

PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

DONNA APISA, CHAIR
HELEN COX, VICE CHAIR
MELVIN CHIBA, MEMBER
FRANCIS DEGRACIA, MEMBER
GLENDA NOGAMI-STREUFERT, MEMBER
LORI OTSUKA, MEMBER

MEMORANDUM

DATE: October 25, 2021

TO: Planning Commission

FROM: Clerk of the Commission

SUBJECT: 1st Addition to the 10/25/2021 Planning Commission Subdivision Committee Agenda

H. GENERAL BUISNESS MATTERS

1. **Extension Request to Complete Improvements**

a. Subdivision Application No. S-99-49

1. Supplement #1 to Extension Report



SUPPLEMENT #1 TO
EXTENSION REPORT

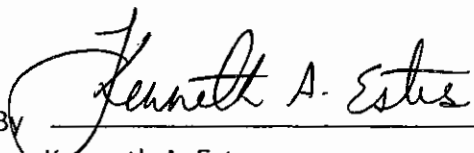
RE: Subdivision Application No. S-99-49

APPLICANT: Kūlana Association of Apartment Owners

ADDITIONAL FINDINGS

Attached for the Planning Commission's reference is supplemental information as follows:

1. An Affidavit of Mailing received October 15, 2021 that was submitted from the Applicant to meet the requirements outlined in the Kūlana Restated Subdivision Agreement for requesting an extension of time to complete the subdivision improvements. The Affidavit of Mailing includes a list of property owners that notices were sent and the documents included in such notice that describes the Subdivider's intent to request an extension of time, and containing the date, time and location of the meeting at which the Planning Commission will consider the extension request and the reason for the request.
2. Communication from Kurt Bosshard received October 4, 2021.

BY 
Kenneth A. Estes
Staff Planner

H. I. A. 2.

OCT 26 2021





LAUREL LOO
PARTNER

TRANSMITTAL LETTER

21 OCT 15 18:59

To: Kaua'i Planning Department
4444 Rice Street, Suite A473
Lihue, Hawai'i, 96766

Date: **REC** October 14, 2021

Via Hand-delivery

From: Vera C. Tabe
Paralegal to Laurel Loo

Re: Affidavit of Mailing

Copies	Date	Description
1 (Original)	10/12/21	Affidavit of Mailing for Association of Apartment Owners of Kulana for hearing scheduled for October 26, 2021

TRANSMITTED FOR:

- Your Information
- Your Signature and Return
- Your Signature and Forwarding as Noted Below
- Per Our Conversation
- Your Further Necessary Action
- Your Approval
- Your Review
- Per Your Request
- SEE REMARKS BELOW

IF YOU HAVE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CALL.

REMARKS:

KELLER WILLIAMS REALTY

WAYNE RICHARDSON, III
2970 HALEKO ROAD, SUITE 205
LIHUE, HI 96766

Managing Agent for Applicant
Michael Kaplan

BEFORE THE PLANNING COMMISSION

OF THE COUNTY OF KAUAI

In The Matter Of The Application)	APPLICATION NO:
)	Subdivision Number S-99-49
)	
)	
Of)	AFFIDAVIT OF MAILING;
)	EXHIBITS "A" – "C"
Association of Apartment Owners of)	
Kulana,)	
)	
)	

AFFIDAVIT OF MAILING

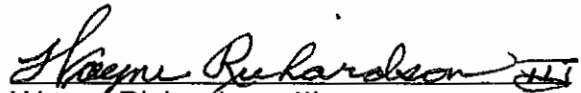
STATE OF HAWAII)	
)	SS.
COUNTY OF KAUAI)	

Wayne Richardson, III, being first duly sworn on oath, deposes and says as follows:

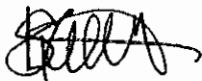
1. That he is the managing agent for the Association of Apartment Owners of Kulana in the above-reference matter;
2. That he caused a list to be made of all the apartment owners of Kulana.
3. That the list of those apartment owners is attached hereto as Exhibit "A";

4. That on October 5, 2021, he caused a notice informing owners in the subdivision of the date of the Planning Commission would hear a request for a subdivision extension; the notice is attached hereto as Exhibit "B" and was mailed at least 85% of those parties listed in Exhibit "A".
5. That the mailings were done by certified mail to all persons listed in Exhibit "A";
6. That Exhibit "C", attached hereto, evidences the certified mailings of the notice; and
7. That this Affidavit is submitted to meet the public hearing notice requirements under the Kaua'i County Code.

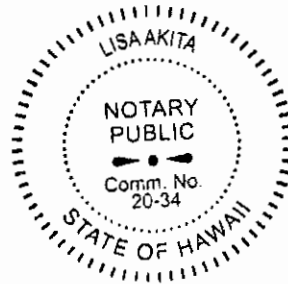
FURTHER, Affiant says not.


Wayne Richardson, III

Subscribe and sworn to before me
this 12th day of October 2021.



Notary Public State of Hawai'i
My commission expires: February 9, 2024



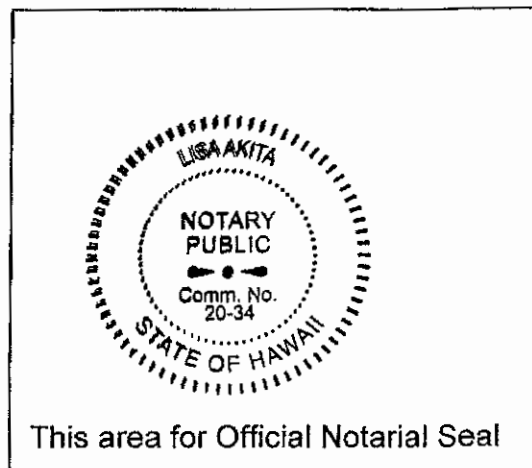
STATE OF HAWAII)
) SS.
COUNTY OF KAUAI)

On October 12, 2021, before me, Lisa Akita,
personally appeared Wayne Richardson, III,
personally known to me (or provide to me on the basis of satisfactory evidence) to be
the person whose name is subscribed to the within instrument and acknowledged to me
that he executed the same in his authorized capacity, and that by his signature on the
instrument the person, or the entity upon behalf of which the person acted, executed the
instrument.

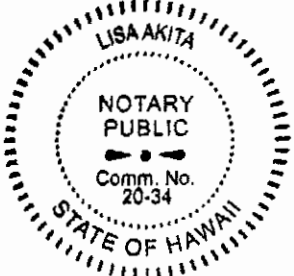
WITNESS my hand and official seal.

Signature [Handwritten Signature]

My Commission Expires: February 9, 2024



NOTARY PUBLIC CERTIFICATION	
Doc Date: <u>October 12, 2021</u>	# Pages: <u>12</u>
Notary Name: <u>Lisa Akita</u>	Judicial Circuit: <u>5th</u>
Doc. Description: <u>Affidavit of Mailing</u>	
Notary Signature: <u>[Handwritten Signature]</u>	
Date: <u>October 12, 2021</u>	



Loihi Organic Farm LLC
P.O. Box 223459
Princeville, HI 96722

Kapahi Farm Lots LLC
3144 Elua Street
Lihue, HI 96766

Amy L. Sherrer Revocable Trust
30 Loloa Street
Kapaa, HI 96746

Larry K. Sherrer Revocable Trust
30 Loloa Street
Kapaa, HI 96746

Daniel J. Diamond
P.O. Box 1627
Kapaa, HI 96746

Jami MCKnight & Thomas McKnight
1470 Kitsap Lake Road NW
Bremerton, WA 98312

Jay Manzano & Alejandro Pascual
1532 Kamole Street
Honolulu, HI 96821-1424

Alex Herrera & Lisa Herrera
2972 Aceca Drive
Los Alamitos, CA 90720

Lawrence Halsey & Rose Halsey
250 Halsey Lane
Water Mill, NY 11976

Harco Properties LLC
4207 E. Palo Verde Drive
Phoenix, AZ 85018

James Von Grep
16016 Mariner Drive
Huntington Beach, CA 92649

John Free & James Howey
2642 Foothill Drive
Vista, CA 92084

Neil O'Neill, III & Eileen Marie Agurcia
4274 Upper Pack River Road
Sandpoint, ID 83864

Oanh Huynh
P.O. Box 5634
Irvine, CA 92616

Sakda Thaksin & Machiko Yamaguchi
P.O. Box 1983
Kapaa, HI 96746

Brad Rockwell & Hai Nguyen
P.O. Box 1851
Koloa, HI 96756

KK4X LLC
1000 Bishop Street Suite 1200
Honolulu, HI 96813

Karen Hansen Thompson Revocable
Trust 2010
544 Paseo Companeros
Chico, CA 95928

Kulana 5C LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

Kulana 5D LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

James King & Tomasz Wnekiewicz
90 Candelerio Drive Apt 45
Tomasz Humacao, PR 00791

Harco Properties LLC
4207 E. Palo Verde Drive
Phoenix, AZ 85018

Shelly Evans
37 Wildwood Court
Watsonville, CA 95076

Douglas Nash
2150 Talman Mews Court
Winter Park, FL 32792

Look Vacations LLC
4646 Wailapa Road
Kilauea, HI 96754

Randall J. Keller
P.O. Box 297
Kilauea, HI 96754

Scott Tiraschi & Marie Tiraschi
16180 Hotaw Court
Sonora, CA 95370

Don Nicolson Sr.
P.O. Box 393
Kapaa, HI 96746

Commercial Plumbing Properties LLC
1812 Colburn Street
Honolulu, HI 96819

Joseph Clark
P.O. Box 511
Waimea, HI 96796

Exhibit A

Howard Greene & Lisa Greene
5251 Kaapuni Road
Kapaa, HI 96746

Janine Wilson
1831 Poipu Road Suite #913
Koloa, HI 96756

Jeffrey W. Fisher
P.O. Box 1326
Lihue, HI 96766

Darrel Jarmusch & Sheryl Sarkoff
P.O. Box 543
Elfrida, AZ 85610-0543

David Livingston Jr
Jennifer Livingston
P.O. Box 7621
Olympia, WA 98507-7621

Kulana 15B LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

Melvin A. Maraney Jr
18535 Santa Ynez Street
Fountain Valley, CA 92708

Kenyon Kapp Wilma Kapp
4821 Nonou Road
Kapaa, HI 96746

Brad Rockwell & Quyen Rockwell
P.O. Box 1851
Koloa, HI 96756

Robert Fischer & Susan Fischer
5061 Decatur Drive
La Palma, CA 90623

The Suzanne Jo Bernard Revocable
Living Trust
6781 Kawaihau Road
Kapaa, HI 96746

JKC Properties LLC
245 Cascade Falls Drive
Folsom, CA 95630

Kulana 12E LLC
C/O Jeannette Meier
34522 N Scottsdale Rd., Suite 120 PMB
626
Scottsdale, AZ 85266

Vincent Howard & Anna Howard
P.O. Box 452165
Los Angeles, CA 90045

Kenneth Sakihama & Janice Sakihama
98-853 Ka'ahale Street
Aiea, HI 96701

Edward McVeagh
16927 Robert Drive
Anchorage, AK 99516

Kulana 16D LLC
Amanda Brown
1465 Pine Bluff Drive
Allen, TX 75002

Christopher Thomas & Tiffany Thomas
5331 Luana Street
Kapaa, HI 96746

William J. Courtemanche
Judith A. Courtemanche
696 Diamond Drive
Chula Vista, CA 91911

Mark Sullivan & Julia Sullivan
1271 Missouri Street
San Diego, CA 92109

Joseph Enrique, II & Mary J. Enrique
P.O. Box 508
Anahola, HI 96703

Lindsey W. Bosshard, Co-Trustee
3144 Elua Street
Lihue, HI 96766

Boyer Kawaihau Partners LLC
P.O. Box 1590
Kapaa, HI 96746

Douglas Briggs Jr & Joanne Briggs
1911 Marion Avenue
Novato, CA 94945

Steve Nafshun & Esther Eun
410 Papaloa Road Unit 334
Kapaa, HI 96746

Paul Wright
16737 N. Carleton Avenue
Nampa, ID 83687

Thomas J. Brooks & Jennifer S. Brooks
2770 East Pinehave Drive Box 24
Island Park, ID 83429-5150

Robert A. Bartolo Sr.,
5060 Nonou Road
Kapaa, HI 96746

Donovan Starks & Jennifer Starks
802 E. 750 N.
Pleasant Grove, UT 84062

Chris Mann & Kriss Mann
245 Cascade Falls Drive
Folsom, CA 95630

Jamie Mantegna
4178 Awela Place
Lihue, HI 96766

Ryan Paik & Stephanie Paik
4770 A Wailapa Road #C
Kilauea, HI 96754

Pensco Trust LLC
Jamie Mantegna
4178 Awela Place
Lihue, HI 96766

Thomas Leslie May
P.O. Box 223355
Princeville, HI 96722

October 5, 2021

Kūlana Owner & address

Dear _____,

The Re-Styled Subdivision Agreement (“Agreement”) for the Kūlana Subdivision, dated November 26, 2018, provided for a Completion Date of September 13, 2021 to complete the Subdivision Improvements. As has been reported during regular meetings and periodic written updates to owners, the majority of Subdivision Improvements have been completed but some punchlist items, final inspections, and as-built drawings remain in progress. Because it was unlikely that we would complete by September 13, 2021 date, we requested an extension in August 2021. The letter request to the Planning Commission dated August 13, 2021, which provides a detailed update on completion status is attached.

The Agreement also requires that, if an extension to the Completion Date is requested, written notice shall be provided to all owners, by certified mail or hand delivery, of the intent to request an extension along with the date, time, and location of the meeting at which the Planning Commission will consider such request. In accordance with that requirement, you are hereby notified that the Planning Commission will consider an extension of the Completion Date for the Kulana Subdivision at its meeting on October 26, 2021 at 8:30am via a virtual meeting. The Planning Commission meeting will be live-streamed via the county’s website at www.kauai.gov/Webcast-Meetings. If you would like to provide oral testimony, please provide a request to the Planning Department at least 24 hours prior to the meeting to planningdepartment@kauai.gov or by calling (808) 241-4050.

Sincerely,

Brad W. Rockwell
President
AOAO Kūlana

Exhibit 10

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30 Loloea Street
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1470 Kitsap Lake Road NW
Bremerton, WA 98312

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Phoenix, AZ 85018

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Sent To: Larry K. Sherrer Revocable Trust
30 Loloea Street
Kapaa, HI 96746

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Sent To: Karen Hansen Thompson Revocable Trust
Trust 2010
544 Paseo Companeros
Chico, CA 95928

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Sent To: James Von Grep
16016 Mariner Drive
Huntington Beach, CA 92649

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Sent To: Loihl Organic Farm LLC
P.O. Box 223459
Princetonville, HI 96722

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Honolulu, HI 96821-1424

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1532 Kamole Street
Honolulu, HI 96821-1424

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Irvine, CA 92616

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P.O. Box 5634
Irvine, CA 92616

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Total Postage and Fees \$4.33

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3144 Elua Street
Lihue, HI 96746

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Los Alamitos, CA 90720

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 Certified Mail Restricted Delivery \$0.00
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 Adult Signature Restricted Delivery \$0.00

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Total Postage and Fees \$4.33

Sent To: Alex Herrera & Lisa Herrera
2972 Aceca Drive
Los Alamitos, CA 90720

Postmark: LIHUE HI 96746 OCT 5 2021

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Honolulu, HI 96813

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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total Postage and Fees \$4.33

Sent To: KK4X LLC
1000 Bishop Street Suite 1200
Honolulu, HI 96813

Postmark: LIHUE HI 96746 OCT 5 2021

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Kapaa, HI 96746

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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total Postage and Fees \$4.33

Sent To: Daniel J. Diamond
P.O. Box 1627
Kapaa, HI 96746

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Water Mill, NY 11976

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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total Postage and Fees \$4.33

Sent To: Lawrence Halsey & Rose Halsey
250 Halsey Lane
Water Mill, NY 11976

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Scottsdale, AZ 85266

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 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total Postage and Fees \$4.33

Sent To: Kulana 5D LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

Postmark: LIHUE HI 96746 OCT 5 2021

Exhibit C

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 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Julana SC LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

Postmark: LIHUE HI 96766 OCT 5 2021

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Total \$4.33

Send To: Brad Rockwell & Hai Nguyen
P.O. Box 1851
Koloa, HI 96756

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 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Sakda Thaksin & Machiko Yamaguchi
P.O. Box 1983
Kapaa, HI 96746

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Vista, CA 92084

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 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: John Free James Howey
2642 Foothill Drive
Vista, CA 92084

Postmark: LIHUE HI 96766 OCT 5 2021

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Sandpoint, ID 83864

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 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Neil O'Neill, III & Eileen Marie Agurcia
4274 Upper Pack River Road
Sandpoint, ID 83864

Postmark: LIHUE HI 96766 OCT 5 2021

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Princetonville, HI 96722

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Thomas Leslie May
P.O. Box 223355
Princetonville, HI 96722

Postmark: LIHUE HI 96766 OCT 5 2021

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Lihue, HI 96766

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Pansco Trust LLC
Jamie Mantegna
4178 Awela Place
Lihue, HI 96766

Postmark: LIHUE HI 96766 OCT 5 2021

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Kilauea, HI 96764

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Ryan Paik & Stephanie Paik
4770 A Wailapa Road #C
Kilauea, HI 96754

Postmark: LIHUE HI 96766 OCT 5 2021

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Lihue, HI 96766

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Jamie Mantegna
4178 Awela Place
Lihue, HI 96766

Postmark: LIHUE HI 96766 OCT 5 2021

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Folsom, CA 95630

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Chris Mann & Kriss Mann
245 Cascade Falls Drive
Folsom, CA 95630

Postmark: LIHUE HI 96766 OCT 5 2021

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For delivery information, visit our website at www.usps.com.

San Diego, CA 92109

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Mark Sullivan & Julia Sullivan
1271 Missouri Street
San Diego, CA 92109

Postmark: LIHUE HI 96766 OCT 5 2021

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La Palma, CA 90623

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Robert Fischer & Susan Fischer
5061 Decatur Drive
La Palma, CA 90623

Postmark: LIHUE HI 96766 OCT 5 2021

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Pleasant Grove, UT 84062

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Donovan Starks & Jennifer Starks
802 E. 750 N.
Pleasant Grove, UT 84062

Postmark: LIHUE HI 96766 OCT 5 2021

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Chula Vista, CA 91911

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: William J. Courtemanche
Judith A. Courtemanche
696 Diamond Drive
Chula Vista, CA 91911

Postmark: LIHUE HI 96766 OCT 5 2021

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Koloa, HI 96766

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage):
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Send To: Brad Rockwell & Quyen Rockwell
P.O. Box 1851
Koloa, HI 96756

Postmark: LIHUE HI 96766 OCT 5 2021

CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com.
Kapaa, HI 96746

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Robert A. Bartolo Sr.,
5060 Nonou Road
Kapaa, HI 96746

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com.
Fountain Valley, CA 92708

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Melvin A. Maraney Jr
18535 Santa Ynez Street
Fountain Valley, CA 92708

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com.
Aiea, HI 96701

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Kenneth Sakihama & Janice Sakihama
98-853 Ka'ahale Street
Aiea, HI 96701

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Kapaa, HI 96746

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Christopher Thomas & Tiffany Thomas
5331 Luana Street
Kapaa, HI 96746

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Nampa, ID 83687

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Paul Wright
16737 N. Carleton Avenue
Nampa, ID 83687

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Olympia, WA 98507

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: David Livingston Jr
Jennifer Livingston
P.O. Box 7621
Olympia, WA 98507-7621

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Kapaa, HI 96746

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Kenyon Kapp Wilma Kapp
4821 Nonou Road
Kapaa, HI 96746

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Anchorage, AK 99514

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Edward McVeagh
16927 Robert Drive
Anchorage, AK 99514

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Novato, CA 94945

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Douglas Briggs Jr & Joanne Briggs
1911 Marion Avenue
Novato, CA 94945

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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For delivery information, visit our website at www.usps.com.
Island Park, ID 83429

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Thomas J. Brooks & Jennifer S. Brooks
2770 East Pinehave Drive Box 24
Island Park, ID 83429-5150

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Scottsdale, AZ 85266

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Kulana 15B LLC
C/O Jeannette Meier
34522 N Scottsdale Road Suite 120
PMB 626
Scottsdale, AZ 85266

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Los Angeles, CA 90045

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Vincent Howard & Anna Howard
P.O. Box 452165
Los Angeles, CA 90045

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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For delivery information, visit our website at www.usps.com.
Allen, TX 75002

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Kulana 16D LLC
Amanda Brown
1465 Pine Bluff Drive
Allen, TX 75002

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Kapaa, HI 96746

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Steve Nafshun & Esther Eun
410 Papaloo Road Unit 334
Kapaa, HI 96746

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Elfrida, AZ 85610

Certified Mail Fee \$3.75

Extra Services & Fees (check box, add fee to postage)
 Return Receipt (hardcopy) \$0.00
 Return Receipt (electronic) \$0.00
 Certified Mail Restricted Delivery \$0.00
 Adult Signature Required \$0.00
 Adult Signature Restricted Delivery \$0.00

Postage \$0.58

Total \$4.33

Sent To: Darrel Jarmusch & Sheryl Sarkoff
P.O. Box 543
Elfrida, AZ 85610-0543

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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Kapaa, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Boyer Kawaihau Partners LLC
P.O. Box 1590
Kapaa, HI 96746

CERTIFIED MAIL® RECEIPT
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Koloa, HI 96756

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Janine Wilson
1831 Poipu Road Suite #913
Koloa, HI 96756

CERTIFIED MAIL® RECEIPT
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Honolulu, HI 96819

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Commercial Plumbing Properties LLC
1812 Colburn Street
Honolulu, HI 96819

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Scottsdale, AZ 85266

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: C/O Jeannette Meier
34522 N Scottsdale Rd., Suite 120 PMB
626
Scottsdale, AZ 85266

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Anahola, HI 96703

Certified Mail Fee	\$2.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Joseph Enrique, II & Mary J. Enrique
P.O. Box 508
Anahola, HI 96703

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Kapaa, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Don Nicolson Sr.
P.O. Box 393
Kapaa, HI 96746

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Lihue, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Jeffrey W. Fisher
P.O. Box 1326
Lihue, HI 96746

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Kapaa, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: *Surat Permad*
10758 HAWAII Key Drive #1102
Anahola HI 96703

**U.S. Postal Service™
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For delivery information, visit our website at www.usps.com®.
Sonoma, CA 95370

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Scott Tiraschi & Marie Tiraschi
16180 Hotaw Court
Sonoma, CA 95370

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For delivery information, visit our website at www.usps.com®.
Lihue, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Lindsey W. Bosshard, Co-Trustee
3144 Elua Street
Lihue, HI 96746

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Kapaa, HI 96746

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Howard Greene & Lisa Greene
5251 Kaapuni Road
Kapaa, HI 96746

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Kilauea, HI 96754

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Randall J. Keller
P.O. Box 297
Kilauea, HI 96754

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Folsom, CA 95630

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: JKC Properties LLC
245 Cascade Falls Drive
Folsom, CA 95630

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For delivery information, visit our website at www.usps.com®.
Waimea, HI 96796

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
Return Receipt (hardcopy)	\$0.00
Return Receipt (electronic)	\$0.00
Restricted Mail Restricted Delivery	\$0.00
Adult Signature Required	\$0.00
Adult Signature Restricted Delivery	\$0.00

Postage \$0.58
Total Postage \$4.33
Date 10/05/2021

Sent To: Joseph Clark
P.O. Box 511
Waimea, HI 96796

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For delivery information, visit our website at www.usps.com®.
Kilauea, HI 96754

Certified Mail Fee	\$3.75
Extra Services & Fees (check box, add fee to postage)	\$0.00
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Sen Shelly Evans

37 Wildwood Court

City Watsonville, CA 95076

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Sen Harco Properties LLC

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City Phoenix, AZ 85018

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Sen James King & Tomasz Wnekiewicz

90 Candellero Drive Apt 45

City Tomasz Humacao, PR 00791

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Kristen Romuar-Cabico

From: Kurt Bosshard <kboss@aloha.net>
Sent: Monday, October 4, 2021 10:45 AM
To: Planning Department
Subject: Planning Commission Meeting, 10/26/21; Subdivision Application No. S-99-49
Attachments: Kulana - 10-4-21 letter to Planning Dept & Commission + attachments.pdf

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Please see attached letter dated 10/4/21, with enclosures.

Kurt Bosshard, Esq.
3144 Elua Street
Lihue, Hawaii 96766
Phone: 808-245-5302
Fax: 808-245-8929

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ATTORNEY AT LAW
3144 ELUA STREET
LIHUE, HAWAII 96766
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FAX: 808-245-8929
EMAIL: kboss@aloha.net

October 4, 2021

Planning Department and Planning Commission
4444 Rice Street, Suite 473
Lihue, HI 96766

via email only (planningdepartment@kauai.gov)

RE: Planning Commission Meeting
October 26, 2021
Extension Request to Complete Improvements
Subdivision Application No. S-99-49

Aloha:

I am the Managing Member of Kapahi Farm Lots LLC. Kapahi Farm Lots LLC owns several CPR Units in the Kulana Subdivision. While I support the Association's request for an extension of time to complete improvements, I want to bring to your attention the issue of the Kulana Condominium Association's lack of commitment to the agricultural usage of this large, agriculturally zoned land.

Presently, the Kulana CCR's and Design Review Guidelines are based on a "gated residential community" template. These CCR's and Design Review Guidelines clearly violate HRS §165, HRS §205-4.6, and HRS §205-2(d)(15) of our State law and are contrary to the conditions upon which the County approved this subdivision. I attach here copies of HRS §165, HRS §205-4.6, and HRS §205-2(d)(15) which are referred to collectively as the "right to farm" law.

For the past several years I have attempted to work with the Association to rewrite these documents consistent with the intent of the right to farm law and this County's pronouncements as to its support of agriculture. Thus far, the Association has not taken steps necessary to rectify the situation. Should these documents not be so modified, then I will oppose the final

Planning Department and Planning Commission
October 4, 2021
Page 2

approval of this subdivision when it next comes up for hearing before the Planning Commission. As of now, I am asking the Planning Commission and Planning Department's assistance in encouraging the Association to take the right to farm law seriously. Your input should be consistent with that demanded by the community which is tired of losing good farm land to gentlemen farmers' agricultural resorts. I trust that the Association will take your concerns more seriously than my own.

Thank you for your consideration of the foregoing.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kurt Bosshard', written in a cursive style.

Kurt Bosshard

KB:rsnh

CHAPTER 165
HAWAII RIGHT TO FARM ACT

Section

- 165-1 Findings and purpose
- 165-2 Definitions
- 165-3 Declaration of public purpose
- 165-4 Right to farm
- 165-5 Frivolous lawsuits
- 165-6 Liberal construction

§165-1 Findings and purpose. The legislature finds that when nonagricultural land uses extend into agricultural areas, farming operations often become the subject of nuisance lawsuits that may result in the premature removal of lands from agricultural use and may discourage future investments in agriculture. The legislature also finds that under the Hawaii State Planning Act, it is a declared policy of this State to "foster attitudes and activities conducive to maintaining agriculture as a major sector of Hawaii's economy." Accordingly, it is the purpose of this chapter to reduce the loss to the State of its agricultural resources by limiting the circumstances under which farming operations may be deemed to be a nuisance. [L 1982, c 256, pt of §1; am L 1986, c 242, §1]

§165-2 Definitions. As used in this chapter, unless the context otherwise requires:

"Farming operation" means a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment. "Farming operation" includes but shall not be limited to:

- (1) Agricultural-based commercial operations as described in section [205-2(d)(15)];
- (2) Noises, odors, dust, and fumes emanating from a commercial agricultural or an aquacultural facility or pursuit;
- (3) Operation of machinery and irrigation pumps;
- (4) Ground and aerial seeding and spraying;
- (5) The application of chemical fertilizers, conditioners, insecticides, pesticides, and herbicides; and
- (6) The employment and use of labor.

A farming operation that conducts processing operations or salt, brackish, or freshwater aquaculture operations on land that is zoned for industrial, commercial, or other nonagricultural use

shall not, by reason of that zoning, fall beyond the scope of this definition; provided that those processing operations form an integral part of operations that otherwise meet the requirements of this definition.

"Nuisance" means any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare. "Nuisance" as used in this chapter, includes all claims that meet the requirements of this definition regardless of whether a complainant designates such claims as brought in nuisance, negligence, trespass, or any other area of law or equity; provided that nuisance as used in this chapter does not include an alleged nuisance that involves water pollution or flooding. [L 1982, c 256, pt of §1; am L 1986, c 242, §2; am L 1993, c 162, §2; am L 2001, c 26, §1; am L 2012, c 113, §1]

[\$165-3] Declaration of public purpose. The preservation and promotion of farming is declared to be in the public purpose and deserving of public support. [L 1982, c 256, pt of §1]

§165-4 Right to farm. No court, official, public servant, or public employee shall declare any farming operation a nuisance for any reason if the farming operation has been conducted in a manner consistent with generally accepted agricultural and management practices. There shall be a rebuttable presumption that a farming operation does not constitute a nuisance. [L 1982, c 256, pt of §1; am L 1986, c 242, §3; am L 2001, c 26, §2]

Revision Note

Subsection designation deleted pursuant to §23G-15.

[\$165-5] Frivolous lawsuits. Any nuisance action, found to be frivolous by the court, in which a farming operation is alleged to be a nuisance as defined in section 165-2, shall be governed by section 607-14.5. [L 1993, c 162, pt of §1]

Cross References

Vexatious litigants, see chapter 634J.

[\$165-6] Liberal construction. This chapter is remedial in nature and shall be liberally construed to effectuate its purposes. [L 1993, c 162, pt of §1]

§205-4.6 Private restrictions on agricultural uses and activities; not allowed. (a) Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any:

(1) Deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after July 8, 2003, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes; and

(2) Condominium declaration, map, bylaws, and other documents executed and submitted in accordance with chapter 514B or any predecessor thereto.

Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable, subject to special restrictions enacted by the county ordinance pursuant to section 46-4; except that restrictions taken to protect environmental or cultural resources, agricultural leases, utility easements, and access easements shall not be subject to this section.

(b) For purposes of this section, "agricultural leases" means leases where the leased land is primarily utilized for purposes set forth in section 205-4.5(a). [L Sp 2003, c 5, §2; am L 2004, c 170, §1; am L 2014, c 49, §2; am L 2017, c 181, §7]

Law Journals and Reviews

"Urban Type Residential Communities in the Guise of Agricultural Subdivisions: Addressing an Impermissible Use of Hawai'i's Agricultural District. 25 UH L. Rev. 199 (2002).

§205-2 Districting and classification of lands. (a)

There shall be four major land use districts in which all lands in the State shall be placed: urban, rural, agricultural, and conservation. The land use commission shall group contiguous land areas suitable for inclusion in one of these four major districts. The commission shall set standards for determining the boundaries of each district, provided that:

(1) In the establishment of boundaries of urban districts those lands that are now in urban use and a sufficient reserve area for foreseeable urban growth shall be included;

(2) In the establishment of boundaries for rural districts, areas of land composed primarily of small farms mixed with very low density residential lots, which may be shown by a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre shall be included, except as herein provided;

(3) In the establishment of the boundaries of agricultural districts the greatest possible protection shall be given to those lands with a high capacity for intensive cultivation; and

(4) In the establishment of the boundaries of conservation districts, the "forest and water reserve zones" provided in Act 234, section 2, Session Laws of Hawaii 1957, are renamed "conservation districts" and, effective as of July 11, 1961, the boundaries of the forest and water reserve zones theretofore established pursuant to Act 234, section 2, Session Laws of Hawaii 1957, shall constitute the boundaries of the conservation districts; provided that thereafter the power to determine the boundaries of the conservation districts shall be in the commission.

In establishing the boundaries of the districts in each county, the commission shall give consideration to the master plan or general plan of the county.

(b) Urban districts shall include activities or uses as provided by ordinances or regulations of the county within which the urban district is situated.

In addition, urban districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, as permissible uses.

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structures, streets, and urban level of services are absent, and where small farms are intermixed with low density residential lots except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than eighteen thousand five hundred square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot; provided

that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure. These districts may include contiguous areas which are not suited to low density residential lots or small farms by reason of topography, soils, and other related characteristics. Rural districts shall also include golf courses, golf driving ranges, and golf-related facilities.

In addition to the uses listed in this subsection, rural districts shall include geothermal resources exploration and geothermal resources development, as defined under section 182-1, and construction and operation of wireless communication antenna, as defined under section 205-4.5(a)(18), as permissible uses.

(d) Agricultural districts shall include:

- (1) Activities or uses as characterized by the cultivation of crops, crops for bioenergy, orchards, forage, and forestry;
- (2) Farming activities or uses related to animal husbandry and game and fish propagation;
- (3) Aquaculture, which means the production of aquatic plant and animal life within ponds and other bodies of water;
- (4) Wind-generated energy production for public, private, and commercial use;
- (5) Biofuel production, as described in section 205-4.5(a)(16), for public, private, and commercial use;
- (6) Solar energy facilities; provided that:
 - (A) This paragraph shall apply only to land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class B, C, D, or E; and
 - (B) Solar energy facilities placed within land with soil classified as overall productivity rating class B or C shall not occupy more than ten per cent of the acreage of the parcel, or twenty acres of land, whichever is lesser, unless a special use permit is granted pursuant to section 205-6;
- (7) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, regardless of whether conducted on the same premises as the agricultural activities to which they are accessory, including farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, photovoltaic, biogas, and other

small-scale renewable energy systems producing energy solely for use in the agricultural activities of the fee or leasehold owner of the property, agricultural-energy facilities as defined in section 205-4.5(a)(17), vehicle and equipment storage areas, and plantation community subdivisions as defined in section 205-4.5(a)(12);

(8) Wind machines and wind farms;

(9) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings;

(10) Agricultural parks;

(11) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5;

(12) Agricultural tourism activities, including overnight accommodations of twenty-one days or less, for any one stay within a county; provided that this paragraph shall apply only to a county that includes at least three islands and has adopted ordinances regulating agricultural tourism activities pursuant to section 205-5; provided further that the agricultural tourism activities coexist with a bona fide agricultural activity. For the purposes of this paragraph, "bona fide agricultural activity" means a farming operation as defined in section 165-2;

(13) Open area recreational facilities;

(14) Geothermal resources exploration and geothermal resources development, as defined under section 182-1;

(15) Agricultural-based commercial operations registered in Hawaii, including:

- (A) A roadside stand that is not an enclosed structure, owned and operated by a producer for the display and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
- (B) Retail activities in an enclosed structure owned and operated by a producer for the display and sale of agricultural products grown in Hawaii, value-added products that were produced using agricultural products grown in Hawaii, logo items related to the producer's agricultural operations, and other food items;

- (C) A retail food establishment owned and operated by a producer and permitted under chapter 11-50, Hawaii administrative rules, that prepares and serves food at retail using products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii;
- (D) A farmers' market, which is an outdoor market limited to producers selling agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii; and
- (E) A food hub, which is a facility that may contain a commercial kitchen and provides for the storage, processing, distribution, and sale of agricultural products grown in Hawaii and value-added products that were produced using agricultural products grown in Hawaii.

The owner of an agricultural-based commercial operation shall certify, upon request of an officer or agent charged with enforcement of this chapter under section 205-12, that the agricultural products displayed or sold by the operation meet the requirements of this paragraph; and

(16) Hydroelectric facilities as described in section 205-4.5(a)(23).

Agricultural districts shall not include golf courses and golf driving ranges, except as provided in section 205-4.5(d). Agricultural districts include areas that are not used for, or that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.

(e) Conservation districts shall include areas necessary for protecting watersheds and water sources; preserving scenic and historic areas; providing park lands, wilderness, and beach reserves; conserving indigenous or endemic plants, fish, and wildlife, including those which are threatened or endangered; preventing floods and soil erosion; forestry; open space areas whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding communities, or would maintain or enhance the conservation of natural or scenic resources; areas of value for recreational purposes; other related activities; and other permitted uses not detrimental to a multiple use conservation concept. Conservation districts shall also include areas for geothermal resources exploration and geothermal resources development, as defined under section 182-

1. [L 1963, c 205, pt of §2; Supp, §98H-2; HRS §205-2; am L 1969, c 182, §5; am L 1975, c 193, §3; am L 1977, c 140, §1 and c 163, §1; am L 1980, c 24, §2; am L 1985, c 298, §2; am L 1987, c 82, §3; am L 1989, c 5, §2; am L 1991, c 191, §1 and c 281, §2; am L 1995, c 69, §8; am L 2005, c 205, §2; am L 2006, c 237, §3 and c 250, §1; am L 2007, c 159, §2; am L 2008, c 31, §2 and c 145, §2; am L 2011, c 217, §2; am L 2012, c 97, §6, c 113, §2, c 167, §1, and c 329, §3; am L 2014, c 55, §2; am L 2015, c 228, §2; am L 2016, c 173, §2; am L 2017, c 12, §15 and c 129, §2; am L 2018, c 49, §3]

Note

The 2018 amendment applies to permit applications filed with the State or county after December 31, 2018. L 2018, c 49, §6(2).

Cross References

Districts, generally, see chapter 4.

Attorney General Opinions

Uses within agricultural districts. Att. Gen. Op. 62-33, 62-38.

Dwellings permissible under this section are further defined by regulations established under §205-7. Att. Gen. Op. 75-8.

Law Journals and Reviews

Avoiding the Next Hokuli`a: The Debate over Hawai`i's Agricultural Subdivisions. 27 UH L. Rev. 441 (2005).

Case Notes

Cited: 134 H. 187, 339 P.3d 685 (2014).



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

DONNA APISA, CHAIR
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LORI OTSUKA, MEMBER

MEMORANDUM

DATE: October 25, 2021

TO: Planning Commission

FROM: Clerk of the Commission

SUBJECT: 1st Addition to the 10/25/2021 Planning Commission Subdivision Committee Agenda

H. GENERAL BUISNESS MATTERS

1. **Extension Request to Complete Improvements**
 - a. Subdivision Application No. S-99-49
 1. Supplement #1 to Extension Report