORK.
9. THE CONTRACTOR SHALL RESOLVE ANY CONFLICTS ON THE DRAWINGS OR IN THE SPECIFICATIONS WITH THE CONTRACTING OFFICER BEFORE PROCEEDING WITH THE WORK.
10. ANY DEVIATION, MODIFICATION, OR SUBSTITUTION FROM THE APPROVED SET OF STRUCTURAL DRAWINGS SHALL BE APPROVED BY THE BUILDING DEPARTMENT AND ENGINEER OF RECORD PRIOR TO CONSTRUCTION.
11. THE CONTRACTOR SHALL PROVIDE ALL NECESSARY SHORES, BRACES AND GUYS REQUIRED TO SUPPORT ALL LOADS TO WHICH THE BUILDING STRUCTURE, BUILDING COMPONENTS, SOILS, OTHER STRUCTURES AND UTILITIES MAY BE SUBJECTED TO DURING CONSTRUCTION. SHORING SYSTEMS SHALL BE DESIGNED AND STAMPED BY A CIVIL ENGINEER LICENSED IN THE STATE OF HAWAII.
12. THE CONTRACTOR SHALL PROVIDE MEANS, METHOD, TECHNIQUES, SEQUENCE AND PROCEDURE OF THE REQUIRED CONSTRUCTION.
13. EXISTING CONDITIONS AS SHOWN ON THESE PLANS ARE FOR REFERENCE ONLY. CONTRACTOR IS REQUIRED TO FIELD VERIFY ALL EXISTING CONDITIONS PRIOR TO CONSTRUCTION AND REPORT INACCURACIES TO THE EOR.
14. THE CONTRACTOR SHALL PROTECT ALL WORK, MATERIALS AND EQUIPMENT FROM DAMAGE, AND SHALL PROVIDE PROPER STORAGE FACILITIES FOR MATERIALS AND EQUIPMENT DURING CONSTRUCTION.
15. SITE VISITS PERFORMED BY THE BUILDING ENGINEER OF RECORD DO NOT INCLUDE OBSERVATION OF MEANS AND METHODS OF CONSTRUCTION PERFORMED BY CONTRACTOR.
16. STRUCTURAL OBSERVATIONS PERFORMED BY THE BUILDING ENGINEER OF RECORD DURING CONSTRUCTION ARE NOT SPECIAL INSPECTION SERVICES AND DO NOT WAIVE THE RESPONSIBILITY FOR THE INSPECTIONS REQUIRED OF THE BUILDING INSPECTOR OR THE DEPUTY INSPECTOR. OBSERVATIONS ALSO DO NOT GUARANTEE CONTRACTOR'S PERFORMANCE AND SHALL NOT BE CONSIDERED AS SUPERVISION OF CONSTRUCTION.
17. CONTRACTORS SHALL REVIEW SHOP DRAWINGS FOR COMPLETENESS AND COMPLIANCE WITH CONTRACT DOCUMENTS. CONTRACTOR SHALL STAMP SHOP DRAWINGS PRIOR TO SUBMISSION TO THE ARCHITECT AND ENGINEER.
18. REVIEW OF THE SHOP DRAWINGS SHALL NOT BE CONSTRUED AS AN AUTHORIZATION TO DEVIATE FROM CONTRACT DOCUMENTS.
19. SHOP DRAWINGS MAY NOT BE PROCESSED DUE TO INCOMPLETENESS, LACK OF COORDINATION WITH RELEVANT PORTION OF CONTRACT DOCUMENTS, LACK OF CALCULATIONS IF REQUIRED, AND WHERE DEVIATIONS, MODIFICATIONS AND SUBSTITUTIONS ARE INDICATED WITHOUT PRIOR WRITTEN APPROVAL FROM ARCHITECT / ENGINEER. ALLOW A MINIMUM OF SEVEN WORKING DAYS FOR PROCESSING SHOP DRAWINGS AFTER RECEIPT BY THE ENGINEER.
20. STRUCTURAL ITEMS NOT SPECIFICALLY DETAILED AS PART OF THESE PLANS SHALL BE DESIGNED BY A STRUCTURAL ENGINEER REGISTERED BY THE STATE OF HAWAII. SEE "PRE-ENGINEERED STRUCTURES NOTES" FOR ADDITIONAL REQUIREMENTS.
21. SEE ARCHITECTURAL DRAWINGS FOR THE FOLLOWING:
SIZE AND LOCATION OF ALL DOOR AND WINDOW OPENINGS, EXCEPT AS SHOWN.
SIZE AND LOCATION OF ALL INTERIOR AND EXTERIOR NONBEARING PARTITIONS.
SIZE AND LOCATION OF ALL CONCRETE CURBS, FLOOR DRAINS, SLOPES. DEPRESSED AREAS, CHANGES IN ELEVATION, CHAMFERS, GROOVES, REGLETS, ETC. EXCEPT AS SHOWN ON STRUCTURAL DRAWINGS.
SIZE AND LOCATION OF ALL CONCRETE FILLED PANS AND DOMES FOR FLOOR AND ROOF OPENINGS EXCEPT AS SHOWN. FLOOR AND ROOF FINISHES. STAIR FRAMING AND DETAILS, EXCEPT AS SHOWN. DIMENSIONS NOT SHOWN ON STRUCTURAL DRAWINGS.
22. SEE MECHANICAL AND PLUMBING DRAWINGS FOR THE FOLLOWING:
PIPE SLEEVES, SLEEVES, HANGERS, TRENCHES, WALL AND SLAB OPENINGS, CONCRETE INSERTS FOR MECHANICAL OR PLUMBING FIXTURES, AND SIZE, WEIGHT, AND LOCATION OF REF EQUIPMENT.
SEE ELECTRICAL DRAWINGS FOR THE FOLLOWING:
ELECTRICAL CONDUIT RUNS, BOXES, OUTLETS IN WALLS AND SLABS, AND CONCRETE INSERTS FOR ELECTRICAL FIXTURES.
23. CONTRACTORS THAT ARE RESPONSIBLE FOR THE CONSTRUCTION OF THE WIND OR SEISMIC FORCE RESISTING SYSTEM, OR COMPONENTS OF THIS SYSTEM, LISTED IN THE "STATEMENT OF SPECIAL INSPECTION", SHALL SUBMIT A WRITTEN STATEMENT OF RESPONSIBILITY TO THE INSPECTORS OF THE JURISDICTION HAVING AUTHORITY AND TO THE OWNER PRIOR TO THE COMMENCEMENT OF WORK ON SUCH SYSTEM OR COMPONENT.
24. A COP

ACRONYMS

NOTES:

1. ACRONYMS APPLY TO ALL DRAWINGS
2. ACRONYMS LISTED ON PLANS OR IN DETAILS TAKE PRECEDENCE OVER THE ACRONYM LIST BELOW

&	AND	F.S.	FAR SIDE	S	PLASTIC SECTION MODULUS
@	AT	FT	FOOT; FEET	S.A.D.	SEE ARCHITECTURAL DRAWINGS
A.B.	ANCHOR BOLT	FTG	FOOTING	S.C.D.	SEE CIVIL DRAWINGS
ABV	ABOVE	Fy	YIELD STRENGTH	SCHED	SCHEDULE
ADDL, ADD'L	ADDITIONAL	GA	GAUGE	SDL	SUPERIMPOSED DEAD LOAD
ADJ	ADJACENT	GALV.	GALVANIZED	SECT.	SECTION
A.F.F.	ABOVE FINISHED FLOOR	G.D.	GRADE BEAM	S.E.D.	SEE ELECTRICAL DRAWINGS
ALT	ALTERNATIVE, ALTERNATE	GC	GENERAL CONTRACTOR	SEP	SEPARATION
ALUM	ALUMINUM	GAR	GARAGE	SHR	SHEARING, SHORE
APPROX	APPROXIMATELY	GEN	GENERAL	SHT	SHEET
A.B.	ANCHOR ROD.	GL	GRID LINE	SHT'G	SHEATHING
ARCH	ARCHITECT	GND	GROUND	SIM	SIMILAR
ARCH'L	ARCHITECTURAL	GR	GRADE	SIMPSON, SST	SIMPSON STRONG TIE
ATTACH.	ATTACHMENT	H.A.S.	HEADED ANCHOR STUD	S.J.	SEISMIC JOINT
BF	BRACED FRAME	(HD)	HOLD DOWN	SLRS	SEISMIC LOAD RESISTING SYSTEM
BLDG	BUILDING	(H) OR HORIZ	HORIZONTAL	S.M.D.	SEE MECHANICAL DRAWINGS
BLK	BLOCK	HD	HOLD DOWN	S.M.S.	SHEET METAL SCREW
BLK'G	BLOCKING	HDR	HEADER	S.O.G.	SLAB ON GRADE
BLW	BELOW	HGR	HANGER	SPCL	SPECIAL
BM	BEAM	HK	HOOK	S.P.D.	SEE PLUMBING DRAWINGS
B.O.	BOUNDARY NAILING	HOSP	HOSPITAL	SPECS	SPECIFICATIONS
BNDRY	BOUNDARY	HS	HIGH STRENGTH	SQ.	SQUARE
B.O.	BOTTOM OF	HSB	HIGH STRENGTH BOLT	SS	SELECT STRUCTURAL
B.O.F.	BOTTOM OF FOOTING	HT	HEIGHT	SSH	SHORT SLOTTED HOLES
BOTT OR BOT	BOTTOM	I	MOMENT OF INERTIA	STAGG	STAGGERED
BRBF	BUCKLING-RESTRAINED BRACED FRAME	I.D.	INSIDE DIAMETER	STD	STANDARD
		I.E.	THAT IS	STIFF	STIFFENER
BRG	BEARING	I.F.	INSIDE FACE	STL	STEEL
BSMT	BASEMENT	IN	INCH	STRUCT	STRUCTURAL
B'WAY OR BET	BETWEEN	INCL	INCLUDE	SW	SHEAR WALL
BS	BACKSIDE	INFO	INFORMATION	SYMM.	SYMMETRICAL
CALCS	CALCULATIONS	INSP	INSPECTION, INSPECTOR	T/	TOP OF
CANT	CANTILEVER	INT	INTERIOR	TBD	TOP AND BOTTOM
CBC	MANDLI BUILDING CODE	INV	INVERT	T&G	TONGUE AND GROOVE
CC	CANTILEVER CAMBER	JST	JOIST	TEMP	TEMPERATURE, TEMPORARY
CF	CUBIC FOOT	JT	JOINT	T.F.F.	TOP OF FINISHED FLOOR
CG	CENTER OF GRAVITY	K	1,000 POUNDS	THK	THICK
C|P	CAST IN PLACE	KSF	KIPS PER SQUARE FOOT	THRU	THROUGH
C.J.	CONSTRUCTION JOINT	KSI	KIPS PER SQUARE INCH	TL	TOTAL LOAD
CTRL JT	CONTROL JOINT	(L)	LOW	T.O.C.	TOP OF CONCRETE (OR CURB)
C|P	COMPLETE JOINT PENETRATION	LAB	LABORATORY	T.O.S.	TOP OF STEEL
CL	CENTER LINE	LABC	LOS ANGELES BUILDING CODE	T.O.W.	TOP OF WALL
CLR	CLEAR	LAP	LAP SPLICE LENGTH	TRANSV	TRANSVERSE
CLSM	CONTROLLED LOW STRENGTH MATERIAL	LBS OR #	POUND	TYP	TYPICAL
CMU	CONCRETE MASONRY UNIT	Ldc	COMPRESSION DEVELOPMENT LENGTH	UL	UNDERWRITERS LABORATORY, INC.
CO	COMPANY	LDGTH	LOADING	U.N.O.	UNLESS NOTED OTHERWISE
COL	COLUMN	Ldh	HOOKED BAR DEVELOPMENT LENGTH	U/S	UNDERSIDE
COMP	COMPRESSION	Ldt	TENSION DEVELOPMENT LENGTH	UT	ULTRASONIC TEST
CONC	CONCRETE	L.F.	LINEAL FOOT	(V) OR VERT	VERTICAL
COND	CONDITION	LIN	LINEAL; LINEAR	V.I.F.	VERIFY IN FIELD
CONN OR CXN	CONNECTION	LL	LIVE LOAD	W/	WITH
CONST	CONSTRUCTION	LLH	LONG LEG/SIDE HORIZONTAL	W/O	WITHOUT
CONT	CONTINUOUS	LLV	LONG LEG/SIDE VERTICAL	W/C	WATER/CEMENT
CTC	CENTER TO CENTER	LONG	LONGITUDINAL	WD	WOOD
CTR	CENTER	L.P.	LOW POINT	WF	WIDE FLANGE
CTR'D	CENTERED	L.S.	LAG SCREW	WHT	WEIGHT
CTSK	COUNTERSINK;COUNTERSUNK	Lsc	COMPRESSION LAP SPLICE LENGTH	W.P.	WORK POINT
CVR	COVER	Lsh	LONG SLOTTED HOLES	W.S.	WOOD SCREW
d	PENNY (NAIL SIZE AS IN 10d)	Lst	TENSION SPLICE LENGTH	W.T.S.	WELDED THREADED STUDS
D=d	DRILL & EPOXY	L.W.	LIGHTWEIGHT	W.W.F.	WELDED WIRE FABRIC REINFORCEMENT
D.B.A.	DEFORMED BAR ANCHOR	LVL	LEVEL		
DBL	DOUBLE	MAX	MAXIMUM		
DBLR	DOUBLER	M.B.	MACHINE BOLT		
D.C.H	DEMANDS CRITICAL WELD	MDF	MEDIUM DENSITY FIBERBOARD		
DEG	DEGREES	MECH	MECHANICAL		
D=d	DRILL & EPOXY	MEP	MECHANICAL, ELECTRICAL,		
DEPT	DEPARTMENT	PLUMBING			
DET	DETAIL	MEZZ	MEZZANINE		
DFL	DOUGLAS FIR LARCH	MF	MOMENT FRAME		
DIA	DIAMETER	MFR	MANUFACTURER		
DIAG	DIAGONAL	MID	MIDDLE		
DIAPH	DIAPHRAGM	MIN	MINIMUM		
DIM	DIMENSION	MISC	MISCELLANEOUS		
DIR	DIRECTION	MTL	METAL		
DIST	DISTANCE	MULT	MULTIPLE		
DL	DEAD LOAD	(N)	NEW		
DN	DOWN	N	NORTH		
DO	DO OVER	N/A	NOT APPLICABLE		
DWG	DRAWING(S)	N.F.	NEAR FACE		
DWL	DOWEL	N.I.C.	NOT IN CONTRACT		
(E)	EXISTING	NLB	NAILING		
I.E.	FOR EXAMPLE	NO. OR #	NUMBER		
EA.	EACH	N.S.	NEAR SIDE		
EBF	ECCENTRIC BRACED FRAME	NTS	NOT TO SCALE		
E.E.	EACH END	NW	NORMAL WEIGHT		
E.F.	EACH FACE	O.C.	ON CENTER		
E.J.	EXPANSION JOINT	O.D.	OUTSIDE DIAMETER		
EL OR ELEV	ELEVATION	O.F.	OUTSIDE FACE		
ELEC	ELECTRICAL	O.H.	OPPOSITE HAND		
ELEV	ELEVATOR	P.C.	PRECAST		
EMB	EMBEDDED	PCF	POUNDS PER CUBIC FOOT		
ENGR	ENGINEER	PCI	POUNDS PER CUBIC INCH		
E.N.	EDGE NAILING	P.A.T.	POWER (OR PNEUMER) ACTUATED		
E.O.R.	ENGINEER OF RECORD	PATTERN			
E.O.S.	EDGE OF SLAB	PB	PLATE GIRDER		
EPS	EXPANDED POLYSTYRENE	PJP	PARTIAL JOINT PENETRATION		
EQUIP	EQUIPMENT	PLF	POUNDS PER LINEAL FOOT		
EQUIV	EQUIVALENT	PERP OR ⊥	PERPENDICULAR		
EQ	EQUAL	P.E.N.	PANEL EDGE NAILING		
E.S.	EACH SIDE	PL	PLATE		
ETC	ET CETERA	PLWD OR PLY.	PLYWOOD		
EXA	EXPANSION ANCHOR	PLBG	PLUMBING		
EXCVN	EXCAVATION	PNL	PANEL		
EXIST	EXISTING	PREFAB	PREFABRICATED		
EXP	EXPANSION	PRKG	PARKING		
EXT	EXTERIOR	PROJ	PROJECT		
E.W.	EACH WAY	PROP	PROPERTY		
Fb	ALLOWABLE BENDING STRESS	PS	PRE-STRESSED		
FB	FLAT BAR	PSF	POUNDS PER SQUARE FOOT		
F'c	CONCRETE COMPRESSION STRENGTH	PSI	POUNDS PER SQUARE INCH		
		P.T.	PRESSURE TREATED; POST TENSIONED		
FD	FLOOR DRAIN				
FDN	FOUNDATION	PTFE	POLYTETRAFLUOROETHYLENE (TEFLON)		
FF	FINISH FLOOR	PVC	POLYVINYL CHLORIDE		
FIN	FINISH	PVMT	PAVEMENT		
FLG	FLANGE	P.Z.	PROTECTED ZONE		
FLR	FLOOR	RAD	RADIUS		
F'm	MASONRY COMPRESSIVE STRENGTH	RB:	REFER TO:		
F.N.	FIELD NAILING	REF	REFERENCE		
FOC	FACE OF CONCRETE	REG	REGULAR		
FOM	FACE OF WALL	REINF.	REINFORCEMENT		
FP	FULL PENETRATION	REQ, REQ'D	REQUIRED		
FRMG	FRAMING	RET	RETAINING		
		REV	REVISION		
		RF	ROOF		
		RM	ROOM		
		R.O.	ROUGH OPENING		

STRUCTURAL STEEL SHAPES

W	W SHAPES		
S	S SHAPES		
M	M SHAPES		
HP	HP SHAPES		
C	STD CHANNEL		
MC	MISC CHANNEL		
L	ANGLES		
WT, ST, MT	STRUCTURAL TEES CUT FROM W, S, OR M SHAPES		
PIPE OR STD PIPE	STANDARD PIPE		
PIPE-X OR PIPE XS	STRONG PIPE		
HSS	HOLLOW STRUCTURAL SECTION		

TABLE 2304.10.1 (2018 HBC)
FASTENING SCHEDULE (U.O.N.)

DIAPHRAGM SHEATHING NAILS OR OTHER APPROVED SHEATHING CONNECTORS SHALL BE DRIVEN SO THAT THEIR HEAD OR CROWN IS FLUSH WITH THE SURFACE OF THE SHEATHING.

CONNECTION	NAILING a,b
1. JOISTS TO SILL OR GIRDER, TOENAIL	3-8d
2. BRIDGING TO JOIST, TOENAIL EACH END	2-8d
3. 1" x 6" SUBFLOOR OR LESS TO EACH JOIST, FACE NAIL	2-8d
4. WIDER THAN 1" x 6" SUBFLOOR TO EACH JOIST, FACE NAIL	3-8d
5. 2" SUBFLOOR TO JOIST OR GIRDER, BLIND AND FACE NAIL	2-16d
6. SOLE PLATE TO JOIST OR BLOCKING, TYPICAL FACE NAIL	16d AT 16" O.C.
SOLE PLATE TO JOIST OR BLOCKING, AT BRACED WALL PANELS	3-16d PER 16"
7. TOP PLATE TO STUD, END NAIL	2-16d
8. STUD TO SOLE PLATE	4-8d, TOE NAIL OR 2-16d, END NAIL
9. DOUBLE STUDS, FACE NAIL	16d AT 24" O.C.
10. DOUBLED TOP PLATES, TYPICAL FACE NAIL	2-16d AT 16" O.C.
DOUBLE TOP PLATES, LAP SPLICE	8-16d
11. BLOCKING BETWEEN JOISTS OR RAFTERS TO TOP PLATE, TOENAIL	3-8d
12. RIM JOIST TO TOP PLATE, TOENAIL	8d AT 6" O.C.
13. TOP PLATES, LAPS AND INTERSECTIONS, FACE NAIL	2-16d
14. CONTINUOUS HEADER, TWO PIECES	16d @ 16" ALONG EACH EDGE
15. CEILING JOISTS TO PLATE, TOENAIL	3-8d
16. CONTINUOUS HEADER TO STUD, TOENAIL	4-8d
17. CEILING JOISTS, LAP OVER PARTITIONS, FACE NAIL	3-16d
18. CEILING JOISTS TO PARALLEL RAFTERS, FACE NAIL	3-16d
19. RAFTER TO PLATE, TOENAIL	3-8d
20. 1" DIAGONAL BRACE TO EACH STUD AND PLATE, FACE NAIL	2-8d
21. 1" x 8" SHEATHING OR LESS TO EACH BEARING, FACE NAIL	3-8d
22. WIDER THAN 1" x 8" SHEATHING TO EACH BEARING, FACE NAIL	3-8d
23. BUILT-UP CORNER STUDS	16d AT 24" O.C.
24. BUILT-UP GIRDER AND BEAMS — 20d AT 32" O.C. FACE NAIL AT TOP AND BOTTOM STAGGERED ON OPPOSITE SIDES — 2-20d FACE NAIL AT ENDS AND AT EACH SPLICE	
25. 2" PLANKS	2-16d AT EACH BEARING
26. COLLAR TIE TO RAFTER, FACE NAIL	3-10d
27. JACK RAFTER TO NTP — 3-10d TOE NAIL OR 2-16d FACE NAIL	
28. ROOF RAFTER TO 2x RIDGE BEAM, TOE OR FACE NAIL	2-16d
29. JOIST TO BAND JOIST, FACE NAIL	3-16d
30. LEDGER STRIP, FACE NAIL	3-16d
31. WOOD STRUCTURAL PANELS AND PARTICLEBOARD: SUBFLOOR, ROOF AND WALL SHEATHING (TO FRAMING):	
1/2" AND LESS	6d c,i
19/32"-3/4"	8d OR 6d e
7/8"-1"	8d c
1 1/8"-1 1/4"	10d OR 8d e
SINGLE FLOOR (COMBINATION SUBFLOOR-UNDERLAYMENT TO FRAMING):	
3/4" AND LESS	6d e
7/8"-1"	8d e
1 1/8"-1 1/4"	10d OR 8d e
32. PANEL SIDING (TO FRAMING):	
1/2" OR LESS	6d f
5/8"	8d f
33. FIBERBOARD SHEATHING:	h
1/2" — NO. 11 GAGE ROOFING NAIL	6d
— NO. 16 GAGE STAPLE	i
25/32" — NO. 11 GAGE ROOFING NAIL	h
	8d
— NO. 16 GAGE STAPLE	i
34. INTERIOR PANELING:	
1/4"	6d j
3/8"	6d k

FOR SI: 1 INCH = 25.4 MM

A. USE COMMON NAILS EXCEPT WHERE OTHERWISE STATED.

B. NAILS SPACED AT 6 INCHES ON CENTER AT ORGES, 12 INCHES AT INTERMEDIATE SUPPORTS EXCEPT 6 INCHES AT SUPPORTS WHERE SPANS ARE 48 INCHES OR MORE. FOR NAILING OF WOOD STRUCTURAL PANEL AND PARTICLEBOARD DIAPHRAGMS AND SHEAR WALLS, REFER TO SECTION 2305. NAILS FOR WALL SHEATHING ARE PERMITTED TO BE COMMON, GALVANIZED BOX OR CASING.

C. COMMON OR DEFORMED SHANK.

D. COMMON.

E. DEFORMED SHANK.

F. CORROSION-RESISTANT SIDING OR CASING NAIL.

G. FASTENERS SPACED 3 INCHES ON CENTER AT EXTERIOR EDGES AND 6 INCHES ON CENTER AT INTERMEDIATE SUPPORTS.

H. CORROSION-RESISTANT ROOFING NAILS WITH 7/16-INCH-DIAMETER HEAD AND 1-1/2-INCH LENGTH FOR 1/2-INCH SHEATHING AND 1 3/4-INCH LENGTH FOR 25/32-INCH SHEATHING. PANEL SUPPORTS AT 16 INCHES (40 INCHES IF STRENGTH AXIS IN THE LONG DIRECTION OF THE PANEL, UNLESS OTHERWISE MARKED).

I. CASING OR FINISH NAILS SPACED 6 INCHES ON PANEL EDGES, 12 INCHES AT INTERMEDIATE SUPPORTS.

J. CASING OR FINISH NAILS SPACED 6 INCHES ON PANEL EDGES, 12 INCHES AT INTERMEDIATE SUPPORTS.

K. PANEL SUPPORTS AT 24 INCHES. CASING OR FINISH NAILS SPACED 6 INCHES ON PANEL EDGES, 12 INCHES AT INTERMEDIATE SUPPORTS.

L. FOR ROOF SHEATHING APPLICATIONS, 6D NAILS ARE THE MINIMUM REQUIRED FOR WOOD STRUCTURAL PANELS.

M. STAPLES SHALL HAVE A MINIMUM CROWN WIDTH OF 7/16 INCH.

N. FOR ROOF SHEATHING APPLICATIONS, FASTENERS SPACED 4 INCHES ON CENTER AT EDGES, 8 INCHES AT INTERMEDIATE SUPPORTS.

O. FASTENERS SPACED 4 INCHES ON CENTER AT EDGES, 8 INCHES AT INTERMEDIATE SUPPORTS FOR SUBFLOOR AND WALL SHEATHING AND 3 INCHES ON CENTER AT EDGES, 6 INCHES AT INTERMEDIATE SUPPORTS FOR ROOF SHEATHING.

P. FASTENERS SPACED 4 INCHES ON CENTER AT EDGES, 8 INCHES AT INTERMEDIATE SUPPORTS.

STRUCTURAL WOOD NOTES

1. ALL WOOD MEMBERS SHALL BE DOUGLAS FIR (DF) OR LARCH GRADE MARKED BY A RECOGNIZED GRADING AGENCY (WCLIB & WWPA). SEE LISTS BELOW FOR GRADE REQUIREMENTS.
2. PLYWOOD SHALL BE APA RATED SHEATHING AND SHALL CONFORM TO COMMERCIAL PRODUCTS STANDARD PS 1-09. NAIL WITH COMMON NAILS.
3. CUTTING, NOTCHING, OR DRILLING OF STUDS SHALL BE PERMITTED ONLY AS DETAILED OR APPROVED BY THE ENGINEER OF RECORD AND/OR PER 2018 HBC SECTION 2308.8.9, 2308.8.9 OR 2308.8.10
4. CUTTING, NOTCHING, OR DRILLING OF BEAMS OR JOISTS SHALL BE PERMITTED ONLY AS DETAILED OR APPROVED BY THE ENGINEER.
5. ALL NAILING SHALL USE COMMON WIRE NAILS. MINIMUM NAILING TO BE IN ACCORDANCE WITH THE 2018 HBC TABLE 2304.10.1 OF THE 2018 HBC NAILING SCHEDULE, EXCEPT AS NOTED ON PLANS AND DETAILS.
6. ALL SILLS OR PLATES RESTING ON CONCRETE OR MASONRY, WHICH IS IN CONTACT WITH EARTH OR RESTING ON FOUNDATIONS, SHALL BE PRESSURE TREATED.
7. ALL BOLT HEADS AND NUTS BEARING ON WOOD SHALL HAVE STANDARD CUT WASHERS. ALL BOLT HOLES IN WOOD SHALL BE DRILLED 1/32" DIAMETER LARGER THAN NOMINAL BOLT DIAMETERS. PROVIDE LEAD HOLE 40% - 70% OF THREADED SHANK DIAMETER AND FULL DIAMETER FOR SMOOTH SHANK PORTION. ALL BOLT HOLES SHALL BE DRILLED 1/32" TO 1/16" OVERSIZED.
8. BOLTS IN WOOD SHALL NOT BE LESS THAN 7 DIAMETERS FROM THE END AND 4 DIAMETERS FROM THE EDGE OF THE MEMBER.
9. ALL FRAMING ANCHORS, POST CAPS, BASES, HANGERS, STRAPS, ETC., SHALL BE AS MANUFACTURED BY SIMPSON STRONG TIE, SST, OR ENGINEER APPROVED EQUAL.
10. PROVIDE DOUBLE JOISTS UNDER ALL PARALLEL PARTITIONS. SOLID BLOCK BENEATH ALL WALLS PERPENDICULAR TO JOISTS.
11. WHERE POST OCCURS ON 2ND FLOOR, AND THE SAME POST ON FIRST FLOOR AND BETWEEN FLOOR SHEATHING AND 1ST FLOOR TOP PLATE.
12. TOP PLATES OF ALL WOOD STUD WALLS TO BE 2-2x MINIMUM (SAME WIDTH AS STUDS), LAP PER TYPICAL DETAILS.
13. MOISTURE CONTENT OF WOOD AT TIME OF PLACING SHALL NOT EXCEED 19 PERCENT.
14. EXTERIOR WALLS OTHER THAN SHEAR WALLS SHALL BE 2/2"ONE SHEATHING NAILED W/ 8d COMMONS SPACED @ 6" O.C. ALONG ALL PANEL EDGES (E.N.) AND 12" O.C. ALONG INTERMEDIATE SUPPORTS (FIELD) (F.N.).
15. PLUMBING & MECHANICAL LINES AND THEIR CONNECTIONS SHALL BE DESIGNED AND DETAILED TO ACCOMODATE WOOD SHRINKAGE.
16. FULL DEPTH SOLID BLOCKING SHALL BE INSTALLED AT INTERVALS NOT EXCEEDING 8'-0" O.C. FOR ALL JOIST AND RAFTERS.
17. JOISTS OR RAFTERS FRAMING FROM OPPOSITE SIDES OF BEAMS OR WALLS SHALL HAVE A LAP OF 4" OR MORE AND BE SPLICED WITH 4-16d NAILS, U.N.O.
18. WHERE STRAPS ARE APPLIED TO THE TOP OF TOP PLATES, THE NAILS FOR THE STRAP MAY REPLACE THE NAILS OF CONNECTING THE TOP PLATES.
19. WOOD GRADES:
    A). FOR HORIZONTAL MEMBERS:
    ___ JOISTS AND RAFTERS: _____GRADE #2
    ___ BEAMS: _____GRADE #1
    ___ LOOKOUTS AND NAILERS: _____GRADE #2
    ___ HEADERS: _____GRADE #1
    ___ TOP PLATES: _____GRADE #2
    ___ DECKING: _____GRADE #2
    B). FOR VERTICAL MEMBERS:
    ___ 2x4 STUDS: _____GRADE #2
    ___ 2x6 AND LARGER STUDS: _____GRADE #2
    ___ POSTS: _____GRADE #1
    C). PLYWOOD SHEATHING:
    ___ SHEAR WALLS: _____CDX APA RATED PLYWOOD
    ___ 8'MHD EXTERIOR WALLS: _____EXP 1 APA RATED 058
    ___ FLOOR SHEATHING: _____EXP 1 APA RATED 058, T&G
    ___ ROOF SHEATHING: _____CDX APA RATED PLYWOOD

WOOD CONNECTION HARDWARE NOTES

1. UNLESS NOTED OTHERWISE, ALL HANGERS, STRAPS, HOLDOWNS, AND MISCELLANEOUS STRUCTURAL CONNECTION SHALL BE SIMPSON STRONG TIE OR AN ENGINEER APPROVED EQUAL. SIMPSON STRONG-TIE CONNECTORS ARE SPECIFICALLY REQUIRED TO MEET THE STRUCTURAL CALCULATIONS OF PLAN. BEFORE SUBSTITUTING ANOTHER BRAND, CONFIRM LOAD CAPACITY BASED UPON RELIABLE PUBLISHED WOOD TESTING DATA OR CALCULATIONS. THE ENGINEER OF RECORD SHOULD EVALUATE AND GIVE WRITTEN APPROVAL FOR SUBSTITUTION PRIOR TO INSTALLATION.
2. ALL SPECIFIED FASTENERS MUST BE INSTALLED ACCORDING TO THE INSTRUCTIONS OF THE MOST RECENT EDITION OF "WOOD CONSTRUCTION CONNECTORS" PUBLISHED ANNUALLY BY SIMPSON STRONG-TIE, INC. INCORRECT FASTENER QUANTITY, SIZE, TYPE, MATERIAL, OR FINISH MAY CAUSE THE CONNECTION TO FAIL.
3. 16d FASTENERS ARE COMMON NAILS (.066 in x 3 1/2") AND CANNOT BE REPLACED WITH 10d SINKERS (.96a x 3 1/4") FOR FULL LOAD VALUE UNLESS OTHERWISE SPECIFIED.
4. ALL CONNECTORS TO BE FULLY NAILED OR BOLTED PER MANUFACTURES RECOMMENDATIONS.
5. BOLT HOLES SHALL BE AT LEAST A MINIMUM OF 1/32" AND NO MORE THAN A MAXIMUM OF 1/16" LARGER THAN THE BOLT DIAMETER (PER THE 2015 NDS 12.1.1.3). PROVIDE LEAD HOLE 40% - 70% OF THREADED SHANK DIAMETER AND FULL DIAMETER FOR SMOOTH SHANK PORTION.
6. INSTALL ALL SPECIFIED FASTENERS BEFORE LOADING THE CONNECTION.
7. SOME HARDENED FASTENERS MAY HAVE PREMATURE FAILURE IF EXPOSED TO MOISTURE. THE FASTENERS ARE RECOMMENDED TO BE USED IN DRY INTERIOR APPLICATIONS.
8. FOUNDATION SILLS SHALL BE NATURALLY DURABLE OR PRESERVATIVE-TREATED WOOD. FASTENERS FOR PRESERVATIVE TREATED AND FIRE-RETARDANT-TREATED WOOD SHALL BE OF HOT DIPPED ZINC-COATED GALVANIZED STEEL, STAINLESS STEEL, SILICON BRONZE OR COPPER. THE CONNECTORS MEDIUM FOR ZINC-COATED FASTENERS SHALL BE IN ACCORDANCE WITH ASTM A 153. FASTENERS OTHER THAN NAILS, TIMBER RIVETS WOOD SCREWS AND LAG SCREWS SHALL BE PERMITTED TO BE OF MECHANICALLY DEPOSITED ZINC COATED STEEL WITH COATING WEIGHTS IN ACCORDANCE WITH ASTM B 695, CLASS 55 MINIMUM.
9. WELDING GALVANIZED STEEL MAY PRODUCE HARMFUL FUMES; FOLLOW PROPER WELDING PROCEDURES AND SAFETY PRECAUTIONS. WELDING SHOULD BE IN ACCORDANCE WITH A.W.S. STANDARDS. UNLESS OTHERWISE NOTED, SIMPSON CONNECTORS CANNOT BE WELDED.
10. PNEUMATIC NAIL TOOLS MAY BE USED TO INSTALL CONNECTORS, PROVIDED THE CORRECT QUANTITY AND TYPE OF NAILS AND PROPERLY INSTALLED IN THE NAIL HOLES. TOOLS WITH NAIL ROLE-LOCATING MECHANISMS SHOULD BE USED. FOLLOW THE MANUFACTURER'S INSTRUCTIONS AND USE THE APPROPRIATE SAFETY EQUIPMENT. OVER DRIVING NAILS MAY REDUCE ALLOWABLE LOADS, OVER DRIVING MUST BE AVOIDED.
11. JOIST SHALL BEAR COMPLETELY ON THE CONNECTOR SEAT, AND THE GAP BETWEEN THE JOIST END AND THE HEADER SHALL NOT EXCEED 1/8" PER ASTM D1761 TEST STANDARDS.
12. INSTALL HOLDOWNS 1/2 INCH MINIMUM ABOVE THE PLATE TO ALLOW FOR TIGHTENING ANCHOR BOLT. THE HOLDOWN SHALL BE INSTALLED TIGHT TO THE POST WITHOUT FILLERS OR SHIMMING. DO NOT BEND HOLDOWN ANCHORS.
13. FOR HOLDOWNS, ANCHOR BOLT NUTS SHOULD BE FINGER-TIGHT PLUS 1/3 TO 1/2 TURN WITH A WRENCH, WITH CONSIDERATION GIVEN TO POSSIBLE FUTURE WOOD SHRINKAGE. CARE SHOULD BE TAKEN TO NOT OVER-TORQUE THE NUT AS THIS MAY PRELOAD THE HOLDOWN.
14. CONNECTOR BOLTS INTO WOOD FRAMING SHALL BE INSTALLED WITH PLATE WASHERS PER LABC TABLE 2306.5. HOLD-DOWN CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE APPROVED PLATE WASHERS; AND HOLD-DOWNS SHALL BE FINGER TIGHT AND 1/3 WRENCH TURN JUST PRIOR TO COVERING THE WALL FRAMING. CONNECTOR BOLTS INTO WOOD FRAMING REQUIRE STEEL PLATE WASHERS ON THE POST ON THE OPPOSITE SIDE OF THE ANCHORAGE DEVICE. PLATE SIZE SHALL BE A MINIMUM OF 0.299 INCH BY 3 INCHES BY 3 INCHES.
15. ROOF DIAPHRAGM NAILING TO BE INSPECTED BEFORE COVERING. FACE GRAIN OF PLYWOOD SHALL BE PERPENDICULAR TO THE SUPPORTS. FLOOR SHALL HAVE TONGUE AND GROOVE OR BLOCKED PANEL EDGES. PLYWOOD SPANS SHALL CONFIRM WITH TABLE 2304.8(1).

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STRUCTURAL ENGINEERING

NOT FOR CONSTRUCTION

No	Issue Description	Date
1	PLANCHECK	5-6-8

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
GENERAL NOTES

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S001

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REQUIRED VERIFICATION AND INSPECTION OF WOOD CONSTRUCTION

TYPE	CONTINUOUS SPECIAL INSPECTION	PERIODIC SPECIAL INSPECTION	REFERENCED STANDARD	HBC CODE REFERENCE
FABRICATION OF PREFABRICATED STRUCTURAL ELEMENTS	-	X	-	1705.5
FABRICATION OF HIGH-LOAD DIAPHRAGMS:				
A. VERIFY STRUCTURAL PANEL GRADE AND THICKNESS	-	X	-	1705.5.1 TABLE 2306.2 (2)
B. VERIFY NOMINAL SIZE OF FRAMING MEMBERS AT ADJOINING PANEL EDGES	-	X	-	1705.5.1 TABLE 2306.2 (2)
D. VERIFY NAIL OR STAPLE DIAMETER AND LENGTH, NUMBER OFFASTENER LINES AND SPACING BETWEEN FASTENERS IN EACH LINE AND AT EDGE MARGINS	-	X	-	1705.5.1 TABLE 2306.2 (2)
PREFABRICATED WOOD SHEAR PANELS	-	X	ICC EVALUATION REPORT	1705.9 1704.2.5
METAL-PLATE-CONNECTED WOOD TRUSSES SPANNING 60 FEET OR GREATER	X	-	-	1709.5.2

REQUIRED VERIFICATION AND INSPECTION OF WOOD CONSTRUCTION

FIELD GLUING OF DIAPHRAGM AND SHEAR WALL ELEMENTS FOR LATERAL FORCE-RESISTING-SYSTEMS	X	-	-	1705.13.1 & 1705.12.3
CONNECTIONS FOR DIAPHRAGM CHORDS, COLLECTORS, BRACING, AND SHEAR WALL ANCHORAGE AND HOLDOWNS	-	X	-	
FASTENING OF DIAPHRAGM AND SHEAR WALL SHEATHING WITH EDGE NAILING LESS THAN OR EQUAL TO 4"	-	X	-	

HBC 2018 TABLE 1705.3 - REQUIRED VERIFICATION AND INSPECTION OF CONCRETE CONSTRUCTION

TYPE	CONTINUOUS SPECIAL INSPECTION	PERIODIC SPECIAL INSPECTION	REFERENCED STANDARD	IBC REFERENCE
1. INSPECT REINFORCEMENT, INCLUDING PRESTRESSING TENDONS, AND VERIFY PLACEMENT.	—	X	ACI 318:CH. 20.2.1, 25.3,26.5.3 -26.5.3	1908.4
2. REINFORCING BAR WELDING: a. VERIFY WELDABILITY OF REINFORCING BARS OTHER THAN ASTM A706; b. INSPECT SINGLE-PASS FILLET WELDS, MAXIMUM 5/16",GMB c. INSPECT ALL OTHER WELDS.	— — X	X X	AWS D1.4 ACI318: 26.5.4	—
3. INSPECT ANCHORS CAST IN CONCRETE.	—	X	ACI 318: 17.8.2	—
4. INSPECT ANCHORS POST-INSTALLED IN HARDENED CONCRETE MEMBERS. a. ANCHORS INSTALLED IN HORIZONTALLY OR UPWARDLY INCLINED ORIENTATIONS TO RESIST SUSTAINED TENSION LOADS. b. MECHANICAL ANCHORS AND ADHESIVE ANCHORS NOT DEFINED IN 4.a.	X	X	ACI 318: 17.8.2.4 ACI 318: 17.8.2	1909.1
5. VERIFY USE OF REQUIRED DESIGN MIX.	—	X	ACI 318: CH 19 26.4.3, 26.4.4	1904.2, 1910.2, 1910.3
6. PRIOR TO CONCRETE PLACEMENT, FABRICATE SPECIMENS FOR STRENGTH TESTS, PERFORM SLUMP AND AIR CONTENT TESTS, AND DETERMINE THE TEMPERATURE OF THE CONCRETE.	X	—	ASTM C172 C31; ACI 318 26.4.5, 26.12, 5.9	1910.10
7. INSPECT OF CONCRETE AND SHOTCRETE PLACEMENT FOR PROPER APPLICATION TECHNIQUES.	X	—	ACI 318: 26.4.5	1910.6 -7-8
8. VERIFY MAINTENANCE OF SPECIFIED CURING TEMPERATURE AND TECHNIQUES.	—	X	ACI 318: 26.4.7-26.4.9	1910.9
9. INSPECT PRESTRESSED CONCRETE FOR: a. APPLICATION OF PRESTRESSING FORCES. b. GROUTING OF BONDED PRESTRESSING TENDONS	X X	— —	ACI 318: 26.9.2.1 ACI 318: 26.9.2.3	—
10. INSPECT ERECTION OF PRECAST CONCRETE MEMBERS.	—	X	ACI 318: CH 26.8	—
11. VERIFY IN-SITU CONCRETE STRENGTH, PRIOR TO STRESSING OF TENDONS IN POST-TENSIONED CONCRETE AND PRIOR TO REMOVAL OF SHORES AND FORMS FROM BEAMS AND STRUCTURAL SLABS.	—	X	ACI 318: 26.10.2	—
12. INSPECT FORMWORK FOR SHAPE, LOCATION, AND DIMENSIONS OF THE CONCRETE MEMBER BEING FORMED.	—	X	ACI 318: 26.10.1(b)	—

FOR SI: 1 INCH = 25.4 MM.
a. WHERE APPLICABLE, SEE ALSO SECTION 1705.13, SPECIAL INSPECTIONS FOR SEISMIC RESISTANCE.
b. SPECIFIC REQUIREMENTS FOR SPECIAL INSPECTION SHALL BE INCLUDED IN THE RESEARCH REPORT FOR THE ANCHOR ISSUED BY AN APPROVED SOURCE IN ACCORDANCE WITH 17.8.2 IN ACI 318, OR OTHER QUALIFICATION PROCEDURES. WHERE SPECIFIC REQUIREMENTS ARE NOT PROVIDED, SPECIAL INSPECTION REQUIREMENTS SHALL BE SPECIFIED BY THE REGISTERED DESIGN PROFESSIONAL AND SHALL BE APPROVED BY THE BUILDING OFFICIAL PRIOR TO THE COMMENCEMENT OF THE WORK.

DEFERRED APPROVAL, PRE-ENGINEERED STRUCTURES, ITEMS TO BE ANCHORED TO THE BUILDING NOTES:

1. THE STRUCTURAL ITEMS ARE NOT COVERED BY THIS SET OF DRAWINGS AND SHALL BE DESIGNED BY THE CONTRACTOR. THE STRUCTURAL ENGINEER AND THE ARCHITECT IN CHARGE ARE RESPONSIBLE TO REVIEW FOR IMPACT TO STRUCTURE ONLY, DEFERRED ITEMS PRIOR TO SUBMITTAL FOR REVIEW BY THE CITY OF HANALEI BUILDING DIVISION. ALL DRAWINGS AND CALCULATIONS SHALL BE STAMPED AND SIGNED BY A LICENSED STRUCTURAL ENGINEER. INSTALLATION OF ITEMS SHALL NOT BE PERMITTED UNTIL CITY APPROVAL IS OBTAINED.
2. CONNECTIONS OF THE STRUCTURES TO MAIN STRUCTURAL MEMBERS SHALL NOT RESULT IN TORSION IN THE SUPPORTING STRUCTURAL MEMBERS. PROVIDE DESIGN FOR GRAVITY, SEISMIC FORCES, AND WIND FORCES.
3. DESIGN STRUCTURES IN ACCORDANCE WITH THE SAN FRANCISCO MUNICIPAL CODE, APPLICABLE SECTIONS OF AISC SPECIFICATIONS, AND THE AWWA RECOMMENDED DESIGN PRACTICE MANUAL.
4. THE FOLLOWING LIST ARE DEFERRED STRUCTURAL SUBMITTAL ITEMS:
   A. DESIGN BUILD GUARDRAILS & ATTACHMENTS PER ARCH'L @ 2ND FLOOR.

STATEMENT AND SCHEDULE OF SPECIAL INSPECTION, 2018 HBC

1. PROJECT: NW - 5418 WEKE RD
2. LOCATION: 5418 WEKE RD, HANALEI, HI 96714
3. THIS STATEMENT OF SPECIAL INSPECTION IS SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS OF THE 2018 HBC . INCLUDED ARE THE FOLLOWING:
   a. SCHEDULE OF SPECIAL INSPECTIONS AND TESTS APPLICABLE TO THIS PROJECT:
      1. SPECIAL INSPECTIONS PER SECTIONS 1704 AND 1705.
      2. SPECIAL INSPECTIONS FOR SEISMIC RESISTANCE.
      3. SPECIAL INSPECTIONS FOR WIND RESISTANCE.
4. SPECIAL INSPECTIONS AND TESTING WILL BE PERFORMED IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS, THIS STATEMENT AND 2018 HBC SECTIONS 1704, 1705, 1707 AND 1708.
5. THE SCHEDULE OF SPECIAL INSPECTIONS SUMMARIZES THE SPECIAL INSPECTIONS AND TESTS REQUIRED. SPECIAL INSPECTIONS WILL REFER TO THE APPROVED PLANS AND SPECIFICATIONS FOR DETAILED SPECIAL INSPECTION REQUIREMENTS.ANY ADDITIONAL TESTS AND INSPECTIONS REQUIRED BY THE APPROVED PLANS AND SPECIFICATIONS WILL ALSO BE PERFORMED.
6. INSPECTION REPORTS WILL BE SUBMITTED TO THE BUILDING OFFICIAL AND THE REGISTERED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE IN ACCORDANCE WITH 2018 HBC SECTION 1704.1.3.
7. A FINAL REPORT OF SPECIAL INSPECTIONS DOCUMENTING REQUIRED SPECIAL INSPECTIONS, TESTING AND CORRECTION OF ANY DISCREPANCIES NOTED IN THE INSPECTIONS SHALL BE SUBMITTED PRIOR TO ISSUANCE OF A CERTIFICATE OF USE AND OCCUPANCY (SECTION 1704.1.2). THE FINAL REPORT WILL DOCUMENT:
   A. REQUIRED SPECIAL INSPECTIONS.
   B. CORRECTION OF DISCREPANCIES NOTED IN INSPECTIONS.
8. THE OWNER RECOGNIZES HIS OR HER OBLIGATION TO ENSURE THAT THE CONSTRUCTION COMPLIES WITH THE APPROVED PERMIT DOCUMENTS AND TO IMPLEMENT THIS PROGRAM OF SPECIAL INSPECTIONS. IN PARTIAL FULFILLMENT OF THESE OBLIGATIONS, THE OWNER WILL RETAIN AND DIRECTLY PAY FOR THE SPECIAL INSPECTIONS AS REQUIRED IN 2018 HBC SECTION 1704.1.
9. THIS PLAN HAS BEEN DEVELOPED WITH THE UNDERSTANDING THAT THE BUILDING OFFICIAL WILL:
   A. REVIEW AND APPROVE THE QUALIFICATIONS OF THE SPECIAL INSPECTORS WHO WILL PERFORM THE INSPECTIONS.
   B. MONITOR SPECIAL INSPECTION ACTIVITIES ON THE JOB SITE TO ASSURE THAT THE SPECIAL INSPECTORS ARE QUALIFIED AND ARE PERFORMING THEIR DUTIES AS CALLED FOR IN THIS STATEMENT OF SPECIAL INSPECTION.
   C. REVIEW SUBMITTED INSPECTION REPORTS.
   D. PERFORM INSPECTIONS AS REQUIRED BY THE LOCAL BUILDING CODE.
10. THE FOLLOWING ELEMENTS ARE TO HAVE CONTINUOUS SPECIAL INSPECTION BY A REGISTERED DEPUTY INSPECTOR:
   A. ALL CONCRETE WORK WITH 2500PSI CONCRETE STRENGTH OR ABOVE.
   B. BOLTS INSTALLED IN CONCRETE AND HIGH STRENGTH BOLTING.
   C. EXPANSION AND ADHESIVE ANCHORS.
   D. ALL ASTM A 706 GR. 60 REINFORCING STEEL
   E. ALL STRUCTURAL OR FIELD WELDING
   F. SPECIAL GRADING, EXCAVATION, AND BACKFILLING
   G. PLYWOOD SHEAR WALLS OR HIGH LOAD DIAPHRAGMS. [SEE NOTE 11]
   H. SHEAR WALL HOLDOWNS.
   I. SPRAYED OR FIREPROOFING.
   J. ENGINEERED MASONRY OR PRE-STRESSED CONCRETE.
   K. HIGH LIFT GROUTING
   L. SPECIAL MOMENT RESISTING CONCRETE FRAMES.
   M. OTHER INSPECTION REQUIRED BY THE BUILDING OFFICIAL
11. CONTINUOUS INSPECTION BY A LICENSED DEPUTY INSPECTOR SHALL BE REQUIRED FOR ALL STRUCTURAL PLYWOOD SHEARWING INSTALLATION WHERE THE FASTENER SPACING IS 6 INCHES OR LESS AND PERIODIC INSPECTION FOR ALL WOOD SHEAR WALLS,SHEAR PANELS, AND DIAPHRAGMS, INCLUDING NAILING, BOLTING, ANCHORING AND OTHER FASTENING TO OTHER COMPONENTS OF THE SEISMIC FORCE RESISTING SYSTEM.
12. PER STEEL NOTES ALL FABRICATION OF STRUCTURAL STEEL WILL BE PERFORMED IN AN AISC CERTIFIED LAB. PER SECTION 1704.2.2 SPECIAL INSPECTIONS REQUIRED BY 1704 ARE NOT REQUIRED WHERE WORK IS DONE ON THE PREMISES OF A FABRICATOR AND APPROVED TO PERFORM SUCH WORK WITHOUT SPECIAL INSPECTION.
13. CONTRACTORS RESPONSIBLE FOR THE CONSTRUCTION OF A MAIN OR SEISMIC FORCE RESISTING SYSTEM/COMPONENT LISTED IN THE "STATEMENT OF SPECIAL INSPECTION" SHALL SUBMIT A WRITTEN STATEMENT OF RESPONSIBILITY TO THE LABOR INSPECTORS AND THE OWNER PRIOR TO THE COMMENCEMENT OF WORK ON SUCH SYSTEM OR COMPONENT PER SEC 1707.1.
14. SPECIAL ACTIVITY INSPECTION IS REQUIRED FOR BUILDINGS OVER 5 STORIES OR 60' IN HEIGHT, BUILDINGS OVER 50,000 SQ FT OF GROUND FLOOR AREA, OR OVER 200,000 SQ FT OF TOTAL FLOOR AREA.
15. PER MASONRY NOTES, QUALITY ASSURANCE MEASURES SHALL COMPLY WITH SEC. 2105 OF THE SAN FRANCISCO MUNICIPAL CODE AND TABLES 1.19.1 AND 1.19.2 AND 1.19.3 OF ACI 530.

PREPARED BY: DEREK WAVERING, S.E.
REGISTERED DESIGN PROFESSIONAL IN RESPONSIBLE CHARGE.

SIGNATURE/DATE

OWNER'S AUTHORIZATION:

SIGNATURE/DATE

BUILDING OFFICIAL ACCEPTANCE

SIGNATURE/DATE

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No	Issue Description	Date
1	PLANCHECK	6-5-20

No	Revision Description	Date

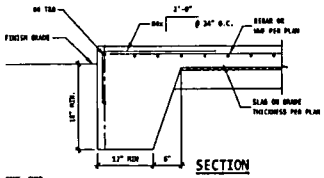
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
GENERAL NOTES

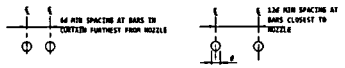
ARCHITECT
NOHO WORKSHOP

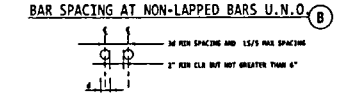
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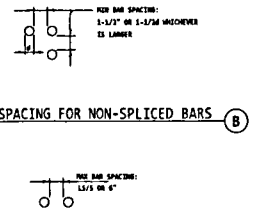
SHEET NUMBER
S002



7 / S100 TYP. SLAB-ON-GRADE EDGE DETAIL
N.T.S.





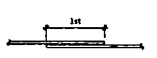


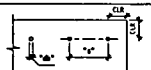
3 / S100 TYP. NON-CONTACT BAR SPACING
N.T.S.

1st, UN-FACTORED TENSION SPLICE LENGTH (GRADE 60 BARS)

BAR	f'c / CLR & S	2500 psi	3000 psi	4000 psi	5000 psi	6000 psi	7000 psi	8000 psi
#3	CLR≥3/4", S≥3"	1'-6"	1'-5"	1'-2"	1'-1"	1'-0"	1'-0"	1'-0"
#4	CLR≥3/4", S≥3"	2'-0"	1'-10"	1'-7"	1'-5"	1'-4"	1'-3"	1'-3"
	CLR≥2", S≥6"	1'-7"	1'-6"	1'-3"	1'-2"	1'-1"	1'-1"	1'-1"
#5	CLR≥3/4", S≥3"	2'-6"	2'-4"	2'-0"	1'-10"	1'-8"	1'-7"	1'-6"
	CLR≥2", S≥6"	2'-0"	1'-10"	1'-7"	1'-5"	1'-4"	1'-3"	1'-3"
#6	CLR≥3/4", S≥3"	3'-11"	3'-7"	3'-1"	2'-10"	2'-8"	2'-6"	2'-5"
	CLR≥2", S≥6"	3'-1"	2'-10"	2'-5"	2'-3"	2'-1"	2'-0"	1'-11"
#7	CLR≥ 3/4", S≥3"	5'-7"	5'-1"	4'-5"	4'-0"	3'-10"	3'-7"	3'-5"
	CLR≥2", S≥6"	4'-5"	4'-0"	3'-5"	3'-2"	3'-0"	2'-10"	2'-8"
#8	CLR≥ 3/4", S≥3"	7'-3"	6'-7"	5'-8"	5'-2"	4'-11"	4'-7"	4'-5"
	CLR≥2", S≥6"	5'-8"	5'-2"	4'-5"	4'-1"	3'-10"	3'-8"	3'-6"
#9	CLR≥ 3/4", S≥3"	9'-2"	8'-4"	7'-2"	6'-6"	6'-2"	5'-11"	5'-8"
	CLR≥2", S≥6"	7'-2"	6'-6"	5'-7"	5'-1"	4'-10"	4'-7"	4'-5"
#10	CLR≥ 3/4", S≥3-1/4"	11'-0"	10'-0"	8'-7"	7'-10"	7'-4"	6'-11"	6'-8"
	CLR≥2", S≥6"	8'-7"	7'-10"	6'-8"	6'-1"	5'-8"	5'-5"	5'-2"
#11	CLR≥ 3/4", S≥3-1/4"	13'-6"	12'-3"	10'-6"	9'-7"	9'-0"	8'-6"	8'-2"
	CLR≥2", S≥6"	10'-6"	9'-7"	8'-2"	7'-6"	7'-0"	6'-9"	6'-6"

"TOP BARS" - ANY HORIZONTAL BAR WITH MORE THAN 12" OF FRESH CONCRETE CAST BELOW THE BAR (ACI 318 25.4.2.4)
"OTHER BARS" - ALL BARS THAT ARE NOT TOP BARS





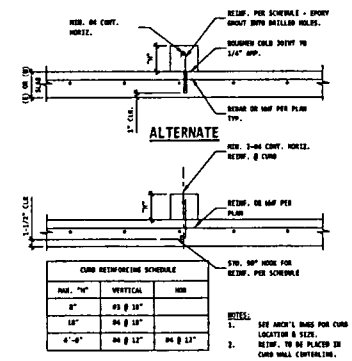
1st = TENSION LAP SPLICE LENGTH = (1st')(Ce)

REINFORCEMENT DETAILS

VARIABLES:
1st' = TENSION DEVELOPMENT LENGTH FOR #3, #4 BARS. SEE TABLE & NOTE 1.
db = BAR DIAMETER, SEE DETAIL A.
s = BAR SPACING, SEE DETAIL A.
CLR = CLEAR COVER, SEE DETAIL A.

NOTES:
1. THE TABULATED VALUES OF 1st' APPLY TO THE FOLLOWING CONDITIONS:
   - GRADE 60 UNCOATED BARS
2. MINIMUM CLEAR COVER (CLR) AND BAR SPACING (s) REQUIREMENTS ARE INDICATED IN THE SCHEDULE. BOTH MINIMUMS MUST BE MET.
3. THE TABULATED VALUES SHALL BE INCREASED FOR ALL APPLICABLE FACTORS NOTED BELOW
4. INCREASE LENGTH FOR EPOXY COATED BARS (ACI 318, 25.4.2.4):
   Ce = 1.0 FOR UNCOATED BARS
   Ce = 1.2 FOR EPOXY COVERED BARS WITH: CLR≥3db AND s≥6db.
   Ce = 1.5 FOR ALL OTHER EPOXY COATED BARS.
5. FOR GRADE 75 REBAR MULTIPLY LENGTHS BY 1.25.
6. FOR LATERAL LOAD RESISTING ELEMENTS, CRITICAL SECTION SHALL BE TAKEN AS THE FACE OF TIE/HOOP AT CONFINED CORES OF MOMENT FRAME COLUMN JOINTS OR SHEAR WALL BOUNDARY ZONES.
7. WHERE A LONGITUDINAL BAR TERMINATES IN A MOMENT FRAME COLUMN JOINT OR SHEAR WALL BOUNDARY ZONE ANY PORTION OF THE DEVELOPMENT LENGTH THAT EXTENDS BEYOND THE CONFINED CORE OF THE MOMENT FRAME COLUMN OR SHEAR WALL BOUNDARY ZONE SHALL BE MULTIPLIED BY 1.6
8. FOR LAP SPLICES OF 2 BUNDLED BARS, MULTIPLY LENGTHS BY 1.3
9. ALL SPLICES ARE CONTACT LAP SPLICES U.N.O.
10. WHEN BARS OF DIFFERENT SIZES ARE SPLICED, THE SPLICE LENGTH SHALL BE THE GREATER OF THE TWO BARS.
11. #14 BARS OR GREATER SHALL NOT BE LAP SPLICED, MECHANICAL SPLICING IS REQUIRED.

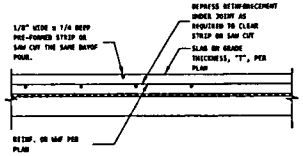
1 / S100 TYP. TENSION LAP SPLICE LENGTHS "1st"
1/2" = 1'-0"



CURB REINFORCING SCHEDULE		
MAX. "H"	VERTICAL	HOR
8"	#3 @ 18"	
18"	04 @ 18"	
4'-0"	04 @ 12"	04 @ 12"

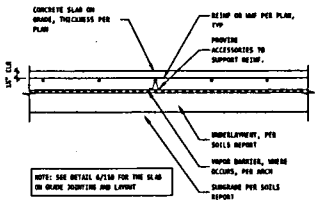
NOTES:
1. SEE ARCH'L DWGS FOR CURB LOCATION & SIZE.
2. REINF. TO BE PLACED IN CURB WALL CENTERLINE.

8 / S100 TYP. CURB DETAIL
N.T.S.

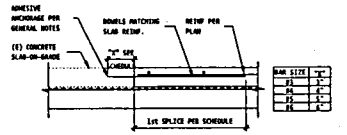


NOTES:
1. 30'-0" MAX SPACING
2. SEE PLAN FOR "T"
3. CONTRACTOR SHALL SUBMIT A LAYOUT OF JOINTS FOR APPROVAL PRIOR TO PLACING SLABS.

5 / S100 TYP. SLAB-ON-GRADE CONTROL JOINT
N.T.S.



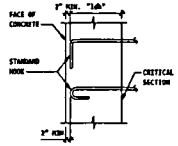
4 / S100 TYP. SLAB ON -GRADE
N.T.S.



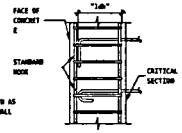
6 / S100 TYP. NEW TO (E) SLAB ON GRADE DETAIL
N.T.S.

1db, HOOKED BAR DEVELOPMENT LENGTHS						
BAR / f'c	4000 psi	5000 psi	6000 psi	7000 psi	8000 psi
#3	0'-8"	0'-7"	0'-6"	0'-6"	0'-6"
#4	0'-10"	0'-9"	0'-8"	0'-8"	0'-7"
#5	1'-0"	0'-11"	0'-10"	0'-9"	0'-9"
#6	1'-3"	1'-1"	1'-0"	0'-11"	0'-11"
#7	1'-5"	1'-3"	1'-2"	1'-1"	1'-0"
#8	1'-7"	1'-5"	1'-4"	1'-3"	1'-2"
#9	1'-10"	1'-8"	1'-6"	1'-5"	1'-4"
#10	2'-1"	1'-10"	1'-8"	1'-7"	1'-6"
#11	2'-3"	2'-0"	1'-10"	1'-9"	1'-7"
#14	2'-8"	2'-5"	2'-3"	2'-1"	1'-9"
#18	3'-7"	3'-3"	2'-11"	2'-9"	2'-7"

NOTES:
1. LENGTHS APPLY TO GRADE 60 REBAR IN NORMAL WEIGHT CONCRETE
2. FOR GRADE 75 REBAR MULTIPLY LENGTHS BY 1.25
3. FOR LIGHTWEIGHT AGGREGATE CONCRETE MULTIPLY BY 1.3
4. FOR EPOXY COATED REINFORCEMENT MULTIPLY BY 1.2
5. FOR LATERAL LOAD RESISTING ELEMENTS, CRITICAL SECTIONS SHALL BE TAKEN AS THE FACE OF THE / HOOP AT CONFINED CORES OF COLUMN JOINTS OR SHEAR WALL BOUNDARY ZONE

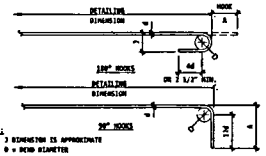


TYPICAL SECTION



SECTION AT LATERAL LOAD RESISTING ELEMENT

STANDARD HOOK DIMENSIONS				
BAR SIZE	D	90° HOOK A	180° HOOK A	180° HOOK J
#3	0'-2 1/4"	0'-6"	0'-9"	0'-3"
#4	0'-3"	0'-8"	0'-6"	0'-4"
#5	0'-3 3/4"	0'-10"	0'-7"	0'-5"
#6	0'-4 1/2"	1'-0"	0'-8"	0'-6"
#7	0'-5 1/4"	1'-2"	0'-10"	0'-7"
#8	0'-6"	1'-4"	0'-11"	0'-8"
#9	0'-8 1/2"	1'-7"	1'-3"	0'-11 3/4"
#10	0'-10 3/4"	1'-10"	1'-5"	1'-1 1/4"
#11	1'-0"	2'-0"	1'-7"	1'-2 3/4"
#14	1'-6 1/4"	2'-7"	2'-3"	1'-9 3/4"



NOTES:
1. J DIMENSION IS APPROXIMATE
2. D = BEND DIAMETER
3. d = BAR DIAMETER

2 / S100 TYP. HOOKED BAR DEVELOPMENT LENGTHS & DETAILS OF REINF
N.T.S.

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NOT FOR CONSTRUCTION

No	Issue Description	Date
4	PERMITTING	04/24
3		
2		
1		

No	Revision Description	Date

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

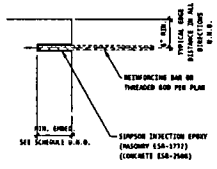
SHEET TITLE
TYPICAL CONCRETE REINF. & SLAB ON GRADE DETAILS

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S100

EPOXY ANCHOR EMBEDMENT SCHEDULE	
BAR	MINIMUM EMBEDMENT LENGHT U.O.O.
#3	4"
#4	6 1/4"
#5	7"
#6	8 3/8"
#7	9 3/8"
#8	9"
#9	10 1/8"
#10	11 1/4"
#11	12 3/8"



NOTES:
1. ALL DEFORMED REINFORCING BARS AND THREADED ROD NOTED AS EPOXY SHALL BE INSTALLED PER MANUFACTURERS RECOMMENDATIONS. SEE SCHEDULE FOR MINIMUM EMBEDMENT LENGHTS.

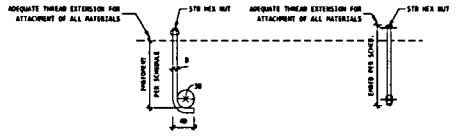
2. ONLY NON-HAMMER-CUTTING DRILL BITS SHALL BE USED TO DRILL HOLES IN EXISTING CONCRETE. CARE IS TO BE TAKEN WHEN DRILLING HOLES SO AS NOT TO CUT ANY EXISTING REINFORCING.

3. DRILLED HOLES SHALL BE CLEANED OF CONCRETE DUST AND DEBRIS USING EITHER A NYLON BRUSH AND A VACUUM, OR A NYLON BRUSH AND OIL-FREE COMPRESSED AIR. A BLOW-OUT BULB MAY BE USED IF A VACUUM OR COMPRESSED AIR IS NOT AVAILABLE

4. SPECIAL INSPECTION IS REQUIRED FOR INSTALLATION OF ALL ADHESIVE ANCHORS. INSPECTOR TO VERIFY AND DOCUMENT EMBEDMENT LENGHT AND HOLE PREPARATION AND CLEANLINESS. INSPECTOR TO VERIFY CORRECT IMPLEMENTATION OF THE MANUFACTURER'S INSTRUCTIONS FOR INSTALLATION.

5. DRILL & EPOXY TO BE USED ONLY WHERE INDICATED ON DRAWINGS.

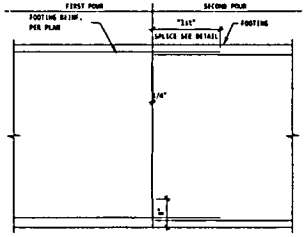
8 / S101 — TYP. SIMPSON SET EPOXY ANCHOR EMBEDMENT SCHEDULE
1" = 1'-0"



BOLT DIAMETER "B"	MINIMUM EMBEDMENT	
	VERT. ANCHOR BOLTS	HORIZ. ANCHOR BOLTS
1/2"	8"	6"
5/8"	9"	6"
3/4"	9"	6"
7/8"	9"	6"
1"	9"	7"
1-1/8"	10"	8"

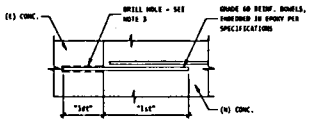
NOTES:
1. USE A DEEPER EMBEDMENT WHERE INDICATED.
2. THE MINIMUM EMBEDMENT EXCLUDES THE HEIGHT OF CONCRETE CURBS. AT CURBS, THE CURB HEIGHT SHALL BE ADDED TO THE MINIMUM EMBEDMENT DEPTH.

5 / S101 — TYP. ANCHOR BOLTS
N.T.S.

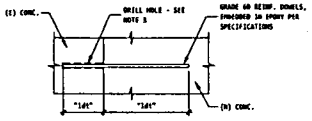


NOTES:
WELDED SPLICES REQUIRED FOR #14 AND LARGER BARS. WHERE CONTINUOUS FOOTING IS UNDER A WALL, LOCATE CONSTRUCTION JOINT AT 1/4 OF THE CLEAR OPENING WIDTH ABOVE FROM FACE OF OPENING, OR IN MIDDLE 1/3 OF THE DISTANCE BETWEEN COLUMNS.

6 / S101 — TYP. CONT. FOOTING CONSTRUCTION JOINT
N.T.S.



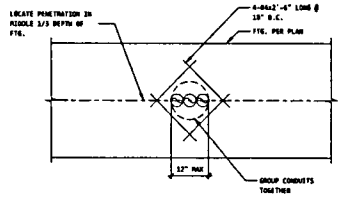
AT BAR SPLICE



AT DOWEL

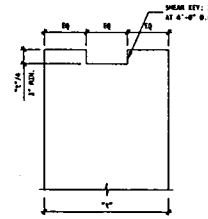
NOTES:
1. SCHEDULE APPLIES TO REINF. BARS TERMINATING IN STRUCTURAL CONC. U.O.O. ON DETAILS.
2. SEE TYPICAL DEVELOPMENT DETAIL FOR "1st" AND "lap".
3. DIAMETER OF HOLES FOR EPOXY-SET DOWELS SHALL BE PER EPOXY MANUFACTURER'S RECOMMENDATIONS.
4. ENSURE END OF DRILLED HOLE FOR EPOXY-SET DOWELS IS MIN. 1 1/2" CLEAR OF FAR SIDE OF CONC. WALL OR SLAB.
5. FOR EMBEDMENT DEPTH IN EXCESS OF 25", USE HILTI RE: 500 V3
6. DRILLED HOLES SHALL BE CLEANED OF CONCRETE DUST AND DEBRIS USING EITHER A NYLON BRUSH AND A VACUUM, OR A NYLON BRUSH AND OIL-FREE COMPRESSED AIR. A BLOW-OUT BULB MAY BE USED IF A VACUUM OR COMPRESSED AIR IS NOT AVAILABLE.

7 / S101 — TYP. POST-INSTALLED REINFORCEMENT DETAIL
N.T.S.

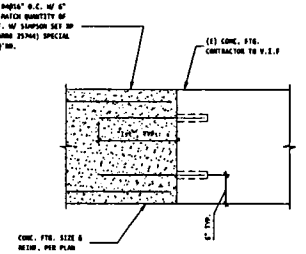


NOTES:
1. SLEEVE SIZES AND LAYOUT TO BE PROVIDED FOR STRUCTURAL ENGINEER OF RECORD TO REVIEW PRIOR TO INSTALLATION

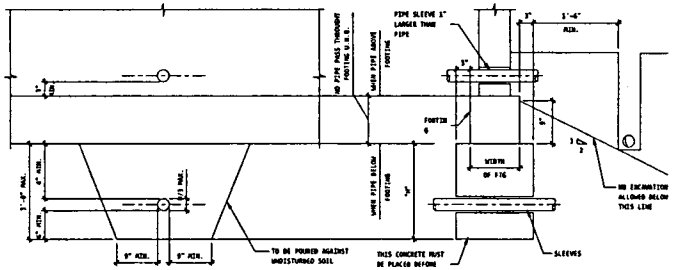
1 / S101 — TYP. SLEEVE THROUGH FOOTING DETAIL
N.T.S.



2 / S101 — TYP. CONCRETE SHEAR KEY
N.T.S.



3 / S101 — NEW TO EXISTING FTG. DETAIL
1" = 1'-0"



NOTES:
PROVIDE SLEEVES FOR ALL PIPES PASSING THROUGH GRADE BEAM, CONT. FTGS OR WALLS. PASS THROUGH MIDDLE THIRD OF DEPTH OF GRADE BEAM OR FTG. DO NOT PASS PIPES THROUGH ISOLATED FTGS. STEP AROUND OR BELOW AS REQUIRED. SEE WHERE MULTIPLE SLEEVES OCCUR.

4 / S101 — TYP. PIPE THRU FOUNDATION DETAIL
N.T.S.

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No	Revision Description	Date

No	Issue Description	Date

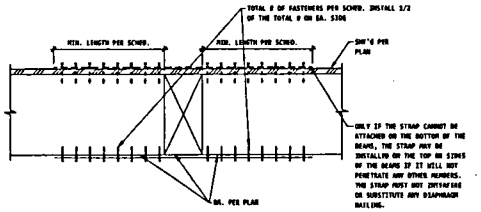
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
TYPICAL CONCRETE WALL & FOUNDATION DETAILS

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S101

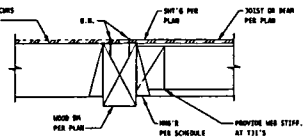


STRAP SCHED.					
STRAP MARK	STRAP MODEL No.	STRAP WIDTH	TOTAL # OF FASTENERS	MIN. LENGTH EACH SIDE (IN.)	CAPACITY (LBS)
CS1	CS16	1-1/4"	26-16d	15"	1,490
CS2	CMST12	3"	38-16d	18"	8,791
CS3	CMST12	3"	56-16d	25"	6,973
CS4	CMST12	3"	74-16d	33"	9,215

5 S110 TYP. STRAP SCHED. & DETAIL
N.T.S.

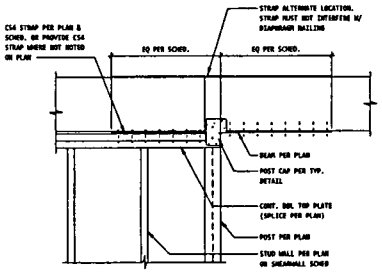
HANGER SCHEDULE - MANUFACTURER: SIMPSON STRONGTIE					
TOP MOUNT HANGER			FACE MOUNT HANGER		
JOIST/ BEAM SIZE			JOIST/ BEAM SIZE		
ALL SAWN LUMBER D.F.D.O.	SIMPSON HUTF		ALL SAWN LUMBER D.F.D.O.	SIMPSON HU	
2x6 THRU 2x16	SIMPSON LU		2x6 THRU 2x10	SIMPSON LUS	
2-2x6 THRU 2-2x16	SIMPSON HA		2-2x6 THRU 2-2x10	SIMPSON LUS	
4x6 THRU 4x16	SIMPSON HA		4x6 THRU 4x16	SIMPSON HHUS	

NOTES:
1. PROVIDE TOP MOUNT HANGERS WHEREVER POSSIBLE. FACE MOUNT HANGERS SHALL BE ALLOWED ONLY WHERE SPECIFICALLY INDICATED ON THE PLANS OR DETAILS.
2. PROVIDE SKEWED, SLOPED HANGERS AS REQ'D.



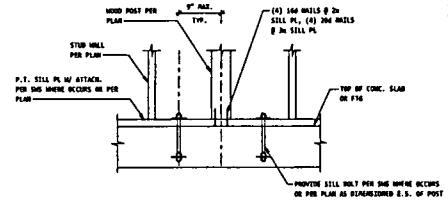
WOOD BEAM CONN. @ PERP. WOOD JOIST OR BM. BOTTOM (A)

6 S110 TYP. WOOD BEAM / JOIST CONNECTIONS
N.T.S.

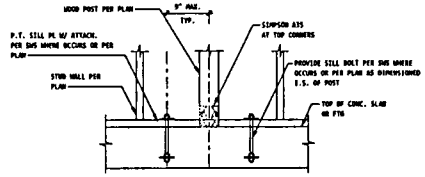


STRAP TO FLUSH BEAM

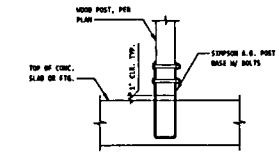
7 S110 TYP. DRAG STRAP TO BEAM DETAIL
1" = 1'-0"



POST BASE ALTERNATE DETAIL (POST PART OF WALL)

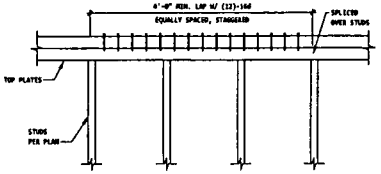


POST BASE (POST PART OF WALL)

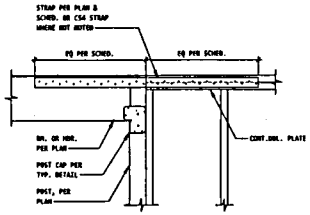


ISOLATED POST

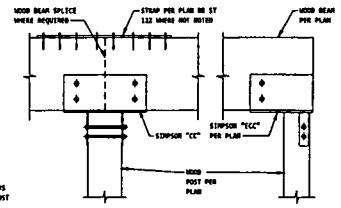
3 S110 TYP. POST BASE
N.T.S.



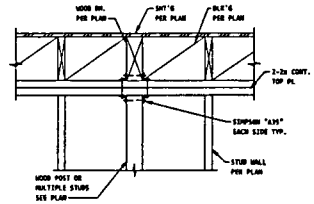
4 S110 TYP. TOP SPLICE DETAIL
N.T.S.



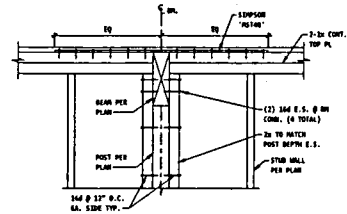
STRAP TO DROP BEAM



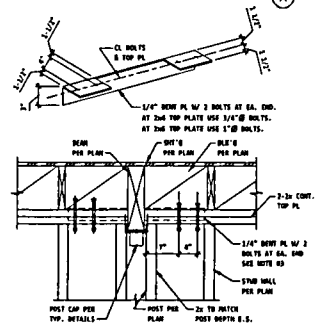
WITH COLUMN CAP (B)



WITHOUT COLUMN CAP (D)

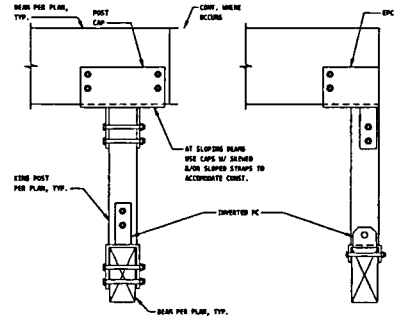


DROP BEAM (A)



DROP BEAM (C)

1 S110 TYP. BM. TO POST CONNECTION DETAIL
1" = 1'-0"



2 S110 TYP. KING POST DETAIL
N.T.S.

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No	Revision Description	Date

No	Issue Description	Date
1	PERMIT/PLAN CHECK	12/2/22

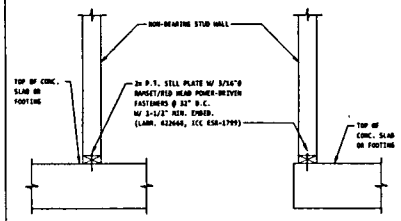
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
WOOD BEAM & JOIST CONNECTION DETAILS

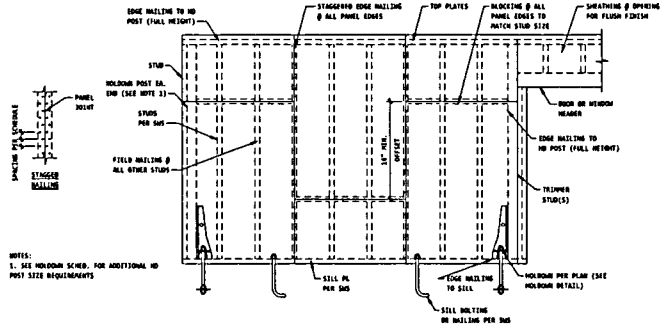
ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S110

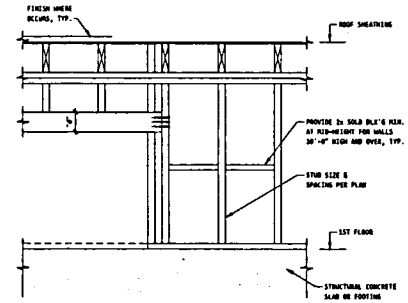


6 S111 — TYP. NON-BEARING WALL BASE DETAIL
1" = 1'-0"



NOTES:
1. SEE HOLDOWN SCHED. FOR ADDITIONAL HD POST SIZE REQUIREMENTS

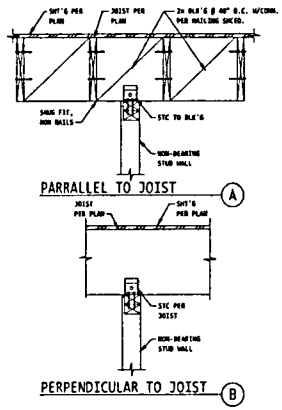
3 S111 — TYPICAL SHEARWALL ASSEMBLY
1" = 1'-0"



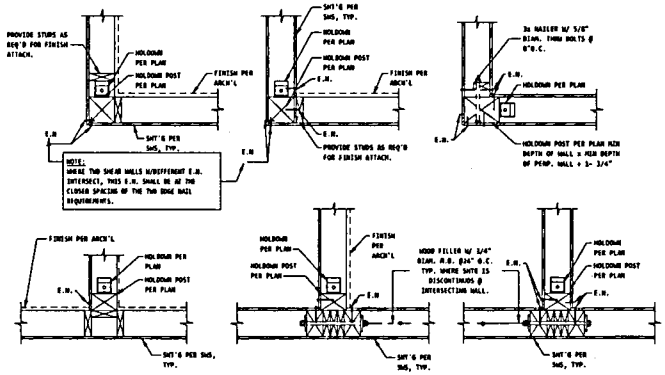
NOTES:
1. SEE PLANS FOR SPECIAL FRAMING REQUIREMENTS.
2. HEADER SIZES SHOWN IN SCHEDULES IN THIS DETAIL ARE MINIMUM HEADER SIZES, SEE PLANS FOR WHERE LARGER HEADER SIZES ARE REQUIRED.
3. STUD HEIGHT LIMITATIONS:
   2x4 AT 16" O.C. NOT TO EXCEED 9 FEET.
   3x4 OR 2x6 AT 16" O.C. NOT TO EXCEED 9 FEET.
   IF CALLED OUT STUD SIZES AT ANY GIVEN FLOOR LEVEL EXCEED THESE LIMITATIONS, CONTACT STRUCTURAL ENGINEER FOR CLARIFICATION.
4. AT EXTERIOR WALLS WHERE OPENING WIDTH > 3'-6", PROVIDE DOUBLE STUD EACH END OF HEADER. FOR ADDITIONAL DETAIL SEE "TYP. STUD WALL OPENING FRAMING."
5. TRIMMERS TO BE SAME SIZE AS STUDS AS GIVEN FLOOR LEVEL UNLESS NOTED OTHERWISE. SEE PLANS FOR POSTS WHERE REQUIRED INSTEAD OF TRIMMERS.
6. SEE PLANS FOR SHEAR WALL FRAMING REQUIREMENTS.
7. IF STRUCTURAL WALL WIDTH PER PLAN VARIES FROM ARCH DWGS CONTACT STRUCTURAL ENGINEER FOR CLARIFICATION.

TYP. MIN. ROOF HDR. SCHEDULE U.N.O.					
WIDTH OF OPENING	12'-0"	8'-0"	6'-0"	4'-0"
NUMBER OF TRIMMERS	1	1	1	1
HDR. "d" (AT 8' WALLS)	4x12 (6x8)	4x8 (6x8)	4x6 (6x8)	4x6 (6x8)

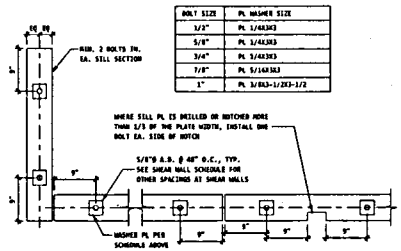
1 S111 — TYP. STUD WALL FRAMING ELEVATION & NOTES
B.T.S.



7 S111 — TYP. NON-BEARING STUD WALL CONNECTION AT TOP
1" = 1'-0"

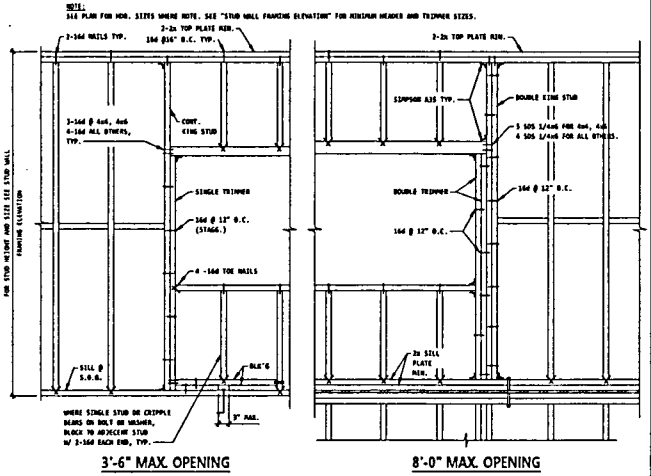


4 S111 — TYPICAL SHEARWALL INTERSECTIONS
1" = 1'-0"



BOLT SIZE	PL WASHER SIZE
1/2"	PL 1/4X3X3
5/8"	PL 1/4X3X3
3/4"	PL 1/4X3X3
7/8"	PL 5/16X3X3
1"	PL 3/8X3-1/2X3-1/2

5 S111 — TYPICAL SILL BOLTING
1" = 1'-0"



2 S111 — TYP. STUD WALL OPENING FRM'G
3/4" = 1'-0"

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NOT FOR CONSTRUCTION

No	Revision Description	Date

No	Issue Description	Date
A	PLANNING SET	10-2-2

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
TYP. WOOD BEARING WALL & SHEAR WALL DETAILS

ARCHITECT
HOMO WORKSHOP

PROJECT NUMBER
22011

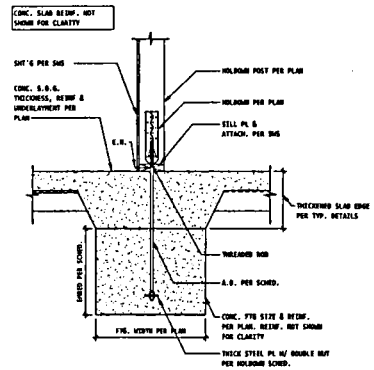
SHEET NUMBER
S111

HOLDOWN SCHED (2018 HBC)

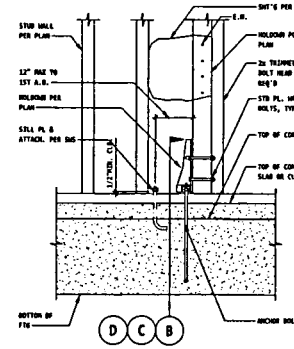
MARK	HOLDOWN TYPE	STRAP ALTERNATE @ FLOORS	"L" MIN. STRAP LENGTH & NAILS PER LEG	STRAP @BM SUPPORT COND.	"L" MIN. STRAP LENGTH & NAILS PER LEG	ATTACHMENT TO EA. POST	MINIMUM POST SIZE	PAD A.B. @ CENTERED CONDITION B & C	PAD PLATE WASHER SIZE	MIN. PAD EMBED DEPTH	MIN. CONT. FTG. SIZE (W x D)	ALLOWABLE TENSION LOADS	
2	HDU2	RST48	16-16d (32 TOTAL)	RSTC4083	30-10d STUD, 32-10d BEAM, 4-10d DOT	(6) 1/4"ø SDS	4x6	PAD5	1/2x 1-3/4 SQ	15"	12"x18"	3075 LB	
4	HDU4	RST48	16-16d (32 TOTAL)	RSTC4083 (4)	30-10d STUD, 54-10d BEAM, 4-10d DOT	(10) 1/4"ø SDS	4x6	PAD5	1/2x 1-3/4 SQ	15"	12"x18"	4565 LB	
5	HDU5	RST60	23-16d (46 TOTAL)	CMST14	33-16d EA. POST LEG	(14) 1/4"ø SDS	4x6	PAD5	1/2x 1-3/4 SQ	15"	12"x18"	5465 LB	
8	HDU8	CMST12	37-16d (74 TOTAL)	CMST12	37-16d EA. POST LEG	(20) 1/4"ø SDS	4x6	PAD7	1/2x 2-1/2 SQ	15"	12"x18"	8970 LB	
11	HDU11	N/A	N/A	N/A	N/A	(30) 1/4"ø SDS	6x6 OR 4x8	PAD8	3/4x 3-1/2 SQ	15"	12"x18"	9535 LB	
14	HDU14	N/A	N/A	N/A	N/A	(36) 1/8"ø SDS	6x6 OR 4x8	PAD8	3/4x 3-1/2 SQ	15"	18"x18"	14645 LB	
19	HD19	N/A	N/A	N/A	N/A	(5) 1"ø A307	6x6 OR 4x8	PAD30	3/4x 3-1/2 SQ	15"	18"x18"	19070 LB	
3-14	2-HDU14	N/A	N/A	N/A	N/A	(36) 1/4"ø SDS	8x8	(2) PAD8	3/4x 3-1/2 SQ	15"	24"x18"	28090 LB	SEE DETAIL ENTITLED "DOUBLE HOLDOWN DETAILS"
84	"ZONE FOUR" T2-84"	N/A	N/A	N/A	N/A	(8) 1"ø A307 BOLT	(2) 6x6	N/A		N/A	N/A	34301 LB	
48-1	"ZONE FOUR" T2-48"	N/A	N/A	N/A	N/A	(4) 1"ø A307 BOLT	(2) 6x6	N/A		N/A	N/A	32216 LB	
48-8	"ZONE FOUR" T2-48"	N/A	N/A	N/A	N/A	(4) 1"ø A307 BOLT	(2) 6x8	N/A		N/A	N/A	43420 LB	
66	"ZONE FOUR" T2-66"	N/A	N/A	N/A	N/A	(6) 1"ø A307 BOLT	(2) 6x8	N/A		N/A	N/A	63731 LB	

NOTES:

1. FOR ECCENTRIC CONDITION ANCHOR BOLTS SEE SCHED PER B/-
2. PROVIDE MIN. POST SIZE AS INDICATED, U.N.O.
3. SIMPSON HOLDOWNS (ICC ESR 2330), ZONE FOUR HOLDOWNS (ESR 3105) & SIMPSON SD (ESR 2611)
4. HOLDOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.
5. MINIMUM BEAM DEPTH FOR A MSTC6683 IS 11-1/4". PROVIDE HOLD DOWN TYPE S IF BEAM IS LESS THAN 11-1/4"
6. ALL S.B. SHALL BE ASTM F1554 GR. 36
7. CONC. MAT SLAB STRENGTH SHALL BE 2500 PCI MIN.
8. SEE MANUFACTURER'S PRODUCT CATALOG FOR MIN EDGE DISTANCES



INTERIOR MAT. SLAB HOLDOWN CONDITION DETAIL (B)



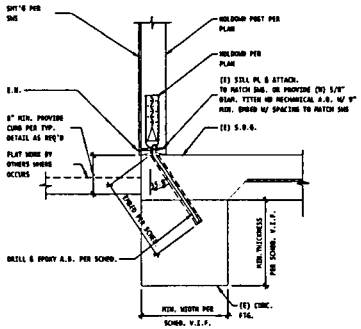
NOTES:

RETIGHTEN ALL BOLTS IMMEDIATELY PRIOR TO COVERING WALL. TYP @ ALL SHEAR WALLS.

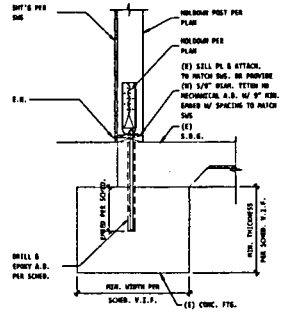
(A)

1 TYP. HOLDOWN SCHEDULE & DETAILS @ CONVENTIONAL FOOTINGS - SINGLE POUR (2018 HBC)

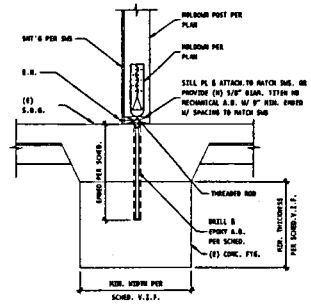
S112 N.T.S.



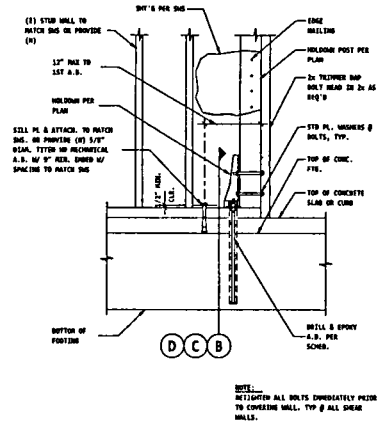
EXISTING CONC. FTG. ECCENTRIC HOLDOWN CONDITION DETAIL (D)



EXISTING CONC. FTG. CENTERED HOLDOWN CONDITION DETAIL (C)



EXISTING INTERIOR CONC. FTG. HOLDOWN CONDITION DETAIL (B)



NOTE:
RETIGHTEN ALL BOLTS IMMEDIATELY PRIOR TO COVERING WALL. TYP @ ALL SHEAR WALLS.

EXISTING CONC. FTG. HOLDOWN ELEVATION (A)

HOLDOWN SCHEDULE

MARK	HOLDOWN TYPE	STRAP ALTERNATE @ FLOORS	"L" MIN. STRAP LENGTH & NAILS PER LEG	STRAP @BM SUPPORT COND.	"L" MIN. STRAP LENGTH & NAILS PER LEG	ATTACHMENT TO EA. POST	MINIMUM POST SIZE	ALL THREAD ROD A.B. DIAM.	MIN. A.B. EMBED DEPTH CENTER (DBC)	MIN. A.B. EMBED DEPTH ECCENTRIC (D)	ALLOWABLE TENSION LOADS	NOTES
3	HDU3	RST48	16-16d (32 TOTAL)	RSTC4083	30-10d STUD, 32-10d BEAM, 4-10d DOT	(6) 1/4"ø SDS	4x6	5/8"	8 1/2"	12"	3075 LB	
4	HDU4	RST48	16-16d (32 TOTAL)	RSTC4083 (4)	30-10d STUD, 54-10d BEAM, 4-10d DOT	(10) 1/4"ø SDS	4x6	5/8"	14 1/2"	20"	4565 LB	
5	HDU5	RST60	23-16d (46 TOTAL)	CMST14	33-16d EA. POST LEG	(14) 1/4"ø SDS	4x6	5/8"	18 7/8"	19 1/2"	5465 LB	
8	HDU8	CMST12	37-16d (74 TOTAL)	CMST12	37-16d EA. POST LEG	(20) 1/4"ø SDS	4x6	7/8"	29"	22 1/4"	8970 LB	

NOTES:
1. FOR ECCENTRIC CONDITION ANCHOR BOLTS SEE SCHEDULE PER B/-
2. PROVIDE MIN. POST SIZE AS INDICATED, U.N.O.
3. HILTI ADHESIVE HIT-HY 500 V3 (ICC ESR 3814), HAS ROD (ESR 2611)
4. HOLDOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.
5. MINIMUM BEAM DEPTH FOR A MSTC6683 IS 11-1/4". PROVIDE HOLD DOWN TYPE S IF BEAM IS LESS THAN 11-1/4"
6. ALL S.B. SHALL BE ASTM F1554 GR. 36
7. CONC. STRENGTH SHALL BE 3000 PSI MIN.
8. SEE MANUFACTURER'S PRODUCT CATALOG FOR MIN EDGE DISTANCES

2 TYPICAL HOLDOWN SCHEDULE & DETAILS @ CONVENTIONAL FOOTINGS

S112 1" = 1'-0"

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NOT FOR CONSTRUCTION

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No	Issue Description	Date
1	1ST CORRECTION	6-6-2

No	Revision Description	Date

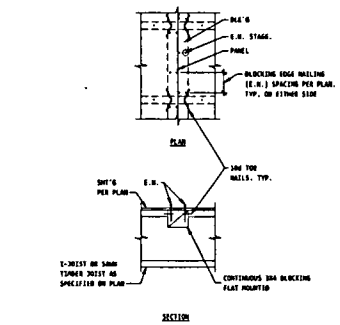
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
TYP. HOLDOWN FOUNDATION DETAILS

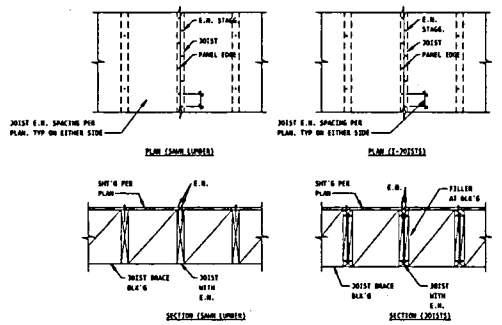
ARCHITECT
NONO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S112

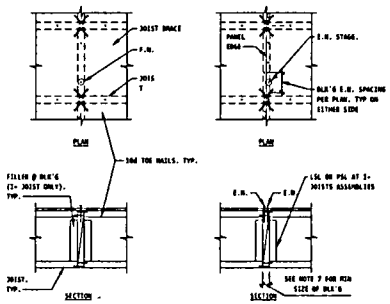


ADJOINING PANEL EDGES - NAILING TO CONT. BLK'G (D)
SECTION LUMBER AND I-JOISTS

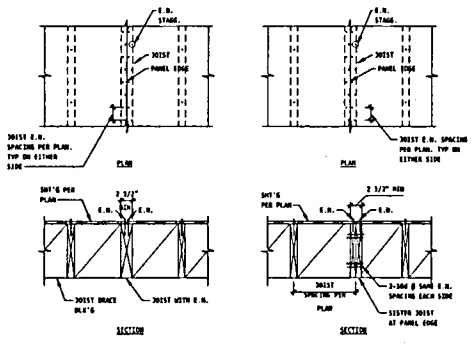


ADJOINING PANEL EDGES - NAILING TO JOISTS (B)
NAIL SPACING GREATER THAN 3"

DIAPHRAGM NAILING SCHEDULE					
DIAPH MARK	MIN. NOMINAL MEMBER & BLK'G THICKNESS @ PANEL BOUNDARY EDGES	No FASTENER ROWS	E.N./P.E.N. SPACING (In. O.C.)	F.N. SPACING (IN. O.C.)	NOTES & REMARKS
6	2	1	6	12	SEE DETAIL D,D & F2
4	2	1	4	12	SEE DETAIL D,D & F2
2.5	2	1	3 1/2	12	SEE DETAIL D,D & F2
3	3	1	2 STAGG.	12	SEE DETAIL C,D & F1
40	3	2	4	12	
2.50	3	2	2 1/2 STAGG.	12	
47	6	3	4	12	
2.57	4	1	2 1/2 STAGG.	12	

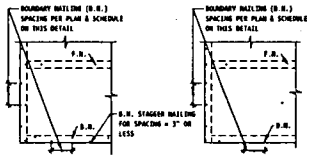


JOIST BRACE (F1)
JOIST BRACE (F2)
ADJ. PANEL EDGES

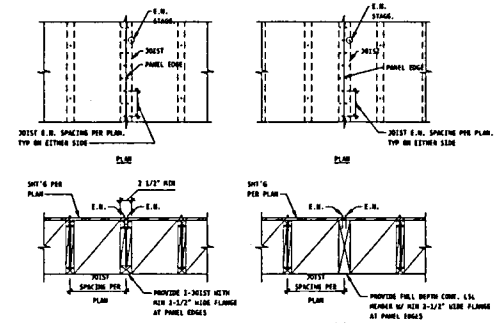


SAWN LUMBER (C3)
SAWN LUMBER (C4)

JOIST BRACING – FULL DEPTH BLK'G (E)
SAWN LUMBER AND I-JOISTS

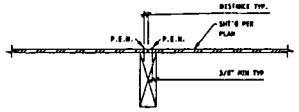


STAGG. COND. (F1)
B.N. NAILING IS 3" OR LESS
SINGLE LINE COND. (F2)
B.N. NAILING IS GREATER THAN 3"
BOUNDARY NAILING (F)
SAWN LUMBER AND I-JOISTS



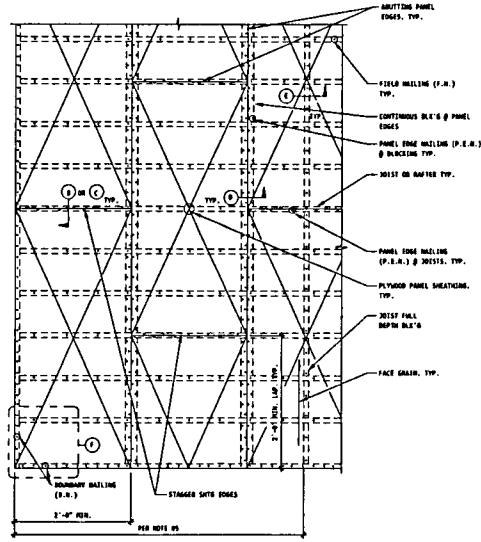
I-JOISTS (C1)
I-JOISTS (C2)

NOTE:
DETAILS C1 AND C2 CAN BE INTERCHANGEABLY USED AS I-JOISTS ASSEMBLY. DETAILS C3 AND C4 CAN INTERCHANGEABLY BE USED AS SAWN LUMBER ASSEMBLIES



NAILING EDGE DISTANCES (G)

ADJOINING PANEL EDGES – NAILING TO JOISTS (C)
NAIL SPACING = 3" OR LESS



NOTES:

1. REFER TO PLANS FOR SHT'G THICKNESS & GRADE.
2. REFER TO PLANS & SCHEDULE ON THIS DETAIL FOR NAIL SIZE AND SPACING OF BOUNDARY NAILING (B.N.), EDGE NAILING (P.E.N.) AT JOISTS, EDGE NAILING AT BLOCKING, AND FIELD NAILING (F.N.).
3. PROVIDE MIN 3/8" NAIL EDGE DISTANCE FROM SHTG AND FRAMING MEMBERS. SEE INSET DETAIL "G"
4. BLOCK ALL PANEL EDGES AS SHOWN UNLESS OTHERWISE SPECIFIED ON THE PLANS
5. PROVIDE CONTINUOUS JOIST BRACING MEMBERS @ 8'-0" O.C. MAX SPACING UNLESS SPECIFIED OTHERWISE ON PLANS
6. JOIST BRACING MEMBERS SHALL CONSIST OF FULL DEPTH BLOCKING AS SHOWN PER INSET DETAIL "E". AS A MINIMUM PROVIDE 2x MEMBERS AND 1-3/4" LSL/LVL MEMBERS AT SAWN LUMBER OR I-JOIST ASSEMBLIES RESPECTIVELY.
7. FOR MIN WIDTH OF NAILED FACE OF FRAMING SEE SCHED. ON THIS DETAIL
8. LONG DIMENSION OF SHTG SHALL BE PERPENDICULAR TO JOIST
9. DIAPHRAGM NAILING TO BE OBSERVED BY STRUCTURAL ENGINEER BEFORE COVERING
10. SHTG SPANS SHALL CONFORM WITH 2018 NDC TABLE 2304.7
11. AT LOCATIONS OTHER THAN SHEAR WALLS, PANEL EDGE NAIL (P.E.N.) SPACING AT NON-CONTINUOUS EDGES MAY BE INCREASED TO 150% OF THE E.N. SPACING. SPACING NOT TO EXCEED 6" O.C.

TYP. LAYOUT AND NOTES (A)

1 / S113 TYP. DIAPHRAGM SHEATHING ASSEMBLY & NAILING SCHED
N.T.S.

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No	Issue Description	Date
	Revision Description	Date

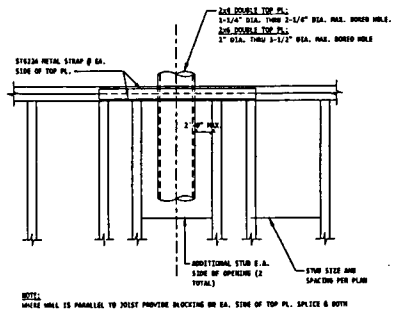
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
WOOD DIAPHRAGM

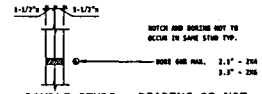
ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

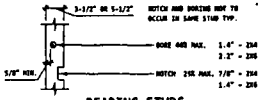
SHEET NUMBER
S113



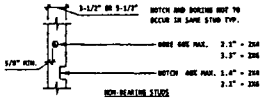
TOP PL PIPE BORING DETAIL — O



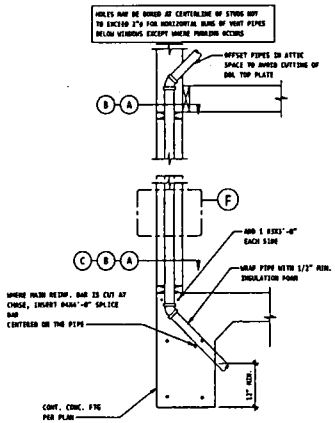
DOUBLE STUDS - BEARING OR NOT



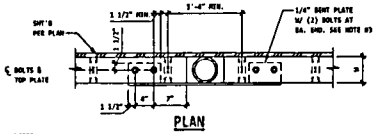
BEARING STUDS



TYP. STUD NOTCHING — F

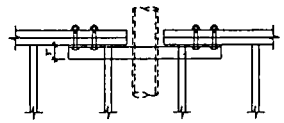


SECTION

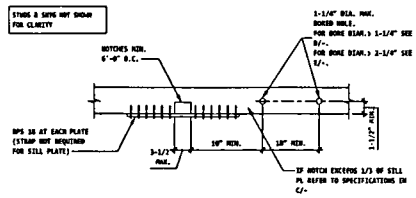


PLAN

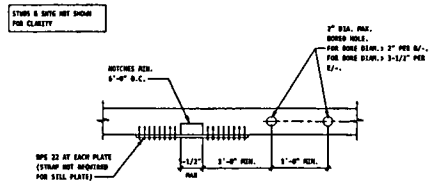
NOTES:
1. NO TOP PLATE SPLICE TO OCCUR WITHIN 4'-0" OF PIPE.
2. DETAIL APPLIES WHERE DRILLED HOLE EXCEEDS 2-1/4" AT 2x4 OR 3-1/2" @ 2x6 PL OR PLATE IS INTERRUPTED.
3. AT 2x6 TOP PLATE USE 3/4"@ BOLTS. AT 2x8 TOP PLATE USE 1"@ BOLTS.
4. USE SIMILAR SPLICE FOR SPLICE OF INTERRUPTED BOTTOM PLATE.



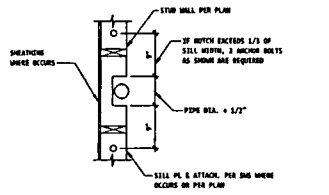
TYP. INTERUPTED TOP/BOTT. PL SPLICE — D



2x4 DBL. TOP PLATE 2x4 OR 3x4 SILL PLATE SIM. — A



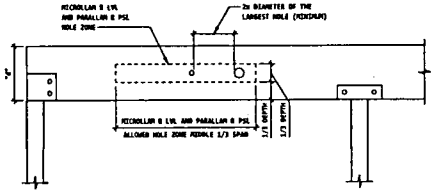
2x6 DBL. TOP PLATE 2x6 OR 3x6 SILL PLATE SIM. — B



PLAN — C

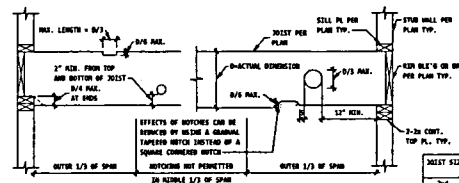
1 TYP. PIPES & CONDUIT IN STUD WALLS
S114 — N.T.S.

HEADER OR BEAM DEPTH	MAXIMUM ROUND HOLE SIZE
4 3/8"	1"
5 1/2"	1 3/4"
7 1/4"-20"	2"



NOTES:
1. PROVIDE ALL LOCATIONS, SIZE AND ELEVATIONS OF HOLES AND NOTCHES TO THE STRUCTURAL ENGINEER OF RECORD FOR APPROVAL. THE LOCATIONS PROVIDED IN THIS DETAIL ARE NOT PRE-APPROVED AND ANY MODIFICATIONS TO JOISTS FOR HOLES OR NOTCHES ARE REQUIRED TO BE APPROVED BY THE STRUCTURAL ENGINEER OF RECORD.
2. ALL HOLES MUST BE CIRCULAR
3. FOR LSL®, IF LARGER HOLE IS REQUIRED CONTACT SEOR FOR REVIEW.
4. FOR UNIFORMLY LOADED BEAMS ONLY.
5. BASED ON WEYERHAEUSER TJ-9015.

3 LSL, LVL & PSL PLACEMENT OF NOTCHES, HOLES & TAPERED CUTS
S114 — 1" = 1'-0"



NOTES
1. PROVIDE ALL LOCATIONS, SIZE AND ELEVATIONS OF HOLES AND NOTCHES TO THE STRUCTURAL ENGINEER OF RECORD FOR APPROVAL. THE LOCATIONS PROVIDED IN THIS DETAIL ARE NOT PRE-APPROVED AND ANY MODIFICATIONS TO JOISTS FOR HOLES OR NOTCHES ARE REQUIRED TO BE APPROVED BY THE STRUCTURAL ENGINEER OF RECORD.
2. ALL HOLES MUST BE CIRCULAR

JOIST SIZE	MAX. HOLE	MAX. NOTCH DEPTH	MAX. NOTCH DEPTH	MIN CLEAR SPACING, S
2x4	NONE	NONE	NONE	-
2x6	1-1/2"	7/8"	1-3/8"	6-1/2"
2x8	2-3/8"	1-1/4"	1-7/8"	7-1/2"
2x10	3"	1-1/2"	2-3/8"	9"
2x12	3-3/4"	1-7/8"	2-7/8"	11-1/2"

2 SOLID SAWN JOIST PLACEMENT OF NOTCHES & HOLES
S114 — 1" = 1'-0"

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No	Revision Description	Date

No	Issue Description	Date
1	1st PERMIT SET	04-28

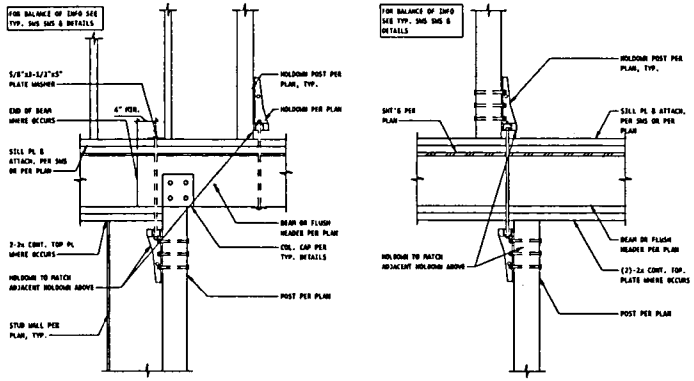
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
WOOD PENETRATION DETAILS

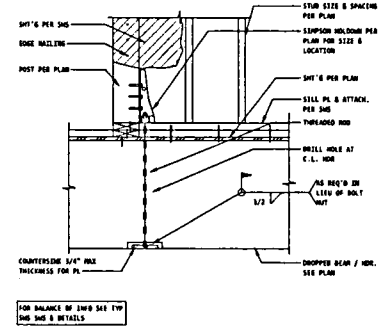
ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

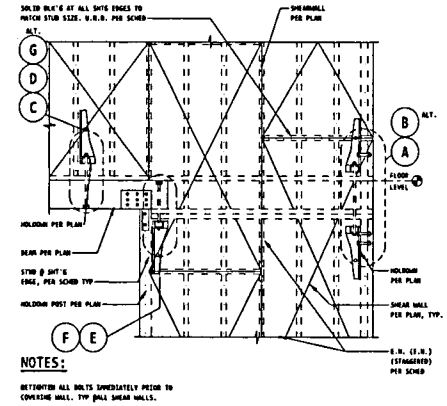
SHEET NUMBER
S114



TYP. OFFSET HOLDOWN DETAIL @ FLOOR TRANSFER (F)



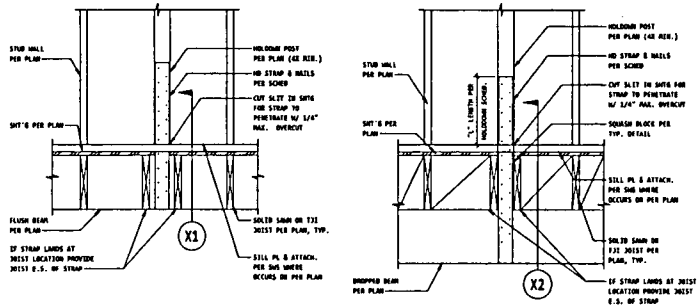
TYP. HOLDOWN AT WOOD BEAM DETAIL (C)



NOTES:

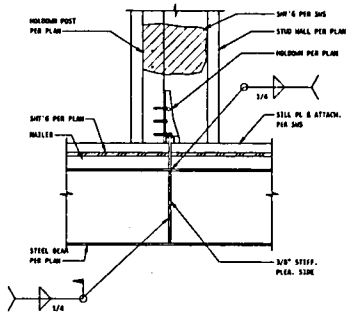
BETTERTEN ALL BOLTS IMMEDIATELY PRIOR TO COVERING WALL. TYP @ALL SHEAR WALLS.

ELEVATION: HOLDOWNS & STRAPS

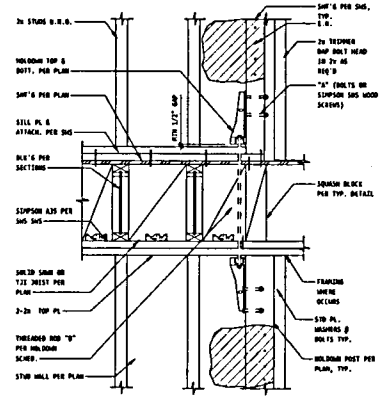


HD STRAP AT FLUSH BEAM

HD STRAP AT DROP BEAM

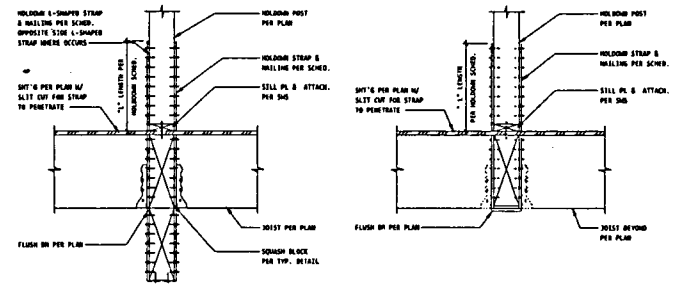


BEAM SUPPORTING DISCONTINUOUS POST
TYP. HOLDOWN @ STEEL (D)



TYPICAL HOLDOWN @ FLOOR TRANSFER DETAIL (A)

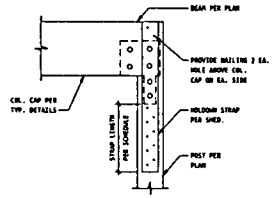
STRAPS @ DISCONTINUOUS HOLDOWN POST (G)



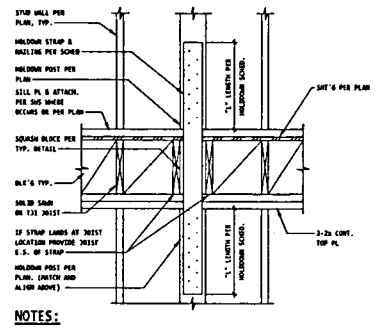
DROPPED BEAM SECTION (X2)

FLUSH BEAM SECTION (X1)

BEAM SECTIONS (X)



TYP. TOP STRAP HOLDOWN @ WOOD BEAM (E)



NOTES:

1. INSTALL STRAP OVER SHT'G. SHT'G O.N. REQ'D IN ADDITION TO STRAP NAILING

METAL STRAP HOLDOWN AT FLOOR TRANSFER (B)

1 / S115 TYP. HOLDOWN @ FLOOR TRANSFER DETAIL

O.T.S.

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No	Issue Description	Date

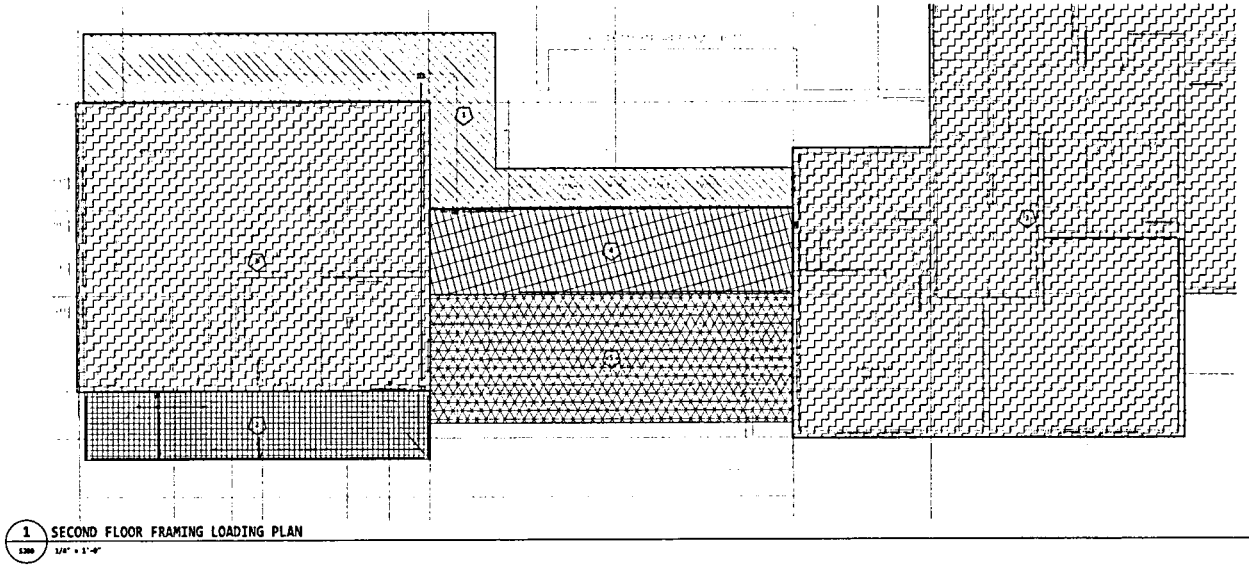
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
TYP. HOLDOWN FOUNDATION DETAILS

ARCHITECT
NOHO WORKSHOP

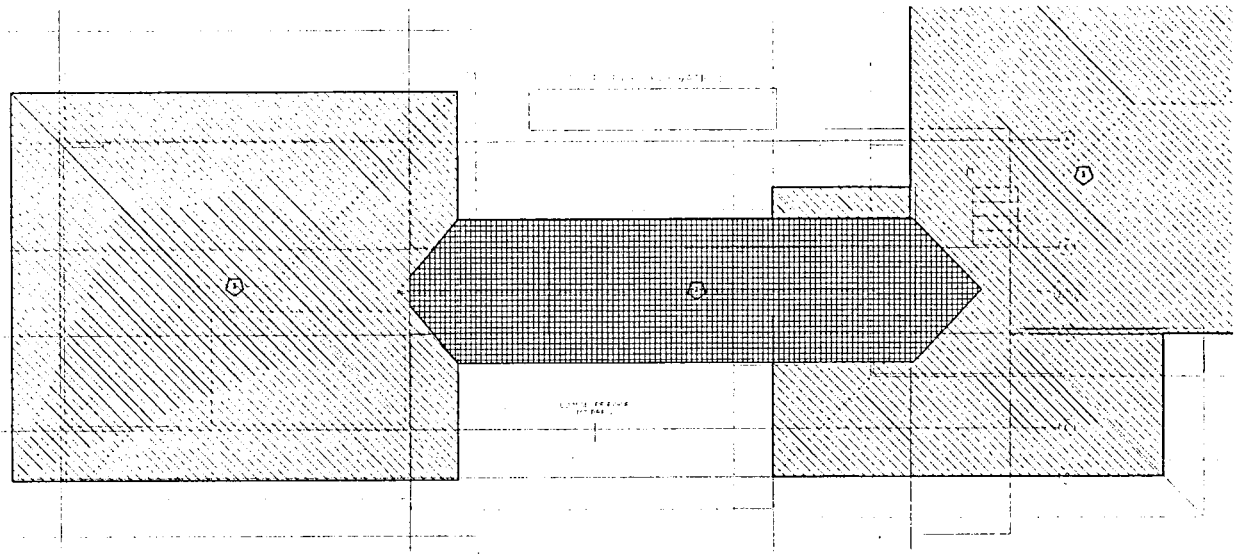
PROJECT NUMBER
22011

SHEET NUMBER
S115



LOAD KEY LEGEND		
LOAD AREA & PATTERN	DESCRIPTION OF LOAD	NOTES
1	(E) CEDAR SHAKE ROOFING OVER (E) 1/2" SHEATHING OVER (E) STRUCTURAL FRAMING	
2	CEDAR SHAKE ROOFING OVER 1/2" SHEATHING OVER STRUCTURAL FRAMING	
3	(E) HARDWOOD FLOOR OVER (E) 3/4" SHEATHING OVER (E) STRUCTURAL FRAMING	
4	HARDWOOD FLOOR OVER 3/4" SHEATHING OVER STRUCTURAL FRAMING	
5	(E) CEDAR SHAKE ROOFING OVER (E) 1/2" SHEATHING OVER (E) STRUCTURAL FRAMING	

1 S200 SECOND FLOOR FRAMING LOADING PLAN
1/4" = 1'-0"



2 S200 ROOF FRAMING LOADING PLAN
1/4" = 1'-0"

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No	Revision Description	Date

No	Issue Description	Date
1	1st SUBMITTAL	04-02

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
FINISH PLANS

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S200

LEGEND AND SYMBOLS:

INDICATES (N) STRUCTURAL WALL ABOVE

INDICATES (E) STRUCTURAL WALL ABOVE

INDICATES ARCHITECTURAL WALL

INDICATES CONC. FOOTING

INDICATES (E) CONC. FOOTING

INDICATES STEP IN FLOOR SURFACE

CFG — INDICATES CONTINUOUS CONCRETE FOOTING TYPE PER SCHEDULE S201

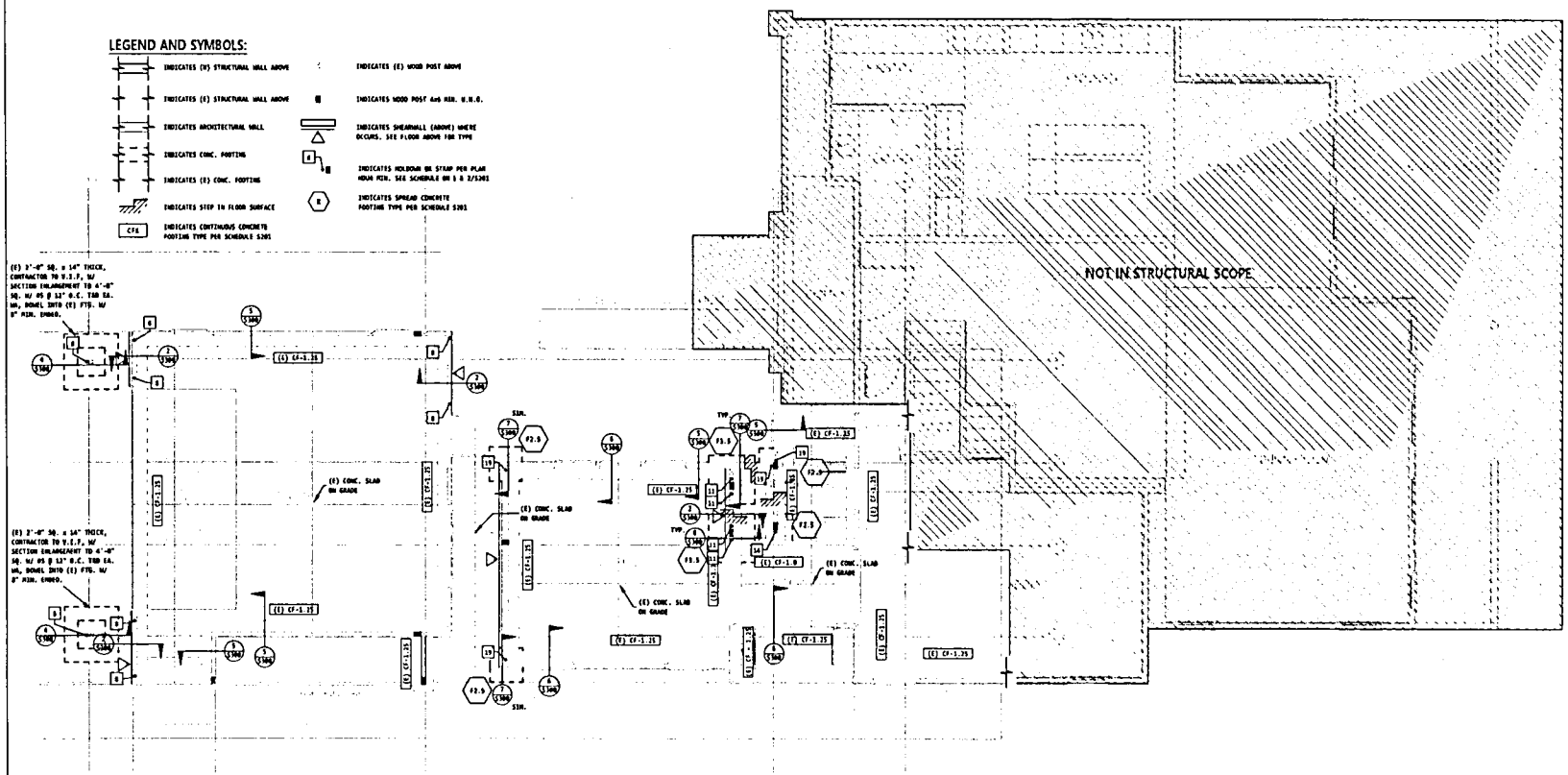
INDICATES (E) WOOD POST ABOVE

INDICATES WOOD POST 4x6 MIN. U.N.O.

INDICATES SHEARWALL (ABOVE) WHERE OCCURS. SEE FLOOR ABOVE FOR TYPE

HDU4 — INDICATES HOLDOWN OR STRAP PER PLAN HDU4 MIN. SEE SCHEDULE ON 1 & 2/S201

F2.5 — INDICATES SPREAD CONCRETE FOOTING TYPE PER SCHEDULE S201



1 / S201 — FIRST FLOOR FOUNDATION PLAN

1/4" = 1'-0"

PROJECT NORTH

CONCRETE FOUNDATION SCHEDULE

MARK	DIMENSIONS (IN)	THICKNESS (IN)	REINFORCEMENT
CF-1.0	12" WIDE	18"	CONTRACTOR TO V.I.F.
F2.5	30" X 30"	24"	(5) #5 EA. WAY TOP & BOTT.
F3.5	42" X 42"	24"	(6) #5 EA. WAY TOP & BOTT.

SHEARWALL SCHEDULE

MARK	SHEATHING	NAIL SIZE	EDGE NAIL SPACING	FIELD NAIL SPACING	SILL PL	FRAMING MEMBER @ VERT. EDGE NAILING	A35 OR LPT4 SHEAR CLIPS	SILL TO WOOD CONNECTION	SILL TO CONC. CONNECTION	ALLOWABLE SHEAR (PLF)
6	15/32 STRUCT.1 CD-X SHTG	16d	6"	12"	2X	1X	16" O.C.	SDWS 0.220"x6" @ 12" O.C.	5/8"ø A.B. @ 32" O.C.	348
6	15/32 STRUCT.1 CD-X SHTG	16d	4"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C.	SDWS 0.220"x6" @ 9" O.C.	5/8"ø A.B. @ 24" O.C.	510
3	15/32 STRUCT.1 CD-X SHTG	16d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	16" O.C.	SDWS 0.220"x6" @ 6" O.C.	5/8"ø A.B. @ 16" O.C.	665
3	15/32 STRUCT.1 CD-X SHTG	16d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C.	SDWS 0.220"x6" @ 6" O.C.	5/8"ø A.B. @ 16" O.C.	870
6B	15/32 STRUCT.1 CD-X SHTG EA. SIDE	16d	6"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C. EA. FACE	(2)HDU4 SDWS 0.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 16" O.C.	1020
3B	15/32 STRUCT.1 CD-X SHTG EA. SIDE	16d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	16" O.C. EA. FACE	(2)HDU4 SDWS 0.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1330
2B	15/32 STRUCT.1 CD-X SHTG EA. SIDE	16d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C. EA. FACE	(2)HDU5 SDWS 0.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1748

SHEARWALL SCHEDULE NOTES:

1. SEE SHEET S111 FOR TYPICAL SHEAR WALL ASSEMBLY.
2. WHERE SHEATHING IS APPLIED TO BOTH FACES OF THE WALL, OFFSET VERTICAL PANEL JOINTS TO FALL ON DIFFERENT FRAMING MEMBERS.
3. STUDS - ALL VERTICAL FRAMING (STUDS) AT PANEL EDGES SHALL BE 3x OR 2-2x, U.O.O. NAILS SHALL BE STAGGERED WHERE THE SPACING IS 3" ON CENTER OR LESS.
4. NAILING - ALL SHEARWALL NAILING SHALL BE COMMON NAILS OR NAILS SHALL BE PLACED NOT LESS THAN 1/2" FROM PANEL EDGE.
5. HOLD DOWNS - SEE PLAN FOR HOLD-DOWNS AT WALL ENDS. HOLD-DOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.
6. SILL BOLTS - SEE "SILL BOLTING REQUIREMENTS NOTE" SECTION OF THE GENERAL NOTES AND TYPICAL SILL BOLTING DETAIL (8/S111). AT SINGLE 2x SILL, THE A.B. AND WASHER MAY NOT BE COUNTERSUNK. AT 2x SILL, ACCEPTABLE TO COUNTERSINK, 3/4" MAX.
7. SDWS SCREWS - AT RIM BOARD/BLK'G, CENTER SCREW ON RIM BOARD/BLK'G AND VERIFY 2" MINIMUM SDSW PENETRATION. AT STEEL BEAM, USE SDWS SCREW WITH MIN 1 1/2" PENETRATION INTO WOOD NAILER. DO NOT USE SDS SCREWS.
8. EXISTING FOUNDATIONS - SILL ANCHORS SHALL BE 5/8"ø TITEN HD SCREW ANCHORS WITH A MINIMUM EMBEDMENT OF 5". SPACING TO MATCH A.B. SPACING PER SCHEDULE.
9. SHEAR CLIPS - USE 12-8d 1-1/2" COMMON NAILS OR GALVANIZED BOX NAILS FOR A35 AND LPT4 CONN.

FOUNDATION NOTES:

1. FOR GENERAL NOTES, SEE S002 SERIES SHEETS. FOR TYPICAL DETAILS, SEE S100 SERIES SHEETS. GENERAL NOTES & TYPICAL DETAILS APPLY TO ALL PARTS OF THE WORK EXCEPT WHERE SPECIFICALLY DETAILED OR U.N.O.
2. FOR CONCRETE FOOTING DETAILS, SEE SHEET S111
3. VERIFY ALL DIMENSIONS, ELEVATIONS, SLAB EDGES, SLAB DEPRESSIONS, SLAB OPENINGS, CURBS, FOOTING, PENETRATIONS, WALL OPENINGS, MECHANICAL PAD & EQUIPMENT HEIGHTS WITH ARCHITECTURAL, MECHANICAL, PLUMBING, ELECTRICAL & CIVIL DRAWINGS.
4. FOR GRID LINE DIMENSIONS, SEE ARCHITECTURAL DRAWINGS.
5. PRIOR TO REQUESTING A BUILDING DEPARTMENT FOUNDATION INSPECTION, THE SOILS ENGINEER/GEOTECHNICAL CONSULTANT SHALL INSPECT AND APPROVE THE FOUNDATION EXCAVATION.
6. ALL (N) FOUNDATIONS SHALL BEARING ON BEDROCK AND BE A MINIMUM DEPTH OF 24" BELOW LOWEST ADJACENT GRADE.
7. (E) PAD FOOTINGS MUST BE CONFIRMED BY CONTRACTOR TO BE BEARING IN BEDROCK.

DETAIL REFERENCES:

THESE SELECTED DETAIL REFERENCES ARE PROVIDED FOR CONTRACTOR CLARITY. THE CONTRACTOR IS RESPONSIBLE FOR REVIEWING GENERAL NOTES AND ALL TYPICAL AND SPECIFIC DETAILS FOR RELATION TO DRAWINGS

1. FOR NEW TO EXISTING CONCRETE FOOTING DETAILS, SEE DETAIL 3/S101
2. FOR TYPICAL TOP PLATE SPLICE DETAIL, SEE DETAIL 4/S110
3. FOR TYPICAL WOOD FRAMING AND CONNECTION DETAILS SEE 6/S110
4. FOR TYPICAL WOOD WALL DETAILS, SEE S111
5. FOR TYPICAL WOOD HOLDDOWN DETAILS SEE S112
6. FOR TYPICAL WOOD PENETRATION DETAILS SEE S114
7. FOR TYPICAL WOOD DIAPHGRAM DETAILS SEE S113
8. FOR TYPICAL 4X6 POST DETAIL SEE 2/S110

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No	Revision Description	Date
1	ISSUED FOR PERMIT	08/08/25

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
FIRST FLOOR FOUNDATION PLAN

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

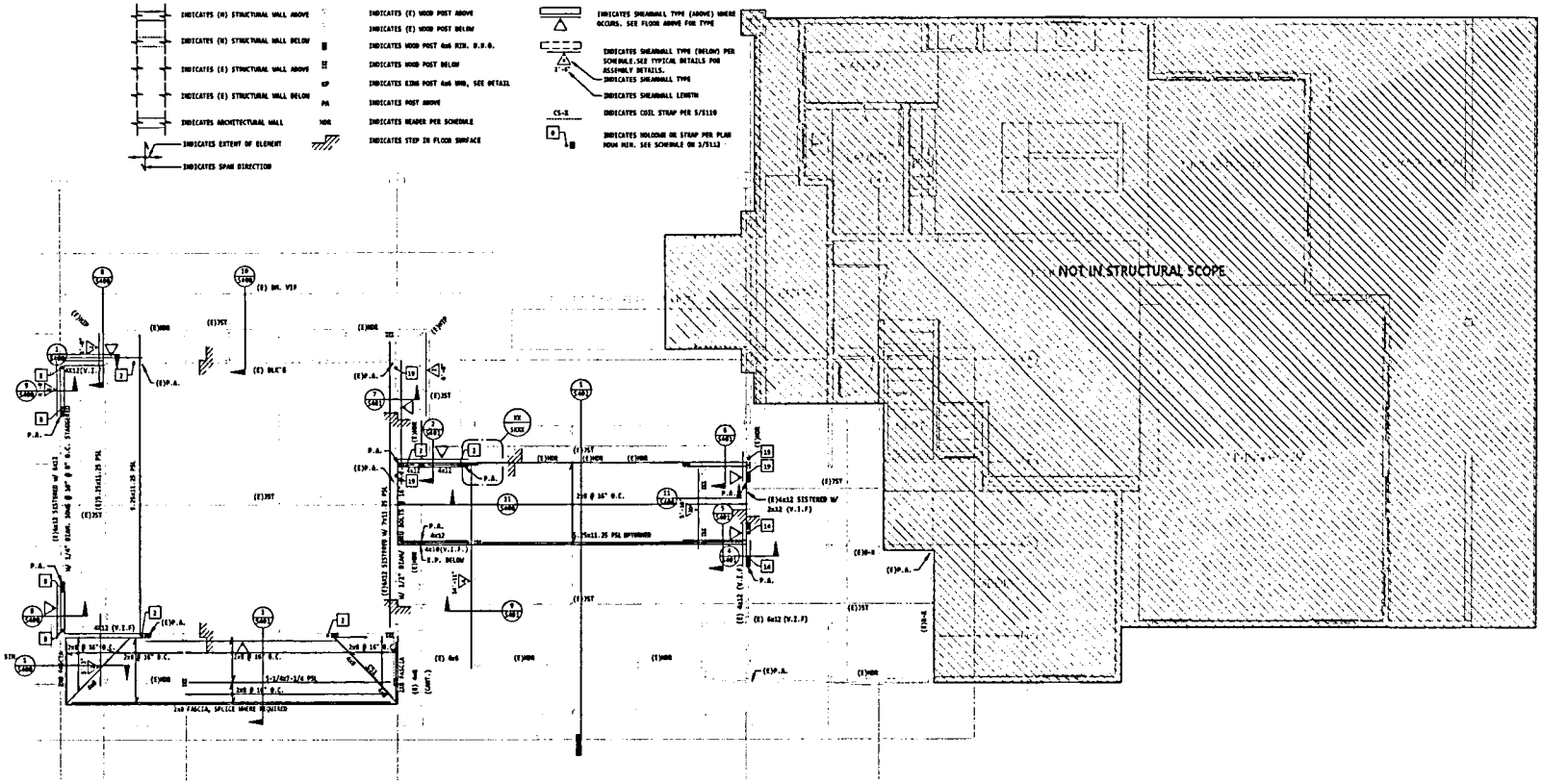
SHEET NUMBER
S201

LEGEND AND SYMBOLS:

INDICATES (N) STRUCTURAL WALL ABOVE
INDICATES (N) STRUCTURAL WALL BELOW
INDICATES (E) STRUCTURAL WALL ABOVE
INDICATES (E) STRUCTURAL WALL BELOW
INDICATES ARCHITECTURAL WALL
INDICATES EXTENT OF ELEMENT
INDICATES SPAN DIRECTION

INDICATES (N) WOOD POST ABOVE
INDICATES (E) WOOD POST BELOW
INDICATES WOOD POST 6x6 MIN. U.N.O.
INDICATES WOOD POST BELOW
INDICATES KING POST 6x6 UNO, SEE DETAIL
INDICATES POST ABOVE
INDICATES HEADER PER SCHEDULE
INDICATES STEP IN FLOOR SURFACE

INDICATES SHEARWALL TYPE (ABOVE) WHERE OCCURS. SEE FLOOR ABOVE FOR TYPE
INDICATES SHEARWALL TYPE (BELOW) PER SCHEDULE.SEE TYPICAL DETAILS FOR ASSEMBLY DETAILS.
INDICATES SHEARWALL TYPE
INDICATES SHEARWALL LENGTH
INDICATES COIL STRAP PER S/S110
INDICATES HOLDOWN OR STRAP PER PLAN NOTE MIN. SEE SCHEDULE ON S/S113



1 S202 SECOND FLOOR FRAMING PLAN
1/4" = 1'-0"

PROJECT NORTH

SHEARWALL SCHEDULE

MARK	SHEATHING	NAIL SIZE	EDGE NAIL SPACING	FIELD NAIL SPACING	SILL PL	FRAMING MEMBER @ VERT. EDGE NAILING	A35 OR LPT4 SHEAR CLIPS	SILL TO WOOD CONNECTION	SILL TO CONC. CONNECTION	ALLOWABLE SHEAR (PLF)
6	15/32 STRUCT.1 CD-X 5M16	10d	4"	12"	2X	2X	16" O.C.	SDWS 0.230"x6" @ 12" O.C.	5/8"ø A.B. @ 32" O.C.	340
4	15/32 STRUCT.1 CD-X 5M16	10d	4"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C.	SDWS 0.230"x6" @ 9" O.C.	5/8"ø A.B. @ 24" O.C.	510
3	15/32 STRUCT.1 CD-X 5M16	10d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	10" O.C.	SDWS 0.230"x6" @ 6" O.C.	5/8"ø A.B. @ 16" O.C.	665
2	15/32 STRUCT.1 CD-X 5M16	10d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C.	SDWS 0.230"x6" @ 6" O.C.	5/8"ø A.B. @ 16" O.C.	870
4D	15/32 STRUCT.1 CD-X 5M16 EA. SIDE	10d	4"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C. EA. FACE	(2)ROWS SDWS 0.230"x6" @8" O.C. w/ ORL RIM BOARD/BLK'G	5/8"ø A.B. @ 16" O.C.	1020
3D	15/32 STRUCT.1 CD-X 5M16 EA. SIDE	10d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	10" O.C. EA. FACE	(2)ROWS SDWS 0.230"x6" @6" O.C. w/ ORL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1330
2D	15/32 STRUCT.1 CD-X 5M16 EA. SIDE	10d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C. EA. FACE	(2)ROWS SDWS 0.230"x6" @6" O.C. w/ ORL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1740

DETAIL REFERENCES:

THESE SELECTED DETAIL REFERENCES ARE PROVIDED FOR CONTRACTOR CLARITY. THE CONTRACTOR IS REPONSIBLE FOR REVIEWING GENERAL NOTES AND ALL TYPICAL AND SPECIFIC DETAILS FOR RELATION TO DRAWINGS

1. FOR NEW TO EXISTING CONCRETE FOOTING DETAILS, SEE DETAIL 3/S101
2. FOR TYPICAL TOP PLATE SPLICE DETAIL, SEE DETAIL 4/S110
3. FOR TYPICAL WOOD FRAMING AND CONNECTION DETAILS SEE 6/S110
4. FOR TYPICAL WOOD WALL DETAILS, SEE S111
5. FOR TYPICAL WOOD HOLDOWN DETAILS SEE S112
6. FOR TYPICAL WOOD PENETRATION DETAILS SEE S130
7. FOR TYPICAL WOOD DIAPHRAGM DETAILS SEE S113
8. FOR TYPICAL KING POST DETAIL SEE 2/S130

SHEARWALL SCHEDULE NOTES:

1. SEE SHEET S111 FOR TYPICAL SHEAR WALL ASSEMBLY.
2. WHERE SHEATHING IS APPLIED TO BOTH FACES OF THE WALL, OFFSET VERTICAL PANEL JOINTS TO FALL ON DIFFERENT FRAMING MEMBERS.
3. STUDS - ALL VERTICAL FRAMING (STUDS) AT PANEL EDGES SHALL BE 3x OR 3-2x, U.N.O. NAILS SHALL BE STAGGERED WHERE THE SPACING IS 3" ON CENTER OR LESS.
4. NAILING - ALL SHEARWALL NAILING SHALL BE COMMON NAILS OR NAILS SHALL BE PLACED NOT LESS THAN 1/2" FROM PANEL EDGE.
5. HOLD DOWNS - SEE PLAN FOR HOLD-DOWNS AT WALL ENDS. HOLD-DOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.
6. SILL BOLTS - SEE "SILL BOLTING REQUIREMENTS NOTE" SECTION OF THE GENERAL NOTES AND TYPICAL SILL BOLTING DETAIL (S/S111). AT SINGLE 2x SILL, THE A.B. AND WASHER MAY NOT BE COUNTERSUNK. AT 3x SILL, ACCEPTABLE TO COUNTERSINK, 3/4" MAX.
7. SDSW SCREWS - AT RIM BOARD/BLK'G, CENTER SCREW ON RIM BOARD/BLK'G AND VERIFY 2" MINIMUM SDSW PENETRATION. AT STEEL BEAM, USE SDWS SCREW WITH MIN 1 1/2" PENETRATION INTO WOOD NAILER. DO NOT USE SDS SCREWS.
8. EXISTING FOUNDATIONS - SILL ANCHORS SHALL BE 5/8"Ø TITEN HD SCREW ANCHORS WITH A MINIMUM EMBEDMENT OF 3". SPACING TO MATCH A.B. SPACING PER SCHEDULE.
9. SHEAR CLIPS - USE 12-8dx 1-1/2" COMMON NAILS OR GALVANIZED BOX NAILS FOR A35 AND LPT4 CONN.

FRAMING NOTES:

1. FOR GENERAL NOTES AND TYPICAL DETAILS SEE SHEETS S002 & S100 SERIES. GENERAL NOTES & TYPICAL DETAILS APPLY TO ALL PARTS OF THE WORK EXCEPT WHERE SPECIFICALLY DETAILED OR U.N.O.
2. VERIFY ALL DIMENSIONS, ELEVATIONS, SLAB DEPRESSIONS, SLAB OPENINGS, CHASES, FOOTING, PENETRATIONS, WALL OPENINGS WITH ARCHITECTURAL, MECHANICAL, PLUMBING, ELECTRICAL & CIVIL DRAWINGS.
3. FOR ALL DIMENSIONS & ROOF SLOPES SEE ARCHITECTURAL DRAWINGS.
4. U.N.O. MINIMUM POST SIZE SHALL BE 4X DEPTH OF WALL.
5. FOR MINIMUM POST SIZE AT ENDS OF SHEAR WALLS, REFER TO HOLDOWN & TIEDOWN SCHEDULES ON TYPICAL DETAILS.
6. ALL HOLDOWNS SHALL BE TIGHTENED JUST PRIOR TO COVERING WALL. PLATE WASHERS ARE REQUIRED FOR ALL HOLDOWNS.
7. ALL BOLTS IN WOOD SHALL BE A-307 STANDARD BOLTS. HOLES SHALL NOT BE MORE THAN 1/16" LARGER THAN THE BOLT DIAMETER. PROVIDE PLATE WASHERS AT ALL BOLTS. INSPECTOR TO VERIFY.
8. (N) EXTERIOR WALLS OTHER THAN SHEAR WALLS SHALL BE 1/2" EXP. 1 APA RATED OSB COVERING SPACED @ 6" O.C. ALONG ALL PANEL EDGES (T.N.) AND 12" O.C. ALONG INTERMEDIATE SUPPORTS (FIELD) (F.N.)
9. SIMPSON A35 CLIP SHALL BE PROVIDED BETWEEN RIM JOIST OR BLK'G TO DOUBLE TOP PLATE PER THE SHEAR WALL SCHEDULE WHERE OCCURS OR PROVIDE A35 CLIPS @ 16" O.C. @ ALL OTHER (N) WALLS TYP.
10. ALL WOOD EXPOSED TO WEATHER TO BE TREATED WOOD, REDWOOD OR OTHER SPECIES ANNUALLY RESISTANT TO DECAY AND JOIST HANGERS, STRAPS, TIES, ETC. SHALL BE GALVANIZED (G185 COATING). FASTENERS SHALL BE STAINLESS STEEL OR APPROVED EQUAL.
11. EXTERIOR WALL FRAMING: 2x6 STUDS @ 16" O.C. U.N.O. MIN. U.N.O.
12. INTERIOR WALL FRAMING PER ARCHITECTURAL DRAWINGS: 2x4 AND 2x6 WALLS SHALL HAVE STUDS SPACED @ 16" O.C. INTERIOR NON-STRUCTURAL WALL SHALL BE CONNECTED TO FRAMING ABV. PER TYP. DETAIL.
13. SIZE AND LOCATION OF ALL MECHANICAL EQUIPMENT TO BE REVIEWED AND APPROVED BY THE STRUCTURAL ENGINEER PRIOR TO PLACEMENT.
14. REPLACE ANY EXISTING DAMAGED WOOD MEMBERS WITH THE SAME SIZE MEMBER AS THE EXISTING MEMBER SIZE.
15. PROVIDE FLOOR PATCHING FOR (N) BMS, W/ 5/4" PLYWOOD WITH NAILING TYPE 6 PER 1/S113.

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No	Revision Description	Date

No	Issue Description	Date
1	PLANCHECK	10/2/24

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
SECOND FLOOR FRAMING PLAN

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

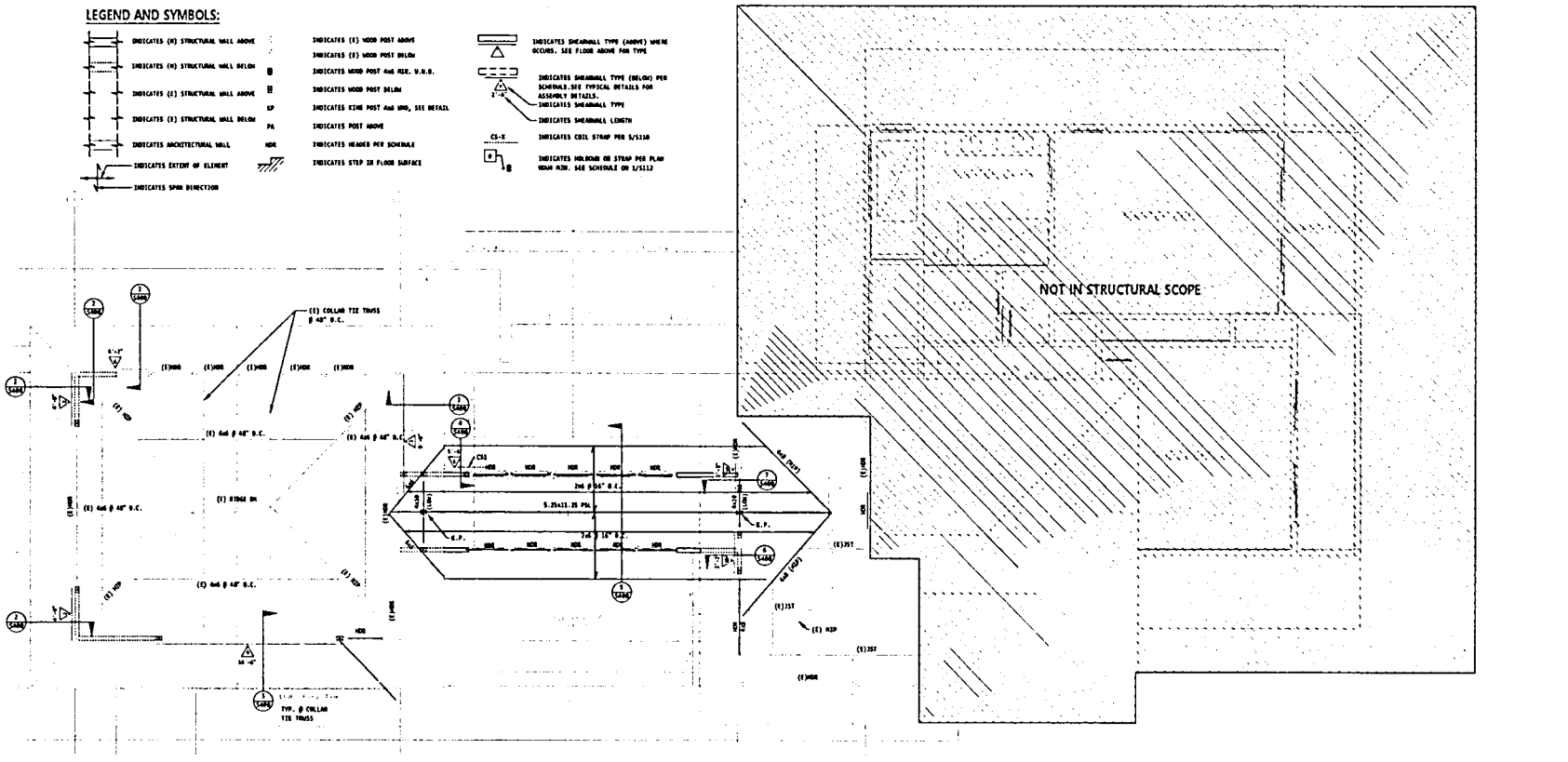
SHEET NUMBER
S202

LEGEND AND SYMBOLS:

INDICATES (N) STRUCTURAL WALL ABOVE
INDICATES (N) STRUCTURAL WALL BELOW
INDICATES (E) STRUCTURAL WALL ABOVE
INDICATES (E) STRUCTURAL WALL BELOW
INDICATES ARCHITECTURAL WALL
INDICATES EXTENT OF ELEMENT
INDICATES SPAN DIRECTION

INDICATES (E) WOOD POST ABOVE
INDICATES (E) WOOD POST BELOW
INDICATES WOOD POST 4x6 MIN. U.N.O.
INDICATES WOOD POST BELOW
INDICATES KING POST 4x6 UNO, SEE DETAIL
INDICATES POST ABOVE
INDICATES HEADER PER SCHEDULE
INDICATES STEP IN FLOOR SURFACE

INDICATES SHEARWALL TYPE (ABOVE) WHERE OCCURS. SEE FLOOR ABOVE FOR TYPE
INDICATES SHEARWALL TYPE (BELOW) PER SCHEDULE.SEE TYPICAL DETAILS FOR ASSEMBLY DETAILS.
INDICATES SHEARWALL TYPE
INDICATES SHEARWALL LENGTH
INDICATES COIL STRAP PER S/S130
INDICATES HOLDOWN OR STRAP PER PLAN WHERE NOTED. SEE SCHEDULE ON S/S112



1 S301 ROOF FRAMING PLAN
1/4" = 1'-0"

PROJECT NORTH

DETAIL REFERENCES:

THESE SELECTED DETAIL REFERENCES ARE PROVIDED FOR CONTRACTOR CLARITY. THE CONTRACTOR IS RESPONSIBLE FOR REVIEWING GENERAL NOTES AND ALL TYPICAL AND SPECIFIC DETAILS FOR RELATION TO DRAWINGS

1. FOR NEW TO EXISTING CONCRETE FOOTING DETAILS, SEE DETAIL 3/S101
2. FOR TYPICAL TOP PLATE SPLICE DETAIL, SEE DETAIL 6/S110
3. FOR TYPICAL WOOD FRAMING AND CONNECTION DETAILS SEE 8/S130
4. FOR TYPICAL WOOD WALL DETAILS, SEE S113
5. FOR TYPICAL WOOD HOLDOWN DETAILS SEE S112
6. FOR TYPICAL WOOD PENETRATION DETAILS SEE S114
7. FOR TYPICAL WOOD DIAPHRAM DETAILS SEE S113
8. FOR TYPICAL KING POST DETAIL SEE 2/S130

SHEARWALL SCHEDULE NOTES:

1. SEE SHEET S111 FOR TYPICAL SHEAR WALL ASSEMBLY.
2. WHERE SHEATHING IS APPLIED TO BOTH FACES OF THE WALL, OFFSET VERTICAL PANEL JOINTS TO FALL ON DIFFERENT FRAMING MEMBERS.
3. STUDS - ALL VERTICAL FRAMING (STUDS) AT PANEL EDGES SHALL BE 3x OR 2-2x, U.N.O. NAILS SHALL BE STAGGERED WHERE THE SPACING IS 3" OR CENTER OR LESS.
4. NAILING - ALL SHEARWALL NAILING SHALL BE COMMON NAILS OR NAILS SHALL BE PLACED NOT LESS THAN 1/2" FROM PANEL EDGE.
5. HOLD DOWNS - SEE PLAN FOR HOLD-DOWNS AT WALL ENDS. HOLD-DOWN HARDWARE MUST BE SECURED IN PLACE PRIOR TO FOUNDATION INSPECTION.
6. SILL BOLTS - SEE "SILL BOLTING REQUIREMENTS NOTE" SECTION OF THE GENERAL NOTES AND TYPICAL SILL BOLTING DETAIL (8/S1111). AT SINGLE 2x SILL, THE A.B. AND WASHER MAY NOT BE COUNTERSUNK. AT 3x SILL, ACCEPTABLE TO COUNTERSIN, 3/4" MAX.
7. SDSH SCREWS - AT RIM BOARD/BLK'G, CENTER SCREW ON RIM BOARD/BLK'G AND VERIFY 3" MINIMUM SDSH PENETRATION. AT STEEL BEAM, USE SDWS SCREW WITH MIN 1 1/2" PENETRATION INTO WOOD NAILER. DO NOT USE SDS SCREWS.
8. EXISTING FOUNDATIONS - SILL ANCHORS SHALL BE 5/8"Ø TITEN HD SCREW ANCHORS WITH A MINIMUM EMBEDMENT OF 5". SPACING TO MATCH A.B. SPACING PER SCHEDULE.
9. SHEAR CLIPS - USE 12-8dx 3-1/2" COMMON NAILS OR GALVANIZED 8DX NAILS FOR A35 AND LPT4 CONN.

SHEARWALL SCHEDULE

MARK	SHEATING	NAIL SIZE	EDGE NAIL SPACING	FIELD NAIL SPACING	SILL PL	FRAMING MEMBER @ VERT. EDGE NAILING	A35 OR LPT4 SHEAR CLIPS	SILL TO WOOD CONNECTION	SILL TO CONC. CONNECTION	ALLOWABLE SHEAR (PLF)
6	15/32 STRUCT.1 CD-X 5#TG	10d	6"	12"	2X	2X	16" O.C.	SDWS Ø.220"x6" @ 12" O.C.	5/8"ø A.B. @ 32" O.C.	340
4	15/32 STRUCT.1 CD-X 5#TG	10d	4"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C.	SDWS Ø.220"x6" @ 9" O.C.	5/8"ø A.B. @ 24" O.C.	510
3	15/32 STRUCT.1 CD-X 5#TG	10d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	10" O.C.	SDWS Ø.220"x6" @ 6" O.C.	5/8"ø A.B. @ 16" O.C.	665
2	15/32 STRUCT.1 CD-X 5#TG	10d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C.	SDWS Ø.220"x6" @ 4" O.C.	5/8"ø A.B. @ 16" O.C.	870
4D	15/32 STRUCT.1 CD-X 5#TG EA. SIDE	10d	4"	12"	3X OR 2-2X	3X OR 2-2X	12" O.C. EA. FACE	(2)ROWS SDWS Ø.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 16" O.C.	1020
3D	15/32 STRUCT.1 CD-X 5#TG EA. SIDE	10d	3" STGR	12"	3X OR 2-2X	3X OR 2-2X	10" O.C. EA. FACE	(2)ROWS SDWS Ø.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1330
2D	15/32 STRUCT.1 CD-X 5#TG EA. SIDE	10d	2" STGR	12"	3X OR 2-2X	3X OR 2-2X	8" O.C. EA. FACE	(2)ROWS SDWS Ø.220"x6" @6" O.C. w/ DBL RIM BOARD/BLK'G	5/8"ø A.B. @ 8" O.C.	1740

FRAMING NOTES:

1. FOR GENERAL NOTES AND TYPICAL DETAILS SEE SHEETS S001 & S100 SERIES. GENERAL NOTES & TYPICAL DETAILS APPLY TO ALL PARTS OF THE HOME EXCEPT WHERE SPECIFICALLY DETAILED OR U.N.O.
2. VERIFY ALL DIMENSIONS, ELEVATIONS, SLAB DEPRESSIONS, SLAB OPENINGS, CURBS, FOOTING, PENETRATIONS, WALL OPENINGS WITH ARCHITECTURAL, MECHANICAL, PLUMBING, ELECTRICAL & CIVIL DRAWINGS.
3. FOR ALL DIMENSIONS & ROOF SLOPES SEE ARCHITECTURAL DRAWINGS.
4. V.I.F. MINIMUM POST SIZE SHALL BE AS DEPTH OF WALL.
5. FOR MINIMUM POST SIZE AT ENDS OF SHEAR WALLS, REFER TO HOLDOWN & TIEDOWN SCHEDULES ON TYPICAL DETAILS.
6. ALL HOLDOWNS SHALL BE TIGHTENED JUST PRIOR TO COVERING WALL. PLATE WASHERS ARE REQUIRED FOR ALL HOLDOWNS.
7. ALL BOLTS IN WOOD SHALL BE A-307 STANDARD BOLTS. HOLES SHALL NOT BE MORE THAN 1/16" LARGER THAN THE BOLT DIAMETER. PROVIDE PLATE WASHERS AT ALL BOLTS. INSPECTOR TO VERIFY.
8. (N) EXTERIOR WALLS OTHER THAN SHEAR WALLS SHALL BE 1/2" EXP. 1 APA RATED 8#8 COMMON SPACED @ 6" O.C. ALONG ALL PANEL EDGES (E.N.) AND 12" O.C. ALONG INTERMEDIATE SUPPORTS (FIELD) (F.N.)
9. SIMPSON A35 CLIP SHALL BE PROVIDED BETWEEN RIM JOIST OR BLK'G TO DOUBLE TOP PLATE PER THE SHEAR WALL SCHEDULE WHERE OCCURS OR PROVIDE A35 CLIPS @ 16" O.C. @ ALL OTHER (N) WALLS TYP.
10. ALL WOOD EXPOSED TO WEATHER TO BE TREATED WOOD, REDWOOD OR OTHER SPECIES NATURALLY RESISTANT TO DECAY AND JOIST HANGERS, STRAPS, TIES, ETC. SHALL BE GALVANIZED (G185 COATING). FASTENERS SHALL BE STAINLESS STEEL OR APPROVED EQUAL.
11. EXTERIOR WALL FRAMING: 2x6 STUDS @ 16" O.C. U.N.O. MIN. U.N.O.
12. INTERIOR WALL FRAMING PER ARCHITECTURAL DRAWINGS: 2x4 AND 2x6 WALLS SHALL HAVE STUDS SPACED @ 16" O.C. INTERIOR NON-STRUCTURAL WALL SHALL BE CONNECTED TO FRAMING ABV. PER TYP. DETAIL.
13. SIZE AND LOCATION OF ALL MECHANICAL EQUIPMENT TO BE REVIEWED AND APPROVED BY THE STRUCTURAL ENGINEER PRIOR TO PLACEMENT.
14. REPLACE ANY EXISTING DAMAGED WOOD MEMBERS WITH THE SAME SIZE MEMBER AS THE EXISTING MEMBER SIZE.
15. PROVIDE FLOOR PATCHING FOR (N) BMS, W/ 3/4" PLYWOOD WITH NAILING TYPE 6 PER 1/S113.

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No	Issue Description	Date
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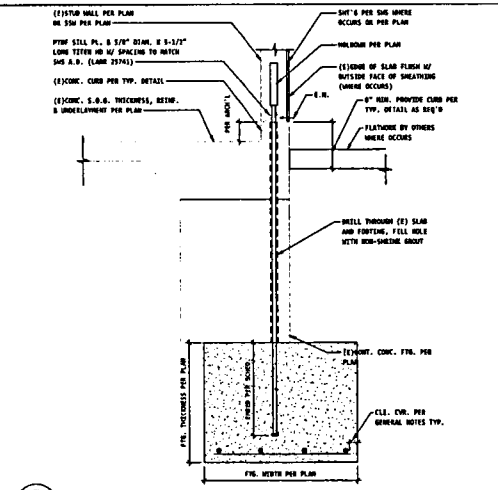
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
ROOF FRAMING PLAN

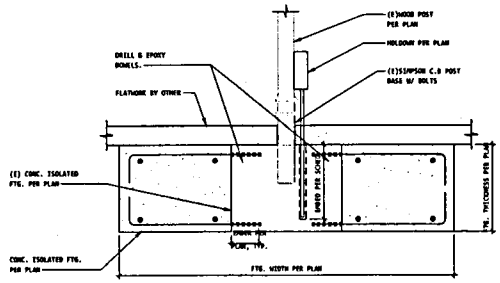
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PROJECT NUMBER
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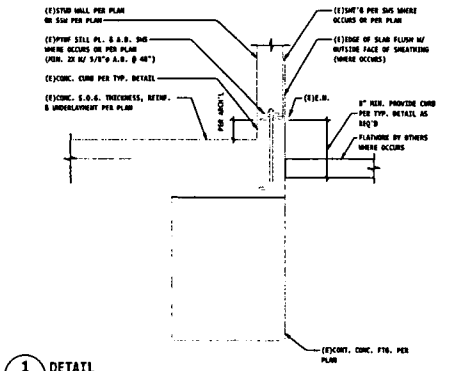
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S203



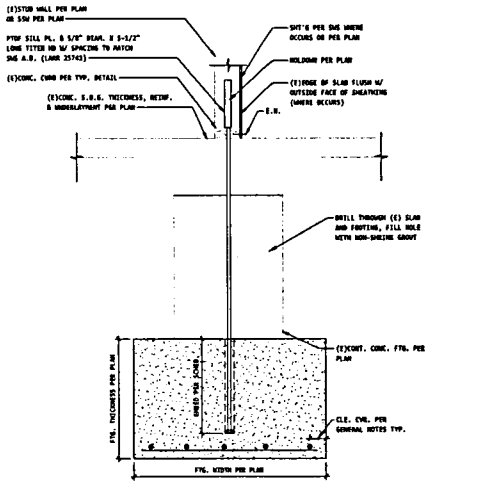
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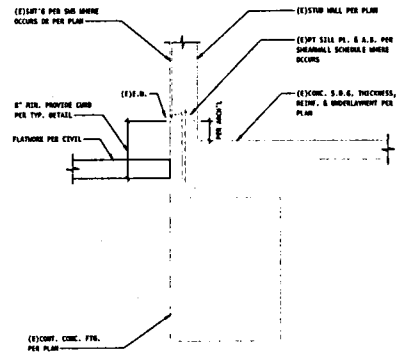
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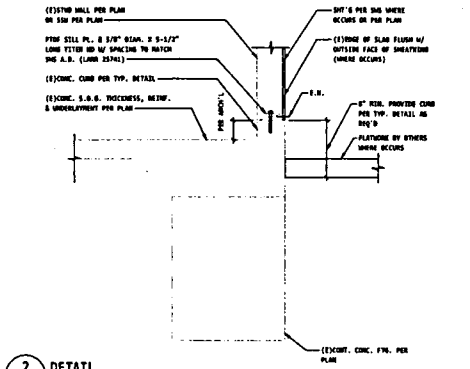
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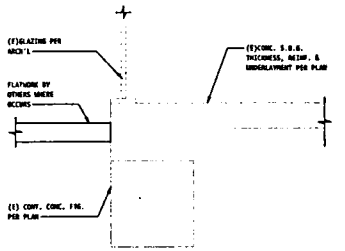
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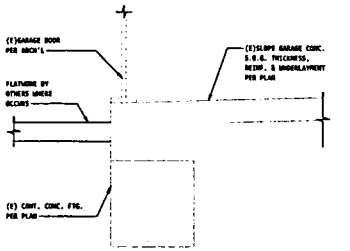
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2 DETAIL
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6 DETAIL
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3 DETAIL
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1	4/4/2022 PLANCHECK	4-4-22

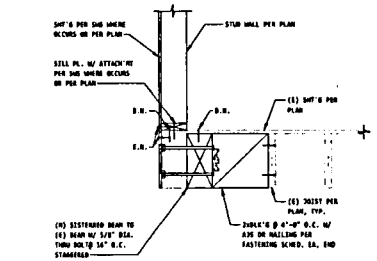
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

SHEET TITLE
DETAILS

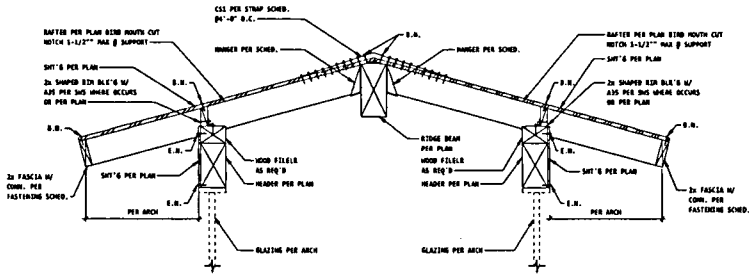
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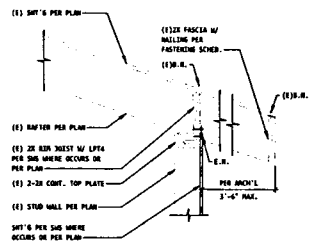
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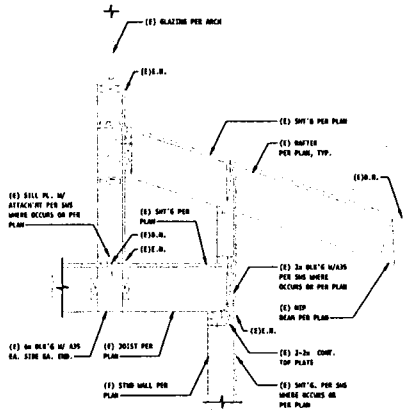
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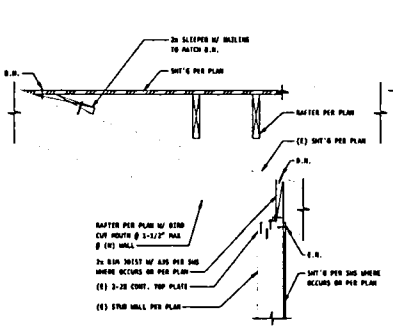
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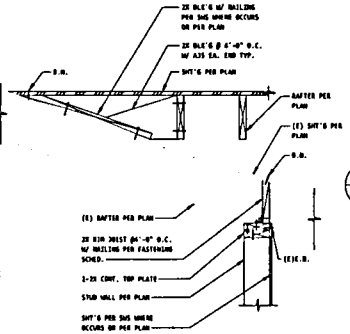
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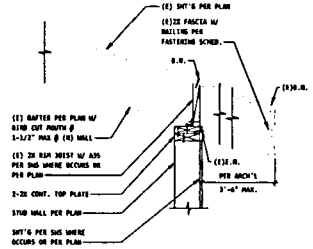
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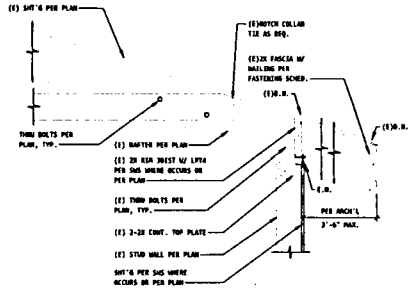
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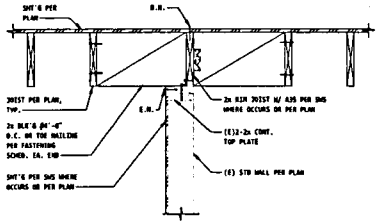
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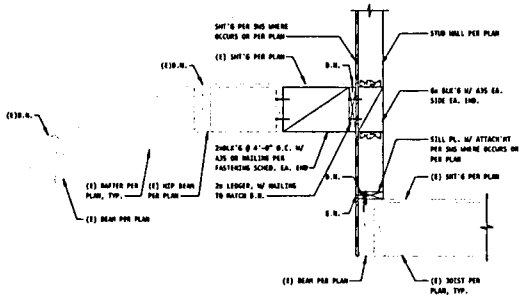
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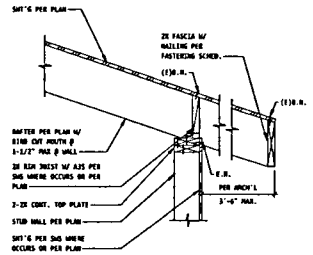
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11 DETAIL
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8 DETAIL
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4 DETAIL
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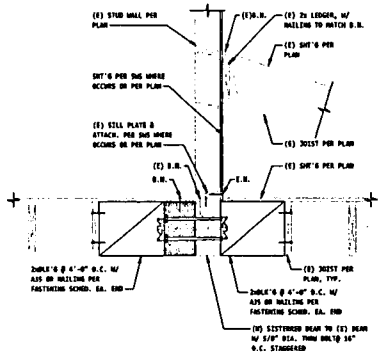
PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI HI 96714

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DETAILS

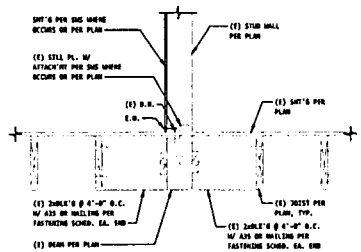
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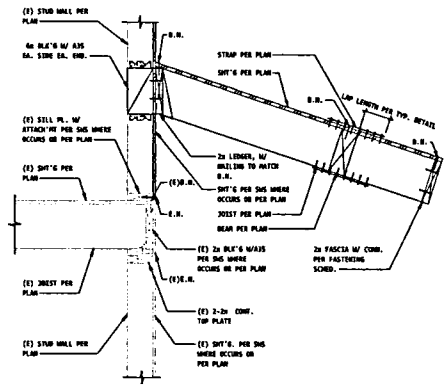
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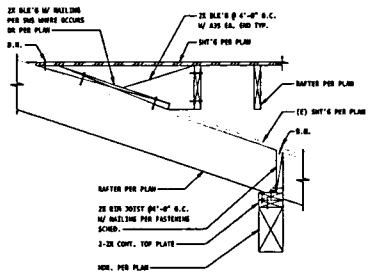
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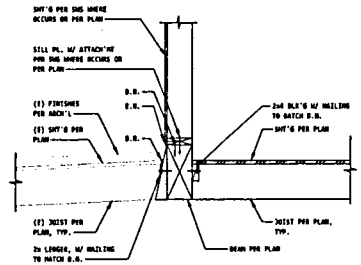
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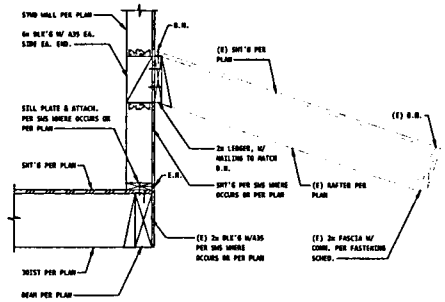
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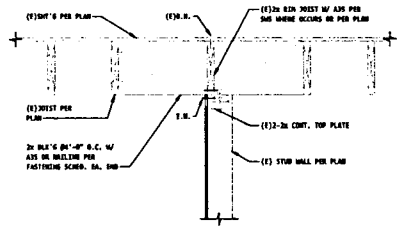
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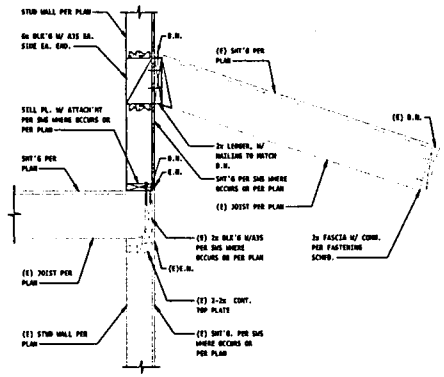
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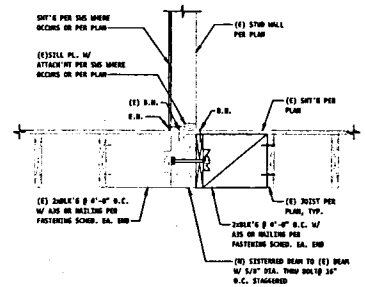
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9 DETAIL
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6 DETAIL
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3 DETAIL
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No	Revision Description	Date
1	PLANCHECK #1	10-2-25

No	Issue Description	Date
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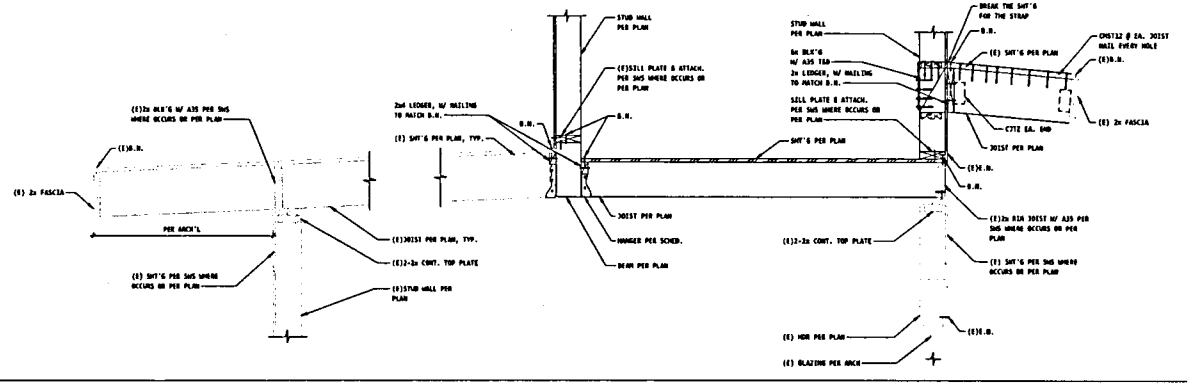
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SHEET TITLE
DETAILS

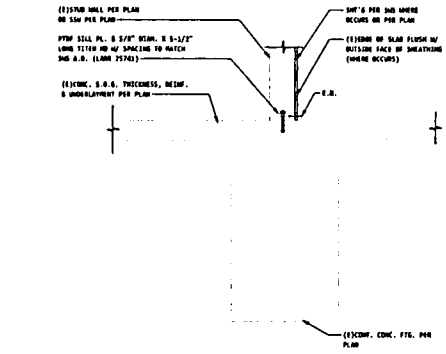
ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S401



1 DETAIL
S402 1" = 1'-0"



2 S/402
S402 1" = 1'-0"

NOT FOR CONSTRUCTION

NOT FOR CONSTRUCTION

NOT FOR CONSTRUCTION

KURT FISCHER STRUCTURAL ENGINEERING
17547 VENTURA BLVD, STE 302
ENCINO CA 91316
OFFICE: (818) 874-1445
www.kfseng.com
dw@kfseng.com

No	Issue Description	Date
1	PLANCHECK	6-2-2

No	Revision Description	Date

PROJECT NAME
NW - 5418 WEKE RD
5418 WEKE RD, HANALEI, HI 96714

SHEET TITLE
DETAILS

ARCHITECT
NOHO WORKSHOP

PROJECT NUMBER
22011

SHEET NUMBER
S402

-82:1547Ã.7;36893Ã0-)Ã#*%*%.+%Ã"/#(Ã#*!,Ã'-$,(./+&

April __, 2022

TO WHOM IT MAY CONCERN:

My name is Kanoa Chung. I am a Hawai'i licensed professional architect, license no. AR-18731. I am the founder and sole member of Noho Workshop LLC, a Hawaii-Pacific based architecture and design studio. I prepared the architectural plans for the renovation of the structures located at 5418 Weke Rd. Hanalei, Kauai, Hawai'i, issue date March 31, 2022 (the "Plans"). I have extensive experience with designing, and pricing residential and public use buildings on Kaua'i. According to my professional training and expertise and my knowledge of the current rates of contractors on the North Shore of Kaua'i, I estimate that the cost of the work described in the Plans is $238,000.00, which is based on a cost estimate of $350.00/sf.

Kanoa Chung,

DocuSigned by:
Kanoa Chung
082C757050594B2...

EXHIBIT E

DEPARTMENT OF PLANNING | COUNTY OF KAUA'I

DEPARTMENTAL DETERMINATION REQUEST FORM

Fill out and e-mail this form plus supporting documentation in Adobe PDF format to: planningdepartment@kauai.gov

FOR DEPARTMENTAL USE ONLY

DD# 2022 - 42

INTAKE BY RI DATE 5/16/22

PAU 7/20/22 BY RI

TMK NUMBER:	(4) 5-5-004:013
NAME OF OWNER*:	Concora Cliffs LC
PHYSICAL ADDRESS OF PROPERTY:	5418 A Weke Rd. Hanalei, Kauai, Hawaii
CONTACT PHONE:	(808) 521-9297
CONTACT E-MAIL:	mtrask@cades.com

TYPE OF DETERMINATION REQUESTED (Please Check Applicable):

- ◯ A. Clarification or interpretation of enforcement relating existing permitting conditions imposed either by the Planning Director or Planning Commission
- ◯ B. Confirmation of Additional Dwelling Unit availability on a parcel
- ◯ C. Voluntary Cancellation or Withdrawal of Permits and Permit Applications
- ◯ D. Confirmation of Non-conformities or Pre-CZO status for a parcel
- ◯ E. Confirmation or Clarification of previous Director or Departmental Determinations
- ◯ F. Boundary interpretation
- ◯ G. Confirmation of any open violations on the property
- ◉ H. Applicability of Special Management Area "Development" definition to a proposed use
- ◉ I. Applicability of zoning review/permitting for a proposed use or structure

* I am the legal title holder to the property and have 100% or more legal or equitable interest in the parcel of record, have written authorization to act as an agent for the property owner with 100% or more legal or equitable interest in the parcel of record or am leasing the property (please attach proper authorization documents). By signing below I understand a determination is only a regulatory interpretation by a government official which could be subject to appeal or challenge. I further understand a determination does not necessarily bind the County to specifically perform in such a manner if relied upon by the applicant in the course of its development or construction activities. **I further understand that reliance on a determination is at my own risk and recognize I must rely on my own due diligence.**

The Department reserves discretion to not respond to a request in writing.

MAUNA KEA TRASK — May 16, 2022

Print Name and Signature — DATE

EXHIBIT F

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

July 28, 2022

CADES SCHUTTE
MAUNA KEA TRASK
Contact email: mtrask@cades.com

RE: **Departmental Determination DD-2022-42**
Applicability of Special Management Area "Development" definition to a proposed use, and
Applicability of zoning review/permitting for a proposed use or structure
TMK: (4)5-5-004:013
Hanalei, Kaua'i
Concora Cliffs LLC

The Planning Department has received and reviewed your request for a Departmental Determination regarding the subject parcel, as reflected in your submittal dated May 16, 2022. Please note the following:

As represented, the applicant is proposing to 1) demolish and remove structures that are attached to the garage/guest house building, 2) provide a connection between the second floor of the single-family residence and the guest house unit, and 3) make interior alterations at the second floor of the existing structures. More specifically, the applicant will be:

- removing the staircase and lanai attached to the garage/guest house building;
- connecting the southeastern portion of the second floor of the single-family residence to the guest house unit via a second-floor hallway bridge, (thus extinguishing the separate guest house unit); and
- renovating the interior of the guest house and the single-family residence.

The primary purpose of the Project is to extinguish the existing guest house unit by incorporating it into the second floor of the single-family residence.

SMA DETERMINATION- As described above, the proposed project is not considered "Development" as defined in Section 1.4f of the County of Kaua'i definitions of the County's SMA Rules and Regulations.

Section 1.4F definitions "Development" does not mean the following:

(7) Demolition or removal of structures, except those structures located on any historic site os designated in national or state registers;

(15) Structural and nonstructural improvements to existing single-family residences, where otherwise permissible;

ZONING REVIEW/ PERMITTING-The subject parcel is within the county zoning designation Open (O) and

Located within the Open (O) and located within the county Shore (S-SH) and Tsunami (S-TS) Constraint Districts. The parcel is also located within 500 feet of the shoreline. The proposed development is subjected to Sections 8-9.4 (b), 8-8.4(b)(c), and 8-27.1 of the Kaua'i County Code, CZO. Please note the following:

Sec. 8-9.4 Permits Required.

(b) No construction or other development for which Standards are established in this Chapter shall be undertaken within any Open District except in accordance with a valid Zoning Permit. The requirements for Zoning Permits shall be the same as those established in Sec. 8-8.4 of this Chapter. Where no definite Class Permit is specified for any use application, Class II Zoning Permit procedure shall apply. (Ord. No. 935, November 14, 2012)

Sec. 8-8.4 Permits Required.

(c) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(1) Construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

Article 27. Shoreline Setback and Coastal Protection

Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kaua'i where structures and/or prohibited activities are proposed within five hundred (500) feet of the shoreline. (Ord. No. 979, December 5, 2014; Ord. No. 1088, February 4, 2021)

Should you have further questions regarding this matter, please contact staff Planner Romio Idica at 808.241.4056. Aloha!

KA'AINA HULL
Deputy Director

PLANNING DEPARTMENT
SHORELINE SETBACK APPLICATION

FOR OFFICIAL USE ONLY:	
SSD 202 2 - 49	
Acceptance Date:	6.30.22
Website Posting Date:	7.8.22
Determination Date:	6.30.22
Planning Commission Date:	7.12-22
Expiration Date:	6.30.23
Planner Assigned:	R1

Instructions: File all information requested under Part A for processing the Determination of Applicability (§8-27.1), including signature page. Fill out Parts A and B if you know that your parcel will require a Certified Shoreline Survey, due to the proximity to the shoreline. If you are proposing a permitted structure or subdivision within the shoreline setback area fill in Part C. For applications involving a variance, complete Part D.

Applicant Information

Applicant: Concora Cliffs LLC
Mailing Address: Cades Schutte LLP, P.O. Box 1205, Lihue, HI 96766
Phone: (808) 521-9297
Email: mtrask@cades.com

Applicant's Status: (Check one)

☐ Owner of the Property	(Holder of at least 75% of the equitable and legal title)
☐ Lessee of the Property	Lessee must have an **unexpired and recorded** lease of five (5) years or more from the date of filing of this application. If not, Owner(s) must provide a Letter of Authorization.
☑ Authorized Agent	Attach Letter of Authorization

Transmittal Date: May 16, 2022

Project Information (attach additional sheets, if necessary)

County Zoning District: Open (O)
Tax Map Key(s): (4) 5-5-004:013
Land Area: 0.3876 acres/16,885 sf.

Nature of Development: (Description of proposed structure or subdivision)	Interior alteration, demolition and removal, and structural and nonstructural improvements to existing single-family residence and garage/guest house.

NO PERMITS WILL BE ISSUED WITHOUT PLANNING COMMISSION ACCEPTANCE, EXCEPT AS PROVIDED IN §8-27.8(c)(8)

Part A

Shoreline Setback Determination of Applicability (§8-27.1)

Check all that apply, fill in applicable information. Any box checked must be accompanied by additional information, photos and/or documentation.

1. Property is Abutting the Shoreline
   - ☐ Proposed project's approximate distance from shoreline (based on aerial map): _____ ft.
2. Property is Not Abutting the Shoreline
   - ☑ Proposed project's approximate distance from shoreline (based on aerial map): 222.87 ft.
3. Additional Information:
   - ☑ Shoreline Change (Erosion Accretion) Rate: + 1.7 - +2.0 ft./year (Information available here: www.soest.hawaii.edu/coasts/kauaicounty/KCounty.html)
   - ☑ Number and description of parcels (including roads, buildings, structures) between Shoreline and this parcel:

One parcel, the County's 2.9 acre Waioli beach park parcel TMK No. (4)5-5-004:0002.

EXHIBIT G

PLANNING DEPARTMENT
SHORELINE SETBACK APPLICATION

☑ Topography (undulating, flat, slope, etc.) and ground elevation of subject parcel (Lowest and Highest elevations)

Flat and approximately 39.4 ft. above sea level.

☑ Shoreline type (e.g. beach, dune, rocky, sandy with rocky outcropping, etc.)

Wide sandy beach

☐ Artificially armored Shoreline
- ☐ If checked, what type of armoring (e.g. seawall, revetment, bulkhead): _____
- ☐ Is the armoring permitted/authorized? _____
- ☐ Date of authorization (attach copy of authorization letter): _____

☐ Is property in coastal floodplain (if checked, what zone)? _____

☑ Has this property been subject to coastal hazards (i.e. flooding, erosion, tsunami, etc.) in the past?

This property has not been subject to coastal hazards, but the Hanalei area is prone to flooding.

PLEASE NOTE:

Any misrepresentation of information in this shoreline setback application will result in revocation of this determination and may result in fines and criminal prosecution.

Applicant's Signature

Signature — Date: 6/16/22

Applicability (to be completed by Planning Department)

☑ **Setback Determination necessary.** Requirements of Ordinance No. 979 are applicable.

☐ **Setback Determination is NOT necessary.** Requirements of Ordinance No. 979 are not applicable.

Planning Director or designee — Date: 6.30.22

If **Part A** has been deemed that a Determination will be necessary, the additional information will be required for submission of this application.

Part B

☑ A non-refundable processing fee of **one hundred dollars ($100.00)** shall accompany a request for determination. (§8-27.8(e))

☑ An aerial map/image (ex. Google Maps or Google Earth) with a line drawn from the shoreline/vegetation line (approximate shoreline) to the proposed project and the calculated distance in feet.

☑ A detailed Plot Plan **to scale** with all existing and proposed structures including driveways, visible lot coverage, setbacks and measurement details, fences, gates, and walls, etc.

☑ Building Permit Number (If building plans submitted)

PLANNING DEPARTMENT
SHORELINE SETBACK DETERMINATION

Exemption Determination

☐ **Exemption 1**

In cases where the proposed structure or subdivision satisfies the following four criteria:

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

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

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

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

☑ **Exemption 2**

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

☐ **Exemption 3**

Pursuant to §8-27.7, those structures and uses found exempt in Table 3 (see pg. 7) including repairs and renovations to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs DO NOT enlarge, add to or expand the structure; increase the size or degree of non-conformity; or intensify the use of the structure or its impact on coastal processes;
(B) The repairs DO NOT constitute a substantial improvement of the structure; and
(C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law.

☐ Letter from the Department of Public Works stating that the proposed project does **NOT** constitute "Substantial Improvement," pursuant to §8-27.2 (If applicable, will require valuation of project).

Exemption Determination (to be completed by Planning Department)

☑ Pursuant to §8-27.3 the Kaua'i County Code, 1987 as amended, the Planning Department hereby certifies the proposed structure(s) or subdivision(s) as exempt from those shoreline setback determination requirements established under §8-27.8.

☐ Pursuant to §8-27.7 the Kaua'i County Code, 1987 as amended, the proposed structure(s) is permitted within the shoreline setback area. While exempt from those shoreline setback determination requirements established under §8-27.8, the proposed structure(s) is subject to the conditions of §8-27.7(b). (See pg. 8)

Ronio Lalu — 6.30.22

Planning Director or designee — Date

☐ **Additional comments/conditions:**

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

July 12, 2022

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2022-49	Concora Cliffs LLC	2-8-015:014	Hanalei	Second story addition/
SSD-2022-50	COK Department of Parks and Recreation	5-5-002:019	Hanalei	Renovation of existing Hanalei Pavilion/ Accreting shoreline required setback 100 feet, Existing Pavilion 280 feet away from shoreline

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

DIRECTOR'S REPORT

REVIEW AND ANALYSIS OF CLASS III ZONING PERMIT Z-III-2023-5 DATE: May 3, 2023

PLANNER Dale Cua

Project Name:	CONCORA CLIFFS	TMK:	5-5-004:013
Applicant:	CONCORA CLIFFS, LLC.	Location:	Hanalei, Kaua'i
Applicant Rep:	Mauna Kea Trask, Esq.	Zoning:	Open (O)
Address:	PO Box 1205	LUC:	Urban
	Līhu'e, Hawai'i 96766	Gen. Plan:	Natural
		Parcel Size:	16,885 square feet (SF)

Phone Number: 808-521-9297

PROJECT ANALYSIS

Project Description:

The project involves interior renovations to the existing 2-story single-family residence. As represented, the Applicant is proposing to convert the existing guest house that is situated above the garage into a bedroom addition to the residence.

As proposed, the bedroom addition will be accessible through a bridge connecting into the residence at the second floor. Part of the construction work will involve removing the existing staircase from the garage area that serves as the primary access into the guest house.

The project generally complies with the development standards within the Open (O) zoning district as well as the Sea Level Rise Constraint District (S-SLR), pursuant to Sections 8-9.2 & 8-12.5(d) of the Comprehensive Zoning Ordinance (CZO) respectively. The construction work occurs on the second floor of the dwelling and does not affect the footprint of the existing structures as well as the existing land coverage.

It is further noted that the project site is situated within the Special Management Area (SMA). However, the proposal is NOT considered "development" as defined in Section 1.4 H of the County of Kauai, SMA Rules and Regulations.

G.3.a.1
JUN 27 2023

PERMIT INFORMATION

PERMITS REQUIRED	
☐ Use Permit	
☐ Project Development Use Permit	
☐ Variance Permit	
☐ Special Permit	
☒ Zoning Permit Class ☐ IV ☒ III	Pursuant to Section 8-7.4 of the KCC, 1987, as amended, a Class III Zoning Permit is a procedural requirement for a parcel located within a Constraint District.
☐ Special Management Area Permit ☐ Use ☐ Minor	
AMENDMENTS	
☐ Zoning Amendment	
☐ General Plan Amendment	
☐ State Land Use District Amendment	

PROJECT DATA

PROJECT INFORAMTION	
Parcel Location:	The project site is located along the makai side of Weke Road in Hanalei, approximately 600 feet west of the Weke Road/Mahimahi Road intersection.
ZONING & DEVELOPMENT STANDARDS	
Height Limit:	25 feet
Max. Land Coverage:	Not greater than 10%
Parking Requirement:	2 min. off-street parking spaces per dwelling unit, pursuant to Sec. 8-4.5(a)(5) of the CZO
Front Setback:	10 feet
Rear Setback:	5 feet OR ½ Wall Plate Height, whichever is greater
Side Setback:	5 feet OR ½ Wall Plate Height, whichever is greater
Community Plan Area:	North Shore Planning Area
Community Plan Land Use Designation:	NA.
Deviations or Variances Requested:	NA.

PROJECT DEVELOPMENT REQUIREMENTS

As proposed, the development/use conforms to:

CZO:	YES	NO	N/A	Comments
1. Permitted use	☒	☐	☐	Conversion of guesthouse to BR
2. Parcel size requirements	☒	☐	☐	
3. Density requirements	☒	☐	☐	Eliminates guesthouse
4. Setback Requirements:				
a. Front	☒	☐	☐	
b. Side	☒	☐	☐	
c. Rear	☒	☐	☐	
d. Between buildings	☒	☐	☐	
5. Height requirements	☒	☐	☐	Existing structure
6. Parking requirements	☒	☐	☐	2 stalls
8. Open Space	☐	☐	☒	
9. Driveway/access req.	☒	☐	☐	Existing driveway
10. Lot dimension req.	☒	☐	☐	Existing lot
11. Constraint District	☒	☐	☐	Subject to CZO Sec. 8-12.5(d)
12. Proper Authorization	☒	☐	☐	
13. All other requirements	☒	☐	☐	
14. Others:				

Explain nature of Deficiencies: None. The proposal eliminates the guesthouse and converts it into a bedroom addition for the existing residence.

SMA	YES	NO	N/A	Comments
1. Shoreline Setback req.	☐	☐	☒	
2. Cert. Shoreline Survey	☐	☐	☒	
3. Within SMA	☒	☐	☐	
4. Public Beach Access req.	☐	☐	☒	
5. Design Criteria	☐	☐	☒	
6. Minor or Major permit	☐	☐	☒	
7. Cost Estimate	☐	☐	☒	

8.	E. A. or EIS	☐	☒	☐	
9.	Historic sites	☐	☐	☒	
10.	Other :				

Explain nature of Deficiencies: Not applicable.

OTHER		YES	NO	N/A	Comments
1.	Color Schemes necessary	☐	☒	☐	
2.	Landscape master plan	☐	☐	☒	
3.	CAC review required	☐	☒	☐	
4.	EIA Fee applicable	☐	☒	☐	
5.	Park Dedication Fee	☐	☒	☐	
6.	Master Plan and/or Phasing required	☐	☒	☐	
7.	Public Hearing required	☐	☒	☐	
8.	Other:	☐	☐	☐	

Agency review required:	☐ Hwys. - DOT	☒ Water	☒ Pub Works	☒ Health
	☒ Fire	☒ Other – **SHPD**		

Explain nature of Deficiencies:

RECOMMENDATION

☐ APPROVAL ☒ APPROVAL WITH CONDITIONS *See attached* ☐ DENIAL

By _____ **Planner**

May 9, 2023
Date

APPROVED BY: _____ **Planning Director**

5/9/2023
Date

CONCORA CLIFFS, LLC.
CLASS III ZONING PERMIT Z-III-2023-5

Tax Map Key: (4) 5-5-004:013
Hanalei, Kaua'i

CONDITIONS OF APPROVAL:

1. The proposed renovation and associated improvements shall be developed as represented. Any changes to said structures and/or facilities shall be reviewed by the Planning Department to determine whether agency review is warranted.

2. The Applicant is made aware that further development involving this parcel may require an SMA Permit and subject to the development standards contained in Section 8-12.5(d) of the CZO, relating to the Sea Level Rise Constraint District (S-SLR).

3. Prior to commencement of the proposed activity, written confirmation of compliance with the requirements from all reviewing agencies shall be provided to the Planning Department. Failure to comply may result in forfeiture of the Class III Zoning Permit.

4. In order to minimize adverse impacts on Federally Listed Threatened Species, such as Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following type: *downward-facing shielded lights*. Spotlights aimed upward or spotlighting of structures on the project site shall be prohibited.

5. The Applicant shall develop and utilize Best Management Practice (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.

6. If historic/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found during construction, the Applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division (SHPD) and the Planning Department, to determine appropriate action.

7. The Applicant shall resolve and comply with all reviewing agency conditions. The Applicant is advised that additional agency conditions may apply and is responsible for resolving & complying with those requirements with each respective agency.

BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUA'I

In the Matter of:	CC-2023-1
	TVRNCU #4250
Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:040 containing 12,197.0 square feet,	TMK: (4) 5-5-001:040
	HEARING OFFICER'S REPORT AND RECOMMENDATION OF CONTESTED CASE; CERTIFICATE OF SERVICE
	HEARING (Held):
	Date: December 19, 2022
	Time: 9:00 a.m.
PATRICK TURLEY and PATRICIA TURLEY,	
Petitioners,	
vs.	
PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I,	
Respondent.	

HEARING OFFICER'S
REPORT AND RECOMMENDATION OF CONTESTED CASE

H.1.a.
June 27, 2023

H. 1.
JUN 27 2023

I. INTRODUCTION.

This Contested Case involves the appeal by Petitioners PATRICK TURLEY and PATRICIA TURLEY ("Petitioners") from the denial by the Director of Respondent PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I ("Planning Department") of Petitioner Patrick Turley's 2022 Transient Vacation Rental Renewal Application dated June 1, 2022, regarding the property located at 4895 Weke Road, Hanalei, Kaua'i, Hawai'i, and known as "Nami Nori" ("Subject Property"), requesting renewal of Transient Vacation Nonconforming Use Certificate No. 4250 ("Renewal Application"). The Planning Department denied the Application because it was received on June 23, 2022, seventeen (17) days after the June 6, 2022, deadline for the Renewal Application. Petitioners timely appealed the denial of the Renewal Application by submitting their "Notice of Appeal and Demand for Contested Case Hearing" to the Planning Department on July 15, 2022 ("Notice of Appeal").[1]

II. PROCEDURAL HISTORY.

At its meeting held on July 26, 2022, the Kaua'i Planning Commission ("Commission") referred the Appeal to the Office of the Boards and

[1] The Notice of Appeal was dated July 13, 2022, but received by the Planning Department on July 15, 2022.

Commissions for the County of Kaua'i ("Office of Boards and Commissions") to appoint of a Hearing Officer to conduct a Contested Case Hearing ("Hearing"). The Office of Boards and Commissions appointed this Hearing Officer on July 28, 2022, to conduct the Hearing, and advised Petitioners and the Planning Department accordingly. Thereafter, a Prehearing Conference was conducted by this Hearing Officer on August 24, 2022, to schedule the Hearing and discuss other related matters. Joanna C. Zeigler, Esq., appeared on behalf of Petitioners and waived their presence. Chris Donahoe, Esq., appeared on behalf of the Planning Department. No other parties appeared. Pursuant to the *Hearing Officer's Scheduling Order* dated August 24, 2022, the Hearing was set for December 19 and 21, 2022, commencing at 9:00 a.m. on both days ("Scheduling Order"). The Scheduling Order also permitted the filing of Prehearing Motions by November 11, 2022.[2]

Pursuant to the Scheduling Order, *Petitioner's* (sic) *Motion For Summary Judgment On Petitioin* (sic) *To Appeal Planning Director's Decision Related To The Planning Director's Cease And Desist And Forefeiture* (sic) *Of TVRNCU #4250* dated November 10, 2022, was received by the Hearing Officer that same day ("Petitioners" MSJ"). *Respondent's Memorandum In Opposition To*

[2] The Scheduling Order contained a typographical error setting that deadline as November 11, 2021. See Scheduling Order at 2, ¶5.

Petitioner's Motion For Summary Judgment On Petition To Appeal Planning Director's Decision Related To The Planning Director's Cease And Desist And Forfeiture Of TVRNCU # 4250 dated December 5, 2022, was also received the same day it was dated ("Planning's MIO"). In accordance with the Scheduling Order, this Hearing Officer then issued his *Order Denying Petitioners' Motion For Summary Judgment On Petitioin* (sic) *To Appeal Planning Director's Decision Related To The Planning Director's Cease And Desist And Forefeiture Of TVRNCU #4250* dated December 7, 2022 ("Order Denying MSJ"). The Order Denying MSJ ruled that Petitioners: (1) have not demonstrated they are entitled to judgment as a matter of law from being excused of the time requirements of Comprehensive Zoning Code ("CZO") § 8-17.10(h) in the submittal of the Renewal Application; and (2) the issues that were litigated, or could have been litigated, in *Elizabeth Kendrick, et al. vs. Planning Department Of The County Of Kauai/Planning Commission Of The County Of Kauai, et al.;* Civil No. 18-1-0190, filed in the Circuit Court of Third Circuit, State of Hawai'i ("*Kendrick* CC Case"), are different from the issues and facts in this Contested Case, and therefore, the doctrine of res judicata[3] is inapplicable against the Planning Department.

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[3] Petitioners' MSJ relied upon the doctrine of Collateral Estoppel, or "Issue Preclusion," rather than the doctrine of Res Judicata. See Memorandum In Support Of Motion at 10-12 attached to Petitioners' MSJ. Often times, these two (2) legal doctrines are used interchangeably because "Collateral [E]stoppel is an aspect of *res judicata* which precludes the relitigation of a fact or issue which was previously determined in a *prior suit* on a different claim between the same

The Hearing commenced at 9:10 a.m. on December 19, 2022.[4] Gregory W. Kugle appeared on behalf of Petitioners and waived their presence at the Hearing. Tr. at 1. However, Ms. Liz Grout was present as Petitioners' Representative ("Grout"). *Id.* at 2. Chris Donahoe appeared on behalf of the Planning Department with Michael Laureta, Representative of the Planning Department ("Laureta"). *Id.*

Introduction and admission of exhibits was the next item for discussion prior to commencement of the evidentiary portion of the Hearing. In that regard, the parties stipulated to the admission of Petitioners' Exhibits "1" through "6," and the Planning Department's Exhibits "A" through "T", and therefore, those exhibits were received into evidence. *Id.* Next, Grout was called as Petitioners' only witness. *Id.* at 3-17. Similarly, Laureta was called as the Planning Department's only witness. *Id.* at 18-47.

Upon conclusion of the evidentiary portion of the Hearing, the parties were given "fourteen (14) days after receipt of the transcript of the Contested Case Hearing within which to file any Motions To Correct Transcript pursuant to

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parties or their privies. Collateral [E]stoppel also precludes relitigation of facts or issues previously determined when it is raised defensively by one not a party in a *prior suit* against one who was a party to that suit and who himself raised and litigated that fact or issue." *Kaho'ohanohano v. Department of Human Services, State of Hawai'i*, 117 Hawai'i 262, 302, 178 P.3d 538, 578 (2008) (emphasis in original).

Rule 1-6-18(a) of the *Rules of Practice and Procedure of the Kaua'i County Planning Commission* ('Commission Rules') ('Motions'). Objections to any of the Motions shall be served within seven (7) days thereof. Thereafter, [this Hearing Officer] will act on the Motions with due consideration to the video and audio recording of the Contested Case Hearing ('Final Transcript')." *Minutes Of Contested Case Hearing* dated December 26, 2022 ("Hearing Minutes") at 2. The transcript of the Hearing was electronically provided to the parties on January 27, 2023. Since no Motion To Correct Transcript was filed by either party, February 27, 2023, was the due date for Petitioners' Closing Arguments and/or Proposed Findings of Fact and Conclusions of Law.[5]

Petitioners' Closing Arguments; Proposed Hearing Officer Report And Recommendation; Certificate of Service dated February 24, 2023, were received that same day (collectively "Petitioners' Closing Arguments," unless otherwise specified to the contrary). In turn, *Respondent Planning Department Of The County Of Kaua'i's Closing Arguments; Proposed Hearing Officer Report And Recommendation; Certificate of Service* dated March 9, 2023, were received

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[4] The Hearing commenced a few minutes late due to the delay in this Hearing Officer's flight from Honolulu International Airport. Transcript of Contested Case Hearing conducted on December 19, 2022 ("Tr.") at 1.

[5] Since the thirtieth (30th) day from receipt of the Transcript of the Hearing was a Saturday, Petitioners' Closing Arguments were due on February 27, 2023, the next day that is not a Saturday, Sunday, or State of Hawai'i Holiday. See Rule 6 of the *Hawai'i Rules of Civil Procedure* ("HRCP") and compare with Hearing Minutes at 3, ¶1.

on March 10, 2023 (collectively "Planning's Responsive Closing Arguments," unless otherwise specified to the contrary). This Hearing Officer then inquired whether Petitioners intended to submit their optional Reply to the Planning's Responsive Closing Arguments since none was received by its deadline. On April 10, 2023, Petitioners replied that they did not intend to do so.

III. FINDINGS OF FACT.

A. The Parties and Subject Property.

1. Petitioners whose address in the Renewal Application is 3104 The Strand, Manhattan Beach, California 90266, are the owners of the real property that is the subject of this Contested Case located at 4895 Weke Road, Hanalei, Kaua'i, Hawai'i 96714 (i.e. Subject Property). Exhibit "1"[6] at 1.

2. The Subject Property is located outside of a Visitor Destination Area ("VDA") and therefore, required a Nonconforming Use Certificate in order to continue operating as a Single Family Transient Vacation Rental. See County of Kaua'i Zoning Maps and compare with *Kaua'i County Code 1987* ("KCC") §§ 8-1.5 and 8-17.10(b).

[6] Pursuant to the Scheduling Order, Petitioners' Exhibits are identified by **Numbers** and the Planning Department's Exhibits referenced by **Alphabets**. Scheduling Order at 2, ¶4.

3. Petitioners last obtained a renewal of their Nonconforming Use Certificate for the Subject Property on May 26, 2021 ("TVNCU #4250"). Exhibit "F" at 1-2. The Planning Department's letter dated May 26, 2022, noted TVNCU #4250 was renewed to **June 6, 2022**. In addition, this letter stated, in pertinent part, that "in order to keep [the] Non-Conforming Use Certificate valid, [the Petitioners] must:

> 1. Apply for renewal every year, no less than thirty (30) days, ***and up to two months,*** prior to the renewal date of **June 6th** every year, utilizing the most current renewal form on [the Planning Department's] website, and the renewal fee existing at the time (presently $750). ***Should your renewal be at least one (1) day late, you will be served with a Cease & Desist and Notice of Forfeiture. Should your renewal be incomplete, it will not be processed and will be returned to you via USPS. The resubmittal of the complete application must be before the renewal date.***
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> . . .

Id. at 1 (emphasis in original).

4. The Planning Department is the governmental agency responsible for reviewing and approving the Renewal Application, as well as other applications for renewals of Nonconforming Use Certificates.

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B. Submittal Of Renewal Application, Followed By Cease and Desist Order.

5. The Renewal Application signed by Petitioner Patrick K. Turley ("Patrick Turley") was dated June 1, 2022. Exhibit "1" at 1. Grout was identified as the "**authorized representative**" of Patrick Turley and "Hawaii Life" as the Management Company for him and the Subject Property. *Id.* at 1. A check dated May 31, 2022, in the amount of Seven Hundred Fifty and No/100 Dollars ($750.00) drawn on Hawaii Life's bank account accompanied the Renewal Application. *Id.* at 2.[7]

6. The Renewal Application was received by the Planning Department on June 23, 2022. *Id.* at 1.

7. By letter dated June 23, 2022, entitled "**CEASE & DESIST, and FORFEITURE of Non-Confirming Use Certificate TVNCU #4250 ('Nami Nori')**," the Planning Department advised Petitioners that TVNCU #4250 was to have been renewed by ***June 6, 2022***. ("Cease & Desist Notice"). Exhibit "2" at 1 (emphasis in original). The Cease & Desist Notice further advised Petitioners, in pertinent part, that pursuant to KCC § 8-17.10(h)(1):

> Each application to renew shall include proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming

[7]A majority of Petitioners' Exhibits are not paginated and therefore, the reference to the page number(s) of those exhibits are determined by the number of pages from their first page.

> use and shall be received by the Department prior to the expiration date of a held Nonconforming Use Certificate. ***Failure to meet this condition will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates.***
>
> . . .

Id. at 1 (first emphasis added; second emphasis in original; and quotation marks omitted).

8. By letter dated June 27, 2023, entitled "**DENIAL OF 2022 RENEWAL APPLICATION PACKET for Non-Conforming Use Certificate TVNCU #4250 (Nami Nori)**" ("Denial Letter") the Planning Department advised Petitioners they "failed to submit a renewal application with the required documentation prior to ***June 6, 2022***. It is for this reason that the renewal packet submitted to the [Planning] Department on June 23, 2022 is being denied and returned to you (attached)." Exhibit "H" at 1 (emphasis in original).

9. Petitioners admit "[a]bout a week after the renewal date had past, [they] filed their application." *Petitioners' Prehearing Statement* dated December 1, 2022 ("Petitioners' Prehearing Statement") at 4.

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C. Appeal Of Planning Director's Decision Denying The Renewal Application.

10. By letter dated July 13, 2022, addressed to both the Commission and Planning Department, Petitioners' Counsel[8] submitted Petitioners' "Notice of Appeal and Demand for Contested Case Hearing" pursuant to Chapter 9 of the Commission Rules (i.e. Notice of Appeal). Dkt. No. 3[9] at 1.

11. The Notice of Appeal advanced the arguments that: (1) the Cease & Desist Notice and Denial Notice ("Forfeiture Letters") were procedurally defective; (2) the County of Kaua'i[10] does not have authority to order the forfeiture of TVNCU #4250 due to the missed deadline; (3) the Forfeiture Letters violated County Ordinances because Petitioners use of the Subject Property as a Transient Vacation Rental was continuous; (4) Petitioners vested property rights in the Subject Property and TVNCU #4250 cannot be forfeited because of a missed ministerial deadline to reapply; and (5) termination of TVNCU #4250 because of a missed deadline violates Petitioners' constitutional right to due process under stated and federal the law. *Id.* at 1-3.

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[8] Petitioner's Counsel are Gregory W. Kugle, Esq., and Joanna C. Zeigler, Esq., both from the law firm of Damon Key Leong Kupchak Hastert ("Petitioners' Counsel"). Toren K. Yamamoto, Esq. has since replaced Ms. Zeigler as one of Petitioners' Counsel.

[9] The document number following "Dkt. No." refers to the sequence of the documents in this Contested Case on file with the Planning Department.

[10] The Planning Department is an agency of the County of Kaua'i and therefore, those terms are used interchangeably in this Report and Recommendation. See generally Article XIV of *The Charter of the County of Kaua'i (2022 Codified Version)* ("County Charter").

D. Relevant Authorities and Pertinent Legislative History.

12. *Haw. Rev. Stat.* § 46-4(a) provides in pertinent part:

(a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. **The zoning power granted herein shall be exercised by ordinance which may relate to:**

. . .

(2) **The areas in which residential uses may be regulated or prohibited;**

. . .

(4) **The areas in which particular uses may be subjected to special restrictions;**

. . .

(12) **Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.**

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

. . .

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d). [(This paragraph shall hereafter be referred to as the "**Liberal Construction Provision**".)]

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. **In no**

event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262. [(This paragraph shall hereafter be referred to as the "**Continued Lawful Use Provision**".)]

. . .

(emphasis added).

13. **KCC § 8-17.10** adopted by the County of Kaua'i County Council ("Council") on February 20, 2008 as part of **Ordinance No. 864** provided in pertinent part:

> Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals
>
> **(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to the effective date of this ordinance and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.**
>
> **(b) The owner, operator or proprietor of any single-family transient vacation rental which is operating outside of a Visitor Destination Area on the effective date of this ordinance shall by March 30, 2009, obtain a nonconforming use certificate for single family vacation rentals.**
>
> (c) **No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance**, and the applicant demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to the effective date of this ordinance and was in compliance with all State and County land use and planning laws,

including but not limited to, HRS[] Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plan Management and Shoreline Setback laws at the effective date of this ordinance, up to and including, the time of application for a nonconforming use certificate. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawai'i General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to the effective date of this ordinance, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to the effective date of this ordinance, with a pattern of consistency that evidences an ongoing and lawful enterprise.

. . .

(g) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate by July 31 for every year.

(1) Each application to renew shall include proof that:

(A) There is in effect a State of Hawai'i general excise tax License and transient accommodations tax license for the Nonconforming use.

(B) notwithstanding any other ordinance or rule to the contrary, the use has been ongoing, with a presumption that if the nonconforming use has occurred less than a total of thirty (30) days, said use has been abandoned, and

(C) that at the time of renewal the dwelling unit was in compliance with all State and County land use or planning laws, including, but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline

Management Area, Flood Plain Management, and Shoreline Setback laws.

(2) Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificates.

(3) Applicant shall pay a renewal fee of One Hundred Fifty Dollars ($150.00) which shall be deposited into the County General Fund.

(emphasis added).

14. The intent of the Council in adopting **Ordinance No. 864** was, in pertinent part, as follows:

SECTION 1. Findings and Purpose.

The Council of the County of Kaua'i finds that there is a compelling need to regulate single-family transient vacation rentals on Kaua'i. Single-family transient vacation rentals are occurring at a greater rate and inflicting a larger impact on the community of Kaua'i than was ever anticipated in the County's original Comprehensive Zoning Ordinance. While this type of visitor unit could be compatible with the character and nature of Kaua'i and while it has certain positive advantages to the community and is desirable in terms of offering a mix of accommodations to the visitor, **the uncontrolled proliferation of vacation rentals in residential and other areas outside the Visitor Destination Areas (VDAs) is causing significant negative impacts to certain residential neighborhoods, foreshadowing similar potential impacts on other areas of the island**[.]

The County General Plan, updated in the year 2000, recognizes this need by its policy for "Alternative Visitor Accommodations," which reads as follows:

"4.2.8.2 Alternative Visitor Accommodations

(a) The County of Kaua'i shall recognize alternative visitor accommodations, such as B&Bs, vacation rentals, inns, cabins, and retreat centers.

(b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.

. . .

Census data shows that seasonal rentals account for 45% of the new housing units built on Kaua'i between 1990 and 2000, a greater percentage than housing built for long-term renters (14%) or for owner-occupied use (36%). Since 2000, out of the 2,050 new residential units, 1,070 have been built for the seasonal homes market and less than half have been for local families to rent (46) or own (936). **The potential for vacation rental use increases the value and thus the selling price and investment rating of property on Kaua'i, which increases prices and adds another potential layer of speculation in the real estate market. This also means that the limited available infrastructure and resources on Kaua'i, including roads, water, sewer capacity, building materials, and contractor time are being used primarily for expensive second or third homes rather than the primary home needs of local residents.**

In oceanfront or other places of premium real estate value, second and third homes and vacation rentals (often one and the same) are displacing traditional neighborhoods where people of low and moderate income have been able to live in the past. Besides contributing to a lack of affordable housing in the community, this is changing the social character of neighborhoods where neighbors used to know each other. This has tended to make these neighborhoods more vulnerable to crime. While regulating single-family vacation rentals will not guarantee more affordable housing, it will dampen speculation and bring a halt to uncontrolled growth and cumulative impacts of vacation rentals which have affected the traditional neighborhoods of 'Anini and Ha'ena, and which could or are beginning to also affect neighborhoods such as Waimea Valley, Kekaha, and the makai side of Kapa'a Town.

. . .

The purpose of this bill is to restore a balance between primary residences and single-family transient vacation rentals by: 1) requiring registration of vacation rentals or nonconforming use certificates and setting standards for all vacation rentals, 2) explicitly prohibiting new single-family vacation rentals outside visitor destination areas (multi-family vacation rentals are already so prohibited), and 3) identifying and allowing nonconforming uses where single-family vacation rentals have been operating lawfully prior to approval of this bill.

. . .

(emphasis added).

15. On January 14, 2009, by codifying **Ordinance No. 876**, KCC § 8-17.10(g) was renumbered as **KCC § 8-17.10(h)**, and as of September 30, 2014 with the passage of **Ordinance No. 974**,[11] KCC § 8-17.10(h) was amended to provide:

> (h) The owner or lessee who has obtained a Nonconforming Use Certificate under this Section **shall apply to renew the Nonconforming Use Certificate annually on the date of the issuance of the Nonconforming Use Certificate.**
>
> > (1) Each application to renew shall include proof that there is a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the nonconforming use and shall be received by the [Planning] Department prior to the expiration date of a held Nonconforming Use Certificate. **Failure to meet this condition will result in the automatic**

[11] Citation in this Report and Recommendation to "KCC § 8-17.10(h)" shall hereinafter refer to the version adopted by this Ordinance No. 974 because Ordinance No. 1119 amending same did not take effect until July 6, 2022. See last page of Exhibit "D."

denial of the application for renewal of the Nonconforming Use Certificates.

(2) Upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter, or other pertinent land use laws, and may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

(3) The applicant shall pay an annual renewal fee of seven hundred fifty dollars ($750.00) which shall be deposited into the County General Fund.

(emphasis added).

16. **KCC § 8-13.2** adopted by the Council on November 14, 2012 as part of Ordinance No. 935[12] in its effort to update the CZO by focusing on, as a first step, the organizational and format changes, provides in pertinent part:

(a) **A nonconforming use of land, buildings, or other structures may continue to the extent that the use existed on September 1, 1972** or any amendment hereto, as provided in this Section, provided that the Planning Commission may, after hearing, order the termination of a nonconforming use that creates substantial danger to public health or safety.

(b) **If any nonconforming use ceases for any reason for continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed** and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.

. . .

[12] The present version KCC § 8-13.2 has not changed since the adoption of Ordinance No. 935.

(emphasis added).

17. If any Finding of Fact herein should be designated as a Conclusion of Law, the same shall be deemed to have been identified as such.

IV. CONCLUSIONS OF LAW.

A. Principles of Statutory Construction.

1. "Courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute." *Robert D. Ferris Trust v. Planning Com'n of County of Kauai,* 138 Hawai'i 307, 310, 378 P.3d 1023, 1026 (2016) *quoting State v. Kaakimaka,* 84 Hawai'i 280, 289-90, 933 P.2d 617, 626-67 (1997).

2. "The general rule is that repeals by implication are not favored and that if effect can reasonably be given to two statutes, it is proper to presume that the earlier statute is to remain in force and the later statute did not repeal it." *Reefshare, Ltd. v. Nagata,* 70 Hawai'i 93, 97, 762 P.2d 169, 172 (1988) *quoting State v. Pacariem,* 67 Hawai'i 46, 48, 677 P.2d 463, 465 (1984).

3. "[W]here there is a plainly irreconcilable conflict between a general and specific statute concerning the same subject matter, the specific will be

favored. However, where the statutes simply overlap in their application, effect will be given to both if possible, as repeal by implication is disfavored." *Mahiai v. Suwa,* 69 Hawai'i 349, 356-57, 742 P.2d 359, 366 (1987) (internal quotation marks and citations omitted).

4. Another "cardinal rule of statutory construction is that [the courts] must ascertain and give effect to the intention of the legislature, and [they] must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose." *Roaring Lion, LLC v. Exclusive Resorts PBL 1, LLC,* 2013 WL 1759002 at 10 (Haw. Ct. App. 2013) *citing Haole v. State,* 111 Hawai'i 144, 149, 140 P.3d 377, 382 (2006).

5. "Laws *in pari materia*, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another." *In the Interest of CM,* 141 Hawai'i 348, 353, 409 P.3d 752, 757 (2017) *quoting State v. Young,* 107 Hawai'i 36, 39-40, 109 P.3d 677, 680-81 (2005) (citations, internal quotations marks, brackets, and ellipses omitted; format changed).

6. In addition to all the above cited rules of statutory construction, statutes and ordinances must be interpreted, if possible, to avoid violating constitutional provisions. *Ferris Trust,* 138 Hawai'i at 314, 378 P.3d at 1029

citing Life of the Land, Inc. v. West Beach Dev. Corp., 63 Hawai'i 529, 531, 631 P.2d 588, 590 (1981).

7. "When interpreting county charters, municipal ordinances, and administrative rules, the general principles of statutory construction apply." *Ferris Trust*, 138 Hawai'i at 310, 378 P.3d at 1026 *quoting Kellberg v. Yuen*, 131 Hawai'i 513, 527, 319 P.3d 432, 446 (2014) (brackets omitted).

8. "It is a well established rule of statutory construction that, where an administrative agency is charged with the responsibility of carrying out the mandate of a statute which contains words of broad and indefinite meaning, courts accord persuasive weight to administrative construction and follow the same, unless the construction is palpably erroneous." *Hyatt Corp. v. Honolulu Liquor Com'n*, 69 Hawai'i 238, 242-43, 738 P.2d 1205, 1208 (1987) (brackets omitted).

9. "Zoning laws, whether statutes or ordinances, inasmuch as they curtail and limit uses of real estate and are in derogation of the common law must be given strict construction and the provisions thereof may not be extended by implication. Nevertheless, they should be read according to the natural and most obvious import of the language when there is no manifest legislative intent contrarywise." *Ferris Trust*, 138 Hawai'i at 311, 378 P.3d at 1027 *quoting Maui*

Cty. v. Puamana Mgmt. Corp., 2 Haw.App. 352, 356, 631 P.2d 1215, 1218 (1981) (ellipsis omitted).

B. <u>The Mandatory Requirements Of KCC § 8.17-10(h)</u>.

10. Petitioners first argument is that "[i]n considering the equities of the parties, [this] Hearing Officer should enter an order stating Petitioners renewal was timely because forfeiture of the nonconforming use, a valuable property right, is too severe a penalty for submitting a complete renewal application within days of an arbitrarily set deadline."[13] Petitioners' Closing Arguments at 2.

11. The Planning Department counters that as "[a]n executive branch government agency [it] possess only the authority granted to it by the legislative branch." Planning Department's Closing Arguments at 11 (citation omitted).

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[13] Petitioners' equitable argument is based upon their prior renewal applications being the responsibility of Gregory Myers, Esq., and Scott Lindman of Hawaii Life. Tr. at 6-7. However, Mr. Myers has since left private practice for a government position, and Mr. Lindman passed away unexpected during the time the Renewal Application was to have been prepared and submitted to the Planning Department. Petitioners' *Proposed Hearing Officer Report and*

12. The mayor of the County of Kaua'i is the leader of the executive branch comprised of, among other departments, the Planning Department. Compare County Charter Art. VI, §6.01, with Art. XIV, § 14.01.[14]

13. The legislative branch is the Council, and the Council adopts ordinances that govern the County of Kaua'i. Art. III, § 3.01 and Art. IV, § 4.02.

14. One of the duties of the Planning Department is to enforce the zoning ordinances. Art.XIV, § 14.05.B. Variances to any of the zoning ordinances are to be "established by the [C]ouncil by ordinance." Art. XIV, § 14.03.D.

15. The provisions of KCC § 8-17.10(h) are mandatory because they contain the directive "shall." *See generally Leslie v. Board of Appeals of County of Hawaii,* 109 Hawai'i 384, 394, 126 P.3d 1071, 1081 (2006) ("As used in statutes, contracts, or the like, this word [(i.e. shall)] is generally imperative or mandatory.").

16. The Planning Department has no discretion based upon equitable principles, or otherwise, to disregard the deadline for submittal of the Renewal Application because there is no ordinance authorizing such exception. See generally Art. XIV, § 14.03.D. Therefore, the Planning Department has no authority to accept the Renewal Application after its' deadline of June 6, 2022.

Recommendation at 4, ¶¶17-18. Therefore, as argued by Petitioners, "equitable relief is proper." *Id.* at 5-6.

17. This Hearing Officer has no authority to entertain equitable principles in the issuance of this Report and Recommendation, but rather, is tasked with the duty of determining whether the Planning Department's[15] issuance of the Forfeiture Letters were "based on an erroneous finding of a material fact, or that the [Planning Department] had acted in an arbitrary or capricious manner, or had manifestly abused [its'] discretion." Rule 1-9-2(b)(6) of the Commission Rules.

C. Interpretation of the Continued Liberal Construction Provision and Continued Lawful Use Provision in *Haw. Rev. Stat.* §46-4 As Applied to KCC § 8.17-10(h).

18. Petitioners' second argument is that "*Haw. Rev. Stat.* § 46-4 and KCC § 8-13.2(a) provide that a nonconforming use is not eliminated unless the use is discontinued or abandoned for a continuous period of twelve calendar month [(the 'Second Argument')]." Petitioners' Closing Arguments at 2. Since it is undisputed that Petitioners have not discontinued use of the Subject Property as a Transient Vacation Rental prior to the June 6, 2022, renewal date, they have the right to maintain that nonconforming use even if the Renewal Application was not timely submitted to the Planning Department. See generally *Id.*

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[14] Hereinafter all references to "Art." shall refer to the Articles in the County Charter.
[15] Reference in this Report and Recommendation to the "Planning Department" also includes its "Director." See generally Art. XIV, § 14.01.

19. In response, the Planning Department counters the "County is Free To Regulate 'Grandfathered' Nonconforming Uses and Those Uses Can be Terminated or Forfeited for Failure to Comply With The Requirements of the Regulation and For Reasons Other Than Discontinuance." Planning Department's Closing Arguments at 15 (emphasis omitted). That view is correct because the Petitioners are erroneously relying upon the Continued Lawful Use Provision while completely disregarding the Liberal Construction Provision. *Id.* at 18-19.

20. All parts of *Haw. Rev. Stat.* § 46-4 are to be given effect to further the purposes of that statute as pronounced by the legislature. *See generally Ferris Trust,* 138 Hawai'i at 10, 378 P.3d at 1026 and *Roaring Lion,* 2013 WL 1759002 at 10. However, since the Continued Lawful Use Provision and Liberal Construction Provision create doubt as to the intention of the legislature since they appear at odds with each other, the law of *in pari materia* may be employed to explain this apparent inconsistency. *See In the Interest of CM,* 141 Hawai'i at 353, 409 P.3d at 757.

21. When taking into account the purpose of *Haw. Rev. Stat.* § 46-4 which is to empower the counties to enact zoning ordinances allowing and encouraging the most beneficial use of the land consonant with good zoning practices, and construing it in a manner consistent with that purpose, the zoning mandate of KCC § 8-17.10, as commissioned by *Haw. Rev. Stat.* § 46-4(a), is to be

liberally construed to permit the nonconforming use of the Subject Property to continue provided TVNCU #4250 is maintained and registered with the Planning Department pursuant to KCC § 8-17.10(h). *See generally In the Interest of CM*, 141 Hawai'i at 353, 409 P.3d at 757 ("What is clear in one statute [(i.e. KCC § 8-17.10(h))] may be called upon in aid to explain what is doubtful in another [(i.e. *Haw. Rev. Stat.* § 46-4(a))]."). If such registration lapses as in this Contested Case, the nonconforming use is no longer a lawful use because the Subject Property lacks a "Nonconforming Use Certificate for [that] single family vacation rental". KCC § 8-17.10(b) and *Cf. Waikiki Marketplace Inv. Co. v. Chair of Zoning of Appeals of the C&C of Honolulu,* 86 Hawai'i 343, 356, 949 P.2d 183, 196 (1997) ("[T]he terms 'lawful use' and 'previously lawful,' as used in HRS § 46-4 and the LUO, refer to compliance with previous zoning laws, not the building codes or other legal requirements that may be applicable to the construction or operation of a structure.").

22. Other principles of statutory construction also support this interpretation of *Haw. Rev. Stat.* § 46-4(a) because when nonconforming use certificates were first required by Ordinance No. 864, that ordinance also contained a renewal procedure for those nonconforming use certificates. See Ordinance No. 864 at 11. Therefore, it was contemplated by the Council that the

nonconforming use would only continue as a lawful use provided the certificate to permit the same is renewed pursuant to KCC § 8-17.10(h).[16]

23. The Continued Lawful Use Provision of *Haw. Rev. Stat.* § 46-4(a) does not conflict with KCC § 8-17.10(h) and therefore, KCC § 8-17.10(h) is enforceable against TVNCU #4250 and the Subject Property.

D. Interpretation and Application of KCC § 8-13.2.

24. As part of Petitioners' Second Argument, they advance the notion that KCC § 8-13.2 permits TVNCU #4250 to be terminated only in the event "the [nonconforming] use is discontinued or abandoned for a continuous period of twelve calendar months." Petitioners' Closing Arguments at 2. Since Petitioners have not discontinued such nonconforming use, TVNCU #4250 cannot be forfeited. *See generally Id.*

25. KCC § 8-13.2(a) provides a nonconforming use "**may** continue to the extent that the use existed on September 1, 1972". (emphasis added).

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[16] This construction of *Haw. Rev. Stat.* § 46-4(a) comports with the purposes of both that statute and KCC § 8-17.10 because the former granted the counties zoning powers to further the intent of their respective general plans. In addition, the Council concluded that there is a need to control the proliferation of vacation rentals in residential areas which adds another layer of speculation in that real estate market potentially placing prices beyond the reach of many of its residents, and therefore, warrants "a balance between primary residences and single-family transient vacation rentals by: 1) requiring registration of vacation rental or nonconforming use certificates and setting standards for all vacation rentals, 2) explicitly prohibiting new single-family vacation rentals outside visitor destination areas (multi-family vacation rentals are already so prohibited), and 3) identifying and allowing nonconforming uses where single-family vacation

However, if that "nonconforming use ceases for any reason for a continuous period of twelve (12) calendar months or for one (1) season if the use is seasonal, then the use **shall not be resumed**". *Id.* at § 8-13.2(b) (emphasis added). Therefore, the continuation of the nonconforming use is discretionary,[17] but once abandoned, it is mandatory that this nonconforming use **shall not be resumed.** [18] *Id.* Consequently, KCC § 8-13.2(a) does not prohibit KCC §8-17.10(h) from having a transient vacation rental nonconforming use certificate forfeited by its owner for failing to timely renew it.

26. KCC § 8-13.2 is also general in nature because it addresses all types of nonconforming uses, but KCC § 8-17.10(h) only deals with transient vacation rental nonconforming uses. Although both ordinances concern the same subject matter (i.e. nonconforming uses), the specific provisions of KCC § 8-17.10(h) is favored with respect to transient vacation rental nonconforming uses, over KCC § 8-13.2(a) which governs all other nonconforming uses. *Mahiai,* 69 Hawai'i at 356-57, 742 P.2d at 366 (The specific statute concerning the same subject matter is favored over the one more general in nature.).

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rentals have been operating lawfully prior to approval of [Ordinance No. 864]." Ordinance No. 864 at 2.

[17] "The term '**may**' is generally construed to render **optional, permissive, or discretionary** the provision in which it is embodied". *State v. Kahawai,* 103 Hawai'i 464, 465, 83 P.3d 725, 728 (2004) (emphasis added).

27. KCC § 8-13.2 does not prevent the enforcement of KCC § 8-17.10(h) because the former is discretionary and relates to all types of nonconforming uses, whereas the latter is specific and mandatory with respect to transient vacation rental nonconforming uses. *See Mahiai,* 69 Hawai'i at 356-57, 742 P.2d at 366 and *Leslie*, 109 Hawai'i at 394. 126 P.3d at 1081.

E. <u>Constitutional Grounds Advanced By Petitioners</u>.

28. Petitioners finally argue "the right of a property owner to the continued existence of uses and structures which lawfully existed prior to the effective date of a zoning restriction is grounded in constitutional law. Therefore, due process principles protect a property owner from having his or her vested property rights interfered with and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate." Petitioners' Closing Arguments at 2 *quoting Waikiki Marketplace,* 86 Haw. 345, 353, 949 P.2d 183, 193 (App. 1997). Consequently, "the Planning Department violated due process principles when it interfered with Petitioners' vested property interests [by forfeiting TVNCU #4250]." Petitioners' Closing Arguments at 3.

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[18] "As used in statutes, contracts, or the like, this word [(i.e. **shall**)] is generally **imperative or mandatory**." *Leslie,* 109 Hawai'i at 394, 126 P.3d at 1081 *quoting Black's Law Dictionary* 1375 (6th ed. 1990) (emphasis added).

29. In response, the Planning Department argues the denial of the Renewal Application was the result of Petitioner's untimely submittal of it, and therefore, no constitutional violations are implicated by the forfeiture of TVNCU #4250. Planning Department's Closing Arguments at 21-22. Moreover, that action by the Planning Department was not a "taking," but rather Petitioners "lost it." *Id.* at 22.

30. "*Black's Law Dictionary* defines **abrogate** as **abolish** (a law or custom) by formal or authoritative action; to annul or repeal." *MW Builders of Texas, Inc. v. City of Wichita Falls,* 2009 WL 2365443 at 7 (N.D. TX 2009) *quoting Black's Law Dictionary* (Westlaw 2009) (italics in original, internal quotations omitted, and **bold** emphasis added). On the other hand, "[t]he definition of **forfeiture** links the behavior of an individual to the loss of a right, privilege, or property indicating that such loss is a **consequence of that individual's actions**." *United States Securities and Exchange Commission v. Ahmed,* 263 F.Supp.3d 381, 390 (D. Ct. 2016) (emphasis added and internal quotations marks omitted).

31. KCC § 8-17.10(h) setting forth the renewal procedures for nonconforming use certificates does not **abrogate or abolish** them once they are obtained. Instead, failure to comply with KCC § 8-17.10(h) constitutes a forfeiture of those existing nonconforming use certificates. *See generally Ahmed,* 263 F.Supp.3d at 390.

32. "Taking" of Petitioners' interest in the Subject Property would only occur if there was full compliance with KCC § 8-17.10(h). *See generally Bolt v. U.S.,* 944 F.2d 603, 610 (9th Cir. 1991) *citing U.S. v. Locke,* 471 U.S. 84, 107, 105 S.Ct. 1785, 1799, 85 L.E.2d 64 (1985) (The U.S. Supreme Court has never required Congress to compensate an owner for the consequences of his own neglect). Moreover, "[r]egulation of property rights does not 'take' private property when an individual's reasonable, investment-backed expectations can continue to be realized **so long as he complies with reasonable regulatory restrictions the legislature has imposed.**" *Kunkes v. U.S.,* 78 F.3d 1549, 1553 (Fed. Cir. 1996) *quoting Locke,* 471 U.S. at 107, 105 S.Ct. at 1779.

33. Petitioners' constitutional due process rights are not violated by the enforcement of KCC § 8-17.10(h) because that ordinance does not abrogate or abolish their right to operate the Subject Property as a transient vacation rental, but merely renders that right forfeited if Petitioners do not timely renew TVNCU #4250. Moreover, there is no "taking" of Petitioners' rights in the Subject Property because the forfeiture of TVNCU #4250 was due to the untimely submittal of the Renewal Application and therefore, Petitioners' reasonable, investment-backed

expectations cannot continue to be realized because they failed to comply with KCC § 8-17.10(h).[19]

34. If any Conclusion of Law herein should be designated as a Finding of Fact, the same shall be deemed to have been identified as such.

V. CONCLUSION.

Based upon the foregoing, it is recommended the Planning Commission AFFIRM the decision of the Planning Director to DENY the Renewal Application because Petitioners have not met their burden of proof by a preponderance of the evidence establishing that this decision of the Planning Department was based on an erroneous finding of a material fact, or the Planning Director acted in an arbitrary or capricious manner, or manifestly abused his discretion. Rule 1-9-2(b)(6) of the Commission Rules.

Similarly, it is recommended the Planning Commission AFFIRM the decision of the Planning Director to FORFEIT TVNCU #4250 because Petitioners have not met their burden of proof by a preponderance of the evidence establishing that this decision of the Planning Department was based upon an erroneous finding

[19] This construction of KCC § 8-17.10(h) avoids violation of any constitutional provisions. *Ferris Trust,* 138 Hawai'i at 314, 378 P.3d at 1029.

of a material fact, or the Planning Director acted in an arbitrary or capricious manner, or manifestly abused his discretion. *Id.*

DATED at Honolulu, Hawaii, May 5, 2023.

/s/ Harlan Y. Kimura

HARLAN Y. KIMURA
Hearing Officer for the
Planning Commission of the
County of Kaua'i

BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUA'I

In the Matter of:	CC-2023-1
	TVRNCU #4250
Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kaua'i, Hawai'i, identified by Kaua'i TMK No. (4) 5-5-001:040 containing 12,197.0 square feet,	TMK: (4) 5-5-001:040
	CERTIFICATE OF SERVICE
PATRICK TURLEY and PATRICIA TURLEY,	
Petitioners,	
vs.	
PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I,	
Respondent.	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties listed below, in the manner described thereto, at their last-known addresses, on May 5, 2023

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DATED at Honolulu, Hawaii, May 5, 2023.

/s/ Harlan Y. Kimura

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BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In the Matter of: Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4) 5-5-001:040 containing 12,197.0 square feet, PATRICK TURLEY and PATRICIA TURLEY, Petitioners, v. PLANNING DEPARTMENT OF THE COUNTY OF KAUAI, Planning Department.	CC-2023-1 TVRNCU #4250 TMK: (4) 5-5-001:040 **PETITIONERS' EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATION OF CONTESTED CASE; REQUEST FOR ORAL ARGUMENT; CERTIFICATE OF SERVICE** HEARING: Date: December 19, 2022 Time: 9:00 a.m. Hearing Officer: Harlan Y. Kimura

H.1.b.
June 27, 2023

PETITIONERS' EXCEPTIONS TO HEARING OFFICER'S REPORT AND RECOMMENDATION OF CONTESTED CASE

Pursuant to the Rules of Practice and Procedure of the Kauai Planning Commission Rule 1-6-10(b), Petitioners Patrick Turley and Patricia Turley ("Petitioners"), hereby submit their Exceptions to Hearing Officer's Report and Recommendation of Contested Case ("Report") entered on May 5, 2023. The Kauai Planning Commission should reject the Hearing Officer's conclusion that Petitioner must cease the use of their property as a nonconforming transient vacation rental.

I. INTRODUCTION

Petitioners own a legal single-family residential home that has been continuously and lawfully used as a Transient Vacation Rental ("TVR") since long before the County of Kauai amended its zoning law to prohibit new TVRs, a fact conceded by the Planning Department through its issuance of a Nonconforming Use Certificate ("NCUC") year after year until 2022. The right to continue TVR use is a valuable vested property right, made even more valuable by the County's 2008 prohibition on new TVRs. In 2022, Petitioners were unable to submit renewal application by the arbitrary date set by the Planning Department and, within weeks of that designated renewal date, the Planning Department issued a Cease and Desist and Forfeiture of the Petitioners' NCUC. The Planning Department refused to process any renewal registration and instead ordered Petitioners to cease and desist TVR use. The renewal process is nothing more than a ministerial act to update certain tax and other information for the Planning Department for legally established TVR properties and should not be allowed to determine the validity of a vested property right.

The Hearing Officer ignored the central issue of this case: given the circumstances of the Petitioners' NCUC renewal agent's untimely passing and because the renewal packet is a

ministerial function, the Planning Department should have accepted Petitioners' renewal packet as timely. The issue is both legal and practical. The purpose of the renewal packet is to update the Planning Department regarding Petitioners' property and to submit documentation to show continuous use, such as tax returns. Thus, there was no harm in accepting the packet a few weeks late. However, in application, the Planning Department uses late renewals as method for systematically eliminating lawful nonconforming TVR properties.

In affirming the Planning Department's issuance of a Cease & Desist and Forfeiture letter ("Forfeiture Letter") the Hearing Officer's Report gives a recommendation that violates Petitioners' vested property and due process rights, violates state law and county ordinance, and defies principles of equity. Therefore, Petitioners request the Planning Commission consider the unique circumstances surrounding the submission of Petitioners' renewal packet, reject the Report, and render a decision in favor of Petitioner.

II. SPECIFIC EXCEPTIONS

In addition to the general objections and exceptions noted above, Petitioners object to the following specific findings of fact and conclusions of law, without waiving any other arguments.

A. Findings of Fact

Petitioners object to Finding of Fact 9, because it fails to address circumstances relevant to the arbitrary date. Specifically, the party in charge of filing Petitioner's NCUC renewal applications was Scott Lindman, who passed away earlier in the year. December 29, 2022 Transcript Pages 44-45. Following his untimely passing Lisbeth Grout began management of the property, entirely unaware of the unusual June 6, 2022, deadline[1]. Thus, Finding of Fact 9 fails to address extenuating circumstances pivotal in causing the delay at issue.

[1] July 31st is the most common renewal date. See December 19, 2022 Transcript Page 42.

B. Conclusions of Law

Petitioners object to COLs 12-17 because the Hearing Officer did not provide support as to why Petitioners were not entitled to equitable relief and does not reconcile the fact that "[e]quity does not favor forfeitures." *Food Pantry v. Waikiki Bus. Plaza*, 58 Haw. 606, 614, 575 P.2d 869, 876 (1978). The Hearing Officer does not even discuss the equities in this case. He simply concluded that because the ordinance does not provide for an extension, the Planning Department had no authority "to order equitable relief."

Petitioners object to COL 20 as an incorrect statement of law. The "Liberal Construction Provision"[2] and the "Continued Lawful Use Provision"[3] are not at odds or inconsistent with each other. Although Haw. Rev. Stat. § 46-4(a) provides that the "powers granted herein shall be liberally construed in favor of the county exercising them," this does not conflict with the fact that zoning ordinances shall not "prohibit the continued lawful use of any building or premises." The "Continued Lawful Use Provision" limits the zoning powers of the county that would otherwise violate the constitution. *See Ferris Tr. v. Planning Comm'n of Kauai*, 138 Haw 307,

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[2] Haw. Rev. Stat. § 46-4(a) (the Zoning Enabling Act) provides:

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations[.]

The Hearing Officer designates this provision as the "Liberal Construction Provision."

[3] Haw. Rev. Stat. § 46-4(a) also provides:

> Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses.

The Hearing Officer designates this provision as the "Continued Lawful Use Provision."

312, 378 P.3d 1023, 1028 (App. 2016) ("The statutory protection of lawfully existing uses and structures 'prior to the effective date of a zoning restriction is grounded in constitutional law.'") (quoting W*aikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals*, 85 Haw. 343, 353, 949 P.2d 183, 193 (App. 1997). The Hearing Officer also ignores well-settled case law subsequent to the adoption of Haw. Rev. Stat. chapter 46-4, that hold that zoning laws are strictly construed because they are in derogation of the free use of property. *Waikiki Marketplace*, 85 Haw. at 354, 949 P.2d at 194 ("Moreover, zoning laws and ordinances are strictly construed, 'as they are in derogation of the common law, and their provisions may not be extended by implication."); *Foster Village Community Ass'n v. Hess*, 4 Haw. App. 463, 469-70, 667 P.2d 850, 854 (1983) ("Ambiguities in a zoning regulation should not be resolved in further derogation of common-law rights."). Therefore, zoning powers cannot prohibit lawful nonconforming uses except under very specific circumstances.

Petitioners objection to COLs 21-22 and Footnote 16 as an incorrect application of the law. Kauai County Code ("KCC") § 8-17.10(h) does not aid or explain Haw. Rev. Stat. § 46-4(a). First, Haw. Rev. Stat. § 46-4(a) is not ambiguous and neither party argued that it is ambiguous. Second, Haw. Rev. Stat. § 46-4 is the Zoning Enabling Act, which grants the counties authority to create zoning laws. *Ferris*, 138 Haw. at 312, 378 P.3d at 1028. On the other hand, KCC § 8-17.10(h) addresses renewal of non-conforming use certificates for TVRs. Further, the requirement that the owner of a single family transient vacation rental obtain a NCUC, pursuant to KCC § 8-17.10(b), does not lead to the conclusion that a "lapse of registration" means "the nonconforming use is no longer a lawful use" nor does it mean that a property owner loses its nonconforming status under Haw. Rev. Stat. § 46-4. Lawfulness of a use is determined at the time the zoning restriction is adopted, not ten years later.

Petitioners object to COL 23 as an incorrect application of the law. Haw. Rev. Stat. § 46-4(a) and KCC § 8-17.10(h) conflict because Petitioners obtained a lawful NCUC and cannot forfeit their NCUC based on a ministerial and arbitrarily set deadline. Petitioners have a vested property right to continue their lawful nonconforming use. *See Waikiki Marketplace*, 86 Haw. at 353, 949 P.2d at 193 (stating "due process principles protect a property owner from having his or her vested property rights interfered with and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate").

Petitioners object to COLs 25-27 as an incorrect application of the law. The County's ability to allow nonconforming uses to continue if they existed prior to an amendment of the zoning code is not discretionary; it is mandatory. Haw. Rev. Stat. § 46-4(a) provides: "[n]either this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises . . . ." (Emphasis added.) Pursuant to the supremacy provisions in Article VIII, Section 6 of the Hawaii Constitution and Haw. Rev. Stat. § 50-15 because Haw. Rev. Stat. § 46-4 prohibits a county from preventing a lawful use to continue, the County ordinance cannot make it discretionary. *See also Save Sunset Beach Coal. v. City & Cty. of Honolulu*, 102 Haw. 465, 481, 78 P.3d 1, 17 (2003).

Petitioners object to COLs 30-33 as an incorrect application of the law. The Hearing Officer concludes without providing any support that a nonconforming use can be forfeited, attempting to distinguish the terms "abrogate" and "forfeit." However, the Hearing Officer fails to overcome the notion that "due process principles protect a property owner from having his or her vested property rights interfered with and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate." *Waikiki Marketplace*, 86 Haw. at 353-54, 949 P.2d at 193-94 (citation omitted). The County's zoning ordinance, KCC

8-17.10(h), abrogates Petitioners' vested property rights in violation of the constitution if it is interpreted to remove Petitioners' right to its lawful nonconforming use by missing a ministerial and arbitrarily set deadline to provide updated tax and other information to the Planning Department.

C. Hearing Officer's Conclusion

Petitioners object to the Hearing Officer's conclusion for the reasons stated above.

D. Denial of Motion for Summary Judgment

Petitioners' object to the Hearing Officer's denial of their Motion for Summary Judgment. The same issue presented by this appeal has been litigated by the Planning Department in other cases, and the Planning Department and Planning Commission have been reversed by the Circuit Court. The Hearing Officer is not applying the legal principles correctly, and is recommending the Commission to take action that has been reportedly overturned by the Circuit Court.

III. CONCLUSIONS

The Planning Commission should reject the Hearing Officer's Report. The Planning Commission should further render a decision in favor of Petitioners and instruct the Planning Department to accept Petitioners' 2022 renewal packet and order the Planning Department to continue to recognize Petitioners' lawful nonconforming use of their property.

DATED: Honolulu, Hawaii, May 15, 2023.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Gregory W. Kugle
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BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In the Matter of: Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4) 5-5-001:040 containing 12,197.0 square feet, PATRICK TURLEY and PATRICIA TURLEY, Petitioners, v. PLANNING DEPARTMENT OF THE COUNTY OF KAUAI, Planning Department.	CC-2023-1 TVRNCU #4250 TMK: (4) 5-5-001:040 **REQUEST FOR ORAL ARGUMENT**

REQUEST FOR ORAL ARGUMENT

Pursuant to the Rules of Practice and Procedure of the Kauai Planning Commission Rule 1-6-19(d), Petitioners respectfully request that they be granted an opportunity for oral argument before the Planning Commission. The Hearing Officer in this case disregarded Petitioner's legal and constitutional arguments. An oral argument before the Planning Commission would give Petitioners an opportunity to clarify their arguments and further highlight the errors in the Hearing Officer's Report and Recommendation, so that the Planning Commission can properly make its decision regarding the Report and not act in violation of Petitioners' rights.

DATED: Honolulu, Hawaii, May 15, 2023.

DAMON KEY LEONG KUPCHAK HASTERT

/s/ Gregory W. Kugle
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BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In the Matter of: Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4) 5-5-001:040 containing 12,197.0 square feet, PATRICK TURLEY and PATRICIA TURLEY, Petitioners, v. PLANNING DEPARTMENT OF THE COUNTY OF KAUAI, Planning Department.	)	CC-2023-1 TVRNCU #4250 TMK: (4) 5-5-001:040 **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties listed below, by means of electronic mail and U.S. Mail, postage prepaid, at their last known address.

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BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In the Matter of:	CC-2023-1
	TVRNCU # 4250
Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4) 5-5-001:040 containing 12,197.0 square feet,	TMK: (4) 5-5-001:040
	RESPONDENT PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I SUPPORT OF HEARING OFFICER'S REPORT AND RECOMMENDATION OF CONTESTED CASE; CERTIFICATE OF SERVICE
PATRICK TURLEY and PATRICIA TURLEY,	
Petitioners,	HEARING: Dates: December 19th, 2022 Time: 9:00 AM Hearing Officer: Harlan Y. Kimura
vs.	
PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I,	
Respondent	

H.1.c.
June 27, 2023

H.X.a.
JUN 27 2023

RESPONDENT PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I' SUPPORT OF HEARING OFFICER'S REPORT AND RECOMMENDATION OF CONTESTED CASE

On December 19, 2022, the above captioned case came on for a hearing before Hearing Officer Harlan Kimura. Petitioners PATRICK TURLEY and PATRICIA TURLEY ("Petitioners") were appealing the Planning Director's decision relating to the forfeiture of the Petitioners' nonconforming use certificate. At the hearing, Petitioners were represented by Gregory W. Kugle and Respondent Planning Department of the County of Kaua'i (hereinafter "Planning Department") was represented by Deputy County Attorney Chris Donahoe.

On May 8, 2023, the Planning Department received the Hearing Officer's Report and Recommendations of the Contested Case listed above that was heard on December 19, 2022. On May 15, 2023, the Planning Department received Petitioners' Exceptions to Hearing Officer's Report and Recommendation of Contested Case and Request for Oral Argument in the above-entitled matter.

Pursuant to Rules of Practice and Procedure of the Kaua'i Planning Commission (hereinafter "RPPPC"), Chapter 6, Rule l-6-19 (c), the Planning Department hereby files its Support of Hearing Officer's Report and Recommendation of Contested Case for the case captioned above.

I. RESPONSE TO PETITIONERS' SPECIFIC EXCEPTIONS

Pursuant to RPPPC, Chapter 6, Rule 1-6-19(c), the Planning Department responds to the Petitioners' specific exceptions to the Hearing Officer's Report and Recommendation of Contested Case.

A. Findings of Fact

The Petitioners last obtained a renewal of Nonconforming Use Certificate Number 4250 ("TVNCU # 4250") for their property located at 4895 Eke Road, Hanalei, Kaua'i, Hawai'i 96714 ("Subject Property") on May 26, 2021. See Hearing Officer's Report and Recommendation for Contested Case ("H.O. Report") Finding of Fact ("FOF") 3. The Planning Department's letter dated May 26, 2021 notified the Petitioners that TVNCU # 4250 was renewed to June 6, 2022. H.O. Report at FOF 3. This letter stated that "in order to keep [the] Non-Conforming Use Certificate valid" the Petitioners had to submit their renewal application prior to the renewal date of June 6, 2022. H.O. Report at FOF 3. The letter dated May 26, 2021 from the Planning Department notified the Petitioners that "***Should your renewal be at least one (1) day late, you will be served with a Cease & Desist and Notice of Forfeiture.***" H.O. Report at FOF 3.

The Petitioners had to submit their renewal application by the renewal deadline of June 6, 2022. With regard to Finding of Fact 9, it was Petitioners own admission in Petitioners' Prehearing Statement dated December 1, 2022 at 4 that "[a]bout a week after the renewal date had past, [they] filed their application." Finding of Fact 9 is accurate. The Petitioners missed the renewal deadline of June 6, 2022. The Planning Department did not receive the Petitioners' Renewal Application for TVNCU # 4250 until June 23, 2022. H.O. Report at FOF 6. The renewal deadline of June 6, 2022 was mandatory and could not be missed by even one day. H.O. Report at Conclusions of Law ("COL") 15. The Planning Department has no discretion based upon equitable principles, or otherwise, to disregard the deadline for submittal

of the renewal application because there is no ordinance authorizing such exception. H.O. Report at COL 16. As such, the Planning Department has no authority to accept the Petitioners' renewal application after its deadline of June 6, 2022. H.O. Report at COL 16. Given that the Planning Department has no discretion to disregard the deadline for submittal of the renewal application, and given that the Planning Department has no authority to accept the Petitioners' renewal application after its deadline of June 6, 2022, any claimed extenuating circumstances as to why the Petitioners failed to submit the renewal application by the mandatory June 6, 2022 deadline were irrelevant, superfluous, and did not have to be addressed by the Hearing Officer in Finding of Fact 9.

The Planning Department supports the Hearing Officer's Findings of Fact 1 – 17.

B. Conclusions of Law

With regard to COL's 12 – 17, it is the Planning Department's position that the Hearing Officer provided sufficient support as to why Petitioners were not entitled to equitable relief. The Planning Department agrees with the Hearing Officer's analysis regarding COL's 12 – 17.

With regard to COL 20, it is the Planning Department's position that the Hearing Officer's analysis is proper and a correct statement of law.

With regard to COL's 21 – 22 and Footnote 16, it is the Planning Department's position that the Hearing Officer's analysis is proper and a correct application of the law.

With regard to COL 23, it is the Planning Department's position that the Hearing Officer's analysis is proper and a correct application of the law.

With regard to COL's 25 – 27, it is the Planning Department's position that the Hearing

Officer's analysis is proper and a correct application of the law.

With regard to COL's 30 – 33, it is the Planning Department's position that the Hearing Officer's analysis is proper and a correct application of the law.

The Planning Department supports the Hearing Officer's analysis contained in COL's 1 – 34.

C. Conclusion

The Planning Department supports the Hearing Officer's conclusion in the contested case listed above, which is to affirm the decision of the Planning Director to deny the Petitioners' renewal application because Petitioners did not meet their burden of proof by a preponderance of the evidence to establish that the decision of the Planning Department was based on an erroneous finding of a material fact, or the Planning Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

Additionally, the Planning Department supports the Hearing Officer's conclusion in the contested case listed above, which is to affirm the decision of the Planning Director to forfeit TVNCU # 4250 because Petitioners did not meet their burden of proof by a preponderance of the evidence to establish that the decision of the Planning Department was based upon an erroneous finding of a material fact, or the Planning Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

II. CONCLUSION

The Planning Commission should accept the Hearing Officer's Report and Recommendations contained therein. Based on the Hearing Officer's Report and

Recommendations contained therein, the Planning Commission should affirm the decision of the Planning Director to deny the Petitioners' renewal application and also affirm the decision of the Planning Director to forfeit TVNCU # 4250 because Petitioners did not meet their burden of proof by a preponderance of the evidence during the contested case to establish that the decision of the Planning Department was based upon an erroneous finding of a material fact, or the Planning Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

DATED: Līhu'e, Kaua'i, Hawai'i, May 19, 2023.

MATTHEW M. BRACKEN
County Attorney

By /s/ Chris Donahoe
CHRIS DONAHOE
Deputy County Attorney

Attorneys for Respondent
PLANNING DEPARTMENT OF THE
COUNTY OF KAUA'I

BEFORE THE HEARING OFFICER

OF THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In the Matter of: Petition to Appeal Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4250 (Nami Nori) for the Failure to Renew by June 6, 2022 Regarding the Property located at 4895 Weke Road, Hanalei, Kauai, Hawaii, identified by Kauai TMK No. (4) 5-5-001:040 containing 12,197.0 square feet, PATRICK TURLEY and PATRICIA TURLEY, Petitioners, vs. PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I, Respondent	)	CC-2023-1 TVRNCU # 4250 TMK: (4) 5-5-001:040 **CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a true and correct copy of the foregoing document was duly served upon the following parties listed below, by means of electronic mail and U.S. Mail, postage prepaid, addressed as follows:

GREGORY W. KUGLE, ESQ.
TOREN K. YAMAMOTO, ESQ.
Damon Key Leong Kupchak Hastert
1003 Bishop Street, Suite 1600
Honolulu, Hawai'i 96813
Email: gwk@hawaiilawyer.com
jcz@hawaiilawyer.com

Attorneys for Petitioners
PATRICK TURLEY and PATRICIA TURLEY

HARLAN Y. KIMURA, ESQ
220 South King Street, Suite 1660
Honolulu, Hawai'i 96813
Email: hyk@harlankimura.com

Hearing Officer for the
Planning Commission of the County of Kaua'i

LAURA BARZILAI, ESQ
County of Kaua'i
4444 Rice Street, Suite 220
Līhu'e, Hawai'i 96766
Email: lbarzilai@kauai.gov

Attorney for
Planning Commission of the County of Kaua'i

ELLEN CHING
Office of Boards and Commissions
County of Kaua'i
4444 Rice Street, Suite 150
Līhu'e, Hawai'i 96766
Email: eching@kauai.gov
asegreti@kauai.gov

DATED: Līhu'e, Kaua'i, Hawai'i, May 19, 2023.

MATTHEW M. BRACKEN
County Attorney

By /s/ Chris Donahoe
CHRIS DONAHOE
Deputy County Attorney

Attorneys for Respondent
PLANNING DEPARTMENT OF THE
COUNTY OF KAUA'I

Kaua`i Habitat for Humanity®

Building homes. Building community. Building 'ohana.

June 5, 2023

Ka'āina S. Hull, Planning Director
County of Kaua'i, Planning Department
4444 Rice Street, Suite A473
Līhu'e, HI 96766

SUBJECT: TIME EXTENSION REQUEST
Special Management Area Use Permit SMA(U)-2021-08
Tax Map Keys: (4) 4-3-009-71 and (4) 4-3-009:51
Waipouli, Kaua'i
Kauai Habitat for Humanity, Inc., Applicant

Dear Director Hull,

Kauai Habitat for Humanity, Inc. is submitting this request for an extension of Condition No. 13 from the approved Special Management Area (SMA) Use Permit (SMA (U)-2021-08 approved by the County of Kaua'i, Planning Commission effective July 13, 2021. We are seeking a three (3) year extension of this condition which would result in a change to the time deadlines for substantial progress, as determined by the Director, regarding the development. If the extension is granted, then necessary building permits would be issued and construction substantially started by July 13, 2026.

We have been working diligently on this project and have made significant progress on the following items:

1. Received approval of lot consolidation under Subdivision Map S-2022-11 on August 23, 2022. This lot consolidation will facilitate our building layout. We still need to remove lots from the Land Court system to facilitate home ownership of the individual units.
2. The architectural design for the units has been completed. Due to the unique design of the duplex units we have engaged the services of a structural engineer for structural review.
3. The Grading Permit plans have been submitted and reviewed by Public Works. Resubmittal is pending.
4. The existing building on the property has been relocated and the foundations removed.
5. The design and approval of the off-site water supply work was completed by June 8, 2022. The construction contract was issued in 2022.

While we have made significant progress on the items noted above we are behind on our project schedule due to circumstances detailed below:

This is institution is an equal opportunity provider and employer. We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

EQUAL HOUSING OPPORTUNITY

Kaua`i Habitat for Humanity®

Building homes. Building community. Building 'ohana.

Removal from Land Court System

To facilitate management of land issues and unit ownership we are transferring the lots from Land Court to Regular System. Following approval of the SMA Use Permit for the subject project we determined that the project needed to be consolidated into a single lot and convert lots from Land Court to Regular System. Land Court determinations can be a lengthy process and completion dates are difficult to predict.

CPR Documentation

We are actively working on our CPR documents and the CPR map is near completion. Obtaining final CPR approval is another process that is difficult to predict completion. Our Kalaheo Project is in its third year of the process.

Off-Site Waterline Work

The off-site waterline work has been significantly impacted by supply-line issues. The contractor is still waiting for one significant part. It delivery is expected imminently and construction will start as soon as it arrives.

On-Site Grading & Infrastructure Work

Starting the on-site grading and infrastructure work is dependent on issuance of the grading permit. Final approval of grading permits has been complicated by the Engineering Division's requirement that grading permits be reviewed by the State Historic Preservation Division (SHPD) of DLNR. We did not anticipate this requirement since SHPD had already reviewed the project during the SMA process and approved the project's Archaeological Monitoring Plan. Review times by SHPD are very difficult to predict.

Conclusion

Kauai Habitat for Humanity has been diligently working on this project. As identified above we have made significant progress on many items but are experiencing project delays on others due to various issues outside of our control. Approval of this time extension for substantial progress will allow us adequate time to complete this much needed affordable housing project. Please see our revised Project Timeline attached.

Thank you for considering our request. Should you have any question regarding this request please contact me at 808-634-1027 or via email at milani@kauaihabitat.org.

Sincerely,

Milani Pimental
Executive Director

This is institution is an equal opportunity provider and employer. We are pledged to the letter and spirit of U.S. policy for the achievement of equal housing opportunity throughout the Nation. We encourage and support an affirmative advertising and marketing program in which there are no barriers to obtaining housing because of race, color, religion, sex, handicap, familial status, or national origin.

EQUAL HOUSING OPPORTUNITY

DEPARTMENT OF PLANNING
KA'ĀINA HULL, DIRECTOR
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission:	Consideration of Applicant's request for an extension of a SMA Use Permit SMA(U)-2021-8 for the construction of eight (8) two-story multi-family buildings and a two-story single-family dwelling, consisting of twelve (12) three (3) bedroom units and five (5) 2-bedroom units for a total of seventeen (17) residential units.
Permit Application Nos.	Special Management Area Use Permit SMA(U)-2021-8
Name of Applicant(s)	KAUA'I HABITAT FOR HUMANITY, INC.

II. PERMIT INFORMATION

PERMITS REQUIRED	
☐ **Use Permit**	
☐ **Project Development Use Permit**	
☐ **Variance Permit**	
☐ **Special Permit**	
☐ **Zoning Permit Class** ☐ IV ☐ III	
☒ **Special Management Area Permit** ☒ Use ☐ Minor	Pursuant to Section 205A of the Hawai'i Revised Statues (HRS) and the Special Management Area Rules and Regulations of the County of Kaua'i, the change in intensity of use of land, including but not limited to the division or subdivision of land; which constitutes "Development." Therefore, a SMA Use Permit is required as defined in Section 7.3 of the SMA Rules.
AMENDMENTS	
☐ **Zoning Amendment**	
☐ **General Plan Amendment**	
☐ **State Land Use District Amendment**	

Date of Receipt of Completed Application: N/A

H.2.b.
June 27, 2023

Date of Director's Report: N/A

Date of Public Hearing: JUNE 27, 2023

Deadline Date for PC to Take Action (60TH Day): N/A

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located off Kūhiō Highway at the intersection Wana Road, situated across the Kaua'i Shopping Village and Kaua'i Choy village.		
Tax Map Key(s):	(4) 4-3-009:051	**Area:**	.8458 Acres

ZONING & DEVELOPMENT STANDARDS	
Zoning:	Residential (R-20)
State Land Use District:	Urban
General Plan Designation:	Neighborhood Center
Height Limit:	No multiple family buildings, hotel or motel, shall be more than ten (10) feet higher than any residential building located within thirty (30) feet of the building, or shall not exceed four (4) stories nor exceed forty (40) feet from finished grade at each point along the building to the highest wall plate line. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less. The limits contained in this Section shall not apply to spaces containing mechanical equipment, such as elevator machinery and air conditioning units, but the spaces shall not exceed fifteen (15) feet above the highest wall plate line.
Max. Land Coverage:	90 %
Front Setback:	10'-0"
Rear Setback:	5' or ½ the wall plate height whichever is greater
Side Setback:	5' or ½ the wall plate height whichever is greater
Community Plan Area:	Kapa'a- Wailua Development Plan
Community Plan Land Use Designation:	N/A
Deviations or Variances Requested:	N/A

IV. LEGAL REQUIREMENTS

Section 8.3.1(f), KCC:	**N/A**
Commission Meeting Date:	June 27, 2023

V. PROJECT DESCRIPTION AND USE

The proposed development is an affordable housing project consisting of twelve (12) 3-bedroom units and five (5) 2- bedroom units for a total of seventeen (17) residential units. As represented, the original permit submittal for the July 13, 2021 Planning Commission Hearing, involved two (2) adjacent parcels identified as Tax Map Key (TMK) Numbers (4) 4-3-009:071 and 051. There was an existing single-family residence on parcel 071 that has since been relocated through Zoning Permit Number Z-431-2022. The applicant also submitted a lot consolidation permit through Subdivision Permit number S-2022-11. The subdivision application received final approval by the Planning Commission on approval on August 23, 2022. The subdivision has been since recorded and officially recognized as TMK: (4) 4-3-009:051 consisting of .8458 acres (36, 851 s.f.).

The subject permit was approved by the Planning Commission on July 13, 2021. A condition of the permit required the applicant to adhere to project timelines upon approval of the SMA Permit. As originally approved Condition No. 13 reads:

> *"13. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect."*

VI. APPLICANT'S REASONS/JUSTIFICATION

As noted above, the applicant received subdivision approval to consolidate the parcels and is currently in the process of removing the newly consolidated parcel from the land court system and having it transferred to the regular system. The applicant is also currently working on the Condominium Property Regime (CPR) process to provide opportunities for families to construct and buy their own homes.

Also, on-site grading and infrastructure work is awaiting review by the Department of Land and Natural Resources, State Historic Preservation Division (DLNR, SHPD).

VII. PRELMINARY EVALUATION

Based on the circumstances involving the development, the applicant's reasons to allow the time extension are justifiable and no problems are foreseen in the granting of the applicant's request.

The Planning Department suggests that an amendment to condition No. 13 is necessary to provide a five (5) Year time extension to complete the project as represented.

VIII. PRELIMINARY RECOMMENDATION

It is recommended that the Commission approve the extension to allow the completion of the project and the applicant be subjected to the applicable requirements. Furthermore, Condition No. 13 be amended to read as follows:

> *"13. Unless otherwise stated in the permit, [once permit is issued,] the Applicant must make substantial progress, as determined by the Director, regarding the development or activity [within two (2) years,] by July 13, 2026 or the permit shall be deemed to have lapsed and be no longer in effect."*

The applicant is advised that all applicable conditions of approval shall remain in effect (see Exhibit "A" for a copy of the original conditions of approval letter dated July 13, 2021.

*NOTE: Material to be deleted in brackets & strikethrough, and new material is underlined.

By _____
ROMIO IDICA
Planner

Approved & Recommended to Commission:

By _____
KA'ĀINA S. HULL
Director of Planning

Date: 6/8/2023

EXHIBIT "A"

(SMA (U)-2021-8 Letter of approval, Dated July 13, 2021)

PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISION

DONNA APISA, CHAIR
GERALD AKO, MEMBER
HELEN COX, VICE CHAIR
MELVIN CHIBA, MEMBER
FRANCIS DEGRACIA, MEMBER
GLENDA NOGAMI-STREUFERT, MEMBER
LORI OTSUKA, MEMBER

July 13, 2021

Kaua'i Habitat for Humanity, INC.
P.O. Box 28
'Ele'ele, Hawai'i 96705

Subject: Special Management Area Use Permit SMA(U)-2021-8
Tax Map Key: (4) 4-3-009:071 and (4) 4-3-009:051
Kapa'a, Kaua'i
KAUA'I HABITAT FOR HUMANITY, INC.

Dear Mr. Spears,

This letter memorializes the action taken by the Kaua'i Planning Commission effective July 13, 2021 concerning approval of the above subject permits to allow the construction of eight (8) two-story multi-family buildings and a two-story single-family dwelling, consisting of twelve (12) three (3) bedroom units and five (5) 2-bedroom units for a total of seventeen (17) residential units. The approval is subject to the following conditions:

1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.

2. Prior to commencement of the proposed development, written confirmation of compliance with the requirements from all reviewing agencies shall be provided to the Planning Department. Failure to comply may result in forfeiture of the SMA Permit.

3. The proposed dwellings shall not be utilized for any transient accommodation purposes. It shall not be used as a transient vacation rental (TVR) or as a homestay. This restriction shall be incorporated into the deed restrictions of the subject parcel in the event the property is sold to another party, draft copies of which shall be submitted to the Planning Department prior to building permit application approval.

4. In order to ensure that the project is compatible with its surroundings and to minimize the visual impact of the structures, the external color of the proposed dwellings shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to building permit application.

5. In accordance with Section 11A-2.2 of the Kaua'i County Code, the applicant shall submit to the Planning Department and Environmental Impact Assessment (EIA) Fees

for the project. The EIA fee for the Multi-Family residential unit project is based on $1,000 per unit and is due prior to building permit approval.

6. The applicant shall provide two (2) off-street parking spaces per dwelling unit. A total of 34 off-street parking spaces shall be provided for the proposed development.

7. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division at (808) 692-8015 and the Planning Department at (808) 241-4050 to determine mitigation measures.

8. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward-facing, shielded lights. Spotlights aimed upward or spotlighting of structures shall be prohibited.

9. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.

10. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.

11. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kauai residents for particular skilled jobs where no qualified Kauai residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.

12. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.

13. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity

within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

14. While habitable enclosed areas are not projected to be impacted by the Sea Level Rise Exposure Area (SLRXA), given the proximity of the site to the coastline and its corresponding hazards, the applicant shall consider further elevating all habitable structures, including but not limited to the first story bedrooms.

15. The Applicant shall provide hazard education to all residents and tenants, including but not limited to the following:

    - Disclosure of the risks to hurricane, tsunami, and sea level rise, including provisions of flood, storm surge, and tsunami maps, and other resources that show inundation and evacuation areas.

    - Provide information on how to create a family evacuation plan, and how to create a 14-day supply of food and water, and other essentials.

    - Provide information on options to purchase hurricane and flood insurance.

If you have further questions regarding this matter, please contact Romio Idica of my staff at (808) 241-4056.

Sincerely Yours,

KA'ĀINA S. HULL
Clerk, Kaua'i Planning Commission

xc: COK – Public Works, Fire, Water, Housing Agency, Finance-Real Property Division
State Health Dept., State Department of Transportation

David & Melinda Murray
1196 Nohea St
Kalaheo, HI 96741
Mindy@Kit-Therapy.com
808.652.1954

COUNTY OF KAUAI
'23 MAY 23 P2:39
PLANNING DEPT.

5/14/2023

County of Kauai Department of Permitting 4444 Rice Street, Suite A470 Lihue, HI 96766

Subject: Disposal of Homestay Permit Request:

Class IVZoning PermitZ-IV-2015-39

UsePermit U-2015-38

Tax Map Key: (4) 2-3-023:119

1196 Nohea Street, Kalaheo, Hl 96741 (Kauai Studio)

Aloha,

I am writing to inform you that my family no longer requires a homestay permit for our property located at 1196 Nohea Street Kalaheo, HI 96741, Parcel # 230231190000 . Therefore, I kindly request that you dispose of our homestay permit currently under Active Status.

The reason for this change is that we have recently filed our taxes with the appropriate authorities in a different jurisdiction. As a result, we are no longer eligible for a homestay permit on Kauai. We understand the importance of complying with all applicable tax laws and regulations, and we strive to maintain full compliance in all our endeavors.

We sincerely apologize for any inconvenience caused by this withdrawal, and we appreciate your understanding in this matter. We understand the significance of obtaining and maintaining the appropriate permits and licenses for operating a homestay, and we respect the processes and regulations set forth by the County of Kauai.

Should there be any further steps or documentation required from our end to complete the cancellation of our homestay permit request, please let us know promptly. We are committed to resolving this matter as efficiently as possible and ensuring compliance with all relevant regulations.

Thank you for your attention to this request. We appreciate your dedication to maintaining the integrity of the homestay program and your assistance throughout this process. Should there be any questions or concerns, please do not hesitate to contact me at the provided email address or phone number.

Mahalo Nui Loa,

Dave & Mindy Murray

Cell: 808.652.1954, E: Mindy@kit-therapy.com

H.M.A.
JUN 27 2023

PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISION

FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, MEMBER
HELEN COX, MEMBER
GLENDA NOGAMI-STREUFERT, MEMBER
JERRY ORNELLAS, MEMBER
LORI OTSUKA, MEMBER

MEMORANDUM

To: Honorable Commissioners
Kauai Planning Commission

Fr: Kaaina S. Hull
Clerk of the Commission

Date: June 5, 2023

RE: Clerk of the Commission's Recommendation to Cancel a Homestay permit, Use Permit U-2015-38 and Class IV Zoning Permit Z-IV-2015-39, ***Dave and Mindy Murray***, 1196 Nohea Street, Kalaheo, Kauai, TMK 23023119, as requested

By letter dated 5/14/2023, applicant's are requesting the cancellation of the above referenced permits as they have filed their taxes in a different jurisdiction. SEE attached.

Recommendation: Approve cancellation of Use Permit U-2015-38 and Class IV Zoning Permit Z-IV-2015-39.

H.2.b.
JUN 27 2023

DEPARTMENT OF PLANNING
THE COUNTY OF KAUA'I
DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

COPY

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI-SAYEGUSA
DEPUTY DIRECTOR

CEASE & DESIST, AND
FORFEITURE OF TVRNCU

May 3, 2023
Certified Mail

Edmund & Linda Gregoire
W3133 Country Road N Pp
Sheyboygan, WI 53085

Subject: **CEASE & DESIST, and FORFEITURE of Non-Conforming Use Certificate TVNCU #4287**
TMK 26011019, Koloa, Kaua'i
4650 Amio Road (Mau Loa 'Ohana)
Edmund & Linda Gregoire, applicant

Your TVNCU was to be renewed by ***April 18, 2023*** as required by Sec.8-17-10 (h)(1) of the codified Kauai County Code 1987, as amended, which was the annual date of issuance of the non-conforming use certificate. The Department received the renewal packet which was hand delivered on April 28, 2023.

Further Section 8-17.10(h)(1) reads:

> "Each application to renew shall include proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use and shall be received by the Department prior to the expiration date of a held Nonconforming Use Certificate. ***Failure to meet this condition will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates.***"

Since you failed to submit a renewal packet prior to April 18, 2023, you are hereby ordered to **Cease & Desist** the transient vacation rental use of the property. The following elements shall be instituted immediately:

a. Cease and desist the use of the single family residence as a vacation rental;

b. Remove all advertisements (tv, radio, worldwide web, outdoor signage, etc) related to the existing Vacation Rental use of the property;

c. Suspend or cancel the GE and TAT licenses for the Vacation Rental use;

d. Cancel all Transient Vacation rental commitments for the property, commencing from May 3, 2023.

H.4.a.
JUN 27 2023

Documentation shall be submitted to the Department confirming the above actions have been implemented.

You have the right to appeal this decision and any appeal must be filed with the Planning Commission within 30 days after the date of this decision to provide you an opportunity for a hearing before the Planning Commission. The appeal must conform to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission. The Rules of Practice and Procedure of the Planning Commission are available on the Department's website.

Should you fail to Cease & Desist the vacation rental use of the property within the time period noted above and it is confirmed by the Department, you will be issued a Notice of Violation, $10,000.00 civil fine, and the matter forwarded to the Prosecutor's Office for criminal prosecution. Should you appeal this forfeiture, the vacation rental use must still cease.

Should you have any questions regarding this matter, please contact Enforcement Supervisor Michael Laureta at 808-241-4071 or mlaureta@kauai.gov.

KAAINA S. HULL
Director of Planning

CC: Real Property Div.
Linda Jordan

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The Parrish Collection, LLC
3176 Poipu Road Suite #1
Koloa, HI 96756

June 2, 2023

Count of Kaua'i Planning Commission
c/o County of Kaua'i Planning Department
4444 Rice Street., Ste A473
Lihue, Hawaii 96766

Re: Petition to Appeal

Dear County of Kaua'i Planning Commission:

Our company is the agent for Edmund Gregoire and Linda Gregoire ("**Homeowners**"). We are in receipt of a letter addressed to Homeowners dated May 3, 2023 from the Director of the Kaua'i Department of Planning and Permitting (the "**Director**") concerning Non-Conforming Use Certificate TVNCU #4287 (the "**Order**") related to TMK 2-6-011-019, for the property located at 4650 Amio Road, Koloa, Kaua'i (Homeowners' "**home**"). We understand that the Director is attempting to take away Homeowners' right to use their home for residential purposes for less than 180 days, despite their home having been utilized legally and continuously for such use from before such use was made illegal by the County.

This letter shall serve as Homeowners' petition to appeal the Order. As far as we can tell, according to the Order and the Rules of Practice and Procedure of the Kaua'i County Planning Commission, as modified by an amendment certified by the County Clerk on October 18, 2017 and posted on the Planning Commissions website[1] ("**Kauai Planning Rules**" or "**KPR**"), § 1-9-2(a)(1) Homeowners have 30 days after service of the Order to file their petition to appeal to you. Homeowners received the Order on May 3, 2023, and therefore Homeowners have until Friday, June 2, 2023 to file this petition with the Clerk of the Commission.

Pursuant to KPR § 1-9-2(b) Homeowners' petition must include the following:

1. Appellants' name, address, and telephone number;
2. The identification of the property and Homeowner's interest therein;
3. The particular provision of the zoning ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Director; and
6. The reasons for Homeowners' appeal, including a statement as to why Homeowners believe that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion.

We provide the following responses, in order:

1. Name, address, telephone number of appellants:

Edmund Gregoire and Linda Gregoire
c/o The Parrish Collection, LLC

[1] Available at <https://www.kauai.gov/LinkClick.aspx?fileticket=qp23OZ-DtNE%3d&tabid=156&portalid=0&mid=988> (last visited June 1, 2023).

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3176 Poipu Road Suite #1
Koloa, HI 96756
808-742-2000

2. The identification of the property and appellants' interest therein:

TMK 2-6-011-019
4650 Amio Road, Koloa, Kaua'i
The Parrish Collection, LLC is the agent for Edmund Gregoire and Linda Gregoire who control Mauloa LLC, the fee simple owner of the property

3. The particular provision of the zoning ordinance or regulation in question:

Kaua'i County Code ("**KCC**") § 8-17-10(h)(1)

4. All pertinent facts:

The home was built in 1983. The home has been rented to "Transient" tenants under the KCC's current definition of "Transient"[2] since before March 7, 2008. The home has been used continuously for such rentals since that time, before such residential use was declared illegal by the County of Kauai.

On March 7, 2008, the County of Kauai passed Ordinance 864, a new law that declared Homeowners' "Transient" residential use illegal. Relevant portions of said ordinance were codified as KCC § 8-17.10. KCC § 8-17.10 created a process whereby persons using homes for residential uses that were no longer in conformance with the KCC had to submit an annual renewal to maintain their constitutional rights. The provision does not provide for any recognition that a use could be continuing for an entire year before the renewal deadline. Instead, the Director has interpreted KCC § 8-17.10 to mean there is absolutely no grace period and anyone who is one day late in submitting the arbitrary renewal application will have their constitutional rights to residential use taken by the government.

An application for a nonconforming use certificate was submitted for the home. Such application, and Homeowners' constitutional right to continue using their property for legal residential uses, was "approved" as TVNCU #4287 (the

[2] KCC § 8-1.5 defines "Transients" and "Transient Vacation Rental" as follows:

> "Transient" or "Transients" means any person who owns, rents, or uses a dwelling unit or a portion thereof for one hundred eighty (180) days or less, and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not apply to nonpaying guests of the family occupying the unit, patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from State or Federal governments, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

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"**Permit**") on April 18, 2008. In, 2022, Homeowners' "renewed" their constitutional rights partially evidenced in the Permit pursuant to the Director's process. Homeowners' were informed via letter dated April 6, 2022, titled "2022 Renewal and 2023 Renewal Notice" ("**2022 Renewal**") that their Permit was renewed until April 18, 2023.

From April 6, 2022, until April 18, 2023, Homeowners' home was utilized for residential uses. Homeowners' rented their home to individuals for less than 180 days throughout that period.

5. The action of the Director:

On April 28, 2023, Homeowners submitted a renewal application for 2023 to 2024. After Homeowners' submittal, the Director sent Homeowners a letter informing them that due to their renewal request not being submitted prior to April 18, 2023, the Director was taking away their right to use their home for the residential use of renting their home to individuals for less than 180 days.

6. The reasons for appellants' appeal, including a statement as to why appellants believe that the Director's action was based on an erroneous finding of a material fact, or that the Director had acted in an arbitrary or capricious manner, or had manifestly abused his discretion:

Since the first constitution laid down by Kamehameha III, it has been illegal for government to take private property except by due process of law in these islands.[3] The US Constitution similarly requires that no one shall be deprived of property without due process of law, nor shall private property be taken for public use without just compensation.[4] The 14th Amendment to the US Constitution furthermore applied the requirements of the US Constitution to the States.[5]

On August 21, 1959, Hawaii became a state of the United States subject to a state constitution that stated in relevant part as follows:

> Sec. 2. All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are . . . the acquiring and possessing of property.
> Sec. 4. No person shall be deprived of . . . property without due process of law[.]
> Sec. 9. Excessive bail shall not be required, nor excessive fines imposed[.]

---

[3] *See* 1839 Constitution of the Kingdom of Hawaii, paragraph 5; *see also* 1840 Constitution of the Kingdom of Hawaii paragraph 5[3], 1852 Constitution of the Kingdom of Hawaii paragraph 10 ("No person shall . . . be deprived of . . . property, without due process of law."), 1864 Constitution of the Kingdom of Hawaii, Art. 9, 1887 Constitution of the Kingdom of Hawaii, Art. 9, 1894 Constitution of the Republic of Hawaii, Art. 8.

[4] U.S. Const. amend. V.

[5] Hawai'i Legal Short-Term Rental All. v. City & Cnty. of Honolulu, No. 22-CV-247-DKW-RT, 2022 WL 7471692, at *9 (D. Haw. Oct. 13, 2022).

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> Sec. 18. Private property shall not be taken for public use without just compensation.[6]

These rights were re-affirmed after a 1968 convention.

In 1976, Kaua'i passed a revised county ordinance, which enacted a section codified as KCC § 23.2, which states in relevant part:

> (a) A nonconforming use of land, buildings, or other structures may continue to the extent that the use existed on September 1, 1972 or any amendment hereto, as provided in this Section, provided that the Planning Commission may, after hearing, order the termination of a nonconforming use that creates substantial danger to public health or safety.
>
> (b) If any nonconforming use ceases for any reason for continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.[7]

Homeowners' home was built in 1983. The home has been utilized for residential uses through lease agreements of less than 180 days from before March 7, 2008.

On November 7, 1978, Hawaii's constitution was amended to what it states today. The constitution reiterated:

> Sec. 2. All persons are free by nature and are equal in their inherent and inalienable rights. Among these rights are . . . the acquiring and possessing of property.
> Sec. 5. No person shall be deprived of life, liberty or property without due process of law[.]
> Sec. 12. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted.
> Sec. 20. Private property shall not be taken or damaged for public use without just compensation.[8]

In 2008, the County of Kauai's zoning powers was derived from, and limited by, HRS § 46-4 (2007), which stated in relevant part as follows:

> Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this

[6] Haw. Const. art. I, §§ 2, 4, 9, 18 (1959).
[7] KCC § 23.2 (1976) (emphasis added) (KCC § 23.2 was re-designated with identical language and is now found at KCC § 8-13.2 (2012)).
[8] Haw. Const. art. I, §§ 2, 5, 12, 20.

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> section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.[9]

The plain meaning of this section is that the County of Kauai cannot take away Homeowners' right to rent their home to individuals for less than 180 days if the house was used for that purpose prior to the enactment of Ordinance 864 on March 7, 2008, which it was. Furthermore, the Director does not have the authority to amortize or phase out nonconforming residential uses.

A similar case recently came up in Honolulu. In Hawai'i Legal Short-Term Rental All. v. City & Cnty. of Honolulu, No. 22-CV-247-DKW-RT, 2022 WL 7471692 (D. Haw. Oct. 13, 2022) ("**HLSTRL**"), the City and County of Honolulu was attempting to take away the right of individuals to provide their property for residential use to others for periods from 30-89 days. The court issued a preliminary injunction against the City, finding that the County's ordinance not only violated HRS § 46-4(a)'s prohibition on taking nonconforming rights, it also violated HRS § 46-4(a)'s prohibition on phasing out residential uses. The court stated in relevant part:

> In this light, Ordinance 22-7 clearly violates the relevant provisions of HRS § 46-4(a). It is currently legal to rent O'ahu homes to tenants for 30–89 day periods in any zoning district. The Ordinance threatens to prohibit that activity in all non-Resort districts starting on October 23, 2022 or at least following the prescribed 180-day phase-out period, without grandfathering in prior lawful users. This is in direct conflict with H.R.S. § 46-4(a)'s bar against elimination of "lawful use[s]" that are in place "at the time ... [an] ordinance takes effect." Thus, unless the statute's amortization exception applies, this aspect of the Ordinance is conflict-preempted and, therefore, invalid.
>
> HRS § 46-4(a)'s amortization exception applies "only" in "commercial, industrial, resort, and apartment zoned areas" (hereinafter "phase-out districts"). In other words, the City may not phase out a nonconforming use in *non*-phase-out districts—*e.g.*, residential or agricultural zoning districts. To the extent the Ordinance purports to eliminate or phase out existing 30–89 day

[9] HRS § 46-4 (2007) (emphasis added).

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> rentals in residential, agricultural, and other non-phase-out districts, it is invalid.[10]

Similar to the county in HLSTRL, the County of Kaua'i (the "**County**") attempted to make a prior legal residential use illegal through its zoning power, which is subject to HRS § 46-4(a), exactly the same as the county in HLSTRL. The County of Kaua'i further attempted to impose an unusual punishment for anyone continuing such lawful use: such individuals would need to submit a request to continue exercising their constitutional rights annually, and, to quote what the Director told Homeowners in the 2022 Renewal, "[s]hould your renewal be at least one (1) day late, your will be served with a Cease & Desist and Notice of Forfeiture."

As explained by the court in HLSTRL, the Director does not have the power to take away Homeowners' right to use their home for the residential use of renting their home to individuals for less than 180 days merely because Homeowners' failed to submit an unnecessary request to continue exercising their constitutional rights 10 days after the date arbitrarily created by the Director and the County of Kaua'i. The County must demonstrate that Homeowners failed to use their home for residential uses for 12 continuous months, not merely that Homeowners filed paperwork late. The County's code states that nonconforming uses can only be taken by the County for non-use if such use ceases for 12 continuous months.[11] This would, in theory, be consistent with HRS § 46-4(a), unless such an attempt at "phase out" were applied to residential uses. In this case, that is precisely what the County of Kaua'i appears to be attempting: the elimination of residential uses through an overly stringent, cruel, unusual and Kafkaesque bureaucratic process.

Furthermore, it is critical to note that the Director's process violates Homeowners' due process rights. Due process, at a minimum, requires that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.[12] When notice is a citizen's due, process which is a mere gesture is not due process.[13] In this case, the Director's 2022 Renewal titled itself "2022 Renewal and 2023 Renewal Notice". This appears to be a mere gesture by the Director to inform Homeowner of their obligation to prove that their constitutional rights still existed one year later. Homeowners received no further notices about the Director's plan to take their property rights. Furthermore, the Director explicitly states that Homeowners' rights are forfeited, with absolutely no hearing whatsoever unless Homeowners request one pursuant to this petition within a strict 30-day time limit set by the Director.

The Director's letter also violated KCC § 8-3.5, which states:

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[10] Hawai'i Legal Short-Term Rental All. v. City & Cnty. of Honolulu, No. 22-CV-247-DKW-RT, 2022 WL 7471692, at *6 (D. Haw. Oct. 13, 2022).
[11] KCC § 23.2.
[12] Klinger v. Kepano, 635 P.2d 938, 942 (1981).
[13] Klinger, 635 P.2d at 942.

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> (2) The order shall advise the party responsible for the violation that the order shall become final thirty (30) calendar days after the date of its delivery or posting on the property, or publishing of such notice in a newspaper of general circulation in the County of Kauai. The order shall also advise that the Director's action may be appealed to the Planning Commission.

The Order failed to advise Homeowners of the fact that the Order became final 30 days after delivery. Worse, the Order stated explicitly that Homeowners' use of their home for the residential use of renting the home to individuals for less than 180 days must cease "immediately". The Order therefore violated the US Constitution, the Hawaii Constitution, the Hawaii Revised Statutes, and the Kaua'i County Code.

It is the job of government to protect the rights of the people, not to oppress us. KCC § 8-17.10, and the Director's implementation of its nonconforming application process, is illegal under HRS § 46-4(a) and violates the US and Hawaii Constitutions. Homeowners wish for their Permit to be reinstated immediately, for the County to lift its threat of fines against them, for KCC § 8-17.10 to be declared illegal and unconstitutional, and for an apology from the County of Kaua'i and the Director for their arbitrary and capricious violation of Homeowners' rights.

Thank you,

Very truly yours,

DocuSigned by:
Jonathan Parrish
50E242B629D24F0...

Jonathan Parrish
The Parrish Collection, LLC as Agent for Edmund & Linda Gregoire

CADES SCHUTTE
A Limited Liability Law Partnership

ALLISON MIZUO LEE 7619
MAUNA KEA TRASK 8418
KEOLA R. WHITTAKER 11200
3083 Akahi Street, Ste 201
Līhu'e, Hawai'i 96766
Telephone: (808) 245-1922
Fax: (808) 521-9210

Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE,
And MAULOA LLC

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

In the Matter of the Application of EDMUND GREGOIRE, LINDA GREGOIRE, And MAULOA LLC Appealing Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287, dated May 3, 2023, for a property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i Tax Map Key No.: (4) 2-6-011:019	**PETITION TO APPEAL OF THE DECISION OF THE PLANNING DIRECTOR;** **EXHIBITS "1" - "6"** **CERTIFICATE OF SERVICE** **Planning Commission Hearing:** **Date:** _____ **Time:** _____ **Place:** _____

PETITION TO APPEAL OF THE DECISION OF THE PLANNING DIRECTOR

Notice is hereby given that the Appellants, EDMUND GREGOIRE, LINDA GREGOIRE (the "**Gregoires**"), and MAULOA LLC ("**Mauloa**") (collectively "**Appellants**"), by and through their undersigned counsel, pursuant to Chapters 6 and 9, et seq., of the Rules of Practice and Procedure of the Planning Commission ("**Planning Commission Rules**"), hereby appeals the decision of the Planning Director as set forth in his letter executed on May 3, 2023 (the "**Notice & Order**"), a copy of which is attached hereto and incorporated herein as Exhibit "1".

Appellants state as follows:

I. Name, Address and Telephone Number of the Appellants.

As stated above, Appellants are EDMOND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC. Appellants may be contacted via undersigned counsel at the following address and telephone number: 3083 Akahi Street Līhu'e, #201, Hawai'i 96766; Phone (808) 245-1922.

II. Identification of the Property and Appellants Interest Therein.

Mauloa is the current owner of the fee simple interest in that certain parcel of real property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i 96756, and further identified as Tax Map Key (4) 2-6-011:019 (the "**Property**"). *See*, Exhibit "2". The Gregoires formed Mauloa in 2020 to hold title to the Property which they owned since 2014. *See*, Exhibit "3". The Gregoires are the sole owners of Mauloa.

III. The Particular Provisions of the Regulations in Question.

The particular provisions of the regulations in question are Section 8-17.10, of the codified Kaua'i County Code 1987, as amended ("**Section 8-17.10**"). Also at issue are Interpretive Administrative Zoning Rules and Regulations (2014) of the Kaua'i Planning Commission Relating to Chapters 8, 9, and 10 of the Kaua'i County Code.

IV. Facts.

The Property has been used as a licensed transient vacation rental ("**TVR**")[1] since at least early 2008 and was therefore registered as a lawful nonconforming use pursuant to Section 8-17.10. Section 8-17.10, subsection (h), requires that the owner of such TVRs apply to renew the Nonconforming Use Certificate annually on the date of issuance of the Nonconforming Use

[1] A "transient vacation rental" is "a dwelling unit which is provided to transient occupants for compensation or fees, including club fees, or as part of interval ownership involving persons unrelated by blood, with a duration of occupancy of one hundred eighty (180) days or less." KCC § 8–1.5.

Certificate (the "**Annual Renewal**"). The deadline for Appellants to submit their Annual Renewal was April 18.

Since the Gregoires' acquisition in 2014, the Property was managed by The Parrish Collection, LLC ("**TPC**") pursuant to a Rental Property Management Agreements between the Gregoires and TPC. *See*, Exhibit "4". Under this agreement and the understanding between the parties that was reinforced yearly, TPC was required to, among other things, collect rents, make repairs, and, as relevant here, ensure that the annual renewal of the Nonconforming Use Certificate was filed every year by April 18.

TPC had the Appellants sign an authorization letter to name TPC as Appellants' authorized agent for the County of Kaua'i's Transient Vacation Rental registration so they could act on Appellants' behalf when communicating with the County. *See*, Exhibit "5". TPC filed the Annual Renewal for Appellants in 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 on time. Appellants expected, as TPC did every year for nine years, that TPC would file the 2023 Annual renewal by April 18, 2023. But TCP missed the deadline by 10 days and submitted the Annual Renewal on April 28, 2023.

Section 8-17.10(h)(1), provides that failure to file the Annual Renewal on the date of issuance "will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates." Prior to 2013, the Section 8-17.10(h)(1) allowed an owner to reapply for renewal of the Nonconforming Use Certificate even if the deadline was missed as long as they could present "a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use." *See* Exhibit "6". That provision was removed by Ordinance 950, which was approved on July 23, 2013. *See id.*

V. The Action of the Director.

On May 3, 2023, the Director sent the Appellants a "Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287" (the "**Order**"). The Order indicated that the Nonconforming Use Certificate "was to be renewed by April 18, 2023…which was the annual date of the issuance of the non-conforming use certificate. The Department received the renewal packet which was hand delivered on April 28, 2023." It further indicated that since the Annual Renewal was not filed by April 18, 2023, the Appellants are ordered to cease and desist the transient vacation rental use of the property immediately.

VI. Reasons for the Appeal.

A. The Director's Order is Improper Because Section 8-17.10 Violates HRS Section 46-4(a)

The counties of the state of Hawai'i "derive their zoning powers from HRS § 46–4(a) referred to as the Zoning Enabling Act." Kaiser Hawaii Kai Dev. Co. v. City & Cty. of Honolulu, 70 Haw. 480, 483, 777 P.2d 244, 246 (1989). Accordingly, any zoning ordinance that conflicts with HRS § 46-4(a) is invalid. Id. at 16.

HRS § 46-4(a) bars the counties from passing a law that discontinues any previously lawful use of a property:

> Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any . . . purpose for which the building or premises is used at the time this section or the ordinance takes effect.
>
> The statute provides one exception to that rule:
>
> [A] zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. ***In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses.***

Id. (emphasis added). This provision only allows a county to phase out a nonconforming use "over a reasonable period of time" in four zoning districts only: commercial, industrial, resort, and apartment, but not in residential districts.

In light of this, Section 8-17.10 violates HRS § 46-4(a) as applied to the Property. First, there is no question that the Property is located in the R2 residential district. *See* Zoning Map ZM-KU 300, Lawai Bay - Kukuiula.. The U.S. District Court for the District of Hawai'i recently confirmed that TVR uses are *residential uses* as defined in state law. Hawaii Legal Short-Term Rental Alliance v. City & Cty. of Honolulu, 22-cv-247-DKW-RT (October 13, 2022), at 18-20.

Second, Section 8-17.10 is intended to be, and is, in effect, a phasing out of TVR uses because it creates a regulatory framework designed to revoke the right to operate TVRs over time. As noted in subsection (a) of that ordinance, the purpose of Section 8-17.10 "identify and register those single family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008" and allow them to continue *only if they obtain an annual Nonconforming Use Certificates*. The onerous annual application requirements in Section 8-17.10 are notably not required for conforming TVRs. *See generally* Section 8-17. This implies that there is no genuine policy reason to require annual certificate renewals for nonconforming TVRs because other TVRs do not receive the same level of scrutiny, licensing requirements, and strict deadlines.

Subsection (h) of Section 8-17.10 further demonstrates that the intent and effect of that section is to phase out nonconforming TVRs. Unlike other TVRs, they must pay an annual $750 fee, provide certain tax information annually, and, most significantly: "Failure to meet [these requirements] will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates." Section 8-17.10(h)(1).

In sum, TVR uses within single-family residential districts are residential land uses under HRS § 46-4(a), and, therefore, the amortization exception does not apply. Section 8-17.10 is conflict-preempted and invalid because it effectively phases out legal nonconforming TVRs by placing onerous regulatory requirements that do not apply equally to other TVR properties. This regulatory scheme is designed so that any minor misstep – even missing a single deadline by a few days – will invalidate the nonconforming use forever. The effect and intent is clear: to phase out nonconforming TVRs in violation of HRS § 46-4(a).

B. The Director's Order is Improper Because Section 8-17.10's Requirement for Annual Nonconforming Use Certificates is an Unconstitutional Regulatory Taking.

The statutory protection of lawfully existing uses and structures "prior to the effective date of a zoning restriction is grounded in constitutional law." Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cty. of Honolulu, 86 Hawai'i 343, 353, 949 P.2d 183, 193 (1997). Under the United States and Hawai'i Constitutions, "preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate." Waikiki Marketplace, 86 Hawai'i at 353–54, 949 P.2d at 193–94.

The Takings Clause of the United States Constitution provides that private property shall not "be taken for public use, without just compensation." U.S. Const. and. V. The Ninth Circuit uses a two-step analysis to determine whether a constitutional taking has occurred: "first, we determine whether the subject matter is 'property' within the meaning of the Fifth Amendment and, second, we establish whether there has been a taking of that property, for which compensation is due." Bowers v. Whitman, 671 F.3d 905, 912 (9th Cir. 2012) (quoting Engquist v. Or. Dep't of Agric., 478 F.3d 985, 1002 (9th Cir. 2007), aff'd 553 U.S. 591 (2008)).

As the U.S. Supreme Court explained, property rights are "created and their dimensions are defined by existing rules...such as state law rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972). To be a constitutionally protected by takings principles, those property rights also must be vested. Id. at 916.

"To determine whether a property interest has vested for Takings Clause purposes, 'the relevant inquiry is the certainty of one's expectation in the property interest at issue.'" Id. Furthermore, "if the property interest is 'contingent and uncertain' or the receipt of the interest is 'speculative' or 'discretionary,' then the government's modification or removal of the interest will not constitute a constitutional taking." Id.

First, there is no question that the right to operate a TVR is a vested property right. The Appellants have lawfully used the Property for TVR rentals and rely on that income to offset the costs of ownership. In fact, the Appellants made their decision to purchase the property, and take on an expensive mortgage, based on their ability to obtain income by renting the Property as a TVR. The Property is currently for sale because Appellants are unable to maintain the costs associated with ownership of the Property without the income generated by short-term rental use. That is precisely why the U.S. District Court for the District of Hawai'i ruled last year that TVR rentals in non-resort districts are a vested property right protected by takings principles. Hawaii Legal Short-Term Rental Alliance, 22-cv-247-DKW-RT., at 22-24.

Second, Section 8-17.10 is a taking of the property. As detailed above, the strict time deadlines and other regulatory requirements that are uniquely applied to nonconforming TVR properties effectively phase them out by cancelling the right to operate a TVR for any minor regulatory misstep and does so without providing compensation for the nonconforming use. This

violates the takings clause of the U.S. Constitution. Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (a regulatory taking occurs where "government regulation of private property [is] so onerous that its effect is tantamount to a direct appropriation or ouster.") As the Hawai'i Intermediate Court of Appeals noted:

> [T]he right of a property owner to the continued existence of uses and structures which lawfully existed prior to the effective date of a zoning restriction is grounded in constitutional law.
>
> [D]ue process principles protect a property owner from having his or her vested property rights interfered with, and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate.

Waikiki Marketplace Inv. Co. v. Chair of the Zoning Bd. Of Appeals of City & Cnty. Of Honolulu, 949 P.2d 183, 193–94 (Haw. Ct. App. 1997) (citing U.S. Const. amend. V and Haw. Const., art. 1 § 5). Robert D. Ferris Trust v. Planning Comm'n of the Cnty. Of Kauai, 378 P.3d 1023, 1028–29 (Haw. Ct. App. 2016) (holding that any interpretation of Section 8-17.10 which takes away vested rights to pre-existing lawful uses is unconstitutional).

C. The Commission Should Grant Appellants Equitable Relief.

The Appellants seek equitable relief from the Planning Commission due to the unique circumstances present here, notably that: (1) Appellants relied on a third party to timely file their annual renewal, (2) through no fault of the Appellants, the Annual Renewal was not timely filed, and (3) the Annual Renewal was received by the County only 10 days late, which does no harm to and does not prejudice the County. Given these unique circumstances, the Appellants request that the Commission reverse the Planning Director's strict application of the law and set aside the Order.

Appellants' request for equitable relief here is grounded in the doctrine of equitable tolling, a principle deeply rooted in fairness and justice. In Wright v. State Farm Mutual Automobile Insurance Co., 86 Haw. 357, 949 P.2d 197 (Ct. App. 1997), the Hawai'i courts adopted the doctrine of equitable tolling. The Hawai'i Supreme Court explained that, in the context of a complaint filed after the expiration of a statute of limitations, equitable tolling will apply if a plaintiff demonstrates (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Office of Hawaiian Affairs v. State, 110 Haw. 338, 360, 133 P.3d 767, 789 (2006). These requirements come from "a tradition in which courts of equity have sought to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity." Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1052 (9th Cir. 2013) (internal quotations and citations omitted). Thus, the equitable tolling doctrine "enables courts to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices." Id.

The doctrine of equitable tolling recognizes that there may be situations where rigid adherence to statutory or contractual deadlines would lead to an unjust outcome. The same is true here. The law should not punish the Appellants who, through no fault of their own, were unable to meet a statutory deadline due to extraordinary circumstances beyond their control.

Equity requires that Appellants be permitted to keep the Nonconforming Use Certificate. Appellants diligently pursued their right to maintain their Nonconforming Use Certificate by ensuring that they hired TCP to handle their Renewal Application and informing them of the annual deadline. Appellants had every reason to expect, as they had for the last nine years, that TCP would timely file the Renewal Application without specific instruction. Unfortunately,

TCP did not timely file the Renewal Application as they had in years past. That is not the fault of the Appellants, but Appellants will pay the price by losing a certificate that they've held since purchasing the Property.

Strict adherence to the statutory deadline here results in a significant legal and financial burden. Appellants should not have to suffer for the actions of a third party. Archaic rigidity is not required here. The County will not be harmed by granting this appeal. Tolling the deadline by 10 days is reasonable under these circumstances. The Planning Commission should reject the Planning Director's hard and fast adherence strict legal rules when equitable intervention would prevent an injustice.

WHEREFORE, Appellants pray that the Planning Commission:

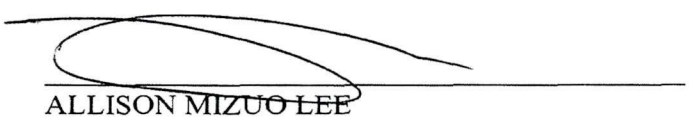
A. Reverse and set aside the Planning Director's May 3, 2023 Order;

B. Determine that Appellants' April 28, 2023 Renewal Application should be accepted by the Planning Department and Appellants' Nonconforming Use Permit be renewed; and

C. Grant such further relief as may be just.

DATED: Līhu'e, Hawai'i, June 2, 2023.

CADES SCHUTTE LLP
A Limited Liability Law Partnership



ALLISON MIZUO LEE
MAUNA KEA TRASK
KEOLA R. WHITTAKER
Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC

DEPARTMENT OF PLANNING
THE COUNTY OF KAUA'I
DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI-SAYEGUSA
DEPUTY DIRECTOR

CEASE & DESIST, AND
FORFEITURE OF TVRNCU

May 3, 2023
Certified Mail

Edmund & Linda Gregoire
W3133 Country Road N Pp
Sheyboygan, WI 53085

Subject: **CEASE & DESIST, and FORFEITURE of Non-Conforming Use Certificate TVNCU #4287**
TMK 26011019, Koloa, Kaua'i
4650 Amio Road (Mau Loa 'Ohana)
Edmund & Linda Gregoire, applicant

Your TVNCU was to be renewed by ***April 18, 2023*** as required by Sec.8-17-10 (h)(1) of the codified Kauai County Code 1987, as amended, which was the annual date of issuance of the non-conforming use certificate. The Department received the renewal packet which was hand delivered on April 28, 2023.

Further Section 8-17.10(h)(1) reads:

> "Each application to renew shall include proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use and shall be received by the Department prior to the expiration date of a held Nonconforming Use Certificate. ***Failure to meet this condition will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates.***"

Since you failed to submit a renewal packet prior to April 18, 2023, you are hereby ordered to **Cease & Desist** the transient vacation rental use of the property. The following elements shall be instituted immediately:

a. Cease and desist the use of the single family residence as a vacation rental;

b. Remove all advertisements (tv, radio, worldwide web, outdoor signage, etc) related to the existing Vacation Rental use of the property;

c. Suspend or cancel the GE and TAT licenses for the Vacation Rental use;

d. Cancel all Transient Vacation rental commitments for the property, commencing from May 3, 2023.

EXHIBIT 1

Documentation shall be submitted to the Department confirming the above actions have been implemented.

You have the right to appeal this decision and any appeal must be filed with the Planning Commission within 30 days after the date of this decision to provide you an opportunity for a hearing before the Planning Commission. The appeal must conform to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission. The Rules of Practice and Procedure of the Planning Commission are available on the Department's website.

Should you fail to Cease & Desist the vacation rental use of the property within the time period noted above and it is confirmed by the Department, you will be issued a Notice of Violation, $10,000.00 civil fine, and the matter forwarded to the Prosecutor's Office for criminal prosecution. Should you appeal this forfeiture, the vacation rental use must still cease.

Should you have any questions regarding this matter, please contact Enforcement Supervisor Michael Laureta at 808-241-4071 or mlaureta@kauai.gov.

KAAINA S. HULL
Director of Planning

CC: Real Property Div.
Linda Jordan

410
C

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
August 18, 2020 3:29 PM
Doc No(s) A – 75350501

1 1/1 OFC
B – 33557555

/s/ LESLIE T. KOBATA
REGISTRAR

Conveyance Tax: $1.50

LAND COURT | ONJ REGULAR SYSTEM

AFTER RECORDATION, RETURN ORIGINAL BY: MAIL (X) PICK-UP ( )
Mauloa LLC
W3133 County Road PP
Sheboygan Falls, WI 53085

Tax Map Key No.: (4) 2-6-011-019 Total Pages: 6

WARRANTY DEED

PARTIES TO DOCUMENT

GRANTOR: EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE

GRANTEE: MAULOA LLC, a Wisconsin limited liability company

THIS DEED, made this 5 day of August, 2020, by EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE, husband and wife, of Sheboygan Falls, Wisconsin, hereinafter collectively called the "Grantor," in favor of MAULOA LLC, a Wisconsin limited liability company, whose address is W3133 County Road PP, Sheboygan Falls, Wisconsin 53085, hereinafter called the "Grantee;"

EXHIBIT 2

WITNESSETH

That for TEN AND NO/100 DOLLARS ($10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as **TENANT IN SEVERALTY**, in fee simple:

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

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

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

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

AND, in consideration of the premises, the Grantor does hereby covenant and agree to and with Grantee that Grantor is lawfully seized in fee simple of the real property described in Exhibit "A" and is the absolute owner of said personal property (if any) and that Grantor's title to all of said property is free and clear of and from all encumbrances other than those mentioned in Exhibit "A"; that Grantor has good right to sell and convey said property as aforesaid and that Grantor will WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons except as aforesaid.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees, corporations or limited liability companies, and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

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

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Grantor has executed this instrument.

EDMUND DONALD GREGOIRE

LINDA LEE GREGOIRE

"Grantor"

STATE OF WISCONSIN)
) SS:
COUNTY OF Sheboygan)

On August 5, 2020, before me personally appeared EDMUND DONALD GREGOIRE, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 8/5/2020 Number of Pages: 6
Description of Document: Warranty Deed

Signature: Terri L. LeMahieu
Name: Terri L LeMahieu
Notary Public, Above-Mentioned State

My commission expires: 6/17/2022

STATE OF WISCONSIN)
) SS:
COUNTY OF Sheboygan)

On August 5, 2020, before me personally appeared LINDA LEE GREGOIRE, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 8/5/2020 Number of Pages: 6
Description of Document: Warranty Deed

Signature: Terri L. LeMahieu
Name: Terri L. LeMahieu
Notary Public, Above-Mentioned State

My commission expires: 6/17/2022

EXHIBIT "A"

All of that certain parcel of land situate, lying and being at Kukuiula, Koloa, Island and County of Kauai, State of Hawaii, being Lot 6-B, same being a subdivision of Lot 6, of the "KUKUIULA SUBDIVISION", as shown on File Plan 458, and thus bounded and described:

Beginning at a pipe in concrete at the Northeast corner of this Lot, the Northwest corner of Lot 7 of Kukuiula Subdivision, and along the South side of Arnio Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 9,864.97 feet South and 14,395.17 feet East, thence running by azimuths measured clockwise from true South:

1.	348 °	30'	200.50	feet along Lot 7 of Kukuiula Subdivision to an "x" on rock;
	The next four (4) courses follow the debris and vegetation line at seashore,			
2.	51 °	50'	12.00	feet;
3.	94°	30'	70.00	feet;
4.	133 °	00'	17.00	feet;
5.	90°	00'	13.79	feet;
6.	186°	20'	175.50	feet along Lot 6-A, a subdivision of Lot 6 of Kukuiula Subdivision, to a pipe, and passing over a pipe at 8.50 feet;
7.	Thence on a curve of radius of 60.00 feet to the left along the South side of Arnio Road, the direct azimuth and distance being:			
	260°	44'	23.72	feet to an "x" on concrete;
8.	249°	20'	24.25	feet along same to the point of beginning and containing an area of 14,678 square feet, more or less.

Together with Easement "Y-1 ", for the forever preservation of a view of the ocean and coastline, as granted by MUTUAL GRANT OF EASEMENTS dated May 31, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-087007.

Being all the property described in the following:

DEED

Recorded:	December 31, 2014 in the Bureau of Conveyances, State of Hawaii, as Document No. A-54780134
Grantor:	MICHAEL J. TOMCIK and CONNIE H. TOMCIK, Trustees of the Tomcik Trust dated August 3, 2000, with full power and authority to sell, lease, borrow, mortgage, etc.
Grantee:	EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE, husband and wife, as Tenants by the Entirety

SUBJECT, HOWEVER, TO:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.

2. Any adverse claim based upon the location of the seaward boundary and/or the shoreline setback line of the herein described property, as may be established under the laws of the State of Hawaii.

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

Instrument:	GRANT
Granted To:	JAMES L. CLAY and ANDREA CLAY
For:	an easement for preservation of a view of the ocean and coastline over Easement "V-2"
Dated:	May 31, 2001
Recorded:	in the Bureau of Conveyances, State of Hawaii, as Document No. 2001- 08700

4. Any claim or boundary dispute which may exist or arise by reason of the failure of the MUTUAL GRANT OF EASEMENTS recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-087007, referred to in Schedule C to locate with certainty the boundaries of Easement "V-1" described in said instrument.

END OF EXHIBIT "A"

Wisconsin Department of Financial Institutions

Strengthening Wisconsin's Financial Future

Search for:
Mauloa

Search Records

Search
Advanced Search
Name Availability

Corporate Records

Result of lookup for **M109360** (at 5/12/2023 4:14 PM)

MAULOA LLC

You can: File an Annual Report - Request a Certificate of Status - File a Registered Agent/Office Update Form

Vital Statistics

Entity ID	M109360
Registered Effective Date	01/17/2020
Period of Existence	PER
Status	Organized Request a Certificate of Status
Status Date	01/17/2020
Entity Type	Domestic Limited Liability Company
Annual Report Requirements	Limited Liability Companies are required to file an Annual Report under s. 183.0212, WI Statutes.

Addresses

Registered Agent Office	LINDA GREGOIRE W3133 COUNTY ROAD PP SHEBOYGAN FALLS , WI 53085-2533 File a Registered Agent/Office Update Form
Principal Office	W3133 COUNTY ROAD PP SHEBOYGAN FALLS , WI 53085-2533

Historical Information

Annual Reports

Year	Reel	Image	Filed By	Stored On
2022	000	0000	online	database
2021	000	0000	online	database

File an Annual Report - Order a Document Copy

Certificates of Newly-elected Officers/Directors	None
Old Names	None

Chronology

Effective Date	Transaction	Filed Date	Description

EXHIBIT 3

01/17/2020	Organized	01/17/2020	E-Form
05/06/2021	Change of Registered Agent	05/06/2021	OnlineForm 5

Order a Document Copy

RENTAL PROPERTY MANAGEMENT AGREEMENT

AGENT: The Parrish Collection, LLC
3176 Poipu Road, Suite #1
Koloa, Kauai, Hawaii 96756
(808) 742-2000

PROPERTY: Mauloa Ohana

DATED: December 20, 2014

ThePARRISHCollectionKaua'i
Island Vacation Homes

EXHIBIT 4

AGENT IS REQUIRED TO HAVE THE FOLLOWING ON THE FIRST PAGE OF THIS AGREEMENT:
(Agent cannot rent Owner's Property without bolded items)

Owner Name	Federal Tax ID # or Social Security #	Check if Owner is non-resident alien
Edmund D. & Linda L. Gregoire		❑
		❑
Hawaii General Excise Tax Number:		
Transient Accommodation Tax Number:		

Mailing Address	Contact Phone Numbers		Email Address (s)
W3133 County Rd. N Pp Sheboygan Falls, WI 53085	Day	920-467-3521	egregoire@excel.net
	Evening	920-893-4602	lgregoire214@gmail.com

Property Name		Property Address		Property Phone Number	
Mauloa Ohana		4650 Amio Road Koloa, HI 96756		808-742-9242	
Tax Map Key:	4-2-6-11-19	TVR #	TVNC-4287	CPR:	

Pursuant to Hawaii Revised Statutes 237.30.5 we are required to advise you as follows:
HAWAII GENERAL EXCISE TAXES (GET) MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING REAL PROPERTY IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS AGREEMENT, OR A FEDERAL INTERNAL REVENUE FORM 1099 STATING THE AMOUNT OF RENTS COLLECTED SHALL BE FILED WITH THE HAWAII DEPARTMENT OF TAXATION.
Agent shall comply by filing form IRS 1099 as required annually.

Federal Tax Notice:
Federal tax laws require all persons paying rent to a non-U.S. citizen (a "Foreign Owner") to withhold thirty percent (30%) or as required by the IRS of such rental payments and to remit this withholding tax to the I.R.S. A FOREIGN OWNER WHO HIRES A REAL ESTATE PROPERTY MANAGER TO MANAGE HIS/HER RENTAL PROPERTY IN THE UNITED STATES SHOULD EXPECT SAID PROPERTY MANAGER TO WITHHOLD THIRTY PERCENT (30%) OF THE FOREIGN OWNER'S GROSS RENTAL RECEIPTS (regardless of mortgage, maintenance, or other expenses) AND TO REMIT THIS THIRTY PERCENT (30%) WITHHOLDING TAX TO THE I.R.S.

Foreign Owner's Instructions Regarding Federal Withholding Taxes. After consulting with a U.S. tax advisor, I, the Owner, hereby instruct Agent [Check as applicable]:

- ❑ Owner is not a Foreign Owner and, therefore, this box does not apply.
- ❑ Withhold the thirty Percent (30%) tax on GROSS rental income and send said amount to the I.R.S.
- ❑ Do not withhold any tax. I am attaching a completed Form W-8ECI, which includes my U.S. taxpayer identification number, or "TIN". The I.R.S. will be notified of a Foreign Owner's filing of Form W-8ECI. A Foreign Owner filing Form W-8ECI should assume that the I.R.S. will expect said Foreign Owner's income tax return and payment of U.S. income tax on net profits at the appropriate time of filing.

No Representations:
On entering into this Agreement, Owner and Agent acknowledge that neither Owner nor Agent has made any representation to the other regarding projected earnings, the probability of future success or any other similar matter respecting the Property or the Rental Program, that neither is relying upon any of the above in entering into this Agreement and that Agent and Owner understand that no guarantee is made to the other as to any amount of income to be received by Agent or Owner or as to the future financial success of the Rental Program or the Property.

THIS RENTAL PROPERTY MANAGEMENT AGREEMENT ("Agreement") is entered into as of the date set forth as the "Effective Date" on the signature page of this Agreement, by and between the Owner(s) identified on Page 2 and the signature page of this Agreement (hereafter referred to, whether one or more persons or entities, as "Owner") and THE PARRISH COLLECTION, LLC (hereafter referred to as "Agent").

1. EMPLOYMENT OF THE AGENT. Owner hereby appoints Agent as his exclusive agent to rent and manage Owner's property described as: Mauloa Ohana, together with its appurtenant common elements, limited common elements and undivided interest in certain common elements, together with all the contents therein, (hereafter referred to as "Property").

2. TERM. This agreement shall continue for one year from December 20, 2014 and shall be automatically renewed from year to year, thereafter, provided that either party may elect to terminate this agreement at any time upon giving ninety days (90) prior written notice; provided however, that Owner (or Owner's successor in case of Property sale) shall be obligated to honor any reservations or commitments for rentals which are confirmed for the period of ninety (90) days from the date of the notice of termination and cannot be placed by Agent in another comparable property, as determined by Agent. If Owner shall terminate this agreement within the first one hundred eighty (180) days, Owner shall pay a termination fee to Agent equal to the Agent's monthly fee for four months, assuming average rental rate and 70% occupancy.

3. FEE TO AGENT AND EXPENSES.

   3.1. Agent's Fees: Owner shall pay to Agent, as compensation hereunder, a fee of twenty (20) percent of the monthly gross rent received. Agent will pay all travel agent fees and commissions incurred in marketing the Property. Owner may not rent with another rental agency as long as this Agreement is in place. Should owners be responsible for booking their Property, Agent will pay said Owner the commission of ten (10) percent of the gross rental received for all bookings processed by Owner. For those sourced by Owner and processed by Agent, Agent will pay said Owner the commission of five (5) percent of gross rental. Processed is defined as collection of monies, signed contract, etc. See Exhibit D for more additional details. <u>For accuracy of booking and reporting purposes, all rents must flow through Agent for accounting and tax reporting purposes.</u>

3.2. Agent's Fees – Long Term Rentals: Owner shall pay Agent, as compensation hereunder, a monthly fee of ten (10) percent of the monthly gross rent received on all long term rentals. Long term is defined as six months or longer in duration.

3.3. Authorized Expenses: Owner hereby authorizes Agent and gives authority and powers to undertake at Owner's expense the following (Owner shall assume the obligations of any contract entered into on behalf of owner at the request of the owner):

3.3.1. Monthly fee of $100.00 to cover the costs of monthly scheduled advertising and promotion. The monthly advertising/promotional fee will remain in effect on a monthly basis for all vacation rentals regardless of length of stay of owner or owner guest occupancy.

3.3.2. The making of minor repairs and replacement of Property items that Agent deems necessary or advisable, provided that expenditures in excess of $150 per item, or in aggregate of $300 per month, shall not be incurred without Owner's written consent. In an emergency, oral consent of Owner shall be sought if Agent believes time permits. However, if in the opinion of the Agent, repairs are necessary to protect the Property from damage, or to maintain services to the tenants, Agent shall complete necessary repairs and inform Owner as soon as possible or practical. Agent will not be liable for said related expenses.

3.3.3. In-cleaning, mini-maid, and out-cleaning services as needed.

3.3.4. Cost of cleaning for at least one deep clean per year for extensive cleaning and review of maintenance and upgrade items needed at agreed upon rates to be determined.

3.3.5. Applicable window washing, carpet cleaning, tile restoration, pest extermination and any other customary services needed to maintain high standards.

3.3.6. Telephone monthly service charge, including all Owner and Owner's guests toll call charges, if applicable.

3.3.7. The Parrish Collection recycle and linen program charges as applicable.

3.3.8. Other applicable utility charges, such as for electricity, water, cable TV, high speed internet, etc.

3.3.9. 50% of Property start-up fees which include but are not limited to Property photos, web page development, site integration, etc.

3.3.10. Homeowner Liaison charges as detailed in Exhibit F.

3.3.11. Quarterly and Annual filing of GET and TAT taxes if applicable as detailed in Exhibit G.

Failure to Pay Fees or Expenses: Agent is not liable for expenses or losses sustained by Owner by reason of nonpayment or late payment of any expenses or rent. Should Owner fail to pay the fees or reimburse Agent for authorized expenditures, Agent may pay themselves undisputed expenses out of the rental proceeds to the Property or out of other funds held by Agent in Owner's account and may terminate this agreement.

4. DUTIES OF THE OWNER.

4.1. Inventory: Owner shall provide Agent a current and complete list ("Inventory") within fourteen (14) days of execution of this Agreement and will be attached to this Agreement as Exhibit E. For a fee of $30 per hour, Agent can prepare initiation inventory. Owner agrees to notify Agent of any changes in said inventory and a fee of $30 per hour will be charged for periodically re-checking of inventory.

4.2 Hold Harmless: Owner shall save and hold Agent harmless from any damage to the Property or from loss of or damage to any furniture, fixtures, furnishings and other articles therein, from all damage suits in connection with the management of the Property, and from all injury to any person or persons whomsoever, for any cause whatsoever in or around Property whomsoever, except for any negligence or wrongful act by any of The Parrish Collection employees, and to carry at their own expense, necessary public liability, property, and applicable worker's compensation insurance adequate to protect the interest of parties hereto, which policies shall be written to protect Agent in the same manner and to the same extent they protect Owner; and will name Agent as additional insured.

4.3 Insurance: Owner shall provide and maintain a minimum of $500,000 comprehensive liability insurance to cover the Property, and shall furnish Agent with a copy of said policy and such fire, association and extended coverage insurance policies on Property or certificates thereof from an insurance company authorized to do business in the State of Hawaii, and shall name Agent as co-insured. Owner will keep the policy in effect. If there is a break in coverage, the Property will be taken from rental rotation until Agent has received the renewal certificate.

Name of Insurance Company: _____

Name of Insurance Agent: _____

Policy Effective Date: _____

4.4 Keys and House Rules: Owner shall furnish Agent with ten (10) sets of keys to the Property. Owner shall furnish Agent with a complete copy of the House Rules.

4.5 To the extent and if required by law, the owner shall improve and maintain the Property in compliance with the American Disabilities Act, and costs of such improvements and maintenance shall be the Owner's responsibility.

4.6 Default: Should Agent determine that Owner is in default of any of provisions of this Agreement, Agent will provide 30 days notice to cure, and if not cured within that time frame, Agent can immediately terminate this Agreement. If either party is entitled to any payment in accordance with this Agreement, the termination of the Agreement shall not affect the validity of the claimant's right to such funds. Agent is authorized to withhold from any distributions due Owner sufficient funds to cover Owner's unpaid charges incurred prior to the date of termination.

5. OWNER OCCUPANCY.

5.1 Owner Occupancy: Subject to availability of a Property as a result of commitments entered into by Agent, Owner or Owners, their families and guests, herein collectively referred to as "Eligible Persons", shall have the right to occupy the Owner's Property upon the Owner giving written notice to the Agent stating the intended date of arrival and departure. Owner must sign an affidavit/confirmation attesting to the status of "Eligible Persons" (non-rent paying guest, Owner, family member, etc.). **This notice should be given at least one hundred twenty (**

periods except December 20 through January 5 of each year, when 180 days notice is required. Notices are waived if Owner coordinates with Agent to Occupy Property prior to Agent reserving the Property for other guests. Agent shall not be obligated to permit any person, whether Eligible Person, repairman or others to enter the Property without prior coordination through the Agent's office.

5.2 Occupancy Costs for an Owner or Eligible Person: Owner agrees to pay for Eligible Persons costs incurred on his or their account including but not limited to, maid service, linens or cleaning expenses while in occupancy. Owner understands that an out-clean is performed following occupancy to maintain high standards and consistency, and that such an out-clean will be performed following Owner or Eligible Person use, and the cost for such an out-clean will be charged to Owner. When there is no management fee charged on Owner bookings or non-revenue Owner guest bookings, there will be an administrative fee of $50 per booking for all Owner guest bookings. Owner occupied or owner family member occupied bookings are exempt from this charge.

6. DUTIES OF THE AGENT.

6.1 Rental and Collection: During the term hereof, Agent shall use its best efforts to procure and screen tenants for Owner's Property, issue and execute rental agreements, collect all rents and deposits for Property, as well, as terminate or evict any tenants under the terms of such rental agreements. Agent may accept payment in cash, credit card, money order or personal check, but shall not be liable to Owner for the ultimate collection of rents, including personal checks.

6.2 Record Keeping: Agent shall provide Owner, within twenty (20) days after the first of each calendar month, a statement of receipt of disbursements for the Property for the preceding month. Agent shall also provide to Owner, by January 31st of each year, all information with respect to rental of Property necessary for the preparation of Owner's tax returns.

6.3 Deposit of Owner's Funds: Agent shall deposit all funds collected by Agent hereunder in a bank or trust company qualified to engage in the banking or trust business in the State of Hawaii, as designated by Agent, and such funds be held in trust in a special or custodial account, and will not be co-mingled with any other funds. Agent will not be

responsible for any loss resulting from the insolvency of such depository. Funds may be deposited into an interest bearing account in favor of Agent.

6.4 Distribution of Income to Owner: Agent shall deduct from gross rental income received, Agent's fees, taxes and distribution for authorized expenditures to the extent that there are amounts available for distribution. Agent shall monthly distribute net amount due to the Owner, or as Owner may direct Agent.

6.5 Agent's Payment of Funds: Agent shall not be required to perform any act or duty hereunder (including emergency repairs) involving the expenditure of money unless Owner has sufficient funds in Owner's account. In the event that authorized disbursements for expenses are in excess of Owner's account, Owner hereby agrees to pay such amount within 10 days upon demand of Agent. Should amount go unpaid for a period in excess of 30 days, Owner agrees to pay an annual rate of interest of 10% on outstanding balance until paid in full.

6.6 Security Deposits: Agent shall collect and retain security deposits from tenants. Such deposits shall be utilized by Agent to replace or repair items damaged by tenant, applied towards fixing of Property, disbursed to Owner or returned to tenant, as Agent may reasonably determine.

6.7 Maintenance and Minor Repairs: During the term hereof, at the expense of the Owner, Agent shall schedule all necessary cleanings, maintenance and minor repairs. Expenses related to the renovation or re-decoration of Property are not included under this Agreement, however, Agent may provide these services to Owner pursuant to Exhibit F. Agent may hire, discharge, and/or supervise all labor required for the operation and maintenance of the premises, and Agent may perform any of its duties through Owner's attorney or agents and shall not be responsible for acts, defaults or negligence if reasonable care has been exercised in their appointment and retention.

6.8 Other Expenses: Agent shall not be responsible for Owner's expenses related to the Property including, but not limited to mortgages, association dues, insurance, property taxes, handling of insurance claims, or other expenses not covered by this agreement.

6.9 Default: Should Owner determine that Agent is in default of any of provisions of this Agreement, Owner must provide 30 days notice to cure, and if not cured within that time frame, Owner can immediately terminate this Agreement.

7 COMPLIMENTARY DAYS. Upon mutual agreement Owner will allow Agent a total of five (5) days during the calendar year with which Agent may disburse to travel agents or other person or persons whom the Agent may determine as being beneficial to the marketing efforts of Agent. These days will be posted as "Complimentary Days" on the Owner's monthly statement and any associated cleaning costs will be paid by Agent.

8 GOVERNING LAW. This agreement has been executed and delivered and shall be governed by, construed and enforced in accordance with, the laws of the State of Hawaii.

9 TRUST BALANCE. In compliance with Hawaii State Law, Agent will retain a Trust Balance in each owner's account in the amount of $1,000.00 per Property in our vacation rental program. This will be used as a working balance to pay regular monthly charges such as cleaning, window cleaning, advertising, electric, telephone, and other miscellaneous charges. Within sixty (60) days following the termination of the Rental Agreement, the Trust Balance will be returned to the Owner, less any outstanding expenses.

10 DISPUTE RESOLUTION. Before a party may commence any civil action or proceeding arising out of or relating to this Agreement, the dispute shall be submitted to non-binding mediation by a single mediator selected by mutual agreement of the parties. If the parties are unable to agree on the choice of mediator within ten (10) days after a party gives written notice of the intent to mediate, either party may request that Dispute Prevention & Resolution, Inc. ("DPR") appoint a mediator in accordance with its rules. The parties shall exert reasonable efforts to expedite the scheduling of the mediation, so that it occurs, if at all possible, within twenty (20) days after the selection or appointment of the mediator. Each party shall pay for its own witness' and attorneys' fees, as well as one-half (1/2) of the cost and fees of the mediator. In the event mediation is not successful, the parties shall submit the claim to arbitration under the terms set forth herein. Except with respect to any action for injunctive relief, any controversy, claim or breach arising out of this Agreement, which the parties are unable to resolve to their mutual satisfaction through negotiation or mediation, shall be arbitrated according to the Commercial Arbitration Rules of DPR then in effect. The demand for arbitration shall be in writing and shall identify and describe the nature of all matters in controversy to be arbitrated and the facts upon which such matters are based. The arbitration shall be conducted on the Island of Kauai by a single independent arbitrator who shall be mutually

are unable to agree upon an arbitrator within thirty (30) days after Notice is given of a demand for arbitration, the single independent arbitrator shall be selected from a list of three to be provided by DPR with each party striking one name from the list. The hearing shall be held within ninety (90) days after appointment of the arbitrator. The arbitrator shall render a reasoned, written opinion within forty-five (45) days after the hearing. The arbitrator's written opinion shall include findings of fact and conclusions of law. The facts found by the arbitrator shall be final, binding, and not appealable. The findings of law by the arbitrator shall not be final and binding upon the parties, but shall be appealable to a court of general jurisdiction if the arbitrator misapplied or misinterpreted governing law. The arbitrator shall not be empowered to award punitive or exemplary damages. The parties agree to cooperate fully with the arbitrator in order to meet the time schedule for decision and agree that an award may be entered against any party failing to so cooperate. Judgment upon the award rendered by the arbitrator may be entered in any court in the State of Hawaii having jurisdiction pursuant to Chapter 658A of the Hawaii Revised Statutes.

11 ENTIRE AGREEMENT. This Agreement and any Exhibits and Addendums when properly executed by all parties, including Exhibits A-I, to be attached hereto and forming a part hereof set forth all covenants, promises, agreements, conditions and understandings between Owner and Agent in connection with the Property and its operation and there are no covenants, promises, agreements, conditions or understandings either oral or written between Owner and Agent other than as herein set forth or in written addenda signed by both Owner and Agent. Nothing in this Agreement shall create, or be construed to create, a partnership, or joint venture between Owner and Agent.

[signatures follow]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the dates shown below.

AGENT:

THE PARRISH COLLECTION, LLC

By: _____ Date:

Jonathan D. Parrish
Its: President & Principal Broker

OWNER (All Owners of the Property must sign this agreement):

By: _____ Date:
Edmund Gregoire
Print Owner's Name

By: _____ Date:
Linda L Gregoire
Print Owner's Name

OWNER INFORMATION (If multiple ownership, designate name and address of Owner to receive information, checks and authorize any changes):

Name: _____

Mailing Address: _____

_____

Telephone Numbers: Home: ( ) _____ Office: ( ) _____

Fax: ( ) _____ E-mail: _____

EXHIBIT A
RENTAL RATES

The rates below are the rates that we anticipate to begin market your Property (subject to change at any time):

Low Season Rate – 4/2-6/1; 8/20-12/19	$TBD/Day
Mid Season Rate – 6/2-8/19	$TBD/Day
High Season Rate – 1/5-4/1	$TBD/Day
Holiday Season – 12/20-01/05	$TBD/Day

With the objective of maximizing rental revenue, Agent shall have the right to set rental policies for the Property, including but not limited to rental rates, which may be adjusted to meet competition, market conditions, seasonal fluctuations in occupancy, weather conditions, minimum and maximum lengths of stay, and other factors.

- There is a 7 day minimum stay (with the exception of holidays). If reservation is within 30 days, 3 to 6 day stays will be allowed based on availability.
- We offer a 10% discount to repeat guests and kama'aina guests at discretion of Agent.
- Monthly discounts of 5% are offered on 30+ day stays.
- Stays of 30+ days will receive a maid service once every two weeks at owner's expense.
- Number of guests allowed:

Base 6 Maximum 6

Owner _____/_____
Agent _____

EXHIBIT B

REQUIRED LINEN INVENTORY FOR PROPERTY COMING ON LINE

TBD

Owner	_____/_____
Agent	_____

EXHIBIT C

PROPERTIES FOR SALE POLICIES & PROCEDURES

To maximize bookings and partner with your listing agent in a professional manner Owner and Agent agree to the following:

1. If Owner should list Property for sale, Owner must immediately notify Agent. Please note that properties listed for sale do experience a drop in bookings and revenue.

2. All requests for showings, open houses, entry to Property, etc. must be coordinated with Agent. Any requests to Agent for showings will be directed to your listing agent.

3. Agent will continue to book Property as normal, however inquiring and existing guests will be notified that Property is listed for sale.

4. If necessary to confirm or hold an existing booking, Owner shall allow Agent to compensate guest for allowing showings during stay. Compensation shall be rate discount, free night, or gift certificate and shall be commensurate with Property, length of stay, etc.

5. Owner shall allow Agent to confirm bookings with guests that do not want to be disturbed during their stay. Owner needs to advise listing agent that Agent may not allow showings for those guests that do not want to be disturbed during stay.

    a. **Owner must notify Agent if Owner chooses to refuse bookings that do not want to be disturbed during stay. Note, this will result in lower bookings.**

6. Owner and Owner's listing agent agrees to give Agent 48 hour's notice of all requests for showings. Agent will do its best to confirm requests within 24 hours, however confirmation may not be available and/or Owner agrees to allow Agent to grant additional compensation to guest.

7. There will be no showings on Sundays or Holidays when the unit is occupied as a courtesy for guests.

8. Keys will be distributed from our administrative office at 3176 Poipu Road, Koloa which is open Monday - Friday from 8am - 5pm and Saturday from 8am - 4pm. Keys need to be signed out and returned by the end of the day.

9. If Property is vacant on a Sunday or Holiday, with 24 hours notice, keys will be left in the Koloa office lock box for a Sunday/Holiday morning pick up and must be returned that evening.

10. Any missing items, damage, or problems, arising out of the showing shall be the responsibility of the Owner.

11. Owner shall be responsible for any additional housekeeping and maintenance charges after showings, open houses, etc.

12. A small standup sign detailing that Property is for sale will be placed in the unit. Guests will be advised to call Agent for further information and will then be directed to your listing agent.

13. Agent shall provide Owner's listing agent with a one-page color marketing sheet summarizing the rental revenue for your unit.

14. Owner must give Agent immediate notice and if possible at least sixty (60) days notice of Owner acceptance of a sale's contract for any portion of the property ownership that is sold. At a minimum, Owner will honor all bookings within that sixty (60) day period.

15. Owner agrees to add the following language to any Purchase Agreement: "During the escrow period, Seller's current rental agent will continue to market the unit and accept rental reservations until the closing. Buyer hereby agrees to accept and honor said all existing reservations at time of closing."

16. During escrow, Agent requests that Owner and Owner's listing agent work with Agent to keep Property unit under contract with Agent. This will allow Agent continue to book Property and maintain consistency in bookings and cash flow for Owner and/or the new buyer. Agent will cease from taking any new bookings beyond the escrow close date unless buyer agrees to sign a management agreement with Agent. If buyer chooses not to work with Agent, Agent will relocate all bookings that extend beyond the sixty (60) day period.

Owner _____/_____

Agent _____

EXHIBIT D

RENTAL BY OWNER BOOKING POLICIES & PROCEDURES

The following are policies and procedures that Owners must follow if they wish to market their vacation home through rental by owner web sites.

1. **Listing Details –** All information listed for Property must match applicable Agent listing including: all daily rates, processing fees, contract and money due dates, cleaning charges, additional guest charges, security deposits, etc.

2. **Photos –** Photos paid or partially paid for by Agent cannot be used on other listings unless agreed to by Agent.

3. **Rates** – Owner agrees not to undercut Agent rates and any discounts offered by Owner can be offered by Agent and vice versa. Owner and Agent must coordinate any discounts to maintain market integrity.

4. **Funds** – All funds for bookings must be processed through Agent:

5. **Reservation Processing –** There are three options for Owner revenue bookings:

    a. Agent as the call to action – Agent's phone number and email address are listed as the contact information for bookings.

    b. Owner listed as call to action – 5% commission

        - Owner is initial contact for booking inquiries, determines if the unit is available and discusses rates, policies etc. with guest.

        - Upon the close of the sale, Owner contacts Agent to book the reservation. Owner provides details of agreed upon rates, etc. to Agent. Owner provides Agent guest contact details such as name, address, email, and phone.

        - Agent then processes the booking from this point forward. Agent collects contracts, waivers, deposits as well as collects monies at appropriate due dates and returns applicable deposits if required. Both the initial deposit and the final payment can be made by credit card.

        - Should there be an issue with booking during stay (damage to Property, discounts due to disturbance, etc.). Agent will follow through with guest to collect monies due Owner.

    c. Owner as "Travel Agent" – 10% commission

        - Owner is both the initial contact for the inquiry as well as processes booking, in entirety (including collecting all monies, contracts, waivers, etc.).

        - Owner contacts Agent to book the reservation. Owner is responsible for making sure guest adheres to all reservation policies and procedures.

        - Agent will forward all appropriate documentation to Owner, who is responsible for making sure that the documents are signed and returned to Agent

- All documentation provided to Owner for the guest signature cannot be altered or changed. Changes to the documentation may result in the cancellation of booking.
- All initial deposits can be processed with a credit card. A valid credit card is required to have on file for all reservations.
- Final payments must be made by check. Credit cards will not be accepted for final payments. Credit card payments can be accepted for a reduced commission of 5%.
- Should there be an issue with a guest during stay (damage to Property, discounts due to disturbance, etc.) Owner will follow through with guest to collect any monies due Owner.

Owner _____/_____

Agent _____

EXHIBIT E
INVENTORY

Please find complete inventory attached.

Owner _____/_____

Agent _____

EXHIBIT F

STANDARD SERVICES AND SPECIAL SERVICES OF THE HOMEOWNER LIAISON DEPARTMENT

STANDARD SERVICES

There will be no additional fees for the following Standard Services:

- Agent will monitor the condition, replace standard items, and schedule repairs in order to maintain the rentable condition of its properties.
- The Homeowners Liaison (HL) will check each property annually and remit a formal report as to its general condition, in-house rating, and suggestions for upgrading if applicable.
- In addition to the annual review, the HL will periodically view the property to make sure it adheres to its in-house rating throughout the year.
- The HL shall, as necessary, make reasonable recommendations to Owner regarding acquisition and repair of certain items, including, but not limited to, furniture, fixtures, appliances, draperies, wall and floor coverings, lighting, and related items.
- The HL will report to owners all guest problems within the Property.
- The HL will review and approve all owner charges on monthly statements.
- The HL will supervise the replacement of all standard Property supplies and monitor all monthly billings of such items. Standard Property supplies refer to basic kitchen, bath, bedding, equipment and smaller appliances such as DVD/VCR players, vacuums, etc. Replacement of larger items such as refrigerators, TV's, ranges, carpets, etc. will require a special service charge as defined below.
- The HL will provide a referral service of names and resources or assist owners in the hiring of qualified professionals on the island for all renovation and remodeling needs. Agent will not be responsible for supervising any renovation or remodeling projects for its owners.
- The HL will work with the Maintenance Dept. to see that all maintenance requests have been scheduled and completed in a timely manner.

EXHIBIT F (continued)

SPECIAL SERVICES

There will be additional fees for the following Special Services:

- The HL will provide upgrading and replacement services of larger, standard items such as refrigerators, carpets, beds, etc. requiring more than one hour of work, at the rate of $30/hour after the first hour which is free.
- Time spent on scheduling larger maintenance or repair items, defined as those which require over 1 hour of HL time, will incur a nominal charge of $30/hour to Owner after the first hour which is free.
- Agent does not provide supervision for renovation or remodel services. Therefore, Agent requires owners to hire an on-island representative for all renovations and remodels if owners are not going to be present during this time.

In order to save the Owners time and money, Agent buys as many items in bulk and stores them on site for immediate replacement. For those items, the actual cost plus a 25% fee is charged to help offset carrying cost, storage, mileage, and/or shipping and freight charges. For those items over $150 and purchased directly from the store on the Owner's behalf there is no mark-up in price.

OWNER agrees that Agent cannot be held responsible for handling repairs, remodeling, rebuilding or insurance claims that result from damage to property caused by any "Act of God", such as fire, hurricane, tsunami, flooding, etc. In case of such event, a licensed contractor should be contracted by the individual Owner.

Owner _____/_____

Agent _____

EXHIBIT G

STATE OF HAWAII GET & TAT TAXES

[X] I understand that by signing this form and checking this box, I am agreeing to have Agent complete and file my Hawaii State TAT and GET taxes for a fee of $75 per quarter. I understand that Agent will retain all of my collected taxes each month and will remit them to the taxation department as required.

[ ] I do not want this service that Agent is offering. I understand that by signing this form and checking this box, I am stating that I will continue filing my own Hawaii State TAT & GET taxes. I understand that Agent will continue to remit all collected taxes to me on my monthly statement and that I will be liable for submitting them to the taxation department.

Name: Edmund & Linda Gregoire
Address: W3133 County Road PP
City, State, Zip: Sheboygan Falls WI 53085
Phone: 920-980-9312
Fax:

Signature: Edmund L Gregoire
Linda L Gregoire

EXHIBIT H

SMOKING POLICY

All of the Properties with Agent are designated as non-smoking. Some owners allow smoking on the lanai only, while others prefer no smoking anywhere in their Property. Please indicate your choice below:

☐ Smoking is allowed on the lanai only (ashtrays will be put on lanais).

☒ Smoking is not allowed anywhere in my Property, including the lanai areas.

Signed: _____
Edmund Gregoire
Owner

Date

Linda L Gregoire

EXHIBIT I

TRUST BALANCE REQUIRED

In compliance with Hawaii State Law, Agent will retain a Trust Balance in each Owner's account in the amount of $1,000.00 per Property in either our vacation rental program. This will be used as a working balance to pay regular monthly charges such as cleaning, window cleaning, advertising, electric, telephone, and other miscellaneous charges (under $150.00 each occurrence).

Within 60 days following the termination of the Rental Agreement for any reason, the Trust Balance will be returned to the Owner, less any outstanding expenses.

I have read and understand this requirement as evidenced by my signature below:

Signed: Edmund Gregoire

Owner Date

Linda L Gregoire

Jonathan D. Parrish Date
President & Principal Broker
The Parrish Collection, LLC

Date _____

Amount _____

Check number _____

AUTHORIZATION LETTER

To: County of Kauai Planning Department

I/we, as owners of the property at 4650 Amio Rd Koloa hereby

Authorize The Parrish Collection Kauai to be our Authorized Agent for the County of Kauai's Transient Vacation Rental registration.

By: _____ Date: 3/11/15

Edmund Gregoire

Owners Name

By: _____ Date: 3-11-15

Linda L Gregoire

Linda L Gregoire

Owners Name

EXHIBIT 5

AUTHORIZATION LETTER

To: County of Kauai Planning Department

I/we, as owners of the property at 4650 Amio Rd Koloa Hi hereby

Authorize The Parrish Collection Kauai to be our Authorized Agent for the County of Kauai's Transient Vacation Rental registration.

By: _____ Date: 6-2-20

_____

Owners Name

By: _____ Date: 6-2-20

_____

Owners Name

ORDINANCE NO. 950 BILL NO. 2483, Draft 1

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 7, 8, AND 9, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE ADJUSTMENT OF VARIOUS PERMITTING CHARGES AND FEES LEVIED BY THE DEPARTMENT OF PLANNING

(County of Kaua'i, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Findings and Purpose. The County of Kaua'i finds that many of the fees charged and levied by the Department of Planning pursuant to Chapters 7, 8 and 9 of the Kaua'i County Code 1987, as amended, no longer reflect an appropriate amount given the increased complexity of zoning enforcement, and the antiquated nature of the charges and fees as many were fixed and have remained the same amount since the Comprehensive Zoning Ordinance was enacted in 1972. The County of Kaua'i finds that fees related to Transient Vacation Rentals outside of the designated Visitor Destination Areas should be adjusted accordingly to absorb the increased cost associated with enforcement of Transient Vacation Rental certificates. The renewal process is also amended to clarify procedures concerning the timing of renewals to clearly set forth requirements. The County of Kaua'i also finds appropriate the levying and charging of fees for each individual permit rather than bundling and charging for only one fee. New processing fees for shoreline determination and subdivision applications are also included to reflect the complex review nature of the proposals.

SECTION 2. Chapter 7, Article 3, of the Kauai County Code 1987, as amended, shall be amended to read as follows:

"**Sec. 7-3.1 In General.**

The General Plan Ordinance or the General Plan of the County of Kauai may be amended by ordinance, in accordance with the Charter. An amendment may change provisions of this ordinance; text provisions or map designations of the General Plan document; or any of these in combination.

Sec. 7-3.2 Initiation.

(a) An amendment may be initiated by the Planning Director, by the Planning Commission, or by the Council.

EXHIBIT 6

(b) An amendment may be initiated by the verified petition of an owner or a person fully authorized by the owner of property affected by the proposed amendment.

(1) The petition shall be of such form and include such information and exhibits as may be prescribed by the Planning Director. The petition shall be filed with the Planning Department, accompanied by a filing fee of [One hundred dollars ($100).] Six Hundred Dollars ($600.00).

(2) Within 15 working days of a filing, the Planning Director shall accept or reject the petition for amendment, based on compliance with amendment application requirements. The petitioner shall be notified in writing of the acceptance decision."

SECTION 3. Chapter 7, Article 3, of the Kaua'i County Code 1987, as amended, shall be amended by adding a new Section 7-3.8 to read as follows:

Sec. 7-3.8 Fee Exemptions

(a) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(b) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(c) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 7-3.3(c) of this Article.

SECTION 4. Chapter 8, Article 3, of the Kaua'i County Code 1987, as amended, shall be amended to read as follows:

"ARTICLE 3. GENERAL ADMINISTRATIVE REGULATIONS

Sec. 8-3.1 Zoning Permits.

(a) When Required.

No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit.

(b) Applications.

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

(1) A non-refundable filing and processing fee in the amount indicated in Sections 8-3.1(c)(1)[.], 8-3.1(d)(1), 8-3.1(e)(1), or 8-3.1(f)(1), as applicable.

(2) A description of the property in sufficient detail to determine its precise location.

(3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

(A) To show conformity with the standards established in this Chapter, and

(B) To a proper determination relative to the specific request.

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

(c) Class I Zoning Permits.

(1) The filing and processing fee is [Five Dollars ($5)] Thirty Dollars ($30.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.

(3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.

(4) If the Planning Director or his designee fails to take action on a completed application within twenty-one (21) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(d) Class II Zoning Permits.

(1) The filing and processing fee is [Ten Dollars ($10)] Sixty Dollars ($60.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and may

(A) refer the application to any County or State department for comment or approval and

(B) require additional information if necessary to make a determination.

(3) A Class II Zoning Permit shall be issued with or without conditions or denied by the Planning Director.

(4) If the Planning Director or his designee fail to take action on a completed application within thirty (30) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class II Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(e) Class III Zoning Permits.

(1) The filing and processing fee is [Thirty Five Dollars ($35)] Two Hundred Dollars ($200.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use, or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within forty-five (45) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The reports shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) The Planning Director may, within forty-five (45) days after the filing of a completed application, issue a provisional Class III Zoning Permit with or without conditions, or deny the permit, or determine that the application for the permit should be decided in the first instance by the Planning Commission.

(5) If the Planning Director issues a provisional Class III Zoning Permit, with or without conditions, he shall notify the members of the Planning Commission, and any persons who have duly requested such notice, of that action. The provisional permit shall become final unless within thirty (30) days at least three (3) members of the Planning Commission request review by the Planning Commission. In that case, the Planning Commission shall determine whether or not to issue the permit.

(6) If the Planning Director refers the application to the Planning Commission or if three (3) members request Planning Commission review of a provisionally issued permit, the Planning Commission within sixty (60) days of the reference or request for review shall issue the permit with or without conditions or shall deny the permit.

(7) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(8) An applicant who is denied a Class III Zoning Permit by the Planning Director, or who disagrees with the conditions that have been imposed on its issuance by the Planning Director may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(f) Class IV Zoning Permits.

(1) The filing and processing fee is [One Hundred Fifty Dollars ($150),] <u>Eight Hundred Dollars ($800.00).</u> [except where a Class IV Zoning Permit is only required because a Variance is necessary, in which case the fee is Fifty Dollars ($50).]

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within sixty (60) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) Within sixty (60) days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and issue the permit with or without conditions or deny the permit. Notice of the proposed public hearing shall be given to the applicant and shall also be published at least once in a newspaper of general circulation in the County, at least twenty (20) days prior to the date of the hearing.

In proceedings involving use permits within the Residential, Agriculture and Open Districts and for all Project Developments pursuant to Section 8-3.2, and for variances involving height limitations pursuant to Section 8-3.3, the following procedures shall apply in addition to the above paragraphs:

The applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards for at least eighty-five per cent (85%) of all parcels of real property within 300 feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

(A) date;
(B) time;
(C) location;
(D) purpose; and
(E) description or sketch of property involved.

At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the applicant fail to submit the affidavit within the time required, the public hearing shall be postponed. In this case, the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The applicant shall be required to pay for the republication costs and shall follow the same notice requirements of this paragraph in the renotification of affected persons.

(5) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(g) Appeal.

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

(h) After-the-fact Permits.

In addition to the Zoning Permit filing and processing fee(s), an application for a Zoning Permit for a structure partially or fully constructed without the required approvals and/or a use that has commenced prior to the required approvals shall have an additional filing, inspection, and processing fee(s) which is double that of the original filing and processing fee(s) or five hundred dollars ($500.00), whichever is greater.

(i) Fee Exemptions

(1) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and

processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(3) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.1(f)(4) or 8-3.1(h) of this Article.

Sec. 8-3.2 Use Permits.

(a) Purpose.

The purpose of the "Use Permit" procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if the proper integration cannot be assured.

(b) When Required.

No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit.

(c) Application.

An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Section 8-3.1(b) and other information justifying the issuance of the Use Permit.

(d) Fees.

[There shall be no additional filing and processing fee for a Use Permit application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00) shall accompany the application for the Use Permit[.], except that filing and processing fees shall be exempted as follows:

(1) A use permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A use permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Standards.

(1) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(2) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission.

(f) Procedure.

(1) The procedures established in Section 8-8-3.1(e) for a Class III Zoning Permit shall be followed except:

(A) All Use Permits for development or use in a Residential District, and all Use Permits for a Project Development, shall require a public hearing in accordance with the procedure specified for Class IV Zoning Permits.

(2) Upon findings of the Commission that a Use Permit may be granted consistent with the requirements of this Article, the permit shall be issued to the applicant on such terms and conditions and such a period of time, as the facts may warrant.

(3) Use Permits may be revoked by the Commission after due hearing if such action shall be necessary to effectuate the purpose of this Chapter.

(g) Application Denials And Appeal.

When a Use Permit application is denied by the Planning Director and no appeal is taken, or is denied by the Planning Commission, an application for a Use Permit involving the same or substantially similar construction, development, activity or use may not be filed sooner than six (6) months following the denial.

Sec. 8-3.3 Variance

(a) Authority.

The Planning Commission may grant variances from the provisions of this Chapter only in particular cases as set forth in this Article.

(b) Standards.

Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a variance. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the variance.

(c) Application.

An application for a Variance may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, wherever feasible, shall be filed together with the application for the required Zoning Permit and a single application shall be used for both permits in those cases. The application shall contain the information required pursuant to Section 8-3.1(b) and other information justifying the issuance of the Variance.

(d) Fees.

[There shall be no additional filing and processing fee for a Variance application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00) shall accompany the application for the Variance[.], except that filing and processing fees shall be exempted as follows:

(1) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Procedure.

(1) The procedure established in Section 8-3.1(f) for a Class IV Zoning Permit shall be followed.

(2) Upon findings of the Planning Commission that a Variance may be granted consistent with the requirements of this Article, the Variance shall be issued to the applicant on such terms and conditions, and for such period of time, as the facts may warrant. The Planning Commission shall

append conditions that achieve a substantial equivalent or alternative to the regulation from which the Variance is sought.

(3) When a Variance is denied by the Planning Commission, an application for a Variance involving the same or substantially similar construction, development, use or activity may not be filed sooner than six (6) months following the denial.

Sec. 8-3.4 Amendments

(a) Amendments.

This Chapter may be amended by changing the boundaries of districts or by changing the text whenever the public necessity and convenience and the general welfare require an amendment.

(b) Initiation.

The amendment may be initiated by the verified petition of one (1) or more owners of property affected by the proposed amendment, which petition shall be on a form prescribed by and filed with the Planning Commission and shall be accompanied by a processing fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00).

(1) For the purpose of complying with this Section a property owner is to include the holder of a lease interest the expiration of which will occur more than five (5) years after the date of filing the petition.

(2) The petition shall contain or be accompanied by the following:

(A) a statement of the nature of the petitioner's interest;

(B) a draft of the substance of the proposed amendment;

(C) a specific statement of the reasons for granting the proposed change, and if requested by the Planning Director, supported by a written documented analysis of the district involved using all the pertinent elements upon which the Zoning is based;

(D) a map, drawn to scale, describing the property and showing its location in relation to surrounding properties and to known landmarks or improvements.

(3) Processing fees for amendments shall be exempted as follows:

(A) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(B) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(C) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.4(c)(3) of this Article.

(c) Public Hearings.

The Commission shall hold at least one (1) public hearing on any proposed amendment.

(1) Except for amendments relating to necessary governmental public utility developments and District Boundary change applications pending before the State Land Use Commission on or prior to July 3, 1973, all proposed amendments shall be considered for public hearing only during four (4) months per calendar year.

(A) Public hearings shall be conducted by the Planning Commission only during the months of January, April, July and October. At any public hearing, any number of petitions may be heard provided that each petition is heard separately.

(B) Petitions and resolutions received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the public hearing date shall be considered by the Planning Commission and Council for review and action.

(2) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of the hearing, its purpose and a description of any property which may be involved.

(3) In the case of a petition for the amendment of district boundaries, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five per cent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in form approved by the Planning Director:

(A) date;
(B) time;
(C) location;
(D) purpose;
(E) description or sketch of property involved; and
(F) explanation of amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the re-notification of affected persons.

(4) Where the zoning amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of paragraph (c) above shall apply, except that in the consideration of community development plans and updates, the requirements of paragraph (b), above, shall apply.

(d) Consideration.

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

(e) Report Filed With Council.

After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications or disapprove any proposed amendment and shall file a report with the Council and the petitioner of its findings and action taken. The report shall be filed within sixty (60) days after the public hearing, or within a longer period as may be agreed upon between the Planning Commission and the initiator of the action

(1) Failure by the Planning Commission to report within the sixty (60) day period specified in this Section or within a period as may be agreed upon shall be an approval of the proposed amendment by the Planning Commission and shall be reported to the Council by the Planning Director.

(f) Approval Or Denial Of Proposal.

In the event that the Planning Commission approves the proposal, the Council shall act on the proposal as indicated in this Article. However, in the event the Planning Commission denies the proposal, its decision is final except that the petitioners within fifteen (15) days after notice of the action may in writing appeal the decision to the Council, in which case the Council shall hear the matter in the same manner as for an approval by the Planning Commission.

(1) Within forty-five (45) days of receipt of the report for approval, the Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(2) Within forty-five (45) days of receipt of the appeal, the Council shall set the matter for public hearing and shall give notice thereof to the petitioner and also by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to a hearing. After the conclusion of the hearing, the council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(g) Enactment By Ordinance.

Enactment of the amendment shall be by ordinance.

(h) Withdrawal.

With the consent of the Planning Commission, any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution of intention.

(1) The withdrawal or abandonment may be made only when the proceedings are before the body for consideration, and provided that any hearing of which public notice has been given shall be held.

(i) Denial.

When an amendment initiated by petition is denied by the Planning Commission and no appeal is taken, or is denied by the Council, the amendment or a substantially similar amendment may not be initiated by petition sooner than one (1) year following the denial.

(j) Initiation By Council Or Planning Commission.

Nothing contained in this Chapter shall prohibit the Planning Commission or the Council from initiating zoning changes where the general public interest and welfare are involved. When the amendment is initiated by the Planning Commission or the Council, the public hearing on the amendment may be held at any time.

Sec. 8-3.5 Enforcement, Legal Procedures And Penalties.

(a) Enforcement, Legal Procedures And Penalties.

(1) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions thereof.

(3) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars ($2,000). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinment thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

(b) Civil Fines.

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section. The order may require the party responsible for the violation to do any or all of the following:

(A) Correct the violation within the time specified in the order;

(B) Pay a civil fine not to exceed $10,000 in the manner, at the place, and before the date specified in the order;

(C) Pay a civil fine up to $10,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order shall advise the party responsible for the violation that the order shall become final 30 days after the date of its delivery. The order shall also advise that the Director's action may be appealed to the Planning Commission.

(3) The provisions of the order issued by the Director under this section shall become final 30 calendar days after the service of the order. The parties responsible for the violation may appeal the order to the Planning Commission pursuant to its rules. The form of this appeal must conform to the Planning Commission's rules. However, an appeal to the Planning Commission shall not stay any provision of the order.

(4) The Director may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of violation and order were served; that a civil fine was imposed; the amount of the civil fine imposed has not been paid; that either the order has not been appealed or that if appealed, the order was sustained by the Commission and/or any Court action."

SECTION 5. Chapter 8, Article 17, of the Kaua'i County Code 1987, as amended, shall be amended to read as follows:

"Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008 and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator or proprietor of any single-family transient vacation rental which operated outside of a Visitor Destination Area prior to March 7, 2008 shall obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit and demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to March 7, 2008. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawai'i General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to March 7, 2008, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to March 7, 2008, with a pattern of consistency that evidences an ongoing and lawful enterprise.

(d) Applications for nonconforming use certificates for single-family transient vacation rentals located on land designated "Agricultural" pursuant to Chapter 205 of the Hawai'i Revised Statutes shall be made within sixty (60) days of August 16, 2010. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010, then the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred ($1,500.00) Dollars at filing. A nonconforming use certificate may be issued for a single-family transient vacation rental located on land in the State of Hawai'i's land use agricultural district if:

(1) It was built prior to June 4, 1976, or

(2) The Applicant has obtained a special permit under Hawai'i Revised Statutes, Section 205-6 which specifically permits a vacation rental on the subject property.

(A) An application for a special permit shall include verification by the Applicant that the farm dwelling unit was being used as a vacation rental on an ongoing basis in accordance with Section 8-17.10(c).

(B) An application for a special permit pursuant to Hawai'i Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission that is deemed complete by the Planning Director must be filed within one (1) year of August 16, 2010. Upon completion of the application, the Planning Director shall issue a provisional certificate that will allow the transient vacation rental to operate. The provisional certificate shall be null and void after the Planning Commission or the Land Use Commission makes a decision upon the application.

(C) In addition to the Special Permit standards set forth in Hawai'i Revised Statues Section 205-6 and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission, the Planning Commission may only grant a special permit if, prior to March 7, 2008: (1) the property upon which the transient vacation rental is located had a registered agricultural dedication pursuant to the guidelines set forth in the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules; (2) a bona fide agricultural operation existed, as shown by State General Excise Tax Forms and/or Federal Income Tax Form 1040 Schedule F filings; or (3) the Planning Commission finds that the size, shape, topography, location or surroundings of the property, or other circumstances, did not allow an applicant to qualify for an agricultural dedication pursuant to the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules or inhibited intensive agricultural activities

(D) If the application for the special permit is granted, then the transient vacation rental operation shall be subject to conditions imposed by the Planning Commission or the Land Use Commission.

(E) If the application for special permit is denied, then the nonconforming use certificate shall not be issued and the transient vacation rental must cease operation.

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(f) The Planning Director shall make available to the public at the Planning Department counter and on the County of Kaua'i website a list of all completed applications for non-conforming use certificates. Applications deemed completed shall concurrently be made available to the public. Copies of applications shall also be made available to the public as public information, as provided by Haw. Rev. Stat. Chapter 92F (the Uniform Information Practices Act). Such list shall include the names of the applicants and the tax map key number of the parcels which are the subject of the applications. The Planning Department may physically inspect a single-family transient vacation rental prior to a non-conforming use certificate being issued.

(g) The Planning Director shall prepare an application form which shall be available to the public. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010 the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred ($1,500.00) Dollars at filing. Applications received more than one (1) year after August 16, 2010 shall not be accepted and the use of a transient vacation rental shall be deemed discontinued.

(h) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate annually on the date of issuance of the nonconforming use certificate.

(1) Each application to renew shall include proof that there is a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use and shall be received by the Department prior to the expiration date of a held non-conforming use certificate. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates. [The applicant may reapply for renewal upon presenting a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use.]

Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.

(2) Upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter, or other pertinent land use laws, and may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

(3) Applicant shall pay an annual renewal fee of [One Hundred Fifty Dollars ($150.00)] Five Hundred Dollars ($500.00) which shall be deposited into the County General Fund."

SECTION 6. Chapter 8, Article 27, Section 27.8 of the Kauai County Code 1987, as amended, shall be amended to include a new subsection (e) to read as follows:

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

SECTION 7. Chapter 9, Article 3, Section 3.2 of the Kauai County Code 1987, as amended, shall be amended as follows:

"**Sec. 9-3.2 Application For Approval Of Preliminary Subdivision Maps.**

(a) A preliminary subdivision map may be filed by the owner of the property sought to be subdivided, or by any person duly authorized by the owner. The preliminary subdivision map, wherever feasible, shall be filed together with one (1) application for the required zoning permit, as provided in the Comprehensive Zoning Ordinance, and two (2) applications, if any, for necessary use permits and variance permits, as provided in the Comprehensive Zoning Ordinance. Information required in the applications may be shown in the preliminary subdivision map, and the Planning Commission, to the extent feasible, shall act upon the preliminary subdivision map and all applications simultaneously.

(b) Filing Fees. Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of [Three Dollars ($3.00)] Sixteen Dollars and Fifty Cents ($16.50) for each lot shown on the preliminary subdivision map[.] and a processing fee of Three Hundred Dollars ($300.00), except that filing and processing fees shall be exempted as follows:

(1) A subdivision for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A subdivision for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program."

SECTION 8. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 9. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance material for inclusion in the Kauai County Code 1987, as amended, the brackets, bracketed material and underscoring shall not be included. The County Clerk shall also be authorized to codify any relevant changes to Ordinance 935, pursuant to this Ordinance and reissue Ordinance 935 as a complete document.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by: /s/ NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

May 22, 2013

Līhu'e, Kaua'i, Hawai'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2483, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on July 17, 2013, by the following vote:

FOR ADOPTION:	Bynum, Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
July 18, 2013

Ricky Watanabe
County Clerk, County of Kaua'i

ATTEST:

Jay Furfaro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

July 18, 2013

Approved this 23 day of July, 2013.

Bernard P. Carvalho Jr.
Mayor
County of Kaua'i

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

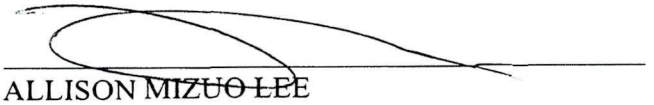
In the Matter of the Application of EDMUND GREGOIRE, LINDA GREGOIRE, And MAULOA LLC Appealing Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287, dated May 3, 2023, for a property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i Tax Map Key No.: (4) 2-6-011:019.	**CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2023, the PETITION TO APPEAL DECISION OF THE PLANNING DIRECTOR; EXHIBITS "1" - "6", was duly served upon the COUNTY OF KAUA'I PLANNING COMMISSION, via hand delivery, addressed to it at the COUNTY OF KAUA'I PLANNING DEPARTMENT, County of Kaua'i, 4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766.

DATED: Līhu'e, Hawai'i, June 2, 2023.

CADES SCHUTTE LLP
A Limited Liability Law Partnership



ALLISON ~~MIZUO LEE~~
MAUNA KEA TRASK
KEOLA R. WHITTAKER
Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC

CADES SCHUTTE
A Limited Liability Law Partnership

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3083 Akahi Street, Ste 201
Līhu'e, Hawai'i 96766
Telephone: (808) 245-1922
Fax: (808) 521-9210

Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE,
And MAULOA LLC

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

In the Matter of the Application of EDMUND GREGOIRE, LINDA GREGOIRE, And MAULOA LLC Appealing Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287, dated May 3, 2023, for a property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i Tax Map Key No.: (4) 2-6-011:019	**PETITION TO APPEAL OF THE DECISION OF THE PLANNING DIRECTOR;** **EXHIBITS "1" - "6"** **CERTIFICATE OF SERVICE** **Planning Commission Hearing:** **Date:** _____ **Time:** _____ **Place:** _____

PETITION TO APPEAL OF THE DECISION OF THE PLANNING DIRECTOR

Notice is hereby given that the Appellants, EDMUND GREGOIRE, LINDA GREGOIRE (the "**Gregoires**"), and MAULOA LLC ("**Mauloa**") (collectively "**Appellants**"), by and through their undersigned counsel, pursuant to Chapters 6 and 9, et seq., of the Rules of Practice and Procedure of the Planning Commission ("**Planning Commission Rules**"), hereby appeals the decision of the Planning Director as set forth in his letter executed on May 3, 2023 (the "**Notice & Order**"), a copy of which is attached hereto and incorporated herein as Exhibit "1".

H.4.c.
June 29, 2023

Appellants state as follows:

I. Name, Address and Telephone Number of the Appellants.

As stated above, Appellants are EDMOND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC. Appellants may be contacted via undersigned counsel at the following address and telephone number: 3083 Akahi Street Līhu'e, #201, Hawai'i 96766; Phone (808) 245-1922.

II. Identification of the Property and Appellants Interest Therein.

Mauloa is the current owner of the fee simple interest in that certain parcel of real property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i 96756, and further identified as Tax Map Key (4) 2-6-011:019 (the "**Property**"). *See*, Exhibit "2". The Gregoires formed Mauloa in 2020 to hold title to the Property which they owned since 2014. *See*, Exhibit "3". The Gregoires are the sole owners of Mauloa.

III. The Particular Provisions of the Regulations in Question.

The particular provisions of the regulations in question are Section 8-17.10, of the codified Kaua'i County Code 1987, as amended ("**Section 8-17.10**"). Also at issue are Interpretive Administrative Zoning Rules and Regulations (2014) of the Kaua'i Planning Commission Relating to Chapters 8, 9, and 10 of the Kaua'i County Code.

IV. Facts.

The Property has been used as a licensed transient vacation rental ("**TVR**")[1] since at least early 2008 and was therefore registered as a lawful nonconforming use pursuant to Section 8-17.10. Section 8-17.10, subsection (h), requires that the owner of such TVRs apply to renew the Nonconforming Use Certificate annually on the date of issuance of the Nonconforming Use

[1] A "transient vacation rental" is "a dwelling unit which is provided to transient occupants for compensation or fees, including club fees, or as part of interval ownership involving persons unrelated by blood, with a duration of occupancy of one hundred eighty (180) days or less." KCC § 8–1.5.

Certificate (the "**Annual Renewal**"). The deadline for Appellants to submit their Annual Renewal was April 18.

Since the Gregoires' acquisition in 2014, the Property was managed by The Parrish Collection, LLC ("**TPC**") pursuant to a Rental Property Management Agreements between the Gregoires and TPC. *See*, Exhibit "4". Under this agreement and the understanding between the parties that was reinforced yearly, TPC was required to, among other things, collect rents, make repairs, and, as relevant here, ensure that the annual renewal of the Nonconforming Use Certificate was filed every year by April 18.

TPC had the Appellants sign an authorization letter to name TPC as Appellants' authorized agent for the County of Kaua'i's Transient Vacation Rental registration so they could act on Appellants' behalf when communicating with the County. *See*, Exhibit "5". TPC filed the Annual Renewal for Appellants in 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022 on time. Appellants expected, as TPC did every year for nine years, that TPC would file the 2023 Annual renewal by April 18, 2023. But TCP missed the deadline by 10 days and submitted the Annual Renewal on April 28, 2023.

Section 8-17.10(h)(1), provides that failure to file the Annual Renewal on the date of issuance "will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates." Prior to 2013, the Section 8-17.10(h)(1) allowed an owner to reapply for renewal of the Nonconforming Use Certificate even if the deadline was missed as long as they could present "a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use." *See* Exhibit "6". That provision was removed by Ordinance 950, which was approved on July 23, 2013. *See id.*

V. The Action of the Director.

On May 3, 2023, the Director sent the Appellants a "Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287" (the "**Order**"). The Order indicated that the Nonconforming Use Certificate "was to be renewed by April 18, 2023…which was the annual date of the issuance of the non-conforming use certificate. The Department received the renewal packet which was hand delivered on April 28, 2023." It further indicated that since the Annual Renewal was not filed by April 18, 2023, the Appellants are ordered to cease and desist the transient vacation rental use of the property immediately.

VI. Reasons for the Appeal.

A. The Director's Order is Improper Because Section 8-17.10 Violates HRS Section 46-4(a)

The counties of the state of Hawai'i "derive their zoning powers from HRS § 46–4(a) referred to as the Zoning Enabling Act." Kaiser Hawaii Kai Dev. Co. v. City & Cty. of Honolulu, 70 Haw. 480, 483, 777 P.2d 244, 246 (1989). Accordingly, any zoning ordinance that conflicts with HRS § 46-4(a) is invalid. Id. at 16.

HRS § 46-4(a) bars the counties from passing a law that discontinues any previously lawful use of a property:

> Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any . . . purpose for which the building or premises is used at the time this section or the ordinance takes effect.
>
> The statute provides one exception to that rule:
>
> [A] zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. ***In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses.***

Id. (emphasis added). This provision only allows a county to phase out a nonconforming use "over a reasonable period of time" in four zoning districts only: commercial, industrial, resort, and apartment, but not in residential districts.

In light of this, Section 8-17.10 violates HRS § 46-4(a) as applied to the Property. First, there is no question that the Property is located in the R2 residential district. *See* Zoning Map ZM-KU 300, Lawai Bay - Kukuiula.. The U.S. District Court for the District of Hawai'i recently confirmed that TVR uses are *residential uses* as defined in state law. Hawaii Legal Short-Term Rental Alliance v. City & Cty. of Honolulu, 22-cv-247-DKW-RT (October 13, 2022), at 18-20.

Second, Section 8-17.10 is intended to be, and is, in effect, a phasing out of TVR uses because it creates a regulatory framework designed to revoke the right to operate TVRs over time. As noted in subsection (a) of that ordinance, the purpose of Section 8-17.10 "identify and register those single family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008" and allow them to continue *only if they obtain an annual Nonconforming Use Certificates*. The onerous annual application requirements in Section 8-17.10 are notably not required for conforming TVRs. *See generally* Section 8-17. This implies that there is no genuine policy reason to require annual certificate renewals for nonconforming TVRs because other TVRs do not receive the same level of scrutiny, licensing requirements, and strict deadlines.

Subsection (h) of Section 8-17.10 further demonstrates that the intent and effect of that section is to phase out nonconforming TVRs. Unlike other TVRs, they must pay an annual $750 fee, provide certain tax information annually, and, most significantly: "Failure to meet [these requirements] will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates." Section 8-17.10(h)(1).

In sum, TVR uses within single-family residential districts are residential land uses under HRS § 46-4(a), and, therefore, the amortization exception does not apply. Section 8-17.10 is conflict-preempted and invalid because it effectively phases out legal nonconforming TVRs by placing onerous regulatory requirements that do not apply equally to other TVR properties. This regulatory scheme is designed so that any minor misstep – even missing a single deadline by a few days – will invalidate the nonconforming use forever. The effect and intent is clear: to phase out nonconforming TVRs in violation of HRS § 46-4(a).

B. The Director's Order is Improper Because Section 8-17.10's Requirement for Annual Nonconforming Use Certificates is an Unconstitutional Regulatory Taking.

The statutory protection of lawfully existing uses and structures "prior to the effective date of a zoning restriction is grounded in constitutional law." Waikiki Marketplace Inv. Co. v. Chair of Zoning Bd. of Appeals of City & Cty. of Honolulu, 86 Hawai'i 343, 353, 949 P.2d 183, 193 (1997). Under the United States and Hawai'i Constitutions, "preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate." Waikiki Marketplace, 86 Hawai'i at 353–54, 949 P.2d at 193–94.

The Takings Clause of the United States Constitution provides that private property shall not "be taken for public use, without just compensation." U.S. Const. and. V. The Ninth Circuit uses a two-step analysis to determine whether a constitutional taking has occurred: "first, we determine whether the subject matter is 'property' within the meaning of the Fifth Amendment and, second, we establish whether there has been a taking of that property, for which compensation is due." Bowers v. Whitman, 671 F.3d 905, 912 (9th Cir. 2012) (quoting Engquist v. Or. Dep't of Agric., 478 F.3d 985, 1002 (9th Cir. 2007), aff'd 553 U.S. 591 (2008)).

As the U.S. Supreme Court explained, property rights are "created and their dimensions are defined by existing rules...such as state law rules or understandings that secure certain benefits and that support claims of entitlement to those benefits." Bd. of Regents v. Roth, 408 U.S. 564, 577 (1972). To be a constitutionally protected by takings principles, those property rights also must be vested. Id. at 916.

"To determine whether a property interest has vested for Takings Clause purposes, 'the relevant inquiry is the certainty of one's expectation in the property interest at issue.'" Id. Furthermore, "if the property interest is 'contingent and uncertain' or the receipt of the interest is 'speculative' or 'discretionary,' then the government's modification or removal of the interest will not constitute a constitutional taking." Id.

First, there is no question that the right to operate a TVR is a vested property right. The Appellants have lawfully used the Property for TVR rentals and rely on that income to offset the costs of ownership. In fact, the Appellants made their decision to purchase the property, and take on an expensive mortgage, based on their ability to obtain income by renting the Property as a TVR. The Property is currently for sale because Appellants are unable to maintain the costs associated with ownership of the Property without the income generated by short-term rental use. That is precisely why the U.S. District Court for the District of Hawai'i ruled last year that TVR rentals in non-resort districts are a vested property right protected by takings principles. Hawaii Legal Short-Term Rental Alliance, 22-cv-247-DKW-RT., at 22-24.

Second, Section 8-17.10 is a taking of the property. As detailed above, the strict time deadlines and other regulatory requirements that are uniquely applied to nonconforming TVR properties effectively phase them out by cancelling the right to operate a TVR for any minor regulatory misstep and does so without providing compensation for the nonconforming use. This

violates the takings clause of the U.S. Constitution. Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 536, 125 S.Ct. 2074, 161 L.Ed.2d 876 (2005) (a regulatory taking occurs where "government regulation of private property [is] so onerous that its effect is tantamount to a direct appropriation or ouster.") As the Hawai'i Intermediate Court of Appeals noted:

> [T]he right of a property owner to the continued existence of uses and structures which lawfully existed prior to the effective date of a zoning restriction is grounded in constitutional law.
>
> [D]ue process principles protect a property owner from having his or her vested property rights interfered with, and preexisting lawful uses of property are generally considered to be vested rights that zoning ordinances may not abrogate.

Waikiki Marketplace Inv. Co. v. Chair of the Zoning Bd. Of Appeals of City & Cnty. Of Honolulu, 949 P.2d 183, 193–94 (Haw. Ct. App. 1997) (citing U.S. Const. amend. V and Haw. Const., art. 1 § 5). Robert D. Ferris Trust v. Planning Comm'n of the Cnty. Of Kauai, 378 P.3d 1023, 1028–29 (Haw. Ct. App. 2016) (holding that any interpretation of Section 8-17.10 which takes away vested rights to pre-existing lawful uses is unconstitutional).

C. The Commission Should Grant Appellants Equitable Relief.

The Appellants seek equitable relief from the Planning Commission due to the unique circumstances present here, notably that: (1) Appellants relied on a third party to timely file their annual renewal, (2) through no fault of the Appellants, the Annual Renewal was not timely filed, and (3) the Annual Renewal was received by the County only 10 days late, which does no harm to and does not prejudice the County. Given these unique circumstances, the Appellants request that the Commission reverse the Planning Director's strict application of the law and set aside the Order.

Appellants' request for equitable relief here is grounded in the doctrine of equitable tolling, a principle deeply rooted in fairness and justice. In Wright v. State Farm Mutual Automobile Insurance Co., 86 Haw. 357, 949 P.2d 197 (Ct. App. 1997), the Hawai'i courts adopted the doctrine of equitable tolling. The Hawai'i Supreme Court explained that, in the context of a complaint filed after the expiration of a statute of limitations, equitable tolling will apply if a plaintiff demonstrates (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Office of Hawaiian Affairs v. State, 110 Haw. 338, 360, 133 P.3d 767, 789 (2006). These requirements come from "a tradition in which courts of equity have sought to relieve hardships which, from time to time, arise from a hard and fast adherence to more absolute legal rules, which, if strictly applied, threaten the evils of archaic rigidity." Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1052 (9th Cir. 2013) (internal quotations and citations omitted). Thus, the equitable tolling doctrine "enables courts to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct ... particular injustices." Id.

The doctrine of equitable tolling recognizes that there may be situations where rigid adherence to statutory or contractual deadlines would lead to an unjust outcome. The same is true here. The law should not punish the Appellants who, through no fault of their own, were unable to meet a statutory deadline due to extraordinary circumstances beyond their control.

Equity requires that Appellants be permitted to keep the Nonconforming Use Certificate. Appellants diligently pursued their right to maintain their Nonconforming Use Certificate by ensuring that they hired TCP to handle their Renewal Application and informing them of the annual deadline. Appellants had every reason to expect, as they had for the last nine years, that TCP would timely file the Renewal Application without specific instruction. Unfortunately,

TCP did not timely file the Renewal Application as they had in years past. That is not the fault of the Appellants, but Appellants will pay the price by losing a certificate that they've held since purchasing the Property.

Strict adherence to the statutory deadline here results in a significant legal and financial burden. Appellants should not have to suffer for the actions of a third party. Archaic rigidity is not required here. The County will not be harmed by granting this appeal. Tolling the deadline by 10 days is reasonable under these circumstances. The Planning Commission should reject the Planning Director's hard and fast adherence strict legal rules when equitable intervention would prevent an injustice.

WHEREFORE, Appellants pray that the Planning Commission:

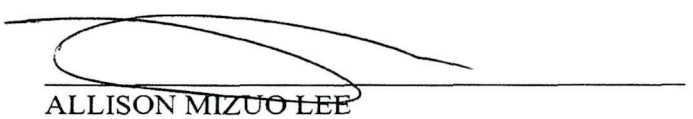
A. Reverse and set aside the Planning Director's May 3, 2023 Order;

B. Determine that Appellants' April 28, 2023 Renewal Application should be accepted by the Planning Department and Appellants' Nonconforming Use Permit be renewed; and

C. Grant such further relief as may be just.

DATED: Līhu'e, Hawai'i, June 2, 2023.

CADES SCHUTTE LLP
A Limited Liability Law Partnership



ALLISON MIZUO LEE
MAUNA KEA TRASK
KEOLA R. WHITTAKER
Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC

DEPARTMENT OF PLANNING
THE COUNTY OF KAUA'I
DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHILIG, MANAGING DIRECTOR

KA'ĀINA S. HULL
DIRECTOR

JODI A. HIGUCHI-SAYEGUSA
DEPUTY DIRECTOR

CEASE & DESIST, AND
FORFEITURE OF TVRNCU

May 3, 2023
Certified Mail

Edmund & Linda Gregoire
W3133 Country Road N Pp
Sheyboygan, WI 53085

Subject: **CEASE & DESIST, and FORFEITURE of Non-Conforming Use Certificate TVNCU #4287**
TMK 26011019, Koloa, Kaua'i
4650 Amio Road (Mau Loa 'Ohana)
Edmund & Linda Gregoire, applicant

Your TVNCU was to be renewed by ***April 18, 2023*** as required by Sec.8-17-10 (h)(1) of the codified Kauai County Code 1987, as amended, which was the annual date of issuance of the non-conforming use certificate. The Department received the renewal packet which was hand delivered on April 28, 2023.

Further Section 8-17.10(h)(1) reads:

> "Each application to renew shall include proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use and shall be received by the Department prior to the expiration date of a held Nonconforming Use Certificate. ***Failure to meet this condition will result in the automatic denial of the application for renewal of the Nonconforming Use Certificates.***"

Since you failed to submit a renewal packet prior to April 18, 2023, you are hereby ordered to **Cease & Desist** the transient vacation rental use of the property. The following elements shall be instituted immediately:

a. Cease and desist the use of the single family residence as a vacation rental;

b. Remove all advertisements (tv, radio, worldwide web, outdoor signage, etc) related to the existing Vacation Rental use of the property;

c. Suspend or cancel the GE and TAT licenses for the Vacation Rental use;

d. Cancel all Transient Vacation rental commitments for the property, commencing from May 3, 2023.

EXHIBIT 1

Documentation shall be submitted to the Department confirming the above actions have been implemented.

You have the right to appeal this decision and any appeal must be filed with the Planning Commission within 30 days after the date of this decision to provide you an opportunity for a hearing before the Planning Commission. The appeal must conform to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission. The Rules of Practice and Procedure of the Planning Commission are available on the Department's website.

Should you fail to Cease & Desist the vacation rental use of the property within the time period noted above and it is confirmed by the Department, you will be issued a Notice of Violation, $10,000.00 civil fine, and the matter forwarded to the Prosecutor's Office for criminal prosecution. Should you appeal this forfeiture, the vacation rental use must still cease.

Should you have any questions regarding this matter, please contact Enforcement Supervisor Michael Laureta at 808-241-4071 or mlaureta@kauai.gov.

KAAINA S. HULL
Director of Planning

CC: Real Property Div.
Linda Jordan

410
C

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
August 18, 2020 3:29 PM
Doc No(s) A – 75350501

1 1/1 OFC
B – 33557555

/s/ LESLIE T. KOBATA
REGISTRAR

Conveyance Tax: $1.50

LAND COURT | ONJ REGULAR SYSTEM

AFTER RECORDATION, RETURN ORIGINAL BY: MAIL (X) PICK-UP ( )
Mauloa LLC
W3133 County Road PP
Sheboygan Falls, WI 53085

Tax Map Key No.: (4) 2-6-011-019 Total Pages: 6

WARRANTY DEED

PARTIES TO DOCUMENT

GRANTOR: EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE

GRANTEE: MAULOA LLC, a Wisconsin limited liability company

THIS DEED, made this 5 day of August, 2020, by EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE, husband and wife, of Sheboygan Falls, Wisconsin, hereinafter collectively called the "Grantor," in favor of MAULOA LLC, a Wisconsin limited liability company, whose address is W3133 County Road PP, Sheboygan Falls, Wisconsin 53085, hereinafter called the "Grantee;"

EXHIBIT 2

WITNESSETH

That for TEN AND NO/100 DOLLARS ($10.00), and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as **TENANT IN SEVERALTY**, in fee simple:

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

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

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

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

AND, in consideration of the premises, the Grantor does hereby covenant and agree to and with Grantee that Grantor is lawfully seized in fee simple of the real property described in Exhibit "A" and is the absolute owner of said personal property (if any) and that Grantor's title to all of said property is free and clear of and from all encumbrances other than those mentioned in Exhibit "A"; that Grantor has good right to sell and convey said property as aforesaid and that Grantor will WARRANT and DEFEND the same unto Grantee against the lawful claims and demands of all persons except as aforesaid.

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine, feminine or neuter, the singular or plural number, individuals, partnerships, trustees, corporations or limited liability companies, and their and each of their respective successors, heirs, personal representatives, successors in trust and assigns, according to the context thereof. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several unless a contrary intention is clearly expressed elsewhere herein.

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

[END OF TEXT, CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the Grantor has executed this instrument.

EDMUND DONALD GREGOIRE

LINDA LEE GREGOIRE

"Grantor"

STATE OF WISCONSIN)
) SS:
COUNTY OF Sheboygan)

On August 5, 2020, before me personally appeared EDMUND DONALD GREGOIRE, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 8/5/2020 Number of Pages: 6
Description of Document: Warranty Deed

Signature: Terri L. LeMahieu
Name: Terri L LeMahieu
Notary Public, Above-Mentioned State

My commission expires: 6/17/2022

STATE OF WISCONSIN)
) SS:
COUNTY OF Sheboygan)

On August 5, 2020, before me personally appeared LINDA LEE GREGOIRE, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing document as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such document in such capacity.

Document Date: 8/5/2020 Number of Pages: 6
Description of Document: Warranty Deed

Signature: Terri L. LeMahieu
Name: Terri L. LeMahieu
Notary Public, Above-Mentioned State

My commission expires: 6/17/2022

EXHIBIT "A"

All of that certain parcel of land situate, lying and being at Kukuiula, Koloa, Island and County of Kauai, State of Hawaii, being Lot 6-B, same being a subdivision of Lot 6, of the "KUKUIULA SUBDIVISION", as shown on File Plan 458, and thus bounded and described:

Beginning at a pipe in concrete at the Northeast corner of this Lot, the Northwest corner of Lot 7 of Kukuiula Subdivision, and along the South side of Arnio Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "WAHIAWA" being 9,864.97 feet South and 14,395.17 feet East, thence running by azimuths measured clockwise from true South:

1.	348 °	30'	200.50	feet along Lot 7 of Kukuiula Subdivision to an "x" on rock;
	The next four (4) courses follow the debris and vegetation line at seashore,			
2.	51 °	50'	12.00	feet;
3.	94°	30'	70.00	feet;
4.	133 °	00'	17.00	feet;
5.	90°	00'	13.79	feet;
6.	186°	20'	175.50	feet along Lot 6-A, a subdivision of Lot 6 of Kukuiula Subdivision, to a pipe, and passing over a pipe at 8.50 feet;
7.	Thence on a curve of radius of 60.00 feet to the left along the South side of Arnio Road, the direct azimuth and distance being:			
	260°	44'	23.72	feet to an "x" on concrete;
8.	249°	20'	24.25	feet along same to the point of beginning and containing an area of 14,678 square feet, more or less.

Together with Easement "Y-1 ", for the forever preservation of a view of the ocean and coastline, as granted by MUTUAL GRANT OF EASEMENTS dated May 31, 2001, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-087007.

Being all the property described in the following:

DEED

Recorded:	December 31, 2014 in the Bureau of Conveyances, State of Hawaii, as Document No. A-54780134
Grantor:	MICHAEL J. TOMCIK and CONNIE H. TOMCIK, Trustees of the Tomcik Trust dated August 3, 2000, with full power and authority to sell, lease, borrow, mortgage, etc.
Grantee:	EDMUND DONALD GREGOIRE and LINDA LEE GREGOIRE, husband and wife, as Tenants by the Entirety

SUBJECT, HOWEVER, TO:

1. Title to all minerals, and metallic mines reserved to the State of Hawaii.

2. Any adverse claim based upon the location of the seaward boundary and/or the shoreline setback line of the herein described property, as may be established under the laws of the State of Hawaii.

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

Instrument:	GRANT
Granted To:	JAMES L. CLAY and ANDREA CLAY
For:	an easement for preservation of a view of the ocean and coastline over Easement "V-2"
Dated:	May 31, 2001
Recorded:	in the Bureau of Conveyances, State of Hawaii, as Document No. 2001- 08700

4. Any claim or boundary dispute which may exist or arise by reason of the failure of the MUTUAL GRANT OF EASEMENTS recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2001-087007, referred to in Schedule C to locate with certainty the boundaries of Easement "V-1" described in said instrument.

END OF EXHIBIT "A"

Wisconsin Department of Financial Institutions

Strengthening Wisconsin's Financial Future

Search for:
Mauloa

Search Records

Search
Advanced Search
Name Availability

Corporate Records

Result of lookup for **M109360** (at 5/12/2023 4:14 PM)

MAULOA LLC

You can: File an Annual Report - Request a Certificate of Status - File a Registered Agent/Office Update Form

Vital Statistics

Entity ID	M109360
Registered Effective Date	01/17/2020
Period of Existence	PER
Status	Organized Request a Certificate of Status
Status Date	01/17/2020
Entity Type	Domestic Limited Liability Company
Annual Report Requirements	Limited Liability Companies are required to file an Annual Report under s. 183.0212, WI Statutes.

Addresses

Registered Agent Office	LINDA GREGOIRE W3133 COUNTY ROAD PP SHEBOYGAN FALLS , WI 53085-2533 File a Registered Agent/Office Update Form
Principal Office	W3133 COUNTY ROAD PP SHEBOYGAN FALLS , WI 53085-2533

Historical Information

Annual Reports

Year	Reel	Image	Filed By	Stored On
2022	000	0000	online	database
2021	000	0000	online	database

File an Annual Report - Order a Document Copy

Certificates of Newly-elected Officers/Directors	None
Old Names	None

Chronology

Effective Date	Transaction	Filed Date	Description

EXHIBIT 3

01/17/2020	Organized	01/17/2020	E-Form
05/06/2021	Change of Registered Agent	05/06/2021	OnlineForm 5

Order a Document Copy

RENTAL PROPERTY MANAGEMENT AGREEMENT

AGENT: The Parrish Collection, LLC
3176 Poipu Road, Suite #1
Koloa, Kauai, Hawaii 96756
(808) 742-2000

PROPERTY: Mauloa Ohana

DATED: December 20, 2014

ThePARRISHCollectionKaua'i
Island Vacation Homes

EXHIBIT 4

AGENT IS REQUIRED TO HAVE THE FOLLOWING ON THE FIRST PAGE OF THIS AGREEMENT:
(Agent cannot rent Owner's Property without bolded items)

Owner Name	Federal Tax ID # or Social Security #	Check if Owner is non-resident alien
Edmund D. & Linda L. Gregoire		❑
		❑
Hawaii General Excise Tax Number:		
Transient Accommodation Tax Number:		

Mailing Address	Contact Phone Numbers		Email Address (s)
W3133 County Rd. N Pp Sheboygan Falls, WI 53085	Day	920-467-3521	egregoire@excel.net
	Evening	920-893-4602	lgregoire214@gmail.com

Property Name		Property Address		Property Phone Number	
Mauloa Ohana		4650 Amio Road Koloa, HI 96756		808-742-9242	
Tax Map Key:	4-2-6-11-19	TVR #	TVNC-4287	CPR:	

Pursuant to Hawaii Revised Statutes 237.30.5 we are required to advise you as follows:
HAWAII GENERAL EXCISE TAXES (GET) MUST BE PAID ON THE GROSS RENTS COLLECTED BY ANY PERSON RENTING REAL PROPERTY IN THE STATE OF HAWAII. A COPY OF THE FIRST PAGE OF THIS AGREEMENT, OR A FEDERAL INTERNAL REVENUE FORM 1099 STATING THE AMOUNT OF RENTS COLLECTED SHALL BE FILED WITH THE HAWAII DEPARTMENT OF TAXATION.
Agent shall comply by filing form IRS 1099 as required annually.

Federal Tax Notice:
Federal tax laws require all persons paying rent to a non-U.S. citizen (a "Foreign Owner") to withhold thirty percent (30%) or as required by the IRS of such rental payments and to remit this withholding tax to the I.R.S. A FOREIGN OWNER WHO HIRES A REAL ESTATE PROPERTY MANAGER TO MANAGE HIS/HER RENTAL PROPERTY IN THE UNITED STATES SHOULD EXPECT SAID PROPERTY MANAGER TO WITHHOLD THIRTY PERCENT (30%) OF THE FOREIGN OWNER'S GROSS RENTAL RECEIPTS (regardless of mortgage, maintenance, or other expenses) AND TO REMIT THIS THIRTY PERCENT (30%) WITHHOLDING TAX TO THE I.R.S.

Foreign Owner's Instructions Regarding Federal Withholding Taxes. After consulting with a U.S. tax advisor, I, the Owner, hereby instruct Agent [Check as applicable]:

- ❑ Owner is not a Foreign Owner and, therefore, this box does not apply.
- ❑ Withhold the thirty Percent (30%) tax on GROSS rental income and send said amount to the I.R.S.
- ❑ Do not withhold any tax. I am attaching a completed Form W-8ECI, which includes my U.S. taxpayer identification number, or "TIN". The I.R.S. will be notified of a Foreign Owner's filing of Form W-8ECI. A Foreign Owner filing Form W-8ECI should assume that the I.R.S. will expect said Foreign Owner's income tax return and payment of U.S. income tax on net profits at the appropriate time of filing.

No Representations:
On entering into this Agreement, Owner and Agent acknowledge that neither Owner nor Agent has made any representation to the other regarding projected earnings, the probability of future success or any other similar matter respecting the Property or the Rental Program, that neither is relying upon any of the above in entering into this Agreement and that Agent and Owner understand that no guarantee is made to the other as to any amount of income to be received by Agent or Owner or as to the future financial success of the Rental Program or the Property.

THIS RENTAL PROPERTY MANAGEMENT AGREEMENT ("Agreement") is entered into as of the date set forth as the "Effective Date" on the signature page of this Agreement, by and between the Owner(s) identified on Page 2 and the signature page of this Agreement (hereafter referred to, whether one or more persons or entities, as "Owner") and THE PARRISH COLLECTION, LLC (hereafter referred to as "Agent").

1. EMPLOYMENT OF THE AGENT. Owner hereby appoints Agent as his exclusive agent to rent and manage Owner's property described as: Mauloa Ohana, together with its appurtenant common elements, limited common elements and undivided interest in certain common elements, together with all the contents therein, (hereafter referred to as "Property").

2. TERM. This agreement shall continue for one year from December 20, 2014 and shall be automatically renewed from year to year, thereafter, provided that either party may elect to terminate this agreement at any time upon giving ninety days (90) prior written notice; provided however, that Owner (or Owner's successor in case of Property sale) shall be obligated to honor any reservations or commitments for rentals which are confirmed for the period of ninety (90) days from the date of the notice of termination and cannot be placed by Agent in another comparable property, as determined by Agent. If Owner shall terminate this agreement within the first one hundred eighty (180) days, Owner shall pay a termination fee to Agent equal to the Agent's monthly fee for four months, assuming average rental rate and 70% occupancy.

3. FEE TO AGENT AND EXPENSES.

   3.1. Agent's Fees: Owner shall pay to Agent, as compensation hereunder, a fee of twenty (20) percent of the monthly gross rent received. Agent will pay all travel agent fees and commissions incurred in marketing the Property. Owner may not rent with another rental agency as long as this Agreement is in place. Should owners be responsible for booking their Property, Agent will pay said Owner the commission of ten (10) percent of the gross rental received for all bookings processed by Owner. For those sourced by Owner and processed by Agent, Agent will pay said Owner the commission of five (5) percent of gross rental. Processed is defined as collection of monies, signed contract, etc. See Exhibit D for more additional details. <u>For accuracy of booking and reporting purposes, all rents must flow through Agent for accounting and tax reporting purposes.</u>

3.2. Agent's Fees – Long Term Rentals: Owner shall pay Agent, as compensation hereunder, a monthly fee of ten (10) percent of the monthly gross rent received on all long term rentals. Long term is defined as six months or longer in duration.

3.3. Authorized Expenses: Owner hereby authorizes Agent and gives authority and powers to undertake at Owner's expense the following (Owner shall assume the obligations of any contract entered into on behalf of owner at the request of the owner):

3.3.1. Monthly fee of $100.00 to cover the costs of monthly scheduled advertising and promotion. The monthly advertising/promotional fee will remain in effect on a monthly basis for all vacation rentals regardless of length of stay of owner or owner guest occupancy.

3.3.2. The making of minor repairs and replacement of Property items that Agent deems necessary or advisable, provided that expenditures in excess of $150 per item, or in aggregate of $300 per month, shall not be incurred without Owner's written consent. In an emergency, oral consent of Owner shall be sought if Agent believes time permits. However, if in the opinion of the Agent, repairs are necessary to protect the Property from damage, or to maintain services to the tenants, Agent shall complete necessary repairs and inform Owner as soon as possible or practical. Agent will not be liable for said related expenses.

3.3.3. In-cleaning, mini-maid, and out-cleaning services as needed.

3.3.4. Cost of cleaning for at least one deep clean per year for extensive cleaning and review of maintenance and upgrade items needed at agreed upon rates to be determined.

3.3.5. Applicable window washing, carpet cleaning, tile restoration, pest extermination and any other customary services needed to maintain high standards.

3.3.6. Telephone monthly service charge, including all Owner and Owner's guests toll call charges, if applicable.

3.3.7. The Parrish Collection recycle and linen program charges as applicable.

3.3.8. Other applicable utility charges, such as for electricity, water, cable TV, high speed internet, etc.

3.3.9. 50% of Property start-up fees which include but are not limited to Property photos, web page development, site integration, etc.

3.3.10. Homeowner Liaison charges as detailed in Exhibit F.

3.3.11. Quarterly and Annual filing of GET and TAT taxes if applicable as detailed in Exhibit G.

Failure to Pay Fees or Expenses: Agent is not liable for expenses or losses sustained by Owner by reason of nonpayment or late payment of any expenses or rent. Should Owner fail to pay the fees or reimburse Agent for authorized expenditures, Agent may pay themselves undisputed expenses out of the rental proceeds to the Property or out of other funds held by Agent in Owner's account and may terminate this agreement.

4. DUTIES OF THE OWNER.

4.1. Inventory: Owner shall provide Agent a current and complete list ("Inventory") within fourteen (14) days of execution of this Agreement and will be attached to this Agreement as Exhibit E. For a fee of $30 per hour, Agent can prepare initiation inventory. Owner agrees to notify Agent of any changes in said inventory and a fee of $30 per hour will be charged for periodically re-checking of inventory.

4.2 Hold Harmless: Owner shall save and hold Agent harmless from any damage to the Property or from loss of or damage to any furniture, fixtures, furnishings and other articles therein, from all damage suits in connection with the management of the Property, and from all injury to any person or persons whomsoever, for any cause whatsoever in or around Property whomsoever, except for any negligence or wrongful act by any of The Parrish Collection employees, and to carry at their own expense, necessary public liability, property, and applicable worker's compensation insurance adequate to protect the interest of parties hereto, which policies shall be written to protect Agent in the same manner and to the same extent they protect Owner; and will name Agent as additional insured.

4.3 Insurance: Owner shall provide and maintain a minimum of $500,000 comprehensive liability insurance to cover the Property, and shall furnish Agent with a copy of said policy and such fire, association and extended coverage insurance policies on Property or certificates thereof from an insurance company authorized to do business in the State of Hawaii, and shall name Agent as co-insured. Owner will keep the policy in effect. If there is a break in coverage, the Property will be taken from rental rotation until Agent has received the renewal certificate.

Name of Insurance Company: _____

Name of Insurance Agent: _____

Policy Effective Date: _____

4.4 Keys and House Rules: Owner shall furnish Agent with ten (10) sets of keys to the Property. Owner shall furnish Agent with a complete copy of the House Rules.

4.5 To the extent and if required by law, the owner shall improve and maintain the Property in compliance with the American Disabilities Act, and costs of such improvements and maintenance shall be the Owner's responsibility.

4.6 Default: Should Agent determine that Owner is in default of any of provisions of this Agreement, Agent will provide 30 days notice to cure, and if not cured within that time frame, Agent can immediately terminate this Agreement. If either party is entitled to any payment in accordance with this Agreement, the termination of the Agreement shall not affect the validity of the claimant's right to such funds. Agent is authorized to withhold from any distributions due Owner sufficient funds to cover Owner's unpaid charges incurred prior to the date of termination.

5. OWNER OCCUPANCY.

5.1 Owner Occupancy: Subject to availability of a Property as a result of commitments entered into by Agent, Owner or Owners, their families and guests, herein collectively referred to as "Eligible Persons", shall have the right to occupy the Owner's Property upon the Owner giving written notice to the Agent stating the intended date of arrival and departure. Owner must sign an affidavit/confirmation attesting to the status of "Eligible Persons" (non-rent paying guest, Owner, family member, etc.). **This notice should be given at least one hundred twenty (**

periods except December 20 through January 5 of each year, when 180 days notice is required. Notices are waived if Owner coordinates with Agent to Occupy Property prior to Agent reserving the Property for other guests. Agent shall not be obligated to permit any person, whether Eligible Person, repairman or others to enter the Property without prior coordination through the Agent's office.

5.2 Occupancy Costs for an Owner or Eligible Person: Owner agrees to pay for Eligible Persons costs incurred on his or their account including but not limited to, maid service, linens or cleaning expenses while in occupancy. Owner understands that an out-clean is performed following occupancy to maintain high standards and consistency, and that such an out-clean will be performed following Owner or Eligible Person use, and the cost for such an out-clean will be charged to Owner. When there is no management fee charged on Owner bookings or non-revenue Owner guest bookings, there will be an administrative fee of $50 per booking for all Owner guest bookings. Owner occupied or owner family member occupied bookings are exempt from this charge.

6. DUTIES OF THE AGENT.

6.1 Rental and Collection: During the term hereof, Agent shall use its best efforts to procure and screen tenants for Owner's Property, issue and execute rental agreements, collect all rents and deposits for Property, as well, as terminate or evict any tenants under the terms of such rental agreements. Agent may accept payment in cash, credit card, money order or personal check, but shall not be liable to Owner for the ultimate collection of rents, including personal checks.

6.2 Record Keeping: Agent shall provide Owner, within twenty (20) days after the first of each calendar month, a statement of receipt of disbursements for the Property for the preceding month. Agent shall also provide to Owner, by January 31st of each year, all information with respect to rental of Property necessary for the preparation of Owner's tax returns.

6.3 Deposit of Owner's Funds: Agent shall deposit all funds collected by Agent hereunder in a bank or trust company qualified to engage in the banking or trust business in the State of Hawaii, as designated by Agent, and such funds be held in trust in a special or custodial account, and will not be co-mingled with any other funds. Agent will not be

responsible for any loss resulting from the insolvency of such depository. Funds may be deposited into an interest bearing account in favor of Agent.

6.4 Distribution of Income to Owner: Agent shall deduct from gross rental income received, Agent's fees, taxes and distribution for authorized expenditures to the extent that there are amounts available for distribution. Agent shall monthly distribute net amount due to the Owner, or as Owner may direct Agent.

6.5 Agent's Payment of Funds: Agent shall not be required to perform any act or duty hereunder (including emergency repairs) involving the expenditure of money unless Owner has sufficient funds in Owner's account. In the event that authorized disbursements for expenses are in excess of Owner's account, Owner hereby agrees to pay such amount within 10 days upon demand of Agent. Should amount go unpaid for a period in excess of 30 days, Owner agrees to pay an annual rate of interest of 10% on outstanding balance until paid in full.

6.6 Security Deposits: Agent shall collect and retain security deposits from tenants. Such deposits shall be utilized by Agent to replace or repair items damaged by tenant, applied towards fixing of Property, disbursed to Owner or returned to tenant, as Agent may reasonably determine.

6.7 Maintenance and Minor Repairs: During the term hereof, at the expense of the Owner, Agent shall schedule all necessary cleanings, maintenance and minor repairs. Expenses related to the renovation or re-decoration of Property are not included under this Agreement, however, Agent may provide these services to Owner pursuant to Exhibit F. Agent may hire, discharge, and/or supervise all labor required for the operation and maintenance of the premises, and Agent may perform any of its duties through Owner's attorney or agents and shall not be responsible for acts, defaults or negligence if reasonable care has been exercised in their appointment and retention.

6.8 Other Expenses: Agent shall not be responsible for Owner's expenses related to the Property including, but not limited to mortgages, association dues, insurance, property taxes, handling of insurance claims, or other expenses not covered by this agreement.

6.9 Default: Should Owner determine that Agent is in default of any of provisions of this Agreement, Owner must provide 30 days notice to cure, and if not cured within that time frame, Owner can immediately terminate this Agreement.

7 COMPLIMENTARY DAYS. Upon mutual agreement Owner will allow Agent a total of five (5) days during the calendar year with which Agent may disburse to travel agents or other person or persons whom the Agent may determine as being beneficial to the marketing efforts of Agent. These days will be posted as "Complimentary Days" on the Owner's monthly statement and any associated cleaning costs will be paid by Agent.

8 GOVERNING LAW. This agreement has been executed and delivered and shall be governed by, construed and enforced in accordance with, the laws of the State of Hawaii.

9 TRUST BALANCE. In compliance with Hawaii State Law, Agent will retain a Trust Balance in each owner's account in the amount of $1,000.00 per Property in our vacation rental program. This will be used as a working balance to pay regular monthly charges such as cleaning, window cleaning, advertising, electric, telephone, and other miscellaneous charges. Within sixty (60) days following the termination of the Rental Agreement, the Trust Balance will be returned to the Owner, less any outstanding expenses.

10 DISPUTE RESOLUTION. Before a party may commence any civil action or proceeding arising out of or relating to this Agreement, the dispute shall be submitted to non-binding mediation by a single mediator selected by mutual agreement of the parties. If the parties are unable to agree on the choice of mediator within ten (10) days after a party gives written notice of the intent to mediate, either party may request that Dispute Prevention & Resolution, Inc. ("DPR") appoint a mediator in accordance with its rules. The parties shall exert reasonable efforts to expedite the scheduling of the mediation, so that it occurs, if at all possible, within twenty (20) days after the selection or appointment of the mediator. Each party shall pay for its own witness' and attorneys' fees, as well as one-half (1/2) of the cost and fees of the mediator. In the event mediation is not successful, the parties shall submit the claim to arbitration under the terms set forth herein. Except with respect to any action for injunctive relief, any controversy, claim or breach arising out of this Agreement, which the parties are unable to resolve to their mutual satisfaction through negotiation or mediation, shall be arbitrated according to the Commercial Arbitration Rules of DPR then in effect. The demand for arbitration shall be in writing and shall identify and describe the nature of all matters in controversy to be arbitrated and the facts upon which such matters are based. The arbitration shall be conducted on the Island of Kauai by a single independent arbitrator who shall be mutually

are unable to agree upon an arbitrator within thirty (30) days after Notice is given of a demand for arbitration, the single independent arbitrator shall be selected from a list of three to be provided by DPR with each party striking one name from the list. The hearing shall be held within ninety (90) days after appointment of the arbitrator. The arbitrator shall render a reasoned, written opinion within forty-five (45) days after the hearing. The arbitrator's written opinion shall include findings of fact and conclusions of law. The facts found by the arbitrator shall be final, binding, and not appealable. The findings of law by the arbitrator shall not be final and binding upon the parties, but shall be appealable to a court of general jurisdiction if the arbitrator misapplied or misinterpreted governing law. The arbitrator shall not be empowered to award punitive or exemplary damages. The parties agree to cooperate fully with the arbitrator in order to meet the time schedule for decision and agree that an award may be entered against any party failing to so cooperate. Judgment upon the award rendered by the arbitrator may be entered in any court in the State of Hawaii having jurisdiction pursuant to Chapter 658A of the Hawaii Revised Statutes.

11 ENTIRE AGREEMENT. This Agreement and any Exhibits and Addendums when properly executed by all parties, including Exhibits A-I, to be attached hereto and forming a part hereof set forth all covenants, promises, agreements, conditions and understandings between Owner and Agent in connection with the Property and its operation and there are no covenants, promises, agreements, conditions or understandings either oral or written between Owner and Agent other than as herein set forth or in written addenda signed by both Owner and Agent. Nothing in this Agreement shall create, or be construed to create, a partnership, or joint venture between Owner and Agent.

[signatures follow]

IN WITNESS WHEREOF, the parties hereto have executed the Agreement on the dates shown below.

AGENT:

THE PARRISH COLLECTION, LLC

By: _____ Date:

Jonathan D. Parrish
Its: President & Principal Broker

OWNER (All Owners of the Property must sign this agreement):

By: _____ Date:
Edmund Gregoire
Print Owner's Name

By: _____ Date:
Linda L Gregoire
Print Owner's Name

OWNER INFORMATION (If multiple ownership, designate name and address of Owner to receive information, checks and authorize any changes):

Name: _____

Mailing Address: _____

_____

Telephone Numbers: Home: ( ) _____ Office: ( ) _____

Fax: ( ) _____ E-mail: _____

EXHIBIT A
RENTAL RATES

The rates below are the rates that we anticipate to begin market your Property (subject to change at any time):

Low Season Rate – 4/2-6/1; 8/20-12/19	$TBD/Day
Mid Season Rate – 6/2-8/19	$TBD/Day
High Season Rate – 1/5-4/1	$TBD/Day
Holiday Season – 12/20-01/05	$TBD/Day

With the objective of maximizing rental revenue, Agent shall have the right to set rental policies for the Property, including but not limited to rental rates, which may be adjusted to meet competition, market conditions, seasonal fluctuations in occupancy, weather conditions, minimum and maximum lengths of stay, and other factors.

- There is a 7 day minimum stay (with the exception of holidays). If reservation is within 30 days, 3 to 6 day stays will be allowed based on availability.
- We offer a 10% discount to repeat guests and kama'aina guests at discretion of Agent.
- Monthly discounts of 5% are offered on 30+ day stays.
- Stays of 30+ days will receive a maid service once every two weeks at owner's expense.
- Number of guests allowed:

Base 6 Maximum 6

Owner _____/_____
Agent _____

EXHIBIT B

REQUIRED LINEN INVENTORY FOR PROPERTY COMING ON LINE

TBD

Owner	_____/_____
Agent	_____

EXHIBIT C

PROPERTIES FOR SALE POLICIES & PROCEDURES

To maximize bookings and partner with your listing agent in a professional manner Owner and Agent agree to the following:

1. If Owner should list Property for sale, Owner must immediately notify Agent. Please note that properties listed for sale do experience a drop in bookings and revenue.

2. All requests for showings, open houses, entry to Property, etc. must be coordinated with Agent. Any requests to Agent for showings will be directed to your listing agent.

3. Agent will continue to book Property as normal, however inquiring and existing guests will be notified that Property is listed for sale.

4. If necessary to confirm or hold an existing booking, Owner shall allow Agent to compensate guest for allowing showings during stay. Compensation shall be rate discount, free night, or gift certificate and shall be commensurate with Property, length of stay, etc.

5. Owner shall allow Agent to confirm bookings with guests that do not want to be disturbed during their stay. Owner needs to advise listing agent that Agent may not allow showings for those guests that do not want to be disturbed during stay.

    a. **Owner must notify Agent if Owner chooses to refuse bookings that do not want to be disturbed during stay. Note, this will result in lower bookings.**

6. Owner and Owner's listing agent agrees to give Agent 48 hour's notice of all requests for showings. Agent will do its best to confirm requests within 24 hours, however confirmation may not be available and/or Owner agrees to allow Agent to grant additional compensation to guest.

7. There will be no showings on Sundays or Holidays when the unit is occupied as a courtesy for guests.

8. Keys will be distributed from our administrative office at 3176 Poipu Road, Koloa which is open Monday - Friday from 8am - 5pm and Saturday from 8am - 4pm. Keys need to be signed out and returned by the end of the day.

9. If Property is vacant on a Sunday or Holiday, with 24 hours notice, keys will be left in the Koloa office lock box for a Sunday/Holiday morning pick up and must be returned that evening.

10. Any missing items, damage, or problems, arising out of the showing shall be the responsibility of the Owner.

11. Owner shall be responsible for any additional housekeeping and maintenance charges after showings, open houses, etc.

12. A small standup sign detailing that Property is for sale will be placed in the unit. Guests will be advised to call Agent for further information and will then be directed to your listing agent.

13. Agent shall provide Owner's listing agent with a one-page color marketing sheet summarizing the rental revenue for your unit.

14. Owner must give Agent immediate notice and if possible at least sixty (60) days notice of Owner acceptance of a sale's contract for any portion of the property ownership that is sold. At a minimum, Owner will honor all bookings within that sixty (60) day period.

15. Owner agrees to add the following language to any Purchase Agreement: "During the escrow period, Seller's current rental agent will continue to market the unit and accept rental reservations until the closing. Buyer hereby agrees to accept and honor said all existing reservations at time of closing."

16. During escrow, Agent requests that Owner and Owner's listing agent work with Agent to keep Property unit under contract with Agent. This will allow Agent continue to book Property and maintain consistency in bookings and cash flow for Owner and/or the new buyer. Agent will cease from taking any new bookings beyond the escrow close date unless buyer agrees to sign a management agreement with Agent. If buyer chooses not to work with Agent, Agent will relocate all bookings that extend beyond the sixty (60) day period.

Owner _____/_____

Agent _____

EXHIBIT D

RENTAL BY OWNER BOOKING POLICIES & PROCEDURES

The following are policies and procedures that Owners must follow if they wish to market their vacation home through rental by owner web sites.

1. **Listing Details –** All information listed for Property must match applicable Agent listing including: all daily rates, processing fees, contract and money due dates, cleaning charges, additional guest charges, security deposits, etc.

2. **Photos –** Photos paid or partially paid for by Agent cannot be used on other listings unless agreed to by Agent.

3. **Rates** – Owner agrees not to undercut Agent rates and any discounts offered by Owner can be offered by Agent and vice versa. Owner and Agent must coordinate any discounts to maintain market integrity.

4. **Funds** – All funds for bookings must be processed through Agent:

5. **Reservation Processing –** There are three options for Owner revenue bookings:

    a. Agent as the call to action – Agent's phone number and email address are listed as the contact information for bookings.

    b. Owner listed as call to action – 5% commission

        - Owner is initial contact for booking inquiries, determines if the unit is available and discusses rates, policies etc. with guest.

        - Upon the close of the sale, Owner contacts Agent to book the reservation. Owner provides details of agreed upon rates, etc. to Agent. Owner provides Agent guest contact details such as name, address, email, and phone.

        - Agent then processes the booking from this point forward. Agent collects contracts, waivers, deposits as well as collects monies at appropriate due dates and returns applicable deposits if required. Both the initial deposit and the final payment can be made by credit card.

        - Should there be an issue with booking during stay (damage to Property, discounts due to disturbance, etc.). Agent will follow through with guest to collect monies due Owner.

    c. Owner as "Travel Agent" – 10% commission

        - Owner is both the initial contact for the inquiry as well as processes booking, in entirety (including collecting all monies, contracts, waivers, etc.).

        - Owner contacts Agent to book the reservation. Owner is responsible for making sure guest adheres to all reservation policies and procedures.

        - Agent will forward all appropriate documentation to Owner, who is responsible for making sure that the documents are signed and returned to Agent

- All documentation provided to Owner for the guest signature cannot be altered or changed. Changes to the documentation may result in the cancellation of booking.
- All initial deposits can be processed with a credit card. A valid credit card is required to have on file for all reservations.
- Final payments must be made by check. Credit cards will not be accepted for final payments. Credit card payments can be accepted for a reduced commission of 5%.
- Should there be an issue with a guest during stay (damage to Property, discounts due to disturbance, etc.) Owner will follow through with guest to collect any monies due Owner.

Owner _____/_____

Agent _____

EXHIBIT E
INVENTORY

Please find complete inventory attached.

Owner _____/_____

Agent _____

EXHIBIT F

STANDARD SERVICES AND SPECIAL SERVICES OF THE HOMEOWNER LIAISON DEPARTMENT

STANDARD SERVICES

There will be no additional fees for the following Standard Services:

- Agent will monitor the condition, replace standard items, and schedule repairs in order to maintain the rentable condition of its properties.
- The Homeowners Liaison (HL) will check each property annually and remit a formal report as to its general condition, in-house rating, and suggestions for upgrading if applicable.
- In addition to the annual review, the HL will periodically view the property to make sure it adheres to its in-house rating throughout the year.
- The HL shall, as necessary, make reasonable recommendations to Owner regarding acquisition and repair of certain items, including, but not limited to, furniture, fixtures, appliances, draperies, wall and floor coverings, lighting, and related items.
- The HL will report to owners all guest problems within the Property.
- The HL will review and approve all owner charges on monthly statements.
- The HL will supervise the replacement of all standard Property supplies and monitor all monthly billings of such items. Standard Property supplies refer to basic kitchen, bath, bedding, equipment and smaller appliances such as DVD/VCR players, vacuums, etc. Replacement of larger items such as refrigerators, TV's, ranges, carpets, etc. will require a special service charge as defined below.
- The HL will provide a referral service of names and resources or assist owners in the hiring of qualified professionals on the island for all renovation and remodeling needs. Agent will not be responsible for supervising any renovation or remodeling projects for its owners.
- The HL will work with the Maintenance Dept. to see that all maintenance requests have been scheduled and completed in a timely manner.

EXHIBIT F (continued)

SPECIAL SERVICES

There will be additional fees for the following Special Services:

- The HL will provide upgrading and replacement services of larger, standard items such as refrigerators, carpets, beds, etc. requiring more than one hour of work, at the rate of $30/hour after the first hour which is free.
- Time spent on scheduling larger maintenance or repair items, defined as those which require over 1 hour of HL time, will incur a nominal charge of $30/hour to Owner after the first hour which is free.
- Agent does not provide supervision for renovation or remodel services. Therefore, Agent requires owners to hire an on-island representative for all renovations and remodels if owners are not going to be present during this time.

In order to save the Owners time and money, Agent buys as many items in bulk and stores them on site for immediate replacement. For those items, the actual cost plus a 25% fee is charged to help offset carrying cost, storage, mileage, and/or shipping and freight charges. For those items over $150 and purchased directly from the store on the Owner's behalf there is no mark-up in price.

OWNER agrees that Agent cannot be held responsible for handling repairs, remodeling, rebuilding or insurance claims that result from damage to property caused by any "Act of God", such as fire, hurricane, tsunami, flooding, etc. In case of such event, a licensed contractor should be contracted by the individual Owner.

Owner _____/_____

Agent _____

EXHIBIT G

STATE OF HAWAII GET & TAT TAXES

[X] I understand that by signing this form and checking this box, I am agreeing to have Agent complete and file my Hawaii State TAT and GET taxes for a fee of $75 per quarter. I understand that Agent will retain all of my collected taxes each month and will remit them to the taxation department as required.

[ ] I do not want this service that Agent is offering. I understand that by signing this form and checking this box, I am stating that I will continue filing my own Hawaii State TAT & GET taxes. I understand that Agent will continue to remit all collected taxes to me on my monthly statement and that I will be liable for submitting them to the taxation department.

Name: Edmund & Linda Gregoire
Address: W3133 County Road PP
City, State, Zip: Sheboygan Falls WI 53085
Phone: 920-980-9312
Fax:

Signature: Edmund L Gregoire
Linda L Gregoire

EXHIBIT H

SMOKING POLICY

All of the Properties with Agent are designated as non-smoking. Some owners allow smoking on the lanai only, while others prefer no smoking anywhere in their Property. Please indicate your choice below:

☐ Smoking is allowed on the lanai only (ashtrays will be put on lanais).

☒ Smoking is not allowed anywhere in my Property, including the lanai areas.

Signed: _____
Edmund Gregoire
Owner

Date

Linda L Gregoire

EXHIBIT I

TRUST BALANCE REQUIRED

In compliance with Hawaii State Law, Agent will retain a Trust Balance in each Owner's account in the amount of $1,000.00 per Property in either our vacation rental program. This will be used as a working balance to pay regular monthly charges such as cleaning, window cleaning, advertising, electric, telephone, and other miscellaneous charges (under $150.00 each occurrence).

Within 60 days following the termination of the Rental Agreement for any reason, the Trust Balance will be returned to the Owner, less any outstanding expenses.

I have read and understand this requirement as evidenced by my signature below:

Signed: Edmund Gregoire

Owner Date

Linda L Gregoire

Jonathan D. Parrish Date
President & Principal Broker
The Parrish Collection, LLC

Date _____

Amount _____

Check number _____

AUTHORIZATION LETTER

To: County of Kauai Planning Department

I/we, as owners of the property at 4650 Amio Rd Koloa hereby

Authorize The Parrish Collection Kauai to be our Authorized Agent for the County of Kauai's Transient Vacation Rental registration.

By: _____ Date: 3/11/15

Edmund Gregoire

Owners Name

By: _____ Date: 3-11-15

Linda L Gregoire

Linda L Gregoire

Owners Name

EXHIBIT 5

AUTHORIZATION LETTER

To: County of Kauai Planning Department

I/we, as owners of the property at 4650 Amio Rd Koloa Hi hereby

Authorize The Parrish Collection Kauai to be our Authorized Agent for the County of Kauai's Transient Vacation Rental registration.

By: _____ Date: 6-2-20

_____

Owners Name

By: _____ Date: 6-2-20

_____

Owners Name

ORDINANCE NO. 950 BILL NO. 2483, Draft 1

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 7, 8, AND 9, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE ADJUSTMENT OF VARIOUS PERMITTING CHARGES AND FEES LEVIED BY THE DEPARTMENT OF PLANNING

(County of Kaua'i, Applicant)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Findings and Purpose. The County of Kaua'i finds that many of the fees charged and levied by the Department of Planning pursuant to Chapters 7, 8 and 9 of the Kaua'i County Code 1987, as amended, no longer reflect an appropriate amount given the increased complexity of zoning enforcement, and the antiquated nature of the charges and fees as many were fixed and have remained the same amount since the Comprehensive Zoning Ordinance was enacted in 1972. The County of Kaua'i finds that fees related to Transient Vacation Rentals outside of the designated Visitor Destination Areas should be adjusted accordingly to absorb the increased cost associated with enforcement of Transient Vacation Rental certificates. The renewal process is also amended to clarify procedures concerning the timing of renewals to clearly set forth requirements. The County of Kaua'i also finds appropriate the levying and charging of fees for each individual permit rather than bundling and charging for only one fee. New processing fees for shoreline determination and subdivision applications are also included to reflect the complex review nature of the proposals.

SECTION 2. Chapter 7, Article 3, of the Kauai County Code 1987, as amended, shall be amended to read as follows:

"**Sec. 7-3.1 In General.**

The General Plan Ordinance or the General Plan of the County of Kauai may be amended by ordinance, in accordance with the Charter. An amendment may change provisions of this ordinance; text provisions or map designations of the General Plan document; or any of these in combination.

Sec. 7-3.2 Initiation.

(a) An amendment may be initiated by the Planning Director, by the Planning Commission, or by the Council.

EXHIBIT 6

(b) An amendment may be initiated by the verified petition of an owner or a person fully authorized by the owner of property affected by the proposed amendment.

(1) The petition shall be of such form and include such information and exhibits as may be prescribed by the Planning Director. The petition shall be filed with the Planning Department, accompanied by a filing fee of [One hundred dollars ($100).] Six Hundred Dollars ($600.00).

(2) Within 15 working days of a filing, the Planning Director shall accept or reject the petition for amendment, based on compliance with amendment application requirements. The petitioner shall be notified in writing of the acceptance decision."

SECTION 3. Chapter 7, Article 3, of the Kaua'i County Code 1987, as amended, shall be amended by adding a new Section 7-3.8 to read as follows:

Sec. 7-3.8 Fee Exemptions

(a) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(b) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing fee designated in Section 7-3.2(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(c) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 7-3.3(c) of this Article.

SECTION 4. Chapter 8, Article 3, of the Kaua'i County Code 1987, as amended, shall be amended to read as follows:

"ARTICLE 3. GENERAL ADMINISTRATIVE REGULATIONS

Sec. 8-3.1 Zoning Permits.

(a) When Required.

No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit.

(b) Applications.

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

(1) A non-refundable filing and processing fee in the amount indicated in Sections 8-3.1(c)(1)[.], 8-3.1(d)(1), 8-3.1(e)(1), or 8-3.1(f)(1), as applicable.

(2) A description of the property in sufficient detail to determine its precise location.

(3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

(A) To show conformity with the standards established in this Chapter, and

(B) To a proper determination relative to the specific request.

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

(c) Class I Zoning Permits.

(1) The filing and processing fee is [Five Dollars ($5)] Thirty Dollars ($30.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.

(3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.

(4) If the Planning Director or his designee fails to take action on a completed application within twenty-one (21) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class I Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(d) Class II Zoning Permits.

(1) The filing and processing fee is [Ten Dollars ($10)] Sixty Dollars ($60.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and may

(A) refer the application to any County or State department for comment or approval and

(B) require additional information if necessary to make a determination.

(3) A Class II Zoning Permit shall be issued with or without conditions or denied by the Planning Director.

(4) If the Planning Director or his designee fail to take action on a completed application within thirty (30) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class II Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(e) Class III Zoning Permits.

(1) The filing and processing fee is [Thirty Five Dollars ($35)] Two Hundred Dollars ($200.00).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use, or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within forty-five (45) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The reports shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) The Planning Director may, within forty-five (45) days after the filing of a completed application, issue a provisional Class III Zoning Permit with or without conditions, or deny the permit, or determine that the application for the permit should be decided in the first instance by the Planning Commission.

(5) If the Planning Director issues a provisional Class III Zoning Permit, with or without conditions, he shall notify the members of the Planning Commission, and any persons who have duly requested such notice, of that action. The provisional permit shall become final unless within thirty (30) days at least three (3) members of the Planning Commission request review by the Planning Commission. In that case, the Planning Commission shall determine whether or not to issue the permit.

(6) If the Planning Director refers the application to the Planning Commission or if three (3) members request Planning Commission review of a provisionally issued permit, the Planning Commission within sixty (60) days of the reference or request for review shall issue the permit with or without conditions or shall deny the permit.

(7) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(8) An applicant who is denied a Class III Zoning Permit by the Planning Director, or who disagrees with the conditions that have been imposed on its issuance by the Planning Director may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(f) Class IV Zoning Permits.

(1) The filing and processing fee is [One Hundred Fifty Dollars ($150),] <u>Eight Hundred Dollars ($800.00).</u> [except where a Class IV Zoning Permit is only required because a Variance is necessary, in which case the fee is Fifty Dollars ($50).]

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within sixty (60) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) Within sixty (60) days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and issue the permit with or without conditions or deny the permit. Notice of the proposed public hearing shall be given to the applicant and shall also be published at least once in a newspaper of general circulation in the County, at least twenty (20) days prior to the date of the hearing.

In proceedings involving use permits within the Residential, Agriculture and Open Districts and for all Project Developments pursuant to Section 8-3.2, and for variances involving height limitations pursuant to Section 8-3.3, the following procedures shall apply in addition to the above paragraphs:

The applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards for at least eighty-five per cent (85%) of all parcels of real property within 300 feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

(A) date;
(B) time;
(C) location;
(D) purpose; and
(E) description or sketch of property involved.

At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the applicant fail to submit the affidavit within the time required, the public hearing shall be postponed. In this case, the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The applicant shall be required to pay for the republication costs and shall follow the same notice requirements of this paragraph in the renotification of affected persons.

(5) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(g) Appeal.

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

(h) After-the-fact Permits.

In addition to the Zoning Permit filing and processing fee(s), an application for a Zoning Permit for a structure partially or fully constructed without the required approvals and/or a use that has commenced prior to the required approvals shall have an additional filing, inspection, and processing fee(s) which is double that of the original filing and processing fee(s) or five hundred dollars ($500.00), whichever is greater.

(i) Fee Exemptions

(1) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A zoning permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and

processing fee required in Section 8-3.1(b)(1), provided such projects conform to applicable provisions of the County's affordable housing program.

(3) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.1(f)(4) or 8-3.1(h) of this Article.

Sec. 8-3.2 Use Permits.

(a) Purpose.

The purpose of the "Use Permit" procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if the proper integration cannot be assured.

(b) When Required.

No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit.

(c) Application.

An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Section 8-3.1(b) and other information justifying the issuance of the Use Permit.

(d) Fees.

[There shall be no additional filing and processing fee for a Use Permit application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00) shall accompany the application for the Use Permit[.], except that filing and processing fees shall be exempted as follows:

(1) A use permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A use permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.2(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Standards.

(1) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(2) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission.

(f) Procedure.

(1) The procedures established in Section 8-8-3.1(e) for a Class III Zoning Permit shall be followed except:

(A) All Use Permits for development or use in a Residential District, and all Use Permits for a Project Development, shall require a public hearing in accordance with the procedure specified for Class IV Zoning Permits.

(2) Upon findings of the Commission that a Use Permit may be granted consistent with the requirements of this Article, the permit shall be issued to the applicant on such terms and conditions and such a period of time, as the facts may warrant.

(3) Use Permits may be revoked by the Commission after due hearing if such action shall be necessary to effectuate the purpose of this Chapter.

(g) Application Denials And Appeal.

When a Use Permit application is denied by the Planning Director and no appeal is taken, or is denied by the Planning Commission, an application for a Use Permit involving the same or substantially similar construction, development, activity or use may not be filed sooner than six (6) months following the denial.

Sec. 8-3.3 Variance

(a) Authority.

The Planning Commission may grant variances from the provisions of this Chapter only in particular cases as set forth in this Article.

(b) Standards.

Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a variance. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the variance.

(c) Application.

An application for a Variance may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, wherever feasible, shall be filed together with the application for the required Zoning Permit and a single application shall be used for both permits in those cases. The application shall contain the information required pursuant to Section 8-3.1(b) and other information justifying the issuance of the Variance.

(d) Fees.

[There shall be no additional filing and processing fee for a Variance application filed in conjunction with an application for a Zoning Permit. In other cases, a] A non-refundable fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00) shall accompany the application for the Variance[.], except that filing and processing fees shall be exempted as follows:

(1) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A variance permit application for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.3(d), provided such projects conform to applicable provisions of the County's affordable housing program.

(e) Procedure.

(1) The procedure established in Section 8-3.1(f) for a Class IV Zoning Permit shall be followed.

(2) Upon findings of the Planning Commission that a Variance may be granted consistent with the requirements of this Article, the Variance shall be issued to the applicant on such terms and conditions, and for such period of time, as the facts may warrant. The Planning Commission shall

append conditions that achieve a substantial equivalent or alternative to the regulation from which the Variance is sought.

(3) When a Variance is denied by the Planning Commission, an application for a Variance involving the same or substantially similar construction, development, use or activity may not be filed sooner than six (6) months following the denial.

Sec. 8-3.4 Amendments

(a) Amendments.

This Chapter may be amended by changing the boundaries of districts or by changing the text whenever the public necessity and convenience and the general welfare require an amendment.

(b) Initiation.

The amendment may be initiated by the verified petition of one (1) or more owners of property affected by the proposed amendment, which petition shall be on a form prescribed by and filed with the Planning Commission and shall be accompanied by a processing fee of [Fifty Dollars ($50)] Three Hundred Dollars ($300.00).

(1) For the purpose of complying with this Section a property owner is to include the holder of a lease interest the expiration of which will occur more than five (5) years after the date of filing the petition.

(2) The petition shall contain or be accompanied by the following:

(A) a statement of the nature of the petitioner's interest;

(B) a draft of the substance of the proposed amendment;

(C) a specific statement of the reasons for granting the proposed change, and if requested by the Planning Director, supported by a written documented analysis of the district involved using all the pertinent elements upon which the Zoning is based;

(D) a map, drawn to scale, describing the property and showing its location in relation to surrounding properties and to known landmarks or improvements.

(3) Processing fees for amendments shall be exempted as follows:

(A) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(B) An amendment initiated for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 8-3.4(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(C) No exemptions shall be afforded for such housing projects from any fees or costs arising from compliance with Section 8-3.4(c)(3) of this Article.

(c) Public Hearings.

The Commission shall hold at least one (1) public hearing on any proposed amendment.

(1) Except for amendments relating to necessary governmental public utility developments and District Boundary change applications pending before the State Land Use Commission on or prior to July 3, 1973, all proposed amendments shall be considered for public hearing only during four (4) months per calendar year.

(A) Public hearings shall be conducted by the Planning Commission only during the months of January, April, July and October. At any public hearing, any number of petitions may be heard provided that each petition is heard separately.

(B) Petitions and resolutions received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the public hearing date shall be considered by the Planning Commission and Council for review and action.

(2) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of the hearing, its purpose and a description of any property which may be involved.

(3) In the case of a petition for the amendment of district boundaries, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five per cent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in form approved by the Planning Director:

(A) date;
(B) time;
(C) location;
(D) purpose;
(E) description or sketch of property involved; and
(F) explanation of amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the re-notification of affected persons.

(4) Where the zoning amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of paragraph (c) above shall apply, except that in the consideration of community development plans and updates, the requirements of paragraph (b), above, shall apply.

(d) Consideration.

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

(e) Report Filed With Council.

After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications or disapprove any proposed amendment and shall file a report with the Council and the petitioner of its findings and action taken. The report shall be filed within sixty (60) days after the public hearing, or within a longer period as may be agreed upon between the Planning Commission and the initiator of the action

(1) Failure by the Planning Commission to report within the sixty (60) day period specified in this Section or within a period as may be agreed upon shall be an approval of the proposed amendment by the Planning Commission and shall be reported to the Council by the Planning Director.

(f) Approval Or Denial Of Proposal.

In the event that the Planning Commission approves the proposal, the Council shall act on the proposal as indicated in this Article. However, in the event the Planning Commission denies the proposal, its decision is final except that the petitioners within fifteen (15) days after notice of the action may in writing appeal the decision to the Council, in which case the Council shall hear the matter in the same manner as for an approval by the Planning Commission.

(1) Within forty-five (45) days of receipt of the report for approval, the Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(2) Within forty-five (45) days of receipt of the appeal, the Council shall set the matter for public hearing and shall give notice thereof to the petitioner and also by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to a hearing. After the conclusion of the hearing, the council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(g) Enactment By Ordinance.

Enactment of the amendment shall be by ordinance.

(h) Withdrawal.

With the consent of the Planning Commission, any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution of intention.

(1) The withdrawal or abandonment may be made only when the proceedings are before the body for consideration, and provided that any hearing of which public notice has been given shall be held.

(i) Denial.

When an amendment initiated by petition is denied by the Planning Commission and no appeal is taken, or is denied by the Council, the amendment or a substantially similar amendment may not be initiated by petition sooner than one (1) year following the denial.

(j) Initiation By Council Or Planning Commission.

Nothing contained in this Chapter shall prohibit the Planning Commission or the Council from initiating zoning changes where the general public interest and welfare are involved. When the amendment is initiated by the Planning Commission or the Council, the public hearing on the amendment may be held at any time.

Sec. 8-3.5 Enforcement, Legal Procedures And Penalties.

(a) Enforcement, Legal Procedures And Penalties.

(1) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions thereof.

(3) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars ($2,000). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinment thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

(b) Civil Fines.

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served, by mail or delivery, with an order pursuant to this section. The order may require the party responsible for the violation to do any or all of the following:

(A) Correct the violation within the time specified in the order;

(B) Pay a civil fine not to exceed $10,000 in the manner, at the place, and before the date specified in the order;

(C) Pay a civil fine up to $10,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order shall advise the party responsible for the violation that the order shall become final 30 days after the date of its delivery. The order shall also advise that the Director's action may be appealed to the Planning Commission.

(3) The provisions of the order issued by the Director under this section shall become final 30 calendar days after the service of the order. The parties responsible for the violation may appeal the order to the Planning Commission pursuant to its rules. The form of this appeal must conform to the Planning Commission's rules. However, an appeal to the Planning Commission shall not stay any provision of the order.

(4) The Director may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of violation and order were served; that a civil fine was imposed; the amount of the civil fine imposed has not been paid; that either the order has not been appealed or that if appealed, the order was sustained by the Commission and/or any Court action."

SECTION 5. Chapter 8, Article 17, of the Kaua'i County Code 1987, as amended, shall be amended to read as follows:

"Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008 and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator or proprietor of any single-family transient vacation rental which operated outside of a Visitor Destination Area prior to March 7, 2008 shall obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit and demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to March 7, 2008. The Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawai'i General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to March 7, 2008, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to March 7, 2008, with a pattern of consistency that evidences an ongoing and lawful enterprise.

(d) Applications for nonconforming use certificates for single-family transient vacation rentals located on land designated "Agricultural" pursuant to Chapter 205 of the Hawai'i Revised Statutes shall be made within sixty (60) days of August 16, 2010. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010, then the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred ($1,500.00) Dollars at filing. A nonconforming use certificate may be issued for a single-family transient vacation rental located on land in the State of Hawai'i's land use agricultural district if:

(1) It was built prior to June 4, 1976, or

(2) The Applicant has obtained a special permit under Hawai'i Revised Statutes, Section 205-6 which specifically permits a vacation rental on the subject property.

(A) An application for a special permit shall include verification by the Applicant that the farm dwelling unit was being used as a vacation rental on an ongoing basis in accordance with Section 8-17.10(c).

(B) An application for a special permit pursuant to Hawai'i Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission that is deemed complete by the Planning Director must be filed within one (1) year of August 16, 2010. Upon completion of the application, the Planning Director shall issue a provisional certificate that will allow the transient vacation rental to operate. The provisional certificate shall be null and void after the Planning Commission or the Land Use Commission makes a decision upon the application.

(C) In addition to the Special Permit standards set forth in Hawai'i Revised Statues Section 205-6 and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission, the Planning Commission may only grant a special permit if, prior to March 7, 2008: (1) the property upon which the transient vacation rental is located had a registered agricultural dedication pursuant to the guidelines set forth in the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules; (2) a bona fide agricultural operation existed, as shown by State General Excise Tax Forms and/or Federal Income Tax Form 1040 Schedule F filings; or (3) the Planning Commission finds that the size, shape, topography, location or surroundings of the property, or other circumstances, did not allow an applicant to qualify for an agricultural dedication pursuant to the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules or inhibited intensive agricultural activities

(D) If the application for the special permit is granted, then the transient vacation rental operation shall be subject to conditions imposed by the Planning Commission or the Land Use Commission.

(E) If the application for special permit is denied, then the nonconforming use certificate shall not be issued and the transient vacation rental must cease operation.

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(f) The Planning Director shall make available to the public at the Planning Department counter and on the County of Kaua'i website a list of all completed applications for non-conforming use certificates. Applications deemed completed shall concurrently be made available to the public. Copies of applications shall also be made available to the public as public information, as provided by Haw. Rev. Stat. Chapter 92F (the Uniform Information Practices Act). Such list shall include the names of the applicants and the tax map key number of the parcels which are the subject of the applications. The Planning Department may physically inspect a single-family transient vacation rental prior to a non-conforming use certificate being issued.

(g) The Planning Director shall prepare an application form which shall be available to the public. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010 the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred ($1,500.00) Dollars at filing. Applications received more than one (1) year after August 16, 2010 shall not be accepted and the use of a transient vacation rental shall be deemed discontinued.

(h) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate annually on the date of issuance of the nonconforming use certificate.

(1) Each application to renew shall include proof that there is a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use and shall be received by the Department prior to the expiration date of a held non-conforming use certificate. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates. [The applicant may reapply for renewal upon presenting a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use.]

Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.

(2) Upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter, or other pertinent land use laws, and may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

(3) Applicant shall pay an annual renewal fee of [One Hundred Fifty Dollars ($150.00)] Five Hundred Dollars ($500.00) which shall be deposited into the County General Fund."

SECTION 6. Chapter 8, Article 27, Section 27.8 of the Kauai County Code 1987, as amended, shall be amended to include a new subsection (e) to read as follows:

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

SECTION 7. Chapter 9, Article 3, Section 3.2 of the Kauai County Code 1987, as amended, shall be amended as follows:

"**Sec. 9-3.2 Application For Approval Of Preliminary Subdivision Maps.**

(a) A preliminary subdivision map may be filed by the owner of the property sought to be subdivided, or by any person duly authorized by the owner. The preliminary subdivision map, wherever feasible, shall be filed together with one (1) application for the required zoning permit, as provided in the Comprehensive Zoning Ordinance, and two (2) applications, if any, for necessary use permits and variance permits, as provided in the Comprehensive Zoning Ordinance. Information required in the applications may be shown in the preliminary subdivision map, and the Planning Commission, to the extent feasible, shall act upon the preliminary subdivision map and all applications simultaneously.

(b) Filing Fees. Each subdivider at the time of filing the preliminary subdivision map shall pay a non-refundable fee of [Three Dollars ($3.00)] Sixteen Dollars and Fifty Cents ($16.50) for each lot shown on the preliminary subdivision map[.] and a processing fee of Three Hundred Dollars ($300.00), except that filing and processing fees shall be exempted as follows:

(1) A subdivision for a housing project or portions of housing projects that are developed to be affordable to low-income households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program.

(2) A subdivision for a housing project or portions of housing projects that are developed to be affordable to gap-group households as determined by the Housing Director or his authorized representative of the County Housing Agency shall be exempt from one-half of the filing and processing fee required in Section 9-3.2(b), provided such projects conform to applicable provisions of the County's affordable housing program."

SECTION 8. If any provision of this Ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 9. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance material for inclusion in the Kauai County Code 1987, as amended, the brackets, bracketed material and underscoring shall not be included. The County Clerk shall also be authorized to codify any relevant changes to Ordinance 935, pursuant to this Ordinance and reissue Ordinance 935 as a complete document.

SECTION 10. This Ordinance shall take effect upon its approval.

Introduced by: /s/ NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

May 22, 2013

Līhu'e, Kaua'i, Hawai'i

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2483, Draft 1, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on July 17, 2013, by the following vote:

FOR ADOPTION:	Bynum, Hooser, Kagawa, Nakamura, Rapozo, Yukimura, Furfaro	TOTAL – 7,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	None	TOTAL – 0,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Līhu'e, Hawai'i
July 18, 2013

Ricky Watanabe
County Clerk, County of Kaua'i

ATTEST:

Jay Furfaro
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

July 18, 2013

Approved this 23 day of July, 2013.

Bernard P. Carvalho Jr.
Mayor
County of Kaua'i

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUA'I

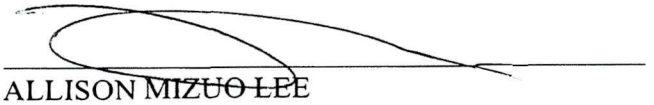
In the Matter of the Application of EDMUND GREGOIRE, LINDA GREGOIRE, And MAULOA LLC Appealing Cease & Desist, and Forfeiture of Non-Conforming Use Certificate TVNCU #4287, dated May 3, 2023, for a property located at 4650 Amio Road, Koloa, Kaua'i, Hawai'i Tax Map Key No.: (4) 2-6-011:019.	**CERTIFICATE OF SERVICE**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 2, 2023, the PETITION TO APPEAL DECISION OF THE PLANNING DIRECTOR; EXHIBITS "1" - "6", was duly served upon the COUNTY OF KAUA'I PLANNING COMMISSION, via hand delivery, addressed to it at the COUNTY OF KAUA'I PLANNING DEPARTMENT, County of Kaua'i, 4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766.

DATED: Līhu'e, Hawai'i, June 2, 2023.

CADES SCHUTTE LLP
A Limited Liability Law Partnership



ALLISON ~~MIZUO LEE~~
MAUNA KEA TRASK
KEOLA R. WHITTAKER
Attorneys for Appellants
EDMUND GREGOIRE, LINDA GREGOIRE, and MAULOA LLC

PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISION

FRANCIS DEGRACIA, CHAIR
DONNA APISA, VICE CHAIR
GERALD AKO, MEMBER
HELEN COX, MEMBER
GLENDA NOGAMI-STREUFERT, MEMBER
JERRY ORNELLAS, MEMBER
LORI OTSUKA, MEMBER

MEMORANDUM

To: Honorable Commissioners
Kauai Planning Commission

Fr: Kaaina S. Hull
Clerk of the Commission

Date: June 5, 2023

RE: Clerk of the Commission's Recommendation to Refer an Appeal of the Planning Director's Decision Related to the Planning Director's Cease and Desist and Forfeiture of TVRNCU #4287 (Mau Loa Ohana) for the Failure to timely renew by April 18, 2023, ***Edmund & Linda Gregoire***, 4650 Amio Road, TMK 26011019, Koloa, Kauai, appeal received on June 2, 2023, for referral to Board and Commissions as Contested Case File No. CC-2023-4. The renewal packet was hand delivered to the Department on April 28, 2023.

Please refer this appeal filed as CC-2023-4 to Boards & Commissions to conduct the required analysis and contested case hearing, as necessary.

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

H.4.d.
JUN 27 2023

APPROVED

COX FRICKE LLP
A LIMITED LIABILITY LAW PARTNERSHIP LLP

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Attorneys for Appellant
THE COMMUNITY ASSOCIATION OF POIPU AINA ESTATES

Electronically Filed
FIFTH CIRCUIT
5CCV-22-0000055
12-APR-2023
08:39 AM
Dkt. 101 FOF

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI‘I

THE COMMUNITY ASSOCIATION OF POIPU AINA ESTATES,

Appellant,

vs.

COUNTY OF KAUA‘I PLANNING COMMISSION; HPM BUILDING SUPPLY,

Appellees.

CASE NO. 5CCV-22-0000055
(Administrative Appeal)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; CERTIFICATE OF SERVICE

DATE: March 1, 2023
TIME: 1:00 p.m.
JUDGE: Hon. Kathleen N.A. Watanabe

M.12.a.
June 27, 2023

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Appellant The Community Association of Poipu Aina Estates' ("Poipu Aina") Notice of Appeal to the Circuit Court and Statement of the Case filed on June 23, 2022 [Dkt No. 1]; Poipu Aina's Opening Brief filed on October 28, 2022 [Dkt No. 75]; Appellee HPM Building Supply's ("HPM") Answering Brief filed on December 7, 2022 [Dkt No. 81]; and Appellee County of Kaua'i Planning Commission's ("Commission") Answering Brief filed on December 7, 2022 [Dkt No. 79]; and Poipu Aina's Reply Brief filed on December 21, 2022 [Dkt No. 83], came for hearing before the Honorable Kathleen N.A. Watanabe on March 1, 2023 at 1:00 p.m., with Abigail M. Holden appearing on behalf of Appellant Poipu Aina, Mauna Kea Trask appearing on behalf of Appellee HPM, and Mark L. Bradbury appearing on behalf of Appellee the Commission.

Having considered the memoranda of law submitted, the arguments of the parties, and the record and files of these proceedings, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. To the extent that any of the following Findings of Fact shall be determined to be Conclusions of Law, they shall be construed as such for the purpose herein.

Proceedings Before the Commission: HPM's Application and Poipu Aina's First Petition to Intervene

2. On or about March 14, 2022, HPM submitted an Application for a Special Permit, Use Permit and Class IV Zoning Permit, for Real Property Situated at Pa'a, District of Koloa, Kaua'i, Hawai'i ("Application"). [Dkt No. 73, Findings of Fact ("FOF") ¶ 2.]

3. In its Application, HPM proposed to build an open-air industrial production facility that would be used to manufacture wooden trusses and wall panels for

residential housing construction on land zoned for agricultural use. [Record on Appeal ("ROA") at 000015-16; Dkt No. 73, FOF ¶ 3.]

4. HPM indicated it would import lumber materials for the wooden trusses and wall panels from the Pacific Northwest, which would necessarily be trucked to its facility. [*Id*.]

5. Poipu Aina is an association comprised of homeowners for 17 individual lots, which is adjacent to the agricultural property upon which HPM plans to build the large, construction material manufacturing facility. [ROA at 000624-25; Dkt No. 73, FOF ¶ 4.]

6. Poipu Aina is situated approximately one-third mile, downhill, and downwind from HPM's manufacturing facility. [*Id*.]

7. On or about April 5, 2022, HPM, through its counsel, claims to have mailed a written Notice of Public Hearing by certified mail to the addresses of a least eighty-five percent of all tax map keys within 300 feet from the nearest point of the tax map key parcel involved in HPM's Application. [Dkt No. 9 at 2; Dkt No. 73, FOF ¶ 5.]

8. However, according to Poipu Aina, the letter provided by HPM's counsel included the incorrect Zoom link and further incorrectly stated that notice was only being provided to neighboring property owners within 30 (not 300) feet of the facility. [ROA at 000480; Dkt No. 73, FOF ¶ 6.]

9. On or about May 4, 2022, the Planning Commission published on its website the Commission Agenda Packet for the May 10, 2022 Commission meeting ("Agenda Packet"). [Statement of Case at ¶ 6; Dkt No. 73, FOF ¶ 7.]

10. On May 9, 2022, Kat Clark, a Poipu Aina homeowner, telephoned the Commission and spoke to the Planning Department Desk. [Statement of Case at ¶ 7; Dkt No. 73, FOF ¶ 8.]

11. The Commission representative told Ms. Clark over the telephone that Poipu Aina could file a petition to intervene, even though it was late, as long as she wrote a letter stating her concerns and delivered it in person before 3 p.m. with a check for $25. [Statement of Case at ¶ 7; Dkt No. 73, FOF ¶ 9.]

12. Immediately, Michael Clark wrote Poipu Aina's Petition to Intervene, visited the Planning Department Desk, and submitted the Petition to Intervene *pro se* ("First Petition"). [Statement of the Case at ¶ 8; Dkt No. 73, FOF ¶ 10.]

13. The First Petition requested that the Commission:

> accept this Petition to Intervene on behalf of the Community of Poipu Aina Estates. We are very concerned that the HPM facility will negatively impact the traffic, air quality, noise and view plains in and around our community. HPM asserts that there will be little to no impact in these areas but we disagree.

[ROA at 000480; Dkt No. 73, FOF ¶ 11.]

14. The First Petition further indicated that "some" of Poipu Aina's "concerns [were] as follows:"

- Traffic noise of trucks on the gravel road starting as early as 6 am.
- Visual impact of a large, open ended tent.
- Noise created by the saws and other power tools, trucks and equipment, especially as our community is downwind of the facility.
- Lack of sound control based on the open tent like nature of the structure.
- Visual impact of the power lines being pulled to the facility.
- Largely obstructed view of the sugar mill.

- Decrease in property values for our community.

- Increased trucking traffic on the South shore specifically the narrow, already congested streets in and around Koloa town.

- The traffic assessment done by HPM was done on 12/10/21 while tourism was still significantly lower because of COVID 19.

- Allowing this facility to operate along the main artery road of Ala Kinoiki, where thousands a day access the Poipu area resorts and beaches.

- The letter sent by cades & schutte dated April 5, 2022 to "persons listed on the current real property assessment notice list within 30 feet from the subject property" did not contain accurate information on attending the Planning Commission meeting via Zoom on 5/10/22 as the zoom link provided was from a past meeting. This may make it difficult for residents to attend the public hearing via zoom if unable to attend in person.

- The peacefulness and beauty surrounding the area around the Old Koloa Mill that is valued by locals and tourists alike.

[ROA at 000480; Dkt No. 73, FOF ¶ 12.]

15. Additionally, Mr. Clark presented a $25 check; however, the person at the desk refused to accept it, stating that the First Petition was too late. [Statement of the Case at ¶ 8; Dkt No. 73, FOF ¶ 13.]

16. Apparently, the Commission unilaterally decided to treat the First Petition as public testimony. [ROA at 000480; Dkt No. 73, FOF ¶ 14.]

17. Indeed, the First Petition appears in the Record on Appeal as "public testimony." [*See* ROA at 000480; Dkt No. 73, FOF ¶ 15.]

18. The Commission did not take any further action on the Petition. [ROA *passim*; Dkt No. 73, FOF ¶ 16.]

19. On May 10, 2022, the Planning Commission held a public hearing on HPM's Application. [ROA at 559-566; Dkt No. 73, FOF ¶ 17.]

20. At the public hearing, Poipu Aina provided oral and written testimony which was made separately from the Petition. [ROA at 000560, 000563, 000564, 000566; Dkt No. 73, FOF ¶ 18.]

21. However, the Commission lacked quorum on May 10, 2022 to act on HPM's Application, so the public hearing was continued and the agency hearing was postponed until May 24, 2022. [Dkt No. 9, Declaration of Jodi Higuchi Sayegusa ("Sayegusa Decl.") ¶ 16; Dkt No. 73, FOF ¶ 19.]

Proceedings Before the Commission:
Poipu Aina's Second Petition to Intervene

22. Poipu Aina alleges that upon observing the furor and emotions at the public hearing on this matter, Poipu Aina realized that HPM's facility was bigger than it had previously realized and raised greater concerns. [Statement of the Case at ¶ 10; Dkt No. 73, FOF ¶ 20.]

23. As a result, Poipu Aina began to look for professional, legal assistance and, on May 18, 2022, Poipu Aina retained the law firm of Damon Key Leong Kupchak Hastert to represent it. [Statement of the Case at ¶ 10-11; Dkt No. 73, FOF ¶ 21.]

24. On May 22, 2022, Poipu Aina – this time through its new counsel – submitted a Supplemental Petition to Intervene via email to the Commission and sent the $25.00 filing fee separately via U.S. Postal Mail ("Second Petition," and collectively with the First Petition, "Petition"). [Statement of the Case at ¶ 10-12; Notice of Appeal, Exhibits 2-3; ROA at 000622-33; Dkt No. 73, FOF ¶ 22.]

25. Among other things, the Second Petition asserted that:

> HPM's Facility would be a violation of the permissible uses within an agricultural district, under Hawaii Revised Statutes § 205-4.5. Its Facility would not be "directly accessory" to permitted agricultural activities identified in HRS § 205-4.5(a)(1 through 23), and therefore shall be prohibited. Agricultural districts shall be restricted to agricultural uses and the County Planning Commission may permit special uses that would promote the effectiveness and objectives of HRS § 205, i.e. support agriculture businesses in Hawaii. HRS § 205-6(c).

[ROA at 000622, Notice of Appeal Exhibit 2, Second Petition at 2; Dkt No. 73, FOF ¶ 23.]

26. HPM filed an Opposition to the Petition on May 22, 2022. [ROA at 000608-21; Dkt No. 73, FOF ¶ 24.]

27. On May 24, 2022, the Commission, once again, lacked quorum to act on HPM's Application and the agency hearing on the Application was therefore postponed to June 14, 2022. [Dkt No. 9, Sayegusa Decl. ¶ 16; Dkt No. 73, FOF ¶ 25.]

28. However, on May 24, 2022, the Commission issued a letter stating that the Second Petition "was not placed on the Planning Commission agenda due to untimeliness" ("May 24, 2022 Decision"). [ROA at 000700; Dkt No. 73, FOF ¶ 26.]

29. The May 24, 2022 Decision went on to state the submittal was also "incomplete since it was missing the required fee associated with the intervention petition." [ROA at 000700; Dkt No. 73, FOF ¶ 27.] The letter further stated that "the document was received by the Commissioners as public testimony" and "[t]he hard copies transmitted are being returned to you." [*Id.*]

30. After receiving the May 24, 2022 Decision, on May 26, 2022, counsel for Poipu Aina resubmitted the Second Petition along with the $25 filing fee, stating, *inter alia,* that:

> The Agency Hearing on HPM Building Supply's Application for Special Permit, Use Permit, and Class IV Zoning Permit has twice been postponed, first from May 10, 2022 and a second time from May 24, 2022. As a result, the Agency Hearing will take place more than 7 days from the

> date of this letter and HPM would not suffer prejudice by the timing of [Poipu Aina]'s intervention.

[ROA at 000703-704, Notice of Appeal at Exhibit 3; Dkt No. 73, FOF ¶ 28.]

31. The May 26, 2022 resubmittal letter from Poipu Aina further indicated that the Second Petition "explain[ed] in detail the good cause reasons for [Poipu Aina]'s intervention in this matter." [ROA at 000703-704, Notice of Appeal at Exhibit 3; Dkt No. 73, FOF ¶ 29.]

32. The May 26, 2022 letter also set forth the TMK numbers for each member of Poipu Aina as an adjacent property owner to the property subject to HPM's requested permits. [*Id.*]

Proceedings Before the Commission:
The Agency Hearing

33. On June 8, 2022, the Commission published its Notice and Agenda for the June 14, 2022 Commission meeting, indicating that a public and agency hearing on HPM's Application would be held at the June 14, 2022 Commission meeting. [ROA at 000705-10; Dkt No. 73, FOF ¶ 30.]

34. On June 13, 2022, the Commission issued an untimely revised agenda indicating that Poipu Aina's Petition would also be heard at the June 14, 2022 meeting. [ROA at 001213-14; Notice of Appeal at ¶ 34; Dkt No. 73, FOF ¶ 31.]

35. Counsel for Poipu Aina alleges that he was unaware of the June 13, 2022 revised agenda as he was not provided with notice of the revision and was unprepared to argue Poipu Aina's Petition at the June 14, 2022 hearing. [Statement of the Case at ¶¶ 16-19; Dkt No. 73, FOF ¶ 32.]

36. Poipu Aina's Petition was orally denied as untimely during the June 14, 2022 meeting. [ROA at 001013; Dkt No. 9, Sayegusa Decl. at ¶ 17; Dkt No. 73, FOF ¶ 33.]

37. After orally denying Poipu Aina's Petition, the Commission granted HPM's Application, thereby granting the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8), with minimal conditions. [ROA at 001040-43; Dkt No. 73, FOF ¶ 34.]

38. Poipu Aina filed a timely Notice of Appeal with this Court on June 23, 2022. [ROA at 001049.] *See* Hawai'i Revised Statutes ("HRS") § 91-14 (requiring an appeal be filed within 30 days of the preliminary ruling or service of the certified copy of the final decision and order of the agency). [Dkt No. 73, FOF ¶ 35.]

39. On June 24, 2022, the Commission entered a written Order denying Poipu Aina's Petition ("Order"). The Commission reasoned as follows:

> In accordance with Kauai County Comprehensive Zoning Ordinance § 8-3.1(f)(4), on April 8, 2022, Notice of the proposed public hearing for this Application was published in a newspaper of general circulation in the County. Petitioner's petition for intervention and supplemental petition for intervention were filed on May 9, 2022, and May 23, 2022, respectively. On May 10, 2022, the public hearing on this matter was commenced, public testimony was accepted therein, and the hearing was continued to June 14, 2022 due to the lack of sufficient quorum for the Commission to take action. Petitioner's filings are therefore untimely for failure to file no later than May 3, 2022, seven days prior to the agency hearing for which notice to the public has been published pursuant to law, as is required by Commission Rule 1-4-3. Within its written filings, and during counsel's oral argument, Petitioner failed to demonstrate good cause for untimeliness, as is required by Commission Rule 1-4-3 and under the common law regarding this issue. Petitioner has failed to show a substantial reason amounting in law to a legal excuse for failing to perform an act required by law, i.e., the timely filing of a Petition to Intervene in a matter pending before the Commission.

(Emphasis added.) [Dkt No. 9, Exhibit E; Dkt No. 73, FOF ¶ 36.]

Proceedings Before the Circuit Court

40. On July 13, 2022, HPM filed its Motion to Dismiss Appellant's Notice of Appeal ("Motion") pursuant to Hawai'i Rules of Civil Procedure ("HRCP") Rule 12(b)(1) based on the argument that the Court lacked subject matter jurisdiction pursuant to HRS § 91-14 because Poipu Aina's petition to intervene was untimely and did not comply with the form and content requirements of the Commission Rules. [Dkt No. 9 *passim*; Dkt No. 73, FOF ¶ 37.]

41. On July 19, 2022, County of Kaua'i filed its Substantive Joinder to Appellee HPM's Motion to Dismiss. [Dkt No. 19 *passim*; Dkt No. 73, FOF ¶ 38.]

42. On August 30, 2022, Poipu Aina filed its Opposition to the Motion to Dismiss, asserting that the Court has subject matter jurisdiction over the instant appeal pursuant to HRS § 91-14 and *Public Access Shoreline Hawaii v. Hawai'i County Planning Commission*, 79 Hawai'i 425, 903 P.2d 1246 (1995) (hereinafter "*PASH*"), inasmuch as (1) a contested case hearing was "required by law" and "determined the rights, duties, and privileges of specific parties" under *PASH*, 79 Hawai'i at 431, 903 P.2d at 1252; (2) the Commission's May 24, 2022 Decision was a "final decision" or a "preliminary ruling" such that deferral of review would deprive Poipu Aina of adequate relief, *id*.; (3) Poipu Aina followed the applicable agency rules and was involved in a contested case hearing by filing the Petition and also by offering written and oral testimony, *id*.; and (4) Poipu Aina had standing to appeal under HRS § 91-14, *id*. [Dkt No. 42 *passim*.]

43. The Court denied the Motion to Dismiss, holding that it had jurisdiction under HRS § 91-14 to hear the Notice of Appeal, and issued its Findings of Fact, Conclusions of Law, and Order Denying the Motion to Dismiss on October 10, 2022. [Dkt No. 73.]

44. The Court concluded, in part, that:

> 19. The May 24, 2022 Decision was a denial of Poipu Aina's Petition.
>
> 20. There was no indication in the May 24, 2022 Decision that the Petition was not placed on the agenda due to a lack of quorum at the May 24, 2022 hearing. Instead, the letter unequivocally provided that the information in the Petition was used "as public testimony."
>
> 21. Nowhere in the May 24, 2022 Decision did it indicate that Poipu Aina's Petition would be considered by the Commission at a later date.
>
> 22. Nevertheless, Poipu Aina resubmitted its Petition on May 26, 2022.
>
> 23. The resubmitted Petition was again denied orally on June 14, 2022 and via Order dated June 24, 2022.
>
> 24. Based on the foregoing, a "contested case" hearing, i.e., a hearing that was(1) "required by law" and (2) determined the "rights, duties, and privileges of specific parties," occurred pursuant to HRS Sec. 91-14.

[Dkt No. 73, COL ¶¶ 19-24.]

45. Poipu Aina filed its Opening Brief on October 28, 2022, asserting the following questions presented as to the Commission's denial of Poipu Aina's Petition and the grant of HPM's application and requested permits:

> (1) whether the Commission's denial of Poipu Aina's petition as untimely the Rules of Practice and Procedure of the Kaua'i County Planning Commission ("Commission Rules") Rule 1-4-3 was made upon unlawful procedure, was affected by other error or law, or was in violation of constitutional or statutory provisions;
>
> (2) whether the Commission's decision that Poipu Aina lacked good cause for its allegedly untimely filed Petition was clearly erroneous or affected by error of law; and
>
> (3) whether the Commission's decision granting HPM's Application and awarding HPM the subject permits, without granting Poipu Aina a contested case hearing, was made upon unlawful procedure, was affected by other error or law, or was in violation of constitutional or statutory provisions.

[Dkt No. 75 at 13-14.]

46. The County of Kaua‘i and HPM filed their respective Answering Briefs on December 7, 2022. [Dkt Nos. 79, 81.]

47. Poipu Aina filed its Reply Brief on December 21, 2022. [Dkt No. 83.]

48. Oral argument was heard before the Honorable Kathleen N.A. Watanabe on March 1, 2023 at 1:00 p.m.

CONCLUSIONS OF LAW

Based upon the preceding Findings of Fact, the Court concludes as follows:

1. In evaluating this matter, the Court recognizes and is guided by the legislative intent set forth in HRS § 92-1:

> In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible. To implement this policy the legislature declares that:
>
> (1) It is the intent of this part to protect the people's right to know;
>
> (2) The provisions requiring open meetings shall be liberally construed; and
>
> (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

2. Commission Rule 1-1-1 similarly provides the "Purpose" of the Commission's Rules of Practice and Procedures:

> The intent and purpose of the Rules of Practice and Procedures of the Kaua‘i County Planning Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open and orderly manner.

3. This Court reviews an agency decision under the standards of review set forth in HRS § 91–14, which provides:

> Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
>
> (1) In violation of constitutional or statutory provisions; or
>
> (2) In excess of the statutory authority or jurisdiction of the agency; or
>
> (3) Made upon unlawful procedure; or
>
> (4) Affected by other error of law; or
>
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HRS § 91–14(g).

4. Under HRS § 91-14(g), conclusions of law are reviewed *de novo*, pursuant to subsections (1), (2) and (4); questions regarding procedural defects are reviewable under subsection (3); findings of fact are reviewable under the clearly erroneous standard, pursuant to subsection (5); and an agency's exercise of discretion is reviewed under the arbitrary and capricious standard, pursuant to subsection (6). *Save Diamond Head Waters LLC v. Hans Hedemann Surf, Inc*., 121 Hawai‘i 16, 24, 211 P.3d 74, 82 (2009); *see also Paul's Elec. Serv., Inc. v. Befitel*, 104 Hawai‘i 412, 420, 91 P.3d 494, 502 (2004), *as corrected* (July 14, 2004).

5. Mixed questions of law and fact are "'reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the

particular case.'" *Save Diamond Head Waters LLC*, 121 Hawai'i at 25, 211 P.3d at 83 (citation omitted).

6. With regard to a right to intervene in a proceeding, Commission Rule 1-4-1 provides that:

> All Persons who have hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, shall be admitted as Parties-Intervenors upon timely written application for intervention. In no such case shall intervention be allowed for appeals of actions from the Director pursuant to Chapter 9 of these Rules.

The Commission's Denial of Poipu Aina's Petition as Untimely Under Rule 1-4-3 Was Based Upon Unlawful Procedure, Was Affected by Other Error or Law, And Was in Violation of Constitutional or Statutory Provisions

The Commission's Denial of Poipu Aina's Petition as Untimely Is Reviewed *De Novo*

7. The Commission denied Poipu Aina's Petition as "untimely for failure to file no later than May 3, 2022, seven days prior to the agency hearing for which notice to the public has been published pursuant to law, as is required by Commission Rule 1-4-3."

8. The Commission's denial of Poipu Aina's Petition was based solely on its interpretation of the relevant regulations and statutes.

9. The Hawai'i Supreme Court has held that "whether or not an agency has followed proper procedures or considered the appropriate factors in making its determination is a question of law, and will be reviewed *de novo*." *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 315, 167 P.3d 292, 308 (2007), *as corrected* (Oct. 10, 2007).

10. Further, the "court does not defer to agency interpretations that are 'plainly erroneous or inconsistent with the underlying legislative purpose.'" *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 67, 283 P.3d 60, 74 (2012).

11. The issue before the Court is whether the Commission correctly applied the law and followed proper procedures in denying Poipu Aina's Petition as untimely.

12. The Commission did not find any facts.

13. Accordingly, the Commission's denial of Poipu Aina's Petition was a matter of law and is subject to *de novo* review pursuant to HRS § 91-14(g). *Sierra Club*, 115 Hawai'i at 315, 167 P.3d at 308.

The Commission Erred in Denying Poipu Aina's Petition as Untimely

14. Commission Rule 1-4-3 provides the following regarding the timing for submission of petitions to intervene:

> Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

15. The plain language of Commission Rule 1-4-3 requires that a petition for intervention be filed "seven (7) days before the Agency Hearing for which notice to the public has been published pursuant to law." (Emphasis added.)

16. "'Agency Hearing' refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua'i and other applicable laws." Commission Rule 1-1-2(1)(i).

17. The Agency Hearing on HPM's Use Permit was held on June 14, 2022. [ROA at 000977.]

18. Seven days before June 14, 2022 was June 7, 2022.

19. HPM and the Commission argue that the deadline to submit a petition for intervention was set for seven days before May 10, 2022, the date first set for the Agency Hearing, even though no Agency Hearing on HPM's Application and Use Permit actually occurred on that day and, in fact, was ultimately continued until June 14, 2022.

20. HPM and the Commission rely on Comprehensive Zoning Ordinance ("CZO") § 8.3.1(f)(4) and Commission Rule 1-13-5(a), which they argue require a different interpretation of the deadline set for submission of petitions to intervene Commission Rule 1-4-3 other than the plain language.

21. CZO § 8.3.1(f)(4) and Commission Rule 1-13-5(a), respectively, require that notice be provided in a newspaper at least twenty days prior to a public and agency hearing.

22. Nothing in CZO § 8.3.1(f)(4) or Commission Rule 1-13-5(a) dictates a date for the filing of a petition to intervene or change the plain language of Rule 1-4-3 stating that a petition to intervene should be submitted seven days prior to the Agency Hearing.

23. Nevertheless, HPM argues that the public should have known that, based on CZO § 8.3.1(f)(4) and Commission Rule 1-13-5(a), the deadline to file a petition to intervene was strictly set for May 3, 2022, no matter when the Agency Hearing was actually held.

24. The interpretation of Commission Rule 1-4-3 urged by HPM and the Commission is absurd. *Coon v. City & Cnty. of Honolulu*, 98 Hawai'i 233, 245, 47 P.3d 348, 360 (2002) (noting that the court should not hesitate "to reject an incorrect or unreasonable statutory construction advanced by the agency").

25. Commission Rule 1-4-3 does **not** state that the petition "shall be filed with the Commission at least seven (7) days prior to the [date of the original] Agency Hearing for

which notice to the public has been published pursuant to [Commission Rule 1-13-5(a)],” which is what HPM and the Commission would like it to say.

26. By way of example, in contrast to Commission Rule 1-4-3, the corresponding Maui Planning Commission Rule states:

> § 12-201-40 Petition filing. (a) Petitions to intervene shall be in conformity with section 12-201-20 herein and shall be filed with the commission and served upon the applicant no less than ten days before the **first public hearing date**. Untimely petitions will not be permitted except for good cause, but in no event will intervention be permitted after the commission has taken the final vote on the matter before it.

(Emphases added.)

27. The Commission could have used its rule making authority to enact a rule that requires submission of a petition to intervene prior to the first public hearing or the date originally noticed for the Agency hearing, but it did not.

28. Instead, the plain language of Commission Rule 1-4-3 ties the deadline to submit the petition to intervene to the Agency Hearing.

29. Thus, the Commission erred in interpreting Commission Rule 1-4-3 to require a petition to intervene to be filed by May 3, 2022, seven days before the public hearing, when the Agency Hearing was not actually held until June 14, 2022.

30. This plain language interpretation is also consistent with Commission Rule 1-1-1 (and HRS § 92-1) in that it balances systematic and orderly hearings with the opportunity to participate.

31. Poipu Aina’s First Petition, submitted *pro se* on May 9, 2022, was timely filed pursuant to Commission Rule 1-4-3, because it was submitted 35 days before the Agency Hearing.

32. Poipu Aina's Second Petition was timely filed on May 23, 2022, 22 days before the Agency Hearing.

33. Thus, the Commission erred in denying Poipu Aina's Petition as untimely.

34. The Commission's denial of Poipu Aina's Petition is vacated and reversed. *See* HRS § 91-14(g) ("Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced[.]")

35. The Commission and HPM argue extensively that the Commission's actions and interpretation of the subject regulations must be afforded "deference." [Dkt No. 79 at 4-5; Dkt No. 81 at 10-13, 15-16.]

36. However, the case law is clear that the courts "do not apply 'deference' per se, but may choose a more or less deferential standard of review." *Sierra Club*, 115 Hawai'i at 317, 167 P.3d at 310. In this regard, when case law speaks of deference, it is usually in regard to the fact that the "abuse of discretion" standard is more deferential, for example, than the "de novo " standard. *Id*. at 317 n.25, 167 P.3d at 310 n.25.

37. Even if the Commission were to be given "deference" in its interpretation of the relevant regulations and rules, its interpretation of Commission Rule 1-4-3 is incorrect and "palpably erroneous." *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 67, 283 P.3d 60, 74 (2012) (explaining that the "court does not defer to agency interpretations that are 'plainly erroneous or inconsistent with the underlying legislative purpose'").

The Commission's Decision That Poipu Aina Lacked Good Cause For Its Allegedly Untimely Filed Petition Was Clearly Erroneous or Affected By Error of Law

The Commission's Determination that Poipu Aina Lacked Good Cause for Its Purported Untimely Petition Was Based on an Error of Law and Is Reviewed *De Novo*

38. In addition to denying Poipu Aina's Petition as untimely, the Commission held that Poipu Aina's lacked "good cause" for the purported untimely filing, reasoning that "[Poipu Aina] has failed to show a substantial reason amounting in law to a legal excuse for failing to perform an act required by law, i.e., the timely filing of a Petition to Intervene in a matter pending before the Commission." [Dkt No. 9, Exhibit E; Dkt No. 73, FOF ¶ 36.]

39. The term "good cause" means "a sufficient reason, depending upon the circumstances of the individual case." *Eckard Brandes, Inc. v. Dep't of Lab. & Indus. Rels.*, 146 Haw. 354, 363, 463 P.3d 1011, 1020 (2020), *as corrected* (Apr. 27, 2020) (citation omitted).

40. Further, the interpretation of "good cause" should advance "the policy of law [that] favors dispositions of litigation on the merits[.]" *Id*. at 364, 463 P.3d at 1021.

41. In addition, "good cause" "is a much lower standard under Hawai‘i law." *Chen v. Mah*, 146 Hawai‘i 157, 177, 457 P.3d 796, 816 (2020).

42. The Hawai‘i Supreme Court held in *Chen* that whether "good cause" exists "will depend upon the circumstances of the individual case," and "good cause" exists "if there is no (1) deliberate delay and/or contumacious conduct; or (2) if deliberate delay or contumacious conduct exist, there is no actual prejudice that cannot be addressed through lesser sanctions." 146 Hawai‘i at 180, 457 P.3d at 819.

43. The Commission looked only at whether Poipu Aina had a "substantial reason" for purportedly failing to "timely fil[e] . . . a Petition to Intervene." [Dkt No. 9, Exhibit E.]

44. The Commission failed to properly apply this jurisdiction's law related to good cause as set forth above.

45. This Court interprets the Commission's misapplication of the law *de novo* pursuant to HRS § 91-14(g). *Sierra Club*, 115 Hawai'i 299, 315, 167 P.3d 292, 308.

46. "[G]ood faith misinterpretation of a procedural rule may represent such excusable neglect" for the purposes of determining good cause for a purported late filing. *Lorenzen v. Employees Retirement Plan of Sperry and Hutchinson Co*., 896 F.2d 228, 232 (7th Cir. 1990).

47. As set forth above there is, at a minimum, a good faith argument that Poipu Aina's First Petition and Second Petition were timely as they were filed (and then resubmitted) more than seven days before the Agency Hearing which occurred on June 14, 2022.

48. Poipu Aina therefore had "a sufficient reason" based under the circumstances for a purportedly untimely filing.

49. Moreover, there was no deliberate delay or contumacious conduct on the part of Poipu Aina, and HPM suffered no prejudice based on the purported untimely filing.

50. Further, "the determination [of whether a party has shown 'excusable neglect'] is at bottom an equitable one, taking account of all relevant circumstances[.]" *Eckard*, 146 Hawai'i at 360, 463 P.3d at 1017.

51. The Commission erred in applying the law in this jurisdiction regarding good faith inasmuch as if failed to consider the equities of the situation, particularly as the law favors dispositions of litigation on the merits and HPM did not suffered any prejudice – and has not argued that it would – because it had notice of Poipu Aina's intent to intervene 36 days before the Agency Hearing was actually held.

52. Accordingly, good cause under the law existed for any purported untimely filing and the Petition should not have been denied.

53. Even if the Commission's decision were to be reviewed under an abuse of discretion standard, the decision was "arbitrary and capricious" as the Commission "exceeded the boundaries of [its] discretion" by misapplying the law related to the standard for "good cause." *Cmty. Associations of Hualalai, Inc. v. Leeward Plan. Comm'n*, 150 Hawai'i 241, 261-62, 500 P.3d 426, 446-47 (2021) (holding that the Planning Commission abused its discretion where the Planning Director "exceeded the boundaries of [his] discretion by precluding Hualalai from participating in a contested case proceeding" and that the Commission's "failure to grant or deny Hualalai's petition was arbitrary and capricious, and constituted an abuse of discretion").

54. The Commission's denial of Poipu Aina's Petition is therefore vacated and reversed. *See* HRS § 91-14(g).

The Commission's Decision Granting HPM's Application and Awarding HPM The Subject Permits, After Improperly Denying Poipu Aina Petition, Was Made Upon Unlawful Procedure and Was Affected By Other Error Or Law

Poipu Aina Has a Constitutional, Statutory, and Regulatory Right to Intervene

55. Poipu Aina has (1) a constitutional and statutory right to intervene and (2) a right to intervene pursuant to the Commission's Rules.

56. At the outset, Poipu Aina has established that it has both organizational and associational standing to intervene inasmuch as its interests, as well as the interests of its members, would be directly and immediately impacted by HPM's Application and requested Permits.

57. The three-part "injury in fact" test, requires "(1) an actual or threatened injury, which (2) is traceable to the challenged action, and (3) is likely to be remedied by

favorable judicial action." *Ka Pa'akai O Ka'Aina v. Land Use Comm'n, State of Hawai'i*, 94 Hawai'i 31, 42, 7 P.3d 1068, 1079 (2000), as amended (Jan. 18, 2001).

58. "Environmental plaintiffs must meet this three-part standing test but need not assert an injury that is different in kind from an injury to the public generally." *In re Application of Maui Elec. Co., Ltd.*, 141 Hawai'i 249, 270, 408 P.3d 1, 22 (2017).

59. The Hawai'i Supreme Court has established that it "will recognize harms to plaintiffs' environmental interests as injuries that may provide the basis for standing," and that "[t]his lower standard that is applied when environmental rights are asserted has long been established in our law." *Id.* ("[W]e recognize that where the interests at stake are in the realm of environmental concerns, we have not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements.") (internal quotation marks and brackets omitted) (citing *Kilakila 'O Haleakala v. Bd. of Land & Nat. Res.*, 131 Hawai'i 193, 204, 317 P.3d 27, 38 (2013)).

60. Indeed, "where the interests at stake are in the realm of environmental concerns[,]" the Hawai'i Supreme Court has "not been inclined to foreclose challenges to administrative determinations through restrictive applications of standing requirements." *Hualalai*, 150 Hawai'i at 258, 500 P.3d at 443 (citations omitted).

61. Poipu Aina has established that it has both organizational and associational standing to intervene inasmuch as its interests, as well as the interests of its members, would be directly and immediately impacted by HPM's Application.

62. Specifically, Poipu Aina has organizational standing under the traditional injury-in-fact test as it is located directly adjacent to the proposed HPM industrial manufacturing plant and has raised environmental concerns to the traffic, air quality, noise and view plains.

Sierra Club, 115 Hawai‘i at 319, 167 P.3d at 312 (setting forth three-part standing test: (1) “has the plaintiff suffered an actual or threatened injury”; (2) “is the injury fairly traceable to the defendant’s actions”; and (3) “would a favorable decision likely provide relief for plaintiff’s injury.” (citation omitted)).

63. Poipu Aina also has associational standing because the homeowners that make up the association would have standing on their own regarding such environmental issues and the participation of individual members is not necessary. *Id.* at 334, 167 P.3d at 327 (noting that an association may sue on behalf of its members when: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit”).

64. Poipu Aina’s interest is distinguishable from that of general public in that it is located directly adjacent to the HPM industrial manufacturing plant.

65. With regard to Poipu Aina’s constitutional rights, the Hawai‘i Supreme Court has stated that “[c]onstitutional due process protections mandate a hearing whenever the claimant seeks to protect a ‘property interest,’ in other words, a benefit to which the claimant is legitimately entitled.” *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawai‘i 64, 68, 881 P.2d 1210, 1214 (1994).

66. Article XI, Section 9 of the Hawai‘i State Constitution provides:

> Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

67. The Hawai‘i Supreme Court has held that "HRS chapter 205 is a law relating to the conservation, protection and enhancement of natural resources, and thus falls within the scope the enforcement right established by article XI, section 9." *Cnty. of Hawaii v. Ala Loop Homeowners*, 123 Hawai‘i 391, 409, 235 P.3d 1103, 1121 (2010), *abrogated by Tax Found. of Hawai‘i v. State*, 144 Hawai‘i 175, 439 P.3d 127 (2019); *see also In re Application of Maui Elec. Co., Ltd*., 141 Hawai‘i 249, 269, 408 P.3d 1, 21 (2017) (holding that petitioners have a right to intervene where they have established a "protected property interest in a clean and healthful environment"); *Protect & Pres. Kahoma Ahupua‘a Ass'n v. Maui Plan. Comm'n*, 149 Hawai‘i 304, 311, 489 P.3d 408, 415 (2021) ("*Protect & Pres. Kahoma Ahupua‘a Ass'n II*"), *as amended* (June 17, 2021), *reconsideration denied*, No. SCWC-15-0000478, 2021 WL 2828030 (Haw. July 7, 2021) (same).

68. Courts use a two-step analysis to determine whether there was a due process right to a contested case hearing: "(1) [whether] the particular interest which [the] claimant seeks to protect by a hearing [is] 'property' within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is 'property,' what specific procedures are required to protect it." *Protect & Pres. Kahoma Ahupua‘a Ass'n II*, 149 Hawai‘i at 312, 489 P.3d at 416.

69. *Protect and Preserve Kahoma Ahupua‘a Association II* involved facts similar to those presented here. With respect to the first step, Protect and Preserve Kahoma Ahupua‘a ("PPKAA"), whose members owned land adjacent to the development, "alleged 'direct personal environmental and aesthetic interests, including those of adjacent landowners' and 'potential actual injury from the Project.'" 149 Hawai‘i at 312, 489 P.3d at 416 (citation omitted). The Court noted that "PPKAA did not merely assert unilateral expectations of

aesthetic and environmental values, but a protectable property interest in its constitutional right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution." *Id*. at 313, 489 P.3d at 417 (explaining that "HRS ch. 205A is a law 'relating to environmental quality' for the purposes of article XI, section 9").

70. With respect to the second step, the Court turned to whether the appellant's "right to procedural due process was violated." *Id*. at 313, 489 P.3d at 417. In its analysis, the Court noted: "the private interest was PPKAA's constitutional right to a clean and healthful environment," *id*.; the "risk of an erroneous deprivation of PPKAA's interest was high absent PPKAA's participation in the contested case hearing because the Project could have adverse and long-term environmental impacts to the SMA," *id*. at 313-314, 489 P.3d at 417-18; "[a]s adjacent landowners to the Project, PPKAA's members would likely bear the brunt of adverse impacts to the SMA, and their knowledge of the area could have supplemented the findings of the environmental assessment," *id*.; and it was not unduly burdensome to allow PPKAA to participate in the contested case hearing as "the Commission was already required to consider the CZMA in making its decision" on the SMA use permit, *id*.

71. Further, the Court specifically noted that PPKAA raised such concerns as "loss of scenic and open space resources, drainage and runoff impacts, and impacts on the tsunami evacuation zone[.]" *Id*.

72. Similarly, here, Poipu Aina asserted its members' constitutional right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution, as described above.

73. For instance, Poipu Aina are adjacent homeowners, FOF ¶ 4; Poipu Aina is concerned about the negative impacts to traffic, air quality, noise, view planes, property

values, and aesthetic value, and incorrect public hearing information, FOF ¶¶ 11-12; and HPM's Facility would be in violation of the permissible uses within an agricultural district pursuant to HRS § 205-4.5(a)(1 through 23), FOF ¶ 23.

74. "[W]here a source of state law—such as article XI, section 9—grants any party a substantive right to a benefit -- such as a clean and healthful environment -- that party gains a legitimate entitlement to that benefit as defined by state law, and a property interest protected by due process is created." *In re Application of Maui Elec. Co., Ltd.*, 141 Hawai'i at 264, 408 P.3d at 16.

75. Poipu Aina was therefore denied procedural due process when the Commission denied Poipu Aina's Petition.

Poipu Aina Also Has a Right To Intervene Pursuant To Commission Rule 1-4-1

76. Commission Rule 1-4-1 states that a person "shall be admitted" as "parties-intervenors" upon timely written application for intervention if they "can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public."

77. Viewing the *pro se* First Petition liberally, as the Commission and the Court are required to do, the First Petition raised environmental concerns for traffic, noise, and visual impact, which are rights to a clean and healthful environment protected by article XI, section 9 of the Hawai'i Constitution.

78. In addition, the Second Petition sets forth Poipu Aina's constitutional and statutory right to intervene pursuant to HRS chapter 205 and article XI, section 9 of the Hawai'i Constitution.

79. Commission Rule 1-4-1 therefore required that the Commission grant Poipu Aina's Petition.

80. Moreover, contrary to HPM's arguments otherwise, Poipu Aina's First Petition and Second Petition individually and collectively complied with the Commission Rules. [Dkt No. 81 at 14-15.]

81. At the outset, that Poipu Aina's Petition did not comply with Commission Rules other than being purportedly untimely, was not a basis for the Commission's denial of the Petition.

82. "[C]ourts and agencies should construe *pro se* filings in a reasonable manner that enables them to promote access to justice." *Waltrip v. TS Enterprises, Inc.*, 140 Hawai'i 226, 240, 398 P.3d 815, 829 (2016). [*See also* Dkt No. 73, COL ¶ 13.]

83. Viewing the *pro se* First Petition liberally, although not explicitly categorized, the First Petition complied with Commission Rule 1-4-4, which requires that a petition state:

> (1) The nature of Petitioner's statutory or other right[;] (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property[;] (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing[;] (4) The effects of any decision in the Proceeding on Petitioner's interest. If applicable, the petition shall also make reference to the following: (5) Other means available whereby Petitioner's interest may be protected[;] (6) Extent Petitioner's interest may be represented by existing parties[;] (7) Extent Petitioner's interest in Proceeding differs from that of the other parties[;] (8) Extent Petitioner's participation can assist in[] development of a complete record[;] (8) Extent Petitioner's participation will broad the issue or delay the Proceeding[;] (10) How the Petitioner's intervention would serve the public interest.

84. First, the First Petition sets out Poipu Aina's environmental concerns (protected by, *inter alia*, article XI, section 9 of the Hawai'i State Constitution).

85. Second, Poipu Aina's interest is clearly based on their position as neighboring community members ("our community is downwind of the facility," and noting that the Cades & Schutte letter sent to property owners "within 30 feet from the subject property" did "not contain accurate information on attending the Planning Commission meeting").

86. Third and fourth, the issues to be raised were, as stated in the First Petition, Poipu Aina's environmental concerns and approval of the Application would impact Poipu Aina's environmental interests as set forth therein. *See Pele Def. Fund.*, 77 Hawai'i at 70, 881 P.2d at 1216 (stating that the appellees properly alleged that granting the requested permits would expose the Appellee's "to potential harm including diminished property values, deterioration of air quality, odor nuisance, and possible physical injury resulting from the permitted operations").

87. Further, Poipu Aina attempted to file the required filing fee pursuant to Commission Rule 1-4-6 but was not permitted to do so.

88. The Second Petition explicitly addressed all of the content requirements of Rule 1-4-4 and was resubmitted with another $25 filing fee pursuant to Commission Rule 1-4-6.

89. HPM further suggests that Poipu Aina's Supplemental Petition to Intervene did not comply with Commission Rules which do not contemplate reply or supplemental filings. [Dkt No. 81 at 15.]

90. However, Commission Rule 1-4-2(e) governing the "Requirements for Filing of Documents" states in relevant part: "<u>All pleadings may be amended at any time prior to hearing</u>." (Emphasis added.)

91. For the foregoing reasons, Poipu Aina had a constitutional, statutory and regulatory right to intervene and the Commission erred in denying Poipu Aina's Petition.

The Commission's Decision Granting HPM's Application and Awarding HPM The Subject Permits, After Improperly Denying Poipu Aina Petition, Was Made Upon Unlawful Procedure and Was Affected By Other Error Or Law

92. Where procedural error by an administrative agency prejudices the substantial rights of a party, the trial court may, on review and in accordance with law, fashion a remedy appropriate remedying prejudice caused. *See* HRS § 91-14(g); *Nakamine v. Board of Trustees of Employees' Retirement System*, 65 Haw. 251, 649 P.2d 1162 (1982).

93. HRS § 91-14(g) provides the following remedies: "Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced . . . ." *See Hualalai*, 150 Hawai'i at 259, 500 P.3d at 444 ("Under HRS § 91-14(g), upon reviewing the record, this court may 'remand the case with instructions for further proceedings . . . if the substantial rights of the petitioner[] may have been prejudiced because the administrative findings, conclusions, decisions, or orders are: . . . [m]ade upon unlawful procedure; . . . or [a]rbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.'") (citing HRS § 91-14(g)(3), (6)).

94. At the outset, the permits issued by the Commission are invalid where the issuing agency made errors during the permit approval process. *See, e.g., Mahuiki v. Plan. Comm'n*, 65 Haw. 506, 519, 654 P.2d 874, 883 (1982) ("As the Commission's approval of the application for an SMA use permit breached this command, the grant of the permit cannot stand."); *Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Plan. Comm'n*, 148 Hawai'i 275, 472 P.3d 42, at *12 (Ct. App. 2020) ("*Protect & Pres. Kahoma Ahupua'a Ass'n I*"), *aff'd*, 149 Hawai'i 304, 489 P.3d 408 (2021), *as amended* (June 17, 2021) ("On remand, we note that the

Commission is required under HRS § 205A-26(2)(C) to make a specific finding on the Project's consistency with the Maui County General and Community Plans before it may approve Carr Development's SMA permit application."); *Diamond v. Dobbin,* 132 Hawai'i 9, 28, 319 P.3d 1017, 1036 (2014) (holding "that the BLNR's ultimate shoreline determination is invalid because the agency made errors of fact and errors of law in its Amended Decision").

95. As detailed above, the Commission erred in denying Poipu Aina's Petition.

96. Thus, the grant of HPM's Application and the issuance of Class in Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8) and Special Permit (SP-2022-12) was in error.

97. The Hawai'i Supreme Court has held that where a request for a contested case hearing complied with all applicable agency rules but was neither granted nor denied on the merits prior to approval of a permit, the agency "should have held a contested case hearing as required by law and requested by [the organization] prior to decision making on" the permit application. *Kilakila 'O Haleakala*, 131 Hawai'i at 205-206, 317 P.3d at 39-40 (remanding to the circuit court for further proceedings regarding the organization's request for stay or reversal of the permit granted by the agency, although the agency's subsequent grant of a contested case hearing while the appeal was pending).

98. Indeed, had Poipu Aina been afforded its due process rights to have its Petition heard on the merits and to be admitted as a party-intervenor, Poipu Aina would have had an opportunity to present evidence and cross-examine opposing witnesses. *See* Commission Rules Chapter 6; *Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Plan. Comm'n II*, 149 Hawai'i at 314, 489 P.3d at 418 (noting that the association's members, who were erroneously denied intervenor status, "were not able to submit evidence or cross-examine opposing

witnesses, which the Commission's rules would have allowed them the opportunity to do had their petition been granted").

99. Poipu Aina's right to due process was therefore violated when its Petition was improperly denied in violation of the law and HPM's Application was thereafter granted.

100. Accordingly, inasmuch as the Commission erred in denying Poipu Aina's Petition, HPM's permits were erroneously granted as they were procedurally and substantively flawed.

101. The Court therefore vacates Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-12).

102. The Court further remands this matter to the Commission for action consistent with these Findings of Fact, Conclusions of Law and Order.

DECISION AND ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons discussed above, the Commission erred in denying Poipu Aina's Petition as untimely and, alternatively, determining that Poipu Aina lacked "good cause" for its purported untimely submission. Therefore, the Commission's (1) Denial of Poipu Aina's Petition; and (2) Grant of HPM's Application for the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8), are vacated. The case is remanded to the Commission so that Poipu Aina may intervene as a party in a contested case hearing regarding HPM's Application for the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8).

DATED: Lihue, Hawai‘i, April 12, 2023.

* Kirsten N. G. Watanabe

JUDGE OF THE ABOVE-ENTITLED COURT

*Correction made to pg. 10, para. 44, #24

NOTICE OF ELECTRONIC FILING

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FIFTH CIRCUIT
5CCV-22-0000055
12-APR-2023
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Case ID: 5CCV-22-0000055
Title: The Community Association of Poipu Aina Estates v. County of Kauai Planning Commission and HPM Building Supply
Filing Date / Time: WEDNESDAY, APRIL 12, 2023 08:39:12 AM
Filing Parties:
Case Type: Circuit Court Civil
Lead Document(s):
Supporting Document(s): 101-Findings/Fact Concl of Law-Ord
Document Name: 101-(APPROVED) FOF, COL and Order

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IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI'I

PACIFIC RESOURCE PARTNERSHIP, Appellant, vs. COUNTY OF KAUA'I PLANNING COMMISSION; HPM BUILDING SUPPLY; JOHN DOES 1–10; JANE DOES 1–10; DOE CORPORATIONS 1–10; DOE LIMITED LIABILITY COMPANIES 1–10; DOE PARTNERSHIPS 1–10; DOE GOVERNMENTAL ENTITIES 1-10; and DOE ENTITIES 1-10, Appellees.	CASE NO. 5CCV-22-0000049 CASE NO. 5CCV-22-0000060 (Consolidated) (Agency Appeal) FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; ~~CERTIFICATE OF SERVICE~~ No Trial Date Set Judge: Hon. Kathleen N.A. Watanabe
PACIFIC RESOURCE PARTNERSHIP, Appellant, vs. COUNTY OF KAUA'I PLANNING COMMISSION; HPM BUILDING	CASE NO. 5CCV-22-0000060 (Agency Appeal)

M.12.b.
June 27, 2023

SUPPLY; JOHN DOES 1–10; JANE DOES 1–10; DOE CORPORATIONS 1–10; DOE LIMITED LIABILITY COMPANIES 1–10; DOE PARTNERSHIPS 1–10; DOE GOVERNMENTAL ENTITIES 1-10; and DOE ENTITIES 1-10,

Appellees.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Appellant Pacific Resource Partnership's ("PRP") Notice of Appeal to the Circuit Court and Statement of the Case filed on June 9, 2022 (Dkt No. 1); PRP's Opening Brief filed on November 14, 2022 (Dkt No. 92); Appellee HPM Building Supply's ("HPM") Answering Brief filed on December 21, 2022 (Dkt No. 94); and Appellee County of Kaua'i Planning Commission's ("Commission") Answering Brief filed on December 22, 2022 (Dkt No. 96); PRP's Reply Brief to HPM's Answer Brief filed on January 4, 2023 (Dkt No. 98) and PRP's Reply Brief to the Commission's Answering Brief filed on January 5, 2023 (Dkt No. 100), came for hearing before the Honorable Kathleen N.A. Watanabe on March 28, 2023, at 1:30 p.m., with Abigail M. Holden appearing on behalf of PRP, Mauna Kea Trask appearing on behalf of HPM, and Mark L. Bradbury appearing on behalf of the Commission.

Having considered the memoranda of law submitted, the arguments of the parties, and the record and files of these proceedings, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. To the extent that any of the following Findings of Fact shall be determined to be Conclusions of Law, they shall be construed as such for the purpose herein.

HPM's Application and PRP's Petition to Intervene

2. On or about March 24, 2022, the Commission published publicly on its website a May 10, 2022 Planning Commission Public Hearing Notice -- REVISED, which stated in relevant part:

> CLASS IV ZONING PERMIT (Z-IV-2022-8), USE PERMIT (U-2022-8) and SPECIAL PERMIT (SP-2022-1) to operate a construction material manufacturing facility on a parcel situated immediately adjacent to the Old Kōloa Sugar Mill site in Kōloa, along the eastern side of Ala Kinoiki, approximately 3,300 feet west of the Weliweli Road/Ala Kinoiki intersection, further identified as Tax Map Key: 2-9- 001:001, and affecting a 3-acre portion of a larger parcel.

("Public Hearing Notice"). [Dkt No. 90, Findings of Fact ("FOF") ¶ 7.]

3. The Public Hearing Notice did not contain any details of the proposed project, including the name of the applicant, as they pertained to the Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-1). [Dkt No. 90, FOF ¶ 8.]

4. On May 4, 2022, the Planning Commission published publicly on its website the Commission Agenda Packet for the May 10, 2022 Commission meeting ("Agenda Packet"). [Dkt No. 90, FOF ¶ 9.]

5. The Agenda Packet, published just six days before the meeting, provided details that were made easily accessible to the public for the first time regarding the proposed project, such as the name of the applicant (HPM) and the subject of the manufacturing facility (prefabricated housing packages). [Dkt No. 90, FOF ¶ 10.]

6. The Agenda Packet contained (1) HPM Building Supply's Application for a Special Permit, Use Permit and Class IV Zoning Permit, for Real Property Situated at Paʻa, District of Koloa, Kauaʻi, Hawai'i ("Application") and (2) the April 26, 2022 Department of Planning Director's Report ("Director's Report"). [*Id*.]

7. PRP is a market recovery trust fund which represents approximately 7,000 men and women union carpenters and 240 large and small contractors throughout the State of Hawai‘i. [Dkt No. 90, FOF ¶ 2; Record on Appeal ("ROA") at 000562-63.]

8. PRP represents approximately 250 individuals and union contractors residing on Kaua‘i. [Dkt No. 90, FOF ¶ 3; ROA at 000562-63.]

9. PRP has expertise in, and is committed to, building a stronger, more sustainable Hawai‘i in a way that promotes a vibrant economy, creates jobs, and enhances the quality of life for all residents of Hawai‘i. [Dkt No. 90, FOF ¶ 4; ROA at 000562-63.]

10. PRP supports the following issues:

> Jobs. PRP advocates for job creation in the construction industry along with ensuring that construction workers are paid a living wage.
>
> Wages and benefits. PRP advocates for living wages for construction workers building affordable housing and other types of construction projects. A part of the solution to solving the State and County's housing affordability crisis is also about paying workers a "living wage" to keep up with Hawaii's high cost of living and to ensure that workers can afford the homes they are building. Workers paid a living wage will help to keep residents off government subsidies and create a healthy economy for all residents on Kaua‘i.
>
> Skilled workforce. PRP is a proud supporter of a skilled workforce, including but not limited to, the state-approved apprenticeship program that provides high school graduates and job seekers with an opportunity to learn specialized skills in the construction industry. After completing training in an apprenticeship program, apprentices can earn good middle-class wages and pursue other career options in the future, such as becoming an apprentice supervisor, contractor, or business owner. PRP members go through this training.
>
> Affordable housing. PRP has advocated for affordable housing policies that would reduce the cost of housing by creating state and county incentives to reduce the construction costs for building homes for Hawaii's residents.

[Dkt No. 90, FOF ¶ 5; ROA at 000368-369, 562.]

11. Additionally, PRP and its members – as important members of the local development sector – have an interest in development and land use projects that comprehensively account for the local economy and environment by meeting the statutory environmental, economic, and cultural requirements. [Dkt No. 90, FOF ¶ 6; ROA at 000370-71.]

12. PRP viewed the Agenda Packet when it was published publicly on May 4, 2022 and observed, for the first time, that there were significant deficiencies in the Application, which were explicitly relied on and adopted by the Director's Report, thereby necessitating PRP's intervention. [Dkt No. 90, FOF ¶ 11.]

13. In particular, HPM asserted in its Application that it was proposing to construct an industrial manufacturing facility that will be used to manufacture wooden trusses and wall panels for residential housing construction. [Dkt No. 90, FOF ¶ 12; ROA at 000015-16.]

14. HPM indicated it would import lumber materials for the wooden trusses and wall panels from the Pacific Northwest. [*Id*.]

15. HPM stated that it anticipated an initial production level of 10-15 truss and/or wall panel "packages" per month for the first 1-2 years. One "package" is equivalent to one single-family residential home. [Dkt No. 90, FOF ¶ 13; ROA at 000016.]

16. Throughout its Application, HPM asserted that its industrial manufacturing facility would create jobs and promote affordable housing ("HPM anticipates that the Facility will help bring home construction prices down" and "will also create between 20 - 23 new jobs in the Koloa district") and, thus, HPM should be granted a Use Permit. [Dkt No. 90, FOF ¶ 14.]

17. HPM acknowledged that its proposed industrial manufacturing factory was not specifically a permitted use on agricultural land but argued it should nevertheless be issued a Special Permit because the industrial manufacturing factory was not contrary to the objectives of Hawai‘i Revised Statutes ("HRS") Chapter 205 and 205A. [Dkt No. 90, FOF ¶ 15.]

18. Upon reviewing the May 4, 2022 Agency Packet, PRP further realized that HPM's unsupported allegations were explicitly relied on and adopted in the Director's Report, which recommended approval of HPM's requested permits. [Dkt No. 90, FOF ¶ 16; ROA at 000374-75.]

19. Intervention was therefore necessary to support the interests of PRP and its members in retaining jobs and living wages for Kaua‘i residents and ensuring that development projects involve responsible planning, environmental use, industry integrity, and beneficial industry relations. [Dkt No. 90, FOF ¶ 17.]

20. Accordingly, on May 6, 2022, PRP filed its Petition to Intervene ("Petition"). [Dkt No. 90, FOF ¶ 18; ROA at 000364-86.]

21. PRP asserted that it should be permitted to intervene because HPM's requested industrial manufacturing plant to produce prefabricated materials for housing "packages" would not actually support the purpose of HRS Chapter 205 and 205A or the Kaua‘i General Plan. [Dkt No. 90, FOF ¶ 19; ROA at 000364-86.]

22. PRP asserted that, contrary to HPM's assertions in its Application, granting permits for HPM's requested industrial manufacturing plant would lead to a significant reduction in local jobs, as well as a potential reduction in payment of a living wage on Kaua‘i, would present a use of the land that is entirely out of character for the area, which the General

Plan deems as having an "historic 'old town' charm" with "vast cultural treasures," and was an inappropriate use of lands zoned for agriculture. [Dkt No. 90, FOF ¶ 20; ROA at 000364-86.]

23. The Petition established that PRP has a right to intervene in a contested case because PRP is "so directly and immediately affected by the proposed application that [its] interest in the Proceeding is clearly distinguishable from that of the general public." [Dkt No. 90, Conclusions of Law ("COL") ¶¶ 14-20; ROA at 000364-86.]

24. The Petition detailed numerous issues with the Application that required intervention and a contested case or, at a minimum, "further study," including, but not limited to,

- The proposed development does not comply with the requirements for a Special Permit, as it is inconsistent with Hawai'i Revised Statutes ("HRS") Chapters 205 and 205A and the rules of the Land Use Commission. An industrial manufacturing plant intended to build factory-built housing has no agricultural connection and is not compatible with the existing land use and designation as agricultural. In addition, there is a whole host of issues, including economic, cultural, and environmental issues, that must be studied in order to determine whether the "desired use would not adversely affect surrounding property[.]" Accordingly, a boundary amendment is likely required here, as opposed to a Special Permit.

- The proposed development does not comply with the requirements for a Use Permit, as it does not adequately address environmental issues, such as the disturbance of impacted soil. The project is also contrary to the Kaua'i County General Plan, and closer study is necessary to assess the soundness of HPM's sweeping assertions, including but not limited to: (1) that the facility "will result in lowering the cost of housing construction by decreasing import costs associated with housing construction and reducing the time and expense of construction at the home site"; (2) that "HPM's practice of providing competitive wages based upon each island's cost of living and its employee stock ownership plan directly addresses concerns related to stagnant wages and upward economic opportunities"; (3) that the facility will "provid[e] economic opportunities that are not reliant on tourism and will instead be a part of Kauai's small manufacturing economy and a viable diversified agricultural industry"; and (4) that "[b]y manufacturing prefabricated housing materials on Kaua'i, the Facility will directly and significantly contribute to decreasing the carbon footprint associated with housing construction."

- Additional issues relating to the impacts of the proposed development have not been fully studied or addressed, including but not limited to: (1) the presence of Nene on the property, which is endemic to Hawai‘i, as well as the presence of the White-tailed Tropicbird and the Pacific Golden-Plover, which are indigenous to Hawai‘i, which may trigger additional requirements under the Endangered Species Act; (2) the on-site wastewater treatment and disposal system may constitute a trigger under HRS Chapter 343; (3) stormwater runoff from construction activities may require an NPDES permit; and (4) the project may impact the area surrounding the Old Sugar Mill of Koloa, a National Historic Landmark, and the Koloa Heritage Trail, which has been recognized by the National Park Service.

[Dkt No. 90, FOF ¶ 21; ROA at 000365-6.]

25. The Petition also asserted, among other things, that PRP had good cause to file the Petition four days before the scheduled public hearing because the Agency Packet, including the Application and Director's Report was not made publicly and easily accessible until May 4, 2022 – just six days before the public hearing scheduled for May 10, 2022. [Dkt No. 90, FOF ¶ 22; ROA at 000374-75.]

26. The Petition, citing *Chen v. Mah*, 146 Hawai‘i 157, 457 P.3d 796 (2020), also asserted that good cause existed for the purportedly late filing because there was no deliberate delay or contumacious conduct on the part of PRP, and no harm or prejudice to HPM. [Dkt No. 90, FOF ¶ 23; ROA at 000374-75.]

27. PRP argued that the notice provided by the Commission did not comply with HRS Chapters 91 and 92 or with constitutional rights of due process. [Dkt No. 90, FOF ¶ 24; ROA at 000374-75.]

28. HPM filed an opposition to PRP's Petition on May 9, 2022. [Dkt No. 90, FOF ¶ 25; ROA at 000404-435.]

29. On May 10, 2022, the Commission held a public hearing on HPM's Application. [Dkt No. 90, FOF ¶ 26; ROA at 000559-566.]

30. During the public hearing on HPM's Application on May 10, 2022, PRP provided oral and written testimony which was made separately from the Petition. [Dkt No. 90, FOF ¶ 26; ROA at 000562-63.]

31. However, the Commission lacked quorum on May 10, 2022 to hold an agency hearing to act on HPM's Application, so the agency hearing was postponed until May 24, 2022. [Dkt No. 90, FOF ¶¶ 28-30; ROA at 000569.]

The Commission's Denial of PRP's Petition to Intervene

32. On May 11, 2022, the Commission issued its written decision ("May 11 Decision"), stating that PRP's Petition was

> not placed on the Planning Commission agenda due to its untimeliness. As referenced in Chapter 4 of the Rules of Practice and Procedure of the Kauai County Planning Commission, Section 1-4-3, entitled "Method of Filing: Timing, "the petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown. However, please note that the document was received by the Commissioners as public testimony.

[ROA at 000590.]

33. The May 11 Decision did not address PRP's good cause arguments, nor did it address the fact that the agency hearing had been postponed to May 24, 2022, mitigating any potential harm and/or prejudice to HPM. [Dkt No. 90, FOF ¶ 33; ROA at 000590.]

34. The May 11 Decision also did not address why PRP's Petition was deemed untimely despite the deferment of the agency hearing. [Dkt No. 90, FOF ¶ 34.]

35. Upon issuing the May 11 Decision, the Commission returned all thirteen (13) copies of the Petition that had been mailed to the Commission, along with PRP's $25.00 check for the filing fee. [Dkt No. 90, FOF ¶ 35.]

36. On May 17, 2022, the Commission issued the agenda for the May 24, 2022 Commission meeting, which included HPM's Application. [Dkt No. 90, FOF ¶ 34; ROA at 000605-07.]

37. The Agenda for the May 24, 2022 Commission Meeting did **not** include PRP's Petition as an Agenda item. [Dkt No. 90, FOF ¶ 37.]

38. On May 24, 2022, the Commission, once again, lacked quorum to hold an agency hearing to act on HPM's Application, and the Application was again deferred to June 14, 2022. [Dkt No. 90, FOF ¶ 38; ROA at 000678-79.]

PRP's Notice of Appeal From the May 11 Decision

39. On June 9, 2022, PRP timely filed the Notice of Appeal from the May 11 Decision ("Notice of Appeal"). HRS § 91-14 (requiring an appeal be filed within 30 days of the preliminary ruling or service of the certified copy of the final decision and order of the agency). [Dkt No. 90, FOF ¶ 41.]

40. In the Notice of Appeal, PRP raised, *inter alia*, that the Commission erred in denying PRP's Petition and did not appropriately address PRP's good cause argument, despite the requirement within Commission Rule 1-4-3 that it do so. [Dkt No. 1 *passim,* Dkt No. 90, FOF ¶ 42.]

41. The Commission was served with a copy of the Notice of Appeal via email and US Mail on Thursday, June 9, 2022. [Dkt No. 90, FOF ¶ 43; ROA at 000711-747.]

42. Upon the filing of the Notice of Appeal, the Commission was divested of jurisdiction. [Dkt No. 90, COL ¶ 42 (citing *McPherson v. Zoning Bd. of Appeals*, 67 Haw. 603, 607, 699 P.2d 26, 29 (1985) (recognizing that an administrative agency loses jurisdiction after the filing of an appeal) and *Kaheawa Wind Power, LLC v. Cnty. of Maui*, 135 Hawai‘i 202, 206 n.3, 347 P.3d 632, 636 n.3 (App. 2014) (noting that the First Amended Final Judgment was a nullity "because it was entered after the notices of appeal were filed and without any jurisdictional basis") ("Generally, the filing of a notice of appeal divests the trial court of jurisdiction over the appealed case.")).]

The June 14, 2022 Agency Hearing and PRP's Second Notice of Appeal

43. After receiving the Notice of Appeal, on June 13, 2022, the afternoon before the public hearing on the Application, the Commission published a revised agenda on its website ("Revised Agenda"), including explicitly – for the first time – PRP's Petition as a line item for the hearing on HPM's Application. [Dkt No. 90, FOF ¶ 44.]

44. The Commission did not provide PRP actual notice of the Revised Agenda. [Dkt No. 90, FOF ¶ 45.]

45. During the June 14, 2022 Commission Meeting, PRP was only given five (5) minutes to argue its Petition, with two (2) additional minutes to respond to questions from the Commission. [Dkt No. 90, FOF ¶ 46.]

46. After some apparent confusion among the Commissioners and concerns regarding the timeframe for automatic approval for the permits, the Commission again orally denied PRP's Petition, reasoning that PRP did not have a good reason for its "late" filing of the Petition. [Dkt No. 90, FOF ¶ 47; ROA at 000999-0001005.]

47. The Commission did not address that HPM had not suffered any prejudice due to PRP's filing of the Petition three days after the deadline but more than five weeks before the agency hearing on HPM's Application. [Dkt No. 90, FOF ¶ 48; ROA at 001001-05.]

48. The Commission further failed to consider whether PRP's Petition was, in fact, timely filed given that the agency hearing on HPM's Application was twice deferred for lack of quorum. [Dkt No. 90, FOF ¶ 49; ROA at 001001-05.]

49. After orally denying PRP's Petition, the Commission granted HPM's Application, thereby approving the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8), with a few minimal conditions. [Dkt No. 90, FOF ¶ 50; ROA at 001040-43.]

50. On June 24, 2022, the Commission issued its written order denying PRP's Petition ("Order") providing, in relevant part:

> In accordance with Kaua'i County Comprehensive Zoning Ordinance § 8-3.1(f)(4), on April 8, 2022, Notice of the proposed public hearing for this Application was published in a newspaper of general circulation in the County. Petitioner's petition for intervention and motion for postpone hearing was filed on May 9, 2022 [sic].[1] On May 10, 2022, the public hearing on this matter was commenced, public testimony was accepted therein, and the hearing was continued to June 14, 2022 due to a lack of sufficient quorum for the Commission to take action. Petitioner's filing is therefore untimely for failure to file no later than May 3, 2022, seven days prior to the commencement of the agency hearing for which notice has been published pursuant to law, as set forth by Commission Rule 1-4-3.
>
> Within its written filing, and during counsel's oral argument, Petitioner failed to demonstrate good cause for untimeliness, as is required by Commission Rule 1-4-3 and under the common law regarding this issue. Petitioner has failed to show a substantial reason amounting in law to a legal excuse for failing to perform an act required by law, i.e., the timely filing of a Petition to Intervene in a matter pending before the Commission.

[1] The Order is incorrect. PRP's Petition was filed on May 6, 2022. [ROA at 000364-86; FOF ¶ 18.]

[Dkt No. 17, Ex. E.]

51. PRP filed a second Notice of Appeal preserving its rights on July 14, 2022, in Case No. 5CVV- 22-0000060 ("Second Notice of Appeal").

HPM's Two Motions to Dismiss and the Commission's Substantive Joinders

52. On June 29, 2022, HPM filed a Motion to Dismiss Appellant's Notice of Appeal to Circuit Court Filed on June 9, 2022 in Case No. 5CCV-22-0000049 ("First Motion"), arguing that this Court lacked subject matter jurisdiction pursuant to HRS § 91–14 over the Notice of Appeal. [Dkt No. 90, FOF ¶ 54.]

53. The Commission filed a Substantive Joinder to the First Motion on June 29, 2022. [Dkt No. 19.]

54. On July 14, 2022, HPM filed a second Motion to Dismiss Appellant's Notice of Appeal to Circuit Court filed, filed August 3, 2022 in Case No. 5CCV-22-0000060 ("Second Motion"), arguing that this Court lacked subject matter jurisdiction pursuant to HRS § 91–14 over the Second Notice of Appeal. [Dkt No. 90, FOF ¶ 55.]

55. The Commission filed a Substantive Joinder to the Second Motion on August 4, 2022. [Dkt No. 33 in Case No. 5CCV-22-0000060.]

56. On September 28, 2022, the two cases, Case No. 5CCV-22-0000049 and Case No. 5CCV-22-0000060, were consolidated under Case No. 5CCV-22-0000049.

The Court's Denial of the First and Second Motions and the Substantive Joinders

57. On October 31, 2022, the Court issued its Findings of Fact Findings Of Fact, Conclusions Of Law And Order Denying (1) Appellee HPM Building Supply's Motion To Dismiss Appellant's Notice Of Appeal To Circuit Court Filed On June 9, 2022, Filed June 29, 2022 In Case No. 5CCV-22-0000049, (2) Appellee County Of Kaua'i Planning Commission's

Substantive Joinder To Appellee HPM Building Supply's Motion To Dismiss Appellant's Notice Of Appeal To Circuit Court Filed On June []9, 2022, Filed June 29, 2022 In Case No. 5CCV-22-0000049, (3) Appellee HPM Building Supply's Motion To Dismiss Appellant's Notice Of Appeal To Circuit Court Filed On July 14, 2022, Filed August 3, 2022 In Case No. 5CCV-22-0000060, and (4) Appellee County Of Kaua'i Planning Commission's Substantive Joinder To Appellee HPM Building Supply's Motion To Dismiss Appellant's Notice Of Appeal To Circuit Court Filed On August 3, 2022, Filed August 4, 2022 In Case No. 5CCV-22-0000060 ("FOF/COL"). [Dkt No. 90.]

58. The Court's FOF/COL are incorporated herein.

59. The Court held that it had jurisdiction over PRP's Notice of Appeal and Second Notice of Appeal. [*See* Dkt No. 90.]

60. In particular, the Court held that PRP met the requirements of HRS § 91-14:

> first, the proceeding that resulted in the unfavorable agency action must have been a "contested case" hearing—*i.e.,* a hearing that was [(]1) "required by law" and [(]2) determined the "rights, duties, and privileges of specific parties"; second, the agency's action must represent "a final decision and order," or "a preliminary ruling" such that deferral of review would deprive the claimant of adequate relief; third, the claimant must have followed the applicable agency rules and, therefore, have been involved "in" the contested case; and finally, the claimant's legal interests must have been injured—*i.e.,* the claimant must have standing to appeal.

[Dkt No. 90 (citing *Public Access Shoreline Hawai'i v. Hawai'i County Planning Commission* (hereinafter, "*PASH*"), 79 Hawai'i 425, 431, 903 P.2d 1246, 1252 (1995)).]

61. The Court made the following findings and conclusions relevant here.

The Court Concluded that PRP Has Standing to Intervene Pursuant to Commission Rule 1-4-1

62. Commission Rule 1-4-1 provides that:

> All Persons who have hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, **shall** be admitted as Parties-Intervenors upon timely written application for intervention. In no such case shall intervention be allowed for appeals of actions from the Director pursuant to Chapter 9 of these Rules.

(Emphases added.) [COL ¶ 10.]

63. The Court held that "[i]n its Petition, PRP established that it had both organizational and associational standing to intervene inasmuch as its interests, as well as the interests of its members, would be directly and immediately impacted by HPM's Application." [Dkt No. 90, COL ¶ 14.]

64. Specifically, the Court concluded that "PRP has organizational standing under the traditional injury-in-fact test, as the goal of the Application – to obtain permits to develop housing packages – directly undercuts PRP's asserted advocacy efforts and will necessarily force PRP to expend and/or reallocate significant resources related to job creation, a skilled workforce, and living wages for its members." [Dkt No. 90, COL ¶ 15 (citing *Sierra Club v. Dep't of Transp*., 115 Hawai'i 299, 319, 167 P.3d 292, 312 (2007) as corrected (Oct. 10, 2007)).]

65. The Court further concluded that "PRP also has associational standing because its members – union carpenters and contractors – would have standing on their own regarding such issues as job loss and living wages; PRP seeks to protect job creation and living

wages as part of its mission; and the participation of individual members is not necessary." [Dkt No. 90, COL ¶ 16 (citing *Sierra Club*, 115 Hawai‘i at 334, 167 P.3d at 312).]

66. The Court also concluded that PRP has "a direct and significant interest in ensuring that the proposed industrial manufacturing plant supports local jobs and provides living wages, and also meets the statutory environmental, economic, and cultural requirements," [Dkt No. 90, COL ¶ 17], and also "an interest in development and land use projects that comprehensively account for the local economy and environment by including community members in the application process," [*id*., COL ¶ 18].

67. Accordingly, "PRP's interest is distinguishable from that of [the] general public in that PRP represents union carpenters on Kaua‘i who may lose jobs as a result of HPM's proposal and may not be paid living wages based on the indusrial manufacturing plant." [Dkt No. 90, COL ¶ 19.]

68. The Court therefore concluded: "Inasmuch as PRP established a right clearly distinguishable from the general public, Commission Rule 1-4-1 **mandates** ('shall be admitted') that PRP be admitted as a party-intervenor 'upon timely written application for intervention.'" [Dkt No. 90, COL ¶ 20 (emphasis added).]

The Court Also Concluded That PRP Has a Constitutional Right to Intervene

69. The Court held that, as "article XI, section 9 of the Hawai‘i Constitution additionally provides, in relevant part, that '[e]ach person has the right to a clean and healthful environment, as defined by laws relating to environmental quality,'" [Dkt No. 90, COL ¶ 27], "[a] contested case was . . . required to protect PRP's right to a clean and healthful environment," [*id*., COL ¶ 32].

70. Specifically, the Court held that "PRP asserted in its Petition that HPM's proposed development does not comply with the requirements for a Special Permit, as the manufacturing factory is inconsistent with the letter and policy of HRS Chapters 205 and 205A." [Dkt No. 90, COL ¶ 28.]

71. Accordingly, the Court held that "PRP's right to a clean and healthful environment, as defined by laws relating to environmental quality such as HRS Chapter 205 and 205A, is a property interest protected by due process, as it is a substantive right guaranteed by the Hawai'i Constitution." [Dkt No. 90, COL ¶ 31 (citing *Matter of Hawai'i Elec. Light Co., Inc*., 145 Hawai'i 1, 16, 445 P.3d 673, 688 (2019)).]

72. The Court concluded: "A contested case was therefore required to protect PRP's right to a clean and healthful environment." [Dkt No. 90, COL ¶ 32 (citing *Matter of Hawai'i Elec. Light Co., Inc*., 145 Hawai'i at 17, 445 P.3d at 689; *Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Plan. Comm'n*, 148 Hawai'i 275, 472 P.3d 42 (App. 2020)).]

The May 11 Decision Was a Final Decision and the Commission Was Divested of Jurisdiction

73. With respect to the second requirement set forth in *PASH*, the Court held that "the [May 11] Decision was a final decision denying PRP's Petition pursuant to HRS § 91-14." [Dkt No. 90, COL ¶ 50.]

74. Accordingly, "the filing of the Notice of Appeal by PRP on June 9, 2022 divested the Commission of jurisdiction." [*Id*., COL ¶ 58 (citing *McPherson v. Zoning Bd. of Appeals*, 67 Haw. 603, 607, 699 P.2d 26, 29 (1985) and comparing *Kaheawa Wind Power, LLC v. Cnty. of Maui*, 135 Hawai'i 202, 206 n.3, 347 P.3d 632, 636 n.3 (App. 2014)).]

PRP's Petition Complied With the Commission Rules

75. With respect to the third requirement set forth in *PASH*, the Court held that "PRP complied with the applicable agency rules in submitting its Petition." [Dkt No. 90, COL ¶ 68.]

PRP Suffered Injury-In-Fact

76. With respect to the fourth requirement set forth in *PASH*, the Court held that "PRP suffered an injury in fact and was adversely affected by the [May 11] Decision for purposes of HRS § 91-14." [Dkt No. 90, COL ¶ 82.]

77. Specifically, the Court held that "[t]he goal of HPM's Application – to develop an industrial manufacturing facility to produce prefabricated wooden trusses and wall panels – 'directly undercuts PRP's advocacy efforts and will necessarily force PRP to expend and/or reallocate significant resources related to job creation, a skilled workforce, and living wages for its members.'" [Dkt No. 90, COL ¶ 79.]

78. The Court concluded: "The injury to PRP is therefore directly traceable to the denial of its Petition, and favorable judicial action pursuant to this appeal will likely remedy PRP's injury." [*Id*., COL ¶ 80.]

79. The Court further concluded that, as "PRP has hundreds of members residing on Kauaʻi and PRP alleges an injury in fact to the property and environmental interests of its members based on HPM's improper use of land zoned agriculture under HRS Chapter 205," [Dkt No. 90, COL ¶ 81], "PRP suffered an injury in fact and was adversely affected by the [May 11] Decision for purposes of HRS § 91-14," [*id*. ¶ 82].

The Briefing

80. PRP filed its Opening Brief on November 14, 2022, asserting the following questions presented as to the Commission's denial of PRP's Petition and the grant of HPM's application and requested permits:

> (1) whether the Commission's [May 11] Decision, denying PRP's Petition was made upon unlawful procedure, was affected by other error or law, or was in violation of constitutional or statutory provisions; and
>
> (2) whether the Commission's [May 11] [D]ecision granting HPM's Application and awarding HPM the subject permits, without granting PRP's request for a contested case hearing, was made upon unlawful procedure, was affected by other error or law or was in violation of constitutional or statutory provisions.

[Dkt No. 92 at 14.]

81. HPM filed its Answering Brief on December 21, 2022 (Dkt No. 94) and the Commission filed its Answering Brief on December 22, 2022 (Dkt No. 96).

82. PRP filed its Reply Brief regarding HPM's Answering Brief on January 4, 2023 (Dkt No. 98) and the Commission's Answering Brief on January 5, 2023 (Dkt No. 100).

83. Oral argument was heard before the Honorable Kathleen N.A. Watanabe on March 28, 2023 at 1:30 p.m.

CONCLUSIONS OF LAW

Based upon the preceding Findings of Fact, the Court concludes as follows:

1. In evaluating this matter, the Court recognizes and is guided by the legislative intent set forth in HRS § 92-1:

> In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public

> policy--the discussions, deliberations, decisions, and action of governmental agencies--shall be conducted as openly as possible. To implement this policy the legislature declares that:
>
> (1) It is the intent of this part to protect the people's right to know;
>
> (2) The provisions requiring open meetings shall be liberally construed; and
>
> (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

2. Commission Rule 1-1-1 similarly provides the "Purpose" of the Commission's Rules of Practice and Procedures:

> The intent and purpose of the Rules of Practice and Procedures of the Kaua'i County Planning Commission is to provide a systematic and democratic method of conducting meetings and hearings in order to insure that all persons and parties will have an opportunity to participate in an open and orderly manner.

3. This Court reviews an agency decision under the standards of review set forth in HRS § 91–14, which provides:

> Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:
>
> (1) In violation of constitutional or statutory provisions; or
>
> (2) In excess of the statutory authority or jurisdiction of the agency; or
>
> (3) Made upon unlawful procedure; or
>
> (4) Affected by other error of law; or
>
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
>
> (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HRS § 91–14(g).

4. Under HRS § 91-14(g), conclusions of law are reviewed *de novo*, pursuant to subsections (1), (2) and (4); questions regarding procedural defects are reviewable under subsection (3); findings of fact are reviewable under the clearly erroneous standard, pursuant to subsection (5); and an agency's exercise of discretion is reviewed under the arbitrary and capricious standard, pursuant to subsection (6). *Save Diamond Head Waters LLC v. Hans Hedemann Surf, Inc*., 121 Hawai'i 16, 24, 211 P.3d 74, 82 (2009); *see also Paul's Elec. Serv., Inc. v. Befitel*, 104 Hawai'i 412, 420, 91 P.3d 494, 502 (2004), *as corrected* (July 14, 2004).

5. Mixed questions of law and fact are "'reviewed under the clearly erroneous standard because the conclusion is dependent upon the facts and circumstances of the particular case.'" *Save Diamond Head Waters LLC*, 121 Hawai'i at 25, 211 P.3d at 83 (citation omitted).

The Commission's Denial of PRP's Petition as Untimely Under Commission Rule 1-4-3 Was Based Upon Unlawful Procedure, Was Affected by Other Error or Law, and Was in Violation of Constitutional and/or Statutory Provisions

The Commission's Denial of PRP's Petition as Untimely Is Reviewed *De Novo*

6. The Commission's sole reason for the denial of PRP's Petition in the May 11 Decision was that it was untimely. [ROA at 000590.]

7. The Commission's denial of PRP's Petition was based solely on its interpretation of the relevant regulations and statutes.

8. The Hawai'i Supreme Court has held that "whether or not an agency has followed proper procedures or considered the appropriate factors in making its determination is a question of law, and will be reviewed *de novo*." *Sierra Club v. Dep't of Transp.*, 115 Hawai'i 299, 315, 167 P.3d 292, 308 (2007), *as corrected* (Oct. 10, 2007).

9. Further, the "court does not defer to agency interpretations that are 'plainly erroneous or inconsistent with the underlying legislative purpose.'" *Kaleikini v. Yoshioka*, 128 Hawai'i 53, 67, 283 P.3d 60, 74 (2012).

10. The issue before the Court is whether the Commission correctly applied the law and followed proper procedures in denying PRP's Petition as untimely.

11. The Commission did not find any facts in denying PRP's Petition as untimely.

12. The facts related to the timing of PRP's Petition are undisputed and set forth in the record on appeal.

13. Accordingly, the Commission's denial of PRP's Petition as untimely is a matter of law and is subject to *de novo* review pursuant to HRS § 91-14(g). *Sierra Club*, 115 Hawai'i at 315, 167 P.3d at 308.

The Commission Erred When It Denied PRP's Petition As Untimely

14. Commission Rule 1-4-3 provides the following regarding the timing for submission of petitions to intervene:

> Methods of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

15. The plain language of Commission Rule 1-4-3 makes clear that a petition for intervention shall be filed "seven (7) days before the Agency Hearing for which notice to the public has been published pursuant to law." (Emphasis added.)

16. "'Agency Hearing' refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS,

including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua‘i and other applicable laws." Commission Rule 1-1-2(1)(i).

17. The Agency Hearing on HPM's Use Permit was held on June 14, 2022. [ROA at 000977.]

18. Seven days before June 14, 2022 was June 7, 2022.

19. Thus, PRP's Petition filed on May 6, 2022 was filed more than seven days before the Agency Hearing on June 14, 2022.

20. HPM and the Commission argue that the deadline to submit a petition for intervention was set for seven days before May 10, 2022, the date first set for the Agency Hearing, even though no Agency Hearing on HPM's Application and Use Permit actually occurred on that day and, in fact, was ultimately continued until June 14, 2022. [Dkt No. 94 at 16-17; Dkt No. 96 at 6-7.]

21. HPM and the Commission rely on Comprehensive Zoning Ordinance ("CZO") § 8-3.1(f)(4) and Commission Rule 1-13-5(a), which they argue require a different interpretation of the deadline set for submission of petitions to intervene Commission Rule 1-4-3 other than the plain language. [Dkt No. 94 at 16; Dkt No. 96 at 6-7.]

22. CZO § 8-3.1(f)(4) and Commission Rule 1-13-5(a), respectively, require that notice be provided in a newspaper at least twenty days prior to a public and agency hearing.

23. Nothing in CZO § 8-3.1(f)(4) or Commission Rule 1-13-5(a) dictates a date for the filing of a petition to intervene or change the plain language of Rule 1-4-3 stating that a petition to intervene should be submitted seven days prior to the Agency Hearing.

24. Nevertheless, HPM and the Commission argue that PRP and the public should have known that, based on CZO § 8-3.1(f)(4) and Commission Rule 1-13-5(a), the deadline to file a petition to intervene was strictly set for May 3, 2022, no matter when the Agency Hearing was actually held. [Dkt No. 94 at 16; Dkt No. 96 at 6-7.]

25. The interpretation of Commission Rule 1-4-3 urged by HPM and the Commission is absurd. *Coon v. City & Cnty. of Honolulu*, 98 Hawai'i 233, 245, 47 P.3d 348, 360 (2002) (noting that the court should not hesitate "to reject an incorrect or unreasonable statutory construction advanced by the agency").

26. Commission Rule 1-4-3 does **not** state that the petition "shall be filed with the Commission at least seven (7) days prior to the [date of the original] Agency Hearing for which notice to the public has been published pursuant to [Commission Rule 1-13-5(a)]," which is what HPM and the Commission would like it to say.

27. By way of example, in contrast to Commission Rule 1-4-3, the corresponding Maui Planning Commission Rule states:

> § 12-201-40 Petition filing. (a) Petitions to intervene shall be inconformity with section 12-201-20 herein and shall be filed with the commission and served upon the applicant no less than ten days before the **first public hearing date**. Untimely petitions will not be permitted except for good cause, but in no event will intervention be permitted after the commission has taken the final vote on the matter before it.

(Emphases added.)

28. The Commission could have used its rule making authority to enact a rule that requires submission of a petition to intervene prior to the first public hearing or the date originally noticed for the Agency Hearing, but, it did not.

29. Instead, the plain language of Commission Rule 1-4-3 ties the deadline to submit the petition to intervene to the date of the Agency Hearing.

30. Thus, the Commission erred in interpreting Commission Rule 1-4-3 to require a petition to intervene to be filed by May 3, 2022, seven days before the public hearing, when the Agency Hearing was not actually held until June 14, 2022.

31. This plain language interpretation is also consistent with Commission Rule 1-1-1 (and HRS § 92-1) in that it balances systematic and orderly hearings with the opportunity to participate.

32. PRP's Petition, submitted on May 6, 2022, was timely filed pursuant to Commission Rule 1-4-3, because it was submitted 39 days before the Agency Hearing.

33. Thus, the Commission erred in denying PRP's Petition as untimely.

The Commission Erred When It Denied PRP's Petition Without Consideration of PRP's Good Cause Argument

34. Pursuant to Commission Rule 1-4-3, cited above, peitions to intervene are permitted to be filed in an untimely manner if there is "good cause" for the late filing.

35. The May 11 Decision recognized that good cause is a basis to allow petitions that are filed in an "untimely" manner.

36. PRP set forth in its Petition "good cause" for its purportedly late filing. [Dkt No. 90, FOF ¶ 22; *see also id*., COL ¶ 22.]

37. However, nowhere in the May 11 Decision did the Commission address PRP's good cause arguments. [Dkt No. 90, FOF ¶ 33.]

38. Nor did the May 11 Decision address the fact that the agency hearing was ultimately rescheduled until June 14, 2022, rendering the Petition timely filed and/or mitigating any potential harm and prejudice to HPM. [*See id*.; Dkt No. 90, FOF ¶ 33.]

39. Thus, the Commission additionally erred in denying PRP's Petition as untimely without consideration of PRP's good cause arguments set forth in its Petition as plainly required by Commission Rule 1-4-3.

40. The Commission's denial of PRP's Petition is vacated and reversed. *See* HRS § 91-14(g) ("Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced[.]").

41. HPM and the Commission argue that the Commission's actions and interpretation of the subject regulations must be afforded "deference." [Dkt No. 94 at 17-20; Dkt No. 96 at 3-4.]

42. However, the case law is clear that courts "do not apply 'deference' per se, but may choose a more or less deferential standard of review." *Sierra Club*, 115 Hawai'i at 317, 167 P.3d at 310. In this regard, when case law speaks of deference, it is usually in regard to the fact that the "abuse of discretion" standard is more deferential, for example, than the "de novo " standard. *Id*. at 317 n.25, 167 P.3d at 310 n.25.

43. Inasmuch as the Commission erroneously denied PRP's Petition as untimely the Commission's (1) Denial of PRP's Petition; and (2) Grant of HPM's Application for the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8), must be vacated and, as set forth below, the case remanded to the Commission so that PRP may intervene as a party in a contested case hearing regarding HPM's Application for the

Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8).[2]

PRP's Notice of Appeal Divested the Commission of Jurisdition

44. The May 11, 2022 Decision was a final appealable decision by the Commission. [*See also* Dkt No. 90, COL ¶¶ 58-59.]

45. On June 9, 2022, PRP timely filed the Notice of Appeal from the May 11 Decision. HRS § 91-14 (requiring an appeal be filed within 30 days of the preliminary ruling or service of the certified copy of the final decision and order of the agency). [Dkt No. 90, FOF ¶ 41.]

46. PRP's Notice of Appeal set forth the errors made by the Commission. [Dkt No. 1 *passim*; Dkt No. 90, FOF ¶ 42.]

47. Upon the filing of the Notice of Appeal, the Commission was divested of jurisdiction. [Dkt No. 90, COL ¶ 42.]

48. The Commission was served with a copy of the Notice of Appeal via email and US Mail on Thursday, June 9, 2022. [Dkt No. 90, FOF ¶ 43; ROA at 000711-747.]

49. Thereafter, although it lacked jurisdiction to do so, the Commission added PRP's Petition to the Agenda for the June 14, 2022 Commission Meeting – the afternoon before the public hearing on the Application – in an apparent attempt to correct its earlier mistakes as

[2] HPM's Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-12) were previously vacated in a separate agency appeal before the Court, *The Community Association of Poipu Aina Estates v. County of Kaua'i Planning Commission, et al*., Case No. 5CCV-22-00000055. *See* Hawai'i Rule of Evidence 201 (permitting judicial notice of adjudicative facts). Nevertheless, the Court additionally holds here that the permits are vacated based on the facts presented in the instant matter.

set forth in the Notice of Appeal in denying PRP's Petition. [*See also* Dkt No. 90, FOF ¶ 44, COL ¶ 57 .]

50. The inclusion of PRP's Petition in the June 14, 2022 Commission Meeting was in violation of HRS § 92-7 (requiring notice of any rescheduled meeting six calendar days prior to the meeting). [*See also* Dkt No. 90, COL ¶ 53.]

51. The Commission did not provide PRP actual notice of the Revised Agenda. [S*ee also* Dkt No. 90, FOF ¶ 45.]

52. The failure of the Commission to provide adequate notice also violates HRS § 92-1. *See, e.g., Kanahele v. Maui Cnty. Council*, 130 Hawai'i 228, 252, 307 P.3d 1174, 1198 (2013), *as corrected* (Aug. 30, 2013) ("Thus while a continued meeting does not require a board to post a new agenda, nevertheless the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted 'as openly as possible' and in a manner that 'protect[s] the people's right to know.'") (citing HRS § 92-1).

53. Indeed, "[w]hen meetings are continued to a later date, people are discouraged from attempting to participate in the process of government decision making." *Id*. at 250, 307 P.3d at 1196 (quoting Stand. Comm. Rep. No. 889, in 1985 House Journal, at 562) (emphasis added in *Kanahele*); *see id*. at 250-51, 307 P.3d at 1196-97 ("The legislature's concern, then, with respect to the Sunshine Law has always been that the public should have a realistic, actual opportunity to participate in the board's processes rather than a theoretical 'right' to participate in name only.").

Even Assuming *Arguendo* That the Commission Had Jurisdiction, its Order HoldingThat PRP Lacked Good Cause for its Allegedly Untimely Filed Petition Was Clearly Erroneous or Affected by Error of Law

54. At the June 14, 2022 Agency Hearing, the Commission purpoted to orally deny, again, PRP's Petition, reasoning that PRP did not have a good reason for its "late" filing of the Petition.

55. The Commission issued its Order further stating that PRP lacked "good cause," reasoning that "[PRP] has failed to show a substantial reason amounting in law to a legal excuse for failing to perform an act required by law, i.e., the timely filing of a Petition to Intervene in a matter pending before the Commission." [Dkt No. 17, Ex. E.]

56. The term "good cause" means "a sufficient reason, depending upon the circumstances of the individual case." *Eckard Brandes, Inc. v. Dep't of Lab. & Indus. Rels.*, 146 Hawai'i 354, 363, 463 P.3d 1011, 1020 (2020), *as corrected* (Apr. 27, 2020) (citation omitted).

57. Further, the interpretation of "good cause" should advance "the policy of law [that] favors dispositions of litigation on the merits[.]" *Id*. at 364, 463 P.3d at 1021.

58. In addition, "good cause" "is a much lower standard under Hawai'i law." *Chen v. Mah*, 146 Hawai'i 157, 177, 457 P.3d 796, 816 (2020).

59. The Hawai'i Supreme Court held in *Chen* that whether "good cause" exists "will depend upon the circumstances of the individual case," and "good cause" exists "if there is no (1) deliberate delay and/or contumacious conduct; or (2) if deliberate delay or contumacious conduct exist, there is no actual prejudice that cannot be addressed through lesser sanctions." 146 Hawai'i at 180, 457 P.3d at 819.

60. The Commission looked only at whether PRP had a "substantial reason" for purportedly failing to "timely fil[e] . . . a Petition to Intervene." [Dkt No. 17, Exhibit E.]

61. The Commission failed to properly apply this jurisdiction's law related to good cause as set forth above.

62. This Court interprets the Commission's misapplication of the law *de novo* pursuant to HRS § 91-14(g). *Sierra Club*, 115 Hawai'i 299, 315, 167 P.3d 292, 308.

63. Here, PRP had a sufficient reason based upon the circumstances of this individual case for any purported "untimely filing."

64. Significantly, HPM's Application file, including the Director's Report, was not made publicly accessible until May 4, 2022 – just six days before the hearing.

65. Prior to reviewing HPM's Application and the Director's Report, PRP did not know the extent of the manufacturing facility, HPM's reliance on unsubstantiated claims of job creation and housing costs, the land use designations of the property, or the considerations and studies – or lack thereof – involved in the Application.

66. Moreover, there was no deliberate delay or contumacious conduct on the part of PRP and HPM suffered absolutely no prejudice for any purported "untimely filing."

67. Alternatively, there is, at a minimum, a good faith argument that PRP's Petition was timely filed where it was filed more than seven days before the agency hearing that occurred on June 14, 2022.

68. "[G]ood faith misinterpretation of a procedural rule may represent such excusable neglect" for the purposes of determining good cause for a purported late filing. *Lorenzen v. Employees Retirement Plan of Sperry and Hutchinson Co*., 896 F.2d 228, 232 (7th Cir. 1990).

69. PPR therefore had "a sufficient reason" based under the circumstances for a purportedly untimely filing.

70. Further, "the determination [of whether a party has shown 'excusable neglect'] is at bottom an equitable one, taking account of all relevant circumstances[.]" *Eckard*, 146 Hawai'i at 360, 463 P.3d at 1017.

71. The Commission erred in applying the law in this jurisdiction regarding good faith inasmuch as if failed to consider the equities of the situation, particularly as the law favors dispositions of litigation on the merits and HPM did not suffered any prejudice – and has not argued that it would – because it had notice of PRP's intent to intervene 38 days before the Agency Hearing was actually held.

72. Accordingly, good cause under the law existed for any purported untimely filing and the Petition should not have been denied.

73. Even if the Commission's May 11 Decision were to be reviewed under an abuse of discretion standard, the May 11 Decision was "arbitrary and capricious" as the Commission "exceeded the boundaries of [its] discretion" by misapplying the law related to the standard for "good cause." *Cmty. Associations of Hualalai, Inc. v. Leeward Plan. Comm'n*, 150 Hawai'i 241, 261-62, 500 P.3d 426, 446-47 (2021) (holding that the Planning Commission abused its discretion where the Planning Director "exceeded the boundaries of [his] discretion by precluding Hualalai from participating in a contested case proceeding" and that the Commission's "failure to grant or deny Hualalai's petition was arbitrary and capricious, and constituted an abuse of discretion").

The Commission's Approval of HPM's Application, Issuing HPM The Subject Permits, After Improperly Denying PRP's Petition, Was Made Upon Unlawful Procedure and Was Affected By Other Error Or Law

PRP Has a Constitutional, Statutory, and Regulatory Right to Intervene

74. PRP has (1) a constitutional and statutory right to intervene and (2) a right to intervene pursuant to the Commission's Rules.

75. At the outset, PRP has established that it has both organizational and associated standing to intervene inasmuch as its interests, as well as the interests of its members, would be directly and immediately impacted by HPM's Application and requested Permits. [*See also* Dkt No. 90, COL ¶¶ 14-19.]

76. As previously discussed above and incorporated herein, the Court determined that PRP had a statutory right to intervene inasmuch as "PRP suffered an injury in fact and was adversely affected by the [May 11] Decision for purposes of HRS § 91-14." [Dkt No. 90, COL ¶ 82.]

77. Moreover, as discussed above, PRP has a constitutional right to intervene. [*See, e.g.*, Dkt No. 90, COL ¶ 32.]

78. Specifically, with regard to PRP's constitutional rights, the Hawai'i Supreme Court has stated that "[c]onstitutional due process protections mandate a hearing whenever the claimant seeks to protect a 'property interest,' in other words, a benefit to which the claimant is legitimately entitled." *Pele Defense Fund v. Puna Geothermal Venture*, 77 Hawai'i 64, 68, 881 P.2d 1210, 1214 (1994).

79. Article XI, Section 9 of the Hawai'i State Constitution provides:

> Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Any person may enforce this right against any party, public or private, through

> appropriate legal proceedings, subject to reasonable limitations and regulation as provided by law.

80. The Hawai‘i Supreme Court has held that "HRS chapter 205 is a law relating to the conservation, protection and enhancement of natural resources, and thus falls within the scope the enforcement right established by article XI, section 9." *Cnty. of Hawaii v. Ala Loop Homeowners*, 123 Hawai‘i 391, 409, 235 P.3d 1103, 1121 (2010), *abrogated on other grounds by Tax Found. of Hawai‘i v. State*, 144 Hawai‘i 175, 439 P.3d 127 (2019); *see also In re Application of Maui Elec. Co., Ltd*., 141 Hawai‘i at 269, 408 P.3d at 21 (holding that petitioners have a right to intervene where they have established a "protected property interest in a clean and healthful environment"); *Protect & Pres. Kahoma Ahupua‘a Ass’n v. Maui Plan. Comm’n*, 149 Hawai‘i 304, 311, 489 P.3d 408, 415 (2021) ("*Protect & Pres. Kahoma Ahupua‘a Ass’n II*"), *as amended* (June 17, 2021), *reconsideration denied*, No. SCWC-15-0000478, 2021 WL 2828030 (Haw. July 7, 2021) (same).

81. Courts use a two-step analysis to determine whether there was a due process right to a contested case hearing: "(1) [whether] the particular interest which [the] claimant seeks to protect by a hearing [is] 'property' within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is 'property,' what specific procedures are required to protect it." *Protect & Pres. Kahoma Ahupua‘a Ass’n II*, 149 Hawai‘i at 312, 489 P.3d at 416.

82. "[W]here a source of state law—such as article XI, section 9—grants any party a substantive right to a benefit—such as a clean and healthful environment—that party gains a legitimate entitlement to that benefit as defined by state law, and a property interest protected by due process is created." *In re Application of Maui Elec. Co., Ltd.*, 141 Hawai‘i at 264, 408 P.3d at 16.

83. Thus, PRP's right to a clean and healthful environment, as defined by laws relating to environmental quality such as HRS Chapterrs 205 and 205A, is a property interest protected by due process, as it is a substantive right guaranteed by the Hawai‘i Constitution. [*See also* Dkt No. 90, COL ¶ 31.]

84. With respect to the second step, the Court in *Protect & Pres. Kahoma Ahupua‘a Ass'n II* turned to whether the appellant's "right to procedural due process was violated." 149 Hawai‘i at 313, 489 P.3d at 417.

85. In determining the procedures required to comply with constitutional due process, courts consider the following factors: "(1) the private interest which will be affected; (2) the risk of an erroneous deprivation of such interest through the procedures actually used, and the probable value, if any, of additional or alternative procedural safeguards; and (3) the governmental interest, including the burden that additional procedural safeguards would entail." *Id*.

86. In its analysis, the Court noted: "the private interest was PPKAA's constitutional right to a clean and healthful environment," (*id*.); the "risk of an erroneous deprivation of PPKAA's interest was high absent PPKAA's participation in the contested case hearing because the Project could have adverse and long-term environmental impacts to the SMA," (*id*. at 313-14, 489 P.3d at 417-18); "[a]s adjacent landowners to the Project, PPKAA's members would likely bear the brunt of adverse impacts to the SMA, and their knowledge of the area could have supplemented the findings of the environmental assessment," (*id*.); and it was not unduly burdensome to allow PPKAA to participate in the contested case hearing as "the Commission was already required to consider the CZMA in making its decision" on the SMA use permit, (*id*.).

87. Further, the Court specifically noted that PPKAA raised such concerns as "loss of scenic and open space resources, drainage and runoff impacts, and impacts on the tsunami evacuation zone," and that while PPKAA members testified at the public hearing and the hearing on its petition to intervene, "they were not able to submit evidence or cross-examine opposing witnesses, which the Commission's rules would have allowed them the opportunity to do had their petition been granted." *Id*.

88. Similarly, here, PRP asserted its members' constitutional right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution, as described above.

89. For instance, PRP's members have an interest in development and land use projects that support local jobs and provide living wages, and also meet the statutory environmental, economic, and cultural requirements [Dkt No. 90, COL ¶ 17]; PRP has an interest in development and land use projects that comprehensively account for the local economy and environment by including community members in the application process [*id*. at COL ¶ 18]; PRP is concerned that HPM's requested industrial manufacturing plant to produce prefabricated materials for housing "packages" would not actually support the purpose of HRS Chapter 205 and 205A or the Kaua‘i General Plan [*id*. at FOF ¶¶ 20, 23]; and PRP is concerned that, contrary to HPM's assertions in its Application, granting permits for HPM's requested industrial manufacturing plant would lead to a significant reduction in local jobs, as well as a potential reduction in payment of a living wage on Kaua‘i, present a use of the land that is entirely out of character for the area (which the General Plan deems as having an "historic 'old town' charm" with "vast cultural treasures") and be an inappropriate use of lands zoned for agriculture [*id*. at FOF ¶ 21].

90. PRP is also concerned that the proposed development does not comply with the requirements for a Use Permit, as it does not adequately address environmental issues, such as the disturbance of impacted soil [Dkt No. 90, FOF ¶ 23]; the presence of Nene and indigenous birds on the property may trigger requirements under the Endangered Species Act, [*id*.]; the on-site wastewater treatment and disposal system may trigger requirements under HRS Chapter 343, [*id*.]; stormwater runoff from construction activities may require an NPDES permit, [*id*.]; and the project may impact the area surrounding the Old Sugar Mill of Koloa, a National Historic Landmark, and the Koloa Heritage Trail, which is recognized by the National Park Service, [*id*.].

91. Thus, PRP asserted its and its members' constitutional right to a clean and healthful environment under article XI, section 9 of the Hawai‘i Constitution and was therefore denied due process when it was denied the opportunity to intervene. [*See also* Dkt No. 90, COL ¶¶ 31-32.]

PRP Has a Right To Intervene Pursuant to Commission Rule 1-4-1

92. As previously discussed above and incorporated herein, the Court held that inasmuch as PRP established organizational and associational standing, and a right distinguishable from the general public, Commission Rule 1-4-1 mandates ("shall be admitted") that PRP be admitted as a party-intervenor "upon timely written application for intervention." [*See* Dkt No. 90, COL ¶¶ 10-25.]

93. Commission Rule 1-4-1 therefore required that the Commission grant PRP's Petition and order a contested case. [*See id*.]

The Commission's Decision Granting HPM's Application and Awarding HPM The Subject Permits Must Be Reversed

94. Where procedural error by an administrative agency prejudices the substantial rights of a party, the trial court may, on review and in accordance with law, fashion a remedy appropriate to the prejudice caused. *See* HRS § 91-14(g); *Nakamine v. Board of Trustees of Employees' Retirement System*, 65 Haw. 251, 649 P.2d 1162 (1982).

95. HRS § 91-14(g) provides the following remedies: "Upon review of the record, the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced . . . ." *See Hualalai*, 150 Hawai'i at 259, 500 P.3d at 444 ("Under HRS § 91-14(g), upon reviewing the record, this court may 'remand the case with instructions for further proceedings . . . if the substantial rights of the petitioner[] may have been prejudiced because the administrative findings, conclusions, decisions, or orders are: . . . [m]ade upon unlawful procedure; . . . or [a]rbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.'") (citing HRS § 91-14(g)(3), (6)).

96. Under similar circumstances where an agency made errors during the permit approval process, Hawai'i courts have instructed on remand that the grant of a permit is invalid. *See, e.g., Mahuiki v. Plan. Comm'n*, 65 Haw. 506, 519, 654 P.2d 874, 883 (1982) ("As the Commission's approval of the application for an SMA use permit breached this command, the grant of the permit cannot stand."); *Protect & Pres. Kahoma Ahupua'a Ass'n v. Maui Plan. Comm'n*, 148 Hawai'i 275, 472 P.3d 42, at *12 (Ct. App. 2020) ("*Protect & Pres. Kahoma Ahupua'a Ass'n I*"), *aff'd*, 149 Hawai'i 304, 489 P.3d 408 (2021), *as amended* (June 17, 2021) ("On remand, we note that the Commission is required under HRS § 205A-26(2)(C) to make a specific finding on the Project's consistency with the Maui County General and Community

Plans before it may approve Carr Development's SMA permit application."); *Diamond v. Dobbin,* 132 Hawai'i 9, 28, 319 P.3d 1017, 1036 (2014) (holding "that the BLNR's ultimate shoreline determination is invalid because the agency made errors of fact and errors of law in its Amended Decision").

97. As detailed above, the Commission erred in denying PRP's Petition.

98. Thus, the grant of HPM's Application and the issuance of Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8) and Special Permit (SP-2022-12) was in error.

99. The Hawai'i Supreme Court has held that where a request for a contested case hearing complied with all applicable agency rules but was neither granted nor denied on the merits prior to approval of a permit, the agency "should have held a contested case hearing as required by law and requested by [the organization] prior to decision making on" the permit application. *Kilakila 'O Haleakala*, 131 Hawai'i at 205-206, 317 P.3d at 39-40 (remanding to the circuit court for further proceedings regarding the organization's request for stay or reversal of the permit granted by the agency, although the agency's subsequent grant of a contested case hearing while the appeal was pending).

100. Indeed, had PRP been afforded its due process rights to have its Petition heard on the merits and to be admitted as a party-intervenor, PRP would have had an opportunity to present evidence and cross-examine opposing witnesses. *See* Commission Rules Chapter 6; *Protect & Pres. Kahoma Ahupua'a Ass'n II*, 149 Hawai'i at 314, 489 P.3d at 418 (noting that the association's members, who were erroneously denied intervenor status, "were not able to submit evidence or cross-examine opposing witnesses, which the Commission's rules would have allowed them the opportunity to do had their petition been granted").

101. PRP's right to due process was therefore violated when its Petition was improperly denied in violation of the law and HPM's Application was thereafter granted.

102. Accordingly, inasmuch as the Commission erred in denying PRP's Petition, HPM's permits were erroneously granted as they were procedurally and substantively flawed.

103. The Court therefore vacates the Class IV Zoning Permit (Z-IV-2022-8), Use Permit (U-2022-8), and Special Permit (SP-2022-12).

104. The Court further remands this matter to the Commission for action consistent with these Findings of Fact, Conclusions of Law and Order.

PRP's Request for Declaratory Relief Is Denied Without Prejudice

105. Based on the foregoing and as discussed above, PRP was deprived of its right to due process inasmuch as its Petition was erroneously denied as untimely. Haw. Const. art. I, § 5 ("[n]o person shall be deprived of life, liberty or property without due process of law[.]).

106. The Commission's interpretation and application of Commission Rule 1-4-3 under the circumstances presented here violated PRP's right to due process and HRS Chapter 92.

107. The Court's findings of facts and conclusions of law set forth herein and the decision and order provide PRP with an appropriate remedy.

108. Thus, PRP's request for declaratory relief pursuant to HRS § 91-7 is denied without prejudice.

DECISION AND ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, and for good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

For the reasons discussed above, the Commission erred in denying PRP's Petition as untimely and, alternatively, determining that PRP lacked "good cause" for its purported untimely submission. Therefore, the Commission's (1) Denial of PRP's Petition; and (2) Grant of HPM's Application for the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8), are vacated. The case is remanded to the Commission so that PRP may intervene as a party in a contested case hearing regarding HPM's Application for the Special Permit (SP-2022-1), Use Permit (U-2022-8), and Class IV Zoning Permit (Z-IV-2000-8).

DATED: Honolulu, Hawai'i, May 10, 2023.

APPROVED

JUDGE OF THE ABOVE-ENTITLED COURT

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