

**A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8,
KAUAI COUNTY CODE, 1987, AS AMENDED, RELATING TO
AMENDING THE COMPREHENSIVE ZONING ORDINANCE IN ITS ENTIRETY**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Purpose The County of Kauai adopted the first General Plan in 1971 (updated in 1984 and 2000). Subsequently, the County of Kauai adopted the Comprehensive Zoning Ordinance (CZO) in 1972. Since its adoption, the County of Kauai has approved several amendments to specific provisions of the CZO. However, the CZO has not been updated in a comprehensive manner since its adoption.

In order to present the CZO update in a more orderly fashion, the CZO Update has been divided into two phases, with the first phase focusing on organizational and format changes. This involves mainly moving or relocating existing provisions to more appropriate locations in the code. The first phase also includes the re-codification of ordinance amendments made to the CZO. The second phase will show the newly reformatted document with recommended substantive changes to the code in a Ramseyered format which will be forthcoming after the first phase has been completed.

Thus, the purpose of this ordinance is to complete the first phase of the CZO update by adopting all organizational, format changes, and to re-codify ordinance amendments made to the CZO to date.

SECTION 2. Chapter 8 of Title IV of the Kauai County Code, 1987, as amended, and Ordinances Nos. 803, 813, 843, 849, 864, 876, 883, 886, 887, 894, 896, 903, 904, 912, 915, 919, 924 and 928 are hereby repealed in their entirety and replaced with the following:

**CHAPTER 8
COMPREHENSIVE ZONING ORDINANCE**

TABLE OF CONTENTS:

Article 1.	General Provisions
Sec. 8-1.1	Title
Sec. 8-1.2	Purpose
Sec. 8-1.3	Nature Of County Zoning Ordinance
Sec. 8-1.4	Application Of Regulations

Sec. 8-1.5	Definitions
Article 2.	Designation Of Districts, Method And Effect Of Establishment Of Districts, And Zoning Maps
Sec. 8-2.1	Districts
Sec. 8-2.2	Method And Effect Of Establishment Of Districts
Sec. 8-2.3	Zoning Maps
Sec. 8-2.4	Uses in Districts
Article 3.	General Administrative Regulations
Sec. 8-3.1	Zoning Permits
Sec. 8-3.2	Use Permits
Sec. 8-3.3	Variance
Sec. 8-3.4	Amendments
Sec. 8-3.5	Enforcement, Legal Procedures and Penalties
Article 4.	Residential Districts (R)
Sec. 8-4.1	Purpose
Sec. 8-4.2	Types Of Residential Districts
Sec. 8-4.3	Development Standards For Residential Structures Not Involving The Subdivision Of Land
Sec. 8-4.4	Development Standards For Residential Structures Which Involve The Subdivision Of Land
Sec. 8-4.5	Standards Of Development Applicable To All Residential Development
Sec. 8-4.6	Application Of Density And Development Standards
Sec. 8-4.7	Permits Required
Sec. 8-4.8	Application To Residential Development In Other Districts
Sec. 8-4.9	Development Of Other Uses In A Residential District
Article 5.	Resort Districts (RR)
Sec. 8-5.1	Purpose
Sec. 8-5.2	Types Of Resort Districts
Sec. 8-5.3	Development Standards
Sec. 8-5.4	Permits Required
Sec. 8-5.5	Application To Resort Development In Other Districts
Article 6.	Commercial Districts (C)
Sec. 8-6.1	Purpose
Sec. 8-6.2	Types Of Commercial Districts
Sec. 8-6.3	Development Standards For Commercial Development
Sec. 8-6.4	Permits Required
Sec. 8-6.5	Application To Commercial Development In Other Districts
Sec. 8-6.6	Maximum Residential And Resort Densities Within Commercial Districts

Article 7.	Industrial Districts (I)
Sec. 8-7.1	Purpose
Sec. 8-7.2	Types Of Industrial Districts
Sec. 8-7.3	Standards For Industrial Development, Subdivision Or Construction
Sec. 8-7.4	Permits Required
Sec. 8-7.5	Application To Industrial Development In Other Districts
Article 8.	Agriculture Districts (A)
Sec. 8-8.1	Purpose
Sec. 8-8.2	Agriculture District Development Standards
Sec. 8-8.3	Limitations On Subdivision Of Parcels In Agriculture Districts
Sec. 8-8.4	Permits Required
Sec. 8-8.5	Application To Agricultural Development In Other Districts
Sec. 8-8.6	Special Standards for Issuance of Farm Worker Housing Use Permits
Article 9.	Open Districts (O)
Sec. 8-9.1	Purpose
Sec. 8-9.2	Open District Development Standards
Sec. 8-9.3	Calculation Of Densities And Land Coverage
Sec. 8-9.4	Permits Required
Sec. 8-9.5	Review Of Open District Designations In Particular Cases
Article 10.	Project Development
Sec. 8-10.1	Purpose
Sec. 8-10.2	Lands That May Be Included In A Project Development
Sec. 8-10.3	Uses, Structures And Development Which May Be Permitted
Sec. 8-10.4	Requirements For Project Development Use Permits
Sec. 8-10.5	Permits Required
Sec. 8-10.6	Joint Development Of Two Or More Abutting Lots
Article 11.	Special Treatment Districts (ST)
Sec. 8-11.1	Purpose
Sec. 8-11.2	Types Of Special Treatment Districts
Sec. 8-11.3	Generally Permitted Uses, Structures And Development
Sec. 8-11.4	Uses, Structures And Development Requiring A Use Permit
Sec. 8-11.5	Applications For Use Permits
Sec. 8-11.6	Special Planning Area
Sec. 8-11.7	Scenic Corridors And Points
Article 12.	Constraint Districts (S)
Sec. 8-12.1	Purpose
Sec. 8-12.2	Types Of Constraint Districts And Application
Sec. 8-12.3	Drainage Districts (S-DR)
Sec. 8-12.4	Flood Districts (S-FL)
Sec. 8-12.5	Shore Districts (S-SH)
Sec. 8-12.6	Slope Districts (S-SL)

Sec. 8-12.7	Soils Districts (S-SO)
Sec. 8-12.8	Tsunami Districts (S-TS)
Article 13.	Non-Conforming Structures And Uses
Sec. 8-13.1	Non-Conforming Buildings And Structures
Sec. 8-13.2	Non-Conforming Uses
Sec. 8-13.3	Uses, Structures And Lots For Which Permits Were Issued Prior To The Adoption Of This Ordinance
Article 14.	Kaua'i Historic Preservation Review Commission
Sec. 8-14.1	Purpose
Sec. 8-14.2	Kaua'i Historic Preservation Review Commission
Sec. 8-14.3	Powers And Duties Of The Historic Preservation Review Commission
Sec. 8-14.4	Meetings
Sec. 8-14.5	Accounting And Funding
Article 15	Additional Dwelling Unit
Sec. 8-15.1	Additional Dwelling Unit On Other Than Residentially Zoned Lots
Sec. 8-15.2	Additional Dwelling Unit On Residentially Zoned Lots
Article 16	RESERVED
Article 17.	Time Sharing And Transient Vacation Rentals
Sec. 8-17.1	Limitations on Location
Sec. 8-17.2	Permitted Time Share Locations
Sec. 8-17.3	Permitted Locations For Transient Vacation Rentals
Sec. 8-17.4	Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts
Sec. 8-17.5	Existing Uses
Sec. 8-17.6	Penalty
Sec. 8-17.7	Amendments To Visitor Destination Areas Designations
Article 18	RESERVED
Article 19	RESERVED
Article 20	RESERVED
Article 22	RESERVED
Article 23	RESERVED
Article 24	RESERVED
Article 25	RESERVED

Article 26 RESERVED

Article 27 Shoreline Setback and Coastal Protection

- Sec. 8-27.1 Applicability
- Sec. 8-27.2 Definitions
- Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line
- Sec. 8-27.4 Minimum Shoreline Setback Requirements
- Sec. 8-27.5 Structures and Activities Subject to These Rules
- Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area
- Sec. 8-27.7 Permitted Activities in the Shoreline Setback Area
- Sec. 8-27.8 Structure and Activity Determinations
- Sec. 8-27.9 Variance Application
- Sec. 8-27.10 Criteria for Approval of a Variance
- Sec. 8-27.11 Enforcement
- Sec. 8-27.12 Civil Fines
- Sec. 8-27.13 Appeal of the Director's Decision
- Sec. 8-27.14 Promulgation of Rules and Regulations

Article 28. Transient Accommodation Unit Certificate Allocation Program

- Sec. 8-28.1 Definitions
- Sec. 8-28.2 Applicability
- Sec. 8-28.3 Availability of Transient Accommodation Unit Certificates
- Sec. 8-28.4 Transient Accommodation Unit Certificate Allocation Process
- Sec. 8-28.5 Exemption for Eligible Resort Projects
- Sec. 8-28.6 Promulgation of Rules and Regulations

(The purpose of this Chapter is to provide regulations and standards for land development and the construction of buildings and other structures in the County of Kaua'i. By utilizing the findings and analysis of the County General Plan, this Chapter establishes several land districts and delineates the respective types of permitted uses and development that can take place in those districts. The regulations and standards prescribed by this Chapter are intended to promote development that is compatible with the Island's scenic beauty and environment and to preclude inadequate, harmful or disruptive conditions that may prove detrimental to the social and economic well-being of the residents of Kaua'i.)

ARTICLE 1. GENERAL PROVISIONS

Sec. 8-1.1 Title.

This Chapter shall be known as and may be cited as "The Comprehensive Zoning Ordinance for the County of Kaua'i" and its official abbreviated designation shall be "CZO."

Sec. 8-1.2 Purpose.

This Chapter is adopted for the purpose of:

- (a) Implementing the intent and purpose of the adopted General Plan.
- (b) Regulating the use of buildings, structures and land for different purposes.
- (c) Regulating location, height, bulk and size of buildings and structures, the size of yards, courts and other open spaces.
- (d) To maintain the concept of Kaua'i as "The Garden Isle," thus assuring that any growth will be consistent with the unique landscape and environmental character of the Island
- (e) To insure that all physical growth is carried out so as to maintain the natural ecology of the Island to the extent feasible.
- (f) To create opportunities for a greater fulfillment of life through the development of a broad spectrum of educational and cultural pursuits.
- (g) To promote and protect the health, safety and welfare of all residents
- (h) To provide opportunities for desirable living quarters for all residents in all income levels.

(i) To recognize those aspects of the Island and its people which are historically significant, and to preserve and promote them as a continuing expression of the Island's physical and social structure.

(j) To guide and control development to take full advantage of the Island's form, beauty and climate, and preserve the opportunity for an improved quality of life.

(k) To protect, maintain and improve the agriculture potential of land located in the County.

Sec. 8-1.3 Nature Of County Zoning Ordinance.

(a) This Zoning Ordinance consists of the establishment of six (6) major Use Districts in conjunction with two (2) Special Districts within the territory of the County of Kauai. (This Chapter includes regulations concerning the uses permissible within each of the six (6) Use Districts and concerning the special conditions under which the uses may be developed or created within each of the two (2) special districts.) The boundaries of the Use Districts are established on the Zoning Maps of the County as specified in Sec. 8-2.3 of this Chapter. The boundaries of the special districts are established on the Zoning Maps or on the Constraint Map.

(b) The districts established and located by this Chapter are based upon the findings and analysis utilized in the General Plan for the County of Kauai. The designations of the Use Districts reflect in part the elements of the environment and society and, in addition, reflect appropriate interrelationships of land use, transportation, utilities, public services, existing development, recreational and employment opportunities, economic conditions, resource management, and population.

(c) The designations of the Constraint and Special Treatment districts reflect:

(1) The capability of the land within the County to accommodate disturbances:

(2) Potential threats to health, safety and welfare, social and aesthetic values; and

(3) Relative development of use potential because of existing parcel conditions or unique or limited natural resources.

(d) The intent of the regulations governing all districts is to be permissive within the minimum requirements and performance criteria specified for each district. Development, use or construction should be permitted where it can be

established by following the provisions of this Chapter so that the development and construction for a specific use or combination of uses can be accommodated within the specific physical and social conditions of a particular location in such a manner that it will not create the inadequate, harmful or disruptive conditions that formed the basis of the establishment of regulations of any district.

(e) The Use Districts allocate and regulate the various functions necessary to a diverse and viable society and specify the performance required to develop land and create improvements consistent with those functions and their interrelationships.

(f) Commercial, Industrial and Resort Districts recognize the specific nature of such uses and allocate their location in relation to land suitability and established or potential patterns of residential uses and other activities, such as transportation and community facilities.

(g) Overlaying the regulation of development or use in any or all of the Use Districts are additional special regulations which relate more specifically to the land and the existing community structure. These special regulations have been defined in the Constraint District and the Special Treatment District and may modify the manner in which uses regulated under the Use Districts may be developed or may require special performance in the development.

(h) Since the degree and type of the development or use may determine the magnitude of public concern, the procedures for administering the requirements of use and condition have been structured to permit smaller developments, while insuring that the effects of larger developments are adequately examined.

Sec. 8-1.4 Application Of Regulations.

(a) For the purposes of this Chapter, the County of Kauai shall include the districts of Waimea, Koloa, Lihue, Kawaihau and Hanalei as described in Section 4-1(4), H.R.S.

(b) Unless otherwise expressly prohibited by law, the provisions of this Chapter shall apply to all areas within the County boundaries.

(c) In administering and applying the provisions of this Chapter, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Chapter.

(d) For parcels containing multiple zoning designations, each designation shall be considered individually in applying the standards of this Chapter, with the exception that any lot or parcel located in the State Land Use Commission Agricultural District and containing fifty (50) acres or more in the County Open

District shall be considered together with the County Agriculture District for the purpose of determining parcel acreage to apply subdivision standards.

(e) Nothing in this Chapter shall regulate the placement, design and construction of utility poles, towers and transmission lines by a public utility company as defined in Section 209-1, H.R.S., provided, that the poles and towers shall be no higher than twenty (20) feet above the height limits for structures applicable in the Use District in which the poles and towers are constructed.

(f) Nothing in this Chapter shall regulate the minimum size of lots in a subdivision which are to be used for government or public utility facilities. The creation of such lots shall be in compliance with the provisions of Chapter 9, County Subdivision Ordinance, of the Code

(g) Nothing in this Chapter shall prohibit the use of factory built housing or trailer homes as permitted dwellings, buildings or structures for the purpose of human habitation or occupancy within the various Use Districts provided that all such factory built housing and trailer homes must first:

(1) Meet all applicable development standards, density limitation and other such requirements for the particular Use District;

(2) Be permanently affixed to the ground;

(3) Have had their wheels and axles, if any, removed.

(4) If licensed pursuant to Hawaii's Revised Statutes Chapter 249, have been registered as a stored vehicle in accordance with Hawaii's Revised Statutes Section 249-5;

(5) Meet the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code; and

(6) Meet all other applicable governmental rules, regulations, ordinances, statutes and laws.

(h) Recreational trailers may be used as temporary dwellings for travel, recreational or vacation purposes in accordance with Chapter 16 (Recreational Trailer Camps) of Title 11, Administrative Rules, Department of Health, State of Hawaii, or any other State or County laws, ordinances or rules relating to the use of public or private lands, parks or camp grounds for camping or recreational purposes. Except as provided herein, no recreational trailer shall be used as a dwelling or building for the purpose of human habitation or occupancy.

Sec. 8-1.5 Definitions.

When used in this Chapter the following words or phrases shall have the meaning given in this Section unless it shall be apparent from the context that a different meaning is intended:

"Accessory Building" or "Structure" means a building or structure which is subordinate to, and the use of which is incidental to that of the main building structure or use on the same lot or parcel.

"Accessory Use" means a use customarily incidental, appropriate and subordinate to the main use of the parcel or building.

"Adult Family Boarding Home" means any family home providing for a fee, twenty-four (24) hour living accommodations to no more than five (5) adults unrelated to the family, who are in need of minimal 'protective' oversight care in their daily living activities. These facilities are licensed by the Department of Health, State of Hawai'i under the provisions of sections 17-883-74 to 17-883-91.

"Adult Family Group Living Home" means any family home providing twenty-four (24) hour living accommodations for a fee to five (5) to eight (8) elderly, handicapped, developmentally disabled or totally disabled adults, unrelated to the family, who are in need of long-term minimal assistance and supervision in the adult's daily living activities, health care, and behavior management. These facilities are licensed by the Department of Health, State of Hawai'i, under the provisions of sections 17-883-74 to 17-883-91.

"Agriculture" means the breeding, planting, nourishing, caring for, gathering and processing of any animal or plant organism for the purpose of nourishing people or any other plant or animal organism; or for the purpose of providing the raw material for non-food products. For the purposes of this Chapter, Agriculture shall include the growing of flowers and other ornamental crops and the commercial breeding and caring for animals as pets.

"Alley" means a public or permanent private way less than fifteen (15) feet wide for the use of pedestrians or vehicles which has been permanently reserved and which affords, or is designed or intended to afford the secondary means of access to abutting property.

"Animal Hospital" means an establishment for the care and treatment of small animals, including household pets.

"Apartment" See Dwelling, Multiple Family.

"Apartment-Hotel" means a building or portion thereof used as a hotel as defined in this Section and containing the combination of individual guest rooms or suite of rooms with apartments or dwelling units.

"Applicant" means any person having a controlling interest (75% or more of the equitable and legal title) of a lot; any person leasing the land of another under a recorded lease having a stated term of not less than five (5) years; or any person

who has full authorization of another having the controlling interest or recorded lease for a stated term of not less than five (5) years.

"Aquaculture" means the growing and harvesting of plant or animal organisms in a natural or artificial aquatic situation which requires a body of water such as a pond, river, lake, estuary or ocean.

"Base Flood" means the flood, from whatever source, having a one percent (1.0%) chance of being equalled or exceeded in any given year, otherwise commonly referred to as the 100-year flood.

"Base Flood Elevation" means the water surface elevation of the base flood.

"Bed and Breakfast" See "Homestay", "Transient Vacation Rental", "Single-Family Vacation Rental", or "Multi-Family Transient Vacation Rental".

"Building" means a roofed structure, built for the support, shelter or enclosure of persons, animals, chattels or property of any kind. The word "building" includes the word "structure".

"Cemetery" means land used or intended to be used for the burial of the dead and dedicated for cemetery purposes, including columbaria, mausoleums, mortuaries and crematoriums, provided the crematorium has the approval of the Department of Health, Planning Commission and Council when operated in conjunction with and within the boundary of the cemetery.

"Center Line" See "Street Center Line".

"Church" means a building designed for or used principally for religious worship or religious services.

"Coastal High Hazard Area" means the area subject to high velocity waters, including but not limited to coastal and tidal inundation or tsunami. The area is designated on a FIRM as Zone VE.

"Commercial Use" means the purchase, sale or other transaction involving the handling or disposition (other than that included in the term "industry" as defined in this Section) of any article, substance or commodity for profit or a livelihood, including in addition, public garages, office buildings, offices of doctors and other professionals, public stables, recreational and amusement enterprises conducted for profit, shops for the sale of personal services, places where commodities or services are sold or are offered for sale, either by direct handling of merchandise or by agreements to furnish them but not including dumps and junk yards.

"Compatible Use" means a use that, because of its manner of operation and characteristics, is or would be in harmony with uses on abutting properties in the same zoning district. In judging compatibility the following shall be considered: intensity of occupancy as measured by dwelling units per acre, pedestrian or vehicular traffic generated, volume of goods handled, and other factors such as, but not limited to: vibration noise level, smoke, odor or dust produced or light or radiation emitted.

"Conforming" means in compliance with the regulations of the pertinent district.

"Construction, Commencement of" means the actual placing of construction materials in their permanent position, fastened in a permanent manner.

"Contiguous Lots or Parcels in Common Ownership" means more than one (1) adjoining lot or parcel each of which is owned in full or part by the same person, or his representative.

"County Engineer" means the County Engineer of the Department of Public Works of the County of Kauai.

"Cultivation" means the disturbance by mechanical means of the surface soil to a depth less than two (2) feet where the original grade and shape of the land is not substantially altered, for the purpose of planting and growing plants.

"Day Care Center" means any facility which complies with the State of Hawai'i licensing requirements where seven or more children under the age of 18 are cared for without overnight accommodations at any location other than their normal place of residence. This term includes child care services and other similar uses and facilities consistent with this definition, and not covered by the "Family Child Care Home" definition.

"Day Use Areas" means land, premises and facilities, designed to be used by members of the public, for a fee or otherwise, for outdoor recreation purposes on a daily basis. Day use areas include uses and facilities such as parks, playgrounds, picnic sites, tennis courts, beaches, marinas, athletic fields, and golf courses.

"Density" means the number of dwelling units allowed on a particular unit of land area.

"Developed Campgrounds" means land or premises designed to be used, lot or rented for temporary occupancy by campers traveling by automobile or otherwise and which contain such facilities as tent sites, bathrooms or other sanitary facilities, piped water installations, and parking areas, but not including mobile home parks. Developed campgrounds may include facilities for the

temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential uses at no more than six (6) vehicles per acre.

"Distance, Measurement of" means unless otherwise specified, all distances other than height shall be measured in a horizontal plane. Height shall be measured vertically.

"Diversified Agriculture" means the growing and harvesting of plant crops for human consumption which does not involve a long-range commitment to one (1) crop. Diversified Agriculture includes truck gardening and the production of fresh vegetables, and minor fruit or root crops such as guava or taro.

"Division of Land" means the division of any lot or parcel or portion thereof into two (2) or more lots, plots, sites or parcels for the purpose, whether immediate or future, of sale, transfer, lease, or building development. It includes subdivisions and resubdivision and other divisions of land and may relate to the process of dividing land or to the land or territory divided.

"Dry Cleaning" means the process of removing dirt, grease, paints and other stains from wearing apparel, textile fabrics, rugs and other material by the use of nonaqueous liquid solvents, flammable or nonflammable, and it may include the process of dyeing clothes or other fabrics or textiles in a solution of dye colors and nonaqueous liquid solvents.

"Dump" means a place used for the discarding, disposal, abandonment, or dumping of waste materials.

"Dwelling" means a building or portion thereof designed or used exclusively for residential occupancy and having all necessary facilities for permanent residency such as living, sleeping, cooking, eating and sanitation.

"Dwelling, Multiple Family" means a building or portion thereof consisting of two (2) or more dwelling units and designed for occupancy by two (2) or more families living independently of each other, where any one (1) of the constructed units is structurally dependent on any other unit.

"Dwelling, Single Family Attached" means a building consisting of two (2) or more dwelling units designed for occupancy by two (2) or more families living independently of each other where each unit is structurally independent although superficially attached or close enough to appear attached.

"Dwelling, Single Family Detached" means a building consisting of only one (1) dwelling unit designed for or occupied exclusively by one (1) family.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by

a person living alone and providing complete living facilities, within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens.

"Easement" means an acquired privilege or right of use or enjoyment which an individual, firm, corporation, person, unit of government, or group of individuals has in the land of another.

"Existing grade" means the existing grade or elevation of the ground surface which exists or existed prior to manmade alterations such as grading, grubbing, filling or excavating.

"Factory Built Housing" means any structure or portion thereof which is designed for use as a building or dwelling; prefabricated or assembled at a place other than the building site; and capable of complying with the standards and requirements contained in Section 12-4.4 of Chapter 12, Building Code.

"Family" means an individual or group of two (2) or more persons related by blood, adoption or marriage living together in a single housekeeping unit as a dwelling unit. For purposes of this Chapter, family shall also include a group of not more than five (5) individuals unrelated by blood, adoption or marriage.

"Family Care Home" means any care home occupied by not more than five (5) care home residents. These facilities are licensed by the Department of Health, State of Hawai'i, under the provisions of sections 17-883-74 to 17-883-91.

"Family Child Care Home" means providing child care services and other similar uses consistent with this definition where six or fewer children under the age of 18 are cared for in a private dwelling unit without overnight accommodations at any location other than the children's normal place of residence and which complies with State of Hawai'i licensing requirements.

"Finished grade" means the final elevation of the ground surface after manmade alterations such as grading, grubbing, filling or excavating have been made on the ground surface.

"Flag Lots" means a lot or parcel bounded by at least six (6) sides and describing two (2) distinct but contiguous areas, one (1) of which is the primary development area used to determine lot area, width and proportion, and the other of which is an appendage normally used as access from a street to the primary development area. The primary development area is referred to as the "flag" portion of the lot, and the appendage is referred to as the "pole" portion of the lot.

"Flammable Liquid" means any liquid having a flash point below two hundred degrees Fahrenheit (200 degrees F) and having a vapor pressure not exceeding forty (40) pounds per square inch (absolute) at one hundred degrees Fahrenheit (100 degrees F.).

"Flood Fringe Area" means the portion of the flood plain outside the floodway, designated as AE, AO, and AH Zones on the FIRM.

"Flood Insurance Rate Map" means the official map on which the Federal Insurance Administration has delineated the areas of special flood hazards, the risk premium zones applicable, base flood elevations, and floodways.

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Forestry" means the growing or harvesting of trees for timber or wood fiber purposes.

"Frontage" means that portion of a parcel of property which abuts on a road, street, or highway

"Front Building" means the side of a building or structure nearest the street on which the building fronts, or the side intended for access from public area. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Garage" means a building or structure or a portion thereof in which a motor vehicle is stored, housed, kept, repaired or serviced.

"Garage, Automobile Repair" means a garage wherein major repairs are made to motor vehicles or in which any major repairs are made to motor vehicles other than those normally used by the occupants of the parcel on which the garage is located.

"Garage, Automobile Storage" means any garage used exclusively for the storage of vehicles.

"General Flood Plain Area" means the area consisting of the approximate flood plain area as delineated on the flood maps, where detailed engineering studies have not been conducted by the Federal Insurance Administration to delineate the flood fringe and floodway and identified as A, X, and D Zones on the FIRM.

"Grade" with reference to a street or land surface, means the gradient, the rate of incline or decline expressed as a percent.

"Grazing" means the production or use of vegetative land cover for the pasturing of animals.

"Ground Level" means with reference to a building, the average elevation of the finished ground levels adjoining the walls of a building.

"Guest House" means a building with a floor area of no more than five hundred (500) square feet, contains no kitchen, is used for dwelling purposes by guests, and is located on a parcel of at least nine thousand (9,000) square feet that contains one (1) or more dwelling units.

"Height-Building". See appropriate Chapter provisions.

"Height, Fence or Screen" means the vertical distance measured from the ground level to the top of the fence. For the purpose of applying height regulations, the average height of the fence along any unbroken run may be used provided the height at any point is not more than ten percent (10%) greater than that normally permitted.

"Height, Wall" means the vertical distance to the wall plate measured from the ground level at the bottom of the wall.

"Historic Resource" means any property, area, place, district, building, structure, site, neighborhood, scenic viewplane or other object having special historical, cultural, architectural or aesthetic value to the County of Kaua'i.

"Home Business" means any use customarily conducted entirely within a dwelling and carried on solely by the inhabitants thereof, in connection with which there are: no display from the outside of the building; no mechanical equipment used except as is normally used for domestic or household purposes; and no selling of any commodity on the premises; which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The office, studio, or occupational room of an architect, artist, engineer, lawyer or other similar professional person; a family child care home; business conducted entirely by phone or by mail (not involving frequent bulk shipments); and an office for "homework" of a person in business elsewhere; all shall be permitted as home businesses except that no activity involving, encouraging, or depending upon frequent visits by the public and no shop or clinic of any type shall be deemed to be a home business.

"Homestay" means a owner-occupied dwelling unit in which overnight accommodations are provided to transient guests for compensation, for one hundred

eighty (80) days or less, within the same dwelling unit in which the owner or lessee resides or in a guest house.

"Horizontal Property Regime" means the forms of development defined in the Horizontal Property Act, Chapter 511A, H.R.S.

"Hospital" means any building or portion thereof to which persons may be admitted for overnight stay or longer and which is used for diagnosis, care or treatment of human illness or infirmity or which provides care during and after pregnancy.

"Hotel" means any building containing six (6) or more rooms intended or designed to be used, or which are used, rented or hired out to be occupied for sleeping purposes by guests when the rooms are open to the occupancy by the general public on a commercial basis whether the establishment is called a hotel, resort hotel, inn, lodge or otherwise which rooms do not constitute dwelling units.

"HPR Commission" means the Historic Preservation Review Commission.

"Indoor Amusement, Commercial" means buildings and structures designed to be used by members of the public that contain amusement facilities such as movie theaters, bowling alleys, pool halls and skating rinks.

"Industry" means the manufacture, fabrication, processing, reduction or destruction of any article, substance or commodity, or any other treatment thereof in a manner so as to change the form, character or appearance thereof, and storage other than that accessory to a nonmanufacturing use on the same parcel including storage elevators, truck storage yards, warehouses, wholesale storage and other similar types of enterprises.

"Intensive Agriculture" means the growing and harvesting of plant crops for human consumption or animal feeds primarily for sale to others and involving the long-range commitment to one crop such as sugar, pineapple, sorghum, or grain.

"Junk" means any worn-out, cast-off, or discarded article or material which is ready for destruction or has been collected or stored for salvage or conversion to some use; any article or material which, unaltered or unchanged and without further reconditioning can be used for its original purpose as readily as when new shall not be considered junk.

"Junk Yard" means any open space in excess of two hundred (200) square feet, used for the breaking up, dismantling, sorting, storage or distribution of any scrap, waste material or junk.

"Kitchen" means any room used or intended or designed to be used for cooking and preparing food.

"Land Coverage" means a man-made structure, improvement or covering that prevents normal precipitation from directly reaching the surface of the land underlying the structure, improvement or covering. Structures, improvements and covering include roofs, surfaces that are paved with asphalt, stone, or the like such as roads, streets, sidewalks, driveways, parking lots, tennis courts, patios, and lands so used that the soil will be compacted so as to prevent substantial infiltration, such as parking of cars and heavy and repeated pedestrian traffic. Land coverage shall not include bus stops, bus shelters and public shared use paths greater than ten feet (10') in width. Any shared use path wider than ten feet (10') requires the Planning Director's approval for lot coverage exemption.

"Landscaping" means the modification of the landscape for an aesthetic or functional purpose. It includes the preservation of existing vegetation and the continued maintenance thereof together with grading and installation of minor structures and appurtenances.

"Land Use" and **"Use of Land"** includes "building use" and "use of building."

"Livestock" means domestic animals of types customarily raised or kept on farms for profit or other productive purposes.

"Loft" means the floor placed between the roof and the floor of the uppermost story within a single family detached dwelling, the floor area of which is not more than one-third (1/3) the floor area of the story or room in which it is placed.

"Lot" means a portion of land shown as a unit on an approved and recorded Subdivision Map.

"Lot Area" means the total of the area, measured in a horizontal plane, within the lot boundary lines.

"Lot Coverage". See **"Land Coverage"**.

"Lot Length" means the horizontal distance between the front and rear lot lines measured in the mean direction of the side lot lines.

"Lot Width" means the average horizontal distance between the side lot lines measured at right angles to the line followed in measuring the lot depth.

"Manager" means the Manager and Chief Engineer of the Water Department of the County of Kaua'i.

"Mineral Extraction" means any excavation or removal of natural materials not related to or not occasioned by an impending development of the site of the excavation.

"Motel" means a group of attached or detached buildings containing rooms, designed for or used temporarily by automobile tourists or transients, with garages attached or parking space conveniently located to each unit, including auto court, tourist court or motor lodge, or otherwise, which rooms do not constitute dwelling units.

"Multi-Family Transient Vacation Rental" means a multi-family dwelling unit which is used as a transient vacation rental.

"Non-conforming Building and Structure" means a building or portion thereof lawfully existing on September 1, 1972 or as a result of any subsequent amendment to this Zoning Ordinance and which does not comply with the regulations of the zoning district in which it is located.

"Non-conforming Use" means a lawful use of a building or land existing on September 1, 1972 or as a result of any subsequent amendment to this Zoning Ordinance, and which does not comply with the regulations for the zoning district in which it is located.

"Nursery" means the growing, collecting or storing of plants for the purpose of selling to others for transplanting.

"Nursing Home" means a facility established for profit or nonprofit, which provides nursing care and related medical services on a twenty-four (24) hour per day basis to two (2) or more individuals because of illness, disease, or physical or mental infirmity. It provides care for those persons not in need of hospital care.

"Open Space" means the portion or portions of a parcel unoccupied or unobstructed by buildings, paving or structures from the ground upward.

"Orchards" means the establishment, care and harvesting of over twenty-five (25) fruit bearing trees such as persimmon, guava, banana or papaya for the purpose of selling the fruit to others.

"Organized Recreation Camps" means land or premises containing structures designed to be used for organized camping. The structures include bunk houses, tent platforms, mess halls and cooking facilities, and playfields. Examples include Boy Scout Camps and summer camps.

"Outdoor-Amusement, Commercial" means land or premises designed to be used by members of the public, for a fee, that contain outdoor amusement facilities such as miniature golf courses, merry-go-rounds, car race tracks, and outdoor motion picture theaters.

"Outdoor Recreation" means uses and facilities pertaining primarily to recreation activities that are carried on primarily outside of structures.

"Outdoor Recreation Concession" means uses and facilities ancillary to outdoor recreation uses, such as gasoline pumps at piers and marinas, and boat rental and food and beverage facilities at public beaches.

"Owner" means the holders of at least seventy-five percent (75%) of the equitable and legal title of a lot.

"Parcel" means an area of contiguous land owned by a person.

"Parking Area, Public" means an open area, other than street or alley, used for the parking of automobiles and available for public use whether free, for compensation, or as an accommodation for clients or customers.

"Parking Space, Automobile" means an area other than a street or alley reserved for the parking of one (1) automobile. The space shall be afforded adequate ingress and egress.

"Pet Keeping" means the feeding or sheltering of more than two (2) animals or four (4) birds as a service to others.

"Pet Raising" means the breeding, feeding or sheltering of more than two (2) animals not normally used for human consumption for the purpose of sale to others.

"Piggery" means any parcel where ten (10) or more weaned hogs are maintained.

"Planning Commission" means the Planning Commission of the County of Kaua'i.

"Planning Director" means the Director of the Planning Department of the County of Kaua'i.

"Poultry Raising" means the breeding, feeding, sheltering or gathering of more than four (4) game or domestic fowl for the purpose of sale, food or egg production, or pets.

"Power Purchase Agreement (P.P.A.)" means a contract in which the purchaser, a registered public utility pursuant to H.R.S. Chapter 269, consents to purchasing more than 100 kilowatts of electricity from a transmitting party.

"Private Recreation Areas" means lands or premises designed to be used exclusively by owners and renters of dwelling units, that contain such facilities as tennis courts, playfields, swimming pools, clubhouses, bathing beaches, and piers.

"Project; Project Instrument". "Project" means property that is subject to project instruments, including but not limited to condominiums and cooperative housing corporations. "Project instrument" means one or more documents,

including any amendments to the documents, by whatever name denominated, containing restrictions or covenants regulating the use or occupancy of a project.

"Property Line" means any property line bounding a lot as defined in this Section.

"Property Line, Front" means the line separating the lot from the street or other public areas. In case a lot abuts on more than one (1) street, the lot owner may elect any street lot line as the front line provided that the choice, in the discretion of the Planning Director, will not be injurious to adjacent properties and will comply with any other reasonable determination of the Planning Director. Where a lot does not abut on a street or where access is by means of an access way, the lot line nearest to and most nearly parallel to the street line is the front lot line. In cases where this definition is not applicable, the Planning Director shall designate the front lot line.

"Property Line, Rear" means that line of a lot which is opposite and most distant from the front line of the lot. In cases where this definition is not applicable the Planning Director shall designate the rear lot line.

"Property Line, Side" means any lot boundary not a front or rear lot line.

"Public Facility" means a facility owned or controlled by a governmental agency.

"Public shared use path" means a minimum eight foot (8') width bikeway that is physically separated from motorized vehicular traffic by an open space or barrier, and is within the highway right-of-way or has an independent right-of-way. Shared use paths may also be used by pedestrians, skaters, wheelchair users, joggers, and other non-motorized users.

"Public Utility" has the meaning defined in Section 269-1, H.R.S.

"Rear, Building" means the side of the building or structure opposite the front. In cases where this definition is not applicable, the Planning Director shall make the determination.

"Recreation Vehicle Park" means a parcel of land under one (1) ownership which has been planned and improved and which is let or rented or used for the temporary placement of camp trailers and camping vehicles which are utilized for non-permanent residential use.

"Recreational Trailer" means a portable structure, used or designed for human habitation or occupancy and built on a chassis with wheels, which is capable of being licensed as a motor vehicle, a vehicle or a trailer pursuant to Hawaii Revised Statutes Chapter 249 and transported on a highway, but which is unable, due to its size, design, construction or other attributes, to comply with the minimum standards and requirements applicable to dwellings or buildings, or portions thereof, contained in Section 12-4.4 of Chapter 12, Building Code.

"Registration Number" means a number assigned to a Transient Vacation Rental in a Visitor Destination Area by the Finance Director upon registration of said rental.

"Religious Facilities" means buildings, other structures, and land designed to be used for purposes of worship.

"Repair" (as applied to Structures) means the renewal or treatment of any part of an existing structure for the purpose of its maintenance. The word "repairs" shall not apply to any change of construction such as alterations of floors, roofs, walls or the supporting structure of a building or the rearrangement of any of its component parts.

"Residential Care Home" means any care home facility occupied by more than five (5) care home residents.

"Resource Management" means uses and facilities pertaining to forest products, minerals and other natural resources.

"Retail Stores or Shops" means an establishment primarily engaged in selling goods, wares or merchandise directly to the ultimate consumer.

"School" means an institution with an organized curriculum offering instruction to children in the grade range kindergarten through twelve (12), or any portion thereof.

"Setback Line" means a line parallel to any property line and at a distance from there equal to the required minimum dimension from that property line, and extending the full length of the property line.

"Single-Family Transient Vacation Rental" means a single-family dwelling unit, other than a homestay, which is used as a transient vacation rental.

"Slope" means a natural or artificial incline, as a hillside or terrace. Slope is usually expressed as a ratio or percent.

"Solar Energy Facility" means a use and/or structure(s) that collects and utilizes the sun's radiant energy as an electrical source for the primary purpose of commercial distribution. To qualify as a solar energy facility the use and/or structure(s) must be operated or managed by a registered public utility pursuant to H.R.S. Chapter 269, or the electricity generated is transmitted to a registered public utility under a Power Purchase Agreement (P.P.A.).

"Specialized Agriculture" means the growing, collection or storing of any plant for ornamental or non-food use such as flowers and pot plants.

"Stock Raising" means the breeding, feeding, grazing, herding or sheltering of more than one (1) animal such as cattle, sheep, pigs, goats, and horses, for any purpose.

"Story" means the space in a building between the upper surface of any floor and the upper surface of the floor next above, and if there be no floor above, then the space between the upper surface of the topmost floor and the ceiling or roof

above. No story shall be more than twelve (12) feet high measured from the floor level to the wall plate line.

"Street Center Line" means the center line of a street as established by official surveys or a recorded subdivision map. If not so established, the center line is midway between the right-of-way lines bounding the street.

"Street or Highway" means a way or place of whatever nature, open to the public for purposes of vehicular travel.

"Street Right-of-Way Line" means the boundary line right-of-way or easement and abutting property.

"Structural Alteration" means any change in the supporting members of a building, such as in a bearing wall, column, beam or girder, floor or ceiling joist, roof rafters, roof diaphragms, foundations, piles or retaining walls or similar components or changes in roof or exterior lines.

"Structure" means anything constructed or erected which requires location on the ground or which is attached to something having location on the ground, excluding vehicles designed and used only for the transportation of people or goods, and excluding utility poles and towers constructed by a public utility.

"Subdivider" means a person commencing proceedings to effect a division of land for himself or for another.

"Subdivision" means the division of land or the consolidation and resubdivision into two (2) or more lots or parcels for the purpose of transfer, sale, lease, or building development, and when appropriate to the context shall relate to the process of dividing land for any purpose. The term also includes a building or group of buildings, other than hotel, containing or divided into two (2) or more dwelling units or lodging units.

"Thoroughfare" means a highway or street.

"Time Share Plan" means any plan or program in which the use, occupancy, or possession of one or more time share units circulates among various persons for less than a sixty (60) day period in any year, for any occupant. The term "time share plan" shall include both time share ownership plans and time share use plans, as follows:

(A) "Time share ownership plan" means any arrangement whether by tenancy in common, sale, deed, or other means whereby the purchaser receives an ownership interest and the right to use the property for a specific or discernible period by temporal division.

(B) "Time share use plan" means any arrangement, excluding normal hotel operations, whether by membership agreement, lease, rental agreement, license, use agreement, security or other means, whereby the purchaser receives a right to use accommodations or facilities, or both, in a time share unit for a specific or discernible period by temporal division, but does not receive an ownership interest.

"Time Share Unit" means the actual and promised accommodations, and related facilities, which are the subject of a time share plan.

"Trailer Home" means factory built housing which is capable of being licensed as a vehicle or trailer pursuant to Hawaii Revised Statutes Chapter 249 and transported upon a highway.

"Transient or Transients" means any person who owns, rents, or uses a dwelling unit or a portion thereof for one hundred eighty (180) days or less, and which dwelling unit is not the person's primary residence under the Internal Revenue Code. This definition shall not apply to nonpaying guests of the family occupying the unit, patients or clients in health care facilities, full-time students, employees who receive room and/or board as part of their salary or compensation, military personnel, low-income renters receiving rental subsistence from state or federal governments, or overnight accommodations provided by nonprofit corporations or associations for religious, charitable, or educational purposes where no rental income is transacted.

"Transient Vacation Rental" means a dwelling unit which is provided to transient occupants for compensation or fees, including club fees, or as part of interval ownership involving persons unrelated by blood, with a duration of occupancy of one hundred eighty (180) days or less.

"Undeveloped Campground" means land or premises designed to be used for temporary occupancy by campers traveling by foot or horse which may contain facilities and fireplaces, but do not contain facilities as are provided at developed campgrounds.

"Use" means the purpose for which land or building is arranged, designed or intended, or for which either land or building is or may be occupied or maintained.

"Used" includes "designed, intended or arranged to be used".

"Use, Existing" means a lawful use of land existing on August 17, 1972.

"Use Permit" means a permit issued under the definite procedure provided in this Chapter allowing a certain use which is conditionally permitted for the particular district.

"Utility Facility" means a use or structure used directly in distribution or transmission of utility services.

"Utility Line" means the conduit, wire or pipe employed to conduct water, gas, electricity or other commodity from the source tank or facility for reduction of pressure or voltage or any other installation, employed to facilitate distribution.

"Visitor Destination Area or VDA" are those areas designated as Visitor Destination Areas on County of Kauai zoning maps.

"Wall" means any structure or device forming a physical barrier, which is so constructed that fifty percent (50%) or more of the vertical surface is closed and prevents or tends to prevent the passage of light, air and vision through the surface in a horizontal plane. (This includes structures of concrete, concrete block, wood or other materials that are solids and are so assembled as to form a solid barrier, provided carport posts, columns and other similar structures not constructed of fifty percent (50%) or more of the vertical surface shall be deemed walls.)

ARTICLE 2. DESIGNATION OF DISTRICTS, METHOD AND EFFECT OF ESTABLISHMENT OF DISTRICTS, AND ZONING MAPS

Sec. 8-2.1 Districts.

To carry out the purposes of this Chapter, the major and minor districts into which the County of Kauai may be divided and their official abbreviated designations are as follows:

- (1) Residential--R:
 - (A) R-1
 - (B) R-2
 - (C) R-4
 - (D) R-6
 - (E) R-10
 - (F) R-20
- (2) Resort--RR:
 - (A) RR-10
 - (B) RR-20
- (3) Commercial--C:
 - (A) Neighborhood Commercial--CN
 - (B) General Commercial--CG
- (4) Industrial--I:
 - (A) Limited Industrial--IL
 - (B) General Industrial--IG

- (5) Agriculture--A
- (6) Open--O
- (7) Special Treatment--ST
 - (A) Public Facilities--ST-P
 - (B) Cultural/Historic--ST-C
 - (C) Scenic/Ecological--ST-R
 - (D) Open Space--ST-O
- (8) Constraint--S:
 - (A) Drainage--S-DR
 - (B) Flood--S-FL
 - (C) Shore--S-SH
 - (D) Slope--S-SL
 - (E) Soils--S-SO
 - (F) Tsunami--S-TS

Sec. 8-2.2 Method And Effect Of Establishment Of Districts.

(a) Any of the districts listed in Sec. 8-2.1 of this Chapter is or may be established for any portion of the County in map forms as provided in this Section.

(b) Sec. 8-2.3 shall constitute the "Zoning Maps" of the County of Kaua'i, an up-to-date copy of which shall be kept for public display in the office of the Planning Department.

(c) "Zoning Maps" and all notations, reference, data and other information defined and shown thereon shall be adopted as a part of this Chapter. Any change in the boundary of any district shall be by ordinance and shall constitute an amendment to the "Zoning Maps" and also an amendment to this Zoning Ordinance. As a part of any ordinance enacted by the County Council effecting a change in the zoning classification of any real property or boundary of any district within the County, there may be imposed conditions concerning the use or zoning classification of the real property involved

(1) Conditions may be imposed at the discretion of the County Council for the purpose of preventing circumstances which may be adverse to public health, safety and welfare, to ensure, encourage or enhance the fulfillment of a public need involving public service, industrial or commercial needs or to preserve the heritage, character and beauty of the Island of Kaua'i, to assure substantial compliance with representations made by the petitioner in seeking the district boundary amendment.

(2) Conditions may include but shall not be limited to specifications of or limitation on any use, construction, landscaping or development of real property, and may contain provisions for submission and approval of plans, drawings, specifications, agreements and other documents to County

Agencies and inspection by County Agencies as may be deemed necessary or desirable by the cognizant County Agencies.

(3) Conditions may be in the form of a condition precedent or a condition subsequent as the terms are used in common law and may provide that the zoning classification of the real property shall automatically change upon the occurrence of the specified condition.

(4) Conditions may contain specifications of time limitations or may be continuing.

(5) The Council may require the petitioner for district boundary amendment to submit a development schedule providing for the completion of development within a reasonable time period; to demonstrate financial, organizational and legal capacity to undertake the development that is proposed; and to offer written assurances of compliance with any representations made by the petitioner as part of the application and any specific conditions attached to approval of the application.

(6) The Council may require petitioners to submit periodic reports indicating what progress has been made in complying with any conditions that have been imposed by the Council under the provisions of this Section.

(7) If affordable housing conditions are included in an existing or future ordinance or if such ordinance is silent, no other affordable housing conditions shall be imposed on or agreed to by the petitioner or buyers, unless required by the State Land use Commission, ordinance, or Planning Commission condition approved by the Council.

(d) Upon adoption of any district as a part of the "Zoning Map," the land thus defined shall become subject to the specific regulations for all of the districts in which it is located and to the provisions of this Chapter and except as otherwise provided:

(1) No building, structure or portion thereof shall be erected, or altered, nor shall any structure, land or premises be used except in the manner indicated and only for the uses permitted in the districts in which the building, structure, land or premises is located.

(2) No building, structure or portion thereof shall be established, erected, or altered to exceed the height limits and densities, or to encroach upon minimum setbacks and designated open spaces, or to exceed the land coverage limitations, as designated in this Chapter for the districts in which the structure is located.

(3) Every use of land shall at all times be located on a parcel of land having not less than the minimum area as designated for the districts in which the use is located.

(4) No building, structure, or portion thereof, and no use, activity or development subject to regulation under this Chapter shall be undertaken or established except in accordance with the provisions of this Chapter and without first obtaining the permits required by this Chapter.

(c) Where uncertainty exists as to the boundaries of any of the aforesaid districts as shown on the "Zoning Map", the following rules shall apply:

(1) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed to follow the centerlines.

(2) Boundaries indicated as approximately following plotted lot lines shall be construed as following the lot lines.

(3) Boundaries indicated as approximately following jurisdictional lines shall be construed as following the limits.

(4) Boundaries indicated as following shore lines shall be construed to follow the shoreline as defined in Section 205-31, H.R.S.; boundaries indicated as approximately following the centerlines of streams, rivers, canals lakes, or other bodies of water shall be construed to follow the centerlines.

(5) The intent of the boundaries on the Zoning Maps is to differentiate relative uses or characteristics and is not intended to be a precise graphic definition. Where physical or cultural features existing on the ground vary from those shown on the "Zoning Map", or in other circumstances not covered by Subsections (a) through (d), the Planning Director shall determine the location of the boundaries.

Sec. 8-2.3 Zoning Maps.

(a) In order to carry out the purpose of this Chapter, the following maps are created and designated as Sections of the Zoning Maps of the County of Kaua'i, current copies of which shall be kept for public display in the office of the Planning Department:

- | | | |
|---------------------------|------------------|------------|
| (1) Waimoa Planning Area: | | |
| | ZM-100 | 1" - 1000' |
| | ZM-K100 (Kekaha) | 1" - 400' |
| | ZM-W100 (Waimea) | 1" - 400' |

(2)	Hanalei Planning Area:	
	ZM-200	1" = 1000'
	ZM-H200 (Hanalei)	1" = 400'
(3)	Kōloa-Po'ipū Planning Area:	
	ZM-300	1" = 1000'
	ZM-KL300 (Kalāheo)	1" = 400'
	ZM-LW300 (Lawa'i)	1" = 400'
	ZM-KO300 (Kōloa)	1" = 400'
	ZM-KU300 (Kukui'ula)	1" = 400'
	ZM-PO300 (Po'ipū)	1" = 400'
	ZM-OM300 (Omao)	1" = 400'
(4)	Līhu'e-Kapa'a Planning Area:	
	ZM-500	1" = 1000'
	ZM-WH500 (Wailua Homesteads)	1" = 400'
	ZM-WA500 (Wailua)	1" = 400'
	ZM-WP500 (Wailua - Waipouli)	1" = 400'
	ZM-KP500 (Kapa'a - Keālia)	1" = 400'
	ZM-KH500 (Kapa'a Homesteads)	1" = 400'
	ZM-NW400 (Nāwiliwili)	1" = 400'
	ZM-LI400 (Līhu'e)	1" = 400'
	ZM-HM400 (Hanamā'ulu)	1" = 400'
	ZM-P400 (Pūhi)	1" = 400'
(5)	Kīlauea Planning Area:	
	ZM-600	1" = 1000'
	ZM-AN600 (Anahola)	1" = 400'
	ZM-KI600 (Kīlauea)	1" = 400'
(6)	Hanalei Planning Area:	
	ZM-700	1" = 1000'
	ZM-HA700 (Hanalei Town)	1" = 200'
	ZM-PR700 (Princeville)	1" = 400'

(b) Maps indicating Constraint Districts for each of the six (6) planning areas will be at the same scale as the maps at a scale of one inch (1") equals one thousand feet (1000'). Current copies of all maps shall be kept in the office of the Planning Department. Other maps and development plans may be adopted to accommodate special requirements of a particular area.

Sec. 8-2.4 Uses in Districts.

The following table designates allowable uses in the various zoning districts, and whether the specific uses require a Use Permit within the zoning districts permitted.

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential		Commercial			Industrial			AC	O
		R-1 to R-5	R-10 to R-20	CH	CN	CG	IL	IC			
8-2.4(a)(1)	Single Family Detached Dwellings	P	P								
8-2.4(a)(2)	Accessory structures and uses, including one (1) guest house on a lot or parcel 9,000 square feet or larger	P	P								
8-2.4(a)(3)	Two (2) multiple family dwelling units or two (2) single family attached dwelling units upon a parcel of record as of June 30, 1950	P	P								
8-2.4(a)(4)	Notwithstanding subsection (3) above, multiple family and single family attached dwellings developed pursuant to a Federal, State or County housing program	P	P								
8-2.4 (b)	Multiple family and single family attached dwellings are permitted in districts R-10 and R-20 in addition to those types of residential uses and structures permitted under Subsection (a) above		P								
8-2.4 (c)	Public and private parks and home businesses are permitted in all districts.	P	P								
8-2.4 (d)	Adult Family Boarding and Family Care Homes that comply with all State Department of Social Services and Housing and State Department of Health rules, regulations and requirements provided, however, that the Planning Director may require a use permit for such applications that may create adverse impacts to the health, safety, morals, convenience and welfare of the neighborhood or community that the proposed use is located.	P	P								
8-2.4 (e)	Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in non-VDA areas.	P	P								
8-2.4(f) (1)	Botanical and zoological gardens	U	U								
8-2.4(f) (2)	Cemeteries, nurseries and crematoriums	U	U								
8-2.4(f) (3)	Churches, temples, and monasteries	U	U								
8-2.4(f) (4)	Clubs, lodges and community centers	U	U								
8-2.4(f) (5)	Diversified and specialized agriculture and nurseries	U	U								
8-2.4(f) (6)	Dormitories, guest and boarding houses, but not hotels and motels	U	U								
8-2.4(f) (7)	Golf courses.	U	U								
8-2.4(f) (8)	Medical and nursing facilities	U	U								

Table 6-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential		Commercial			Industrial				
		R-1 to R-4	R-10 to R-20	CC	CN	CG	IL	IG	MG	O	
8-2.4(f) (9)	Museums, libraries and public services and facilities	U	U								
8-2.4(f) (10)	Private and public utilities and facilities, other than maintenance and storage of equipment, materials, and vehicles	U	U								
8-2.4(f) (11)	Project developments in accordance with Article 10 of this Chapter	U	U								
8-2.4(f) (12)	Retail shops and stores	U	U								
8-2.4(f) (13)	School and day-care centers	U	U								
8-2.4(f) (14)	Transportation terminals and docks	U	U								
8-2.4(f) (15)	Three (3) or more multiple family dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4, or the R-6 District	U	P								
8-2.4(f) (16)	Three (3) or more single family attached dwelling units upon a parcel of record as of June 30, 1980, in the R-1, R-2, R-4 or the R-6 District	U	P								
8-2.4(f) (17)	Residential care homes	U	U								
8-2.4(f) (18)	Adult Family Group Living Home	U	U								
8-2.4(f) (19)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District	U	U								
8-2.4(g) (1)	Accessory structures and uses			P							
8-2.4(g) (2)	Apartment hotels			P							
8-2.4(g) (3)	Automobile service and storage			P							
8-2.4(g) (4)	Barber shop and beauty shop			P							
8-2.4(g) (5)	Commercial recreation			P							
8-2.4(g) (6)	Gift shops			P							
8-2.4(g) (7)	Golf courses			P							
8-2.4(g) (8)	Home business			P							
8-2.4(g) (9)	Hotels			P							

Table 8-2.3 TABLE OF USES

Sec	USE	ZONING DISTRICT									
		Residential		RE	Commercial		Industrial		AG	D	
		R-1 % R-6	R-1H to R-20		CN	CG	IL	IG			
8-2.4(g) (10)	Laundromat			P							
8-2.4(g) (11)	Libraries			P							
8-2.4(g) (12)	Motels			P							
8-2.4(g) (13)	Museums			P							
8-2.4(g) (14)	Police and fire stations			P							
8-2.4(g) (15)	Public parks and monuments			P							
8-2.4(g) (16)	Restaurants and food service			P							
8-2.4(g) (17)	Retail cleaning outlets			P							
8-2.4(g) (18)	Retail cleaning outlets			P							
8-2.4(g) (19)	Retail food and drug shops			P							
8-2.4(g) (20)	Shoe repair shops			P							
8-2.4(g) (21)	Single family detached dwellings			P							
8-2.4(g) (22)	Transient Vacation Rentals, provided they are located within the Designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in non-VDA areas			P							
8-2.4(h) (1)	Agriculture			U							
8-2.4(h) (2)	Automobile sales and repair			U							
8-2.4(h) (3)	Bars, night clubs and cabaret, not a part of a hotel			U							
8-2.4(h) (4)	Churches, temples and monasteries			U							
8-2.4(h) (5)	Day camps			U							
8-2.4(h) (6)	Employee or construction worker temporary housing			U							
8-2.4(h) (7)	Marinas, transportation terminals and docks			U							
8-2.4(h) (8)	Professional offices			U							
8-2.4(h) (9)	Project development in accordance with Article 10 of this Chapter			U							
8-2.4(h) (10)	Public utilities and facilities			U							
8-2.4(h) (11)	Retail manufacturing			U							
8-2.4(h) (12)	Shopping centers			U							
8-2.4(h) (13)	Theaters and auditoriums			U							
8-2.4(h) (14)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District			U							
8-2.4(i) (1)	Accessory uses and structures				P						
8-2.4(i) (2)	Automobile services				P						

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT								
		Residential			Commercial		Industrial		AG	FI
		R-1 to R-6	R-10 to R-20	R-9	CN	CG	IU	IG		
8-2.4(i) (3)	Churches, temples and monasteries				P					
8-2.4(i) (4)	Clubs, lodges and community centers				P					
8-2.4(i) (5)	Household services				P					
8-2.4(i) (6)	Museums, libraries and public services				P					
8-2.4(i) (7)	Personal services, such as barber shops, laundromats, and shoe repair shops				P					
8-2.4(i) (8)	Professional offices				P					
8-2.4(i) (9)	Public parks and monuments				P					
8-2.4(i) (10)	Retail shops and stores				P					
8-2.4(i) (11)	Restaurants and food services				P					
8-2.4(i) (12)	Single family detached dwellings on lots or parcels of no less than six thousand (6,000) square feet, and no a density not to exceed six (6) units per acre				P					
8-2.4(i) (13)	Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established pursuant to Article IV of this Chapter. These uses are prohibited in non-VDA areas				P					
8-2.4(j) (1)	Accessory uses and structures						P			
8-2.4(j) (2)	Automobile sales, repair and storage						P			
8-2.4(j) (3)	Automobile services						P			
8-2.4(j) (4)	Churches, temples and monasteries						P			
8-2.4(j) (5)	Clubs, lodges and community centers						P			
8-2.4(j) (6)	Commercial indoor amusement and parks						P			
8-2.4(j) (7)	Department stores						P			
8-2.4(j) (8)	Hotels and motels						P			
8-2.4(j) (9)	Household services						P			
8-2.4(j) (10)	Light manufacturing, such as handicrafts and garment fabrication						P			
8-2.4(j) (11)	Minor food processing, such as cracked seeds, jellies, candies and ice cream						P			
8-2.4(j) (12)	Museums, libraries and public services						P			
8-2.4(j) (13)	Offices and professional buildings						P			
8-2.4(j) (14)	Parking garages						P			
8-2.4(j) (15)	Personal services						P			
8-2.4(j) (16)	Public offices and buildings						P			
8-2.4(j) (17)	Public parks and monuments						P			

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential		BP	Commercial			Industrial		AG	D
		R-1 or R-2	R-10 or R-20		CN	CC	IL	IG			
8-2.4(j)(18)	Research and development						P				
8-2.4(j)(19)	Restaurants and food services						P				
8-2.4(j)(20)	Retail sales						P				
8-2.4(j)(21)	Supermarkets and shopping centers						P				
8-2.4(j)(22)	Transient Vacation Rentals, provided they are located within the designated Visitor Destination Areas established pursuant to Article 17 of this Chapter. These uses are prohibited in non-VDA areas						P				
8-2.4(j)(23)	Transportation terminals and docks						P				
8-2.4(j)(24)	Warehouses						P				
8-2.4(j)(25)	Wholesale Outlets						P				
8-2.4(k)(1)	Animal hospitals					U					
8-2.4(k)(2)	Automobile sales, repair and storage					U					
8-2.4(k)(3)	Botanical and zoological gardens					U					
8-2.4(k)(4)	Communications facilities					U					
8-2.4(k)(5)	Construction materials storage					U					
8-2.4(k)(6)	Diversified agriculture					U					
8-2.4(k)(7)	Food processing and packaging					U					
8-2.4(k)(8)	Light manufacturing					U					
8-2.4(k)(9)	Multiple family dwellings and single family attached dwellings					U					
8-2.4(k)(10)	Private and public utilities and facilities					U					
8-2.4(k)(11)	Project development in accordance with Article 10 of this Chapter					U					
8-2.4(k)(12)	Research and development					U					
8-2.4(k)(13)	Schools and day care centers					U					
8-2.4(k)(14)	Warehouses					U					
8-2.4(k)(15)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District					U					
8-2.4(l)(1)	Animal hospitals						U				
8-2.4(l)(2)	Bars						U				
8-2.4(l)(3)	Botanical and zoological gardens						U				
8-2.4(l)(4)	Commercial outdoor amusement						U				
8-2.4(l)(5)	Communications facilities						U				
8-2.4(l)(6)	Construction materials storage						U				

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential			Commercial			Industrial		AG	O
		R-1	R-16	RR	CN	CG	I-1	I-2			
		to	to								
8-2.4(d)(7)	Diversified agriculture					U					
8-2.4(d)(8)	Food processing and packaging					U					
8-2.4(d)(9)	Nightclubs and cabarets					U					
8-2.4(d)(10)	Private and public utilities and facilities					U					
8-2.4(d)(11)	Project development in accordance with Article 10 of this Chapter					U					
8-2.4(d)(12)	Residential dwellings, detached, attached or multi-family					U					
8-2.4(d)(13)	Schools and day care centers					U					
8-2.4(d)(14)	Warehouses					U					
8-2.4(d)(15)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District					U					
8-2.4(m)(1)	Accessory uses and structures							P			
8-2.4(m)(2)	Animal hospitals							P			
8-2.4(m)(3)	Automobile services, sales, repair and storage							P			
8-2.4(m)(4)	Cemeteries, mortuaries and crematoriums							P			
8-2.4(m)(5)	Communication facilities							P			
8-2.4(m)(6)	Construction material storage							P			
8-2.4(m)(7)	Food processing and packaging							P			
8-2.4(m)(8)	Light manufacturing							P			
8-2.4(m)(9)	Manufacturing in retail sales							P			
8-2.4(m)(10)	Private and public utilities and facilities							P			
8-2.4(m)(11)	Public parks and monuments							P			
8-2.4(m)(12)	Research and development							P			
8-2.4(m)(13)	Restaurants, bars and food services							P			
8-2.4(m)(14)	Retail sales							P			
8-2.4(m)(15)	Warehouses							P			
8-2.4(n)(1)	Accessory uses and structures								P		
8-2.4(n)(2)	Animal hospitals								P		
8-2.4(n)(3)	Automobile services, sales, repair and storage								P		
8-2.4(n)(4)	Cemeteries, mortuaries and crematoriums								P		
8-2.4(n)(5)	Communication facilities								P		
8-2.4(n)(6)	Construction material manufacturing								P		
8-2.4(n)(7)	Construction material storage								P		

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential			Commercial			Industrial		AG	O
		R-1 R-10 R-15	R-10 R-20	HR	CM	CR	IL	IG			
8-2.4(n)(8)	Excavation and extraction									P	
8-2.4(n)(9)	Factories									P	
8-2.4(n)(10)	Food processing and packaging									P	
8-2.4(n)(11)	Light manufacturing									P	
8-2.4(n)(12)	Manufacturing in retail sales									P	
8-2.4(n)(13)	Mineral processing									P	
8-2.4(n)(14)	Private and public utilities and facilities									P	
8-2.4(n)(15)	Public parks and monuments									P	
8-2.4(n)(16)	Restaurants, bars and food services									P	
8-2.4(n)(17)	Research and development									P	
8-2.4(n)(18)	Retail sales									P	
8-2.4(n)(19)	Transportation terminals and docks									P	
8-2.4(n)(20)	Warehouses									P	
8-2.4(o)(1)	Botanic and zoologic gardens									U	
8-2.4(o)(2)	Commercial recreation and parks									U	
8-2.4(o)(3)	Construction materials manufacturing									U	
8-2.4(o)(4)	Diversified agriculture									U	
8-2.4(o)(5)	Factories									U	
8-2.4(o)(6)	Junk yards and dumps									U	
8-2.4(o)(7)	Livestock and poultry yards									U	
8-2.4(o)(8)	Museums, libraries and public services									U	
8-2.4(o)(9)	Office and professional buildings									U	
8-2.4(o)(10)	Project development in accordance with Article 10 of this Chapter									U	
8-2.4(o)(11)	Single family dwellings									U	
8-2.4(o)(12)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District.									U	
8-2.4(p)(1)	Commercial recreation and parks									U	
8-2.4(p)(2)	Diversified agriculture									U	
8-2.4(p)(3)	Inflammable or noxious chemical processing or storage									U	
8-2.4(p)(4)	Junk yards and dumps									U	
8-2.4(p)(5)	Livestock and poultry yards and piggeries									U	
8-2.4(p)(6)	Museums, libraries and public services									U	
8-2.4(p)(7)	Office and professional buildings									U	

TABLE B-3.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT											
		Residential		Commercial			Industrial		AG	U			
		R-1	R-13	PR	CN	CG	II	IG					
		R-6	R-20										
8-2.4(g)(5)	Project Development in accordance with Article 10 of this Chapter												
8-2.4(p)(9)	Stockyards												
8-2.4(p)(10)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District												
8-2.4(q)(1)	Accessory structures and uses												P
8-2.4(q)(2)	Aquaculture												P
8-2.4(q)(3)	Diversified agriculture												P
8-2.4(q)(4)	Forestry												P
8-2.4(q)(5)	Grazing												P
8-2.4(q)(6)	Historic sites												P
8-2.4(q)(7)	Intensive agriculture												P
8-2.4(q)(8)	Livestock, poultry, and piggeries, except as provided in Sec. 8-2.3(r)(11)												P
8-2.4(q)(9)	Minor food processing related to agricultural products												P
8-2.4(q)(10)	Orchards and nurseries												P
8-2.4(q)(11)	Outdoor recreation												P
8-2.4(q)(12)	Pet keeping and raising, except as provided in Sec. 8-2.4(r)(10)												P
8-2.4(q)(13)	Public parks and monuments												P
8-2.4(q)(14)	Resource management												P
8-2.4(q)(15)	Single family detached dwellings												P
8-2.4(q)(16)	Solar energy facilities placed within land with soil classified by the State of Hawaii Land Study Bureau's detailed land classification as overall (master) productivity rating B, C, D or E; those facilities placed within land with soil classified as overall productivity rating class B and C shall not occupy more than ten percent (10%) of the acreage of the parcel, or twenty (20) acres of land, whichever is less												P
8-2.4(q)(17)	Specialized agriculture												P
8-2.4(q)(18)	Undeveloped campgrounds												P
8-2.4(q)(19)	Warehousing, storage, and packing of plant products												P
8-2.4(q)(20)	Wildlife management												P
8-2.4(r)(1)	Animal hospitals												U
8-2.4(r)(2)	Cemeteries												U

Table 8-2.4 TABLE OF USES

Sec.	USE	ZONING DISTRICT									
		Residential			Commercial		Industrial		AG	C	
		R-1	R-10	R-20	CB	CG	IL	IG			
8-2.4(r)(3)	Churches, temples and monasteries									U	
8-2.4(r)(4)	Commercial recreation									U	
8-2.4(r)(5)	Construction and worker temporary housing									U	
8-2.4(r)(6)	Development campgrounds									U	
8-2.4(r)(7)	Farm worker housing									U	
8-2.4(r)(8)	Golf courses									U	
8-2.4(r)(9)	Mineral extraction and quarries									U	
8-2.4(r)(10)	Pet keeping and raising proposed within five hundred (500) feet of any Residential District									U	
8-2.4(r)(11)	Poultry and piggeries when to be located within three thousand (3000) feet of any Use District									U	
8-2.4(r)(12)	Private and public utility facilities									U	
8-2.4(r)(13)	Schools and day care centers									U	
8-2.4(r)(14)	Transportation terminals									U	
8-2.4(r)(15)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District									U	
8-2.4(s)(1)	Accessory uses and structures										P
8-2.4(s)(2)	Day-use areas										P
8-2.4(s)(3)	Diversified agriculture										P
8-2.4(s)(4)	Livestock and grazing, except as provided in Sec. 8-2.4(t)(6)										P
8-2.4(s)(5)	Outdoor recreation										P
8-2.4(s)(6)	Parks and monuments										P
8-2.4(s)(7)	Private recreation areas										P
8-2.4(s)(8)	Resource management										P
8-2.4(s)(9)	Single family detached dwellings										P
8-2.4(s)(10)	Undeveloped campgrounds										P
8-2.4(t)(1)	Communications facilities										U
8-2.4(t)(2)	Day care centers										U
8-2.4(t)(3)	Developed campgrounds										U
8-2.4(t)(4)	Home businesses										U
8-2.4(t)(5)	Intensive agriculture										U
8-2.4(t)(6)	Livestock and grazing within the Unopen District as established by the State Land Use Commission										U
8-2.4(t)(7)	Organized recreation camps										U

Table 8-2.4 TABLE OF USES

Sec	USE	ZONING DISTRICT								
		Residential			Commercial		Industrial		AG	O
		R-1 to R-6	R-10 to R-30	RE	CN	CG	II	IG		
8-2.4(i)(9)	Outdoor recreation concessions									U
8-2.4(i)(9)	Police and fire facilities									U
8-2.4(i)(10)	Quarries									U
8-2.4(i)(11)	Recreation vehicle parks									U
8-2.4(i)(12)	Religious facilities									U
8-2.4(i)(13)	Utility installations									U
8-2.4(i)(14)	Any other use or structure which the Planning Director finds to be similar in nature to those listed in this Section and appropriate to the District									U

KEY:

U = Use Permit Required

P = Permitted Use or Structure (Zoning Permit may be required)

GENERAL NOTES:

1. Requirements for Additional Dwelling Units (ADU) are contained in Article 1

ARTICLE 3. GENERAL ADMINISTRATIVE REGULATIONS

Sec. 8-3.1 Zoning Permits.

(a) When Required.

No person shall undertake any construction or development or carry on any activity or use, for which a zoning permit is required by this Chapter, or obtain a building permit for construction, development, activity or use regulated by this Chapter, without first obtaining the required zoning permit.

(b) Applications.

The owner or lessee (holding under recorded lease the unexpired term of which is more than five (5) years from the date of filing the application), or any person duly authorized by the owner or lessee of the property affected, or any utility

company possessing the power of eminent domain, may file a written application with the Planning Department for a zoning permit of the required type on a form prescribed by the Planning Department. The application shall contain or be accompanied by:

(1) A non-refundable filing and processing fee in the amount indicated in Sections 8-3.1(e)(1).

(2) A description of the property in sufficient detail to determine its precise location

(3) A plot plan of the property, drawn to scale, showing all existing and proposed structures and any other information necessary:

(A) To show conformity with the standards established in this Chapter, and

(B) To a proper determination relative to the specific request.

(4) Any other plans and information required by the Planning Department.

(c) Class I Zoning Permits.

(1) The filing and processing fee is Five Dollars (\$5)

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, or use conforms to the standards established by this Chapter and may require additional information if necessary to make the determination.

(3) A Class I Zoning Permit shall be issued with or without conditions or denied by the Planning Director or by any member of the Planning Department to whom the Planning Director has delegated authority.

(4) If the Planning Director or his designee fails to take action on a completed application within twenty-one (21) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(6) An applicant who is denied a Class J Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(d) Class II Zoning Permits.

(1) The filing and processing fee is Ten Dollars (\$10).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and may

(A) refer the application to any County or State department for comment or approval and

(B) require additional information if necessary to make a determination.

(3) A Class II Zoning Permit shall be issued with or without conditions or denied by the Planning Director.

(4) If the Planning Director or his designee fail to take action on a completed application within thirty (30) days of its filing, unless the applicant assents to a delay, the application shall be deemed approved.

(5) An applicant who is denied a Class II Zoning Permit or who disagrees with the conditions that have been imposed on its issuance may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(e) Class III Zoning Permits.

(1) The filing and processing fee is Thirty Five Dollars (\$35).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use, or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within forty-five (45) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The reports shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) The Planning Director may, within forty-five (45) days after the filing of a completed application, issue a provisional Class III Zoning Permit with or without conditions, or deny the permit, or determine that the application for the permit should be decided in the first instance by the Planning Commission.

(5) If the Planning Director issues a provisional Class III Zoning Permit, with or without conditions, he shall notify the members of the Planning Commission, and any persons who have duly requested such notice, of that action. The provisional permit shall become final unless within thirty (30) days at least three (3) members of the Planning Commission request review by the Planning Commission. In that case, the Planning Commission shall determine whether or not to issue the permit.

(6) If the Planning Director refers the application to the Planning Commission or if three (3) members request Planning Commission review of a provisionally issued permit, the Planning Commission within sixty (60) days of the reference or request for review shall issue the permit with or without conditions or shall deny the permit.

(7) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(8) An applicant who is denied a Class III Zoning Permit by the Planning Director, or who disagrees with the conditions that have been imposed on its issuance by the Planning Director may appeal the decision to the Planning Commission in accordance with Section 8-3.1(g).

(f) **Class IV Zoning Permits.**

(1) The filing and processing fee is One Hundred Fifty Dollars (\$150), except where a Class IV Zoning Permit is only required because a Variance is necessary, in which case the fee is Fifty Dollars (\$50).

(2) The Planning Director or his designee shall check the application to determine whether the construction, development, activity, use or plot plan conforms to the standards established by this Chapter and

(A) shall refer the application to the Department of Public Works and the Department of Water and may refer the application to any other County or State Department for comment or approval and

(B) may require additional information if necessary to make a determination.

(3) Within sixty (60) days after the filing of a completed application, the Planning Director shall prepare a report that indicates the reasons supporting the issuance, issuance with conditions, or denial of the application. The report shall be sent to the applicant, to the Planning Commission, to any persons who have duly requested the report, and shall be made public.

(4) Within sixty (60) days after the receipt of the Planning Director's report or within such longer period as may be agreed to by the applicant, the Planning Commission shall hold at least one public hearing on the application and issue the permit with or without conditions or deny the permit. Notice of the proposed public hearing shall be given to the applicant and shall also be published at least once in a newspaper of general circulation in the County, at least twenty (20) days prior to the date of the hearing.

In proceedings involving use permits within the Residential, Agriculture and Open Districts and for all Project Developments pursuant to Section 8-3.2, and for variances involving height limitations pursuant to Section 8-3.3, the following procedures shall apply in addition to the above paragraphs:

The applicant, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card File located at the Real Property Division of the Department of Finance of the County of Kaua'i, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards for at least eighty-five per cent (85%) of all parcels of real property within 300 feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager" followed by the name and address of the condominium involved. The notice shall include the following information and shall be in a form approved by the Planning Director:

- (A) date;
- (B) time;
- (C) location;
- (D) purpose; and
- (E) description or sketch of property involved.

At least seven (7) days prior to the hearing date, the applicant shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the applicant fail to submit the affidavit within the time required, the public hearing shall be postponed. In this case, the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The applicant shall be required to pay for the republication costs and shall follow the same notice requirements of this paragraph in the renotification of affected persons.

(5) If the Planning Director or the Planning Commission fails to take action within the time limits prescribed in this Article, unless the applicant assents to a delay, the application shall be deemed approved.

(g) **Appeal**

An applicant who seeks to appeal from an adverse decision of the Planning Director or his designee shall file a notice of appeal with the Planning Director and the Planning Commission within twenty-one (21) days after the adverse decision. If the appeal is from the denial of a Class III Zoning Permit, the Planning Director shall make the notice public and shall notify any persons who have duly requested notice of appeals. The Planning Commission shall consider the appeal within sixty (60) days of the filing of the notice at a public session and shall render its decision within that period.

Sec. 8-3.2 Use Permits.

(a) **Purpose.**

The purpose of the "Use Permit" procedure is to assure the proper integration into the community of uses which may be suitable only in specific locations in a district, or only under certain conditions, or only if the uses are designed, arranged or conducted in a particular manner, and to prohibit such uses if the proper integration cannot be assured.

(b) **When Required.**

No person shall undertake any construction or development, or carry on any activity or use for which a Use Permit is required by this Chapter, or obtain a building permit for construction, development, activity or use for which a Use Permit is required by this Chapter, without first obtaining a Use Permit.

(c) **Application.**

An application for a Use Permit may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(b). The application, whenever feasible, shall be filed together with the application for the required zoning permit, and a single application shall be used for both permits in those cases. The application shall contain the information required by Section 8-3.1(b) and other information justifying the issuance of the Use Permit.

(d) Fees.

There shall be no additional filing and processing fee for a Use Permit application filed in conjunction with an application for a Zoning Permit. In other cases, a non-refundable fee of Fifty Dollars (\$50) shall accompany the application for the Use Permit.

(e) Standards.

(1) A Use Permit may be granted only if the Planning Commission finds that the establishment, maintenance, or operation of the construction, development, activity or use in the particular case is a compatible use and is not detrimental to health, safety, peace, morals, comfort and the general welfare of persons residing or working in the neighborhood of the proposed use, or detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the community, and will not cause any substantial harmful environmental consequences on the land of the applicant or on other lands or waters, and will not be inconsistent with the intent of this Chapter and the General Plan.

(2) The Planning Commission may impose conditions on the permit involving any of the following matters: location, amount and type and time of construction, type of use, its maintenance and operation, type and amount of traffic, off-street parking, condition and width of adjoining roads, access, nuisance values, appearance of the building, landscaping, yards, open areas and other matters deemed necessary by the Planning Commission.

(f) Procedure.

(1) The procedures established in Section 8-8-3.1(e) for a Class III Zoning Permit shall be followed except:

(A) All Use Permits for development or use in a Residential District, and all Use Permits for a Project Development, shall require a public hearing in accordance with the procedure specified for Class IV Zoning Permits.

(2) Upon findings of the Commission that a Use Permit may be granted consistent with the requirements of this Article, the permit shall be

issued to the applicant on such terms and conditions and such a period of time, as the facts may warrant.

(3) Use Permits may be revoked by the Commission after due hearing if such action shall be necessary to effectuate the purpose of this Chapter.

(g) Application Denials And Appeal.

When a Use Permit application is denied by the Planning Director and no appeal is taken, or is denied by the Planning Commission, an application for a Use Permit involving the same or substantially similar construction, development, activity or use may not be filed sooner than six (6) months following the denial.

Sec. 8-3.3 Variance

(a) Authority.

The Planning Commission may grant variances from the provisions of this Chapter only in particular cases as set forth in this Article.

(b) Standards.

Variances from the terms of this Chapter shall be granted only if it is found that because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of the regulations deprives the property of privileges enjoyed by other property in the vicinity and within the same District, and the applicant shows that he cannot make a reasonable use of the property if the regulations are applied. Where these conditions are found, the variance permitted shall be the minimum departure from existing regulations necessary to avoid the deprivation of privileges enjoyed by other property and to facilitate a reasonable use, and which will not create significant probabilities of harm to property and improvements in the neighborhood or of substantial harmful environmental consequences. Financial hardship to the applicant is not a permissible basis for the granting of a variance. In no case may a variance be granted that will provide the applicant with any special privileges not enjoyed by other properties in the vicinity. The Planning Commission shall indicate the particular evidences that support the granting of the variance.

(c) Application.

An application for a Variance may be filed by any person authorized to file an application for a Zoning Permit under Section 8-3.1(h). The application, wherever feasible, shall be filed together with the application for the required Zoning Permit and a single application shall be used for both permits in those cases. The

application shall contain the information required pursuant to Section 8-3.1(b) and other information justifying the issuance of the Variance.

(d) Fees.

There shall be no additional filing and processing fee for a Variance application filed in conjunction with an application for a Zoning Permit. In other cases, a non-refundable fee of Fifty Dollars (\$50) shall accompany the application for the Variance.

(e) Procedure.

(1) The procedure established in Section 8-3.1(f) for a Class IV Zoning Permit shall be followed.

(2) Upon findings of the Planning Commission that a Variance may be granted consistent with the requirements of this Article, the Variance shall be issued to the applicant on such terms and conditions, and for such period of time, as the facts may warrant. The Planning Commission shall append conditions that achieve a substantial equivalent or alternative to the regulation from which the Variance is sought.

(3) When a Variance is denied by the Planning Commission, an application for a Variance involving the same or substantially similar construction, development, use or activity may not be filed sooner than six (6) months following the denial.

Sec. 8-3.4 Amendments

(a) Amendments.

This Chapter may be amended by changing the boundaries of districts or by changing the text whenever the public necessity and convenience and the general welfare require an amendment.

(b) Initiation.

The amendment may be initiated by the verified petition of one (1) or more owners of property affected by the proposed amendment, which petition shall be on a form prescribed by and filed with the Planning Commission and shall be accompanied by a processing fee of Fifty Dollars (\$50).

(1) For the purpose of complying with this Section a property owner is to include the holder of a lease interest the expiration of which will occur more than five (5) years after the date of filing the petition.

(2) The petition shall contain or be accompanied by the following:

(A) a statement of the nature of the petitioner's interest;

(B) a draft of the substance of the proposed amendment;

(C) a specific statement of the reasons for granting the proposed change, and if requested by the Planning Director, supported by a written documented analysis of the district involved using all the pertinent elements upon which the Zoning is based;

(D) a map, drawn to scale, describing the property and showing its location in relation to surrounding properties and to known landmarks or improvements.

(c) Public Hearings.

The Commission shall hold at least one (1) public hearing on any proposed amendment.

(1) Except for amendments relating to necessary governmental public utility developments and District Boundary change applications pending before the State Land Use Commission on or prior to July 3, 1973, all proposed amendments shall be considered for public hearing only during four (4) months per calendar year.

(A) Public hearings shall be conducted by the Planning Commission only during the months of January, April, July and October. At any public hearing, any number of petitions may be heard provided that each petition is heard separately.

(B) Petitions and resolutions received in an acceptable form by the Planning Commission not later than sixty (60) days prior to the public hearing date shall be considered by the Planning Commission and Council for review and action.

(2) At least fifteen (15) days prior to the public hearing, the Planning Commission shall give notice thereof to the petitioner and also by publishing at least once in a newspaper of general circulation published in the County the time, date and place of the hearing, its purpose and a description of any property which may be involved.

(3) In the case of a petition for the amendment of district boundaries, the petitioner, at least twelve (12) days prior to the scheduled date of such hearing, shall either hand deliver written notice to persons listed on the current Notice of Property Assessment Card file located at the Real

Property Division of the Department of Finance of the County of Kauai, or mail, by certified mail, written notice to the addresses shown on such Notice of Property Assessment Cards, for at least eighty-five per cent (85%) of all parcels of real property within three hundred (300) feet from the nearest point of the premises involved in the application to the nearest point of the affected property. For the purposes of this paragraph, notice to one co-owner shall be sufficient notice to all other co-owners of the same parcel of real property. For each condominium project within the affected area, one notice of the hearing shall be sent addressed "To the Residents, Care of the Manager", followed by the name and address of the condominium involved. The notice shall include the following information and shall be in form approved by the Planning Director:

- (A) date;
- (B) time;
- (C) location;
- (D) purpose;
- (E) description or sketch of property involved; and
- (F) explanation of amendment process with emphasis on forthcoming Council action.

At least seven (7) days prior to the hearing date, the petitioner shall file with the Planning Commission an affidavit as to the mailing or delivery of such notice and a list of persons to which such notices were sent.

Should the petitioner fail to submit the affidavit within the time required, the public hearing shall be postponed and the Planning Commission shall reschedule another hearing within sixty (60) days of the postponed hearing. The petitioner shall be required to pay for the republication costs and shall follow the notice requirements of this paragraph in the re-notification of affected persons.

(4) Where the zoning amendments are initiated by the Planning Commission or the Council, the public hearing notice requirements of paragraph (c) above shall apply, except that in the consideration of community development plans and updates, the requirements of paragraph (b), above, shall apply.

(d) Consideration.

In considering an amendment, the Planning Commission shall consider the purposes of the existing and proposed changes to the Zoning Ordinance. A change in the Zoning Map or text shall not be made unless the change will further the public necessity and convenience and the general welfare.

(e) Report Filed With Council.

After the conclusion of the public hearing, the Planning Commission shall approve, approve with modifications or disapprove any proposed amendment and shall file a report with the Council and the petitioner of its findings and action taken. The report shall be filed within sixty (60) days after the public hearing, or within a longer period as may be agreed upon between the Planning Commission and the initiator of the action.

(1) Failure by the Planning Commission to report within the sixty (60) day period specified in this Section or within a period as may be agreed upon shall be an approval of the proposed amendment by the Planning Commission and shall be reported to the Council by the Planning Director.

(f) Approval Or Denial Of Proposal.

In the event that the Planning Commission approves the proposal, the Council shall act on the proposal as indicated in this Article. However, in the event the Planning Commission denies the proposal, its decision is final except that the petitioners within fifteen (15) days after notice of the action may in writing appeal the decision to the Council, in which case the Council shall hear the matter in the same manner as for an approval by the Planning Commission.

(1) Within forty-five (45) days of receipt of the report for approval, the Council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(2) Within forty-five (45) days of receipt of the appeal, the Council shall set the matter for public hearing and shall give notice thereof to the petitioner and also by one (1) publication in a newspaper of general circulation published within the County at least fifteen (15) days prior to a hearing. After the conclusion of the hearing, the council may affirm, reverse or modify the Planning Commission's decision and may adopt the proposed amendment or any part thereof by a majority vote of the Council in a form as the Council deems advisable.

(g) Enactment By Ordinance.

Enactment of the amendment shall be by ordinance.

(h) Withdrawal.

With the consent of the Planning Commission, any petition for an amendment may be withdrawn upon the written application of the initiator. The Council or the Planning Commission, as the case may be, may, by motion abandon any proceedings for an amendment initiated by its own resolution of intention.

(1) The withdrawal or abandonment may be made only when the proceedings are before the body for consideration, and provided that any hearing of which public notice has been given shall be held.

(i) Denial.

When an amendment initiated by petition is denied by the Planning Commission and no appeal is taken, or is denied by the Council, the amendment or a substantially similar amendment may not be initiated by petition sooner than one (1) year following the denial.

(j) Initiation By Council Or Planning Commission.

Nothing contained in this Chapter shall prohibit the Planning Commission or the Council from initiating zoning changes where the general public interest and welfare are involved. When the amendment is initiated by the Planning Commission or the Council, the public hearing on the amendment may be held at any time.

Sec. 8-3.5 Enforcement, Legal Procedures And Penalties.

(a) Enforcement, Legal Procedures And Penalties.

(1) All departments, officials, and public employees vested with the duty or authority to issue permits or licenses shall conform to the provisions of this Chapter, and shall issue no such permits or licenses for construction, development, uses, activities, subdivisions or other purposes which would be in conflict with the provisions of this Chapter; any such permits or licenses, if issued in conflict with the provisions of this Chapter shall be void.

(2) It shall be the duty of the Planning Commission and Planning Director to enforce the provisions of this Chapter and it shall be the duty of all law enforcement officers of the County of Kauai to enforce this Chapter and all the provisions thereof.

(3) Any person convicted of violating or causing or permitting the violation of any of the provisions of this Chapter, shall be guilty of a misdemeanor and shall be punished by a fine not exceeding Two Thousand Dollars (\$2,000). After conviction, a separate offense is committed upon each day during or on which a violation occurs or continues.

(4) Any building or structure or other improvement or development set up, erected, constructed, altered, enlarged, converted, moved, or maintained contrary to the provisions of this Chapter or any use of land contrary to the provisions of this Chapter shall be unlawful and a public

nuisance. The County Attorney shall immediately commence an action or proceeding for the abatement, removal, or enjoinder thereof in the manner provided by law, and shall take such other steps, and shall apply to such courts as may have jurisdiction to grant relief that will abate or remove such building, structure, improvement, development or use, and restrain and enjoin any person from setting up, erecting, building, maintaining, or using any such building, structure, improvement or development, or using any property contrary to the provisions of this Chapter.

(5) The remedies provided for in this Article shall be cumulative and not exclusive.

(b) Civil Fines.

(1) If the Director of the Planning Department determines that any person, firm or corporation is not complying with a notice of violation, the Director may have the party responsible for the violation served by mail or delivery, with an order pursuant to this section. The order may require the party responsible for the violation to do any or all of the following:

(A) Correct the violation within the time specified in the order;

(B) Pay a civil fine not to exceed \$10,000 in the manner, at the place, and before the date specified in the order;

(C) Pay a civil fine up to \$10,000 per day for each day in which the violation persists, in the manner and at the time and place specified in the order.

(2) The order shall advise the party responsible for the violation that the order shall become final 30 days after the date of its delivery. The order shall also advise that the Director's action may be appealed to the Planning Commission.

(3) The provisions of the order issued by the Director under this section shall become final 30 calendar days after the service of the order. The parties responsible for the violation may appeal the order to the Planning Commission pursuant to its rules. The form of this appeal must conform to the Planning Commission's rules. However, an appeal to the Planning Commission shall not stay any provision of the order.

(4) The Director may institute a civil action in any court of competent jurisdiction for enforcement of any order issued pursuant to this section. Where the civil action has been instituted to enforce the civil fine imposed by said order, the Director need only show that the notice of

violation and order were served; that a civil fine was imposed, the amount of the civil fine imposed has not been paid; that either the order has not been appealed or that if appealed, the order was sustained by the Commission and/or any Court action.

ARTICLE 4. RESIDENTIAL DISTRICTS (R)

Sec. 8-4.1 Purpose.

The Residential District regulates the number of people living in a given area by specifying the maximum allowable number of dwelling units that may be developed on any given parcel of land. In order not to differentiate between economic groups or life-styles, a reasonable flexibility in the type of dwelling units and their placement on the land has been provided.

(a) To establish standards governing the development, construction and use of housing and dwelling facilities.

(b) To provide opportunity for all groups of persons to obtain adequate housing within each area of the County suitable for residential use in relation to other land uses and consistent with the preservation of natural, scenic, and historic resources.

(c) To establish the level of minimum services necessary to assure the adequacy of housing.

(d) To encourage a variety of housing types, sizes and densities necessary to meet the needs of all economic groups and to avoid environmental monotony detrimental to the quality of life.

(e) To maintain the character and integrity of communities within residential districts and support residents in continuing to live and raise their families in these neighborhoods.

Sec. 8-4.2 Types Of Residential Districts.

- (a) There are six (6) residential density districts as follows:
- (1) R-1
 - (2) R-2
 - (3) R-4
 - (4) R-6
 - (5) R-10
 - (6) R-20

(b) The number portion of each residential density district establishes the maximum number of dwelling units that may be permitted per acre of land in each district as calculated in accordance with Sec. 8-1.6.

Sec. 8-4.3 Development Standards For Residential Structures Not Involving The Subdivision Of Land.

(a) **Parcel Area.** Parcel area shall be as follows:

(1) The parcel area required for single family detached dwelling units shall be calculated in accordance with the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-4.2, except that, one (1) single family detached dwelling unit may be constructed on any legal lot or parcel of record as of August 17, 1972, even if the lot or parcel is smaller than is required in the density district in which the lot or parcel is located.

(2) Subject to the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-4.2, the minimum parcel area on which two (2) or more attached single family dwellings may be developed shall be twelve thousand (12,000) square feet.

(3) Subject to the density and acreage limitations in the particular Residential Density District, as provided in Sec. 8-4.2, the minimum parcel area on which two (2) or more multiple family dwelling units may be developed shall be ten thousand (10,000) square feet.

(b) **Setback Requirements.** Setback requirements shall be as follows:

(1) No building may be closer than ten (10) feet to the right-of-way line of a public thoroughfare or the property line of a private street or the pavement line of a driveway or parking lot serving more than three (3) dwelling units.

(2) No garage, carport or storage building may be closer than ten (10) feet to the right-of-way line of a public thoroughfare.

(3) No building shall be closer to a side property line than five (5) feet or one-half (1/2) the total height of the highest building wall from the ground level nearest the property line, whichever is greater.

(4) No eave, roof overhang, or other appurtenance to a building, other than a fence under six (6) feet in height, shall project into any setback more than one-half (1/2) the distance of the setback, or four (4) feet, whichever is less.

(5) No balconies, overhead walkways, decks, carports or other exterior spaces intended for human occupancy above the ground floor of any building, shall penetrate the setback area.

(6) No building shall be closer than ten (10) feet to the rear property line. Accessory buildings and garden or service shelters not higher than seven (7) feet nor covering more than four hundred (400) square feet, nor exceeding twenty percent (20%) of the rear property line in the longest dimension facing the rear property line, may be built without setback. Accessory buildings higher than seven (7) feet shall not be set back less than five (5) feet from the rear property line or one-half (1/2) the total height of the building wall nearest the property line measured from the ground level to the wall plate line, whichever is greater.

(7) The front side of any building shall not be closer than ten (10) feet from any property line, and the rear side of any building shall not be closer than fifteen (15) feet from any property line.

(8) Greater setbacks because of topographic, drainage, sun exposure or privacy conditions may be required and made a condition for a zoning permit.

(c) **Minimum Distance Between Buildings.** Minimum distance between buildings shall be as follows:

(1) Minimum distance between detached buildings containing dwelling units shall be:

End to end or side to side	
or end to side	10 feet
Front to end or side	20 feet
Front to front	20 feet
Front to rear	25 feet
Rear to rear	30 feet
Rear to end or side	20 feet

All dimensions shall be increased five (5) feet for each story over one (1) in both buildings.

(2) The minimum distance between detached accessory buildings and between dwelling unit buildings and detached accessory buildings shall be ten (10) feet.

(d) **Parcel Dimension Requirements.** Parcel dimension requirements shall be as follows:

(1) A parcel large enough to qualify for two (2) or more dwelling units shall conform to the following requirements before any person is permitted to develop more than one (1) single family dwelling unit and accessory buildings on the parcel:

(A) The minimum frontage on a public or private street shall be twenty-five (25) feet unless the parcel is a flag lot.

(B) The minimum average width of the existing parcel, excluding the flag portion of a flag lot, shall be sixty (60) feet

(2) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-4.5.

(3) The amount of land coverage created including buildings and pavement, shall not exceed fifty per cent (50%) of the lot or parcel area.

(e) **Open Space.** When development on a parcel meeting the density and parcel area requirements of Sec. 8-4.3 results in the designation of areas within the parcel for open space use, the area shall be designated on a map of the parcel as permanent open space and the map shall be recorded with the Bureau of Land Conveyances. In addition, the areas shall automatically be transferred to the Open District for zoning purposes.

Sec. 8-4.4 Development Standards For Residential Structures Which Involve The Subdivision Of Land.

(a) **Single Family Detached Dwellings.** Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-4.2, the following criteria shall apply where an applicant seeks subdivision approval to create lots for single family detached dwellings.

(1) **Lot Area**

(A) The minimum average lot area shall be six thousand (6,000) square feet;

(B) No lot shall be less than four thousand five hundred (4,500) square feet; and

(C) No more than twenty per cent (20%) of the lots in the proposed subdivision shall be less than six thousand (6,000) square feet.

(2) **Lot Width**

(A) Minimum average lot width shall be sixty (60) feet;

(B) No lot shall be less than forty-five (45) feet in width;

(C) No more than twenty per cent (20%) of the lots in the proposed subdivision shall be less than sixty (60) feet in width;

(D) No more than six (6) lots less than sixty (60) feet in width shall be located adjacent to one another;

(E) The pole section of a flag lot shall not be less than fifteen (15) feet in width.

(3) Lot Length

(A) The average length of any lot shall not be greater than three (3) times the average width;

(B) The maximum length of the pole portion of a flag lot shall be one hundred fifty (150) feet.

(4) Setback. The minimum distances from property lines shall be as required by Sec. 8-4.3(b), except that the applicant may indicate varying front setbacks on the subdivision map so long as no front setback is less than ten (10) feet.

(5) Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-4.2, where an applicant seeks approval of a horizontal property regime, all single family detached dwelling units shall be located in a manner as to conform to the requirements of this Article as if they were to occur on separate subdivided parcels or lots.

Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-4.5.

(b) Single Family Attached Dwellings. Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-4.2, the following standards shall apply where an applicant seeks subdivision approval to create lots for single family attached dwellings:

(1) Lot Area

(A) The minimum average lot area shall be three thousand (3,000) square feet;

(B) No lot shall be less than two thousand four hundred (2,400) square feet;

(C) No more than forty per cent (40%) of the lots in the proposed subdivision shall be less than three thousand (3,000) square feet;

(D) There shall be a permanent open space in common ownership and readily accessible to each single family attached lot usable for recreation and community activities other than streets, driveways, and parking, equal to no less than thirty per cent (30%) of the total area of all single family attached lots.

(2) Lot Width

(A) The minimum average lot width shall be thirty (30) feet;

(B) No lot shall be less than twenty-four (24) feet in width;

(C) No more than forty per cent (40%) of the lots in the proposed subdivision shall be less than thirty (30) feet in width;

(D) No more than six (6) lots less than thirty (30) feet in width shall be located adjacent to one another.

(3) Lot Length. The average length of any lot shall not exceed four (4) times its average width.

(4) Setbacks

(A) Minimum front setbacks shall be the same as required by Sec. 8-4.3(b).

(B) Minimum sideyard setback shall be the same as required by Sec. 8-4.3(b), except that the minimum setback from property lines between single family attached dwellings within the same subdivision shall be either less than six (6) inches or greater than five (5) feet;

(C) Minimum rear setbacks shall be fifteen (15) feet unless a maintenance easement is required in which case minimum rear setbacks shall be twenty-five (25) feet.

(5) Maintenance Easements. Easements shall be provided for maintenance access to the rear or exposed sides of all single family attached lots which do not have exterior access. Side access easements shall be not

less than five (5) feet and rear access easements shall be not less than ten (10) feet.

(6) **Distance Between Buildings.**

(A) When the parallel walls of two (2) or more single family attached units are not over one (1) foot apart, they shall be considered as one (1) building in determining the minimum distance between buildings;

(B) The minimum distance between buildings shall be the same as required by Sec. 8-4.3(c), except that the minimum side to side distances between any portion of adjacent buildings must be five (5) feet or greater if the side to side distance is more than one (1) foot; and no more than six (6) attached single family dwellings may be placed adjacent to one another where all dwellings are within twenty (20) feet of one another;

(C) Minimum distances between single family attached dwellings and single family detached or multiple family dwellings shall be as required by Sec. 8-4.3(c).

(7) Subject to the density and acreage limitations in the particular residential density district, as provided in Sec. 8-4.2, where an applicant seeks approval of a horizontal property regime, all single family attached dwelling units shall be located in a manner as to conform to the requirements of this Section as if they were to occur on separate subdivision parcels or lots.

(8) **Construction Requirements.** No lots for single family attached dwellings, as provided in this Section, shall be sold or leased until the dwelling units and other improvements to be erected on the lots, as indicated on construction plans or which were required as a condition of a zoning permit, have undergone at least fifty per cent (50%) construction or completion and that the developer has deposited or provided the County of Kaua'i with a one hundred per cent (100%) bond from the inception to the completion of the project.

(9) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential developments as established in Sec. 8-4.5.

(c) **Multiple Family Dwellings.** Subject to the acreage limitations in the particular residential density district, as provided in Sec. 8-4.2, the following standards shall apply where an applicant seeks subdivision approval to create lots for multiple family dwellings:

(1) Lot Area: The minimum lot area shall be ten thousand (10,000) square feet.

(2) Lot Width: The minimum lot width shall be eighty (80) feet.

(3) Lot Length: The average length of any lot shall not exceed three (3) times its average width.

(4) Setbacks: Minimum setbacks shall be as required by Sec. 8-4.3(b).

(5) Distance Between Buildings: Minimum distance between buildings shall be as required by Sec. 8-4.3(c).

(6) Maximum Lot Coverage: The amount of land coverage created, including buildings and pavement, shall not exceed fifty per cent (50%) of the lot or parcel area. This requirement shall not apply to separate lots or parcels used in common for parking or other community uses.

(7) Requirements for parking, access, driveways, building height, utilities and other regulations not specified in this Section shall be the same as those required of all residential development as established in Sec. 8-4.5.

Sec. 8-4.5 Standards Of Development Applicable To All Residential Development.

(a) Access, Driveways and Off-Street Parking. The following standards of development shall apply to all residential development:

(1) No residential building may be constructed on a parcel that is in excess of six hundred (600) feet of traveling distance from a public thoroughfare, or is in excess of three hundred (300) feet of traveling distance from vehicular access adequate for fire protection vehicles, refuse collection vehicles, moving vans, or other standard service vehicles.

(2) No common driveway may serve more than four (4) single family lots or dwelling units or be in excess of one hundred twenty (120) feet long.

(3) The right-of-way width and improvements of private streets shall be equivalent to County standards for public streets.

(4) A minimum of two (2) off-street parking spaces per dwelling unit shall be provided. When off-street parking spaces serving more than one (1) dwelling unit are provided in a parking area, the spaces shall be paved. For elderly housing projects, the minimum off-street parking spaces may be one (1) per three (3) dwelling units. For multiple family dwelling units used

primarily by visitors, tourists and transient guests, a minimum off-street parking space ratio of 1.5 spaces per dwelling unit may be permitted by the Planning Director

(5) No driveway shall be wider than forty per cent (40%) of the lot frontage on a public thoroughfare, except on the turn-around end of a cul-de-sac.

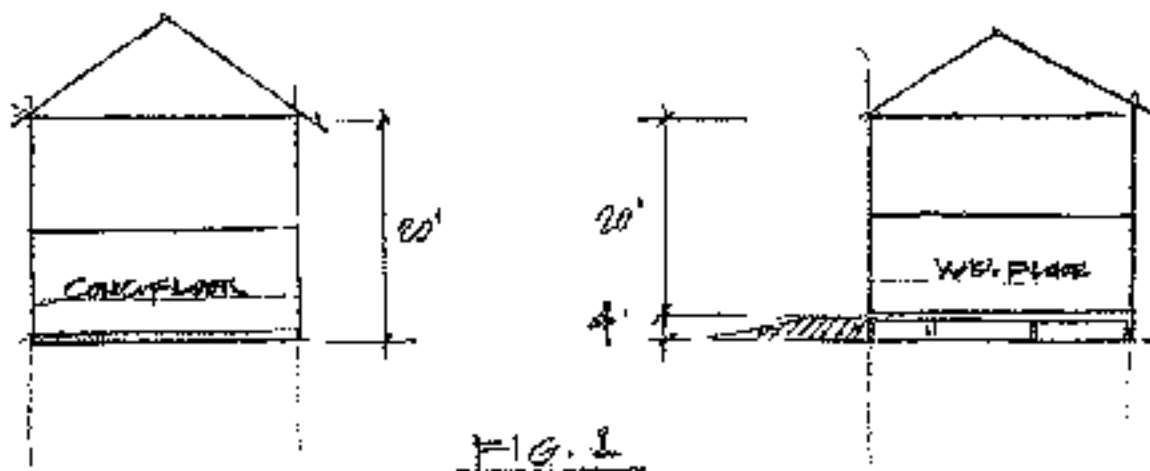
(6) Driveway connections to public streets shall conform to standards of design and construction established by the Department of Public Works.

(7) All parking areas serving more than two (2) dwelling units shall be screened from public thoroughfares by a fence, wall or planting not less than four (4) feet in height, provided that the screening height shall be lowered to the standard as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations.

(8) All paved parking areas shall be set back from public right-of-way lines a minimum of five (5) feet.

(b) **Building Height.**

(1) No single family detached or single family attached dwelling, or accessory structure shall be more than two (2) stories above and one (1) story below from the finished grade at the main entry, over twenty (20) feet measured from the finished grade at the main entry to the highest exterior wall plate line, and over thirty (30) feet to the highest point of the roof measured at each point along the building from the finished grade at the main entry. The finished grade at the main entry shall not be elevated more than a maximum of four (4) feet from the existing grade. (See Figure 1)



For the purpose of determining the number of stories in a single family detached dwelling, a loft shall be considered a story, except when the dwelling is constructed in a flood plain area. In a flood plain area a loft shall not be deemed a story for the story limitation purpose of Sec. 8-4.5(b)(1). Lower minimums may be imposed as a condition to a zoning permit to recognize topographic, light and air, privacy or architectural conditions of adjacent development or uses.

(2) No multiple family buildings, hotel or motel, shall be more than ten (10) feet higher than any residential building located within thirty (30) feet of the building, or shall not exceed four (4) stories nor exceed forty (40) feet from finished grade at each point along the building to the highest wall plate line. Gables and roof height shall not exceed one-half (1/2) the wall height or fifteen (15) feet, whichever is less. The limits contained in this Section shall not apply to spaces containing mechanical equipment, such as elevator machinery and air conditioning units, but the spaces shall not exceed fifteen (15) feet above the highest wall plate line.

(c) **Utilities and Services** The following standards of development shall apply to all residential development:

(1) Waste collection areas shall be provided for single family detached dwelling and common waste collection areas shall be provided for single family attached and multiple family dwelling units, according to standards established by the County Engineer. All waste collection areas shall be screened by a fence, wall or hedge from public thoroughfares when serving over two (2) dwelling units.

(2) Where a zoning permit is issued providing for development at a density of ten (10) or more dwelling units per acre on a parcel, all electric distribution lines, telephone lines, gas distribution lines, cable television

lines, and like facilities located within the parcel to be developed or leading into the parcel shall be installed underground unless the applicant demonstrates, and the Planning Commission determines on the basis of substantial evidence, that installation of any of the foregoing lines and facilities above ground will better protect scenic and environmental values.

The following types of lines and facilities may be exempted from the requirements of this Section:

(A) Poles without overhead lines used exclusively for fire or police alarm boxes, lighting purposes or traffic control;

(B) Overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the building to another location on the same building;

(C) Equipment appurtenant to underground facilities, such as surface mounted transformers, pedestal mounted terminal boxes, and meter cabinets and concealed ducts, provided that the facilities shall be located and designed so as to harmonize with the area, and shall be appropriately screened and landscaped. In appropriate instances, all or part of the transformers and service terminals shall be flush with or below the surface of the ground at the point of installation.

(3) All residential development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Public Works and the State Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(4) All residential development in districts permitting densities in excess of one (1) dwelling unit per acre shall be served by a public water distribution system or a private system equivalent to public standards and specifications as established by the Department of Water.

(d) Public Access. The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

Sec. 8-4.6 Application Of Density And Development Standards.

(a) **Calculation of Permissible Densities.** The area in connection with which the permissible number of dwelling units shall be calculated shall consist of all that land owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought. A separate calculation shall be made for the lands in areas that are contained in different residential density districts where the application is made for more than two (2) dwelling units and the land area designated in the permit application comes within more than one (1) residential district. The number of permissible dwelling units shall include dwelling units previously authorized, or constructed, within the area so designated in the application.

(b) **Calculation of Lot or Parcel Area.** For purposes of determining whether minimum parcel area requirements are satisfied, lots and parcels shall not include adjoining streets or commonly held or used areas, such as dedicated open space, parking lots, or like facilities.

(c) **Open Space.** When a subdivision meeting the density and parcel area requirements of Sec. 8-4.4, results in the designation of areas within the subdivision for open space use, the areas shall be designated on the final subdivision map as permanent open space, and in that case, upon approval of the final subdivision map the areas shall automatically be transferred to Open District for zoning purposes.

(d) **Plot Plans Where Subdivision Approval Not Sought.** Where a permit is sought for residential development containing fewer dwelling units than are permissible on the lot or parcel in the residential density district in which the lot or parcel is located, and no subdivision approval is sought, the applicant shall submit a plot plan which shall show that the future subdivision of the lot or parcel, or that the future location of other structures on the lot or parcel, can be done in a manner that will conform to the standards established in this Chapter. The plot plan shall be filed by the Planning Department in such a manner that it will be available in the future to the Department and to any subsequent purchaser from the applicant to determine the future permissible development on the lot or parcel.

The developer may deviate from the plot plan filed with the Planning Commission provided the deviation will be an improvement over the original plan submitted.

(e) **Parcels Containing Existing Development.** No parcel shall be created subsequent to September 1, 1972 which is occupied by existing dwelling units unless the parcel created is large enough to meet the density and acreage requirements for the existing dwelling units in the density district in which it is located.

(f) **Fractional Units** When the density calculation results in a fractional unit of sixty-five percent (65%) or more of a unit, the allowable density may be established at the next higher number of units.

Sec. 8-4.7 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any residential district except in accordance with a valid zoning permit. The following zoning permits, in accordance with Section 8-3.1, shall be required for the following activities:

(a) **Class I Permit.** A Class I Permit must be obtained for construction or development on an existing parcel where:

(1) the parcel is not located in a Constraint District or a Special Treatment District, and is not large enough to qualify for more than one (1) dwelling unit under the density permitted in the Residential District in which the parcel is located; and

(2) the construction or development does not require a use permit or a variance permit.

(b) **Class II Permit.** A Class II Permit must be obtained for construction or development on a parcel that is not located in a Constraint District or Special Treatment District, where the construction or development does not require a use permit or a variance permit and:

(1) consists of two (2) to ten (10) dwelling units, provided that where the construction or development is to be carried out on a parcel large enough to qualify for eleven (11) or more dwelling units, the Planning Director may require a Class III or Class IV Zoning Permit if he determines that additional construction or development on the parcel in excess of ten (10) dwelling units is probable in the near future; or

(2) consists of one (1) dwelling unit on a parcel large enough to qualify for more than one (1) dwelling unit.

(c) **Class III Permit.** A Class III Permit must be obtained for construction or development that does not require a variance permit and:

(1) consists of eleven (11) to fifty (50) dwelling units; provided that where the construction or development is to be carried out on a parcel large enough to qualify for fifty-one (51) or more dwelling units, the Planning Director may require a Class IV Zoning Permit if he determines that additional construction or development on the parcel in excess of fifty (50) dwelling units is probable in the near future; or

(2) consists of construction or development for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(d) Class IV Permit. A Class IV Permit shall be obtained for construction or development consisting of fifty-one (51) or more units or for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(e) To obtain any Permit the applicant shall show compliance with the Standards established in this Section and shall submit, where necessary, a plot plan as required by Sec. 8-4.6(d).

Sec. 8-4.8 Application To Residential Development In Other Districts.

All residential construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article.

Sec. 8-4.9 Development Of Other Uses In A Residential District.

All permitted uses, all uses requiring a use permit, and all uses allowed by variance other than residential:

(a) Shall conform to development standards established for the district in which they are normally permitted provided that:

(1) the minimum distance from property lines shall be the same as that required for Single Family Detached Dwellings; and

(2) the maximum building heights shall be the same as that required for Single Family Detached Dwellings; or

(b) Shall conform to the requirements and conditions imposed by the Planning Commission in granting the use permit or variance permit.

ARTICLE 5. RESORT DISTRICTS (RR)

Sec. 8-5.1 Purpose.

(a) To create and protect attractive areas in pleasing and harmonious surroundings to accommodate the needs and desires primarily of visitors, tourists and transient guests.

(b) To control density and to assure that undue congestion of streets and facilities will not occur.

(c) To control the organization and design of use and structures to assure that the development will not detract from the natural features and attributes of the surrounding area

(d) To insure that physical and visual public access to recreational, historic and scenic areas is maintained and improved.

Sec. 8-5.2 Types Of Resort Districts.

(a) There are two (2) resort density districts as follows:

- (1) RR-10
- (2) RR-20

(b) The number portion of each resort density district establishes the maximum number of dwelling units including hotel and motel rooms that may be permitted per acre of land in each district as calculated in accordance with Sec. 8-4.6, except that each hotel and motel room shall be considered as one-half (1/2) of one (1) dwelling unit in computing the allowable number of dwelling units.

Sec. 8-5.3 Development Standards.

(a) Residential. Subject to the density and acreage limitations in the particular Resort District as provided in Sec. 8-5.2, the standards for the development of single family detached residential structures shall be the same as those provided in Sec. 8-4.1

(b) Hotels. Buildings containing hotel rooms shall be considered the same as multiple family dwellings subject to the same standards as provided in Secs. 8-4.3 through 8-4.6, inclusive, with the following exceptions:

- (1) there is no maximum distance requirement from buildings containing dwelling units to parking areas;
- (2) only one (1) parking space must be provided for each three (3) hotel rooms;
- (3) the maximum allowable land coverage shall be fifty percent (50%);

No hotel room in a structure containing more than three (3) rooms shall be converted to a dwelling unit without first obtaining a Class IV Zoning Permit

(c) **Motels.** Development standards for motels shall be the same as those for multiple family dwellings as provided in Secs. 8-4.3 through 8-4.6, inclusive, with the following exceptions.

(1) parking spaces must be within one hundred fifty (150) feet of the dwelling unit or motel room served;

(2) at least one (1) parking space shall be provided for each motel room.

(d) **Other Permitted Uses.** Parking service, open space and other requirements applicable to each use other than dwelling units shall be the same as the regulations established in the district other than Resort where such uses are permitted and regulated.

(e) **Other Requirements.** Other requirements for development standards in resort districts are as follows:

(1) The Planning Director or the Planning Commission may revise the requirements if the plan review required for a zoning permit indicates that the specific nature of the overall development reasonably warrants the revisions.

(2) The Planning Commission may require the dedication of adequate public access ways not less than six (6) feet in width to publicly-owned land or waters and may require the preservation of all historic and archeologic sites, known or discovered on the parcel subject to development.

(3) No single retail or wholesale establishment within a Resort District may occupy more than seventy-five thousand (75,000) gross square feet in floor area. The gross square feet in floor area of any retail or wholesale establishment within eight hundred (800) feet of each other, regardless of whether they are attached or detached, shall be aggregated in cases where the stores:

(A) are engaged in the selling of similar or related goods, wares or merchandise and are operated under common management; or

(B) share check-out counters, storage areas, or warehouse facilities; or

(C) are owned, leased, possessed or otherwise controlled, in any manner, by the same individual(s) or business or non-business entity(ies), or

(D) otherwise operate as associated, integrated or cooperative business enterprises.

Sec. 8-5.4 Permits Required.

(a) No construction or other development for which standards are established in this Chapter shall be undertaken within any Resort District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Article 19, shall be required for the following activities:

(1) Class I Permit. A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District, and is not large enough to qualify for more than one (1) dwelling unit under the density permitted in the Resort District in which the parcel is located; and

(B) the construction or development does not require a use permit or a variance permit.

(2) Class II Permit. A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District, and is large enough to qualify for two (2) to ten (10) dwelling units under the density permitted in the Resort District in which the parcel is located; and

(B) the construction or development does not require a use permit or a variance permit.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel for which a variance permit is not required, where:

(A) the parcel is large enough to qualify for eleven (11) to twenty-five (25) dwelling units under the density permitted in the Resort District in which the parcel is located, whether or not the parcel is located in a Constraint District or Special Treatment District; or

(B) the construction or development consists of one (1) single family detached dwelling in which case a Class II Permit may be obtained unless the parcel is located in a Constraint District or a Special Treatment District; or

(C) the construction or development is such that a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) large enough to qualify for more than twenty-five (25) dwelling units whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or

(B) for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(5) To obtain any permit the applicant shall show compliance with the Standards established in this Section and shall submit a plot plan and other information as required by Sec. 8-4 6(d).

Sec. 8-5.5 Application To Resort Development In Other Districts.

All resort construction, development or use permitted by or in accordance with this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Section.

ARTICLE 6. COMMERCIAL DISTRICTS (C)

Sec. 8-6.1 Purpose.

(a) To designate areas suitable for commercial and public or private business activities distributed so as to supply goods and services to the public in a convenient and efficient manner.

(b) To relate commercial and business activities to established or projected transport, utility and community patterns so that they may contribute to the general health, safety and welfare of the public.

(c) To assure that commercial and business development and uses will not detract from the environmental qualities of the surrounding areas.

Sec. 8-6.2 Types Of Commercial Districts.

(a) There are two (2) Commercial Districts:

(1) Neighborhood Commercial. The official abbreviated designation for "Neighborhood Commercial" is "CN".

(2) General Commercial. The official abbreviated designation for "General Commercial" is "CG".

(b) Neighborhood Commercial shall include uses and services which are frequently required and utilized by residents of all ages and which can be compatibly located in close proximity to residential districts.

(c) General Commercial shall include uses and services which are less frequently used and which are normally supplemented by and dependent upon the aggregate activities of a central commercial center serving several residential neighborhoods and which are less compatible with the environmental qualities of residential districts.

Sec. 8-6.3 Development Standards For Commercial Development.

(a) Lot Size. Lot size shall be as follows:

(1) The minimum lot or parcel area which may be created in a Neighborhood Commercial District shall be six thousand (6,000) square feet.

(2) The minimum lot or parcel area which may be created in a General Commercial District shall be eight thousand five hundred (8,500) square feet.

(3) Any existing legal lot or parcel of record as of September 1, 1972 that is smaller than the required size may be developed for commercial use.

(4) Lot or parcel area shall be calculated in accordance with Sec. 8-4.6(b).

(b) Setback Requirements. Setback requirements shall be as follows:

(1) Minimum distances from property lines.

(A) The minimum distance of any building from the right-of-way line of a public or private street or the pavement line of a driveway or parking lot used by the public shall be five (5) feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be fifteen (15) feet.

(B) The minimum distance of any building to a side property line when the adjacent use district is commercial shall be zero. When the adjacent use district is other than commercial, the minimum distance to the property line shall be the same as that required for residential use.

(C) The minimum distance of any building to a rear property line when adjacent use district is commercial shall be zero. When the adjacent rear use district is other than commercial, the minimum distance to the rear property line shall be ten (10) feet

(c) **Minimum Distance Between Buildings.** The minimum distance between detached buildings on the same parcel shall be fifteen (15) feet for each story over two (2), or one-half (1/2) the total height of the highest building, whichever is greater.

(d) **Parcel Dimension Requirements.** No parcel shall be created unless:

(1) It has a minimum frontage on a public street of sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District;

(2) The average depth of the parcel is not greater than four (4) times its average width, and

(3) The minimum average width is sixty (60) feet in a Neighborhood Commercial District and one hundred (100) feet in a General Commercial District.

(e) **Driveways and Parking Areas.** Driveways and parking areas shall be as follows:

(1) The minimum driveway width in Commercial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.

(2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:

(A) No parking lot pavement edge may be located closer than five (5) feet from the right-of-way line of a public street;

(B) No part of parked vehicles shall protrude into that setback;

(C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the screening height shall be lowered to the standards as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.

(3) **Off-Street Parking.** The following requirements shall apply to commercial development in the Commercial District and any other district in which such uses are permitted or allowed.

(A) General retail sales and services where sales or business transactions normally involve the presence of consumers but do not establish capacity by seating: One (1) parking space for each three hundred (300) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, grocery stores, drug stores, clothing stores, gift and sundry stores, banks, personal and household services.

(B) Retail sales and services where the capacity is established by seating: One (1) parking space for each two hundred (200) square feet of gross floor space plus one (1) space for every three (3) employees, but not less than four (4) spaces shall be required. This category includes, but is not limited to, restaurants, bars, cabarets, barber and beauty shops.

(C) Offices and office buildings: One (1) parking space for every two hundred (200) square feet of net office space and waiting rooms or other spaces used by the public for the transaction of business or services, but not less than two (2) parking spaces shall be required. This category includes, but is not limited to, general business offices, medical and dental offices.

(D) Churches, sport arenas, auditoriums, theaters, assembly halls and the like: One (1) parking space for each eight (8) seats in principal assembly room.

(E) The Planning Director shall determine the distribution of requirements for any particular use or combination of uses and may increase parking requirements when particular uses or locations occur in areas where unusual traffic congestion or conditions exist or are projected.

(F) In cases where the provision of off- street parking to meet these requirements is not feasibly consistent with the parcel size or location, the applicant may be allowed to meet these requirements at any other location within two hundred (200) feet of the parcel where the use is proposed, provided that the requisite number of parking spaces at the location are under the control of the applicant and are devoted exclusively to parking uses in connection with the commercial development for which the application is made; and provided further, that a recorded easement or other interest is created in the land at the other location that assures permanent use of the other location for parking purposes.

(f) Height Limitations. Height limitations shall be as follows:

(1) No building within a General Commercial District shall exceed fifty (50) feet in height, measured from the ground level of the primary building entrance.

(2) No building within a Neighborhood Commercial District shall exceed thirty-five (35) feet in height measured from the ground level of the primary building entrance nor shall the building contain more than two (2) stories.

(g) Lot Coverage. Lot coverage shall be as follows.

(1) The amount of land coverage created, including buildings and pavement, shall not exceed eighty percent (80%) of the lot or parcel area within a Neighborhood Commercial District.

(2) The amount of land coverage created, including buildings and pavement, shall not exceed ninety percent (90%) of the lot or parcel area within a General Commercial District.

(3) No single retail or wholesale establishment within a General Commercial District or within a Neighborhood Commercial District may occupy more than seventy-five thousand (75,000) gross square feet in floor area. The gross square feet in floor area of any retail or wholesale establishment within eight hundred (800) feet of each other, regardless of whether they are attached or detached, shall be aggregated in cases where the stores:

(A) are engaged in the selling of similar or related goods, wares or merchandise and are operated under common management; or

(B) share check-out counters, storage areas, or warehouse facilities; or

(C) are owned, leased, possessed or otherwise controlled, in any manner, by the same individual(s) or business or non-business entity(ies); or

(D) otherwise operate as associated, integrated or cooperative business enterprises.

(4) All uncovered areas shall be landscaped with living plant material.

(b) **Waste Collection Areas.** Waste collection areas shall be enclosed.

(i) **Sewers.** All commercial development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(j) **Public Access.** The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

Sec. 8-6.4 Permits Required.

(a) No construction or other development for which standards are established in this Chapter shall be undertaken within any Commercial District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Section 8-3.1 shall be required for the following activities:

(1) **Class I Permit.** A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not larger than ten thousand (10,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(2) **Class II Permit.** A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is larger than ten thousand (10,000) square feet but smaller than twenty thousand (20,000) square feet; and

(B) the construction or development does not require a use permit or a variance permit.

(3) Class III Permit. A Class III Permit must be obtained for construction or development on a parcel where:

(A) the parcel is larger than twenty thousand (20,000) square feet but smaller than one (1) acre, whether or not the parcel is located within a Constraint District or a Special Treatment District, and the construction or development does not require a variance permit; or

(B) for construction or development on a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) one (1) acre or more, whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit or variance permit is required; or

(B) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Section and shall submit, where necessary, a plot plan as required by Sec. 8-4 6(d).

Sec. 8-6.5 Application To Commercial Development In Other Districts.

(a) All commercial construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article, with the following exceptions:

(1) Building heights shall conform to the Standards of the applicable Use District.

(2) Minimum Distances from property lines shall be the same as required of other development in the applicable Use District.

Sec. 8-6.6 Maximum Residential And Resort Densities Within Commercial Districts.

(a) **Neighborhood Commercial.** The allowable maximum residential density shall be the greater of the following:

(1) that permitted in an R-10 District;

(2) that permitted in any Residential District that adjoins the Neighborhood Commercial District in question.

(b) **General Commercial.** The allowable maximum densities shall be as follows:

(1) That permitted in an R-20 District.

(2) Hotels: That permitted in an RR-20 District.

(3) Motels: That permitted in an RR-10 District.

ARTICLE 7. INDUSTRIAL DISTRICTS (I)

Sec. 8-7.1 Purpose.

(a) To provide areas for the location of commercial, industrial, processing and manufacturing uses which are not compatible with those permissible activities and uses in the Commercial or Residential Districts.

(b) To regulate and control development, construction, organization or subdivision for those uses.

(c) To assure that uses which are potentially detrimental to the health, safety and welfare of the public have been located, developed or constructed to substantially eliminate their potential detrimental effects.

Sec. 8-7.2 Types Of Industrial Districts.

(a) There are two (2) Industrial Districts:

(1) Limited Industrial

(2) General Industrial

(b) Limited Industrial shall include uses which are generally in support of but not necessarily compatible with permissible uses in the Commercial District. These Districts shall normally be established within reasonable accessibility and convenience to General Commercial Districts and where there is adequate access to a major thoroughfare

(c) General Industrial shall include all business, industrial processing, or storage uses that are generally considered offensive to the senses or pose some potential threat or hazard to health, safety and welfare. This District shall not be located adjacent to residential or resort districts unless there is physical or geographical protection from those characteristics of the uses considered to be offensive or hazardous.

Sec. 8-7.3 Standards For Industrial Development, Subdivision Or Construction.

(a) Lot size. Lot size shall be as follows:

(1) The minimum lot area that may be created or developed in a Limited Industrial District shall be ten thousand (10,000) square feet.

(2) The minimum lot area that may be created or developed in a General Industrial District shall be ten thousand (10,000) square feet.

(3) Any existing legal lot or parcel of record as of August 17, 1972, that is smaller than the required size, may be developed for industrial use.

(4) Lot or parcel area shall be calculated in accordance with Sec. 8-4.6(b).

(b) Setback Requirements. Unless as otherwise specified under paragraph (3) below, setback requirements shall be as follows:

(1) Minimum distance from property lines in a Limited Industrial District:

(A) The minimum distance of any building from the right-of-way line of a public or private street shall be ten (10) feet unless the building is entered from that side by motor vehicles in which case the minimum distance shall be fifteen (15) feet.

(B) The minimum distance from any building to a side property line when the adjacent use district is industrial or commercial shall be zero. When the adjacent use district is other than industrial or commercial, the minimum distance to the side property line shall be ten (10) feet.

(C) The minimum distance of any building to a rear property line when the adjacent use district is industrial or commercial shall be zero. When the adjacent rear use district is other than industrial or commercial, the minimum distance to the rear property line shall be ten (10) feet.

(2) Minimum distances from property lines in a General Industrial District:

(A) Minimum distance of any building from the right-of-way of a public or private street shall be fifteen (15) feet.

(B) Minimum distance of any building from a side property line when the adjacent use district is industrial shall be zero. When the adjacent use district is other than industrial, the minimum distance to the side property line shall be fifteen (15) feet.

(C) Minimum distance of any building to a rear property line shall be fifteen (15) feet.

(3) The Planning Director may impose greater setback requirements because of topographic, drainage, air, landscaping, or other health, safety and welfare conditions.

(c) Minimum Distance Between Buildings. The minimum distance between detached buildings on the same parcel shall be ten (10) feet.

(d) Parcel Dimension Requirements. No parcel shall be created unless:

(1) It has a minimum frontage on a public street of seventy-five (75) feet in a Limited Industrial District and one hundred (100) feet in a General Industrial District;

(2) The average depth of the parcel is not greater than four (4) times its average width in either District; and

(3) The minimum average width is seventy-five (75) feet in a Limited Industrial and one hundred (100) feet in a General Industrial district.

(e) Driveways and Parking Areas. Driveways and parking areas shall be as follows:

(1) The minimum driveway width in Industrial Districts shall be twenty (20) feet if there is two-way traffic and fourteen (14) feet if there is one-way traffic.

(2) Parking areas shall conform to standards of design and construction established by the County Engineer, provided that:

(A) No parking lot pavement edge may be located closer than five (5) feet from the right-of-way line of a public street;

(B) No part of parked vehicles shall protrude into that setback;

(C) All parking lots shall be screened from public thoroughfares by a fence, wall or plant screen not less than four (4) feet high, provided that the screening height shall be lowered to the standard as required under the County Traffic Code or to the standards of the Department of Public Works, at street corners, driveway intersections, and other locations. The setback area between the parking area paving and the public right-of-way shall be planted and shall not be paved.

(3) Paved off-street parking shall be provided as follows:

(A) One (1) parking stall for each three (3) employees, or one (1) parking stall for every five hundred (500) square feet of gross floor area of the buildings where the number of employees is unknown;

(B) One (1) parking stall designated for visitors for each two hundred (200) square feet of office space; and

(C) Parking spaces for trucks, equipment, or other vehicles used in the conduct of the business.

(D) The Planning Director shall determine the distribution of requirements for any particular use or combination of uses and may increase parking requirements when particular uses or locations occur in areas where unusual traffic congestion or conditions exist or are projected.

(f) Building Height. No building or portion thereof shall exceed thirty (30) feet in height in a Limited Industrial District or fifty (50) feet in height in a General Industrial District unless it can be demonstrated that a greater height is essential to the functioning of the development and that no reasonable alternative exists.

(g) Sewers. All industrial development accessible to a public sewer shall provide for adequate sanitary sewer facilities in accordance with standards established by the Department of Public Works and the State Department of Health. In developments not accessible to public sewers, a private sewage disposal system shall be provided that meets the requirements of the Department of Public Works and the requirements of Chapter 57 of the Public Health Regulations of the State Department of Health.

(h) Environmental Impact Statement. The Planning Director, the Planning Commission, or the County Engineer may require an Environmental Impact Statement to be submitted prior to the issuance of any zoning, use or variance permit when there is any operation, material or activity which constitutes a potential threat to public health, safety and welfare or to the quality of the environment. When requiring such a statement the precise nature of the items that the Environmental Impact Statement shall cover shall be indicated.

(i) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites known or discovered on the parcel subject to development.

(j) No single retail or wholesale establishment within an Industrial District may occupy more than seventy-five thousand (75,000) gross square feet in floor area. The gross square feet in floor area of any retail or wholesale establishment within eight hundred (800) feet of each other, regardless of whether they are attached or detached, shall be aggregated in cases where the stores:

(1) are engaged in the selling of similar or related goods, wares or merchandise and are operated under common management; or

(2) share check-out counters, storage areas, or warehouse facilities; or

(3) are owned, leased, possessed or otherwise controlled, in any manner, by the same individual(s) or business or non business entity(ies); or

(4) otherwise operate as associated, integrated or cooperative business enterprises.

Sec. 8-7.4 Permits Required.

(a) No construction or other development for which Standards are established in this Chapter shall be undertaken within any Industrial District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Section 8-3.1, shall be required for the following activities:

(1) **Class I Permit.** A Class I Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint or a Special Treatment District and is not larger than fifteen thousand (15,000) square feet; and

(B) the construction or development does not require a use permit, a variance permit or an environmental impact statement.

(2) **Class II Permit.** A Class II Permit must be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is larger than fifteen thousand (15,000) square feet but not larger than twenty-five thousand (25,000) square feet; and

(B) the construction or development does not require a use permit, variance permit or an environmental impact statement.

(3) **Class III Permit.** A Class III Permit must be obtained for construction or development on a parcel where:

(A) the parcel is larger than twenty-five thousand (25,000) square feet but not larger than one (1) acre, whether or not the parcel is located in a Constraint District or a Special Treatment District, and the construction or development does not require a variance permit or an environmental impact statement, or

(B) for construction or development on a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) **Class IV Permit.** A Class IV Permit must be obtained for construction or development on a parcel that is:

(A) larger than one (1) acre, whether or not the parcel is located in a Constraint District or Special Treatment District, and whether or not a use permit, variance permit or environmental impact statement is required, or

(B) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance permit or an environmental impact statement is required.

(5) To obtain any permit the applicant shall show compliance with the Standards established in this Section and shall submit a plot plan and other information as required by Sec. 8-4.6(d).

Sec. 8-7.5 Application To Industrial Development In Other Districts.

All industrial construction, development or use permitted by, or in accordance with this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article.

ARTICLE 8. AGRICULTURE DISTRICTS (A)

Sec. 8-8.1 Purpose.

The Agriculture District establishes means by which land needs for existing and potential agriculture can be both protected and accommodated, while providing the opportunity for a wider range of the population to become involved in agriculture by allowing the creation of a reasonable supply of various sized parcels.

(a) To protect the agriculture potential of lands within the County of Kaua'i to insure a resource base adequate to meet the needs and activities of the present and future.

(b) To assure a reasonable relationship between the availability of agriculture lands for various agriculture uses and the feasibility of those uses

(c) To limit and control the dispersal of residential and urban use within agriculture lands.

Sec. 8-8.2 Agriculture District Development Standards

(a) Subject to the density, parcel and other requirements of Sec. 8-8.3 and Sec. 8-8.2(c), the development standards applicable in an Agriculture District shall be the same as those established in Secs. 8-4.3 and 8-4.5 of this Chapter, except that:

(1) The maximum height of any building, other than one intended primarily for residential use, shall be fifty (50) feet.

(b) **Public Access** The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly-owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

(c) Permitted residential densities shall be calculated as follows:

(1) One (1) dwelling unit for each parcel one (1) acre or larger.

(2) One (1) additional dwelling unit for each additional three (3) acres in the same parcel, provided that no more than five (5) dwelling units may be developed on any one (1) parcel.

(3) A parcel or contiguous parcels in common ownership of record existing prior to or on September 1, 1972, which is smaller than one (1) acre, may develop one (1) dwelling unit.

Sec. 8-8.3 Limitations on Subdivisions of Parcels in Agriculture Districts.

(a) Purpose:

(1) To limit, retard and control subdivision of agriculture land that will destroy agriculture stability and potential.

(2) To avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses.

(3) To establish and maintain a proportionate mix of parcel sizes to accommodate optimum sizes for existing or potential agricultural uses.

(4) To establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by the subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels and to maintain and provide smaller parcels of various sizes for agricultural uses that can be carried out most efficiently on smaller parcels.

(b) Method of Calculating Allowable Subdivision of Agriculture Lands.

(1) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, no larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.

(B) parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(C) parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.

(D) parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size

(E) parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(2) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(A) a maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.

(B) an additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.

(C) the balance of the parcel area, shall not be subdivided.

(c) Limitations on Resubdivision of any Parcel in an Agriculture District Subsequent to September 1, 1972. Except as provided herein, no parcel resulting from a subdivision approved after September 1, 1972, shall be resubdivided unless the parcel is transferred to the Urban or Rural Districts under the provisions of the State Land Use Law and is transferred to a use district other than Agriculture or Open, under the provisions of this Ordinance. The restriction in this subsection shall not apply to any lot resulting from:

(1) Subdivision requested by any governmental agency;

(2) Subdivision resulting from the construction of public improvements by governmental action;

(3) Subdivision requested for public utility purposes;

(4) Consolidation and resubdivision of properties where no additional lots or parcels are created provided that the resulting properties would not permit greater density.

However, any parcel of record thirty acres or less existing prior to August of 1972 and subsequently subdivided which has not maximized density as prescribed in Subsection 8-8.3(b)(1), may be further subdivided in accordance with said subsection.

(d) **Automatic Review of the Provisions of This Section.** The provisions of this Article and the boundaries of the Agriculture District shall be comprehensively reviewed by the Planning Commission in accordance with the requirements and procedures of Sec. 8-8.3(d) no later than two (2) years after September 1, 1972 and every succeeding five (5) years thereafter.

(e) **Minimum lot size requirements**

(1) The minimum average lot width shall be one hundred fifty (150) feet.

(2) The average length of any lot shall not be greater than four (4) times its width.

Sec. 8-8.4 Permits Required.

No construction or other development for which standards are established in this Chapter shall be undertaken within any Agriculture District except in accordance with a valid zoning permit. The following zoning permits, in accordance with Section 8-3.1, shall be required for the following activities:

(1) A Class I Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is not large enough to qualify for more than one (1) dwelling unit under the density provisions of this Article; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(2) Class II Permit A Class II Permit shall be obtained for construction or development on a parcel where:

(A) the parcel is not located in a Constraint District or a Special Treatment District and is qualified for more than one (1) dwelling unit; and

(B) the construction or development does not require a Use Permit or a Variance Permit.

(3) Class III Permit. A Class III Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development of a parcel for which a Class I or Class II Permit would otherwise be obtainable except that the parcel is located in a Constraint District or a Special Treatment District.

(4) Class IV Permit. A Class IV Permit shall be obtained for construction or development on a parcel where:

(A) for construction or development for which a Class I, II, or III Permit would otherwise be obtainable except that a variance or a use permit is required.

(5) To obtain any permit, the applicant shall show compliance with the Standards established in this Article and shall submit a plot plan and other information as required by Sec. 8-4.6(d).

Sec. 8-8.5 Application To Agricultural Development In Other Districts.

All agricultural construction, development or use permitted by, or in accordance with, this Chapter in any other Use District shall be carried out in accordance with the Standards established in this Article.

Sec.8-8.6 Special Standards For Issuance of Farm Worker Housing Use Permits.

(a) For the purposes of this Section the following definitions shall apply:

“Commercial farm” means an operation or enterprise in operation for at least one year whose owner has filed a Schedule F form with federal income tax filings with the Internal Revenue Service. The core function of the commercial farm shall be:

(1) the commercial cultivation of fruits, vegetables, flowers, foliage, crops for bioenergy and forage (but excluding timber and turf farms); or

(2) the raising of livestock, including but not limited to, meat and dairy cattle, pigs, goats, sheep, poultry, bees, fish, or other animal or aquatic life that are propagated for commercial purposes (but excluding the husbandry of horses for recreational or hobby purposes unless the farm complies with the guidelines set forth in §RP-2-3(a)(1) of the County of

Kauai's Department of Finance Real Property Tax Division's Agricultural Dedication Program Rules as of April, 2010).

"Exclusive residence" means the real property that is the person's only home or residence. If the person has more than one home or residence, then the person does not have an exclusive residence.

"Farm worker" is a farm owner, employee, contract worker or unpaid intern in a program that qualifies under the Fair Labor Standards Act who works no less than nineteen (19) hours per week in farm-related operations on a commercial farm. For the purposes of farm worker housing, a commercial farm owner may qualify as a farm worker only when he can demonstrate the following:

- (1) that the proposed farm worker housing will be the farm owner's exclusive residence, and
- (2) that the affected lot has been subject to a condominium property regime (C.P.R.) and the respective C.P.R. limited common element does not qualify for any allowable permanent density.

"Farm worker housing" means the use of a building or portion thereof designed and used exclusively for the housing of farm workers who actively and currently farm on the land upon which the housing is situated. Farm worker housing may also be used to house the immediate family members of the respective farm worker.

(b) the Director shall not deem an application for a farm worker housing use permit complete unless the applicant can demonstrate that:

- (1) the commercial farm has generated at least thirty five thousand dollars (\$35,000.00) of gross sales of agricultural product(s) per year for the preceding (2) two consecutive years for each for each farm worker housing structure, as shown by State general excise tax forms and Internal Revenue Service Schedule F forms;
- (2) the owner has dedicated the subject lot or C.P.R. limited common element or portion thereof upon which the farm worker housing will be located to agricultural use pursuant to Section 5A-9.1 of the Kauai County Code as of August 16, 2010; and
- (3) the owner or lessee of the subject lot or C.P.R. limited common element or portion thereof upon which the farm worker housing is being proposed has provided a commercial farm plan with staffing needs outlined to the Planning Department that demonstrates the feasibility of the respective farm's commercial agricultural production.

(c) The owner of a condominium property regime or a limited common element in a condominium property regime may not apply for farm worker housing unless, as of August 16, 2010:

(1) the condominium property regime has been registered with and received an effective date for the final public report from the Real Estate Commission of the State of Hawaii and the declaration has not been amended subsequent to August 16, 2010; and

(2) the subject CPR limited common element or portion thereof has been dedicated to agricultural use pursuant to Section 5A-9.1 of the Kauai County Code.

(d) No use permit for farm worker housing shall be approved unless:

(1) The application meets the use permit standards established under Section 8-3.2(c) of the Kauai County Code;

(2) The Planning Commission finds that based upon the type of agricultural activity, size of the commercial farm, and farming methodologies, the applicant has demonstrated a clear and compelling need for farm worker housing and the number and size of structures applied for; and

(3) The subject lot's maximum residential densities, as established in Section 8-3.2(c), have been permitted and constructed. If the applicant can demonstrate that the subject lot has been subjected to a condominium property regime (C.P.R.) and that the maximum allowable residential density for the applicant's respective C.P.R. limited common element has been permitted and constructed, the Planning Commission may waive the requirements of this provision.

(e) In addition to conditions of approval that the Planning Commission may impose pursuant to Section 8-3.2(e)(2), a use permit for farm worker housing shall be subject to the following conditions:

(1) The farm worker housing shall be used exclusively for the housing of farm workers and their immediate family;

(2) The Planning Commission may issue a maximum of one (1) farm worker housing use permit per lot or, if the lot has been developed as a C.P.R., per C.P.R. limited common element. Each permit may allow the construction of a maximum of three (3) farm worker housing structures. The total floor area of all structures combined shall be limited to 1,500 square feet and no structure may exceed 1,200 square feet of floor area. For the purposes of farm worker housing, the total floor area shall mean the sum of the horizontal areas of each floor of a building, measured from the interior faces

of the exterior walls. The total floor area shall include enclosed attached accessory structures such as garages or storage areas, but it shall exclude unenclosed attached structures such as breezeways, lanais, or porches:

(3) The structures shall have post and pier foundations. No concrete slabs shall be used in constructing the farm worker housing;

(4) The structures shall be located on a plot plan approved by the Planning Commission; and

(5) The owner or lessee of the subject lot or C.P.R. limited common element or portion thereof shall not charge the farm workers or their immediate family members for rent or electricity.

(f) The land upon which the farm worker housing is located shall not be subdivided to create separate lots for the farm worker housing and the commercial farm. A farm worker housing use permit shall be subject to revocation if the farm worker housing and the commercial farm are designated as limited common elements of separate condominium units.

(g) The owner of farm worker housing shall annually certify to the Director of Planning that the Farm Worker Housing meets requirements and conditions set forth in Sections 8-8.6 (a) through (f). If any interest in the subject lot or C.P.R. limited common element or portion thereof that is the subject of the use permit is transferred, conveyed or sold, the successor in interest shall immediately notify the Director of Planning of such change in ownership.

(h) Prior to the issuance of the building permit, the applicant shall demonstrate to the satisfaction of the Planning Director that the applicant has recorded in the Bureau of Conveyances or the Land Court, as the case may be, the requirements and conditions set forth in Sections 8-8.6 (g) through (j) respectively.

ARTICLE 9. OPEN DISTRICTS (O)

Sec. 8-9.1 Purpose.

The Open District is established and regulated to create and maintain an adequate and functional amount of predominantly open land to provide for the recreational and aesthetic needs of the community or to provide for the effective functioning of land, air, water, plant and animal systems or communities.

(a) To preserve, maintain or improve the essential characteristics of land and water areas that are:

(1) of significant value to the public as scenic or recreational resources;

(2) important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;

(3) necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements

(h) To preserve, maintain or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.

(c) To define and regulate use and development within areas which may be potentially hazardous.

(d) To include areas indicated on the County General Plan as open or as parks.

(e) To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment - Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain in either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 16-4, Hawaii Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without express provision to the contrary. The Council is hereby authorized to make such factual determinations as necessary incident to this section.

(f) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public.

Sec. 8-9.2 Open District Development Standards

(a) Land Coverage.

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten per cent (10%) of the lot or parcel area.

(2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the ten per cent (10%) land coverage limitation.

(3) At least three thousand (3,000) square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972.

(b) Residential Densities.

(1) Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission.

(2) No more than one (1) single family detached farm dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agricultural" by the State Land Use Commission, and provided that no more than five (5) dwelling units may be developed on any one parcel.

(3) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%).

(4) Provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.

(5) Existing Structures, Permits and Condominium Property Regimes (CPRs).

(A) Any lot of record which has a valid zoning permit(s) for more than five (5) units prior to August 19, 2010, shall be allowed to build to the density for which there are permits.

(B) Any lot of record which has been submitted to a Condominium Property Regime ("CPR") that has been registered with the Real Estate Commission prior to August 19, 2010, shall be allowed to build to the density in place at the time of the registration of the CPR with the Real Estate Commission.

(C) Any dwelling unit constructed under these provisions or lawfully existing prior to May 21, 2010 may be replaced, expanded,

altered or enlarged in accordance with all other applicable provisions of this Chapter.

(c) Subdivision.

(1) No parcel or lot shall be created which is less than three (3) acres in size within an area designated as "Urban" or "Rural" by the State Land Use Commission, or less than five (5) acres in size within an area designated as "Agriculture" by the State Land Use Commission, except within an "Urban" area a lot or parcel may be created which is one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten per cent (10%).

(2) No parcel or lot shall be subdivided when the improvements on the parcel meet or exceed the density and land coverage requirements of this Article.

(3) No portion of any parcel previously used as the basis for the calculation of allowable density or subdivision in any other District shall subsequently be subdivided or used as the basis for any other density or land coverage calculation.

(4) For contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, within an area designated as "Agricultural" by the State Land Use Commission the following standards shall apply. Parcel area shall be calculated in accordance with Section 8-1.4(d):

(A) Parcels not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.

(B) Parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(C) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(i) A maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.

(ii) An additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may

be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.

(iii) The balance of the parcel area shall not be subdivided.

(5) Standards for Subdivision on State Land Use District Agricultural. Any subdivision on land in State Land Use Commission Agricultural District shall be consistent with the provisions of H.R.S. Chapter 205 and Article 8 of Chapter 8 of Title IV of the Kaua'i County Code.

(d) Development standards. Subject to the density and subdivision restrictions in Sec. 8-9.2(c), the development requirements for use development or subdivision within an Open District shall be:

(1) The same as the requirements for the District in which the proposed use would be permitted under other provisions of this Chapter.

(2) The same as the requirements of Secs. 8-4.4 and 8-4.5 of the Residential District if no use is indicated or if the use proposed is not readily assignable to any other Use District.

(3) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly owned land or waters and may require the preservation of all historic and archaeological sites, known or discovered on the parcel subject to development.

Sec. 8-9.3 Calculation Of Densities And Land Coverage.

(a) The area in connection with which the permissible densities shall be calculated shall consist of that lot or lots, or parcel owned or controlled by the applicant designated in the permit application as part of the land development for which the permit is sought.

(b) When an area is included in the Open District because it is within the Constraint District, the precise boundary of the Open District shall be established to reflect the physical or ecological considerations upon which the particular Constraint District is based, regardless of lot or parcel boundaries. In those cases, that portion of the lot or parcel included in Open District may be included in any calculation of permitted densities and land coverage to be carried out on that portion of the parcel that is not within the Open District, provided that the total amount of density and land coverage shall be no more than one and one-half (1-1/2) that which would be permissible if the Open District portion of the lot or parcel was excluded from the calculation.

(c) **Open Space.** When a subdivision meeting the density and parcel area requirements of Sec. 8-4.4, Sec. 8-8.4, Sec. 8-8.2(c), Sec. 8-9.2(b), Sec. 8-9.2(c), and Sec. 8-8.6 results in the designation of areas within the subdivision for open space use, the areas shall be designated on the final subdivision map and Zoning map as open space, and, in that case, upon approval of the final subdivision map the areas shall automatically be transferred to the "Open District, Special Treatment - Open Space" for zoning purposes.

Sec. 8-9.4 Permits Required.

(a) Where a parcel is adjacent to, or within one thousand (1,000) yards of, a Use District or Districts other than an Open District, no use permit shall be issued for uses and structures on parcels which are not generally permitted, or permitted under a use permit, in all adjacent or proximate Districts.

(b) No construction or other development for which Standards are established in this Chapter shall be undertaken within any Open District except in accordance with a valid zoning permit. The requirements for zoning permits shall be the same as those established in Sec. 8-8.4 of this Chapter. Where no definite Class Permit is specified for any use application, Class II Zoning Permit procedure shall apply.

Sec. 8-9.5 Review Of Open District Designations In Particular Cases.

In some cases, lands have been included in the Open District that are designated for Residential or other use in the County General Plan. Such Open District zoning reflects a judgment that such lands are not now needed for the uses indicated in the General Plan. To assure timely consideration of whether such need has arisen, the Planning Commission shall review the status of such lands no later than five (5) years after September 1, 1972, and every succeeding five (5) years thereafter.

ARTICLE 10. PROJECT DEVELOPMENT

Sec. 8-10.1 Purpose.

(a) To facilitate, by a use permit process, comprehensive site planning and design productive of optimum adaptation of development of significant land areas under the ownership of one (1) person or cooperatively joined for the purpose of development.

(b) To provide a process that will allow diversification in the relationships of various uses, buildings, structures, open spaces and yards, building heights, lot

sizes, and streets and utility systems in planning and designing use facilities while maintaining the intent of this Chapter.

(c) To assure, in proper cases, that the complete development of a parcel has been planned prior to the development or subdivision of any portion of the parcel so that public service, transport, and utility systems can be effectively anticipated and coordinated.

Sec. 8-10.2 Lands That May Be Included In A Project Development.

(a) Any land area designated as Urban District by the State Land Use Commission may be developed in accordance with a use permit issued pursuant to this Article if the land area is under one (1) ownership or there is an agreement among several owners for the purposes of cooperative or joint development, and the land area is:

(1) in excess of one (1) acre in a Commercial, Resort, or Industrial Use District; or

(2) is large enough to qualify for more than ten (10) dwelling units in any Residential District, Open District, or Agriculture District.

Sec. 8-10.3 Uses, Structures And Development Which May Be Permitted.

Any use, structure or development that is permitted in the Use District in which the land of the applicant is located, and any other use, structure or development subordinate or in support of, those uses may be allowed if it is demonstrated that the subordinate or supportive use, structure or development is:

(1) compatible and complementary to the generally permitted uses and to public health, safety and welfare; and

(2) compatible and complementary to uses on lands adjacent to the project development site and to uses in the general vicinity; and will not create conditions that overload existing public transport systems, utility systems or other public facilities.

Sec. 8-10.4 Requirements For Project Development Use Permits.

(a) The applicant shall submit drawings and plans comprising a general development plan covering the entire area of the parcel to contain the project development that show: uses, dimensions and locations of proposed structures; widths, alignments and improvements of proposed streets, pedestrian and drainage ways; how the property could be divided for individual parcel sale; parking areas; public uses; landscaping and open spaces; a schedule of development; architectural drawings demonstrating the design and character of the proposed buildings and

uses; and any other information or plans deemed necessary by the Planning Director.

(b) The applicant shall substantially commence construction of the project development within one (1) year from the date of full approval, and shall demonstrate that the project development will be completed within the schedule furnished with the application.

(c) The applicant shall demonstrate, and the Planning Commission shall find, that the proposed project development substantially conforms to the intent of the General Plan.

(d) The Planning Commission shall find that the project development will create an environment of sustained desirability and stability, shall be compatible with the character of the surrounding neighborhood, and shall result in an intensity of land coverage and density of dwelling units no higher than are permitted in the Use District in which the project development is to be located. The Planning Commission may approve a project development containing residential uses, at a density higher than permitted in the District in which the project development is to be located, if the residences to be constructed will be leased or sold at prices that will make them available to persons of lower income. In that case, the applicant shall establish that the residential construction is being undertaken under a Federal or State subsidized housing program designed to produce housing for lower income persons.

(e) A permit may not be granted for any commercial development which will create any substantial traffic congestion, will interfere with any projected public improvements, and which does not include adequate provisions for entrances and exits, internal traffic and parking, or will create adverse effects upon the adjacent and surrounding existing or prospective development.

(f) All industrial developments included in a project development shall be in conformity with performance standards established by the Department of Public Works, shall constitute an efficient and well organized development with adequate provisions for freight service and necessary storage, and will not create adverse effects upon adjacent and surrounding existing or prospective development.

(g) The applicant shall demonstrate and the Planning Commission shall find that the development is of a harmonious, integrated whole and that the contemplated arrangements or uses justify the application or regulations and requirements differing from those ordinarily applicable within the district where the project development is to be located.

Sec. 8-10.5 Permits Required.

A project development may only be undertaken in accordance with a Class IV Zoning Permit. The permit may be issued by the Planning Commission if it determines that the requirements of this Article have been met even though the development thus permitted does not satisfy all the requirements applicable in the Use District in which the project development is to be located.

Sec. 8-10.6 Joint Development Of Two Or More Abutting Lots.

(a) **Application.** This Section shall be applicable in all zoning districts.

(b) **Joint Development: When Prohibited.** A joint development is prohibited when the owner of abutting lots is the same person.

(c) **Application For Joint Development.** An applicant who desires a joint development over abutting lots without consolidating the lots may apply for a Use permit to undertake a joint development. For the purposes of this Section, in the event leasehold interests are involved, the minimum term of the leasehold interests remaining on a lease shall be for forty (40) years.

(d) **Accompanying Documents.**

(1) Together with the application for a Use permit the applicant shall submit a draft of an agreement describing the joint development and also a plot plan showing the location of proposed improvements on the lots. The agreement shall contain a covenant of the owners or lessees to maintain the development in conformity with all zoning regulations and that any conflicting claims or differences among the owners, lessees or developers shall not affect the right of the County to enforce all zoning and other County regulations so long as the structures constructed under the agreement are in existence.

(2) In the event the proposed improvements are to be constructed over abutting lots, then the agreement shall contain provisions respecting the removal or continued use of the improvements at the termination of the agreement.

(3) The agreement shall contain a covenant that at the termination of the joint development agreement the uses and improvements within each lot shall be made to be in conformity with all requirements of the Comprehensive Zoning Ordinance.

(4) The covenants mentioned in this subsection shall be covenants which shall run with the land.

(e) **Action on Application.** If the Planning Commission finds that the joint development is reasonable, logical and consistent with the zoning regulations pertinent to the area, it may issue the Use permit subject to the condition that the agreement mentioned in subsection (d) of this Section be executed in final form, filed with the Planning Department and registered or recorded in the appropriate records office by the applicant. The owner's or lessee's agreement shall be subject to the approval of the County Attorney. No Building permit shall be issued until the Planning Director has certified to the Building Division that the required conditions have been satisfied. The Planning Commission may impose other conditions relating to the proposed development as may be consistent with the Comprehensive Zoning Ordinance.

ARTICLE 11. SPECIAL TREATMENT DISTRICTS (ST)

Sec. 8-11.1 Purpose.

The Special Treatment District specifies the additional performance required when critical or valuable social or aesthetic characteristics of the environment or community exist in the same area as a parcel where particular functions or uses may be developed.

(a) To designate and guide development of County areas which because of unique or critical cultural, physical or locational characteristics have particular significance or value to the general public.

(b) To insure that development within those areas recognize, preserve, maintain and contribute to the enhancement of those characteristics which are of particular significance or value to the general public.

(c) Any or all of these districts may overlap any Use Districts, creating accumulated regulations which more nearly relate to the conditions of the specific location where the development or use may occur.

Sec. 8-11.2 Types Of Special Treatment Districts.

(a) There are four (4) Special Treatment Districts as follows:

(1) **Public Facilities (ST-P).** All public and quasi-public facilities, other than commercial, including schools, churches, cemeteries, hospitals, libraries, police and fire stations, government buildings, auditoriums, stadiums, and gymnasiums, which are used by the general public or which tend to serve as gathering places for the general public; and those areas which because of their unique locations are specially suited for such public and quasi-public uses

(2) **Cultural/Historic (ST-C)** Communities and land or water areas which have a particular and unique value to the general public because of significant historic background, structures, or land forms.

(3) **Scenic/Ecologic Resources (ST-R)**. Land and water areas which have unique natural forms, biologic systems, or aesthetic characteristics which are of particular significance and value to the general public.

(4) **Open Space (ST-O)**. Areas which, pursuant to Article 9 ("Open Districts"), have been designated as "open space" areas.

Sec. 8-11.3 Generally Permitted Uses, Structures And Development.

All uses, structures, or development shall require a Use Permit, except repairs or modifications of land and existing structures that do not substantially change the exterior form or appearance of three (3) dimensional structures or land; provided that no uses, structures, or development shall be allowed in Special Treatment-Open Space Districts without express provision to the contrary. In addition, such repairs or modifications do not require a Zoning Permit.

Sec. 8-11.4 Uses, Structures And Development Requiring A Use Permit.

(a) Any use, structure or development permitted with or without a Use Permit in the underlying Use District in which the parcel or lot is located that is consistent with an approved plan for development in accordance with Sec. 8-11.5.

(b) Repairs or modifications of land and existing structures that substantially change the exterior form or appearance of the structures or land in a manner inconsistent with the surrounding area within the Special Treatment District.

(c) No uses, structures, or development shall be allowed by Use Permit in Special Treatment-Open Space Districts without express provision to the contrary.

Sec. 8-11.5 Applications For Use Permits.

(a) The procedures are in addition to those established in Article 3

(b) Before making an application, the applicant shall be informed of the particular reasons for the establishment of the Special Treatment District in which the applicant's land is located.

(c) Applications shall be accompanied by plans and three (3) dimensional drawings or models which clearly indicate the relation of the proposed development to other uses and structures within the Special Treatment District and the ways in which the proposed development is consistent with the reasons for the establishment of the District. Plans shall indicate the location of all existing and

proposed topography, buildings, walks, driveways, and utilities and plant material within the boundaries of the applicant's parcel and the existing or proposed streets, sidewalks, driveways, trees, buildings, and topography on adjacent lands as required by the Planning Director, but no less than two hundred (200) feet from property lines of the parcel which abut a public thoroughfare, park or facility and one hundred (100) feet from the property lines of the parcel which abut privately owned property. Aerial photography may be utilized to meet these requirements if approved by the Planning Director.

(d) In addition to the foregoing, the applicant may be required to provide:

(1) Cross sections, elevations, perspectives or models of any of the areas defined in this Article in order to illustrate the proposed development's three (3) dimensional relationship to surrounding areas;

(2) Information concerning color, form, mass or shape of the structures in the proposed development and concerning the proposed development's impact on environmental characteristics such as sun and shadow, wind, noise, ecology, traffic and visual appearance; and

(3) Information concerning the impact of the proposed development on public services or utilities and social and economic structure or cultural characteristics.

(e) The Planning Director may waive any of the requirements established in this Section for proposals involving parcels of less than one (1) acre in the Residential, Agriculture, or Open Districts, except in the Special Treatment-Open Space District, or less than ten thousand (10,000) square feet in the Commercial or Industrial Districts.

Sec. 8-11.6 Special Planning Areas.

(a) The Planning Commission may formulate Development Plans for any Special Treatment District or for any regional or subregional areas which are of particular county, state or federal value because of unique physical, ecologic or cultural characteristics or are determined to be critical areas of concern to the general economic, social or physical development of the County.

(b) The District or areas shall be designated as Special Planning Areas. The boundaries of the areas shall be established by the Planning Commission and recorded on the zoning maps.

(c) Development Plans for Special Planning Areas shall include, whenever appropriate and practical, the following:

(1) A review of existing physical characteristics, including public and private improvements, ownership, use and factors concerning geographic, ecologic, scenic, and resources features;

(2) A review of the social, economic, cultural and historic characteristics of the area;

(3) A statement concerning community goals, values, and objectives and the methods for involving the community in the planning process;

(4) A statement of the goals and objectives of the Development Plan and their relationship to the goals and objectives established in the General Plan, and an analysis of the specific problems inhibiting the accomplishment of the goals and objectives based on an analysis of existing conditions;

(5) A program of specific activities, improvements and modifications necessary to accomplish the stated goals and objectives;

(6) A physical development plan at scale of detail appropriate to the existing conditions and to feasible methods of implementation, that indicates the location and nature of programmed activities and improvements, including:

(A) housing by density and type of dwelling units;

(B) transportation and circulation by type, including pedestrian, bicycle, parking and related facilities;

(C) recreation and open space by activity and function;

(D) agricultural uses and structures;

(E) commercial, industrial and resort uses and structures.

(7) The establishment of specific subdivision and development criteria, including setbacks, heights, permitted uses, and other design standards necessary for the implementation of the physical plan. The criteria may be more detailed than, or may vary from the requirements of the Use, Special Treatment and Constraint Districts within which a Special Planning Area has been located.

(8) A phasing and action priority program in four (4) five (5)-year increments with an Estimated Capital Improvement Program decreasing in detail with each increment.

(d) The Planning Department shall review each Development Plan formulated under this Article no less than every five (5) years after its adoption and shall revise and update all plan elements consistent with the conditions that prevail at the time of the review.

(e) Upon adoption by the Council, the provisions of the Development Plan shall constitute regulations and shall supersede conflicting regulations applicable in the Use, Special Treatment and Constraint Districts within which the Special Planning Area is located. Regulations and requirements not so superseded shall remain in force.

(f) After the Council adopts a Development Plan for a Special Planning Area, no development, use or activity may be undertaken in the area that is contrary to the Development Plan.

Sec. 8-11.7 Scenic Corridors And Points.

(a) **Purpose.** To preserve, maintain and improve visual access and quality from major public thoroughfares or areas of public value and to define criteria and procedures necessary to achieve those ends.

(b) **Land Included.** Scenic corridors shall be as indicated on the General Plan and the Zoning maps and shall include by reference all land and water areas visible from the center line of the corridor or the scenic point, or to a lesser distance as the Planning Director shall determine.

(c) **Requirements of Development and Structures Within a Scenic Corridor.**

(1) The Planning Director may require the applicant to furnish graphic or pictorial material sufficient to indicate the nature of the proposed use, development or structure and its relation to the view from that portion of the corridor or point which may be affected.

(2) The Planning Director or his designee shall ascertain whether the proposed development, structure, or use proposed will block, disrupt, or significantly change the visual accessibility or quality of the scenic corridor.

(3) The Planning Director may approve, approve with conditions, or refer the application to the Planning Commission with recommendations. Upon reference, the Planning Commission shall, in such case, approve, with conditions, or deny the permit.

(4) The Planning Director and the Planning Commission shall not deny an application if the denial would create undue hardship on the

applicant, but shall nevertheless impose constructive and reasonable requirements on the development to protect the scenic quality of the corridor.

(d) The Planning Commission may require that visually disruptive or offensive activities, facilities, or structures that are within three hundred (300) feet of the public right-of-way be screened from view from the thoroughfare by an acceptable structural or plant screen.

ARTICLE 12. CONSTRAINT DISTRICTS (S)

Sec. 8-12.1 Purpose.

The Constraint District specifies the additional performance required when critical or valuable physical, ecologic, or biologic characteristics of the environment exist on the same parcel where particular functions or uses may be developed.

(a) To implement the objectives of the six (6) Development Restriction Zones established in the General Plan.

(b) To identify those areas where particular physical, biologic and ecologic characteristics of the land, water and atmosphere indicate that standard requirements for development, modification or use may be inadequate to insure the general health, safety or welfare of the public or the maintenance of established physical, geologic and ecologic forms and systems.

(c) To insure that development, modification or use will not create substantial threats to health, safety and welfare of people, or to the maintenance of established physical, biologic, and ecologic forms and systems

(d) To permit development, modification or use when it can be shown, within the limits of available knowledge, that ecologic interrelationship will be improved or not significantly depreciated.

Sec. 8-12.2 Types Of Constraint Districts And Application.

(a) There are six (6) Constraint Districts as follows.

- | | | |
|-----|--------------------|------|
| (1) | Drainage Districts | S-DR |
| (2) | Flood Districts | S-FL |
| (3) | Shore Districts | S-SH |
| (4) | Slope Districts | S-SL |
| (5) | Soils Districts | S-SO |
| (6) | Tsunami Districts | S-TS |

(b) The standards established in each Constraint District shall apply to all modifications, development or uses which are undertaken on lands within the

boundaries of the Districts and shall be in addition to the development standards applicable to lands in the underlying Use and Special Treatment Districts in which the lands are located.

(c) When land is located in more than one (1) Constraint District, the more restrictive standard concerning any subject matter of regulation shall apply.

(d) Applications for Zoning or Use Permits for uses, structures and development in Constraint District shall include the information required by, and shall establish conformity to the standards established for, the Constraint District or Districts in which the lands in question are located.

Sec. 8-12.3 Drainage Districts (S-DR)

(a) Purpose.

(1) To protect the function of natural and existing water courses as a part of the system for surface water collection and dispersal.

(2) To maintain the quality of surface and marine water as a valuable public resource.

(3) To regulate the modification of water.

(b) Lands Included In The Drainage District.

(1) The Drainage District includes all rivers, streams, storm water channels, and outfall areas indicated in the Development Restriction Zones of the General Plan and other areas of similar physical characteristics and conditions.

(2) Within two (2) years after September 1, 1972, the Department of Public Works on the basis of available information, shall prepare a master drainage plan for the County that shall include:

(A) The boundaries of watershed areas one hundred (100) acres or larger.

(B) A classification of all rivers, streams, and water carrying channels based on calculated existing carrying capacities and potential carrying capacities.

(C) The limitations on increased quantities of water by watershed which may be added to any channel.

(D) Water quality control standards and criteria for all constant flowing rivers and streams and marine outfalls

(E) Proposed and anticipated channel revisions, new channels, and all required structural appurtenances or conditioning to channels, with estimated costs and projected scheduling of improvements.

(F) Standards, regulations and procedures concerning drainage practices in connection with development that effects water quality and quantity.

(3) Upon approval by the Planning Commission and adoption by the Council, this master drainage plan shall supplement the requirements of this Section.

(c) Requirements For Development Within A Drainage District.

Prior to the adoption of a master drainage plan, no zoning, building or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Drainage District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) No water course or outfall of a water course shall be modified, constricted, altered, piped, lined or substantially changed in any way unless first approved by the Department of Public Works.

(2) Development shall not be allowed on land adjacent to water courses which increases the flow at peak discharge above the capacity of its present channel, or materially increases the flood plain of downstream water courses.

(3) Pollutants shall not be discharged into any natural water course that are considered harmful or dangerous by state, federal or county health or water control authorities to the public or to vegetation and wildlife.

(4) Development shall not be allowed that causes discharge or runoff of substantial amounts of silt, construction materials, trash, solid waste or other deleterious material

(5) The Department of Public Works shall require that detailed plans and calculations accompany applications for development or modifications of any water course or of any development, grading or clearing of any land area.

(d) Modification Of Requirements.

The requirements of this Article shall not apply to any area within the Drainage District where the applicant demonstrates to the satisfaction of the Department of Public Works, that the area in question should not have been included in the Drainage District under the criteria established in Sec. 8-12.3.

Sec. 8-12.4 Flood District (S-FL)

(a) Purpose.

(1) To minimize the threat to public health and safety due to periodic inundation by storm water.

(2) To maintain the characteristics of flood plain areas which contribute to ground water recharge, storm water storage, salt retention and marine water quality.

(b) Lands Included.

All lands subject to flooding and identified as flood fringe, floodway, and general flood plain areas by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the County of Kauai", dated March 9, 1987, with accompanying Flood Insurance Rate Maps.

(c) Requirements For Development Within A Flood District.

No zoning, building, or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Flood District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applications shall include:

(A) Development plans indicating:

(i) The location, size, nature, and intended use of all buildings, roads, walkways and other impervious surfaces;

(ii) Limits and extent of all clearing and grading operations; grading plans showing existing and revised contour lines, cross sections showing cuts and fills anticipated; angles of slopes and structural appliances such as retaining walls and cribbing;

(iii) Sizes and locations of existing and proposed surface and subsurface drainage with expected quantities, velocities, and treatment of outfalls;

(iv) Provisions for siltation and erosion control during construction and plans for revegetation of all cleared or graded areas not covered by impervious surfaces;

(v) Identification of flood hazards on the site, including the delineation of the floodways and base flood elevations.

(B) When required by the Department of Public Works, hydrologic and geologic reports showing the effects of the development on ground water recharge, storm water retention and marine water quality shall be submitted.

(C) When required by the Planning Director, an environmental impact study indicating critical areas of concern and the effects of the proposed development on physical, geologic, ecologic and environmental forms and systems such as downstream water quality, flood plains, wildlife, vegetation and marine ecologies, visual and historic amenities, and air or ground water pollution.

(1) The use, structure and development, if required, shall be subject to additional construction and development standards provided in Sec. 15-1, relating to Flood Plain Management.

(2) The applicant shall demonstrate to the satisfaction of the Planning Director, the Department of Public Works, and the Manager and Chief Engineer of the County Water Department that the proposed development will not have a detrimental effect on the ecology of the area and that the potential damage to public utility, traffic service systems, as a result of the development, has been substantially eliminated.

(d) **Modification Of Requirements.**

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Flood District under the criteria established in Sec. 8-12.4(b).

Sec. 8-12.5 Shore Districts (S-SH)

(a) **Purpose.**

To regulate development or alterations to shore and water areas which have unique physical and ecological conditions in order to protect and maintain physical, biologic and scenic resources of particular value to the public.

(b) Lands Included.

(1) The Shore District includes the greater of the following shoreline areas (land and water):

(A) That area where the Planning Director determines that there is significant interrelationship between the physical, biologic, or ecologic forms or systems characteristic of the shore area;

(B) From the low water mark to forty (40) feet inland from the upper reaches of the wash of waves other than storm or tidal waves (or twenty (20) feet in those cases as are provided for by the rules of the State Land Use Commission implementing Chapter 205, U.R.S.).

(2) Within five (5) years after September 1, 1972 the Planning Commission shall prepare a Shoreline Special Treatment Zone Plan. The plan upon adoption by the Planning Commission shall determine the boundaries of the Shore District.

(c) Requirements For Development Within The Shore District.

No zoning, building or use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Shore District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applicants for permits shall furnish an Information Report prepared by a person or firm qualified by training and experience to have expert knowledge of the subject. The Planning Director shall determine the adequacy of the report and may require the submission of further information where necessary. The report shall provide information regarding the existing ocean conditions and regarding probable effects of the proposed structures, development, or alterations, as follows:

(A) With respect to existing conditions, the report shall describe the configuration of the shore; the nature, magnitude, and periodicity of Shore District forces such as wind, waves and currents, as they affect the Shore District; the origin, nature and volume of materials composing the shoreline; the physical and biologic characteristics and the rate of Shore District change over time under both natural and proposed artificial conditions.

(B) With respect to probable effects of the proposed construction, the applicant shall define a design wave (usually the mean height and period of the highest one-third (1/3) of the waves of a given wave group, including storm surge and tsunami), the design water level of the ocean, the foundation conditions, and the construction materials, and shall state how the proposed design and construction operations will minimize disruption of the natural system.

(C) With respect to assessing the quality of the proposed construction, the applicant shall describe alternatives to the proposed construction that were considered and why each was rejected, in terms of environmental quality and economic feasibility, including as one alternative the choice of no construction

(2) Before a permit may be granted, the applicant shall establish that the proposed alteration, construction or activity will not cause significant harm to:

(A) The water quality of the ocean, including but not limited to its clarity, temperature, color, taste and odor;

(B) Fish and aquatic habitats;

(C) The natural beauty of the area;

(D) Navigation, safety or health; or

(E) Would not substantially interfere with public use of the ocean waters or underlying lands; and

(F) That other facilities are unavailable to the applicant.

(3) Marinas and harbors shall not be permitted in the following locations:

(A) Areas where, due to the amount of unconsolidated materials, wave and current energy, shoreline configuration, and other pertinent factors, beach erosion is likely to occur.

(B) Unstable locations.

(C) Areas designated by the Planning Commission as being of unique scenic beauty which should be retained in their natural condition.

(D) Areas where there is no demonstrable public need for a new marina or harbor.

(E) In areas so that the standards established in Section 8-12.5(c)(2) are violated.

(F) Use Districts where marinas and harbors are not permitted uses.

(4) Marinas and harbors, when permitted, shall be located in the following areas unless the Planning Commission determines that the site would be inconsistent with the objectives of this Chapter or the applicant can demonstrate that such an area is unavailable and that the alternative site chosen will be consistent with the purposes of this Chapter.

(A) In deeper water in order to minimize the need for dredging.

(B) In natural inlets to avoid use of breakwaters.

(C) In an area designated for marinas and harbors on the General Plan.

(5) Design and Construction Standards:

(A) Floating piers or piers on pilings shall be used to provide access to boats, rather than dredging, whenever possible.

(B) Where dredging is permitted, spoil material shall not be deposited in the water.

(C) Where a barrier wall is required in connection with a marina, or harbor, it shall be carried deep enough below the bottom to prevent movement of back-fill materials into the water.

(D) Materials used to stabilize the bottom of the marina or harbor for pier structures shall be chemically inert sand, gravel, or similar substances.

(6) Shore Facilities. Restrooms, pump-out facilities for boat sewage receptacles, and trash receptacles for other boat wastes shall be provided at a marina or harbor.

(7) Monitoring Information Requirements. The owner or operator of a marina or harbor may be required to furnish information concerning water quality, current patterns and intensities, shore alterations, and any

other conditions which may be altered by the construction of the marina or harbor for a reasonable period after completion of the facility.

(8) **Location of Shoreline Protective Structures.** To prevent local beach loss, shoreline protective structures shall be used only where protection of the back-shore is of greater importance than beach preservation, or where less disruptive methods have failed. The following design and construction standards shall apply:

(A) Sloping permeable revetments shall be used when barriers are permitted.

(B) Seawalls and bulkheads shall be permitted only when the applicant is able to demonstrate that revetments are not feasible and that the alternative structure will cause no undue beach erosion.

(C) Shoreline barriers shall not be constructed of unstable or soluble materials.

(9) There shall be no fill placed in the Shore District except at those locations where the fill is found to be beneficial to existing water quality or Shore District conditions.

(10) There shall be no dredging, removal or rearrangement of materials within the water or shore zone of the ocean. Dredging or excavation performed in the course of construction for which a permit has been approved under the terms of this Chapter shall be considered dredging or excavation for the purpose of this Section.

(d) **Permits Required.**

(1) A Class IV Zoning Permit is required for any construction, development, use or activity proposed to be carried out within forty (40) feet of the upper reaches of the wash of waves (other than storm or tidal waves), or within the shoreline setback area as established by the State Land Use Commission pursuant to Chapter 205, H.R.S., whichever is the lesser. The Planning Commission shall issue a permit only if the requirements of both Chapter 205, H.R.S. and this Chapter have been met.

(2) A Class III or Class IV Zoning Permit, depending upon the requirements established for the underlying Use District in which the proposed construction, development, use or activity is located, is required for undertakings in the Shore District established by this Chapter located landward of the shoreline setback area defined in Section 8-12.5(d)(1). The Planning Director or Planning Commission shall issue a permit only if the requirements of this Chapter have been met.

(e) **Modification Of Requirements.**

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Planning Director that the area in question should not have been included in the Shore District under the criteria established in Section 8-12.5(c)(1).

Sec. 8-12.6 Slope Districts (S-SL)

(a) **Purpose.**

- (1) To insure public safety from earth slides and slips.
- (2) To minimize erosion and attendant siltation of downstream waters.
- (3) To insure safety from downstream flooding due to altered runoff characteristics.
- (4) To protect ecologic functions such as ground water recharge, wildlife habitats, and vegetative communities.

(b) **Lands Included.**

All land areas in excess of twenty percent (20%) slope (one (1) foot of rise or fall in five (5) feet measured horizontally).

(c) **Requirement For Development Within The Slope District.**

No zoning, building, or use permit shall be issued, nor shall any use requiring the development, grading, or alteration of any portion of the Slope District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applications for all subdivision development, land alteration or clearing, other than one (1) single family dwelling unit on an existing parcel shall include specific development plans indicating:

(A) The location, size, nature, and intended use of all buildings, roads, walkways and other impervious surfaces.

(B) Limits and extent of all clearing and grading operations; grading plans showing existing and revised contour lines; cross sections showing cuts and fills anticipated; angles of slopes and structural appliances such as retaining walls and cribbing.

(C) Sizes and locations of existing and proposed surface and subsurface drainage with expected quantities and velocities and treatment of outfalls.

(D) Provisions for siltation and erosion control during construction and plans and schedules for revegetation of all cleared or graded areas not covered by impervious surfaces.

(E) When required by the Department of Public Works, a soils and geology report by a soils engineer defining existing soil and geologic stability and other pertinent characteristics and certifying the stability of the proposed development.

(F) When required by the Planning Director, an environmental impact study indicating critical areas of concern and the effects of the proposed development on physical, biologic, ecologic and environmental forms and systems, such as downstream water quality, flood plains, wildlife, vegetation, and marine ecologies, visual and historic amenities, and air or ground water pollution.

(1) All graded areas not covered by a building or other impervious surfaces and all fill slopes steeper than one (1) foot of rise in three (3) feet horizontally shall be revegetated within six (6) months of the commencement of grading unless areas other than fill slopes must be left bare because of other construction activities. The Department of Public Works may require revegetation of portions of the graded area which in its opinion are not necessary to in-progress construction, or where significant construction activity has been suspended for over sixty (60) days. Grading operations which extend over one (1) year shall require a time extension from the Department of Public Works. All bare areas where excessive erosion and dust problems may occur shall be revegetated prior to final inspection.

(d) Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Slope District under the criteria established in Section 8-12.6(b).

Sec. 8-12.7 Soils District

(a) Purpose.

To minimize the threat to public health and safety as a result of development on soils that are unstable, have inadequate drainage characteristics, or require abnormal structural solutions because of load bearing or drainage characteristics.

(b) **Lands Included.**

The Soils District shall include all land areas where:

(1) The characteristics of the surface soils to a depth of five (5) feet inhibit water percolation to the point that it is unacceptable to State and County health officials for use as septic effluent discharge, or allows surface water to stand for over twelve (12) hours.

(2) The characteristic of the soil and subsurface geology makes the soil inadequate as a bearing surface for standard building or road construction.

(3) The characteristic of the soil in combination with slope, water, wind, or other physical factors makes the soil unstable and subject to sliding, slipping, or water or wind erosion.

(c) **Requirements For Development Within A Soils District.**

No Zoning, Building or Use permit shall be issued, nor shall any use requiring the development, grading or alteration of any portion of the Soils District be permitted, unless the applicant establishes conformity with the requirements of this Section.

(1) Applications shall include soils and geologic reports by a soils engineer submitted to the Department of Public Works indicating the structure, drainage characteristics, and bearing capacities of the land to be developed. The report shall include a topographic map of the parcel indicating existing or potential slip, slide, or highly erosive areas, and areas with poor surface drainage or inadequate percolation rates.

(2) The applicant shall demonstrate through detailed drawings that the development will not contribute to the instability of the land and that all structural proposals including roads and pavement have adequately compensated for soil characteristics.

(3) The applicant shall demonstrate through detailed drawings that the proposed development will eliminate the potential of casual standing water through positive drainage and that percolation rates are adequate for the type of development proposed.

(4) For the development of not more than one (1) dwelling unit, the Department of Public Works may waive any of the requirements of this Article provided that requirements of the State Health Department and County Building Code are met or exceeded.

(d) **Modification Of Requirements.**

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Soils District under the criteria established in Section 8-12.7(b).

Sec. 8-12.8 Tsunami Districts (S-TS)

(a) **Purpose.**

To minimize the threat to the public health and safety, and damage to property due to extraordinary ocean wave action.

(b) **Lands Included**

All lands subject to flood hazards caused by extraordinary ocean wave action, regardless of generating force, identified as coastal high hazard areas by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the County of Kauai", dated March 4, 1987, with accompanying Flood Insurance Rate Maps.

(c) **Requirements For Development In A Tsunami District.**

No zoning, building, or use permit shall be issued for development of any portion of the Tsunami District unless the applicant establishes conformity with the requirements of this Section.

(1) The following uses, structures, and developments shall not be permitted in the Tsunami District:

(A) Publicly-owned buildings intended for human occupancy other than park and recreational facilities.

(B) Schools, hospitals, nursing homes, or other buildings or development used primarily by children or physically or mentally infirm persons.

(2) The use, structure and development, if required, shall be subject to additional construction and development standards provided in Section 15-1, relating to Flood Plain Management.

(3) Applications shall delineate the boundaries of the Tsunami District, the coastal high hazard areas as shown on the flood maps, and designate the base flood elevations for the site.

(d) Modification Of Requirements.

The requirements of this Article shall not apply where the applicant demonstrates to the satisfaction of the Department of Public Works that the area in question should not have been included in the Tsunami District under the criteria of Section 8-12.8(b).

ARTICLE 13. NON-CONFORMING STRUCTURES AND USES

Sec. 8-13.1 Non-Conforming Buildings And Structures.

(a) Buildings and structures that do not conform to the regulations established by this Chapter and which lawfully existed prior to or on September 1, 1972 or any subsequent amendment may be maintained, transferred and sold, provided that the Planning Commission may, after hearing, order the termination of a non-conforming use that creates substantial danger to public health or safety.

(b) Any nonconforming structure, except as otherwise regulated, may be repaired, maintained, or altered in any manner which does not increase nonconformity. Any nonconforming structure, except as otherwise regulated, may be enlarged or expanded provided that any enlargement or addition shall conform to the regulations for the district in which is it located.

(c) A non-conforming building or structure that is damaged or destroyed may not be reconstructed other than in accordance with the provisions of this Chapter unless the cost of reconstruction does not exceed fifty per cent (50%) of the replacement cost of the building or structure prior to the damage having occurred. Where reconstruction is permissible, reconstruction shall be completed within one (1) year from the date of damage or destruction and the building as reconstructed shall have no greater floor area than it had prior to being damaged. Where reconstruction is prohibited, the remaining portion of the non-conforming building or structure shall be removed or brought into conformity with the requirements of this Chapter. The Department of Public Works shall determine the extent of damage to determine whether the building may be restored.

(d) Except as otherwise provided in this section, no nonconforming structure that is voluntarily razed or required to be razed by the owner thereof may thereafter be restored except in full conformity with the provisions of this chapter.

(c) Any business building located on a lot of less than six thousand (6,000) square feet in a business district may be rebuilt to its existing size subject to the condition that the front setback line shall be enforced and the building size decreased to provide for the setback.

Sec. 8-13.2 Non-Conforming Uses.

(a) A non-conforming use of land, buildings, or other structures may continue to the extent that the use existed on September 1, 1972 or any amendment hereto, as provided in this Section 8-13.2, provided that the Planning Commission may, after hearing, order the termination of a non-conforming use that creates substantial danger to public health or safety.

(b) If any non-conforming uses ceases for any reason for continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.

(c) If the non-conforming use is carried on in a non-conforming building or structure and the portion of the building or structure within which non-conforming use is conducted is destroyed or damaged, the use may be resumed if restoration or reconstruction, as permitted by this Article, is completed within one (1) year from the date of the damage or destruction. If the building or structure may not be restored or reconstructed under the provisions of this Chapter, or if the building or structure was conforming, the non-conforming use may not be resumed and any use of the land or building thereafter shall be in full conformity with the provisions of this Chapter.

(d) Any building lawfully in existence and vacant prior to or on September 1, 1972 may within six (6) months thereafter, be occupied by the use for which it was manifestly designed or arranged.

Section 8-13.3 Uses, Structures, And Lots For Which Permits Were Issued Prior To September 1, 1972 Or Subsequent Amendment Hereto.

(a) Variances. Any building or structure authorized under a valid variance still in force issued prior to September 1, 1972 may be constructed if substantial construction activities related to the building or structure carried out on the site have been commenced or are commenced within twelve (12) months after September 1, 1972.

(b) Lots. Lots that do not conform to the requirements of this Chapter may be treated as lots existing on September 1, 1972 if they are created by a subdivision of land.

(1) for which a final subdivision map was approved prior to September 1, 1972 if the map has been, or is recorded within one (1) year after September 1, 1972 or

(2) for which a preliminary subdivision map was approved prior to September 1, 1972 and a final map of the subdivision is approved and recorded within one (1) year after September 1, 1972.

(c) Permits. Any building or structure authorized under a valid variance still in force issued prior to any subsequent amendment to this Chapter may be constructed if substantial construction activities related to the building or structure carried out on the site have been commenced or are commenced within twelve (12) months after August 26, 2002.

ARTICLE 14. KAUAI HISTORIC PRESERVATION REVIEW COMMISSION

Sec. 8-14.1 Purpose.

This Article is adopted for the purpose of:

(a) Protecting, preserving, perpetuating, promoting, enhancing and developing the historic resources of the County of Kaua'i.

(b) Providing for the development and maintenance of a county-wide system to identify and inventory historic resources within the County of Kaua'i.

(c) Encouraging and assisting in the nomination of additional historic resources to the National and State Register.

(d) Promoting the goals and programs contained in the Kaua'i County General Plan, Chapter 7 (Ordinance No. 461), relating to Historic, Archeologic and Cultural Resources and contained in Chapter 6E (Historic Preservation) of the Hawaii Revised Statutes.

(e) Promoting the heritage and use of historic resources by and for the residents and visitors of the County of Kaua'i for educational and recreational purposes.

(f) Stimulating pride in the historic resources of the County of Kaua'i.

(g) Retaining and enhancing those unique qualities which contribute to the character of a historic district in order to preserve property values, attract visitors and residents, and provide new business and commercial opportunities.

(h) Insuring and promoting the harmonious, orderly and efficient growth, development, use and/or improvement of historic resources.

(i) Assuring that the development of new structures and uses, and the alteration and improvement to old structures and uses, within a historic district are compatible with the existing character and style of the district, and create harmony in style, form, color, proportion, texture and material between buildings of historic design and those of more modern design.

(j) Promoting the formulation of policies and guidelines to allow existing historic resources within a historic district to be maintained, repaired, improved or replaced as they exist so as to retain their historic character while improving public health and safety.

(k) Providing for the promulgation of rules and regulations to implement the purpose of this Article.

Sec. 8-14.2 Kaua'i Historic Preservation Review Commission.

(a) The purpose of this Article shall be implemented by a commission to be known as the "Kaua'i Historic Preservation Review Commission."

(b) The HPR Commission shall consist of nine (9) members, eight (8) of whom shall be appointed by the Mayor and the Council as provided in Section 23.02(B)(2) of the County Charter, as amended. At least five (5) of the HPR Commissioners shall be professionals of special expertise or interest from five of the following disciplines: architecture; architectural history; archaeology; history; planning; or Hawaiian culture. The Mayor shall appoint four (4) members, with at least one being a professional in history, one in Hawaiian culture, and one in Planning. The Council shall appoint four (4) members with at least one being a professional in archaeology and one in architecture/architectural history. These professional representatives must meet the qualifications enumerated in 36 CFR Sec. 61, Appendix A. The disciplines of archaeology, architecture or architectural history, history and Hawaiian culture must have professional representation on the HPR Commission, to the extent that such professionals are available in the County. In the event such expertise is not available within the County of Kaua'i, experts from within the State may be contacted to service the HPR Commission. When one (1) of these six (6) disciplines is not represented in the HPR Commission membership, the HPR Commission shall seek through appropriate means to acquire expertise in such missing area when considering National Register nominations and other actions that will impact properties which are normally evaluated by a professional in such a discipline. In addition, to the extent possible, there shall be one (1) representative HPR Commissioner from each of the five (5) Planning Areas in the County of Kaua'i.

(c) The terms of the HPR Commissioners shall be staggered, with the initial appointments as follows:

(1) One year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.

(2) Two year term: two (2) Mayor-appointed HPR Commissioners and two (2) Council-appointed HPR Commissioners.

(3) Three year term: the HPR Commissioner appointed by the eight HPR Commissioners previously appointed by the Mayor and the Council.

Thereafter, the term of the office of the HPR Commissioners shall be three (3) years. No HPR Commissioner shall serve more than two (2) successive three-year terms. Should a vacancy arise prior to completion of the term, an appointment to fill such vacancy shall be made by the respective appointing authority only for the unexpired portion of the term.

(d) The Mayor shall designate one (1) of the members of the HPR Commission to serve as the initial Chairman, and one (1) to be the initial Vice-Chairman. Each shall serve for a period of one (1) year and thereafter the HPR Commission shall elect its own officers on a yearly basis. The Planning Director, or his designee, shall be responsible for administering the HPR Commission's historic preservation program, and shall serve as its liaison with the State Historic Preservation Office.

(e) The members shall serve without compensation, but shall be reimbursed for expenses necessarily incurred in the performance of their duties.

Sec. 8-14.3 Powers And Duties Of The HPR Commission.

In order to implement the purposes of this Article, the HPR Commission shall have the power to do any of the following:

(a) To adopt criteria, standards and procedures for the identification of historic resources, and to prepare a countywide inventory of such.

(b) To maintain a system for the survey and inventory of historic resources within the County, as provided in Sec. 7-3.7 of the Kaua'i General Plan.

(c) To review and recommend to the State Historic Preservation Officer those historic resources which should be for submittal to the Keeper of the National Register.

(d) To administer the Local Certified Government program of Federal Assistance for historic preservation within the County of Kaua'i.

(e) To prepare and implement a comprehensive Countywide Historic Preservation Planning Process, consistent and coordinated with the Statewide Comprehensive Historic Preservation Planning Process.

(f) To advise and assist Federal, State and County government agencies in carrying out their historic preservation responsibilities.

(g) To provide public information and education relating to the National, State and County historic preservation programs.

(h) To assist the Planning Commission to develop standards and guidelines applicable to uses of historic resources and uses proposed within historic districts or neighborhoods, and to otherwise advise the Planning Commission in all matters affecting historic resources.

(i) To obtain, within the limits of funds appropriated, the services of qualified persons and organizations to direct, advise and assist the Commission and to obtain the equipment, supplies and other materials necessary to its effective operation.

(j) To promulgate rules and regulations pursuant to Hawaii Revised Statutes Chapter 91 in order to carry out its function in accordance with provisions of this Article.

Sec. 8-14.4 Meetings.

(a) The HPR Commission shall meet as necessary, and at least once quarterly.

(b) Within fifteen (15) days of such meetings, the HPR Commission shall forward any comments or recommendations it may have concerning matters referred to it by the Planning Commission to that body for its consideration.

(c) The HPR Commission shall hold public hearings in accordance with Chapter 91 of the Hawaii Revised Statutes.

Sec. 8-14.5 Accounting And Funding.

(a) The primary source of funding shall be from the Federal Historic Preservation Grant award to be allotted annually each fiscal year.

(b) The HPR Commission shall adopt a yearly budget, which shall be administered by the Planning Department.

(c) The HPR Commission, through the Planning Department, shall have the right to receive public and private funds and to hold and spend such funds for the purpose of implementing this Article. Funds received from outside sources shall not replace appropriated governmental sources. Any and all funds received may be used to compensate the Planning Department for any services it may perform for the HPR Commission.

(d) Should the Federal Historic Preservation Grant program be terminated, the HPR Commission and this Article may be repealed by the County Council pursuant to proper procedure, unless substitute State or County funds can be secured to continue the program.

ARTICLE 15. ADDITIONAL DWELLING UNIT

Sec. 8-15.1 Additional Dwelling Unit On Other Than Residentially Zoned Lots.

(a) **Additional Dwelling Unit.** Notwithstanding other provisions to the contrary, for any lot where only one single-family residential dwelling or farm dwelling is a generally permitted use or is allowed through a use permit, one additional single-family residential dwelling unit (attached or detached) or farm dwelling may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-46c, Hawai'i Revised Statutes and the county's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standard and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form shall be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall effect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(b) **Expiration.** Section 8-15.1(a) is hereby repealed December 31, 2006. No building permit shall be granted for an additional dwelling unit under this Section 8-15.1(a) after such repeal date.

(c) Upon expiration of Sec. 8-15.1(a), any additional dwelling unit built pursuant to a valid building permit obtained under Sec. 8-15.1(a) shall thereafter be considered a conforming structure and use, notwithstanding Article 13 of the Comprehensive Zoning Ordinance relating to non-conforming structures and uses.

(d) Notwithstanding the expiration of Section 8-15.1(a), and subject to compliance with all applicable legal requirements and conditions, a building permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Section 8-15.1(a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007 or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a building permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Section 8-15.1(d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kauai County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable county requirements not inconsistent with Section 46-4(c), Hawaii Revised Statutes, and the county's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were rezoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(3) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or

where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface at the time of application for a building permit, there exist funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy" (as may be amended from time to time), for those roads which are considered substandard.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. Completion of the ADU Facilities Clearance form shall not guarantee the issuance of a building permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit

issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying 1) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot, and 2) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a building permit, and that all conditions and requirements in existence at the time of building permit application shall be met before a building permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(8) Notwithstanding any law to the contrary, no building permit for an additional dwelling unit shall be issued pursuant to this Section after December 15, 2014.

Sec. 8-15.2 Additional Dwelling Unit On Residentially Zoned Lots.

(a) Notwithstanding other provisions to the contrary, for any residentially-zoned lot where only one single-family residential dwelling is permitted, one additional single-family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4(c), Hawaii Revised Statutes and the County's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially-zoned lots on which an additional dwelling unit is developed, no guest house under Sec. 8-4.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form will be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any residential lot.

ARTICLE 16. RESERVED

ARTICLE 17. TIME SHARING AND TRANSIENT VACATION RENTALS

Sec. 8-17.1 Limitations On Location.

Except as provided in this section, time share units, time share plans and transient vacation rentals are prohibited.

Sec. 8-17.2 Permitted Time Share Locations.

Subject to the limitations contained in Sections 8-17.4 and 8-17.5, time share units and time share plans are allowed.

(a) In Hotels in Resort or Commercial Districts; and

(b) In the Resort RR-10 and RR-20 Districts and multi-family R-10 and R-20 Residential Districts when such districts are located within the visitor destination areas of Pōpō, Lāhulē, Waihua-Kapa'a or Princeville, as more particularly designated on County of Kaua'i Visitor Destination Area maps attached to Ordinance No. 436 and incorporated herein by reference. The boundary lines established on these visitor destination maps shall be transferred onto the official zoning maps for reference purposes.

(c) Time share units and time share plans are prohibited in the R-1, R-2, R-4 and R-6 Residential Districts.

Sec. 8-17.3. Permitted Locations for Multi-Family Transient Vacation Rentals.

Subject to the limitations contained in Section 8-17.5, multi-family transient vacation rentals are allowed:

(a) In Hotels in Resort or Commercial Districts; and

(b) In Resort Districts and Residential Districts within the visitor destination areas as more particularly designated on County of Kaua'i zoning maps.

Sec. 8-17.4 Time Sharing In Projects Located Within Visitor Destination Areas And Hotels In Resort Or Commercial Districts.

If the project in which the time share unit or time share plan is to be created contains an existing time share unit or time share plan, then time share units and plans shall be regulated according to the terms of the project instruments.

If the project in which the time share unit or time share plan is to be created is not a hotel and does not contain time share units or time share plans, then such use may be created only if such use is explicitly and prominently authorized by the

project instruments, or the project instruments are amended by unanimous vote of the unit owners to explicitly and prominently authorize time sharing. Provided, however, that time share units and time share plans permitted under this section shall be limited to the visitor destination areas described in Section 8-17.2, and to hotels in Resort or Commercial Districts.

Sec. 8-17.5 Existing Time Share and Multi Family Transient Vacation Rental Uses.

(a) **Time Share Units, Time Share Plans and Multi-Family Transient Vacation Rentals Existing On or Before September 22, 1982, That Are Not Located in Visitor Destination Areas.** Time share units, time share plans, or multi family vacation rentals existing on or before September 22, 1982 that are not located within the visitor destination areas described in Section 8-17.2 may continue as allowed uses. However, no additional time share units, time share plans, or multi-family transient vacation rentals outside the visitor destination area shall be created after September 22, 1982. The uses left unimpaired by this subsection shall not be lost by the failure to exercise the use unless it clearly appears that the use has been abandoned for a period in excess of two years. This subsection shall not apply to hotels in Resort or Commercial Districts.

(b) **Time Share Units, Time Share Plans And Transient Vacation Rentals in Projects Located Within Visitor Destination Areas** existing on or before September 22, 1982. Time share units and time share plans in projects existing on or before September 22, 1982, and located within areas described in Section 8-17.3 shall be regulated in accordance with the provisions of Section 8-17.4.

Sec. 8-17.6 Penalty.

An owner of any unit which is operated in violation of this Article, and/or any other person, firm, company, association, partnership or corporation violating any provision of this Article, shall each be fined not less than \$500 nor more than \$10,000 for each offense. This civil fine may be in addition to any criminal fines. If any person fails to cease such violation within one month, such person shall be subject to a new and separate violation for each day the violation continues to exist.

(a) **Actions by County Attorney.** The County Attorney may file a civil action to enjoin any violation of this Article and collect any penalties provided for by this Article.

(b) **Disposition of Fines.** All fines imposed for violations of this Article shall be paid to the Director of Finance to the credit of the Development Fund.

Sec. 8-17.7 Amendments To Visitor Destination Areas Designations.

Amendments to the location and/or boundaries of the Visitor Destination Areas shall be made in accordance with the amendment provisions of Section 8-3.4 of this Chapter 8, provided that the burden of proof rests with the applicant to show upon the clear preponderance of the evidence that the amendment is reasonable. The criteria for evaluating such proposed amendments shall be as follows:

(1) The proposed amendment is consistent with the General Plan and the Development Plan.

(2) The parcel or parcels to be affected by the proposed amendment are suitable for Visitor Destination Area uses.

(3) The availability of existing public services and facilities in the affected areas and whether the requested public services and facilities for the proposed change in use can be met without undue burden.

(4) The proposed change will conflict with other existing uses in the affected area.

(5) The proposed change will cause or result in unreasonable air, noise, or water pollution, or will adversely affect irreplaceable natural resources.

(6) The affected areas contain or are in close proximity to other areas that contain:

(A) Large numbers of hotel and/or multiple family dwelling units suitable as accommodations by temporary visitors.

(B) Lands designated for Resort Use on the General Plan or having Resort zoning.

(C) Outdoor or commercial recreational facilities, such as beaches, golf courses, tennis courts and other similar facilities.

(D) Tourist related commercial facilities, such as gift shops, food stores, recreational equipment and services shops, tour and transportation service terminals, restaurants, bars, night clubs, cabarets, shopping centers, theaters, auditoriums, and other similar facilities.

(7) The proposed change will include or adversely affect predominantly residential neighborhoods.

Section 8-17.8 Single Family Transient Vacation Rentals.

(a) Notwithstanding any underlying zoning designation and with the exception of properties on the National or State Register of Historic Places, single-family transient vacation rentals are prohibited in all areas not designated as Visitor Destination Areas.

(b) Development Standards for Single-Family Vacation Rentals permitted within Visitor Destination Areas and Holders of Nonconforming Use Certificates. Development standards shall be the same as those for single-family detached dwellings in Sections 8-4.5 through 8-4.8, inclusive, with the following additions:

(1) Applicant for a single-family transient vacation rental shall designate a contact person or owner's representative who shall be available on a 24-hour, 7-days-per-week basis. Applicant shall provide the name and contact information to neighbors adjacent to and directly across subject vacation rental, the Planning Department, the Kaua'i Police Department, the Kaua'i Civil Defense Agency, and the Kaua'i Visitors Bureau upon issuance of a non-conforming use certificate or registration number. Owner is responsible for keeping information updated with all agencies.

(2) One outdoor sign no larger than the one square foot shall be posted in a visible place on a wall, fence, or post immediately inside or on the front boundary of the property where it is easy to see for the purpose of providing the current Nonconforming Use Certificate number or the Registration Number and the 24/7 phone number. No other signs shall be allowed and there shall be no direct illumination of the required sign. The numbers on the sign shall be no smaller than two inches (2") in height.

(3) The applicant shall provide a list of requirements and information entitled "For the Safety and Comfort of You and Your Neighbors." This shall provide essential information to the visitor and shall seek to reduce negative impacts on the surrounding neighborhood. This information piece shall be provided to the Planning Department at time of application and shall be posted in a conspicuous place in the guest's sleeping quarters along with a copy of the Nonconforming Use Certificate or the Registration Number, whichever the case may be and if required. The list shall include, but not be limited to, suggested curfews, guidance with respect to the character of the neighborhood and gatherings and noise, and what to do in cases of emergency and natural disaster.

(4) All print and internet advertising for single-family vacation rentals, including listings with a rental service or real estate firm, shall include the Nonconforming Use Certificate or the Registration Number.

(5) A copy of the Nonconforming Use Certificate or the Registration Number, where required, shall be displayed in the back of the front door of the sleeping quarters.

(6) A site and floor plan shall be filed with the application.

Section 8-17.9 Registration Of All Transient Vacation Rentals.

(a) All single-family transient vacation rentals, excluding, however, a Time Share Unit in a Time Share Plan subject to Chapter 514E of the Hawaii Revised Statutes, as amended, lawfully existing in Visitor Destination Areas on March 7, 2008 shall register with the Director of Finance on a form prescribed by the Director of Finance no later than one hundred eighty (180) days after March 7, 2008. Any new single family transient vacation rental, excludes, however, a Time Share Unit in a Time Share Plan subject to Chapter 514E of the Hawaii Revised Statutes, as amended, established in Visitor Destination Areas subsequent to March 7, 2008 shall register with the Director of Finance prior to any such use of said rental. All single-family transient vacation rental uses will be subject to Kaua'i County Code Title III, Chapter 5A.

(b) No single-family transient vacation rental shall operate outside a Visitor Destination Area without a Nonconforming Use Certificate obtained under Section 8-13.10.

Section 8-17.10 Nonconforming Use Certificates for Single-Family Vacation Rentals.

(a) The purpose of this section is to provide a process to identify and register those single-family transient vacation rentals as nonconforming uses which have been in lawful use prior to March 7, 2008 and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section.

(b) The owner, operator or proprietor of any single-family transient vacation rental which operated outside of a Visitor Destination Area prior to March 7, 2008 shall obtain a nonconforming use certificate for single family vacation rentals.

(c) No nonconforming use certificate shall be issued by the Planning Director unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant provides a sworn affidavit and demonstrates to the satisfaction of the Planning Director that a dwelling unit was being used as a vacation rental on an ongoing basis prior to March 7, 2008. The

Planning Director, in making the decision, shall take into consideration, among other things, the following guidelines:

(1) The applicant had a State of Hawaii General excise tax license and transient accommodations tax license for the purpose of the lawful operation of single-family transient vacation rentals for a period long enough to demonstrate actual payment of taxes.

(2) That prior to March 7, 2008, applicant had deposits for reservations by transient guests in exchange for compensation for use of subject property as a vacation rental.

(3) That applicant had transient guests occupy subject property in exchange for compensation prior to March 7, 2008, with a pattern of consistency that evidences an ongoing and lawful enterprise.

(d) Applications for nonconforming use certificates for single-family transient vacation rentals located on land designated "Agricultural" pursuant to Chapter 205 of the Hawaii Revised Statutes shall be made within sixty (60) days of August 16, 2010. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010, then the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred (\$1,500.00) Dollars at filing. A nonconforming use certificate may be issued for a single-family transient vacation rental located on land in the State of Hawaii's land use agricultural district if:

(1) It was built prior to June 4, 1976, or

(2) The Applicant has obtained a special permit under Hawaii Revised Statutes, Section 205-6 which specifically permits a vacation rental on the subject property.

(A) An application for a special permit shall include verification by the Applicant that the farm dwelling unit was being used as a vacation rental on an ongoing basis in accordance with Section 8-17.10(c).

(B) An application for a special permit pursuant to Hawaii Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission that is deemed complete by the Planning Director must be filed within one (1) year of August 16, 2010. Upon completion of the application, the Planning Director shall issue a provisional certificate that will allow the transient vacation rental to operate. The provisional certificate shall be null and void after the Planning Commission or the Land Use Commission makes a decision upon the application.

(C) In addition to the Special Permit standards set forth in Hawai'i Revised Statutes Section 205-6 and Chapter 13 of the Rules of Practice and Procedure of the Planning Commission, the Planning Commission may only grant a special permit if, prior to March 7, 2008: (1) the property upon which the transient vacation rental is located had a registered agricultural dedication pursuant to the guidelines set forth in the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules; (2) a bona fide agricultural operation existed, as shown by State General Excise Tax Forms and/or Federal Income Tax Form 1040 Schedule F filings; or (3) the Planning Commission finds that the size, shape, topography, location or surroundings of the property, or other circumstances, did not allow an applicant to qualify for an agricultural dedication pursuant to the County of Kaua'i's Department of Finance Real Property Tax Division Agricultural Dedication Program Rules or inhibited intensive agricultural activities.

(D) If the application for the special permit is granted, then the transient vacation rental operation shall be subject to conditions imposed by the Planning Commission or the Land Use Commission.

(E) If the application for special permit is denied, then the nonconforming use certificate shall not be issued and the transient vacation rental must cease operation.

(e) The owner, operator, or proprietor shall have the burden of proof in establishing that the use is properly nonconforming based on the following documentation which shall be provided to the Planning Director as evidence of a nonconforming use: records of occupancy and tax documents, including all relevant State of Hawai'i general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawai'i income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided. Based on the evidence submitted, the Planning Director shall determine whether to issue a nonconforming use certificate for the single-family transient vacation rental.

(f) The Planning Director shall make available to the public at the Planning Department counter and on the County of Kaua'i website a list of all completed applications for non-conforming use certificates. Applications deemed completed shall concurrently be made available to the public. Copies of applications shall also be made available to the public as public information, as provided by Haw. Rev. Stat. Chapter 92F (the Uniform Information Practices Act). Such list shall include the names of the applicants and the tax map key number of the parcels which are the subject of the applications. The Planning Department may

physically inspect a single-family transient vacation rental prior to a non-conforming use certificate being issued.

(g) The Planning Director shall prepare an application form which shall be available to the public. If an operator as defined under Section 8-17.10(c) fails to apply for a nonconforming use certificate within sixty (60) days of August 16, 2010 the Planning Director shall assess an administrative late application processing fee of Fifteen Hundred (\$1,500.00) Dollars at filing. Applications received more than one (1) year after August 16, 2010 shall not be accepted and the use of a transient vacation rental shall be deemed discontinued.

(h) The owner or lessee who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate annually on the date of issuance of the non-conforming use certificate.

(1) Each application to renew shall include proof that there is a currently valid State of Hawai'i general excise tax license and transient accommodations tax license for the Nonconforming use. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates. The applicant may reapply for renewal upon presenting a currently valid State of Hawai'i general excise tax license and transient accommodation tax license for the nonconforming use.

Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.

(2) Upon renewal, the Planning Department may initiate re-inspection of properties for compliance with other provisions of this chapter, or other pertinent land use laws, and may withhold approval of a renewal application and issue cease and desist notices to the applicant until all violations have been resolved to the satisfaction of the Planning Director.

(3) Applicant shall pay a renewal fee of One Hundred Fifty Dollars (\$150.00) which shall be deposited into the County General Fund.

Section 8-17.11 Enforcement Against Illegal Transient Vacation Rentals

(a) In addition to other penalties provided by law, including but not limited to Section 8-17.6, Section 8-3.5(a) and the Planning Commission Rules, as amended, the Planning Director, or any member of the public who has duly obtained standing pursuant to rules promulgated by the commission, may initiate proceedings to revoke or modify the terms of a nonconforming use certificate pursuant to the Rules of Practice and Procedures of the Planning Commission, as amended. Violations of conditions of approval or providing false or misleading information on the application or in any information relating thereto at any time

during the application process shall be grounds for revocation or cease and desist orders.

(b) Advertising of any sort which offers a property as a transient vacation rental shall constitute prima facie evidence of the operation of a transient vacation rental on said property and the burden of proof shall be on the owner, operator, or lessee to establish that the subject property is not being used as a transient vacation rental or that it is being used for such purpose legally. If any unit is found to be operating unlawfully, penalties established in Section 8-17.6 and Section 8-3.5(a) shall apply.

Section 8-17.12 Historic Properties Exemption.

Single-Family Dwelling Units on the National or State Register of Historic Places may be allowed to operate as a transient vacation rental through a use permit and by abiding by the development standards specified in Section 8-17.8(b).

ARTICLE 18. RESERVED

ARTICLE 19. RESERVED

ARTICLE 20. RESERVED

ARTICLE 21. RESERVED

ARTICLE 22. RESERVED

ARTICLE 23. RESERVED

ARTICLE 24. RESERVED

ARTICLE 25. RESERVED

ARTICLE 26. RESERVED

ARTICLE 27. SHORELINE SETBACK AND COASTAL PROTECTION

Sec. 8-27.1 Applicability.

This Article shall be applicable to all lands within the County of Kauai, State of Hawaii, that are:

(a) abutting the shoreline, or

(b) not abutting the shoreline but located within five hundred (500) feet of the shoreline unless the applicant can demonstrate to the satisfaction of the Planning Director that the applicant's proposed improvement will not be affected by coastal erosion or hazards, excluding natural catastrophes. Factors to be considered shall include, but not be limited to, proximity to the shoreline, topography, properties between the shoreline and applicant's property, elevation, and the history of coastal hazards in the area.

Sec. 8-27.2 Definitions.

For purposes of this article, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

"Adversely affect beach processes" means to pose a potential immediate or future adverse effect on beach processes as a result of a structure or activity located within the coastal erosion hazard zone, or to create an immediate or future need to artificially fix the shoreline.

"Annual coastal erosion rate" means the annual rate of coastal erosion calculated by following a procedure established in the Hawaii Coastal Hazard Mitigation Guidebook, (January 2005), which was prepared for the State of Hawaii, Department of Land and Natural Resources, Coastal Zone Management Program, University of Hawaii Sea Grant College Program and the Pacific Services Center and Coastal Services Center of the National Oceanic and Atmospheric Administration at section 4.1.

"Average lot depth" means the measurement obtained by adding the lengths of the two sides of a lot which are at or near right angles with the shoreline, or the seaward boundary of the lot that runs roughly parallel to the shoreline if the property is not abutting the shoreline, to the length of a line obtained by drawing a line from a point in the center of the makai side of the lot to a point in the center of the mauka side of the lot and dividing the resulting sum by three. For irregularly shaped lots including flag lots, triangular parcels, lots on peninsulas, and/or lots

having ocean on two or more sides of the lot, the average lot depth will be determined by the Director.

“Board” shall mean the Board of Land and Natural Resources, State of Hawaii.

“Building footprint” shall mean all parts of a main building (excluding roof overhangs) that rest, directly or indirectly, on the ground, including those portions of the building that are supported by posts, piers, or columns. Building footprint also includes attached garages, covered carports, bay windows with floor space, lanais, decks, cantilevered decks, spas, and in-ground swimming pools.

“Certified Shoreline” means the shoreline established by Board pursuant to HRS 205A-42, as amended.

“Coastal Dune” means one of possibly several continuous or nearly continuous mounds or ridges of unconsolidated sand contiguous and parallel to the beach, situated so that it may be accessible to storm waves and seasonal high waves for release to the beach or offshore waters.

“Coastal erosion” means the natural loss of coastal lands, usually by wave attack, tidal or littoral currents, or wind. Coastal erosion is synonymous with shoreline retreat.

“Coastal erosion hazard zone” shall include all of the land between the shoreline and the shoreline setback line.

“Coastal erosion study” means a quantitative study of historical shoreline behavior utilizing orthorectified aerial photographs or other imagery to carry out high-resolution mapping of historical shoreline positions to obtain a statistically valid annual erosion rate of the Shoreline Change Reference Feature (SCRF) and vegetation line. The coastal erosion study shall be carried out by a qualified professional consultant as defined in this article following procedures described in Section 4.1 of the Hawaii Coastal Hazard Mitigation Guidebook, (January 2005). The coastal erosion study shall include but not be limited to:

(1) Mapping of the historical shoreline positions including both the SCRF and the vegetation line for the subject parcel, as well as the local and regional littoral cell;

(2) The method resulting in the larger erosion rate (SCRF/line of beach vs. vegetation line) shall be used to establish the erosion rate unless there is clear evidence to indicate another method is a more accurate representation of historic shoreline change.

(3) Uncertainty or error calculation of the data and the annual erosion rate;

(4) Additional information relevant to the erosion study shall include: a current certified shoreline survey, construction plans, if any, existing and finished contours; photographs of the shoreline setback area, analysis of the coastal erosion rates and shoreline processes.

(5) Where a coastal erosion study is required to be done or is done voluntarily by an applicant, an application for a shoreline setback determination shall not be deemed complete unless the coastal erosion study has been accepted by the Director.

(6) Any non-governmental study shall be valid for no longer than a period of five (5) years from the date of its acceptance by the Director which shall be by certified letter issued by the Planning Department.

(7) The coastal erosion study shall consider the purpose of the study to safely site structures away from hazards such as erosion so that shoreline hardening will not be required to protect the property during its useful life.

"Coastal hazard" means natural processes in the coastal zone that are generated by geologic, oceanographic, and/or meteorological processes that place people and/or improvements at risk for injury and/or damage.

"Commission" means the Planning Commission of the County of Kauai.

"Department" means the Planning Department of the County of Kauai.

"Director" means the Planning Director of the Planning Department of the County of Kauai.

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone, and provides complete living facilities within the unit for sleeping, recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen.

"FEMA" means the Federal Emergency Management Agency.

"FIRM" means the Flood Insurance Rate Map.

“Hazard Assessment” means assessment for erosion, wave, flood, and inland zone following the standards in Section 4.3 of the Hawaii Coastal Mitigation Guidebook, (January 2005).

“Lot” means a portion of land shown as a unit on an approved and recorded subdivision map.

“Makai” means seaward or in a seaward direction.

“Mauka” means landward or in a landward direction.

“Minimum buildable footprint” means the building footprint of 2,100 square feet or as allowed in Section 8-27.10(a).

“Minor activity” means an activity that:

- (1) costs less than \$125,000; and
- (2) does not adversely affect beach processes, does not artificially fix the shoreline, does not interfere significantly with public access or public views to and along the shoreline; and
- (3) does not impede the natural processes and/or movement of the shoreline or sand dunes, and does not alter the grade of the shoreline setback area, except for landscaping, clearing (grubbing) of vegetation, and grading, which are exempt from HRS Chapter 343; and
- (4) is consistent with the purposes of this article and HRS Chapter 205A, as amended.

“Minor structure” means:

- (1) a structure that costs less than \$125,000 and provides temporary emergency protective measures for a legally habitable structure that is imminently threatened by coastal hazards provided that the protective measure has received approval in accordance with the Special Management Area Rules of the Kauai Planning Commission and/or the State Department of Land and Natural Resources (as may be the case), relocation of the endangered structure has been considered and is not reasonable given the nature of the emergency, the protective measure is removed within one hundred eighty (180) days of its installation, and given the significance of the emergency, the protection is the best management alternative with respect to beach, shoreline, and/or coastal resource conservation, or

- (2) a structure that.

(A) costs less than \$125,000; and

(B) does not adversely affect beach processes, does not artificially fix the shoreline, and does not interfere with public access or public views to and along the shoreline; and

(C) does not impede the natural processes and/or movement of the shoreline and/or sand dunes, and does not alter the grade of the shoreline setback area; and

(D) is consistent with the purposes of this article and HRS Chapter 205A, as amended; and

(E) includes, but is not limited to, lighting in conformance with HRS Chapter 205A, landscape features, barbeques, picnic tables, benches, chairs, borders, wooden trellis, bird feeders, signs, safety improvements, movable lifeguard stands, walkways for access, outdoor showers and water faucets, public utility lines, utility poles and accessory structures along existing corridors, temporary tents for special events not exceeding fourteen (14) consecutive days in duration during any three-month period, walls and fences that are located more than forty (40) feet from the shoreline, landscape planting and irrigation systems provided that they are directed away from a valid certified shoreline and do not artificially extend the shoreline or shoreline setback area seaward; and

(F) excludes, but is not limited to, any in-ground swimming pools or spas, garages, carports, concrete walkways that are reinforced, concrete walkways that are not saw-cut at a minimum of three (3) foot intervals, and concrete steps.

"Natural catastrophe" is a natural disaster qualifying for a governor's declaration of emergency pursuant to Hawaii Revised Statutes Chapter 128, or a presidential declaration of emergency of a major disaster pursuant to 42USC5170, including those caused by episodic coastal hazards such as tsunamis and hurricanes, and not the result of other coastal hazards or processes such as erosion or sea level rise

"Nonconforming structure or activity" means a structure or activity which is lawfully existing within the shoreline setback area because it:

(1) Was completely built, in its present form, prior to June 22, 1970; or

(2) Received either a building permit, board approval, or shoreline setback area variance prior to June 16, 1989; or

(3) Was outside the shoreline setback area when it received either a building permit or board approval, or

“Plan” or “site plan” means a detailed construction plan drawn to scale of 1" =20' 0" that shows the design of a structure proposed to be built within the shoreline setback area. The plan shall be based on an accurate instrument by a surveyor licensed in the State of Hawaii and shall consist of data including but not limited to:

- (1) Property boundaries;
- (2) Natural features such as large trees, rock outcroppings, and any primary or secondary coastal dunes;
- (3) Topography in and around the proposed construction;
- (4) Any and all shoreline hardening;
- (5) Flood zones, where applicable;
- (6) Existing and proposed structures and their proximity to the shoreline and shoreline setback area;
- (7) Fences, walls, and any other structures in the shoreline setback area and any potential hindrances to lateral access along the shoreline;
- (8) A geo-referenced survey of the site; and
- (9) Any other information which identifies the existing condition of the subject parcel of land."

“Primary Coastal Dune” means the first dune encountered mauka of the beach. **Qualified professional consultant** means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawaii that has experience in coastal processes.

“Qualified professional consultant” means a coastal scientist with a masters of science degree or doctorate in geology, geography, or other appropriate physical science relating to coastal processes, or an engineer licensed in the State of Hawaii that has experience in coastal processes.

“Qualified Demolition” means the demolition of a structure or structures where such demolition:

- (1) Will not adversely affect beach processes;
- (2) Will not artificially fix the shoreline;
- (3) Will not interfere with public access, except for public safety reasons during demolition operations;
- (4) Will not interfere with public views to and along the shoreline, except during demolition operations;
- (5) Will be consistent with the intent of open space enhancement as reflected in these rules and HRS 205A; and
- (6) Will comply with applicable County Codes.

“Rebuilding” means reconstruction of a lawfully existing dwelling unit when the reconstruction is valued by a licensed professional engineer or architect at fifty percent (50%) or more of the current replacement cost of the structure.

“Repair” means the fixing of damages to a structure where the cost thereof is valued by a licensed professional engineer or architect at less than fifty percent (50 %) of the current replacement cost of the structure.

“Revetment” shall mean a facing of stone, concrete, blocks, or other similar materials built to protect a scarp, embankment, or shore structure against erosion by wave action or currents.

“Rocky Shoreline” means a shoreline segment acting as the primary interface between marine dominated processes and terrestrial dominated processes that is composed of hard, non-dynamic, non-erodible material such as basalt, fossil limestone, beach rock, or other natural non-dynamic material, not to include cobble or gravel beaches that are dynamic in nature, or erodible cliffed shorelines composed dominantly of dirt or clay.

“Shoreline” is as defined in Section 205A-1, Hawai'i Revised Statutes, as amended, and as established pursuant to Section 205A-42, Hawai'i Revised Statutes, as amended.

“Shoreline Change Reference Feature (SCRF)” means a morphologic feature commonly referred to as the “toe” of the beach, which represents the base of the foreshore or approximating the Mean Lower Low Water (MLLW).

"Shoreline setback area" means "shoreline area" as defined in Section 205A-41, Hawaii Revised Statutes, as amended.

"Shoreline setback line" is as defined in Section 205A-41, Hawaii Revised Statutes, as amended.

"Storm huffer zone" is the first forty feet (40') of the shoreline setback area as measured from the shoreline.

"Structure" is as defined in Section 205A-41, Hawaii Revised Statutes, as amended.

"Substantial construction" means that one hundred percent (100%) of the foundation has been laid, or that one hundred percent (100%) of the foundation of the active phase of a project has been laid where the project is being done in phases.

"Temporary structures or activities" means structures or activities that will exist for no longer than six (6) months and will not irreversibly and adversely affect beach processes, public access, or public views nor artificially fix the shoreline in an irreversible way, and from which there will be a public benefit.

"Use" means the purpose for which land or building is arranged, designed, or intended, or for which either land or building is or may be occupied or maintained

Sec. 8-27.3 Shoreline Setback Determination: Establishment of the Shoreline Setback Line.

(a) No shoreline setback line shall be established for any lot subject to this Article unless the application for a shoreline setback line includes a shoreline survey certified not more than six (6) months prior to submission of the application.

(b) For lots with an average depth of one hundred sixty (160) feet or less, the shoreline setback line shall be established based on the average depth of the lot as provided in Table 1, or at the option of the applicant, upon a coastal erosion study as provided in Table 2.

Table 1: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the average lot depth in feet. See attached table and substitute for below.

If the average lot depth is:	100 feet	101 to 120 feet	121 to 140 feet	141 to 160 feet	161 to 180 feet	181 to 200 feet	More than 200 feet
	or less						

Then the minimum setback is:	40 feet	50 feet	60 feet	70 feet	80 feet	90 feet	100 feet
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(c) for lots with an average depth of more than one hundred sixty (160) feet, the shoreline setback line shall be established based on a coastal erosion study as provided in Table 2 and shall be no less than the setback distances set forth in Table 1 as applicable.

Table 2: The distance in feet of the shoreline setback line as measured from the certified shoreline based on the building footprint and a coastal erosion study.

For structures with a building footprint that is:	Less than or equal to 5,000 square feet	Greater than 5,000 square feet
Then the Setback distance is:	40 feet plus 70 times the annual coastal erosion rate	40 feet plus 100 times the annual coastal erosion rate

(d) No zoning amendment, general plan amendment, development plan amendment, or subdivision, any of which involves lands, or any portion of land, subject to this Article, shall be approved without a coastal erosion study and a shoreline setback line established in accordance with Table 1 and Table 2. In cases where these methods result in lines that cross or intersect each other, the most mauka (landward) segments of each line shall form the shoreline setback line.

(e) When an application for a Shoreline Setback Determination has been certified complete by the Director on a form prescribed by the Director, the Director shall, within one hundred twenty (120) days of the completed application, issue a Shoreline Setback Determination which shall conform to the delineation of the shoreline setback line on a site plan pursuant to Section 8-27.3.

(f) The Director shall notify the commission at the Commission's next regularly scheduled meeting of the following:

(1) any newly completed applications for shoreline setback determination

(2) any new shoreline setback determinations made by the Director including, but not limited to, the name of the applicant, the average lot depth calculations, the location of any proposed structures or activities depicted on a plan drawn to scale, the purpose of the proposed structures and/or activities, the current certified shoreline, the setback calculations and

setback line drawn on the plan, and copies of the coastal erosion study, if applicable.

(g) The Director's shoreline setback determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal of the Director's decision, the shoreline setback determinations shall not be final until the Commission completes its decision-making on the appeal.

(h) Prior to commencement of grubbing, grading, or construction activities, the shoreline and shoreline setback line shall be identified on the ground and posted with markers, posts, or other appropriate reference marks by a surveyor licensed in the State of Hawaii.

(i) The application of Section 8-27.3 by itself shall not make a dwelling unit nonconforming.

Sec. 8-27.4 Minimum Shoreline Setback Requirements

Except as provided for in this article, no lot shall have a shoreline setback line of less than forty (40) feet.

Sec. 8-27.5 Structures and Activities Subject to These Rules.

All structures and activities located or proposed to be located within the shoreline setback area shall conform to the requirements of this article. The requirements of this article shall not abrogate the requirements of any other applicable statutes, codes, ordinances, rules and regulations, or other law. Construction immediately mauka of the shoreline setback area shall also be subject to these rules unless a certified and confirmed survey map, prepared in accordance with the provisions of section 8-27.3, is filed with the department showing that the construction is mauka of the shoreline setback area.

Sec. 8-27.6 Prohibited Activities in the Shoreline Setback Area.

(a) Pursuant to HRS 205A-44, as amended, the mining or taking of sand, dead coral or coral rubble, rocks, soils, or other beach or marine deposits from the shoreline setback area is prohibited with the following exceptions.

(1) The taking from the shoreline setback area of the materials, not in excess of one gallon per person per day, for reasonable, personal noncommercial use; or

(2) Where the mining or taking is authorized by a variance pursuant to these rules; or

(3) The clearing of these materials from existing drainage pipes and canals and from the mouths of streams, including clearing for the purposes under HRS section 46-11.5; provided that, the sand removed shall be placed on adjacent areas unless such placement would result in significant turbidity; or

(4) The cleaning of the shoreline setback area for state or county maintenance purposes, including the clearing of seaweed, limu, and debris under HRS section 46-12; provided that, the sand removed shall be placed on adjacent areas unless the placement would result in significant turbidity.

(b) Any primary coastal dune, which lies wholly or partially in the setback area, shall not be altered, graded, or filled in any way except for the addition of sand of compatible quality and character unless the application of this section renders the build-out of allowable density unfeasible. In such case, modifications, alterations, grading, or filling may be allowed through a variance, but only for that portion of the primary dune located mauka (landward) of the shoreline setback area, and only to the extent necessary to construct on a minimum building footprint. This exception shall apply only to lots in existence on the date of enactment of this ordinance. Non-native vegetation may be removed only if done in conjunction with a dune restoration and re-vegetation program approved by the Director that uses naturally occurring historical endemic plant species.

Sec 8-27.7 Permitted Structures and Activities Within the Shoreline Setback Area.

(a) The following structures and activities are permitted in the shoreline setback area. All structures and activities not specifically permitted in this section are prohibited without a variance.

(1) Existing conforming and nonconforming structures/activities.

(2) Structure or activity that received a shoreline variance or administrative approval prior to January 1, 2010.

(3) A structure or activity that is necessary for, or ancillary to, continuation of agriculture or aquaculture existing in the shoreline setback area on June 16, 1989.

(4) "Temporary structures or activities" as defined in Section 8-27.2. To ensure that there will be no irreversible or long-term adverse affects, the Director shall require as a condition of a permit the restoration of the site to its original condition or better, and the director may require a bond to ensure such restoration.

(5) A structure or activity that consists of maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime, or water sports recreational facilities, which are publicly owned, and which result in no interference with natural beach processes; provided that permitted structures may be repaired, but shall not be enlarged within the shoreline setback area without a variance.

(6) Repairs to a lawfully existing structure, including nonconforming structures, provided that:

(A) The repairs do not enlarge the structure nor intensify the use of the structure or its impact on coastal processes;

(B) The repairs are valued by a licensed professional engineer or architect at less than fifty percent (50%) of the current replacement cost of the structure; and

(C) The repairs are permitted by building code, flood hazard regulations, and special management area requirements under HRS Chapter 205A.

(7) Beach nourishment or dune restoration projects approved by all applicable governmental agencies.

(8) A structure or activity approved by the Director as a minor structure or activity.

(9) Qualified demolition of existing structures

(10) Unmanned civil defense facilities installed for the primary purposes of: (i) warning the public of emergencies and disasters; or (ii) measuring and/or monitoring geological, meteorological and other events

(11) Scientific studies and surveys, including archaeological surveys.

(12) Structures built to address an emergency as declared by the Governor of the State of Hawai'i, the Mayor of the County of Kaua'i or any other public official authorized by law to declare an emergency.

(b) The following conditions shall apply to any new structure or activity permitted in the shoreline setback area:

(1) All new structures shall be constructed in accordance with the standards for development in Chapter 15, Article I, Flood Plain Management, Kaua'i County Code, relating to coastal high hazard districts

and FEMA guidelines regarding construction in areas mapped on Flood Insurance Rate Maps as flood hazard areas.

(2) The applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify, and hold the County of Kaua'i harmless from and against any and all loss, liability, claim or demand arising out of damages to said structures or activities from any coastal natural hazard and coastal erosion.

(3) The applicant shall agree in writing for itself, its successors and assigns that the construction of any erosion-control or shoreline hardening structure or activity shall not to be allowed to protect the permitted structure or activity during its life, with the exception of approved beach or dune nourishment fill activities, and landscape planting and irrigation.

(4) All new structures or activities shall not (i) adversely affect beach processes, (ii) artificially fix the shoreline, (iii) interfere with public access or public views to and along the shoreline, (iv) impede the natural processes and/or movement of the shoreline and/or sand dunes, or (v) alter the grade and/or shoreline setback area.

(5) All new structures shall be consistent with the purposes of this article and HRS Chapter 205A, as amended.

(6) The requirements of this subsection 8-27.7(b) shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the bureau of conveyances or land court, whichever is applicable, no later than thirty (30) days after the date of final shoreline approval of the structure or activity under Section 8-27.8. A copy of the recorded unilateral agreement shall be filed with the Director and the County Engineer no later than forty-five (45) days after the date of the final shoreline determination and approval of the structure or activity and the filing of such with the Director shall be a prerequisite to the issuance of any related building permit.

Sec. 8-27.8 Structure and Activity Determinations.

(a) Any structure or activity proposed in the shoreline setback area shall first obtain a determination from the Director in accordance with this article.

(b) A proposed structure and activity in the shoreline setback area shall not be allowed by the Director unless it is consistent with this Article and HRS Chapter 205A, as amended.

(c) Procedure

(1) A request for determination for a structure or activity within the shoreline setback area shall be submitted to the department on a form prescribed by the Director.

(2) For public improvements and facilities whose valuation does not exceed \$125,000.00, and repairs to lawfully existing private structures as delineated in Section 8-27.7(a)(6), the request shall include construction and site plans, and a written text addressing compliance with the criteria set forth in this article.

The Director may also require additional information, including, but not limited to a current shoreline setback determination or a current certified shoreline surveyor shoreline survey stamped by a licensed surveyor, registered in the State of Hawaii and coastal erosion information, a list of proposed plants and their growth, existing and final contours, photographs, and an environmental assessment.

(3) For public improvements and facilities whose valuation exceeds \$125,000.00, and private improvements and facilities that are not repairs to lawfully existing structures as delineated in Section 8-27.7(a)(6), the request shall include relevant information, which shall include, but is not limited to, a current shoreline setback determination as set forth in Section 8-27.8 or a current certified shoreline survey and coastal erosion information, construction and site plans, a list of proposed plants and their growth, existing and final contours, photographs, an environmental assessment, and a written text addressing compliance with the criteria set forth in this article.

(4) Within one hundred twenty (120) days from the day the application is deemed complete by the Director, the Director shall make a determination in accordance with the criteria set forth in this Article that the proposed activity or structure is:

- (A) Permitted under Section 8-27.7;
- (B) Permitted under Section 8-27.7 and subject to conditions;
- (C) Not permitted under Section 8-27.7; or
- (D) Outside of the shoreline setback area.

(5) The Director shall notify the commission at the commission's next regularly scheduled meeting of the following:

- (A) any newly completed applications for approval for a structure or activity proposed within the shoreline setback area; and

(B) any new approvals or denials by the Director of structures or activities and the reasons therefore, including, but not limited to, the name of the applicant, the location and purpose of the structure or activity, and a discussion of the factors considered in making the decisions.

(6) The Director's structure and activity determinations shall not be final until accepted by the Commission. Notwithstanding Commission acceptance, if there is an appeal from the Director's decision, the determinations shall not be final until the Commission completes its decision-making on the appeal.

(7) Minor structures or activities shall be completed or in operation respectively within one year from the final shoreline approval or within one year from the date of approval of the last discretionary permit, whichever comes later.

(8) For any non-minor structures or activities allowed within the shoreline setback area and any structures outside the shoreline setback area based on the shoreline setback line, substantial construction of the structure shall be achieved within three (3) years from the date of final shoreline setback determination and approval, and construction thereof shall be completed (as evidenced by a certificate of occupancy in the case of buildings for habitation) within four (4) years from said date.

(A) An extension of no more than one year may be granted by the director to the deadline for substantial construction only for properties with a stable shoreline such as rocky or accreting shorelines or shorelines exhibiting no coastal erosion per a coastal erosion study. In all other cases where substantial construction has not occurred by the deadline, a new shoreline determination shall be required.

(B) In case of failure to complete construction by the four-year deadline, the Planning Commission shall determine a remedy based on a review of the specific circumstances, including but not limited to, the stability of the shoreline, the extent of the completion and the reason for delay.

(C) These requirements for substantial construction and completion shall run with the land and shall be written in a unilateral agreement that is recorded in the Bureau of Conveyances or Land Court, as applicable, prior to application for a building permit. A copy of the recorded unilateral agreement shall be submitted to the Planning Department prior to application for a building permit.

(d) Nothing in this section shall be deemed to amend, modify or supersede any provision of the Special Management Area Rules and Regulations of the County of Kauai

Sec. 8-27.9 Variance application.

(a) A written application for variance shall be made in a form prescribed by the Director and shall be filed with the Director. The application shall include plans, site plans, photographs, and any other plans, drawings, maps, or data determined by the Director to be necessary to evaluate the application. The application shall also include:

(1) An administrative fee of \$300.00. The administrative fee shall be seventy-five hundred dollars (\$7,500) if the application is made after the structure is partially or fully built without the required approvals.

(2) Certification from the owner or lessee of the lot which authorizes the application for variance;

(3) An environmental assessment prepared in accordance with HRS chapter 343, and the environmental impact statement rules and applicable guidelines of the State of Hawaii,

(4) The names, addresses, and the tax map key identification of owners of real property situated adjacent to and abutting the boundaries of the land on which the proposed use, activity or operation is to occur;

(5) A site plan of the shoreline setback area, drawn to scale,

(A) Existing natural and man-made features and conditions within;

(B) Existing natural and man-made features and conditions along properties immediately adjacent to the shoreline setback area and proposed improvements;

(C) The certified shoreline and the shoreline setback line;

(D) Contours at a minimum interval of two (2) feet unless waived by the director, and

(E) Proposed development and improvements showing new conditions with a typical section (if a structure).

(6) A copy of the certified shoreline survey map of the property;

(7) Detailed justification of the proposed project, which addresses the purpose and intent of these rules and the criteria for approval of a variance;

(8) Analysis and report of coastal erosion rates and coastal processes; and

(9) Any other information required by the director.

(b) Upon a determination by the director that the application is complete and in compliance with HRS Chapter 205A, part II and this article, the Director shall submit the application to the commission. If the application is determined to be incomplete by the Director, the Director shall return the application to the applicant with a written description identifying the portions of the application determined to be incomplete. The Director shall submit a written report, a copy of the application, and all other documents submitted on the application to the commission prior to the matter appearing on an agenda of the commission.

(c) Except as otherwise provided in this section, all applications for variances shall be heard, noticed, and processed as public hearing matters. Not less than thirty (30) calendar days before the public hearing date, the applicant for a variance shall mail notices of public hearing by certified or registered mail, postage prepaid, to owners of real property which abut the parcel that is the subject of the application. Not less than thirty (30) days prior to the public hearing date, the Director shall publish a notice of hearing once in a newspaper that is printed and issued at least twice weekly in the County and which is generally circulated throughout the County. The notice shall state the nature of the proposed development, the date, time, and place of the hearing, and all other matters required by law.

(d) Exceptions. Prior to action on a variance application, the commission may waive a public hearing on the application for:

(1) Stabilization of shoreline erosion by the moving of sand entirely on public lands;

(2) Protection of a legal structure costing more than \$20,000; provided that, the structure is at risk of immediate damage from shoreline erosion;

(3) Other structures or activities; provided that, no person or agency has requested a public hearing within twenty-five calendar days after public notice of the application. For the purposes of this section "public notice of the application" shall be publication of a notice of the application in a newspaper which is printed and issued at least twice weekly in the County of Kaua'i, which informs the public of the subject matter of the application and which

identifies the date and time by which a written request for a public hearing must be received by the commission; or

(4) Maintenance, repair, reconstruction, and minor additions or alterations of legal boating, maritime or watersports recreational facilities, which result in little or no interference with natural shoreline processes.

Sec. 8-27.10 Criteria for approval of a variance.

(a) A shoreline setback area variance may be considered for a structure or activity otherwise prohibited by this Article, if the commission finds in writing, based on the record presented, that the proposed structure or activity is necessary for or ancillary to:

(1) Cultivation of crops;

(2) Aquaculture;

(3) Major landscaping; provided that, the commission finds that the proposed structure or activity will not adversely affect beach processes, public access or public views and will not artificially fix the shoreline.

(4) Drainage;

(5) Boating, maritime, or water sports recreational facilities;

(6) Facilities or improvements by public agencies or public utilities regulated under HRS chapter 269;

(7) Private and public facilities or improvements that are clearly in the public interest;

(8) Private and public facilities or improvements which will neither adversely affect beach processes nor artificially fix the shoreline; provided that, the commission also finds that hardship will result to the applicant if the facilities or improvements are not allowed within the shoreline setback area;

(9) Private and public facilities or improvements that may artificially fix the shoreline but not adversely affect beach processes; provided that, the commission also finds that shoreline erosion is likely to cause severe hardship to the applicant if the facilities or improvements are not allowed within the shoreline setback area and all alternative erosion control measures, including retreat, have been considered;

(10) The commission may consider granting a variance for the protection of a dwelling unit or public infrastructure; provided that, the structure is at imminent risk of damage from coastal erosion, such damage poses a danger to the health, safety, and welfare of the public, and the proposed protection is the best shoreline management option in accordance with relevant state policy on shoreline hardening.

(11) Construction of a new dwelling unit. In the case where the applicable shoreline setback line does not allow for the minimum buildable footprint for a new dwelling unit, the commission may consider granting a variance under the following guidelines:

(A) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(B) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(C) The minimum buildable footprint may be reduced to 1500 square feet.

(D) If the foregoing approaches (a), (b), and (c) are done to the maximum extent practicable, the calculated shoreline setback may be reduced, provided that under no circumstance shall the shoreline setback line be less than forty (40) feet;

(12) Rebuilding of an existing dwelling unit.

(A) Rebuilding of a lawfully existing dwelling unit under this section shall only be allowed if the rebuilding does not enlarge the structure beyond its previous building footprint nor intensify the use of the structure or its impacts on coastal processes, and the rebuilding is not prohibited by Article 13, Chapter 8, Kaua'i County Code, 1987 as amended.

(B) In the case where the applicable shoreline setback line does not allow for the rebuilding of a lawfully existing dwelling unit upon a minimum building footprint, the commission may consider granting a variance under the following guidelines only:

(i) The front yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(ii) The side yard setback may be reduced where feasible to allow for the minimum buildable footprint;

(m) The buildable footprint may be reduced to below 2100 square feet.

(iv) If the foregoing approaches (a), (b) and (c) are done to the maximum extent practicable and a buildable footprint of 1500 is not feasible, the shoreline setback may be reduced provided that under no circumstances shall the shoreline setback line be less than twenty (20) feet from the certified shoreline, and for any reduction below thirty (30) feet, a qualified professional consultant must certify that the property is not subject to undue risk from erosion, high wave action, or flooding.

(b) A structure or activity may be considered for a variance upon grounds of hardship if:

(1) The applicant would be deprived of all reasonable use of the land if required to fully comply with the shoreline setback rules;

(2) The applicant's proposal is due to unique circumstances and does not draw into question the reasonableness of the shoreline setback rules; and

(3) The proposal is the best practicable alternative which best conforms to the purpose of the shoreline setback rules.

(c) Before granting a hardship variance, the commission must determine that the applicant's proposal is a reasonable use of the land. Because of the dynamic nature of the shoreline environment, inappropriate development may easily pose a risk to individuals or to the public health and safety or to the coastal zone management and resources. For this reason, the determination of the reasonableness of the use of land should properly consider factors such as shoreline conditions, erosion, surf and flood conditions and the geography of the lot.

(d) For purposes of this section, hardship shall not include economic hardship to the applicant resulting from: (1) county zoning or setback changes, planned development permits, cluster permits, or subdivision approvals after June 16, 1989; (2) any other permit or approval which may have been issued by the commission, or (3) actions by the applicant.

(e) No variance shall be granted unless appropriate conditions are imposed:

(1) To maintain and require safe lateral access to and along the shoreline for public use or adequately compensate for its loss,

(2) To minimize and mitigate risk of adverse impacts on beach processes;

(3) To minimize and mitigate risk of structures failing and becoming loose rocks or rubble on public property; and

(4) To minimize adverse impacts on public views to, from, and along the shoreline; and

(5) To comply with County Code provisions relating to flood plain management, Chapter 15, Article 1, Kaua'i County Code, and Drainage, Chapter 22, Article 16, Kaua'i County Code, respectively.

(f) Any structure approved within the shoreline setback area by variance shall not be eligible for protection by shoreline hardening during the life of the structure, and this limitation and the fact that the structure does not meet setback requirements under Section 8-27.3 and could be subject to coastal erosion and high wave action shall be written into a unilateral agreement that is recorded by the Bureau of Conveyances of Land Court, as the case may be. A copy of the unilateral agreement shall be submitted to the Planning Department prior to the issuance of the required zoning and/or shoreline setback variance. Failure of the grantor to record these deed restrictions shall constitute a violation of this section and the grantor shall be subject to the penalties set forth in this article.

(g) For any structure approved within the shoreline setback area by variance, the applicant shall agree in writing that the applicant, its successors, and permitted assigns shall defend, indemnify and hold the County of Kaua'i harmless from and against any and all loss, liability, claim, or demand arising out of damages to said structure and this indemnification shall be included in the unilateral agreement required above.

(h) The applicant may apply to the department for an amendment to the variance in a manner consistent with the procedures of the special management area rules of the Kaua'i Planning Commission.

(i) No variance shall be granted for structures within the shoreline setback area that are unpermitted, unless the Commission determines that a structure is necessary to protect public health and safety, and/or that removal of the structure would cause a greater public harm.

Sec. 8-27.11 Enforcement.

(a) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive zoning Ordinance, HRS Chapter 205A, and the rules of Practice and Procedure of the County of Kaua'i Planning Commission.

(b) Removal of an unpermitted structure.

(1) In determining the disposition of a unpermitted structure, the Director shall follow the procedures outlined in Chapter 12 of the Rules of Practice and Procedure of the County of Kaua'i Planning Commission based on the nature of the unpermitted structure. If the structure would have required Class I, II, or III permits as well as shoreline setback determination and approval or variance, the procedure shall be that required under Section 1-12-4 of said rules. If a Class IV permit would have been required, the procedure would be that outlined in Sections 1-12-5 through 1-12-8 of said rules.

(2) Following the relevant procedures described in Section 8-27.11(b)(1), the Director or the Commission, as the case may be, shall order the removal of an unpermitted structure unless it is determined that removal shall cause a greater public harm than allowing the structure to remain.

(3) If the Director or Commission determines that removal would be inappropriate, the property owner or perpetrator shall obtain a variance under Sec. 8-27.10 and shall pay penalties as specified in Section 8-27.12.

(c) Judicial Enforcement of Order. The director may institute a civil action in any court of competent jurisdiction for the enforcement of any order issued pursuant to this section.

Where the civil action has been instituted to enforce the civil fine imposed by such order, the director need only show that a notice of violation and order was served, a hearing was held or the time allowed for requesting a hearing had expired without such a request, that a civil fine was imposed and that the fine imposed has not been paid.

The director may institute a civil action in any court of competent jurisdiction for injunctive relief to prevent violation of any provision of this Chapter, any rule adopted thereunder, any permit issued pursuant thereto or any condition of any shoreline setback approval in addition to any other remedy provided for under this chapter.

(d) Nonexclusiveness of Remedies. The remedies provided in this chapter for enforcement of the provisions of this chapter, or any rule adopted thereunder, shall be in addition any other remedy as may be provided by law.

(e) Appeal in Accordance with Statute. If any person is aggrieved by the order issued by the director pursuant to this section, the person may appeal the order in the manner provided in HRS Chapter 91, provided that no provision of such

order shall be stayed on appeal unless specifically ordered by a court of competent jurisdiction

(f) The Director shall enforce this article in accordance with Section 8-3.5(a) of the County of Kaua'i Comprehensive Zoning Ordinance and HRS Chapter 205A.

Sec. 8-27.12 Civil fines.

(a) Any person who violates any provision of this Article shall be subject to the penalties provided for in HRS Section 205A 32. Where a structure is built without permits and the Director, in following the procedures outlined in Section 8-27.11(a), determines that removal of the structure would cause a greater public harm, a mandatory penalty of one thousand dollars (\$1,000) shall be imposed, plus, in the discretion of the Director, between ten percent (10%) to one hundred percent (100%) of the estimated construction cost of the unpermitted structure shall be imposed as a penalty, considering factors such as percentage of completion, scope of work, and number of offenses.

(b) Any penalty paid pursuant to this section shall be deposited by the Director of Finance into the Planning Department's budget and shall be used for the enforcement and/or education relating to this Article.

Sec. 8-27.13 Appeal of Director's decision.

Any person who can show that a direct probable harm to his or her person or his or her property interest, or probable public harm could occur from the decision may appeal any Shoreline Setback Determination, Approval or Denial by the Director to the Commission. The potential appellant shall file a notice of appeal with the Director and the Commission within fifteen (15) days after the adverse decision. Within twenty (20) days of said filing, the commission shall determine the potential appellant's standing to appeal. If the commission grants standing to appeal, the commission shall follow the procedure outlined in Chapter 9 of The Rules of Practice and Procedure of the County of Kaua'i Planning Commission. The Planning Commission's decision may be appealed to the Circuit Court pursuant to HRS Chapter 91 and the aforementioned rules.

Sec. 8-27.14 Promulgation of Rules and Regulations.

This ordinance shall supersede the Shoreline Setback Rules and Regulations of the Planning Department of the County of Kaua'i in existence at the time of adoption of this ordinance. Pursuant to HRS Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article.

**ARTICLE 28. TRANSIENT ACCOMMODATION UNIT CERTIFICATE
ALLOCATION PROGRAM**

Sec. 8-28.1 Definitions.

The definitions contained in Chapter 8, including those contained in Sec. 8-1.5, as amended, are incorporated into this Article 28. In addition, for purposes of this Article 28, unless it is plainly evident from the context that a different meaning is intended, certain words and phrases used herein shall be defined as follows:

“Actual Cost” means the amount actually paid or expenditure actually incurred, as opposed to estimated cost, replacement cost, or market value. Actual Cost may be established through receipts, paid invoices, contractual liabilities, or any other documentation or evidence sufficiently establishing the payment or expenditure of money.

“Allocation Base Year” means the year prior to the start of the Allocation Cycle.

“Allocation Base Year Transient Accommodation Unit Target” means the number of Transient Accommodation Units in the County of Kauai on December 5, 2008, increased by 1.5% per year on a compounded annual basis, for the number of years between the Allocation Base Year and 2008.

“Allocation Cycle” means a recurring five year period beginning January 1 of the first year and ending December 31 of the fifth year.

“Eligible Resort Project” means a development project that requires a zoning permit, use permit, subdivision application and/or variance permit and situated on one or more lots or parcels:

(a) Approved prior to December 5, 2008, pursuant to a zoning amendment ordinance; and

(b) Located in one or more zoning districts which were approved prior to December 5, 2008, pursuant to a zoning amendment ordinance designating such zoning districts.

“Improvements” mean all buildings, structures, landscaping and physical alterations to land, including but not limited to: waterlines, water tanks, water wells, and related facilities; streets, highways, and related facilities; workforce or affordable housing units, and related facilities; sewer lines, wastewater treatment plans, and related facilities; recreational equipment, parks, trails, common areas, and related facilities; drainage lines, detention and retention basins, and related

facilities; electrical and communication utility lines, poles, and related facilities; gas utility lines and related facilities; and grubbing and grading activities.

“Off Site Improvements” mean Improvements constructed outside of an Eligible Resort Project.

“On Site Improvements” mean Improvements constructed within an Eligible Resort Project.

“Permitted Project” means a project to develop more than one Transient Accommodation Unit that has received all requisite zoning permits, use permits, subdivision approvals, and variance permits as described in Section 8-28.2 on or before December 5, 2008; or projects that received all necessary permits and approvals as required by law before August 17, 1972.”

“Project VDA Ordinance” means one or more Visitor Destination Area amendment ordinances which established the existing VDA boundary for an Eligible Resort Project.

“Project Zoning Ordinance” means one or more zoning amendment ordinances which established the existing zoning districts within an Eligible Resort Project.

“Substantial Sum” means an Actual Cost, including architectural, engineering, and construction costs incurred before December 5, 2008 to satisfy a condition or requirement of a zoning amendment, use permit, zoning permit, subdivision approval, or variance permit, that exceeds five hundred thousand dollars (\$500,000.00), or twenty percent (20%) of the Real Property Assessment of the Land Value for the Eligible Resort Project for the 2008-2009 tax year as determined by the Department of Finance of the County of Kaua'i, whichever is less. Substantial Sum does not include any costs incurred before the approval of the Project VDA Ordinance or Project Zoning Ordinance applicable to the Eligible Resort Project.

“Transient Accommodation Unit” means any and all of the following:

- (a) A hotel unit in an Apartment-Hotel, a Hotel, or a Motel;
- (b) A hotel unit located in a Visitor Destination Area;
- (c) A hotel unit located in a Resort District;
- (d) A Time Share Unit or any other type of similarly-used fractional ownership dwelling unit or hotel unit;
- (e) A Transient Vacation Rental;

- (f) A Single-Family Transient Vacation Rental; and/or
- (g) A Multi-Family Transient Vacation Rental.

"Transient Accommodation Unit Certificate" means an authorization issued to a Transient Accommodation Unit allowing it to be developed and used.

"Transient Accommodation Unit Inventory" shall mean the State's Official Census of Visitor Accommodations, also known as the Annual Visitor Plant Inventory, for Kauai County.

Sec. 8-28.2 Applicability.

(a) Except as otherwise provided, this Article shall be applicable to any of the following permits if such permits would allow the development of more than one Transient Accommodation Unit on any lot or parcel entitled to more than one dwelling unit:

- (1) Use permits issued pursuant to Article 11, Article 10 or Sec. 8-3.2;
- (2) Zoning permits issued pursuant to Sec. 8-3.1.
- (3) Variances issued pursuant to Sec. 8-3.3; and
- (4) Subdivision approvals issued pursuant to Chapter 9 located within the Visitor Destination Area.

(b) The provisions of Section 8-28.3 shall not apply to:

- (1) the development, construction, reconstruction, repair, renovation, or use of a Permitted Project;
- (2) a Permitted Project that is the subject of a proposed modification, if the proposed modification does not increase the number of permitted Transient Accommodation Units and the Planning Director determines that the proposed modification does not require a new zoning permit, use permit, subdivision approval or variance permit; or
- (3) a Permitted Project that is the subject of a proposed modification, if the proposed modification reduces the number of permitted Transient Accommodation Units by thirty-three percent (33%) of what was previously approved by the Planning Commission or Planning Director; provided, however, that such modification, as determined by the Director,

does not create additional impacts other than those addressed by conditions outlined in the Permitted Project.

(c) Individual lots entitled to more than one Transient Accommodation Unit in a previously approved subdivision shall not be exempt from the provisions of Section 8-28.2 and 8-28.3 with regard to any other permits, including zoning permits, use permits, subdivision approvals or variances, as required by law to construct, develop or use a Transient Accommodation Unit on the owner's lot or parcel unless the project is exempt as an Eligible Resort Project pursuant to Section 8-28.5.

(d) Notwithstanding any other provision contained in this Article 28, the boundaries of a Permitted Project may be amended by consolidating the Permitted Project with one or more adjacent lots ("Adjacent Lot(s)") pursuant to Chapter 9 of the Kauai County Code 1987, as amended. Provided, however, the number of Transient Accommodation units being applied for on the Permitted Project's property and the Adjacent Lot(s) shall not exceed the number of Transient Accommodation units authorized by the Planning Commission for the Permitted Project prior to the consolidation. Upon consolidation under these terms, the Permitted Project on the new lot or parcel shall not be subject to Section 8-28.3.

Sec. 8-28.3 Availability of Transient Accommodation Unit Certificates.

(a) In order to construct, develop, or use a Transient Accommodation Unit, an applicant:

(1) must be issued a Transient Accommodation Unit Certificate by the Planning Commission; and

(2) must obtain all necessary permits and approvals by the Planning Commission.

(b) The total number of Transient Accommodation Unit Certificates available for issuance during an Allocation Cycle shall be equal to five point one percent (5.1%) of the Transient Accommodation Unit Inventory in the Allocation Base Year (i.e., a one percent compounded annual growth rate during the five year Allocation Cycle), provided that this number shall be:

(1) decreased by fifty percent (50%) if the Transient Accommodation Unit Inventory in the Allocation Base Year exceeds the Allocation Base Year Transient Accommodation Unit Target, or

(2) increased by fifty percent (50%) if the Transient Accommodation Unit Inventory in the Allocation Base Year is less than the Transient Accommodation Unit Inventory in the Allocation Base Year of the previous Allocation Cycle and the Transient Accommodation Unit Inventory in the

Allocation Base Year is less than the Allocation Base Year Transient Accommodation Unit Target.

(c) The Planning Commission, upon recommendation by the Planning Department, must adopt the total number of Transient Accommodation Unit Certificates available for issuance to all prospective applicants in the applicable Allocation Cycle before March 1 of the first year of the Allocation Cycle.

(d) If fractional Transient Accommodation Unit Certificates would result from the computations contained in this section, then the number shall be rounded up to the next whole number.

Sec. 8-28.4 Transient Accommodation Unit Certificate Allocation Process.

(a) Applications for more than one Transient Accommodation Unit Certificate must be contemporaneously submitted with a complete application for a permit set forth in Section 8-28.2. These applications shall only be received by the Planning Department on or after the first business day following the Planning Commission's adoption of the number of available Transient Accommodation Unit Certificates for the Allocation Cycle. Applications shall not be accepted by the Planning Commission when Transient Accommodation Unit Certificates are no longer available in the applicable Allocation Cycle.

(b) Transient Accommodation Unit Certificates shall be allocated in chronological order.

(c) Should an application exceed the number of available Transient Accommodation Unit Certificates established by the Planning Commission in the applicable Allocation Cycle, the applicant may apply for either a zoning, use, subdivision or variance permit for more than one Transient Accommodation Unit pursuant to Charter Section 3.19(a) and (b).

(d) Applications for Transient Accommodation Units pursuant to this Section shall be processed as provided in this Chapter, and in Chapter 9.

(e) Transient Accommodation Unit Certificates shall not be issued until the application under Section 8-28.2 submitted contemporaneously has received final approval.

(f) Should an applicant fail to commence substantial construction of twenty percent (20%) of the Transient Accommodation Unit estimated cost of the value of the improvements as determined by the building permit within four (4) years from the date the certificate was issued, the certificate shall lapse. Notwithstanding the above, the Planning Commission, for good cause shown, may extend the certificate for one (1) year at a time. The Planning Commission may grant up to three (3) extensions.

Sec. 8-28.5 Exemption for Eligible Resort Projects.

(a) The purpose of this section is to provide a process for identifying, and for registering Eligible Resort Projects that are exempt from Section 8-28.3(a)(1).

(b) The owner of any Eligible Resort Project shall have one (1) year from November 20, 2011 to file an application with the Planning Director to register an Eligible Resort Project as exempt from Section 8-28.3(a)(1). The application shall include an itemization of Actual Costs with reference to exhibits containing proof of expenditures actually made before December 5, 2008.

(c) The Planning Director shall approve and register as exempt any Eligible Resort Project, or portion thereof, which meets the criteria in Section 8-28.5(c)(1) and either Section 8-28.5(c)(2) or 8-28.5(c)(3) below.

(1) The Eligible Resort Project must be composed of one or more lots or parcels that are located in a Visitor Destination Area that was approved and established prior to December 5, 2008, pursuant to a Project VDA Ordinance or the Eligible Resort Project must be composed of one or more lots or parcels that are located in zoning districts that were approved and established prior to December 5, 2008, pursuant to a Project Zoning Ordinance.

(2) Either the owner or the owner's predecessor-in-interest must have obtained the governmental approvals for and expended Substantial Sums on any of the following prior to December 5, 2008:

(A) Any On Site Improvements or Off Site Improvements authorized by the Project VDA Ordinance or the Project Zoning Ordinance; or

(B) Any On Site Improvements or Off Site Improvements required to be constructed pursuant to the conditions of approval contained in the Project VDA Ordinance or the Project Zoning Ordinance.

(3) The owner or the owner's predecessor-in-interest must have complied with Article 3 of the Housing Policy for the County of Kaua'i (Ordinance No. 860), or paid an in-lieu fee or dedicated land pursuant to an affordable housing agreement with the County, prior to December 5, 2008, in fulfillment of any workforce housing or affordable housing condition contained in the Project VDA Ordinance or the Project Zoning Ordinance.

(d) The owner shall have the burden of proof by a preponderance of the evidence in establishing that the Eligible Resort Project is exempt.

(e) The Planning Director shall have one hundred and twenty (120) days after acceptance of a completed application to approve or deny the registration of an Eligible Resort Project as exempt. If the Planning Director denies the application, the owner may appeal to the Planning Commission pursuant to the procedures set forth in Chapter 9 of the Rules of Practice and Procedures of the Planning Commission, as amended from time to time.

(f) In making a decision on any application, the Planning Director shall find that the owner or the owner's predecessors-in-interest have expended Substantial Sums.

(g) An Eligible Resort Project that has obtained an exemption under Section 8-28.5(a) is not exempt from obtaining any other permits required by law.

(h) Notwithstanding any other provision contained in this Article 28, the boundaries of an Eligible Resort Project which is exempt under this Section 8-28.5 ("Exempt Project") may be amended by consolidating the Exempt Project with one or more adjacent lots ("Adjacent Lot(s)") pursuant to Chapter 9 of the Kauai County Code 1987, as amended. Provided, however, the number of Transient Accommodation units being applied for on the Exempt Project's property and the Adjacent Lot(s) shall not exceed the number of Transient Accommodation units approved by the Zoning Amendment or Planning Commission for the Exempt Project prior to the consolidation. Upon consolidation under these terms, the Exempt Project on the new lot or parcel shall be exempt pursuant to the provision of this Section 8-28.5.

Sec. 8-28.6 Promulgation of Rules and Regulations.

Pursuant to Hawai'i Revised Statutes Chapter 91, as amended, the Planning Commission may promulgate rules and regulations consistent with this Article as may be necessary to implement any of the provisions of this Article

Section 3. If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

Section 4. Before final adoption and publication of this ordinance, the County Clerk shall be authorized to codify any ordinances relating to Chapter 8 of the code enacted prior to the adoption of this ordinance but not listed in Section 2 of this legislation.

Section 5. This ordinance shall take effect upon its approval.

Introduction by: /s/NADINE K. NAKAMURA
(By Request)

DATE OF INTRODUCTION:

March 28, 2012

Lihou'e, Kaua'i, Hawai'i

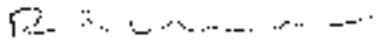
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CERTIFICATE OF THE COUNTY CLERK

I hereby certify that heretofore attached is a true and correct copy of Bill No. 2433, Draft 2, which was adopted on second and final reading by the Council of the County of Kauai at its meeting held on November 14, 2012, by the following vote:

FOR ADOPTION: Bynuni, Kualifi, Nakamura, Rapozo, Yukimura Furforo	TOTAL - 6,
AGAINST ADOPTION: None	TOTAL 0,
EXCUSED & NOT VOTING: Chang	TOTAL - 1,

Lihue, Hawaii
November 21, 2012


Ricky Watanabe
County Clerk, County of Kauai

ATTEST:

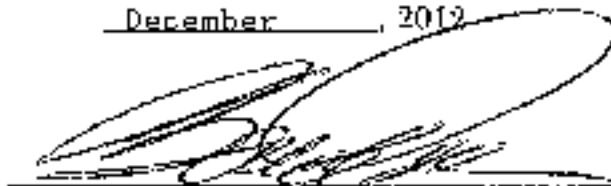

Jay Furforo
Chairman & Presiding Officer

DATE OF TRANSMITTAL TO MAYOR:

November 21, 2012

Approved this 5 day of

December, 2012



Bernard P. Carvalho Jr.
Mayor
County of Kauai