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,
Kaohoe 4th, South Kona, Hawaii

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

LANDOWNER: Ralph Fukumitsu

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

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

SUBZONE: Limited
DESCRIPTION OF AREA/CURRENT USE:

The parcel is an unimproved lot fronting Koahe 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, Kaohelani 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, Chairperson
Board of Land and Natural Resources
~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

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
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@araidesign.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@araidesign.com

REACHABLE PERSON (Please Print): Harvey Sacarob

MAILING ADDRESS: 87-3139 Mamalahoa Highway

CITY: Captain Cook 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 ZIP CODE: 96704

FOR OFFICE USE ONLY:

TAX MAP KEY: (3) 8-1-019:031:0000 ZONING: A-Ga

SLU: 0 If Ag, Date of Subdivision: 18/12/18 LUPAG: open

The submittal of an incomplete application will delay official acceptance by the Department. Furthermore, additional information may be requested by the Department during the course of the review process and be deemed valid. Lack of required information will render the application incomplete, and it will not be processed.
To whom should we send original correspondence? (Select one): □ Owner □ Applicant □ Reachable Person

Instructions:

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

1. Completed STVR Registration Form.

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

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

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

LANDOWNER: 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: 

Exhibit 5
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**STVR Registration**

--- 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)______________________________

<table>
<thead>
<tr>
<th>TO BE COMPLETED BY BUILDING DIVISION STAFF</th>
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<tbody>
<tr>
<td>Building Permit Number(s) and</td>
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<tr>
<td>Final Approval Date(s)</td>
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<tr>
<td>Electrical Permit Number(s) and</td>
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<tr>
<td>Plumbing Permit Number(s) and</td>
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Exhibit 5

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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
LUSHERTTE, MARIE Fee Owner
Mailing Address
ARAI,CHRISTOPHER
4451 PINE FLAT RD
HEALDSBURG CA 95448 8058
Show All Owners and Addresses

Assessment Information
<table>
<thead>
<tr>
<th>Year</th>
<th>Property Class</th>
<th>Market Land Value</th>
<th>Dedicated Use Value</th>
<th>Assessed Land Value</th>
<th>Assessed Building Value</th>
<th>Total Market Value</th>
<th>Total Assessed Value</th>
<th>Total Exemption Value</th>
<th>Total Taxable Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>2019</td>
<td>CONSERVATION</td>
<td>$193,700</td>
<td>$0</td>
<td>$193,700</td>
<td>$191,200</td>
<td>$384,900</td>
<td>$384,900</td>
<td>$0</td>
<td>$384,900</td>
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</tbody>
</table>

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

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

Sketches
Permit Information

<table>
<thead>
<tr>
<th>Date</th>
<th>Permit Number</th>
<th>Reason</th>
<th>Permit Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/15/2014</td>
<td>BK2014-02786</td>
<td></td>
<td>$19,600</td>
</tr>
<tr>
<td>11/20/1997</td>
<td>976005</td>
<td></td>
<td>$2,700</td>
</tr>
<tr>
<td>8/8/1997</td>
<td>975646</td>
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</tr>
<tr>
<td>12/15/1995</td>
<td>965017</td>
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<td>$50,000</td>
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Bldg Division Permit and Inspections Information

<table>
<thead>
<tr>
<th>Permit Date</th>
<th>Permit Type</th>
<th>Permit Number</th>
<th>Permit Reason</th>
<th>Permit Description</th>
<th>Estimated Cost</th>
<th>Inspection Date</th>
<th>Inspection Status</th>
<th>Permit Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>12/15/2014</td>
<td>Electrical</td>
<td>E12014-03066</td>
<td>Alteration</td>
<td>Install new roof, mounted 3.92 kW PV array</td>
<td>$19,600</td>
<td>3/10/2015</td>
<td>COMPLETED</td>
<td>Complete</td>
</tr>
<tr>
<td>11/21/1997</td>
<td>Building</td>
<td>976005*</td>
<td>Alteration, Solar</td>
<td>Install new roof, mounted 3.92 kW PV array</td>
<td>$2,700</td>
<td>8/2/2019</td>
<td>COMPLETED</td>
<td>COMPLETED</td>
</tr>
</tbody>
</table>
Permit Date  Permit Type  Permit Number  Permit Reason  Permit Description  Estimated Cost  Inspection Date  Inspection Status  Permit Status
11/21/1997  Plumbing  M975720*  Alteration  $1,000  4/29/1998  COMPLETED  COMPLETED
8/13/1997  Building  979566*  New  $2,000  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

<table>
<thead>
<tr>
<th>Sale Date</th>
<th>Sale Amount</th>
<th>Instrument #</th>
<th>Instrument Type</th>
<th>Instrument Description</th>
<th>Date Recorded</th>
<th>Land Court Document Number</th>
<th>Conveyance Type</th>
<th>Document Tax</th>
<th>Document Type</th>
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<tbody>
<tr>
<td>02/13/2006</td>
<td>$875,000</td>
<td>06-032892</td>
<td>FEE</td>
<td>Warranty Deed</td>
<td>02/17/2006</td>
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<td>12/20/2004</td>
<td>$450,000</td>
<td>04-306915</td>
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<td>Warranty Deed</td>
<td>12/27/2004</td>
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<td>07/31/2000</td>
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Historical Tax Information

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<thead>
<tr>
<th>Year</th>
<th>Tax</th>
<th>Payments and Credits</th>
<th>Penalty</th>
<th>Interest</th>
<th>Other</th>
<th>Amount Due</th>
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<tbody>
<tr>
<td>2019</td>
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<td>2018</td>
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<td>$(4,347.43)</td>
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<td>$0.00</td>
<td>$0.00</td>
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<td>2017</td>
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<td>$211.39</td>
<td>$25.60</td>
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<td>$176.10</td>
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<td>2015</td>
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<td>2000</td>
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<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Map

Exhibit 5
Page 8 of 36
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
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
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
County of Hawai‘i

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.
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
Page 15 of 36
(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 ANNA
Printed Name of Landowner/Authorized Applicant

8.23.19
Date

Landowner Signature / Authorized Applicant

TESS LUSTHELF
Printed Name of Landowner/Authorized Applicant

8.23.19
Date

Exhibit 5
Page 17 of 36
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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, personally appeared Christopher Corberr Arai and

Tes 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 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 Compromise
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:

©2016 National Notary Association • www.NationalNotary.org • 1-800-US NOTARY (1-800-876-6827) Item #5907

Exhibit 5
Page 18 of 36
## Transient Accommodations Tax Annual Reconciliation Return

**Name:** TESS LUSHER & CHRIS ARAI  
**Filing Period:** 12/31/2019  
**Filing Frequency:** Reconciliation  
**Web Name:** CHRISTOPHER ARAI

<table>
<thead>
<tr>
<th>Gross Rental / Proceeds</th>
<th>Exemptions/ Deductions</th>
<th>Taxable Proceeds</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Oahu</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Maui, Molokai, Lanai</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td><strong>Hawaii</strong></td>
<td>85,539.99</td>
<td>85,539.99</td>
</tr>
<tr>
<td><strong>Kauai</strong></td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

**Total Fair Market Rental Value:** 85,539.99

### Timeshare Occupancy Tax

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<thead>
<tr>
<th>Oahu</th>
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</thead>
<tbody>
<tr>
<td>Maui, Molokai, Lanai</td>
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</tr>
<tr>
<td>Hawaii</td>
<td>0.00</td>
</tr>
<tr>
<td>Kauai</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### Tax Computation

- **Total Amount Taxable:** 85,539.99  
- **Tax Rate:** $0.1025  
- **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
**TRANSMITTED ACCOMMODATIONS TAX ANNUAL RETURN & RECONCILIATION**

**ID NO 01**

---

**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

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>COLUMN A GROSS RENTAL OR GROSS RENTAL PROCEEDS</th>
<th>COLUMN B EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)</th>
<th>COLUMN C TAXABLE PROCEEDS (Column a minus Column b)</th>
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<tbody>
<tr>
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<tr>
<td>2. MAUI, MOLOKAI, LANAI</td>
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<td>2</td>
<td></td>
</tr>
<tr>
<td>3. HAWAII</td>
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<tr>
<td>4. KAUAI</td>
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<td>4</td>
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</tr>
</tbody>
</table>

**TOTAL FAIR MARKET RENTAL VALUE** 50686.28

**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):

50686.28

**10. Tax Rate**

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.

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 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**

**FEE**

**03/30**

**OWNER**

---

Continued on page 2 — Parts V, VI & VII MUST be
<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>Column a GROSS RENTAL OR GROSS RENTAL PROCEEDS</th>
<th>Column b EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)</th>
<th>Column c TAXABLE PROCEEDS (Column a minus Column b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>OAHU</td>
<td>1</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td>MAUI, MOLOKAI, LANAI</td>
<td>2</td>
<td></td>
<td>2</td>
</tr>
<tr>
<td>HAWAII</td>
<td>70876.40</td>
<td></td>
<td>70876.40</td>
</tr>
<tr>
<td>KAUAI</td>
<td>4</td>
<td></td>
<td>4</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL FAIR MARKET RENTAL VALUE</th>
</tr>
</thead>
<tbody>
<tr>
<td>70876.40</td>
</tr>
</tbody>
</table>

| TOTAL AMOUNT TAXABLE. Add Column c of lines 1 thru 4 and lines 5 thru 8. |
| Enter result here (but not less than zero). |
| 70876.40                        |

<table>
<thead>
<tr>
<th>Tax Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.0825</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>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 &quot;0.00&quot; here.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5847.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PENALTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>INTEREST</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL AMOUNT. Add lines 11 and 12.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5847.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL PAYMENTS MADE LESS ANY REFUNDS RECEIVED FOR THE TAX YEAR.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CREDIT CLAIMED ON ORIGINAL ANNUAL RETURN (For Amended Return ONLY)</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>NET PAYMENTS MADE. Line 14 minus line 15.</th>
</tr>
</thead>
<tbody>
<tr>
<td>0.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CREDIT TO BE REFUNDED. Line 16 minus line 13.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5847.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ADDITIONAL TAXES DUE. Line 13 minus line 16.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5847.30</td>
</tr>
</tbody>
</table>

**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 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.

**SIGNATURE**

**DATE**

**TRADE**

**OWNER**

**Exhibit 5**
Page 22 of 36
**STATE OF HAWAII — DEPARTMENT OF TAXATION**

**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

<table>
<thead>
<tr>
<th>DISTRICT</th>
<th>Column a GROSS RENTAL OR GROSS RENTAL PROCEEDS</th>
<th>Column b EXEMPTIONS/DEDUCTIONS (Explain on Reverse Side)</th>
<th>Column c TAXABLE PROCEEDS (Column a minus Column b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. OAHU</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. MAUI, MOLOKAI, LANAI</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. HAWAII</td>
<td>51156.00</td>
<td></td>
<td>51156.00</td>
</tr>
<tr>
<td>4. KAUAI</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL FAIR MARKET RENTAL VALUE**

51156.00

**6. OAHU DISTRICT**

**TOTAL AMOUNT TAXABLE.** Add Column c of lines 1 thru 4 and lines 5 thru 8. Enter result here (but not less than zero).

51156.00

**GRAND TOTAL**

51156.00

**10. Tax Rate**

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.

3708.81

**PART IV — ADJUSTMENTS & RECONCILIATION**

**12. Amounts assessed during the year...**

**INTEREST**

12.

3708.81

**13. TOTAL AMOUNT.** Add lines 11 and 12.

3708.81

**14. TOTAL PAYMENTS MADE LESS ANY REFUNDS RECEIVED FOR THE TAX YEAR.**

0.00

**15. CREDIT CLAIMED ON ORIGINAL ANNUAL RETURN (For Amended Return ONLY)**

0.00

**16. NET PAYMENTS MADE.** Line 14 minus line 15

0.00

**17. CREDIT TO BE REFUNDED.** Line 16 minus line 13

3708.81

**18. ADDITIONAL TAXES DUE.** Line 13 minus line 16

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 DUTY AUTHORIZED AGENT.**

**TA2_F2010A 01**

Continued on page 2 — Parts V, VI & VII MUST be filled out
## General Excise Annual Reconciliation Return

### Part I - General Excise And Use Taxes @ ½ of 1% (.005)

<table>
<thead>
<tr>
<th>Business Activities</th>
<th>Column A</th>
<th>Column B</th>
<th>Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Wholesaling</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Producing</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Wholesale/Services</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Landed Value of Imports For Resale</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Business Activities of Disabled Persons</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Sum of Part I, Column C (Taxable Income)</td>
<td></td>
<td></td>
<td>0.00</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Business Activities</th>
<th>Column A</th>
<th>Column B</th>
<th>Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retailing</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Services Including Professional</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Contracting</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Theater, Amusement and Broadcasting</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Commissions</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
<tr>
<td>Transient Accommodations Rentals</td>
<td>85,539.99</td>
<td>0.00</td>
<td>85,539.99</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Business Activities</th>
<th>Column A</th>
<th>Column B</th>
<th>Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Insurance Commissions</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### Part IV - City & County of Honolulu Surcharge Tax @ ½ of 1% (.005)

<table>
<thead>
<tr>
<th>Business Activities</th>
<th>Column A</th>
<th>Column B</th>
<th>Column C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oahu Surcharge</td>
<td>0.00</td>
<td>0.00</td>
<td>0.00</td>
</tr>
</tbody>
</table>

### Part V - Schedule Of Assignment Of Taxes By District

- [ ] Oahu
- [ ] Maui
- [X] Hawaii
- [ ] Kauai
- [ ] Multi

### Part VI - Total Return and Reconciliation

<table>
<thead>
<tr>
<th>Taxable Income Column (c)</th>
<th>Tax Rate Column (b)</th>
<th>Total Tax Column (c)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Part I Total Tax</td>
<td>.005</td>
<td>0.00</td>
</tr>
<tr>
<td>Part II Total Tax</td>
<td>.04</td>
<td>3,421.60</td>
</tr>
<tr>
<td>Part III Total Tax</td>
<td>.0015</td>
<td>0.00</td>
</tr>
<tr>
<td>Part IV Total Tax</td>
<td>.005</td>
<td>0.00</td>
</tr>
<tr>
<td>Total Taxes Due</td>
<td></td>
<td>3,421.60</td>
</tr>
<tr>
<td>Amounts Assessed During the Period</td>
<td>Penalty</td>
<td>0.00</td>
</tr>
<tr>
<td>Total Amount</td>
<td></td>
<td>3,421.60</td>
</tr>
<tr>
<td>Total Payments Made Less Any Refunds Received for the Tax Year</td>
<td>3,438.13</td>
<td></td>
</tr>
<tr>
<td>Credit Claimed on Original Annual Return (Amended Only)</td>
<td>0.00</td>
<td></td>
</tr>
<tr>
<td>Net Payments Made</td>
<td></td>
<td>3,438.13</td>
</tr>
<tr>
<td>Credit to BeRefunded</td>
<td></td>
<td>16.53</td>
</tr>
<tr>
<td>Additional Taxes Due</td>
<td></td>
<td>0.00</td>
</tr>
<tr>
<td>For Late Filing Only</td>
<td></td>
<td>0.00</td>
</tr>
</tbody>
</table>

Total Amount Due and Payable

Grand Total of Exemptions/Deductions Claimed

---

**Exhibit 5**
Page 24 of 36
**FORM G-49**  
STATE OF HAWAII — DEPARTMENT OF TAXATION

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

<table>
<thead>
<tr>
<th>BUSINESS ACTIVITIES</th>
<th>VALUES, GROSS PROCEEDS OR GROSS INCOME</th>
<th>EXEMPTIONS/DEDUCTIONS (Attach Schedule GE)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Wholesaling</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Manufacturing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Producing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Wholesale Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Landed Value of Imports for Resale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Business Activities of Disabled Persons</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7. Sum of Part I, Column c (Taxable Income) — Enter the result here and on page 2, line 21, Column (a)</td>
<td>5665</td>
<td>5665</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TAXABLE INCOME (Column a minus Column b)</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. Retailing</td>
</tr>
<tr>
<td>9. Services Including Professional</td>
</tr>
<tr>
<td>10. Contracting</td>
</tr>
<tr>
<td>11. Theater, Amusement and Broadcasting</td>
</tr>
<tr>
<td>12. Commissions</td>
</tr>
<tr>
<td>13. Transient Accommodations Rentals</td>
</tr>
<tr>
<td>14. Other Rentals</td>
</tr>
<tr>
<td>15. Interest and All Others</td>
</tr>
<tr>
<td>16. Landed Value of Imports for Consumption</td>
</tr>
</tbody>
</table>

| Sum of Part II, Column c (Taxable Income) — Enter the result here and on page 2, line 22, Column (a) | 50686 | 50686 |

**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**  
**OWNER**  
**DATE**  
03

Continued on page 2 — Parts V & VI MUST be

---

**Exhibit 5**  
Page 25 of 36
## 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

**STATE OF HAWAII — DEPARTMENT OF TAXATION**

**DO NOT WRITE IN THIS AREA**

**ATTACH CHECK OR MONEY ORDER HERE**

### PART I - GENERAL EXCISE and USE TAXES @ 3% OF 1% (.005)

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Wholesaling</td>
<td>1</td>
</tr>
<tr>
<td>2. Manufacturing</td>
<td>2</td>
</tr>
<tr>
<td>3. Producing</td>
<td>3</td>
</tr>
<tr>
<td>4. Wholesale Services</td>
<td>4</td>
</tr>
<tr>
<td>5. Landed Value of Imports for Resale</td>
<td>5</td>
</tr>
<tr>
<td>6. Business Activities of Disabled Persons</td>
<td>6</td>
</tr>
</tbody>
</table>

7. **Sum of Part I, Column c (Taxable Income)** — Enter the result here and on page 2, line 21, Column (a)

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

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. Transient Accommodations Rentals</td>
<td>70877</td>
</tr>
</tbody>
</table>

8. Retailing

9. Services Including Professional

10. Contracting

11. Theater, Amusement and Broadcasting

12. Commissions

13. Other Hires

14. Interest and All Others

15. Landed Value of Imports for Consumption

16. **Sum of Part II, Column c (Taxable Income)** — Enter the result here and on page 2, line 22, Column (a)

#### DECLARATION

I, declare, under the penalties set forth in section 201-36, 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 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** 03-30-17

**Exhibit 5**

Continued on page 2 — Parts V & VI MUST be completed
FORM G-49

STATE OF HAWAI'I — DEPARTMENT OF TAXATION

DO NOT WRITE IN THIS AREA

GENERAL EXCISE/USE
ANNUAL RETURN &
RECONCILIATION

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

TAX YEAR ENDING 12-31-15
HAWAI‘I TAX I.D. NO. GE 038-847-2832-01

Last 4 digits of your FEIN or SSN 0463

NAME: ARAI, CHRISTOPHER

BUSINESS ACTIVITIES
VALUES, GROSS PROCEEDS OR GROSS INCOME

COLUMN a

COLUMN b

COLUMN c

EXEMPTIONS/DEDUCTIONS
(Attach Schedule GE)

TAXABLE INCOME
(Column a minus Column b)

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

1. Wholesaling
2. Manufacturing
3. Producing
4. Wholesale Services
5. Landed Value of Imports for Resale
6. Business Activities of Disabled Persons

7. Sum of Part I, Column c (Taxable Income) — Enter the result here and on page 2, line 21, Column (a)

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

8. Retailing
9. Services Including Professional

10. Contracting
11. Theater, Amusement and Broadcasting

12. Commissions
13. Transient Accommodations Rentals

14. Other Rentals
15. Interest and All Others
16. Landed Value of Imports for Consumption

17. Sum of Part II, Column c (Taxable Income) — Enter the result here and on page 2, line 22, Column (a)

DECLARATION - I declare, under the penalties set forth in section 221-36, 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

Continued on page 2 — Parts V & VI MUST be

Exhibit 5

Page 27 of 36
<table>
<thead>
<tr>
<th>ParcelId</th>
<th>First Name</th>
<th>Last Name</th>
<th>Second Name</th>
<th>OwnerAddress2</th>
<th>OwnerCity&amp;State</th>
<th>Country</th>
</tr>
</thead>
<tbody>
<tr>
<td>870190030000</td>
<td>James</td>
<td>M</td>
<td>BAKER, TR</td>
<td>4318 THE STRAND</td>
<td>MANHATTAN BEACH CA</td>
<td>90266 3081</td>
</tr>
<tr>
<td>870190041000</td>
<td>Jackson Long &amp; Sonja</td>
<td>K</td>
<td>DOUGHERTY, FAMILY TR</td>
<td>5980 FREDICKS RD</td>
<td>SEBASTOPOL CA</td>
<td>95472 5641</td>
</tr>
<tr>
<td>870190016000</td>
<td>Greg</td>
<td>Laurel</td>
<td>ERICKSON, LAUREL</td>
<td>2326 BIG PINIE RD</td>
<td>ESCONDIDO CA</td>
<td>92027 4954</td>
</tr>
<tr>
<td>870190026000</td>
<td>Edward K &amp; Amy S</td>
<td>S</td>
<td>FUJIMOTO, AMY S</td>
<td>15728 BUENA VISTA DR</td>
<td>KAMUELA HI</td>
<td>96743 1361</td>
</tr>
<tr>
<td>870190028000</td>
<td>Michael</td>
<td>J</td>
<td>GODDEN, TRST</td>
<td>81-6358 KEOJPUA PL</td>
<td>ROCKVILLE MD</td>
<td>20855</td>
</tr>
<tr>
<td>870190029000</td>
<td>Edwin</td>
<td>P</td>
<td>GRAMLICH, TRST</td>
<td>78-502 PUUKI RD</td>
<td>KEALKAIKAU HI</td>
<td>96750 8126</td>
</tr>
<tr>
<td>870190025000</td>
<td>Lisa</td>
<td></td>
<td>HEINRICHS</td>
<td>87-3176 MAPUNA RD</td>
<td>KAILUA KONA HI</td>
<td>96740 9729</td>
</tr>
<tr>
<td>870190027000</td>
<td>Arthur G &amp; Carmella</td>
<td>W</td>
<td>HERNANDEZ</td>
<td>318 HUALANI ST</td>
<td>CAPTAIN COOK HI</td>
<td>96714 8735</td>
</tr>
<tr>
<td>870190034000</td>
<td>Gary</td>
<td>Caroline</td>
<td>KILLEEN, TRIST</td>
<td>2310 SHADY DR</td>
<td>KAILUA HI</td>
<td>96734 2201</td>
</tr>
<tr>
<td>870190032000</td>
<td>Sidney T</td>
<td></td>
<td>KONA PACIFIC PROPERTIES LLC</td>
<td>1429 HOLLY ST</td>
<td>LAKE HAVASU CITY AZ</td>
<td>86406 7633</td>
</tr>
<tr>
<td>870190033000</td>
<td>Sidney</td>
<td></td>
<td>MIZUKAMI, TR</td>
<td>73-4165 HULIKA DR UNIT 1</td>
<td>WHITEHORSE YT</td>
<td>Y1A 4V2</td>
</tr>
<tr>
<td>870190024000</td>
<td>Bradley M</td>
<td></td>
<td>MIZUKAMI, TR</td>
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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 Keohokalole Highway, Building E
Kailua-Kona, Hawai‘i 96740

Exhibit 5
Page 30 of 36

**FIRST NOTIFICATION LETTER**
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**Certificate of Mailing**

Firm: Firm

Name and Address of Sender: Sender Name and Address

Name and Address of Receiving Employee: Receiving Employee Name and Address

Total No.: Total Number

Address: Address of Receiving Employee

Postmark with Date of Receipt: Date of Postmark

Axex Stamp Here: Axex Currency

Postmark per (name of receiving employee): Postmark Per (name of receiving employee)
Name and Address of Sender

CIRC ARM
4451 PINE FLAT RD
HEALDSBURG CA 95448

TOTAL NO. of Pieces Listed by Sender

TOTAL NO. of Pieces Received at Post Office

Affix Stamp Here
Postmark with Date of Receipt.

1. USPS® Tracking Number
Firm-specific Identifier

1409 HOLLY ST
WHITEHORSE YT Y1A 4V2
CANADA

Sidney T MIZUKAMI, TR
73-4165 HULIKOA DR UNIT 1
KAILUA KONA HI 96740 2691

2.

Sidney MIZUKAMI, TR
73-1388 HIKIMOEO ST
KAILUA KONA HI 96740 0000

3.

Bradley M MORAN
6289 VAN KEPPLE RD
FORESTVILLE CA 95436 9575

4. Exhibit 5

Page 34 of 36

Andrea M MORAN
PO BOX 1627
GUERNELVILLE CA 95446 1627

5.

George M NAKASONE
13572 CREEDMORE DR
WHITTIER CA 90601

6.

U.S. POSTAGE PAID
HEALDSBURG, CA 95448

U.S. POSTAGE PAID
HEALDSBURG, CA 95448

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HEALDSBURG, CA 95448

AMOUNT
$1.45
R2305H129759-11

See Reverse for Instructions
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| 1. | SIROGABI PARADISE LLC  
165 E 32ND ST APT 7E  
NEW YORK NY 10016 6009 |
| 2. | Gerald R TULANG  
250 ALALOA RD APT A  
HILO HI 96720 3757 |
| 3. | Leroy VICTORINE, TR  
PO BOX 7197  
HILO HI 96720 8940 |
| 4. | VOGLER, FAMILY TR  
87-3177 LEA RD  
CAPTAIN COOK HI 96704 8724 |
| 5. | Darren WHISSEN  
PO BOX 11687  
NEWPORT BEACH CA 92658 5038 |
| 6. | Youngsung Park & Philip Man-Sik YOO  
5521 SOUTHWICK ST  
BETHESDA MD 20817 3543 |

Exhibit 5
Page 36 of 36
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
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

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

cc: C. Lato, Senior Account Clerk
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, Kaohe 4th, at South Kona, Hawaii, TMK: 8-7-19:31

We are pleased to inform you that your Conservation District Use application for single 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 form 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

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

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

<table>
<thead>
<tr>
<th>Customer ID (new format)</th>
<th>Customer ID (V#)</th>
<th>Taxpayer Name</th>
<th>DBA Name</th>
<th>Search</th>
</tr>
</thead>
<tbody>
<tr>
<td>T-038-847-2832</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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### Search Tax Licenses

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<tr>
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<th>Address</th>
<th>Old Account ID</th>
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<th>Business Start</th>
<th>Business End</th>
<th>Status</th>
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<td>4451 PINE FLAT RD HEALDSBURG CA 95448-8058</td>
<td>W-12302388-01</td>
<td>General Excise / Use</td>
<td>Jan-01-2013</td>
<td></td>
<td>Open</td>
</tr>
<tr>
<td>TA-038-847-2832-01</td>
<td>TESS LUSHER &amp; CHRIS ARAI</td>
<td>4451 PINE FLAT RD HEALDSBURG CA 95448-8058</td>
<td>W-12302388-01</td>
<td>Transient Accommodations</td>
<td>Jan-01-2013</td>
<td></td>
<td>Open</td>
</tr>
</tbody>
</table>

2 Rows

*Warning: This session will timeout after 15 minutes of inactivity.*
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.
See our listing on [VRBO](https://www.vrbo.com). VRBO is a great site for finding vacation rentals.

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

Let us know how you found us. Thanks!

Hits since 1/1/2012...
DECLARATION OF RESTRICTIVE COVENANTS

WHEREAS, RALPH U. FUKUMITSU and GLADYS H. 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
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 K. Fukumitsu
STATE OF HAWAII
COUNTY OF HAWAII

On this 5TH day of August, 1995, before me personally appeared RALPH U. YUKUMITSU and GLADYS N. YUKUMITSU, 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.

[Signature]
Notary Public, State of Hawaii
My commission expires: 12/97
EXHIBIT "A"

RESTRICTIVE COVENANTS
FOR TAX MAP KEY NO. (3) 9-7-19:31
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 11-2-31, 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 form 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.

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
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APPENDIX D: DAMAGES EXAMPLES

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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**

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

**Major Harm to the Resource/ Board Permit (D)**

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

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

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

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

**Very Minor Harm to the Resource/(B) Permit**

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

**2.1.2 Non-Identified Land Use Penalties**

Violations in which an unauthorized use is not identified in HAR §13-5-22, 23, 24, 25, Staff may try to associate the action with the most similar identified land use in HAR
§13-5 or according to the "harm to the resource" caused by the violation. Refer to the above section, Identified Land Use Penalties, for the most similar required permit prefix. To categorize the violation as a "harm to resource" when no similar use is identified in HAR §13-5, Staff will refer to Table 1 and the definitions of the four violation types of "harm to resource" (See Appendix B: Definitions).

2.1.3 Tree Removal

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

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

2.1.4 Vegetation Removal/Vegetation Clearing

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

---

3 While Staff and Board decisions in MA-01-09, OA-05-40 and HA-06-08 have treated the removal of non-native, invasive, or noxious trees as one citation of "clearing" with mandatory remediation plans.
Department may see fit to assess the removal/clearing of threatened, endangered, or commercially valuable plants similar to the modified tree removal framework and may be penalized on an individual plant basis of up to $15,000 per plant.

Table 3. Vegetation Removal

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

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

2.1.5 Additional Considerations and Factors

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

2.1.6 Continuing Violations and Permit Non-Compliance

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

*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. 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

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5 In-Kind Penalty framework has been adapted from Florida Department of Environmental Protection. 2007. Program Directive 923, Settlement guidelines for civil and administrative penalties.
restoration, enhancement, information, or education project. In-kind penalties are limited to the following specific options:

a. **Material and/or labor support for environmental enhancement or restoration projects.** The Department will give preference to in-kind projects benefiting proposed government-sponsored environmental projects. For shoreline violations, this may include state beach nourishment projects and dune restoration projects.

b. **Environmental Information and Environmental Education projects.** Any information or education project proposed must demonstrate how the information or education project will directly enhance the Department's, and preferably the OCCL’s, mission to protect and conserve Hawaii’s Conservation District Lands.

c. **Capital or Facility improvements.** Any capital or facility improvement project proposed must demonstrate how the improvement will directly enhance the Department’s and/or public’s use, access, or ecological value of the conservation property.

d. **Property.** A responsible party may propose to donate land to the department as an in-kind penalty. Donations will be handled by the Department’s Legacy Lands program or similar program.
2.1.8 Penalty Adjudication

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

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

**Major and Moderate Harm to the Resource**

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

**Minor and Very Minor Harm to the Resource**

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

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

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

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

While each case is unique and individual in nature, the Department may not be able to conduct detailed damage assessments in each case, and may refer to past precedent,
economic ecosystem valuations, and other published environmental valuations to estimate and assess damages on smaller scales (for valuations and publication examples see Appendix C: References and Appendix D: Damages Examples). Using the benefit transfer method to apply past precedents and published valuations in some situations would allow the Department to focus its administrative duties and time on remediation and restoration efforts. However, as ecological valuation and research continue, more comprehensive estimates may be produced and utilized.

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

### 3.1 PRIMARY RESTORATION DAMAGES

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

Returning the damaged and or severely degraded site to a condition similar to or better than its previous ecological structure and function (e.g., a terrestrial system such as a Koa (Acacia koa) forest) would include: (1) calculating the level of ecosystem services to be restored from carbon sequestration, climate regulation, nutrient cycling, air and water purification, erosion control, plant and/or wildlife habitat, and any other services which
may be valued; (2) purchase, production and out-planting of Koa seedlings; and (3)
monitoring, maintenance, and management for the time period of mature growth of ~40-
60 years, to achieve mature canopy structure, native under-story, and an acceptable level
of lost ecosystem structure, function and/or services restored.

3.2 COMPENSATORY DAMAGE CALCULATION

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

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

These natural resource damages may be assessed using economic valuation techniques to
estimate the total value(s) of the natural resource(s) damaged on a per area basis,
including: total ecosystem service value, total annual benefits, the market value of the
natural resource, or any other factor deemed appropriate. The total value of the present
and interim natural resource damage may be estimated by calculating the net present
value of these lost benefits, values and services. The net present value may be calculated
using a discount rate to scale the present and future costs to the public, of the interim
losses of ecosystem services over the restoration time. The restoration time may be
estimated as the number of years for the damaged natural resource or ecosystem to reach maturity and/or the ecosystem structure and function to be restored similar to the pre-violation state. The discount of future losses and accrued benefits may be used in the valuation of mitigation efforts performed by the violator. For example the restoration conducted immediately after damage occurred may be calculated to have a higher present benefit worth than the benefit of restoration activities undertaken a year or two later.

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

3.3 ADJUDICATION OF DAMAGES

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

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

APPENDIX A: GUIDELINE FRAMEWORK TABLES

Table 1. Penalty Guideline Framework

<table>
<thead>
<tr>
<th>Harm to resource or potential for harm to resource</th>
<th>Identified land use permit beginning with the letter</th>
<th>Penalty Range</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major</td>
<td>D (Board)</td>
<td>$10,000-$15,000</td>
</tr>
<tr>
<td>Moderate</td>
<td>C (Departmental)</td>
<td>$2,000-$10,000</td>
</tr>
<tr>
<td>Minor</td>
<td>B (Site Plan)</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Very Minor</td>
<td>(B) (Site Plan)</td>
<td>Up to $1,000</td>
</tr>
<tr>
<td>Action</td>
<td>Comprehensible Harm to Resource</td>
<td>Penalty Range</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>--------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Removal of more than 10,000 sq. ft.</td>
<td>Major</td>
<td>$10,000-$15,000</td>
</tr>
<tr>
<td>Removal of Vegetation or of 2,000-10,000 sq. ft of vegetation</td>
<td>Moderate</td>
<td>$2,000-$10,000</td>
</tr>
<tr>
<td>Removal of less than 2,000 sq. ft. vegetation</td>
<td>Minor</td>
<td>$1,000-$2,000</td>
</tr>
<tr>
<td>Clearing of Invasive or noxious vegetation</td>
<td>Very Minor</td>
<td>Up to $1,000(^6)</td>
</tr>
</tbody>
</table>

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

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

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

\(^7\)Ecosystem Valuations http://www.ecosystemvaluation.org/benefit_transfer.htm
recreation, scientific discovery, fisheries, society, cultural inspiration and practices, and any other services which may be valued.

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

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

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

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

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

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

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

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8 Definition adapted from Florida Department of Environmental Protection. 2000 Administrative Fines and Damage Liability. Ch. 62B-54.
associated with minor land uses requiring an administrative Site Plan Approval, for building a small accessory structure.

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


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


NOAA Coastal Services Center. *Habitat Equivalency Analysis.*
www.csc.noaa.gov/coastal/economics/habitatequ.htm

APPENDIX D: DAMAGES EXAMPLES

Examples of Damage Assessments and Possible Remediation Efforts

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

Coral

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

Cesar et al 2002 (Ecosystem Service Valuation)
Cesar et al. used a Simple Coral Reef Ecological Economic Model (SCREEM) to assess Hawaiian coral reefs based on the annual benefits of the coral reefs to recreation/tourism, property amenities, biodiversity, fisheries and education. The annual benefits and total economic value could then be expressed on a ‘per area’ basis. This study found the total annual benefits of the coral reefs of Hanauma Bay to be $37.57 million ($2,568/m²), of the coral reefs in Kihei to be $28.09 million ($65/m²) and the coral reefs on the Kona coast to be $17.68 million ($19/m²).

Pilaa enforcement (KA-02-10) (Primary Restoration Cost)
Damage to Coral reef ecosystems was assessed for restoration activities according to Florida guidelines, as $5,830,000 for 5,380 m² of coral reef damage. This calculation
was similar to the estimated cost of remediation efforts $390,000 to clean 5,000 yd\(^3\) of beach sand. However between 30,000-50,000 yd\(^3\) was estimated to be impacted, totaling $2,300,000-$3,900,000. While cleaning the sediment from the reef was estimated to cost approximately $845,000 (for the 13 acres, or $65,000 for 10m\(^2\)). This totaled between $3,100,000 and $4,700,000, and did not include coral colony re-establishment. An additional $630,000 was estimated for the 10-year monitoring period, (however studies by Cesar et al. 2003 estimated a 25 year period for recovery of ecological impacts).

Thus damage to corals may be calculated as follows:

# Number of square meters of coral damaged
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/yd\(^2\) of damage to seagrass beds for the first yd\(^2\) damaged and $75/yd\(^2\) per each additional yd\(^2\) damaged.

$100 for the first yard damaged
+$75 per each additional yard

or net present total value of ecosystem services lost until recovery
+vegetation planting
+monitoring
**Sand Beaches (ex. Of Primary Restoration Costs)**

Minimum penalty cost of restoration and potential negative ecological, social and environmental impacts should be included in the assessment of damaged, degraded or lost sandy beaches. As one of Hawaii’s greatest natural resources the following should be included in the minimum penalty assessment, however, as ecological valuation and research continue, more comprehensive estimates may be produced. In KA-02-10 Pilaa, $390,000 fine was estimated to clean 5,000 yd$^3$ of beach.

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

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

Violator’s Name(s):__________________________

TMK:______________________________________

OCCL Staff Member: _________________________

Date:_______________________________________

Part 1- Penalties

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

Penalty Total:

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

1. Actual environmental damage extent (onsite)

   Description: ____________________________________________________________

2. Actual environmental damage extent (offsite)

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

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

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

6. Does the Violator have a Financial Hardship?

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

8. Other.
   Description:

Total Adjustment: up/down

Multi-day penalties
Number of days to multiply penalty:
Reasoning:

Total multi-day: