STATE OF HAWAI‘I
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawai‘i

February 14, 2020

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

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

LANDOWNER: James Miles Hugh Wilson,
Ke‘ei Beach LLC,
Hubert F Est Richards, &
Elizabeth A Richards

LOCATION: 83-677 Ke‘ei Beach Road, Ke‘ei 1st – Ke‘ei 2nd, South Kona, Hawai‘i

TAX MAP KEY: (3) 8-3-006:009

PARCEL SIZE: 0.5630-acres

SUBZONE: General

DESCRIPTION OF AREA:
The subject parcel is located at 83-677 Ke‘ei Beach Road in the Ke‘ei 1st ahupua‘a of South Kona on the Western side of the island of Hawai‘i and is further identified as Tax Map Key (TMK) (3) 8-3-006:009. The parcel is located within the General Subzone of the State Land Use Conservation District (see Exhibit 1). The single-family residence (SFR) and attached garage, private wastewater treatment system, private water system comprised of two water catchment tanks, an existing non-conforming pump house and storage shed; and landscaping improvements were permitted under Conservation District Use Application (CDUA) HA-2714 on October 14th, 1994 (see Exhibit 2). A Site Plan for a shed addition to the house and water storage tanks were approved on August 27th, 1996 (see Exhibit 3).

The parcel is in close proximity to the shoreline and Ke‘ei Beach along Ke‘ei Beach Road. The property and associated SFR are in a quiet residential beach community that encompasses the makai portions of the ahupua‘as of Ke‘ei 1st – Ke‘ei 2nd in a rural coastal area of South Kona on the Island of Hawai‘i (see Exhibit 4). Vacant lots to the East and West of the property are owned by Kamehameha Schools. Similar SFR’s border the parcel to the North and South. The Ke‘ei Beach area is believed to be a place of historical and cultural importance as it is said that the area is the site of King Kamehameha the Great’s first battle, the Battle of Mokuohai, which helped him gain control over the Island of Hawai‘i and inspired his quest to unify all the Hawaiian Islands.
ALLEGED UNAUTHORIZED LAND USES

On October 15th, 2019, the Department of Planning from the County of Hawai’i contacted the Office of Conservation and Coastal Lands (OCCL) regarding Ke’ei Beach LLC’s application to register the parcel and associated SFR as a Short-Term Vacation Rental and Nonconforming Use. Based on previous instances of homeowners in the Conservation District attempting to register their properties and SFRs as short-term rentals and nonconforming uses with the County of Hawai’i, the Department of Planning understood that the subject property was under the jurisdiction of OCCL and that Ke’ei Beach LLC was potentially in violation of Hawai’i Administrative Rules (HAR) §13-5 as well as the permit conditions of CDUA HA-2714. This was confirmed by OCCL. The Department of Planning then issued Mr. Hugh Wilson of Ke’ei Beach LLC a letter noting that their transient rental was prohibited in the Conservation District and that the Department of Planning was returning their application (see Exhibit 5). The Ke’ei Beach LLC Short-Term Vacation Rental and Nonconforming Use Application was then forwarded to OCCL (see Exhibit 6).

After reviewing the Ke’ei Beach LLC Short-Term Vacation Rental and Nonconforming Use Application, OCCL notes that the landowners provided documentation of a Transient Accommodations Tax Certificate of Registration for Ke’ei Beach LLC doing business as Kupuna ‘Aina at 83-677 Ke’ei Beach Road with a start date of February 1st, 2017 (see Page 10 of Exhibit 6). Additionally, the application shows a record of Ke’ei Beach LLC having paid transient accommodations taxes with this tax license from January 2019 through August 2019 (see Page 17 of Exhibit 6). OCCL staff researched the typical vacation rental websites for a listing of the subject property and associated SFR but believes that Ke’ei Beach LLC has either removed their listings from these websites or has used other means to promote the property and associated SFR for transient rental purposes. However, the application lists Ms. Colette Tavares, who is a realtor at Reba-Mae Silva Realty LLC according to her Linkedin page, as the reachable person on the island of Hawai’i for the property and associated SFR (see Page 2 & Page 13 of Exhibit 6 & 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-2714 states that the single family dwelling shall not be used for rental or any other commercial purposes.

Condition #12 of CDUA HA-2714 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 Keʻei Beach LLC’s Short-Term Vacation Rental Registration/Nonconforming Use Certificate application, the owners’ of the parcel with TMK: (3) 8-3-006:009 and CDUA HA-2714 appear to have been using the property and associated single-family residence for transient rental purposes. These actions are in direct violation of HAR §13-5 and the Conditions of their CDUA HA-2714.

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 and 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, §13-5-14, the objective of the General Subzone is to designate open space where specific conservation uses may not be defined, but where urban use would be premature. 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 General Subzone and are therefore strictly prohibited in these areas.

FINDINGS

The use of the subject property and single-family residence for transient rental purposes are in violation of Chapter 183C, HRS, Title 13-5, HAR, and CDUA HA-2714. Based upon our
investigation, OCCL finds that:

1. The location of the transient rental, Tax Map Key: (3) 8-3-006:009, is in the State Land Use Conservation District General Subzone;

2. The single-family residence has been used as a transient rental.

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-2714 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-2714 for the use of the subject property and associated single-family residence as a transient rental which is a 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 20-20 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
Mr. James Miles Hugh Wilson  
Suite 600, Park Central  
2970 Clairmont Road N.E.  
Atlanta, Georgia 30329

Dear Mr. Wilson:

Subject: Conservation District Use Application for a Single Family Residence at Keel, South Kona, Hawaii, TMK: 8-3-06: 09

We are pleased to inform you that your Conservation District Use Application for a single family residence was approved on October 14, 1994, 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/page or document 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;

Exhibit 2
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 the permit and the declarations set forth in the permit application. Three (3) of the copies will 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 precautionary measures shall be taken to prevent excessive erosion, chemical products, debris, or other contaminants associated with construction activities from entering the ocean;

9. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

10. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole part, and or the Department may, in addition, institute appropriate legal proceedings;

11. That all representations relative to mitigation set forth in the accepted application for this proposed use are hereby incorporated as conditions of this approval;

12. That failure to comply with any of these conditions shall render this Conservation District 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, within thirty (30) days, in the space provided on the following page. Please sign two copies. Retain one and return the other within thirty (30) days.
Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 587-0377.

Very truly yours,

KEITH W. AHUE

Receipt acknowledged

Applicant's Signature

Date 10/28/94

cc: Steven S.C. Lim
    Hawaii Board Member
    Hawaii Land Agent
    Hawaii Planning Dept.
    Hawaii DP&R, DWS
    DOH/OHA/OSP/DOT
Mr. John P. Dinmore  
Dinmore & Cisco Architects, Inc.  
75-167 Kalani Street, Suite 202  
Kailua Kona, Hawaii 96740

Dear Mr. Dinmore:

SUBJECT: Site Plan Approval for the Addition of a Shed at Keel, South Kona, Hawaii; TMK: 8-3-6:09

We are in receipt of your Site Plan Approval request including the construction plans for the addition of a shed. The purpose of the shed is to house an existing water tank.

The addition of the shed can be considered as an accessory use pursuant to Chapter 13-5, of the Hawaii Administrative Rules (HAR); Section 13-5-23 (L-7) Structures, Accessory, of the Department’s HAR.

ANALYSIS:

Section 13-5-23, Structures, Accessory, specifically allows the "Construction or placement of structures accessory to an existing structure, building, or facility under an existing conservation district use permit." It further states that, "Accessory uses shall be allowed only if they are consistent with the purpose of the Conservation District."

The proposed shed is consistent with the purpose of the Conservation District subzone inasmuch as this is a very minor addition that will serve to protect the water tank from the elements and will not alter the existing land use on the property. Conservation District Use Permit (CDUP) NO.: HA-2714 was approved by the Board on October 14, 1994, subject to thirteen conditions.

In addition, we have determined that this action is an exempt activity pursuant to the Environmental Impact Rules, Section 11-200-8(a), HAR.

Exhibit 3
Therefore, authorization is hereby granted to the Landowner for the addition of a shed within the Conservation District at Keesi, South Kona, Hawaii; TMK: 8-3-6:09, 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 13-5-42, Hawaii Administrative Rules;

2. All conditions imposed under CDUP #HA-2714 shall remain in effect;

3. The applicant shall comply with all applicable Department of Health Administrative Rules;

4. 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 approval.

Please acknowledge receipt of this approval, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other within thirty (30) days.

If you have any questions on any of these conditions, please contact the Planning Branch at 587-0378.

Aloha,

MICHAEL D. WILSON

Receipt acknowledged:

Applicant’s Signature

Date: 8.22.76

cc: Hawaii Board Member
October 15, 2019

Hugh Wilson, Member
Ke‘ei Beach LLC
BO Box 2844
Park City, UT 84060

Dear Mr. Wilson,

SUBJECT: RETURN OF SHORT-TERM VACATION RENTAL REGISTRATION/NONCONFORMING USE CERTIFICATE APPLICATION
Applicant: Ke‘ei Beach LLC
Landowner: Ke‘ei Beach LLC
Proposal: Register a Short-Term Vacation Rental and Apply for a Nonconforming Use Certificate
Tax Map Key: (3) 8-3-006:009

This letter is to acknowledge receipt of your Registration for a Short-Term Vacation Rental (STVR) and Nonconforming Use Certificate Application, with associated documents, and filing fee. Your application indicates that you have been operating a vacation rental on the subject property since at least May of 2018.

After a thorough review of the application documents, we must return these submittals as the subject parcel is located entirely within the State Land Use (SLU) Conservation District. All uses on properties within the SLU Conservation District are under the direct jurisdiction of the State of Hawai‘i Department of Land and Natural Resources, Office of Conservation and Coastal Lands (DLNR-OCCL).

Please be aware that Hawai‘i Administrative Rules, Chapter 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." Furthermore, Conservation District Use Permit (HA-5/12/94-2714) was granted for the construction of a single-family residence on December 23, 1994 on the subject property. Condition No. 4 of the CDUP prohibits the use of the single family dwelling as a rental or other commercial purposes. Based on the preceding, operation of an STVR on the property is prohibited. For your information, we are providing a copy of this letter and information related to this STVR application to the DLNR-OCCL.
Finally, we will return the $500 filing fee under separate cover.

Should you have any questions, please contact Christian Kay of the Planning Department at (808) 961-8136 or email christian.kay@hawaiicounty.gov.

Sincerely,

MICHAEL YEE
Planning Director

Encl.: STVR Registration/Nonconforming Use Certificate Application Submittal Documents
       CDUP HA-5/12/94-2714

cc: C. Lato, Senior Account Clerk
    Samuel J. Lemmo, Administrator
    DLNR-OCCL
Mr. James Miles Hugh Wilson  
Suite 600, Park Central  
2970 Clairmont Road N.E.  
Atlanta, Georgia 30329

Dear Mr. Wilson:

Subject: Conservation District Use Application for a Single Family Residence at Keel, South Kona, Hawaii, TMK: 8-3-06: 09

We are pleased to inform you that your Conservation District Use Application for a single family residence was approved on October 14, 1994, 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/page or document 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;

OCT 20 1994

File No.: HA-5/12/94-2714  
180-Day Exp. Date: 11/8/94
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 the permit and the declarations set forth in the permit application. Three (3) of the copies will 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 precautionary measures shall be taken to prevent excessive erosion, chemical products, debris, or other contaminants associated with construction activities from entering the ocean;

9. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

10. That in issuing this permit, the Department and Board has relied on the information and data which the permittee has provided in connection with his permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole part, and or the Department may, in addition, institute appropriate legal proceedings;

11. That all representations relative to mitigation set forth in the accepted application for this proposed use are hereby incorporated as conditions of this approval;

12. That failure to comply with any of these conditions shall render this Conservation District 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, within thirty (30) days, in the space provided on the following page. Please sign two copies. Retain one and return the other within thirty (30) days.
Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 587-0377.

Very truly yours,

KEITH W. AHUE

Receipt acknowledged

Applicant’s Signature

Date__________________

cc:  Steven S.C. Lim
     Hawaii Board Member
     Hawaii Land Agent
     Hawaii Planning Dept.
     Hawaii DP&R, DWS
     DOH/OHA/OSP/DOT
County of Hawai‘i Planning Department

This is a form for a:
- STVR Registration only - $500 fee
- STVR Registration + Nonconforming Use Certificate - $500 fee

APPLICANT (Please Print): Ke‘ei Beach, LLC

APPLICANT’S INTEREST, IF NOT THE OWNER:

SIGNATURE: ___________________________ DATE: ____________

SIGNER (Please Print): Hugh Wilson TITLE: Member

MAILING ADDRESS: PO Box 2844

CITY: Park City STATE: UT ZIP CODE: 84060

PHONE NO.: (_____435-901-7071 EMAIL: Hhsuperwilson@gmail.com

Please provide information for all owners of the STVR property. A Landowner Addendum is attached, if needed.

LANDOWNER (Please Print): Ke‘ei Beach, LLC

SIGNATURE: ___________________________ DATE: ____________

SIGNER (Please Print): Hugh Wilson TITLE: Member

MAILING ADDRESS: PO Box 2844

CITY: Park City STATE: UT ZIP CODE: 84060

PHONE NO.: (_____435-901-1848 EMAIL: Hhsuperwilson@gmail.com

REACHABLE PERSON (Please Print): Colette Tavares

MAILING ADDRESS: PO Box 483

CITY: Holualoa /HI ZIP CODE: 96725

PHONE NO.: Business (808) 938-0363 Home/Mobile (_____)

EMAIL: colettetavares808@gmail.com

STVR STREET ADDRESS: 83-677 Ke‘ei Beach Road

CITY: Captain Cook /HI ZIP CODE: 96704

FOR OFFICE USE ONLY:

TAX MAP KEY: (3) 8-3-006:009.0000 ZONING: Open

SLU: C If Ag, Date of Subdivision: LUPAG: Open

The submittal of an incomplete application will delay official acceptance by the Department. Furthermore, addenda during the course of the review process will be deemed invalid. Lack of required information will render the application incomplete.

Hawaii County is an Equal Opportunity Provider and Employer.
STVR Registration

To whom should we send original correspondence? (Select one): Owner Applicant Reachable Person

Instructions:
- STVR Registration only: Please submit Items 1-10
- Pursuant to Planning Department Rules of Practice and Procedure Rule 23, the Director may request additional information to facilitate processing your application request.

1. Completed STVR Registration Form.

2. Landowner Authorization, if applicable. Any entity applying for an STVR Registration shall submit written authorization from the owner(s) to act on their behalf.

3. $550 Non-refundable filing and processing fee. Payments by check may be made payable to: Director of Finance.

4. Final Approvals from Building Division. Please provide documentation establishing that all permits from the County of Hawai‘i Department of Public Works-Building Division for all necessary building, electrical, and plumbing permits were granted final approval. Please visit the Hawai‘i County Real Property Tax website ( ) and “Search Records” to retrieve and print out a copy of the real property tax records for your property, showing all applicable building, electrical, and plumbing permits. Include a copy of this print-out with your application. Additional forms of proof to potentially established there was a final building permit includes the following:
   a. Certificate of Occupancy
   b. Federal Housing Administrations or Veterans Affairs loans
   c. Condominium Property Regime Declaration recorded with the Bureau of Conveyance.
   d. Notes from the inspector on the day of final inspection. (Would have been given to the home owner or contractor at time of inspection. Rare but may be available)

Incomplete permits will require page 5 of the Registration form to be completed with the County of Hawai‘i Department of Public Works-Building Division.

5. Current tax licenses. Please submit copies of your current State of Hawai‘i General Excise Tax / Transient Accommodations Tax licenses for your STVR. You may substitute a printout from the official State of Hawaii Department of Taxation website listing your licensed name and the respective GE and TA account numbers.

6. County of Hawai‘i Real Property Tax Clearance Certificate obtained from the Real Property Tax Division. This is the preferred documentation.

As an alternative to the Tax Clearance Certificate, the Planning Department will accept a printout of the official Real Property Tax Office web page indicating that taxes have been fully paid to June 30, 2019 if your application is physically received at the Planning Department before August 20, 2019, when the next tax payment is due. Since taxes are done on a fiscal year basis, the Tax Period for taxes paid to June 30, 2019 is noted as Tax Period “2018-2” which is for the period of January 1, 2019 to June 30, 2019. While in the website, click on the year 2018, and a drop down window will show that taxes have been paid for “2018-2” which is the period from Jan. 1, 2019 to June 30, 2019. NOTE: If your application is received on or after August 20, 2019, you will probably have to get the Tax Clearance Certificate instead of using this website print-out option, because the website information is not updated for perhaps a month or more after tax payments are received and checks have cleared. Please be aware that due to their staff workload during the week of the August 20 tax payment deadline, their response to requests for Tax Clearance Certificates may be very slow.
Site Plan. Drawn to scale, on 11” x 17” white copy paper (NOTE: this is double the size of typical letter-size paper), identifying:

a) All property boundaries, dimensions, setbacks, and easements;
b) Location of existing and proposed structures, driveway access, swimming pools, ancillary structures, eaves, and overhangs shall be clearly identified and labeled; for condominium sites, identify the location of your apartment and its parking spaces.
c) Designated parking spaces for the STVR in compliance with Hawai‘i County Code (HCC), Sections 25-4-50 through 25-4-54; each parking space must be at least 18’ long and 8.5’ wide, entirely with the boundary of the STVR property, and must be accessible without another parked car having to be moved out of the way; and
d) Reference points such as roadways, shoreline, etc; and
e) Table indicating total square footage of each of the structures on the property.

8. Floor Plan. Drawn to scale, also on 11” x 17” white copy paper, identifying the location and use of all rooms in the STVR with dimensions of all spaces.

9. Notarized Affidavit of Compliance. Please complete and sign a copy of the attached Short-Term Vacation Rental Affidavit of Compliance. Submit notarized affidavit(s) with this application.

10. Pre-existing STVRs: Please provide proof of your use of the property as an STVR prior to April 1, 2019. Proof may include tax documents for the relevant time period if those documents specifically identify the STVR property and if they identify payment of Transient Accommodation Tax (only payable for short-term rentals) or other reliable evidence such as third-party receipts or ledger statements, transaction reports, etc. which specifically identify the STVR property.

11. List of affected property owners/lessees. A list of the names, mailing addresses, and tax map key numbers of all owners and lessees of record of all lots of which any portion is within three hundred (300) feet of any point along the perimeter boundary of the STVR property. Please visit the Hawai‘i County Real Property Tax website ( ) and use the “New Web Access Portal” to retrieve and print out the surrounding property owners list.

12. Copy of First Notification Letter to Affected Property Owners/Lessees. Please review the attached Notification Requirements for Nonconforming Use Certificate Applicants, and follow the instructions provided.

13. Proof of service. Applicants shall provide proof of service or of good faith efforts to serve notice of the application to affected property owners and lessees of record. Proof may consist of certified mail receipts, affidavits, declarations, or the like.
SHORT-TERM VACATION RENTAL (STVR) REGISTRATION
LANDOWNER ADDENDUM

LANDOWNER: ____________________________________________

SIGNATURE: ____________________________________________ DATE: __________
SIGNER (Please Print): ____________________________________ TITLE: __________
MAILING ADDRESS: _______________________________________
CITY: __________________________ STATE: ___________ ZIP CODE: __________
PHONE NO.: (____)_________________ EMAIL: ________________

LANDOWNER: ____________________________________________

SIGNATURE: ____________________________________________ DATE: __________
SIGNER (Please Print): ____________________________________ TITLE: __________
MAILING ADDRESS: _______________________________________
CITY: __________________________ STATE: ___________ ZIP CODE: __________
PHONE NO.: (____)_________________ EMAIL: ________________

LANDOWNER: ____________________________________________

SIGNATURE: ____________________________________________ DATE: __________
SIGNER (Please Print): ____________________________________ TITLE: __________
MAILING ADDRESS: _______________________________________
CITY: __________________________ STATE: ___________ ZIP CODE: __________
PHONE NO.: (____)_________________ EMAIL: ________________

LANDOWNER: ____________________________________________

SIGNATURE: ____________________________________________ DATE: __________
SIGNER (Please Print): ____________________________________ TITLE: __________
MAILING ADDRESS: _______________________________________
CITY: __________________________ STATE: ___________ ZIP CODE: __________
PHONE NO.: (____)_________________ EMAIL: ________________

Exhibit 6
Page 5 of 29
--- THIS PAGE FOR OFFICE USE ONLY ---

SHORT-TERM VACATION RENTAL (STVR) REGISTRATION
DEPARTMENT OF PUBLIC WORKS, BUILDING DIVISION APPROVAL

LANDOWNER(S): ___________________________________________

STVR ADDRESS: ___________________________________________

CITY: ___________________________ /HI ZIP CODE: ____________

STVR TAX MAP KEY: (3)__________________________

<table>
<thead>
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<th>Building Permit Number(s) and Final Approval Date(s)</th>
<th>General Description of Permit</th>
<th>Permit Status</th>
<th>Completed By:</th>
<th>Date:</th>
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</thead>
<tbody>
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</table>

<table>
<thead>
<tr>
<th>Electrical Permit Number(s) and Final Approval Date(s):</th>
<th>General Description of Permit</th>
<th>Permit Status</th>
<th>Completed By:</th>
<th>Date:</th>
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<tbody>
<tr>
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<table>
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<th>Plumbing Permit Number(s) and Final Approval Date(s):</th>
<th>General Description of Permit</th>
<th>Permit Status</th>
<th>Completed By:</th>
<th>Date:</th>
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<tbody>
<tr>
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Exhibit 6

Hawaii County is an Equal Opportunity Provider.
Parcel Information

<table>
<thead>
<tr>
<th>Parcel Number</th>
<th>830060090000</th>
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<tbody>
<tr>
<td>Location Address</td>
<td>83-677 KEE I BEACH ROAD</td>
</tr>
<tr>
<td>Project Name</td>
<td>KEE 1st &amp; 2nd</td>
</tr>
<tr>
<td>Property Class</td>
<td>CONSERVATION</td>
</tr>
<tr>
<td>Neighborhood Code</td>
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</tr>
<tr>
<td>Legal Information</td>
<td>0.563 AC DES RP S102 LCWA 2102.1 KEE 1</td>
</tr>
<tr>
<td>Land Area (acres)</td>
<td>0.563</td>
</tr>
<tr>
<td>Land Area (approximate sq ft)</td>
<td>24,524</td>
</tr>
</tbody>
</table>

Owner Information

Owner Names
WILSON JAMES MILES HUGH - Fee Owner, Tenants in Common
KEE BEACH LLC - Fee Owner
RICHARDS HUBERT F EST - Fee Owner
RICHARDS ELIZABETH A - Fee Owner

Mailing Address
WILSON JAMES MILES HUGH
PO BOX 2844
PARK CITY UT 84060 2844

Assessment Information

<table>
<thead>
<tr>
<th>Year</th>
<th>Property Class</th>
<th>Market Land Value</th>
<th>Dedicated Use Value</th>
<th>Assessed Land Value</th>
<th>Market Building Value</th>
<th>Assessed Building Value</th>
<th>Total Market Value</th>
<th>Total Assessed Value</th>
<th>Total Exemption Value</th>
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<tr>
<td>2019</td>
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Land Information

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<tbody>
<tr>
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<td>0.563</td>
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Residential Improvement Information

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<tr>
<td>Year Built</td>
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<tr>
<td>Eff Year Built</td>
<td>1996</td>
</tr>
<tr>
<td>Square Feet</td>
<td>1,232</td>
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<td>Total Room Count</td>
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<td>Full Baths</td>
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<tr>
<td>Half Baths</td>
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<tr>
<td>Bedrooms</td>
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<tr>
<td>Framing</td>
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<td>Exterior Wall</td>
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<tr>
<td>Roof Material</td>
<td>COMPOSITION</td>
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<tr>
<td>Heating/AC</td>
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<td>Fireplace</td>
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<tr>
<td>Grade</td>
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Sketches

Exhibit 6
## Building 1

### Permit Information

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<tr>
<th>Date</th>
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<th>Reason</th>
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<tr>
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### Bldg Division Permit and Inspections Information

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<th>Permit Reason</th>
<th>Permit Description</th>
<th>Estimated Cost</th>
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<tr>
<td>11/9/1995</td>
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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.

### Sales Information

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<tr>
<th>Sale Date</th>
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<th>Instrument #</th>
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<th>Instrument Description</th>
<th>Date Recorded</th>
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<th>Cert # Book/Page</th>
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### Current Tax Bill Information

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<th>Taxes Assessment</th>
<th>Tax Credits</th>
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<tr>
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[Exhibit 6](https://gpublic.schneidercorp.com/Application.aspx?AppID=1048&LayerID=23618&PageTypeID=2)
### Historical Tax Information

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### Recent Sales in Area

From: [Name]

To: [Name]

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

---

**Exhibit 6**

Page 9 of 29
Re: License Letter

Dear Taxpayer:

This letter contains your Transient Accommodations Tax Certificate of Registration for Hawaii Tax ID Number: TA-004-918-5792-01. Please display this certificate of registration conspicuously at KE’EI BEACH, LLC’s place of business.

If you require further information, please contact us at the address and phone number listed below. Reference the letter ID found at the top of the page on any correspondence or phone calls to expedite the process.

Sincerely,

Department of Taxation
Taxpayer Services Branch
PO Box 259
Honolulu, HI 96809-0259
Phone: (808) 587-4242
Neighbor Islands/Continental U.S.
Toll Free: 1 (800) 222-3229

Exhibit 6
Page 10 of 29
KE’EI BEACH, LLC  
PO BOX 2844  
PARK CITY UT 84060-2844  

Re: License Letter

Dear Taxpayer:

This letter contains your General Excise Tax License for Hawaii Tax ID Number: GE-004-918-5792-01. Please display this license conspicuously at KE’EI BEACH, LLC’s place of business.

If you require further information, please contact us at the address and phone number listed below. Reference the letter ID found at the top of the page on any correspondence or phone calls to expedite the process.

Sincerely,

Department of Taxation  
Taxpayer Services Branch  
PO Box 259  
Honolulu, HI 96809-0259  
Phone: (808) 587-4242  
Neighbor Islands/Continental U.S.  
Toll Free: 1 (800) 222-3229

Exhibit 6  
Page 11 of 29

BUSINESS START DATE: 01/01/2017  
STATE OF HAWAII  
DEPARTMENT OF TAXATION  
LICENSE ISSUED FOR THE PRIVILEGE OF ENGAGING IN BUSINESS AND OTHER ACTIVITIES UPON THE CONDITION THAT THE LICENSEE SHALL PAY THE TAXES ACCRUEING TO THE STATE OF HAWAII UNDER THE PROVISIONS OF CHAPTER 237, HRS, AS AMENDED. LICENSEE’S ACTIVITIES ARE LISTED ON THE APPLICATION ON FILE WITH THE DIRECTOR OF TAXATION.

GENERAL EXCISE TAX LICENSE  

THIS LICENSE IS NOT TRANSFERABLE, TO BE DISPLAYED CONSPICUOUSLY AT THE PLACE OF BUSINESS FOR WHICH ISSUED.
County of Hawai‘i
DEPARTMENT OF FINANCE - REAL PROPERTY TAX

REAL PROPERTY TAX CLEARANCE

Date: September 13, 2019

TMK(s): (3) 8-3-006-009-0000

This is to certify that the real property taxes due to the County of Hawai‘i on the parcel(s) listed above have been paid for the tax year 2019 up to and including December 31, 2019.

The County’s real property taxes are levied on July 1st each year. The taxes become a lien on the property assessed as of the levy date.

This clearance was requested on behalf of James Miles Hugh Wilson & Keei Beach LLC & Elizabeth/Hubert Richards for the County Planning Department and is issued for this/these parcel(s) only.

REAL PROPERTY TAX DIVISION

Paid up to and including December 31, 2019

Hawai‘i County is an Equal Opportunity Provider and Employer
COUNTY OF HAWAI‘I
PLANNING DEPARTMENT

SHORT-TERM VACATION RENTAL (STVR) AFFIDAVIT OF COMPLIANCE

This is to acknowledge that I, Hugh Wilson as Member-Manager of Ke‘ei Beach, LLC, landowner/authorized applicant of the existing/proposed STVR property located at:
83-677 Ke‘ei Beach Road, Captain Cook, HI 96704

Tax Map Key (3) 3-8-3-006-009-0000-000, CERTIFY, SWEAR, AND AFFIRM THAT:

- The final approvals for building, electrical, and plumbing permits from the County of Hawai‘i Department of Public Works-Building Division accurately reflect the structure as it currently exists without unpermitted modifications or changes of use.
- To the best of my knowledge, there are no public, private, or financial covenants and or conditions prohibiting the use of this property as a vacation rental.
- I acknowledge that once my application is accepted, the Director may request a site inspection to verify that the STVR is located within a legal dwelling and complies with the HCC, Chapter 25, any rule adopted thereunder, or any permit or variance issued pursuant thereto.
- I will comply with all applicable County, State, and Federal laws, rules, regulations, and requirements, and will continue to operate within those laws, which shall also include, but is not limited to, the STVR Standards outlined in this Affidavit.
- I acknowledge that any misrepresentation made by me or by my agent in applying for this STVR Registration may render the Registration invalid.
- I acknowledge that any discussion that I have had or may have with Planning Department staff about conditions of approval are preliminary only, and are not final, nor are they the specific conditions required to gain approval of the application, unless the conditions are part of the Director’s final written determination.
- (Nonconforming Use Certificate Applicants) The list of names, mailing addresses, and tax map keys of all owners and lessees of record of all lots of which any portion is within three hundred (300) feet of any point along the perimeter boundary of the STVR property, is, to the best of my knowledge, a complete and accurate “record of all said owners and lessees.”

SHORT-TERM VACATION RENTAL STANDARDS

Maximum Number of Guests. The maximum number of guests temporarily residing within an STVR at any one time shall be consistent with the definition of “Family” under Hawai‘i County Code (HCC) Chapter 25.

Owner/Reachable Person Responsibilities. The Owner or Reachable Person shall:

(1) Reside in the County of Hawai‘i;

(2) Be reachable by guests, neighbors, and County agencies on a twenty-four (24) hour, seven (7) days-per-week basis;

Hawai‘i County is an Equal Opportunity Provider and Employer

Exhibit 6
Page 13 of 29
(3) Be able to respond via telephone to a request from a guest, neighbor or County agency within one (1) hour of receiving that request and by physically present at the STVR within three (3) hours of receiving a call from a guest, neighbor or County agency, when that guest, neighbor, or County agency requests the presence of the reachable person;

(4) Ensure that activities taking place within the STVR conform to the character of the existing neighborhood in which the rental is located;

(5) Notify the Department within five (5) days of a change in the owner or reachable person’s contact information; and

(6) Notify the Department within thirty (30) days, should the STVR permanently cease operations for any reason.

**Advertising.** All print and internet advertising of STVRs, including listings with a rental service or real estate firm, shall include the STVR Registration Number. The Nonconforming Use Certificate Number shall also be included, if one has been issued.

**Guest Parking.** All guest parking for STVRs shall be off-street and shall meet the requirements set forth in HCC Sections 25-4-50 through 25-4-54 and applicable parking standards in HCC Chapter 25. If there is any doubt as to the requirements for off-street parking for an STVR, the Director shall determine the required number of parking spaces.

**Signage.** Any commercial signage that advertises an STVR shall comply with the requirements of HCC Section 22-2.6 and HCC Chapter 3.

**Display Requirements.** All STVRs shall display the following documents in compliance with the provisions below:

(1) The STVR Registration Certificate, and the Reachable Person’s name and phone number, shall be displayed on the back of the front door of all sleeping quarters.

(2) Good Neighbor Policy. At a minimum, the following shall be prominently displayed within the dwelling unit and recited in the rental agreement signed by the tenant:

   (a) Quiet hours shall be from 9:00 p.m. to 8:00 a.m., during which time the noise from the STVR shall not unreasonably disturb adjacent neighbors.

   (b) Sound that is audible beyond the property boundaries during non-quiet hours shall not be more excessive than would be otherwise associated with a residential area.

   (c) Guest vehicles shall be parked in the designated parking area.

   (d) The STVR shall not be used for commercial purposes.

(3) Current Nonconforming Use Certificates shall be displayed in a conspicuous place on the STVR’s premises that is readily visible to an inspector. In the event that a single address is associated with numerous Nonconforming Use Certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous, readily visible common area instead.
Short-Term Vacation Rental Affidavit of Compliance

STVR TMK: 3-8-3-006-009-0000-000

Landowner Signature / Authorized Applicant

[Signature]

Printed Name of Landowner/Authorized Applicant

Hugh Wilson

Date

9/24/19

Landowner Signature / Authorized Applicant

Printed Name of Landowner/Authorized Applicant

Date

Exhibit 6

Page 15 of 29
Short-Term Vacation Rental Affidavit of Compliance

STATE OF HAWAII

COUNTY OF HAWAII

On this 24th day of September, 2019, before me personally appeared

Hugh Wilson

to me known to be the person(s) described in and who executed the foregoing instrument, and acknowledged that he/she executed the same as his/her free act and deed.

MIKE KINSINGER
Notary Public - State of Utah
Comm. No. 693305
My Commission Expires on
Feb 10, 2021

Notary Public, State of Hawaii
Judicial Circuit

My Commission Expires: 2/10/2021

NOTARY CERTIFICATION

Doc. Date: __________________________
No. of Pages: _______________________

Notary Name: _______________________

Doc. Description: ____________________
Circuit: _____________________________

Notary Signature ____________________
Date: _______________________________

Hawaii County is an Equal Opportunity Provider and Employer

Exhibit 6
Page 16 of 29
#10 - Proof of Pre-existing STUR

State of Hawaii
Hawaii Tax Online

Transient Accommodations (TA-1)

Home  Transient Accommodations (TA-1)

Department of Taxation  About Hawaii Tax Online  Frequently Asked Questions  Video Tutorials  Contact Us

 Tick Account
 KE'EI BEACH, LLC
 "***7548
 Transient Accommodations (TA-1)
 Monthly
 TA-004-918-5792-01
 Balance: ($8,505.52)

Account Alerts

- File Form for Aug-31-2019
- File Form for Jul-31-2019
- File Form for Jun-30-2019
- File Form for May-31-2019
- There are 6 more alerts

Recent Periods  Submissions  Correspondence  Names and Addresses  Locations

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<th>Recent Periods</th>
<th>Submissions</th>
<th>Correspondence</th>
<th>Names and Addresses</th>
<th>Locations</th>
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<td>Monthly</td>
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Don't see your return or payment?

- Payment history can be viewed by clicking on the Submissions tab and then clicking View Submissions. Once the return is processed, the payment will be reported in the Credit column.
- For returns filed through the old website, (dotax.ehawaii.gov) please expect a 2-3 business day delay before the filing can be viewed on Hawaii Tax Online.
- For paper returns, it may take as long as 16 weeks before the filing can be viewed on Hawaii Tax Online.

Warning: This session will timeout after 15 minutes of inactivity.

Exhibit 6
Page 17 of 29
NONCONFORMING USE CERTIFICATE (NUC) APPLICATION:
FIRST NOTIFICATION TO SURROUNDING PROPERTY OWNERS/LESSEES

Today’s Date: September 5, 2019

Dear Surrounding Property Owner,

In accordance with Hawai‘i County regulations, we are sending this notification letter to you because your property is within three hundred (300) feet of a proposed Short-Term Vacation Rental (STVR). Under Planning Department regulations, an applicant who wishes to apply for a Nonconforming Use Certificate (NUC) to operate a STVR must notify property owners and lessees within three hundred (300) feet of any point along the perimeter boundary of the property upon which a NUC is sought.

This is only a notification to you as a surrounding property owner and does not require a response.

Under Planning Department guidelines, applicants must distribute this FIRST Notification Letter to surrounding property owners and lessees BEFORE a NUC Application is submitted to the Department. We will submit a NUC Application for the subject property to the Planning Department on September 27, 2019 at the Department’s Kona location.

(specify Hilo or Kona)

STVR INFORMATION

Applicant(s) Name: Ke‘el Beach, LLC

Proposed STVR Street Address: 83-677 Ke‘el Beach Road, Captain Cook, HI 96704

__________________________

TMK: (3) 3-8-3-006-009-0000-000

Number of bedrooms being rented: 2

Maximum number of guests permitted: 4

Number and location of off-street parking spaces: 3 parking spaces located on-site

__________________________

Should you wish to offer comments on this application, you may submit your written comments to the Planning Department’s Hilo or Kona office, or by email. Please include the applicant’s name in the subject line of your correspondence. Thank you!

All applications are public information once submitted and may be viewed at the Planning Department during regular business hours from 7:45am – 4:30pm.

EAST HAWAI‘I (HILO):
County of Hawai‘i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawai‘i, 96720
Email:

WEST HAWAI‘I (KONA):
County of Hawai‘i Planning Department
74-5044 Ane Keohokālole Highway, Building E
Kailua-Kona, Hawai‘i 96740

Exhibit 6

Page 25 of 29
SHORT TERM VACATION RENTAL APPLICATION AFFIDAVIT OF MAILING FIRST NOTICE

This is to acknowledge that Hugh Wilson, as Member-Manager of Ke'e'i Beach LLC, landowner/authorized applicant of the existing STVR property located at 83-677 Ke'e'i Beach Road, Captain Cook, HI (tax map key 3-8-3-006-009-0000-000), CERTIFY, SWEAR, AND AFFIRM THAT:

- On or before September 17, 2019, I mailed a copy of the enclosed NONCONFORMING USE CERTIFICATE (NUC) APPLICATION: FIRST NOTIFICATION TO SURROUNDING PROPERTY OWNERS/LESSEES to the required surrounding landowners (a list of which is attached herein).

Sworn and Attested to on this 24th day of September 2019 by:

[Signature]
Hugh Wilson, as Member Manager of Ke'e'i Beach, LLC

STATE OF UTAH:
COUNTY OF SUMMIT:

On this 24th day of September 2019, before me personally appeared Hugh C Wilson, known to be the person described in and who executed the foregoing instrument, acknowledged that he executed the same as his free act and deed.

[Signature]
Notary Public, State of Utah

MIKE KINSINGER
Notary Public - State of Utah
Comm. No. 693305
My Commission Expires on
Feb 10, 2021
Business Information

<table>
<thead>
<tr>
<th>MASTER NAME</th>
<th>KE'EI BEACH, LLC DBA KUPUNA AINA</th>
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<td>BUSINESS TYPE</td>
<td>Foreign Limited Liability Company (LLC)</td>
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<td>FILE NUMBER</td>
<td>168502 C6</td>
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<td>STATUS</td>
<td>Active</td>
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<tr>
<td>PLACE INCORPORATED</td>
<td>Utah UNITED STATES</td>
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<td>REGISTRATION DATE</td>
<td>Jan 25, 2017</td>
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<tr>
<td>MAILING ADDRESS</td>
<td>2370 GILT EDGE CIR</td>
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<tr>
<td></td>
<td>PO BOX 2844</td>
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<tr>
<td></td>
<td>PARK CITY, Utah 84060</td>
</tr>
<tr>
<td></td>
<td>UNITED STATES</td>
</tr>
<tr>
<td>PARTNER TERMS</td>
<td>SHALL CONTINUE UNTIL DISSOLVED OR TERMINATED</td>
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<tr>
<td>MANAGED BY</td>
<td>MEMBER(S)</td>
</tr>
<tr>
<td>AGENT NAME</td>
<td>STEFANIE WILSON</td>
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<tr>
<td>AGENT ADDRESS</td>
<td>83-677 KE'EI BEACH RD</td>
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Officers

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<tr>
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Trade Names

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## Search Tax Licenses

Use the fields to search for your Hawaii Tax license(s) and status(es).

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<th>Business Start</th>
<th>Business End</th>
<th>Status</th>
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<td>PO BOX 2844 PARK CITY UT 84080-2844</td>
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<td>PO BOX 2844 PARK CITY UT 84080-2844</td>
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<td>Feb-01-2017</td>
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2 Rows

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*Warning*: This session will timeout after 15 minutes of inactivity.
Search Tax Licenses

Use the fields to search for your Hawaii Tax license(s) and status(es).

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<th>Customer ID (W#)</th>
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<th>DBA Name</th>
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<td>Kupuna Aina</td>
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### Search Tax Licenses

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<th>Business Start</th>
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<td>KE'EI BEACH, LLC</td>
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<td>Jan-01-2017</td>
<td></td>
<td>Open</td>
</tr>
<tr>
<td></td>
<td>KUPUNA 'AINA</td>
<td>COOK HI 96704</td>
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<td></td>
<td></td>
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<td>TA-004-918-5792-01</td>
<td>KE'EI BEACH, LLC</td>
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<td>Feb-01-2017</td>
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2 Rows

Warning: This session will timeout after 15 minutes of inactivity.
Colette Tavares
Realtor at Reba-Mae Silva Realty LLC
Kailua Kona, Hawaii · 29 connections

Experience

Realtor
Reba-Mae Silva Realty LLC
Apr 2006 – Present · 13 years 8 months
Kailua-Kona, HI

Education

Leeward Community College
Associate's Degree
1984 – 1988

Exhibit 7
Colette Tavares

- Get introduced
- Contact Colette Tavares directly

Join to view full profile

People also viewed

Craig Tanaka
Director of Security at Makena Golf & Beach Club

KATHLEEN MORGADO
Real Estate Broker at K REALTY, LLC

Wilbert Castro
Realtor Associate

Mihana Souza
Realtor Associate at Locations LLC

Mary Souza
Real Estate Agent at Savio Realty Ltd

Marylu Surratt
Real Estate Agent at Elite Pacific Properties

Lida Morgado
Office Manager at Real Geeks LLC

joseph teixeira-tavares
Commercial Real Estate Professional

Kathleen Morgado
Principal Broker, Owner

https://www.linkedin.com/in/colette-tavares-18606771
Colette Tavares
Real Estate Sales Associate at KW Kauai
Hawaiian Islands

Colette Tavares
Real Estate Agent at Reba-Mae Silva Realty, LLC
Hawaiian Islands

Colette Tavares
Realtor
Hawaiian Islands

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- Introduction to Commercial Real Estate Analysis
- How to Be Promotable
- How to Analyze a Wholesale Deal in Real Estate

See all courses

Colette’s public profile badge
Include this LinkedIn profile on other websites

https://www.linkedin.com/in/colette-tavares-18806771
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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APPENDIX C: REFERENCES

APPENDIX D: DAMAGES EXAMPLES

APPENDIX E: PENALTY CALCULATION WORKSHEET
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” 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), 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) Adopted from Florida Department of Environmental Protection2000 Administrative Fines and Damage Liability, Ch. 62B-34.

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

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

**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. 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

<table>
<thead>
<tr>
<th>Action</th>
<th>Comparable Harm to Resource</th>
<th>Penalty Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Removal of more than 10,000 sq. ft.</td>
<td>Major</td>
<td>$10,000-$15,000</td>
</tr>
<tr>
<td>Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation</td>
<td>Moderate</td>
<td>$2,000-$10,000</td>
</tr>
<tr>
<td>Removal of less than 2,000 sq. ft. vegetation</td>
<td>Minor</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Clearing of Invasive or noxious vegetation</td>
<td>Very Minor</td>
<td>Up to $1,000⁴</td>
</tr>
</tbody>
</table>

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.\textsuperscript{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

\textsuperscript{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.

<table>
<thead>
<tr>
<th>Harm to the Resource</th>
<th>Penalty Adjudicator and Penalty Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major</td>
<td>$10,000-$15,000 Board</td>
</tr>
<tr>
<td>Moderate</td>
<td>$2,000-$10,000 Board</td>
</tr>
<tr>
<td>Minor</td>
<td>$1,000-$2,000 Chairperson or Presiding Officer</td>
</tr>
<tr>
<td>Very Minor</td>
<td>up to $1,000 Chairperson or Presiding Officer</td>
</tr>
</tbody>
</table>

**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 practices, 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

<table>
<thead>
<tr>
<th>Harm to resource or potential for harm to resource</th>
<th>Identified land use permit beginning with the letter</th>
<th>Penalty Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major</td>
<td>D (Board)</td>
<td>$10,000-$15,000</td>
</tr>
<tr>
<td>Moderate</td>
<td>C (Departmental)</td>
<td>$2,000-$10,000</td>
</tr>
<tr>
<td>Minor</td>
<td>B (Site Plan)</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Very Minor</td>
<td>(B) (Site Plan)</td>
<td>Up to $1,000</td>
</tr>
</tbody>
</table>
Table 2. Vegetation Removal

<table>
<thead>
<tr>
<th>Action</th>
<th>Comparable Harm to Resource</th>
<th>Penalty Range</th>
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<tr>
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<td>Major</td>
<td>$10,000-$15,000</td>
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<tr>
<td>Removal of Vegetation or of 2,000-10,000 sq. ft. of vegetation</td>
<td>Moderate</td>
<td>$2,000-$10,000</td>
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<tr>
<td>Removal of less than 2,000 sq. ft. vegetation</td>
<td>Minor</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Clearing of Invasive or noxious vegetation</td>
<td>Very Minor</td>
<td>Up to $1,000²</td>
</tr>
</tbody>
</table>

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.  

(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

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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


Florida Department of Environmental Protection. Damage Costs in Seagrass Habitats. http://www.dep.state.fl.us/coastal/habitats/seagrass/awareness/damage_costs.htm


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.*
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 $390,000 to clean 5,000 yd$^3$ of beach sand. However between 30,000-50,000 yd$^3$ 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 $65,000 for 10m$^2$). 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
- Multiplied by $1,000 (or estimated value of coral on per/area basis)

(\#m^2 \times $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 $100/yd$^2$ of damage to seagrass beds for the first yd$^2$ damaged and $75/yd^2$ per each additional yd$^2$ 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
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 Pilaa, $390,000 fine was estimated to clean 5,000 yd$^3$ 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.)
APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator’s Name(s): __________________________________________

TMK:__________________________________________________________________

OCCL Staff Member:__________________________________________________________________

Date:__________________________________________________________________

Part 1- Penalties

<table>
<thead>
<tr>
<th>Violation Type</th>
<th>Permit Prefix (D, C, B)</th>
<th>Harm to Resource (actual &amp; potential)</th>
<th>Tree or Vegetation Status</th>
<th>Penalty Range</th>
<th>Adjustments (Mark Adj. Choice #1-8)</th>
<th>Multi-day (# days)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
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</table>

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: __________________________________________

   __________________________________________
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: