

NCU RENEWAL FORM

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

For Government Use Only	
Date Received <u>3/9/12</u>	By _____
Date Approved _____	By _____
Fee \$150 <u>\$517.00</u>	Date <u>3/10/12</u>
CK # <u>10164</u>	

NON-CONFORMING USE CERTIFICATE # 24551
APPLICANT Sandalwood Trust
ADDRESS c/o Lorna A. Nishimitsu, Esq.
Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice St. Ste. 202, Lihue, Hawaii 96766
PHONE NO. 245-4705

NOTE: *Lessee must have an unexpired and recorded lease of five (5) years or more from date of filing this application.

Sign: Keely Shaye Brosnan
Print: Keely Shaye Brosnan

APPLICANT IS: (check one)
☒ Owner of Property
☐ New Owner of Property
☐ Lessee of Property -
Number of Years Leased
From _____ to _____

Authorized Agent - Attach Letter of
Authorization.
Proprietor of TVR operation

Property Info

Tax Map Key 5-8-10-14 Lot. No. 3 # of Buildings on CPR or Lot Three (3)
Zoning: - SLUD Urban General Plan Resid. Community County Residential R-4

Information Update

Please provide updated information regarding the property or operation. Please complete and provide attachments even if information has not changed.

Establishment name The Cove

Description of Operation (no. of rooms, no. of units etc.) 3 bedroom, 2 bath single
single family dwelling (there are also a yurt and a pavilion, neither of which have bedrooms or
bathroom facilities)

G.E. License # W40971052-01 TAT License # W40971052-01

24 Hour Contact Info Robin Piretti

☒ Copy of For the Safety and our Neighbors

Attachments provided (G.E.License, TAT License, Units in TVR Use etc.)

Improvements to the property (describe and provide building and zoning permit numbers): The single family dwelling, containing 1971 s.f., was in existence when the

property was acquired by the Applicant. The yurt (Bld. Permit # 04-1733) and
pavilion (Bld. Permit # 04-1734) were built by the Applicant.

COUNTY OF KAUAI PLANNING DEPARTMENT

Inspections

To be initialed by Planning Dept. Staff

☐ The subject property has no violations

☐ The subject property was inspected on _____

☐ The property has the following violations _____

To be initialed by Planning Dept. Staff

☐ The Non conforming Use Certificate is revoked

☐ The Non conforming Use Certificate is renewed on _____ for a

☐ A Single Family Vacation Rental outside the VDA

☐ A single family vacation rental in the SLUD Ag district

☐ A Single Family Transient Vacation Rental operating on a property or dwelling on the State or National Historic Register

Signature

Keely Shaye Brosnan
Owner/Applicant

Date

3-5-12

BERNARD P. CARVALHO, JR.
MAYOR



MICHAEL A. DAHLIG
DIRECTOR OF PLANNING

GARY K. HEU
MANAGING DIRECTOR

DEE M. CROWELL
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326
TEL (808) 241-4050 FAX (808) 241-6699

April 8, 2011

To: Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice Street Suite 202
Lihu'e, HI 96766

Attn: Ms. Lorna A. Nishimitsu

Re: Sandalwood Trust
5-7480 Kūhi'ō Hwy
Hanalei, HI 96714
TMK: 5-8-10:014
TV-2455-NCU

Dear Ms. Nishimitsu:

Mahalo, for your patience for our belated response. After researching our files, we note the following:

At its May 25, 2010, regular meeting, the Planning Commission voted to consent to issuance of the above captioned Non-Conforming Use (NCU) certificate for your Transient Vacation Rental (TVR). NCU certificates are issued pursuant to the following conditions:

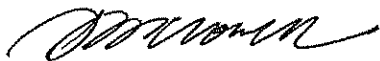
1. An issued certificate is not evidence of compliance with any and all pertinent zoning and use regulations of the County of Kaua'i. .
2. The certificate does not vest any rights for any subsequent annual renewal of the certificate or inspection of the property by the Planning Department, and/or any other government agency as may be necessary.
3. The owner or lessee who has obtained a NCU certificate under this section shall apply to renew the certificate annually on or before the anniversary date of issuance. Application forms may be found online at www.kauai.gov.

4. Any subsequent use, development, repairs, and/or improvement on the property requires Planning Department review and approval prior to such occurring.
5. Prior to renewal of this certificate, applicant/owner shall provide documentation from the County of Kaua'i, Department of Public Works, Engineering Division, to the Planning Department that the proposed use/structure complies with the applicable flood zone standards/requirements.
6. This approval for the use of the TVR is being permitted at this time. However, any CZO violations on the property or structure, not necessarily connected to the TVR use, must be brought into compliance. Remedies of violations must be completed prior to any consideration for renewal of this certificate.

The property and operation is subject to the applicable provisions of Section 8-17, of the Kaua'i County Code, in particular those provisions adopted by Ordinance 864, 876, and 904. Section 8-17.11(a) states, "Violations of conditions of approval or providing false or misleading information relating hereto at any time during the application process shall be grounds for revocation or cease and desist orders."

If you have any questions please call the Planning Department, at 241-4050

Sincerely,



DEE M. CROWELL
Deputy Planning Director

cc: Finance Department, Real Property Division

TRANSIENT VACATION RENTAL AFFIDAVIT OF

STATE OF California)
COUNTY OF Los Angeles) ss.

I, _____, being first sworn upon oath, deposes and says:

1. My name is, Keely Brosnan and I make this affidavit based on my personal knowledge.

2. I am the owner of the property identified as TMK: 5-8-10:14, 19+39 with a mailing address of 5-7480 Kuhio Hwy, Haena HI 96714
PO Box 1046 Hanalei HI 96721

3. I have operated a transient vacation rental(s) on the property since _____ under the business name of Sandelwood Trust.

4. My State of Hawai'i General Excise Tax license number is W40971052-01 and I have paid General Excise and Transient Accommodation Taxes in accordance with State Law during the period(s) the Transient Vacation Rental was in operation.

5. Building permit number(s) 06-358 were approved on February 21, 2006 for all structures on the property and there were no expansions, alterations, improvements, or uses contrary to State and County land use and planning laws.

6. There _____ were _____ were not any legal expansions or improvements made on the property after March 7th 2008. Improvements and expansions took place under the following permits _____

FURTHER AFFIANT SAYETH NAUGHT.

[Signature]
Name: _____

WITNESS my hand and official seal.

Mariah Yvonne Hulsey March, 28th 2009
Notary Public, State of ~~Hawaii~~ California Date

My commission expires: May, 5, 2010



Doc. Date: March, 28th 2009 # Pages 2

Notary Name: Mariah Yvonne Hulsey _____ Circuit

Doc. Description: Transient Vacation
Rental Affidavit

The Cove Rental Agreement

Thank you for selecting The Cove for your vacation on the North Shore of Kauai. We trust you will have an outstanding holiday and create memories that will last a lifetime. Please review the following information to verify its accuracy.

Description: The Cove

A three bedroom, two bathroom plantation style home set on 5 acres of lush, beachfront gardens with gorgeous ocean views.

808-827-8423 Phone

808-826-1946 fax

Terms:

Arrival June 26, 2008 (Check in 3:00pm)

Departure July 10, 2008 (Check out 1:00pm)

Reservation made on April 7, 2008

Number of nights 15 days (2 weeks and 1 day)

Rate: \$10,000.00 per week @ \$1428.58/day

Security Deposit: \$5,000.00 (from which we will deduct a \$1,000 housekeeping fee which includes in and out cleaning, gardening service, flowers, fruit basket and window washing upon arrival.)

(Due 90 days before arrival)

\$30.00 per hour for additional cleaning and grocery shopping services.

Totals: \$21,428.58 House Rental Fee

\$1626.08 TAT tax 7.25%

\$934.38 GET tax 4.166%

+ \$5,000.00 Security Deposit DUE NOW

\$23,989.04 TOTAL DUE BY CHECK IN

-\$4,000.00 deposit returned within 45 days after rental completed.

Please send check to: The Brosnan Trust
c/o Flekman Baren and Co
9171 Wilshire Blvd.
Suite 400
Beverly Hills, CA 90210

Cancellation policy: Reservation must be cancelled in writing 90 days prior to arrival date. Cancellations received less than 90 days prior to arrival are NON-REFUNDABLE.

No pets

The Cove is NON-SMOKING (Please enjoy cigarettes and cigars on our beautiful ocean front lanai).

Please sign and return this rental agreement with your deposit.

Signature

Date

4/9/08

cc'd Joetta / Ins. File

BERNARD P. CARVALHO JR.
MAYOR

GARY K. HEU
ADMINISTRATIVE ASSISTANT



IAN K. COSTA
DIRECTOR OF PLANNING

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUA'I
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUA'I, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

COPY

August 12, 2009

TO: Holly Lazo
PO Box 1405
Hanalei Hi 96714

SUBJECT: Issuance on NCU # TV-1008

At its July 14th regular meeting the Planning Commission voted to consent to issuance of the subject Non-Conforming Use certificate(s) pursuant to the following conditions

1. An issued certificate is not evidence of compliance with any and all pertinent zoning and use regulations.
2. The certificate does not bear upon any subsequent non-conforming certificate renewal inspections of the property by the Planning Department.
3. The Certificates expire on July 31st 2010.

The property and operation is subject to the applicable provisions of Section 8-17 of the Kaua'i County Code, in particular those provisions adopted by Ordinance 864. Any violations of these sections will be considered grounds to revoke the certificate.

If you have any questions please call the Planning Department

Sincerely


Ian K. Costa
Planning Director

cc: Finance Department, Real Property Division

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City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

In the Matter of the Application)
)
 Of)
)
 SANDALWOOD TRUST for)
 Non-Conforming Use Certificate Application)
 TVNC-2455 for property located at Wainiha,)
 Hanalei, Island and County of Kauai, State of)
 Hawaii, more particularly designated as Tax)
 Key No.: (4) 5-8-10-014.)
)

STATEMENT OF THE CASE

Appellant SANDALWOOD TRUST, by and through its undersigned attorneys,
hereby states as follows:

- c/o Lorna A. Nishimitsu
Belles Graham Proudfoot Wilson & Chun, LLP
4334 Rice Street, Suite 202
Lihue, Kauai, Hawaii 96766
Phone: (808) 245-4705

2. Appellant is the owner of certain real property located at Wainiha, Hanalei, Island and County of Kauai, State of Hawaii, and identified by Tax Map Key No. (4)5-8-10-014 ("Subject Property"). Appellant acquired the Subject Property (which consists of four separate condominium units, but which have not been developed with multiple dwellings) in 2002.

3. Appellant timely submitted the TVR Registration and NCU Form for a nonconforming use certificate ("NUC") for a single-family dwelling ("Dwelling") located on the Subject Property, a true and correct copy of which is attached hereto and incorporated herewith as Exhibit "B".

4. The Subject Property is within the State Land Use Commission Urban District, the County General Plan Residential Community Classification, and zoned Residential R-4 under Chapter 8 of the Kauai County Code ("KCC"). The Subject Property is located within the Special Management Area ("SMA").

5. The Dwelling is the only dwelling unit on the Subject Property. The Dwelling was constructed pursuant to Building Permit No. 1-1216. The Dwelling contains a laundry/storage room, which was shown on the original plans, and which has been used primarily for laundry and storage since Appellant acquired it.

6. Appellant has been renting out the Dwelling as a transient vacation rental since 2002, and has paid all transient accommodations taxes, general excise taxes and real property taxes for the Subject Property.

7. On or about March 7, 2008, Ordinance No. 864 was adopted by the County, which prohibited any new transient vacation rentals in areas that were not within the Visitor Destination Area. Ordinance No 864 amended the Chapter 8, KCC, by including a new Section

8-17.10, which required all single-family transient vacation rentals to obtain a NUC by March 30, 2009.

8. Section 46-4, Hawaii Revised Statutes ("HRS") relating to the County's zoning powers, expressly provides that:

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in Chapter 262.

(Emphasis added).

9. In November 2008, the Planning Department conducted an inspection of the Dwelling.

10. Pierce Brosnan and Keely Shaye Smith-Brosnan, who are beneficiaries of the Sandalwood Trust, reside at the Subject Property during the winter holidays, and entertain guests. Because the kitchen in the Dwelling is rather small, a stove, which is kept at a storage unit, was placed in the laundry room to enable the staff to have more space for serving guests during the holidays. On the date that the Planning Department conducted its inspection, the stove was in the laundry room, as were the washer and dryer (even during holiday preparations, the laundry room continued to be used for doing laundry).

11. Attached hereto and incorporated herewith as Exhibit "C" is a photograph depicting the laundry room. On the date of the inspection, the stove was located at approximately the location where the photographer was standing. The washer and dryer shown in Exhibit "C" were never removed from the laundry room.

12. The Planning Department issued a letter dated May 6, 2009, and sent by certified mail addressed to Keely Brosnan (and not to either of the Trustees of the Sandalwood Trust), denying Appellant's application for a NUC (see Exhibit "A").

13. The Planning Department identifies two (2) reasons why it denied the NUC application, summarized as follows:

a. That there was a conversion of the "Storage area into a full kitchen", in violation of Section 8-17.8(b), KCC;

b. That the "use of the storage area along with associated construction of kitchen facilities without the proper permits constitutes a violation" of Section 8-19.1, KCC.

14. No other reasons for denial of Appellant's TVR application were cited.

15. There are no nonconformities or violations affecting the Dwelling.

16. Section 8-17.10(c), KCC, provides in pertinent part as follows:

"No nonconforming use certificate shall be issued by the Planning Department unless the use as a single-family rental is a legal use under the Comprehensive Zoning Ordinance, and the applicant 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 the effective date of this ordinance and was in compliance with all State and County land use and planning laws, including but not limited to, HRS Chapter 205, the Comprehensive Zoning Ordinance, Shoreline Management Area, Flood Plan [sic] Management and Shoreline Setback laws at the effective date of this

ordinance, up to and including, the time of application for a nonconforming use certificate. . ." [Emphasis added.]

17. The NUC was sought for the Dwelling, which only contains one (1) kitchen as the term is defined by Section 8-1.5(75), KCC. The laundry room, in which a stove was temporarily placed for the beginning of the holiday festivities, is not and was not a kitchen.

18. There were no renovations or additions for which any building or zoning permits were required to the Dwelling after its initial construction and completion.

19. There is no evidence that the Dwelling was other than "in compliance with all State and County land use and planning laws".

20. If the placement of a stove in the laundry room constituted a change of the laundry room into a kitchen, then no person would be able to have hot plates, electric grills, warmers, or similar appliances, placed in a room other than a kitchen to temporarily host parties or gatherings in any dwelling.

21. As a result, the Planning Department's decision to deny Appellant's application for an NUC on the basis that the laundry room had been converted into a kitchen was:

a. Contrary to statutory authority, in violation of Section 91-14(g)(1), HRS;

b. In excess of the statutory authority or jurisdiction of the agency, in violation of Section 91-14(g)(2), HRS;

c. Affected by error of law, in violation of Section 91-14(g)(4), HRS;

d. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

e. In violation of Section 91-14(g)(5), HRS; and

f. Characterized by abuse of discretion or clearly unwarranted exercise of discretion, in violation of HRS Section 91-14(g)(6).

22. Appellant has shown, by a preponderance of the evidence, that the Dwelling was a valid nonconforming transient vacation rental and has satisfied all of the requirements of Chapter 8, KCC, and Section 46-4, HRS, to continue its use of the Dwelling as a transient vacation rental operation on the Subject Property.

23. The Planning Department has not produced facts or evidence sufficient to overcome the showing made by Appellant. As a result, the Planning Department's decision to deny the Application was:

a. Affected by error of law in violation of Section 91-14(g)(4), HRS;

b. Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, in violation of Section 91-14(g)(5), HRS; and

c. Characterized by abuse of discretion or clearly unwarranted exercise of discretion, in violation of Section 91-14(g)(6), HRS.


24. The Planning Department's improper and unlawful denial of Appellant's Application for an NUC will result in a substantial decrease in the value of the Subject Property; in Appellants' use and enjoyment of the Subject Property; and in Appellants' reasonable investments made in improvements for the Subject Property.

25. As a result, the Planning Department's denial constitutes a taking without just compensation in violation of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, Sections 5 and 20 of the Hawaii State Constitution.

WHEREFORE, Appellant prays that the Planning Commission:

- A. Reverse and set aside the decision of the Planning Department denying Appellant's application for an NUC;
- B. Approve Appellant's application for an NUC;
- C. Award Appellant its fees and costs incurred in this matter; and
- D. Grant such further relief as may be just.

DATED: Lihue, Kauai, Hawaii, July 10, 2009.



LORNA A. NISHIMITSU
Attorney for Appellant
SANDALWOOD TRUST



EXHIBIT "C"

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**

ATTORNEYS AT LAW

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DONALD H. WILSON
JONATHAN J. CHUN

Federal I.D. No. 99-0317663

WATUMULL PLAZA
4334 RICE STREET, SUITE 202
LIHUE, KAUAI, HAWAII 96766-1388

TELEPHONE NO: (808) 245-4705
FACSIMILE NO: (808) 245-3277
E-MAIL: mail@kauai-law.com

OF COUNSEL
DAVID W. PROUDFOOT

COUNSEL
LORNA A. NISHIMITSU

ASSOCIATE
DAWN N. MURATA

July 10, 2009

COUNTY OF KAUAI
VIA HAND DELIVERY

'09 JUL 13 AS 134

PLANNING DEPT.

Mr. Ian K. Costa
Planning Director
Planning Department
County of Kauai
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766

RE: TVNC-2445
Tax Key No.: (4) 5-8-10-014 (The Cove)
Owner: Sandalwood Trust

Dear Mr. Costa:

This office represents Sandalwood Trust, the owner of the above-referenced property, which was recently denied its application for a Transient Vacation Rental Nonconforming Use Certificate ("TVR NUC"). The denial letter, dated May 6, 2009, cites the following reasons:

1. That a storage area was converted into a full kitchen; and
2. That the use of the storage area along with "associated construction of kitchen facilities without the proper permits" constituted a violation.

The room which is considered a "full kitchen" by your Department was permitted and constructed as a laundry room. Enclosed is a photograph showing the laundry room facilities (there are storage cabinets, a refrigerator and a sink), along with cabinetry and countertops, and the photograph does evidence that the room is both used as a laundry room and for storage. The laundry room has always contained the washer and dryer.

Our client had its Executive Assistant, Jolene Dodson, submit a letter addressing the denial, and asking for guidance regarding the necessity of any additional filings to receive the TVR NUC. We submit herewith, on behalf of the Sandalwood Trust, the Supplemental Notice

Mr. Ian K. Costa
July 10, 2009
Page 2

of Appeal to the Planning Commission; Designation of Record on Appeal; Statement of the Case; Exhibits "A" through "C"; Certificate of Service.

The room which was deemed to be a "kitchen" by your staff was built, designed, and is used as a laundry room. On the date of the inspection, which was shortly before the commencement of the Thanksgiving and Christmas holidays, our client had staff take a stove, which is kept in a storage unit, into the laundry room. The kitchen in the dwelling is not large enough to handle the holiday spread that is prepared and served to family and friends, so the stove was temporarily in the laundry room to help with holiday preparations. The washer and dryer remained in the laundry room, and it continued to be used as a laundry room.

This has been the practice of our client for the past two years, as they have a number of guests visiting or otherwise invited to share in the holiday festivities. The use of the stove in the laundry room is comparable to the use of other kitchen appliances that have to be moved to a family room, dining room, enclosed patio, etc., when a family is hosting an event.

The determination that the laundry room was a kitchen is incorrect, and on that basis, our client took objection by submitting a letter noting the incorrect conclusion, and we hereby supplement the appeal filed by our client.

Please call me at your earliest convenience to discuss the foregoing.

Very truly yours,

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**



Lorna A. Nishimitsu

LAN:spc

Enclosures

cc: Ms. Jolene Dodson (with enclosures)
Mr. Andres Emayo (with enclosures)

BERNARD P. CARVALHO JR.
MAYOR



IAN K. COSTA
DIRECTOR OF PLANNING

GARY K. HEU
ADMINISTRATIVE ASSISTANT

IMAIKALANI P. AIU
DEPUTY DIRECTOR OF PLANNING

COUNTY OF KAUAI
PLANNING DEPARTMENT
4444 RICE STREET
KAPULE BUILDING, SUITE A473
LIHU'E, KAUAI, HAWAII 96766-1326

TELEPHONE: (808) 241-6677 FAX: (808) 241-6699

CERTIFIED

May 6, 2009

Keely Brosnan
C/O Sandatwood TRUST
P.O. Box 1046
Hanalei HI 96714

SUBJECT: Non-Conforming Use Certificate Application # TVNC-2455
TMK: 5-8-010:014 THE COVE

We have reviewed your application for a Non-Conforming Use Certificate to continue Transient Vacation Rental operations on TMK 5-8-010:014 and have found the following on your property.

- a. "Section 8-17.8 Single Family Transient Vacation Rentals.
(b) ...Development standards shall be the same as those for single-family detached dwellings in Sections 8-3.5 through 8-3.8; ...
The conversion of the Storage area into a full kitchen.
- b. Article 19. Zoning Permits Sec. 8-19.1 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. (Ord. No. 164, August 17, 1972; Sec. 8-18.1, R.C.O. 1976)
The use of the storage area along with associated construction of kitchen facilities without the proper permits constitutes a violation.

AN EQUAL OPPORTUNITY EMPLOYER

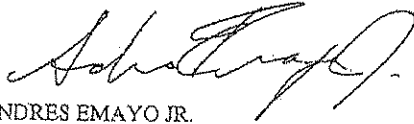
EXHIBIT "A"

Kauhale Kamahao Condominium
May 6, 2009

Pursuant to Section 8-17.10 of the Kauai County Code your application has been denied and you are directed to comply with the following requirements immediately:

- a. Cease and desist transient vacation rental operations immediately
- b. Cease and desist use of above noted structures (Storage), as a kitchen and remove all illegal gas and/or electric service supplies along with cooking facilities within 30 days from receipt of this notice.
- c. Submit plans and applications along with filing fees for review by the Department for all illegal construction, additions and alterations. Such construction, additions and alterations without proper approval shall be demolished and removed.

Failure to contact the Planning Department in writing within 15 calendar days upon receipt of this letter to provide an acceptable plan for compliance provides us with no other alternative but to issue a Notice of Violation and pursue litigation. Please call the Planning Department at 241-6677 if you have any questions.



ANDRES EMAYO JR.
Planning Inspector

cc: County Attorney
Prosecuting Attorney
Finance Department, Real Property Division
Office of the Mayor, PIO

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**
ATTORNEYS AT LAW

MICHAEL J. BELLES
MAX W.J. GRAHAM, JR.
DONALD H. WILSON
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TELEPHONE NO: (808) 245-4705
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E-MAIL: mail@kauai-law.com

OF COUNSEL
DAVID W. PROUDFOOT

COUNSEL
LORNA A. NISHIMITSU

ASSOCIATE
DAWN N. MURATA

July 10, 2009

COUNTY OF KAUAI
VIA HAND DELIVERY

Mr. Ian K. Costa
Planning Director
Planning Department
County of Kauai
4444 Rice Street, Suite A473
Lihue, Kauai, Hawaii 96766

RE: ~~TVNC-2445~~ *AE TV 2455 NCU*
Tax Key No.: (4) 5-8-10-014 (The Cove)
Owner: Sandalwood Trust

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July 10, 2009
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The room which was deemed to be a "kitchen" by your staff was built, designed, and is used as a laundry room. On the date of the inspection, which was shortly before the commencement of the Thanksgiving and Christmas holidays, our client had staff take a stove, which is kept in a storage unit, into the laundry room. The kitchen in the dwelling is not large enough to handle the holiday spread that is prepared and served to family and friends, so the stove was temporarily in the laundry room to help with holiday preparations. The washer and dryer remained in the laundry room, and it continued to be used as a laundry room.

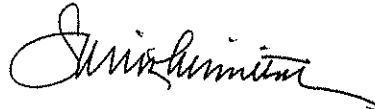
This has been the practice of our client for the past two years, as they have a number of guests visiting or otherwise invited to share in the holiday festivities. The use of the stove in the laundry room is comparable to the use of other kitchen appliances that have to be moved to a family room, dining room, enclosed patio, etc., when a family is hosting an event.

The determination that the laundry room was a kitchen is incorrect, and on that basis, our client took objection by submitting a letter noting the incorrect conclusion, and we hereby supplement the appeal filed by our client.

Please call me at your earliest convenience to discuss the foregoing.

Very truly yours,

**BELLES GRAHAM PROUDFOOT
WILSON & CHUN, LLP**



Lorna A. Nishimitsu

LAN:spc

Enclosures

cc: Ms. Jolene Dodson (with enclosures)
Mr. Andres Emayo (with enclosures)