



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

RECEIVED

FRANCIS DEGRACIA, CHAIR
MELVIN CHIBA, VICE CHAIR
GERALD AKO, MEMBER

21 OCT 29 P 1:07

On August 5, 2021, Governor David Y. Ige issued an Emergency Proclamation, which continued the suspension of Hawai'i Revised Statutes (HRS) Chapter 92, relating to Public Agency Meetings and Records (also known as the Sunshine Law) as it pertained to the COVID-19 Response. HRS Chapter 92 was suspended to the extent necessary to enable boards to conduct business in-person or through remote technology without any board members or members of the public physically present in the same location.

The meetings of the Kaua'i Planning Commission Subdivision Committee will be conducted as follows until further notice:

- Meetings will be publicly noticed pursuant to HRS Chapter 92.
- In-person meetings will be closed to the public to be consistent with social distancing practices.
- Planning Commissioners, Planning Department Staff, parties to agenda items, and resource individuals may appear via the ZOOM remote technology.
- The meeting will be live streamed and also available as an archived meeting after completion at www.kauai.gov/Webcast-Meetings. Please note video production services or enhancements will not be available.
- **Written testimony** may be submitted on any agenda item and submitted to planningdepartment@kauai.gov or mailed to the Kauai County Planning Department 4444 Rice Street., Ste A473, Lihue, Hawaii 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be distributed to all Planning Commissioners prior to the meeting. Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
- **Oral testimony** will be taken during the public hearing portion of the meeting via **Zoom remote** technology platform. Anyone interested in providing oral testimony shall provide a request to the Planning Department at least **24 hours prior** to the meeting by emailing planningdepartment@kauai.gov or by calling (808) 241-4050. Any request shall include your name, telephone number, E-mail address, and the specific agenda item(s) that you will be testifying on. Requests will not be allowed after that time. You will then be prompted to register for the meeting to receive the meeting link that is unique to each registrant that cannot be shared.
 - It shall be the responsibility of the testifier to join the meeting through the **Zoom** link provided via E-mail to provide their oral testimony. In addition, it shall be the responsibility of the testifier to ensure that the **Zoom** software is downloaded and operational prior to the meeting.
 - All testifier audio and video will be disabled until it is your turn to testify.
 - Per the Planning Commission's and Chairs practice, there is three-minute time limit per testifier.
 - If there are temporary technical glitches during your turn to testify, we may have to move on to the next person due to time constraints; we appreciate your understanding.
 - After oral testimony has been taken, members of the public should continue watching the meeting via the live stream link found at www.kauai.gov/Webcast-Meetings.
- If any major and insurmountable technical difficulties are encountered during the meetings, the Planning Commission Subdivision Committee will continue all matters and reconvene at the next scheduled Planning Commission Meeting.
- Minutes of meetings will be completed pursuant to HRS Chapter 92 and posted to the Planning Commission's website upon completion and approval.

SUBDIVISION COMMITTEE TELECONFERENCE MEETING
NOTICE AND AGENDA

Tuesday, November 9, 2021
8:30 a.m. or shortly thereafter

Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Subdivision Committee

1. May 11, 2021

E. RECEIPT OF ITEMS FOR THE RECORD

F. HEARINGS AND PUBLIC COMMENT The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to planningdepartment@kauai.gov 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 before 9:00 a.m. on Monday, November 8, 2021, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, November 8, 2021, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

Oral testimony will be taken at the beginning of the meeting on any agenda item via the Zoom remote technology platform and it shall be the responsibility of the testifier to ensure that the Zoom software is downloaded prior to the meeting. Requests to provide oral testimony must be made at least 24 hours prior to the meeting by emailing planningdepartment@kauai.gov or by calling (808) 241-4050. Any request shall include your name, telephone number, E-mail address, and the specific agenda item(s) that you will be testifying on. Requests will not be allowed after that time. You will then be prompted to register for the meeting to receive the meeting link that is unique to each registrant that cannot be shared. After oral testimony has been taken, members of the public should continue watching the meeting via the live stream link found at www.kauai.gov/webcastmeetings.

G. GENERAL BUSINESS MATTERS

H. UNFINISHED BUSINESS

I. NEW BUSINESS (For Action)

1. Tentative Subdivision Map Approval

- a. Subdivision Application No. S-2022-3
(Whiptail Wallaby, LLC.)
Proposed 2-lot Consolidation
TMK: (4) 2-6-018:025 & 027
Kōloa, Kona, Kauaʻi

- 1) Subdivision Report pertaining to this matter.

J. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

KAUA'I PLANNING COMMISSION
SUBDIVISION COMMITTEE MEETING
May 11, 2021

Draft

The regular meeting of the Planning Commission Subdivision Committee of the County of Kaua'i was called to order at 8:31 a.m., Microsoft Teleconference. The following Commissioners were present:

Mr. Francis DeGracia
Mr. Chiba

Absent and Excused:

The following staff members were present: Planning Department Director Kaaina Hull – Planning Deputy Director Jodi Higuchi Sayegusa, Dale Cua, Kenneth Estes, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney –Deputy County Attorney Laura Barzilai; Office of Boards and Commissions – Commission Support Clerk Arleen Kuwamura.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Subdivision Committee Chair DeGracia: Called the meeting to order at 8:31 a.m.

ROLL CALL

Planning Director Kaaina Hull: Okay, Mr. Chair, it is 8:31 am, Tuesday, May 11. Are you ready to start the meeting?

Chair DeGracia: Yes, I would like to call to order the Subdivision Committee Meeting for Tuesday, May 11, 2021. Clerk, can we please have a roll call?

Mr. Hull: Roll call, Mr. Chair. Commissioner Chiba.

Mr. Chiba: Here

Mr. Hull: Chair DeGracia.

Chair DeGracia: Here

Mr. Hull: You have a quorum. Two Present.

APPROVAL OF AGENDA

Mr. Hull: Next agenda item is approval of the agenda. The Department has no recommended

changes.

Mr. Chiba: I move we approve the agenda.

Chair DeGracia: Second. All in favor? Aye (Unanimous voice vote). I believe the agenda is approved. Motion carried 2:0.

Mr. Hull: Motion passes, Chair.

MINUTES of the meeting(s) of the Subdivision Committee

Mr. Hull: Next, we have no Meeting Minutes.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: There is no Receipt of Items for the Record.

HEARINGS AND PUBLIC COMMENT

Mr. Hull: Now I will do Hearings and Public Comment. So at this time, if there's any member of the public that has called in, that is not an applicant, but a member of the public that has called in and would like to testify, please state your name. Hearing none and quite honestly, Mr. Chair, we do not have anybody that called in, except for applicants or their representatives.

GENERAL BUSINESS MATTERS

UNFINISHED BUSINESS (For Action)

Mr. Hull: We will move on to Unfinished Business, there is no Unfinished Business.

NEW BUSINESS (For Action)

Tentative Subdivision Extension Request.

Subdivision Application No. S-2018-12, Association of Apartment Owners of Kulana Condominium, Kulana Water Tank Subdivision Proposed 2-lot Subdivision
TMK: (4) 4-4-014: 003:089 Waipouli, Kawaihau, Kauai

Mr. Hull: We can move on to New Business. One tentative Subdivision Extension Request, 1.a Subdivision Application No. S-2018-12. Application to the Association of Apartment Owners of The Kulana Condominium, the Kulana Water tank Subdivision and proposed 2-lot subdivision TMK 4-4-003:089, located on Waipouli, Kauai. I will turn it over to Kenny for the Subdivision report pertaining to this matter.

Staff Planner Kenneth Estes: Good morning. I will read the report for the record. The proposed development involves a 2-lot subdivision. This application was granted tentative approval by the Planning Commission on May (inaudible), 2018 and the applicant's request is a third extension for tentative approval.

Mr. Estes read the Subdivision Report for the record (on file with the Planning Department).

Mr. Estes: The applicant is also working with the State Department of Land and Natural Resources to secure access and utility easements that will traverse over a sink ditch. Based on the prevalent circumstances, the applicant's reasons are justifiable, and no problems are foreseen in granting the extension request. The Department of Public Works and Water (inaudible). It is recommended that an extension until May 22, 2022, be granted to obtain final Subdivision approval.

Chair DeGracia: Thank you, Kenny. Do we have any questions for the Planning Department? Hearing none. I have no questions. Could we please hear from the applicant?

Ms. Laura Loo: Good morning Chair. This is Laura Loo. I am the attorney for the applicant. We have several people available here, to answer your questions. But, probably the person with the most, well with overall knowledge, would be Brad Rockwell, who is the president of the Homeowners' Association.

Chair DeGracia: Thank you.

Mr. Brad Rockwell: Good morning Chair. I am Brad Rockwell, president. I do not have any comments. But we're standing by to answer any questions if you have. Thank you.

Chair DeGracia: I guess, if you could share, I guess, the, the progress from your last extension, just to give us an idea of what is happening on this project.

Mr. Rockwell: Sure. I can just give you a quick overview. So most of 2020 was involved with chlorinating and connecting the water transmission system. That was delayed, approximately six to nine months due to COVID shutdowns and restrictions on inter-island travel. The chlorination company is located on Maui. And there were some issues with, you know, inter-island travel, that I am sure is no surprise to the Commission. All the water tank and water line construction is complete. Final conveyance documents have been transmitted to the Department of Water. The DOW staff has reviewed and accepted. DOW legal is currently reviewing the documents. Upon completion of legal review, the association will execute, and Department of Water will bring to the Water Board for acceptance. We have satisfied Department of Public Works condition that you note, that you see there about the driveway ingress and egress, by securing an easement from the neighboring parcel, the Yamaguchi parcel. DLNR has approved easements over the State ditch. The Association currently, awaits a tax clearance certificate from the county to allow

DLNR issuance of easements. And upon completion of all the above, everything I just mentioned, the association is prepared to submit final title reports and the final subdivision map to the County Planning Commission. Standing by for any questions.

Chair DeGracia: Thank you. Do we have any questions for the applicant? I have no questions - any further questions. I will entertain a motion.

Mr. Chiba: I move to approve the extension request for Subdivision Application number 2018-12 to May 22, 2022, along with the Planning Department's requirements for an updated status report, no later than 60 days prior to the expiration date.

Chair DeGracia: I will second. All in favor? Aye (Unanimous voice vote).

Mr. Chiba: Aye.

Chair DeGracia: Opposed? None. Any discussion? If not, this is approved. Motion carries 2:0. Thank you.

Mr. Rockwell: Thank you Chair. Thank you, Commission.

Mr. Hull: With that, we still need a motion to approve.

Chair DeGracia: Okay.

Mr. Hull: Unless you guys have any other questions for the Department. Sorry, I didn't mean to jump the gun on that.

Chair DeGracia: Motion to approve.

Mr. Chiba: Motion to approve what?

Chair DeGracia: Okay. Excuse me, clerk. I am still, I am a little lost. I am sorry.

Ms. Barzilai: Excuse me Clerk. I think that Chair needs, clarification on what's necessary at this moment.

Mr. Hull: Sorry. I was distracted for a second. Did you guys already vote on a motion for the subdivision?

Chair DeGracia: Yes, we did.

Mr. Hull: Oh, I apologize. I got pulled into another side conversation here. Yeah. Problems with tele-video. Sorry about that. With that and there was a vote taken. I apologize.

Chair DeGracia: Okay.

ADJOURNMENT

Mr. Hull: With that, there is no further items on the agenda and at your discretion, it is ready for adjournment, Chair.

Chair DeGracia: I move to adjourn.

Mr. Chiba: I second.

Chair DeGracia: Okay. All in favor, signify that by saying, "Aye."

Mr. Chiba: Aye.

Chair DeGracia: Motion passes. 2:0. Thank you all. We are adjourned. See you in the next meeting.

Mr. Hull: Thank you all.

Mr. Chiba: Thank you everybody. See you later.

Subdivision Committee Chair Ho adjourned the meeting at 8:42 a.m.

Respectfully submitted by:

Arleen L. Kuwamura
Arleen Kuwamura
Commission Support Clerk

() Approved as circulated (add date of meeting approval).

() Approved as amended. See minutes of _____ meeting

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SUBDIVISION REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Subdivision Application No. S-2022-3 that involves a two (2) lot consolidation.

Subdivision Permit No. Application No. S-2022-3

Name of Applicant(s) WHIPTAIL WALLABY, LLC.

II. PROJECT INFORMATION


Map Title	Kukui'ula Residential Subdivision, Phase IIB, Consolidation of Lot 68 (Subdivision File No. S-2009-02) and Lot 27 (Subdivision File No. S-2006-5) into Lot 72, Being a Portion of Royal Patent 6714, Land Commission Award 7714-B, Apana 2 to M. Kekuaiwa No M. Kekuanaoa at Kōloa (Makai), Kōloa, Kona, Kaua'i, Hawai'i.				
Tax Map Key(s):	2-6-018:025 & 027	Area:	52,840 sq. ft.		
Zoning:	Residential (R-4)				
State Land Use District(s):	Urban	General Plan Designation:	Residential Community		
AGENCY COMMENTS					
<input checked="" type="checkbox"/> COK Public Works	Pending	<input type="checkbox"/> State DOT-Highways:			
<input checked="" type="checkbox"/> COK Water:	Pending	<input checked="" type="checkbox"/> State Health:	10.08.2021		
<input type="checkbox"/> Other(s)		<input type="checkbox"/> DLNR – SHPD:			
EXISTING ROAD RIGHT-OF-WAY(S)					
Road Name	Existing Width	Required Width	Pavement YES	NO	Reserve
Kahālāwai Street	44 feet	44 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Holo Malanai Street	44 feet	44 feet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
			<input type="checkbox"/>	<input type="checkbox"/>	
APPLICABLE FEES					
Environmental Impact Assessment (EIA)	N/A				
Park Dedication	N/A				
Appraisal Report Required	N/A				

I.I.A.I.
NOV 09 2021

III. EVALUATION

The proposed development involves a two (2) lot consolidation within the County Residential (R-4) Zoning District and is situated within Kukui'ula's Residential Subdivision. It is noted that the lots were created through different phases of the project. Lot 68 was a part of Subdivision No. S-2009-2 that was approved by the Kaua'i Planning Commission on March 10, 2009, whereas Lot 27 was a part of Subdivision No. S-2006-5 that was approved on March 11, 2008. Since there are no additional lots being created with this application, there will be no assessment of EIA and Park Dedication Fees.

RECOMMENDATION

TENTATIVE APPROVAL	FINAL APPROVAL
<input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denied	<input type="checkbox"/> Approval <input type="checkbox"/> Denied
Tentative Approval subject to all requirements as noted on the follow pages:  Director of Planning	All conditions have been complied with
10/27/2021 Date	Director of Planning Date

IV. AGENCY REQUIREMENTS

1. Requirements of the Planning Department:

- a. An updated preliminary title report for each existing lot shall be submitted to the Planning Department for review.
- b. All existing and proposed easements, if any, shall be identified in the deed descriptions of the affected lots, draft copies of which shall be submitted to the Planning Department for review and approval.
- c. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kaua'i County Code (1987), the Applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

- d. The Applicant shall identify on the final subdivision map whether the proposed lot will be utilized for Transient Vacation Rental (TVR) purposes. If so, the total amount of the lots within the Kukui'ula Residential Subdivision, Phase II-C shall be counted towards the total amount approved through Ordinance No. PM-2004-370.
- 2. Requirements of the Department of Public Works (DPW):
 - a. The subdivider shall comply with all requirements of the Department of Public Works, if any, prior to final subdivision approval.
- 3. Requirements of the Department of Water (DOW):
 - a. The subdivider shall comply with all requirements of the Department of Water, if any, prior to final subdivision approval.
- 4. Requirements of the Department of Health (DOH):
 - a. Noise will be generated if/when development of this parcel will start. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded, unless a noise permit is obtained from the State Department of Health (DOH).
 - b. Temporary fugitive dust emissions could be emitted if/when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1, entitled "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
 - c. The construction waste/green waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1, "Solid Waste Management Control", the open burning of any of these wastes on or off site is prohibited.

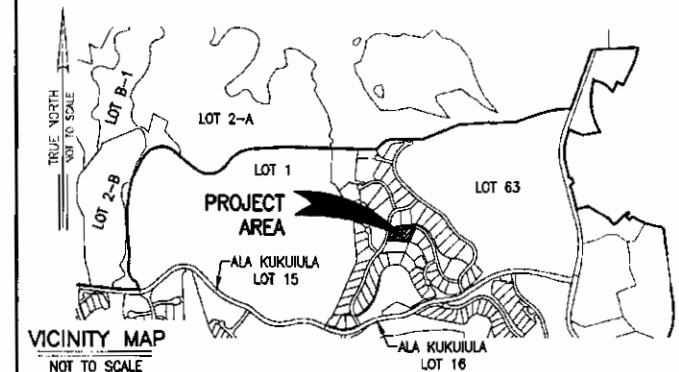
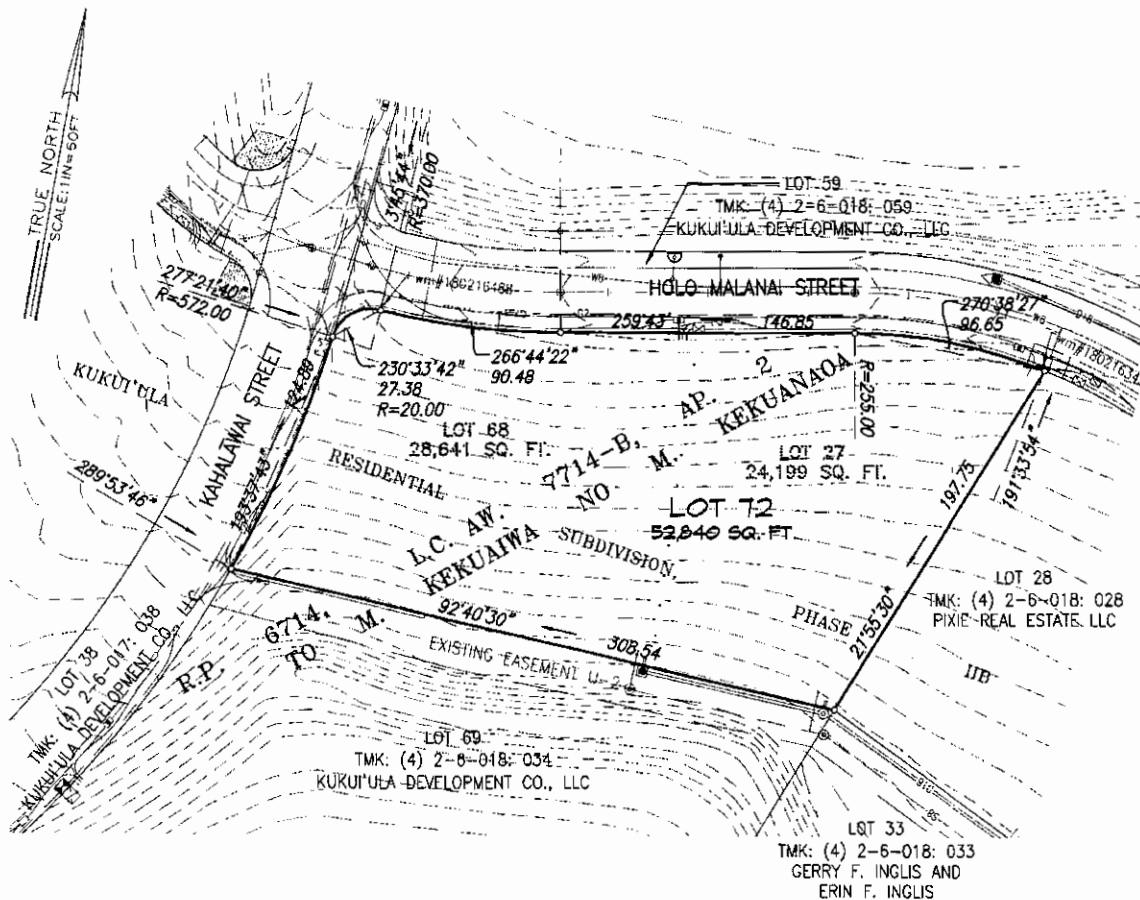
5. The Applicant is advised the should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
6. The Applicant is advised that prior to and/or during construction and use additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for NOVEMBER 9, 2021 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  _____
KENNETH A. ESTES, PLANNER

FILE: Y:\2021\21-336 KUKUI'ULA VERSTAPPEN CONSOLIDATION SURVEY.DWG; 21-336 CONSOLIDATION.DWG



**KUKUI'ULA RESIDENTIAL SUBDIVISION, PHASE IIB
CONSOLIDATION OF
LOT 68 (SUBD. FILE NO. S-2009-02) AND
LOT 27 (SUBD. FILE NO. S-2006-5) INTO
LOT 72**

BEING A PORTION OF
ROYAL PATENT 6714, LAND COMMISSION AWARD 7714-B,
APANA 2 TO M. KEKUIIWA NO M. KEKUANAOKA
AT KOLOA (MAKAI), KOLOA, KONA, KAUAI, HAWAII

OWNER: WHIPTAIL WALLABY LLC

ADDRESS: 5621 HOLO MALANAI STREET
KOLOA, HAWAII 96756



AUSTIN, TSUTSUMI, & ASSOCIATES INC.
501 SUMNER STREET, SUITE 521
HONOLULU, HI 96817

THIS WORK WAS PREPARED BY ME
OR UNDER MY SUPERVISION.

LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE No. 9826

EXP. 4/22

NOTES:

- COORDINATES AND AZIMUTHS SHOWN ON THIS MAP ARE BASED ON GOVERNMENT SURVEY TRIANGULATION STATION "WAHIAWA" A.
- OWNERS OF ADJOINING PARCELS TAKEN FROM REAL PROPERTY TAX RECORDS.
- SUBJECT PROPERTIES ARE WITHIN FLOOD ZONE X AS SHOWN ON FIRM PANEL NUMBER 150002 0313 F, REVISED NOVEMBER 26, 2010.

TMK: (4) 2-6-018: 025 AND 027

JOB NO.: 21-336

ATA AUSTIN, TSUTSUMI & ASSOCIATES, INC.
ENGINEERS, SURVEYORS • HONOLULU, MAILOA, HAWAII

AUGUST 12, 2021

11" X 17" = 1.30 SQ. FT.

Kenneth Estes

From: Agullana, Roger D. <roger.agullana@doh.hawaii.gov>
Sent: Friday, October 8, 2021 8:30 AM
To: Kenneth Estes
Subject: S-2022-3 WHIPTAIL WALLABY LLC
Attachments: S-2022-3 Whiptail Wallyby LLC.doc

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

Aloha Kenny,

Attached is DOH comments.

Roger Agullana
Food Safety Specialist IV
Food Safety Branch
Hawaii State Department of Health
Environmental Health Services Division
3040 Umi St
Lihue, HI 96766
Cell-(808)482-9923

Subdivision Application No: **S-2022-3**

Applicant: **Whiptail Wallaby LLC**

Based on our review of the application and our on-site survey of the property, we offer the following environmental health concerns for your consideration.

1. Noise will be generated if/when development of this parcel will start. The applicable maximum permissible sound levels as stated in Title 11, Hawaii Administrative Rules (HAR), Chapter 11-46, "Community Noise Control", shall not be exceeded unless a noise permit is obtained from the Department of Health (DOH).
2. Temporary fugitive dust emissions could be emitted if/when construction activities occur. In accordance with Title 11, HAR Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
3. The construction waste/green waste that will be generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, (HAR), Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when information that is more detailed is submitted.



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473 LĪHU'E, HAWAII 96766
(808) 241-4050

SUBDIVISION APPLICATION ROUTING FORM

DATE: September 23, 2021

Subdivision Map Review and Approval			
REQUEST:	<input checked="" type="checkbox"/> Preliminary	<input type="checkbox"/> Final	
	<input type="checkbox"/> Pre-Final	<input type="checkbox"/> Extension	
SUDIVISION APPLICATION NO:		Subdivision Permit NO. S-2022-3,	
Owner(s)/Applicant(s):		Whiptail Wallaby LLC	
Name of Surveyor/Engineer/Authorized Agent:		Erik Kaneshiro	
Tax Map Key:	Tax Map Key: (4) 2-6-018:027	Assigned to:	Kenny
Improvements:			

Route To:

<input checked="" type="checkbox"/>	DPW-Engineering	<input type="checkbox"/>	Department of Transportation - STP
<input type="checkbox"/>	DPW-SolidWaste	<input type="checkbox"/>	DOT-Highway, Kauai
<input checked="" type="checkbox"/>	DPW-Wastewater	<input checked="" type="checkbox"/>	State Department of Health
<input type="checkbox"/>	Fire-Department	<input checked="" type="checkbox"/>	State Historic Preservation Division
<input type="checkbox"/>	Department of Parks & Recreation	<input type="checkbox"/>	UH Sea Grant
<input checked="" type="checkbox"/>	County Housing-Agency	<input checked="" type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	KHPRC	<input type="checkbox"/>	Other:
<input checked="" type="checkbox"/>	County Water Department		
<input checked="" type="checkbox"/>	County Transportation Agency		

COMMENTS (Comment Due Date: 10/23/2021):

no ww - Property Not on County Sewer



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

RECEIVED

'21 OCT 29 P1:06

DONNA APISA, CHAIR
HELEN COX, VICE CHAIR
GERALD AKO, MEMBER
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LORI OTSUKA, MEMBER

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9:00 a.m. or shortly thereafter

Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

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

1. May 11, 2021

E. RECEIPT OF ITEMS FOR THE RECORD

F. HEARINGS AND PUBLIC COMMENT The Planning Commission will accept written testimony for any agenda item herein. Written testimony indicating your 1) name, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted in writing to planningdepartment@kauai.gov 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 before 9:00 a.m. on Monday, November 8, 2021, will be distributed to all Planning Commissioners prior to the meeting. Written testimony received after 9:00 a.m. on Monday, November 8, 2021, will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.

Oral testimony will be taken at the beginning of the meeting on any agenda item via the Zoom remote technology platform and it shall be the responsibility of the testifier to ensure that the Zoom software is downloaded prior to the meeting. Requests to provide oral testimony must be made at least 24 hours prior to the meeting by emailing planningdepartment@kauai.gov or by calling (808) 241-4050. Any request shall include your name, telephone number, E-mail address, and the specific agenda item(s) that you will be testifying on. Requests will not be allowed after that time. You will then be prompted to register for the meeting to receive the meeting link that is unique to each registrant that cannot be shared. After oral testimony has been taken, members of the public should continue watching the meeting via the live stream link found at www.kauai.gov/webcastmeetings.

1. Continued Agency Hearing

2. New Agency Hearing

- a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-2) for the construction of a single-family residence and associated site improvements on a parcel situated along the makai side of Kaumuali'i Highway and immediately adjacent to the Kikialola Small Boat Harbor in Kekaha, further identified as 8948 Kaumuali'i Highway, Tax Map Key: (4) 1-2-006:022, containing a total area of 2.601 acres = ***Lāwa'i Properties LLC***.

1. Director's Report pertaining to this matter.

3. Continued Public Hearing

4. New Public Hearing

- a. ZA-2022-1: A bill (2834) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance, and Chapter 22, Kauai County Code 1987, as amended, relating to Public Health, Safety, and Welfare. The purpose of this ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contacts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses = ***Kaua'i County Council***.

1. Director's Report pertaining to this matter.

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

G. CONSENT CALENDAR

1. Status Reports

- a. Annual Status Report 2021 for Special Management Area Use Permit SMA(U)-2007-13, Project Development Use Permit P.D. U-2007-25, and Class IV Zoning Permit Z-IV-2007-29, Tax Map Keys: (4)2-5-015:043, 044 & 082; 2-8-016:003, 004 = ***Kaua'i Blue, Inc. (formerly SVO Pacific, Inc. & VSE Pacific, Inc.)***.

1. Director's Report pertaining to this matter.

2. Director's Report for Project Scheduled for Agency Hearing

H. EXECUTIVE SESSION

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

I. GENERAL BUSINESS MATTERS

J. COMMUNICATION

K. COMMITTEE REPORTS

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

L. UNFINISHED BUSINESS (For Action)

M. NEW BUSINESS (For Action)

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2022-2) for the construction of a single-family residence and associated site improvements on a parcel situated along the makai side of Kaumuali'i Highway and immediately adjacent to the Kikialola Small Boat Harbor in Kekaha, further identified as 8948 Kaumuali'i Highway, Tax Map Key: (4) 1-2-006:022, containing a total area of 2.601 acres = ***Lāwa'i Properties LLC***.
2. ZA-2022-1: A bill (2834) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance, and Chapter 22, Kauai County Code 1987, as amended, relating to Public Health, Safety, and Welfare. The purpose of this ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contacts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses = ***Kaua'i County Council***.

N. ANNOUNCEMENTS

1. Topics for Future Meetings
2. The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on December 14, 2021. The Planning Commission anticipates meeting via teleconference, but will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

O. ADJOURNMENT

NOTE: IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ASEGRETI@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST.

UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

FRANCIS DEGRACIA, CHAIR
MELVIN CHIBA, VICE CHAIR

On August 5, 2021, Governor David Y. Ige issued an Emergency Proclamation, which continued the suspension of Hawai'i Revised Statutes (HRS) Chapter 92, relating to Public Agency Meetings and Records (also known as the Sunshine Law) as it pertained to the COVID-19 Response. HRS Chapter 92 was suspended to the extent necessary to enable boards to conduct business in-person or through remote technology without any board members or members of the public physically present in the same location.

The meetings of the Kaua'i Planning Commission Subdivision Committee will be conducted as follows until further notice:

- Meetings will be publicly noticed pursuant to HRS Chapter 92.
- In-person meetings will be closed to the public to be consistent with social distancing practices.
- Planning Commissioners, Planning Department Staff, parties to agenda items, and resource individuals may appear via the ZOOM remote technology.
- The meeting will be live streamed and also available as an archived meeting after completion at www.kauai.gov/Webcast-Meetings. Please note video production services or enhancements will not be available.
- **Written testimony** may be submitted on any agenda item and submitted to planningdepartment@kauai.gov or mailed to the Kauai County Planning Department 4444 Rice Street., Ste A473, Lihue, Hawaii 96766. Written testimony received by the Planning Department at least **24 hours prior** to the meeting will be distributed to all Planning Commissioners prior to the meeting. Any testimony received after this time and up to the start of the meeting will be summarized by the Clerk of the Commission during the meeting and added to the record thereafter.
- **Oral testimony** will be taken during the public hearing portion of the meeting via **Zoom remote** technology platform. Anyone interested in providing oral testimony shall provide a request to the Planning Department at least **24 hours prior** to the meeting by emailing planningdepartment@kauai.gov or by calling (808) 241-4050. Any request shall include your name, telephone number, E-mail address, and the specific agenda item(s) that you will be testifying on. Requests will not be allowed after that time. You will then be prompted to register for the meeting to receive the meeting link that is unique to each registrant that cannot be shared.
 - It shall be the responsibility of the testifier to join the meeting through the **Zoom** link provided via E-mail to provide their oral testimony. In addition, it shall be the responsibility of the testifier to ensure that the **Zoom** software is downloaded and operational prior to the meeting.
 - All testifier audio and video will be disabled until it is your turn to testify.
 - Per the Planning Commission's and Chairs practice, there is three-minute time limit per testifier.
 - If there are temporary technical glitches during your turn to testify, we may have to move on to the next person due to time constraints; we appreciate your understanding.
 - After oral testimony has been taken, members of the public should continue watching the meeting via the live stream link found at www.kauai.gov/Webcast-Meetings.
- If any major and insurmountable technical difficulties are encountered during the meetings, the Planning Commission Subdivision Committee will continue all matters and reconvene at the next scheduled Planning Commission Meeting.
- Minutes of meetings will be completed pursuant to HRS Chapter 92 and posted to the Planning Commission's website upon completion and approval.

SUBDIVISION COMMITTEE TELECONFERENCE MEETING
NOTICE AND AGENDA

Tuesday, November 9, 2021
8:30 a.m. or shortly thereafter

Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES of the meeting(s) of the Subdivision Committee

1. May 11, 2021

E. RECEIPT OF ITEMS FOR THE RECORD

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G. GENERAL BUSINESS MATTERS

H. UNFINISHED BUSINESS

I. NEW BUSINESS (For Action)

1. Tentative Subdivision Map Approval

- a. Subdivision Application No. S-2022-3
(Whiptail Wallaby, LLC.)
Proposed 2-lot Consolidation
TMK: (4) 2-6-018:025 & 027
Kōloa, Kona, Kauaʻi

- 1) Subdivision Report pertaining to this matter.

J. ADJOURNMENT

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

November 9, 2021

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2022-16	Gabriel Prieto	4-9-005:023 CPR Unit 4	Anahola	Swimming pool with associated decking and pool equipment area

KAUA'I PLANNING COMMISSION
REGULAR MEETING
May 11, 2021

Draft

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Apisa at 9:10 a.m., - Microsoft Teams Audio +1 469-848-0234, Conference ID: +620 121 629# The following Commissioners were present:

Ms. Glenda Nogami Streufert
Ms. Donna Apisa
Mr. Melvin Chiba
Ms. Helen Cox
Mr. Francis DeGracia
Ms. Lori Otsuka

The following staff members were present: Planning Department – Director Kaaina Hull, Deputy Director Jodi Higuchi Sayegusa, Myles Hironaka, Dale Cua, Romeo Idica, and Planning Commission Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai and Chris Donahoe; Office of Boards and Commissions – Administrator Ellen Ching, Administrative Specialist Anela Segreti, and Support Clerk Arleen Kuwamura

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Apisa: Called the meeting to order at 9:10 a.m.

ROLL CALL

Planning Director Mr. Kaaina Mr. Hull: We are ready to start the meeting.

Chair Apisa: I am ready to call the meeting to order. Roll call please.

Mr. Hull: Roll call, Madame Chair. Commissioner Otsuka?

Ms. Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Here.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Here.

Mr. Hull: Commissioner Vice Cox?

Ms. Cox: Here.

Mr. Hull: Chair Apisa.

Chair Apisa: Here.

Mr. Hull: You have a quorum, Madame Chair. Six present.

APPROVAL OF AGENDA

Chair Apisa: Thank you very much. Moving on ward to approval of the Agenda.

Mr. Hull: Madam Chair, we have, again, members of public, please mute your phones, this will be the last request for a mute, and otherwise, we will be muting all of you (inaudible) to testify. Please again, mute your phones. Madam Chair, we have the agenda that was posted. We also have two addendums to the agenda that were also posted but were just for clarification sake, the addendum to the agenda, the first addendum, has for special order of the day for the Michael A. Capital Revocable Trust Petition for Intervention, we have a letter from Yosh LHote, a letter from Maka'ala Ka'aumoana, a letter from Eric Taniguchi, a letter from Hope Kallai, a letter from Teresa Tico, a letter from Shelly Spencer, and one amendment. We need for the agenda is that the letter for Shelly Spencer is actually meant for the Kilauea Old Mill. We also have a letter for the special order of the day from Michael Kaplan's attorney. You have a memorandum for the Director, myself. You also have testimony from Councilmember Felicia Cowden. On the first agenda, there is a letter from Maka'ala Ka'aumoana for the Kilauea Old Mill, LLC. You have a second addendum to the agenda with another letter for the special order of the day from Valerie Nielson and David Kells. We just need a small amendment made for the agenda to reflect (inaudible) letter from Sheri Spencer is for again, the Kilauea Block edition.

Chair Apisa: So we need to amend the agenda or is that of records?

Mr. Hull: No, it would be the motion to amend as stated by the Director.

Chair Apisa: Should we have a set motion?

Ms. Cox: I move that we amend the agenda as reported by the Director.

Ms. Nogami Streufert: I second it.

Chair Apisa: Motion has been moved and seconded. All in favor? Aye. (Unanimous voice vote). All those who oppose? Any opposed? No opposition. Motion carried. 6:0. The Agenda is so amended. Thank you.

Chair Apisa: So then we need to... now that was to amend the agenda, now we need to approve the agenda.

Ms. Cox: I move we approve the agenda.

Ms. Otsuka: I second.

Chair Apisa: All in favor? Aye. (Unanimous voice vote). Is there any opposed? None. Agenda is approved. Motion carried 6:0.

MINUTES of the meeting(s) of the Planning Commission

Chair Apisa: We are onto approval of minutes for the August 11, of, 2021. I think that's August 2020.

Ms. Cox: Yes.

Chair Apisa: A typographical error. So if need...

Ms. Nogami Streufert: I move to approve minutes for the August 11, 2020 meeting.

Chair Apisa: Second?

Ms. Cox: I will second.

Chair Apisa: Do we have a motion to approve the minutes of the August 11, 2020, meeting?

Ms. Nogami Streufert: I did, I think, this is Glenda, I did.

Ms. Cox: And I seconded it.

Chair Apisa: All in favor? Aye. (Unanimous voice vote). Is there any opposed? None. Motion carried 6:0. The minutes of the August 11, 2020 meeting are approved.

Mr. Hull: Okay folks, again, we are still getting a considerable amount of feedback so I am going to be muting all of the participants at this time. For members of the public called in on your phone to unmute when you like to testify an agenda item I will be making those calls, you need to hit star 69. We are going to be muting all participants. For Commissioners and representatives of applicants, you are on video screenings so to unmute yourself there is just the icon on the right hand side of the screen to unmute yourself. I am going to go ahead and mute the entire participation.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next on the Agenda, there are no Receipt of Items for the record.

SPECIAL ORDER OF THE DAY

CLASS IV ZONING PERMIT (Z-IV 2021-8), and USE PERMIT (U-2021-7) for the construction of a farm dwelling unit and associated site improvements on a parcel located in Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from the Kahili Makai Road/Kuhio Highway intersection, further identified as Tax Map Key: (4) 5-2-012:019 and containing a total area of 0.735 acre = Michael A. Kaplan Revocable Trust. [Director's Report received, 3/29/2021.]

Mr. Hull: Moving on to the next Agenda Item is Special Order of the Day Class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the construction of a farm dwelling unit and associated site improvements on a parcel located at Kilauea, situated approximately 1,700 feet from Kahili Makai Road and 2,700 feet from Kahili Makai Road and the Kuhio Highway intersection, further identified as Tax Map Key: 5-2-012:019 and continuing a total area of .735 acres. The applicant is Michael A. Kaplan Revocable Trust. There is a petition for intervention, from dated 4-5-2021 by Mauna Kea Trask, and the Special Order of Day is the discussion of this intervention request. At this time, Madam Chair, prior to getting into the two parties, it would be appropriate to receive any public testimony for that is specific pertaining to this special order of the day.

With your approval granted, I generally would stand down and let our attorney handle any further proceedings of this, but to kind of help navigate the public testimony part, if you're okay with it, I'll be calling the phone numbers of those who have called in to see if they would like to testify. Are you okay with that Madam Chair?

Chair Apisa: Yes, that is fine, Kaaina. Thank you.

Mr. Hull: Okay so for members of the public I am going to be going down the list of the phone numbers to ask if you have called in to testify on this special order of the day. You can either remain silent or state "no" if you are not. If you do intend to speak specifically on the special item of the day, I need to state your name and you will have three minutes for testimony. So the first phone number we have listed is area code [REDACTED] Do you wish to testify on this agenda item?

Chair Apisa: Kaaina, if I could just interrupt for one quick second, because of full disclosure. I do want to state that I made a full visit to the Somers' property along with one of a realtor from our office. I have no monetary gain and I am able to vote impartially on this matter. I just want to make that statement. I think that is appropriate.

Mr. Hull: Thank you, Madame.

Chair Apisa: Please continue with the phone number business.

Mr. Hull: Thank you, Madam Chair. Again, and so if you are a member of the public calling in to testify, to unmute your phone you have to push star 62. So going down the list again. Area code [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] Would you like to testify on this agenda item? Okay hearing none moving on to

area code [REDACTED] Would you like to testify on this agenda item?

Mr. Hull: Hearing none.

Ms. Cox: Can I interrupt for just a second? This is Helen. Did you...to unmute if they are on the phone is it star 69 or star 62? Because you just said 62, the last time and I thought earlier you had said 69.

Mr. Hull: Star 62.

Ms. Cox: Okay thanks. Just wanted to clarify for whoever out there.

Mr. Hull: Also, for those that have called in you can view this livestreaming on Granicus. There is no need to call in and just listen on your phone. It is streaming on the website - on the Planning Commission - County of Kauai Planning Commission website. Moving down the list area code [REDACTED]

Ms. Valerie Neilson: Hold on, hold on, hold on, please. You did not allow our number to respond.

Mr. Hull: Okay. Go ahead and speak ma'am.

Ms. Neilson: Okay thank you. Sorry we were having trouble unmuting. So yes, I would like to testify.

Mr. Hull: Yes, just speak your name and you have three minutes for testimony.

Ms. Neilson: Thank you. My name is Valerie Neilson and my husband David Kells is here with me. The first thing, I would like on record is that our written objection to grant Somers' intervenor status was originally submitted on May 6 to the Planning Department. It was noted this AM that it had not been included, so I resubmitted this AM and requested it be added to the agenda. So thank you, Kaaina Hull, for adding that to the agenda. It is under the second amendment. So onto my testimony. I respectfully ask that the Planning Commission members to cautiously, consider testimony that support efforts by Mr. Somers. It is no secret that he uses his "resources" to influence others to do his bidding, thought Mr. Somers, through Mr. (Somers)' representative, I have (inaudible) been presented with monetary offers. (Inaudible) I cannot afford to allow this wealthy landowner to shroud his true intentions of blocking other property owners from making good legal use of their private land through monetary donations under support to non-profit organizations or other private individuals. Wealthy landowners cannot absolve their wrongdoings, such as blocking access to treasured and secret areas of Kauai by donating their resources. A sin is a sin, but we all know that it does influence people. This is very dangerous. It's not only ethical, it's not only an ethical dilemma it is also a legal dilemma. Mr. Somers has not distinguished himself from the public. He has not identified a specific detriment the Kaplan's plan will pose to an adjoining landowner or to the public. What compromise has Mr. Somers proposed? None. Because his greedy desire is to obtain all the land surrounding the Kilauea Stream and to keep all people from what he believes is his. This is evident in the

blocking of public access to the falls, by not allowing public access to his conservations, and by not maintaining public access to Rock Quarry Beach. I do not in any way; believe that the planning process was developed with the intention to block appropriate use of land. However, Mr. Somers through Mr. Trask's knowledge and experience in working with the county employee has given Mr. Somers considerable advantage to use the planning process against other people, other landowners, for his personal gain. I am done. Are we just silent for three, the rest, remaining of the time?

Chair Apisa: Kaaina? Kaaina?

Deputy County Attorney Laura Barzilai: Excuse me, Director Hull.

Ms. Cox: Kaaina you are muted.

Mr. Hull: Sorry about that. Thank you for your testimony Ms. Kells. Moving on to the next caller. Area code [REDACTED] Would you like to provide testimony on this agenda item? Again, area code [REDACTED] Would you like to provide testimony on this agenda item? And again, folks the way to unmute your phone is star 62. Moving on to area code [REDACTED] Would you like to provide testimony on this agenda item? Again, area code [REDACTED] Would you like to provide testimony on this item? Hearing none, area code [REDACTED] Would you like to provide testimony on this agenda item? Moving, moving on, area code [REDACTED] [REDACTED] Would you like to provide testimony on this agenda item?

Mr. Robert Warren: This is Robert Warren...

Mr. Hull: Sir, would you like to provide testimony?

Mr. Warren: Yes.

Mr. Hull: Okay, please state your name and you have three minutes for testimony.

Mr. Warren: Yes, Robert Warren, my wife and I, have a Kuleana six-acre lot on the Kilauea River with a house, that we built back in the early 2003, 2005 timeframe. We were informed back in 2010 that (inaudible) has wanted to build a single-family home on the Kilauea River in SMA, SCR area. We did not oppose that and the reason is he applied for SMA and STR permits. My wife and I are not opposed to people building, um, in the STR, SMA but we are opposed if they do not comply with the permitting process and make sure that they protect the environment and the scenic resources that we have. The confusing thing was there is no way to follow it. Apparently, he had two years to complete the project, which he did not do through the permit expired in 2012. Later, Mr. Kaplan bought the property in 2019 and as we understand, it was granted an extension to the expired permits in 2019 for two years, which ran until April of this year and they have since expired. Our understanding, and we have not been on the property, our understand, that the structures that were asked for in the MASTR permitting process have never been completed and still are not completed. Our concern is that it's been such a long period of time, we don't know what changes have been made to the construction plans or what is built, what hasn't been built. So we're requesting that there be a public hearing to update, what's

actually happened to the property since 2010. I cannot imagine that the Planning Commission would not allow that, since so much time has gone by and so much confusion has occurred over the property. Why the public cannot be updated on what has happened to the property, what is on the property, what is being proposed for the property? We are opposed to any construction, uh, in the SMA, STR without complying with the - the - the permitting process, and we look to the Planning Commission to enforce the state and County regulations for those and it does not seem like those are being enforced. There is extension after extension, there is no clarification of what is being permitted, what changes are being made, and so both my wife and I request that the Commission...

Mr. Hull: Three minutes, Sir.

Mr. Warren: Okay.

Mr. Hull: You need to wrap up your testimony, sir.

Mr. Warren: Yes, that is fine.

Mr. Hull: Thank you for that testimony. Next caller [REDACTED] Would you like to provide testimony on this agenda item? Please if you are not intending to speak, please mute your phones. Moving on to the next caller, [REDACTED] Would you like to testify on this agenda item? Moving on, oh, would you like to testify on this agenda item?

Ms. Kuuipo Precious Akau: Yes.

Mr. Hull: All right, please state your name and you have three minutes for testimony.

Ms. Akau: Aloha everyone. My name is Kuuipo Precious Akau. I am here, a native of Kauai and I am a native Hawaiian. It was brought to my attention that there was things that are built on top the land that are more sacred and the birthing stone of it and to hear of this it really caught my attention and it's really heartbreaking to see that these things that, you know, belong to our ancestors and for generations to come. On top of that and I am supporting and opposed of the Somers intervention, Mahalo. I am in favor of the Somers intervention.

Mr. Hull: Thank you for your testimony. Moving on to area code [REDACTED] Would you like to provide testimony on this agenda item? Again, area code [REDACTED] would you like to provide testimony. Hearing none. Area code [REDACTED] Would you like to provide testimony on this agenda item?

Man: Yes.

Mr. Hull: Go ahead. Please state your name and you have three minutes for testimony.

Mr. Bruce Layman: Hi, this is Bruce Layman. I testified prior to this last month, and I would like to thank all of the Commissioners for allowing the privilege to provide testimony again. The last time I testified I spoke of my heritage, growing up there in Kilauea. But since then, I've even

become more concerned and I see how critical this has become. Since then I have found out that Mr. Kaplan in 2019, had received a violation for illegal cropping and grading. I also found out that kuleana was awarded to (inaudible) Hawaiian wahine the only wahine granted the kuleana in that area, which was rare, and she did an amazing job out there. It was basically a Lima Huli Gardens out there with, I believe it was a total of 69 Lo`is. But what disturbed me the most is what I found out this past week, by a native Hawaiian gentleman here that grew up in Anahola Hawaiian homes, that lives out there. He went on this site and asked one of the employees who I believe, was the person running the work out there and stood on that site, that he remembered an older wahine a kupuna told him when he was younger that he was a birthing stone there. So he went down there and shared this practice with him and he saw exactly what her teaching explained. So this was real special to him because it was actually a birthing stone and then when he went there he asked them, "What happened to this stone?" And they said, "What are you talking about?" "What happened to this rock formation here? It's not here anymore." And he could see that there has been grading and grubbing work done and he said, "You guys just destroyed and desecrated an ancient Hawaiian birthing site," and he was really upset and he left the property and he shared that. And I got wind of this and I heard this, and we confirmed it with the person himself. I did not want to do this based on hearsay and so that even more concerns me. I know there was some testimony handed in by Teresa Tiko and I believe she's the attorney for...she actually makes a good point when she said, "there's a lot of dis-information, a lot of propaganda." And it's easy to... that's the easiest thing for everyone to do is demonize people. And what that did is, here look at the shiny object over here. If this is just a distraction, everybody should forget the names, forget how deep everyone's pockets are, forget the beefing and fighting, and concentrate on the land. The intervention will allow a public process so these things will never happen in the future. Our...this island (inaudible).

Mr. Hull: Three minutes, Sir.

Mr. Layman: I'll wrap up. Thank you so much and I am in favor of the intervention. Please allow this to go through so that the public is not confused and there is not propaganda. That they can see that the light of day sunshine is the best remedy, it is the best hope that we have to make sure that thing, you know, goes through. So I am in support of the intervention. Thank you Commissioners. Have a wonderful day. Aloha.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to provide testimony on this agenda item? Hearing none, area code [REDACTED], would you like to testify on this agenda item?

Mr. Paul Kyno: Yes.

Mr. Hull: Please state your name. You have three minutes for testimony.

Mr. Kyno: Paul Kyno and I am in favor of opening this to the public and having this contested case so people can actually find out what's happening with all the misinformation that's going around. I have been before the Planning Commission as a Development Consultant many times over the last 25 or 30 years. And in some situations where SMA permits have expired. I understand that the Planning Department and Planning Commission do have some discretion and

administrative capacity to reinstate those permits. But usually it's done you know, if a permit is expired when it's actively being worked on or maybe, you know, as far as the year out, but this, SMA permit that expired 12 years ago, and it was reinstated. People in the area that have a vested interest that, you know, move in become neighbors, other people move out and you know, like, 12 years is a long time, for a lot of people that, new people have a vested interest. And anyway, they, 12 years is just way too long and especially when there's archeological and historic sights on the Kuleana, that the subject property is. So, I, think that there was also a home originally that I believe was approved with a (inaudible) beam type home, and now that has been traded changed to a slab on grade, which creates more damage to the property. So, to wrap this up, I think that this contested hearing should go forward so that people can see all of this and then at least, the public will be informed as to what's going on. Thank you.

Mr. Hull: Thank you for your testimony. Moving on, area code [REDACTED] Would you like to testify on this agenda item?

Ms. Julian Armaza: Aloha.

Mr. Hull: Yes, please state your name and you have three minutes for testimony.

Ms. Armaza: Thank you. Aloha, my name is Julian Kapopuna Armaza along with my husband Bernard Armaza. We have here in support of the Somers intervention. It has been brought to my attention that stone has been moved, birthing stones has been moved and destroyed, removed and it bothers me to think that anyone can come on to ancient Hawaiian grounds with without permission and, it's my kuleana to think that it should be heard. So I'm in support of the Somers' application intervention for this matter and I greatly appreciate you folks' time and effort on this matter. Thank you.

Mr. Hull: Thank you for your testimony. Next phone number area code [REDACTED] Would you like to testify? Again area code...

Mr. Rohn Boyd: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony. Would you like to testify again?

Mr. Boyd: Hello.

Mr. Hull: Area code [REDACTED] would you like to testify?

Mr. Boyd: Yes.

Mr. Hull: Please state your name and you have three minutes for testimony.

Mr. Boyd: My name is Rhone Boyd. I have lived on the North Shore for a very long time. I have owned and developed numerous properties in the Kilauea area. I still own properties in the Kilauea area. Several of these properties are located within the SMA and open STR zoning

overlay districts. I have commenced to apply for permits in the past, uh, within these districts. When I have done that, I have understood the application process requires Planning Commission approval and that public testimony and oppositions in my developments was likely. In fact, of many of my applications, I have numerous members of the public and neighbors speak in opposition to my projects. I further understood and accepted the fact that those in opposition had the right to apply for intervener status. One of the properties I owned had a permanent structure that was never commenced from a prior owner. It never occurred to me that I might reapply for an expired permit that it might- and then further it might be granted and approved by the Planning Commission without public testimony. That being said, I accepted the fact that my projects might be forced be altered due to certain cultural or other aspects that significant conditions could be opposed upon my projects, but more importantly, I understood, and I still understand, that these rules and regulations are put in place to protect and (inaudible) development within these incredibly sensitive areas. I embrace the rules and cherish the spirit and meanings behind them. We all live, work and play in the incredibly unique and sensitive island environment and it's our duty to ensure that cultural resources are protected, cared for and preserved for current and future generations to come. No one person has or entity should be allowed to circumvent the regulations and processes that are in place to protect these resources. It is the Planning Commission's duty to hold each and every applicant to the same requirements and process - processes for each and every project. Commissioners, it's your duty to ensure that the current application follow the same process to approving further developments. Thank you for your time.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to testify on this agenda item? Again area code [REDACTED] Would you like to testify on this agenda item?

Ms. Debra Kualii: Aloha.

Mr. Hull: Yeah, please state your name and you have three minutes for testimony.

Ms. Kualii: My name is Debra Kualii. I am a native Hawaiian, sister of Kipukai Kualii. I have lived here all my life and I am testifying in support of the Somers intervention. Commissioners, please respect our native sites and do not destroy what our ancestors put place. As a woman to hear our birthing stone that was put in place there, I ask that please Commissioner, stop the destruction do what is right. Deb. Thank you.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to testify on this agenda item? Again area code [REDACTED] Would you like to testify? Hearing none, area code 808.

Mr. Mauna Kea Trask: I am sorry. |

Mr. Hull: Oh. Would you like to testify?

Mr. Mauna Kea Trask: I am sorry. Mr. Hull I'm sorry this is, Mauna Kea Trask on behalf of representative of petition intervene (inaudible). I am actually getting, I got a call that some of these testifiers are not able to; they are confused over the unmuting. They think its star 62 or star

69, and/or they are trying to press the button and are not able to. I just want to communicate that to you. Sorry to interrupt, thank you.

Mr. Hull: Okay, thank you. Again, members of the public, to unmute your phones it is star 62, so to unlock the phones again, it is star 62. Next area code [REDACTED] Would you like to testify on this agenda item? Again area code [REDACTED]. Would you like to testify on this agenda item?

Hearing none area code [REDACTED] Would you like to testify on this agenda item?

Woman: No testimony today. Mahalo.

Mr. Hull: Thank you. Area code. Sorry. Area code [REDACTED]

Mr. Hull: [REDACTED]

Man: Hello.

Mr. Hull: Would you like to testify on this agenda item? Again area code [REDACTED] Would you like to testify on this agenda item? Hearing none. Area code [REDACTED] Would you like to testify on this agenda item?

Woman: Not this item. Thank you.

Mr. Hull: Moving on, that completes our list of caller numbers. If there is any member of the public who has called in, this does not pertain to applicants or parties that are parties to the proceedings but to members of the public who have called in who would like to testify specifically, on the special order of the day which is the Petition to Intervene in the Kaplan application. If you would like to testify, please state your name?

Woman: Yes.

Mr. Hull: Go ahead please state your name and you have three minutes for testimony.

Ms. Erica Taniguchi: Thank you. My name is Erica Taniguchi, I was just calling in in support of the request for intervention, not because I have a bias or interest for either of these parties, but because I believe that our County and State has these processes for permitting and for addressing for development, especially in special management areas. We have established those for a reason and I would like to support, um, the process being followed, especially since this area is such a special place. As a Hawaiian, as a Kanaka maoli that is a descendant of this Koolau district, for me personally this area is very important. It's and I think I can speak for a lot of people of the Kahili River Valley is a very special very important very, delicate place, sensitive place, culturally and environment, and so I would like to support this request for intervention so that its past these processes can be upheld and followed. Thank you.

Mr. Hull: Thank you for your testimony. Is there any other members of the public that have called in that have not testified that will like to testify on this agenda item?

Man: Yes, yes, yes.

Ms. Valerie Nielson: This is Valerie Nielson, I have receiving text messages that are saying that there are people in the waiting room wanting to be added into the conversation and have not been.

Mr. Hull: All right. All right.

Man: (inaudible) response.

Mr. Hull: Excuse me, hold on. I am not seeing anybody in the waiting room who called in. We have admitted all of the people in the Planning Commission. If there are members of the public that have called into another waiting room, say for the Sub-division meeting or other meeting is occurring, they have to call specifically into the Planning Commission meeting itself. Again, are there any members that have called in to this meeting that would like to testify on this agenda item that have not testified?

Mr. Kevin Webb: Yes, Kevin Webb. Yes, response.

Mr. Hull: Mr. Web, please state your name and you have three minutes for testimony.

Mr. Webb: Sure. My name is Kevin Webb. I am speaking on behalf of Charles Somers the landowner of the adjoining property of Mr. Kaplan. Mr. Somers (inaudible) acres who Kilauea falls down to Kalihi beach (inaudible). Mr. Somers has donated 155 acres in the conservation land thus preserving this incredible resource. So Mr. Somers when having to build his family house (inaudible) acres his application was required to contest the case. Mr. Somers proper process and in the end produced a positive outcome to the property. Mr. Somers just can't believe the Mr. Kaplan's property is not being held to the same requirement. Mr. Kaplan has a much (inaudible) on this dry land use. The Kaplan's will (inaudible) high concentration of archeological resources. Again, you've talked about the birthing stone that apparently has been removed and then replaced, you talked about how the re- permit required there to be, footings, raised footings whose standard is slab requiring (inaudible). Furthermore, there was a great deal of vegetation being cleared from the site. I assume there has been no management plan that dictates how that was going to be done. If they are doing an intervener, status that could be that set up. The County has allowed commencing construction based on the entire permit, per Mr. Kyno 12 years. This is not a violation of county ordinance, this is a violation of state law, and the fact you're claiming this is Planning Department has allowed this to move forward is, like, the lack in judgment. Mr. Somers identifies this (inaudible) litigation against the county one in this regard. The reason Mr. Somers did not want Mr. Kaplan, the reason Mr. Somers, that's (inaudible) stop Mr. Kaplan from building, he simply wants this site to go through the intervener process so everybody can have a chance to review (inaudible) on what is being done. At this point, the public is starting to lose confidence as you can hear today. There is folks that are concerned about birthing stones and other issues and by denying Mr. Somers the ability and the public the ability to review this intervener process is a great injustice for the entire community. Thank you.

Mr. Hull: Thank you for your testimony. Is there anybody in, and just for clarification purposes this is for the general members of the public's portion for testimony? The parties will be heard from after the public testimony portion. So if you are a party to the preceding or part of the intervention request, please, please know that there is time afforded to you during that specific area. Are there any other members of the public that would like to testify that are not able to...

Mr. Eric Taniguchi: Yes.

Mr. Hull: Okay, state your name and please you have three minutes...

Mr. Taniguchi: Eric Taniguchi.

Mr. Hull: Sorry, Mr. Taniguchi, please state your full name. You have three minutes for testimony.

Mr. Taniguchi: Eric Taniguchi, and I want to thank you for the allowing me to testify in support of the position for intervention for Mr. Mauna Kea. Trask and his legal team. (inaudible) and the associated lo'i kalo complex is a treasured site for the descendants of the Wahini (inaudible), the native people of Kilauea, which includes my family and all of Hawaii, the natives of Hawaii. And let me explain why my family. In 1882, Masazo Taniguchi came to Kauai from Hiroshima, Japan and married Kaliko Aukai Naumu. My Naumu genealogy traces back to a man (inaudible), who was born about 1797 and died about 1872. During his life of about 81 years, he was the chief of Kauai and he lived in the district of Koolau. The (inaudible) of (inaudible) is within the (inaudible) district and makes me believe that (inaudible) walked the (inaudible) on a weekly basis and personally knew (inaudible), which registered her claim in January of 1848. Learning about this kuleana compelled me to testify today because it has become personal to me and my ohana. I just learned yesterday morning that a family member who lives in Kilauea and knows the kuleana was told by a kupuna of a birthing stone (inaudible) that he investigated several years ago and found to be true and accurate. Recent land clearing and graving prompted this family member to revisit the area of the site and was missed by a landscape business owner. And when asked about the stones in that particular area, that he could see was no longer there, the business owner openly admitted that they had removed the stones. A close friend and I drove to Kilauea yesterday afternoon to meet my family member to hear firsthand from him about the desecration of this historical site and was told exactly what I am testifying to you this morning. So I asked myself, did they removed these stones not knowing its significant historical and cultural values? Or was this properly or purposely and deliberately done? Next questions comes to mind is who was born on these birthing stones? How many were born? How many mothers died giving birth on that stones? The history of these birthing stones and the many tears of joy and sorrow and sadness is gone forever from a culture and people who once thrived in this district. So Commissioners, I ask that you please...

Mr. Hull: Three minutes, Madame Chair.

Mr. Eric Taniguchi: ...deny this permit and allow the intervention to allow enough time for a complete and thorough investigation of this Kuleana so this never happens again. Thank you for

allowing me to testify and thank you for your time.

Mr. Hull: Again, I will make a, thank you for your testimony sir. Again, I'll make cause that anybody that has called in that has not testified yet that would like to testify on this agenda.

Mr. Alan Swan: Alan Swan.

Mr. Hull: Mr. Swan please.

Mr. Swan: Alan Swan.

Mr. Hull: Yeah please testify...

Ms. Felicia Cowden: I would just like to speak.

Man: Thank you very much.

Ms. Cowden: I would like to speak. Did you hear me? Okay.

Mr. Hull: Oh. Sorry. I believe this Council member Cowden, we have next up Alan Swan and then you are right after him.

Ms. Cowden: Okay.

Mr. Swan: Aloha. I am Alan Swan. I am Alan Swan. I am a native Hawaii, Hawaiian resident of Kauai and a graduate of Kamehameha School. I am for Somers's intervention. I am very surprised to hear of this desecration happening without any knowledge. I am very sad to hear about it from a dear friend of mine. Any ancient Hawaiian sites shouldn't just be moved, it should be protected and researched, and the knowledge passed down to other Hawaiians and everyone else. I am for protecting this ancient Hawaiian site, this birthing stone. I believe that Covid-19 lockdown rules is no excuse to keep Hawaiian history and this sacred place with children of the past have been born there who are now part of a Hawaiian bloodline island of Kauai and part of all Hawaiians now. Please Commission, please support the Somers intervention. Aloha.

Mr. Hull: Thank you for your testimony. Council Cowden, I know you're on the line. Did you want to testify on this agenda item?

Ms. Cowden: Can you hear me?

Mr. Hull: Yes, yes we can.

Ms. Cowden: Can you hear me? Okay, so I think I am going to testify now as an individual. I sent in a written testimony that basically really would like, um, the Planning Department and the Planning Commission to be the neutral third party to review any of the applicants' needs of the public hearing process. I see that the Planning Director has made a simple recommendation for

approval. I have spent quite a bit of time on that property. More so maybe a decade ago. This is me as an individual I live very close, so we used to go down to the waterfall all the time on the property that became Mr. Somers'. One of the previous testifiers who did not identify himself as a security guard. They have very firm security there kicking children out, everybody out when, our neighborhood association has worked very hard and had been led to believe that we were going to be able to have continued access to the Falls. The testimony I turned in I have documentation relative to that both sides of the valley, up and down the valley have a lot of culturally significant parts. When we were kicked out of the Somers side of the property, the Saunders who owned the property in question at the time invited us and many other people. The community was welcome to be a part of that area over there and each of the three owners who have had the property now know that the Kaplans, have been welcoming to the community - some more than others. It's just been a few weeks. I went down after I heard the last Planning meeting on this, and I could see that there had been more restoration of the terracing there was plants that were over growth taken up very steep hill. The Valley as Mr. Taniguchi said that whole valley is filled with so much historical pieces. The Kaplans, their house is not very large - it is where there had been a house before and what is concerning to me and why I oppose this intervention is that we need to have the county - if there's an intervention, the county needs to look at it. We should not be supplanting the county's role because on the plaintiff's side, there - they have a recent graving and rubbing violation. They have so many pieces where they have pretty much shut out the entire community from that area. Whereas when we have one holdout property that really welcomes cultural practitioners, cultural use, it seems a bit mistake to give the intervention capacity to the very entity that shut everybody out of the Valley. And how...

Mr. Hull: Three minutes Madam Chair.

Ms. Cowden: ...okay, thank you.

Mr. Hull: Thank you for your testimony. Is there anybody else who has called in that has not testified in this agenda item but would like to testify in this agenda item? If so, please state your name. I would like to make a last call for anybody that has called in that has not testified on this agenda item but would like to testify on this agenda item for the Somers intervention request for the (inaudible) plantation? If so, please state your name.

Mr. Rohn Boyd: This is Rohn Boyd.

Woman: Wait, wait.

Mr. Hull: Excuse me, Mr. Boyd, I believe you spoke earlier?

Mr. Boyd: I did, I thought this was an opportunity to say something. I just want to say one thing and close (inaudible).

Mr. Hull: No, Mr. Boyd, remember each public member is afforded three minutes the time has moved on. This is a call for anybody that has not testified on this agenda item.

Mr. Boyd: Okay thank you.

Mr. Hull: Thank you, so again is there anybody who has called in and would like to testify on this intervention request who has not spoken previously? If so, please state your name.

Woman: Yes, there are people in the waiting room that want to testify that have not been allowed in.

Mr. Hull: Again, ma'am, I stated this earlier. I am monitoring the waiting room. Other members of the staff are monitoring the waiting room. If there are members of the public that attended to call into this meeting, they are not in our waiting room. This we, our waiting room is completely let into this meeting. If people have called in to other meetings accidentally, they need to call into this meeting. However, there are no members of public waiting in the waiting room right now. So again, is there anybody who has called in and is online right now with us that would like to testify on this agenda item that has not previously testified?

Mr. Lawrence Hornbeck: Hello? Lawrence Hornbeck trying to speak.

Mr. Hull: Yes, Mr. Hornbeck, please, uh, testify. You have three minutes.

Mr. Hornbeck: Thank you. What I have to say is not so much about the intervention process. I believe that's an excellent process for things to go through. What I respectfully, oppose is that Charles Somers and CS, LLC, as an intervener, in regards to this house site in Kilauea. And since Charles Somers and CS, LLC, have not at all lived up to the agreement with the Kauai County to maintain the Kahili Quarry Road, but instead has blocked it with boulders, cement key rail type of structure as though the county is responsible for the maintenance of that road, and the blockage starts right in his driveway or his gate. And in order and my understanding is is that, Kalihiwai Quarry Road maintenance was to be handled by Mr. Somers or his LLC and that is obviously not happening as the road's blocked. Even making use of a, Kauai County sign, and I would like to see, understand why it, he who is, you know, objecting about permits when he, in fact, has not lived up to his own agreement with the County of Kauai. And as a resident of Kilauea, I object to that ongoing situation where in order to access the beach down at Rock Quarry you'll be, you're not going to be carrying your kayak down there, that probably because he doesn't like people coming up the river, possibly stepping on some minute part of his land. And also, even people with small children, now they have to park by his property and get their little kids down the road where before they could get down the road and easily access the beach and the sort of lake life type of water that's available just before going into ocean. so I, as much as I agree with things need to be permitted and particularly historical sites, I find it the desecration of a historical birthing site is something I wasn't aware of and that's just beyond my comprehension as a person who's always been interested in preserving and parkland and access points and.

Mr. Hull: Three minutes, Madame Chair.

Mr. Hornbeck: Okay, that's all I had to say. Mahalo.

Mr. Hull: Thank you for your testimony. Again, there is an open call for any member of the

public that has called in that has not previously testified on the intervention request for the Kaplan application. If you would like to testify, please state your name.

Ms. Teresa Tiko: Yes, this is Teresa Tiko. I just joined this meeting, unfortunately. I had an incorrect meeting ID number and missed the majority of the testimony except for the last testifier. If I could be permitted to just briefly, address the Commissioners that would be appreciated.

Mr. Hull: Yes, you have three minutes ma'am.

Ms. Tiko: Okay thank you. Yes, Commissioners, I did submit written testimony and I won't be redundant, but I do ask that you take the time to read my testimony, because I go into the history of Mahele and Kuliana Act of 1850, and how our Supreme Court decisions have upheld the rights of kuleana owners to live on their land and live off of their land. And, you know, what is happening here is really a travesty in my mind. I am not Mr. Kaplan's attorney in this matter. I have represented him in other matters - I want to disclose that to you. But, what's going on here is that Mr. Somers seems to be completely intent to prevent Kaplan from ever building on his land. And, you know, the irony here is that the previous owner, built on that land back in 1985 with a building permit. Unfortunately, that house was destroyed in Iniki and you know where Mr. Kaplan was to build his home is on or near the same footprint. So, it - there aren't going to be any historic sites or natural resources damaged or destroyed as a result of this one single-family residence being built on this site. As far as the surrounding area, there is a full preservation planned that has been approved and abided by Mr. Kaplan ever since he's taken ownership of this property. And if you would just take the time, I know it's very difficult during Covid-19, but if you could take the time to make a site visit, I think you would be very impressed with what he's down towards restoration and protecting those resources and historic sites. And that's all I have to say. Thank you.

Mr. Hull: Thank you for your testimony. Is there anyone else who has called in to this meeting that has not previously testified that would like to testify on the intervention request for the Kaplan application?

Woman: Yes, Hope Kalai is in the waiting room.

Mr. Hull: Ma'am, we do not have anybody in the waiting room for the Planning Commission meeting. Again, as was stated by one of the other previous speakers, some members may have called in to a different meeting ID but the Planning Commission meeting there are no individuals in the waiting room. If there were anybody online, right now that would like to testify on this agenda item, please state your name. Again, this will be a last call, any member of the public that has called in to this meeting that will like to testify on the agenda item, for the petition for intervention in the Kaplan application that has not previously spoken and would like to testify now. If so, please state your name. Hearing none, madam Chair, at this point I will turn the meeting over to you and your legal counsel and the Department will stand down as far as the rest of the special order of the day items. Thank you.

Deputy County Attorney Laura Barzilai: Thank you, Director Hall. Madame Chair with your

permission I would like to address the parties.

Chair Apisa: Yes, please thank you very much, Kaaina for your assistance. Our legal counsel will proceed.

Ms. Barzilai: Good morning Counsel, Laura Barzilai for the County Attorney's office in discussion with the chair prior to the meeting, guidelines have been set to allow each party five minutes to present final comments on the petition for intervention and the opposition with three minute rebuttal, starting with the petitioner if you would like to proceed.

Mr. Trask: Yes, Ms. Barzilai prior to starting, I would like to have final rebuttal as we are the (inaudible) for the petition for intervention and it is appropriate there for that we have last word.

Ms. Barzilai: I think that is acceptable.

Mr. Trask: Just let me know when I can start.

Ms. Barzilai: Commissioner?

Chair Apisa: Please, please go ahead.

Mr. Trask: Aloha Commissioners, Honorable Chair. Mauna Kea Trask on behalf of the Petitioner intervention. I have to go quick so pardon me for speaking quickly. There is a lot to address. First off, some of the testimony received today, Mr. Somers is not blocking access of Kahili Quarry Road. That road was damaged in March 20, 2020, during a flood event that was subject to a Governor and Mayor emergency proclamation. Mr. Somers has been working with the (inaudible) Kahili group, members of KNA, members of fish and wildlife, and the County of Kauai to remedy this situation as quickly as possible. Currently the

Woman: (inaudible) has been damaged.

Mr. Trask: ...currently the documents are in front of FEMA for review and actually, the alleged violation that's been proffered today is evidence of Mr. Somers' bad acts was a result of activity he had done. Under his existing permits, while the SMA rules were suspended by Governor and Mayor Proclamation, in order to preserve the remaining portion of the road of the blown-out culvert, and so anything and now he's very cautious not to do anything so as to avoid any further allegations of improper use. Access. Anybody can access the as stated in the permits, access is granted by Mr. Somers. You can contact his land manager and that is how access to the property is, I mean the falls is regulated. This intent is not personal. Nothing about this process is personal. It is not supplanting the County the Department or the Commission's authority in this matter. It is pursuant to Planning Commission rule and the objectives of policies and guidelines of the special managing area and the CZMA rules and state and county law. Mr. Somers is not objecting or trying to stop development. As you know, you cannot do that in Hawaii. But the process has to be followed. You know, it was brought up, I believe Ms. Cowden or brought up Somers permit process, that's correct. And there was a contested case. Ms. Freeman intervened in that matter. Over 50 people testified in it, and, like Mr. Webb said a better result came out of

the project. We are asking for the exact same thing. Mr. Somers has always wanted just to participate and ensure that the public is aware of and he is aware of and can participate in the development of this (inaudible). And there's no reason why he has less rights than Ms. Freeman or anyone else. And the Kaplan application was simply a result of, like was testified to lapsed permit be allowed to extend for additional two years after it had lapsed seven years prior without any public hearing or public notification. Everyone in this room, everyone who has testified will agree that that is a good policy and that it is consistent with the law. Ms. Tiko said that Ms. Tiko talked for the historic site. She is not in a position to say whether or not historic sites was damaged. If you look at the application, Mr. Kaplan's application, on page five, he states, "Archeologist working on the site, Matthew Clark monitoring rock walls during construction and has allowed removal of some of the walls' drain construction, and that the the walls will be replaced under archeologists' supervision when the construction is completed. Furthermore, in documenting what they purport to be in a evaluation of native Hawaiian pass rights, it simply states cursorily, that applicant and his contractors have been working on the property for two years, have communicated frequently with Hendrickas, who's a private non-Hawaiian land owner, and they're unaware of any customary traditional practices on the parts that was performed by native Hawaiians. They do not say they asked anybody, they do not provide any evidence that they did outreach to the community, and you've heard today that the birthing stone, apparently a birthing stone was removed, which is in line with their statement that rocks have been removed during construction. The native Hawaiians know what there is there. The oral traditions in the native Hawaiian community are still strong. And the fact an archeologist doesn't about it doesn't mean it's conclusory, it just means that they weren't asked. And finally, I want to get into the meat of this. Again, Somers has shown a prima facie case, that this development was significantly and adversely affected his interest in protecting the conservation values of the easement, causing (inaudible) runoff and pollution into the Kilauea Stream, adversely affect the view and scenic resources from his various properties, affect his rights in the clean environment, and his rights to engage in recreation activities. All in line with the Dalton case, life of the land, (inaudible) model association and every single case in Hawaii that supports, um, the low bar for standing in environmental (inaudible) matters. It is unarguable, inarguable that he has established his right and interest to intervene. That is all he is asking for, to get this evidence before you - because you do not have the whole story. It's his interest has been furthermore supported by the circuit court order and denial is inappropriate under the Planning Commission rules, because there are no other interveners. The Somers intervention will aid in the development of a full record and so that you will be presented with all evidence, you only can make this decision, this important decision, after you have reviewed all evidence. That's all it is here. It's just a hearing, that's it. Now the real opposition, as you see, is simply that Charles is a flimsy and irrelevant argument that Charles is a bad person. That's it. And they're saying that, you know, he has supported the Kilauea Ag Department to the tune of millions of dollars to get that off the ground. That park was promised to the Kilauea community in the 70s, after Kilauea sugar went under. It was only delivered through the hard work of KNA, (inaudible), and Charles Somers to erect right now, what is a functional community piece of agricultural production. He's not trying to buy anybody off. Those (inaudible) it is like a canoe, if you have the resources you provide the resources. If you have the strength, you pull, if you can steer, you steer, if you can fit in the front seat you stroke. Everyone plays their part.

Ms. Barzilai: Excuse me Mr. Trask. Laura Barzilai, five minutes. Please wrap up.

Mr. Trask: Thank you very much. Finally, I just want to say that again, and there is, one of the issues we are going to bring up is an SMA Use permit. You need a SMA Use permit in this application and that I reserve the remainder of my three minutes for final rebuttal. Thank you.

Ms. Barzilai: Thank you, Mr. Trask. Either Ms. Loo or Ms. Bronster on behalf of Mr. Kaplan?

Ms. Marjorie Bronster: Hold on I am trying to unmute here. It will be Ms. Bronster, Margarie Bronster on behalf of Mr. Kaplan. First, let me address some of the things that Mr. Trask has said as well as some of the issues that have been raised by the testifiers. I think it is wonderful that the people have come out and made their positions known and that is the role of the public testifying, uh, at the commission hearing. But it should not be used as an opportunity to allow Mr. Somers to continue to fight against Mr. Kaplan from building anything on his property. As we submitted, there were two new things that have come up since the last time, but nothing anyone has said and nothing that Mauna Kea Trask has said changes the fact that Mr. Somers has not submitted anything to show that he has an interest different from the general public. He simply is trying to take the job of the Commission and of the Department. The two things that we have submitted are, number 1, the fact that I mentioned that the court refused to allow Somers to enjoin the county from granting this permit. This is not a permit for the entire development. This is not the old permits that many of the testifiers have referred to. This is simply a permit for the building of a single home on a Kuleana lot. Just like every other single home on a Kuleana lot that this Commission has every approved. And we believe that the commission should get on with it, without any further delay. So he went into court to try to get this stopped and the court said, "No." Then he is claiming a special interest because of the conservation easement, but that, too, is an issue that he and Mr. Kaplan have a dispute about which is now pending in the courts, and you should not get involved in that dispute, you should let the court deal with that. So those are the two things that we submitted. I will say that people are making assumptions about archeological review, but there was an archeological review and there is a preservation plan and Mr. Kaplan is following it. So the assumption that there is no - has been no - review is simply (inaudible) a wrong assumption. Th- the hearsay, about removal of birthing stones is also not true. The Kaplans have not removed any stone that was anything like a birthing stone. The reference to the wall was a reference to rocks on a wall that is being rebuilt. So all of this, I think, is worthwhile of discussion. But the Commission should deny the right to intervene, because Mr. Somers as Mauna Kea Task said, Mr. Somers is doing this because he has the resources to do so, not because he has any particular interest different from the public, but because he believes he can do this better than the County. And it is not his job. If he would like to be elected, if he would like to take on the job, of, that Mr. Hull has, let him try, but he should not be allowed to do so because he has these incredible resources. Let Mr. Kaplan build his home and let the other issues that are pending in the court, like the extension and the other permits and the SMA that are all pending before appropriate courts, let those stay in the court and let Mr. Kaplan have his permit to build his house on his Kuleana. Thank you. We ask that you deny the Mr. Somers' application to intervene.

Ms. Barzilai: Thank you, Ms. Bronster. Laura Barzilai again. Mr. Trask, rebuttal?

Mr. Trask: Thank you. It is entirely incorrect to say that this house is just a single-family

residence on its own lot, and that therefore it is exempt from the SMA Use permit. It is the same, it's part of the same large development that was previously permitted and was vacated by the Circuit Court, and this is shown both in the application and in the Director's Report on page five where it says, The following permits SMU-20-11-1, U-20-11-1 and Class IV-20-11-1 for the authorization construction of a farm building accessory add storage and office structures and site improvements." This is the farm dwelling that is in addition to the large development. That large development span two lots, both owned by Hendrickas and now both owned by Kaplan. You only get an exemption if it is not, if it is the first house not part of a large development. This is the same development. That same development that Ms. Tiko representative made, the same development that Ms. Bronster is representing amend, the same development that Ms. Loo represented. It's the same thing, you cannot parcel this out in order to avoid permitting requirements. You know, to say that, Somers is not trying to supplement. He is trying to participate. That was the whole point of the Kaplan circuit court appeal: to participate. Now to say not get involved in the dispute, so now Kaplan is showing his true colors members of the Commission. He is now going to sue Somers and Hill for what he says is improper granting of the conservation easement when, it was this Commission who mandated that conservation easement. So now, Kaplan is going to sue people for following the community's request to conserve 80 acres of Charles Somers' property, and he wants you to deny his request for intervention based upon his obligation and duty to protect that 80 acres as part of his permit requirements. So Somers was told you have to put this line in conservation easement, you have to protect it. They're saying he's going (inaudible) illegally. Somers cannot plant; he was fined for planting orange trees on his property. He's not planting anything illegally. He has to be very gingerly and cautious with that conservation easement, but now he is going to get denied because he's trying to protect the very conservation values that he was obligated to protect makes no sense. No sense whatsoever. And to see that there is no historic properties and its allegations or its hearsay, that is an insult to the Hawaiian people, the Hawaiian culture, and as a native Hawaiian, I take offense to that too. You have to go out in the Kapa kai pass you got find the native Hawaiians, they are right there. They are literally in the neighborhood. They have testified today. As you have seen today the testimony process, even online they have a hard time communicating. As you know, the oral, you know, Covid-19 is prohibiting gatherings. Hawaiians learn by talking to each other, by going to paina, gathering at parties, meeting each other and that rightfully so has been circumvent, circumscribed this past year for health reasons.

Ms. Barzilai: Mr. Trask, excuse me, I am sorry. Three minutes.

Mr. Trask: Thank you. I would just like to say...

Ms. Barzilai: Yes.

Mr. Trask: ...finally, this is just a request for petition intervention. It is legally required and that is all we want to do is participate. You are ultimately going to make your own decision. Thank you.

Ms. Bronster: Ms. Barzilai, I must object, move, and request that the Commission ignore Mr. Trask's statements that are absolute misstatements of the record, and one example is the fact that he is saying that there requires an estimated termination for this permit. Our exhibit "M" said

that the, this single-family dwelling would not be considered a development. I beseech you not to get involved with what is going on in the courts and that is the question of Kaplan's use of his own G4 and the whole area of prior permits. This is not the same thing. Do not let Mr. Trask confuse you.

Ms. Barzilai: (Inaudible) Ms. Bronster these were late filings that I will take the opportunity to explain to the Commission if I should have that opportunity. We received these filings last night. Ms. Bronster would you like to proceed with three minutes of rebuttal to Mr. Trask's direct comments.

Mr. Trask: Wait Ms. Barzilai I would like I would like to know something for the record in response to that comment. Somers was not provided a copy of that late filing as you stated, "Late last night," as required in the Planning Commission rules. Therefore, we have been deprived the opportunity to review and prepare that. So we would ask that to be stricken from the record and furthermore, we are, we are Ms. Bronster is mischaracterizing the order of the court, Because that was a motion to enforce an ICA order, and the order of the circuit court, and they didn't say you (inaudible) development they said you can develop in order to protect. And so what we're talking is a different issue of whether or not this house is part of a larger development, and therefore subject to an exemption. So we would take an objection to that and we would ask that Ms. Bronster's late filing, which wasn't served appropriately, or timely on us or the Commission be stricken. Thank you.

Ms. Barzilai: Thank you, Mr. Trask. We will take that under advisement. I believe that Ms. Bronster still has three minutes and then you asked for final rebuttal.

Mr. Trask: Thank you.

Ms. Barzilai: Thank you.

Ms. Bronster: Thank you. Thank you Ms. Barzilai. I submitted to you an order of the court of Judge Watanabe that was issued that said, and this is in reference to Mr. Somers' request that the county be prevented from issuing this new permit. After Somers put together many of the arguments that he has made to you today, the court said, "It is hereby ordered, adjudged and decreed that the motion is denied as the court find there's insufficient evidence to support both the enforcement and injunctive relief being sought in the motion." The injunctive relief was to prevent you from issuing this permit, and the court refused to do so. With respect to the motion itself, we went through this at great length, but the fact of the matter is that there is no basis for granting Mr. Somers intervention in this case. It would create a dangerous precedent for all Kuleana owners who want to build on their land. And with respect to the archeological and preservation plan, that has been a cornerstone of what Mr. Kaplan has been pursuing on this property to try to respect and follow what has been required by the state. But that does not interfere with the ability to build a small single-family residence, which is partially built and all he is asking, is for the right to complete it, just as so many Kuleana owners have done and we request that you deny the motion to intervene and get to the merits of his application for his single family lot. Thank you.

Ms. Barzilai: Thank you Ms. Bronster. Laura Barzilai speaking. Mr. Trask, one-minute rebuttal.

Mr. Trask: Thank you. That motion to enforce in the circuit court had nothing to do about this use permit. We had no idea about this use permit until March 18. That was about the fact that Kaplan started building, we had no idea why, in violation of the circuit court ordered. And now it's become clear that (inaudible) back in October he got permission from the department in violation of the circuit court ordered. Finally, there is no dangerous precedent being set. Every Kuleana owner knows and accepts the fact that they have to go through this permit process. And it is - it is a travesty that they're going to ignore the (inaudible) testimony today, supporting and requesting intervention, just because someone wants to build on their cover of Covid and not let anybody know or give public testimony. Furthermore, ask your attorney in executive session is there's any evidence the public, I mean, public notice was given under the (inaudible) procedures of Class IV zoning permits, because there's no evidence in the Planning Director's Report or in the record that such an affidavit was filed by the applicant and therefore even the use permit would be improper. 'Kay? So please correct partition for intervention. All we are requesting is to participate so that you have all the evidence, because today has shown that there is more to this story than it simply included at the request of Mr. Kaplan, in his application. Thank you.

Ms. Barzilai: Thank you parties. Madam Chair, at this time if you would like to open the floor to Commissioners for questions.

Chair Apisa: Yes, that is the next call to order in here. I would, I do now open the floor questions from our Commissioners. Commissioners, any questions of any of the parties?

Ms. Otsuka: This is Commissioner Otsuka. I have a question for Mr. Trask. Is there actual evidence that the construction of Mr. Kaplan's residence will cause harmful environmental consequences to the Kilauea Stream?

Mr. Trask: We believe so, yes. As part of the application there is draining and grubbing. Now previously in the Henrique's permit in September of 2010, Ms. Ka'uamoana testified that this was a sensitive place and the Planning Commission granted that time, a Condition No. 10, requiring clean water testing before, during and after construction so as to ensure that the public trust resource of the Kilauea Stream or River is protected. There is no evidence that any of that has taken place, by either Mr. Henrique's or Mr. Kaplan. Furthermore, we would and she has testified as well in support of this petition. There is also landscaping that is proposed in and around the area, including within the conservation easement encumbered by easement GU4, that includes that's going to include, grubbing, removing of existing trees we believe it's going to include pesticide use, in can include any number of things, and that's all downhill slope. There is also a stream there that Mr. Kaplan, it was referenced earlier, and there is an SMA letter violation for grading and grabbing in Parcel 41 by the waterfall, the no-name waterfall that is there. That can flow out into the stream. Furthermore, um, the Mr. Henrique's permit, as was testified earlier and the archeological inventory survey and management plan was predicated upon Henrique's design of a post and peer foundation. Now Kaplan has built a concrete to slab foundation - concrete to grade, which requires grading. Now he built that without letting the Commission know of April 2019 that was a different foundation. We only found out about that during the administrative appeal. So all things we believe there is evidence for it because it was requested before, it is in a flood zone, I mean the soils in the slopes are subject to erosion. I am

sorry. And given the grading and landscape in the area, we have to be sure that there is not going to be any significant adverse impact as proved by Kaplan, because we believe based on the record, going back to 2010, that there is.

Ms. Otsuka: Thank you. I have another question. Declaration of Charles Somers, page 2. 9. It says, "Out of these 11 properties, five will be directly significantly and negatively affected by Kaplan's proposed development," so is there anything currently on the five properties? And if so, what is the reason for the claim that they at all? The five properties will be negatively affected.

Mr. Trask: Okay. I am sorry, a little trouble hearing you but I believe I did, and so.

Ms. Otsuka: Declaration of Charles Somers.

Mr. Trask: And so, yes, hold on.

Ms. Otsuka: On the five properties.

Mr. Trask: Some of the private properties are non-developed and vacant and others had single-family residences when they were purchased. To my understanding there has been Mr. Somers has not developed any of them or applied for permits for any of the other parcels, except for his house that he built on the large parcel, um, (inaudible) Road. And then if you look at, um, Exhibit 14, which is the declaration of Rhone Boyd, Exhibits W and X, you can see that the, in order to (inaudible) in the planning Director's Report is that landscaping will mitigate the view, uh, from neighboring landowners and therefore not affect significant scenic resources. As you can see, again, Exhibit 14, therein Exhibits W and X, you can clearly see this development from Mr. Somers' neighboring property (inaudible) on the Kilauea side of the River Valley. There is no landscaping protecting it or hiding it. And so, when you have all the other houses in Kilauea are on slopes (inaudible) so as to avoid the flood plain and not affect the view of the inter part of the valley, but except for Kaplan's house. That is a sore spot right there that is barren and open to view for everybody and it destroys the ambience of the whole valley.

Ms. Otsuka: So the whole valley and not just Mr. Somers?

Mr. Trask: Yes, it affects specifically Mr. Somers' property because what we have to do is show-individualized interest, which we have. But because we think that the SMA notice of public hearing didn't go out, nobody else has had an opportunity to voice their concerns. So what you are hearing right now is really a last minute, you know, showing of portions of the community showing up. We are sure there is more. But, again because it was not funneled as it should've been per circuit court order and state and county law, through public hearing public notification under the SMA rules in addition to the use permit, we think you're not getting the whole story. Therefore, intervention (inaudible) will bring you the whole story so you can make your appropriate decision, that's all.

Ms. Otsuka: Thank you Mr. Trasks.

Mr. Trask: Thank you Ms. Otsuka.

Ms. Barzilai: Madam Chair, it's Laura. Any other questions from the Commissioners?

Ms. Nogami Streufert: Laura this is Glenda is it possible to ask questions of the, of the attorneys after our executive session?

Ms. Barzilai: Yes.

Ms. Nogami Streufert: Okay.

Ms. Barzilai: Of course.

Ms. Nogami Streufert: Good. I will hold my questions until then.

Ms. Barzilai: Okay.

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 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 matter of an application by Michael A. Kaplan Revocable Trust for a Class IV Zoning Permit (Z-IV-2021-8) and Use Permit (U-2021-7) for the real property identified as Tax Map Key: (4)5-2-021:019 and Petition for Intervention (4/5/2021) by Mauna Kea Trask, Attorney for Petitioners, West Sunset 32 Phase 1, LLC., CS Development LLC., and Charles Somers, individually and Applicant Michael Kaplan's Objection to Petition for Intervention and Request for Hearing.

Ms. Barzilai: Madam Chair, if there are not any other questions from the Commissioners at this time, you may move to either go into executive session or take a vote on this matter.

Chair Apisa: I move that we go into executive session.

Ms. Cox: I will second that motion.

Ms. Barzilai: Pardon me. Commissioner Otsuka, would you please state the purpose for which you would like to enter executive session?

Ms. Otsuka: Okay. I move that we go into executive session pursue to Hawaii Revised Statutes Section 92-4, and 92-5(a)(4), to consult with the County's legal counsel on questions, issues, status and procedural matters regarding Charles Somers intervention, petition for intervention.

Ms. Barzilai: Is there a second?

Ms. Otsuka: Is that all?

Ms. Barzilai: Is there a second?

Ms. Cox: Yes, I second that motion.

Ms. Barzilai: Roll call please.

Mr. Hull: Madam Chair, are you okay with me doing the roll call? Or Ms. Barzilai did you want me to do the roll call? or were you going to do the roll call?

Ms. Barzilai: I can do the roll call, Director Hull.

Mr. Hull: Okay thanks.

Ms. Barzilai: To move into executive session, the vote is Commissioner Otsuka.

Ms. Otsuka: Aye.

Ms. Barzilai: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Ms. Barzilai: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Barzilai: Commissioner Chiba?

Mr. Chiba: Aye.

Ms. Barzilai: Vice-Chair Cox?

Ms. Cox: Aye.

Ms. Barzilai: Commissioner Apisa? Chair Apisa I believe that you are on mute.

Chair Apisa: Yes, thanks. So, the motion has been approved 6:0, to go into executive session. I believe the Commissioners will log out of this you do have a login for executive session and then when finished we will return to this in a half hour estimate be reasonable I expect?

Ms. Barzilai: I think half an hour is conservative. We might want to say 45 minutes.

Chair Apisa: Okay, uh, so we will, uh, adjourn to executive session and then return after that is finished. So Commissioners log out and then login to the executive session.

The Commission moved into Executive Session at 10:43 a.m.
The Commission returned to Open Session at 11:28 p.m.

Chair Apisa Called the meeting back to order after Executive Session.

Chair Apisa: Okay. Thank you everyone. Okay thank you, I will take a roll call to make sure everyone is there, uh, Commissioner Streufert, are you present?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba? Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Chair Apisa? 6 present here. All right, the meeting back to order following our executive session. Laura are you...I guess we start, does the Commissioner have any further questions that you want to ask?

Ms. Barzilai: Madam Chair, I believe that there's a statement that one of the Commissioners would like to make.

Chair Apisa: (inaudible) call the meeting back to order (inaudible) our executive session.

Mr. Hull: Sorry, this is Kaaina Hull. Everybody again, please mute your phones. We are getting considerable feedback.

Chair Apisa: Commissioner have any further questions that.

Mr. Hull: Okay. Commissioners, sorry, Kaaina again, for sake of the meeting continuing I've muted all of the microphones including yourselves so any Commissioner that would like to speak you just have to unmute yourself. Sorry about that.

Ms. Otsuka: This is Commissioner Otsuka. For the benefit of the public, can we please request

our attorney to read the language of the rule of intervention?

Ms. Barzilai: Thank you, Madam Chair, thank you Commissioner Otsuka. The Commission has requested of me as counsel for the commission to read portions of the language of the Planning Commission's rule on intervention and I will proceed to do so. Chapter 4: Intervention proceedings before the planning commission, Rule 1-4-1. Who may intervene? All persons who have whole interest in the land...

Mr. Trask: I am sorry, Ms. Barzilai.

Ms. Otsuka: This is Commissioner Otsuka.

Mr. Trask: I am getting, I'm hearing everything in repeat. Is anyone else hearing that?

Ms. Barzilai: I am hearing that from your end, Mr. Trask. You are on a delay.

Mr. Hull: If anybody is called in to the meeting and the same time of a cell phone as well as their computer system and/or monitoring their their online webinar, you are going to get feedback, so (inaudible) system. That is for anybody participating.

Chair Apisa: Oh let's, let's get this...we want to make sure that Mr. Trask is on line with us? Mauna Kea, you are muted are you hearing us direct now?

Mr. Trask: Yes, I am sorry I it was something apparently on my end but I've I think I figured it out, thank you. I apologize for that.

Chair Apisa: No problem we just want to make sure it is cleared up.

Ms. Otsuka: Do I need to restate my statement?

Chair Apisa: Yes, Commissioner Otsuka, please restate your statement.

Ms. Otsuka: Okay. This is Commissioner Otsuka. For the benefit of the public, can we please request our attorney to read the language of the rule of intervention?

Chair Apisa: Yes, please.

Ms. Barzilai: Thank you, Madam Chair, thank you Commissioner Otsuka. I have been requested by the Commission as their counsel to read the rule on intervention. Chapter 4: Intervention Proceedings before the Planning Commission, Rule 1-4-1. Who May Intervene? All persons who have whole 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 party's interveners upon timely written application for intervention. In no such case, shall intervention be allowed for appeals of actions from the director pursuant to chapter nine of these rules. Rule 1-4-2. Intervention grounds for Denial; leave to intervene may be

granted except, in matters over, which the Commission exercises only advisory functions provided that the commission or its hearing officer, if one is appointed, may deny an application to intervene. When in the commissions or hearing officer's sound discretion it appears that, Number 1: the position of the applicant for intervention concerning a proposal is substantially the same as the position of a party intervenor already admitted to the proceeding. Number 2: the admission of additional party's intervenors will render the proceedings inefficient and unmanageable, or Number 3: the intervention will not aid in the development of a full record and will overly broaden issues. That is what I was requested to read. Thank you madam Chair.

Chair Apisa: Thank you very much. Does anyone else need any clarity on our role here or questions that they would like to ask?

Ms. Barzilai: If not Madam Chair, you are ready to entertain a vote.

Chair Apisa: Okay. I hearing no questions I am ready to take a vote and I will do a roll call vote on this, Commissioner Streufert? Oh, wait, first... I am sorry.

Ms. Barzilai: I am sorry, Madam Chair. You need a motion before you first.

Chair Apisa: We need to have a motion on the floor. Would someone like to make a motion?

Ms. Cox: I will make a motion to deny the petition to intervene, guess I have to read all this? This is the amendment to the special permit to amend the site plan and condition number, oh wait sorry, wrong, I'm looking at the wrong one, sorry. Should have had this ready before I started the motion. Okay so this is a, this is to deny the petition for intervention by Mauna Kea Trask, attorney for petitioners West sunset for 32 Phase I, LLC, CS Development LLC, and Charles Somers individually for the class IV zoning permit Z-IV-2021-8 and use permit U-2021-7.

Chair Apisa: Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: There is a motion on the floor. Is there any further discussion on the motion? Hearing none. I will take a roll call, Commissioner Streufert.

Ms. Nogami Streufert: This is to an "aye" vote 'denies the petitions' or is that correct?

Chair Apisa: Correct. It is correct the motion is to 'deny'.

Ms. Nogami Streufert: Aye.

Chair Apisa: Thank you. Commissioner DeGracia?

Mr. DeGracia: Aye.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Chair Apisa: Commissioner Chiba? Commissioner Chiba you may be muted. Commissioner Chiba are you with us.

Mr. Chiba: I thought I was on mute. I am okay now. This is Chiba. I vote 'no'.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Aye.

Chair Apisa: I believe that I can count the the vote has been taken, I...

Ms. Barzilai: Madam Chair, you have not voted.

Ms. Cox: Yeah you did not vote yet.

Chair Apisa: Would it be proper for me to abstain? Or I guess if I just abstain from this vote can I just abstain from this vote?

Ms. Barzilai: Pursuant to the rules, Madam Chair, an abstention is an affirmative vote.

Chair Apisa: Thank you, I will vote 'no'. But, go ahead we have four "4" "Ayes" and two (2) "Nos" is that correct?

Ms. Barzilai: That's correct Madam Chair. The motion has carried 4:2.

Mr. Hull: With the motion passing, Madam Chair, then we will move directly into the actual agenda item itself for Class Zoning Permit Z-IV-2021-8 Use Permit, U-2021-7 for the construction of a farm-building unit and associated site improvements of a parcel located in Kilauea, Situated approximately 1,700 feet from Kahili Makai Road, and 2,700 feet from Kahili Makai Road/ Kuhio Highway intersection, further identified as Tax Map Key: 5-2-012:019 and containing to area of 0.735 acres. Applicant is Michael A. Kaplan Revocable Trust.

Now what just happened previously was the discussion as was public testimony specifically on the intervention request. That has failed. So I'm moving directly into the actual use permit itself. Because this a special item of the day and we haven't called for public testimony, with your discretion Chair, I think it would be appropriate now to call for public testimony for those members of the public that would like to testify on the use permit itself. Are you okay with that?

Chair Apisa: Yes, please proceed.

Mr. Hull: Thank you. So members of the public that have called in and again, this is for the members of the public, not those that are part of the application. If you would like to testify, call in. You need to unmute your phone by pressing star 62 and state your name and you have three

minutes for testimony. I am going to go through the list again. It is not as lengthy as it was earlier this morning, but I will go through it to make sure that we can cover everybody that is called in. So the first number I have up is area code [REDACTED] Would you like to testify on the use permit for Michael A. Kaplan? If so, please state your name.

Woman: No.

Mr. Hull: Thank you. Area code [REDACTED] Would you like to testify on the Michael A. Kaplan use permit application? If so, please state your name.

Woman: The use is appropriate.

Mr. Hull: Would you like to testify? State your name ma'am.

Mr. David Kells: This is David Kells. I am just testifying in support of the project. I think it is a good use of the land. I think the Kaplan's will be excellent stewards of the land, and take care of the private property and invite and encourage positive participation as necessary. I just wanted to talk a little bit about this slab on grade versus post and puller, I have done quite a bit of research on that and I find nothing in the Hawaii archeological studies that suggest that there is any difference in terms of effect on archeology. In reviewing British literature, it is actually more damage to archeology from posting puller and slab on grade construction. Thank you.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] Would you like to testify on this agenda item for the Kaplan use permit application?

Ms. Hope Kalai: Yes, I would.

Mr. Hull: Please state your name and you have three minutes for testimony.

Ms. Kalai: Hope Kalai.

Mr. Hull: Go ahead Ms. Kalai.

Ms. Kalai: Oh, thank you. And thank you for hearing the use permit agenda items separately because I couldn't figure out how to get in before. I support this single-family resident construction on this Kuleana property. I believe there have been homes on this property for a long time and contiguous to this property. There were other Kuleana filers, claimants who for some reason their paperwork was not accepted or they passed or they moved or something, but right contiguous to this Kuleana was a Pa hale that was described in the survey boundaries when this Kuleana was filed in 18- when the RP was received in 1851, the Pa hale was described. And it was on the 1892 map and the 1925 map. So there were Pa hale on this Kuleana and on contiguous Kuleana properties that didn't receive a number or an RP. And the whole birthing stone thing is quite an interesting spin because I've been down the properties for the past couple dozen years and I believe the birthing stone is still there. I am not sure if somebody came down. If they were to ask me, I am not sure I would have said where it was, especially a man. So and

the guy talked to a the landscaper. That is totally wrong. On a whole different piece of land and this Kuleana property didn't have the rock wall features that the rest of Kaplan's CPR property does because it was an agricultural Kuleana. It would not have had rock wall going right through the middle of it, so that is why Mr. Hendrickas chose that side of this terrace for his home construction. So it was not the Kaplans' choice of home sites, it was Mr. Hendrickas. So, I support this home being allowed to be constructed on this Kuleana piece and other Kuleana pieces in this valley. We have a housing problem on Kauai, and we did not really make it worse by a guy who owns 200 acres saying what's in his view plane. That is utterly ridiculous. You cannot see this house from anywhere. Right now, it's got a tarp on the roof. The singles are on site. I support the Kaplans.

Mr. Hull: Three minutes Madam Chair.

Ms. Kalai: Thank you. I support letting the Kaplan's put their roof on their house and finish the construction that has already begun under an archeological preservation and restoration plan. Thank you for your time.

Mr. Hull: Thank you for your testimony. Area code again, we're calling for those that would like to testify on the Kaplan use permit application. If you are on as a member of the public and your phone is muted, you have to push star 62 to unmute. Area code [REDACTED] Would you like to testify on this agenda item? If so, please state your name. Again, area code [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] excuse me. [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] Would you like to testify on this agenda item? (Inaudible) unmuting your microphone. Area code [REDACTED] Would you like to testify on this agenda item?

Ms. Teresa Tiko: Yes, I would thank you. This is Teresa Tiko. I do not know how many of you Commissioners have had an opportunity to look at the rendering of this home. It is a very simple, modest home. It has all earth tone colors. I have been on the property, I have walked the property, it is not - it is not visible from any other residences as far as I can tell. It possibly could be visible the roof perhaps, if, Mr. Somers, you know, goes out of his way in his walk to his waterfall he might see the brook but again the colors match the earth, they match the natural surroundings and it will blend in nicely. I said earlier there was a house there previously, I think this will be a welcomed addition to the Kuleana so I'm in full support of the use permit being granted. Thank you.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to testify on this agenda item? Again area code [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED] Would you like to testify on this agenda item?|Hearing none, area code [REDACTED] Would you like to testify on this agenda item?

Man: Yes.

Mr. Hull: Okay please state your name. You have three minutes for testimony.

Man: I would like to see that permit not approved. That is all.

Mr. Hull: Thank you for your testimony. Area code [REDACTED] Would you like to testify on this agenda item? Again area code [REDACTED] Would you like to testify on this agenda item? Hearing none, area code [REDACTED]. Would you like to testify on this agenda item? Lastly, area code [REDACTED] Would you like to testify on this agenda item? Okay that is the list of those who have called in have I missed anybody again for any member of the public that has called in that has not been able to testify, not on the intervention, you may request, testify on the intervention but this is specific for testimony on the use permit for the Kaplan application. Is there any member of the public that would like to testify that has not on this agenda item? If so, please unmute your phone by pressing 62 and stating your name.

Mr. Eric Taniguchi: Yes.

Mr. Hull: Okay go ahead. Please state your name you have three minutes for testimony.

Mr. Taniguchi: This is Eric Taniguchi, and I would like the application denied. As for the destruction that has already taken place and having no disregard as to what was on the property prior. You can have people inspect that that is under the guise of the owner and they will be able to do things that the owner wants to have done. And from all the testimony that has taken place this morning, if the truth isn't good enough, I don't know what can change this denial of this application. Thank you.

Mr. Hull: Thank you for your testimony. Is there any other member of the public that have not spoken on the use permit application for the Kaplan application that would like to testify on this agenda item? If so, please unmute your phone by pressing star 62 and state your name. Hearing none, Madam Chair, with that I'd like to hand over this personal meeting to our planner Dale Cua who has a preliminary, the Director's Report with a Preliminary Evaluation.

Chair Apisa: Yes please. Dale, will you give us your report please?

Staff Planner Dale Cua: Yes, good morning Madam Chair and members of the Planning Committee. I will be moving through my Director's Report and thus summarizing the highlights of the report.

Mr. Cua read the Summary, Project Description and Use, and Applicant's Reasons/Justification sections of the Director's Report for the record (on file with the Planning Department)

Mr. Cua: And as I mentioned earlier also, the project was previously considered through previous permits, approved in 2010 involving a special management area use permit SMAU-2011-1 use permit U-2011-1 and class zoning permit Z-IV-2011-1. It should be noted that the property is situated within the special management area. The construction of the first residence on the parcel is not considered development and therefore is exempt from the SMA permit. Comments from reviewing agencies are attached to the Director's Report and at this time, this concludes the Director's Report for the project.

Chair Apisa: Thank you much. At this time, do we hear from the applicants, I think?

Ms. Barzilai: Yes ma'am.

Chair Apisa: ...before we question from the Commissioners?

Mr. Hull: Yes. Generally, Chair, if you have any Commissioners of the Department either Dale or myself, we can fill in those questions or if you would like to have the applicant make their presentation, the applicant is of course online as well.

Ms. Nogami Streufert: Could we ask a question. If I could. Dale, because we have, there have been several concerns that were issued earlier. This is only for a one-story farm dwelling not the original 10 that Hendrickas had originally intended. So this is a one-story farm dwelling with two bedrooms and two and 1/2 bathrooms. Which.

Mr. Cua: That is correct.

Ms. Nogami Streufert: To a total of about 2,796 or about 2,800 square feet with a Porte-cochere. Is that correct?

Mr. Cua: That is correct.

Ms. Nogami Streufert: Does not include any other buildings?

Mr. Cua: No just this farm dwelling unit.

Chair Apisa: Great, thank you.

Mr. DeGracia: I have a question. Dale this, the footprint of the proposed, well where the house is currently being built under construction. Is it the same footprint as previous construction, or the previous buildings that were on the property?

Mr. Cua: No, it's not. As I mentioned in my Director's Report, the design of this residence is significantly different from the previous residence that was previously approved and the SMA Use permit and there is actually a reduction of the size of the footprint.

Mr. DeGracia: I think - I guess my question Dale is there was a previous residence that was there prior to Hurricane Iniki. Does it fall within the same area of the land? Or is it on a different area of the land?

Mr. Cua: It's in the general vicinity of the residence that previously existed.

Mr. DeGracia: Okay. And also, I guess I don't want to assume, but it appears that the uses will also be consistent with what was on that residence that was there previously, Hurricane Iniki.

Mr. Cua: That is correct, yes.

Mr. DeGracia: Thank you. No further questions.

Chair Apisa: Oh, I guess I will ask the question again. I mean is it customary or Kaaina is customary that we have the applicant make some comments or just if we have questions of him?

Mr. Hull: Oh no, yeah, absolutely, Chair. Sorry, I was stating earlier that the Department can field any questions you folks have after the report, but the applicant is here, not just to field questions but also to present their application.

Chair Apisa: Yeah.

Mr. Hull: So whenever you folks are, whenever you folks are done with any questions you have of the Department after having received our report, then it would be appropriate to call in the applicant to get their presentation.

Chair Apisa: Are there any other further questions for the planner?

Ms. Otsuka: I was just wondering if the Kaplan's plan to make this a permanent residence? Are they going to live in it?

Chair Apisa: I think that be a better posed to the applicant after they speak.

Ms. Otsuka: You are right. Thank you.

Chair Apisa: Okay I think we are ready if the applicant is present, we would like to hear from the applicants at this time.

Ms. Laurel Loo: Good morning, Commissioners, Chair Apisa, Mr. Hull, this is Laurel Loo for the applicants Mike and (inaudible) Kaplan. You have before you a pretty simple use permit and class for application and because some of you have already voted to approve this in 2019, I don't expect a whole lot of questions. We have attached many of the same exhibits as we have attached to the 2019 application. But I would like to address a couple things that came up this morning. One, is the issue of post and (inaudible) versus a concrete slab. The concrete slab was all always even since in our 2019 application presented to the Planning Commission. So despite testimony that this was a last-minute switch that is not true. It was always presented by the Kaplan's, as a concrete slab. And keep in mind that this is with the consultation and oversight of an archeologist who's on property. And while I'm talking about archeology, I just wanted to mention that this property has been the subject of at least six archeological inventory surveys over the past couple of decades. The most recent one is attached to our order application as Exhibit K, and we have been able to find no reference to a birthing stone during the break today well the Commissioners were in executive session we had an opportunity to speak to the applicants who are unaware of the presence of an actual birthing stone on this lot. And it just, it just surprises me how a double hearsay mentioned in testimony this morning sort of becomes fact by this afternoon. In addition to the state's archeological inventory surveys, we also have Matt Clark who is an archeologist who is retained by the Kaplan's who is onsite and monitoring the job. So there are many features in place to protect any archeology on this site. The Kaplan's are very concerned and have done extensive restoration under a preservation plan, and anyone who's visited the site will see that it has become a beautiful site as compared to an overgrowth site as it was just a couple of years ago. We have all of our exhibits attached to our application that shows the progress of the construction, the proposed landscaping plan, elevations of the floor plan so I am here to answer any questions you may have and yes, this is the Kaplan's primary residence.

Chair Apisa: Thank you very much, Laurel. Any other questions for the applicant from the Commissioners?

Ms. Nogami Streufert: Laurel, yes, if I could ask you a question. If a worker were to find some archeological thing, whether it's, and I'm not going to say it's a stone or it's some kind of an artifact, what is the process whereby the worker lets, either the archeologist onsite or the owner know about the existence of this?

Ms. Loo: Pursuant to the Department's standard conditions, I believe that they have to, um, notify the state immediately. And also, in addition to that, we have a private archeologist who is on hand and able to answer any questions and if it were, for example, bones or (inaudible) they would immediately stop construction. So it's just a standard condition that the county places on construction.

Ms. Nogami Streufert: But the owner is and the archeologist are open to getting reports from their workers that there might be something there and that they should stop?

Ms. Loo: Absolutely.

Chair Apisa: Great, thank you.

Ms. Loo: Thank you.

Chair Apisa: Any, any other questions?

Ms. Loo: I guess my only question is what is Mike Loretta having for lunch?

Mr. Mike Loretta: I apologize. I did not realize my camera was on.

Ms. Nogami Streufert: I did not see that.

Chair Apisa: Laura, I would just like to clarify, the Commission did not approve it in 2019? I think this is a new this is a new application, as I understand it.

Ms. Loo: The Commission approved the same the same, residence, the same floor plan and design, and including the concrete slab and the elevations that are all attached. The only update I think is a few more plans in their landscaping plan or few different plants in the landscaping plan, which includes a taro lo'i and a pineapple field, which, I think was not as robust in the 2019 application.

Chair Apisa: My understanding is that this is an application thought it might be the same. Plans the same. It's a new application.

Ms. Loo: It's the same building that is being proposed and has already received Planning Commission approval, but what we did was, because that was tied to a different application that went to court, we decided to just proceed while the rest of the stuff is in court, with this one use permit for this one residence.

Chair Apisa: So it is a new application for this one single-family farm dwelling?

Ms. Loo: It's a new application with the same elevations and floor plan that was already approved in 2019.

Chair Apisa: Thank you for clarifying.

Ms. Loo: So it's a new application, yes.

Ms. Barzilai: Excuse me Madam Chair, it's Laura, County Attorney's office. If you require further clarification from the Director or from the Department, now would be the time to ask those questions as well on this issue - of the structure itself. I believe that that permit was invalidated by the court, so we are now examining a brand new permit.

Chair Apisa: Maybe, Kaaana or Dale do you want to clarify or expand on that.

Mr. Hull: Yeah, there is more to it, Ms. Barzilai just mentioned. The permits that were approved previously were an amendment to a previously (inaudible) permit that under previous county attorney positions were that that permit was valid and you folks entertained it for an amendment. Since that time, and approved it, the amendment. Since that time a court did invalidate those permits, based on a timeline issue and that they had expired. And so the applicant here before you folks is appealing that decision of the court, but also recognizing, okay, if it has been I, if it has been invalidated, recognizing it has been invalidated, they have applied for a separate brand new permit to go through the process fully and anew it is what is here before you folks.

Chair Apisa: Thank you. Commissioners, any further questions?

Ms. Cox: I do not have a question. Accept maybe to other Commissioners. And it's just that given that so much public concern about the archeology, I'm wondering if theirs is, it appropriate to seek a second opinion or something just so that it's totally clear? I just do not know. I'm just feeling like there was a lot of concern and I would like to respect the public concern but not overly, you know, necessarily, accept all that as fact, but I'm just wondering if it's appropriate to have a second look at that.

Mr. Hull: Yeah, think, if I could chime in really quickly, Madam Chair, Thank you, Commissioner Cox. Well then, let's also bring up to is, this as you guys begin these discussions about possible motions and possible actions. I would like to say that, you know the report that was submitted to you folks; it specifically references a preliminary evaluation or preliminary recommendation. That is standard for all reports. If during the course of the public hearing because the part of the public hearing, agency hearing/public hearing is to hear what public testimony is. And is to weigh various things that are brought to the attention of not just the Commission but the Department as well to the process. I can say that, not just off today's proceedings but a part of partial to today's proceedings, and testimony. The Department will request a deferral to July 13, so that, among other things, we can further assess and make an analysis of not all that was stated here today, but as well as seeking further clarification, from other state or county agencies. And that's ultimately you folks have the authority to take action when you feel or see fit, but the Department's position is it would be appropriate for the (inaudible).

Ms. Cox: That actually makes me feel more comfortable.

Ms. Bronster: If I may, Madam Chair?

Ms. Barzilai: Madam Chair, Ms. Bronster would like to be recognized.

Chair Apisa: Yes, please.

Ms. Bronster: On behalf of the applicant, I would like to object to any deferral of this matter. I think that the appropriate manner in which to deal with any issues as Ms. Cox has raised, is to potentially clarify it in the Conditions. There is currently a proposed Condition with regard to the archeological issues, and the archeological, the recommendation in the Director's Report specifically refers to known archeological sites, and wants to Condition the approval on the applicant working closely with the State Department of Land and Natural Resources. And for the benefit of all of you, it is in the Director's Report on page 10, paragraph 9. It says, "The applicant shall work closely with the State Department of Land and Natural Resources, Historic Preservation Division, SHPD in order to ensure that these archeological sites remain undisturbed and/or unaffected by the proposed construction activities. Furthermore, the applicant is advised that should any archeological or historical resources be discovered during ground disturbing construction work, all work in the area of archeological historical findings shall immediately cease and the applicant shall contact SHPD and the Planning Department." We believe that the concerns that have been raised are precisely those that are addressed by this Condition and if there are additional aspects of the concerns, I think that the appropriate thing to do would be to approve the permit today, and potentially adjust this condition, to include any additional issues that you would like to deal with. However, I think that the timing is really critical. There are serious problems in deferring this and Mr. Kaplan is not willing to waive his rights and defer this further. Unfortunately, he has been at this for a very long time and he has really limited this application to a very narrow scope, recognizing that this preservation plan is in place. It is something that has been the subject of archeological review it does contain the archeological surveys and he is willing and anxious to work with SHPD and the department if there is anything that does come up. And as I said, what we would request is that you approve the permit today with Conditions. I will note that because this house had been previously partially built, there are serious problems with the deterioration given the the weather and we are very, very concerned about further delay of this approval. So we request that you follow the timelines as laid out in the Director's Report and approve this today, with Conditions. Thank you.

Ms. Barzilai: Madam Chair you are on mute. |

Mr. Hull: If I might respond, Madam Chair, to Ms. Bronster's objections?

Chair Apisa: Well I am going to suggest, I mean, if the Commissioners feel they need direction or we could go into another executive session, or you could ask any question. How would the Commissioners like to proceed?

Ms. Barzilai: Madam Chair, prior to entertaining a motion, perhaps we should allow Director Hull an opportunity to comment.

Chair Apisa: Sounds like a good idea. Director Hull?

Mr. Hull: Thanks Madam Chair. I can sympathize with what Ms. Bronster's stating. I will say that I would be in complete agreement that the July 13 date that I just requested for deferral for would, breach the 60-day automatic approval timeline that is in place under Kauai County Court Chapter 8. I think that time is, quite honestly necessary and appropriate for us to do a further analysis, but I also, respect that there is a timeline crunch or is a timeline requirement under the 60-day window, that if the applicant does not agree to it than that is completely their right. You guys may need to go into executive session on this. I do believe that because the intervention request took two meetings to resolve, that it told the timeline. And that in fact, the June 8, meeting is still within the 60-day window, now granted is was beyond 60 days since this Commission received the Director's Report and held the first public hearing, but I believe because the Commission could not get into that time frame it had to resolve the intervention request. I do believe that we have at least until the June meeting to be able to come back to you folks and get an updated supplemental Director's Report. But I recognize that that could be challenged, and it's probably something that you're going to have to talk to your attorney in executive session. But that is where the Department is at.

Ms. Bronster: Madam Chair, may I address the issue of the tolling?

Chair Apisa: Yes, go ahead.

Ms. Bronster: I want to take a moment to talk to you about the timeframes that were set up in the county ordinance. And I will say that the 60-day timeline, has been set. It is there, it is a firm date and there is no provision in the rules for tolling. So, what I think is important to note is that what Mr. Hull suggested that there may be some tolling, it has to (inaudible) within your authority. And obviously, this is something to discuss with your own counsel, but we would just like to be heard on it. The rules specifically say, that within 60 days after receipt of the Planning Director's Report or as longer period as may be agreed to by the applicant, which the applicant is not willing to agree to. The Planning Commission shall hope- hold at least one public hearing and issue the permit with or without Conditions or deny the permit. In Sub-section 5, it says, "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." And again, I just want for the record to say that the applicant is not assenting to any delay. Accordingly, there is no provision anywhere in the ordinances that suggest that a delay because of a motion, would toll the timeframes. And this is important because this ordinance was a result of a state statue. It was not something that the Commission, the County Council simply came up with, It was specifically part of 91-13.5 which was actually first, passed in 1999, a very long time ago, but I happen to remember it because at the time, I was the Attorney General. And

the problem came up that there were a lot of vacancies and there was a lot of delay, and there were a lot of things that just took more time than people wanted. And so what the legislature said is each county must come up with a strict maximum time period, within which to act. Now we're not telling you whether it has to be 20 days, 30 days, 60 days, but it's up to you counties to make that determination. But once you make that determination as to what that time limit is, it will be followed. And if you don't act within the time limit as the county prescribes, it will deem - the application will be deemed approved. So having passed it in the legislature in 91-13.5, the county of Kauai then went and set the 60-day time limit, and it didn't have any tolling and the state law didn't allow or have any provisions for tolling. So based on those, we believe that the 60 days as set forth and as reported in the Director's Report will expire on, it says that the deadline for the PC to take action according to the director is May 22, 2021, and we believe that that is the deadline. Accordingly, we would request, um, rather than have this approval by operation of law; we would request that the Commission approve this single-family modest home, the Kaplan's. Thank you.

Chair Apisa: Thank you, for further explanation again, Commissioners, any questions or comments or do you feel you need to go into executive session?

Ms. Nogami Streufert: Donna, Chair, Commission Chair, Chair Apisa, if I could ask a question of Mr. Hull please?

Chair Apisa: Yes, please.

Ms. Nogami Streufert: I think the largest at this point one of the largest areas of concern is No. 9, (inaudible), which is logical. And right now (inaudible) land is (inaudible) as the orbiter if you will. (Inaudible). Is there a (inaudible) Kauai that would be appropriate as a consultant to be added to this Condition?

Mr. Hull: You know, I would be hesitant to bring on a private party and one, would the Department pay for it, which I don't have the funds for but if we made it upon the applicant to bring on a consultant, you know, what would be the distinguishing, (inaudible) between SHPD and the consultant if they disagreed, so to speak? So generally it is a reliance on SHPD's, not only expertise by their, you know, their position as a state government agency. So I know there are of course, consulting services that we completely respect and acknowledge their professionalism in the field by it would be hard to see said authorities to make calls on certain archeological sites above and beyond SHPD for a consultant if you will.

Ms. Nogami Streufert: Okay. Thank you.

Chair Apisa: Are there any further questions?

Ms. Cox: I have a question. So does SHPD as, I am just not as familiar with their work as maybe I should be, but do they, will they, talk to clients from the area? I mean...or do they just

oversee the removal of things? In other words, is there a way by putting a Condition in and or adding into I mean, leaving 9, the way it is, but does that mean that they actually are going to investigate some of the things we heard this morning?

Mr. Hull: It's a good question, Commissioner Cox. While I have seen...I believe some history of SHPD participating in cultural practitioner issues, if you will, I don't believe, that that's particular their authority and responsibility. According to case law, quite honestly, it is the authority of the applicant or it's the responsibility of the applicant and the duty of the Planning Department to look into those particular issues. Then ultimately, by our assessment research and provision of that information to the Commission, then from that information you (inaudible) an action or a response and so that is really where that responsibility falls.

Ms. Cox: Okay, thank you.

Chair Apisa: Further, open to further questions. What I am hearing is that if we do not take action today, it could be automatically approved by the 60-day, 60-day time limit.

Mr. Hull: If I might have one final caveat to that 60-day timeline, Madam Chair?

Chair Apisa: Yes please.

Mr. Hull: And with that, I will of course respect the ability for Ms. Bronster and Ms. Loo to respond, but indeed, there is the 60-day timeline. I think Ms. Bronster and Ms. Loo disagree with the Department's assessment of the tolling of that timeline. Regardless of where that timeline fits in, I cannot say what action is required within the 60th day. The three actions you have before you always the same, right? Approval, approval of the Conditions of approval, or denial, and those were the three actions that - that essentially would be necessitated taken within that 60-day time frame.

Chair Apisa: Commissioners, have no further questions or want to go into executive session, I would entertain a motion. What is your pleasure?

Ms. Bronster: May I make a comment?

Chair Apisa: Yes, please.

Ms. Bronster: Madam Chair?

Chair Apisa: Yes, please. |

Ms. Bronster: I apologize for interjecting here. I did want to note that the archeological inventory survey attached as Exhibit "K" to the application specifically refers to the fact that as part of the survey itself, the applicant did reach out to Kapuna in the area, and the Kapuna made comments on this topic of the then application, that was being considered, that was the full development. And the Kapuna Mary Lee Chandler, checked with other Kapuna on the behalf of

the applicant and could not find anybody who had the historical knowledge of the study parcel. However, in communication with the applicant just now, I have been informed, that the applicant would be willing to entertain an extension of this Condition No. 9, to include in the Condition. The fact, that they should go back out to the Kapuna with respect to investigating this issue to get a cultural practitioner to look at the issue of the archeological sites that have been referenced. I would also note that to the extent that the archeological surveys show anything the ones that had been previously done, they are not in the location of the home. So that it would not be a review there, but rather at the other site or sites that have been discussed to see whether in fact there any stones were moved that we were unaware of.

Chair Apisa: Thank you. Commissioners, your pleasure?

Ms. Nogami Streufert: Could I ask a question then of the attorney? Does that mean (inaudible) that you would be or your client would be open to entertaining a modification of Condition 9, to include regular consultations, local Kapuna or with local practitioners?

Ms. Bronster: I think that the way in which this is generally handled, in other areas that I have been involved with on other islands. What is done is hire a cultural practitioner to take, to reach out to the Kapuna, and look at whether or not there are any additional issues that could be considered under the Preservation Plan and the coordination with SHPD. So it would basically be going out to either the cultural practitioner who is previously been engaged or a new one to see whether or not there are additional things that should be incorporate into the Preservation Plan of this SHPD. And it would be consistent with the rest of paragraph 9, which says, "If there are other things discovered, they will be raised with SHPD and the Planning Department." So it would not solely be SHPD it would be, um, with SHPD and the Planning Department. So the applicant is willing to hire a cultural consultant, to do that and then if anything additional is found, would follow the rest of Condition No. 9.

Ms. Nogami Streufert: Would that be something that would be acceptable to the Planning Department?

Mr. Hull: I'll say it's better than not having it there. But I would say again, we can craft a possible Condition that we think might be reasonably implemented and I've crafted one, but I will still say that the Department is requesting a deferral.

Ms. Nogami Streufert: 'Kay.

Ms. Cox: Then can I ask for clarification of what our options are at this point? If we deny this or defer it, either one, then it would, we will run into that time frame problem, right?

Mr. Hull: No, no. So if you deny it, you do not run into the time frame.

Ms. Cox: Oh yeah, you are right okay. If we don't yeah, okay. So if we defer it, which is what the Planning Department would, is requesting, then we would run into the time frame. And if we

run into the time frame, the application may be approved as is, which would mean that recommendation 9, would not be changed the way we just discovered or just talked about, right? Okay. So if we approve it with recommendation 9, it may not have the same intent as what the Planning Department would like, but it would also would not be subject to the time lapse problem. Okay. Thank you.

Mr. Hull: If the Commission would like again, we're asking for a deferral and you know, to put some of (inaudible) if the Commission doesn't feel that they has enough information to assess in that it hasn't met all the standards and criteria. The Applicant or the Department has not demonstrated that all the standards have been met, given, say public testimony or other information provided, then the Commission can deny on that on those grounds. But those are for clarification. So, if the Commission would like me to read what I kind of put together just listening to this discussion about a possible amendment to Condition No. 9, I can read something onto the record. But again, that's if you want to go on the track of... someone wants to make a motion in line with approving with an amended Condition No. 9.

Chair Apisa: I would like to hear what your proposed amendment is.

Ms. Cox: Yeah, I would, too.

Mr. Hull: Well the Department drafted up it could get to what was being spoken to by both the applicant as well as the Commission, is that No. 9, would be amended to include the following language after the first portion of that paragraph. To state: "Regular consultation with cultural practitioners shall continue on an annual basis in order to ensure cultural practitioner rights are preserved and maintained."

Woman: I like it.

Mr. Hull: And I of course Ms. Bronster wants to be able to write that down I can re-read it if you want, but. Commissioners you know, you want to get clarification if the applicant has any objections to that type of Condition.

Chair Apisa: Go ahead and re-read it one more time. It is not too long.

Mr. Hull: So in addition to the language already established in recommended Condition No. 9, it would be amended to add the following language: "Regular consultation with cultural practitioners shall continue on an annual basis in order to ensure cultural practitioner rights are preserved and maintained." And I guess from an implementation standpoint, essentially that would necessitate that the applicant provides the Planning Department with a report on an annual basis demonstrating that consultation and outreach.

Chair Apisa: Is that an annual basis forever and ever?

Mr. Hull: It would at least the way it's drafted, yes.

Ms. Bronster: May I respond here.

Mr. Hull: I will say, it's not uncommon for annual reports to be placed on class IV zoning permits. Right? There are class IV zoning permits, there are SMA permits, there are use permits that have annual reports. While the Department is not necessarily in favor of all of them because it creates a lot of reporting for the Department to process. I was just trying to synthesize at least; the concerns are being raised by the Commission's applicant's response and so there is I will say a format that has been done. But if the Commission wants to change that language or the applicant has any recommended changes to it, but again, I just want to state that this is just one I crafted off of the concerns that were being raised. The Department's position still is that action for approval is not recommended at this time.

Ms. Otsuka: I would think it should not be on an annual basis forever, at least until completion? If you think how many - how many people would want to live in a home and always need to be reminded every year I have to go to the Planning Department because I need to let them know that nothing historical was found. I do not want to be in my 80s having to remember something like this.

Chair Apisa: Then pass it on to your grandchildren.

Ms. Nogami Streufert: We could make it due on income tax day then you would remember it.

Mr. Hull: (Inaudible) look if that is where the Commissioner's is lining up as far as design or a possible Condition that could be amended then to an annual basis until a certificate of occupancy is issued by the building division.

Chair Apisa: That sounds better.

Ms. Bronster: Yeah, I think that, if I may, Madam Chair?

Chair Apisa: Yes, please.

Ms. Bronster: I think that until a C of O is granted, I think would work. But I think we would need to be clear that the Condition should say 'on an annual basis' to ensure that cultural rights, if any, are preserved and maintained. Because it is not clear from the archeological study that has been done that there have been any cultural rights on lot 19, which is the smaller parcel. So, certainly we would reach out to a cultural practitioner and hopefully with that determination, but I would like it to be the consultation with the cultural practitioner shall continue until a C of O is obtained and a report made until C of O is contained to ensure that cultural rights, if any, are preserved.

Chair Apisa: Kaaina are you.

Ms. Nogami Streufert: If I could ask a question? What does a referral do for a, if we were to defer it, does this mean that they could build without any Conditions? That it expires so therefore

they can building with any Conditions at all.

Mr. Hull: It's really a question for you possibly in your attorney and executive session. Because it there was a deferral of today or say you deferred it just till June, right? Till the June meeting, once the Department feels as if it is in within the timeline, the applicant does not sustain that they don't feel it is within the timeline, right? Then there are repercussions. If they decide to challenge it, if they decide not to challenge it, right, then that is really a discussion, sorry to (inaudible) it's really a discussion for you and Ms. Barzilai.

Ms. Barzilai: Which now might be an appropriate time to make a motion. I believe that we understand that the Department's position is that tolling started when the contested case commenced when the petition for intervention was filed. And that there's still time on the clock until after the June 8 meeting. That is the position of the Department is that tolling occurred and that there time remains? The position of the applicant is that that is not the case. That the rules do not provide for tolling and that chapter 91-13.5 does not provide for tolling. Madam Chair maybe at this time you would like to entertain a motion.

Chair Apisa: Yes, would someone like to make a motion to go into executive session? It sounds like we are at a standstill here and we need a little guidance.

Ms. Barzilai: You probably would want to state the purpose.

Ms. Cox: I will make a motion that we go into executive session pursuant to Hawaii revised statute Section 92-4, and 92-5(a)(4) for the purpose of the executive session is to consult with the county's legal counsel on questions, issues, status and procedural matters. This consultation-consultant- consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the commission and the county, as they relate to the matter of an applicant by Michael A. Kaplan, local trust for a class IV Zoning Permit Z-IV-2021-8 and Use Permit U-2021-7 for the real property identified as Tax Map Key: 4-5-2-012:019.

Chair Apisa: Do we have a second for this motion? Do we have a second?

Ms. Nogami Streufert: Second.

Chair Apisa: Okay we have a motion on the floor to go into executive session, um, all in favor. Aye. (Unanimous voice vote). Motion Passes 6:0. We will adjourn and reunite in executive session and I think this could be much shorter than the last 45 minutes.

The Commission moved into Executive Session at 12:49 p.m.
The Commission returned to Open Session at 1:45p.m.

Chair Apisa called the meeting back to order after Executive Session.

Chair Apisa: Okay, we would like to take roll call. I will do a roll call here. Commissioner Streufert?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Ms. Apisa here. There is 6 present and the meeting is reconvened. So this first, does the Commissioner have any questions or I do or I don't but Kaaina do you have any comments to add?

Mr. Hull: None, not at this time Madam Chair.

Chair Apisa: All right, Ms. Bronster, to avoid the possibility of a deferral in a 6 month or I'm sorry. To avoid the possibility of a denial and a 6-month delay, would your client consider agreeing to a 30-day deferral?

Ms. Barzilai: Ms. Bronster, you are on mute.

Ms. Cox: You're muted.

Chair Apisa: I'm sorry what was that?

Ms. Bronster: Okay, I am sorry, Madam Chair, I was muted. I am sorry Madam Chair. We do not believe that it would be appropriate to have a deferral. We think that the issues that were raised previously, relating to the Hawaiian rights are valid concerns and I think that the proposal

that was suggested earlier to amend the Conditions would adequately address those concerns. And I think that when we're talking about a use permit on a Kuleana lot, there are very specific requirements on what you should be looking at. And to the extent that there are archeological, cultural practices, and other related issues, we think that the proposal by Director Hull, would more than adequately address the concern. The applicant would be happy to consult with cultural practitioners and would be happy to report to SHPD and the Department and were prepared to do that today. We believe that the condition No.9, with adjustments would address that and based on that, there should be no reason to delay. So we believe that the Commission should vote today, and with due respect, we request that you expand Condition 9, to address the concerns that were raised and in enable the applicant to reach out to the community to determine whether there are additional issues that should be looked at and we request that you approve it today. Thank you. And we are not willing to defer.

Chair Apisa: Okay, thank you, and Director Hull, you seem to have some concern in needing additional time to amend the report. Any- anything you want to add to that?

Mr. Hull: No, Madam Chair, just as you stated and as we have stated before, prior to you folks going to executive session, the Department would appreciate additional time, to further assess the information that was provided today. And provide the, you know, possibility of an updated report to analyze, assess, and make a recommendation. I hope on the input that brought today, to do further outreach. Again, we do understand where the applicant is coming from when it comes to the timeline, so we respect that. Ultimately, the Commission's quite honestly, and as your clerk, I apologize you are in this position, but I appreciate the fact that you folks are definitely, between a rock and a hard place. More so than I think, I have seen any Commission put in on any other previous items. So, I apologize for folks having to be in this position, but ultimately it's an action that is necessary.

Chair Apisa: Yeah, I think the rock and a hard place is maybe not agreeing on when the 60 days are up (inaudible) you know, understanding the applicants' position on prior deferrals. Commissioners any further, any questions? So we have before us the option to approve as submitted, approve with conditions, or to deny. I would entertain a motion.

Ms. Nogami Streufert: Chair, before we get into the Conditions, or before we get these (inaudible) will we not, if we wanted to add Conditions or modify Conditions. Do we not have to do that now before we even (inaudible) to do that? |

Chair Apisa: Yes, I would think now would be the appropriate time if you want to modify the conditions or add to them in any way. Now would be the time, before we vote.

Ms. Barzilai: Madam Chair, you would need a specific proposal or a specific question from the Commissioners on an individual condition that you would like to discuss or revise.

Chair Apisa: Okay, let me take a stab at it. On Condition 9, I think is the archeological Hawaiian (inaudible). I think that is where most people in the community as well as, I can't speak for the rest of the Commission, have concerns with. I would like to see that strengthened and I am not sure how to do this so that is why I am hesitating. I would like to see that strengthened to ensure that the either (inaudible) or the historical or (inaudible). You got the archeological survey, so archeological surveys say that it's relatively, the area that they want to do (inaudible) in has been relatively (inaudible). But there have been things that have been brought up whether they're real or whether that's just one person who said it and then as it becomes repeated it becomes more established fact. I don't know where it goes. Well is there some way, Mr. Hull that we can strengthen that to take into account the possibility that there is something there as well as to future quote finds or future reminiscences of what has happened before can be taken into account. There is some kind of a language that can be put in there.

Mr. Hull: So sorry, I hear kind of two things by our Commissioner Streufert, and I am just trying to clarify so correct me if I am wrong. There is Condition 9, currently, is germane towards the discussion points and mitigation or preservation points of archeological sites. I think there is also a concern from the Commission and we address the possible amendment to that,, to go beyond just addressing archeological points but to address possible cultural practitioner points. In so far as there are cultural practitioners today, that may be using this site, whose rights to access a site as Ms. Bronster said, if any is actually occurring to be preserved and maintained. I have to say I do not see anything further beyond what was previously proposed encapsulating, that Condition as a mitigation measure, right? You know, the ultimately that is why the Department has concerns with moving forward with applicant is that further outreach may be necessary or further analysis? And that's what our recommendation is for the deferral. But as far as the Commission are you looking at making a motion to say approve with this Condition amended, I'll be honest Commissioner, I don't see anything beyond what's already there as well as what was previously reiterated with the consent of Ms. Bronster.

Ms. Nogami Streufert: Thank you.

Ms. Otsuka: Clerk, one concern. I have a question. One concern if this is deferred, how many days does someone have to intervene?

Mr. Hull: Commissioner Otsuka, if I may. It wouldn't be an intervention, if this were deferred, the applicant at least with what they've conveyed so far in this meeting, may object to that and therefore they have a right to appeal that to the court. And so they would have, I'm trying to think and Laura, you might know that better, they either have 21 days or 30 days to make that

appeal.

Ms. Barzilai: I think its 30 days. I can check the roll.

Chair Apisa: So 30 days would be the maximum. Could be done anytime within that period.

Mr. Hull: Correct.

Ms. Cox: I have to say I am very concerned, because I understand that the applicants' concern with the time frame, they've waited a long time for this, but I also am struggling with the fact that the public deserves to have these things analyzed and researched. I just I guess, all I want to say is I wish that we could agree on a deferral a shorter, you know, 30-day referral because I do feel like I'm between a rock and a hard place, and going to have to make a tough decision.

Ms. Bronster: Madam Chair?

Chair Apisa: Yes?

Ms. Bronster: May I address this point?

Chair Apisa: Yes, please.

Ms. Bronster: I have heard the concerns of the Commission and I fully appreciate the difficulty. What I would propose is as Director Hull mentioned earlier, to add the additional language about consultation with cultural practitioners to that the applicant shall engage with the cultural practitioners to ensure the cultural rights if any are preserved and maintained, and that with respect to the particular issue that was raised about the birthing stone, that the applicant be required to go back to the archeologist and cultural (inaudible) concerns to determine whether in fact, there is a birthing stone and to make sure that it is preserved, if it does exist on the property. I think that that very specific concern was raised by a lot of people, and I think that's something that the applicant would very much like to investigate further and make sure that the people are given assurances that if there is such a cultural item that it does get protected. So we have no problem with having that added to the Condition. Obviously, if it were identified it would then fit into the rest of the part of paragraph 9, and it would be required to be, the applicant would be required to work with SHPD and the Planning Department with respect to any additional archeological and historical findings. We believe that that would address not only the concerns raised by the Department, the concerns raised by some of you, and certainly the concerns raised by a number of the testifiers. The applicant is prepared to report back on a periodic basis, but clearly the Department probably doesn't want annual reports from every applicant. I think, having a limit, as addressed earlier, could deal with that. But certainly, having the report to the

Department, which would be public to the public, the public would be informed about the fact that there are protections in place to address the things that were raised this morning. We would request that you amend paragraph 9, accordingly and approve with the Conditions.

Ms. Cox: Kaaina, how do you see the difference between that amendment and what the Planning Department would do if they had more time? Because in one case it is the Planning Department that's going to be going something. The amendment is saying that the applicant is going to do something. So I am just wondering what do you, can you comment on how those might proceed differently?

Mr. Hull: Mm.

Ms. Cox: Sorry.

Mr. Hull: No, no, yeah, it's a valid question Commissioner Cox. The Department thinks that further clarification or further drawing out of the birthing stone and the preserva...the identification of it, if it is there. And the preservation of it, should be determined that it is there. I think is appropriate given the overall Condition. But again, I have to go back to the fact that a lot of this information, a lot of this testimony was just received today. The Department still has concerns about taking action based on some of these cultural practitioner positions of the site, without further outreach and consultation with them.

Ms. Cox: Thank you.

Mr. Hull: I will say, I did write down something of an implementable Condition. If one of the Commissioner's is so inclined to make a motion, I can read what I wrote down, but, I won't belabor it if there's no interest, but if a Commissioner is interested in making a motion to that affect I can read what I've written down for the overall Condition line.

Chair Apisa: I would like to hear what you have written down.

Ms. Otsuka: Yes, I second.

Mr. Hull: Okay, here we go, I got a lot of arrows, sorry. So, in addition to the language in Condition 9, what could be added, as additional language, would read: "Regular de-consultation with cultural practitioners shall continue on an annual basis until a certificate of occupancy is issued by the building division. This condition is to ensure cultural practitioner rights if any are preserved and maintained. With respect to the issue of a possible birthing stone on-site, the applicant shall work with cultural practitioners, SHPD, and the Planning Department to determine if there is a birthing stone on-site, and if there is, that that site be preserved in place."

Ms. Otsuka: Sounds good.

Ms. Nogami Streufert: If there was a birthing stone and it was moved, could it be restored on-site? Would that, could that work or not?

Chair Apisa: Is that included encompassed in that?

Ms. Nogami Streufert: No, I am asking that because it said to keep the birthing stone. But I'm asking whether, if we knew where it came from can it be restored to the site, could that be put in there.

Chair Apisa: And there is some question if it was ever there.

Ms. Nogami Streufert: Right. I said "if" Clerk.

Chair Apisa: Any further questions or comments from the Commissioners?

Mr. DeGracia: This coming from Commissioner DeGracia.

Chair Apisa: Okay.

Mr. DeGracia: I guess I have a comment, it is hard for me at this point at this juncture, kind of really want to prove nor deny the motion. I just feel that I need just more information and I had hoped that a deferral would have been an option.

Ms. Cox: Yep.

Mr. DeGracia: So if it is coming down to a vote today, I'm not sure where I'm headed, but, I prefer a deferral - if it is at all possible.

Chair Apisa: My understanding is that there is difference of opinion if the deferral is there or not.

Ms. Cox: This is a procedural question. If someone makes a motion and it gets seconded, there can still be discussion after that, right?

Chair Apisa: Correct.

Ms. Barzilai: Yes.

Mr. Hull: Absolutely.

Ms. Cox: I believe I am ready to make a motion.

Chair Apisa: Please do.

Ms. Cox: I actually move, and I hate doing this, but I move to deny the applicant because I really think for the public good, we've got to look at this. I think it has to be the public that looks at it, sorry.

Ms. Nogami Streufert: I seconded it.

Chair Apisa: Okay we have a motion on the floor. Any further discussion? Well hearing none, I guess we go to a vote. I am going to proceed with the same order that I have been following. Commissioner Streufert?

Ms. Nogami Streufert: And again, to make this clear, a "yes" vote is to deny the applicant. Is that correct?

Chair Apisa: Yes. The motion is to deny the application which would throw it into a 6-month time period for reapplying, so, yes, a "yes" vote will deny it, a "no" vote will defeat the motion.

Ms. Otsuka: Approve it, approve it.

Chair Apisa: I am sorry yes. I am sorry. A "yes" vote will approve it, a "yes" vote will approve the motion to defer it.

Ms. Cox: Deny.

Ms. Barzilai: It is to deny the permit applicant. The motion on the floor is to deny the permit application.

Chair Apisa: A "yes" we will deny the application. Okay so Glenda, I'm sorry, Commissioner Streufert that was an "Aye?"

Ms. Nogami Streufert: Yes.

Chair Apisa: All right, thank you. Commissioner DeGracia?

Mr. DeGracia: No.

Chair Apisa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Aye.

Chair Apisa: Commissioner Cox, Vice-Chair Cox?

Ms. Cox: Aye.

Chair Apisa: Commissioner Apisa? No. Looks like the motion carried. Is somebody tallying the votes there?

Mr. Hull: The motion passes 4:2, Madam Chair.

Ms. Cox: Yeah.

Mr. Hull: Moving on to the, well, before we move on to the next agenda item, I have to check in with the Commissioners. It's 2:15 and we haven't checked with you guys for a lunch break, so would you guys like to...

Chair Apisa: I would the (inaudible) like to take...

Ms. Bronster: A question, a question of order. I believe that the Commission needs to identify the reason for the denial of the applicants' motion. I do not believe that you can simply leave the motion unexplained.

Ms. Cox: Since I made the motion, I will make an attempt at explaining it. I do not feel that the Conditions are appropriately met because there is not insufficient time and insufficient (inaudible) time; there is insufficient response to public concerns, an analysis of those concerns.

Ms. Bronster: That the open-ended outreach is insufficient.

Ms. Cox: Yeah, you mean for, your suggestion of denying and which, I hated having to make this decision, but yeah, for me it's that the public ought to be analyzing this further, rather than leaving it in the applicants' consultation with an external cultural practitioner. Feel free anybody else who voted this way to add to that. I'm not saying it very well, but that it really came down to public versus the applicant. It's not that I believe that you, that the applicant may wish very

well to do the right thing, but I think there's enough public concern that we need the public to have the opportunity to have their concerns looked at by the public.

Ms. Barzilai: Any party who voted in the affirmative can also ask that the motion be reconsidered at this time.

Chair Apisa: Would anyone like to have the motion considered (inaudible) of the IV (inaudible) Commissioners who voted in favor? Hearing silence. Counsel, where do we go from here?

Ms. Barzilai: I believe that this hearing is concluded, and we can provide written comments post-hearing.

Ms. Bronster: I raise this only because it is a legal requirement that the Commission, as a whole give a reason for the vote. I appreciate Ms. Cox, your comments. I mean, I hear them. The purpose of the applicant agreeing to the Condition was to get the issues aired in public. But I think that in order to deny an application of this sort, there needs to be just a feeling of wanting the time. That was specifically the purpose of the state passing the legislation that said that there must be a time limit. So the idea of extending it simply because you want more than the 60 days.

Ms. Cox: That was not my, sorry, that was not my intent. In fact, that is why I corrected myself and took back time, because it's really the analysis that what we need is an analysis of public concern. So it's not that I want more time, it's that we haven't had the analysis of the public concern.

Ms. Bronster: And the Condition could be simply to have as a Condition of the approval, have an analysis of the public concern. That certainly could be a Condition which would enable you to vote and approve (inaudible) and (inaudible) have it (inaudible) Condition of the approval.

Ms. Cox: Guess I am not quite following that.

Mr. Hull: Okay, I will jump and at the end of this, we will be taking both the Clerk and the Commission, as well as the Commission's legal counsel. We'll be drafting the action of the Commission that occurred today, and we'll reflect, (inaudible) only the discussion that was had but more particularly Commission Cox your response that essentially, there was insufficient response and analysis of the proposal's impacts and public concerns. But if there's no further requests, I think from a Commissioner to reconsider the item, I think we'll have to move this into the next agenda item.

Chair Apisa: I will take one last call. Would anyone want to reconsider the motion? And, it would have to come from one of the IV who voted in favor.

Ms. Barzilai: That is correct.

Chair Apisa: Hearing silence I guess we move on.

Mr. Hull: So with that again, Commissioner is there desire, you guys have been going at for a solid several hours here, is there a desire to take a break.

Chair Apisa: I suggest a 30-minute break. Is that sufficient for everyone?

Ms. Cox: Yes.

Ms. Nogami Streufert: Yes.

Chair Apisa: I motion to adjourn for a 30-minute break. Do we need a motion for that?

Mr. Hull: Yeah. Commission, Chair Apisa, you can just call a lunch recess, it's not adjourning it's just a lunch recess for 30 minutes to return at 2:50 pm.

Chair Apisa: Okay. Yeah we will adjourn, come back promptly at 2:15 pm. That is not quite 30 minutes but hopefully, we can all get a bite to eat and come back at that time. Okay, great. Thank you.

The Commission adjourned for lunch this portion of meeting at 2:19 p.m.
The Commission reconvened this portion of the meeting at 2:50 p.m.

Chair Apisa Call the meeting back to order after Lunch recess.

Chair Apisa: We will do a roll call. Commissioner Streufert?

Ms. Nogami Streufert: Here.

Chair Apisa: Commissioner DeGracia?

Mr. DeGracia: Here.

Chair Apisa: Commissioner Otsuka.

Ms. Otsuka: I am sorry, did you say Otsuka?

Chair Apisa: Yes, Commission Otsuka?

Ms. Otsuka: Here.

Chair Apisa: Commissioner Chiba?

Mr. Chiba: Here.

Chair Apisa: Vice-Chair Cox?

Ms. Cox: Here.

Chair Apisa: Chair Apisa, here and accounted for so bring the meeting back to order. 6 present.

HEARINGS AND PUBLIC COMMENTS

Mr. Hull: Thank you, Madam Chair, moving on, there was a special item of the day, we just finished. So actually still at the top of the agenda for now we are in Hearings and Public Comments. I only have a few phone numbers, so I am just going to call out at this time. This is for the members of the public that would like to testify on any agenda item. We really only have three remaining agenda items: the Kilauea Old Mill application, the Aerooff and Longbine application, and the Department of Public Works application as well as the Sub-divisions. If anybody has called in and would like to speak on any one of those agenda items, please unmute your phone by pressing star 62 and state your name.

Mr. Brian Hoshida: Hi. I would like to comment on the Old Mill, Kilauea Old Mill.

Mr. Hull: Please, go ahead and state your name and you have three minutes for testimony.

Mr. Hoshida: Sorry, can you repeat that?

Mr. Hull: Just please state your name and you have three minutes for testimony.

Mr. Hoshida: Okay. My name is Brian Hoshida and I would just like to call in support of continuing using the Kilauea Old Mill for Longman Jujitsu. The benefits of the community for that use, in my opinion far outweighs any benefit that would get you know, be transmitted to housing as it not a very good housing station or project. I do not think the building is well suited for it, and I think that the community gets more benefit from the current use than switching it to a different use.

Chair Apisa: Excuse me. This is...we are on the agenda of the Kilauea Old Mill I need to recuse myself so if Vice-Chair Cox could take over for the meeting please.

Ms. Cox: Yes, I will. So, thank you for your testimony.

Chair Apisa recused herself at 2:53 p.m.

Mr. Hull: Thank you. Madam Chair. And just for... it's fine to recuse yourself now Commissioner Chair Apisa, but for the members of the public we're still in the public comments section. So we are not quite at the Kilauea Mills section, we are in the public comments, so at this time, if any of the members of the public would like, who have called in would like to speak on any agenda item, please unmute your phone by pressing star 62 and state your name. Again, there's an open call for public testimony and comment. Do any members of the public who have called in would like to testify?

Ms. Rachel Saub: (Inaudible) on the Kilauea Mill agenda.

Mr. Hull: Okay. Please state your name; you have three minutes for testimony.

Ms. Saub: This is Rachel Saub.

Mr. Hull: Go ahead and provide your testimony ma'am. You have three minutes.

Ms. Saub: Okay. Aloha, sorry, I am having some hard time hearing today. I am here and I am outside on the grass with my daughter. Being that I, my husband is from Kilauea and has been part of this beautiful community and Dojo for, I would say, about 15 years at least under Bruno he and Dojo brings a beautiful space more of the heart I would say as a parent. My daughter and my son both train there. My son being that he is 13. I much prefer to hear that he is training with his peers, as mine did with wonderful teachers, than hanging out unfortunately, at the neighborhood center or something like this. To myself, and many parents that really love and embrace not just the island and just Kilauea, but are there to help and foresee the future of our children growing into being beautiful young men, women, adults and representing us. It does give them an armor of pride and beauty when it comes to their interaction and how they do- deal with situations at hand. Doesn't matter their peers or in social situations, it's not just a place where they go to specifically train but the schools they go to get mentally and emotionally nourished. Being the way that he is training with his children. I personally do not see anything wrong with what it is now. I cannot see or foresee that it could be anything better for our kids being that they are future here. They do bring a righteous armor of humility but also pride of that turning into or being a residential, I do not see a benefit of that and in any situation on many levels. So, yeah, just having roots here and being a part of this community is a beautiful thing, and I really see it being more as the heart and soul of the children here and really helping pull the pride of, you know, our future adults that represent our island and coming together and these children really showing what, you know, we do here and the aloha that, we give with the righteous heart. I guess that is all I have to say. My words are not scripted my words are just of truth and where I come from and just loving the community.

Mr. Hull: Thank you for your testimony.

Ms. Saub: Thank you.

Mr. Hull: I inaudible another open call for those members of the public that have called in and would like to testify on any agenda item. Please state your name and you will have three minutes of testimony.

Mr. Peter Morimoto: Hi, this is Peter Morimoto, is this the time to talk about Old Mill or should I wait until the agenda item?

Mr. Hull: This would be the time to speak on any of the applications, Peter.

Mr. Morimoto: So this is a public hearing question.

Mr. Hull: Well you can provide it now and then we are going to the agency hearings. You can do it during the agency hearing as well.

Mr. Morimoto: But is this the public hearing portion?

Mr. Hull: The agency hearing and public hearing is next on the agenda.

Mr. Morimoto: Okay, because again, I am a little confused but we got a public hearing notice but when I look at the agenda, you know, and then the public hearing section there is nothing there. Anyway, I represent Jim and Sheri Spencer. The Spencer's are not opposed to Bruno's Dojo being there, as long as there are appropriate Conditions in place by the Commission regarding parking and traffic circulation, etc. We do ask that the Commission, have the Planning Department review all of the existing use permits, not only on this property but on properties surrounding the area, because there are permits with Conditions that are not being enforced. And you know, I know you guys just went through a rather contentious proceeding and you took a lot of time to, you know, try to craft the appropriate Conditions to deal with, you know, the impacts of the development. And in this case, you know, there are existing use permits on the property, and this Commission imposed Condition to take into consideration the concerns of the community, but those Conditions are being ignored today. And so, you know, Bruno's Dojo was allowed to operate in violation of the current use permits. Now it's turned into a popularity contest, you know, because people have gotten use to Bruno's Dojo being there, you know, because he's a good sensei and all that, and he's, you know, growing in popularity and become successful, there's a problem that is drawing a lot of traffic into the area, and so, you should look into that before taking any action on this application. The Spencer's do oppose to juice bars/restaurant stand that's being proposed. The applicant should not be rewarded for violating the current use permit. And basically, that's what's going on here, and that, you know, I find objectionable. That's all we have to say. We're not going to be intervening, but we would, again, ask the Planning Commission to require the Department to review the existing use permits in the surrounding area and determine whether or not the permit holders are in compliance with the permits. Thank you.

Mr. Hull: Thank you for your testimony.

Mr. Morimoto: If you have any questions, I would be happy to answer any of your questions.

Mr. Hull: Any questions Commissioners?

Mr. Hull: Thank you for your testimony and Mr. Morimoto, as was stated earlier this is the general public testimony. There is a specific agency hearing, public hearing if you will, which is next which also will be afforded opportunity for testimony for the Kilauea Old Mill at that time. On the public testimony for the overall agenda. Again, is there any member of the public that has called in and would like to testify on any agenda item at this time? If so, please state your name. One last call, any member of the public that has called in and would like to testify on any agenda item. Please unmute your phone by pressing star 62 and state your name.

Mr. Leo Calvon: Hello?

Mr. Hull: Yes sir, please if you want to testify on any agenda item please state your name. You have three minutes for testimony. Hello? Again, I will make one last call if there is anybody that would like to testify on any agenda item for the Planning Commission, please unmute your phone by pressing star 62 and state your name.

Mr. Calvon: Hello. Leo Calvon. Hello?

Mr. Hull: Yes sir. Please state, you have three minutes for testimony if you would like to testify.

Mr. Calvon: Yes, please. Leo Calvon. I was born and raised here in Kilauea, and I have been a friend of Bruno since I was 15 years old and I am 35 now. And it's been a really good thing in my life, and I've been in this Old Mill and this whole commercial area ever since I was young, and I really, really like the idea of having a juice bar and having this academy in town. It is good for the community. I do not see nothing wrong with the contra-flow traffic and everything. Everything is good in my eyes. I help teach class as much as I can and I do not see no problem with the traffic flow, and everything looks really, great here. I remember seeing this whole thing with commercial and I will let...I am a big favor of it and they should pretty much keep it going, that is pretty much it, sir.

Mr. Hull: Thank you for your testimony.

Mr. Calvon: Thank you very much. You people have a good day.

Mr. Hull: We are winding down to two numbers left. Again, is there anybody that is called in that would like to testify on any agenda item here before the Planning Commission? If so, please state your name. Okay, last call. Is there anybody that is called in that would like to testify on

any agenda item here before the Planning Commission? If so, please state your name. Hearing none, Madam Chair...

Mr. Bruno Ewald: Kaaina? Kaaina?

Mr. Hull: Yeah, go ahead sir.

Mr. Ewald: Hi, this is Bruno. If it is the right time now for me.

Mr. Hull: Oh, Bruno hold on one second. We are coming up to your application in a few minutes here probably.

Mr. Ewald: Okay, okay thank you.

Mr. Hull: Thank you. Seeing no further public testimony or Hearings and Public Comment, we move now actually into the New Agency Hearing. For the members of the public that are still online, the previous section was just allowed for anybody that would like to testify. Generally, that is set in the very beginning of the meeting. Because the special order of the day took so long, it took a while to get there. So, that's just for general testimony on any agenda item.

Continued Agency Hearing

Mr. Hull: We have no Continued Agency Hearing.
New Agency Hearing

Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 to allow operation of an athletic health club within an existing warehouse building and operation of a commercial kitchen & retail business within the existing Old Mill Building on a parcel situated at the Oka Street/Aalone Street intersection in Kilauea Town, further identified as 2430 – A Oka Street, Tax Map Key: 5-2-014:049, and containing a total area of 20,389 sq. ft. = Kilauea Old Mill, LLC.

Mr. Hull: Now, we move into the actual Agency/Public Hearing for the Kilauea Old Mill. So is the agent hearing for class IV zoning permit Z-IV-2021-7 and Use Permit 2021-6 to allow operation of athletic health club within an existing warehouse building and operation of a commercial kitchen and retail business within existing Old Mill building on a parcel of situated at the Oka Street, Aalone Street, and intersection in Kilauea Town. Further identified as 24308 Oka Street, Tax Map Key: 5-2-014:049 and continue a total area of 20,389 square feet. The applicant is the Kilauea Old Mill and in addition to the testimony that was received and noted in the first and second addendums of the agenda, we also have testimony from, written testimony from Genno Wolkon, Kyle Casey, Evan Daniells, Eunice Sagucio, Ryan Siebring, William Perri, and a Supplemental to the Director's Report, I'm sorry, we'll present that after. At this time, was

there anybody, and if you previously testified in the public hearing testimony, you can still testify in this agency hearing section, public hearing section. Is there anybody that would like to testify on this hearing for the Kilauea Old Mill application specifically? If so, please unmute your phone and state your name.

Chair Apisa: At this point, I do recuse myself, Vice-Chair Cox, please Chair the meeting.

Chair Apisa recused herself at 2:53 pm.

Ms. Cox: Yes, I will.

Mr. Hull: Again, we are going to ask is there anybody that has called in as member of the public, not the applicant, but a member of the public, that would like to testify at this hearing for Kilauea Old Mill, LLC? If so, please unmute your phone and state your name. Hearing none, Madam Chair and members of the Commission the Department, we recommend a motion to close the agency hearing.

Ms. Cox: May I have a motion to close the agency hearing?

Ms. Nogami Streufert: I move to close the agency hearing.

Ms. Cox: Is there a second?

Mr. DeGracia: I will second.

Ms. Cox: Thank you but I do not think we need to do a roll call for this one. All those in favor say "Aye". Anybody opposed? Okay, it carries. We are closing the agency hearing. The motion is approved 6:0.

Vice Chair Cox announced the close the Agency Hearing.

Mr. Hull: Thank you Madam Chair. We will move directly into the Director's Report on this so we are actually going to have Romeo summarize very briefly the Director's Report. You folks have had this for at least two weeks transmitted to you folks. We also have submitted a Supplement to the Director's Report. As the previous testifier spoke there were some concerns about traffic that was noted in the previous, agency hearing that we deferred to republish. But the Department did note that there were concerns about traffic and impacts and analysis be made. We did resubmit the applicant back to Engineering Division for a further assessment to make sure that there were no concerns. And so, we have included those concerns in the supplement Director's Report. But I'll turn it over to Romeo to just go over briefly what, the Director's Report and then we can get into any questions you folks may have and then we can directly go into the applicant who is here to make a presentation or statement on the application. But Romeo why don't you take it over sir.

Staff Planner Romio Idica: Good afternoon, Madam Chair, and good afternoon Commissioners. Presenting this afternoon for your consideration class IV zoning permit Z-IV-2021-7 and Use permit 2021-6 to allow commercial kitchen and juice bar operation within the portion of the Old Mill building.

Mr. Idica read the Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Idica: That concludes my brief summary and I will pause here before I give the Planning Department recommendations. Any questions for the applicant or myself?

Ms. Cox: Any questions from the Commissioners?

Ms. Nogami Streufert: This is Glenda. In where you have the Jiu-jitsu now, what is else is there is there some kind of a commercial kitchen there or anything like that?

Mr. Idica: The existing? No this is the proposal for the juice bar.

Ms. Nogami Streufert: Okay, The juice bar, it will be brand new use.

Mr. Idica: That is correct, yes.

Ms. Cox: Any other questions?

Mr. Hull: I will also clarify...

Ms. Nogami Streufert: Is that...

Mr. Hull: Oh sorry, go ahead. Go ahead Commissioner Streufert.

Ms. Nogami Streufert: Is that the operation says it is a commercial kitchen that would, that will be used to support local products.

Mr. Idica: Yes.

Ms. Nogami Streufert: Is that, is that, or is that a juice bar?

Mr. Idica: Meaning that they will buy local products from farmers. So that's what it is intended to.

Ms. Nogami Streufert: They are processing those foods for the juice bar. Is that is the only thing they would be doing?

Mr. Idica: That is correct.

Ms. Nogami Streufert: It's not a commercial kitchen.

Mr. Idica: Commercial kitchen as in a commercial kitchen required for food service.

Ms. Nogami Streufert: Okay.

Ms. Cox: Kaaina, you said you wanted to add something.

Mr. Hull: Yeah, just to and to supplement Romeo's summary of the Director's Report to also, a supplemental to Director's Report was provided being that we asked the Public Works Engineering Division who had provided, you know, comments of no concern to the application after first submittal. We asked them to reassess it because more than one member of the community had brought up concerns about traffic. The Engineering Division in particular the Engineering Division Chief himself, really looked at the application and did actually, did not raise any concerns about circulation being created by this particular use on this property. But I did have objections to where they were attempting to locate, three additional parking stalls which are located in the road right-of-way which is not permissible under the standards. From the Planning Department's perspective that doesn't create, a problem being that they're just trying to provide that in surplus to the standard parking requirements under our Kauai County Codes. So, they'll have to remove those three in the...if this applicant were approved, they could use those three but that wouldn't negate the fact that they have provided enough off-street parking with the proposal.

Ms. Cox: Thank you. Any questions for either Romeo or Kaaina at this point? Okay, are we ready to hear the recommendation? All right. Romeo who is here to.

Ms. Cox: Do we hear the applicant first? Sorry, I am not used to being the Chair. Do we hear the applicant before we hear the recommendation? We can hear the applicant first.

Mr. Jonathan Chun: Good afternoon, Commissioner Chair, Commissioner Cox. Jonathan Chun on behalf of the applicant. I read the report and the supplemental report of the Department and the comments of the Department of Public Works regarding the parking. We understand their concern and the comments they raise and we have no comments. We will abide by the the Department of Public Works wants regarding the parking spaces. As for what was pointed out by Director Hull despite the...even if we take away the three extra spaces that were thinking of doing, we still have adequate spaces to serve the proposed uses that are going to be, that we are requesting this application. And as it was that the testimony of the, of some of the public members, that came in today. There has been no problems with parking or traffic in the area. Public Works themselves did not have any traffic concerns. Parking, most of the parking needs are going to be done after work hours as pointed out by the report. That is when most of the students are for the jiu-jitsu classes are going to be held. So we don't believe there's going to be any traffic and parking during the most-used half of the jiu-jitsu class. Uh, for the juice bar, again, it's only take-out orders only. We have no dining found in facilities. Again, we don't anticipate any kind of parking problems. If there are any problems, I do note that the Commission, the Department has made a recommendation and that one of the Conditions is that

we have to keep it, that additional Conditions might be imposed if we have problems coming out in the future. And we do understand, I think that's a good Condition, we will keep an eye out on that to see if there's any additional problems that will come out, but we don't anticipate any right now.

Ms. Cox: Thank you Jonathan.

Mr. Chun: So if there are any questions, I would be happy to answer questions that the Commission might have. Thank you.

Ms. Cox: Sorry, I did it in the wrong order Jonathan, but any questions from the Commissioners.

Mr. Chun: That is all right.

Ms. Nogami Streufert: Jonathan is there an outdoor eating area attached to the juice bar.

Mr. Chun: No, there is none. We have out right outside of the, right outside of the door I believe there's a bicycle parking rack that we provided for, but no we don't have any outdoor (inaudible). There is no dining in or dining out area provided.

Ms. Nogami Streufert: Okay.

Ms. Cox: Other questions? Okay.

Mr. Hull: If I might interject a slight one, Madam Vice-Chair. Mr. Jonathan did your client; I know Bruno was on here somewhere, did he want to make a statement at any time?

Ms. Cox: That is what just what I was going to say.

Mr. Chun: I know Bruno was here online, Bruno...

Mr. Ewald: Right here.

Mr. Chun: ...would you like to add anything right now about the classes or anything, that was raised by the public regarding classes?

Mr. Ewald: I am here.

Ms. Cox: This is your chance to speak, Bruno.

Mr. Ewald: Hello? Can you hear me?

Ms. Cox: Yes.

Mr. Ewald: Hello?

Ms. Cox: Go ahead.

Mr. Ewald: Hi everyone. Thank you for a long day of work. I just wanted to state first, I wanted to say, thank you everyone for working so hard on this and I just have to note a couple- couple points, (inaudible) the Commissioners asked about, if there was a commercial kitchen there. The exact spot was operated as a commercial kitchen for previous restaurants so all the piping, all the electrical, even a grease trap, which I'm not going to - we're not going to be using if we ever had it, it's in place, gas lines and everything is still in place, because that's how it was operated in the past. As far as the classes, I just wanted to state that the Jiu-jitsu classes actually start at 3:45 rather than 2:15 as stated earlier. The kids' classes is only three times a week, the kids' class, not five times a week. So it's three, so the morning classes is three times a week at the moment it's only at 9:00 am to 10:30 am. On Tuesdays and Thursdays, it is only half of the morning and an hour and a half at night from 6 pm - 7:30 pm. The place during busy hours, which is school pick up and all that, but for the weeks IV nights a week there is no traffic whatsoever. And, just wanted to mention because I feel like the traffic and the crowding were most of the concern for everyone and I know everyone enjoys what I am doing and the community benefit from it. But I understand also the neighborhood, concerns and I'm also, like, share those concerns in fact, I try to make sure everyone that behaves here but the traffic it's actually minimized by most of them are students that are living nearby. A lot of them ride their bikes and walk into it, and sometimes there will be five, six bikes outside of the kids' class an awesome sight to see, you know? But I just wanted to point those things out. Also, when, Mr. Morimoto mentioned before of the applicant trying to apply for this permit, he didn't mention that I've been here for twelve years, prior to the applicant, permit request. So it's for the benefit of the community and that there's never been a complaint, there's never been a complaint about all we do, and just wanted to point that out to clarify it to the board. Thank you very much for your time again and you people have a wonderful rest of your day.

Ms. Cox: Thank you Bruno. Any questions for Bruno? Okay, and there are no questions for Jonathan? All right then I guess.

Ms. Nogami Streufert: Can I say something.

Ms. Cox: Yes, go ahead Glenda.

Ms. Nogami Streufert: Can I say something? Bruno, I do not know you but everything that we have heard on all of the comments and all of the things that have come in I think have been very positive on what you have done for the community and the children there and sounds like you are doing an exceptional job. Thank you very much for everything you are doing for Kilauea. I think if any issues were coming up it (inaudible) parking that might be associated with the juice bar but I do not believe I heard anything, any comments, negative comments about what you are doing there, so thank you.

Mr. Ewald: Thank you. Appreciate it.

Ms. Cox: Any other comments?

Mr. Hull: If I might just make a real brief statement, I know we want to get the meeting moving along. But I could make a real brief statement because there were certain, I think, sentiments or expressions during the past month or so on this particular applicant that, you know, "the Planning Department has turned a blind eye" or "we were rewarding the applicant for some types of previous behaviors." You know, I will say categorically that was not the case of the Planning Department or any of our staff. At the end of the day, what ultimately brought this use, into our sphere of awareness is the fact that the applicant themselves were coming in for a juice bar. And it was part of the juice bar and as part of the application itself, we saw that they were saying we are doing Jiu-jitsu here, that we noticed off of their applicant, "Say, hey, this actually is not supposed to be occurring without a use permit as well, so you need to incorporate that into the application." That was the only time that was every brought into our sphere. Now I know there might be members of the public or people that were watching this particular case, saying, "Oh the Planning Department had to have known, they had to have kind of let things go," and, I have to say, "No", we were not aware. There are roughly 700 plus use permit applications in play right now. Every single one of them has conditions of approval that is inclusive of and it is also in addition to thousands of zoning permits, and we have one inspector for all CZO use permit violations. We have multiple inspectors for vacation rentals, but for comprehensive zoning violations, we have one inspector. So, the public may not feel that it's appropriate that we're only complaint-based, but with the resources that we have, we have to take a complaint in order for us to look into, and if we get a complaint, we do definitely investigate it. So if members of the public feel that there are other use permits that are being violated, the complaint needs to be made quite honestly, with our one inspector and all the entitlements out of there that's just the way that this system has to work. So I just want to make that as a point of clarify and if you guys have any questions we can provide about our enforcement program, we can provide a briefing agendaize it particularly for our future Commission. But I just want to make this statement because of things that have been said previously about this particular application.

Ms. Cox: Thank you Kaaina. Okay are we ready to hear from Romio and their recommendation now?

Mr. Idica: Okay.

Ms. Cox: Thanks Romio.

Mr. Idica: No problem. Based on the foregoing evaluation and conclusion it is hereby recommended Class IV Zoning Permit Z-IV-2021-7 and Use Permit U2021-6 be approved with the following Conditions listed in the Director's Report.

Ms. Cox: Do we have any discussion or a motion? I do not think I can make the motion as a Vice-Chair. So does any other Commissioner have a motion they would like to make?

Mr. DeGracia: I move to approve Class IV zoning permit Z-4-2021-7 and Use permit U-2021-6 to allow operation of Athletic Club within an existing warehouse building, an operation of a commercial kitchen and retail business with an existing Old Mill building on parcel situated at Oka Street, Aalona Street intersection in Kilauea town.

Ms. Otsuka: I second it.

Ms. Cox: Okay, it has been moved and seconded. Any further discussion?

Ms. Nogami Streufert: If I could to address some of the community concerns. There is a Condition No. 8 in here that talks about traffic and parking requirements so that should help alleviate some of the concerns about the traffic and parking situation in that area.

Mr. DeGracia: I guess to clarify; I would like to approve those permits with the Department's recommendations.

Ms. Cox: I cannot remember who seconded it. I think it was Lori, are you okay with the amendment.

Ms. Otsuka: I second.

Ms. Cox: Okay. All right. Any further discussion? All right. We ready to vote. And we can do roll call? You want to do it Kaaina or you want me to do it?

Mr. Hull: I can do the roll call, Madam Chair.

Ms. Cox: Okay.

Mr. Hull: Roll call. Commissioner Apisa excused. Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commission DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Vice-Chair Cox?

Ms. Cox: Aye.

Mr. Hull: Motion passes 5:0. Madam Chair.

Ms. Cox: Thank you.

Mr. Idica: Thank you.

Mr. Chun: Thank you Madam Chair and members of the Commission.

Ms. Cox: I believe I can now turn this meeting back over to you, Donna, who actually knows what the order is.

Chair Apisa reentered the meeting at 3:07 p.m.

Chair Apisa: You did excellent, Vice Chair Cox.

Ms. Otsuka: You did a good job, Helen.

Chair Apisa: Really? Kaaina, are you going to guide us through the here?

Mr. Hull: Yep.

GENERAL BUSINESS MATTERS

Amendment to Special Permit (SP-2012-25) to amend site plan and Condition No. 20 to allow conversion of existing workshop into a guest house and for construction involving interior renovations & deck addition's to the existing residence on a parcel situated on the mauka side of Anini Road in Anini, further identified as 3573 Anini Road, Tax Map Key: 5-3-004:018, containing a total area of 11,451 square feet = Jeff Ayeroff and Marty Longbine, applicants.

Mr. Hull: Yep. We just have a couple more Agenda Items. Next up we have agenda item J.1, General Business Matter. Amendment to Special Permit SP-2012-25 to amend site plan and Condition No. 20 to allow conversion of an existing workshop into a guest house and for construction allowing interior renovations and deck additions to the existing residence on a parcel situated on a mauka side of Anini road in Anini, and any further identified as 3573 Anini Road, Tax Map Key: 5-3-004:018, containing a total area of 11,451 square feet. The applicant is Jeff Ayeroff and Marty Longvine. I will turn it over to Dale who has the Director's Report pertaining to this matter.

Staff Planner Dale Cua: Good afternoon, Madam Chair and members of the Planning Commission. Again, I would like to summarize the Director's Report.

Mr. Cua read the Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: A condition of acknowledgement of this limitation by the applicants is also appropriate. The requested minor renovations to the main house is reasonable as no additional bedrooms are being added, and that pretty much concludes the Director's Report and I'll hold off on the Department's recommendation for the project.

Ms. Barzilai: Madam Chair would you like to invite the applicant to speak?

Chair Apisa: Hi, yes please. I forgot.

Mr. Ian Jung: Hi. Good afternoon, Planning Commission Chair, and members of the Commission. Ian Jung, behalf of the petitioner in this case is Jeffery Ayeroff, Marty Longvine, and as illustrated in the Director's Report, the request is twofold. As many of you may have recalled with special permit for Trans Vacation Rentals, they were pretty restrictive in the Conditions at the time, because of the potential for abuse that, was of concern back when these were getting approved years ago. But I think the petitioner now is the owner and has great track record of making sure that structure is not used as private vacation rental. So, a first component of the request is to amend Condition 20 to allow for, that workshop structure that was previously a guest house but unfortunately, the prior owner did not go through the proper permitting channels to get that authorized to reconvert that back to a guest house. And when we met with the planning staff, they did raise a very serious concern about, you know, how we would be able to manage this and deal with the issue. Mr. Ayeroff was willing to agree to a condition that, if it were to be ever used as or even advertised as a vacation rental you would automatically allow for the license to be removed. So they are not going to jeopardize this TVR license nor would they want to ever break the law so they're not going to be using this and we are okay with such a condition. So the second component of the request, is, you know, the house is a relatively modest small house at 912 square feet, so what they wanted to do is enclose a little stoop porch that's under a roof, and create a wall and then add a new decking space along the perimeter of the South facing portion of the structure and those are illustrated in those, two additions would not expand the interior of the square footage of the home. So it's a real negligible impact to expand and the Planning Department's policy is to be very watchful over any extension of non-conforming use but we were able to work with a Planning Department to make sure that expansion did not violate the working policies on that. Then the second component of the second request, if we want to create a rock wall with an exterior outdoor shower that can be integrated into the residence. So again, that area is outside the footprint and wouldn't impact any expanding footprint of the structure itself. So with that we're happy to answer any questions. With me here on screen is Mr. Jeffery Ayeroff who can also answer any questions should you folks have any questions regarding the use of the property.

Mr. Jeffery Ayeroff: Okay, can you see me Ian?

Mr. Ian: We can see you and hear you.

Mr. Ayeroff: See me and hear me, hello everyone.

Chair Apisa: Did, as an applicant did you want to make any comments?

Mr. Ayeroff: No, I mean, yes I will. First, I admire your fortitude. I have been watching. I just got curious it became like a television show I watched the whole (inaudible). It was stunning. I know why I do not volunteer very much, so I really admired it, I admired it. So yeah, we've been on Hawaii for a long time. We have had houses there for almost 30 years. And we decided to

downsize but we did not want to leave and my children did not want us to leave, so we bought a 1,000 square foot house, with what we thought was a guest house and turned out it wasn't a guest house, and it should've been a guest house and now we're trying to...it was a mismanaged piece of property that, we are trying to correct the mismanagement, correct the, you know, I think the guy who sold it to us didn't really, didn't play fair. I just want to get the ability to go there with my family and for my wife and I to be able to stay in the little house, which was the guesthouse. It would only be used when we're going with family or friends, that's it. It would not be rented, ever. I mean I understand, I've had rental property in Hawaii for 28 years, so I understand what the parameters are. I am willing to do what you need me to do and I would appreciate getting to kind of put this property straight as it was intended to be built. That is about it.

Chair Apisa: All right thank you very much. Thank you. Commissioners, any questions for the applicant.

Ms. Nogami Streufert: Just a question. If the, uh, condition 20, if this is only going to be used for residential purposes, why are you striking out "residential" in condition 20?

Mr. Chun: So the way that Condition 20 was crafted, it said, it shall not be used nor be advertised for transient vacation or rental so we're striking out "rental" to be able to use what was what was the workshop, with hope to be a guest house and then we'll be able to use that, um, for residential purposes and not restricted residential purposes. I see where you're getting at Commissioner Streufert, it's sort of a double negative but the intent is that it cannot be advertised or used as a part of a vacation property.

Ms. Nogami Streufert: Okay, then there is a typo in here because it says, mine says, "The workshop storage structure on the property shall not be used nor be advertised for transient vacation or residential purposes at any time."

Mr. Hull: Yeah sorry, if I can jump in one second. Commissioner Streufert, so the brackets are for the deletion and the underscore are for the added language. So originally, the Condition was for the workshop that the workshop could not be used for vacation rental or residential purposes and so way the Condition reads now is it will state, "The guesthouse structure shall not be used or be advertised for transient vacation rental purposes at any time." So they can use it for rental or residential purposes with the say the condition's crafted. Like Ian was saying, or Mr. Jung was saying, it looks a little strange when you compare what's been stricken but then if you read it in totality in relation to what was previously established for the workshop, it allows for residential rental purposes long-term.

Ms. Nogami Streufert: So then it was just a typo (inaudible) rental, okay, that was stricken out. Okay got it. All right.

Chair Apisa: Any questions, Commissioners? Well hearing none, I guess we are ready for the conclusion from the planner.

Mr. Cua: Sure, sure, I'll move on to the recommendation of the Director's Report. It is recommended that the Planning Commission approve the requested new configuration of the

floor plan and approve the conversion of the workshop to a guesthouse. Furthermore, Condition No. 20, of special permit SP-2012-25, be amended to read as follows, and I will read the corrected amended condition. Condition No. 20 will read: "The guest house structure should not be used, nor be advertised for transit vacation rental purposes at any time. Prior to the annual renewal of this permit, applicant shall arrange with the planning department for an inspection of the structure." And that concludes the Department's recommendation.

Chair Apisa: Thank you very much. Commissioners, any comments though at this point, having heard the recommendation from the planner? If none, is anyone ready to make a motion?

Ms. Nogami Streufert: I move to accept the Director's Report to amend (inaudible) and Condition No. 20 of the special permit approved by (inaudible) April 11, 2012, to permit the operation of a non-confirming transient vacation rental used within the state (inaudible). Special SDT12-25 or PBRNC #4 (inaudible).

Ms. Cox: I'll second that.

Chair Apisa: Okay thank you. Any discussion? All in favor? Aye. (Unanimous voice vote). Is there any opposed? I think we are good without a roll call would you agree, Kaaina?

Mr. Hull: Yeah, I didn't hear any objections, Madam Chair. I think if there is an objection vote that we would ask for a roll call, but hearing none.

Chair Apisa: Are there any objections just to clarify? Hearing none, the motion is approved, so congratulations. Thank you.

Mr. Jung: All right thank you, Commissioners.

Mr. Ayeroff: Thank you all very much. Appreciate it.

Amendment to Class IV Zoning Permit (Z-IV-2021-14), Use Permit (U-2010-12), Special Permit (SP-2010-2) to allow construction of a new water storage tank, water pump station, water pipeline installation, and association site improvements at the existing Waimea Wastewater Treatment Plant, involving a parcel on the mauka side of Kaumualii Highway, approx. 1,200 feet west of the Waimea Canyon Middle School campus, further identified as TMK: 1-2-006:036, and containing a total area of 4 acres = County of Kauai, Department of Public Works.

Mr. Hull: Next, we have General Business 1.2, amendment to class for zoning permit Z-IV-2010-14 use permit U-2010-12, and special permit SP-2010-2, to allow construction of a new new water storage tank, water pump station, water pipeline installation, and associated site improvements of the existing Waimea Waste Water Treatment Plant. Involving a parcel on the mauka side of Kaumualii Highway approximately 1200 feet west of the Waimea Canyon Middle School campus, further identified as Tax Map Key: 1-2-006:036. The applicant is the County of Kauai Department of Public Works. I will turn it over to Dale for the Director's Report

Pertaining to this matter.

Staff Planner Dale Cua: Thank you and I applaud all of you for still being here and being attentive. Last one, and again I will summarize through this Director's Report.

Mr. Cua read the Project Description and Use, Additional Findings, and Preliminary Evaluation sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: That concludes the Department's Director's Report and I'll hold off on the Department's recommendations.

Chair Apisa: Thank you. Commissioners, is there any, I guess is there an applicant here for that or?

Mr. Jason Kagimoto: Yes.

Chair Apisa: Okay. Is they- would the applicant like to say a few words?

Mr. Kagimoto: Good afternoon. I guess that would be, likely be me. So yeah, good afternoon everyone. My name is Jason Kagimoto. I am the Waste Water Division Chief for the Department of Public Works. So basically, the goal is, you know, is basically what, as Dale has mentioned. It's to be able to provide RI, reused or recycled water to be able to support the irrigation of the Waimea athletic field. So the goal of this project is to be able to provide community benefit for the waste water that we're treating and be able to, yeah make the Waimea athletic field and possible other properties in the area, you know, greener than they are with, you know, much cheaper water. So that is basically what we're trying to accomplish. We have received (inaudible) about federal funds to be able to upgrade the facilities and now we are working on being able to distribute that water.

Chair Apisa: Thank you, Jason.

Mr. Kagimoto: No problem, thank you.

Chair Apisa: Commissioners, any questions for the applicant? Hearing none. I guess we are ready for your recommendation Dale.

Mr. Cua read the Recommendation section of Supplemental No. 1 to the Director's Report for the record (on file with the Planning Department).

Mr. Cua: Okay. Thank you Madam Chair. Based on the foregoing, it is recommended that the Commission approve the proposed development involving the construction of a new 400,000-gallon storage tank, recycled water pump station and improvements to the existing distribution system. Furthermore, the applicant is advised that all applicable Conditions of approval shall remain in effect.

Chair Apisa: Thank you. Commissioners any questions now or would someone like to make a motion?

Ms. Nogami Streufert: Okay I'll move to accept the Director's Report and recommendation for the, to amend Class IV Zoning permit and Use permit for construction of a new 400,000 storage tank and improvements to the existing distribution system. Class IV zoning permit Z-IV-2010-14 use permit U-2010-12 and special permit SP-2010-2.

Chair Apisa: Do we have a second?

Ms. Cox: I'll second.

Chair Apisa: Thank you we have a motion on the floor. Is there any discussion? Hearing none. All in favor? Aye. (Unanimous voice vote).

Chair Apisa: I did not hear everybody's aye. Is there anyone opposed? Does anyone abstain?

Mr. Hull: Madam Chair, just for clarity sake, we may want to take a roll call, just.

Chair Apisa: Okay, go ahead, Kaaina, take the roll call.

Mr. Hull: Roll call on the motion to approve. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Chair Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes 6:0, Madam Chair.

COMMUNICATIONS (For Action)

Mr. Hull: Moving right along, we have no Communications for Actions.

COMMITTEE REPORTS

Subdivision

Mr. Hull: Moving on to the next - thanks (Jason). Moving on to the next agenda item is committee reports, the sub-division committee report. I will turn it over to Subdivision Committee, Chair DeGracia.

Mr. DeGracia: Thank you all. Subdivision Committee in attendance, Commission Chiba and I. We had one item for action. It was approved and it was a tentative subdivision extension request. Subdivision application No. S-2018-12. It was for Association of Apartment owners of Kulana Condominium and it was for a Kulana water tank Subdivision. And that will conclude my report.

Chair Apisa: At this time, I would like to recuse myself for; I am involved with the Kulana Subdivision so, Vice-Chair Cox could you take it over again, please?

Chair Apisa recused herself from the meeting at 3:53 p.m.

Ms. Cox: Yes, I will.

Chair Apisa: Thank you.

Ms. Cox: So we have heard the Subdivision Committee Report, would somebody like to make a motion to accept that report?

Ms. Otsuka: I make the motion to accept the Sub-division report.

Ms. Nogami Streufert: I second.

Ms. Cox: Okay (inaudible) motion and a second. All those in favor, Aye. Say 'Aye' Loudly, so we do not have to do roll call court. (Unanimous voice vote),

((Crosstalk)) Aye.

Ms. Cox: Okay, I guess that is the roll call. I did not hear everybody's voices.

Mr. Hull: Roll call Madam Chair on the motion to approve the Subdivision Committee Report. Commissioner Chiba?

Mr. Chiba: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Vice-Chair Cox?

Ms. Cox: Aye.

Mr. Hull: Motion passes 5:0, Madam Chair.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Moving on, there is no Unfinished Business.

NEW BUSINESS

Mr. Hull: We have no New Business as we handled the New Business; we took the action on New Business.

For Action- See Agenda F for Project Descriptions

ANNOUNCEMENTS

Topics for Future Meetings

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter on May 11, 2021. The Planning Commission anticipates meeting via teleconference but will announce its intended meeting method via agenda electronically posted at least six days prior to the meeting date.

Mr. Hull: Next, that is really it. We have a few use permits coming up. We will also have a briefing very shortly with the Long-Range Division on some of their plans and where they are on previous plans and reporting on them. And that I also work with the Chair, to see if it's appropriate that perhaps the Planning Department provide a briefing just on our overall Enforcement program. And so, it's an issue that seems to come up not readily but fair enough- a fair amount enough to possibly have a briefing if the Chair is amenable to that. Other than that, we are open to any future topics that Commissioners themselves would like to see on the agenda aside from just the use permits and SMA permits that you generally review. And with that let me just ask: are there any particular topics that Commissioners would like to see addressed? Okay.

Ms. Cox: Might be a terrible time to ask us right now Kaaina.

Mr. Hull: Yeah. With that, I'll just say thank you so much for the fortitude, patience, discretion and wherewithal. We are counting on T minus seven hours and going right now so, thank you all again. If you have something to drink please - please do. The next following regularly scheduled Planning Commission meeting will be held at 9:00 am or shortly thereafter on June 8, 2021. The Planning Commission anticipates meeting via teleconference (inaudible) attended meeting method via an agenda (inaudible) at least six days prior to that date, but thank you, thank you, thank you all again.

Ms. Cox: And just so you know, I already let Kaaina know, but I will not be at the June meeting. I'm going to see my kids and grandkids.

Ms. Otsuka: Nice.

Chair Apisa reentered the meeting at 3:55 p.m.

Chair Apisa: Boy. Okay where is that, Helen?

Ms. Cox: All over San Francisco, Washington, D.C., Salt Lake City - they live all over.

ADJOURNMENT

Chair Apisa: Thank you well that concludes our meeting. May I have a motion to adjourn please?

Ms. Otsuka: And I move to adjourn.

Ms. Cox: I will second that.

Chair Apisa: All in favor a nice big, loud “yes”, “Aye”.

((Crosstalk)) Aye.

Ms. Cox: Meeting is adjourned.

Chair Apisa: See you all on June.

Mr. Hull: Thank you all.

Chair Apisa adjourned the meeting at 3:56 p.m.

Respectfully submitted by:

Arleen L. Kuwamura

Arleen Kuwamura,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.

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LAWAI PROPERTIES, LLC,
a Hawaii limited liability company

BEFORE THE PLANNING COMMISSION

OF THE

COUNTY OF KAUAI

In The Matter Of The Application)	SPECIAL MANAGEMENT AREA PERMIT
)	SMA(U)-2021-_____
Of)	
)	SPECIAL MANAGEMENT AREA
LAWAI PROPERTIES, LLC, a Hawaii)	USE PERMIT APPLICATION; EXHIBIT
limited liability company, for a Special)	LIST; EXHIBITS "A" - "H"
Management Area Permit, for real property)	
situated at Kekaha, Kauai, Hawaii, described)	
as Lot 4 of Map 7 of Land Court Application)	
937, identified by Kauai Tax Map Key No.)	
(4) 1-2-006:022.)	
)	
)	
)	

SPECIAL MANAGEMENT AREA USE PERMIT

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APPLICATION

Comes now, LAWAI PROPERTIES, LLC, a Hawaii limited liability company, Applicant in the above-captioned proceedings, by and through its undersigned attorney, and hereby submits the following Application to a second dwelling unit and associated improvements on the property.

SECTION 1. APPLICANT/SUBJECT PROPERTY/OWNERS.

1.1 Applicant. The Applicant is Lawai Properties, LLC, a Hawaii limited liability company, by and through its Managing Member, Ian Kagimoto. The Applicant has authorized Ian K. Jung of Belles Graham LLP to file this Application pursuant to the Applicant's Authorization attached hereto as Exhibit "A".

1.2 Subject Property. The property which is the subject matter of this Application is a portion of Lot 4 of Land Court Application 937 (Map No. 7), which contains 2.6010 acres (113,300 square feet), and is identified by Kauai Tax Map Key No. (4) 1-2-006:022 ("Subject Property"). A legal description of the Subject Property is contained in the Deed attached hereto as Exhibit "B".

1.3 Ownership. The Applicant is the owner of the Subject Property, as shown in the Deed attached as Exhibit "B".

SECTION 2. LOCATION LAND USE DESIGNATIONS OF PROPERTY.

2.1 Location. The Subject Property is located in Kekaha, Kauai, Hawaii, and is shown on the Location Map attached hereto as Exhibit "C-1" and on the Tax Map attached as Exhibit "C-2". Map No. 7 of Land Court Application 937 is attached as Exhibit "C-3". The Subject Property is commonly referred to as the Kauai Harbor House.

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

a. SLUC. As shown on the Land Use District Boundary Map attached as Exhibit "C-4", the Subject Property is located in the SLUC Urban District. The Subject Property has been located in the SLUC Urban District since the inception of the SLUC Districts.

b. Kauai General Plan. As shown on the General Plan Map attached as Exhibit "C-5", the Subject Property is located in the Kauai General Plan Natural Designation. The Subject Property was recently designated from the Open Designation to the newly created Natural Designation in the Update to the Kauai General Plan (2018).

c. CZO. As shown on the CZO Map attached as Exhibit "C-6", the Subject Property is located in the CZO Open District. The Subject Property has been located in the CZO Open District since the adoption of the CZO.

d. Development Plan Area. The Subject Property is located within the newly adopted West Kauai Community Plan Area. The Subject Property is not located in the Special Treatment Coastal Edge.

e. Special Management Area. As shown on the Special Management Area Map attached as Exhibit "C-7", all of the Subject Property is located within the Special Management Area ("SMA") of the County of Kauai. The Subject Property has been located within the SMA since the adoption of the SMA Rules (December 17, 1979).

f. Shoreline/Shoreline Setback Area. The Subject Property is shoreline property and is located within the 500-foot shoreline setback threshold. The Applicant

will comply with the shoreline setback requirements. All proposed improvements will be outside the shoreline setback area given the Project will be at the mauka end of the Subject Property.

g. Heritage Resources. As shown on the Heritage Resources Map attached as Exhibit "C-8", the Subject Property is located within the Preserve Heritage Resources Designations (Updated to the Kauai General Plan, 2018).

h. Violations. There are no known violations on the Subject Property.

2.3 Prior Land Use Permits. The Subject Property is subject to the following land use permits and conditions:

a. Primary Dwelling Unit – The Real Property Tax Card notes the existing dwelling unit constructed in 1964.

b. Carport – The Real Property Tax Card notes the carport 1970, which was reconstructed after Hurricane Iniki in 1993.

c. Metal Utility Shed – The Real Property Tax Card notes the metal utility shed as constructed in 1970.

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

3.1 Past Uses. The Subject Property is currently improved with the Primary Dwelling Unit, carport and shed/workshop and has historically been in residential and transient vacation rental use. The Primary Dwelling Unit (also known as the “Harbor House”) occasionally hosts events there including Ke Kula Niihau graduations, hula halau events, Waimea Town Celebration festivities, Hawaiian church revivals, and canoe races. Most events are for local families. Many events serve local Hawaiian families for first birthdays, weddings, graduations and family reunions. The use of the existing residence is a valuable asset for the Westside community. No additional compensation for the above noted activities are solicited and any

compensation is related to the rental of the residence pursuant to its existing Nonconforming Use Certificate.

3.2 Proposed Use. The proposed new residence will serve as a long-term rental and is being built for Ron and Cads Samio. Both of whom are longtime Waimea/Kekaha residents. Mrs. Samio grew up across the street. Mr. and Mrs. Samio have been the caretakers of the Subject Property for the past ten (10) years.

3.3 Existing Structures. As noted above, the Subject Property is improved with one (1) single-family residential structure, carport, and a shed/workshop. (See, Exhibit "D" for the Real Property Tax Card).

3.4 Land Coverage. The total allowable land coverage of the Subject Property is 11,330 square feet, which is 10% of 113,300 square feet. After completion of the Project, the total land coverage will be approximately 11,330 square feet. Currently, Primary DU, carport, and shed/workshop results in 9,540 square feet of land coverage. The proposed new dwelling unit and carport results in 1,829 square feet of land coverage. Therefore, the Project combined with the existing improvements results in 11,369 square feet of land coverage. The Applicant will remove 39 square feet from the existing shed/workshop, which will result in a total land coverage of 11,330 square feet as is allowed pursuant to CZO Sec. 8-9.2(a).

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

4.1 Location. The Subject Property is located in Kekaha adjacent to Kikia'ola Small Boat Harbor. The northern portion of the Subject Property runs along Kaumuali'i Highway. The southern portion of the Subject Property is bound by a State of Hawaii beach preserve and

Kikiaola Small Boat Harbor. The western portion of the Subject Property is adjacent to the County of Kauai Chinese and Japanese Cemetery.

4.2 Surrounding Uses. The adjacent properties are in residential and recreational use. Other than the Kikia'ola Small Boat Harbor, there are no Natural Area Reserves or Wildlife Refuges or Sanctuaries within or abutting the Subject Property.

SECTION 5. PERMITS REQUESTED AND REQUIRED.

5.1 SMA Use Permit. The development and construction of the following proposed improvements on the Subject Property (the "Development") will take place within the SMA:

- a. New Second Dwelling Unit. The proposed single-family dwelling unit is slated to be the second dwelling unit on the Subject Property. (Considered Development for SMA purposes). (See, attached Exhibit "E").
- b. New Carport (Considered Development for SMA purposes). (See, attached Exhibit "E").
- c. New Gravel for Driveway (Considered Development for SMA purposes). (See, attached Exhibit "E").
- d. Related site utilities and individual wastewater system as shown on the enclosed Site Plan. (See, attached Exhibit "E").

Such activity will constitute "Development" as defined by the Special Management Rules and Regulations of the County of Kauai ("SMA Rules"). The total value of the Development in the SMA is less than \$500,000.00, but we understand the Planning Department requires. Therefore, the Applicant is requesting the Planning Commission to issue a SMA Use Permit (as defined in Section 7.3.B. of the SMA Rules) for the Development. The proposed new single-family dwelling unit (1,764 square feet of land coverage) will include three (3) bedrooms

and two (2) bathrooms with a one (1) half bathroom. The new single-family residence will be a single-story plantation style design. (See, attached Exhibit "E"). however, the second (2nd) single-family residential structure will not be used for vacation rental purposes and is intended provide housing for the Mr. and Mrs. Samio, who currently caretake on the Subject Property.

SECTION 6. IMPACTS OF DEVELOPMENT.

6.1 Botanical Resources and Wildlife. The Subject Property is located in a residential neighborhood off at the start of Kekaha. The Subject Property primarily consists of grass lawn, mango trees, tropical plants cultivated with the existing residential uses. No impacts to botanical resources and wildlife are anticipated due to the residential use of the surrounding area.

6.2 Historical Resources. The Applicant will coordinate a review of the Project by the State Historic Preservation Division ("SHPD") via its HRS Chapter 6E Historic Preservation Review Process. If requested by SHPD, representatives for the Applicant intend to meet with the SHPD Kauai Archeologist to conduct a site visit.

6.3 Air Quality/Noise. The Development 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 Development activities. All vehicles or equipment used by the Applicants for the prior 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 air quality standards will not be exceeded.

6.4 Flooding and Drainage. The proposed Project is within Flood Zone XS, as shown on the County of Kauai's flood insurance rate map (Flood Insurance Rate Map 1500020254F) attached as Exhibit "C-9". The Subject Property is located almost entirely within

the Flood Zone XS and the Project 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, 1987. All drainage resulting from construction activities and from the increase in land coverage will be retained on site and subject to best management practices. No additional drainage is anticipated to significantly or negatively impact the surrounding properties.

6.5 Utilities.

a. Potable Water. The Subject Property currently obtains water service from the County of Kauai, Department of Water.

b. Electric/Communications. The Subject Property obtains electric service from Kauai Island Utility Cooperative, and communication services from either Spectrum or Hawaiian Telcom, Inc. Existing electric and communications facilities are presently adequate to provide the demand for such services that will be generated by the proposed Development.

6.6 Wastewater Treatment and Disposal. The Subject Property will install a private individual wastewater system (septic tanks and leach fields) as required by the Department of Health in order to dispose of wastewater. There are no sewer facilities available to the Subject Property.

6.7 Solid Waste Disposal. Solid waste collection will be provided by the County of Kauai and by private means. Solid waste will be taken to the County's Transfer Stations for disposal in the County Landfill.

6.8 Governmental Services. The Project will have the following impacts on governmental services:

a. Fire and Police Services. Fire and police services in the vicinity are located in Waimea, approximately two (2) miles from the Subject Property. The Project will not significantly increase the need for existing fire and police services.

b. Schools. The closest schools are Kekaha Elementary School located in Kekaha, and Waimea Canyon Middle School and Waimea High School, both of which are located in Waimea. The Project will not generate any significant additional enrollment.

6.9 Economics. The Project will have the following economic impacts:

a. Jobs. The Project will result in the creation of approximately five (5) temporary job positions (during construction).

b. Housing. The Project will not result in the need for additional housing, as all persons working on the Project will be Kauai residents.

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 Project will increase the value of the Subject Property. This will result in an increase real property taxes on the Subject Property, and increase revenues to the County of Kauai.

6.10 Population. The Project will not result in an increase in population.

6.11 Traffic Circulation. The major road which services the Subject Property is the Kaumuali'i Highway. The Project will distribute access to the Subject Property to a single driveway but will not in and of itself increase traffic on these roads.

6.12 Heritage Resources. The Subject Property is located within the Preserve Heritage Resources Designation (Update to the Kauai General Plan, 2018). The Heritage Resources of Kauai include natural, cultural and scenic resources. The proposed Project will not significantly affect any of these resources.

SECTION 7. SLUC CONSIDERATIONS.

7.1 SLUC Urban District. The Subject Property is located within the SLUC Urban District. Permitted uses in the SLUC Urban District include residential uses.

SECTION 8. GENERAL PLAN CONSIDERATIONS.

8.1 Kauai General Plan Natural Land Use Designation. The Subject Property is located in the Kauai General Plan Natural Land Use Designation and contemplates limited residential use. The Subject Property zoning (Open District) allows for a single dwelling unit. As such, the Project complies with the Natural Land Use Designation.

8.2 Project's Compliance with Kauai General Plan Standards. The proposed use includes limited residential use, thereby the development itself will have no significant impact on the surrounding environment. The Project will include residential uses that are compatible with other uses in the area, as well as with the surrounding environment. As such, the Project complies with the Kauai General Plan policy for the Natural Land Use Designation in that it will help to preserve, maintain and improve the natural characteristics of the area and will allow the area to remain predominantly free of development given the limited land coverage available.

SECTION 9. CZO OPEN DISTRICT CONSIDERATIONS.

9.1 CZO Open District. The Project site is located within the CZO Open District. Uses in the CZO Open District are set forth in CZO Article 9, which provides in relevant part as follows:

"ARTICLE 9. OPEN DISTRICTS (O)

Sec. 8-9.1 Purpose.

- (a) To preserve, maintain or improve the essential characteristics of land and water areas that are:
 - (1) of significant value to the public as scenic or recreational sources;

(2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;

(3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.

(b) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.

(c) To define and regulate use and development within areas which may be potentially hazardous.

(d) To include areas indicated on the County General Plan as open or as parks.

(e) To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment – Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain in either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 46-4, Hawai'i Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without express provision to the contrary. The Council is hereby authorized to make such factual determinations as necessary incident to this section.

(f) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public.

9.2 Project's Compliance with CZO Open District Standards. Single-family

detached dwelling units and accessory structures are Permitted Uses which are allowed pursuant to CZO Section 8-2.4(s). The Land Coverage on the Subject Property will not exceed the allowed 10% land coverage. The Project itself will have no significant impact on the surrounding environment. The Project will include residential uses that are compatible with other uses in the area,

as well as with the surrounding environment. As such, the Project complies with CZO Section 8-9.1 in that it: will help to preserve, maintain and improve the natural characteristics of the area; will allow the area to remain predominantly free of development; and will be incidental to the use and open character of the surrounding lands.

SECTION 10. WEST KAUAI COMMUNITY PLAN CONSIDERATIONS.

10.1 Community Plan Goals and Objectives. The goals and objectives of the West Kauai Community Plan allows for single-family residences as housing for local families. The Project is intended to be a modest long term rental property for a local family as component of Section 1.1.010.C..

10.2 Project's Compliance with Development Plan Standards. The proposed Project will not conflict with any of the objectives contained in the West Kauai Community Plan. The design, layout and outside appearance of the Project is and will be compatible with the Residential Neighborhood Designation as provided for in the Future Land Use Map. Further, the limitation on land coverage merges this concept by limiting the developable area of the Subject Property. As noted above, the Subject Property and the location of the proposed residence is not located in the 3.2 foot anticipated sea level rise area and therefore is not subject to the new Special Treatment Coastal Edge overlay within the West Kauai Community Plan.

SECTION 11. SMA CONSIDERATIONS.

11.1 Recreational Resources. There are no public recreational opportunities taking place on the Subject Property. Therefore, the proposed Project will not have any negative impact on any public recreational opportunities located on properties adjacent to the Subject Property. Therefore, the Project will have no direct impact on any existing public beach, river or mountain access.

11.2 Historic Resources. The proposed Project will not have any significant impact on historic, cultural or archaeological resources (if any) located on or near the Subject Property. The Project is proposed where existing mango trees are located and has been in orchard agriculture for the past fifty (50) years. There was nothing observed on the surface to indicate the presence of subsurface cultural deposits; and while not an impossibility, given the prior ground disturbance on the Subject Property, and the minimal depth of footings for the post on pier construction, the Applicant does not expect cultural deposits will be found.

11.3 Scenic and Open Space Resources. The proposed Project will have only minor impacts on the scenic and open space resources on and around the Subject Property. Any visual impacts from Kaumuali'i Highway will be sufficiently mitigated with landscaping and earth tone colors and non-reflective windows. (See, enclosed Exhibit "E-1"). The Project will be compatible with and blend into the earth-toned colored structures in the surrounding area.

11.4 Coastal Ecosystems. The Subject Property is not near any coastal ecosystem as the structures that are proposed are approximately 344 feet away from the State of Hawaii Beach Reserve area. As such, the proposed Project will have no significant impact on this ecosystem. The Project will be constructed and maintained so that any erosion or increased runoff will be maintained on site. It is not anticipated that the Project will endanger the coastal ecosystem or have any negative impacts on it.

11.5 Economic Uses. The Subject Property will be developed for residential purposes. The proposed Project will create short term economic benefits associated with the construction of the improvements. The proposed Project will not have any negative impacts on the economy.

11.6 Coastal Hazards. Portions of the Subject Property near but not adjacent to shoreline and is situated within or near a flood zone (Zone XS) as shown on the County of Kauai's flood insurance rate maps (Flood Insurance Rate Maps). Any additional surface water flows caused by the Project will be maintained on site. The National Oceanic and Atmospheric Association Sea Level Rise Viewer does not predict sea level rise to inundate the Subject Property by year 2100 based a 3.2 foot increase in the sea level. (See, Exhibit "F"). The average life expectancy of wood-framed residences is seventy (70) years. Therefore, NOAA does not model any impacts to the Subject Property or the proposed location of the residence by sea level inundation.

11.7 Managing Development/Public Participation. The Project activities on the Subject Property are complimentary to, and consistent with, present and future coastal zone development in this area of Kauai.

11.8 Beach Protection/Marine Resources. The Project will have no impact on any shoreline or beach areas given the distance from the shoreline area, or on any open space areas along the shoreline. The Project will not involve any development within the beach or coastal area which would have any negative impact on marine or coastal resources. The Applicant is not aware of any existing fishponds, seawalls or revetments in the vicinity of the Subject Property; however, the Kikiaola Small Boat Harbor is near the Subject Property.

11.9 Value of Development. The Development involves activities with a value of less than \$500,000.00. The value of the improvements defined as Development is estimated at \$350,00.00 as shown in the Construction Estimate, attached as Exhibit "G".

11.10 Compatibility With Surrounding Uses. The Subject Property is surrounded by properties located within the SLUC Urban District and the CZO Open District. Uses on the surrounding lands include residential uses and commercial uses. The Subject Property is similar

in topography, character and nature with adjacent and surrounding properties, and the Project activities are consistent with such surrounding uses.

11.11 Project's Impacts Within SMA. The Project on the Subject Property will have no negative impact on the SMA. The Project is and will be compatible with existing uses in areas on or around the Subject Property. The Project will not negatively impact scenic or open space resources within the SMA. The Project will not increase runoff or otherwise endanger the coastal ecosystem. The Project will have no detrimental impact on recreational, historic, or economic resources. The Project will not have detrimental impacts on beach or marine resources. Approval of the Project will not result in the foreclosure of future management options for development in the area. The design, siting, and landscaping of the Project as proposed will ensure that the proposed Project recognizes, preserves, maintains and contributes to the characteristics of the surrounding lands (which lands are recognized to be of particular significance or value to the general public). In particular, the Project will be compatible with, and will protect, the unique natural forms of, biologic systems contained within, and aesthetic characteristic of, the SMA.

11.12 Project's Compliance with SMA Standards. The Project activities on the portions of the Subject Property within the SMA fulfill the provisions of the SMA Rules in that:

- a. The Project will have no effect on public access to publicly owned or used beaches and recreational areas.
- b. The Project will not detrimentally affect any wildlife or endangered plant or animal species which may be located at this site.
- 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 landforms 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 Project will not require dredging, filling, or altering any bay, estuary, salt marsh, river mouth, slough or lagoon.

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

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

i. The Project 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 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 interests.

k. The Project 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 Project is consistent with permitted uses in the SLUC Urban District, the Kauai General Plan, the West Kauai Community Plan, and the CZO.

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

12.1 HRS Chapter 343. The Project is not subject to the provisions of Hawaii Revised Statutes Chapter 343. HRS Chapter 343 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain activities as specified in HRS Section 343-5. The proposed Project does not implement any of the trigger points required under HRS Section 343-5.

SECTION 13. NATIVE HAWAIIAN ISSUES.

13.1 Project's Impacts on Traditional or Cultural Practices. The Project area is start of the residential corridor of Kekaha and has a small footprint for the proposed residential structure. The Applicant has contacted Mr. Ron Samio, whom is the caretaker for the Subject Property, Mr. Thomas Nizo, who is familiar with the Kekaha region, Mrs. Ala Nizo, who is also familiar with the Kekaha region, and Wesley Yadao, whom is a longtime West Kauai resident, all of whom have knowledge of the Subject Property. The Project Site Photographs illustrate the current status of the Project area both in residential and agricultural use. (See, Exhibits "H-1" through "H-5").

Based on the Applicant's discussions with these individuals, it believes that the Project will have no impact on any known traditional or customary practices of native Hawaiians and find that:

a. There are no known traditional or customary practices of native Hawaiians that are presently occurring within the Project area. Furthermore, no surface or cultural deposits were discovered, which would indicate whether any cultural and traditional native Hawaiian practices on the Subject Property.

b. There are no indications of special gathering practices taking place within the Subject Property given the primary feature of the Project existing residential uses.

c. There will be no detrimental effect on access to any streams, access to the shoreline or other adjacent shoreline areas, or gathering along any streams, the shoreline or in the ocean given public beach access is available near the Subject Property.

d. There are no indications of religious practices taking place within the Project area.

e. There are no known cultural or historic sites or resources within the Project area, nor were any disclosed to the Applicant during the construction of the existing residence years ago on the Subject Property.

f. There are no known burials within the Project area; however, adjacent property to the west is home to a cemetery. Should any burial site be identified during construction activities, the Applicant will ensure its contractor will contact the State Historic Preservation Division as required by law.

SECTION 14. CONCLUSION.

The Applicant respectfully requests that 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.

2. Find that the Project is consistent with the objectives, policies, and guidelines set forth in Hawaii Revised Statutes Chapter 205A and Sections 3.0 and 4.0 of the SMA Rules.

3. Find that the Project is consistent with permitted uses in the SLUC Agricultural District, the Kauai General Plan, the North Shore Development Plan, and the CZO.

4. Approve the issuance of a SMA Use Permit for the Project on the Subject Property as described herein, subject to such reasonable conditions as the Planning Department shall impose.

DATED: Lihue, Kauai, Hawaii, 8/18/2021.

BELLES GRAHAM LLP

By 

IAN K. JUNG
Attorney for Applicant,
LAWAI PROPERTIES, LLC,
a Hawaii limited liability company

EXHIBIT LIST

EXHIBIT

A. AUTHORIZATION

Applicant's AuthorizationA

B. TITLE

DeedB

C. MAPS

Location MapC-1

Tax MapC-2

Land Court MapC-3

Land Use District Boundary MapC-4

General Plan MapC-5

CZO MapC-6

SMA Map.....C-7

Heritage Resources MapC-8

Flood Insurance Rate MapC-9

D. PERMITS

Real Property Tax CardD

E. PLANS

Plan SetE-1

Land CoverageE-2

F. REPORT

SLRX ReportF

G. ESTIMATES

Construction Estimate.....G

H. PHOTOGRAPHS

Project Site Photographs..... H-1 – H-5

EXHIBIT "A"

APPLICANT'S AUTHORIZATION

I. APPLICANT.

Name: Lawai Properties LLC, a Hawaii limited liability company
Attn: Ian Kagimoto

Address: P. O. Box 383
Lawai, Hawaii 96765

Email: ikagimoto@hawaii.rr.com

II. AUTHORIZED AGENT.

Name: Ian K. Jung, Esq.

Address: Belles Graham LLP
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766

Telephone: (808) 245-2163
Facsimile: (808) 245-3277
Email: ikj@kauai-law.com

III. PROPERTY.

Lot 4
Land Court Application 937, Map 7
Kekaha, Kauai, Hawaii
Kauai Tax Map Key No. (4) 1-2-006:022

IV. AUTHORIZATION.

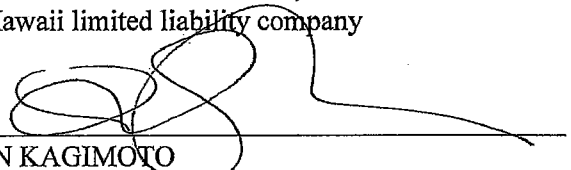
The Applicants hereby authorize the Authorized Agent to act on the Applicants' behalf and to file and process on the Applicants' behalf any and all applications necessary to obtain governmental permits relating to the Subject Property, including, but not limited to, the following:

1. Building permits, grading permits, use permits, variance permits, zoning permits, shoreline setback determinations, and Special Management Area permits issued by any department, agency, board or commission of the County of Kauai.
2. Permits issued by the Department of Health of the State of Hawaii.
3. Permits issued by the Board of Land and Natural Resources of the State of Hawaii and/or the Department of Land and Natural Resources of the State of Hawaii, including shoreline certifications.
4. Permits issued by the Land Use Commission of the State of Hawaii.
5. Approval before the United States Department of Agriculture, Natural Resources Conservation Service.

DATED: 5/13/21

APPLICANT/OWNER:

LAWAI PROPERTIES LLC,
a Hawaii limited liability company



IAN KAGIMOTO
Its Manager

EXHIBIT "B"



L-234 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

DEC 13, 2010 11:00 AM

Doc No(s) 4028833

on Cert(s) 962,964

Issuance of Cert(s) 1,006,545



20 1/1 Z10

/s/ NICKI ANN THOMPSON
ASSISTANT REGISTRAR
CONVEYANCE TAX: \$4500.00

KA LAND COURT

REGULAR SYSTEM RA

AFTER RECORDATION, RETURN BY MAIL () PICK-UP (XX)

Bart M. Koza, Esq.
Central Pacific Plaza
220 S. King Street, Suite 1600
Honolulu, HI 96813

TITLE OF DOCUMENT: WARRANTY DEED

PARTIES TO DOCUMENT:

GRANTOR: IAN (NMN) KAGIMOTO AND ALMA YAEKO KAGIMOTO

GRANTEE: LAWAI PROPERTIES LLC, A HAWAII LIMITED LIABILITY
COMPANY

GRANTEE'S POST OFFICE BOX 383
ADDRESS: LAWAI, HAWAII 96765

Tax Map Key No.: (4) 1-2-006-022

WARRANTY DEED

THIS DEED, made on September 30, 2010, by

IAN (NMN) KAGIMOTO AND ALMA YAEKO KAGIMOTO, husband and wife, at
Post Office Box 383, Lawai, Hawaii 96765,

hereinafter called the "Grantor," and

LAWAI PROPERTIES LLC, a Hawaii Limited Liability Company, at Post Office Box
383, Lawai, Hawaii 96765,

hereinafter called the "Grantee,"

WITNESSETH:

That for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), lawful money of the United States of America, to Grantor paid by Grantee, the receipt of which is hereby acknowledged, Grantor does hereby grant, bargain, and convey unto Grantee, as TENANT IN SEVERALTY, forever, absolutely and in fee simple, all of Grantor's interest in the real property described in Exhibit "A," attached hereto and made a part hereof.

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

TO HAVE AND HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto Grantee, forever, absolutely and in fee simple.

AND, in consideration of the premises, Grantor does hereby covenant and agree to and with Grantee that Grantor is lawfully seized in fee simple of the property herein described; that said property is free and clear of and from all liens and encumbrances, except as herein mentioned and except for the lien of real property taxes not yet by law required to be paid; that Grantor has good right to sell and convey said property, as aforesaid.

AND Grantee hereby accepts said real property described in said Exhibit "A."

The terms "Grantor" and "Grantee," as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporations and their and each of their respective successors, heirs, personal representatives and assigns, according to the context thereof. If these presents shall be signed by

two or more Grantors or by two or more Grantees, all covenants of such parties shall be and for all purposes are deemed to be joint and several.

IN WITNESS WHEREOF, Grantor and Grantee have hereunto caused this instrument to be executed as of the day and year first above written.



IAN (NMN) KAGIMOTO

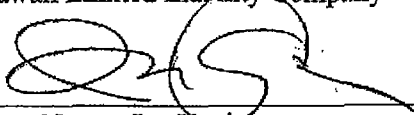


ALMAYAEKO KAGIMOTO

Grantor

LAWAI PROPERTIES LLC,
a Hawaii Limited Liability Company

By



Name: Ian Kagimoto

Title: Member

By



Name: Alma Y. Kagimoto

Title: Member

Grantee

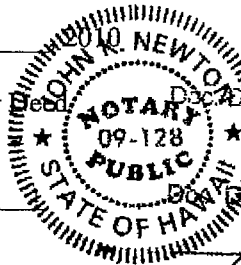
STATE OF HAWAII)
 : SS.
COUNTY OF KAUAI)

On September 30, 2010, in the Fifth Judicial Circuit of the State of Hawaii, before me personally appeared, IAN (NMN) KAGIMOTO and ALMA YAEKO KAGIMOTO, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Doc. Date: September 30

Total Pages: 5

Document Description: Warranty Deed



Doc. Date: September 30, 2010

Pages: 5

John K. Newton

5th Circuit

John K. Newton
Name: John K. Newton
Notary Public, State of Hawaii

My commission expires: April 12, 2013

John K. Newton 09/30/10
Signature Date

NOTARY CERTIFICATION

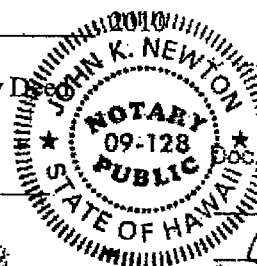
STATE OF HAWAII)
 : SS.
COUNTY OF KAUAI)

On September 30, 2010, in the Fifth Judicial Circuit of the State of Hawaii, before me personally appeared, IAN KAGIMOTO and ALMA Y. KAGIMOTO, to me personally known, who, being by me duly sworn, did say that they are Members of LAWAI PROPERTIES LLC, a Hawaii Limited Liability Company, that said instrument was signed on behalf of said limited liability company by its Members and acknowledged said instrument to be the free act and deed of said limited liability company.

Doc. Date: September 30

Total Pages: 5

Document Description: Warranty Deed



Doc. Date: September 30, 2010

Pages: 5

John K. Newton

5th Circuit

John K. Newton
Name: John K. Newton
Notary Public, State of Hawaii

My commission expires: April 12, 2013

John K. Newton 09/30/10
Signature Date

NOTARY CERTIFICATION

EXHIBIT "A"

All of that certain parcel of land situate at Kikiaola, Waimea, Island and County of Kauai, State of Hawaii, described as follows:

LOT 4, area 2.601 acres, more or less, as shown on Map 7, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 937 (amended) of H. P. Faye, Limited.

Being the land described in Transfer Certificate of Title No. 962,964 issued to the Grantor herein.

NOTE:

There is hereby omitted from any covenants, conditions and reservations contained herein any covenant or restriction based on race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, or source of income, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law. Lawful restrictions under state or federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

SUBJECT, HOWEVER, to the following:

1. The terms and provisions contained in the following:
INSTRUMENT : WAIMEA PLANTATION DECLARATION OF COVENANTS AND RESTRICTIONS
DATED : June 29, 2004
FILED : Land Court Document No. 3134739
RECORDED : Document No. 2004-140184

FIRST SUPPLEMENT TO WAIMEA PLANTATION DECLARATION OF COVENANTS AND RESTRICTIONS dated March 28, 2008, filed as Land Court Document No. 3737308.
2. Any and all easements, encumbrances, restrictions and reservations as noted on said Transfer Certificate of Title.

END OF EXHIBIT "A"

EXHIBIT "C-1"



Overview



Legend

- Parcels
- Roads

Parcel ID	120060220000	Situs/Physical Address	8948 KAUMUALII HWY	Total Market Value	\$1,794,400	Last 2 Sales		
Acreage	2.601	Mailing Address	LAWAI PROPERTIES LLC	Total Assessed Value	\$1,794,400	Date	Price	Reason
Class	VACATION RENTAL		PO BOX 383 LAWAI HI 96765	Total Exemptions	\$0	10/23/2009	\$1500000	VALID SALE
				Total Net Taxable Value	\$1,794,400	n/a	0	n/a

Brief
Tax Description

LOT 4 MAP 7 LC APP 937 2.601 AC

(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, including, 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: 5/17/2021
Last Data Uploaded: 5/17/2021 9:21:47 AM

Developed by  Schneider
GEOSPATIAL

EXHIBIT "C-1"

EXHIBIT "C-2"

EXHIBIT "C-3"

LAND COURT
STATE OF HAWAII

LAND COURT APPLICATION 337

SUBDIVISION OF LOT 3-A-1-A

AS SHOWN ON MAP 6 INTO

LOTS 4, B AND 6

DELETION OF EASEMENT C OVER AND ACROSS LOT 3-A-1-A AS SHOWN ON MAP 6
DELETION OF EASEMENT E OVER AND ACROSS LOT 3-A-1-B AS SHOWN ON MAP 6
AND DESIGNATION OF EASEMENT F OVER AND ACROSS LOT 5
AND DESIGNATION OF EASEMENT G OVER AND ACROSS LOT 3-A-1-B

LAND SITUATED AT KIKIAOLA, WAIMEA, KAUAI
STATE OF HAWAII



By: *Ramona Hines*
Buyer and holder of Plan
No. 100-00000000000000000000
Certificate No. 100-00000000000000000000
Land Court Survey No. 100-00000000000000000000

State of Hawaii
Department of Land and Natural Resources
Office of the Land Court
August 10, 1994

OWNER OF LOT 3-A-1-B STATE OF HAWAII

OWNER'S CERTIFICATE OF TITLE: 85288

OWNER: KIKIAOLA LAND COMPANY LIMITED

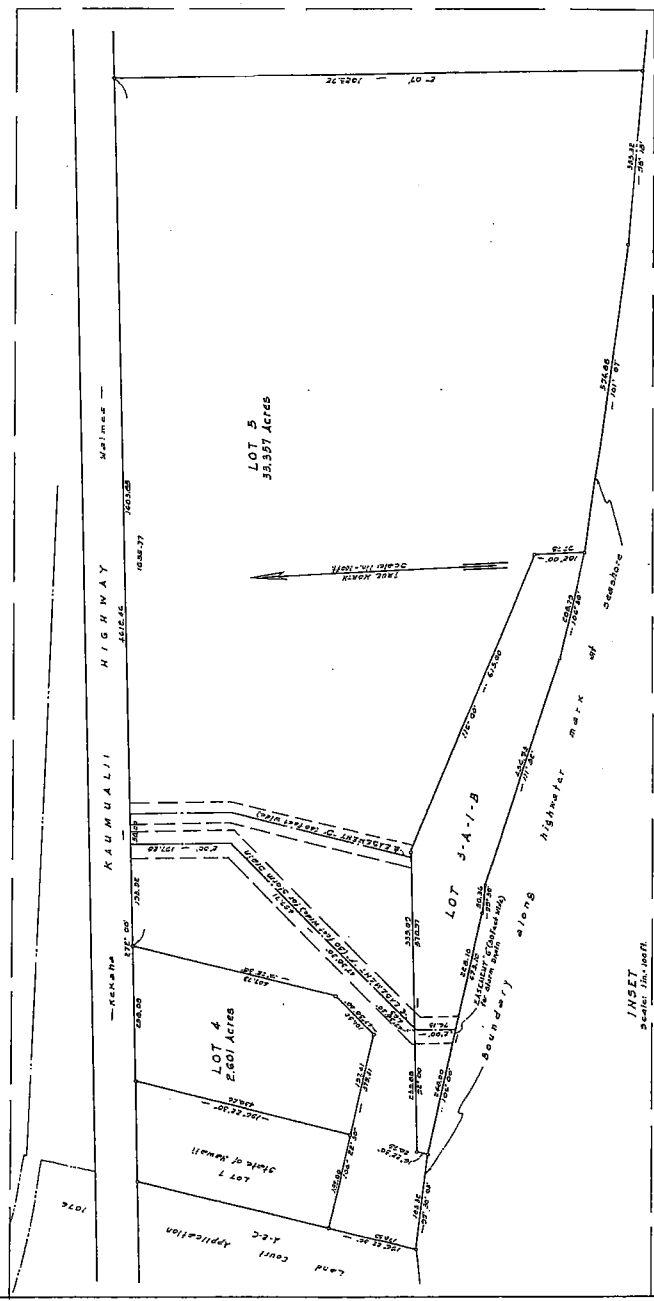
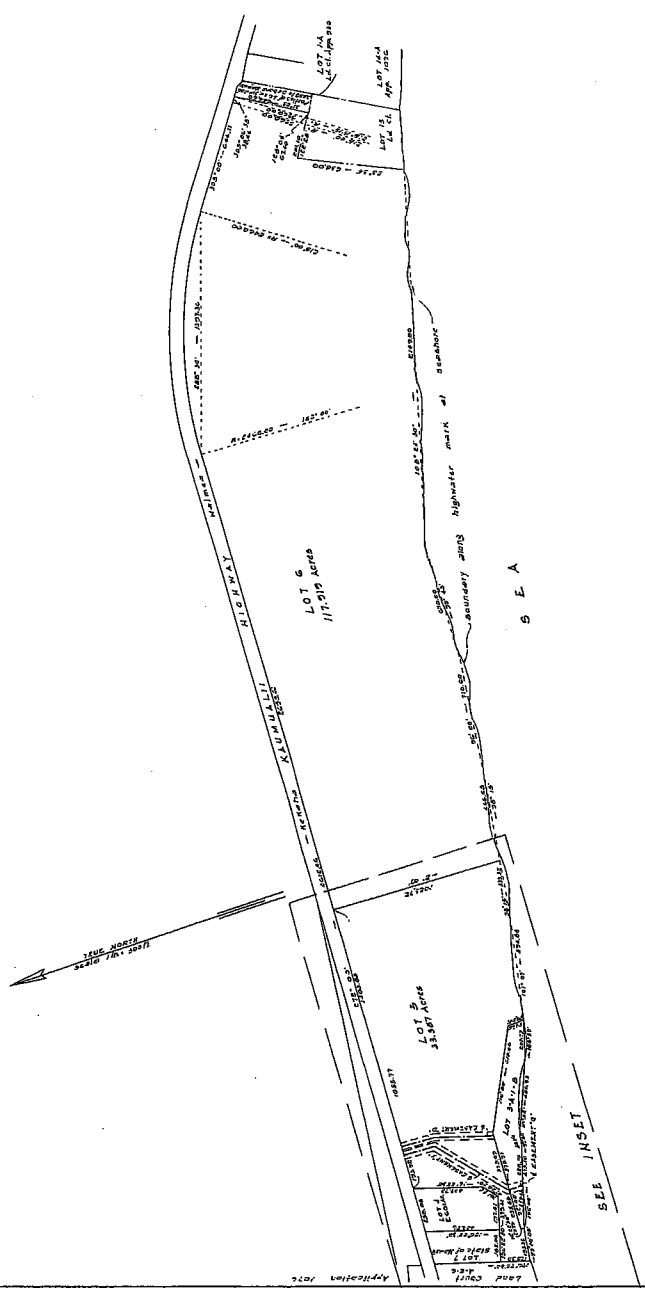
OWNER'S CERTIFICATE OF TITLE: 54022

AUTHORIZED AND APPROVED BY ORDER OF THE JUDGE
OF THE LAND COURT DATED: OCTOBER 25, 1994
BY ORDER OF THE COURT

Ramona Hines
Buyer and holder of Plan
No. 100-00000000000000000000
Certificate No. 100-00000000000000000000
Land Court Survey No. 100-00000000000000000000

Filed with 19, 1994 Paul Galt

30 x 30 - 107.2 sq. ft.



NOTE:
Area of Easement 'F', 36550 sq. ft.
Area of Easement 'G', 40280 sq. ft.

EXHIBIT "C-4"



State of Hawaii Land Use District Boundaries Map - January 2...

EXHIBIT "C-4"

EXHIBIT "C-5"

**Figure 5-2 Waimea-Kekaha
Land Use Map**

- Planning District Boundary
- Major Roads
- Roads
- Streams
- Reservoirs
- Natural
- Agriculture
- Agriculture (AL)
- Parks and Recreation
- Golf Course
- Homestead
- Residential Community
- Neighborhood Center
- Neighborhood General
- Resort
- Potential Resort
(Pending Community Plan)
- Plantation Camp (descriptive only)
- Transportation
- Military

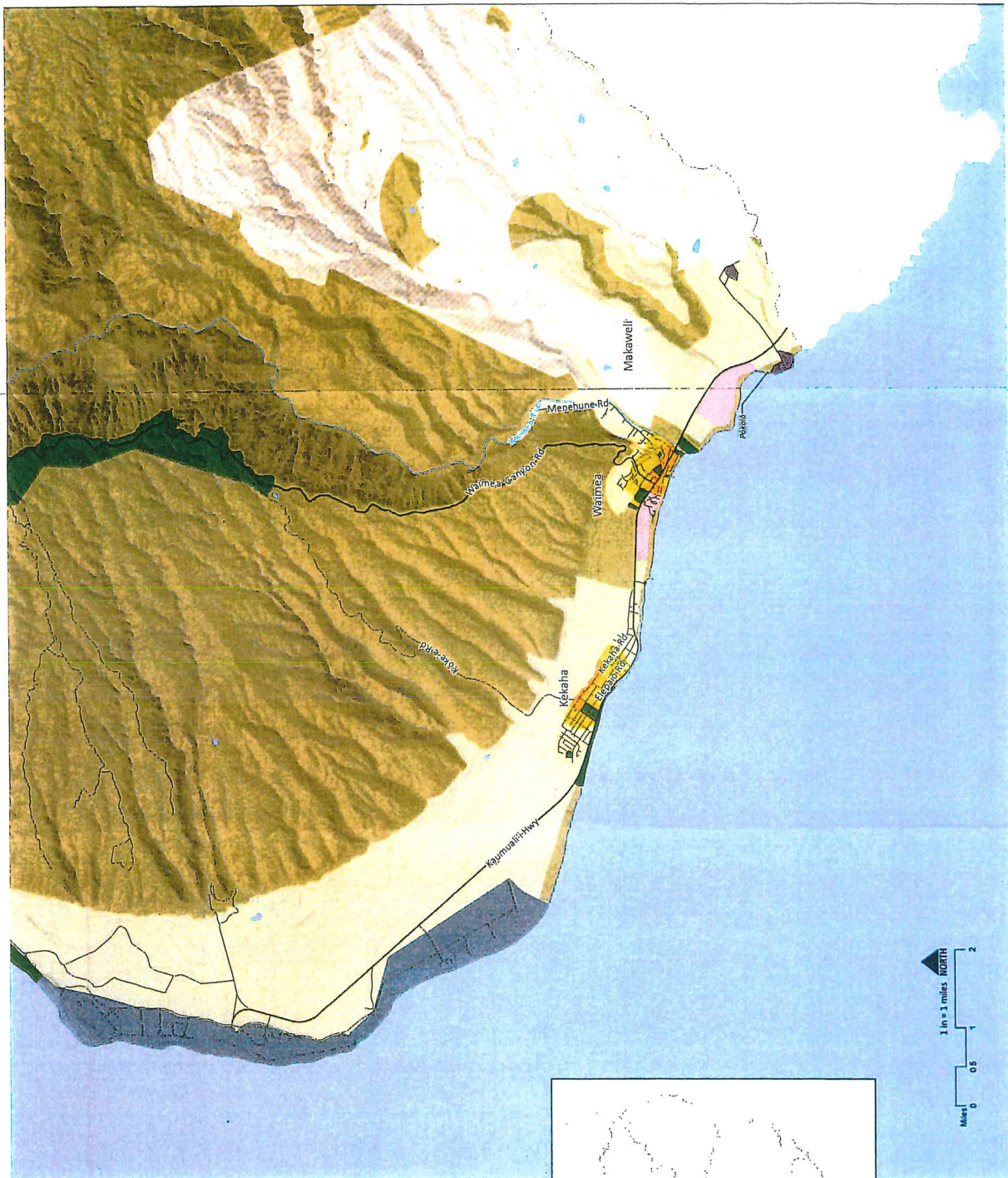
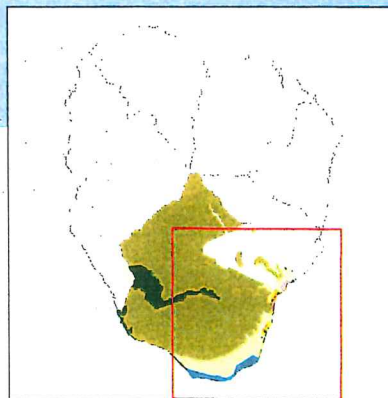


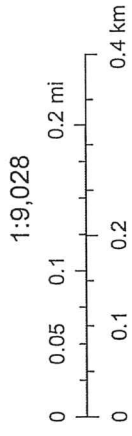
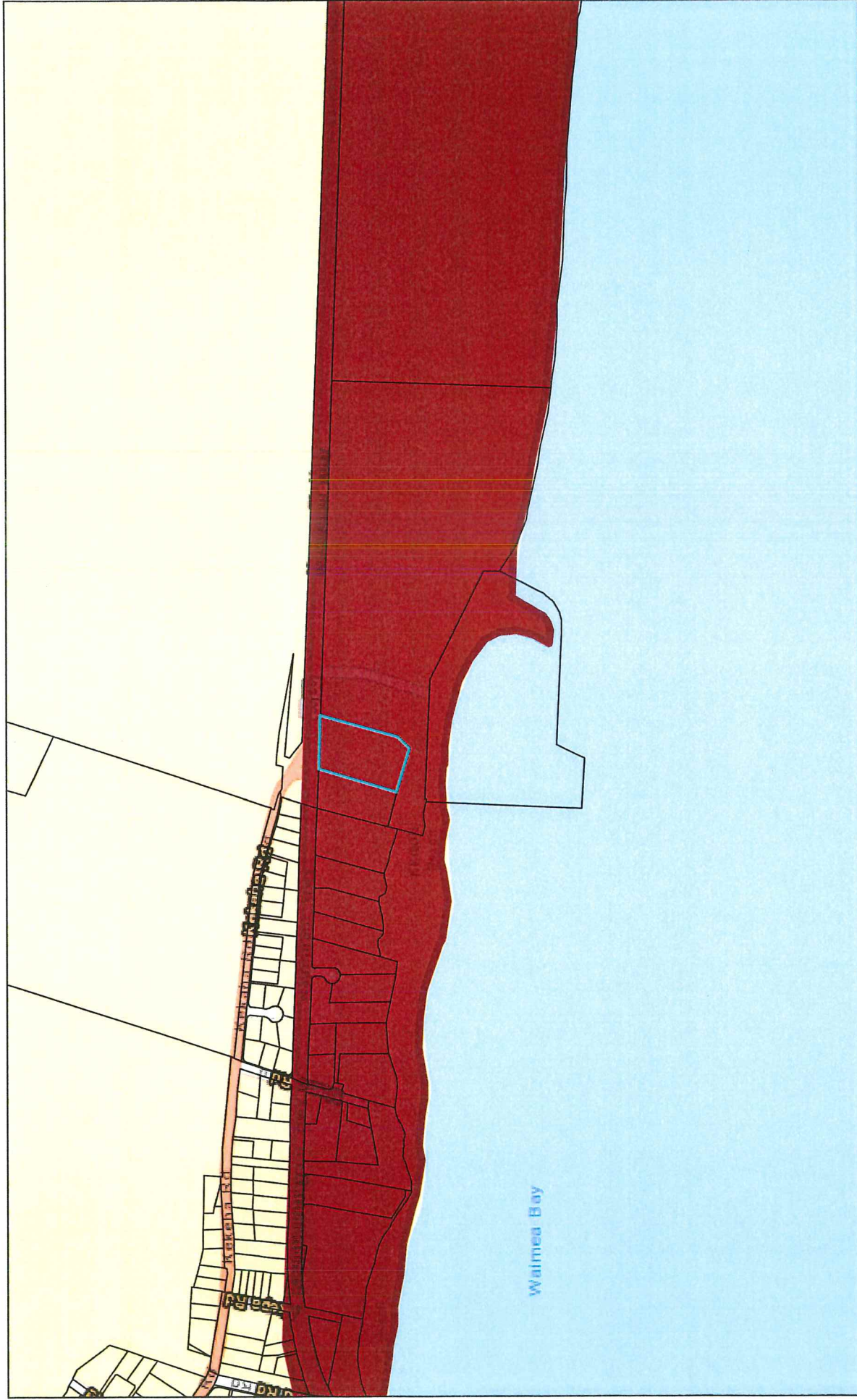
EXHIBIT "C-5"

EXHIBIT "C-6"

[illegible]

EXHIBIT "C-7"

SMA Kekaha



May 18, 2021

Esri, HERE, HERE, Garmin, Intermap, NGA, USGS

EXHIBIT "C-8"

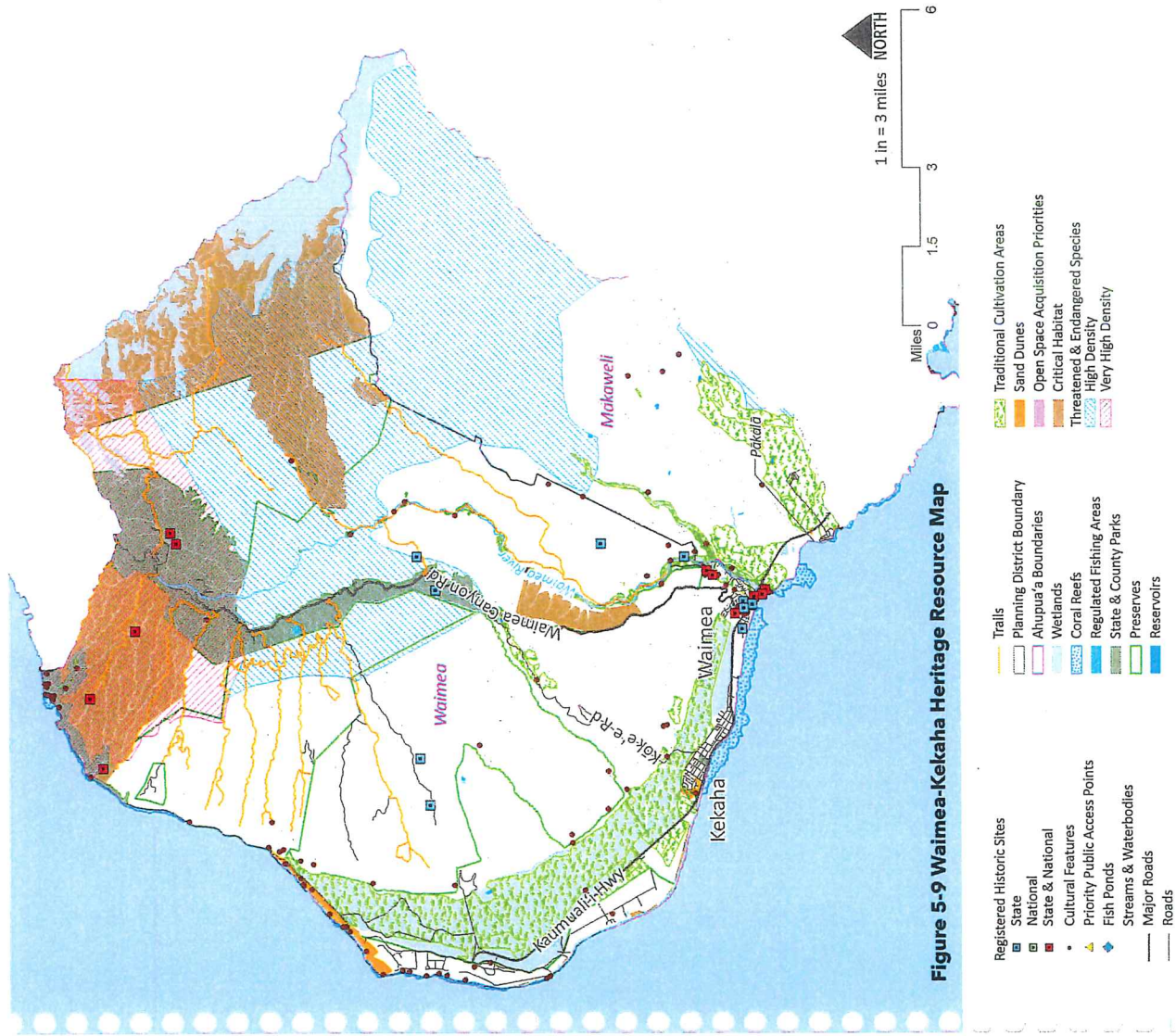
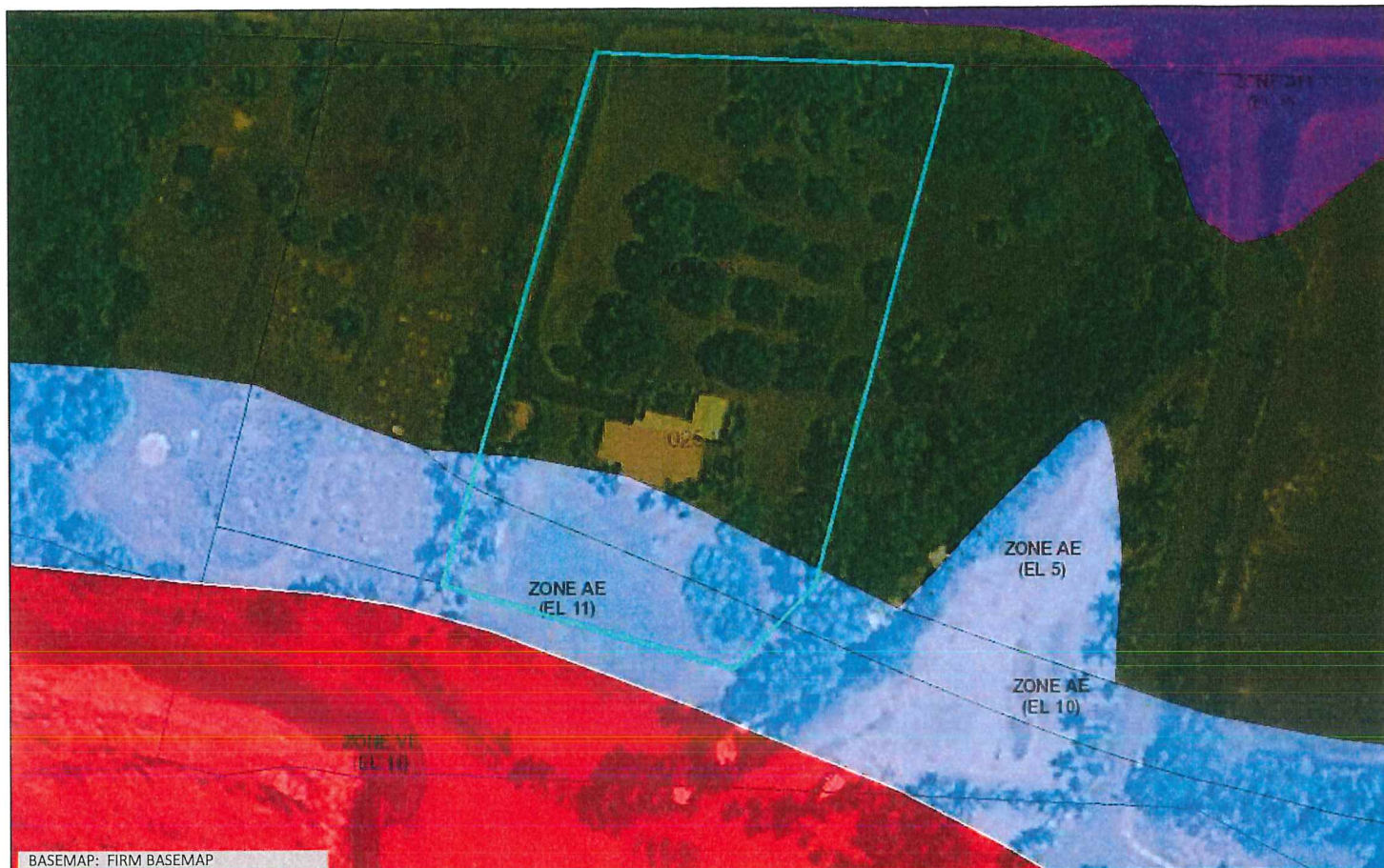


EXHIBIT "C-9"



BASEMAP: FIRM BASEMAP



Flood Hazard Assessment Report

www.hawaiiinfip.org

Property Information

COUNTY: KAUAI
 TMK NO: (4) 1-2-006:022
 WATERSHED: KAPILIMAO
 PARCEL ADDRESS: ADDRESS NOT DETERMINED
 KEKAHA, HI 96752

Notes:

Flood Hazard Information

FIRM INDEX DATE: FEBRUARY 26, 2021
 LETTER OF MAP CHANGE(S): NONE
 FEMA FIRM PANEL: 1500020254F
 PANEL EFFECTIVE DATE: NOVEMBER 26, 2010

THIS PROPERTY IS WITHIN A TSUNAMI EVACUATION 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/>



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 known 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 applies, but coverage is available in participating communities.
--	--

EXHIBIT "C-9"

EXHIBIT "D"



Parcel Information

Parcel Number (TAX MAP KEY) 120060220000
 Location Address 8948 D KAUMUALII HWY
 WAIMEA HI 96796
 Project Name KEKAHA HARBOR HOUSE TVR
 Tax Classification VACATION RENTAL
 (Note: This is for tax purposes only. Not to be used for zoning.)
 Neighborhood Code 1614-1
 Legal Information LOT 4 MAP 7 LC APP 937 2.601 AC
 Zoning OP
 Non Taxable Status
 Land Area (acres) 2.6010
 Land Area (approximate sq ft) 113,300
 Living Units 1

[View Map](#)

Owner Information

Owner Names
 LAWAI PROPERTIES LLC Fee Owner

Mailing Address
[LAWAI PROPERTIES LLC](#)
 PO BOX 383
 LAWAI HI 96765

Assessment Information

[Show Historical Assessments](#)

Year	Property Class	Total Market Value	Total Property Assessed Value	Total Property Exemption	Total Net Taxable Value
2021	VACATION RENTAL	\$1,794,400	\$1,794,400	\$0	\$1,794,400

[How to calculate real property taxes](#)

Assessment Notices

2021 (PDF)

2020-2 (PDF)

2019-2 (PDF)

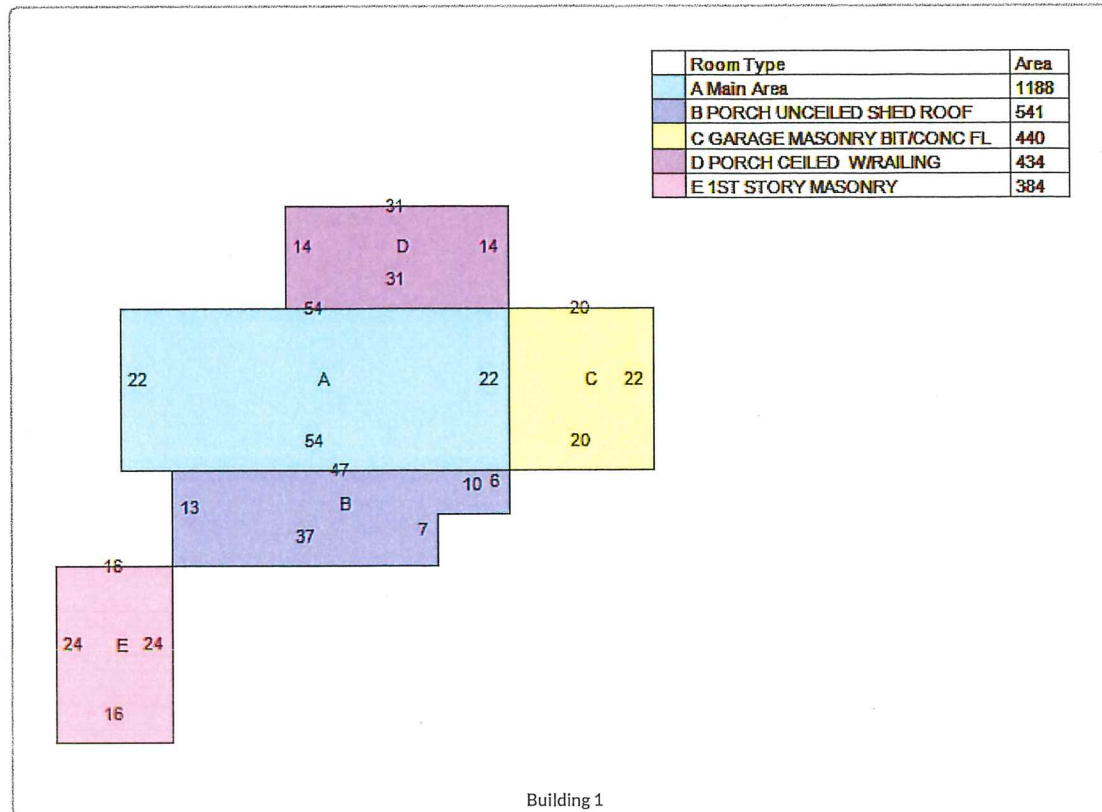
Online Assessment Notices will include one PDF per parcel for each class. For multi-owner copies please contact rpassessment@kauai.gov.

Improvement Information

Building Number	1	Bedrooms	3
Year Built	1964	Full Bath	3
Eff Year Built	1975	Half Bath	2
Living Area	1,572	Percent Complete	

Sketches

EXHIBIT "D"


[Print Sketches](#)

Other Building and Yard Improvements

Description	CARPORT OPEN WOOD FLOOR	Area	320
Quantity	1	Percent Complete	
Year Built	1993		

Description	METAL UTILITY SHED	Area	392
Quantity	1	Percent Complete	
Year Built	1970		

Description	CARPORT OPEN GRAVEL FLOOR	Area	532
Quantity	1	Percent Complete	
Year Built	1970		

Permit Information

Date	Permit Number	Reason	Permit Amount
4/27/2012	1200000593	ADDITION	\$8,500
4/27/2012	1200000592	REROOF	\$127,600
4/8/1983	0000019218	SOLAR	\$3,695

Conveyance Information

Sale Date	Price	Instrument #	Instrument Type	Date Recorded	Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
09/30/2010	\$1,500,000		FEE CONVEYANCE	12/13/2010	4028833	1006545		4500	Warranty Deed
10/23/2009	\$1,500,000		FEE CONVEYANCE	10/30/2009	3911564	962964		6000	Warranty Deed
06/20/2005	\$616,300		FEE CONVEYANCE	06/27/2005	3287346	54022		616.3	Quitclaim Deed
06/22/1989	\$0	0000000000	LEASE	09/08/1989	1666778	54022			
10/03/1988	\$0	0000000000							

Historical Tax Information

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
2020	\$16,315.55	(\$16,315.55)	\$0.00	\$0.00	\$0.00	\$0.00
2019	\$16,706.59	(\$16,706.59)	\$0.00	\$0.00	\$0.00	\$0.00
2018	\$16,455.42	(\$16,455.42)	\$0.00	\$0.00	\$0.00	\$0.00
2017	\$14,188.33	(\$14,188.33)	\$0.00	\$0.00	\$0.00	\$0.00
2016	\$13,457.32	(\$13,457.32)	\$0.00	\$0.00	\$0.00	\$0.00

⊕ 2015	\$13,027.20	(\$13,027.20)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2014	\$12,210.35	(\$12,210.35)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2013	\$10,558.40	(\$10,558.40)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2012	\$5,517.77	(\$5,517.77)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2011	\$6,201.42	(\$6,201.42)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2010	\$6,887.37	(\$6,887.37)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2009	\$2,734.39	(\$2,734.39)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2008	\$2,701.66	(\$2,701.66)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2007	\$2,697.41	(\$2,697.41)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2006	\$2,730.90	(\$2,730.90)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2005	\$2,500.42	(\$2,500.42)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2004	\$420.52	(\$420.52)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2003	\$430.29	(\$430.29)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2002	\$422.64	(\$422.64)	\$0.00	\$0.00	\$0.00	\$0.00
⊕ 2001	\$1,758.50	(\$1,758.50)	\$0.00	\$0.00	\$0.00	\$0.00

Map



No data available for the following modules: CPR/Condo/Apt Unit Information, Appeal Information, Commercial Improvement Information, Current Tax Bill Information.

The Kauai County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation.

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[Last Data Upload: 5/17/2021, 3:21:47 AM](#)

Developed by
 Schneider
 GEOSPATIAL

Version 2.3.121

EXHIBIT "E-1"

BUILDER'S OBLIGATIONS

IT SHALL BE THE RESPONSIBILITY OF THE GENERAL CONTRACTOR/BUILDER TO CONSTRUCT THIS STRUCTURE WITH STRICT ACCORDANCE TO THE PLANS AND THE RULES AND REGULATIONS OF THE CURRENT INTERNATIONAL BUILDING CODE AS ADOPTED BY THE STATE OF HAWAII AND AS AMENDED BY EACH ISLANDS COUNTY IN WHICH THIS STRUCTURE IS TO BE CONSTRUCTED.

THE CONTRACTOR/BUILDER SHALL INSPECT THE PLANS AND PROJECT SITE, AND VERIFY ALL DIMENSIONS, CONDITIONS, AND DETAILS BEFORE STARTING CONSTRUCTION.

THE CONTRACTOR/BUILDER SHALL BRING ALL POTENTIAL PROBLEMS, ERRORS, AND OR OMISSIONS TO THE ATTENTION OF HPM BUILDING SUPPLY AND THE ARCHITECT OF RECORD, PRIOR TO START OF CONSTRUCTION.

THE CONTRACTOR/BUILDER SHALL VERIFY THAT THE PROJECT SITE TOPOGRAPHY CAN ACCOMMODATE THE BUILDING DESIGN PRIOR TO STARTING CONSTRUCTION. THE CONTRACTOR/BUILDER SHALL IMMEDIATELY BRING ANY SITE CONDITIONS THAT MAY ADVERSELY AFFECT THE DESIGN OF THIS PROJECT TO THE ATTENTION OF HPM BUILDING SUPPLY AND THE ARCHITECT OF RECORD TO RESOLVE ANY ISSUES AND/OR CONCERNS PRIOR TO STARTING CONSTRUCTION.

THE CONTRACTOR/BUILDER SHALL BE RESPONSIBLE TO VERIFY THAT ALL SOIL CONDITIONS CAN ACCOMMODATE FOUNDATION DESIGN AND SHALL SLOPE ALL FINISHED GRADES AWAY FROM STRUCTURE, AS PER CURRENT LOCALLY ADOPTED BUILDING CODE REQUIREMENTS.

GENERAL CONDITIONS

ALL 4X LUMBER TO BE #1 GRADE OR BETTER.

OWNER'S OBLIGATIONS

THE OWNER IS RESPONSIBLE FOR VERIFYING ALL LOT DIMENSIONS AND ANGLES, SETBACKS, EASEMENTS, RIGHT-OF-WAYS, COVENANTS AND RESTRICTIONS, AND OTHER PLANNING AND ZONING ISSUES - REGARDLESS OF THE DRAFTED SITE PLAN.

BY APPLYING FOR A BUILDING PERMIT, THE OWNER CONFIRMS THAT HE OR SHE HAS REVIEWED THESE PLANS AND FINDS THEM COMPLETE AND ACCURATE IN REGARDS TO HIS OR HER REQUIREMENTS.

COUNTY OF KAUAI CHAPTER 12, KAUAI COUNTY BUILDING CODE KAUAI COUNTY CODE 1987, AS AMENDED

ARTICLE 6 - ENERGY CONSERVATION CODE

TO THE BEST OF MY KNOWLEDGE, THIS PROJECT'S DESIGN SUBSTANTIALLY CONFORMS TO THE RESIDENTIAL PROVISIONS OF:

SECTION 12-6.3 ADOPTION OF THE INTERNATIONAL ENERGY CONSERVATION CODE (IECC)
SECTION 12-6.4 LOCAL AMENDMENTS TO THE IECC

COMPLIANCE METHOD

- ☐ Tropical Zone, R401.2.1
☒ Prescriptive, R402
Roof and Wall
☐ Insulation R-value, Table R402.1.2
☐ Construction U-factor, Table R402.1.4
☐ Total UA, R402.1.5
☒ Points Option, R407 (noted below)
☐ Simulated Performance Alternative, R405
☐ Energy Rating Index Compliance Alternative, R406

INFORMATION IN CONSTRUCTION DOCUMENTS

	Yes	N/A
Envelope		
Roof insulation R-value	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roof insulation type and location	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roof membrane solar reflectance and thermal emittance	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Wall insulation R-value	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Wall insulation type and location	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Window and skylight SHGC	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Air leakage testing requirement	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Air Conditioning		
Air conditioning equipment capacity and efficiency	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Programmable thermostat	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Duct insulation R-value	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Duct leakage testing requirement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Electrical		
Lighting fixture locations	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Lamp type	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Ceiling fans	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Whole-house fan	<input type="checkbox"/>	<input checked="" type="checkbox"/>

NOTES:

POINTS OPTION FOR DWELLING WITH WOOD FRAMED WALLS (STANDARD HOME) = 0

- R-13 CAVITY WALL INSULATION = 0
- R-19 ROOF INSULATION = -1
- ENERGY STAR FANS = 1

75% OF PERMANENTLY INSTALLED LIGHTING FIXTURES SHALL BE CFL, LED, OR T-8/SMALLER DIAMETER LINEAR FLUORESCENT LAMPS (R404.1)

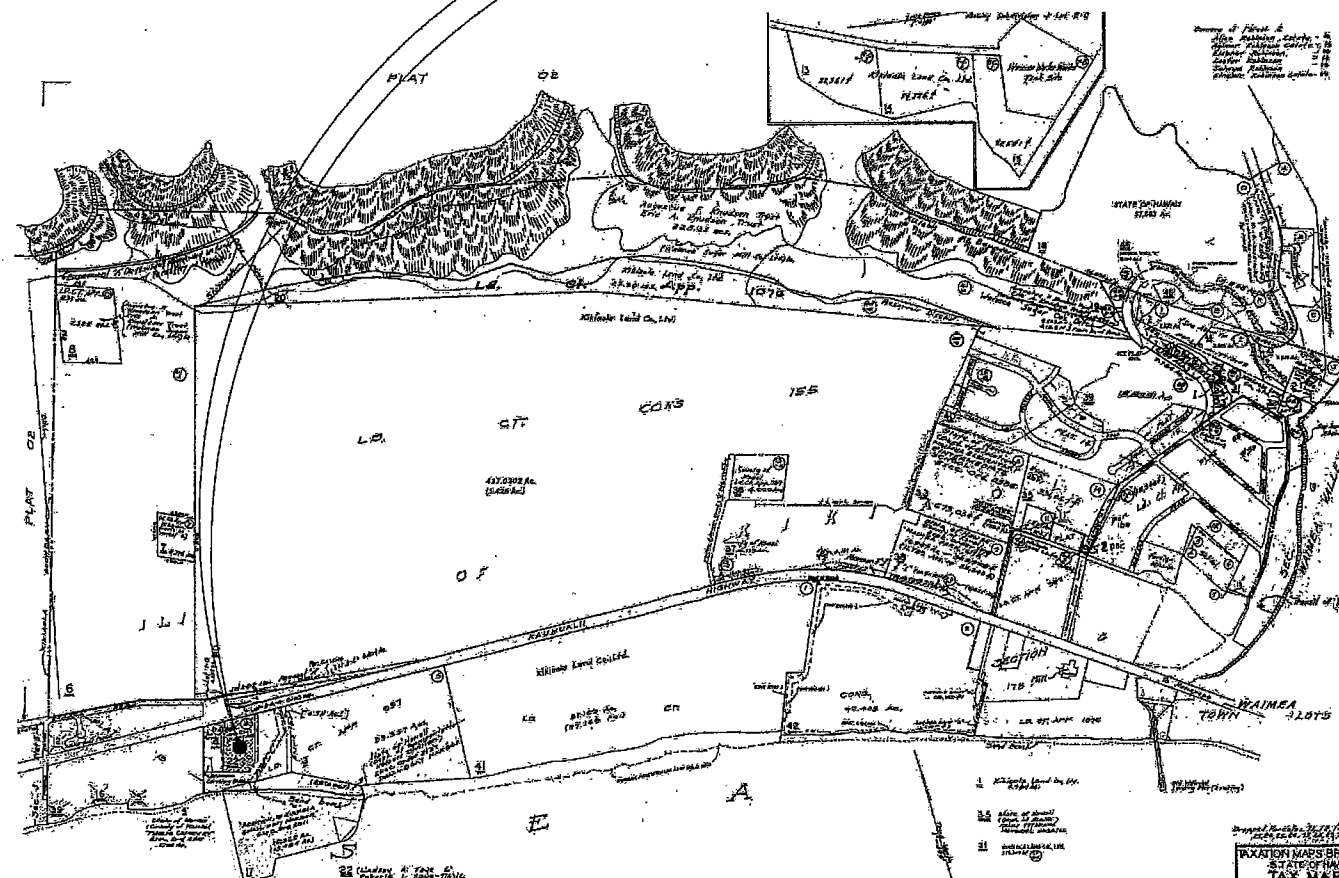
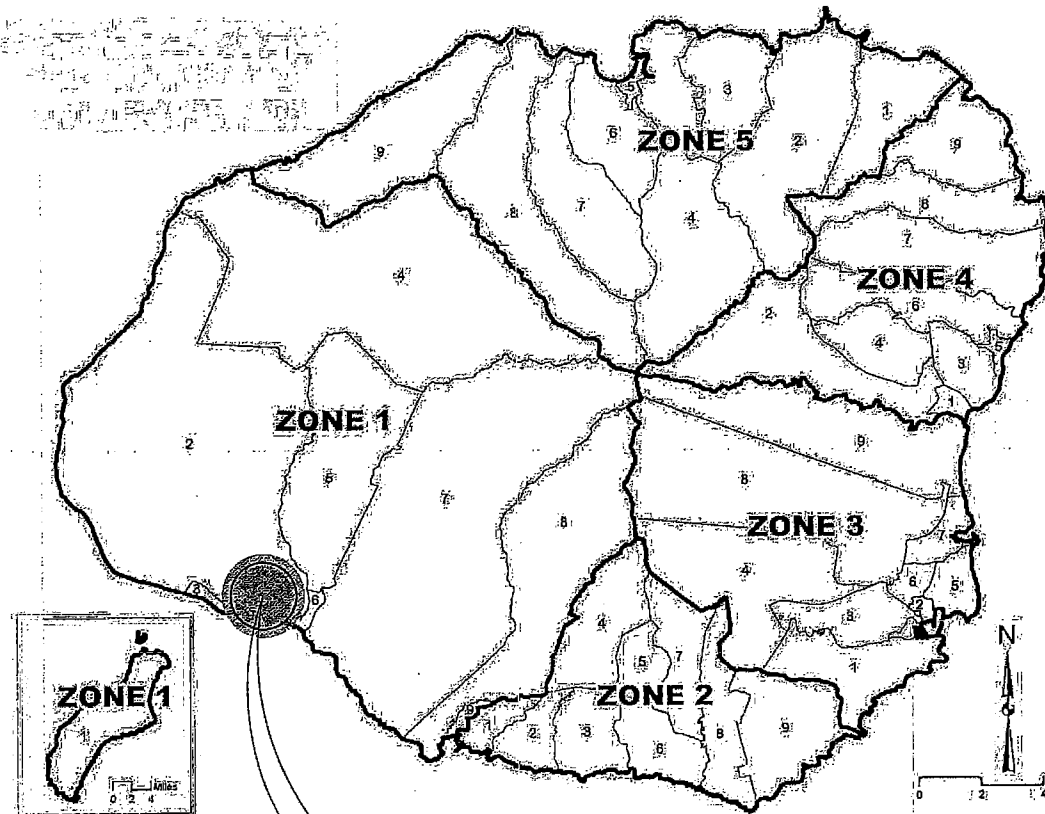
ENERGY STAR FANS OR ROUGH-IN SHALL BE INSTALLED IN EACH BEDROOM AND LIVING ROOM (R401.2.1, AMENDMENT)

AIR-LEAKAGE TESTING ≤ 5 AIR CHANGES PER HOUR TESTED AT PRESSURE OF 0.2 IN W.G. WRITTEN REPORT REQUIRED (R402.4.1.2)

ALL WINDOWS AND SLIDING GLASS DOORS SHALL BE DOUBLE PANE GLAZING WITH LOW-E COATING, WITH SOLAR HEAT GAIN COEFFICIENT OF ≤ 0.25 (R402.3)

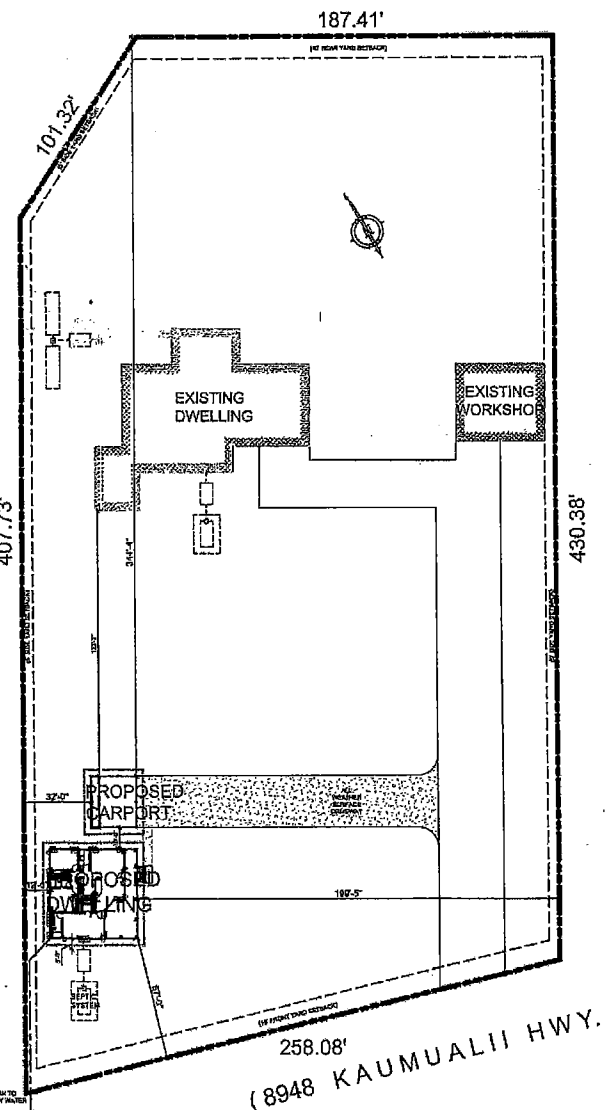
Signature: Robert C. Smelter
Name: Robert C. Smelter
Title: Architect
License No: 33660

Date: 4-18-20



Index to Drawing

DESCRIPTION	SHEET No.
PROJECT INFORMATION AND SITE PLAN	1
(HSE) - FLOOR PLAN AND GENERAL NOTES	2
(HSE) - DOOR, WINDOW SCHEDULES and INTERIOR ELEVATIONS	3
(HSE) - EXTERIOR ELEVATIONS	4
(HSE) - FOUNDATION PLAN AND FLOOR FRAMING	5
(HSE) - DETAILS	6
(HSE) - SECTIONS	7
(HSE) - ROOF PLAN AND ELECTRICAL LAYOUT	8
(CARPORT) - FLOOR PLAN, ROOF PLAN, ELECTRICAL LAYOUT and EXTERIOR ELEVATIONS	9
(CARPORT) - FOUNDATION, DETAILS and SECTIONS	10



PLOT PLAN

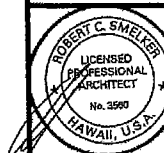
SC: 1"=40.00'

TWK: (4) 1-2-006:022
LOT NO: 4
LOT AREA: 2,501 acs.
por. of KIRIAGLA, WAIMEA, KAUAI, HAWAII

EXHIBIT "E-1"

DATE:

Mar. 2020



*EXPIRES 4-30-2022

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION. CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.

PROJECT INFORMATION and SITE PLAN

WWW.HPMHAWAII.COM



A PROPOSED NEW CONSTRUCTION FOR:
LAWAI PROPERTIES, LLC.

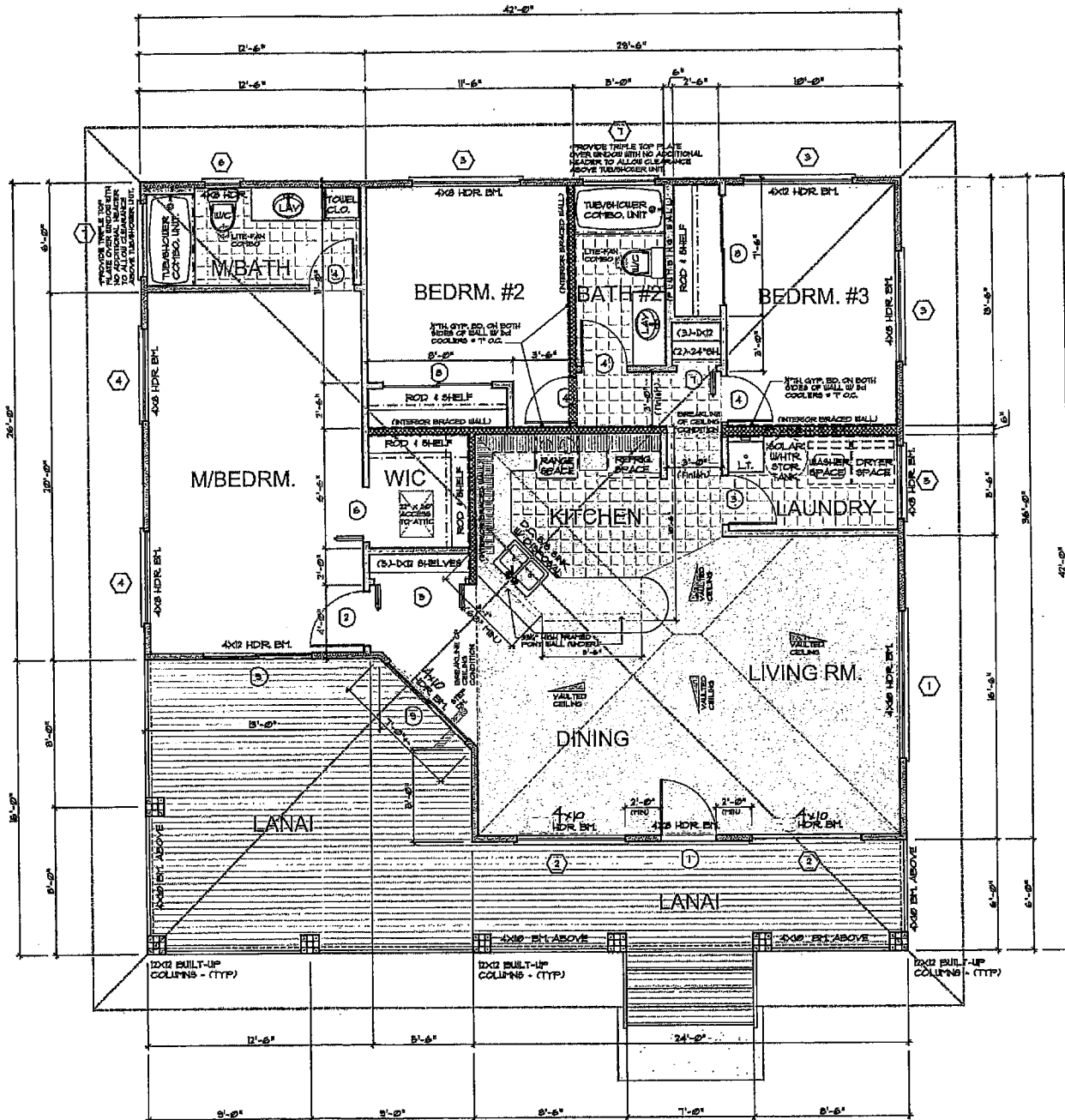
SHT. NO.

1

GENERAL NOTES:

Revised 15, September 2017.

- The Contractor shall visit the project site and thoroughly familiarize himself with the existing conditions prior to submitting his bid.
- All grading operations shall be performed in conformance with the applicable provisions of Chapter 54, water quality standards, and Chapter 55, water pollution control, of Title II, administration rules of the State of Hawaii Department of Health.
- The Contractor shall conform to the latest prevailing codes and ordinances and manufacturer's specifications and standards for all trades of work.
- All work is to be done by the General Contractor unless otherwise noted. An "Owner-Builder" is in fact the General Contractor and shall bear all of the responsibilities of the General Contractor for the project. An "Owner-Builder" shall read and understand 'KNOW THE RISKS AND RESPONSIBILITIES OF BEING AN OWNER BUILDER' provided by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA), and its Regulated Industries Complaints Office (RICO), 235 S. Beretania Street, Ninth Floor, Honolulu, Hawaii 96813, www.hawaii.gov/dcca/rico, telephone (808) 587-4272.
- Burying organic "green" material from the site grading process is common. The Contractor shall locate all green material on the site and make sure that all structures are constructed a minimum of 6' away from all green material. If a structure is to be constructed over a green material location, the green material shall be removed and be replaced with engineered fill with a 95% compaction.
- Termite treat all dimension structural wood in accordance with the prevailing codes. Termite treat the ground under the building with chemicals acceptable to the local building authority and in accordance with the manufacturer's recommendations.
- All structural lumber species shall be Douglas Fir-Larch unless otherwise noted. Structural lumber grades shall be #1 or better for 4x6 or larger beams and rafters with a minimum structural value of Fb 1200, and #2 for 2x floor joist and rafters with a minimum structural value of Fb 900 unless otherwise noted.
- The General Contractor is responsible for coordinating all work for the sub-contractors.
- The Contractor shall verify that the soil conditions can accommodate the foundation design, if there is any question regarding the soil condition and foundation design, the Owner or Contractor shall retain a Hawaii Licensed Geotechnical Engineer and comply with all of the Hawaii Licensed Geotechnical Engineer's recommendations.
- All engineered fill, base course and ground under concrete slabs and concrete footings shall be compacted to a minimum of 95%.
- The Contractor shall slope all finished grades away from the building.
- The Contractor shall verify all dimensions, conditions and details prior to beginning construction and contact the Architect if there are any questions.
- The Contractor shall field verify all work and coordinate among trades prior to fabrication and installation. All products, unless otherwise noted, shall be pre-approved by the Owner prior to ordering, fabrication, installation and execution of the product.
- Where figures or dimensions have been omitted from the drawings, the drawings shall not be scaled. The Contractor shall immediately contact the Architect regarding any omissions.
- The Contractor shall use adequate numbers of skilled workman who are trained and experienced in the necessary crafts and who are completely familiar with the specific requirements and methods needed for proper performance of all aspects of the work.
- The Contractor shall examine all areas and conditions under which this work will be performed and correct all conditions detrimental to the timely and proper completion of the work prior to beginning the work.
- The Contractor shall provide other material not specifically described but needed for a complete and proper installation as selected by the Contractor and subject to the approval of the Owner.
- The Contractor shall protect products scheduled for use on this project. Maintain packaged materials with seals unbroken and labels intact until time of use. Promptly remove damaged material and unsuitable items from the job site, and promptly replace with material meeting the specified requirements, at no additional cost to the Owner. In the event of any damage to the job site, promptly make replacements and repairs to the approval of the Owner at no additional cost to the Owner.
- The Contractor shall keep the construction area in a neat, safe and orderly condition at all times during the execution of this work, free from the accumulation of dust and debris.
- The Contractor is to file and secure all approvals, permits, tests, inspections and certificates of compliance as required.
- The Contractor shall keep a full set of up-to-date plans available on the job site at all times.
- The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs necessary for completion of the work.
- All materials and labor shall be guaranteed for one(1) year from the date of final payment.
- The Contractor shall repair, replace, patch and match any materials, areas or systems as required or called for to obtain the proper installation and neat appearance of the work, connect new work to existing work in a neat and approved manner, and restore existing work, in making such connections, to perfect condition.
- The Contractor shall keep all operations and maintenance manuals and related paperwork in a marked envelop to be turned over to the Owner upon the completion of the project.
- The Contractor shall make a careful inspection of the construction and make sure that the project is ready for final acceptance prior to calling the Owner for a final inspection.
- All work shall conform to ADA and ADAAG requirements where applicable.
- The Contractor shall verify that the project site topography can accommodate the building design.
- All structural wood shall have a moisture content of 19 percent or less (measured at the center of the specific structural wood member).
- The Contractor shall not use Fiber Mesh as a substitute for wire mesh or steel in concrete slabs and concrete footings.
- The Contractor shall remove all red cinder from formed areas prior to pouring concrete slabs and concrete footings.
- Nailling Schedule Unless Otherwise Noted:
 - $\frac{3}{8}$ " $\frac{1}{2}$ " and $\frac{3}{4}$ " thick structural panels:
10d at 6" o.c. at edges and 12" o.c. in field.
 - $\frac{1}{2}$ " $\frac{7}{8}$ " and $\frac{3}{4}$ " thick structural panels:
8d at 6" o.c. at edges and 12" o.c. in field.
 - $\frac{5}{8}$ " thick structural panels:
6d at 4" o.c. at edges and 8" o.c. in field.
- All anchor bolts, hold down straps and ties, column bases and all other metal connectors embedded in concrete shall be galvanized.
- A valid Building Permit is, in no way, a guarantee that a County's Building Inspector will not, without just cause or notice, demand partial or total building redesign at the Owner's expense.



FLOOR PLAN

Scale: 1/4" = 1'-0"

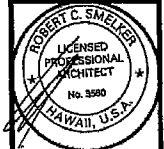
NOTE: R-13 INSULATION IN STUD CAVITY OF EXTERIOR WALLS

TABULATION

LIVING AREA: 1,345 sq.ft.
LANAI: 419 sq.ft.
TOTAL: 1,764 sq.ft.

BRACE WALL SCHEDULE

Symbol	Reference	Description	Minimum Length	Note
1	R502.10.3 Method 1	1" x 4" diagonal tie-in bracing	Varies, 60 to 45 degrees from horizontal	If wall = 4" to 8" If wall = 8" to 12" If wall = 12" to 16" If wall = 16" to 20"
2	R502.10.3 Method 2	Diagonal wood bracing	4'	per Table R502.3 (1)
3	R502.10.3 Method 3	Wood structural panels	4'	per Table R502.3 (2) and R502.3 (1)(3)
4	R502.10.3 Method 4	Structural Fiberglass	4'	per Table R502.3 (1)
5	R502.10.3 Method 5	Gypsum Wallboard	8' one side, 4' both sides	per Table R502.3 (1) for sheathing, Table R502.3.5 for starter gypsum board
6	R502.10.3 Method 6	Particleboard	4'	per Table R502.3 (1)(4)
7	R502.10.3 Method 7	Portland cement plaster on studs	4'	per Section 703.8
8	R502.10.3 Method 8	Hardboard panel siding	4'	per Section 703.4
A1	R502.10.5.1	Bracing panel with hold downs	20' one side - 10' floor above 20' two sides - one floor above	With hold downs, 10' length, 20' to 42"
A2	R502.10.5.2	Partial frame with hold downs	10' - no floor above 20' - one floor above	With hold downs
C	R502.10.5	Wood structural panel, continuously sheathed	24' and up	All exterior surfaces sheathed except openings
C.B	Table R502.10.5, Footnote b	Wood structural panel, continuously sheathed	8' wall = 24' 10' wall = 24' 12' wall = 24' 14' wall = 24'	Adjacent to garage door opening, 10' wall, double story, 4' aspect ratio
C.C	Table R502.10.5, Footnote c	Partial frame without hold downs, continuously sheathed	8' wall = 15' 10' wall = 15' 12' wall = 15'	Adjacent to garage door opening, 10' wall, double story, 4' aspect ratio

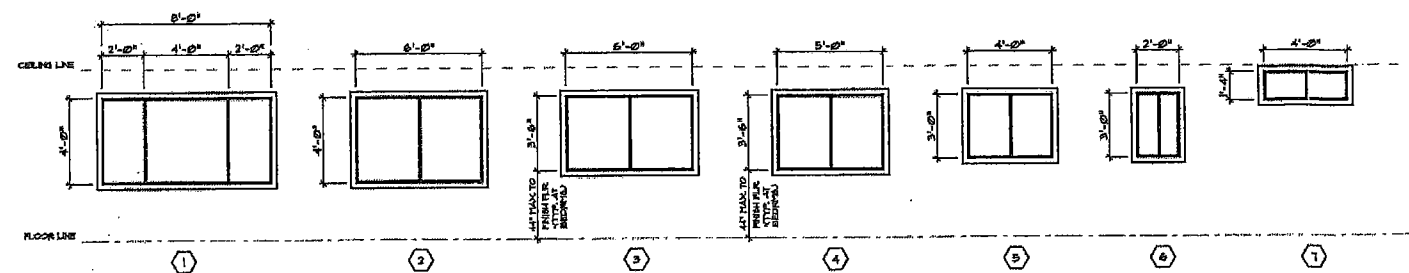


EXPIRES 4-30-2022

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION. CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY OBSERVATION.

SHT. NO.

2



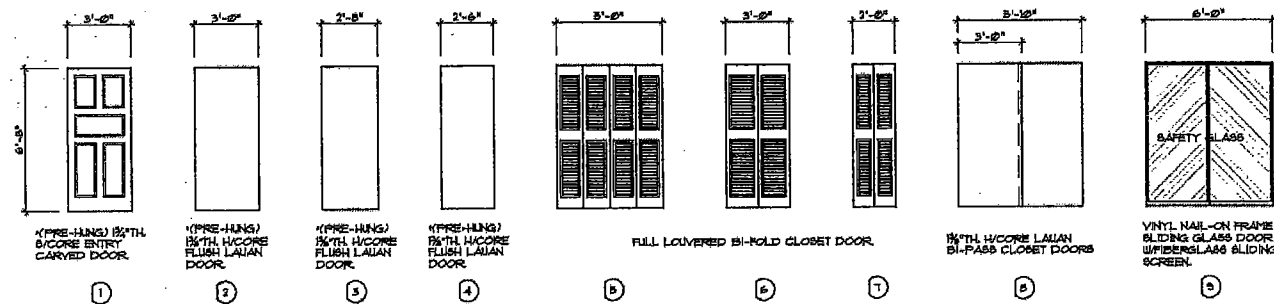
MILGARD DUAL GLAZE WHITE NAIL-ON VINYL SLIDING GLASS WINDOWS WITH REMOVABLE SCREENS.

WINDOW SCHEDULE

SC1/4\"/>

0 1 2 3 4 5

NOTE: ALL EXTERIOR SLIDING GLASS DOORS AND WINDOWS SHALL HAVE A GLAZED FENESTRATION MAXIMUM 18\"/>

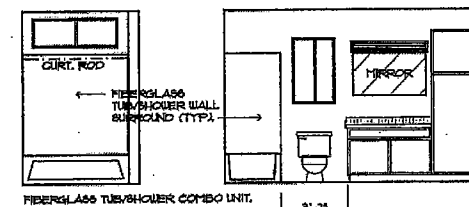


DOOR SCHEDULE

SC1/4\"/>

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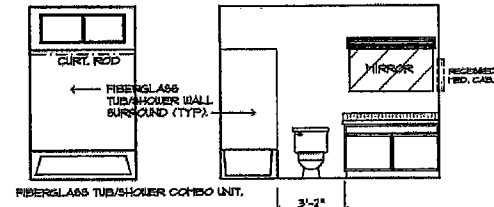
NOTE: ALL EXTERIOR SLIDING GLASS DOORS AND WINDOWS SHALL HAVE A GLAZED FENESTRATION MAXIMUM 18\"/>



M/BATH ELEVATION

SC1/4\"/>

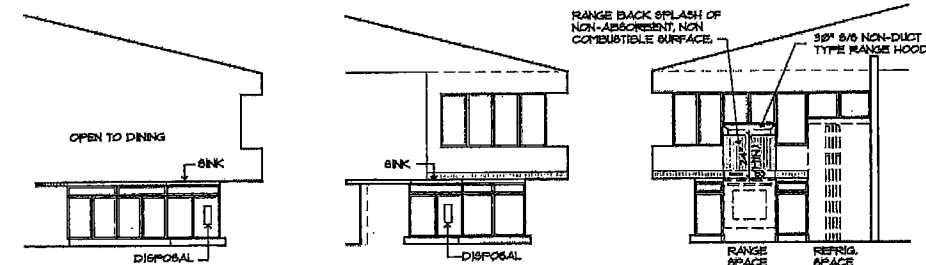
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BATH #2 ELEVATION

SC1/4\"/>

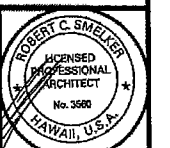
0 1 2 3 4 5



KITCHEN ELEVATION

SC1/4\"/>

0 1 2 3 4 5

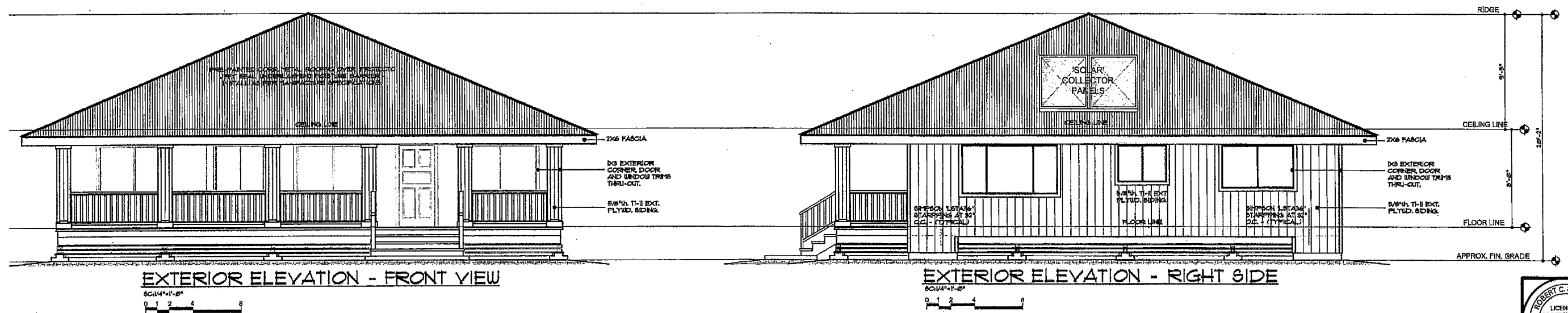
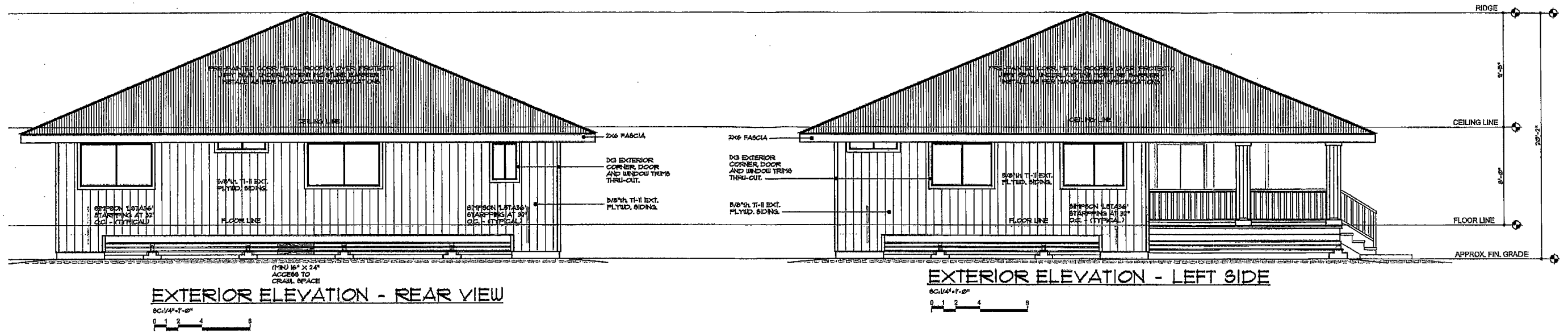


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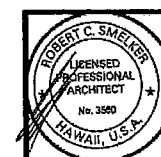
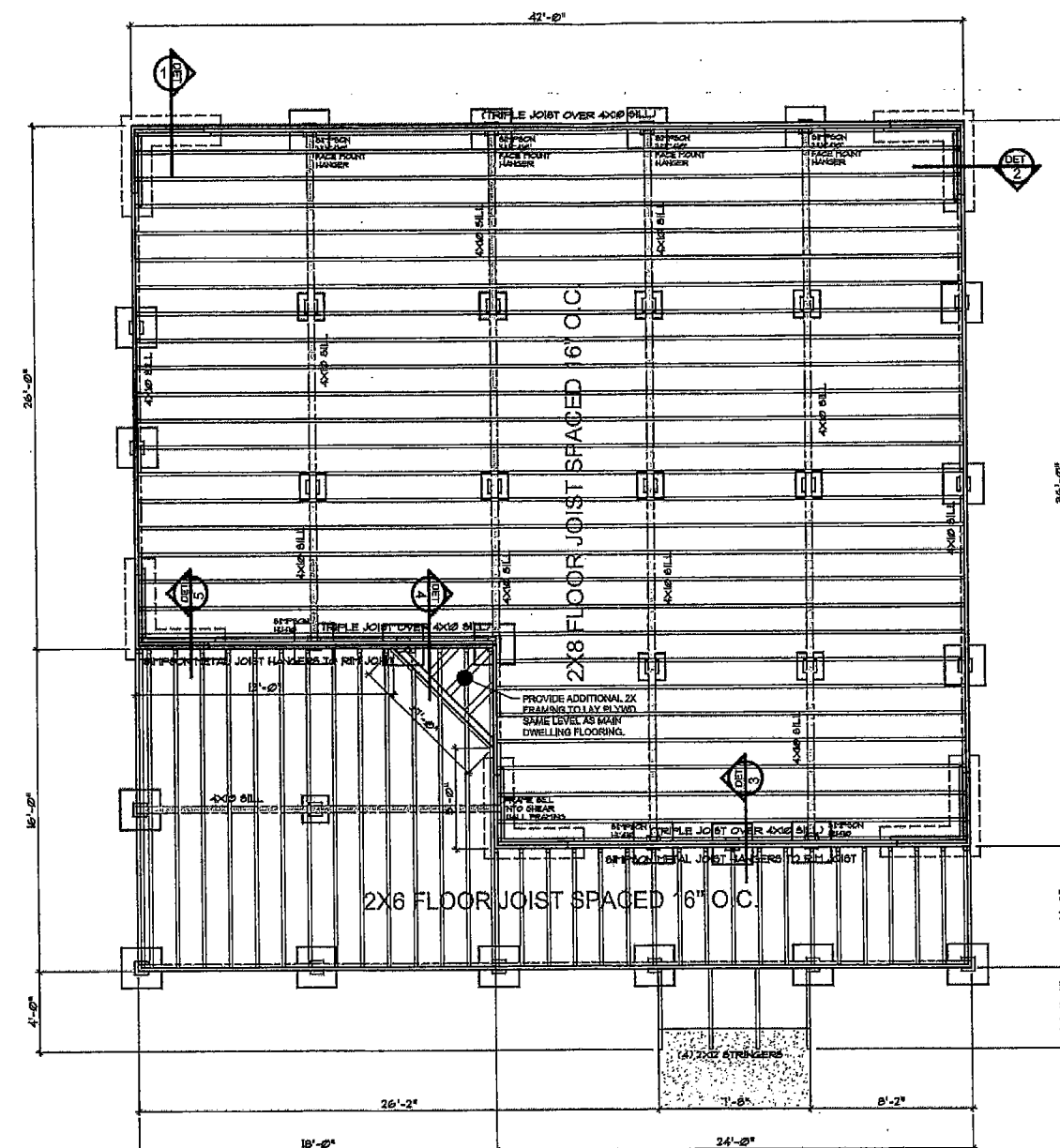
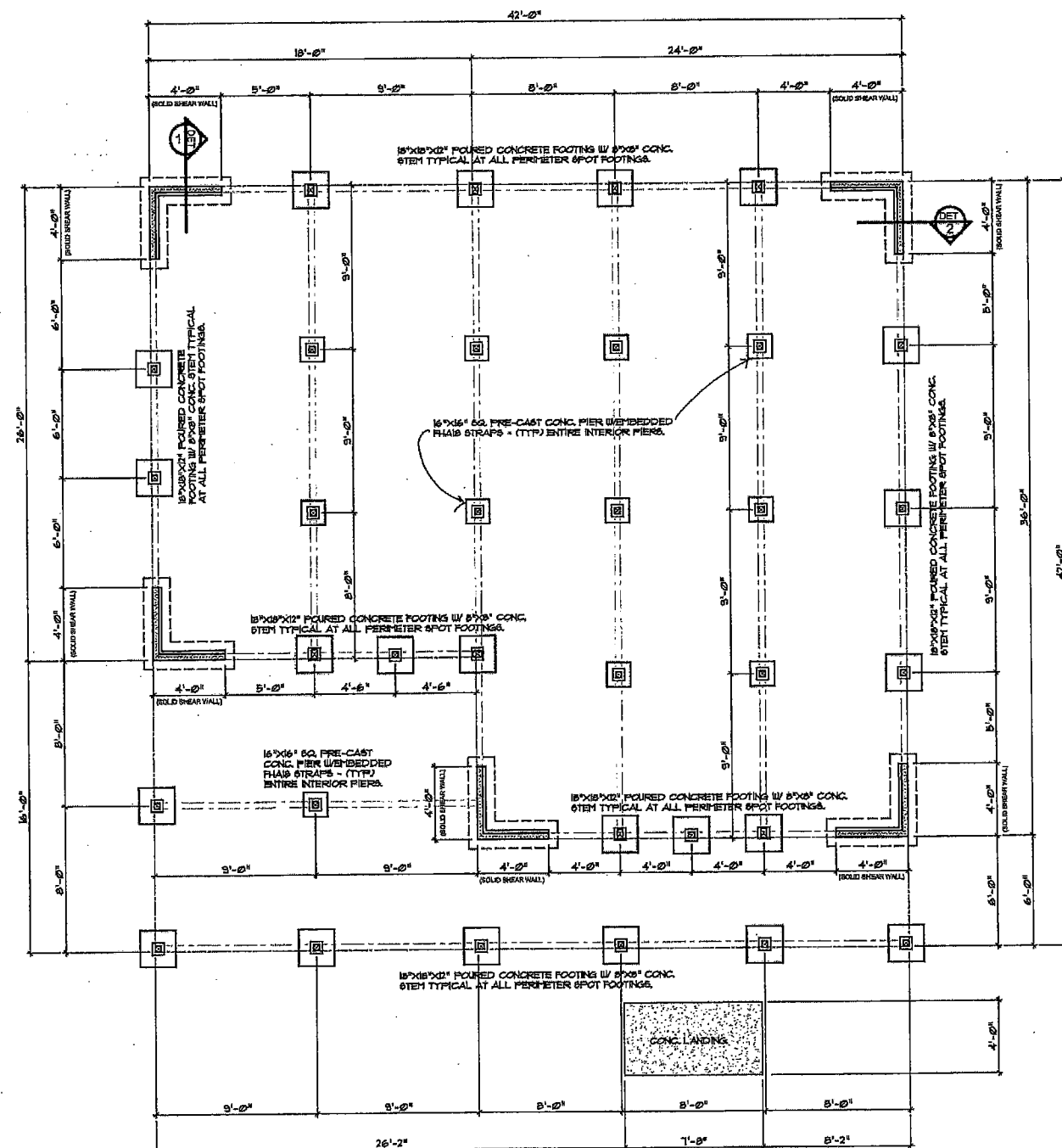
3



ROBERT C. SMELER
 LICENSED
 PROFESSIONAL
 ARCHITECT
 No. 3590
 HAWAII, U.S.A.
 *EXPIRES 4-30-2022

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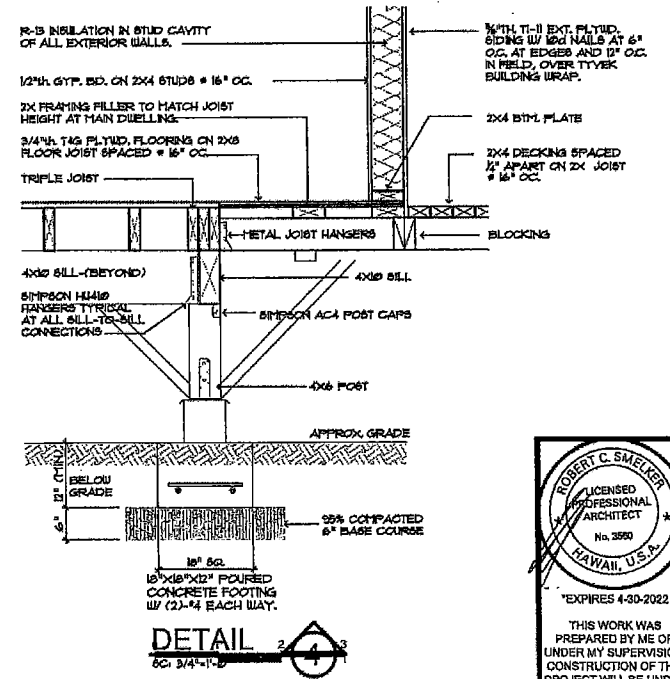
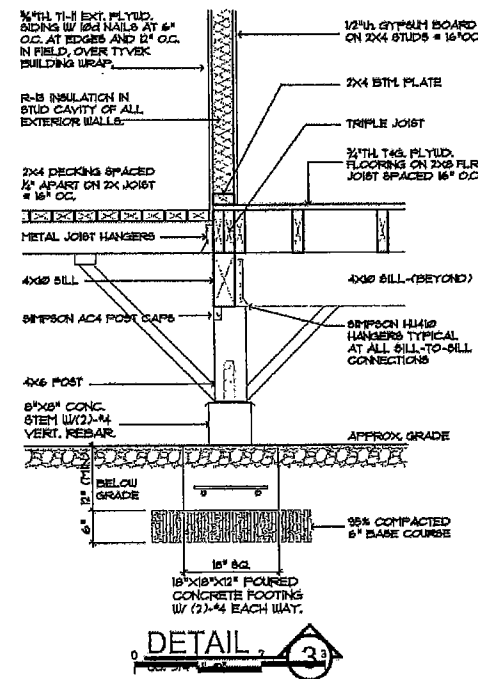
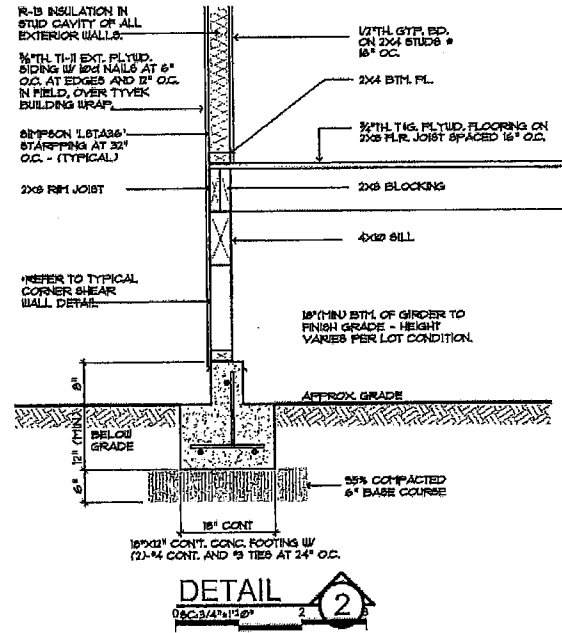
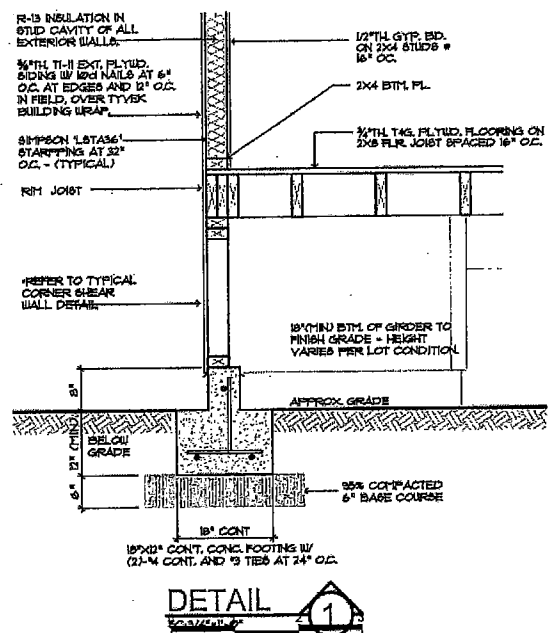
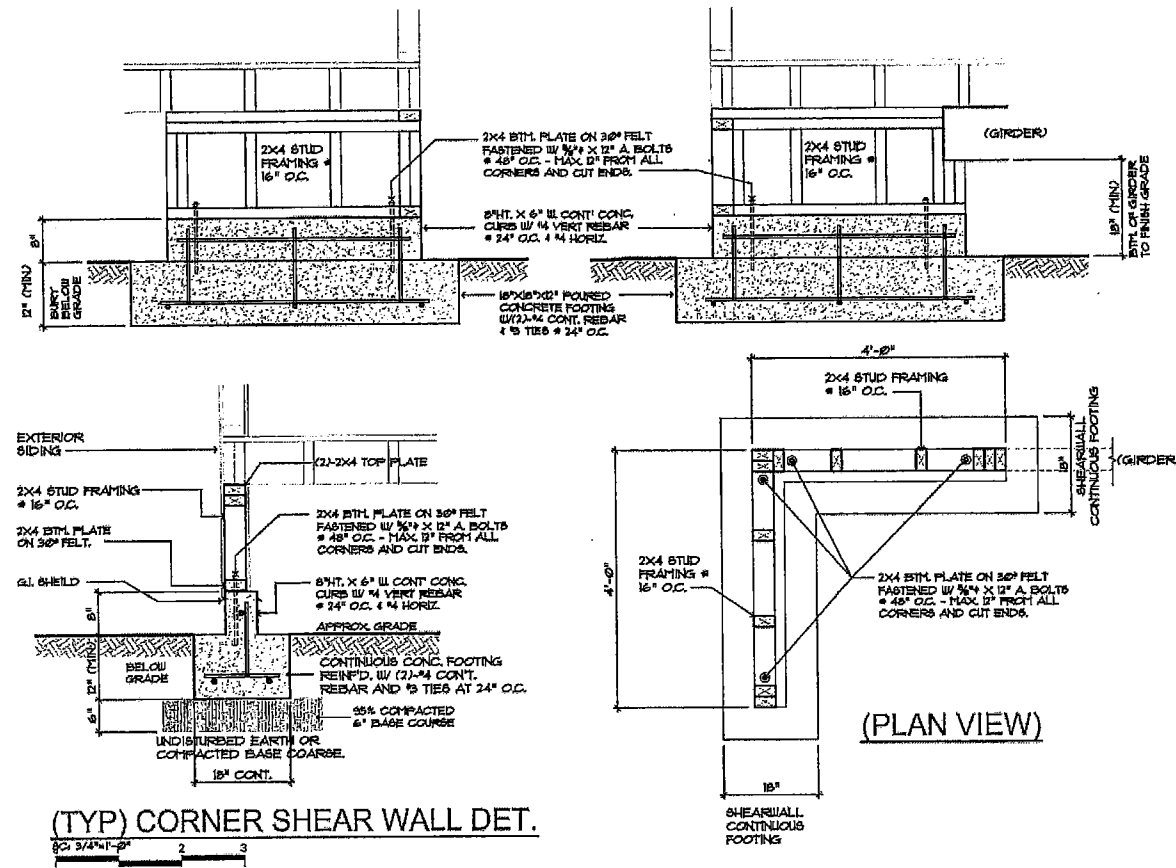
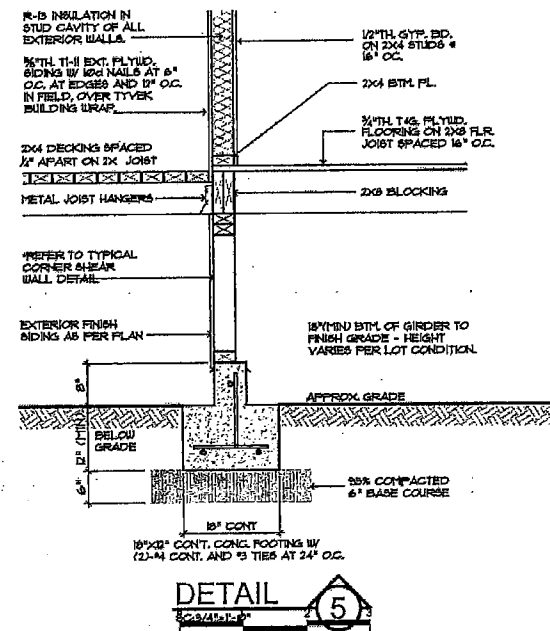
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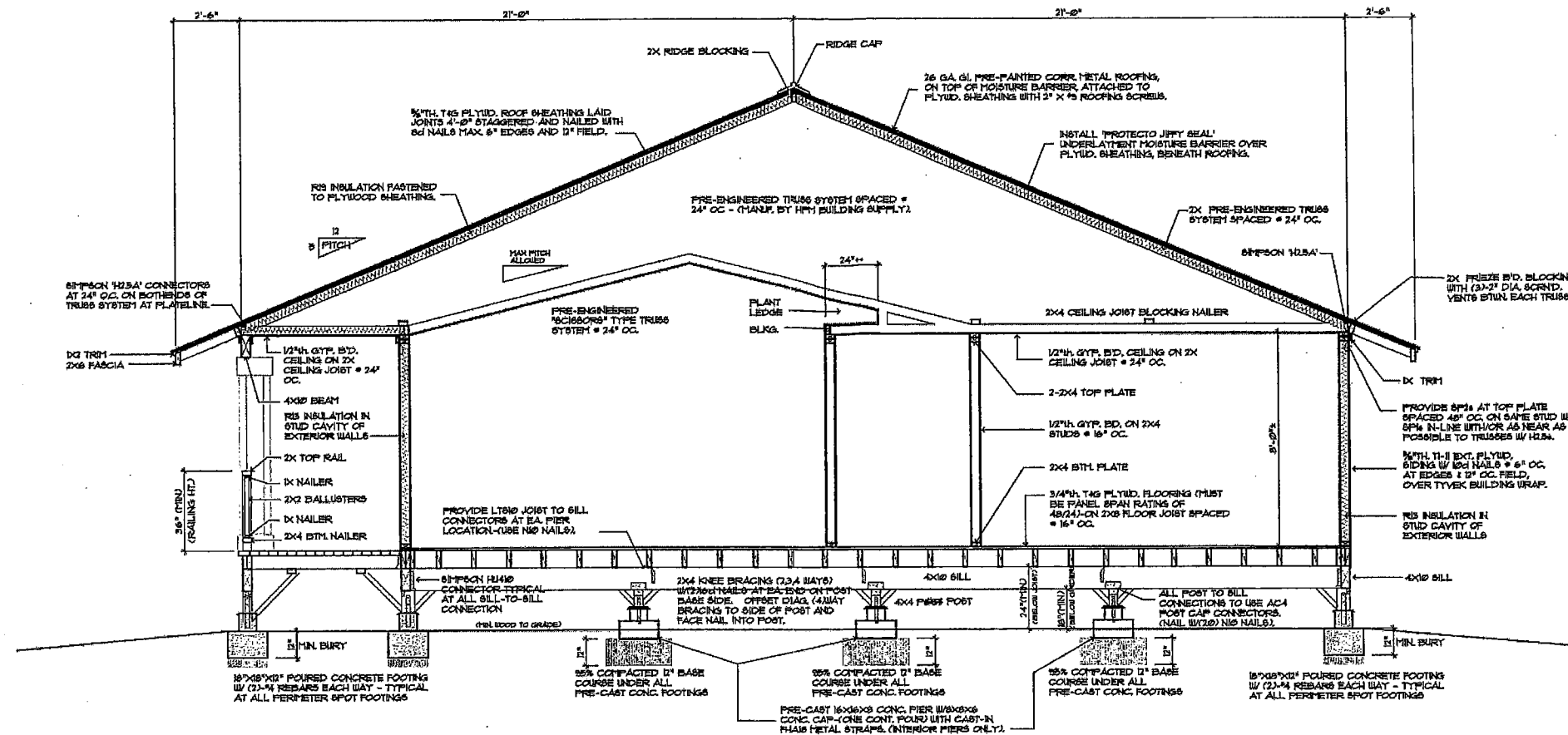
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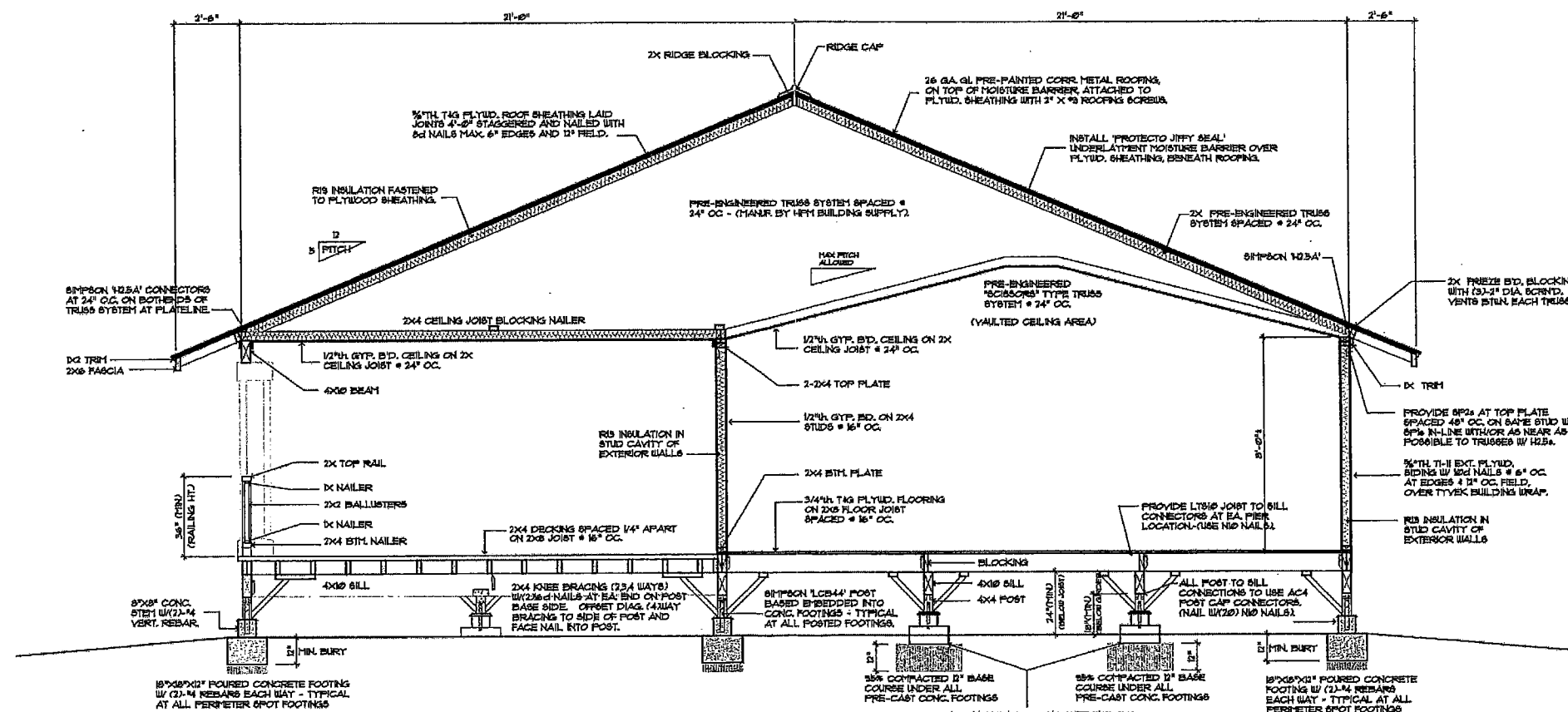


ROBERT C. SMELER
LICENSED PROFESSIONAL ARCHITECT
No. 3550
HAWAII, U.S.A.
EXPIRES 4-30-2022
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SHT. NO. 6



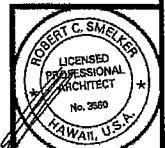
SECTION THRU LANAI, LIVING and BEDRM. AREA

SC 3/8\"/>



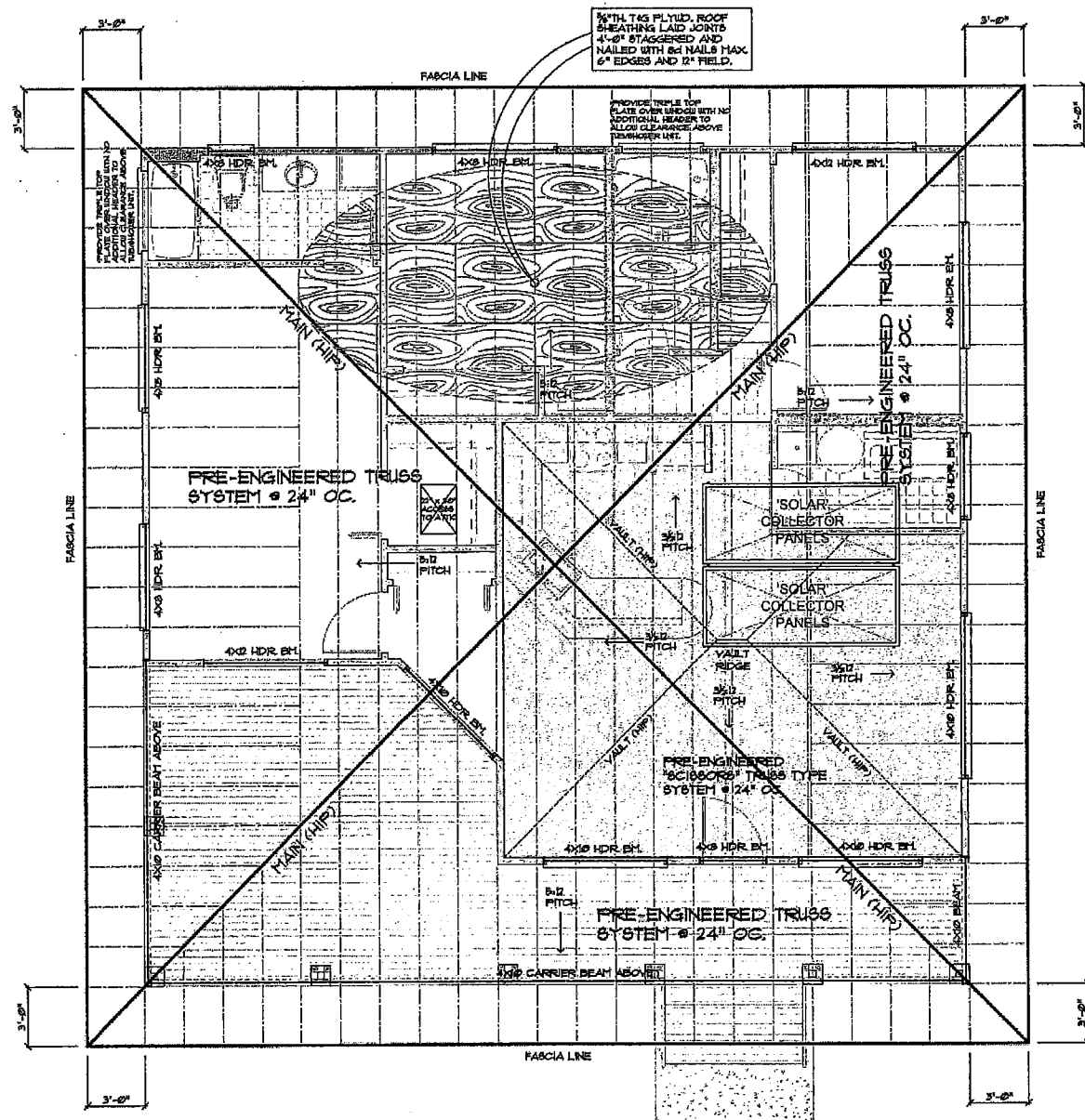
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SC 3/8\"/>

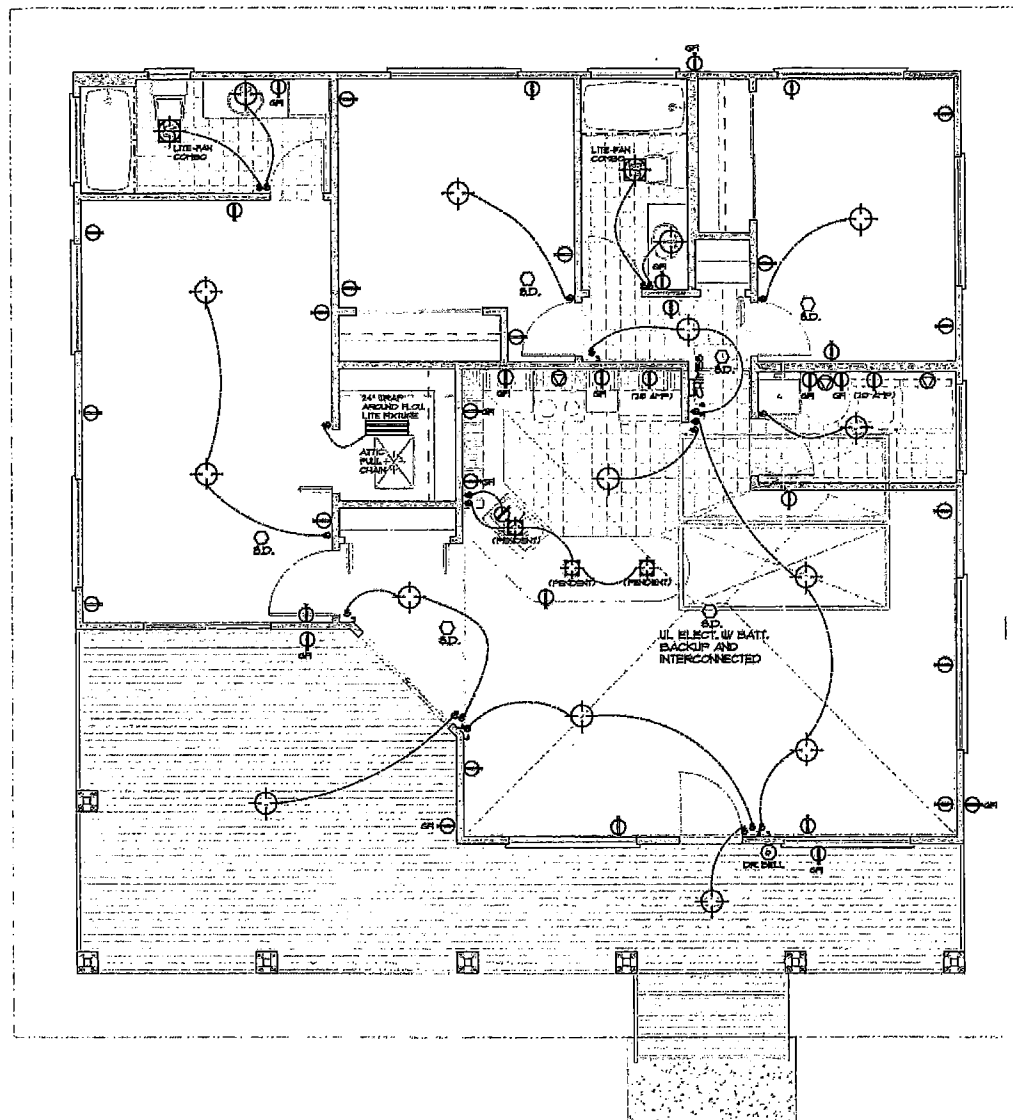


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SHT. NO.
7



ROOF LAYOUT PLAN
 0 2 4 8
 1/4" = 1'-0"



ELECTRICAL SYMBOLS LEGEND	
SYMBOL	DESCRIPTION
	WIRE CONCEALED IN WALL OR ABOVE CEILING
	SINGLE POLE SWITCH
	3-WAY SWITCH
	4-WAY SWITCH
	SURFACE MOUNT LIGHT FIXTURE (LED OR CFL)
	WALL MOUNT SCONCE LIGHT FIXTURE (LED OR CFL)
	PENDANT LIGHT FIXTURE (LED OR CFL)
	ATTIC PULL CHAIN LIGHT FIXTURE (LED OR CFL)
	RECESSED CAN LIGHT FIXTURE (LED OR CFL)
	EXHAUST FAN WITH LIGHT (LED OR CFL)
	TRACK DIRECTIONAL LIGHT FIXTURE (LED OR CFL)
	4 FT. WRAP AROUND LIGHT FIXTURE (LED OR CFL)
	FLOOD LIGHT w/ MOTION SENSOR (LED OR CFL)
	ENERGY STAR CEILING FAN w/ LIGHT (LED OR CFL)
	DUPLEX OUTLET
	GFCI OUTLET
	WEATHER PROTECTED GFCI OUTLET
	SWITCHED OUTLET
	220V OUTLET
	SMOKE DETECTOR
	DOOR BELL & CHIMES
	TELEPHONE OUTLET
	CABLE OUTLET
	GAS CONNECTION REQUIRED

ELECTRICAL LAYOUT

PROVIDE 1/2" CIRCUITED OUTLETS IN KITCHEN, BATHS, GARAGE, UTILITY ROOMS, AND OUTDOOR LOCATIONS.
 PROVIDE TEMPER RESISTANT OUTLETS PER CURRENT NEC ADOPTED CODE REQUIREMENTS.

SECTION R313 / SMOKE ALARMS

THE ALARM DEVICES SHALL BE INTERCONNECTED IN A MANNER THAT THE ACTIVATION OF ONE ALARM BELL ACTIVATE ALL OF THE ALARMS IN THE INDIVIDUAL UNIT. THE ALARM SHALL BE CLEARLY AUDIBLE IN ALL BEDROOMS OVER BACKGROUND NOISE WITH ALL INTERVENING DOORS CLOSED.

LIGHTING:

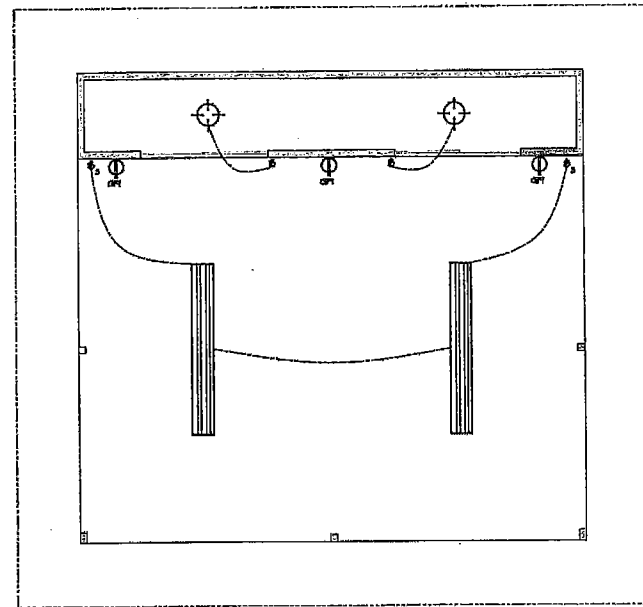
REQUIREMENTS: > 75% OF PERMANENTLY INSTALLED LIGHTING FIXTURES SHALL BE CFL, LED, OR T-8" or SMALLER DIAMETER LINEAR FLUORESCENT LAMPS (R404.1).

ENERGY STAR RATED FANS or ROUGH-IN SHALL BE INSTALLED IN EACH BEDROOM AND LIVING ROOM (R401.2.1. AMENDMENT).

HIGH EFFICIENCY LAMPS ARE DEFINED AS:
 - T-8 or SMALLER DIAMETER FLUORESCENT
 - COMPACTED FLUORESCENT
 - 60 LUMENS / WATT IF > 40W
 - 50 LUMENS / WATT IF > 15W AND < 40W
 - 60 LUMENS / WATT IF < 15W

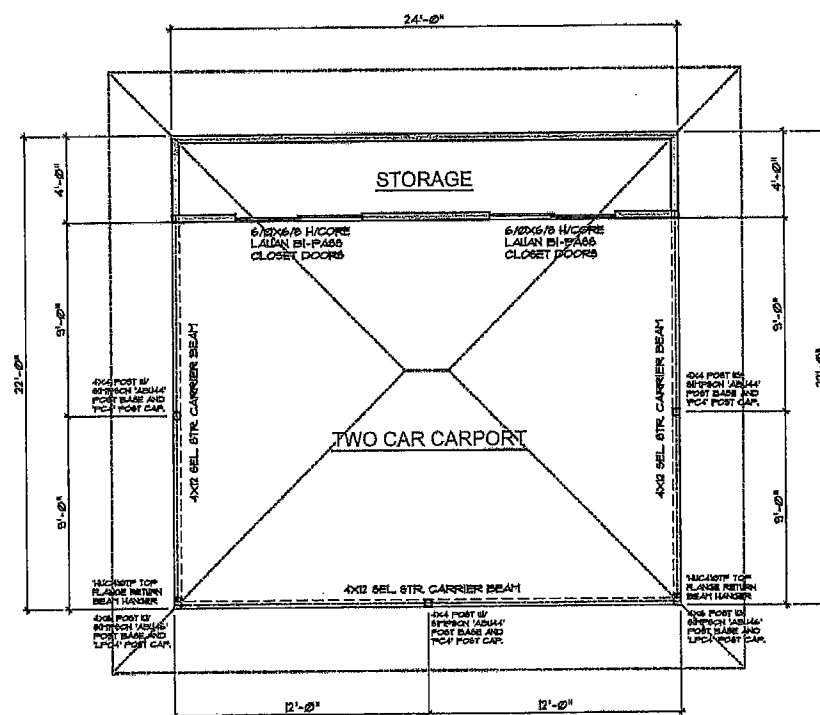
MOST, BUT NOT ALL, LED LAMPS WILL QUALIFY. APPLIES TO PERMANENTLY - INSTALL FIXTURES.
 LOW-VOLTAGE LIGHTING IS EXEMPT.

ROBERT C. SWEET
 LICENSED PROFESSIONAL ARCHITECT
 No. 3550
 HAWAII, U.S.A.
 *EXPIRES 4-30-2022
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 SHT. NO.
 8



ELECTRICAL LAYOUT PLAN

PROVIDE 100' CIRCULATED OUTLETS IN KITCHEN, BATH, GARAGE, UTILITY ROOMS, AND OUTDOOR LOCATIONS.

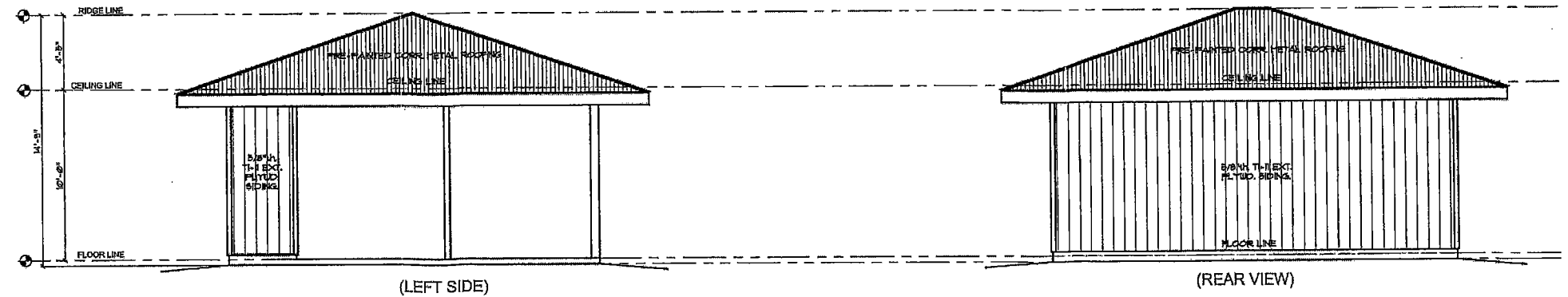


FLOOR PLAN

SC: 1/4"=1'-0"

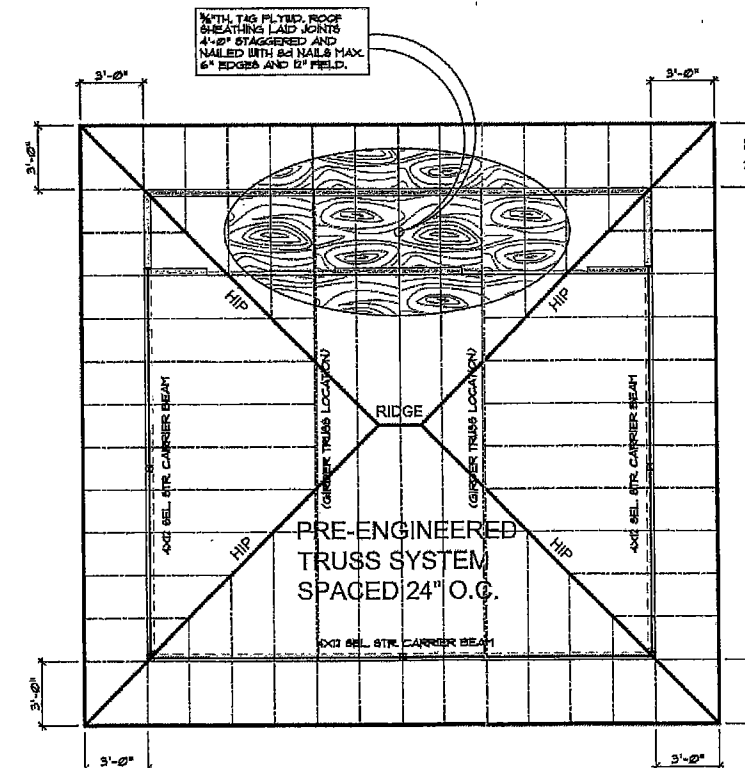
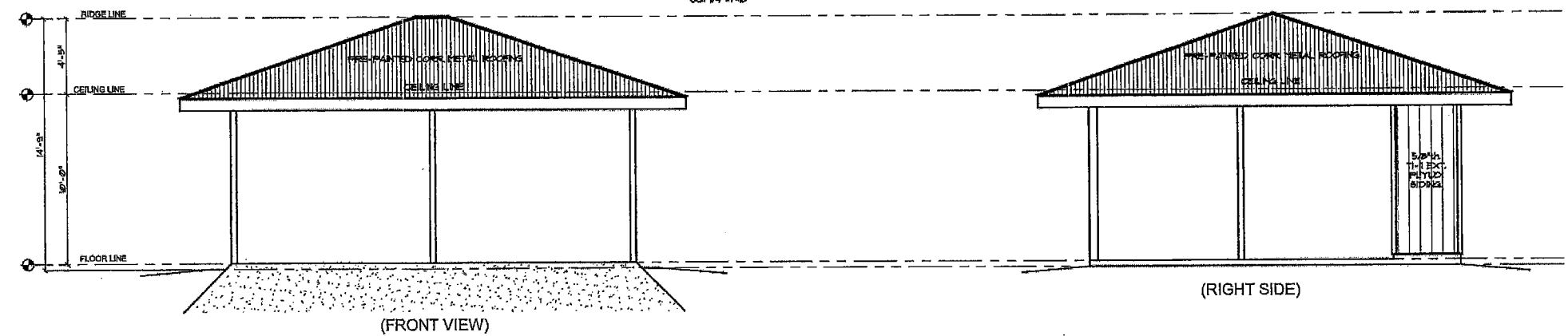
TABULATION:

FLOOR AREA: 528 sq.ft.



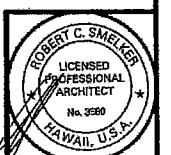
EXTERIOR ELEVATIONS

SC: 1/4"=1'-0"



ROOF LAYOUT PLAN

SC: 1/4"=1'-0"



*EXPIRES 4-30-2022

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SHT. NO.

9

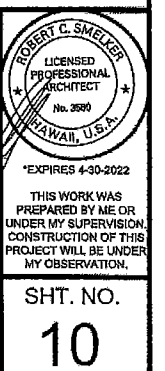
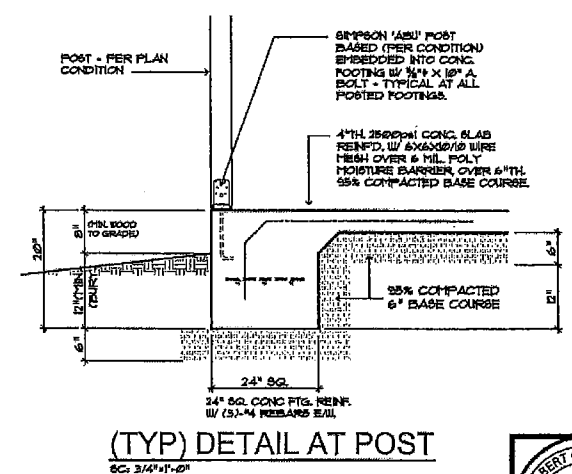
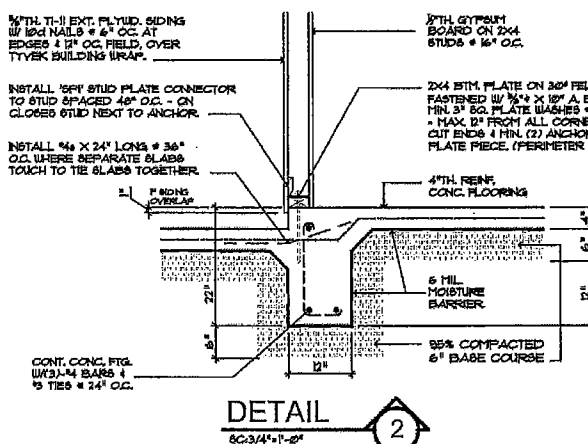
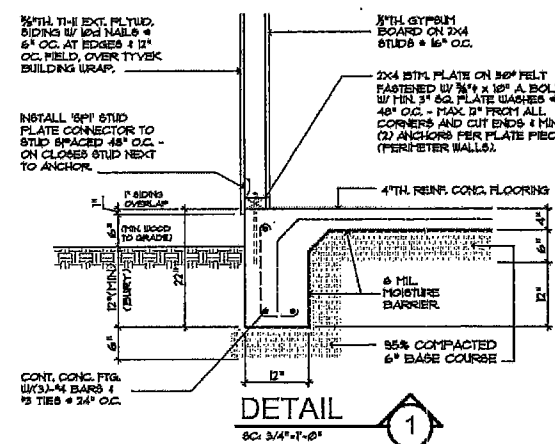
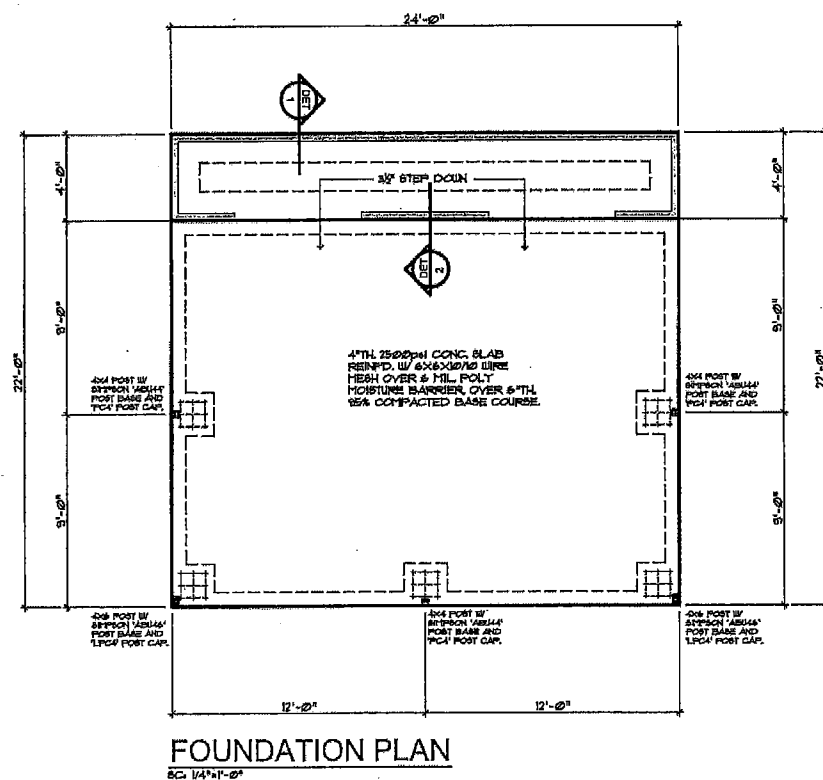
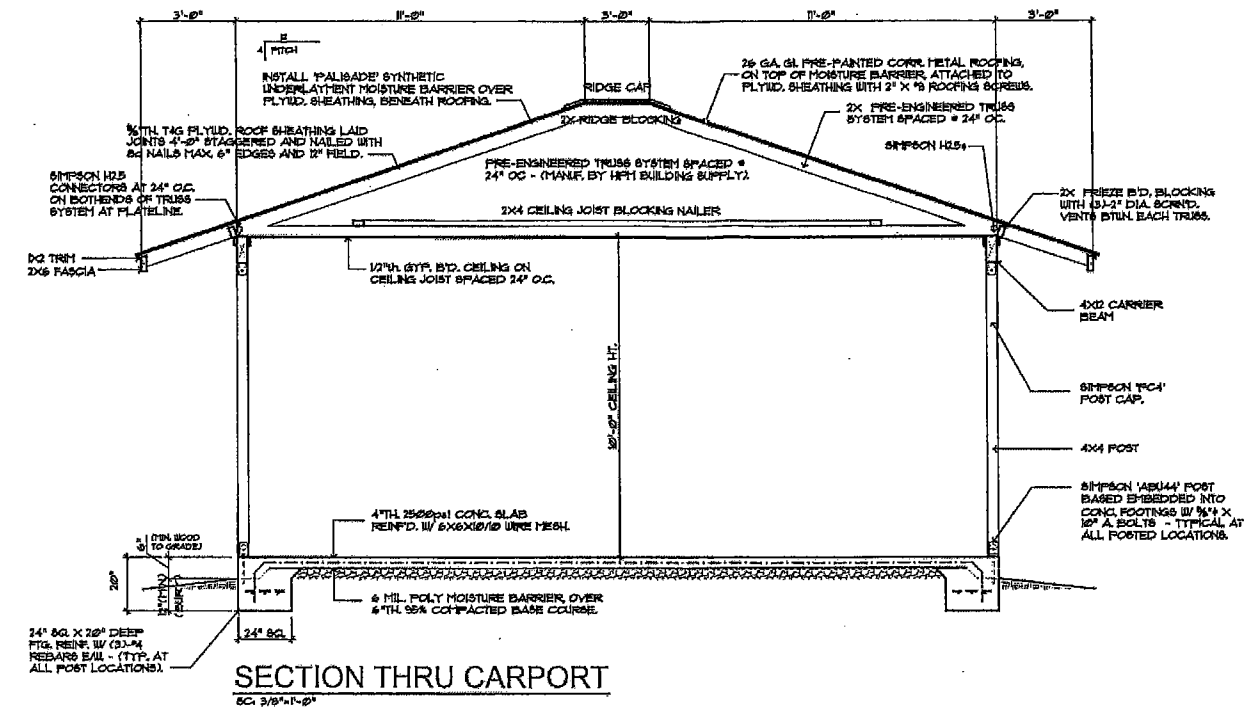
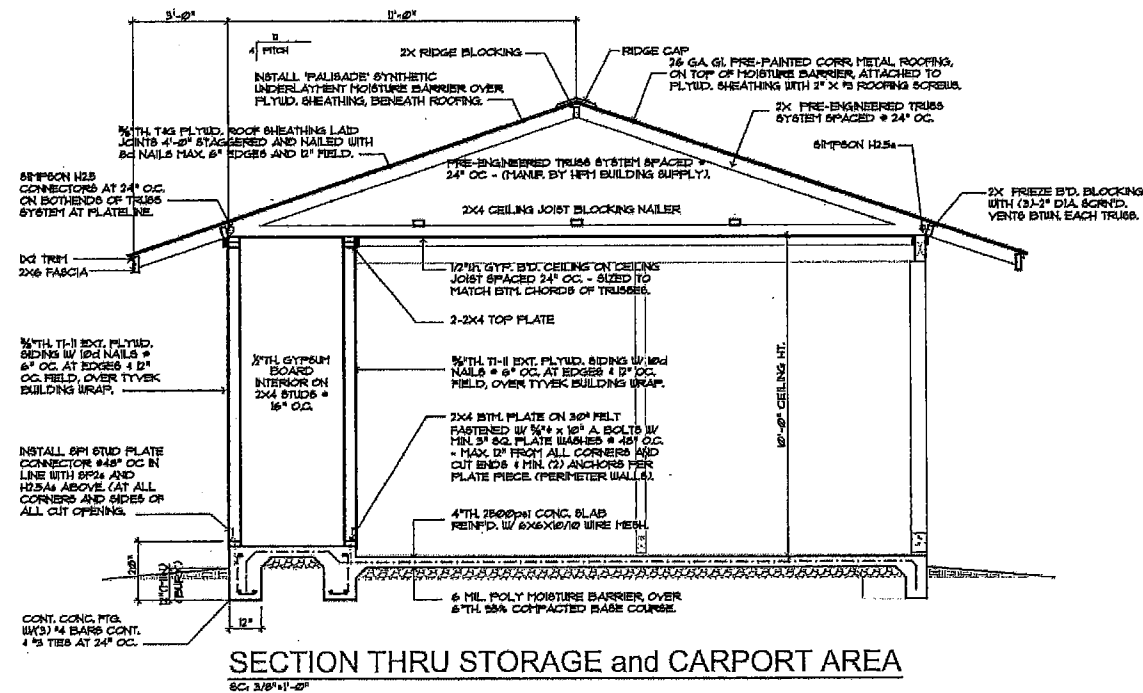


EXHIBIT "E-2"

Lot Coverage Calculations

Remarks

Property: TMK: (4) 1-2-006:022
Address: 8948 D Kaumualii Hwy
Property Owner: Lawai Properties, LLC
Total lot size: 113,300 s.f.

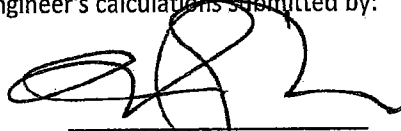
Existing improvements:

Asphalt driveway	4850 s.f.
Open storage shed	940 s.f.
Residence	<u>3750 s.f.</u>
Total existing	9540 s.f.

Proposed Improvements:

Residential unit	1345 s.f. Living area, lanai not included
Carport	<u>484 s.f.</u>
Total Proposed	1829 s.f.
Total proposed coverage	11369 s.f.

Engineer's calculations submitted by:


Date: 4/25/21

License No.

C-3723

EXHIBIT "F"



Waves

Currents

Shoreline Impacts

Water Characteristics

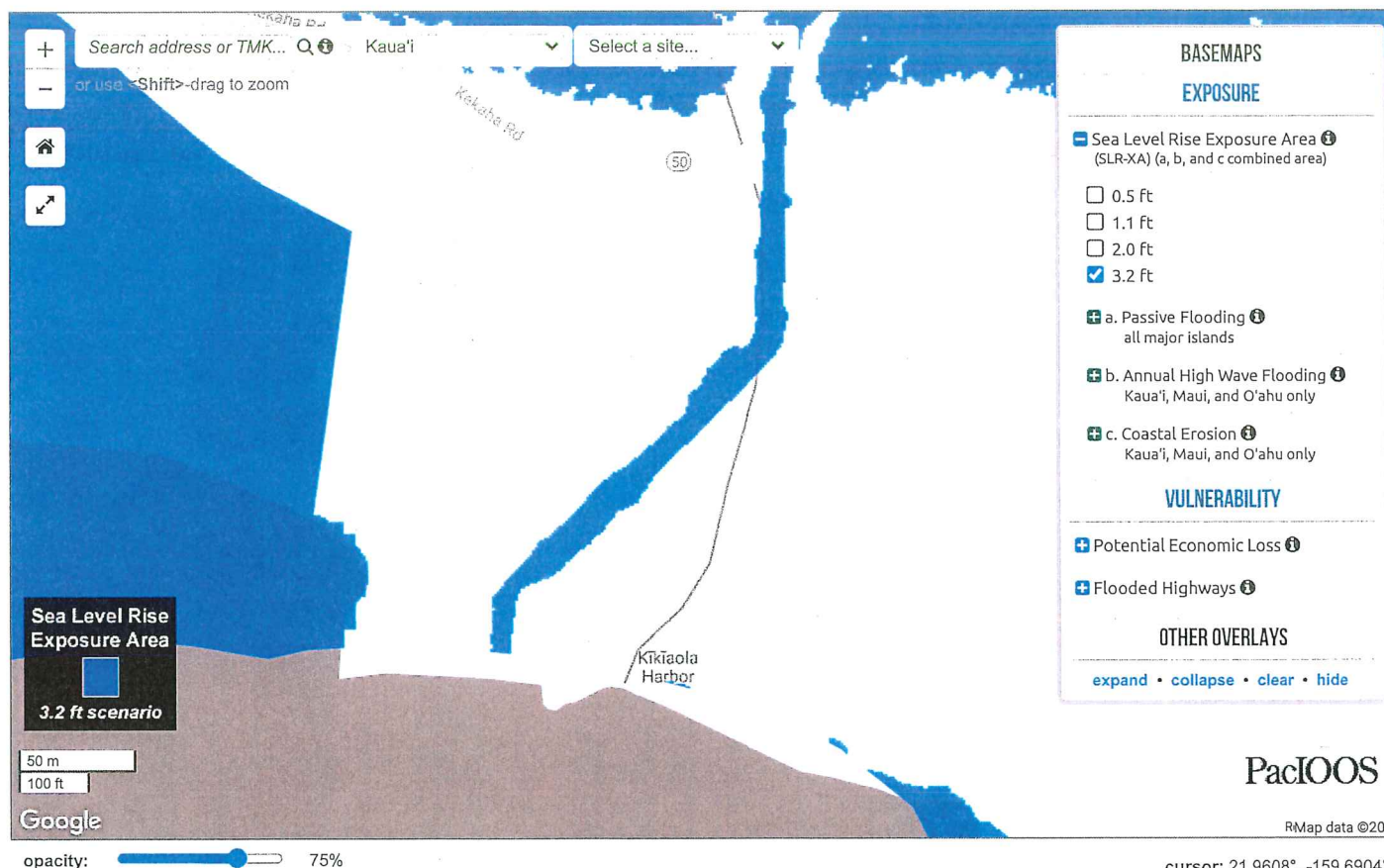
Weather

P


[Home](#) / [Shoreline Impacts](#) / [Sea Level Rise](#) / State of Hawai'i Sea Level Rise Viewer
[SHARE](#)

Sea Level Rise : State of Hawai'i Sea Level Rise Viewer

An Interactive Mapping Tool in Support of the State of Hawai'i Sea Level Rise Vulnerability and Adaptation Report



PacIOOS



Funding provided by the National Oceanic and Atmospheric Administration (NOAA) through their 2016 Regional Coastal Resilience Grants Program.

EXHIBIT "F"

EXHIBIT "G"

Pereza Construction

2279 Wiliko Street

Lihue, HI 96766

License No. BC 16512

Phone: (808)652-2778

Email: mpereza@hawaii.rr.com

Construction Cost Estimate for Single Family Residence and Carport

8948 D Kaumualii Highway, Kekaha, HI

TMK: (4) 1-2-006:022

Owner: Lawai Properties LLC

Material cost for Lauhala model with carport	105,700
Building Contractor	140,000
Subcontractors:	
Plumbing	20,000
Electrical	20,000
Roofing	15,000
Drywall	15,000
Painting	20,000
Septic system	20,000
Subtotal	<u>355,700</u>
Contingencies (+/- 10%)	<u>35,570</u>
Total estimated construction cost	<u>\$391,270</u>

(MILES M. PEREZA)

Submitted by: Miles M. PerezDate: 7/23/21

EXHIBIT "H-1"

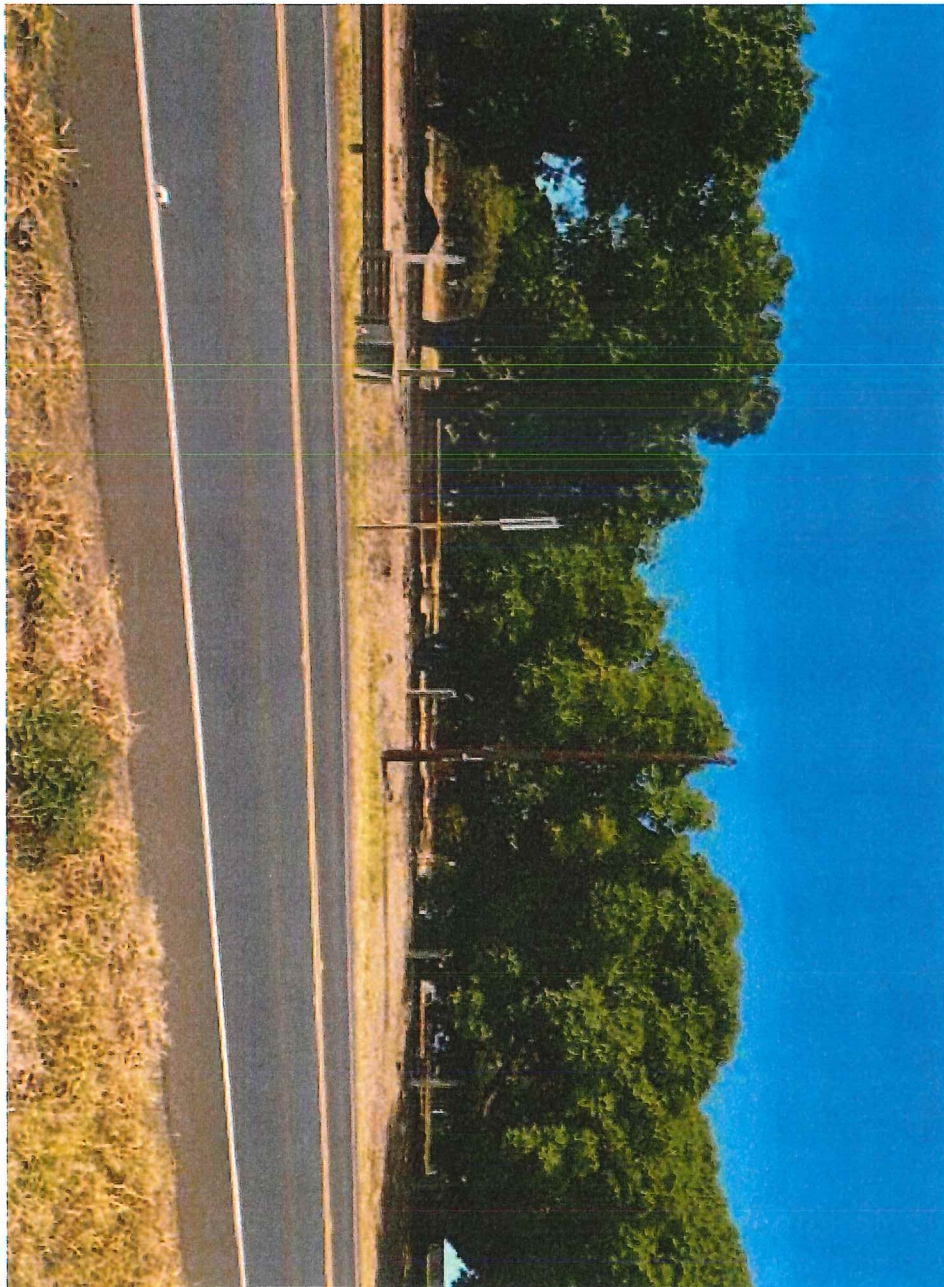


EXHIBIT "H-1"

EXHIBIT "H-2"



EXHIBIT "H-2"

EXHIBIT "H-3"



EXHIBIT "H-3"

EXHIBIT "H-4"



EXHIBIT "H-4"

EXHIBIT "H-5"

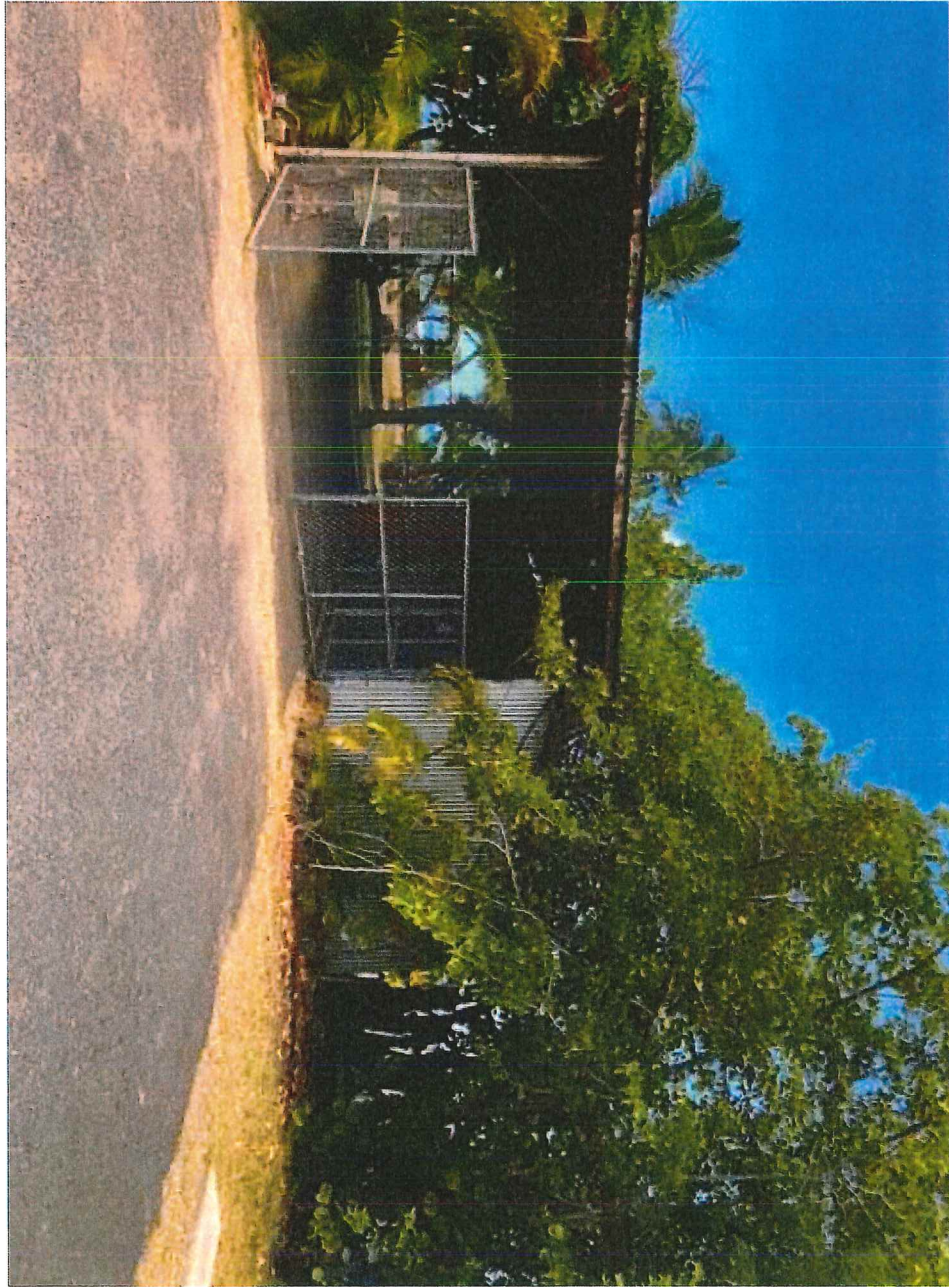


EXHIBIT "H-5"



**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

DIRECTOR'S REPORT

SUBJECT TO CHANGE

I. SUMMARY

Action Required by Planning Commission: Consideration of a Special Management Area Use Permit for the construction of a second dwelling unit, detached carport, and gravel driveway.

Permit Application Nos. Special Management Area Use Permit SMA(U)-2022-2

Name of Applicant(s) LĀWA'I PROPERTIES, LLC

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input type="checkbox"/> Use Permit	
<input type="checkbox"/> Project Development Use Permit	
<input type="checkbox"/> Variance Permit	
<input type="checkbox"/> Special Permit	
<input type="checkbox"/> Zoning Permit Class <input type="checkbox"/> IV <input type="checkbox"/> III	
<input checked="" type="checkbox"/> Special Management Area Permit <input checked="" type="checkbox"/> Use <input type="checkbox"/> 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, 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	
<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

F.2.a.1.

NOV 09 2021

Date of Receipt of Completed Application: August 31, 2021
Date of Director's Report: October 27, 2021
Date of Public Hearing: NOVEMBER 9, 2021
Deadline Date for PC to Take Action (60TH Day): October 30, 2021

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	The project site is located off Kaumuali'i Highway approximately 446 feet west of Kikiaola Harbor Road intersection and adjacent to the County of Kaua'i Chinese and Japanese Cemetery at Kikiaola Small Boat Harbor.		
Tax Map Key(s):	(4) 1-2-006:022	Area:	2.6010 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	OPEN (O)		
State Land Use District:	Urban		
General Plan Designation:	Residential Community		
Height Limit:	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.		
Max. Land Coverage:	10% or at least three thousand (3,000) square feet of land coverage maximum for any parcel of record existing prior to or on September 1, 1972.		
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:	West Kaua'i Community 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 October 27, 2021 and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.
Public Hearing Date:	NOVEMBER 9, 2021

V. PROJECT DESCRIPTION AND USE

The applicant is seeking to construct a single-family dwelling, detached carport, and gravel driveway to serve as a long-term rental for the current care takers of the property (Ron and Cads Samio).

The proposed residence is a single story "plantation style" design (see attached Exhibit "E"). The residence consists of three (3) bedrooms and two (2) bathrooms with a half bathroom. The residence and carport is designed with a 5:12 pitched hip roof line with T1-11 plywood exterior siding. The proposed dwelling and carport will be placed within the mango orchard area that is located on the mauka side on the property closest to the highway. Three (3) large mango trees along with their root ball will be removed to accommodate the development.

The project site is currently developed with an existing dwelling commonly referred to as the "Harbor House," which on occasion, hosts events such as Ke Kula Ni'ihau graduations, hula halau events, Waimea Town Celebration festivities, Hawaiian church revivals, and canoe races. Hawaiian and local families also utilize the property for a variety of events such as first birthday parties, weddings, graduations, and family reunions. In addition to the foregoing uses, the Harbor House also operates as a Transient Vacation Non-Conforming (TVNC) and is an asset for the Westside community. The project site also includes a carport, metal storage shed and an asphalt driveway. Access to the property will be off Kaumuali'i Highway.

VI. APPLICANT'S REASONS/JUSTIFICATION

As noted, the proposed residence will serve as a long-term rental for Ron and Cads Samio the current caretakers of the property for the last ten (10) years.

VII. ADDITIONAL FINDINGS

1. The project site is located off Kaumuali'i highway and is popularly known as Harbor House site. Access to the property will be off Kaumuali'i highway. Property is situated between the County of Kaua'i Chinese and Japanese cemetery site and Kikaola Small Boat Harbor.
2. The State Land Use District (SLUD) designation for the parcel is "Urban" which allows for urban growth in a specified area.
3. The property is located in West Kaua'i and the proposed development complies with Sec. 10-3.4 "Existing Conditions" of the West Kaua'i Form Based Code (WKFBC), attached as Appendix "C" to the West Kaua'i Community Plan. The subject site is not within any Special Planning Areas "K", "L," "M", and "N" as designated in the WKFBC.
4. The subject parcel is not an abutting shoreline property and is not within the 500 feet shoreline setback threshold, pursuant to the County's shoreline setback requirements contained in Chapter 8, Article 27 of the Kaua'i County Code (1987), as amended.
5. The subject property is not located within the Visitor Designation Area (VDA) and the General Plan designation (GP) is "Residential Community". According to the GP, areas designated as Residential Community indicates existing areas that are primarily residential with few to no other uses. These areas are located outside the quarter mile boundary of Neighborhood Center and are no longer intended to be utilized as a growth tool to indicate areas of future development.
6. According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) the subject parcel is affected by Zone "AE" and Zone "XS" (See Exhibit "C-9"). The area of the proposed residence is placed on the mauka portion of the subject property within the Zone "XS" area. The Flood Hazard Assessment Report indicates Zone "XS" as 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. The parcel is also within the tsunami evacuation zone.
7. The topography of the project site contains a 0.5% slope running at the highest point at the southern makai portion to the northern mauka portion of the site. Grading of the project area will be very minimal and not negatively impact drainage in the area.
8. 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.

9. CZO Development Standards

The proposed development is subjected to standards prescribed in Section 8-4.3 and Section 8-9.2.

- 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. **Parking Requirements:** The applicant shall provide two (2) off-street parking spaces for the proposed dwelling unit.
- c. **Setback between buildings:** The distance between buildings shall be ten (10) feet minimum.
- d. **Lot Coverage:** The subject property is within the Open (O) zoning district and is approximately 2.060 acres or 113,000 square feet in size. The maximum lot coverage allowed for Open (O) District is ten percent (10%) or 11,330 square feet. Existing lot coverage of 9,540 square feet consists of the existing dwelling, carport, shed/ workshop, and an asphalt driveway. The proposed dwelling and carport provide an additional 1,829 square feet, which brings the total to 11,369 square, 39 square feet above what is allowed. The applicant will be required to remove 39 square feet from the existing shed/workshop to comply with the Open (O) zone designation construction standards.

- e. **Density:** Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated “Urban” or “Rural” by the State Land Use Commission. Where the parcel is located within an area designated “Urban” by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%). As previously noted, the parcel contains a 0.5% slope.
- 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.

VIII. AGENCY COMMENTS

See attached Exhibit “A”

IX. PRELIMINARY EVALUATION

In evaluating the Applicant’s request to allow the construction of the proposed development, the following 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”** – The proposed development of the single-family dwelling and a detached carport is in an existing residential community. The dwelling is being built for the “Harbor House” caretakers. The parcel is zoned Open (O) District which allows ten percent (10%) lot coverage. The dwelling also will have its own individual wastewater system (septic tank). The development will have minimal impacts to the surrounding area, and will provide its tenants a live/work opportunity and eliminates the need to commute to and from work.
- 2) **Goal #2 “Unique and Beautiful Place”** – The project site has the “Harbor House” which has been used traditionally as a place for community and private events. Events and cultural practices such as the hula and canoe races make the project site unique. The proposed dwelling will be placed on the mauka side of

the property (See exhibit “E-1” Plot Plan) and should not negatively impact the events held at the “Harbor House”. The Open zoning designation allows a limited lot coverage leaving the site predominantly free of development. With this type zoning, the development will have minimal visual impacts to the rural character of the surrounding area.

- 3) **Goal #3 “A Healthy and Resilient People”** – The proposed single-family dwelling is within close walking distance to beach recreation, fishing, and boating. As represented the single-family dwelling is made for the caretakers of the “Harbor House” that is located on the same parcel and a live/work type of environment.
- 4) **Goal #4 “An Equitable Place, with Opportunity for All”** – The proposed development will provide housing and is walking distance to work for the caretakers of the property. The proposed development will offer limited amount of jobs opportunities such as construction.

B. Section 1.4, entitled “POLICIES TO GUIDE GROWTH”

- 1) **Policy #1 “Manage Growth to Preserve Rural Character”**– Considering that the Open zoning designation prescribes limited lot coverage, the rural character of the surrounding area would be preserved. Also, the caretakers who are to reside at the residence could walk to work eliminating the need for the daily commute.
- 2) **Policy #3 “Recognize the Identity of Kaua‘i’s Individual Towns and Districts”** – The proposed development is located on the westside of Kaua‘i. The project site is surrounded by open space that separates it from other residential areas and the westside town core. This attribute contributes to the rural character that is valued by residents and visitors alike.
- 3) **Policy#6 “Reduce cost of Living”** – As represented, the proposed development is for the existing caretakers of the property. The need to commute to work is eliminated.
- 4) **Policy#8 “Protect Kaua‘i’s Scenic Beauty”** – Large mango trees front the property off Kaumuali‘i Highway and the County Open zone construction standards allow limited lot coverage. The proposed single-story residence will not negatively impact views off Kaumuali‘i highway or the surrounding area.

2. Native Hawaiian Traditional and Cultural Rights

The Applicant has reached out to members of the westside community who are either long-time residents or familiar with the project site. Based on the applicant’s discussion with these individuals, the proposed development should have no impact on any known traditional or customary practices of native Hawaiians. There are no indications of

religious practices, and no known cultural or historic sites or resources within the project area. The project site is immediately adjacent to a public cemetery. Should any burial site be identified during construction activities, the Applicant should ensure that its contractor contact the State Historic Preservation Division (SHPD) as required by law. The “Harbor House” located makai of the property still to present day hosts canoe races and hula to perpetuate native Hawaiian traditional and cultural practice.

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 project site does not contain any public access or offer any recreation activities. Existing beach access and other public recreational such as fishing, and boating are located on adjacent properties. The proposed development will not have any direct negative impacts on any existing public recreational opportunities.
- b. Cultural/Historical Resources – The proposed dwelling will be placed in an area on the subject property where it has been a mango orchard for the past fifty (50) years. Given the prior ground disturbance, there was nothing observed on the surface to indicate any evidence of subsurface cultural deposits. Ground disturbance will occur during construction for the dwellings post on pier footings. Although still a possibility, the Applicant does not anticipate cultural deposits to be found.

Historically the property has been in orchard use and the site of the “Harbor House”. The “Harbor House” remains a popular place on the westside community for holding events and gatherings. Native Hawaiian traditional cultural practices such as hula and canoe racing are still being held there on occasion.
- c. Scenic and Open Space Resources – There are no coastal views from Kaumuali‘i Highway. The proposed dwelling will be placed mauka of the property within an orchard of large mango trees and have minimal visual impacts from the highway. Mitigation from potential visual impacts could be addressed through substantial landscaping and utilizing moderate to dark tone colors for the proposed buildings.
- d. Coastal Hazards – According to the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), the subject parcel is affected by Zone “AE” and Zone “XS” (See Exhibit “C-9”). Based on the Pacific Islands Ocean Observing System (PacIOOS) State of Hawai‘i sea level rise viewer

website the subject parcel were analyzed using the Sea Level Rise Exposure Area (SLRXA) at the 3.2 feet range for potential impacts of passive flooding, annual high wave flooding, and coastal erosion. The associated sea level rise viewer does not project any sea level rise impacts of the subject property by year 2100. The existing seawall and rock revetment of Kikiaola Small Boat Harbor also provides some protection from these coastal impacts.

- e. Coastal Ecosystems – The project site is not located on the shoreline or near any coastal ecosystem. The project will not have any significant impact on the coastal ecosystem and any adjacent properties or its surroundings. The proposed development is out of the shoreline setback area and no erosion-protection structures seaward of the shoreline is being proposed. No endangered flora or fauna, wetland, natural area reserve, or wildlife reserve are situated on the project sites.

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:

- a. involve dredging, filling, or otherwise altering any bay, estuary, salt marsh, 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.

Furthermore through proper mitigation measures, the proposed development would not have any detrimental impact to the environment or the surrounding area and is 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.

The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project.

XI. PRELIMINARY RECOMMENDATION

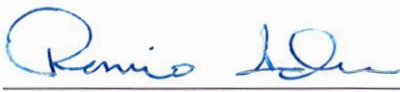
Based on the foregoing evaluation and conclusion it is hereby recommended Special Management Area Use Permit SMA(U)-2022-2 to be **APPROVED**. If approved, the following conditions shall be implemented:

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. 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 dwelling shall not be utilized for 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. 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.


6. 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.
7. 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.
8. 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.
9. 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.
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 NOVEMBER 9, 2021 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'AINA S. HULL
Director of Planning

Date: 10/27/2021

EXHIBIT “A”

(Agency Comments)

For reference

COUNTY OF KAUAI



RECEIVED

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SEP 11 2021

COUNTY OF KAUAI
PLANNING DEPARTMENT

County of Kauai

PLANNING DEPT.

4444 RICE STREET, SUITE A473 LIHUE, HAWAII 96766

(808) 241-4050

FROM: Kaaina S. Hull, Director (Romio)

August 31, 2021

SUBJECT: Special Management Area Use Permit SMA(U)-2022-2, Dwelling, Single Family Detached

Tax Map Key: (4) 1-2-006:022, Lawai Properties, Llc C/o Ian K. Jung, Esq.,
Authorized Agent, Applicant

TO:

<input type="checkbox"/>	Department of Transportation - STP	<input checked="" type="checkbox"/>	DPW-Engineering
<input type="checkbox"/>	DOT-Highway, Kauai(info only)	<input type="checkbox"/>	DPW-Wastewater
<input type="checkbox"/>	DOT-Airports, Kauai (info only)	<input type="checkbox"/>	DPW-Building
<input type="checkbox"/>	DOT-Harbors, Kauai (info only)	<input type="checkbox"/>	DPW-SolidWaste
<input checked="" type="checkbox"/>	State Department of Health	<input type="checkbox"/>	Department of Parks & Recreation
<input type="checkbox"/>	State Department of Agriculture	<input checked="" type="checkbox"/>	Fire-Department
<input type="checkbox"/>	State Office of Planning	<input type="checkbox"/>	County Housing-Agency
<input type="checkbox"/>	State Dept. of Bus. & Econ. Dev. Tourism	<input type="checkbox"/>	County Economic Development
<input type="checkbox"/>	State Land Use Commission	<input type="checkbox"/>	KHPRC
<input checked="" type="checkbox"/>	State Historic Preservation Division	<input checked="" type="checkbox"/>	Water Department
<input type="checkbox"/>	DLNR- Land Management	<input type="checkbox"/>	Kaua'i Civil Defense
<input type="checkbox"/>	DLNR- Forestry & Wildlife	<input type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	DLNR- Aquatic Resources	<input type="checkbox"/>	UH_Sea_Grant
<input type="checkbox"/>	DLNR- OCCL	<input checked="" type="checkbox"/>	County Transportation Agency
		<input type="checkbox"/>	Other:

FOR YOUR COMMENTS (pertaining to your department):

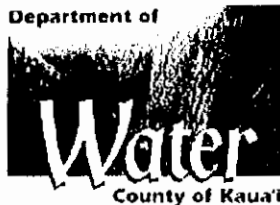
GTA HAS NO FURTHER COMMENT ON THIS PROJECT.

THANKS!

[Signature] 9.17.2021

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/9/2021 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!

Exhibit "A"



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

00000000000000000000

'21 OCT 26 AM 11

PLANNING DEPARTMENT

DATE: October 20, 2021

TO: Planning Department
Kaaina Hull, Director (Romio)

SUBJECT: Special Management Area Use Permit SMA(U)-2022-2, Dwelling, Single Family Detached, Tax Map Key: (4) 1-2-06:022, Lawai Properties, LLC, c/o Ian K. Jung, Esq., Authorized Agent, Applicant

DOW COMMENTS:

The Department of Water (DOW) has concerns regarding the increase in water demand associated with this SMA Minor Permit SMA(U)-2022-2 application for the proposed Single Family Dwelling on TMK: 1-2-06:022.

The DOW recommends to the Planning Department that any approval of the proposed SMA Minor Permit application be conditioned, whereby the applicant shall be made aware that prior to the DOW recommending water meter services or building permit approval, the applicant will be required to:

1. Pay the applicable charges in effect at the time of payment to DOW. At the present time, these charges shall include but not be limited to:
 - a. The Facilities Reserve Charge (FRC) of \$14,115 per dwelling unit.
2. Submit a formal water service request for the proposed single-family dwelling.

Requests for additional water meter or an increase in water meter size will be dependent on the adequacy of the source, storage and transmission facilities existing at that time.

Michael K. Hinazumi

Michael K. Hinazumi, P.E.
Program Administrator
Engineering Division

Oct 22, 2021

Date

SMA-U-2022-2, T-21798, Dwelling, Single Family Detached, 1-2-06:022, Lawai Properties, LLC
RFBdm



**COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766
(808) 241-4050**

FROM: Kaaina S. Hull, Director (Romio)

August 31, 2021

SUBJECT: Special Management Area Use Permit SMA(U)-2022-2, Dwelling, Single Family Detached

Tax Map Key: (4) 1-2-006:022, Lawai Properties, Llc C/o Ian K. Jung, Esq.,
Authorized Agent, Applicant

TO:

<input type="checkbox"/>	Department of Transportation - STP	<input checked="" type="checkbox"/>	DPW-Engineering
<input type="checkbox"/>	DOT-Highway, Kauai(info only)	<input type="checkbox"/>	DPW-Wastewater
<input type="checkbox"/>	DOT-Airports, Kauai (info only)	<input type="checkbox"/>	DPW-Building
<input type="checkbox"/>	DOT-Harbors, Kauai (info only)	<input type="checkbox"/>	DPW-SolidWaste
<input checked="" type="checkbox"/>	State Department of Health	<input type="checkbox"/>	Department of Parks & Recreation
<input type="checkbox"/>	State Department of Agriculture	<input checked="" type="checkbox"/>	Fire Department
<input type="checkbox"/>	State Office of Planning	<input type="checkbox"/>	County Housing-Agency
<input type="checkbox"/>	State Dept. of Bus. & Econ. Dev. Tourism	<input type="checkbox"/>	County Economic Development
<input type="checkbox"/>	State Land Use Commission	<input type="checkbox"/>	KHPRC
<input checked="" type="checkbox"/>	State Historic Preservation Division	<input checked="" type="checkbox"/>	Water Department
<input type="checkbox"/>	DLNR- Land Management	<input type="checkbox"/>	Kaua'i Civil Defense
<input type="checkbox"/>	DLNR- Forestry & Wildlife	<input type="checkbox"/>	U.S. Postal Department
<input type="checkbox"/>	DLNR- Aquatic Resources	<input type="checkbox"/>	UH Sea Grant
<input type="checkbox"/>	DLNR- OCCL	<input checked="" type="checkbox"/>	County Transportation Agency
		<input type="checkbox"/>	Other:

FOR YOUR COMMENTS (pertaining to your department):

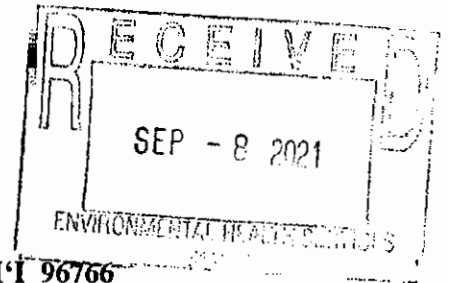
could not locate nearest water supply. Sprinklers may be required

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/9/2021 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!

Exhibit "A"



**COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473 LIHU'E, HAWAII 96766
(808) 241-4050**



FROM: Kaaina S. Hull, Director (Romio)

August 31, 2021

SUBJECT: Special Management Are Use Permit SMA(U)-2022-2, Dwelling, Single Family Detached

Tax Map Key: (4) 1-2-006:022, Lawai Properties, Llc C/o Ian K. Jung, Esq.,
Authorized Agent, Applicant

TO:

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<input type="checkbox"/>	DLNR- OCCL	<input checked="" type="checkbox"/>	County Transportation Agency
		<input type="checkbox"/>	Other:

FOR YOUR COMMENTS (pertaining to your department):

9/13/21

Kaaina S. Hull (Acting)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 11/9/2021 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!

Exhibit "A"

Special Management Area (Use) Permit: **SMA (U)-2022-3**
Applicant: **Lawai Properties, LLC**

Based on our review of the application, we offer the following environmental health concerns for your consideration.

1. The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined by the wastewater rules in effect at the time of building permit application.
2. Noise will be generated during the demolition and construction phase of this project. 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.
3. Temporary fugitive dust emissions could be emitted when the project site is prepared for demolition and when construction activities occur. In accordance with Title 11, Hawaii Administrative Rules (HAR), Chapter 11-60.1 "Air Pollution Control", effective air pollution control measures shall be provided to prevent or minimize any fugitive dust emissions caused by construction work from affecting the surrounding areas. This includes the off-site roadways used to enter/exit the project. The control measures include but are not limited to the use of water wagons, sprinkler systems, dust fences, etc.
4. The waste that is generated by the project shall be disposed of at a solid waste disposal facility that complies with the applicable provisions of Title 11, HAR, Chapter 11-58.1 "Solid Waste Management Control", the open burning of any of these wastes on or off site prohibited.

Due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when more detailed information is submitted.

Exhibit "A"

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii

COUNTY OF KAUAI

21 AUG 24 10:17

PLANNING DEPT.



Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

August 19, 2021

Donna Apisa, Chair
and Members of the Planning Commission
c/o County of Kauai Planning Department
4444 Rice Street, Suite A473
Lihue, Hawaii 96766

Dear Chair Apisa and Members of the Planning Commission:

The Kauai County Council, at its meeting on August 18, 2021, referred the following proposed amendment to Chapter 8, Kauai County Code 1987, as amended, and Chapter 22, Kauai County Code 1987, as amended, to the Planning Commission for review and recommendation:

"PROPOSED DRAFT BILL (NO. 2834) - A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, AND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE"

Please note that an error exists in the definition of "Guest House" under SECTION 3., Sec. 22-28.1 Definitions., which should read, "Guest House" shall have the same meaning as guest house under Chapter 8 of the Kauai County Code.

Thank you for your continued assistance in these planning matters. Should you have any questions, please feel free to contact me at 241-4188.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

CNT:jy
Enclosure

F.4.9.

NOV 09 2021

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, AND
CHAPTER 22, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING
TO PUBLIC HEALTH, SAFETY AND WELFARE**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kaua'i County Council finds that many subdivisions have provisions which are stricter than the Comprehensive Zoning Ordinance (CZO). This includes prohibitions against Long-Term Rentals within a home and prohibitions against Additional Dwelling Units (ADU). These types of prohibitions exclude lower income families from many neighborhoods and increase the cost of housing island-wide.

The Council finds that research from around the country has shown that increasing access to housing in low-poverty neighborhoods helps improve outcomes in disadvantaged children and reduces intergenerational poverty. Increasing access to housing island-wide is also a critical tool to help reverse the exodus of families from Kaua'i who are forced to move away because of the high cost of housing. Giving families more flexibility over the use of their own properties in ways that are consistent with the CZO also ensures that families can build multi-generational housing on their property.

The Kaua'i General Plan recommends incentivizing housing developments within existing communities "in order to leverage existing physical and social infrastructure while preserving vital open space." The Plan specifically cites ADUs and the future potential of Additional Rental Units (ARU), as a way to increase housing opportunities in existing communities.

The General Plan further states that "communities that cater to a high-end market, resulting in enclaves of similar household incomes and housing types, are no longer acceptable. New communities must further the goals of sustainability, equity, and opportunity." To help achieve those goals, it includes a specific action item to "prohibit future subdivision and development from restricting construction of ADUs in their deed and covenants."

Additionally, the General Plan states that "[t]here is an insufficient amount of affordable housing for the disabled, elderly, homeless individuals and families, and young families. The lack of affordable housing, results in overcrowding, which in turn fuels the demand for illegal or substandard housing units." These substandard housing units often do not comply with building requirements and endanger the

inhabitants. The 2014 Homeless Utilization Report identified three hundred (300) unsheltered houseless individuals on Kaua'i. The houseless community increases yearly with several large encampments that lack running water, basic sanitation, and have higher incidents of criminal activity. Kaua'i needs homes for young families, the disabled, elderly, houseless, and impoverished to protect health, life, and security of all its residents.

The purpose of this Ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contracts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses.

SECTION 2. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Section 8-15.2 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"Sec. 8-15.2 Additional Dwelling Unit on Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only one single family residential dwelling is permitted, one (1) additional single family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer

system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

SECTION 3. Chapter 22, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Article 28 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"Article 28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

Sec. 22-28.1 Definitions.

"Additional Dwelling Unit" shall have the same meaning as additional dwelling unit under Chapter 8 of the Kaua'i County Code.

"Additional Rental Unit" shall have the same meaning as additional rental unit under Chapter 8 of the Kaua'i County Code.

"Dwelling Unit" Applicable to this section only, means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone.

"Guest House" shall have the same meaning as additional rental unit under Chapter 8 of the Kaua'i County Code.

"Long-Term Rental" shall mean a dwelling unit which is occupied for a period of one hundred eighty-one (181) days or more.

Sec. 22-28.2 Limiting or Prohibiting.

Covenants, conditions, deed restrictions, declarations of condominium property regime, association bylaws, and any other agreements that run with the land shall not limit or prohibit Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

Sec. 22-28.3 Applicability.

Nothing in this section shall apply to any contracts and agreements:

(a) In existence as of the effective date of this Ordinance;

(b) Of a successor-in-interest to real property to the extent that an association entered into, amended, or enforced, a covenant, condition, or restriction before the effective date of this Ordinance; and

(c) Formed by the County of Kaua'i, the State of Hawai'i, or the United States federal government.

Sec. 22-28.4 Enforcement.

Failure to comply with this Ordinance creates an independent right of action.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

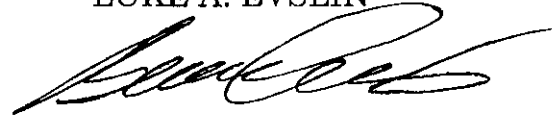
SECTION 5. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This Ordinance shall take effect upon its approval.

Introduced by:



LUKE A. EVSLIN



BERNARD P. CARVALHO, JR.

DATE OF INTRODUCTION

Līhu'e, Kaua'i, Hawai'i

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COUNTY OF KAUA'I
PLANNING DEPARTMENT

DIRECTOR'S REPORT

SUBJECT TO CHANGE

I. SUMMARY

Action Required by Planning Commission: Consideration of a Bill (2834) for an Ordinance Amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Additional Dwelling Units on Residentially Zoned Lots. See attached draft bill No. 2834 (Attached as Exhibit A).

Permit Application Nos. ZA-2022-1

Name of Applicant(s) KAUA'I COUNTY COUNCIL

II. PERMIT INFORMATION

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

III. LEGAL REQUIREMENTS

KCC Section 8-3.4	
Public Hearing Date:	November 09, 2021
Date of Publication:	October 08, 2021
Date of Director's Report:	November 09, 2021

IV. DESCRIPTION OF THE AMENDMENT

F.4.a.1.
NOV 09 2021

The proposed legislation adds new language under Section 8-15.2 (6) of the Comprehensive Zoning Ordinance (1987) to encompass the provisions set forth in Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

Chapter 22, Kaua'i County Code 1987, Section 22-28.2 Covenants, conditions, deed restrictions, declarations of condominium property regime, association bylaws, and any other agreements that run with the land shall not limit or prohibit Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

V. AMENDMENT JUSTIFICATION

The draft bill finds that many subdivisions have civil provisions that are stricter than the Comprehensive Zoning Ordinance (CZO). These include civil prohibitions against Long-Term Rentals within a home and prohibitions against Additional Dwelling Units (ADUs). These types of prohibitions can exclude lower income families from many neighborhoods and increase the cost of housing island-wide.

The draft bill finds that increasing access to housing island-wide is also a critical tool to help reverse the exodus of families from Kaua'i who are forced to move away because of the high cost of housing. Giving families more flexibility over the use of their own properties in ways that are consistent with the CZO also ensures that families can build multi-generational housing on their property.

The Kaua'i General Plan recommends incentivizing housing developments within existing communities "in order to leverage existing physical and social infrastructure while preserving vital open space." The Plan specifically cites ADUs and the future potential of Additional Rental Units (ARUs) as ways to increase housing opportunities in existing communities.

The General Plan further states that "communities that cater to a high-end market, resulting in enclaves of similar household incomes and housing types, are no longer acceptable. New communities must further the goals of sustainability, equity, and opportunity." To help achieve those goals, it includes a specific action item to "prohibit future subdivision and development from restricting construction of ADUs in their deed and covenants."

Additionally, the General Plan states that "[t]here is an insufficient amount of affordable housing for the disabled, elderly, homeless individuals and families, and young families. The lack of affordable housing, results in overcrowding, which in turn fuels the demand for illegal or substandard housing units." These substandard housing units often do not comply with building requirements and endanger the inhabitants. The 2014 Homeless Utilization Report identified three hundred (300) unsheltered houseless individuals on Kaua'i. The houseless community increases yearly with several large encampments that lack running water, basic sanitation, and have higher incidents of criminal activity. Kaua'i needs homes for young families, the disabled, elderly, houseless, and impoverished to protect health, life, and security of all its residents.

VI. AGENCY COMMENTS

Forthcoming

VII. PRELIMINARY EVALUATION

In reviewing the proposed legislation, the following aspects should be taken into consideration:

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

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

2. The County of Kaua‘i as well as the rest of the state are in the midst of a housing crisis. The department has observed that increases in housing demand do not correspond to a matching increase in supply, ultimately resulting in high housing costs, which inevitably prices many local families out of the housing market.
3. The Department finds the amendment consistent with the Kaua‘i General Plan and is necessary to address the current housing shortage on Kaua‘i for the following reasons:
 - A. The Kaua‘i County 2018 General Plan updated Socioeconomic Analysis and Forecast in 2014 noted that the County had a housing deficit of 1,400 units and a demand that is projected to increase by approximately 9,000 units by 2035;

B. Kaua‘i County 2018 General Plan

- i. Section 1.4, entitled “Policies to Guide Growth”

a. Policy #2: Provide Affordable Housing While Facilitating a Diversity of Privately-Developed Housing for Local Families
– The proposed legislation prohibits future contracts and agreements from restricting Long-Term Rentals, ARUs, ADUs, and Guest Houses. The proposed legislation gives families more flexibility to build multi-generational housing.

- ii. Section 3.0 Actions by Sector, Subsection Sector II, entitled “Housing” for new communities here are the following listed actions for code changes:

- a. **Prohibit future subdivision and development from restricting construction of ADUs in their deed and covenants** – The proposed draft bill implements these exact code changes recommended by the General Plan prohibiting future subdivision and developments from restricting construction of ADUs in their deed and covenants.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is concluded that the proposal is reasonable and appropriate. It is consistent with the Kaua‘i General Plan and will further the public necessity, convenience, and the general welfare.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that the subject request to amend Section 8-15.2 (6) of the Comprehensive Zoning Ordinance (1987), as amended, relating to the provisions of Chapter 22, Kaua‘i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses be **APPROVED**.

By 
SHELEA BLACKSTAD
Planner

Date: 10/28/2021

Approved & Recommended to Commission:

By 
KĀĀINA HULL
Director of Planning

Date: 10/28/2021

EXHIBIT “A”

(Draft Bill No. 2834)

For reference

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualiti

COUNTY OF KAUAI

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PLANNING DEPT.



Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

August 19, 2021

Donna Apisa, Chair
and Members of the Planning Commission
c/o County of Kauai Planning Department
4444 Rice Street, Suite A473
Lihue, Hawaii 96766

Dear Chair Apisa and Members of the Planning Commission:

The Kauai County Council, at its meeting on August 18, 2021, referred the following proposed amendment to Chapter 8, Kauai County Code 1987, as amended, and Chapter 22, Kauai County Code 1987, as amended, to the Planning Commission for review and recommendation:

"PROPOSED DRAFT BILL (NO. 2834) - A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, AND CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO PUBLIC HEALTH, SAFETY AND WELFARE"

Please note that an error exists in the definition of "Guest House" under SECTION 3., Sec. 22-28.1 Definitions., which should read, "Guest House" shall have the same meaning as guest house under Chapter 8 of the Kauai County Code."

Thank you for your continued assistance in these planning matters. Should you have any questions, please feel free to contact me at 241-4188.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

CNT:jy
Enclosure

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED,
RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, AND
CHAPTER 22, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING
TO PUBLIC HEALTH, SAFETY AND WELFARE**

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

SECTION 1. Findings and Purpose. The Kaua'i County Council finds that many subdivisions have provisions which are stricter than the Comprehensive Zoning Ordinance (CZO). This includes prohibitions against Long-Term Rentals within a home and prohibitions against Additional Dwelling Units (ADU). These types of prohibitions exclude lower income families from many neighborhoods and increase the cost of housing island-wide.

The Council finds that research from around the country has shown that increasing access to housing in low-poverty neighborhoods helps improve outcomes in disadvantaged children and reduces intergenerational poverty. Increasing access to housing island-wide is also a critical tool to help reverse the exodus of families from Kaua'i who are forced to move away because of the high cost of housing. Giving families more flexibility over the use of their own properties in ways that are consistent with the CZO also ensures that families can build multi-generational housing on their property.

The Kaua'i General Plan recommends incentivizing housing developments within existing communities "in order to leverage existing physical and social infrastructure while preserving vital open space." The Plan specifically cites ADUs and the future potential of Additional Rental Units (ARU), as a way to increase housing opportunities in existing communities.

The General Plan further states that "communities that cater to a high-end market, resulting in enclaves of similar household incomes and housing types, are no longer acceptable. New communities must further the goals of sustainability, equity, and opportunity." To help achieve those goals, it includes a specific action item to "prohibit future subdivision and development from restricting construction of ADUs in their deed and covenants."

Additionally, the General Plan states that "[t]here is an insufficient amount of affordable housing for the disabled, elderly, homeless individuals and families, and young families. The lack of affordable housing, results in overcrowding, which in turn fuels the demand for illegal or substandard housing units." These substandard housing units often do not comply with building requirements and endanger the

inhabitants. The 2014 Homeless Utilization Report identified three hundred (300) unsheltered houseless individuals on Kaua'i. The houseless community increases yearly with several large encampments that lack running water, basic sanitation, and have higher incidents of criminal activity. Kaua'i needs homes for young families, the disabled, elderly, houseless, and impoverished to protect health, life, and security of all its residents.

The purpose of this Ordinance is to protect health, life, and property and to conform with the General Plan to ensure that future contracts and agreements do not limit or prohibit Long-Term Rentals, ARUs, ADUs, and Guest Houses.

SECTION 2. Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended by amending Section 8-15.2 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"Sec. 8-15.2 Additional Dwelling Unit on Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only one single family residential dwelling is permitted, one (1) additional single family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer

system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

SECTION 3. Chapter 22, Kaua'i County Code 1987, as amended, is hereby amended by adding a new Article 28 to read as follows and all other and prior ordinances or parts of ordinances in conflict herewith are hereby repealed:

"Article 28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

Sec. 22-28.1 Definitions.

"Additional Dwelling Unit" shall have the same meaning as additional dwelling unit under Chapter 8 of the Kaua'i County Code.

"Additional Rental Unit" shall have the same meaning as additional rental unit under Chapter 8 of the Kaua'i County Code.

"Dwelling Unit" Applicable to this section only, means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone.

"Guest House" shall have the same meaning as additional rental unit under Chapter 8 of the Kaua'i County Code.

"Long-Term Rental" shall mean a dwelling unit which is occupied for a period of one hundred eighty-one (181) days or more.

Sec. 22-28.2 Limiting or Prohibiting.

Covenants, conditions, deed restrictions, declarations of condominium property regime, association bylaws, and any other agreements that run with the land shall not limit or prohibit Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses.

Sec. 22-28.3 Applicability.

Nothing in this section shall apply to any contracts and agreements:

- (a) In existence as of the effective date of this Ordinance;
- (b) Of a successor-in-interest to real property to the extent that an association entered into, amended, or enforced, a covenant, condition, or restriction before the effective date of this Ordinance; and
- (c) Formed by the County of Kaua'i, the State of Hawai'i, or the United States federal government.

Sec. 22-28.4 Enforcement.

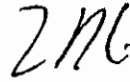
Failure to comply with this Ordinance creates an independent right of action.

SECTION 4. Severability. If any provision of this Ordinance or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

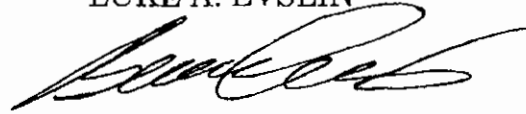
SECTION 5. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 6. This Ordinance shall take effect upon its approval.

Introduced by:



LUKE A. EVSLIN



BERNARD P. CARVALHO, JR.

DATE OF INTRODUCTION

Līhu'e, Kaua'i, Hawai'i

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DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

DIRECTOR'S REPORT

TO: Planning Commission

SUBJECT TO CHANGE

RE: **2021 Status and Progress Report**
PO'IPŪ SHERATON KAUA'I RESORT
Special Management Area Use Permit SMA(U)-2007-13
Class IV Zoning Permit Z-IV-2007-29
Project Development Use Permit PD(U)-2007-25
Tax Map Keys: (4) 2-8-015:043, 044 & 082; 2-8-016:003, 004
Po'ipū, Kaua'i

APPLICANT: Kauai Blue, Inc. (formerly SVO Pacific, Inc. & VSE Pacific, Inc.)

BACKGROUND

The subject permits were approved by the Planning Commission on October 9, 2007 to facilitate improvements to the existing Sheraton Kaua'i Resort facility. The development includes condominium/timeshare units, several support facilities and uses, off-street parking, and on-site & off-site infrastructure improvements.

Condition No. 4 of the permits requires the Applicant to submit an annual report to the Planning Commission to report the progress of the project until it's completed and it reads:

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

APPLICANT'S REQUEST

In accordance with Condition No. 4, the Applicant is providing its annual status report for 2021 (refer to Attachment).

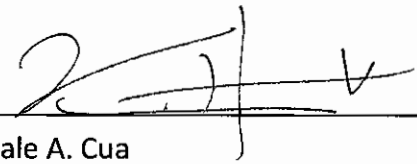
RECOMMENDATION

It is recommended that the Commission accepts the Applicant's Annual Status Report dated

A.I.A.I.

NOV 09 2021

September 2, 2021. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 4, shall remain in effect. The next Annual Status Report be submitted no later than SEPTEMBER 9, 2022.

By 
Dale A. Cua
Planner

Approved and recommended to Commission:

By 
Ka'aina S. Hull
Director of Planning

Date: 10/28/2021

BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.
JONATHAN J. CHUN
IAN K. JUNG

Federal I.D. No. 99-0317663

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OF COUNSEL

MICHAEL J. BELLES
DAVID W. PROUDFOOT
DONALD H. WILSON

September 2, 2021



Mr. Ka'āina S. Hull
Director of Planning
Planning Department
County of Kauai
4444 Rice Street, Suite 473
Lihue, Kauai, Hawaii 96766

VIA HAND DELIVERY

Re: **2021 Fourteenth Annual Status Report of Compliance With Permit Conditions For Special Management Area Use Permit SMA (U)-2007-13; Project Development Use Permit PDU-2007-25, And Class IV Zoning Permit Z-IV-2007-29, For Poipu Sheraton Kauai Resort, (Kauai Blue, Inc., fka SVO Pacific, Inc. and VSE Pacific, Inc.)**

Dear Mr. Hull:

Pursuant to Condition No. 4 of the above-referenced permits, the Applicant, Kauai Blue, Inc. (formerly known as SVO Pacific, Inc. and VSE Pacific, Inc.), hereby submits this 2021 Annual Status Report providing the status and progress towards project completion and compliance with conditions of approval. This Annual Status Report is intended to report on the status of conditions imposed by the Planning Commission of the County of Kauai, as required by the subject permits, as approved by the Planning Commission on October 9, 2007, and as memorialized in the corresponding permits dated October 10, 2007, attached hereto as Exhibit "A".

Thus, listed below, in the same order as they appear in the approval letter, are each of the stated 22 conditions of the subject permits (in bold italics), followed by a statement of the corresponding status of each of the respective conditions.

1. 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 types: shielded lights, cut-off luminaries, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.

Status: The Applicant acknowledges this condition. The architects and lighting consultants have specifically been made aware of this requirement and will incorporate appropriate lighting.

2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.

Status: The Applicant acknowledges this condition. The fees will be paid, accordingly.

3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.

Status: The Applicant has met this condition. In compliance with Condition 3, a Memorandum of Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (a true and correct copy of which is attached to this letter as Exhibit "B") was recorded on June 2, 2008. A copy of the recorded Memorandum was forwarded to the Planning Department on June 6, 2008.

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

Status: The Applicant acknowledges this condition. This letter provides the current status and Applicant's manner of addressing all conditions of approval.

5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.

Status: The Applicant acknowledges this condition. A copy of the letter confirming the Department's definition of "full approval" is attached hereto as Exhibit "C" and made a part hereof by reference.

The Applicant's building permit applications were submitted on June 2, 2008. Included within these permits were four hotel renovation permits which include the Point Restaurant (now open and operating as "Rum Fire") (#08-1205); the Oasis Pool Bar (now open and operating as "Lava's") (#08-1206); the Swimming Pool (#08-1207) continue to be operational; and the Breezeway & Existing Kitchen (now operating as the "Main Kitchen") (#08-1208). All four hotel renovation building permit applications were approved and issued in early 2010.

The pool construction was completed in August of 2011 and a Certificate of Inspection for the pool was subsequently issued. The County issued a Certificate of Occupancy for the Oasis Pool Bar in mid-August 2011 and Certificates of Occupancy for both the Point Restaurant and Breezeway & Existing Kitchen in the second quarter of 2012.

Three additional building permits for modified work to the Point Restaurant, Oasis Pool Bar, and Breezeway and Existing Kitchen (#11-460, #11-461 and #11-462) were applied for on March 28, 2011. All of the work was completed by the first quarter of 2012 and Certificates of Occupancy were issued.

An additional permit for the Coffee Shop/Link Café (#11-463) was applied for on June 27, 2011. The work was completed by the first quarter of 2012 and a Certificate of Occupancy was issued.

Building permits for work in the Dining Room (#11-2167) and for Roofing Work (#11-2323) were applied for in November of 2011. The permits were approved, work was completed in 2012 and the Certificates of Occupancy were issued.

A total of nine new building permit applications – one application for a new employee break room (#12-673) and eight applications for ADA improvements at the Hotel (#12-684 through #12-691) were submitted on April 13 and 16, 2012, respectively. The employee break room has been modified and the ADA work is partially complete.

The value of the work covered by the above-referenced hotel renovation permits is approximately \$16 million.

In addition, three new building permits were submitted in 2013. A wall replacement/awning at the Oasis Pool Bar (#13-1516, value of \$153,000.00) and fitness center relocation (#13-1515, value of \$135,000.00) building permits were submitted on July 12, 2013. The Oasis Pool Bar work has been completed and the fitness center relocation permit was removed from the County system. A re-roofing building permit was submitted on August 15, 2013 (#13-2138-2145, value of \$2,300,000.00). A separate re-roofing building permit (#15-1040, value of \$36,225.00) was submitted on April 16, 2015. All re-roofing building permits have been approved, work started on August 1, 2014, and the re-roofing project is complete. The Applicant also applied for and received Shoreline Setback Determination ("SSD") approval on the above 3 projects including a tennis court demolition project. A separate demo permit was applied for and demo work complete.

Four new building permits were submitted in 2014. A permit for a Welcome Center, mockup unit, and roof safety platform (#13-2666, value of \$80,000.00, #014-931, value of \$80,000.00, #014-392, value of \$50,000.00, and #14,1139, value of \$30,000.00) have been issued and the work completed. An SSD for the above projects has been approved.

Eight new building permits were submitted in November 2015 for renovation of 8 units in the Garden Wing. The permit numbers were #15-3089 - #15-3096 with a total value of \$248,000.00. The work was completed, and Certificates of Occupancy were issued in June and July, 2016.

Furthermore, since submittal of the 2016 SMA Annual Report, the Sheraton Kauai Resort has completed or is in the process of completing approximately \$13,350,000.00 in resort improvements/repair/upgrades and maintenance projects.

The demolition permits for the existing Garden Wing were submitted and approved. Revisions and amendments to the demolition plan will, however, in all likelihood be filed by the Applicant with the County to reflect proposed changes in the design and the re-development of the Garden Wing as explained more fully below. However, since the Applicant was not yet ready to commence demolition, the Building Department requested that the Applicant pick up the plans and the 19 permit applications, which was done.

The Applicant submitted plans for the existing Garden Wing buildings for the first phase of its future timeshare project. The Applicant has built a mockup of timeshare units and reviewed them on-site with the Planning Department. In

addition, the Applicant plans to upgrade the existing mockup units and a building permit was submitted in December 2016. This building permit (#16-2486 with a value of \$210,000.00) was issued on March 22, 2017. The work was completed and a Certificate of Occupancy was issued on March 1, 2018.

With respect to the new timeshare building permits, the Applicant submitted plans in December 2016 and all building permits (#16-2502, #16-2503, #16-2505, #16-2507, #16-2508, #16-2510, #16-2512, #16-2513, #16-2514, and #16-2515 for a total value of \$24,922,119.00) have been approved. This work started in October 2017 and construction was completed in October 2019. A TCO was also received for #16-2514 on January 23, 2018. Work is complete and a Certificate of Occupancy for building permits #16-2507, #16-2508, #16-2510, #16-2512, #16-2513, and #16-2514, were issued on November 2, 2018, November 9, 2018, January 7, 2019, January 16, 2019, November 2, 2018, and December 6, 2018, respectively. Work is almost completed for building permits #16-2502 and #16-2503, and work for building permit #16-2505 has been completed when the 2019 SMA report was filed. Since then, construction and furniture installation has been completed and a Certificate of Occupancy was issued on September 4 and 23, 2019.

ADA building permits for the Ocean and Beach Wings were submitted in May 2017 (#17-1094 and #17-1095 with a total value of \$450,000.00) and Ocean Wing Certificate of Occupancy issued on December 1, 2017, and Beach Wing Certificate of Occupancy issued on April 20, 2018.

Three (3) new building permits were submitted in 2019. A permit for the hotel units renovation located in Buildings 6 and 7 (#19-378 with a value of \$650,000.00, and #19-379 with a value of \$765,000.00) and a permit for the executive offices refresh (#19-622 with a value of \$100,160.00) are pending approval. A SSD for the above projects has also been submitted and approved. Construction work for all three building permits were completed. A Certificate of Occupancy was issued for building permit #19-622 on February 20, 2020. A Temporary Certificate of Occupancy was issued on March 30, 2020 for building permits #19-378 and #19-379. Additional work requested by the Department of Water was completed in late 2020. Therefore, the Certificate Of Occupancy was issued on January 12, 2021.

In summary, the Applicant has spent over \$16 million to complete the Ocean Wing improvements as represented in the SMA. The Applicant has completed the \$2,336,225.00 Garden Wing re-roofing project, \$240,000.00 of building permit work in 2014 and 2015, \$248,000.00 of building permit work in 2016, \$450,000.00 in ADA work in 2017 and 2018, and spent approximately \$13,414,000.00 on various upgrades and maintenance type improvements since the 2016 annual report. Lastly, the Applicant has completed the construction for the conversion of the Garden Wing buildings. It is estimated that the Applicant has spent approximately \$25 million to complete the Garden Wing conversion.

The corona virus pandemic of 2020 had a devastating effect on the visitor and hotel industry in Hawaii. The Sheraton Kauai Resort was forced to shut down normal operations on March 28, 2020. The Sheraton Kauai Resort temporarily re-opened the Garden Wing in Q4 of 2020, but closed again due to travel restrictions. The Sheraton Kauai Resort has since re-opened the Garden Wing on April 9, 2021, and the Ocean Wing on May 5, 2021.

6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.

Status: The Applicant acknowledges this restriction on the sale and transferability of the permits prior to completion of the project and issuance of the occupancy permit.

7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all public areas, such as beach parking, multi-use access paths, shower & bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas.

Language and signage design shall be subject to Planning Department review and approval.

Status: The Applicant acknowledges this condition. In compliance with Condition 7, a Declaration of Public Facilities Easements (a true and correct copy of which is attached to this letter as Exhibit "D") was recorded on June 2, 2008. A copy of the recorded Declaration was forwarded to the Planning Department on June 6, 2008.

8. As represented, the Applicant shall:

a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.

Status: The Applicant acknowledges this condition. The concepts have been reviewed with the Kauai Civil Defense Agency. The Kauai Civil Defense Agency's letter regarding the hurricane emergency shelter is attached hereto as Exhibit "E" and made a part hereof by reference.

b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuiula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.

Status: The Applicant acknowledges this condition. The Applicant will implement the applicable KPACP recommendations once the Plan is approved by the County.

c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.

Status: The Applicant acknowledges this condition. The Applicant is currently reviewing and assessing the various TDM measures available.

d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac.

Status: The Applicant acknowledges this condition. A copy of the Applicant's letter requesting the County's authorization is attached hereto as Exhibit "F" and made a part hereof by reference.

e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.

Status: The Applicant acknowledges this condition. The Applicant will submit a recycling program to the County for review and approval when it is completed.

f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.

Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.

Status: The Applicant acknowledges this condition. The Grading Plans and Drainage Report for the property mauka of the railroad berm have been submitted to the County of Kauai, Public Works Department, Engineering Division for review.

Grading plans have also been submitted for the Applicant's first phase of the timeshare conversion project and plans were approved.

g. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.

Status: The Applicant acknowledges this condition. The Applicant met with the Planning Director on May 8, 2008. A copy of the letter transmitted to the Planning Director is attached hereto as Exhibit "G" and made a part hereof by reference. Although the letter in Exhibit "G" references Condition 9, it also covers the requirements of this condition as well.

h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.

Status: The Applicant acknowledges this condition. The Applicant has met with the County Transportation Agency and commenced discussions on this issue.

i. place the Hoonani Road utilities serving the project underground.

Status: The Applicant acknowledges this condition. The design work is complete. Plans were submitted in May 2018 and approved in July 2019. Construction is complete and the Kauai Island Utility Cooperative has started the underground cabling work in June, 2021. The timing for undergrounding the utilities along Ho'onani Road is described in the attached letter to the County of Kauai, County Engineer and is attached hereto as Exhibit "H" and made a part hereof by reference.

j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.

Status: The Applicant acknowledges this condition. The Applicant met with the County Housing Agency on August 9, 2007, April 10, 2008, and February 24, 2011, and continues to use its best efforts to work with the County Housing Agency to address this condition.

k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.

Status: The Applicant acknowledges this condition. The Cultural Report was updated and submitted to the Planning Department on May 29, 2008, as shown in the transmittal attached hereto as Exhibit "I" and made a part hereof by reference.

l. develop a blasting plan for review and approval by the Public Works and Planning Departments. Said blasting plan shall include public notice via newspaper, radio and hand delivered flyers to residents within 100 feet of the property, where notice is given at least 1 week in advance of the activity. Such notice shall include the date and time of the blasting, and a contact name and phone number.

Status: The Applicant acknowledges this condition. The Applicant will submit a blasting plan to the County for review and approval when it is completed.

m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department.

Status: The Applicant acknowledges this condition. A copy of the letter containing the current dust protocol was transmitted to the Planning Department, and is attached hereto as Exhibit "J" and made a part hereof by reference.

n. the number of units remaining authorized by SMA (U)-96-9 and Z-IV-96-25 shall be reduced from 18 to 15.

Status: The Applicant acknowledges this condition. The design and footprint of the subject building have been reduced from 18 to 15 units.

Evidence of the implementation of these programs or the manner of addressing these issues shall be provided to the Department prior to building permit review.

Status: The Applicant has met this condition. See the response to Item 5, above, for more detail on the status of the building permit applications.

9. In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.

In addition, the Applicant shall continue the landscape theme already established on the makai side of Poipu Road, and which the commission has required of the properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association regarding foliage along Poipu Road prior to Department review of the landscape design.

Status: The Applicant acknowledges this condition. The color scheme will be "earth tone" colors as required by this condition. The specific colors will be provided at a later date. The landscape plan has been provided to the Planning Department,

and a copy of the transmittal is attached hereto as Exhibit "K" and made a part hereof by reference. In addition, the Applicant met with the Poipu Beach Resort Association Board of Directors on May 8, 2008 to discuss landscaping along Poipu Road.

10. *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) at 742-7033, and the Planning Department, to determine appropriate action.*

Status: The Applicant acknowledges this condition. A full time archaeological monitor has been onsite during all grading activities. On March 29, 2018, an inadvertent discovery was found in sand that was excavated from an existing utility trench within the Garden Wing Building 7 corridor. Work was immediately halted, the area was fenced off, notification to the SHPD Burial Sites Specialist for Kauai was made, Kauai Police Department was notified and dispatched. On March 30, 2018, the Burial Sites Specialist for SHPD and the Kauai Niihau Islands Burial Council member for the Koloa District conducted a site visit and recommended the inadvertent skeletal discovery be moved and the sand pile screened. During excavation along Ho'onani Road, inadvertent burials were discovered on November 21, 2019 and December 10, 2019. All burial remains were stored in a locked and secured location on the property. On March 11, 2020, the burial remains were reinterred in an existing crypt located on the Sheraton Kauai Garden Wing. The archaeologist submitted the required data recovering and monitoring reports to SHPD on March 25, 2021, and it is still pending approval.

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 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 resident 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.*

Status: The Applicant acknowledges this condition, and will hire and contract accordingly.

12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) standards and strategies wherever feasible for sustainable site, utilities and building development.

Status: The Applicant acknowledges this condition, and is assessing the feasibility of various sustainable elements. The Applicant has already contracted for irrigation of the mauka wing using R-1 treated effluent, and the service lateral has been installed.

13. Approval of the subject permits is based on the revised conceptual site plan dated 9/11/2007 developed by WCIT Architecture, which reflects: a view corridor from Poipu Road through the open motor court of the lobby building, the location of three 4-story parking structures, the location of the 3 and 4-story step-down structures along the perimeter, and reduction in units from 382 to 365 units.

Status: The Applicant acknowledges this condition, and is proceeding with project design, accordingly.

14. As recommended by the Water Department, applicant shall be required to:

a. Submit a formal request for water service to the DOW for our review and approval. Include detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Identify whether water demands will be from new or existing water meter(s). Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. This shall be done for both the new development and the renovation developments. The Department's comments may change depending on the approved water demand calculations.

Status: The Applicant acknowledges this condition. The Applicant submitted its formal request for water meters on May 7, 2008, and its formal request for all other water services on May 21, 2008. The Applicant received conditional approvals from DOW on July 29, 2008. The Applicant continues to work with the DOW to ensure their SMA conditions are met and to expedite their review of the Building Permits.

b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:

1. ***Additional source and storage facilities.***
2. ***The domestic service connections.***
3. ***The fire service connections, if applicable.***
4. ***The interior plumbing plans with the appropriate backflow prevention device.***
5. ***A 12 inch main extension, approximately 1,200 ft. in length along Kapili Road connecting to the 12 inch main along Poipu and Ho'onani Roads.***

Status: The Applicant acknowledges this condition. With reference to item 14.b.5 above, construction of the 12 inch main extension is complete and has been dedicated to the County. With reference to Item 14.b.2 above, utility laterals for water have been installed under Kapili Road for future service to the project site.

c. Pay the applicable charges in effect at the time of payment to the Department. At the present time these charges shall include but not be limited to the Facilities Reserve Charge (FRC) \$4,600 per unit of the FRC amount as determined by the approved water meter size; whichever amount is greater.

Status: The Applicant acknowledges this condition, and will pay the applicable charges, accordingly.

The Applicant is made aware that applicable FRC liability shall be offset by up to 33% each where water source or water storage improvements are constructed and up to 50% where transmission mains are constructed; provided that the total amount of all offsets shall not exceed 100% of the applicant's FRC liability, and provided further that the offset for any source or storage improvements or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.

Status: The Applicant acknowledges this condition.

d. Receive a "Certification of Completion" for the construction of the necessary water system facilities from the DOW.

Status: The Applicant acknowledges this condition.

15. The Applicant shall comply with the requirements and recommendations of applicable County, State and Federal Agencies, including the County Fire, Engineering and Building Divisions of the Department of Public Works, and the State Department of Health, State Department of Transportation-Highways Division.

Status: The Applicant acknowledges this condition. With respect to the issue of sewer improvements, the Applicant has contributed approximately \$265,000.00 for the purpose of upgrading the existing private sewer system to fully service the project.

16. As recommended by the State Department of Land and Natural Resources, Historic Preservation Division:

a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.

Status: The Applicant has complied with this condition. The Applicant submitted the required Data Recovery Plan to the State Historic Preservation Division ("SHPD"), and such plan was accepted and approved by SHPD on June 19, 2007 as evidenced by the communication attached hereto as Exhibit "L" and made a part hereof by reference.

b. Data recovery of Site 362 shall be completed as agreed to in the approved data recovery plan and an approved report on this work be submitted to the State Historic Preservation Division prior to the start of construction, and

Status: The Applicant has complied with this condition. The Applicant submitted the required Preservation Plan to SHPD, and such plan was accepted and approved by SHPD on July 9, 2007 as evidenced by the communication attached hereto as Exhibit "M" and made a part hereof by reference.

c. A qualified archaeologist shall be on the project area for all ground disturbing activities and perform work as outlined in the approved archaeological monitoring plan. An approved report on this work shall be submitted to the State Historic Preservation Division once the monitoring work is completed.

Status: The Applicant acknowledges this condition. The Cultural Surveys Hawaii ("CSH") monitoring plan was approved by SHPD on January 2, 2018 and CSH has provided the necessary monitoring.

17. The Applicant shall conform to the anticipated Koloa-Poipu Area Circulation Plan process and will pay, immediately prior to issuance of the first building permit for the project, the voluntary fair share contributions (VFSC), unless the impact fee has been identified in an Ordinance by that time, in which case it shall pay the impact fee. In the event the VFSC is paid, the final fee amount shall be in lieu of the impact fee in the anticipated ordinance. The Applicant shall work out the engineering details of the project access onto Poipu Road, Kapili Road and Ho'onani Road, and the mauka-makai connection road between Poipu Road and Ho'onani Road with the Department of Public Works.

Status: The Applicant acknowledges this condition, and will pay the voluntary fair share contribution or impact fee, accordingly.

18. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the subject permits through proper procedures should the Applicant fail to comply with the conditions of approval, or should unforeseen circumstances occur or result.

Status: The Applicant acknowledges this condition.

19. Should the Applicant be unable to comply with the development time line in condition #5 above and request an extension of time, applicant is advised that any new laws, ordinances, or regulations that have been implemented within this time frame may become applicable to the project.

Status: The Applicant acknowledges this condition.

20. In view of the various conditions and recommendations imposed by the various government agencies as referenced to herein, building permit application or preconstruction work for any phase of the project or portion of the property shall not be accepted until the Applicant submits a status report of all permit conditions that are either required to be complied with prior to or at time of building permit application.

Status: The Applicant has complied with this condition. Thirteen Annual Status Reports were filed with the Planning Department on June 2, 2008, September 4, 2009, September 10, 2010, September 8, 2011, September 7, 2012, September 9, 2013, September 9, 2014, September 9, 2015, September 9, 2016, September 8, 2017, September 7, 2018, September 6, 2019, and September 4, 2020, respectively. The Applicant submitted building permit applications for the project

Mr. Ka'āina S. Hull
Director of Planning
Planning Department
September 2, 2021
Page 16

beginning on June 2, 2008, and thereafter as explained more fully in the response to Item 5, above.

21. The Applicant is advised that prior to and/or during construction and use, additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).

Status: The Applicant acknowledges this condition.

22. As an accessory use, the establishment of a rock crusher operation on site shall be subject to review and approval of the Planning Director. Such use shall not be permitted unless it can be assured that the resultant dust and noise can be properly and adequately addressed. If such cannot be assured, such activity shall occur at an alternate site where such impacts to abutting residential uses will not occur.

Status: The Applicant acknowledges this condition.

I believe that the foregoing 2021 Fourteenth Annual Status Report adequately responds to Condition 4 of the Planning Commission approval of the aforementioned development permits for this Project. In the event you are in need of any additional information or clarification regarding the documents, please feel free to contact me at any time.

Thank you very much for your cooperation and assistance in this matter.

Sincerely yours,

BELLES GRAHAM LLP

A handwritten signature in black ink, appearing to read 'Michael J. Belles', with a long horizontal line extending to the right.

Michael J. Belles

MJB:jgm
Enclosures

cc: Mr. Mac Montgomery, w/encls. (via email only)
Mr. Tim Tansey, w/encls. (via email only)
Mr. Carlos Rivera, w/encls. (via email only)

LISTING OF EXHIBITS

- Exhibit "A" - Copy of permit approval letter from the County of Kauai, dated October 10, 2007
- Exhibit "B" - Copy of the Memorandum of Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29, dated May 5, 2008
- Exhibit "C" - Copy of letter confirming the Planning Department's definition of "Full Approval", signed and approved by Ian Costa June 27, 2008
- Exhibit "D" - Copy of the Declaration of Public Facilities Easements, dated May 23, 2008
- Exhibit "E" - Copy of Kauai Civil Defense Agency's letter regarding the hurricane emergency shelter
- Exhibit "F" - Copy of letter requesting the County's authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
- Exhibit "G" - Copy of letter to the Planning Director regarding landscaping and color schemes for structures in accordance with Condition 9 of the SMA Permit
- Exhibit "H" - Copy of letter addressed to the County Engineer, County of Kauai, describing the timing for undergrounding the utilities along Ho'onani Road
- Exhibit "I" - Copy of transmittal of Cultural Focus Group Report dated 5-29-08 from Greg Kamm Planning & Management to Planning Department
- Exhibit "J" - Copy of Dust Mitigation Protocol transmitted to the Planning Department
- Exhibit "K" - Copy of transmittal letter providing the landscape plan to the Planning Department
- Exhibit "L" - Copy of a letter dated June 19, 2007 from the State Historic Preservation Division ("SHPD") accepting the required preservation plan for Site 947
- Exhibit "M" - Copy of a letter dated July 9, 2007 from the State Historic Preservation Division ("SHPD") approving the data recovery plan submitted for Site 362

EXHIBIT "A"

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-6677 FAX (808) 241-6699

October 10, 2007

Michael J. Belles
Belles Graham Proudfoot & Wilson, LLP
4334 Rice Street, Suite 202
Lihu'e, Hawaii 96766

RECEIVED
OCT 16 2007

Subject: Special Management Area Use Permit SMA(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
SVO Pacific, Inc., applicant
Tax Map Key 2-8-15: 43, 44 & 82, and 2-8-16: 3 & 4

BELLES GRAHAM
PROUDFOOT & WILSON, LLP

Dear Michael:

The Planning Commission, at its meeting held on October 10, 2007, amended and approved the subject permits to develop a time share resort project within the existing Sheraton Kauai Resort in Kōloa. Of the existing 413 hotel rooms within the hotel, 227 hotel rooms and all other existing improvements within the Garden Wing parcel will be demolished and the parcel will be consolidated with the adjacent 3 parcels. A time share development consisting of 382 one, two and three bedroom condo units and associated amenities, 948 parking stalls, and typical resort access uses will be provided. The remaining 186 hotel units within the Ocean Wing parcel will remain as hotel rooms. Improvements and renovations will occur also. A previously approved 18 unit wing was voluntarily reduced to 15 units. The proposed development will also include a new access road with a public sidewalk and bikeway, and the undergrounding of existing overhead utility lines along the mauka side of Hoonani Road will occur. Approval is subject to the following conditions:

1. 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 types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.

EXHIBIT "A"

2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project. relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.
3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.
4. Applicant shall provide annual status reports to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.
5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.
6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.
7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all non-leasehold public areas, such as beach parking, multi-use access paths, shower and bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas. For any leasehold property owned by the applicant such property shall be conveyed to the County only for the duration of the leasehold interest as may be approved by the Planning Department.

Language and signage design shall be subject to Planning Department review and approval.

8. As represented, the Applicant shall:

- a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.
 - b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuiula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.
 - c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.
 - d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
 - e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.
 - f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.
- Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.
- g. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.

- h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.
- i. place the Hoonani Road utilities serving the project underground.
- j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.
- k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.
- l. develop a blasting plan for review and approval by the Public Works and Planning Departments. Said blasting plan shall include public notice via newspaper, radio and hand delivered flyers to residents within 1000 feet of the property, where notice is given at least 1 week in advance of the of the activity. Such notice shall include the date and time of the blasting, and a contact name and phone number.
- m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department.
- n. the number of units remaining authorized by SMA(U)-96-9 and Z-IV-96-25 shall be reduced from 18 to 15.

Evidence of the implementation of these programs or the manner of addressing these issues shall be provided to the Department prior to building permit review.

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In addition, the Applicant shall continue the landscape theme already established on the makai side of Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Po'i'pū Beach Resort Association

regarding foliage along Poī'pū Road, prior to Department review of the landscaping plan.

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 - a. Submit a formal request for water service to the DOW for our review and approval. Include detailed water demand (both domestic and irrigation) calculations along with the proposed water meter size. Identify whether water demands will be from new or existing water meter(s). Water demand calculations submitted by your engineer or architect should also include fixture count and water meter sizing worksheets. This shall be done for both the new development and the renovation developments. The Department's comments may change depending on the approved water demand calculations.
 - b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. These facilities shall include but not be limited to:
 1. Additional source and storage facilities
 2. The domestic service connections.
 3. The fire service connections, if applicable.
 4. The interior plumbing plans with the appropriate backflow prevention device.

5. A 12 inch main extension, approximately 1,200 ft in length along Kapili Road connecting to the 12 inch main along Poipu and Hoonani Roads.
- c. Pay the applicable charges in effect at the time of payment to the Department. At the present time these charges shall include but not be limited to the Facilities Reserve Charge (FRC) \$4,600 per unit or the FRC amount as determined by the approved water meter size; whichever amount is greater.

The applicant is made aware that applicable FRC liability shall be offset by up to 33% each where water source or water storage improvements are constructed and up to 50% where transmission mains are constructed; provided that the total amount of all offsets shall not exceed 100% of the applicant's FRC liability, and provided further that the offset for any source or storage improvements or transmission main shall not exceed the actual cost of the source or storage improvement or transmission main.
- d. Receive a "Certification of Completion" for the construction of the necessary water system facilities from the DOW.
15. The Applicant shall comply with the requirements and recommendations of applicable County, State and Federal Agencies, including the County Fire, Engineering and Building Divisions of the Department of Public Works, and the State Department of Health, State Department of Transportation-Highways Division.
16. As recommended by the State Department of Land and Natural Resources, Historic Preservation Division:
 - a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.
 - b. Data recovery of Site 362 shall be completed as agreed to in the approved data recovery plan and an approved report on this work be submitted to the State Historic Preservation Division prior to the start of construction, and
 - c. A qualified archaeologist shall be on the project area for all ground disturbing activities and perform work as outlined in the approved archaeological monitoring plan. An approved report on this work shall be submitted to the State Historic Preservation Division once the monitoring work is completed.
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20. In view of the various conditions and recommendations imposed by the various government agencies as referenced to herein, building permit application or preconstruction work for any phase of the project or portion of the property shall not be accepted until the Applicant submits a status report of all permit conditions that are either required to be complied with prior to or at time of building permit application.
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Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.



IAN R. COSTA
Planning Director

cc: DPW Engineering Div.
Water Dept.
State Health Dept.
DLNR-Historic Preservation Div.
Fire Dept.
Finance Dept., Real Property Div.
DOT Hwys

EXHIBIT "B"



L-63 STATE OF HAWAII
OFFICE OF ASSISTANT REGISTRAR
RECORDED

JUN 02, 2008 08:01 AM

Doc No(s) 3754224
on Cert(s) AS LISTED HEREIN



/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

20 1/1 Z11

Land Court System

Regular System

After Recordation, Return By Mail ☐ Or Pickup ☒

SVO Pacific, Inc.
8803 Vistana Centre Drive, Suite 360
Orlando, FL 32821
Attn: Bo (Rouselle) Sutton, Esq.

76A090645-5

Title of Document:

(Total Pages: 13)

MEMORANDUM OF SPECIAL MANAGEMENT AREA USE
PERMIT SMA (U)-2007-13, PROJECT DEVELOPMENT USE
PERMIT PDU-2007-25, AND CLASS IV ZONING PERMIT Z-
IV-2007-29

Parties To Document:

KAUAI BLUE, INC., a Delaware corporation
SVO PACIFIC, INC., a Florida corporation

Tax Map Key Nos.: (4) 2-8-015:043, 044, and 082
(4) 2-8-016:004

TCT Nos.: 687,179; 797,563; 797,564

THIS MEMORANDUM OF SPECIAL MANAGEMENT AREA USE PERMIT SMA (U)-2007-13, PROJECT DEVELOPMENT USE PERMIT PDU-2007-25, AND CLASS IV ZONING PERMIT Z-IV-2007-29 ("Memorandum") is made as of May 5th, 2008, by KAUAI BLUE, INC., a Delaware corporation ("Kauai Blue"), and SVO PACIFIC, INC., a Florida corporation ("SVOP").

WHEREAS, Kauai Blue is the fee owner of the land described in Item 1 of Exhibit "A" attached hereto and incorporated herein;

WHEREAS, SVOP is the fee owner of the lands described in Items 2 and 3 of said Exhibit "A" (Items 1, 2 and 3 of Exhibit "A" are referred to collectively as the "Real Property");

WHEREAS, on October 10, 2007, the Kauai Planning Commission (the "Commission") approved Special Management Area Use Permit SMA (U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (collectively, the "Permits"), which Permits relate to and authorize the development of a resort, timeshare project on the Real Property;

WHEREAS, the Commission's approval of the Permits is memorialized in that certain letter dated October 10, 2007, from Kauai Planning Director Ian Costa to Michael J. Belles, Esq., a true copy of which is attached hereto as Exhibit "B" (the "Permit Approval Letter");

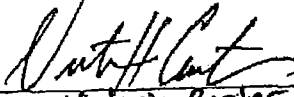
WHEREAS, condition no. 3 of the Permit Approval Letter provides that "[a]pplicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project"; and

WHEREAS, Kauai Blue and SVOP desire to record this Memorandum against the Real Property to give notice of the approval of the Permits and the conditions thereto as memorialized in the Permit Approval Letter and as required by condition no. 3 thereof;

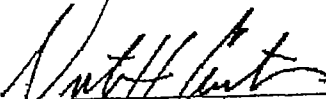
NOW, THEREFORE, in consideration of the foregoing Recitals, Kauai Blue and SVOP hereby give notice of the approval of the Permits and the conditions thereto as memorialized in the Permit Approval Letter.

IN WITNESS WHEREOF, Kauai Blue and SVOP have each caused this Memorandum to be executed and delivered by a duly authorized officer or representative.

SVO PACIFIC, INC.,
a Florida corporation

By 
Name: Victoria Carter
Title: Senior Vice President, Assistant Secretary

KAUAI BLUE, INC.,
a Delaware corporation

By 
Name: Victoria Carter
Title: Senior Vice President, Assistant Secretary

STATE OF FLORIDA

COUNTY OF ORANGE

)
) SS.
)

On this 5th day of May, 2008, before me appeared Victoria H. Carter to me personally known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same in the capacity stated herein as her free act and deed.



Barbara Dickie
Name: BARBARA DICKIE
Notary Public, State of FLORIDA

My commission expires: 5/16/10

STATE OF FLORIDA

COUNTY OF ORANGE

)
) SS.
)

On this 5th day of May, 2008, before me appeared
VICTORIA H. CARTER, to me personally known to be the person described in
and who executed the foregoing instrument and acknowledged that she executed the same in the
capacity stated herein as ~~his~~ her free act and deed.



Barbara Dickie
Name: BARBARA DICKIE
Notary Public, State of FLORIDA

My commission expires: 5/16/10

EXHIBIT "A"

REAL PROPERTY

Item 1:

All of that certain parcel of land situate at Koloa, District of Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 267, area 10.730 acres, more or less, as shown on Map 67, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen;

Being the land(s) described in Transfer Certificate of Title No. 687,179 issued to KAUAI BLUE, INC., a Delaware corporation.

Item 2:

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 217-C, area 9.718 acres, more or less, as shown on Map 71, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen;

Being land(s) described in Transfer Certificate of Title No. 797,563 issued to SVO PACIFIC, INC., a Florida corporation.

Item 3:

-FIRST:-

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 89, area 20,000 square feet, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen.

Together with a means of ingress and egress to and from a public highway over and across Lots 162 and 163 as shown on Map 18, and Lot 202 as shown on Map 27, of said Land Court Application No. 956, (Roadways) as set forth by Land Court Order No. 9840, filed September 22, 1950, and Land Court Order No. 20122, filed June 1, 1962.

-SECOND:-

All of that certain parcel of land situate at Koloa, Island and County of Kauai, State of Hawaii, described as follows:

LOT 88, area 20,000 square feet, more or less, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 956 of Bishop Trust Company, Limited, Trustee for Eric A. and Augustus F. Knudsen.

Together with a means of ingress and egress to and from a public highway over and across Lots 162 and 163 as shown on Map 18, and Lot 202 as shown on Map 27, of said Land Court Application No. 956, (Roadways) as set forth by Land Court Order No. 9840, filed September 22, 1950, and Land Court Order No. 20122, filed June 1, 1962.

Being lands described in Transfer Certificate of Title No. 797,564 issued to SVO PACIFIC, INC., a Florida corporation.

End of Exhibit "A"

EXHIBIT "B"

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

IMAICALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI PLANNING DEPARTMENT

4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TEL (808) 241-8677 FAX (808) 241-8699

October 10, 2007

Michael J. Belles
Belles Graham Proudfoot & Wilson, LLP
4334 Rice Street, Suite 202
Lihu'e, Hawaii 96766

RECEIVED
OCT 16 2007

Subject: Special Management Area Use Permit SMA(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
SVO Pacific, Inc., applicant.
Tax Map Key 2-8-15: 43, 44 & 82, and 2-8-16: 3 & 4

BELLES GRAHAM
PROUDFOOT & WILSON, LLP

Dear Michael:

The Planning Commission, at its meeting held on October 10, 2007, amended and approved the subject permits to develop a time share resort project within the existing Sheraton Kauai Resort in Koloa. Of the existing 413 hotel rooms within the hotel, 227 hotel rooms and all other existing improvements within the Garden Wing parcel will be demolished and the parcel will be consolidated with the adjacent 3 parcels. A time share development consisting of 382 one, two and three bedroom condo units and associated amenities, 948 parking stalls, and typical resort access uses will be provided. The remaining 186 hotel units within the Ocean Wing parcel will remain as hotel rooms. Improvements and renovations will occur also. A previously approved 18 unit wing was voluntarily reduced to 15 units. The proposed development will also include a new access road with a public sidewalk and bikeway, and the undergrounding of existing overhead utility lines along the mauka side of Hoonani Road will occur. Approval is subject to the following conditions:

1. 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 types: shielded lights, cut-off luminaires, or indirect lighting. Spotlights aimed upward or spotlighting of structures, landscaping, signage or hotel features within the project site shall be prohibited.

AN EQUAL OPPORTUNITY EMPLOYER

2. In accordance with Section 9-2.8 of the Kauai County Code, 1987, the requirement of the Park Dedication In-Lieu Fee is applicable to this project relating to "Parks and Playgrounds" are applicable to the project and shall be resolved at the time of building permit approval. Also, in accordance with Section 11A-2.2 of the KCC, the Applicant shall submit to the Planning Department an Environmental Impact Assessment Fees (EIA) for the project. The EIA fees are based on \$1,000 per new multi-family unit, and \$100 per the minimum number of parking stalls serving the commercial development components as required by County Code Section 11A-2.2. Both of these fees are due at time of first building permit approval.
3. Applicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project. A copy of this recordation shall be provided to the Planning Department at time of building permit application.
4. Applicant shall provide annual status reports to the Planning Commission beginning from one year from the date of this approval. The reports shall be submitted to the Department no later than 30 days prior to the annual anniversary date of approval of this project. The report shall provide project status and progress towards project completion and compliance with conditions of approval. Annual reports shall be provided until completion of the project, and compliance with all conditions of approval.
5. Applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall complete construction of the project development within 5 years from the date of approval of the subject permits.
6. Subject permits approved herein cannot be sold and are not transferable to other than Applicant, its subsidiaries and affiliated corporations and legal entities prior to the completion of the project and issuance of the occupancy permit.
7. In accordance with Section 8-5.5 of the Kauai County Code, 1987, the Applicant shall provide a grant of easement for all non-leasehold public areas, such as beach parking, multi-use access paths, shower and bench area, cultural/historical preserves and sites, and lateral coastal multi-use beach walk. Said easement document shall also be recorded, with a recorded copy provided to the Planning Department at time of building permit review. All such public areas shall be adequately signed. The 42 public parking stalls shall also be signed, with such signage managed and maintained by the Applicant to ensure that employees and/or guests shall not be utilizing such parking areas. For any leasehold property owned by the applicant such property shall be conveyed to the County only for the duration of the leasehold interest as may be approved by the Planning Department.

Language and signage design shall be subject to Planning Department review and approval.

8. As represented, the Applicant shall:

- a. design the Lobby building within the Mauka Parcel to also function as a hurricane emergency shelter for the project's residents, guests and key employees. Said design shall be as reviewed and approved by the County Civil Defense agency. The Applicant shall also maintain its current bus evacuation plan to accommodate guests who may prefer to evacuate the site during impending hurricane situations.
- b. implement alternate transport system recommendations of the Koloa-Poipu-Kukuiula Area Circulation Plan (KPACP), including a Koloa-Poipu shuttle circulator system targeted to residents, visitors and employees.
- c. implement transportation demand management (TDM) measures for employees which could potentially include ridesharing, transit services, and a transportation allowance.
- d. seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac
- e. develop and implement a demolition and new construction materials recycling program, as reviewed and approved by the Department of Public Works, Solid Waste Division, and DOH.
- f. prepare a drainage report to address the increase in storm runoff as a result of the development. A copy of the drainage report and grading plan approved by the Department of Public Works shall be submitted to the Planning Department.

Filling of the property with material obtained from off-premises shall not be permitted, except as may be necessary to comply with the site drainage and grading requirements as resolved with the Department of Public Works and Planning Department. This prohibition of exported fill material shall not apply to top soil used for landscaping purposes in accordance with the approved landscaped plans. Mass pad filling to increase the heights of the proposed structures shall not be permitted except as resolved with the Department of Public Works and Planning Department.

- g. provide building and architectural design, vehicular access, view corridors, public access, color scheme, and landscaping as represented in the project application or as was amended during the course of the public hearings. Plans for each phase of the project shall be submitted for the review and approval of the Planning Director at time of building permit review.

- h. work with the County Transportation Agency as to the possible relocation of existing bus stops adjacent to the property and for the provision of roof improvements for said bus stops.
- i. place the Hoonani Road utilities serving the project underground.
- j. continue to use its best efforts to work with the County Housing Agency in an effort to develop an agreement for participating in the provision of affordable housing for its employees as may be required by law.
- k. obtain information on the cultural resources of the area once the project's Cultural Focus Group completes its report. Said report shall be provided, and as updated, to the Planning Department.
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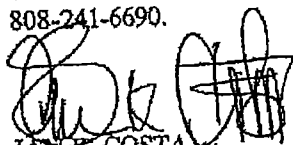
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IAN K. COSTA
Planning Director

cc: DPW Engineering Div.
Water Dept.
State Health Dept.
DLNR-Historic Preservation Div.
Fire Dept.
Finance Dept., Real Property Div.
DOT Hwys

End of Exhibit "B"

EXHIBIT "C"

GREG KAMM PLANNING & MANAGEMENT
P.O. BOX 1200
KOLOA, KAUAI, HAWAII 96756

June 16, 2008

Mr. Ian Costa, Director
Kauai County Planning Department
4444 Rice Street Suite 473
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project (the "Project")
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29 (the "Subject
Permits") TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

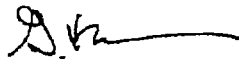
Dear Mr. Costa:

Thank you for taking the time to meet with Eric Crispin, Vice President of Starwood Hotels and Resorts, Jean Camp and myself, along with your Senior Planner, Mike Laureta to discuss the Project and its Subject Permits.

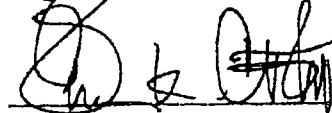
Per your request, this letter, once fully executed, will document the Planning Department's definition of "full approval", as such phrase is used and contained in Condition #5 of the Special Management Area Use Permit SMA-(U)-2007-13 for the Project. As you confirmed, it was the Planning Department's original intent for "full approval" to mean the Applicant's acquirement of all permits and approvals, from all governmental agencies and departments, necessary to allow for all construction approved by the Subject Permits.

In closing, please provide your counter-signature and date below, and return one original to my attention. Mahalo for your on-going help and support.

Very truly yours,



Greg Kamm



Approved as Stated Above
Ian Costa, Planning Director

6/27/08
Date

EXHIBIT "C"

EXHIBIT "D"

RECORDER'S MEMO
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OFFICE OF ASSISTANT REGISTRAR
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/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation, Return by: Mail () Pickup ()

Belles Graham Proudfoot & Wilson (DHW)

4334 Rice Street, Suite 202

Lihue, Kauai, Hawaii 96766

Telephone: (808) 245-4705

T6A 390682 -S
This document contains 8 pages

TYPE OF DOCUMENT:

DECLARATION OF PUBLIC FACILITIES EASEMENTS

PARTIES TO DOCUMENT:

DECLARANTS: SVO PACIFIC, INC. a Florida corporation
8801 Vistana Centre Drive
Orlando, Florida 32821

KAUAI BLUE, INC., a Delaware corporation
1111 Westchester Avenue
White Plains, New York 10604

TAX MAP KEY FOR PROPERTY:

(4) 2-8-015-043, (4) 2-8-015-044, (4) 2-8-015-082 and (4) 2-8-016-004

DECLARATION OF PUBLIC FACILITIES EASEMENTS

This Declaration of Public Facilities Easements is made effective this 23rd day of May, 2008, by SVO PACIFIC, INC., a Florida corporation, whose mailing address is 8801 Vistana Centre Drive, Orlando, Florida 32821 ("SVO"), and KAUAI BLUE, INC., a Delaware corporation, whose mailing address is 1111 Westchester Avenue, White Plains, New York 10604 ("Kauai Blue"), hereinafter collectively called the "Declarants."

I. RECITALS

A. SVO is the owner of certain property located in District of Koloa, Island and County of Kauai, State of Hawaii described as (a) Lot 89, as shown on Map 18, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii ("Land Court") with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-043, being a portion of the property described in Transfer Certificate of Title No. 797,564, (b) Lot 88, as shown on Map 18, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-044, being a portion of the property described in Transfer Certificate of Title No. 797,564, and (c) Lot 217-C, as shown on Map 71, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-015-082, being the property described in Transfer Certificate of Title No. 797,563.

B. Kauai Blue is the owner of certain property located in District of Koloa, Island and County of Kauai, State of Hawaii described as Lot 267, as shown on Map 67, filed in the Land Court with Land Court Application No. 956, identified by Kauai Tax Map Key No. (4) 2-8-016-004, being the property described in Transfer Certificate of Title No. 687,179.

C. The properties described herein are collectively referred to herein as the "Declarants' Property."

D. The Declarants' Property is a portion of the property that is the subject of Special Management Area Use Permit SMA(U)-2007-13, Project Development Use Permit PDU-2007-25, and Class IV Zoning Permit Z-IV-2007-29 (collectively the "Permits"), all approved by the Planning Commission of the County of Kauai, State of Hawaii (said County being hereinafter referred to as the "County") by that certain unrecorded letter dated October 10, 2007 (the "Permit Approval Letter").

E. Pursuant to the rights granted under the Permit Approval Letter, the Declarants intend to construct a resort vacation project (the "Declarants' Project").

E. As one of the conditions to the granting of approval of the Permits, the Declarants are required to establish certain easements for all non-leasehold public areas as more particularly described in the Permit Approval Letter.

II. DECLARATION OF EASEMENT

Pursuant to the foregoing Recitals, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, and subject to all of the terms, conditions and

limitations contained herein, the Declarants do hereby declare the following areas to be public easements for the following purposes:

(A) Easement A-1, being a perpetual, non-exclusive easement for public pedestrian access purposes around the entire perimeter of the Declarants' Property.

(B) Easement A-2, being a perpetual, non-exclusive easement for public vehicular and pedestrian access purposes.

(C) Easement A-3, being a perpetual, non-exclusive easement for public pedestrian access purposes to the burial site located within this Easement Area.

(D) Easement A-4, being a perpetual, non-exclusive easement for public pedestrian access purposes.

(E) Easement P-1, being a perpetual, non-exclusive easement for public vehicular parking purposes in compliance with the terms and conditions of the Permits.

(F) Easement H-1, being a perpetual, non-exclusive easement for historic preserve and public pedestrian access purposes.

The foregoing easements shall be referred to herein as the "Easement" or the "Easements," depending on the context.

The Easements are located approximately as shown on the map attached hereto and incorporated herein by reference as Exhibit "A." The portion of the Declarants' Property subject to the Easements shall be referred to hereinafter as the "Easement Areas" or the "Easement Area," depending on the context.

EXCEPTING AND RESERVING HOWEVER, from this Declaration the right of the Declarants to make use of the land within the Easement Areas in any manner which is not inconsistent with the Easement purposes described herein and the right to grant other easements within the Easement Areas for such purposes as are not inconsistent with and will not unreasonably interfere with the public rights hereunder.

This Declaration is made on the following terms and conditions:

1. Intent. The Declarants' intention is to establish the Easements to be used by the County and the general public for the purposes stated herein, subject to the terms and conditions contained in this Declaration.

2. Improvements Within Easement Area. The Declarants shall construct, install, maintain, reconstruct, replace and repair such specific improvements within the Easement Areas in furtherance of the purposes described herein as shall be appropriate and, if necessary, as approved in advance by the appropriate governmental agency. The Declarants shall have the right to construct, install, maintain, reconstruct, replace and repair additional improvements or utilities within the Easement Areas, and to install and maintain vegetation within the Easement Areas, provided such vegetation or

improvements do not unreasonably interfere with public's rights hereunder or the public's use of the Easement Areas.

3. Condemnation. If at any time the Easement Areas, or any part thereof, shall be condemned or taken for any public project by any governmental authority, the County shall have the right to claim or recover from the condemning authority, but not from the Declarants or either of them, such compensation as is payable for the Easement and the rights granted herein.

4. Relocation of Easement Areas. The Declarants reserve the right from time to time to relocate any portion or all of the Easement Areas to a new location(s) within the Declarants' Property.

5. Designation of Land Court Easements; Grant of Easement For Public Facilities. It is understood that after construction of the improvements authorized under the Permit Approval Letter or as may be further authorized by the County Planning Commission pursuant to a final consolidation approval for the Declarants' Property, and after designation of the Easement Areas on an appropriate Map approved by the Land Court of the State of Hawaii (the "Land Court"), the Declarants and the County will enter into one or more formal "Grant(s) of Easement For Public Facilities" on substantially the same terms and conditions contained herein and describing the Easement Areas in detail, consistent with the approved Land Court Map designating the Easement Areas. The Declarants agree to submit the appropriate Map and Petition to the Land Court to designate the Easement Area(s) located in each Phase of the Declarants' Project prior to the issuance by the County of a Certificate of Occupancy for that Phase of the Declarants' Project. Not later than forty-five (45) days after Land Court approval of the said Map and Petition for such Phase of the Declarants' Project, the Declarants shall deliver in recordable form to the County Planning Department a Grant of Easement For Public Facilities for such Phase of the Declarants' Project.

6. Exercise of Rights. The Declarants and all members of the general public shall exercise their respective rights hereunder in such manner as to occasion as little interference as reasonably necessary with the use of the Easement Areas by the other party.

7. County's Indemnification. This Declaration is made on the express condition that the County and the County's agents, servants, employees, invitees and guests, and the general public, will use the Easements at their sole risk, and that the County will indemnify, defend and hold harmless the Declarants and their respective successors and assigns against any and all claims and demands for any liability, costs, expenses, attorneys' fees, loss, damage or injury to persons or property, including the claims of its agents, servants, employees, invitees and guests that shall or may arise by reason of the use of the Easement by the County and the County's agents, servants, employees, invitees, or guests, except to the extent such claims or demands arise by reason of the Declarants' own gross negligence or willful misconduct.

8. Condition of Easement Area. The Declarants have not made and do not make any representation or warranty with respect to the condition of the Easement Areas, and the Easement Areas shall be used and enjoyed by the public in their "as is" condition.

9. Limitation of Use.

a. The County's and the general public's rights hereunder shall be strictly limited to those necessary to allow the County or the general public to utilize the Easement Areas for the purposes

intended and described above. Such rights hereunder shall be limited to those uses legally permitted on the Easement Areas and for no other purposes. The Declarants, for themselves and their respective successors and assigns, reserve the right to peaceably remove any person: (a) who has caused or is causing a public nuisance within or in the immediate vicinity of the Easement Areas or (b) whose actions are illegal or in violation of the terms of this instrument.

b. In addition to the general terms stated in the preceding paragraph 9.a, use of the entire Easement Areas by the County and the general public shall be restricted as follows:

(1) Hours of use of the Easement Areas under this Declaration shall be limited to daylight hours (i.e., sunrise to sunset); and

(2) Normal community standards of dress and behavior shall be required by all persons using the Easement Areas pursuant to this Declaration.

c. The Declarants reserve the right to remove any vehicle that is parked or abandoned within the Easement Areas for an unreasonable amount of time.

10. Maintenance. The Declarants shall be solely responsible for maintaining and repairing the improvements in the Easement Area in good and safe repair and condition. The Declarant shall place and maintain adequate signage, and with regard to the vehicular parking area such signage shall clearly indicate that the parking area is for public parking and not for the Declarants' employees and/or guests.

11. Service of Notice. Any written notice or request required or authorized to be served hereunder shall be deemed delivered and received either upon the actual personal receipt thereof by the receiving party or within five (5) business days after the notice has been posted with the U.S. Mail, return receipt requested, addressed to the receiving party at its address as stated herein, or at such other address as the receiving party may have previously designated to the sending party in writing.

12. Severability. If any term or provision of this Declaration is determined by a court or competent jurisdiction to be illegal, invalid or unenforceable for any reason whatsoever, such illegality, invalidity or unenforceability shall not affect the legality, validity or enforceability of the remainder of this Declaration.

13. Headings For Reference Only. The headings of the sections and subsections herein are inserted only for convenience and reference and shall in no way define, limit or describe the scope or intent of any provision of this Declaration.

[text continued on next page]

14. Counterparts. This Declaration may be executed simultaneously in two or more counterparts, each of which shall be deemed on original, but all of which together shall constitute one and the same instrument. Signature pages from separate signed copies may be attached to a single copy for purposes of recording.

15. Interpretation. This Declaration shall be interpreted in accordance with the laws of the State of Hawaii.


16. Terms. The term "Declarants" as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation, and the Declarants and each of their respective devisees, successors in trust, successors, heirs, personal representatives and assigns, according to the context thereof.

17. HRS Chapter 520. It is intended that this Declaration will promote the purposes of Hawaii Revised Statutes Chapter 520 by making land and water areas available to the public for recreational purposes, and as a result that the Declarants will be eligible for the limitations in liability set forth in said Chapter 520.


IN WITNESS WHEREOF, the Declarants have executed this Declaration of Public Facilities Easements effective as of the date written above.

DECLARANTS:

SVO PACIFIC, INC., a Florida corporation

By 
Name: DENIS EBRILL
Its: SR. VICE PRESIDENT

KAUAI BLUE, INC., a Delaware corporation

By 
Name: DENIS EBRILL
Its: SR. VICE PRESIDENT

STATE OF FLORIDA)
) SS:
COUNTY OF ORANGE)

On this 23RD day of MAY, 2008, before me appeared DENIS EGBAILL, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



CHRISTINE MALONEY
MY COMMISSION # DD 424478
EXPIRES: September 1, 2009
Bonded thru Budget Notary Services

Christine Maloney

Name of Notary: CHRISTINE MALONEY
Notary Public, In and For Said State and County.

My commission expires: 09/01/09

STATE OF FLORIDA)
) SS:
COUNTY OF ORANGE)

On this 23RD day of MAY, 2008, before me appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.



CHRISTINE MALONEY
MY COMMISSION # DD 424478
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Name of Notary: CHRISTINE MALONEY
Notary Public, In and For Said State and County.

My commission expires: 09/01/09

EXHIBIT "A"

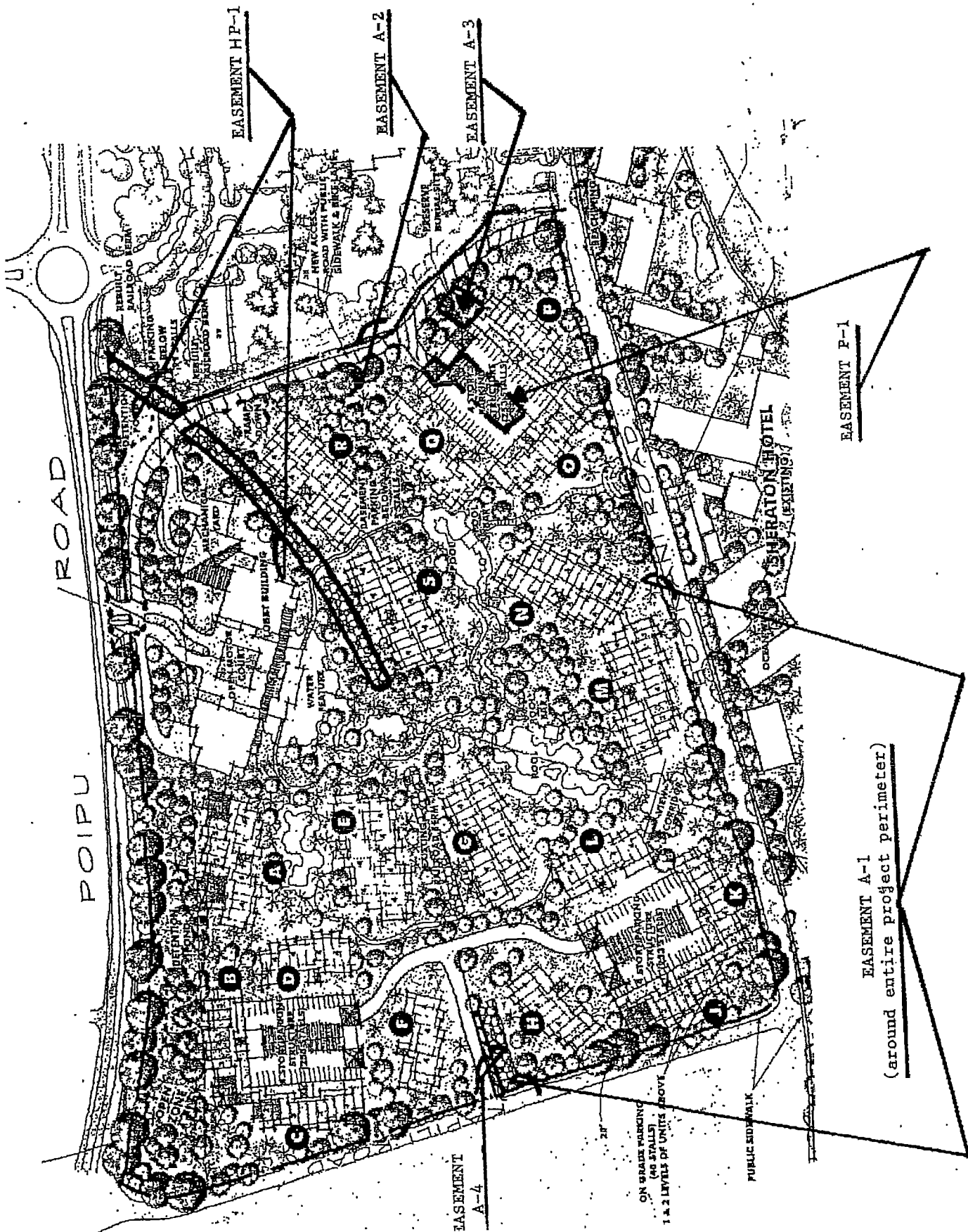


EXHIBIT "E"



BRYAN BAPTISTE, Mayor
MARK B. L. MARSHALL, Administrator

**KAUAI CIVIL DEFENSE AGENCY
COUNTY OF KAUAI**

3990 Kaana Street, Suite 100
Lihue, HI 96766



Box: (808) 241-1800
FAX: (808) 241-1860
e-mail: omops@kcda.state.hi.us

August 31, 2007

The Honorable Theodore Daligdig III, Chairman, and Members
Kauai County Planning Commission
4444 Rice Street
Lihue, Kauai, HI 96766

Attn: Mike Laureta, Planner

RE: Sheraton Kauai Expansion Project Permit Applications

Dear Chairman Daligdig and Members of the Commission:

I am writing to comment on the subject applications as it deals with hurricane treat to the subject property.

Mr. Jim Neely of Starwood and Mr. Greg Kamm, planning consultant, met with me to seek my advice and comment relative to the design of the project and operational response to hurricane advisories, watches, warnings, and actual events. They indicated the Planning Commission had raised this question during a recent hearing, so they wanted input from the Civil Defense Agency.

I have already met with Mr. Nick Arruda, Director of Security for the Sheraton Kauai, and his staff several times and have apprised him of our Agency's preferences and concerns. Their current plan is to use chartered buses (already under contract to Sheraton) to evacuate to a Public Shelter. This new initiative builds on that previous approach and provides an opportunity to expand and "build in" solutions to this resort expansion project.

As you are aware, there is a significant shortage of emergency shelter space on the island. Although both Kauai Community College and the Kauai War Memorial Convention Hall are public shelters, available to all, in light of the overall shortage, we would like to see additional alternatives become available. Accordingly, where possible and appropriate, Civil Defense is recommending "Shelter in Place on Site." In this instance, particularly for hurricanes, it appears that portions of Sheraton's new mauka lobby building will be able to accommodate most or all of the approximately 1,500 visitors and employees, including the key staff members families, whom we have learned from experience, need to be sheltered on property to keep the key staff on the property.

EXHIBIT "E"

The Honorable Theodore Dalligdig III, Chairman, and Members
August 31, 2007
Page 2

The sub-grade parking garage can be made suitable to house these visitors and staff during and possibly after a hurricane event. After the event, the lower level of the building (one level above the garage) will allow expansion of available space and a greater degree of comfort.

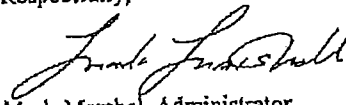
Sheraton appears ready to undertake the needed facilities program modifications to make the building have a greater wind-resistance factor, as well as the needed utilities to serve the occupants.

At the same time, some guests may prefer to evacuate, to reach a shelter closer to the airport to facilitate departure from the island. Given the advances in prediction of hurricanes out to a window of at least several days, these two strategies, when paired, represent a reasonable response to a hurricane threat.

On this basis, the County Civil Defense Agency recommends the Commission's approval of the expansion, subject to the condition that both programs of hardening and upgrading the lobby building and maintaining the bus evacuation option be conditions of that approval.

It is rare that a resort takes such forward-thinking measures, so I am pleased to be able to write this letter.

Respectfully,



Mark Marshal, Administrator
Kauai Civil Defense Agency

c: Mr. Jim Neely, Starwood, 808-665-0495 fax
Mr. Eric Crispin, Starwood, 808-924-5039 fax
Mr. Greg Katm, GK P&M 808-742-1751 fax

EXHIBIT "F"

GREG KAMM PLANNING & MANAGEMENT
P.O. BOX 1200
KOLOA, KAUAI, HAWAII 96756

voice: 808-742-1144 cell: 808-639-1144 fax 808-742-1751

May 20, 2008

Mr. Donald Fujimoto, County Engineer
Kauai County Department of Public Works
4444 Rice Street Suite 275
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

Dear Donald:

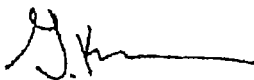
Condition 8.d. of the subject permits requires the Applicant to "seek County authorization to refurbish and maintain the existing comfort station located at the southeastern end of the Hoonani Road cul-de-sac."

This letter is our request for authorization to undertake steam-cleaning of all surfaces, repainting of the structure in a color similar to the existing, and replacement of any fixtures or fittings which are required.

Thereafter, Sheraton Kauai/Starwood will maintain the comfort station to a standard appropriate to the quality destination which Poipu has become.

Please authorize us to proceed and contact me with any questions,

Very truly yours,



Greg Kamm for Starwood Hotels & Resorts

cc: Sheraton Kauai/Starwood Compliance Team

EXHIBIT "F"

EXHIBIT "G"

GREG KAMM PLANNING & MANAGEMENT
P.O. BOX 1200
KOLOA, KAUAI, HAWAII 96756

May 20, 2008

Mr. Ian Costa, Director
Kauai County Planning Department
4444 Rice Street
Suite 473
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

attn.: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

Condition 9 of the subject permits reads as follows:

9. *In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.*

In addition, the Applicant shall continue the landscape theme already established on the makai side of

EXHIBIT "G"

Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association regarding foliage along Poipu Road prior to Department review of the landscaping plan.

Starwood Hotels/Sheraton Kauai met with the PBRA Board on the morning of May 8, 2008. Our landscape architects, Walters, Kimura, Motoda, Inc. presented the conceptual landscape plan to Board. There was a healthy exchange of ideas, and ultimately the Board expressed support that Sheraton was going to upgrade Poipu Road.

As you recall, Eric Crispin and I met with you and Donald Fujimoto on the afternoon of May 8, 2008 and delivered the landscape plan we had presented to PBRA that morning. This constituted submission of the plans called for in the above condition. We understood from the meeting that both the landscape plans and the rural roadway and sidewalk sections for Poipu and Kapili Roads and the "landscape bulb" section for Ho'onani Road were acceptable to both key departments, so we are moving forward on the construction documents on that basis.

The only item remaining to fully comply with this condition is submittal of a color scheme for the structures. We will be submitting that shortly, but you may rest assured the scheme will follow the condition's directive of utilizing "earth tones."

For your convenience, attached is a copy of the same landscape brochure we presented to PBRA and to you.

Please contact me with any questions.

Sincerely,



Greg Kamm
for Sheraton Kauai

encl.

cc w/o encl.: Sheraton Kauai/Starwood

EXHIBIT "H"

STARWOOD
HOTELS & RESORTS WORLDWIDE, INC.

May 29, 2008

Donald M. Fujimoto, P.E.
County Engineer, Director, Dept of Public Works
County of Kauai
Mo'ikeha Building
4444 Rice Street Suite 275
Lihue, Kauai, HI 96766

RE: Sheraton Kauai Resort Expansion Project
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.
And
Consolidation of Land Court Application 956, Lot 267 (Map 67), Lot 217-C
(Map 71) and Lots 88 and 89 (Map 18) into Lot A, at Koloa, Kauai, Hawaii.
(S-2007-38, SVO Pacific, Inc./Kauai Blues, Inc.).

Dear Mr. Fujimoto:

This letter is to formally transmit our Draft drawings dated 8 May 2008 for the Sheraton Kauai Resort expansion, as reviewed and discussed at our meeting on May 9, 2008 at our Starwood office in Honolulu, which was in follow-up to our earlier discussion on April 11, 2008 with Greg Kamm, Wally Kudo and Deputy Ed Renaud at your office.

In the letter to Ron Wagner dated Nov. 28, 2007 granting Tentative Approval of the Consolidation, Condition 1.b.(2) reads as follows:

(2) [Applicant shall] Widen and improve Po'ipu Road, Kapili Road, and Ho'onani Road with curbs, gutters, and sidewalks in accordance with the Department of Public Works roadway standards;



By way of summary of our discussions on this topic, the following are highlights as agreed upon:

- **Generally:**
 - Rather than implementing an "urban section" of curbs, gutters, and sidewalks as called for above, we will provide a "rural section" more typical of and in keeping with the Poipu Resort area. The rural section will reflect the drawings prepared by Walters Kimura Motoda, Inc. dated May 8, 2008 (attached): e.g. roadway bordered by grass swale, small landscaped berm, sidewalk, and large, undulating landscaped berm. Further, "widen" is intended to mean a widening of the ROW, but not necessarily widening the pavement.
- **Poipu Road:**
 - Will follow "rural section" with grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), undulating berm (berm undulates both vertically and horizontally).
- **Kapili Road:**
 - Will follow "rural section" with grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), landscaped berm.
- **Beach Access Road:**
 - This private driveway will have a public access easement. The design will follow the same "rural section" with landscaping bordering Kiahuna Plantation, followed by roadway, grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), and an undulating berm. On this driveway, once we get to final engineering, we may accommodate the bicycles in a bike lane instead of a shared use path, but they will be accommodated.
- **Ho'onani Road:**
 - Will have curbs, gutters, sidewalk. Note as discussed, the existing street parking will remain, and we plan to create landscaping "bulb-outs" to protect the parking, enhance the landscaping, and to provide the perception of a slightly narrower road. As discussed, the existing wide pavement causes drivers to accelerate on this dead-end road and creates a danger to pedestrians going to the beach; the landscaped bulb-outs will create defined "pockets" for street parking while give the perception of a narrower, calmer, quieter, and hopefully safer road. We anticipate minimal, if any, loss of street parking stalls by doing this significant improvement. At the same time it will enhance the road's appearance.

Mr. Donald Fujimoto
Page 3

Construction Sequencing

We plan to begin construction of the resort expansion at the currently undeveloped land in the corner of Poipu Road and Kapili Road.

- **Initial Construction**

We plan on beginning construction in the vacant parcel located in the corner of Poipu Road and Kapili Road, making the sidewalk and landscaping improvements, providing continuity to our neighboring properties (Koloa Landing to the West and Kiahuna Plantation to the East). We will also plan on providing landscaping and sidewalk improvements along Kapili Road, connecting the new development to our existing Resort.

- **Further Construction**

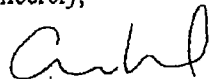
After completion of Initial Construction, we plan to subsequently build the remaining elements of the Resort as indicated in our site plan, implementing the new Beach Access Road and the undergrounding of utilities / landscaping on Ho'onani Road, to coincide with the future phases of development, which call for demolition of the existing Garden Wing hotel rooms and facilities.

Please note that we have met with Planning Director Ian Costa about this approach and his reaction toward this design was favorable.

We understand, based on our meetings with you and your staff, that the approach outlined above and shown in the attached drawings meet with your approval, and we will proceed accordingly.

Please contact me if this is not your understanding, We invite you to call me to coordinate any questions you may have.

Sincerely,

 for ERIC CRISPIN

Eric Crispin
Vice President, Development - Hawaii
Starwood Hotels & Resorts Worldwide, Inc

encl.

by email w/o encl.: Mike Fujita, WOC
Larry Cunha, WCIT
Greg Kamm GKP&M
Jean Camp CC LLC
Mike Williams Starwood
Jim Neely Starwood
T. Sunnarborg Starwood

EXHIBIT "I"

**GREG KAMM PLANNING & MANAGEMENT
P.O. BOX 1200
KOLOA, KAUAI, HAWAII 96756**

voice: 808-742-1144 cell: 808-639-1144 fax 808-742-1751

May 29, 2008

Mr. Ian Costa, Director
Kauai County Planning Department
4444 Rice Street
Suite 473
Lihue HI 96766

via hand delivery

RE: Sheraton Kauai Resort Expansion Project
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

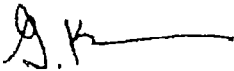
attn.: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

In compliance with condition 8.k. of the above-referenced permits, I am pleased to enclose one copy of the Hawaiian Cultural Plan for the Sheraton-Poipu Beach Villas, prepared by the Peter Apo Company in cooperation with the Cultural Focus Group assembled for this effort.

Please contact me with any questions.

Very truly yours,



Greg Kamm

encl.

cc w/o encl via email: Sheraton Kauai
Starwood Compliance Team

EXHIBIT "I"

EXHIBIT "J"

STARWOOD

April 23, 2008

Mr. Ian Costa, Director
Kauai County Planning Dept.
4444 Rice St.
Building A Suite 473
Lihue, Kauai, HI 96766

Subject: Sheraton Kauai Resort
Special Management Area Use Permit SMA (U)-2007-13
Class IV Zoning Permit Z-IV-2007-29
SVO Pacific, Inc. Applicant
Tax Map Key 2-8-15:43, 44, 82, and 2-8-16:3 & 4 Poipu, Kauai

Re: Condition No. 8.m - Dust Mitigation Protocol

Dear Mr. Costa:

This letter is to document Starwood's compliance with SMA Condition No. 8.m for the subject property, which states:

"m. follow the dust mitigation protocol established by the Dust Hui during construction of the project. A current copy of said protocol shall be provided to the Department."

Starwood has been a founding member of the Dust Hui which was formed in conjunction with Kukui'ula, Goodfellow Brothers, Koioa Landing, and KMP. The Dust Hui protocol was created in the Spring of 2007, and has been managed and implemented on various job sites by Ms. Patti Melziener in accordance with the following Protocol:

1. Best Management Practices are put into place: Dust fence, sprinklers installed to keep down dust, earthwork contractors hose down site work during earth moving operations.
2. Hot line number is set up (Ideally same number as the existing number).
3. Phone calls received by that number are logged as to caller, address, date, time, nature of complaint
4. A personal site visit is then conducted by the "Dust Mitigation Officer" to assess the damage, verify complaint
5. Individual who files the complaint obtains one or more cost estimates for mitigation - i.e. car wash, power wash/cleaning of individual home, other measures as deemed necessary.

STARWOOD

W

WESTIN

EXHIBIT "J"

6. Dust Mitigation officer reviews and authorizes the work to be done.
7. Individual pays for the work and work is performed
8. Developer reimburses the individual for the authorized work

This letter is to inform you that SVO Pacific, Inc. will adhere with the above Dust Mitigation Protocol or as may be subsequently amended.

Should you have any questions, please feel free to contact me at (808) 689-3691.

Yours very truly,
SVO PACIFIC, INC.

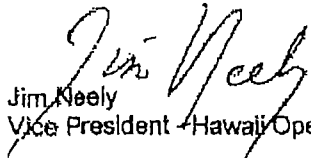

Jim Neely
Vice President - Hawaii Operations

EXHIBIT "K"

GREG KAMM PLANNING & MANAGEMENT
P.O. BOX 1200
KOLOA, KAUAI, HAWAII 96756

May 20, 2008

Mr. Ian Costa, Director
Kauai County Planning Department
4444 Rice Street
Suite 473
Lihue HI 96766

RE: Sheraton Kauai Resort Expansion Project
Special Management Area Use Permit SMA-(U)-2007-13
Project Development Use Permit PDU-2007-25
Class IV Zoning Permit Z-IV-2007-29
TMKs: 2-8-16:3 & 4 and 2-8-15: 82, 43 & 44.

attn.: Mr. Mike Laureta, Senior Staff Planner

Dear Mr. Laureta:

Condition 9 of the subject permits reads as follows:

9. *In order to help screen the structure from public views as seen from public areas, and to blend the structures with its surroundings, external colors shall be of earth tones, complementary to the existing Sheraton Kauai Resort buildings within the Makai Parcel and compatible with the surrounding natural background. In addition, the Applicant shall prepare a landscape plan to further soften the existing building mass. The landscape plan shall reflect the use of native plants that are common to the area, endemic, indigenous, or Polynesian-introduced. The proposed color scheme and landscape plan shall be submitted to the Planning Department for review and approval prior to building permit review.*

In addition, the Applicant shall continue the landscape theme already established on the makai side of

Poipu Road, and which the Commission has required of other properties located along Poipu Road, while honoring the commitment to preserve the view corridors over this property and down Kapili Road as represented by the Applicant. Applicant shall consult with the Poipu Beach Resort Association regarding foliage along Poipu Road prior to Department review of the landscaping plan.

Starwood Hotels/Sheraton Kauai met with the PBRA Board on the morning of May 8, 2008. Our landscape architects, Walters, Kimura, Motoda, Inc. presented the conceptual landscape plan to Board. There was a healthy exchange of ideas, and ultimately the Board expressed support that Sheraton was going to upgrade Poipu Road.

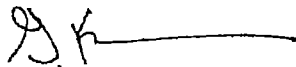
As you recall, Eric Crispin and I met with you and Donald Fujimoto on the afternoon of May 8, 2008 and delivered the landscape plan we had presented to PBRA that morning. This constituted submission of the plans called for in the above condition. We understood from the meeting that both the landscape plans and the rural roadway and sidewalk sections for Poipu and Kapili Roads and the "landscape bulb" section for Ho'onani Road were acceptable to both key departments, so we are moving forward on the construction documents on that basis.

The only item remaining to fully comply with this condition is submittal of a color scheme for the structures. We will be submitting that shortly, but you may rest assured the scheme will follow the condition's directive of utilizing "earth tones."

For your convenience, attached is a copy of the same landscape brochure we presented to PBRA and to you.

Please contact me with any questions.

Sincerely,



Greg Kamm
for Sheraton Kauai

encl.

cc w/o encl.: Sheraton Kauai/Starwood

EXHIBIT "L"

LINDA LINGLE
GOVERNOR OF HAWAII



6-22-07

ALLAN A. SMITH
CHAIRMAN
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PETER YOUNG
DEPUTY DIRECTOR - LAND

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
HABITAT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAMOOLOA WILDLIFE RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLEI, HAWAII 96707

June 19, 2007

Hallett Hammatt, Ph.D.
Cultural Surveys Hawai'i
Post Office Box 1114
Kailua, Hawai'i 96734

LOG: 2007.1965
DOC: 0706NM35
Archaeology

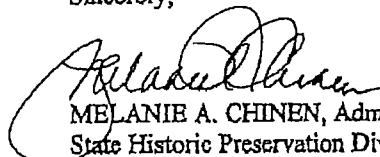
Dear Dr. Hammatt:

SUBJECT: Chapter 6E-42 - Historic Preservation Review - Preservation Plan and Reconstruction Plan for Site 50-30-10-0947 a Railroad Berm in Koloa (CSH, Hammatt and Shideler May 2007) Koloa Ahupuaa, Kona District, Kauai
TMK: [4] 2-8-015; 082

Thank you for submitting the aforementioned preservation and reconstruction plan for the railroad berm at the Sheraton Kauai Hotel by CSH, Hammatt and Shideler (2007). The plan calls for four breaches in the berm, three stabilization areas, and two reconstruction locations along the berm. Billy Fields is the overseer of the stabilization and reconstruction work on the berm. The Kauai Historic Preservation Review Commission in their June 2007 meeting approved of this plan. The plan includes interim and long-term measures which are acceptable. The plan is acceptable.

If you have any questions, please call Nancy McMahon our Kauai and Molokai Archaeologist who reviewed this plan at (808) 742-7033.

Sincerely,


MELANIE A. CHINEN, Administrator
State Historic Preservation Division

NM:jen

c: Greg Kamm, Greg Kamm Planning and Management
KHPRC

EXHIBIT "L"

EXHIBIT "M"

LINDA LINGOLE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLAHAWA, HAWAII 96707

ALLAN A. SMITH
SYSTEM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

PETER T. YOUNG
DEPUTY DIRECTOR

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONSERVATION
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CONSERVATION AND RESOURCES INFORMATION
ENHANCEMENT
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

July 9, 2007

Hallett Hammatt, Ph.D.
Cultural Surveys Hawai'i
Post Office Box 1114
Kailua, Hawai'i 96734

LOG: 2007.1971
DOC: 0707NM02
Archaeology

Dear Dr. Hammatt:

Subject: Chapter 6E-42 - Historic Preservation Review - Archaeological Data Recovery for
SIHP No. 50-30-010-0362 at the Proposed Starwood Vacation Ownership
Development Project, Koloa Ahupuaa, Kona District, Island of Kauai (CSH,
Tulchin and Hammatt May 2007)
TMK: [4] 2-8-015: 43, 44, 82

Thank you for submitting the above cited archaeological data recovery report by Cultural Surveys Hawai'i (Tulchin and Hammatt) which we received on June 7, 2007. Site -0362 is a temporary habitation site where further archaeological work was done to gather information about construction and stone tool exchange patterns and age. Your research concludes that the method of construction was a base course on basalt bedrock. You have also included that construction of the hearth occurred after the construction of the enclosure. Furthermore, this report concludes that the tools originated from a local source from Koloa. The radiocarbon dates suggest the site dates from 1410 AD to modern.

The report is acceptable and is accepted as final. In the future, we recommend that when dating wood samples you also include a discussion identifying the wood type. If you have any questions, please call Nancy McMahon our Kauai and Molokai Archaeologist who reviewed this plan at 808-742-7033.

Sincerely,

Melanie A. Chinen, Administrator
State Historic Preservation Division

NM:

EXHIBIT "M"