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BEFORE THE PLANNING COMMISSION
OF THE
COUNTY OF KAUAI

In the Matter of the Application)	SPECIAL PERMIT NO. _____
)	
of)	
Bruce and Cynthia Fehring, for a)	
Special Permit for a portion of real)	
property known Lot L-12-B of the)	APPLICATION; EXHIBIT LIST;
Wailapa Subdivision, situated at Kahili,)	EXHIBITS "A" and "B"
Hanalei, Kauai, Hawaii, identified by)	
Tax Key No. (4) 5-1-05-:015, CPR E)	
And containing an area of 1.445 acres,)	
more or less.)	
)	
)	
)	
_____)	

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APPLICATION

COMES NOW BRUCE AND CYNTHIA FEHRING, husband and wife, the Applicant in the above-captioned proceedings, and hereby submits the following Application:

SECTION 1. APPLICANT/SUBJECT PROPERTY/OWNER

- 1.1 Applicant. The Applicant is Bruce and Cynthia Fehring, husband and wife.
- 1.2 Subject Property. The property which is the subject matter of this Application ("Subject Property") is described as a portion of Lot L-12-B of the Wailapa Subdivision, located in Kahili, Hanalei, Kauai, Hawaii, identified by Tax Key No. (4) 5-1-05:015, CPR No. 5. The Subject Property is shown on the copy of the tax plat map attached hereto as Exhibit "A". The Subject Property contains a limited common element area of 1.445 acres.
- 1.3 Ownership. Applicant is the owner of the Subject Property.

SECTION 2. LOCATION AND LAND USE DESIGNATIONS OF PROPERTY

- 2.1 Location. The Subject Property is located in Kahili, Hanalei, Kauai, Hawaii, with direct access to Wailapa Road, as shown on Exhibit "A".
- 2.2 Land Use Designations. The respective State Land Use Commission ("SLUC"), Kauai General Plan, County of Kauai Comprehensive Zoning Ordinance ("CZO") and other relevant land use designations for the Subject Property are described as follows:
 - a. SLUC. The Subject Property is located within the SLUC Agricultural District.
 - b. Kauai General Plan. The Subject Property is located in the Kaua'i General Plan

Agricultural Land Use Designation, as it has been under prior General Plans.

- c. CZO. The Subject Property is located in the CZO Agriculture District, and has been since the adoption of the CZO.
- d. Development Plan Area. The Subject Property is located within the North Shore Development Plan Area since the original adoption of the North Shore development Plan Ordinance (Ordinance No. 239, December 27, 1974), which is codified in Chapter 10, Article 2 of the Kauai County Code, 1987 ("KCC").
- e. Special Management Area. None of the Subject Property is located within the Special Management Area ("SMA") of the County of Kauai.
- f. Shoreline/Shoreline Setback Area. None of the Subject Property is located along the shoreline or within the Shoreline Setback Area as defined in HRS Chapter 205A, Part III, and CZO Article 27.
- g. Resources. The Subject property is located within the Agriculture Designation (Kauai's General Plan, November 2000).
- h. Violations. There are no existing violations of any land use laws or regulations on the Subject Property.
- i. Land Use Conditions. The Subject Property is part of the Wailapa Subdivision, which was subdivided by Kilauea Bay Consortium, who had satisfied all conditions of Subdivision Permits No. S-78-2 and S-81-26.

SECTION 3. DESCRIPTION OF EXISTING USES ON THE SUBJECT PROPERTY

- 3.1 Existing Improvements. The Subject Property has a single-family dwelling and a gravel driveway

which connects to Wailapa Road.

- 3.2 Transient Vacation Rental Activity Prior to March 7, 2008. Applicant' documents have been submitted to the Kauai County Planning Department for a Transient Vacation Rental Nonconforming Use Certificate, which includes a list of transient vacation rental bookings for the Subject Property covering the period from April 2006 through and including March 2008. These documents establish a pattern of consistent rental that was occurring prior to the adoption of Ordinance No. 864.

SECTION 4. PROPOSED PERMITTED USE OF THE SUBJECT PROPERTY.

- 4.1 Proposed Permitted Use. The Applicant proposes that it be permitted to continue to engage in transient vacation rental activity from the existing dwelling subject to Special, Use, and Class IV Zoning Permits from this Commission. No new construction is proposed with this Application.
- 4.2 Access and Parking. Access to the Subject Property is through an opening in the vegetative landscaping from Wailapa Road over a gravel driveway. Parking for guests is provided on-site; no parking occurs within the Wailapa Road right-of-way.
- 4.3 Agricultural Use. The steep topography of this parcel, as evidenced by a certified topographical map Exhibit "B" precludes the use of the majority of the Subject Property for most meaningful agricultural pursuits, due to erosion and safety concerns. In areas of the parcel which are usable agriculturally, the owner-applicants grow apple bananas, coconuts, tropical flowers, star fruit, and mangoes. These are used for sale, for consumption by TVR guests, and for personal consumption by owner applicants. Owner/Applicant Bruce and Cynthia Fehring actively farm the entirety of Unit C of the Wailapa Road Condominium, TMK (4) 5-1-05-015-CPR 3, and use the income from the use of Unit E as a TVR to supplement their farm income. Agricultural activity is evidenced by 1040 Schedule F filings and General Excise Tax Filings submitted to County Planning.

SECTION 5. GENERAL DESCRIPTION OF SUBJECT PROPERTY AND SURROUNDING LANDS

5.1 Adjacent Property. The Subject Property is, more or less, triangular in shape. It is bordered to the east by Wailapa Road, on the other side of which is the Na Aina Kai Botanical Gardens. To the west lies the 30' wide County of Kauai beach easement track to Kahili ("Rock Quarry") Beach. Beyond that is a non-usable gulch which falls down steeply to the Wailapa Stream, and which is a common element of the Wailapa Road Condominium. To the north is a neighboring agricultural parcel owned, and lived on, by Martha Harkey and Gary Henderson. Clifford J. Coffyn owns the parcel to the south, also across the County's Beach Access Easement to Kahili Beach.

5.2 Natural Environment.

a. General Description. The subject Property is located within an area of former sugar lands, as were large tracts of land within the Kilauea area which have since been urbanized or subdivided as agricultural lots. There is no evidence, however, that the Subject Property was ever cultivated, probably due to its steep nature. The Kilauea Plantation constructed the (now beach access) road adjacent to (and over part of) the Subject Property to bring stone from the beachside sea-level quarry to the level plain above for use in construction.

b. Soils.(USDA/UH Soil Survey). Sheet Numbers 16 and 25 of the Soil Survey prepared by the Soil Conservation service of the U.S. Department of Agriculture indicate that the soils on the Subject Property are described as follows:

(1) Lihue Series: LhB (0-8% slope), LhC (8-15% slope), LhD (15-22% slope), LhD (22-29% slope), LhE (29-36% slope). These are described as well-drained soils on upland areas, developed in materials weathered from basic igneous rock, gently sloping to steep in grade. Subject Property has an approximate average grade of 24 degrees, with areas in excess of 34 degrees.. See Certified Topographical Map (Exhibit "B"). Elevations range from nearly sea level to 800 feet. Annual rainfall is 40" to 60", and the mean temperature is 73 degrees F.

c. Soil Rating (Land Study Bureau/UH). The Detailed Land Classification- Island of Kauai

prepared by the Land Study Bureau, University of Hawaii, shows that the Subject Property consists of lands with overall ratings of B (primarily where the residence is located) and D (primary the steep area subject to erosion).

d. Botanical/Biological Resources. The steep topography of the Subject Property and lack of any evidence to the contrary leads the Applicant to believe that no commercial agriculture has been pursued in the past.

e. Flood Zones. According to Flood Insurance Rate Maps, the Subject Property is situated within Flood Zone X (areas outside the 500 year flood plain).

SECTION 6. PERMITS REQUESTED AND REQUIRED

6.1 Special Permit. A SLUC Special Permit, as provided in Hawaii Revised Statutes Section 205-6 and Hawaii Administrative Rules title 15, Subtitle 3, Chapter 15, Subchapter 12, is required for the proposed use of the Subject Property, which is within the State Land Use Agricultural District, in conjunction with a transient vacation rental use of the dwelling on the Subject Property. Because the Subject Property is less than fifteen (15) acres in size, the Planning Commission does not require final approval by the State Land Use Commission.

a. Reasons for requesting a Special Use Permit. Applicant owns a single family residence which has been used as a vacation rental on an ongoing basis prior to March 7, 2008 on land designated Agricultural. Applicant desires to continue using the existing single family dwelling unit as a vacation rental to supplement Applicant's farm income on Unit C of the Wailapa Road Condominium so that Applicant can continue to farm.

This application is made pursuant to Ordinance 904 (Bill No. 2364) amending provisions of Ordinances 864 and 876 relating to previously implemented "grandfathering" provisions for existing single family transient vacation rentals outside the Visitor Destination Areas. The Applicant seeks a Special Use Permit in conjunction with the Applicant's related NCU Form, submitted prior to October 15, 2010, requesting a single family

transient vacation rental located on land in the State's land use Agricultural District.

On August 16, 2010, the County adopted Kauai County Ordinance 904, which essentially extended the deadline to obtain a non-conforming use certificate for single family transient vacation rentals located on land designated Agricultural, and provided for the issuance of Special Use Permits where, in addition to the Special Use Permit standards in HRS 205-6 Planning Commission's Rules of Practice and Procedure, the Applicant can show that the Subject Property had a County of Kauai Agricultural Dedication, bona-fide agricultural operation existing on the property, Federal Tax Form 1040 Schedule F, or circumstances that inhibit intensive agricultural activities or prevent the Applicant from qualifying for agricultural dedication.

Accordingly, Applicant seeks a Special Use Permit pursuant to Kauai County Ordinance 904 due to circumstances (steep topography, see Exhibit "B") that inhibit intensive agricultural activities. The Subject Property has very little level ground, and what little level land exists contains the residence and limited agricultural uses.

6.2 Use Permit. The proposed use of the Subject Property will take place within the CZO Agriculture District. A Use Permit is required for the proposed use in the CZO Agriculture District (CZO Section 8-7.3 ((a)(4))). The standards for the issuance of use permits are contained in CZO Chapter 8, Article 20.

6.3 Class IV Zoning Permit. The issuance of a Class IV Zoning Permit is a condition of the Use Permit approval. See CZO Sections 8-7.7(4), 8-8.7, and 8-19.6.

SECTION 7. IMPACTS OF DEVELOPMENT.

7.1 Botanical Resources and Wildlife. The Subject Property has been used for dwelling purposes since 1988 and for transient vacation rental purposes since 1994. There are no known endangered botanical features nor habitat for any endangered biological species.

7.2 Historical Resources. There are no known historic sites or features on the surface of the Subject

Property. Although no further construction is contemplated with this Application, in the event of inadvertent historic site or burial discovery in the future, the Applicant will immediately contact the Historic Preservation Division of the Department of Land and Natural Resources.

7.3 Air Quality/Noise. The Development has little or no impact on the air quality and ambient noise levels in the area. Because the use is for temporary occupancy, the quality of the air and the noise levels are no different that occur when the owners or their extended family are living in the dwelling.

7.4 Flooding and Drainage. The Subject Property is situated within Flood Zone "X" (areas outside of 500 year flood plain) as shown on the County of Kauai's flood insurance rate map. The dwelling met all of the requirements of the Flood Plain Management Ordinance of the County of Kauai, as contained in Chapter 15, Article 1, of the Kauai County Code, 1987. The Development has no impact on flooding on or around the Subject Property. All drainage resulting from the Development is contained on site and subject to best management practices.

7.5 Utilities.

a. Potable Water. The dwelling receives water service from the department of Water of the County of Kauai for the residential use.

b. Electric/Communications. The dwelling receives electric service from Kauai Island Utility Cooperative and wire communication services from Hawaiian Telcom, Inc.

7.6 Wastewater Treatment and Disposal. Wastewater generated by the dwelling goes into a septic system (as permitted at the time of construction of the dwelling by the Department of Health, State of Hawaii).

7.7 Solid Waste Disposal. Solid waste collection for the dwelling is provided by the County of Kauai.

7.8 Governmental Services. The proposed transient vacation rental use will have no greater impacts on

governmental services than results from owner or owner family occupancy periods.

a. Fire and Police Services. Fire and police services in the vicinity are located in Kapaa and Hanalei. The proposed transient rental use will not increase the need for existing fire and police services.

b. Schools. The closest schools are Kilauea Elementary School, Kapaa Middle School, and Kapaa High School. Because the transient rentals are to persons who are not residents of the island, no additional student enrollment is reasonably expected to result.

7.9 Economics. The transient rentals will have the following economic impacts:

a. Jobs. All persons who provide services for the transient rental operation are independent contractors. For housekeeping, there are between 2 to 3 persons when the dwelling requires cleaning; between 1 to 3 persons for other maintenance on an as-needed basis; 1 person handling reservations for the Subject Property; 1 person doing website design and maintenance for the Subject Property. Income derived from transient vacation rentals at the Subject Property are used in part to support farm workers of the Applicant's adjacent farmed 7.5 acre Unit C of the Wailapa Road Condominium.

b. Housing. There will be no need for additional Workforce Housing.

c. Property Values. The fair market value of real property is based on the value of the land and physical improvements. The proposed transient rental use, in and of itself, will not significantly increase the value of the Subject Property (barring, of course, re-structuring of the tax laws that the Council might implement), and should not result in any significant increase in real property taxes on the Subject Property. It will not, in and of itself, have a material impact on the value of, or real property taxes assessed against, surrounding properties, as the assessment of buildings is based on the age, condition, and nature of construction of the building itself, and the assessment of the land area can be capped if agricultural dedication takes place.

7.10 Population. The proposed transient rental will not result in a change in the population.

7.11 Traffic Circulation. The major road servicing the Subject Property is Wailapa Road (a County road), which connects with Kuhio Highway (a State Highway). The volume of traffic into and from the Subject Property will be no greater than the current volume. A maximum of 6 persons can occupy the dwelling at any given time, but usually there are between 2 and 4 persons. As a result, the proposed transient use will not result in any significant or meaningful increase in traffic in this area.

SECTION 8. SLUC CONSIDERATIONS

8.1 SLUC Agricultural District. The Subject property is located in the SLUC Agricultural District. One of the permitted uses in the SLUC Agricultural District is farm dwellings, which are defined as dwellings in which the occupants derive income from agricultural use.

8.2 Compliance with SLUC Agricultural District Standards. The proposed use is to allow guests to occupy the dwelling for periods of time less than 180 consecutive days. While the owners or their extended family may not be occupying the dwelling on a permanent basis because of periodic transient rental, the owners and/or their extended family do occupy the dwelling on occasion and derive agricultural income from the agricultural income from agricultural activities which take place within the Wailapa Road Condominium.

SECTION 9. GENERAL PLAN CONSIDERATIONS

9.1 Kauai General Plan Agriculture Land Use Designation. The Subject Property is located in the Kauai General Plan Agriculture Land Use Designation. The policies governing such lands are set forth in Section 5.4 of the Kauai General Plan, which provides, in relevant part, as follows:

"5.2.1 Policy

- (a) Lands included within the Agriculture designation shall be predominantly used for or held in reserve to be used in the future for agricultural activities. These activities include the breeding, planting, nourishing, and caring for, gathering, and processing of any animal or plant organism, including aquatic animals and plants, for the purpose of producing food or material for non-food products; the commercial growing of flowers or other ornamental plants; the commercial growing of forest products; and the commercial breeding and caring for domestic animals and pets.
- (b) The primary intent of the Agriculture designation is to conserve land and water resources in order to: 1) insure an excellent resource base for existing and potential agricultural uses; 2) assure a sufficient supply of land available for sale or lease at a cost that is economically feasible for agricultural enterprise; and 3) promote and preserve open agricultural lands as a key element of Kauai's rural character and lifestyle, essential to its image as "The Garden Island" and to the continued viability and development of Kauai's visitor industry.
- (c) In administering zoning and subdivision regulations, the County shall seek to preserve important agricultural lands. Important agricultural lands include those designated "A" or "B" by the State Land study Bureau evaluation or "Prime" or "Unique" by the Agricultural Lands of Importance State Of Hawaii Evaluation; provided that these ratings shall be superseded at such time as the State of Hawaii officially maps and designates Important Agricultural Lands, as mandated in the State Constitution.
- (d) Lands designated Agriculture shall include: important agricultural lands; lands in active agricultural use; lands with potential for agriculture, silviculture or aquaculture; and other lands not suited for urban development because of location, topography, economy of public services, or other purpose related to general health, safety, and welfare.
- (e) The secondary intent of the Agriculture designation is to provide an opportunity for Kauai citizens to reside in an agricultural community. An "agricultural community" is an area that has both agricultural uses and residences. Typically, an agricultural community is established through subdivision of land and provision of roads and potable water service. Agricultural communities are generally located in outlying areas, do not have convenient access to County facilities, and may not receive the full range or highest level of County services such as are available to residential communities, towns, and urban centers.
- (f) The primary intent of the Agriculture designation shall take precedence over the secondary intent.
- (g) To implement the Agriculture designation, specific controls on the subdivision and alteration of designated lands shall be formulated to prevent the dissipation of agricultural potential, the loss of rural character, and the dispersal of residential and other urban uses.
- (h) The following principles shall be applied in the development of an agricultural community: 1) maintain irrigation works and easements where feasible and beneficial to existing or potential agricultural uses within the site or downstream; and 2) preserve wetlands and streams and provide a riparian buffer area to prevent land disturbance and to filter runoff."

9.2 Compliance with Kauai General Plan Standards. The proposed use is the equivalent of owner occupancy (i.e., a farm dwelling), because there are persons who reside, although temporarily, within the structure or on the Subject Property. If the Subject property was occupied full time by the Owner, the same or greater impacts to the property itself, and to the surrounding neighborhood, would result. With transient rentals, there are no greater amount of vehicles and no more noise than occurs with a family permanently occupying the dwelling. With transient rentals, there are no more greater (and likely far less) amount of vehicles and no more noise than if the Subject property was rented on a long-term basis and not occupied by the owners. The use will have no significant adverse impact on the surrounding environment. The activities will be compatible with agricultural uses in the area, as well as with the surrounding environment, and will not inhibit existing or future agricultural uses of surrounding agriculturally zoned properties. As such, the proposed use complies with the Kauai General Plan policy for the agricultural Designation in that it will help preserve and maintain the natural characteristics of the area, will allow the area to remain predominantly free of development, and will be incidental to the agricultural use and open character of the surrounding lands.

SECTION 10. CZO CONSIDERATIONS

10.1 CZO Agriculture District. The Subject Property is located within the CZO Agriculture District. Uses in the CZO Agriculture District are set forth in the CZO Article 7, which provides in relevant part as follows:

“Sec.8-7.2 Generally Permitted Uses and Structures.

The following uses and structures are permitted in agriculture districts:

- (1) Accessory Structures and uses
- (2) Aquaculture
- (3) Diversified agriculture
- (4) Forestry
- (5) Grazing
- (6) Historic Sites
- (7) Intensive agriculture

- (8) Livestock, poultry, and piggeries, except as provided in Sec. 8-7.3
- (9) Minor food processing related to agricultural products
- (10) Orchards and nurseries
- (11) Outdoor recreation
- (12) Pet keeping and raising, except as provided in Sec. 8-7.3
- (13) Public parks and monuments
- (14) Resource management
- (15) Single family detached dwellings
- (16) Specialized agriculture
- (17) Undeveloped campgrounds
- (18) Warehousing, storage, and packing of plant products
- (19) Wildlife management

Sec. 8-7.3 Uses and Structures That Require a Use Permit

The following uses and structures in agricultural districts shall require a use permit:

- (1) Animal Hospitals
- (2) Cemeteries
- (3) Churches, temples, and monasteries
- (4) Commercial recreation
- (5) Construction and worker temporary housing
- (6) Development campgrounds
- (7) Golf courses
- (8) Mineral extraction and quarries
- (9) Pet keeping and raising proposed within five hundred (500) feet of any Residential District
- (10) Poultry and piggeries when to be located within three thousand (3000) feet of any Use District
- (11) Private and public utility facilities
- (12) Schools and daycare centers
- (13) Transportation terminals
- (14) Any other use or structure which the Planning Director to be similar in nature to those listed in this section and appropriate to the District."

10.2 Compliance with CZO Agriculture District Standards. The structure in which the proposed use is to take place is a single family dwelling, and single family dwellings are permitted uses within the Agricultural District. The difference is that the dwelling is not occupied by the owners year-round, nor by long-term renters. The occupants are guests, who, like long-term renters, pay a rental fee. However, the transient guests can be occupants for periods of less than 180 days. The use is residential occupancy, because the guests are occupying a dwelling, although the perception of some is that this is “commercial” or “resort” in nature because of the type of occupancy involved.

The proposed transient rental itself will have no significant impact on the surrounding environment. The proposed transient rental use is a use that is compatible with other uses in the area, as well as with the surrounding environment. There is no irretrievable loss of agriculture because of the unusable nature of majority of the property for agriculture, and the continuing use for agriculture of those portions which are agriculturally viable. As such, the development complies with CZO Sections 8-7.1 and 8-7.3 in that it will help to preserve, maintain, and improve the natural characteristics of the area, will allow the area to remain predominantly free of development and will be incidental to the agricultural uses and the agricultural character of the surrounding lands.

The rental income helps to sustain the agricultural activities that have been occurring both on the Subject Property and on the Applicant’s adjacent more agriculturally viable parcel.

SECTION 11. USE PERMIT/CLASS IV ZONING PERMIT CONSIDERATIONS

11.1 Use Permit. The Applicant is applying for a Use Permit pursuant to CZO Chapter 8, Article 20, and CZO Sections 8-7.3 (a) and 8-8.3. The permit is for the use of the existing dwelling (which is a permitted structure) as a vacation rental in the CZO Agriculture District.

11.2 Compatibility With Surrounding Uses. The Subject Property is surrounded by a very large parcel used as a commercial botanical garden, with a deeply sloping gulch on the opposite side, beyond the County of Kauai beach easement track to Kahili/Quarry Beach. Uses on the surrounding lands include dwelling uses and agricultural uses. The proposed activities will be consistent with such surrounding uses.

11.3 Compliance with CZO Use Permit Standards. The proposed use on the Subject Property is in compliance with the standards for Use Permits as contained in the CZO Section 8-20.5 (a) in that the development will be :

- a. a compatible use;
- b. not detrimental to health of persons residing or working in the neighborhood;
- c. not detrimental to safety of persons residing or working in the neighborhood;
- d. not detrimental to peace of persons residing or working in the neighborhood;
- e. not detrimental to morals of persons residing or working in the neighborhood;
- f. not detrimental to comfort and general welfare of persons residing or working in the neighborhood;
- g. not detrimental or injurious to property or improvements in the neighborhood;
- h. not detrimental to the general welfare of the community;
- i. not a cause of substantial harmful environmental consequences to the Subject Property, or to other lands or waters;
- j. not inconsistent with the intent of the CZO (Chapter 8, KCC) ; and

- k. not inconsistent with the general plan

11.4 Compliance with CZO Class IV Zoning Permit Standards. The Applicant has complied with the procedural provisions for a Class IV Zoning Permit by its filing and processing of this application.

SECTION 12. NORTH SHORE DEVELOPMENT PLAN.

12.1 Development and considerations. KCC Section 10.2 (c) addresses the need to protect and perpetuate agricultural uses within the North Shore Planning Area because of the unique cultural, economic, historic and scenic value to the general public. To do so, the following limitations exist:

- a. No More than one dwelling unit is permitted for each parcel of record;
- b. The minimum lot size for subdivision is five (5) acres;
- c. Heights of structures are limited to 25 feet;
- d. Access points require conformance with the Development Plan;
- e. Subdivision design requires conformance with the Development Plan;
- f. Utility structure location and routing (except for poles not more than 40 feet in height) require Planning Commission approval;
- g. Alignment of rights of way, pavement width, pedestrian and bicycle trails, access points of private streets, parking lots and common driveways serving more than 2 dwellings shall conform with the Development Plan; parking public carriers of more than 10 passengers and travel routes are limited to locations designated on the Development Plan; helicopter and ocean going craft landing is prohibited without specific approval of the Planning Commission; and restoration and maintenance of the one-lane Hanalei Bridge shall be carefully considered.

h. Development of campsites, recreational vehicle parks, day use picnic areas, undeveloped campgrounds and private recreation areas intended for use of persons other than the land owners which require facilities, require a use permit; and commercial recreational uses and facilities are prohibited within a residential district if ambient noise levels increase as a result.

i. Design standards applicable to exterior colors, use of concrete block masonry, landscaping and parking areas are specified.

12.2 Development's Compliance with Development Plan Considerations. The proposed use of the Subject Property will not conflict with any of the capital considerations contained in the North Shore Development Plan. The dwelling in which the proposed transient rental use is to take place exists, and it is compatible with the environmental integrity and the natural beauty of the area. As such, the rental will allow the Applicant to continue and maintain agricultural activities both on and nearby to the Subject Property, will have no negative impact on the public safety or welfare, on any endangered species of plants or animals, on archaeological or historic sites, or on recreational opportunities on or around the Subject Property.

SECTION 13. COMPLIANCE WITH REQUIREMENTS FOR SLUC SPECIAL PERMIT.

13.1 Special Permit Requirements. The proposed Development will comply with the requirements for an SLUC Special Permit, as contained in Hawaii Revised Statutes Section 205-6 and in Section 15-15-95 of the Land Use Commission Rules (Hawaii Administrative Rules) as set forth herein.

13.2 The use will not be contrary to the objectives sought to be accomplished by the HRS Chapter 205 and 205A, and the SLUC Rules. The proposed use is the same as, or substantially similar to, farm dwelling use on lands in the SLUC Agricultural District.

13.3 The desired use will not adversely affect surrounding property. As discussed herein, the proposed use is, and shall continue to be, compatible with the surrounding neighborhood and uses, and will not generate any

significant adverse impacts. There will be no increase in the amount of traffic resulting from this proposal.

13.4 The use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. As discussed herein, no burden will be placed on public agencies to provide additional facilities, services, and utilities as a result of this proposal.

13.5 Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. As noted herein, allowing the Applicant the opportunity to derive income from transient rental will not interfere with, and instead will promote, agricultural activities. The cost of planting, propagating, and maintaining the vegetable gardens, tropical flower beds, fruit tree orchard, palm nursery and other plantings that the Applicant grows is considerable. Income from the rental allows the Applicant to allow their agricultural operations. Income is also used for maintenance of the swelling and other improvements on the Subject Property, and to keep the land in a condition that is a benefit to not only the owners and guests, but to persons who visit the area.

In addition, new demands have arisen for visitor accommodations that are different from hotel accommodations. Many guests prefer the privacy of a dwelling to that of a resort with numerous other guests. The proposed use will not require intrusive improvements, will not curtail the existing and future agricultural uses nearby to the Subject Property and will provide additional revenues to the Applicant to enable it to continue its agricultural business.

13.6 The land on which the proposed use is sought is mostly unsuited for the viable agricultural uses permitted within the District, due to its steep topography. The presence of the dwelling in the proposed use is to take place does not prevent use of a small portion of the subject property and nearby properties, including that which is currently being extensively farmed by the Applicant, remaining available for agricultural purposes. Contrary, then, to the assertions that allowing transient vacation rental use will mean the irretrievable loss of agricultural lands, This Commission can recognize that the uses are not incompatible and can co-exist.

SECTION 14. HRS CHAPTER 343 (ENVIRONMENTAL IMPACT STATEMENTS) CONSIDERATIONS.

14.1 HRS Chapter 343. The proposed use is not subject to the provisions of Hawaii Revised Statutes Chapter 343. HRS Chapter 343 requires the preparation of an Environmental Assessment and/or an Environmental Impact Statement for certain activities as specified in HRS Section 343-5. The proposed use does not fall within any of the category of activities contained in HRS Section 343-5.

SECTION 15. NATIVE HAWAIIAN ISSUES.

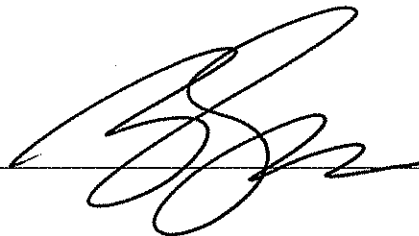
15.1 Development's Impacts on Traditional or Cultural Practices. There are no known practices taking place on the Subject Property that will be affected. The Applicant acquired the Subject Property in 1987 and has never observed any native practices, nor been approached by any Native Hawaiians requesting use of any portion of the Subject Property for such practices. The proposed use will have no negative impact on any cultural or historic sites or resources located on or upon the Subject Property.

SECTION 16. CONCLUSION.

The Applicant respectfully requests that the Planning Commission of the County of Kauai: grant the Applicants request for a Special Use Permit for the proposed use.

DATED: Kilauea, Kauai, Hawaii, 5/31/11

OWNER/APPLICANT



BRUCE FEHRING



CYNTHIA A. FEHRING

Condominium Map for
WAILAPA ROAD
Site Plan
Page 1 of 11 pages



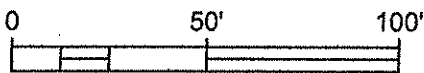
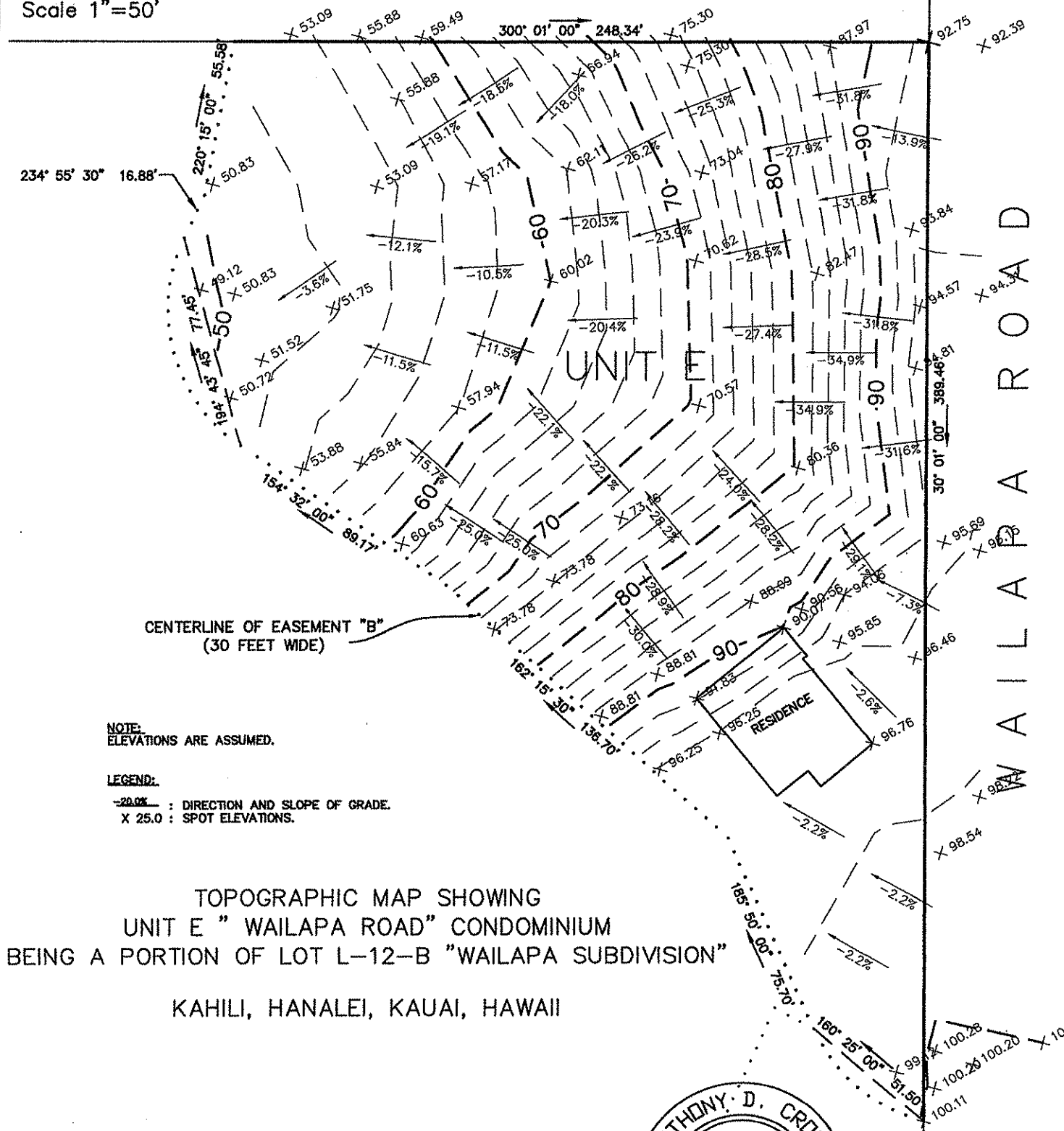


EXHIBIT "B"

Scale 1"=50'




NOTE:
ELEVATIONS ARE ASSUMED.

LEGEND:

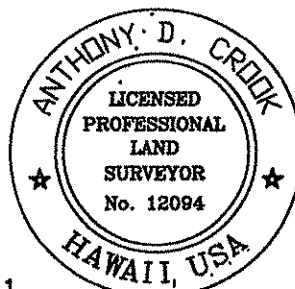
-20.0% : DIRECTION AND SLOPE OF GRADE.
X 25.0 : SPOT ELEVATIONS.

TOPOGRAPHIC MAP SHOWING
UNIT E " WAILAPA ROAD" CONDOMINIUM
BEING A PORTION OF LOT L-12-B "WAILAPA SUBDIVISION"

KAHILI, HANAIEI, KAUAI, HAWAII

 AILANA SURVEYING & GEOMATICS LLC
PHONE (808)346-1818
FAX 1-800-655-6297
INFO@AILANASURVEYING.COM

MAP DATED: JANUARY 18, 2011



THIS MAP WAS PREPARED BY ME OR
UNDER MY SUPERVISION.
ANTHONY D. CROOK
LICENSED PROFESSIONAL LAND SURVEYOR
CERTIFICATE No. 12094

TMK(4)5-1-005-015 : UNIT E