

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

March 13, 2020

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

REGARDING: Conservation District Enforcement HA 20-17 Alleged Unauthorized Land Use
– Transient Rental Located in the Conservation District

LANDOWNER: Christopher Gorham Arai &
Tess Marie Lusher

LOCATION: 87-3173 Mapuna Road, Kona Paradise Kaohe 4th, South Kona, Hawai'i

TAX MAP KEY: (3) 8-7-019:031

PARCEL SIZE: 0.2581-acres

SUBZONE: Limited

DESCRIPTION OF AREA:

The subject parcel is located at 87-3173 Mapuna Road in the Kona Paradise Kaohe 4th Subdivision of South Kona on the Western side of the island of Hawai'i and is further identified as Tax Map Key (TMK) (3) 8-7-019:031. The parcel is located within the Limited Subzone of the State Land Use Conservation District (**see Exhibit 1**). The single-family residence (SFR), minor landscaping improvements with coconut trees, water catchment system, and septic tank were permitted under Conservation District Use Application (CDUA) HA-2730 on December 16th, 1994 (**see Exhibit 2**).

The parcel is a shoreline property that abuts Pebbles Beach at the bottom of the Kona Paradise Kaohe 4th Subdivision and is located in a rural coastal area of South Kona on the island of Hawai'i. A vacant lot is to the South of the property, Mapuna Road is to the East, and a similar SFR residence is to the North. The Kona Paradise Kaohe 4th Subdivision is a quiet residential neighborhood due to the rural nature of South Kona (**see Exhibit 3**).

ALLEGED UNAUTHORIZED LAND USES

In August of 2019, Mr. Arai and Ms. Lusher contacted the Office of Conservation and Coastal Lands (OCCL) via phone regarding potential authorization for conducting transient rental activities in the Conservation District. OCCL Staff instructed Mr. Arai and Ms. Lusher that transient rentals are prohibited in the Conservation district pursuant to Hawai'i Administrative Rules (HAR) §13-5-42 (5) and that the conditions of CDUA HA-2730 state that the single-family residence associated with the property shall not be used for transient rental purposes. This telephone conversation with Mr. Arai and Ms. Lusher was followed by an email from OCCL Staff reiterating that transient rentals are

prohibited in the Conservation District and that the single-family residence was not to be used for rental or other commercial purposes according to Conditions #4 and #12 of CDUA HA-2730 (see **Exhibit 4**). Mr. Arai and Ms. Lusher were also given the links to Hawai'i Administrative Rules (HAR) §13-5 and Hawai'i Revised Statutes (HRS) Section 183C-7 which explain the rules and regulations as well as the penalties for unauthorized uses in the Conservation District. The phone call and email with Mr. Arai and Ms. Lusher were noted by OCCL Staff as verbal and written notification that transient rentals are prohibited in the Conservation District.

On September 24th, 2019, the Department of Planning from the County of Hawai'i contacted OCCL regarding Mr. Arai and Ms. Lusher's application to register the property and associated SFR as a Short-Term Vacation Rental and Nonconforming Use with the County of Hawai'i (see **Exhibit 5**). Upon learning that the property was in the State Land Use Conservation District, and therefore falling under the jurisdiction of OCCL, the Department of Planning inquired if the applicants needed a Conservation District Use Permit (CDUP) to operate a Short-Term Vacation Rental in the Conservation District. OCCL staff instructed the Department of Planning that transient rentals are prohibited in the Conservation District pursuant to HAR §13-5-42 (5) and that the applicants may be in noncompliance and violation of the property's CDUA HA-2730.

On September 25th, 2019, the Department of Planning issued Mr. Arai and Ms. Lusher 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 6**). Mr. Arai and Ms. Lusher's Short-Term Vacation Rental and Nonconforming Use Application were then forwarded to OCCL.

After reviewing Mr. Arai and Ms. Lusher's Short-Term Vacation Rental and Nonconforming Use Application, OCCL notes that Mr. Arai and Ms. Lusher provided documentation showing rental proceeds and taxes paid for transient rental purposes for 2015, 2016, 2017, and 2018 (see **page 20 to 27 of Exhibit 5**). Additionally, the website "Ili Ili House" on www.araidesign.com has advertised the subject property and associated SFR for transient rental purposes since January 1st, 2012 suggesting that Mr. Arai and Ms. Lusher have been operating a transient rental on the property prior to the dates indicated in their Short-Term Vacation Rental and Nonconforming Use Application to the Department of Planning (see **Exhibit 8**). OCCL staff researched the typical vacation rental websites for a listing of the subject property and associated SFR but believes that Mr. Arai and Ms. Lusher have removed their listings from these websites. However, a listing for the property on vrbo.com [vrbo = Vacation Rentals by Owner] was included in their application to the Department of Planning (see **page 19 of Exhibit 5**). Staff notes that Mr. Arai and Ms. Lusher dismantled the "Ili Ili House" website on www.araidesign.com between December 17th, 2019 and January 2nd, 2020.

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-2730 states that *the single family dwelling shall not be used for rental or any other commercial purposes.*

Condition #12 of CDUA HA-2730 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.*

Additionally, the originator of CDUA HA-2730, Mr. Ralph Fukumitsu, filed and recorded the thirteen (13) conditions of the CDUA in accordance with condition #5 of the permit as a “Declaration of Restrictive Covenants” with the State of Hawai’i Bureau of Conveyances on August 5th, 1995 (see **page 2 of Exhibit 9**). The language in the “Declaration of Restrictive Covenants” recorded with the Bureau of Conveyances indicates that the conditions of CDUA HA-2730 “... shall run with the land and shall be binding upon the owners, their heirs, executors, administrators, assigns, successors and grantees, for as long as said land shall be subject to the Conservation Zoning of the State of Hawaii, and the breach of any covenant may be enjoined, abated or remedied by appropriate proceedings by the State of Hawaii.” Any title report produced for the parcel with the TMK: (3) 8-7-019:031 would show the property’s “Declaration of Restrictive Covenants” (Abstract 1995119773).

Based on Mr. Arai and Ms. Lusher’s Short-Term Vacation Rental Registration/Nonconforming Use Certificate application and the “Ili Ili House” website on www.araidesign.com, the owners’ of the parcel with TMK: (3) 8-7-019:031 and CDUA HA-2730 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-2730.

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.

Mr. Arai and Ms. Lusher contacted OCCL regarding the use of their property and associated SFR for transient rental purposes and were subsequently given verbal and written notification that transient rentals are prohibited in the Conservation District. The landowners then continued with their application to the County of Hawai'i to register the property and associated SFR as a Short-Term Vacation Rental and Nonconforming Use. These actions are in violation of Title 13-5, HAR, and the conditions of CDUA HA-2730.

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

FINDINGS

The use of the subject property and single-family residence for transient rental purposes are in violation of Chapter 183C, HRS, Title 13-5, HAR, and CDUA HA-2730. Based upon our investigation, OCCL finds that:

1. The location of the transient rental, Tax Map Key: (3) 8-7-019:031, is in the State Land Use Conservation District *Limited* Subzone;
2. The single-family residence has been used as a transient rental;
3. Based on the history noted above, the property owners were given verbal and written notice that the use is prohibited in the State Land Use Conservation District.

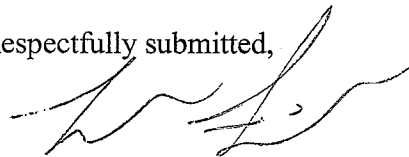
AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to HRS, §183C-7 and HAR, §13-5-6, the Board finds the landowner in violation of HAR, §13-5-42 as well as the conditions of CDUA HA-2730 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-2730 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 \$5,000.00 in a second instance for violating the provisions of HRS §183C-7, HAR §13-5-42, and CDUA HA-2730 by attempting to register the subject

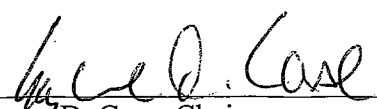
- property and associated single-family residence for transient rental purposes after verbal and written notification from the Department;
3. That the landowners are fined an additional \$2,000 for administrative costs associated with the subject violations;
 4. That the landowners shall pay all designated fines and administrative costs (\$22,000.00) within one hundred eighty (180) days from the date of the Board's action;
 5. That the landowners cease all transient rental activities on the subject property;
 6. That the landowners remove all advertisements associated with the subject property and single-family residence from any websites that promote transient rental accommodations;
 7. 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;
 8. That the landowners provide DLNR and OCCL with all applicable documentation that would demonstrate that the above actions have satisfactorily been performed;
 9. 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
 10. 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;
 11. 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;
 12. The above noted conditions of Enforcement file HA 20-17 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

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Office of Conservation and Environmental Affairs
Honolulu, Hawaii

File No.: HA-2730
180-Day Exp. Date: 1/25/95

December 16, 1994

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

REGARDING: Conservation District Use Application for a Single
Family Residence at Kona Paradise Subdivision,
Kaohe 4th, South Kona, Hawaii

APPLICANT: Mr. Ralph Fukumitsu
73-1400 Hikimoe Street
Kailua-Kona, Hawaii 96740

LANDOWNER: Ralph Fukumitsu

LOCATION/ Kona Paradise Subdivision
Kaohe 4th, South Kona
TMK: 8-7-19: 31

AREA OF PARCEL/ 11,245 Square Feet (S.F.)
USE: 1,500 S.F. Single Family Residence

SUBZONE: Limited

DESCRIPTION OF AREA/CURRENT USE:

The parcel is an unimproved lot fronting Kaohe Park and Ili-Ili Beach (Exhibits 1, 2, 3). It has a rocky lava terrain, and is flat (elevation is about 20 feet), and partially covered with several coconut trees and Ekoa bush. The property was graded in 1959 when the subdivision was established.

Electricity and telephone are readily available for the site, but water and sewerage are not. Access is provided within the Kona Paradise Subdivision with a private road consisting of crushed rock.

The property is part of a subdivision duly approved on January 19, 1959. The Conservation District in this area was established in 1969.

PROPOSED USE:

The applicant proposes to construct an 1500 square feet, one-story residential structure on the property (Exhibits 4 & 5). In conjunction with this structure, the applicant proposes to landscape it with coconut tree planting in every appropriate space. Water will be obtained by a catchment system and a septic tank will be installed for sewage. This beach home will be used as a secondary home for the applicant's family.

In addition, subdivision covenants will apply for the proposed building design, and will be subject to approval by the Association's architecture committee.

SUMMARY OF COMMENTS:

This application was referred to the following agencies for their review and comment: The State Department of Health, the Department of Transportation, the Office of Hawaiian Affairs, the Office of State Planning, the Department of Land and Natural Resources, Divisions of Aquatic Resources, Forestry and Wildlife, State Parks, Historic Preservation, Conservation and Resources Enforcement, Land Management, Water Resource Management and the Natural Area Reserves System; and the County of Hawaii, Planning Department, the Department of Public Works and Waste Management and the Department of Water Supply. Substantive comments received are provided below.

DEPARTMENT OF LAND AND NATURAL RESOURCES

Division of Aquatic Resources

The planned residence is not expected to significantly impact aquatic resource values.

Existing traditional and historical access to the Ili-Ili beach should be maintained for fishing and other recreational uses.

Finally, precautions should be taken to prevent construction materials, petroleum products, wastes, debris, eroded soil and other contaminants from entering coastal waters.

Historic Preservation Division

As indicated in the application, the subject lot was graded in 1959. Based on this information and examination of the accompanying photographs we believe that the proposed action will have "no effect" on historic sites.

COUNTY OF HAWAII

Planning Department

We have review the above-referenced Conservation District Use Application for a proposed single family residence on the subject property. We have the following comments:

1. The subject property is situated within the Special Management Area (SMA) of the County of Hawaii. A single family residence is considered exempt from the requirements of the SMA.
2. However, prior to approval of a Building Permit the applicant is required to submit an SMA Use Permit Assessment Application to the Planning Department for review and approval of the proposed residence. In addition, a certified shoreline survey is required as the property abuts the shoreline.
3. We recommend that the minimum setback requirements for the structure be front - 20 feet, and sides - 10 feet. The shoreline setback line will be determined upon receipt of a certified shoreline survey.

Department of Public Works

We have reviewed the subject application and have the following comments:

1. Building shall conform to all requirements of codes and statutes pertaining to building construction.
2. All development generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
3. The subject parcel is in Flood Zone "X".

ANALYSIS:

Following review and acceptance of the application for processing, the applicant was notified, by letter dated August 8, 1994, that:

1. The proposed use is a non-conforming use within the Limited subzone of the Conservation District according to Hawaii Administrative Rules, Title 13, Chapter 2, as amended;
2. No public hearing pursuant to Section 183-41, Hawaii Revised Statutes (HRS), as amended, will be required; and
3. The proposed use qualifies as an exempt action in accordance with Title 11, Chapter 200, of the Environmental Impact Statement, Administrative Rules.

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

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

The County of Hawaii Planning Department has confirmed that the proposed project is located within the Special Management Area; however, a single family residence is considered exempt from the requirements of the SMA.

The proposed single family residential structure would be built at the outer boundary of an established residential subdivision. Although a few mitigative measures may be necessary, no adverse environmental impact is expected by this development. Access along the shoreline will not be affected by development on this property.

Moreover, the proposed single family residential use of the property qualifies as a nonconforming use.

The proposal qualifies as a nonconforming use as defined under Section 13-2-1 of the Department's Administrative Rules for the Conservation District, i.e.

The lawful use of any building, premises or land for any trade, industry, residence or other purposes which is the same as and no greater than that established prior to October 1, 1964, or prior to the inclusion of the building, premises, or land within the conservation district.

The parcel was created as a subdivision lot for residential purpose in 1959, prior to its inclusion in the Conservation District in 1969, and, therefore, the applicant's proposal qualifies as a nonconforming use.

Staff, therefore, recommends that:

RECOMMENDATION:

The Board of Land and Natural Resources approve this application for a single family residence at Kona Paradise Subdivision, Koahe 4th, South Kona, Hawaii, as a non-conforming use 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;
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 remain 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.

Respectfully submitted,

Roy Schaefer

ROY SCHAEFER
Staff Planner

Attachment(s)

Approved for Submittal:

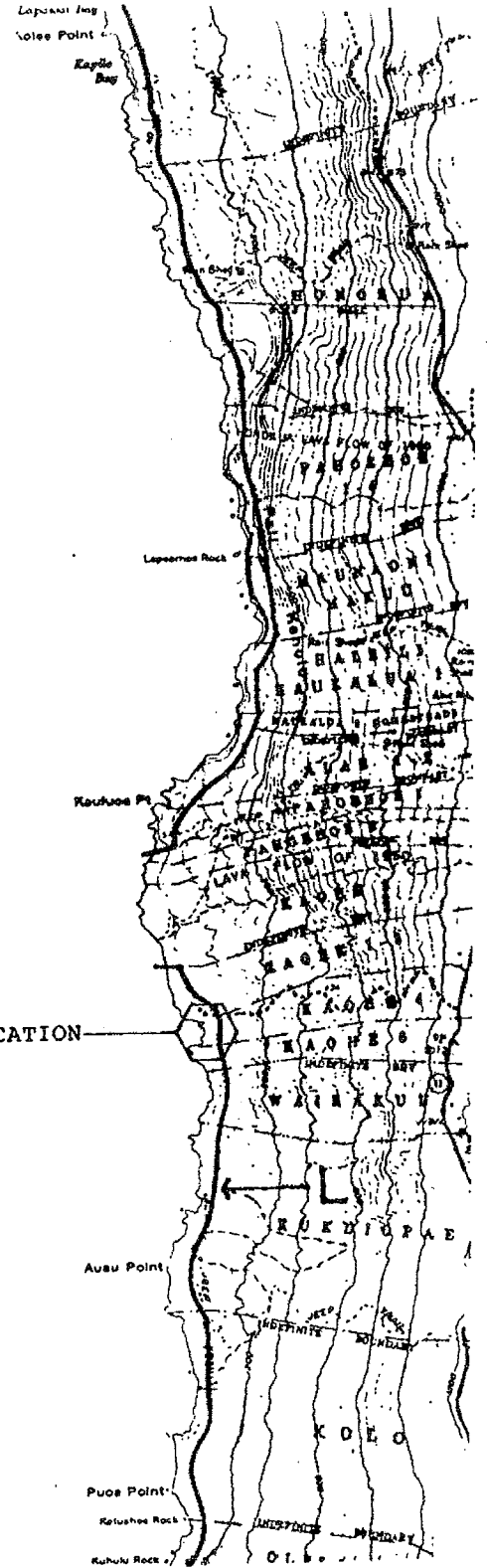
Keith W. Ahue

KEITH W. AHUE, Chairperson
Board of Land and Natural Resources

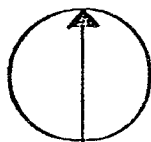
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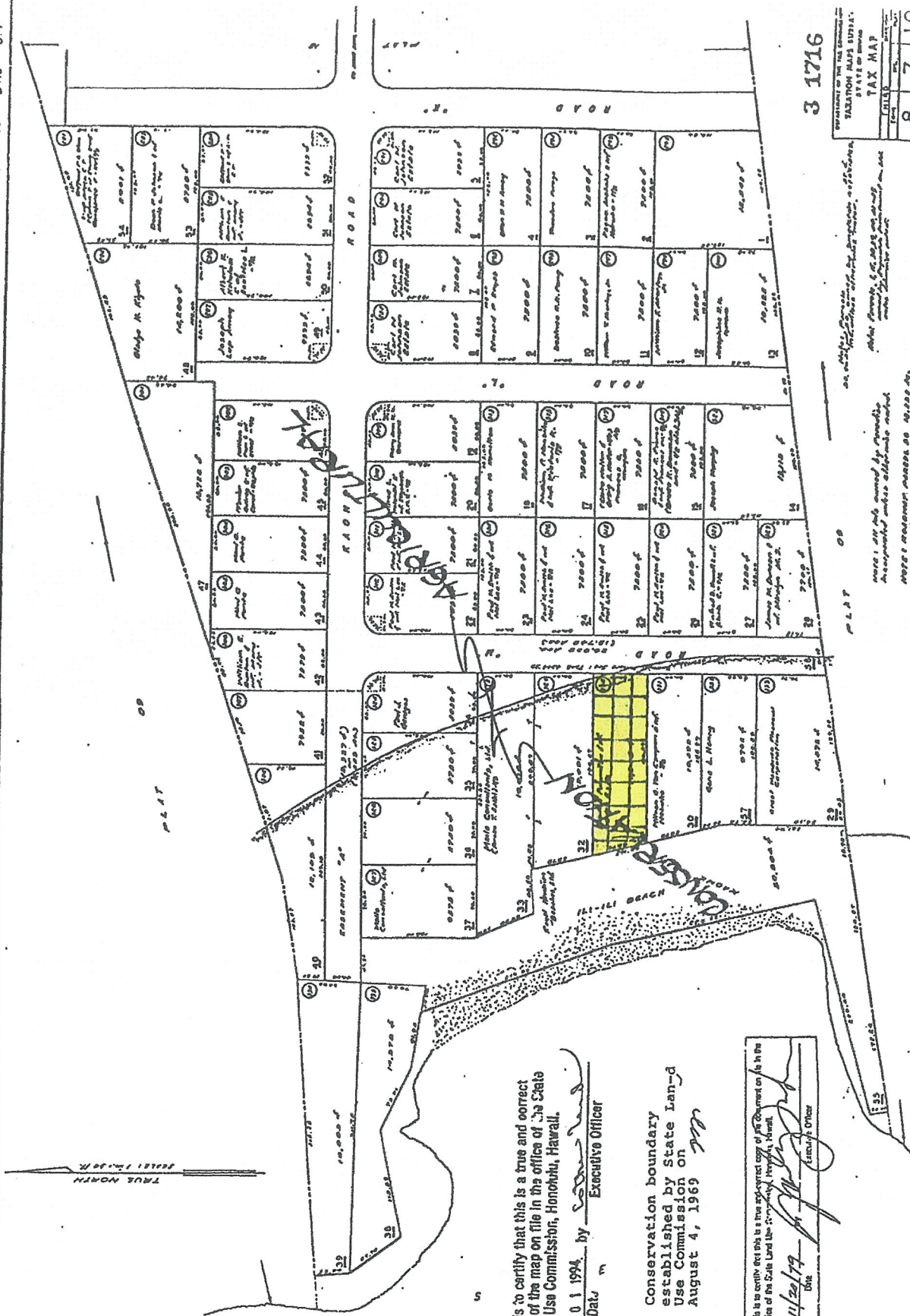
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PROJECT LOCATION



CDUA no.
APPLICANT



DEPARTMENT OF THE TREASURY	
TAXATION MAPS SUBSIST.	
STATE OF HAWAII	
TAX MAP	
DATE	FILE NO.
8 7 19	

3 1716

This is to certify that this is a true and correct copy of the map on file in the office of the State Land Use Commissioner, Honolulu, Hawaii.

JUN 0 1 1994 by [Signature] Executive Officer

Conservation boundary established by State Land Use Commission on August 4, 1969

[Signature]

This is to certify that this is a true and correct copy of the map on file in the office of the State Land Use Commissioner, Honolulu, Hawaii.

11/22/19 [Signature] Executive Officer

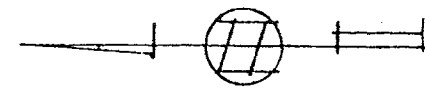
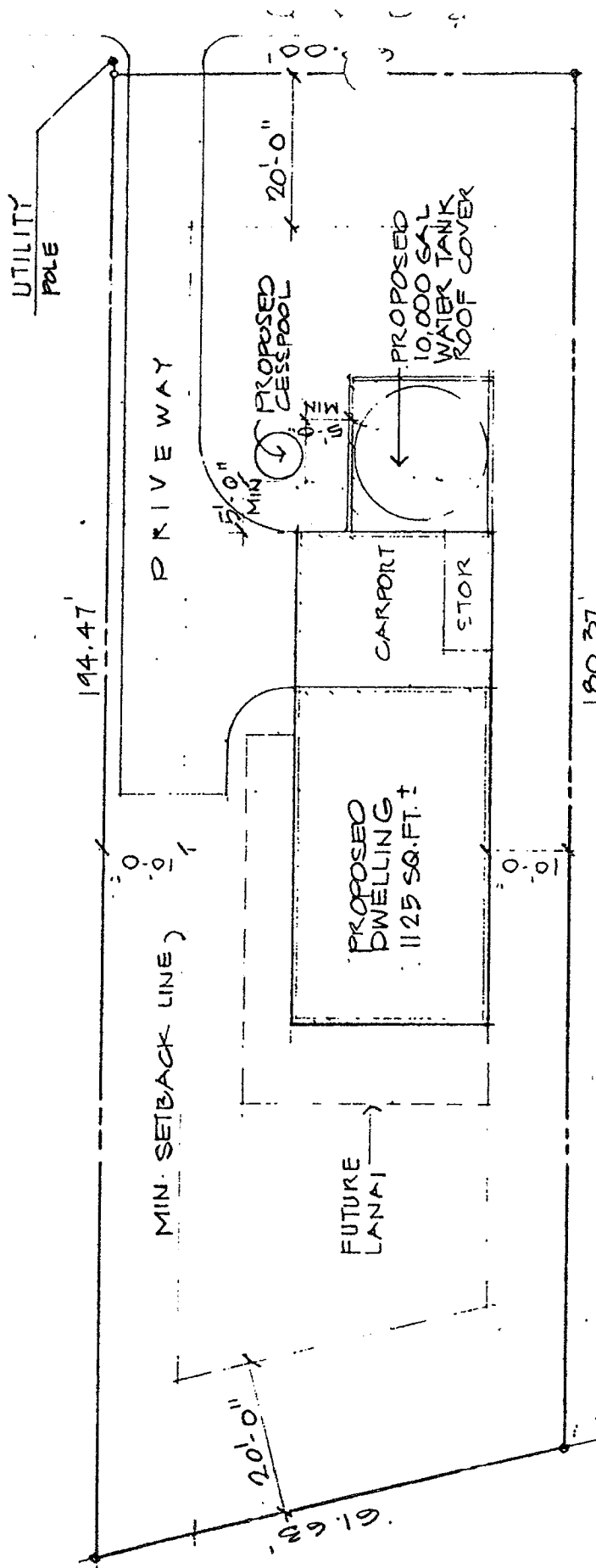
NOTE: All lots owned by Honolulu are marked with alternate colors.

NOTE: Minimum areas are 10,000 sq. ft. unless otherwise noted.

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SUBJECT TO CHANGE

WUC file copy

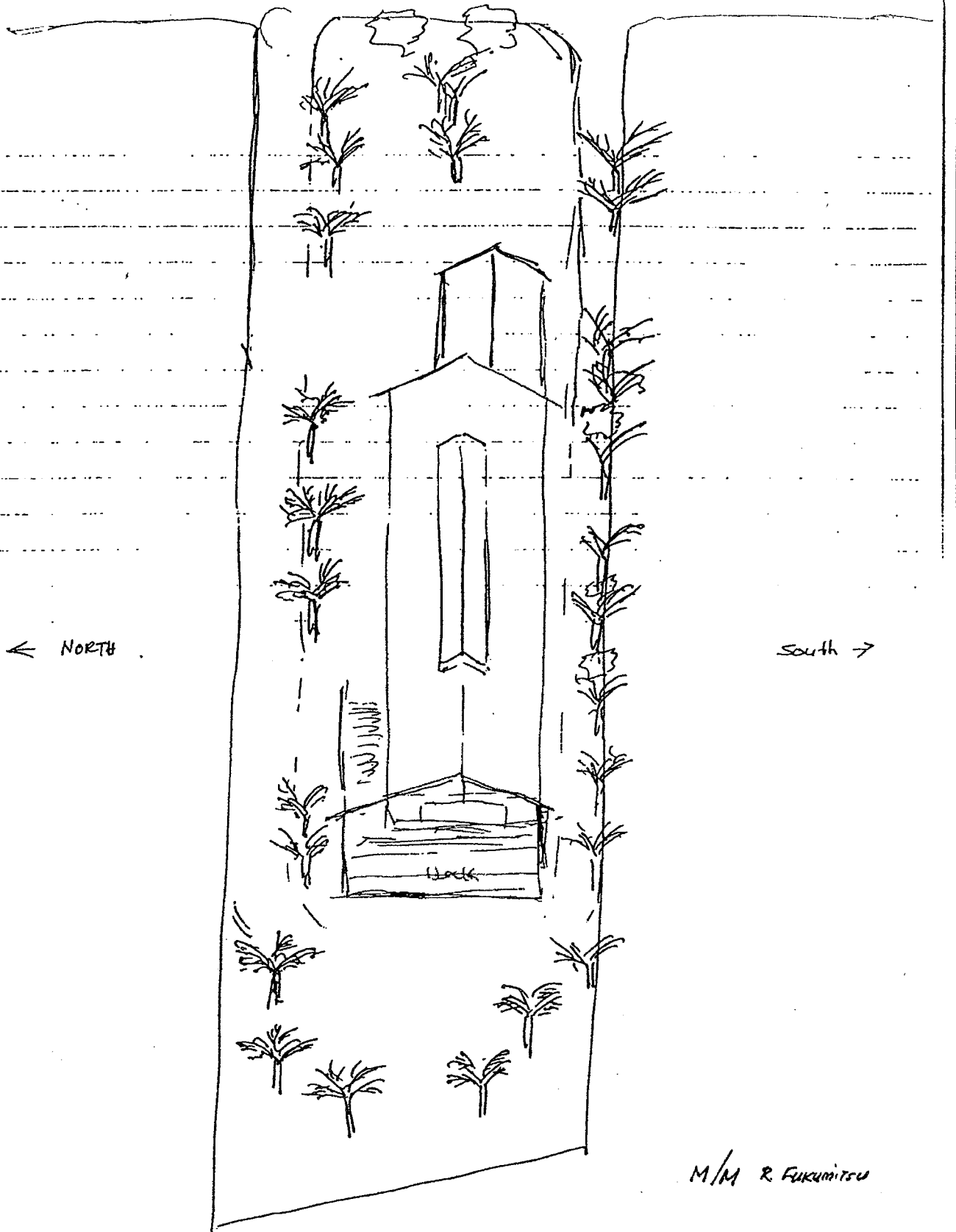


PLOT PLAN

SCALE IN FEET 1" = 20 FT

T.M.K: 8-7-19-4 LOT 330
 LOC: KAHOE 4th, SOUTH KONA
 AREA: 11,245 SQ. FT.

M/M R FUFUMITSU



← NORTH

SOUTH →

WEST
↓


- BRACH FRONT

M/M R. Fukumitsu

Exhibit 3: Kona Paradise Kaohe 4th

South Kona, Hawaii

Legend

 Arai & Lusher SFR at TMK: (3) 8-7-019:031

 87-3173 Mapuna Rd

11



4000 ft

Google Earth

© 2018 Google
Image © 2019 TerraMetrics

Exhibit 4

From: [Mills, Kimberly T](#)
To: [Fitzpatrick, Trevor J](#)
Subject: FW: CDUP HA-2730
Date: Friday, October 18, 2019 2:39:43 PM
Attachments: [2730.PDF](#)
Importance: High

~Tiger
K. Tiger Mills, Staff Planner
State of Hawai'i
Department of Land and Natural Resources
Office of Conservation And Coastal Lands
P.O. Box 621
Honolulu, Hawai'i 96809
www.dlnr.hawaii.gov/occl



From: Mills, Kimberly T
Sent: Wednesday, August 28, 2019 1:45 PM
To: chris@araidesign.com
Subject: CDUP HA-2730
Importance: High

Mr. Arai:

Attached please find Conservation District Use Permit HA-2730 authorizing the residence.
Please note condition #4 and #12

The rules and regulations of the Conservation District also noted as the Hawaii Administrative Rules (HAR), chapter 13-5 may be found on our website at dlnr.hawaii.gov/occl
Sec. 13-5-2 Definitions defines a transient rental
Sec. 13-5-42 Standard conditions (5) states the prohibition

Below is the link to HRS, Sec. 183C-7 that explains the penalty for violation in the Conservation District.

https://www.capitol.hawaii.gov/hrscurrent/Vol03_Ch0121-0200D/HRS0183C/HRS_0183C-0007.htm

I believe I gave you verbal notification and this is written notification **that Transient Rentals are prohibited in the Conservation District.**

As landowners of Conservation District land, I suggest that you and Ms. Lusher review HAR, Chapter

13-5 in addition to the Hawaii Revised Statutes (HRS) Chapter 183C Conservation District, to familiarize yourselves with the laws of the Conservation District and abide by these laws.

~Tiger

K. Tiger Mills, Staff Planner

State of Hawai'i

Department of Land and Natural Resources

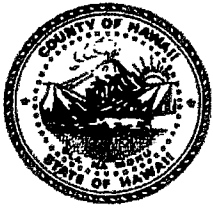
Office of Conservation And Coastal Lands

P.O. Box 621

Honolulu, Hawai'i 96809

www.dlnr.hawaii.gov/occl





County of Hawai'i Planning Department

www.hiplanningdept.com · planning@hawaiicounty.gov

East Hawai'i Office · 101 Pauahi Street, Suite 3 · Hilo, Hawai'i 96720
Phone (808) 961-8288 · Fax (808) 961-8742

West Hawai'i Office · 74-5044 Ane Keohokalole Hwy · Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770 · Fax (808) 327-3563

FOR OFFICE USE ONLY
Receipt Number: _____
Reviewed By: _____
STVR #: _____
NUC # (if Applicable) _____

Exhibit 5
Page 1 of 36

SHORT-TERM VACATION RENTAL (STVR) REGISTRATION AND/OR NONCONFORMING USE (NUC) APPLICATION

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

APPLICANT (Please Print): Christopher Gorham Arai

APPLICANT'S INTEREST, IF NOT THE OWNER: _____

SIGNATURE: _____ DATE: _____

SIGNER (Please Print): _____ TITLE: _____

MAILING ADDRESS: 4451 Pine Flat Rd

CITY: Healdsburg STATE: CA ZIP CODE: 95448

PHONE NO.: (707) 695 6229 EMAIL: chris@aradesign.com

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

LANDOWNER (Please Print): Christopher Gorham Arai & Tess Marie Lusher

SIGNATURE: _____ DATE: _____

SIGNER (Please Print): _____ TITLE: _____

MAILING ADDRESS: 4451 Pine Flat Rd

CITY: Healdsburg STATE: CA ZIP CODE: 95448

PHONE NO.: (707) 695-6229 EMAIL: chris@aradesign.com

REACHABLE PERSON (Please Print): Harvey Sacarob

MAILING ADDRESS: 87-3139 Mamalahoa Highway

CITY: Captain Cook /HI ZIP CODE: 96704

PHONE NO.: Business () _____ Home/Mobile (808) 937-3777

EMAIL: 7sunbear21@gmail.com

STVR STREET ADDRESS: 87-3173 Mapuna Rd

CITY: Captain Cook /HI ZIP CODE: 96704

FOR OFFICE USE ONLY:

TAX MAP KEY: (3) 8-7-019:031:0000 ZONING: A-5A

SLU: 0 If Ag, Date of Subdivision: 13/3/2 2/10/1981 LUPAG: open

STVR Registration

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

Instructions:

- STVR Registration only: Please submit Items 1-10
- STVR Registration + Nonconforming Use Certificate: Please submit Items 1-13.
- 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. **\$500 Non-refundable filing and processing fee.** Payments by check may be made payable to: Director of Finance.
4. **Final Approvals from Building Division.** 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 (www.hawaiipropertytax.com) 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. Incomplete permits will require page 4 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.
6. **County of Hawai'i Real Property Tax Clearance Certificate** obtained from the Real Property Tax Division.
7. **Site Plan.** Drawn to scale, on 11" x 17" white copy 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;
 - c) Designated parking spaces for the STVR in compliance with Hawai'i County Code (HCC), Sections 25-4-50 through 25-4-54; and
 - d) Reference points such as roadways, shoreline, etc; and
 - e) Table indicating total square footages of each of the structures on the property.
8. **Floor Plan.** Drawn to scale, 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.** All landowners must 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 prior use of the property as an STVR. Proof may include tax documents for the relevant time period or other reliable evidence.
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 (www.hawaiipropertytax.com) and use the "New Web Access Portal" to retrieve and print out the surrounding property owners list.

Exhibit 5

Page 2 of 36

STVR Registration

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.

Exhibit 5

Page 3 of 36

STVR Registration

SHORT-TERM VACATION RENTAL (STVR) REGISTRATION
LANDOWNER ADDENDUM

LANDOWNER: Christopher Gorham Arai
SIGNATURE: [Signature] DATE: 8.27.19
SIGNER (Please Print): CHRISTOPHER GORHAM ARAI TITLE: _____
MAILING ADDRESS: 4451 Pine Flat Road
CITY: Healdsburg STATE: CA ZIP CODE: 95448
PHONE NO.: (707) 695 6229 EMAIL: chris@araidesign.com

LANDOWNER: ~~Tess Marie Lusher~~
SIGNATURE: [Signature] DATE: 8.27.19
SIGNER (Please Print): TESS MARIE LUSHER TITLE: MD
MAILING ADDRESS: 4451 Pine Flat Road
CITY: Healdsburg STATE: CA ZIP CODE: 95448
PHONE NO.: (707) 480 9159 EMAIL: tess@araidesign.com

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: _____

--- THIS PAGE FOR OFFICE USE ONLY ---

**SHORT-TERM VACATION RENTAL (STVR) REGISTRATION
BUILDING DIVISION APPROVAL**

LANDOWNER(S): _____

STVR ADDRESS: _____

CITY: _____ /HI ZIP CODE: _____

STVR TAX MAP KEY: (3) _____

TO BE COMPLETED BY BUILDING DIVISION STAFF

Building Permit Number(s) and Final Approval Date(s)	General Description of Permit	Permit Status	Completed By:	Date:
Electrical Permit Number(s) and Final Approval Date(s):				
Plumbing Permit Number(s) and Final Approval Date(s):				

Parcel Information

Parcel Number 870190310000
 Location Address 87-3173 MAPUNA ROAD
 Project Name Kona Paradise
 Property Class CONSERVATION
 Neighborhood Code 8742-6
 Legal Information LOT 330 11,245 SF DES POR MAHELE AW 25 RP 7739 KONA
 Land Area (acres) 0.2581
 Land Area (approximate sq ft) 11,245

[View Map](#)

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

Owner Information

Owner Names ARAI,CHRISTOPHER Fee Owner, Tenants by the Entirety
 LUSHER,TESS MARIE Fee Owner
 Show All Owners and Addresses

Mailing Address ARAI,CHRISTOPHER
 4451 PINE FLAT RD
 HEALDSBURG CA 95448 8058

Assessment Information

		Show Historical Assessments								
Year	Property Class	Market Land Value	Dedicated Use Value	Assessed Land Value	Market Building Value	Assessed Building Value	Total Market Value	Total Assessed Value	Total Exemption Value	Total Taxable Value
2019	CONSERVATION	\$193,700	\$0	\$193,700	\$191,200	\$191,200	\$384,900	\$384,900	\$0	\$384,900

Land Information

Property Class CONSERVATION
 Square Footage 11,245
 Acreage 0.2581
 Agricultural Use Indicator

Residential Improvement Information

Building Number	1	Bedrooms	2
Year Built	1997	Framing	Frame
Eff Year Built	1997	Exterior Wall	DOUBLE WALL
Square Feet	959	Roof Material	METAL
Total Room Count	4	Heating/AC	NONE
Full Baths	2	Fireplace	0
Half Baths	0	Grade	3+

Sketches

Room Type	Area
A Main Area	959
B OPEN CARPORT BIT/CONC FLOOR	528
C PORCH CEILED W/RAILING	273

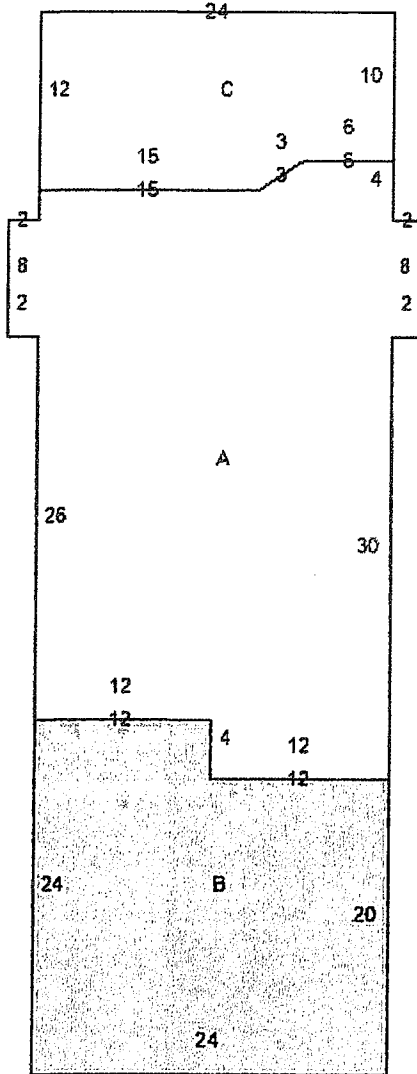


Exhibit 5

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Permit Information

Date	Permit Number	Reason	Permit Amount
12/15/2014	BK2014-02786		\$19,600
11/20/1997	976005		\$2,700
8/8/1997	975646		\$2,000
12/15/1995	965017		\$50,000

Bldg Division Permit and Inspections Information

Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status	Permit Status
12/15/2014	Building	BK2014-02786	Alteration,Electrical,Photovoltaic	PV-Install new roof mounted 3.92 kw PV array	\$19,600	3/11/2015	COMPLETED	Complete
12/15/2014	Electrical	EK2014-03068	Alteration	PV-Install new roof mounted 3.92 kw PV array	\$19,600	3/10/2015	COMPLETED	Complete
11/21/1997	Building	976005*	Alteration, Solar		\$2,700	8/2/2019	COMPLETED	COMPLETED

Permit Date	Permit Type	Permit Number	Permit Reason	Permit Description	Estimated Cost	Inspection Date	Inspection Status	Permit Status
11/21/1997	Electrical	E975927*	Alteration		\$150	4/30/1998	COMPLETED	COMPLETED
11/21/1997	Plumbing	M975720*	Alteration		\$1,000	4/29/1998	COMPLETED	COMPLETED
8/25/1997	Electrical	E975643*	Addition		\$300	4/22/1998	COMPLETED	COMPLETED
8/13/1997	Building	975646*	Addition		\$2,000	4/22/1998	COMPLETED	COMPLETED
6/5/1997	Electrical	E975427*	New		\$2,500	4/22/1998	COMPLETED	COMPLETED
2/3/1997	Plumbing	M975061*	New		\$2,500	1/12/1998	COMPLETED	COMPLETED
1/11/1996	Building	965017*	New		\$50,000	4/22/1998	COMPLETED	COMPLETED

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

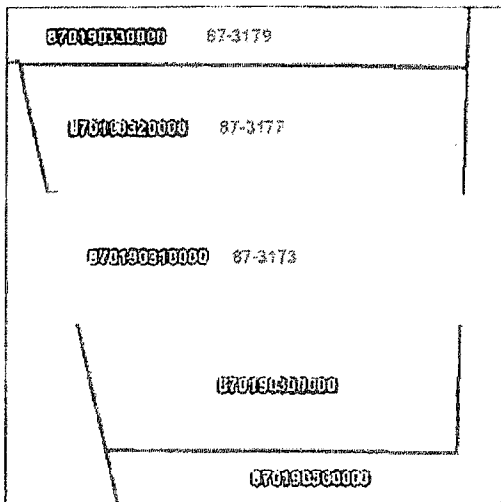
Sales Information

Sale Date	Sale Amount	Instrument #	Instrument Type	Instrument Description	Date Recorded	Land Court Document Number	Cert # Book/Page	Conveyance Tax	Document Type
02/13/2006	\$875,000	06-032892	FEE CONVEYANCE	Warranty Deed	02/17/2006			1750	Warranty Deed
12/20/2004	\$450,000	04-260915	FEE CONVEYANCE	Warranty Deed	12/27/2004			450	Warranty Deed
07/31/2000	\$400,000	0000112522	FEE CONVEYANCE	Warranty Deed	08/15/2000			400.00	Warranty Deed

Historical Tax Information

Year	Tax	Payments and Credits	Penalty	Interest	Other	Amount Due
2019	\$4,445.60	(\$4,445.60)	\$0.00	\$0.00	\$0.00	\$0.00
2018	\$4,347.43	(\$4,347.43)	\$0.00	\$0.00	\$0.00	\$0.00
2017	\$4,266.58	(\$4,266.58)	(\$211.39)	(\$25.60)	\$0.00	\$0.00
2016	\$3,521.92	(\$3,521.92)	(\$176.10)	(\$38.74)	\$0.00	\$0.00
2015	\$3,196.42	(\$3,196.42)	(\$159.82)	(\$52.74)	\$0.00	\$0.00
2014	\$3,189.91	(\$3,189.91)	(\$159.50)	(\$21.08)	\$0.00	\$0.00
2013	\$3,103.11	(\$3,103.11)	\$0.00	\$0.00	\$0.00	\$0.00
2012	\$2,805.29	(\$2,805.29)	(\$140.27)	(\$46.29)	\$0.00	\$0.00
2011	\$2,814.15	(\$2,814.15)	\$0.00	\$0.00	\$0.00	\$0.00
2010	\$2,946.14	(\$2,946.14)	(\$166.90)	(\$57.23)	\$0.00	\$0.00
2009	\$2,622.29	(\$2,622.29)	(\$131.12)	(\$14.42)	\$0.00	\$0.00
2008	\$2,383.75	(\$2,383.75)	\$0.00	\$0.00	\$0.00	\$0.00
2007	\$1,891.27	(\$1,891.27)	(\$94.56)	(\$10.40)	\$0.00	\$0.00
2006	\$1,839.97	(\$1,839.97)	(\$92.00)	(\$30.36)	\$0.00	\$0.00
2005	\$2,056.69	(\$2,056.69)	\$0.00	\$0.00	\$0.00	\$0.00
2004	\$2,005.47	(\$2,005.47)	\$0.00	\$0.00	\$0.00	\$0.00
2003	\$1,956.22	(\$1,956.22)	(\$97.81)	(\$64.56)	\$0.00	\$0.00
2002	\$1,908.94	(\$1,908.94)	\$0.00	\$0.00	\$0.00	\$0.00
2001	\$1,802.45	(\$1,802.45)	\$0.00	\$0.00	\$0.00	\$0.00
2000	\$1,795.65	(\$1,795.65)	\$0.00	\$0.00	\$0.00	\$0.00

Map



Recent Sales in Area

From: 08 / 19 / 2016  To: 08 / 19 / 2019 

Sales by Neighborhood

Sales by Distance

1500 Feet

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

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



Last Data Upload: 8/19/2019, 4:30:32 AM

Version 2.3.0

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

TESS LUSHER & CHRIS ARAI
4451 PINE FLAT RD
HEALDSBURG CA 95448-8058

Date: August 15, 2016
Letter ID: L0549881856
Customer ID: T-038-847-2832



Re: License Letter

Dear Taxpayer:

This letter contains your General Excise Tax License for Hawaii Tax ID Number: GE-038-847-2832-01. Please display this license conspicuously at TESS LUSHER & CHRIS ARAI'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 correspondences 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

BUSINESS START DATE: 01/01/2015

STATE OF HAWAII
DEPARTMENT OF TAXATION

L0549881856
FORM G-44A
(REV. 2016)

LICENSE ISSUED FOR THE PRIVILEGE OF ENGAGING IN BUSINESS AND OTHER ACTIVITIES UPON THE CONDITION THAT THE LICENSEE SHALL PAY THE TAXES ACCRUING 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.

HAWAII TAX ID NUMBER: GE-038-847-2832-01
TESS LUSHER & CHRIS ARAI
4451 PINE FLAT RD
HEALDSBURG CA 95448-8058



Exhibit 5
Page 10 of 36

DAVID Y. IGE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

TESS LUSHER & CHRIS ARAI
4451 PINE FLAT RD
HEALDSBURG CA 95448-8058



Date: August 15, 2016
Letter ID: L1253853184
Customer ID: T-038-847-2832

Re: License Letter

Dear Taxpayer:

This letter contains your Transient Accommodations Tax Certificate of Registration for Hawaii Tax ID Number: TA-038-847-2832-01. Please display this certificate of registration conspicuously at TESS LUSHER & CHRIS ARAI'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 correspondences 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

BUSINESS START DATE: 01/01/2015

STATE OF HAWAII
DEPARTMENT OF TAXATION

L1253853184
FORM TA-4A
(REV. 2016)

This Certificate is permanent evidence of your registration under the provisions of Hawaii's Transient Accommodations Tax Law, Chapter 237D, HRS, and must be conspicuously displayed at each place of business where the transient accommodations is located or a notice may be posted in each room, apartment, suite or the like, informing the reader of the location, where this certificate may be inspected and examined. A copy of your registration application and any amendments thereto should be attached to this Certificate.

**TRANSIENT ACCOMMODATIONS TAX CERTIFICATE OF
REGISTRATION**

THIS CERTIFICATE OF REGISTRATION IS NOT TRANSFERABLE

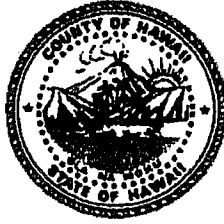
HAWAII TAX ID NUMBER: TA-038-847-2832-01
TESS LUSHER & CHRIS ARAI
4451 PINE FLAT RD
HEALDSBURG CA 95448-8058



Exhibit 5

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Harry Kim
Mayor



Deanna S. Sako
Finance Director

Nancy Crawford
Deputy Director

County of Hawai'i

DEPARTMENT OF FINANCE - REAL PROPERTY TAX

Aupuni Center • 101 Pauahi Street • Suite No. 4 • Hilo, Hawai'i 96720 • Fax (808) 961-8415
Appraisers (808) 961-8354 • Clerical (808) 961-8201 • Collections (808) 961-8282
West Hawai'i Civic Center • 74-5044 Ane Keohokalole Hwy. • Bldg. D, 2nd Flr. • Kailua Kona, Hawai'i 96740
Fax (808) 327-3538 • Appraisers (808) 323-4881 • Clerical (808) 323-4880
Website: www.hawaiipropertytax.com

REAL PROPERTY TAX CLEARANCE

(Rev. 07/13)

Date: July 30, 2019

TMK(s): (3) 8-7-019-031-0000

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 2019-2020, up to and including June 30, 2020.

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 CHRISTOPHER ARAI for the County Planning Department and is issued for this/these parcel(s) only.

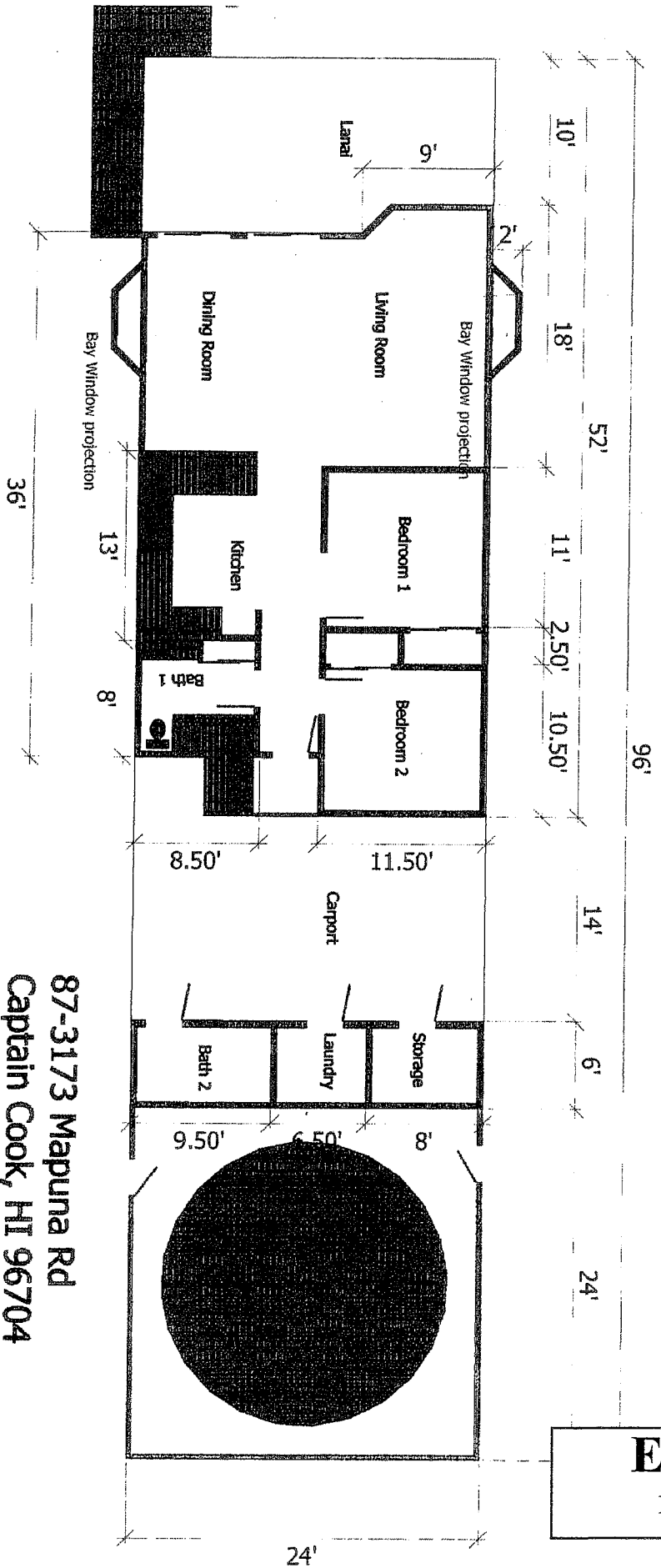

By Theresa Eckert

REAL PROPERTY TAX DIVISION

Paid up to and including JUNE 30, 2020.

Exhibit 5

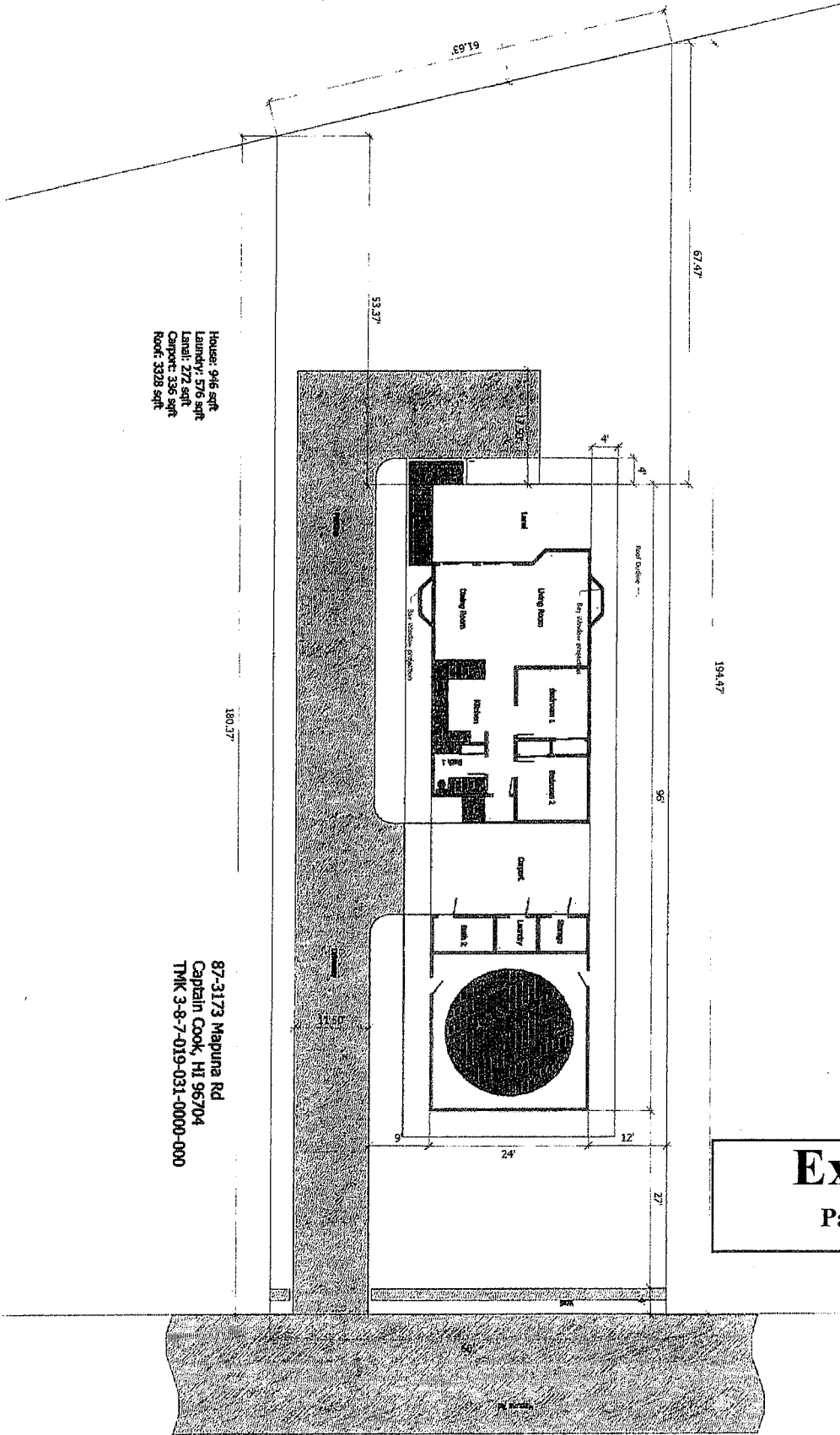
Page 12 of 36



87-3173 Mapuna Rd
 Captain Cook, HI 96704
 TMK 3-8-7-019-031-0000-000

Exhibit 5
 Page 13 of 36

Kahoe Park



House: 946 sqft
 Laundry: 576 sqft
 Land: 772 sqft
 Carport: 336 sqft
 Room: 3328 sqft

87-3173 Mapuna Rd
 Captain Cook, HI 96704
 TMK 3-8-7-019-031-0000-000

Exhibit 5
 Page 14 of 36

**COUNTY OF HAWAI'I
PLANNING DEPARTMENT**

SHORT-TERM VACATION RENTAL (STVR) AFFIDAVIT OF COMPLIANCE

This is to acknowledge that I, Christopher Gorham Arai and Tess Marie Lusher

landowner / authorized applicant of the existing/proposed STVR property located at:
87-3173 Mapuna Road, Captain Cook 96704

Tax Map Key (3) 870190310000, 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.
 - (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."
 - 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.
-

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;

Exhibit 5

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Short-Term Vacation Rental Affidavit of Compliance

- (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 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.

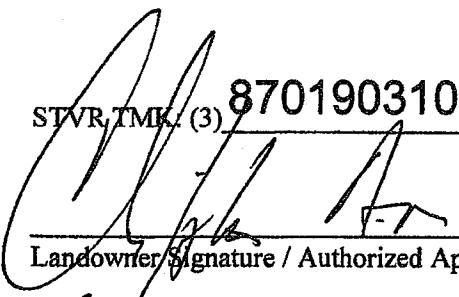
Signage. Any commercial signage that advertises an STVR shall comply with the requirements of HCC Section 22-2.6 and HCC Chapter 3.

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

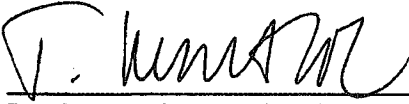
STVR, TMK. (3) 870190310000



Landowner Signature / Authorized Applicant

CHRISTOPHER AGUI
Printed Name of Landowner/Authorized Applicant

8.23.19
Date



Landowner Signature / Authorized Applicant

TESS LUSTER
Printed Name of Landowner/Authorized Applicant

8.23.19
Date

Exhibit 5

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

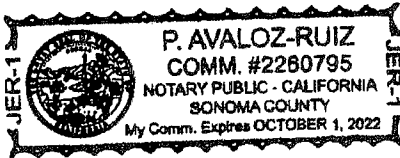
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Sonoma)
On August 23, 2019 before me, P. Avaloz-Ruiz, Notary Public,
Date Here Insert Name and Title of the Officer
personally appeared Christopher Garham Arai and
Name(s) of Signer(s)
Tess Marie Lusher

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit of Compliance
Document Date: _____ Number of Pages: _____
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Exhibit 5
Page 18 of 36



Ili Ili Beach House · 87-3173 Mapuna Rd...
VRBO 87576

87-3173 Mapuna Rd, Ca

2019

Month view

My account ▾ Help ▾

Reservation list

Name, ResID, email	ResID	Start Date	End Date	Status
MELISSA ELLIS	HA-74XGXC	Fri, Feb 8	Tue, Feb 12	●
\$2,062.92 matthew huff	HA-XMMK55	Wed, Feb 13	Sun, Feb 17	●
\$2,530.14 William Patzoldt	HA-BYYSD1	Sun, Feb 17	Fri, Feb 22	●
\$1,907.69 Vickie Dungan	HA-LR1KKK	Fri, Feb 22	Mon, Feb 25	●
\$2,062.92 Pamela Fink	HA-QDV6KK	Mon, Feb 25	Fri, Mar 1, 2019	●
\$2,062.92 Caria Davis	HA-KQXS4G	Mon, Mar 4	Fri, Mar 8	●

March 2019

April 2019

M	T	W	T	F	M	T	W	T	F
---	---	---	---	---	---	---	---	---	---

- Reserved
- Tentative/Booking request
- Conflict
- Blocked
- Glamping Hub

VRBO Reservations

STATE OF HAWAII — DEPARTMENT OF TAXATION

Transient Accommodations Tax Annual Reconciliation Return

Name TESS LUSHER & CHRIS ARAI
Filing Period 12/31/2018
Filing Frequency Reconciliation
Web Name CHRISTOPHER ARAI

Tax ID TA-038-847-2832-01R
Return Type TA-2
Amended
Submitted Jan-29-2019

Transient Accommodations Tax	Gross Rental / Proceeds (a)	Exemptions/ Deductions (b)	Taxable Proceeds (c)
Oahu	0.00	0.00	0.00
MauI, Molokai, Lanai	0.00	0.00	0.00
Hawaii	85,539.99	0.00	85,539.99
Kauai	0.00	0.00	0.00

Timeshare Occupancy Tax	Total Fair Market Rental Value
Oahu	0.00
MauI, Molokai, Lanai	0.00
Hawaii	0.00
Kauai	0.00

Tax Computation

Total Amount Taxable	85,539.99
Tax Rate	x0.1025
Total Taxes Due	8,767.85

Total Annual Return

Amounts Assessed During Year	Penalty	0.00
	Interest	0.00
Total Amount		8,767.85
Total Payments Made Less Any Refunds Received for the Tax Year		9,009.32
Credit Claimed on Original Annual Return (For Amended Return ONLY)		0.00
Net Payments Made		9,009.32
Credit to be Refunded		241.47
Additional Taxes Due		0.00

Total Amount Due

For Late Filing Only	Penalty	0.00
	Interest	0.00
Total Amount Due and Payable		0.00

Exhibit 5



**TRANSIENT ACCOMMODATIONS TAX
ANNUAL RETURN & RECONCILIATION**

ID NO 01

Place an "X" in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-17

HAWAII TAX I.D. NO. TA 038-847-2832-01

NAME: ARAI, CHRISTOPHER

Last 4 digits of your FEIN or SSN 0463

PART I — TRANSIENT ACCOMMODATIONS TAX	DISTRICT	Column a GROSS RENTAL OR GROSS RENTAL PROCEEDS	Column b EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)	Column c TAXABLE PROCEEDS (Column a minus Column b)	
	1.	OAHU			
2.	MAUI, MOLOKAI, LANAI				2
3.	HAWAII	50686.28		50686.28	3
4.	KAUAI				4
TOTAL FAIR MARKET RENTAL VALUE					
PART II — TIMESHARE OCCUPANCY TAX	5.	OAHU DISTRICT	5.		
	6.	MAUI, MOLOKAI LANAI DISTRICT	6.		
	7.	HAWAII DISTRICT	7.		
	8.	KAUAI DISTRICT	8.		
PART III — TAX COMPUTATION	9.	TOTAL AMOUNT TAXABLE. Add Column c of lines 1 thru 4 and lines 5 thru 8. Enter result here (but not less than zero).....		9.	50686.28
	10.	Tax Rate		10.	x0.0925
	11.	TOTAL TAXES DUE. Multiply Line 9 by Line 10 and enter the result here. If you did not have any activity for the year, enter "0.00" here		11.	4688.48
PART IV — ADJUSTMENTS & RECONCILIATION	PENALTY				
	12.	Amounts assessed during the year...	12.		
	INTEREST				
	13.	TOTAL AMOUNT. Add lines 11 and 12	13.	4688.48	
	14.	TOTAL PAYMENTS MADE LESS ANY REFUNDS RECEIVED FOR THE TAX YEAR	14.	0.00	
	15.	CREDIT CLAIMED ON ORIGINAL ANNUAL RETURN (For Amended Return ONLY)	15.		
	16.	NET PAYMENTS MADE. Line 14 minus line 15	16.	0.00	
	17.	CREDIT TO BE REFUNDED. Line 16 minus line 13	17.		
18.	ADDITIONAL TAXES DUE. Line 13 minus line 16	18.	4688.48		

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the Transient Accommodations Tax Laws, and the rules issued thereunder.

IN THE CASE OF A CORPORATION OR PARTNERSHIP, THIS RETURN MUST BE SIGNED BY AN OFFICER, PARTNER OR MEMBER, OR DULY AUTHORIZED AGENT.

SIGNATURE: [Signature] TITLE: OWNER DATE: 03/30 DAYTIME PHONE NUMBER: [Blank]

Continued on page 2 — Parts V, VI & VII **MUST** be

Exhibit 5

Page 21 of 36



**TRANSIENT ACCOMMODATIONS TAX
ANNUAL RETURN & RECONCILIATION**

ID NO 01

Place an "X" in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-16

HAWAII TAX I.D. NO. TA 038-847-2832-01

NAME: ARAI, CHRISTOPHER

Last 4 digits of your FEIN or SSN 0463

ATTACH CHECK OR MONEY ORDER HERE

PART I — TRANSIENT ACCOMMODATIONS TAX	DISTRICT	Column a GROSS RENTAL OR GROSS RENTAL PROCEEDS	Column b EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)	Column c TAXABLE PROCEEDS (Column a minus Column b)
	1. OAHU			1
	2. MAUI, MOLOKAI, LANAI			2
	3. HAWAII	70876.40		3
	4. KAUAI			4
	TOTAL FAIR MARKET RENTAL VALUE			
PART II — TIMESHARE OCCUPANCY TAX	5. OAHU DISTRICT	5.		
	6. MAUI, MOLOKAI LANAI DISTRICT	6.		
	7. HAWAII DISTRICT	7.		
	8. KAUAI DISTRICT	8.		
PART III — TAX COMPUTATION	9. TOTAL AMOUNT TAXABLE. Add Column c of lines 1 thru 4 and lines 5 thru 8. Enter result here (but not less than zero).			9. 70876.40
	10. Tax Rate	10.	0.0825 0.0825	
	11. TOTAL TAXES DUE. Multiply Line 9 by Line 10 and enter the result here. If you did not have any activity for the year, enter "0.00" here			11. 5847.30
PART IV — ADJUSTMENTS & RECONCILIATION	PENALTY			
	12. Amounts assessed during the year...	12.		
	INTEREST			
	13. TOTAL AMOUNT. Add lines 11 and 12.	13.		5847.30
	14. TOTAL PAYMENTS MADE LESS ANY REFUNDS RECEIVED FOR THE TAX YEAR.	14.		0.00
	15. CREDIT CLAIMED ON ORIGINAL ANNUAL RETURN (For Amended Return ONLY)	15.		
	16. NET PAYMENTS MADE. Line 14 minus line 15	16.		0.00
	17. CREDIT TO BE REFUNDED. Line 16 minus line 13	17.		
	18. ADDITIONAL TAXES DUE. Line 13 minus line 16	18.		5847.30

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the Transient Accommodations Tax Laws, and the rules issued thereunder.

IN THE CASE OF A CORPORATION OR PARTNERSHIP, THIS RETURN MUST BE SIGNED BY AN OFFICER, PARTNER OR MEMBER, OR DULY AUTHORIZED AGENT.

SIGNATURE	TITLE	DATE
	OWNER	03/3

Exhibit 5

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Continued on page 2 — Parts V, VI & VII **MUST** be



**TRANSIENT ACCOMMODATIONS TAX
ANNUAL RETURN & RECONCILIATION**

ID NO 01

Place an "X" in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-15

HAWAII TAX I.D. NO. TA 038-847-2832-01

NAME: ARAI, CHRISTOPHER

Last 4 digits of your FEIN or SSN 0463

PART I — TRANSIENT ACCOMMODATIONS TAX	DISTRICT	Column a GROSS RENTAL OR GROSS RENTAL PROCEEDS.	Column b EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)	Column c TAXABLE PROCEEDS (Column a minus Column b)
	1. OAHU			
2. MAUI, MOLOKAI, LANAI				
3. HAWAII		51156.00		51156.00
4. KAUAI				
				TOTAL FAIR MARKET RENTAL VALUE
PART II — TIMESHARE OCCUPANCY TAX	5. OAHU DISTRICT		5.	
	6. MAUI, MOLOKAI LANAI DISTRICT		6.	
	7. HAWAII DISTRICT		7.	
	8. KAUAI DISTRICT		8.	
PART III — TAX COMPUTATION	9. TOTAL AMOUNT TAXABLE. Add Column c of lines 1 thru 4 and lines 5 thru 8. Enter result here (but not less than zero).....		9.	51156.00
	10. Tax Rate		10.	0.0025 0.0125
	11. TOTAL TAXES DUE. Multiply Line 9 by Line 10 and enter the result here. If you did not have any activity for the year, enter "0.00" here		11.	3708.81
PART IV — ADJUSTMENTS & RECONCILIATION	PENALTY			
	12. Amounts assessed during the year... ..		12.	
	INTEREST			
	13. TOTAL AMOUNT. Add lines 11 and 12.		13.	3708.81
	14. TOTAL PAYMENTS MADE LESS ANY REFUNDS RECEIVED FOR THE TAX YEAR.....		14.	0.00
	15. CREDIT CLAIMED ON ORIGINAL ANNUAL RETURN (For Amended Return ONLY)		15.	
	16. NET PAYMENTS MADE. Line 14 minus line 15		16.	0.00
	17. CREDIT TO BE REFUNDED. Line 16 minus line 13		17.	
	18. ADDITIONAL TAXES DUE. Line 13 minus line 16		18.	3708.81

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the Transient Accommodations Tax Laws, and the rules issued thereunder.

IN THE CASE OF A CORPORATION OR PARTNERSHIP, THIS RETURN MUST BE SIGNED BY AN OFFICER, PARTNER OR MEMBER, OR DULY AUTHORIZED AGENT.

SIGNATURE	TITLE	DATE
	OWNER	03/

Exhibit 5

Page 23 of 36

Continued on page 2 — Parts V, VI & VII **MUST** b

STATE OF HAWAII — DEPARTMENT OF TAXATION

General Excise Annual Reconciliation Return

Name TESS LUSHER & CHRIS ARAI
 Filing Period 12/31/2018
 Filing Frequency Reconciliation
 Web Name CHRISTOPHER ARAI

Tax ID GE-038-847-2832-01R
 Return Type G-49
 Amended []
 Submitted Jan-29-2019

Part I - General Excise And Use Taxes @ 1/2 of 1% (.005)

Business Activities	Column A Values, Gross Proceeds, Or Gross Income	Column B Exemptions/Deductions (Attached Schedule GE)	Column C Taxable Income (Column A Minus Column B)
Wholesaling	0.00	0.00	0.00
Manufacturing	0.00	0.00	0.00
Producing	0.00	0.00	0.00
Wholesale Services	0.00	0.00	0.00
Landed Value of Imports For Resale	0.00	0.00	0.00
Business Activities of Disabled Persons	0.00	0.00	0.00
Sum of Part I, Column C (Taxable Income)			0.00

Part II - General Excise And Use Taxes @ 4% (.04)

Retailing	0.00	0.00	0.00
Services Including Professional	0.00	0.00	0.00
Contracting	0.00	0.00	0.00
Theater, Amusement and Broadcasting	0.00	0.00	0.00
Commissions	0.00	0.00	0.00
Transient Accommodations Rentals	85,539.99	0.00	85,539.99
Other Rentals	0.00	0.00	0.00
Interest and All Others	0.00	0.00	0.00
Landed Value of Imports For Consumption	0.00	0.00	0.00
Sum of Part II, Column C (Taxable Income)			85,539.99

Part III - Insurance Commissions @ .15% (.0015)

Insurance Commissions	0.00	0.00	0.00
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Part IV - City & County of Honolulu Surcharge Tax @ 1/2 of 1% (.005)

Oahu Surcharge	0.00	0.00	0.00
----------------	------	------	------

Part V - Schedule Of Assignment Of Taxes By District

Oahu Maui Hawaii Kauai Multi

Part VI - Total Return and Reconciliation

	Taxable Income Column (a)	Tax Rate Column (b)	Total Tax Column (c)
Part I Total Tax	0.00 X	.005 =	0.00
Part II Total Tax	85,539.99 X	.04 =	3,421.60
Part III Total Tax	0.00 X	.0015 =	0.00
Part IV Total Tax	0.00 X	.005 =	0.00
Total Taxes Due			3,421.60
Amounts Assessed During the Period		Penalty	0.00
		Interest	0.00
Total Amount			3,421.60
Total Payments Made Less Any Refunds Received for the Tax Year			3,438.13
Credit Claimed on Original Annual Return (Amended Only)			0.00
Net Payments Made			3,438.13
Credit to Be Refunded			16.53
Additional Taxes Due			0.00
For Late Filing Only		Penalty	0.00

Total Amount Due and Payable
Grand Total of Exemptions/Deductions Claimed



GENERAL EXCISE/USE
ANNUAL RETURN &
RECONCILIATION

Place an X in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-17

HAWAII TAX I.D. NO. **GE** 038-847-2832-01

Last 4 digits of your FEIN or SSN 0463

NAME: ARAI, CHRISTOPHER

ID NO 99

BUSINESS
ACTIVITIES

Column a
VALUES, GROSS PROCEEDS
OR GROSS INCOME

Column b
EXEMPTIONS/DEDUCTIONS
(Attach Schedule GE)

Column c
TAXABLE INCOME
(Column a minus Column b)

PART I - GENERAL EXCISE and USE TAXES @ 1/2 OF 1% (.005)

• ATTACH CHECK OR MONEY ORDER HERE •

- 1. Wholesaling 1
- 2. Manufacturing 2
- 3. Producing 3
- 4. Wholesale Services 4
- 5. Landed Value of Imports for Resale 5
- 6. Business Activities of Disabled Persons 6
- 7. Sum of Part I, Column c (Taxable Income) — Enter the result here and on page 2, line 21, Column (a) 7

PART II - GENERAL EXCISE and USE TAXES @ 4% (.04)

- 8. Retailing 8
- 9. Services Including Professional 5665 5665 9
- 10. Contracting 10
- 11. Theater, Amusement and Broadcasting 11
- 12. Commissions 12
- 13. Transient Accommodations Rentals 50686 50686 13
- 14. Other Rentals 14
- 15. Interest and All Others 15
- 16. Landed Value of Imports for Consumption 16
- 17. Sum of Part II, Column c (Taxable Income) — Enter the result here and on page 2, line 22, Column (a) 56351 17

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the General Excise and Use Tax Laws, and the rules issued thereunder.

IN THE CASE OF A CORPORATION OR PARTNERSHIP, THIS RETURN MUST BE SIGNED BY AN OFFICER, PARTNER OR MEMBER, OR DULY AUTHORIZED AGENT.

SIGNATURE	TITLE OWNER	DATE 03-
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Exhibit 5

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Continued on page 2 — Parts V & VI **MUST** be



GENERAL EXCISE/USE
ANNUAL RETURN &
RECONCILIATION

Place an X in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-16

HAWAII TAX I.D. NO. **GE** 038-847-2832-01

Last 4 digits of your FEIN or SSN 0463

NAME: ARAI, CHRISTOPHER

ID NO 99

BUSINESS
ACTIVITIES

Column a
VALUES, GROSS PROCEEDS
OR GROSS INCOME

Column b
EXEMPTIONS/DEDUCTIONS
(Attach Schedule GE)

Column c
TAXABLE INCOME
(Column a minus Column b)

PART I - GENERAL EXCISE and USE TAXES @ 1/2 OF 1% (.005)

• ATTACH CHECK OR MONEY ORDER HERE •

- 1. Wholesaling 1
- 2. Manufacturing 2
- 3. Producing 3
- 4. Wholesale Services 4
- 5. Landed Value of Imports for Resale 5
- 6. Business Activities of Disabled Persons 6
- 7. Sum of Part I, Column c (Taxable Income) — Enter the result here and on page 2, line 21, Column (a) 7

PART II - GENERAL EXCISE and USE TAXES @ 4% (.04)

- 8. Retailing 8
- 9. Services Including Professional 5950 5950 9
- 10. Contracting 10
- 11. Theater, Amusement and Broadcasting 11
- 12. Commissions 12
- 13. Transient Accommodations Rentals 70877 70877 13
- 14. Other Rentals 14
- 15. Interest and All Others 15
- 16. Landed Value of Imports for Consumption 16
- 17. Sum of Part II, Column c (Taxable Income) — Enter the result here and on page 2, line 22, Column (a) 76827 17

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the General Excise and Use Tax Laws, and the rules issued thereunder.

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SIGNATURE	TITLE	DATE
	OWNER	03-30

Exhibit 5

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Continued on page 2 — Parts V & VI MUST be c



GENERAL EXCISE/USE
ANNUAL RETURN &
RECONCILIATION

Please put an X in this box ONLY if this is an AMENDED return

TAX YEAR ENDING 12-31-15

HAWAII TAX I.D. NO. **GE** 038-847-2832-01

Last 4 digits of your FEIN or SSN 0463

NAME: ARAI, CHRISTOPHER

ID NO 99

Column a
BUSINESS ACTIVITIES
VALUES, GROSS PROCEEDS
OR GROSS INCOME

Column b
EXEMPTIONS/DEDUCTIONS
(Attach Schedule GE)

Column c
TAXABLE INCOME
(Column a minus Column b)

PART I - GENERAL EXCISE and USE TAXES @ 1/2 OF 1% (.005)

• ATTACH CHECK OR MONEY ORDER HERE •

- 1. Wholesaling 1
- 2. Manufacturing 2
- 3. Producing 3
- 4. Wholesale Services 4
- 5. Landed Value of Imports for Resale 5
- 6. Business Activities of Disabled Persons 6
- 7. Sum of Part I, Column c (Taxable Income) — Enter the result here and on page 2, line 21, Column (a) 7

PART II - GENERAL EXCISE and USE TAXES @ 4% (.04)

- 8. Retailing 8
- 9. Services Including Professional 4900 4900 9
- 10. Contracting 10
- 11. Theater, Amusement and Broadcasting 11
- 12. Commissions 12
- 13. Transient Accommodations Rentals 51156 51156 13
- 14. Other Rentals 14
- 15. Interest and All Others 15
- 16. Landed Value of Imports for Consumption 16
- 17. Sum of Part II, Column c (Taxable Income) — Enter the result here and on page 2, line 22, Column (a) 56056 17

DECLARATION - I declare, under the penalties set forth in section 231-36, HRS, that this return (including any accompanying schedules or statements) has been examined by me and, to the best of my knowledge and belief, is a true, correct, and complete return, made in good faith for the tax period stated, pursuant to the General Excise and Use Tax Laws, and the rules issued thereunder.

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SIGNATURE	TITLE	DATE
	OWNER	03-3

Exhibit 5

Page 27 of 36

Continued on page 2 — Parts V & VI **MUST** be

Parcelld	First Name	Last Name	Second Name	OwnerAddress2	OwnerCityStZip	Country
870190300000	James M	BAKER, TR		4318 THE STRAND	MANHATTAN BEACH CA 90266 3081	
870190410000		CANTOR,FAMILY TR		5980 FREDRICKS RD	SEBASTOPOL CA 95472 5641	
870190160000	Jackson Long & Sonja K	DUFRIEND	LONG,JACKSON	2326 BIG PINE RD	ESCONDIDO CA 92027 4954	
870190260000	Greg & Laurel	ERICKSON	ERICKSON,LAUREL	PO BOX 1361	KAMUELA HI 96743 1361	
870190190000	Edward K & Amy S	FUJIMOTO	FUJIMOTO,AMY S	15728 BUENA VISTA DR	ROCKVILLE MD 20855	
870190280000	Michael J	GODDEN, TRST	GODDEN,RAE A TRST	81-6358 KEOPUKA PL	KEALAKEKUA HI 96750 8126	
870190290000	Edwin P	GRAMLICH, TRST		78-502 PUJUKI RD	KAILUA KOHA HI 96740 9729	
870190250000	Lisa	HEINRICHSEN		87-3176 MAPUNA RD	CAPTAIN COOK HI 96704 8795	
870190270000	Arthur G & Carmella W	HERNANDEZ	HERNANDEZ,CARMELLA W	318 HUALANI ST	KAILUA HI 96734 2201	
870190340000	Gary & Caroline	KILLEEN,TRST	ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE	2310 SNEAD DR	LAKE HAVASU CITY AZ 86406 7633	
Big parcel south 870090020000		KONA PACIFIC PROPERTIES LLC		1409 HOLLY ST	WHITEHORSE VT V1A 4VZ	CANADA
870190320000	Sidney T	MIZUKAMI, TR		73-4165 HULIKOA DR UNIT 1	KAILUA KOHA HI 96740 2691	
870190300000	Sidney	MIZUKAMI, TR		73-1388 HIKMOE ST	KAILUA KOHA HI 96740 0000	
870190240000	Bradley M	MORAN		6289 VAN KEPPEL RD	FORESTVILLE CA 95436 9575	
870190240000	Andrea M	MORAN		PO BOX 1627	GUERNEVILLE CA 95446 1627	
870190180000	George M	NAKASONE		13572 CREEDMORE DR	WHITTIER CA 90601	
870190200000	Deanna & Fredrick	NASBY YOUNG,FAMILY TR		87-320 KAOHE RD	CAPTAIN COOK HI 96704 8796	
870190400000	Jeffrey K & Quentin	OLIVIER	OLIVIER,FREDERICK	87-287 KAOHE RD	CAPTAIN COOK HI 96704 8738	
870190220000	Andrews	PARKER	PARKER,QUENTIN ANDREWS	19 OLD FORGE LANE	SUDBURY MA 01776 1655	
870190430000	Carole	POOLE,TRUST	C/O POOLE CAROLE	429 S SIERRA AVE #146	SOLANA BEACH CA 92075 2234	
870190210000	Mark/Gail	SCHLENKER FAMILY TRST	C/O SCHLENKER,MARK/GAIL,TTEES	4066 PARKSIDE CT	SACRAMENTO CA 95822 1624	
870190150000		SERR LLC		401 62ND ST	NEWPORT BEACH CA 92663 1903	
870190420000		SIROGABI PARADISE LLC		165 E 32ND ST APT 7E	NEW YORK NY 10016 6009	
870190230000	Gerald R	TULANG	TULANG,DOREEN C OSHIRO	250 ALALOA RD APT A	HILO HI 96720 3757	
870090150000	Leroy & Elvina	VICTORINE, TR	VICTORINE,ELVINE	PO BOX 7197	HILO HI 96720 8940	
870190170000	Darren	VOGLER,FAMILY TR		87-3177 LEA RD	CAPTAIN COOK HI 96704 8724	
870190380000	Youngsung Park & Philip	WHISSEN	WHISSEN,DAO	PO BOX 11687	NEWPORT BEACH CA 92658 5038	
870190140000	Man-sik	YOO	YOO,PHILIP MAN-SIK	5521 SOUTHWICK ST	BETHESDA MD 20817 3543	
Parcel Owners not sent First Notice.						
870190550000	Beach	KONA PARADISE OWNERS ASSN	C/O HAWAIIANA MGMT CO	74-5620 PALANI RD STE 215	KAILUA KOHA HI 96740 3640	
870190560000		VARIOUS OWNERS	SR-ROADWAY			
870190560000		HENRY,GENE L				
870190560000	Road?	REVOCABLE TRUST OF	JACK BRYSSON GREENWELL JR	2123 THORNSBERRY RD	SONOMA CA 95476 4820	
870090030000	Shoreline south of beach	STATE OF HAWAII				
870190310000		ARAI,CHRISTOPHER				
870190310000		LUSHER,TESS MARIE		4451 PINE FLAT RD	HEALDSBURG CA 95448 8058	

Exhibit 5

ParcelId	OwnerName	OwnerAddress1	OwnerAddress2	OwnerAddress3	City/State/Zip	Country
870190240000	MORAN,BRADLEY M		6289 VAN KEPPEL RD		FORESTVILLE CA 95436 9575	
870190240000	MORAN,ANDREA M		PO BOX 1627		GUERNEYVILLE CA 95446 1627	
870190250000	HEINRICHSEN,LISA		87-3176 MAPUNA RD		CAPTAIN COOK HI 96704 8735	
870190260000	ERICKSON,GREGG		PO BOX 1361		KAMUELA HI 96743 1361	
870190260000	ERICKSON,LAUREL					
870190270000	HERNANDEZ,ARTHUR G		318 HUALANI ST		KAILUA HI 96734 2201	
870190270000	HERNANDEZ,CARMELLA W					
870190280000	GODDEN,MICHAEL J TRST		81-6358 KEOPUKA PL		KEALAKEKUA HI 96750 8126	
870190280000	GODDEN,RAE A TRST		PO BOX 7197		HILO HI 96720 8940	
870090150000	VICTORINE,LEROY TR					
870090150000	VICTORINE,ELVINE					
870090200000	KONA PACIFIC PROPERTIES LLC			WHITEHORSE YT Y1A 4V2		CANADA
870190290000	GRAMLICH,EDWIN P TRST		1409 HOLLY ST			
870190300000	BAKER,JAMES M TR		78-502 PUUIKI RD		KAILUA KONA HI 96740 9729	
870190310000	ARAI,CHRISTOPHER		4318 THE STRAND		MANHATTAN BEACH CA 90266 3081	
870190310000	LUSHER,TESS MARIE		4451 PINE FLAT RD		HEALDSBURG CA 95448 8058	
870190320000	MIZUKAMI,SIDNEY T TR					
870190330000	MIZUKAMI,SIDNEY T TR		73-4165 HULIKOA DR UNIT 1		KAILUA KONA HI 96740 2691	
870190340000	KILLEEN,TRST	ATTN: GARY KILLEEN & CAROLINE KILL 2310 SNEAD DR	PO BOX 11687		KAILUA KONA HI 96740 0000	
870190380000	WHISSEN,DARREN				LAKE HAVASU CITY AZ 86406 7633	
870190380000	WHISSEN,DAO		5521 SOUTHWICK ST		NEWPORT BEACH CA 92658 5038	
870190140000	YOO,PHILIP MAN-SIK					
870190150000	SERR LLC		401 62ND ST		BETHESDA MD 20817 3543	
870190360000	KILLEEN,TRST	ATTN: GARY KILLEEN & CAROLINE KILL 2310 SNEAD DR			NEWPORT BEACH CA 92663 1903	
870190400000	OLIVIER,FREDERICK				LAKE HAVASU CITY AZ 86406 7633	
870190400000	OLIVIER,DEANNA					
870190410000	CANTOR,FAMILY TR		87-287 KA OHE RD		CAPTAIN COOK HI 96704 8738	
870190420000	SIROGABI PARADISE LLC		5980 FREDRICKS RD		SEBASTOPOL CA 95472 5641	
870190230000	TULANG,GERALD R		165 E 32ND ST APT 7E		NEW YORK NY 10016 6009	
870190230000	TULANG,DOREEN C OSHIRO		250 ALALOA RD APT A		HILO HI 96720 3757	
870190160000	DUFRIEND,SONJA K		2326 BIG PINE RD		ESCONDIDO CA 92027 4954	
870190170000	VOGLER,FAMILY TR					
870190430000	POOLE,TRUST	C/O POOLE CAROLE	87-3177 LEA RD		CAPTAIN COOK HI 96704 8724	
870190220000	PARKER,JEFFREY K		429 S SIERRA AVE #146		SOLANA BEACH CA 92075 2234	
870190220000	PARKER,QUENTIN ANDREWS		19 OLD FORGE LANE		SUDBURY MA 01776 1655	
870190180000	NAKASONE,GEORGE M		13572 CREEDMORE DR		WHITTIER CA 90601	
870190190000	FUJIMOTO,EDWARD K	FUJIMOTO EDWARD K/AMY S	15728 BUENA VISTA DR		ROCKVILLE MD 20855	
90190000	FUJIMOTO,AMY S					
90200000	NASBY YOUNG,FAMILY TR		87-320 KA OHE RD		CAPTAIN COOK HI 96704 8736	
90210000	SCHLENKER,MARK S/GAIL F C/O SCHLENKER,MARK/GAIL,TTEES SR-ROADWAY		4086 PARKSIDE CT		SACRAMENTO CA 95822 1624	
90560000	VARIOUS OWNERS					
90560000	HENRY,GENE L					
90560000	REVOCABLE TRUST OF	JACK BRYSSON GREENWELL JR	2123 THORNSBERRY RD			
90030000	STATE OF HAWAII					
90550000	KONA PARADISE OWNERS / C/O HAWAIIANA MGMT CO		74-5620 PALANI RD STE 215		SONOMA CA 95476 4820	
90370000	KILLEEN,TRST	ATTN: GARY KILLEEN & CAROLINE KILL 2310 SNEAD DR			KAILUA KONA HI 96740 3640	
					LAKE HAVASU CITY AZ 86406 7633	

Exhibit 5

**NONCONFORMING USE CERTIFICATE (NUC) APPLICATION:
FIRST NOTIFICATION TO SURROUNDING PROPERTY OWNERS/LESSEES**

Today's Date: August 23, 20 19

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 _____, 20____ at the Department's _____ location.

(specify Hilo or Kona)

STVR INFORMATION

Applicant(s) Name: Christopher Gorham Arai & Tess Marie Lusher

Proposed STVR Street Address: 87-3173 Mapuna Road, Captain Cook, HI 96704

TMK: (3) 870190310000

Number of bedrooms being rented: 2 Maximum number of guests permitted: 6

Number and location of off-street parking spaces: 3 spaces. 1 covered/paved. 1 paved. 1 gravel

All spaces are behind a wall and gate and are not visible from the road.

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: planning@hawaiicounty.gov

WEST HAWAI'I (KONA):

County of Hawai'i Planning Department
74-5044 Ane Keohokālole Highway, Building E
Kailua-Kona, Hawai'i 96740

Exhibit 5

Page 30 of 36

FIRST NOTIFICATION LETTER

arcallid	OwnerName	OwnerAddress1	OwnerAddress2	OwnerAddress3	OwnerCity/Zip	Country
870190240000	MORAN, BRADLEY M		6289 VAN KEPPEL RD		FORESTVILLE CA 95436 9575	
870190240000	MORAN, ANDREA M		PO BOX 1627		GUERNEVILLE CA 95446 1627	
870190250000	HEINRICHSEN, LISA		87-3176 MAPUJINA RD		CAPTAIN COOK HI 96704 8735	
870190260000	ERICKSON, GREGG		PO BOX 1361		KAMUJELA HI 96743 1361	
870190260000	ERICKSON, LAUREL		318 HUALANI ST		KAILUA HI 96734 2201	
870190270000	HERNANDEZ, ARTHUR G		81-6358 KEOPIUKA PL		KEALAKEKUA HI 96750 8126	
870190280000	GODDEN, MICHAEL J TRST		PO BOX 7197		HILO HI 96720 8940	
870190280000	GODDEN, RAE A TRST					
870090150000	VICTORINE, LEROY TR		1409 HOLLY ST			CANADA
870090200000	KONA PACIFIC PROPERTIES LLC		78-502 PUUJIKI RD	WHITEHORSE YT Y1A 4V2	KAILUA KONA HI 96740 9729	
870190290000	GRAMLICH, EDWIN P TRST		4318 THE STRAND		MANHATTAN BEACH CA 90266 3081	
870190300000	BAKER, JAMES M TR		4451 PINE FLAT RD		HEALDSBURG CA 95448 8058	
870190310000	ARAI, CHRISTOPHER		73-4165 HULIKOA DR UNIT 1		KAILUA KONA HI 96740 2891	
870190320000	MIZUKAMI, SIDNEY T TR		73-1388 HIKIMOE ST		KAILUA KONA HI 96740 0000	
870190330000	MIZUKAMI, SIDNEY T TR		2310 SNEAD DR		LAKE HAVASU CITY AZ 86406 7633	
870190340000	KILLEEN, TRST	ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE	PO BOX 11687		NEWPORT BEACH CA 92658 5038	
870190380000	WHISSEN, DARREN		5521 SOUTHWICK ST		BETHESDA MD 20817 3543	
870190380000	WHISSEN, DAO		401 62ND ST		NEWPORT BEACH CA 92663 1903	
870190140000	YOO, YOUNGSUN PARK	ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE	2310 SNEAD DR		LAKE HAVASU CITY AZ 86406 7633	
870190140000	YOO, PHILIP MAN-SIK		87-287 KA OHE RD		CAPTAIN COOK HI 96704 8738	
870190350000	KILLEEN, TRST		5980 FREDRICKS RD		SEBASTOPOL CA 95472 5641	
870190400000	OLIVIER, DEANNA		165 E 32ND ST APT 7E		NEW YORK NY 10016 6009	
870190410000	CANTOR, FAMILY TR		250 ALALOA RD APT A		HILO HI 96720 3757	
870190420000	SIROGABI PARADISE LLC		2326 BIG PINE RD		ESCONDIDO CA 92027 4854	
870190230000	TULANG, GERALD R		87-3177 LEA RD		CAPTAIN COOK HI 96704 8724	
870190230000	TULANG, DOREEN C OSHIRO		429 S SIERRA AVE #146		SOLANA BEACH CA 92075 2234	
870190160000	DUFFRIEND, SONJA K		19 OLD FORGE LANE		SUDBURY MA 01776 1655	
870190160000	LONG, JACKSON		13572 CREEDMORE DR		WHITTIER CA 90601	
870190170000	VOGLER, FAMILY TR		15728 BUENA VISTA DR		ROCKVILLE MD 20855	
870190430000	POOLE, TRUST	C/O POOLE CAROLE	87-320 KA OHE RD		CAPTAIN COOK HI 96704 8736	
870190220000	PARKER, JEFFREY K		4066 PARKSIDE CT		SACRAMENTO CA 95822 1624	
870190220000	PARKER, QUENTIN ANDREWS		2123 THORNSBERRY RD		SONOMA CA 95476 4820	
870190180000	NAKASONE, GEORGE M		74-5620 PALANI RD STE 215		KAILUA KONA HI 96740 3640	
870190190000	FUJIMOTO, EDWARD K		2310 SNEAD DR		LAKE HAVASU CITY AZ 86406 7633	
870190190000	FUJIMOTO, AMY S					
870190190000	NASBY YOUNG, FAMILY TR					
870190190000	SCHLENKER, MARK S/GAIL FAMILY TRST	C/O SCHLENKER, MARK/GAIL, TTEES				
870190190000	VARIOUS OWNERS	SR-ROADWAY				
870190190000	HENRY, GENE L	JACK BRYSSON GREENWELL JR				
870190190000	REVOCABLE TRUST OF					
870190190000	STATE OF HAWAII	C/O HAWAIIANA MGMT CO				
870190190000	KONA PARADISE OWNERS ASSN	ATTN: GARY KILLEEN & CAROLINE KILLEEN TTEE				
870190190000	KILLEEN, TRST					

Exhibit 5



Certificate of Mailing - Firm

Name and Address of Sender

Chris Area
4451 PINEFLAT RD
HEALDSBURG CA
95448

TOTAL NO. of Pieces Listed by Sender

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TOTAL NO. of Pieces Received at Post Office™

Affix Stamp Here

Postmark with Date of Receipt

AUG 24 2016

Postmaster, per (name of receiving employee)

USPS® Tracking Number Firm-specific Identifier

Address (Name, Street, City, State, and ZIP Code™)

- 1. James M BAKER, TR
4318 THE STRAND
MANHATTAN BEACH CA 90266 3081
- 2. CANTOR, FAMILY TR
5980 FREDRICKS RD
SEBASTOPOL CA 95472 5641
- 3. Jackson Long & Sonja K DUFRIEND
2326 BIG PINE RD
ESCONDIDO CA 92027 4954
- 4. Greg & Laurel ERICKSON
PO BOX 1361
KAMUELA HI 96743 1361
- 5. Edward K & Amy S FUJIMOTO
15728 BUENA VISTA DR
ROCKVILLE MD 20855
- 6. Michael J & Rae A GODDEN, TRST
81-6358 KEOPUKA PL
KEALAKEKUA HI 96750 8126

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Exhibit 5

Page 32 of 36



Certificate of Mailing — Firm

Name and Address of Sender

Chavis Arri
4451 PINE FLAT RD
HEALDSBURG CA
95448

TOTAL NO. of Pieces Listed by Sender

TOTAL NO. of Pieces Received at Post Office™

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Postmaster: per (name of receiving employee)

Affix Stamp Here
Postmark with Date of Receipt.

7/21/2019

USPS® Tracking Number
Firm-specific Identifier

Address
(Name, Street, City, State, and ZIP Code™)

1. Edwin P GRAMLICH, TRST
78-502 POUKIRI RD
KAILUA KONA HI 96740 9729

2. Lisa HEINRICHSEN
87-3176 MAPUNA RD
CAPTAIN COOK HI 96704 8735

3. Arthur G & Carmella W HERRANDEZ
318 HUAIANI ST
KAILUA HI 96734 2201

4. KILLEEN, TRST
2310 SNEAD DR
LAKE HAVASU CITY AZ 86406 7633

5. KILLEEN, TRST
2310 SNEAD DR
LAKE HAVASU CITY AZ 86406 7633

6. KILLEEN, TRST
2310 SNEAD DR
LAKE HAVASU CITY AZ 86406 7633



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Exhibit 5
Page 33 of 36



Certificate of Mailing — Firm

Name and Address of Sender	TOTAL NO. of Pieces Listed by Sender	TOTAL NO. of Pieces Received at Post Office™	Affix Stamp Here Postmark with Date of Receipt
<p>CHICKS AREA 4451 PINE FLAT RD HEADSBURG CA 95448</p>	<p>4</p>		<p>AUG 24 2019</p>
<p>USPS® Tracking Number Firm-specific identifier</p>	<p>Address (Name, Street, City, State, and ZIP Code™)</p>		
<p>1.</p>	<p>KONA PACIFIC PROPERTIES LLC 1409 HOLLY ST WHITEHORSE YTYIA 4V2 CANADA</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448 AUG 23 19</p>
<p>2.</p>	<p>Sidney I MIZUKAMI, TR 73-4165 HULIKOA DR UNIT 1 KAILUA KONA HI 96740 2691</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448</p>
<p>3.</p>	<p>Sidney MIZUKAMI, TR 73-1388 HIKIMOE ST KAILUA KONA HI 96740 0000</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448</p>
<p>4.</p>	<p>Bradley M MORAN 6289 VAN KEPPEL RD FORESTVILLE CA 95436 9575</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448 AUG 23 19</p>
<p>5.</p>	<p>Andrea M MORAN PO BOX 1627 GUERNEVILLE CA 95446 1627</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448 AUG 23 19</p>
<p>6.</p>	<p>George M NAKASONE 13572 CREEDMORE DR WHITTIER CA 90601</p>		<p>U.S. POSTAGE PAID HEADSBURG, CA 95448 AUG 23 19 AMOUNT \$1.45 R2306H129759-11 0000</p>

Exhibit 5
Page 34 of 36



Certificate of Mailing — Firm

Name and Address of Sender

Chris Allen
4451 PINEFLAT RD
HEALDSBURG CA
95448

TOTAL NO. of Pieces Listed by Sender

TOTAL NO. of Pieces Received at Post Office™

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Postmaster, per (name of receiving employee)

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Postmark with Date of Receipt.

024 2019

Exhibit 5
Page 35 of 36

USPS® Tracking Number
Firm-specific Identifier

Address
(Name, Street, City, State, and ZIP Code™)

1. NASBY YOUNG, FAMILY TR
87-320 KAOHE RD
CAPTAIN COOK HI 96704 8736

2. Deanna & Frederick OLIVIER
87-287 KAOHE RD
CAPTAIN COOK HI 96704 8738

3. Jeffrey K & Quentin Andrews PARKER
19 OLD FORGET LANE
SUDBURY MA 01776 1655

4. Carole POOLE, TRUST
429 S SIERRA AVE #146
SOLANA BEACH CA 92075 2234

5. Mark/Gail SCHLENKER FAMILY TRST
4066 PARKSIDE CT
SACRAMENTO CA 95822 1624

6. SERR LLC
401 62ND ST
NEWPORT BEACH CA 92663 1903



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Certificate of Mailing — Firm

Name and Address of Sender	TOTAL NO. of Pieces Listed by Sender	TOTAL NO. of Pieces Received at Post Office™	Affix Stamp Here Postmark with Date of Receipt.
CHRIS ADAI 4451 PINE FLAT RD HEALDSBURG CA 95448	U	UG 24 2019	 U.S. POSTAGE PAID HEALDSBURG, CA 95448 AUG 23 19
USPS® Tracking Number Firm-specific Identifier	Address (Name, Street, City, State, and ZIP Code™)		 U.S. POSTAGE PAID HEALDSBURG, CA 95448
1.	SIROGABI PARADISE LLC	165 E 32ND ST APT 7E	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
2.	Gerald R TULANG	250 ALALOA RD APT A	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
3.	Leroy VICTORINE, TR	PO BOX 7197	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
4.	VOGLER, FAMILY TR	87-3177 LEA RD	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
5.	Darrin WHISSEN	PO BOX 11687	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
6.	Youngsung Park & Philip Man-Sik YOO	5521 SOUTHWICK ST	 U.S. POSTAGE PAID HEALDSBURG, CA 95448
	BETHESDA MD 20817 3543		 U.S. POSTAGE PAID HEALDSBURG, CA 95448
<div style="border: 1px solid black; padding: 5px; text-align: center;"> Exhibit 5 Page 36 of 36 </div>			 U.S. POSTAGE PAID HEALDSBURG, CA 95448
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			U.S. POSTAGE PAID HEALDSBURG, CA 95448

Harry Kim
Mayor

Wil Okabe
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

Duane Kanuha
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

September 25, 2019

Christopher Gorham Arai
4451 Pine Flat Road
Healdsburg, CA 95448

Dear Mr. Arai,

**SUBJECT: RETURN OF SHORT-TERM VACATION RENTAL
REGISTRATION/NONCONFORMING USE CERTIFICATE
APPLICATION**

Applicant: Christopher Gorham Arai
Landowner: Christopher Gorham Arai & Tess Marie Lusher
**Proposal: Register a Short-Term Vacation Rental and Apply for a
Nonconforming Use Certificate**

Tax Map Key: (3) 8-7-019:031

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 2015.

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.

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-2730) 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.

Exhibit 6

Christopher Gorham Arai
September 25, 2019
Page 2 of 2

For your information, 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

CRK:crk

\\Coh33\planning\public\Admin Permits Division\Letters\STVR Letters\9.25.19 - STVR & NUC Return - 87019031 - Arai.docx

Encl.: STVR Registration/Nonconforming Use Certificate Application Submittal Documents
CDUP HA-2730

cc: C. Lato, Senior Account Clerk



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

P O BOX 621
HONOLULU, HAWAII 96809

AQUACULTURE DEVELOPMENT PROGRAM
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
CONSERVATION AND ENVIRONMENTAL AFFAIRS
CONSERVATION AND RESOURCES ENFORCEMENT
CONVEYANCES
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
LAND MANAGEMENT
STATE PARKS
WATER AND LAND DEVELOPMENT

REF:OCEA:TES

DEC 23 1994

FILE NO.: HA-2730

Mr. Ralph Fukumitsu
73-1400 Hikimoe Street
Kailua-Kona, Hawaii 96740

Dear Mr. Fukumitsu:

SUBJECT: Conservation District use Application for a Single family Residence at the Kona Paradise Subdivision, Kaohae 4th, at South Kona, Hawaii, TMK: 8-7-19:31

We are pleased to inform you that your Conservation District Use application for single a family residence was approved on December 16, 1994, subject to the following conditions:

1. The application 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;
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 remain 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 below. 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: Hawaii Board Member
Hawaii Land Agent
Hawaii County Planning Department
Hawaii DP&R, DWS
DOH/OHA/OSP/DOT

RS:tes



Exhibit 7

Search Tax Licenses

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Search Tax Licenses

Search

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

Customer ID (new format)	Customer ID (W#)	Taxpayer Name	DBA Name	
<input type="text" value="T-038-847-2832"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Search

Search Tax Licenses

Filter

New Account ID	Name	Address	Old Account ID	Account Type	Business Start	Business End	Status
GE-038-847-2832-01	TESS LUSHER & CHRIS ARAI	4451 PINE FLAT RD HEALDSBURG CA 95448-8058	W-12302386-01	General Excise / Use	Jan-01-2013		Open
TA-038-847-2832-01	TESS LUSHER & CHRIS ARAI	4451 PINE FLAT RD HEALDSBURG CA 95448-8058	W-12302386-01	Transient Accommodations	Jan-01-2013		Open

2 Rows

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

Ili Ili House

Exhibit 8



Beautiful house *on the beach* in South Kona, Big Island of Hawai'i
 Located in Kona Paradise, this beach is little known and almost private.
 Come and swim, snorkel, kayak or hike just a few steps off the lanai. Relax to the sound of tumbling pebbles or be thrilled by the sound of whales just off shore.

2 bed, 2 bath + beach shower Gas
 barbeque & outdoor gas range
 Kayaks & Boogie boards for use of
 guests
 25 miles to Kailua-Kona or 70 to the
 Volcanoes National Park
 Close to surfing and places of
 historical interest



View of the beach from the house taken during Christmas week. Crowded isn't it?

A Non-smoking House. Children OK, no pets.



10/4/2019

Ili Ili House

See our listing on [YRBO](#)

VRBO is a great site for finding vacation rentals.

Here is a new site for vacation rentals: [VacationRentalPeople.com](#). We just started listing on this site.

Let us know how you found us. Thanks!

Hits since 1/1/2012...

R-464

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

SEP 18, 1995 10:20 AM

Doc No(s) 95-119773

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

AFTER RECORDATION, RETURN BY MAIL (X) PICK UP ()

RALPH U. FUKUMITSU
73-1400 Hikimoe Street
Kailua-Kona, Hawaii 96740

AFFECTS TAX MAP KEY: (3) 8-7-19:31

DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, RALPH U. FUKUMITSU and GLADYS E. FUKUMITSU, husband and wife, hereinafter referred to as "Owners," whose residence address is 73-1400 Hikimoe Street, Kailua-Kona, Hawaii 96740, of that certain parcel of land designated as Lot 330, being more specifically identified by Third Division, Tax Map Key No. 8-7-19:31, and recorded in the Bureau of Conveyances of the State of Hawaii in Liber 8853, Page 220;

WHEREAS, said land has been zoned by the State of Hawaii within the Conservation Zone, Limited Subzone, and as such is subject to the statutes, rules and regulations of the State of Hawaii, as administered by its Department of Land and Natural Resources (DLNR); and

Exhibit 9

Page 1 of 5

WHEREAS, by approval dated December 23, 1994, DLNR has granted the Owners permission to construct a single family residence on said land, subject to certain restrictive covenants, which are attached hereto and incorporated herein as Exhibit "A," which are to be declared and recorded as Restrictive Covenants running with said land;

NOW THEREFORE, the Owners declare that said land shall be subject to the Restrictive Covenants contained in Exhibit "A," that said covenant shall run with the land and shall be binding upon the Owners, their heirs, executors, administrators, assigns, successors and grantees, for as long as said land shall be subject to the Conservation Zoning of the State of Hawaii, and the breach of any covenant may be enjoined, abated or remedied by appropriate proceedings by the State of Hawaii.

IN WITNESS WHEREOF, the Owners have executed this instrument on this 5TH day of August, 1995.


RALPH U. FUKUMITSU


GLADYS E. FUKUMITSU

STATE OF HAWAII)
)
COUNTY OF HAWAII) SS.

On this 5TH day of August, 1995, before me personally appeared RALPH U. FUKUMITSU and GLADYS E. FUKUMITSU, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

Glenn A. Mizala
Notary Public, State of Hawaii
My commission expires: 11/8/99

081795\up\mfsc\fulumitau.doc

Exhibit 9
Page 3 of 5

EXHIBIT "A"

RESTRICTIVE COVENANTS
FOR TAX MAP KEY NO. (3) 8-7-19:31
KAHOE 4TH, SOUTH KONA, HAWAII

1. The application 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;
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 remain 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;

Exhibit 9

Page 4 of 5

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.

END OF EXHIBIT "A"

**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

Exhibit 10

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1 INTRODUCTION

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

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

2 CONSERVATION DISTRICT VIOLATION PENALTIES SCHEDULE GUIDELINES

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

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

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

2.1 PENALTY CALCULATION

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

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

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

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

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

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

2.1.1 Identified Land Use Penalties

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

Table 1. Penalty Guideline Framework

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

Major Harm to the Resource/ Board Permit (D)

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

Moderate Harm to the Resource/Departmental Permit (C)

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

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

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

Very Minor Harm to the Resource/(B) Permit

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

2.1.2 Non- Identified Land Use Penalties

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

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

2.1.3 Tree Removal

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

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

2.1.4 Vegetation Removal/Vegetation Clearing

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

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

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

Table 3. Vegetation Removal

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

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

2.1.5 Additional Considerations and Factors

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

2.1.6 Continuing Violations and Permit Non-Compliance

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

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

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

2.1.7 In-Kind Penalties

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

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

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

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

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

2.1.8 Penalty Adjudication

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

Harm to Resource	Estimated Harm and Potential Penalty Amount	Penalty Adjudicator
Major	\$10,000-\$15,000	Board
Moderate	\$2,000-\$10,000	Board
Minor	\$1,000-\$2,000	Chairperson or Presiding Officer
Very Minor	up to \$1,000	Chairperson or Presiding Officer

Major and Moderate Harm to the Resource

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

Minor and Very Minor Harm to the Resource

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

3 ASSESSMENT OF DAMAGES TO PUBLIC LAND OR NATURAL RESOURCES

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

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

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

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

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

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

3.1 PRIMARY RESTORATION DAMAGES

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

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

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

3.2 COMPENSATORY DAMAGE CALCULATION

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

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

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

Table 2. Vegetation Removal

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

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

APPENDIX B: DEFINITIONS

Definitions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPENDIX C: REFERENCES

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NOAA Coastal Services Center. Habitat Equivalency Analysis.

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APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

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

Coral

Florida Department of Environmental Protection (Civil Damages):

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

Cesar et al 2002 (Ecosystem Service Valuation)

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

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

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

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

Thus damage to corals may be calculated as follows:

Number of square meters of coral damaged

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

(#m² x \$1000)

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

+Plus cost of Remediation

+Plus Cost of cleaning sediment from reef

+Plus Cost of cleaning sediment/mud from beach sand

+Plus Cost of coral reestablishment

+Plus Cost of Monitoring

+Plus Cost of Management

Seagrass beds (Compensatory Damage)

The Florida DEP fines offenders \$100/yd² of damage to seagrass beds for the first yd² damaged and \$75/yd² per each additional yd² 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 yd³ of beach.

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

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

APPENDIX E: PENALTY CALCULATION WORKSHEET

Violator's Name(s): _____

TMK: _____

OCCL Staff Member: _____

Date: _____

Part 1- Penalties

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

Penalty Total:

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

1. Actual environmental damage extent (onsite)

Description: _____

2. Actual environmental damage extent (offsite)

Description: _____

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: _____