

SUBJECT TO CHANGE

**COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHU'E, KAUAI**

STAFF REPORT

DEADLINES:

Date of Complete Application	February 1, 2011
Hearing Date:	July 12, 2011
Max 60 days after acceptance of complete application:	n/a - time extension granted
Max 210 days for decision making:	September 1, 2011
Additional public hearing dates:	7/26, 8/9, 8/23/2011

PROJECT: Special Permit SP-2011-27

APPLICANT: Bruce and Cynthia Fehring

FINDINGS

LOCATION: Wailapa Agricultural subdivision, Kahili, Kauai, approximately 2,700 feet north of the Kuhio Highway and Wailapa Street intersection (SEE Exhibit 1)

TAX MAP KEY: 5-1-5: 15 (E)

AREA: 1.445 ac of overall 22.10
acre lot

ZONING: Agriculture District "A"

SLUD: Agricultural

GEN. PLAN: Agriculture

EXIST. USE: Single family residential

I. ACTIONS REQUIRED:

Pursuant to Section 205 of the Hawai'i Revised Statutes (H.R.S.) and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, a **Special Permit** is required for a use in the State Land Use Agricultural (A) District that is not a permissible use as set forth in Chapter 205 of the H.R.S.

II. PROJECT DESCRIPTION AND USE:

As permitted by County of Kauai Ordinance No. 904, applicant is seeking a Special Permit for a single-family transient vacation rental located on land designated State Land Use "Agriculture" District. A provisional non-conforming use certificate (NCU# 4239-P, SEE Exhibit 2) was issued by the Planning Department on February 3, 2011 after satisfying the requirements of Ordinance No. 904, Sec. 8-17.10 (d) and (e), thereby providing the applicant an opportunity to request a Special Permit before the Planning Commission.

This property is part of the Wailapa Agricultural subdivision which was subdivided by the Kilauea Bay Consortium, who received final subdivision approval for S-78-2 and S-81-26. A two bedroom, approximate 1,463 sq.ft. residence exists on this steeply sloping Lot E, which has the small useable areas planted in apple bananas, coconuts, tropical flowers, star fruit and mangos. Applicant also actively farms the 7.607 acre Lot C within the same CPR, and uses the income from the TVR use on Lot E to supplement their farm expenses on Lot C. The agricultural produce from both Lots C and E are either sold to markets, consumed by the TVR guests, and for personal consumption by the applicants. Parking for guests are provided for on-site, with no parking or overflow parking occurring within the County road right-of-way.

III. LEGAL REQUIREMENTS:

Scheduling of public hearing. This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-13.-5 of the Kauai County Code, relating to the conducting of a public hearing on the subject Special Permit request within sixty (60) days of the filing of a completed petition as determined by the Planning Department, unless the 60 day period is extended by the applicant to the extent permitted by law. On June 20, 2011, applicant did grant an extension of time to address this matter.

Ordinance No. 904. As mandated by Ordinance No. 904, Sec. 8-17.10 (d) and (e), the applicant has provided sufficient evidence to the Planning Director that the transient vacation rental use on SLUD "Agricultural" land is properly nonconforming. This evidence includes the following documentation: "records of occupancy and tax documents, including all relevant State of Hawaii general excise tax filings, all relevant transient accommodations tax filings, federal and/or State of Hawaii income tax returns for the relevant time period, reservation lists, and receipts showing payment. Other reliable information may also be provided." Further, an agricultural use exists on the parcel as verified by the Department.

Notification. In accordance with Section 8-19.6 (d), the Applicant shall notify at least 85 % of the property owners of all parcels within 300 feet from the nearest point of the premises involved in the application of the subject permits' application, the proposed use, and the corresponding public hearing date.

Special Permit standards. Pursuant to Section 205 of the Hawaii Revised Statutes (H.R.S) and Chapter 13 of the Rules of Practice and Procedures of the Planning Commission, a Special Permit is required for a use in the State Land Use "Agricultural" District that is not a permissible use as set forth in Chapter 205, HRS, provided it meets the criteria as an unusual yet reasonable use of the land:

- a. The use shall not be contrary to the objectives sought to be accomplished by Chapters 205 and 205A, H.R.S., and the rules of the commission;

- b. The use would not adversely affect surrounding property;
- c. The use would unreasonably burden public agencies to provide roads and streets, sewers, water drainage, school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and rules were established; and
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

IV. APPLICANT'S REASON/JUSTIFICATION:

Please refer to application.

V. ADDITIONAL FINDINGS:

Soil productivity. The Detailed Land Classification-Island of Kauai, Land Study Bureau, Productivity ratings and descriptions, Map panel 87, rates the soils on the property as B78i (Puhi soil series), E87 (rough broken lands, 36-80% slopes) and C79i (Puhi soil series), on a scale of A (best) to E (worst).

Soil type. The Soil Survey of the Islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii, by the U.S. Department of Agriculture, Soil Conservation Service, map panel 25, identifies the soil types on the property as: PnB, Puhi silty clay loam 3-8% slope, IoC, Ioleau silty clay loam, 6-12% slope, and IoD2, Ioleau silty clay loam, 12-20% slope. Lot E has an approximately average slope of 24%, with areas in excess of 34%.

Internet website advertising. The existing TVR is known as "Hale Kai Kalani." SEE Exhibit 3.

TVR applications in Wailapa. As of the date of this report, there are no other TVR applications in the Wailapa Agricultural Subdivision. As established by Ordinance No. 904 Sec.8-17.10 d-1-B, such applications "must be filed within one (1) year of the effective date of this ordinance", or August 16, 2011.

Field inspection. A field inspection was conducted by the Department on May 9, 2011; there were no zoning permit issues. SEE Exhibit 4

The Special Permit Consideration for a Use within State Land Use "Agricultural" District. The County of Kauai administers the State Land use "Agricultural" District within the framework of the State land use law. State law and Land Use Commission rules limit uses in the agricultural district, most of them relating to agriculture, including mills and other processing facilities, but allowing non-agricultural uses provided they are deemed "unusual and reasonable."

On lots created by subdivisions approved after June 4, 1976, homes are required to be "farm dwellings", or otherwise accessory to agriculture, but in pre-June 4, 1976 subdivisions the homes were "single family dwellings." Lot sizes for subdivisions in the Agricultural District are set by the County through zoning, but must be a minimum lot size of at least one acre by State law.

Pursuant to HRS 205-6, the legislature created a discretionary permitting process to facilitate allowing additional uses in the Agricultural District because of the narrow scope of activities listed in HRS 205-2 and 205-4.5.

The "special permit" process allows for a wide range of other uses. A special permit can be issued for any "unusual and reasonable" use. A special permit can be analogous to a variance from the specific set of uses listed in HRS 205-2 and 205-4.5. The Planning Commission implemented rules years ago to facilitate the special permit process. Chapter 13 of the Rules of the Practice and Procedure of the Planning Commission established five criteria to balance when reviewing a special permit application. Notably, the County Planning Commission rules are exactly the same as the LUC's rules for special permits.

For areas of 15 acres or less, the County Planning Commission decides the special permit. For more than 15 acres, the special permit must be approved by both the County Planning Commission and the State Land Use Commission. Examples of special permits approved as "unusual and reasonable uses" are educational/cultural facilities (Kapaa Middle School, Kauai Community College, Kahili Adventist School, Island School, Punana Leo, Kawaikini Charter School, Waipa Foundation, etc), churches (Church of the Pacific, New Hope, Calvary Chapel, Saiva Siddhantha, etc.), quarries and processing plants (Hanamaulu valley, Wahiawa valley, Princeville cement processing, etc), transient vacation rentals, bed-and-breakfast operations, airport (Princeville), cell phone towers, alternate energy facilities (solar and windmills), helicopter landing areas, sewage treatment and water tank facilities, electrical substations, etc.

As such, HRS 205-6 authorizes the Counties and the LUC depending on the acreage of the proposed activity) to go beyond the delineated list of uses within the State Land Use "Agricultural" District.

General Plan. The County General Plan, updated in 2000, recognizes a need for alternative vacation rentals by its policy for "Alternative Visitor Accommodations," which reads as follows:

"4.2.8.2 Alternative Visitor Accommodations

- (a) The County of Kauai shall recognize alternative visitor accommodations, such as B&B's, vacation rentals, inns, cabins and retreat centers.
- (b) The County shall enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agriculture, Open, and Resort zoning districts.
- (c) County development standards and permit processes shall be scaled to the

size and potential impact of the use....

- (d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood.”

Ordinance No. 904. The Findings and Purpose section reads as follows: “The purpose of this bill aims to amend particular provisions of ordinances 864 and 876 relating to previously implemented grandfathering provisions for existing, single-family transient vacation rentals outside the Visitor Destination Area (“VDA”) boundaries. However, this bill maintains the prohibition concerning the commencement of any new single-family transient vacation rentals outside the VDAs if use was not established prior to March 7, 2008.

The Council finds that this ordinance will comport with the County General Plan which emphasizes the need to “enact clear standards and permit processes for regulating alternative visitor accommodation structures and operations in Residential, Agricultural, Open, and Resort zoning districts.” The Council further finds certain provisions of Ordinances 864 and 876 have served contrary to this policy.

The County General Plan also entertains the possibility of alternative visitor accommodations, and “development standards and permit processes for regulating alternative visitor accommodation structures and operations in residential, Agricultural, Open, and Resort zoning districts” should be implemented through zoning.

This ordinance will not invalidate non-conforming use certificates issued to single-family transient vacation rentals previous to the enactment of this ordinance. However, nonconforming use certificate holders will remain subject to a renewal process.”

AGENCY COMMENTS: See attached

PRELIMINARY EVALUATION

EVALUATION

Provisional permit. In the consideration of the existing, non-conforming transient vacation rental use in the State Land Use “Agricultural” District, County of Kauai Ordinance’s No. 864 (adapted 3/7/08), Ordinance No. 876 (adapted 1/24/09), and Ordinance No. 904 (adapted 8/16/10) were utilized. Specifically, Ord. 904 established the requirements such an existing, non-conforming use would have to satisfy in order to first qualify for a provisional permit by the Planning Director. This provisional permit then permitted the TVR use to operate until such time the Planning Commission (or Land Use Commission if the property were larger than 15 acres) rendered a decision on their Special Permit application.

As to the Provisional Permit issued by the Planning Director to the applicant on February 18, 2011, the applicant provided the following as specifically required by Ordinance No. 904:

- Submitted its application within the 60 days of the effective date of Ordinance No. 904;

- Properly established that the applicant had paid General Excise and Transient Accommodation taxes, as well as declared said income from the use on either State of Hawaii or Federal tax returns prior to March 8, 2008;
- Provided reservations lists for the use prior to March 8, 2008;
- Provided an analysis of the applicability of the State's 5-point Special Permit test; and
- Was properly declaring that the property is in agricultural use although not from a commercial standpoint due to the topography of Unit E.

The Department conducted an inspection of the property on May 9, 2011 and confirmed that no violations existed, and that the property has a history of continued agricultural use.

Special Permit. Pursuant to Section 205-6 Special permit, Hawaii Revised Statutes, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the State Land Use district is classified. Special permits for land areas exceeding 15 acres in size are subject to approval by the Land Use Commission. The applicant is requesting a State Land Use Commission Special Permit to operate a TVR on the subject property as a permitted "unusual and reasonable" use with the State "Agricultural" Land Use District.

Standards for considering a Land Use Commission Special Permit are found under Title 15 Department of Business, Economic Development, and Tourism; Subtitle 3 State Land Use Commission, Chapter 15 Land Use Commission Rules, Subchapter 12 Special Permits, Section 15-15-95 of the Hawaii Administrative Rules; and, Section 13-6 of the Rules of Practice and Procedures of the County of Kauai Planning Commission.

The proposed request could be considered to be an "unusual and reasonable" use based on the following:

1. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission.

Analysis. The proposed action could be considered to be consistent with the State Land Use Law's objectives and policies for agricultural regions since this Lot E has a home consumption-type history of agricultural use on it, despite the steep slopes of most of the property. Fruit and flower producing trees have been planted on the property, for the use and enjoyment of the guests and owners. Further, the applicant's utilize the income from this TVR to supplement their agricultural farming efforts on their 7.607 acre Lot C within the same 5-lot CPR as Lot E.

2. The desired use would not adversely affect surrounding property;

Analysis. Due to its size and location the character of the property would not change, nor would the use impact or change the nature of this existing agricultural community. Parking in any number can be amply accommodated on property, away from and off of Waialapa Road. The Department has not received any complaints from neighbors in the vicinity regarding the TVR use.

3. The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection;

Analysis: The TVR use as this location would not burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. Infrastructure as required by the County were provided when this area received final subdivision approvals in 1978 and 1981.

4. Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;

Analysis: Kauai's economy has dramatically evolved since the establishment of the State land Use law in 1961. Tourism is now the largest economic driver in the County. While the tourism industry itself has evolved, from centralized and localized by large resorts and hotels that operate along the coastal areas of the island, the time-share industry, and now the transient vacation rental industry, has been part of a growing demand for more rustic and private accommodations on the island. This location is a prime "rustic" location that the movie industry has taken advantage of.

Further, the County of Kauai **General Plan** also entertains the possibility of alternative visitor accommodation structures and operations in Residential, Agricultural, Open, and Resort zoning districts. *However*, Sec.4.2.6.2, County Policy and Zoning Regulations, states the following: "Specific development standards should be developed for multi-unit B&B's and SFVR's (single family vacation rentals) addressing at least the following factors:

- Buffering of adjacent properties in order to prevent noise impacts and visual impacts. Related factors are the size of the property and the location of the visitor units relative to adjacent properties.
- Access to adequate public roads.
- Parking for employees and patrons.
- Adequate wastewater treatment and disposal
- The total number of vacation rentals in the area and the cumulative impacts on the neighborhood.

5. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

Analysis. The subject property is suitable for agricultural purposes, which exist on the property despite the steep slopes of the majority of Lot E. Staff does not anticipate any impacts to surrounding or abutting "Agricultural" districted lands or residential improvements because of the location of the "Hale Kai Kalani" TVR on this 22+ acre property.

The Planning Commission may impose such protective conditions as it deems necessary in the issuance of a special permit. The Planning Commission should establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the special permit. Such conditions on the existing TVR operation could ensure that the owners of these entitlements, and their neighbors, would know what to expect from each other. Failure to abide by the conditions of approval could mean possible forfeiture of the use should complaints to the Department remain unresolved.

CONCLUSION

Based on the foregoing findings and evaluation, it is concluded that the transient vacation rental use can comply with the requirements for the issuance of a Special Permit. Such an approval should be with the imposition of conditions of approval to better address the use, and potential impacts to the neighborhood. Since adverse public comment was not received during the public hearing portion of this request, the approval of this Special Permit should be for a limited, two-year period in order to better gauge this, and other TVR proposals, in the neighborhood. This use needs to be strictly managed in order to prevent an "Animal House" type impact to the neighborhood from occurring.

It is finally concluded that even though the Department has reservations about TVR uses outside the Visitor Destination Area within the SLUD "Agricultural District" irrespective of the County zoning, our recommendations were contemplated under the confines of the law, including Federal constitutional considerations concerning property rights and takings, the County's Ordinance No. 904, the recommendations of the General Plan, and Chapter 13 of the Planning Commission's Rules of Practice.

RECOMMENDATION:

Based on the foregoing evaluation and conclusion, it is recommended that Special Permit SP-2011-4 be approved, subject to the following conditions:

1. This permit is not evidence of compliance with any and all pertinent zoning and use regulations of the County of Kauai.
2. This permit does not bear upon any subsequent annual renewal of the certificate or inspection of the property by the Planning Department and/or any other government agency as may be necessary.
3. The owner or lessee who has obtained a non-conforming use certificate under this section shall apply with the Planning Department to renew the NCU certificate annually no later than one month prior to the date of issuance of the NCU certification. Application Forms can be found online at www.kauai.gov.
4. Any subsequent use, development, repair and/or improvement on the property requires Planning Department review and approval prior to such occurring.

5. This approval for the use of the Transient Vacation Rental is being permitted at this time; however, other CZO violations on the property or structure not necessarily connected to the TVR use must be complied with, if applicable. Further, the agency comments, concerns and recommendations must be resolved and be complied with and/or addressed prior to any consideration for renewal of this certificate.
6. The property and operation is subject to the applicable provisions of Section 8-17 of the Kauai County Code, in particular those provisions adopted by ordinance No. 864, 876, and/or 904. Section 8-17.11(a) also states the following: "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."
7. The applicant, its successors and/or permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Special Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) to cover against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit, or as a result of a natural disaster. A copy of a policy shall be submitted to the Department within ninety (90) calendar days from the date of the granting of the Special Permit. Failure to renew this certificate and to provide the County Planning Department with a renewal certificate shall result in the implementation of condition #6 above.
8. This Special Permit shall be renewed every 2 years commencing from the date of Planning Commission approval by the Planning Director or his designee. The renewal application shall be submitted to the Department no less than 30 days prior to the date of expiration. The renewal application shall discuss compliance with the conditions of approval, and any issues that may have arisen. If the renewal request is submitted late, then the use shall cease until the Planning Commission renders a decision on this matter. If a denial of the renewal request is to be recommended, such matter shall be brought to the Planning Commission.
9. If historical/cultural remains such as archaeological artifacts, charcoal deposits or human burials are found at any time during any subsurface work on the property, the applicant shall stop work in the immediate area, and shall contact the State Historic Preservation Division (SHPD) at (808)241-3690 and the Planning Department, to determine appropriate action.

10. To respect the neighboring residential properties:

- All vehicular parking related to this use and property shall be accommodated on the subject property at all times. On-street parking shall not be permitted at any time.
- Guests shall be informed that elevated noise activities or amplified music shall not be permitted after 10.00 p.m.


These limitations shall be incorporated in the "Welcome and Notice" posted within the dwelling, and within any and all contracts and advertisements for use of the structure from the date of this approval. Copies of these documents shall be provided to the Department.

11. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts the project may create, or to revoke the permits through the proper procedures should adverse impacts occur that cannot be mitigated.
12. The applicant, its successors and assigns, shall indemnify, defend and hold the County of Kauai harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit. This indemnification agreement shall be submitted for approval by the Planning Department within 30 days from the date of approval of the Special Permit and shall be recorded at the Bureau of Conveyances or Land Court within 60 days of approval by the Department. A recorded copy shall be provided to the Department.
13. The applicant is on notice that this property sits within the State Agricultural District, and adjacent parcels may engage in intensive farming and the subject parcel may experience noise, fugitive dust, and other environmental impacts associated with good farming practices. The applicant shall notify any TVR tenant of potential impacts associated with adjacent farming, and to refrain from calling or reporting such activity to governmental authorities.
14. As recommended by the Fire Department, a fire extinguisher be mounted near an exit, an emergency escape plan be mounted behind the main door, and smoke alarms be installed.


The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for July 12, 2011 whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- Pending government agency comments;
- Testimony from the general public; and

- The Applicant's response to staff's report and recommendation as provided herein.

By 
Michael L. Laureta
Planner

Approved & Recommended to Commission:

By 
Michael A. Dahill
Interim Director of Planning

Date: 7/6/2011

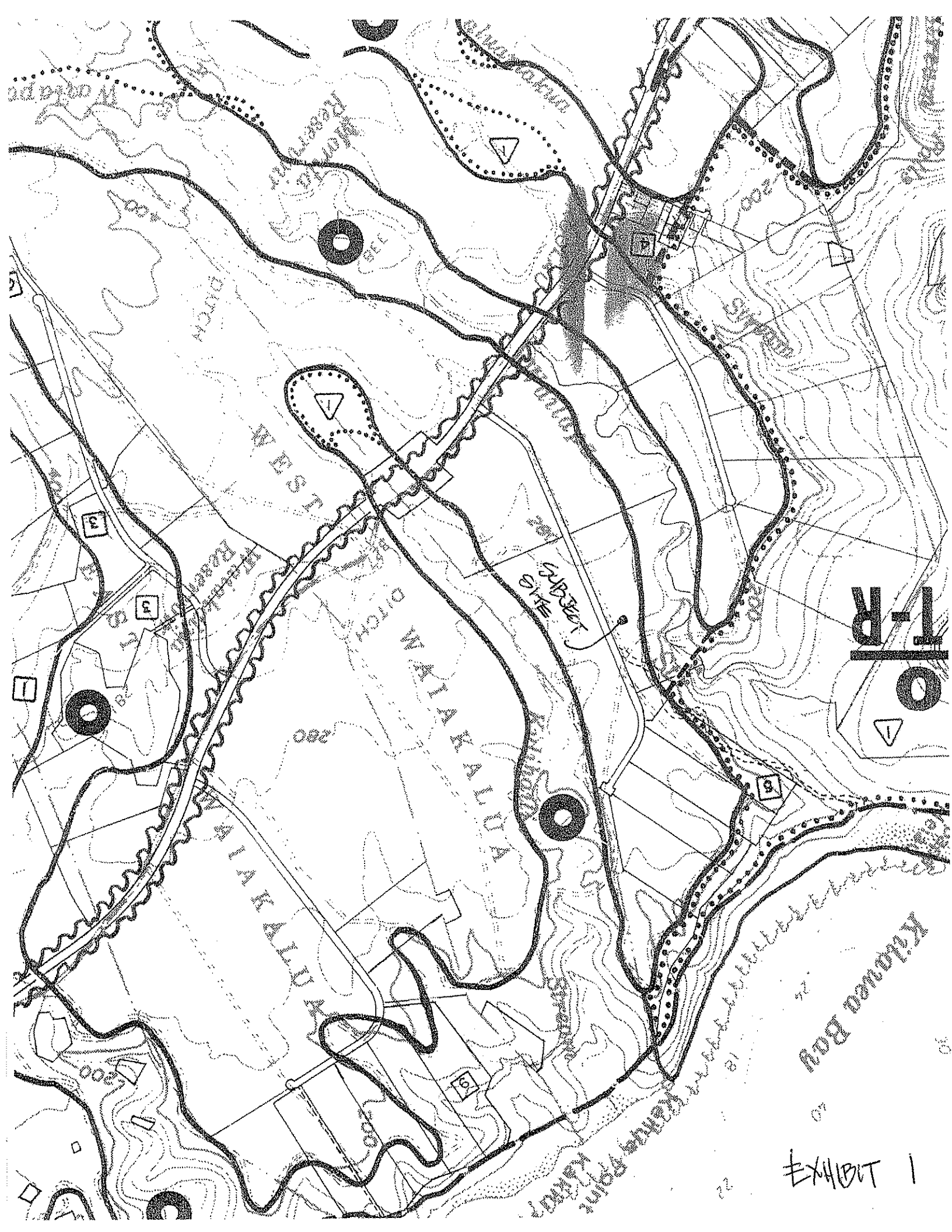
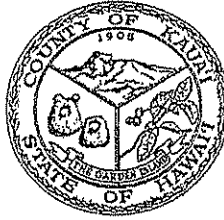


EXHIBIT 1

Bernard P. Carvalho, Jr.
Mayor



Michael A. Daffillg
Director of Planning

COPY

Gary K. Heu
Managing Director

Dee M. Crowell
Deputy Director of Planning

PLANNING DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite A-473, Līhu'e, Hawai'i 96766
TEL (808) 241-4050 FAX (808) 241-6699

February 3, 2011

Bruce and Cynthia Fehring
P.O. Box 565
Kialuea, Hawaii 96754

Subject: Provisional Nonconforming Use Certificate NCU# 4239-P
Tax Map Key 5-1-5: 15 (E), Wailapa, Kauai
Bruce and Cynthia Fehring, applicant

This is to acknowledge receipt of your information submitted on February 1, 2011 which provided additional and supplemental information for the transient vacation rental (TVR) use on the subject property.

Based on the information provided, as well as the requirements in Ordinance No. 904, the Planning Department finds your TVR application to be complete. Your Provisional Nonconforming Use Certificate (NCU-P), captioned above, is APPROVED.

The approval of the NCU-P Certificate qualifies you to apply for a Special Permit from the Planning Commission. A Special Permit is required to operate a TVR in the State Land Use "Agricultural" District. The NCU-P Certificate shall be valid only until either the Planning Commission renders a decision on the Special Permit, or you fail to submit your application by August 16, 2011.

If the Planning Commission denies the Special Permit, then the NCU-P Certificate shall be deemed null and void, and the transient vacation rental use must cease.

If the Planning Commission approves the Special Permit, a Nonconforming Use (NCU) Certificate shall be issued, and the TVR operation shall be subject to the conditions that may be imposed by the Planning Commission.

Special Permit Application Procedure

- Please submit 30 sets of your application, 1 complete set of your financial documents (GE forms, TAT forms, State and/or Federal income tax forms, and reservation lists, which will be separate from your application), and an application fee (in the form of a check for \$50.00, made payable to the Director of Finance) by August 16, 2011. Upon

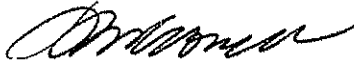
the receipt of these items, your Special Permit application can then be considered complete, and processing can commence.

- Special Permit requirements and procedures are contained in Chapter 13, of the *Rules of Practice and Procedures of the Planning Commission*. This was provided with our letter to you of December 20, 2010
- Failure to submit a complete Special Permit application to the Planning Department by August 16, 2011, will terminate your NCU-P Certificate, and it shall be deemed expired. Your transient vacation rental use will have to cease. No extensions will be granted.

Please be advised that this NCU-P Certificate is not evidence of compliance with any and all pertinent zoning and use regulations. Furthermore, the certificate does not bear upon any subsequent nonconforming certificate renewal inspections of the property by the Planning Department.

The Department also reserves the authority to require additional information relating to the TVR use that may become necessary during the course of its Special Permit review.

If you have any questions, please contact Michael Laureta, at (808)241-4050.



for MICHAEL A. DAHILIG
Director of Planning

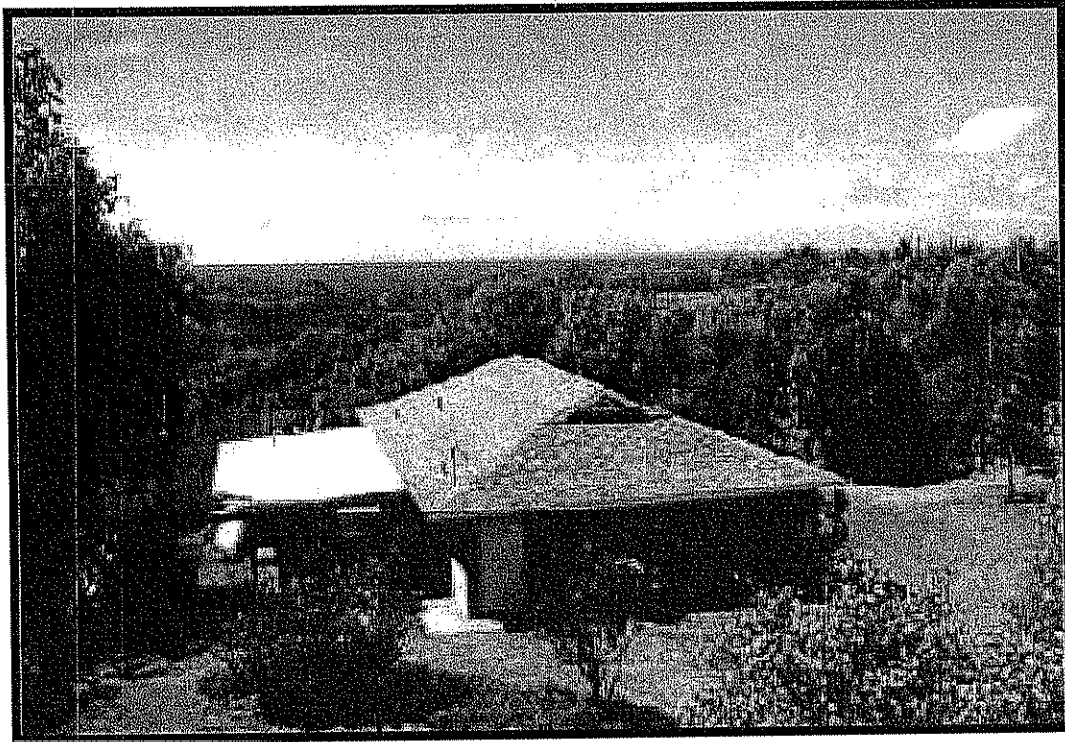
RATES

PHOTOS

CONTACT INFO

EMAIL

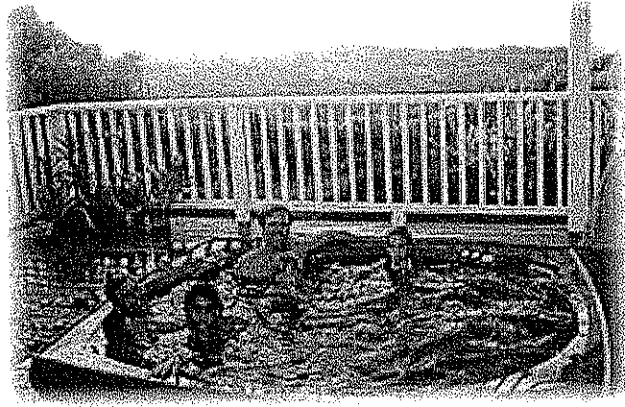
Aloha and Welcome to Hale Kai Kalani



A Private Bluff-Front Beach Home W/ Great Views & Sunken Hot Tub

Beautifully furnished and well-equipped, this is a great home for a couple, honeymooners, small family, or 2 couples traveling together. Fully equipped tile kitchen and bathrooms, tropical cloth curtains and pillow covers, comfortable beds with 100% cotton sheets and pillow cases, lots of soft towels and washcloths. The master bedroom features a king bed, and the marble master bath has twin sinks. There is a fully equipped entertainment center and private, steamy, sunken hot tub spa. Star-gazing while soaking in the hot tub spa is a special treat! For those who have to stay in touch, there is wireless highspeed internet access.

EXHIBIT 3



Tour incredibly beautiful Kauai, including the Na Pali trail, Kilauea Lighthouse, Hanalei Bay, Tunnels Beach, Waimea Canyon, and more, or just stay at home & soak in the private outdoor 6-person sunken Kohler hot tub spa. The daytime view from the hot tub spa is awesome, and the starry nighttime sky a sight to behold... Many guests remark that the views are like a painting (and a number of local artists have come to paint it!)- The Blue Pacific, The Kilauea River and river valley, lush, green Crater Hill National Wildlife Preserve, and a nearby tropical jungle waterfall. The generous covered lanai overlooks all these AND the 1.5 acre lushly landscaped property. Tropical fruits abound- bananas, limes, figs, star-fruit, and coconuts.



Come Get Wet! Quiet Kahili Beach (known locally as Rock Quarry Beach for a plantation-era quarry which existed at one of the headlands that form this broad, white sand, bay beach) is a scenic stroll or very quick drive from this private, newly renovated, comfortably furnished bluff-front beach home. Another half-dozen world class beaches are within 10 minutes drive.

Go jungle river cruising in the 4 person canoe for a great adventure. Paddles, lifejackets, and roof racks all included.

The home is aptly named- "Hale Kai Kalani" (House of the Heavenly Sea). It is private (we, the owners, are the nearest neighbors, over 6 acres away), yet conveniently located 1.5 miles outside of Kilauea Town, home of the Kilauea Lighthouse and Crater Hill National Wildlife Refuge,

northernmost spot in the inhabited Hawaiian Islands!

Honeymooners, couples, small parties and families all love this house and property. We have many return guests who think of Hale Kai Kalani as "their vacation house" in Kauai. Come join those who have experienced Kauai living at its best, and enjoy this piece of heaven on earth.

So let's recap... ocean views, mountain views, private hot tub, acreage privacy, beach proximity, wireless highspeed internet access, cable TV, full kitchen, dishwasher, washer, dryer, and a comfortable, affordable home. Come for a honeymoon, a retreat, or for the vacation of a lifetime!

Click Here For

PHOTO GALLERY

2010 RATES

**1/03 - 5/01: \$189/night or \$1295/week
5/01 - 6/05: \$179/night or \$1195/week
6/05 - 8/28: \$225/night or \$1495/week
8/28 - 10/30: \$199/night or \$1295/week
10/30 - 12/18: \$179/night or \$1195/week
12/18 - 1/02/2011: \$1495/week**

Summer (6/05 - 8/28) and Holiday (12/18 - 1/02/2011) rates are for up to 4 guests.

Other season rates are for up to 2 guests.

Add \$7.50/night or \$50/week for one additional guest up to a total of 6 guests.

*5 night minimum stay, 7 nights preferred in Summer, 14 nights at Holiday
HOWEVER, shorter stays between established bookings are welcome, so please inquire*

**NORMAL out-cleaning charge: \$135 for 2 guests, \$165 for 3 or more guests.
12.42% State taxes. \$500 refundable security/booking deposit applies. Available
Year-Round.**

Note: Until confirmed, rates are subject to change without notice.

CONTACT INFO

Please Contact Bruce Fehring:

Cellular: 808-346-0364, for quickest response

Click to E-Mail: inquiries@vacation-rental-kauai.com

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[PHOTOS](#)

[CONTACT INFO](#)

[EMAIL](#)

INSPECTION REPORT

PROJECT: TVNC-4239, Hale Kai Kalani
TMK: 5-1-005:015-0005
ADDRESS 4230 Wailapa Rd.
OWNER: Bruce Fehring Trust

FINDINGS

DESCRIPTION OF PROPERTY

The TVR Registration and NCU Form application for the subject Single Family Resident is located at 4230 Wailapa Rd., Kilauea, TMK: (4) 5-1-005:015-0005.

- It is County Zoned AG with the State Land Use AG.
- The land area of subject property is: 22.10 Acres.
- SFR. Permitted (Z-206-96) in 5/7/96.

On 5/9/11 at 12:20 am a TVR application inspection was conducted by Inspector Emayo at which time Bruce Fehring (owner) allowed entry and accompanied Inspector Emayo on entire inspection. Pictures are taken of inspection (attached).

- Picture set #1: The SFR Permitted (Z-206-96) in 5/7/96. The SFR has 2 Bedrooms, 2 Bathrooms, and 1 Kitchen. At this time the construction and use of said structure represents the TVR submitted plans.
- There is no other structure on the subject property at this time.
- Picture set #2: Ag use on property. 1000 various plants, 1 mango tree, 50 banana trees, 500 eureka trees, 200 gingers and 10 coconut trees.
- Statement by Bruce Fehring (owner); open field will be used as pasture in the future.

By

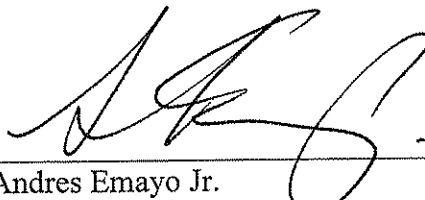

Andres Emayo Jr.
TVR Inspector

EXHIBIT 4

() COMPLAINT		(X) REGISTRATION INSPECTION	
BUS. NAME: Hale Kai Kalani		UNIT/S:	TYPE: NCU
TMK: 5-1-005:015	LAND AREA: 22.10 ac.		TV#: TVNC-4239
DIST: Hanalei	LOC: Kilauea		
ZONING: AG	OWNER: BRUCE FEHRING TRUST		
SLUC DIST: AG	MNGR Co.		
LOG #	SITE ADDR: 4230 WAILAPA RD.		
OWNER:		GE:	
NAME:		TAT:	
ADDR:		SAFETY/COMFORT:	
		RECIEPT/LOG:	
PHONE: 808-346-0364		AFFIDAVID:	
WEB SITE:		FLOOD CHECK:	
Nature of inspection			
verify compliance for TVR use			
INSPECTOR: Bambi			

[illegible]

Application number : 96 00000965
 Address : 4230 WAILAPA RD
 Tax Map Key Number : 5-1-005-015 0005
 Application type : ADD RESIDENTIAL
 Permit Number :
 Tenant name, number :

Type options, press Enter.

2=Change 4=Delete 5=View 6=Fast log 8=Action log maintenance
 9=In/out maint

ACCORDING TO
WES

Opt	Agency description	Rev	Path	Step	Req	In	Est	Cmpl	Resulted	Stat	By
—	PLANNING DEPT		A 01	Y		04/09/96	05/08/96	05/09/96	APP	WM	
—	DEPT OF WATER		B 01	Y		05/09/96	04/16/96	05/10/96	APP	SOL	
—	DEPT OF HEALTH (STAT		C 01	Y		05/28/96	04/16/96	07/08/96	APP	JKS	
—	ENGINEERING DIVISION		D 01	Y		05/13/96	04/16/96	05/13/96	APP	WMK	
—	BLDG-BLDG INSPECTION		E 01	Y		07/09/96	05/28/96	05/28/96	APP	KS	

Bottom

F3=Exit F5=Land inquiry F6=Add F7=Revisions F8=Misc info inquiry
 F9=Corrections report F10=View 2 F11=Sort by agency F24=More keys

Z-206-96

5/7/96

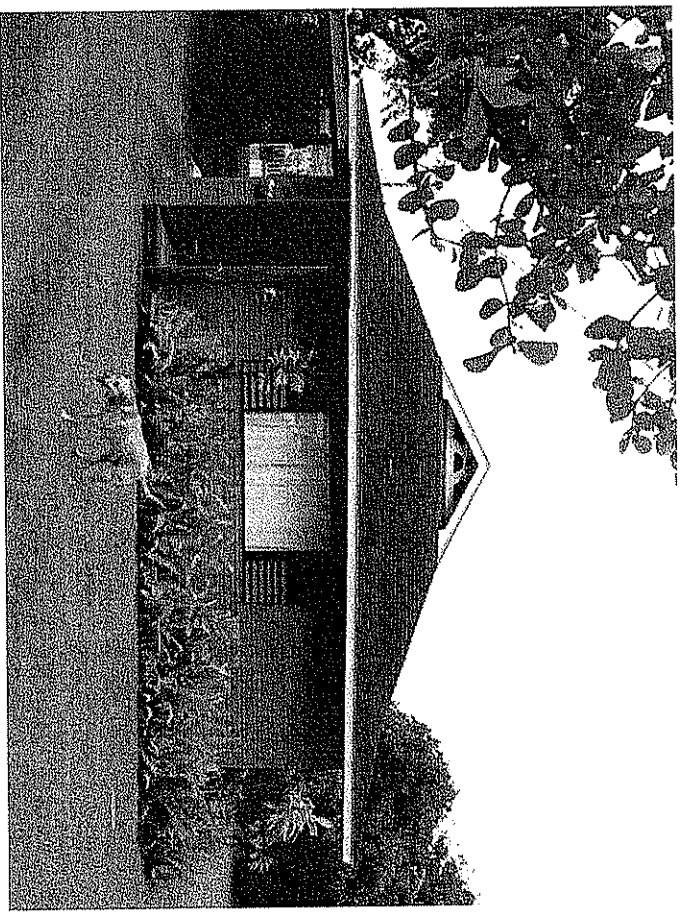
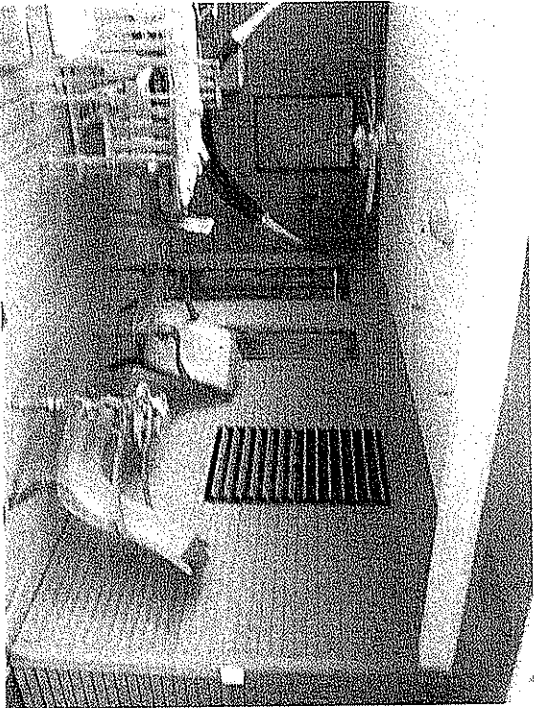
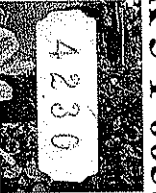
= 96-965

CONVERT TO SFR

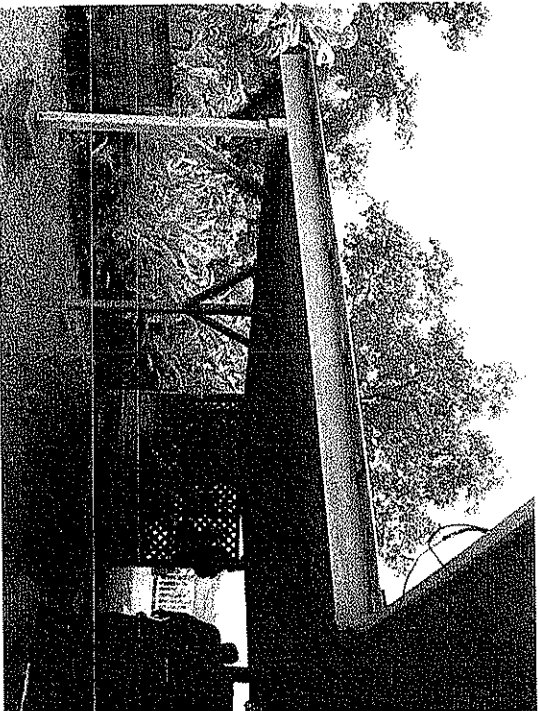
Property address : 4230 WAILAPA RD
Tax Map Key Number : 5-1-005-015 0005
Type options, press Enter.
1=Select 5=View detail

Opt	Appl Nbr	Type	Stat	Date	Tenant Nbr/Name
—	98 00002208	RLOC	AP	10/05/98	FRM: UNIT C TO UNIT E
—	96 00002506	ZPA2	AP	8/22/96	
—	96 00001877	ZPA2	AP	7/03/96	
—	96 00001374	ZPA2	AP	5/14/96	
—	<u>96 00000965</u>	<u>ADDR</u>	<u>AP</u>	<u>4/09/96</u>	— 5/9/96
—	94 00003997	ZPA1	CL	11/25/94	
—	94 00003996	ZPA1	AP	11/25/94	
—	94 00003894	ZPA1	AP	11/17/94	
—	93 00002970	GAS	AP	8/16/93	
—	92 00001710	ELEC	AP	11/25/92	
—	92 00000414	SFR	CL	7/09/92	
—	89 00002513	ONR	AP	3/23/89	

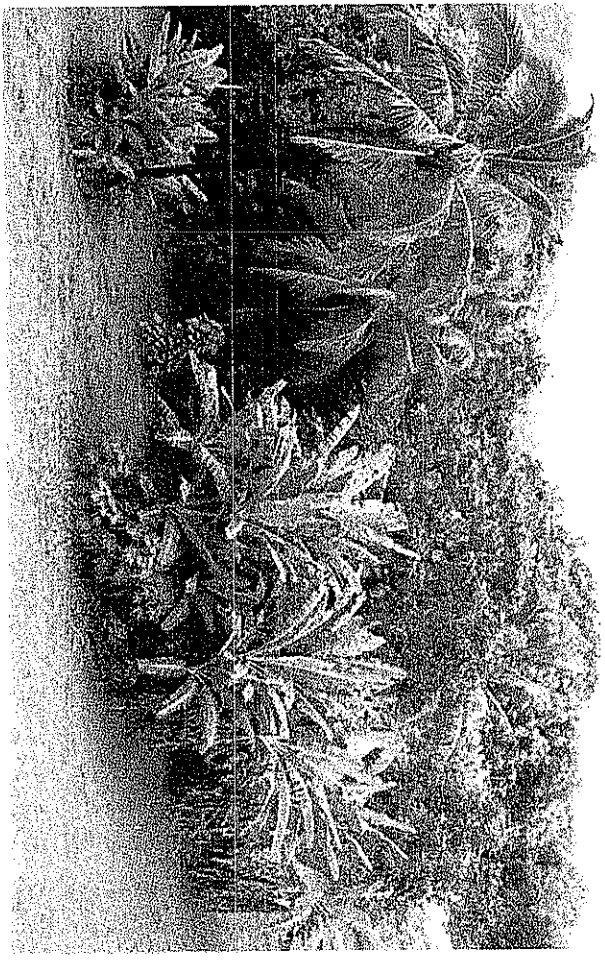
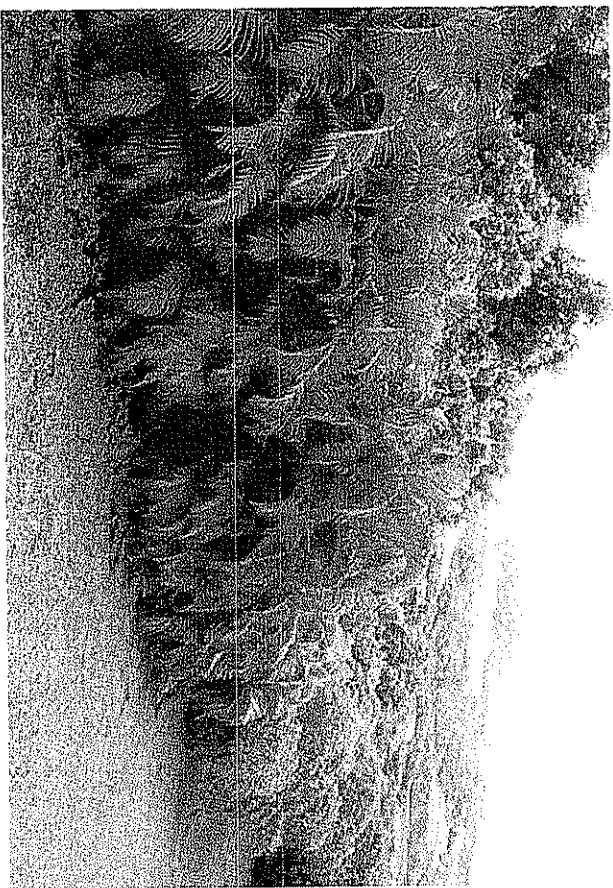
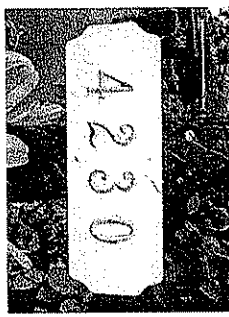
F3=Exit F12=Cancel



SFR



Pic. #2 TMK 5-1-005:015 TVNC-4239 5/9/2011
AG Use



TMK: 4/5-1-005:015-0005 TVNC-4239 10/8/08

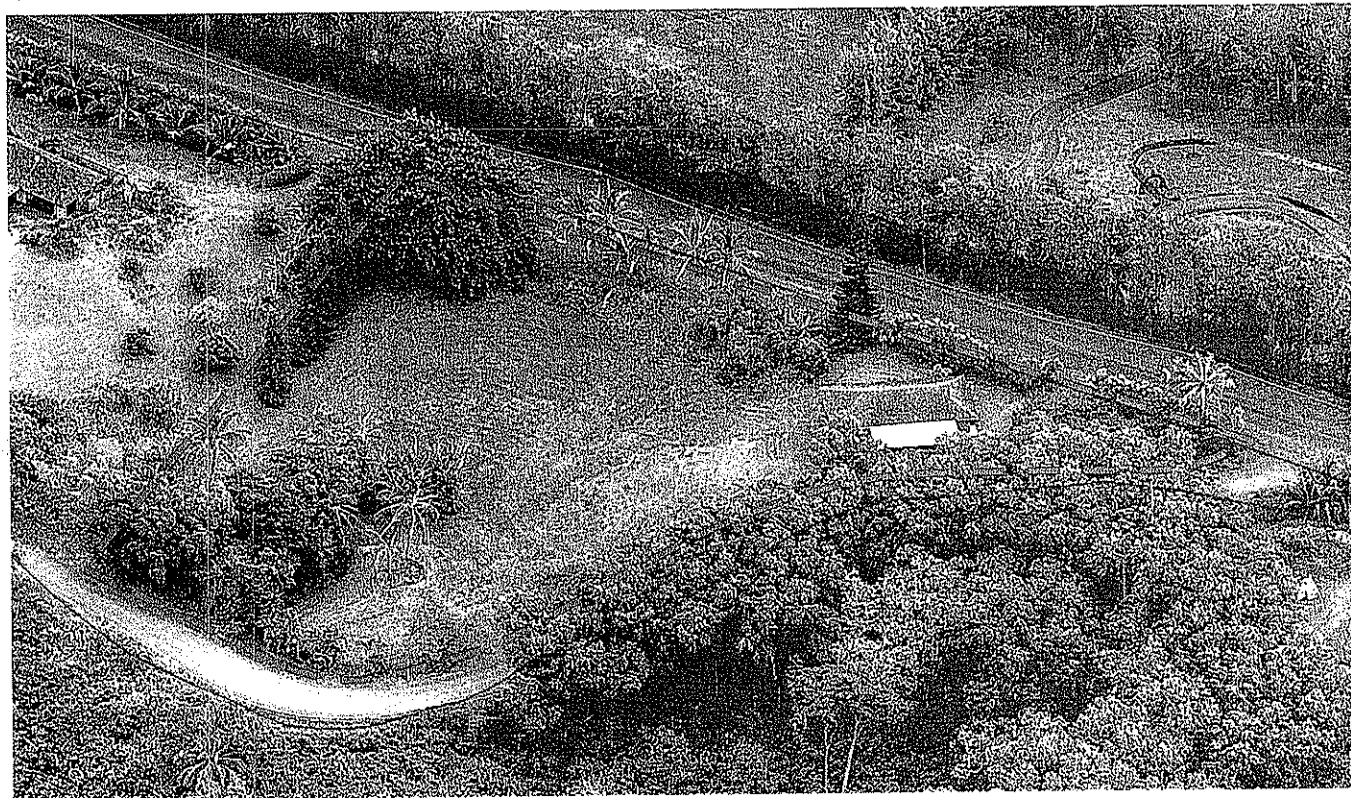


TMK: 4/5-1-005:015-0005 TVNC-4239

10/8/08

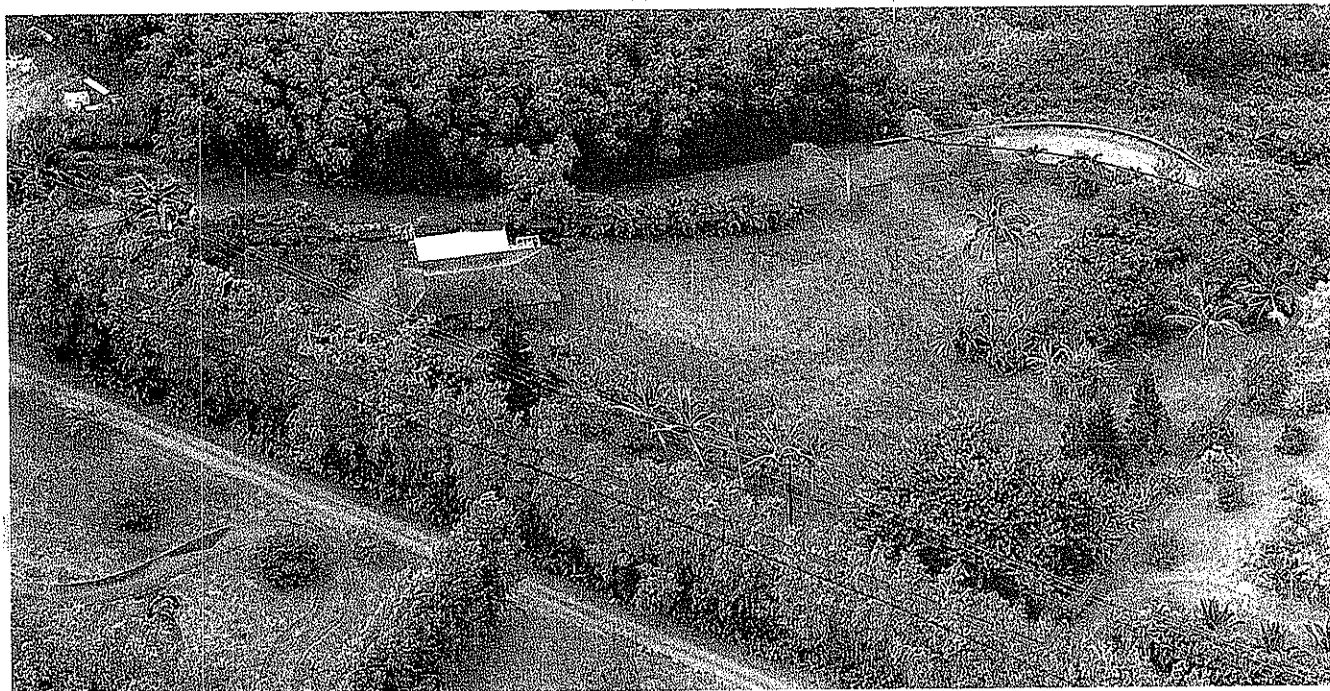


10/8/08



TMK: 4/5-1-005:015-0005 TVNC-4239

10/8/08



10/21/08



TMK: 4/5-1-005:015-0005 TVNC-4239 10/21/08



COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET, SUITE A473, LIHUE, HI 96766
(808) 241-4050

FROM: Michael A. Dahilig, Director (Mike)

Wednesday, June 08, 2011

SUBJECT: Special Permit SP-2011-27, Transient Vacation Rental, Single Family, Tax
Map Key:(4)5-1-5:15, Bruce & Cynthia Fehring

JUN 15 2011

TO:

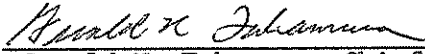
- | | |
|--|---|
| <input checked="" type="checkbox"/> Department of Transportation - STP | <input checked="" type="checkbox"/> DPW-Engineering |
| <input checked="" type="checkbox"/> DOT-Highway, Kauai(info only) | <input type="checkbox"/> DPW-Wastewater |
| <input type="checkbox"/> DOT-Airports, Kauai (info only) | <input type="checkbox"/> DPW-Building |
| <input type="checkbox"/> DOT-Harbors, Kauai (info only) | <input type="checkbox"/> DPW-SolidWaste |
| <input checked="" type="checkbox"/> State Department of Health | <input type="checkbox"/> Department of Parks & Recreation |
| <input type="checkbox"/> State Department of Agriculture | <input checked="" type="checkbox"/> Fire-Department |
| <input type="checkbox"/> State Office of Planning | <input type="checkbox"/> County Housing-Agency |
| <input type="checkbox"/> State Dept. of Bus. & Econ. Dev. Tourism | <input type="checkbox"/> County Economic Development |
| <input checked="" type="checkbox"/> State Land Use Commission | <input type="checkbox"/> KHPRC |
| <input checked="" type="checkbox"/> State Historic Preservation Division | <input checked="" type="checkbox"/> Water Department |
| <input type="checkbox"/> DLNR- Land Management | <input type="checkbox"/> Kauai Civil Defense |
| <input type="checkbox"/> DLNR-Forestry & Wildlife | <input type="checkbox"/> U.S. Postal Department |
| <input type="checkbox"/> DLNR-Aquatic Resources | |
| <input type="checkbox"/> DLNR- OCCL | |

FOR YOUR COMMENTS(pertaining to your department):

SEE COMMENTS ON ATTACHED SHEET

COUNTY OF KAUAI
11 JUN 22 P2:30
PLANNING DEPT.

June 20, 2011
Date


Gerald N. Takamura, Chief
District Environmental Health Program Kauai

This matter is scheduled for a public hearing before the County of Kauai Planning Commission
on Tuesday, July 12, 2011 at the Lihue Civic Center, Moikeha Building, Meeting Room
2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter.

If we do not receive your agency comments within one (1) month from the date of this request, we
will assume that there are no objections to this permit request. Mahalo!

Special Permit Application No.: **SP-2011-27**
Applicant: **Bruce & Cynthia Fehring**

Based on our review of the application, we have no environmental health concerns for your consideration at this time. However, due to the general nature of the application submitted, we reserve the right to implement future environmental health restrictions when more detailed information is submitted.