

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

February 9, 2026

Agency comments received by the Planning Department as of February 9, 2026, 9:00 am for the February 10, 2026, Planning Commission meeting regarding the following item:

**G.2.a. CLASS IV ZONING PERMIT (Z-IV-2026-8) and VARIANCE PERMIT (V-2026-2)** involving a 20-lot subdivision, to allow a deviation from the requirement relating to the construction of curbs, gutters, and sidewalks for residential subdivision, for parcels immediately adjacent to the Koloa Estate Subdivision, situated along the western side of Lopaka Paipa Boulevard in Koloa, , further identified as Tax Map Keys: (4) 2-6-014:041 & 046; 2-6-015:005, and containing a total area of 6.064 acres = **MAKAI KOLOA LLC. [Director's Report Received, 1/28/2026].**



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

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

12/2/2025

SUBJECT: Zoning Class IV Z-IV-2026-8  
 Variance Permit V-2026-2  
 Applicant: Makai Koloa, LLC. (Lindsay Crawford, Authorized Agent)  
 Makai Koloa LLC

TO:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> State Department of Transportation - STP  | <input checked="" type="checkbox"/> County DPW - Engineering     |
| <input checked="" type="checkbox"/> State DOT - Highways, Kauai (info only)   | <input type="checkbox"/> County DPW - Wastewater                 |
| <input type="checkbox"/> State DOT - Airports, Kauai (info only)              | <input type="checkbox"/> County DPW - Building                   |
| <input type="checkbox"/> State DOT - Harbors, Kauai (info only)               | <input type="checkbox"/> County DPW - Solid Waste                |
| <input checked="" type="checkbox"/> State Department of Health                | <input type="checkbox"/> County Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture                      | <input checked="" type="checkbox"/> County Fire Department       |
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| <input type="checkbox"/> State DLNR - Conservation & Coastal Lands            | <input type="checkbox"/> UH Sea Grant                            |
| <input type="checkbox"/> State DLNR - Commission on Water Resource Management |  |
| <input type="checkbox"/> Office of Hawaiian Affairs                           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

*will need Hydrant locations to approve Plans.*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 1/13/2026 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!



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

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

12/2/2025

SUBJECT: Zoning Class IV Z-IV-2026-8  
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FOR YOUR COMMENTS (pertaining to your department)

12.15.2025

CTA HAS NO FURTHER COMMENT ON THIS PROJECT.

MAHALO!

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

DEC 19 '25 AM 9:38  
 PLANNING DEPT

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

12/2/2025

SUBJECT: Zoning Class IV Z-IV-2026-8  
 Variance Permit V-2026-2  
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FOR YOUR COMMENTS (pertaining to your department)

*\* Please see Wastewater Comments*

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 1/13/2026 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!



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

DATE: Dec 16, 2025  
TO: To whom it may concern  
FROM: Ellis Jones  
District Environmental Health Program Chief  
SUBJECT: RESPONSE\_Makai Koloa LLC\_Z-IV-2026-8

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

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

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

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

**Clean Air Branch**

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

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

#### **Clean Water Branch**

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

#### **Hazard Evaluation & Emergency Response Office**

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

#### **Indoor and Radiological Health Branch**

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

#### **Safe Drinking Water Branch**

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

#### **Solid & Hazardous Waste Branch**

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

electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.

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

### **Wastewater Branch**

Wastewater Branch has no objections to the proposed zoning permit or Variance permit. Makai Koloa LLC will still need to comply with the DOH Wastewater Branch requirements listed in Preliminary Subdivision approval letter for S-2025-2; Makai Koloa, LLC dated April 10, 2025 Kukui'ula Parcel Q Subdivision.

Please contact DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto:doh.wwb@doh.hawaii.gov).

### **Sanitation / Local DOH Comments:**

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

### **Other**

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

*Ellis Jones*

*Ellis Jones*

District Environmental Health Program Chief  
Office Phone: (808) 241-3326



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

FROM: Kaaina S. Hull, Director

Planner: Kenneth Estes

12/2/2025

SUBJECT: Zoning Class IV Z-IV-2026-8  
 Variance Permit V-2026-2  
 Applicant: Makai Koloa, LLC. (Lindsay Crawford, Authorized Agent)  
 Makai Koloa LLC

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| <input type="checkbox"/> Office of Hawaiian Affairs                           | <input type="checkbox"/> Other:                                  |

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 1/13/2026 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!

## Kenneth Estes

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**From:** Thirugnanam, Jeyan <jeyan.thirugnanam@hawaii.gov>  
**Sent:** Friday, December 5, 2025 2:15 PM  
**To:** Kenneth Estes  
**Cc:** Ho, Tracy T; Nikaido, Blayne H; Leonillo, Robert P; Fong, Kirk  
**Subject:** Makai Koloa LLC - Z-VAR (25-217)"  
**Attachments:** LUT - STP 00961.25 Makai Koloa LLC - Z-VAR (25-217) (part 2) - signed.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

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.

Hi Kenneth,

HDOT Highways has no comments.

Thanks,  
Jeyan Thirugnanam  
HDOT Highways Land Use Permits Review

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# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

February 9, 2026

Agency comments received by the Planning Department as of February 9, 2026, 9:00 am for the February 10, 2026, Planning Commission meeting regarding the following item:

**G.2.c. CLASS IV ZONING PERMIT (Z-IV-2026-10) and VARIANCE PERMIT (V-2026-3)** involving a 18-lot subdivision, to allow a deviation from the requirement relating to the construction of curbs, gutters, and sidewalks for residential subdivision, for a parcel situated along the makai side of Ala Kukui'ula in the Kukui'ula Master Plan Community, approximately ¾-mile west of its intersection with Ala Kalanikaumaka, further identified as Tax Map Key: (4) 2-6-023:040, and containing a total area of 114.47 acres = **BBCP KUKUIULA DEVELOPMENT LLC. [Director's Report Received, 1/28/2026].**



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

FEB 9 '26 AM 9:52  
 PLANNING DEPT

FROM: Kaaina S. Hull, Director

12/26/2025

SUBJECT: Zoning Class IV Z-IV-2026-10  
 Variance Permit V-2026-3  
 Tax Map Key: 26023040  
 Applicant: BBCP Kukuiula Development LLC (Mauna Kea Trask, Esq., Authorized Agent)  
 CLASS IV ZONING PERMIT (Z-IV-2026-10) and VARIANCE PERMIT (V-2026-3)

TO:

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FOR YOUR COMMENTS (pertaining to your department)

We have reviewed the application for the subject Class IV Zoning and Variance Permits at TMK: (4) 2-6-023:040 (Applicant: BBCP Kukuiula Development LLC). We have no objections to the request to remove sidewalk in the areas shown on the variance permit request. Specifically, Exhibit "L" shows that sidewalk would be constructed on the east side of Ala Haku Lei Loop, but the requirement for sidewalk would be waived on the west side of Ala Haku Lei Loop and on both sides of Na Hiku Place. Na Hiku Place is a cul-de-sac street accessing 13 lots, with an estimated daily traffic volume of approximately 130 vehicles. At this traffic volume, it is reasonable for pedestrians to share the roadway pavement with vehicular traffic. Ala Haku Lei Loop is the primary entry street to several subdivisions, accessing approximately 60 future lots, with an estimated daily traffic volume of approximately 600 vehicles. At this traffic volume, a sidewalk is recommended to reduce conflicts between pedestrians and motor vehicles; sufficient gaps in traffic will be available for crossing the street, allowing for recommended sidewalks on only one side of the street. The proposed sidewalk on the west side of Ala Haku Lei Loop is intended to be a portion of the future walkway network within the Kukui'ula development, providing an alternate method of pedestrian circulation.

Should the requirement of sidewalks be waived by the Planning Commission we recommend that the applicant pay a fee of \$218,200 in lieu of required sidewalk construction. This amount was determined by multiplying the estimated quantity of "in lieu of sidewalk" of 1,091 square yards by a unit cost of \$200 per square yard. Payment of said fees shall be made as a lump sum at the time of final subdivision map approval or a payment of 50% at the time of preliminary subdivision map approval and the balance paid at the time of final subdivision map approval.

Sincerely,

Digitally signed by Michael Moule  
 Date: 2026.02.06 18:24:52 -10'00'

Michael Moule, P.E.  
 Chief, Engineering Division

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 2/10/2026 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!



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

JAN 12 '26 PM 1:49  
PLANNING DEPT

FROM: Kaaina S. Hull, Director

12/26

SUBJECT: Zoning Class IV Z-IV-2026-10  
Variance Permit V-2026-3  
Tax Map Key: 26023040  
Applicant: BBCP Kukuiula Development LLC (Mauna Kea Trask, Esq., Authorized Agent  
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STATE OF HAWAII  
DEPARTMENT OF HEALTH  
3040 Umi St. Lihue  
Hawaii 96766

DATE: January 9, 2026

TO: To whom it may concern

FROM: Ellis Jones  
District Environmental Health Program Chief

SUBJECT: RESPONSE\_BBCP Kukuiula development LLC\_Z-IV-2026-10

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

**Clean Air Branch**

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

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

#### **Clean Water Branch**

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

#### **Hazard Evaluation & Emergency Response Office**

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

#### **Indoor and Radiological Health Branch**

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

#### **Safe Drinking Water Branch**

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

#### **Solid & Hazardous Waste Branch**

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

electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.

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

#### **Wastewater Branch**

Wastewater Branch has no objections to the proposed project. The type and number of IWS (individual wastewater systems) will be determined during design review process. By Revised Statute 11-62-31.1 If the parcel is less than 10,000sq feet, an individual onsite waste-water unit may not be possible for future construction. Please contact DOH waste-water branch at 808-586-4288 for further information. For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto:doh.wwb@doh.hawaii.gov).

#### **Sanitation / Local DOH Comments:**

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

#### **Other**

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

*Ellis Jones*

*Ellis Jones*

District Environmental Health Program Chief  
Office Phone: (808) 241-3326

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

February 9, 2026

Additional Information received by the Planning Department as of February 9, 2026, 9:00 am for the February 10, 2026, Planning Commission meeting regarding the following item:

- I.1. Clerk of the Commission's Recommendation to Refer Appeals of the Planning Director's First Notice of Violation[s] for the operation of a Commercial Retreat in the Open Zone District, and Eight (8) Notice of Violation & Order to Pay Fines for the reestablishment of a Homestay Operation on the property located outside of a designated Visitor Destination Area, **Cheryl Cowden Schenck on behalf of Kauai Kai Diamonds Irrevocable Trust**, Tax Map Key (4)49012005, Kapaa, Kauai, received on October 20, 2025, for referral to Boards &

## Shanlee Jimenez

---

**Subject:** FW: Submission of Evidence Supporting Motion to Dismiss – Cheryl Cowden-Schenck | CC-2026-2  
**Attachments:** Doc 3 (4).pdf; Doc 2 (3).pdf

---

**From:** cheryl Schenck <[moloaa@hotmail.com](mailto:moloaa@hotmail.com)>  
**Sent:** Friday, February 6, 2026 1:42 PM  
**To:** Kaaina Hull <[khull@kauai.gov](mailto:khull@kauai.gov)>; Jodi Higuchi Sayegusa <[jhiguchi@kauai.gov](mailto:jhiguchi@kauai.gov)>; Reiko Matsuyama <[rmatsuyama@kauai.gov](mailto:rmatsuyama@kauai.gov)>; Andres Emayo <[aemayo@kauai.gov](mailto:aemayo@kauai.gov)>; Mike Laureta <[mlaureta@kauai.gov](mailto:mlaureta@kauai.gov)>; Joan Ludington <[jludington@kauai.gov](mailto:jludington@kauai.gov)>; Diana Dotter <[dianamdor@gmail.com](mailto:dianamdor@gmail.com)>  
**Subject:** Fwd: Submission of Evidence Supporting Motion to Dismiss – Cheryl Cowden-Schenck | CC-2026-2

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.

Begin forwarded message:

**From:** Diana Dotter <[dianamdor@gmail.com](mailto:dianamdor@gmail.com)>  
**Date:** February 6, 2026 at 1:33:07 PM HST  
**To:** [khull@kauai.gov](mailto:khull@kauai.gov), [jhiguchi@kauai.gov](mailto:jhiguchi@kauai.gov), [rmatsuyama@kauai.gov](mailto:rmatsuyama@kauai.gov), Andres Emayo <[aemayo@kauai.gov](mailto:aemayo@kauai.gov)>, Mike Laureta <[mlaureta@kauai.gov](mailto:mlaureta@kauai.gov)>, Joan Ludington <[jludington@kauai.gov](mailto:jludington@kauai.gov)>, Diana Dotter <[dianamdor@gmail.com](mailto:dianamdor@gmail.com)>, Moloaa Shangrila <[moloaa@hotmail.com](mailto:moloaa@hotmail.com)>  
**Subject: Submission of Evidence Supporting Motion to Dismiss – Cheryl Cowden-Schenck | CC-2026-2**

**Subject: Submission of Evidence Supporting Motion to Dismiss – Cheryl Cowden-Schenck | CC-2026-2**

**To:**

[khull@kauai.gov](mailto:khull@kauai.gov); [jhiguchi@kauai.gov](mailto:jhiguchi@kauai.gov); [mayor@kauai.gov](mailto:mayor@kauai.gov); [rmatsuyama@kauai.gov](mailto:rmatsuyama@kauai.gov); [aemayo@kauai.gov](mailto:aemayo@kauai.gov); [mlaureta@kauai.gov](mailto:mlaureta@kauai.gov); [jludington@kauai.gov](mailto:jludington@kauai.gov); [dianamdor@gmail.com](mailto:dianamdor@gmail.com)

Ka'āina S. Hull, Planning Director – [khull@kauai.gov](mailto:khull@kauai.gov)

Jodi A. Higuchi Sayegusa, Deputy Planning Director – [jhiguchi@kauai.gov](mailto:jhiguchi@kauai.gov)

Reiko Matsuyama, Managing Director – [rmatsuyama@kauai.gov](mailto:rmatsuyama@kauai.gov)

Mike Andres, [aemayo@kauai.gov](mailto:aemayo@kauai.gov)

Mike Laureta, [mlaureta@kauai.gov](mailto:mlaureta@kauai.gov)

Joan Ludington - [jludington@kauai.gov](mailto:jludington@kauai.gov)

**Submission of formal evidence in support of Motion to Dismiss**

I Cheryl Cowden-Schenck, representing Kauai Kai Diamonds Irrevocable Trust, am submitting the attached documents on this date, **February 6, 2026**, as formal evidence in support of the ***Motion to Dismiss or Mitigate Enforcement Orders*** concerning Contested Case File No. **CC-2026-2**, relating to property located at **3720 Moloa‘a Road, Anahola, HI** (TMK: (4) 4-9-012-050).

These materials include:

- A **Hearing Brief** outlining factual background and legal arguments
- A **Motion to Dismiss or Mitigate Enforcement Orders**

These documents are respectfully submitted:

1. In support of the motion to dismiss Orders of Violation Nos. 1 through 10;
2. As part of the **public record**;
3. For review and consideration by the Kaua‘i Planning Commission and appropriate county leadership.

We respectfully request that the materials be accepted into the official record for this matter and taken into consideration as part of all relevant deliberations.

Please send verification that you have received this email, its attached documents and have submitted the attachments to the public official record.

Mahalo for your attention to this matter.

Respectfully,

Cheryl Cowden Schenck representing Kauai Kai Diamonds Irrevocable Trust

**HEARING BRIEF**

**Submitted to the Kauai Planning Commission**

**Subject Property: 3720 Moloaa Road, Anahola, Hawaii**

**TMK: 4-9-012-005-0000**

**In Re: Orders of Violation Nos. 1 through 10**

**WRITTEN TESTIMONY**

Submitted to: Kaua'i Planning Commission

Via: [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)

Subject: Agenda Item – Contested Case File No. CC-2026-2

**Name:** Cheryl Cowden-Schenck

**Position/Title:** Representative of Kauai Kai Diamonds Irrevocable Trust

**Organization Represented:** Kauai Kai Diamonds Irrevocable Trust

**Agenda Item for Comment:** Clerk of the Commission's Recommendation to Refer Appeals of the Planning Director's First Notice of Violation(s) for the operation of a Commercial Retreat in the Open Zone District, and Eight (8) Notices of Violation & Order to Pay Fines for the reestablishment of a Homestay Operation on the property located outside of a designated Visitor Destination Area, Cheryl Cowden-Schenck on behalf of Kauai Kai Diamonds Irrevocable Trust, Tax Map Key (4)49012005, Kapaa, Kauai, received on October 20, 2025, for referral to Boards & Commission as Contested Case File No. CC-2026-2. [Deferred, 12/9/2025].

**Written Comment:** I, Cheryl Cowden-Schenck, respectfully submit this written testimony on behalf of the Kauai Kai Diamonds Irrevocable Trust in relation to the above-captioned contested case matter. This testimony concerns:

a. Appeal of Orders of Violation:

- Order 1 (Date referenced in Notice)
- Order 2 (Alleged infraction on December 3, 2024)
- Order 3 (Alleged infraction on September 23, 2025)
- Order 4 (Alleged infraction on September 24, 2025)
- Order 5 (Alleged infraction on September 25, 2025)
- Order 6 (Alleged infraction on September 26, 2025)
- Order 7 (Alleged infraction on September 27, 2025)
- Order 8 (Alleged infraction on September 28, 2025)
- Order 9 (Alleged infraction on September 29, 2025)

- Order 10 (Alleged infraction on September 30, 2025)

b. Request for Continuance of Planning Commission Hearing concerning property located at 3720 Moloaa Road, TMK: 4-9-012-050.

I strongly object to the validity and scope of the violations cited and request that the Commission exercise its discretion to dismiss all associated enforcement actions and fines. I respectfully request that my testimony be entered into the record and considered as part of the Commission's deliberation in this matter.

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## **I. INTRODUCTION**

Chair and Members of the Commission:

This brief is presented by Cheryl Cowden-Schenck, representative of the Kauai Kai Diamonds Irrevocable Trust, in response to the Notices of Violation and Orders issued by the Planning Department concerning the subject property. It is respectfully submitted that Orders of Violation Nos. 1 through 10 should be dismissed in their entirety on both legal and equitable grounds, and that all associated fines be rescinded in full.

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## **II. FACTUAL SUMMARY**

1. I Cheryl Cowden-Schenck, a seventy-seven year-old Kauai resident, is the former owner of property listed in the Notices of Violation and Orders numbers 1-10, representing the Kauai Diamonds Irrevocable Trust, the legal titleholder of the subject property.
2. During the period in question, I Cheryl Cowden Schenck, was on Oahu attending to my terminally ill husband Mike Schenck, who was undergoing emergency medical treatment for his recent stroke and end-of-life cancer care treatment. Mike passed away during this period.
3. I, Cheryl Cowden Schenck, extended an invitation to a long-time friend, Mana, to stay at the property as a guest during my absence - the dates of violation, and permitted him to have guests join him.
4. Unbeknownst to me, Mana Jampa used his time on the property to invite multiple individuals and conducted what appears to have been an organized, paid gathering. Notably, the promotional website included images of the subject property, which were used without my knowledge or permission.
5. I, Cheryl Cowden Schenck, received no financial benefit or compensation from the gathering and neither advertised, promoted, facilitated, nor approved any event of this nature.

6. I Cheryl Cowden Schenck first learned of the alleged gathering only after being issued Notices of Violation by the County.
- 

### **III. ARGUMENT**

#### **A. Lack of Knowledge or Intent**

There is no evidence that I, Cheryl Cowden-Schenck, had knowledge of the paid gathering, let alone intent to facilitate it. My physical absence from the property, during the times outlined in the violation periods, due to a documented medical emergency pertaining to my husband Mike Schenck's transfer to Queens Hospital on Oahu to support his recent stroke and end-of-life cancer care treatment supports this assertion. There is a clear absence of scienter (intent) which is an essential element for enforcement of land use violations.

Additionally, the website used to promote the gathering featured images of Cheryl Cowden-Schenck's property without her knowledge or consent, further evidencing her lack of involvement or endorsement of the activity.

#### **B. No Commercial Benefit or Use by Cheryl Cowden-Schenck**

I, Cheryl Cowden Schenck, received no payment, direct or indirect, from the guest Mana Jampa or any of his guests. Mana Jampa acted independently and without my involvement. No evidence ties me to the organization or operation of a commercial enterprise.

#### **C. Medical Hardship and Emergency Circumstances**

My ongoing role as caregiver for her terminally ill spouse over the past 3.5 years, combined with my absence from the island during the periods outlined in the violation notices, constitutes a significant mitigating circumstance. These extraordinary personal responsibilities prevented me from overseeing or managing any activities taking place on the property.

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### **IV. CONCLUSION**

Given the above facts and legal principles, I Cheryl Cowden-Schenck respectfully request that:

1. The enforcement actions, specifically Orders of Violation Nos. 1 through 10, should be dismissed in their entirety on both legal and equitable grounds;
2. All associated fines be dismissed due to lack of culpability;

3. The Commission issue guidance to clarify permissible and non-permissible uses of residential property by third-party guests.

The facts do not support the conclusion that Cheryl Cowden-Schenck knowingly operated or permitted any commercial land use. The Commission has full authority to grant equitable relief in the face of such circumstances.

Respectfully submitted,  
Cheryl Cowden-Schenck  
Representative of the Kauai Kai Diamonds Irrevocable Trust

---

**EXHIBIT A - NOTARIZED DECLARATION**

I, Cheryl Cowden-Schenck, declare under penalty of perjury:

1. I am representing the Kauai Kai Diamonds Irrevocable Trust.
2. During the relevant dates, I was off-island attending to the emergency care of my husband and his subsequent passing, as well as managing the associated post-mortem legal and administrative matters.
3. I allowed a friend to stay at the property and permitted him to have guests join him, but I had no knowledge or expectation that a paid gathering was being held.
4. I received no compensation, and I took no part in organizing, advertising, or facilitating any retreat.
5. I first learned of the event only after the County issued Violation notices.
6. Images of the subject property were used on a promotional website without my knowledge or consent. I have since notified Mana Jampa to immediately cease and desist from using any images or representations of the property in any promotional, commercial, or public-facing materials.
7. I am committed to full compliance with all County regulations and regret any unintended misuse of the property.

Executed this 2<sup>nd</sup> day of Feb., 2026.

Signature: \_\_\_\_\_

Name: Cheryl Cowden-Schenck

STATE OF HAWAI'I  
COUNTY OF KAUAI

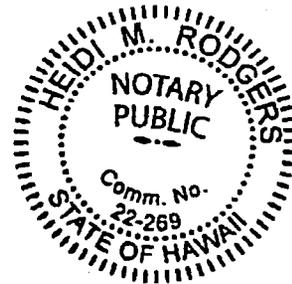
On this 3<sup>rd</sup> day of February, 2026, before me personally appeared Cheryl Cowden-Schenck, to me known to be the person described in and who executed the foregoing declaration, and acknowledged that she executed the same as her free act and deed.

WITNESS my hand and official seal.

Heidi M. Rodgers

Notary Public, State of Hawai'i

My commission expires: 12/4/2026



**IN THE MATTER OF THE PLANNING COMMISSION OF THE COUNTY OF KAUAI  
BEFORE THE COMMISSION**

**IN RE:**

Enforcement Orders Nos. 1 through 10  
Regarding Property Located at:  
3720 Moloa'a Road, Anahola, HI 96703  
TMK: (4) 4-9-012-050  
Contested Case File No. CC-2026-2

**MOTION TO DISMISS OR MITIGATE ENFORCEMENT ORDERS**

Submitted by: Cheryl Cowden-Schenck, Representative  
Kauai Kai Diamonds Irrevocable Trust

**I. INTRODUCTION**

Comes now Cheryl Cowden-Schenck, as representative of the Kauai Kai Diamonds Irrevocable Trust ("Trust"), and respectfully moves the Planning Commission to dismiss in full actions reflected in Orders of Violation Nos. 1 through 10 issued by the Planning Department. These Orders allege unlawful use of residential property for a commercial retreat and homestay operations outside the designated Visitor Destination Area (VDA). The Trust seeks relief on the basis of (1) Cheryl Cowden-Schenck's absence and lack of knowledge of the alleged event, (2) the absence of financial benefit or commercial intent, (3) medical hardship and exigent personal circumstances.

**II. GROUNDS FOR DISMISSAL**

**A. No Knowledge or Intent to Violate Land Use Ordinances**

The violations stem from a gathering held at the property. Cheryl Cowden-Schenck had extended an invitation to a personal friend to stay on the property during her absence, allowing him to host friends. She had no knowledge that a commercial endeavor was planned, organized, or conducted at that time.

Intent, or scienter, is critical to establish culpability under land use enforcement, and Cheryl's absence on Oahu during the periods cited in the Orders, for the terminal care of her husband, confirms the lack of any knowing participation.

**B. No Commercial Benefit or Use by Trust Representative**

Cheryl Cowden-Schenck received no compensation or other benefit from the alleged gathering. The Trust did not advertise, promote, or endorse any commercial activity. All planning and guest participation occurred without her awareness. Such incidental misuse by a third party does not rise to the level of a knowing land use violation.

**C. Extraordinary Medical Hardship and Absence**

During the cited violation periods, Cheryl was off-island attending to the medical emergency, hospice care, and eventual death of her husband. Her capacity to monitor

the property was suspended by medical necessity. This is a critical mitigating factor that warrants equitable relief from daily accruing fines.

### III. REQUEST FOR RELIEF

In light of the foregoing, the Trust respectfully requests the following:

1. Dismissal of Orders of Violation Nos. 1 through 10 in their entirety;
2. Rescission of all associated fines;
3. Clarification from the Commission as to the permissibility and limitations of temporary guest uses on residential property;

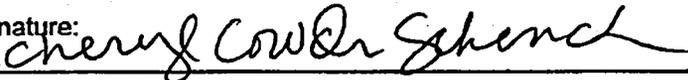
### IV. DECLARATION OF CHERYL COWDEN-SCHENCK

I, Cheryl Cowden-Schenck, declare:

1. I am representing the Kauai Kai Diamonds Irrevocable Trust.
2. During the relevant dates, I was off-island attending to the emergency care of my husband and his subsequent passing, and the associated post-mortem legal and administrative matters.
3. I allowed a friend to stay at the property and permitted him to have guests join him, but I had no knowledge or expectation that a paid experience was being held.
4. I received no compensation, and I took no part in organizing, advertising, or facilitating any commercial activity on the property.
5. I first learned of the event only after the County issued enforcement notices.
6. Images of the subject property were used on a promotional website without my knowledge or consent. I have since notified Mana Jampa to immediately cease and desist from using any images or representations of the property in any promotional, commercial, or public-facing materials.
7. I am committed to full compliance with all County regulations.

Executed this 3rd day of Feb, 2026.

Signature:



Name: Cheryl Cowden-Schenck

STATE OF HAWAII  
COUNTY OF KAUAI

On this 3<sup>rd</sup> day of February, 2026,  
before me personally appeared Cheryl Cowden-Schenck, to me known to be the person  
described in and who executed the foregoing declaration, and acknowledged that she  
executed the same as her free act and deed.

WITNESS my hand and official seal.

Notary Public, State of Hawai'i

*Heidi M. Rodgers*

My commission expires: 12/4/2026

