



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

25 OCT 23 P1:04

- The Planning Commission Meeting will be at:

Līhu'e Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

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

IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR ADAVIS@KAUAI.GOV AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.

PLANNING COMMISSION MEETING NOTICE AND AGENDA

Monday, November 10, 2025

9:00 a.m. or shortly thereafter

**Līhu'e Civic Center, Moikeha Building
Meeting Room 2A-2B
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i**

RECEIVED

A. CALL TO ORDER

25 OCT 23 P1:04

B. ROLL CALL

C. APPROVAL OF AGENDA

D. MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

1. August 26, 2025.
2. September 9, 2025.

E. RECEIPT OF ITEMS FOR THE RECORD

F. HEARINGS AND PUBLIC COMMENT

1. Continued Agency Hearing

- a. None for this meeting.

2. New Agency Hearing

- a. None for this meeting.

3. Continued Public Hearing

- a. **ZA-2026-1: A bill (2969)** for an ordinance amending Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. The purpose of this Ordinance is to amend the Shoreline Setback Ordinance by adding safeguards that protect life and property and ensure the longevity and integrity of Kauai's coastal and beach resources along the shoreline = **KAUAI COUNTY COUNCIL. [Director's Report, Received, Hearing Continued, 8/26/2025].**

1. Director's Report pertaining to this matter.

4. New Public Hearing

- a. County Zoning Amendment (ZA-2026-2) A petition for a bill to amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended = **COUNTY OF KAUAI, PLANNING DEPARTMENT.**

1. Transmittal of public testimony to Planning Commission.

G. CONSENT CALENDAR

1. Status Reports

- a. 2025 Annual Report on the progress of compliance and conditions of the subject permits for SHERATON KAUAI RESORT in accordance with condition No. 4 of Special Management Area Use Permit SMA(U)-2007-13, Class IV Zoning Permit Z-IV-2007-29, Project Development Use Permit PDU-2007-25, Tax Map Keys: (4)2-8-015:043, 044 & 082; 2-8-016:003, 004, Poipu, Kauai = **KAUAI BLUE INC. (FORMERLY SVO PACIFIC, INC. & VSE PACIFIC, INC.)**

1. Director's Report pertaining to this matter.

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

- a. None for this meeting.

3. Class III Zoning Permits

- a. None for this meeting.

H. GENERAL BUSINESS MATTERS

1. Petition to Revoke Special Management Area Use Permit SMA(U)-2002- 6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i.
2. Director of Planning's Recommendation to Revoke Applicant Jens Olsson Non-Conforming Use Transient Vacation Rental Certificate TVNCU #5032 and Issue an Order to Show Cause and Set Hearing; Memorandum in Support of Petition; Declaration of Kaaina S. Hull; Notice of Meeting; and Certificate of Service, 2672 Pu'uholo Road, Tax Map Key (4)26007007-1, Koloa Kauai.
 - a. Notice of Appeal of Revocation of TVNCU Permit #5032 from Jens E. Olsson dated October 13, 2025.
3. Petition to Appeal Action of the Planning Director in the Administration of the Subdivision Ordinance as Provided for in Chapter 9 of the Kauai County Code, as Memorialized in That Certain Letter Dated July 22, 2025, Subdivision Application No. S-2023-1; Kukuiula Parcels A2, F2, F3 for properties located at Lawai Ahupuaa, Kona District, Island of Kauai, Tax Map Key No. (4) 2-6-022:020, BBCP Kukuiula Development, LLC received on July 28, 2025. **[Referred to Contested Case Hearing, 8/12/2025].**
 - a. Notice of Withdrawal of Petition to Appeal Action of the Planning Director in the Administration of the Subdivision Ordinance as Provided for in Chapter 9 of the Kauai County Code, as Memorialized in That Certain Letter Dated July 22, 2025, Subdivision Application No. S-2023-1; Kukuiula Parcels A2, F2, F3 for properties located at Lawai Ahupuaa, Kona District, Island of Kauai, Tax Map Key No. (4) 2-6-022:020.

4. In the Matter of a Notice of Violation and Order to Pay Fines, for 1) illegal commercial events within the Agricultural District (weddings, retreats, spiritual events and private ceremonies) and the failure to cease and desist and secure the required permits, and 2) the construction of seven (7) yurts without the required permits, related to the property located at Hui Road, Anahola, Kauai, TMK 49003001, KALALEA TRUST, applicant, as Appeal File CC-2025-1.

- a. Petitioners' equitable objection to County of Kauai's Memorandum in opposition to entry of default.

I. COMMUNICATIONS

1. None for this meeting.

J. COMMITTEE REPORTS

1. Subdivision Committee Report

- a. Subdivision Application No. S-2025-1
Sueoka Store Expansion Project
SMK, Inc.
Proposed 11-Lot Consolidation into 1-Lot
TMKs: (4) 2-8-008: 020, 022 – 029, 034, 035
Kōloa, Kaua'i
- b. Subdivision Application No. S-2025-8
Calipjo Properties, LLC.
Proposed 4-Lot Subdivision
TMK: (4) 3-3-021: 048
Nāwiliwili, Niumalu, Līhu'e, Kaua'i
- c. Subdivision Application No. S-2026-3
State of Hawai'i / Charles K. and Eileen I. Bright
Proposed 2-Lot Consolidation
TMKs: (4) 4-6-027: 010 and 025 (por.)
Kawaihau, Kapa'a, Kaua'i
- d. Subdivision Application No. S-2023-1
Kukui'ula Parcel A2F2F3 Subdivision
BBCP Kukui'ula Development, LLC.
Proposed 31-Lot Subdivision
TMK: (4) 2-6-022: 020
Lāwai, Kōloa, Kona, Kaua'i
- e. Subdivision Application No. S-2024-2
Moloa'a Farms, LLC. et al.
Proposed 11-Lot Subdivision
TMK: (4) 4-9-009: 001
Moloa'a and Papa'a, Kawaihau, Kaua'i

- f. Subdivision Application No. S-2019-4
Tim Beckman and Mira Hess
Proposed 4-Lot Consolidation and Re-subdivision into 3-Lots
TMKs: (4) 2-8-014: 038 and 042
Kōloa, Kauaʻi

K. UNFINISHED BUSINESS (For Action)

1. **CLASS IV ZONING PERMIT (Z-IV-2025-6), USE PERMIT (U-2025-4), and SPECIAL PERMIT (SP-2025-1)** to conduct outdoor commercial events, including but not limited to weddings and public/private gatherings, on a parcel situated along the mauka side of Kaumualii Highway in Kalaheo (formerly Olu Pua Gardens site), situated approximately 0.5 mile west of Kalaheo Town, approximately 3,000 feet mauka of the Halewili Road/Kaumualiʻi Highway intersection, further identified as Tax Map Key: (4) 2-4-007:016, containing a land area of 12.285 acres = **OLU PUA GARDENS LLC. [Director's Report Received, 12/24/2024; Hearing Closed, Deferred, 1/14/2025; Deferred, 6/10/2025; Deferred, 8/12/2025].**

- a. Transmittal of supplemental information to Planning Commission.

L. NEW BUSINESS (For Action)

1. None for this meeting.

M. EXECUTIVE SESSION

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

1. **ZA-2026-1: A bill (2969)** for an ordinance amending Chapter 8, Article 27 of the Kauaʻi County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. The purpose of this Ordinance is to amend the Shoreline Setback Ordinance by adding safeguards that protect life and property and ensure the longevity and integrity of Kauai's coastal and beach resources along the shoreline = **KAUAI COUNTY COUNCIL. [Director's Report, Received, Hearing Continued, 8/26/2025].**
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Kōloa, Kaua'i
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TMK: (4) 3-3-021: 048
Nāwiliwili, Niumalu, Līhu'e, Kaua'i
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TMKs: (4) 4-6-027: 010 and 025 (por.)
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10. Subdivision Application No. S-2023-1
Kukui'ula Parcel A2F2F3 Subdivision
BBCP Kukui'ula Development, LLC.
Proposed 31-Lot Subdivision
TMK: (4) 2-6-022: 020
Lāwai, Kōloa, Kona, Kaua'i
11. Subdivision Application No. S-2024-2
Moloa'a Farms, LLC. et al.
Proposed 11-Lot Subdivision
TMK: (4) 4-9-009: 001
Moloa'a and Papa'a, Kawaihau, Kaua'i

12. Subdivision Application No. S-2019-4

Tim Beckman and Mira Hess

Proposed 4-Lot Consolidation and Re-subdivision into 3-Lots

TMKs: (4) 2-8-014: 038 and 042

Kōloa, Kauaʻi

13. **CLASS IV ZONING PERMIT (Z-IV-2025-6), USE PERMIT (U-2025-4), and SPECIAL PERMIT (SP-2025-1)** to conduct outdoor commercial events, including but not limited to weddings and public/private gatherings, on a parcel situated along the mauka side of Kaumualii Highway in Kalaheo (formerly Olu Pua Gardens site), situated approximately 0.5 mile west of Kalaheo Town, approximately 3,000 feet mauka of the Halewili Road/Kaumualii Highway intersection, further identified as Tax Map Key: (4) 2-4-007:016, containing a land area of 12.285 acres = **OLU PUA GARDENS LLC. [Director's Report Received, 12/24/2024; Hearing Closed, Deferred, 1/14/2025; Deferred, 6/10/2025; Deferred, 8/12/2025].**

N. ANNOUNCEMENTS

1. Topics for Future Meetings.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on **December 9, 2025**. The Planning Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

O. ADJOURNMENT

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SPECIAL MANAGEMENT AREA (SMA) Minor Determinations

Date (Action)	SMA Minor Permit number	Location (TMK)	Activity/ structure
9.26.2025 (Approved)	SMA(M)-2026-6	Kōloa (2-6-011:006)	Construction and installation of a new Individual Wastewater System (IWS) and concrete driveway.
10.03.2025 (Approved)	SMA(M)-2026-7	Līhu'e (3-2-003:030)	Construction/ New Individual Wastewater System (IWS).
10.03.2025 (Approved)	SMA(M)-2026-8	Kekaha (1-3-010:113)	Construction/ New Individual Wastewater System (IWS).
10.13.2025 (Approved)	SMA(M)-2026-9	Kapa'a (4-1-004:034)	Construction/ New Individual Wastewater System and Grass Crete driveway.

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 10, 2025

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2026-10	Village Manor	4-3-007:013	Kapa'a	Stair demolition and rebuild at Building A./ Required setback: 130.7 ft. Work is 311 ft beyond required setback.
SSD-2026-11	Christopher and Ani Turner	5-8-008:006	Hanalei	Proposed new single-family dwelling and ADU. The required shoreline setback is 89 feet, and the dwelling is located an additional 361 to 389 feet inland from that required setback.
SSD-2026-12	Village Manor	4-3-007:013	Kapa'a	Stair demolition and rebuild at Building C./ Required setback: 130.7 ft. Work is 311 ft beyond required setback.
SSD-2026-13	Jeff Lewis	1-3-003:022 CPR Unit 1 and 2	Kekaha	New rock wall/ Rock wall is located more than 40 feet from shoreline.

KAUAI PLANNING COMMISSION
REGULAR MEETING
August 26, 2025
DRAFT

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Francis DeGracia at 9:09 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako
Ms. Helen Cox
Mr. Francis DeGracia
Ms. Glenda Nogami Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

The following staff members were present: Planning Department - Director Ka'aina Hull; Staff Planner Kenny Estes, Dale Cua; Staff Services Leila Kim; Planning Secretary Shanlee Jimenez; Office of the County Attorney - Deputy County Attorney Laura Barzilai, Office of Boards and Commissions - Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Francis DeGracia: Good morning. The time is 9:09, I'd like to call to order the Planning Commission meeting for Tuesday, August 26, 2025. Could we get a roll call vote, Mr. Clerk.

ROLL CALL

Planning Department Director Ka'aina Hull: Roll call, Mr. Chair. Commissioner Ako?

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox:

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner Ornellas?

Commissioner Jerry Ornellas: Here.

Mr. Hull: Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Mr. Hull: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Mr. Hull: Chair DeGracia?

Chair Francis DeGracia: Here.

Mr. Hull: You have a quorum, Mr. Chair. 6:0.

Chair DeGracia: Thank you.

APPROVAL OF AGENDA

Mr. Hull: Next is the Approval of the Agenda. The department recommend amending the agenda first to reflect, L. New Business items to directly proceed their respective agency hearings in G.2.

Ms. Cox: I move we approve the agenda as suggested.

Ms. Streufert: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to approve the agenda as amended by the clerk. We'll do a voice vote on this. All in favor say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION (None)

Mr. Hull: Next, we have Minutes of the Meeting of the Planning...oh, I apologize. There are no previous minutes, so we move directly into Committee Reports. I'll turn it over to the Subdivision Committee Chair.

RECEIPT FOR ITEMS FOR THE RECORD (None)

COMMITTEE REPORTS

Subdivision Committee Report

Subdivision Committee Chair Gerald Ako: Good morning. The Subdivision Committee met this morning. We had six items on the agenda, however four of the items were Extensions for Requests. Requests for Extensions and two of them were a request for termination of a prior permit, so with that, if you have any other questions.

Chair DeGracia: If no questions, Commissioners, I'll seek a motion.

Ms. Streufert: I move to approve the Subdivision Committee Report.

Ms. Cox: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to approve the Subdivision Committee Report. If there's no discussion, we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

HEARINGS AND PUBLIC COMMENT (None)

Continued Agency Hearing (None)

New Agency Hearing

Mr. Hull: Next, we move on to New Agency Hearing, 2.A.

CLASS IV ZONING PERMIT Z-IV-2026-1 to allow the construction of a 42,000 square feet warehouse/distribution facility and associated site improvements on Lot 4 of the Ahukini Business Park Subdivision in Lihue, involving a parcel situated on the makai side of Kapule Highway and immediately adjacent to the County of Kauai Ahukini Transfer Station, further identified as Tax Map Key: (4) 3-7-002:021 and containing a total area of 14.671 acres - BHD LAND DEVELOPMENT LLC. [Director's Report Received, 8/12/2025].

1. Director's Report pertaining to this matter.
2. Transmittal of agency comments to Planning Commission.

Mr. Hull: I don't have anybody signed up to testify on this agenda item. Are there any members of the public that would like to testify on this agenda item? Seeing none, the department would recommend closing agency hearing.

Unknown Woman from public audience: For the applicant (inaudible)?

Mr. Hull: Oh no, no, during the...yeah, this is just for public testimony.

Unknown Woman from public audience: Okay. Thank you.

Ms. Cox: I move we close the agency hearing.

Ms. Otsuka: Second.

Chair DeGracia: Commissioners, motion on the floor is to close agency hearing on this agenda item. Any discussion? Hearing none, we'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Motion carries. 6:0.

Mr. Hull: With that I'll turn over to the staff planner to give the Directors Report, and then as the applicant's here and if they'd like to give a brief presentation, so we may have to take a small recess when we get into them, to set them up, but I'll turn over to Kenny for now.

Staff Planner Kenny Estes: Good morning, Chair and members of the Planning Commission. I'll go over the report for the record.

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

Mr. Estes: I'll hold off on the department's recommendation.

Chair DeGracia: Okay. Thank you. Commissioners, any questions for the planner or the department?

Ms. Streufert: (Inaudible). It's on. Got it. On this 14.671-acre property there's a 42,000 square foot facility, but I don't see that where that's going to be located on the, on the...

Mr. Estes: They provided a site plan with the application, which shows the proposed facility on the lot.

Ms. Streufert: I can't seem to find it. I'll ask the applicant (inaudible).

Mr. Hull: (Inaudible). I'm certain they'll be going over that in their presentation as well.

Chair DeGracia: Commissioners, any further questions? Additional? I have a question for the department, but this is not concerning our application, but just curious about parking requirements in industrial under that Section 87.3 and what is the logic behind having only one parking stall for each 3 employees? (Inaudible). It doesn't pan out in my mind.

Mr. Hull: Yeah, well, philosophically from a zoning perspective, parking standards are absolutely arbitrary, that you will look across to zoning code to zoning code to zoning code and every zoning code for each different municipality will have different parking requirements, so how they're created, I'm not sure where three came from originally in 1972. There is some, you know thought within the planning industry that the parking requirement should just be turned over the applicants and they know their parking better than government does. Having said that, sorry, little parking rant there. The one in three you can surmise that not every employee is going to be on site during the working hours, so you don't necessarily need a parking stall for every single employee employed by an operation and that they'll be there during different times. but being that generally of the belief that operations know their parking better than us, like the question would be pointed to ask the applicant as well whether or not that's (inaudible).

Chair DeGracia: It's just on a case by case, but this is just written into the code.

Mr. Hull: It's written in the code, we have to apply it but yeah...

Chair DeGracia: Okay. Thank you. Commissioners, any further questions? If not, do we need a few minutes to...

Ms. Streufert: Is that the same...I'm sorry, for the parking thing, is that also the same rationale for the number of photovoltaic recharging stations because there's only five and I don't know how that works.

Mr. Hull: The...so, the trigger for photo, for, not photovoltaic, but I think you're talking about EV charging stations.

Ms. Streufert: I'm sorry, yes.

Mr. Hull: EV charging stations is off of what the code requirements are once you hit 100 units, so many additional EV charging stations are required. The 100 units is in state law and then the county law goes a bit beyond that.

Chair DeGracia: Okay, Commissioners, anything further for the department? If not, did I hear that they need a few minutes...

Mr. Hull: Kenny, are they set up already or are they going to take some time to set up before?

Mr. Estes: I believe they have to set up.

Chair DeGracia: Okay.

Mr. Hull: Maybe a 5-minute recess.

Chair DeGracia: We'll take a short recess for setting up.

The Commission went into recess at 9:25 a.m.
The Commission reconvened from recess at 9:27 a.m.

Chair DeGracia: Okay. Thank you for your patience. I'd like to call the meeting back to order.

Mr. Hull: And with that I'll turn it over to the applicant, BHD Land Development LLC.

Ms. Onaona Thoene: Mahalo nui. Can you folks hear me okay? Alright. Good morning, Chair, Commissioners, Planning Director, and Planning Staff. My name is Onaona Thoene and I represent the applicant, BHD Land Development LLC. We thank you folks for hearing this application this morning. We prepared just a very brief PowerPoint presentation to bring up some of the visuals from our application to help orient you with our project. With me today are Steve Bachman and Tracy Hammer of BHD. We also have a number of our technical consultants with us should you folks have any questions on the project. So, as reported by the Planning Department this project is going to be cited on Lot 4 of the Ahukini Makai Subdivision. Project is located near the Līhu'e Airport and the Līhu'e Refuse Station. So, that's right here, you can see it on the map. The line is designated in the State Land Use Urban District and it's zoned in the General Zoning, General Industrial Zoning District. As they reported the projects approximately 42,000 square feet, warehouse and distribution facility on approximately 8.8 acres of a larger 14.6-acre parcel. The proposed warehouse and distribution use is a permitted use in the General Industrial Zoning District and is consistent with the General Plan and the urban center designation. In terms of economic benefits, we are expecting that this project will create

approximately 169 permanent employment positions on the island. So, with that, I'll go ahead and turn it over to Steve and Tracy to provide you some additional details on the project site plan and elevations.

Mr. Steve Bachman: Good afternoon, good morning, sorry, afternoon back in Arizona. Can you guys hear me okay?

Mr. Hull: Yes.

Mr. Bachman: Okay, great. I'm Steve Bachman with BH DevCo, also the owners of BHD Land Development, which is the LLC. that we are (inaudible) contract to purchase this land through. My partner is Tracy Hammer; he's sitting to my left. We're happy to be here, so thank you guys for taking the time to hear our application. Love to give you a little overview of what the site looks like, certainly answer the question about where the 42,000 square foot facility is within the overall subdivision, but to start I guess I'll tell you in 30 seconds about us. So, BHD is a national developer that works directly for end users, so we do not (inaudible) developments, so there is always an actual user behind us that is certainly the case here. I'm always under, and Tracy 's always under an NDA, Non-Disclosure Agreement, so we can't specifically talk about who we are representing. So, therefore we go under project code names. This one we call Project Winston. And we're very happy to be in front of all of you to talk about Project Winston. Certainly getting answer any questions you have about operations, how the building functions, hours of operation, the type of construction, all those things. We just wanted to kind of tell you who we are, and that it's not just the two of us up here, there is a, an end user behind us. So, as to the site plan, what you see in front of you is the overall 14-acre parcel and within the, what I'll call (inaudible), right side or what appears to be east, but it's more the South side is the regional retention facility for the Ahukini Subdivision that is being developed currently by Grove Farm. So, that is the drainage facility that will serve the entire project, so within the 14-acres that includes that portion of the project as well as our project, which is on the plan, west side. So, I don't know if we have anything that shows the overall subdivision but...

Ms. Theone: (Inaudible).

Mr. Bachman: We could potentially get there if you want to see how it fits within the overall subdivision, but to kind of go through the operations of the site and what we're currently showing you, is the area in the center of the colored areas is the actual building, and just for the record I'd like to make, I'd like to make a correction for the record, when we submitted the application we submitted it as a 35,994 square foot building, with a 6,545 foot canopy area, since that time, and is often the case, there's minor modifications that get made as we start to work with the end user on some design elements, very minor in this case, but for the record I'd like to state that we are now showing a 36,148 square foot building with 5,015 square feet of canopy, so the total square footage of the overall, call it canopy and building area is now 41,163 square feet, whereas before we were a little over 42,000. So, minor modification, but just wanted it for the record state that. That is within the kind of the blocked area in the middle. The canopy area is over the green area, those are the parking stalls for the vans that we'll be leaving the facility to go make parcel deliveries. The blue area is where the vans park when they're not in operation. They come in, they park or go through and then go to the green area to back in, get loaded with packages and then exit out of the facility. The yellow area is where the employees park in. To the question

earlier, we certainly exceed the standard and that is often the case with almost all of these buildings, do...you know exceed the standards of what the local codes are. I would agree that the codes are sometimes a little bit outdated in how they, how they interpret what the employment or what the, you know, facilities will be for current industrial buildings. We design it for the end user and for their potential growth, potential, so that is what the yellow area is and the yellow area is a total of 89 parking stalls currently. I should mention that the blue area is 46 parking stalls and the green dock area includes 9 loading docks for those vans. The red area to the plan north is where the trucks would come in with the prepackaged addressed packages, they would be unloaded in the red area, that is 6 depressed dock areas, we're going to show you the next slide that shows you a little bit of the elevation of the building. So, that is a depressed dock you see it down here in the bottom right, so that's a 4-foot high dock area, so the trucks back in there, they unload the packages, they then get sorted by the employees inside of the facility, they then get ready to go into the vans and as the vans pull up they get loaded into the vans and off to their final destination. The other view, so that view is kind of from what would be the plan southeast corner looking at the canopy and look at the dock area. The other view is kind of from the plan southwest corner looking back at the building, showing where the office entry is. On the...there under that canopy as well as the canopy itself for the van loading, so that is kind a, kind of the overall design and operations for the facility. Certainly happy to answer any questions. Often we're asked about timelines, so I'd be happy to give you just a very quick timeline. You know, as you all know, I believe you guys have approved the overall subdivision agreement that subdivision for Grove Farm and their master development. They are currently under construction with their master plan doing their phased grading, utilities, paving, all the things they're supposed to do and they're doing a great job, we're enjoying our relationship with them. So, a lot of what we're doing within this project kind of gets dovetails into what they're doing for the master development, master subdivision standpoint. So, based on their timing, we will continue with the design, again assuming, well not assuming, but hoping that we get your approval today. We would kick off our design, go through design and be planning to commence construction in 2026, with a building opening and operating in 2027. And that does coordinate with the construction activity that Grove Farm is doing within the overall subdivision. So, with that, kind of a general overview of off site by them, our timing and then I'm happy to answer any questions or Chair, if you have no questions at this time, I'll turn it back to Onaona and she'll give you a little bit more on the project.

Ms. Theone: Thanks, Steve. Just a couple more slides here again, so this is all part of our application showing, you know generally where the location of the property, General Plan Designation, Zoning Designation, State Land Use, flood zone, tsunami zone, and SMA, and because the portion of the project as you can see back in this slide, very kind of top corner of the project, portions in the SMA, we did apply for SMA Minor Permit and it covers just some simple elements that are located in the SMA that you can see, here we have perimeter fencing, bio swell, landscaping, we have a trash enclosure a little bit of some pavement areas and then of course a portion of the regional retention basin. So, that SMA Permit was granted on August 11th, and then lastly, we did get the Shoreline Setback Determination, so this graphic here shows, you know the shoreline, it's the 100 setback in relation to the project. So, you know we just again, thank you folks very much for your time, hearing our application. We have the approvals that we're going through to get this project going and our team is available for questions if you have any.

Chair DeGracia: Commissioners, questions for the applicant?

Mr. Ako: Real quick, if I can. Relative to the Refuse Transfer Station, where is that? Real close, right?

Ms. Theone: It's the next door neighbor, yeah.

Mr. Ako: On the Hanamā'ulu side?

Ms. Theone: On the south side...right?

Mr. Ako: South side...

Mr. Bachman: It'd be to the south, yes.

Ms. Theone: So, right here, these guys are right...the refuse station if you can see, that's their parcel right there. See if I can get a better...here we go.

Mr. Bachman: Yeah, there you go.

Mr. Hammer: (Inaudible) corner of the building, that white (inaudible).

Mr. Ako: So, as I come into Ahukini as I'm going to the beach, it's on the left, mauka side? Next to the...

Ms. Theone: Ahukini Road... sorry, okay.

Mr. Ako: Which is the...

Ms. Theone: So, the beach is on this side, yeah, the refuse station is right here.

Mr. Hull: So, behind (inaudible).

Mr. Bachman: So, we're above the beach...

Ms. Theone: Yeah.

Mr. Bachman: ...but adjacent to the refuse station.

Ms. Theone: Yeah.

Mr. Ako: Got it. Okay.

Ms. Cox: So how...I know that you've met the setback requirements, but how close are you to the bay, and what is the visibility?

Mr. William Eddy: Good morning. My name is William Eddy with Kodani & Associates Engineers. We're the civil engineer consultants for the project. So, the...on the map here there's two red lines, the first red line that is closest to the (inaudible) that says Hanamā'ulu Bay, is the

certified shoreline. And that is really just what it sounds like, it's...the vegetation line of the bay, and then there's a 100-foot setback from that, and so that's where development has restrictions. So, the terrain there is quite steep, it's like a rocky headland there, you can kind of see it when you fly into the airport where it's rocky shoreline, and so the elevation at the project site is...I'm kind of guessing, but maybe about 80 feet (inaudible) sea level.

Ms. Cox: Okay.

Mr. Eddy: And then at the edge of the property there, is close to the top of the slope where that Lot 4 is kind of a nice plain surface, and you know it was a sugar cane field at one time and then it drops off quite steeply to the ocean. So, there are nice views of Hanamā'ulu Bay from this lot for sure, but there's also a lot of trees along the cliffside...

Ms. Cox: So, if you're down on the bay you're not going to see the building...or will you?

Mr. Eddy: You won't...it's...the angles just don't work out. Maybe if you were directly across the bay and then looking through the trees and, you know it's up at a higher elevation, so we haven't really done any studies as such, but I wouldn't expect that you could see the building itself, it's not a tall building...

Ms. Cox: Right.

Mr. Eddy: ...it's a (inaudible) 28 feet in height, yeah.

Ms. Cox: Thank you.

Mr. Hull: There's a Shoreline Setback Ordinance Amendment on the agenda, and Ms. Diamond is sitting in the back, so I just want to clarify a certified shoreline is no longer the vegetation line, it is the highest (inaudible) to the highest (inaudible).

Ms. Cox: That's right.

Mr. Hull: As enumerated in the Supreme Court ruling per Diamond v State, so, thank you.

Ms. Streufert: Before you go. I just have a couple of questions. I misstated my question earlier. I did see this map, but I cannot quite figure out how close you are to the approach, the airport approach or the airplane approach because I'm more concerned about...I'm concerned about the view plain, but I am more concerned about the safety because it is so close to the airport. So, could you explain a little bit about what kinds of mitigating factors you're using to ensure that there is safety that we can assure safety at the airport?

Mr. Eddy: Okay. All of Ahukini Makai Subdivision is subject to an agreement with the Department of Transportation Airports Division and the name of the agreement is called Avigation Agreement, and so there's rules for development within the subdivision and per the agreement. One of the conditions of the Avigation Agreement is that each development submits to the FAA, the Federal Aviation Administration for a certain permit for development in proximity to an airport and so there's a standard application and we've completed that application, and then the FAA does a, they call that aeronautical study and the application seems

to be most concerned with tall things like antennas and also with lighting, and so they have it reviewed and approved the application for this project. So, that would be an FAA approval.

Ms. Streufert: So, I see this report from the Department of Transportation that was included in this and their comments included complying with conditions and terms outlined in the memorandum of agreement of mitigation measures for traffic and there are a few others in here. Would this be acceptable if this were also part of the conditions for approval? If this is from the department or the state Department of Transportation?

Mr. Bachman: Yeah, from the applicant standpoint, we do adhere to and are part of the overall subdivision and we do understand that Grove Farms is adhering to the criteria that they have been told by the DOT, so we would be fine if that was a condition of our approval.

Ms. Streufert: Which is this particular document.

Mr. Hull: Yeah, to clarify. So, that conditions, sorry, Hawai'i Department of Transportation submitted separate comments to this particular application that aren't necessarily the exact same comments typed (inaudible) subdivision requirements, and so what the commissioner is asking is, would you, as the applicant be open to an amendment to the department's proposed conditions of approval to incorporate the HDOT comments as requirements as well.

Mr. Bachman: Just to our project application or to the overall? Because I can't, we can't agree to something...

Mr. Hull: No, no, yeah, it'd just be for, just for your project site application. Correct.

Mr. Bachman: Yeah, we've reviewed those and we don't see any issue with that. That'd be fine.

Chair DeGracia: Commissioners, further questions.

Ms. Otsuka: I...

Mr. Ornellas: Yes, I'm...

Ms. Otsuka: Go ahead.

Mr. Ornellas: I'm just curious as to why, and I don't think you can answer the question, but I'm just curious to why the end user wishes to remain anonymous. I mean if they coming to Kaua'i to do business here and they're a reputable firm, you would think that they would have no problem telling us who they are.

Mr. Bachman: Yeah, you're probably right that I can't answer that for them, what I can tell you is that it is not specific to Hawai'i, it's not specific to this project, it is the standard course of business that my partner and I have to go through. We would love to tell you, but we just can't do the NDA, but yeah, the reason for why they want to remain somewhat anonymous I don't, I wouldn't speculate I guess as to what that is, but we do...our experience with this particular end user is that they are a great end user, they are of the highest quality, and when the time is right they do make announcements so that everyone knows who they are. So...

Mr. Ornellas: As you can see our names are right here, right, so...we can't be anonymous.

Mr. Bachman: Yes, understood.

Mr. Ornellas: Thank you.

Mr. Bachman: Thank you.

Mr. Ako: If I can follow up on that and if you cannot tell us, who could?

Mr. Bachman: Who could? The end user only can, themselves.

Mr. Ako: And would they be willing to disclose that to this Commission?

Mr. Bachman: To this Commission today, I don't believe that they would be willing to disclose that. But I can't speak for the end user on that specific item.

Mr. Ako: Okay.

Chair DeGracia: I got a question. In the application...

Mr. Hull: Sorry, I just gotta...just with the way the conversations going, I just want to also, just point out that the department when we accept applications, just is reviewing the proposal as long as the landowner is authorizing the proposal to be, you know, applied for, there's no way that the department can compel, you know what the specific operation is. We have to look at the operation as proposed regardless of who is applying. So, that's why the department can't...I mean I think we all know who we're talking about, but...

Chair DeGracia: My question is, there was a section on community outreach and it stated that when an application is submitted and accepted by the department that you would initiate, so two part question, what is the goal of that community outreach and then the other part is, where are you at with this outreach to the community?

Mr. Bachman: We would...a lot of that has been done through the master subdivision, we're working closely with Grove Farm, where they have had, you know many meetings over the last call it 10 plus years with the community. They've given us you know names and contacts of people to be reaching out to. Some of them with the end user and we are beginning and working through that process now. We have our cultural team with us here today and will continue to follow up with kind of some, what I'd call key stakeholders with both the end user and with Grove Farm. But a lot of that outreach was done and approved or done, done through the subdivision agreement that Grove Farm already completed.

Chair DeGracia: Okay.

Mr. Bachman: But nothing (inaudible) that.

Chair DeGracia: Specific to this project though, has there...is there goals for the community outreach specific to this project or...

Mr. Bachman: Absolutely.

Chair DeGracia: What is your goal?

Mr. Bachman: Yeah, the goal for the end user and we'll be alongside them is to have community outreach to reach out to different stakeholders within, you know local community to start to integrate with local groups as to employment as they get closer to, assuming an approval and moving forward, you know getting closer to bringing employment on, so they have what they call, you know some of these, some of the things you'll see in here are what they call, like flex drivers, I believe it was in the application, there are local, there are opportunities for local people to work for them not just as an employee, but otherwise through other contract things and they will engage with the community directly for that, and that they've had, you know we will have, my partner and I will engage with the community through the contractor base, so while we haven't hired a general contractor yet, we hope to in the coming months and when we do that we will have outreach to the contractor community as well, so that we have sub-contractors that are all, you know have an opportunity to see the project as well, which is typical of all the projects we work on, Mr. Chair, but here I think, you know we certainly have already had those conversations with them, (inaudible) my partners met with, you know three different general contractors, Swinnerton, Layton and PLC...

Mr. Hammer: PCL.

Mr. Bachman: PCL. And you know, with part of that direction being that local outreach will be part of what we will pursue with the, the contracting of this project for construction.

Chair DeGracia: Thank you, and you brought us something interesting, what is a flex driver and what's the difference between a flex driver and an employee driver?

Mr. Bachman: I don't know that I can fully answer it 100% accurately, but I'll give it a shot and someone will tell me if I, if I messed it up behind me. A flex driver is not an actual true employee of the end user, they are a contract employee that works through a contract to have the opportunity to drive for that end user, so there's separate things that are set up, so there's full time employees, they're employees, you know with the, you know kind of call it the typical employment base, but then there also are flex drivers, which are not direct employees, but have contracts with the company to drive and some of those are done through what they, you know it's part of this outreach where they do have, where they work within the local community to find, you know leaders for that on that opportunity to bring others in.

Chair DeGracia: Thank you. And then one last question. I was looking at the rendering of the warehouse, how are you guys planning on cooling it down for workers inside?

Unknown Male: It will be an air-conditioned warehouse.

Chair DeGracia: Okay.

Unknown Male: And then when I was going to add to the outreach, we have reached out to four general contractors, and all have a local presence and certainly work on the islands and as part of RFP to the general contractors, will be outreach to the local folks, so we will have a diversity

component as part of that RFP, where we'll set goals and objectives for the project and then I do think as well it's good to add the sustainability portion to that, it is a company that's focused on low carbon emissions, there will be a recycling program, we do have the 5 EV charging stations as required, but there's definitely a goal and a target to hire local wherever we can.

Chair DeGracia: Thank you. Because this operation, it looked this a considerable operation and the size of it would like to see a good partnership with the community. Thank you. Commissioners, any further questions?

Ms. Streufert: I do. Go ahead.

Mr. Ako: Let's see, I think one of the big issues that we face here on Kaua'i is the fact of, you know our economic stability that we have here. The big issue is that we're just losing our next generations that are moving off island because one, they cannot afford to stay here or the lack of job opportunities. I know you mentioned that there's about 69 jobs that this project here will employ. What type of jobs are we talking about? About the 69 or whatever that number is.

Mr. Bachman: Yeah, I think it's a 169.

Mr. Ako: 169.

Mr. Bachman: 169. You know, drivers, warehouse workers, maintenance, there's a variety of things that people that work within the warehouse. There's also obviously the people that oversee them, so the management of the of the facility and things like that, so a myriad of things, but a lot of, you know, it's, this is a true warehouse facility, it's a distribution facility and it is a delivery facility, so it will be, you know warehouse workers and drivers.

Mr. Ako: So, if we talking about salary, any idea about what that average, what the mean salary would be for an employee.

Mr. Bachman: I don't know that myself and I wouldn't guess, especially since we're talking about here in the islands where I'm not sure what the, what the pay is myself but...

Mr. Ako: And you also mentioned that the warehouse itself will...it's going to be a warehouse and distribution center, yeah, what does that mean? That means products will be coming in and going out as well as products that will be stored within the facility for say, distribution.

Mr. Bachman: Generally, the project, so to go back to the site plan, so, prepackaged things come in daily into the red area, which would be the unloaded through by in the docs, so they come in through trucks and get unloaded. They then, the workers then sort them.

Mr. Ako: And those are designated for no particular individual or residents, they're just this block of goods that are coming in.

Mr. Bachman: No, no. They are already prepackaged.

Mr. Ako: Prepackaged.

Mr. Bachman: Yes so, they already have been, delivery station wise, someone has already made an order, that package has been put into the box that has your name on it and then it gets shipped to this from a from a...through a truck from another facility and then gets sorted and gets placed on a van and gets delivered out to your house or whomever 's house or business from this facility. So, it's not actually storing overnight, you know a bunch of materials that are going to be orders placed for them to be packaged in this facility, that is not the current operation of this facility, it's more things coming in, warehoused, loaded, sorted throughout the day and then distribute it out later in the day. John?

Unknown Male: Yeah, that was right and (inaudible). Very good.

Mr. Bachman: John Karnowski is the Traffic Engineer for us, as well as works actually for this particular end-user, so he is very familiar with their operations and can help answer questions as well.

Mr. John Karnowski: And then what I was going to add real quick as well, if you do read the type 4 application I think there's a great section or paragraph in there in regards to the employment, the hourly wage, the benefits that the client provides, but the great written narrative that I think does speak to Steve's point that, you know this client is a great steward of the community and they hold that in very high regard, but there's a lot of detailed information in the application.

Ms. Otsuka: I have a question. With the amount of vehicles proposed, was there any discussions regarding our future need for above ground fuel station?

Unknown Male: Fuel station.

Ms. Otsuka: Fuel...

Mr. Karnowski: I don't think that's part of the plan.

Ms. Otsuka: Okay. Thanks.

Ms. Streufert: On page 4 of your application it that says that there is going to be, using, handling or storing hazardous materials in the ordinary course of business. It's on page 4. And there was a concern in the Director's Report about drainage with the airport runway area so close, and also it goes into the potentially go into Ahukini Bay, can you address that?

Mr. Karnowski: I'll try and touch on the hazardous materials to start. Currently and initially there are no plans to store hazardous materials. I know it was part of the clients operation on occasion they may have facilities that do store hazardous materials and if that were to occur there would certainly be a follow up process to the requirements entitlement side of that as far as what, how those materials may be handled, but initially no hazardous materials.

Ms. Streufert: And the drainage part of that...is that...

Mr. Karnowski: The drainage is part of the overall Master Plan as Steve had mentioned, the area to plan (inaudible), the large basin, that is a self-contained basin, so we will not be sending any stormwater off property, if you will, that'll all be contained within the master basin.

Ms. Streufert: So, this is all part of the Master Plan, but not specifically to this project. Is that correct?

Mr. Karnowski: When the Master Plan was designed this particular lot was planned as part of that overall master retention detention basin, so...

Ms. Streufert: Okay.

Mr. Ako: At 40,000 square feet, warehouse, are you aware of, if there's any other warehouse or distribution center on the island equivalent to...it's about the size of Longs, right? About 40,000 square feet. Are you aware of any other warehouse or distribution center on island or maybe in state, maybe might be a better question, that exist?

Mr. Bachman: On the island, not aware of any. Certainly, there are other opportunities or other things in state, absolutely. On O'ahu there's buildings that big and larger, but here on Kaua'i, (inaudible) I don't know of any nor have I seen it. But what I can say to that is that, you know the way that these operations get designed and specifically for this type of facility is that every building is...it's not a cookie cutter at all. We, my partner and I have developed many of these buildings around the country and this one might be 42, the next one might be 26, the next one might be 87, every building is designed for the market based on the capacity of what the end user specifically believes the needs of that community are, so this is not an over designed, if anything it's the right size for the market with maybe a little bit of room for growth and expansion, but yeah they (inaudible) to really, especially in this product type, there are other buildings that another users would work with, where they do just kind of building the same building often, but that is certainly not the case for this facility, since it is right sized.

Mr. Hull: The only one I can think of, Commissioner, would possibly be the building supply warehouse in Lawa'i.

Mr. Ako: Lawa'i.

Mr. Hull: It's not receiving things from the airport, per say, but receives material and then distributes the material.

Ms. Otsuka: Comment, I appreciate the investment in the Hawai'i workforce, it says the end user invest up to \$5250.00 per associate annually to support their educational enrichment and career goals, so I appreciate that.

Chair DeGracia: I've got a question. This facility is it designed mainly to self-perform instead of contracting out your business or will it also, or and will it expedite the current service that's going on now?

Mr. Bachman: I'll talk in general because again I'm not the end user, but our understanding is both of those things will be true. One, it will...these efforts are designed to expedite delivery to

enhance the customers experience with the end user by not relying on others to do the delivery, specifically. So, by having the delivery network more contained, I believe it is easier for this end user to control the outcome a little more and they, and it will enhance customer experience, may shorten some other delivery timelines and third, it may take the relief off of some other facilities that are, that are a little bit stressed by the need to assist this particular end user. So...and again we're seeing this, my partner and I are working on this with them in many locations and we've heard that, call that second hand information, but in other presentations that I'm, so I'm kind of repeating what I've, what I've heard previously, but I do believe that to be the case.

Chair DeGracia: Thank you. Appreciate it.

Mr. Ako: I have one question. You know, as you just mentioned there that the, you relieving stress from some of the other, I guess distributors that are out there, does that mean we moving employees from one enterprise to another enterprise or are we increasing the workforce itself?

Mr. Bachman: I don't know that I could answer that myself.

Mr. Karnowski: Yeah, I think what I would add, you are increasing the workforce and what we do see nationally is some of the other entities are overstressed and they can't keep up with the volume, so it's more of a volume capacity timing consideration than it is an employment consideration.

Mr. Ako: Just wondering because I think right now we're looking at employment, unemployment at about 2.4%, 2.3%, and I think when you looking for the need for labor, where does that labor come from (inaudible), so, you know if we actually want to be increasing the workforce I think that's really good, yeah. We're bringing the 2.3% even further down, but I think at 2.3% you almost looking at a, everybody that's ready, willing and able to work, yeah, are already working, yeah at that level. Okay, so I'm hoping that you increasing the work, the labor workforce.

Ms. Streufert: Is there a requirement for workforce housing?

Mr. Hull: Not that I'm aware of.

Chair DeGracia: Okay, Commissioners, any further questions for the applicant and or the department? Or any further comments?

Mr. Ornellas: Yeah. You know, this type of operation is one that lends itself readily to automation, to what extent are these sorting lines automated.

Mr. Karnowski: This is all manual sorting, so this isn't a highly automated facility, so there's some conveyors in it, but it's all supported by the labor.

Mr. Ornellas: Thank you.

Chair DeGracia: Commissioners, anything further? All right I guess we'll be ready for the Director's recommendation or unless we need to take a...we can take a recess for (inaudible) of the conditions.

Mr. Hull: Well, the departments recommendation stands as it is, with the proposed recommendation of approval. Did the applicant have any objections to those recommended conditions of approval?

Mr. Bachman: No objections.

Ms. Streufert: I would also like to consider adding all of the recommendations from the Department of Transportation for safety and as you have stated previously you have no problems with that, so if we could add that with one change to those.

Mr. Hull: Yeah, there's one condition in there, Commissioner, almost all the conditions recommended by, sorry if I take a step back, generally speaking, the department is hesitant about incorporating other agencies comments as a clearing house set of conditions of approval and recommending it (inaudible) this body, this body absolutely has the ability and authority to do it, but generally the department would recommend not doing that because agencies are signatories to the building permit and will sometimes change their requirements post Planning Commission actions whereby will necessitate coming back to the Commission, so generally we recommend not, but for those agencies that are not signatories to building permits, that is, I think in a, an appropriate action to consider adopting their conditions that they're recommending. HDOT is not a signatory to the building permits, I think it's absolutely appropriate to consider adopting it. There is just one condition that HDOT is recommending that I'll be honest, from the departments standpoint we have a bit of a concern on, and it has to do with the fact that, I think it's Condition 3, which states that based on the information provided, the proposed projects does not anticipate to significantly impact the state highway system, however in the event that there are any unexpected traffic issues attributed to the project, the applicant shall mitigate them to the satisfaction of HDOT, at no cost to the state. That one, you know, all the other are pretty much reiterations of code requirements that they are (inaudible) to stand by those code requirements. This one is kind of an open-ended cart blanch, well HDOT would never do something, but like, in the extreme and in a hyperbolic statement, HDOT could be like, oh, there's too trucks on the road, we need you to build another lane to Kapa'a. I'm not saying they're to do that, but that's where there's some...it's (inaudible) simplified and if, you know perhaps, Commissioner, we could take a 5 or 10 minute recess and I can discuss with the applicant potential amendments that they might be open to, which I think will implement the intent of the condition while not leaving it entirely open-ended.

Ms. Streufert: Thank you. I would like that.

Chair DeGracia: Okay. We'll take a 10-minute recess.

The Commission went into recess at 10:09 a.m.
The Commission reconvened from recess at 10:17 a.m.

Chair DeGracia: Like to call the meeting back to order. And are we ready for the Director's recommendations?

Mr. Hull: Yeah, so the department still holds to its original set of recommended Conditions of Approval and the department is also by reference, recommending all of HDOT's recommendations be included as a new Condition 6, with HDOT's recommendations being

alphabetized with the final one being numerical and specifically the departments recommending one small change to Conditions 3 of HDOT, which be Condition C, as recommended to read as follows; based on the information provided the proposed project is not anticipated to significantly impact the state highway, however in the event that there are any unexpected traffic issues attributed to the project the applicant shall mitigate them to the satisfaction of the Planning Department will work in consultation with HDOT to make that determination.

Ms. Streufert: Should it state the Kaua'i Planning Department?

Mr. Hull: I can say that, I can adjust it, to the satisfaction of the Kaua'i Planning Department, who will work in consultation with HDOT to make that determination.

Unknown Male: I guess (inaudible).

Mr. Bachman: We do not object, we accept that modification. Thank you.

Chair DeGracia: Okay. Commissioners, any further discussion on the, the amendment? Any concerns?

Ms. Cox: No.

Chair DeGracia: If not, then are we going back to the Director's recommendation?

Mr. Hull: No, that was it.

Chair DeGracia: Or that was it? Okay. Commissioners, any further discussion?

Ms. Cox: Yeah. I just had a...I was thinking about seems to be there's a, I don't know if it's a contradiction, but at least a possible problem, and that is Gerald pointed out, Commissioner Ako pointed out that our unemployment rate is very low and you also said that you were going to be increasing the workforce rather than just moving people, so it seems like, either the project is going to steal jobs because of the unemployment rate is so low that people are going to leave other jobs to come to you or you really are going to increase the workforce, which is great, but then we have a housing problem and I was just wondering if you could speak to how you would imagine this working.

John Karnowski: I do know as part of the overall Master Plan with Grove Farms they do have a affordable housing component to that, which I think is a compliment to the overall Master Plan and I think based on the job growth and opportunities coupled with the overall Master Plan and the affordable housing component there I think they complement one another and then, you know from a job employment standpoint, you know certainly understand the low employment rate, but the objective and goal is to certainly, you know create new jobs and I think the benefits that come along with it and, you know when you really have a chance to read the Type 4 application and the written narrative, you know I think it does a great job just beyond the employment consideration factor of what the client tries to do in the community, so a lot of great information in that section without getting into a lot of detail.

Ms. Cox: Thank you.

Mr. Hull: I apologize to interject at the last minute, right before (inaudible) and action be called. Recognizing that we have two separate agenda items, we have the Agency Hearing, which was closed this morning, and we have the actual New Business, technically we didn't call for public testimony on the New Business. So, if you guys could take a seat and we'll call for any public testimony.

Ms. Theone: Thank you, folks.

Mr. Hull: Sunshine Law, sorry about that. So, while the Agency Hearing has been closed for this item there is technically a business section, New Business section. Is there any, we don't have anybody signed up, but there is anybody in the public that would like to testify on this agenda item? Okay, seeing none. Thank you.

Chair DeGracia: Thank you. With that, Commissioners, any further questions? If not, I'll entertain a motion.

Ms. Streufert: I move to approve Class IV 4 Zoning Permit, Z-IV-2026-1, with the amendments suggested by the department,

Ms. Otsuka: Second.

Chair DeGracia: Okay. Commissioners, motion has been made and seconded to approve Class IV Zoning Permit, Z-IV-2026-1, with the additional condition. Do we have any further discussion before we go to a roll call vote? Okay, hearing none, could we get a roll call vote, Mr. Clerk.

Mr. Hull: Roll call, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Okay. Thank you.

Mr. Hull: Moving on to number, G.2.b.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2026-1), CLASS IV ZONING PERMIT (Z-IV-2026-2), and USE PERMIT (U-2026-1) to accommodate improvements to the existing Wastewater Treatment Plant (WWTP) on property identified as the Ching Young Village Shopping Center in Hanalei Town, further identified as 5-5190 Kuhio Highway, Tax Map Key: (4) 5-5-002:040, containing a total area of 2.485 acres = MICHAEL G. CHING, ET AL. [Director's Report Received, 8/12/2025].

1. Director's Report pertaining to this matter.
2. Transmittal of agency comments to Planning Commission.

Mr. Hull: We don't have anybody signed up to testify in this agenda item, but is there any member of the public that would like to testify on this agenda item?

Ms. Theone: Just mahalo to you all. Thank you very much.

Mr. Hull: Seeing none, the department would recommend closing the agency hearing.

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

Ms. Cox: Second.

Chair DeGracia: Okay. Commissioners, motion has been made and seconded to close the agency hearing on this agenda item. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Oppose. Hearing none, motion carries. 6:0.

Continued Public Hearing (None)

NEW BUSINESS (For Action)

Mr. Hull: Moving into the business, New Business for this agenda item and agency hearing previously listed. The department's going to call right now for any public testimony on this item. Seeing none, the department will turn it over to Dale for the Director's Report pertaining to this matter.

Staff Planner Dale Cua: Good morning, Mr. Chair and members of the Planning Commission.

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

Chair DeGracia: Thank you. Commissioners, any questions for the department, planner?

Ms. Streufert: On the historical resources, it says that SHPD, this is their application, it says that SHPD requested submittal of the HRS 6E form to formally begin their review processes, the appropriate document was submitted to SHPD. Has any response been received?

Mr. Cua: We're still waiting for their reply.

Ms. Streufert: Okay.

Chair DeGracia: Commissioners, any other questions for the department? If not, I'd like to invite the applicant up to add or applicants representative. We have anybody in the room? Good morning. If there's anything you'd like to add to the report from the department and be available for any questions from the Commissioners.

Ms. Otsuka: Should they state their names?

Mr. Larry Harper: My name is Larry Harper; I'm the General Manager of Ching Young Village.

Mr. Waioli Forrest: I'm Waioli Forrest, the Assistant Manager, and, you know, it's a long time coming, we've been looking to update this for the couple of years, and we just look forward to getting the approval and, hopefully, you know, allow us to improve (inaudible) the shopping center (inaudible). Oh...yeah, we're just hoping to improve the environment, the community and, you know just update the existing shopping center, so it just optimizes our operations, you know.

Chair DeGracia: Commissioners, any questions for applicant?

Ms. Otsuka: You mentioned you're the General Manager and Assistant of the village?

Mr. Forrest: Yeah.

Mr. Harper: The shopping center.

Ms. Otsuka: The shopping center. Thank you.

Ms. Streufert: After this project is completed, what will happen to the temporary wet water treatment...product.

Mr. Harper: The temporary...

Ms. Streufert: Yeah, but...

Mr. Harper: (Inaudible).

Ms. Streufert: ...right, the temp...there's a temporary WWTP, I can't think of what the "P" is.

Mr. Harper: It's basically just a rented temporary system, and then the company that we rent from (inaudible).

Ms. Streufert: Okay, so then the old one will then be taken out...

Mr. Forrest: Decommissioned, yeah.

Ms. Streufert: Okay, because it's not in (inaudible).

Mr. Forrest: Oh, sorry about that.

Chair DeGracia: Commissioners, anything further? The applicant or department or would you guys like to start a discussion? If not, you know if you'd like to, get the departments Director's recommendation.

Mr. Cua: Chair, the department stands by its recommendation. There are a total of 8 conditions listed. I did want to make a note that Condition No. 8, there's a small little amendment to the condition where it would read, the Planning Commission reserves the right to add, modify or delete conditions of approval. But other than that it'll stand by its original recommendations.

Chair DeGracia: Okay. Thank you. Commissioners, last questions, discussion. If not, I'll entertain a motion.

Mr. Ako: Let's see, regarding Special Management Area Use Permit, SMA(U)-2026-1, Class IV Zoning Permit, Z-IV-2026-2, and Use Permit, U-2026-1, I move to approve.

Ms. Otsuka: Second.

Chair DeGracia: Okay, Commissioners, motion on the floor is to approve Special Management Area Use Permit, SMA(U)-2026-1, Class IV Zoning Permit, Z-IV-2026-2, and Use Permit, U-2026-1. Any last minute discussion before we go to a roll call vote?

Ms. Cox: Do we have to mention that the little modification?

Chair DeGracia: With the, with the correction and addition to Condition No. 8. Okay, if not, no further discussion. Could we get a roll call vote, Mr. Clerk.

Mr. Hull: Roll call, Mr. Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner Cox?

Ms. Cox: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Aye.

Mr. Hull: Chair DeGracia?

Chair DeGracia: Aye.

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

Chair DeGracia: Thank you.

Mr. Ako: Thank you.

Mr. Forrest: Thank you.

New Public Hearing

Mr. Hull: Next on the agenda, the final agenda item is;

ZA-2026-1: A bill (2969) for an ordinance amending Chapter 8, Article 27 of the Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection. The purpose of this Ordinance is to amend the Shoreline Setback Ordinance by adding safeguards that protect life and property and ensure the longevity and integrity of Kauai's coastal and beach resources along the shoreline = KAUAI COUNTY COUNCIL.

1. Director's Report pertaining to this matter.
2. Transmittal of agency comments to Planning Commission.

Mr. Hull: Do we have any members of the public that would like to testify on this agenda item? If you could state your name and three minutes for testimony.

Ms. Caren Diamond: Aloha Caren Diamond. I just want to thank Planning Department and support the changes to this. I think all the changes are excellent, the Director's Report explains everything. And really amazing and I just want to add my support for all the changes and thank you. Aloha.

Chair DeGracia: Thank you.

Ms. Otsuka: Thank you.

Mr. Hull: Is there any other members of the public who would like to testify on this agenda item? Seeing none...moving...okay, generally at this point the department would give its report, the staff planner assigned to this agenda item is out sick today. I can go over briefly, so you can understand. Ultimately, we're asking for deferral to have a little more time to digest and then, yeah, thank you to Ms. Diamond, I've been in discussions with her for now, a year and a half, trying to massage parts of the ordinance and the implementation of it that could be built better and then there's some additional things in it as well that go beyond just making the ordinance better, but the first and foremost, it's kind of a 3-pronged approach, first and foremost is, we've

noticed over time that, I'm sorry, with the Shoreline Setback Ordinance, to give it in a nutshell, the purpose of the setback is to ensure that the built environment is adequately setback from the shoreline enable to ensure that the new proposed structures are not impacted by coastal hazards, particularly coastal erosion, but other coastal hazards as well, and then also so that the built environment proposed new structures as the shoreline moves mauka, those built structures aren't going to impact and create tension and conflict between the public realm of the beach and the private realm of the private property, which we often see in coastal areas where land owners often at times can be found encroaching upon, what is public domain and whether, you know you're talking about just access issues, traditional issues, gathering and fishing issues, that conflict between the built environment is part of why the Shoreline Setback Ordinance was created. A lot of people look at the Shoreline Setback Ordinance, and is like, "oh, it's just to make sure the house can we move adequately to accommodate coastal erosion", that's a part of it, but that's not the only reason. So, in looking at the proposed amendments, one area where we found that there has been some insufficiencies in administering the ordinance is when it comes to renovations, repairs and rebuilds, so when you rebuild a structure in the shoreline setback area, you are required to move it back or out of the setback, and if you're going to repair a structure in the setback area, you're allowed to repair up to 50% of the assessed value of the structure. And what we found is that a fair, not a lot, but some applications over the past have provided a certain amount that they're proposing to improve the structure by and after we approve it as a repair to happen, that considerable efforts were made whereby it would appear significant amounts of money may have been invested in that structure beyond (inaudible) originally listed in the building permit repair application. And so, the first thrust of what this ordinance does is it grants the Planning Department the authority to require that after construction has happened, well, one that renovations and repair, repairs, sorry, anybody asking for repair exemption has to itemize exactly what is being proposed to be repaired, and the material and labor that's going to go into those repairs, and so we can itemize and look that it's actually is within the 50% threshold, and then it also authorized the department that should it require receipts after construction, we have...it would provide the department ability to require those receipts and if receipts are not provided, that the department can make a market analysis of what that would have cost it, and whether through the market analysis or through the receipts, it's demonstrated at 50% has been exceeded, it just further clarifies that we can have them either apply for a Shoreline Setback Variance or they have to remove those improvements. So, that's the first thrust of it. The second thrust is looking at the minimum buildable footprint, which when building in the setback, right now the minimum buildable footprint was set at 1,000 square feet. The Planning Commission in reviewing the variance has to at least consider allowing a minimum of a thousand square foot dwelling unit, and the proposal reduces it down to 500. Again, reducing that conflict between the built environment and the public space and what may be subject to coastal hazards. And the 3rd one, and I don't know if it's not getting that much attention, there's been a fair amount of discussion statewide around the draft ordinance and this one doesn't get much discussion, but it's the one I'm kind of somewhat most excited about. I can't take credit for it. Caren came up with it and I was, kind of like, is that legal...and the 3rd one is this notion of, even if you're doing repairs, once you hit and it's well within that 50%, once you hit 125,000, it's going to (inaudible) for shoreline structures, it's going to necessitate a shoreline survey be done. And you know, (inaudible), (inaudible), I've even spoke to some private sector attorneys and they're like, oh, that's asking a lot, and I was like, well, is it legal and they're like, well, in (inaudible), and their response, no, it's legal. And this speaks to the conflict that we often see between public users and

private property and that, you know, we just don't have many surveys of our beaches, we don't actually know where that line exists and so, when property owners and not all, I don't want to speak poorly and dimly on, and be like, oh, all ocean property owners are the pits and they're jerks and they're trying to take away public rights, definitely (inaudible) the case, but there are definitely some, where indeed they are trying to exert additional property, private property rights on what is otherwise clearly public lands and the reason we have such a hard time pushing back on those property owners or DLNR has problems pushing back on those property owners, is because we just don't have many certified shorelines out there and this mechanism, this trigger could in theory get a substantial part of our beaches that are abutting the built environment, certified and us (inaudible) stand exactly where that line is. So, I know it's kind of long winded, but that's what the proposed bill is in a nutshell. So, I don't know if there's any questions commissioners have.

Ms. Otsuka: I have a question. It says the structure cost less than 125,000, but are you taking into consideration the cost of construction as the years progress? Because you can have the same today, the value of 125,000 five years from now, the cost of the construction will be higher.

Mr. Hull: Yeah.

Ms. Otsuka: So...

Mr. Hull: Yeah, the...technically with the Coastal Erosion Ordinance there's a study that's done in every five or seven years to update the erosion rates. And I think, so, it's constantly (inaudible) ordinance in that, the erosion rates as time passes are updated through a map certification at UH, so in theory, every time we update it we could look at increasing, per say, for inflationary purposes the 125,000 threshold.

Ms. Otsuka: Thank you.

Mr. Ornellas: Along those lines, not only the 125k, but where the property is located. If I'm in Kapa'a, you know, contractor is going to charge me a lot less than if I say, I'm in Hā'ena, right, so it's kind of a moving target. The other question I had was regarding the 50% rule, is that based on the current assessed value of the property because that's also a moving target, right?

Mr. Hull: Yes.

Mr. Ornellas: Every year there seems...

Mr. Hull: The assessed value of the structure.

Mr. Ornellas: ...to be...yeah, these beach front properties are assessed at higher values constantly, right. So, it's based on the current assessed value.

Mr. Hull: Of the structure, not the property (inaudible)...

Mr. Ornellas: Yeah, of the structure.

Mr. Hull: ...the structure...

Mr. Ornellas: Right.

Mr. Hull: ...and then if there is some concern around the real property assessed value of the structure, the applicants provide an appraised amount from an appraiser, who will appraise the actual structure. So...and usually you can tell...not at all, I mean if it's a clear-cut quick case the applicants we find will generally use the real property assessment of those structure just because it's readily available, but as we see some property owners especially in these high-end, larger units wanting to push that envelope more. I don't think the appraisers are held to a specific standards, so I'll don't think they're out there blowing loads of building up these numbers, but the real property assessment process as I understand it, is generally kept them on the conservative side to keep the...so the assessors, generally as I understand it, going a little bit and as low as they possibly can in their analysis, whereas an appraiser might go a little bit higher, so you'll almost always see these applications especially for these higher-end properties and the ones we often come into conflict with using appraisers.

Mr. Ornellas: Yeah, because if you're looking at replacement value then that's a game changer.

Mr. Hull: Yeah.

Mr. Ornellas: You know, not necessarily (inaudible) maybe an old structure.

Mr. Hull: Yeah.

Mr. Ornellas: And not worth much.

Mr. Hull: Yeah.

Mr. Ornellas: But if the appraiser says, what is the replacement cost of this building today, in today's dollars, then that's significantly higher.

Mr. Hull: Yeah. Absolutely.

Mr. Ornellas: Thank you.

Ms. Streufert: And this is more of a an overall kind of question. Based upon the data that's here, in the past century, on average the beaches have lost four inches per year because it's 36 feet for the last century, and if this is correct based upon those projections, by 2050 it will be double that, so that'll be eight inches per year, and if you go to 2020 or 2100, it's two and a half times, so that would be 10 inches per year. When that happens, where does the private property begin and the public beaches start? Is that based upon from the...from where it is today or where...each year that it goes up? So, that the property owners will actually lose land...

Mr. Hull: Yep.

Ms. Streufert: ...as they go on. Is that correct?

Mr. Hull: That is correct.

Ms. Streufert: So, that's about 10 feet or 10 feet over high tide is always going to be there.

Mr. Hull: Correct. And it moves, right, so in Alisha's report she's just, she's taking it from the abstract...an island wide picture of overall. Now granted, if you're sitting on a beach front property that doesn't mean your property itself is going to be subject to that. It could be subject to much more than that, it could be subject to less than that, and that's what the coastal erosion study that the Shoreline Setback Ordinance is attached to intimately, is that erosion rate coastal study, each area has 50 foot transects of what the erosion rate is, and so, if you're looking at, you know, a 5-foot erosion rate in front of your property, you're going to have much more than what Alisha is laying out, but if you have a static shoreline or rocky shoreline it won't necessarily have the same impacts.

Ms. Streufert: So, if my calculations are correct and I'm not a...I'm a statistician not a mathematician. By 2100 we could lose something like 67 feet from the shoreline, that's...that's the significant chunk of land. So, I just wanted to lay that out there. But the other part of it is Hawaiian burials tended to be on the beach or close to the beach, is that correct? And our policy about iwi, is that while you're building or when you have any ground disturbing activities then you have to call SHPD to let them know. When this goes up, when you've got all this erosion and these iwi may come out, is there any requirement for the landowner or the homeowner to report this?

Mr. Hull: There generally is, and also to one set of erosion is happening, right, technically the shoreline being the highest wash of the highest wave, and I'm not a 100% certain on the overall process, but because the highest wash of the highest wave is going to generally be where erosion is exposing iwi then it's now technically in DLNR's domain, that's (inaudible) the public's fear. And so, yeah, how, so they're essentially navigating how you deal with those and if there are any lineal descendants and the appropriate process for reinterring those.

Chair DeGracia: Okay. Commissioners, any further questions for the Director?

Ms. Barzilai: Are we taking substantive action today?

Mr. Hull: No, the department is recommending a deferral, apologies, I'm looking at the calendar.

Ms. Barzilai: I also wanted to know, Ka'aina, that we opened up a Rule 5, Public Hearing, but I don't think we closed it. We opened up the hearing, take testimony...

Mr. Hull: Okay.

Ms. Barzilai: ...we just need to close the Rule 5 hearing.

Mr. Hull: Okay. Sorry. Recognizing what the October agendas are shaping up to be, the department would recommend deferring this to November 11th. Oh, and I apologize, I believe somebody from the public was raising their hand. If, Chair, if you'd like to still consider taking public testimony.

Ms. Barzilai: Yes, because the hearing's still open.

Mr. Hull: Yeah. Okay.

Ms. Felicia Cowden: For the record, Felicia Cowden, both as a resident of the North Shore for 40 year, for more than 40 years and as a council member. The pattern is, you know, very simple houses get rebuilt into something really grand. So, I think, you know there's good questions, maybe there needs to be a metric on how to determine the percentage of the cost that becomes the trigger for a significant or even minor change because definitely building cost change, but I'll tell you, you have an old house, quaint little old house that becomes a brand new very significant house. What has bothered me over the years as an individual and then also as a council person is the landscaping that happens on that that really works almost like a hardened sea wall, and so it will erode the area next to it, it takes beach areas away. In the past I haven't been down there as much because I'm kind of busy, but they'll be four houses in a row that add 10 feet one week, two weeks later another 10 feet are added, two weeks later another 10 feet, till, if you look where the beach signs are they're 40 feet back and they've taken the view, you know it's...when you allow these improvements to happen, not you, but when improvements are allowed that are so significant typically these people want privacy and is a complete change of the parcel, so it's the taking of the beach and there's no room to see around, you no longer see the view, you can't walk around, you can't take your kids there, in the winter time the waves come up. Certainly in Hanalei when the yards were put quite a long way in, the sand line went back to the normal place and that was looked at as sea level rise, (inaudible) sea level rise, it was just evidence of the encroachment on the beach. So, it's just an important element and I am thankful that we had a community member here who has been diligent on this and is looking at it, and what also happens when we look the other way on our Shoreline Setback and what is a renovation, these properties become worth millions and millions of dollars, and so it's very difficult, real property tax wise and everything else for any of the existing homeowners and people who live there to be able to continue to live there, so it basically gentrifies and changes, and privatizes the beach in many ways. So, I just appreciate the intention behind this very, very well needed adaptation. Thank you.

Chair DeGracia: Thank you.

Mr. Hull: Is there any other member of the public who would like to testify on this item? Seeing none, the department would recommend closing the public hearing.

Ms. Cox: I move we close the public hearing.

Ms. Streufert: Second.

Chair DeGracia: Okay, Commissioners, motion has been made and seconded to close agency, public hearing on this agenda item. We'll do a voice vote. All in favor say. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

Mr. Hull: If there's other questions, Commissioners has, but otherwise we'd be recommending a deferral to November 11th.

Ms. Streufert: I move to defer Zoning Amendment, ZA-2026-1 to the November 11th meeting.

Mr. Ako: Second.

Chair DeGracia: Commissioners, a motion has been made and seconded to defer this agenda item, ZA-2026-1, to the November 11th meeting. Any further discussion?

Ms. Streufert: Can I ask you a question though? November 11th is a holiday.

Mr. Hull: Oh.

Ms. Streufert: It's Veteran's Day.

Mr. Hull: That's right. So, it would to move to actually, it's going to be November 12.

Ms. Streufert: The 12th?

Mr. Hull: Yeah.

Ms. Streufert: I amend my motion to...

Mr. Hull: Sorry.

Ms. Streufert: ...read to November the 12th.

Chair DeGracia: Okay. Motion on floor is to defer this agenda item to November 12th. Any further discussion? Okay, if not, we'll take a voice vote on this one. All in favor say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0.

CONSENT CALENDAR (None)

Status Report (None)

Director's Report for Project(s) Scheduled for Agency Hearing

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2026-2), CLASS IV ZONING PERMIT Z-IV-2026-3, and USE PERMIT U-2026-2 for the construction of a farm dwelling unit and associated site improvements within Lot 15 of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated at the terminus of Makana'ano Place, approx. 1,200 east of its intersection with Pali Moana Place, further identified as Tax Map Key: (4) 5-2-004:088 containing a total area of 5.11 acres = CAROLINE NEAL.

1. Director's Report pertaining to this matter.

Class III Zoning Permits (None)

GENERAL BUSINESS MATTERS (None)

COMMUNICATIONS (None)

UNFINISHED BUSINESS (For Action) (None)

EXECUTIVE SESSION (None)

Mr. Hull: We have no further agenda items, so that will close out the agenda.

Ms. Barzilai: One more thing, Ka'aina, sorry about that. I just want to make sure on the Consent Calendar that we take note for the record that there's nobody here to testify on the Neal application, just so we take note. We have one Consent Calendar item it went in and just noting that nobody was testifying on the item.

Mr. Hull: Is there anybody that would like to testify? We don't have anybody signed up, but is there anybody that would like to testify on H. Consent Calendar, 2. Special Management Area Use Permit 2026-2? Seeing none.

Ms. Barzilai: That's it.

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Hull: Now we have no further agenda items, except for Announcements. We do have a next scheduled meeting for September 9, 2025, which will have the Public Agency Hearing for the Consent Calendar item just discussed, however I think we anticipate quorum not being made. We'll verify that further. If quorum is not made then any agenda items get moved to the subsequent September meeting at the end of the month. With that we have no further items.

ADJOURNMENT

Chair DeGracia: Okay. Commissioners all entertain a motion to adjourn.

Ms. Cox: I move we adjourn.

Ms. Streufert: Second.

Chair DeGracia: Okay. Motion on the floor, a motion has been made and seconded to adjourn this meeting. We'll take a voice vote. All in favor say aye. Aye (unanimous voice vote). Opposed. Hearing none, motion carries. 6:0. Meeting is adjourned.

Chair DeGracia adjourned the meeting at 10:53 a.m.

Respectfully submitted by:

_____*Lisa Oyama*_____

Lisa Oyama,
Commission Support Clerk

() Approved as circulated (date of meeting approved).

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

KAUA'I PLANNING COMMISSION
REGULAR MEETING
September 09, 2025
DRAFT
NO QUORUM

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Francis DeGracia at 9:00 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Francis DeGracia

Excused or Absent

Mr. Gerald Ako

Ms. Helen Cox

Ms. Glenda Nogami Streufert

Mr. Jerry Ornellas

Ms. Lori Otsuka

The following staff members were present: Planning Department - Director Ka'aina Hull; Planning Secretary Shanlee Jimenez; Office of the County Attorney - Deputy County Attorney Chris Donahoe, Office of Boards and Commissions - Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Francis DeGracia: Good morning. The time is 9 o'clock, I'd like to call to order the Planning Commission meeting for Tuesday, September 9, 2025. Roll call, Mr. Clerk.

ROLL CALL

Planning Department Director Ka'aina Hull: Roll call, Mr. Chair. Commissioner Ako is excused. Commissioner Cox is excused. Commissioner Ornellas is excused. Commissioner Otsuka is excused. Commissioner Streufert is excused. Chair DeGracia?

Chair DeGracia: Here.

Mr. Hull: Chair, you do not have a quorum. For members of the public, we're aware that at least three other Commissioners would not be able to make this meeting, so the other Commissioners didn't...there's no point in them showing up, but Chair is here for any public testimony because this is a published agenda so, the Chair came to make sure that public testimony could be

provided, but without quorum you're unable to have any discussions or take any actions. Having said that, looking at the list of signups for all agenda items, we don't have anybody signed up to testify in any agenda item. Is there any member of the public here that would like to testify on any agenda item? If so, please approach the microphone. Seeing none, no action can be taken on any agenda items, all agenda items will be moved to the subsequent Planning Commission meeting on September 23, 2025, and with that.

Chair DeGracia: Do I need a motion to adjourn or should I just adjourn?

Mr. Hull: You can't even take the vote to adjourn.

Chair DeGracia: Okay. Meeting adjourned.

Chair DeGracia adjourned the meeting at 9:02 a.m.

Respectfully submitted by:

_____*Lisa Oyama*_____

Lisa Oyama,
Commission Support Clerk

() Approved as circulated (date of meeting approved).

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



DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration for an Ordinance to amend Chapter 8, Article 27 Kaua'i County Code 1987, as amended, relating to Shoreline Setback and Coastal Protection

Permit Application No.: Zoning Amendment ZA-2026-1

Name of Applicant(s): COUNTY OF KAUA'I, PLANNING DEPARTMENT

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 because it involves the changing of legislation 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:	August 26, 2025
Date of Publication:	July 25, 2025
Date of Director's Report:	August 18, 2025

F.3.a.1.
NOV 10, 2025

G.4.a.1.
AUG 26 2025

IV. DESCRIPTION OF THE AMENDMENT

The proposed bill (see attached Exhibit A), amends the Shoreline Setback and Coastal Protection Ordinance as outlined in Chapter 8, Article 27 of the Kaua'i County Code. The purpose of this amendment is to strengthen the existing shoreline setback regulations in order to more effectively mitigate the adverse impacts associated with the improper siting, renovation, or improvement of structures located within shoreline setback areas that are vulnerable to coastal hazards. This amendment is being introduced in recognition of the increasing variety and intensity of natural hazards- including, but not limited to, tsunamis, high surf, coastal flooding and erosion associated with sea level rise, and other climate-related impacts- which pose significant threats to public health, safety, and property. As these threats continue to escalate, it is the County's responsibility to take proactive measures to protect life and property, reduce exposure to coastal hazards, and preserve Hawaii's critical coastal and beach resources. This amendment is being proposed as a direct action to fulfill that responsibility.

To effectuate these changes, the proposed bill includes the following amendments:

- **New and Revised Definitions:** Introduces and updates definitions to improve clarity and consistency. New definitions include "*Beach*," "*Beach Processes*," "*Primary Coastal Dune*," "*Sea Level Rise Exposure Area (SLR-XA)*," and "*Seawall*." Existing definitions, including "*Coastal Hazard*," "*Minor structure*" "*Repair*," "*Revetment*," and "*Substantial Construction*" are revised.
- **Shoreline Setback Line Calculation:** Includes an additional 20-foot safety buffer in the average lot depth calculation and certain existing standard setback requirements to account for storm surge and sea level rise risks.
- **Updated Requirements for the Repair of Existing Structures:** Establishes updated requirements for shoreline property owners seeking to repair lawfully existing structures to better ensure such work does not qualify as a substantial improvement.
- **Shoreline Survey Requirement:** Requires a certified state shoreline survey for any repair project with estimated costs exceeding \$125,000.
- **Retreat Agreement:** Requires the applicant to enter into an agreement to retreat, relocate, or remove proposed or existing structures before or when the shoreline reaches the structure(s). This requirement applies to lots identified as being threatened by sea level rise-related or historical coastal erosion
- **Construction Timeline Modification:** Reduces the time allowed to initiate and complete substantial construction within the shoreline setback area.
- **Adjustment to Minimum Buildable Footprint for Rebuilding:** Reduces the minimum buildable footprint for rebuilding a dwelling unit that cannot be sited mauka of the shoreline setback.
- **Clarification of Hardship Criteria:** Specifies that small lot size does not qualify as an economic hardship for the purposes of obtaining a hardship variance.
- **Enforcement of Removal for Improvements to Existing Structures:** Enables the enforcement of removal of improvements to existing structures, ensuring consistent implementation of related repair provisions.

Please refer to attached (Exhibit A) proposed draft bill language for further details.

V. AMENDMENT JUSTIFICATION

Hawaii's beaches are vital socio-ecological habitats that provide a wide range of benefits, including natural coastal protection from storms, support for tourism and food production, and the sustenance of diverse ways of life- such as subsistence practices, recreational activities, historical heritage, and spaces for social connection and spirituality- that are integral to the identity and well-being of local communities.¹ Recognizing the significant benefits of natural resources and the deep-rooted relationships that communities maintain with beaches and coastlines, the Hawai'i State Constitution affirms the obligation of the State and counties to preserve and protect these resources, stating that "*the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resource.*"²

In addition to the constitutional mandate, additional rules and regulations at the county, state, and federal levels have been enacted to preserve and protect Hawaii's coastal zones. At the county level, two primary mechanisms regulate coastal development: the Special Management Area (SMA) Rules and Regulations and the Shoreline Setback and Coastal Protection Policy. The SMA Rules and Regulations, adopted in 1975, establish special controls on development within designated shoreline areas. In 2008, the County of Kaua'i adopted its first Shoreline Setback and Coastal Protection Ordinance, creating a development prohibition zone along the island's shoreline.

However, despite the constitutional directive and the implementation of regulations to manage coastal development, studies of historical shoreline change have found that approximately 71% of Kauai's beaches are eroding, with shorelines retreating by an average of 36 feet over the past century and nearly four miles of beach having been completely lost.³ Climate change further exacerbates these challenges, posing a serious threat to beaches and coastal dune systems, which are highly vulnerable to its impacts. Projections indicate that by 2050, average shoreline recession may be nearly double that estimated through historical trends, and nearly 2.5 times by 2100.⁴ In light of these impacts and projections, it is evident that current regulatory frameworks are inadequate in effectively preventing long-term coastal erosion and the loss of beach resources. Research highlights persistent regulatory challenges, including the use of allowances for the

¹ Bremer, L. L., Coffman, M., Summers, A., Kelley, L. C., & Kinney, W. (2022). Managing for diverse coastal uses and values under sea level rise: Perspectives from O'ahu, Hawai'i. *Ocean & Coastal Management*, 225, 106151. <https://doi.org/10.1016/j.ocecoaman.2022.106151>

² HAW. CONST. art. XI, § 1.

³ Fletcher, C.H., Romine, B.M., Genz, A.S., Barbee, M.M., Dyer, Matthew, Anderson, T.R., Lim, S.C., Vitousek, Sean, Bochicchio, Christopher, and Richmond, B.M., 2012, National assessment of shoreline change: Historical shoreline change in the Hawaiian Islands: U.S. Geological Survey Open-File Report 2011-1051, 55 p. (Also available at <http://pubs.usgs.gov/of/2011/1051/>.)

⁴ Anderson, T.R., Fletcher, C.H., Barbee, M.M. et al. (2015). Doubling of coastal erosion under rising sea level by mid-century in Hawaii. *Nat Hazards* 78, 75-103 <https://doi.org/10.1007/s11069-015-1698-6>

maintenance and renovation of non-conforming structures, which can further entrench vulnerability to coastal hazards and accelerate shoreline degradation.⁵

In response to the growing threat of climate change, Kauaʻi County has taken a leadership role in strengthening its planning and regulatory framework to address climate impacts. To address chronic coastal erosion driven by sea level rise, the County amended its Shoreline Setback and Coastal Protection Policy in 2014, implementing an erosion rate-based setback calculated from historical shoreline change. Following this, Kauaʻi County adopted its 2035 General Plan in 2018, which called for integrating climate change risks into future land use, development, and infrastructure planning, as well as periodically updating the Shoreline Setback and Coastal Protection provisions of the Comprehensive Zoning Ordinance to reflect the best available sea level rise data. In 2022, the County further advanced climate resilience by adopting the Sea Level Rise Constraint District, which established climate-resilient design standards, including elevation requirements informed by spatial and depth projections for sea level rise.

This proposed bill builds upon these efforts by introducing targeted amendments to the Comprehensive Zoning Ordinance’s Shoreline Setback and Coastal Protection policy, aimed at strengthening shoreline protections, preserving the island’s beach resources, reducing long-term risk, enhancing regulatory implementation, and safeguarding public and environmental interests. The objectives and justifications for these amendments are outlined below:

- *To enhance consistency and enforceability*, the bill adds and clarifies key definitions, thereby reducing ambiguity in regulatory interpretation and streamlining the permitting process.
- *To ensure permitted development decisions account for future climate change risks*, additional sea level rise considerations are incorporated into shoreline setback calculations, providing a more accurate and forward-looking buffer from the shoreline.
- *To prevent development from circumventing shoreline regulations through repairs*, the bill includes additional requirements for repairs to lawfully existing structures, ensuring such work does not qualify as a substantial improvement that would trigger stricter standards.
- *To safeguard public trust resources and maintain lateral beach access*, the bill requires certified shoreline surveys for repair projects exceeding \$125,000, providing clear delineation between public trust lands and private property to help prevent disputes.
- *To minimize reliance on reactive emergency responses that may threaten public safety and coastal resources*, property owners seeking a permit in high-risk areas must enter into agreements to retreat, relocate, or remove structures once they are threatened by shoreline erosion.
- *To promote risk-informed and timely development*, the timeframe to initiate and complete substantial construction is shortened.

⁵ [Summers, A., Fletcher, C. H., Spirandelli, D., McDonald, K., Over, J.-S., Anderson, T., Barbee, M., & Romine, B. M. \(2018\). Failure to protect beaches under slowly rising sea level. *Climatic Change*, 151\(3–4\), 427–443.](#)

- *To limit the scale of a rebuild in hazardous areas*, the bill reduces the minimum buildable footprint for rebuilding a dwelling that cannot be sited mauka of the setback, ensuring that only smaller structures are constructed, thereby minimizing risks to property, public safety, and coastal ecosystems.
- *To ensure the appropriate application of hardship variances*, the bill specifies that small lot size does not constitute an economic hardship, thereby preventing it from being used as the justification for development in hazardous coastal areas.

Please refer to the following Preliminary Evaluation for further discussion.

VI. AGENCY COMMENTS

Attached through separate transmittal.

VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be taken into consideration:

The County of Kauai's Shoreline Setback and Coastal Protection policy, outlined in Article 27, regulates the location and type of development near the shoreline with the following intention:

...to protect life and property, provide access to and along the shoreline, protect and preserve Native Hawaiian cultural resources and communities threatened by sea level rise, ensure the longevity and integrity of Kaua'i's coastal and beach resources along Kaua'i's shoreline and to strengthen shoreline setback requirements in this Article by incorporating science-based erosion rates established in the Kaua'i Coastal Erosion Study and current coastal hazard mitigation best practices and strategies. (Ord. No. 979, December 5, 2014; Ord. No. 1088, February 4, 2021)

Building on this foundation, the proposed bill aims to further strengthen shoreline setback requirements by integrating the latest coastal hazard mitigation strategies and best practices. These updates are intended to enhance the County's ability to protect life and property, mitigate risks posed by coastal hazards such as erosion exacerbated by sea level rise, and preserve critical coastal resources.

The specific mechanisms by which the proposed bill intends to achieve these goals— along with their policy implications and potential impacts— are further examined below.

CZO Amendment

Amendment of Sec. 8-27.2 (Definitions)

The proposed bill amends Section 8-27.2 by introducing new and revised definitions. Below are a each listed amendments pertaining to Section 8-27.2 with their respective justifications:

- 1) **“Beach” means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action or tidal processes. Beach includes sand deposit in nearshore submerged areas, or coastal dunes or upland beach deposits landward of the shoreline that provide benefits for public use and recreation, for coastal ecosystems, and as a natural buffer against coastal hazards.**
 - This new definition is being proposed to enhance clarity and consistency in the application of Article 27. Although the term “beach” is referenced throughout the existing Shoreline Setback and Coastal Protection policy—as well as within several newly proposed definitions in the bill—it is not currently defined. Establishing a clear and specific definition is essential to ensure consistent regulatory interpretation and effective implementation.
- 2) **“Beach processes” means the dynamic interactions between waves, currents, and sediment along coastal shorelines, influencing the formation and evolution of beaches.**
 - The new definition is being proposed because it is frequently referenced throughout Article 27; however, it currently lacks any definition. For example, when considering variance approvals, a common criterion requires that the proposed structure “not adversely affect beach processes”. Therefore, establishing a clear and precise definition of “beach processes” is essential to promote consistent regulatory interpretation. This is particularly important for agency personnel, who typically do not possess scientific training in coastal dynamics.

However, it should be noted that this definition could be further strengthened by:

1. Incorporating additional key interactions, such as those involving wind and water levels;
 2. Clarifying that the interaction occurs with sediment mobility, not merely the presence of sediment; and
 3. Specifying that these interactions shape beach formation and evolution through erosion, transportation, and deposition of sediment.
- 3) **“Coastal hazard” means [natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage] elevated risk to public health or safety, property, and the environment in coastal areas resulting from physical phenomena, including but not limited to high waves, storm surge, tsunami, sea level rise, coastal erosion, and other hazards.**
 - This amendment is necessary to improve the functionality and relevance of the definition for use in regulatory contexts. For instance, it replaces the vague term

"natural processes" with a more specific list of identifiable coastal hazards—such as high waves, storm surge, sea level rise, tsunami, and coastal erosion—offering clearer guidance for regulators and applicants. By explicitly naming climate-driven hazards, the revised definition addresses previous omissions related to anthropogenic climate change. It also adopts a risk-based framing, shifting focus from the origin of hazards to their impacts on public health and safety, property, and the environment. Additionally, the scope of identified risks is expanded beyond just “people and improvements” to include broader considerations aligned with the purpose of Article 27, which is to protect life, property, and natural resources.

It should be noted that Hawai‘i Revised Statutes Chapter 205A defines “Coastal Hazards” as “*any tsunami, hurricane, wind, wave, storm surges, high tide, flooding, erosion, sea level rise, subsidence, or point and nonpoint source pollution.*” While this definition expressly includes point and nonpoint source pollution and subsidence, the revised definition in this proposed amendment does not emphasize these hazards. This is because the primary purpose of the shoreline setback is to anticipate and mitigate risks arising from physical phenomena by siting structures farther inland from areas deemed more vulnerable. Pollution, however, is not necessarily a physical phenomenon. Instead, the Special Management Area Rules and Regulations—another mechanism for implementing Chapter 205A—serve as a mitigative permitting process that addresses development-related impacts, including those from hazards such as point and nonpoint source pollution and subsidence. Accordingly, for the purposes of this Article, it is appropriate to highlight hazards that result from physical processes rather than those stemming primarily from development-driven contamination.

To further strengthen this definition and better align it with the broader objectives of Article 27, this term could explicitly incorporate recognition of risks to shoreline access and Native Hawaiian cultural resources, thereby ensuring a more comprehensive approach to assessing vulnerability in project review and permitting.

- 4) “**Minor structure,**” means [:
- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua‘i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within 180 days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or
 - (2)] a structure that:
 - (A) costs less than \$125,000; and

- (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and
- (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and
- (D) is consistent with the purposes of this Article and HRS Chapter 205A, as amended; and
- (E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding 14 consecutive days in duration during any three-month period, walls and fences that are located more than 40 feet from the shoreline, landscape planting and irrigation systems provided that they are located more than 40 feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward, public park facilities (excluding restrooms, wastewater systems, and shoreline armoring structures or improvements), portable or removable walkways for public access, or, as determined by the director, a structure primarily benefitting the public that will not impact or be impacted by coastal erosion processes; and
- (F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three foot intervals, and concrete steps.

- This amendment is necessary as it removes redundancy in the definition of a 'Minor Structure' related to the cost threshold of \$125,000. Additionally, by eliminating subsection (1), the proposed amendment clarifies that temporary emergency protective measures, such as sandbags, for imminently threatened, legally habitable structures are no longer classified as 'Minor Structures.' While Article 27's current regulations permit these measures within the shoreline setback, the proposed bill would reclassify them as structures. As a result, they would now require a variance, including Planning Commission approval-thereby establishing a more rigorous permitting process that further supports the preservation of beaches and coastal resources.

It is important to note that temporary shoreline emergency protective measures are also currently subject to Special Management Area (SMA) Rules and Regulations. However, such measures could qualify as an SMA Minor Permit, which does not require a public hearing or action by the Planning Commission. Therefore, this amendment would ensure a public hearing process as part of obtaining a variance.

5) **“Primary Coastal Dune” means the first dune encountered mauka of the beach.**

- This new definition is being added because in the current Shoreline Setback and Coastal Protection policy, this term was inadvertently included at the end of the

definition of “Plan.” The proposed bill corrects this by removing the definition from the term “Plan” and establishing “Primary Coastal Dune” as a distinct and clearly defined term.

However, this definition can be further refined to specify that the primary coastal dune is positioned so that it may be reached by storm waves, seasonal high waves, and elevated water levels, enabling the release of sand to the beach or offshore waters. Including this in the definition recognizes the primary coastal dune as the dune closest to the ocean—typically the most exposed and, therefore, the most vulnerable to coastal hazards (e.g., storm waves, seasonal high waves, elevated water levels). This distinction differentiates it from the broader coastal dune system, where secondary and tertiary dunes are generally located farther inland, often at higher elevations, and are less directly affected by storm waves and seasonal high waves.

Based on this distinction, it could also be appropriate to revise the definition of “Coastal Dune,” which could read:

“Coastal dune” means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand on the landward side of a beach that is contiguous and approximately parallel to the beach, [situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters] formed as wind and occasionally high waves deposit sand in a sheltered area that is typically stabilized with dune-adapted plant species, leading to accumulation and formation of a dune.

This revised definition clarifies the location of the dune system without implying uniform vulnerability to storm waves or seasonal high waves, as accessibility and exposure vary among dunes. It also specifies dune formation and stabilization processes.

- 6) **“Repair”** means the [reconstruction or renewal] rehabilitation or renovation of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and does not result in an addition to, or enlargement or expansion of, the lawfully existing structure, such as alterations of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts. A “substantial improvement” as defined herein shall not be considered a repair. [Repair shall be consistent with the definition of “repair” under Sec. 8-1.5, Kaua’i County Code 1987, as amended.]

- This amendment is necessary because the terms ‘reconstruction’ and ‘renewal’ generally imply extensive work, often involving rebuilding or significant upgrades. Moreover, the definition of “Rebuilding” explicitly states that it “means reconstruction,” further reinforcing the association with more substantial construction activity. In contrast, the terms ‘rehabilitation’ and ‘renovation’ more

accurately describe less intensive work focused on the maintenance and improvement of existing structures, rather than complete rebuilding.

Additionally, the proposed bill removes the reference to consistency with the definition of “repair” under Sec. 8-1.5 to eliminate the need for agency staff, applicants, and the public to cross-reference definitions. Instead, the term will be explicitly defined within the Shoreline Setback and Coastal Protection Policy section for clarity and ease of use.

- 7) **“Revetment”** shall mean a facing of stone, concrete, blocks, or other [similar] materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.
- This amendment is necessary because revetments can be constructed from a variety of materials beyond stone, concrete, or blocks, such as geotextile tubes or bags. To accurately encompass these structures, the definition should not limit materials to those explicitly listed or those of a similar nature.

It is also important to distinguish revetments from seawalls: revetments are characterized by a sloped surface, whereas seawalls are vertical structures. The definition should be revised to clearly reflect this distinction. Additionally, Hawai‘i Administrative Rules Title 13, Chapter 222 (Shoreline Certifications) defines “Revetment” as *“a sloping face of stone, concrete, blocks or other similar material built to protect the embankment or shore against erosion by wave action or current.”* The proposed definition should align with this existing definition by including the inclusion of the term “sloping.”

- 8) **“Sea Level Rise Exposure Area (SLR-XA)”** means the sea level rise exposure area delineated in the Hawai‘i Climate Change Mitigation and Adaptation Commission’s Hawai‘i Sea Level Rise Vier, or its successors.
- As this term does not appear in the existing language of Article 27 or in the proposed amendments, it may be appropriate to remove its definition from the proposed bill.
- 9) **“Seawall”** means a shoreline hardening structure built of stone, concrete, blocks or other materials to protect a scarp, embankment, or structure against erosion or damage by wave action or currents and has a vertical face on its makai side.
- This new definition is being added because the term “Seawall” is included within the definition of “Shoreline hardening” but is not explicitly defined, whereas the term “Revetment” is currently defined. Providing a definition for “Seawall” will clarify what constitutes a seawall and how it differs from a revetment.

It should be noted that Hawai‘i Administrative Rules Title 13, Chapter 222 (Shoreline Certifications) defines “Seawall” as *“a structure with a vertical face*

separating land and water areas, primarily designed to prevent erosion and other damage due to wave action.” Given the close coordination required between the County Planning Department’s Special Management Area regulatory personnel and the Department of Land and Natural Resources Office of Conservation and Coastal Lands—who administer the Shoreline Certifications policy—maintaining consistency with the Hawai‘i Administrative Rules is advantageous.

While the Hawai‘i Administrative Rules’ definition is somewhat more general than the proposed one, there are no significant differences that would exclude structures identified as seawalls under the proposed amendment. Therefore, it is advisable to amend the definition of “Seawall” to align with the definition provided in Hawai‘i Administrative Rules Title 13, Chapter 222 (Shoreline Certifications).

10) “Substantial construction” means that 100% of the foundation has been laid[, or that 100% of the foundation of the active phase of a project has been laid where the project is being done in phases].

- This amendment is necessary to ensure completion within the substantial construction timeframe, which the bill proposes to shorten from three years to two. Further details on this change are provided later in the report.

Amendment of Sec. 8-27.3 (Shoreline Setback Determination: Establishment of the Shoreline Setback Line)

The shoreline setback line reflects the projected inland retreat of the shoreline over the expected lifespan of a building. Since the adoption of the Shoreline Setback and Coastal Protection Policy in 2008, setback calculations have been refined to incorporate the best available data, updated coastal management practices, and an improved understanding of development’s impacts on coastal processes.

When first adopted in 2008, an erosion rate–based calculation was applied only to lots with an average depth greater than 160 feet, with a minimum setback distance ranging from 40 feet up to 100 feet for all other lot depths. However, this approach preceded the completion of coastal erosion hazard maps and was therefore implemented without the benefit of comprehensive data. In 2010, the University of Hawai‘i Coastal Geology Group completed the Kaua‘i Coastal Erosion Study, which mapped historical shoreline positions and calculated shoreline change rates along most of the island’s sandy coastlines. Incorporating this data, the policy was amended in 2014 to apply erosion rate–based setbacks to all lots included in the coastal erosion hazard study. The formula of the erosion-based shoreline setback calculation is: 40 feet + (70 X annual coastal erosion rate) + 20 feet. In breaking down the formula, the 40 feet represents the State’s minimum setback, in accordance to the State’s Coastal Zone Management Act, HRS §§ 205A. The 70-year multiplier reflects the minimum expected lifespan of a structure. The added 20 feet is an additional safety buffer for the variability in the erosion rate data, storm surge, high surf, and the risk of sea level rise.

The average lot depth setback calculation was included based on the rationale that larger lots should be subject to greater setback requirements. The average lot depth formula also includes the State's minimum setback (40 feet). Accordingly, the shoreline setback would be determined using the greater of the two calculations: the erosion-rate-based setback or the average lot depth-based setback.

The proposed bill revises the methodology for determining the shoreline setback line by incorporating an additional 20-foot safety buffer into the average lot depth calculation, accounting for storm surge and sea level rise risks. It also adds a 20-foot buffer to the existing 100-foot setback requirement for lots with a depth greater than 220 feet. Furthermore, the bill establishes a maximum setback of 120 feet for lots not included in the Kaua'i Coastal Erosion Study. **Table 1** provides a summary of the current setback provisions and the proposed amendments.

Table 1: Summary of Original Shoreline Setback Determination Calculations and Proposed Amendments

Lot Category	Average Lot Depth	Original Setback Calculations	Proposed Amendments
Lots included in the Kaua'i Coastal Erosion Study	Less than 140 feet	40 feet plus 70 times the annual coastal erosion rate, plus a 20-foot buffer	No changes proposed
	140 to 220 feet	Greater of: <ul style="list-style-type: none"> 40 feet plus 70 times the annual coastal erosion rate, plus a 20-foot buffer $(\text{Average Lot Depth} - 100 \text{ feet}) \div 2 + 40 \text{ feet}$ 	Greater of: <ul style="list-style-type: none"> 40 feet plus 70 times the annual coastal erosion rate, plus a 20-foot buffer $(\text{Average Lot Depth} - 100 \text{ feet}) \div 2 + 60 \text{ feet}$ Note: Increases the base from 40 feet to 60 feet (adds 20 feet)
	Greater than 220 feet	Greater of: <ul style="list-style-type: none"> 40 feet plus 70 times the annual coastal erosion rate, plus a 20-foot buffer 100 feet from the certified shoreline 	Greater of: <ul style="list-style-type: none"> 40 feet plus 70 times the annual coastal erosion rate, plus a 20-foot buffer 120 feet from the certified shoreline Note: Increases the setback from 100 feet to 120 feet (adds 20 feet)
Lots not included in	N/A	$(\text{Average Lot Depth} - 100) \div 2 + 40 \text{ feet}$	$(\text{Average Lot Depth} - 100) \div 2 + 60 \text{ feet}$

the Kaua‘i Coastal Erosion Study			Note: Increases the base from 40 feet to 60 feet (adds 20 feet)
		Maximum setback that can be required: 100 feet	Maximum setback that can be required: 120 feet Note: Increases maximum by 20 feet

Currently, erosion rate-based setbacks are the only shoreline setback calculations that account for climate change-related hazards, including sea level rise and storm surge variability. By incorporating a 20-foot safety buffer into the other setback methods—such as the average lot depth formula, the 100-foot setback for lots over 220 feet in depth, and the maximum setback for lots not included in the Kaua‘i Coastal Erosion Study—the proposed bill ensures that all setback determinations address a broader range of coastal hazards, including high surf, coastal flooding, and erosion associated with climate change.

Amendment of Sec. 8-27.6 (Prohibited Activities in the Shoreline Setback Area)

The proposed bill amends Section 8-27.6, Prohibited Activities in the Shoreline Setback Area, by revising the language of the third provision of Section 8-27.6(c), which specifies certain activities prohibited within the shoreline setback area:

- (3) [Shoreline hardening unless it is approved by the State of Hawai‘i’s Office of Conservation and Coastal Lands] Private shoreline hardening structures, including seawalls and revetments, at sites subject to the Kaua‘i Coastal Erosion Study and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.

This amendment aligns with the language of the State’s Coastal Zone Management Act, HRS §§ 205A, which establishes a policy to “*prohibit construction of private shoreline hardening structures, including seawalls and revetments, at sites having sand beaches and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.*” Given that this is a State directive, and that the State of Hawai‘i’s Office of Conservation and Coastal Lands must comply with this policy, adopting the language from HRS §§ 205A simplifies and strengthens this provision.

The primary distinction in the proposed amendment is the specific identification of sites subject to the Kaua‘i Coastal Erosion Study, rather than generally referencing sites with sand beaches. This distinction is important for two reasons: (1) the Kaua‘i Coastal Erosion Study encompasses all sandy beaches, thereby ensuring comprehensive coverage of sites having sand beaches; and (2) it accounts for the potential loss of sandy beaches over time due to climate change or significant storm surge events, thereby including sites where sandy beaches currently exist but may be diminished or lost in the future under changing environmental conditions.

While this amendment may ultimately extend beyond existing sandy beaches, it encourages the retreat of structures built on dune systems to facilitate beach restoration. Furthermore, because shoreline hardening accelerates erosion on adjacent properties—a phenomenon known as “flanking,” where erosion accelerates on lands near hardened structures—it is prudent to prohibit private shoreline hardening structures outright to prevent further disruption of sand transport within the littoral system.

Amendment of Sec. 8-27.7 (Permitted structures within the shoreline setback area)

Section 8-27.7 of the Shoreline Setback and Coastal Protection Policy specifies the types of structures permitted within the shoreline setback area. Any structures or landscaping not listed in this section are prohibited unless authorized through a variance.

Repairs to lawfully existing structures, including nonconforming structures, are allowed provided that they:

1. Do not enlarge or expand the structure;
2. Do not constitute a substantial improvement;
3. Comply with all applicable laws and regulations (e.g., Building Code, Floodplain Management Regulations, Special Management Area requirements); and
4. Meet the definition of “repair” as set forth in **Section 8-27.2 (Definitions)**.

Under the ordinance, a “repair” is distinct from a “substantial improvement.” A substantial improvement is defined as a cumulative series of repairs, reconstructions, improvements, or additions to a structure within a 10-year period, where the total cost equals or exceeds 50% of the structure’s market value prior to the first improvement in that period. The County currently determines whether a project constitutes a substantial improvement through a letter from the Department of Public Works (DPW) to the Planning Department, which includes a calculated ratio and percentage of proposed improvement costs relative to market value. If the percentage is 50% or more, the project is classified as a substantial improvement and requires a variance.

However, accurately distinguishing between repairs and substantial improvements can be difficult in practice due to several factors, including:

- Project costs are estimated prior to construction, yet these estimates are inherently uncertain and often fluctuate due to inflation, supply chain disruptions, or unforeseen conditions encountered during construction.
- Variability in market value arises from differing appraisal methodologies as well as changes in property values between the appraisal date and the construction period.
- Incomplete or inaccurate cost reporting may occur, potentially resulting in underreported expenditures.
- Unreported changes in project scope during construction may increase overall project costs beyond the original estimate.

- Tracking repair costs for projects completed in incremental phases can be difficult, as the cumulative costs of multiple phases may exceed the threshold for classification as a substantial improvement.

To address these challenges, the proposed bill aims to formalize and enhance provisions to ensure that projects classified as repairs do not, in fact, constitute substantial improvements by requiring the following:

1. An appraisal of the structure;
2. A cost breakdown estimate for the proposed project using a “Non-Substantial Improvement Job Cost Breakdown Worksheet” that includes all project costs;
3. A signed declaration from the applicant acknowledging understanding and agreement with the estimated repair exemption cost figures;
4. Notification to the Planning Department of the project’s completion date, along with disclosure of any additional construction materials, labor, or associated costs incurred;
5. Within 60 days of notification of completion—or while the project is still ongoing—the Director may require submission of receipts for each improvement listed in the “Non-Substantial Improvement Job Cost Breakdown Worksheet”; and
6. If the receipts show that expenditures meet the definition of a substantial improvement rather than a repair, the Director shall initiate enforcement actions in accordance with applicable standards.

The proposed amendments are both appropriate and necessary to accurately verify repair projects, thereby preventing potential misuse of repair classifications, ensuring consistent and effective enforcement of the ordinance, and safeguarding coastal resources from inappropriate development. While the Planning Department currently employs a process—including the use of an internal “Substantial Improvement Job Cost Breakdown” worksheet—to track and verify project costs, the proposed bill introduces additional requirements, such as mandating an appraisal of the structure, which would further strengthen the verification process. Moreover, it is important to note that the existing process is not codified within the Shoreline Setback and Coastal Protection Policy and is therefore considered an informal practice conducted as a matter of due diligence. Given that informal procedures may vary with changes in personnel, codifying this process is essential to ensure its consistent application over time.

It should be noted that the Planning Department typically employs its internal “Substantial Improvement Job Cost Breakdown” worksheet to verify project costs only when the calculated ratio and percentage of proposed improvement costs provided by the Department of Public Works fall within the 30% to 49% range. While there may be concerns that applying these measures to all repair projects could be time-consuming, the complexities associated with tracking repair costs—particularly for projects completed in incremental phases or through multiple repairs—underscore the importance of implementing these measures universally for all repairs.

Additionally, the proposed bill amends Sec. 8-27.7 by requiring that any repairs exceeding \$125,000 will be required to include a certified state shoreline survey in their application

for a shoreline setback determination. The State-certified shoreline survey identifies the designated shoreline—defined as the highest wash of the waves during the highest annual tide—and is officially approved by the State of Hawai‘i Board of Land and Natural Resources. Currently, a certified state shoreline survey is required for any new structures or uses proposed within the shoreline setback, with the survey remaining valid for one year. The certified shoreline is used to determine where the setback’s development prohibition zone extends to. It also is used to identify what land is held in public trust versus what is private property.

Uncertainty regarding the boundary between public beach areas and private property often leads to conflict, particularly as coastal development continues to intensify. In the absence of a valid State-certified shoreline, property owners typically benefit from greater flexibility in asserting boundary claims. However, a state-certified shoreline provides a definitive demarcation, clarifying which lands are held in the public trust and which are privately owned.

Given the increasing value and vulnerability of coastal properties, requiring a certified shoreline survey for higher-value repair projects is considered a prudent measure to prevent disputes, protect public trust resources and lateral beach access, and ensure regulatory consistency. The proposed amendment represents a meaningful step toward addressing these long-standing challenges.

The final amendment proposed in Section 8-27.7 introduces a new provision requiring that applicants for any new structure or substantial improvement within the shoreline setback area—where the lot is subject to sea level rise erosion or historic erosion—must agree to retreat, relocate, or remove both the proposed and any existing structures at their own expense when the shoreline reaches those structures.

This amendment is necessary to address the escalating threat of structures collapsing into the ocean as coastal erosion intensifies with sea level rise. Several locations across the state have already experienced such incidents. Currently, the State’s approach to private lands relies on a reactive retreat program, in which action is taken only after a structure has fallen onto the beach. Such a reactive approach poses serious risks to public safety, including injuries from falling debris and hazards created by debris accumulating on beaches or in the ocean, endangering swimmers and beach users. It also results in environmental degradation through the release of toxic substances, pollution from building materials, and physical damage to sensitive coastal and marine ecosystems. This issue is particularly urgent for Kaua‘i, where an ongoing study estimates that property acquisition and deconstruction of residential, hotel and resort, and commercial development could cost as much as \$1.1 billion.⁶ Residential properties alone represent a substantial portion of this cost—estimated at roughly half a billion dollars. As sea level rise continues to accelerate erosion, the need for proactive removal of imminently threatened structures—and ensuring that property owners bear the associated costs—will become increasingly critical. Requiring applicants

⁶ Tavares, K., Setter, R., Dreizin, T., Summers, A., Clinton, A., Coffman., M. (2025) [Report in preparation]. University of Hawai‘i

for new structures to commit to retreating, relocating, or removing proposed and existing structures at their own expense reduces reliance on emergency responses, enhances protection of public safety and coastal ecosystems, and ensures that the financial responsibility for retreat rests with the property owner. As specified in the CZO, this agreement shall run with the land and be recorded by the applicant with the Bureau of Conveyances or the Land Court, thereby ensuring that the obligations associated with the structure(s) remain enforceable regardless of any change in ownership.

Amendment of Sec. 8-27.8 (Procedures for Obtaining Shoreline Setback Determinations)

The proposed bill includes language in Section 8-27.8 establishing that all shoreline setback determination applications are subject to a 30-day public comment period. Currently, these applications are posted on the Planning Commission's agenda and made available for a 30-day comment period; however, this amendment formalizes and codifies that requirement, thereby improving transparency and helping to ensure the public is aware of and able to participate in the process.

Additionally, the proposed bill reduces the timeframe for substantial construction to commence following shoreline setback approval from three years to two years and shortens the completion deadline from four years to three years. These changes promote timely project execution, minimize the likelihood of stalled projects within the shoreline setback area, and support more risk-informed development decisions. If construction is not completed within the three-year deadline, the Planning Commission will have the opportunity to reassess shoreline stability, enabling a review of evolving shoreline conditions and the continued appropriateness of the development.

Amendment of Sec. 8-27.9 (Variance application)

The proposed bill also removes the provision that permits the Planning Commission to waive a public hearing for a variance application that protects a legal structure costing more than \$20,000, provided that the structure is at risk of immediate damage from shoreline erosion.

This amendment is necessary to align with the State Coastal Zone Management Act, HRS § 205A, which prohibits the construction of private shoreline hardening structures at sites with sand beaches or where such structures would interfere with existing recreational and waterline activities, while also enhancing public transparency and advancing the preservation of beaches and coastal resources.

Amendment of Sec. 8-27.10 (Criteria for approval of a variance)

The proposed bill seeks to amend Sec. 8-27.10 by reducing the minimum buildable footprint for rebuilding a dwelling unit that cannot be sited mauka of the setback from the

previous threshold of 1,000 square feet (or the existing house footprint) down to 500 square feet.

This amendment helps limit the scale of rebuilding in hazardous areas, consistent with the intent of the Shoreline Setback and Coastal Protection Policy to reduce coastal hazard risk through best practices in hazard mitigation, which include restricting development in areas identified as highly vulnerable.

Additionally, the proposed bill clarifies that hardship does not include economic difficulties arising from small lot sizes. This amendment prevents small lot size from being used as a justification for constructing developments exceeding 500 square feet in hazardous coastal areas.

Amendment of Sec. 8-27.11 (Enforcement)

The proposed bill seeks to amend Section 8-27.11 to include language enabling the enforcement of removal of improvements to an existing structure. This amendment is necessary to ensure consistent implementation of related provisions, whereby enforcement actions are triggered if expenditures documented for a repair project indicate that the work constitutes a substantial improvement rather than a repair.

Finally, the proposed bill removes language allowing the Director or the Commission to forgo ordering the removal of an unpermitted structure or improvements to an existing structure if it is determined that removal would cause greater harm to the ecosystem or public improvements than allowing the structure to remain.

Eliminating this provision is appropriate because enforcement actions can include mitigation measures to address any potential impacts of removal on the ecosystem or public improvements.

General Plan

The proposed bill is in alignment with the following goals and policies of the General Plan, which emphasize resiliency, safety, and preparing for climate change:

A. Section 1.3, entitled “Visions and Goals”

- 1) **Goal #1: “A Sustainable Island”**- Goal #1 of the County of Kaua‘i General Plan promotes sustainable growth that meets the needs of current and future generations without depleting vital natural resources. It emphasizes that sustainable development must not compromise the natural systems that support life.

Development situated too close to eroding shorelines threatens critical

coastal ecosystems—including beach, nearshore, and estuarine habitats—that serve as essential areas for feeding, breeding, nursery functions, and migration for various species. The proposed bill supports the intent of this goal by strengthening the Shoreline Setback and Coastal Protection policy through several mechanisms that limit development in vulnerable coastal areas; thereby, minimizing further harm to these sensitive environments. These policy updates reflect a proactive approach to managing coastal development in a manner consistent with Kaua‘i’s long-term sustainability vision.

Goal #2: “A Unique and Beautiful Place”- Goal #2 of the General Plan emphasizes the *“stewardship and protection of the natural, cultural, social, and built environment assets that are of value to the community.”* This goal also cites the Hawai‘i State Constitutional mandate, which declares: *“For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawai‘i’s natural beauty and all natural resources.”* The proposed bill advances these guiding principles through targeted amendments that support the long-term preservation of Hawai‘i’s natural beach systems. For example, one amendment includes a requirement for applicants to enter into retreat agreements, which obligate property owners to relocate, retreat, or remove structures once they become threatened by coastal erosion. By incorporating a trigger-based adaptive approach, the bill establishes proactive safeguards to prevent reactive responses—such as the emergency removal of collapsed structures from the ocean—thereby not only reducing public safety risks, but also minimizing environmental degradation and supporting the long-term preservation of beach ecosystems for future generations.

- 2) **Goal #3: “A Healthy and Resilient People”-** The General Plan’s GOAL #3 aims to *“increase the resilience and vitality of Kaua‘i’s communities and promote better health outcomes through improving the natural, built, and social environment and responding to the impacts from climate change.”* The proposed bill supports this goal by strengthening shoreline setback regulatory measures to better mitigate the impacts of coastal hazards, including coastal erosion associated with sea level rise, on Kaua‘i’s built environment. In doing so, it enhances community resilience by reducing the risks posed by structures situated too close to the eroding and vulnerable shoreline.

B. Section 1.4, entitled “Policies to Guide Growth”

- 1) **Policy #12: “Protect Our Watersheds”-** Policy #12 of the General Plan acknowledges the interconnectedness of ecological systems and emphasizes the importance of integrated resource protection by calling to *“restore and protect our watershed from mauka to makai.”* It further affirms that safeguarding these systems is essential to sustaining a healthy community.

The proposed bill supports this policy by reinforcing shoreline setback regulations aimed at preserving and protecting coastal and beach ecosystems—key components of the broader watershed system. It does so by implementing stricter controls to prevent inappropriate development that could further increase risks to these vulnerable coastal resources.

- 2) **Policy #14: “Prepare for Climate Change”**- The General Plan’s Policy #14 acknowledges that *“climate change and resulting sea level rise (SLR) are evidenced and documented on global, national, as well as local levels”* and affirms the government’s kūleana (responsibility) to *“provide direction to prepare our island for increased coastal hazards and their impacts to businesses, homes, roadways, drinking water, and ultimately health and safety.”* While recognizing some uncertainty in forecast data, the policy emphasizes the need to rely on *“the best available science for our island.”*

In alignment with this guidance, the proposed bill takes a proactive approach to climate change adaptation by strengthening Shoreline Setback and Coastal Protection regulations. Key measures include: (1) revising and expanding definitions to explicitly recognize climate change-related impacts as coastal hazards; (2) incorporating sea level rise projections into the shoreline setback calculations; and (3) requiring property owners to enter retreat agreements when structures become threatened by erosion—an adaptive strategy that reduces reliance on emergency responses and helps protect public safety and coastal ecosystems.

Additionally, the General Plan specifies actions that are tied to the overarching goals and policies outlined above. Some of the key policies associated with “Permitting and Code Changes” are summarized in the text below:

A. Section 3.0, entitled “Actions by Sector”

1) **Sector I. The Watershed: “Kahakai- Coastal Areas and Shorelines”**

- a. The General Plan calls for the action to *“minimize coastal hazard risks through planning and development standards that: a) ensure the safety of individuals, families, and communities within coastal hazards areas... b) discourage development or redevelopment within hazardous areas... ”* and *“d) ensure property owners assume the risks associated with new development in hazardous areas.”* The proposed bill advances this directive by reinforcing Shoreline Setback and Coastal Protection policies to more effectively reduce coastal hazard risks and enhance public safety. For instance, the bill discourages development in hazardous areas by updating the criteria for repair projects to prevent substantial improvements from proceeding under the guise of minor repairs, and it reduces the minimum buildable footprint for rebuilds on parcels that cannot meet setback standards, thereby limiting the scale of redevelopment in vulnerable coastal zones. Furthermore, by requiring

applicants in high-risk areas to enter into a formal retreat agreement—the bill directly supports the General Plan’s policy directive that property owners bear the risks and responsibilities of development in hazardous areas.

2) Sector IX. Public Safety & Hazards Resiliency: “Hazards Resiliency”

- a. The General plan includes an action to “*minimize coastal development in areas of high risk of erosion, flooding, tsunami inundation, and sea level rise.*” The proposed bill advances this objective through several key provisions, including the implementation of assurance measures to accurately distinguish between repair projects and substantial improvements to better ensure inappropriate development does not occur in vulnerable areas. Additionally, it reduces the minimum buildable footprint for rebuilding dwellings that cannot be relocated mauka of the coastal setback, thereby further limiting development in high-risk coastal areas.

3) Sector IX. Public Safety & Hazards Resiliency: “Global Warming and Climate Change Adaptation”

- a. The General Plan states an action to “*periodically update the Shoreline Setback and Coastal Protection article of the Comprehensive Zoning Ordinance to allow for adjustments in the setback calculations based on best-available sea level rise data.*” The proposed bill aligns with this action by incorporating an additional 20-foot sea level rise buffer into shoreline setback calculations that do not currently account for sea level rise, including the setback calculations based on average lot depth.
- b. The proposed bill is in direct alignment with the General Plan’s identified an action to “*encourage strategic retreat and relocation to safer areas...*” by requiring applicants to enter into a retreat agreement. Under this agreement, property owners commit to relocating, retreating, or removing structures once they are threatened by coastal erosion.

Community Development Plans

The Community Development Plans, which further builds upon the direction set forth in the General Plan, also details region-specific policies, objectives, goals, and actions that support the provisions detailed in the proposed bill. For instance, the 2018 West Kaua‘i Community Plan (WKCP), highlights climate change and resiliency:

A. Section 2.0, entitled “Regional Policies”

- 1) Resiliency: “Value Statement”-** The WKCP emphasizes that “*West Kaua‘i must prepare for climate change, such as higher temperatures,*

SLR, and changing precipitation patterns. These impacts threaten residents by affecting housing, infrastructure, jobs, and arable land. Through proactive measures and solutions grounded in resiliency, sustainability, and the Hawaiian concept of 'āina aloha (beloved homeland), West Kaua'i's people can strengthen their ability to withstand and recover from hazards and the impacts of climate change." The proposed bill will provide proactive measures to help the West Kaua'i District prepare for erosion impacts that are exacerbated due to climate change through various measures, such as the changes in setback calculations and retreat agreements.

- 2) Resiliency Policy # 1: “Adapt West Kaua‘i’s lowlying neighborhoods for climate change impacts and lay the groundwork for managed retreat.”**- In order to adapt West Kaua‘i’s low-lying neighborhoods for climate change impacts, the WKCP states that *“improved development standards and managed retreat strategies should be employed. Identify areas that are highly vulnerable to coastal hazards, including but not limited to SLR, coastal erosion, high wave run-up, passive flooding, and an increased frequency and intensity of storms. Ensure that if development occurs within these areas, the development is constructed in a manner that safely mitigates those impacts."* The proposed bill supports this policy by strengthening the Shoreline Setback and Coastal Protection policy to better ensure that development within vulnerable coastal areas undergo comprehensive reviewal and are setback appropriately in acknowledgement of the increased intensity and frequency of coastal hazards associated with climate change.

The 2015 Līhu‘e Community Plan also contains policies and guidelines which support the amendments included in the proposed bill:

A. Section 5.0, entitled “Policies and Guidelines”

- 1) Climate change Policies-** The Līhu‘e Community Plan includes several policies that align with the proposed bill, including: (1) minimizing development within coastal hazard areas, and (2) incorporating climate change impacts into land use, development, and planning decisions. The proposed bill further strengthens Article 27 by reinforcing these objectives, including measures such as integrating sea level rise considerations into shoreline setback calculations and reducing the minimum buildable footprint for rebuilding dwelling units that cannot be sited mauka of the setback.

VIII. PRELIMINARY CONCLUSION

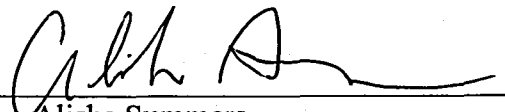
Based on the foregoing findings and evaluation, it is concluded that the proposal is reasonable and appropriate.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion of the final proposed bill, it is recommended that the subject request to amend Chapter 8 (Comprehensive Zoning Ordinance) Article 27 (Shoreline Setback and Coastal Protection) of the Kaua‘i County Code (1987), as amended, be **APPROVED** subject to the following revisions:

1. Expand the definition of “Beach processes” to include the following: 1) incorporate additional key interactions, such as those involving wind and water levels; 2) clarify that the interaction occurs with sediment mobility; and 3) specify that these interactions shape beach formation and evolution through erosion, transportation, and deposition of sediment.
2. Explicitly include the risks to shoreline access and Native Hawaiian cultural resources in the definition for “Coastal hazard” to ensure a more comprehensive approach to assessing vulnerability in project review and permitting.
3. Expand the definition of “Primary Coastal Dune” to specify that the primary coastal dune is positioned so that it may be more readily reached by storm waves, seasonal high waves, and elevated water levels, enabling the release of sand to the beach or offshore waters. This distinction differentiates it from the broader coastal dune system, where secondary and tertiary dunes are generally less directly affected by storm waves and seasonal high waves compared to the primary coastal dune.
4. Include an amendment to the definition of “Coastal dune” to include the following: 1) clarify the location of the dune system without implying uniform vulnerability to storm waves or seasonal high waves; and 2) specify dune formation and stabilization processes.
5. Include in the definition of “Revetment” that revetments are characterized by a sloped surface.
6. Remove the definition of the “Sea Level Rise Exposure Area (SLR-XA)” given that this term does not appear in the existing language of Article 27 or in the proposed amendments.
7. Revise the definition of “Seawall” to mirror the definition of “Seawall” in Hawai‘i Administrative Rules Title 13, Chapter 222 (Shoreline Certifications).

By



Alisha Summers
Planner

Approved & Recommended to Commission:

By 
KA'AINA S. HULL
Director of Planning

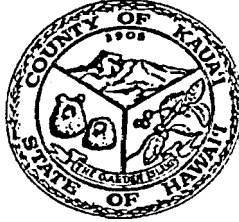
Date: 8-18-2025

Exhibit A:

Original proposed bill

COUNTY COUNCIL

Mel Rapozo, Chair
KipuKai Kualii, Vice Chair
Addison Bulosan
Bernard P. Carvalho, Jr.
Felicia Cowden
Fern Holland
Arryl Kaneshiro



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OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188
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July 17, 2025

Francis DeGracia, Chair
and Members of the Planning Commission
c/o County of Kauai Planning Department
Via Email Only: planningdepartment@kauai.gov

Dear Chair DeGracia and Members of the Planning Commission:

**RE: REFERRAL OF PROPOSED DRAFT BILL (NO. 2969) RELATING
TO SHORELINE SETBACK AND COASTAL PROTECTION**

The Kauai County Council, at its meeting on July 16, 2025, referred the following measure to the Planning Commission for review and recommendation:

**"Proposed Draft Bill (No. 2969) – A BILL FOR AN ORDINANCE AMENDING
CHAPTER 8, ARTICLE 27, KAUAI COUNTY CODE 1987, AS AMENDED,
RELATING TO SHORELINE SETBACK AND COASTAL PROTECTION"**

Thank you for your continued assistance in these planning matters. Should you have any questions, please feel free to contact me at (808) 241-4188.

Sincerely,

JADE K. FOUNTAIN-TANIGAWA
County Clerk, County of Kauai

RM:sf
Enclosure

ORDINANCE NO. _____

BILL NO. (2969)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 27,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO
SHORELINE SETBACK AND COASTAL PROTECTION**

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

SECTION 1. The Council finds that Kaua'i's coastline is subject to an increasing variety of natural hazards such as tsunamis, high surf, sea level rise, climate change, hurricanes, coastal flooding, and coastal erosion, all of which pose severe dangers to people and properties located near the shoreline. Therefore, proper siting of structures and regulation of improvements to structures along Kaua'i's shoreline areas are critical to protecting life and property, mitigating coastal hazards, and preserving coastal resources, which are culturally important to the people of Hawai'i. To accomplish this, the Council finds it necessary to strengthen Kaua'i's Shoreline Setback Ordinance adopted in 2008 by updating Chapter 8, Article 27, Kaua'i County Code 1987, as amended, to include added definitions for clarity and revised requirements for shoreline property owners seeking to repair existing structures.

The purpose of this Ordinance is to amend the Shoreline Setback Ordinance articulated in Chapter 8, Article 27, Kaua'i County Code 1987, as amended, by adding safeguards that protect life and property and ensure the longevity and integrity of Kaua'i's coastal and beach resources along the shoreline.

SECTION 2. Section 8-27.2, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.2 Definitions.

For purposes of this Article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kaua'i fronted by a sandy beach from the Kaua'i Planning Department. These rates were calculated by the University of Hawai'i's Coastal Geology Group for the Kaua'i Coastal Erosion Study, and it

was last updated in 2018. The Planning Director may designate a qualified professional to review and, subject to the Planning Director's approval, update annual coastal erosion rates.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

"Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action or tidal processes. Beach includes sand deposit in nearshore submerged areas, or coastal dunes or upland beach deposits landward of the shoreline that provide benefits for public use and recreation, for coastal ecosystems, and as a natural buffer against coastal hazards.

"Beach processes" means the dynamic interactions between waves, currents, and sediment along coastal shorelines, influencing the formation and evolution of beaches.

"Board" shall mean the Board of Land and Natural Resources, State of Hawai'i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, 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, spas, and in ground swimming pools.

"Certified shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

"Coastal erosion hazard zone" shall include all of the land between the shoreline and the shoreline setback line.

“Coastal hazard” means [natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage] elevated risk to public health or safety, property, and the environment in coastal areas resulting from physical phenomena, including but not limited to high waves, storm surge, tsunami, sea level rise, coastal erosion, and other hazards.

“Coastal hazard disclosure statement” means a statement prescribed by the department disclosing the potential for coastal hazards and the potential for further restrictions and limitations on development of the respective property in the future. This statement is an addendum to the shoreline setback determination application, and it must be signed by the property owner prior to acceptance of the determination application.

“Commission” means the Planning Commission of the County of Kauaʻi.

“Department” means the Planning Department of the County of Kauaʻi.

“Director” means the Planning Director of the Planning Department of the County of Kauaʻi.

“Dwelling unit” means any building or any portion thereof which is designed or intended for occupancy by one family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaiʻi Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawaiʻi, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawaiʻi Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

“Kauaʻi coastal erosion study” means the quantitative study of Kauaʻi and Niʻihau’s historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted by the University of Hawaiʻi’s Coastal Geology Group for the County of Kauaʻi, and it was last updated in 2018. The shoreline change data and shoreline change posters produced by this study are on file with the Kauaʻi Planning Department. The study followed procedures described in the National

Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2010) available from the Kaua'i Planning Department.

"Landscaping" means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means a building footprint of 1,500 square feet.

"Minor structure" means[:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua'i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within 180 days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

(2)] a structure that:

- (A) costs less than \$125,000; and
- (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and
- (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and
- (D) is consistent with the purposes of this Article and HRS Chapter 205A, as amended; and
- (E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along

existing corridors, temporary tents for special events not exceeding 14 consecutive days in duration during any three-month period, walls and fences that are located more than 40 feet from the shoreline, landscape planting and irrigation systems provided that they are located more than 40 feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward, public park facilities (excluding restrooms, wastewater systems, and shoreline armoring structures or improvements), portable or removable walkways for public access, or, as determined by the director, a structure primarily benefitting the public that will not impact or be impacted by coastal erosion processes; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai’i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval[; or].

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of [Hawaii] Hawai’i and shall consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;

- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land. ["Primary Coastal Dune" means the first dune encountered mauka of the beach.]

"Primary Coastal Dune" means the first dune encountered mauka of the beach.

"Prohibited activities" means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kaua'i and the requirements of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

"Public park facilities" means recreational facilities owned and operated by state or county park agencies for the benefit and use of the general public.

"Qualified consultant" means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.

"Qualified demolition" means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;

- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer, or architect at 50% or more of the current replacement cost of the structure.

“Repair” means the [reconstruction or renewal] rehabilitation or renovation of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and does not result in an addition to, or enlargement or expansion of, the lawfully existing structure, such as alterations of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts. A “substantial improvement” as defined herein shall not be considered a repair. [Repair shall be consistent with the definition of “repair” under Sec. 8-1.5, Kaua‘i County Code 1987, as amended.]

“Revetment” shall mean a facing of stone, concrete, blocks, or other [similar] materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Sea Level Rise Exposure Area (SLR-XA)” means the sea level rise exposure area delineated in the Hawai‘i Climate Change Mitigation and Adaptation Commission’s Hawai‘i Sea Level Rise Viewer, or its successors.

“Seawall” means a shoreline hardening structure built of stone, concrete, blocks or other materials to protect a scarp, embankment, or structure against erosion or damage by wave action or currents and has a vertical face on its makai side.

“Shoreline” is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

“Shoreline certification” means a signed statement by the chairperson of the Board of Land and Natural Resources that the shoreline is as located and shown on the map as of a certain date.

“Shoreline change reference feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

"Shoreline hardening" means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Shoreline setback line" means that inland line established by Section 8-27.3 that runs parallel to the shoreline.

"Storm buffer zone" is the first 40 feet of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

"Substantial construction" means that 100% of the foundation has been laid[, or that 100% of the foundation of the active phase of a project has been laid where the project is being done in phases].

"Substantial improvement" means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a 10 year period, where the cumulative cost equals or exceeds 50% of the market value of the structure before the start of construction of the first improvement during that 10 year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be 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."

"Temporary structures" means structures that will exist for no longer than six months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

"Use" means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained."

SECTION 3. Section 8-27.3, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-27.3. Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

Shoreline setback determinations shall be issued based on the following procedures:

(a) A shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article, except in the following two cases:

- (1) As permitted in Section 8-27.7;
- (2) Where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within 12 months prior to submission of the application.

(c) Lots Included in the Kaua'i Coastal Erosion Study. For all structures on lots subject to the Kaua'i Coastal Erosion Study, the setback shall be calculated as follows:

- (1) For lots with an average lot depth of less than 140 feet, the setback line shall be 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.
- (2) For lots with an average lot depth of 140 feet to 220 feet, the greater setback of the following shall apply:
 - (A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or
 - (B) A shoreline setback determined by taking the average lot depth, subtracting 100 feet, dividing by two and adding [40] 60 feet.

(3) For all lots with an average lot depth of over 220 feet, the greater setback of the following shall apply:

(A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of [100] 120 feet from the certified shoreline.

Table 1

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

Average Lot Depth	Setback Line
Less than 140 feet	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus [40] <u>60</u> feet
Greater than 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- [100] <u>120</u> feet from the certified shoreline

(d) Lots Not Included in the Kaua'i Coastal Erosion Study. For all structures on lots that were not included in the Kaua'i Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth - 100)/2 + [40] 60, subject to the following:

(1) For all lots, the shoreline setback line shall be no less than 60 feet.

(2) The maximum setback that can be required shall be [100] 120 feet.

(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot within approximately 500 feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a

certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kaua'i County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line of 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of 5,000 square feet of buildable area *mauka* of the shoreline setback line established in accordance with subsections (f) and (g), above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming."

SECTION 4. Section 8-27.6, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

- (1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
- (2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawai'i Revised Statutes;
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS Section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;
- (4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS Section 46-12; provided that, the sand removed

shall be placed on adjacent areas unless the placement would result in significant turbidity;

- (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
 - (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, Section 7, of the Hawai'i State Constitution; or
 - (7) For the response to a public emergency or a state or local disaster.
- (b) Any primary coastal dune, which lies wholly or partially in the shoreline setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence prior to December 2, 2009.
- (c) The following are prohibited in the shoreline setback area:
- (1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement or structure to accommodate the system outside of the setback line, and the system or improvement complies with all statutory and Department of Health requirements.
 - (2) Landscaping that artificially fixes the shoreline.
 - (3) [Shoreline hardening unless it is approved by the State of Hawai'i's Office of Conservation and Coastal Lands] Private shoreline hardening structures, including seawalls and revetments, at sites subject to the Kaua'i Coastal Erosion Study and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
 - (4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law."

SECTION 5. Section 8-27.7, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.7 Permitted structures within the shoreline setback area.

- (a) The following structures are permitted in the shoreline setback area. All

structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

- (1) Existing conforming or legally nonconforming structures.
- (2) Structure that received a shoreline variance or administrative approval prior to February 26, 2008.
- (3) A structure that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- (4) "Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
- (5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations that results in no interference with natural beach processes and is ancillary or associated with one of the following sites:
 - (A) A Hawaiian fish pond;
 - (B) A publicly owned and legal boating, maritime, or water sports recreational facility.
- (6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:
 - (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of nonconformity; or intensify the use of the structure or its impact on coastal processes;
 - (B) The repairs do not constitute a substantial improvement of the structure;
 - (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law; and
 - (D) The Planning Director determines that the proposal complies with the definition of "repair" under Sec. 8-27.2, Kaua'i County Code 1987, as amended.
 - (E) To ensure that proposed repairs under Sec. 8-27.2, Kaua'i County

Code 1987, as amended, do not constitute a substantial improvement, the Director shall require the applicant to provide the following:

- (1) Appraisal of the structure.
 - (2) A cost breakdown estimate of the proposed repair project through a "Non-Substantial Improvement Job Cost Breakdown Worksheet." The worksheet is to be submitted to and maintained by the Director and shall include all costs of the subject repair project, including but not limited to costs associated with site work, masonry, plumbing, electrical work, carpentry (framing and finish work), drvwall, glass and glazing, painting, flooring, appliances, cabinetry, and all labor.
 - (3) The applicant shall submit a signed declaration acknowledging understanding and agreeing the repair exemption cost figures estimated in the "Non-Substantial Improvement Job Cost Breakdown Worksheet" are subject to review after the completion of the proposed repairs for consistency with the actual and proposed repairs.
 - (4) The applicant shall inform the Planning Department of the date of completion of the repair project and any additional construction materials, labor and associated costs incurred during the repair. In the absence of any notification of completion, the Department shall consider this repair project still ongoing.
 - (5) Within 60 days of the notification of completion or while the repair project is still ongoing, the Director may require the applicant to submit receipts for each of the improvements listed on the "Non-Substantial Improvement Job Cost Breakdown Worksheet" and any other construction materials, labor and associated costs necessitated by the repairs that have been completed. If the applicant cannot provide receipts, the Director may establish the fair market cost for each of the improvements for which receipts cannot be provided.
 - (6) Should the expenditures on the receipts provided demonstrate that the project is not a repair and is in fact considered a substantial improvement pursuant to Section 8-27.2, Kaua'i County Code 1987, as amended, the Director shall follow the enforcement standards in Section 8-27.11, Kaua'i County Code 1987, as amended.
- (F) A certified state shoreline survey is required for any repairs exceeding \$125,000 and must be included in the application for a shoreline setback determination.

- (7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
- (8) A structure approved by the Director as a minor structure.
- (9) Qualified demolition of existing structures.
- (10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
- (11) Scientific studies and surveys, including archaeological surveys.
- (12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.
- (13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within 30 days following the completion of the film production.
- (14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.
- (15) Repair and/or rebuilding of existing public park facilities, excluding shoreline armoring structures or improvements.

(b) The following conditions shall apply to any new structure or any substantial improvement permitted in the shoreline setback area:

- (1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
- (2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.
- (3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline

hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than 40 feet from the shoreline.

- (4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, (v) adversely impact neighboring property, or (vi) alter the grade of the shoreline setback area.
- (5) All new structures shall be consistent with the purposes of this Article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.
- (6) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than 30 days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than 45 days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.
- (7) On lots threatened by sea level rise erosion or historic coastal erosion, before approval of an additional structure, the applicant must agree to retreat, relocate, or remove the proposed and existing structure(s) before or when the shoreline reaches the structure(s) at the respective property owner's expense."

SECTION 6. Section 8-27.8, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.8 Procedures for Obtaining Shoreline Setback Determinations.

- (a) Unless as otherwise provided in this Article, any structure proposed within 500 feet of the shoreline shall first obtain a shoreline setback determination from the Director in accordance with this Article.
- (b) A proposed structure in the shoreline setback area or within 500 feet of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure.

- (1) A request for determination for a proposed structure within the shoreline setback area or within 500 feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.
- (2) For public structures whose valuation does not exceed \$500,000 and repairs to lawfully existing private structures as delineated in Section 8-27.7(a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article. The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.
- (3) For public structures whose valuation exceeds five hundred thousand dollars (\$500,000.00) and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.
- (4) Within 60 days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:
 - (A) Permitted under Section 8-27.7;
 - (B) Permitted under Section 8-27.7 and subject to conditions;
 - (C) Not permitted under Section 8-27.7;
 - (D) Outside of the shoreline setback area; or
 - (E) Not subject to Section 8-27.3.
- (5) A list of applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted within 10 working days to a publicized website maintained by the Department. All applications are subject to a 30-day comment period.
- (6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:

- (A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within 500 feet of the shoreline;
 - (B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure, and a discussion of the factors considered in making the decisions; and
 - (C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3.
- (7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, make a determination of exemption, the Director shall state the justification in writing.
- (8) The Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its [decisionmaking] decision-making on the appeal.
- (9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.
- (10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within [three] two years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within [four] three years from said date.
- (A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kaua'i Coastal Erosion Study. In all other cases where substantial

construction has not occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the [four-year] three-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(11) All applications for Shoreline Setback Determinations shall include a Coastal Hazard Disclosure Statement signed by the property owner.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A nonrefundable processing fee of \$100 shall accompany a request for determination."

SECTION 7. Section 8-27.9, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) A non-refundable administrative application fee of \$300[.];

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;

- (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;
 - (5) A site plan of the shoreline setback area, drawn to scale, showing:
 - (A) Existing natural and man-made features and conditions within;
 - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - (C) The certified shoreline and the shoreline setback line;
 - (D) Contours at a minimum interval of two feet unless waived by the director; and
 - (E) Proposed development and improvements showing new conditions with a typical section (if a structure), and the proposed development's impacts to neighboring properties.
 - (6) A copy of the certified shoreline survey map of the property;
 - (7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;
 - (8) Analysis and report of coastal erosion rates and coastal processes; and
 - (9) Any other information required by the Director.
- (b) Upon a determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this Article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.
 - (c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than 30 calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to all owners of real property within 300 feet of the parcel that is the subject of the application. Not less than 30 days prior to the

public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

[(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;]

[(3)](2) Other structures or activities; provided that, no person or agency has requested a public hearing within 25 calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or

[(4)](3) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes."

SECTION 8. Section 8-27.10, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Landscaping; provided that, the Commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5;

(4) Drainage;

- (5) Boating, maritime, or water sports recreational facilities;
- (6) Structures by public agencies or public utilities regulated under HRS Chapter 269;
- (7) Private and public structures that are clearly in the public interest;
- (8) Private and public structures that will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;
- (9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;
- (10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.
- (11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines:
 - (A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than [1,000] 500 square feet.
 - (D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the

reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than 40 feet.

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code 1987, as amended and does not:

- (i) enlarge the structure beyond its previous building footprint, and
- (ii) intensify the use of the structure or its impacts on coastal processes.

(B) In the case where the minimum buildable footprint does not allow for a setback of 60 feet, the Commission may consider granting a variance under the following guidelines only:

- (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of [1,000] 500 square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

- (1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the provisions of the provisions of this Article;
- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and
- (3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.

(c) Before granting a hardship variance, the Commission shall find that the

applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards, shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook (Hwang, 2005), and any subsequent amendments thereto.

- (d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, [or] (3) actions by the applicant, or (4) small lot size.
- (e) No variance shall be granted unless appropriate conditions are imposed:
 - (1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
 - (2) To minimize and mitigate risk of adverse impacts on beach processes and neighboring properties;
 - (3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property;
 - (4) To minimize adverse impacts on public views to, from, and along the shoreline; and
 - (5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code 1987, as amended, and Drainage, Chapter 22, Article 16, Kaua'i County Code 1987, as amended, respectively.
- (f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed

restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this Article.

- (g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.
- (h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.
- (i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.
- (j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits."

SECTION 9. Section 8-27.11, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive [zoning] Zoning Ordinance[.], HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure or improvement(s) to an existing structure.

- (1) In determining the disposition of [a] an unpermitted structure or improvement(s) to an existing structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.
- (2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure or improvement(s) to an

existing structure [unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain].

- (3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) **Judicial Enforcement of Order.** The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this Chapter.

- (d) **Nonexclusiveness of Remedies.** The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition to any other remedy as may be provided by law.
- (e) **Appeal in Accordance with Statute.** If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.
- (f) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A."

SECTION 10. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application 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 11. 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 12. This ordinance shall take effect upon its approval. These amendments shall be applied to any pending application, determination, or permits.

Introduced by:



MEL RAPOZO



BERNARD P. CARVALHO, JR.

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

V:\BILLS\2024-2026 TERM\2025-292.1 Shoreline Setback Coastal Protection bill
MR_BC_RM_mn.docx

Exhibit B:

Revised proposed bill

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 27,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO
SHORELINE SETBACK AND COASTAL PROTECTION**

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

SECTION 1. The Council finds that Kaua'i's coastline is subject to an increasing variety of natural hazards such as tsunamis, high surf, sea level rise, climate change, hurricanes, coastal flooding, and coastal erosion, all of which pose severe dangers to people and properties located near the shoreline. Therefore, proper siting of structures and regulation of improvements to structures along Kaua'i's shoreline areas are critical to protecting life and property, mitigating coastal hazards, and preserving coastal resources, which are culturally important to the people of Hawai'i. To accomplish this, the Council finds it necessary to strengthen Kaua'i's Shoreline Setback Ordinance adopted in 2008 by updating Chapter 8, Article 27, Kaua'i County Code 1987, as amended, to include added definitions for clarity and revised requirements for shoreline property owners seeking to repair existing structures.

The purpose of this Ordinance is to amend the Shoreline Setback Ordinance articulated in Chapter 8, Article 27, Kaua'i County Code 1987, as amended, by adding safeguards that protect life and property and ensure the longevity and integrity of Kaua'i's coastal and beach resources along the shoreline.

SECTION 2. Section 8-27.2, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.2 Definitions.

For purposes of this Article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure and/or landscaping located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012). Annual coastal erosion rates are available for all lots on Kaua'i fronted by a sandy beach from the Kaua'i Planning Department. These rates were calculated by the University of Hawai'i's Coastal Geology Group for the Kaua'i Coastal Erosion Study, and it

was last updated in 2018. The Planning Director may designate a qualified professional to review and, subject to the Planning Director's approval, update annual coastal erosion rates.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

"Beach" means a coastal landform primarily composed of sand from eroded rock, coral, or shell material, or any combination thereof, that is established and shaped by wave action or tidal processes. Beach includes sand deposit in nearshore submerged areas, or coastal dunes or upland beach deposits landward of the shoreline that provide benefits for public use and recreation, for coastal ecosystems, and as a natural buffer against coastal hazards.

"Beach processes" means the dynamic interactions between waves, currents, water levels, winds, and sediment mobility along coastal shorelines, influencing the formation and evolution of beaches through erosion, transportation, and deposition of sediment.

"Board" shall mean the Board of Land and Natural Resources, State of Hawai'i.

"Building footprint" shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, 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, spas, and in ground swimming pools.

"Certified shoreline" means the shoreline established by Board pursuant to HRS 205A-42, as amended.

"Coastal dune" means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand on the landward side of a beach that is contiguous and approximately parallel to the beach, [situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters]formed as wind and occasionally high waves deposit sand in a sheltered area that is typically stabilized with dune-adapted plant species, leading to accumulation and formation of a dune.

"Coastal erosion" means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

“Coastal erosion hazard zone” shall include all of the land between the shoreline and the shoreline setback line.

“Coastal hazard” means [natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage] elevated risk to public health or safety, property, access to and along the shoreline, Native Hawaiian cultural resources, and the environment in coastal areas resulting from physical phenomena, including but not limited to high waves, storm surge, tsunami, sea level rise, coastal erosion, and other hazards.

“Coastal hazard disclosure statement” means a statement prescribed by the department disclosing the potential for coastal hazards and the potential for further restrictions and limitations on development of the respective property in the future. This statement is an addendum to the shoreline setback determination application, and it must be signed by the property owner prior to acceptance of the determination application.

“Commission” means the Planning Commission of the County of Kauaʻi.

“Department” means the Planning Department of the County of Kauaʻi.

“Director” means the Planning Director of the Planning Department of the County of Kauaʻi.

“Dwelling unit” means any building or any portion thereof which is designed or intended for occupancy by one family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one kitchen.

“FEMA” means the Federal Emergency Management Agency.

“FIRM” means the Flood Insurance Rate Map.

“Hazard assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaiʻi Coastal Mitigation Guidebook, (January 2005), which was prepared for the State of Hawaiʻi, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawaiʻi Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration.

“Kauaʻi coastal erosion study” means the quantitative study of Kauaʻi and Niʻihau’s historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF). The study was conducted

by the University of Hawai‘i’s Coastal Geology Group for the County of Kaua‘i, and it was last updated in 2018. The shoreline change data and shoreline change posters produced by this study are on file with the Kaua‘i Planning Department. The study followed procedures described in the National Assessment of Shoreline Change: Historic Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2010) available from the Kaua‘i Planning Department.

“Landscaping” means the modification of landscape for an aesthetic or functional purpose that includes the planting of vegetation; the installation of irrigation, rock or water features; grading or grubbing.

“Makai” means seaward or in a seaward direction.

“Mauka” means landward or in a landward direction.

“Minimum buildable footprint” means a building footprint of 1,500 square feet.

“Minor structure” means[:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kaua‘i Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within 180 days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or
- (2)] a structure that:
 - (A) costs less than \$125,000; and
 - (B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and
 - (C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and
 - (D) is consistent with the purposes of this Article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, lifesaving devices, movable lifeguard stands, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding 14 consecutive days in duration during any three-month period, walls and fences that are located more than 40 feet from the shoreline, landscape planting and irrigation systems provided that they are located more than 40 feet away from the shoreline and do not artificially extend the shoreline or shoreline setback area seaward, public park facilities (excluding restrooms, wastewater systems, and shoreline armoring structures or improvements), portable or removable walkways for public access, or, as determined by the director, a structure primarily benefitting the public that will not impact or be impacted by coastal erosion processes; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai‘i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42 USC 5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

“Nonconforming structure or activity” means a structure or activity which is lawfully existing within the shoreline setback area because it:

- (1) Was completely built, in its present form, prior to June 22, 1970; or
- (2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or
- (3) Was outside the shoreline setback area when it received either a building permit or board approval[; or].

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" = 20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of [Hawaii] Hawai‘i and shall consist of data including but not limited to:

- (1) Property boundaries;

- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;
- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land. ["Primary Coastal Dune" means the first dune encountered mauka of the beach.]

"Primary Coastal Dune" means the first coastal dune encountered mauka of the beach, situated so that it may be accessible to storm waves, seasonal high waves, and high water levels to release sand to the beach or offshore waters.

"Prohibited activities" means those activities prohibited in the shoreline setback area as provided in Section 8-27.6 of this Article. All other activities shall be regulated by the Special Management Area Rules and Regulations of the County of Kaua'i and the requirements of HRS Chapter 343-5 regarding environmental assessments for any proposed uses within a shoreline area as defined in Section 205A-41.

"Public park facilities" means recreational facilities owned and operated by state or county park agencies for the benefit and use of the general public.

"Qualified consultant" means a coastal scientist with a master of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes. If a dune restoration project is proposed, the qualified consultant shall have experience and expertise with dune restoration.

"Qualified demolition" means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;

- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer, or architect at 50% or more of the current replacement cost of the structure.

“Repair” means the [reconstruction or renewal] rehabilitation or renovation of any part of a lawfully existing structure, but not the entire structure, solely for the purpose of its maintenance and does not result in an addition to, or enlargement or expansion of, the lawfully existing structure, such as alterations of floors, roofs, walls, or the supporting structure of a building or the rearrangement of any of its component parts. A “substantial improvement” as defined herein shall not be considered a repair. [Repair shall be consistent with the definition of “repair” under Sec. 8-1.5, Kaua‘i County Code 1987, as amended.]

“Revetment” shall mean a sloping facing of stone, concrete, blocks, or other [similar] materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Sea Level Rise Exposure Area (SLR XA)” means the sea level rise exposure area delineated in the Hawai‘i Climate Change Mitigation and Adaptation Commission’s Hawai‘i Sea Level Rise Viewer, or its successors.

“Seawall” means a structure with a vertical face separating land and water areas, primarily designed to prevent erosion and other damage due to wave action, shoreline hardening structure built of stone, concrete, blocks or other materials to protect a scarp, embankment, or structure against erosion or damage by wave action or currents and has a vertical face on its makai side.

“Shoreline” is as defined in Section 205A-1, Hawai‘i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai‘i Revised Statutes, as amended.

“Shoreline certification” means a signed statement by the chairperson of the Board of Land and Natural Resources that the shoreline is as located and shown on the map as of a certain date.

“Shoreline change reference feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

“Shoreline hardening” means the process of fortifying the shoreline or shoreline setback area with hard structures including, but not limited to, seawall and revetments.

“Shoreline setback area” means “shoreline area” as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Shoreline setback line” means that inland line established by Section 8-27.3 that runs parallel to the shoreline.

“Storm buffer zone” is the first 40 feet of the shoreline setback area as measured from the shoreline.

“Structure” is as defined in Section 205A-41, Hawai‘i Revised Statutes, as amended.

“Substantial construction” means that 100% of the foundation has been laid[, or that 100% of the foundation of the active phase of a project has been laid where the project is being done in phases].

“Substantial improvement” means any cumulative series of repairs, reconstruction, improvements, or additions to a structure over a 10 year period, where the cumulative cost equals or exceeds 50% of the market value of the structure before the start of construction of the first improvement during that 10 year period. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The value of any substantial improvement shall be 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.”

“Temporary structures” means structures that will exist for no longer than six months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

“Use” means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained.”

SECTION 3. Section 8-27.3, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-27.3. Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

Shoreline setback determinations shall be issued based on the following procedures:

(a) A shoreline setback determination shall be required for all structures and subdivisions proposed on lands covered by this Article, except in the following two cases:

- (1) As permitted in Section 8-27.7;
- (2) Where the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed structure or subdivision will not affect beach processes, impact public beach access, or be affected by or contribute to coastal erosion or hazards, excluding natural disasters. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(b) Unless otherwise provided in subsection (a) above, no shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a certified shoreline issued within 12 months prior to submission of the application.

(c) Lots Included in the Kaua'i Coastal Erosion Study. For all structures on lots subject to the Kaua'i Coastal Erosion Study, the setback shall be calculated as follows:

- (1) For lots with an average lot depth of less than 140 feet, the setback line shall be 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.
- (2) For lots with an average lot depth of 140 feet to 220 feet, the greater setback of the following shall apply:
 - (A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline

setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback determined by taking the average lot depth, subtracting 100 feet, dividing by two and adding [40] 60 feet.

(3) For all lots with an average lot depth of over 220 feet, the greater setback of the following shall apply:

(A) Forty feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, for all applicable lots subject to the Kaua'i Coastal Erosion Study a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards; or

(B) A shoreline setback line of [100] 120 feet from the certified shoreline.

Table 1

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

Average Lot Depth	Setback Line
Less than 140 feet	40 feet plus (70 X annual coastal erosion rate) plus 20 feet
140 feet to 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- (Average Lot Depth minus 100 feet) ÷ by 2 plus [40] <u>60</u> feet
Greater than 220 feet	Greater of: 40 feet plus (70 X annual coastal erosion rate) plus 20 feet -or- [100] <u>120</u> feet from the certified shoreline

(d) Lots Not Included in the Kaua'i Coastal Erosion Study. For all structures on lots that were not included in the Kaua'i Coastal Erosion Study, the setback shall be calculated by the following formula, (Average Lot Depth - 100)/2 +[40] 60, subject to the following:

(1) For all lots, the shoreline setback line shall be no less than 60 feet.

(2) The maximum setback that can be required shall be [100] 120 feet.

(e) Non-abutting Lots. If an applicant is unable to secure permission from the abutting owner to complete a certified shoreline for a non-abutting lot

within approximately 500 feet of the shoreline, the Planning Director may, pursuant to Sec. 8-4.3, impose conditions to zoning permits to increase setbacks where evidence exists that a proposed structure may be affected by coastal hazards or erosion.

(f) No subdivision which involves a lot, or any portion of a lot that would be subject to this Article, shall be approved without a coastal erosion study, a certified shoreline, and a shoreline setback line established in accordance with this Article, unless the subdivision is initiated by the County.

(g) Any subdivision with lots abutting the shoreline approved pursuant to Chapter 9 of the Kaua'i County Code, 1987, as amended, after the adoption of this Ordinance shall have a shoreline setback line of 40 feet plus 70 times the annual coastal erosion rate as measured from the certified shoreline. In addition to the shoreline setback calculations above, a mandatory 20 foot additional safety buffer shall be added to the setback area for episodic coastal events, sea level rise and other hazards.

(h) Each lot abutting the shoreline in a subdivision approved after the effective date of this ordinance shall be designed to achieve a building footprint of 5,000 square feet of buildable area *mauka* of the shoreline setback line established in accordance with subsections (f) and (g), above.

(i) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawai'i.

(j) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming."

SECTION 4. Section 8-27.6, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions:

- (1) The inadvertent taking from the shoreline setback area of the materials, such as those inadvertently carried away on the body, and on clothes, toys, recreational equipment, and bags;
- (2) Where the mining or taking is authorized by a variance pursuant to Section 205A-46 of the Hawai'i Revised Statutes;
- (3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the

purposes under HRS Section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity;

- (4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS Section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity;
 - (5) The taking of driftwood, shells, beach glass, glass floats, or seaweed;
 - (6) The exercise of traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, Section 7, of the Hawai'i State Constitution; or
 - (7) For the response to a public emergency or a state or local disaster.
- (b) Any primary coastal dune, which lies wholly or partially in the shoreline setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence prior to December 2, 2009.
- (c) The following are prohibited in the shoreline setback area:
- (1) Individual wastewater system or subsurface improvement unless the applicant demonstrates to the satisfaction of the Director that no feasible alternative exists, including a redesign of the improvement or structure to accommodate the system outside of the setback line, and the system or improvement complies with all statutory and Department of Health requirements.
 - (2) Landscaping that artificially fixes the shoreline.
 - (3) [Shoreline hardening unless it is approved by the State of Hawai'i's Office of Conservation and Coastal Lands] Private shoreline hardening structures, including seawalls and revetments, at sites subject to the Kaua'i Coastal Erosion Study and at sites where shoreline hardening structures interfere with existing recreational and waterline activities.
 - (4) Expansion of the footprint of a non-conforming structure, unless otherwise provided by law."

SECTION 5. Section 8-27.7, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.7 Permitted structures within the shoreline setback area.

(a) The following structures are permitted in the shoreline setback area. All structures and/or landscaping not specifically permitted in this section are prohibited without a variance.

- (1) Existing conforming or legally nonconforming structures.
- (2) Structure that received a shoreline variance or administrative approval prior to February 26, 2008.
- (3) A structure that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.
- (4) "Temporary structures" as defined in Section 8-27.2. To ensure that there will be no irreversible or long term adverse effects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the Director may require a bond to ensure such restoration.
- (5) A structure that consists of maintenance, repair, reconstruction, and minor additions or alterations that results in no interference with natural beach processes and is ancillary or associated with one of the following sites:
 - (A) A Hawaiian fish pond;
 - (B) A publicly owned and legal boating, maritime, or water sports recreational facility.
- (6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:
 - (A) The repairs do not enlarge, add to or expand the structure; increase the size or degree of nonconformity; or intensify the use of the structure or its impact on coastal processes;
 - (B) The repairs do not constitute a substantial improvement of the structure;
 - (C) The repairs are permitted by the Comprehensive Zoning Ordinance, Development Plans, building code, floodplain management regulations, special management area requirements under HRS Chapter 205A and any other applicable rule or law; and

(D) The Planning Director determines that the proposal complies with the definition of "repair" under Sec. 8-27.2, Kaua'i County Code 1987, as amended.

(E) To ensure that proposed repairs under Sec. 8-27.2, Kaua'i County Code 1987, as amended, do not constitute a substantial improvement, the Director shall require the applicant to provide the following:

- (1) Appraisal of the structure.
- (2) A cost breakdown estimate of the proposed repair project through a "Non-Substantial Improvement Job Cost Breakdown Worksheet." The worksheet is to be submitted to and maintained by the Director and shall include all costs of the subject repair project, including but not limited to costs associated with site work, masonry, plumbing, electrical work, carpentry (framing and finish work), drywall, glass and glazing, painting, flooring, appliances, cabinetry, and all labor.
- (3) The applicant shall submit a signed declaration acknowledging understanding and agreeing the repair exemption cost figures estimated in the "Non-Substantial Improvement Job Cost Breakdown Worksheet" are subject to review after the completion of the proposed repairs for consistency with the actual and proposed repairs.
- (4) The applicant shall inform the Planning Department of the date of completion of the repair project and any additional construction materials, labor and associated costs incurred during the repair. In the absence of any notification of completion, the Department shall consider this repair project still ongoing.
- (5) Within 60 days of the notification of completion or while the repair project is still ongoing, the Director may require the applicant to submit receipts for each of the improvements listed on the "Non-Substantial Improvement Job Cost Breakdown Worksheet" and any other construction materials, labor and associated costs necessitated by the repairs that have been completed. If the applicant cannot provide receipts, the Director may establish the fair market cost for each of the improvements for which receipts cannot be provided.
- (6) Should the expenditures on the receipts provided demonstrate that the project is not a repair and is in fact considered a substantial improvement pursuant to Section 8-27.2, Kaua'i County Code 1987, as amended, the Director shall follow the

enforcement standards in Section 8-27.11, Kaua'i County Code 1987, as amended.

(F) A certified state shoreline survey is required for any repairs exceeding \$125,000 and must be included in the application for a shoreline setback determination.

- (7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.
- (8) A structure approved by the Director as a minor structure.
- (9) Qualified demolition of existing structures.
- (10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events.
- (11) Scientific studies and surveys, including archaeological surveys.
- (12) Structures built by a governmental agency to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.
- (13) Structures relating to film productions that have received a County Revocable Film Permit. Structures undertaken for film productions must be removed within 30 days following the completion of the film production.
- (14) Structures required for remedial and removal actions undertaken pursuant to Chapter 128D of the Hawai'i Revised Statutes.
- (15) Repair and/or rebuilding of existing public park facilities, excluding shoreline armoring structures or improvements.

(b) The following conditions shall apply to any new structure or any substantial improvement permitted in the shoreline setback area:

- (1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code 1987, as amended, relating to coastal high hazard districts and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.
- (2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold

the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures from any coastal natural hazard and coastal erosion.

- (3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion control or shoreline hardening structure and/or landscaping shall not be allowed to protect the permitted structure during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation located more than 40 feet from the shoreline.
- (4) Unless otherwise provided, all new structures and/or landscaping shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, (v) adversely impact neighboring property, or (vi) alter the grade of the shoreline setback area.
- (5) All new structures shall be consistent with the purposes of this Article and HRS Chapter 205A, as amended, and shall be designed and located to minimize the alteration of natural landforms and existing public views to and along the shoreline.

(6) On lots threatened by sea level rise erosion or historic coastal erosion, before approval of an additional structure, the applicant must agree to retreat, relocate, or remove the proposed and existing structure(s) before or when the shoreline reaches the structure(s) at the respective property owner's expense.

[(6)](7) The requirements of this Subsection (b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances or the Land Court, whichever is applicable, no later than 30 days after the date of final shoreline approval of the structure under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than 45 days after the date of the final shoreline determination and approval of the structure and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

~~(6) On lots threatened by sea level rise erosion or historic coastal erosion, before approval of an additional structure, the applicant must agree to retreat, relocate, or remove the proposed and existing structure(s) before or when the shoreline reaches the structure(s) at the respective property owner's expense.~~

SECTION 6. Section 8-27.8, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

“Sec. 8-27.8 Procedures for Obtaining Shoreline Setback Determinations.

- (a) Unless as otherwise provided in this Article, any structure proposed within 500 feet of the shoreline shall first obtain a shoreline setback determination from the Director in accordance with this Article.
- (b) A proposed structure in the shoreline setback area or within 500 feet of the shoreline shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.
- (c) Procedure.
 - (1) A request for determination for a proposed structure within the shoreline setback area or within 500 feet of the shoreline shall be submitted to the Department on a form prescribed by the Director.
 - (2) For public structures whose valuation does not exceed \$500,000 and repairs to lawfully existing private structures as delineated in Section 8-27.7(a), the request shall include construction and site plans, and written text addressing compliance with the criteria set forth in this Article. The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor, registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.
 - (3) For public structures whose valuation exceeds five hundred thousand dollars (\$500,000.00) and private structures unless delineated in Sec. 8-27.7(a), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Sec. 8-27.3 or a current certified shoreline survey and coastal erosion information, construction and site plans, existing and final contours, photographs, and a written text addressing compliance with the criteria set forth in this Article. The Director may also require a hazard assessment.
 - (4) Within 60 days from the day the application is deemed complete by the Director, the Director shall make a decision in accordance with the criteria set forth in this Article that the proposed structure is:
 - (A) Permitted under Section 8-27.7;
 - (B) Permitted under Section 8-27.7 and subject to conditions;
 - (C) Not permitted under Section 8-27.7;

(D) Outside of the shoreline setback area; or

(E) Not subject to Section 8-27.3.

- (5) A list of applications for a shoreline setback determination or determination of exemption deemed complete by the Director shall be posted within 10 working days to a publicized website maintained by the Department. All applications are subject to a 30-day comment period.
- (6) The Director shall notify the Commission at the Commission's next regularly scheduled meeting of the following:
- (A) any shoreline setback determinations for approval of a structure proposed within the shoreline setback area or within 500 feet of the shoreline;
 - (B) any approvals or denials by the Director of structures and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure, and a discussion of the factors considered in making the decisions; and
 - (C) any decision by the Director to not require a shoreline setback determination pursuant to Section 8-27.3.
- (7) All shoreline setback determinations made by the Director shall include, but are not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures depicted on a plan drawn to scale, the purpose of the proposed structures, the current certified shoreline (if required), the setback calculations and setback line drawn on the plan, and copies of a coastal erosion study, if applicable. If the Director, pursuant to Section 8-27.3, make a determination of exemption, the Director shall state the justification in writing.
- (8) The Director's decisions pursuant to Section 8-27.8(c)(4) shall not be final until posted on the Commission's agenda. Notwithstanding the posting of the decision, if there is an appeal from the Director's decision, the decision shall not be final until the Commission completes its [decisionmaking] decision-making on the appeal.
- (9) Minor structures shall be completed within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.
- (10) For any non-minor structures allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within [three] two years from the date of

final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within [four] three years from said date.

(A) An extension of no more than one year may be granted by the Director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per shoreline change rates as provided in the Kaua'i Coastal Erosion Study. In all other cases where substantial construction has not occurred by the deadline, a new certified shoreline and setback determination shall be required.

(B) In case of failure to complete construction by the [four-year] three-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(11) All applications for Shoreline Setback Determinations shall include a Coastal Hazard Disclosure Statement signed by the property owner.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kaua'i, HRS Chapter 205A, as amended, or HRS Chapter 343-5, as amended.

(e) Fees. A nonrefundable processing fee of \$100 shall accompany a request for determination."

SECTION 7. Section 8-27.9, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or

data determined by the Director to be necessary to evaluate the application. The application shall also include:

- (1) A non-refundable administrative application fee of \$300[.];
 - (2) Certification from the owner or lessee of the lot which authorizes the application for variance;
 - (3) An environmental assessment prepared in accordance with HRS Chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawai'i;
 - (4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed structure and/or landscaping is to be located;
 - (5) A site plan of the shoreline setback area, drawn to scale, showing:
 - (A) Existing natural and man-made features and conditions within;
 - (B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;
 - (C) The certified shoreline and the shoreline setback line;
 - (D) Contours at a minimum interval of two feet unless waived by the director; and
 - (E) Proposed development and improvements showing new conditions with a typical section (if a structure), and the proposed development's impacts to neighboring properties.
 - (6) A copy of the certified shoreline survey map of the property;
 - (7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;
 - (8) Analysis and report of coastal erosion rates and coastal processes; and
 - (9) Any other information required by the Director.
- (b) Upon a determination by the Director that the application is complete and in compliance with HRS Chapter 205A, part II and this Article, the Director shall submit the application to the Commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the

portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the Commission prior to the matter appearing on an agenda of the Commission.

- (c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than 30 calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to all owners of real property within 300 feet of the parcel that is the subject of the application. Not less than 30 days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.
- (d) Exceptions. Prior to action on a variance application, the Commission may waive a public hearing on the application for:
 - (1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;
 - [(2)] (2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;]
 - [(3)] (2) Other structures or activities; provided that, no person or agency has requested a public hearing within 25 calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which identifies the date and time by which a written request for a public hearing must be received by the Commission; or
 - [(4)] (3) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or water sports recreational facilities, which result in little or no interference with natural shoreline processes."

SECTION 8. Section 8-27.10, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.10 Criteria for approval of a variance.

- (a) A shoreline setback variance may be considered for a structure otherwise prohibited by this Article, if the Commission finds in writing, based on the record presented, that the proposed structure meets those standards established under Section 8-3.3 and is necessary for or ancillary to:

- (1) Cultivation of crops;
- (2) Aquaculture;
- (3) Landscaping; provided that, the Commission finds that the proposed structure will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline and is in compliance with HRS Section 115-5;
- (4) Drainage;
- (5) Boating, maritime, or water sports recreational facilities;
- (6) Structures by public agencies or public utilities regulated under HRS Chapter 269;
- (7) Private and public structures that are clearly in the public interest;
- (8) Private and public structures that will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the Commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;
- (9) Private and public structures that may artificially fix the shoreline but not adversely affect beach processes; provided that, the Commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;
- (10) The Commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.
- (11) Construction of a new dwelling unit. In the case where the minimum buildable footprint does not allow for a setback in accordance with this Article, the Commission may consider granting a variance under the following guidelines:
 - (A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

- (B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
- (C) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint shall be reduced to no less than [1,000] 500 square feet.
- (D) If the foregoing approaches in subsections (A), (B) and (C) are done to the maximum extent practicable, the calculated shoreline setback may be reduced to the minimum extent required to permit the construction of a house within the reduced footprint, provided that a qualified consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding. Under no circumstance shall the shoreline setback line be less than 40 feet.

(12) Rebuilding of an existing dwelling unit.

- (A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code 1987, as amended and does not:
 - (i) enlarge the structure beyond its previous building footprint, and
 - (ii) intensify the use of the structure or its impacts on coastal processes.
- (B) In the case where the minimum buildable footprint does not allow for a setback of 60 feet, the Commission may consider granting a variance under the following guidelines only:
 - (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;
 - (iii) If the foregoing approaches are done to the maximum extent practicable and a dwelling cannot be sited mauka of the shoreline setback, the minimum buildable footprint may be reduced to the lesser of [1,000] 500 square feet or the actual footprint of the house.

(b) A structure may be considered for a variance upon grounds of hardship if:

- (1) The applicant would be deprived of all reasonable use of the land if

required to fully comply with the provisions of the provisions of this Article;

- (2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the provisions of this Article; and
 - (3) The proposal is the best practicable alternative which best conforms to the purpose of the provisions of this Article.
- (c) Before granting a hardship variance, the Commission shall find that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. The Commission shall consider factors such as coastal hazards, shoreline conditions, erosion, surf inundation, flood conditions and the geography of the lot in determining whether the proposal is a reasonable use of the applicant's land. The Commission shall give due consideration to the long-term average annual rate of coastal erosion calculated by following the methodology outlined in the National Assessment of Shoreline Change: Historical Shoreline Changes in the Hawaiian Islands (Fletcher, et al., 2012) and any amendments thereto, or Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook (Hwang, 2005), and any subsequent amendments thereto.
- (d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, [or] (3) actions by the applicant, or (4) small lot size.
- (e) No variance shall be granted unless appropriate conditions are imposed:
- (1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;
 - (2) To minimize and mitigate risk of adverse impacts on beach processes and neighboring properties;
 - (3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property;
 - (4) To minimize adverse impacts on public views to, from, and along the shoreline; and
 - (5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code 1987, as

amended, and Drainage, Chapter 22, Article 16, Kaua'i County Code 1987, as amended, respectively.

- (f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this Article.
- (g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.
- (h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.
- (i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.
- (j) In no case shall the Commission grant a shoreline setback variance for structures constructed without valid permits."

SECTION 9. Section 8-27.11, Article 27 of Chapter 8, Kaua'i County Code 1987, as amended, is hereby amended to read as follows:

"Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive [zoning] Zoning Ordinance[], HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure or improvement(s) to an existing structure.

- (1) In determining the disposition of [a] an unpermitted structure or improvement(s) to an existing structure, the Director shall follow the

procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

- (2) Following the relevant procedures described in Sec. 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure or improvement(s) to an existing structure [unless it is determined that removal shall cause a greater harm to the ecosystem and/or public improvements than allowing the structure to remain].
- (3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) **Judicial Enforcement of Order.** The Director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the Director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The Director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted there under, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this Chapter.

- (d) **Nonexclusiveness of Remedies.** The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition to any other remedy as may be provided by law.
- (e) **Appeal in Accordance with Statute.** If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction.

- (f) The Director shall enforce this Article in accordance with Article 24 of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A."

SECTION 10. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or application 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 11. 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 12. This ordinance shall take effect upon its approval. These amendments shall be applied to any pending application, determination, or permits.

Introduced by:

MEL RAPOZO

BERNARD P. CARVALHO, JR.

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

V:\BILLS\2024-2026 TERM\2025-292.1 Shoreline Setback Coastal Protection bill
MR_BC_RM_mn.docx

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

October 6, 2025

CERTIFIED MAIL

Michael J. Belles, Esq.
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Līhu'e, Hawai'i 96766

Subject: In the Matter of the Petition to Amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385 for Real Property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, Kaua'i Tax Map Key (4) 1-7-005: 001, Zoning Amendment ZA-2026-2

In the Matter of the Petition to Amend Ordinance No. PM-2001-356 as amended in part by Ordinance No. PM-2006-385, affecting approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Zoning Amendment ZA-2026-2, has been scheduled on the **November 10, 2025, County Kaua'i, Planning Commission Agenda:**

**Purpose of the
Proposed
Amendment:**

This Petition seeks to amend Ordinance No. PM-2001-356, as amended in part by Ordinance No. PM-2006-385, to rezone approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001 to the designations that existed prior to Ordinance No. PM-2001-356, as amended.

The proposed action would redesignate the zoning of the property from Resort (RR-10) to the Agriculture (A) and Open (O) Districts, as it previously existed prior to the adoption of Ordinance No. PM-2001-356, as amended.

Subject Property:

Waimea, Kaua'i. Approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001

NOV 10 2025

Meeting Location: Līhu'e Civic Center, Moikeha Building, Meeting Room 2A-2B,
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

* The Planning Commission Agenda for November 10, 2025 will specify the final determination of location.

Date: November 10, 2025, Monday

Time: 9:00 a.m. or shortly thereafter

The Petition and the Draft Bill for an Ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to zoning designations in Makaweli, Kaua'i, which includes a map showing the proposed amendment regions, was sent via certified mail on August 14, 2025. Please contact the Planning Department with any questions at planningdepartment@kauai.gov or (808) 241-4050.

A handwritten signature in black ink, appearing to read 'Ka'āina S. Hull', is written over a horizontal line.

Ka'āina S. Hull
Director of Planning

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO
ZONING DESIGNATION IN MAKAWELI, KAUAI**

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

SECTION 1. Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385, is hereby amended by amending the zoning designation for that certain area in Makaweli, Kaua'i, identified as TMK No.: 1-7-05:1, and as shown on Zoning Map ZM-200 and on the map attached hereto and incorporated herein as Exhibit ZA-2000-2 (Exhibit A) from the "Resort District (RR-1)," "Resort District/Special Treatment – Cultural District (RR-1/ST-C)," "Open District/Special Treatment – Resource District (O/STR)," "Open District/Special Treatment - Public District (O/ST-C)," "Open District/Special Treatment – Cultural District (O/ST-C)," and the establishment of view corridor and Transition Areas 1, 2, and 3 to the "Agriculture District (A)" and "Open District (O)." Ordinance No. PM 2001-356, as amended in part by Ordinance No. PM-2006-385, is amended as follows:

[1. — ZONING DESIGNATIONS:

~~As shown on the attached Exhibit "A," the following are zoning designations and acreage the project:~~

- ~~(a) — Resort District (RR-1) — 127.93 acres.~~
- ~~(b) — Resort/Special Treatment Cultural District (RR-1/ST-C) — 18.02 acres.~~
- ~~(c) — Open/Special Treatment Cultural District (O/ST-C) — 11.43 acres.~~
- ~~(d) — Open/Special Treatment Resource District (O/ST-R) — 11.46 acres.~~
- ~~(e) — Open/Special Treatment Public District (O/ST-P) — 2.88 acres.~~

2. — SPECIAL RESTRICTIONS:

~~As shown on the attached Exhibit "A," the following are design and project development controls to supplement the zoning designations:~~

~~(a) — Transition Area 1 — Shall be along the shoreline and be 200 feet deep, measured from the edge of the Conservation District and/or the O/ST-R zone, and be subject to the following restrictions:~~

~~(i) — Single-story buildings only.~~

~~(ii) — A maximum allowable land coverage of 20%.~~

~~(iii) — A maximum building height of twenty (20) feet for the resort units measured from all points of the building.~~

~~(b) — Transition Area 2 — Shall be a 200 feet deep area around the fishpond. This zone shall be subject to the following restrictions:~~

~~(i) Single-story buildings only.~~

~~(ii) Limit of 800 square feet per resort unit (including each unit in a duplex). Lanais and decks will not count, but should not exceed one third of the floor area or 200 square feet whichever is less.~~

~~(iii) Only one tier of buildings.~~

~~(iv) An average distance of forty (40) feet between buildings.~~

~~(v) A maximum allowable land coverage of 20%.~~

~~(vi) A maximum building height of twenty (20) feet for the resort units measured from all points of the building.~~

~~(c) Transition Area 3 Shall be a 100 feet deep area around the RR-1/ST-C zone which includes the Robinson family residence and the resource area on the western boundary of the project. This zone shall be subject to the following restrictions:~~

~~(i) No resort units.~~

~~(ii) Single-story buildings only (single family detached — residences for employee and/or affordable housing are permitted).~~

~~(iii) No commercial buildings.~~

~~(iv) The density of this zone is transferred to the RR-1 zone.~~

~~(v) A maximum building height of thirty (30) feet for all — buildings measured from all points of the building.~~

~~(d) Overlap of Transition Areas. Transition Areas 1 and 2 have some overlap around the fishpond. In this case the stricter restrictions apply.~~

~~(e) View Corridor A view corridor from the Robinson family residence (as specified in the application and EIS) to the shoreline shall be established and maintained to preserve the views to the ocean. The requirements stated in Section 8.9.7 of the CZO shall apply to the view corridor.~~

~~3. ZONING AMENDMENT CONDITIONS:~~

~~Approve the zoning designations specified in Section 1, subject to the following conditions:~~

~~(a) — The applicant shall comply with conditions of the State Land Use Commission Decision and Order dated April 6, 2001.~~

~~(b) — In keeping with prior commitments and representations made by the applicant, the applicant shall, in the forthcoming SMA and Zoning Permit process, provide appropriate documentation pertaining to historic preservation philosophy and methodology of the proposed development including the preservation of the carriage houses and green house.~~

~~The applicant shall also provide appropriate historic preservation documentation and information as recommended by the Kauai Historic Preservation Review (KHPRC) Commission in its July 3, 2000 memorandum (on file) in conjunction with the forthcoming permit process. Also, the Department of Land and Natural Resources — State Historic Preservation Division (DLNR — SHPD) and the KHPRC shall be given the opportunity to provide further comments as more detailed historic preservation information and plans become available.~~

~~(c) — As recommended by the State Historic Preservation Division of the Department of Land and Natural Resources (DLNR):~~

~~(i) — Five historic sites are to be preserved, as documented in the inventory survey report. A detailed preservation plan for these sites must be submitted to the State Historic Preservation Division (SHPD) for approval. This plan must include buffer zones, interim protection measures (if needed), and long-range preservation measures. Before land alteration can occur, minimal buffer zones and interim protection measures need to be approved and the SHPD must verify in writing that this plan has been successfully executed.~~

~~(ii) — One historic site may undergo some data recovery (site 764, the Robinson plantation house complex) as not all buildings may be preserved. A data recovery plan must be submitted to the SHPD for approval for any building to be demolished.~~

~~(iii) — The proposal to preserve the burial within site 792 must be submitted to the Kauai Island Burial Council for approval. A burial treatment plan (covering preservation concerns) must be reviewed and approved by the Burial Council.~~

~~(iv) — Archaeological monitoring shall occur for all altering construction in the shoreline sand areas outside of site 792, to cover the possibility of inadvertent burial finds or finds of small remnants of subsurface habitation deposits. An archaeological monitoring plan (Scope of Work) must be~~

~~submitted to the SHPD for approval. The SHPD must verify in writing when the plan has been successfully executed.~~

~~(d) — The applicant shall comply with the requirements of the Fire Department as specified in their December 2, 1999 letter to the Planning Department (see attached).~~

~~(e) The applicant shall meet all applicable requirements of the County Department of Water and the County Department of Public Works at the time of permitting.~~

~~(f) — The applicant shall comply with the comments of the State Highways Division dated March 8, 2000 to the Planning Department (see attached).~~

~~(g) — The applicant shall comply with all applicable requirements of the State Department of Health at the time of permitting.~~

~~(h) — The Resort District (RR-1) zoning shall:~~

~~(i) — Have a maximum density of two hundred fifty (250) resort units. This zone has the capacity to also allow for three (3) additional single-family residential units. This additional density shall apply towards covering three (3) of the eight (8) existing plantation homes.~~

~~(ii) — Allow those uses that are permitted within the resort zoning section of the Comprehensive Zoning Ordinance, including administration functions, maintenance functions, and small conference facilities. The support facilities such as the sewage treatment plant, pump stations and other accessory uses that are necessary to operate the infrastructure shall also be permitted. The amount of amenities allowed as permitted uses shall however be limited to those uses specified in the zoning amendment application (two restaurants, a snackbar, luau grounds, public/passive recreation area, museum, bar/lounge, three swimming pools, fitness center/beach club, sports courts, amphitheater, and public parking/access.~~

~~(iii) — Be required to provide one paved parking stall per hotel unit.~~

~~(iv) — Be restricted to a maximum building height of thirty-five (35) feet for non-resort unit buildings.~~

~~(v) — Be restricted to only duplexes for attached units; i.e. no more than two units shall be attached under one roof. The floor area for each unit in a duplex shall not exceed 800 square feet.~~

~~Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.~~

~~(vi) All units shall not exceed 800 square feet of floor area. Decks and lanais shall not count, however shall not exceed one-third the floor area or 200 square feet, whichever is less.~~

~~(vii) Not allow the resort units to be higher than thirty (30) feet which shall be measured from all points of the building.~~

~~(i) The Planning Department shall be granted authority to determine the course of action needed to address any changes to the project; i.e. whether legislative action involving an amendment to the ordinance or an administrative process involving the Planning Department and/or Commission. Increases in density, changes in uses, or other major changes that could alter the complexion of the project shall require County Council action. Slight variations and minor modifications to the project would qualify for administrative action.~~

~~(j) In addition to the State Land Use Commission's Decision and Order conditions pertaining to public access and amenities, the following improvements shall be constructed and/or provided prior to occupancy of the resort units:~~

~~(i) A comfort station for public use.~~

~~(ii) An outdoor shower facility for public use.~~

~~(iii) A passive public recreation area to allow for picnicking and passive day uses not less than two and one-half (2.5) acres in size.~~

~~(iv) A public parking lot consisting of thirty (30) paved parking stalls with an overflow parking area of twenty (20) stalls.~~

~~(v) In the event that the applicant's proposed driveway connection to the beach parking lot cannot be implemented due to DOT concerns, an access onto Kaunualii Highway for use on an emergency only basis to be resolved with the Fire Department.~~

~~(vi) A fifty (50) foot wide lateral beach access easement be provided along the shoreline portion of the project site. This fifty (50) foot easement shall run along the entire shoreline frontage of the property and be granted in favor of the County of Kauai. This lateral beach access shall be open 24 hours a day for unrestricted pedestrian use to enable the public to traverse (non-motorized) along the beach area. The~~

long-term goal of such lateral access easements is to keep connecting the easements to enable the public to eventually traverse to and through beaches for recreational purposes throughout the island.

The exact amount of land area along with its alignment and configuration for public use (parking, comfort station, showers, passive recreation area, and walking trail) shall be resolved with the Planning Department during the permitting process. This public use area shall be designated as a public easement in favor of the State of Hawaii (to be consistent with the Land Use Commission's decision and order).

Further, provision of these improvements will enable the project to qualify for a 50% Park Dedication fee credit.

(k) — There shall be no encroachment of commercial buildings or any resort units within any of the Open/Special Treatment districts.

(l) — The existing foliage along the highway frontage within the Open/Special Treatment — Resource District (O/ST-R) shall not be removed. Maintenance trimming and planting of additional landscaping are allowed. The intent of this condition is to ensure that the buildings within the project are not seen from the highway and to ensure that the existing vegetation along the highway remains in its current state.

(m) — Signage along the highway shall be reviewed and approved by the Planning Department and shall follow the County's sign ordinance. Direct lighting shall not be permitted. Indirect lighting is allowable.

(n) — The applicant shall be made aware of condition 12 of the Land Use Commission Decision and Order that requires the applicant to participate in the pro-rata funding and construction of local and regional transportation improvements and programs necessitated by the proposed development in designs and schedules accepted and determined by the State Department of Transportation (DOT). Agreement between the applicant and the DOT as to the level of funding and participation shall be obtained prior to the applicant acquiring County zoning or prior to building permits if County zoning is not required.

(o) — A landscape plan which includes an inventory of all major landscape elements covering major plants (within the Special Treatment and Transition Areas) that are existing, proposed to be removed, remain, and new landscaping shall be approved by the Planning Commission as part of or prior to issuance of the applicable land use permits (SMA, Zoning, and/or Use Permits) for the project.

(p) — The Open District (O) zoning with the Special Treatment overlays qualify for one single family residential unit per acre. This Open zone density

~~shall be transferred to the RR-1 portion and be used only to cover part of the density for the eight (8) existing plantation homes (the additional RR-1 density will be used to cover part of the 8 homes) and for affordable and/or employee housing. The additional remaining density shall only be allowed if used for affordable and/or employee housing. If not used for these purposes, the remaining Open zoning should not yield any residential densities.~~

~~(q) — The Applicant shall provide fifteen (15) employee housing units, on site, that shall be single family detached dwellings, including both two-bedroom and three-bedroom models, with all units being affordable to and benefiting Kauai households earning no more than eighty percent (80%) of the Kauai Median Household Income, pursuant to housing income standards maintained by the Kauai County Housing Agency. The affordable units shall remain affordable to and benefit households earning no more than eighty percent (80%) of the Kauai Median Household Income for a period of at least twenty (20) years and compliance to the income restriction shall be monitored by the Kauai County Housing Agency.~~

~~(r) — The Planning Department shall be allowed to refine the alignment of the zoning for this project based on the evaluation of more detailed information. Such administrative refinements shall not include changes to density and major changes to the alignment of the zoning district lines.~~

~~(s) — Sufficient employee parking above and beyond the requirement for the hotel units shall be required during the permitting stage.~~

~~(t) — Substantial construction of the hotel, defined as completion of at least fifty percent (50%) of building foundations, shall be completed within eighteen (18) months from the date that the appeal of the project's shoreline certification currently pending before the Chair of the Board of Land and Natural Resources has been resolved. If substantial construction is not completed within this time, the Planning Commission shall initiate proceedings to rezone the property to the designations existing prior to the date of this ordinance.~~

~~(u) — 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).~~

1. ZONING DESIGNATIONS:

As shown on the attached Exhibit "A," the following are zoning designations for that certain area in Makaweli, Kaua'i, identified as TMK No.: 1-7-05:1:

- (a) Agricultural District.
- (b) Open District.

SECTION 2. The Planning Commission is directed to note the change on the official Zoning Map on file with the Commission. All applicable provisions of the Comprehensive Zoning Ordinance shall apply to the area rezoned herein.

SECTION 3. If any provision of this Ordinance or 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.

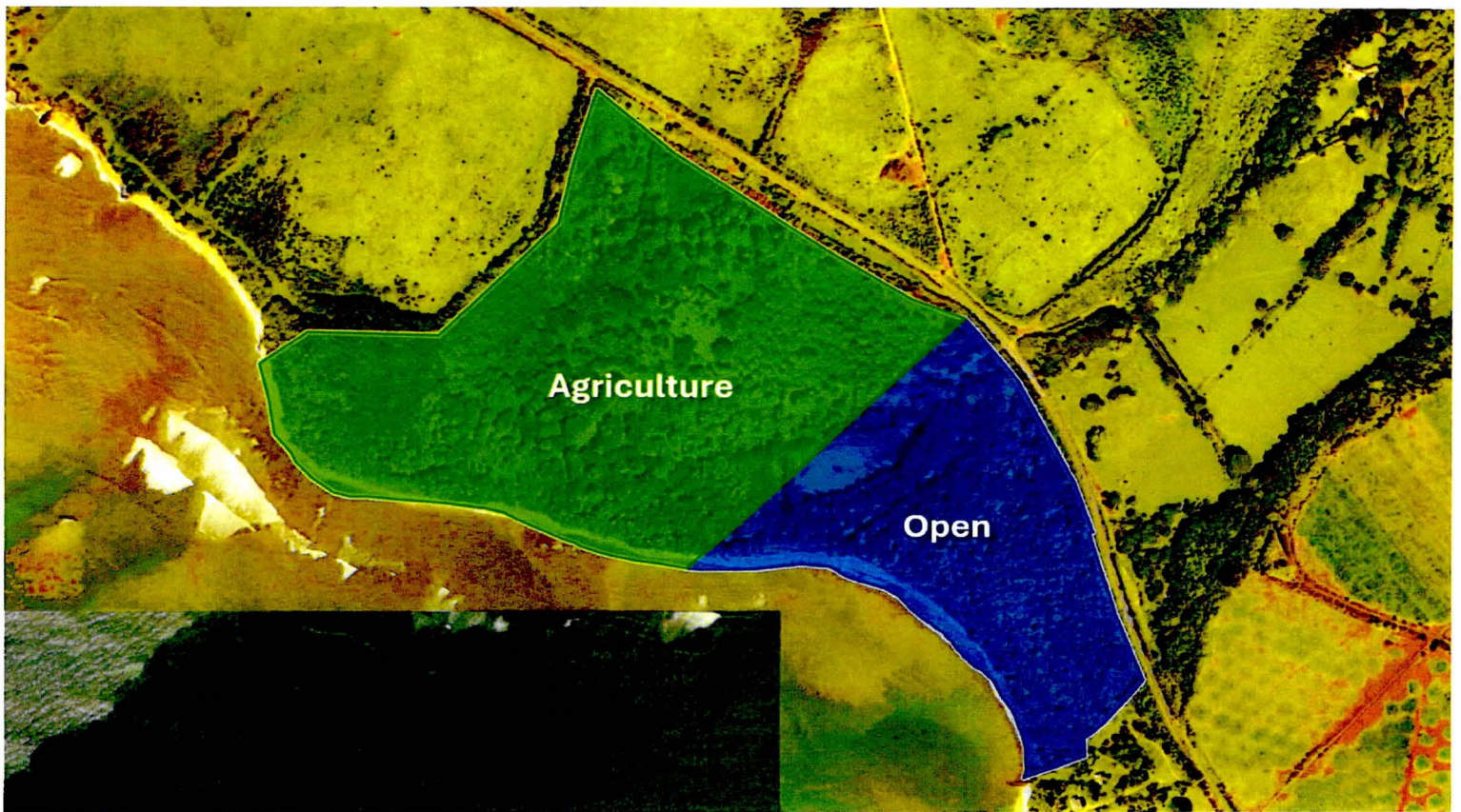
SECTION 5. This Ordinance shall take effect upon its approval.

Introduced by:

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

Exhibit A



DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

TRANSMITTAL OF PUBLIC TESTIMONY TO PLANNING COMMISSION

DATE: **October 23, 2025**

PERMIT NUMBER(S): **ZA-2026-2**

APPLICANT(S): **COUNTY OF KAUAI, PLANNING DEPARTMENT**

Attached for the Planning Commission's reference is Public Testimony pertaining to the permit application referenced above.

F.4.a.1.
NOV 10 2025

To: Kaua'i County Planning Commission

From: Nancy Somers Shaw

Date: October 8, 2025

Subject: Opposition to Proposed Zoning Amendment ZA-2026-2 (Kapalawai, Makaweli, Kaua'i)

Aloha Chair and Commissioners,

I am writing in **opposition** to the proposed zoning amendment (ZA-2026-2) that seeks to rezone approximately **171.72 acres at Kapalawai, Makaweli** from **Resort (RR-10)** back to **Agriculture (A) and Open (O)**.

1. Resort Zoning Enables Economic Opportunity and Local Investment

The existing Resort zoning supports the potential for responsible, diversified, place-based economic growth on the West Side. For generations, families from this area have faced limited opportunities and long commutes to work. Maintaining Resort zoning would help create local jobs and investment while keeping benefits within the community, rather than continuing the pattern of economic decline and outward migration.

2. Reverting to Agriculture Zoning Would Remove a Vital Financial Resource

Changing the zoning back to Agriculture and Open would strip our family company and the community of a key financial asset. The existing Resort zoning represents a principal means of generating the capital necessary to fund local priorities, including the development of workforce and agricultural housing for westside Kaua'i.

Without that potential, the ability to reinvest in housing, infrastructure, and community-serving uses would be severely constrained. The amendment would unintentionally undercut the very goals of economic balance and housing affordability that Kaua'i's General Plan promotes.

3. Resort Zoning Can Support a Balanced, Sustainable Vision

Retaining the Resort designation does not imply large-scale or insensitive development. Rather, it allows for a modern, sustainable resort framework that integrates cultural interpretation, open space preservation, and small-scale visitor experiences consistent with West Kaua'i's character. The Resort zone provides the flexibility and financial tools needed to pursue these outcomes responsibly.

4. The Original Ordinance Reflected Long-Term Planning Commitments

The 2001 zoning under Ordinance PM-2001-356 was based on a comprehensive plan to diversify the local economy and strengthen community resilience. Reversing that zoning

now disregards that long-term planning vision and the investments made in reliance upon it. A series of uncontrollable events delayed the project:

- 2008 economic downturn caused Lew Geyser to leave Hawaii and the Kapalawai development.
- 2015 death of Derek Trethewey resulted in his estate forgoing the development in 2018.
- 2020 global pandemic shut down all prospective developers, including Hyatt, McWhinney, Collective Resorts, and Six Senses.

In 2022 Kerzer signed a development agreement and lease with our family and has made steady progress on planning and permitting investing nearly \$7million to date.

5. Recommendation

For these reasons, I respectfully urge the Planning Commission to deny the proposed amendment (ZA-2026-2) and retain the Resort (RR-10) zoning designation for Kapalawai, Makaweli. Maintaining the existing zoning will preserve the family's ability to generate economic activity that directly supports workforce housing, agricultural initiatives, and infrastructure improvements that benefit West Kaua'i.

Mahalo for your time and consideration.

Respectfully submitted,



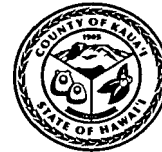
Nancy Somers Shaw

Robinson Family Partner and Gay & Robinson Board Member
NancySomersShaw@gmail.com

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

PLANNING DIRECTOR'S REPORT

RE: Annual Status Report 2025
Special Management Area Use Permit SMA(U)-2007-13
Class IV Zoning Permit Z-IV-2007-29
Project Development Use Permit PDU-2007-25
Tax Map Keys: (4) (4) 2-8-015:043, 044 & 082; 2-8-016:003, 004
Po'ipū, Kaua'i

APPLICANT: KAUA'I BLUE, INC.
(formerly SVO Pacific, Inc. & VSE Pacific, Inc.)

PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on October 9, 2007 to authorize the renovation and redevelopment of the Sheraton Kaua'i Resort consisting of 413 hotel units. The development involves both the Garden and Ocean wings as well as a new access road with public sidewalk and bikeway, and 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. 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."

APPLICANT'S REQUEST

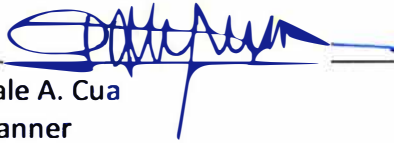
In accordance with Condition No. 4, the Applicant is providing the attached status and progress report (dated September 8, 2025) on behalf of Kaua'i Blue, Inc., refer to Exhibit 'A'. All conditions of the original permit are addressed by the Applicant in the attached report. The matrix provided also identify the progress with the compliance of the specific requirement.

RECOMMENDATION

It is recommended that the Commission receives the Applicant's Annual Status Report dated

G.I.A.I.
NOV 10 2025

September 8, 2025. 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.

By  _____
Dale A. Cua
Planner

Approved and recommended to Commission:

By  _____
Ka'aina S. Hul
Director of Planning

Date: 10 / 14 / 2025

EXHIBIT “A”

(2025 Annual Status Report)

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PLANNING DEPT

September 8, 2025

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: **2025 Eighteenth 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 2025 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.

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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.

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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. Since re-opening, the Sheraton Kauai Resort has done approximately \$500,000.00 in repairs, renovations and upgrades.

Since the 2022 Annual Report filing, the Sheraton Kauai Resort has been in continuous operation and is planning on an AC replacement in 2024 on the Ocean Wing side of the Resort. No other significant improvements were recently completed.

Since the 2023 Annual Report filing, the Sheraton Kauai Resort has completed the AC replacement with a value of approximately \$1,100,000.00 and roofing repairs with a value of approximately \$100,000.00 on the Ocean Wing side of the Resort.

Since the 2024 Annual Report filing, the Sheraton Kauai Resort has completed an AC controls project, roofing repair, and utility repair work with a value of approximately \$530,000.00, with an additional \$630,000.00 of mechanical and additional roof repair work being scheduled for 2026.

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.

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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. All work is complete. Plans were submitted in May 2018 and approved in July 2019. Construction is complete and the Kauai Island Utility Cooperative started the underground cabling work in June, 2021 and was completed in February, 2025. Charter Cable started their work in July, 2023 and work is complete. Hawaiian Telcom has completed their portion of underground work along Ho'onani Road. The last overhead lines along Ho'onani Road fronting Sheraton Kauai were moved earlier this year. 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. SHPD provided comments to the Monitoring Report in February 2022 and a revised Archaeological Monitoring Report was submitted in March 2022 and accepted and approved by SHPD on March 31, 2022.

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.

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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.

Mr. Ka'aina S. Hull
Director of Planning
Planning Department
September 8, 2025
Page 16

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. Seventeen 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, September 4, 2020, September 2, 2021, September 8, 2022, September 7, 2023, and September 6, 2024, respectively. The Applicant submitted building permit applications for the project 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.

Mr. Ka'aina S. Hull
Director of Planning
Planning Department
September 8, 2025
Page 17

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 2025 Eighteenth 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



Michael J. Belles

MJB:jgm

Enclosures

cc: Mr. Scott McFarlane, w/encls. (via email only)
Mr. Aaron Geer, 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

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) 241-6677 FAX (808) 241-6699

October 10, 2007

Michael J. Belles
Belles Graham Proudfoot & Wilson, LLP
4334 Rice Street, Suite 202
Lihue, 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.

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.
- g. 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.

- 9. In order to help screen the structures 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 Poi'pū Road, prior to Department review of the landscaping plan.

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.
11. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kauai contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kauai in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non- Kauai residents for particular skilled jobs where no qualified Kauai 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.
12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) and green building council principles, standards and strategies wherever feasible for sustainable site, utilities and building development.
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.
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.
 - b. Prepare and receive DOW's approval of construction drawings for the necessary water system facilities and construct said facilities. Those 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:

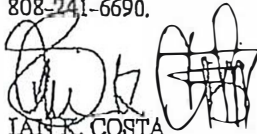
- a. An approved preservation plan for site 947 (railroad berm) which includes interpretation (short and long term measures) and breaching and restoration plans must be submitted to the State Historic Preservation Division for review and approval.
- b. Data recovery of Site 362 shall be completed as 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.

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 Hoonani Road, and

the mauka-makai connection road between Poipu Road and Hoonani Road with the Department of Public Works.

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.
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.
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.
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).
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.

Should there be any questions regarding the above, please contact planner Michael Laureta at 808-241-6690.


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 "A"

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



20 1/1 211

/s/ CARL T. WATANABE
ASSISTANT REGISTRAR

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.

TBA290645-S

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");

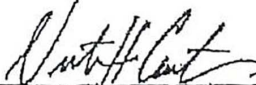
WHEREAS, condition no. 3 of the Permit Approval Letter provides that "[a]pplicant shall record all of the conditions imposed under the subject permits with the deed(s) to the properties of the resort project"; and

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;

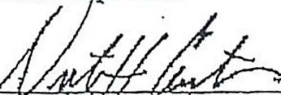
NOW, THEREFORE, in consideration of the foregoing Recitals, Kauai Blue and SVOP hereby give notice of the approval of the Permits and the conditions thereto as memorialized in the Permit Approval Letter.

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 CHARGE

)
) 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.

her



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 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, Trustees 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



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMAKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHUE, KAUAI, HAWAII 96786-1326

TEL (808) 241-0077 FAX (808) 241-0699

October 10, 2007

Michael J. Belles
Belles Graham Proudfoot & Wilson, LLP
4334 Rice Street, Suite 202
Lihue, 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 Hoomani 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 imported 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.

- 9. In order to help screen the structures 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 Kapa'i 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.

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.
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 Kapa'i contractors as long as they are qualified and reasonably competitive with other contractors, and shall seek to employ residents of Kapa'i in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non-Kapa'i residents for particular skilled jobs where no qualified Kapa'i 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.
12. The Applicant shall consider the application of Leadership in Energy and Environmental Design (LEED) and green building council principles, standards and strategies wherever feasible for sustainable site, utilities and building development.
13. Approval of the subject permits is based on the revised conceptual site plan dated 9/11/2007 developed by WCTT 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.
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.
 - 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.
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 fee 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 Hoonani Road, and

the mauka-makai connection road between Poipu Road and Hoonani Road with the Department of Public Works.

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.
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.
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.
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).
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.

Should there be any questions regarding the above, please contact planner Michael Laurota at 808-241-6690.



LARRY 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 "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.

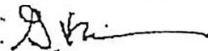
Dear Mr. Costa:

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

 6/27/08

Approved as Stated Above
Ian Costa, Planning Director

EXHIBIT "C"

EXHIBIT "D"

RECORDER'S MEMO

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Isi 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

Lihua, Kauai, Hawaii 96766

Telephone: (808) 245-4705

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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

{W:\DOCS\263882\W002372.DOC}

EXHIBIT "D"

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").

F. As one of the conditions to the granting of approval of the Permits, the Declarants are required to establish certain easements for all non-leaschold 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 an 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.

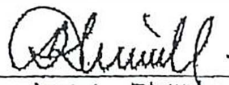
16. Terms. The term "Declarants" as and when used herein, or any pronouns used in place thereof, shall mean and include the masculine or feminine, the singular or plural number, individuals or corporation, and the Declarants and each of their respective devisees, successors in trust, successors, heirs, 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.

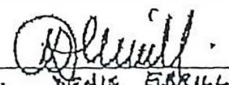
IN WITNESS WHEREOF, the Declarants have executed this Declaration of Public Facilities Easements effective as of the date written above.

DECLARANTS:

SVO PACIFIC, INC., a Florida corporation

By 
Name: DENIS ESKILL
Its: SR. VICE PRESIDENT

KAUAI BLUE, INC., a Delaware corporation

By 
Name: DENIS ESKILL
Its: SR. VICE PRESIDENT

STATE OF FLORIDA)
COUNTY OF ORANGE) SS:

On this 23RD day of MAY, 2008, before me appeared DENIS GBRILL, 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 424470
EXPIRES: September 1, 2009
Bonded thru 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)
COUNTY OF ORANGE) SS:

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 424470
EXPIRES: September 1, 2009
Bonded thru Notary Services

Christine Maloney

Name of Notary: CHRISTINE MALONEY
Notary Public, In and For Said State and County.

My commission expires: 09/01/09

EXHIBIT "E"

08/30/07 13:43 FAX 808 241 1860

KAUAI CIVIL DEFENSE

0901



BRYAN BAPTISTE, Mayor
MARK L. L. MARSHALL, Administrator

KAUAI CIVIL DEFENSE AGENCY
COUNTY OF KAUAI

3990 Kapa Street, Suite 100
Lihue, HI 96766



Buc: (808) 241-1800
FAX: (808) 241-1860
e-mail: cmaps@koda.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 willing to comment on the subject applications as it deals with hurricane threat to the subject property.

Mr. Jim Neely of Starwood and Mr. Greg Kanan, 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 Dallgig 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.

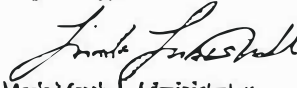
Shoraton appears ready to undertake the needed facilities program modifications to make the building have a greater wind-resistance factor, as well as the needed utilities to serve the occupants.

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 Marshall, Administrator
Kauai Civil Defense Agency

c: Mr. Jim Neely, Starwood, 808-663-0495 fax
Mr. Eric Crispin, Starwood, 808-924-5039 fax
Mr. Greg Kamm, 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 Kolon, 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 Kaman, Wally Koda 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;



2155 Kalia Road, Suite 300, Honolulu, Hawaii 96815 Tel: 808 821 4000 Fax: 808 823 0851

EXHIBIT "H"

By way of summary of our discussions on this topic, the following are highlights as agreed upon:

- Generally:

- o 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:

- o 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:

- o Will follow "rural section" with grass swale, low landscaping, meandering shared use path (bike/pedestrian walkway), landscaped berm.

- Bench Access Road:

- o 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:

- o 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 (Kolou 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

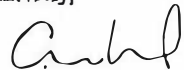
After completion of Initial Construction, we plan to subsequently build the remaining elements of the Resort as indicated in our site plan, implementing the new Beach Access Road and the undergrounding of utilities / landscaping on Ho'onani Road, to coincide with the future phases of development, which 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, CCLLC
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:

"To follow the dust mitigation protocol established by the Dust Hul 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 Hul which was formed in conjunction with Kukui'ula, Goodfellow Brothers, Koloa Landing, and KMP. The Dust Hul 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.

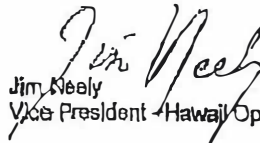

Jim Neely
Vice President - Hawaii Operations

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

EXHIBIT "K"

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.

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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 LINDLEY
GOVERNOR OF HAWAII



6-22-07

ALLAN A. RABIN
DEPARTMENT OF LAND AND NATURAL RESOURCES
CHIEF OF BUREAU OF HISTORIC PRESERVATION

PETER YOUNG
DEPUTY DIRECTOR - LAND

ANTHONY KIMMEL
PLANNING AND DESIGN DIVISION
BUREAU OF CONSERVATION
DEPARTMENT OF LAND AND NATURAL RESOURCES
CONSERVATION AND RECREATION DIVISION
RECREATION
PLANNING AND DESIGN
DEPARTMENT OF LAND AND NATURAL RESOURCES
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 Hammett, Ph.D.
Cultural Surveys Hawai'i
Post Office Box 1114
Kailua, Hawai'i 96734

LOG: 2007.1965
DOC: 0706NM35
Archaeology

Dear Dr. Hammett:

SUBJECT: Chapter 6E-42 - Historic Preservation Review - Preservation Plan and
Reconstruction Plan for Site 50-30-10-0947 a Railroad Berm in Koloa
(CSH, Hammett and Shideler May 2007)
Koloa Ahupua'a, 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 Kanai Hotel by CSH, Hammett 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 Kamun, Greg Kamun Planning and Management
KHPRC

EXHIBIT "L"

EXHIBIT "M"

Central Library
OFFICE OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

STATE HISTORIC PRESERVATION DIVISION
601 KAMOKILA BOULEVARD, ROOM 555
KAPOLAHUA, HAWAII 96707

ALLAN A. HAMMATT
DIRECTOR
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF WATER RESOURCES MANAGEMENT

KEITH T. YOUNG
DEPUTY DIRECTOR

KEN C. KAWAHARA
DIRECTOR - WATER

ADMINISTRATIVE
PLANNING AND COORDINATION
BUREAU OF WATER RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF WATER RESOURCES MANAGEMENT
OFFICE OF WATER RESOURCES MANAGEMENT
OFFICE OF WATER RESOURCES MANAGEMENT

PLANNING AND COORDINATION
BUREAU OF WATER RESOURCES
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF WATER RESOURCES MANAGEMENT
OFFICE OF WATER RESOURCES MANAGEMENT
OFFICE OF WATER RESOURCES MANAGEMENT

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

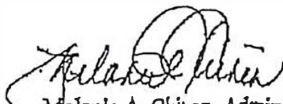
Dear Dr. Hammatt:

Subject: Chapter 6E-42 - Historic Preservation Review - Archaeological Data Recovery for
SHHP No. 50-30-010-0362 at the Proposed Starwood Vacation Ownership
Development Project, Koloa Ahupua'a, Kona District, Island of Kauai (CSH,
Tulchin and Hammatt May 2007)
TMK: 41-2-8-015: 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,


Melane A. Chinen, Administrator
State Historic Preservation Division

NM;

EXHIBIT "M"

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

October 6, 2025

CERTIFIED MAIL

Michael J. Belles, Esq.
Belles Graham, LLP
3135 Akahi Street, Suite A
Līhu'e, HI 96766-1191
Attorney for Robinson Family Partners

DAVID M. LOUIE, ESQ.
JOSEPH A. STEWART, ESQ.
Kobayashi Sugita & Goda, LLP
999 Bishop Street, Suite 2600
Honolulu, HI 96813
Attorneys for Kerzner International Managements Services Hawai'i, Inc

CHRIS DONAHOE, ESQ.
Deputy County Attorney, County of Kaua'i
4444 Rice Street, Suite 220
Līhu'e, Hawai'i 96766

Subject: In the Matter of the Petition to Revoke Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i

In the Matter of the Petition to Revoke Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001, affecting approximately 171.72 acres of real property situated at Kapalawai, Makaweli, has been scheduled on the **November 10, 2025 County Kaua'i, Planning Commission Agenda:**

**Description of
Petition:**

This Petition seeks Petition to Revoke Special Management Area Use Permit SMA(U)-2002-6, Project Development Use Permit PDU-2002-15, and Class IV Zoning Permit Z-IV-2002-20 pertaining to Kaua'i Tax Map Key (4) 1-7-005: 001 approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001.

Subject Property:

Waimea, Kaua'i. Approximately 171.72 acres of real property situated at Kapalawai, Makaweli, Island of Kaua'i, State of Hawai'i, identified by Kaua'i Tax Map Key (4) 1-7-005:001

Meeting Location: Līhu'e Civic Center, Moikeha Building, Meeting Room 2A-2B,
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

* The Planning Commission Agenda for November 10, 2025 will specify the final determination of location.

Date: November 10, 2025, Monday

Time: 9:00 a.m. or shortly thereafter

The Petition was sent via certified mail on August 14, 2025. Please contact the Planning Department with any questions at planningdepartment@kauai.gov or (808) 241-4050.

A handwritten signature in black ink, appearing to read 'Ka'āina S. Hull', written over a horizontal line.

Ka'āina S. Hull
Director of Planning

KAAINA S. HULL
Director of Planning
County of Kaua'i
4444 Rice Street Suite A473
Līhu'e, Hawai'i 96766
khull@kauai.gov
808-241-4050

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

In the matter of:

Non-Conforming Use Certificate
TVNCU #5032 (Kauai Cove), 2672
Pu'uholo Road, Tax Map Key (4)
2-6-007: 7(1), Koloa, Kauai.

Jens Olsson, permittee

Tax Map Key (TMK): (4) 2-6-007:
007(1)

PLANNING DIRECTOR KAAINA S.
HULL'S PETITION TO REVOKE
APPLICANT JENS OLSSON NON-
CONFORMING USE CERTIFICATE
TVNCU #5032 AND ISSUE AN
ORDER TO SHOW CAUSE AND SET
HEARING; MEMORANDUM IN
SUPPORT OF PETITION;
DECLARATION OF KAAINA S. HULL;
NOTICE OF MEETING; CERTIFICATE
OF SERVICE


MEETING:
Monday, November 10, 2025 at 9:00
a.m.

**PLANNING DIRECTOR KAAINA S. HULL'S PETITION TO REVOKE APPLICANT
JENS OLSSON NON-CONFORMING USE CERTIFICATE TVNCU #5032
AND ISSUE AN ORDER
TO SHOW CAUSE AND SET HEARING**

Comes now Kaaina S. Hull, duly appointed Director of Planning of the County of
Kaua'i (hereinafter referred to as "Director"), and hereby petitions this Honorable
Commission to revoke the existing non-conforming short term vacation rental certificate

to Jens Olsson: non-conforming Use Certificate TVNCU #5032, approved on 8/4/08 to Eydun and Diane Olsson. The Director requests the Commission issue an Order to Show Cause to Jens Olsson and set a hearing with the Commission on **Monday, November 10, 2025** at 9:00 a.m at the Līhu'e Civic Center, Pi'ikoi Meeting Room, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i. This petition is filed pursuant to Chapter 12 of the Rules of Practice and Procedures of this Commission.

DATED: Līhu'e, Hawai'i, September 22, 2025.



KAAINA S. HULL
Director of Planning
County of Kaua'i

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI

STATE OF HAWAII

In the matter of:

Non-Conforming Use Certificate
TVNCU #5032 (Kauai Cove), 2672
Pu'uholo Road, Tax Map Key
(TMK): (4) 2-6-007: 007(1),
Koloa, Kauai

Jens Olsson, permittee

Tax Map Key (TMK): (4) 2-6-007:
7 (1)

MEMORANDUM IN SUPPORT OF
PETITION

MEMORANDUM IN SUPPORT OF PETITION

WHEREAS, the short term vacation rental use was registered with the Planning Department of the County of Kauai's "TVR Registration and NCU Form" on 8/4/08. Applicant has renewed timely since then.

WHEREAS, a meeting was held in 2014 with the applicant and his attorney regarding an appeal the Department was referring to an Hearings Officer. This appeal was relative to the inconsistencies in the vacation rental certificate request that was submitted for the applicant's property. Website advertising for the property was for 3 individual TVR units with food preparation opportunities in each bedroom, rather than for the rental of the single family residence.

WHEREAS, the Department and the applicant agreed to the following in order to resolve the appeal:

1. "Website advertising was to be changed immediately to reflect only 1 TVR unit;"
2. "Utility improvements (i.e. 220 electrical outlets, propane gas lines, interior locking doors, exterior door locks, etc.) were to be changed by October 31, 2014. They are to take before and after pictures of these changes and submit them to the Department at their earliest convenience, but by no later than October 31, 2014."
3. Conditions 3 and 4 were relative to the renewal fees outstanding, and fine.

WHEREAS, based on a complaint received by the Department on May 21, 2025 that the applicant was again advertising and operating 3 short term vacation rentals under his tvr certificate.

WHEREAS, the Department has confirmed the website advertising, future commitments for the property based on the applicant's calendar, and previous use of the property based on comments from users of the property, all contrary to the 2014 agreement.

WHEREAS, the Director, based on the foregoing, believes there is reasonable cause to determine a failure to perform according to the 2014 agreement.

NOW THEREFORE, the Director prays upon this Honorable Commission that it take the following actions:

1. Pursuant to the Planning Commission Rules of Practice and Procedure Section 1-12-5 confirm the finding of the Director there is reasonable cause to believe that the Applicant has not met its obligation to satisfy conditions of approval agreed upon for the certificate in 2014.

2. Pursuant to Section 1-12-6 of the Rules of Practice and Procedures of this commission, order the issuance of an Order to Show Cause in a form compliant with Section 1-12-6(b).
3. Order the Clerk of the Commission to issue the Order to Show Cause to Jens Olsson.
4. Set the hearing with the Commission on **Tuesday, November 10, 2025** at 9:00 a.m at the Lihue Civic Center, Pi'ikoi Meeting Room, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i.

Dated: Līhu'e, Hawai'i, September 22, 2025.



KAAINA S. HULL

Director of Planning
County of Kaua'i

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

In the matter of:

Non-Conforming Use Certificate
TVNCU #5032 (Kauai Cove), 2672
Pu'uholo Road, Tax Map Key
(TMK): (4) 2-6-007: 007(1),
Koloa, Kauai

Jens Olsson, permittee

Tax Map Key (TMK): (4) 2-6-007:
7 (1)

DECLARATION OF KAAINA S. HULL


DECLARATION OF KAAINA S. HULL

I, KAAINA S. HULL, under the penalty of perjury, hereby state the following is true and accurate to the best of my knowledge and belief:

1. I am the duly appointed Director of Planning for the County of Kaua'i.
2. Attached as Exhibit "A", is a true and correct copy of the Planning Department of the County of Kauai memo dated October 7, 2014.
3. Attached as Exhibit "B" is a true and correct copy of the Planning Department of the County of Kauai investigative report dated September 16, 2025.

Declarant further sayeth naught.

DATED: Līhu'e, Hawai'i, September 22, 2025.



KAAINA S. HULL

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

In the matter of:

Non-Conforming Use Certificate
TVNCU #5032 (Kauai Cove), 2672
Pu'uholo Road, Tax Map Key
(TMK): (4) 2-6-007: 007(1),
Koloa, Kauai

Jens Olsson, permittee

Tax Map Key (TMK): (4) 2-6-007:
7 (1)

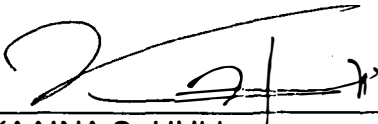
NOTICE OF MEETING

NOTICE OF MEETING

TO: Jens Olsson
5980 Lokelani Rd #A
Kapaa, HI 96746

NOTICE IS HEREBY GIVEN that a meeting on PLANNING DIRECTOR KAAINA S. HULL'S PETITION TO REVOKE APPLICANT JENS OLSSON NON-CONFORMING USE CERTIFICATE TVNCU #5032 FOR SHORT TERM VACATION RENTAL USE, ISSUE ORDER TO SHOW CAUSE, APPOINT HEARINGS OFFICER, AND SET HEARING will come before the Planning Commission on **Tuesday, November 10, 2025** at 9:00 a.m. Lihu'e Civic Center, Planning Commission Meeting Room, 4444 Rice Street, Lihu'e, Kaua'i, Hawai'i.

DATED: Lihu'e, Hawai'i, September 22, 2025.


KAAINA S. HULL

BEFORE THE PLANNING COMMISSION OF THE COUNTY OF KAUAI
STATE OF HAWAII

In the matter of:
Non-Conforming Use Certificate
TVNCU #5032 (Kauai Cove), 2672
Pu'uholo Road, Tax Map Key
(TMK): (4) 2-6-007: 007(1),
Koloa, Kauai

Jens Olsson, permittee

Tax Map Key (TMK): (4) 2-6-007:
7 (1)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was duly served on the following party by placing the same in the Certified United States mail with return receipt, postage prepaid, on the date specified below:

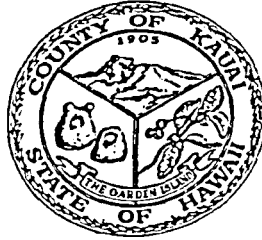
Jens Olsson
5980 Lokelani Rd #A
Kapaa, HI 96746

DATED: Līhu'e, Hawai'i, September 22, 2025.


KAAINA S. HULL

BERNARD P. CARVALHO, JR.
MAYOR

NADINE NAKAMURA
MANAGING DIRECTOR



MICHAEL A. DAHLIG
DIRECTOR OF PLANNING

DEE M. CROWELL
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAII 96766-1326
TEL (808) 241-4050 FAX (808) 241-6699

MEMORANDUM

Date: October 7, 2014
To: File
From: Michael Laureta, Planner
Subject: Reconsideration of TVR #1502/5032
Eydun & Diane Olsson
TMK 2-6-7: 7 (1)

Inconsistencies in this file necessitated a meeting with the Olsson's.

- The application packet for a TVR was submitted on August 4, 2008. Said packet was *complete* with all documentation required by Ordinance.
- 26 months later, a cease & desist letter dated October 12, 2010 was issued by the Department. In this letter, reference is made to a *denial* of the TVR application on March 30, 2009.
- This March 30, 2009 denial was not by letter, as no copy exists in the file. Further, the Olsson's say they never received such a letter of determination.
- By letter dated October 27, 2010 the Olsson's attorney Charles Foster requested a copy of the March 30, 2009 determination letter. *The Department never responded or acknowledged this request.*
- On November 16, 2010 the Department received an "Appeal of Denial of Use Permit Application" from Foster. *The Department never responded or acknowledged this request.*
- On December 2, 2010 Foster again requests information regarding the denial of the TVR application. *The Department never responded or acknowledged this request.*
- 3 years later, on December 16, 2013 the Planning Commission approved the referral of the Olsson appeal to a Hearings Officer. The Olsson's new attorney Jonathan Chun was notified of this action.

EXHIBIT

X

On October 6, 2014 inspectors Bambi Emayo, Vil Balisacan, and I met with the Olsson's regarding their application packet. They confirmed the following:

- Internet advertising to this date was still for 3 TVR "units" (although 2 of them did not have "kitchens");
- Two kitchens had been removed as a result of the 10/12/10 Department letter. They did not contact the Department to notify them of such removal;
- The Olsson's purchased the property "as is" and made no improvements or alterations. They continued the use as it existed when purchased in 1997.

To resolve this appeal, based on the above, reconsideration was determined appropriate. The following was agreed to:

1. Website advertising was to be changed immediately to reflect only 1 TVR unit;
2. Utility improvements (i.e. 220 electrical outlets, propane gas lines, interior locking doors, exterior door locks, etc.) were to be changed by October 31. They are to take before and after pictures of these changes and submit them to the Department at their earliest convenience, but by no later than October 31.
3. Since the TVR use continued, and no renewals were submitted - A 2015 renewal packet with all documents was to be submitted at their earliest convenience, but no later than by October 31. The renewal fee's owed: 2009-\$150, 2010-\$150, 2011-\$150, 2012-\$150, 2013-\$500, 2014 -\$500; 2015 - \$750, total \$2,350.
4. A fine of \$500/illegal TVR unit was assessed, total \$1,000. The fine was not levied higher since the kitchen improvements were removed.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

INVESTIGATION REPORT

DATE/TIME: 9/16/2025 11:21 AM

TYPE: CZO Complaint Case

Tax Map Key: 260070070001

Land Area: 3036

Property Address: 2672 A PUUHOLO RD KOLOA, HI 96756

District: Koloa

Zoning: Residential (R-4)

PROPERTY OWNER

MANAGER/LESSEE

NAME: OLSSON, JENS E TRUST

NAME:

ADDRESS: C/O OLSSON, JENS E TTEE

ADDRESS:

2672 PUUHOLO RD #A

KOLOA, HI 96756

PHONE:

NATURE OF COMPLAINT/VIOLATION:

DESCRIPTION OF INVESTIGATION

1. COMPLAINT

On May 21, 2025, the planning department received an email complaint, "Poipu Kauai Vacation Cottage", a single-family Transient Vacation Rental was advertising a 3-unit Transient Vacation Rental on the subject property. The email contained a hyperlink to the website and photos of the subject property.

(EXHIBITA)

2. RESEARCH WEBSITE ADVERTISEMENTS

On May 29, 2025, research of online website Poipu Kauai vacation cottages - Hibiscus Cottage - Kauai Cove.

Found an advertisement for "The Hibiscus Cottage" & "The Plumeria Cottage" 2 (two) Transient Vacation Rental units advertised in single Dwelling Unit.

Website advertisement describing the 2 (two) unit's

- a. Description
- b. Rates & Reservations
- c. Cleaning Fee
- d. Address of the property
- e. TVNC # 5032

EXHIBIT
B

3. On September 11, 2025, clipped website advertisement Poipu Kauai vacation cottages - Hibiscus Cottage - Kauai Cove. Specifically the calendar for “Plumeria Cottage” & “ Hibiscus Cottage”

(EXHIBIT B)

4. On September 11, 2025, research of online website www.airbnb.com found an advertisement for:

Kauai Cove Cottage in Poipu Beach - Guest suites for Rent in Koloa, Hawaii, United States - Airbnb
Kauai Cove Cottage in Poipu Beach

Website advertisement describing the 2 (two) unit's

- a. Description
- b. Rates
- c. Calander
- d. Tax Map Key Number
- e. TVNCU #5032
- f. TA & GE#
- g. Reviews left by guest

(EXHIBIT C)

5. On September 11, 2025, research of online website www.airbnb.com found an advertisement for: Hawaiian-art themed Cottage 300 ft from the Ocean - Cottages for Rent in Koloa, Hawaii, United States -

Airbnb
Hawaiian-art themed cottage 330 ft from the Ocean

- a. Description
- b. Rates
- c. Calander
- d. Tax Map Key Number
- e. TVNCU#5032
- f. TA & GE#
- g. Reviews left by guest

Reviews left by guest describes 3 units in the single

(EXHIBIT D)

6. Research TVNCU File:
5032 Renewal 2008
- a. TVR Registration and NCU Form
 - b. Transient Vacation Rental Affidavit
 - c. Floor Plan
 - d. Exterior Elevation

Research 5032 Renewal 2014

- a. Memorandum dated October 7, 2014
- b. Fine Payment dated October 30, 2014

FINDINGS

Research Findings

1. The subject single family dwelling unit holds a Nonconforming Use Certificate TVNC 1502 and was converted into a Motel.
2. The advertisements found on website's, "Poipu Kauai Vacation Cottages" & "airbnb.com" confirms the operating of the motel use.
3. Reviews left by guest who stayed at the TVR confirms 3 units being rented at the same time
4. Memorandum dated October 7, 2014, in the 2014 renewal packet confirms this is a re-established violation.

VIOLATIONS

Article 17 General Administrative Regulations

Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(c) No Nonconforming Use Certificate shall be issued by the Planning Director unless the use as a single family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit...

Article 1. General Provisions

Sec. 8-1.5 Definitions.

"Motel" means a group of attached or detached buildings containing rooms, designed for or used temporarily by automobile tourists or transients, with garages attached or parking space conveniently located to each unit, including auto

(EXHIBIT A)
Complaint Received
5/21/2025

(EXHIBIT B)
Online Research
05/11/2025

Kauai Cove

Poipu Kauai vacation cottages - Rental rates and reservations - Kauai Cove.

https://kauaicove.com/index.php

Hawaiian Airlines C... Airbnb City Portal Host Compliance D MyChart Login Page Hawaiian Airlines Kauai.gov Start Process | Laser Other fa...

Kauai Cove
(808) 651-0279

Home Accommodations Rates & Reservations Location See & Do About Us Contact Us Blog

Check Availability!

Kauai Cove is located within the Kauai Tsunami Concentration Zone



It's all about the Ambience...

Our Poipu Accommodations

Type here to search

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https://kauaicove.com/index.php

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Kauai Cove - with a tropical Hawaiian decor and located on a nice quiet lane in Poipu Beach - off the beaten path yet still within a short walking distance to Poipu's beaches, great restaurants and shops. Soak with turtles at the end of the lane at Koloa Landing or enjoy Kauai sunsets at Baby Beach - just 2 blocks away!

Kauai Cove is that great little place that makes you truly feel like you are in Hawaii!

TVNC # 5032
TAT # TA-140-371-7632-01

Plumeria Cottage Pool Cottage Hibiscus Cottage




Escape Tension and Experience the Magic that Kauai has to offer!

Kauai Cove - Perfect for Honeymoons, Anniversaries or a Relaxing Retreat!

https://kauaicove.com/accommodations/plumeria_cottage.php

Hawaiian Airlines C Airbnb City Portal Host Compliance D MyChart - Login Page Hawaiian Airlines Kauai.gov Start Process | Laser Other fa



Plumeria at Kauai Cove has a very Hawaiian feeling...with a Queen Bamboo Canopy Bed, high vaulted ceilings, nice bathroom, lots of woodwork and private patio area with gas BBQ grill.

Located on a nice quiet lane in Poipu Beach...within a short walking distance to beaches, restaurants and shops.

Koloa Landing Cove is right at the end of the lane...a great place to Snorkel or Swim with Sea Turtles. Baby Beach is a nice little sandy Beach just 2 blocks away. Lawai Beach next to the Beach House Restaurant is just 1/4 mile, and just a 1/2 mile the other direction is the best sandy swimming beach in Poipu! Just about a mile to the main Poipu Beach Park and Brennecke's Beach.

The new Kukulua Shopping Village is just a short walk, offering good restaurants, music and shops and a great gourmet farmers market on Wednesday afternoons


Reservation Inquiry »

"We have stated for almost on our Hawaii vacation Kauai touched our hearts the deepest. Our cottage was the perfect home away from home. Greeting us each evening with all its comforts and extra touches you provided."

Plumeria Rates: \$179 - \$299
Out-Clean fee: \$150

Cottage with Kitchenette
Queen Bamboo Canopy Bed
Flat Screen TV, DVD & Stereo
Free Wi-Fi access & Parking
A/C & Ceiling Fan
Clock Radio, Iron & Hair Dryer
Beach towels, chairs & cooler
Non-Smoking Only!

The Kauai Cove Plumeria Cottage is located at:
2672 Puuholo Rd, Koloa, HI 96756
TVNC # 5032
Contact: (808) 651-0279



https://kauaicove.com/rates_reservations.php

Hawaiian Airlines C Airbnb City Portal Host Compliance D MyChart - Login Page Hawaiian Airlines Kauai.gov Start Process | Laser Other fa

***Booked dates in:**

Rates
Plumeria Cottage... \$179 - \$299 per night
Pool Cottage... \$179 - \$299 per night
Mibiscus Cottage... \$179 - \$299 per night

Online Reservation Instructions:
Fill out the form below as completely as possible
You will be contacted by email or phone for confirmation of this reservation request.

Full Name: _____
Your E-Mail: _____
Phone #: _____ Fax #: _____
Address: _____
City: _____ Zip: _____
State: _____
Arrival Date: _____ Departure Date: _____
Total Nights: _____ # of Adults: _____
Your Comments: _____

General Rental Policy
50% Deposit required to confirm a Reservation
Balance due 45 days prior to arrival
All Rates subject to 17.816% State Taxes
Rates and availability subject to change without notice
All accommodations are Non-Smoking Only!

Payment and Cancellation Policy
We accept personal checks, VISA, MasterCard, and Discover
Notice of Cancellation must be received at least 60 days prior to arrival to receive a full refund. Cancellations received within 60 days of arrival date forfeit the total reservation amount.
We Recommend TRAVELERS INSURANCE to protect your Vacation Investment. Please check out CSA Travel Protection at 1-866-999-4018 or www.vacationrentalinsurance.com

Privacy Policy
Kauai Cove Cottages has created this privacy statement in order to demonstrate our firm commitment to privacy. The following discloses our information gathering and dissemination practices for this website.
Kauai Cove Cottages respects the privacy of our customers and feels that your email address and all personal information are confidential. For this reason Kauai Cove Cottages will not sell, rent or trade any of our customer information with any individual or any other companies. Your information is safe and confidential.
Kauai Cove Cottages will only use a customer's email address to contact them with issues regarding their reservation, respond to customer questions, or to advise about our specials.

Send Us Your Inquiry

Type here to search

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Poipu Kauai vacation cottages - Plumeria Cottage - Kauai Cove.

PLUMERIA COTTAGE

https://kauaicove.com/accommodations/plumeria-cottage.php

Hawaiian Airlines C... Airbnb City Portal... Host Compliance D... MyChart Login Page... Hawaiian Airlines... Kauai gov... Start Process | Laser... Other fo...

Home Accommodations Rates & Reservations Location See & Do About Us Contact Us Blog 7

Check Availability! The Plumeria Cottage




Kitchenette

Type here to search

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Home Accommodations Rates & Reservations Location See & Do About Us Contact Us Blog 7

Check Availability! The Plumeria Cottage



Front patio

Plumeria at Kauai Cove has a very Hawaiian feeling...with a Queen Bamboo Canopy Bed, high vaulted ceilings, nice bathroom, lots of woodwork and private patio area with gas

Plumeria Rates: \$179 - \$299
Out-Clean fee: \$150

[Check Availability!](#)

The Plumeria Cottage



Back patio with BBQ grill

← 11 → X



Plumeria at Kauai Cove has a very Hawaiian feeling...with a Queen Bamboo Canopy Bed, high vaulted ceilings, nice bathroom, lots of woodwork and private patio area with gas

Plumeria Rates: \$179 - \$299
Out-Clean fee: \$150

[Check Availability!](#)

The Plumeria Cottage



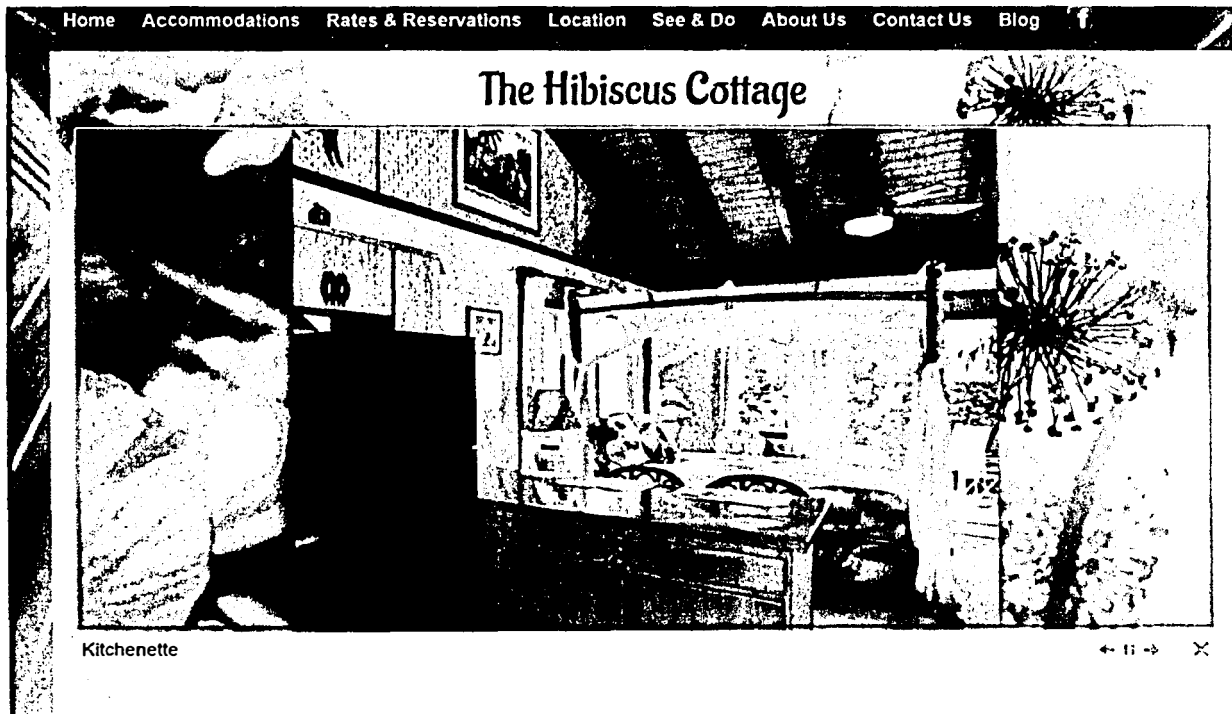
Queen bamboo canopy bed

← 12 → X

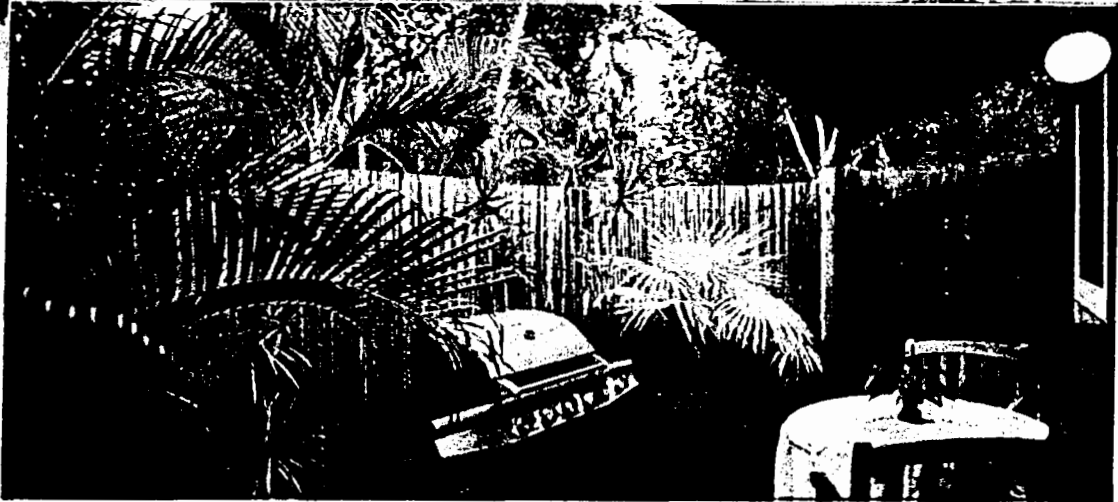


Poipu Kauai vacation cottages - Hibiscus Cottage - Kauai Cove.

HIBISCUS COTTAGE



The Hibiscus Cottage



Patio with BBQ grill

← → ↺ ↻

← ↻ https://kuaia-cove.com/rates-reservations.php

[Hawaii Airlines](#)
[Airfare City Portal](#)
[Host Compliance D](#)
[MyChart Login Page](#)
[Hawaii Airlines](#)
[Kauai.gov](#)
[Start Project Taxes](#)

Other fa

Rates & Reservations

Call (808) 651-0279

or Fill out our On-Line Reservation Form Below

Plumeria Cottage

September, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

*Booked dates in red

Rates

Plumeria Cottage ... \$179 - \$299 per night
 Pool Cottage ... \$179 - \$299 per night
 Hibiscus Cottage ... \$179 - \$299 per night

Online Reservation Instructions:

Fill out the form below as completely as possible.

Maximum stay is 30 days. Maximum occupancy is 4 adults.

Pool Cottage

September, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

Hibiscus Cottage

September, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

General Rental Policy

50% Deposit required to confirm a Reservation

Balance due 45 days prior to arrival

All Rates subject to 17.5% State Taxes

Rates and availability subject to change without notice

All accommodations are Non-Smoking Only!

Type here to search



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https://kauaicoe.com/rates-reservations.php

Hawaiian Airlines C | Airbnb City Portal | Host Compliance D | MyChart Login Page | Hawaiian Airlines | Kauaigov | Start Process | Laser | Other

Rates & Reservations

Call (808) 651-0279
or Fill out our On-Line Reservation Form Below

Plumeria Cottage

October, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
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*Booked dates in red

Rates
Plumeria Cottage ... \$179 - \$299 per night
Pool Cottage ... \$179 - \$299 per night
Hibiscus Cottage ... \$179 - \$299 per night

Pool Cottage

October, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
			1	2	3	4
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Hibiscus Cottage

October, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
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12	13	14	15	16	17	18
19	20	21	22	23	24	25
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General Rental Policy
50% Deposit required to confirm a Reservation
Balance due 45 days prior to arrival

Type here to search

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https://kauaicoe.com/rates-reservations.php

Hawaiian Airlines C | Airbnb City Portal | Host Compliance D | MyChart Login Page | Hawaiian Airlines | Kauaigov | Start Process | Laser | Other

Rates & Reservations

Call (808) 651-0279
or Fill out our On-Line Reservation Form Below

Plumeria Cottage

November, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

*Booked dates in red

Rates
Plumeria Cottage ... \$179 - \$299 per night
Pool Cottage ... \$179 - \$299 per night
Hibiscus Cottage ... \$179 - \$299 per night

Pool Cottage

November, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
						1
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9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

Hibiscus Cottage

November, 2025

SUN	MON	TUE	WED	THUR	FRI	SAT
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23	24	25	26	27	28	29
30						

General Rental Policy
50% Deposit required to confirm a Reservation
Balance due 45 days prior to arrival

Rates & Reservations

Call (808) 651-0279

or Fill out our On-Line Reservation Form Below

Plumeria Cottage

<< December, 2025 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

*Booked dates in

Rates

Plumeria Cottage ... \$179 - \$299 per night
Pool Cottage... \$179 - \$299 per night
Hibiscus Cottage ... \$179 - \$299 per night

Pool Cottage

<< December, 2025 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Hibiscus Cottage

<< December, 2025 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

General Rental Policy

50% Deposit required to confirm a Reservation
Balance due 45 days prior to arrival

Rates & Reservations

Call (808) 651-0279

or Fill out our On-Line Reservation Form Below

Plumeria Cottage

<< January, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

*Booked dates in

Rates

Plumeria Cottage ... \$179 - \$299 per night
Pool Cottage... \$179 - \$299 per night
Hibiscus Cottage ... \$179 - \$299 per night

Pool Cottage

<< January, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Hibiscus Cottage

<< January, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
			1	2	3	
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

General Rental Policy

50% Deposit required to confirm a Reservation
Balance due 45 days prior to arrival

Rates & Reservations

Call (808) 651-0279

or Fill out our On-Line Reservation Form Below

Plumeria Cottage

<< February, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

Pool Cottage

<< February, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

Hibiscus Cottage

<< February, 2026 >>

SUN	MON	TUE	WED	THUR	FRI	SAT
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

*Booked dates in red

Rates

Plumeria Cottage ... \$179 - \$299 per night

Pool Cottage... \$179 - \$299 per night

Hibiscus Cottage ... \$179 - \$299 per night

General Rental Policy

50% Deposit required to confirm a Reservation

Balance due 45 days prior to arrival

(EXHIBIT C)
Online Research
05/11/2025

Airbnb



X

About this space

Tropical Cottage in Poipu Beach with kitchenette, AC and WI-FI! Only 300 feet from the Ocean!
Quiet perfect location, just steps from beaches, snorkeling, restaurants and shops.

TVNCU #5032 - GE#W01238856-02 & TA#W01238856-01

This Property is located within Kauai Tsunami Evacuation Zone

The space

The cottage has a very Tropical Hawaiian feel with lots of woodwork and high vaulted ceilings.

Other things to note

We provide beach towels, chairs and a cooler TVNCU Registration #5032/ GE#W01238856-02 & TA#W01238856-01

Registration Details

260070070001

[Photos](#) [Amenities](#) [Reviews](#) [Location](#)

3 nights in Koloa

Q-13, 2025 Q-130, 2025



 Rare find! This place is usually booked

\$1,058 for 3 nights

CHECK-IN
10/27/2025

CHECKOUT
10/30/2025

GUESTS
1 guest

Reserve

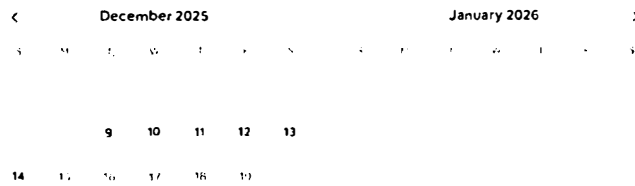
You won't be charged yet

Reproduction of

[Photos](#) [Amenities](#) [Reviews](#) [Location](#)

3 nights in Koloa

$\frac{1}{2} \times 8 = 4$ $\frac{1}{2} \times 8 = 4$



 Rare find! This place is usually booked

\$1,058 for 3 nights

CHECK-IN
10/27/2025

CHECKOUT
10/30/2025

QUEST4
1 guest

Reserve

You won't be charged yet

4. والتحليل

Clear dates

Photos Amenities Reviews Location

Rare find! This place is usually booked

3 nights in Koloa

Oct 27, 2025 - Oct 30, 2025

May 2026							June 2026						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
					1	2		1	2	3	4	5	6
3	4	5	6	7	8	9	7	8					
10	11	12	13	14	15	16							
17	18	19	20	21	22	23							
24	25	26	27	28	29	30							
31													

\$1,058 for 3 nights

CHECK IN
10/27/2025

CHECKOUT
10/30/2025

GUESTS
1 guest

Reserve

You won't be charged yet

or [Cancel this booking](#)

Clear dates

Photos Amenities Reviews Location

Rare find! This place is usually booked

3 nights in Koloa

Oct 27, 2025 - Oct 30, 2025

March 2026							April 2026						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
									1	2	3	4	
							5	6	7	8	9	10	11
							12	13	14	15	16	17	18
							19	20	21	22	23	24	25
							26	27			30		

\$1,058 for 3 nights

CHECK IN
10/27/2025

CHECKOUT
10/30/2025

GUESTS
1 guest

Reserve

You won't be charged yet

or [Cancel this booking](#)

Photos Amenities Reviews Location

3 nights in Koloa

10/27/2025 - 10/30/2025

< January 2026 February 2026 >
S M T W T F S S M T W T F S S

\$1,058 for 3 nights

CHECK IN
10/27/2025

CHECKOUT
10/30/2025

GUESTS
1 guest

Reserve

You won't be charged yet

[Report this listing](#)

[Clear dates](#)

Entire guest suite in Koloa, Hawaii

2 guests 1 bedroom 1 bed 1 bath



Guest favorite

One of the most loved homes on Airbnb, according to guests

4.91

116

Reviews



Hosted by E.J.

Joined 2015 · Superhost



Self check in

Key lock and keypad for self check in



Comfy bed for better sleep

100% of guests who stayed here said the beds were comfortable



Peace and quiet

90% of guests who stayed here said it was quiet

Add dates for prices

CHECK IN
10/27/2025

CHECKOUT
10/30/2025

GUESTS
1 guest

Check availability

[Report this listing](#)

Tropical Cottage in Poipu Beach with kitchenette, AC and Wi-Fi! Only 300 feet from the Ocean! Quiet perfect location, just steps from beaches, snorkeling, restaurants and

www.airbnb.com

Hawaiian Airlines City Portal Post Compliance D MyChart Login Page Hawaiian Airlines Kauai.gov Start Process | Laser... Inbox (207) hoolan...

Photos Amenities Reviews Location Add dates for prices

4.91

Guest favorite

109 reviews

Overall rating

Cleanliness 5.0

Accuracy 4.9

Check in 5.0

Communication 4.9

Katalin

April 2024

For the price that we paid, we expected a cleaner, bigger and better functioning place. This suite is part of a larger building that includes another suite owned by other people. The bathroom had a distinctive smell, and the air con and the fridge were very loud. We've found too many strands of hair in the bathroom, too much dust on the ground, and too many stains on the bedding and the towels to our liking. It was heavily raining sometimes during our stay, but couldn't sit outside in the back yard as that area was not covered properly, nor was the front yard which can be tricky, as one gets home in the pouring rain and tries to enter the home without getting drenched. The amenities were nice and the communication was OK.

Type here to search

1:00 PM 5/22/2025

https://www.airbnb.com/rooms/2943447?adults=1&search_from_modal_open&search_from_modal_open_id=p3-1777620&P3=act20

Hawaiian Airlines City Portal Post Compliance D MyChart Login Page Hawaiian Airlines Kauai.gov Start Process | Laser... Other

Photos Amenities Reviews Location

\$1,058 for 3 nights

4.91

Neighborhood highlights

Located on a nice quiet lane in Poipu Beach!

[Show more](#)

Meet your host

E.J.

419 Reviews

4.91★

11 years hosting

E.J. is a Superhost

Superhosts are experienced, highly rated hosts who are committed to providing great stays for guests.

Host details

Response rate: 100%

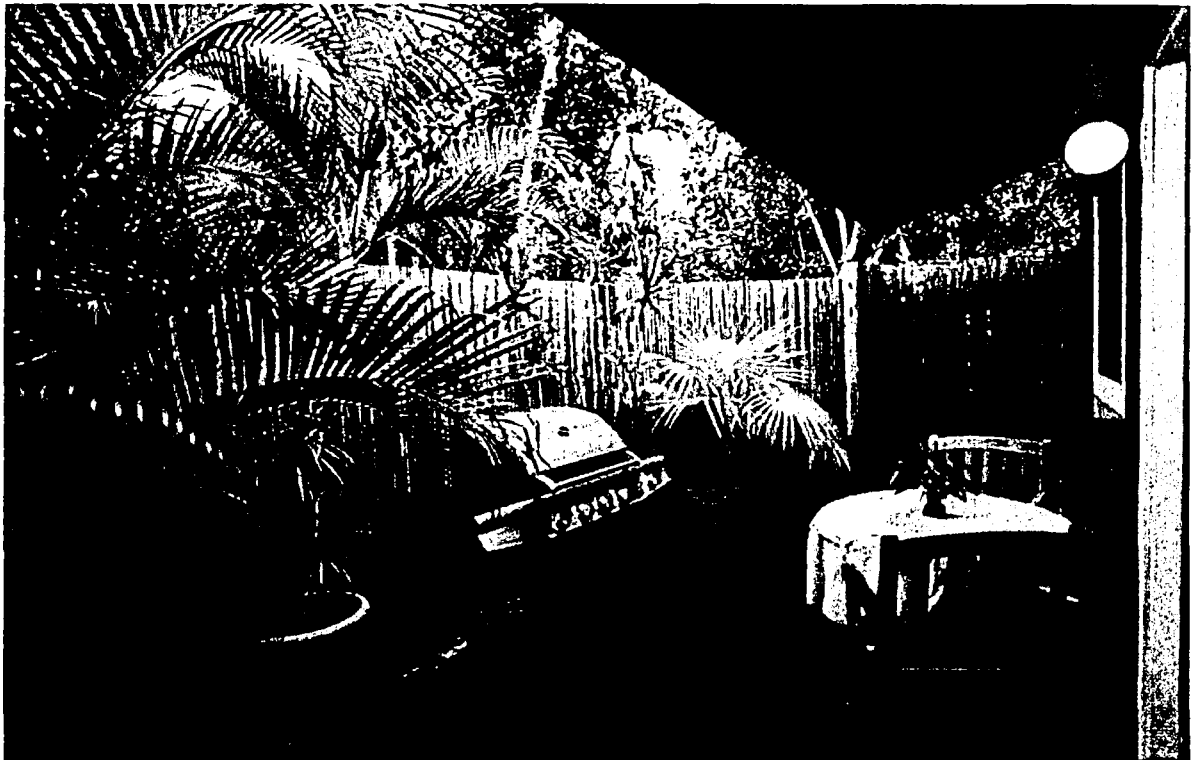
Responds within an hour

Message host

Live in Poipu, Hawaii








→ <https://www.airbnb.com/rooms/50996623?source=impression&id=p3-1757621052-F3c0XwKRN-PVzi>

Hawaiian Airlines C [Airbnb City Portal](#) [Host Compliance D](#) [MyChart](#) [Login Page](#) [Hawaiian Airlines](#) [Kauai.gov](#) [Start Process | Lase](#) [Other fa](#)

airbnb [Anywhere](#) [Any week](#) [Add guests](#) [Become a host](#)

Hawaiian-art themed Cottage 300 ft from the Ocean

[Share](#) [Save](#)



Entire cottage in Koloa, Hawaii
2 guests · Studio · 1 bed · 1 bath

Add dates for prices

[Guest](#) [One of the most loved homes on](#) [4.94](#) [68](#)

[CHECK IN](#) [CHECKOUT](#)

Type here to search

79°F 9:19 PM 9/11/2025

[Photos](#)
[Amenities](#)
[Reviews](#)
[Location](#)

the-beaten path in an ideal location in Poipu Beach. The Cottage has a kitchenette, A/C, high speed wifi, & convenient shopping center, nearby beaches, sea turtles, kayaking, & an assortment of restaurants nearby.

About this space

Cute Hawaiian art themed one story studio just 300 feet from the ocean in a quiet off the beaten path in an ideal location in Poipu Beach. The Cottage has a kitchenette, A/C, high speed wifi, & convenient patio parking right in front. You can walk to Kukuula Shopping center, nearby beaches, sea turtles, kayaking, & an assortment of restaurants nearby.

What this place offers:

- Shared beach access
- Free parking on premises
- Air conditioning
- Hair dryer
- Bath tub
- Refrigerator

is usually booked

Checkout
7/30/2025


Booked yet?

No listing



Entire cottage in Koloa, Hawaii


2 guests · Studio · 1 bed · 1 bath

 Guest favorite


One of the most loved homes on Airbnb, according to guests

4.94
★★★★★


68
Reviews




Hosted by E.J.
Superhost · 10 years hosting



Self check-in
Check yourself in with the lockbox



Comfy bed for better sleep
Every room is well equipped with comfortable beds and linens for quality



Calm and convenient location
Quietly tucked in a peaceful area, just a short walk to the beach

Add dates for prices

CHECK IN
Add date

CHECK OUT
Add date

GUESTS
1 guest

Check availability

Report this listing

Cute Hawaiian art themed one-story studio just 300 feet from the ocean in a quiet off

Photos Amenities Reviews Location

5 nights in Koloa

Dec 9, 2025 - Dec 14, 2025

September 2025							October 2025						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
										1	2	3	4
				11	12	13							
14	15												
							27	28	29	30			

Rare find! This place is usually booked

\$1,707 for 5 nights

CHECK IN
12/9/2025

CHECK OUT
12/14/2025

GUESTS
1 guest

Reserve

You won't be charged yet

Report this listing

Clear dates

https://www.airbnb.com/rooms/2943440?adults=1&search_mode=regular_search&source_impression_id=p3_1757620611_P3fspect...

Hawaiian Airlines C Airbnb City Portal Host Compliance ID MyChart Login Page Hawaiian Airlines Kilauea.gov Start Process | Laser

Photos

4.91

Guest favorite

116 reviews

Most relevant

Our stay was wonderful! We were celebrating our 32 years Wedding Anniversary and we could not have picked a better place. The cottage was beautiful and very cozy! I will highly recommend this cute cottage to my family and friends.

Tina
Olathe, Kansas

July 2024

The cottage was the perfect size for my husband and I! Even though you are next to others everything felt private and quiet. The location is near a lot of restaurants and beaches which was very convenient. Would stay again!

Blake
Seattle, Washington

3 years on Airbnb

Bethlehem, Pennsylvania

Overall rating

Rating	Cleanliness	Accuracy	Check in	Communication
5	50	49	50	49
4				
3				
2				
1				

This cottage details accom

Show

https://www.airbnb.com/rooms/2943440?adults=1&search_mode=regular_search&check_in=2025-12-09&check_out=2025-12-14&c...

Hawaiian Airlines C Airbnb City Portal Host Compliance ID MyChart Login Page Hawaiian Airlines Kilauea.gov Start Process | Laser

Photos **Amenities** **Reviews** **Location**

\$1,707
for 5 nights

Reserve

Cara
Bethlehem, Pennsylvania

May 2025

Cute place, very clean and has everything you need. Host was great and responsive. Felt right at home. Easy walk to beaches, restaurants, great breakfast. Felt like a true local.

Allyson
3 years on Airbnb

February 2025

We stayed here for a week on our honeymoon. The place is cozy and had everything we needed and more. The bed was very comfortable and the place was very clean. Having an A...

Nancy
San Francisco, California

January 2025

This cottage is so charming and thoughtfully designed in every detail. We loved the island decor and the fully equipped kitchen (it even has a rice cooker), and appreciated the ...

Cassandra
San Jose, California

September 2024

This cottage in Poipu was "adorable"! It had the cutest Hawaiian charm, and the location was perfect. Just a short walk away, we found a secret little cove where turtles were ..

Show all 116 reviews

www.airbnb.com

[Hawaiian Airlines C](#)
[airbnb City Portal](#)
[Host Compliance D](#)
[MyChart - Login Page](#)
[Hawaiian Airlines](#)
[Kauai.gov](#)
[Start Process | Laser](#)
[Inbox \(207\) - hoolai](#)

Photos

4.91

Guest favorite

109 reviews

Most relevant

Overall rating

Cleanliness	5.0
Accuracy	4.9
Check-in	5.0
Communication	4.9

***** July 2016

Host helped plan my stay and stayed in contact with me several weeks in advance. Made sure we had everything we needed. Always responds in a timely manner and is always helpful. Cottage is set up as a honeymoon suite and it is well designed and purpose built for a beach vacation. Suite is part of a studio triplex. The attention to detail lead me to believe the host had done the work himself, which I later confirmed with him to be true. No hired worker puts that much care into their jobs. Beautiful local hard wood and bamboo trim. Feels like home in some pleasant dream. One of the nicest beach communities on the island. Amazing landscapes in the Kaloa area. Very close to beaches, food and shopping. Less than 1/4 mile walk on safe residential streets, to Baby Beach. Price was very competitive. The only room for improvement here would be a washer and dryer, otherwise I can't imagine what would be superior to this place for a couple to stay on Kauai. DELUXE

Type here to search

80°F 11:11 PM 5/22/2025

www.airbnb.com

[Hawaiian Airlines C](#)
[airbnb City Portal](#)
[Host Compliance D](#)
[MyChart - Login Page](#)
[Hawaiian Airlines](#)
[Kauai.gov](#)
[Start Process | Laser](#)
[Inbox \(207\) - hoolai](#)

airbnb

Become a host

Kauai's reviews

***** 1 week ago

great choice, would stay again

Show more reviews

Kauai's listings

Mikaela

***** 1 week ago

Great location, walking distance to a cozy beach and restaurants. We appreciated the extra like the DVDs (we watched all three Jurassic parks) and the beach gear. We were not provided any instructions for check in other than that the door would be unlocked but we didn't know what room we were staying in or where to park. I called the contacts provided and they were quick to respond. They even called later to check in on us. Overall a great stay

Michelle

***** 1 week ago

Perfect location and very comfortable.

Jan Christoph

We are a couple that did not stay in Kauai and were able to find food nearby. The shops were good and we ended up staying there as well. It was so nice to have coffee at the rental and enjoy...

Type here to search

80°F 12:28 PM 5/22/2025

(EXHIBIT D)
Records Research

- 1) TVR Registration and NCU Form
- 2) Transient Vacation Retnal Affidavit
- 3) Floor Plan
- 4) Evxerior Floor Plan
- 5) Plot Plan

TVR REGISTRATION AND NCU FORM

COUNTY OF KAUAI
FINANCE DEPARTMENT
REAL PROPERTY DIVISION 808-241-6222
PLANNING DEPARTMENT 808-241-6677

APPLICANT EDDUN & DIANE OLSSON
ADDRESS 2672 PULLHOLD RD #A
KOLOA, HI 96756

PHONE NO (808) 742-2562

APPLICANT IS: (check one)

- ☒ Owner of Property
☐ Lessee of Property - Number of Years
Leased From _____ to _____
☐ Authorized Agent - Attach Letter of
Authorization.
☐ Proprietor of TVR operation

For Government Use Only

Registration # TV-1502
Date Received 8/14/08 By ET
Date Approved _____ By _____
Plans By _____
Fee \$ _____ Date _____

NOTE: *Lessee must have an unexpired and recorded lease of five (5) years or more from date of filing this application.

Sign: _____

Print: _____

Property Info

Tax Map Ke (4)2-6-007-001-001 Lot. No. _____ # of Buildings on CPR or Lot 1
Zoning - SLUD RTF General Plan _____ County _____

Establishment Info

Establishment name and Address KAHAI COVE
2672 PULLHOLD RD, KOLOA, HI 96756
Description of Operation (no. of rooms, no. of units etc.) Individually
owned transient vacation rental
2 Bdrm/1.5 Bath
G.E. License # W40965946-01 TAT License # W40965946-01
24 Hour Contact Info EJ & DIANE OLSSON (808) 742-2562
Date TVR Use Started 1997

☒ Copy of For the Safety and Comfort of You and Your Neighbors

Attachments provided (G.E.License, TAT License, Units in TVR Use etc.)

GE License & TAT License
Copy of covers of GE & TAT TAX BOOKS 1995-2008
Copy of GE & TAT TAX FORM & CANCELLED CR'S 01-06/2007
Copies of guest reservation confirmations, credit card
trans. history, Merchant & Bank stmt's

COUNTY OF KAUAI PLANNING DEPARTMENT

Inspections

To be initialed by Planning Dept. Staff

- ☐ The subject property has no violations
☐ The subject property was inspected on 3/11/09
☐ The property has the following violations _____

To be initialed by Planning Dept. Staff

- ☐ The subject property does not qualify for single family vacation rental uses.

County of Kaua'i
Planning Department

NCU # TV-1
Operation Name KAHAI COVE

TRANSIENT VACATION RENTAL AFFIDAVIT OF

JENS OLSSON, D.B.A. KAHAI COVE

STATE OF HAWAII)
) ss.
COUNTY OF KAUAI)

I, JENS OLSSON, being first sworn upon oath, deposes and says:

1. My name is, JENS OLSSON and I make this affidavit based on my personal knowledge.
2. I am the owner of the property identified as TMK: (4) 2-6-07:07 #A with a mailing address of 2367 HOOHU RD. KOLOA, HI 96756
3. I have operated a transient vacation rental(s) on the property since 11/03/97 under the business name of KAHAI COVE
4. My State of Hawai'i General Excise Tax license number is W40965946-01 and I have paid General Excise and Transient Accommodation Taxes in accordance with State Law during the period(s) the Transient Vacation Rental was in operation.
5. Building permit number(s) 94-3543 were approved on 2/15/95 for all structures on the property and there were no expansions, alterations, improvements, or uses contrary to State and County land use and planning laws.
6. There X were X were not any legal expansions or improvements made on the property after March 7th 2008. Improvements and expansions took place under the following permits N/A

County of Kaua'i
Planning Department


NCU # _____
Operation Name _____

FURTHER AFFIANT SAYETH NAUGHT


Name: _____

JENS OLSEN

WITNESS my hand and official seal.


Notary Public, State of Hawai'i

3/18/2009
Date

My commission expires:

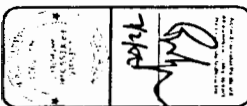
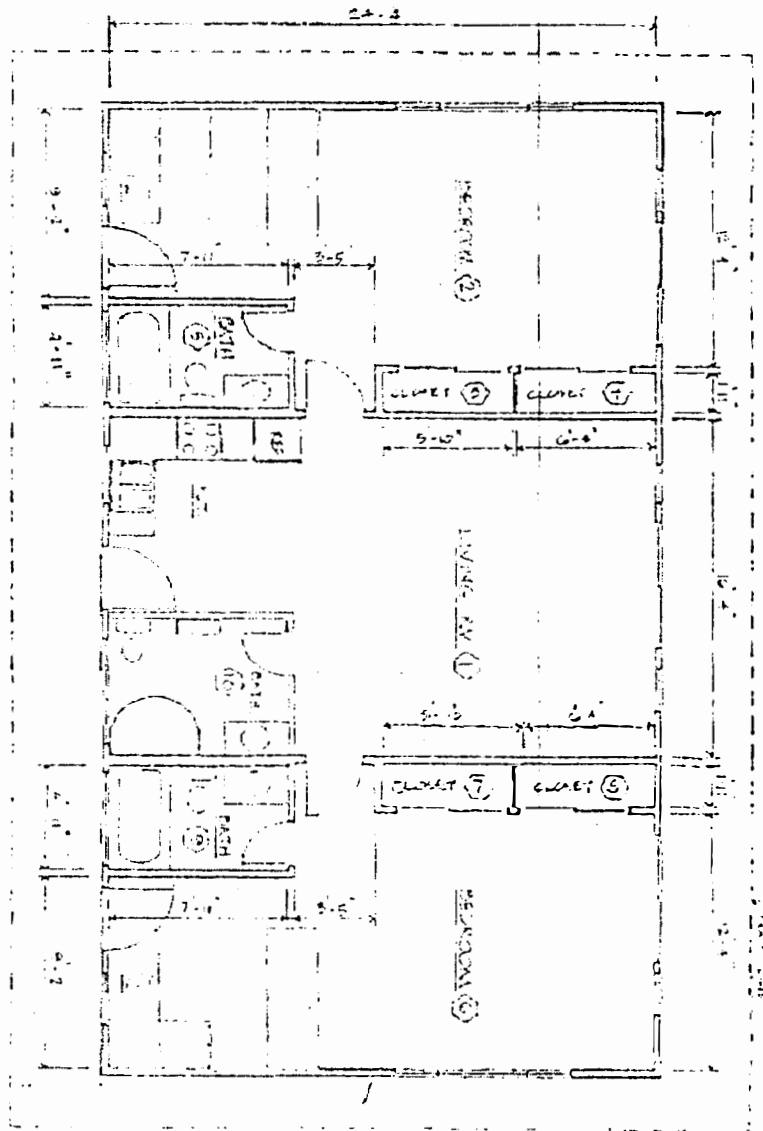
Doc. Date: 3/18/2009 # Pages 2

Notary Name: Thomas J. Canute SCA Circuit

Doc. Description: TRANSIENT VACATION RENTAL
AFFIDAVIT OF THIS LESSOR
(S.A. KAZIOL (LUG))

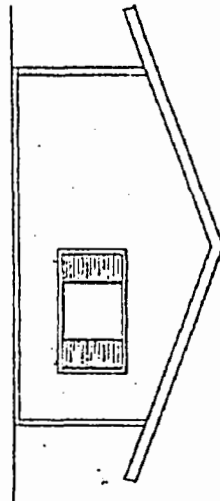


FLOOR PLAN

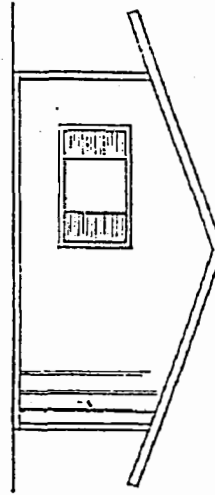


KAUAI COVE
2672 PUUHOLO RD
TMK #: (4) 2-6-07: 07 UNIT A

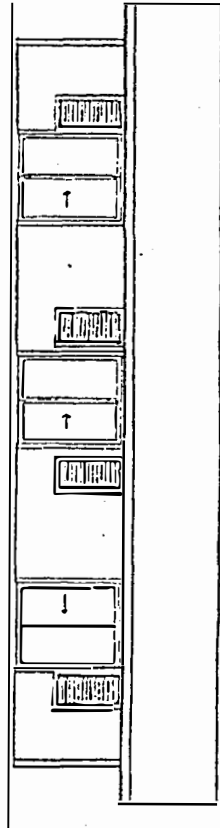
A D G ARCHITECTURE VISUALIZATION PLANNING
4028 Poplar Blvd. Suite 100, Honolulu, HI 96818 ph 808 243 4350 f 808 248 1008



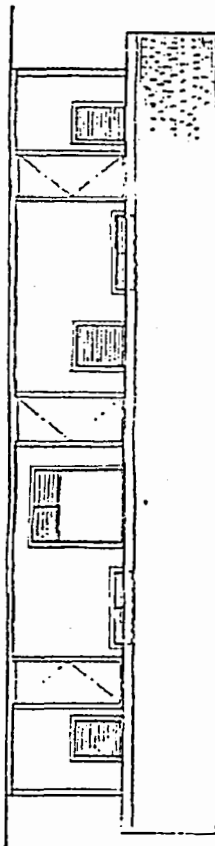
NORTH ELEVATION



SOUTH ELEVATION

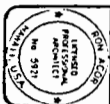


WEST ELEVATION



EAST ELEVATION

ELEVATIONS



David A. Jones
7/16/8

KAUAI COVE
2672 PUUHOLO RD.
TMK #: (4) 2-6-07: 07 UNIT A



agor design group

ARCHITECTURE VISUALIZATION PLANNING

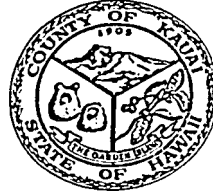
4028 Kono, Ste 8 Lahaina, Hawaii 96760 PH: 808 245 4358 F: 808 248 1096

(EXHIBIT D)
Records Research

- 1) Memorandum dated Oct 7, 2014
- 2) Payment of Fine

BERNARD P. CARVALHO, JR.
MAYOR

NADINE NAKAMURA
MANAGING DIRECTOR




MICHAEL A. DAHLIG
DIRECTOR OF PLANNING

DEE M. CROWELL
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326
TEL (808) 241-4050 FAX (808) 241-6699

MEMORANDUM

Date: October 7, 2014
To: File
From: Michael Laurcta, Planner 
Subject: Reconsideration of TVR #1502/5032
Eydu & Diane Olsson
TMK 2-6-7: 7 (1)

Inconsistencies in this file necessitated a meeting with the Olsson's.

- The application packet for a TVR was submitted on August 4, 2008. Said packet was *complete* with all documentation required by Ordinance.
- 26 months later, a cease & desist letter dated October 12, 2010 was issued by the Department. In this letter, reference is made to a *denial* of the TVR application on March 30, 2009.
- This March 30, 2009 denial was not by letter, as no copy exists in the file. Further, the Olsson's say they never received such a letter of determination.
- By letter dated October 27, 2010 the Olsson's attorney Charles Foster requested a copy of the March 30, 2009 determination letter. *The Department never responded or acknowledged this request.*
- On November 16, 2010 the Department received an "Appeal of Denial of Use Permit Application" from Foster. *The Department never responded or acknowledged this request.*
- On December 2, 2010 Foster again requests information regarding the denial of the TVR application. *The Department never responded or acknowledged this request.*
- 3 years later, on December 16, 2013 the Planning Commission approved the referral of the Olsson appeal to a Hearings Officer. The Olsson's new attorney Jonathan Chun was notified of this action.

On October 6, 2014 inspectors Bambi Emayo, Vil Balisacan, and I met with the Olsson's regarding their application packet. They confirmed the following:

- Internet advertising to this date was still for 3 TVR "units" (although 2 of them did not have "kitchens");
- Two kitchens had been removed as a result of the 10/12/10 Department letter. They did not contact the Department to notify them of such removal;
- The Olsson's purchased the property "as is" and made no improvements or alterations. They continued the use as it existed when purchased in 1997.

To resolve this appeal, based on the above, reconsideration was determined appropriate. The following was agreed to:

1. Website advertising was to be changed immediately to reflect only 1 TVR unit;
2. Utility improvements (i.e. 220 electrical outlets, propane gas lines, interior locking doors, exterior door locks, etc.) were to be changed by October 31. They are to take before and after pictures of these changes and submit them to the Department at their earliest convenience, but by no later than October 31.
3. Since the TVR use continued, and no renewals were submitted - A 2015 renewal packet with all documents was to be submitted at their earliest convenience, but no later than by October 31. The renewal fee's owed: 2009-\$150, 2010-\$150, 2011-\$150, 2012-\$150, 2013-\$500, 2014 -\$500; 2015 - \$750, total \$2,350.
4. A fine of \$500/illegal TVR unit was assessed, total \$1,000. The fine was not levied higher since the kitchen improvements were removed.

COUNTY OF KAUAI
PLANNING DEPARTMENT

(Official Receipt)

No. 54481

Lihue, Kauai, Hawaii

10/30/14

Received from

Jens Olson

One thousand and 00/100

(1000⁰⁰)

DOLLARS

Deposit Covering

FILE-TUR

Application No.

TUR 5032

Check

1435

Cash

Planning Director
or his authorized agent

October 13, 2025

Jens E. Olsson
5980 A Lokelani St
Kapaa, HI 96746

Kaaina S. Hull
Director of Planning
County of Kauai
4444 Rice Street Suite A473
Lihu'e, Hawaii 96766

RECEIVED
PLANNING
OCT 14 2025

NOTICE OF APPEAL OF REVOCATION OF TVNCU PERMIT #5032

To the Honorable Commission, Planning Director, and Members of the Planning Department:

I respectfully submit this appeal regarding the proposed revocation of my Transient Vacation Rental Non-Conforming Use Permit, TVNCU #5032. I have operated this business openly and continuously for 28 years and ask that you grant my appeal, allowing me to continue operating with a clear commitment to immediate and full compliance with County regulations.

My appeal is based on the following: my actions taken since receiving the notice of intended revocation, my long history of good-faith effort, and the severe personal hardship I face.

I. Commitment to Immediate and Full Compliance

In response to the certified letter I received on October 8, 2025, I immediately began taking action to conform to the single-unit requirement and eliminate any basis for future complaints:

1. Cessation of Duplicity: I have ceased all advertising and the acceptance of any future reservations for more than the single legally permitted unit on all platforms, including my website, www.kauaicove.com.
2. Reservation Cancellation: I have cancelled and fully refunded all future reservations that exceeded the use of a single unit. My reservation calendar is now in conformity with the intended single-unit use of the permit.
3. Physical Compliance: I am ensuring that the internal structure is now in physical compliance with County vacation rental laws, confirming the property is utilized only as a single rental unit.
4. I removed all signage and obvious indications of my rental.

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II. A Good-Faith Operational Misunderstanding

I mistakenly believed that my operational method was acceptable, primarily because the County repeatedly approved my annual permit renewals while my method of operation was openly apparent. My mistaken belief was reinforced by the following:

- Annual County Renewal: I timely applied for and was granted a TVR permit by the County year after year, providing documentation and adhering to all safety requirements.
- Fiscal Accountability: I have consistently and accurately paid all required taxes, including the significantly increased property taxes levied by the County for vacation rental use and the timely collection and remittance of the KVAT.
- Reduced Impact: I was operating under the sincere, though mistaken, belief that renting out two smaller units was quieter and resulted in less overall impact (fewer people, less socializing) than renting the entire property to one large group.

Regarding the specific points of the complaint:

- Advertising Clarification: The third advertised "Cottage" was for a friend's legally permitted property near Brenneke's inside the VDA, not on my property.
- Parking Clarification: The vehicle shown in the complaint photograph was my own vehicle, parked at the property, which the complainant mistakenly identified as a renter's car, possibly because it resembled a rental.

I have never received a noise complaint from any neighbor over my 28 years of operation.

III. Request for Consideration and Hardship

This permit represents more than just a business; it is my only means of providing for my family.

- I am a long-time resident and member of the Kaua'i community.
- I am approaching 65 and have a considerable financial hardship that would result from an immediate and complete shutdown.
- This rental income is my sole source of income (aside from sporadic handyman work) and is currently supporting the college education of my son; born and raised on Kauai.

I am not asking to continue the duplicative use. I am humbly asking for the opportunity to operate my business as a single unit, given my 28-year operational history, my clean record, and my immediate steps to achieve complete compliance.

I trust the Commission and the Department will consider my full commitment to operating lawfully going forward. Thank you for your time and consideration of my appeal.

Respectfully,

Jens E. Olsson



Appeal Considerations...

Kauai Cove #5032

1. I will now operating **completely compliant** with the planning department's requirements, removing all items that could construe more than one cooking area or any living arrangement other than that of a single-family residence.
2. **I have cancelled and refunded all my redundant reservations** for all future time periods, and now only have one reservation for the entire property for all future remaining bookings.
3. I have removed all signage and obvious indications of rental use.
4. I openly and honestly never tried to conceal the way I was operating, and **all applications for renewal were reviewed and approved by the County over many years.** I honestly thought the County wouldn't mind that way of operation, since I could have otherwise rented to 2 couples as one group anyway.
5. House has no stove anywhere. No gas anywhere. No 220V power inside anywhere, so there are no built-in cooking appliances, just small moveable ones. There is no dishwasher anywhere either. There are no lockouts to either bedroom, only privacy locks on the inside doors.
6. Since there is **no real kitchen** at all on the property, I was under the impression the **County wouldn't mind** if I rented to 2 couples separately, as opposed to two couples as one group. I hope this is seen as a smaller infraction, since I've worked so hard to be compliant in every other way.
7. Community Impact -Two independent couples, in each bedroom area, are much less impactful on my neighbors than for example 2 couples or a group socializing together. Therefore, I have never gotten any noise complaint in my 28 years of operating.
8. Unique Structure -The property is an "Odd Duck" in that it was never purposed as a single-family residence. I bought it as a triplex in 1997 when it was used to house timeshare salespeople working at Lawai Beach Resort.

9. Hardship -This is my only source of income except for a little handyman work I do for neighbors in the area. I will be 65 years old soon, and I have a son in college that was born and raised here. I need the income from this, so I hope I can continue given these changes now.
10. Misunderstanding -I believe the complaint was a misunderstanding from a neighbor's associate that I am friendly with, and would like to address later to resolve, if possible. I feel I get along with all my neighbors extremely well.
11. Culturally Unique -Kauai Cove is a one-of-a-kind rental. The artwork and wall hangings include pictures of old Kauai from the Kauai Museum, and I teach people the Island history through the many books I provide about the culture of the Island. It is "Old Hawaiian-themed" giving guests a unique culturally-enlightened historical perspective of Kauai.
12. Tax Support -I estimate the lost tax benefit to the County to be approximately \$15,000 per year if my operation stopped because of lower property taxes and also because of lost KVAT revenue from guests that may otherwise stay elsewhere. I have always paid my taxes accurately and on time.
13. Community Business Support - My guests are couples that typically dine out here, supporting nearby Poipu restaurants, rather than big groups loading up at Costco.

Thank you for your consideration of this appeal. After 28 years, I hope I can keep my TVR and continue a bit longer while my son is in school. Mahalo, E.J. (Jens) Olsson

CADES SCHUTTE
A Limited Liability Law Partnership

MAUNA KEA TRASK 8418
P.O. Box 1205
Lihue, Hawai'i 96766
Telephone: (808) 521-9297
Fax: (808) 540-5015

Attorney for Appellants
BBCP KUKUIULA
DEVELOPMENT, LLC

BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In the Matter of the Appeal

of

BBCP KUKUIULA DEVELOPMENT, LLC,
Appealing the Action of the Planning Director in
the Administration of the Subdivision Ordinance
as Provided for in Chapter 9 of the Kauai County
Code, as Memorialized in That Certain Letter
Dated July 22, 2025, Subdivision Application
No. S-2023-1; Kukuiula Parcels A2, F2, F3 for
properties located at Lawai Ahupuaa, Kona
District, Island of Kauai, Tax Map Key No. (4)
2-6-022:020.

CONTESTED CASE NO. CC-2025-7

**NOTICE OF WITHDRAWAL OF
PETITION TO APPEAL THE ACTION OF
THE PLANNING DIRECTOR;**

EXHIBITS "1" AND "2";

CERTIFICATE OF SERVICE

**NOTICE OF WITHDRAWAL OF PETITION TO APPEAL THE ACTION OF THE
PLANNING DIRECTOR**

Notice is hereby given that Applicant, BBCP KUKUIULA DEVELOPMENT, LLC,
("Appellant", "Applicant" or "BBCP"), by and through its undersigned counsel, pursuant to
the terms of the Settlement Agreement attached hereto as Exhibit "1" and that certain letter

H.N.A.
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signed by the Planning Director dated September 10, 2025, attached hereto as Exhibit "2", BBCP hereby withdraws its appeal in CC-2025-7.

DATED: Lihu'e, Hawai'i, September __, 2025.

CADES SCHUTTE LLP

MAUNA KEA TRASK, ESQ.

Attorneys for Appellant
BBCP KUKUIULA DEVELOPMENT, LLC

[Handwritten signature]

BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In the Matter of the Appeal

of

BBCP KUKUIULA DEVELOPMENT, LLC,
Appealing the Action of the Planning Director in
the Administration of the Subdivision Ordinance
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properties located at Lawai Ahupuaa, Kona
District, Island of Kauai, Tax Map Key No. (4)
2-6-022:020.

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September __, 2025, the NOTICE OF
WITHDRAWAL OF PETITION TO APPEAL THE ACTION OF THE PLANNING
DIRECTOR; EXHIBITS "1" AND "2", was duly served upon the COUNTY OF KAUAI
PLANNING COMMISSION, via hand delivery, addressed to it at the COUNTY OF KAUAI
PLANNING DEPARTMENT, County of Kauai, 4444 Rice Street, Suite A-473, Lihu'e, Hawai'i
96766.

DATED: Lihu'e, Hawai'i, September __, 2025.

CADES SCHUTTE LLP

MAUNA KEA TRASK, ESQ.
Attorney for Appellant
BBCP KUKUIULA DEVELOPMENT, LLC

CADES SCHUTTE
A Limited Liability Law Partnership

MAUNA KEA TRASK 8418
P.O. Box 1205
Lihue, Hawai'i 96766
Telephone: (808) 521-9297
Fax: (808) 540-5015

Attorney for Appellants
BBCP KUKUIULA
DEVELOPMENT, LLC

BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In the Matter of the Appeal

of

BBCP KUKUIULA DEVELOPMENT, LLC,
Appealing the Action of the Planning Director in
the Administration of the Subdivision Ordinance
as Provided for in Chapter 9 of the Kauai County
Code, as Memorialized in That Certain Letter
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properties located at Lawai Ahupuaa, Kona
District, Island of Kauai, Tax Map Key No. (4)
2-6-022:020.

CONTESTED CASE NO. CC-2025-7

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) concerns BBCP KUKUIULA DEVELOPMENT, LLC, (“**Appellant**”, “**Applicant**” or “**BBCP**”), and the County of Kauai Planning Department (“**Department**”) by and through its Planning Director (“**Director**”), hereinafter collectively referred to as “**Parties**”. This Agreement sets forth the terms and conditions of an agreement to settle BBCP’s appeal of the Planning Director’s action memorialized in that certain letter dated July 22, 2025, regarding Subdivision Application No. S-

2023-1 (the “**Appeal**”). This Agreement is legally binding as a contract formed under Hawai‘i law.

RECITALS

WHEREAS, pursuant to Kaua‘i County Charter (“**Charter**”) section 14.04, the Director is the administrative head of the Department;

WHEREAS, pursuant to Charter section 14.05 (B) the Director is charged with the administration of the zoning and subdivision ordinance and the regulations adopted thereunder;

WHEREAS, pursuant to Charter section 14.09 (A) the Kauai County Council (“**Council**”) has enacted the Subdivision Ordinance for the County of Kaua‘i (“**CSO**”);

WHEREAS, BBCP owns the fee simple interest in that certain 136.378 acre parcel of real property located at Lawai Ahupua‘a, Kona District, Island of Kauai, Tax Map Key No. (4) 2-6-022:020, also identified as Lot 13 of the Kukuiula Parcel E Subdivision (the “**Property**”);

WHEREAS, BBCP, filed Subdivision Application No. S-2023-1 (the “**Application**”) with the Department to subdivide the Property into twenty-four (24) residential lots, four (4) remnant parcels and three (3) roadway lots (the “**Project**”);

WHEREAS, on July 25, 2022, the Department routed the Application to various state and county agencies;

WHEREAS, on October 27, 2022, the State Historic Preservation Division (“**SHPD**”) issued its determination of “No Historic Properties Affected” for the current Project, and indicated it had no objection to the Application;

WHEREAS, on November 15, 2022, the Kaua‘i Planning Commission (“**Commission**”) granted Preliminary Subdivision Map approval subject to various conditions;

WHEREAS, on November 28, 2023, BBCP received a revised determination letter from SHPD calling for a Reconnaissance Level Survey (“**RLS**”), an Archaeological Inventory Survey (“**AIS**”) and an Archaeological Monitoring Plan (“**AMP**”) (collectively the “**Submittals**”) based upon the identification of: (1) a rock fill facing associated with a railroad trestle, (2) a segment of a previously identified earthen ditch feature, and (3) a sub-feature of a previously identified feature comprising a culvert running beneath the cane haul road and former railroad bed;

WHEREAS, in the November 28, 2023, letter SHPD requested the Department withhold issuing final subdivision approval until the Submittals are reviewed and accepted at which time the permits issuance process may continue;

WHEREAS, on June 17, 2024, BBCP’s consultant Cultural Surveys Hawaii (“**CSH**”) submitted the RLS and the AMP to the Hawai‘i Cultural Resource Information System (“**HICRIS**”);

WHEREAS, on December 16, 2024, CSH submitted the AIS to HICRIS;

WHEREAS, following approval of the preliminary subdivision map, BBCP prepared and submitted the requisite grading plans, construction plans and specifications showing details and road construction, drainage structures, sewers, water mains, and all other utilities proposed to be constructed in the subdivision (collectively the “**Construction Plans**”) to the Department pursuant to CSO §9-3.5(a);

WHEREAS, the Department of Public Works, the Department of Water, the State Department of Health, Kaua‘i Island Utility Cooperative (“**KIUC**”), Spectrum, Hawai‘i Gas, and Hawai‘i Telcom have all approved the Construction Plans;

WHEREAS, SHPD has not commented on the Submittals to date;

WHEREAS, BBCP and CSH have diligently complied with the requests of SHPD to complete the historic review process as it relates to the Application and obtain approval of the final subdivision map;

WHEREAS, BBCP, CSH and BBCP's counsel have sent multiple letters and emails to SHPD in an attempt to have them comment on the Submittals and complete their historic review without any success;

WHEREAS, On Jul 21, 2025, BBCP, through its counsel, submitted a letter to the Director explaining that due to state and county law SHPD is presumed to concur with the Submittals and requesting the Director approve the Construction Plans pursuant to the CSO;

WHEREAS, on July 22, 2025, the Department responded to BBCP saying they had not received the requisite review and comment letter from SHPD concerning the proposed construction plans associated with Subdivision Application S-2023-1, and the Department cannot approve the subject construction plans without review and comment by SHPD;

WHEREAS, on July 28, 2025, BBCP filed the Appeal;

WHEREAS, the Parties engaged in good faith negotiations regarding state and county law concerning the maximum time period to grant or deny a business or development-related permit, license, or approvals;

WHEREAS, HRS § 91-13.5 provides that agencies shall adopt rules specifying maximum time periods for acting on a business or development-related permit, license, or approval, and that any application not decided within the established time frame is "deemed approved." *Kauai Springs, Inc. v. Planning Commission of Kauai*, 133 Haw. 141, 159, 324 P.3d 951, 969 (2014);

WHEREAS, SHPD promulgated its rules concerning maximum time periods to grant or deny a business or development-related permit, license, or approval as required by HRS § 91-13.5, and codified the same in Hawai‘i Administrative Rules (“HAR”) Ch 13-284;

WHEREAS, pursuant to HAR §§ 13-284-5(5)(e), 13-284-6(d), 13-284-7(c), and 13-284-8(b)&(c), SHPD shall make the required concurrences and/or determinations concerning the Submittals within 45 days of their submittal or by a mutually agreeable date;

WHEREAS, pursuant to HAR §13-284-3(e), if SHPD fails to make the required concurrences and/or determinations concerning the Submittals within 45 days, “then SHPD is presumed to concur with the submittal;”

WHEREAS, under the relevant administrative rules, SHPD was required to comment on the RLS by August 1, 2024, at which time SHPD was presumed to concur with the same;

WHEREAS, under the relevant administrative rules, the AMP is a form of identification or mitigation measure (*see*, HAR §§ 13-284-8(a)(1)(C) and 13-279-3) and SHPD was required to comment on the AMP by August 1, 2024, at which time SHPD was presumed to concur with the same;

WHEREAS, SHPD was required to comment on the AIS by January 30, 2025, at which time SHPD was presumed to concur with the same;

WHEREAS, pursuant to CSO §9-1.4, subdivision applicants shall be held to the minimum requirements necessary to accomplish the purpose of the CSO;

WHEREAS, CSO §9-3.4(b) requires SHPD to complete its review of the preliminary subdivision map within 45 days;

WHEREAS, CSO §9-3.5 (b)(1) requires SHPD to take action concerning their review of the subdivision construction plans within 60 days;

WHEREAS, CSO §9-3.5 (b)(3) provides that if SHPD fails to take action within the allotted time, the Construction Plans shall be deemed approved;

WHEREAS, CSO §9-3.5 (b)(2) provides that after action is taken by the agencies, the Director shall take action on the Construction Plans within fifteen (15) calendar days;

WHEREAS, SHPD has failed to take action concerning the Construction plans within the time limits prescribed in CSO §§9-3.4 and 9-3.5, at which time SHPD was presumed to have approved the same;

WHEREAS, pursuant to HRS §91-13.5(c) the Department shall take action to grant or deny the Subdivision Application within the established maximum period of time, or the application shall be deemed approved;

WHEREAS, BBCCP has not agreed to extend any deadlines concerning the review and approval of any of the Submittals under state or county law with either SHPD or the Department or any other department or agency of the government;

WHEREAS, all departments, officials and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of the CSO;

WHEREAS, there are no state or county laws, rules or regulations that allow the Director to delay approval of the Construction Plans beyond the time limits provided in the CSO;

WHEREAS, pursuant to Charter section 7.05 (A) the Director must administer the CSO honestly, efficiently, and lawfully;

WHEREAS, the Director is compelled to approve the Construction Plans pursuant to CSO §9-3.5 and HRS §91-13.5;

WHEREAS, any person, firm, or corporation, whether as principal, agent, employee, or otherwise, violating or causing or permitting the violation of any of the provisions of the CSO,

shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars (\$500.00) for each offense;

WHEREAS, pursuant to Charter section 23.10, any violation of a charter provision, any ordinance, or duly enacted rule or regulation having the effect of law shall be subject to a fine not exceeding \$1,000 or one year's imprisonment or both unless the charter, ordinance, rule, or regulation provides for a specific penalty in which case the specific penalty shall control;

WHEREAS, by this Agreement, the Parties intend to settle and fully dispose of all of BBCP's Appeal;

WHEREAS, the Parties believe this Agreement is fair, reasonable, and adequate to protect the interests of all Parties.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals, and the following terms and conditions, and for good and valuable consideration, the receipt of which is hereby expressly acknowledged by each of the Parties, the Parties covenant and agree as follows:

1. Approval of the Construction Plans.

The Director agrees to determine that the Construction Plans conform to the preliminary subdivision map, as conditioned by the Commission, and approve the Construction Plans as provided by CSO §9-3.5(b).

2. Completion of Subdivision Improvements, Agreement and Bond.

Upon approval of the Construction Plans as provided herein, BBCP may proceed to construct the required subdivision improvements prior to seeking approval of the final subdivision map, or BBCP may enter into an agreement with the County guaranteeing the construction of improvements at its own expense within a reasonable time period specified by

the Commission in which case BBCP may seek approval of the final subdivision map prior to constructing the required improvements as provided by CSO §9-3.6.

3. Withdrawal of Appeal.

Upon the Director's approval of the Construction Plans as provided herein, BBCP agrees to withdraw its Appeal.

4. Release of Claims.

In consideration of the benefits and protections afforded by this Agreement, BBCP hereby fully and finally releases and discharges the Director, the Department and their successors, assigns, officers, and past and present agents and employees ("**Released Parties**") from any and all claims raised in the Appeal, or that could have been raised in the Appeal ("**Released Claims**"). The Released Claims do not include any claims to enforce the terms of this Agreement.

5. Entire Agreement.

This Agreement constitutes the entire agreement between BBCP, the Director and the Department with respect to all of the matters discussed in the Agreement, and supersedes all prior or contemporaneous discussions, communications, or agreements, expressed or implied, written or oral, by or between the Parties.

6. Binding on Successors.

This Agreement shall be binding on all successors, assignees, employees, agents, and all others working for or on behalf of the respective Parties.

7. Rules of Construction.

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The terms of this Agreement are the

product of joint negotiations and shall not be construed as having been authored by one party rather than another. Any ambiguity shall not be construed against any Party. Where required by context, the plural includes the singular and the singular includes the plural.

8. Counterparts.

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which, when taken together, will constitute one and the same instrument.

9. Governing Law and Enforcement.

This Agreement shall be governed by and construed in accordance with the laws of the State of Hawaii and may be enforced by the Fifth Circuit Court.

10. Modification in Writing.

This Agreement cannot be orally modified. The Agreement can be modified only with a written agreement that expressly recites the Parties' intent to modify a provision of the Agreement, and that is signed by authorized representatives of all Parties.

11. Review of Agreement.

The Agreement has been carefully reviewed by each of the Parties, or their responsible officers, and their legal counsel, and its contents are known and understood by each of the Parties. The Parties each acknowledge that they are entering into this Agreement freely, knowingly, voluntarily, and with full understanding of its terms.

12. Waiver of Breach.

The waiver of a breach of this Agreement shall not be construed as a waiver of any subsequent breach.

13. Authority.

The persons executing the Agreement each represent and warrant that he or she has the authority to enter into the Agreement, and to resolve the matters set forth in the Agreement, on behalf of the Party for whom he or she is executing the Agreement, and that no further approval is necessary in order for the Agreement to be binding on the Party for whom he or she is executing.

14. Attorneys Fees and Costs.

Each party shall bear and be solely responsible for their respective attorney's fees and costs.

15. Notices.

Any notice or communication provided under this Agreement shall be made in writing and shall be delivered or sent by email and/or by registered mail or Federal Express to the addresses below or to such other addresses as may be specified in writing by any Party. Should any Party's contact information change from what is listed below, that Party shall promptly provide written notice of the updated contact information to the other Parties.

To BBCP

Maua Kea Trask, Esq.
P.O. Box 1205
Lihue, HI, 96766
mtrask@cades.com

To the Director and/or the Department

Matthew M. Bracken, Esq.
Christopher Donahoe, Esq.
4444 Rice St, Ste. 220
Lihue, HI 96766
mbracken@kauai.gov
cdonahoe@kauai.gov

IN WITNESS HEREOF, each of the undersigned has executed this Agreement on the date set forth below.

DATED: _____

BBCP KUKUIULA DEVELOPMENT, LLC

By: _____

Its: _____

DATED: 8/25/2025


PLANNING DIRECTOR

APPROVED AS TO FORM: The below attorney signatures are not intended to impose obligations on the attorneys other than to facilitate notices and communications necessary to implement the settlement terms.


DATED: _____

CADES SCHUTTE LLP

Mauna Kea Trask, Esq.
Attorneys for Appellant
BBCP KUKUIULA DEVELOPMENT, LLC

DATED: 8/25/25

OFFICE OF THE COUNTY ATTORNEY


Christopher Donahoe, Esq.
Attorneys for Respondent
PLANNING DIRECTOR

IN WITNESS HEREOF, each of the undersigned has executed this Agreement on the date set forth below.

DATED: August 25, 2025

BBCP KUKUIULA DEVELOPMENT, LLC

By: 

Its: VICE PRESIDENT - ACCOUNTING.

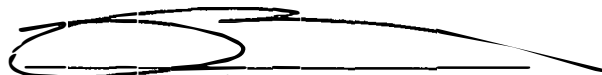
DATED: _____

PLANNING DIRECTOR

APPROVED AS TO FORM: The below attorney signatures are not intended to impose obligations on the attorneys other than to facilitate notices and communications necessary to implement the settlement terms.

DATED: August 26, 2025

CADES SCHUTTE LLP



Mauna Kea Trask, Esq.
Attorneys for Appellant
BBCP KUKUIULA DEVELOPMENT, LLC

DATED: _____

OFFICE OF THE COUNTY ATTORNEY

Christopher Donahoe, Esq.
Attorneys for Respondent
PLANNING DIRECTOR

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

September 10, 2025

Mr. Mauna Kea Trask, Esq.
CADES SCHUTTE LLP
P.O. Box 1205
Līhu'e, Hawai'i 96766
Email: mtrask@cades.com

Subject: **Commencement of Construction**
Contested Case No. CC-2025-7 — Settlement Agreement
Kukui'ula Parcel A2F2F3 Subdivision
Subdivision Application No. S-2023-1
Tax Map Key: (4) 2-6-022: 020
Lāwa'i, Kōloa, Kaua'i, Hawai'i
Applicant: BBCP Kukui'ula Development, LLC.

Dear Mr. Trask,

Please accept this letter as confirmation that, pursuant to the executed Settlement Agreement between BBCP Kukui'ula Development, LLC and the County of Kaua'i Planning Department regarding the subject subdivision application, the construction of the required subdivision improvements may commence in accordance with Section 9-3.6 of the Subdivision Ordinance, Kaua'i County Code (1987), as amended. Please be advised that the construction plans for Subdivision Application No. S-2023-1, were approved by the Planning Director on May 15, 2025. This approval remains valid.

Should you have further questions regarding this matter, please contact Kenneth A. Estes of my staff at 808.241.4050. Aloha!

KA'ĀINA S. HULL
Director of Planning

KALALEA TRUST
% 4470 Wailapa Road
Kilauea, Hawai'i [96754]
+1 808 652 4140

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT
STATE OF HAWAII

KALALEA TRUST,

Petitioner,

vs.

HARLAN Y. KIMURA, Hearing Officer,
Office of Boards and Commissions, County of
Kaua'i; and
KAUA'I COUNTY PLANNING
DEPARTMENT, Respondents.

Case No. 5CCV-25-0000022

**PETITIONER'S EQUITABLE OBJECTION TO
COUNTY OF KAUAI'S MEMORANDUM IN
OPPOSITION TO ENTRY OF DEFAULT,
REQUEST FOR RELIEF AND ENTRY OF
DEFAULT,
CERTIFICATE OF SERVICE,
Exhibit A - BOC Conference
Exhibit B - Notice of Filing**

**PETITIONER'S EQUITABLE OBJECTION TO COUNTY OF KAUAI'S
MEMORANDUM IN OPPOSITION TO ENTRY OF DEFAULT**

Affidavit of the Truth of the Matter stated:

I. Preliminary Statement

Petitioner, the Kalalea Trust, by and through its Trustee, respectfully submits this Equitable Response, verified by affidavit, to this Honorable Court to object to and formally rebut Respondents' alleged facts and their attempt to circumvent the law in order to avoid a ministerial default. In the County's Memorandum in Opposition to the Amended Request for Entry of Default Judgment, filed September 24, 2025, the County's filing is procedurally defective and substantively insufficient. Respondents have been in default for more than six months and have shown no good cause for their failure to answer. **Equity aids the vigilant, not those who slumber on their rights.**

II. The County's "Background Facts" Are Irrelevant, Objected to as Hearsay

1. The Petitioner is the Kalalea Trust, not Carl Langschmidt individually.
2. The Kalalea Trust never appealed or petitioned the Planning Commission or any de facto administrative tribunal.



H.4a.
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3. Trustee Carl Langschmidt in good faith merely responded to unfounded notices so as not to acquiesce or default to any alleged claims or controversies.
4. "Langschmidt" is not a party to this matter.
5. Hearing Officer Kimura acted without credentials, oath, or authority, and created a petition in the Trust's name ultra vires.
6. The tenant, Garden of Eden, has held lawful tenancy since January 1, 2023 (Exhibit A). Therefore the Kalalea Trust is not the party of interest for any alleged violations as expressed in the meeting with county inspectors, Joan and Bambi, on Sept 16 2024.

III. Jurisdiction Was Never Established

1. No injured party has been identified.
2. No sworn statement, affidavit, or wet-ink signature exists to show bona fide claims.
3. The Trust Indenture requires controversies to be heard only in a court of record, not in a private hearing before Mr. Kimura.
4. Equity recognizes the maxim: "He who acts without authority does so in vain."
5. Without jurisdiction, the County's NOV and COZ are void ab initio.

IV. Procedural Default is Clear

The Writ of Prohibition was filed February 4, 2025. The County failed to file a timely answer. More than six months have passed without response. No good cause has been shown for this failure. Equity will not relieve a party from its own neglect when it has had full notice and opportunity.

V. Respondents Cannot Shield Themselves with HRAP Rule 21

Respondents misapply HRAP Rule 21. That rule governs extraordinary writs in the appellate courts, not original petitions filed in the Circuit Court. Here, HRCR Rules 7, 12, and 55 default principles apply, and Respondents' opposition cannot retroactively cure their failure to timely respond.

VI. Irreparable Harm, Breach of Trust and Destruction of rights.

1. The County continued to act without jurisdiction ever being established, even after jurisdiction was challenged at the onset.
2. With notice of the private Trust, the County nonetheless dragged the Trust into the public, breaching the Trust and attempting to validate administrative proceedings without consent.
3. The County and Hearing Officer Kimura breached the Trust and caused irreparable injury by threatening \$90,000 in unverified fines (Exhibit B).
4. These fines are void ab initio and violate the protections of the Eighth Amendment – Excessive fines.
5. The County and Hearing Officer Kimura further breached the Trust by committing trespass and destroying rights secured to the Trust and the Constitution.
6. Mr. Kimura, acting as trustee de son tort, is personally and professionally culpable for his unauthorized actions.
7. The County's adoption of his unlawful recommendations is to its own peril.

8. Respondents have failed to provide lawful authority for bringing any claim against the Trust.
9. Respondents have failed to provide their Government ID's, Oaths of Office and Bonds.

VII. Equity Requires Default to Be Entered

Equity favors substance over form. The maxim applies: "When there is a conflict between the rules of law and the rules of equity, equity shall prevail."

As Pomeroy's Equity Jurisprudence explains, even silence may create estoppel. Here, the County's silence and failure to answer for six months is far more. To permit them to proceed now would reward neglect and perpetuate injustice.

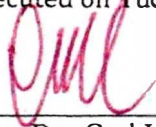
REQUEST FOR RELIEF

For the foregoing reasons, Petitioner respectfully requests that this Court issue an order sua sponte granting the following relief:

1. Deny the County's Memorandum in Opposition as untimely and irrelevant;
2. Enter default against the Respondent, Kaua'i County Planning Department, pursuant to HRCF Rules 7, 12, and 55, as default principles apply;
3. Grant the Writ of Prohibition restraining the County of Kauai Planning Dept and Hearing Officer Kimura from further ultra vires acts against the Kalalea Trust;
4. Void all Respondents' notices and orders, including but not limited to the demand for ninety thousand dollars (\$90,000) in purported fines, as unlawful and excessive, and recognize them as wrongful monetary damages asserted against the Petitioner;
5. Enjoin the County and its agents from entering upon or trespassing on Trust property without prior permission of the Trustee or a duly issued judicial warrant; and
6. Grant such other and further relief, whether general, special, or extraordinary, as equity and good conscience may require.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Tuesday, September 30, 2025



By: Carl Langschmidt, Trustee
Kalalea Trust

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was duly served upon the following parties by **Certified Mail, Return Receipt Requested**, postage prepaid, on this 30th day of September, 2025, addressed as follows:

Office of the County Attorney
County of Kaua'i
4444 Rice Street, Suite 220
Līhu'e, Hawai'i 96766

Planning Department
County of Kaua'i
4444 Rice Street, Suite A473
Līhu'e, Hawai'i 96766

Harlan Y. Kimura, Hearing Officer
Office of Boards and Commissions
County of Kaua'i
4444 Rice Street, Suite 300
Līhu'e, Hawai'i 96766



Carl Langschmidt, Trustee

Kalalea Irrevocable Common Law Asset Trust

EXHIBIT A

AIL



STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

September 2, 2025 2:54 PM
Doc No(s) A - 9376000760

Pkg 12596885 OFC

/s/ MIKE H. IMANAKA
REGISTRAR

Conveyance Tax \$0.00

LAND COURT

mw

REGULAR SYSTEM

(AREA ABOVE RESERVED FOR RECORDING INFORMATION)

After Recordation, Return by Mail ☐ or Pick-up ☐ Phone#: _____

FILL IN NAME AND ADDRESS BELOW:

GARDEN OF EDEN
P.O. Box 30843
ANAHOLA HAWAII 96703

DOCUMENT CONTAINS 5 PAGES

NOTICE OF LEASE

- 1. This Notice of Lease is made and entered into as of this 12 day of June, 2025, by and between:**

LANDLORD:

Kalalea Trust

By: Carl Langschmidt, Trustee

Mailing Address: 4470 Wallapa Rd Kilauea, Hawaii [96754]

TENANT:

Garden of Eden,

By: Craig Ferrie, Trustee

Mailing Address: P.O BOX 30843 Anahola Hawaii [96703]

NOTICE IS HEREBY GIVEN pursuant to Hawaii Revised Statutes §502-31 that:

1. Lease Agreement: Landlord and Tenant entered into a written lease agreement concerning real property located in the County of Kaua'i, State of Hawai'i.

2. Effective Date: The lease commenced on January 1, 2023.

3. Term: The term of the lease is ten (10) years, expiring on December 31, 2032, unless extended or sooner terminated as provided therein.

4. Premises: The lease pertains to the entire parcel of land held in trust under the Kalalea Trust, identified as:

a. Tax Map Key (TMK): 490030010003

b. Legal Description: Hui rd, Kalalea Plantation Lot 3, lot 74 of Moloaa Hui Lands, Allomanu, Kauaihau, Kauai, Hawaii.

c. Survey Attached as Exhibit A/page 5.

5. Purpose: The Premises are leased exclusively for religious, agricultural, and community purposes in accordance with the mission of The Garden of Eden.

6. Non-Public Lease: This Notice is provided solely for the purpose of recording notice of the lease and does not set forth the full terms and conditions thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Notice of Lease as of the dates written below.

LANDLORD:
Kalalea Trust

By: Carl Langschmidt.
Carl Langschmidt, Trustee
Date: Friday, June 13, 2025

TENANT:
Garden of Eden

By: [Signature]
Craig Ferrie, Trustee
Date: Friday, June 13, 2025

State of Hawai'i

County of Kauai

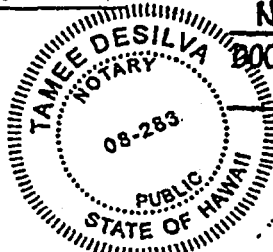
On this 13th day of June, 2025, before me, the undersigned Notary Public, personally appeared Carl Langachmidt, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same as **Trustee of Kalalea Trust**, and that such execution was made of his free act and deed and, if applicable, in the authorized capacity stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]

Notary Public, State of Hawai'i

My commission expires: 8/3/28



DOC. DESCRIPTION: NOTICE OF LEASE
DOC. DATE: 6/13/25 NO. PAGES: 5
TAMEE DESILVA
NOTARY PRINTED NAME
5TH
ADD. CIRCUMST.

State of Hawai'i

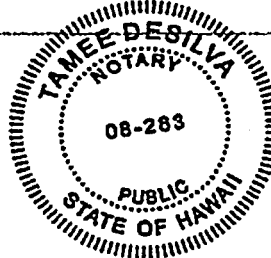
County of Kauai

On this 13th day of June, 2025, before me, the undersigned Notary Public, personally appeared **Craig Ferrie** who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same as **Trustee/Authorized Representative of Garden of Eden**, and that such execution was made of his free act and deed and, if applicable, in the authorized capacity stated therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawai'i

My commission expires: 8/3/28



DOC. DESCRIPTION: Notice of Lease
DOC. DATE: 6/13/25 NO. PAGES: 5
TAMEE DESILVA STH
NOTARY PRINTED NAME NOTARY SIGNATURE

Exhibit A

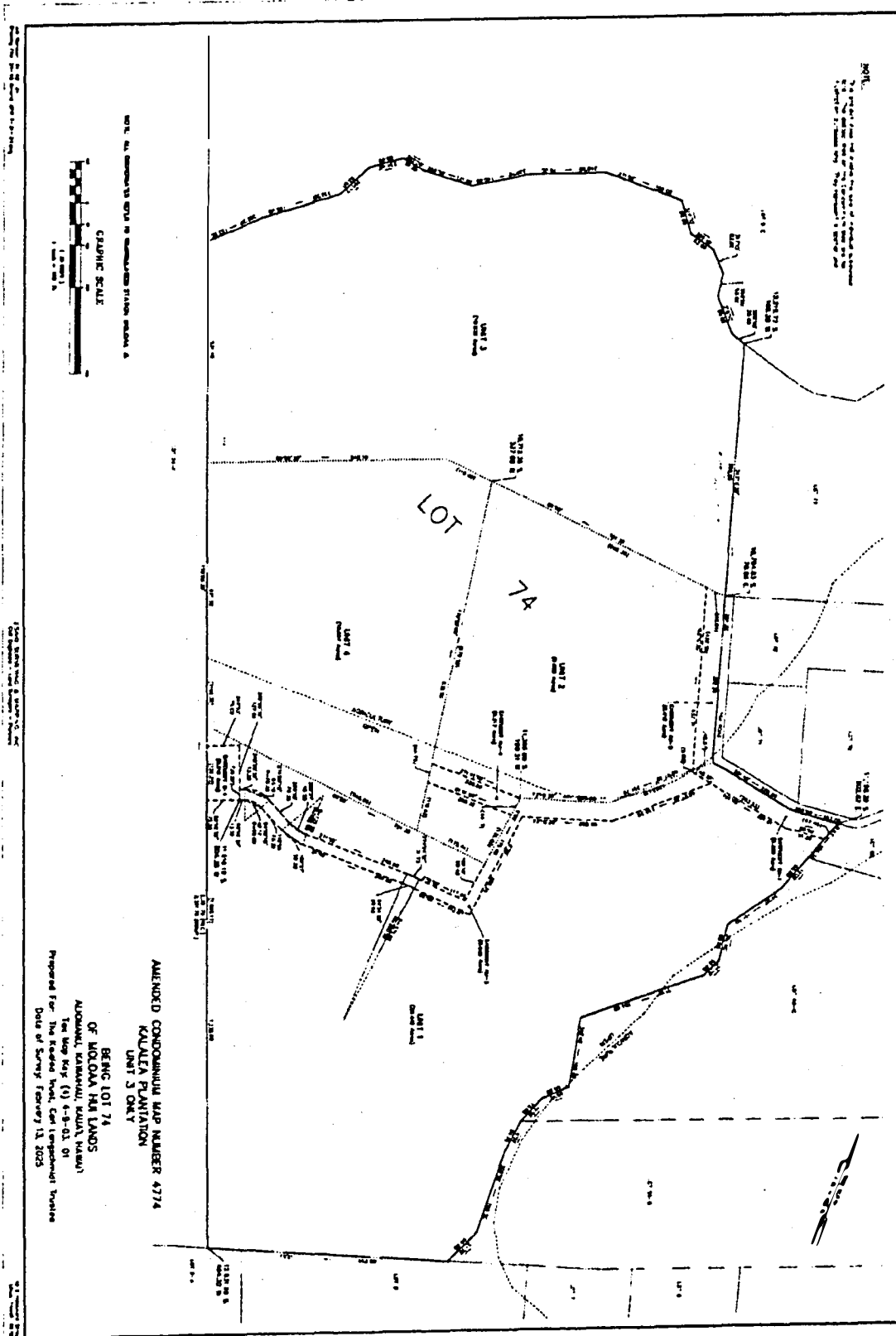


Exhibit B

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

**VIA CERTIFIED U.S. MAIL, RETURN RECEIPT REQUESTED
AND FIRST CLASS U.S. MAIL**

SEP 26 2025

**Kalalea Trust
4470 Wailapa Rd
Kilauea HI 96754 1139**

**Kalalea Plantation
Kalalea Plantation LLC
PO Box 1139, Kilauea, HI 96754**

Kalalea Plantation LLC
6623 Las Vegas Blvd Unit 340
Las Vegas NV 89119

Sunrise Hui Farm LLC
2955 Aukele Ste 201
Lihue HI 96766

FINAL NOTICE FOR REMITANCE OF FINE PAYMENT

**SUBJECT: COMPREHENSIVE ZONING ORDINANCE (CZO) VIOLATION ON:
Hui Rd Master Anahola, HI 96703
Tax Map Key: 490030010003**

The purpose of this letter is to give FINAL NOTICE FOR REMITANCE of money owed regarding your levy and order to pay a fine of ninety thousand dollars (\$90,000.00) for the violations of Sec. 8-3.1 Zoning Permits, Section 8-8.7 Developed Campgrounds in Agriculture Zoning Districts and Section 8-2.4 Uses in Districts of the Comprehensive Zoning Ordinance.

You were mailed multiple "Notice of Violation & Order to Pay Fines" where you were levied and ordered to pay fines in total of ninety thousand dollars (\$90,000.00). As of THIS DATE this penalty remains unpaid.

SUBMIT PAYMENT IMMEDIATELY

Unless the Planning Department receives full payment within 14 days of the date of this notice, legal action against your penalty will be taken. Failure to remit the fine amount of ninety thousand dollars

Notice of Violation and
Order to Pay Fines
TMK: 490030010003
Page 2

(\$90,000.00) will result in the Director instituting a civil action seeking enforcement of the order under Kaua'i County Code, Section 8-3.5(b) (4) (5). Failure to pay the total amount of the civil fine imposed within thirty (30) days of this Order may result in a lien placed on the subject property. You are advised to give this matter your immediate attention.

A handwritten signature in blue ink, appearing to read 'Ka'aina S. Hui', is written over a horizontal line.

KA'AINA S. HUI
Director of Planning

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

TRANSMITTAL OF SUPPLEMENTAL INFORMATION TO PLANNING COMMISSION

DATE: **October 23, 2025**

PERMIT NUMBER(S): **Z-IV-2025-6, U-2025-4, and SP-2025-1**

APPLICANT(S): **OLU PUA GARDENS LLC.**

Attached for the Planning Commission's reference is supplemental information to project's application.

K.I.A.
NOV 10 2025

BELLES GRAHAM LLP

ATTORNEYS AT LAW

MAX W.J. GRAHAM, JR.
JONATHAN J. CHUN
IAN K. JUNG

Federal I.D. No. 99-0317663

DYNASTY PROFESSIONAL BUILDING
3135 AKAHI STREET, SUITE A
LIHUE, KAUAI, HAWAII 96766-1191

TELEPHONE NO: (808) 245-4705
FACSIMILE NO: (808) 245-3277
E-MAIL: mail@kauai-law.com

OF COUNSEL

MICHAEL J. BELLES
DAVID W. PROUDFOOT

October 10, 2025

Mr. Francis DeGracia, Chairperson
Planning Commission of the County of Kauai
c/o Planning Department
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766

VIA EMAIL & REGULAR MAIL

Attention: Ms. Marisa Valenciano, Planner

Re: **In the Matter of the Application of Olu Pua Gardens LLC
for Use Permit U-2025-4, Class IV Zoning Permit Z-IV-2025-6,
and Special Permit SP-2025-1**
Olu Pua Gardens
Parcel First (8.504 acres)
Parcel Second (3.781 acres)
Wahiawa, Kauai, Hawaii
Kauai Tax Map Key No. (4) 2-4-007:016
Owner: Olu Pua Gardens LLC, a Hawaii limited liability company.

Dear Chairperson DeGracia and Planning Commission Members:

I am writing to you on behalf of Olu Pua Gardens LLC, the Applicant in the above-described Application. The Planning Commission heard this matter at its meeting held on January 14, 2025. The matter was not completed, and at Applicant's request, was continued until June 10, 2025. The Planning Department subsequently received a letter from the State Historic Preservation Division ("SHPD") dated February 21, 2025, requesting that an archaeological literature review and field inspection ("LRFI") be prepared for the Project Area. The Applicant is in the process of having a LRFI prepared, but it still has not been completed.

The Applicant previously requested an extension until the Planning Commission meeting scheduled for December 9, 2025. It now appears that the LRFI will not be completed in time for the December meeting. In order to have the LRFI completed, to obtain the necessary approvals from SHPD, and to have the Planning Commission take final action in this matter, I am requesting a further extension until the Planning Commission meeting of January 13, 2026. As a condition of this extension, the Applicant agrees to all of the timelines contained in CZO Section 8-3.1(f).

Mr. Francis DeGracia, Chairperson
Planning Commission of the County of Kauai
c/o Planning Department
October 10, 2025
Page 2

Thank you very much for your consideration of this request.

Sincerely yours,

BELLES GRAHAM LLP



Max W. J. Graham, Jr.

MWJG:jgm

cc: Dr. and Mrs. Joerg Hohnloser (via email only)

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, October 13, 2025 11:46 AM
To: Marisa Valenciano; Dale Cua; Shanlee Jimenez
Subject: RE: Further Extension Request re: Olu Pua Gardens

Hey Marisa,

This should actually go on the Nov agenda, and we just defer it out to January. Mahalo!

From: Marisa Valenciano <mvalenciano@kauai.gov>
Sent: Monday, October 13, 2025 10:28 AM
To: Dale Cua <dcua@kauai.gov>; Shanlee Jimenez <sjimenez@kauai.gov>; Kaaina Hull <khull@kauai.gov>
Subject: FW: Further Extension Request re: Olu Pua Gardens

Kaaina, Dale, and Shan,

Max transmitted the above letter for Olu Pua Gardens requesting an extension to the January 13, 2026 PC Meeting. Based on the attached letter, I was planning to transmit to the Commission as part of the December 9, 2025 PC agenda packet. Can you please let me know if that would work or if the attached letter would need to be transmitted as part of the November 10, 2025 PC agenda packet?

During the August 12, 2025 meeting, Max asked commission on the floor to extend to the December 9, 2025 meeting even though his July 2025 correspondence asked for the extension to the October 2025 PC meeting (no quorum anyways).

I already put a placeholder on the white boards to pencil in Olu Pua for the Jan. 2026 PC Meeting under unfinished business.

Please let me know if there is a preference to transmit this letter for the November or December meeting.

Thank you,
Marisa

From: Planning Department <planningdepartment@kauai.gov>
Sent: Friday, October 10, 2025 2:23 PM
To: Marisa Valenciano <mvalenciano@kauai.gov>
Subject: FW: Further Extension Request re: Olu Pua Gardens

Please see email below.

Mahalo,

Sara Agoot
CZM Account Clerk
County of Kaua'i | Department of Planning
4444 Rice St. Suite, A473 | Lihu'e, HI 96766
Dept. Phone #: 808-241-4050



RISE to a New Way with workday



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From: Julie Mararagan <JGM@kauai-law.com>

Sent: Friday, October 10, 2025 10:42 AM

To: Planning Department <planningdepartment@kauai.gov>

Cc: Max Graham <MWG@kauai-law.com>; Marisa Valenciano <mvalenciano@kauai.gov>

Subject: Further Extension Request re: Olu Pua Gardens

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.

Dear Chairperson DeGracia and Planning Commission Members,

Attached please find Mr. Graham's letter to you dated October 10, 2025, regarding the above-identified matter.

The original letter has been sent to you via regular mail.

Thank you.

Aloha and Mahalo,

Julie



Julieta Ganotisi Mararagan

Belles Graham LLP

Dynasty Professional Building

3135 Akahi Street, Suite A

Lihue, Kauai, Hawaii 96766

Phone: (808) 246-6962

Fax: (808) 245-3277

Email: jgm@kauai-law.com

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