

44

NOTICE OF PUBLICATION AND NOTICE OF PUBLIC HEARING

Notice is hereby given that the Council of the County of Kaua'i will hold a public hearing on Wednesday, September 7, 2022, at 8:30 a.m., or soon thereafter, at the Council Chambers, 4396 Rice Street, Room 201, Historic County Building, Lihue, on the following:

Bill No. 2878

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO ADDITIONAL RENTAL UNITS (*County of Kaua'i Planning Department, Applicant*) (ZA-2022-8)

This Bill proposes to amend Chapter 8, Article 30, Kaua'i County Code 1987, as amended, by removing the requirement for a lot of record to have direct access to a County standard road, or have the Subdivision Ordinance or the "Kaua'i County Planning Commission Road Widening Policy" be applied to the Additional Rental Unit (ARU) Clearance Form process.

Bill No. 2879

A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 12, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO CONSTRAINT DISTRICT(S) (*County of Kaua'i Planning Department, Applicant*) (ZA-2022-12)

This Bill proposes to amend Chapter 8, Article 12, Kaua'i County Code 1987, as amended, relating to Constraint District(s), by amending the Comprehensive Zoning Ordinance's Constraint Shoreline District (S-SH) to become the Constraint Sea Level Rise District to address sea level rise impacts on annual high wave run up and passive flooding projected to occur within this century by a County of Kaua'i Sea Level Rise Constraint District Viewer.

All interested persons who wish to present their comments may do so at the public hearing. Written testimony prior to the hearing would be appreciated. Written testimony can be submitted to the Office of the County Clerk, Council Services Division by mail, facsimile, or via E-mail to counciltestimony@kauai.gov. Copies of these Bills are available at the Office of the County Clerk, Council Services Division.

(The Council Committee or Council may amend these Bills at their subsequent meetings. Meeting notices are posted at least six (6) days in advance at the County Clerk's Office and the public may also testify at any of these meetings.)

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that the foregoing Bill No. 2878 and Bill No. 2879 were passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on August 3, 2022, by the following vote:

AYES:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
NOES:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihue, Hawaii
August 3, 2022

/s/ Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

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 THE COUNTY CLERK, COUNCIL SERVICES DIVISION AT (808) 241-4188 OR COKCOUNCIL@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.

(One publication – The Garden Island – August 11, 2022)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO ADDITIONAL RENTAL UNITS**

(County of Kaua'i Planning Department, Applicant) (ZA-2022-8)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kaua'i County Council is currently in a housing crisis with the current housing inventory unable to meet the local demand for housing units.

The Council also finds that the Additional Rental Units (ARU) standards for road widening under Kaua'i County Code 1987, as amended (KCC), Section 8-30.1(c)(4) extends the time it takes to get an ARU Clearance Form by at least two (2) to three (3) months.

The Council also finds that Section 8-30.1(c)(4) Additional Rental Unit standards for road widening replicated Section 8-15.1(a)(4)(E) Additional Dwelling Units standards for road widening. While the original intent of the requirement for a road widening agreement was to ensure non-standard roadways be brought up to County standards, there have been no substandard roads brought into conformity through ADU associated road widening agreements.

The Council also finds that removing Section 8-30.1(c)(4) will remove this unnecessary two (2) to three (3) months delay in the ARU Clearance Form process.

The purpose of this Ordinance is to amend the Comprehensive Zoning Ordinance to remove the requirement for a lot of record to have direct access to a County standard road, the Subdivision Ordinance, or the "Kaua'i County Planning Commission Road Widening Policy" be applied to the ARU Clearance Form process.

SECTION 2. Chapter 8, Article 30, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 8-30.1, to read as follows:

"Sec. 8-30.1 Additional Rental Units.

(a) One Additional Rental Unit may be constructed as an accessory to an existing dwelling unit located within the Residential Zoning District, subject to the following conditions:

- (1) The maximum total floor area for an Additional Rental Unit shall be 800 square feet. The total floor area shall mean the sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls. The total floor area shall include enclosed attached accessory structures such as garages or storage areas. Unenclosed attached structures such as breezeways, lanais, or porches shall be excluded.

(2) One (1) off-street parking space per Additional Rental Unit shall be provided in addition to the required off-street parking for the primary dwelling unit(s).

(3) Neither the owner or owners, nor the heirs, successors or assigns of the owner or owners will submit the lot or any portion thereof to a condominium property regime under the provisions of Hawai'i Revised Statutes, Chapter 514A and 514B, to separate the ownership of an Additional Rental Unit from the ownership of its primary dwelling unit.

(4) The Additional Rental Unit shall be used only for long-term rental or otherwise occupied for a period of at least six (6) months per year.

(5) The Additional Rental Unit shall not be used for transient accommodations, including but not limited to a homestay or transient vacation rental.

(6) Provided the Department of Public Works, Engineering Division does not object, an additional ten percent (10%) land coverage beyond the land coverage maximum established under Section 8-4.3 shall be provided to the respective property for the construction of an Additional Rental Unit(s) and any required off-street parking stall(s).

(b) With the exception of Section 8-30.1(a)(6), the development standards for an Additional Rental Unit shall be the same as the requirements of Section 8-4.3 and Section 8-4.5 relating to the Residential District.

(c) Prior to building permit review for an Additional Rental Unit, the following public facilities shall be found adequate to service the Additional Rental Unit:

(1) 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 or an individual wastewater system shall be confirmed in writing by the State of Hawai'i Department of Health.

(2) The availability of water (including but not limited to source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(3) Approval in writing for an Additional Rental Unit from the Kaua'i Fire Department shall be required.

[(4) The lot must have direct access to a street that 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 at the time of application for a building permit, there exists 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 pursuant to Chapter 9, Subdivision Ordinance, Kaua'i County Code 1987, as amended, and the "Kaua'i County Planning Commission Road Widening Policy" (as may be amended) for those roads considered substandard.]

(d) The Additional Rental Unit Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. All requirements and conditions on the completed Additional Rental Unit Facilities Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit issuance. The Planning Director shall certify the Additional Rental Unit Facilities Clearance Form as complete only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director.

(e) The permitting and construction of an Additional Rental Unit shall conform to Chapter 444 and Chapter 448E of the Hawai'i Revised Statutes.

(f) Additional Rental Units shall be prohibited on any property located within any of the County of Kaua'i's Tsunami Evacuation Zones west of the Hanalei River.

(g) Additional Rental Unit (ARU) Subsidy; Purpose. There is hereby established and created an account to be known as the "Additional Rental Unit (ARU) Subsidy" within the Housing Development Fund (Fund No. 512) for the purpose of subsidizing efforts associated with the Facilities Reserve Charge (FRC).

Administration. The County Housing Agency shall certify an applicant's qualification to receive an Additional Rental Unit (ARU) Subsidy. Applications for an ARU Subsidy shall be processed on a first come, first served basis, subject to funding availability. Copies of all ARU Subsidy Applications, regardless of affordability certification result, shall be provided to the Planning Department, the Public Works Department-Wastewater Division, and the Public Works Department-Building Division prior to any waiver of fees.

Appropriation of Funds. An appropriation of \$113,200 from the Housing Development Fund shall be set aside to assist property owners with efforts associated with the Facilities Reserve Charge. Annual appropriations from the Housing Development Fund shall be subject to Council approval. Any balance remaining in the Additional Rental Unit (ARU) Subsidy account at the end of any fiscal year shall not lapse. The moneys in the Additional Rental Unit (ARU) Subsidy account shall not be used for any purpose except those listed in this section. Any violation of the affordable housing restrictions required by the Housing Agency may result in an ARU Subsidy Repayment as follows:

Number of days in Affordable Rental Program	Percent of ARU Subsidy Repayment
Less than or equal to 365 days (1 year)	100%
Less than or equal to 730 days (2 years)	75%
Less than or equal to 1,095 days (3 years)	50%
Less than or equal to 1,460 days (4 years)	25%
Less than or equal to 1,825 days (5 years)	10%

Repayment. The ARU Subsidy Repayment constitutes a lien upon the real property in which the ARU is situated. The lien may be recorded in the appropriate land record system. After any failure to pay the amount due, the lien may be enforced by any legal action, including foreclosure proceedings. In the event legal action is instituted for collection, the County shall be reimbursed for all costs of collection including reasonable attorneys' fees.

Rules and Regulations. The Kaua'i County Housing Agency is hereby authorized and directed to promulgate rules and regulations as may be necessary to implement subsection 8 30.1(g) within twelve (12) months from approval of this Ordinance.

Preemption. Nothing in this section shall be construed to preempt or prohibit the authority in any other provision of the Kaua'i County Code 1987, as amended."

SECTION 3. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. 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 5. This Ordinance shall take effect upon approval.

Introduced by:


MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

August 3, 2022

Lihu'e, Kaua'i, Hawai'i

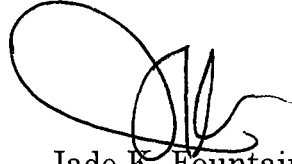
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2878, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on August 3, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.

Lihu'e, Hawai'i
August 3, 2022



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 12,
KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO CONSTRAINT DISTRICT(S)**

(County of Kauai Planning Department, Applicant) (ZA-2022-12)

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kauai County Council (Council) finds that rapid warming of the atmosphere and oceans is increasing the sea level rise that threatens our natural and built environments.

The Council also finds that the State of Hawaii Climate Change and Mitigation and Adaptation Commission adopted a Sea Level Rise Vulnerability and Adaptation Report. The Report with its corresponding Hawaii Sea Level Rise Viewer, provides hazard and vulnerability data and maps that can be used for land management decisions.

The Council also finds that the Hawaii Sea Level Rise Viewer models three (3) specific sea level rise hazards associated to increase within this century: chronic coastal erosion, annual high wave run up, and passive flooding.

With data generated through the studies and analysis for the State of Hawaii Sea Level Rise Vulnerability and Adaptation Report, the County of Kauai can generate its own sea level rise spatial and depth analysis for annual high wave run up and passive flooding generated from sea level rise.

The Council also finds that the Comprehensive Zoning Ordinance has a relatively outdated and redundant Constraint District, the Constraint Shoreline District (S-SH). This Constraint District is now covered by much more comprehensive rules and regulations with the Special Management Area Rules and Regulations.

The Council also finds that Article 27 of the Comprehensive Zoning Ordinance establishes specific shoreline setback requirements to address chronic coastal erosion as well as the added impact of sea level rise on shoreline erosion. Any additional regulations concerning sea level rise impacts on coastal erosion should be done so within Article 27 of the Comprehensive Zoning Ordinance.

The purpose of this Ordinance is to amend the Comprehensive Zoning Ordinance's Constraint Shoreline District (S-SH) to become the Constraint Sea Level Rise District to address sea level rise impacts on annual high wave run up and passive flooding projected to occur within this century by a County of Kauai Sea Level Rise Constraint District Viewer.

SECTION 2. Chapter 8, Article 12, Kaua'i County Code 1987, as amended, is hereby amended by amending Sec. 8-12.5, to read as follows:

“[Sec. 8-12.5 Shore Districts (S-SH).

(a) Purpose. To regulate development or alterations to shore and water areas which have unique physical and ecological conditions in order to protect and maintain physical, biologic and scenic resources of particular value to the public.

(b) Lands Included.

(1) The Shore District includes the greater of the following shoreline areas (land and water):

(A) That area where the Planning Director determines that there is significant interrelationship between the physical, biologic, or ecologic forms or systems characteristic of the shore area;

(B) From the low water mark to forty (40) feet inland from the upper reaches of the wash of waves other than storm or tidal waves (or twenty (20) feet in those cases as are provided for by the rules of the State Land Use Commission implementing Chapter 205, H.R.S.).

(2) Within five (5) years after September 1, 1972 the Planning Commission shall prepare a Shoreline Special Treatment Zone Plan. The plan upon adoption by the Planning Commission shall determine the boundaries of the Shore District.

(c) Requirements for Development Within the Shore District. No Zoning, Building or Use Permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Shore District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applicants for permits shall furnish an Information Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The Planning Director shall determine the adequacy of the report and may require the submission of further information where necessary. The report shall provide information regarding the existing ocean conditions and regarding probable effects of the proposed structures, development, or alterations, as follows:

(A) With respect to existing conditions, the report shall describe the configuration of the shore; the nature, magnitude, and periodicity of Shore District forces such as wind, waves and currents, as they affect the Shore District; the origin, nature and volume of materials composing the shoreline; the physical and biologic characteristics and the rate of Shore District change over time under both natural and proposed artificial conditions.

(B) With respect to probable effects of the proposed construction, the applicant shall define a design wave (usually the mean height and period of the highest one-third (1/3) of the waves of a given wave group, including storm surge and tsunami), the design water level of the ocean, the foundation conditions, and the construction materials, and shall state how the proposed design and construction operations will minimize disruption of the natural system.

(C) With respect to assessing the quality of the proposed construction, the applicant shall describe alternatives to the proposed construction that were considered and why each was rejected, in terms of environmental quality and economic feasibility, including as one alternative the choice of no construction.

(2) Before a permit may be granted, the applicant shall establish that the proposed alteration, construction or activity will not cause significant harm to:

(A) The water quality of the ocean, including, but not limited to, its clarity, temperature, color, taste and odor;

(B) Fish and aquatic habitats;

(C) The natural beauty of the area;

(D) Navigation, safety or health; or

(E) Would not substantially interfere with public use of the ocean waters or underlying lands; and

(F) That other facilities are unavailable to the applicant.

(3) Marinas and harbors shall not be permitted in the following locations:

(A) Areas where, due to the amount of unconsolidated materials, wave and current energy, shoreline configuration, and other pertinent factors, beach erosion is likely to occur;

(B) Unstable locations;

(C) Areas designated by the Planning Commission as being of unique scenic beauty which should be retained in their natural condition;

(D) Areas where there is no demonstrable public need for a new marina or harbor;

(E) In areas so that the standards established in Subsection (c)(2) are violated;

(F) Use Districts where marinas and harbors are not permitted uses.

(4) Marinas and harbors, when permitted, shall be located in the following areas unless the Planning Commission determines that the site would be inconsistent with the objectives of this Chapter or the applicant can demonstrate that such an area is unavailable and that the alternative site chosen will be consistent with the purposes of this Chapter.

(A) In deeper water in order to minimize the need for dredging;

(B) In natural inlets to avoid use of breakwaters;

(C) In an area designated for marinas and harbors on the General Plan.

(5) Design and Construction Standards.

(A) Floating piers or piers on pilings shall be used to provide access to boats, rather than dredging, whenever possible.

(B) Where dredging is permitted, spoil material shall not be deposited in the water.

(C) Where a barrier wall is required in connection with a marina, or harbor, it shall be carried deep enough below the bottom to prevent movement of back-fill materials into the water.

(D) Materials used to stabilize the bottom of the marina or harbor for pier structures shall be chemically inert sand, gravel, or similar substances.

(6) Shore Facilities. Restrooms, pump-out facilities for boat sewage receptacles, and trash receptacles for other boat wastes shall be provided at a marina or harbor.

(7) Monitoring Information Requirements. The owner or operator of a marina or harbor may be required to furnish information concerning water quality, current patterns and intensities, shore alterations, and any other conditions which may be altered by the construction of the marina or harbor for a reasonable period after completion of the facility.

(8) Location of Shoreline Protective Structures. To prevent local beach loss, shoreline protective structures shall be used only where protection of the back-shore is of greater importance than beach preservation, or where less disruptive methods have failed. The following design and construction standards shall apply:

(A) Sloping permeable revetments shall be used when barriers are permitted.

(B) Seawalls and bulkheads shall be permitted only when the applicant is able to demonstrate that revetments are not feasible and that the alternative structure will cause no undue beach erosion.

(C) Shoreline barriers shall not be constructed of unstable or soluble materials.

(9) There shall be no fill placed in the Shore District except at those locations where the fill is found to be beneficial to existing water quality or Shore District conditions.

(10) There shall be no dredging, removal or rearrangement of materials within the water or shore zone of the ocean. Dredging or excavation performed in the course of construction for which a permit has been approved under the terms of this Chapter shall be considered dredging or excavation for the purpose of this Section.

(d) Permits Required.

(1) A Class IV Zoning Permit is required for any construction, development, use or activity proposed to be carried out within forty (40) feet of the upper reaches of the wash of waves other than storm or tidal waves, or within the shoreline setback area as established by the State Land Use Commission pursuant to Chapter 205, H.R.S., whichever is the lesser. The Planning Commission shall issue a permit only if the requirements of both Chapter 205, H.R.S. and this Chapter have been met.

(2) A Class III or Class IV Zoning Permit, depending upon the requirements established for the underlying Use District in which the proposed construction, development, use or activity is located, is required for undertakings in the Shore District established by this Chapter located landward of the shoreline setback area defined in Subsection (d)(1). The Planning Director or Planning Commission shall issue a permit only if the requirements of this Chapter have been met.

(e) Modification of Requirements. The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Planning Director that the area in question should not have been included in the Shore District under the criteria established in Subsection (c)(1).]

Sec. 8-12.5 Sea Level Rise District (S-SLR).

(a) Purpose.

(1) To minimize the threat to public health and safety due to sea level rise that increases the impacts of annual high wave run up and passive flooding.

(2) To promote resilient planning and design.

(3) To minimize the expenditure of public money for costly flood control projects necessitated from sea level rise impacts.

(4) To minimize the need for rescue and relief efforts that are associated with sea level rise flooding and generally undertaken at the expense of the general public.

(5) To ensure that those who occupy areas that are projected to be impacted by sea level rise acknowledge and assume responsibility for their actions.

(b) General Provisions.

(1) Lands Included. All lands subject to annual high wave flooding and passive flooding impacts projected by the Kauai Sea Level Rise Constraint District Viewer (with 3.2 feet of sea level rise anticipated to occur by the year 2100) and within the County of Kaua'i Sea Level Rise Constraint District (S-SLR).

(2) Compliance. No structure shall be constructed, located, extended, converted, or altered without full compliance with the terms of this Article or other applicable regulations.

(3) Other Laws and Regulations. All construction and improvements subject to this Article shall comply with other applicable laws and regulations, including but not limited to, the Flood Plain Management Ordinance, Building Code, Electrical Code, Plumbing Code, Subdivision Ordinance, Special Management Area Rules and Regulations, and Sediment and Erosion Control Ordinance. In case of a conflict between this Article and the requirements of any other Federal law, State law, or County ordinance, such as the Flood Plain Management Ordinance, the more restrictive requirements shall apply.

(4) Interpretation. In the interpretation and application of this Article, all provisions shall be:

a. Considered as minimum requirements;

b. Liberally construed in favor of the County; and

c. Deemed neither to limit nor repeal any other requirement, power, or duty prescribed under Federal, State, or County statutes.

(5) Warning and Disclaimer of Liability. The degree of sea level rise protection required by this Article is considered reasonable for regulatory purposes and is based on scientific considerations. Larger floods and hazards can and will occur on occasions. Sea level rise flood elevations may be increased by human or natural causes. This Article does not imply that land outside the area of the Constraint Sea Level Rise District or uses permitted within such area will be free from damage. This Article shall not create liability on the part of the County of Kaua'i, any officer, or employee for any damages that result from reliance on this Article or any administrative decision lawfully made based on this Article.

(c) Definitions.

“Annual high wave run up” is the distance over which the maximum annually occurring significant wave height and associated peak period run-up and wash across the shoreline.

“Basement” means the portion of a building having its floor subgrade (below ground level) on all sides.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest on the ground directly or indirectly, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks. This definition does not include vertical access, such as stairs or ramps.

“County” means the County of Kaua‘i.

“County Engineer” means the County Engineer of the County of Kaua‘i or his/her authorized representative.

“Flood or flooding” means a general condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal water resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff or surface waters from any source.

“Kaua‘i Sea Level Rise Constraint District Viewer” is an online atlas in effect on *** and generated by data used in the creation of the Hawai‘i Sea Level Rise Vulnerability and Adaptation Report that was mandated by Act 83, Session Laws of Hawai‘i (SLH) 2014 and Act 32, SLH 2017. The Viewer provides visualizations depicting projections of future annual high wave run up and passive flooding hazards due to rising sea levels. The methodology and data were provided by the University of Hawai‘i School of Ocean and Earth Science and Technology (UH SOEST) through a collaborative project led by the University of Hawai‘i Sea Grant College Program (Hawai‘i Sea Grant) in partnership with DLNR and the State of Hawai‘i Office of Planning, and published under Anderson et al. 2018.

“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor, for the purposes of this Article, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

“Passive flooding” is flooding of low coastal lands due to sea level rise potentially from multiple sources, including but not limited to a rising groundwater table, seawater flowing from the ocean through storm drains and out into urban areas (storm drain backflow from the ocean), and seawater flowing directly across the shoreline into lands that lie below the water level.

“Planning Director” means the Planning Director of the Planning Department of the County of Kaua‘i.

“Sea level rise flood elevation (SLRFE)” is the individual depth per grid unit provided by the County of Kaua‘i Sea Level Rise Constraint District Viewer for both the high wave run up hazard and the passive flooding hazard when either of those are associated with 3.2 feet of sea level rise occurring by year 2100.

“Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

“Substantial improvement” means any combination of repairs, reconstruction, improvements, or additions or other improvements to a structure over a ten (10) year period, where the cumulative cost equals or exceeds fifty percent (50%) of the market value of the structure before the start of construction of the first improvement during that ten (10) year period. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The cost of any substantial improvement, including the cost to repair damage to pre-damage condition, shall be reviewed and determined by the County Engineer or his/her authorized representative. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

(d) Design Standards.

(1) Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) Elevation.

a. Residential Structures. All new construction and substantial improvements shall have the lowest floor (including basements) elevated at least two (2) feet above the highest sea level rise flood elevation (SLRFE) located within the respective building footprint. This additional two (2) feet shall be calculated from the top of the SLRFE to the bottom of the lowest horizontal structural member of the lowest floor, excluding pilings, columns, and vertical accesses.

Fully enclosed areas below the lowest floor that are useable solely for parking of vehicles, building access, or storage in an area other than a basement shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one (1) foot above grade. Openings may be equipped with screens, louvres, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

b. Nonresidential Structures. All new construction and substantial improvements shall elevate the lowest floor, including basement, at least one (1) foot above the highest sea level rise flood elevation located within the respective building footprint. This additional one (1) foot shall be calculated from top of the SLRFE to the bottom of the lowest horizontal structural member of lowest floor, excluding pilings, columns, and vertical accesses.

(3) Fill is prohibited for structural support.

(4) No machinery or equipment that service a building, such as furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, and food freezers, are permitted below the respective sea level rise depth value located within the respective space the machinery is proposed to be situated.

(5) All interior wall, floor, and ceiling materials located below the sea level rise flood elevations must be unfinished and resistant to flood damage. The design standards set forth in the American Society of Civil Engineers (ASCE) 24 Flood Resistant Design and Construction shall be followed.

(6) Front, Rear, and Side Setback Areas. The following may be located within the required setback areas:

a. Front, Rear, and Side Setback Areas: structures and improvements used for vertical access from grade to the elevated structure, such as stairs or ramps.

b. Rear and Side Yards: flood protection equipment, and structures housing mechanical equipment above the required SLRFE.

(7) All design standards shall conform, at a minimum, to the Kaua'i County Code's Floodplain Management Regulations (See Title V, Chapter 15, Article 1 Floodplain Management). Additionally, per the State Building Code Council, as of November 13, 2020 Kaua'i County is required to adopt the 2012 International Building Code (IBC) Council and will be required to adopt the 2018 International Building Code in timeframes determined by the State Building Code Council. The 2012 International Building Code incorporates, by reference, that the American Society of Civil Engineers (ASCE) section 24-05 Flood Resistant Design and Construction be followed. The 2018 International Building Code incorporates, by reference, that the American Society of Civil Engineers (ASCE) section 24-14 Flood Resistant Design and Construction be followed. The current versions of the IBC and ASCE Flood Resistant Design and Construction shall be followed and the more stringent criteria will comply where conflicts arise with the SLRFE.

(e) Nonconforming Structures.

Any nonconforming structure existing on the effective date of this ordinance may continue subject to the following conditions:

(1) Any repair, reconstruction, improvement, or addition to a nonconforming structure; if it is determined to be substantial improvement or repair of substantial damage, it shall comply with the applicable standards for new construction in the Constraint Sea Level Rise District. However, a repair, reconstruction, improvement, or addition to a nonconforming structure will not have to comply with the applicable standards for new construction if it meets one of the following criteria: (1) any project for improvement of a structure to correct existing violations of a State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(2) Replacement or reconstruction of a destroyed or demolished nonconforming structure is considered new construction regardless of the actual work performed and shall comply with the applicable standards of this Article.

(3) All relocated structures shall comply with the standards of the Article.

(f) Determination of Exemption.

(1) Standards. A Determination of Exemption from the design standards of this Article may be issued by a joint determination of the County Engineer and the Planning Director where the applicant can demonstrate that the proposal will not increase sea level rise flood heights, create additional threats to public safety, create extraordinary public expense, create nuisances, or conflict with existing local laws or ordinances.

(2) Request for Determination of Exemption. A request for Determination of Exemption shall be submitted to the Planning Director and the County Engineer. The application shall be signed and stamped by a registered professional engineer or architect, and it shall include three (3) sets of documents with the following information as may be required by the Planning Director and the County Engineer.

a. Plans and specifications showing the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, storage area; location and elevations of existing and proposed streets and utilities; relationship of the site to the location of the Sea Level Rise Constraint District, flood boundary; floodway; and the existing and proposed flood control measures and improvements.

b. Cross-sections and profile of the area and the regulatory SLRFE elevations and profile based on elevation reference marks on flood maps.

c. Flood study and drainage report in areas where study and report have not been reviewed and accepted by the County.

d. Description of surrounding properties and existing structures and uses and the effect of the regulatory flood on them caused by the determination of exemption.

e. An agreement, executed by the property owner, that a covenant will be inserted in the deed and other conveyance documents of the property and filed with the Bureau of Conveyances of the State of Hawai'i stating that the property is located in the Sea Level Rise Constraint District and is subject to flooding and flood damage; that a determination of exemption to construct a structure below the SLRFE may result in increased flood risks to life and property; that the property owners will not file any lawsuit or action against the County for costs or damages or any claim; that the property owners will indemnify and hold

harmless the County from liability when such loss, damage, injury, or death results due to the determination of exemption and flooding of the property; and that upon approval of the determination of exemption, the covenants shall be fully executed and proof of filing with the Bureau of Conveyances shall be submitted to the County Engineer prior to the issuance of a building permit.

f. Such other information as may be relevant and requested by the Planning Director and the County Engineer.”

SECTION 3. The Planning Department shall make the Kaua‘i Sea Level Rise Constraint District Viewer available on its County of Kaua‘i, Planning Department website.

SECTION 4. When revising, compiling, or printing this Ordinance for inclusion in the Kaua‘i County Code 1987, as amended, the designated adoption date of this Ordinance shall be substituted for the *** placeholder.

SECTION 5. If any provision of this Ordinance, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 6. 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 7. This Ordinance shall take effect upon approval.

Introduced by:



MASON K. CHOCK
(By Request)

DATE OF INTRODUCTION:

August 3, 2022

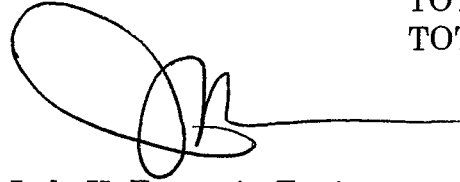
Līhu‘e, Kaua‘i, Hawai‘i

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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2879, which was passed on first reading and ordered to print by the Council of the County of Kaua'i at its meeting held on August 3, 2022, by the following vote:

FOR PASSAGE:	Carvalho, Chock, Cowden, DeCosta, Evslin, Kualii, Kaneshiro	TOTAL - 7,
AGAINST PASSAGE:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	None	TOTAL - 0,
RECUSED & NOT VOTING:	None	TOTAL - 0.



Jade K. Fountain-Tanigawa
County Clerk, County of Kaua'i

Lihu'e, Hawaii
August 3, 2022