CM Bynum

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OFFICE OF THE COUNTY CLERK COUNTY OF KAUAI

COUNCIL MEETING NOTICE and AGENDA

WEDNESDAY, FEBRUARY 17, 2010

9:30 A.M. OR SOON THEREAFTER

COUNCIL CHAMBERS
Historic County Building
4396 Rice Street, Room 201
Līhu'e, Kaua'i, Hawai'i

MEETING CALLED TO ORDER.

ROLL CALL.

APPROVAL OF AGENDA.

MINUTES of the following meetings of the Council:

Special Council Meeting of January 5, 2010
Public Hearing of January 6, 2010 re: Bill No. 2340
Special Council Meeting of January 21, 2010
Council Meeting of January 21, 2010
Public Hearing of January 21, 2010 re: Resolution No. 2009-71
Council Meeting of February 3, 2010
Public Hearing of February 3, 2010 re: Bills Nos. 2241, 2242, 2243, 2244, and 2245

COMMUNICATIONS:

C 2010-10 Communication (12/24/2009) from the Fire Chief, requesting Council approval to fund the cost of the acquisition of a public use helicopter via a 10-year lease to be used to enhance and support search and rescue, firefighting, ocean safety, training and other services of the Kaua'i Fire Department and other departments in the County of Kaua'i. *(The Budget & Finance Committee recommended approval of C 2010-10; see CR-B&F 2010-02)*

C 2010-25 Communication (01/20/2010) from the County Auditor, requesting Council approval of a 3-year lease term with an option to extend for 962 square feet of office space for the relocation of the Office of the County Auditor. *(Deferred 02/03/2010)*

C 2010-36 Communication (02/05/2010) from the Mayor, requesting Council consideration and confirmation of the following appointments and reappointments to various Boards and Commissions for the County of Kaua'i: *(Applications on file in the County Clerk's Office)*

(1) Building Board of Appeals
Duane Curammeng – 1st complete term *(Electrical Background)* ending 12/31/2012
(See Resolution No. 2010-19)

Glen Taba – 1st complete term *(Building Background)* ending 12/31/2012
(See Resolution No. 2010-20)

(2) Charter Commission
Joel Guy – 1st complete term ending 12/31/2012
(See Resolution No. 2010-21)

(3) Civil Service Commission
Ryan de la Pena – 2nd complete term ending 12/31/2012
(See Resolution No. 2010-22)

(4) Cost Control Commission
Michelle Swartman – 2nd complete term ending 12/31/2012
(See Resolution No. 2010-23)

(5) Fire Commission
Linda Ka'auwai-Iwamoto – 2nd complete term ending 12/31/2012
(See Resolution No. 2010-24)

(6) Planning Commission
Caven Raco – 2nd complete term ending 12/31/2012
(See Resolution No. 2010-25)

(7) Police Commission
Ernest Kanekoa – 1st complete term ending 12/31/2012
(See Resolution No. 2010-26)

C 2010-37 Statement of Condition of the County Treasury as of December 3, 2009.

C 2010-38 Communication (02/10/2010) from Councilmember Kawakami, providing the Council with written disclosure of a possible conflict of interest relating to Bill No. 2342, as he serves in various capacities in the HSK Corporation, a company which owns property in the project area, and is thus recused from any discussion, deliberation, etc., on Bill No. 2342.

C 2010-39 Communication (02/11/2010) from Council Chair Asing and Vice Chair Furfaro, requesting Council consideration of a draft bill appropriating $350,000 for the Black Pot Expansion Project (land acquisition). *(See Proposed Draft Bill No. 2349)*

C 2010-40 Communication (01/14/2010) from the Fire Chief, requesting Council approval to donate the Fire Department's ISI Self-Contained Breathing Apparatus (SCBA) to the State of Hawai'i Airport Crash Fire as the Kaua'i Fire Department has recently acquired new Scott SCBA packs for the entire department through a federal grant.

C 2010-41 Communication (01/20/2010) from the Director of Housing, requesting Council approval to decline the repurchase of Unit No. 601 Hookena at Puhi, located at 2080 Manawalea Street, Līhu'e, Hawai'i 96766, and to issue the owners a one-year waiver of the County's repurchase right effective the date of the Council's decision, thus permitting market resale of the unit for a period of one year.

C 2010-42 Communication (01/27/2010) from the Chief of the Engineering Division, Department of Public Works, transmitting for Council approval a resolution for abandoning the access road off Lauoho Road, Kōloa District, at TMK: 2-3-009:034, and authorizing the land transfer to the National Tropical Botanical Garden, Kalāheo, Kaua'i, Hawai'i. *(Copy of attachments on file in the Clerk's Office) (See Resolution No. 2010-27)*

C 2010-43 Request (02/08/2010) from the Office of the County Attorney for authorization to expend additional funds up to $25,000.00 to engage special counsel's continued representation in the lawsuit entitled Kathleen Ah Quin v. County of Kaua'i, Department of Transportation (USDCT) Civ. No. CV 08-00507 JMS/BMK and related matters.

C 2010-44 Request (02/09/2010) from the Office of the County Attorney for authorization to expend additional funds up to $20,000.00 to engage special counsel to represent the County defendants in Wayne R. Daniel, et al., v. Kodani and Associates, Inc., et al., Civ. No. 08-1-0006 (Fifth Circuit Court) and related matters. *(Copy of First Amended Complaint on file in the Clerk's Office)*

C 2010-45 Communication (02/11/2010) from Council Chair Asing, requesting Council reconsideration of Bill No. 2336, Draft 3, relating to mobile electronic devices, which was unanimously approved at the February 3, 2010 Council meeting.

LEGAL DOCUMENT:

C 2010-46 Communication (01/15/2010) from the Director of Parks & Recreation, requesting Council approval to secure a shared-use path easement at the Kaua'i Shopping Village (TMK 4-4-3-08:14) in exchange for a parking and pedestrian access easement at Waipouli Drainage Canal.

1) Grant of Reciprocal Easements Agreement by and among Kaua'i Beautiful Island I, LLC; Kaua'i Beautiful Island II, LLC; Kaua'i Beautiful Island III, LLC; Kaua'i Beautiful Island IV, LLC; Kaua'i Beautiful Island VI, LLC and Kaua'i Beautiful Island VII, LLC, all Delaware limited liability companies, and the County of Kaua'i that the County shall convey to Kaua'i Beautiful Easement "P-1" (Waipouli Drainage Canal) for vehicular parking and access and for pedestrian access purposes, and that Kaua'i Beautiful shall convey to the County Easement "BP-1" (Kaua'i Shopping Village) for bicycle and pedestrian access purposes.
(Copy on file in the Clerk's Office)

2) Grant of Easement by and between the County of Kaua'i (grantor) and Kaua'i Beautiful Island I, LLC; Kaua'i Beautiful Island II, LLC; Kaua'i Beautiful Island III, LLC; Kaua'i Beautiful Island IV, LLC; Kaua'i Beautiful Island VI, LLC and Kaua'i Beautiful Island VII, LLC, all Delaware limited liability companies (grantee), granting a perpetual non-exclusive easement "P-1" for vehicular parking and access and for pedestrian access purposes (Tax Map Key No. (4) 4-3-008-013). *(Copy on file in the Clerk's Office)*

3) Grant of Easement by and between Kaua'i Beautiful Island I, LLC; Kaua'i Beautiful Island II, LLC; Kaua'i Beautiful Island III, LLC; Kaua'i Beautiful Island IV, LLC; Kaua'i Beautiful Island VI, LLC and Kaua'i Beautiful Island VII, LLC, all Delaware limited liability companies (grantor) and the County of Kauai (grantee), granting a perpetual non-exclusive easement "BP-1" for a public park, which shall contain a bicycle and pedestrian path and be part of the County's park system (Tax Map Key No. (4) 4-3-008-014). *(Copy on file in the Clerk's Office)*

C 2010-47 Communication (01/28/2010) from the Director of Parks & Recreation, requesting Council approval of the Quitclaim Deed to secure a portion on Niulani Road and Ala Road (TMK: 4-3-009-054) for construction of a portion of the Lydgate-Kapa'a Bicycle/Pedestrian Path project.

- Quitclaim Deed:
  Grantor: BANK OF HAWAI'I, a Hawai'i corporation, successor by merger to Hawaiian Trust Company, Limited, as SUCCESSOR TRUSTEE under that certain inter vivos Trust Agreement executed by Lillian May Clayton Brewer, dated February 6, 1964, as amended.
  Grantee: COUNTY OF KAUA'I, A POLICITAL SUBDIVISION OF THE STATE OF HAWAI'I
  Property Description: (Kaua'i) 4-3-009-054
  (Copy on file in the Clerk's Office)

C 2010-48 Communication (02/05/2010) from the Director of Housing, requesting Council approval to close the purchase of a 75-Acre Parcel in 'Ele'ele, Kaua'i, Tax Map Key (4) 2-1-1:27, pursuant to the Disposition Agreement of November 19, 2009, between McBryde Sugar Company, Limited, and the County of Kaua'i, to include the following:

(1) Approve closing the purchase of the 75-acre parcel and authorize the County Clerk to execute the Warranty Deed;

- Warranty Deed With Restrictions and Covenants: McBryde Sugar Company, Limited, a Hawai'i corporation (Grantor) and County of Kaua'i (Grantee), Property: Tax Map Key (4) 2-1-001:027 (por.) *(Copy on file in the Clerk's Office)*

(2) Authorize the County Clerk to execute the License Agreement for the continued use of the property by McBryde Sugar Company, Limited, for agricultural purposes until the County needs possession of the property, or any portion thereof, for the purpose of providing affordable housing;

- License Agreement by and between the County of Kaua'i (licensor) and McBryde Sugar Company, Limited (licensee) regarding the real property being portion of Tax Map Key No. (4) 2-1-01-27 *(Copy on file in the Clerk's Office)*

(3) Authorize the County Clerk to execute the Assignment and Assumption Agreement and the Assignment and Release Agreement as acknowledgement that the County of Kaua'i has been notified that McBryde Sugar Company, Limited, is engaging in a section 1031 like-kind exchange.

- Assignment and Assumption Agreement by and among (i) McBryde Sugar Company, Limited, a Hawai'i corporation (Assignor); (ii) T.G. Exchange, Inc., a Hawai'i corporation (Assignee); and (iii) the County of Kaua'i (Transferee) *(Copy on file in the Clerk's Office)*

- Assignment and Release Agreement by and among (i) T.G. Exchange, Inc., a Hawai'i corporation (Assignor); (ii) McBryde Sugar Company, Limited, a Hawai'i corporation (Assignee); and (iii) the County of Kaua'i (Transferee) *(Copy on file in the Clerk's Office)*

CLAIMS:

C 2010-49 Communication from the County Clerk, transmitting a claim filed against the County of Kaua'i by Eric M. Wedemeyer for damage to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE REPORTS:

CR-B&F 2010-02: on C 2010-10 — Communication (12/24/2009) from the Fire Chief, requesting Council approval to fund the cost of the acquisition of a public use helicopter via a 10-year lease to be used to enhance and support search and rescue, firefighting, ocean safety, training and other services of the Kaua'i Fire Department and other departments in the County of Kaua'i. [Approved.]

CR-B&F 2010-03: on Bill No. 2345 — A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2009-690, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Acquisition of a Public Use Helicopter via a 10-year lease) [Approved.]

CR-B&F 2010-04: on Bill No. 2343 — AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF KAUA'I FOR THE PURPOSE OF FINANCING CERTAIN PUBLIC IMPROVEMENTS AND REFUNDING CERTAIN BONDS OF THE COUNTY; FIXING OR AUTHORIZING THE FIXING OF THE FORM, DENOMINATIONS, AND CERTAIN OTHER DETAILS OF SUCH BONDS AND PROVIDING FOR THE SALE OF SUCH BONDS TO THE PUBLIC
[Approved.]

CR-B&F 2010-05: on Bill No. 2344 — AN ORDINANCE AMENDING ORDINANCE NO. B-2009-691, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 TO JUNE 30, 2010, BY REVISING THE REVENUES AND APPROPRIATIONS IN THE BOND FUND AND THE GENERAL FUND (CIP)
[Approved as Amended.]

PUBLIC WORKS/ELDERLY AFFAIRS COMMITTEE REPORT:

CR-PWE 2010-04: on Bill No. 2341 — A BILL FOR AN ORDINANCE TO AMEND CHAPTER 21, ARTICLE 7, KAUA'I COUNTY CODE 1987, RELATING TO INTEGRATED SOLID WASTE MANAGEMENT
[Approved as Amended.]

RESOLUTIONS:

Resolution No. 2010-11, RESOLUTION AMENDING RESOLUTION NO. 2007-97 TO REPLACE AND CONFIRM THE APPOINTMENT OF A MAYORAL APPOINTEE TO THE SALARY COMMISSION (Sheri S. Kunioka-Volz, First Term, replacing Dawn Murata) *(Deferred 01/06/2010 pending interview.)*

Resolution No. 2010-19, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BUILDING BOARD OF APPEALS (Duane Curammeng)

Resolution No. 2010-20, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE BUILDING BOARD OF APPEALS (Glen Taba)

Resolution No. 2010-21, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CHARTER REVIEW COMMISSION (Joel Guy)

Resolution No. 2010-22, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE CIVIL SERVICE COMMISSION (Ryan de la Peña)

Resolution No. 2010-23, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE COST CONTROL COMMISSION (Michele Swartman)

Resolution No. 2010-24, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE FIRE COMMISSION (Linda Ka'auwai-Iwamoto)

Resolution No. 2010-25, RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT TO THE PLANNING COMMISSION (Caven Raco)

Resolution No. 2010-26, RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE POLICE COMMISSION (Ernest Kanekoa)

Resolution No. 2010-27, RESOLUTION ABANDONING ACCESS ROAD OFF LAUOHO ROAD, KALĀHEO, KAUA'I, AND AUTHORIZING THE LAND TRANSFER TO THE NATIONAL TROPICAL BOTANICAL GARDEN, KALĀHEO, KAUA'I, HAWAI'I

BILLS FOR FIRST READING:

Proposed Draft Bill No. 2347 – A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B-2009-690, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010 BY REVISING THE OPERATING BUDGET OF THE OFFICE OF THE COUNTY AUDITOR IN THE GENERAL FUND *(Deferred 02/03/2010)*

Proposed Draft Bill No. 2349 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2009-691, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE SPECIAL TRUST FUND FOR PARKS & PLAYGROUNDS—HANALEI DISTRICT

BILLS FOR SECOND READING:

Bill No. 2341, Draft 1 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 21, ARTICLE 7, KAUA'I COUNTY CODE 1987, RELATING TO INTEGRATED SOLID WASTE MANAGEMENT *(The Public Works/Elderly Affairs Committee recommended approval of Bill No. 2341 as amended to Bill No.2341, Draft 1; see CR-PWE 2010-04)*

Bill No. 2343 – AN ORDINANCE AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS OF THE COUNTY OF KAUA'I FOR THE PURPOSE OF FINANCING CERTAIN PUBLIC IMPROVEMENTS AND REFUNDING CERTAIN BONDS OF THE COUNTY; FIXING OR AUTHORIZING THE FIXING OF THE FORM, DENOMINATIONS, AND CERTAIN OTHER DETAILS OF SUCH BONDS AND PROVIDING FOR THE SALE OF SUCH BONDS TO THE PUBLIC *(The Budget & Finance Committee recommended approval of Bill No. 2343; see CR-B&F 2010-04)*

Bill No. 2344, Draft 1 – AN ORDINANCE AMENDING ORDINANCE NO. B-2009-691, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 TO JUNE 30, 2010, BY REVISING THE REVENUES AND APPROPRIATIONS IN THE BOND FUND AND THE GENERAL FUND (CIP) *(The Budget & Finance Committee recommended approval of Bill No. 2344, as amended to Bill No. 2344, Draft 1; see CR-B&F 2010-05)*

Bill No. 2345 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2009-690, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Acquisition of a Public Use Helicopter via a 10-year lease) *(The Budget & Finance Committee recommended approval of Bill No. 2345; see CR-B&F 2010-03)*

BILL FOR RECONSIDERATION:

Bill No. 2336, Draft 3 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 16, ARTICLE 20, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE TRAFFIC CODE *(Approved on second and final reading on 02/03/2010)*

EXECUTIVE SESSION: Pursuant to Haw. Rev. Stat. ("H.R.S.") §92-7(a), the Council may, when deemed necessary, hold an executive session on any agenda item without written public notice if the executive session was not anticipated in advance. Any such executive session shall be held pursuant to H.R.S. §92-4 and shall be limited to those items described in H.R.S. §92-5(a). (Confidential reports on file in the County Attorney's Office and/or the County Clerk's Office. Discussions held in Executive Session are closed to the public.)

ES-424 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on Kathleen Ah Quin v. County of Kaua'i, Department of Transportation (USDCT) Civ. No. 08-00507 JMS/BMK and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-425 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kaua'i County Charter section 3.07(E), the purpose of this executive session is to provide the Council a briefing on Wayne R. Daniel, et al., v. Kodani and Associates, Inc., et al., Civ. No. 08-1-0006 (Fifth Circuit Court) and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ES-426 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing, update, and to request authority relating to the case of Jane Doe v. County of Kaua'i, EEOC Charge no. 486-2009-00268 and related matters. This briefing and consultation involves consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

ADJOURNMENT.

NOTE: SPECIAL ACCOMMODATIONS AND SIGN LANGUAGE INTERPRETER AND INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS ARE AVAILABLE UPON REQUEST FIVE (5) DAYS PRIOR TO THE MEETING DATE, TO THE COUNTY CLERK, 4396 RICE STREET, ROOM 206, LĪHU'E, KAUA'I.
TELEPHONE NO. 241-6371.

Bernard P. Carvalho, Jr.
Mayor

Robert F. Westerman
Fire Chief

John T. Blalock
Deputy Fire Chief

COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihu'e, Kaua'i, Hawaii 96766

RECEIVED
'09 DEC 24 P12:20
THE COUNTY CLERK

December 24, 2009

Council Chair Bill "Kaipo" Asing and
Members of the Kauai County Council
Kauai County Council
4396 Rice Street
Lihue, Hawaii 96766

RE: Funding for "Public Use" Helicopter

Dear Chairperson Asing and members:

We are requesting approval to move forward with our plans for a public use helicopter. The helicopter operation will enhance and support search and rescue, firefighting, ocean safety, training and other services of the Kauai Fire Department and other departments in the County of Kauai.

We would like to provide the County Council with a thorough briefing of our plans for your consideration. We are also requesting your approval to fund the acquisition costs of a helicopter via a 10-year lease.

Thank you for your time and consideration regarding this matter. Please call me at 241-4980 should you have any questions or require additional information.

Sincerely,

Robert Westerman
Fire Chief

APPROVED:

Bernard P. Carvalho, Jr.
Mayor

RFW/eld

C 2010-10

Ernesto G. Pasion
County Auditor

OFFICE OF THE COUNTY AUDITOR

COUNTY OF KAUA'I, STATE OF HAWAI'I
4386 RICE STREET, SUITE 107
LĪHU'E, HAWAI'I 96766-1819
Telephone: (808) 241-4178
Fax: (808) 241-6208
Email: auditor@kauai.gov

January 20, 2010

RECEIVED

'10 JAN 20 P1 :19

THE COUNTY
COUNTY OF KAUAI

Honorable Bill "Kaipo" Asing, Council Chair
And Members of the County Council
4396 Rice Street, Room 206
Līhu'e, Hawai'i 96766

Dear Chair Asing and County Council Members:

This letter requests County Council approval to establish a line item, 001-0203-511.41-01 entitled "Building Lease" for the Office of the County Auditor, and to transfer funds of $16,444 from line item 001-0203-511.32-00 Consultant Services into this line item to pay for the lease rent and other expenses associated with leasing 962 square feet of commercial space under the terms and conditions of the attached lease.

The lease is necessary because no space has been allocated for the Office of the County Auditor, and the office must vacate the space it is temporarily occupying. This allotment will fund the lease for the remainder of Fiscal year 2009-2010. The term of the lease will be for three years with an option to extend.

Please contact me if you have any questions regarding this request.

Sincerely,

Ernesto G. Pasion
County Auditor

Attachments

C 2010-25

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Administrative Assistant

John Isobe
Executive Assistant

OFFICE OF THE MAYOR
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 235, Līhu'e, Hawai'i 96766
TEL (808) 241-6300 FAX (808) 241-6877

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'10 FEB -5 P2:30
THE COUNTY COUNCIL

MEMORANDUM

To: The Honorable William "Kaipo" Asing, Chairman and Members of the Kaua'i County Council

From: Bernard P. Carvalho, Jr., Mayor

Via: John Isobe, Executive Assistant

Date: February 5, 2010

Subject: **APPOINTMENTS TO BOARDS AND COMMISSIONS FOR THE COUNTY OF KAUA'I**

I am taking this means to request your favorable consideration and confirmation of the following appointments to various Boards and Commissions for the County of Kaua'i.

Board of Appeals (Building)

Mr. Duane Curammeng — 1st complete term *(Electrical Background)* ending 12/31/12

Mr. Glen Taba — 1st complete term *(Building Background)* ending 12/31/12

Charter Commission

Mr. Joel Guy — 1st complete term ending 12/31/12

Civil Service Commission

Mr. Ryan de la Pena — 2nd complete term ending 12/31/12

Cost Control Commission

Ms. Michelle Swartman — 2nd complete term ending 12/31/12

C 2010-36

Board and Commission Appointments
February 5, 2010

Fire Commission
Ms. Linda Kaauwai-Iwamoto 2nd complete term ending 12/31/12

Planning Commission
Mr. Caven Raco 2nd complete term ending 12/31/12

Police Commission
Mr. Ernest Kanekoa 1st complete term ending 12/31/12

The application forms for each of the above named appointees are attached.

Please contact the Office of Boards and Commissions or myself if you have any questions regarding any of these very capable and qualified individuals.

Thank you.

Attachments:

cc (without attachments):
Donald Fujimoto, Department of Public Works
Don Lutao, Department of Public Works, Building Division
Malcolm Fernandez, Personnel Director
Robert Westerman, Fire Department
Ian Costa, Planning Director
Darryl Perry, Police Department

C 2010-36

RECEIVED

'10 FEB -9 P1 :02

OFFICE OF THE COUNTY CLERK

C 2010-37

STATEMENT

CONDITION OF THE COUNTY TREASURY

County of Kauai

As of December 3, 2009

The undersigned, Director of Finance and County Clerk, of said County, in pursuance of Section 10.5, County Charter, have this day counted the money in the Treasury of Kaua'i County, and find:

First: There ought to be in said Treasury:

	Cash As of September 10, 2009	Cash As of December 3, 2009	Cash Variance	Investments As of September 10, 2009	Investments As of December 3, 2009	Investments Variance
BEAUTIFICATION FUND	$395,832.06	$476,077.06	$80,245.00			
BIKEWAY FUND	51,007.23	57,882.23	6,875.00			
BOND FUND	(367,883.47)	(389,839.86)	(21,956.39)	$35,405,933.31	$33,261,486.53	($2,144,446.78)
BUILDING PERMIT REVOLVING FUND	250,177.89	229,969.70	(20,208.19)			
CDBG REHABILITATION REVOLVING	2,257,403.57	3,061,952.59	804,549.02			
CRIMINAL ASSETS FORFEITURE FUND	246,205.49	257,293.53	11,088.04	745,502.72	741,150.55	(4,352.17)
DEBT SERVICE FUND	(1,722,872.99)	(1,722,872.99)	0.00			
FEDERAL GRANTS FUND	(910,566.65)	(1,885,554.94)	(974,988.29)	1,751,257.00	1,751,257.00	0.00
GENERAL CIP FUND	19,748,723.21	19,472,340.79	(276,382.42)	650,000.00	651,303.56	1,303.56
GENERAL FUND	(18,228,061.52)	(15,605,922.58)	2,622,138.94	104,407,837.08	83,565,524.19	(20,842,312.89)
GOLF FUND	84,117.26	(88,086.39)	(172,203.65)			
GRANTS CIP FUND	(5,922,912.48)	(5,787,462.30)	135,450.18			
HIGHWAY CIP FUND	4,063,247.21	4,063,013.80	(233.41)			
HIGHWAY FUND	(149,986.88)	433,157.63	583,144.51	5,729,328.00	4,734,355.43	(994,972.57)
HOUSING REVOLVING FUND	505,683.52	(462,953.51)	(968,637.03)	1,505,696.14	1,651,017.82	145,321.68
PARKS REVOLVING FUND	917,111.00	991,447.10	74,336.10			
LIQUOR FUND	(41,576.46)	755,939.06	797,515.52	699,086.11	697,508.30	(1,577.81)
HOUSING RENTAL PROJECTS FUND	2,322,297.39	2,263,763.16	(58,534.23)			
PUBLIC ACCESS FUND	984,727.10	735,711.55	(249,015.55)	1,206,000.00	1,448,855.58	242,855.58
REAL PROPERTY TRUST FUND	273,687.42	800,508.48	526,821.06			
SECTION 8	1,576,686.75	1,082,033.98	(494,652.77)			
SELF INSURANCE FUND	3,209,112.07	2,785,976.04	(423,136.03)			
SEWER FUND	(67,384.44)	(321,453.76)	(254,069.32)	1,902,366.25	1,897,512.39	(4,853.86)
SEWER TRUST FUND	1,373,499.01	1,355,041.01	(18,458.00)			
SOLID WASTE DISPOSAL FUND	3,765,312.25	1,202,409.82	(2,562,902.43)	5,950,000.00	6,432,520.00	482,520.00
SPECIAL STATE CIP FUND	0.00	0.00	0.00			
SPECIAL TRUST FUND FOR PARKS & PLAYGROUNDS	286,370.37	2,083,214.13	1,796,843.76	4,678,029.80	4,655,831.81	(22,197.99)
STATE GRANTS FUND	745,412.88	373,404.17	(372,008.71)			
TREASURY TRUST FUND	2,740,374.13	894,596.27	(1,845,777.86)	970,000.00	970,010.92	10.92
TRUST & AGENCY FUND	576,293.17	509,607.81	(66,685.36)			
TRUST FUND-CONTRIBUTIONS BY DEVELOPERS	191,666.34	255,214.59	63,548.25	1,898,283.14	1,896,741.62	(1,541.52)
WATER UTILITY "FRC"	127,637.36	386,031.74	258,394.38	5,608,099.38	5,089,221.10	(518,878.28)

C2010-37

STATEMENT

CONDITION OF THE COUNTY TREASURY

County of Kauai

As of December 3, 2009

	Cash As of September 10, 2009	Cash As of December 3, 2009	Cash Variance	Investments As of September 10, 2009	Investments As of December 3, 2009	Investments Variance
WATER UTILITY FUND.....	(179,622.21)	480,877.10	660,499.31	5,753,514.90	6,784,215.82	1,030,700.92
WATER UTILITY-BOND FUND.....	(441,730.60)	186,237.91	627,968.51	660,000.00	660,000.00	0.00
TOTAL.....	$18,659,986.98	$18,929,554.92	$269,567.94	$179,520,933.83	$156,888,512.62	($22,632,421.21)

Second: The amount actually in said Treasury Is:
The amounts and kinds of money are:

CASH IN TREASURY.....	$79,442.81	$103,545.50	$24,102.69			
CHANGE FUND, WAILUA GOLF COURSE.....	4,050.00	4,050.00	0.00			
AMERICAN SAVINGS & LOAN.....	1,004,510.85	1,005,350.57	839.72	$450,000.00	$350,000.00	($100,000.00)
BANK OF HAWAII.....	3,936,207.56	2,416,676.78	(1,519,530.78)	10,780,448.16	11,291,605.85	511,157.69
CAPITAL SECURITIES OF AMERICA				5,018,595.98	5,510,619.31	492,023.33
CENTRAL PACIFIC BANK.....	3,582,405.11	3,722,814.89	140,409.78	9,500,000.00	9,500,000.00	0.00
FIRST HAWAIIAN BANK.....	10,053,370.65	11,677,117.18	1,623,746.53	75,645,908.82	59,281,407.64	(16,364,501.18)
MERRILL LYNCH.....				33,199,120.00	25,692,534.99	(7,506,585.01)
MULTI-BANK.....				24,616,910.87	23,942,164.83	(674,746.04)
UBS FINANCIAL SERVICES INC			0.00	20,309,950.00	21,320,180.00	1,010,230.00
VINING SPARKS.....						
TOTAL.....	$18,659,986.98	$18,929,554.92	$269,567.94	$179,520,933.83	$156,888,512.62	($22,632,421.21)

STATE OF HAWAII, County of Kaua'i

Subscribed and sworn to before me this

9th day of February 20 10

County Clerk, County of Kauai

Office of the County Clerk

County Clerk

Dated, Lihue, Kaua'i February 5, 2010

Department of Finance

Director of Finance

COUNTY COUNCIL
Bill "Kaipo" Asing, Chair
Jay Furfaro, Vice Chair
Tim Bynum
Dickie Chang
Daryl W. Kaneshiro
Lani T. Kawahara
Derek S.K. Kawakami

OFFICE OF THE COUNTY CLERK

Peter A. Nakamura, County Clerk

Telephone (808) 241-6371
Fax (808) 241-6349
Email: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Room 206
Līhu'e, Kaua'i, Hawai'i 96766-1371

February 10, 2010

RECEIVED
'10 FEB 10 P3:47
OFFICE OF THE COUNTY CLERK

TO: Bill "Kaipo" Asing, Council Chair
and Members of the Kauai County Council

FROM: Derek S. K. Kawakami, Councilmember

RE: Possible Conflict of Interest
Bill No. 2342, Relating to the Lihue Town Core Update

Pursuant to Section 20.04(B), Charter, Section 3-1.9, Kauai County Code 1987, and Council Rule No. 8, this is to provide written disclosure on the record of a possible conflict of interest relating to Bill No. 2342, because I serve in the following capacity for HSK Corporation, a company which owns property in the project area:

a. Director, Commercial Properties
b. Director, Haupu Management (owner of the Rice Shopping Center)

For the reasons stated above, I am recused from any discussion and deliberation, etc. on Bill No. 2342.

Should you have any questions, please feel free to see me. Your attention to this matter is appreciated.

CC: February 17, 2010 Council Meeting Agenda

C 2010-38

COUNTY COUNCIL
Bill "Kaipo" Asing, Chair
Jay Furfaro, Vice Chair
Tim Bynum
Dickie Chang
Daryl W. Kaneshiro
Lani T. Kawahara
Derek S. K. Kawakami

Council Services Division
4396 Rice Street, Room 206
Līhu'e, Kaua'i, Hawai'i 96766-1371

OFFICE OF THE COUNTY CLERK

Peter A. Nakamura, County Clerk

Telephone (808) 241-6371
Fax (808) 241-6349
Email cokcouncil@kauai.gov

RECEIVED
'10 FEB 11 P3:43
OFFICE OF THE COUNTY CLERK COUNTY OF KAUAI

February 11, 2010

Members of the County Council
County of Kaua'i
4396 Rice Street
Līhu'e, HI 96766

Dear Honorable Members of the County Council:

Attached for your consideration is a bill that appropriates $350,000.00 for the Black Pot Park Expansion Project (land acquisition). The Council was previously briefed by the Kaua'i Public Land Trust (KPLT) on the purchase of a parcel adjacent to Black Pot Beach Park that would be a tremendous asset for the County of Kaua'i to expand the park area. Also attached is a letter that we received from Jennifer Luck, Executive Director of KPLT regarding their request for the additional appropriation.

The Council previously appropriated $1,850,000.00 for this expansion and approximately $800,000.00 would have been derived from a grant from the Legacy Land Commission via the State. As the State Legislature is currently in session, time is of the essence to secure these funds from the State and to act on this bill in a timely manner. This $350,000.00 would provide the County's commitment to expand the park area.

In light of the above, your favorable consideration is appreciated.

Sincerely,

BILL "KAIPO" ASING
Council Chair

JAY FURFARO
Council Vice Chair

Attachments
cc: 02/17/2010 Council Meeting
Si/Lc

C 2010-39

Board of Directors:

Bill Chase
President

Gary Blaich M.D.
Vice-President

Barbara Robeson
Secretary

Louie Abrams

Walt Barnes

JoAnn Yukimura

Diane Zachary

February 11, 2010

Mr. Bill "Kaipo" Asing
Chair, Kaua'i County Council
4396 Rice Street, Room 206
Lihue, HI 96766

Aloha Council Chair Asing,

The Kaua'i Public Land Trust (KPLT) respectfully requests to be added to the Kaua'i County Council February 17th agenda. We would like to seek $350,000 in funds from the County of Kaua'i to acquire a parcel adjacent to Black Pot Park in Hanalei currently owned by Mr. John Hodge (TMK4-5-5-001:011).

Theses additional funds will ensure that the Hodge lot is acquired for the express purpose of expanding Black Pot Park. As you know the County has already generously earmarked $1,850,000 from the Open Space Fund towards this purchase. In addition KPLT has secured $800,000 in funding from the Legacy Lands Conservation Program Fund. However, these funds will only be released if all other monies to complete the acquisition are secured. To achieve this goal KPLT met with Mr. Hodge and was able to further reduce the price of the sale to $3,000,000 from the original $3,300,000. This leaves only $350,000 left to secure in order to complete the purchase, which we are requesting from the County.

Attached is a letter from Mr. Hodge confirming his decision to reduce his sales price to $3,000,000 from $3,300,000.

Thank you for your consideration.

Best Regards,

Jennifer Luck
Executive Director

Office: (808) 346-9419 ◊ E-Mail: Jennifer@kauaipubliclandtrust.org
Visit Us Online at www.kauaipubliclandtrust.org!

C 2010-39

Bernard P. Carvalho, Jr.
Mayor

Robert F. Westerman
Fire Chief

John T. Blalock
Deputy Fire Chief

COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihu'e, Kaua'i, Hawaii 96766

RECEIVED
'10 JAN 26 P1:20
THE COUNTY

January 14, 2010

Council Chair Bill "Kaipo" Asing and
Members of the Kauai County Council
Kauai County Council
4396 Rice Street
Lihue, Hawaii 96766

RE: Approval to Donate ISI Self Contained Breathing Apparatus (SCBA) to State Crash Fire

Dear Chairperson Asing and members:

The Kaua'i Fire Department (KFD) requests your approval to donate our old ISI SCBA units to the State of Hawai'i Airport Crash Fire. We recently acquired new Scott SCBA packs including bottles for the entire department through a Federal Grant. These packs replace our existing units that are over 15 years old.

There are a total of 26 packs and 106 bottles that we would like to donate to the State Crash Fire. They currently use ISI packs and although these packs are over 15 years old, the packs they have are older and in worse condition. We have also provided the Kaua'i Police Department with 19 Viking packs along with 20 bottles, these were the newer models.

Thank you for your time and consideration regarding this matter. Should you have any questions or require additional information, please contact me at 241-4975.

Sincerely,

Robert Westerman
Fire Chief

APPROVED:

Bernard P. Carvalho, Jr.
Mayor

RFW/eld

C 2010-40

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Administrative Assistant

Eugene K. Jimenez
Housing Director

KAUAI COUNTY HOUSING AGENCY
Pi'ikoi Building 4444 Rice Street Suite 330
Lihue Hawaii 96766

January 20, 2010

RECEIVED
'10 JAN 26 P1:19
THE COUNTY CLERK

Honorable Chair Bill "Kaipo" Asing
And Council members
Kaua'i County Council
4396 Rice Street
Līhu'e, Kaua'i, Hawai'i 96766

Attention: Economic Development/Housing Committee Chair Dickie Chang

Dear Chair Asing:

SUBJECT: Request to Decline Repurchase of Unit No. 601, Hookena at Puhi

The owners of the Unit No. 601 at Hookena at Puhi, located in Puhi at 2080 Manawalea Street, Līhu'e, Hawai'i 96766, purchased a 2-bedroom, 2 bath single family attached CPR unit on August 21, 2007 for $294,175.00. Due to the family outgrowing their living space, the owners are requesting the county allow the sale of the unit.

Attached is a Repurchase Disclosure Schedule that calculates the repurchase price at $303,400.00. Pursuant to the Housing Agency's affordable for sale housing prices, this price would be affordable to households earning approximately one-hundred forty percent (140%) of Kaua'i's median household income.

The Housing Agency recommends that the County not exercise its repurchase right to buyback this property and that the Housing Agency issue the owners a one-year waiver of the County's repurchase right effective the date of the Council's decision. Such waiver provides the owner the ability to sell the unit on the open market for a one-year period. The Housing Agency's recommendation to decline repurchase is based on the affordability level of this unit and that we believe our repurchase price is too close to market value.

Development Section (808) 241 4444 FAX (808) 241 5118
TDD (808) 241 4411

Section 8 (HUD) (808) 241 4440 FAX (808) 241 5119

C 2010-41

COUNTY OF KAUAI
1908
STATE OF HAWAII

COUNTY OF KAUAI
1908
STATE OF HAWAII

KAUAI (HRS 343)

1. Access Road off of Lauoho Road (FEA)

Island:	Kauai
District:	Koloa
TMK:	4-2-3-09
Proposing Agency:	County of Kauai, Department of Public Works, 4444 Rice Street, Suite 275, Lihue, HI 96766-1340. Wally Kudo, 241-4891
Approving Agency:	Same
Consultant:	NKN Project Planning, 4849, Iiwi Road, Kapaa, HI 96746. Nadine Nakamura, 822-0388
Comments:	FEA accepted by the Approving Agency. There is no comment period
Permits:	none

The County of Kauai, Department of Public Works is proposing to abandon an unimproved access road and re-convey it to the current adjacent property owners National Tropical Botanical Garden (NTBG) and Toshi Kaneko. The access road was created in 1940 to provide access to a kuleana and jelly factory on TMK (4) 2-3-09:11 formerly owned by the McBryde Sugar Company and currently owned by NTBG. Following the acceptance of the Final Environmental Assessment, Public Works will seek approval from the County Council to abandon and re-convey the parcel to the adjacent property owners.

The unnamed access road is located in the district of Koloa, Kalaheo Ahupuaa. The road to the north abuts Lauoho Road, is bounded to the east and south by NTBG-owned properties, and to the west by landowners the Stella and Toshiro Kaneko Trusts. The road is zoned Agriculture with a small portion in the Open zone. The General Plan land use designation is Agriculture. The Kalaheo Homestead Act, Kalaheo Homesteads Second Series created a 10 foot wide "government road" right-of-way as an access from Lauoho Road to the kuleana. In 1940 the County initiated and acquired five small adjacent parcels in order to straighten and widen the right-of-way to 30 feet and to provide vehicular access to the kuleana parcel. Although officially described as a road, the actual use and function has been a driveway to access NTBG's property. Since its creation, the road has not been improved or maintained by the County. The drivable width is approximately 12 – 15 feet, although the County's right-of-way ownership is about 30 feet, and is approximately 745 feet long.

This proposed action was initiated in response to a condition imposed by the County of Kauai, Department of Public Works on an application by the National Tropical Garden to construct a central housing facility for up to 24 visiting researchers, interns and other education program participants.

2. Kuhio Highway Short – Term Improvements - Kuamoo Road to Temporary Bypass Road (DEA)

Island:	Kauai
District:	Kawaihau
TMK:	Various parcels, 3-9-02, 3-9-06; 4-1-03, 4-1-05, 4-3-01, 4-3-02, and 4-3-10
Proposing Agency:	Department of Transportation, Highways Division, 869 Punchbowl Street, Honolulu, HI 96813. Darell Young, 587-1835
Approving Agency:	Same
Consultant:	Wilson Okamoto Corporation, 1907 South Beretania Street, Suite 400, Honolulu, HI 96826. Ronald A. Sato, AICP, Project Manager, 946-2277
Comments:	DEA 30-day comment period starts with the date of this Notice. Address comments to the Proposing Agency and Consultant
Permits:	Department of Army Section 404 Nationwide Permit, National Pollutant Discharge Elimination System (NPDES) Permit for Storm Water Associated with Construction Activity, NPDES Permit for Dewatering, Section 401 Water Quality Certification, Noise, Construction Noise Variance – if required, Air Quality, Chapter 6E, HRS Historic Preservation Review, Coastal Zone Management Program Consistency Determination, Road, Grading/Grubbing, Building, Excavation, Drainage Plan Approval, Utility Service Agreements

C 2010-42

4. Kalanianaole Highway Sewer System Improvements (FEA)

Island:	Oahu
District:	Honolulu
TMK:	3-5-22, 23, & 58; 3-6-01, 02, & 03; 3-7-01, 10 & 11; 3-8-14
Proposing Agency:	City and County of Honolulu, Department of Design and Construction, 650 South King Street, 11th Floor, Honolulu, HI 96813
Approving Agency:	Same
Consultant:	HDR | Hawaii Pacific Engineers, Inc., 1132 Bishop Street, Suite 1003, Honolulu, HI 96813. Roy Abe, 522-7425
Comments:	FEA accepted by the Approving Agency. There is no comment period
Permits:	Community noise, noise variance, perform work within a state highway, street usage and trenching

The City and County of Honolulu is proposing to clean and rehabilitate key sewer lines between Kahala and Niu Valley to address capacity limitations and structural deficiencies in the East Honolulu sewer system. The project includes: 1) rehabilitating 6,400 feet of 24- to 30-inch diameter sewer lines located along Kalanianaole Highway from Kawaikui Beach Park to Wailupe Beach Park, 2) removing long-term sediment accumulation in 6,000 feet of 30- and 36-inch diameter sewer lines located along beachfront properties from Wailupe Beach Park to Waialae Beach Park; and 3) rehabilitating 1,700 feet of 10-inch diameter sewer lines along Kalanianaole Highway between Niu Valley Shopping Center and Paiko Drive. Trenchless cured-in-place-pipe (CIPP) technology will be used to rehabilitate the sewers.

Direct temporary impacts resulting from construction activities include increased traffic congestion, noise and dust. There should be no impacts to endangered species, archaeological resources or cultural practices. No long-term adverse indirect, secondary and cumulative impacts are anticipated. Beneficial long-term impacts include improved water quality and public health due to lower risk of future sewage spills. The estimated construction cost of the project is $10 million. The construction work is expected to begin in September 2009 at the earliest and last approximately 18 months.

The City has determined that this project will not have significant environmental effects and has issued a Finding of No Significant Impact (FONSI).

MAUI (HRS 343)

5. West Olinda Tank Replacement (FEA)

Island:	Maui
District:	Makawao
TMK:	2-4-13:132
Proposing Agency:	Department of Water Supply, County of Maui, 200 South High Street, Wailuku, Maui, 96793. Wendy Taomoto, 270-7835
Approving Agency:	Same
Consultant:	Austin, Tsutsumi & Associates, 501 Sumner St, Suite 521, Honolulu, HI 96817. Ivan Nakatsuka, 533-3646
Comments:	FEA accepted by the Approving Agency. There is no comment period
Permits:	Grading, Building, "Work to be Performed on County Roads" permit, NPDES permits

The County of Maui, Department of Water Supply (DWS) proposes constructing a new 300,000-gallon concrete tank within the fenced site of the existing 50,000-gallon steel West Olinda tank, which will be removed as part of the project. The capacity of the new tank will allow for lengthening of the period between activation of the existing booster pumps at this West Olinda Tank site, as well as the booster pumps at the Maluhia Tank site that pump water up to this West Olinda Tank. This would significantly improve the life efficiency of both booster pump systems. In addition, the new tank will provide storage capacity for another 30 to 50 years. The new tank will be of reinforced concrete, with a diameter of approximately 61 feet and a height of about 16 feet. Related site

C 2010-42

is proposing to construct: 1) a self-supported 4-leg tower of between 120 feet and 140 feet tall (final height will depend on topographic survey results and final location of the tower on the parcel) with 14 microwave dish antennas and other whip, panel, and yagi style antennas; 2) an approximately 900-square foot by 12-foot high building, and 3) other supporting facilities, including an outdoor diesel fuel tank, and interior items to support radio equipment such as a backup generator, station batteries and charger system, electrical power transfer and control system, and air conditioning. The entire facility will be designed and constructed to remain operational at wind speeds of up to 110 miles per hour (mph) and to survive wind speeds of up to 155 mph. Electrical power will be supplied via connection to the commercial power line that services the existing nearby facilities. No State or County of Hawaii employees will be assigned to the facility on a daily basis.

Since the project site has not been previously cleared, construction activities would primarily be related to construction of the fenced-in-compound, the building, and the tower. These activities will create dust and noise while work occurs on the project site. Once operational, the only activity would be visits by government employees and contract service personnel to perform periodic monitoring and maintenance functions.

8. <u>Waimea Water System Improvements</u> (FEA)

Island:	Hawaii
District:	South Kohala
TMK:	(3) 6-5-01:21; 6-5-04:79 and County Roadways within TMK Plats 6-5-02, 6-5-04, 6-5-08 & 6-5-11
Proposing Agency:	Hawaii County Department of Water Supply, 345 Kekuanaoa Street, Suite 20, Hilo, HI 96720. Larry Beck, 961-8070 Ext 260
Approving Agency:	Same
Consultant:	Geometrician Associates, PO Box 396, Hilo, HI 96721. Ron Terry, 969-7090
Comments:	FEA accepted by the Approving Agency. There is no comment period
Permits:	County of Hawaii, Department of Public Works, Permit for Work in County Right-of-Way; State Department of Health, National Pollutant Discharge Elimination System; State Board of Land and Natural Resources, Utility/Access Easement on State Land

The Hawaii County Department of Water Supply (DWS) proposes to construct a water line to relieve a water pressure deficiency in its Waimea system. The approximately 6,000-feet-long water line will improve the water system delivery pressure and fire flow to the upper parts of Laelae and Opelo Roads.

Because the line will parallel existing water lines from reservoirs in the DWS' Waimea Water Reservation and will be contained within the same existing road rights-of-way, no valuable biological, historic or cultural resources are present or will be affected. In order to minimize the potential to disrupt traffic and pose a hazard, contractors will utilize a "cut and cover" method, in which asphalt pavement will be saw cut, and base course and underlying material will be removed by a backhoe. This material will be hauled to a stockpile site. The contractor will coordinate trench excavation, delivery of material to the work site, and water line installation to minimize inconvenience to the public. Except for one location on Kawaihae Road, most construction is along local roads. Professional traffic control will be used to ensure access to properties and safe and efficient traffic flow.

9. <u>Hawaii Belt Road Rockfall Protection at Maulua, Laupahoehoe and Kaawalii Gulches</u> (DEA)

Island:	Hawaii
District:	North Hilo and Hamakua
TMK:	Kaawalii Gulch: (3) 3-9-01:01; Laupahoehoe Gulch: (3) 3-6-04:02, 11, 15, 17, 23, 30; Maulua Gulch: (3) 3-4-02: 03, 04, 05
Proposing Agency:	Department of Transportation, Highways Division, 869 Punchbowl Street, Room 513, Honolulu, HI 96813. Ross Hironaka, 692-7575
Approving Agency:	Same
Consultant:	R. M. Towill Corporation, 2024 North King Street, Suite 200, Honolulu, HI 96819. Brian Takeda, 842-1133

C 2010-42

Comments: DEA 30-day comment period starts with the date of this Notice. Address comments to the Proposing Agency and Consultant

Permits: Federal: U.S. Army Corps; State: Department of Health, NPDES Individual Permit, Conservation District Use Permit; County: Special Management Area Permit, Shoreline Setback Variance

Alii Drive, a County of Hawaii roadway, is a two-lane, two-way road used by motorists to reach retail, commercial, resort, recreational, and residential areas south of Kailua Village. The County of Hawaii, Department of Public Works proposes to make improvements to Alii Drive along Oneo Bay, from Hualalai Road to Walua Road. The Alii Drive Improvements Along Oneo Bay project would provide pedestrian, landscaping, and scenic view improvements within the project limits which would include: 1) landscape enhancements; 2) underground placement of existing overhead utility lines; and 3) construction of a new sea wall and pedestrian walkway. The new seawall would be constructed in front of or makai of the existing seawall and would extend for about 750 feet along the shoreline. The improvements are needed to enhance driver and pedestrian movements to this area of Kailua-Kona. Thus, the project is needed to maintain the public health and welfare for the residents of this area of the County. The County intends to fund the improvements with SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users). As a result, the improvements need to be among the qualifying activities, as described by SAFETEA-LU.

COASTAL ZONE NOTICES

Federal Consistency Reviews

The Hawaii Coastal Zone Management (CZM) Program has received the following federal actions to review for consistency with the CZM objectives and policies in Chapter 205A, HRS. This public notice is being provided in accordance with section 306(d)(14) of the National Coastal Zone Management Act of 1972, as amended. For general information about CZM federal consistency please call John Nakagawa with the Hawaii CZM Program at 587-2878. For neighboring islands use the following toll free numbers: Lanai & Molokai: 468-4644 x72878, Kauai: 274-3141 x72878, Maui: 984-2400 x72878 or Hawaii: 974-4000 x72878. For specific information or questions about an action listed below please contact the CZM staff person identified for each action. Federally mandated deadlines require that comments be received by the date specified for each CZM consistency review. Comments may be submitted to: Office of Planning, Department of Business, Economic Development and Tourism, P.O. Box 2359, Honolulu, HI 96804. Email: jnakagaw@dbedt.hawaii.gov or Fax: (808) 587-2899.

Kona Blue Water Farms Offshore Net Pen Replacement, Kona, Hawaii
Applicant: Kona Blue Water Farms, LLC
Contact: Neil Sims, (808) 331-1188, ext. 201
Federal Action: Federal Permit
Federal Agency: U.S. Army Corps of Engineers
Location: Offshore Kona Coast in 200 feet of water, 1 mile north of Keahole Point, Hawaii
CZM Contact: John Nakagawa, 587-2878, jnakagaw@dbedt.hawaii.gov
Proposed Action: Kona Blue Water Farms is proposing to replace two of the existing submersible net pens with two smaller "Aquapod" net pens. The new net pens are made of a plastic lumber frame with brass-alloy mesh and will be 20-feet in diameter with a volume of 110 cubic yards. By comparison, the existing net pens are 80-feet in diameter with a volume of 3,000 cubic meters. As with the existing net pens, the new pens will be submerged and will be raised to the surface for diving and other work. The replacement pens will be 3-feet above the sea surface when raised as compared to 25-30 feet above the sea surface when the existing pens are raised. There would be no increase in production capacity and no change in the species cultured. New mooring lines would not be added, but some of the ballast lines and concrete blocks that comprise the clump weights on the existing pens would be removed. The applicant anticipates that the new pens would be operationally more efficient due to a reduction in the amount of biofouling on the mesh.
Comments Due: July 22, 2009

Repair Damages to Wailoa and Waiakea Flood Control Projects, Hilo, Hawaii
Federal Action: Federal Agency Activity
Federal Agency: U.S. Army Corps of Engineers
Contact: Sharon Ishikawa, 438-2249; or Mark Arakaki, 438-6929

C 2010-42

KA-330	6/25/09	Lydgate Park, Parts E & F situate at Wailua, Kauai Address: N/A Purpose: Reconstruction	Esaki Surveying and Mapping, Inc./ County of Kauai	3-9-06:01
KA-331	6/29/09	Lot 111 Haena Hui Lands being a portion of R.P. 3596 L.C. Aw. 10613, Ap. 6 to A Paki situate at Haena, Halelea, Kauai Address: Kuhio Highway Purpose: County consolidation application	Wagner Engineering Services, Inc./ David Morrow	5-9-03:45

POLLUTION CONTROL PERMITS

Department of Health Permits

Pursuant to HRS §342B and HAR §11-60.1, the following is a list of some pollution control permits currently before the State Department of Health. For more information about any of the listed permits, please contact the appropriate branch or Environmental Management Division at 919 Ala Moana Blvd., Honolulu, HI.

Branch Permit Type	Applicant & Permit Number	Project Location	Date	Proposed Use
Clean Air Branch, 586-4200, Covered Source Permit	CTS Earthmoving, Inc. CSP No. 0562-01-CT Application for Renewal No. 0562-03 Application for Modification No. 0562-04	Located at: Various Temporary Sites State of Hawaii	Comments Due: 7/20/09	Crushing and Screening Plants
Clean Air Branch, 586-4200, NonCovered Source Permit	Maui Blocks, Inc. NSP No. 0372-01-N Application for Modification No. 0372-04	Located at: Pulehunui Quarry Puunene, Maui	Issued: 6/19/09	29.4 TPH Concrete Block Plant
Clean Air Branch, 586-4200, Covered Source Permit	Chevron Products Company CSP No. 0098-01-C Application for Renewal No. 0098-02	Located at: 1.5 miles off the coast of Campbell Industrial Park, Oahu	Comments Due: 7/30/09	Marine Mooring Terminal

Request to Update Mailing List for Public Notices of Draft Air Permits

The Department of Health, Clean Air Branch is updating its mailing list of interested persons wishing to receive copies of public notices of draft air permits. If anyone is interested in being placed on the mailing list, please provide, in writing, your name and mailing address to the Clean Air Branch, Department of Health, 919 Ala Moana Blvd., Room 203, Honolulu, HI 96814 or via email to CAB@doh.hawaii.gov. The Clean Air Branch's public notices can also be viewed at the following website: http://www.hawaii.gov/health/environmental/air/cab/index.html

FEDERAL NOTICES

Environmental Assessment for Constructing New Barracks at Schofield Barracks, Oahu (NEPA)

Island: Oahu
District: Wahiawa
TMK: 7-7-01-01
Proposing Agency: US Army Corps of Engineers, Honolulu District, Building 252, Ft. Shafter HI 96858. Lynn Schneider, 438-0402
Approving Agency: Same
Consultant: Myounghee Noh & Associates, LLC, 99-1046 Iwaena Street, Suite 210A, Honolulu, HI 96701
Permits: NPDES

C 2010-42

GLOSSARY

Draft Environmental Assessment
A project or action that may affect the environment cannot be implemented until an Environmental Assessment (EA) is prepared in accordance with Chapter 343, Hawaii Revised Statutes (HRS). If the lead State or County agency (the proposing agency for agency actions, or the approving agency for applicant actions) anticipates that the project will have no significant environmental impact, then affected agencies, individuals, and organizations must be consulted and a Draft EA (DEA) is written and public notice is published in this periodic bulletin (section 343-3, HRS) known as the Environmental Notice. The public has 30 days to comment on the Draft EA from the date of the first notice.

Final Environmental Assessment and Finding of No Significant Impact
After the lead agency reviews the public comments and it determines that the project will have no significant effect on the environment, then it will prepare a Final EA (FEA) and issue a Finding of No Significant Impact (FONSI) formerly called a Negative Declaration. The FEA must respond to all public comments. An Environmental Impact Statement will not be required and the project may now be implemented. The public has 30 days from the first notice of a FONSI in this periodic bulletin to ask a court to require the preparation of an EIS.

Final Environmental Assessment and Environmental Impact Statement Preparation Notice
When a lead agency decides that a project may have a significant environmental impact, an Environmental Impact Statement (EIS) must be prepared prior to implementing the project. Like the DEA (above), affected agencies, individuals and organizations must be consulted prior to preparation of the FEA and issuance of a determination called an EIS Preparation Notice (EISPN). (The EA is called final, to distinguish it from the draft, above). After the FEA is written by the agency, and notice of the FEA-EISPN is published in this periodic bulletin, any agency, group, or individual has 30 days from the first publication of the EISPN to request to become a consulted party and to make written comments regarding the environmental effects. The public (including an applicant) has 60 days from the first notice of an EISPN in this periodic bulletin to ask a court to not require the preparation of an EIS.

Draft Environmental Impact Statement
After receiving the comments on the FEA-EISPN (see above), the agency or applicant must prepare a Draft Environmental Impact Statement (DEIS) prior to project implementation which must disclose the likely impacts of a project. Direct, indirect and cumulative impacts must be discussed along with mitigative measures. The public has 45 days from the first publication date in this periodic bulletin to comment on a DEIS. The DEIS must respond to comments received during the FEA-EISPN comment period in a point-by-point manner.

Final Environmental Impact Statement
After considering all public comments filed during the DEIS stage, the agency or applicant must prepare a Final EIS (FEIS). The FEIS must respond in a point-by-point manner to all comments from the draft stage and must be included in the FEIS. For applicant projects, the approving agency is authorized to accept the FEIS. For an agency project, the Governor or the Mayor (or their designated representative) is the accepting authority. Only after the FEIS is accepted may the project be implemented.

Acceptability
If the FEIS is accepted, notice of this action is published in this periodic bulletin. The public has 60 days from the date of first notice of acceptance to ask a court to vacate the acceptance of a FEIS. In the case of applicant actions, the law requires that an approving agency must make a determination on acceptance within 30 days of receipt of the FEIS or the FEIS is deemed accepted. Also, for applicant actions, the law provides for an administrative appeal of a non-acceptance to the Environmental Council.

National Environmental Policy Act
The National Environmental Policy Act (NEPA) requires federal projects to prepare an EA or EIS. In many ways it is similar to Hawaii's law. Some projects require both a state and federal EIS and the public comment procedure should be coordinated. OEQC publishes NEPA notices in this periodic bulletin to help keep the public informed of important federal actions.

Conservation District
Any use of land in the State Conservation District requires a Conservation District Use Application (CDUA). These applications are reviewed and approved by the Board of Land and Natural Resources. Members of the public may intervene in the permit process. Notice of permit applications are published in this periodic bulletin.

Special Management Area
The Special Management Area (SMA) is along the coastline of all islands and development in this area is generally regulated by Chapter 205A, HRS and county ordinance. A special subset of the SMA that is regulated by Chapter 343, HRS is the Shoreline Setback Area. Most development in this area requires a Special Management Permit (SMP). This periodic bulletin posts notice of these SMA applications to encourage public input.

Shoreline Certifications
State law requires that Hawaii shorelines be surveyed and certified when necessary to clearly establish the shoreline setback from the certified shoreline. The public may participate in the process to help assure accurate regulatory boundaries. Private land owners often petition to have their shoreline certified by the State surveyor prior to construction. This periodic bulletin publishes notice from the Department of Land and Natural Resources of both shoreline certification applicants and of final certifications or rejections.

Environmental Council
The Environmental Council is a 15-member citizen board appointed by the Governor to advise the State on environmental concerns. The council makes the rules that govern the Environmental Impact Statement process. Agendas of their regular meetings are posted on the Internet and the public is invited to attend.

Exemption Lists
Government agencies must keep a list describing the minor activities they regularly perform that are declared exempt from the environmental review process. These lists and any amendments shall be submitted to the Council for review and concurrence. This periodic bulletin will publish an agency's draft exemption list for public comment prior to Council decision making, as well as notice of the Council's decision on the list.

Endangered Species
This periodic bulletin is required by Section 343-3(c), HRS, to publish notice of public comment periods or public hearings for Habitat Conservation Plans (HCP), Safe Harbor Agreements (SHA), or Incidental Take Licenses (ITL) under the federal Endangered Species Act, as well as availability for public inspection of a proposed HCP or SHA, or a proposed ITL (as a part of an HCP or SHA).

C 2010-42

NATIONAL TROPICAL BOTANICAL GARDEN
Chartered by Congress to Create a National Resource in Conservation, Research, and Education

September 21, 2009

Mr. Wally Kudo, P.E.
Chief, Engineering Division
Department of Public Works
Mo`ikeha Building, Suite 275
4444 Rice Street
Lihu`e, HI 96766

Dear Mr. Kudo:

Subject: Access Road off Lauoho Road, TMK: 2-3-09: 034

Per our Memorandum of Agreement dated January 30, 2009, the National Tropical Botanical Garden (NTBG) submits the following documentation of costs incurred in facilitating the transfer of the above-referenced County-owned road to the NTBG.

Attached please find the following documents:

1.	Invoice from CLS Hawai`i for survey of road	$ 2,344
2.	Contract with NKN Project Planning for Environmental Assessment	$17,500
3.	Invoices from Belles, Graham, Proudfoot & Wilson for legal work	$ 1,733
	Total expenses incurred by NTBG	**$21,577**
	Fair market value, per Real Property Memo dated 8/31/09	$19, 962

Should you have any questions, please do not hesitate to give me a call.

Yours truly,

Chipper Wichman
Director and CEO

Attachments

cc: Nadine Nakamura

NATIONAL HEADQUARTERS 3530 Papalina Road, Kalāheo, Hawai`i 96741 USA · (808) 332-7324 · Fax (808) 332-9765 · www.ntbg.org

C 2010-42

CLS Hawaii
Phone (808)635-3700
Fax (866)592-2475 Toll Free
P.O. Box 777
Kalaheo, Kauai, HI 96741

surveyor1@clshawaii.com

COPY

MAR 30 2009

CLS HAWAII

Land Surveying & Mapping

Invoice

DATE	INVOICE #
03/23/2009	M9038
TERMS	**DUE DATE**
Net 30	04/22/2009

BILL TO
National Tropical Botanical Gardens ATTN: Scott Sloan 3530 Papalina Road Kalaheo, Kauai, HI 96741

02-6190
01-00
8129

AMOUNT DUE	ENCLOSED
$2,343.74	

Please detach top portion and return with your payment

TMK No.
4/2-3-009:011&034

Activity	Amount
• Miscellaneous--Expended Survey and Metes & Bounds Descriptions 12 hrs field @ $150/hr.= $1800.00 6 hrs office mapping @ $75/hr = $450.00	2,250.00T

Survey Ordered By:

Make check payable to CLS HAWAII
Mail to: PO Box 777 Kalaheo, HI 96741

SUBTOTAL	$2,250.00
TAX (4.166%)	$93.74
TOTAL	$2,343.74

MAKE CHECK PAYABLE TO CLS HAWAII - ALL PAYMENTS TO BE MAILED TO P.O. BOX 777 KALAHEO, HI 96741

C 2010-42

needed. A presentation will be made to a community organization in in Koloa.

4. Prepare a Draft Environmental Assessment (EA) for submittal to the County Department of Public Works (accepting and approving agency—to be confirmed).
5. Coordinate submittal of Draft EA to the State Office of Environmental Quality Control.
6. Distribute Draft EA and respond to public and agency comments.
7. Prepare responses to Draft EA
8. Incorporate changes into Final EA
9. File a Finding of No Significant Impact (FONSI), if appropriate, with the OEQC.

REQUESTED MATERIALS

The consultant requests the following:

1. Reproducible location, topographic, and site plans of the proposed site.
2. Elevation, floor, and landscaping plans.
3. Cost estimate and project timeline.

DOCUMENT PREPARATION

The consultant will prepare and mail all necessary reports and correspondence for public distribution.

SUB CONSULTANTS

No sub-consultants will be retained at this time. Should there be a need for specialized studies (botanical, cultural, archaeological) the cost of such studies and consultant services shall be submitted under separate cover or as an amendment to this agreement.

STAFFING

The consultant will utilize the services of a researcher, writer, and clerical assistant. Work assignments will be made, whenever possible, in a way that maximizes the consultant's effectiveness and time efficiency, and minimizes the client's expenses.

DISPUTE RESOLUTION

Any disputes between the consultant and the client shall be resolved by binding mediation or arbitration, costs to be split by the parties.

APPROVAL

If this agreement meets with your approval and accurately reflects your understanding of the terms of the consultant's engagement, please sign and return this letter. A copy is enclosed for your files. The consultant will proceed with representation when a signed copy of this letter is received.

I appreciate the opportunity to work with you. If you have any questions concerning this engagement letter, please call me.

Sincerely,

Nadine K. Nakamura
Principal

Attachment

Acceptance and Approval

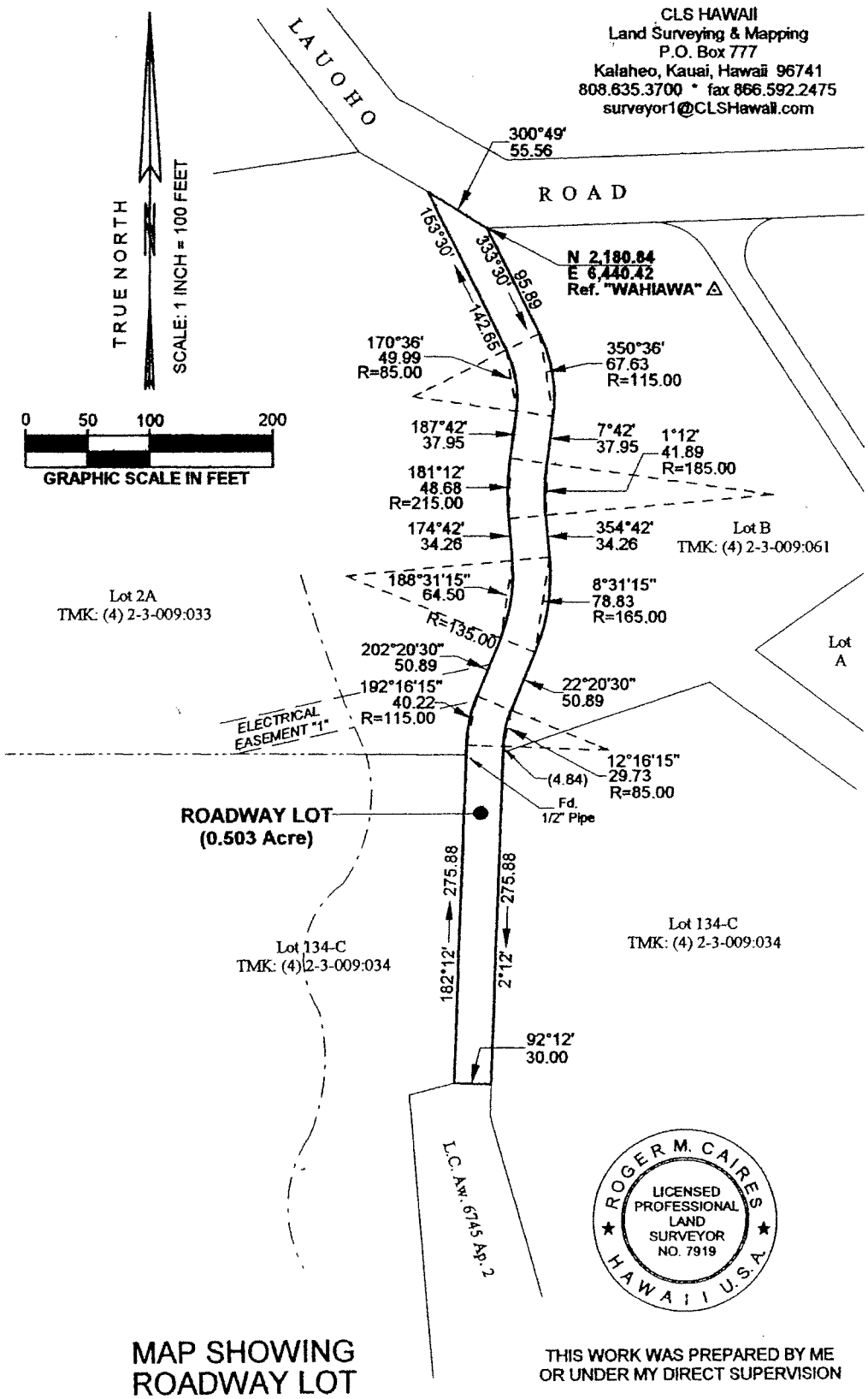
The terms contained in the foregoing Engagement Letter are approved and accepted.

Dated: 12/13/2008, 2008.

Title: Director

C 2010-42

CLS HAWAII
Land Surveying & Mapping
P.O. Box 777
Kalaheo, Kauai, Hawaii 96741
808.635.3700 * fax 866.592.2475
surveyor1@CLSHawaii.com



MAP SHOWING ROADWAY LOT

BEING WITHIN THE KALAHEO HOMESTEADS, 2nd SERIES

KALAHEO, KAUAI, HAWAII

Area: 0.503 Acres
December 10, 2009

THIS WORK WAS PREPARED BY ME
OR UNDER MY DIRECT SUPERVISION

ROGER M. CAIRES
Licensed Professional Land Surveyor
Certificate Number 7919
Expires 04/30/10

M9218MAP

C2010-42

BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP
ATTORNEYS AT LAW

4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HI 96766-1388

TELEPHONE: (808) 245-4705
FACSIMILE: (808) 245-3277
Federal I.D. No. 99-0317663

COPY

NATIONAL TROPICAL BOTANICAL GARDENS
3530 PAPALINA ROAD
KALAHEO, KAUAI, HI 96741

JAN 20 2009

January 12, 2009

Our File No. 24271-019:NATIONAL TROPICAL BO INVOICE: 21241
In Reference To: LOT 134 ACCESS

TO ENSURE PROPER CREDIT, PLEASE INDICATE OUR FILE NO. AND INVOICE NUMBER ON YOUR PAYMENT. FOR CREDIT CARD PAYMENTS, COMPLETE AND RETURN LAST PAGE.

Professional Services

			Hours	Amount
12/18/2008	DHW1	REVIEW FILE IN PREPARATION FOR COUNTY OF KAUAI MEETING.	0.40	120.00
	DHW1	CONFERENCE WITH NTBG REPRESENTATIVES AND COUNTY OF KAUAI REPRESENTATIVES REGARDING PROCESS FOR ROAD ABANDONMENT.	1.00	300.00
12/19/2008	DHW1	DRAFT LETTER TO COUNTY ENGINEER REGARDING ACCESS ROAD AGREEMENT.	1.10	330.00
For professional services rendered			2.50	$750.00

Timekeeper Summary

Name	Hours	Rate	Amount
Donald H. Wilson	2.50	300.00	$750.00
Hawaii Tax (4.16%)			$31.20
Total amount of this bill			$781.20

NTBG
Acct # 02-6660
Dept 01-00
Proj # 5129 (Ed Hks Proj)
True, Corre Authorized for payment
By:

THIS INVOICE IS PAYABLE UPON RECEIPT. YOUR PROMPT PAYMENT IS APPRECIATED. A LATE CHARGE OF 10% PER ANNUM WILL BE ADDED TO INVOICES NOT PAID WITHIN 30 DAYS OF THE DATE HEREOF.

C 2010-42

RECEIVED

'10 FEB -9 A10 :07

OFFICE OF THE COUNTY ATTORNEY
COUNTY OF KAUAI

COUNTY OF KAUAI

OFFICE OF THE COUNTY ATTORNEY

February 8, 2010

TO: Honorable Bill "Kaipo" Asing, Council Chair
and Councilmembers

FROM: Alfred B. Castillo, Jr., County Attorney

RE: REQUEST FOR AN AGENDA ITEM ON FEBRUARY 17, 2010 FOR AUTHORIZATION TO EXPEND ADDITIONAL FUNDS FOR SPECIAL COUNSEL FOR KATHLEEN AH QUIN v. COUNTY OF KAUA'I, DEPARTMENT OF TRANSPORTATION (USDCT) CIV. NO. CV 08-00507 JMS/BMK AND RELATED MATTERS.

The Office of the County Attorney requests approval of its recommendation for authority to expend additional funds up to $25,000.00 to enable special counsel's continued representation in the lawsuit entitled Kathleen Ah Quin v. County of Kaua'i, Department of Transportation (USDCT) Civ. No. CV 08-00507 JMS/BMK and related matters.

For notice and posting purposes, this agenda item should be described as follows:

> "Request from the Office of the County Attorney for authorization to expend additional funds up to $25,000.00 to engage special counsel's continued representation in the lawsuit entitled Kathleen Ah Quin v. County of Kaua'i, Department of Transportation (USDCT) Civ. No. CV 08-00507 JMS/BMK and related matters."

C 2010-43

RECEIVED

COUNTY OF KAUAI

OFFICE OF THE COUNTY ATTORNEY 10 FEB 10 P4 :14

February 9, 2010

OFFICE OF THE COUNTY CLERK COUNTY OF KAUAI

TO: Honorable Bill "Kaipo" Asing, Council Chair
and Councilmembers

FROM: Alfred B. Castillo, Jr., County Attorney

RE: REQUEST FOR AN AGENDA ITEM ON FEBRUARY 17, 2010 FOR AUTHORIZATION TO EXPEND FUNDS FOR SPECIAL COUNSEL FOR WAYNE R. DANIEL, ET AL., v. KODANI AND ASSOCIATES, INC., ET AL., CIV. NO. 08-1-0006 (FIFTH CIRCUIT COURT) AND RELATED MATTERS

The Office of the County Attorney requests approval of its recommendation for authority to expend funds up to $20,000.00 to engage special counsel to represent the County defendants in Wayne R. Daniel, et al., v. Kodani and Associates, Inc., et al. Civ. No. 08-1-0006 (Fifth Circuit Court) and related matters.

For notice and posting purposes, this agenda item should be described as follows:

> "Request from the Office of the County Attorney for authorization to expend additional funds up to $20,000.00 to engage special counsel to represent the County defendants in Wayne R. Daniel, et al., v. Kodani and Associates, Inc., et al., Civ. No. 08-1-0006 (Fifth Circuit Court) and related matters.

In support of this request, this office states as follows:

Special counsel will be hired pursuant to the normal selection process. A copy of the complaint is attached.

C 2010-44

FILED

2009 SEP 28 AM 11:01

DOREENA OLIVAS
CLERK

PAUL JOHNSON PARK & NILES
Attorneys At Law
A Law Corporation

COREY Y. S. PARK 1515-0
JASON C. ZHAO 7545-0
American Savings Bank Tower
1001 Bishop Street, Suite 1300
Honolulu, Hawai`i 96813
Telephone: (808) 524-1212

Attorneys for PLAINTIFF
WAYNE R. DANIEL, INDIVIDUALLY AND AS TRUSTEE OF THE WAYNE R. DANIEL SELF-TRUSTEED TRUST DATED FEBRUARY 18, 1999

RECEIVED
'09 OCT -2 A11:20
OFFICE OF THE COUNTY ATTORNEY COUNTY OF KAUAI

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI`I

WAYNE R. DANIEL, Individually and as TRUSTEE OF THE WAYNE R. DANIEL SELF-TRUSTEED TRUST DATED FEBRUARY 18, 1999, Plaintiff, v. KODANI AND ASSOCIATES, INC., a Hawai`i corporation, and CLYDE T. KODANI; COUNTY OF KAUA`I, COUNTY OF KAUA`I PLANNING COMMISSION, COUNTY OF KAUA`I PLANNING DEPARTMENT, IAN K. COSTA, IN HIS OFFCIAL CAPACITY AS THE DIRECTOR OF PLANNING, JOHN DOES 1-20, JANE DOES 1-20, DOE CORPORATIONS 1-20, DOE PARTNERSHIPS 1-20, and DOE ENTITIES 1-20, Defendants.	CIVIL NO. 08-1-0006 (Other civil action) FIRST AMENDED COMPLAINT; EXHIBIT "A"; DEMAND FOR JURY TRIAL; SUMMONS; CERTIFICATE OF SERVICE

I do hereby certify that this is a full, true and correct copy of the original on file in this office.

Clerk, Circuit Court, Fifth Circuit

C2010-44

Director of Planning and is being sued in his official capacity as such. (Defendants County, the Planning Commission, the Planning Department and Costa are sometimes collectively referred to as the "County Defendants".)

8. Defendants John Does 1-20, Jane Does 1-20, Doe Corporations 1-20, Doe Partnerships 1-20, and Does Entities 1-20 (collectively, "Doe Defendants") are believed to be individuals, corporations, joint ventures, partnerships, or other business or governmental agencies who committed acts or omissions that were negligent, in breach of the contracts, or otherwise wrongful within the State of Hawai`i in or relating to the construction, engineering, planning and/or consultation of certain improvements on Plaintiff's real property as described herein. Doe Defendants are sued herein under fictitious names for the reasons that their true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiff, despite diligent and good faith efforts to ascertain their identities and responsibilities, except that they are connected in some manner with the named defendants or may be liable to Plaintiff for their negligence, breach of contract or other wrongdoing individually and/or as agents, servants, employees, alter egos of the named defendants (or one or more of them), employers, representatives, co-venturers, engineers, experts or consultants; or were in some manner, presently unknown to Plaintiff, engaged or involved in the activities alleged herein relating to the planning, engineering and/or construction of such improvement or other matters alleged herein, and/or were in some manner by their negligence, breach of contract or other wrongdoing responsible for the damages to Plaintiff. If necessary, Plaintiff will seek leave of court to amend his Complaint and/or certify as party defendants those individuals and/or entities presently named as Doe Defendants when their true names and capacities become known to Plaintiff.

14. In or prior to July 2004, Plaintiff hired Defendants Kodani and Kodani & Associates to provide professional engineering services for the development, engineering and/or planning of the Project. These services included obtaining the County's final subdivision approval for the Project before December 31, 2006, which was the expiration date of the County's ADU ordinance, which would have permitted the Project to contain ten units.

15. In or about July 2004, Defendants Kodani and Kodani & Associates submitted the subdivision application for the Project to the Planning Department for approval. The application requested approval of a five-lot subdivision.

16. Prior to September 2004, Plaintiff was advised by certain of the County Defendants that the Property was eligible to be subdivided into a five-lot subdivision under the County's Comprehensive Zoning Ordinance ("CZO"). In reliance upon the representations that the Project conformed to the requirements of the County's CZO, Plaintiff and Hong closed on the purchase of the Property in September 2004.

17. By its letter dated September 15, 2004, Defendant Planning Department formally advised Plaintiff, through Defendant Kodani, that the Project was granted tentative approval by the Planning Commission on September 14, 2004, and that final approval of the five-lot subdivision will be granted upon satisfaction of the requirements enumerated therein. (A true and correct copy of the September 15, 2004, letter is attached hereto as Exhibit "A.")

18. Subsequently, in a letter dated January 26, 2005 from Defendant Costa, the Planning Department, again, confirmed that based on the size and zoning of the Property, two residential dwellings could be built on each of the five lots as permitted by the County's ADU ordinance.

19. In reliance upon the Planning Commission's tentative approval of the Project

2006, did the Planning Commission withdraw its tentative approval of the Project.

24. As a result of the failures and other wrongful acts by Defendants, and each of them, as alleged herein, Plaintiff sustained damages and losses including but not limited to the following:

(a) Loss of profits as a result of the failure to obtain final approval for the subdivision Project by the December 31, 2006 expiration date of the ADU ordinance;

(b) Out of pocket expenditures incurred for the Project, which expenditures cannot be recouped in the three-unit CPR emergency alternative plan;

(c) The cost of continuing debt service as a result of delays in the development of the Property caused by the failure to obtain final approval for the Project by the December 31, 2006 expiration date of the ADU ordinance;

(d) Expert and consultation expenses relating to the three-unit CPR emergency alternative plan;

(e) Attorney's fees, costs and other litigation expenses; and

(f) Other costs, expenses and losses.

COUNT I
(Professional Negligence)

25. Plaintiff re-alleges and repeats the allegations contained above as though fully set forth herein.

26. Defendants Kodani and Kodani & Associates, as the engineers for the Project, owed Plaintiff the duty to exercise the degree of skill, care, and diligence ordinarily exercised by engineers under circumstances comparable to those in this case.

27. Defendants Kodani and Kodani & Associates, and each of them, failed to

COUNT III
(Negligent Misrepresentation)

34. Plaintiff re-alleges and repeats the allegations contained above as though fully set forth herein.

35. The County Defendants, and each of them, owed Plaintiff a duty of care and competence in supplying information concerning the Project, including information concerning whether the Project conformed to the requirements of the CZO and the ADU Ordinance.

36. The County Defendants, and each of them, failed to exercise the degree of care and competence required of them in obtaining and communicating information concerning the Project.

37. Plaintiff justifiably relied upon the information supplied by Defendants, including but not limited to the Planning Commission's issuance of tentative approval for the Project and the representations by the Planning Department and Defendant Costa that the Property could be subdivided into five lots with two residential dwellings built on each lot in compliance with the requirements of the CZO and the ADU Ordinance.

38. By reason of the foregoing, the County Defendants, and each of them, are jointly and severally liable to Plaintiff in an amount to be proven at trial.

COUNT IV
(Declaratory Relief)

39. Plaintiff re-alleges and repeats the allegations contained above as though fully set forth herein.

40. An actual controversy presently exists between Plaintiff, on the one hand, and Defendants Kodani and Kodani & Associates and/or the County Defendants, on the other hand, in that Plaintiff contends, and Defendants disagree, that under the circumstances, notwithstanding the

BRYAN J. BAPTISTE
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IAN K. COSTA
DIRECTOR OF PLANNING

GARY L. HENNIGH
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
Kapule Building
4444 Rice Street, Suite A473
Lihu'e, Hawai'i, 96766-1326

TELEPHONE: 808.241.6677
FAX: 808.241.6699

September 15, 2004

FILE COPY

Clyde T. Kodani
Kodani & Associates, Inc.
3126 Akahi Street
Lihue, Hawaii 96766

Subject: Subdivision of Lot 139-A, Being a Portion of Grant 8166, Kapaa Homesteads, Second Series, into Lots 139-A-1 thru 139-A-6, at South Olohena, Kawaihau, Kauai, Hawaii. (S-2005-2, Antone/Evelyn Sanchez)

Subject subdivision was granted **TENTATIVE APPROVAL** by the Planning Commission at their meeting held on September 14, 2004. Final approval will be granted subject to the following requirements:

1. Requirements of the Planning Department:

   a. An updated preliminary title report shall be submitted to the Planning Department for review.

   b. The following fees shall be paid to the County of Kauai:

      (1) $750 Park Dedication Fee; and

      (2) $1,000 Environmental Impact Assessment Fee.

   c. A ten (10) foot wide future road widening reserve shall be established along the frontage of Kamalu. There shall be no new structures permitted within the reserve, and any new structures shall be set back from the reserve. The reserve,

with a farm where agriculture activity provides income to the family occupying the dwelling. These restrictions shall be included in the covenants for the proposed lots, draft copies of which shall be submitted to the Planning Department for review and approval.

i. The subdivider shall prepare and Agriculture Master Plan for the subdivided lots, which shall be submitted to the Planning Department for review and approval. The Master Plan shall address, but not limited to the following components:

(1) Provision of irrigation water, which shall be resolved with the Planning and Water Departments prior to construction plan approval for the subdivision improvements.

(2) System of easements for both on and off site irrigation.

(3) Identify field areas for cultivation of crops or pastures.

The applicant is made aware that conditions may be added, modified, and/or deleted while in the process of resolving this condition.

j. Pursuant to Section 9-3.8(b) of the Subdivision Ordinance, Kauai County Code (1987), the applicant shall submit to the Planning Department an electronic record (digitized format) of the final subdivision map(s) on disk for record keeping purposes prior to final subdivision approval.

2. Requirements of the Department of Public Works:

FORM & CONTENT OF MAP

a. In accordance with HRS §16-115-9 states all plans, specifications, map, reports, surveys, descriptions, and every sheet in a set of design drawings prepared by or under the supervision of a licensed professional engineer, architect,

f. A Grading Permit will be required for the development of the subdivision roadway.

Revised [3] See Memo 9/28/05

Requirements of the Department of Water (DOW):

a. The subdivider shall pay the DOW a Facilities Reserve Charge of $23,000 (5 lots at $4,600 per lot). The subdivider shall pay any rate increase/applicable charges in effect at the time of receipt.

b. The subdivider shall prepare and get DOW's approval on construction drawings for necessary water system facilities and either construct said facilities or post a performance bond for construction. These facilities shall include:

(1) The domestic service connections.

(2) The fire service connections.

c. The subdivider shall prepare and convey to the DOW a right-of-entry and temporary grant of easement for the purpose of construction, repair, maintenance and operation for the subdivision water system improvements installed in other than County-owned property.

d. If bonding, the subdivider shall clearly letter the following on the approved construction plans, final subdivision map and deeds:

"Domestic water service will not be available until the required construction improvements for this subdivision are completed and accepted by the Department of Water, County of Kauai."

The subdivider shall record this deed restriction with the Bureau of Conveyances within ninety (90) days of final subdivision approval by the Planning Department.

when the subdivided lots are developed shall be disposed of at a solid waste disposal facility that is in compliance with the State DOH. The open burning of any of these wastes on or off site is prohibited.

f. The Army Corps of Engineers should be contacted to identify whether a Federal Permit (including a Department of Army Permit) is required for this project. Pursuant to Section 401(a)(1) of the Federal Water Pollution Act (commonly known as the "Clean Water Act"), a Section 401 Water Quality Certification is required for "[a]ny applicant for Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters..."

g. A National Pollutant Discharge Elimination System (NPDES) general permit coverage is required for the following activities:

(1) Storm water associated with industrial activities, as defined in Title 40, Code of Federal Regulations, Section 122.26(b)(14)(i) through 122.26(b)(14)(ix) and 122,26(b)(14)(xi);
(2) Construction activities including clearing, grading, and excavation that result in the disturbance of equal to or grater than one (1) acre of total land area. The total land area includes a contiguous area where multiple separate and different schedules under a larger common plan of development or sale. **An NPDES Permit is required before the commencement of the construction activities.**
(3) Discharge of treated effluent from leaking underground storage tank remedial activities.
(4) Discharge of once through cooling water less than one (1) million gallons per day;
(5) Discharge of hydrotesting water;
(6) Discharge of construction dewatering effluent;

The owner/applicant is advised to contact the CWB at 808.596.4309 to resolve any NOI or NPDES concerns.

5. The applicant is advised that prior to and/or during construction and use, additional conditions may be imposed by government agencies. Should this occur, the applicant shall resolve these conditions with the respective agency(ies).

You are hereby informed that the final subdivision map must be filed within one year after the tentative approval date in order to obtain final approval. If not filed, the preliminary subdivision map and construction plan, if any, shall become null and void unless an extension of time, not to exceed six months, is granted by the Planning Commission.

IAN K. COSTA
Director of Planning

xc: Public Works Dept.
Water Dept.
State Health Dept.

PAUL JOHNSON PARK & NILES
Attorneys At Law
A Law Corporation

COREY Y. S. PARK 1515-0
JASON C. ZHAO 7545-0
American Savings Bank Tower
1001 Bishop Street, Suite 1300
Honolulu, Hawai`i 96813
Telephone: (808) 524-1212

Attorneys for PLAINTIFF
WAYNE R. DANIEL, INDIVIDUALLY AND
AS TRUSTEE OF THE WAYNE R. DANIEL
SELF-TRUSTEED TRUST DATED
FEBRUARY 18, 1999

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI`I

WAYNE R. DANIEL, Individually and as TRUSTEE OF THE WAYNE R. DANIEL SELF-TRUSTEED TRUST DATED FEBRUARY 18, 1999, Plaintiff, v. KODANI AND ASSOCIATES, INC., a Hawai`i corporation, and CLYDE T. KODANI; COUNTY OF KAUA`I, COUNTY OF KAUA`I PLANNING COMMISSION, COUNTY OF KAUA`I PLANNING DEPARTMENT, IAN K. COSTA, IN HIS OFFCIAL CAPACITY AS THE DIRECTOR OF PLANNING, JOHN DOES 1-20, JANE DOES 1-20, DOE CORPORATIONS 1-20, DOE PARTNERSHIPS 1-20, and DOE ENTITIES 1-20, Defendants.	CIVIL NO. 08-1-0006 (Other civil action) SUMMONS

C2010-44

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAI`I

WAYNE R. DANIEL, Individually and as TRUSTEE OF THE WAYNE R. DANIEL SELF-TRUSTEED TRUST DATED FEBRUARY 18, 1999	)	CIVIL NO. 08-1-0006 (Other civil action)
	)	CERTIFICATE OF SERVICE
Plaintiff,	)	
vs.	)	
KODANI AND ASSOCIATES, INC., a Hawai`i corporation, and CLYDE T. KODANI; COUNTY OF KAUA`I, COUNTY OF KAUA`I PLANNING COMMISSION, COUNTY OF KAUA`I PLANNING DEPARTMENT, IAN K. COSTA, IN HIS OFFCIAL CAPACITY AS THE DIRECTOR OF PLANNING, JOHN DOES 1-20, JANE DOES 1-20, DOE CORPORATIONS 1-20, DOE PARTNERSHIPS 1-20, and DOE ENTITIES 1-20,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date shown below, a copy of the foregoing document was duly served by U.S. postal service, postage prepaid, addressed to the following:

ERIC T.W. KIM, ESQ.
Kim & Kuwahara
345 Queen Street, Suite 700
Honolulu, HI 96813

Attorney for Defendants
KODANI AND ASSOCIATES, INC.
and CLYDE T. KODANI

C 2010-44

COUNTY COUNCIL
Bill "Kaipo" Asing, Chair
Jay Furfaro, Vice Chair
Tim Bynum
Dickie Chang
Daryl W. Kaneshiro
Lani T. Kawahara
Derek S. K. Kawakami

OFFICE OF THE COUNTY CLERK

Peter A. Nakamura, County Clerk

Telephone (808) 241-6371
Fax (808) 241-6349
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Room 206
Līhu'e, Kaua'i, Hawai'i 96766-1371

RECEIVED

'10 FEB 11 P4 :10

OFFICE OF THE COUNTY CLERK COUNTY OF KAUAI

MEMORANDUM

February 11, 2010

TO: All Councilmembers

FRO M: Council Chair Bill "Kaipo" Asing

RE: RECONSIDERATION OF BILL NO. 2336, DRAFT 3, RELATING TO MOBILE ELECTRONIC DEVICES

Pursuant to Rule No. 6(i)[1] of Resolution No. 2009-02 (resolution adopting rules of the Council of the County of Kaua'i for the organization of committees and the transaction of business), this is to request that the Kaua'i County Council reconsider its approval of Bill No. 2336, Draft 3, ("Bill") relating to mobile electronic devices, which was unanimously approved at the February 3, 2010 Council Meeting.

This reconsideration request would allow the Council to amend the Bill to address concerns and clarify language on how the proposed ordinance would be applied to all drivers using "two-way" radios for business purposes.

Please feel free to see Council Services staff if you have any questions on this matter. Thank you for your consideration of this request.

/ys

[1] Rule No. 6(i); Motions:
Reconsideration. When a motion has been made and carried in the affirmative or negative, only a member who voted with the majority may move, at the same meeting or at the next regular meeting, to reconsider it and such motion shall take precedence over all other questions except a motion to adjourn; except that pursuant to the Charter, when a bill fails to pass on final reading and a motion is made to reconsider, the vote on such motion shall not be acted upon before the expiration of 24 hours.

ORDINANCE NO. _____ BILL NO. 2336, Draft 3

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 16, ARTICLE 20, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE TRAFFIC CODE

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

SECTION 1. Chapter 16, Article 20, Kaua'i County Code 1987, is amended by adding a new section to be appropriately designated and to read as follows:

Sec. 16-20.__ Use of Mobile Electronic Devices While Operating a Vehicle.

(a) No person shall operate a motor vehicle while using a mobile electronic device.

(b) The use of a mobile electronic device for the sole purpose of making a "911" emergency communication shall be an affirmative defense to this ordinance.

(c) The use of a two-way radio while in the performance and scope of work-related duties shall also be an affirmative defense to this ordinance.

(d) The following persons shall be exempt from the provisions of subsection (a):

(1) Emergency responders using a mobile electronic device while in the performance and scope of their official duties; and

(2) Drivers possessing a valid amateur radio operator license issued by the Federal Communications Commission and using a half-duplex two-way radio.

(e) As used in this section:

"Emergency responders" include fire fighters, emergency medical service technicians, mobile intensive care technicians, civil defense workers, police officers, and federal and state law enforcement officers.

"Mobile electronic device" means any hand-held or other portable electronic equipment capable of providing wireless and/or data communication between two or more persons or of providing amusement, including but not limited to a cellular phone from a Commercial Mobile Radio Service as defined by Title 47 of the Code of Federal Regulations, Part 20, text messaging device,

C 2010-45

paging device, personal digital assistant, laptop computer, video game, or digital photographic device, but does not include any audio equipment or any equipment installed in a motor vehicle for the purpose of providing navigation, emergency assistance to the operator of the motor vehicle, or video entertainment to the passengers in the rear seats of the motor vehicle.

"Operate a motor vehicle" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway.

"Two-way radio" means a Private Land Mobile Radio System as defined by Title 47 of the Code of Federal Regulations, Part 90.

"Use or using" means holding a mobile electronic device while operating a motor vehicle.

(f) Any person convicted or found liable of violating any provisions of this section shall be subject to a maximum fine of fifty dollars ($50).

(g) Any person convicted or found liable of violating any provisions of this section while operating a motor vehicle in a school zone or construction area as defined in HRS Section 291C-104 shall be subject to a maximum fine of one hundred dollars ($100).

SECTION 2. This ordinance shall take effect three (3) months after its approval.

Introduced by: /s/ DEREK S. K. KAWAKAMI

Date of Introduction:
November 4, 2009
Līhu'e, Kaua'i, Hawai'i
V:\CS OFFICE FILES\2009 BILLS\2336d3 mobile device ban.doc(ys)

C 2010-45

CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2336, Draft 3, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on February 3, 2010, by the following vote:

FOR ADOPTION:	Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL - 6,
AGAINST ADOPTION:	None	TOTAL - 0,
EXCUSED & NOT VOTING:	Bynum	TOTAL - 1.

Līhu'e, Hawai'i
February 3, 2010

Peter A. Nakamura
County Clerk, County of Kaua'i

ATTEST:

Bill "Kaipo" Asing
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

February , 2010

Approved this _____ day of

_____, 2010.

Bernard P. Carvalho Jr.
Mayor
County of Kaua'i

C 2010-45

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

LEONARD A. RAPOZO, JR.
DIRECTOR
TELEPHONE 241-4456

KYLAN K. DELA CRUZ
DEPUTY DIRECTOR
TELEPHONE 241-4460

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PARKS AND RECREATION
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 105
LĪHU'E, KAUA'I, HAWAII 96766

RECEIVED

'10 JAN 20 A11 :19

January 15, 2010

Honorable Kaipo Asing, Chairman
And Members of the County Council
4396 Rice Street, Room 201
Lihue, Hawaii 96766

Subject: Shared-Use Path Easement at the Kaua'i Shopping Village (TMK 4-4-3-08:14) and Parking & Pedestrian Access Easement at Waipōuli Drainage Canal.

Dear Chair Asing and Council Members:

We request your approval to secure a shared-use path easement at the Kaua'i Shopping Village in exchange for a parking and pedestrian access easement at Waipōuli Drainage Canal. Attached are one original and two copies of each easement and one original and two copies of the easement exchange agreement.

Please call me at 241-4456 should you have any questions.

Very truly yours,

LEONARD A. RAPOZO JR.
Director, Department of Parks & Recreation

APPROVED:

Bernard P. Carvalho Jr.
Mayor

DH
cc: CE
DCE
Building Division

C 2010-46

BERNARD P. CARVALHO, JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT

LEONARD A. RAPOZO, JR.
DIRECTOR
TELEPHONE 241-4456

KYLAN K. DELA CRUZ
DEPUTY DIRECTOR
TELEPHONE 241-4460

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PARKS AND RECREATION
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 105
LĪHU'E, KAUA'I, HAWAII 96766

RECEIVED
'10 FEB -4 A10:32
THE COUNTY COUNCIL

January 28, 2010

Honorable Kaipo Asing, Chairman
And Members of the County Council
4396 Rice Street, Room 201
Lihue, Hawaii 96766

Subject: Quitclaim Deed for a portion of Niulani Road and Ala Road (4-3-009-054) for the Lydgate-Kapa'a Bicycle/Pedestrian Path Project

Dear Chair Asing and Council Members:

We request your approval to process the subject Quitclaim Deed. This Quitclaim Deed is for securing a portion on Niulani Road and Ala Road for construction of a portion of the Lydgate to Kapa'a Bike and Pedestrian Path. The federal funded project will include construction of a one way vehicular road along Niulani Road, improvements to Ala Road and a shared use path. We will be forwarding a Council Resolution for the traffic modifications in the near future.

Attached are four (4) fully executed and notarized copies of the Quitclaim Deed for Council approval.

Please call me at 241-4456 should you have any questions.

Very truly yours,

Leonard A. Rapozo Jr.
Director

APPROVED:

Bernard P. Carvalho Jr.
Mayor

cc: CE
DCE
Building Division

C 2010-47

Bernard P. Carvalho, Jr.
Mayor

Gary K. Heu
Administrative Assistant

Eugene K. Jimenez
Housing Director

KAUA'I COUNTY HOUSING AGENCY
Pi'ikoi Building 4444 Rice Street Suite 330
Līhu'e Hawai'i 96766

February 5, 2010

RECEIVED
'10 FEB -5 A10:45
OFFICE OF THE COUNTY CLERK
COUNTY OF KAUAI

Honorable William "Kaipo" Asing, Chairperson
and Members of the County Council
4396 Rice Street, Room 206
Līhu'e, Kaua'i, Hawai'i 96766

Attention: Economic Development/Housing Committee Chair Dickie Chang

Dear Chairperson Asing and Members:

SUBJECT: Request for Approval to Close the Purchase of a 75-Acre Parcel in Eleele, Kauai, Tax Map Key (4)2-1-1:27, Pursuant to the Disposition Agreement of November 19, 2009, between McBryde Sugar Company, Limited and County of Kauai

In November 2009, the Housing Agency received the County Council's approval of the Disposition Agreement for the purchase of a 75-acre parcel of land in Eleele for the purpose of providing future affordable housing. At that time the Housing Agency requested the Council to defer approval to close the purchase pending the completion of the due diligence phase and confirmation by the County's consultant that the site would be acceptable for residential development.

The Housing Agency has completed due diligence for the 75-acre parcel. Due diligence consisted of a Phase 1 Environmental Site Assessment (site reconnaissance) and a Phase 2 Environmental Site Assessment (soil testing) to determine the presence of any environmental conditions not suitable for residential development. Based on the findings and results of the Phase 1 and Phase 2 Environmental Site Assessments, R.M. Towill Corporation concludes that there are no recognized environmental conditions that would impact the property's use for residential development and no remedial action to the soil is necessary on the site.

With the completion of the County's due diligence for this purchase, we are now ready to proceed to closing. To conclude the execution of legal documents for the purchase and to complete the County's financial activities (transfer of funds to escrow), the Housing Agency requests the County Council to:

Development Section (808) 241 4444 FAX (808) 241 5118
TDD (808) 241 4411

Section 8 (HUD) (808) 241 4440 FAX (808) 241 5119

C 2010-48

1. Approve the closing to purchase the 75-acre parcel and authorize the County Clerk to execute the Warranty Deed;

2. Authorize the County Clerk to execute the License Agreement for the continued use of the property by McBryde Sugar Company, Limited, for agricultural purposes until the County needs possession of the property, or any portion thereof, for the purpose of providing affordable housing; and

3. Authorize the County Clerk to execute the Assignment and Assumption Agreement and the Assignment and Release Agreement as acknowledgment that the County of Kauai has been notified that McBryde Sugar Company, Limited is engaging in a section 1031 like-kind exchange.

Thank you for your consideration of this request.

Yours truly,

Eugene K. Jimenez

Eugene K. Jimenez
Housing Director
GM:gm

APPROVED:

Bernard P. Carvalho, Jr.
Mayor

Enclosures (4)

C 2010-48

COUNTY COUNCIL
Bill "Kaipo" Asing, Chair
Jay Furfaro, Vice Chair
Tim Bynum
Dickie Chang
Daryl W. Kaneshiro
Lani T. Kawahara
Derek S. K. Kawakami

OFFICE OF THE COUNTY CLERK

Peter A. Nakamura, County Clerk

Telephone (808) 241-6371
Fax (808) 241-6349
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Room 206
Līhu'e, Kaua'i, Hawai'i 96766-1371

RECEIVED

'10 JAN 29 A8:18

THE COUNTY COUNCIL

January 28, 2010

The Honorable Bill "Kaipo" Asing
Chair, and Members
of the County Council
County of Kaua'i
Līhu'e, Hawai'i 96766

Chair and Members:

Pursuant to Section 23.06, Charter of the County of Kaua'i, we transmit a claim filed against the County of Kaua'i by Eric M. Wedemeyer for damage to his vehicle.

A copy has been sent in advance to the County Attorney's Office.

Very truly yours,

PETER A. NAKAMURA
County Clerk

Enclosure

cc: Alfred B. Castillo, Jr., County Attorney
Eric M. Wedemeyer

C 2010-49

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution No. 2010-11

RESOLUTION AMENDING RESOLUTION NO. 2007-97
TO REPLACE AND CONFIRM THE APPOINTMENT OF
A MAYORAL APPOINTEE TO THE SALARY COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Resolution No. 2007-97, Section 1, is hereby amended as follows:

"SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral [re-appointment] appointment as follows:

SALARY COMMISSION (3-Year Term)

	Term Expires
[Dawn Murata (Second Term)]	
Sheri S. Kunioka-Volz (First Term)	12/31/2010"

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. Material to be deleted is bracketed. New material to be added is underscored.

SECTION 4. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Mayor's Office for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\2010 RESOLUTIONS\Kunioka-Volz.doc (LP)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. 2010-11 was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

County Clerk

Chairman & Presiding Officer

Dated

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING
MAYORAL APPOINTMENT TO THE BUILDING BOARD OF APPEALS

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Sec. 12-2.2 (Section 105, Uniform Building Code, 1997 Edition) of the Kaua'i County Code 1987, as amended, the Kaua'i County Council hereby approves the following mayoral appointment as follows:

BUILDING BOARD OF APPEALS (3-Year Term)

	Term Expires
Duane Ray Curammeng (Electrical)	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Department of Public Works–Building Division for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Curammeng Bldg Bd Appeals (Elec).doc (lp)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-19

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING
MAYORAL APPOINTMENT TO THE BUILDING BOARD OF APPEALS

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Sec. 12-2.2 (Section 105, Uniform Building Code, 1997 Edition) of the Kaua'i County Code 1987, as amended, the Kaua'i County Council hereby approves the following mayoral appointment as follows:

BUILDING BOARD OF APPEALS (3-Year Term)

	Term Expires
Glen Satoru Taba (Building Construction)	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Department of Public Works–Building Division for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Taba Bldg Bd Appeals (Constr).doc (lp)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-20

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL APPOINTMENT
TO THE CHARTER REVIEW COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral appointment as follows:

CHARTER REVIEW COMMISSION (3-Year Term)

	Term Expires
Joel Dennis Guy	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Mayor's Office for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Guy Charter Review.doc (lp)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-21

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT
TO THE CIVIL SERVICE COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral reappointment as follows:

CIVIL SERVICE COMMISSION (3-Year Term)

	Term Expires
Ryan Mel de la Peña	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Department of Personnel Services for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\de la Pena Civil Service.doc (lp)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-22

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT
TO THE COST CONTROL COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral reappointment as follows:

COST CONTROL COMMISSION (3-Year Term)

	Term Expires
Michelle Swartman	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Mayor's Office for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Swartman 2nd.doc(LP)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-23

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT
TO THE FIRE COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral reappointment as follows:

FIRE COMMISSION (3-Year Term)

	Term Expires
Linda Ka'auwai-Iwamoto	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Fire Department for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Iwamoto 2nd.doc (LP)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-24

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL REAPPOINTMENT
TO THE PLANNING COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral reappointment as follows:

PLANNING COMMISSION (3-Year Term)

	Term Expires
Caven K. Raco	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Planning Department for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Raco 2nd.doc (LP)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-25

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION CONFIRMING MAYORAL APPOINTMENT
TO THE POLICE COMMISSION

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I:

SECTION 1. Pursuant to Section 23.02 of the Kaua'i County Charter, the Kaua'i County Council hereby approves the following mayoral appointment as follows:

POLICE COMMISSION (3-Year Term)

	Term Expires
Ernest L. Kanekoa, Jr.	12/31/2012

SECTION 2. This resolution shall take effect upon its approval.

SECTION 3. The County Clerk shall transmit a copy of this resolution to the Boards and Commissions Office and the Police Department for appropriate distribution.

Introduced by:

BILL "KAIPO" ASING
(By Request)

V:\CS OFFICE FILES\RESOLUTIONS\Kanekoa Police.doc (LP)

	Aye	Nay	Exc	Recused
Asing				
Furfaro				
Bynum				
Chang				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-26

COUNTY COUNCIL

COUNTY OF KAUA'I

Resolution

RESOLUTION ABANDONING ACCESS ROAD OFF LAUOHO ROAD, KALĀHEO, KAUA'I, AND AUTHORIZING THE LAND TRANSFER TO THE NATIONAL TROPICAL BOTANICAL GARDEN KALĀHEO, KAUA'I, HAWAI'I

WHEREAS, the Planning Commission granted a Special Permit (SP-2008-01), Use Permit (U-2008-02), and Class IV Zoning Permit (Z-IV-2008-03) on October 23, 2007 to the National Tropical Botanical Garden (NTBG) to establish a Central Housing Facility in Lāwa'i at TMK (4) 2-3-009: 034; and

WHEREAS, during the review of the above mentioned permits the County Department of Public Works, Engineering Division, noted that the access road identified as TMK (4) 2-3-009 leading from Lauoho Road to the subject property appeared to be abandoned and recommended that the applicant assist the County in transferring ownership by preparing an environmental assessment and obtaining County Council approval for the abandonment of the roadway; and

WHEREAS, the Planning Commission included a condition in the permit approval that "the Applicant shall resolve matters relating to the access road with the County Department of Public Works prior to building permit application;" and

WHEREAS, the Kalāheo Homestead Act, Kalāheo Homesteads Second Series created a 10-foot wide "government road" right-of-way as an access from Lauoho Road to the *kuleana* (LCA 6745), which once housed a jelly factory and is currently owned by the NTBG; and

WHEREAS, in 1940 the County initiated and acquired five (5) small adjacent parcels in order to straighten and widen the road right-of-way to thirty (30) feet and to provide vehicular access to TMK (4) 2-3-009: 011, then owned by McBryde Sugar; and

WHEREAS, although officially described as a Roadway, the actual use and function of this County-owned parcel is a driveway to access NTBG property; and

WHEREAS, no improvements to the roadway have been made by the Department of Public Works for the past sixty-nine (69) years and its access is restricted by a chain across the width of the dirt roadway; and

WHEREAS, the Department of Finance, Real Property Assessment Division, has determined that the County-owned portion of the roadway is 6,654 square feet; and

WHEREAS, the Department of Finance, Real Property Assessment Division, has determined that the fair market value of the County-owned portion of the roadway is $19,962; and

Resolution No. 2010-27

WHEREAS, the National Tropical Botanical Garden has expended funds for an Environmental Assessment, property survey, and attorney fees to facilitate this property transfer in excess of $19,962 as evidenced by invoices and executed contracts; and

WHEREAS, a Finding of No Significant Impact (FONSI) was noted in the Final Environmental Assessment, published in the Office of Environmental Quality Control's "The Environmental Notice," on July 8, 2009; and

WHEREAS, the Department of Public Works has determined that the subject access roadway serves no current and future public purpose; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, that the access road off Lauoho Road located on TMK (4) 2-3-009 be abandoned.

BE IT FURTHER RESOLVED, that the Director of Finance, County Attorney, and County Engineer shall convey the County's interest in the subject roadway to NTBG at no additional expense.

BE IT FINALLY RESOLVED, that copies of this resolution be transmitted to the Finance Department, Office of the County Attorney, Public Works Department, Building Division, County Engineer, Planning Department, and National Tropical Botanical Garden.

INTRODUCED BY:

Tim Bynum (by request)

v.dsimao/YS.resolution2010.nationaltropicalbotanicalgarden,Kalaheo;csofficfiles

	Aye	Nay	Exc	Recused
Asing				
Bynum				
Chang				
Furfaro				
Kaneshiro				
Kawahara				
Kawakami				
Total				

Certificate Of Adoption

We hereby certify that Resolution No. _____ was adopted by the Council of the County of Kaua'i, State of Hawai'i, Lihu'e, Kaua'i, Hawai'i, on

_____ County Clerk

_____ Chairman & Presiding Officer

Dated

Resolution No. 2010-27

ORDINANCE NO. _____ BILL NO. _____

A BILL FOR AN ORDINANCE
TO AMEND ORDINANCE NO. B-2009-690, AS AMENDED,
RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I,
STATE OF HAWAI'I FOR THE FISCAL YEAR JULY 1, 2009 THROUGH
JUNE 30, 2010 BY REVISING THE OPERATING BUDGET OF THE
OFFICE OF THE COUNTY AUDITOR IN THE GENERAL FUND

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

SECTION 1. That pursuant to Sec. 19.07B of the Charter of the County of Kaua'i, as amended, Ordinance No. B-2009-690, as amended, relating to the Operating Budget of the County of Kaua'i, State of Hawai'i, for the fiscal year July 1, 2009 through June 30, 2010, be hereby amended as follows:

The sum of $16,444.00 be and is hereby transferred from the item designated as follows:

Office of the County Auditor

001-0203-511.32-00 Consultant Services $16,444.00

to the:

Office of the County Auditor

001-0203-511.41-01 Building Lease $16,444.00

SECTION 2. This ordinance shall take effect upon its approval.

Introduced by:

Jay Furfaro
(By request)

Date of Introduction:

Līhu'e, Kaua'i, Hawai'i

Proposed Draft Bill No. 2347

ORDINANCE NO. _____ BILL NO. _____

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2009-691, AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE SPECIAL TRUST FUND FOR PARKS & PLAYGROUNDS -- HANALEI DISTRICT

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

SECTION 1. That pursuant to Sec. 19.10A and 19.07B of the Charter of the County of Kaua'i, as amended, Ordinance No. B-2009-691, relating to the Capital Budget of the County of Kaua'i, State of Hawai'i, for the fiscal year July 1, 2009 through June 30, 2010, be hereby amended as follows:

The sum of $350,000.00, by revising the surplus and appropriations estimated in the Special Trust Fund For Parks & Playgrounds—Hanalei District, be and is hereby appropriated for the following purpose:

BLACK POT EXPANSION (LAND ACQUISITION) $350,000.00

SECTION 2. This appropriation is contingent upon the receipt of the grant moneys from the Legacy Land Commission.

SECTION 3. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Bill "Kaipo" Asing

Jay Furfaro

Date of introduction:

Līhu'e, Kaua'i, Hawaii

Proposed Draft Bill No. 2349