

Tim

COUNCIL MEETING NOTICE and AGENDA
TUESDAY, JUNE 16, 2009

9:00 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 May 27, 2009
Council Meeting of June 3, 2009

COMMUNICATIONS:

C 2009-209 Communication (04/21/2009) from the Planning Director, transmitting the Planning Commission's recommendation to clarify the procedures for Shoreline Setback Determinations and Activity Determinations and determining applicability; to amend the list of activities permitted within the shoreline setback area and to allow activities permitted under Section 8-27.7 within the shoreline setback area to proceed with permitting without a setback determination. *(Draft bill, Planning Commission's findings and staff report and transcripts on file in the County Clerk's Office.) (See Proposed Draft Bill No. 2319)*

C 2009-210 Communication (05/12/2009) from the Chief of the Building Division, Department of Public Works, transmitting for Council information, the Building Permit Information Reports for April 2009 that includes the following:

- 1) Building Permit Processing Report
- 2) Building Permit Estimated Value of Plans Summary
- 3) Building Permits Tracking Report
- 4) Building Permits Status

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OFFICE OF THE COUNTY CLERK
THE COUNTY OF KAUAI
COUNTY OF KAUAI

- C 2009-211 Communication (05/19/2009) from the Director of Personnel Services, transmitting for Council information, the following classification requests which the Department of Personnel Services will be reviewing and taking appropriate action:
- Fire Department, Position No. 2534 (Reallocation of Present Class of Water Safety Office I to Lifeguard)
 - Fire Department, Position No. 1654 (Reallocation of Present Class of Water Safety Officer II to Lifeguard)
 - Fire Department, Position No. 1036 (Reallocation of Present Class of Water Safety Officer II to Lifeguard)
- C 2009-212 Communication (05/20/2009) from the Director of Finance, transmitting for Council information, a copy of the Kaua'i Humane Society's Third Quarter Report for Fiscal Year 2009, which includes Cash Flow Analysis, Percentage Change Report, and Field Services Statistics.
- C 2009-213 Communication (05/15/2009) from the Wallace M. Kudo, Civil Engineer VII, requesting Council approval to replace one (1) Plotter/Scanner in the amount of approximately \$23,000 which funds are available in the Engineering Division's equipment account.
- C 2009-214 Communication (05/20/2009) from the Housing Director, requesting Council approval to decline the repurchase of Unit No. 82, Villas at Puali, located at 1934 Hokulei Place, Lihu'e, Kaua'i, Hawai'i, 96766, and provide the owner with a one-year waiver of the resale restriction.
- C 2009-215 Communication (05/20/2009) from the Housing Director, requesting Council approval to decline the repurchase of Unit No. 32, Villas at Puali, located at 1945 Hokulani Place, Lihu'e, Kaua'i, Hawai'i, 96766, and permit market sale of the unit for a period of one-year.
- C 2009-216 Communication (05/27/2009) from the Prosecuting Attorney, requesting Council approval to:
- 1) Apply for, receive, and expend Federal funds for the Domestic Violence Prosecution Unit in the amount of \$46,403; and
 - 2) Indemnify the State of Hawai'i, Department of the Attorney General.
- The funding received will be expended on salaries/wages and supplies for the Domestic Violence Prosecution Unit to continue the program for the term commencing December 1, 2009 to November 30, 2010.

- C 2009-217 Communication (06/03/2009) from the Executive on Aging, Agency on Elderly Affairs, requesting Council approval to receive, and expend State funds, in the amount of \$29,901 which covers funding from July 1, 2009 through June 30, 2010 for State Fiscal Year 2009 to 2010 for KUPUNA CARE services to adults, age 60 and older, and to indemnify the State Executive Office on Aging with their intent to award the Agency on Elderly Affairs State funds.
- C 2009-218 Communication (06/03/2009) from the Fire Chief, requesting Council approval to apply for, receive, and expend the 2009 Rural Fire Assistance Grant to purchase 162 durable wildland firefighting headlamps in the amount of \$9,004.60 which is 90% of the grant and the remaining 10% or \$1,000.52 will be from the Kaua'i Fire Department's budget.
- C 2009-219 Communication (06/04/2009) from the Executive on Transportation, requesting Council approval to apply for, receive, indemnify and expend a Federal Transit Administration (FTA) Section 5311 and 5311(b)(2) Rural Transit Assistance Program (RTAP) grant for operational, administrative and training expenses for the County Transportation Agency in the amounts of \$555,525 and \$10,711, respectively.
- C 2009-202 Communication (05/08/2009) from the Housing Director, requesting Council approval to decline the repurchase of Unit No. 602, Hookena at Puhi, located at 2080 Manawalea Street, Lihu'e, Kaua'i, Hawai'i, 96766, and provide the owner with a one-year waiver of the resale restriction. *(Deferred 06/03/2009)*

CLAIMS:

- C 2009-220 Communication (05/26/2009) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Shiannte Makaanani, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.
- C 2009-221 Communication (05/27/2009) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Janice S. Bond, for damages to her vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2009-222 Communication (05/29/2009) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Richard E. Hurst, Sr., for damages to his vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

C 2009-223 Communication (06/03/2009) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Eric "Rick" Fogel, for loss of personal property, pursuant to Section 23.06, Charter of the County of Kaua'i.

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE REPORT:

CR-B&F 2009-19: on Bill No. 2305 AN ORDINANCE AMENDING ORDINANCE NO. B-2008-673 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE PUBLIC ACCESS FUND (Appropriation of \$1.85 million from the Public Access Fund to Black Pot Beach Park Expansion-Land Acquisition)
[Approved.]

PLANNING COMMITTEE REPORT:

CR-PL 2009-04: on PL 2009-1 Communication (6/04/2009) from Jay Furfaro, Planning Committee Chair, requesting that Ian Costa, the Planning Director, be present to provide an update on the following projects:

1. County Zoning Ordinance (CZO) Update – Phase I
2. Zoning Digitization/Geographic Information Systems (GIS) Project
3. Coastal Erosion Study
4. Lihu'e Town Core Urban Design Plan
5. Lihu'e Development Plan Update
6. Important Agricultural Land (IAL) Study

[Received for the record.]

BILLS FOR FIRST READING:

Proposed Draft Bill No. 2319 – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE (Amending Article 27, Chapter 8, Kaua'i County Code 1987, relating to Shoreline Setbacks and Coastal Protection)

BILLS FOR SECOND READING:

Bill No. 2305 – AN ORDINANCE AMENDING ORDINANCE NO. B-2008-673 AS AMENDED, RELATING TO THE CAPITAL BUDGET OF THE COUNTY OF KAUAI, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE PUBLIC ACCESS FUND (Appropriation of \$1.85 million from the Public Access Fund to Black Pot Beach Park Expansion-Land Acquisition) (*See CR-B&F 2009-19; Budget & Finance Committee recommended approval.*)

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, H.R.S. §92-5(a), and Kauai County Charter §3.07E. (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-389 Pursuant to Haw. Rev. Stat. sections 92-4 and 92-5(a)(4), and Kauai County Charter section 3.07(E), the purpose of this executive session is to consult with the Council's attorney regarding the charter amendments adopted in the 2008 General Election and other related matters. This consultation involves the 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: If the Council is not finished with this meeting by approximately 1:30 p.m., it will recess for public hearings on the following. After the public hearings, the Council will reconvene to complete any unfinished business.

Bill No. 2314 - A BILL FOR AN ORDINANCE AMENDING CHAPTER 12 OF THE KAUAI COUNTY CODE-1987 ENTITLED "BUILDING CODE"

Bill No. 2315 - A BILL FOR AN ORDINANCE TO AMEND ARTICLE 9 OF CHAPTER 6, KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO THE HOUSING REVOLVING FUND

Bill No. 2316 - A BILL FOR AN ORDINANCE TO AMEND ZONING CONDITION IN ORDINANCE NO. PM-31-79, RELATING TO ZONING DESIGNATION IN PO'IPŪ, KAUAI (Kiahuna Land Company, a Hawai'i limited partnership; and Po'ipū Town Center, LLC, Applicants)

For complete information, including a summary of the item, please refer to the official Notice of Public Hearing. The official Notice of Public Hearing has been published, posted on the bulletin board, and filed in the County Clerk's Office as required by law. Notwithstanding this Council Agenda, the Council may hold a public hearing on any item which has been posted in advance in compliance with the Sunshine Law.

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, LĪHUE, KAUAI. TELEPHONE NO. 241-6371.



MEMORANDUM

TO: Honorable Chairperson Bill "Kaipo" Asing and Members of the Kauai County Council

FROM: Ian K. Costa, Planning Director *IKC FOR*

VIA: Bernard P. Carvalho Jr., Mayor *BPC*

SUBJECT: Zoning Amendments ZA-2009-7
Amend Article 27 of the Comprehensive Zoning Ordinance

DATE: 4/21/2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

09 MAY 12 A9:37

RECEIVED

The Planning Commission, at its meeting held on April 14th, 2009, voted 5 in favor, one abstaining and one absent to approve ZA-2009-2 with amendments

Transmitted herewith are the following

1. Proposed ordinance amendments (draft ordinance format)
2. Staff reports covering the amendment requests
3. Transcripts and testimonies from the hearing

Requirements regarding the Council's consideration of the amendments are set forth in Section 8-22 of the Kauai County Code, 1987

C2009-209

BERNARD P. CARVALHO, JR.
MAYOR



RECEIVED
DONALD M. FUJIMOTO
COUNTY ENGINEER
TELEPHONE 241-4902

09 JUN -3 10 55
EDMOND P.K. RENAUD
DEPUTY COUNTY ENGINEER
TELEPHONE 241-4902

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

GARY K. HEU
ADMINISTRATIVE ASSISTANT

AN EQUAL OPPORTUNITY EMPLOYMENT
COUNTY OF KAUAI
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LIHUE, KAUAI, HAWAII 96766-1340

May 12, 2009

Honorable Kaipo Asing, Chairperson
And Members of the County Council
County of Kauai
Lihue, HI 96766

Dear Chairman Asing and Members of the County Council:

Subject: MONTHLY REPORT ON BUILDING PERMIT INFORMATION

Transmitted is the monthly report for the month of April. The report includes the following items:


1. Building Permit Processing Report – Provides information on quantity and value of incoming applications, value of permits issued, and status of Revolving Fund.
2. Building Permit Estimated Value Summary – Graph of building permit estimated values over a one year period.
3. Building Permits Tracking Report – Summarizes processing times overall and by agency for all permits issued during the reporting period.
4. Building Permits Status: All Current Open Applications – Summarizes review times overall and by agency for all outstanding permit applications

If any additional information is required, or any information is desired in a different format, please call me at 241-4854.


Very truly yours,


DOUGLAS HAIGH
Chief, Building Division

CONCUR:


DONALD M. FUJIMOTO
County Engineer

APPROVED:

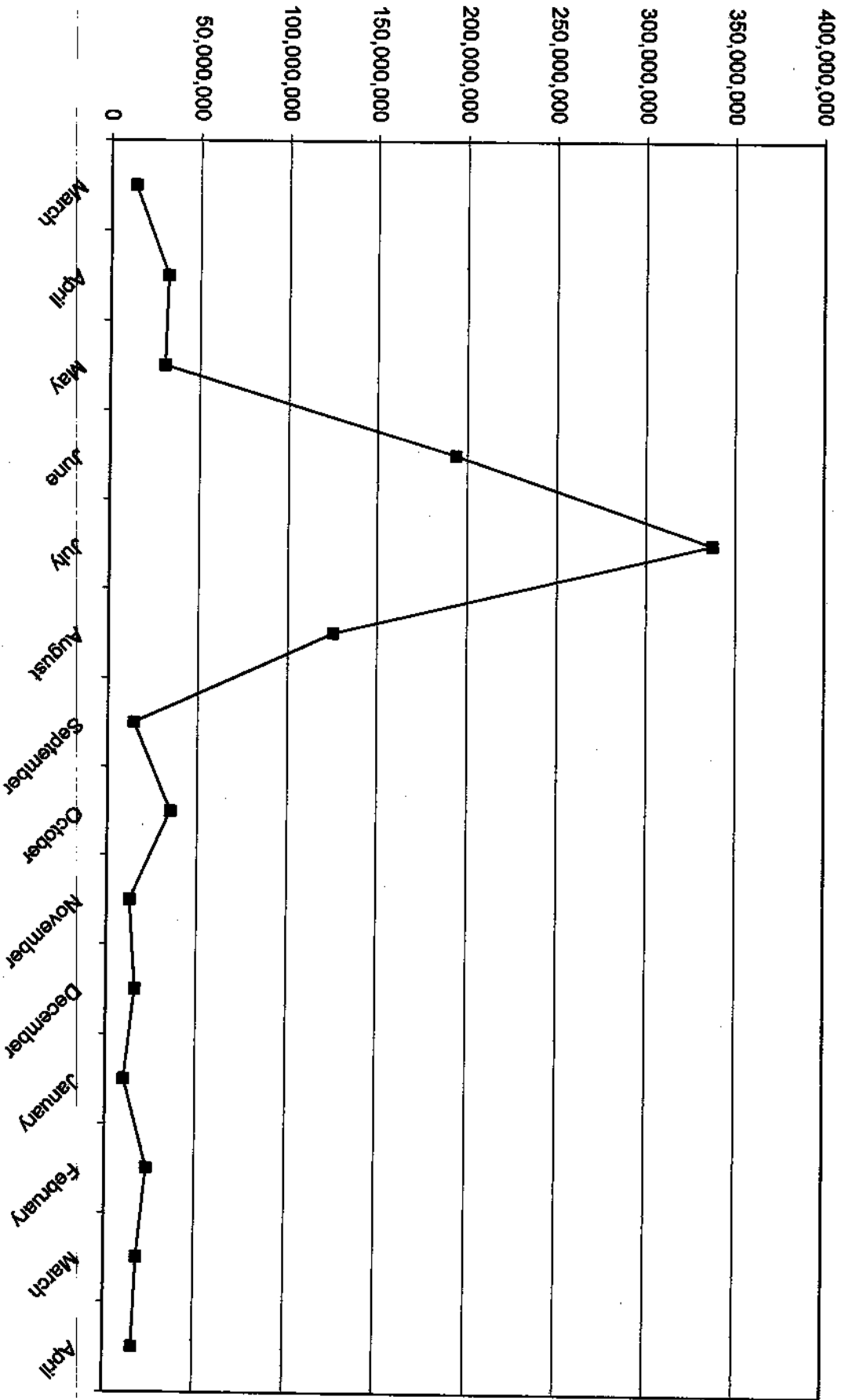

BERNARD P. CARVALHO, JR.
Mayor

Attachment

cc: Planning Department w/attachment, Fire Department w/attachment, Water Department w/attachment, Engineering Division w/attachment, Wastewater Division w/attachment, Director of Finance w/attachment

C2009-210

Building Permit Estimated Value of Plans Summary



C7009-210

Building Permit Processing Report for the Month of April 2009

Permit Volume Summary

	Residential	Commercial	Total	Previous Year
Incoming Plans	63	19	82	154
Estimate Value of Plans	9,683,257	6,729,043	16,412,300	32,453,900
Number of Building Permits Issued	72	18	90	120
Value of Building Permit Issued	5,113,100	7,092,700	12,205,800	14,399,742
Revolving Fund Fees Collected	9,305	6,466	15,771	20,215
Revolving Fund Balance			200,000	83,062

C2009-210



Building Permits Status: Current Open Applications

Type	# of Apps	< 30 Days	30 to 60 Days	61 to 90 Days	> 90 Days
Commercial	698	11	17	10	660
Residential	1,492	30	62	61	1,399

Type	Agency	Number of Reviews	< 30 Days	30 to 60 Days	61 to 90 Days	> 90 Days	
Commercial	BUILDING-BLDG	554	483	55	2	4	
	BUILDING-ELECTRICAL	414	349	45	15	3	
	BUILDING-PLUMBING	481	252	21	8	7	
	PLANNING DEPT	558	378	125	17	157	
	ENGINEERING DIVISION	282	227	14	1	50	
	FIRE DEPARTMENT	433	424	8	1	2	
	DEPT OF HEALTH (STATE)	515	415	31	15	43	
	DEPT OF WATER	515	457	24	7	28	
	WASTEWATER DIVISION	222	211	1	1	9	
	FLOOD REVIEW	383	357	4	9	2	
	Residential	BUILDING DIVISION	1,302	1,121	48	15	77
		PLANNING DEPT	1,828	1,074	280	142	387
ENGINEERING DIVISION		780	595	17	8	82	
FIRE DEPARTMENT		115	157	2	0	0	
DEPT OF HEALTH (STATE)		1,388	1,078	79	52	157	
DEPT OF WATER		1,357	1,226	25	39	87	
WASTEWATER DIVISION		281	173	1	9	27	
FLOOD REVIEW		538	528	18	4	9	

Section 1 - Summary : Quantity of active Building Permit applications by type and aging

Type : Commercial or Residential Building Permit Type

of Apps: Total quantity of active Building Permit Applications

< 30 Days : Quantity of Building Permit Applications aged 29 days or less

< 30 to 60 Days: Quantity of Building Permit Applications aged 30 to 60 days

< 61 to 90 Days: Quantity of Building Permit Applications aged 61 to 90 days

> 90 Days: Quantity of Building Permit Applications aged greater than 90 days

Section 2 - Detail :

Number of reviews on active Building Permit applications by type and aging

Type : Commercial or Residential Building Permit Type

Agency: Agency Name

BUILDING - BLDG : Public Works Building Division

APPLICANT BUILDING : Out of Office from Public Works Building Division to Applicant

BUILDING ELECTRICAL : Public Works Building Division Electrical Inspection Section

ELECTRICAL APPLICANT : Out of Office from Public Works Building Division Electrical Inspection Section to Applicant

BUILDING PLUMBING : Public Works Building Division Plumbing Inspection Section

PLUMBING APPLICANT : Out of Office from Public Works Building Division Plumbing Inspection Section to Applicant

PLANNING DEPT : Planning Department

PLANNING APPLICANT : Out of Office from Planning Department to Applicant

ENGINEERING DIVISION : Public Works Engineering Division

ENGINEERING APPLICANT : Out of Office from Public Works Engineering Division to Applicant

FIRE DEPT : Fire Department

APPLICANT FIRE : Out of Office from Fire Department to Applicant

DEPT OF HEALTH : Department of Health - State of Hawaii

HEALTH DEPARTMENT APPLICANT : Out of Office from Department of Health to Applicant

DEPT OF WATER : Department of Water

WATER APPLICANT : Out of Office from Department of Water to Applicant

WASTEWATER DIVISION : Public Works Wastewater Division

WASTEWATER APPLICANT : Out of Office from Public Works Wastewater Division to Applicant

FLOOD REVIEW : Public Works Building Division Flood Review Section

FLOOD APPLICANT : Out of Office from PW Building Division Flood Review Section to Applicant

Number of Reviews: Quantity of reviews for all active Building Permit applications. No Permit issued. There may be multiple reviews per application.

< 30 Days: Quantity of Building Permit Application reviews aged 29 days or less

< 30 to 60 Days: Quantity of Building Permit Application reviews aged 30 to 60 days

< 61 to 90 Days: Quantity of Building Permit Application reviews aged 61 to 90 days

> 90 Days: Quantity of Building Permit Application reviews aged greater than 90 days

02009-210



Building Permits Tracking Report Issued During April 2009

Days from Application to Issuance

Type	# of Apps	MAX	AVG
Commercial	19	300	65
Residential	41	660	118

Days from Approval to Pickup

Type	# of Apps	MAX	AVG
Commercial	19	95	24
Residential	41	312	17

Agency Review Days

Type	Agency	Number of Reviews	MAX Days	AVG Days	
Commercial	BUILDING-BLDG	20	27	9	
	BUILDING-ELECTRICAL	14	5	2	
	BUILDING-PLUMBING	14	12	6	
	PLANNING DEPT	13	80	19	
	FIRE DEPARTMENT	11	4	3	
	DEPT OF HEALTH (STATE)	13	121	13	
	DEPT OF WATER	11	18	4	
	WASTEWATER DIVISION	3	1	1	
	FLOOD REVIEW	13	21	9	
	BUILDING DIVISION	61	89	10	
Residential	PLANNING DEPT	20	190	18	
	ENGINEERING DIVISION	4	23	8	
	FIRE DEPARTMENT	3	4	5	
	DEPT OF HEALTH (STATE)	39	164	24	
	DEPT OF WATER	80	18	4	
	WASTEWATER DIVISION	3	1	1	
	FLOOD REVIEW	41	27	11	

Field Descriptions, for your Reference:

Section 1 - Summary : Days from Application to Issuance - Total Throughput and Averages

Type : Commercial or Residential Building Permit Type
 # of Apps: Quantity of Applications with Building Permit Issuance for the month
 Max: Greatest quantity of review days from Building Permit Application Start Date to Permit Issuance Date
 AVG: Mean average quantity of review days from Building Permit Application Start Date to Permit Issuance Date (Total Days / Number of Permits Issued)

Section 2 - Summary: Days from Approval to Pickup - Owner / Builder delay in days

Type : Commercial or Residential Building Permit Type
 # of Apps: Quantity of Applications with Permits Issued for the month
 Max: Greatest quantity of days from Building Permit Application Approval Date to Permit Issuance Date
 AVG: Mean average quantity of days from Building Permit Application Approval Date to Permit Issuance Date (Total Days / Number of Permits Issued)

Detail Section 3: Agency Review Days

Type : Commercial or Residential Building Permit Type
 Agency: Agency Name
 BUILDING - BLDG : Public Works Building Division

BUILDING APPLICANT : Out of Office from Public Works Building Division to Applicant

BUILDING ELECTRICAL : Public Works Building Division Electrical Inspection Section
 ELECTRICAL APPLICANT : Out of Office from Public Works Building Division Electrical Inspection Section to Applicant

BUILDING PLUMBING: Public Works Building Division Plumbing Inspection Section
 PLUMBING APPLICANT : Out of Office from Public Works Building Division Plumbing Inspection Section to Applicant

PLANNING DEPT : Planning Department
 PLANNING APPLICANT : Out of Office from Planning Department to Applicant
 ENGINEERING DIVISION : Public Works Engineering Division
 ENGINEERING APPLICANT : Out of Office from Public Works Engineering Division to Applicant

FIRE DEPT : Fire Department
 APPLICANT FIRE : Out of Office from Fire Department to Applicant
 DEPT OF HEALTH : Department of Health - State of Hawaii
 HEALTH DEPARTMENT APPLICANT : Out of Office from Department of Health to Applicant

DEPT OF WATER : Department of Water
 WATER APPLICANT : Out of Office from Department of Water to Applicant
 WASTEWATER DIVISION : Public Works Wastewater Division
 WASTEWATER APPLICANT : Out of Office from Public Works Wastewater Division to Applicant

FLOOD REVIEW : Public Works Building Division Flood Review Section
 FLOOD APPLICANT : Out of Office from Public Works Building Division Flood Review Section to Applicant

MAX: Greatest quantity of review days for the agency for permits issued for the month.

AVG: Mean average quantity of review days for the agency for permits issued for the month.

07009-210

BERNARD P. CARVALHO
MAYOR

MALCOLM C. FERNANDEZ
DIRECTOR OF PERSONNEL SERVICES



COUNTY OF KAUAI
DEPARTMENT OF PERSONNEL SERVICES

MO'IKEHA BUILDING
4444 Rice Street, Suite 140
LIHU'E, KAUAI, HAWAII 96766

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May 19, 2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI
Malcolm C. Fernandez

TO: COUNTY COUNCIL
FROM: MALCOLM C. FERNANDEZ, DIRECTOR OF PERSONNEL SERVICES
SUBJECT: SECTION 31 OF FY 09 BUDGET ORDINANCE

This is to inform the Council that we received the following classification request(s). This department will review the request(s) and take appropriate action(s).

Dept.	Requested Action*	Pos. No.	Present Class	Requested Class Allocation
Fire	R	2534	Water Safety Officer I	Lifeguard
Fire	R	1654	Water Safety Officer II	Lifeguard
Fire	R	1036	Water Safety Officer II	Lifeguard

* NP - IA = New Position - Initial Allocation
R = Reallocation
RR= Redescription - Review

C2009-211

MAY 19 2009

COUNTY OF KAUAI
DEPARTMENT OF PERSONNEL SERVICES
Lihue, Kauai, Hawaii

May 7, 2009
(Date)

TO: DIRECTOR OF PERSONNEL SERVICES, COUNTY OF KAUAI
FROM: Fire Chief Robert F. Westerman
SUBJECT: RECORD OF CLASSIFICATION REQUEST AND ACTION

PART ONE

REQUEST: (to be completed by the department & should accompany the Position Description)

Department: Fire Division: Operations
Pos. No.: 2534
Present Class: Water Safety Officer I SR/BC/EM SR 15
New Class Request: Yes No SR/BC/EM _____

Reason for Request (short summary):

Reallocate position #1654 (Vacant) from Water Safety Officer II to Lifeguard
Reallocate to entry level for recruitment.

How Services Were Formerly Provided:

Position Number (s): 2534

Position Title (s): Water Safety Officer I

Incumbent (s): Vacant

Attach current or applicable Table of Organization of affected organizational unit and Mayor's approval for position action as requested.

07009-211

COUNTY OF KAUAI
DEPARTMENT OF PERSONNEL SERVICES
Lihue, Kauai, Hawaii

May 7, 2009
(Date)

TO: DIRECTOR OF PERSONNEL SERVICES, COUNTY OF KAUAI
FROM: Fire Chief Robert F. Westerman *[Signature]*
SUBJECT: RECORD OF CLASSIFICATION REQUEST AND ACTION

PART ONE

REQUEST: (to be completed by the department & should accompany the Position Description)

Department: Fire Division: Operations
Pos. No.: 1036
Present Class: Water Safety Officer II SR/BC/EM SR 17
New Class Request: Yes No SR/BC/EM _____

Reason for Request (short summary):

Reallocate position #1654 (Vacant) from Water Safety Officer II to Lifeguard
Reallocate to entry level for recruitment.

How Services Were Formerly Provided:

Position Number (s): 1036

Position Title (s): Water Safety Officer II

Incumbent (s): Vacant


Attach current or applicable Table of Organization of affected organizational unit and Mayor's approval for position action as requested.

07009-211

MAY 19 2009

COUNTY OF KAUAI
DEPARTMENT OF PERSONNEL SERVICES
Lihue, Kauai, Hawaii

May 7, 2009
(Date)

TO: DIRECTOR OF PERSONNEL SERVICES, COUNTY OF KAUAI
FROM: Fire Chief Robert F. Westerman 
SUBJECT: RECORD OF CLASSIFICATION REQUEST AND ACTION

PART ONE

REQUEST: (to be completed by the department & should accompany the Position Description)

Department: Fire Division: Operations
Pos. No.: 1654
Present Class: Water Safety Officer II SR/BC/EM SR 17
New Class Request: Yes No SR/BC/EM _____

Reason for Request (short summary):

Reallocate position #1654 (Vacant) from Water Safety Officer II to Lifeguard
Reallocate to entry level for recruitment.

How Services Were Formerly Provided:

Position Number (s): 1654

Position Title (s): Water Safety Officer II

Incumbent (s): Vacant

Attach current or applicable Table of Organization of affected organizational unit and Mayor's approval for position action as requested.

C2009-211

Bernard P. Carvalho, Jr.
Mayor

Gary Heu
Administrative Assistant



COUNTY OF KAUAI
DEPARTMENT OF FINANCE

May 20, 2009

RECEIVED
Wallace G. Rezentes, Jr.
Director of Finance

'09 MAY 27 A9:27

Belma A. Baris

Deputy Director of Finance

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

TO: HONORABLE BILL 'KAIPO' ASING, COUNCIL CHAIR
AND MEMBERS OF THE COUNTY COUNCIL

FROM: WALLACE G. REZENTES, JR., DIRECTOR OF FINANCE *WGR*

VIA: MAYOR BERNARD P. CARVALHO, JR. *BPC*

SUBJECT: KAUAI HUMANE SOCIETY THIRD QUARTER REPORT FOR FY2009

The Kauai Humane Society has submitted their Third Quarter Report for FY2009 as requested in Contract #6787 Item (5).

We are also submitting a copy of their report on Animal Statistics (July - March) as well as a copy of their Field Services Statistics.

Please do not hesitate to call Wallace Rezentes, Jr., Director of Finance at 241-4200 if you need any more information.

C2009-212

MAY 5 - 2009

DIRECTION OF FINANCE
COUNTY OF KAUAI

May 1, 2009

Mr. Wallace G. Rezendes, Jr.
Director of Finance
County of Kauai
4444 Rice Street, Room 303
Lihue, Hawaii 96766

3-825 Kaunualii Hwy.
P.O. Box 3330
Lihue, Hawaii 96766
phone: 808-632-0610
fax: 808-632-0727
www.kauaihumane.org

Re: Third Quarter Report FY 09

Dear Wally,

Operationally, we have been busy in all areas of service. Most notable this quarter was our work on the coastal path, zero tolerance for dogs off leash and assisting Kauai Police Department (KPD) by caring for 100 fighting roosters. We have been visiting the coastal path daily and overall, the majority of dog owners are in good compliance with the new rules. We are promoting more responsible dog ownership everywhere and issuing more citations for dogs off leash as seen in our statistics with a 123% increase as compared to the same period last year.

KPD requested our assistance on March 15 to impound over 100 fighting roosters from the scene of their investigation of an illegal cockfight. We are still holding 72 of them and have submitted invoices to KPD for the care of the birds which they have agreed to pay.

Our financial report shows how we are seeking additional sources of income and reducing expenses. We successfully received a grant from A&B Foundation for \$1250 to go towards our pet adoption program. Payroll expenses are most significantly over budget due to Dr. Ushio's maternity leave and the need to hire two part-time veterinarians. We are continuing with our wage and hiring freeze implemented last October.

And finally, please review our letterhead with a list of our new officers and board members effective January, 2009.

As you review the attached reports, please do not hesitate to contact me by phone at 632-0610 x 106 or by email at drbecky@kauaihumane.org with any questions.

Sincerely,


Rebecca H. Rhoades, D.V.M.
Executive Director



Board of Directors

President

Laura Wiley, CPA

1st Vice President

Elizabeth Freitas

2nd Vice President

Jeff Kennedy

Secretary

Orianna Skomoroch

Treasurer

Sandra Day

Paul Douglass

Naomi Giovanni

Wallace Johnson

Leticia Lee

Les Milnes

Maureen Mulvihill

Dawn Murata

Betty Unanian

Joyce Weidman, DVM

Executive Director

Rebecca Rhoades, DVM

07009-212



FY 2009
Third Quarter
Animal Statistics
(July - March)

FY 2009

<u>Intake</u>	
DOGS	1557
CATS	2260
OTHERS	923
DOA/REQ	340
TOTAL	5080

<u>Recovery</u>	
DOGS	591
CATS	84
OTHERS	3
TOTAL	678

<u>Adoption</u>	
DOGS	439
CATS	348
OTHERS	51
TOTAL	838

<u>Euthanasia</u>	
DOGS	650
CATS	1750
OTHERS	764
TOTAL	3164

<u>Spay/Neuter</u>	
ADOPTIONS	857
PUBLIC	741
FERAL CATS	424
COMM. VETS	250
TOTAL	2272

FY 2008

<u>Intake</u>	
DOGS	1448
CATS	2156
OTHERS	1252
DOA/REQ	300
TOTAL	5156

<u>Recovery</u>	
DOGS	476
CATS	87
OTHERS	4
TOTAL	567

<u>Adoption</u>	
DOGS	415
CATS	362
OTHERS	47
TOTAL	824

<u>Euthanasia</u>	
DOGS	570
CATS	1718
OTHERS	1109
TOTAL	3397

<u>Spay/Neuter</u>	
ADOPTIONS	811
PUBLIC	714
FERAL CATS	284
COMM. VETS	258
TOTAL	2067

% CHANGE

<u>Intake</u>	
DOGS	8%
CATS	5%
OTHERS	-26%
DOA	13%
TOTAL	-1%

<u>Recovery</u>	
DOGS	24%
CATS	-3%
OTHERS	-25%
TOTAL	+ 20%

<u>Adoption</u>	
DOGS	6%
CATS	-4%
OTHER	9%
TOTAL	+ 5%

<u>Euthanasia</u>	
DOGS	14%
CATS	2%
OTHERS	-31%
TOTAL	- 7%

<u>Spay/Neuter</u>	
ADOPTIONS	6%
PUBLIC	4%
FERAL CATS	49%
COMM. VETS	- 3%
TOTAL	+ 10%

C7009-212



**Field Services
Statistics
THIRD QTR
FY2009**

FIELD ACTIVITY	FY 09	FY 08	Change
Stray Dog Transport	482	434	11%
Own Dog Transport	18	28	-36%
Stray Cat Transport	857	1006	-15%
Own Cat Transport	0	6	-600%
Stray Other Transport	293	482	-39%
Own Other Transport	0	2	-200%
DOA Pickup	199	229	-13%
Animal Rescue/Emergency	109	94	16%
Loose Dog Complaint	479	349	38%
Barking Dog Complaint	95	83	15%
Aggressive Dog Complaint	62	70	-11%
Cat Problem Complaint	223	196	14%
Animal Cruelty Report	28	41	-32%
Animal Neglect Report	216	177	22%
Animal Abandonment Report	13	6	117%
TOTAL CALLS	3074	3203	-4%
Citations Issued	172	77	123%
Miles Driven	71921	68525	5%
Dog licenses issued @ shelter	2751	1612	71%
Dog licenses issued in field	436	340	28%
Total Dog Licenses Issued	3187	1952	63%

C7009-212

BERNARD P. CARVALHO, JR.
MAYOR



DONALD M. FUJIMOTO
COUNTY ENGINEER
TELEPHONE 241-4993

EDMOND P.K. RENAUD
DEPUTY COUNTY ENGINEER
TELEPHONE 241-4994

GARY K. HEU
ADMINISTRATIVE ASSISTANT

AN EQUAL OPPORTUNITY EMPLOYER
COUNTY OF KAUA'I
DEPARTMENT OF PUBLIC WORKS
4444 RICE STREET
MO'IKEHA BUILDING, SUITE 275
LIHU'E, KAUA'I, HAWAII 96766-1340

May 15, 2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUA'I

09 MAY 26 AM 8:38

RECEIVED

Honorable Kaipo Asing, Chair
And Members of the County Council
4396 Rice Street
Lihue, HI 96766

Dear Mr. Asing:

SUBJECT: Request to replace (1) inoperable Plotter/Scanner

The Department of Public Works, Engineering Division requests your approval to replace (1) Plotter/Scanner that is currently inoperable and essential in our current operations.

The Plotter/Scanner replacement cost is approximately \$23,000 and funds to purchase the equipment are available in the Engineering Division's Equipment account. Your approval of this request is appreciated.

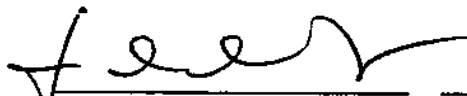
Should you have any questions, please contact Oscar Portugal of the Engineering Division at 2414882.

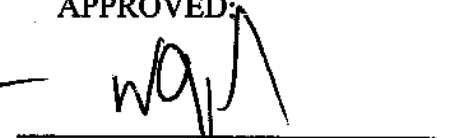
Very Truly Yours,

CONCUR:

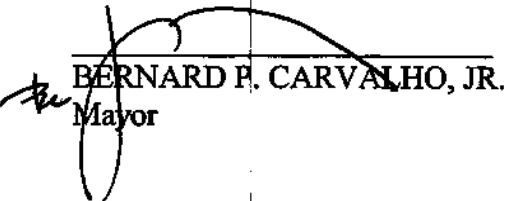
APPROVED:


WALLACE M. KUDO
CE VII


DONALD M. FUJIMOTO
County Engineer


WALLACE G. REZENTES, JR.
Director of Finance

APPROVED:


BERNARD P. CARVALHO, JR.
Mayor

C2009-213

Bernard P. Carvalho
Mayor

Eugene K. Jimenez
Housing Director

Gary K. Heu
Administrative Assistant



RECEIVED
Kenneth N. Rainforth
Executive Assistant

KAUAI COUNTY HOUSING AGENCY
Piikoi Building 4444 Rice Street Suite 330
Lihue Hawaii 96766

'09 JUN -3 AIO :19

May 20, 2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

Honorable Chair Bill "Kaipo" Asing
and Council Members
Kaua'i County Council
4396 Rice Street
Lihu'e, Hawai'i 96766

Attention: Economic Development/Housing Committee Chair Dickie Chang

Dear Chair Asing:

SUBJECT: Request to Decline Repurchase of Unit No. 82, Villas at Puali

Per Ordinance No. PM 2005-372, the buyback requires a repurchase price of \$477,800.00 (cost plus interest at 3.0% or at the rate of change in the Honolulu CPI) or at market value, whichever is less. A Repurchase Disclosure Schedule is attached. Whether an appraisal would estimate value above or below the repurchase determined on the Disclosure Schedule is unclear. Either way, the price is at or near market value and no affordable housing objective will be achieved in repurchasing the property. At this time, the Housing Agency recommends declining the repurchase and granting the owner a one-year waiver of the buyback to allow a sale by the owner.

The Housing Agency requests the approval of the Kaua'i County Council to decline the repurchase of Unit No. 82, Villas at Puali, situate at 1934 Hokulei Pl., Lihu'e, Kaua'i, Hawai'i 96766, and provide the owner with a one-year waiver of the resale restriction.

Thank you for your assistance with this matter.

Sincerely,

Eugene K. Jimenez
EUGENE K. JIMENEZ
Housing Director

APPROVED:

Bernard P. Carvalho, Jr.
BERNARD P. CARVALHO, JR.
Mayor

EKJ:ftt

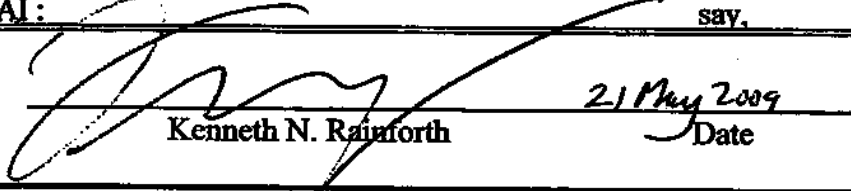


02009-214

**REPURCHASE DISCLOSURE SCHEDULE
KAUAI COUNTY HOUSING AGENCY**

Document Preparation Date
Anticipated Closing Date

May 12, 2009
June 30, 2009

Owner :	*	Lot No :	
Project :	Villas at Puali - Apt. #82	Lot Size :	
Address :	1934 Hokulei Pl.	TMK :	3/3/003/039/0082
	Lihu'e, Hawai'i 96766		
August 25, 2006	Recording Date Of Original Sale	Inspected :	
6/30/2009	Estimated Closing Date of Repurchase	By :	
1040	Days of Ownership Period		
1. ORIGINAL PURCHASE PRICE			423,158.35
2. ORIGINAL SALE CLOSING COSTS :			
a.	Escrow Fee & Notary	859.37	
b.	Recording Fees	205.00	
c.	Title Insurance	500.00	
d.	Document Preparation Fees	260.42	
e.	Tax Service Fee	634.70	
f.	Appraisal Fee to FmHA	0.00	
g.	Mortgage Recording Fee/HHRF	0.00	
h.		0.00	
i.		0.00	\$ 2,459.49
3. COST OF CAPITAL IMPROVEMENTS ADDED - See Pages 4 & 5			\$ -
4. MORTGAGE BALANCE:			
	Principal	189,354.10	
	Interest & Late Fees	0.00	
	Subsidy Recapture	0.00	0.00
		\$ 189,354.10	
5. SIMPLE INTEREST @			4.30% PER YEAR
a.	Cost of Original Sale (Lines 1 & 2)	\$ 52,146.93	
b.	Improvements Added (Line 3)	\$ -	\$ 52,146.93
	ESTIMATED CASH EQUITY :	\$ 288,445.90	
6. TOTAL REPURCHASE PRICE			\$ 477,764.77
COUNTY OF KAUAI :			say, \$ 477,800.00
Prepared By		21 May 2009	
	Kenneth N. Rainforth	Date	
SELLER'S ACCEPTANCE OF REPURCHASE PRICE :			
Seller	N/A - for financing purposes only		Date

C2009-214

Bernard P. Carvalho
Mayor

Gary K. Heu
Administrative Assistant



Eugene K. Jimenez
Housing Director

RECEIVED Kenneth N. Rainforth
Executive Assistant

KAUAI COUNTY HOUSING AGENCY
Pittol Building 4444 Rice Street Suite 330
Lihue Hawaii 96766

'09 JUN -3 AIO :19

May 20, 2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

Honorable Chair Bill "Kaipo" Asing
and Council members
Kaua'i County Council
4396 Rice Street
Lihue, HI 96766

Attention: Economic Development/Housing Committee Chair Dickie Chang

Dear Chair Asing:

SUBJECT: Request to Decline Repurchase of Unit No. 32, Villas at Puali

The owners of Unit No. 63 at Villas at Puali, situate at 1945 Hokulani Place, Lihue, Hawaii 96766, purchased a 3-bedroom, 2-bath single family attached CPR unit in March 2006 for \$385,063.00. Owners are unhappy of the continued increases of their Homeowners Association Fee and Sewer costs.

Attached is a Repurchase Disclosure Schedule that calculates the repurchase price at \$438,000.00. Pursuant to the Housing Agency's affordable for sale housing prices, this price would be affordable to household earning approximately one hundred sixty percent (160%) 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.

C2009-215

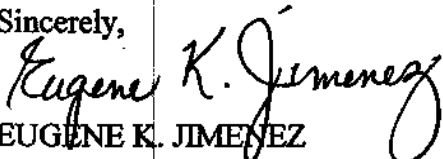


Honorable Chair Bill "Kaipo" Asing
May 20, 2009
Page 2

The Housing Agency requests the Kaua'i County Council to decline its option to repurchase Unit No. 32, Villas at Puali, situate at 1945 Hokulani Pl. Lihue, Hawai'i 96766 and permit market sale of the unit for a period of one-year.


Thank you for your assistance with this matter.

Sincerely,


EUGENE K. JIMENEZ
Housing Director


Kenneth N. Rainforth
Executive Assistant

APPROVED:




BERNARD P. CARVALHO, JR.
Mayor



C2009-215

**REPURCHASE DISCLOSURE SCHEDULE
KAUAI COUNTY HOUSING AGENCY**

Document Preparation Date May 29, 2009
Anticipated Closing Date May 29, 2009

Owner :		Lot No :	
Project :	Villas at Puali	Lot Size :	
Address :	1945 Hokunui Place, Unit #32	TMK :	3 3 003 039
	Lihue, HI 96766		
3/29/06	Recording Date Of Original Sale	Inspected :	
5/29/2009	Estimated Closing Date of Repurchase	By :	
1157	Days of Ownership Period		
1. ORIGINAL PURCHASE PRICE			385,063.00
2. ORIGINAL SALE CLOSING COSTS :			
a.	Escrow Fee & Notary	\$ 208.33	
b.	Recording Fees	\$ 52.00	
c.	Title Insurance	\$ 160.00	
d.	Document Preparation Fees		
e.	Tax Service Fee	\$ 385.10	
f.	Appraisal Fee to FmHA		
g.	Mortgage Recording Fee/HHRF		
h.		\$ 26.04	
i.		\$ 260.42	\$ 1,091.89
3. COST OF CAPITAL IMPROVEMENTS ADDED - See Page 2			None
4. MORTGAGE BALANCE:			
	Principal	\$ -	
	Interest & Late Fees		
	Subsidy Recapture		
		\$ -	
5. SIMPLE INTEREST @			4.30% PER YEAR
a.	Cost of Original Sale (Lines 1 & 2)	\$ 52,634.50	
b.	Improvements Added (Line 3)	\$ -	\$ 52,634.50
	ESTIMATED CASH EQUITY :	\$ 438,800.00	
6. TOTAL REPURCHASE PRICE			\$ 438,789.39
COUNTY OF KAUAI:			say, \$ 438,800.00
Prepared By	 Kenneth N. Rainforth		 Date
SELLER'S ACCEPTANCE OF REPURCHASE PRICE :			
Seller	N/A - for financing purposes only		Date

C7009-215



OFFICE OF THE PROSECUTING ATTORNEY

COUNTY OF KAUAU, STATE OF HAWAII

3990 KAANA STREET, SUITE 210

LIHUE, HAWAII 96766

Telephone: (808) 241-1888

Fax: (808) 241-1758

Email: prosecutor@kauai.gov



Shaylene Iseri-Carvalho
Prosecuting Attorney

Lori H. Wada
First Deputy

Deputy Prosecuting Attorney
Christopher Donahoe
Rosa Flores
Paul Kanoho
Justia Kollar

Deputy Prosecuting Attorney
Lauren McDowell
Tracy Murakami
Mauna Kea Trask

May 27, 2009

Honorable Bill "Kaipo" Asing, Council Chair
and members of the County Council
County of Kauai
4396 Rice Street
Lihue, HI 96766

OFFICE OF THE
PROSECUTING ATTORNEY
COUNTY OF KAUAU

09 JUN 10 P 3:11

RECEIVED

Re: Federal – STOP Violence Against Women Formula Grant

Dear Chair Asing and County Council Members:

I respectfully request County Council approval to apply, receive and expend federal funds for the Domestic Violence Prosecution Unit in the amount of \$46,403.00, and approval to indemnify the State of Hawai'i, Department of the Attorney General. Grant funds will be utilized to continue the program for the term commencing December 1, ~~2008~~ to November 30, ~~2009~~.

2009-10 2010-11

Funding received will be expended on salaries/wages and supplies for the Domestic Violence Prosecution Unit. Program information and a budget are attached.

Thank you for your time and consideration in this matter. Please do not hesitate to contact me should you have any questions.

Sincerely,

Shaylene Iseri-Carvalho
Prosecuting Attorney

Enclosure

/jc

C2009-216

PART II. DESCRIPTION OF PROJECT

A. PROBLEM STATEMENT

Assault and murder are just two classifications of crimes that stem from domestic violence. In Hawaii, according to Hawaii Revised Statutes (H.R.S. § 586-1), domestic violence includes physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members.

Domestic violence is a widespread problem that occurs among all ages, genders, races, educational backgrounds and socioeconomic groups. Historically, females have been most often victimized by someone they knew¹. In 2005, at least 5, or 16% of the murders that occurred in Hawai'i were domestic violence related².

Statistics collected from January 1, 2006 – December 31, 2006 County of Kauai Office of the Prosecuting Attorney (OPA), indicate that we received over 359 police reports from the Kauai Police Department (KPD) for Abuse of Family and Household Members (AFHM) (H.R.S. § 709-906), 309 police reports in 2007, and 257 police reports in 2008. With a recorded population of 62,828³ in 2007, the County of Kaua'i is a small knit community. The greatest distance from the town of Kekaha to the town of Hanalei is just 57 miles in driving distance, making abuse of a family member a difficult situation for community members of Kaua'i.

Sadly, these numbers demonstrate the continued problem of domestic violence in Kauai's community. The primary concern of the OPA is for the safety of Kauai's citizens. Until an abuser is held accountable for his/her actions, Kauai's families remain at risk of repeated incidents of domestic violence. This results in the widespread consequences which not only affect the abused victim, but also the children, other family members and community members who witness and live amidst the abuse.

In OPA's effort to aggressively prosecute those who engage in the criminal activity of domestic violence, a specialized Domestic Violence Prosecution Unit (DVPU) was established in 1997, and staffed a 0.50 Full Time Equivalent (FTE) and a 0.25 FTE Legal Clerk. The core

¹ Costs of Intimate Partner Violence Against Women in the United States. 2003. Centers for Disease Control and Prevention, National Centers for Injury Prevention and Control, Atlanta GA.

² Crime Prevention & Justice Assistance Division Research and Statistics Branch, "Crime in Hawai'i 2005", http://hawaii.gov/ag/cpja/main/rs/Folder.2005-12-05.2910/Crime%20in%20Hawaii%202005%20%28Annual%29/copy_of_Crime%20in%20Hawaii%202005.pdf/vie w?searchterm=Crime%20in%20Hawaii%202005

³ US Census Bureau. <http://quickfacts.census.gov/qfd/states/15/15007.html>

principals of the unit have been to provide vertical prosecution, expedite screening and processing of cases, and achieve successful conviction rates.

Operating a DVPU has improved the effectiveness and efficiency in prosecuting crimes of domestic violence including restraining/protective order violations. Through the unit, the SPA follows established criteria to proficiently screen and charge subject cases. Vertical prosecution has allowed the SPA to gain a better understanding of various dynamics and issues of domestic violence cases, and how these dynamics affect the victims, witnesses and accused. As a result of the DVPU, the SPA has become well versed in the issues, laws and procedures central to domestic violence cases and establishes a broader understanding of the unique challenges these cases present.

Due to the volume of domestic violence reports being received over the years, additional funding from the Edward J. Byrne Memorial Justice Assistance Grant (JAG) was applied for and received in 2005, 2006, 2007 and 2008. As a result of the additional funding, the Domestic Violence Prosecution Unit expanded on May 1, 2006. The DVPU staff is now able to dedicate 100% of their time and abilities on prosecuting domestic violence crimes. The DVPU's goals and objectives of the JAG grant incorporate additions and increases to the following goals and objectives listed below. However, in the event that a fourth year of JAG funding is not received, the following goals and objectives have been established, based on grants available and financial resources, which can only cover the cost of staffing two part-time positions.

B. GOAL AND OBJECTIVES

In response to the problem of domestic violence, the County of Kauai OPA is requesting funding to continue the operation of our Domestic Violence Prosecution Unit (DVPU).

GOAL

To improve public safety in the County of Kauai through efficient and effective prosecution of those who commit crimes of domestic violence including the violation of restraining/protection orders.

OBJECTIVES

- To accomplish efficiency and effectiveness:

- Continue the operation of the DVPU established with STOP Violence Grant funding.
- 90% of police reports received by the Prosecutor's Office, involving crimes of domestic violence, will be screened and charged (or declined) within 30 days of receipt through the DVPU.
- 100% of domestic violence cases received by the Prosecutor's Office will be processed through the DVPU utilizing vertical prosecution.
- 60% of all cases filed involving domestic violence will result in a conviction.

C. PROJECT ACTIVITIES

- a. On December 1, 2010 continue the operation of the DVPU.
- b. On December 1, 2010 continue to expedite screening and processing of cases involving crimes of domestic violence in the criminal justice system by reducing the lag time between receipt of cases at the prosecutor's office and the time of charging.
- c. On December 1, 2010 continue to utilize specialized vertical prosecution to allow the Special Prosecuting Attorney and a Victim/Witness Counselor to establish early and continuous contact with the victims and witnesses of domestic violence crimes.
- d. On December 1, 2010 continue to minimize the "second victimization" and trauma to victims involved in the criminal justice system through vertical prosecution, thus maintaining a continuity of contact between the victim and the Special Prosecuting Attorney and Victim/Witness Counselor.
- e. On December 1, 2010 the SPA shall work towards attaining a 60% or higher conviction rate for all crimes involving domestic violence.

D. PROJECT ORGANIZATION AND MANAGEMENT

The Office of the Prosecuting Attorney is the primary agency responsible for prosecuting criminal violations of state laws and county ordinances that occur within the county of Kauai. The office consists of 25 persons including 8.75 attorneys, 2 victim/witness counselors, 1 victim/witness director, 1 special investigator, 1 grant coordinator, 7 legal clerks, 1 senior clerk, and 1 departmental staff assistant and 1 secretary. The office is organized in specified prosecution units. Designated attorney(s) handle district court (traffic, petty misdemeanor, and misdemeanor) matters, family court juvenile, domestic violence, and felony cases in circuit court. The office also receives and administers state and federal grants

for victim/witness services, domestic violence and sexual assault prosecution, career criminal prosecution and juvenile court.

The Prosecuting Attorney of the County of Kauai will manage this project. This special unit will function under the direct control of the Prosecuting Attorney, as are all specially funded projects. The Prosecuting Attorney and First Deputy Prosecuting Attorney will consult with the unit's Special Prosecuting Attorney on a weekly basis or more often as needed, and will be informed of all scheduled meetings and community briefings. The Prosecuting Attorney will review unit statistics quarterly.

All police reports as well as case information will be accurately entered into the County of Kaua'i's Office of the Prosecuting Attorney's HOKU system by the assigned clerk to the unit. This will allow the Grant Coordinator the ability to track all cases from screening to charging to disposition. The Grant Coordinator will be responsible to submit all fiscal and program reports to the Grantor.

E. PERSONNEL

The Domestic Violence Prosecution Unit will be staffed with a Special Prosecuting Attorney (50% full-time equivalent) and a Legal Clerk I (20% full-time equivalent). The Special Prosecuting Attorney, Shannon Parrott, will be responsible for vertically prosecuting domestic violence cases against women. To perform her duties efficiently, she will work in close partnership with the unit's Legal Clerk I from the receipt of a police report for screening through the closing of a criminal case. The Legal Clerk I shall be responsible for the preparation of legal documents, correspondence, and maintenance of records related to the domestic violence cases assigned to the unit. Overtime has also been incorporated in the budget to allow time for the Legal Clerk I to update the required Excel logs and/or the HOKU case management system, which will be utilized to compile the statistics required for the semi-annual grant progress reports

F. PERSONNEL BIOGRAPHIES

On December 1, 2008, Mauna Kea Trask joined the DVPU as the Special Prosecuting Attorney. Graduating from the J. D. University of Hawai'i William S. Richardson School of Law in 2004, he gained experience as a law clerk for the 1st and 5th Circuit Courts, as well as with the Honolulu Public Defenders office. He spear headed the

development of the Honolulu Office of the Public Defender's defensive strategy to the new criminal speeding charge, "Excessive Speeding", under HRS 291C-105. Mr. Trask spent 5 months defending criminals in domestic violence cases which allow him special insight to prosecuting domestic violence cases with the OPA's office.

Joining the County of Kaua'i, Office of the Prosecuting Attorney in March 2008, he has done over 10 jury trials, of only 2 resulted in a not guilty verdict. Those in which he was successful in prosecuting included B level felonies, white collar cases, assault cases, and theft cases. Although his time with the DVPU has been minimal his knowledge and trial experience will greatly contribute to the DVPU. His resume is incorporated as Attachment A.

Ms. Deann Costa, who has been employed as a Legal Clerk in Kauai's Office of the Prosecuting Attorney since May of 2007, shall be assigned as the Legal Clerk for the specialized unit. Her resume has also been incorporated as Attachment B of this application.

G. PARTICIPATING AGENCIES

The Domestic Violence Prosecution Unit has been able to operate efficiently and effectively due to the cooperative team effort established between the unit, OPA's Victim Witness Program and the Kauai Police Department. The unit also works closely with other community agencies such as the Judiciary, Office of the Public Defender, YWCA, Child Protective Services, Wilcox Memorial Hospital, and the Department of Education as needed.

H. PROJECT EVALUATION

The following statistics will be compiled semi-annually to evaluate the performance of the Domestic Violence Prosecution Program:

- Continued operation of the DVPU.
- Number and percentage of police reports, involving crimes of domestic violence screened and charged (or declined) within 30 days of receipt.
- Number and percentage of domestic violence cases processed through the specialized Domestic Violence Prosecution Unit utilizing vertical prosecution.
- Number and percentage of convictions as a result of cases filed through the Domestic Violence Prosecution Unit.
- Number of specialized training relating to domestic violence attended by the Domestic Violence Prosecution Unit's attorney.

PART III. BUDGET DETAIL
PART IV - BUDGET

Kauai Domestic Violence Prosecution Unit
 For the period December 1, 2009 through November 30, 2010

COST ELEMENT					AMOUNT
A. SALARIES AND WAGES					
<u>Position</u>	<u>FTE</u>	<u>Monthly Salary from Grant</u>	<u>Extended Salary</u>	<u>Total</u>	
Special Prosecuting Attorney Position No. T9087 12/01/09 – 5/31/10 (6 months)	45%	3,188.00	19,128.00		
6/01/10 - 11/30/10 (6 months)		3,375.00	20,250.00	39,378.00	
Legal Clerk I Position No. T2807 12/01/09 – 4/30/09 @ \$2,702/mo x 12	20%	540.00	6,485.00	6,485.00	
TOTAL SALARIES AND WAGES				\$45,863.00	
<hr/>					
B. FRINGE BENEFITS *					
Employee Benefits @ 34.33% (County Match)					\$15,526.00
County Match *					\$15,526.00
TOTAL FRINGE BENEFITS				\$15,526.00	
<hr/>					
C. CONSULTANTS					\$0.00
D. TRANSPORTATION AND SUBSISTENCE					\$0.00
E. OFFICE SUPPLIES					\$715.00
F. FACILITIES, OFFICE SPACE					\$0.00
G. EQUIPMENT					\$0.00
H. OTHER COSTS					\$0.00
<hr/>					
FEDERAL FUNDS					\$46,578.00
25% COUNTY MATCH					\$15,526.00
TOTAL PROJECT COSTS				\$62,104.00	

7 C7009-216

BUDGET EXPLANATION

A. SALARIES AND WAGES

Salary budget for a Special Prosecuting Attorney at 0.45 Full Time Equivalent (FTE) for the time period of December 1, 2009 to November 30, 2010.

Salary budget for a Legal Clerk I at 0.20 FTE is budgeted in accordance with the bargaining agreement between the County of Kauai and the Hawaii Government Employees Association (HGEA) Salary Schedule for Bargaining Unit 03.

B. FRINGE BENEFITS

The County of Kauai issued notice on March 24, 2009 that grants may be charged a fringe benefit rate of 48.17% from the period effective July 1, 2008. But a fringe rate of 34.33% is being used as the county match.

Fringe benefit categories include the following:

EMPLOYEES' RETIREMENT SYSTEM
FICA (Social Security Tax and Medicare)
EMPLOYEES HEALTH FUND

BERNARD P. CARVALHO, JR.
MAYOR

LUDVINA K. TAKAHASHI
EXECUTIVE ON AGING



GARY K. HEU
ADMINISTRATIVE ASSISTANT

RECEIVED

COUNTY OF KAUA'I
AGENCY ON ELDERLY AFFAIRS P12 :49
09 JUN 3

June 3, 2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUA'I

The Honorable Kaipo Asing, Chair
and Members of the Kaua'i County Council
4396 Rice Street
Lihu'e, Hawai'i 96766

VIA: Gary K. Heu, Administrative Assistant

RE: SUPPLEMENTAL KUPUNA CARE FUNDS FOR SFY 2009

Dear Chair Asing and Members:

The Agency on Elderly Affairs, requests the Council's approval to receive, expend State funds and indemnify the State Executive Office on Aging, with their intent to award the County of Kauai, Agency on Elderly Affairs supplemental Kupuna Care service funds to support the annual Kupuna Care base allocation for SFY 2009 to 2010. The funding period covers from July 1, 2009 through June 30, 2010.

The funds in the amount of \$29,901.00 are for the provision of KUPUNA CARE services to older adults, age 60 and older.

If you have any questions, please feel free to contact me at 241-4474. Thank you for your consideration on this matter.

Sincerely,

(Ms.) Kealoha Takahashi
Executive on Aging

APPROVED:

Date:

Bernard P. Carvalho, Jr., Mayor

6/04/09

02009-217

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
Lihue, Kauai, Hawaii 96766

RECEIVED

'09 JUN -8 A9 23

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

June 3, 2009

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

RE: 2009 Rural Fire Assistance Grant

Dear Chairperson Asing and members:

The Kauai Fire Department requests your approval to apply, receive, and expend the 2009 Rural Fire Assistance Grant to purchase 162 durable wildland firefighting headlamps. The total cost of this project including tax and shipping is \$10,005.12 of which the grant would cover 90% or \$9,004.60 and the Kauai Fire Department would be responsible for the remaining 10% or \$1,000.52.

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,

APPROVED:

Handwritten signature of Robert Westerman in black ink.

Robert Westerman
Fire Chief

Handwritten signature of Bernard P. Carvalho, Jr. in black ink.

Bernard P. Carvalho, Jr.
Mayor

RFW/eld

12009-218

Bernard P. Carvalho, Jr.
Mayor

Janine M. Z. Rapozo
Executive on Transportation

Gary K. Heu
Administrative Assistant



COUNTY OF KAUAI
TRANSPORTATION AGENCY

RECEIVED

June 4, 2009

'09 JUN -8 A9 :23

The Honorable Bill "Kaipo" Asing, Chair
And Members of the Kauai County Council
4396 Rice Street
Lihue, HI 96766

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

ATTENTION: LANI T. KAWAHARA, CHAIR OF THE
PARKS/TRANSPORTATION COMMITTEE

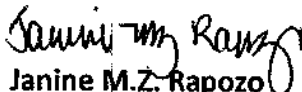
VIA: Gary K. Heu, Administrative Assistant

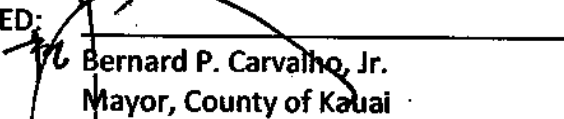
Dear Chair Asing and Members:

The Transportation Agency requests Council's approval to apply for, receive, indemnify and expend an FY 2009 Federal Transit Administration (FTA) Section 5311 and 5311(b)(2) Rural Transit Assistance Program (RTAP) grant for operational, administrative and training expenses for the County Transportation Agency in the amounts of \$555,525 and \$10,711 respectively.

Thank you for your consideration in this matter.

Sincerely,


Janine M.Z. Rapozo
Executive on Transportation

APPROVED: 
Bernard P. Carvalho, Jr.
Mayor, County of Kauai



THE KAUA'I BUS



Telephone (808) 241 6410

3220 Ho'olalo Street
Lihue Kauai Hawaii 96766-1492

Fax (808) 241 6417

02009-219

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
Ernesto G. Pasion, Deputy County Clerk

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

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

May 26, 2009

RECEIVED

'09 MAY 27 A7:44

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

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

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 Shiannte Makanani for damage to her 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
Shiannte Makanani

C7009-220

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
Ernesto G. Pasion, Deputy County Clerk

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

RECEIVED

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

May 27, 2009

'09 MAY 27 P2 2'

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

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

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 Janice S. Bond for damage to her 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
Janice S. Bond

C7009-221

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
Ernesto G. Pasion, Deputy County Clerk

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

Council Services Division
4396 Rice Street, Room 206
Lihue, Kauai, Hawaii 96766-1371

RECEIVED

May 29, 2009

'09 MAY 29 AM 1:03

The Honorable Bill "Kaipo" Asing
Chair, and Members
of the County Council
County of Kauai
Lihue, Hawaii 96766

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

Chair and Members:

Pursuant to Section 23.06, Charter of the County of Kauai, we transmit a claim filed against the County of Kauai by Richard E. Hurst, Sr. 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
Richard E. Hurst, Sr.

C7009-222

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
Ernesto G. Pasion, Deputy County Clerk

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

Council Services Division
4396 Rice Street, Room 206
Lihu'e, Kauai, Hawaii 96766-1371

June 3, 2009

09 JUN -4 A9:4

The Honorable Bill "Kaipo" Asing
Chair, and Members
of the County Council
County of Kauai
Lihu'e, Hawaii 96766

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

Chair and Members:

Pursuant to Section 23.06, Charter of the County of Kauai, we transmit a claim filed against the County of Kauai by Eric "Rick" Fogel for loss of personal property.

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 "Rick" Fogel

C7009-223

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO
THE COMPREHENSIVE ZONING ORDINANCE

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

SECTION 1. Findings and Purpose: The purpose of this bill is to streamline permit procedures by removing unnecessary requirements for structures and activities permitted within the shoreline setback area.

SECTION 2. Chapter 8, Article 27 of the Kauai County Code 1987, as amended, is hereby amended as follows:

"[Sec. 8-27.1 Applicability. This Article shall be applicable to all lands within the County of Kauai, State of Hawaii, that are (a) abutting the shoreline, or (b) located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.]

Sec. 8-27.1 Applicability.

(a) This Article shall be applicable to all lands within the County of Kauai, State of Hawaii, that are:

- (1) abutting the shoreline, or
- (2) located within five hundred (500) feet of the shoreline.

(b) Exceptions. The following exceptions apply to the above provisions:

(1) If the applicant can demonstrate to the satisfaction of the Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

(2) For properties abutting the shoreline, the Director's determination shall be based on a detailed report written by a Qualified Professional Consultant submitted to the Director outlining

the specific reasons the improvements are not affected by coastal hazards, excluding natural catastrophes.

Sec. 8-27.2 Definitions.

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

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

“Annual coastal erosion rate” means the annual rate of coastal erosion calculated by following a procedure established in the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawai'i, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawai'i Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 4.1.

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

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

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

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

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

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

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

"Coastal erosion study" means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified professional consultant as defined in this article following procedures described in Section 4.1 of the Hawai'i Coastal Hazard Mitigation Guidebook, (January 2005). The coastal erosion study shall include but not be limited to:

(1) Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

(2) The method resulting in the larger erosion rate (SCRF/toe of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

(3) Uncertainty or error calculation of the data and the annual erosion rate;

(4) Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

(5) Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.

(6) Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

(7) The coastal erosion study shall consider the purpose of the study—to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kaua'i.

"Department" means the Planning Department of the County of Kaua'i.

"Director" means the Planning Director of the Planning Department of the County of Kaua'i.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"FEMA" means the Federal Emergency Management Agency.

"FIRM" means the Flood Insurance Rate Map.

"Hazard Assessment" means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawai'i Coastal Mitigation Guidebook, (January 2005).

"Lot" means a portion of land shown as a unit on an approved and recorded subdivision map.

"Makai" means seaward or in a seaward direction.

"Mauka" means landward or in a landward direction.

"Minimum buildable footprint" means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).

"Minor activity" means an activity that:

- (1) costs less than \$125,000; and
- (2) does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and
- (3) does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing (grubbing) of vegetation, and grading, which are exempt from HRS Chapter 343; and
- (4) is consistent with the purposes of this article and HRS Chapter 205A, as amended.

"Minor structure" means:

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

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbecues, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

“Natural catastrophe” is a natural disaster qualifying for a governor’s declaration of emergency pursuant to Hawai’i Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise.

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

(1) Was completely built, in its present form, prior to June 22, 1970; or

(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or

(3) Was outside the shoreline setback area when it received either a building permit or board approval; or

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

(1) Property boundaries;

(2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;

(3) Topography in and around the proposed construction;

(4) Any and all shoreline hardening;

- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land."

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

"Qualified professional consultant" means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawai'i that has experience in coastal processes.

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

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

"Rebuilding" means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

"Repair" means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50 %) of the current replacement cost of the structure.

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

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

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

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

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

“Shoreline setback line” is as defined in Section 205A-41, Hawai'i Revised Statutes, as amended.

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

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

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

“Temporary structures or activities” means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

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

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

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.

Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below:

If the average lot depth is:	100 feet or less	101 to 120 feet	121 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet	More than 200 feet
Then the minimum setback distance is:	40 feet	50 feet	60 feet	70 feet	80 feet	90 feet	100 feet

(c) For lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.

For structures with a building footprint that is:	Less than or equal to 5,000 square feet	Greater than 5,000 square feet
Then the setback distance is:	40 feet plus 70 times the annual coastal erosion rate	40 feet plus 100 times the annual coastal erosion rate

[(d) Any shoreline setback line established based on a coastal erosion study may be reviewed by the Planning Commission to ensure that the law has been properly followed.]

[(e)](d) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most mauka (landward) segments of each line shall form the shoreline setback line.

[(f)](e) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.

(f) The Director shall notify the commission at the Commission's next regularly scheduled meeting of the following:

(1) any newly completed applications for shoreline setback determination.

(2) any new shoreline setback determinations made by the Director including, but not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures or activities depicted on a plan drawn to scale, the purpose of the proposed structures and/or activities, the current certified shoreline, the setback calculations and setback line drawn on the plan, and copies of the coastal erosion study, if applicable.

(g) The Director's shoreline setback determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal of the Director's decision, the shoreline setback determinations shall not be final until the Commission completes its decision-making on the appeal.

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

[(h)](i) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

Sec. 8-27.4 Minimum Shoreline Setback Requirements.

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Structures and activities subject to these rules.

All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is filed with the department showing that the construction is mauka of the shoreline setback area.

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

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

(1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(2) Where the mining or taking is authorized by a variance pursuant to these rules; or

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed

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

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a dune restoration and re-vegetation program approved by the Director that uses naturally occurring historical endemic plant species.

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

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

(1) Existing nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to the effective date of this ordinance.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures or activities" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the director may require a bond to ensure such restoration.

(5) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;

(B) The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and

(C) The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HRS Chapter 205A.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure or activity approved by the Director as a minor structure or activity.

(9) Qualified demolition of existing structures.

(10) Unmanned civil defense facilities installed for the primary purpose of protecting life and property.

(11) Structures and activities necessary to be within the shoreline setback area for public health and safety.

(12) Scientific studies and surveys, including archaeological surveys.

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

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article 1, Flood Plain Management, Kaua'i County Code, relating to coastal high hazard districts and FEMA guidelines regarding [FIRM maps] construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not to be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

Sec. 8-27.8 [Shoreline Setback] Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) The request shall include [relevant information, which shall include, but is not limited to, a current shoreline setback determination or a current certified shoreline survey and coastal erosion information,] construction and site plans, [a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment,] and a written text addressing compliance with the criteria set forth in this article.

[(3) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall approve, approve with conditions, or deny an application for approval/determination in accordance with the criteria set forth in this Article. The Director may also issue a determination that the proposed activity or structure is not subject to this Article because it is outside the shoreline setback area.]

(3) The Director may also require additional information including, but not limited to, a current shoreline setback determination or a current certified shoreline survey or shoreline survey stamped by a licensed surveyor registered in the State of Hawai'i and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(4) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall make a determination in accordance with the criteria set forth in this Article that the proposed activity or structure is:

(A) Permitted under Section 8-27.6;

(B) Permitted under Section 8-27.6 and subject to conditions;

(C) Not permitted under Section 8-27.6; or

(D) Outside of the shoreline setback area.

[(4)](5) The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

[(A) any newly completed applications for shoreline setback determination,]

~~[(B)](A)~~ any newly completed applications for approval for a structure or activity proposed ~~[for a]~~ within the shoreline setback area; and

~~[(C)](B)~~ any new ~~[shoreline setback determinations or approval]~~ approvals or denials by the Director of structures or activities and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions. ~~[The Planning Director may submit copies of the coastal erosion study if applicable.]~~

~~[(5)](6)~~ The Director's ~~[shoreline setback]~~ structure and activity determinations ~~[and approvals or denials]~~ shall not be final until accepted by the ~~[commission.]~~ Commission. Notwithstanding ~~[commission]~~ Commission acceptance, if there is an appeal from the Director's decision, the ~~[shoreline setback]~~ determinations, ~~[approvals, or denials]~~ shall not be final until the Commission completes its decision-making on the appeal.

~~[(6)](7)~~ Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

~~[(7)](8)~~ For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

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

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

agreement shall be submitted to the Planning Department prior to application for a building permit.

Sec. 8-27.9 Variance application.

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

(1) An administrative fee of \$300.00. The administrative fee shall be seventy-five hundred dollars (\$7,500) if the application is made after the structure is partially or fully built without the required approvals.

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

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

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity, or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale, showing:

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director; and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the

application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

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

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

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

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

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

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

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline;

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;

(7) Private facilities or improvements that are clearly in the public interest;

(8) Private facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) The minimum buildable footprint may be reduced to 1500 square feet.

(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal

processes, and the rebuilding is not prohibited by Article 23, Chapter 8, Kaua'i County Code, 1987 as amended.

(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

[(1)] (i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

[(2)] (ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

[(3)] (iii) The buildable footprint may be reduced to below 2100 square feet.

[(4)] (iv) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding.

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

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision

approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss;

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code, and Drainage, Chapter 22, Article 16, Kaua'i County Code, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

Sec. 8-27.11 Enforcement.

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

(b) Removal of an unpermitted structure.

structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars (\$1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department's budget and shall be used for the enforcement and/or education relating to this ordinance.

Sec. 8-27.13 Appeal of Director's decision.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant's standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedure outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Kaua'i Planning Commission. The Planning Commission's decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.

Sec. 8-27.14 Promulgation of Rules and Regulations.

This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Kaua'i in existence at the time of adoption of this ordinance. Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article."

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

SECTION 5. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Kaua'i County Code, 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect thirty (30) days after its approval. The requirements of this ordinance shall not affect any application which has been approved by the County Council or the Commission prior to the effective date of this ordinance, unless there is a subsequent approval required prior to a building permit, in which case, that subsequent application shall be subject to the relevant requirements of this ordinance, excluding subdivisions which have received tentative approval prior to the approval date of this ordinance.

Introduced by:

JAY FURFARO
(By Request)

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i

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