



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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

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'24 SEP -4 P1:15

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

- 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.

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'24 SEP -4 P1:16

PLANNING COMMISSION MEETING NOTICE AND AGENDA

Tuesday, September 10, 2024

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

A. CALL TO ORDER

B. ROLL CALL

C. APPROVAL OF AGENDA

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

1. August 13, 2024.

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. Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = **COUNTY OF KAUAI, PLANNING COMMISSION**. [Director's Report received and Public Hearing Deferred, July 9, 2024.]

1. Supplemental #1 to Director's Report pertaining to this matter.

- b. ZA-2024-1: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = **COUNTY OF KAUAI, PLANNING DEPARTMENT**. [Director’s Report received and Public Hearing Deferred, June 4, 2024.]

- 1. Supplemental #1 to Director’s Report pertaining to this matter.

- c. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kauai County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT**. [Director’s Report received and Public Hearing Deferred, June 4, 2024.]

- 1. Supplemental #1 to Director’s Report pertaining to this matter.

4. **New Public Hearing**

- a. None for this meeting.

G. **CONSENT CALENDAR**

1. **Status Reports**

- a. 2024 Annual Report on the progress and status of compliance and conditions of the subject permits for Hokuala Resort (formerly Kauai Lagoons LLC. & MORI Golf (Kauai) LLC.) in accordance with Condition No. 28 of Special Management Area Use Permit SMA(U)-2005-8, Class IV Zoning Permit Z-IV-2005-30, Project Development Use Permit PDU-2005-26, and Use Permit U-2005-25, Tax Map Keys: (4) 3-5001: 027 (Por.), 168, 169, 171 (Por.), 172, 175 & 176.

- 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. In the matter of a Notice of Violation and Order to Pay Fines, for illegal development within the Shoreline Management Area (SMA) and failure to secure required SMA permit determination, related to the property located at 5-7534 B Kuhio Highway, Haena, Hanalei, Tax Map Key: (4)5-9-002:021 = **HAPPY HOUSE TRUST**.
 - a. Petition to Appeal Notice of Violation & Order to Pay Fines, dated June 27, 2024; Exhibits “A” through “F”; Certificate of Service.

- 2. Amendment to Class IV Zoning Permit Z-IV-99-46, Use Permit U-99-40, Variance Permit V-99-13, and Special Permit SP-99-15 to allow construction & operation of a thrift store on a parcel situated on the northern side of Kaumuali'i Highway in Kipu, situated approximately ½-mile west of its intersection with Kipu Road, and further identified as 3-1850 Kaumualii Highway, Tax Map Key: 3-4-005:017 and containing a total area of 10 acres = **KAUAI HUMANE SOCIETY**.
 - a. Director’s Report pertaining to this matter.

I. COMMUNICATION

- 1. None for this meeting.

J. COMMITTEE REPORTS

- 1. Subdivision Committee Report.
 - a. None for this meeting.

K. UNFINISHED BUSINESS (For Action)

- 1. Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = **COUNTY OF KAUAI, PLANNING COMMISSION**. [Director’s Report received and Public Hearing Deferred, July 9, 2024.]

- 2. ZA-2024-1: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Wailua, Kauai that would amend Zoning Map ZM-WA 500 (Wailua). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Wailua = **COUNTY OF KAUAI, PLANNING DEPARTMENT**. [Director’s Report received and Public Hearing Deferred, June 4, 2024.]

3. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT**. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

4. Special Management Area Use Permit SMA(U)-2022-1, Class IV Zoning Permit Z-IV-2022-1, and Use Permit U-2022-1 for the Construction of a Farm Dwelling Unit, Guest House, Garage and Associated Site Improvements, within Lot 11-A of the Seacliff Plantation Subdivision in Kīlauea, involving a parcel situated approximately 1,000 feet West of the Pali Moana Place/Makana`ano Place Intersection, further identified as Tax Map Key: (4) 5-2-004: 084 (Unit 1) affecting a Larger Parcel approximately 12.305 acres in size, NĀ KIA'I O NIHOKŪ, Petitioner-Intervenor, vs. PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I, Respondent, and **PHILIP J. GREEN and LINDA M. GREEN**, Trustees of the Philip J. Green, Jr., Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018, Applicants.
 - a. Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service. Hearing (Held): Dates: November 14, 15, and 17, 2022, December 12, 13, and 15, 2023, and January 9, 10, and 12, 2023.
 - b. Intervenor's Exception to Hearing Officer's Report and Recommendation of Contested Case; Memorandum in Support of Exception; Certificate of Service.
 - c. Applicants Philip J. Green and Linda M. Green's Answer to Intervenor's Exception to Hearing Officer's Report and Recommendation of Contested Case, Dated July 24, 2024; Certificate of Service.
 - d. Respondent Planning Department of The County of Kaua'i's Support of Hearing Officer's Report and Recommendation of Contested Case; Certificate of Service.

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. Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = **COUNTY OF KAUAI, PLANNING COMMISSION**. [Director's Report received and Public Hearing Deferred, July 9, 2024.]

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3. ZA-2024-2: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to Zoning Designations in Hanapēpē, Kauai that would amend Zoning Map ZM-H 200 (Hanapēpē). The purpose of the bill is to eliminate the Special Treatment – Public Facilities (ST-P) zoning district designation for affected residential lots within Hanapēpē = **COUNTY OF KAUAI, PLANNING DEPARTMENT**. [Director's Report received and Public Hearing Deferred, June 4, 2024.]
4. In the matter of a Notice of Violation and Order to Pay Fines, for illegal development within the Shoreline Management Area (SMA) and failure to secure required SMA permit determination, related to the property located at 5-7534 B Kuhio Highway, Haena, Hanalei, Tax Map Key: (4)5-9-002:021 = **HAPPY HOUSE TRUST**.
5. 2024 Annual Report on the progress and status of compliance and conditions of the subject permits for Hokuala Resort (formerly Kauai Lagoons LLC. & MORI Golf (Kauai) LLC.) in accordance with Condition No. 28 of Special Management Area Use Permit SMA(U)-2005-8, Class IV Zoning Permit Z-IV-2005-30, Project Development Use Permit PDU-2005-26, and Use Permit U-2005-25, Tax Map Keys: (4) 3-5001: 027 (Por.), 168, 169, 171 (Por.), 172, 175 & 176.
6. Amendment to Class IV Zoning Permit Z-IV-99-46, Use Permit U-99-40, Variance Permit V-99-13, and Special Permit SP-99-15 to allow construction & operation of a thrift store on a parcel situated on the northern side of Kaumuali'i Highway in Kipu, situated approximately ½-mile west of its intersection with Kipu Road, and further identified as 3-1850 Kaumualii Highway, Tax Map Key: 3-4-005:017 and containing a total area of 10 acres = **KAUAI HUMANE SOCIETY**.
7. Special Management Area Use Permit SMA(U)-2022-1, Class IV Zoning Permit Z-IV-2022-1, and Use Permit U-2022-1 for the Construction of a Farm Dwelling Unit, Guest House, Garage and Associated Site Improvements, within Lot 11-A of the Seacliff Plantation Subdivision in Kīlauea, involving a parcel situated approximately 1,000 feet West of the Pali Moana Place/Makana'ano Place Intersection, further identified as Tax Map Key: (4) 5-2-004: 084 (Unit 1) affecting a Larger Parcel approximately 12.305 acres in size, NĀ KIA'I O NIHOKŪ, Petitioner-Intervenor, vs. PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I, Respondent, and **PHILIP J. GREEN and LINDA M. GREEN**, Trustees of the Philip J. Green, Jr., Trust, dated December 4, 2018, and the Linda M. Green Trust, dated December 4, 2018, Applicants.

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 October 8, 2024. 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
Approved (8/12/2024)	SMA(M)-2025-1	Hanalei (5-5-010:073)	Construction and Placement/ Six food trucks with associated site improvements (deck and pavilion.)
Approved (8/14/2024)	SMA(M)-2025-2	Hanalei (5-5-009:022)	Construction/ Two (2) EV Charging Stations and metal bollards.

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.

September 10, 2024

SHORELINE SETBACK DETERMINATIONS

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
SSD-2025-9	Lelan C. Nichek	2-8-019:004 CPR Unit 32	Kōloa	Interior kitchen renovation. / Work deemed unsubstantial per Department of Public Works letter dated May 28, 2024.
SSD-2025-10	Robert Maccallum	4-3-002:013 CPR Unit 131	Kapa'a	Repair-Replace Glass Sliding Door. / Work deemed unsubstantial per Department of Public Works letter dated July 26, 2024.
SSD-2025-11	Robert Maccalum & Beverly Bulger	4-3-002:013 0066	Kapa'a	Repair-Replace Glass Sliding Door. / Work deemed unsubstantial per Department of Public Works letter dated July 26, 2024.

KAUA'I PLANNING COMMISSION
REGULAR MEETING
August 13, 2024
DRAFT

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

The following Commissioners were present:

Mr. Gerald Ako
Ms. Donna Apisa
Mr. Francis DeGracia
Ms. Glenda Nogami Streufert
Mr. Jerry Ornellas
Ms. Lori Otsuka

Excused or Absent

Ms. Helen Cox

The following staff members were present: Planning Department - Director Ka'aina Hull, Staff Planner Kenny Estes, Dale Cua, Romio Idica; 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 Donna Apisa: Call the meeting to order and we're going to take a 10-minute break.

Planning Department Director Ka'aina Hull: You may want to go through roll call.

Chair Apisa: Oh okay. We'll go through a roll call then we'll take a 10-minute break. We've got some new information that was received last minute.

ROLL CALL

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

Commissioner Gerald Ako: Here.

Mr. Hull: Commissioner Cox, oh excuse me, Commissioner Cox is excused.

Commissioner Helen Cox: Here.

Mr. Hull: Commissioner DeGracia?

Commissioner Francis DeGracia: 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 Apisa?

Chair Apisa: Here.

Mr. Hull: You have a quorum, Madam Chair.

APPROVAL OF AGENDA

Mr. Hull: Next up would be review and Approval of the Agenda. The department doesn't have any proposed changes to the agenda.

Chair Apisa: a motion to approve the agenda, please.

Ms. Streufert: I move to approve the agenda.

Ms. Otsuka: Second.

Chair Apisa: We have a motion to approve the agenda. All in favor? Aye (unanimous voice vote). Any opposed/abstain. Motion carried. 6:0.

MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION

Mr. Hull: Next up would be the minutes for the meeting of July 9, 2024.

Mr. DeGracia: I move to approve the minutes for July 9, 2024.

Mr. Ako: Second.

Chair Apisa: Any discussion? All in favor. Aye (unanimous voice vote). Any opposed/abstention. Motion carried. 6:0.

RECEIPT OF ITEMS FOR THE RECORD (None)

Mr. Hull: Next up, we have no listed Receipt of Items for the Record. However, as you spoke to earlier, Chair, we have received communications from a number of members of the public after the posting agenda, which the Commissioners did not get to see. So, we recommend taking a five-to-ten-minute recess to review the documents that were brought in.

Chair Apisa: We will take a 10-minute break. We have some documents here to review.

The Commission went into recess at 9:10 a.m.
The Commission reconvened from recess at 9:24 a.m.

Chair Apisa: (Inaudible) I call the meeting back to order.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) to allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.** [Director's Report received and Agency Hearing Deferred, July 9, 2024.]

1. Transmittal of public testimony to Planning Commission.
2. Transmittal of Supplemental #2 to Planning Commission.
3. Supplement to Director's Report pertaining to this matter.

Mr. Hull: I didn't have anybody signed up, but would like anybody in the audience like to testify on this agenda item. If so, please approach the microphone.

Ms. Caren Diamond: Good morning, commissioners. Caren Diamond, thank you for adding conditions to this permit it does help, and I support the added conditions. I do still have a few other concerns. One of them is the size, in the supplemental papers that were given to you it still says the house is 1,650 square feet. The house is more than 4,000 square feet, and so, that really needs to be corrected in everywhere, because there's a substantial difference between a 1,650 square foot house, and a house that's more than 4,000 square feet. Which is way large for the neighborhood, way large for the location and which brings me to, you know, the reason this is an SMA permit and the reason that the landowner is going through the permitting is because it's the second house on that lot of record, and I do believe therefore, it is correct that you make conditions on that first house being removed when the ocean or the shoreline reaches the house. That whole area in that whole stretch of Wainiha is really close to the ocean. There's a lot of old structures, including that one, that are very close to the ocean and planning, and owners are going to have to figure out how retreat is going to happen and when retreat is going to happen, but because they're putting a second structure on this lot, there will be no room for that first structure to retreat when it is time, and so I do think it is a good idea to require that first structure

to retreat when the shoreline reaches it and the ocean reaches it before then and that be a condition of this permit. The other thing I want to address is the view plain and you know next door to this lot is another old house that had been there for a very long time. It never had a fence. Recently the county gave them an SMA minor permit and the whole property was fenced off and our coastal views would have fenced off. And so now this property is saying, well, there are no views because of that fence. Well, fences, I don't know why planning forgot about our coastal view plain needing protection and allowed a fence to do that, but a fence is a quick thing that can come down, and house is not a quick thing, and so when you have a house that is saying that, well, we're not blocking any coastal views because they're already blocked, but they're only blocked by a fence. And I do urge you to downsize, require them to downsize this house, not block coastal views and as well as planning to address the next-door fence and why that is up there blocking our views. But I do thank you for your consideration and it building between the ocean and the highway on these high risk lots is high risk and I do believe that they should also be required to submit a coastal hazard...

Mr. Hull: Three minutes, Madam Chair.

Ms. Diamond: ...disclosure form so that the county is protected. Thank you.

Chair Apisa: Thank you very much.

Mr. Hull: Thanks, Caren. Is anyone else in the audience that like to testify in this agenda item? Seeing none, the department would recommend closing the agency hearing.

Chair Apisa: Motion to close the agency hearing, please.

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

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor to close the agency hearing. All in favor? Aye (unanimous voice vote). Any opposed? Abstentions? Motion carried. 6:0.

New Agency Hearing (None)

Mr. Hull: Next, we would have Continued Public Hearing.

ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = KAUAI COUNTY COUNCIL. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

1. Transmittal of public testimony to Planning Commission.
2. Transmittal of agency comments to Planning Commission.

3. Supplement #1 to Director's Report pertaining to this matter.

Mr. Hull: I don't have anybody signed up to testify on this agenda item, but does anybody in the audience that would like to testify on this agenda item? If so, please approach the microphone.

Ms. Diamond: Good morning, Caren Diamond. Again, I support this amendment. I do believe it is a good thing to limit the density along the SMA and that's a very good addition to this. I also think flood land should not be at, we shouldn't be increasing density in flood land. Mālama Kua'āina recently did a Wainiha flood vulnerability assessment and shows the pretty incredible hazards that exist along the streams and rivers and and other portions of Wainiha, and I do believe that it would be prudent to also omit flood land from this and one easy solution would be to not allow any increased density west of the Hanalei Bridge and both because there is no safe evacuation, there's only one lane road that goes the distance is often flooded and there is nowhere for people to evacuate so, increasing the density in this area is probably not the smartest thing to do and thank you for...

Chair Apisa: Thank you, Caren.

Mr. Hull: Is there anyone else in the, excuse me, in the audience that would like to testify on this agenda item? Seeing none, I would recommend closing the public hearing.

Chair Apisa: Motion to close the public hearing, please.

Ms. Otsuka: I move to close the ZA-2024-3.

Mr. Ornellas: Second.

Chair Apisa: We have a motion on the floor. All in favor, please. Aye (unanimous voice vote). Any opposed/abstentions. Motion is carried. 6:0.

New Public Hearing (None)

CONSENT CALENDAR (None)

Status Reports (None)

Director's Report for Project(s) Scheduled for Agency Hearing (None)

Class III Zoning Permits (None)

GENERAL BUSINESS MATTERS

Mr. Hull: Moving on, we have no New Public Hearing, no Consent Calendar items. Moving on to H. General Business Matters.

Status Report and request to amend Condition No. 10 of Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, and Special Permit SP-2015-1 involving a parcel situated at 5730 Olohena Road, further identified as Tax Map Key: (4) 4-4-003:045, CPR Unit 3, Kapaa Homesteads = **Steelgrass Farm LLC.**

- a. Transmittal of public testimony to Planning Commission.
- b. Director's Report pertaining to this matter.

Mr. Hull: We have a transmittable public testimony to the Planning Commission and the Director's Report pertaining to this matter. I do have a list of signed up testifiers. First, we have Judy Arrigo.

Ms. Judy Arrigo: Good morning. I live at 5700 Olohena and we are at the bottom of the hill and we're here to file a complaint against the Steelgrass Farms for traffic going... we're not against the tours, we're not against the farm, but the traffic going up a very small road in a small subdivision has gotten to be quite extensive, and I found out just recently that one of the attachments that we sent to you, you were not able to open up and it had our traffic survey in it. I do have copies of it, which I would be happy to give to everyone. But I want to explain a couple of things on the traffic survey and one other complaint that's in that attachment that you did not get. We conducted a traffic survey by using some students for a series of weeks in July, June, July and August or June and July, and we had people at the bottom of the hill and folks going up looking at where people actually entered into the farm so that we knew not just how many people were going up the road, but how many were actually going into the farm, and we found that there were an average of a couple hundred, a hundred or so cars that would go up in a weeks period of time, so a round trip, two hundred and some in a month, for four to eight hundred additional cars on a small road. And we've talked to the owner of Steelgrass Farms suggested that they either have people coming off of Waipolui Road where he's got additional acreage that actually connects to his property and that's on a public road so that it's a little easier to work for people to go up and down or to bus people in to have them actually park someplace down in Kapa'a and bus them up so that we will only have one or two buses coming up. This has been a problem for a couple of years where we have actually notified the Board of Directors, (inaudible) condominium association and we've notified the Board of Directors that there is a problem that we're complaining about the traffic going up the hill. It's never been discussed, at least not publicly. It may have been discussed at board meetings, but we don't get meetings, we don't get minutes of the meeting, so we don't know whether it actually is, was discussed. We found, we found out about the extension on the number of tours, so that it's now five tours or five days a week, four tours a day, unlimited number of people. He since has opened up a gift shop downtown Kapa'a, and on the door is a place where they can actually get registered to take a tour, so the tours are may have eliminated the number of people that came for the gift shop itself, but the tours are still there, and they're still averaging anything from ten to maybe more, and that's just cars there maybe four or five people in the car. So, we're complaining about the traffic, not about the tours, not about the the farm itself, have no problem with them doing farming, we have no problem with them doing tours. We just don't want it in a very small road that goes up, that's maintained by the people in the association. The association is made-up of eighteen units. Everybody pays 1/18th for maintenance of the road, and that's our major, it's actually the only thing that we have reserves for is the road maintenance. The Steelgrass Farms actually has more traffic on that road than all the rest of us do, and so, but they still only pay 1/18th of the fee for the maintenance of the road, so our problem, as I said, is not with the tours itself, it's with the traffic that goes there.

Mr. Hull: Thank you for your testimony.

Chair Apisa: Could I just ask you a question...

Ms. Arrigo: Yeah.

Chair Apisa: ...like of your 18 CPR owners, correct?

Ms. Arrigo: Uh-huh.

Chair Apisa: Like do you have a very active board, or you have any meetings to discuss this?

Ms. Arrigo: No. We don't, we don't know. I can't say I don't know for sure. They don't publish meetings if they do have board meetings, it's not published anywhere. The only thing we've ever seen is that an annual meeting, which is basically a, you know, pass the budget and take the reserves and put it in all that kind of stuff. And then there's a an owners forum afterwards, where we've been able to bring up problems. Problem is that nobody attends them and so if they're required, supposedly to have four meetings a year including the annual meeting. As far as we know, they only have one, but if they do have more, they don't notify us.

Chair Apisa: When you say they, you're referring to the...

Ms. Arrigo: The board.

Chair Apisa: ...CPR Association.

Ms. Arrigo: Yeah.

Chair Apisa: So, how did you become aware of, I guess, just from the traffic that...

Ms. Arrigo: Well, we became aware of the approval of the last permit that got them up to five days a week, four tours a day and unlimited capacity. And I think it was through, I think my brother actually got up a notice from the Planning Department that said that that was, that that was happening. We've noticed the traffic, I mean the traffic has increased over the couple of years that he's been doing tours. The traffic has increased quite substantially and the two people that are right on the corner where the where the road goes up the hill are the ones that are most impacted with the traffic noise. The rest of us are impacted with the fact that the tourists come down the hill, they don't necessarily look in either direction. I've become close to being broadsided a couple of times for somebody that's just flying down the hill and doesn't look when I'm going this way. So, we found out through the traffic in from notice from the Planning Department.

Chair Apisa: Thank you very much.

Ms. Arrigo: You're welcome.

Chair Apisa: Thank you.

Mr. Hull: Next, we have Rosalind Lwin. If you can just state your name for the record.

Ms. Rosalind Lwin: Rosalind Lwin. Aloha, commissioners. Thank you for taking the time to hear our plea. My name is Rosalind, and I have in full disclosure, I'm relatively new to Kaua'i. We moved to Kaua'i about 18 months ago. I'm an immigrant from Myanmar, formerly known as Burma, and you might know what's happening in my home country there. We moved from around Oakland, California and you kind of probably have heard about some of the things happening there. This is the first place I've ever felt at home in my life, and even though I'm new here, I'm invested in my home, I'm invested in my neighborhood, I'm invested in my community and in this island. I'm still learning, and I come with you, to you with the utmost humility. But I have some concerns about what's happening here and about what this might mean for the future of our neighborhood and what precedent it might set for our community at large. And so, one of the concerns that I have is this permit that was issued for unlimited tours and unlimited number of participants for these tours. So yes, we have this traffic survey that has been shared with you and I know some of the numbers might be a little bit confusing. So, you'd have to look at it a bit more carefully. And yes, there might be a disagreement between our party and the farms party around what those numbers are, but once you have unlimited, no limitations, whatever it is now, it could very well get worse, even though there have been appreciated efforts to open up the gift shop in town, we don't know what that means, yet it's too soon to tell, and we also know that the farm rightfully wants to grow their business. They should be able to do that. It just shouldn't be at the expense of our neighborhood. We hope to be able to reach some kind of compromise like I, but it's not that we don't want the farm to succeed or do well in any way, we've met some of the people who work there. They're beautiful, lovely, wonderful people. We want them to do well, but our concern is that if you approve no limitations on this, what precedent does that sound. Already we feel like we don't have enough of a voice in this community. As Judy had mentioned, we pay 1/18th of the HOA. Everybody pays the same amount including the farm, and yet what happens on these roads? What happens in the neighborhood? We don't feel like we have equal voice for a number of different reasons. The, Mr. Lydgate not only operates the farm, but he's also the President of the HOA and he has a lot of influence there. And so, we, our only recourse is to hope that you might be able to support us in working things out. I welcome any questions that you have, but I know that was my three minutes.

Chair Apisa: Thank you.

Ms. Lwin: Thank you.

Mr. Hull: Thanks. Next, we have signed up is Bidyut Bose. I might have butchered that, I apologize.

Ms. Lwin: He's hard of hearing, so if it's okay if I sit next to him, in case...

Mr. Hull: Yeah.

Mr. Bidyut Bose: I'm hearing impaired. Thank you. Aloha and good morning. Along with Ros, I'm one of the co-owners of one of the 18 units in the Lydgate Rise CPR...

Chair Apisa: If you could please...

Mr. Bose: ...and you've already heard that...

Chair Apisa: I'm sorry. Could you just state your name for the record and then you have three minutes. Thank you.

Mr. Bose: Sure. Bidyut Bose. And so, one of the co-owners of one of the 18 units. The traffic you've already heard about in the Director's Report from March 8, 2022, there are three things that stood out to me. One, that the report said that it should not impact the quality of life of the community. It also, the approval was conditional, this unlimited capacity was conditional to ensure that the community wasn't disturbed, the peace, the quiet, etcetera, etcetera and that is written into the Director's Report two weeks after the permit was given, all right, unlimited tours, unlimited capacities for two years. The problem of course is air pollution, noise pollution, impact on privacy, the safety of people walking their dogs or children playing and so on and so forth. But the other part of this is that how it was done. I appreciated Chair Apisa's question that you have board meetings, do you discuss this? Small number of people on the board, violating all kinds of you know, you know clauses in the bylaws where there's no elections, there's no discussion, no for (inaudible) annual general meeting. And so, we are struggling to find out when these applications were made over several years to try to get this conditional approval, it doesn't feel right. In February, before we filed our complaint, Ros and I wrote to Will, in the spirit of good neighborliness, that look the traffic is out of control. What is happening here? This is not quite right. Will didn't bother to respond to us in six months. Additionally, one of the people that also brought this up with Will is one of the residents, he was past board member, and he said this is what Will told him, you can't stop me, I have friends in high places, as I heard this, to me it felt like this was not just about an old man with lung issues and heart issues, it was an insult to every single one of you in this panel and an insult to every leader in the county, County of Kauai's government. A rich white man using his power and his influence to basically do whatever he wants is simply not right. It is wrong. We have no issue with the farm members. They're sweet, they're kind, they're polite, they're helpful, but this is what is happening here unlimited today. What does that mean? More tours, more often. More cars? Already we're talking about a hundred cars a week. And that's, you know, hundred cars in four trips, about 20 or 25, you know, per two or four tours. That's about a hundred cars a day. That is...

Mr. Hull: Three minutes, Madam Chair.

Mr. Bose: ...two hundred round trips a week, that is, you know, heading towards a thousand trips in a week.

Chair Apisa: If you could wrap it up.

Mr. Bose: Yes, I just...I'm requesting you respectfully to look at this and to possibly consider three things, one, limit the number of tours and the number of people in the in the tours, you know, propose like we have done to Will multiple times. There's a county road, Waipouli Road that comes right to the farm, use that, why this tiny little private easement for commercial purposes and the third thing is in future, let us make sure that we are all in communication. We are all co-owners of an 18-unit CPR. Thank you. Mahalo.

Chair Apisa: Thank you very much for your testimony.

Mr. Hull: Thank you.

Chair Apisa: Jerry. One of our Commissioners may have a question.

Mr. Hull: One of the commissioners has a question for you folks.

Chair Apisa: Yes, please come. Thank you.

Mr. Ornellas: Thank you for your testimony. I'm just curious those homes in that CPR are all farm dwellings, is that correct?

Ms. Lwin: It's all in the agricultural zone, yes.

Mr. Ornellas: How many people there actually farm?

Ms. Lwin: They are. We are starting a little micro food forest there and then there are a few, a few other areas that are growing some fruits and vegetables, I don't know that it would be considered (inaudible).

Mr. Ornellas: Thank you.

Mr. Bose: Any other questions?

Chair Apisa: No, thank you.

Mr. Hull: Thank you.

Mr. Bose: Thank you.

Mr. Hull: Next, we have, apologize, not quite legible, Kailey Carlson.

Ms. Kailey Carlson: Hello, I'm Kailey Carlson and I'm here to testify in support of Lydgate Farms. I'm the farm manager. Been working there for about three and a half. I've watched this grow from we had about 13 employees when I started and now, we have about 27, so we've grown a ton in the last few years. I will say agritourism is the only reason we've been able to grow as a farm. As you can see on Hawai'i, in Hawai'i in general, ag is very difficult to sustain and agritourism is the only way to really do that. Yes, that involves some traffic, hundred cars a week in my opinion is not that much, especially when we also have 27 employees, so think about how many cars are also employees. The agritourism has funded a lot of the ag research that we're doing at the farm, which is really cool. We're doing some vanilla stuff, we're working with (inaudible) on variety trials, we've been able to do a ton and a lot of it is because of the tourism that this provides. And yes, I understand that there is traffic, but it is frustrating when all of these leases are on the ag land and no one else is doing agriculture and to attack the farm, who's actually doing ag is a bit unwarranted. And yeah, I mean, there are a few alternatives we could look into, but most of them are not feasible for the farm. So yeah, I just want to say that if you do want to support Hawai'i ag, you should be standing with the farm. Our tours just inspire a lot of people to recognize the importance of knowing where your food comes from and Lydgate Farms is one of the few ag businesses that is actually thriving right now. I know a lot of other farms that can't support 27 employees, so Lydgate Farms is just, it serves as a model and I think if you're

going to limit tours to a farm when all these properties are on ag lease land then we need to look more so at who's coming at us rather than the ag itself.

Chair Apisa: Thank you for your testimony.

Ms. Streufert: Could I ask a question?

Mr. Hull: Oh, sorry, Kailey we might have a question for you.

Ms. Carlson: Yeah.

Ms. Streufert: You said that there were alternate routes. You said that there is there were alternate routes to the farm, but they were not feasible, could you explain what that means?

Ms. Carlson: Yeah, there's one route that was proposed that is not actually on our land. So, we lease a back property of 46 acres. We can't put a road on that to have tourists come through and yeah, that was the main one that they proposed, but that's not feasible for us.

Chair Apisa: I heard talk about maybe an access off of a county road, Waipouli road, is that...

Ms. Carlson: I don't think that turn off is feasible and also yeah, the...there isn't a road there right now, so it would involve. I don't think we have, I don't think it butts up to the to the actual road. There's like a big ditch in there too, so...

Ms. Streufert: There was a comment in one of those about safety on the road. Can you comment on that?

Ms. Carlson: Yeah. I mean, we have tons of slow down signs. Yes, we can't control the way tourists always drive, (inaudible) our staff are well trained. None of us go fast on that road. There's a corner that they're discussing. It's not a blind corner. You can see people coming down the hill. Tourists sometimes do drive quicker, but there are probably ten signs that say slow down, speed limit five, drive slow that also direct traffic from getting confused and stopping at the wrong places. I know that was an issue before, but we put in signs. And another thing that they were discussing was the 1/18th that they pay for the road, which does not include like the farm team is, especially during rainy weather out there patching potholes with gravel every week. So, we spend probably five hours in the winter, every week, patching potholes and maintaining the roads so they're not including that in their 1/18th. Yes, we're paying the equal share, but we're also doing a lot of work for the road as well maintenance.

Chair Apisa: Any other questions? Thank you very much.

Mr. Hull: Next, we have signed up is Suzanne, I believe last name is Gold, Gold.

Ms. Suzanne Gold: Hi, this is Anne Gold. I live up in the farm. I've been there for 20 years. Will, I've known him that length of time. He's a wonderful neighbor. Large portion of my land, I think there's two of us that, we have the largest portion, probably the tourist drive along, and I've had no problem. You know, speeding. However, we have some heavy-footed residents who do. So, but the tourists haven't, nice people. And I've noticed since they opened the store, there's been a

kind of decrease in the traffic going past, but I have no complaints about the traffic going and the farm gives jobs to local people and their chocolate is awesome, that's good. As far as she was mentioning about the potholes, most of them are in front of my place. They're really good about coming and they're putting gravel in and kind of filling it in. But like I said, a large part of the traffic travels my yard, and I have no problem with them. Or do I with, you know, the farm. And any questions?

Chair Apisa: I believe not but thank you very much for your testimony.

Ms. Gold: Okay.

Mr. Hull: Lastly, we have signed up Melanie Cameron.

Ms. Melanie Cameron: Good morning. Can you hear me?

Chair Apisa: Yes.

Mr. Hull: Yeah.

Ms. Cameron: Okay. I'm Melanie Cameron. Thank you for hearing me. I have owned our home well; my husband and I have owned our home in Lydgate Rise for nine years. We support the farm and all of Will's endeavors. We are small business owners of our own. So, we always support small business and especially local business. We have been up to the farm for tours, for harvest, all kinds of different things. We've had great experiences. Everyone there working at the farm is very friendly, very nice. As far as the traffic goes, we see the traffic, it doesn't bother us. And I wouldn't even call it traffic. There's just cars and I, it, that doesn't bother me in the least. What does concern me is in the nine years that we've owned our home, I've seen a lot of contention, one sided contention. I, let me just explain. I like people I can get along with most people. We have had time and time again, phone, not phone calls, texts, emails, complaining about, you name it everything under the sun, with us personally, and on the other hand we've had kindness and support from Will Lydgate. It's just a tough thing to have such contention. I, that's very hard for me. I don't have a problem with the traffic. I know this is about the traffic, what I do have a problem is that we're not, some of us aren't extending grace to each other and trying to form a friendly, loving, supportive neighborhood. All I, all I think that we need to do is just extend a little grace to each other. I think that's all I have to say. Do you have any questions for me?

Chair Apisa: Seeing none, thank you very much for your testimony.

Ms. Cameron: Thank you.

Mr. Hull: That completes the list of those who signed up. Is there anyone in the audience who didn't sign up or would like to testify on this agenda item? Seeing none, this isn't, this is an amendment to the existing zoning permit, so the proceedings fall directly into, follow directly into the report. So, I'll turn this over to Dale for the report, the department's report pertaining to this matter.

Staff Planner Dale Cua: Good morning, Chair and members of the Commission. It's a relatively short report, so I'll just kind of briefly go right through the Director's Report.

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).

Ms. Streufert: Could I ask a question?

Mr. Cua: So, that concludes the Director's Report.

Chair Apisa: Thank you, Dale.

Deputy County Attorney Laura Barzilai: Dale, you have a question.

Ms. Streufert: Could I ask (inaudible)?

Ms. Barzilai: Commissioner Streufert.

Ms. Streufert: Have you seen this report? That we were given today.

Mr. Cua: Yeah, I kind of briefly went through it and the total numbers that I saw in the week was less than the stated 200 that was initially mentioned in the testimony. So, I just went off 200.

Ms. Streufert: Okay, because I was not able to, I've been trying to calculate...

(Multiple people speaking at once)

Mr. Cua: I did it.

Ms. Streufert: Doesn't quite make it.

Mr. Cua: Yeah, yeah.

Ms. Streufert: So, I'm not quite sure what this tells me, and I was just wondering what you (inaudible), what yours (inaudible).

Mr. Cua: What I saw is, you know, I think the numbers on the far-right column depicts the number of trips or cars in that week, but from what I saw, none of them reached the 200.

Ms. Streufert: So, it's 468 per month if I'm reading this correctly on the right-hand column. Which divided by four, just assuming it's...

Mr. Cua: Right, so it's a hundred...

Ms. Streufert: ...it's about a hundred cars a day.

Mr. Cua: Right, and the quick assessment I did was 200, worst case scenario, 200 per week.

Ms. Streufert: And of those 200, if there are 27 employees...

Mr. Cua: Probably less.

Ms. Streufert: I'm assuming, let's say, fifteen cars...

Mr. Cua: Hard to say, yeah.

Ms. Streufert: ...give or take ten to fifteen cars.

Mr. Cua: Right.

Mr. DeGracia: I have a question for the department. Question relating to Condition 10. Has the department received any or recorded any grievances concerning the project since 2022, March 2022?

Mr. Cua: Yeah, the more recent grievances received, I think I noted my report was received in February. So, I can confirm that and receiving the grievance members of our enforcement staff didn't go out to the site and essentially their purpose was to observe the number of cars, and their comment was there's a bunch of cars, but, and it's pretty consistent what, with what the numbers that was provided to us so...

Mr. DeGracia: Okay. But no grievances recorded for 2022 or 2023?

Mr. Cua: Since the amendment in 2022...

Mr. DeGracia: Yeah.

Mr. Cua: ...none that I know of in '23. Just early 2024.

Mr. DeGracia: Okay, thank you.

Chair Apisa: Further questions for the planner.

Mr. Ako: I have a question, Madam Chair. I just wanted to follow up on Commissioner Ornellas' question about, you know, whether they do farming. The 18 residents that are there, what is, I mean, are they supposed to be farming or is this like an ordinary community where it's just the residential home?

Mr. Cua: It is an agricultural. It is an agricultural subdivision, and you know, they're zoned for agricultural activities as far as whether each resident is farming, we can't confirm if all 18 is confirmed (inaudible).

Mr. Ako: Okay.

Chair Apisa: Just a...based on my experience, it's a pretty typical ag CPR.

Mr. Hull: Yeah. So, just for clarity, and I think Commissioner Ornellas is going to when he asked a specific question about farm dwellings, so pursuant to Hawai'i State Revised Statutes,

agricultural lands can have dwelling on them, but they have to be only farm dwellings, meaning any dwelling on agricultural lands needs to be connected to a farm. The issue that's risen, though, and there's a constant battle around Hawai'i, is the definition of farm is really you (inaudible) need it with a couple of papaya trees or a couple kalo plants, and so, this whole distinction between genuine farming and disingenuous farming is always, you know, a contentious issue in Hawai'i, and the more, there been several attempts to shore up the definition of farming, but because of placing farming into a box in one category and boxing out what could be farmers, in another category so far, it's generally been left fairly loose.

Mr. Ako: Yeah. Knowing that, I mean, you know, I'm not really into the intent of whether they're farmers or not, but knowing that it's an agricultural lot, do we treat it differently than we, the effects I guess that's going on in that one community there, do we treat that differently than if it's a residential area?

Mr. Hull: Generally, yes, now granted, farm, agricultural lots have the outright ability to retail their product. So, there's no way from a discretionary review process, this body can really regulate the retail aspects of a farm operation insofar as those retail aspects are kept within a certain square footage. But the ability to do agricultural tours is somewhat of an increased intensity pursuant to articles of agriculture use that requires a use permit and so, this body does regulate the intensity and mitigation measures that can be placed on an operation for agricultural tourists, but somewhat going off of the phrase you used, commissioner, of the law, and it's, I just offer this for your consideration because it's kind of where do you go with this. I can definitely appreciate the frustrations that some of the members of the public spoke about having to deal with traffic impacts, but I think one of the members also brought up, you know, and they did as far as condominium property regimes. This is actually one entire lot of record that all these parties co owned together. So, if they're on this property, there's a lot of record actually has the entitlement for farm tours, the entire lot of record. And so, some of the testimony you received today is from co-owners of this lot. And when you look at compatibility issues laid out in the use permit process, it is within a neighborhood or region or area, generally speaking, from a planning approach to it, is that's for the neighbors of other lots around the area and how say the impacts of a proposed use would have on, say, public infrastructure in the area, the road itself, I'm sorry, the county road or a park or a school or what have you, what we have in this situation and is co-owners that have a driveway that they all share that is being impacted by the operation of another co-owner. So, to a certain degree, I would say, planning looks at this, you know, as a civil matter in that we understand this frustrations, but some of this needs to be vetted out and netted out civilly through the condominium association itself and I think there's some mention that bylaws are being violated, and if they're being violated, they need to be, you know, rectified, but they need to be rectified civilly through that process and not necessarily through this body and this particular arena, if you will. Now that's, I'll say the Planning Departments position, I can see where some commissioners say no, no, no, we want to get involved in how this driveway is handled between these co owning parties and I'm not saying legally you cannot do that. I'm just saying our position looks as like, this is an entire lot of record but, I think if the commission wants to intervene on this, it has that authority, but from the department's position, much of the contention needs to be resolved civilly within the condominium itself. I'll leave it at that.

Ms. Otsuka: So, I wanted to discuss regarding the traffic. As shown on Exhibit C, if there's 468 per month, that's a little over a hundred per week. I'm thinking the tours is from morning to

afternoon, and because to me traffic is a hundred or 25 cars, all at the same time, but I see this because it's from morning, tours are morning to afternoon. There won't be an influx of constant traffic all at once. I see like at eight o'clock they have a few cars for the first tour, and so in my mind I feel for the other residents, but I don't see it's a huge traffic problem because it's not all at the same time. Does that make sense, yeah. So yeah, I feel for the other residents and yet...yeah...

Mr. Hull: Well, I think it's also there are questions (inaudible) for staff. I just want to say if there's other questions for staff or myself, we're definitely going to answer them, but also like they know the applicant themselves have presented.

Mr. Ako: Yeah, I have another question here. So, because this is a CPR, I guess lot that's there and, is it a (inaudible) statement to make that we cannot control the traffic that goes within the property there, but we're able to control the tours, the number of tours that they have?

Ms. Barzilai: It's not a county (inaudible).

Mr. Hull: That's (inaudible) accurate.

Unknown Commissioner: That's correct.

Mr. Hull: Yeah. I'd say that's an accurate statement. We're (inaudible) yeah this body does not authority to restrict specific traffic measures, but you do in fact have the ability to set a threshold for tours.

Ms. Otsuka: Which then should kind of control the traffic.

Mr. Hull: In theory.

Ms. Otsuka: Control the tours.

Ms. Streufert: Could I ask Kailey Carlson, I think.

Chair Apisa: One of the testifiers?

Ms. Streufert: Yes, but she's the farm manager.

Ms. Otsuka: Farm manager.

Ms. Streufert: How large are your groups in your tours?

Ms. Carlson: The tours can be anywhere from five to about twenty people.

Ms. Streufert: And so, twenty is your maximum or...

Ms. Carlson: Yeah, twenty to twenty-five.

Ms. Streufert: Are you intending to increase that number?

Ms. Carlson: No, I think that's the max number of people per tour. Just as far as like our capacity like our lanai, we can't sit more than that many people at once.

Ms. Streufert: And how many tours would be the maximum that you could do right now? You've got from nine, ten, eleven, twelve and maybe one.

Ms. Carlson: I think maximum we could do five tours a day, but no more than that.

Ms. Streufert: That's what you're doing right now.

Ms. Carlson: No. We're doing anywhere from two to four or three. Yeah, it, usually they're not full, so...

Ms. Streufert: Okay, so the nine, ten, eleven, twelve, and one that you have here is...is

Ms. Carlson: Nine. Yes, that is max right now, yeah.

Ms. Streufert: So, if that's the case, then would you, and you've got 27 employees?

Ms. Carlson: Uh-huh.

Mr. Hull: Commissioner, (inaudible). I hate to interjecting, and I think that going down a good line of questioning, but Kailey was testifying earlier as a member of the public granted...

Ms. Carlson: Yeah.

Mr. Hull: ...employees of the company can absolutely testify during times for members of the public, but also say that the...

Ms. Streufert: Representing.

Mr. Hull: ...applicant is going to present, and it might be better to get into details with them at that time.

Ms. Carlson: Yeah.

Ms. Streufert: Okay, okay.

Ms. Carlson: Sorry.

Ms. Streufert: Sorry since you were the manager, I thought you were (inaudible).

Chair Apisa: Do we have any other questions of the department or the planner? If not, I think we're ready to call up the applicant.

Ms. Janeen Olds: Just checking. Good morning. My name is Janeen Olds, and I'm legal counsel to Lydgate Farms. Mahalo for allowing us to, we'll keep it short, our presentation this morning. We are here to request that all conditions of the use permit relating to time and dates. Specifically in Condition 2, and monitoring and Condition 10 be removed from the permit. By way of

background, Lydgate Farms right now is part of researching agricultural ecosystem in Kaua'i. Agriculture has always been one of the backbones of Kaua'i. The reliance on shipping is risky, goods having to come from the continent and into O'ahu, and then to finally Kaua'i means that, Kaua'i is one natural disaster or labor disturbance away from jeopardizing its food security, so agriculture remains very vital to our community here, consistent with its own key policies, Kaua'i Kākou, the Kaua'i Destination Management Action Plan and Bill No. 2804, in 2021, regarding agriculture retail stands, are all consistent with what Lydgate Farms is doing now. The farm tours themselves supplement the core farming production business, which has increased by double digits each year since, probably over the last five years and allows Lydgate Farms to practice ethical and sustainable farming. A more expensive but needed component of farming. In addition to the production of award-winning cacao, Lydgate Farm operates three to four agricultural farm tours per day, up to five days a week. Tourists are by reservation only. It is not people just dropping in. They must have a reservation to go on the tour. The revenue from the farm tours also helped to support Lydgate Farms, professional and skilled positions with a living wage plus full benefits. Staffing has doubled since 2022, actually I think even from just last year to what Kailey had said is 27 employees. So, and the farm tours also allow Lydgate Farms to provide almost on a not quite weekly basis, but to provide education and community related tours, introducing our haumana of all ages, from elementary to high school, to have an authentic farm experience where they see firsthand food production, land stewardship and the history of our 'aina, all part of best management practices in agritourism. The future plan just really briefly is continued growth of farm production and diversifying the value added and retail operations review, and also reviewing the relocation of its warehouse facilities so that there's even more space on the farm for farm production and operations. Just some facts that I want to highlight because we did submit a letter on behalf of Lydgate Farms, we need to really appreciate that this neighborhood is an agricultural neighborhood, not a, what's been referred to as a residentially zoned neighborhood. It is an agriculturally zoned neighborhood of which it is encumbered, each CPR lot in there is encumbered by a farm dwelling agreement, and that's what was discussed earlier. And whether you are a continuing original owner or you subsequently acquired the property, since I think the early 2000's when the property was originally CPR. You are subject to, you were made aware of the farm dealing agreement when you purchase your lot, so this should, this is not a surprise as to what can occur within this area. And as was mentioned by the Planning Department, this review today is about the agricultural tours. In 2021, when Mayor Kawakami passed oh, I'm sorry, the City Council as well as Mayor Kawakami, signed on to the bill allowing agricultural retail stands are essentially what's being referred to as our gift shop that's lawfully permitted. So, we're not looking at the traffic. Necessarily impacts there also, but though I'd like to discuss them, and this is also not about farming, because that's a permissible activity. In fact it's supposed to be shared by all the residents who are there. Now the concerns that have been expressed by the residents or a few neighbors involves really four areas which we outlined in our letter, just very briefly. One is about no notification of a March 22nd amendment request. Another had to do with the increased traffic. Another had to do with health and well-being concerns and the other, something that's been discussed is about alternative access to Lydgate Farms. These have been addressed in our submittal and we're more than happy to answer any further questions that you have. I would just like to specifically address what I think is the key topic here today and that's the vehicle traffic, which appears to be the primary focus, so again the use permit really considers the agricultural tour traffic, but I will say that out of that traffic, that is generally, that is going up to Lydgate Farms, about fifty percent of it had been generated or was being

generated by the actual agricultural retail stand, the gift shop, a lawfully permitted activity on the farm, adds value to the farm, allows the farm to be able to be sustainable and viable from an economic ecosystem. This use permit does not monitor or limit the traffic from the farm staff, which may not actually appear in the traffic assessment because they actually get there earlier than eight o'clock. So that's why when you go and you start taking it down, it almost seems like geez, there's only ten cars (inaudible) really coming for the tours. I just want to correct that because our staff gets there fairly early you may see a little bit of traffic if they are having business that has to go outside of the farm, but other than that, they've probably already been on the farm before any, even our own traffic assessment was conducted. The agricultural farm tours themselves have very low impact on the agricultural activity of use, and really they sustain the operations of the farm. Traditional farm vehicles and equipment such as tractors and backhoes and things like that actually would have a much higher impact on this piece of property if they were continually going over that road. Another thing is, is there's mention about being able to bus in, actually the driveway won't permit big buses to come through there. So, the big tour buses cannot come through, vans, perhaps up to about the sprinter vans could fit up into the actual driveway themselves, and quite frankly, some of the increase that might have occurred since especially 2021, and maybe not felt until after the 2022 amendment is due in part to the agricultural retail stand bill that passed, but also just the organic growth which is positive for Kaua'i of Lydgate Farms. So yes, you have more employees, you have more businesses having business with the farm also traveling up to the farm. You know, our traffic assessments were all done by independent third parties professionals and the conclusion that came to there was that the traffic generated by the tours is far below the per hour fee hit (inaudible) traffic to raise any kind of traffic operational concerns. And until today, and we're not, we haven't really had a chance, but it almost sounds like we may have actually consistent data from what was being offered today by one of the other residents. Now just real quickly to talk about a little bit of mitigation that isn't required but which Lydgate Farms is a good neighbor. There's discussion earlier about this being able to hopefully be a cohesive neighborhood is they have addressed mitigation efforts. There's been improvements to the roadway, which we're not at charged to the (inaudible) or the association, and as Kailey talked about, there's been regravelling when necessary, there's been refilling of the potholes when necessary. The times established for visitation and even farming are consistent with what I think many of us see as our normal work day. We're not, you know, most farmers you're, they're sun up to sundown. That's not necessary, that's not happening here. It's business working hours. And then I think the other thing is Kailey mentioned was the signage along the access roadway for traffic easing. There's directional signage, you know, point you to exactly where Lydgate Farms is. There's signage regarding speed, you know, slow down. There's even a mirror that was installed down where we were talking about a blind corner. So, there are mitigation efforts. There is an effort to listen to the community and to take action. There's been other efforts, but I want to respect the time here and so, you know, we're really looking at that the relocation of the agricultural retail stand approximately a month ago, actually almost to the day. First of all, that was a strategic business decision, it was made a year or two ago because, quite frankly, the farm wanted more room to farm. And so that decision was made, the lease was entered into last year with the improvements now taking approximately the first half of this year. So, we knew that it would come with mitigation impacts, that was a positive, but the move itself was a strategic business move just like the review that's now going on with respect to the warehouse facilities that are up there as well, and this was again done with full disclosure to the neighbors. So, consistent with the intent

of both the state and the county to promote agritourism, Lydgate Farms has demonstrated its stewardship and its agricultural lands and toward agritourism, and it respectfully requested all of the conditions relating to time, dates and monitoring and the use permit be eliminated and that and that's what we, we will also answer questions, but if you could, if I could just beg for your patience a little bit longer. I have next to me, Mr. Will Lydgate, who is the owner and operator of Lydgate Farms, and he just wanted to shortly address the commission and then we are more than happy to answer any questions.

Mr. Will Lydgate: Aloha, Will Lydgate, aloha to the Commission and the Planning Director. I just want to thank this commission. Some of you were there two years ago. We're pioneering a new model for agriculture and actually we saw the mayor two days ago, he called us the farm (inaudible) now. You're either mechanized and forty thousand acres, or you're, there's no more middle-sized farms anymore. There's no more thirty-to-fifty-acre people anymore except us. And you know, I really want to thank the commission. You've understood what we're trying to do. I've been before you several times and it's really helped. I have incredible people I've been able to hire, we got Cocoa of Excellence Gold award in Europe, top awards in the world for Kaua'i, you know, and not for surfing, right. And it I didn't do it, it's not me anymore, it's my team and I'd like to apologize, I think there was some confusion, Kailey's our farm manager, who manages all the farm outdoor operations. I have general manager. So, she just, yeah, she doesn't do any of the tour operations, so that might have been the miscommunication, but she did a really good job. Thanks Kailey. Anyway, just mahalo to the commission. I know, you know, we're kind of first out of the gate of this, but you know, I really think that cacao, vanilla, other crops can be those really high value direct sale replacements and you know responsible ag tourism done right. I mean if we're going to keep doing ag, this has to be something that we do and we got to, you know solve these things and make these things work and you know find ways to do it and you know, just trying to do ag on ag zoned land and I really appreciate your consideration and just appreciate your support.

Chair Apisa: Thank you. Commissioners, do you have questions of the applicant?

Mr. Ornellas: I have a question. So, if these conditions are dropped, you will continue to do weekday tours, but not weekend tours, is that correct?

Mr. Lydgate: We don't have any imminent plans to do weekend tours. I mean, if we did maybe something like a kama'āina, kama'āina day. An issue is that local people can only come on holidays, so you know, we feel like we've demonstrated responsible stewardship, and we just want the ability to be able to make our own decisions regarding the market. I mean, we can't necessarily sell out tours. There is a market, and we just wanting the flexibility.

Mr. Ornellas: And your hours of operation won't change?

Mr. Lydgate: I'm not planning on, there's no plans to make any changes.

Mr. Ornellas: Thank you.

Ms. Olds: And just a just a slight correction from what Kailey had said earlier is that actually the maximum number of participants generally is or will be up to about 25 and that is purely just to provide a quality tour because after that the different models have been tried it, it just does not

provide the quality that Lydgate Farms wants. So, it's kind of a little bit imposed, self-imposed by that, as well as the number of tours themselves, I mean, there's only certain amount of hours that actually they want to run the tours and the tours are three hours in length, and so, you know, there's only going to be so many. And right now it is at three to four tours a day.

Mr. Ornellas: It's a nice gesture not to work the weekends, and I appreciate you doing that, although you don't necessarily have to.

Mr. Lydgate: And we don't weed whack move back before 8 a.m.

Ms. Streufert: I have a question. If this if this condition were to be revised, so that there would be another review in two years, but there would be no limitation on the number of tours or the number of days, I mean all those other limitations were to be taken off, but it would be revisited in two years. Would that be something that you could, you could accept?

Ms. Olds: I believe that's what we have currently.

Ms. Streufert: Right.

Ms. Olds: So, you're, you're suggesting that it remain as is.

Ms. Streufert: Well, I'm. I'm just wondering why is the, is it the two-year review that you're opposing in this because there are no conditions on the number of tours or the number of people that are on each tour right now. There's nothing about the days of the week. There's nothing about the number of tours.

Mr. Lydgate: If I could speak to that?

Ms. Streufert: For people.

Mr. Lydgate: I think the, the way we have it set up now with the legal structure of agtourism is under this use permit, which I believe at any time there's the ability for, you know, we operate at the commission's pleasure. So, I think removing that is just making it so we don't have to come in. But I think at any time we could, that could be triggered. The Planning Director could say, hey, come let's talk about this. So, it already feels like we're walking on eggshells and so, but whatever the commission decides today, we're going to, we're going to work with and do our best to keep doing ag. But we prefer to (inaudible).

Chair Apisa: Our counsel may have some comment.

Ms. Barzilai: The director would like to comment on that, but it would result from a complaint or an enforcement action if Mr. Lydgate were to be called back in.

Chair Apisa: So, a complaint or an enforcement action could trigger a call back in.

Ms. Barzilai: And he would continue to appear for his annual status report. There's a status report requirement?

Chair Apisa: Annual?

Ms. Streufert: That's what they would like to get rid of.

Ms. Barzilai: No, just a general status report. There's no general status report requirement? No, okay. Thank you.

Ms. Streufert: We applaud, well, I applaud you're, you're using agricultural land for agriculture. I really do. I'm just trying to find a way to, and a lot, a lot of the issues that have been coming up I think are civil, and they are not anything that we have anything to do with, but the number of, so the only thing that I can imagine that would be somewhere in between is to keep the requirement for a two-year or three-year review, but leave all the other conditions the same as if it is right now, which is no limit on tours, no limit on the people in each tour and on the days of the week, because that is not there in here to begin with anyway, it's just a review every two-years. Is that correct?

Ms. Barzilai: Maybe Commissioner is asking for a status report.

Ms. Otsuka: Yeah, I think that he would appreciate not having to come back.

Ms. Streufert: Right, that's (inaudible).

Ms. Otsuka: In a way, for me, I think it's, it's, I would not, I would feel like I had shackles on. If I had to come back, you know, every two-years, go through the whole process again, hire an attorney. Yeah, I would still feel like I had shackles, and he wants the shackles?

Chair Apisa: So, what you're saying is just the threat of a public complaint, could bring you before the County...

Ms. Otsuka: Yeah.

Chair Apisa: ...Department or Commission, so that alone would keep you...

Ms. Otsuka: Yeah. Keep him on his toes.

Ms. Olds: And I think the other consideration that we have too is that first of all, as Mr. Lydgate said, that we will be compliant with, because this is necessary for the sustainability of the farm, however because there are already regulations and rules in place, I think the other thing that that we think of as much broader also is that to the extent that it perhaps represents precedent to how others who may come in requesting a use permit for agritourism. I think that's also just something that we are trying to, to encourage others to do as well. And I think some of the comments that that were made as to it, it's not shackles, but it is showing good stewardship. I, you know showing the, what happens when you have growing pains and how you address it and I think that's what we've come forth today to try to provide examples of how that has been accomplished by Lydgate Farms.

Chair Apisa: So, just for clarity, the access which has been, I think referenced as a road is really your driveway or CPR driveway, a shared driveway?

Mr. Lydgate: It's an easement, partially covered with concrete, partially covered with gravel, at least 30 foot wide.

Chair Apisa: But it's all within, it's in common element of the CPR.

Mr. Lydgate: It's not a common element, it's not listed as a common element. We had a lot of fights about this. What the definition of it is, an easement which has an easement cover that a certain portion of which just the very bottom portion people pay to repair, and the rest is taken care of by the owners who are beneficiaries as smaller huis outside of the governing body of the (inaudible).

Chair Apisa: Okay. So, it's an easement within the CPR.

Ms. Olds: Easement is within the driveway.

Ms. Barzilai: Referred to as a driveway.

Mr. Hull: Yeah, I'll (inaudible). We use the driveway, right, generally when speaking of a roadway that doesn't meet the county the standard roadway standards, but it's used for access purposes.

Ms. Olds: Yeah.

Ms. Barzilai: In other words, it's internal to your CPR.

Mr. Lydgate: Correct.

Ms. Olds: Yeah.

Chair Apisa: Right. Yes, thank you. I mean that was all I was trying to clarify. Thank you.

Mr. Ako: Madam Chair, I got a question. Let me just start by saying that I, you know, I haven't heard anything to say that in anybody is against ag, you know, and neither am I. I also want to come up to say that, you know, I just want to thank everybody for making their presentation so clear and concise. So, for my mind anyway, it makes it very understandable in terms of where both positions are coming from at the same time, because it's so clear. I mean, there is a (inaudible), yeah, between the two positions that are being taken here. And thirdly, I just wanted to say that, I think there's a lot of courage that's in this application itself, because we're not talking about the community of Līhu'e out there, where people can just testify and pretty much you're the unknown that comes in here, yeah, we're talking about neighbors over here that kind of live together. So, I appreciate that. And then I think in spite of all of that, I think the main issue that we're dealing with over here is the, what we going call traffic, yeah, whether it's all at one time whether it comes sporadically, it comes down and the study that was done to make the determination, yeah, I think what confuses me is the fact that we use a study that is used by standards of the federal level as well as the City and County of Honolulu out there, which we're talking about 1400 cars per hour that passes, and we're using that same standard, which I'm looking at it like, 1400 cars an hour for Olohena Road, that same standard is being applied to this little driveway that goes up the road. And in my mind that's being taken out of context over there.

You know, and obviously I think we're looking at 1400 cars an hour that's going up that driveway is, I mean, in my mind anyway, that's, you know, that will not happen and that cannot happen. And yet when you're talking about the numbers, I think that we've been looking at, I think I kind of question about the validity of the data, but it kind of comes out about the same, yeah, I mean we're not way, way off on this. I think the one that we have here is talking about data that's coming from several dates that has been looked upon as opposed to the federal one, but a study that was done which was only a, one day, it was just a photographing time that was done, so, I'm not sure whether that was really reflective, but how would you respond to the fact that you rely upon that survey that is done by the Federal and City and County of Honolulu, those standards, which in my mind, yeah, doesn't really apply to the driveway situation.

Ms. Olds: So, we actually question on some Austin Tsutsumi, who was the consultant who conducted the traffic study, about trying to find something that was more comparable closer to the actual access, the roadway access itself and they couldn't find a standard for that. So, it's not that those, that was the, that was the closest that could be found. It was questioned and asked because, we asked that ourselves too. I think what's important to remember is I have not seen what was presented by the neighbor, but it sounded, and then from the calculations that were done by the Planning Department to be fairly consistent, I think what we also have to remember is I'm not sure the dates on those because I know ours and you are correct, it was it was one day. Ours are reflective of before the relocation of the gift shop to Kapa'a Town. So, we're already looking at about a 40-50% drop in that whatever those numbers are, because as of, I think this past week, maybe there are a handful single digit number of cars that we need that are coming up to the farm that we redirect because they really just wanted to go to the gift shop, so, those numbers themselves, depending on the date of when it was taken, may also actually now have a significant rejection just by the relocation.

Chair Apisa: Would the Commissioners like to entertain an executive session? If you have any questions that you need clarify on what's a CPR and what's open or...

Ms. Barzilai: There doesn't appear to be interest, Madam Chair.

Chair Apisa: Okay. Thank you.

Ms. Barzilai: Looks like Commissioners are okay with what they've heard so far. I can comment on any of it as needed in open if we have to.

Chair Apisa: Alright. Thank you.

Mr. Lydgate: Chair, can I add something? Pursuant to what Janeen was saying, you know, we have some sort of after relocation, we moved our agricultural retail stand down to Kapa'a, right. And we prefer to do tours, you know, it's easier for us to know when they're going to come and then they have directions, right, as opposed to drop in, which we can't control. So, this week, and one day was 27 cars came for the tour. I mean, so, you know, there's the word traffic which I think has a definition both of cars on the road, and also stuck you know, but I really feel like Mr. Cua was saying, you know, you're really divided and you look at this is, you know, maybe three cars are in the driveway at the same time, and there's nothing for ten minutes, I mean, saying it's traffic and it's detrimental to, you know, this and this, it's, you go out to the drive, which I

imagine the inspectors did, like this hold on nothing for most of the day, so 40 cars over an eight hour period, I mean, so it's really I think this is different, things (inaudible) discuss. If you don't look at the roadway, you can't them.

Chair Apisa: Well, I think with traffic, as with most things, its noise, it's everything. It's what you're used to and what your expectation is. What bothers one person doesn't bother another.

Mr. Ako: Is the gift shop still in operation up there?

Ms. Olds: No.

Mr. Ako: No.

Ms. Olds: No. It closed...

Mr. Lydgate: July 15th.

Ms. Olds: July 15th.

Mr. Ako: So, I know there was a statement that was made that the retail store is pretty much is getting their income now from the tours. What does that mean?

Mr. Lydgate: (Inaudible). So, if you come on a farm tour, there's a special gift shop just for you, where there's items that you can only get if you come on our farm tour, especial stuff and then if you just want to buy chocolate, you go to Kapa'a.

Ms. Olds: Yeah.

Mr. Lydgate: And we have an online store. That's, online store's been moved down to (inaudible) Street, ocean side where we lease the warehouse.

Ms. Olds: So, the gift shop closed for drop ins, that, maybe I should clarify that, July 15th. The only people who can actually buy product on the farm itself are those who participate in the farm tour, at the end of their tour.

Chair Apisa: And like what type of products are, like you said, you can only buy the T-shirts or...

Mr. Lydgate: Chocolate, Special Bars, Reserve bars, we do have some logo wear at that shop, and this was the original gift shop that was conceived in the first tour permit, and people just started dropping in and say, hey, can I buy chocolate. And so, this whole business line evolved under the permit and then now as an outright permitted use and that was when we decided to move because we have control over the growth of that.

Chair Apisa: Chocolate, right.

Mr. Lydgate: We wanted to, I'd rather have fewer people, you can make more money and have fewer people on their property with tours, which makes much more sense.

Chair Apisa: How, a question on the driveway and the landscape. How is the driveway landscaped? Is it lots of trees? Hedges?

Mr. Lydgate: In very various ways certain yards are very exposed. And I think those are the people I tend to notice here about traffic, some are completely blocked, they can't see the roadway at all. Each lot (inaudible) does its own landscaping and there's no common elements, so, there's not like a (inaudible) to maintain. It's a fair amount of areca palms on certain lots, some lots have everything chopped down, and you have full view of the road.

Ms. Otsuka: So, you plan to maintain two retail shops at all times? I just assumed the retail shop and Kapa'a Town you're going to close the one at the farm.

Mr. Lydgate: Well, we still want the one for the tours. I mean, if you wanna, you know, open up the playbook here, if you look at a place like Napa Valley, you know, the special stuff you can't produce that much of it and you want to be able to sell it to a more high-end customer. So, if you go to a winery (inaudible) the reserve stuff, and so when you take your best stuff and that that's the premium product and then you have a place to put all of your different grades and products, it's a very old strategy comes from Porto in Portugal, champagne, it's the same strategy. So, we want to make coming to the farm very high value, lower volume, business line for us and then there's people who maybe aren't interested in that kind of high value kind of more scarce product and maybe they want to go to a (inaudible) business line that has more volume, place in Kapa'a, placed on the side of the road. So, that's a little bit of my playbook there.

Ms. Olds: So, the answer is yes that we will have, we will continue to have a retail store that is going to be only available to those on the tours and it's actually situated on the farm and then in Kapa'a Town itself.

Chair Apisa: So, the one on site is limited to people on the tour.

Ms. Olds: Yes.

Chair Apisa: Thank you.

Ms. Otsuka: So, being that the store just opened about a month ago, how, what are your intentions, how will you be able to get the people who don't plan on going to the tour, know not to go up to the farm?

Ms. Olds: So, since...

Ms. Otsuka: Is it...

Ms. Olds: ...several months before relocating, there's been marketing efforts, as well as mail out efforts based on customer list and when they approach the farm, they're asked if they're going to be joining, you know, if they reserved a spot on the tour, and if not, then they'll redirect, but those re...what we call redirects have really started to fall since we have moved the retail store down to down to the town area. So, there has been concerted advanced marketing efforts to let people know about where to go to shop purely for a chocolate tasting, as well as shopping without the farm tour itself.

Ms. Otsuka: So, it's going to be even shown on the website, the farm website?

Ms. Olds: Yeah.

Mr. Lydgate: Yeah. In fact, we also, Commissioner, changed the names, it's Lydgate Farms Estate Tours and then the Lydgate Chocolate Tasting Room...

Ms. Otsuka: Oh, okay.

Mr. Lydgate: ...is the name of Kapa'a. So yeah, we did a whole sweep of our online thing. There was a big campaign. And it's been effective.

Ms. Otsuka: Okay. Yeah. It just concerned me because if the people who just wanted product didn't know it, they would all still continue driving up to the farm and then this would not, this would still be an issue.

Mr. Lydgate: Yeah, we've never had a sign on the side of the road that says, free chocolate today or anything like that, even though we absolutely could've. So, it's, most people find this online and then hopefully get that information and get directed to the correct business line.

Chair Apisa: Thank you.

Ms. Otsuka: Thank you.

Chair Apisa: Gerald?

Mr. Ako: If I can just add again. Yeah, I think on this issue here, my real big concern is the fact that I remember you coming here, Mr. Lydgate, about two years ago, right in 2022, I had no idea who you were. I had no idea about Lydgate Chocolates or anything. Today I know, today I know, and I think a lot of us today know that, you know, you folks have just a superior level of chocolate that, you know, that you make. And I don't think anybody here wants to hurt that business there. A statement that was made in here was that if there is an adverse effect about limiting the tours that come to the farm with supplements, I guess the farm activities there that you may go into now the floral side, or which would bring in the bigger tractors and the bigger trucks into the, I guess now going down the roads and all of this here. How much revenue do you generate from the gift shop and the tours as compared to the manufacturing of your chocolates itself?

Mr. Lydgate: (Inaudible) percentage.

Ms. Olds: Okay.

Mr. Lydgate: Yeah. With the online store and the past model, it was about 50% was generated from the tours, and 50% generated through the substantial chocolate sales. I don't know what the calculation is now because that Kapa'a store is moving more volume so, ...

Mr. Ako: I'm sorry. What was that again, 50% percent comes from the...

Mr. Lydgate: Tours...

Mr. Ako: The tours?

Mr. Lydgate: ...and 50% comes from product sales at wholesale.

Mr. Ako: And the rest comes from the...

Mr. Lydgate: Product sales.

Chair Apisa: I would imagine they're somewhat related because the more tours, more tours, people go on, the more they're aware of it and the more they're going to buy more chocolate. So, there's definitely a marketing correlation.

Mr. Lydgate: There's very much a correlation. Thank you. The (inaudible) correlation, and so, after you come on the tour of like it, we'll get your e-mail and then there's an e-mail marketing campaign and so and people buy it as a souvenir of this place just like you would have a relationship with a winery.

Chair Apisa: Right.

Mr. Lydgate: (Inaudible) more wine from them (inaudible).

Mr. Ako: I think I'm confused. If we eliminate the tours totally, that would be 50% of your, of your business or your entire...

Mr. Lydgate: (Inaudible) eliminate the on-farm gift shop, so as the Chair mentions, it would be a devastating blow to the business, yeah.

Mr. Ako: Wow. So, if we cannot deal with the traffic, but we can deal with the tours, then that in return could have a significant impact upon the existence of Lydgate Farms?

Ms. Olds: Yes.

Mr. Ako: Really?

Chair Apisa: I believe that a couple of years ago maybe, I mean, it was established that, and Ka'aina correct me if I'm going off the deep end here, but that there can be farm stands to support agricultural activity, I think Kaneshiro and I don't know if others have come with that position and saying how that was needed to substantiate and make the farming viable. So, I think there is a precedent and some laws regarding being able to sell your products on agricultural land.

Mr. Ako: Well, no, I'm not concerned about whether, where you sell them or whatever. I'm just surprised that the tours are that significant of a part of the chocolate business.

Mr. Hull: The, I can just add Commissioner Ako, I'd say the department, the Commission gets to see about maybe 10% of potential applicants that come in to the Planning Department looking to get a use permit. We have a number of applications every year for farm tours. The vast majority of them, we explain to them, you absolutely have the right to apply, but the Planning Department

will not be supporting a petition because you don't have enough real genuine agricultural occurring. You know, they're yoga retreats and, you know, papaya is going to be a part of it, so, the potential for tours generating a revenue is always there on, in Hawai'i because of the landscape we have. But to really use it and fold it into an actual bona fide agricultural model, I think it's becoming part and parcel, part of the picture statewide.

Mr. Lydgate: If I could add a comment. Think of the ag like the asset and the tours of the investment. So, countries take like about eight years to return on investment, (inaudible). So, you really don't get anything for three or four years. And so, it's very expensive to put out all that cash. So, it's a tours, are our strategy that allows us to build those agricultural assets up in a way that say we didn't have that and we just all we have is the agriculture retail stand. We would just put a sign on the side of the road free chocolate today. You know, we would have people coming through, we would survive just on that. It would mean we have to do some layoffs. Maybe we can't afford organic fertilizer, you know what I mean, it would become a little more scrappy and like much of the farming you see where people are really hand to mouth. And I know, I know members of this Commission understand, you know, agriculture and how that is so, that I have a farm (inaudible) and agronomist. I have a tree crop specialist, all he does his graft all day. That's a, it's deluxe, I mean this is I'm so stoked on my people, and you got to pay people super good and it's really expensive here and housing is incredibly hard to get. So, that's the reason to have such a great team and the fact that I have a (inaudible) and better net margins because I run tours, that's what allows me to have this staff that's growing and stoked.

Mr. Ako: Yeah. And I think for me too, yeah, I think on the other side as much as I appreciate the fact that, hey, you don't get your tours, you may have to lay off people and all of this at the same time, I guess two years ago, I didn't know who you were, today I know that you are, you know you are across the nation, you know, going worldwide and what that also brings is the fact that when I come to Kaua'i not only am I going to the must see is going to be the go to Koke'e, right, it's going to be to go to Lydgate Farms, which is a great thing. And at the same time, yeah, I guess, what does greatness do to your, and how does it impact that group that's living on that road there.

Mr. Lydgate: I can speak too.

Ms. Olds: And, Commissioner, and just to follow up on your comment, I mean part of it also, if it was only the agricultural retail stand, then we're going to have the traffic impact be even greater yet it's not going to, it's a permitted use. So, if we didn't have the tours, then one of the alternatives is going to go back to the traffic that we're, it's going to be increased traffic impact because now the retail stand has to be on the farm. That's part of what the 2021 ordinance requires. It's value added on the farm with the restrictions that are there. So, I mean...

Mr. Ako: Correct, but what was it...

Ms. Olds: ...there's a, there's a balancing.

Mr. Ako: Yeah, but (inaudible) that issue today, right, is the traffic that is generated by the tours, right, not so much the gift shop, I mean, I guess if I live there, I don't really care, right. It's just

how many cars are coming over there, but I guess technically, we're looking at the impact of the cars that are generated by the tours itself.

Ms. Olds: Yeah.

Ms. Streufert: Just a question since this, the, your gift shop is about a month old and we really don't know what the impact is going to be from, of having a gift shop in Kapa'a. If we did this for another two years, so you would have to come back in two years and just tell us how it went. Is that...because that's all it is. This is not limiting tours. There's no limit on the tours, there's no limit on the total number of people. That's not part of Condition 10. Condition 10 is just coming back in two years. Is that correct? Did I misunderstand that one?

Ms. Barzilai: If there are grievances, it can revert back to prior condition.

Ms. Streufert: But that would be, that would have to be another discussion in this commission.

Ms. Barzilai: That, it would, if you delete the condition today, it would come in the form of enforcement action.

(Multiple people talking at once)

Ms. Barzilai: What I think I'm hearing...

Ms. Streufert: What I'm asking is, this condition does not limit the number of tours, it does not limit the number of people, it does not limit the number of days. All it does is it says in two years you will come back.

Ms. Barzilai: Yes, but if there is a grievance and mitigation measures aren't acceptable prior to our limitations can be reimposed.

Chair Apisa: If there's a grievance, it could change everything that there, that they come back, but that's if they...

Mr. Ako: So, your suggestion is really to amend the condition that we have now by extending the date.

Ms. Streufert: Exactly. Just keep the date but not make it so, I mean it has to be a significant grievance or it has to be more than X percentage of the people who are part of the CPR or something like that because otherwise you're right, you know, one person with a grievance can make this stop, but it also, it would just, I don't think it's correct but one, but at least there's an outlet for people who live in that CPR to have an outlet that is not an enforcement action, I mean that goes from zero to one hundred all at once and I would prefer that there be some kind of a mitigation in between that all the CPR members can agree upon. And right now I think that's what we have here, but it's not, but we don't go from (inaudible) from everything is peachy keen to or chocolatey nice to, you know, it goes to we're going to go to court. I mean, there's some, there's got to be something in between for people who are not comfortable with either traffic or not, we don't really have the data yet to see what the impact of the Kapa'a store is going to be yet. I think you can rightly make it an assumption that there's going to be less traffic, but until you

have the data, I'm kind of a data person. I was kind of trying to figure out the number of cars and stuff. I would like to see some more data before I say no, you don't have to come in but, after two years, I think one or if you if you want to make it three years, you know, whatever. But at least that there's there is some kind of an outlet for the people that are living in that CPR, that doesn't go all the way to enforcement for the first time. So, that would be my recommendation, but I mean that would be where I would stand on this thing that this does not limit the number of tours, this does not limit the number of people, it does not limit the number of days that can go. If I'm wrong on any of those three points, then I would like to know that.

Ms. Barzilai: Chair, I think what Commissioner, is asking for is would you like an annual?

Unknown Commissioner: No.

Ms. Barzilai: Or you want every two years a written status report that can then be discussed by the Commission as an outlet for public comment.

Chair Apisa: That's what I'm hearing is...

Ms. Barzilai: Because...

Chair Apisa: ...Commissioner Streufert's position.

Ms. Barzilai: ...the other...

Ms. Streufert: And that would, and it would be then, I mean both we have, we don't limit the number of tours, we don't limit you in any way because we all want to support agriculture and it is the, it is the utilization of agricultural land for agriculture that we really appreciate, okay, but it's that there are apparently issues in your CPR and we would like to be able to not go directly to an enforcement if someone gets upset.

Ms. Barzilai: The other option are, petitions to modify the conditions that can be brought by the department or the Commission itself later on. I don't see it coming to that. Things are moving smoothly, but the status report that Commissioner is speaking of this is going to require an agreement in the Commission now to add that as a condition.

Ms. Streufert: As opposed to this, what we have right now which is the (inaudible).

Mr. Ako: Would it be a status report or would it be that in two years or three years, whatever that that they are able to come back and again remove this condition?

Ms. Streufert: That's all, that's all...

Ms. Barzilai: Then you would be denying their application for today because you have two things before you.

Mr. Ako: Well, you...

Ms. Barzilai: Sorry, Ka'aina. Please go ahead.

Mr. Hull: Yeah, and I'm just trying to clarify and not the department's taking a position on it. I can voice the departments position, but to clarify thing where you're going, Commissioner Streufert, in the comments, you (inaudible) Commissioner Ako, I think what Commissioner Streufert what you're saying is you'd like to reestablish conditions, no, no, keep Condition 10 in place, and that after two years so, we could set a date, August 13th, 2026, so that we, let me read what I've gotten and see if it gets to what you're attempting to propose, Commissioner. The Condition 10 would be amended to read as follows; The projects shall be monitored for a period of two years from August 13th, 2024, in that time, the department (inaudible) record any grievances related to the project, if any, within the two year period, the project shall be revisited by the Planning Commission. The applicant may be allowed to continue to operate with no patron limitation. However, additional mitigation measures may be imposed to address any issues or impacts, if any. If projects result in impacts to the surrounding neighborhood due to the removal of the maximum number of patrons per tour, the Planning Commission may consider requiring the tour operation to revert back to a maximum of 25 patrons per tour as originally conditioned.

Ms. Streufert: I would prefer not to have the second part of it in there, and I don't think we want to revert or anything like that. That's something that the next commission can actually determine what they want to do. That's not for us to determine right now.

Mr. Hull: Okay, so (inaudible) amend the...I can rephrase, the project should be monitored for a period of two years from August 13th, 2026. In that time the department shall record any grievances related to the project, if any. Within the two-year period the project shall be revisited by the Planning Commission.

Ms. Streufert: Period.

Mr. Hull: Period. Ultimately, a motion would have to be made, and seconded, if you folks wanted to discuss it.

Chair Apisa: Yeah. At this point, it's just...

Ms. Streufert: It's just (inaudible).

Chair Apisa: ...what's on the table. Right, it's just a suggestion of one or two commissioners.

Ms. Barzilai: Maybe they'd like to hear from the (inaudible).

(Multiple people speaking at once)

Ms. Otsuka: I can understand only if there's grievances, the next commission, if there's grievances, then the next commission has to figure out.

Ms. Streufert: What the mitigation is.

Chair Apisa: Well, I think if there are grievances, it comes before you at that time and not waiting for two years, correct?

Ms. Barzilai: The language that our clerk just read doesn't address grievances. It addresses monitoring...

Mr. Hull: Yep.

Ms. Barzilai: ...which I believe is something that the department does in any case.

Mr. Hull: Yep.

Ms. Otsuka: Because I feel people who have concerns about the traffic in two years will still have concerns about the traffic, whether, even if the traffic is reduced as Chair Apisa mentioned, each person has a different idea of what traffic is, what quiet, a quiet neighborhood is. So, I believe the retail store in Kapa'a Town will significantly reduce the traffic. However, I feel in two years there will still be complaints.

Ms. Streufert: And that could be, I can't, I can't hypothesize what's going to happen. I'm just thinking that in two years, we'll have more data. Right now, we have one month of data about what the whether (inaudible).

Ms. Otsuka: Yeah, that's my concern too. There's only one month of data.

Ms. Streufert: And so, that's, and based upon that, I'm trying to make it as easy for them to continue the operation of, of the farm, because it is a fantastic product, and everybody knows it. You know you're doing agriculture and agricultural land. The question is just one of...is it going to, if there's a status report or if you or if something were to, they would be monitoring you for two years, would that be an issue?

Chair Apisa: Yeah, I would like to hear just some input from the applicant after all of this discussion amongst the Commissioners.

Mr. Lydgate: We've, speak from the heart. I think I've; I've always felt that we operated at the pleasure of the commission and I think you've heard from me, it does feel a little bit like walking on egg shells because anytime you get out there and do something, there's going to be someone that doesn't like it and, frankly we've been getting, I've been hearing similar feedback from one individual since we had, you know, seven cars, three times a week. And it's been just as impassionate and negative. And I've (inaudible) there's a long history there. I didn't bring any of that up, I decided not to share any of that with you at the advice of my attorney because we want to be, you know factual and I don't think it's a lot of cars. You know, this could just be what it is, I'm happy to come back for the commission if that's what it gets, gets this done and gets us off and going and I think, you know, there's the commission isn't the only, you know, the end all be all. I mean, it's there's other ways that we can take a look at this, and I think that, you know, tides are changing to move in the favor of these kinds of uses. So, there's work that needs to be done outside of just a use permit, right, to see what is a bonafide farm, right. Do we want to do farm tours on our island? You know, because these kinds of issues are going to keep coming up, and I really do want to clear the way for predecessors. I want, I want, I want people to, people who come after us. I want the other people to be able to get into this stuff and frankly, this is the kinds of issues you have when you have residential you know uses in agricultural district. You find it all over the country, all over the world. It's a very common issues, I learned that in ag leadership

program, they have it everywhere. It's in Massachusetts, it's in New York, it's in California, it's everywhere. And it's, you know, I feel the support and I really appreciate the accommodation for doing ag on ag land and making a world class product, and we're going to keep doing that and I'd be happy to come back and see you all in two years or three years and you know, I'm just, I'm really trying hard to be a good person and be a good neighbor and I'm going to keep on doing that, and I think it's just part of kind of being sort of the first out of the gate with these sort of paid tours. Like I tell you from 20 years ago to now, it's already a sea change in people's understanding. And I went to the at the federal level, Schatz's office is talking about this kind of stuff. They're finally starting to look at, like, oh, this might be the new medium sized farm, right.

Chair Apisa: Thank you.

Mr. Lydgate: Is that okay?

Ms. Olds: Yeah.

Mr. Ako: If I can add, Madam Chair. Maybe. Yeah.

Mr. Lydgate: Yeah, yeah, I know, it was mentioned to, you know, just remove restriction restrictions on dates and times and then have us come back in two or three years and that would be very favorable to us. You know we think we're good operators and we want to have a little flexibility with how we do things, you know and we already, my point earlier, already operating under a use permit, which at any time you know anyone can complain. So, I have that already over my head at all times.

Chair Apisa: Alright, thank you. And I don't want to put Commissioner Ornellas on the spot, but I would be curious to see if you have any input just coming from a farming background.

Mr. Ornellas: I certainly do.

Chair Apisa: Alright.

Mr. Ornellas: People who move into a rural area, especially here in Hawai'i, that's zone agriculture, and expect utopia. The true meaning of the word utopia means nowhere because it doesn't exist, so you wouldn't buy a condominium in Kapa'a Town or in Waipouli and then complain about the tourists. You wouldn't buy a home next to an industrial area and then complain about the noise. Working farms can be messy. They can generate noise, they can generate smells, they can generate dust, right. The farm, I'm familiar with Mr. Lydgate's farm. It's a very quiet farm. A lot quieter than mine. I try not to work on weekends out of respect for my neighbors, but frankly, farming is a business and we need to operate our businesses. Farming is a seven day a week operation. Yeah. So, because he runs Orchard, he doesn't do tillage all the time, he doesn't do spraying all the time, he doesn't do a lot of the activities that most farmers do. So, along those lines, about ten years ago, the legislature, in their wisdom, struck down convenances, conditions and restrictions. So, CC and R's on agricultural CPR's right, because they recognized that farmers cannot operate under conditions, especially when their favored residents, oftentimes unfamiliar with what goes on in a farming community, so, you know, that's just my two cents.

Chair Apisa: No, thank you. And I do recall that I believe it was Aliomanu Estates that brought that new laws into effect. So, thank you very much. I value your input. Thank you.

Ms. Barzilai: So, Chair.

Mr. Hull: Oh, sorry.

Ms. Barzilai: No, go ahead.

Mr. Hull: I'll just stating, I crafted of the language the way I think Commissioner Streufert was trying to memorialize it. And I just, we crafted the language, but I'll just from the department standpoint again raise just a bit of concern. I do think the body does have the authority to intervene in limiting tours to address traffic on a driveway. I do think you have authority, I'm not pushing back on that authority, however just as a matter of practice and of philosophy from the Clerk of the Commission, I generally advise the Commission not to get into what are civil disputes. There was a few years ago when there was a restaurant and hotel and they attempted to try to litigate their civil issues before this body and then, you know, I have strong contention of any civil group and in both those situations, in this situation is a condominium property (inaudible) that have very specific bylaws and HOA processes that can remedy it or keep it in place, but again, I'm not trying to push back on your authority to intervene, I just as a practice, I do have concern about getting involved, the Commission getting involved in what is clearly a civil dispute. I've added, if the motion passes, that's 2026, will be around the time you'll be getting a new clerk, and that clerk may have a different philosophy, but for now, that that'd be my advice.

Chair Apisa: Thank you for...

Ms. Otsuka: Thank you.

Ms. Streufert: And if that were worded the way you had it, have it right now, which is very, which limits this, would that, would that satisfy what you're (inaudible).

Mr. Hull: No, I think to Commissioner Otsuka's point, it still would, I think in two or three years, if they're not able to resolve it through their HOA processes, that it would be back before this body again, with this request for this body to participate in what again, I believe is a civil dispute.

Chair Apisa: I think we're allowing a little bit and thank you for that direction. I think it brings us back to some clarity that within a CPR is a civil matter and we're looking at outside of that CPR.

Ms. Streufert: So, we should never have had this Condition 10 anyway.

Ms. Otsuka: Yeah.

Ms. Streufert: Is that what...

Mr. Hull: Well, I think, you know, I think if through the process we got grievances and complaints that the traffic being generated on a county standard road is being overly

burdensome, we do have a problem with the overall impact, what the entitlements on this lot of record are doing to, you know, that region of land to properties that are being affected outside of the specific lot and record, lot in question, I think that that that would be okay. Now I think it's appropriate for all of us to get involved, review and assess. And I know those words are probably falling a little harshly on the condominium property regime owners because you folks in a way, our neighbors as well, but that's where I think what you're looking at public thoroughfares and impact on traffic on that we can see. I definitely say this condition would be appropriate to call into question their operation, where agreements are being aired from within the lot of record itself, that's where, again, I would say that reverts back to a civil matter.

Mr. Ako: Madam Chair, can I ask a question? If what is being proposed right now and amended, actually is what will be governed from today forward, what impact does that have on your business?

Mr. Lydgate: Can you clarify the...

Mr. Ako: Because I think, you know, all of us here, you know, we're for ag, and, you know, let's say we take the extreme extent where there's no tours up there, right, and that's your business right there and you're done, but by having the existing conditions still here today, how does that impact your business moving forward? And because I know you're booming, you're booming right now and you know you're only going to get bigger and bigger and you know from what's going on at the Kapa'a store, you know you get more exposure and everything is there, is there a negative impact? I'm assuming it is not going to be a, well, I'm assuming there's not going to be a negative impact.

Mr. Lydgate: I can speak to the to two points on that. One, is just the overall vision of this site, this Olohena site, (inaudible) a place where it all began. That's where I planted the cacao that came from Hillebrand, and my great grandfather, worked for Hillebrand at that time, the 1800's, it was like, that history is there, but I don't foresee it as a site that can really scale too much, so I would rather have the tours on that site rather than the agriculture region stay on that site because there's only so much people we want to have up there, right. So, I don't think this is the only place we ever want to grow. For example, now we have a retail store in Kapa'a, so that can grow more and we're, you know, contemplating other sites, right, you know. Lots of ideas, I think this business has (inaudible), there's lots of different crops. In terms of what's the impact, I think for me it's kind of on a personal level, but also a political level that if you live in agriculturally zoned land and you just don't like seeing cars on the driveway, we're talking about 40 cars over an eight hour period, then you can, have (inaudible), you know, have to go get all these letters of support to go and do this stuff and call Janeen and do these things, it's almost like a vote of confidence that you, you really you want to see this kind of ag go forward and I understand that you're going to listen to everybody and you know, be fashionable and clear just as a personal level. I feel like I'm doing the thing that everyone says they want, and I just (inaudible) some support in that. Does that make sense, like, just that vote that, and I think I've already heard it, you appreciate what I'm doing, you appreciate the products, and this is, I think just part of it being a pioneer, you know.

Ms. Barzilai: Madam Chair. Excuse me, Mr. Lydgate. If I could just distill it down to what you might focus on right now.

Chair Apisa: Yes.

Ms. Barzilai: So, you what you have before you is a request to modify to delete Condition 10. I believe that's the request of the applicant. So, that's either a deny or approve vote.

Chair Apisa: (Inaudible) correct.

Ms. Barzilai: Correct?

Ms. Olds: So, actually the request of the applicant is to...

Chair Apisa: Amend.

Ms. Olds: Amend...

Ms. Barzilai: (Inaudible).

Ms. Olds: ...well, whether it's amendment or deletion or modification, I'm sorry, I don't have it right in front of me, is the dates and times on Condition 2, as well as to delete Condition 10.

Ms. Barzilai: So, the modification to remove those two or to delete these two requirements, correct?

Ms. Olds: Yes.

Ms. Barzilai: Okay, so this is one motion and there's a lot of discussion on this right now. And the alternative is to amend language suggested by the clerk or some other form of language. You can also defer and request an additional traffic study, or you can revert to the caps that were in place in 2022.

Chair Apisa: So...

Ms. Barzilai: So, maybe there's some discussion on, I think we have a sense from some of the Commissioners on where we're going with this.

Mr. Ako: So, the request really is to have tours with no restrictions?

Ms. Barzilai: Yes.

Ms. Streufert: (Inaudible) don't have any restrictions on their tours.

Ms. Otsuka: If you delete number 10.

(Multiple people speaking at once)

Mr. Ako: Two and ten, right.

Ms. Otsuka: Two and ten.

Ms. Barzilai: Under number two. Look at the first page of the Planning Director's report. You'll see the language of Condition 2.

Ms. Streufert: I was only looking at 10.

Ms. Barzilai: Sorry Mr. Lydgate. So, you could start with calling for a vote on the language suggested by Commissioner Streufert. If other language, if, if this pass is great, you can proceed. You also need a motion to accept the status report. Mr. Clerk, any other suggestions?

Mr. Hull: Yes, yes, (inaudible) want some clarity. The applicant...

Ms. Otsuka: Question.

Mr. Hull: Oh yeah.

Ms. Otsuka: So, say if we end up deleting Condition 10, what will happen if people do, continue to have grievances? Do they still...

Ms. Barzilai: It goes to...

Ms. Otsuka: ...approach the department?

Mr. Hull: Uh-huh.

Ms. Barzilai: Yes. It would be directed at the Enforcement Division.

Ms. Otsuka: Thank you.

Mr. Hull: So, currently, Condition 2 reads, the agricultural commercial tours shall be limited to no more than five days per week, and the hours of operation shall be 8 a.m. to 4 p.m., so that's what's in play. You guys are requesting to amend this?

Ms. Olds: To delete it.

Mr. Hull: To delete this and then also to delete Condition 10.

Ms. Olds: I don't know if this is the appropriate time, but after hearing the Commission speak, we would modify that, if possible, to deleting Condition 2, to provide flexibility and in light of the stewardship, I believe that Lydgate Farms has demonstrated over the past several years, but are willing to come back and however, the report would be, I'm not sure how you want to word it exactly, but to come back in two or three years with, so that Condition 10 perhaps is modified in whatever capacity that you want, it's just that, that is still going to give you the opportunity to review the ongoing tour operations of Lydgate Farms.

Ms. Otsuka: What, what did you want us to do with Condition 2? Still delete?

Ms. Olds: Delete it, but then we would, we are willing to come back and to report or however you would like a report in two or three years with respect to the tour operations.

Ms. Streufert: But the Condition 10 says that there are no patron limitations. That's how I read it, that there are no limitations anyway.

Ms. Barzilai: So, the limitations are dictated by Condition 2.

Ms. Otsuka: Yeah.

Mr. Hull: Yeah. Under the original condition and it was the patron limitations are dictated by Condition 2, which has an hour, 8 a.m. to 6 p.m., and 25 paying participants. You know, I think, I think that's something that may have been missed in the report that Condition 2 was being requested to be amended. I think that's what's creating some confusion.

Ms. Barzilai: I think it's because you know, actually the request comes in the form of a status report and not a...

Mr. Hull: Yeah.

Ms. Barzilai: ...traditional petition. So, I don't think it was clear.

Ms. Streufert: It might, I guess that I'm mistaken. My understanding was there were no limitations on date time and number of patrons, so, that's why (inaudible) just (inaudible) the status report in two years did not seem like it, (inaudible) kind of, or if however, that does not mean that Condition 10 still needs and there are conditions about number of patriots and hours of operation (inaudible).

Ms. Barzilai: So, if I'm reading this correctly then deleting ten necessitates a deletion of two, right.

Mr. Hull: Potentially. I mean Condition 2 could be kept in play still the same time and just Condition 10 is removed.

Mr. DeGracia: Madam Chair. Could I ask for a quick bathroom recess?

Chair Apisa: Yeah.

Ms. Barzilai: I think that's a good idea.

Chair Barzilai: So, we were going, we were going to take a recess after this was over. I had no idea this was going to continue on so long. So, let's take a seven-minute recess.

The Commission went into recess at 11:27 a.m.
The Commission reconvened from recess at 11:41 a.m.

Chair Apisa: I think we're all back together, call the meeting back to order. And just to kind of summarize what I'm hearing here are on Condition No. 2 and 10, are the conditions here. What I'm hearing is to, we will take the vote separately, but what I'm hearing, as is two delete Condition No. 2 and amend Condition No. 10 that the, this be monitored by the Planning Department and then they come back in two years and revisit. That's kind of what I'm hearing,

but it's the pleasure of the Commissioners to...

Mr. Hull: Just to clarify things. Chair, where you going is what you're hearing some of the discussion involved, but to clarify, the specific request from the petitioner is to delete Condition 2 and to delete Condition 10, and so it may be appropriate to look at if there's any desire for a Commissioner to introduce a motion to delete Condition 2 first, and that discussion and vote be done and then also, then a motion, if there's a Commissioner willing to delete Condition 10 pursuant to the request of the applicant and then discussion to evolve around there to which it may turn into a debate to amend Condition 10 versus deleted, but it probably needs the most appropriate to look at them as separate.

Chair Apisa: Right, right, right. I was sort of summarizing the big picture, but I do agree that they would be taken as two separate motions. So, I would entertain a motion regarding number two, if anyone is so inclined to make a motion.

Mr. DeGracia: Madam Chair, real quick. Do we need a motion to accept, to receive the status report?

Ms. Barzilai: To receive the status report.

Mr. DeGracia: First or...

Mr. Hull: You can do it before or after, it's at the pleasure of the commission.

Ms. Barzilai: We may as well do it now because it appears that the request, the applicants request is contained within the status report so.

Chair Apisa: Okay, I would first of all entertain a motion to receive the status report.

Ms. Streufert: I move to accept the status report.

Ms. Barzilai: To receive.

Ms. Barzilai: Receive.

Ms. Streufert: To receive the status report.

Ms. Otsuka: Second.

Chair Apisa: Okay. Any discussion on receiving the status report? Hearing none. All in favor? Aye (unanimous voice vote). Any opposed? Any abstentions? Okay, that motion carried the status report is received. 6:0. We've crossed one little hurdle.

Ms. Barzilai: Now you can address the request of the applicant. You can address by calling for a motion, you can call for a motion on Condition 2.

Chair Apisa: Right, right.

Ms. Barzilai: (Inaudible) dictate the content of the motion, but you can call for the motion.

Chair Apisa: Right. I would call. I mean, it's the Commissioners pleasure here, I would call for a motion on Condition No. 2. We will address them separately.

Ms. Streufert: I move to delete Condition No. 2.

Mr. DeGracia: Second.

Chair Apisa: We have a motion on the floor to delete Condition No. 2. Call for discussion.

Mr. Ako: Yeah, so if we delete Condition No. 2, we're saying that you can have it seven days a week and any time of the day.

Ms. Streufert: Yes.

Mr. Hull: Correct.

Mr. Ako: That's what it is, yeah.

Ms. Otsuka: But we're relying on his good stewardship. I trust him.

Chair Apisa: I would like a roll call vote on this removal of Condition No. 2.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: 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 Apisa?

Chair Apisa: I say aye and thank you Commissioner Otsuka for your comment, there's a lot of good faith going into this motion. Thank you.

Motion passes, 6:0.

Chair Apisa: Moving on to Condition, oh wait...

Ms. Barzilai: Condition 10.

Chair Apisa: Condition No. 2 has been...

Ms. Barzilai: Deleted or modified.

Chair Apisa: Deleted.

Ms. Barzilai: Yes.

Chair Apisa: So, moving on to Condition No. 10, do we have a motion? I know that there was one suggested here by our Planning Director. Do we have a motion on Condition No. 10? Maybe do you want to repeat what you had?

Ms. Otsuka: Yeah, can you re-read?

Mr. Hull: Yeah. So, either to be clear, the applicant is requesting Condition 10 be deleted. A possible modification to ten was drafted to read as follows; the projects will be monitored for a period of two years from August 13th, 2024. In that time, the department shall record any grievances related to the project, if any. Within the two year period, the project shall be revisited by the Planning Commission. And again, that the condition was drafted in the manner to reflect Commissioner Streufert's comments, I would say the department is submitting it as a recommendation.

Ms. Otsuka: Wait, hold on...

Ms. Barzilai: The alternative is to approve the applicant's request.

Ms. Otsuka: Does it need to be more detailed like the project or, I guess, yeah, I guess the project, I was thinking more like the traffic, but we want to keep it general, the project. I guess, yeah, that that'll be better if it's that open, yeah.

Mr. Hull: That's up to you guys.

Ms. Barzilai: That's (inaudible).

Mr. Hull: The department isn't recommending that this language be adopted, but I think if the intent is to have the applicant return to the Commission after two years, then the reflected language does work and be implemented.

Chair Apisa: Maybe read that one more time. It's brief. Thank you.

Mr. Hull: The project shall be monitored for a period of two years from August 13th, 2024. In that time the department shall record any grievances related to the project, if any. Within the two year period the projects shall be revisited by the Planning Commission.

Ms. Otsuka: I know what, I apologize. I have one more thought, being that you're saying August 13th, wait, from...

Chair Apisa: Today.

Ms. Otsuka: August 13th, 2024. Does this condition need to state why we picked that date? Does it need to state that it was a Commission meeting, August...no, okay.

Mr. Hull: It set, it sets the deadline. I mean you can reflect if you like more introductory or explanatory clauses into it, but it's not necessary.

Ms. Otsuka: Okay.

Ms. Barzilai: It will appear in the Director's Report too, at the time that it comes before the Commission again. What the language doesn't indicate is how it's going to come before the Planning Commission, does it have to come by way of written status report or is this, does this cover it, revisited?

Ms. Barzilai: Open for discussion.

Mr. Hull: Yeah.

Ms. Barzilai: So, you require a motion, Madam Chair.

Chair Apisa: Yes, I am waiting to hear a motion. That's why I asked our Planning Director to restate that if that is the pleasure or Commissioner Ornellas, you have a motion or no? Okay.

Mr. Otsuka: Within a two-year period the project.

Mr. Ako: I think you for the motion is made, I'll just state that, you know, I think at this point already we put, when you delete Condition No. 2, you put a whole bunch of trusts already within the corporation of Lydgate Farms, and if there's any complaints that come up from here forward, you know there's always a process within the rules already to have those addressed. So, I think right now I would prefer to stick with the original request and just remove.

Chair Apisa: Okay. Would you like to make such a motion? If it fails, we'll come up with another one. Let's get something on the floor.

Mr. Ako: Okay. I move to accept. No, let's see, move to approve the removal of Condition No. 10...

Ms. Otsuka: Removal?

Mr. Ako: ...in the Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit SP-2015-1.

Ms. Barzilai: That works.

Ms. Otsuka: So, delete, yeah.

Mr. Ako: To delete Condition No. 10.

Mr. DeGracia: I'll second.

Chair Apisa: Is everybody clear on the motion? We have a motion on the floor. Do we have any discussion on the motion? Hearing none. I would like to call for a roll call.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: Aye.

Mr. Hull: Commissioner Ornellas?

Mr. Ornellas: Aye.

Mr. Hull: Commissioner Otsuka?

Ms. Otsuka: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Streufert: Abstain.

Mr. Hull: And Chair Apisa?

Chair Apisa: Aye. I would just like to say I mean I think we are very sensitive to the CPR owners, and I hope that you can understand that what goes on within the CPR is really a civil matter, a CPR is registered with the State of Hawai'i, and the county still sees it as one parcel. So, I hope you can understand that we're not being deaf to your testimony and your comments. So, thank you for sharing them and hopefully there will be consideration and you folks within the CPR can find some peace and work it out amongst yourselves, but I hope you can understand the position that we are taking today that the CPR is really registered with the state and county is seeing it as one parcel.

Motion passes. 5:1

Mr. Hull: Thank you. Moving on to the next agenda item. We still got a full dock. Thank you all.

COMMUNICATION (None)

Mr. Hull: Moving on next agenda item is, no additional communications.

COMMITTEE REPORTS

Mr. Hull: We have Committee Reports. I'll turn it over to the Subdivision Committee Chair for the Subdivision Committee Report.

Mr. DeGracia: Commissioners, Madam Chair. Subdivision Committee met today. We had three items on our agenda. Lima Ola Phase 2, Kukui'ula parcel, and also Yukimura Trust. The actions taken was all approved and all of the votes were all 3:0.

Chair Apisa: Thank you. Motion to accept the Subdivision Committee Report.

Ms. Barzilai: You can do a motion to approve, Chair.

Chair Apisa: Approve. I'm sorry.

Ms. Barzilai: No problem.

Ms. Otsuka: Motion to approve.

Ms. Streufert: Second.

Chair Apisa: All in favor? Aye (unanimous voice vote). Any opposed? Any abstain? Motion carried. 6:0.

UNFINISHED BUSINESS (For Action)

Mr. Hull: Next, we have up, K. Unfinished Business.

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) to allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamihi Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.** [Director's Report received and Agency Hearing Deferred, July 9, 2024.]

Mr. Hull: We had the agency hearing earlier this morning and I'll turn it over to Romio for the departments report pertaining to this matter.

Staff Planner Romio Idica: Thank you, Madam Chair, Commissioners, I have a brief update for you today. This is a continuation from the Planning Commission meeting on July 9, 2024.

Mr. Idica 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 Apisa: Thank you, good report.

Mr. Hull: Doesn't look like we have any questions right now for staff or myself. Before I turn over the applicant, I was just reminded while we did have the agency hearing earlier for this

session, technically all agenda items are allowed to call for testimony. So, like I said, if there's anybody in this audience that like to testify on this agenda item, you can approach the microphone. With that, I'll turn, I'll ask the applicant if you can come up and respond to any of the report analysis or present on any other additional material.

Mr. Ian Jung: Good morning, commissioners. Ian Jung behalf of Bruce Holdings LLC, the applicant in this matter. We did submit a Supplement No. 2, that the supplemental report was premised on. In that Supplement No. 2, we sort of refined the site plan that was prepared, as well as some of the architectural plans, one of the issues that Ms. Diamond raised was the size of the structure, and let me apologize because when we submitted our application we meant to refer to the second dwelling as 1,682 square feet, that's actually the existing dwelling, but in our land coverage portion of the application, we identified the total land coverage, which at the time of the original submittal, which went out for notification of the public, was at, was at 4,243 square feet. The proposed land coverage now, I'm sorry, the original was 4,100 square feet. The proposed land coverage now is 4,234. And the way this is broken down is you have to work through what counts as land coverage and not when dealing with these types of properties, so the interior space is 2,500 square feet. The decking adds on an additional 1,533 square feet, that includes the decking that's under eave and outside of eave. So, you have to count certain portions of that is full land coverage, certain portions of that is 50% of land coverage. And then when we reconfigured the stairs to eliminate the two stairwells into one stairwell, it reduced the land coverage allotment. So, I hope that cleans up the size of the structure. The size of the structure for the interior living is 2,518 square feet. I did sort of a quick survey of some of the properties around there, the most recent one that was approved was the spa building for the Hanalei Colony Resort, and that one was approved at 4,200 square feet. So, there's some consistent numbers on the size of structures out there. There's another landowner, some of you might know, Terri Tico, who has the property out there, that one is at 2,600 square feet. There's another two residences that drop in the 2,300 to 4,300 square feet, so it's fairly consistent. Some of the older homes are more in the realm of 1,600 to 1,800 square feet. So, the SMA threshold for what considered exempt on a single-family residence for the first home, and I know this is the second home, not the first home, but it's 7,500 square feet. So, I think the threshold is not too exorbitant to be a large home, when you factor in the interior square footage of 2,500 square feet plus the lanai decking at 1,500, and the stairwell that goes up. So, that's issue number one with the size of the structure. Issue number two was the wastewater treatment issue and the applicant was aware that the cesspool for the existing residence on the property was antiquated and actually took it upon himself to do the Fuji clean aerobics system on that, for that house, and that's already been converted. So, one of the issues that Ms. Diamond raised is to convert that or put a condition to convert that existing residences waste system to a septic system, which has been done, and I submitted that to the SMA Planner for the record. The next issue that we have is dealing with the additional conditions and the additional conditions that are proposed are reasonable, we're okay with them. One includes, I mean that, the two main ones or one includes the seawall restriction, which we all know now that you know that for private residences, the state, county are no longer going to support any sea wall, so the applicants okay with that condition. The second condition is the parking, this is the first project I've ever heard of where they put a restriction on no parking on the site for construction activities, which I know it says we shall consider not doing it and the applicant is willing to consider it, but it's just sometimes it's not reasonable to have you know, certain contractors come out at certain period of times and then relay a shuttle back and forth to get those, but he's willing to try and work it out with the contractor, whomever that may be at the

time, to try and create a shuttle process, so, there's a limitation on parking on site. And then the third one or the last one that was raised by Ms. Diamond, is the issue of the existing grandfather single family residence in the front and that that should be removed or relocated. And I think from a constitutional standpoint, that structure is grandfathered in, the law has to respect it. This particular SMA is for the second dwelling, and what impacts that second dwelling may have. There's always a situation where the state can come in and condemn land and take land, saying that it's a part of the coastal beach corridor, the beach access corridor, but I don't think it's reasonable and I believe it's arbitrary and capricious to add some kind of condition that would require the removal of that structure, if it's ever impacted by coastal erosion because there's going to be a separate process for that, if the state deems that it's on state unencumbered land, then they can initiate those processes. For us to agree to a condition that would, I guess speculate as to what the erosion rate would be because this is all what's anticipated and what the erosion rate would be and lose significant value, I'd probably lose my law license for agreeing to it, but if that were to happen, then the state can come in and do what's necessary, similar to what's happening on the North Shore of O'ahu and how they're dealing with it through OCCL. So, we can't agree to any type of condition dealing with the existing grandfathered single-family residence. With that said, I did bring some photos for the view access corridor as requested at the last Planning Commission. The first photo has the illustration from the road and then the second photo has the color palette that was requested to darken it, illustrating the photo realistic of the home. So, with that, I'll leave it for any questions the Commission may have as to the proposed project, any impacts it may have.

Mr. Ornellas: So, Mr. Jung, what is the distance from the high-water mark to the first dwelling?

Mr. Jung: The first one, we don't have that that marking it's in the shoreline setback. Well, we did a certified shoreline and then a shoreline setback. We could probably get that measurement for you if you want, but it'd be on a rough scale since, we don't have it, but looking here, if you look on Exhibit, I think it's Exhibit E, and it's SP 1, you can see that the state certified shoreline as of...

Mr. Idica: To answer that question, I did some preliminary measurements on the certified shoreline. It's approximately about 15 to 17 feet from the 2022 certified shoreline.

Mr. Ornellas: 15 to 17?

Mr. Idica: That is correct.

Mr. Ornellas: What's the rate of erosion?

Mr. Idica: It's about .4.

Mr. Ornellas: Thank you.

Mr. Idica: You're welcome.

Ms. Streufert: .4 feet per year?

Mr. Idica: That is correct.

Chair Apisa: So, 30 years. Well, half, you know, .5 in 15.

Mr. Jung: But just for record purposes, I think it's important to look at how the rates of erosion are really affecting this parcel over the last 30 years, because they're fairly constant. There's some change with, you know, during North Shore high wave event, but there are periods of time when the sand retreats back on the beach, so, it's an estimated number, it creates a vulnerable number, but the reality is we don't know that data yet and how it's going to impact because it's been somewhat constant and not like there's some places where, you know, it shows four feet of erosion, but it really hasn't been four feet of erosion. So, in this case, with the minimum amount of .4 feet, it's still not as significant when this house was built back in the 80's.

Mr. Hull: Yeah, just to add because I think Ms. Diamond's comments and that she had here verbally with us, but also, she submitted concerning the proximity of the existing structure to the shoreline and potential undermining action by the ocean. Within the lifespan of structure from a planning perspective, we're a hundred percent in agreement that that is concerning and so, I did have Romio draft, a potential condition of approval reflecting that, but I think as Mr. Jung has intimated that they would have grave objections to that and from a legal standpoint, and so all I have to say is we do have a conditional approval drafted, Mr. Jung has reviewed it, but I think if there's any discussion or desire for the Commission to entertain and look at it, you're going to have to consult with your attorney. Perhaps in executive session as well, if there is a desired pursue that.

Ms. Barzilai: My initial thought is that I am in agreement with Mr. Jung, and that this condition as it applies to the new structure might be unconstitutional as applied based on the factors that you have to consider. I'm not in a hundred percent agreement with Mr. Jung on the speculative nature of the erosion rates. I think that there are other applications where such a demolition requirement may be appropriate. You considered one for variance from a shoreline setback determination, but that was for the subject structure itself. This is for a different structure that is sitting behind the coastal structure. And I can get more into it if you'd like.

Mr. Ornellas: I believe Ms. Diamond's point was the managed retreat from the shoreline would impact the primary structure first and correct me if I'm wrong, but there's no ordinance now regarding retreat as far as allowing room for the retreat.

Ms. Barzilai: Although conceptually I think it's wonderful that Ms. Diamond raised it, but there is no managed retreat or retreat program that the department is implementing at this time.

Mr. Hull: I'll just (inaudible). Ian and I have presented at a multitude of platforms and venues to discuss manage retreat in practice. Hawai'i has one of the most, I know it's not the best in our eyes, but one of the most progressive somewhat managed retreat program, in that it now proactively prohibit sea walls from being constructed on the shoreline. There are many municipalities that don't even have that and that same organization entity OCCL also takes action against those structures that are being undermined by the ocean that aren't moved out. So, currently that's technically the manage retreat policy of the State of Hawai'i is, it doesn't allow new sea walls and allow us and requires structures being undermined by the ocean to be demolished and removed, and then they're making some success with actually, you know, finding to the tune of hundreds of thousands of dollars of structures that are in there. So, you know, I

think what when Mr. Jung is getting at is that, you know this structure will be undermined eventually, but it's in OCCL's domain to really regulate that, and that's the manage retreat policies, it's just move it out. Maybe they could move it back a little, but probably not given they're going to have now this larger structure on the site, but anyways, I just wanted...

Mr. Jung: May I comment on that? So, Ms. Diamond and I have talked about this because we have all kinds of theories on various things. And one of the issues I looked at it for like a (inaudible), I actually look at this project as manage retreat because they're going to build a new house compliant with the shoreline setback ordinance, but the issue is what to do with the first existing home right. So, if the ocean were to encroach onto this particular residence, I wouldn't be able to get that residence lifted up and move back because it's over 1,500 square feet. So, the county shoreline setback variance would not allow for that size of structure. Something would have to be removed when it's retreated back, and it will have to be retreated back at the 40-foot set back line based on a current certifying shoreline. So, if at some point in the future, whether it's ten years from now or 50 years from now, that structure would have a difficult time being relocated unless you modified it and set it back a certain different or certain distance. This new structure would then be seated at the rear of the property, subject to the current 88-foot shoreline setback line compliant with some of the codes on what we anticipate for new projects. The problem with the current certified shoreline is we had to respect of the existing residences, but deal with the future residences and I think that's an issue, you know going forward and I fully understand how the Commission analyzed the shoreline setback variance condition on those particular structures because it's inside, the proposed project was going to be inside the shoreline setback area. So, I think there's a (inaudible) need to connect that type of condition to that type of project one is a shoreline set back variance, but in this case, when the proposed new project sits outside, I think it's hard to come back in and tackle the existing grandfathered residence. It's going to be an issue that OCCL will have to deal with in the future, whether it's ten years from now or 50 years from now, you know they'll have to come up with a plan, but at least this particular landowner will have this permit in place to have the residence on the property should that one need to be removed.

Mr. Ornellas: So, it raises an interesting question regarding density. You would basically lose half of your density on the property.

Mr. Jung: Yeah. Because the size of this particular lot, you get two dwelling units. I know there was an issue raised about ADU, but I don't think the architect of record fully understand the density implications, when he called it the ADU, it still could get an ADU, but it really is a second dwelling. You could, like if the state took the house and took the property and subdivided the lot to make it smaller, then you could still in theory get an ADU, but you'd be subject to the current shoreline setback and fit even if you had to do a shoreline set back variance no greater than 1,500 square feet beyond 40 feet. So, it'd be kind of a narrow building site to put something on.

Mr. Ornellas: Thank you.

Mr. Jung: Sure.

Chair Apisa: Any further questions?

Mr. Ako: Yeah, if I can ask? You know last month we came here and then we put that restriction in there that the house needs to be removed by a certain date. What is the difference between that and this one here?

Mr. Jung: That's what I was just saying because it was a shoreline set back variance. So, that was the first one I think we, was it the first one, yeah, the first one the Planning Commission dealt with whereby the proposed structures that were, the applicant was asking to get billed, were built going to be built inside the shoreline setback line. The problem with that particular project is the whole lot was in the shoreline setback area, so the condition on those particular houses and the boat shed was to say that in in the 70-year planning horizon, if there's coastal erosion, then the Commission will come back, take a look at it and realize, and if they're getting impacted, have them removed. But that's a special requirement for the shoreline set back variances, this one we're not asking for variance.

Mr. Hull: And so, that one too was that was the proposed structure they wanted to cite it there, so, we're saying, the commission ultimately said, because we're citing the structure here, you're going to have to agree to remove it by such and such date. In this scenario, the structure is being cited outside the setback, and in any condition to now have the existing structure that is inside the setback being moved, again, I'll say from a planning principle is appropriate, it absolutely is, I think. But what I think Mr. Jung is saying and Ms. Barzilai is saying is that from a constitutional standpoint, there are (inaudible) issues. And I've said it before and I'll say it again, the single biggest barrier to managed retreat is United States Constitution, and what it costs to do it.

Ms. Otsuka: I have a question for Mr. Jung. The previous architects rendition has in the middle of an opening where you can see there's an ocean view, and...but you presented us today is blocked off. Is it a sliding wall or is it a permanent...

Mr. Jung: Yeah. Sorry, when Mr. Chun was covering for me in the last meeting and he wanted the angle of the home at the angle for which you make that curvature of the turn. So, there is still the gap between the two lower breakaway wall storage cabinets and garage, but you just can't see it on that. So, the break is still there.

Ms. Otsuka: To see the ocean?

Mr. Jung: Correct.

Ms. Otsuka: Oh.

Mr. Jung: It's just the structure is tilted so as you drive along the highway, what you see.

Ms. Otsuka: Okay.

Mr. Jung: That illustration was, I think, in response to the concern that the brighter color wasn't preferred. So, they use the wood for the darker tint for more darker tones. Which was a proposed condition better.

Ms. Otsuka: It does look better.

Ms. Streufert: Darker.

Mr. Jung: You know, I've had, you know, I hold multiple community meetings on these kinds of things and it's like some people love white, some people have dark, and nobody seems to agree what's the better. I know with the 1 Hotel when the olive green was proposed everybody seemed to agree that that was good. So, versus the white.

Ms. Streufert: There was a couple of comments about the driveway that was going to be on the west side of the property line and that KIUC has a utility easement in that area, you addressed that. Is that...

Mr. Jung: Yeah, the driveway you can see on the larger plan was enclosed to just be one and the technical driveway is only one, you only get one driveway allowed per lot, you know unless you can prove that the sight distances aren't impacted, in this case there will just be one driveway.

Ms. Streufert: But will that have any impact upon the KIUC...

Mr. Jung: No. Yeah, it won't impact the easement. Because KIUC will still have access to it. So, when KIUC grants easements they're typically not exclusive easements, they're non-exclusive easements where they just have the right to go on and get to their power source to deal with whatever maintenance and repaired.

Ms. Streufert: So, this driveway will not be over. I think it said somewhere in here, one of them that said, it was over right the easement.

Mr. Jung: Along the, where the water meter and (inaudible).

Ms. Streufert: And I all I have is easement. On the KIUC easement. I just want to make sure that we don't have an issue with the utility easements.

Mr. Jung: Yeah, there won't be any issue. Because the landowner will have to respect that easement that's been granted over that property.

Chair Apisa: Are there further questions?

Ms. Barzilai: Need a recommendation from the department.

Chair Apisa: No, no further questions? Yeah, I think we're ready for the recommendation from the department.

Mr. Idica: My apologies. I just have to find the language, my apologies. Based on the foregoing conclusion evaluation, it is hereby recommended that the construction of a second single-family dwelling through Special Management Area Use Permit SMA(U)-2024-10 be approved with the following conditions as amended. Do you want me to read the whole amended conditions or...

Mr. Hull: The Commission has had the report for some time now, so we stand by the conditions. Like I said, we had drafted an additional condition previously to address one of Ms. Diamond's

concerns. But we're ultimately at the advice of our attorney not submitting it as a supplemental. So, we stand by the originally submitted supplemental Director's Report.

Chair Apisa: Are there any further questions or is someone...

Mr. Ornellas: I just had one quick question. Mr. Jung, what was the rationale behind not having parking on the lot to reconstruction?

Mr. Jung: I'm not sure. I think that was a comment that came from community testimony. And I've seen it before. I've seen it actually before, where people are parking on the streets. And clustering the street, but not necessarily on the property. So, there was two components, one was the trash, which I confirmed with the owner, they're going to get trash bins to have the trash stored versus scattered about, which is just the respectful thing to do. And then the other one I think was when people come in and off site, there's multiple trucks coming from contractors and subs and all that, but I think that was the issue and maybe it's traffic to the North Shore, I don't know.

Mr. Ornellas: Thank you.

Chair Apisa: And then the applicant, have you reviewed the eighteen conditions? You have no...

Unknown Woman: Eighteen?

Chair Apisa: Aren't there eighteen?

Ms. Barzilai: Eighteen, including...

Chair Apisa: The amended yeah, the supplement to the Planning Director's Report, but there you have no...

Mr. Jung: Yeah, we're acceptable to the additional five conditions to make it from eighteen from thirteen.

Chair Apisa: Are we ready for a motion or any other questions? What is the...

Ms. Streufert: I move to approve the Special Management Area use Permit SMA(U)-2024-10 with the eighteen conditions.

Chair Apisa: Do we have a second?

Mr. Ako: Second.

Chair Apisa: We have a motion on the floor. Is there any further discussion on it? Would like a roll call vote please?

Mr. Hull: Oh, sorry. Roll call, Madam Chair. Commissioner Ako?

Mr. Ako: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: 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 Apisa?

Chair Apisa: Aye.

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

Mr. Jung: Thank you, commissioners.

Ms. Otsuka: Thank you.

Mr. Hull: Next we have, K.2.

ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = KAUAI COUNTY COUNCIL. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

Mr. Hull: I'll call for any public testimony on this agenda item. Seeing none, I'll kind of give a brief report of what happened at the last meeting. We asked this, so we introduced this proposal, which allows guest houses in all zoning districts as permissible for one per dwelling unit and right now, guest houses are allowed one per lot of records, so some lots of record qualify from multiple dwelling units, but only one guest house is allowed where there is some confusion at times is on condominium property regimes on any lot that has residential rights or dwelling rights, I should say, you might have five or six or seven CPR units, each one with a dwelling unit, but only one of those CPR units can qualify for a guest house, so the proposal is to say, all of those units with each of the respective dwellings could qualify for a guest house and a guest house being up to 800 square feet in size, with or without a kitchen, so it can be used for habitable purposes and are currently being used for habitable purposes across the island. So, the

department is supportive of the initiative and the draft ordinance we asked for some time to somewhat review and assess other, you know, housing initiatives and programs. And so, we've come back to you folks with two proposed amendments to the bill. One, is that there was some concern in our previous report for two particular areas, one being IAL lands and the other being SMA coastal lands, the IAL lands because those lands are designated important agricultural lands for the express use of being tied up for agriculture use in perpetuity. There are some dwelling rights on those lands, but the original report rate raised some concerns should guest houses at this new ratio will be allowed on IAL lands. Ultimately, we come to an analysis and a conclusion from our side, is that IAL lands are massive in size and across Kaua'i, you know the amount of guest houses that will be qualified on the IAL parcels is nominal in size. You're talking, you know, right now it might be one per one of those lots, and now they could qualify between five and ten, which might seem like a lot, but most of the lots are thousands of acres in size, and so we're kind of like, it's nominal impact. They could also be used by farmers, who are farming IAL lands, so we decided not to go any further in pursuing that concern. The other concern is allowing guest houses at this new ratio in SMA coastal lands and ultimately we will be come to and our conclusion analysis is that perhaps they aren't appropriate in SMA coastal lands, SMA coastal lands are generally one subject to a higher frequency and intensity of hazards, whether they be coastal flooding, the impacts from hurricanes and storms, sea level rise, so, increasing density in this area may not be appropriate because of all of those hazards, and then also for the most part, the coastal SMA areas are generally a speculative area. It's generally from, unfortunately it's the area that that is most valuable and purchased up from a global speculative aspect, and so having those houses locked up in that, you know, perhaps it's not appropriate when combined with the hazards at the same time by allowing it, you may have some local inventory in there, so we're not, you know, like going down swinging say it should not be in the coastal, but it's a concern we have and right now in the draft what we're saying is it, it should not be allowed at that rate in SMA coastal lands. And then the last amendment we have is to have what's called a guest house clearance form process and this just follows the ADU additional dwelling units, as well as additional rental units all have what's called a clearing form, and it requires the applicant to do this clearing form which is free of charge, they just fill out the tax map key, provide a plot plan that they can hand draw to scale, and the Planning Department will circulate with all the infrastructure agencies and those infrastructure agencies will make an assessment of whether or not that property qualifies for a guest house, pursuant to the infrastructure availability, i.e., does it have water? Does it have the ability to put a sewer system, to put a septic system or hook up to a sewer because the only other way that they could determine that is by drafting, having an architect or draftsman spend five to ten thousand dollars or higher on those plans and then circulated only to find out the Department of Health's not going to let you do it because you can't put a septic system on that property or Water Department has limited water capacity, so you know with the first time I was approached with this idea of clearance forms with the ARU process is like, no, we're not putting another, you know, layer of permit review on the applicant. But then on second look saying like oh, but this could actually protect the applicant and save them a lot of potential lost monies, is where (inaudible) like it's on the ARU, it's on the ADU's, it should also be on the guest house. So, those are the two amendments we have, that's all nutshell. Open to any questions, concerns, issues.

Mr. Ornellas: Yeah, I, you know, Department of Water has concerns regarding water availability, meter availability. Now my understanding is that you could share a water meter with the primary residence, as it presently exists. You don't need a water meter for a guest house.

Mr. Hull: Correct.

Mr. Ornellas: So, that still stands right, so, that kind of answers the department's concern.

Mr. Hull: Yeah, it does, it doesn't. The Water Department could still restrict, depending on the line size or capacity, they still could end up restricting some of these guest houses. The guest (inaudible), the guest houses aren't going to be a way to end run or there's no water capacity in this neighborhood, but we can get guest houses with water. There still will be water issues.

Mr. Ornellas: Yeah, but guest houses right now do not require a separate meter.

Mr. Hull: Nope.

Mr. Ornellas: Okay. So, and then wastewater, right, you can share a septic system providing you fall within the parameters of the number of bedrooms.

Mr. Hull: Yes.

Mr. Ornellas: Okay, so, if you have a five-bedroom septic system, and you have a three bedroom house then you have no problem, right?

Mr. Hull: Exactly.

Mr. Ornellas: Okay, so, that kind of answers... then there's also questions regarding flow, gauging flow to the house, right, and that with the issue of increasing capacity, line size, most houses are 5/8 meters.

Mr. Hull: Yeah.

Mr. Ornellas: So, it's expensive to put a one-inch meter in for (inaudible).

Mr. Hull: Yes. Yeah, that's what the clearance form is going to kind of ferret out, if you will.

Mr. Ornellas: If you could, yeah, okay. Thank you.

Ms. Otsuka: I have a question. There were several testimonies written testimonies against this amendment and my question is, at what point in time does our fold or consideration to date take effect? Does it go back to the Council?

Mr. Hull: Yeah.

Ms. Otsuka: So, a person in Po'ipū who is, has already started planning an ADU and is, if they started it, like today and the Council takes couple months, are they, like, grandfathered in that they can build on Po'ipū... I'm sorry, a shoreline...

Mr. Hull: Okay, so...

Ms. Barzilai: Complaint about the VDA.

Mr. Hull: Yeah, so those if you're, Commissioner Otsuka, if you're referring to some of the testimony provided for Po'ipū, there were concerns in there that in the ordinance as drafted and we didn't recommend touching it states that the guesthouse cannot be used for a TVR vacation rental.

Ms. Otsuka: Okay.

Mr. Hull: If a guesthouse is being used for a vacation rental currently and it exists in the VDA, so the Visitor Destination Area, that's a legal, and that's a legal use today right now. If they got their permits for it though they just get their permit for its Class I Zoning permits over the counter, if they have their zoning permit for today, and the ordinance is adopted tomorrow, they who got their permits today or prior to the adoption date, can still operate as legally nonconforming.

Ms. Otsuka: Thank you.

Chair Apisa: So, I guess just expanding on that, so all they need is the building permit, they don't have to have the house up in use of it.

Mr. Hull: They don't have to have the building permit; they just have to have the zoning permit.

Chair Apisa: Oh, the zoning permit.

Mr. Hull: And so, the zoning permit, yeah, even if the house isn't up yet, they can still get the zoning permit entitlement.

Chair Apisa: Okay. So, do there, is there a special application to do that or is it just, it's there because of the zoning?

Mr. Hull: It's over the, it's at the Planning Department, Class I Zoning Permit, over the counter, \$30 fee.

Chair Apisa: Any other questions? Let's see what's our action required here.

Mr. Hull: Action...sorry, I also, for other testimony that was submitted, I think there was one that was submitted that's recommended removing it from the residential neighborhoods because it could have the impact on the quality of the neighborhood or whatnot. While there is definite, you know, concerns about that, we don't anticipate a...while it would be nice concerning our housing crisis, they're being mad, rushed to the door once the ordinance is adopted in the residential neighborhood because of inadequate in particular wastewater infrastructure in the residential neighborhoods, we don't anticipate a mad rush to the door. We anticipate some. We also anticipate some occurring in the agricultural district and open district, which you know, there are some concerns about that, but just going over our current housing crisis, the amount of permits we've processed in the past three years, I think I presented the last time in the past three years, we've approved on average, a hundred zoning permits, we've approved permits for a hundred dwelling units annually for the past three years, in the middle of a housing crisis whereby we are behind by several thousand. And then I just, you know, found out this past week that the average contractor rate for a single-family dwelling on Kaua'i has hit 500 dollars a square foot. Meaning if you're proposing a 1,500, you will pay 750,000 dollars for just the house, not the land or the

infrastructure. And this in bill, in no ways is the panacea to the housing crisis, but is one of many lines we believe are being thrown into the ocean to try and help ameliorate the crisis we're in.

Mr. Ornellas: So, Ka'aina, that hundred houses, hundred units annually, does that include the affordable housing units?

Mr. Hull: So, those were approved prior to the past three years. We haven't had any affordable housing projects. So, there are still affordable housing and other housing units that were approved that still haven't been constructed. (Inaudible) just we're looking at the actual permit caseload, it's a little, it's a little over a hundred a year and, but that's counting houses, like, that are in Kukui'ula that aren't going really into our housing inventory and meeting our housing needs, right, so, we are, we are so far behind. I'm trying to advance that move to get housing, but yeah...

Ms. Streufert: Based upon this, if you had a residence and you had an ADU, could you still have a guest house?

Mr. Hull: Yeah, the way this is, so that's a perfectly good question, Commissioner Streufert, and I don't think I addressed that in my comments. Currently, the existing ADU losses you can either have an ADU or a guest house. What this bill changes to say, you can have them both, and in fact for every dwelling unit you can have a guest house as well. So, if your lot only qualifies, and this isn't for Agriculture District, because the ADU's aren't allowed on the ag district, but in a residential district, if your lot, only qualifies for one house, that means it qualifies for an ADU, but it also qualify for two guest houses now, as opposed to zero guest houses.

Chair Apisa: For every house that you're allowed, you can add additional guest house?

Mr. Hull: Yeah.

Ms. Streufert: And an ADU.

Chair Apisa: No.

Mr. Ornellas: So, those already houses that already have a guest house are not entitled to another guest.

Mr. Hull: No. It's one per.

Mr. Ornellas: Thank you.

Ms. Streufert: But if you have an ADU, you can have guest house.

Mr. Hull: If this bill is adopted, you could have two guest houses on that property. One for the main dwelling, one for the ADU.

Chair Apisa: So, we are looking to either approve or deny the...

Ms. Barzilai: The zoning amendment, Chair.

Chair Apisa: Yeah, you know, as amended, yeah and then refer it back to the Council. So, I mean we, we have to look at what's before us and either approve or deny.

Mr. Hull: Or modify.

Chair Apisa: As amended or modify as amended. As it's already amended.

Mr. Ako: I'll so move. I'll so move to approve Zoning Amendment ZA-2024-3, as revised.

Ms. Barzilai: And refer to Council, Commissioner.

Mr. Ako: And referred to Council.

Ms. Barzilai: Thank you.

Ms. Otsuka: Second.

Chair Apisa: Okay. We have a motion on the floor. Any further discussion on it? No further discussion. I'd like a roll call, please.

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

Mr. Ako: Aye.

Mr. Hull: Commissioner DeGracia?

Mr. DeGracia: 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 Apisa?

Chair Apisa: Aye.

Mr. Hull: Motion passes, Madam Chair 6:0. We don't have any further business on the agenda.

NEW BUSINESS (For Action) (None)

EXECUTIVE SESSION (None)

ANNOUNCEMENTS

Mr. Hull: Our next scheduled meeting is September 10, 2024. We do anticipate for the rest of the year only having Planning Commission meetings on the second Tuesday of the following months, so only one Planning Commission for a month we're anticipating for the rest of the year we have a few agenda items coming up. Some are going to be some administrative rules. We also have the Nihoku Green application coming back. It's been, the hearings officer has provided a report to the Commission on that, and of course, Coco Palms Status Report is eventually coming, we're working with Chair to get that on the upcoming agenda. Nothing else, but if there's anything the commission would like to see, provided a brief, you can definitely get our staff know, to get that set up.

Ms. Streufert: Are there any additional affordable housing projects that are coming up?

Mr. Hull: You guys just did one via the subdivision action, and that is Phase 2 Of Lima Ola. Lima Ola is definitely up and running. We, the Housing Agency, is going to be taking some actions to shore up lands that they already have purchased over in Kilauea, but it's not going to be going vertical anytime soon. There's also plans in the works for the Waimea 400 property that the Housing Agency is working on, but as far as additional ones coming in for permitting, there's nothing on our immediate horizon. I can say that we anticipate the Central Pacific Bank site, which is going to be converted into, demolished and converted into affordable housing units. They should be breaking ground in the next few months, hopefully, they already have their permits. We also have the Komalu, which is across from Burger King on the highway. They should be breaking out in the next couple of months. And the site of the affordable housing units in Ele'ele that burned down, we do anticipate that developer beginning reconstruction, they do plan on reconstructing in light of, after the fires. And I can't think of any other projects on the immediate horizon. I can say we do have the plantation camp, our department team is doing plantation camp zoning districts for, what we did it for Kaumakani Avenue and Kaumakani Camp, we now have another series of plantation camp form based codes for Numila, which is kind of like Kaua'i Coffee as well as camp six, so we should have those to you folks with the consent of the landowners, we're working with the landowners right now, hopefully before the year's end, and then after that we do anticipate kind of going throughout the state and looking at the other plantation camps to see if we can formulate the Plantation Camp Subdivision Ordinance, that basically reduces lot size requirements, reduces roadway requirements, reduces a fair amount of infrastructure requirements, can't get around DOH and Water Department, but reduces a lot of requirements and is still within the form of the camps that so many here grew up on and grew up within and are familiar with. So, we hope to get that in. And when I was talking with, who was I talking to? Kimi Yuen, from PBR, which is a planning firm, she was saying that they were taking some of the plantation camp work we've done with not just building decks, but more particularly with roadway standards and shared parking standards that were in the camps for decades and implementing them in affordable housing projects. So, it's catching on there and there's moves that are being made, but again, in this crisis, like we're nowhere near resolution of it, so we're trying to cast every line in the river we can.

Ms. Streufert: \$500 dollars a square foot. Is that for single family residents? Would it...what's the cost in terms of a multi-family thing?

Mr. Hull: I don't have that at the top of my head, we can find that out, though. Now, if you know that off the top your head, Francis.

Mr. DeGracia: Even more.

Chair Apisa: Even more, yeah. Bet it's even more. But I'm hearing those same numbers. I've heard it for a while. It's 500 is your starter cost per square foot to build a single-family residence.

Ms. Streufert: How is that...how does that compare to the first (inaudible)? How does it compare with the rest of the United States?

Chair Apisa: Oh, I'm sure it's high.

Mr. Ornellas: Four, I just read today.

Ms. Streufert: 400? So, we're just, we're not that much, 20% more.

Mr. Ornellas: It's incredible because the United States, I mean, I mean, Made in America was a lot a lot cheaper, now it's now four, 400 a square foot.

ADJOURNMENT

Chair Apisa: Building materials and labor. Anything else before or else I'll call for a motion to adjourn.

Mr. Ornellas: Move to adjourn.

Ms. Otsuka: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). The meeting is adjourned. 6:0.

Chair Apisa adjourned the meeting at 12:43 p.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.

DEPARTMENT OF PLANNING

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



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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Amendment to the Rules of Practice and Procedure of the Kaua'i County Planning Commission, Chapter 4 Relating to Petitions to Intervene

II. PROCEDURAL REQUIREMENTS

Public Hearing Date:	July 9, 2024
Date of Publication:	June 7, 2024
Date of Director's Report:	June 26, 2024

I. INTRODUCTION:

Various agencies and boards and commissions draft and adopt their own rules of engagement that govern their respective board or commission, including rules pertaining to petitions for interventions. Hawaii Revised Statutes (HRS) Chapter 91, provides a baseline for administrative procedures. The purpose of Chapter 4 of Rules of Practice and Procedure of the Kauai County Planning Commission ("Commission Rules") is to provide standards and procedures for petitions for intervention. Specifically, Chapter 4 details the applicability of intervention requests for various Planning Commission actions, the requirements to file a petition to intervene, requirements for multiple petitioners and intervenors, process for arguments for and against petitions to intervene, and actions on petitions for intervention. The proposed amendments to Chapter 4 of the Commission Rules seek to clarify this section and foster greater efficiency for addressing intervention petitions.

II. DISCUSSION OF CHANGES:

Overall, grammatical and formatting changes were made throughout Chapter 4. In some instances, previous sections were combined and rearranged. In addition, substantive amendments were incorporated in the following new thematic sections:

- A. Applicability
- B. Petition Filing
- C. Contents of Petitions to Intervene
- D. Multiple Petitioners and Intervenors
- E. Arguments For or Against Intervention
- F. Action on Petitions for Intervention

The changes will be discussed in the following subsections. Please see the attached Exhibit A for a copy of the current and amended Planning Commission, Chapter 4 Rules in their entirety.

A. APPLICABILITY

The proposed amendment clarifies the persons or entities who may be admitted as an intervenor or a party to the contested case. Specifically, the amended language replaces the current language that

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that requires a person to prove an “interest in the land”, lawful residence on the land in question, or that their interest is directly and immediately affected by the application and their interest is “clearly distinguishable from that of the general public.” Instead, a person who can “demonstrate an actual or threatened injury that is fairly traceable to the applications action, for which the Commission maintains authority to redress” may be admitted as a party-intervenor. The reason for this change was based on the guidance of the County Attorney’s Office due to relatively recent changes in law decided by the Hawai’i State Supreme Court. Based on the case law, the standard of ‘clearly distinguishable from the general public’ was replaced by the petitioner’s burden to show an actual or threatened injury, traceable to applicant’s conduct, which can be remedied by a Commission decision. Parties with an interest in the land or who reside on the land will often meet this standard, along with others who can demonstrate an injury.

In addition to the above substantive changes, grammatical and formatting changes were made. For example, sections 1-4-1 and 1-4-2 were combined into a new section 1-4-1 under the heading, “Applicability.”

<u>Current Commission Rules Sections 1-4-1 and 1-4-2</u>	<u>Proposed Amendment: Commission Rules Section 1-4-1</u>
<p>1-4-1 <u>Who May Intervene.</u> All Persons who have hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, shall be admitted as Parties-Intervenors upon timely written application for intervention. In no such case shall intervention be allowed for appeals of actions from the Director pursuant to Chapter 9 of these Rules.</p> <p>1-4-2 <u>Intervention: Grounds for Denial.</u> Leave to intervene may be granted, except in matters over which the Commission exercises only advisory functions, provided that the Commission or its Hearing Officer, if one is appointed, may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:</p> <ol style="list-style-type: none"> (1) the position of the applicant for intervention concerning the proposal is substantially the same as the position of a Party-Intervenor already admitted to the proceeding; (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or (3) the intervention will not aid in the development of a full record and will overly broaden issues. 	<p>1-4-1 <u>Applicability.</u></p> <ol style="list-style-type: none"> (a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention. (b) A person who demonstrates an actual or threatened injury that is fairly traceable to the applicant's action, for which the Commission maintains authority to provide redress, may be admitted as Parties-Intervenors upon timely written application for intervention in conformity with these Rules. (c) The Commission may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that: <ol style="list-style-type: none"> (1) the position or interest of the applicant for intervention is substantially the same as a party already admitted to the proceeding; (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or (3) the intervention will not aid in the development of a full record and will overly broaden issues. (d) Upon admission of any intervenor, the Planning Department shall be automatically admitted as a party to the contested case. (e) In no case shall intervention be allowed for appeals from actions of the Director pursuant to Subchapter 9 of these Rules, matters over which the Commission exercises only advisory functions, or the Planning Department exercises only ministerial functions.

B. PETITION FILING

The proposed amendment clarifies the deadline to file petitions for interventions, institutes “excusable neglect” as a standard for untimely petitions for interventions, and increases the filing fee to offset administrative costs associated with processing the petitions.

Regarding the deadline to file petitions for interventions, the amendment proposes to clarify that petitions must be filed “no less than seven (7) days prior to the first public hearing for which notice to the public has been published pursuant to law” instead of the existing language that says, “at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law.” The existing language created confusion regarding what constituted an “Agency Hearing” versus when public hearings were required and accomplished. Also, the requisite deadline became complicated when the Planning Commission continued a public hearing beyond the date detailed in the published public notice. Pursuant to Chapter 8, Article 3 of the Kaua‘i County Code (KCC), as amended, and Section 9 of the Special Management Area (SMA) Rules and Regulations, County of Kaua‘i, State of Hawai‘i, a “[n]otice of the proposed public hearing shall be . . . published at least once in a newspaper of general circulation in the County, at least 20 days prior to the date of the hearing” for all class IV, use, SMA use, and variance permit applications. Thus, the amended language clarifies that the deadline will be seven (7) days prior to the first public hearing for those matters.

For matters that do not require the publication of notice (for example, subdivision application matters), petitions to intervene must be filed “no later than four (4) days prior to the first public hearing.” While notice for these matters are not published in a newspaper, they are listed on the Planning Commission’s agenda at least six (6) days prior to the first public hearing or Planning Commission meeting date. The proposed deadline for intervention petitions for these matters will be no less than four (4) days prior to the first public hearing or Planning Commission meeting date. A deadline of four (4) days will allow the Commission, Commission support staff, and the applicant a minimal amount of time to prepare for, analyze, or respond to the petition to intervene.

Regarding the standard to excuse a late filing of a petition to intervene, existing language allowed late petitions to be accepted for “good cause shown”; however, “good cause” proved confusing and required further clarification. The amendment proposes that “good cause” will be “a sufficient reason beyond the control of the petitioner including acts of God.” For instance, a storm that prevents access to the County to file the petition to intervene would be an appropriate excuse based on a finding of “good cause.”

In addition to “good cause”, a new “excusable neglect” standard is proposed, which is defined as “extenuating circumstances within the control of the petitioner” and not “carelessness, ignorance of the rules, and deliberate or willful conduct”. For example, plausible misconstruction of the rules would constitute “excusable neglect.” Also, the amendment clarifies that “in no event will intervention be permitted after the Commission has taken the final vote on the matter.” Finally, the amendment clarifies that a “finding of good cause or excusable neglect will depend upon the circumstances and will be determined at the discretion of the Commission.”

Regarding the filing fee, an increase from \$25 to \$300 is proposed based on an assessment of the Planning Commission and Planning Department’s administrative costs associated with processing, reviewing, and acting upon petitions to intervene. The \$25 filing fee was imposed 10 years ago in 2014;

however, since 2014, the volume of zoning permit applications and intervention petitions have dramatically increased. In addition, the complexity and highly litigious nature of these zoning permits, especially where petitions to intervene are lodged, has increased the time, energy, and number of staff involved in processing these petitions. At minimum, the Planning Commission’s deputy county attorney spends 10-20 hours to research, prepare for, and provide counsel to the Planning Commission regarding the petitions to intervene. Commission support staff and the Planner assigned expends around 2 hours each to prepare for, copy, create files, and distribute the petitions to intervene. Finally, the Commission’s Clerk and Planning Director will spend up to 2 hours consulting with the Department’s attorney and preparing for the petition for intervention. The collective administrative cost for staff members’ time is up to \$900 per petition.

A survey of other municipalities’ filing fees highlights that a \$300 fee is in conformity with other filing fees. For instance, Maui County imposes a \$828 filing fee for non-SMA or shoreline related petitions to intervene. Hawai‘i County imposes a \$200 filing fee for petitions to intervene. Thus, \$300 is within the range of fees that t are already imposed by other counties.

In addition to the above substantive changes, grammatical and formatting changes were made. For example, sections 1-4-3 and 1-4-6 were combined into a new section 1-4-2 under the heading, “Petition Filing”.

<u>Existing Commission Rules Section 1-4-3 and 1-4-6</u>	<u>Proposed Amendment: Commission Rules Section 1-4-2</u>
<p>1-4-3 Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.</p> <p>1-4-6 Filing Fees. Petitions for intervention shall be accompanied by a filing fee of \$25.00. In the event the petition for intervention is denied, such fees shall be reimbursed.</p>	<p>1-4-2 Petition Filing</p> <p>(a) Petitions to intervene shall be in writing and conform with these Rules.</p> <p>(b) The petition for intervention with Certificate of Service shall be filed with the Commission no less than seven (7) days prior to the first public hearing for which notice to the public has been published pursuant to law or no later than four (4) days prior to the first public hearing for matters that do not require notice by publication.</p> <p>(c) Untimely petitions for intervention will not be accepted except for good cause or excusable neglect shown, but in no event will intervention be permitted after the Commission has taken the final vote on the matter. A finding of good cause or excusable neglect will depend upon the circumstances and will be determined at the discretion of the Commission.</p> <p>(1) Good cause is a sufficient reason beyond the control of the petitioner including acts of God.</p> <p>(2) Excusable neglect is due to extenuating circumstances within the control of the petitioner. Carelessness, ignorance of the rules, and deliberate or willful conduct do not constitute excusable neglect.</p> <p>(d) A Certificate of Service shall verify and attest that all papers filed with the petition for intervention were served upon the applicant, Office of</p>

	<p>the County Attorney, and Planning Department in accordance with Section 1-3-3 of these Rules.</p> <p>(e) Petitions for intervention shall be accompanied by a non-refundable filing and processing fee of \$300.00. In the event the petition for intervention is denied, such fees shall not be reimbursed.</p>
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C. CONTENTS OF PETITIONS TO INTERVENE

The proposed amendment makes grammatical and formatting changes to the section that specifies the contents of a petition to intervene. No substantive changes were made.

<u>Existing Commission Rules Section 1-4-4</u>	<u>Proposed Amendment: Commission Rules Section 1-4-3</u>
<p>1-4-4 <u>Contents of Petition.</u> The petition shall state:</p> <ol style="list-style-type: none"> (1) The nature of Petitioner's statutory or other right. (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property. (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing. (4) The effects of any decision in the Proceeding on Petitioner's interest. <p>If applicable, the petition shall also make reference to the following:</p> <ol style="list-style-type: none"> (5) Other means available whereby Petitioner's interest may be protected. (6) Extent Petitioner's interest may be represented by existing parties. (7) Extent Petitioner's interest in Proceeding differs from that of the other parties. (8) Extent Petitioner's participation can assist in, development of a complete record. (9) Extent Petitioner's participation will broaden the issue or delay the Proceeding. (10) How the Petitioner's intervention would serve the public interest. 	<p>1-4-3 <u>Contents of Petition to Intervene</u></p> <p>(a) The petition shall contain the following:</p> <ol style="list-style-type: none"> (1) The nature of Petitioner's statutory or other right; (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property; (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing; and (4) The effects of any decision in the Proceeding on Petitioner's interest. <p>(b) If applicable, the petition shall also refer to the following:</p> <ol style="list-style-type: none"> (1) Other means available whereby Petitioner's interest may be protected; (2) Extent Petitioner's interest may be represented by existing parties; (3) Extent Petitioner's interest in Proceeding differs from that of the other parties; (4) Extent Petitioner's participation can assist in, development of a complete record; (5) Extent Petitioner's participation will broaden the issue or delay the Proceeding; and (6) How the Petitioner's intervention would serve the public interest.

D. MULTIPLE PETITIONERS AND INTERVENORS

The proposed amendment makes grammatical changes and adjusts the numbering to this section. The amendment clarifies that multiple petitioners may be consolidated. In addition, the amendment clarifies that once admitted, multiple intervenors may be required to assign responsibilities between themselves, and reasonable subject matter limitations and time limitations may be imposed by the Hearing Officer or Commission to streamline the contested case process.

<u>Existing Commission Rules Section 1-4-5</u>	<u>Proposed Amendment: Commission Rules Section 1-4-4</u>
<p>1-4-5 <u>Consolidation of Parties</u>. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.</p>	<p>1-4-4 <u>Multiple Petitioners and Intervenors</u>.</p> <p>(a) <u>Multiple Petitioners</u>. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.</p> <p>(b) <u>Multiple Intervenors</u>. If more than one intervenor is admitted to a contested case proceeding, the Hearing Officer or Commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The Hearing Officer or Commission shall have the right to impose reasonable subject matter limitations and time limitations on examination and cross-examination of witnesses, whether parties are represented by counsel.</p>

E. ARGUMENTS FOR OR AGAINST INTERVENTION

The proposed amendment makes formatting changes to this section that details the opportunity of petitioners and the parties opposing the petitions to argue for or against intervention. No substantive changes were made.

<u>Existing Commission Rules Section 1-4-7</u>	<u>Proposed Amendment: Commission Rules Section 1-4-5</u>
<p>1-4-7 <u>Arguments For or Against Intervention</u>. The Petitioner for intervention shall be given an opportunity to argue on behalf of the petition to the Commission. The other Parties shall then be given an opportunity to comment on or oppose the petition. If any Party opposes the petition for intervention, the Party shall file objections thereto as soon as practicable or state the objections for the record.</p>	<p>1-4-5 <u>Arguments For or Against Intervention</u>.</p> <p>(a) The petitioner shall be given an opportunity to argue on behalf of the petition to the Commission. The other parties shall then be given an opportunity to comment on or oppose the petition.</p> <p>(b) If any party opposes the petition for intervention, the party shall file their motion opposing the petition as soon as practicable or state the objections for the record.</p>

F. ACTION ON PETITION FOR INTERVENTION

The proposed amendment clarifies that all petitions to intervene or in opposition shall be reviewed and decided by the Commission prior to first public hearing on the subject application. In addition, the proposed amendment makes grammatical and formatting changes to this section by combining sections 1-4-8 and 1-4-9 into a new section 1-4-6, titled "Action on Petition for Intervention".

<u>Existing Commission Rules Section 1-4-8 and 1-4-9</u>	<u>Proposed Amendment: Commission Rules Section 1-4-6</u>
<p>1-4-8 <u>Action</u>. All petitions to intervene or in opposition to such intervention shall be reviewed and</p>	<p>1-4-6 <u>Action on Petition for Intervention</u>.</p> <p>(a) All petitions to intervene or in opposition</p>

<p>a decision rendered by the Commission prior to the commencement of the hearing.</p> <p>1-4-9 <u>Denial of Intervention</u>. Upon denial or an intervention petition by the Commission, the Commission shall issue a written decision.</p>	<p>to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the first public hearing.</p> <p>(b) The Commission shall issue a written decision upon its denial of a petition for intervention.</p> <p>(c) A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, HRS, as amended.</p>
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III. RECOMMENDATION:

Pursuant to HRS 91-3 and Chapters 2, 5 and 11 of the Planning Commission Rules, prior to any action, a public hearing is required to allow all interested persons an opportunity to submit data, views, or arguments. In addition, pursuant to HRS 201M, the amendments must be reviewed by the State of Hawai'i Small Business Regulatory Review Board regarding any affects to small businesses. Thus, the Department recommends the Planning Commission defer action and continue the public hearing on this matter until after the State of Hawai'i Small Business Regulatory Review Board reviews and provides its recommendation on the proposed amended rules.



JODY HIGUCHI SAYEGUSA
Deputy Director of Planning

EXHIBIT A

Current Chapter 4 of the Commission Rules

And

Draft Amended Chapter 4 of the Commission Rules

CHAPTER 4

INTERVENTION PROCEEDINGS BEFORE THE PLANNING COMMISSION

1-4-1 Who May Intervene. All Persons who have hold interest in the land, who lawfully reside on the land, or who otherwise can demonstrate that they will be so directly and immediately affected by the proposed application that their interest in the Proceeding is clearly distinguishable from that of the general public, shall be admitted as Parties-Intervenors upon timely written application for intervention. In no such case shall intervention be allowed for appeals of actions from the Director pursuant to Chapter 9 of these Rules.

1-4-2 Intervention: Grounds for Denial. Leave to intervene may be granted, except in matters over which the Commission exercises only advisory functions, provided that the Commission or its Hearing Officer, if one is appointed, may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:

- (1) the position of the applicant for intervention concerning the proposal is substantially the same as the position of a Party-Intervenor already admitted to the proceeding;
- (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

1-4-3 Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the Agency Hearing for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

1-4-4 Contents of Petition. The petition shall state:

- (1) The nature of Petitioner's statutory or other right.
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property.
- (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing.
- (4) The effects of any decision in the Proceeding on Petitioner's interest.

If applicable, the petition shall also make reference to the following:

- (5) Other means available whereby Petitioner's interest may be protected.
- (6) Extent Petitioner's interest may be represented by existing parties.
- (7) Extent Petitioner's interest in Proceeding differs from that of the other parties.
- (8) Extent Petitioner's participation can assist in, development of a complete record.
- (9) Extent Petitioner's participation will broaden the issue or delay the Proceeding.
- (10) How the Petitioner's intervention would serve the public interest.

1-4-5 Consolidation of Parties. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.

1-4-6 Filing Fees. Petitions for intervention shall be accompanied by a filing fee of \$25.00. In the event the petition for intervention is denied, such fees shall be reimbursed.

1-4-7 Arguments For or Against Intervention. The Petitioner for intervention shall be given an opportunity to argue on behalf of the petition to the Commission. The other Parties shall then be given an opportunity to comment on or oppose the petition. If any Party opposes the petition for intervention, the Party shall file objections thereto as soon as practicable or state the objections for the record.

1-4-8 Action. All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the hearing.

1-4-9 Denial of Intervention. Upon denial of an intervention petition by the Commission, the Commission shall issue a written decision.

Subchapter 4 Intervention

- § 1-4-1 Applicability**
- § 1-4-2 Petition Filing**
- § 1-4-3 Contents of Petition to Intervene**
- § 1-4-4 Multiple Petitioners and Intervenors**
- § 1-4-5 Arguments For or Against Intervention**
- § 1-4-6 Action on Petition for Intervention**

SUBCHAPTER 4

PETITION TO INTERVENE

1-4-1 Applicability.

(a) All departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention.

(b) A person who demonstrates an actual or threatened injury that is fairly traceable to the applicant's action, for which the Commission maintains authority to provide redress, may be admitted as Parties-Intervenors upon timely written application for intervention in conformity with these Rules.

(c) The Commission may deny an application to intervene when in the Commission's or Hearing Officer's sound discretion it appears that:

- (1) the position or interest of the applicant for intervention is substantially the same as a party-already admitted to the proceeding;
- (2) the admission of additional Parties-Intervenors will render the proceedings inefficient and unmanageable; or
- (3) the intervention will not aid in the development of a full record and will overly broaden issues.

(d) Upon admission of any intervenor, the Planning Department shall be automatically admitted as a party to the contested case.

(e) In no case shall intervention be allowed for appeals from actions of the Director pursuant to Subchapter 9 of these Rules, matters over which the Commission exercises only advisory functions, or the Planning Department exercises only ministerial functions.

1-4-2 Petition Filing.

(a) Petitions to intervene shall be in writing and conform with these Rules.

(b) The petition for intervention with Certificate of Service shall be filed with the Commission no less than seven (7) days prior to the first public hearing for which notice to the public has been published pursuant to law or no later than four (4) days prior to the first public hearing for matters that do not require notice by publication.

(c) Untimely petitions for intervention will not be accepted except for good cause or excusable neglect shown, but in no event will intervention be permitted after the Commission has taken the final vote on the matter. A finding of good cause or excusable neglect will depend upon the circumstances and will be determined at the discretion of the Commission.

- (1) Good cause is a sufficient reason beyond the control of the petitioner including acts of God.
- (2) Excusable neglect is due to extenuating circumstances within the control of the petitioner. Carelessness, ignorance of the rules, and deliberate or willful conduct do not constitute excusable neglect.

(d) A Certificate of Service shall verify and attest that all papers filed with the petition for intervention were served upon the applicant, Office of the County Attorney, and Planning Department in accordance with Section 1-3-3 of these Rules.

(e) Petitions for intervention shall be accompanied by a non-refundable filing and processing fee of \$300.00. In the event the petition for intervention is denied, such fees shall not be reimbursed.

1-4-3 Contents of Petition to Intervene.

(a) The petition shall contain the following:

- (1) The nature of Petitioner's statutory or other right;
- (2) The nature and extent of petitioner's interest and if an affected property owner, provide the Tax Map Key description of the affected property;
- (3) The specific issues to be raised or contested by the Petitioner in the Contested Case hearing; and
- (4) The effects of any decision in the Proceeding on Petitioner's interest.

(b) If applicable, the petition shall also refer to the following:

- (1) Other means available whereby Petitioner's interest may be protected;
- (2) Extent Petitioner's interest may be represented by existing parties;
- (3) Extent Petitioner's interest in Proceeding differs from that of the

other parties;

- (4) Extent Petitioner's participation can assist in, development of a complete record;
- (5) Extent Petitioner's participation will broaden the issue or delay the Proceeding; and
- (6) How the Petitioner's intervention would serve the public interest.

1-4-4 Multiple Petitioners and Intervenors.

(a) Multiple Petitioners. Petitioners deemed by the Commission to have similar intervention requests may be consolidated as a single Party represented by a single counsel or agent.

(b) Multiple Intervenors. If more than one intervenor is admitted to a contested case proceeding, the Hearing Officer or Commission may require intervenors to assign responsibilities between themselves for the examination and cross-examination of witnesses. The Hearing Officer or Commission shall have the right to impose reasonable subject matter limitations and time limitations on examination and cross-examination of witnesses, whether parties are represented by counsel.

1-4-5 Arguments For or Against Intervention.

(a) The petitioner shall be given an opportunity to argue on behalf of the petition to the Commission. The other parties shall then be given an opportunity to comment on or oppose the petition.

(b) If any party opposes the petition for intervention, the party shall file their motion opposing the petition as soon as practicable or state the objections for the record.

1-4-6 Action on Petition for Intervention.

(a) All petitions to intervene or in opposition to such intervention shall be reviewed and a decision rendered by the Commission prior to the commencement of the first public hearing.

(b) The Commission shall issue a written decision upon its denial of a petition for intervention.

(c) A person whose petition to intervene has been denied may appeal such denial to the circuit court pursuant to chapter 91-14, HRS, as amended.

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

SUPPLEMENTAL #1 TO DIRECTOR'S REPORT

I. BACKGROUND

Based on the discussion on July 9, 2024, regarding the proposed amendment to Chapter 4 of the Rules of Practice and Procedure of the Planning Commission, this "Supplemental #1 to the Director's Report" was prepared to provide further clarification. Namely, the Commission requested additional examples of what may constitute "good cause" and "excusable neglect" that could excuse missing the filing deadline for petitions to intervene.

Among other things, the proposed amendment clarifies the deadline to file petitions for interventions. Petitions must be filed "no less than seven (7) days **prior to the first public hearing** for which notice to the public has been published pursuant to law" instead of the existing language that says, "at least seven (7) days prior to the **Agency Hearing** for which notice to the public has been published pursuant to law." For matters that do not require the publication of notice (for example, subdivision application matters), petitions to intervene must be filed "**no later than four (4) days prior to the first public hearing.**"

The proposed amended Section 1-4-2 seeks to amend the current language that says, "[u]ntimely petitions for intervention will not be permitted except for good cause shown," with the following:

(a) **Untimely petitions for intervention will not be accepted except for good cause or excusable neglect shown**, but in no event will intervention be permitted after the Commission has taken the final vote on the matter. A finding of good cause or excusable neglect will **depend upon the circumstances and will be determined at the discretion of the Commission.**

- (1) **Good cause** is a sufficient reason beyond the control of the petitioner including acts of God.
- (2) **Excusable neglect** is due to extenuating circumstances within the control of the petitioner. Carelessness, ignorance of the rules, and deliberate or willful conduct do not constitute excusable neglect.

II. DISCUSSION

A. GOOD CAUSE

"Good cause" is "a sufficient reason beyond the control of the petitioner including acts of God." Whether the explanation meets the "good cause" standard will depend on the facts and circumstances of each scenario and will be in the Commission's discretion. Some examples could include the following:

1. Natural disasters
 - a. A storm that closes the roadways or the county buildings that prevents access to the County to file the petition.
 - b. Global pandemic with quarantine restrictions.
2. Power Outage: a power outage in the petitioner's area that hampers progress or completion of the petition on time.

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3. Technical Difficulties: computer hardware failure, loss of data, or loss of internet service that prevented timely printing or submission of the petition.
4. Medical Emergency: an unexpected medical emergency that required immediate attention and prevented filing the petition on time.
5. Family Emergency: an unexpected family emergency that required the petitioner to travel or provide support to the family member, which affected their ability to meet the deadline.
6. Faulty Information: notice in the newspaper was not posted properly or contained misleading information.

B. EXCUSABLE NEGLECT

“Excusable neglect” is “extenuating circumstances within the control of the petitioner” and not “carelessness, ignorance of the rules, and deliberate or willful conduct”. This standard infers that there was a mistake or surprise that would make the neglect excusable. Again, whether the reason is excusable would depend on the facts and circumstance and will be up to the Commission to weigh and assess. However, some examples could include the following:

1. Plausible misconstruction of the rules: a lay person (not a land use representative or attorney) misconstrued the standards or rules.
2. Personal Health Issues: ongoing health issues (not a medical emergency) or a temporary sickness or disability that impacted productivity and progress to finish the petition or timely file the petition.
3. Unanticipated Workload or Scheduling Issues:
 - a. An unexpected surge in work from other jobs or duties that caused insufficient time to finish the petition or file the petition.
 - b. Error in scheduling caused recording the deadline later than it was or delayed completing the petition.
4. Document or Information Misplacement: misplaced critical documents that were needed to draft the petition.
5. Unexpected Personal Commitment: an unexpected personal commitment, such as a family obligation (not family emergency) that interfered with meeting the deadline.
6. Ongoing Hardware or Software Failure: failure to remedy a temporary or ongoing hardware, software or tool that was needed to draft or file the petition (not an unexpected failure).

C. NOT BAD FAITH

In either scenario, reasons that could excuse missing the deadline do not include bad faith, willful or deliberate acts, ignorance, nor carelessness. Examples of bad faith could include:

1. Deliberate Acts

- a. A party intentionally or deliberately files the petition late to cause inconvenience to the other party.
 - b. Repeated behavior such as repeatedly failing to meet deadlines that reflects willful or knowing failure to comply with the timelines.
 - c. A party knowingly or intentionally neglects to check deadlines or understand the rules with the intent to miss the deadline.
2. Ignorance or carelessness: a party that attempts to file a petition or raise wishes to file a petition with little to no understanding of any Planning Commission Rules.
 3. Deceptive Behavior: a party makes misleading statements to reflect good cause or excusable neglect.



JODI HIGUCHI SAYEGUSA
Deputy Director of Planning

Ka'āina S. Hull
Director of Planning



Jodi A. Higuchi Sayegusa
Deputy Director of Planning

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

Permit Application Nos. Zoning Amendment ZA-2024-1

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 when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

III. LEGAL REQUIREMENTS

KCC Section 8-3.4	
Public Hearing Date:	June 4, 2024
Date of Publication:	May 03, 2024
Date of Director's Report:	May 20, 2024

F.3.b.
SEP 10 2024

F.4.a.2.
JUN 04 2024

IV. DESCRIPTION OF THE AMENDMENT

The proposed legislation under Zoning Amendment ZA-2024-1 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Wailua region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

V. AMENDMENT JUSTIFICATION

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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

The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

VI. AGENCY COMMENTS

Agency comments under separate transmittal.

VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:

- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
- ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-1 be **APPROVED**.

By Shelea Koga
Shelea Koga
Planner

Approved & Recommended to Commission:

By Kāaina Hull
KĀĀINA HULL
Director of Planning

Date: 5/21/2024

EXHIBIT "A"

Draft Ordinance for ZA-2024-1 Wailua

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN WAILUA,
KAUA'I**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Wailua, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

SECTION 2. The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-WA 500 (Wailua) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Wailua area include the following: (4) 4-1-016: 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, and 28.

SECTION 3. The Planning Department 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 4. If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

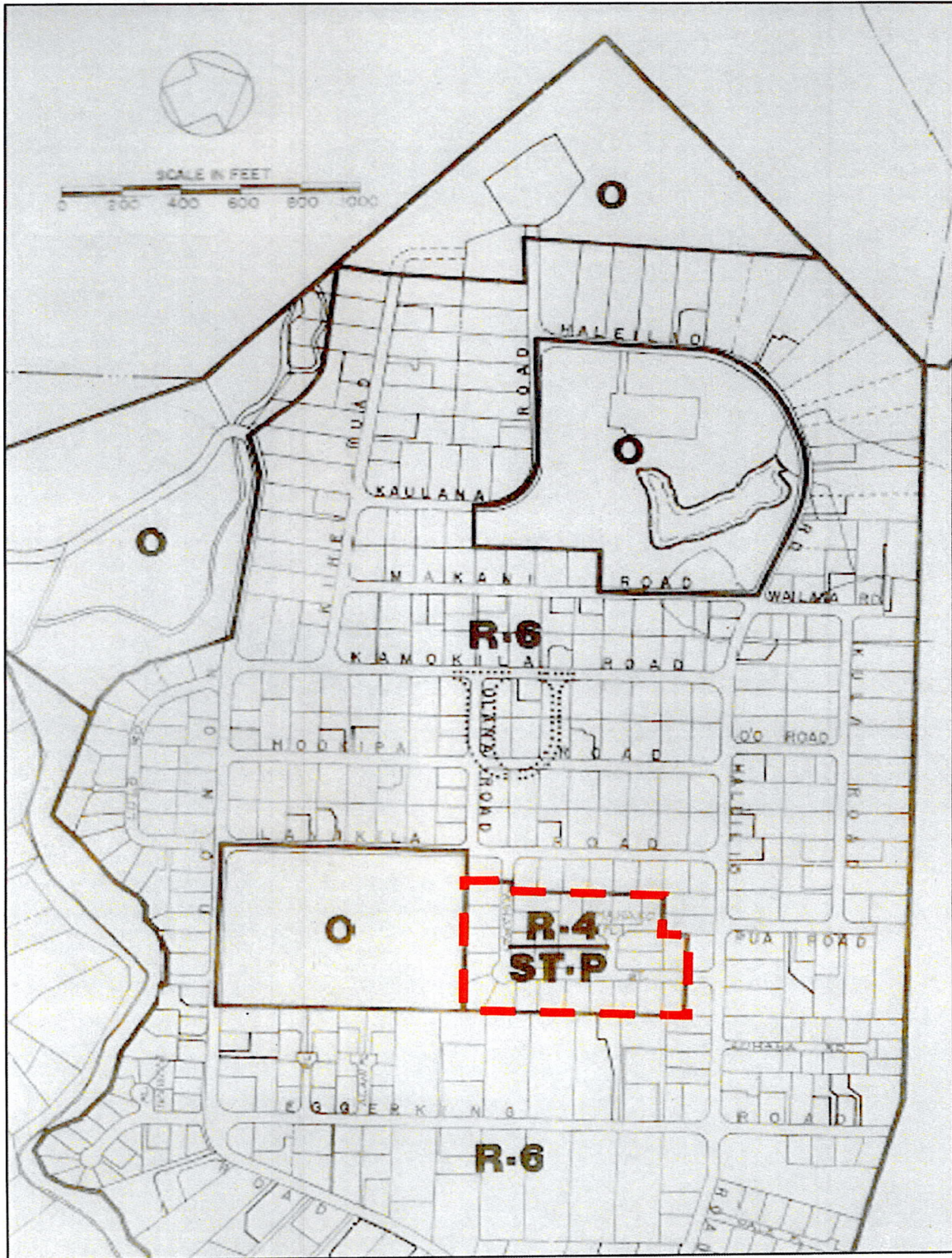
SECTION 5. This ordinance shall take effect upon its approval.

Introduced by:

(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



Proposed Amendment to Zoning Map ZM-WA 500 from Residential 4/Special Treatment Public (R-4/ST-P) to Residential 4 (R-4)

Wailua Houselots, Kaua'i, Hawai'i


 R-4 District Boundary

Exhibit A

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



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

SUPPLEMENT #1 TO
PLANNING DIRECTOR'S REPORT

RE: Zoning Amendment ZA-2024-1

APPLICANT: COUNTY OF KAUA'I, PLANNING DEPARTMENT

Background

On June 4, 2024, the Planning Commission reviewed Zoning Amendments ZA-2024-1 (Wailua) and ZA-2024-2 (Hanapēpē), both initiated by the County of Kaua'i Planning Department to amend Zoning Maps ZM-WA-500 (Wailua) and ZM-H200 (Hanapēpē) by removing the ST-P overlay from Residential Zoned parcels.

The Planning Department requested an initial deferral of ZA-2024-2 (Hanapēpē) to make necessary changes to the submitted map to ensure that existing public utilities remain within the ST-P overlay. Although no changes were made for ZA-2024-1 (Wailua), the department still requested a deferral to ensure both related bills would proceed together.

Additional Findings

Please see attached exhibits.

1. Original Director's Report 05/20/2024 (Exhibit "A")

Preliminary Recommendation

Based on the foregoing, it is recommended that Zoning Amendment ZA-2024-1 be **APPROVED**.

By Shelea Koga
Shelea Koga
Planner

Approved & Recommended to Commission:

By [Signature]
KĀĀINA HULL
Director of Planning

Date: 8/29/2024

F.3.b.1.
SEP 10 2024

“EXHIBIT A”

(Original Director’s Report dated 05/20/2024)

For reference

Ka'āina S. Hull
Director of Planning



Jodi A. Higuchi Sayegusa
Deputy Director of Planning

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

Permit Application Nos. Zoning Amendment ZA-2024-1

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 when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

III. LEGAL REQUIREMENTS

KCC Section 8-3.4	
Public Hearing Date:	June 4, 2024
Date of Publication:	May 03, 2024
Date of Director's Report:	May 20, 2024

IV. DESCRIPTION OF THE AMENDMENT

The proposed legislation under Zoning Amendment ZA-2024-1 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Wailua region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

V. AMENDMENT JUSTIFICATION

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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

The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

VI. AGENCY COMMENTS

Agency comments under separate transmittal.

VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:


- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
- ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-WA 500 (Wailua) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-1 be **APPROVED**.

By 
Shelea Kōga
Planner

Approved & Recommended to Commission:

By 
KĀĀINA HULL
Director of Planning

Date: 5/21/2024

EXHIBIT “A”

Draft Ordinance for ZA-2024-1 Wailua

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN WAILUA,
KAUA'I**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII:

SECTION 1. Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Wailua, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

SECTION 2. The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-WA 500 (Wailua) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Wailua area include the following: (4) 4-1-016: 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, and 28.

SECTION 3. The Planning Department 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 4. If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

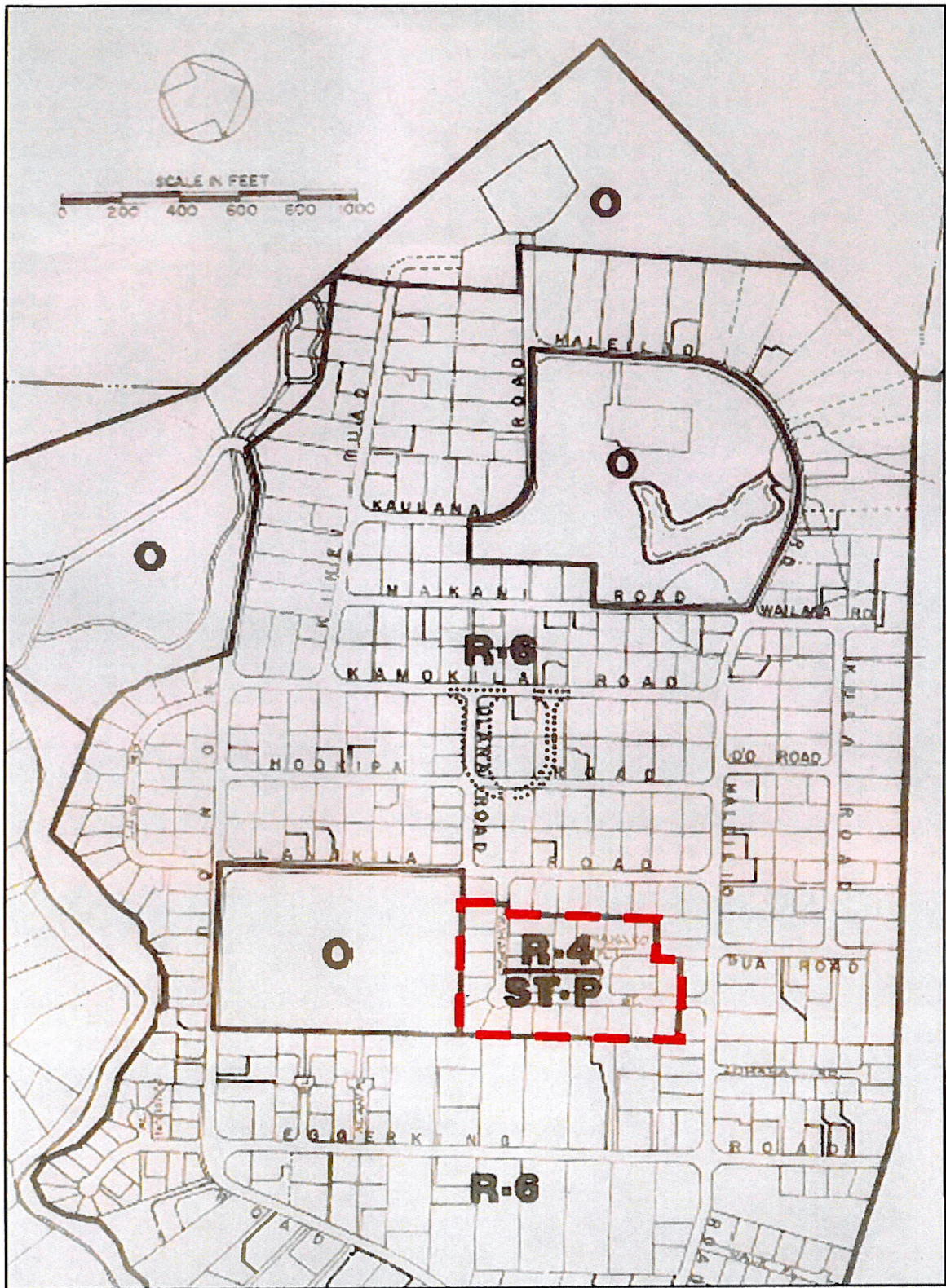
SECTION 5. This ordinance shall take effect upon its approval.

Introduced by:

(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



Proposed Amendment to Zoning Map ZM-WA 500 from Residential 4/Special Treatment Public (R-4/ST-P) to Residential 4 (R-4)

Wailua Houselots, Kaua'i, Hawai'i

 R-4 District Boundary

Ka'āina S. Hull
Director of Planning



Jodi A. Higuchi Sayegusa
Deputy Director of Planning

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

Permit Application Nos. Zoning Amendment ZA-2024-2

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 when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
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III. LEGAL REQUIREMENTS

KCC Section 8-3.4	
Public Hearing Date:	June 4, 2024
Date of Publication:	May 03, 2024
Date of Director's Report:	May 20, 2024

F. B. C.
SEP 10 2024

~~**F. A. B. I.**~~
JUN 04 2024

IV. DESCRIPTION OF THE AMENDMENT

The proposed legislation under Zoning Amendment ZA-2024-2 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Hanapēpē region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

V. AMENDMENT JUSTIFICATION

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

VI. AGENCY COMMENTS

Agency comments under separate transmittal.

VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:

- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
- ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-2 be **APPROVED**.

By Shelea Koga
Shelea Koga
Planner

Approved & Recommended to Commission:

By Kāaina Hull
KĀĀINA HULL
Director of Planning

Date: 5/21/2024

EXHIBIT "A"

Draft Ordinance for ZA-2024-2 Hanapēpē

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN
HANAPĒPĒ, KAUA'I**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII':

SECTION 1. Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Hanapēpē, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development; except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

SECTION 2. The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-H200 (Hanapēpē) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Hanapēpē area include the following: (4) 1-8-013:036, (4) 1-8-014: 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; (4) 1-8-015: 1, 2, 3, 4, 5, 6, 7, 8, 9, 118, 119, 120, 121, 124, and 125.

SECTION 3. The Planning Department 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 4. If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

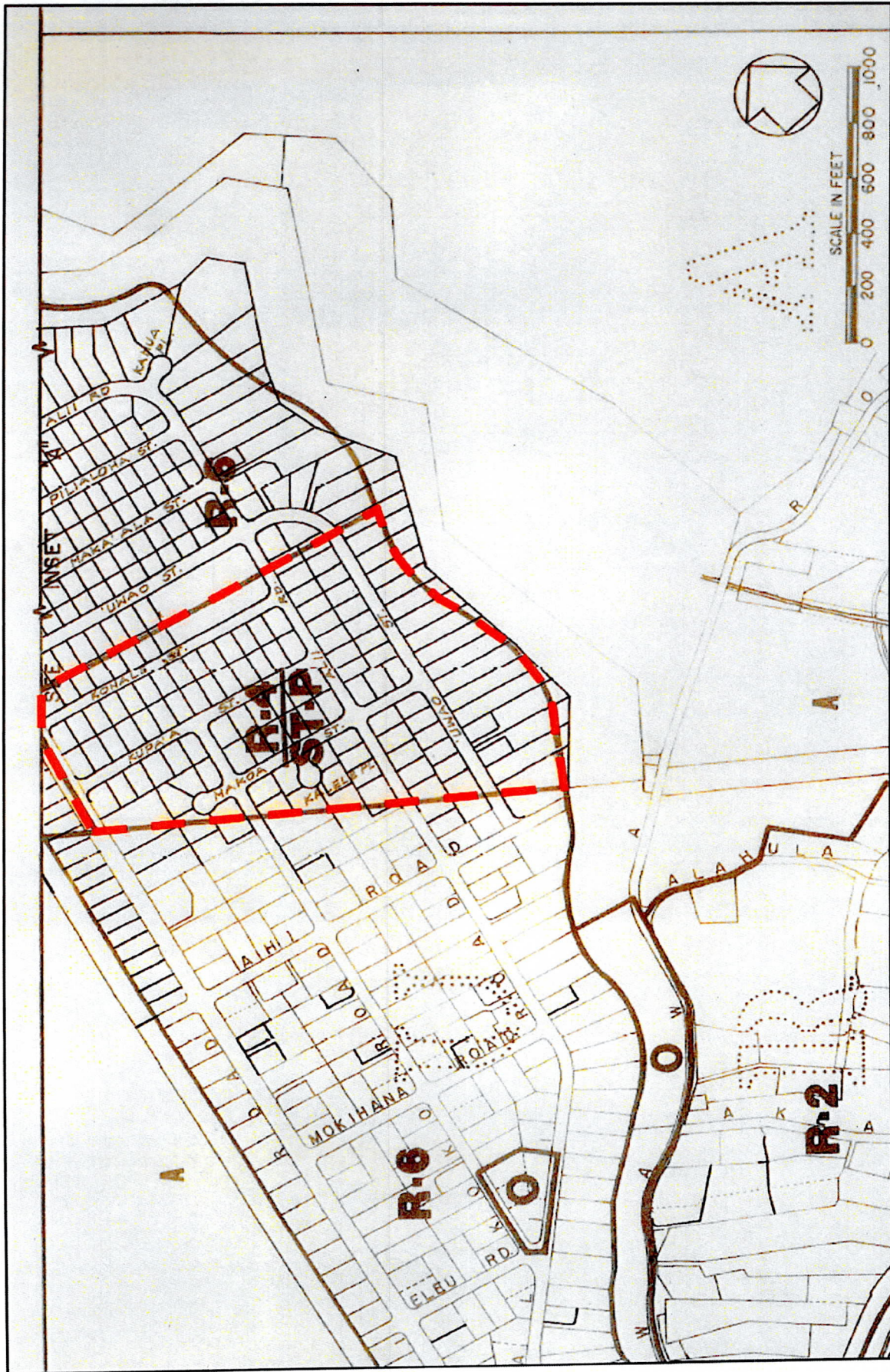
SECTION 5. This ordinance shall take effect upon its approval.

Introduced by:

(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



Proposed Amendment to Zoning Map ZM-H200 from Residential Four/Special Treatment Public(R-4/ST-P) to Residential Four (R-4)

Hanapēpē Heights, Kaua'i, Hawai'i

 R-4 District Boundary

Exhibit A

DEPARTMENT OF PLANNING

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



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

SUPPLEMENT #1 TO
PLANNING DIRECTOR'S REPORT

RE: Zoning Amendment ZA-2024-2

APPLICANT: COUNTY OF KAUA'I, PLANNING DEPARTMENT

Background

On June 4, 2024, the Planning Commission reviewed Zoning Amendments ZA-2024-1 (Wailua) and ZA-2024-2 (Hanapēpē), both initiated by the County of Kaua'i Planning Department to amend Zoning Maps ZM-WA-500 (Wailua) and ZM-H200 (Hanapēpē) by removing the ST-P overlay from Residential Zoned parcels.

The Planning Department requested an initial deferral of ZA-2024-2 (Hanapēpē) to make necessary changes to the submitted map to ensure that existing public utilities remain within the ST-P overlay. Although no changes were made for ZA-2024-1 (Wailua), the department still requested a deferral to ensure both related bills would proceed together.

Additional Findings

Please see attached exhibits.

1. Amended ZM-H200 Hanapēpē Map (Exhibit "A")
2. Original Director's Report 05/20/2024 (Exhibit "B")

Preliminary Recommendation

Based on the foregoing, it is recommended that Zoning Amendment ZA-2024-1 be APPROVED.

By Shelea Koga
Shelea Koga
Planner

Approved & Recommended to Commission:
By [Signature]
KĀĀINA HULL
Director of Planning

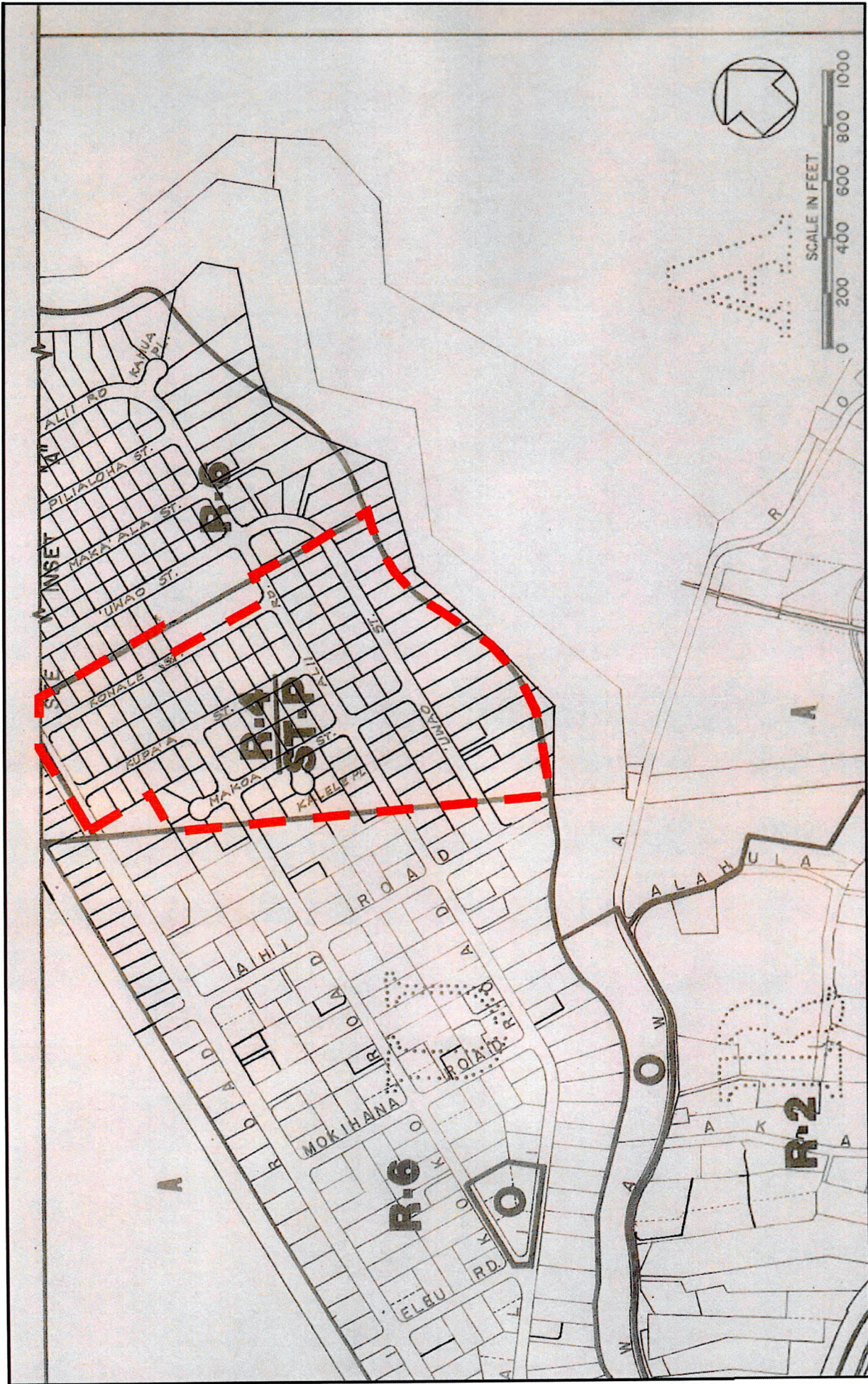
Date: 8/29/2024

F.B.C.I.
SEP 10 2024

“EXHIBIT A”

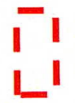
(Amended ZM-H200 Hanapēpē Map)

For reference



Proposed Amendment to Zoning Map ZM-H200 from Residential Four/Special Treatment Public(R-4/ST-P) to Residential Four (R-4)

Hanapēpē Heights, Kaua'i, Hawai'i



R-4 District Boundary

“EXHIBIT B”

(Original Director’s Report dated 05/20/2024)

For reference

Ka'āina S. Hull
Director of Planning



Jodi A. Higuchi Sayegusa
Deputy Director of Planning

**COUNTY OF KAUA'I
PLANNING DEPARTMENT**

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of a Zoning Amendment to amend the subject properties from Residential Four (R4) / Special Treatment – Public Facilities (ST-P) to Residential Four (R4).

Permit Application Nos. Zoning Amendment ZA-2024-2

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 when changing the text whenever the public necessity and convenience and the general welfare require an amendment.
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> Community Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

III. LEGAL REQUIREMENTS

KCC Section 8-3.4	
Public Hearing Date:	June 4, 2024
Date of Publication:	May 03, 2024
Date of Director's Report:	May 20, 2024

IV. DESCRIPTION OF THE AMENDMENT

The proposed legislation under Zoning Amendment ZA-2024-2 (Bill No. to be determined) is being initiated by the County of Kaua'i Planning Department and would amend Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3.

At present, the affected parcels in the Hanapēpē region are zoned as Residential Four (R4)/ Special Treatment – Public Facilities (ST-P). These parcels are situated in close proximity to a public park. In reviewing the records, the intent behind placing the ST-P overlay over the residential area surrounding the park is uncertain. However, it can be speculated that the ST-P designation may have been applied to the residential parcels with the goal of expanding the park. There are no plans with the Parks Department to expand the subject park.

Please see the attached draft bill for the affected properties in Exhibit A.

V. AMENDMENT JUSTIFICATION

The ST-P zoning designation on residentially zoned properties does not align with the intended purpose of the ST-P zoning district. According to Section 8-11.2 of the Comprehensive Zoning Ordinance (CZO), the ST-P Zoning District is designated for the following purposes:

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

The subject residential parcels are not suited for public and quasi-public uses.

Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land. Obtaining a discretionary Use Permit can often be a lengthy and arduous process, and it can also incur substantially higher costs compared to a ministerial Class I, II, or III permit.

VI. AGENCY COMMENTS

Agency comments under separate transmittal.

VII. PRELIMINARY EVALUATION

In evaluating the proposed zoning amendment, the following aspects should be considered:

1. Comprehensive Zoning Ordinance (CZO)

The proposed zoning amendment would uphold the low-density character of the immediate area, in line with neighboring properties zoned R4. It aims to eliminate the ST-P Zoning to

maintain consistency with the surrounding zoning. The zoning amendment would continue to be compatible with the surrounding uses. Also, it should not have any significant adverse impacts to the environment and not be detrimental to persons or property in the surrounding area.

2. Use Permit Process

The Use Permit process is designed to obtain approval for land uses or developments that are not outright permitted under existing zoning regulations. It begins with a pre-application meeting where the applicant consults with planning staff to discuss the project and gather necessary information. The applicant then submits a detailed application, which includes site plans, renderings, and any relevant analyses or studies, along with a fee. Planning staff review the application for completeness and compliance, often requesting additional information. Public notices are then sent out to inform nearby property owners and the general public.

During the public hearing, the project is presented, and community members have the opportunity to voice their support or concerns. At this stage, intervention from the public can occur, where individuals or groups may present objections or request additional considerations. Such interventions can lead to extended litigation, additional reviews, and potentially more public hearings, all of which can significantly affect the timeline for action. This prolonged process can become very costly for the applicant, both in terms of time and financial resources, as they may need to conduct further studies, revise plans, or enter into litigation.

Planning staff prepare a report evaluating the proposal against zoning regulations and community feedback, which is reviewed by the Planning Commission. The Commission then decides to approve, deny, or conditionally approve the Use Permit. If denied or conditions are imposed, the applicant may appeal. Once approved, the Use Permit is issued, allowing the applicant to proceed with other required permits and begin development. Compliance with the permit conditions is monitored by the planning department to ensure adherence, with penalties or revocation possible for non-compliance. This process ensures that proposed developments align with community standards and regulatory requirements while allowing for public participation.

Typically, residentially zoned properties do not require a Use Permit to construct a dwelling, as this is a permitted use under such zoning. However, due to these properties having a ST-P overlay, they can be subject to the Use Permit requirements.

This can be an arduous, costly, and lengthy process for construction of nothing more than residential homes within an area that has been previously determined to be appropriate for residential construction.

3. Kaua'i General Plan (2018)

The 2018 General Plan sets forth a vision, goals, and policies to guide future growth on Kaua'i. The proposed amendment is consistent with the overall vision and policies outlined in the 2018 General Plan.

A. Section 3.0 Actions by Sector, Subsection Sector II, entitled "Infill Housing" states for code changes:


- i. **Streamline permit approvals for infill development and housing rehabilitation by removing barriers, such as administrative delays.**
Eliminating the ST-P designation will allow these properties to obtain ministerial Class I permits instead of Use Permits, thus expediting the Zoning Permit process.
- ii. **Incentivize infill development by reducing or eliminating tipping fees, wastewater and water facility charges, permit review fees, and park and environmental fees.**
Eliminating the ST-P designation will encourage infill development due to the disparity in permitting fees. Ministerial Class I-II permits typically range from \$30 to \$60, whereas Use Permits can cost anywhere between \$800 to \$1200, and they can become exponentially more expensive with intervention and litigation.

VIII. PRELIMINARY CONCLUSION

Based on the foregoing findings and evaluation, it is hereby concluded that the proposed amendments to Zoning Map ZM-H 200 (Hanapēpē) within the Comprehensive Zoning Ordinance (CZO) referenced in Section 8-2.3 is reasonable and appropriate.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing evaluation and conclusion, it is recommended that Zoning Amendment ZA-2024-2 be **APPROVED**.

By 
Shelea Koga
Planner

Approved & Recommended to Commission:

By 
KĀĀINA HULL
Director of Planning

Date: 5/21/2024

EXHIBIT “A”

Draft Ordinance for ZA-2024-2 Hanapēpē

ORDINANCE NO. _____

BILL NO. _____

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO ZONING DESIGNATIONS IN
HANAPĒPĒ, KAUA'I**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAII'I:

SECTION 1. Findings and purpose. The purpose of this ordinance is to remove the Special Treatment – Public Facilities (ST-P) designation from residential areas in Hanapēpē, Kaua'i.

The Comprehensive Zoning Ordinance (CZO) section 8-11.2 states that the ST-P zoning district is for "all public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses." Due to the ST-P zoning designation, any property located within this district requires a Use Permit for all uses, structures, or development, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three dimensional structures of land.

The County of Kaua'i acknowledges the lengthy and at times challenging process involved in obtaining a Use Permit. Residential properties that would typically require a ministerial class I permit are subjected to obtaining a discretionary Use Permit due to the ST-P Zoning.

SECTION 2. The Comprehensive Zoning Ordinance (CZO) is hereby amended by amending the Zoning Map within the CZO referenced in Section 8-2.3 by making the following changes to ZM-H200 (Hanapēpē) as shown in Exhibit A of this ordinance, which is attached hereto and incorporated herein:

The parcels identified by the Tax Map Keys for the Hanapēpē area include the following: (4) 1-8-013:036, (4) 1-8-014: 1, 2, 3, 4, 5, 6, 7, 8, 9, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, and 113; (4) 1-8-015: 1, 2, 3, 4, 5, 6, 7, 8, 9, 118, 119, 120, 121, 124, and 125.

SECTION 3. The Planning Department 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 4. If any provision of this ordinance or application thereof to any person, persons, or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5.

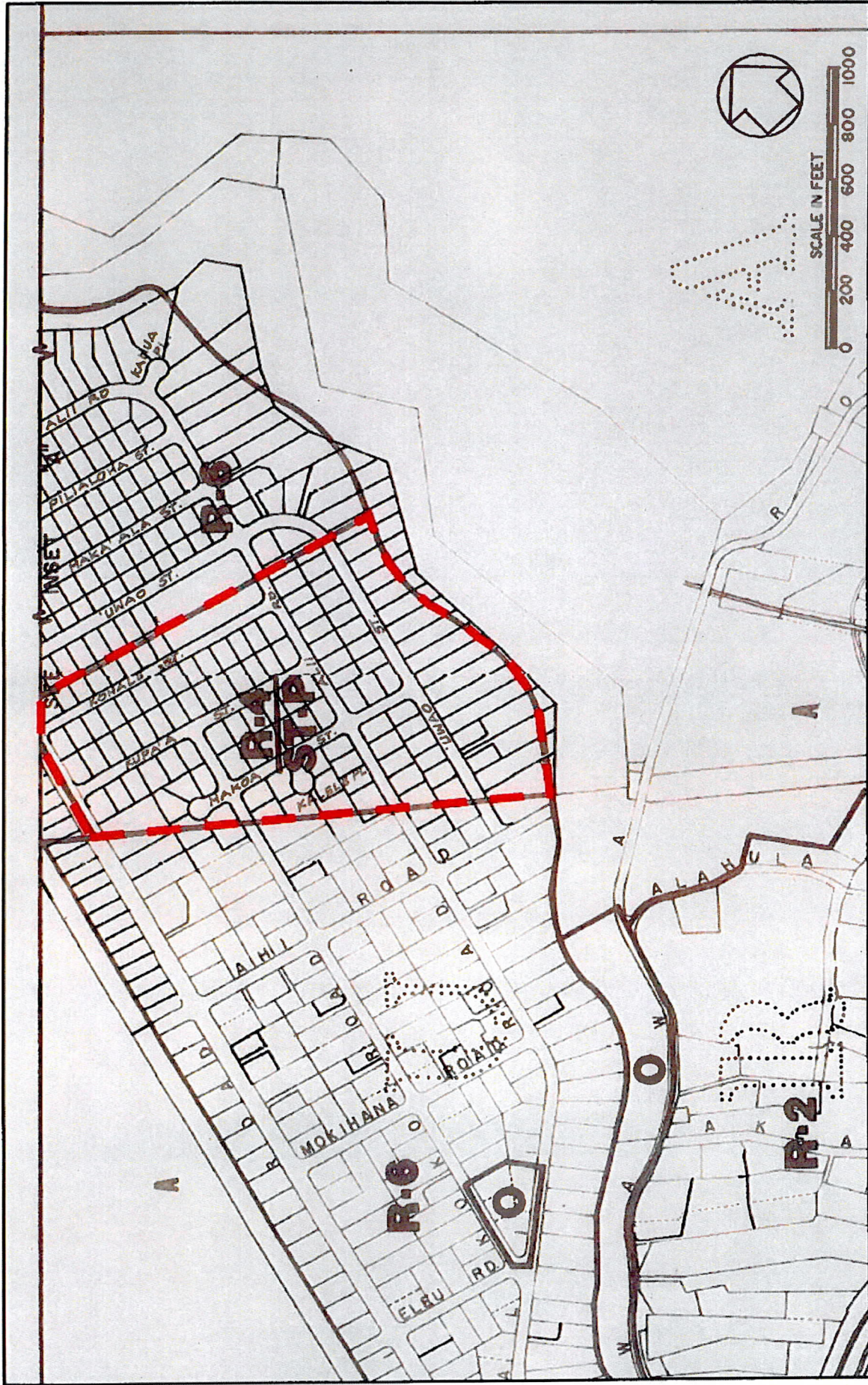
This ordinance shall take effect upon its approval.

Introduced by:

(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



Proposed Amendment to Zoning Map ZM-H200 from Residential Four/Special Treatment Public(R-4/ST-P) to Residential Four (R-4)

Hanapēpē Heights, Kaua'i, Hawai'i

 R-4 District Boundary

Exhibit A

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

PLANNING DIRECTOR'S REPORT

RE: Annual Status Report 2024
Special Management Area Use Permit SMA(U)-2005-8
Class IV Zoning Permit Z-IV-2005-30
Project Development Use Permit P.D. U-2005-26
Use Permit U-2005-25
Tax Map Key: (4) 3-5-001:027 (Por.), 168, 169, 171 (Por.), 172 (Por.),
175 & 176

APPLICANT: HŌKŪALA RESORT
(formerly Kaua'i Lagoons LLC. & MORI Golf (Kaua'i) LLC.)

PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on August 11, 2009 to allow implementation of a revised master site plan involving multiple resort and residential projects throughout the subject property. The development includes condominium/timeshare units, several support facilities and uses, approximately 1,098 off-street parking stalls, and on-site infrastructure improvements.

Condition No. 28 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:

"28. The Applicant shall provide an annual report to the Planning Commission, which shall be submitted to the Planning Department 30 days prior to the annual anniversary date of approval of the amendments considered herein. The annual report shall include the progress and status of the project and compliance with all conditions of approval. An annual report shall be provided until project completion and compliance with all conditions of approval."


APPLICANT'S REQUEST

In accordance with Condition No. 28, the Applicant is providing its annual status report for 2024 (refer to Exhibit 'A').

RECOMMENDATION

It is recommended that the Commission accepts the Applicant's 2023 Annual Status Report dated June 14, 2024. Additionally, the Applicant is advised that all applicable conditions of approval, including the provision of annual status report as required by Condition No. 28, shall remain in effect.

G.I.A.I.
SEP 10 2024

By 
Dale A. Cua
Planner

Approved and recommended to Commission:

By 
Ka'aina S. Hull
Director of Planning

Date: 9/4/2024

EXHIBIT “A”

(2024 Annual Report)



WILSON OKAMOTO
C O R P O R A T I O N
INNOVATORS • PLANNERS • ENGINEERS

10125-02
June 14, 2024

Mr. Ka'aina Hull, Director
County of Kaua'i Planning Department
4444 Rice Street, Suite 473
Lihu'e, Hawai'i 96766

Attention: Mr. Dale Cua, Chief Regulatory Planner

Subject: 2024 Annual Report for Hōkūala Resort
(formerly Kaua'i Lagoons Resort)
Second and Third Amendments to
Special Management Area SMA (U)-2005-8
Project Development Use Permit U-2005-26
Use Permit U-2005-25
And
Class IV Zoning Permit Z-IV-2005-30
Kalapakī, Līhu'e, Kaua'i, Hawai'i

Dear Mr. Hull:

In accordance with Condition No. 28 of the Second and Third Amendments to Special Management Area SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the Hōkūala Resort (formerly Kaua'i Lagoons Resort), of which approvals were granted by the County of Kaua'i Planning Commission on August 11, 2009 and January 12, 2010, respectively, as well as Condition 1e of the Preliminary Subdivision Map Approval for Hōkūala Resort Subdivision 1, and Condition 1d of the Preliminary Subdivision Map Approval Hōkūala Resort Subdivision 1A, we hereby submit this report on the progress and status of compliance of the conditions of the subject permits. Copies of the subject permit approval letters from the County Planning Department dated August 12, 2009, January 13, 2010, April 9, 2024, respectively, are attached for your reference as Exhibits A, B, and C.

It is noted that the Applicant has appointed and delegated to Timbers Kaua'i Management, LLC (hereinafter collectively referred to as the "Applicant") the responsibility of being the development manager for the resort project and, as such, will be responsible for the day to day management and operation of the resort and will be the entity assigned the task of providing all necessary information to the County including annual reports as well as ensuring compliance with the applicable conditions of all relevant permits and entitlements for the resort project. Consequently, the Applicant intends to fully cooperate with the County in developing the Hōkūala Resort property pursuant to law and in accordance with all applicable entitlements and permits relative to the property and as may be amended from time to time with the approval of the County.

The following subdivisions have been undertaken in the development of the Hōkūala Resort:

- Kalanipu'u Subdivision (Subdivision No. S-2007-22) – This subdivision implemented the required boundary adjustments for the Kalanipu'u condominium development at the former Fashion Landing area. Final subdivision approval was granted by the Planning Commission on February 26, 2008.
- Large Lot Subdivision (Subdivision No. S-2008-2) – This subdivision implemented the required boundary adjustments for various areas in the Hōkūala Resort. Final subdivision approval was granted by the Planning Commission on September 9, 2008, and recertified by the County on September 23, 2008 and December 9, 2008.
- Single-Family Subdivisions 1 and 4 (Subdivision No. S-2008-24) – This subdivision subdivided a portion of the planned single-family residential lots within the Hōkūala Resort, and adjusted other lot lines to facilitate the future development of the Resort. Final subdivision approval was granted by the Planning Commission on December 9, 2008, and recertified by the County on December 9, 2008.
- Single-Family Subdivisions 2 and 3 (Subdivision No. S-2009-06) – This subdivision subdivided a portion of the planned single-family residential lots within the Hōkūala Resort, and adjusted other lot lines to facilitate the future development of the Resort. Final subdivision approval was granted by the Planning Commission on May 12, 2009.
- Affordable Housing (Kamāmalu) Subdivision (Subdivision No. S-2010-03) – This subdivision subdivided a 759 square-foot sliver of land from the Hōkūala Resort's affordable housing parcel to accommodate roadway improvements undertaken by the Applicant along Haa Street in conjunction with that development. Final subdivision approval was granted by the Planning Commission on January 26, 2010.
- Revised Large Lot Subdivision (Subdivision No. S-2010-11) – This subdivision allows for various boundary adjustments necessary to accommodate the planned master plan revisions of the Hōkūala Resort approved through the Resort's Second and Third Amendments to Special Management Area Use Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 approved by the County Planning Commission on August 11, 2009 and January 12, 2010, respectively. Final subdivision approval was granted by the Planning Commission on December 14, 2010, and recertified by the County on January 11, 2011.
- Revised Subdivision 700-710 (Subdivision No. S-2019-11) – This subdivision reconsolidated the planned single-family residential lots within the Hōkūala Resort and subdivided the land to facilitate future development as low-density townhomes. Other lot lines were also adjusted in conformance with the existing RR-10/RR-20 designation of the site. Final subdivision approval was granted by the Planning Commission on November 12, 2019.

- Lot Consolidation of Parcels 9C and 9D (Subdivision No. S-2021-2) – This subdivision consolidates Parcels 9C and 9D to allow for the development of one 4-story building with a total of 72 units, less than the previously proposed 90 units between the two properties. Tentative subdivision approval was granted by the Planning Commission on December 8, 2020. The pre-final subdivision map was submitted to the Planning Department on January 31, 2022. Final subdivision approval was granted by the Planning Commission on November 15, 2022.
- Subdivision of Lot 8 (Subdivision No. S-2021-4) – This subdivision allows for the boundary adjustments necessary to subdivide the property according to the existing RR-10 and RR-20 designation of the site. Tentative subdivision approval was granted by the Planning Commission on July 13, 2021. The final subdivision map was submitted to the Planning Department on January 11, 2022. Final subdivision approval was granted by the Planning Commission on November 15, 2022.
- Consolidation of Lots 400 to 423 and Resubdivision into Lots 1 to 25 (Subdivision No. S-2022-4) – This subdivision consolidates and re-subdivides the Subdivision 4 lots that were created under S-2008-24 and approved by the Planning Commission on December 9, 2008, to accommodate the preferred site layout and a new cul-de-sac. Existing landscape, utility, and roadway easements were also redesignated. Tentative subdivision approval was granted by the Planning Commission on December 14, 2021. Final subdivision approval was granted by the Planning Commission on April 12, 2023. The subdivision was recorded with the Bureau of Conveyances on May 12, 2023.
- Subdivision 1 Lot Consolidation (Subdivision No. S-2022-9) – This subdivision consolidates the lots that were created under S-2008-24 and S-2010-11 in accordance with an approved change in density from R-2 to R-4 pursuant to Zoning Ordinance PM-2021-416. A copy of the zoning ordinance is enclosed as Exhibit D. It also updates utility easements per the new lot configuration. Tentative subdivision approval was granted by the Planning Commission on April 9, 2024.
- Subdivision 1A Subdivision (Subdivision No. S-2022-10) – This subdivision creates a single lot for Subdivision 1A that was approved through the Resort's Third Amendments to Special Management Area Use Permit SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 by the County Planning Commission on January 12, 2010. This subdivision is also consistent with the approved change in density from R-2 to R-4 pursuant to Zoning Ordinance PM-2021-416. A copy of the zoning ordinance is enclosed herewith as Exhibit D. Preliminary Sub approval was granted by the Planning Commission on April 9, 2024.

The following construction activities have been undertaken in the development of the Hōkūala Resort:

- Construction of a public recreation/picnic shelter and shower facility near Running Waters Beach, just mauka of the public lateral shoreline access, and a public recreation/picnic shelter, shower and restroom facility farther west and mauka of the public lateral shoreline access, were completed in September 2009. Both of these public recreation facilities are available for public use. The location of these public recreation facilities and the obligations, duties, and responsibilities of the Applicant to provide and maintain these facilities were

confirmed through the Memorandum of Understanding for Hōkūala Resort effective as of January 14, 2022 made by and between the Tower Kaua'i Lagoons Entities, Tower Kaua'i Lagoons 8, LLC, and the County of Kaua'i. A copy of the Memorandum of Understanding for Hōkūala Resort is enclosed herewith as Exhibit E.

- The 82-unit multi-family affordable housing development located on an approximately 6.7-acre parcel identified as TMK (4) 4-3-001:014 in Waipouli was completed by August 2009. The 31-unit multi-family affordable housing development, identified as the Kamāmalu Condominium, within the western portion of the Hōkūala Resort property at the corner of Kaua'i Veterans Memorial Highway (formerly Kapule Highway) and Haoa Street, was completed in February 2010. Completion of both developments fulfilled the affordable housing requirement for Hōkūala. The associated roadway improvements at the adjacent Kaua'i Veterans Memorial Highway/Haoa Street intersection were also completed in February 2010 and accepted by the County, and subsequently dedicated to the County by the Applicant.
- Construction of the 78-unit Kalanipu'u development was completed in 2011, with units currently occupied by residents and time share owners. The Fitness Center and Activities Room within the nearby former Fashion Landing commercial center were completed in January 2012 and October 2012, respectively, for the residents and guests of the Kalanipu'u development.
- Construction of the 14-unit Parcel 9A – Building A (former Inn on the Cliffs) and the 28-unit Parcel 9B – Building B (former Ritz Carlton Club) developments have been completed and were opened in June 2018. Located adjacent to and mauka of the Parcel 9A – Building A site is the Parcel 9A – Townhomes (former Ritz Carlton Residence Town Homes Building A) development, which was also completed and is occupied by the residents.
- Building permit plans were submitted to the County in August 2008 for the Lot 8 – Boutique Hotel development located within a portion of the existing vacant land area adjacent to and makai of the lagoons and the second bridge of Ho'olaule'a Way. These plans were subsequently rescinded by the Applicant. A foundation permit was later issued by the County and substantial construction of the structures was completed in 2016. Updated and revised plans for the Lot 8 – Boutique Hotel development were submitted to the County and are under review by the Planning Department and Department of Public Works (DPW) Building Division.
- Building foundations for the remainder of the permitted 772 units were completed in September 2021.
- A building permit for construction of 12 of the 36 units at Subdivision 7, now named the Ninini Point Residences, was approved by the County on January 11, 2022. Certificates of Occupancy were issued for Buildings D and E on August 29, 2023, and October 18, 2023, respectively.

In 2016, the Applicant proposed minor revisions to the product mix that did not increase the total density of the project. These revisions essentially were very similar to earlier approved versions of the master-planned project and were determined to be in compliance with issued permits and related council

planning measures by Departmental Determination DD-2017-7 issued by the Planning Department on September 6, 2016, a copy of which is attached as Exhibit F. The density allocation approved under DD-2017-7, referred to as the “Current Unit Count”, is summarized in Table 1. Following consultation with the Planning Department, the Applicant proposed further revision of the product mix. Corresponding decreases in density at other developments within the Resort were proposed to offset any increases for a net effect of no change to the total density of the project. The proposed density allocation, referred to as the “Proposed Unit Count”, is summarized in Table 1 and described thereafter.

Table 1. Proposed Density Allocation for Hōkūala Resort			
Parcel	Current Unit Count (per DD-2017-7)	Proposed Unit Count	Status
Parcel 9A – Bldg A (former Inn on the Cliffs)	14	14	Completed
Parcel 9B – Bldg B (former Ritz Carlton Club)	28	28	Completed
Parcel 9A – Townhomes	5	5	Completed
Parcel 8 – Boutique Hotel (Silverwest)	175	210	Proposed (Building Permit Under Review)
Ocean Course, Central Operations, Future Golf Expansion	--	--	No longer proposed
Shops at Hōkūala	--	--	Completed
Ninini Point Residences	48	36	Proposed (Building Permit for 12 units Approved)
Parcel 9E – Boutique Hotel	291	278	Proposed
Subdivision 1	10	14	Proposed
Subdivision 1A	9	13	Proposed
Subdivision 2	--	--	No longer proposed
Subdivision 3	--	--	No longer proposed
Subdivision 4	24	24	Proposed
Parcels 9C and 9D – Hotel Villa	90 (52 and 38 respectively)	72	Proposed
Kalanipu'u	78	78	Completed
TOTAL	772	772	

From 2016, there were no changes proposed in the number of units at the Kalanipu'u (78 units), Parcel 9A – Building A (14 units), Parcel 9B – Building B (28 units) and the Parcel 9A – Townhomes (5 units) developments. The Parcel 8 – Boutique Hotel was changed from 175 units to 210 units. Subdivision 7, which was envisioned as 11 single family residential lots, has evolved to a low-density townhomes development with 36 units. The 36-unit townhome development is now named Ninini Point Residences. Parcel 9E –Boutique Hotel changed from 291 to 263 units.

Subdivisions 1 and 1A were changed to 24 and 18 units, respectively. The unit count increase at Subdivision 1 to 24 units and at Subdivision 1A to 18 units required approval of a zoning amendment to change the zoning designation from Residential District (R-2) to Residential District (R-4). The zoning amendment for Subdivision 1 and Subdivision 1A was approved by the Kaua'i County Council on December 20, 2021, through Zoning Ordinance PM-2021-416. As noted above, tentative subdivision approval was granted by the Planning Commission on April 9, 2024. A copy of the tentative subdivision approvals is attached herewith as Exhibit C. A copy of the zoning ordinance is attached herewith as Exhibit D.

There are no plans currently to develop Subdivisions 2 and 3. The bonds for both Subdivisions 2 and 3 have been left to expire with the approval and concurrence of the County of Kaua'i Planning Director. Subdivision 4 remained at 24 units while the proposed unit count at Parcels 9C and 9D was reduced from 90 units to 72 units.

The existing commercial center located at the former Fashion Landing (hereinafter Commercial Complex) is planned to be repaired and refurbished. SMA III permit approval for improvements to the Commercial Complex was issued on April 24, 2018.

The existing status of conditions from the August 11, 2009 and January 12, 2010 permit approvals is as follows:

Condition

1. *The maximum building height for the proposed condominium, timeshare, multi-family, and hotel units buildings in Project Areas "B" and "D" approved in 2005 and Project Area "B" of the proposed amendments (Page 0.01 Volume II) shall not exceed four (4) stories or forty (40) feet from the ground line measured at each point along the building to the highest wall plate line, whichever is less. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less.*

The maximum building height for structures in Project Area "C" (Page 4, Volume II) as approved in 2005 shall be as follows:

- a. *The maximum building height for the proposed "Inn on the Cliffs" buildings shall not exceed three stories or 45 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.*
- b. *The Ritz Carlton Club units shall have a three- to four-story design with a maximum building height of 55 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.*
- c. *The maximum building height for the Ritz Carlton Residence Town Homes Building A shall not exceed two (2) stories in design with a maximum building height of 35 feet as measured from the ground line at each point along the building to the highest point of the roof of the building.*

The single-family residential developments within Project Area "F" of the 2008 amended permits and Project Areas "A" and "C" of the proposed amendments shall comply with all applicable residential development standards of the Comprehensive Zoning Ordinance.

Status

Design plans initiated by the Applicant for the various phases of development within the Hōkūala Resort are acknowledged.

Construction of the 78-unit multi-family Kalanipu'u development, consisting of three buildings, has been completed. The maximum building height for the Kalanipu'u condominium buildings is 39 feet, 6 inches from the ground line measured at each point along the buildings to the highest wall plate line, which is less than the 40-foot height limit. The roof height is 9 feet, 5 inches, which is less than one-half (1/2) the wall height or 15 feet. The Applicant acknowledges that the remaining buildings in Project Areas "B" and "D" approved in 2005, as amended, shall not exceed four (4) stories or forty (40) feet from the ground line measured at each point along the building to the highest wall plate line, whichever is less. The Applicant further acknowledges that gables and roof height shall not exceed one-half (1/2) the wall height of fifteen (15) feet, whichever is less.

Construction of Parcel 9A – Building A, Parcel 9B – Building B, and the Parcel 9A – Townhomes has been completed in accordance with the conditions for Project Area "C" as approved in the 2005 SMA Permit.

As depicted on the approved building permit plans, the 14 condominium time share units within Parcel 9A - Building A (former Inn on the Cliffs) were developed within the overall existing building footprint and the two-level building height approved for this development in the 2005 SMA Permit. The maximum building height for the Parcel 9A - Building A (former Inn on the Cliffs) is 45 feet from the ground line measured at each point along the building to the highest point of the roof of the building. Parcel 9A – Building A was constructed per the approved building permit plans.

The 28 condominium/time share units within Parcel 9B - Building B (former Ritz Carlton Club) were developed within the overall existing building footprint and the four-level building height approved for this development in the 2005 SMA Permit. Consistent with the building permit plans, the maximum building height for Parcel 9B - Building B (Ritz Carlton Club) is 55 feet from the ground line measured at each point along the building to the highest point of the roof of the building. Parcel 9B – Building B was constructed per the approved building permit plans.

Also consistent with the building permit plans, the maximum building height for the Parcel 9A - Townhomes (former Ritz Carlton Residence Townhomes Building A) is no more than 35 feet from the ground line measured at each point along the building to the highest point of the roof of the building. Parcel PA – Townhomes was constructed per the approved building permit plans.

The single-family residential developments within Single-Family Subdivisions 1, 1A and 4 within Project Area "F" of the 2008 amended permits are intended to comply with the applicable residential development standards of the County's Comprehensive Zoning Ordinance (CZO). The Applicant notes that no building will be more than two (2) stories above and one (1) story below from the finished grade at the main entry, over 20 feet measured from the finished grade at the main entry to the highest exterior wall plate line, and over 30 feet to the highest point of the roof measured from the finished grade at the main entry.

Condition

The Applicant shall also follow the proposed architectural design guidelines that establish building design, roof design, building materials, and earth tone color schemes as shown on the pages 16, 26 and 44 of Volume II of the 2005 application, on pages A.00, E.00 and F.00 of Volume II of the 2008 amended permits, and on pages A.00, B.00 and D.00 of the proposed amendments.

Status

The Applicant submitted design plans to the County for building permit approval for the Parcel 9A - Building A (former Inn on the Cliffs), Parcel 9B - Building B (former Ritz Carlton Club), Parcel 9A - Townhomes (former Ritz Carlton Residence Town Homes Building A), and Parcel 8 - Boutique Hotel developments in conformance with this condition. Parcel 9A - Building A, Parcel 9B - Building B, and Parcel 9A - Townhomes have been constructed according to the approved plans. Updated and revised design plans for Parcel 8 - Townhomes have been submitted and are under review by the Planning Department and the DPW Building Division. The designs of the constructed Kalanipu'u condominiums and the 31-unit Kamāmalu Condominium affordable housing development were also approved through the respective building permit submittals in conformance with this condition.

The maximum building height for the Kamāmalu Condominium development is 27 feet from the ground line measured at each point along the building to the highest wall plate line, which is less than the 40-foot height limit. The roof height is 8 feet, 1 inch, which is less than one-half (1/2) the wall height or 15 feet.

The single-family residential dwelling units to be developed within the Single-Family Subdivisions are intended to follow the proposed architectural design guidelines as shown on page F.00 of Volume II of the Amended SMA Permit and page A.00 of the Second Amended SMA Permit. Dwelling construction and lot landscaping is intended to be undertaken by the individual lot owners in accordance with the established design guidelines. The general appearance of the individual properties, such as architectural design criteria and landscaping requirements, will be controlled through design guidelines for the development and approved by the Resort Developer.

The building design, color scheme samples, and landscape plans for the remaining phases of the project are under review by the Applicant and will be submitted to the Planning Department at the time of building permit application for the respective developments.

Condition

As represented, the maximum building height for the proposed Golf Club House facility on TMK: 3-5-001: por. 173 shall not exceed 35 feet from finished grade at the main entrance of the building to the highest point of the roof.

Status

As part of the Resort's revised master plan under the Applicant, the previously proposed new golf clubhouse was proposed to be relocated and integrated within the Commercial Complex (former Fashion Landing). Although the location is in the General Commercial (CG) District which allows a maximum height limit of 50 feet, the golf clubhouse was proposed to not exceed 35 feet in height. However, the Applicant has decided to forgo construction of a new golf clubhouse and has decided to keep the existing golf pro shop and cart barn in its existing location within the Parcel 8 - Boutique Hotel development.

Condition

- 3. The Applicant shall provide building design, color scheme samples, and landscape plans for each phase of the project for the review and approval of the Planning Department at the time of Building Permit and/or Subdivision Permit Application. The Applicant is encouraged to incorporate the use of native plants that are common to the area or endemic, indigenous, or Polynesian introduced in the landscape plans for each phase of the development.*

The landscape plan shall also include landscaping and/or landscape berm(s) along Haaō Street and Kapule Highway to address visual impacts of the project and to help minimize noise impacts from the highway to the residential project.

Status

The building designs, color scheme samples and landscape plans for the completed 78-unit Kalanipu'u condominium development, 14-unit Parcel 9A - Building A (former Inn on the Cliffs) development, 28-unit Parcel 9B - Building B (former Ritz Carlton Club) development, 5-unit Parcel 9A – Townhomes development, and 31-unit Kamāmalu Condominium affordable housing project were approved by the County Planning Department as part of the respective building permit approval processes. The Applicant worked closely with the County Planning Department on the building designs, color scheme samples and landscape plans to ensure consistency with the intent of the existing permits. As a result, the Planning Department reviewed and approved all such plans and construction of the listed developments were completed in conformance with this condition.

As part of the building permit process for the Parcel 8 – Boutique Hotel, the building design, color scheme sample and landscape plan have been submitted to the County for review and approval. These plans are under review by the Planning Department and the DPW Building Division.

As previously indicated, dwelling construction and lot landscaping of the single-family residential lots are intended to be undertaken by the individual lot owners in accordance with the established design guidelines. The general appearance of the individual properties, such as architectural design criteria and landscaping requirements, will be controlled through design guidelines for the development and approved by the Resort Developer. It is intended that the individual lot owners will provide building design, color scheme samples and landscape plans for their respective proposed dwelling units to the Planning Department for review and approval at the time of building permit application for the respective lots.

The building design, color scheme samples, and landscape plans for the remaining phases of the project are under review by the Applicant and will be submitted to the Planning Department at the time of building permit application for the respective developments.

Condition

- 4. The Applicant shall comply with the required setback distance to property lines for all of the buildings as approved by adjusting the building location or configuration and/or conducting boundary adjustments through the Subdivision process to obtain the land area with the adjacent lands to meet the required setback distances to the respective property line(s).*

Status

Implementation of the required boundary adjustments for the Kalanipu'u condominiums located in the Fashion Landing Commercial area was achieved through its final subdivision which was approved by the Planning Commission on February 26, 2008 (Kalanipu'u Subdivision [S-2007-22]). The required

boundary adjustments in other areas of the Hōkūala Resort were achieved through the Large Lot Subdivision (S-2008-2), of which approval was granted by the Planning Commission on September 9, 2008, and recertified by the County on September 23, 2008, and December 9, 2008. The Revised Large Lot Subdivision (S-2010-11) approved by the Planning Commission on December 14, 2010, and recertified by the County on January 11, 2011, and Subdivision 700-710 (S-2019-11) approved by the Planning Commission on November 12, 2019, also allowed for various boundary adjustments necessary to accommodate the planned master plan revisions of the Resort. As mentioned, these master plan revisions have been approved through the Second and Third Amendments to Special Management Area SMA (U)-2005-8, Project Development Use Permit U-2005-26, Use Permit U-2005-25, and Class IV Zoning Permit Z-IV-2005-30 for the Hōkūala Resort, which were granted by the Planning Commission on August 11, 2009 and January 12, 2010, respectively.

Application for Lot Consolidation of Parcels 9C and 9D (S-2021-2) received final approval on November 15, 2022, and was subsequently recorded with the State Bureau of Conveyances as Document No. Doc A – 83920712. Application for Lot 8 Subdivision (S-2021-4) received final approval on November 15, 2021, and was subsequently recorded with the State Bureau of Conveyances as Document No. Doc A – 83920711. Application for the consolidation of Lots 400 to 423 and Resubdivision into Lots 1 to 25 (S-2022-4) received final approval on April 12, 2023, and was subsequently recorded with the State Bureau of Conveyances as Document No. Doc A – 85320960.

Subdivision 1 Lot Consolidation (S-2024-7) and Subdivision 1A Subdivision (S-2024-8) are being processed with the County. Class IV Zoning Permit and Variance Permit Applications have also been submitted for both Subdivisions requesting that the requirement of curbs, gutter, and sidewalks in the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the County of Kaua'i Code (1987) be waived. A Planning Commission hearing is set for July 9, 2024.

Condition

5. *As required under Condition No. 2 of Ordinance No. PM-2006-383, the Applicant shall provide documentation of the restriction on density in the subject property(ies) within Open District into the deeds of the affected property prior to building permit issuance for any development proposed in the amended area.*

Status

Documentation of the restriction on density within the Open District lands of the Hōkūala Resort is included in the Declaration of Deed Restriction Concerning Density in the Open District Zone of Kaua'i Lagoons Resort dated December 18, 2007 and recorded in the State Bureau of Conveyances on December 31, 2007, as Document No. 2007-223761 and Land Court Document No. 871,637.

Condition

6. *As represented by the Applicant and as recommended by the State Department of Transportation, the Applicant shall prepare a revised Traffic Impact Analysis Report (TIAR) for the Kaua'i Lagoons Resort development that also includes the County's proposed Vidinha Stadium Expansion project. The Applicant shall resolve with the State Department of Transportation (DOT) the execution of a Memorandum of Agreement which would address the specific improvements to be provided as set forth in the letter from the DOT dated May 22, 2008 and July 15, 2009.*

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
DONALD H. WILSON

July 18, 2024

Mr. Ka'aina S. Hull
Director of Planning
Planning Department
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766

JUL 19 '24 PM 1:34
Via Hand Delivery and Certified Mail

Re: **Petition to Appeal Notice of Violation & Order to Pay Fines
Building Permit 22-2500
Lot 2 Haena Hui Lands
Haena, Kaua'i, Hawai'i,
Kaua'i Tax Map Key No. (4) 5-9-002:021**

Dear Mr. Hull:

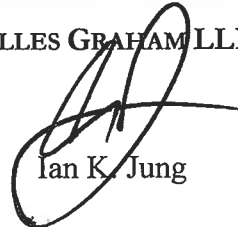
This office represents Happy House Trust ("Appellant"), with regard to Lot 2 of Haena Hui Lands subdivision, further identified as Kauai Tax Map Key No. (4) 5-9-002:021 (referred to as "Subject Property").

As a follow up to our discussion and in response to the Notice of Violation & Order to Pay Fines dated June 27, 2024 ("Notice"), enclosed is an original Petition to Appeal Notice of Violation & Order to Pay Fines, dated July 27, 2024; Exhibits "A" through "F"; Certificate of Service.

Thank you very much for your attention to this matter.

Sincerely yours,

BELLES GRAHAM LLP



Ian K. Jung

IKJ:jaug
Enclosures

BELLES GRAHAM LLP

IAN K. JUNG (8626-0)
3135 Akahi Street, #A
Lihue, Kauai, Hawaii 96766
Telephone: (808) 245-4705

Attorney for Appellant
HAPPY HOUSE TRUST

JUL 19 '24 PM 1:35
PLANNING DEPT

BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In the Matter of the Application	)	PETITION TO APPEAL NOTICE OF
	)	VIOLATION & ORDER TO PAY FINES,
Of	)	DATED JUNE 27, 2024; EXHIBITS "A"
	)	THROUGH "F"; CERTIFICATE OF
HAPPY HOUSE TRUST for property	)	SERVICE
located at 5-7534 B Kuhio Highway,)	
Kauai, Hawaii, 96714, Kauai Tax Map Key)	
No. (4) 5-9-002:021 Re: Notice of Violation)	
& Order to Pay Fines dated)	
June 27, 2024.)	
_____)	
)	
)	

PETITION TO APPEAL
NOTICE OF VIOLATION & ORDER TO PAY FINES, DATED JUNE 27, 2024

Notice is hereby given that the Appellant HAPPY HOUSE TRUST (hereinafter referred to as "Appellant"), by and through their undersigned counsel, do hereby appeal, pursuant to Chapters 13 and 15 of the Special Management Area Rules and Regulations of the County of

Kauai ("SMA Rules and Regulations") and Chapter 9 of the Rules of Practice and Procedure of the Planning Commission ("Planning Commission Rules"), the decision of the Planning Director of the Planning Department of the County of Kauai ("Planning Department") as set forth in his Notice of Violation & Order to Pay Fines dated June 27, 2024 (hereinafter referred to as "Notice"), a copy of which is attached hereto and incorporated herein as Exhibit "A".

1. Happy House Trust is the Appellant herein and have the following address and telephone number:

c/o Ian K. Jung, Esq.
Belles Graham LLP
3135 Akahi Street, #A
Lihue, Kauai, Hawaii 96766
Phone: (808) 245-4705

2. Appellant is the current owner of that certain real property located at 5-7534 B Kuhio Highway, Hanalei, Kauai, Hawaii, and identified by Kauai Tax Map Key No. (4) 5-9-002:021 ("Subject Property"), as shown on Exhibit "B" attached hereto.

3. The Subject Property on which the single-family dwelling unit ("Residence") is located is within the State Land Use Commission Conservation District (Limited Subzone), the County General Plan Residential Community Classification. The Subject Property is also located within the Special Management Area ("SMA").

4. The Residence on the Subject Property was constructed approximately 1991 and contains three (3) bedrooms and two (2) bathrooms.

5. On or about June 27, 2024, the Planning Director mailed the Notice to Appellant requiring the Appellant to "cease and desist any unpermitted activity immediately"

related to the “reconstruction of a dwelling structure (represented in Building Permit BP No. 22-2500, issued on 12/22/2023 (See Exhibit “C”) and revised on 3/11/2024 (See, Exhibit “D”) located in the Special Management Area (SMA) without proper SMA review and permit approval constitutes a violation”.

6. On June 18, 2024, Mr. Leslie Milnes, SMA Planning Inspector, issued an email requesting a site inspection.

7. On June 19, 2024, the Appellant’s attorney contacted Mr. Milnes to schedule the site inspection.

8. On June 24, 2024, representatives for the Appellant met at the Subject Property to conduct the site inspection with Mr. Milnes and Mr. Jaret Towler, SMA Planning Inspector.

9. During the site inspection, representatives for the Appellant shared the approved plan set associated with Building Permit No. 22-2500 (“Building Permit”) and Planning Department comments stating “Approved; In Conservation District, no jurisdiction. SMA exempt” comments to the Permit (See, Exhibit “E”).

10. The Appellant received the Notice on or about July 1, 2024.

11. On July 2, 2024, Appellant's representative contacted Mr. Milnes to “make contact” the Planning Department pursuant to the Notice.

12. On February 24, 1989, the Board of Land and Natural Resources (“BLNR”) approved a Conservation District Use Permit KA-1962 for the Residence. Thereafter, the Site

Plan Approval SPA-KA-19-27 was issued on September 13, 2018, for an addition to the Residence by the Office of Conservation and Coastal Lands (“OCCL”).

13. The Residence is an elevated structure. A lava-rock wall is located on the south and west boundaries of the Subject Property. Utilities are provided via Road "B-2" at the mauka side of the Subject Property. The Appellant proposed to renovate the Residence and reduce the existing decking to reduce the improvements to 3,500 square feet. The scope of work for the Upper Level is as follows: 1) Remodel master bedroom, relocating closet into bedroom, reduce area by 81 square feet; 2) Remodel master closet and bathroom, reduce area by 40 square feet; 3) Remove entry swing door and square off building lining; 4) Remodel kitchen; 5) Remodel bathroom (noted as No. 2), reducing size and adding a powder room; 6) Remodel bathroom (noted as No. 3), relocate land to west side of room; 7) Relocate exterior lanais and reduce by 357 square feet; 8) Relocate main entry stairs; and, 9) Remove chimney. The scope of work for the Lower Level is as follows: 1) Remove planters; 2) Remove posts from reduced upper-level lanais; 3) Replace all rusted posts to beam brackets; 4) Replace any compromised wood posts with concrete columns; and 5) Relocate outdoor shower, remove stone walls, replace with cedar fence. Lastly, the scope of work for the exterior elevations are as follows: 1) Replace existing radius roof and structure with single pitch painted corrugated metal roof; and 2) Replace wood railings with Ipe post and stainless-steel cable.

14. On November 30, 2022, the Appellant received Site Plan Approval SPA:KA-23-39 from OCCL for the renovation of the existing Residence (See, Exhibit “F”).

15. Following the approval of SPA:KA23-39, representatives for the Appellant worked to resolve issues with compliance to the Flood Plain Management Ordinance for the County of Kauai.

16. On July 7, 2024, the Appellant received a Determination of Unsubstantial Improvement from the County of Kauai, Department of Public Works, Engineering Division (“Engineering Division”) to allow for renovation of the Residence as to not exceed the definition of substantial improvement given the noncompliance with the base flood elevation plus one (1) foot requirement.

17. After discussions with the Engineering Division, representatives of the Appellant agreed to elevate the Residence by ten (10) inches to become compliant with Flood Plain Management Regulations and the required base flood elevation plus one (1) foot to be Flood Code compliant. The Appellant’s representatives were thereafter informed by the Engineering Division that the Residence would no longer be subject to the Determination of Unsubstantial Improvement letter issued by the Engineering Division.

18. Upon resubmitting the Revision Plan Set, the County of Kauai approved revised Building Permit No. 22-2500 with elevation sections noting Flood Code compliance with the base flood elevation plus one (1) foot requirement.

19. Pursuant to SPA:KA-23-39, the OCCL found:

The project area is located within the Limited subzone of the State Land Use Conservation District. Based on the project description provided, it would appear that the proposed project is consistent with the following:

- Hawai'i Administrative Rules (HAR) §13-5-22, P-8 STRUCTURES AND LAND USES EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land and equipment.*

Further, the proposed project may be considered an exempt action under the following:

- HAR §11-200.1-15 (c)(2) *Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced; and*
- DLNR Exemption List, Exemption Class 2, PART 1, #1 *Replacement or reconstruction of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.*

20. The HAR Section 13-5-2 defines Minor Alteration as “work done to an existing structure, facility, or use that results in a ten percent or less increase in the size of the structure, facility, or use.” As noted above, the Appellant reduced the size of the Residence in compliance with the Minor Alteration definition.

21. At the time of submittal, the Planning Department approved renovations of existing residences as not development pursuant to SMA Rules and Regulations of the County of Kauai Section 1.4 (F), which provides for the following:

Development does not include:

- (6) *Repair, maintenance, or interior alterations to existing structures;*

As such, the proposed renovations qualified as non-development by the Planning Department and are exempt from requiring an SMA permit.

22. The Hawaii State Legislature adopted Act 16, SLH 2020 (April 2021), which HRS Section 205A-22 provides for the following:

“Development”:

(2) Does not include the following:

(A) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area; is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; and is not part of a larger development;

23. However, the County of Kauai has yet to update their SMA Rules and Regulations, whereby Section 1.4 of the SMA Rules and Regulations continues to define the following as not development:

“Development” does not include the following:

(1) Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area and is not part of a larger development;

24. Here, the Residence’s footing improvements and base floor remain the same, and the footprint of the Residence was reduced. Further, the Residence is 3,500 square feet and is well below 7,500 square feet and is therefore exempt under the current definition of non-development pursuant to the County of Kauai’s SMA Rules and Regulations. As such, the proposed renovations qualified as non-development as provided for in the current definitions of the County of Kauai’s SMA Rules and Regulations and are exempt from requiring an SMA permit.

25. The Planning Department failed to adopt rules pursuant to HRS Section 205A-22 related to “reconstruction” to provide notice to the Appellant as to what constitutes “reconstruction”.

26. Pursuant to SMA Rules and Regulations Section 18.0.D., the Planning Department is required to recognize any approved Building Permit as previously approved to any adoption of rules relating to the definition of “reconstruction”.

27. The Appellant relied on statements of the Planning Department and Engineering Division officials regarding the compliance of the Building Permit revision plan sets.

28. Equitable estoppel is based on a change in position of the part of a land developer by substantial expenditure of money in connection with his project in reliance, not solely on existing zoning laws or on good faith expectancy that the development will be permitted, but on official assurance on which he has a right to rely that his project has met zoning requirements, that necessary approvals will be forthcoming in due course, and he may safely proceed with the project. *Life of the Land Inc. v. City Council of the City and County of Honolulu*, 61 Haw. 390, 453, 606 P.2d 866, 902 (1980).

29. Here, the Appellant began construction of the Residence based on the Building Permit approval and relied on statements and comments made during the review of the Building Permit process.

30. HRS Section 46-1.5(24)A only allows for the imposition of civil fines by a County "after reasonable notice and requests to correct or cease the violation have been made upon the violator."

31. No notice of compliance has been given to Appellant.

32. No notice or requests to correct any violation of the remediation plan or its implementation have been given to the Appellant.

33. No reasonable notice was given to the Appellant regarding the Building Permit and revision plan set that the Appellant was in violation of the SMA Rules and Regulations when the Residence was elevated to comply with the Flood Plain Management Regulations.

34. The evidence in this case will support a finding that the Residence on the Subject Property is in compliance with the SMA Rules and Regulations as adopted by the Planning Commission.

35. The evidence in this case will support a finding that the Appellant is in compliance with the Building Permit and revision plan set reviewed by the Planning Department.

36. The Planning Department's decision to issue an Order fining Appellant \$10,000.00 is: contrary to statutory authority under HRS Section 205A-32 and 46-1.5(24) in violation of HRS Section 91-14(g); in excess of the statutory authority or jurisdiction of the agency, in violation of HRS Section 91-14(g)(2); affected by error of law, in violation of HRS Section 91-14(g)(4); clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, in violation of HRS Section 91-14(g)(5); and characterized by abuse of discretion or clearly unwarranted exercise of discretion, in violation of HRS Section 91-14(g)(6).

37. The Appellant will show, by a preponderance of the evidence, that the Residence is in compliance with SPA:KA-23-39 and has applied for and received the required Building Permit for the Residence on the Subject Property.

38. The Planning Department has not produced facts or evidence sufficient to overcome the showing made by the Appellant. As a result, the Planning Department's decision to issue an Order fining the Appellant was: affected by error of law in violation of HRS Sections 205A-32 and 91-14(g)(4); clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, in violation of HRS Section 91-14(g)(5); and characterized by abuse of discretion or clearly unwarranted exercise of discretion, in violation of HRS Section 91-14(g)(6).

39. The Planning Department's Order fining the Appellant without consideration of the Planning Department's comment state that the Building Permit is "Approved; In Conservation District, no jurisdiction. SMA exempt" is a denial of the Appellant's right to substantive and procedural due process under the Fifth and Fourteenth Amendment of the United States Constitution and Article I, Sections 5 and 20 of the Hawaii State Constitution.

40. The Planning Department's Order fining the Appellant without notifying the Appellant that they are not in compliance with the SMA Rules and Regulations is a denial of the Appellant's right to substantive and procedural due process under the Fifth and Fourteenth Amendment of the United States Constitution and Article I, Sections 5 and 20 of the Hawaii State Constitution.

WHEREFORE, the Appellant prays that the Planning Commission:


- A. Reverse and set aside the decision of the Planning Director's Order fining Burns \$10,000.00;
- B. Recognize that the Appellant's Building Permit is approved;

C. Recognize that the work described in the Building Permit is exempt under the SMA Rules and Regulations.

D. Recognize that the Planning Department has not imposed rules regarding what constitutes reconstruction.

E. Grant such further relief as may be just.

DATED: Lihue, Kauai, Hawaii, 7/18/2024.



IAN K. JUNG
Attorney for Appellant
HAPPY HOUSE TRUST

EXHIBIT "A"

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

RECEIVED
JUL - 1 2024



Belles Graham LLP

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

NOTICE OF VIOLATION & ORDER TO PAY FINES

JUN 27 2024

CERTIFIED MAIL

HAPPY HOUSE TRUST
3130 WILSHIRE BLVD APT 600
SANTA MONICA, CA 90403

BELLES GRAHAM LLP
3135 AKAHI ST
SUITE A, DYNASTY PROF BLDG
LIHUE HI 96766
Attn: Ian K. Jung, Esquire

**SUBJECT: ILLEGAL DEVELOPMENT WITHIN THE SMA DISTRICT & FAILURE TO SECURE REQUIRED SMA PERMIT DETERMINATION ON:
5-7534 B KUHIO HWY, HAENA, HANAIEI, HI 96714
TMK: (4) 5-9-002:021**

On June 24, 2024, the Planning Department inspected the subject property regarding violations on the subject property. The Planning Department has verified violations of the Hawai'i Revised Statutes §205A, §205A-22 and the Special Management Area Rules and Regulations, as follows:

VIOLATION(S):

HAWAII REVISIED STATUTES (HRS) §205A-28
Permit required for development. No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part.

HAWAII REVISIED STATUTES (HRS) §205A-22 "DEFINITIONS"
Section 205A-22 (1)(E) & (2)(A): "Development"

(1) Means any of the uses, activities, or operations on land or in or under water within a Special Management Area that are included below:

(E) Construction, reconstruction, demolition, or alteration of the size of any structure.

VIOLATION(S): continued

(2) *Does not include the following:*

(A) *Construction or reconstruction of a single-family residence that is less than seven thousand five hundred square feet of floor area; is not situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion; and is not part of a larger development*

The Subject Property is situated on a shoreline parcel or a parcel that is impacted by waves, storm surges, high tide, or shoreline erosion. and the noted construction/reconstruction activity is considered "Development".

Section 5.0 DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW

Any use, activity, or operation proposed within the Special Management Area defined as "development" pursuant to Section 205A-22 (1) (E) & (2) (A) above shall be subject to the review of the Director, Planning Department, and Planning Commission under these Rules and Regulations ...

The reconstruction of the dwelling structure (represented in Building Permit BP 22-2500, issued on 12/22/23) located within the Special Management Area (SMA) without proper SMA permit review and approval constitutes a violation. This activity without an SMA permit is a violation of HRS §205A-28, HRS §205A-22 and SMA Section 5.0, "DEVELOPMENTS PROPOSED WITHIN THE SPECIAL MANAGEMENT AREA SUBJECT TO REVIEW."

ORDER:

Pursuant to HRS §205A-32, HRS §205A-22 and SMA Rules and Regulations Section 13.0, you are hereby ordered to comply with the following requirements:

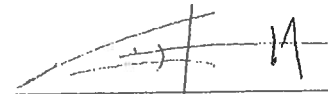
- a. **Cease and desist any further unpermitted activity immediately.**
- b. **Within sixty (60) days from date of Notice, provide the Department with required SMA Permit Assessment Application to address the activity of reconstruction of the Single-Family Dwelling.**
- c. **Pay a civil fine of Ten Thousand dollars (\$10,000.00) for the above noted violations.**

- d. In addition, you may be required to pay a civil fine up to ten thousand dollars **(\$10,000.00) per day for each day in which the violation persists** from the date of this Notice should any timeline requirement be violated.

Payment of the \$10,000.00 civil fine is due to the Planning Department twenty-one (21) days from the receipt of this Order. Failure to correct the violation or pay the total amount of the civil fine imposed within ninety (90) days of this Order may result in a lien placed on the subject property. In addition, you may be subject to criminal prosecution.

This Order shall become final twenty-one (21) days after the date of this Order. Pursuant to SMA Rules and Regulations Section 13.0, and Chapter 9 and 6 of the Rules of Practice and Procedure of the Planning Commission (RPPPC), you have a right to appeal this Order to the Planning Commission. The SMA Rules and Regulations and the RPPPC are available online at the Planning Department's website: <https://www.kauai.gov/Planning>.

Please contact Leslie P. Milnes, CZM Enforcement Officer, of my staff at 241-4064 and email at lmilnes@kauai.gov upon receipt of this letter to discuss the required remedial action plan.



KA'ĀINA S. HULL
Director of Planning

Cc
COK DPW, Engineering, Flood Compliance Officer

EXHIBIT "B"

Parcel Information

Parcel Number (TAX MAP KEY) 590020210000
 Location Address 5-7534 B KUHIO HWY
 HANALEI HI 96714
 Project Name
 Tax Classification NON-OWNER-OCCUPIED RESIDENTIAL
 (Note: This is for tax purposes only. Not to be used for zoning.)
 Neighborhood Code 5914-6
 Legal Information LOT 2 HAENA HUI 27205 SF DES
 Zoning OP
 Non Taxable Status
 Land Area (acres) 0.6245
 Land Area (approximate sq ft) 27,205
 Living Units 1

[View Map](#)

Owner Information

Owner Names HAPPY HOUSE TRUST Fee Owner
 Mailing Address HAPPY HOUSE TRUST
 3130 WILSHIRE BLVD APT 600
 SANTA MONICA CA 90403

Assessment Information

[Show Historical Assessments](#)

Year	Property Class	Total Market Value	Total Property Assessed Value	Total Property Exemption	Total Net Taxable Value
2024	NON-OWNER-OCCUPIED RESIDENTIAL	\$5,555,000	\$5,555,000	\$0	\$5,555,000

[How to calculate real property taxes](#)

Assessment Notices

- [2024 \(PDF\)](#)
- [2023 \(PDF\)](#)
- [2022 \(PDF\)](#)
- [2021 \(PDF\)](#)
- [2020-9 \(PDF\)](#)
- [2019-9 \(PDF\)](#)

Online Assessment Notices will include one PDF per parcel for each class. For multi-owner copies please contact rapassessment@kauai.gov.

Appeal Information

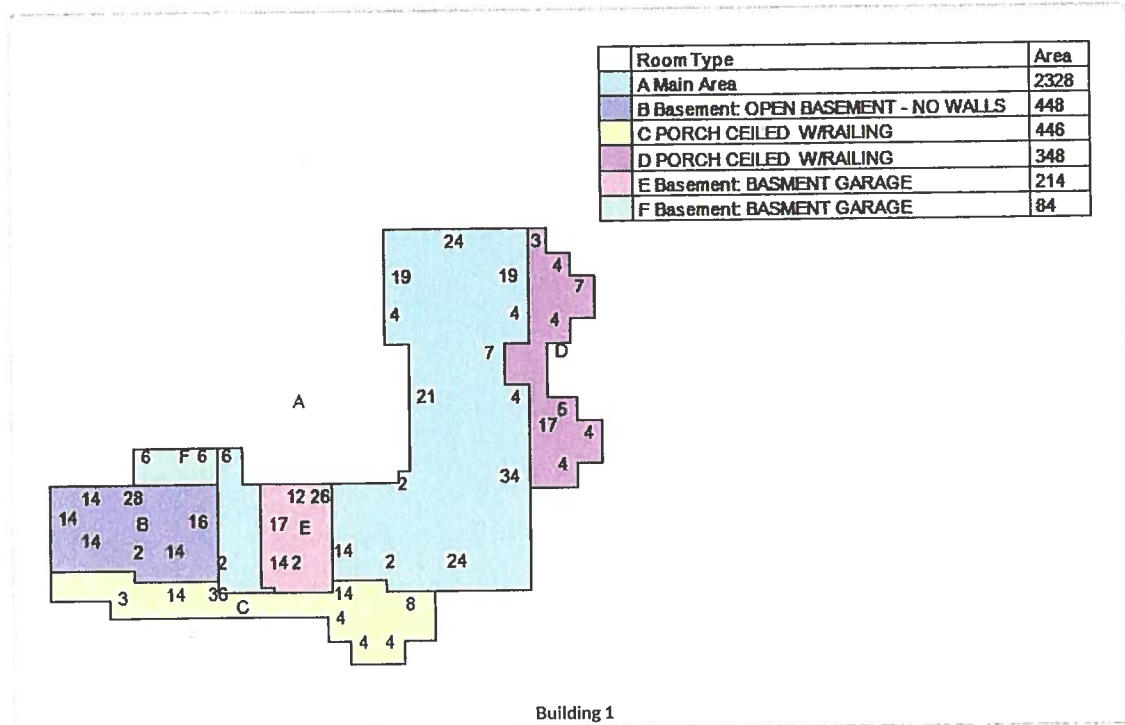
Year	Appeal Type Value	Scheduled Hearing Date subject to change	Status
2011	BOARD OF REVIEW	11/14/2011	Sustained by BOR
2010	BOARD OF REVIEW	5/17/2010	Sustained by BOR
2009	BOARD OF REVIEW	8/10/2009	Closed

Improvement Information

Building Number 1
 Year Built 1991
 Eff Year Built 2001
 Living Area 2,328
 Bedrooms 3
 Full Bath 2
 Half Bath 0
 Percent Complete

Sketches

EXHIBIT "B"



[Print Sketches](#)

Other Building and Yard Improvements

Description	Quantity	Year Built	Area	Percent Complete
WOOD DECK RAILING	1	1991	34	

Permit Information

Date	Permit Number	Reason	Permit Amount
10/6/2022	2200002500	ADDITION	\$1,500,000
10/25/2019	1900002304	Photovoltaic System	\$34,000
10/2/1989	30198	DWELLING	\$452,500

Conveyance Information

Sale Date	Price	Instrument #	Instrument Type	Date Recorded	Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
06/10/2021	\$7,450,000	21-A-78360204	FEE CONVEYANCE	06/15/2021				81950	Warranty Deed
03/01/2018	\$5,225,000	18-A-66400147	FEE CONVEYANCE	03/07/2018				44412.5	Exchange Deed
08/08/2005	\$0	05-179860	FEE CONVEYANCE	09/08/2005					Quitclaim Deed
05/09/2002	\$0	02-097895	FEE CONVEYANCE	06/04/2002					Warranty Deed
12/13/2001	\$0	01-206912	FEE CONVEYANCE	12/31/2001					Quitclaim Deed

Current Tax Bill Information

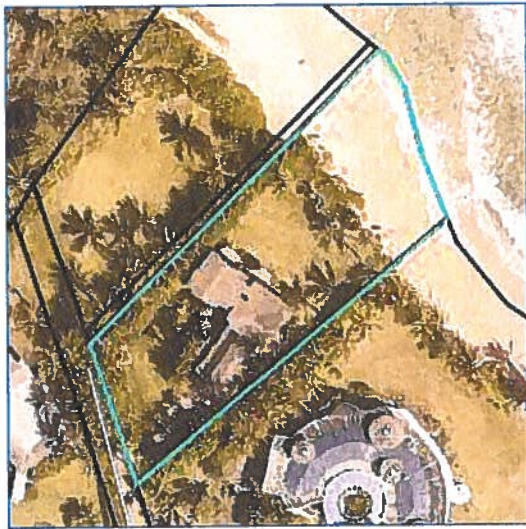
Tax Period	Description	Original Due Date	Taxes Assessment	Tax Credits	Net Tax	Penalty	Interest	Other	Amount Due
2024-1	Real Property Tax	08/20/2024	\$22,368.50	\$0.00	\$22,368.50	\$0.00	\$0.00	\$0.00	\$22,368.50
2024-1	- TRASH: BASE &/OR COLL FEE	08/20/2024	\$0.00	\$0.00	\$108.00	\$0.00	\$0.00	\$0.00	\$108.00
2024-2	- TRASH: BASE &/OR COLL FEE	02/20/2025	\$0.00	\$0.00	\$108.00	\$0.00	\$0.00	\$0.00	\$108.00
2024-2	Real Property Tax	02/20/2025	\$22,368.50	\$0.00	\$22,368.50	\$0.00	\$0.00	\$0.00	\$22,368.50
Tax Bill with Interest computed through 07/31/2024			\$44,737.00	\$0.00	\$44,953.00	\$0.00	\$0.00	\$0.00	\$44,953.00

Historical Payment Information

Year	Tax	Payments and Credits	Penalty	Interest	Other
2024	\$44,953.00	\$0.00	\$0.00	\$0.00	\$0.00
2023	\$65,047.80	(\$65,047.80)	(\$6,504.78)	(\$1,073.29)	\$0.00
2022	\$57,509.94	(\$57,509.94)	\$0.00	\$0.00	\$0.00
2021	\$41,143.60	(\$41,143.60)	\$0.00	\$0.00	\$0.00
2020	\$52,057.00	(\$52,057.00)	\$0.00	\$0.00	\$0.00
2019	\$21,666.84	(\$21,666.84)	\$0.00	\$0.00	\$0.00
2018	\$31,131.22	(\$31,131.22)	\$0.00	\$0.00	\$0.00
2017	\$27,290.82	(\$27,290.82)	\$0.00	\$0.00	\$0.00

Year	Tax	Payments and Credits	Penalty	Interest	Other
2016	\$27,290.82	(\$27,290.82)	\$0.00	\$0.00	\$0.00
2015	\$25,332.33	(\$25,332.33)	\$0.00	\$0.00	\$0.00
2014	\$21,845.96	(\$21,845.96)	\$0.00	\$0.00	\$0.00
2013	\$19,838.90	(\$19,838.90)	\$0.00	\$0.00	\$0.00
2012	\$22,238.41	(\$22,238.41)	\$0.00	\$0.00	\$0.00
2011	\$24,207.55	(\$24,207.55)	\$0.00	\$0.00	\$0.00
2010	\$26,361.95	(\$26,361.95)	\$0.00	\$0.00	\$0.00
2009	\$26,255.40	(\$26,255.40)	\$0.00	\$0.00	\$0.00
2008	\$26,242.22	(\$26,242.22)	\$0.00	\$0.00	\$0.00
2007	\$16,367.31	(\$16,367.31)	\$0.00	\$0.00	\$0.00
2006	\$16,497.44	(\$16,497.44)	\$0.00	\$0.00	\$0.00
2005	\$13,173.35	(\$13,173.35)	\$0.00	\$0.00	\$0.00
2004	\$13,377.34	(\$13,377.34)	\$0.00	\$0.00	\$0.00
2003	\$13,886.15	(\$13,886.15)	\$0.00	\$0.00	\$0.00
2002	\$13,850.60	(\$13,850.60)	\$0.00	\$0.00	\$0.00
2001	\$7,441.28	(\$7,441.28)	\$0.00	\$0.00	\$0.00

Map



No data available for the following modules: CPR/Condo/Apt Unit Information, Commercial Improvement Information.

The Kauai County Tax Assessor's Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein in its use or interpretation.

[User Privacy Policy](#) | [GDPR Privacy Notice](#)
 Last Data Upload: 7/17/2024, 12:31:08 AM

Contact Us





BP22-00002500

Dept. of Public Works, Division of Building
NOTICE TO OWN Issue Date: 12/22/23
Building construction shall be in accordance with the adopted International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code and all other County of Kauai Ordinances. Approval of Plans shall not be construed to be a permit for, or an approval or any violation of any of the provisions of these codes. The approved "Job Site Copy" shall not be changed, modified or altered without authorization from the Building Official. The issuance of a permit shall not prevent the Building Official from requiring the correction of errors in the construction documents and other data.

APPROVALS SUBJECT TO COMMENTS ON BUILDING PERMIT APPLICATION APPROVAL COPY

CONDITIONS OF APPROVAL

APPROVED
JOB SITE COPY
PW-BLDG DIV COUNTY OF KAUAI

Douglas High
Building Official or Authorized Agent

**Certificate of Occupancy
Required from Building
Division Prior to
Occupancy**

ALL PROPOSED WORK SHALL COMPLY TO ADA REQUIREMENTS FOR ACCESSIBILITY ENFORCED BY THE DEPARTMENT OF JUSTICE RELATING TO THE AMERICANS WITH DISABILITY ACT

NOTICE TO BUILDERS
PLEASE OBTAIN SEPARATE PERMIT FOR:
1. ELECTRICAL INSTALLATION
2. PLUMBING INSTALLATION
CALL THE BUILDING DIVISION FOR ROUGH-
IN INSPECTION. DO NOT ENCLOSE UNTIL
INSPECTION IS APPROVED.

BUILDING PERMIT APPLICATION APPROVAL COMMENTS

PLANNING

BUILDING



Issue Date: 12/22/23
BP22-002500

HEALTH/WASTEWATER

PLUMBING/ELECTRICAL

ENGINEERING/FLOOD/ADDRESSING

FIRE/WATER DEPARTMENT



CLAN ARCHITECTURE LLC
 1208 W. KILAUWA BLVD., SUITE 102, KILAUEA, HI 96754
 TEL: (808) 828-0160 FAX: (808) 828-0162
 WWW.CLANARCHITECTURE.COM



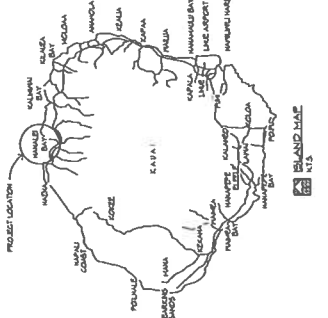
DESIGN CONCEPTS 2484 KENEKE ST., SUITE 102, KILAUEA, HI 96754
 (808) 828-0160 (808) 828-0162 DC@HAWAII.COM
 TMK # (4) 1MK (4) 5-9-002-021
 HAPPY HOUSE TRUST
 SHEET SP1
 SITE PLAN W.P. 17-12

DRAWING INDEX - P/BK11

SHEET #	DESCRIPTION	DATE
001	PROJECT LOCATION	11/15/17
002	PRELIMINARY FLOOR PLAN	11/15/17
003	PRELIMINARY FLOOR PLAN	11/15/17
004	PROPOSED EXTERIOR ELEVATIONS	11/15/17
005	PROPOSED EXTERIOR ELEVATIONS	11/15/17
006	PROPOSED EXTERIOR ELEVATIONS	11/15/17
007	PROPOSED EXTERIOR ELEVATIONS	11/15/17
008	PROPOSED EXTERIOR ELEVATIONS	11/15/17
009	PROPOSED EXTERIOR ELEVATIONS	11/15/17
010	PROPOSED EXTERIOR ELEVATIONS	11/15/17
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012	PROPOSED EXTERIOR ELEVATIONS	11/15/17
013	PROPOSED EXTERIOR ELEVATIONS	11/15/17
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021	PROPOSED EXTERIOR ELEVATIONS	11/15/17
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037	PROPOSED EXTERIOR ELEVATIONS	11/15/17
038	PROPOSED EXTERIOR ELEVATIONS	11/15/17
039	PROPOSED EXTERIOR ELEVATIONS	11/15/17
040	PROPOSED EXTERIOR ELEVATIONS	11/15/17

SUBJECT HOUSE AREA BREAKDOWN

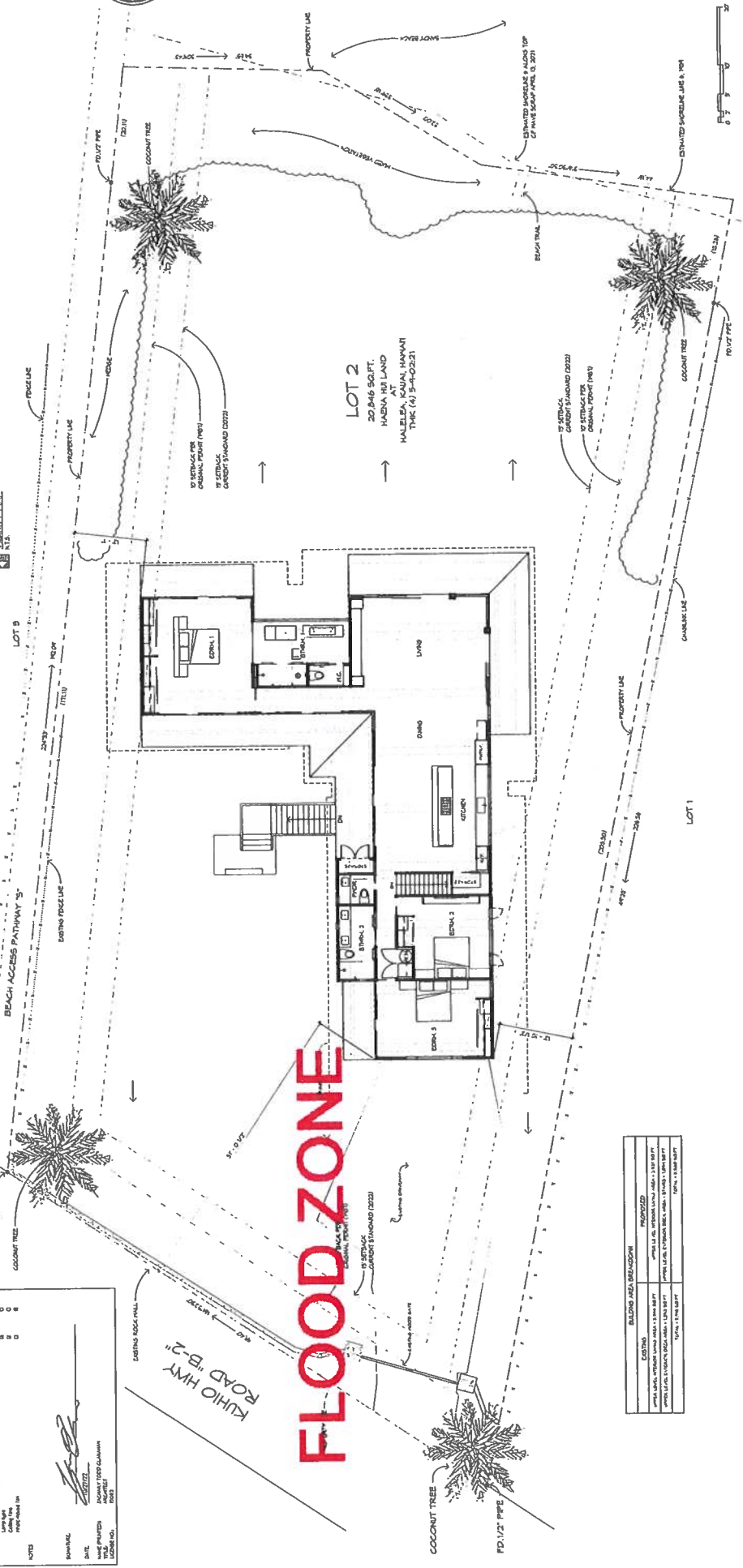
TOTAL LIVING AREA 3,320 SQ. FT.
 TOTAL FLOOR AREA 3,320 SQ. FT.
 TOTAL LOT COVERAGE 100.00 %
 TOTAL LOT AREA 3,320 SQ. FT.
 % OF TOTAL LOT COVERAGE 100.00 %



- GENERAL NOTES OF PROPOSED WORK:**
1. REFER TO ALL DRAWINGS FOR DIMENSIONS AND NOTES.
 2. REFER TO ALL DRAWINGS FOR DIMENSIONS AND NOTES.
 3. REFER TO ALL DRAWINGS FOR DIMENSIONS AND NOTES.
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 19. REFER TO ALL DRAWINGS FOR DIMENSIONS AND NOTES.
 20. REFER TO ALL DRAWINGS FOR DIMENSIONS AND NOTES.

NOTES

NO.	DESCRIPTION	DATE
001	ISSUED FOR PERMIT	11/15/17
002	ISSUED FOR PERMIT	11/15/17
003	ISSUED FOR PERMIT	11/15/17
004	ISSUED FOR PERMIT	11/15/17
005	ISSUED FOR PERMIT	11/15/17
006	ISSUED FOR PERMIT	11/15/17
007	ISSUED FOR PERMIT	11/15/17
008	ISSUED FOR PERMIT	11/15/17
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036	ISSUED FOR PERMIT	11/15/17
037	ISSUED FOR PERMIT	11/15/17
038	ISSUED FOR PERMIT	11/15/17
039	ISSUED FOR PERMIT	11/15/17
040	ISSUED FOR PERMIT	11/15/17



BUILDING AREA BREAKDOWN

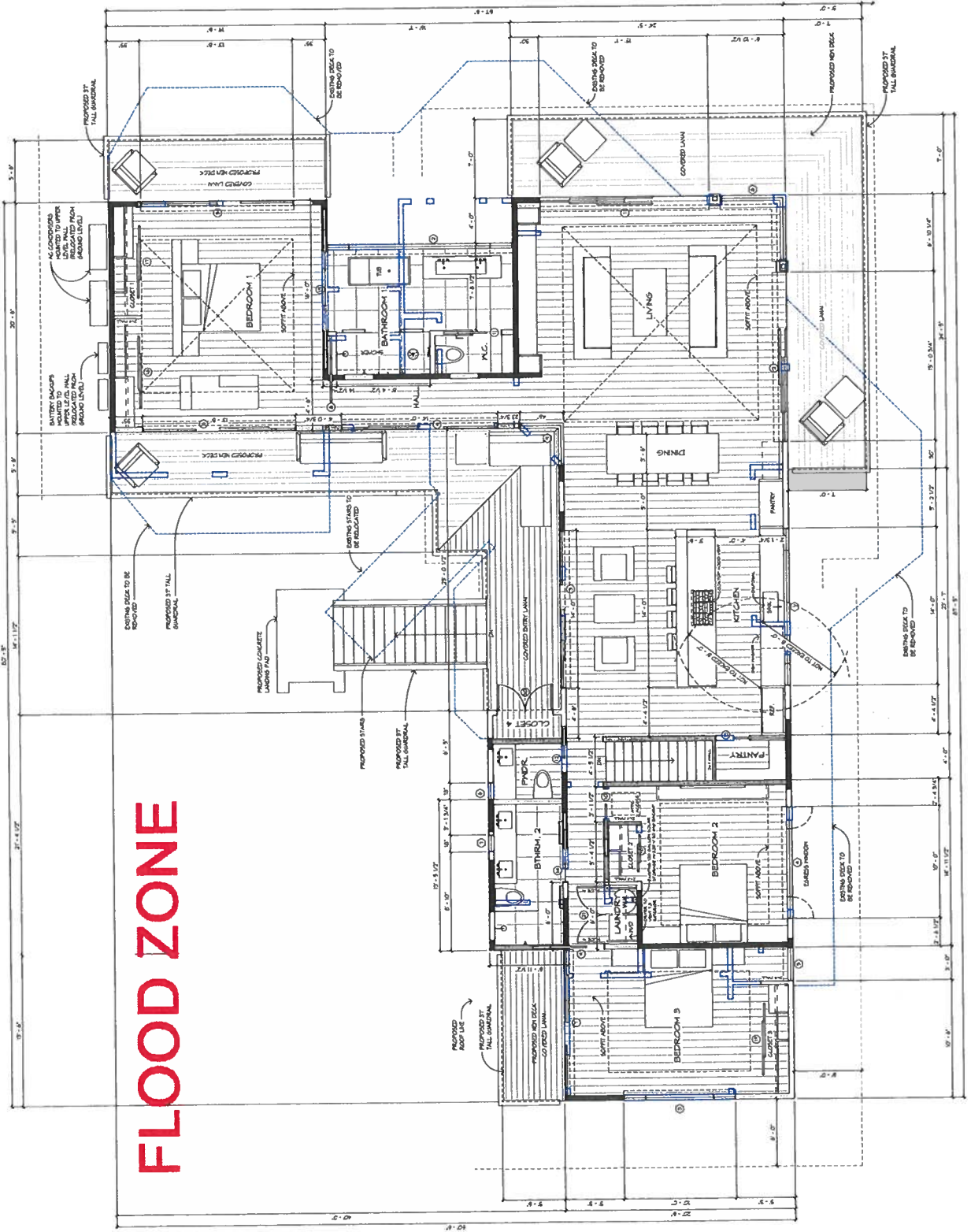
AREA	AREA (SQ. FT.)
Living Room	1,100
Dining	400
Kitchen	400
Bedroom 1	400
Bedroom 2	400
Bedroom 3	400
Bathroom	200
Hallway	100
Staircase	100
Other	100
TOTAL	3,320



MAIN LEVEL FLOOR PLAN
 V4.1.19

- CLOSED FLOORING:**
1. ALL BEDROOM FLOORS MUST BE AT LEAST 4.110 FT. AND BE AT LEAST 2" PINE
 2. 8" X 12" JOIST AND MUST BE OPENING TO EDGE THIN AT ABOVE THE FLOOR.
 3. SPACE BETWEEN JOISTS MUST BE FILLERED WITH 1/2" EPS INSULATION AND AT
 4. APPROPRIATE ALTIMETER AREAS, BUCKETS, SETBACKS SHALL BE MAINTAINED THROUGHOUT THE ENTIRE PROJECT. ALL FLOORING SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
 5. ALL FLOORING SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
 6. INTERESTING FLOORING SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
 7. INTERESTING FLOORING SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
 8. INTERESTING FLOORING SHALL BE MAINTAINED THROUGHOUT THE PROJECT.
- NOTES:**
- ALL FINIS TO BE 3/4" T&G

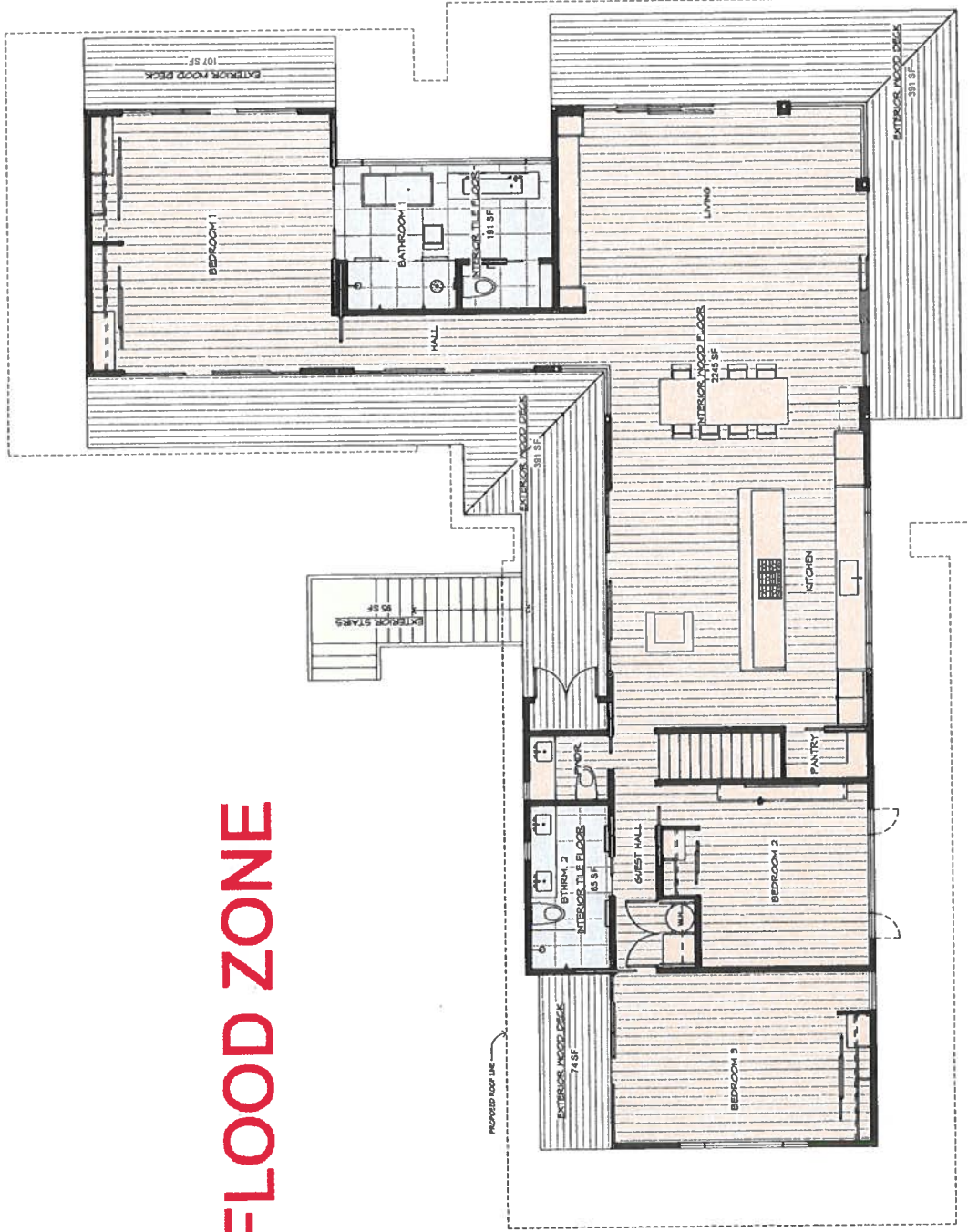
- LEGEND:**
- EXISTING WALLS TO REMAIN
 - PROPOSED WALLS
 - EXISTING STRUCTURE TO BE REMOVED



FLOOD ZONE



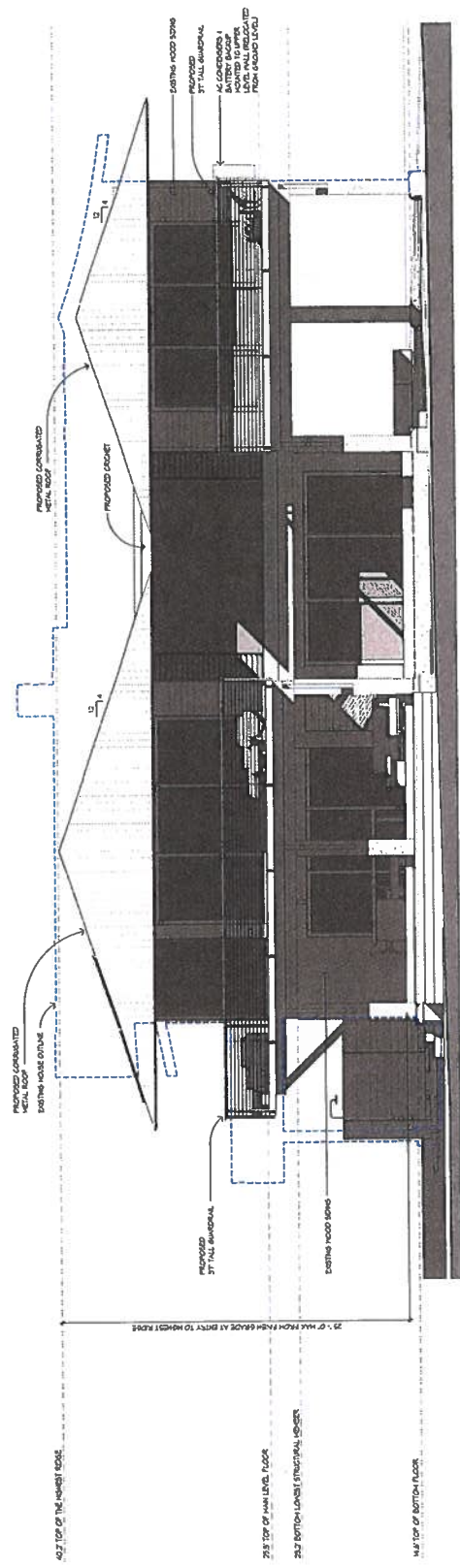
FLOOD ZONE



- AREA COLOR LEGEND**
- EXTERIOR STAIRS
 - EXTERIOR WOOD DECK
 - INTERIOR TILE FLOOR
 - INTERIOR WOOD FLOOR

AREA BREAKDOWN UPPER LEVEL

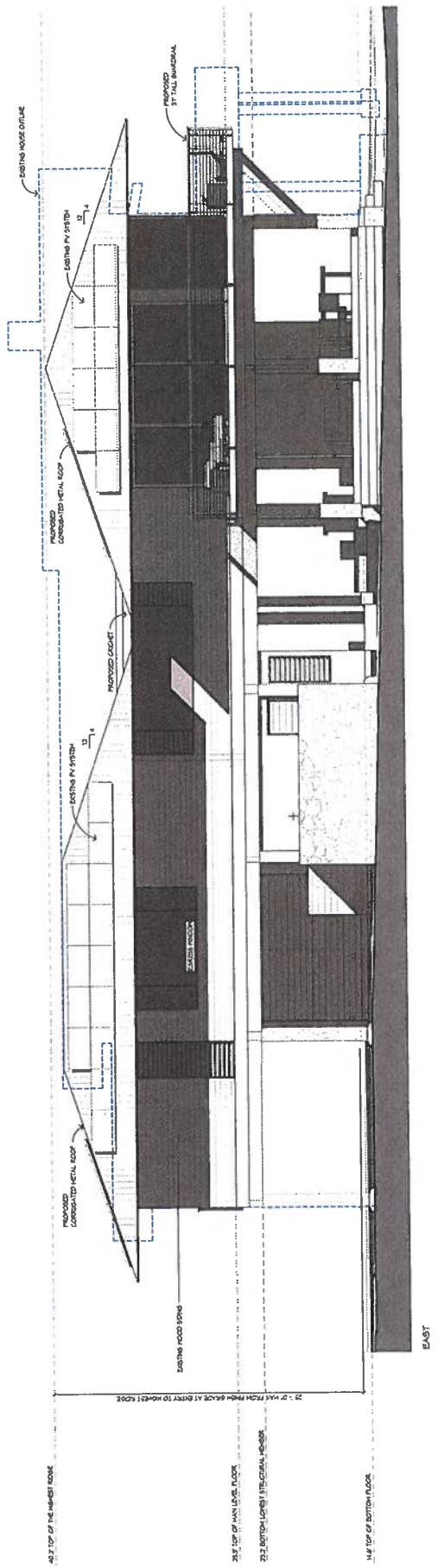
EXTERIOR STAIRS	95 SF
EXTERIOR WOOD DECK	107 SF
TOTAL EXTERIOR AREA	202 SF
INTERIOR TILE FLOOR	245 SF
INTERIOR WOOD FLOOR	245 SF
TOTAL INTERIOR AREA	490 SF
TOTAL AREA	692 SF

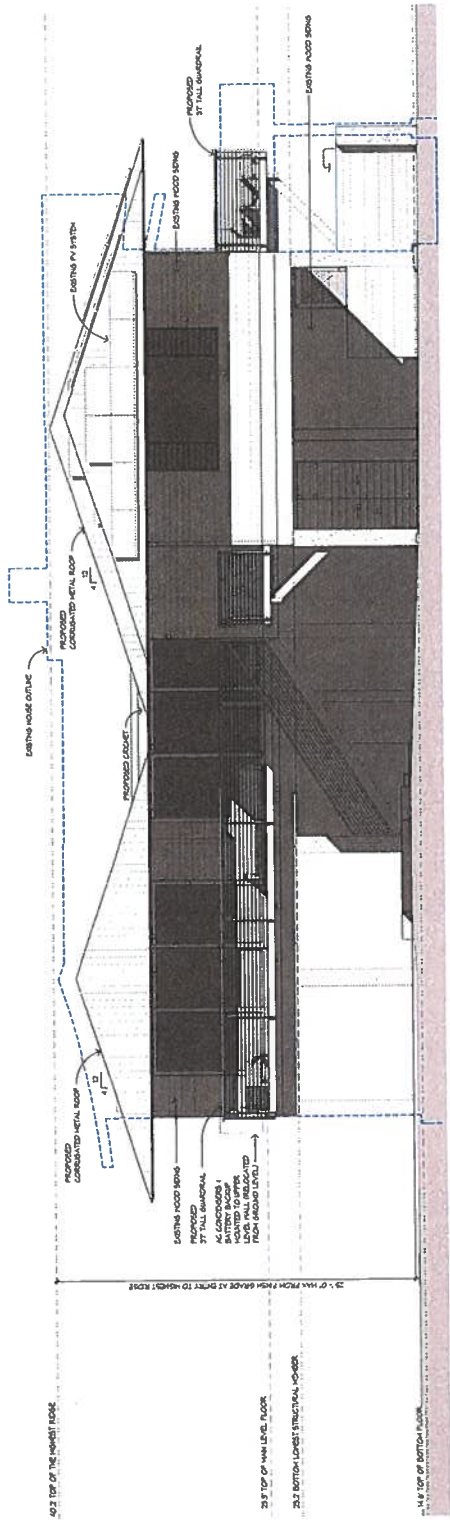


LEGEND:
 - - - - - EXISTING STRUCTURE OUTLINE

NOTE:
 HOOD COLLARS SHOWN AS LONG OF NOT TO BE REPLACED SEE SET

FLOOD ZONE



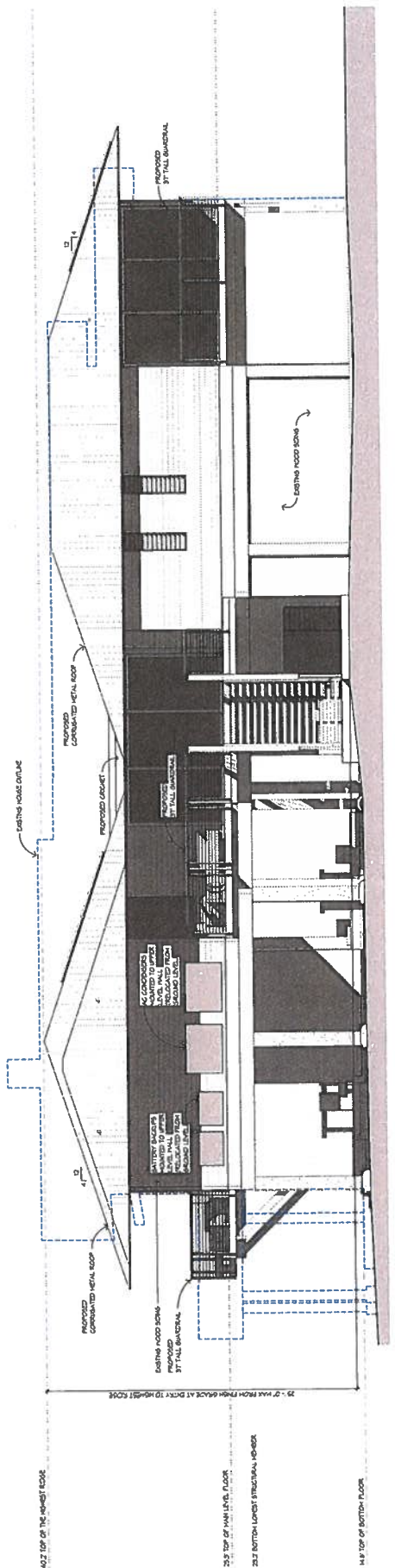


SOUTH

FLOOD ZONE

LEGEND:
 - EXISTING STRUCTURE OUTLINE
 - PROPOSED STRUCTURE OUTLINE

NOTE: ROOF COURSE BUMPERS SAID OF NOT TO BE REPRODUCED SEE SET



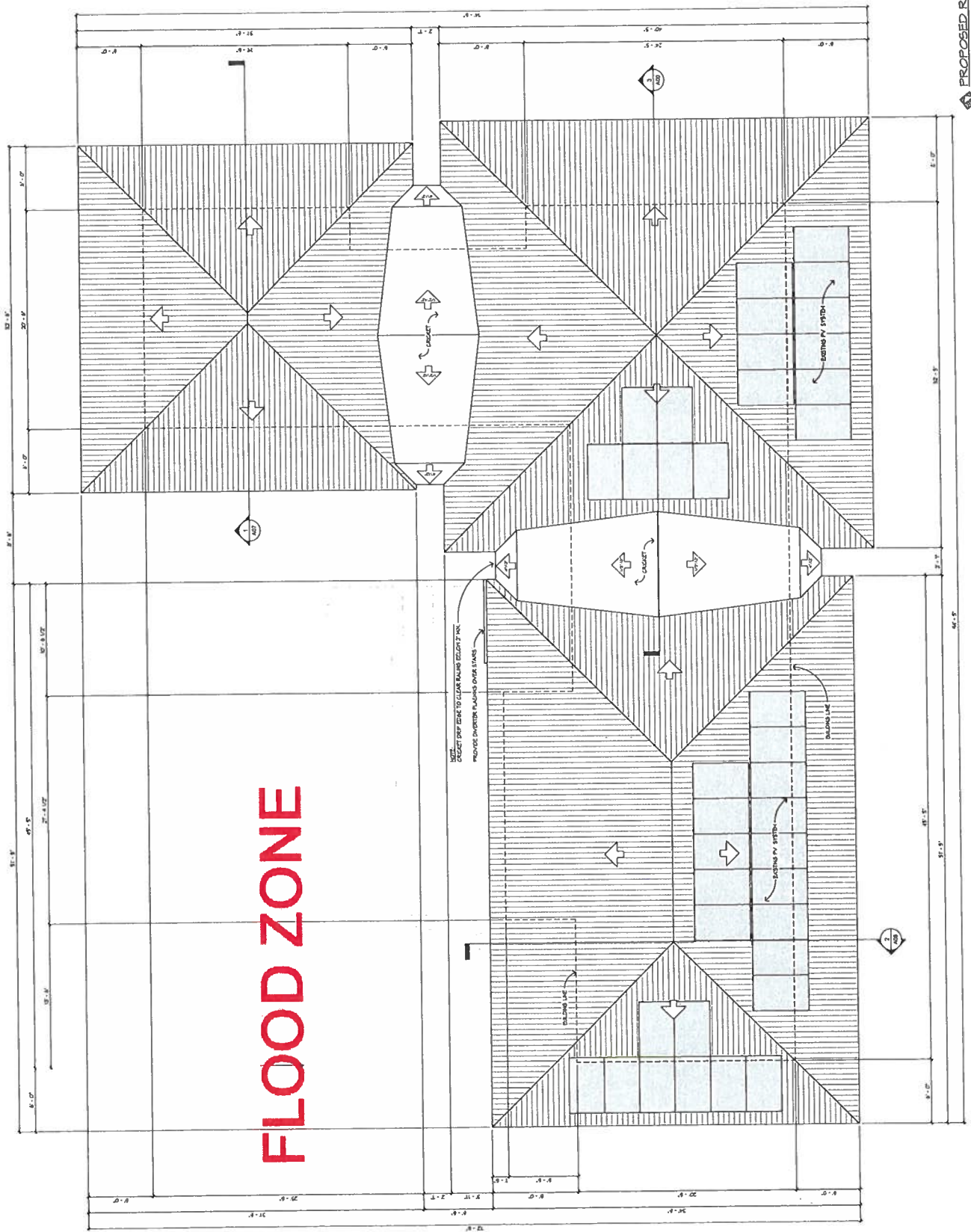
WEST

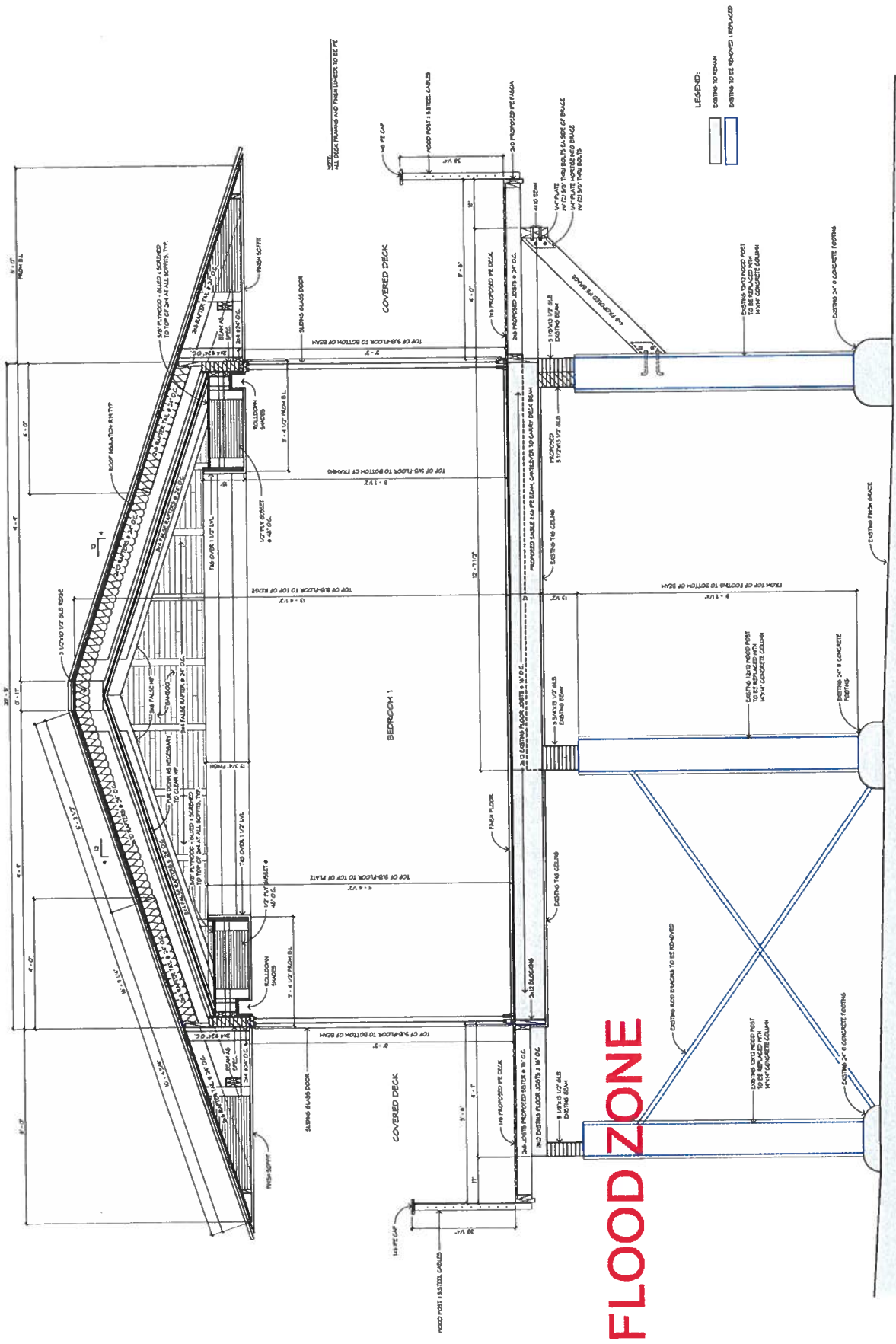
PROPOSED EXTERIOR ELEVATIONS
 1/4\"/>



NOTES: ROOF CONSTRUCTION SHALL BE AS SHOWN AND SHALL BE IN ACCORDANCE WITH THE HAWAIIAN ROOFING CODE. ALL ROOFING SHALL BE 18 GAUGE GALVALUMED ALUMINUM AT 4:12 PITCH. OVER THE ENTIRE ROOF AREA. OVER THE ENTIRE ROOF AREA. OVER THE ENTIRE ROOF AREA.

PROPOSED ROOF PLAN & KEY TO SECTIONS
 DATE: 11/12/20





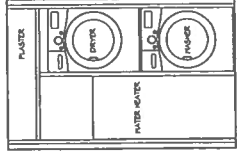
1 SECTION THRU BEDROOM 1



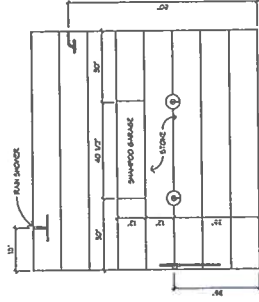
REVISED 11/2008 - EPH/10/08/000000



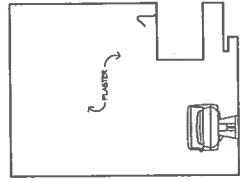
1/2" = 1'-0"



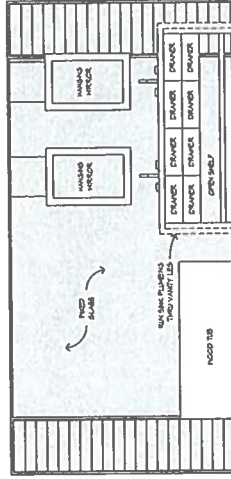
LAUNDRY EAST



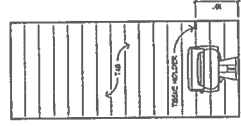
SHOWER SOUTH



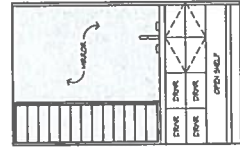
POWDER SOUTH



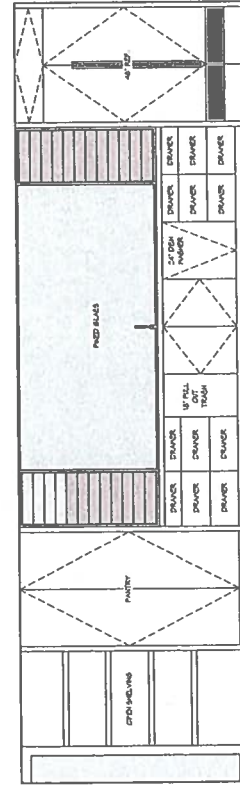
BATHROOM 1 NORTH



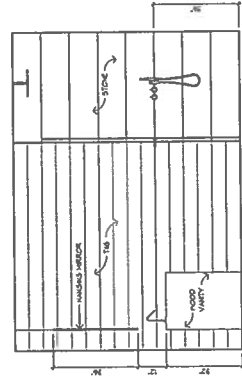
T.C. WEST



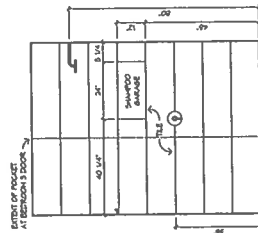
POWDER WEST



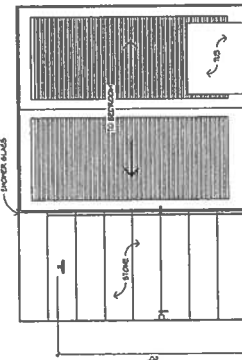
KITCHEN EAST



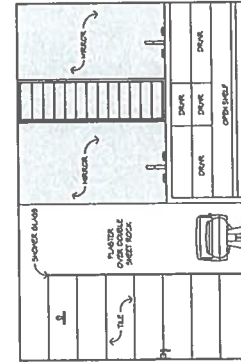
BATHROOM 1 EAST



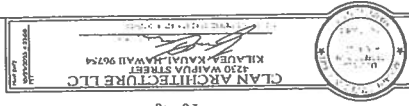
GUEST SHOWER SOUTH



BATHROOM 1 WEST



BATHROOM 2 WEST

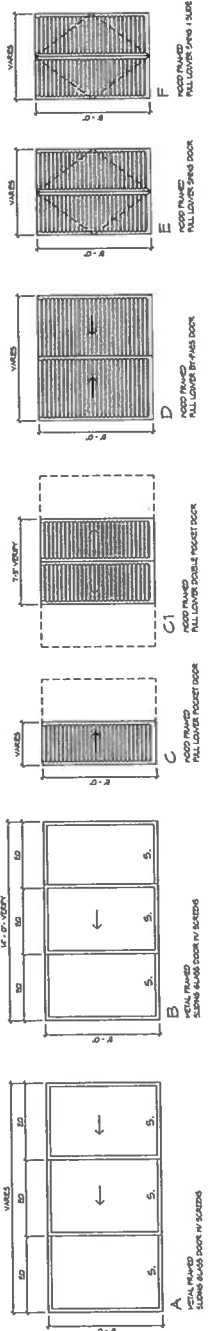


DESIGN CONCEPTS 2484 KENEKE ST. SUITE 102, KILAUEA, HI 96754
 P (808) 828-0160 F (808) 828-0162 DCHAWAL.COM
 HAPPY HOUSE TRUST
 TMK # (4) TMK (4) 5-9-23-21

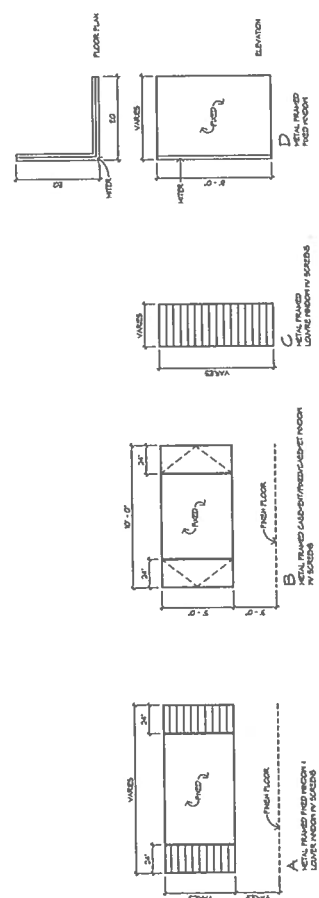


A11

DOOR SCHEDULE - PERMIT						
SYMBOL	WIDTH X HEIGHT	LOCATION	TYPE	DESCRIPTION	ELEVATION	REMARKS
1	15'-0" X 8'-0"	KITCHEN	A	3 PANEL SLIDING GLASS DOOR		DOOR, IV SCREENS
2	15'-0" X 8'-0"	LIVING	A	3 PANEL SLIDING GLASS DOOR		WOOD, IV SCREENS
3	14'-0" X 8'-0"	KITCHEN	B	3 PANEL SLIDING GLASS DOOR		WOOD, IV SCREENS
4	14'-0" X 8'-0"	HALL	B	3 PANEL SLIDING GLASS DOOR		WOOD, IV SCREENS
5	19'-0" X 8'-0"	BEDROOM 1	B	3 PANEL SLIDING GLASS DOOR		WOOD, IV SCREENS
6	19'-0" X 8'-0"	BEDROOM 2	B	3 PANEL SLIDING GLASS DOOR		WOOD, IV SCREENS
7	13'-0" X 7'-0"	BEDROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
8	4'-0" X 1/2" X 8'-0"	BEDROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
9	9'-1 1/2" X 8'-0"	BEDROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
10	9'-1 1/2" X 8'-0"	BEDROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
11	7'-1 1/2" X 8'-0"	PORCH	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
12	9'-1 1/2" X 8'-0"	PORCH	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
13	9'-1 1/2" X 8'-0"	PANTRY	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
14	9'-1 1/2" X 8'-0"	BATHROOM 2	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
15	9'-1 1/2" X 8'-0"	BATHROOM 1	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR		WOOD, IV SCREENS
16	9'-1 1/2" X 8'-0"	CLOSET 1	D	WOOD FRAMED 2 PANEL BI-PASS LOWERED DOOR		WOOD, IV SCREENS
17	9'-1 1/2" X 8'-0"	CLOSET 2	D	WOOD FRAMED 2 PANEL BI-PASS LOWERED DOOR		WOOD, IV SCREENS
18	9'-1 1/2" X 8'-0"	CLOSET 3	D	WOOD FRAMED 2 PANEL BI-PASS LOWERED DOOR		WOOD, IV SCREENS
19	9'-1 1/2" X 8'-0"	CLOSET 4	D	WOOD FRAMED 2 PANEL BI-PASS LOWERED DOOR		WOOD, IV SCREENS
20	9'-0" X 8'-0"	LAUNDRY	E	WOOD FRAMED LOWER DOUBLE SWING DOOR		WOOD, IV SCREENS
21	9'-0" X 8'-0"	LAUNDRY	F	WOOD FRAMED LOWER DOUBLE SWING 1 SLIDE-IN DOOR		WOOD, IV SCREENS



WINDOW SCHEDULE - PERMIT						
SYMBOL	WIDTH X HEIGHT	LOCATION	TYPE	WINDOW DESCRIPTION	ELEVATION	REMARKS
1	14'-0" X 4'-11"	KITCHEN	A	FIXED GLASS W/ LOWER EA. SIDE		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
2	16'-0" X 8'-0"	BATHROOM 1	A	FIXED GLASS W/ LOWER EA. SIDE		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
3	10'-0" X 8'-0"	BEDROOM 1	A	FIXED GLASS W/ LOWER EA. SIDE		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
4	10'-0" X 8'-0"	BEDROOM 2	B	FIXED GLASS W/ CASHEMENT EA. SIDE		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
5	9'-0" X 8'-0"	BEDROOM 3	C	LOWER WINDOW		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
6	1'-6" X 5'-2"	PORCH	C	LOWER WINDOW		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
7	1'-6" X 5'-2"	BATHROOM 2	C	LOWER WINDOW		PLYWOOD BDOO + ALTAIR LOWER STRIP CLEAR ANODIZED
8	9'-10" X 8'-0"	LIVING ROOM	D	FIXED WINDOW, MITER, FIXED WINDOW		PLYWOOD BDOO
9	9'-10" X 8'-0"	LIVING ROOM	D	FIXED WINDOW, MITER, FIXED WINDOW		PLYWOOD BDOO



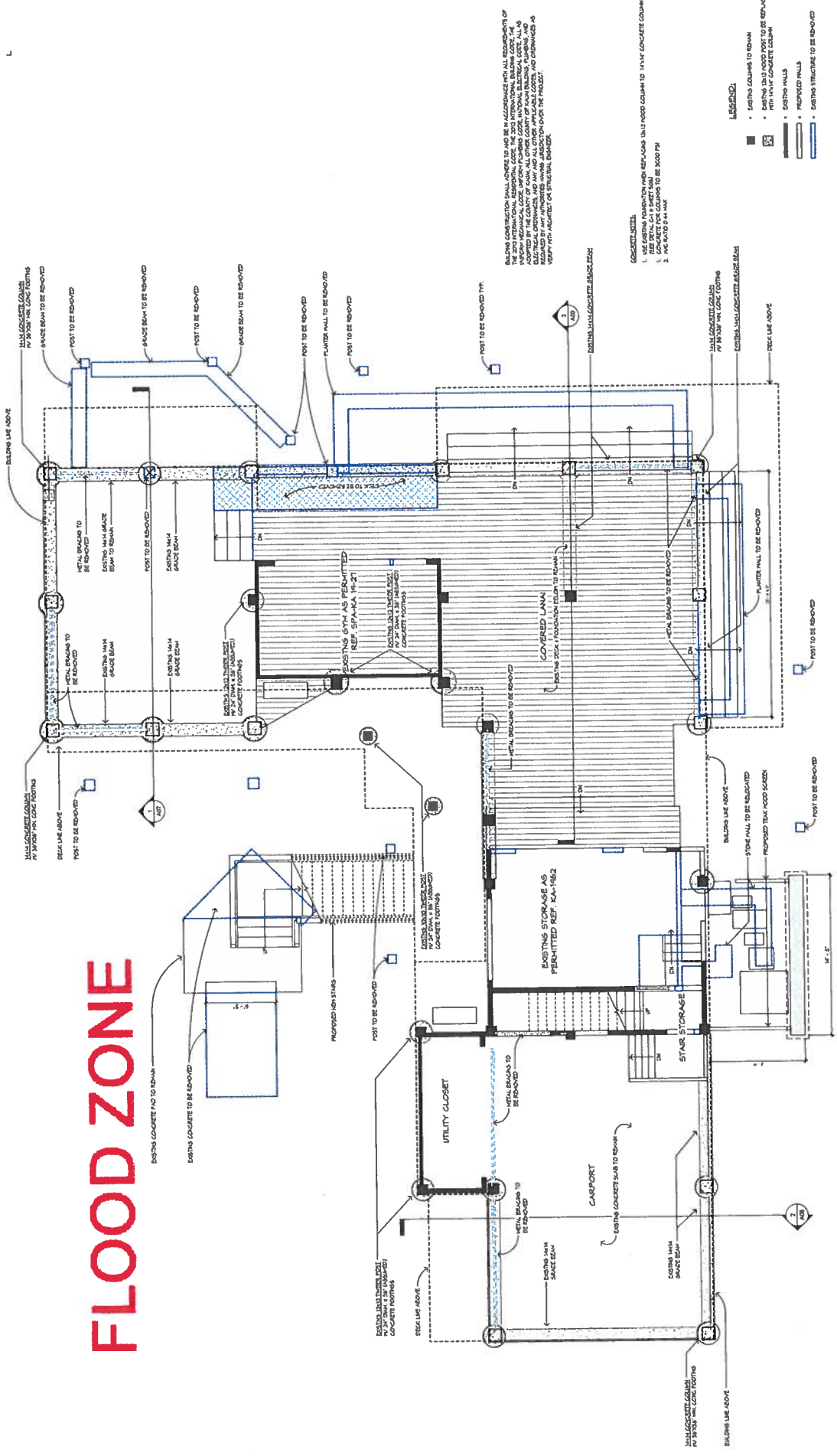
DOOR NOTES:
 1. ALL DOORS SHALL BE 1 3/4" MIN. CLEARANCE FROM FLOOR TO BOTTOM RAIL OF DOOR.
 2. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO SIDE RAIL OF DOOR.
 3. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 4. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 5. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 6. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 7. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 8. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 9. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 10. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 11. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 12. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 13. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 14. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 15. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 16. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 17. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 18. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 19. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.
 20. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF DOOR.
 21. DOOR SHALL BE 1 3/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF DOOR.

WINDOW NOTES:
 1. ALL WINDOWS SHALL BE 1/4" MIN. CLEARANCE FROM FLOOR TO BOTTOM RAIL OF WINDOW.
 2. ALL WINDOWS SHALL BE 1/4" MIN. CLEARANCE FROM WALL TO SIDE RAIL OF WINDOW.
 3. ALL WINDOWS SHALL BE 1/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF WINDOW.
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 20. ALL WINDOWS SHALL BE 1/4" MIN. CLEARANCE FROM WALL TO BOTTOM RAIL OF WINDOW.
 21. ALL WINDOWS SHALL BE 1/4" MIN. CLEARANCE FROM WALL TO TOP RAIL OF WINDOW.

DOOR & WINDOW SCHEDULE
 PERMIT



FLOOD ZONE





Professional Engineer
KILAREA KAMAHI #9754



PERM
S02
FLOOR FRAMING PLAN
DATE: 1/21/18

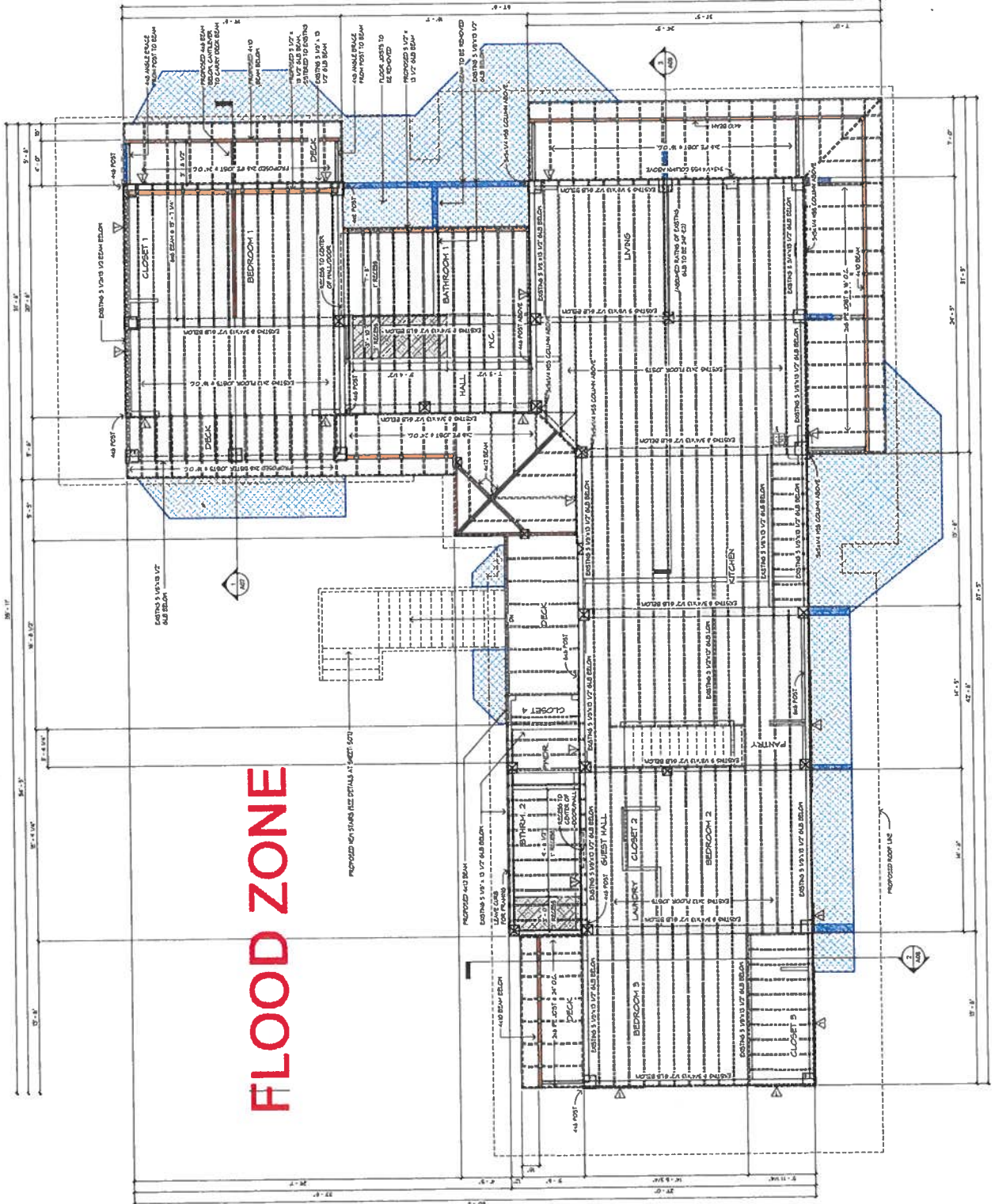
BEFORE CONSTRUCTION SHALL CHECK TO AND BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE STATE INTERNATIONAL CODES AND 2018 HAWAIIAN BUILDING CODE. ALL CONSTRUCTION SHALL BE ACCORDING TO THE CITY OF HAWAII. ALL OTHER COUNTY OF HAWAII ORDINANCES, AND ALL APPLICABLE CODES AND REGULATIONS SHALL BE OBSERVED AND ENFORCED AS REQUIRED BY ANY APPLICABLE ORDINANCE AND APPROVED OVER THE PROJECT.

PLACED BRIMS NOTES:
1. ALL 2"x4" W/O.C. FLOOR JOISTS TO REMAIN.
2. ALL PROPOSED DECK FRAMING AND EXTERIOR FINISH ELEMENTS TO BE RPE.

SHEAR WALL SCHEDULE	
SYMBOL	NOTES
	2'x4" W/O.C. FLOOR JOISTS TO REMAIN
	DECK FRAMING AND EXTERIOR FINISH ELEMENTS TO BE RPE

LEGEND:

	• PROPOSED ROOD POST
	• EXISTING COLUMNS TO REMAIN COLUMN
	• EXISTING 2"x4" ROOD POST TO BE REMOVED WITH 1/2" GANGETE COLUMN BREAM
	• EXISTING DECK TO BE REMOVED
	• EXISTING STRUCTURE TO BE REMOVED
	• DECK BEAM
	• FULL ABOVE
	• PROPOSED DECK FRAMING
	• PROPOSED SHEAR WALL (SEE SCHEDULE)
	• 3" FLOOR BEZELS
	• 1" FLOOR BEZELS



FLOOD ZONE

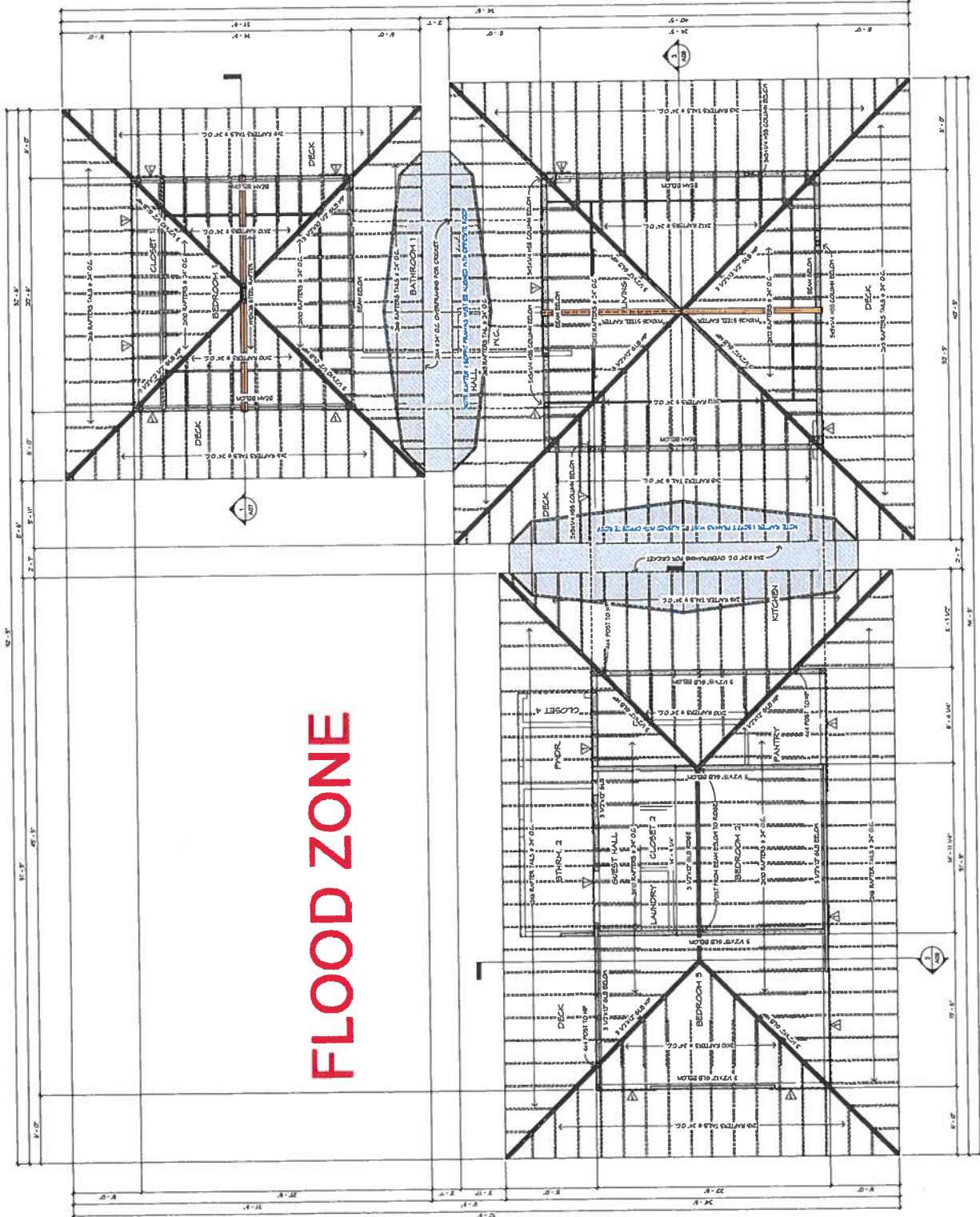


1000 Kalia Road, Suite 1000, Honolulu, HI 96813



S04

ROOF FRAMING PLAN



BEFORE CONSTRUCTION SHALL ADVISE TO AND BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2015 INTERNATIONAL RESIDENTIAL CODE, THE 2015 INTERNATIONAL MECHANICAL CODE, THE 2015 INTERNATIONAL PLUMBING CODE, THE 2015 INTERNATIONAL ELECTRICAL CODE, THE 2015 INTERNATIONAL FIRE AND ALARM CODE, AND THE 2015 INTERNATIONAL ENERGY EFFICIENCY CODE, AS ADOPTED BY THE COUNTY OF HAWAII, IN OTHER COUNTY OF HAWAII, INCLUDING HONOLULU, AND ANY OTHER APPLICABLE CODES, ORDINANCES, REGULATIONS, AND ORDINANCES, AND SHALL BE RESPONSIBLE FOR ANY AMENDMENTS AND CORRECTIONS TO THIS PLAN REQUIRED BY ANY APPLICABLE LAW ENFORCEMENT AGENCY OR AGENCY WITH JURISDICTION OVER THE PROJECT.

ROOF FLOOR SCHEDULE

1. 2x12 RAFTERS @ 16" O.C. (SEE PLAN)

2. 2x12 JOISTS @ 16" O.C. (SEE PLAN)

3. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.

4. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.

5. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.

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SHEAR WALL SCHEDULE	
NOTES	
1. 2x12 RAFTERS @ 16" O.C. (SEE PLAN)	
2. 2x12 JOISTS @ 16" O.C. (SEE PLAN)	
3. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.	
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10. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.	

LEGEND:

1. 2x12 RAFTERS @ 16" O.C. (SEE PLAN)

2. 2x12 JOISTS @ 16" O.C. (SEE PLAN)

3. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.

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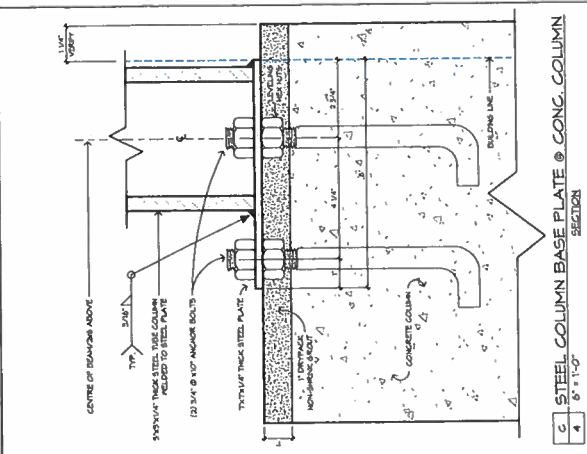
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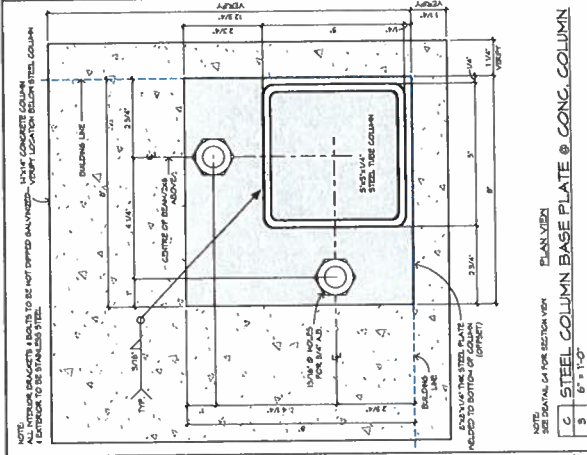
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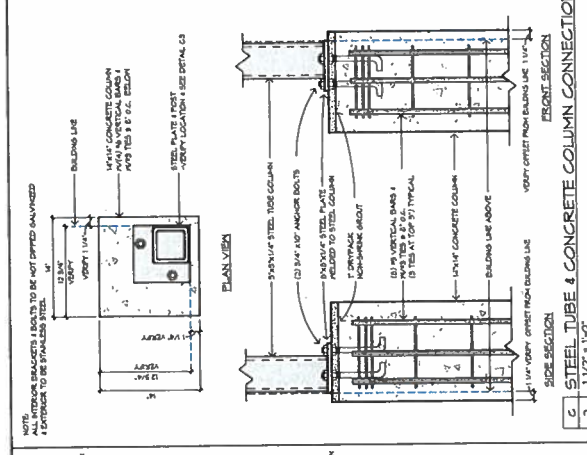
10. 2x12 JOISTS @ 16" O.C. WITH BAYONET EDGE OR EGG CRACK. MOST LAYS WERE NOT OTHERWISE NOTED.



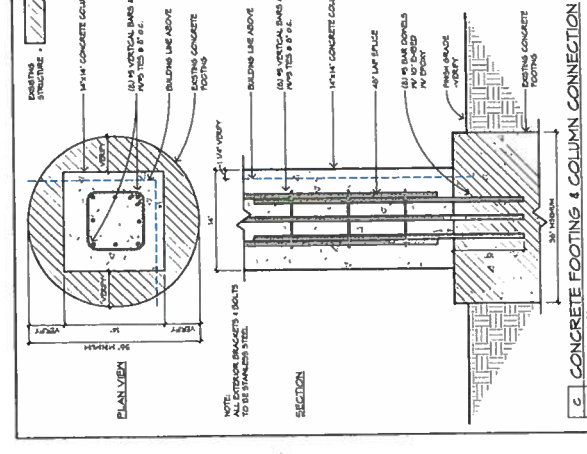
C STEEL COLUMN BASE PLATE @ CONC. COLUMN
 SECTION
 4 8' x 11'-0"



C STEEL COLUMN BASE PLATE @ CONC. COLUMN
 PLAN VIEW
 3 6' x 11'-0"



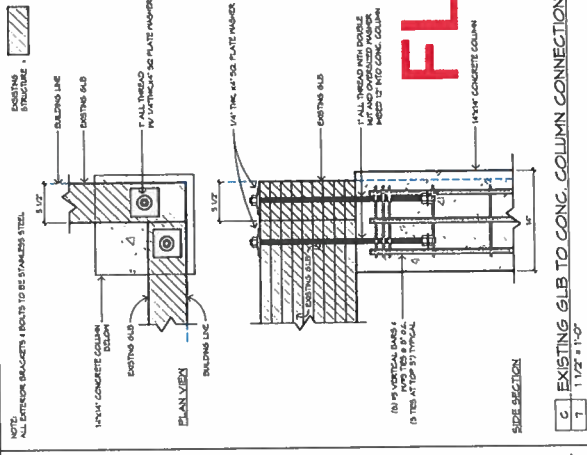
C STEEL TUBE & CONCRETE COLUMN CONNECTION
 FRONT SECTION
 2 11'-0" x 11'-0"



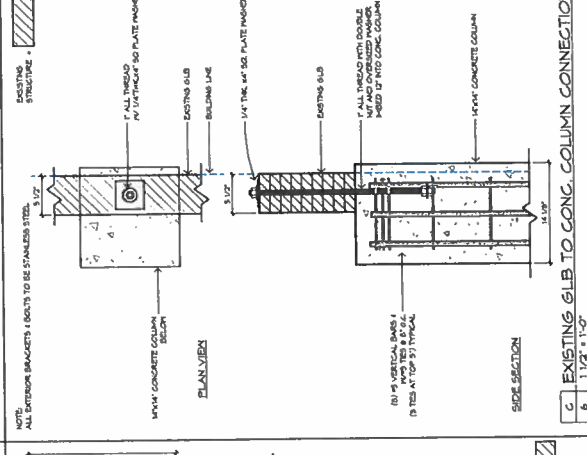
C CONCRETE FOOTING & COLUMN CONNECTION
 SECTION
 1 11'-0" x 11'-0"



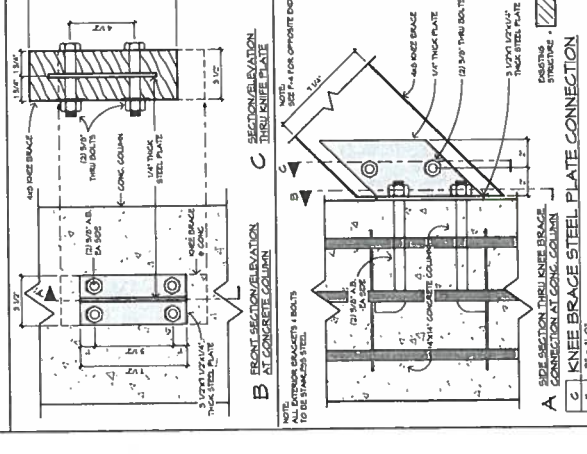
C EXISTING GLUB TO CONC. COLUMN CONNECTION
 SIDE SECTION
 7 11'-0" x 11'-0"



C EXISTING GLUB TO CONC. COLUMN CONNECTION
 SIDE SECTION
 7 11'-0" x 11'-0"

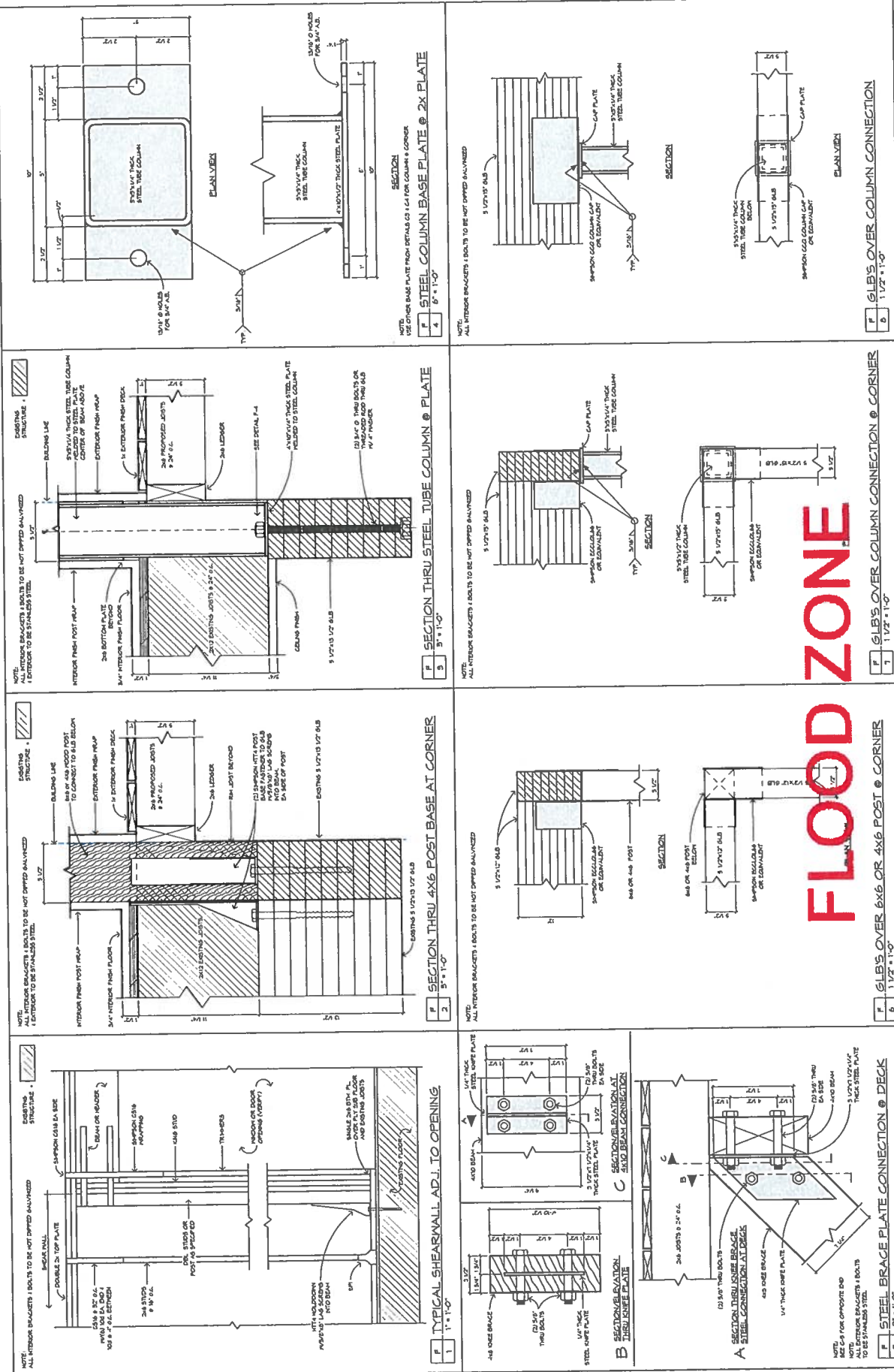


C EXISTING GLUB TO CONC. COLUMN CONNECTION
 SIDE SECTION
 8 11'-0" x 11'-0"

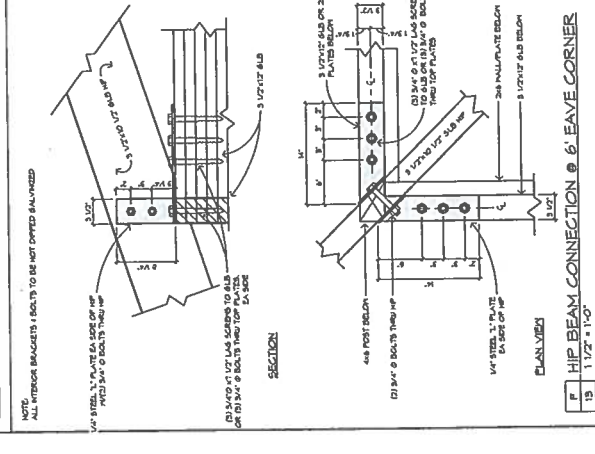
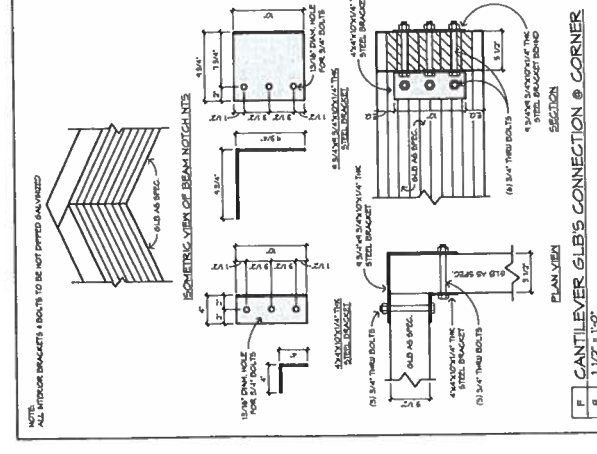
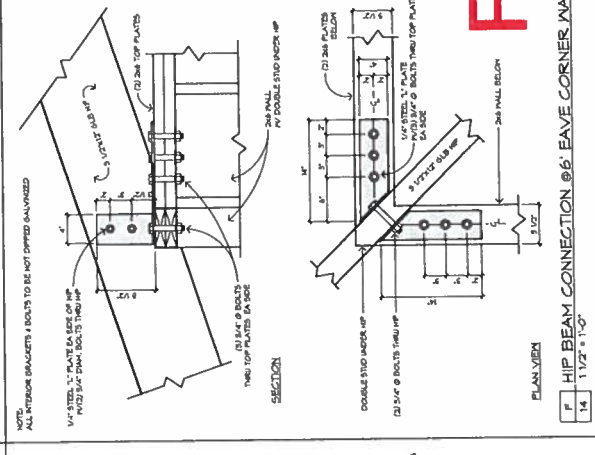
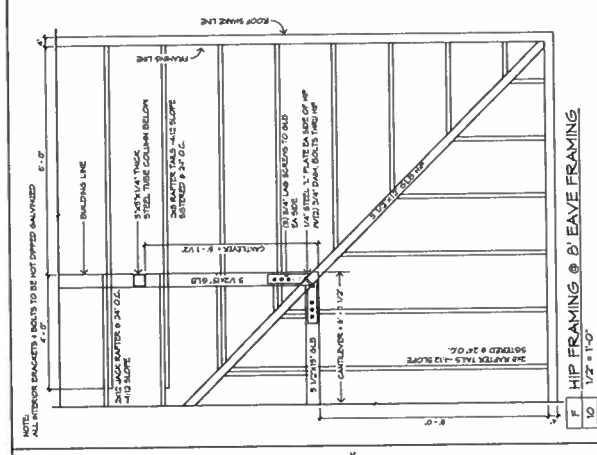
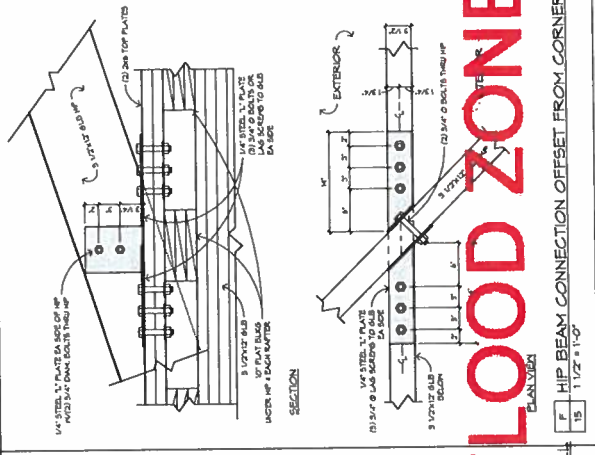
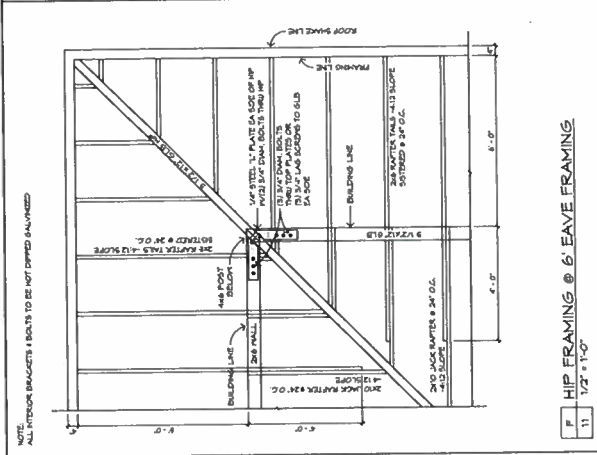
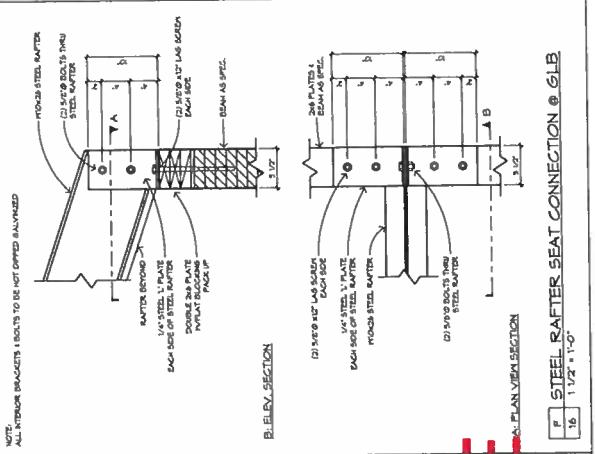
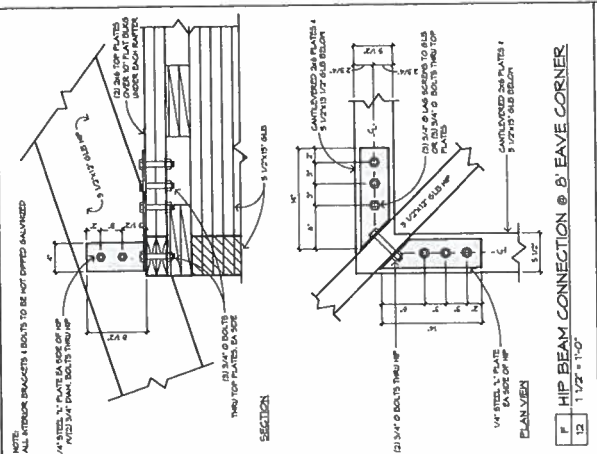


C KNEE BRACE STEEL PLATE CONNECTION
 SECTION
 5 5' x 11'-0"

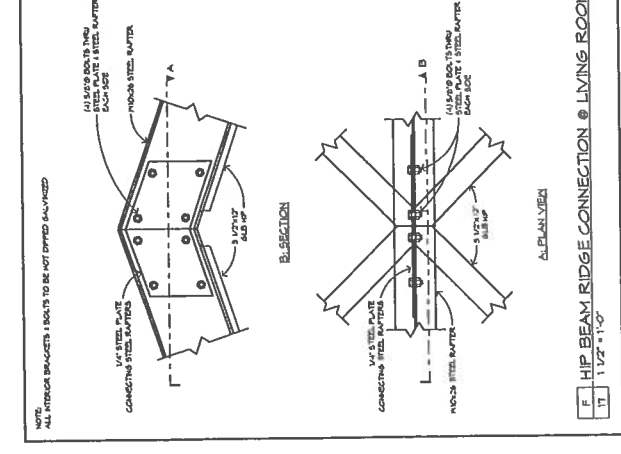
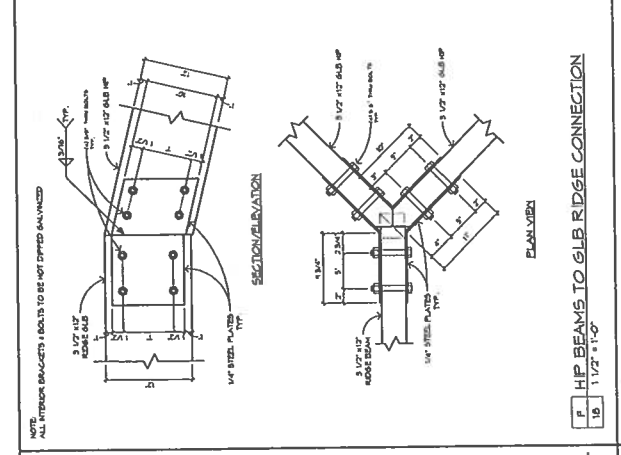
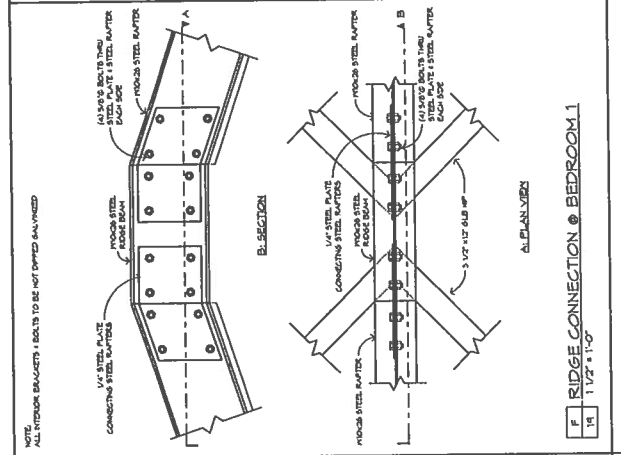
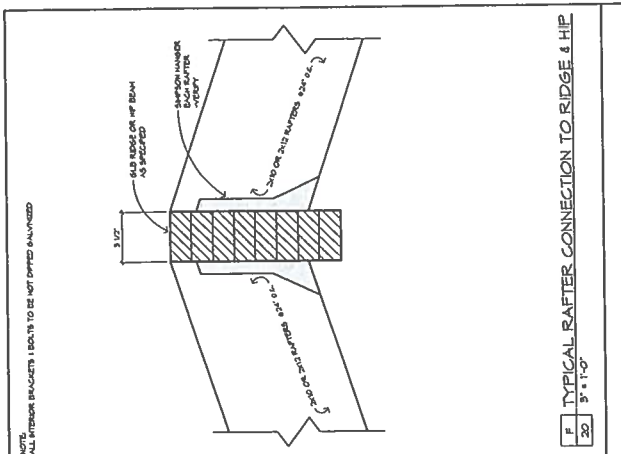
FLOOD ZONE

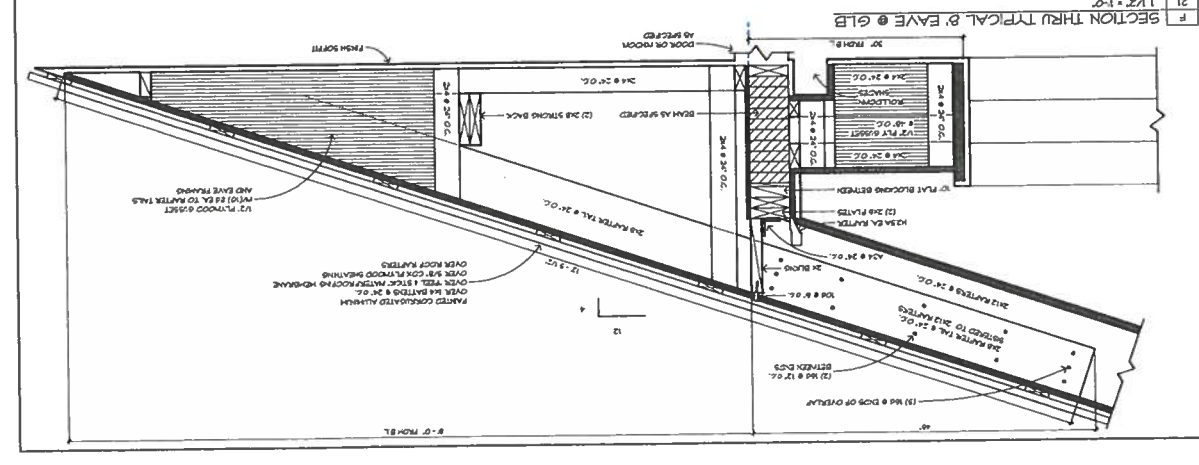
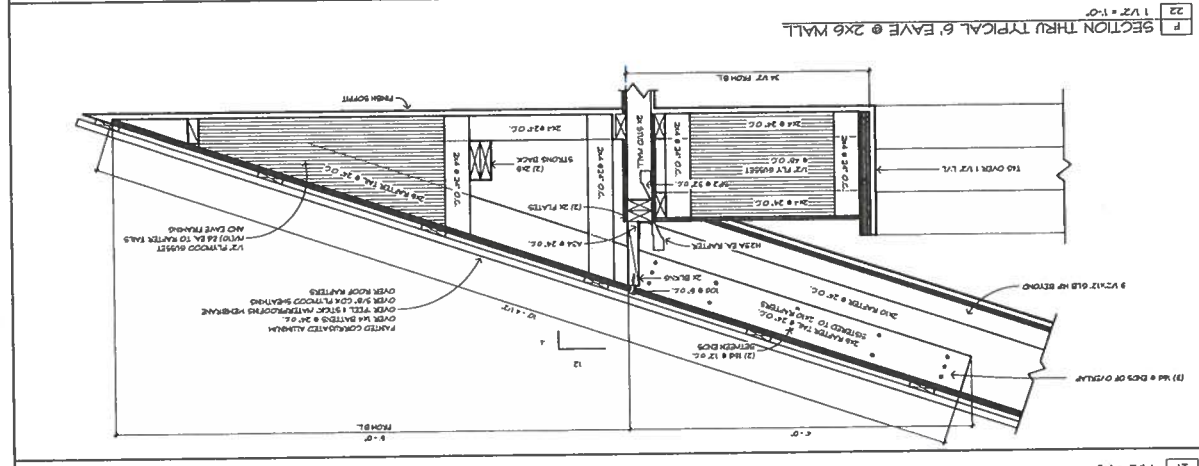
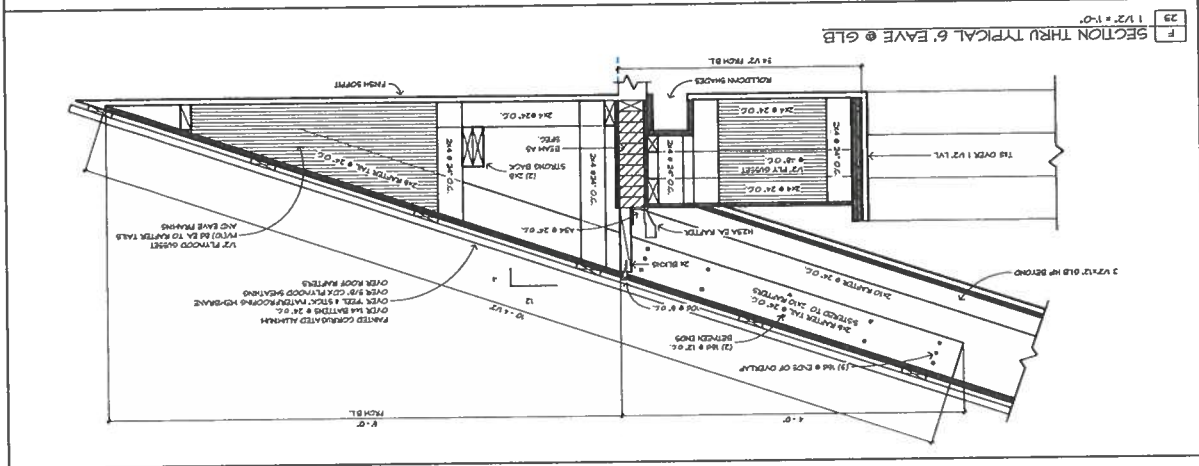
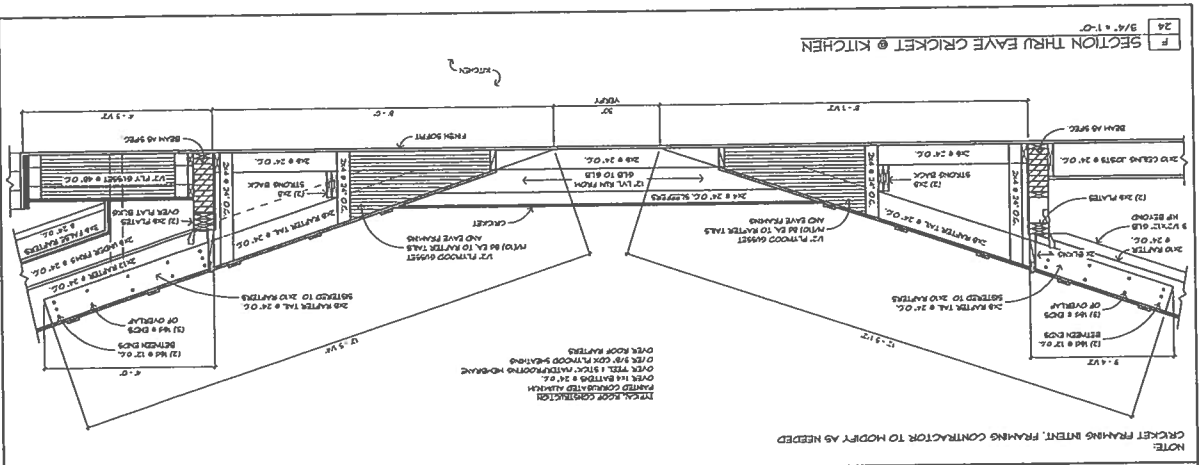


FLOOD ZONE



FLOOD ZONE







Professional Engineer
 License No. 10000
 State of Hawaii
 Department of Land and Natural Resources

FRAMING DETAILS
 AS NOTED

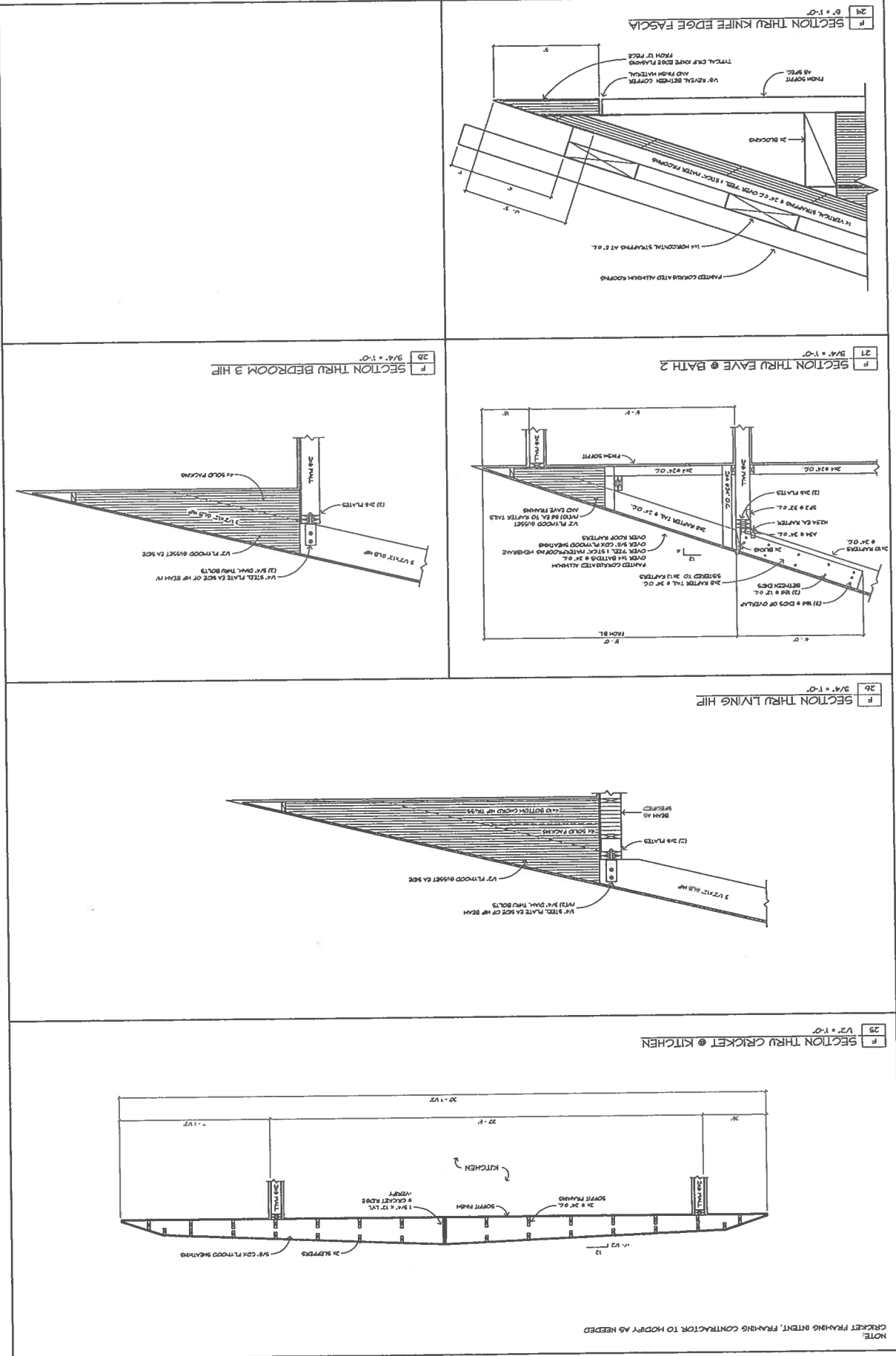


EXHIBIT "D"



Dept. of Public Works - Division of Building
NOTICE TO OWN Issue Date: 12/22/23
BP22-00002500

Building construction shall be in accordance with the adopted International Building Code, International Residential Code, Uniform Plumbing Code, National Electrical Code and all other County of Kauai Ordinances. Approval of Plans shall not be construed to be a permit for, or an approval of any violation of any of the provisions of these codes. The approved "Job Site Copy" shall not be changed, modified or altered without authorization from the Building Official. The issuance of a permit shall not prevent the building official from requiring the correction of errors in the construction documents and other data.

APPROVALS SUBJECT TO COMMENTS ON BUILDING PERMIT APPLICATION APPROVAL

CONDITIONS OF APPROVAL

ALL PROPOSED WORK SHALL COMPLY TO ADA REQUIREMENTS FOR ACCESSIBILITY ENFORCED BY THE DEPARTMENT OF JUSTICE RELATING TO THE AMERICANS WITH DISABILITY ACT

NOTICE TO BUILDERS
PLEASE OBTAIN SEPARATE PERMIT FOR:
1. ELECTRICAL INSTALLATION
2. PLUMBING INSTALLATION
CALL THE BUILDING DIVISION FOR ROUGH-IN INSPECTION. DO NOT ENCLOSE UNTIL INSPECTION IS APPROVED.

APPROVED
JOB SITE COPY
PW-BLDG DIV COUNTY OF KAUAI

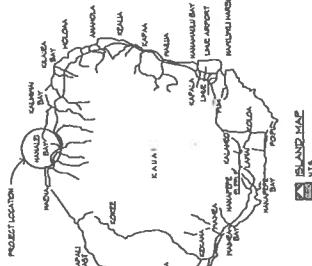
Douglas Haigh
Building Official or Authorized Agent

Certificate of Occupancy
Required from Building
Division Prior to
Occupancy



DRAWING INDEX - PERMIT		
SHEET #	SHEET NAME	SCALE
AD	APPROVAL	AS SHOWN
AE	ARCHITECTURAL ELEVATIONS	1/4" = 1'-0"
AF	FOUNDATION PLAN	1/4" = 1'-0"
AG	GENERAL NOTES	AS SHOWN
AH	MECHANICAL PLAN	1/4" = 1'-0"
AI	ELECTRICAL PLAN	1/4" = 1'-0"
AJ	PLUMBING PLAN	1/4" = 1'-0"
AK	LANDSCAPE PLAN	1/4" = 1'-0"
AL	CONSTRUCTION DETAILS	AS SHOWN
AM	CONSTRUCTION DETAILS	AS SHOWN
AN	CONSTRUCTION DETAILS	AS SHOWN
AO	CONSTRUCTION DETAILS	AS SHOWN
AP	CONSTRUCTION DETAILS	AS SHOWN
AQ	CONSTRUCTION DETAILS	AS SHOWN
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CV	CONSTRUCTION DETAILS	AS SHOWN

SUBJECT HOUSE AREA BREAKDOWN
 TOTAL LIVING AREA 3,211 SQ. FT.
 TOTAL BEDROOM AREA 1,674 SQ. FT.
 TOTAL BATH AREA 411 SQ. FT.
 TOTAL KITCHEN AREA 228 SQ. FT.
 TOTAL LOT COVERAGE 22,214 SQ. FT.
 % OF TOTAL LOT COVERAGE 14.45%



- GENERAL NOTES ON EXHIBITED PLANS:**
1. EXHIBIT 2 (SITE PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 2. EXHIBIT 3 (FOUNDATION PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 3. EXHIBIT 4 (MECHANICAL PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 4. EXHIBIT 5 (ELECTRICAL PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 5. EXHIBIT 6 (PLUMBING PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 6. EXHIBIT 7 (LANDSCAPE PLAN) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.
 7. EXHIBIT 8 (CONSTRUCTION DETAILS) IS A PRELIMINARY PLAN. IT IS SUBJECT TO THE APPROVAL OF THE BOARD OF WATER SUPPLY AND SEWERAGE AND THE BOARD OF HEALTH.

CONTRACTOR'S CHECKLIST

By the time of my inspection, the project's entry materials, systems and the location/quantity of the items are as follows:

COMPLIANCE WITH THE ZONING ORDINANCES:

CONSTRUCTION CONTRACT DOCUMENTS:

FOUNDATION:

MECHANICAL:

ELECTRICAL:

PLUMBING:

LANDSCAPE:

CONSTRUCTION DETAILS:

OTHER:

DATE: _____

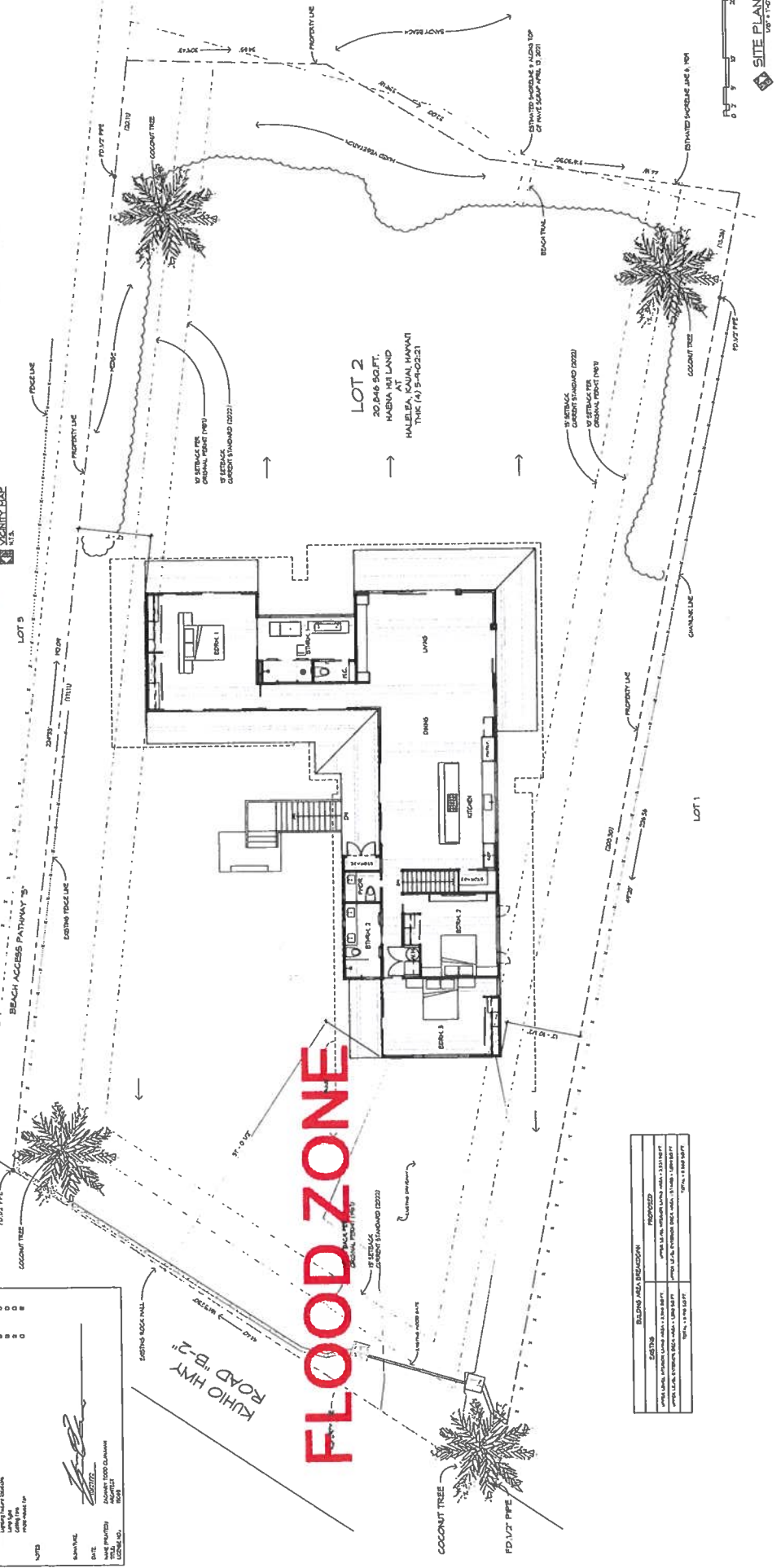
NAME: _____

ADDRESS: _____

CITY: _____

STATE: _____

ZIP: _____

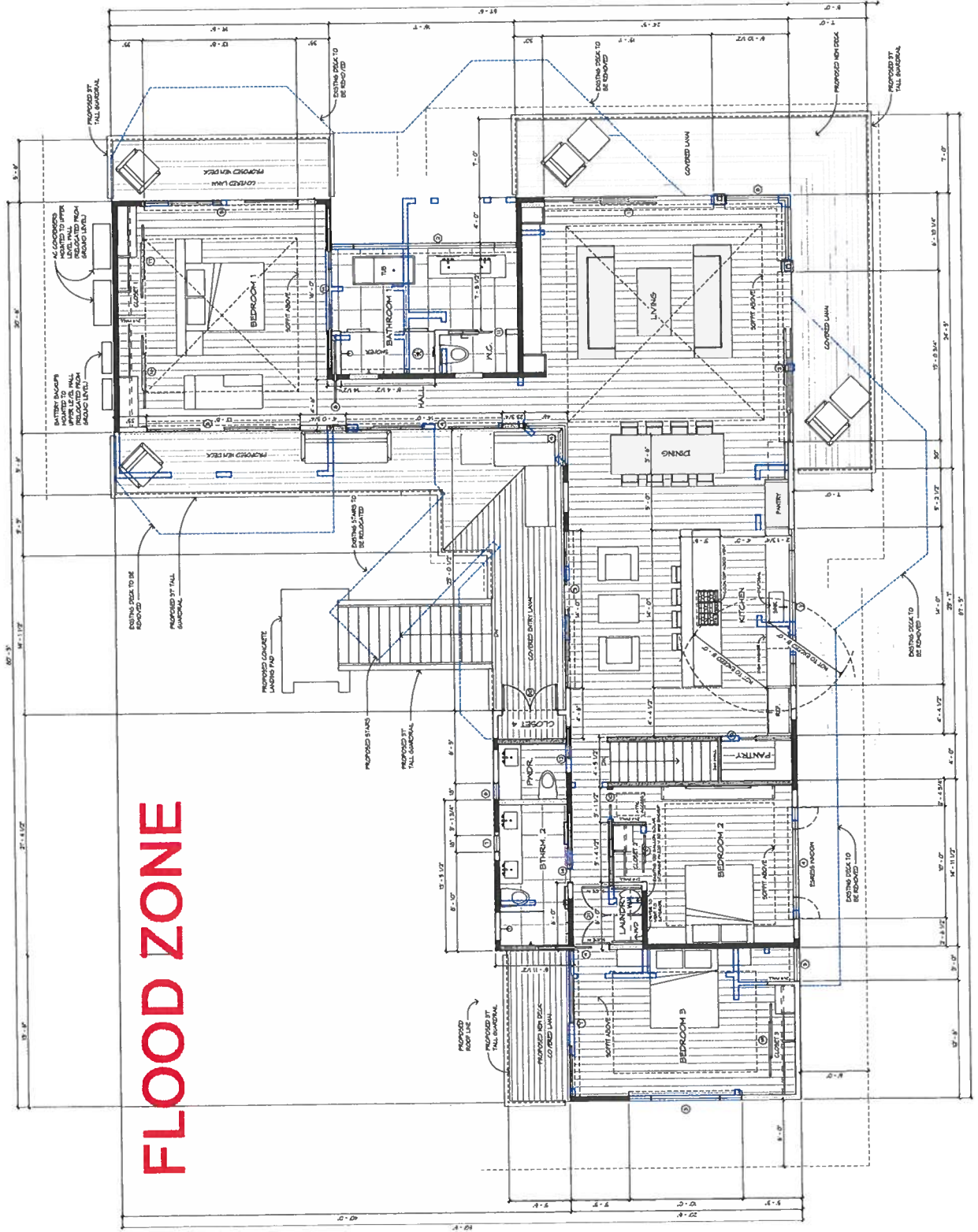


DATE	REVISION	DESCRIPTION
12/15/11	1	ISSUE FOR PERMIT
12/15/11	2	ISSUE FOR PERMIT
12/15/11	3	ISSUE FOR PERMIT
12/15/11	4	ISSUE FOR PERMIT
12/15/11	5	ISSUE FOR PERMIT
12/15/11	6	ISSUE FOR PERMIT
12/15/11	7	ISSUE FOR PERMIT
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12/15/11	9	ISSUE FOR PERMIT
12/15/11	10	ISSUE FOR PERMIT

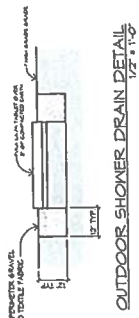
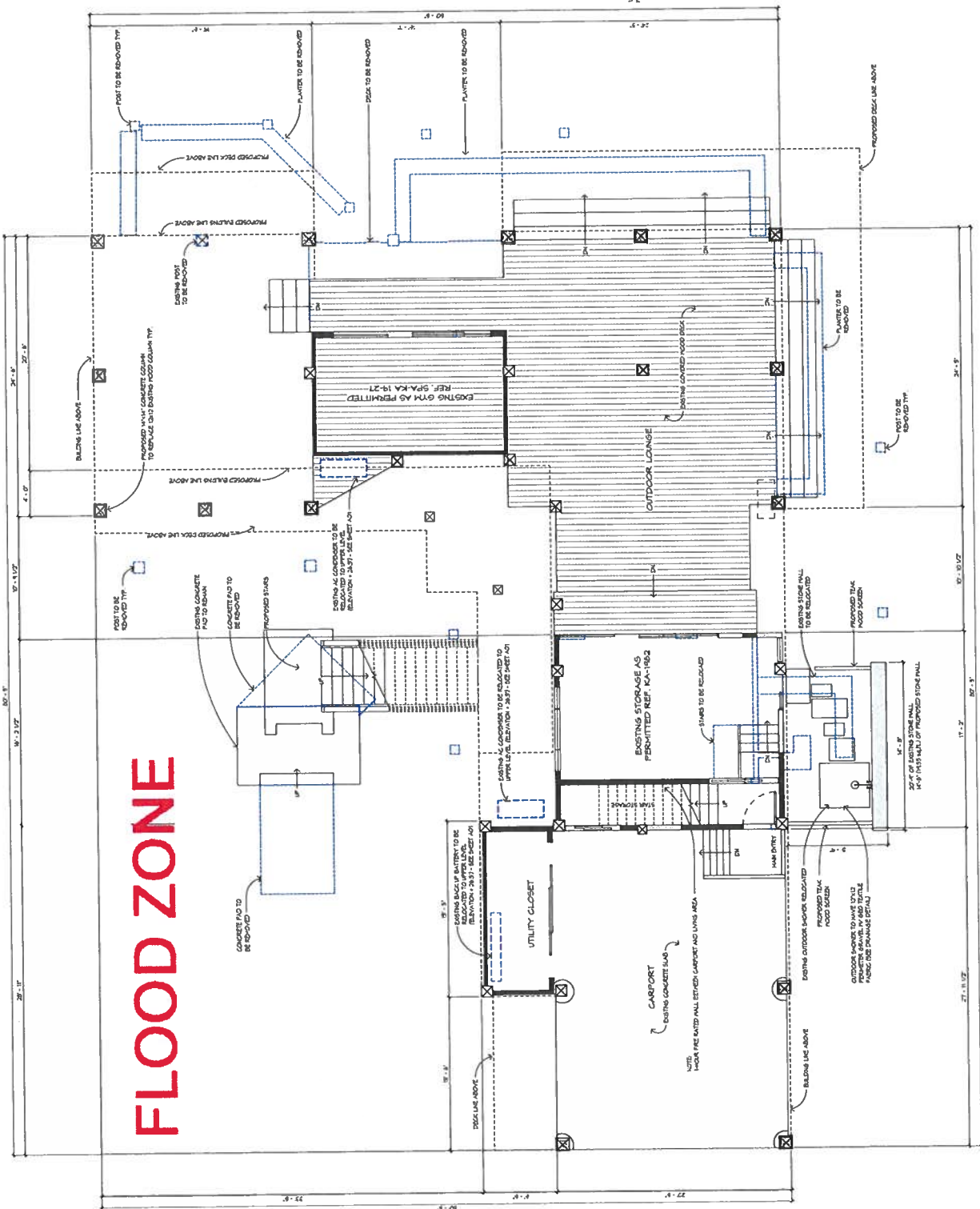


- NOTES:**
1. ALL LEGEND SYMBOLS MUST BE AT LEAST 1/8" IN HEIGHT AND MUST BE PLACED AT LEAST 2" FROM ANY OTHER SYMBOL OR TEXT.
 2. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" ABOVE THE FLOOR LINE.
 3. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 4. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 5. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 6. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 7. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 8. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 9. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.
 10. ALL LEGEND SYMBOLS MUST BE PLACED AT LEAST 1/8" FROM ANY OTHER SYMBOL OR TEXT.

- LEGEND:**
- 1. EXISTING WALLS TO REMAIN
 - 2. PROPOSED WALLS
 - 3. EXISTING STRUCTURE TO BE REMOVED



FLOOD ZONE



- LEGEND:**
- EXISTING COLUMNS TO REMAIN
 - EXISTING WALLS TO REMAIN
 - PROPOSED WALLS
 - PROPOSED FLOORS
 - EXISTING STRUCTURE TO BE REMOVED

FLOOD ZONE

NOTE: HOOK UP THE ENTRY HALL ENTRY, GARAGE AND UTILITY AREA

EXISTING OUTDOOR WORKER RELAXATED PROPOSED TRAIL HOOD SCREEN

OUTDOOR SHOWER TO HAVE UTILITY HOOD SCREEN FOR DRAINAGE DETAIL

EXISTING STONE WALL TO BE REMOVED

PROPOSED TRAIL HOOD SCREEN

EXISTING STONE WALL TO BE REMOVED

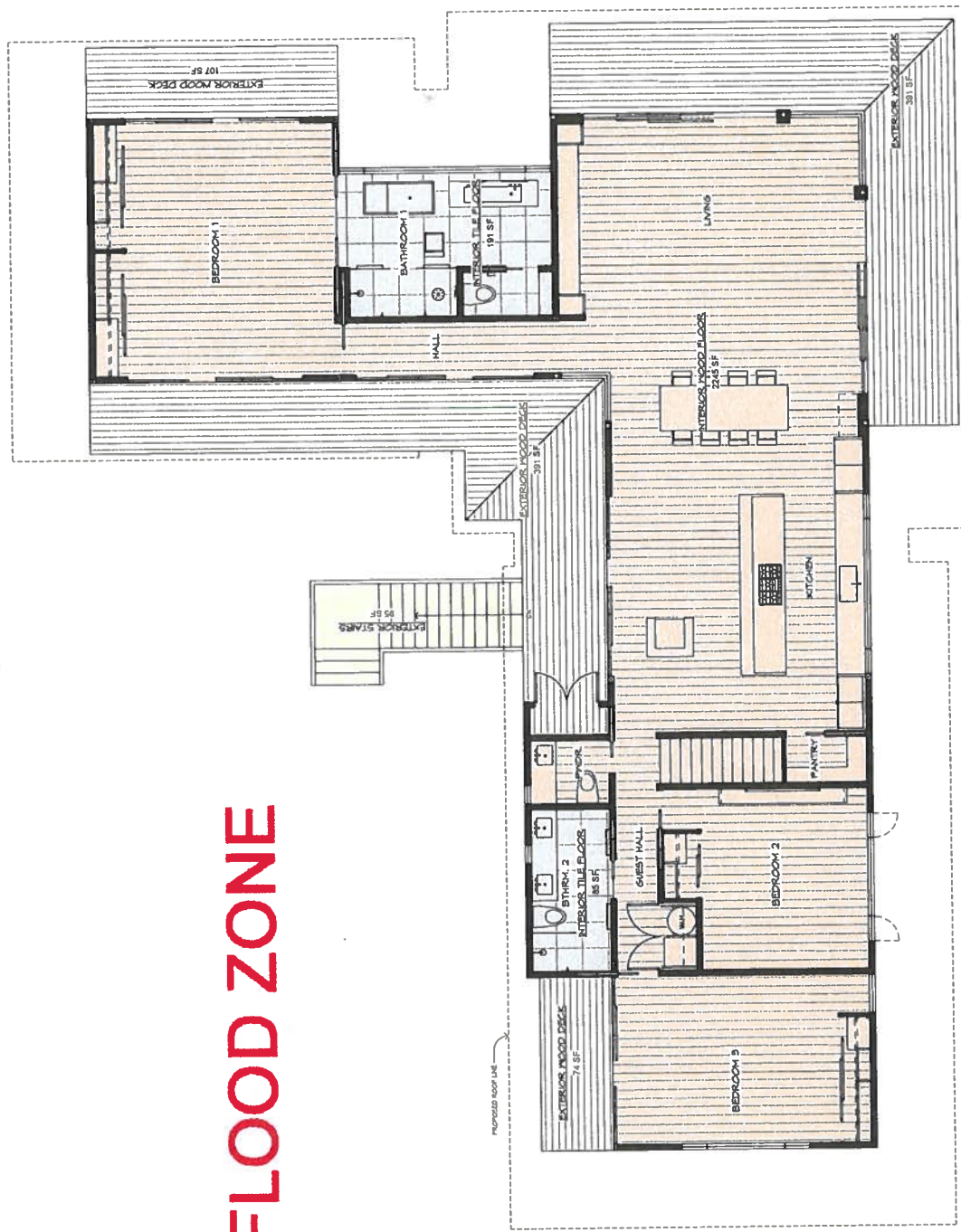
PROPOSED TRAIL HOOD SCREEN

EXISTING STONE WALL TO BE REMOVED

PROPOSED TRAIL HOOD SCREEN

EXISTING STONE WALL TO BE REMOVED

PROPOSED TRAIL HOOD SCREEN

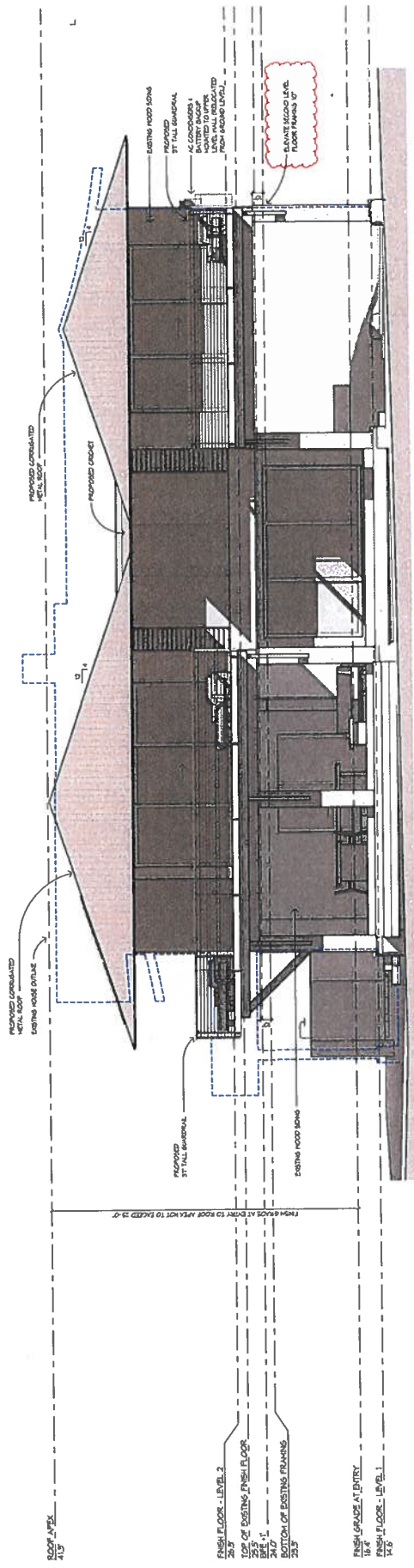


- ASFA COLORS LEGEND**
- EXTERIOR STAIRS
 - EXTERIOR WOOD DECK
 - INTERIOR TILE FLOOR
 - INTERIOR WOOD FLOOR

ASFA BASECATIONS UPPER LEVEL

ITEM	QTY	UNIT
EXTERIOR STAIRS	95	SF
EXTERIOR WOOD DECK	924	SF
INTERIOR TILE FLOOR	208	SF
INTERIOR WOOD FLOOR	2019	SF
TOTAL AREA	3336	SF

FLOOD ZONE



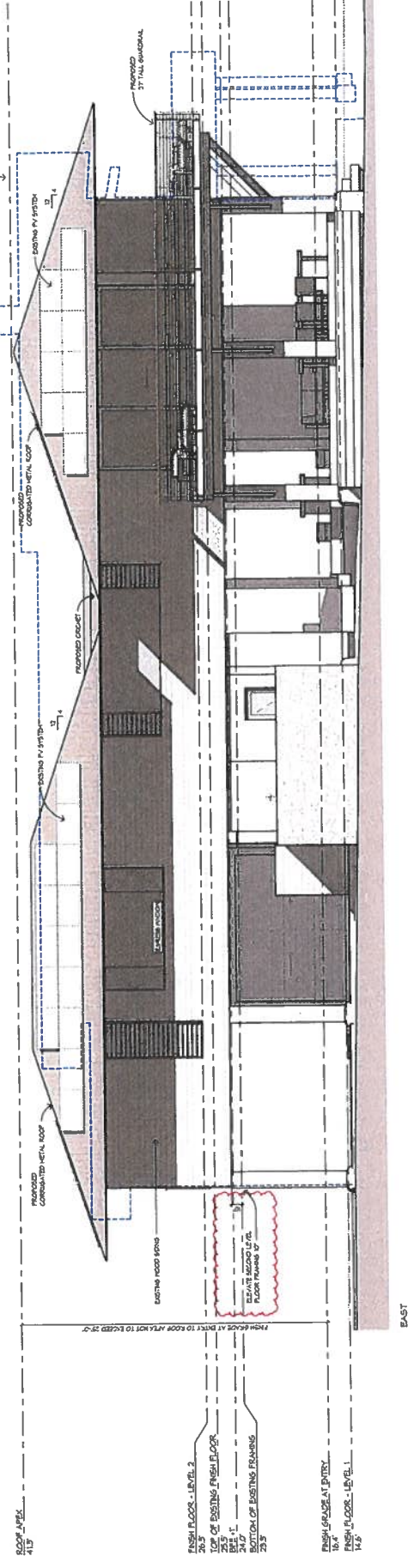
NORTH

FLOOD ZONE

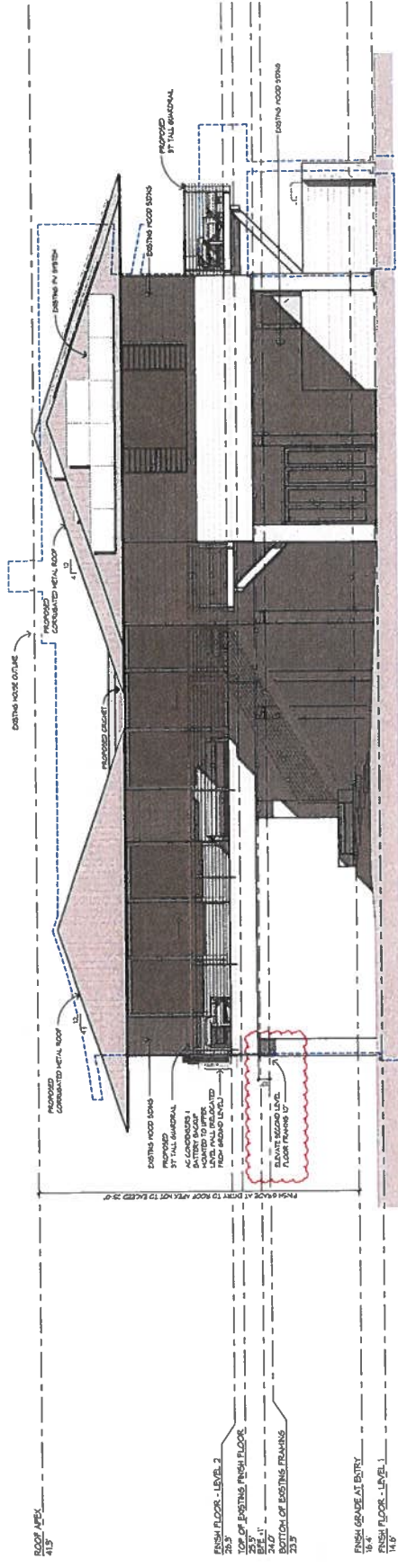
NOTE: ROOF COLLARS BEHIND SIPS OF ROOF TO BE REPLACED SEE 501

LEGEND:

--- EXISTING STRUCTURE OUTLINE

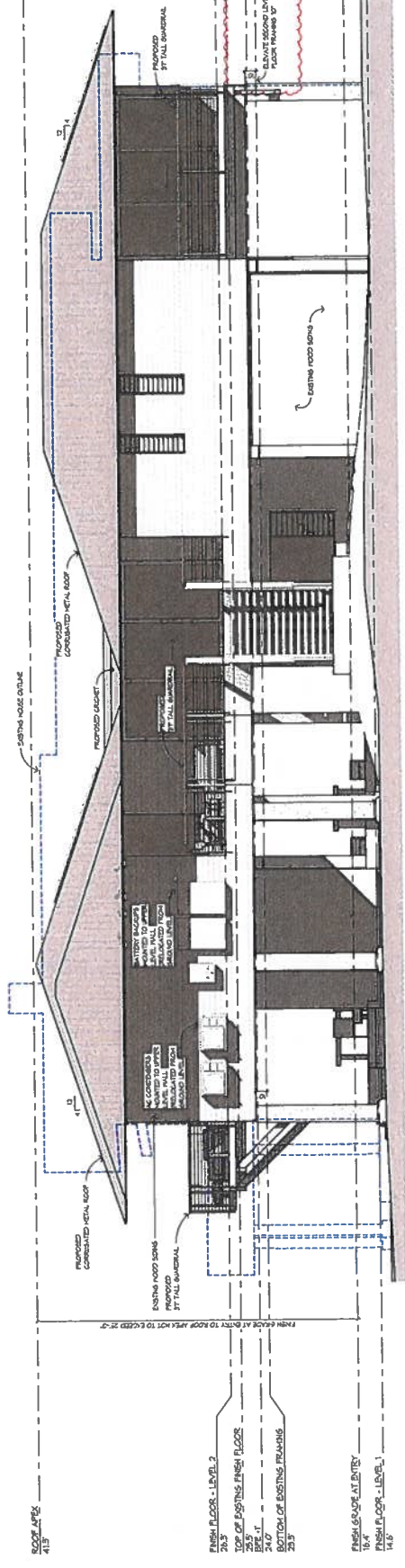


EAST



SOUTH

LEGEND:
 - - - - - EXISTING STRUCTURE OUTLINE
 ROOF COURSES BENEATH SLAB OF ROOF TO BE REPLACED SEE 501



WEST

LEGEND:
 - - - - - EXISTING STRUCTURE OUTLINE
 ROOF COURSES BENEATH SLAB OF ROOF TO BE REPLACED SEE 501

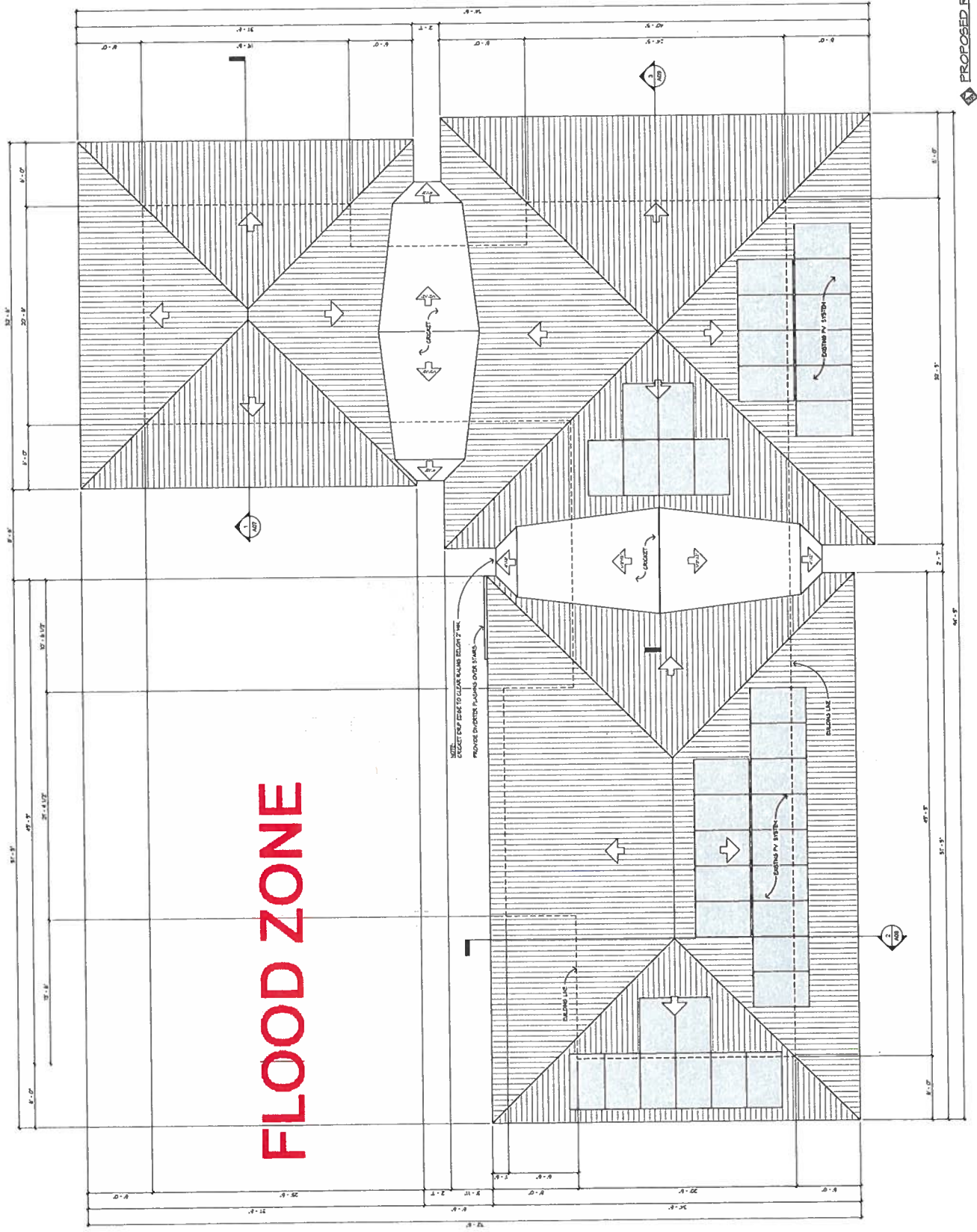
FLOOD ZONE

PROPOSED EXTERIOR ELEVATIONS
 PART 5



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PROPOSED ROOF PLAN & KEY TO SECTIONS
 1/8" = 1'-0"





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 4230 WAIALA STREET
 KILAUEA, KAUAI, HI 96754

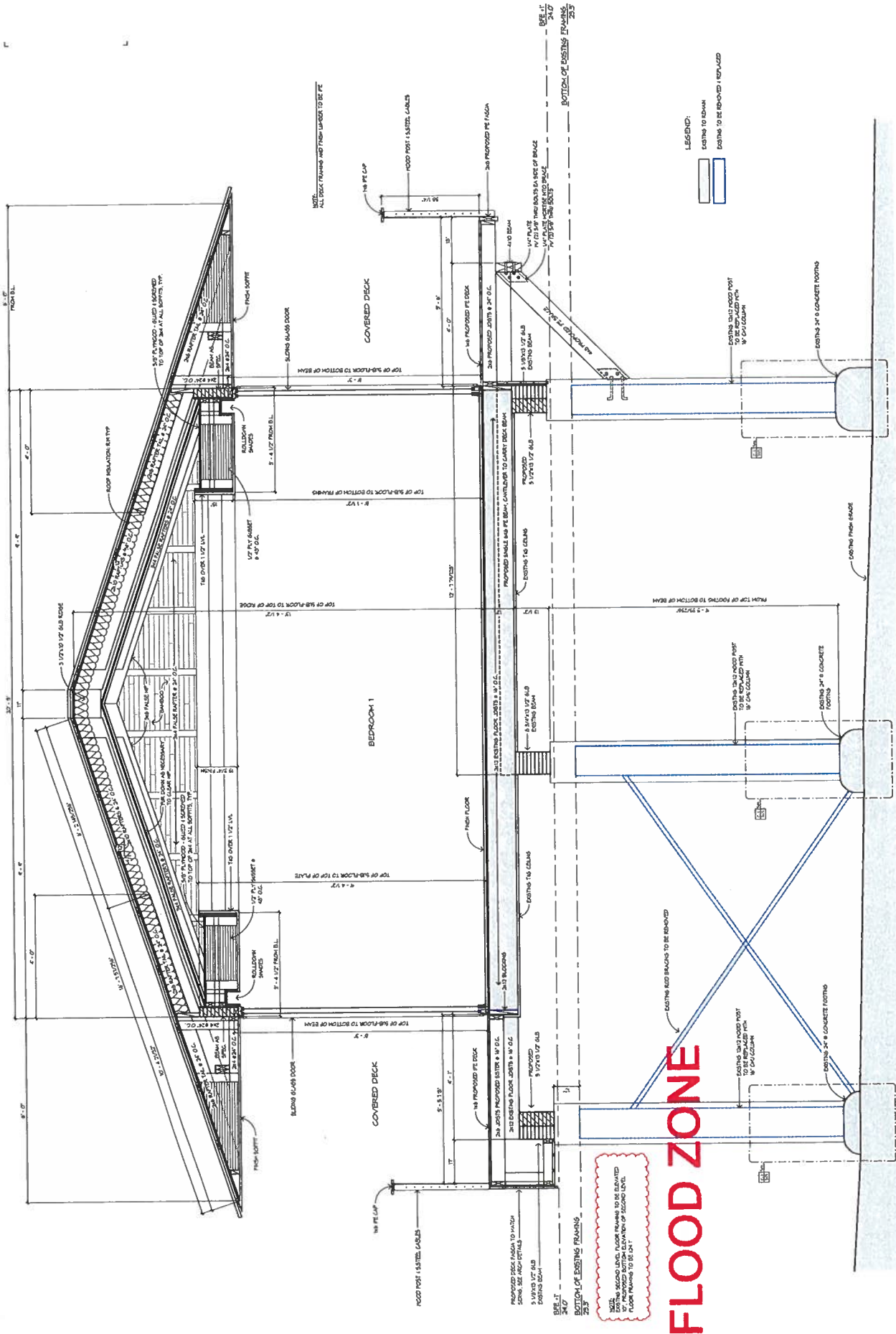


DESIGN CONCEPTS 2484 KENEKE ST. SUITE 102, KILAUEA, HI 96754
 (808) 828-0180 P(808) 828-0182 DCHAWAHI.COM
 HAPPY HOUSE TRUST
 TMK # (4) TMK (4) S-9-002 021



PAGE: A07

BUILDING SECTION
 SECTION 1

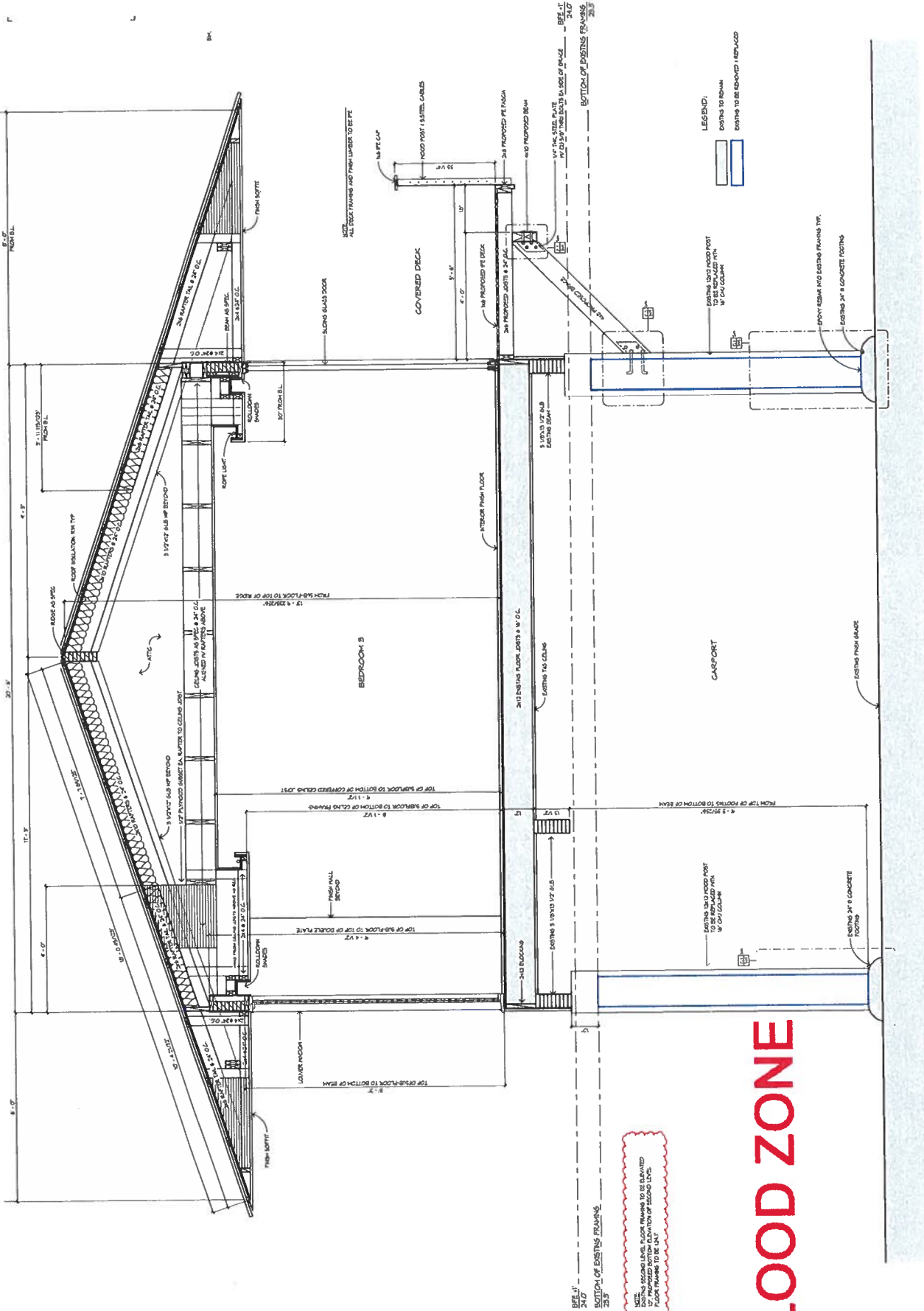
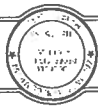


EXISTING 2x4 CONCRETE FLOORING TO BE REMOVED AND REPLACED WITH 2x4 JOISTING.

FLOOD ZONE

SECTION THRU BEDROOM 1

1

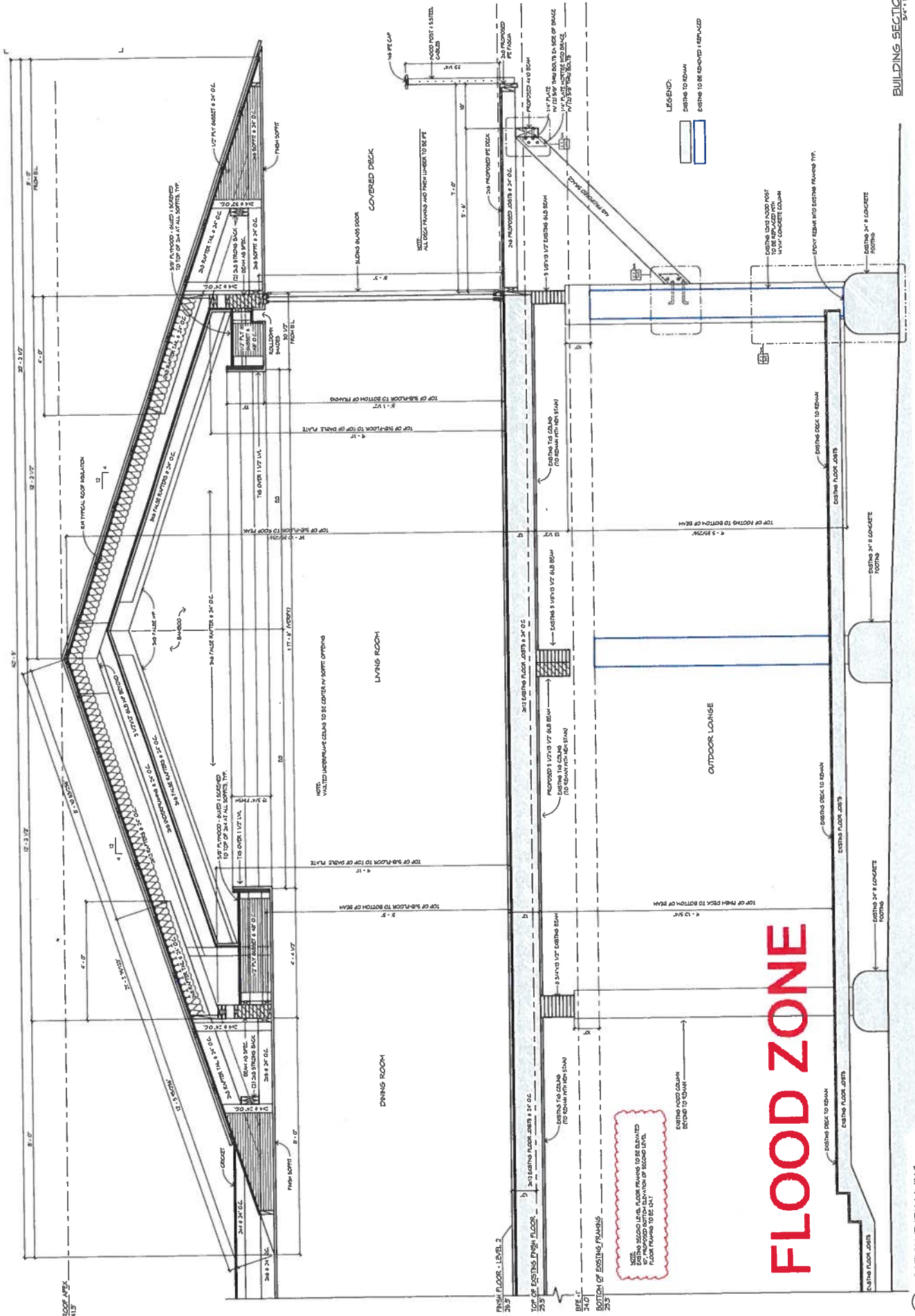


NOTE: EXISTING FLOOR FRAMING IS TO BE REINFORCED WITH NEW FLOOR FRAMING TO BE INST.

FLOOD ZONE

SECTION THRU BEDROOM 3

SECTION 24' x 12'

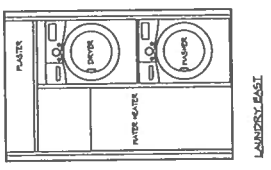


FLOOD ZONE

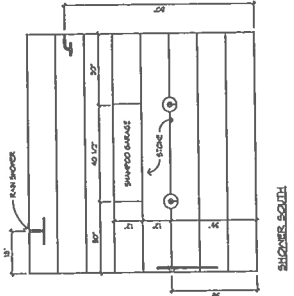
SECTION THRU LIVING



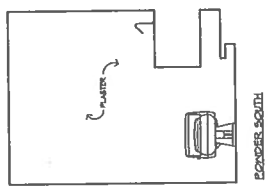
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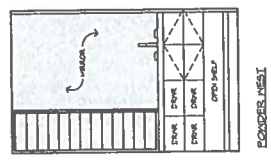
LAUNDRY EAST



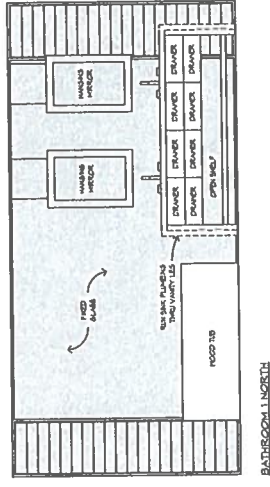
SHOWER SOUTH



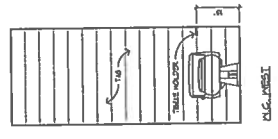
POWDER SOUTH



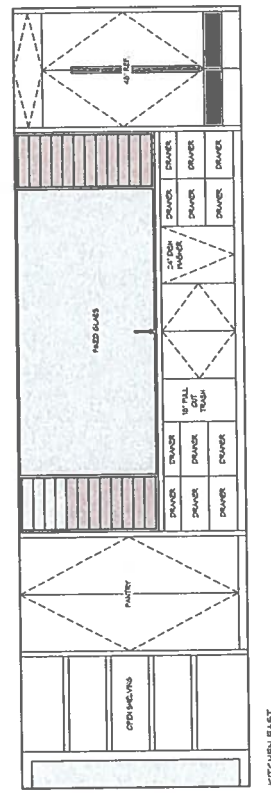
POWDER WEST



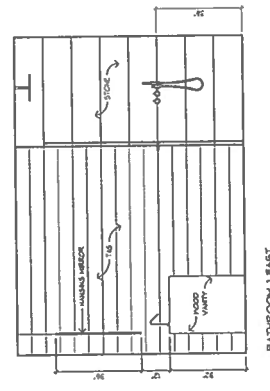
BATHROOM 1 NORTH



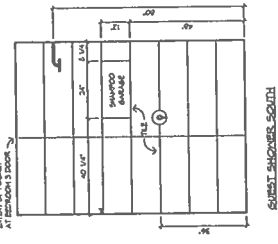
K.I.G. WEST



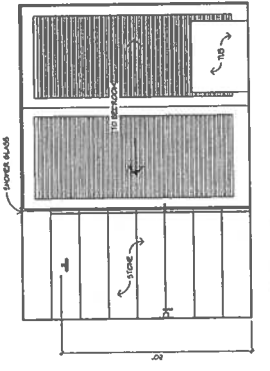
KITCHEN EAST



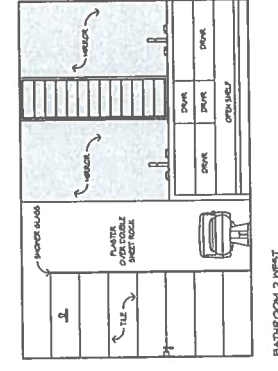
BATHROOM 1 EAST



GUEST SHOWER SOUTH



BATHROOM 1 WEST

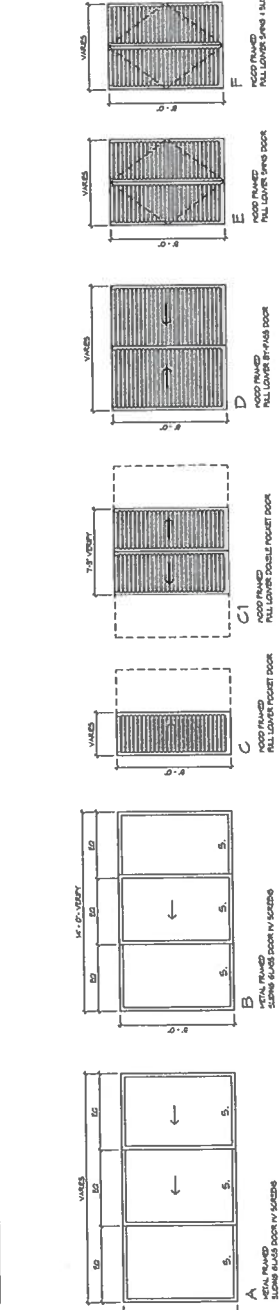


BATHROOM 2 WEST



DOOR SCHEDULE - PERMIT

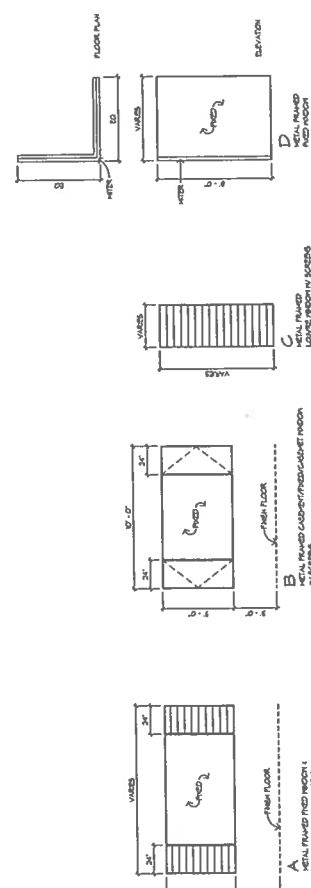
SYMBOL	WIDTH X HEIGHT	LOCATION	TYPE	DESCRIPTION	ELEVATION	HEAD	SILL	JAMB (L)	JAMB (R)	REMARKS
1	18'-0" x 8'-0"	KITCHEN	A	8 PANEL SLIDING GLASS DOOR						DOOR, IV SCREENS
2	18'-0" x 8'-0"	KITCHEN	B	8 PANEL SLIDING GLASS DOOR						XOOD, IV SCREENS
3	14'-0" x 8'-0"	HALL	B	8 PANEL SLIDING GLASS DOOR						XOXK, IV SCREEN
4	13'-0" x 8'-0"	BEDROOM 1	B	8 PANEL SLIDING GLASS DOOR						XOXK, IV SCREEN
5	13'-0" x 8'-0"	BEDROOM 2	B	8 PANEL SLIDING GLASS DOOR						XOXK, IV SCREEN
6	13'-0" x 8'-0"	BEDROOM 3	B	8 PANEL SLIDING GLASS DOOR						XOXK, IV SCREEN
7	13'-0" x 8'-0"	BEDROOM 4	B	8 PANEL SLIDING GLASS DOOR						XOXK, IV SCREEN
8	4'-0" x 8'-0"	BEDROOM 1	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
9	4'-0" x 8'-0"	BEDROOM 2	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
10	4'-0" x 8'-0"	BEDROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
11	4'-0" x 8'-0"	BEDROOM 4	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
12	4'-0" x 8'-0"	BATHROOM 1	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
13	4'-0" x 8'-0"	BATHROOM 2	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
14	4'-0" x 8'-0"	BATHROOM 3	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
15	4'-0" x 8'-0"	BATHROOM 4	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
16	4'-0" x 8'-0"	BATHROOM 5	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
17	4'-0" x 8'-0"	BATHROOM 6	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
18	4'-0" x 8'-0"	BATHROOM 7	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
19	4'-0" x 8'-0"	BATHROOM 8	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
20	4'-0" x 8'-0"	BATHROOM 9	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						
21	4'-0" x 8'-0"	BATHROOM 10	C	INTERIOR WOOD FRAMED LOWER POCKET DOOR						



DOOR NOTES:
 1. DOOR SHALL BE MANUFACTURED BY A QUALIFIED MANUFACTURER AND SHALL BE APPROVED BY THE ARCHITECT.
 2. DOOR SHALL BE MANUFACTURED IN ACCORDANCE WITH THE MANUFACTURER'S INSTALLATION AND MAINTENANCE MANUAL.
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WINDOW SCHEDULE - PERMIT

SYMBOL	WIDTH X HEIGHT	LOCATION	TYPE	WINDOW DESCRIPTION	HEAD	SILL	JAMB (L)	JAMB (R)	HARDWARE	FINISH	REMARKS
1	14'-0" x 4'-11"	KITCHEN	A	FIXED GLASS IV LOWER EA. SIDE						CLEAR ANODIZED	
2	14'-0" x 4'-11"	BATHROOM 1	A	FIXED GLASS IV LOWER EA. SIDE						CLEAR ANODIZED	
3	10'-0" x 5'-0"	BEDROOM 1	A	FIXED GLASS IV LOWER EA. SIDE						CLEAR ANODIZED	
4	10'-0" x 5'-0"	BEDROOM 2	A	FIXED GLASS IV LOWER EA. SIDE						CLEAR ANODIZED	
5	9'-0" x 8'-0"	BEDROOM 3	B	FIXED GLASS IV CASHMENT EA. SIDE						CLEAR ANODIZED	
6	1'-6" x 5'-2"	PORCHER	C	LOWER WINDOW						CLEAR ANODIZED	
7	1'-6" x 5'-2"	BATHROOM 2	C	LOWER WINDOW						CLEAR ANODIZED	
8	5'-10" x 8'-0"	LIVING ROOM	D	FIXED WINDOW, MITEK, FIXED WINDOW						CLEAR ANODIZED	
9	5'-10" x 8'-0"	LIVING ROOM	D	FIXED WINDOW, MITEK, FIXED WINDOW						CLEAR ANODIZED	



WINDOW NOTES:
 1. WINDOW SHALL BE MANUFACTURED BY A QUALIFIED MANUFACTURER AND SHALL BE APPROVED BY THE ARCHITECT.
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TMK # (4) TMK (4) S-9-02-21

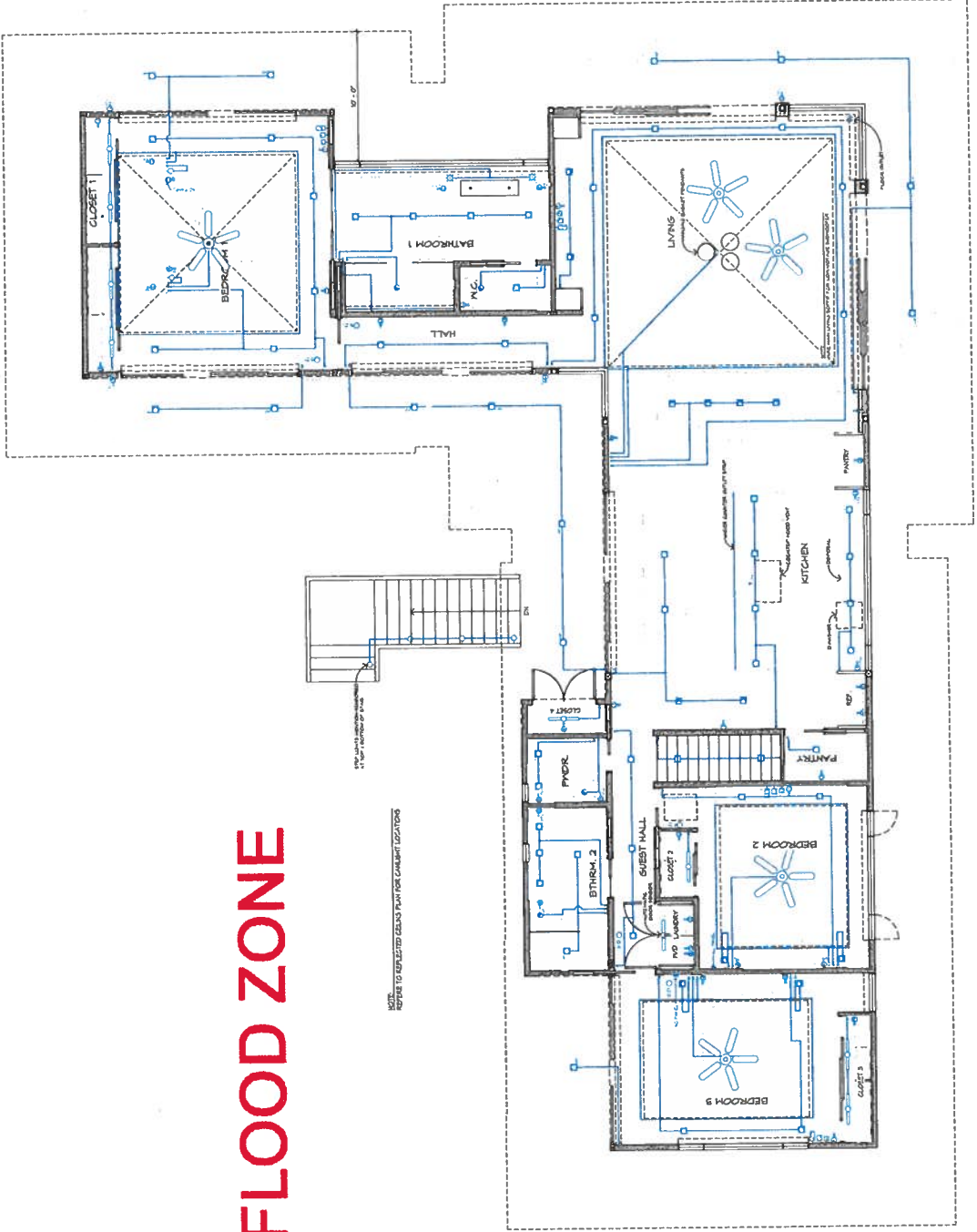
DESIGN CONCEPTS 2484 KENEKE ST. SUITE 102, KILAUEA, HI 96754

HAPPY HOUSE TRUST

SYMBOL LEGEND

- ④ 15' TYPE BRACKET OR BATTERY
- ④ 20' TYPE BRACKET OR BATTERY
- ⊕ WIRELESS ACCESS POINT
- 1" TYPE BRACKET
- 2" TYPE BRACKET
- 3" TYPE BRACKET
- 4" TYPE BRACKET
- 5" TYPE BRACKET
- 6" TYPE BRACKET
- 7" TYPE BRACKET
- 8" TYPE BRACKET
- 9" TYPE BRACKET
- 10" TYPE BRACKET
- 11" TYPE BRACKET
- 12" TYPE BRACKET
- 13" TYPE BRACKET
- 14" TYPE BRACKET
- 15" TYPE BRACKET
- 16" TYPE BRACKET
- 17" TYPE BRACKET
- 18" TYPE BRACKET
- 19" TYPE BRACKET
- 20" TYPE BRACKET
- 21" TYPE BRACKET
- 22" TYPE BRACKET
- 23" TYPE BRACKET
- 24" TYPE BRACKET
- 25" TYPE BRACKET
- 26" TYPE BRACKET
- 27" TYPE BRACKET
- 28" TYPE BRACKET
- 29" TYPE BRACKET
- 30" TYPE BRACKET
- 31" TYPE BRACKET
- 32" TYPE BRACKET
- 33" TYPE BRACKET
- 34" TYPE BRACKET
- 35" TYPE BRACKET
- 36" TYPE BRACKET
- 37" TYPE BRACKET
- 38" TYPE BRACKET
- 39" TYPE BRACKET
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- 48" TYPE BRACKET
- 49" TYPE BRACKET
- 50" TYPE BRACKET

FLOOD ZONE



FLOOD ZONE

SYMBOL LEGEND

- ④ 15' TYPE BRACKET OR BATTERY
- ④ 20' TYPE BRACKET OR BATTERY
- ⊕ WIRELESS ACCESS POINT
- 1" TYPE BRACKET
- 2" TYPE BRACKET
- 3" TYPE BRACKET
- 4" TYPE BRACKET
- 5" TYPE BRACKET
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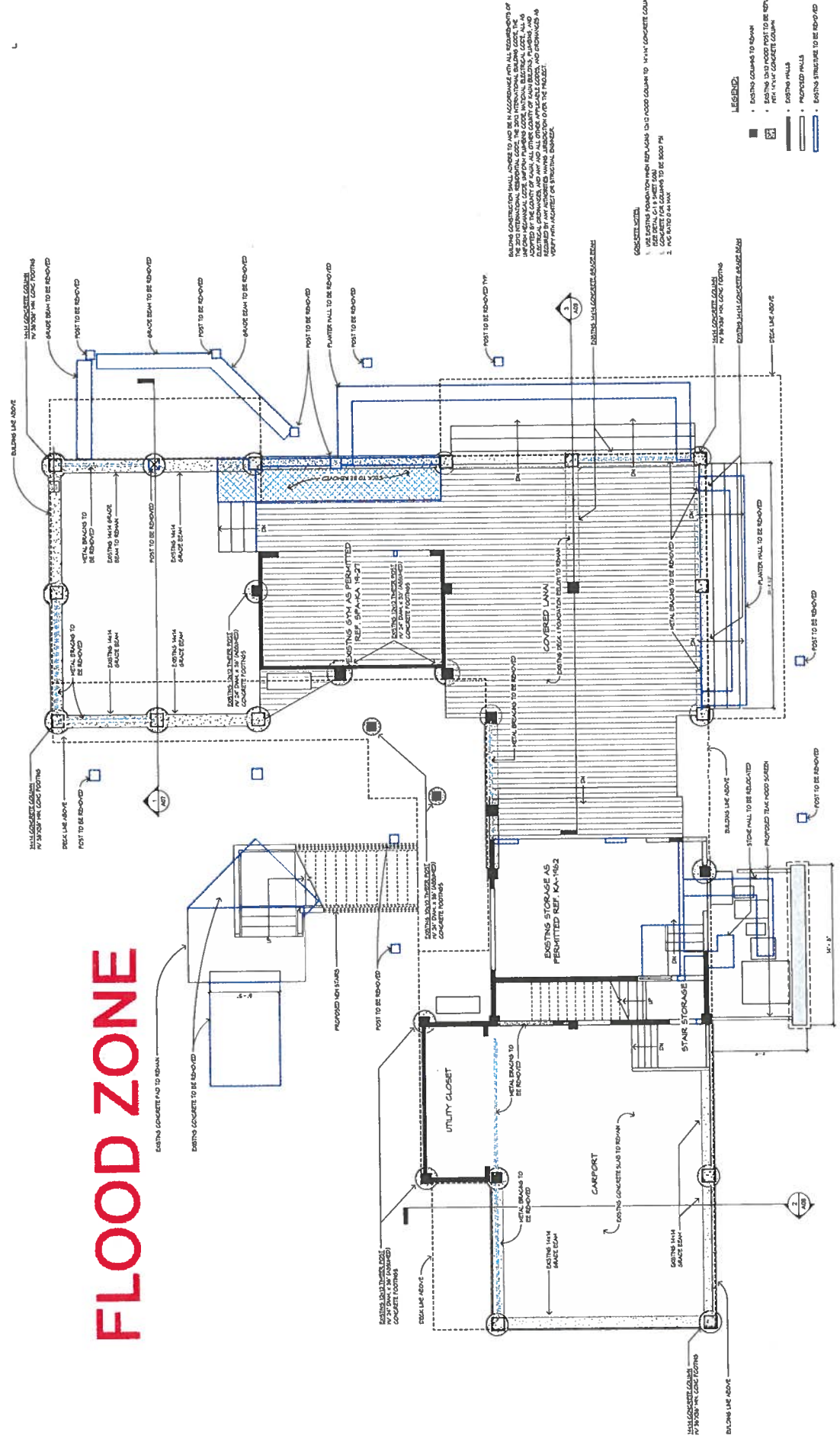
NOTE: REFER TO ELECTRICAL PLAN FOR CABINET LOCATIONS



- NOTES:**
1. ALL UNLIT CONTROLLED LIGHTING FIXTURES SHALL BE MOUNTED AS SHOWN.
 2. SWITCHES AND OUTLETS AT ALL CORNERS TO BE MOUNTED VERTICALLY AT 5' FROM CORNER TOP TO CENTER OF OUTLET OR SWITCH.
 3. ALL MOUNTING AND DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.
 4. ALL UNLIT CONTROLLED LIGHTING FIXTURES SHALL BE MOUNTED AS SHOWN.
 5. ALL DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.
 6. ALL DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.
 7. ALL DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.
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 19. ALL DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.
 20. ALL DIMENSIONS SHALL BE SHOWN DIMENSIONALLY AT 15' FROM FLOOR FINISH AND 5' FROM WALL FROM OUTLETS AND SWITCHES.



FLOOD ZONE



SCALE: 1/8" = 1'-0"

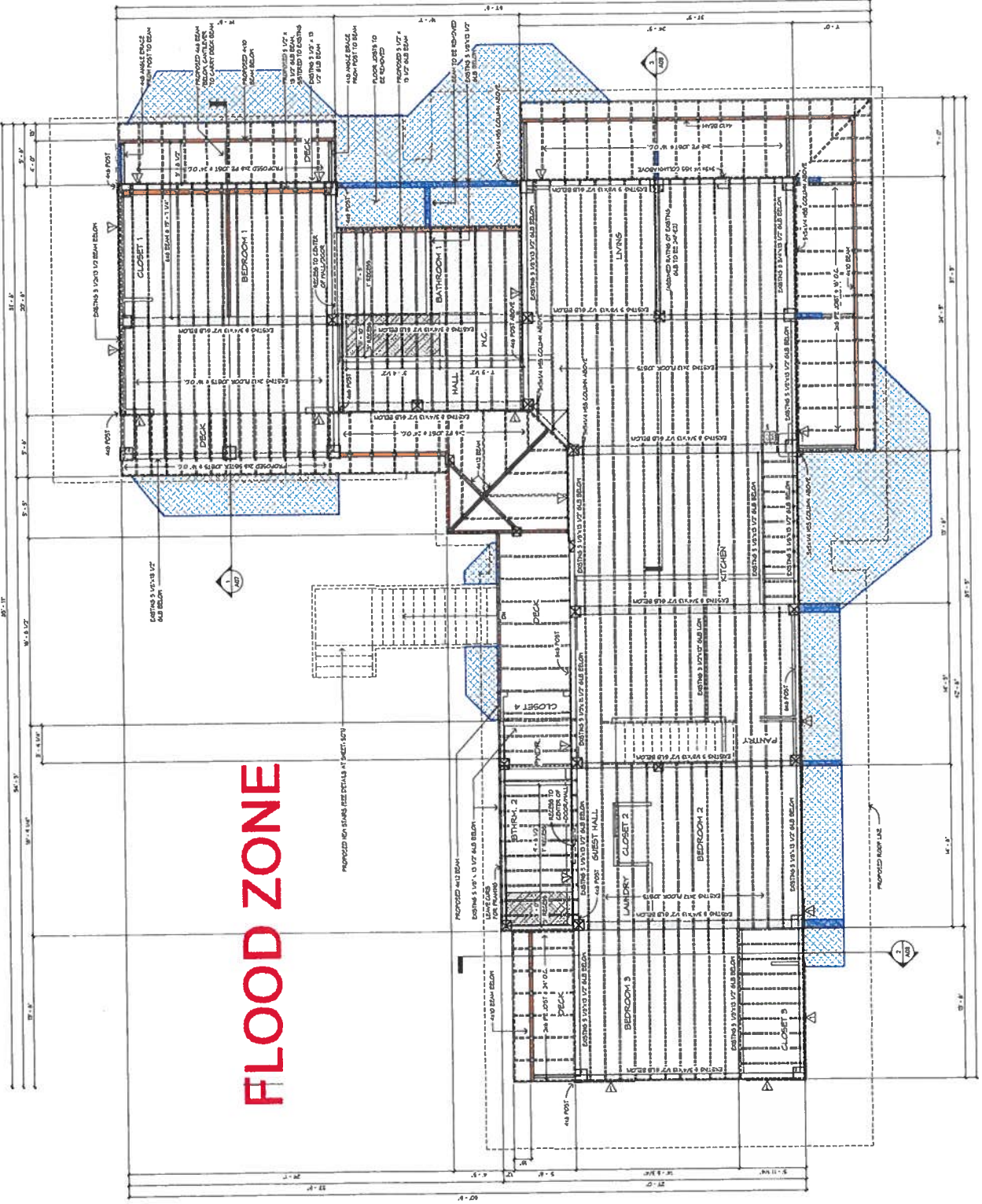


REMARKS: CONSTRUCTION SHALL VERIFY TO BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2015 INTERNATIONAL RESIDENTIAL CODE, THE 2015 INTERNATIONAL BUILDING CODE, THE 2015 INTERNATIONAL PLUMBING AND MECHANICAL CODE, AND THE 2015 INTERNATIONAL ELECTRICAL CODE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING ALL PERMITS ARE OBTAINED BY THE COUNTY OF MAUI, STATE OF HAWAII. THIS PLAN IS THE PROPERTY OF CLAN ARCHITECTURE LLC. NO PART OF THIS PLAN IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF CLAN ARCHITECTURE LLC. ANY VIOLATION OF THIS PLAN SHALL BE CONSIDERED A VIOLATION OF THE HAWAIIAN ARCHITECTURE ACT AND IS SUBJECT TO PENALTIES AS PROVIDED THEREIN.

- LOADS/DETAILS NOTE:**
- 1. ALL SHIP LUGS TO BE CLOSER TO BEAM
 - 2. ALL PROPOSED WALL, WINDOW AND OUTCATCH TRUSS LAMERS TO BE PFC

SHEAR WALL SCHEDULE	NOTES
W-100 17" DIA x 100" HIGH x 4" THICK 10' LONG x 10' HIGH	10' DIA x 100" HIGH x 4" THICK WITH 4" THICK CONCRETE

- LEGEND:**
- PROPOSED MASONRY
 - EXISTING COLUMNS TO REMAIN BELOW
 - EXISTING BEAM TO REMAIN BELOW
 - EXISTING WALLS TO REMAIN
 - EXISTING FLOOR TO REMAIN
 - EXISTING CEILING TO REMAIN
 - EXISTING ROOF TO REMAIN
 - EXISTING WALLS TO REMAIN
 - EXISTING CEILING TO REMAIN
 - EXISTING FLOOR TO REMAIN
 - EXISTING ROOF TO REMAIN
 - EXISTING WALLS TO REMAIN
 - EXISTING CEILING TO REMAIN
 - EXISTING FLOOR TO REMAIN
 - EXISTING ROOF TO REMAIN



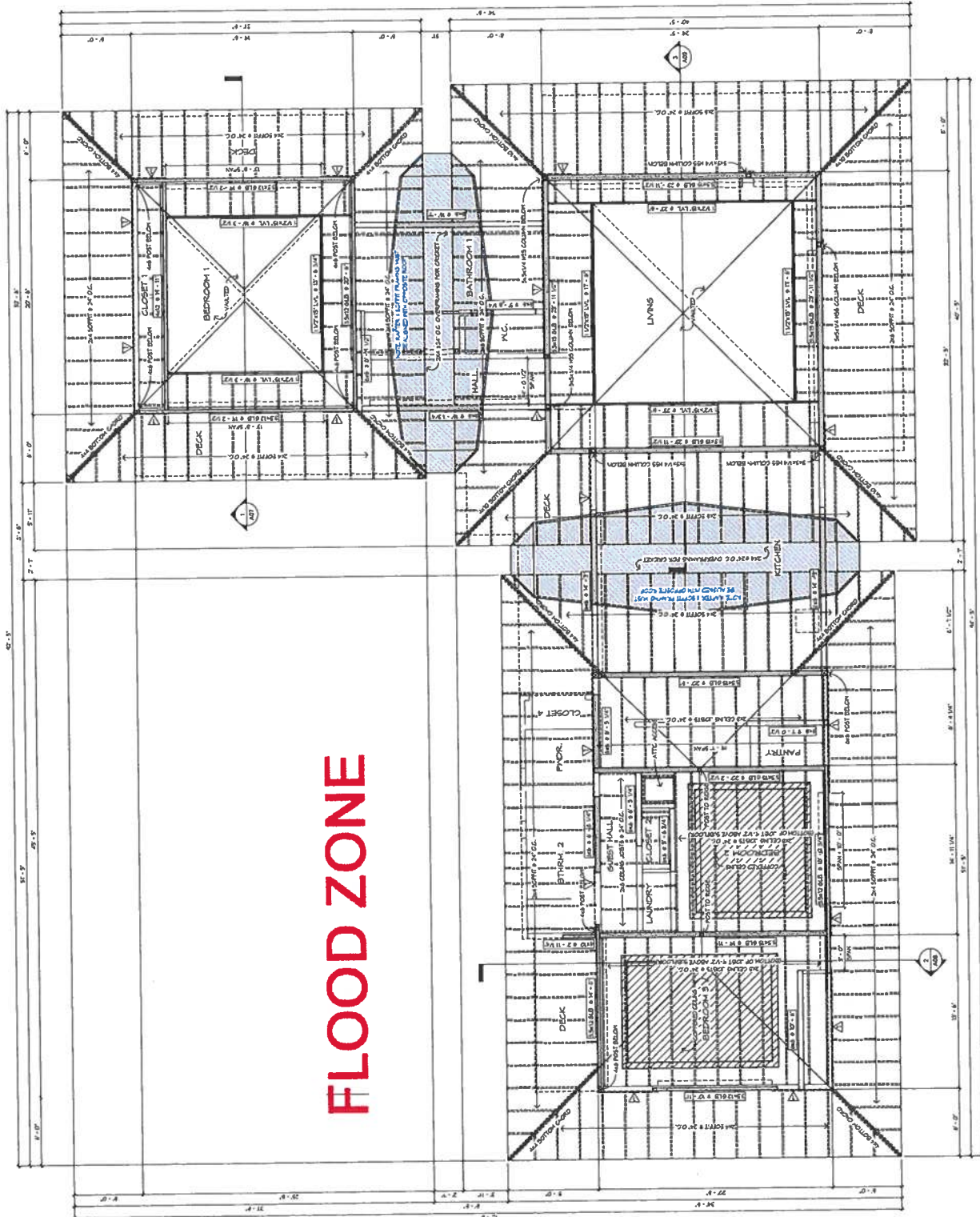
FLOOD ZONE



- ### GENERAL NOTES:
- ALL CEILING JOISTS TO BE SHOWN BY CENTERLINE TO BOTTOM OF JOIST AND TO BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2018 INTERNATIONAL RESIDENTIAL CODE, THE 2018 INTERNATIONAL MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION CODE, THE 2018 INTERNATIONAL ENERGY CONSERVATION CODE, THE 2018 INTERNATIONAL SWEET'S CODE, THE 2018 INTERNATIONAL FLOORING AND FINISHES CODE, THE 2018 INTERNATIONAL IRONING AND LAUNDRY CODE, THE 2018 INTERNATIONAL GREEN BUILDING CONSTRUCTION CODE, AND THE 2018 INTERNATIONAL PLUMBING AND MECHANICAL CODE. VERIFY WITH ARCHITECT OR STRUCTURAL ENGINEER.
 - VERIFY THE CEILING JOIST SPACING IS IN ACCORDANCE WITH THE PROJECT ARCHITECT'S REQUIREMENTS.
 - ALL CEILING JOISTS TO BE SHOWN BY CENTERLINE TO BOTTOM OF JOIST AND TO BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2018 INTERNATIONAL RESIDENTIAL CODE, THE 2018 INTERNATIONAL MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION CODE, THE 2018 INTERNATIONAL ENERGY CONSERVATION CODE, THE 2018 INTERNATIONAL SWEET'S CODE, THE 2018 INTERNATIONAL FLOORING AND FINISHES CODE, THE 2018 INTERNATIONAL IRONING AND LAUNDRY CODE, THE 2018 INTERNATIONAL GREEN BUILDING CONSTRUCTION CODE, AND THE 2018 INTERNATIONAL PLUMBING AND MECHANICAL CODE. VERIFY WITH ARCHITECT OR STRUCTURAL ENGINEER.
 - ALL CEILING JOISTS TO BE SHOWN BY CENTERLINE TO BOTTOM OF JOIST AND TO BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2018 INTERNATIONAL RESIDENTIAL CODE, THE 2018 INTERNATIONAL MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION CODE, THE 2018 INTERNATIONAL ENERGY CONSERVATION CODE, THE 2018 INTERNATIONAL SWEET'S CODE, THE 2018 INTERNATIONAL FLOORING AND FINISHES CODE, THE 2018 INTERNATIONAL IRONING AND LAUNDRY CODE, THE 2018 INTERNATIONAL GREEN BUILDING CONSTRUCTION CODE, AND THE 2018 INTERNATIONAL PLUMBING AND MECHANICAL CODE. VERIFY WITH ARCHITECT OR STRUCTURAL ENGINEER.

SHEAR WALL SCHEDULE	
▽	PLYWOOD AND NAILER
▽	1/2" CDX FIBER BOARD @ 2' O.C. @ 24" STUDS
▽	1/2" CDX FIBER BOARD @ 4' O.C. @ 24" STUDS
▽	5/8" CDX FIBER BOARD @ 4' O.C. @ 24" STUDS
▽	5/8" CDX FIBER BOARD @ 8' O.C. @ 24" STUDS
▽	1" CDX FIBER BOARD @ 8' O.C. @ 24" STUDS
▽	1" CDX FIBER BOARD @ 12' O.C. @ 24" STUDS

LEGEND:
 □ PROPOSED JOIST NOT SHOWN
 □ PROPOSED BEAM NOT SHOWN
 □ PROPOSED STUD WALL NOT SHOWN



FLOOD ZONE



CLAN ARCHITECTURE LLC
 1220 WAIKANA STREET
 KILAUEA, HAWAII 96754

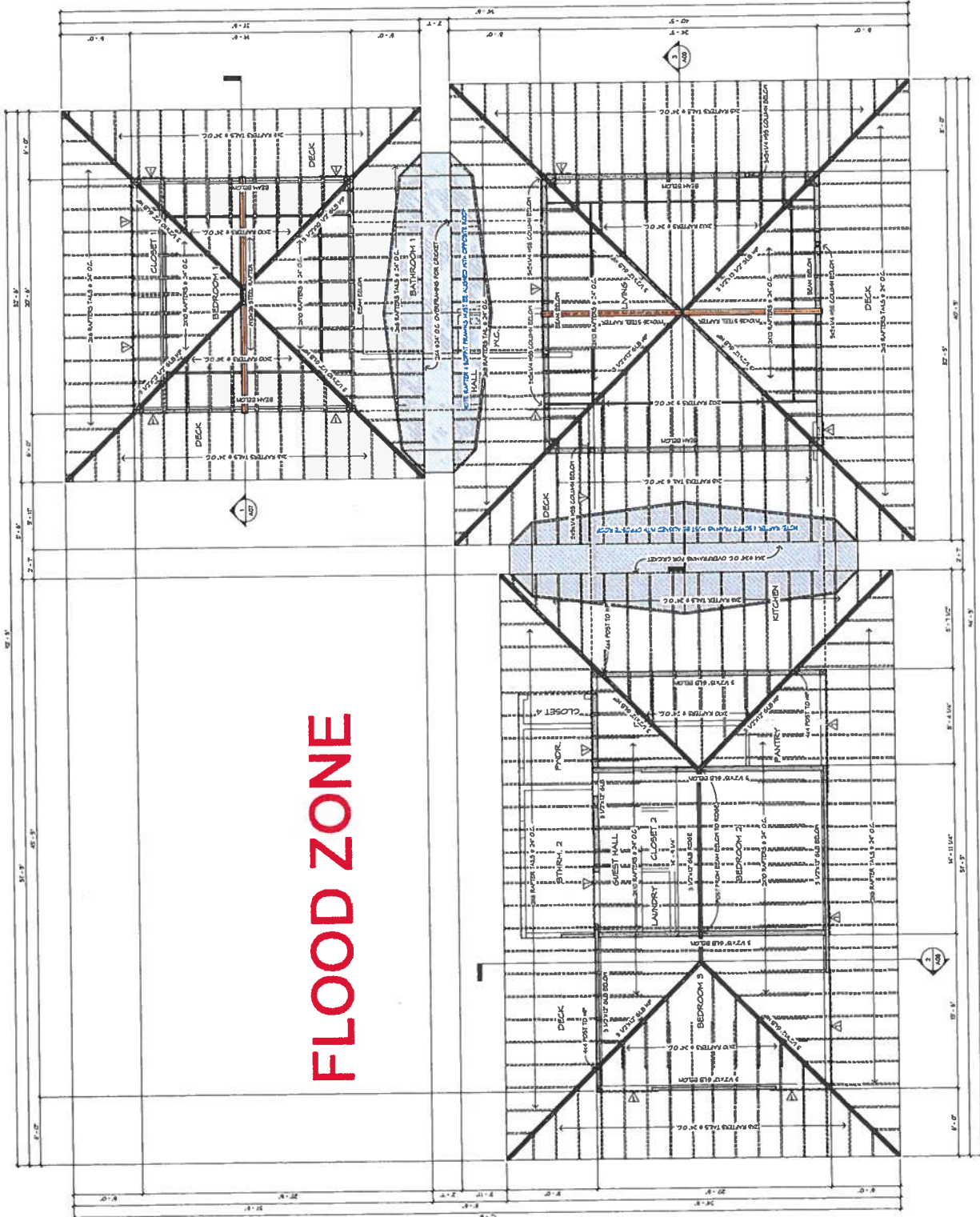


DESIGN CONCEPTS 248A KENEKE ST. SUITE 102, KILAUEA, HI 96754
 (808) 828-0150 (F) (808) 828-0162 DCHAWAII.COM
 HAPPY HOUSE TRUST
 TMK # (4) TMK (4) 5-9-02-21



S04

ROOF FRAMING PLAN
 PART 1/2



FLOOD ZONE

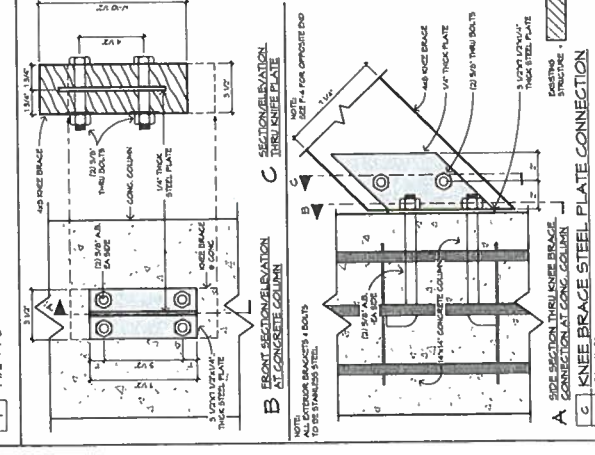
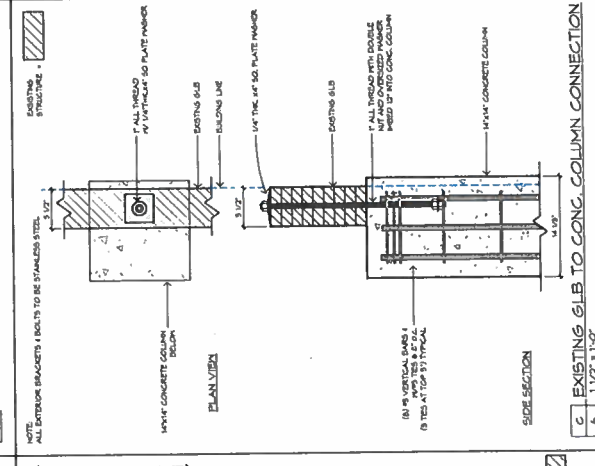
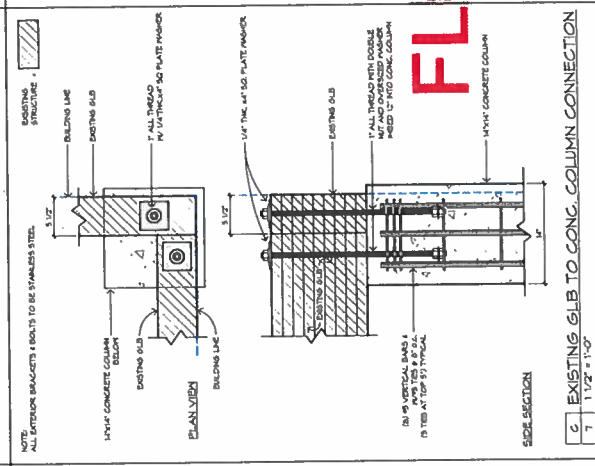
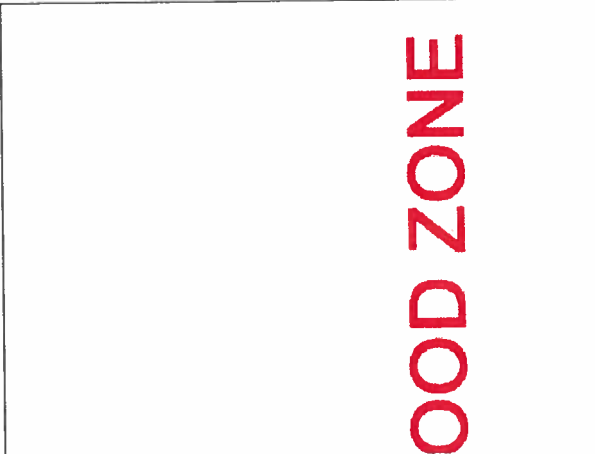
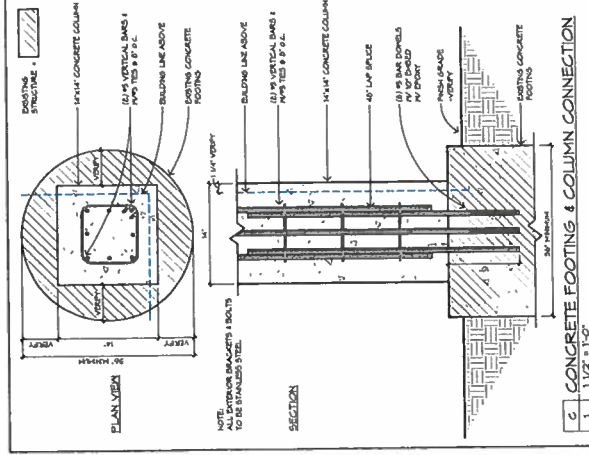
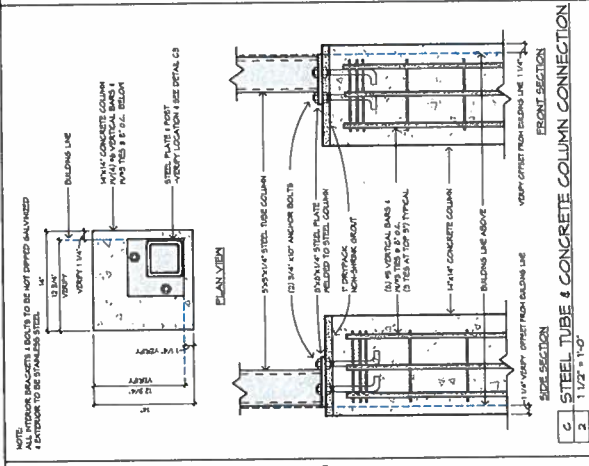
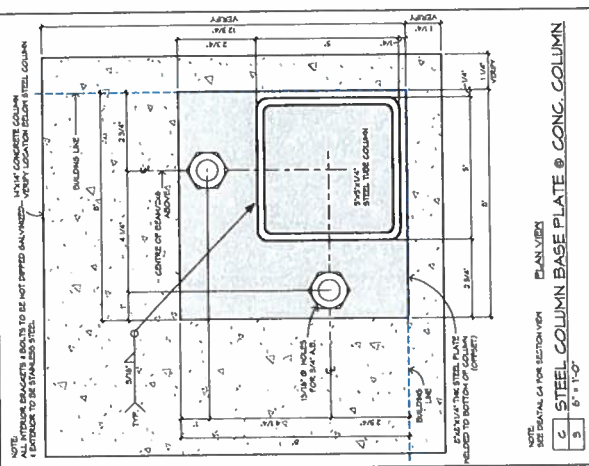
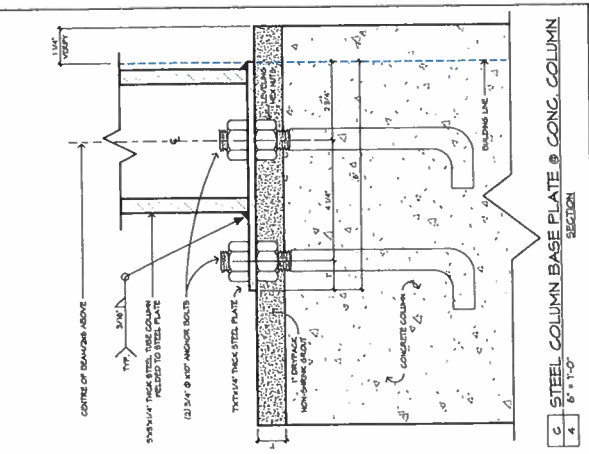
BEFORE CONSTRUCTION SHALL VERIFY AND BE IN ACCORDANCE WITH ALL REQUIREMENTS OF THE 2015 INTERNATIONAL RESIDENTIAL CODE, THE 2015 INTERNATIONAL MECHANICAL CODE, THE 2015 INTERNATIONAL PLUMBING CODE, THE 2015 INTERNATIONAL ELECTRICAL CODE, THE 2015 INTERNATIONAL FIRE AND SAFETY CODE, THE 2015 INTERNATIONAL ENERGY EFFICIENCY CODE, THE 2015 INTERNATIONAL SWEET'S BOOK OF BUILDING MATERIALS, AND THE 2015 INTERNATIONAL ROOFING CODE. ALL WORK SHALL BE PERFORMED IN ACCORDANCE WITH THE 2015 INTERNATIONAL BUILDING DEPARTMENT AND THE 2015 INTERNATIONAL MECHANICAL, ELECTRICAL, PLUMBING AND MECHANICAL (M.E.P.) CODES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPLICABLE AGENCIES.

ROOF FRAMING NOTES:
 1. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL RESIDENTIAL CODE.
 2. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL MECHANICAL CODE.
 3. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL PLUMBING CODE.
 4. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ELECTRICAL CODE.
 5. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL FIRE AND SAFETY CODE.
 6. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ENERGY EFFICIENCY CODE.
 7. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL SWEET'S BOOK OF BUILDING MATERIALS.
 8. ALL ROOF FRAMING SHALL BE IN ACCORDANCE WITH THE 2015 INTERNATIONAL ROOFING CODE.

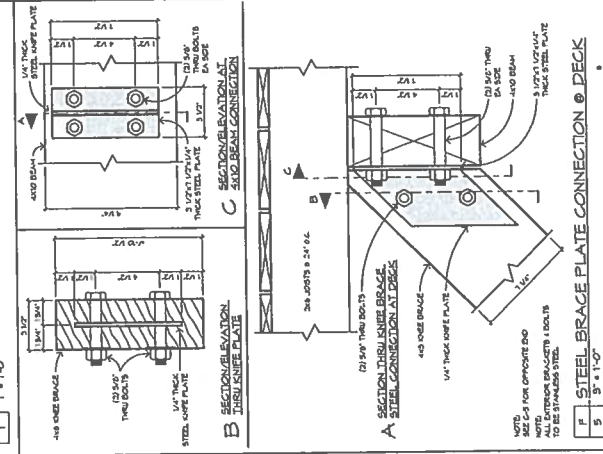
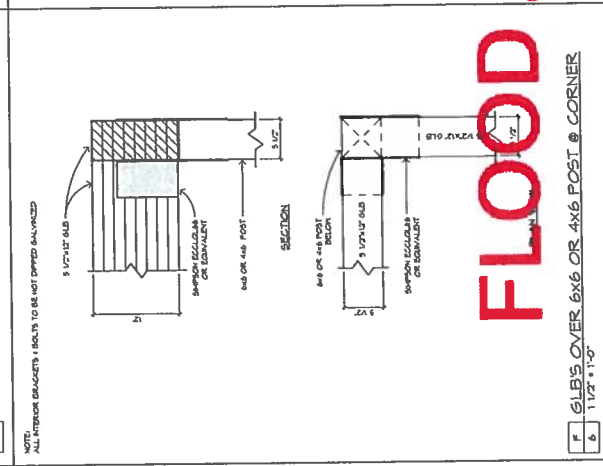
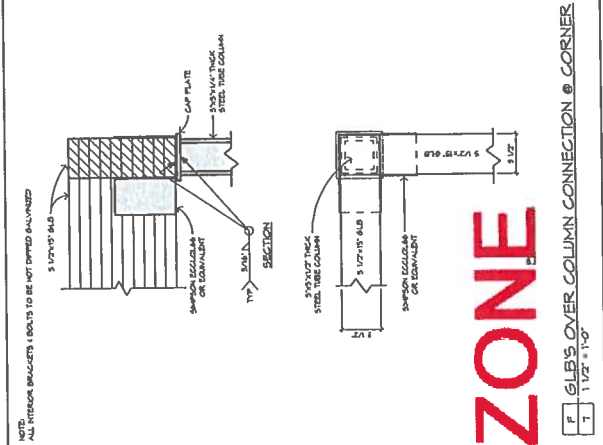
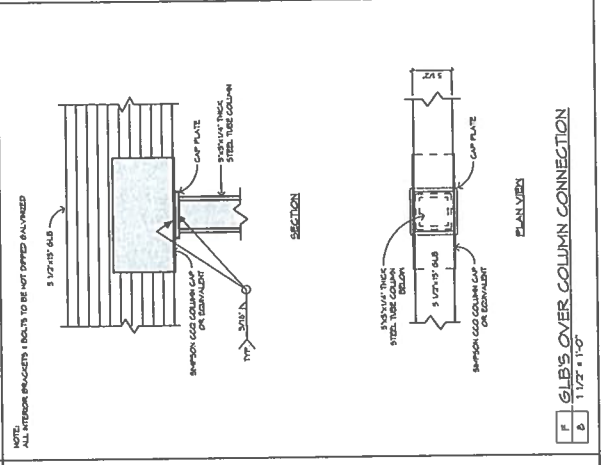
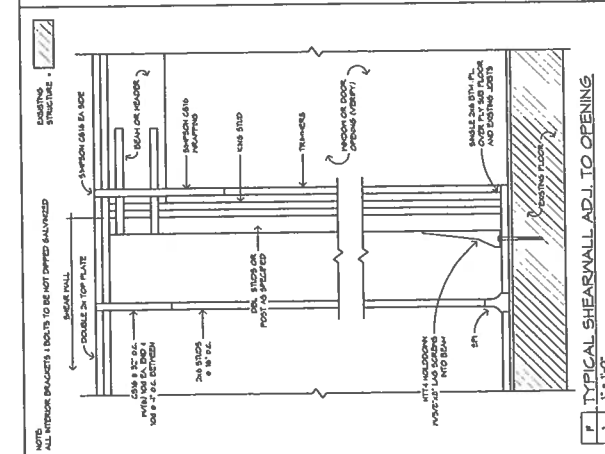
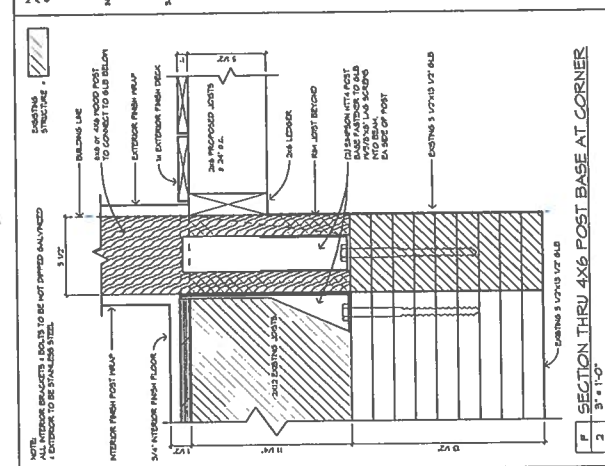
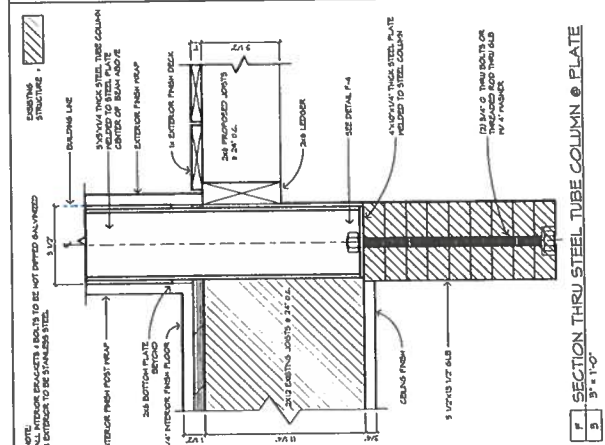
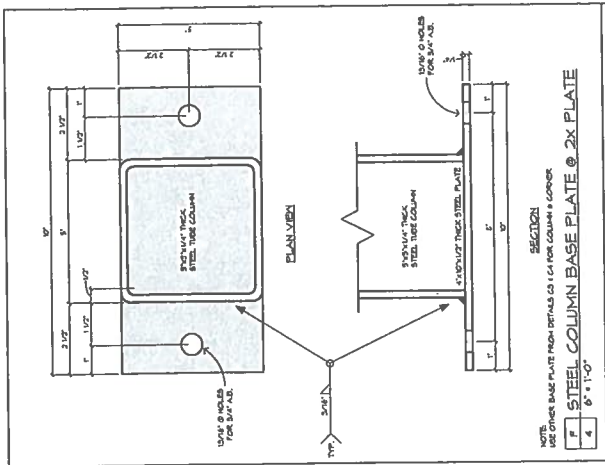
SHEAR WALL SCHEDULE

ITEM	DESCRIPTION
1	2x12 @ 24" O.C. CONTINUOUS FOR CEILING
2	2x10 @ 24" O.C. CONTINUOUS FOR CEILING
3	2x8 @ 24" O.C. CONTINUOUS FOR CEILING
4	2x6 @ 24" O.C. CONTINUOUS FOR CEILING
5	2x4 @ 24" O.C. CONTINUOUS FOR CEILING
6	2x2 @ 24" O.C. CONTINUOUS FOR CEILING
7	2x1 @ 24" O.C. CONTINUOUS FOR CEILING
8	2x1 @ 24" O.C. CONTINUOUS FOR CEILING
9	2x1 @ 24" O.C. CONTINUOUS FOR CEILING
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100	2x1 @ 24" O.C. CONTINUOUS FOR CEILING

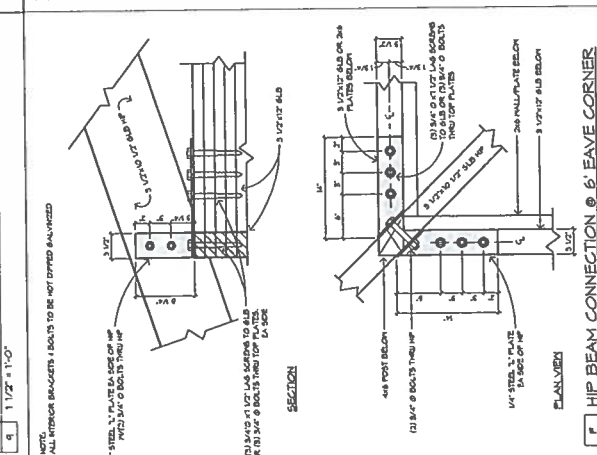
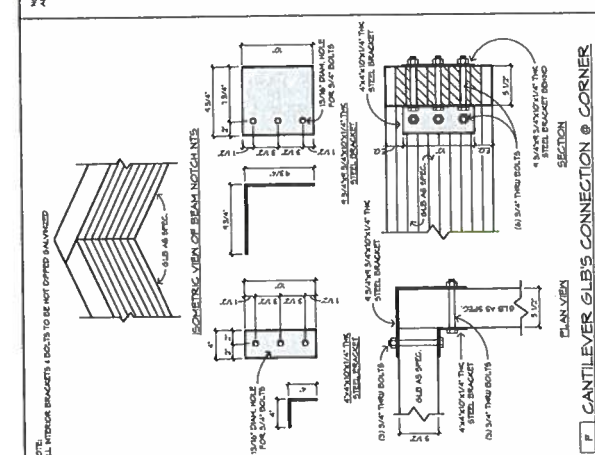
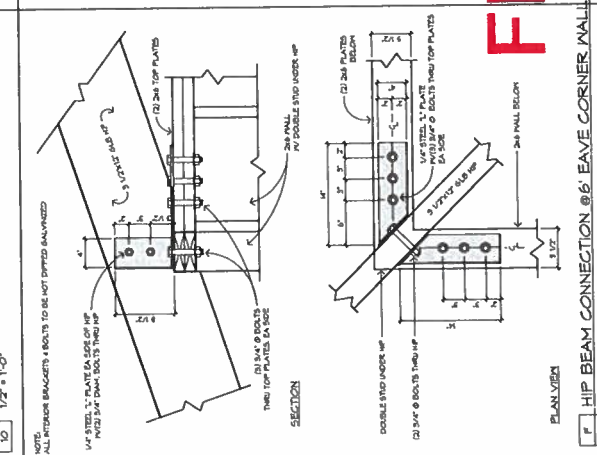
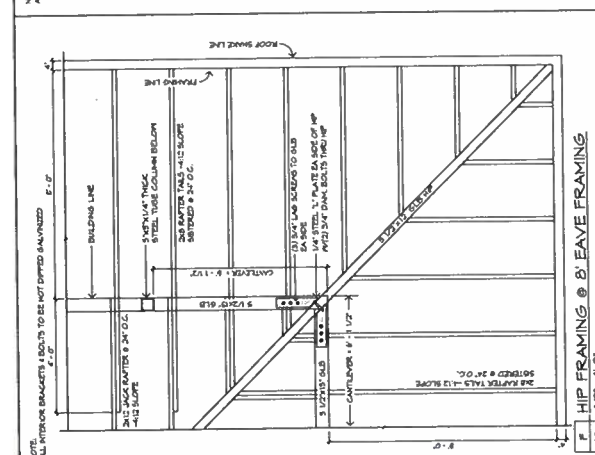
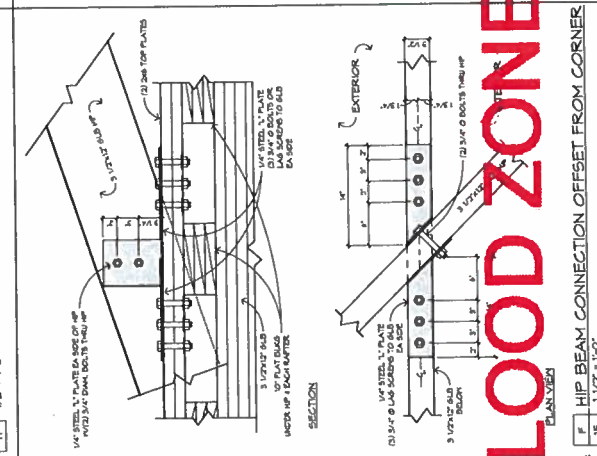
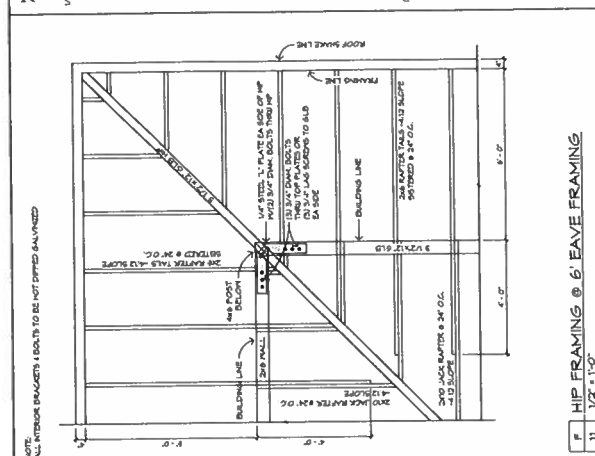
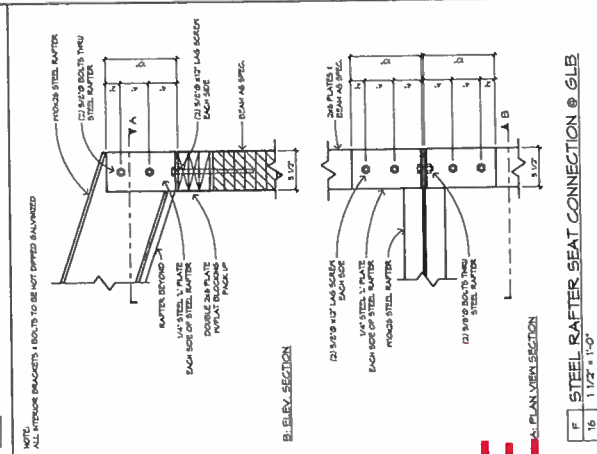
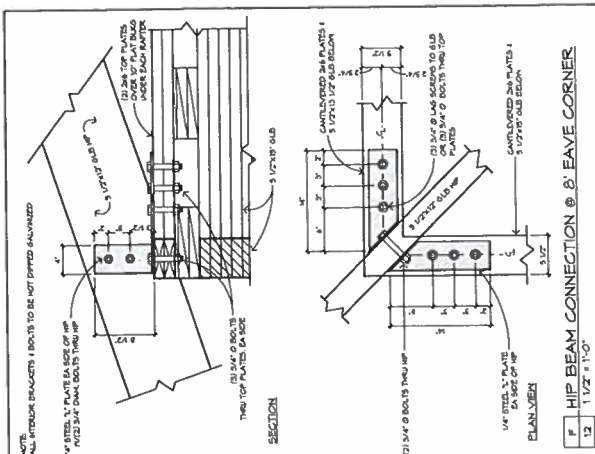
LEGEND:
 1. REINFORCED ROOF JOINT
 2. REINFORCED BEAM JOINT
 3. REINFORCED COLUMN JOINT
 4. REINFORCED WALL JOINT



FLOOD ZONE



FLOOD ZONE



FLOOD ZONE

FRAMING DETAILS
 AS NOTED



1990

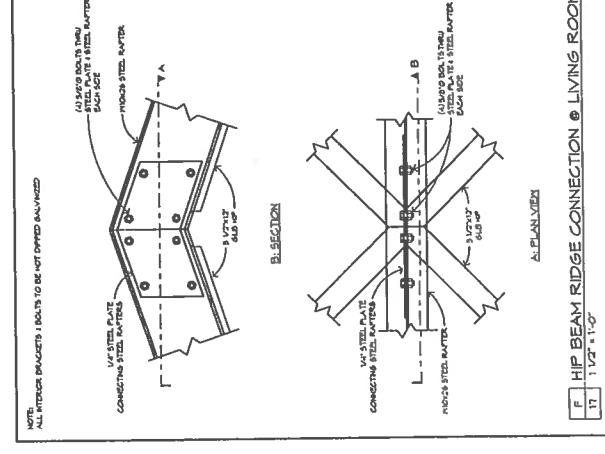
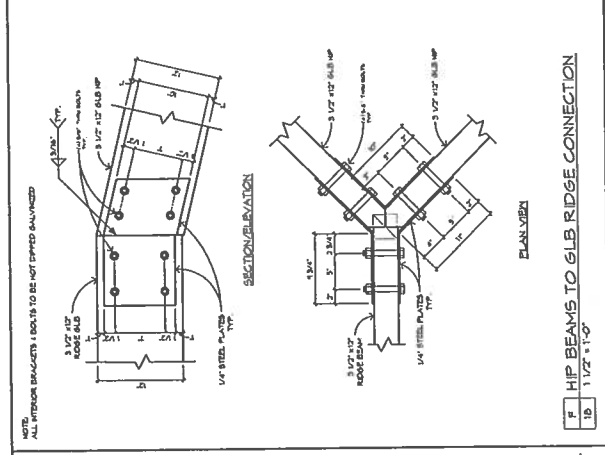
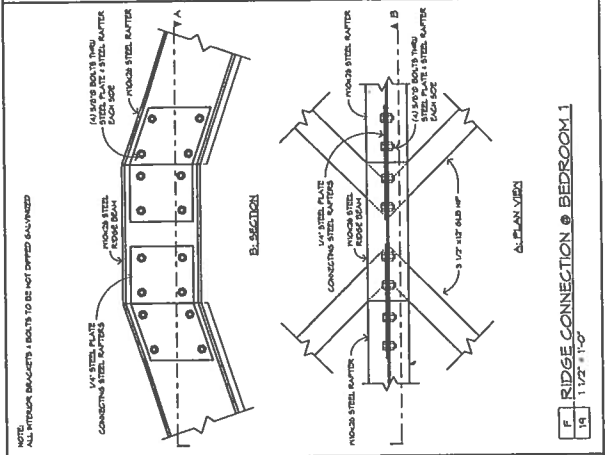
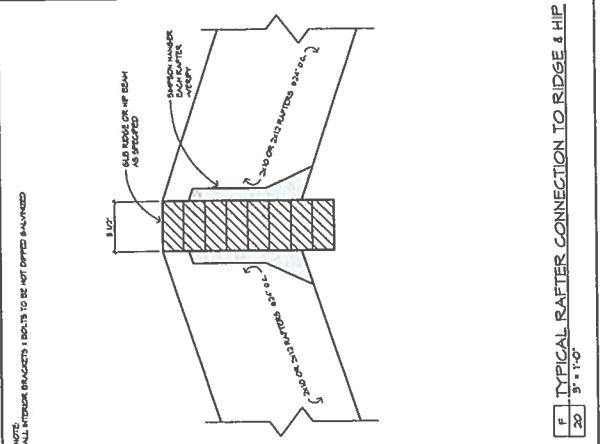
CLAN ARCHITECTURE LLC
 1111 KALANANĀ'OHUE DRIVE, SUITE 102, KĪLAUEA, HI 96734
 TEL: (808) 928-0160 FAX: (808) 928-0160 WWW.DCHAWAII.COM
 KILAUWA, KAPĀLAUWA WALK
 1111 KALANANĀ'OHUE DRIVE, SUITE 102, KĪLAUEA, HI 96734
 TEL: (808) 928-0160 FAX: (808) 928-0160 WWW.DCHAWAII.COM

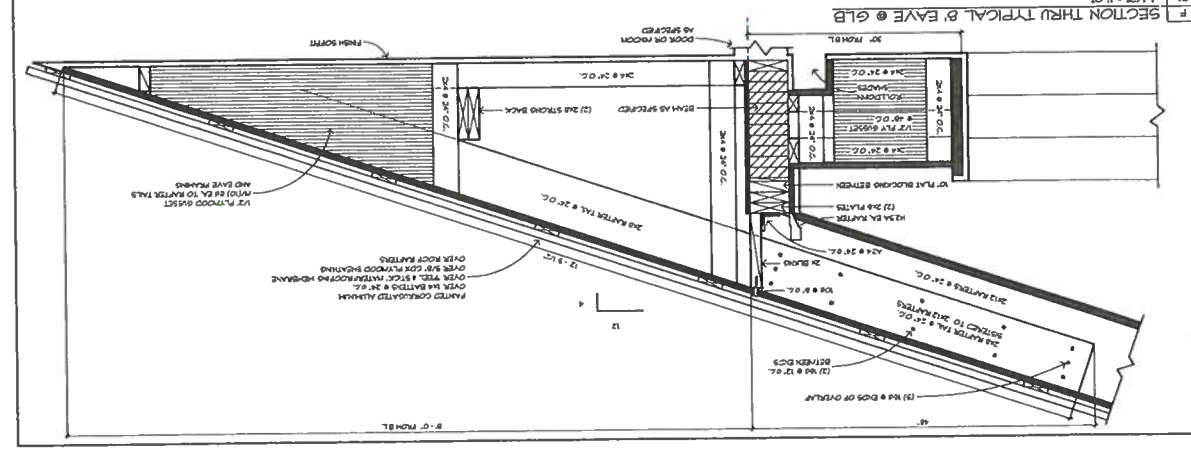
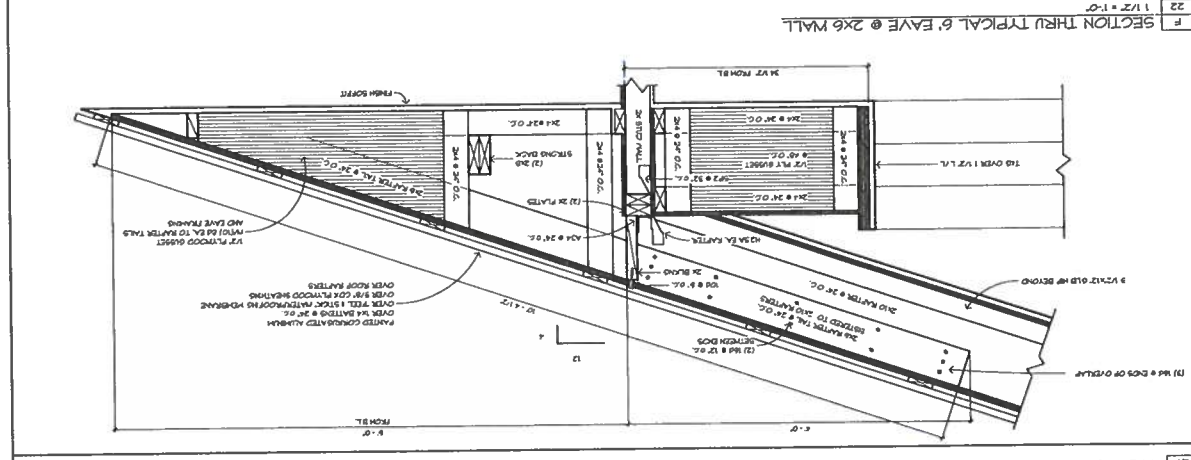
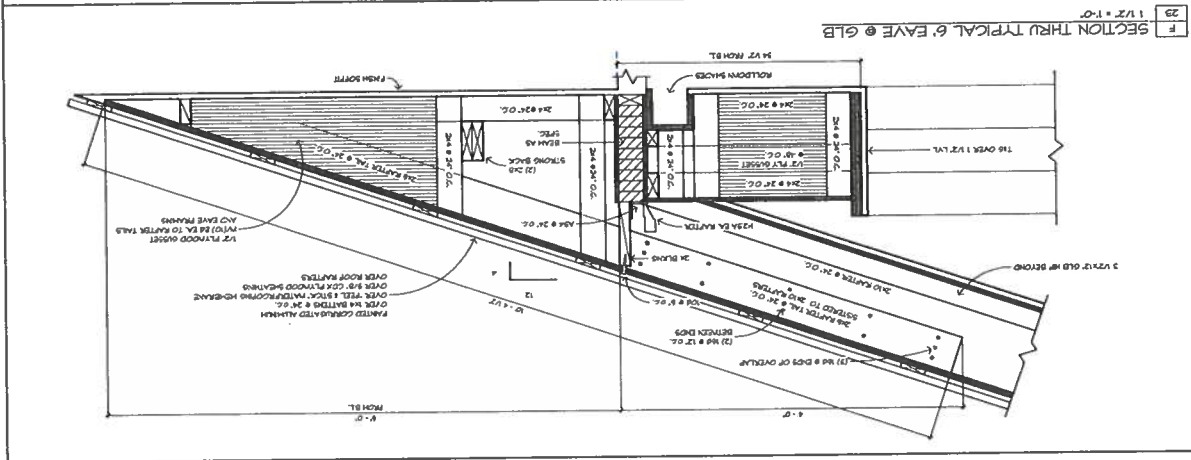
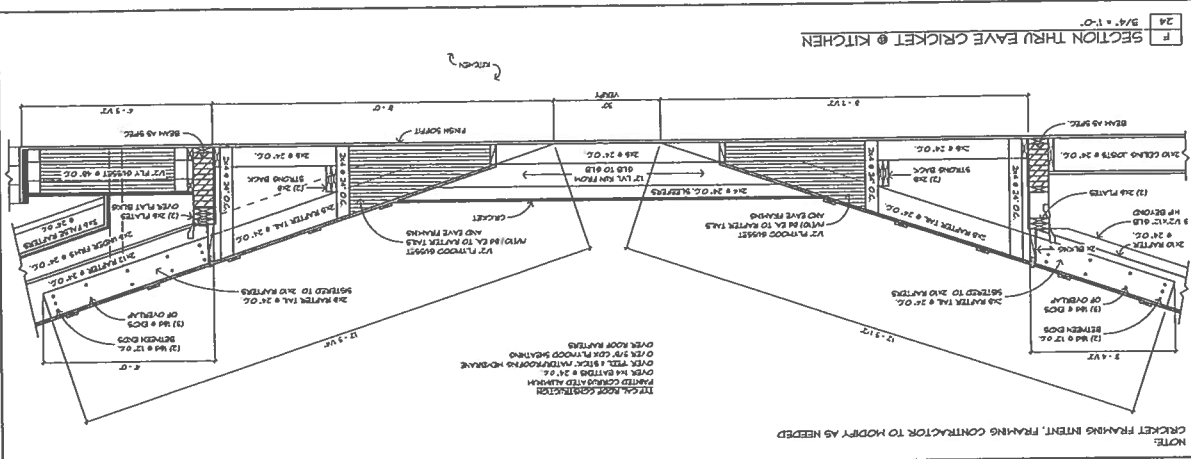
DESIGN CONCEPTS HAWAII LLC P(808) 828-0160 WWW.DCHAWAII.COM
 HAPPY HOUSE TRUST
 2484 KĪHEKE ST, SUITE 102, KĪLAUEA, HI 96734
 TMK (0) 5-9-021

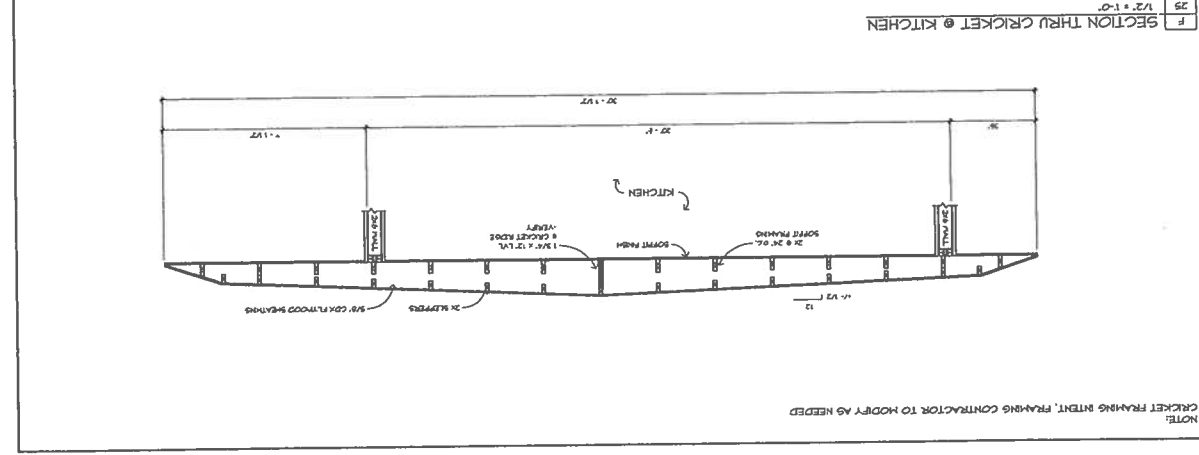
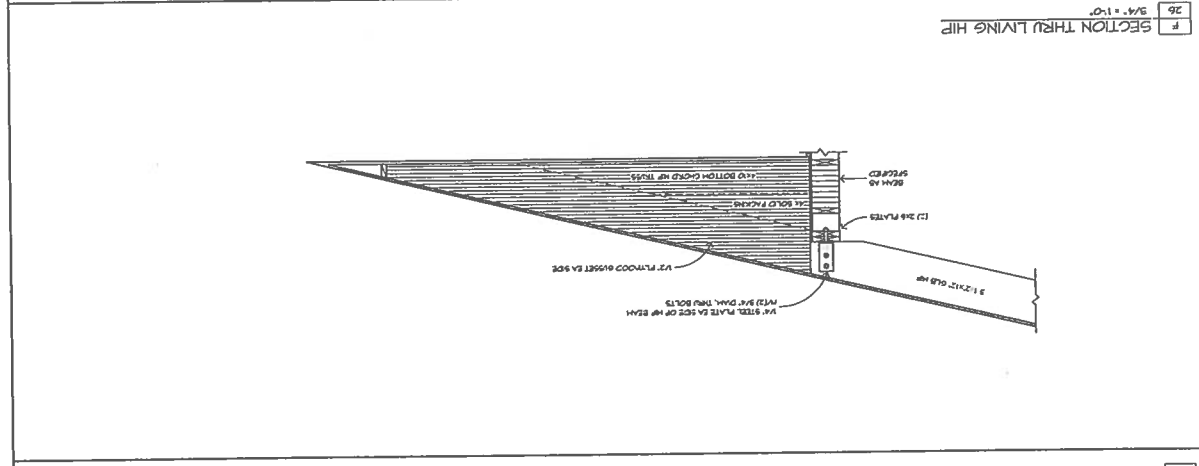
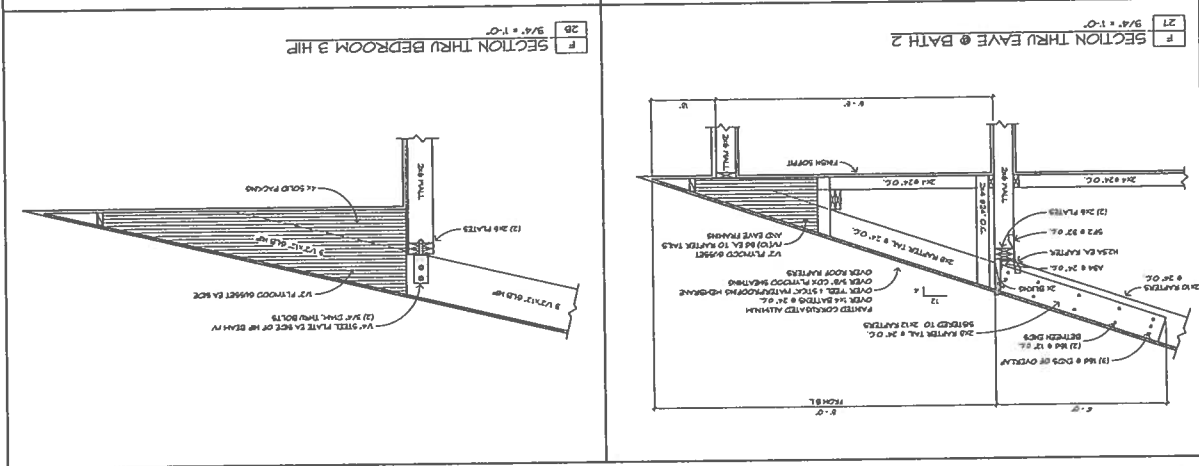
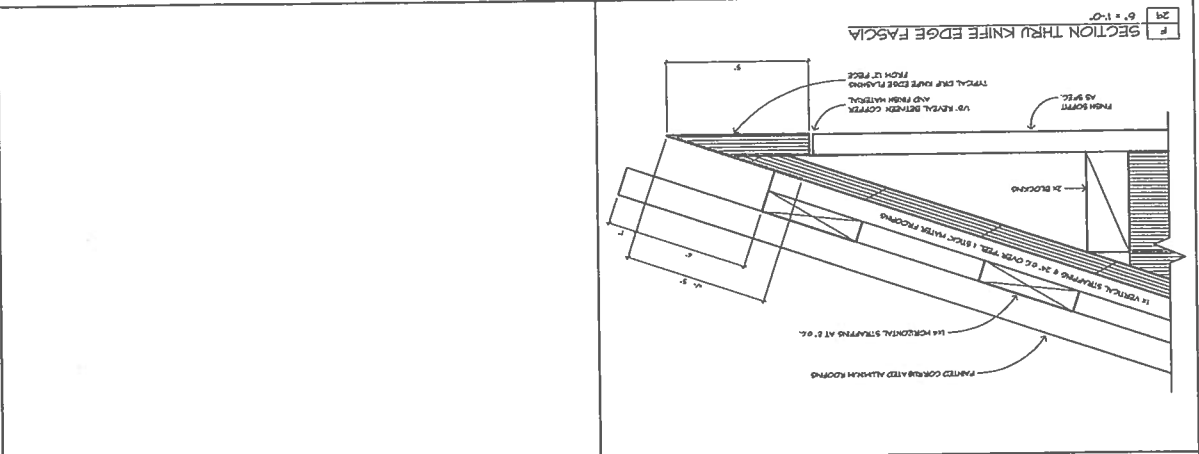


S08

FRAMING DETAILS
 AS NOTED







NOTE: CRICKET FRAMING INTENT, FRAMING CONTRACTOR TO MODIFY AS NEEDED

EXHIBIT "E"

Project BP22-00002500

View Rep

Workflow | BP_StartWorkflow83 (10/08/2022 12:00 AM)

Navigation icons: back, forward, search, zoom, print, find | Next



Current Project - Department Review Status

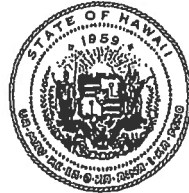
BP22-00002500

Rev Cycle	Group Name	Reviewer Name	Assigned By	Review Status	Review Comments
1					
	ENGINEERING DIVISION	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; flood issues to be addressed; 11/23/2022G
	DEPT OF WATER	Jason Kagimoto jkagimoto@kauaiwater.org	jkaluahine@kauai.gov	CMP	Approved by DOW.
	DEPT OF HEALTH (STATE)	Lori Vetter lori.vetter@doh.hawaii.gov	jkaluahine@kauai.gov	CMP	APPROVED by Dept. of Health.
	BUILDING REVIEW	Lem Soria lsoria@kauai.gov	jkaluahine@kauai.gov	CMP	approved/ls
	FLOOD REVIEW	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; submit Elevation Certificate for this structure; 11/23/2022G
	PLANNING DEPT	Brian Ejima bkejima@kauai.gov	jkaluahine@kauai.gov	DEN	Denied; Upon your receipt of Conservation District Use Permit from the State of Hawaii, post the CDUP in the "Documents Folder" on EPR prior to resubmitting. /BE 11-2-2022
2					
	ENGINEERING DIVISION	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; flood issues to be addressed; 12/13/2022G
	FLOOD REVIEW	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; Must relocate a/c condenser and back up battery above the BE + 1 = 24"; are all enclosures on the lower level of breakaway construction?; the owner needs to get an appraiser to assess the building structure so the proposed improvements are considered unsubstantial; 12/13/2022G
	PLANNING DEPT	Brian Ejima bkejima@kauai.gov	jkaluahine@kauai.gov	DEN	Denied; Upon your receipt of Conservation District Use Permit from the State of Hawaii, post the CDUP in the "Documents Folder" on EPR prior to resubmitting. /BE 11-30-2022
3					
	FLOOD REVIEW	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; upload appraisers report to see if proposed construction cost is unsubstantial improvement; 12/28/2022G
	ENGINEERING DIVISION	Glenn Okamoto gokamoto@kauai.gov	jkaluahine@kauai.gov	DEN	DENIED; flood issue to be addressed; 12/28/2022G
	PLANNING DEPT	Brian Ejima bkejima@kauai.gov	jkaluahine@kauai.gov	CMP	Approved; In Conservation District, no jurisdiction. SMA exempt. /BE 12-22-2022
4					
	ENGINEERING DIVISION	Glenn Okamoto gokamoto@kauai.gov	nlawrence@kauai.gov	CMP	APPROVED; maintain existing drainage pattern; tenant improvement 02/23/2023G
	FLOOD REVIEW	Glenn Okamoto gokamoto@kauai.gov	nlawrence@kauai.gov	CMP	APPROVED; proposed improvements are unsubstantial; balance = \$850,000 for the ten year term that ends in 2033; 2/23/2023G

EXHIBIT "E"

EXHIBIT "F"

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF:OCCL:RB

SPA: KA-23-39

Ian K. Jung
3135 Akahi St., Ste. A
Lihue, HI 96766

NOV 30 2022

SUBJECT: Site Plan Approval (SPA) application for alterations to an existing single-family residence (SFR) located at 5-7534 B Kuhio Hwy, Haena, Halelea, Kauai
Tax Map Key (TMK): (4) 5-9-002:021

Dear Mr. Jung:

The Office of Conservation and Coastal Lands (OCCL) has reviewed the SPA application for your client to conduct alterations to an existing SFR. The existing SFR was permitted under Conservation District Use Permit (CDUP) KA-1962. Subsequent permits were issued for SFR improvements: (1) SPA KA 19-27 for the bottom deck enclosure and gym creation and SFR renovations and (2) SPA KA 19-65 for construction of a rock wall and gate.

Your client is proposing the following exterior SFR alterations:

- Upper deck reconfiguration: this will involve relocating exterior lanais and removing unneeded support posts; this will reduce the total upper lanai area by 357 square feet;
- Relocate the main entry stairs;
- Relocate the outdoor shower; and
- Remove stone walls and replace with cedar fencing

Additional exterior associated modifications include remove chimney; remove planters; replace all rusted posts to beam bracket; replace any compromised wood posts with concrete columns; replace roof with a single pitch painted corrugated metal roof; and replace railings with Ipe post and stainless-steel cable. No grading is proposed, and all work will be contained within the existing developed parcel area.

ANALYSIS

The project area is located within the Limited subzone of the State Land Use Conservation District. Based on the project description provided, it would appear that the proposed project is consistent with the following:

EXHIBIT "F"

- Hawai'i Administrative Rules (HAR) §13-5-22, P-8 STRUCTURES AND LAND USES EXISTING (B-1) *Demolition, removal, or minor alteration of existing structures, facilities, land and equipment.*

Further, the proposed project may be considered an exempt action under the following:

- HAR §11-200.1-15 (c)(2) *Replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site and will have substantially the same purpose, capacity, density, height, and dimensions as the structure replaced; and*
- DLNR Exemption List, Exemption Class 2, PART 1, #1 *Replacement or reconstruction of existing structures and facilities, including baseyards, offices, cabins, sheds, and fencing.*

Staff notes that the Land Division was consulted regarding the HRS §343, Exemption Determination and they concurred that the exemptions are appropriate for the proposed work.

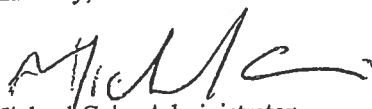
Therefore, authorization is hereby granted to the proposed alterations to an existing single-family residence (SFR) located at 5-7534 B Kuhio Hwy, Haena, Halelea, Kauai, Tax Map Key (TMK): (4) 5-9-002:021 and is subject to the following conditions:

1. The permittee shall comply with all applicable statutes, ordinances, rules, and regulations of the federal, state, and county governments, and applicable parts of Chapter 13-5, HAR;
2. The permittee, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit;
3. The permittee shall comply with all applicable Department of Health administrative rules;
4. The permittee understands and agrees that this permit does not convey any vested rights or exclusive privilege;
5. In issuing the approval, the department has relied on the information and data, which the applicant has provided in connection with the application. If, subsequent to the issuance of the approval such information and data prove to be false, incomplete, or inaccurate, this approval may be modified, suspended, or revoked, in whole or in part, and the department may, in addition, institute appropriate legal proceedings;
6. Where any interference, nuisance, or harm may be caused, or hazard established by the use the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
7. Obstruction of public roads, trails, lateral shoreline access, and pathways shall be avoided or minimized. If obstruction is unavoidable, the permittee shall provide alternative roads, trails, lateral beach access, or pathways acceptable to the department;
8. During construction, appropriate mitigation measures shall be implemented to minimize impacts to off-site roadways, utilities, and public facilities;


9. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;
10. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact SHPD (808-692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;
11. Where any interference, nuisance, or harm may be caused, or hazard established by the use the permittee shall be required to take measures to minimize or eliminate the interference, nuisance, harm, or hazard;
12. The permittee acknowledges that the approved work shall not hamper, impede, or otherwise limit the exercise of traditional, customary or religious practices of native Hawaiians in the immediate area, to the extent the practices are provided for by the Constitution of the State of Hawai'i, and by Hawai'i statutory and case law;
13. Other terms and conditions as prescribed by the OCCL; and
14. Failure to comply with any of these conditions shall render a permit void under Chapter 13-5, as determined by the department.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other. Should you have any questions, please feel free to contact the OCCL at 808-587-0377.

Sincerely,


Michael Cain, Administrator
Office of Conservation and Coastal Lands

Receipt acknowledged:

 Trustee Date Dec 5, 2022
Applicant's signature

c: Kauai County Planning Dept.
KDLO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on 7/18/2024 a true and correct copy of the PETITION TO APPEAL NOTICE OF VIOLATION & ORDER TO PAY FINES, DATED JUNE 27, 2024; EXHIBITS "A" AND "F" was duly served upon COUNTY OF KAUAI PLANNING COMMISSION, by depositing same in the United States Post Office at Lihue, Kauai, Hawaii, postage prepaid, addressed to it at the COUNTY OF KAUAI PLANNING DEPARTMENT, County of Kauai, 4444 Rice Street, Suite A-473, Lihue, Kauai, Hawaii 96766.

DATED: Lihue, Kauai, Hawaii, 7/18/2024.



IAN K. JUNG
Attorney for Appellant
HAPPY HOUSE TRUST

**APPLICATION FOR AMENDMENTS TO THE
SPECIAL AND USE PERMITS**

**for
KAUA'I HUMANE SOCIETY ANIMAL SHELTER FACILITIES**

**Tax Map Key: 3-4-05-17
Use Permit U-95-40
Special Permit SP-95-15
Variance Permit V-95-13
Class IV Zoning Permit Z-IV-95-46**

Applicant: Kaua'i Humane Society

**3-825 Kaumuali'i Hiwy
[P.O. Box 3330]
Lihu'e, Kaua'i, Hawai'i 96766**

(808) 632-0610

July 26, 2024

APPLICANT'S CONTACT INFORMATION

All communications relative to the application are to be sent to:

Attention: Nicole Schafer Crane, Executive Director
Kaua'i Humane Society
P.O. Box 3330
Lihu'e, HI 96766

Email: nicole@kauaihumane.org
Mobile Phone: (954) 881-1206

With copies sent to the land Kaua'i Humane Society Board of Directors to:

Attention: Dan V. Giovanni, President
KHS Board of Directors
P.O. Box 582
Kalaheo, HI 96741

Email: dvgiovanni333@gmail.com
Mobile Phone: (808) 228-8232

IDENTIFICATION OF APPLICANT

The Applicant, Kaua'i Humane Society (KHS), is a 501(c)3 non-profit business and the owner of the subject property, having purchased the property and transferred the title from Grove Farm Company, Inc. on the Settlement Date of November 2, 2022.

KHS constructed and has been operating the animal welfare facilities on the subject property following the approval of **Special Permit 95-15-5** and **Use Permit U-95-40** by the County of Kaua'i Planning Department at its meeting on July 13, 1995 (copy is attached to this Application as Exhibit 1). Condition 5 of the Special Permit stated:

"Prior to building permit application, final subdivision approval shall be obtained for the consolidation and re-subdivision of the subject parcels."

This condition was satisfied and recorded at the Land Court on July 26, 2000.

DESCRIPTION OF EXISTING DEVELOPMENT AND OPERATIONS

KHS animal welfare facilities (aka: "KHS Animal Shelter") were developed on the property that had been leased from Grove Farm Company, Inc. from November 1, 1995 through November 1, 2022, and that is owned by the Applicant since November 2, 2022. These facilities are consistent with the permissible uses identified in Special Permit 95-15-5, and presently include:

- Administrative Offices and Meeting Rooms
- Overnight Boarding Facilities
- Holding Areas for Animals Accepted by KHS

- Indoor and Outdoor Training Areas
- Exercise Areas for Animals
- Veterinary Inspection, Treatment, and Surgical Rooms
- Cremation Services
- Transitional Housing for Cats
- Community Care Clinic
- Dog Park(s)
- Parking Lot

Special Permit 95-15-5 also explicitly allows the building of a pet cemetery and employee housing, but to date these have not been built.

Permissible operations include the following and are currently being offered as a service to the greater Kaua'i community by the Kaua'i Humane Society:

- Animal caretaking and disposal
- Dog and cat adoptions and fostering services
- Veterinary services
- Animal training
- Administrative activities, including investigations of animal cruelty and neglect
- Educational activities
- Occasional fundraising events
- Dog park
- Corral area to accommodate larger (farm) animals for limited time
- Parking

In the future KHS is planning on building two (2) new structures which are permissible uses under Special Permit 95-15-5 and Use Permit U-95-40.

(2) **Boarding Facility.** There exists a significant demand throughout the greater Kaua'i community for pet owners to be able to board their dogs and/or cats overnight or for extended periods. KHS currently has a few kennels available for boarding, but they do not satisfy the demand. The new facility would provide 24 and 12 new kennels for dogs and cats, respectively.

(3) **Community Care Clinic.** A Community Care Clinic would be built and staffed with a veterinary team to serve the needs of the general public. This would be separate from the veterinary care provided to the animals that have been accepted and are being housed at the KHS Shelter. The intent is to provide low-cost veterinary services for urgent/emergency care every day of the week on a walk-in basis. In addition, the structure would include temporary housing on the 2nd floor for visiting professionals working at KHS, and new KHS employees who have moved from the mainland and are searching for housing on Kaua'i.

Architectural site plan and elevation of the KHS facility and proposed improvements are provided as Exhibit 2.

ACTION REQUESTED

KHS is requesting an **Amendment to Special Permit 95-15-5** to include the building and operation of a retail thrift store (known as "Bloomingtails") to be owned and operated by KHS on the subject property. Bloomingtails is an integral part of KHS non-profit business. Goods donated to KHS are sold to the general public at "thrift store prices." All income from Bloomingtails is used by KHS for non-profit operations of the animal shelter and animal welfare.

KHS is also requesting an **Amendment to Use Permit U-95-40** to include operation of a retail thrift store which otherwise would not be permitted within the Agriculture district. The Amendment to Use Permit U-90-40 is being sought in accordance with Section 8-7.2(a)(14) of the Comprehensive Zoning Ordinance to allow thrift store activities within the Agriculture district. Historically, Bloomingtails has operated remotely in leased commercial spaces at different locations in the Lihu'e Area. It is currently operating in a leased space at the Puhi Industrial Park.

The State Land Use Commission's State Land Use District Regulations, Part III, do not specifically list a retail facility such as a thrift store within the State Agricultural District. In accordance with Hawai'i Administrative Rules, Title 15, Subtitle 3, Chapter 15, Subchapter 12, Section 15-15-95, anyone who desires to use his land within an Agricultural district for other than a permissible use may petition the County Planning Commission for a Special Use Permit to use his/her land in the manner desired. Because the Application involves a project under fifteen (15) acres in size, the Application is being filed with the County of Kaua'i, and requires only the County Planning Commission's approval.

With the exception of the proposed thrift store, all aspects of KHS' current and contemplated activities and facilities are permitted under the terms and conditions of the County's Agricultural zoning district (e.g., "animal care") and/or Special Permit 95-15-5 and Use Permit U-90-40. **Thus the Actions Requested in this Application is solely to amend Special Permit 95-15-5 land Use Permit U-95-40 to include a thrift store as a permissible use.**

The retail thrift store is an integral part of the overall non-profit business of KHS. Goods donated to KHS are offered for sale to the general public. Net proceeds go directly to support animal welfare operations of KHS.

KHS has operated a thrift store (aka "Bloomingtails") for more than 20 years in the Lihu'e Area, but it has always been remotely located offsite at different commercial properties leased by KHS. Bloomingtails is currently located in the Puhi Industrial Park.

Unfortunately, remote operation of the thrift store has been problematic (e.g., issues with employee and customer theft), maintenance issues with the leased facilities, and managerial oversight have been difficult. Having the thrift store on location at the subject property is expected to result in better managerial efficiency, more convenient access for thrift store donors and customers, and improved profitability for the benefit of KHS animals.

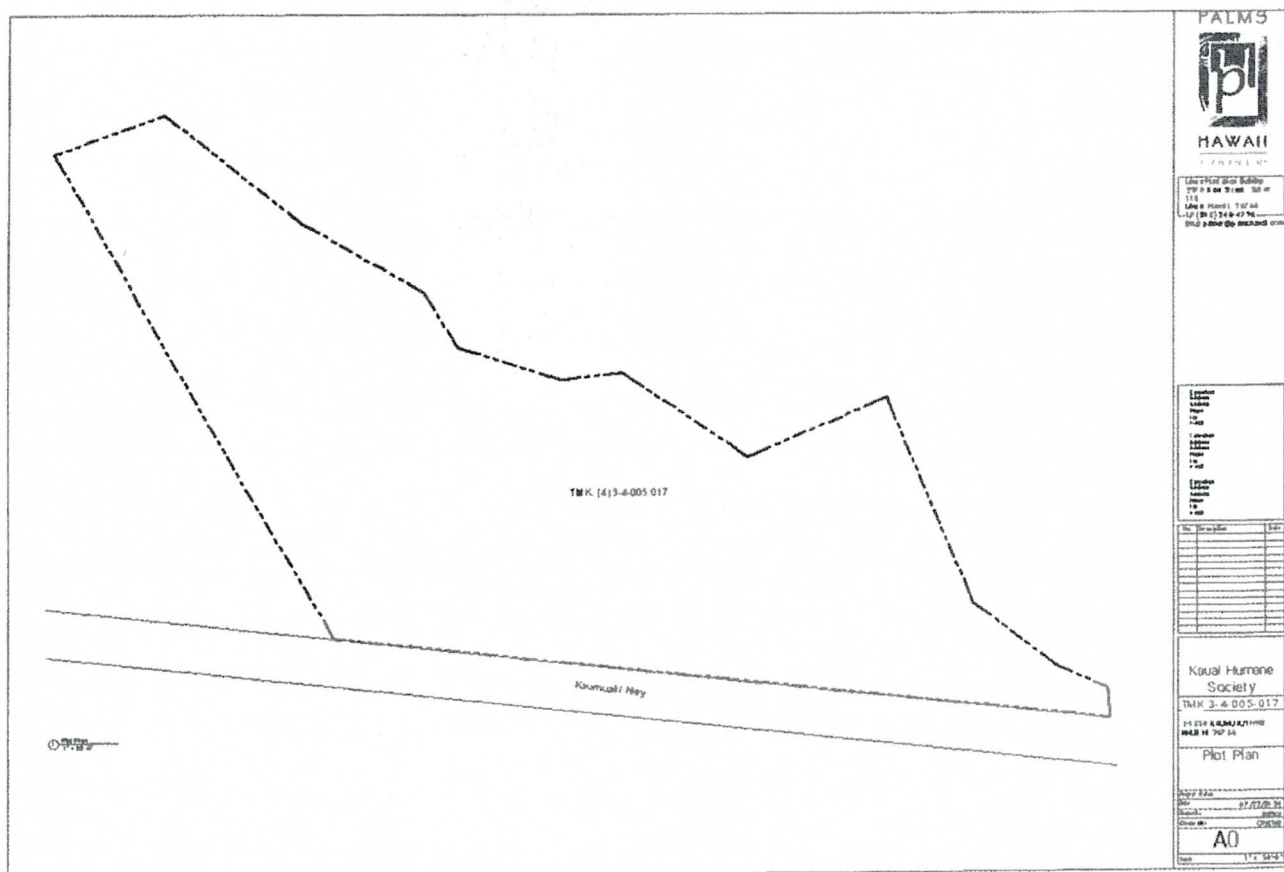
PROPERTY DESCRIPTION

The property is a 10-acre parcel.

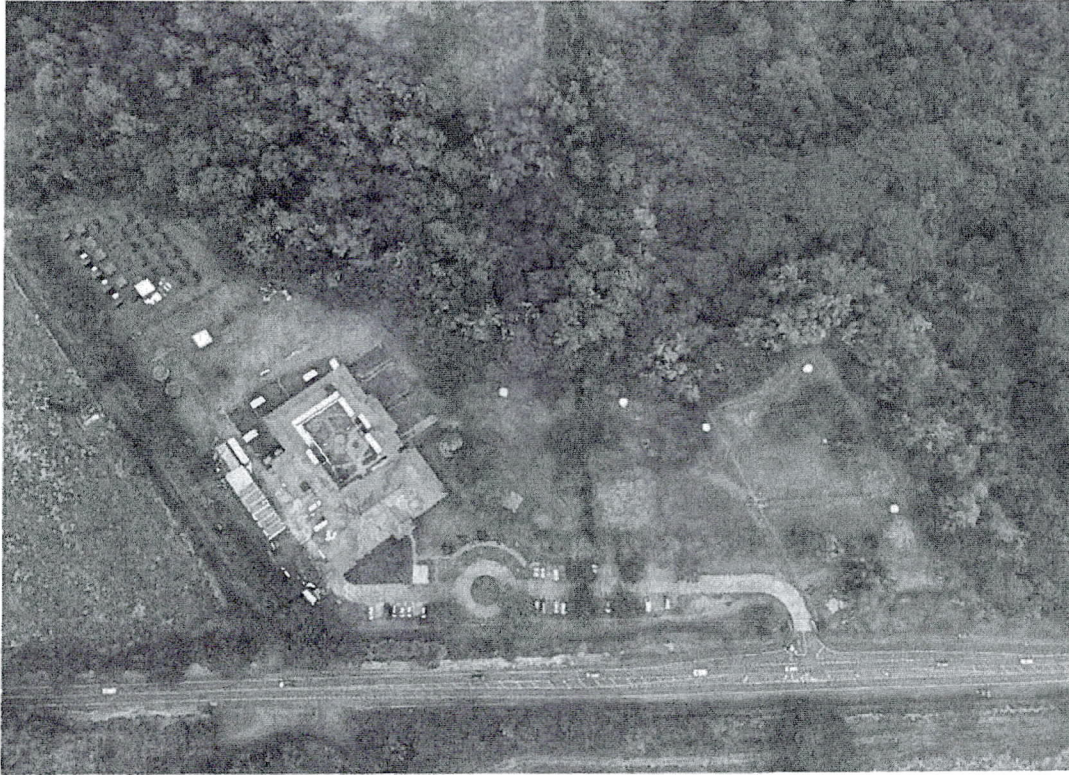
It is located in Haiku, County of Kaua'i, State of Hawai'i, immediately mauka of Kaumuali'i Highway, approximately 2,100 feet west of Kipu Road. The property is further identified as Tax Map Key (TMK) #3-4-05-017.

It is a rural area, and the property is surrounded by natural vegetation.

A plot plan illustrating the shape of the parcel and its proximity to Kamuali'i Highway is shown below.



An aerial photograph of the property is provided below showing the structures (improvements) that have been built since 2000, the surrounding vegetation, and the proximity to Kaumuali'i Highway.



(1) **Existing Uses** - The site was cultivated in sugar cane until 1994. Following the issuance of Use Permit U-95-40 and Special Permit SP-95-15 by the County of Kaua'i, the animal welfare and shelter facilities that exist today were designed, permitted, and constructed. The Kaua'i Humane Society moved into the facilities and commenced its business operations in 2001. Over the years since, the facilities have been modified and upgraded, and today include the following improvements and uses:

- Reception Area
- Volunteer Meeting Area
- Dog, cat, and small animal kennels
- Radiograph room for medical X-rays
- Medical facilities for animal inspection, treatment, and surgery
- Kitten hospital and nursery
- Community Care Center (public clinic)
- Offices, bathroom for employees and the public
- Rooms for pet food preparation, dishwashing, and laundry
- Incinerator for animal cremations
- Conference and Training Room
- Dog park(s)
- Transitional outdoor housing for cats
- Basement storage facilities

(2) **Elevation** - The project area is relatively flat, sloping down gently from southwest to northeast, ranging roughly from elevation 457' in the southwest at the intersection of Kaumuali'i Highway and the cane haul road located immediately to the west of the site,

to elevation 435' at the northeast end. Off-site to the north and northeast, terrain drops roughly 40 feet to a gully. Topography off-site is generally level to the south and west.

- (3) **Slope** - Slopes within the project area range from 2% to 5% slope.
- (4) **Drainage** - Drainage within the site sheet flows to the east and empties into the gully to the northeast. The gully is part of the drainage system of Hoinakaunalehua Stream, which joins with Papakolea Stream and eventually empties into Huleia Stream. The site is located on an elevated plateau, and is not subject to flooding. An existing sugar cane irrigation ditch, which runs along the entire western boundary and a portion of the southern boundary, has been retained as is with no changes were implemented to either its alignment, function or capacity.
- (5) **Rainfall** - According to the Department of Land and Natural Resources Water Resources Management Division Mean Annual Rainfall Map, the site receives approximately 80" of rainfall annually. This figure was previously confirmed by Grove Farm's own rainfall records, which indicate that the site receives roughly 75" of rainfall annually.
- (6) **Soil Classification** - The University of Hawai'i Land Study Bureau classifies the soils of the project area as being Class A and B, with A being the most fertile and E the least. The Department of Agriculture Soil Conservation Service (now called the Natural Resource Conservation Service) survey classifies the soils on the amendment area as being Puhi Silty Clay Loam, 3-8 Percent Slopes (PnB). Puhi Silty Clay Loam soils are found on broad interfluves on uplands. Permeability is moderately rapid. Run-off is slow and the erosion hazard is slight. The surface layer is very strongly acidic, and subsoil is slightly to medium acidic. Topsoil fertility is fair to low. According to the Agricultural Lands of Importance to the State of Hawai'i (ALISH) maps and system of rating, the amendment area is designated as "Prime Agricultural Land." Land classified as Prime is described as "land which has the soil quality, growing season and moisture supply needed to produce sustained high yields of crops economically when treated and managed according to modern farming methods."
- (7) **Surrounding Uses** - The property is roughly triangular in shape and abuts the mauka side of Kaunauli'i Highway to the south, with former sugarcane agricultural fields makai of the highway beyond. A cane haul road abuts the western boundary of the site and former fields of sugar cane continue beyond to the west. A cane haul road runs along the bluff edge immediately to the north and east of the site, and a gully used for grazing is located beyond. This latter cane haul road is required for access to the abutting plateau to the east and has been retained as required by the land owner until agricultural operations on that plateau cease needing access.
- (8) **Agricultural Use** - Although the project area was used for sugar cultivation for over 100 years, farming activities ceased in 1994. The property is a small plateau and its removal from agricultural cultivation has not significantly affected the viability of agricultural production in the area.
- (9) **Historical and Archaeological** - A *Ka Pa'akai* Analysis was performed as part of this application and a copy of the report is provided as Exhibit 3. The analysis generally concluded:

- "There are no known cultural resources or practices with the potential to be negatively impacted because of the proposed project; and
- This [*Ka Pa'akai*] analysis does not foresee potential impacts of the proposed land use and development on Native Hawaiian cultural practices customarily and traditionally exercised for subsistence, cultural or religious purposes."

(10) Land Use and Impervious Cover - The application area is classified as "Agricultural A by the State Land Use Commission. It is zoned "Agriculture" by the County of Kaua'i.

The total land area is 435,600 square feet. Approximately 15.3% of the land has been impervious cover at follows:

- Existing animal welfare and shelter facility = 24,888 square feet = 5.7%
- Existing ancillary structures = 3,134 square feet = 0.7%
- Existing paving and asphalt = 38,505 square feet = 8.8%
- TOTAL existing impervious coverage = 66,527 square feet = 15.3%

The new facilities proposed to be built will cover an additional 18,645 square feet = 4.28%

- New Boarding Facility = 4,932 square feet = 1.1%
- New Community Clinic = 5,750 square feet = 1.3%
- New Thrift Store = 3,980 square feet = 0.9%
- New pathways between structures = 3,983 square feet = 0.9%
- Expanded footprint to modernize existing facilities = 390 square feet = 0.1%
- TOTAL new impervious coverage = 19,035 square feet = 4.37%

TOTAL Existing and Proposed impervious coverage = 84,482 square feet = 19.4%

AVAILABILITY OF PUBLIC SERVICES AND FACILITIES

1. **Wastewater** - The existing facilities and improvement on the subject property dispose of wastewater effluent through its own private septic system and associated leach field, which comply with The State Department to Health Chapter 62. The kennel facilities are designed to contain and direct all kennel runoff into the septic system as well. At current operational levels the septic system is pumped out by a commercial service every 3-to-4 months. Wastewater volumes are expected to increase in the future, and KHS will invest as necessary and appropriate to expand the capacity of its septic system, or install a supplementary septic system.
2. **Solid Waste Disposal** – All solid waste material generated by KHS operations at the subject property are collected and removed by a private waste disposal collection company. We presumed that most if not all of the solid waste is ultimately disposed of at a landfill owned and operated by the County of Kaua'i.
3. **Water** – The water requirements for the existing facilities and improvements on the subject property are satisfied from a permanent groundwater well that was drilled on the property. Grove Farm Properties (i.e., the previous owner or the property) had drilled several exploratory wells in the vicinity. One of which was developed by KHS on the

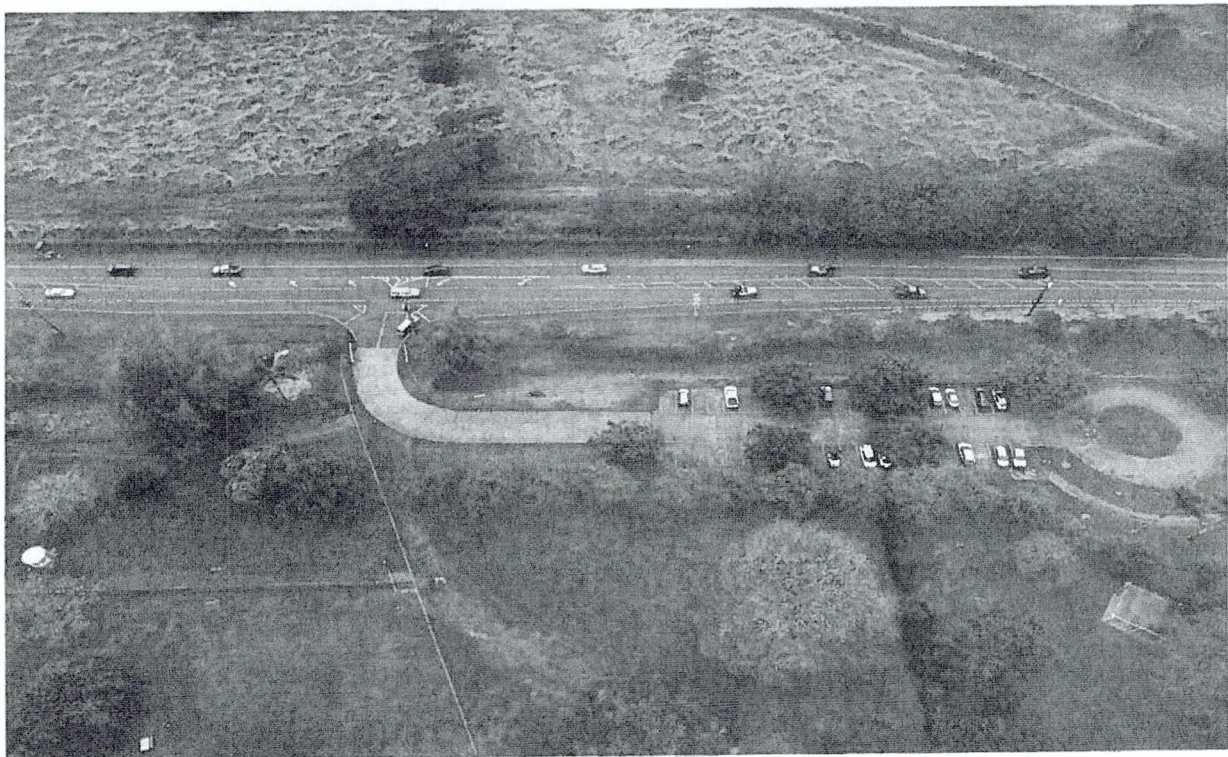
subject property. It currently provides adequate flow and quality for domestic purposes, and is a permanent water well. If additional water volumes are required to support KHS operations in the future, KHS will undertake the requisite work to develop another permanent well and water storage on the property.

4. **Roads** - The property is adjacent to and is accessed from Kaumuali'i Highway as shown in the aerial photo below. Kaumuali'i Highway is a "state road" and is under the jurisdiction of the State Department of Transportation, Highways Division (DOT). All improvements on the subject property have been implemented in compliance with DOT requirements.

Entering the Property from Kaumuali'i Highway. When traveling on the highway in the easterly direction there is a blinking yellow light indicating a dedicated right turn lane into the property. When traveling on the highway in the westerly direction there is a blinking yellow light indicating a dedicated left-hand turn lane into the property.

Exiting the Property to Kamuali'i Highway. There is a stop sign at the exit of the property. To travel in the westerly direction on Kaumuali'i Highway there is a dedicated right turn lane that merges into the traffic flow of the highway heading west. To travel easterly on Kaumuali'i Highway one must first traverse the traffic traveling westerly on the highway, and then turn left to enter a dedicated lane that merges into the flow of the highway heading east.

A paved and striped area is located immediately upon entering the property for mobile transport and for parking vehicles.



The addition of the Thrift Store is not expected to materially affect the quantity or flow of traffic entering or exiting the property from Kaunalihi Highway. KHS clients who visit the KHS Shelter would likely not make an extra trip solely to visit the thrift store. Also, the relocation of the thrift store from the Puhi Industrial Park to the KHS Shelter is expected to result in a net zero impact on the quantity of traffic using Kaunalihi Highway.

The Kauai Humane Society has always and will continue to work cooperatively with DOT regarding issues or concerns regarding roads in the area.

5. **Police and Fire Protection** - The project area is currently served by the Kauai Police and Lihue Fire Departments. Response time for both services is estimated at 6-8 minutes during non-peak traffic periods, and 15-minutes during peak traffic hours. This is considered to be adequate. No additional police officers have been required to service the KHS facility since the site began development in 2000, and no additional police officers will be required for the retail store operation. Fire service to the property area is from a standpipe system installed on-site during initial construction of the project.

REASONS AND JUSTIFICATION FOR AMENDMENTS TO THE SPECIAL PERMIT AND USE PERMIT

Remote management and operation of Bloomingtails has proven to be problematic over the years.

- It has proven to be extremely inefficient from a managerial perspective to have clerical and first-level supervisory personnel located at the thrift store, and to have management staff and accounting located in the administrative offices at the KHS Shelter Facilities.
- There have been numerous incidents of employee theft and vandalism. Locating Bloomingtails on the subject property adjacent to KHS administrative offices and utilizing a common parking lot is highly desirable. It is expected to provide greater managerial control, increased donations, and more income.
- Maintenance of the leased facilities (at the current and prior locations in the Lihue Area) have been problematic. Leaky roofs have resulted in flooding and irreparable damage to commodities and goods-for-sale housed in the thrift store. Landlords have not responded very promptly or cooperatively on several occasions over the years.

Co-locating all of KHS operating groups at one location would be highly desirable for employees, business management, and for clients/customers of KHS. Moreover, it would be convenient for Bloomingtails customers who also have interest/need to visit the other parts of the KHS Shelter Facility at the same location.

Hawaii Revised Statutes, Chapter 205, Section 205-5, states that uses other than those specifically listed as permissible "may be allowed by special permits." Since the proposed thrift store is not specifically listed as a permissible use within the State Agricultural District, amendments to Special Permit 95-15-5 and Use Permit U-95-40 are being sought. Hawaii Administrative Rules, Title 15, Subtitle 3, Chapter 14, Subchapter 12, Section 15-15-95(b) establishes guidelines for "certain unusual and reasonable uses within agriculture ... district(s) which may be permitted." The proposed new use, a thrift store integral to KHS operations, has been evaluated in view of these guidelines as follows:

- (1) **The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205/4, HRS, and the rules of the Commission.** The purpose of the State Land Use District Regulations, Chapter 205, HRS, is stated as being "intended to preserve, protect, and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare." Section 205-2 specifically states that "agricultural districts shall include activities and uses ... related to animal husbandry" along with "services and uses accessory to the above activities including but not limited to living quarters or dwellings..." Over its 70+ years of operation on Kaua'i, the Kaua'i Humane Society has clearly demonstrated its work and facilities are related to the field of animal husbandry. Moreover, the KHS Shelter Facilities that have been operating at its present location, on the subject property, have proven to be an ideal location to serve the greater Kaua'i community. It is relatively remote, easily accessed from a major highway, and situated away from residential areas where animal noises could be a source of irritation. Furthermore, the KHS Shelter Facility performs a public function for the County of Kaua'i in terms of animal welfare and investigative support. In terms of animal control, KHS picks up deceased animals for cremation and proper disposal, and routinely responds to calls to control stray dogs or nuisance animals. KHS retrieves these animals and provides medical attention, temporary shelter, and adoptive services. KHS also responds to complaints of animal cruelty and/ or neglect for all animals, small and big, on Kaua'i. The KHS Shelter Facility also plays a major role in helping to limit the animal population on the island. In 2023, KHS performed approximately 3,000 low-cost or free spay/neuter surgeries for animals in their care and for pets owned by Kaua'i residents. KHS also offers low-cost vaccination clinics to pet owners. These functions unquestionably are in the interest of the public's health and welfare. Thus, this application is consistent with the objectives of the State Land Use Regulations, Chapter 205, HRS.
- (2) **The desired use would not adversely affect surrounding property.** The use of the property for the KHS Shelter Facility over the past 20+ years has not adversely affected surrounding property. As was mentioned above, the site is surrounded by agricultural uses on three sides. As has been the case since the KHS Shelter Facilities were constructed, the existing cane haul roads and their functions have not been affected, in part, because the KHS facilities are accessed solely from Kaumuali'i Highway. Care has also been taken to preserve the function and capacity of the existing agricultural irrigation ditch which runs along the property boundary. All exercising of animals is contained within the property boundary, no trails are provided through surrounding areas, and the property is secured so that no access is afforded to the abutting agricultural areas or abutting cane haul roads. Similarly, no access is afforded to the gully north of the property. Thus no adverse environmental effects upon surrounding agricultural resources have been experienced. These approaches to management of the property would continue in the future.
- (3) **The use would not unreasonably burden public agencies to provide roads and streets, sewers, water drainage, school improvements, and police and fire protection.** As discussed above under "AVAILABILITY OF PUBLIC SERVICES AND FACILITIES," KHS has been and will continue to provide the necessary amenities, services, and facilities if they are not available at the site. The KHS Shelter Facilities will be provided with adequate public services and facilities at no incremental cost to the County of Kaua'i or State of Hawai'i. Upgrading of roads,

sewers, or drainage facilities are not anticipated to be needed. Development of the water system including fire protection, as necessary, has been and will continue to be performed by KHS. Since the KHS Shelter Facility has not and will not generate additional residential population in the area, school improvements are not applicable or needed.

- (4) **Unusual conditions, trends and needs have arisen since the district boundaries and rules were established.** Over the past twenty (20) years the number of animals the Kaua'i Humane Society handles has increased, with annual intakes currently at approximately three thousand (3,000) per year. Dogs and cats are primarily serviced by KHS. However, other species of the animal population are handled depending on the circumstances, including: fowl, horses, cattle, swine, rodents, rabbits, guinea pigs, etc. For several years the KHS Shelter Facility was the home of the *Save our Shearwaters (SOS)* Program, in which thousands of native birds were rescued, rehabilitated, and released.

The KHS Shelter Facility is currently operating near its rated capacity. Moreover, the demand for boarding and veterinary services (e.g., spay, neuter, vaccines, etc.) by the general public exceeds our abilities to deliver. Accordingly, as mentioned above, KHS plans to invest, to modernize, and expand the KHS Shelter to better serve the animal welfare needs of Kaua'i including a new boarding facility, and in the future a community clinic. At the same time the relocation and building of the proposed thrift store on the property would enable full integration and managerial control of all important aspects of the non-profit business.

From a locational standpoint, the KHS Shelter Facility at its central location on Kaumuali'i Hwy has proven beneficial in many respects. It is a reasonable distance from any established residential areas and can easily be accessed by residents and visitors from virtually any population center on the island.

- (5) **The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** Although the site is suited for agricultural use, as is evidenced by the cultivation of sugar cane for a century ending in 1994, it is an isolated plateau separated from the surrounding agricultural fields by the cane haul road, highway, and gully, which make it naturally suited for the KHS Shelter Facility. Furthermore, because KHS operations are closely related to agricultural husbandry it could be argued that the KHS Shelter Facility is "agricultural in nature," and keeping with other agricultural pursuits.

USE PERMIT AND SPECIAL PERMIT SP-95-15

As stated above, Use Permit U-95-40 and Special Permit SP-95-15 were approved by the County of Kaua'i in 1995, and is in effect today. In accordance with these permits the Kaua'i Humane Society (KHS) has invested more than \$10,000,000 in improvements (e.g., structures and operating facilities), and is conducting a variety of animal welfare uses at the property.

The purpose of this Application for Amendment to Use Permit U-95-40 and Special Permit SP-95-15, is to add a new use, that is, construction and operation of a thrift store on the property. KHS has operated its thrift store business (aka: "Bloomingtails") for the past few decades at leased commercial spaces in Lihu'e. Bloomingtails accepts donated items and

resells them at "thrift store prices." Bloomingtails also sells "KHS logo wear." Net proceeds from the sales are used to fund animal welfare services conducted on the property. The thrift store business is an integrated element of KHS' non-profit business operations. KHS has been renting retail spaces in different parts of the Lihu'e Area. This business arrangement has proven to be costly over the years due to high rents, high facility maintenance costs (e.g., leaky roofs), extra security costs, turnover of employees, theft, and difficulty with not having centralized managerial control. It is expected that KHS customers will welcome having Bloomingtails at the same site as the rest of KHS operations, and it will result in increased sales and net revenues for the benefit of KHS animals.

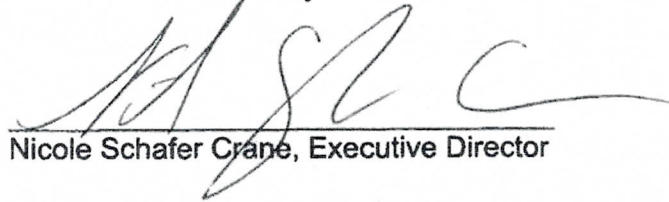
CONCLUSION

Based on the foregoing discussion and exhibits, it can be concluded that an amendment to the existing Special Use, Variance and Class IV Zoning Permit for inclusion of a thrift store at the present site of the Kaua'i Humane Society site on approximately 10 acres of land located at Haiku, Kaua'i, Hawai'i, that is owned by KHS is justified, reasonable, and meets the standards for such requests.

Accordingly, the Kaua'i Humane Society respectfully requests a favorable decision by the Planning Commission for the County of Kaua'i.

DATED: Kaua'i, Hawai'i, this July 26, 2024

Kaua'i Humane Society



Nicole Schafer Crane, Executive Director

EXHIBIT 1

Use Permit U-95-40

Variance Permit V-95-13

Special Permit SP-95-15

Class IV Zoning Permit Z-IV-95-46

Tax Map Key: 3-4-05:

MARYANNE W. KUSAKA
MAYOR



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE 473
LIHUE, KAUAI, HAWAII 96766

DEE M. CROWELL
PLANNING DIRECTOR
IAN K. COSTA
DEPUTY PLANNING DIRECTOR
TELEPHONE (808) 241-6677
FAX (808) 241-6699

July 13, 1995

COPY

Ms. Sherry Hoe, Executive Director
Kauai Humane Society
P. O. Box F
Hanapepe, HI 96716

SUBJECT: Use Permit U-95-40
Variance Permit V-95-13
Special Permit SP-95-15
Class IV Zoning Permit Z-IV-95-46
Tax Map Key: 3-4-05: por. 3 Haiku, Kauai

The Planning Commission, at its meeting held on July 13, 1995, approved the subject permits to construct and operate an animal shelter consisting of an administrative building, barn, training center for the visual and hearing impaired, stage area, parking lot, pet cemetery, and single family residences; and for a variance to deviate from CZO Section 8-7.4(c) regarding the one-time agricultural subdivision limitation. Approval is subject to the following conditions:

1. The operation shall be restricted to activities solely conducted by the Kauai Humane Society non-profit organization. Such activities shall be limited, as represented by the applicant, to administrative and educational activities, occasional fund-raising events, animal caretaking and disposal, related veterinary services, training animals for visual and hearing impaired assistance, pet cemetery, and employee housing.
2. The Applicant shall comply with the recommendations made by the Department of Transportation in their letter of May 3, 1995, to the Planning Department.
3. The applicant shall resolve and comply with all applicable conditions as recommended by the Water, Fire, and Public Works Departments, and with the State Department of Health.

Ms. Sherry Hoe, Executive Director
Page 2
July 13, 1995

4. The Applicant shall:

- (a) resolve all road widening setbacks, reserves, easements and agricultural accesses with the landowner and various departments prior to final subdivision approval, and designate those required on the final subdivision map;
- (b) devise a plan with the landowner to co-ordinate any activities with those of surrounding parcels which may create a hazard or nuisance to facility users or the general public; and
- (c) obtain the review and approval of the Planning Department, and any other applicable agency, should any use of the highway access by other than project-related traffic be proposed.

- RECORDED
@ LANDS CT.
July 26, 2000*
- 5. Prior to building permit application, final subdivision approval shall be obtained for the consolidation and resubdivision of the subject parcels.
 - 6. Prior to building permit application, the Applicant shall submit to the Planning Department for review and approval a revised site plan which designates the required highway improvements and setbacks as recommended by the DOT; any other setbacks, easements, reserves or accesses; a landscaping buffer between the facility and the highway; and dwelling units the number of which shall not exceed that determined in final subdivision approval.
 - 7. Dwelling units, including the training center, shall be occupied only by employees of the facility and their families, or persons associated with the facility, and shall not be used for general rental income purposes.
 - 8. Relative to the three remnant parcels, the Variance shall be allowed provided that any subdivisions of the remnant parcels shall comply with the provisions of CZO Section 8-7.4(b)(2).
 - 9. The Applicant is advised that intensive agriculture, which entails dust, the use of pesticides, and other nuisances associated with agricultural uses, occurs within the surrounding area. The approval of this permit shall not limit or prevent the continuation of intensive agricultural activities within the immediate surroundings.

Ms. Sherry Hoe, Executive Director
Page 3
July 13, 1995

10. Approval of this permit shall not be used as a reason to justify additional non-agricultural uses within the surrounding Agricultural District.
11. Prior to or at the time of building permit application, the applicant shall remit payment of an Environmental Impact Assessment Fee. The fee shall be based on \$100 per parking stall required for office and classroom use, and \$250 for each dwelling units, with an exemption for the first unit.
12. The applicant is advised that additional government agency conditions may be imposed. It shall be the applicant's responsibility to resolve those conditions with the respective agency(ies).
13. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should adverse environmental impacts be created that cannot properly be addressed.



DEE M. CROWELL
Planning Director

cc: Greg Kamm, Grove Farm Properties, Inc.
Public Works Dept.
Water Dept.
State Health Dept.
Historic Preservation Div.-DLNR
Fire Dept.
Kauai Highways Div. - DOT
Land Use Commission
Ofc. of State Planning
Dept. of Agriculture
Real Property Div.

PALMS



HAWAII
ARCHITECTURE

Ulukou Professional Building
2970 Kala Street, Suite 210
115
Ulukou, Hawaii, 96766
Tel: (808) 246-4730
Email: palms@palms-hawaii.com

Client	Address	City	State	Country	Project	Contract	Number	Page	Date

Kaui Humane Society
TMK: 3-4-005-017

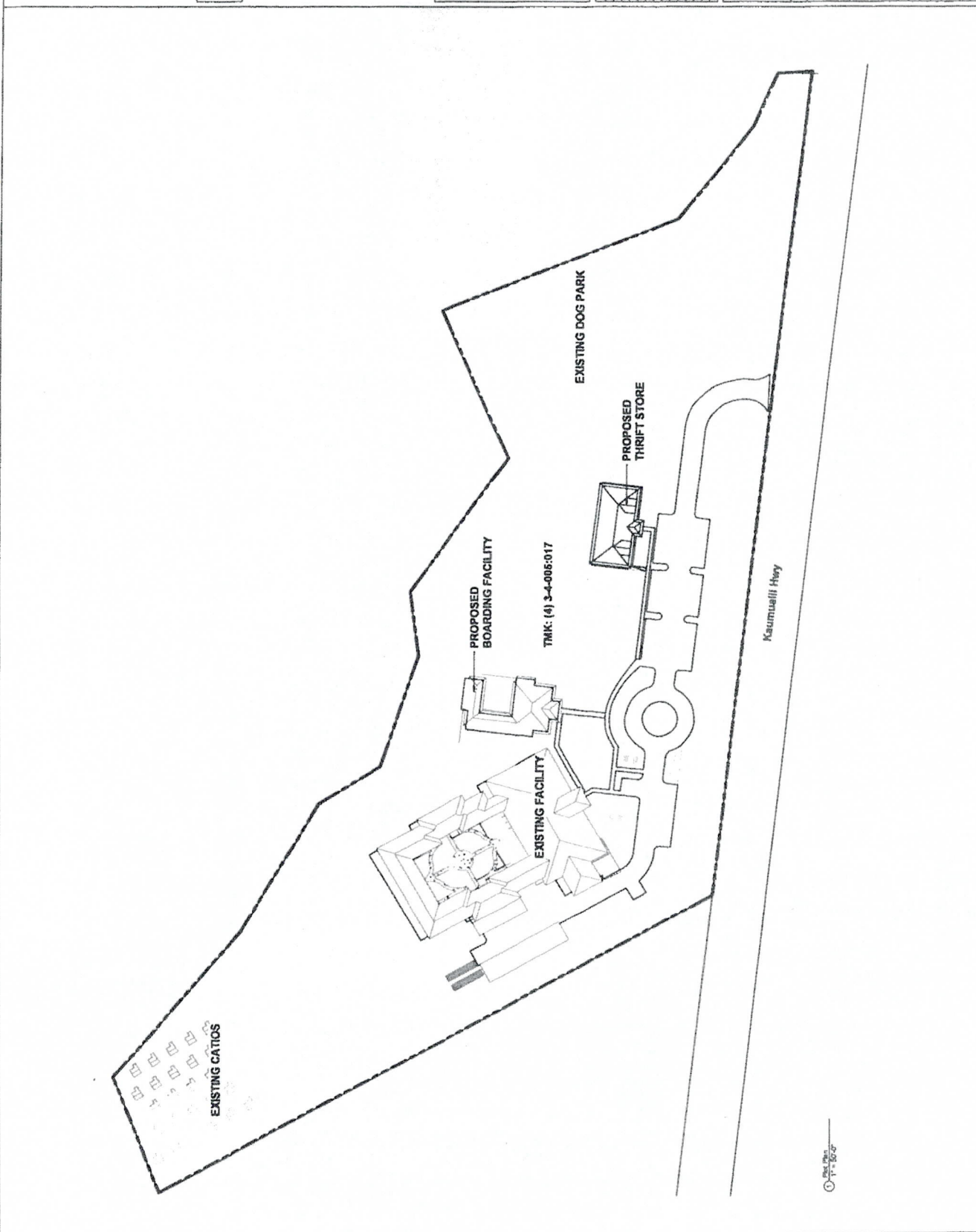
3-1850 KAUHAHAU HWY
UNAIKI 96766

Plot Plan

Project Name
Date
Drawn By
Checked By

07/23/2024
AJB/BC
AO

Scale: 1" = 50'-0"



Scale: 1" = 50'-0"

PALMS



HAWAII
ARCHITECTURE

1116 Kaiulani Dr. #202
2370 Koa Street, Suite 2
115
Honolulu, HI 96816
Tel: (808) 246-4756
Email: palmshawaii.com

Client: _____
Address: _____
Phone: _____
Fax: _____
City: _____
State: _____
Zip: _____
Contract #: _____
Project Name: _____
Architect: _____
Date: _____

No.	Description	Date

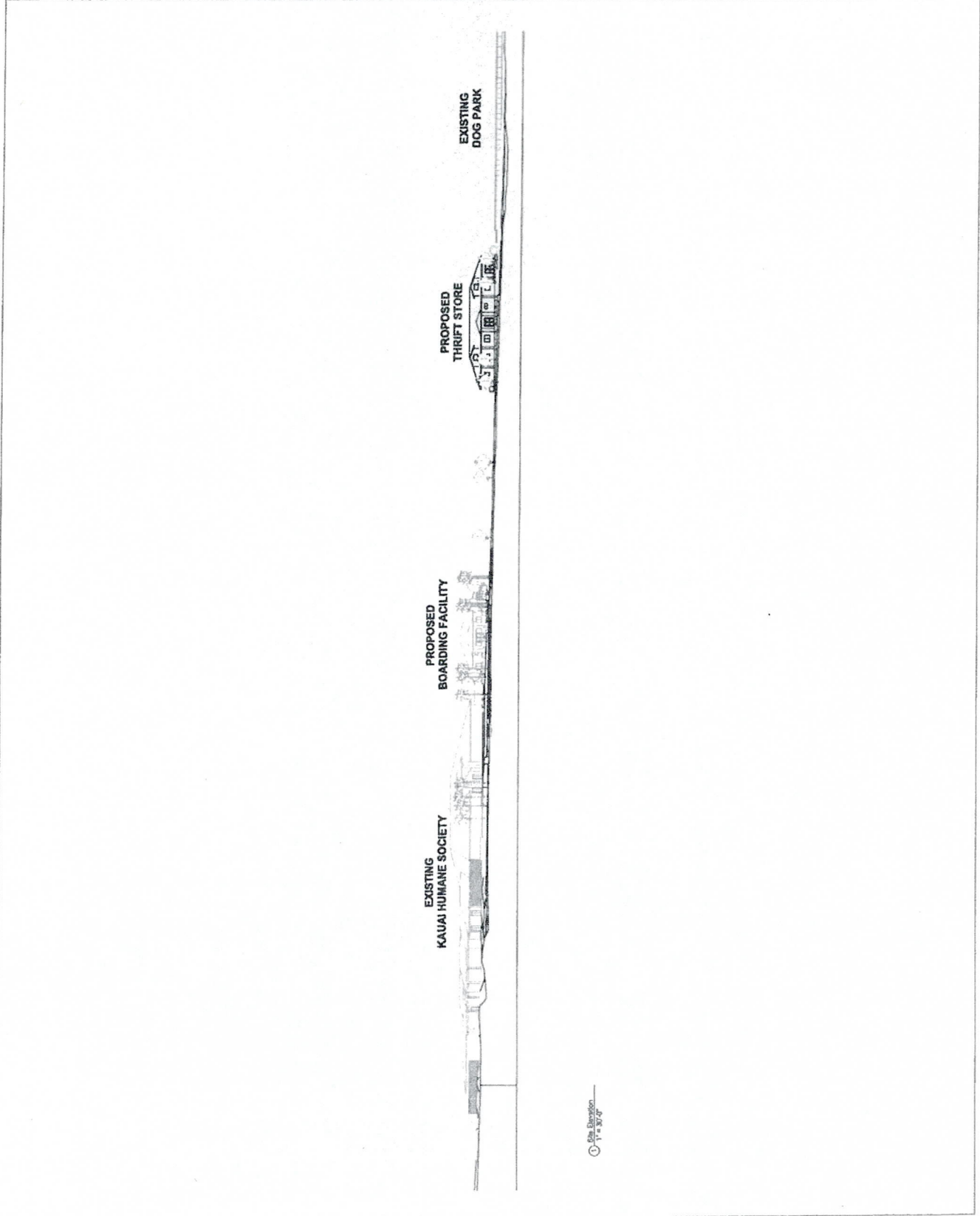
Kauai Humane Society
TMK 3-4-005-017

3-1-850 KAUAI UNIVERSITY
LOT 16 8C756

Site Elevation

Project Name: _____
Date: 07/22/2014
Drawn by: _____
Checked by: _____
C2

Scale 1" = 30'-0"





1312 Perimeter Building
2370 Kaka Street, Suite F
Lanikai, Hawaii, 96766
Tel: (808) 246-4755
Email: palmshawaii.com

Consultant
Address
Phone
Fax
Email
Consultant
Address
Phone
Fax
Email

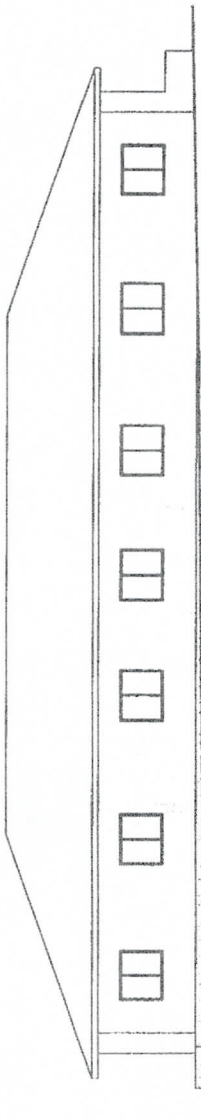
No.	Description	Date

Kauii Humane
Society
TMK 3-4-005-017
3,150 KAUII HWY
LITTLE NECK, HI

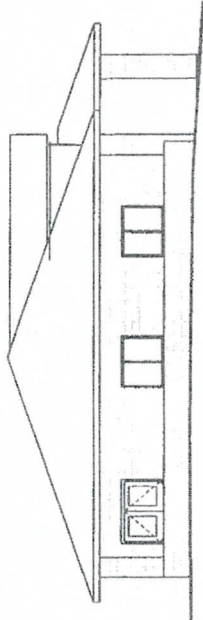
Thrift Store
Elevations

Project name
Date
Drawn by
Checked by
Circulator

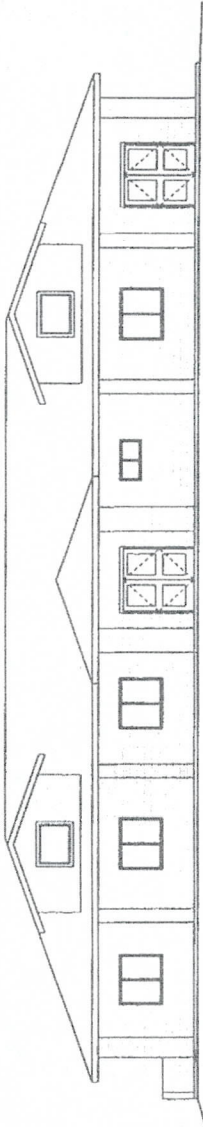
A34



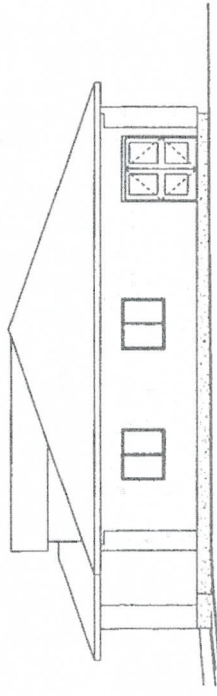
1 Thrift Store North
3/16" = 1'-0"



2 Thrift Store West
3/16" = 1'-0"



3 Thrift Store South
3/16" = 1'-0"



4 Thrift Store East
3/16" = 1'-0"



Ka Pa'akai Analysis

Native Hawaiian Traditions, Customary Practices and Perspectives of
Ha'ikū Ahupua'a Moku o Puna, Kaua'i Island

for
TMK (4) 3-4-005: 017

Prepared for

KAUAI HUMANE SOCIETY

Prepared by

Exploration Associates Ltd.
Līhu'e, Kaua'i

June 2024

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Introduction

At the request of the Kauai Humane Society, Exploration Associates (EAL) conducted a Ka Pa'akai analysis of a 10-acre parcel (TMK (4) 3-4-005: 017 which is in the Ha'ikū Ahupua'a, Līhu'e or the traditional district of Puna District on Kaua'i Island (Figures 1 - 3). Hereinafter referred to as "project area". The project area is located within Ha'ikū Ahupua'a located on the mauka side of Kuhio Highway just west of Lihue. The project area is zoned Agricultural. The County Planning Department requires all land permits address the proposed project's effects on traditional Hawaiian practices, customs, and beliefs. This Ka Pa'akai analysis provides information pertinent to the evaluation of the proposed project's cultural impacts.

The built environment of the project area is fenced with one main animal shelter facility and catios in the mauka side of the main facility, paved parking and a dog park with manicured lawn grass and landscaped vegetation. The project area is bordered by Ka'umuali'i Highway on the south. The Kauai Humane Society is planning to develop three new facilities: a boarding facility, a community clinic and a thrift store within the existing project area (Figure 4 - 6).

Methodology

Methodologies guided by indigenous Hawaiian cultural perspectives and intellect were used to conduct this study. It is always imperative that traditional values of *aloha* and *hō'ihi* (sincerity, love, and respect) are ever present in the actions of the research and investigative team that engages with the natural environments, resources, people, and communities from which/whom information will be gathered for this work. Special focus and attention is given to the examination of the land, water and atmospheric features that are applicable to the study project area and all lands and environments associated with it.

At the onset of this project, EAL entered this work with much enthusiasm and confidence of already "knowing" this place. Even with a limited window of time to conform to, EAL knew that only a little had been documented to bring forth the values and depth of traditional Hawaiian knowledge and customary practices of Ha'ikū 's ancient past. Information and personal experiences that EAL possessed provided an advantage to accomplish the task of completing this Ka Pa'akai analysis.

Much of the effort in conducting studies such as this is to review and evaluate the land allocated for the project area and any possible adverse influences and consequences relating to indigenous Hawaiian beliefs and practices.

Scope of Work

- (1) The identity and scope of valued cultural, historical, or natural resources that are found within the proposed project area and relevant areas within the ahupua'a of Ha'ikū, including the extent to which traditional and customary Native Hawaiian rights are exercised.
- (2) The extent to which those resources – including traditional and customary Native Hawaiian rights – will be affected or impaired by the proposed action.
- (3) The feasible action, if any, to be taken by the agency to reasonably protect Native Hawaiian rights if they are found to exist. (Ka Pa'akai, 94 Haw. at 19, 7 P.3d at 1084.)

Environmental Setting

Kaua'i is the oldest and fourth largest of the main Hawaiian Islands. Geologically, the original volcano, located in the middle of the island went through a period of weathering and erosion. There were voluminous rejuvenated stage lavas which represent the later eruptive stages of the volcano (MacDonald 1960). The primary basaltic rocks from the original volcano are the Waimea Canyon series. The innumerable lava flows are divided into three major geologic formations: the Napali formation, the Olokele formation, and the Makaweli formation. The Napali formation of the Waimea Canyon series is the most permeable of the three.

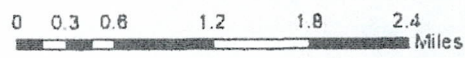
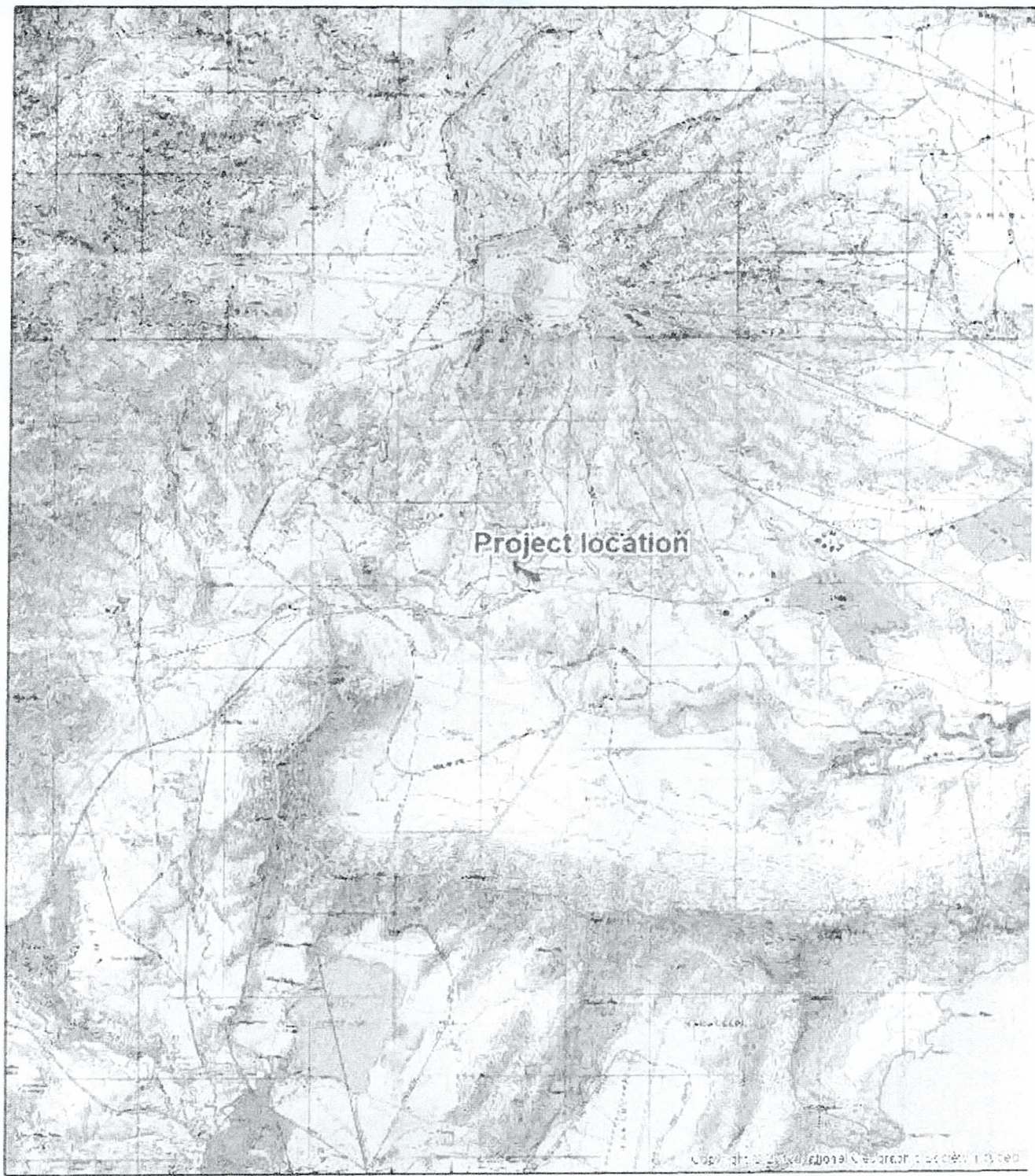
Kaua'i generally receives abundant rain with major stream activity. The project area receives a mean annual rainfall of approximately 1,435 millimeters (mm) (56.5 inches), with wetter months November through March (Giambelluca et al. 2013).

The project area is at an elevation of 315 to 330 feet above mean sea level and the topography is relatively flat. The soils underlying the project area (78.9%) is characterized as Puhi silty clay loam 3 to 8% slope (PnB) in the project area (Foote et al. 1972) (Figure 7). Puhi silty clay loam consists of well-drained soils on the uplands of Kaua'i which developed in material derived from basic igneous rock. PnB soil has slow runoff and a slight erosion hazard (Foote et al. 1972:115). These soil types are typically used for sugarcane, pineapple, truck crops, orchards, pasture, and homesites. Natural vegetation on Puhi silty clay loam consists of guava (*Psidium guajava*), Java plum (*Syzygium cumini*), pangola grass (*Digitaria eriantha*), kikuyu grass (*Pennisetum clandestinum*), *Elephantopus* species, joe

(*Eutocia purpureum*), yellow foxtail (*Setaria pumila*) and rhodomyrtus (*Rhodomyrtus tomentosa*). Kapa'a silty clay with 3 to 8 percent slopes make up 20.9% of the project area.

The project area is located in the uplands of Ha'ikū on the flat, gently sloping lands beneath the southeastern flank of Kilohana Crater. It is just west of Līhu'e, the county seat of Kaua'i. Little is known of traditional land use in the surrounding area due to modifications to the land and waterways for commercial sugarcane cultivation as early as the mid - 19th.

The generalization and clustering of traditional places to common districts (i.e., Kona, Puna (Ha'ikū, Kīpū, Niūmalu, Nāwiliwili), Līhu'e, etc.) has become acceptable, widespread practice in the western framework of identifying and relating to places on Kaua'i. Therein lays an example of how easily a traditional Hawaiian land area or division can be incorrectly identified, misunderstood, and misinterpreted as a significant place of its own.



Haiku, Puna



Figure 1 USGS Map of the Project area within the Ha'ikū Ahupua'a.



Figure 2. Aerial of the Project Area Highlighted in Red.

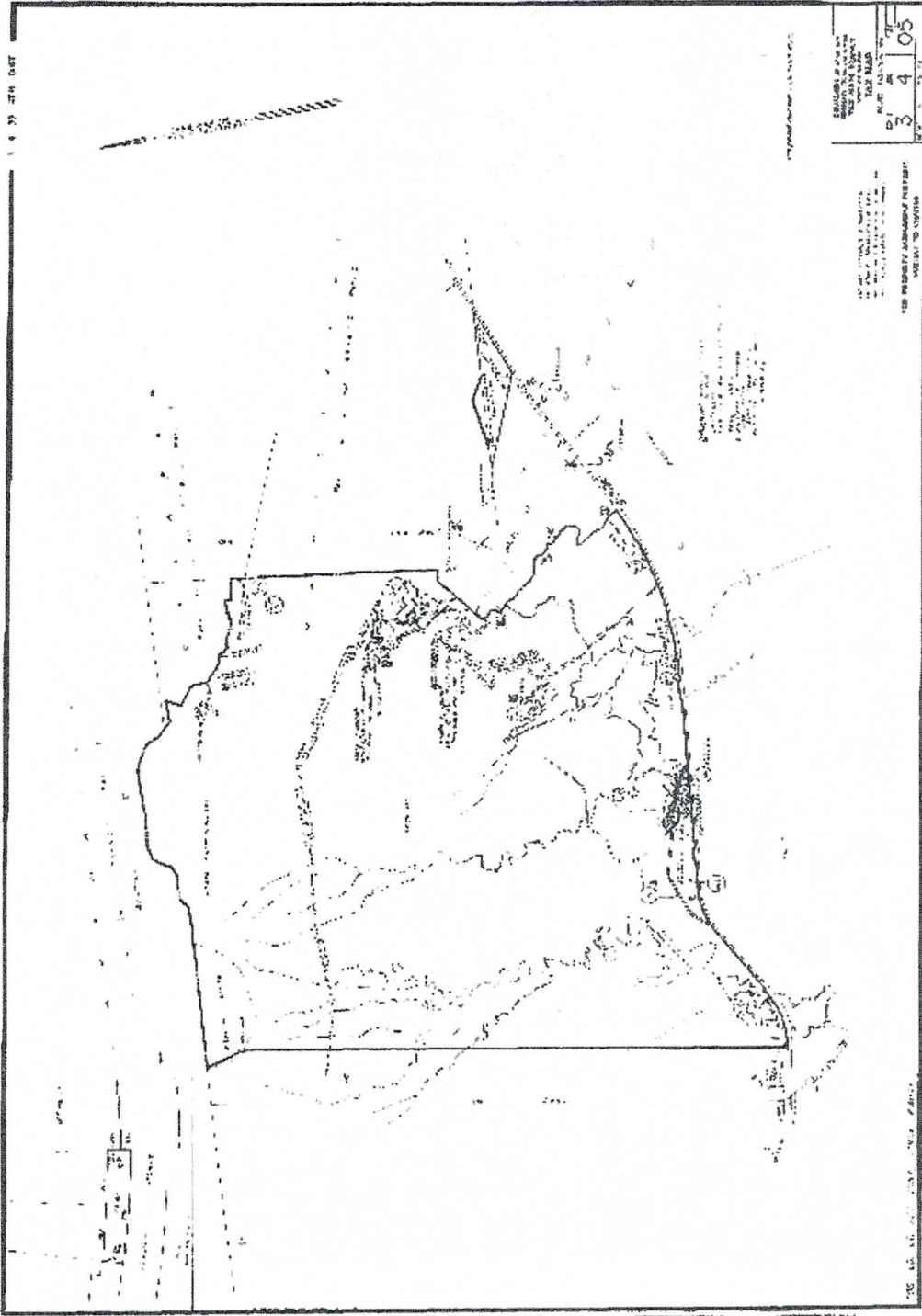


Figure 3. Tax Map Key in red (4) 3-4-005: 017.

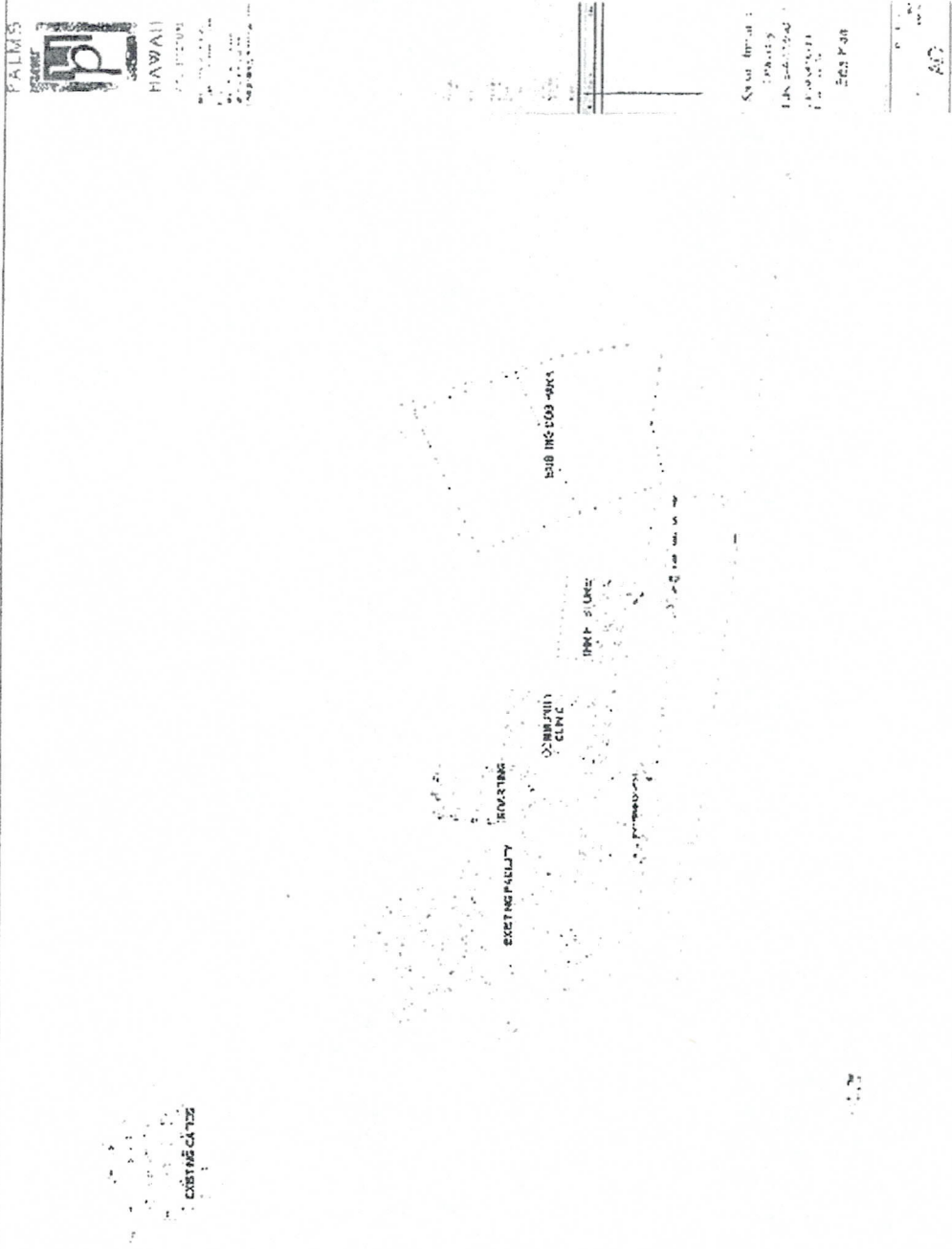


Figure 4. Plot Plan of the Project Area

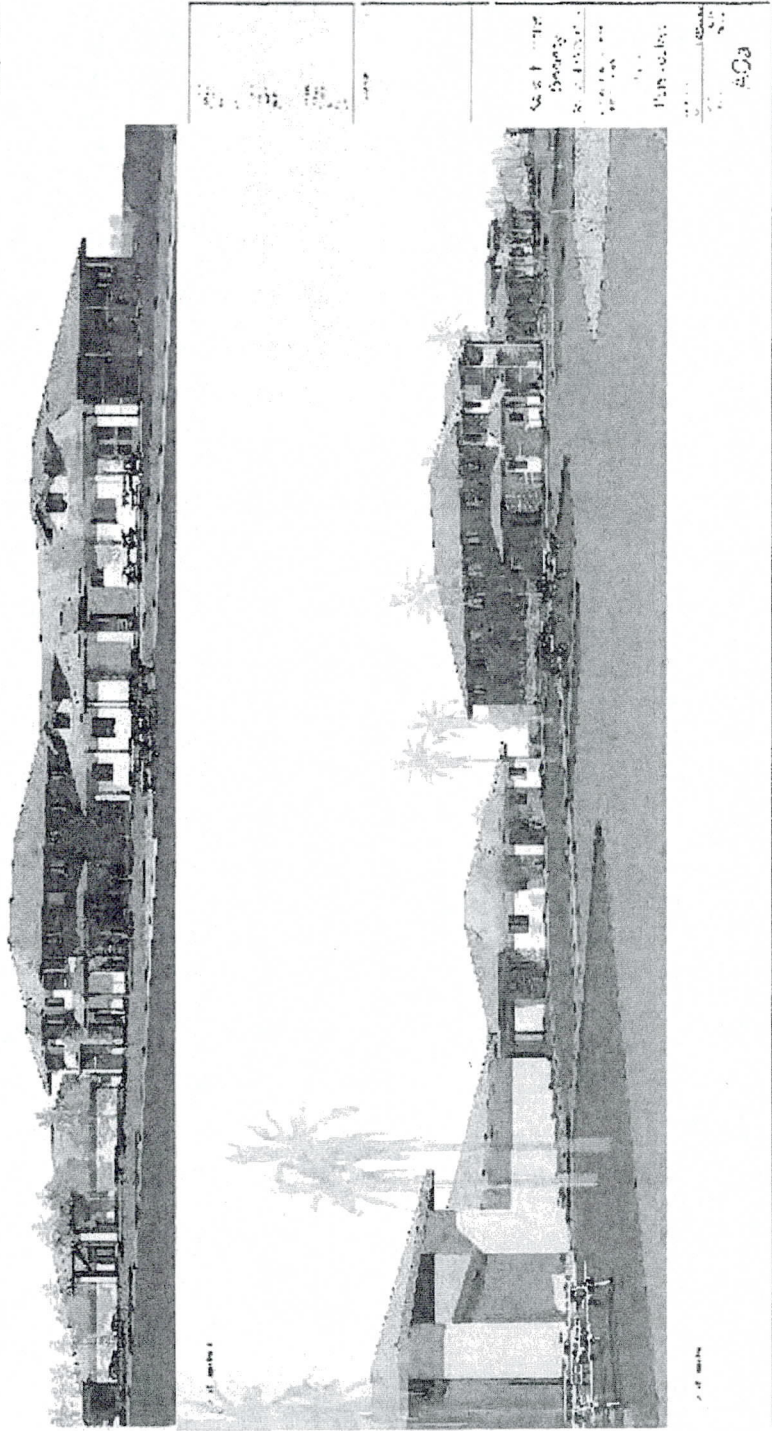


Figure 5. Schematic Elevations.

PALMS HAWAII 		SCALE: 1" = 100'	
PROJECT: Palms Hawaii Project		DATE: 12/2006	
DRAWN BY: J. [Name]		CHECKED BY: K. [Name]	
PROJECT NO.:		SHEET NO.:	

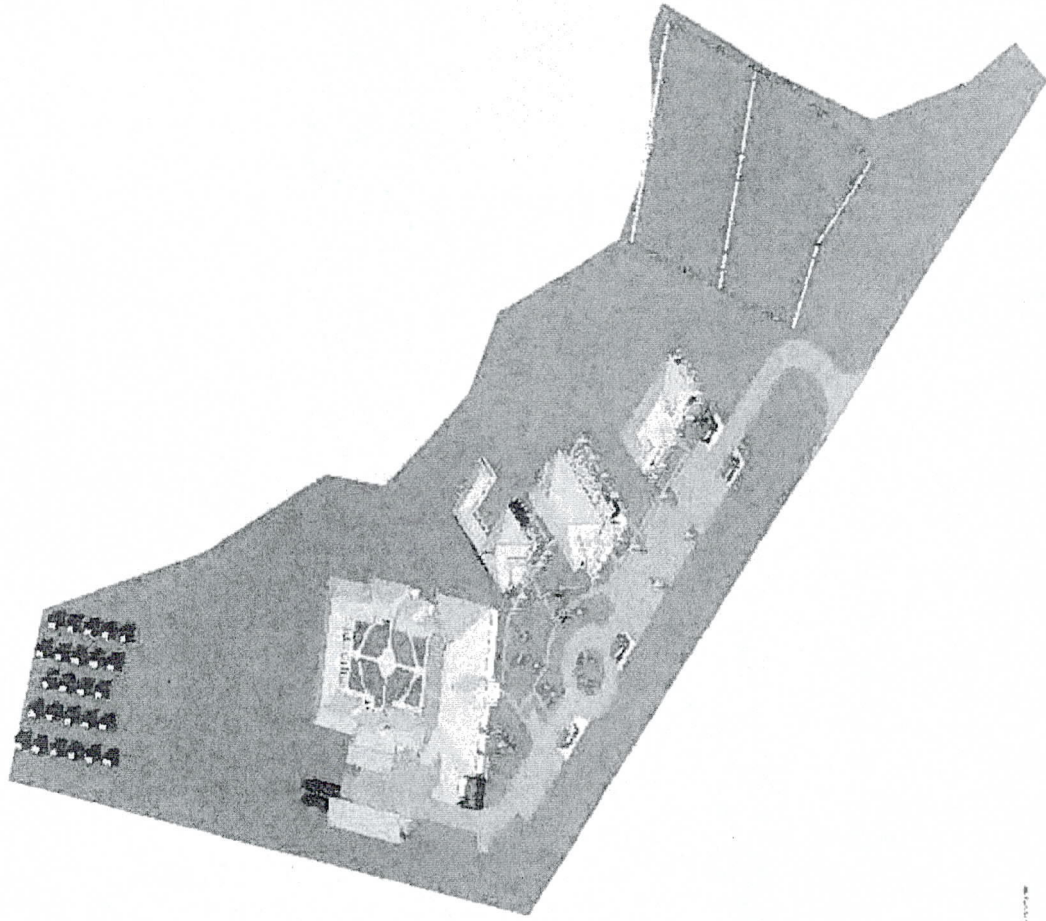


Figure 6. Project Area Perspective.

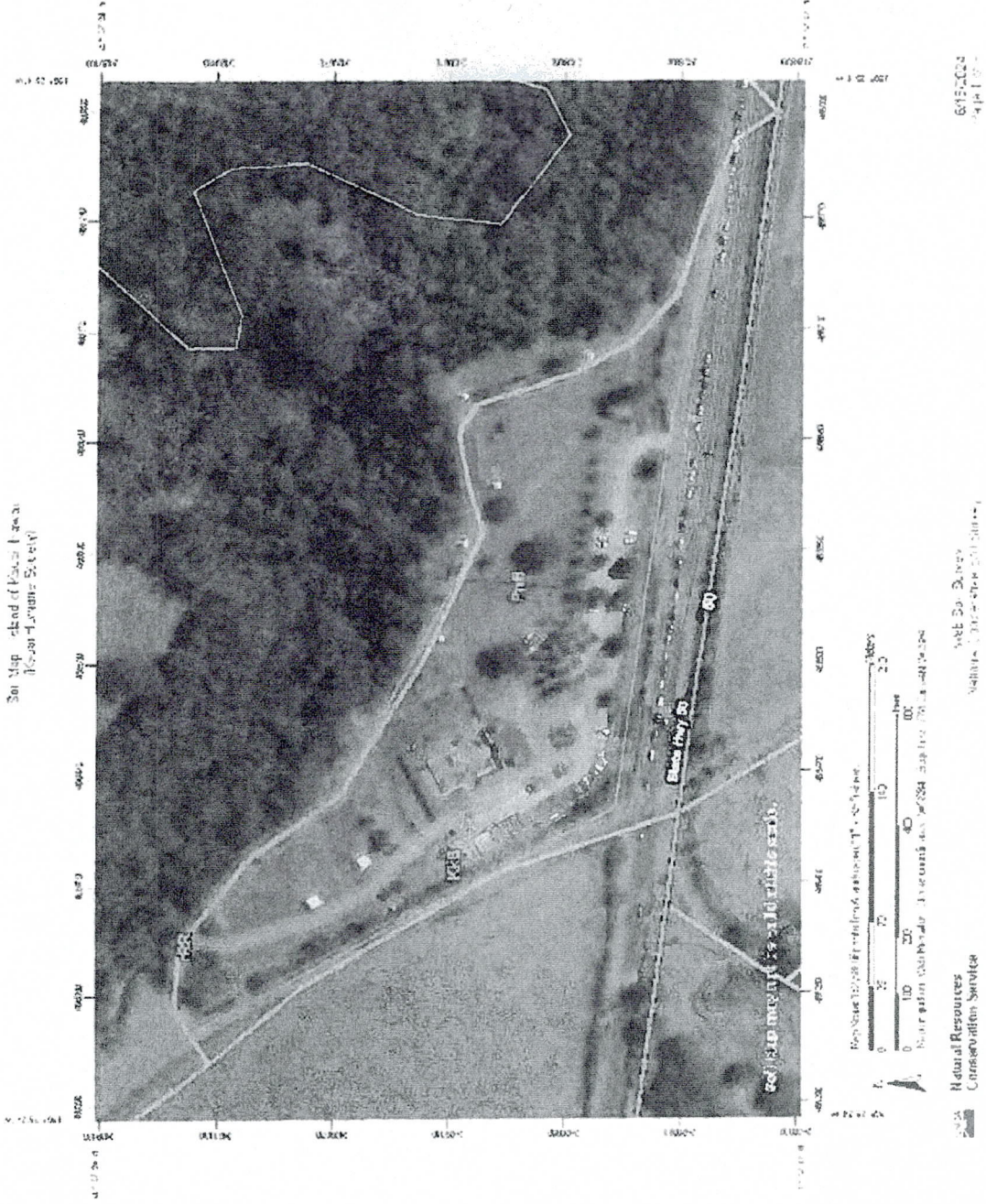


Figure 7. Soils map for project area.

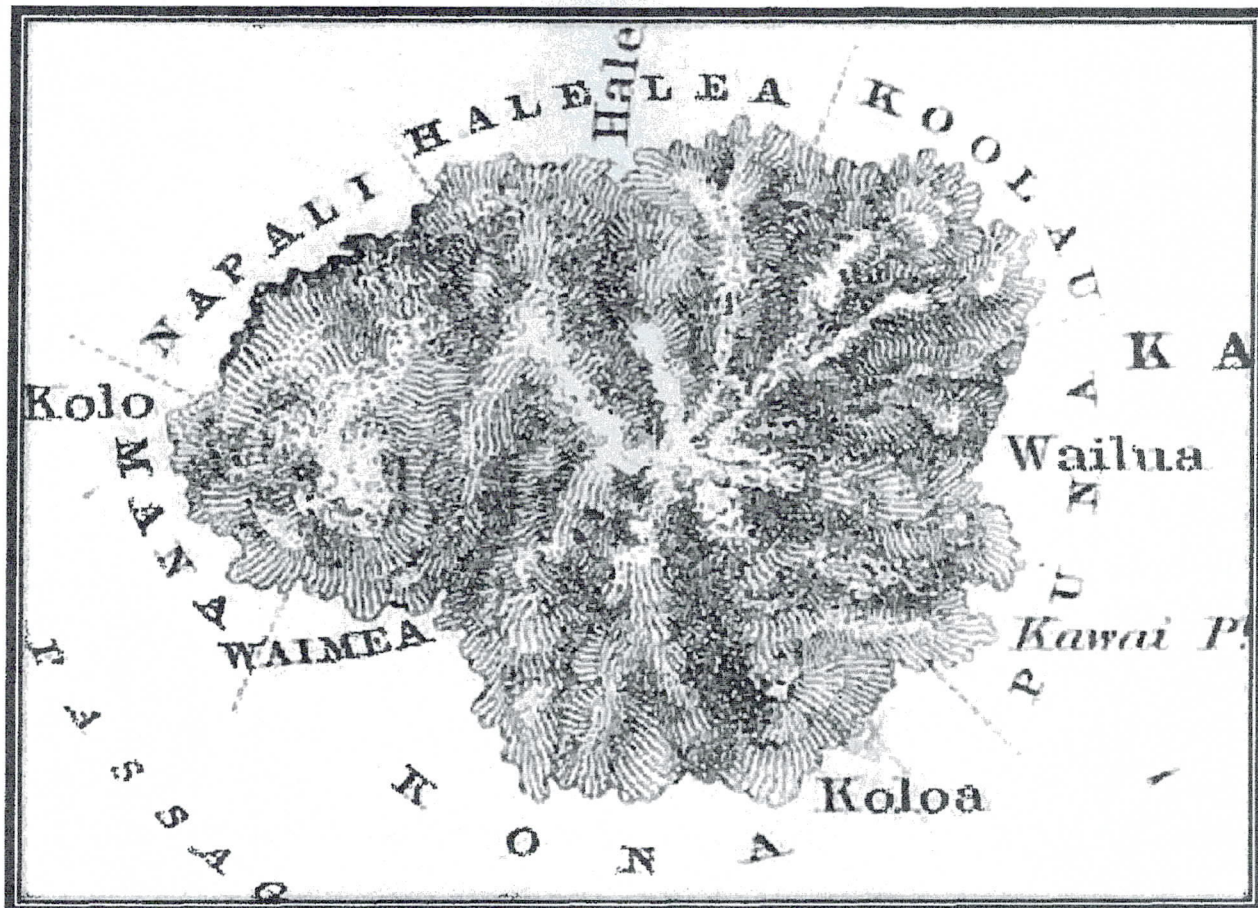


Figure 8. 1845 Map of Kaua'i by Charles Wilkes for U.S. Mapping Expedition. Note that it shows 6 moku or districts including Puna, Ko'olau, Halele'a, Nā Pali, Kona and Mānā. Typically, Kaua'i is divided into 5 moku. Mānā is usually considered as part of the Kona moku.

Geologically, Kaua'i is the northwestern-most main island, with O'ahu as its closest volcanic sibling separated by the tempestuous Ka'ie`ie Channel which is more than 72 miles long. In centuries past, Kaua'i's isolation from the other islands kept it safe from outside invasion and unwarranted conflict.

Cultural Overview

Poetically the island is called, "Manōkalanipō", or "Kaua'i a Manō" after the ancient chief who was largely responsible for elevating Kaua'i's ancient society to sophisticated heights of advancement and productivity. For centuries, from the time of Manōkalanipō's reign, through Kamehameha's unsuccessful attempts to invade Kaua'i in 1796 and 1804, Kaua'i remained free from warfare.

In 1810, Kaumuali'i accepted Kamehameha as the supreme ali'i by peacefully ceding Kaua'i to the newly United Kingdom of Hawai'i. With honor, Kaumuali'i was encouraged to return to rule on Kaua'i as its tributary chief under Kamehameha I.

In accordance with the ancient land division system, an entire island is referred to as a *mokupuni*. While the word, *moku* by itself can also mean island, it is a term that is more specifically used to identify a district. *Puni* means, *controlled, surrounded, to gain control of*. It comes from the word, *aupuni* which is used to describe a government, kingdom, dominion, nation, or population that is governed or under the leadership of a ruler. In ancient times, a *mokupuni* could include an entire island as well as multiple islands that was ruled by an Ali'i Nui or paramount chief. Historically, the *mokupuni* of Kaua'i has included the islands of Ni'ihau as well as Lehua.

Kaua'i Island has traditionally been divided into 5 *moku* including: Ko'olau, Halele'a, Nā Pali, Kona and Puna. The ali'i nui appointed *ali'i 'ai moku* or district chiefs to manage the various *moku*.

Common district names that are universally used across of the Hawaiian archipelago include "Ko'olau" marking the windward sides of the islands; "Kona" - the leeward sides of the islands; and "Puna" - indicating regions where springs and fresh water abound.

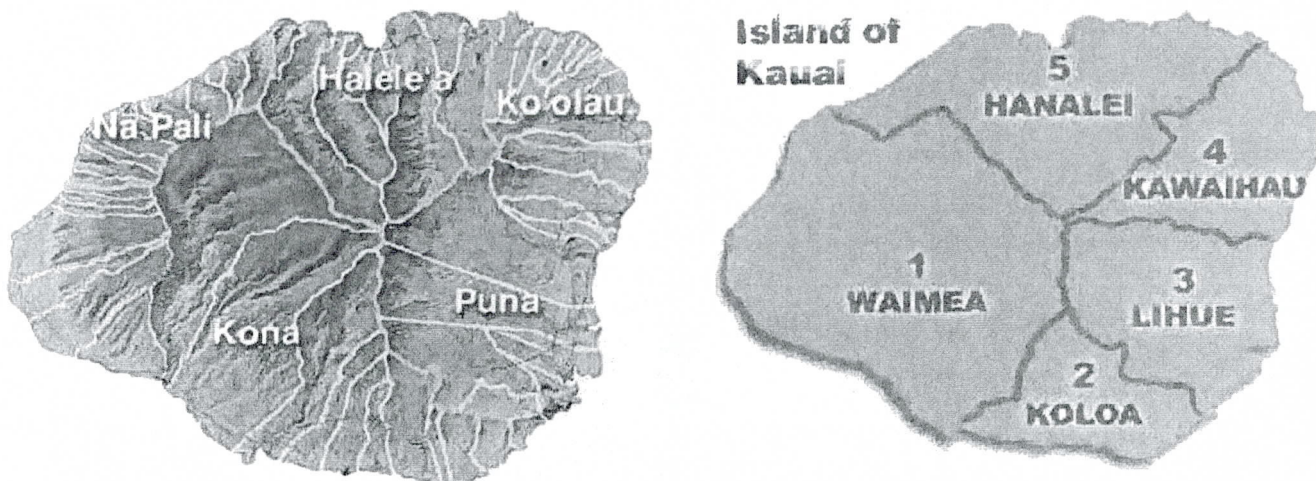


Figure 9 & 10 show Kaua'i Island Districts and Boundaries. Fig 9 on the left show the original *moku* of Ko'olau, Halele'a, Nā Pali, Kona and Puna. Fig 10 on the right show the revised boundaries and judicial land districts of Kawaihau, Hanalei, Waimea, Kōloa and Lihue.

The boundaries of the five moku on Kaua'i were changed in the late 1800s to reflect the present-day judicial land districts. The project area is situated within the traditional moku (district) of Puna, one of five districts that once divided the island of Kaua'i. These districts were further divided into 54 various ahupua'a, (land divisions). Much of the Puna District is a flat Plain nestled between the Ha'upu mountain range to the south and the Makalaha mountain range on the north. Puna is fed by four main water sources, the Hulē'ia River, the Hanamulu River, Ka'alie River and the Wailua River. Some stories say the Puna District was settled by Punanuikaianina who came to Hawai'i from the Marquesas around 1000-1100 A.D. (Fornander 1969:45-46).

Traditionally, the districts were further divided into smaller land divisions known as, *ahupua'a* which included the abundance of land and resources from the mountain to the sea. Under the direction of the ali'i 'ai moku, the *ali'i 'ai ahupua'a* or land division chief was put in charge of governing the ahupua'a. The ali'i 'ai ahupua'a appointed *konohiki* who served as the headman of the ahupua'a land division, and was solely responsible for the management of land, water and fishing rights. An ingenious concept, the ancient design of the ahupua'a system continues to be an excellent model for sustainability and land and natural resource management today. The common description that ahupua'a are "pie-shaped" is inaccurate. However, it is a general practice to apply triangulation of the 3-main boundary points of the ahupua'a when identifying its respective division lines. Additionally, ahupua'a do not terminate at the ocean ward boundary points. The boundary lines are purposely extended into the ocean so that it also includes the resources and minerals of the reef and ocean as well.

The boundaries of Ha'ikū are interesting, as they do not fit this definition. The ahupua'a of Ha'ikū is unique in that it is cut off from the ocean with its only access through the Hulē'ia River. The Hulē'ia River is a defining feature of the ahupua'a and delineates the southern boundary with Kīpū ahupua'a. Based on the location of Land Commission Awards in Ha'ikū it is likely that the traditional Hawaiian population of the ahupua'a was focused along the Hulē'ia River and its various tributaries. The uplands of the ahupua'a include the lands on the southern and southwestern flank of Kilohana Crater. Little is known of traditional land use in the uplands of Ha'ikū due to extensive modifications to the land and water made during plantation-era commercial sugarcane cultivation.

There is some question as to whether the present boundaries of Ha'ikū were those of antiquity. Damon (1931:391-393) writes that:

The irregular shapes of these ancient divisions of Ha'ikū, Niumalu, Nāwiliwili, Kalapakī, Hanamalu and Wailua were by no means

accidental. The Hawaiians, chiefs as well as people, knew their islands. From the land and adjacent waters, they drew their entire sustenance.

But then she notes (91931:392-393) that:

The ahupua'a of Ha'ikū, it will be noticed from the map, does not reach the sea and so means to be strange exceptions to the usual form of such land grants. This is due, it is said by old settlers to an error in the first survey by a foreigner, for when this was done, the Hawaiians of the vicinity immediately remarked that in ancient times Ha'ikū had always had its strip of seacoast south of the Hulē'ia River.

The remnants of traditional Hawaiian agricultural activities along the Hulē'ia River in Ha'ikū are briefly described by Handy and Handy (1972) in *Native planters in old Hawaii: their life, lore and environment* as follows:

The broad delta of the Hule'ia River is 1.5 miles long and a half mile wide and is in the ahupua'a named Ha'ikū, the next to last of the southeasterly valleys of Puna. This area was ideal for wet taro. Terraces continue upriver, and there were terraces up the streams that empty into the river. Old breadfruit and mango trees indicate that there were many Hawaiian kuleana up to 6 miles inland from the delta. (Handy and Handy 1972:427)

A major element of focus for this Ka Pa'akai analysis is based on the 'āina or land that is the project area, as well as surrounding lands and natural resources that are linked to the project area. It is important to readers of this Ka Pa'akai analysis to have a basic understanding of the ancient land division system and the various words, terms and idioms associated with Hawaiian land designation and Hawaiian land use. This is especially helpful in identifying and relating to specific locations and place names that are pertinent to this study.

Mo'olelo: Storied Origins & Traditional Places

Mo'o Ōlelo is the succession of talk; or the continuation and perpetuation of oral histories and traditions that were passed on in story and chant forms. It is from this that the word mo'olelo is derived - stories, tales, myths, legends and chronicles; records of information that was storied in the memories of Hawai'i's ancient people. Another term that is used is kā'ao - oral traditions and myths that represent the cultural truths, wisdom and experiences of kūpuna.

Throughout the Ka Pa'akai analysis, examples of traditional Hawaiian mo'olelo are presented to link the reader with traditional places, beliefs and practices

associated with the ancestral worldview of Hawai'i's indigenous Hawaiian people. Mo'olelo and kā'ao are not viewed as fanciful fairy tales or fictional stories woven to entertain. Laden with skillful use of metaphors and poetic expressions, they are invaluable sources of information that have preserved a sense of consciousness and inner connection of the *kānaka 'ōiwi* with his multidimensional world.

The general vicinity of the uplands of Ha'ikū are briefly mentioned in the Legend of Uweuwelekehau in Abraham Fornanders' *Hawaiian Antiquities and Folklore Volume. 5* as included below:

Legend of Uweuwelekehau

Ku was the father and Hina was the mother of Uweuwelekehau, and Wailua, Kaua'i was the land [of their birth]. Olopana was the first-born, then Ku came next, and the last of the family was Hina, a girl. They lived in Wailua as chiefs and rulers of Kaua'i. After a while Olopana became displeased with Ku, so Ku set out and journeyed to Piihonua, Hilo, Hawaii, where he made his home. In this journey Hina, the sister, followed Ku, as she was much attached to him, and thus left Olopana in Kaua'i by himself.

After they arrived at Hilo, Ku in accordance with the old custom took Hina to be his wife, as he was of too high a rank to take any other woman to wife; and they became king and queen of Hilo. Their bathing place was at the pool called Waianuenu. In course of time Hina conceived and gave birth to a male child, who was called Uweuwelekehau. At the birth of the child a great storm swept over the land; the thunder roared, the earth was shaken by a great earthquake, the lightning flashed, the rivers and streams overflowed, the wind blew and the rain came down in torrents.

After Uweuwelekehau was grown up into manhood it was seen that he was very handsome and pleasant to look upon. He was always accompanied by his two gods, Kane and Kanaloa. His bringing up was surrounded by many restrictions; his house was sacred; people not being allowed to pass near it upon pain of certain death.

In the meantime, Olopana lived on Kaua'i, and he too in course of time was blessed with a child, a girl, who was called Luukia. Upon hearing that Hina had given birth to a male child, Olopana made oath that his daughter should marry no one except Uweuwelekehau. Olopana then commanded the people of Kaua'i that Uweuwelekehau when he comes shall come in a red canoe, having red sails, red paddles, accompanied by large and small men in large and small canoes. When they see such a man come with these different things, then it is the sign of a great chief.

One day near the month of October while Ku and Hina were living in their home, They were possessed with the desire to go up the Wailuku river for oopu and shrimps. In this expedition they took all their servants along with them leaving Uweuwelekehau alone with his attendants. After his parents had departed on their way up the stream Uweuwelekehau set out for the Kalopulepule river to sail his canoe. As he was in the river a small cloud appeared from the sea and came on up till it stood directly above the Wailuku stream when it came down in the form of rain, flooding the whole country and causing the stream to flow in a rush to the ocean, carrying Uweuwelekehau along in its flood. This carrying away of Uweuwelekehau by the flood was caused by Kane and Kanaloa. After he was thus carried out to sea someone went up and informed Ku of the matter and he and his company returned home and a search was made, but the boy could not be found. The parents then mourned for the boy.

While in the sea Uweuwelekehau was changed into a fish through the power of Kane and Kanaloa, and by them taken to Kaua'i and left in a crevice in the rocks near the shore where the fish of Luukia was generally caught by her attendant, Papioholoholokahakai. The fish into which Uweuwelekehau was changed was of the kind called moa, a short stubby fish.

Early the next morning when Luukia awoke from her sleep she told her attendant, Papioholoholokahakai, to go down and catch her some fish for breakfast, as there was none ready for her morning meal. Papioholoholokahakai took up his net and proceeded to the beach. After three casts of his net he found that he had caught nothing. Thinking that his charge would get with him he again made another attempt, when to his delight he caught a small stubby fish, and upon closer inspection he saw that it was a good fish. He then took the fish and placed it into a calabash with some water and proceeded home. When he arrived in the presence of Luukia, he handed her the calabash which contained the fish. Luukia looked at the fish and was made glad by the shape of the fish and took and gave it to her servants with the order that it be given good care.

After the lapse of one day, one the second day, while Luukia and her attendants were asleep, the fish transformed itself into a human being, through the power of Kane and Kanaloa. When Luukia and her attendants woke up they saw a handsome young man coming to them and immediately Luukia fell in love with him, for he was indeed very comely and pleasant to look upon. Luukia called Uweuwelekehau to come closer, whereupon they came together, though they did not know each other, Kane and Kanaloa disapproved of their living together at this time.

While they were living this way, Olopana heard that Luukia was living with a husband; so he became very angry because of the promise he had made, that Luukia should have no one else but Uweuwelekehau for her husband [not knowing that this very person was the man of his choice]. Olopana then gathered all the people of Kaua'i and ordered them to come before him to hear what he had to say about Luukia and her lover, and to see for themselves who he was. As soon as the people came together in his presence, he asked Luukia: "Which would you rather have, the husband or your father?" "I will take my husband," said Luukia. Olopana then ordered his chief officer "Take off everything from Luukia and leave her naked; also take off everything from her husband except his malo." Olopana thought they were deserving of this ill treatment because his daughter had disobeyed him. Olopana then told the people of the whole of Kaua'i not to take these two into their homes nor give them food or clothing. He also commanded that they go to Mana and live, a place of spirits; no human beings lived there.

Luukia and Uweuwelekehau therefore left Wialua and journeyed to the land to which they were commanded to go live. When they reached the plains of Līhu'e, Luukia began to weep and show signs of complaint against her father for forcing her to go naked. When Uweuwelekehau saw this he said: "Don't weep; have patience until we reach that hill, where you will find a pa-u." When they arrived at the hill, they found several pa-u and all manner of kapas, which furnished them with all their wants and thus covered their nakedness. After they left the place Luukia again began weeping because she was hungry. Her husband then said to her: "Have a little patience until we reach that hill, Kohoaea, where we will find food and meat." Upon arriving at the hill they found food and meat which they ate until they were satisfied. From this place they continued on their way until they came to Mana, where they made their home.

Mana, as has been said, was the land where the spirits lived; no human beings lived there; no food or any description grew in the place; the only things that grew in the place were wild shrubs and weeds. It was also a place avoided by people, lest they be destroyed by the spirits, and it was for these reasons that Luukia and her husband were sent there.

During the night, as they slept, a house was built over them, food was provided, animals were brought to the place and all their need were supplied them. When they woke up the next morning Luukia was surprised to see these different things. The two lived on in peace in the place from this time on.

When the fishermen who were out in their canoes saw the light burning, they came ashore and were entertained by Uweuwelekehau, food and meat were given them as well as kapas and other things. Through his great kindness he stole the heart of these people who came to Mana, causing many of them to come and live there, and through their labor turned the wasteland into a rich and comfortable place. By this time these doings were reported to Olopana who was still at Wailua. In order therefore to see these things for himself and also to make up with his daughter and son-in-law, for news had also come to him that this person was Uweuwelekehau himself, because the latter had informed his wife and the people in Mana as to his identity. Olopana set out for Mana, with the purpose not only to make up, but to make his son-in-law and daughter the king and queen of Kaua'i .

The news of Uweuwelekehau being alive on Kaua'i was not by any means confined to that island alone, but it was also carried to Hawaii and to Ku and Hina. They therefore came to Kaua'i with their servants, in large and small canoes, having red sails, red cords, red paddles, red seats, red bailing cups and red men, and with everything needed for the voyage.

When the people from Hawaii arrived, they were met by a great host of people at Mana and great festivities were had. That night for the first time the tow covered by the same kapa, for Kane and Kanaloa were pleased to remove the kapu placed over their charge. Uweuwelekehau and Luukia were at this time declared the king and queen of Kaua'i . Among their first acts to commemorate their great fortune were the planting of the grove of coconut trees at Kaunalewa and the building of the temple of Lolomauna. This is the end of this legend. (Fornander 1918:192-198).

Ching et al. (1974) describes mo'olelo associated with Hulē'ia, suggesting its close pili (association) with O'ahu: The earliest mention of the [Niumalu] area is legendary dating to 1785. After Kahekili defeated Oahu a number of chiefesses of highest rank were killed. Kekelaokalani made her escape to Kaua'i bringing with her some Oahu soil, part of which she deposited at Hulaia [Huleia].

The route of the present Kaumualii Hwy runs through the "Gap" likely following the alignment of the traditional trail system that joined east and west Kaua'i . The "Gap" itself was the subject of traditional Kaua'i legends and tales (Rice 1991:53). It is believed that a trail westward from Wailua mentioned in a legend is the approximate location of the Kaua'i Belt Road, located adjacent to the project area to the south.

Further evidence that the Gap marked a well-known and well-traveled area of Kaua'i in the pre-contact times was present in testimonies by native Hawaiians during the Commission of Boundaries sessions in the 1870s. These testimonies of

the kama'aina recorded in the proceedings of the commission through the Hawaiian islands provided otherwise anonymous Hawaiians as unprecedented opportunity to display not only a comprehensive understanding, passed down through generations of the contours of the ahupua'a , but at the same time, allowed them to reveal local traditions, place names, no longer-existing sites including heiau and settlements, areas where traditional activities were practiced, and historical events they had witnessed or participated in. Testifying on the boundaries of Kōloa ahupua'a in 1874, *Hupai* stated: "The boundary of Kona and Puna (districts) was at Hoaea (i.e. Kahoea on the Ha'ikū /Kōloa border above the Gap) that was where the battle flags were hung that was when the battles were fought." (Boundary Commission, Kaua'i . Vol. 1; Hawaii State Archives). Just beyond were Hulē'ia Stream crosses under Halfway Bridge, at Kahomea, marks the boundary between what is considered Pele's domain (Puna) and Kamapua'a's domain (Kona).

The significance and merit of mo'o ōlelo - what an ingenious tradition of transmitting wisdom, knowledge, history and more through the succession of the voice conveyed through the telling of stories and the perpetuation of the art form of chants and the oral traditions that inspire the essence of indigenous Hawaiian cultural practices and beliefs.

Ha'ikū Wahi Pana

A Hawaiian wahi pana, also referred to as a place name, "physically and poetically describes an area while revealing its historical or legendary significance" (Landgraf 1994:v). Wahi pana can refer to natural geographic locations, such as streams, peaks, rock formations, ridges, and offshore islands and reefs, or they can refer to Hawaiian divisions, such as ahupua'a and 'ili (land section usually a subdivision of an ahupua'a), and man-made structures, such as fish ponds. In this way, the wahi pana of Niūmalu, Nāwiliwili, and Ha'ikū, tangibly link the kama'aina of these ahupua'a to their past.

The source for place names in this section is the online database of Lloyd Soehren's *Hawaiian Place Names* (2010) and Fredrick B. Wichman's *Kaua'i, Ancient Place-Names and Their Stories* (1998). Soehren compiled all names from mid-nineteenth century land documents, such as Land Commission Awards and Boundary Commission Testimony (BCT) reports. The BCT lists boundary points for many of the ahupua'a. The names of 'ili 'āina (land units within an ahupua'a) and 'ili kū (land units awarded separately from a specific ahupua'a) are compiled from the testimony in Māhele Land Commission Awards, from both awards successfully claimed and from those rejected. Place names found by authors on United States Geological Service (USGS)

maps and Hawai'i Survey Registered Maps (HSRM) were also added to the database. The Soehren database includes place name meanings from the definitive book on Hawaiian place names, *Place Names of Hawai'i* (Pukui et al. 1974). For cases in which Pukui et al. (1974) did nothing, Soehren suggested meanings for simple names from the *Hawaiian Dictionary* (Pukui and Elbert 1986).

Ha'ikū has multiple translations that mean "haughty", "conceited", "to speak abruptly", and "a sharp break" (Pukui and Elbert 1986:47). Wichman (1998:51) offered offer different translations of the name as "haughty" and "conceited" and asserts that the story of its name is lost and that new story has taken its place. The new story asserts that the name of Ha'ikū means "push through" and that the naming is related to a ribald story of the pig demigod, Kamapua'a having sexual relationships with Kapo'ulakina'u and her sister the volcano goddess Pele. Pukui (Pukui et. al 1984:53) given the same account ("pushed through" from the Kamapua'a and Pele tradition) as the origin of the place name Hula'ia (and old name for Hulē'ia) stream runs through the southwestern Ha'ikū. It is said in some accounts that Kamapiua and Pele first met at Ha'ikū. Although this place name derivation may indeed be recent it seems plausible that the "push through" reference also relates to the unique gap feature on the west (Kōloa) side of Ha'ikū. As Jousting (1984: 215) describes it:

There is one way through [the] thin mountain ridge [across central] Kaua'i , a place where the barrier briefly parts. This lapse is in the ridge is the way between east and west Kaua'i . It is called the Gap and travelers have used it since the beginning.

Hawaiian Religious & Cultural Practices, Gathering Rights in the Ha'ikū Ahupua'a

Field investigations of the project area resulted in no evidence or findings of significant plants or natural resources that are associated with Hawaiian gathering rights for subsistence, cultural or religious practices. No archaeological inventory survey has taken place in the project area. The project area has non-native vegetation.

Informants that were interviewed for this analysis indicated there has been the long history of large-scale commercial cultivation, roads, rail lines and ranching that could easily have obliterated any cultural or religious sites that may have previously existed in the area and therefore, affected traditional access.

A Connection and Understanding of Place Traditional Wisdom & Knowledge

Over the years, residents have lost touch with the place names and their meanings for this area. The habit of identifying traditional landmarks whether they are mountains, beaches, etc. by generalization is common. A greater misfortune is the more popular trend and use of nicknames created by recent generations of transient and kama'āina residents. Disappointedly, this has resulted in the greater loss of knowledge and awareness of traditional Hawaiian places and wahi pana.

Knowledge of wahi pana and their place names for both subject ahupua`a of this Ka Pa'akai analysis are on the verge of being forgotten and lost altogether. There is a sense of urgency to bring this to the forefront of our collective attention and create learning opportunities for the native Hawaiian community.

Land Commission Award Claims Ha'ikū Ahupua'a and Associated Knowledge

Land Commission Awards and Mahele Awards are Sources of Title adjudicated by the Land Commissioners to claimants. Mahele Awards are Sources of Title specifically issued to those chiefs who received their lands from the king but failed to present their claims before the Land Commission and thus received titles to their lands from the Minister of the Interior. Kamehameha Deeds are Sources of Title to Crown Lands that Kamehameha III, IV and V conveyed. Minister of Interior Deeds were Sources of Titles that conveyed lands from the government to private individuals by the Minister of the Interior during the Kingdom of the Monarchy. Patents - both Royal and Land - were issued on the awards as evidence that the Government's right to commutation therein was satisfied. An award together with a patent perfected the awardee's title to the property. Grants by Royal Patent and Land Patent were Sources of Title deriving from the sales of government lands. The term "Royal" indicates that the document was issued during the Hawaiian Monarchy (up to 1893). The Land Patent or Land Patent Grant thus means the document was issued subsequent to the monarchy.

The Organic Acts of 1845 and 1846 initiated the process of the Mahele – the division of the Hawaiian lands which introduced private property into the Hawaiian society. In 1848 the crown and the ali'i (royalty) received their lands

Titles. Ha'ikū and Nāwiliwili ahupua'a were awarded: Land Commission Award (LCA) 7713 'āpana 2, Royal Patent (RP) 4479 to Victoria Kamāmalu. She was the daughter of Kina'u, and thus the granddaughter of Kamehameha I; her brothers were Kamehameha IV and Kamehameha V. Victoria Kamāmalu's holdings in Ha'ikū were estimated to contain 9585 acres. Following her death in 1866, her father, Mataio Kekuanāoa inherited her lands. Stauder (1973:26) relates that following Victoria Kamāmalu's father's death, Niūmalu Ahupua'a was inherited by Kamehameha V, and then by "her stepsister Ruth, who sold Niūmalu to Paul P. Kanoa in 1883 (Bishop Trust 1930:4)." Documents associated with this award given have no indication of the specific land uses or activities other than for pasturage and possible cattle. The native register account (569 v.5) relates that Ha'ikū a district of Kaua'i, however, the Government cattle shall grass there". It appears that Victoria Kamāmalu almost immediately leased the Ha'ikū lands to Judge Widemann, probably in 1850 for the span of 25 years.

The ahupua'a of Ha'ikū, which includes the project area, was awarded as, to Victoria Kamāmalu during the Māhele (Figure 11). The only exception was several kuleana (commoner) lands awarded as various LCA's along the Hulē'ia River in Ha'ikū Ahupua'a. The Kuleana Act of 1850 allowed maka'āinana (Native Hawaiian commoners), in principle, to own land parcels at which they were currently and actively cultivating and/or residing. These included 35 LCAs in Ha'ikū ahupua'a. No kuleana LCAs were awarded within the project area or its vicinity.

Waihona 'Aina (2024), lists 38 LCAs for Ha'ikū of which 35 were awarded. See Table 1 for a listing of these awards. According to Ching et al. (1973), Ha'ikū has many separate 'ili and lists 237 separate lo'i within the Ha'ikū ahupua'a. Claimants describe loko or kiowai. There are 20 'ili mentioned with 264 lo'i 26 houses, 32 kula, 3 wauke kula, a pig enclosure and 2 mention bulrushes. The average number of lo'i per claimant is higher than in most other ahupua'a on Kaua'i (7), even Hanapepe where the average is 6.6 per claimant. One claim (No. 3634) mentions a dam and three claims mentioned houses in other ahupua'a, either Kīpū or Kōloa. Thirty-one of these claims are located on the lower portion of the Hulē'ia River (R.M. 2413 by J.M. Lydgate). One of the remaining four claims was in this area but not shown, one is near Kahili Pali way up mauka, one is in the Kuia 'Ili near the Kōloa Border to the west of the project area and another is on the path to Kilohana.

Ching et al. (1973) list kapu (prohibited) resources for the ahupua'a of the study area which were gleaned from Land Commission documents on these areas. These was 'opihī (limpet) for Ha'ikū Ahupua'a.

As is often the case, the *konohiki* does not receive an award for his claim. The *konohiki*, Daniela Oleloa is the consort of Debora Kapule after her first husband,

The ruling chief Kaumualii, is taken away by Ka'ahumanu. The other unawarded claims are by a person who has abandoned his land and another who makes two claims.

Although many Hawaiians did not submit or follow through on claims for their lands, the distribution, and written testimonies of LCAs provides insight into patterns of residence and agriculture. Many of these patterns probably had existed for centuries. By examining the patterns of *kuleana* LCA parcels, insight can be gained into the likely intensity and nature of Hawaiian activity in the area at the time.

A review of LCA records indicates that land usage and activity by the mid-nineteenth century included habitation and agriculture, including the cultivation of taro, sugar, potatoes, and yams. This may reflect the continuation into that century of traditional Hawaiian land use.

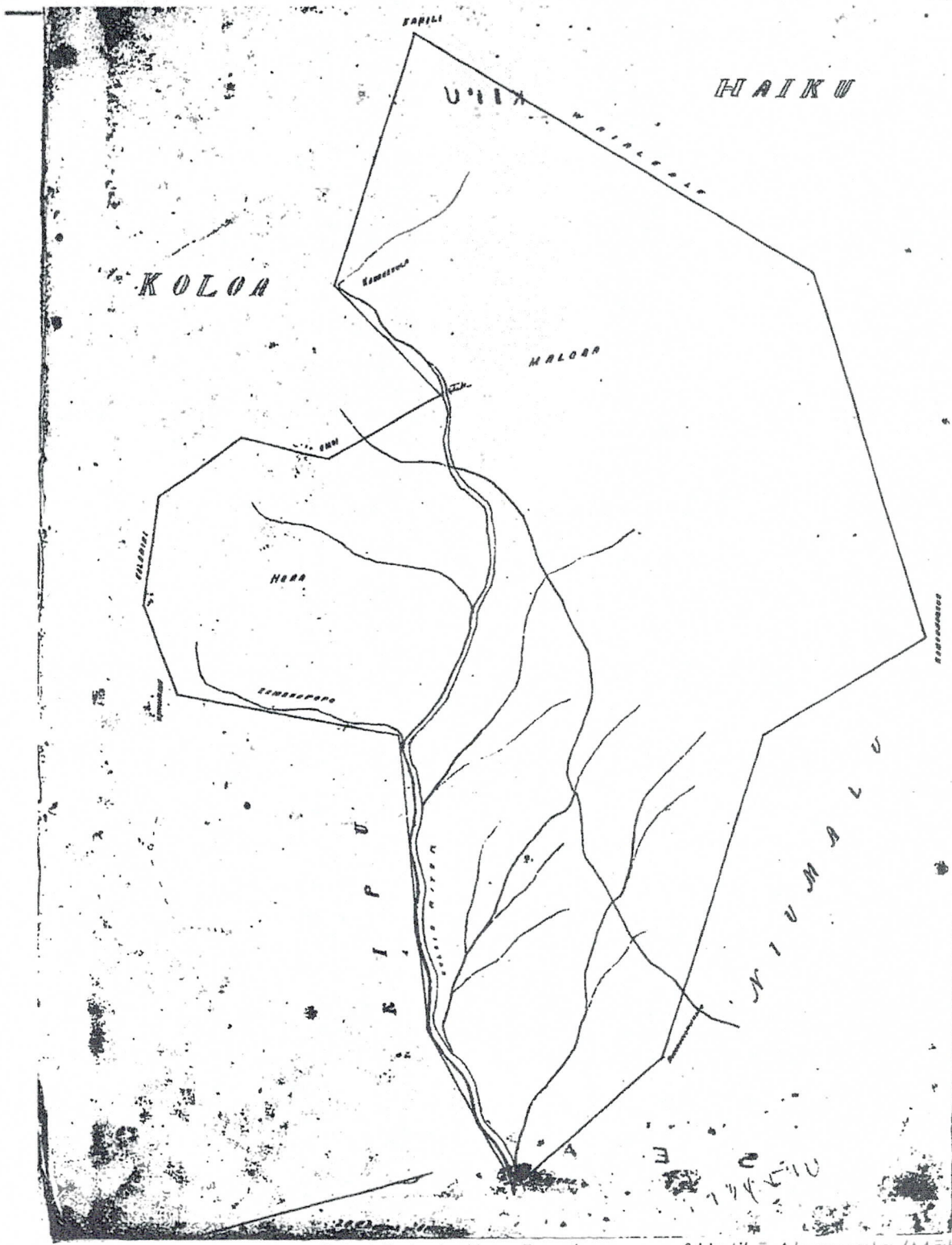


Figure 11. LCA 7713'āpana 2 to Victoria Kamāmalu, map of Ha'ikū Ahupua'a (Māhele Award Book Reel 11, Vol. 9).

Table 1. List of LCAs in Ha'ikū.

Land claim #s	Claimant	'Ili	Land Use	Landscape features	Awarded/Not awarded
3230	Opae	Kahakea / Kahaakea	1 ap.; 3 lo'i, kula, house	Hulā'ia River, Kahakea pali	2 ap.; 1 Ac. 1 rood
3247	Hua	Wainuiohui	1 ap.; 4 lo'i, kula, pig enclosure, house	Niumalu River	1 ap.; 3 roods 17 rods
3272	Leoiki	Makaopuna Lahoolo	2 ap. 8 lo'i, house 1 lo'i	Hanakaau-wai pali, Hanaleiia pali, Popouli Stream	2 ap.; 1.75 Acs 38 rods (2 'apana in Makaopuna)
3287	Wahawaha	Kahakea	1 ap.; 3 lo'i, kula, house	pali, Hulā'ia River	2 ap.; 1 Ac. 1 rood 23 rods
3317	Maikai	Makao-punaau Kapenu	2 ap.; House, kula 8 lo'i	Makaopuna & Kapenu 'auwai (s) Hulā'ia River, Kawaiiki stream, Hanalina pali,	Makaopuna 1 ap.; 2 Acs 3 roods 12 rods; Kaupenu 2 ap.; 1 Ac. 3 roods 14 rods
3318	Kipani, Maraki/ Malaki	Makaokole	2 ap.; 3 lo'i, 10 dry lo'i, house lot	Hulā'ia River, Makakole pali	1 ap.; 3 roods 22 rods
3319	Mahaulu	Makaokole	1 ap.; 5 lo'i, 'auwai, kula, house	'auwai, Hulā'ia River	
3324	Gaperiela Lalo (Kala)	Hoa Wailua Kalaniuli / Laniuli	3 ap.; 3 lo'i, kula 3 lo'i +, kula house lot	Omoe, Maunapali. & Wainuiohui pali(s), Hulā'ia River	1 ap.; Wailua 1.25 Acs (other awards elsewhere on Kaua'i)

Land claim #s	Claimant	'Ili	Land Use	Landscape features	Awarded/Not awarded
3360	Naniho	Wailua Pahani	2 ap.; 4 lo'i, house lot	Ha'ikū 'auwai, Hulā'ia river	Wailua 1 ap.; 2 roods 3 rods; Pahunui 1 ap.; 1 Ac. 3 roods 29 rods
3362	Nakao	Kapenu	2 ap.; 13 lo'i, wauke kula, house lot	Kawaiiki stream, Kamaluhale pali, Kapena 'auwai	2 ap.; 4.25 Acs 14 rods
3363	Naalualu	Wainuiohui	1 ap.; 5 lo'i, kula, house	pali, Niumalu River	1 ap.; 4.5 Acs 3 roods 24 rods
3364	Naihepapa	Peakoa/ Peekoa Makaopuna	2 ap.; 15 lo'i 2 lo'i	Hulā'ia River	2 ap.; 1 Ac. 30 rods
3391B	Paele	Puaku	1 ap.; 1 lo'i, kula, house (House in Kīpū)	Hulā'ia River, Kahua pali (Kīpū)	1 ap.; 1 rood 28 rods
3403B	Haupu	Pu'uloa	1 ap.; no land use given	path to Kilohana, road to Kōloa, Kipu'upu'u stream, Opaikoa pali	1 ap.; 7 Acs 30 rods
3405B	Limaloa	Puapuakii	6 lo'i (house in Kīpū)	Ahule pali, Hulā'ia River	Ha'ikū & Kīpū 3 ap.; 2 Acs. 2 roods 30 rods
3419	Poepoe	Alapaa & Makaopuna (1 ap.) Lahooli	2 ap.; 4 lo'i 1 lo'i 3 lo'i (house in another place)	Hanakaau-wai & Hanaleia pali(s), Popoulu stream	2 ap.; 2 Acs 9 rods (Alapa'a)
3420	Puupuniki	Kahakea	2 ap.; 11 lo'i, kula, house	pali, Hulā'ia River	3 ap.; 1.75 Acs 34 rods

Land claim #s	Claimant	'Ili	Land Use	Landscape features	Awarded/Not awarded
3422	Pakaua, K	Makaopuna	4 lo'i, <i>kula</i> (House in Kipū; Kaluao-koke'e 'ili)	Makaopuna <i>pali</i> , Hulā'ia River	Makaakale 1 ap.; 1 Ac. 37 rods Makaopuna 2 ap.; 2 Acs 4 rods
3621	Kuhookahi	Pōhaku	2 ap.; 8 lo'i, <i>kula</i> , house	Hanaleua <i>pali</i> , Kaua'iiki stream & muliwai, 'auwai	2 ap.; Pahoni 2.75 Acs 6 rods
3623	Kamaka	Makaokole	2 ap.; 8 lo'i, <i>kula</i> , house on <i>pali</i>	Makaokole <i>pali</i>	1 ap.; 4 Acs 21 rods
3625	Ki, John	Pahunui	1 ap.; 13 lo'i, <i>wauke kula</i> , house lot	Niumalu River	1 ap.; 7.25 Acs
3626	Keoahu	Pahani	2 <i>kula</i> , large lo'i		abandons claim
3627	Kaelo	Wailua	8 lo'i, <i>kula</i> , house	side hill (<i>hana hanai</i>), Niumalu River	1 ap.; 1.5 Acs 19 rods
3630	Kauhi	Kua'a / Kuwaa	1 ap.; 6 lo'i, <i>kula</i> , house lot	Kua'a <i>pali</i>	2 ap.; 1.5 Ac. 14 rods
3632	Kalehua	Nakioi Kaumiiumi	1 ap.; 9 lo'i, 1 <i>wauke kula</i> , 1 <i>wauke kula</i>		1 ap.; 4 Acs
3633	Kuanoa	Makaokole	1 ap.; 4 lo'i, <i>kula</i> , house	<i>pali</i>	1 ap.; 1 Ac. 1 rood 14 rods

Land claim #s	Claimant	'Ili	Land Use	Landscape features	Awarded/Not awarded
3634	Kahea	Kamoa	2 ap.; 15 lo'i, house, kula, coconut	Kuamano (dam) of Pomahoa, Ha'ikū 'auwai, Kiowai, Ha'ikū Stream, Poma, Po'onahoa pali	1 ap.; 8.5 Acs 9 rods
3635	Keakinau	Makaokole	1 ap.; 4 lo'i, house, kula	'auwai of Okua'a, Makaokole pali	1 ap.; 1 Ac. 30 rods
3636	Kukononu	Alapa'a	1 ap.; 6 lo'i, kula, house	pali, Kawaiiki Stream	1 ap.; 2 Acs 1 rood 15 rods
3648	Kala, Gapelela		3 lo'i, kula		Award
5311	Kawahinel eiole, wahine	Makaopuna	1 ap.; 4 lo'i, kula, house	Ahuli pali, Ha'ikū River	2 ap.; 3 roods 24 rods
5351	Palea	Waipapa Wainuiohū Kīpūka	1 ap.; 20 lo'i, 1 lo'i house lot	Waiolono Stream, Ha'ikū 'auwai, Hulē'ia River	Waipapa; 3 ap.; 2 Acs 3 rods
5398	Haae	Waipapa	3 ap.; 20 lo'i, house	Waiolono Stream, Waikunono pali, Kahiwaha muliwai, stone fence, Kahinapa river, 'auwai	1 ap.; 2.75 Acs 18 rods
5481	Upai	Waiapuka	1 ap.; 13 lo'i, kula, house	F.T. Ha'ikū Stream, N.T. Hulē'ia Stream	1 ap.; 1 rood 16 rods
6611	Ku, Ioane	Kuia	2 ap.; 13 lo'i, 2 kula (house in Koloa)	Kahili pali, road called Keleponakaheka	1 ap.; 2 roods 25 rods

Land claim #s	Claimant	'Ili	Land Use	Landscape features	Awarded/Not awarded
6533	Kaoe	Kahakea	2 <i>ap.</i> ; 6 <i>lo'i</i> , <i>kula</i> , house lot	Waipuhi Stream, Kahakea <i>pali</i>	3 <i>ap.</i> ; 2 Acs 24 rods
7713	V. Kamamalu	Ha'ikū, Kīpū			Ha'ikū 9585 Acs; Kīpū 3029 acres
10564	Oleloa, Daniela konohiki	10 <i>lo'i</i> , 3 fish ponds, 1 upland taro		Hulā'ia River	not awarded in Ha'ikū

Early Accounts of Ha'ikū

The earliest explorers, like Cook and Vancouver, make no mention made of Lāwa'i. Most of the early accounts are about the coastal area of Puna and Hulē'ia Valley. The project area is in the mid lands or plateau of the ahupua'a where little is known about the early Hawaiian lifestyle.

Hulē'ia Valley, which is defined by Kīpū Ahupua'a (south bank) and Ha'ikū Ahupua'a (north bank), is where traditional Hawaiian agriculture activities have been noted and is described:

[Ha'ikū] contains the broad delta plain of the Huleia River, 1.5 miles long and about a half wide at its widest point. This area was all in terraces. One large section is now in rice, and four small terraces belonging to four Hawaiian taro planters are in wet taro... Small terrace areas existed along the course of the Huleia for at least 2.5 miles above the delta area... Where the highway crossed the Huleia River at Halfway Bridge, there are groups of old terraces, old breadfruit, and mango trees, indicating that here was a group of *kuleana* something over 6 miles inland forms the mouth of the river. (Handy 1940:66)

George Norton Wilcox, son of the ABCFM teacher Abner Wilcox, was raised on Kaua'i and observed Rice's successful utilization of irrigation. Wilcox attended Yale and studied engineering and surveying, earning a certificate in 1862. Upon returning to Kaua'i in 1863 he soon began work as a surveyor for Judge Herman Widemann, owner of the Grove Farm Plantation. Warren Goodale established Grove Farm (named after an old stand of *kukui* trees) in 1850. Goodale sold the property the same year to James F. B. Marshall for \$3,000. In 1856 the plantation was sold, to Judge Widemann for \$8,000. At the end of 1863 Judge Widemann asked George Wilcox to undertake the supervision of the cutting of a water lead or irrigation ditch for the Grove Farm plantation using Hawaiian labor. The following year, Wilcox leased Grove Farm Plantation from Widemann and rapidly expanded development of the irrigation infrastructure.

In 1870 Wilcox bought Grove Farm from Widemann for \$12,000, three-quarters of which was borrowed. Four years later he had 200 acres under cultivation. In 1874, Wilcox renewed a lease, for 25 years, for a 10,000-acre tract of Ha'ikū Ahupua'a from Princess Ruth Ke'elikolani (Krauss and Alexander 1984:179). On April 1, 1881 George Wilcox bought 10,500 acres of Ha'ikū Ahupua'a from Princess Ruth increasing the acreage of Grove Farm nearly ten-fold (Krauss and Alexander 1984:206). The sale was part of a package deal whereby Willie Rice also received Kīpū and Kīpū Kai for a total price of \$27,500 - money that Princess Ruth used to

build her palace that rivaled Kalakaua's palace, also completed the following year.

There was a portion of a road between the Gap and Līhu'e in 1903 that extended from the southwest coast to the northeast coast of Kaua'i. It was an irregular route, likely following the contours of the landscape. It is during the 1930s when federal funds became available to assist the Territory of Hawaii's highway construction program, that development of the present Kaumualii Highway accelerated between 1933 and 1937 the construction or reconstruction of the Belt Road was completed incrementally. By December 1956, the Kaua'i Belt Road from Kōloa to Līhu'e was completed.

In 1954 an airstrip was developed at haiku for aerial spraying of herbicides and pesticides. In the early 1960s the nearly one-mile-long Kuia-Waita Tunnel was completed bringing Ha'ikū water to the drier Kōloa side.

Land Division and Development of the Project Area

In 1933, Land Court Application (LCApp) 1087 subdivided the Grove Farm owned lands of Ha'ikū, Hanamā'ulu, Nāwiliwili, Kalapakī and Niūmalu into Lots 1 through 10, with the project area being located within Lot 9 containing 16,565 acres including the 30 ft road easement for the Koloa-Lihue Government Main Road (Figure 12). There is a railroad line running through the Līhu'e side and on the mauka side of the project area. Between 1937 and 1971 the land containing the project area was divided, consolidated, and re-subdivided into numerous lots. Figure 13 is the subdivision into lot 9 in 1937. The LCApp maps indicate the project area was included within Lot 1-H (30.286 acres) in 1937. Figure 14 is a close of lot 1-H.

A 2000 LCApp map shows the consolidation of lots 1-H and 9-A into lot 1557 (10.00 acres) which is the current configuration of the project area (Figure 15). The Kaua'i Human Society was built and lease from Grove Farm Co. in 1999. Since then, there has been little change within the project area. There are sheds for the animal shelter, perimeter fencing and an office building. The project/parcel area was purchased from Grove Farm Co. in 2022.



Figure 12. LCApp 1087 Map 1. Yellow arrow shows the project area.

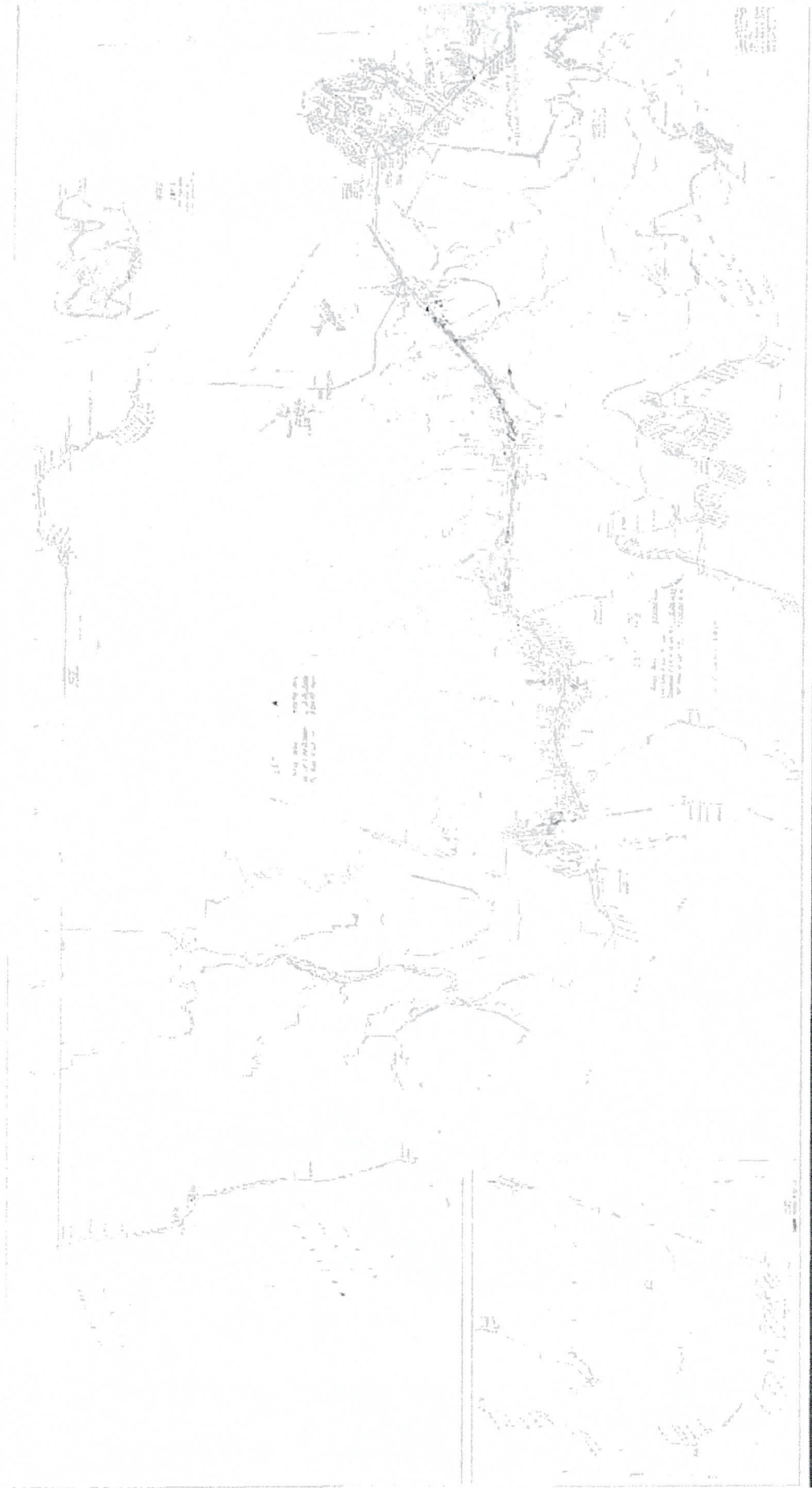


Figure 13. LCApp 1087 Map 4. Yellow is the project area. Showing the subdivision into lot 9.

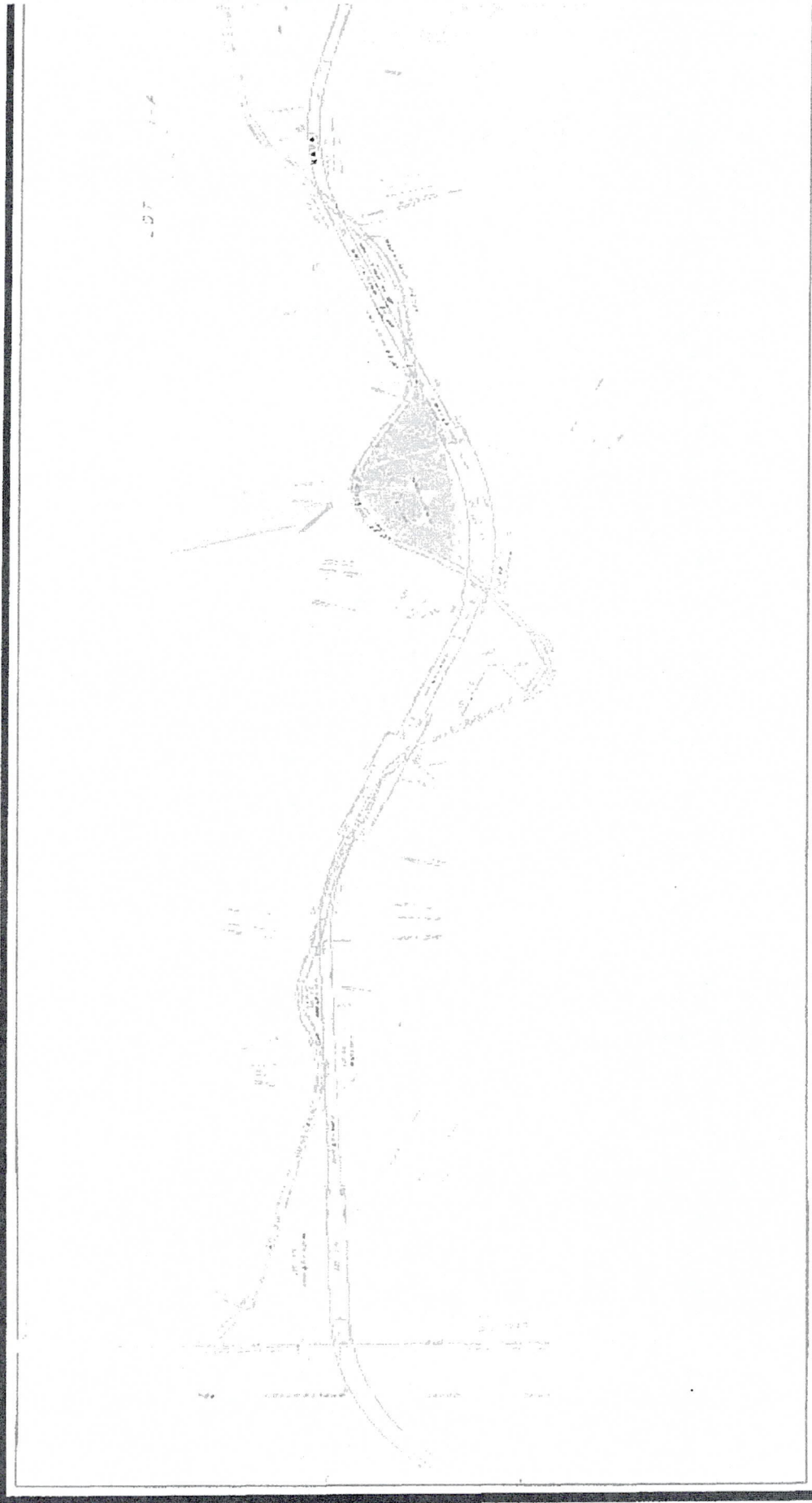


Figure 14. LCApp 1087 Map 5 showing lot 1-H and project area.

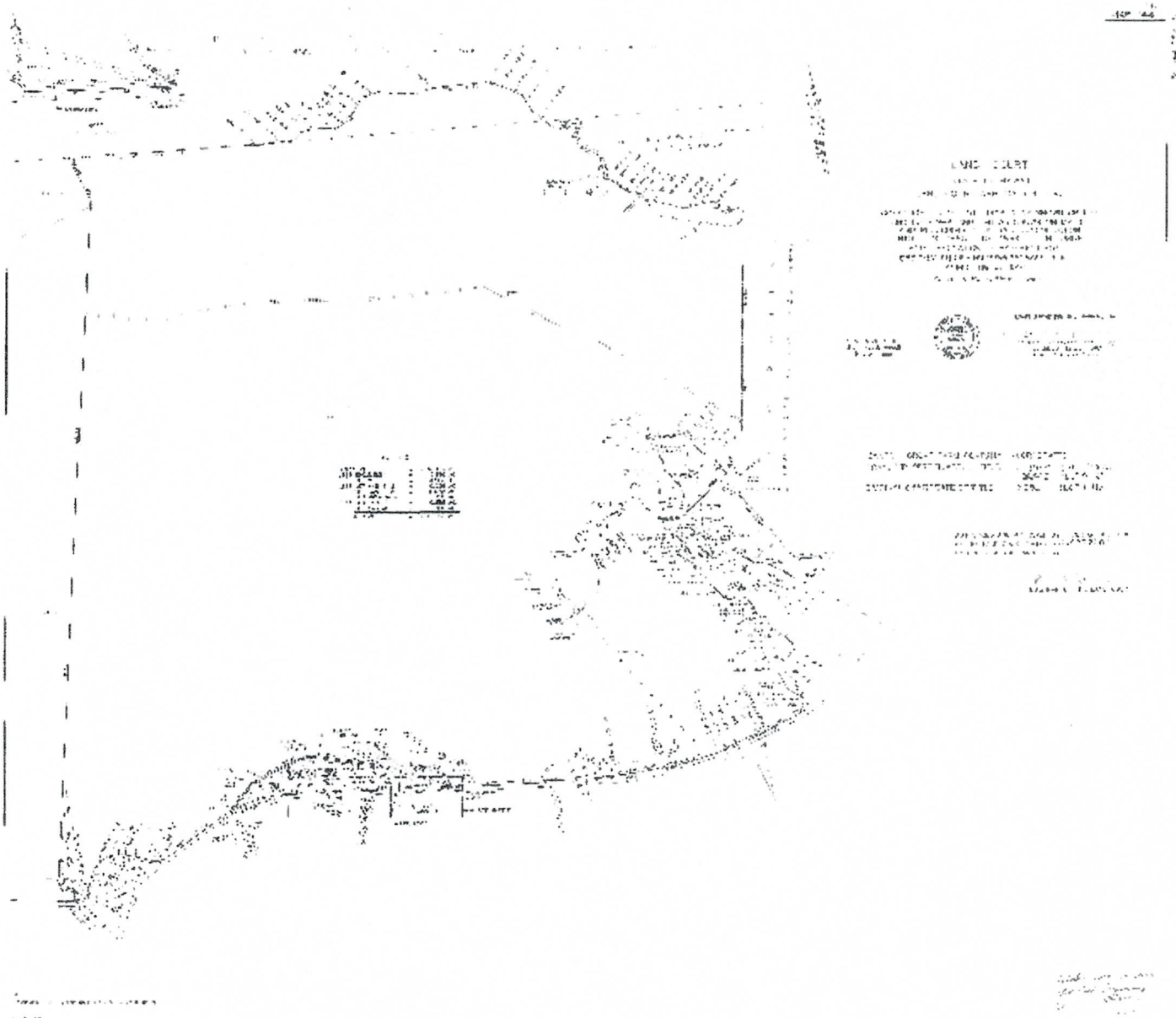


Figure 15. LCApp 1087 Map 144 showing lot 1557 (10 acres) and the current Project area.

Archaeology of Ha'ikū

No previous archaeological studies have been conducted within the project area previously and no archaeological sites are known to be present. The numerous studies that have been conducted in the but not near here include surveys for the Kaua'i Community College, the Philippine Cultural Center, the Island School, Highway improvements, and several former and current Grove Farm properties in support of residential and commercial developments. These studies primarily documented plantation-era sites associated with the Grove Farm and Līhu'e Plantations. The sites documented in the vicinity include historic houses, two historic cemeteries, a historic bridge, the Grove Farm locomotives, plantation water control features, a Territory of Hawaii survey datum, and a subsurface trash pit associated with the former Puhī housing.

Nearby Archaeological Studies

The closes archaeological study to the project area was conducted in 1998 for the Highway improvements. The Ka'umauali'i Highway is adjacent to the project area.

Hammatt and Chiogioji 1998

In 1998, CSH conducted an archaeological assessment for an approximately 11.5-kilometer-long portion of Ka'umauali'i Highway from Nāwiliwili to Kōloa (Hammatt and Chiogioji 1998). The assessment consisted of pedestrian reconnaissance of the road corridor. A total of four historic properties were noted during their project, including two bridges, a cemetery, and the Grove Farm Office Building, none of which were assigned SIHP numbers.

Native Hawaiian Cultural Consultation

It is the policy of the State of Hawaii under Chapter 343, HRS, to alert developers and decision makers, through the environmental assessment process, about significant environmental effects which may result from the implementation of certain actions. An assessment of cultural impacts gathers information about cultural practices and cultural features that may be affected by actions subject to Chapter 343 and promotes responsible decision making. Articles IX and XII of the State Constitution, other state laws, and the courts of the state require government agencies to promote and preserve cultural beliefs, practices, and resources of native Hawaiians and other ethnic groups. Chapter 343 also requires an assessment of cultural resources, in determining the significance of a proposed project.

One of the most important parts of conducting a cultural assessment and study is to hold consultation with Native Hawaiian kūpuna or elders, Hawaiian cultural organizations, cultural practitioners and individuals from the community who potentially have knowledge of traditional Hawaiian sites, resources and cultural practices that are related to the project area as well as to the adjacent and extended land areas of the Ha'ikū ahupua`a. Ultimately, the goal as preparers of this Ka Pa'akai Analysis is to produce a document that can be used to protect and preserve the valuable knowledge and traditional practices of nā 'ōiwi kānaka, the Native Hawaiian people of these places.

EAL's goal was to meet with and interview a cross-section of indigenous Hawaiian people from the community; first and foremost, with kūpuna or elders that have memories and personal experiences of the project area and the surrounding lands in Ha'ikū ahupua`a. In addition, EAL was hopeful to receive their 'ike or insight and knowledge about customary practices and traditional places associated with or relating to the project area.

EAL also aimed to seek out and speak with those of the mākuā or parent generation who had potential knowledge, ties and experiences linked to the project area and Ha'ikū. In this endeavor to "interview" Native Hawaiians, EAL chose to do so in a Hawaiian manner of kukākukā or through "talk-story". In speaking with interviewees without being nīele or as a prying meddler by being annoyingly inquisitive was the approach. While there are specific points of interest for questions that lead the discussions, it is important that each person engage in a manner that is respectful and without imposing pressure. To the Native Hawaiian, a nīele person will never get anywhere by being bold, blunt and direct. However, he or she can be successful by leading up to a subject through indirection and a more 'olu'olu or gracious approach. Every attempt to avoid being maha'oi or presumptuous, brazen and insensitively forward was used. In the traditional Hawaiian household that was led by kūpuna and mākuā who were adamant that the values of aloha (love), ha'aha'a (humility), ahonui (patience) and hō`ihi (respect) apply to the way that one behaves and interact with others. This is especially so when talking and meeting with kūpuna, for with the slightest tone of pejorative stance or speech, they will cease to share their valuable insight and experiences. It helps tremendously to have some sort of association with individuals as well, for more is shared when there is a level of comfort, trust and familiarity.

There were no living cultural descendants to be found from Ha'ikū. Therefore, information about the project area and Ha'ikū was sought from nearby ahupua'a. The interviewees that EAL engaged with for this Ka Pa'akai analysis are:

	INTERVIEWEE	CONNECT TO HA'IKŪ	INFORMATION
1.	Bernard/Charlene Medeiros	Kalaheo Residents who have ranch land in upper Ha'ikū	No knowledge of anyone asking for access for traditional rights
2.	Missy Kamai	Malama Family from Kīpū	Stated that there are no known living descendants from Ha'ikū and did not believe any traditional rights were in the project area.
3.	Kaliko Santos	Ahu Moko Rep/Family from Kīpū	No knowledge, recommend some additional folks to talk to
4.	Milton Ching	Family from Hulē'ia	Mentioned the 35 Kuleana Award but nothing else
5.	Darryl Kaneshiro	Lāwa'i Resident/referred to as perhaps knowledgeable	Knew nothing
6.	Jill Kouchi	Grew up a few years in Kīpū	Knew nothing about any traditional activities in the project area
7.	KipuKai Kualī'i	Father from Kīpū	No knowledge but would ask his father
8.	Staff at Grove Farm Co.	Former Property Owner and managers if GF lands	No response
9.	Healani Trembeth and her daughter Debbie Lee Jackson		No response

All interviews were conducted by EAL in March -June 2024. Subsequently, EAL found that just about most of the interviewees were very little knowledgeable about the area and its resources other than the Hulē'ia River valley. Few knew much about this parcel other than its current use as an animal shelter.

As such, the priority topics needed to conduct this Ka Pa'akai analysis of cultural resources and impacts were overshadowed by the lack of finding informants. EAL spent a considerable amount of time attempting to locate additional interviewees that were knowledgeable about the project area or Ha'ikū in general.

Mahalo a nui loa iā 'oukou for their generous support to contribute and collaborate to this success of this Ka Pa'akai analysis.

Consultation Methodology & Results

As with the composition of the Ka Pa'akai analysis document, EAL employed interview methods consistent with indigenous Hawaiian values. Specific

values and methods applied to the interview process included:

Kukākukō, also known among locals as "talking story", is a quintessentially Hawaiian approach to sharing information intended to avoid being seen as *nīele* (i.e., nosy or meddling) and instead being perceived as *'olu'olu*—gracious—in conduct. By approaching the specific interview topics in an indirect manner, EAL interviewers communicated a level of sincerity and respect for the interviewee and subject matter and so avoided their curiosity being interpreted as *maha'oi*, i.e., brazen and forward.

To these ends, the use of recording devices and a standardized questionnaire were not employed unless requested to do so. Interviews were conducted in individual and small-group settings in homes and back yards. Conversations could flow toward, and at times away from, the specific subject of the project as the interview subjects deemed appropriate.

Selection of Interview Subjects

An assessment of cultural impacts gathers information about cultural practices and cultural features that may be affected by land use decisions. In the preparation of this Ka Pa'akai analysis, representatives of EAL identified certain criteria which guided the process of identifying individual's familiar with cultural practices and features in, or near, Ha'ikū ahupua'a. Was the candidate a *mākuā*, or member of the parent generation, with potential knowledge, ties, or experiences of the project area and the Ha'ikū – Puna region?

- Was the candidate familiar with, or possessing insight into, the customary practices and traditional places in or near to the project area?

In the timeframe available for the preparation of the Ka Pa'akai analysis, representatives of EAL spoke with 6 community members all with personal ties to nearby areas; and possessed unique knowledge relevant to the assessment. Most interviewees were residents of the district of Puna and had a connection to Ha'ikū somewhat.

Cultural Resources & Practices Identified

Neither the literature sources consulted, nor the interviews conducted identified any ongoing native Hawaiian cultural resources or practices located on the project. As indicated by background research and many of the interviewees, the broad Ha'ikū region does not have a rich history of *mo'olelo*

(legends) and *wahi pana* (traditional place names and their stories) and those found none of these have any significant direct or indirect connection to the project site. In addition, some cultivation in this area and the long history of pasture and ranching in addition to the project area being developed as a fenced animal shelter since 1999, has likely destroyed any cultural resources which prevented cultural practices which might have been present in the very distant past.

Most of the informants did not know of any gathering rights in the project area.

Analysis of Impacts

The Ha'ikū - Pona region, was probably a place of prehistoric and historic significance in the Hawaiian civilization. Oral histories and written records tell of the continuing traditions, beliefs, and cultural practices of the region. However, none of the background research, nor interviews conducted in the preparation of this Ka Pa'akai analysis indicates that the cultural practices, resources, or beliefs are tied to the proposed project area. The absence of cultural properties and resources in a region maybe due to change in land ownership and usage brought to Ha'ikū.

Beginning in the 19th century and continuing throughout most of the 20th century, the project area was under cultivation of sugar cane, ranching and then Road/Highway development.

Those interviewed for this assessment reported that within the project area, no traditional trails, no historic sites, no sacred sites, and no burials were known. None knew of any traditional place names associated with the project area. All interviewees reported no ongoing traditional gathering or hunting practices occurred within the project area.

Traditional uses, including habitation, agriculture, and gathering continues throughout the region, but none is known to exist within the project area. Access to sensitive *wahi pana*, streams, or the mountains will not be compromised by this project. None of these exist in the project area today.

Native Hawaiian beliefs and traditions associated with the Puna district persist in Hulē'ia valley, but these are general associations and are not specific to the project area. No *kūpuna* (elders) or *mākua* (parents) could be located that had knowledge of traditional beliefs or practices specific to the project area.

There are no known cultural resources or practices with the potential to be negatively impacted because of the proposed project.

Closing

Cultural impacts upon Native Hawaiian people, customary practices and religious beliefs have infiltrated the history of Hawai'i Nei for more than 200 years since the arrival of Captain James Cook in 1778. Within a period of 40 short years, the Kapu system was abolished by Kamehameha II - Alexander Liholiho and the Queen Regent, Ka'ahumanu bringing an end to the strength of the closely-knit Hawaiian religion and political system of Hawai'i. With the arrival of Calvinist missionaries in 1820 came a new god and religion which leveraged the beginnings of severing the native Hawaiians' veneration of the natural world.

By the 1890s, subsistence lifestyles, agriculture and rural communalism had entirely been replaced by commercialism, urbanization and individualism as key features of life in the Hawaiian Islands. Foreign sugar plantation moguls usurped control of Hawai'i's prime agricultural lands and fresh water sources to sustain their crops. Miles and miles of irrigation ditches were engineered to redirect the natural flow of water out of the ahupua'a; forever changing the balance of environments and lifestyles of generations of native Hawaiian families.

This analysis does not foresee potential impacts of the proposed land use and development on Native Hawaiian cultural practices customarily and traditionally exercised for subsistence, cultural or religious purposes.

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Commencing upon the Harbor of Niunimalu at the mouth of the Stream of Water called 'Ahihoniua issuing from Moku, N. 8° W. 16 1/2 Chains, passing up the side of the pali bounding the valley of Niunimalu in the North, near the Road leading mauka, to the edge of said pali, thence S. by W. 26 1/2 Chains, passing over the plains, to an open space upon the range of hills facing the sea below 'Ahihoniua, to a large tree, bounded the land called Kowiliwili from thence, S. 61° E. 160 Chains, to the southerly bank of stream called Kowiliwili - hohou near the westerly boundary of land owned by W. H. Pease, thence, S. 29° E. 93 Chains, to the point of land upon the Northerly side of Huhua River called Lakoua, thence, S. 44° W. 10 Chains, crossing the Huhua River, to a point near the southerly corner of the large fish pond called 'Ipuwaa, thence, S. 20° E. 75 Chains, crossing the range of hills called Hakuu to the sea at the North easterly corner of the land called 'Ahihoniua following from thence the sea & Harbor to point of Commencement. Comprising an Area of One Thousand Seven Hundred & Sixty Seven Acres.

Notes of Survey of the Ahupua'a called 'Ahihoniua, situated in the district of Puna Island of Hawaii. Commencing upon the westerly and southerly side of 'Ahihoniua Puna, near the Moku end of the fish pond called 'Ipuwaa, commencing from thence, S. 44° E. 40 Chains, crossing the Huhua River to the point called Lakoua upon its Northerly side, thence, S. 29° W. 93 Chains, crossing the plains to the southerly side of the small stream of Water called Kowiliwili hohou near the westerly boundary of land owned by W. H. Pease, bounded by the Ahupua'a called Niunimalu, thence, S. 61° E. 160 Chains, to an open space fronting the sea, on the ridge of the hills, near the 'Ahihoniua, to a certain tree, bounded by said land called Niunimalu, thence, N. 18° W. 86 Chains, to the top of the hills called 'Ahihoniua. thence, S. 44° E. 120 Chains, to the top of the 7th Ridge called 'Ahihoniua, bounded by the Ahupua'a called Niunimalu, thence, S. 44° E. 214 Chains, following the top of said Ridge called 'Ahihoniua to the 7th peak called 'Ahihoniua, thence, S. 61° E. 122 Chains, passing down the side of the 7th Range to the southerly bank of the Huhua River at a turn on said River opposite to the hill called 'Ahihoniua, thence, S. 61° E. 72 Chains, passing down the southerly side of Huhua River to a stake standing upon the southerly side of Huhua River, thence, S. 16° E. 59 Chains, to the top of the hill called 'Ahihoniua, thence, S. 23° E. 46 Chains, following the range of hills called 'Ahihoniua, thence, S. 49° E. 52 Chains, following the said Range of Hills, thence, S. 83° E. 25 Chains, following the said range of hills to the peak called 'Ahihoniua, thence, S. 26° E. 102 Chains, passing down the southerly side of said range to the confluence of the stream called 'Ahihoniua with the Huhua River, upon its westerly bank, bounded by the Ahupua'a called 'Ahihoniua, from thence following the Huhua River upon its southerly bank to the point of Commencement. Comprising an Area of One Thousand Five Hundred & Eighty five Acres.

The fishing grounds of Huhua River, belong to the Ahupua'a of Niunimalu from its mouth to the Road crossing it to 'Ahihoniua.

LCA 7713 'āpana 2 to Victoria Kamāmalu, Niunimalu and Ha'ikū survey notes (Māhele Award Book Reel 11, Vol. 9 pg. 264)

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

DIRECTOR'S REPORT

I. SUMMARY

Action Required by Planning Commission: Consideration of Applicant's request to AMEND Class IV Zoning, Use, Variance, and Special Permits to allow construction and operation of a retail store.

Permit Application Nos. Class IV Zoning Permit Z-IV-95-46
Use Permit U-95-40
Variance Permit V-95-13
Special Permit SP-95-15

Name of Applicant(s) KAUA'I HUMANE SOCIETY (KHS)

II. PERMIT INFORMATION

PERMITS REQUIRED	
<input checked="" type="checkbox"/> Use Permit	A Use Permit was required since the project was not identified as a permissible use within the Agriculture (A) zoning district.
<input type="checkbox"/> Project Development Use Permit	
<input checked="" type="checkbox"/> Variance Permit	A Variance Permit was required to allow the Applicant to deviate from the "one-time" subdivision limitation involving a parcel within the Agriculture (A) zoning district.
<input checked="" type="checkbox"/> Special Permit	A Special was required since the project was not identified as a permissible use within the State Agricultural Land Use District.
<input checked="" type="checkbox"/> Zoning Permit Class <input checked="" type="checkbox"/> IV <input type="checkbox"/> III	Pursuant to Section 8-8.4 of the KCC, 1987, as amended, a Class IV Zoning Permit is a procedural requirement for obtaining a Use Permit.
<input type="checkbox"/> Special Management Area Permit <input type="checkbox"/> Use <input type="checkbox"/> Minor	
AMENDMENTS	

H. 2.9.
SEP 10 2024

<input type="checkbox"/> Zoning Amendment	
<input type="checkbox"/> General Plan Amendment	
<input type="checkbox"/> State Land Use District Amendment	

Date of Receipt of Completed Application: August 14, 2024
Date of Director's Report: N/A
Date of Public Hearing: SEPTEMBER 10, 2024
Deadline Date for PC to Take Action (60TH Day): N/A

III. PROJECT DATA

PROJECT INFORMATION			
Parcel Location:	Kipu. The parcel is situated approximately ¼-mile west of the Kaumualii Highway/Kipu Road intersection.		
Tax Map Key(s):	3-4-005:017	Area:	10 acres
ZONING & DEVELOPMENT STANDARDS			
Zoning:	Agriculture (A)		
State Land Use District:	Agricultural		
General Plan Designation:	Agriculture		
Height Limit:	50 feet		
Max. Land Coverage:	60%		
Parking Requirement:	There are approx. 40 off-street parking stalls available at the project site.		
Front Setback:	10 feet		
Rear Setback:	5 feet		
Side Setback:	5 feet		
Community Plan Area:	NA.		
Community Plan Land Use Designation:	NA.		
Deviations or Variances Requested:	NA.		

IV. LEGAL REQUIREMENTS

Section 8-3.1(f), KCC:	N/A
Commission Meeting Date:	SEPTEMBER 10, 2024

V. PROJECT DESCRIPTION AND USE

BACKGROUND

The subject permits were approved by the Planning Commission on July 13, 1995 that allowed the construction and operation of an animal shelter facility.

As originally represented, the nature of the operation was to perform activities related to the intake and disposal of stray animals that includes adoption services, spay-neutering, health services, euthanasia and cremation. It would also include educational programs for owners and pets, as well as specialized service of training dogs for visual or hearing-impaired owners. There would be single-family residences occupied by a resident caretaker and other employee families. A Training Center for the hearing/visual impaired would be constructed like a residence and would dually serve for training purposes and occupied periodically by prospective owners and trainers.

The facility would include an administrative building, a barn and corral area for large animals and to also serve as classrooms, training center, single-family residences for its employees and a caretaker, and a parking lot. Additionally, a stage area was set aside for fundraising functions and dog training classes as well as for a pet cemetery.

In addition to kennel areas, the administration building would contain offices, an educational area, conference room, dog at cat viewing area, an isolation area, kennel areas, and a small-scale clinic for spay-neuter operations and minor animal health services.

VI. APPLICANT'S REASONS/JUSTIFICATION

REQUEST

The Applicant is requesting to amend the existing permits to allow the construction and operation of a new retail building on the subject parcel. As noted in the Application, the thrift store is commonly referred to as "Bloomingtails" and is an integral part of the KHS non-profit business. It is owned and operated by KHS, and all income generated is used by KHS for non-profit operations of the animal shelter facility. All goods donated to KHS are sold to the general public at thrift store prices. KHS has operated a thrift store in the Lihue area for more than 20 years, but it has always been located offsite at different commercial properties. It is presently being operated in Puhi Industrial Park. The amendment would allow the opportunity to have all of its amenities onsite and result in operational savings cost.

As noted in the Application, the present facility includes the following:

1. Administrative Offices and Meeting Rooms;
2. Overnight Boarding facilities;
3. Holding Areas for animals accepted by KHS;
4. Indoor/Outdoor Training areas;
5. Exercise Areas for animals;
6. Veterinary Inspection, Treatment, and Surgical Rooms;

7. Cremation Services;
8. Transitional Housing for cats;
9. Community Care Clinic;
10. Dog Parks; and
11. Parking Lot

In addition to the foregoing, the permits allow for a pet cemetery and employee housing which have been constructed.

VII. PRELIMINARY EVALUATION

In evaluating the Applicant's request for amendments to the Class IV Zoning, Use, Variance, and Special Permits, the following aspects are being considered:

1. SPECIAL PERMIT

Pursuant to Chapter 205 of the Hawai'i Revised Statutes (HRS) and its Rules of Practice and Procedures, the Planning Commission may approve a Special Permit under such protective restrictions as may be deemed necessary if it finds that the proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District, and that the use would promote the effectiveness and objectives of Chapter 205, HRS. The Planning Commission shall consider the following guidelines in determining unusual and reasonable use:

A. *Such use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, HRS, and the Rules of the Land Commission.*

An intent of the State law is to assure that agricultural lands with a high capacity for intense cultivation be afforded the highest protection of agricultural purposes, and the uses allowed on other agriculture lands be compatible with such agricultural uses.

The proposed retail use as well as the existing facility further supports activities related to the intake and disposal of stray animals, and therefore would not detract from the overall function of the State Agricultural Land Use District.

B. *The desired use would not adversely affect surrounding property.*

The proposed use is consistent with the operations at the existing facility and should not affect surrounding properties or uses within the State Agricultural Land Use District. Since this area was previously under agriculture cultivation and now fallow, there will be no irrevocable loss to natural, scenic, cultural, historical or archaeological resource or sites. As such, the use should not significantly affect the surrounding properties.

- C. ***The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.***

The facility already has all the necessary infrastructure requirements in place, and there should be no additional burden placed on the County to provide further improvements

- D. ***Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established.***

As the island's population has grown as well as population of stray animals, it has presented animal management challenges which would be more appropriately handled by a facility within the State Agricultural Land Use District. As previously mentioned, the Applicant has been operating a retail store at an offsite location but now have the opportunity to move and consolidate all of their operations onsite. As such, the proposed operation should not adversely affect the agricultural integrity of the surrounding properties on both sides of Kaunualii Highway in the Kipu area.

- E. ***The land upon which the use is sought is unsuited for the uses permitted in the District.***

Prior to the development of the animal shelter facility, the areas surrounding and immediately adjacent were left fallow and no longer utilized for intensive agriculture. There are areas within the project site that could accommodate various agricultural endeavors, however, it is the Applicant's intent to continue to support activities related to the intake and disposal of stray animals.

2. USE PERMIT

Pursuant to Article 20 of the Comprehensive Zoning Ordinance (CZO), Chapter 8 of the Kaua'i County Code (1987), the purpose of the Use Permit procedure is to assure the proper integration into the community of uses which may be suitable only in specific location of a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit the uses if proper integration cannot be assured. Section 8-20.5 of the CZO specifies a Use Permit may be granted only if the Planning Commission finds that the use meets the following criteria:

- the use must be a compatible use;
- the use must not be detrimental to persons or property in the area;
- the use must not cause substantial environmental consequences; and
- the use must not be inconsistent with the intent of the Comprehensive Zoning Ordinance (CZO) and General Plan.

Based on the foregoing, the department notes the following:

- A. **The Use Must be a Compatible Use** – The project site is situated along the mauka side of Kaunali'i Highway in Kipu and is entirely surrounded by fallow agriculture lands. The proposed retail building remains consistent with the intent of this facility and would be compatible with activities occurring at the project site.
- B. **The Use Must Not be Detrimental to Persons or Property in the Area** – The proposal as well as the existing animal shelter operations has not been detrimental to the nearby properties, nor resulted in traffic impacts along the highway. The developments on the parcel is not expected to substantially change current conditions due to the low impact nature of the proposal, the frequency of these events, and existing traffic conditions in the area. Since the facility opened, it has demonstrated that they've been able to co-exist with the uses on adjacent parcels.
- C. **The Use Must Not Cause Substantial Environmental Consequences** – Because of the relatively low-impact nature of the proposed use, it is anticipated that it should not cause substantial harmful environmental consequences. It is consistent with the operational needs of this facility.
- D. **The Use Must Not be Inconsistent with the Intent of the CZO and General Plan** – While the proposed development is considered commercial in nature, the operation of this facility remains consistent with activities that generally occurring at the project site. Since the existing facility is a public resource, there is community benefit in allowing activities that would further support their operations and fiscal needs.

Nature of Operation – According to information posted on the Applicant's website, the existing thrift store operation occurs from Monday-Friday, 9:00 a.m. to 5:00 p.m.

Visual Mitigation – Although the project site is situated along the highway and may be visually prominent, the existing facility and proposed development are visually mitigated due to the existing landscape berm. Based on the proposed location, the existing landscaping along the highway would mitigate the building massing of the proposed structures noted in Exhibit 'B' of the Application. However in order to mitigate any potential visual impacts of the project and future structures, the Applicant should provide to the Planning Department detailed landscaping plans to achieve better visual mitigation of the structures.

It is uncertain as to whether the Applicant has made provisions for night illumination with the project, based on the preliminary plans that have been submitted. If so, night illumination should be designed to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds. Night lighting should be shielded from above and directed downwards and shall be approved by the U.S. Dept. of the Interior Fish and Wildlife Service. If external lighting is to be used in connection with the proposal, all external lighting should be only of the following type: *downward-facing, shielded lights*. Spotlights aimed upward or spotlighting of structures is prohibited.

Agency Comments – The Applicant should resolve and comply with all agency requirements prior to permit application review, including but not limited to the flood/drainage requirements imposed by the County DPW Engineering Division, potable water requirements of the County Department of Water, and the environmental health regulations of the State Department of Health (DOH).

The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings should immediately cease and the Applicant contact the State Department of Land and Natural Resources – Historic Preservation Division and the Planning Department.

VIII. CONCLUSION

Based on the foregoing, it is hereby concluded that the proposal meets the criteria for a Use and Special Permits in that it would remain compatible with the surrounding area and not detrimental to persons, property or the environment in the surrounding area. Further, it remains consistent with objectives of the CZO and the Kaua'i General Plan in that it further promotes the mission of the KHS.

The Applicant should institute the “Best Management Practices” to ensure that the operation of this facility does not generate impacts that may affect the health, safety, and welfare of those in the surrounding area of the proposal.

IX. PRELIMINARY RECOMMENDATION

Based on the foregoing reasons, it is hereby recommended that the proposed amendment to Class IV Zoning Permit Z-IV-95-46, Use Permit U-95-40, Variance Permit V-95-13, and Special Permit Z-IV-95-15 be **APPROVED**, subject to the following additional conditions. For clarification purposes, all existing conditions are cited and new conditions shown underscored:

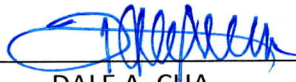
1. The operation shall be restricted to activities solely conducted by the Kauai Humane Society non-profit organization. Such activities shall be limited, as represented by the Application, to administrative and educational activities, occasional fund-raising events, animal caretaking and disposal, related veterinary services, training animals for visual- and hearing-impaired assistance, pet cemetery, and employee housing.
2. The Applicant shall comply with the recommendation made by the Department of Transportation in their letter of May 3, 1995, to the Planning Department.
3. The Applicant shall resolve and comply with all applicable conditions as recommended by the Water, Fire, and Public Works Departments, and with the

State Department of Health.

4. The Applicant shall:
 - a) Resolve all road widening setback, reserves, easements and agriculture accesses with the landowner and various department prior to final subdivision approval, and designate those required on the final subdivision map;
 - b) Devise a plan with the landowner to coordinate any activities with those of surrounding parcels which may create a hazard or nuisance to facility users or the general public; and
 - c) Obtain the review and approval of the Planning Department, and any other applicable agency, should any use of the highway access by other than project-related traffic be proposed.
5. Prior to building permit application, final subdivision approval shall be obtained for the consolidation and resubdivision of the subject parcels.
6. Prior to building permit application, the Applicant submit to the Planning Department for review and approval a revised site plan which designates the required highway improvements and setbacks as recommended by the DOT; any other setbacks, easements, reserves or accesses; a landscaping buffer between the facility and the highway; and dwelling units the number of which shall not exceed that determined in final subdivision approval.
7. Dwelling units, including the training center, shall be occupied only be employees of the facility and their families, or persons associated with the facility, and shall not be used for general rental income purposes.
8. Relative to the three remnant parcels, the Variance shall be allowed provided that any subdivisions of the remnant parcel shall comply with the provisions of CZO Section 8-7.4(b)(2).
9. The Applicant is advised that intensive agriculture, which entails dust, the use of pesticides, and other nuisances associated with agricultural uses, occurs within the surrounding area. The approval of this permit shall not limit or prevent the continuation of intensive agricultural activities within the immediate surroundings.
10. Approval of this permit shall be used as a reason to justify additional non-agricultural uses within the sounding Agricultural District.
11. Prior to or at time of building permit application, the Applicant shall remit payment of an Environmental Impact Assessment Fee. The fee shall be based on

\$100 per parking stall required for office and classroom use, and \$250 for each dwelling units, with an exemption for the first unit.

12. The Applicant is advised that additional government agency conditions may be imposed. It shall be the Applicant's responsibility to resolve those conditions with the respective agency(ies).
13. The Planning Commission reserves the authority to impose additional conditions, modify or delete conditions stated herein, or revoke the permits through proper procedures should the Applicant fail to comply with the conditions of approval.
14. In order to mitigate any potential visual impacts of the project and future structures, the Applicant shall provide to the Planning Department detailed landscaping plans to achieve better visual mitigation of the structures.
15. In order to minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external lighting is to be used in connection with the proposed project, all external lighting shall be only of the following type: downward-facing, shielded lights. Spotlights aimed upward or spotlighting of structures is prohibited.
16. The Applicant shall develop and utilize Best Management Practices (BMP's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
17. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources – Historic Preservation Division and the Planning Department.

By  _____
DALE A. CUA
Planner

Approved & Recommended to Commission:

By  _____
KA'AINA S. HULL
Director of Planning

Date: 8/30/2024

BEFORE THE HEARING OFFICER
OF THE PLANNING COMMISSION
OF THE COUNTY OF KAUA'I

In the Matter of:	) CC-2022-3
)
Petition for Intervention involving	) Special Management Area
Special Management Area Use Permit	) Use Permit: SMA(U)-2022-1
SMA(U)-2022-1, Class IV Zoning	) Class IV Zoning Permit:
Permit Z-IV-2022-1, and Use Permit	) Z-IV-2022-1
U-2022-1 for the Construction of a	) Use Permit: U-2021-1
Farm Dwelling Unit, Guest House,	) TMK: (4) 5-2-004:084 (Unit 1)
Garage and Associated Site)
Improvements, within Lot 11-A of the	) HEARING OFFICER'S REPORT
Seacliff Plantation Subdivision in	) AND RECOMMENDATION OF
Kīlauea, involving a parcel situated	) CONTESTED CASE;
approximately 1,000 feet West of the	) CERTIFICATE OF SERVICE
Pali Moana Place/Makana'ano Place)
Intersection, further identified as Tax	) <u>HEARING (Held):</u>
Map Key: (4) 5-2-004: 084 (Unit 1))
affecting a Larger Parcel	) Dates:November 14, 15,
approximately 12.305 acres in size,	) and 17, 2022,
	) December 12, 13,
NĀ KIA'I O NIHOKŪ,	) and 15, 2023, and
	) January 9, 10,
Petitioner-Intervenor,	) and 12, 2023
)
vs.)
)
PLANNING DEPARTMENT OF)
THE COUNTY OF KAUA'I,)
)
Respondent,)
)
and)
	) (<i>caption continued on next page</i>)
PHILIP J. GREEN and LINDA M.)

GREEN, Trustees of the Philip J.)
Green, Jr., Trust, dated December 4,)
2018, and the Linda M. Green Trust,)
dated December 4, 2018,)
)
Applicants.)
_____)

**HEARING OFFICER’S
REPORT AND RECOMMENDATION OF CONTESTED CASE**

I. INTRODUCTION.

Applicants PHILIP J. GREEN and LINDA M. GREEN, Trustees of the Philip J. Green, Jr., Trust, dated December 4, 2018, and the Linda M. Green, Trust, dated December 4, 2028 (“Applicants”), submitted to Respondent PLANNING DEPARTMENT OF THE COUNTY OF KAUA’I (“Planning Department”) in June 2021 their Application for a Special Management Area Use Permit (SMA(U)-2022-1), Class IV Zoning Permit (Z-IV-2022-1) and Use Permit (U-2022-1) (“SMA Application”), proposing to construct a single-family dwelling, guest house, garage, pool, rock retaining wall, site grading, agricultural and landscape plan, driveway, fencing, outside shower, and associated utilities, on Lot 11-A of the Seacliff Plantation Subdivision (“Proposed Project”). Exhibit I¹

¹ Exhibits identified by **Roman Numerals** are those introduced by Applicants, Exhibits referenced by **Alphabets** were offered by the Planning Department, and Exhibits submitted by Intervenor NĀ KIA’I O NIHOKŪ (“Intervenor”) have been identified by the letter “I” followed by **Numbers** such as “I-1, I-2, etc.” See generally Hearing Officer’s Scheduling Order dated February 8, 2022 (“Scheduling Order”) at 3-4.

at 7. The SMA Application was first considered by the Planning Commission for the County of Kaua'i ("Planning Commission") at its September 14, 2021 Meeting, but deferred decision-making until its next meeting scheduled for October 26, 2021. Compare Exhibit E at 31, with *Id.* at 43-44.

On October 5, 2021, Intervenor as "a community-based intergenerational organization of cultural practitioners, educators, scientists, and citizens founded in April 2016"², filed its Petition To Intervene requesting a contested case hearing on the SMA Application ("Petition To Intervene"). See Exhibit G. In response, Applicants filed their opposition to the Petition To Intervene. See Exhibit H. At the October 26, 2021 Planning Commission Meeting, action on the Petition To Intervene was deferred until its December 14, 2021 Meeting in order to provide time for the Planning Department to complete its analysis for the Planning Commission's consideration the effect the Proposed Project would have on the "reasonable exercise of customary and traditionally exercised rights of Hawaiians to the extent feasible"³ (sometimes "NH Rights") as detailed in *Ka Pa'akai O Ka 'Aina v. Land Use*

² Exhibit G at 2. Note that although Intervenor is stated to have been founded in 2016, it was not registered with Department of Commerce and Consumer Affairs for the State of Hawai'i until November 18, 2020. See Exhibit VII.

³ *Matter of Conversation District Use Application HA-3568* ("Mauna Kea IP"), 143 Hawai'i 379, 395, 431 P.3d 752, 768 (2018) citing *Public Access Shoreline Hawaii by Rothstein v. Hawaii County Planning Commission by Fujimoto* ("PASH"), 79 Hawai'i 425, 450 n.43, 903 P.2d 1246, 1271 n.43 (1995).

Commission, 94 Hawai'i 31, 35, 7 P.3d 1068, 1072 (2000) (sometimes “*Ka Pa'akai Analysis*”). Compare Exhibit L at 20-21, with *Id.* at 18-20.

On November 24, 2021, the Planning Department completed the *Ka Pa'akai Analysis*,⁴ and with its Supplement # 6 To Planning Director's Report (Amended), recommended preliminary approval of the SMA Application with the following conditions:

1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.
2. Prior to commencement of the proposed development, written confirmation of compliance with the requirement from all reviewing agencies shall be provided to the Planning Department. Failure to comply may result in forfeiture of the SMA Permit.
3. The proposed dwelling and guest house shall not be utilized for any transient accommodation purposes. It shall not be used as a transient vacation rental (TVR) or as a homestay. This restriction shall be incorporated into the deed restrictions of the subject parcel in the event the property is sold to another party, draft copies of which shall be submitted to the Planning Department prior to building permit application approval.
4. To ensure that the project is compatible with its surroundings and to minimize impact of the structures, the external color of the proposed dwelling, guest house, and detached garage shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to

⁴ See generally Exhibit N.

building permit application.

5. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the archaeological/historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the Planning Department to determine mitigation measures.
6. Relocate the development down the hill an additional 150 feet from the “Existing Building Setback Line” that created a semi-circle area as the building envelop.
7. Reduce the total square footage of the roofed areas including the house, portico, lanais, garage, and guest house (excluding driveway and pool) by 15 percent.
8. Grading and excavation shall be minimized to the maximum extent possible.
9. Provide a 10-foot-wide access easement for Native Hawaiian traditional and customary practices to access the USFWS⁵ refuge (with USFWS approval) and cultural easement.
 - a. Access will be provided above the “Existing Building Setback Line,” along the fence line on the northern boundary of the property to the north-western corner of the property; or
 - b. Access will be provided along the southern boundary of the property and connected to the western boundary of the property to the north-western corner of the property.
10. For the use and exercise of Native Hawaiian traditional and customary practices, provide an easement that encompasses a 50-foot by 50-foot area that is located at the north-western corner of the property, entirely above the setback line.

⁵ “USFWS” stands for “United States Fish and Wildlife Service.”

- a. Access and use of the cultural easement may be up to one time per month, for up to an 8-hour period.
 - b. Access and use of the cultural easement may be for up to 25 individuals including practitioners of Native Hawaiian traditional and customary rights and members of Nā Kiaʻi o Nihokū. At least one member or representative of Nā Kiaʻi o Nihokū will be present and in attendance at all times during the use of the cultural easement.
 - c. Representatives of Nā Kiaʻi o Nihokū shall provide a minimum of 14 days' notice. Within 7 days of the proposed access, the owner shall permit the proposed access day or propose an alternative day within the designated month.
11. To avoid and minimize potential project impacts to Nene the following measures shall be incorporated:
- a. Do not approach, feed, or disturb Nene.
 - b. If Nene are observed loafing or foraging within the project area during the Nene breeding season (September through April), a biologist familiar with the nesting behavior of Nene shall conduct a survey for nests in and around the project area prior to the resumption of any work. Repeat surveys shall be conducted after any subsequent delay of work of three or more days (during which the birds may attempt to nest).
 - c. All work shall immediately cease and contact the Service⁶ for further guidance if a nest is discovered within a radius of 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins.
 - d. In areas where Nene are known to be present, post and implement reduced speed limits, and inform personnel and contractors about the presence of endangered species on-site.
 - e. Pool areas shall be covered when not in use.

⁶ “Service” is the United States Fish and Wildlife Service (“USFWS”).

- f. Predators on the property shall be eliminated and managed.
- 12. To avoid and minimize potential project impacts to Hawaiian seabirds the following measures shall be incorporated:
 - a. Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary. Spotlights aimed upward or spotlighting of structures shall be prohibited.
 - b. Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
 - c. No nighttime construction is allowed during the seabird fledging period, September 15 through December 15.
 - d. Utility lines associated with this property shall be undergrounded.
 - e. Light emitted from inside the structures shall be minimized to the maximum extent possible.
 - f. Predators on the property shall be eliminated and managed.
- 13. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
- 14. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.
- 15. To the maximum extent possible and 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 were no qualified Kauai residents possesses such skills. For 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.

16. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
17. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

Exhibit O at 27-30 (footnotes added).

At its meeting on December 14, 2021, the Commission granted the Petition To Intervene and referred this matter to the Office of Boards and Commissions of the County of Kaua'i ("Office of Boards and Commissions") to appoint a Hearing Officer to conduct a contested case hearing on the SMA Application ("Contested Case Hearing" or "Hearing"). Exhibit P at 29-30.

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II. PROCEDURAL HISTORY.

A. Preliminary Matters.

Shortly after the Office of Boards and Commission appointed this Hearing Officer on January 21, 2022, several Prehearing and Status Conferences were conducted during the remainder of that year and resolved a number of Prehearing Motions and Requests of the Parties.⁷ As a result of the several Prehearing and Status Conferences, the Planning Department and Intervenor confirmed the two (2) issues to be addressed at the Contested Case Hearing were: (a) whether Applicants' proposed construction of a single-family dwelling, guest house, garage, pool, rock retaining wall, site grading, agricultural and landscape plan, driveway, fencing, outside shower, and associated utilities on Lot 11-A of the Seacliff Plantation Subdivision (i.e. Proposed Project) was subject to the Setback Requirement established in 1982, or the Setback Requirement adopted in 1994; and (b) whether Traditional and Customary Native Hawaiian Cultural Practices

⁷ See generally: (1) Scheduling Order; (2) Minute Order Regarding Status Conference dated April 5, 2022; (3) **Second** Minute Order Regarding Status Conference dated May 31, 2022 ("**Second** Minute Order"); (4) **Third** Minute Order Regarding Status Conference dated August 30, 2022 ("**Third** Minute Order"); (5) Order Denying Without Prejudice Intervenor's Motion To Allow Site Visit During Intervenor's Presentation Of Evidence Dated October 17, 2022, dated November 7, 2022 ("Order Denying Site Visit"); (6) Order Denying Applicants Philip J. Green And Linda M. Green's Motion For Summary Judgment And/Or Adjudication, Dated October 17, 2022, dated November 8, 2022 ("Order Denying Summary Judgment"); and (7) **Fourth** Minute Order Regarding Status Conference dated November 9, 2022 ("**Fourth** Minute Order").

(i.e. NH Rights) dictate the denial of the SMA Application and the Proposed Project.⁸ See *Third* Minute Order at 5.

B. Contested Case Hearing And Exhibits.

The Contested Case Hearing was conducted on November 14, 2022, and continued on November 15 and 17, 2022, December 12, 13, and 15, 2022, and January 9, 10, and 12, 2023. There were a total of eighteen (18) witnesses⁹ testifying during the nine (9) days of the Hearing. At the Hearing the following exhibits were admitted into evidence, either by agreement of the Parties,¹⁰ witness testimony,¹¹ or by way of Judicial Notice:

1. Applicants' Exhibits: I through XXX; XXXII through XXXV; and XLIV through L during Applicants' Rebuttal Case;¹²
2. Planning Department's Exhibits: A through BB;¹³ and

⁸ Applicants also agreed these were the two (2) issues to be addressed at the Hearing. *Third* Minute Order at 5-6.

⁹ There would be **nineteen (19)** witnesses if you include Applicant PHILLIP J. GREEN ("Green"). See e.g., Jan. 12, 2023 Tr. at 1. References to the Contested Case Hearing Transcripts are in the following format: "[date] Tr. [page]:[line(s)]" or "[date] Tr. [page]:[line] to [page]:[line]."

¹⁰ The Parties stipulated to the authenticity and admission of the exhibits, but reserved the right to provide evidence and argument to contest their weight and relevancy.

¹¹ Exhibits admitted by witness testimony were either without objection, or over the objection of the non-offering Party or Parties.

¹² Exhibits XLIV through L were admitted into evidence by Green on day nine (9) of the Hearing. See *Amended* Minutes Of Contested Case Hearing - Days Seven (7) Through Nine (9) dated January 21, 2023 ("*Amended* Minutes: Days 7-9") at 6.

¹³ Exhibit BB was admitted by stipulation of the Parties on day (5) of the Hearing. See Minutes Of Contested Case Hearing - Days Four (4) Through Six (6) dated December 23, 2022 ("*Minutes*: Days 4-6") at 5.

3. Intervenor’s Exhibits: I-1 through I-108, and I-51A.¹⁴

See *Amended* Minutes Of Contested Case Hearing – Days One (1) Through Three (3) dated December 1, 2022 (“*Amended* Minutes: Days 1-3”) at 3-4.

C. Transcripts And Briefing.

On January 11, 2024, the Final Transcripts of the Hearing was distributed to the Parties. Consequently, Applicants submitted their Closing Brief dated February 9, 2024 that same day (“Applicants’ Closing Arguments”), as well as their Proposed Findings of Fact and Conclusions of Law dated February 9, 2024 (“Applicants’ Proposed FoF/CoL”). Thereafter, the Planning Department provided to this Hearing Officer its Closing Brief dated February 23, 2024 (“Planning Department’s Closing Arguments”), and Proposed Findings of Fact and Conclusions of Law also dated February 23, 2024 (“Planning Department’s Proposed FoF/CoL”) that same day. Also on that same day, this Hearing Officer received Intervenor’s Closing Responsive Brief dated February 23, 2024 (“Intervenor’s Closing Arguments”) and Proposed Findings Of Facts, Conclusions Of Law And Order also dated February 23, 2024 (“Intervenor’s Proposed FoF/CoL”). Finally, on March 1, 2024, Applicants submitted their Reply Brief To 1) *Respondent Planning Department Of The County Of Kauai’s Closing*

¹⁴ Exhibit I-51A was admitted into evidence by stipulation of the Parties on day eight (8) of the Hearing. See *Amended* Minutes: Days 7-9.

Brief And 2) Intervenor’s Closing Responsive Brief, Dated February 23, 2024
 (“Applicants’ Reply”).

III. FINDINGS OF FACT.

A. The Subject Property And Parties.

1. On August 12, 2019, and October 19, 2019, Applicants purchased condominium apartment Unit No. 1 and Unit No. 2, respectively, both of which combined comprise Lot 11-A located in the Seacliff Plantation Subdivision¹⁵ in Kīlauea, Kaua‘i, Hawai‘i, and more particularly identified as Tax Map Key: (4) 5-2-004:084 (“Subject Property”). Exhibits XXVI and XXVII.¹⁶

2. The Subject Property is 12.305 acres and located on the upper backside of Nihokū,¹⁷ within the ahupua‘a¹⁸ of Kīlauea (sometimes “Ahupua‘a”).

¹⁵ The Seacliff Plantation Subdivision is a gated community accessible by car through a keyed gate or by foot through a pedestrian access (“Subdivision”). See generally Exhibit I at 8-10 and Nov. 14, 2022 Tr. 41:17 to 42:17.

¹⁶ Since Exhibits XXVI and XXVII are virtually identical in all material respects, except as to the Condominium Unit conveyed (i.e. Unit No. 1 for Exhibit XXVI, as compared to Exhibit XXVII for Unit No. 2), and date of execution and recordation thereof, this Report and Recommendation shall hereinafter cite to only Exhibit XXVI (sometimes “Deed”), unless otherwise indicated to the contrary.

¹⁷ Nihokū, also referred to as “Crater Hill,” is nestled along the side of a dormant volcano crater. See generally Exhibits I-1 to I-3 and Jan. 9, 2023 Tr. at 51:7-19, and compare with Exhibits I-62 and I-63.

¹⁸ “An ‘ahupua‘a’ is a land division usually extending from the mountains to the sea along *rational* lines, such as ridges or other nature characteristics.” *PASH*, 79 Hawai‘i at 429 n.1, 903 P.2d at 1250 n.1 (*italics* in original) *citing In re Boundaries of Pulehunui*, 4 Haw. 239, 241 (1879) (acknowledging that these “rational” lines may also be based upon tradition, culture, or other factors).

Compare Exhibit VI, with Exhibit G at 2, and Nov. 15, 2022 Tr. at 109:28 to 110:12.

3. The Subject Property also abuts the 203-acre United States Fish & Wildlife Service Kīlauea National Wildlife Refuge (“the Refuge”), a wildlife preserve for various seabird species, including the endangered ‘ua‘u (Hawaiian Petrel) and threatened endemic ‘a‘o (a sub-species of the Newell’s Shearwater). See generally Exhibit I-4 at 1.

4. The Deed discloses the Subject Property is SUBJECT TO, among other encumbrances:

2. Building setback line as referenced on Subdivision map approved by the Planning Commission of the County of Kauai on May 26, 1994 [(“1994 Building Setback Line” or “1994 Setback Line”)].

. . .

12. The terms and provisions contained in the following:

DECLARATION OF CONDOMINIUM PROPERTY REGIME FOR “SEACLIFF KILOHANA[”] dated March 31, 2017, recorded as Document No. A-63160587 [(“Declaration”)].

. . .

Said Declaration was amended by instrument dated June 9, 2017, recorded as Document No. A-63730575 [(“Amendment To Declaration”)].

Exhibit XXVI at 11-12 (emphasis in original).

5. The Amendment To Declaration, among other things, replaced the description of the property identified as Exhibit “A” in the Declaration, and noted the Subject Property was further SUBJECT TO, among other encumbrances, the “Building setback line as shown on [the] map prepared by Cesar C. Portugal, Land Surveyor, dated [and] revised July 1983 [(‘1982 Building Setback Line’ or ‘1982 Setback Line’)].” Compare Exhibit I-26 at Exhibit “A” and *Id.* at page 3 of 5, with Exhibit I-25 at Exhibit “A”.¹⁹

6. The Subject Property is vacant land in the Subdivision “improved with road and utility infrastructure as a condition of the Planning Commission’s approved planned community.” Exhibit I at 10, § 3.1.

7. The Subject Property has the following special zoning designations and development standards:

- a. Special Management Area Designation;
- b. Development Standards prescribed in §§ 8-4.3 and 8-9.2 of the *Comprehensive Zoning Code* (“CZO”),²⁰
- c. Use Permit Requirements set forth in § 8-3.2 of the CZO;
- d. County Zoning Designation of Open (O)/Special Treatment-Resource (STG-R) Designation;

¹⁹ Item No. 2 of this Exhibit “A” to the Declaration also references the 1982 Building Setback Line. See Exhibit I-25 at Exhibit “A,” Page 1 of 2.

²⁰ The CZO is contained in Chapter 8 of the *Kaua’i County Code 1987*.

- e. State Land Use District of Agricultural Designation;
- f. General Plan Designation of Natural; and
- g. North Shore Development Planning Area Goals and Objectives.

Exhibit B at 2-6.

8. The Planning Department is an agency within the Executive Branch of the County of Kaua'i, a municipal corporation organized under the laws of the State of Hawai'i. Compare Art. XIV, with Art. I, both in *The Charter of the County of Kaua'i (2022 Codified Version)*.

9. Intervenor, in addition to the description in the Petition To Intervene, stated it would be so directly and immediately affected by the SMA Application that its interest in this Contested Case is clearly distinguishable from that of the general public because it “holds a Special Use Permit with the United States Fish and Wildlife Services [sic] (USFWS) to escort groups for cultural, educational, and ecological restoration purposes from Wōwōni point to Mōkōlea, including the land of Nihokū within the ahupua'a[s] of Kīlauea and Kāhili. These lands encompass the Kīlauea Point National Wildlife Refuge (KPNWR).” Exhibit G at 2, and Compare with Rule 1-4-1 of the *Rules Of Practice And Procedure Of The Kaua'i County Planning Commission (Codified May 2014)* (“Commission Rules”).

B. The Proposed Project.

10. The Proposed Project is situated on Unit No. 1 of the Subject Property and consists of a 6,113 square foot single-family farm dwelling unit (“FDU”)²¹ with a covered portico, a 1,849 square foot detached garage, a five hundred square foot guest house with a kitchen (“Guest Cottage”), a swimming pool, and miscellaneous site improvements, such as rock retaining walls, fencing, outside shower, driveway, ground mounted photovoltaic (PV) solar array, and landscaping for the Subject Property. Exhibit A at Exhibit “D”, Sheet 9 and Exhibit B at 3.

11. The FDU features three bedrooms, three-and-one half bathrooms, a great room, library media room, kitchen, pantry, laundry area, portico, and two lanais. Exhibit I at 11 and Exhibit “D,” Sheet 13.

²¹ Applicants argue the “living area” of the FDU is only 4,586 square feet, rather than 6,113 square feet. See Applicants’ Reply at 2 citing Exhibit I at Exhibit “D,” Sheet 11. Applicants are correct that the “living area” of the FDU is only 4,586 square feet. See *Id.* However, the entire “footprint” of the FDU is 6,113 square feet when including the lanai area of 992 square feet and portico of 535 square feet. See *Id.* Applicants acknowledge this distinction. See Applicants’ Reply at 2.

Applicants further argue they “agreed to reduce the size of the development and move it lower down the hill to accommodate concerns raised.” Applicants’ Reply at 2 citing Nov. 14, 2022 Tr. at 46:2-10 and 59:33-37, and Compare Exhibit IV, with Exhibit V at Exhibit 4, page 21. However, Applicants have not directed this Hearing Officer to any admitted Exhibits and/or testimony indicating the amount of reduction. Additionally, Exhibit IV which appears to reflect the relocation of the Project “lower down the hill” does not include any square foot calculations. Exhibit IV at 1-2.

12. The Guest Cottage contains one bedroom, one bath, and a kitchen/living room. *Id.* at Exhibit “D,” Sheet 12.

13. The four (4) bay Garage is for two vehicles, farm equipment, and a workshop.²² *Id.* and Exhibit “D,” Sheet 11.

14. The proposed Agricultural and Landscape Plan identifies a number of Fruit Trees, Palm Trees, Flower Trees, Floral Vegetation and other Plants. *Id.* at Exhibit “D,” Sheets 7 and 8.

C. The 1982 Building Setback Line.

15. “The Planning Commission at its meeting held on February 10, 1982, voted to reconsider its action of December 23, 1981, and approved the SMA Use Permit [SMA(U)-82-2] . . . [indicating t]he proposed building limit setback line ‘C’ shall be established on the ground and on the map . . . submitted by the Applicant with the February 2, 1982, letter to the Planning Commission [(i.e. 1982 Building Setback Line)].” Exhibit I-13 at 1.

16. One of the conditions for approval of SMA(U)-82-2 was for the developer to “dedicate the 75± acres of prime agricultural land to the County [of Kaua‘i] for agricultural purposes [(“Ag Park”).] Exhibit I-13 at 2.

²² Green testified “initially it was a four car garage. We were gonna move it down to a three-car garage.” Nov. 14, 2022 Tr. at 46:6-8.

17. The Ag Park was dedicated as referenced in SMA(U)-82-2.

Jan. 9, 2023 Tr. at 15:7-32.²³

18. The 1982 Building Setback Line's location was designed to prohibit any building with a maximum height of 25 feet measured from grade at all points along its roof peak: (a) from penetrating the ridgeline horizon when viewed from Kīlauea Town when such building is located on the western portion of Nihokū; or (2) when that building is located on the eastern portion of Nihokū, its' roof line may not be higher than the profile line of the flat land between Kuhio Highway and Nihokū, when viewed from the visible points along Kuhio Highway.²⁴ Exhibit I-13 at 1-2.

19. The 1982 Building Setback Line was located in the flat area of the Subdivision, and the result of an agreement between the developer, The O'Connor Corporation, and the intervenors in Special Management Use Permit SMA(U)-82-2. Compare Dec. 13, 2022 Tr. at 115:36-41, with *Id* at 116:1-26.

20. The 1982 Building Setback Line is shown on the map prepared by Cesar C. Portugal, Land Surveyor dated and revised July 1983

²³ The Ag Park was dedicated sometime after December 5, 1994. Compare Jan. 9, 2023 Tr. at 15:26-28, with Exhibit XV at 1 and 18. However, approval of SMA(U)-82-2 did not set forth a timetable for dedication of the Ag Park. See Exhibit I-13 at 1-4.

²⁴ Staff from the Planning Department and the members of the Planning Commission conducted site visits to craft these conditions to protect the view planes from those locations (i.e. Kuhio Highway, and Kīlauea Town). Dec. 13, 2022 Tr. at 113:15 to 114:33.

(“Portugal Map”). Exhibit XXVIII at Exhibit “B,” Page 1 of 4, Encumbrance No. 3.

21. A copy of the Portugal Map was admitted into evidence as Exhibit I-19.

D. The 1994 Building Setback Line.

22. The 1982 Building Setback Line for the Subdivision (including the Subject Property) was amended by the Planning Commission at its meeting held on November 10, 1994 (i.e. 1994 Building Setback Line). Exhibit XV at unnumbered 19 (Page 1 of the Planning Department’s letter dated November 30, 1994 to The O’Connor Corp., et al. (“O’Connor Letter”)).

23. The 1994 Building Setback Line appeared as a semicircle on each of the applicable lots in the Subdivision, including the Subject Property. See Exhibit V at Exhibit 9, last page, and Exhibit XV at unnumbered 30.

24. As a condition for approval of the 1994 Setback Line, among other things, the developer of the Subdivision (i.e. The O’Connor Corp., et al. and hereinafter “Developer”) “shall remit \$125,000 to [the Kauai Public Land Trust] [(‘]KPLT[’)] to be used for infrastructure and improvements . . . associated with the ag lots, community park, and other community benefits including construction of the irrigation system, minor road improvements, community park amenities

(‘Improvements’), and a \$25,000 administration fee for the KPLT.” Exhibit XV at unnumbered 19-20 (O’Connor Letter at 1-2).

25. Prior to Final Subdivision Approval, the Developer “shall either construct the [Improvements], or file a subdivision agreement and bond or security with the Planning Commission in a form approved by the County Attorney.” *Id.* at unnumbered 20 (O’Connor Letter at 2).

26. The Improvements were never constructed and therefore, the \$125,000 tendered by the Developer to the KPLT was returned by KPLT to the Developer. Compare Dec. 13, 2022 Tr. at 12:4-7, Jan. 9, 2023 Tr. at 15:21-24 and Exhibit I-22 at 3, with Dec. 15, 2022 Tr. at 137:5 to 138:16.

27. Since the Improvements were not constructed, “and the two year duration of the SMA Permit as indicated in the County of Kauai SMA Rules and Regulations²⁵ has expired[,] . . . the original 1982 setback line remains in effect, and the applicant’s structure should be located behind that 1982 line.” Exhibit I-22 at 3 (footnote added) and see also SMA Rules Section 10.0.

28. In 2002, Planner George Kaliski (“Kalisik”) for the Planning Department in reviewing an application for a Zoning Permit and Use Permit for the Subject Property determined that the “original 1982 setback line remains in effect, and the applicant’s structure should be located behind that 1982 line [because the

conditions for approval of the 1994 Setback Line were not met].”²⁶ Exhibit I-22 at 3 and see generally Dec. 13, 2022 Tr. at 5:10-37.

29. The Planner after Kalisik reviewing applications for construction of improvements on Lots 13 and 15 in the Subdivision (“Other Applications” unless otherwise indicated to the contrary) applied the incorrect 1994 Setback Line, instead of the 1982 Setback Line, in approving those applications. See generally Dec. 15, 2022 Tr. at 15:6 to 16:7 and 17:11 to 18:8. In other words, the Other Applications were approved in error. *Id.* at 18:24-31.

30. The SMA Application and Other Applications were also reviewed and analyzed differently because “Crater Hill [(i.e. Nihokū)] has a – has an array of different zoning overlays, um, as well as some are within the Special Management Area and some are not.” *Id.* at 18:34-36, and see also *Id.* at 18:32 to 19:11.

31. The Director of the Planning Department (“Director”) concurred with the reasoning of Kalisik that any development on the Subject Property shall be constructed within the 1982 Setback Line, and therefore, determined the Proposed Project should also comply with the

²⁵ The complete citation for “SMA Rules and Regulations” is *Special Management Area Rules And Regulations, As Amended October 2011 and March 5, 2015* (“SMA Rules”).

²⁶ Kalisik also authored the Report recommending approval of SMA(U)-94-14 which amended the 1982 Building Setback Line and replaced it with the 1994 Setback Line. Compare Exhibit XV at 18, with *Id.* at 11-12, ¶1 and 16, ¶16.

1982 Building Setback Line because the SMA Permit authorizing the 1994 Building Setback Line had expired and no longer in effect due to the conditions in that permit not being met. Compare Exhibit I-22, with Nov. 15, 2022 Tr. at 139:33 to 140:29, Dec. 13, 2022 Tr. at 8:2-20, *Id.* at 10:2-8 and 20:13 to 21:16. See also Exhibit XVIII at 3.

32. Mr. Keith Nitta (“Nitta”) was qualified as an Expert Witness in the area of Land Use Planning having previously been employed by the State of Hawaii Land Use Commission for three (3) years, and then with the Planning Department as a Planner for the next twenty-seven (27) years. Compare Jan. 12, 2023 Tr. at 57:5-30, with *Id.* at 50:24-35.

33. Nitta reviewed the Planning Department’s files and documents for the lots in the Subdivision to determine whether the 1982 Setback Line, or 1994 Setback Line, governs the location of the Proposed Project on the Subject Property. Compare *Id.* at 62:21 to 63:22, with Exhibit I-8²⁷ at 1-2.

34. The Nitta Report observed there was a 1994 and 2002 request to amend the 1982 Building Setback Line. Exhibit I-8 at 4. However, “[t]he 1994 request was declared null and void through the subdivision process, and the second one in 2002 was withdrawn.” *Id.*

²⁷ Exhibit I-8 shall sometimes hereinafter be referred to as the “Nitta Report.”

35. Based upon Nitta’s findings regarding the 1994 and 2002 request, the Nitta Report concluded “the 1994 [Building Setback Line was] . . . terminated at the subdivision level on July 10, 2001 after non-performance on all three (3) of the involved properties (**EXHIBITS A, B, and C**)²⁸”. *Id.* at 3 (emphasis in original; footnote added). “Therefore, the 1982 [Setback Line] approved under SMA permit SMA(U)-82-2 should still be in effect.” *Id.* at 6.

36. Alternatively, the Nitta Report posited that “in the event the 1994 permits [to amend the 1982 Building Setback Line] are still valid, the [1994 Building Setback Line] cannot take effect until the conditions of the [1994] permits are met. Therefore, **up until such time that the 1994 conditions are met, the**

²⁸ Exhibit “A” is a letter dated July 12, 2001, from the Planning Department to The O’Connor Corporation “officially terminating [the Subdivision Application for Tax Map Key: (4) 5-2-04:99, including the 1994 Setback Line,] . . . in accordance with Section 9-3-8(c)(1) of the Subdivision Ordinance, Kauai County Code (1987).” Exhibit I-8 at Exhibit “A.”

Exhibit “B” is a letter also dated July 12, 2001, from the Planning Department to Kīlauea Development Associates “officially terminating [their Subdivision Application for Tax Map Key: (4) 5-2-04:102, including the 1994 Setback Line,] . . . in accordance with Section 9-3-8(c)(1) of the Subdivision Ordinance, Kauai County Code (1987).” *Id.* at Exhibit “B.”

Exhibit “C” is a letter similarly dated July 12, 2001, from the Planning Department to Ideal Acres & Farms, Inc. “officially terminating [its’ Subdivision Application for Tax Map Key: (4) 5-2-04:30-34, including the 1994 Setback Line,] . . . in accordance with Section 9-3-8(c)(1) of the Subdivision Ordinance, Kauai County Code (1987).” *Id.* at Exhibit “C.”

Although the “three involved properties” did not include the Subject Property, the 1994 Setback Line approved under Special Management Area Use Permit SMA(U)-94-14 was likewise terminated due to non-performance of the conditions in that permit, and reverted back to the 1982 Setback Line established with Special Management Area Use Permit SMA(U)-82-2. Compare Exhibit XVI, with Exhibit I-8 at 3 and 6.

1982 [Building Setback Line] should still be applicable.” *Id.* at 5 (emphasis in original).

E. Applicability Of Native Hawaiian Customary And Traditional Practices Affecting The Subject Property.

1. Cultural Significance Of Nihokū.

37. Nihokū has great cultural significance because it is believed to have been once the home of the fire goddess Pele before relocating to Halema‘uma‘u on Hawai‘i Island. See generally Jan. 9, 2023 at 193:34 to 194:22, Jan. 10, 2023 Tr. at 130:32 to 132:12 and *Id.* at 144:17 to 147:22 and Jan. 12, 2023 Tr. at 28:9 to 29:1.

38. Nihokū is also significant for its’ distinct winds and famous Hawaiian Chief that governed that area. Compare Dec. 15, 2022 Tr. at 123:3-30 and Exhibits I-34 through I-37, with Dec. 15, 2022 Tr. at 129:20-36.

39. The Refuge is also located at Nihokū and is the home of various seabird species, including the endangered ‘ua‘u (Hawaiian Petrel) and threatened endemic ‘a‘o (a sub-species of the Newell’s Shearwater). See generally Exhibit I-4 at 1, I-87 to I-94, and I-101. These seabirds are considered kinolau, or

manifestations of different akua and ancestors.²⁹ See generally Exhibit I-1 at 3 and Jan. 10, 2023 Tr. at 133:15 to 134:5.

2. Native Hawaiians As Lawful Occupants Of The Ahupua'a And Beyond.

40. Several members of the general public that submitted testimony before the Planning Commission regarding the SMA Application, interviewed by the Planning Department in order to prepare Supplement #6 To Planning Director's Report (i.e. Exhibit N and sometimes "Supplement #6"), and/or testified at the Hearing, are native Hawaiians³⁰ residing in the Ahupua'a and beyond.³¹

41. Ms. Hōkū Cody ("Cody") **resides part-time in the Ahupua'a.** Exhibit I-1 at unnumbered 1 and Dec. 12, 2022 Tr. at 128:9-14. Cody is a Co-Founder of Intervenor. Dec. 12, 2022 Tr. at 105:25-36.

²⁹ "Kinolau" and "Akua" are the many forms of Hawaiian "gods," and the cultural significance of the "seabirds [is that they] are able to traverse between the heavens where the akua dwell and the earth where humans reside[, serving as the medium between both worlds]." Exhibit I-1 at unnumbered 3.

³⁰ The term "native Hawaiian" refers to all "descendants of the indigenous peoples who inhabited the Hawaiian islands prior to 1778, regardless of blood quantum." *Flores-Case 'Ohana v. Univ. of Hawai'i*, 153 Hawai'i 76, 82 n.10, 526 P.3d 601, 607 n.10 (2023). By contrast, "'Native Hawaiian' means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778 as defined by the Hawaiian homes commission Act ('HHCA') § 201(a) (1920)." *Kanahale v. State*, --- Hawai'i ---, ---, --- P.3d ---, --- (2024), 2024 WL 2762503, *21 n.2 (emphasis added; internal quotation marks omitted).

³¹ These native Hawaiians exercising their NH Rights need not only be lawful occupants of the "relevant" ahupua'a, but may have traveled from another part of the island. *See Pele Defense Fund v. Paty*, 73 Haw. 578, 619-20, 837 P.2d 1247, 1271-72 (1992).

42. Mr. William “Billy” Kinney, Sr. (“Kinney”) **resides in the Ahupua’a**. Compare Exhibit N at Exhibit C, page 28, with *Id.* at Exhibit C, page 1 and see Dec. 12, 2022 Tr. at 32:21-40, 34:21-33 and 93:2-32. Kinney is a member of Intervenor. *Id.* at 33:24-25.

43. Mr. David Sproat (“Sproat”) **resides at Kalihiwai Bay on Kaua’i**.³² Dec. 13, 2022 Tr. at 103:7-29.

44. Mr. Devin Forrest (“Forrest”) **resides in Halelea, Kaua’i**. Exhibit N at Exhibit D, page 5 and see also Dec. 13, 2022 Tr. at 162:22 to 163:11.

45. Kapua Chandler, Ph.D. (“Chandler”) **resides in the Ahupua’a**. Jan. 9, 2023 Tr. at 130:5-11 and 132:23-26, and Exhibit I-2 at unnumbered 1.

46. Ms. Jessica Anne Kau’ionalani Fu (“Fu”) **resides in the Ahupua’a**. Jan. 10, 2023 Tr. at 86:29 to 87:32 and Exhibit I-3 at unnumbered 1.

47. Kehaulani Kekua (“Kekua”) **was born in Anahola where she still resides**. Compare Jan. 10, 2023 Tr. at 125:10-21, with *Id.* at 123:21 to 124:22.

48. Ms. Jenevieve Ku’uipo Tori-Ka’uhane (“Tori-Ka’uhane”) **resides in Anahola**.³³ Dec. 15, 2022 Tr. at 63:16-23 and 66:9-17.

³² Sproat’s daughter, Ms. Kapua Sproat is identified as a witness in the transcript for this proceeding on December 13, 2022, but actually she was only present to assist her father in locating and identifying the exhibits referenced in the questions asked of him. Compare Dec. 13, 2022 Tr. at 1, with *Id.* at 102:34-42.

49. Mehana Vaughan, Ph.D. (“Vaughan”) **grew up in the Ahupua’a**. Exhibit N at Exhibit D, page 24, and see also Jan. 12, 2023 Tr. at 182:4 to 183:4. Vaughn is one of the founding members of Intervenor. Jan. 12, 2023 Tr. at 183:6-10.

50. Cody, Kinney, Sproat, Forrest, Chandler, Fu, Kekua, Tori-Ka’uhane and Vaughan (sometimes “native Hawaiians”) all testified under oath at the Hearing. See e.g., Dec. 12, 2022 Tr. at 96:24-27, Dec. 13, 2022 Tr. at 102:20-24, Dec. 13, 2022 Tr. at 162:2-6, Jan. 9 2023 Tr. at 79:11-14, Jan. 9 2023 Tr. at 202:10-13, Jan. 10, 2023 Tr. at 123:3-5, Dec. 15, 2022 Tr. at 62:36-39 and Jan. 12, 2023 Tr. at 180:12-15.

**3. Customary And Traditional
Native Hawaiian Practices At Nihokū.**

a. In Existence Prior To November 25, 1892.

51. The native Hawaiians testified at the Hearing that their practices customarily and traditionally exercised for subsistence, cultural and religious purposes in the Ahupua’a predate November 25, 1892.

³³ Tori-Ka’uhane’s classification as a native Hawaiian is not based upon a “direct blood lineage, but through her father who was “hanai” into a Hawaiian family whose direct lineage goes back to 1778. Dec. 15, 2022 Tr. at 96:5-22.

“Hanai” means to feed or nourish, and “refers to a child who is reared, educated, and loved by someone other than the child’s natural parents.” *Interest of AB*, 145 Hawai’i 498, 519 n.1, 454 P.3d 439, 460 n.1 (2019) quoting *Native Hawaiian Law: A Treatise* 1140 (Melody Kapilialoha MacKenzie with Susan K. Serrano, D. Kapua’ala Sproat, eds., 2015) (citation omitted).

52. Kinney is certain that the practice of Kilo was established as a customary and traditional native Hawaiian practice as of November 25, 1892. See Dec. 12, 2022 Tr. at 93:43 to 94:7.

53. Sproat testified that his wife's family for seven (7) generations engaged in customary and traditional native Hawaiian practices such as Marine Resource Management, Fishing and Kilo, at Nihokū and neighboring areas. See generally Dec. 13, 2022 Tr. at 105:8 to 108:23.

54. Forrest noted that Hula, the Awa Ceremony,³⁴ Pule,³⁵ the Makahiki Ceremony and Kilo, were customary and traditional native Hawaiian practices in existence prior to November 25, 1892. See Dec. 13, 2022 Tr. at 164:28 to 165:23, Jan. 12, 2023 Tr. at 155:13-18 and Jan. 12, 2023 Tr. at 160:14 to 161:30.

55. Chandler explained that Kilo, practices during Solstices and Equinoxes, Oli (chant) and Mo'olelo (stories, myths and legends) were all established as practices since November 25, 1892. Jan. 9, 2023 Tr. at 133:12 to 134:24.

³⁴ See Dec. 13, 2022 Tr. at 184:14 to 185:6. The "awa ceremony" involves the sharing of the awa drink (kava root extract mixed with coconut water) as a sacrifice to the gods marking an important occasion. See generally *Id.* at 184:3-37.

³⁵ Dec. 13, 2022 Tr. at 165:12 to 166:6, 184:39 to 185:11, 186:27 to 187:8 and Jan. 12, 2023 Tr. at 167:13-31. "Pule" is a prayer to an area to be entered and offering to Pele and other gods. Dec. 13, 2022 Tr. at 186:9-10.

56. Chandler further testified the feathers of native Hawaiian birds from Nihokū were used to make ceremonial wear for royalty. *Id.* at 162:6-10.

57. Fu explained that the customary and traditional practice of Mālama ‘Āina and Kilo predated November 25, 1892. Jan. 10, 2023 Tr. at 88:13 to 89:21, 119:12 to 120:7, and Exhibit I-3 at unnumbered 1-2.

58. Kekua is the 8th generation Kumu Hula of Kalau Palaihiwa O Kaipuwai, which hālau³⁶ was in existence since prior to November 25, 1892. Jan. 10, 2023 Tr. at 124:15 to 125:7.

59. Vaughan described Haku Oli³⁷ and Mālama ‘Āina, or caring for the land, as traditional cultural practices established prior to November 25, 1892. Jan. 12, 2023 Tr. at 184:7 to 185:29 and 186:36 to 187:32.

60. Kalei Nu‘uhiwa, Ph.D. (“Nu‘uhiwa”) verified with documentation from the Bishop Museum that the practice of Kilo was in existence prior to November 25, 1892. Jan. 9, 2023 Tr. at 189:2-32.

61. Tori-Ka‘uhane described the gathering of medicinal plants and flowers for leis, as well as story-telling (i.e. mo‘olelo) and chants (i.e. oli), as

³⁶ “Hālau” is a school that teaches hula. “Hula” is more than just dance, chants and/or songs, “it includes the ritual practices, . . . and protocols and processes that have been handed down through the generations.” Jan. 10, 2023 Tr. at 124:27-29.

³⁷ “Haku” is to weave or create something, “oli” is a song and therefore, “Haku Oli” is “putting a song together to chronicle the place and also the place with a certain experience and time.” Jan. 12, 2023 Tr. at 186:19-35.

native Hawaiian practices that were in existence before November 25, 1892.

Dec. 15, 2022 Tr. at 98:39 to 100:6 and 101:21-43.

b. Recent Practices Conducted At Nihokū.

62. Kinney engaged in kilo from the age of five³⁸ when he was (and still is) living in Kīlauea, and his grandfather would take him to Nihokū to engage in that practice.³⁹ Compare Dec. 12, 2022 Tr. at 63:36-39, with *Id.* at 34:21 to 35:3.

63. Kinney participated in an awa ceremony in 2015 at Nihokū. *Id.* at 35:33-38 and see also Exhibit I-78.

64. Like a number of other witnesses, Nihokū is Kinney's pānānā.⁴⁰ Compare Jan. 9, 2023 Tr. at 213:43-44 and Jan. 10, 2023 Tr. at 91:27 to 93:23, with Dec. 12, 2022 Tr. at 36:6 to 37:3 and 39:31-32.

65. With respect to the Subject Property according to Kinney, just **“seaward on the upper boundary of lot 11-a, the Green's property** is a fence line that separates it from US Fish and Wildlife property on the Fish and Wildlife property is where Na Kia o Nihoku goes and myself typically kilo from.” Dec. 12, 2022 Tr. at 40:2-5 (emphasis added) and see also *Id.* at 43:34 to 44:5 and Exhibit I-51.

³⁸ Kinney is now 40 years old. Dec. 12, 2022 Tr. at 55:36-37.

³⁹ Kinney also visited the Subject Property as a child. *Id.* at 63:14-25.

66. On September 20, 2015, Cody coordinated the gathering of seventy-six (76) persons comprised of Service Staff, Community Leaders, Cultural Experts, Kīlauea Residents, Scientists and Seabird Biologists, “to kilo (observe) sunrise, go to the upper lookout of Nihokū to hear the story of Pele & Lohiau, and then conduct the awa ceremony before heading to Kalihiwai for a post-event feast and talk story.” Exhibit I-1 at unnumbered 2 and see also Exhibits I-64 to I-71, and I-73 to I-83.

67. In April 2016 Cody also led a small group of eight and hiked up to Mōkōlea to practice Kilo, Mālama ‘Āina and ‘Āina-Based Education. Exhibit I-1 at unnumbered 2.

68. Cody through Intervenor, “conduct 4 quarterly kilo events and an average of 10 Mālama ‘Āina and ‘Āina-Based Education events per year [at the Refuge] with the likelihood of growing.” *Id.*

69. Cody due to her connection with the Refuge, is permitted to gather salvaged seabirds that are deemed able to be “decommissioned for cultural uses.” Dec. 12, 2022 Tr. at 147:12. In other words, after the dead seabirds have gone through the protocols to honor repository agreements with state or federal authorities, and related agencies, “they are deemed able to be given for cultural purposes.” *Id.* at 147:19-20. At that point, the decommissioned seabirds and their

⁴⁰ “Pānānā” has often been described as one’s “compass.” *Id.* at 36:31-35.

feathers are used for leis and other ceremonial wear, and their wing bones are used for the traditional art of tattooing. See generally *Id.* at 143:6 to 148:31.

70. Up until approximately five (5) years ago, Sproat and his wife's family would regularly kilo at Nihokū, and then engage in traditional fishing practices depending upon what was observed. Compare, Dec. 13, 2022 Tr. at 155:6-9, with *Id.* at 108:15-23 and 139:12 to 140:16. However, Sproat last visited Nihokū to kilo only about a week prior to his testimony. *Id.* at 155:11 to 156:7.

71. Forrest also participated in six or seven customary and traditional native Hawaiian practices at Nihokū since 2015. Compare Jan. 12, 2023 Tr. at 174:7-10, with *Id.* at 141:9 to 148:25 and Exhibits I-76 and I-80.

72. While at Nihokū in 2015, Forrest participated in offerings made to the gods, including awa during that time. Jan. 12, 2023 Tr. at 143:37 to 146:33, and Compare with *Id.* at 147:24 to 152:5 and Exhibit I-64 to I-71.

73. In approximately 2017, Pule was offered by the group in which Forrest was a part at the beginning of their entry into Nihokū through the Subdivision. Jan. 12, 2023 Tr. at 141:32 to 143:27 and Exhibit I-82.

74. Forrest has never conducted any native Hawaiian traditional cultural practices on the Subject Property and the Proposed Project would not prevent him from doing so. Jan. 12, 2023 at 176:34 to 177:7.

75. In 2021, Chandler and Vaughan, “started an ‘āina-based summer program for students from Kīlauea families⁴¹ . . . [traveling] to Nihokū where they did oli (chants), share mo‘olelo (stories) of Nihokū and the three sisters, grew their kilo (observation) skills through mapping, worked to mālama ‘āina through weeding, and learned about various birds, specifically ua‘a kani as they witnessed their underground burrows.” Exhibit I-2 at unnumbered 2 and see also Exhibits I-56, I-57 and I-88.

76. Cody, Chandler and Fu further identified Nihokū as their cultural and spiritual wahi pana (place of significance), as well as for other residents of Kīlauea and the neighboring ahupua‘as. Exhibits I-1 at unnumbered 3, I-2 at unnumbered 2 and I-3 at unnumbered 2, respectively.

77. Chandler does not have any knowledge whether anyone conducted traditional and customary native Hawaiian practices on the Subject Property. Jan. 9, 2023 Tr. at 107:20-29.

78. The creation of the Subdivision in the 1980s restricted access to parts of Nihokū and temporarily suspended the practices of native Hawaiian

⁴¹ Presumably, some of these families would be native Hawaiians.

Traditional and Customary Practices in that area, but they resumed with the initiatives of native Hawaiian cultural practitioners, and in coordination with USFWS. Compare Exhibit I-13 and Dec. 13, 2022 Tr. at 110:17-28, with Exhibits XXXII at unnumbered 3-10, I-1 at unnumbered 2, I-2 at unnumbered 2-3, I-3 at unnumbered 2, and I-64 to I-86.

79. “Nihokū is [also Fu’s] pānānā, a physical platform and internal compass that [she] use[s] to orient [her]self to [her] environment. . . . Without access to [her] pānānā on Nihokū, [she] would be unable to continue [her] kilo practice to become a skilled kilo (stargazer, reader of omens, seer, astrologer, necromancer; to watch closely, spy, examine, look around, observe, forecast). Exhibit I-3 at unnumbered 2.

80. Fu’s practice of Mālama ‘Āina, or caring for the land, “create[s] a reciprocal relationship with the land and all things that feeds [everyone].” *Id.* and see also Exhibit I-95.

81. Kekua first visited Nihokū in approximately 1999, and annually engaged in cultural practices in that area with her hālau until 2018. See generally Jan. 10, 2023 Tr. at 167:33 to 170:8.

82. Kekua has neither been to the Subject Property nor had any contact with the Applicants. Jan. 12, 2023 at 24:23-26.

83. While in high school, Vaughan learned to drive on the asphalt roads in the area that became the Subdivision. *Id.* at 182:4-11. She also spent a lot of time at the Refuge banding albatross, engaging in a lot of native plantings at Nihokū, and watching the sunset. *Id.* at 182:13-28.

84. Since 2009 or 2010, Vaughan began accessing Nihokū to engage in customary and traditional native Hawaiian practices such as weeding and plant restoration (mālama ‘āina), oli (chants) and teaching the younger generation about that place. Compare *Id.* at 184:7-17, with *Id.* at 182:34 to 184:5.

85. In 2013, Vaughan took her three (3) children to Nihokū and the youngsters performed their own form of kilo. Compare *Id.* at 187:38 to 189:20, with Exhibit I-96. That experience was part of the transfer of knowledge and Kuleana for the ‘Āina to the next generation. Jan. 12, 2023 Tr. at 189:16-20.

86. Vaughan also participated in the cultural practices at Nihokū and offered “her ho‘okupu, her gift to the area.” *Id.* at 152:7-11 and see also Exhibit I-72. She was also inspired to write a mele (song) of that place. See Jan. 12, 2023 Tr. 152:9-29 and Exhibit I-50.

87. Tori-Ka‘uhane described the gathering of medicinal plants and flowers for leis in Nihokū by her grandmother. Dec. 15, 2022 Tr. at 101:6-25.

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4. The Effect Of Proposed Project On Customary And Traditional Native Hawaiian Practices.

88. The testimony presented at the Hearing indicated some customary and traditional native Hawaiian practices for subsistence, cultural and/or religious purposes, may be affected by the Proposed Project.

89. In her written and oral testimony, Cody focused on the adverse effect the Proposed Project would have on the seabird population at Nihokū as grounds to oppose any development on the Subject Property. Compare Exhibit I-1 at unnumbered 3 and Dec. 12, 2022 Tr. at 134:39 to 136:9, with Dec. 12, 2022 Tr. at 136:11-38.

90. Kinney opined that the Proposed Project would adversely impact his ability to Kilo at Nihokū due its' planned location. Dec. 12, 2022 Tr. at 41:27 to 42:3 and 48:16 to 49:42.

91. Sproat is not claiming any customary and traditional native Hawaiian cultural practices with respect to the Subject Property. Dec. 13, 2022 Tr. at 143:15-26. However, his primary concern is the Proposed Project should be located within the 1982 Building Setback Line. See *Id.* at 152:3-15.

92. Forrest noted the Proposed Project “wouldn’t prevent [him] from practicing [customary native Hawaiian traditions], but it would affect the practice”. Jan. 12, 2023 Tr. at 179:8-20, and Compare with *Id.* at 177:4 to 178:38.

93. Chandler objected to the location of the Proposed Project as originally sited along the slope of Nihokū and wanted it to be in the setback line.⁴² Jan. 9, 2023 Tr. at 145:39-43.

94. Fu’s written testimony indicated the Proposed Project would adversely affect her Kilo Practice. Exhibit I-3 at unnumbered 3 and Jan. 10, 2023 Tr. at 71:9-14 and 99:12 to 104:3.

95. Kekua considers Nihokū, including the Subject Property and the rest of lots in the Subdivision, to be revered, and both Wahi Pana (storied place) and Wahi Kapu (sacred place), that need to be protected out of sheer respect.⁴³ Jan. 12, 2023 Tr. at 28:9 to 29:6.

96. Vaughan had the same concerns expressed by others during the Hearing concerning the Proposed Project. *Id.* at 214:38-41. Although the Proposed Project would not prevent Vaughan from carrying out her native Hawaii traditional and customary practices at Nihokū, it would have a “much greater impact than any of the existing development on Nihokū.” *Id.* at 203:31-36, and compare with *Id.* at 203:37 to 206:8.

⁴² Chandler’s reference to the “setback line” appears to be the 1982 Setback Line. See generally Jan. 9, 2023 Tr. at 146:4-5 and I-13.

⁴³ In other words, the Proposed Project will negatively impact the mana (spiritual power) and the integrity of Nihokū because of its size and location up its’ slope. See Jan. 12, 2023 Tr. at 29:13-42.

97. The testimony of André F. Raine, Ph.D. (“Raine”) indicated the close proximity of the Proposed Project to the Refuge would impact the bird population because of light attraction from the FDU and other improvements, sound and vibration disturbance from construction of the Proposed Project, existence of a swimming pool, and dogs and cats threatening the endangered birds and their offspring should the Applicants have any at the Subject Property. Exhibit I-4 at unnumbered 1-2 and see also Dec. 15, 2022 Tr. at 3:40 to 5:17.

5. Proposed Mitigation Efforts To Address The Impact The Proposed Development Would Have On Native Hawaiian Traditional And Customary Practices.

98. As applicable, suggestions were presented at the Hearing by the native Hawaiians to address the impact the Proposed Project would have upon their customary and traditional practices.

99. Cody maintained that none of the conditions in Supplement #6 would address the impact the Proposed Project would have on the seabird population at Nihokū. Compare Dec. 12, 2022 Tr. at 136:14-38, with Exhibit O at 27-30 and Dec. 12, 2022 Tr. at 134:39 to 136:9.

100. Kinney generally agreed with the conditions in Supplement #6. Compare Dec. 12, 2022 Tr. at 90:4 to 92:38, with Exhibit O at 27-30.

101. Sproat also generally agreed with the conditions set forth in Supplement #6. Compare Dec. 13, 2022 Tr. at 149:36 to 153:6, with Exhibit O at 27-30.

102. Forrest noted the rights of the Applicants to construct the Proposed Project should be weighed in balance with the rights of the customary and traditional practices of native Hawaiians. Jan. 12, 2023 Tr. at 177:20-24.

103. Chandler wanted the Proposed Project to be built in accordance with the 1982 Setback Line. See generally Jan. 9, 2023 Tr. at 145:41-43.

104. Fu agreed that the rights of the Applicants, and native Hawaiian Practitioners, “shouldn’t outweigh another.” Compare Exhibit I-3 at unnumbered 2, with Jan. 10, 2023 Tr. at 99:12-18. Consequently, the conditions in Supplement #6 imposed by the Planning Department for approval of the Proposed Project would be acceptable to her. Compare Jan. 10, 2023 Tr. at 99:20 to 104:3, with Exhibit O at 27-30.

105. Kekua could support the Proposed Project if it were relocated to the lower portion of the Subject Property, reduced in size and complied with a number of the other conditions in Supplement #6. See Jan. 12, 2023 at 30:3-16 and 33:12 to 37:25, and Compare with *Id.* at 34:5-9 and 35:22-27.

106. Vaughan also agreed the rights of Applicants to build the Proposed Project should be balanced with the Practitioners’ right to practice their

traditional and customary rights and therefore, she was in general agreement with the conditions set forth in Supplement #6. *Id.* at 215:2-8, and Compare with Exhibit O at 27-30 and Jan. 12, 2023 Tr. at 215:23 to 217:24.

107. Raine indicated that no lighting from the Proposed Project would be best so the birds in the Refuge are not attracted to it, but acknowledged that “there is a threshold through which, like, weak light will not attract birds.” Dec. 15, 2022 Tr. at 5:26-27.

108. Raise also testified that the further away the Proposed Project is from the Refuge “down the hill, . . . would be a positive thing.” *Id.* at 6:33-37.

6. *Ka Pa'akai* Analysis For The Proposed Project.

109. The *Ka Pa'akai* Analysis for the Proposed Project is contained in Supplement #6, as augmented with the evidence received at the Contested Case Hearing.

110. The Archaeological Field Inspection Report prepared by Nancy McMahon (“McMahon”) focused on the presence, if any, of archaeological, historical, or burial sites on the Subject Property and concluded there were “[n]o cultural resources nor historic properties . . . observed or identified within [that] survey areas for this field inspection.” Exhibit II (sometimes “McMahon Green Report”) at 14.

111. The McMahon Green Report is not a *Ka Pa'akai* Analysis because the former focuses on historical burial sites and related archeological artifacts, but the latter addresses the question whether there are native Hawaiian traditional and customary rights and practices conducted in a designated area. Compare *Id.*, with Nov. 15, 2022 Tr. at 61:34 to 62:3.

112. The Applicants did not request the McMahon Green Report to include a *Ka Pa'akai* Analysis. See generally Nov. 15, 2022 Tr. at 52:5-14 and 99:19-27.

113. The *Ka Pa'akai* analysis for Lot 15 in the Subdivision prepared by McMahon dated September 20198 (“McMahon Barker Report”) is about 1,900 linear feet from the Subject Property and therefore, too far away to be used as the *Ka Pa'akai* Analysis for the Subject Property. Compare Exhibit XXV and Dec. 12, 2022 Tr. at 167:18-25, with Nov. 15, 2022 Tr. at 59:7 to 60:12 and 90:23-27.

F. Relevant Authorities.

114. The **Hawai'i Constitution, Article XII, § 7** provides:

The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Island prior to 2778, subject to the right of the State to regulate such rights.

115. *Haw. Rev. Stat. § 1-1* provides:

The common law of England, as ascertained by English and American decisions, is declared to be the common law of the State of Hawaii in all cases, except as otherwise expressly provided by the Constitution or laws of the United States, or by the laws of the State, or fixed by Hawaiian judicial precedent, or established by Hawaiian usage; provided that no person shall be subject to criminal proceedings except as provided by the written laws of the United States or of the State.

116. *Haw. Rev. Stat. § 7-1* provides:

Where the landlords have obtained, or may hereafter obtain, allodial titles to their lands, the people on each of their lands shall not be deprived of the right to take firewood, house-timber, aho cord, thatch, or ki leaf, from the land on which they live, for their own private use, but they shall not have a right to take such articles to sell for profit. The people shall also have a right to drinking water, and running water, and the right of way. The springs of water, running water, and roads shall be free to all, on all lands granted in fee simple; provided that this shall not be applicable to wells and watercourses, which individuals have made for their own use.

117. **KCC § 8-3.2** adopted by the Council of the County of Kaua‘i, State of Hawai‘i (“Council”), on July 17, 2013 as part of Ordinance No. 950 provides in pertinent part:

§ 8-3.2 Use Permits.

- (a) Purpose. The purpose of the Use Permit procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if

the proper integration cannot be assured.

- (b) When Required. No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit.
- (c) Application. An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Sec. 8-3.1(b). The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Sec. 8-3.1(b) and other information justifying the issuance of the Use Permit.

. . .

- (e) Standards.
 - (1) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.
 - (2) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-

street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission.

. . .

118. **KCC § 8-4.3** adopted by the Council on May 7, 2020 as part of Ordinance No. 1073 provides:

§ 8-4.3 Development Standards for Residential Structures Not Involving the Subdivision of Land.

- (a) Parcel Area. The parcel area required for single family detached dwelling units shall be calculated in accordance with the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-4.2, except that, one single family detached dwelling unit may be constructed on any legal lot or parcel of record as of August 17, 1972, even if the lot or parcel is smaller than is required in the density district in which the lot or parcel is located.
- (b) Setback requirements. Setback requirements shall be as follows:
 - (1) Front setback: No structure, including but not limited to garages, carport, decks above grade, and accessory or storage structures may be closer than 10 feet to the right-of-way line of a public thoroughfare or the property line of a private street or the pavement line of a driveway or parking lot serving more than three dwelling units.
 - (2) Rear setback: No structure shall be closer than (5) feet or 1/2 the total height of the building wall nearest the rear property line, whichever is greater.

- (3) Side setback: No building shall be closer to a side property line than five feet or 1/2 the total height of the highest building wall from the ground level nearest the property line, whichever is greater.
 - (4) No eave, roof overhang, or other appurtenance to a building, other than a fence under six feet in height, shall project into any setback more than 1/2 the distance of the setback, or four feet, whichever is less.
 - (5) No balconies, overhead walkways, decks, carports or other exterior spaces intended for human occupancy above the ground floor of any building, shall penetrate the setback area.
 - (6) Accessory buildings and garden or service shelters not higher than seven feet nor covering more than 400 square feet, nor exceeding 20% of the rear side property line in the longest dimension facing the rear property line, may be built without setback.
 - (7) Greater setbacks because of topographic, drainage, sun exposure or privacy conditions may be required and made a condition for a Zoning Permit.
- (c) Minimum distance between structures. Minimum distance between structures shall be 10 feet.
- (d) Parcel Dimension Requirements. Parcel dimension requirements shall be as follows:
- (1) A parcel large enough to qualify for two or more dwelling units shall conform to the following requirements before any person is permitted to develop more than one single family dwelling unit and accessory buildings on the parcel:
 - (A) The minimum frontage on a public or private street shall be 25 feet unless the parcel is a flag lot.

- (B) The minimum average width of the existing parcel, excluding the flag portion of a flag lot, shall be 60 feet.
- (2) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-4.5.
- (3) The amount of land coverage created for R-1 to R-6 Zoning Districts including buildings and pavement, shall not exceed 60% of the lot or parcel area. Land coverage for the R-10 Zoning District shall not exceed 80% and land coverage for the R-20 Zoning District shall not exceed 90%.
- (e) Open Space. When development on a parcel meeting the density and parcel area requirements of this Section results in the designation of areas within the parcel for open space use, the area shall be designated on a map of the parcel as permanent open space and the map shall be recorded with the Bureau of Land Conveyances. In addition, the areas shall automatically be transferred to the Open District for zoning purposes.

119. **KCC § 8-9.2** adopted by the Council on November 14, 2012, as part of Ordinance No. 935 provides:

§ 8-9.2 Open District Development Standards.

- (a) Land Coverage.
 - (1) The amount of land coverage created, including buildings and pavement, shall not exceed 10% of the lot or parcel area.
 - (2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the 10% land

coverage limitation.

- (3) At least 3,000 square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972.

(b) Residential Densities.

- (1) Except as otherwise provided in this Article, no more than one single family detached dwelling unit per three acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission.
- (2) No more than one single family detached farm dwelling unit per five acres of land shall be permitted when the parcel is located within an area designated as "Agricultural" by the State Land Use Commission, and provided that no more than five dwelling units may be developed on any one parcel.
- (3) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one single family detached dwelling unit per one acre of land shall be permissible if the existing average slope of the parcel is no greater than 10%.
- (4) Provided that the provisions of this Article shall not prohibit the construction or maintenance of one single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.
- (5) Existing Structures—Permits and Condominium Property Regimes (C.P.R.s).
 - (A) Any lot of record which has a valid Zoning Permit(s) for more than five units prior to August 19, 2010, shall be allowed to build to the density for which there

are permits.

(B) Any lot of record which has been submitted to a condominium property regime ("C.P.R.") that has been registered with the Real Estate Commission prior to August 19, 2010, shall be allowed to build to the density in place at the time of the registration of the C.P.R. with the Real Estate Commission.

(C) Any dwelling unit constructed under these provisions or lawfully existing prior to May 21, 2010 may be replaced, expanded, altered or enlarged in accordance with all other applicable provisions of this Chapter.

(c) Subdivision.

(1) No parcel or lot shall be created which is less than three acres in size within an area designated as "Urban" or "Rural" by the State Land Use Commission, or less than five acres in size within an area designated as "Agriculture" by the State Land Use Commission, except within an "Urban" area a lot or parcel may be created which is one acre or more in size if the existing average slope of the lot or parcel thus created is no greater than 10%.

(2) No parcel or lot shall be subdivided when the improvements on the parcel meet or exceed the density and land coverage requirements of this Article.

(3) No portion of any parcel previously used as the basis for the calculation of allowable density or subdivision in any other District shall subsequently be subdivided or used as the basis for any other density or land coverage calculation.

(4) For contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, within an area designated as "Agricultural" by the State Land Use Commission the following standards shall apply.

Parcel area shall be calculated in accordance with Sec. 8-1.4(d):

- (A) Parcels not more than 50 acres, may be subdivided into parcels not less than five acres in size.
 - (B) Parcels larger than 50 acres, but not more than 300 acres may be subdivided into 10 or fewer parcels, none of which may be smaller than five acres.
 - (C) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than 300 acres may be subdivided only in accordance with the following criteria:
 - (i) A maximum of 75 acres may be subdivided into not more than 10 parcels, none of which shall be smaller than five acres;
 - (ii) An additional 20% of the total parcel area or 300 acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than 25 acres;
 - (iii) The balance of the parcel area shall not be subdivided.
 - (5) Standards for Subdivision on State Land Use District Agricultural. Any subdivision on land in State Land Use Commission Agricultural District shall be consistent with the provisions of H.R.S. Chapter 205 and Article 8 of Chapter 8 of Title IV of the Kaua'i County Code.
- (d) Development Standards. Subject to the density and subdivision restrictions in Subsection (c), the development requirements for use development or subdivision within an Open District shall be:
- (1) The same as the requirements for the District in which the proposed use would be permitted under other provisions of

this Chapter.

- (2) The same as the requirements of Secs. 8-4.4 and 8-4.5 of the Residential District if no use is indicated or if the use proposed is not readily assignable to any other Use District.
- (3) Public Access. The Planning Commission may require the dedication of adequate public access ways not less than 10 feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

120. **KCC § 9-3.8** adopted by the Council on June 19, 1973 as part of Ordinance No. 175, amended by the Council on March 16, 1982 as Ordinance No. 422, and further amended by the Council on June 28, 2001 as Ordinance No. 771 provides in pertinent part:

§ 9-3.8 Final Subdivision Map.

- (a) If the final map is to be filed with the Land Court for recordation, it shall comply with the requirements specified under the rules of the Land Court for Land Court subdivisions. If the final map is not to be filed with the Land Court, it shall contain the following data:
 - (1) The final map of all registered land shall conform as to size and scale with the standards set forth in Section 502-19, H.R.S. Where the final map is not to be filed with the Land Court, it may be acceptable to the Planning Commission if it is legal size, eight and one-half by thirteen(8 1/2 x 13) inches, or of other size as it may be acceptable to the Planning Commission. When more than one (1) sheet is required an index sheet of the same size shall be filed to show the entire

subdivision on one (1) sheet with block and lot numbers.

- (2)** The final map shall show the following information:
 - (A)** Name and address of the owner of record, subdivider or his or her agent, and of the registered surveyor who prepared the map.
 - (B)** The date, title, north arrow, scale and tax key. The title shall include the name of the subdivision under which it is to be recorded.
 - (C)** Locations of all proposed streets, easements, parks and other open spaces, reservations, lot lines, set-back lines; also names and lines of all adjoining or existing streets.
 - (D)** The length and true azimuths of all straight lines, radii, chords, and central angles of all curves along the property lines of each street, all dimensions and true azimuths along the lines of each lot, and also any other data necessary for the location of all building lines proposed to be imposed by the subdivider, including set-back lines.
 - (E)** All subdivisions shall be shown to have been accurately surveyed, coordinated to the government survey triangulation stations and permanently monumented on the ground with approved survey monuments. The error of closure in traverse around the subdivision and around interior lots or blocks shall not exceed one (1) foot to ten thousand (10,000) feet of perimeter.
 - (F)** Names of all subdivisions immediately adjoining; or when adjoining property is not a recorded subdivision, the names of the owners thereof.
 - (G)** Boundary of the subdivided tract, with courses and

distances marked thereon. The boundary shall be determined by survey in the field by a registered land surveyor and certified to be correct.

- (H) Any conditional requirements imposed as a condition for subdivision by the respective agencies.

. . .

(c) Filing of Final Subdivision Map.

- (1) The applicant shall file fifteen (15) copies of the subdivision final map with the Planning Department within one (1) year after approval of the preliminary subdivision map. If no filing is made, the approval of the preliminary subdivision map and construction plan shall become void unless an extension of time is granted by the Planning Commission.
- (2) An applicant may elect to file for approval of a final map covering only a portion of the approved preliminary map if he or she declares his or her intention at the time he or she files the preliminary map. Each partial final map shall apply to approval for a partial final map and the subdivision agreement required of the applicant shall provide for the construction of improvements as may be necessary to constitute a logical and orderly development of the whole subdivision by units.

(d) Action on Final Subdivision Map.

- (1) Planning Director. After accepting the filing of the final subdivision map, the Planning Director shall send a report to the Planning Commission indicating whether the final map conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved by the Planning Commission and to the approved construction plans. The report shall incorporate written

reports by the County Engineer and the Manager and shall also indicate whether the other requirements of this Chapter, other ordinances and State law have been satisfied.

- (2) **Planning Commission.** After the receipt of the report from the Planning Director, the Planning Commission shall determine whether the final subdivision map substantially conforms to the terms, conditions and format of the preliminary subdivision map which has been previously approved or conditionally approved, and to the approved construction plans, and whether the applicant has satisfied all other requirements imposed by law. The Planning Commission shall accordingly approve or disapprove the final subdivision map.
- (3) **Time Limits.** If the Planning Commission fails to take action on the final subdivision map within forty-five (45) calendar days from the date of acceptance, unless the applicant assents to a delay, the final subdivision map shall be deemed approved.
- (4) **Recordation.** The final subdivision map or a metes and bounds description of the subdivision must be recorded prior to or at the time of conveyance of interest in any lot or parcel. If no such timely recordation is made, the approval of the preliminary subdivision map, the construction plans, and the final subdivision map shall become void.
- (5) **Errors and Discrepancies.** The approval of the final subdivision map by the Planning Commission shall not relieve the applicant of the responsibility for any error in the dimensions or other discrepancies or oversights. Errors, discrepancies, or oversights shall be revised or corrected, upon request to the satisfaction of the Planning Commission.

121. **Special Management Area Rules and Regulations of the County of Kaua'i, As Amended October 2011**, provides in pertinent part:

. . .

Section 10.0 ACTION

. . .

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

. . .

Section 12.0 REVOCAATION

Permits can be revoked through the procedure outlines in Chapter 12 of the Rules of Practice and Procedures of the Planning Commission.

122. **Rule 1-12-5 of the Commission Rules** provides:

1-12-5 Revocation of Permits by the Planning Commission.

The Director shall review and investigate the basis for any petition for revocation of a permit which the Commission has final authority to grant or which the Commission makes a recommendation and report to the Kaua'i County Council, State Land Use Commission or other agency which as the final authority to grant. The Director shall file his report with the Commission within sixty (60) days from the date of acceptance of the petition, unless the Commission allows the Director more time to investigate the contents of the petition. The Commission shall review the Director's report and if the Commission finds that there is reasonable cause to believe that there currently is a failure to perform according to the conditions imposed, the Commission shall issue and serve upon the party bound by the conditions an Order to

Show Cause why the permit should not be revoked or modified.

123. **Rule 1-12-8 of the Commission Rules** provides in pertinent

part:

. . .

(b) For Class III and IV zoning permits, variances, use permits, subdivision approvals, special management area permits, special permits, state land use boundary amendments, or any other permit or approval for which the Commission has final authority, the procedures as set forth in section 1-6-18 and 1-6-19 shall apply. If the Commission finds that any term or condition of a permit has been violated or not complied with, the Commission may revoke, amend or modify the permit or may allow the permit holder a reasonable opportunity to correct, remedy or rectify the violation.

124. If any Finding of Fact herein should be designated as a

Conclusion of Law, the same shall be deemed to have been identified as such.

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IV. CONCLUSIONS OF LAW.⁴⁴

A. **The 1982 Building Setback Line Determines The Location Of The Project Because Special Management Area Use Permit SMA(U)-94-14 Authorizing The 1994 Building Setback Line Lapsed And Is No Longer In Effect.**

1. Applicants' argue the 1994 Setback Line governs the location of the Proposed Project because:

[t]he applicability of the 1994 Setback line was confirmed by [the Planning Department] in 2009 (via the concurrence letter[- Exhibit XVII at 1-2]) and in 2021 (via the recommendation for approval of Applicant's application [by Planning Director Hull - Exhibit IX]) as well as by the Commission in 2020 in approving a dwelling on Lot 15 based on the 1994 Setback line [(Exhibits Y and Z)]. Moreover, **unless and until the Commission takes further action on the 1994 SMA [to revoke it, that permit] remains valid and enforceable.**

Applicants' Closing Arguments at 15 (emphasis added; citations to Exhibits omitted).

2. Next, Applicants argue “[t]here is nothing in the SMA permitting process that calls for a tentative approval and a subsequent approval—

⁴⁴ Only the arguments raised in Applicants' Closing Arguments and Reply are addressed in this Conclusions of Law Section because all prior arguments not incorporated into those submittals are deemed waived. *See generally Rosa v. Johnson*, 3 Haw.App. 420, 430, 651 P.2d 1228, 1236 (1982) (Specified errors may be deemed abandoned if appellant presents no argument in briefs concerning them.) *citing Quality Furniture, Inc. v. Hay*, 61 Haw. 89, 595 P.2d 1066 (1979) *reh'g denied*, 61 Haw. 661 (1979), *State v. Kahua Ranch*, 47 Haw. 466, 390 P.2d 737 (1964), *reh'g denied*, 47 Haw. 485; and *Dement v. Atkins & Ash*, 2 Haw. App. 324, 631 P.2d 606 (1981).

there is only one approval. Unlike a preliminary map in the subdivision process that is by local ordinance tentative, an SMA is a final approval.” *Id.* at 16.

3. Applicants further argue imposition of the 1982 Building Setback Line and relocation of the Proposed Project one hundred and fifty (150) feet downslope “would place the Dwelling pool within Makaano road.” *Id.* at 28 *citing* Nov. 14, 2022 Tr. at 52:34 to 54:16 and Exhibit VI. Further, “[n]o analysis was provided as to the feasibility of developing a ten (10) foot wide access along the south side of the [Subject Property], through dense trees and brush in order to access FWS⁴⁵ lands that may or may not be accessible.” Applicants’ Closing Arguments at 29.

4. Applicants finally argue even if the Planning Commission “were to seek to revoke the 1994 SMA and related approvals, principles of equitable estoppel and vested rights would bar such action.” *Id.* at 17.

5. The Planning Department counters the “1982 Setback should apply [to the Proposed Project].” Planning Department’s Closing Arguments at 16 *citing* Nov. 15, 2022 Tr. at 140:17-21. The Planning Department’s position is based upon the “extensive research into the building setback line issue [conducted by Planning Director Ka’āina S. Hull].” Planning Department’s Closing Arguments at 16 *citing* Dec. 13, 2022 Tr. at 21:5-16.

⁴⁵ “FWS” refers to the U.S. Fish and Wildlife Service.

6. The expert testimony of Nitta also confirmed the 1982 Setback line should apply to the Proposed Project, and therefore, Applicants' reliance on the 1994 Semi-Circle Setback line in their Application is incorrect. See Jan. 12, 2023 Tr. at 63:42 to 64:3. "According to Nitta, in his opinion the mere approval of permit applications by the Planning Commission for lots like Lot 13 and Lot 15 based on the incorrect application of the 1994 Semi-Circle Setback rather than the correct 1982 Setback line would not alone modify the setback line." Planning Department's Closing Arguments at 18, *citing* Jan. 12, 2023 Tr. at 138:10 to 129:8.

7. The Planning Department further argues the letter from Planner Mike Laureta of the Planning Department:

is not reflective of any adjudicative action by the Planning Commission with respect to confirming the 1994 Semi-Circle Setback is the applicable setback line [for the Subject Property]. Additionally, the letter does not indicate that the Planning Department is joining in Mike Laureta's analysis or evaluation of this applicable setback line. Since the authority to establish setback lines rests with the Planning Commission, the Applicants do not have a right to reply upon the representation, if any, of the Planning Department as to the setback line.

Planning Department's Closing Arguments at 19 (citation to transcripts and case law omitted).

8. The Planning Department finally argues the Applicants were on notice the 1982 Setback Line applied to the Subject Property because the Deed

notes the “map reflecting the original 1982 building setback line [prepared by Cesar C. Portugal, Land Surveyor, dated and revised July 1982].” *Id.* at 19.

9. Intervenor argues the 1982 Setback Line applies to the Proposed Project because it:

is the only building setback line that has been approved by the [Planning] Commission and reflected in Commission-approved maps. **This original 1982 building setback line is reflected in the Seacliff Plantation subdivision map, prepared by Cesar C. Portugal in July 1983 and approved by the [Planning] Commission on August 15, 1983.** The 1983 Seacliff Plantation Subdivision map is also referenced in recent conveyance documents for Lots 12, 13, 14 and 15 indicating that those lots are subject to the original 1982 building setback line.

Intervenor’s Closing Arguments at 27 (emphasis added; citations to Exhibits omitted).

10. Both the Planning Department and Intervenor argue the 1994 Setback Line was subject to conditions which were never met and therefore, did not amend or replace the 1982 Setback Line. See generally Planning Department’s Closing Arguments at 15-20 and Intervenor’s Closing Arguments at 29-33.

11. The Planning Department further counters that even with the application of the 1982 Building Setback Line, the Subject Property “will have a triangular shaped buildable area with more than adequate space for a residence.” Planning Department’s Closing Arguments at 20 *citing* Exhibit I-21 [at unnumbered page 8]. Expert Witness Nitta also estimated depending upon the

size of the Proposed Project, Applicants “could still build two farm dwellings and a guest unit on Lot 11-A because the setback line area is about 40,000 square feet under the 1982 Setback.” Planning Department’s Closing Arguments at 20 *citing* Jan. 12, 2023 Tr. at 108:33 to 109:5.

12. Intervenor responds to Applicants equitable estoppel and vested rights arguments that they do not apply because: (a) the cases cited by them are inapposite;⁴⁶ (b) they cannot rely upon equity when Applicants failed to exercise due diligence to discover the 1982 Building Setback Line was a recorded encumbrance against the Subject Property;⁴⁷ and (c) they cannot rely upon SMA-Approval of other lots within the Subdivision based upon the 1994 Building Setback Line because “the topography of Lot 11-A is distinct from the other parcels located along Nihokū”.⁴⁸

13. Special Management Area Use Permit SMA(U)-94-14 which established the 1994 Setback Line is no longer valid because the related Subdivision Application was declared null and void effective July 10, 2001. Compare Exhibit XVI, with Exhibit I-8 at 3 and Exhibits A-C attached thereto.

⁴⁶ Intervenor’s Closing Arguments at 33-34.

⁴⁷ *Id.* at 35.

⁴⁸ *Id.* at 36 referencing: (a) Nov. 15, 2022 Tr. at 93:19-33; (b) Dec. 12, 2022 Tr. at 46:40-41, 54:10-13, and 71:10-11; (c) Dec. 12, 2022 Tr. at 167:18-25; (d) Dec. 13, 2022 Tr. at 18:32-37; and (e) Exhibits I-15 and I-51.

14. The Planning Department may declare the 1994 Building Setback Line null and void without the action of the Planning Commission to revoke Special Management Area Use Permit SMA(U)-94-14 because Section 10.0 of the SMA Rules authorizes the Director to determine whether substantial progress has been made within two (2) years of issuance thereof, and if not, that permit “shall be deemed to have lapsed and be no longer in effect.” SMA Rules Section 10.0 and *Morgan v. Planning Dept., County of Kauai*, 104 Hawai‘i 173, 179, 86 P.3d 982, 988 (2004) (“It is well-established that decisions of administrative agencies acting within the realm of their expertise are accorded a presumption of validity, and, therefore, the appellant carries a heavy burden of convincing the court that the decision is invalid because it is unjust and unreasonable in its consequences.”) *citing Ka Pa ‘akai O Ka ‘Aina*, 94 Hawai‘i at 40, 7 P.3d at 1077 and *Korean Buddhist Dae Wong Sa Temple of Hawai‘i v. Sullivan*, 87 Hawai‘i 217, 229, 953 P.2d 1315, 1327 (1998).

15. The Applicants’ argument the 1994 Building Setback Line is final because there is only one approval, as compared to a tentative subdivision approval, followed by final subdivision approval, does not prevent the Director from determining that setback line is null and void since there was no related final subdivision approval pursuant to KCC § 9-3-8(c)(1), and that decision is not arbitrary, or capricious, or characterized by an abuse of discretion or clearly

unwarranted exercise of discretion. *See Morgan*, 104 Hawai‘i at 179, 86 P.3d at 988.

16. The Director’s decision that the 1994 Building Setback Line is no longer valid because the SMA Use Permit authorizing that setback had lapsed and no longer in effect without the action by the Planning Commission to revoke Special Management Area Use Permit SMA(U)-94-14, and the 1982 Building Setback Line determines the location of the Proposed Project, is not arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.⁴⁹ *Morgan*, 104 Hawai‘i at 179, 86 P.3d at 988.

17. Confirmation from Planner Mike Laureta of the Planning Department (“Planner Laureta”) that the 1994 Building Setback Line remains in effect to determine the location of the Proposed Project is not binding upon the Planning Department. *Brescia*, 115 Hawai‘i at 500, 168 P.3d at 952 (“It is well accepted that a public employee not vested with decision making authority may not bind the state in its exercise of the police power.”) *citing Godbold v. Manibog*, 36 Haw. 206 (1942).

⁴⁹ Black’s Law Dictionary defines “revocation” as “[a]n annulment, cancellation, or reversal, [usually] of an act or power.” *Black’s Law Dictionary* 1346 (8th ed. 2004). By contrast, “lapse” is “to revert to someone else because conditions have not been fulfilled or because a person entitled to possession has failed in some duty.” *Id.* at 896. In either event, both terms indicate the holder of that right or privilege no longer has that right or privilege.

18. Location of the Proposed Project within the 1982 Setback Line is not unreasonable or infeasible because the testimony of Expert Witness Nitta concluded Applicants would still be able to construct two farm dwellings and a guest unit on the Subject Property because the buildable area is about 40,000 square feet. *See generally Brescia*, 115 Hawai'i at 497, 168 P.3d at 949 (Reasonable use of the land is "not necessarily the use most desired by the owner.") *quoting Korean Buddhist Dae Wong Sa Temple of Hawai'i*, 87 Hawai'i at 234, 953 P.2d at 1332 (citation omitted).

19. The requirements of KCC §§ 8-3.2(e), 8-4.3 and 8-9.2 may also be relied upon by the Director and Planning Commission in locating the Proposed Project within the 1982 Setback Line.

20. Applicants' claims of Equitable Estoppel, violation of their Equal Protection Rights, and violation of their Vested Rights, are unsupportable because the Deed, Declaration and Amendment To Declaration, all advised them the 1982 Building Setback Line was an encumbrance on the Subject Property. *Hawaiian Ocean View Estates v. Yates*, 58 Haw. 53, 63, 564 P.2d 436, 442 (1977) ("Since the whole doctrine [of estoppel] is a creature of equity and governed by equitable principles, it necessarily follows that the party who claims the benefit of an estoppel must not only have been free from fraud in the transaction, but **must have acted with good faith and reasonable diligence, otherwise no equity will**

arise in his favor.”) (emphasis added) *quoting 3 Pomeroy’s Equity Jurisprudence* § 813 (5th ed. 1941).

21. Equitable Estoppel also cannot be relied upon by Applicants because Planner Laureta had no authority to bind the Planning Department into agreeing that the 1994 Building Setback Line applies to the Subject Property. *See generally Brescia*, 115 Hawai‘i at 499, 168 P.3d at 951 (Estoppel “cannot be applied to actions for which the agency or agent of the government has no authority.”) *quoting Turner v. Chandler*, 87 Hawai‘i 330, 334, 955 P.2d 1062, 1066 (App. 1998).

22. Applicants further may not rely upon their Vested Rights argument because KCC § 9-3.8(c)(1) referenced by the Planning Department to conclude the 1982 Setback Line, rather than the 1994 Setback Line, controls the location of the Proposed Project is a proper exercise of the County of Kaua‘i’s police power. *Brescia*, 115 Hawai‘i at 499-500, 168 P.3d at 951-52 (“It is well established that zoning which terminates inchoate rights to develop land is a legitimate exercise of the police power.”) *citing County of Kauai v. Pac. Standard Life Ins. Co.*, 65 Haw. 318, 336-37, 653 P.2d 766, 779 (1982).

23. Although the approval of the Other Applications was based upon the 1994 Setback Line, Applicants’ Equal Protection rights are not violated because the lots for those applications are not alike in all relevant respects to the

Subject Property. See *Village of Willowbrook v. Olech*, 528 U.S. 562, 564, 120 S.Ct. 1073, 1074, 145 L.Ed.2d 1060 (2000) (An equal protection violation only occurs when the state action is motivated by a “spiteful effort to get him” for reasons unrelated to any legitimate state objective.) and see also *DiBuonaventura v. Washington Township*, 225 A.3d 1060, 1066 (2020) (“Persons are similarly situated under the Equal Protection Clause when they are alike in “all relevant aspects.”).

24. The conditions set forth in Supplement #6, as revised in this Report and Recommendation, do not violate the Takings Clause of the United States or Hawai‘i Constitution because “mere diminution of market value or interference with the property owner’s personal plans and desires relative to his property is insufficient to invalidate a zoning ordinance or to entitle him to a variance.” *Brescia*, 115 Hawai‘i at 497, 168 P.3d at 949 quoting *City of Eastlane v. Forest City Enters, Inc.*, 426 U.S. 668, 674 n.8, 96 S.Ct. 2358, 2362 n.8, 49 L.E.2d 132 (1976) (internal quotation marks, citations, and brackets omitted).

25. The location of the Proposed Project shall be constructed within the 1982 Setback Line approved under Special Management Area Use Permit SMA(U)-82-2 because Special Management Area Use Permit SMA(U)-94-14

establishing the 1994 Setback Line lapsed and no longer in effect pursuant to Section 10.0 of the SMA Rules. See also KCC § 9-3.8(c)(1).

B. Native Hawaiian Customary And Traditional Practices Affected By The Subject Property.

26. Applicants argue the Proposed Project will not impact customary and traditional native Hawaiian practices because: (1) Intervenor lacks standing to claim Native Hawaiian Access and Gathering Rights on the Subject Property;⁵⁰ (2) Intervenor has not presented Native Hawaiian Descendants with sufficient connection to the Kīlauea Ahupua‘a to claim Assess and Gathering Rights;⁵¹ (3) Intervenor has not established any native Hawaiian Traditional and Customary Practices on the Subject Property;⁵² (4) the Subject Property is “Fully Developed” and therefore, no Customary and Traditional Native Hawaiian Practices may take place on it;⁵³ (5) the Planning Department’s *Ka Pa‘aki* Analysis is flawed as a matter of law and cannot be relied upon to establish any Native Hawaiian Traditional and Customary Practices;⁵⁴ and (6) the

⁵⁰ See Applicants’ Closing Arguments at 18-19. This argument is based upon their claim that none of Intervenor’s members “**reside** in the relevant ahupua‘a or, if they **reside** within an abutting ahupua‘a[,] they must establish that they have customarily and traditionally used and continued to use the relevant area for gathering or other native Hawaiian T&C practices”. *Id.* (emphasis added).

⁵¹ See *Id.* at 20. This ancillary argument is essentially the same as the first one.

⁵² See *Id.* at 20-23.

⁵³ See *Id.* at 23.

⁵⁴ See *Id.* at 24-27.

recommendations of the Planning Department for the Proposed Project are Unreasonable, Infeasible and Unconstitutional.⁵⁵

27. The Planning Department counters that the *Ka Pa'akai* Analysis was prepared for consideration by the Planning Commission because it acknowledged the affirmative duty of the latter to do so and protect Native Hawaiian Traditional and Customary Rights. Planning Department's Closing Arguments at 11-13, and Compare with Exhibits N and O. In order to receive that protection, the: (a) occupants of an ahupua'a are permitted to gather in that ahupua'a, or a neighboring ahupua'a, where such rights have customarily and traditionally been exercised in that manner; (b) occupants of an ahupua'a may gather what is needed for traditional and customary subsistence, cultural, and religious purposes; (c) occupants of an ahupua'a may gather on less than fully developed lands; (d) rights of the Native Hawaiian practitioners of Customary and Traditional practices lawfully residing in an ahupua'a, or neighboring ahupua'a, must be balanced against the rights of the owner of the property which is subject to those practices; and (e) balance weighs in favor of the property owner, and against the occupants of the ahupua'a who exercise otherwise valid customary rights in an unreasonable manner. Planning Department's Closing Arguments at 25.

⁵⁵ See *Id.* at 27-30.

28. Intervenor counters Applicants’ arguments on grounds that the Proposed Project infringes on the rights of their Native Hawaiian Practitioners, and others similarly situated, because: (1) the Proposed Project will impair the Customary and Traditional Native Hawaiian Practices of its members while engaging in those activities at Nihokū;⁵⁶ and (2) the Planning Commission has an affirmative duty to consider the effects of the Proposed Project on Native Hawaiian Traditions and Practices.⁵⁷

29. The Planning Commission has an affirmative obligation to “protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians”. *Flores-Case ‘Ohana*, 153 Hawai‘i at 82, 526 P.3d at 607 *citing PASH*, 79 Hawaii at 450-51, 903 P.2d at 1271-72.

⁵⁶ Intervenor’s Closing Arguments at 37-42. Nihokū is part of the ahupua‘a in which the Subject Property is located. See e.g., Exhibits G at 2. Second, Applicants failed to affirmatively demonstrate the Proposed Project does not impact native Hawaiian customary and traditional practices. Intervenor’s Closing Arguments at 38-39. Third, nine (9) of Intervenor’s witnesses “testified that they are Native Hawaiians who can trace their ancestry back to individuals who inhabited the Hawaiian islands prior to 1778.” *Id.* at 39. Four, the “relevant area” upon which native Hawaii traditional practices take place is not limited to the Subject Property, but includes the entire Subdivision. *See Id.* at 40 n.2. Five, the Subject Property is “less than fully developed” and therefore, the Hawaii Supreme Court has reserved for another day whether native Hawaii traditional practices applies to property at that stage of development. *See Id.* at 42.

⁵⁷ *See Id.* at 49. The Planning Department in conducting its own *Ka Pa‘akai* Analysis on behalf of the Planning Commission met that obligation. See Exhibits N and O. First, the *Ka Pa‘akai* Analysis indicated gathering and cultural practices were occurring at Nihokū. *Id.* at 44-46. Second, the Planning Department evaluated the impact of the Project on native Hawaiian Traditional Practices. *Id.* at 46-47. Finally, the Planning Department proposed terms and conditions for approval of the Proposed Project to mitigate the impact on native Hawaiian traditions and practices. *Id.* at 47-49.

30. The NH Rights are protected by Article XII, § 7, of the Hawai‘i Constitution (for subsistence, cultural and religious purposes), *Haw. Rev. Stat.* § 7-1 (gathering, access and water rights) and *Haw. Rev. Stat.* § 1-1 (certain customary Hawaiian rights beyond those found in *Haw. Rev. Stat.* § 7-1). *Pele Defense Fund*, 73 Hawai‘i at 616-18, 837 P.2d at 1270-71.

31. The individuals to be protected must be “descendants of the indigenous peoples who inhabited the Hawaiian islands prior to 1778, regardless of blood quantum.” *Flores-Case ‘Ohana*, 153 Hawai‘i at 82 n.10, 526 P.3d at 607 n.10.

32. The “native Hawaiian rights protected by article XII, § 7 may extend beyond the ahupua‘a in which a native Hawaiian resides where such rights have been customarily and traditionally exercised in this manner.” *Pele Defense Fund*, 73 Hawai‘i at 620, 837 P.2d at 1272.

33. The native Hawaiian customs and practices must have been in existence as of November 25, 1892. *PASH*, 79 Hawaii at 447, 903 P.2d at 1268.

34. The rights of each native Hawaiian “to exercise traditional and customary practices remains intact, notwithstanding arguable abandonment of a particular site, although this right is potentially subject to regulation in the public interest.” *Id.* at 450, 903 P.2d at 1271.

35. The “relevant area” for the *Ka Pa ‘akai* Analysis is determined by the administrative agency responsible for the enforcement of the NH Rights. *Mauna Kea II*, 143 Hawai‘i at 396 n.16, 431 P.3d at 769 n.16.

36. If the “relevant area” is “‘fully developed,’ i.e., lands zoned and used for residential purposes **with existing dwellings, improvements, and infrastructure**,⁵⁸ it is *always* ‘inconsistent’ to permit the practice of traditional and customary native Hawaiian rights on such property.” *Hanapi*, 89 Hawai‘i at 186-87, 970 P.2d at 494-95 (**bold** emphasis added; *italics* in original; footnote in original, albeit identified with a different number).

37. The Subject Property is part of Nihokū, but only the Subject Property and the Refuge immediately adjacent to it, constitute the “relevant area” for purposes of the *Ka Pa ‘akai* Analysis.⁵⁹ *Mauna Kea II*, 143 Hawai‘i at 396 n.16, 431 P.3d at 769 n.16 (The governing agency defines the “relevant area,” subject to judicial review under *Haw. Rev. Stat.* §91-14(g)).

⁵⁸ “We cite property used for residential purposes as an example of ‘fully developed’ property. **There may be other examples of ‘fully developed’ property as well where the existing uses of the property may be inconsistent with the exercise of protective native Hawaiian rights.**” *State v. Hanapi*, 89 Hawai‘i 177, 187 n.10, 970 P.2d 485, 495 n.10 (1998) (emphasis added).

⁵⁹ The remainder of the *Ka Pa ‘akai* Analysis will focus primarily on the Subject Property because exercise of NH Rights at the Refuge requires a Special Permit issued by USFWS. See generally Exhibit G at 2 and *Cf. S.R.A., Inc. v. State of Minn.*, 327 U.S. 562-63, 66 S.Ct. 749, 753, 90 L.Ed. 851 (1946) (“[N]ot only is the federal property immune from taxation because of the supremacy of the Federal Government but state laws, not adopted directly or impliedly by the United States, are ineffective to tax or regulate other property or persons upon that enclave.”).

38. Cody, Kinney, Forrest, Chandler, Fu and Vaughan, are native Hawaiians lawfully occupying the Ahupua‘a, or neighboring ahupua‘a, entitled to enforce the exercise of their customary and traditional practices in the “relevant area.” *See generally Pele Defense Fund*, 73 Hawai‘i at 616-20, 837 P.2d at 1269-72 (Native Hawaiian rights protected by Art. XII, § 7 may extend beyond the ahupua‘a in which descendants of native Hawaiians who inhabited the Hawaiian islands prior to 1778 reside, where such rights have been customarily and traditionally exercised in this manner.).

39. Sproat, Kekua and Tori-Ka‘uhane, are also native Hawaiians residing beyond the Ahupua‘a, but still on the island of Kaua‘i, and engaged in customary and traditional practices within the Ahupua‘a.⁶⁰ *See Pele Defense Fund*, 73 Hawai‘i at 619, 837 P.2d at 1271 (“The Committee on Hawaiian Affairs added what is now article XII, § 7 . . . contemplated that some traditional rights might extend beyond the ahupua‘a; for instance it was **customary for a Hawaiian to use trails outside the ahupua‘a in which he lived to get to another part of the island.**”) (emphasis added).

⁶⁰ Although Nu‘uhiwa is also a native Hawaiian, she resides in Hilo, Hawaii, and therefore, not included in the group entitled to advance their claims that the Proposed Project affect their rights to exercise customary and traditional practices at Nihokū. Compare Jan. 9, 2023 Tr. at 180:7-15, with *Id.* at 180:2-5.

Nu‘uhiwa also testified under oath. Jan. 9, 2023 Tr. at 179:19-22.

40. The NH Rights were first exercised by the ancestors of Cody, Kinney, Sproat, Forrest, Chandler, Fu, Kekua, Tori-Ka'uhane and Vaughan, prior to November 25, 1892.⁶¹ *PASH*, 79 Hawaii at 447, 903 P.2d at 1265 (*Haw. Rev. Stat.* §1-1's predecessor fixed "November 25, 1892 as the date Hawaiian usage must have been established in practice.").

41. Cody, Kinney, Sproat, Forrest, Chandler, Fu, Kekua, Tori-Ka'uhane and Vaughan (sometimes "Practitioners"), have demonstrated they engaged in customary and traditional native Hawaiian practices within Nihokū. *Hanapi*, 89 Hawai'i at 86, 970 P.2d at 494 (In order to establish his or her conduct is constitutionally protected as a native Hawaiian, he or she must show: (1) he or she is a native Hawaiian within the guidelines set out in *PASH*; (2) his or her claimed right is constitutionally protected as a customary and traditional native Hawaiian practice in art. XII, § 7 of the Hawai'i Constitution, or *Haw. Rev. Stat.* §§ 1-1 or 7-1; and (3) exercise of the right occurred on undeveloped or less than fully developed property.).

⁶¹ These individuals may lay the "adequate foundation" connecting their claimed right to a firmly rooted traditional or customary native Hawaiian practice because kama'aina testimony has been accepted as proof of ancient Hawaiian tradition, custom, and usage. *Hanapi*, 89 Hawai'i at 187 n.12, 970 P.2d at 495 n.12 citing *Palama v. Sheehan*, 50 Haw. 298, 440 P.2d 95 (1968) (holding that testimony from kama'aina witnesses were sufficient to find the existence of an ancient Hawaiian right of way); *Application of Ashford*, 50 Haw. 314, 316, 440 P.2d 76, 78 *reh'g denied*, 50 Haw. 452, 440 P.2d 76 (1968) (recognizing that Hawai'i "allow[s] reputation evidence by kama'aina witnesses in land disputes"); *In re Boundaries of Pulehunui*, 4 Haw. 239 (1879) (permitting kama'aina witnesses to testify about the location of ancient Hawaiian land boundaries).

42. The rights of the Practitioners must be balanced against those of the Applicants' rights to the Subject Property because that property is "fully developed." *PASH*, 79 Hawai'i at 442, 903 P.2d at 1263 ("Traditional and customary rights are properly examined [and balanced] against the law of property as it has developed in this state.), *Id.* at 450, 903 P.2d at 1271 ("[R]ights of access and collection will not necessarily prevent landowners from developing their lands.") *citing Pele Defense Fund*, 73 Hawai'i at 621 n.36, 837 P.2d at 1272 n.36 ("reiterating the early holding that article XII, section 7 does not require the preservation of undeveloped lands in their natural state and that *Kalipi* rights only guarantee access to undeveloped lands") (internal quotation marks, brackets, and ellipses omitted), and *Hanapi*, 89 Hawai'i at 187 n.10, 970 P.2d at 495 n.10 (Property may be "fully developed" even though it lacks dwellings, improvements, and infrastructure, "where the existing uses of that property may be inconsistent with the exercise of protected native Hawaiian rights.").

43. Enforcement of the NH Rights are to reasonably accommodate competing development interests. *Mauna Kea II*, 143 Hawai'i at 395, 431 P.3d at 768 *quoting citing Ka Pa'akai O Ka 'Aina*, 94 Hawai'i at 35, 7 P.3d at 1072.

44. The Customary and Traditional native Hawaiian practices of Kilo, and gathering of medicinal plants and flowers to make leis, have taken place on the Subject Property prior to development of the Subdivision.⁶²

45. Currently, consent of the Applicants is required for entry onto the Subject Property for the gathering of medicinal plants and flowers to make leis. See *PASH*, 79 Hawai'i at 450 n.43, 903 P.2d at 1271 n.43 (“The State’s power to regulate the exercise of customarily and traditionally exercised Hawaiian rights . . . necessarily allows the State to permit development that interferes with such rights in certain circumstances—for example, where the preservation and protection of such rights would result in ‘actual harm’ to the ‘recognized interests of others.’”) citing *Kapili v. Hawaiian Trust Co., Ltd.*, 66 Haw. 1, 12, 656 P.2d 745, 752 (1982).

46. Kilo is the only Customary and Traditional native Hawaii Practice that may be exercised from outside the boundaries of the Subject Property (i.e. the Refuge) without the consent of Applicants, but would be affected by the Proposed Project.

47. The Proposed Project will affect the practice of Kilo during daylight hours due to the visibility of the FDU with a covered portico, detached

⁶² “[T]he right of each [native Hawaiian] tenant to exercise traditional and customary practices remains intact, notwithstanding arguable abandonment of a particular site, although this right is

garage, guest house, swimming pool and miscellaneous site improvements (“Structures”), and during nighttime hours by reason of the illumination of some of the Structures.

48. The endangered birds at the Refuge would also be impacted by the construction of the Proposed Project, illumination of the applicable Structures during nighttime hours, swimming pool if left uncovered, and any dogs and/or cats should Applicants have them on the Subject Property.

49. The conditions proposed in Supplement #6, as amended by this Report and Recommendation, would reasonably protect NH Rights of Kilo and protect the birds in the Refuge, while acknowledging the private property rights of Applicants to the Subject Property.⁶³ See *PASH*, 79 Hawai‘i at 447, 903 P.2d at 1268 (“State retains the ability to reconcile competing interests under article XII, section 7.”)

50. The conditions proposed in Supplement #6, as amended by this Report and Recommendation, are not unreasonable and infeasible because Applicants will be able to proceed with the Proposed Project, albeit on a reasonably reduced scale at a different location on the Subject Property. See

potentially subject to regulation in the public interest.” *PASH*, 79 Hawai‘i at 450, 903 P.2d at 1271.

⁶³ See condition nos. 4, 5, 6, 7, 8, 11, 12 and 13. Exhibit O at 27-30.

Brescia, 115 Hawai'i at 497, 168 P.3d at 949 (Reasonable use of the land is not necessarily the use most desired by the owner.).

51. The conditions proposed in Supplement #6, as revised in this Report and Recommendation, in recognition of customary and traditional Hawaiian rights of the Practitioners does not constitute a judicial taking. *PASH*, 79 Hawaii at 451, 903 P.2d at 1272 (“[R]ecognition of customary and traditional Hawaiian rights . . . does not constitute a judicial taking.”).

52. The conditions proposed in Supplement #6, as revised in this Report and Recommendation, does not constitute a regulatory taking because:

- (a) Applicants may still enjoy economically beneficial use of the Subject Property;
- (b) there is an “essential nexus” between those conditions and protection of NH Rights to the extent feasible, compliance with SMA(U)-82-2 and the 1982 Building Setback Line, and adherence to the requirements of KCC §§ 8-3.2(e), 8-4.3 and 8-9.2 (“Legitimate State Interests”); and (c) those conditions are “roughly proportional” to the impact of the Proposed Project upon the Legitimate State Interests. *PASH*, 79 Hawaii at 452, 903 P.2d at 1273 *citing Dolan v. City of Tigard*, 512 U.S. 374, 386-89, 114 S.Ct. 2309, 2317-19, 129 LE.2d 304 (1994).

53. If any Conclusion of Law herein should be designated as a Conclusion of Law, the same shall be deemed to have been identified as such.

V. CONCLUSION.

It is recommended that the Planning Commission AFFIRM the decision of the Director to APPROVE Applicants' SMA Application SUBJECT TO THE FOLLOWING CONDITIONS:

1. The proposed improvements shall be constructed as represented. Any changes to said development shall be reviewed by the Planning Director to determine whether Planning Commission review and approval is warranted.
2. Prior to commencement of the proposed development, written confirmation of compliance with the requirement from all reviewing agencies shall be provided to the Planning Department. Failure to comply may result in forfeiture of the SMA Permit.
3. The proposed dwelling and guest house shall not be utilized for any transient accommodation purposes. It shall not be used as a transient vacation rental (TVR) or as a homestay. This restriction shall be incorporated into the deed restrictions of the subject parcel in the event the property is sold to another party, draft copies of which shall be submitted to the Planning Department prior to building permit application approval.
4. To ensure that the project is compatible with its surroundings and to minimize impact of the structures, the external color of the proposed dwelling, guest house, and detached garage shall be of moderate to dark earth-tone color. The proposed color scheme and a landscape plan should be submitted to the Planning Department for review and acceptance prior to building permit application.
5. The Applicant is advised that should any archaeological or historical resources be discovered during ground disturbing/construction work, all work in the area of the

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

6. Relocate the development within the 1982 Building Setback Line approved with Special Management Area Use Permit SMA(U)-82-2.
7. Reduce the total square footage of the roofed areas including the house, portico, lanais, garage, and guest house (excluding driveway and pool) by 15 percent.
8. Grading and excavation shall be minimized to the maximum extent possible.
9. DELETED AS REQUESTED OF THE PLANNING DEPARTMENT;⁶⁴
10. DELETED AS REQUESTED OF THE PLANNING DEPARTMENT;⁶⁵
11. To avoid and minimize potential project impacts to Nene the following measures shall be incorporated:
 - a. Do not approach, feed, or disturb Nene.
 - b. If Nene are observed loafing or foraging within the project area during the Nene breeding season (September through April), a biologist familiar with the nesting behavior of Nene shall conduct a survey for nests in and around the project area prior to the resumption of any work. Repeat surveys shall be conducted after any subsequent delay of work of three or more days (during which the birds may attempt to nest).
 - c. All work shall immediately cease and contact the Service for further guidance if a nest is discovered within a radius of

⁶⁴ See Planning Department's Closing Arguments at 35-36. See also Intervenor's Errata To Closing Responsive Brief Dated February 23, 2024 at 2.

⁶⁵ See prior footnote.

- 150 feet of proposed work, or a previously undiscovered nest is found within said radius after work begins
- d. .In areas where Nene are known to be present, post and implement reduced speed limits, and inform personnel and contractors about the presence of endangered species on-site.
 - e. Pool areas shall be covered when not in use.
 - f. Predators on the property shall be eliminated and managed.
12. To avoid and minimize potential project impacts to Hawaiian seabirds the following measures shall be incorporated:
- a. Fully shield all outdoor lights so the bulb can only be seen from below bulb height and only use when necessary. Spotlights aimed upward or spotlighting of structures shall be prohibited.
 - b. Install automatic motion sensor switches and controls on all outdoor lights or turn off lights when human activity is not occurring in the lighted area.
 - c. No nighttime construction is allowed during the seabird fledging period, September 15 through December 15.
 - d. Utility lines associated with this property shall be undergrounded.
 - e. Light emitted from inside the structures shall be minimized to the maximum extent possible.
 - f. Predators on the property shall be eliminated and managed.
13. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development in order to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
14. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, and the County Departments of Public Works, Fire, Transportation, and Water.
15. To the maximum extent possible and 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 were no qualified Kauai residents possesses such skills. For 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

16. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may, create, or to revoke the permits through the proper procedures should conditions of approval not be complied with or be violated.
17. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.

DATED at Honolulu, Hawaii, July 15, 2024.

/s/ Harlan Y. Kimura---

HARLAN Y. KIMURA
Hearing Officer for the
Planning Commission of the
County of Kaua'i

BEFORE THE HEARING OFFICER
OF THE PLANNING COMMISSION
OF THE COUNTY OF KAUA'I

In the Matter of:) CC-2022-3
)
Petition for Intervention involving) Special Management Area
Special Management Area Use Permit) Use Permit: SMA(U)-2022-1
SMA(U)-2022-1, Class IV Zoning) Class IV Zoning Permit:
Permit Z-IV-2022-1, and Use Permit) Z-IV-2022-1
U-2022-1 for the Construction of a) Use Permit: U-2021-1
Farm Dwelling Unit, Guest House,) TMK: (4) 5-2-004:084 (Unit 1)
Garage and Associated Site)
Improvements, within Lot 11-A of the) CERTIFICATE OF SERVICE
Seacliff Plantation Subdivision in)
Kīlauea, involving a parcel situated)
approximately 1,000 feet West of the)
Pali Moana Place/Makana'ano Place)
Intersection, further identified as Tax)
Map Key: (4) 5-2-004: 084 (Unit 1))
affecting a Larger Parcel)
approximately 12.305 acres in size,)
)
NĀ KIA'I O NIHOKŪ,)
)
Petitioner-Intervenor,)
)
vs.)
)
PLANNING DEPARTMENT OF)
THE COUNTY OF KAUA'I,)
)
Respondent,)
)
and)
)
) (caption continued on next page)
PHILIP J. GREEN and LINDA M.)

GREEN, Trustees of the Philip J.)
 Green, Jr., Trust, dated December 4,)
 2018, and the Linda M. Green Trust,)
 dated December 4, 2018,)
)
 Applicants.)
 _____)

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was duly served upon the following parties listed below, in the manner described thereto, at their last-known addresses, on July 15, 2024.

	<u>U.S. Mail</u>	<u>Hand Delivery</u>	<u>Email</u>
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Attorney for Ka'āina S. Hull, Director, County of Kaua'i, Department of Planning			

U.S. Mail

Hand
Delivery

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Attorneys for PHILIP J. GREEN
and LINDA M. GREEN, Trustees of the
Philip J. Green, Jr., Trust, dated
December 4, 2018, and the Linda M.
Green Trust, dated December 4, 2018

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X

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the County of Kaua'i

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X

DATED at Honolulu, Hawaii, July 15, 2024.

/s/ Harlan Y. Kimura---

HARLAN Y. KIMURA
Hearing Officer for the
Planning Commission of the
County of Kaua'i

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 NĀ KIA'I O NIHOKŪ

BEFORE THE KAUA'I PLANNING COMMISSION

STATE OF HAWAI'I

In the Matter of:)	CC-2022-3
)	
Petition for Intervention involving Special	)	Special Management Area Use Permit:
Management Area Use Permit SMA(U)-	)	SMA(U)-2022-1
2022-1, Class IV Zoning Permit Z-IV-)	
2022-1, and Use Permit U-2022-1, for the	)	Class IV Zoning Permit:
Construction of a Farm Dwelling Unit,	)	Z-IV-2022-1
Guest House, Garage and Associated Site)	
Improvements, within Lot 11-A of the	)	Use Permit: U-2021-1
Seacliff Plantation Subdivision in Kīlauea,)	
involving a parcel situated approximately	)	TMK: (4) 5-2-004:084 (Unit 1)
1,000 feet West of Pali Moana)	
Place/Makana'ano Place Intersection,	)	INTERVENOR'S EXCEPTION TO
further identified as Tax Map Key: (4) 5-2-	)	HEARING OFFICER'S REPORT AND
004: 084 (Unit 1) affecting a Larger Parcel	)	RECOMMENDATION OF CONTESTED
approximately 12.305 acres in size,	)	CASE; MEMORANDUM IN SUPPORT OF
	)	EXCEPTION; CERTIFICATE OF
NĀ KIA'I O NIHOKŪ	)	SERVICE.
)	
Petitioner-Intervenor,)	
)	
vs.	)	HEARING OFFICER: Harlan Kimura
)	
PLANNING DEPARTMENT OF THE)	
COUNTY OF KAUA'I)	
)	
Respondent,)	
)	
and)	
)	
PHILIP J. GREEN AND LINDA M.)	
<u>GREEN, Trustees of the Philip J. Green,</u>	)	(caption continued on next page)

Jr., Trust, dated December 4, 2018, and the)
Linda M. Green Trust, dated December 4,)
2018,)
Applicants.)
_____)

**INTERVENOR’S EXCEPTION TO HEARING OFFICER’S
REPORT AND RECOMMENDATION OF CONTESTED CASE**

Hoku Cody, Jessica Kauī Fu, and Mehana Vaughan, as representative members of Nā Kia‘i o Nihokū (“Intervenor”), by and through their attorneys, Native Hawaiian Legal Corporation (“NHLC”), hereby respectfully submit the following Exception to the Hearing Officer’s Report and Recommendation of Contested Case, provided to the parties on Monday, July 15, 2024.

This Exception is submitted pursuant to Rule 1-6-19 (b)(1) of the Kaua‘i Planning Commission Rules (“Commission Rules”) and Article 1, Section 5 of the Hawai‘i Constitution, and is supported by the attached Memorandum in Support, the arguments therein, and the entire record in this matter.

Moreover, pursuant to Rule 1-6-17(j) and (k) of the Commission Rules, Intervenor requests that the Hearing Officer and the Kaua‘i Planning Commission (“the Commission”) take Official Notice of, and incorporate in the record of this Exception, all of the materials, records, files, exhibits, documents, evidence and audio recordings of the contested case hearing (“CCH”) proceedings previously received in this matter.

DATED: Honolulu, Hawai‘i, July 24, 2024

/s/ Kirsha K.M. Durante
KIRSHA K.M. DURANTE
TERINA FA’AGAU
Attorneys for Intervenor

MEMORANDUM IN SUPPORT OF EXCEPTION

Pursuant to Rule 1-6-19 of the Commission Rules, Intervenor submits its Exception to the Hearing Officer’s Conclusion of Law No. 42 concluding that Lot 11-A is “fully developed.”

Conclusion of Law No. 42 of the Hearing Officer’s Report and Recommendation of Contested Case states as follows:

42. The rights of the Practitioners must be balanced against those of the Applicants’ rights to the Subject Property because **that property is “fully developed.”** *PASH*, 79 Hawai‘i at 442, 903 P.2d at 1263 (“Traditional and customary rights are properly examined [and balanced] against the law of property as it has developed in this state.”), *Id.* at 450, 903 P.2d at 1271 (“[R]ights of access and collection will not necessarily prevent landowners from developing their lands.”) citing *Pele Defense Fund*, 73 Hawai‘i at 621 n.36, 837 P.2d at 1272 n.36 (“reiterating the early holding that article XII, section 7 does not require the preservation of undeveloped lands in their natural state and that *Kalipi* rights only guarantee access to - undeveloped lands”) (internal quotation marks, brackets, and ellipses omitted), and *Hanapi*, 89 Hawai‘i at 187 n.10, 970 P.2d at 495 n.10 (Property may be “fully developed” even though it lacks dwellings, improvements, and infrastructure, “where the existing uses of that property may be inconsistent with the exercise of protected native Hawaiian rights.”).

(Emphasis added). Conclusion of Law No. 42 is based on facts that are inconsistent with the evidentiary record from the CCH regarding Lot 11-A. Conclusion of Law No. 42 is also inconsistent with well-established legal precedent outlining the circumstances whereby a property is deemed to be “fully developed.”

In support of this Exception, Intervenor relies on the following facts contained within the record of the CCH:

- No dwellings, improvements, and infrastructure currently exist on Lot 11-A. Kaua‘i Planning Commission Continued Contested Case Hearing Minutes, CC-2022-3 Green 11-17-22, Higuchi-Sayegusa at 118:10; Intervenor’s Exhibit I-102 at 8.

- Applicants’ application notes as to existing improvements and uses, “[t]he Subject Property is currently vacant and unimproved.” Applicants’ Exhibit I at 10.
- Applicants’ application also notes, as to present uses and built environment, that “[t]he Subject Property is currently vacant.” *Id.* at 12-13.
- The Hearing Officer’s Report and Recommendation, dated July 15, 2024, finds that the Subject property is “**vacant land** in the Subdivision ‘with improved road and utility infrastructure as a condition of the Planning Commission’s approved planned community.’” Report and Recommendation (Green; CC-2022-3) dated July 15, 2024, at FOF ¶ 6 (citing Exhibit I at 10, § 3.1) (emphasis added).
- The Seacliff Plantation Subdivision is a “planned community” project consisting of forty-eight (48) project sites approved by the Planning Commission in 2006. *See* Applicants’ Exhibit I at 12. As of the filing of Applicants’ application, only approximately twenty-five (25) lots have been improved with dwelling units and related accessory structures. *See* Applicants’ Exhibit I at 13.
- The 203-acre United States Fish & Wildlife Service Kīlauea National Wildlife Refuge abutting Lot 11-A is a wildlife preserve. Report and Recommendation (Green; CC-2022-3) dated July 15, 2024, at FOF ¶ 3 (citing Exhibit I-4 at 1). The Refuge contains on a small portion of its total acreage the Kīlauea Lighthouse and related structures, along with parking and roadways to those structures. *See* Applicants’ Exhibit I at 67, 69. These improvements are located on a separate peninsula from the crater Nihokū. *See* CC-2022-3 Green 01-09-23, Smith at 8:19 – 9:21; CC-2022-3 Green 01-12-23, Kekua at 20:16-21. The improvements on the Refuge cannot be seen from Lot 11-A. *See* Intervenor’s Exhibits I-51 to I-54.

Lot 11-A is not “fully developed” because it is undisputed that the entirety of Lot 11 – which spans a total 12.305 acres – contains no dwellings, no improvements, and no infrastructure. The mere inclusion of Lot 11-A within the planned Seacliff Plantation Subdivision, which itself is not fully developed, does not render Lot 11-A “fully developed.” The Hawai‘i Supreme Court has held that “. . . if property is deemed ‘fully developed,’ i.e. lands zoned **and used** for residential purposes **with existing dwellings, improvements, and infrastructure**, it is always ‘inconsistent’ to permit the practice of traditional and customary native Hawaiian rights on such property...” *State v. Hanapi*, 89 Hawai‘i 177, 186-87, 970 P.2d 485, 494-495 (1998) (emphases added). Thus, it is clear that a property is considered “fully developed,” under our law, when it has existing dwellings, improvements or infrastructure. Lot 11-A contains none of the legally identified characteristics of a “fully developed” property. Accordingly, Lot 11-A is a “less than fully developed property.” *See id.* at 186, 970 P.2d at 494.

For the foregoing reasons, Intervenor respectfully requests that the Hearing Officer take Official Notice of and incorporate in the record this Exception and respectfully requests that the Hearing Officer modify Conclusion of Law No. 42 consistent with the information and law cited above.

DATED: Honolulu, Hawai‘i, July 24, 2024.

/s/Kirsha K.M. Durante
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Attorneys for Intervenor

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 NĀ KIA'I O NIHOKŪ

BEFORE THE KAUA'I PLANNING COMMISSION

STATE OF HAWAI'I

In the Matter of:)	CC-2022-3
)	
Petition for Intervention involving Special	)	Special Management Area Use Permit:
Management Area Use Permit SMA(U)-	)	SMA(U)-2022-1
2022-1, Class IV Zoning Permit Z-IV-)	
2022-1, and Use Permit U-2022-1, for the	)	Class IV Zoning Permit:
Construction of a Farm Dwelling Unit,	)	Z-IV-2022-1
Guest House, Garage and Associated Site)	
Improvements, within Lot 11-A of the	)	Use Permit: U-2021-1
Seacliff Plantation Subdivision in Kīlauea,)	
involving a parcel situated approximately	)	TMK: (4) 5-2-004:084 (Unit 1)
1,000 feet West of Pali Moana)	
Place/Makana'ano Place Intersection,	)	CERTIFICATE OF SERVICE RE
further identified as Tax Map Key: (4) 5-2-	)	INTERVENOR'S EXCEPTION TO
004: 084 (Unit 1) affecting a Larger Parcel	)	HEARING OFFICER'S REPORT AND
approximately 12.305 acres in size,	)	RECOMMENDATION OF CONTESTED
	)	CASE; MEMORANDUM IN SUPPORT OF
NĀ KIA'I O NIHOKŪ	)	EXCEPTION
)	
Petitioner-Intervenor,)	
)	
vs.	)	HEARING OFFICER: Harlan Kimura
)	
PLANNING DEPARTMENT OF THE)	
COUNTY OF KAUA'I)	
)	
Respondent,)	
)	
and)	
)	
PHILIP J. GREEN AND LINDA M.)	
<u>GREEN, Trustees of the Philip J. Green,</u>	)	<i>(caption continued on next page)</i>

Jr., Trust, dated December 4, 2018, and the)
 Linda M. Green Trust, dated December 4,)
 2018,)
)
 Applicants.)
)
)
)
)
)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the following was served on the following parties by email on July 24, 2024 and a copy was served by U.S. mail postage pre-paid on July 24, 2024:

- Intervenor’s Exception to Hearing Officer’s Report and Recommendation of Contested Case; and Memorandum in Support of Exception.

	E-MAIL	U.S. MAIL
CHRIS DONAHOE, ESQ. Deputy County Attorney County of Kaua’i 4444 Rice Street, Suite 220 Līhu’e, Hawai’i 96766	[X] cdonahoe@kauai.gov	[X]

Attorney for Kaua’i, Department of Planning

PAUL ALSON, ESQ. TIMOTHY H. IRONS, ESQ. Dentons US LLP 1001 Bishop Street, Suite 1800 Honolulu, Hawai’i 96813	[X] paul.alston@dentons.com [X] tim.irons@dentons.com	[X]
---	--	-----

Attorneys for PHILIP J. GREEN
 and
 LINDA M. GREEN, Trustees of the
 Philip J. Green, Jr., Trust, dated
 December 4, 2018, and the Linda M.
 Green Trust, dated December 4, 2018

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---	--	-----

County of Kaua'i
4444 Rice Street, Suite 150
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HARLAN Y. KIMURA, ESQ.
Central Pacific Plaza
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Hearing Officer for the Planning
Commission of the County of Kaua'i

DATED: Honolulu, Hawai'i, July 24, 2024.

/s/ Kirsha K. M. Durante
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Attorneys for Applicants
PHILIP J. GREEN AND LINDA M.
GREEN, Trustees of the Philip J.
Green Jr., dated December 4, 2018,
and the Linda M. Green Trust, dated
December 4, 2018

BEFORE THE HEARING OFFICER
OF THE PLANNING COMMISSION
OF THE COUNTY OF KAUAI

In the Matter of:

Petition for Intervention involving Special Management Area Use Permit SMA(U)-2022-1, Class IV Zoning Permit Z-IV-2022-1, and Use Permit U-2022-1 for the Construction of a Farm Dwelling Unit, Guest House, Garage and Associated Site Improvements, within Lot 11-A of the Seacliff Plantation Subdivision in Kilauea, involving a parcel situated approximately 1,000 feet West of the Pali Moana Place/Makana'ano Place Intersection, further identified as Tax Map Key: (4) 5-2-004; 084 (Unit 1) affecting a Large Parcel approximately 12.305 acres in size,

NĀ KIA'I O NIHOKŪ,

Petitioner-Intervenor,

vs.

PLANNING DEPARTMENT OF THE
COUNTY OF KAUA'I

CC-2022-3

Special Management Area Use Permit
SMA(U)-2022-1; Class IV Zoning
Permit Z-IV-2022-1; Use Permit U-
2021-1; TMK: (4) 5-2-004:084 (Unit 1)

**APPLICANTS PHILIP J. GREEN
AND LINDA M. GREEN'S ANSWER
TO INTERVENOR'S EXCEPTION TO
HEARING OFFICER'S REPORT AND
RECOMMENDATION OF
CONTESTED CASE, DATED JULY
24, 2024; CERTIFICATE OF SERVICE**

K.4.c.

SEP 10, 2024

Respondent,

and

PHILIP J. GREEN and LINDA M. GREEN,
Trustees of the Philip J. Green Jr., dated
December 4, 2018, and the Linda M. Green
Trust, dated December 4, 2018,

Applicants.

**APPLICANTS PHILIP J. GREEN AND LINDA M. GREEN’S ANSWER
TO INTERVENOR’S EXCEPTION TO HEARING OFFICER’S
REPORT AND RECOMMENDATION OF CONTESTED CASE, DATED
JULY 24, 2024**

Applicants Philip J. Green and Linda M. Green (“Applicants”) hereby submit this Answer to Intervenor’s Exception to Hearing Officer’s Report and Recommendation of Contested Case (“Exception”).

I. INTRODUCTION

While Applicants disagree with the majority of the Hearing Officer’s core findings and recommendations, the determination that Applicants’ property is developed is legally and factually sound. The approval of the Seacliff Plantation subdivision (“Seacliff Subdivision”) established development rights for each of the lot owners. The construction of roadways, utilities and numerous dwellings rendered the lots developed. Just because a particular subdivision lot lacks a dwelling does not make it “undeveloped” for purposes of the *Ka Pa’akai* analysis.

II. ARGUMENT

As set forth on pages 70 and 73 of the Report, the Hearing Officer properly relies upon *State v. Hanapi*, 89 Hawai’i 177, 187 n. 10, 970 P.2d 485, 495 n. 10 (1998) (“*Hanapi*”) and related authority, for the proposition that asserting native Hawaiian rights against a property zoned and used for residential purposes, with existing dwellings, improvements and

infrastructure is always inconsistent with the rights of the property owner. The Seacliff Subdivision is zoned for dwellings, has existing dwellings and improvements as well as related infrastructure (roads, utilities, gates/fences). Hearing Officer's Report, p. 14, ¶6; Applicants' Exhibit I (more than half of the lots within the subdivision have been developed.) The Subdivision is developed for purposes of the *Ka Pa'akai* analysis and, as no cultural practices were established within the Applicants' Property, it would be entirely inconsistent with the Applicants' rights to condition development upon access to and within the Property for native Hawaiian practices.

The expectation Seacliff Subdivision lot owners, including Applicants, is that they own a fee simple interest in their property with the imbedded property right to exclude others. "The right to exclude is "one of the most treasured" rights of property ownership." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021). Moreover, the testimony elicited at the contest case hearing confirmed that intervenors understood and understand that the Applicants' Property is private property and that their use thereof would amount to trespassing. 12/15/2022 Hearing Transcript, p. 79, 86 (Ms. Torio-Kauhane testifying "...I am not going to trespass.."); 01/10/2023 Hearing Transcript, p. 101: 34-37 ("Mr. Donahoe: Okay. And you don't specifically practice Malama'Aina on the Green's property, lot 11A, do you? Ms. Fu: No, that would be trespassing.") Under the circumstances, the Hearing Officer was correct to find the property developed and to eliminate the Planning Department conditions that sought to impose a new access trail and easement upon and across the Applicants' property.

III. CONCLUSION

As set forth above, Intervenor's exceptions should be disregarded.

DATED: Honolulu, Hawai'i, July 31, 2024.

/s/ Timothy H. Irons

PAUL ALSTON

TIMOTHY H. IRONS

Attorneys for Applicants

PHILIP J. GREEN AND LINDA M.

GREEN, Trustees of the Philip J. Green

Jr., dated December 4, 2018, and the Linda

M. Green Trust, dated December 4, 2018

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was duly served upon the following parties on this date, by hand delivery, electronically via e-mail and/or depositing said copy, postage prepaid, first class, in the United States Post Office, at Honolulu, Hawai`i, as indicated and addressed as set forth below:

	HAND DELIVERED	E-MAILED	MAILED
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Central Pacific Plaza
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Honolulu, HI 96813
Email hyk@harlankimuralaw.com
HEARING OFFICER

DATED: Honolulu, Hawai'i, July 31, 2024.

/s/ Timothy H. Irons _____
PAUL ALSTON
TIMOTHY H. IRONS

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PHILIP J. GREEN AND LINDA M.
GREEN, Trustees of the Philip J. Green
Jr., dated December 4, 2018, and the Linda
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Attorneys for Respondent
PLANNING DEPARTMENT OF
THE COUNTY OF KAUA‘I

BEFORE THE HEARING OFFICER
OF THE PLANNING COMMISSION
OF THE COUNTY OF KAUA‘I

In the Matter of:) CC-2022-3
)
Petition for Intervention involving Special) Special Management Area Use Permit:
Management Area Use Permit SMA(U)-) SMA(U)-2022-1
2022-1, Class IV Zoning Permit Z-IV-)
2022-1, and Use Permit U-2022-1, for the) Class IV Zoning Permit:
Construction of a Farm Dwelling Unit,) Z-IV-2022-1
Guest House, Garage and Associated Site)
Improvements, within Lot 11-A of the) Use Permit: U-2021-1
Seacliff Plantation Subdivision in Kilauea,)
involving a parcel situated approximately) TMK: (4) 5-2-004:084 (Unit 1)
1,000 feet West of Pali Moana)
Place/Makana’ano Place Intersection,) **RESPONDENT PLANNING**
further identified as Tax Map Key: (4) 5-2-) **DEPARTMENT OF THE COUNTY OF**
004:084 (Unit 1) affecting a Larger Parcel) **KAUA‘I’S SUPPORT OF HEARING**
approximately 12.305 acres in size,) **OFFICER’S REPORT AND**
) **RECOMMENDATION OF**
NA KIA‘I O NIHOKU,) **CONTESTED CASE; CERTIFICATE**
) **OF SERVICE**
)
Petitioner-Intervenor,)
vs.)
)
PLANNING DEPARTMENT OF THE)
COUNTY OF KAUA‘I,)

K.4.d.
SEP. 10, 2024

Respondent,)
)
 and)
)
 PHILIP J. GREEN AND LINDA M.)
 GREEN, Trustees of the Philip J. Green,)
 Jr., Trust, dated December 4, 2018, and the)
 Linda M. Green Trust, dated December 4,)
 2018,)
)
 Applicants)
)
)
)

**RESPONDENT PLANNING DEPARTMENT OF THE COUNTY OF KAUA'I'S
 SUPPORT OF HEARING OFFICER'S REPORT AND RECOMMENDATION OF
CONTESTED CASE**

On November 14, 15, and 17, 2022, December 12, 13, 15, 2022 and January 9, 10, 12, 2023, the above captioned case came on for a hearing before Hearing Officer Harlan Kimura. At the hearing, Applicants PHILIP J. GREEN and LINDA M. GREEN (“Applicants”) were represented by Timothy Irons, Esq., Petitioner-Intervenor NA KIA'I O NIHOKU (“Intervenor” or “NKN”) and its various members were represented by Native Hawaiian Legal Corporation (“NHLC”), and Respondent Planning Department of the County of Kaua‘i (“Planning Department”) was represented by Deputy County Attorney Chris Donahoe.

On July 15, 2024, the Planning Department received the Hearing Officer's Report and Recommendations of the Contested Case listed above. On July 26, 2024, the Planning Department received Petitioner-Intervenor's Exception to Hearing Officer's Report and Recommendation of Contested Case and Memorandum in Support of Exception in the above-entitled matter.

Pursuant to Rules of Practice and Procedure of the Kaua'i Planning Commission (hereinafter "RPPPC"), Chapter 6, Rule 1-6-19 (c), the Planning Department hereby files its Support of Hearing Officer's Report and Recommendation of Contested Case for the case captioned above.

I. RESPONSE TO PETITIONER-INTERVENOR'S SPECIFIC EXCEPTION

Pursuant to RPPPC, Chapter 6, Rule 1-6-19(c), the Planning Department responds to the Petitioner-Intervenor's specific exception to the Hearing Officer's Report and Recommendation of Contested Case.

Moreover, pursuant to KPPPC Rule 1-6-17(j) and (k), the Planning Department requests that the Hearing Officer and the Kaua'i Planning Commission ("KCPC") take Official Notice of, and incorporate in the record, all of the materials, records, files, exhibits, documents, evidence and audio recordings of the contested case hearing proceedings previously received in this matter.

A. CONCLUSION OF LAW NO. 42

Conclusion of Law ("COL") No. 42 of the Hearing Officer's Report and Recommendation of Contested Case states as follows:

42. The rights of the Practitioners must be balanced against those of the Applicants' rights to the Subject Property because that property is "fully developed." *PASH*, 79 Hawai'i at 442, 903 P.2d at 1263 ("Traditional and customary rights are properly examined [and balanced] against the law of property as it has developed in this state."), *Id.* at 450, 903 P.2d at 1271 ("[R]ights of access and collection will not necessarily prevent landowners from developing their lands.") citing *Pele Defense Fund*, 73 Hawai'i at 621 n. 36, 837 P.2d at 1272 n. 36 ("reiterating the early holding that article XII, section 7 does not require the preservation of undeveloped lands in their natural state and that *Kalipi* rights only guarantee access to – undeveloped lands") (internal quotation

marks, brackets, and ellipses omitted), and *Hanapi*, 89 Hawai'i at 187 n. 10, 970 P.2d at 495 n. 10 (Property may be “fully developed” even though it lacks dwellings, improvements, and infrastructure, “where the existing uses of that property may be inconsistent with the exercise of protected native Hawaiian rights.”)

Based on the evidence cited in the Petitioner-Intervenor's Exceptions to Hearing Officer's Report and Recommendation of Contested Case, as well as the additional testimony of Nancy McMahon during the Contested Case hearing that the relevant area, namely Lot 11-A and the adjacent Refuge, is undeveloped because there are no houses, infrastructure, or structures on it (McMahon Trns. 11/15/22, p. 55:2 – 11, p.93:36 – 94:8), it does appear that the language contained in COL No. 42 that the “rights of the Petitioners must be balanced against those of the Applicants' rights to the Subject Property because that property is ‘fully developed’” may be in error. Respondent Planning Department suggests that the Hearing Officer may have inadvertently omitted the word “not” from COL No. 42, so that COL No. 42 should have stated that the Subject Property, namely Lot 11-A and the adjacent Refuge, is “not fully developed.”

Further support for the suggestion that the Hearing Officer may have inadvertently omitted the word “not” before the words “fully developed” in COL No. 42, and that the language of COL No. 42 should have stated that the Subject Property, namely Lot 11-A and the adjacent Refuge, is “not fully developed” can be established by a contextual review of the other Findings of Fact (“FOF”) and COL set forth in the Hearing Officer's Report and Recommendation. The Planning Department submits the following:

1. FINDINGS OF FACT

- FOF 2 – The Subject Property is 12.305 acres and located on the upper backside of Nihoku, within the ahupua’a of Kilauea (sometimes “Ahupua’a”). Hearing Officer’s Report and Recommendation (“HO R&R”) at 12.
- FOF 3 – The Subject Property also abuts the 203-acre United States Fish & Wildlife Service Kilauea National Wildlife Refuge (“the Refuge”), a wildlife preserve for various seabird species, including the endangered ‘ua’u (Hawaiian Petrel) and threatened endemic ‘a’o (a sub-species of the Newell’s Shearwater). HO R & R at 13.
- FOF 6 – The Subject Property **is vacant land** in the Subdivision “improved with road and utility infrastructure as a condition of the Planning Commission’s approved planned community.” Exhibit I at 10, § 3.1 (*emphasis added*). HO R & R at 14.
- FOF 109 – The *Ka Pa’akai* Analysis for the Proposed Project is contained in Supplement # 6, as augmented with the evidence received at the Contested Case Hearing. HO R & R at 40.

2. CONCLUSIONS OF LAW

- COL 29 – The Planning Commission has an affirmative obligation to “protect the reasonable exercise of customarily and traditionally exercised rights of Hawaiians.” *Flores-Case ‘Ohana*, 153 Hawai’i at 82, 526 P.3d at 607 *citing PASH*, 79 Hawaii at 450 – 51, 903 P.2d at 1271-72. HO R & R at 68.
- COL 36 – If the “relevant area” is “‘fully developed’, i.e., lands zoned and used for residential purposes **with existing dwellings, improvements, and infrastructure**, it is *always* ‘inconsistent’ to permit the practice of traditional and customary native Hawaiian rights on such property.” *Hanapi*, 89 Hawai’i at 186 – 87, 970 P.2d at 494 – 95 (**bold** emphasis added; *italics* in original; footnote in original, albeit identified with a different number). HO R & R at 70

COL No. 36 appears to purport that if the “relevant area” is determined to be “fully developed,” then it is inconsistent to permit the practice of traditional and customary native Hawaiian rights on such property. Therefore, there wouldn’t be any need to conduct a *Ka Pa’akai* analysis on the property and balance or protect the rights of the Practitioners against

those of the Applicants’ rights to the Subject Property. However, as described further below, the Hearing Officer balanced the rights of the Practitioners against those of the Applicants’ rights to the Subject Property, which would be inconsistent with a determination that the Subject Property is “fully developed” as set forth in COL No. 42.

- COL 37 – The Subject Property is part of Nihoku, but only the Subject Property and the Refuge immediately adjacent to it, constitute the “relevant area” for purposes of the *Ka Pa’akai* Analysis. HO R & R at 70

Since the evidence submitted in the Contested Case hearing as well as the FOF/COL in the HO R & R established that the Subject Property and the Refuge immediately adjacent to it is “undeveloped,” then the logical conclusion is that the “relevant area” described in COL No. 37 is “undeveloped”. This supports the necessity for a *Ka Pa’akai* analysis as stated in COL No. 37.

- COL 41 – Cody, Kinney, Sproat, Forrest, Chandler, Fu, Kekua, Tori-Ka’uhane and Vaughan (sometimes “Practitioners”), **have demonstrated they engaged in customary and traditional native Hawaiian practices within Nihoku** *Hanapi*, 89 Hawai’i at 86, 970 P.2d at 494 (In order to establish his or her conduct is constitutionally protected as a native Hawaiian, he or she must show: (1) he or she is a native Hawaiian within the guidelines set out in *PASH*; (2) his or her claimed right is constitutionally protected as a customary and traditional native Hawaiian practice in art. XII, § 7 of the Hawai’i Constitution, or *Haw. Rev. Stat.* §§ 1-1 or 7-1; and (3) **exercise of the right occurred on undeveloped or less than fully developed property.**) HO R & R at 72. (emphasis added).

If the Hearing Officer meant to declare in COL No. 42 that the Subject Property, consisting of just Lot 11-A and the vacant adjacent Refuge, was “fully developed,” which would then be always ‘inconsistent’ to permit the practice of traditional and customary native Hawaiian rights on such property, then the Hearing Officer could not have determined in COL No. 41 that the Petitioners met the three-prong *Hanapi* test, including demonstrating that the

“(3) exercise of the right occurred on **undeveloped or less than fully developed property**”, thereby demonstrating that they engaged in customary and traditional native Hawaiian practices within Nihoku. Therefore, given the determination in COL No. 41 that the Practitioners “have demonstrated they engaged in customary and traditional Native Hawaiian practices” by meeting the three-prong *Hanapi* test, it is more consistent for the Hearing Officer to have stated in COL No. 42 that the rights of the Practitioners must be balanced against those of the Applicants’ rights to the Subject Property because that property is “**not fully developed**” instead of “fully developed”. Given this context, the Planning Department’s position is that the Hearing Officer inadvertently omitted the word “not” from COL No. 42 before the phrase “fully developed”.

- COL 44 – The Customary and Traditional native Hawaiian practices of Kilo, and gathering of medicinal plants and flowers to make leis, have taken place on the Subject Property **prior to development of the Subdivision**. HO R & R at 74. (emphasis added)
- COL 46 – Kilo is the only Customary and Traditional native Hawaii Practice that may be exercised from outside the boundaries of the Subject Property (i.e. the Refuge) without the consent of Applicants, but would be affected by the Proposed Project. HO R & R at 74.
- COL 47 – The Proposed Project will affect the practice of Kilo ...” HO R & R at 74
- COL 48 – The endangered birds at the Refuge would also be impacted by the construction of the Proposed Project...” HO R & R at 75

These COL all reflect that the Hearing Officer is balancing the established native Hawaiian traditional and customary rights of the Practitioners in relation to the “relevant area,” Lot 11-A and the Refuge, against those of the Applicant’s property rights. This balance would be misplaced if the Subject Property was meant to be deemed “fully developed” as currently

described in COL No. 42 and therefore not subject to any practice of native Hawaiian traditional and customary rights.

- COL 49 – The conditions proposed in Supplement # 6, as amended by this Report and Recommendation, would reasonably protect NH Rights of Kilo and protect the birds in the Refuge, while acknowledging the private property rights of Applicants to the Subject Property. *See PASH*, 79 Hawai'i at 447, 903 P.2d at 1268 (“State retains the ability to reconcile competing interests under article XII, section 7.”). HO R & R at 75
- COL 51 – The conditions proposed in Supplement # 6, as revised in this Report and Recommendation, in recognition of customary and traditional Hawaiian rights of the Practitioners does not constitute a judicial taking. *PASH*, 79 Hawai'i at 451, 903 P.2d at 1272 (“[R]ecognition of customary and traditional Hawaiian rights...does not constitute a judicial taking.”). HO R & R at 76.

These COL both establish the Hearing Officer’s recognition and approval of the proposed permit conditions recommended by the Planning Department and contained in Supplement # 6. *See Exhibit N*. HO R & O at 4 - 8. On November 24, 2021, the Planning Department completed the *Ka Pa’akai* analysis and incorporated the analysis into its Supplement # 6 to the Planning Director’s Report (Amended). *See Exhibit N*. HO R & R at 4. In determining the proposed permit conditions, the Planning Department balanced the established native Hawaiian traditional and customary rights of the Practitioners in relation to the “relevant area,” Lot 11-A and the Refuge, against those of the Applicant’s property rights. *See Exhibit N*. HO R & R at 4.

In the conclusions contained in the Hearing Officer’s Report and Recommendation, the Hearing Officer recommends that the Planning Commission affirm the decision of the Director to approve the Applicants’ permit application subject to almost all of the same conditions that were proposed by the Planning Department in its Supplement # 6 to the Director’s Report after

it conducted a *Ka Pa'akai* analysis and balanced the established native Hawaiian traditional and customary rights of the Practitioners in relation to the relevant area (Lot 11-A and the Refuge) against those of the Applicants' property rights, with the exception of two conditions that the Planning Department requested be deleted during the Contested Case Hearing. *See* Exhibit N. HO R & R at 80. The Planning Department submits its support and additionally asserts that the Hearing Officer inadvertently omitted the word "not" from COL No. 42 before the phrase "fully developed".

II. CONCLUSION

With the exception of a proposed clarification or amendment regarding COL No. 42 as described herein, the Planning Department supports the FOF, COL, conclusions, and recommendations contained in the Hearing Officer's Report and Recommendation and requests that the KCPC affirm the decision of the Planning Director to approve Applicants' SMA Application subject to the conditions set forth in the Hearing Officer's Report and Recommendation.

DATED: Līhu'e, Kaua'i, Hawai'i, August 1, 2024.

MATTHEW M. BRACKEN
County Attorney

By /s/ Chris Donahoe
CHRIS DONAHOE
Deputy County Attorney

Attorneys for Respondent
PLANNING DEPARTMENT OF THE
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date set forth below, a true and correct copy of foregoing document was duly served upon the following parties by email and U.S.P.S mail:

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