

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai'i

January 24, 2020

Board of Land and
Natural Resources
State of Hawai'i
Honolulu, Hawai'i

REGARDING: Conservation District Enforcement HA 20-18 Alleged Unauthorized Land Use – Transient Rental Located in the Conservation District

LANDOWNER: Mr. Gary Killeen &
Mrs. Caroline Killeen

LOCATION: 87-288 Kaohe Road, Kona Paradise Kaohe 4th, South Kona, Hawai'i

TAX MAP KEY: (3) 8-7-019:036

PARCEL SIZE: 0.291-acres

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject parcel is located at 87-288 Kaohe Road in the Kona Paradise Kaohe 4th Subdivision of South Kona on the Western side of the island of Hawai'i and is further identified as Tax Map Key (TMK) (3) 8-7-019:036. The parcel is located within the Limited Subzone of the State Land Use, Conservation District (see **Exhibit 1**). The single-family residence (SFR) was permitted under Conservation District Use Application (CDUA) HA-2321 on March 9th, 1990 after the permittee had paid fines of \$1,000 for 3 unauthorized land uses in relation to development of the subject parcel without a Conservation District Use Permit (see **Exhibit 2**).

The property is in close proximity to Pebbles Beach at the bottom of Kaohe Road in the Kona Paradise Kaohe 4th Subdivision and is located in a rural coastal area of South Kona on the island of Hawai'i. The Kona Paradise Kaohe 4th Subdivision is a quiet residential neighborhood due to the rural nature of South Kona (see **Exhibit 3**). A SFR is to the South of the subject property and Kaohe Road is to the North. The subject property and associated SFR are bordered to the East and West by parcels with the TMKs: (3) 8-7-019-037 and (3) 8-7-019:34 which are also owned by the subject property owners.

ALLEGED UNAUTHORIZED LAND USES

On October 9th, 2019, the Office of Conservation and Coastal Lands (OCCL) Staff were conducting research regarding an unrelated case involving an alleged unauthorized use of a

residence as a transient vacation rental in the Kona Paradise Kaohe 4th Subdivision and noticed that the subject property was on vrbo.com [vrbo = Vacation Rentals by Owner] (see **Exhibit 4**). The location maps powered by Google on the vrbo advertisement match the County of Hawaii's TMK Map for the property with the TMK: (3) 8-7-019:036, address 87-288 Kaohe Road, and owned by the property owners Gary Killeen and Caroline Killeen (see **Page 1 & Page 13 of Exhibit 4 & Exhibit 5**). Additionally, a video in the photos section of the vrbo advertisement for the subject property showed the address as 87-288 Kaohe Road at the 0:05 mark. OCCL Staff reviewed the advertisement for the subject property on vrbo.com and also found that the description of the home (3 bedrooms, 2 bath) matched what was approved for the SFR under CDUA HA-2321 (see **Page 1 & Page 2 of Exhibit 4 and see Page 2 & Page 10 of Exhibit 6**). The vrbo.com advertisement names the property and associated SFR as "Opihiale" and "Paradise Ocean Hale" (see **Page 2 & Page 5 of Exhibit 4**). Further scrutiny of the vrbo.com advertisement for the subject property and associated SFR revealed that it cost an average of \$250 per night with a minimum stay of 3 to 7 nights (see **Page 1 & Page 2 of Exhibit 4**). The vrbo.com advertisement for the property and associated SFR also contained 99 reviews of visitors' stays from September 2019 to September 2009. OCCL Staff notes that the review titled "Million Dollar View!" by Mikie of Honaunau Hawai'i who stayed at the subject property and associated SFR in December 2009 indicates that the subject property and associated SFR have been used for transient rental purposes prior to being listed on vrbo.com and 2009 (see **Page 14 of Exhibit 4**).

OCCL Staff notes that on October 23rd, 2019 the advertisement for the subject property and associated SFR no longer appeared on vrbo.com. This suggests that the subject property owners removed their advertisement from vrbo.com after receiving the Notice of Alleged Violation & Order letter (HA 20-18) from OCCL (see **Exhibit 7**).

DISCUSSION

Chapter 13-5, Hawai'i Administrative Rules (HAR) and Chapter 183C, Hawai'i Revised Statutes (HRS) regulates land uses in the Conservation District by identifying a list of uses that may be allowed through a Conservation District Use Permit (CDUP) and a set of standard conditions that the permittee must abide by. These chapters also provide for the penalties, collection of administrative costs, costs associated with land and/or habitat restoration, and damages to state land for uses that are not allowed or for which no permit has been obtained.

Condition #4 of CDUA HA-2321 states that *the single family dwelling shall not be used for rental or any other commercial purposes.*

Condition #12 of CDUA HA-2321 states that *failure to comply with any of these conditions shall render this Conservation District Use Application null and void.*

Condition #5 of HAR §13-5-42 (a) (5) states that *the single family residence shall not be used for rental or any other commercial purposes unless approved by the board. Transient rentals are prohibited, with the exception of wilderness camps approved by the board.*

Transient Rental is defined in HAR §13-5-2 (2) as *the use of a single-family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, services, or labor of employees.*

Based on Mr. Gary Killeen and Mrs. Caroline Killeen's advertisement on vrbo.com, the owners of the parcel with TMK: (3) 8-7-019:036 and CDUA HA-2321 have been using the property and associated SFR for transient rental and commercial purposes. These actions are in direct violation of HAR §13-5 and the Conditions of their CDUA HA-2321.

ANALYSIS:

The stated purpose of the Conservation District law is to protect and conserve natural resources. The section of the law, Haw. Rev. Stat. (HRS) § 183C-7, that refers to penalty for violation of conservation law should have a deterrent effect on the landowner to prevent them from doing or allowing malfeasance within the Conservation District. HRS, §183C-7 **Penalty for violation** notes (a) The department shall prescribe administrative procedures as it deems necessary for the enforcement of this chapter and (b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$15,000 per violation in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof. After written or verbal notification from the department, willful violation of this chapter or any rule adopted in accordance with this chapter may incur an additional fine of up to \$15,000 per day per violation for each day in which the violation persists.

Staff has considered the Department's mechanism for the imposition of fines for the unauthorized uses of a SFR for transient rental purposes. Haw. Rev. Stat. § 183C-7 allows for the imposition of up to a \$15,000 fine per violation for violating the statute. The *Conservation District Violation Penalties Schedule* identifies Non-identified Land Use as subject to penalties by the Board of Land and Natural Resources.

Pursuant to HAR, §13-5-1, the purpose of the Conservation District is to conserve, protect, and preserve the important natural and cultural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare. Pursuant to HAR, §13-5-12, the objective of the Limited Subzone is to limit uses where natural conditions suggest constraints on human activities. The use of the property and associated SFR for transient rental purposes intensifies human activities as well as the uses and stresses of the area's natural and cultural resources. Transient rentals are not consistent with neither the intentions of Hawai'i's residential neighborhoods nor the character of rural residential areas such as South Kona. Based on the above, the use of the property and associated SFR for transient rental activities do not align with neither the purpose of the Conservation District nor the objective of the Limited Subzone and are therefore strictly prohibited in these areas.

FINDINGS

The use of the subject property and single-family residence for transient rental and commercial

purposes are in violation of Chapter 183C, HRS, Title 13-5, HAR, and CDUA HA-2321. Based upon our investigation, OCCL finds that:

1. The location of the transient rental, Tax Map Key: (3) 8-7-019:036, is in the State Land Use Conservation District *Limited* Subzone;
2. The single-family residence has been used as a transient rental;
3. That these violations are the second set of violations undertaken by the landowners with regards to their use of the property in the State Land Use Conservation District.

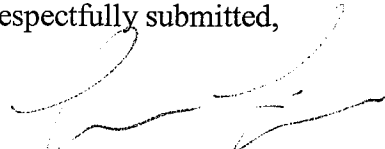
AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7 and HAR, §13-5-6, the Board finds the landowners in violation of HAR, §13-5-42 as well as the conditions of CDUA HA-2321 and is subject to the following:

1. That the landowners are fined \$15,000.00 in one instance for violating the provisions of HRS §183C-7, HAR §13-5-42, and CDUA HA-2321 for the use of the subject property and associated single-family residence as a transient rental which is a non-identified and prohibited land use within the Conservation District;
2. That the landowners are fined an additional \$2,000 for administrative costs associated with the subject violations;
3. That the landowners shall pay all designated fines and administrative costs (\$17,000.00) within one hundred eighty (180) days from the date of the Board's action;
4. That the landowners cease all transient rental activities on the subject property;
5. That the landowners remove all advertisements associated with the subject property and single-family residence from any websites that promote transient rental accommodations;
6. That the landowners sign a declaration stating that they will not carry out any future transient rental activities on the subject property and associated single-family residence and record the declaration in recordable form;
7. That the landowners provide DLNR and OCCL with all applicable documentation that would demonstrate that the above actions have satisfactorily been performed;
8. That in the event of failure of the landowners to comply with any order herein, the landowner shall be fined an additional \$15,000 per day until the order is complied with; and
9. That in the event of failure of the landowners to comply with any order herein, this matter shall be turned over to the Attorney General for disposition, including all administrative costs;

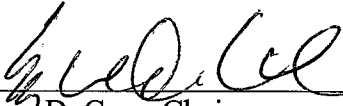
10. That in the event that the DLNR and OCCL find that the landowners have continued to use the subject property and associated single-family residence for transient rental, rental, or commercial purposes, the permit will be revoked, and the landowners will be required to remove the single-family residence;
11. The above noted conditions of Enforcement file HA 20-18 shall be recorded with the deed instrument pursuant to HAR, §13-5-6(e).

Respectfully submitted,



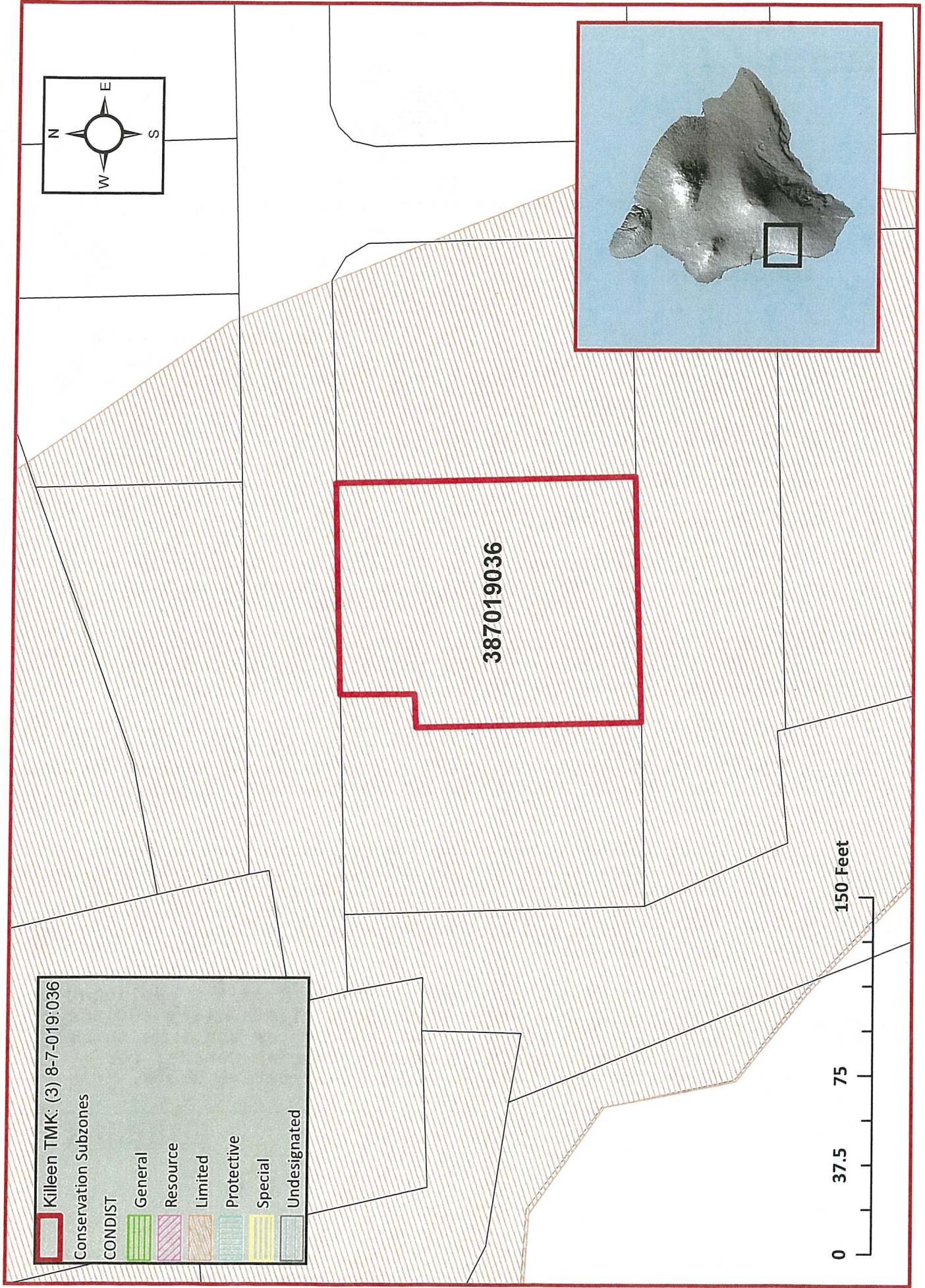
Trevor Fitzpatrick, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Exhibit 1: Killeen Parcel TMK: (3) 8-7-019:036 Kona Paradise Kaohe 4th



JOHN WAIHEE
GOVERNOR OF HAWAII



WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES
Keith W. Ahue
MANABU TAGOMORI
RUSSELL N. FUKUMOTO

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES CONSERVATION AND ENVIRONMENTAL AFFAIRS
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF:OCEA-VIN

FILE NO.: HA-9/25/89-2321
180-Day Exp. Date: 3/24/90
DOCUMENT NO.: 7737E

MAR 21 1990

Mr. and Mrs. David J. Kolos
P.O. Box 772
Honaunau, Hawaii 96726

DLNR
OCEA

APR 12 AM 11:00

RECEIVED

Dear Mr. and Mrs. Kolos:

Subject: Conservation District Use Application for Non-conforming Single Family Residence South Kona, Hawaii (TMK 8-7-19: 36)

We wish to inform you that your Conservation District Use Application for a single family residence was approved on March 9, 1990, subject to the following.

A. Violation

1. That the applicant shall pay a violation fine of \$1,000.00 in a manner determined by the department within sixty (60) days.
2. That this fine shall be discharged through services in kind provided to the Department's Division of State Parks and/or Division of Forestry and Wildlife under their supervision. Please contact their offices directly in Hilo, within thirty (30) days of this letter to arrange its execution.
3. That if there is failure on the part of the applicant to comply with the above conditions within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of the Attorney General for disposition to include all administrative costs.

Exhibit 2

B. Application

That upon compliance with Part A, the Board approve the non-conforming single family residential use of TMK 8-7-19: 36, at Kona Paradise Subdivision, subject to the following conditions:

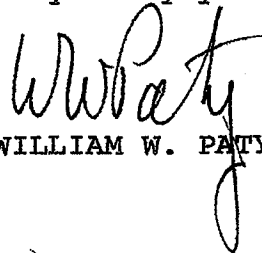
1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended.
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;
5. The applicant shall provide documentation (i.e. book and page number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications, to the Chairperson or his authorized representative for approval for consistency with the conditions of this permit and the declarations set forth in the permit application; three (3) approved copies are to be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;
7. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use.
8. That the applicant shall implement appropriate measures to control potential erosion and sedimentation during and after construction;
9. That all exposed and disturbed ground shall be revegetated within thirty (30) days unless otherwise provided for in a plan on file with and approved by the Department;

- 10. That appropriate measures shall be exercised to prevent construction materials, debris, petroleum derivatives from entering nearby ocean areas or polluting the surrounding area;
- 11. That upon the completion of construction, all debris shall be removed;
- 12. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
- 13. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other.

Should you have any questions on any of these conditions, please feel free to contact Edward Henry of our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,


WILLIAM W. PATY

Receipt acknowledged


Applicant's Signature

Date 4/9/90

cc: Hawaii Board Member
Hawaii Land Agent
Hawaii County Planning Department
DOH/OHA

Exhibit 3: Kona Paradise Kaohe 4th

South Kona, Hawaii

Legend



Killeen SFR at TMK: (3) 8-7-019:036 with address 87-288 Kaohe Rd

87-288 Kaohe Rd.

11

Amalahoa Hwy



4000 ft

Google Earth

© 2018 Google
Image © 2019 TerraMetrics



(<https://www.vrbo.com/>)



Where
 opihihale-captain-cook-hi-usa

Check In

Check Out

Search



\$250 avg/night
 99 Reviews
 Wonderful 4.9/5

Save
 Share

Enter dates for accurate pricing

Check In Check Out

Guests

Request to Book

Bill and Carol

Ask owner a question

For booking assistance, call Vrbo at **888-640-7927**

Property # 317822

FABULOUS OCEANFRONT HOME, STEPS FROM THE BEACH - FROM \$195 for TWO!



House · 3000 sq. ft.


Sleeps: 6

Bedrooms: 3

Exhibit 4

Page 1 of 19

 Bathrooms: 2

 Min Stay: 3 - 7 nights

Premier Partner

Rare Find

No Smoking

Internet

TV

3 Bedroom, 2 Bathroom oceanfront home - sleeps up to 6

Paradise Ocean Hale is a stunning oceanfront home located in quiet, rural South Kona, just a 40 minute drive from Kailua-Kona. Enjoy the luxury of sitting on your own spacious lanai, listening to the sound of the surf gently washing over our beautiful pebble beach while watching whales and dolphins swim by. Snorkel, swim and kayak from our private community beach just steps from your door. Kaohe Bay has some of the best snorkeling and diving on the island. Hike the historic Kings Trail to other remote beaches and an ancient cinder cone.

This gracious open plan home features 3 large tastefully decorated tropical style bedrooms, including a master suite, 2 baths, comfortable large living area with a 60 inch surround sound TV system, beautiful Koa bar and a large well appointed kitchen. Enjoy barbecuing and dining out on the lanai or relaxing with a tropical drink and watching a glorious sunset.

Although you may never want to leave this special place, we are only a 20 minute drive to Pu' uhonua o Honaunau National Park and

Exhibit 4

Page 2 of 19

20 minutes to the Captain Cook Monument in Kealakekua Bay.

Reserve your dates today for the vacation of a lifetime!

Note: Our calender is up to date. We reserve half day after checkout and half before new checkin for the cleaning purposes.

We respond to inquiries as soon as we receive them, however please keep in mind that Hawaii time is 2-6 hours earlier than mainland time.

Specials - if we advertise a special your quotable rate will not reflect this. We will send you a revised quote with the corrected amount.

Note: The road down to the house is steep. 4-wheel drive is not needed, however, we urge our guests to put their cars in low gear, turn on the A/C going down and drive slowly.



Thank you

Owner's registration ID Number:
W36306005-01

Keywords: oceanfront home, beachfront home

View less

Bedrooms

 Bedrooms: 3  Sleeps: 6

Bedroom 2

Exhibit 4

Page 3 of 19



king

Bedroom 1



king

Bedroom 3



queen

Master bedroom has king bed and adjoining bathroom Second bedroom has king bed and third bedroom has queen. Second and third bedroom are separated by full bathroom.

Owner

**Bill and
Carol**

Member
Since 2010

Ask owner a
question

Languages: English

Premier Partner

The owner or manager of this property consistently provides great experiences for their guests.

About Bill and Carol

Exhibit 4

Page 4 of 19

My great grandparents traveled from Portugal to the Hawaii Islands and settled in Maui in the late 1800s. I was born in Maui and reared in Oahu. I went to Farrington High School and graduated when I was 17. I was married the same yr. and also had my first child. By the time I was 21, I had 4 children. I moved to San Diego in 1960, remarried and had my 5th child. I went into Real Estate sales in San Diego and sold RE for 20 yrs. By that time I had several rentals and retired from RE and lived off the income of my rentals. It was hard work but it paid off in time.

Why Bill and Carol chose Opihihale

My husband Gary loved fishing and when we went to Kona for a vacation, he fell in love with it.

We wanted to build our home here, so we looked for a lot. We both wanted to be by the ocean, however, it was slim pickings finding a lot on the ocean or by the ocean. We heard about Kona Paradise from a Realtor who showed us our lot. We were so excited because not only was it ocean front but it also was a swimming beach. It is very rare in Kona to have a beach that you can walk into and swim or snorkel without having to cross over sharp lava rocks.

What makes this House unique

It is so wonderful to just sit and listen to the waves washing thru the pebbles on the beach. In the winter time when the surf high, it is such a beautiful sight to see the large waves crashing down on the beach. I love watching the whales as they go by to settle

Exhibit 4

Page 5 of 19

in the coves south of us and birth their calfs before going back up north. I also love to see the dophins that come and visit our cove. My huband and I would anchor our boat in the cove and then go fishing. Just a few miles out we would catch a lot of fish that we'd share with our wonderful friends and nieghbors. Kona Paradise is truly paradise.

[View less about Bill and Carol](#)

Amenities

Featured



TV



Washer & Dryer



Internet



Satellite or Cable



Parking

Bathrooms

2 Bathrooms

Bathroom 2

toilet, combination tub/shower
toilet, sink and tub/shower enclosure

Bathroom 1

toilet, shower

Exhibit 4

Page 6 of 19

Master bedroom bathroom has large walk in shower.
Guest bathroom has shower/tub combo.

Safety features

First-aid kit Smoke detector Exterior lighting

Location Type

Beachfront Beautiful Pebble Beach Oceanfront Steps from the door to the water

General

Telephone 3 phones Clothes Dryer Iron & Board Parking Hair Dryer Internet Living Room Large living room with sectional and chairs Towels Provided Wireless Internet Washing Machine Washer and dryer located in 'laundry room'

Kitchen

Dishwasher Refrigerator Large side by side with water dispenser and ice maker Stove Electric stove/oven Oven Electric stove/oven

Exhibit 4

Page 7 of 19

Microwav e	Ice Maker	Dishes & Utensils
Grill	Pantry Items	Fully euipped
Coffee Maker	Some pantry items and spices are available	Kitchen Modern up to date kitchen with bar
Toaster		

Dining

Dining Area	Dining Beautiful tropical glass dining set that will seat 6 indoors and dining outdoors.
----------------	---

Entertainment

Television Large flat screen TV	Satellite / Cable	DVD Player
	Stereo	

Outside

Deck /
Patio

Suitability

wheelchai
r
inaccessib
le

Notes



Exhibit 4

Page 8 of 19

Two sets of golf clubs, snorkel gear,
boogie boards, beach chairs, umbrella,
beach towels, coffee

House Rules

Check-in: 3:00 PM **Check-out:** 12:00 PM

No parties/events

No smoking

No pets

Children not allowed
Due to liability concerns kids
must be 10yo and up

Max guests: 6

Cancellation Policy

100% refund if canceled at least 30 days before
arrival date. 50% refund if canceled at least 14 days
before arrival date.

99 Reviews

Wonderful 4.9/5



1 - 6 of 99



Reviews date back to 2009

Exhibit 4

Page 9 of 19

You MUST stay here!!

5/5 Stayed Sep 2019

Jenny U. Medway

We had been in Kauai for a week and totally enjoyed it. This was our first location on the big island. When we walked up to the lanai my daughter got almost teary because our entire vacation wasn't spent right there! We loved everything about the place. We went on a dolphin watch one morning then spent the afternoon on the lanai or the beach. Heaven!

Published Sep 26, 2019

Great spot

5/5 Stayed Sep 2019

scott g. Los Angeles ca

Always a nice place to stay. We are regular visitors and highly recommend.

Published Oct 2, 2019

It was fantastic!

5/5 Stayed Sep 2019

Stephanie L.

This is a beautiful property. We visited in the beginning of September. It is very hot this time of year. There isnt any air conditioning but it was bearable with the fans in the house. We bought 2 extra high powered fans & left them. That is the ALOHA SPIRIT, right?

Exhibit 4

Page 10 of 19

Lol Night time cools down and is totally comfortable while you sleep. Again, keep in mind we were there in the very hottest month! S

Right on the ocean and get ready for an amazing drive down to the house! A lush green paradise overlooking the big blue Pacific Ocean. The beach is black pebbles, clearly not as enjoyable as sand but still really neat! Swimming is great, as is snorkeling but wear shoes down to the beach and take care when traversing the lava rocks down to the beach.

Neighborhood super cool, with really interesting houses and friendly respectful folks.

The lanai is AMAZING and affords a cant miss million dollar view & sunset every night. Plenty of extra water activity accessories are available and literally every kitchen need has been collected over the years, spices & seasonings & cookbooks with Hawaiian recipe's. Even board games! We left you mini beer pong! Lol

This house definitely inspired the Aloha spirit in me & my husband & our friends.

It is a special place & I sincerely hope you enjoy it as much as we did.

Published Sep 14, 2019

Great property and Location

5/5 Stayed Jul 2019

Paul S. Smyrna, Delaware

Exhibit 4

Page 11 of 19

We had a great time here at a Pebbles Beach. Only had two calls to Bill. First was to find out how to turn on LR fan. Readily answered. Second was re ice maker. Disappointed in the basically oh well response. Never checked out or fixed. Finally was annoying dog barking through a couple nights and often day am. You need to remind residents of dog rules especially on the beach.

Paul Smith

Published Aug 5, 2019

Truly paradise

5/5

Stayed Jun 2019

Ranu S.

What a dreamy place! We are a family of four, two adults and two teens. The house is spacious and comfortable, and extremely well appointed. The hosts have thought of everything.

And the beach--wow! The pictures don't do justice to how spectacular it is. Most days we were the only people there; a crowded afternoon meant there were maybe 6 other people. The snorkeling there is the best we found on the island, better even than the places recommended in guide books. We spent most of our time upside down in the water, or lazing on the lanai soaking in the views. We hated to leave. Thank you, Caroline, for sharing your lovely home.

Published Jul 11, 2019

Exhibit 4

Page 12 of 19

Great get away!

5/5 Stayed May 2019

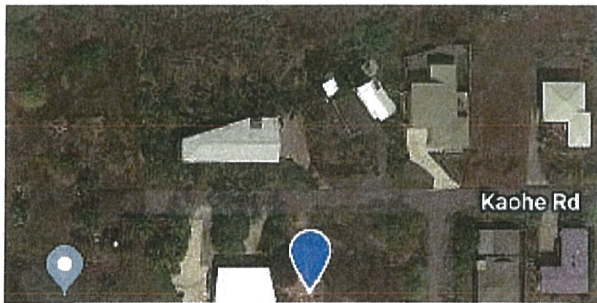
scott g. Los Angeles ca

We stay here twice each year....always a great get away!

Published Jun 18, 2019

< 1 - 6 of 99 >

Map



Google

(<https://maps.google.com/maps?ll=19.313761,-155.887131&z=18&t=h&hl=en-US&data=!3m1!1e3!1m1!1s1020100-11113&auth=...>)

📍 Opihihale, Captain Cook, HI, USA

Walk the historic Kings Trail - steps from the house.

Exhibit 4

Page 13 of 19

Rates & Availability

Save
Share

Perfect in Every Way!

5/5

Stayed Feb 2010

Julie C. Eureka, CA

\$195 avg/night

99 Reviews

Wonderful 4.9/5

Enter dates for accurate pricing

Check In	Check Out
Guests	

Request to Book

Bill and Carol

Ask owner a question

For booking assistance, call Vrbo at 888-640-7927

Property # 317822

I can't say enough about how wonderful our stay was at this beautiful home! We spent every evening watching whales from the spacious breezy covered (and carpeted!) lanai - not to mention lovely sunsets. Great snorkeling, when it's calm, just steps from the door, and easy access to our favorite South Kona snorkel and dive spots. We bought fresh local fish and cooked many delicious meals in the very well-appointed kitchen. Comfortable beds, ceiling fans in every room, excellent walk-in shower in the master bedroom that was perfect for my elderly father. Filtered water, beach towels, chairs & umbrellas, coolers, and even a handy tub right next to the hose for rinsing salty dive gear - everything is so thoughtfully provided! We've rented vacation homes around the word (including many on the Big Island) and this is easily and by far our favorite. We can't wait to come back!

Published Mar 9, 2011

Million Dollar View!

5/5

Stayed Dec 2009

Mikie Honaunau, HI

My husband and I stayed at Paradise Ocean Hale before it was listed on VRBO. The setting is spectacular with the most amazing view of the ocean. We loved sitting on the lanai every night watching one gorgeous

Exhibit 4

Page 14 of 19

sunset after another. We were there during the winter and could whale watch from the lanai. When the surf was quiet, you could actually hear the whales! If we wanted to go for a snorkel all we had to was grab our gear and walk just a little ways and jump in. Everything was provided and so convenient!

The house has everything you need. The kitchen is large and fully equipped. My husband didn't want to leave the 60 inch TV with surround sound!

This is a very special place!

Published Sep 3, 2010

\$195 avg/night

Save Share

99 Reviews

Wonderful 4.9/5

Enter dates for accurate pricing

Check In	Check Out
Guests	

Request to Book

Bill and Carol

Ask owner a question

KONA PARADISE, CAPT COOK

5/5

Stayed Sep 2009

LYNN KEYSTONE HEIGHTS FL

I CANNOT SAY ENOUGH ABOUT THIS RENTAL.THE VIEW WAS ONE OF THE BEST,RIGHT ON THE OCEAN SO YOU CAN HEAR THE WAVES ALL DAY AND NIGHT

MY NEICE AND I STAYED A FEW WEEKS AND DIDN'T WANT TO LEAVE

THE HOME IS SO COMFORTABLE ,THE LANI IS A BIG PLUS,THE GROUNDS ARE WELL KEPT WITH WONDFERFULL TROPICAL TREES AND FLOWERS.THE PHOTOS DO NOT SAY ENOUGH

Published Sep 15, 2010

For booking assistance, call Vrbo at 888-640-7927

Property # 317822

Exhibit 4

Page 15 of 19

October 2019 November 2019

S	M	T	W	T	F	SS	M	T	W	T	F	S	
	1	2	3	4	5						1	2	
6	7	8	9	10	11	12	4	5	6	7	8	9	
13	14	15	16	17	18	19	0	11	12	13	14	15	16
20	21	22	23	24	25	26	7	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

December 2019 January 2020

S	M	T	W	T	F	SS	M	T	W	T	F	S	
1	2	3	4	5	6	7			1	2	3	4	
8	9	10	11	12	13	14	5	6	7	8	9	10	11
15	16	17	18	19	20	21	2	13	14	15	16	17	18
22	23	24	25	26	27	28	9	20	21	22	23	24	25
29	30	31					26	27	28	29	30	31	

Taxes and fees are additional

Additional information about rental rates

Cleaning Fee	\$200
Additional Guest Fee	\$25
Property Damage Insurance	\$59

Not appropriate for kids under 10 yrs. Kids 10 yrs/+ will be charged same rate as adults/ additional cleaning fee of \$25 for parties of 5-6 guests. A revised quote will be sent reflecting this. Discounts may apply for stays longer than 10/nts -except XMAS week-email us for info.

Exhibit 4

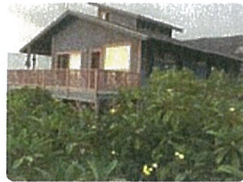
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Damage Insurance does not cover guests residing outside of US - a refundable security deposit will be charged instead.

[ch/keywords:opihihale?noDates=true&unitId=317822&Include=false](#) **You might like these similar properties**



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(61)
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unitId=1546583)



2BR · Sleeps 6
\$221 avg/night
(126)
(/313588?
unitId=313588)



2BR · Sleeps 4
\$143 avg/night
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Exhibit 4

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[Discovery Hub \(https://www.vrbo.com/discoveryhub\)](https://www.vrbo.com/discoveryhub).

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Company

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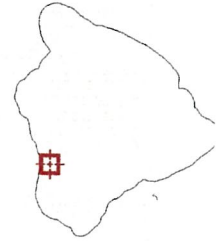
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Exhibit 4

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Overview



Legend

□ Parcels

Parcel ID	870190360000	Situs/Physical Address	87-288 KAOHE ROAD	Market Land Value	\$198,000	Last 2 Sales Date		Price		Reason		Qual	
Acreage	0.291	Mailing Address	KILLEEN,TRST	Dedicated Use Value	\$0	8/16/2007	0			n/a		U	
Class	HOMEOWNER		ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE	Land Exemption	\$0	1/9/2007	0			RELATED INDIVIDUALS OR CORPORATIONS		U	
			2310 SNEAD DR LAKE HAVASU CITY AZ 86406 7633	Net Taxable Land Value	\$158,000								
				Assessed Building Value	\$273,000								
				Building Exemption									
				Net Taxable Building Value	\$180,000								
				Building Exemption									
				Net Taxable Building Value	\$93,000								
				Total Taxable Value	\$522,900								

Exhibit 5

Page 1 of 4

Brief Tax Description: LOT 325-A 12,675 SF DES POR MAHELE AW 25 RP 7739
(Note: Not to be used on legal documents)

*Hawaii County makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All data is subject to change before the next certified taxroll. The 'parcels' layer is intended to be used for



Parcel Information

Parcel Number 870190360000
 Location Address 87-288 KAOHE ROAD
 Project Name Kona Paradise
 Property Class HOMEOWNER
 Neighborhood Code 8742-6
 Legal Information LOT 325-A 12,675 SF DES POR MAHELE AW 25 RP 7739
 Land Area (acres) 0.2910
 Land Area (approximate sq ft) 12,675

[View Map](#)

[Plat \(TMK\) Maps](#)

Owner Information

Owner Names
 KILLEEN,TRST Fee Owner

Mailing Address
 KILLEEN,TRST
 ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE
 2310 SNEAD DR
 LAKE HAVASU CITY AZ 86406 7633

Assessment Information

[Show Historical Assessments](#)

Year	Property Class	Market Land Value	Dedicated Use Value	Assessed Land Value	Market Building Value	Assessed Building Value	Total Market Value	Total Assessed Value	Total Exemption Value	Total Taxable Value
2019	HOMEOWNER	\$198,000	\$0	\$158,000	\$324,900	\$273,000	\$522,900	\$431,000	\$180,000	\$251,000

Land Information

Property Class	Square Footage	Acreage	Agricultural Use Indicator
HOMEOWNER	12,675	0.291	

Residential Improvement Information

Building Number	1	Bedrooms	3
Year Built	1992	Framing	Frame
Eff Year Built	1992	Exterior Wall	DOUBLE WALL
Square Feet	1,560	Roof Material	METAL
Total Room Count	5	Heating/AC	NONE
Full Baths	2	Fireplace	0
Half Baths	0	Grade	3

Sketches

Exhibit 5

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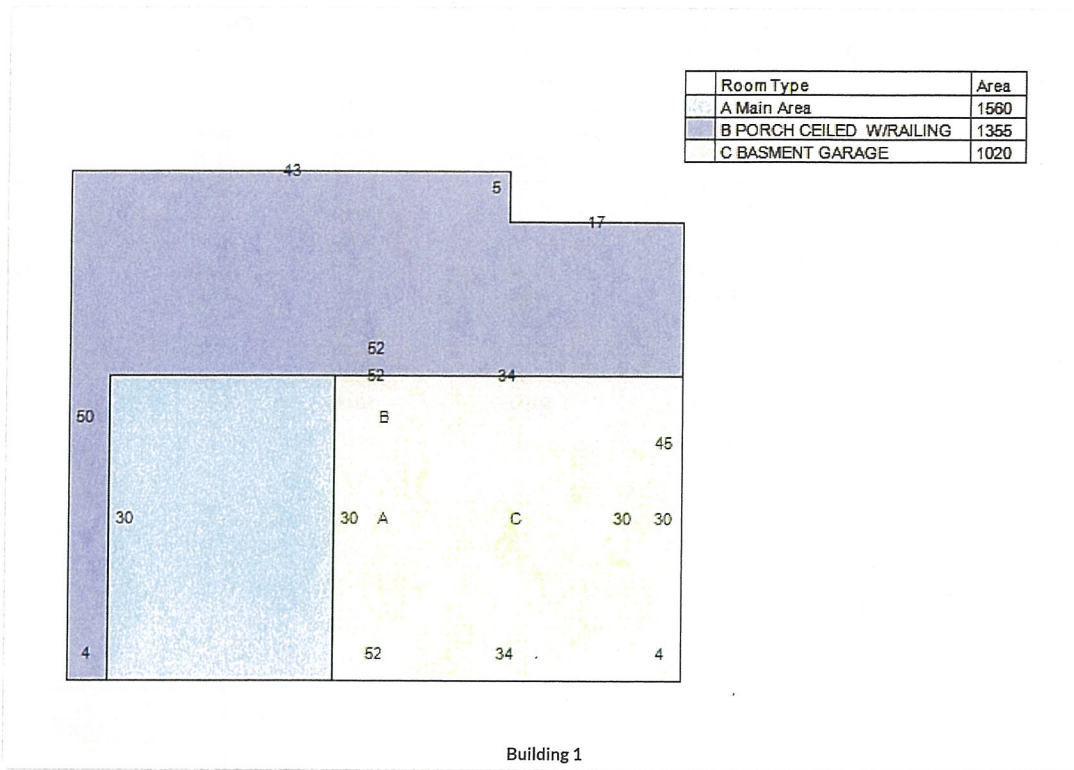


Exhibit 5
Page 3 of 4

Permit Information

Date	Permit Number	Reason	Permit Amount
5/23/1990	905760		\$35,000

Bldg Division Permit and Inspections Information

Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status	Permit Status
4/2/1992	Plumbing	M925260*	New	NEW DWELLING. 01-05-1992: LETTER TO CHANGE PERMIT TO NEW OWNERS, CAROL AND GARY KILLEEN.	\$3,000	11/1/1995	COMPLETED	COMPLETED
3/25/1992	Electrical	E925380*	New	NEW DWELLING. 01-05-1992: LETTER TO CHANGE PERMIT TO NEW OWNERS, CAROL AND GARY KILLEEN.	\$3,500	11/8/1995	COMPLETED	COMPLETED
5/23/1990	Building	905760*	New	NEW DWELLING	\$35,000	11/27/1995	COMPLETED	COMPLETED

As a courtesy to the public, we provide building permit data as supplied by the Department of Public Works. As such, no warranties, expressed or implied, are provided for the data herein, its use or its interpretation, and accuracy.

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date Recorded	Land Court Document Number	Cert #	Book/Page	Conveyance Tax	Document Type
08/16/2007	\$0	07-148344	FEE CONVEYANCE	Warranty Deed	08/20/2007				0	Warranty Deed
01/09/2007	\$0		OTHER	Mapping Change	01/09/2007					Mapping Change
05/31/2005	\$0	05-111456	FEE CONVEYANCE	Warranty Deed	06/06/2005				0	Warranty Deed
05/05/1991	\$0	9200181665	FEE CONVEYANCE		11/09/1992				0.00	
06/25/1990	\$150,000	9000098412	FEE CONVEYANCE		06/29/1990				75.00	
06/21/1989	\$60,000	8900093692	FEE CONVEYANCE	Warranty Deed	06/27/1989			23337/107	30.00	Warranty Deed

Historical Tax Information

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
2019	\$1,543.65	(\$1,543.65)	\$0.00	\$0.00	\$0.00	\$0.00
2018	\$1,466.16	(\$1,466.16)	\$0.00	\$0.00	\$0.00	\$0.00
2017	\$1,391.13	(\$1,391.13)	\$0.00	\$0.00	\$0.00	\$0.00
2016	\$1,325.33	(\$1,325.33)	\$0.00	\$0.00	\$0.00	\$0.00
2015	\$1,268.75	(\$1,268.75)	\$0.00	\$0.00	\$0.00	\$0.00
2014	\$1,267.52	(\$1,267.52)	\$0.00	\$0.00	\$0.00	\$0.00

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
2013	\$1,217.70	(\$1,217.70)	\$0.00	\$0.00	\$0.00	\$0.00
2012	\$1,080.03	(\$1,080.03)	\$0.00	\$0.00	\$0.00	\$0.00
2011	\$1,037.30	(\$1,037.30)	\$0.00	\$0.00	\$0.00	\$0.00
2010	\$991.23	(\$991.23)	\$0.00	\$0.00	\$0.00	\$0.00
2009	\$946.28	(\$946.28)	\$0.00	\$0.00	\$0.00	\$0.00
2008	\$902.44	(\$902.44)	\$0.00	\$0.00	\$0.00	\$0.00
2007	\$860.25	(\$860.25)	\$0.00	\$0.00	\$0.00	\$0.00
2006	\$930.19	(\$930.19)	\$0.00	\$0.00	\$0.00	\$0.00
2005	\$893.56	(\$893.56)	\$0.00	\$0.00	\$0.00	\$0.00
2004	\$1,186.60	(\$1,186.60)	\$0.00	\$0.00	\$0.00	\$0.00
2003	\$1,141.09	(\$1,141.09)	\$0.00	\$0.00	\$0.00	\$0.00
2002	\$1,098.91	(\$1,098.91)	\$0.00	\$0.00	\$0.00	\$0.00
2001	\$869.98	(\$869.98)	\$0.00	\$0.00	\$0.00	\$0.00
2000	\$864.64	(\$864.64)	\$0.00	\$0.00	\$0.00	\$0.00

Recent Sales in Area

From:

10/23/2016

To:

10/23/2019

Sales by Neighborhood

Sales by Distance

1500

Feet ▼

Exhibit 5

Page 4 of 4

No data available for the following modules: Condominium/Apartment Unit Information, Agricultural Assessment Information, Commercial Improvement Information, Other Building and Yard Improvements, Current Tax Bill Information.

The County of Hawaii Real Property Tax Office makes every effort to produce the most accurate information possible. No warranties, expressed or implied are provided for the data herein, its use or interpretation. The assessment information is from the last certified tax roll. All other data is subject to change.

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
P. O. BOX 621
HONOLULU, HAWAII 96809

WILLIAM W. PATY, CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES

KEITH W. AHUE
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AQUACULTURE DEVELOPMENT
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FORESTRY AND WILDLIFE
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

FILE NO.: HA-9/25/89-2321
180-Day Exp. Date: 3/24/90
DOCUMENT NO.: 7484E

March 9, 1990

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

Gentlemen:

REGARDING: Conservation District Use Application
for a Non-conforming Single Family
Residence, South Kona, Hawaii

APPLICANT: David J. and Carol E. Kolos
P.O. Box 772
Honaunau, Hawaii 96726

LANDOWNER: private property - David and Carol Kolos

LOCATION/
TMK: Kona Paradise Subdivision
South Kona, Hawaii
8-7-19: 36

AREA OF PARCEL 8,750 sq. ft.
USE: approximately 2,880 sq. ft.

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The subject parcel is located in Kona Paradise Subdivision, South Kona, Hawaii (Exhibit A). The proposed project is situated on private property, identified as TMK 8-7-10: parcel 36 (Exhibit B). The property is within the State Land Use Conservation District, Limited Subzone (Exhibits C and D).

According to material submitted by the applicant, Kona Paradise Subdivision was established on January 21, 1959. The property abuts Kaohē Road. There is electricity servicing the area, but no water or sewer systems.

Additionally, the applicants have submitted information that the subject parcel conforms to the non-conforming provisions of Section 13-21-1 of the department's Administrative Rules, in that the property has been held for residential purposes since January 1959, and all applicable land taxes have been paid to date.

Exhibit 6

Page 1 of 10

ITEM- H-3

PROPOSED USE:

According to the applicant, the proposed non-conforming single family residence will be used as their primary residence.

As designed, the project would include the construction of a two-story single-family house, with a carport and water tank catchment system on the lower level. The dwelling would include three bedrooms, two bathrooms, a living room, kitchen and a lanai. Property development approval is also requested for a rock-wall (3 ft. high - 2 ft. wide) around the property boundary, a concrete access driveway, a 4 foot by 6 foot fishpond, a grass playhut, a lava rock barbecue garden area and an individual wastewater treatment system (Exhibit E).

Preliminary design concepts of the proposed residence, including elevation schematics, have been submitted by the applicant (Exhibits F and G). The proposed water tank will accommodate approximately 9,000 gallons, constructed of corrugated steel panels with a vinyl liner.

Preliminary square footage specifics, include:

<u>Item</u>	<u>Square Footage</u>
Main house	1,232
Lanai	1,168
Carport (understructure)	<u>480</u>
Total	2,880

After-the-fact components:

The applicants lawyer (and a real estate agent) acknowledge that property development began without prior Board approval. Specifically, the applicant's (1) cleared vegetation from the parcel, (2) dug a hole for a proposed cesspool, and initiated reconstruction of the perimeter rock wall. They also planted trees on the property (Exhibit H).

According to submitted letters, the applicant's were not aware that the subject parcel was within the State Land Use Conservation District, and that Board approval was required prior to property development (Exhibit I).

SUMMARY OF COMMENTS:

This application was referred to the following agencies for review and comment: the State of Hawaii, Department of Health, the Office of Hawaiian Affairs, the Office of State Planning, the Department of Land and Natural Resources, Forestry and Wildlife, State Parks, the Historic Preservation Program, Land Management, Conservation and Resources Enforcement, Water and Land Development, and the Natural Area Reserves Program, the County of Hawaii, Department of Planning, Department of Parks and Recreation and the Department of Water Supply. Comments received include:

Exhibit 6

Page 2 of 10

State of Hawaii:

Department of Health

(Memorandum of February 12, 1990)

We have reviewed a wastewater plan for the subject project submitted by Mr. John Kolos. The plan which consists of a septic tank and seepage pit is not acceptable to the Department. We have previously recommended to the Department of Land and Natural Resources that the wastewater system should consist of, at a minimum, a septic tank and soil absorption system.

For your information, the Department is in the process of trying to implement Critical Wastewater Disposal Areas throughout the State. In such areas, the use of cesspools will be prohibited or restricted for the purpose of preserving and protecting our underground and coastal waster resources. The subject property is in such a proposed critical wastewater area. Therefore, our recommendation was to utilize the above-mentioned wastewater system in the hopes that the system would approach secondary treatment.

We have been informed that the seepage pit or cesspool shown on the site plan has been installed. Therefore, as an alternative to the septic tank/leach field system being recommended, we would like to offer the following alternatives.

1. Instead of a septic tank, an aerobic unit with disinfection can be utilized with the seepage pit. The aerobic unit will provide secondary treatment prior to effluent discharge.
2. In addition to a septic tank, a simple upflow filter or sand filter can be installed prior to the seepage pit. This will provide for further treatment of the effluent prior to discharge.
3. A soil absorption trench can still be used with the seepage pit being used as an overflow device. The soil absorption trench should be constructed with a minimum of 18 to 24 inches of fine gravel/sand at the bottom of the trench.

Again, our recommendations are being made as the area is in a proposed Critical Wastewater Disposal Area and we are attempting to protect our water resources.

(Memorandum of January 3, 1990)

We have reviewed the subject application and recommend that a septic tank with a leachfield be used for wastewater disposal. The subject lot is located very close to the shoreline and within the proposed critical area for wastewater disposal, therefore no cesspools should be allowed.

Exhibit 6

Page 3 of 10

Department of Land and Natural Resources

Divisions of Aquatic Resources

The proposed single-family dwelling site is separated from the shoreline by one makai parcel and the private Kaohae Beach Park. Access to the property and "Ili-Ili Beach" is by private road. Traditional and historical access to and along the shoreline for fishermen and other recreational users should be maintained, particularly if the general public is denied access through the private beach park.

Construction should not significantly affect aquatic resource values adversely, nor impact coastal waters provided precautions are taken to prevent debris, eroded material, petroleum products, landscaping chemicals, and other potential contaminants from reaching the ocean.

The Division of Forestry and Wildlife has no comments/concerns regarding this proposed residence.

Historic Preservation Program

The project will have "no effect" on significant historic sites.

The Division of Land Management has no objections.

Hawaii Land Agent:

(November 1, 1989)

The subject property has been under investigation for a violation within the Conservation District. A DOCARE report was transmitted to your office. We recommend an appropriate fine be levied against the applicants.

(November 14, 1989)

Please be apprised that the applicants are the subject of a DOCARE investigation on alleged violations of Chapter 183, Hawaii Revised Statutes, and Title 13, Chapter 2, Administrative Rules.

Division of Conservation and Resources Enforcement

A field inspection was conducted on November 15, 1989.

The Division of Water and Land Development has no objections to the proposed project.

The proposed land use will have no effect on the existing Natural Area Reserves Program.

County of Hawaii

Department of Planning

We have received and reviewed the subject application for construction of a single family dwelling. This office had previously reviewed the same proposal and determined that the proposed dwelling is exempt from further Special Management Area review.

Please be advised that the plot plan first submitted showed an insufficient rear yard setback to the dwelling. The current plot plan does indicate that the required 15 feet between the wall line and the rear lot boundary is present. Consequently, we have no further concerns with the proposal.

Department of Parks and Recreation

We have reviewed the subject request and have no adverse comments to offer.

Department of Water Supply

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

ANALYSIS:

Following review and acceptance of the application for processing, the applicant, by letter dated October 30, 1989, was notified that:

1. The proposed use is a non-conforming use within the Limited subzone of the Conservation District according to Administrative Rules, Title 13, Chapter 2, as amended;
2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended, will be required.
3. In conformance with Title 11, Chapter 200, of the Administrative Rules, a negative declaration was determined for the proposed action.

The County of Hawaii has acknowledge that the proposed single-family residence is exempt from provisions of the Special Management Area.

The objective of the Limited subzone is to limit uses where natural conditions suggest constraints on human behavior.

Section 13-2-21 (b) (1) relating to standards requires all applications be reviewed in such a manner that the objective of the subzone is given primary consideration.

Violation

Staff became aware of potential illegal property development activities on the subject parcel on July 12, 1989, through the Hawaii Office of the Division of Conservation and Resources Enforcement. However, it became a matter of the investigation to affirm that the subject property was indeed within the State Conservation District, rather than the adjoining State Agricultural District. Hence, staff requested an official district boundary interpretation through the State Land Use Commission on August 2, 1989. The result of this inquiry was notification on August 9, 1989, that the property was entirely within the State Conservation District (Exhibit C).

Exhibit 6

Page 5 of 10

Subsequently, the applicant was instructed to submit a completed CDUA application, including a review and affirmation of the property elements initiated prior to Board approval. The applicants were also advised to cease all property development activities, pending Board review and approval.

Within their application, the applicants have acknowledged three (3) land use elements initiated without prior Board approval, and thus a violation of Chapter 183-41 HRS and Title 13, Chapter 2 of the department's Administrative Rules. These include:

- a. One (1) violation for clearing the property of vegetation.
- b. One (1) violation for the preliminary excavation of a cesspool, and
- c. One (1) violation for the preliminary building of a rock wall.

Thus, staff finds that the applicants have initiated property development activities resulting in a total of three (3) land use violations.

Staff has no comments to offer relative to the applicant's assertion that as nearby arrived residents from the mainland that they were not informed of pertinent rules regarding property development in the Conservation District.

Application

Staff has researched prior Board actions related to non-conforming single-family residences within the Kona Paradise Subdivision and found that the Board has affirmed the non-conforming status of the subject properties. Specifically, Conservation District Use Application, HA-3/28/81-1356 regarding TMKs 8-7-19: 38, 39 and 40 affirms that non-conforming provisions of Title 13, Chapter 2 of the Administrative Rules have been met. These include:

1. The lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district; or
2. Any parcel of land not more than ten acres in area which, as of January 31, 1957, was subject to real property taxes and upon which these taxes were being paid, and which was held and intended for residential or farming use, whether actually put to such use or not; provided that the use whether or not established, shall be limited to either:
 - (A) One residential dwelling; or
 - (B) A farm with no more than one residential dwelling.

The applicant has submitted documentation that real property taxes have been duly paid. Staff notes that the parcel is under ten

Exhibit 6

Page 6 of 10

acres and that the subdivision was established in 1959. Thus, all conditions related to non-conforming land use provisions have been met.

Staff has assessed submitted agency comments and finds that the applicant has worked with the State Department of Health to resolve the issue of proper wastewater disposal.

Staff recommends that standard property development conditions be implemented to ensure that precautions are instituted to prevent potential coastal water adverse impacts.

As such, staff recommends as follows.

RECOMMENDATION:

A. Violation

That the Board of Land and Natural Resources impose a fine of \$500.00 per violation, for three (3) violations, upon the applicant for having violated the provisions of Title 13, Chapter 2, Administrative Rules of the department, subject to the following conditions:

1. That the applicant shall pay a total violation fine of \$1,500.00 (3 violations at \$500.00) within sixty (60) days to the Department of Land and Natural Resources, and;
2. That if there is failure on the part of the applicant to comply with the above conditions within sixty (60) days after the Board's decision, the matter shall be turned over to the Department of the Attorney General for disposition to include all administrative costs.

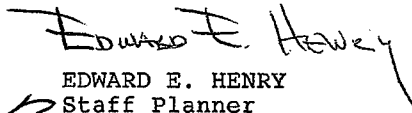
B. Application

That upon compliance with Part A, the Board approve the non-conforming single family residential use of TMK 8-7-19: 36, at Kona Paradise Subdivision, subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended.
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. The single family dwelling shall not be used for rental or any other commercial purposes;

5. The applicant shall provide documentation (i.e. book and page number) that this approval has been placed in recordable form as a part of the deed instrument, prior to submission for approval of subsequent construction plans;
6. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications, to the Chairperson or his authorized representative for approval for consistency with the conditions of this permit and the declarations set forth in the permit application; three (3) approved copies are to be returned to the applicant. Plan approval by the Chairperson does not infer approval required of other agencies. Compliance with Condition 1 remains the responsibility of the applicant;
7. Any work or construction to be done on the land shall be initiated within one (1) year of the approval of such use, and all work and construction must be completed within three (3) years of the approval of such use.
8. That the applicant shall implement appropriate measures to control potential erosion and sedimentation during and after construction;
9. That all exposed and disturbed ground shall be revegetated within thirty (30) days unless otherwise provided for in a plan on file with and approved by the Department;
10. That appropriate measures shall be exercised to prevent construction materials, debris, petroleum derivatives from entering nearby ocean areas or polluting the surrounding area;
11. That upon the completion of construction, all debris shall be removed;
12. That failure to comply with any of these conditions shall render this Conservation District Land Use application null and void; and
13. Other terms and conditions as prescribed by the Chairperson.

Respectfully submitted,


EDWARD E. HENRY
Staff Planner

Attachments

Approved for submittal:



WILLIAM W. PATY

Exhibit 6

Page 8 of 10

Septic Tank, see attached

SITE PLAN

11-2018
T.M.K.: 8-17-36

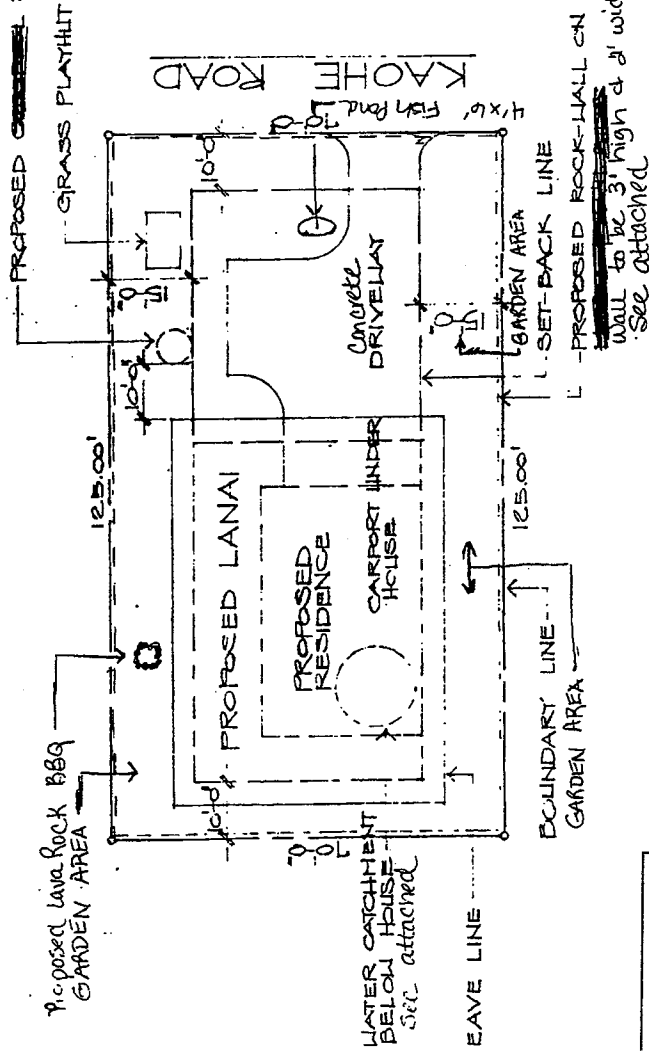
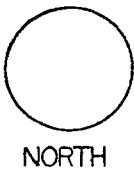


Exhibit 6

Page 9 of 10

EXHIBIT F



CDUA NO. HA-2321

APPLICANT DAVID J. & CAROL E. KOLOS

AGENT _____

TMK 8-7-19: 36

SUBZONE PROTECTIVE

RESOURCE

LIMITED

GENERAL

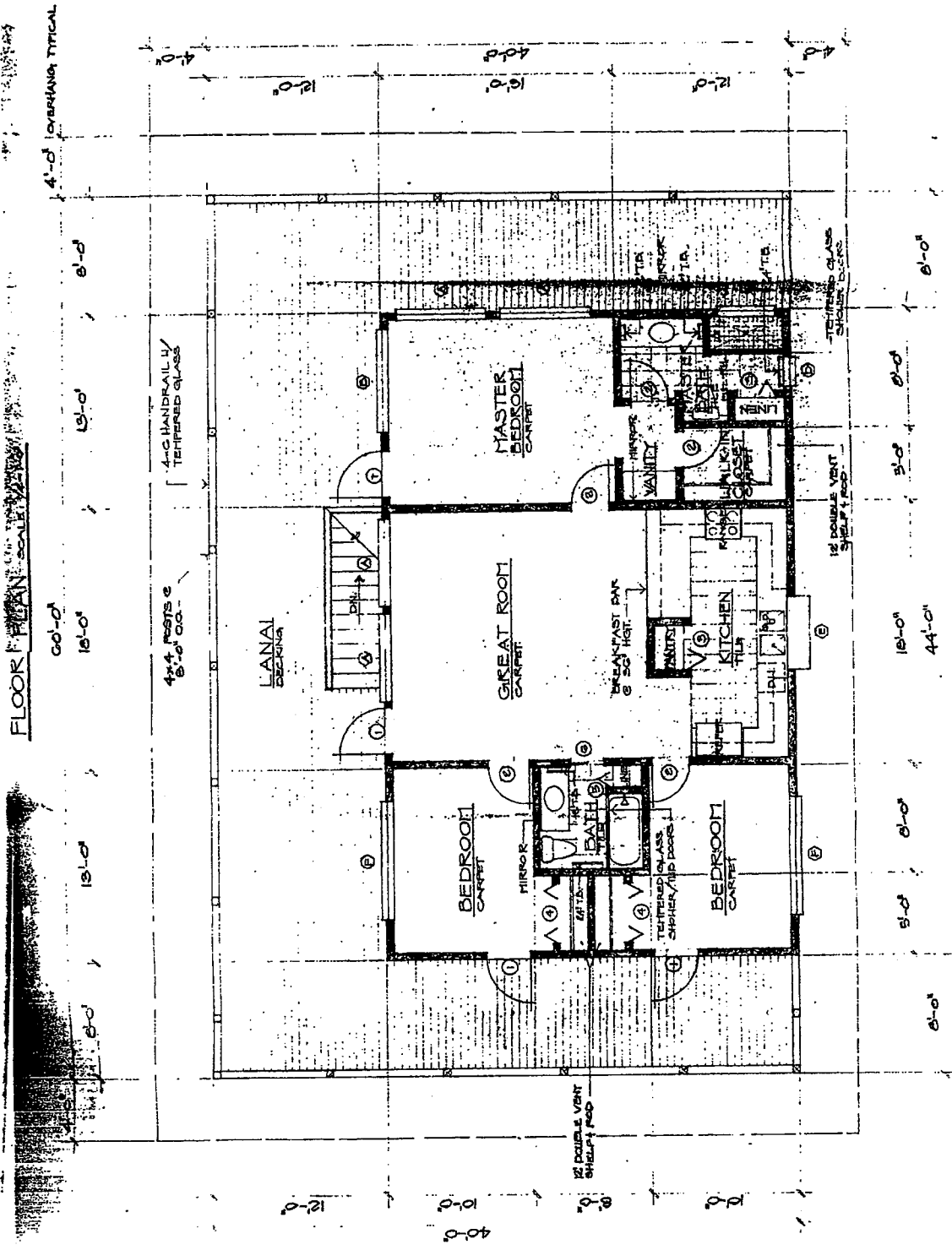
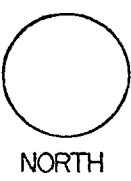


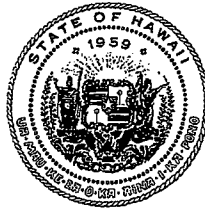
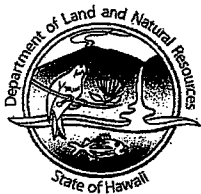
EXHIBIT F



CDUA NO. HA-2321
 APPLICANT DAVID J. & CAROL E. KOLCS
 AGENT _____
 TMK 8-7-19: 36

- SUBZONE
- PROTECTIVE
 - RESOURCE
 - LIMITED
 - GENERAL

DAVID Y. IGE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
ROBERT K. MASUDA
FIRST DEPUTY
M. KALEO MANUEL
DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAOHO'OLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

REF: OCCL: TF

ENF: HA 20-18

OCT 15 2019

NOTICE OF ALLEGED VIOLATION & ORDER

CERTIFIED MAIL/RETURN RECEIPT
7019 0700 0001 4006 6867

Mr. Gary Killeen & Mrs. Caroline Killeen
2310 Snead Dr
Lake Havasu City, AZ 86406-7633

SUBJECT: Alleged Prohibited Use in the Conservation District Located at 87-288 Kaohe Rd,
Kona Paradise Kahoe 4th, South Kona, Hawai'i
Tax Map Key (TMK): (3) 8-7-019:036

Dear Mr. & Mrs. Killeen:

It has come to our attention that you have been advertising the subject property and accompanying single-family residence (SFR) as a transient rental on the website vrbo.com ("vrbo" stands for vacation rentals by owner) [Exhibit 1]. A search of Tax Licenses on the State of Hawai'i's Department of Taxation's website shows that you were issued General Excise Tax License GE-103-281-0496-01 for Account ID W-40926442-01 for 87-288 Kaohe Road Captain Cook Hawai'i 96704-8738 with Business Start Date July 1, 1994 and ended on September 28, 2019 [Exhibit 2]. Based on the vrbo.com advertisement and your General Excise Tax License, it appears that you have been using the subject property and SFR as a transient rental.

The Office of Conservation and Coastal Lands (OCCL) notes that the subject property is located within the Limited Subzone of the State Land Use Conservation District [Exhibit 3]. The Nonconforming SFR was permitted under Conservation District Use Application (CDUA) HA-2321 on March 9th, 1990 after the permittee had paid violation fines \$1,000 for 3 unauthorized land uses in relation to development of the subject parcel without a Conservation District Use Permit [Exhibit 4]. Pursuant to Hawai'i Administrative Rules (HAR) §13-5-2, a "Transient rental" is defined as "the use of a single family residence or structure for less than one hundred eighty consecutive days in exchange for compensation, including but not limited to monetary payment, service, or labor of employees, and pursuant to HAR §13-5-42 (5), transient rentals are prohibited within the Conservation District. Furthermore, Condition #4 of CDUA HA-2321 states that "The single-family dwelling shall not be used for rental or any other commercial purposes" and

Exhibit 7

Condition #12 of CDUA HA-2321 states *“That failure to comply with any of these conditions shall render this Conservation District Use application null and void”*.

NOTICE IS HEREBY GIVEN that you may be in violation of Hawai‘i Administrative Rules (HAR) Title 13, Chapter 5, entitled Conservation District. HAR §13-5 contains the rules and regulations as well as the identified land uses within the State Land Use Conservation District, and was enacted pursuant to Hawai‘i Revised Statutes (HRS), Chapter 183C.

The Department of Land and Natural Resources (DLNR) has determined that:

1. The location of the alleged transient rental and unauthorized land use is at 87-288 Kaohe Road upon TMK: (3) 8-7-019:036 and lies within the Limited Subzone of the Conservation District;
2. Conservation District Use Application HA-2321 for a nonconforming single-family residence was approved by the Board of Land Natural Resources on March 9th, 1990 subject to 13 conditions;
3. Condition #4 of CDUA HA-2321 explicitly states that *“the single-family dwelling shall not be used for rental or any other commercial purposes”*;
4. Condition #12 of CDUA HA-2321 explicitly states *“that failure to comply with any of these conditions shall render this Conservation District Use application null and void”*;
5. Website vrbo.com have identified the residence as “Opihihale” and “Paradise Ocean Hale” located at 87-288 Kaohe Road as a vacation rental;
6. Vacation Rentals by Owner’s website (vrbo.com) shows the “Owner’s registration ID Number: W36306005-01” and Property #317822 for the subject parcel;
7. Website vrbo.com indicates that the average rate per night is within a range of \$195-\$250 with a minimum stay of 3-7 nights and 99 reviews of “Opihihale” and “Paradise Ocean Hale” that date back to September of 2009;
8. General Excise Tax License GE-103-281-0496-01 for Account ID W-40926442-01 in the name of Gary and Carol Killeen at 87-288 Kaohe Road indicate it as a place of Business with start date July 1, 1994 and ended on September 28, 2019;
9. This commercial use within the Conservation District was not authorized by the Board of Land and Natural Resources pursuant to HRS §183C or HAR §13-5; AND
10. The use of the subject property and single-family residence as a transient rental is in direct violation of CDUA HA-2321 as well as HAR §13-5.

We recommend that you cease any further transient rental activities on the subject parcel immediately. Pursuant to HRS §183C-7 and HAR §13-5-6, the Board of Land and Natural Resources may subject you to fines of up to \$15,000.00 per violation in addition to administrative costs for a prohibited use in the Conservation District. If you continue transient rental activities on the subject parcel after written or verbal notification from the Department, willful violation may

Mr. & Mrs. Killeen

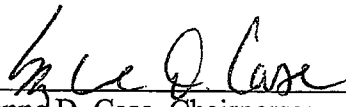
ENF: HA 20-18

incur an additional fine of up to \$15,000.00 per day per violation for each day in which the violation persists.

The OCCL intends to schedule this matter before the Board of Land and Natural Resources for final disposition. You will be notified of the time and place for this Board meeting in the future.

Should you have any questions regarding this matter, contact Trevor Fitzpatrick of our Office of Conservation and Coastal Lands at (808) 587-0373.

Sincerely,



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

CC: *Hawai'i Land Division Office*
DOCARE – Hawai'i
County of Hawai'i, Department of Planning

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OCT 15 2019

Mr. Gary Killeen
Mrs. Caroline Killeen
2310 Sneed Dr.
Lake Havasu City, AZ. 86406-7633

PS Form 3800, April 2015 PSN 7530-02-000-9053 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Gary Killeen
Mrs. Caroline Killeen
2310 Sneed Dr.
Lake Havasu City, AZ. 86406-7633
ENF.: HA-20-18



9590 9402 4622 8323 8066 53

2. Article Number (Transfer from service label)

7019 0700 0001 4006 6867

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature Gary Killeen Agent Addressee

B. Received by (Printed Name) _____ C. Date of Delivery 10/15/19

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below

STATE OF HAWAII
DEPARTMENT OF LAND & NATURAL RESOURCES
COASTAL LANDS

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**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

December 1, 2010

Exhibit 8

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Adoption of the Office of Conservation and Coastal Lands Administrative Sanctions Schedule for the Processing of Minor Conservation District Civil Resource Violations

BACKGROUND:

Civil Natural Resource Violations Act

In 2004, the Legislature established the civil natural resource violations act law under Chapter 199D, Hawaii Revised Statutes (HRS). The purpose was to provide a mechanism to process violations of the Department's regulations for which administrative penalties have been authorized by legislative act or rules adopted that could be applied by all divisions of the Department.

Civil Resource Violations System

On February 27, 2009, the Hawaii Administrative Rules (HAR), Chapter 13-1, Subchapter 7, Civil Resource Violation System (CRVS) became effective. The purpose of the CRVS was to handle the Department's minor civil violation cases and to provide guidance to staff when issuing violation notices under §13-1-54, HAR. Some of the objectives of the Civil Resource Violations System are to provide a fair, fast and cost-effective enforcement measures and to expedite administrative processes that benefits the parties, the public and the department. Matters would be processed as a civil proceeding instead of a criminal proceeding with standard fines, no court date and no criminal record.

On March 13, 2009, the Board of Land and Natural Resources adopted the Administrative Sanctions Schedule for the Department to use as a guideline to resolve civil resource violations administratively under chapter 13-1, subchapter 7, HAR (**Exhibit 1**). The strategy for implementing the CRVS rules is for the Department of Land and Natural Resources agencies to develop an administrative Sanction Schedule that identifies minor civil resource violations that could be processed through the CRVS. The Board has recently approved administrative Sanction Schedules for the Divisions of Aquatic Resources and Boating and Ocean Recreation.

Conservation District Violation Penalties Schedule

Act 217 passed by the 24th State of Hawaii Legislature (effective July 7, 2008) amended Hawaii Revised Statutes (HRS) to increase the maximum penalty for a conservation violation from up to \$2,000.00 per violation to up to \$15,000.00 per violation in addition

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ITEM K-1

to administrative costs, land and habitat restoration cost, damages to public land or natural resources or any combination thereof.

With the substantial increase in fines, the Office of Conservation and Coastal Lands staff (OCCL) developed an internal penalty guideline that seeks a logical and consistent means to assess penalties and guide the settlement of Conservation District enforcement cases. Attached as **Exhibit 2** is the *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources (Guidelines and Assessments)* that is intended to provide Staff with a framework to systematically carry out its enforcement powers in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed.

For major conservation district violations, a recommendation would be reviewed by the Board at a public meeting, testimony from the parties and the public would be allowed to be presented and the Board would make a determination whether a fine is warranted and if so, the monetary amount. Should a violator wish to contest the Board findings, they may do so under Chapter 13-1, HAR and Chapter 91, HRS.

PROPOSED CONSERVATION DISTRICT SANCTION SCHEDULE

Within the developing *Guidelines and Assessments*, OCCL identified different degrees of conservation district land use violations and the recommended actions for resolution of violations. Violations that were ranked as minor and very minor harm to the resources are proposed to be processed administratively through the CRVS at a relatively low level maximum fine. Violations ranked as moderate or major would still be submitted to the Board for consideration.

The OCCL is seeking Board approval for a specific delegation of authority to the Chairperson to process minor to very minor violations as discussed in the attached penalty schedule **Exhibit 3**. This schedule would be applied by OCCL staff to assess minor violations of the Conservation District to be processed under the CRVS.

Unauthorized land uses that could be considered minor violations are:

- Identified land uses that could have been authorized under a Site Plan Approval (SPA) pursuant to 13-5, HAR;
- Non-identified land uses that are similar to an identified land use that would require a SPA;
- Vegetation removal or clearing of less than 2,000-ft² that does not include threatened, endangered, or commercially valuable flora;
- Permit non-compliance; and
- Shoreline vegetation encroachment within beach transit corridors.

In addition to the proposed monetary fines, resolution of minor violations may also include remediation of the impacted site, removal of the land use and/or obtaining an After the Fact Site Plan Approval. Noncompliance of a CRVS notice issued for a

Conservation District use violation may be forward to the Board to be vetted. Recommended penalties above \$2,000.00 shall also be forwarded to the Board.

For minor conservation district violations under the CRVS, notice of the civil resource violation shall be issued and the respondent has 21 days to respond. The respondent may comply with the sanctions assessed; may request mitigation; or may contest the notice. Contested matters shall be processed under Chapter 13-1, HAR and Chapter 91, HRS.

DISCUSSION

About fifteen years ago, the Department had a major backlog of pending cases of alleged violations of the Conservation District. Although most of the alleged violations were minor under §183-41 and §183-43, HRS (Now 183C, HRS) the only way to resolve violations was to go to the Board. In an effort to streamline the process and reduce the backlog of cases, the Board approved a voluntary program whereby the alleged violator could opt out of appearing before the Board and either pay a fine or request a hearing from a hearings officer. This was known as the Hearing Officers Administrative Penalty System (HOAPS).

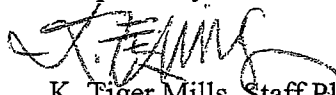
HOAPS had been a pilot program in the Department since 1994. Predecessor Offices of and the OCCL had been very successful in processing minor violations in addition to educating the public and deterring conservation district use violations. Over 300 minor violations have been processed under the HOAPS by the OCCL, therefore staff believes that the OCCL has collective and successful experience in utilizing the HOAPS.

The purpose of the CRVS is to give the Department authority to implement a system similar to the HOAPS as a mandatory department-wide program to efficiently process minor infractions of regulations that govern the use of our natural resources so that greater enforcement resources can be dedicated to more serious violations.

RECOMMENDATION

Staff recommends that the Board of Land and Natural Resources delegate to the Chairperson the administrative processing of minor civil resource violations under the Civil Resource Violation System in accordance with the attached Conservation District Sanction Schedule (**Exhibit 3**).

Respectfully submitted,



K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:



Laura H. Thiejen, Chairperson
Board of Land and Natural Resources

If a person is a respondent in a pending case with the CRVS, the Department may deny any application submitted by such person to the Department for any regulatory permit, license, or a renewal of such, or may issue one with additional conditions upon full payment of the CRVS fines assessed, subject to the review by a hearing officer and the Board or its delegate if the CRVS case is properly contested.

Item 1-5. Delegation of Power to Suspend Permits and Licenses Issued by the Department

- (a) Unless otherwise provided by law or in this Schedule, if a respondent has been issued a CRVS violation notice for any violation related to a particular DLNR permit or license issued to or held by the respondent and fails to comply with the notice within 21 days of the service of the notice, the Chairperson is authorized to suspend the permit or license until the respondent comes into full compliance with all sanctions and requirements imposed through the CRVS.
- (b) A suspension of a permit or license shall mean that the permittee or licensee is not entitled to conduct any activity pursuant to the permit or license until such time as the permit or license is reinstated. Suspension of a permit or license will not affect the expiration of the term of the permit or license.
- (c) The Chairperson may reinstate a suspended permit or license for good cause at any time upon petition of the respondent.
- (d) The Division Administrator shall reinstate a suspended permit or license upon a determination that the respondent has come into full compliance with the law and all violation notices previously issued.

Item 1-6. Delegation of Power to Revoke Permits and Licenses Issued by the Department

- (a) Unless otherwise provided in this Schedule, if a respondent is found to have committed three offenses under this Schedule in the past twelve months for any violation of state law or the terms or conditions of a particular DLNR permit or license issued to or held by the respondent, the Chairperson is authorized to revoke the permit or license for a period not to exceed six months.
- (b) If a permit or license revoked under this Schedule expires before the end of the revocation period, the revocation shall continue to be enforced by denying any application for the renewal or new issuance of a permit or license until the revocation period is over.
- (c) For good cause, the Chairperson may withdraw a revocation of a permit or license.



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
NOTICE OF CIVIL RESOURCE VIOLATION(S)**



Notice No. CRVS - 09 -

Date: _____

TO RESPONDENT: Any administrative proceedings instituted pursuant to this Notice shall not preclude the State from pursuing separate criminal prosecution against you for an offense committed in the same course of conduct.

COMPLAINT: The undersigned official/officer of the Department of Land & Natural Resources (DLNR) states that the named respondent did commit the civil resource violation(s) noted below.

A. RESPONDENT INFORMATION				
Last Name / Company Name		First Name, M.I.		Sex <input type="checkbox"/> M <input type="checkbox"/> F
Street Address		City		State & ZIP (Country)
ID Type	Issued By	ID No.	Juvenile <input type="checkbox"/>	Phone

B. VEHICLE / VESSEL INFORMATION (If applicable)			
<input type="checkbox"/> Vehicle	License Plate No., VIN / Vessel Type, ID, Name		License State
<input type="checkbox"/> Vessel	Year / Make / Model / Color		

C. STATEMENT OF FACTS		
Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	Violation Site: Island / Location / TMK
DESCRIPTION: (Specify any witness, evidence, damage, injury and seizure. Attach additional sheet if needed.)		

D. CITATION(S)			E. FINES ASSESSED	
No.	Authority	Civil Resource Violation	Comply in 21 days	After 21 days
1	§		\$	\$
2	§		\$	\$
3	§		\$	\$
TOTAL ADMINISTRATIVE FINE ASSESSED >>>			\$	\$

F. OTHER SANCTIONS AND REQUIREMENTS
TO RESPONDENT: In addition to any fines assessed in Section E, you must comply with the following sanctions and/or requirements within 21 days of the service of this Notice, unless a different period is provided in this section below:

G. ISSUANCE AND SERVICE		
F.I. & Last Name	Agency	Signature
Service: <input type="checkbox"/> In Person <input type="checkbox"/> Certified Mail		Issued by APO:
<input type="checkbox"/> Unoccupied vehicle/vessel		

H. ACKNOWLEDGEMENT
I acknowledge the receipt of this Notice. This is not an admission of responsibility.
Respondent Signature

>>> CONTINUE TO BACK PAGE >>>

**CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE
GUIDELINES AND ASSESSMENT OF DAMAGES TO PUBLIC LAND OR
NATURAL RESOURCES**

September 2009

Relating to penalties for violations within the Conservation District

Act 217

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1 INTRODUCTION

Hawaii Revised Statutes (HRS) §183C-7 was amended on July 7, 2008 to increase the maximum penalty for a Conservation District violation to up to \$15,000 per violation, in addition to administrative costs, costs associated with land or habitat restoration, and damages to public land or natural resources, or any combination thereof.

This document, *Conservation District Violation Penalties Schedule Guidelines and Assessment of Damages to Public Land and Natural Resources* is intended to provide the Office of Conservation and Coastal Lands (OCCL) with a framework to systematically carry out its enforcement powers, in the determination and adjudication of civil and administrative penalties. These guidelines are to be used for internal staff guidance, and should be periodically reviewed to determine their effectiveness, and whether refinements are needed. These guidelines are consistent with HAR §13-1, Subchapter 7, Civil Resource Violation System (CRVS).

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

The charging and collecting of penalties is an enforcement tool that may be used to ensure future compliance by the responsible party and others similarly situated. The penalty amount(s) shall be enough to ensure immediate compliance with HAR §13-5 and HRS §183C, and cessation of illegal activities. Penalties will be assessed for each action committed by an individual(s) that conducts an unauthorized land use and that impairs or destroys natural resources protected under Chapter §183C, HRS.

The Staff will treat each case individually when assigning conservation district penalties using the following framework, and additional considerations and factors for upward or downward adjustments. The staff of the OCCL (Staff) will use these penalty schedule guidelines to issue violation notices and to make recommendations to the Board of Land

and Natural Resources (Board), Chairperson of the Board of Land and Natural Resources (Chairperson), or Presiding Officer, whom may ultimately adjudicate the Conservation District penalties. These guidelines presume that all cases in which a violation has occurred, the Chairperson, Board, or Presiding Officer may also assess administrative costs, damages to public land or natural resources, and costs associated with land or habitat restoration.

2.1 PENALTY CALCULATION

The penalty range for these actions will be substantially determined based on the type of permit that would have been required if the individual(s) had applied to the Department of Land and Natural Resources (Department) or Board for pre-authorization to conduct the identified use, under Hawaii Administrative Rules (HAR) §13-5-22, 23, 24, 25. Assessing the penalties according to the Conservation District permit type accounts for the level of review or scrutiny the unauthorized use would have received by the Department or Board in order to avoid damage to the natural resource. This graduated permit review framework corresponds to the level of actual or potential “harm to the resource”¹ caused by the violation.

Once the baseline for the penalty range has been established according the required permit, the penalty may be adjusted appropriately upward or downward according to the “harm to resource” caused or potentially caused by the violator’s action and additional considerations and factors (See 2.1.4),² within the assigned penalty range. Where Staff was unable to associate the unauthorized use with a typical land use identified in HAR §13-5, Staff may try to associate the action with the most similar identified land use in HAR §13-5, or according to the “harm to the resource” caused by the violation. Table 1

¹ “Harm to resource” is an actual or potential impact, whether direct or indirect, short or long term, impact on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration (See Appendix B: Definitions) *Adapted from Florida Department of Environmental Protection 2000 Administrative Fines and Damage Liability, Ch. 62B-54.*

² Penalty amounts may be adjusted up or down, based on additional considerations, such as the actual extent of the direct damages, significance of any offsite indirect impacts, environmental record of the violator, responsiveness of violator, etc. (See 2.1.4 Additional Considerations and Factors).

was created to demonstrate the penalty ranges for the type of required permit and “harm to resource” (See 2.1.1 or Appendix A).

The first two of the following sections explain the identified and non-identified land use framework. The next four sections: Tree Removal, Additional Considerations and Factors, Continuing Violations and Permit Non-Compliance, and In-Kind Penalties, provide guidance for the upward or downward adjustment of penalties based on the initial framework discussed in Section 2.1.1, Identified land use penalties.

2.1.1 Identified Land Use Penalties

The violation penalty range associated with each required permit will be assessed in accordance with the following harm to resource indices in this graduated framework.

Table 1. Penalty Guideline Framework

Harm to resource or potential for harm to resource	Identified land use permit beginning with the letter	Penalty Range
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Major Harm to the Resource/ Board Permit (D)

Violations identified with the required permit prefix (D) may incur a penalty in the range of \$10,000 - \$15,000 as a Board permit would have been required to minimize the possibility of causing “major harm to the resource.” Examples of “major harm(s) to the resource” may include actions that cause substantial adverse impact to existing natural resources within the surrounding area, community, ecosystem or region, or damage to the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics. Such actions may include, but are not limited to, unauthorized single-family residences or unauthorized structures, grading or alteration of topographic features, aquaculture, major marine construction or dredging, unauthorized shoreline structures, major projects of any kind, mining and extraction, etc.

Moderate Harm to the Resource/Departmental Permit (C)

Violations identified with the required permit prefix (C) may incur a penalty in the range of \$2,000-\$10,000, as a Departmental permit would have been required, due to the possibility of causing “moderate harm to the resource.” Examples of “moderate harm(s) to the resource” may be adverse impacts that degrade water resources, degrade native ecosystems and habitats, and/or alter the structure or function of a terrestrial, littoral or marine ecosystem. Such actions may include, but are not limited to, unauthorized landscaping causing ground disturbance, unauthorized alteration, renovation or demolition of existing structures or facilities, such as buildings and shoreline structures, maintenance dredging, agriculture, and animal husbandry, etc.

Minor Harm to the Resource/Site Plan Approval (B) Permit

Violations identified with the required permit prefix (B) may incur penalties as a site plan approval would have been required to assure that “minor harm(s) to the resource” are minimized. “Minor harm(s) to the resource” may incur a penalty of \$1,000-\$2,000 and could be actions causing limited to short-term direct impacts including, but not limited to, small-scaled construction, construction of accessory structures, installation of temporary or minor shoreline activities or similar uses.

Very Minor Harm to the Resource/(B) Permit

In instances in which a permit with the B prefix should have been sought but are considered to have only caused “very minor harm(s) to resource” a penalty of up to \$1,000 may be incurred. These “very minor harm(s) to the resource” could be actions in which the impact on the water resource or terrestrial, littoral or marine ecosystem was temporary or insignificant, and was not of a substantial nature either individually or cumulatively.

2.1.2 Non- Identified Land Use Penalties

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR

§13-5 or according to the “harm to the resource” caused by the violation. Refer to the above section, *Identified Land Use Penalties*, for the most similar required permit prefix. To categorize the violation as a “harm to resource” when no similar use is identified in HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of “harm to resource” (See Appendix B: Definitions).

2.1.3 Tree Removal

Violation penalties for the removal of any federal or state listed threatened, endangered, or commercially valuable tree may incur a fine of up to \$15,000 per tree. Removal of any native tree may incur a fine of up to \$1,000 per tree. The removal of any invasive tree shall be considered as removal/clearing of vegetation.

The Board, Department, or Presiding Officer also has the option of considering the removal of more than one tree as a single violation, similar to the removal/clearing of vegetation.³ If violation is considered as one violation, a fine amount of up to \$15,000 may be incurred, utilizing the guidelines for Major, Moderate, Minor, and Very Minor outlined in this schedule. However, the removal of any federally or state listed threatened or endangered tree shall be considered on a one violation per tree basis, with a maximum penalty of up to \$15,000 per tree.

2.1.4 Vegetation Removal/Vegetation Clearing

Past Staff recommendations and Board decisions have treated some cases of tree or removal as one citation of vegetation clearing/vegetation removal, this practice may be continued in violations resulting in minor or very minor harm to the resource. In accordance with the identified land uses within HAR §13-5 the assessment of vegetation removal has been based on a single citation of removal/clearing determined by the square footage of vegetation removed (See Table 3 Vegetation Removal). However, the

³ While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.

Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to \$15,000 per plant.

Table 3. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁴

Note: The clearing of threatened, endangered or commercially valuable plants will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant. According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000.

2.1.5 Additional Considerations and Factors

After Staff applies the Conservation District violation graduated penalty framework to identify the violation penalty range (1, 2, and 3 found above), the Staff may incorporate several considerations into the final assessed conservation district penalty including but not limited to, those factors identified in HAR §13-1-70 Administrative Sanctions Schedule; Factors to be Considered.

2.1.6 Continuing Violations and Permit Non-Compliance

Each day during which a party continues to work or otherwise continues to violate conservation district laws, and after the Department has informed the violator of the offense by verbal or written notification, the party may be penalized up to \$15,000 per day (penalties for every day illegal actions continue) by the Department for each separate offense.

⁴ Provided the harm to the resource and offsite damage were minimal.

Violation of existing approved Conservation District Use Permit (CDUP) conditions will be assessed on a case-by-case basis. Existing permit violations, in which deadlines are not met, may be individually assessed by the Staff as to prior violator conduct, knowledge, and compliance. Violation of permit conditions involving initiation and/or completion of project construction, notification of start and completion dates, failure to file legal documents, etc., may be considered very minor within the existing framework, although it should be noted that such actions may result in permit revocation. Failure to perform proper cultural, archeological, or environmental impact studies or failure to implement proper best management practices as identified in the standard permit conditions may be assessed more severely by Staff, as a moderate or major harm to the resource, due to the potential of greater adverse impacts to natural resources from the violator's failure to comply with the permit conditions, may have occurred.

2.1.7 In-Kind Penalties

Once the penalty amount has been established through the framework above, the Department may determine that the full payment or some portion of the penalty may be paid as an in-kind penalty project.⁵ This would not serve as a way to avoid payment but as a way to reduce the cash amount owed while allowing the Department to consistently enforce its rules. The in-kind penalty project is not designed to credit the violator for restoration or remediation efforts that may be already required, but to offset a portion of the cash penalty assessed. The in-kind penalty should be enough to ensure future compliance with HAR §13-5 and HRS §183C, by the violator and to deter other potential violators from non-compliance.

In-kind penalties will only be considered if (1) the responsible party is a government entity, such as a federal agency, state agency, county agency, city agency, university, or school board, or if (2) the responsible party is a private party proposing an environmental

⁵ In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.

restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

- a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.
- b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL's, mission to protect and conserve Hawaii's Conservation District Lands.
- c. **Capital or Facility improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department's and/or public's use, access, or ecological value of the conservation property.
- d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department's Legacy Lands program or similar program.

2.1.8 Penalty Adjudication

Violation penalties may be adjudicated similarly to the harm to resource indices in the penalty guideline framework.

Comparable Harm to Resource	Identified Land Use Permit and Penalty Range	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

The Board may adjudicate penalties to violations categorized as causing or potentially causing major or moderate harm(s) to the resource. The Board may also adjudicate cases in which repeat violations, repeat violators, or egregious behavior were involved, or moderate to significant actual harm to the resource occurred. The Board may also adjudicate the payment of part or all, of the penalty as part of an In-kind penalty.

Minor and Very Minor Harm to the Resource

The Board may delegate to the Chairperson or a Presiding Officer the power to render a final decision in minor and very minor conservation district violations in order to provide expeditious processing and cost effective resolution. The Chairperson or appointed Presiding Officer may adjudicate penalties to minor and very minor violations characterized by inadvertent or unintentional violations and those violations which caused minor or very minor harm to the resource.

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

Penalties to recoup damages to public lands or natural resources for the purposes of enforcement and remediation may be assessed in addition to Conservation District violation penalties assessed by the aforementioned guidelines. The assessed total value of the initial and interim natural resource(s) damaged or lost (compensatory damages) and the cost of restoration or replacement of the damaged natural resource(s) (primary restoration cost) along with any other appropriate factors, including those named in HAR §13-1-70, may be adjudicated by the Board. The total value may be estimated on a per annum basis, and then may be used to calculate the net present value of the initial and interim loss of natural resource benefits, until the ecosystem structure, function, and/or services are restored.

The cost of a full-scale damage assessment by the Department would be an administrative cost, which could be recouped by the Board from the landowner or offender pursuant §HRS 183C-7. In some cases, the damage to public lands or natural resources may occur on more than one ecosystem or habitat type, (e.g., sandy beaches, seagrass beds, and coral reefs). In such instances, damages for all impacted systems will be handled cumulatively.

Since all the ecosystem services provided by the ecosystem in question cannot be quantified (e.g., the aesthetic value), the values obtained are lower bound estimates, and may be applied to systems similar to the referenced ecosystem using the benefit transfer method. These valuations, to account for the loss of ecosystem services and the cost to restore them, may be applied to Hawaiian ecosystems on public lands: such as Koa and Ohia forests, coral reefs, seagrass beds, wetlands, dune and beach ecosystems, and other important Hawaiian ecosystems.

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,

economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

The Board may allow restoration activities and damage penalties to be conducted and/or applied to a site different from the location of the damaged area where similar physical, biological and /or cultural functions exist. These assessed damages are independent of other, city, county, state and federal regulatory decisions and adjudications. Thus, the monetary remedies provided in HRS §183C-7 are cumulative and in addition to any other remedies allowed by law.

3.1 PRIMARY RESTORATION DAMAGES

The cost of land or habitat restoration or replacement, the cost of site monitoring, and site management may be assessed and charged as primary restoration damages. Restoration efforts will aim to return the damaged ecosystem to a similar ecological structure and function that existed prior to the violation. In cases in which the damaged ecosystem was predominately composed of non-native species, restoration efforts must re-vegetate Conservation District land and public lands with non-invasive species, preferably native and endemic species when possible. The use of native and endemic species may thus result in the restoration of ecological structure and function critical for the survival of endemic Hawaiian species.

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial system such as a Koa (*Acacia koa*) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which

may be valued; (2) purchase, production and out-planting of Koa seedlings; and (3) monitoring, maintenance, and management for the time period of mature growth of ~40-60 years, to achieve mature canopy structure, native under-story, and an acceptable level of lost ecosystem structure, function and/or services restored.

3.2 COMPENSATORY DAMAGE CALCULATION

Compensatory damages to public lands or natural resources may be assessed and charged to the violator to compensate for ecosystem damage and lost initial and interim ecosystem services to the public. All Divisions of the Department may coordinate their resources and efforts along with existing ecosystem valuations and publications (See Appendix C and D for examples) to derive the estimated total value of the natural resource damaged until the ecosystem structure, function, and services are estimated to be recovered.

The total value of the natural resource that is lost or damaged may include the initial and interim values of the ecosystem services provided by the natural resource or habitat, and the social-economic value of the degraded site, until the ecosystem structure, function, and/or services are restored. Assessing the damages to the resource could include: estimating the loss of ecosystem services of carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism, fisheries, society, cultural inspiration and practices⁴, and any other services which may be valued.

These natural resource damages may be assessed using economic valuation techniques to estimate the total value(s) of the natural resource(s) damaged on a per area basis, including: total ecosystem service value, total annual benefits, the market value of the natural resource, or any other factor deemed appropriate. The total value of the present and interim natural resource damage may be estimated by calculating the net present value of these lost benefits, values and services. The net present value may be calculated using a discount rate to scale the present and future costs to the public, of the interim losses of ecosystem services over the restoration time. The restoration time may be

estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

In other instances, a habitat equivalency analysis (HEA) or a resource equivalency analysis (REA) may be used to scale equivalent habitat or wildlife losses for estimating both ecosystem damage penalties and restoration efforts.

3.3 ADJUDICATION OF DAMAGES

The adjudication of primary restoration damages and compensatory damages will be adjudicated by the Board due to the complexity of the assessment process and to assure proper checks and balances, including adequate public notice and a public hearing.

In addition to the damages and penalty violations assessed, the Department is allowed to recoup all administrative costs associated with the alleged violation pursuant to HRS §183C-7(b). All penalties assessed will be in compliance with HRS §183C-7(c) and will not prohibit any person from exercising native Hawaiian gathering rights or traditional cultural practices.

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

<u>Harm to resource or potential for harm to resource</u>	<u>Identified land use permit beginning with the letter</u>	<u>Penalty Range</u>
Major	D (Board)	\$10,000-\$15,000
Moderate	C (Departmental)	\$2,000-\$10,000
Minor	B (Site Plan)	\$1,000-\$2,000
Very Minor	(B) (Site Plan)	Up to \$1,000

Table 2. Vegetation Removal

Action	Comparable Harm to Resource	Penalty Range
Removal of more than 10,000 sq. ft.	Major	\$10,000-\$15,000
Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation	Moderate	\$2,000-\$10,000
Removal of less than 2,000 sq. ft. vegetation	Minor	\$1,000-\$2,000
Clearing of Invasive or noxious vegetation	Very Minor	Up to \$1,000 ⁶

Note: According to Table 2, the clearing of vegetation may incur a penalty of up to \$1/ sq.ft., as clearing 10,000 sq.ft. Staff could assess a penalty of \$10,000. The clearing of threatened, endangered or commercially valuable plants, will be addressed on a case-by-case basis, but depending on the importance of the species may incur a penalty of up to \$15,000 per plant.

APPENDIX B: DEFINITIONS

Definitions:

- (1) “Baseline” means the original level of services provided by the damaged resource.
- (2) “Benefit Transfer Method” estimates economic values by transferring existing benefit estimates from studies already completed for another location or issue.⁷
- (3) “Board” means the Board of Land and Natural Resources.
- (4) “Board Permit” means a permit approved by the Board of Land and Natural Resources.
- (5) “Chairperson” means the chairperson of the board of land and natural resources
- (6) “Civil Resource Violations System” or “CRVS” means a system of administrative law proceedings as authorized under chapter 199D, HRS, and further prescribed in Subchapter 7, 13-1, HAR, for the purpose of processing civil resource violations.
- (7) “Compensatory Damages” means damages for compensation for the interim loss of ecosystem services to the public prior to full recovery.
- (8) “Contested Case” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing.
- (9) “Department” means the Department of Land and Natural Resources.
- (10) “Departmental Permit” means a permit approved by the Chairperson.
- (11) “Discounting” means an economic procedure that weights past and future benefits or costs such that they are comparable with present benefits and costs.
- (12) “Ecosystem Services” means natural resources and ecosystem processes, which may be valued according to their benefits to humankind.

For example: carbon sequestration, climate regulation, nutrient cycling, plant and/or wildlife habitat, biodiversity, air and water purification, erosion control, coastal protection, the loss of benefits to tourism,

⁷ Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_transfer.htm

recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

(13) “Grossly negligent” violation means conscious and voluntary acts or omissions characterized by the failure to perform a manifest duty in reckless disregard of the consequences.⁸

(14) “Harm to resource” means an actual or potential impact, whether direct or indirect, short or long term, acting on a natural, cultural or social resource, which is expected to occur as a result of unauthorized acts of construction, shoreline alteration, or landscape alteration as is defined as follows:

(a) “Major Harm to resource” means a significant adverse impact(s), which can cause substantial adverse impact to existing natural resources within the surrounding area, community or region, or damage the existing physical and environmental aspects of the land, such as natural beauty and open space characteristics

(b) “Moderate Harm to Resource” means an adverse impact(s), which can degrade water resources, degrade native ecosystems and habitats, and/or reduce the structure or function of a terrestrial, littoral or marine system (but not to the extent of those previously defined as those in (a)).

(c) “Minor Harm to Resource” means limited to short-term direct impacts from small scaled construction or shoreline or vegetation alteration activities.

(d) “Very Minor Harm to Resource” means an action in which the impact on the water resource or terrestrial, littoral or marine ecosystem was insignificant, and was not of a substantial nature either individually or cumulatively.

For example, “major harm to the resource(s)” would be associated with a major land use violation that would have likely required a Board Permit, such as building a house, while a “minor harm to the resource(s)” may be

⁸ Definition adapted from Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability, Ch. 62B-54.

associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

- (15) “Knowing” violation means an act or omission done with awareness of the nature of the conduct.
- (16) “Net Present Value” means the total present value (PV) of a time series of cash flows.
- (17) “OCCL Administrator” means the Administrator of the Office of Conservation and Coastal Lands.
- (18) “Party” means each person or agency named or admitted as a party.
- (19) “Person” means an appropriate individuals, partnership, corporation, association, or public or private organization of any character other than agencies.
- (20) “Presiding Officer” means the person conducting the hearing, which shall be the chairperson, or the chairperson’s designated representative.
- (21) “Primary Restoration Damages” means the costs to restore the damaged site to its prior baseline state.
- (22) “Site Plan” means a plan drawn to scale, showing the actual dimensions and shape of the property, the size and locations on the property of existing and proposed structures and open areas including vegetation and landscaping.
- (23) “Willful violation” means an act or omission which is voluntary, intentional and with the specific intent to do something the law forbids, or fail to do something the law requires to be done.

APPENDIX C: REFERENCES

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NOAA Coastal Services Center. Habitat Equivalency Analysis.

www.csc.noaa.gov/coastal/economics/habitatequ.htm

Maine Land-Use Regulation Commission. 2007. 2008 Workshop Draft Comprehensive Land Use Plan; for areas within the jurisdiction.

http://www.maine.gov/doc/lurc/reference/cluprev/CLUP_PWDraft_pg5.shtml

APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

The following are only brief past estimates used in Hawaii and other states; they are by no means comprehensive or limiting. These are intended to be examples for possible assessments and remediation efforts not as templates. As previously stated each case will be handled individually to account for unique ecological, economic and cultural impacts. The following are organized by habitat type.

Coral

Florida Department of Environmental Protection (Civil Damages):

The DEP can impose fines of up to \$1,000/m² of reef damaged and is dependent on the absence of extenuating circumstances such as weather conditions, disregard of safe boating practices, navigational error, whether the vessel operator was under the influence of drugs or alcohol etc.

Cesar et al 2002 (Ecosystem Service Valuation)

Cesar et al. used a Simple Coral Reef Ecological Economic Model (SCREEM) to assess Hawaiian coral reefs based on the annual benefits of the coral reefs to recreation/tourism, property amenities, biodiversity, fisheries and education. The annual benefits and total economic value could then be expressed on a 'per area' basis. This study found the total annual benefits of the coral reefs of Hanauma Bay to be \$37.57 million (\$2,568/m²), of the coral reefs in Kihei to be \$28.09 million (\$65/m²) and the coral reefs on the Kona coast to be \$17.68 million (\$19/m²).

Pilaa enforcement (KA-02-10) (Primary Restoration Cost)

Damage to Coral reef ecosystems was assessed for restoration activities according to Florida guidelines, as \$5,830,000 for 5,380 m² of coral reef damage. This calculation

was similar to the estimated cost of remediation efforts \$390,000 to clean 5,000 yd³ of beach sand. However between 30,000-50,000 yd³ was estimated to be impacted, totaling \$2,300,000-\$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately \$845,000 (for the 13 acres, or \$65,000 for 10m²). This totaled between \$3,100,000 and \$4,700,000, and did not include coral colony re-establishment. An additional \$630,000 was estimated for the 10-year monitoring period, (however studies by Cesar et al. 2003 estimated a 25 year period for recovery of ecological impacts).

Thus damage to corals may be calculated as follows:

Number of square meters of coral damaged

X Multiplied by \$1,000 (or estimated value of coral on per/area basis)

(#m² x \$1000)

Plus the estimated net present value of ecosystem services lost until recovery. (This may be more if damage to an area such as Hanauma Bay with increased recreational economic revenue.)

+Plus cost of Remediation

+Plus Cost of cleaning sediment from reef

+Plus Cost of cleaning sediment/mud from beach sand

+Plus Cost of coral reestablishment

+Plus Cost of Monitoring

+Plus Cost of Management

Seagrass beds (Compensatory Damage)

The Florida DEP fines offenders \$100/yard² of damage to seagrass beds for the first yard² damaged and \$75/yard² per each additional yard² damaged.

\$100 for the first yard damaged

+\$75 per each additional yard

or net present total value of ecosystem services lost until recovery

+vegetation planting

+monitoring

APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator's Name(s): _____

TMK: _____

OCCL Staff Member: _____

Date: _____

Part 1- Penalties

	Violation Type	Permit Prefix (D,C, B)	Harm to Resource (actual & potential)	Tree or Vegetation Status	Penalty Range	Adjustments (Mark Adj. Choice #1-8)	Multi-day (# days)	Total
1								
2								
3								
4								
5								
6								
7								
8								
9								
10								

Penalty Total:

Penalty Adjustments and Descriptions (please attach additional adjustments and descriptions, including but not limited to those listed in §13-1-70)

1. Actual environmental damage extent (onsite)

Description: _____

2. Actual environmental damage extent (offsite)

Description: _____

Sand Beaches (ex. Of Primary Restoration Costs)

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts should be included in the assessment of damaged, degraded or lost sandy beaches. As one of Hawaii's greatest natural resources the following should be included in the minimum penalty assessment, however, as ecological valuation and research continue, more comprehensive estimates may be produced. In KA-02-10 Pīlāa, \$390,000 fine was estimated to clean 5,000 yd³ of beach.

- +Cost of lost revenue due to altered Beach resources (compensatory)
- +primary restoration costs
- +Plus cost of cleaning of sediment/mud from beach area (if necessary)
- +Plus cost of beach nourishment (sand replacement)
- +Plus cost of native dune vegetation

(In some circumstances the loss of beach resources may be assessed in conjunction with other ecological impacts listed above, such as coral reefs and sea grass beds.)

3. Does the violator's have a history of violations?

4. Was the violation repetitious or of a long duration?

5. Was the violator Responsive and exhibit a level of cooperation of with the Department and/or Staff?

6. Does the Violator have a Financial Hardship?

7. Did the violator receive Economic or commercial gain through non-compliance?

8. Other.

Description: _____

Total Adjustment: up/down _____

Multi-day penalties

Number of days to multiply penalty: _____

Reasoning: _____

Total multi-day: _____