

## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808 586-2572

Neil Abercrombie  
Governor

Richard C. Lim  
Director, DBEDT

Mary Alice Evans  
Deputy Director, DBEDT

### Members

Chu Lan Shubert-Kwock  
Chairperson  
Oahu

Anthony Borge  
Vice Chair  
Oahu

Leslie Mullens  
2<sup>nd</sup> Chairperson  
Maui

Howard Lum  
Oahu

Barbara Bennett  
Kauai

Kyoko Y. Kimura  
Maui

Craig Takamine  
Hawaii

Harris Nakamoto  
Oahu

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

## AGENDA

**Wednesday, February 19, 2014 ★ 9:30 a.m.**  
**No. 1 Capitol District Building**  
**250 South Hotel Street - Conference Room 436**

- I. Call to Order**
- II. Introduction of new Board Member**
- III. Approval of January 22, 2014 Meeting Minutes**
- IV. New Business**
  - A. Discussion and Action on Proposed New Rules being Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Article 17, Relating to Transient Vacation Rentals – Exhibit 1
  - B. Discussion and Action on Proposed New Rules being Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Interpretive Administrative Zoning Ordinance Rules and Regulations Relating to Chapters 8, 9, and 10 – Exhibit 2
  - C. Discussion and Action on Proposed New Rules being Promulgated by the County of Kauai's Planning Commission in the Kauai County Code, Chapter 8, Processing and Review of Use Permits Concerning the Construction and Operation of Fruit and Vegetable Stands in the Agriculture and Open Zoning Districts – Exhibit 3
- V. Legislative Matters**
  - A. Discussion of Senate Bill 2487, Relating to the Small Business Regulatory Flexibility Act – Repeals Chapter 201M, Hawaii Revised Statutes, the Small Business Regulatory Flexibility Act
  - B. Discussion and Action of Governor's Message No. 503, Submitting for Consideration and Confirmation to the Small Business Regulatory Review Board, Gubernatorial Nominee, Harris Nakamoto, for a term to expire June 30, 2015
- VI. Administrative Matters**
  - A. Update on Board's Fiscal Year 2015 Supplemental Budget Request
  - B. Discussion and Action on "final draft" report of 201M-7 Periodic Review: *Evaluation, Hawaii Revised Statutes*
  - C. Update on Board's "introduction" meetings to State agencies
  - D. Update on the reactivation of RegAlert, an electronic email alert system for announcement of proposed and amended administrative rules that impact small business
  - E. Discussion and Action on Proposal to Revise the Small Business Impact Statement

# February 19, 2014 ~ SBRRB Meeting Checklist

## Member Attendance

	Airline Preference	From	Details	Attend
Chu Lan Shubert-Kwock <i>Packet</i>	NA	Oahu	Parking Pass	<i>Yes</i>
Howard Lum <i>Packet</i>	NA	Oahu	Parking Pass	<i>Yes</i>
Craig Takamine <i>Packet</i>	HA	Hawaii	Parking Pass	<i>Yes</i>
Barbara Bennett <i>(altared-travel packet)</i>	HA	Kauai	Parking Pass	<i>Yes</i>
Kyoko Kimura <i>Packet</i>	HA	Maui	Parking Pass	<i>Yes</i>
<del>Director's ex officio</del>	<del>NA</del>	<del>Oahu</del>	<del>NA</del>	<del>No</del>
Anthony Borge <i>Packet</i>	NA	Oahu	Parking Pass	<i>Yes</i>
<del>Leslie Mullens</del>	<del>NA</del>	<del>Maui</del>	<del>Parking Pass</del>	<del>No</del>
<del>Harris Nakamoto</del>	<del>NA</del>	<del>Oahu</del>	<del>Parking Pass</del>	<del>Yes</del>
<i>(Wang in Packet Permit)</i>				

## Pre Meeting Checklist

Conference Room #436 (Confirm each month)	X
Make 15 copies of rule packages for board packets - continuous	✓
Poll board attendance	✓
Prepare TAF for Director's approval - ASAP	✓✓
Airline booking ASAP - Linda	✓✓
Draft Agenda to Chair	✓
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office	✓
Send Agendas to those people who requested it <i>Shiruma; Rubegia; Packets</i>	✓✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets Tues or Wed. Feb. 14th or 12th	✓
<i>Water in Fridge (READ) Day Before Meeting - Too</i>	
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

## STAFF

Margaret Ahn <i>Packet</i>			Yes
Dori Palcovich			Yes

## Post Meeting Checklist


# Visitors Sign-in-Sheet – Small Business Regulatory Review Board – February 19, 2014

	Name	Title	Organization	Email	Phone
1	Mark Butcher	Pres.			
2					
3					
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F. Chair's Report – Exhibit A

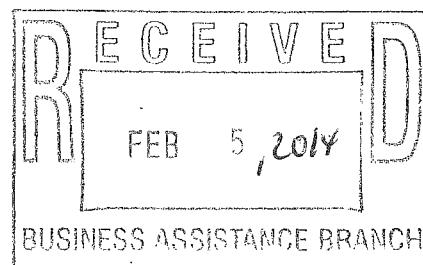
**VII. Adjournment**

**VIII. Next Meeting:** Scheduled for Wednesday, March 19, 2014, at 9:30 a.m.,  
Conference Room 436, Capitol District Building, Honolulu, Hawaii

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

## Exhibit 1

SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: COUNTY OF KAUAI PLANNING COMMISSION

Relevant HRS Chapter or Section: N/A

Administrative Rule Chapter and Title: Administrative rules pertaining to the interpretation and enforcement of Kauai County Code Chapter 8, Article 17 relating to transient vacation rentals

Name: Michael Dahilig/Ian Jung

Title: Director of Planning/Deputy County Attorney

Phone Number: 808-241-4050

Email Address: mdahilig@kauai.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1. ☒ New ☐ Repeal ☐ Amendment ☐ Recompilation

2. Nature of Proposed Changes:

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No
- b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No
- c. Will the proposed rule affect small business because it:
  - 1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_Yes XNo
- 3) Is directly related to the formation, operation, or expansion of a small business? XYes \_\_\_No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

See draft findings in rules. Also, the process for TVR rules and allowable fine levy has not been clear to the public and the draft rules are meant to memorialize the process in one document.

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

**D. Are there new or increased fees or fines? \_\_\_Yes XNo**

The rules only establish the fine structure already allowed through county legislation.

**E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? XYes \_\_\_No**  
If no, why not?

**F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.**

N/A

**G. Departmental Impact (i.e. fiscal, personnel, program)?**

\_\_\_Yes XNo

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**

XYes \_\_\_No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

**J. Final result anticipated from the proposed rule change.**

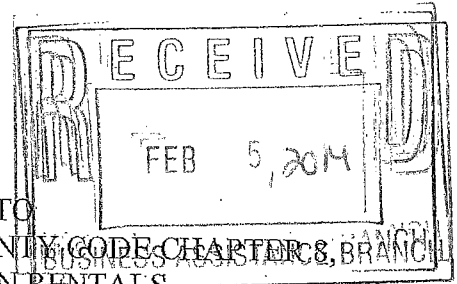
The final result will provide for a more organized document for the public to review, and clarity on the implementation of the TVR program.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.



PLANNING COMMISSION  
County of Kaua'i State of Hawai'i



ADMINISTRATIVE RULES PERTAINING TO  
THE INTERPRETATION AND ENFORCEMENT OF KAUAI COUNTY CODE CHAPTER 8, ARTICLE 17 RELATING TO TRANSIENT VACATION RENTALS.

AUTHORITY:

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Planning Department to enforce Chapter 8, Article 17 of the Kauai County Code 1987, as amended, ("KCC") concerning to the certification and enforcement of Transient Vacation Rentals.

Pursuant to KCC Section 8-17.12(h), the annual renewal of a non-conforming use certificate is requires as prescribed in KCC Sections 8-17-10(a-h). The renewal documentation requires at a minimum:

*...proof that there is a currently valid State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use. Failure to meet this condition will result in the automatic denial of the application for renewal of the nonconforming use certificates.*

Non-conforming uses are defined under KCC Section 8-13.2, and specifically Section 8-13.2(b), which states as follows:

*If any nonconforming use ceases for any reason for a continuous period of twelve (12) calendar months or for one (1) season if the use be seasonal, then the use shall not be resumed and any use of the land or building thereafter shall be in full conformity of the provisions of this chapter.*

FINDINGS:

The requirements of the Chapter 8, Article 17 of the KCC lack specificity pertaining to the annual renewal process, including late filing, the documentation and evidence required to maintain a non-conforming use as defined in KCC Section 8-13, and the procedures necessary for a certificate holder to seek due process in the event of non-renewal.

RULE:

**I. NON-CONFORMING USE CERTIFICATE (NCUC) RENEWAL**

- A. Requirements for Renewal.** Applications for renewal shall only be accepted by the Department sixty (60) days prior to the certificate's renewal date. The annual renewal deadline is the same month and day of the original determination made by the Planning Department certifying the non-conforming use. Along with the mandatory

renewal form, the following documents must accompany the submittal, pursuant to KCC 8-17.12(h)(1):

1. Renewal fee in the amount set forth by ordinance;
2. Copy currently valid General Excise Tax (GET) certificate; and
3. Copy of currently valid Transient Accommodation Tax (TAT) certificate.

Further, in order to ascertain continuous use pursuant to KCC Section 8-23.2(b), the following shall also be submitted to the Planning Department:

1. A dated, updated copy of the "For Your Safety and Comfort" information document provided to vacation rental tenants;
  2. A dated picture of the required transient vacation rental sign with the house in viewing range; and
  3. Copies of redacted tax returns evidencing activity on the GET and TAT certificates with the address of the vacation rental clearly visible.
4. For the period of one (1) year from the date of approval of these Rules, the following shall also be required of renewing certificate holders:
- a. Where the Planning Department has identified missing documents required by the non-conforming use certificate application process, the applicant, in good faith, shall exercise best efforts in providing these documents to complete the file as part of the renewal application.

**B. Timely Renewal Notices.** The Planning Department shall notify the certificate holder if the renewal application has been approved, approved pending a certain action, withheld, or denied within forty-five (45) days of the certificate's renewal deadline.

**C. Inspections.** The Planning Department may require an inspection to verify the non-conforming use.

**D. Renewal Applications.** Submittal by the renewal date is the certificate holder's responsibility as the Planning Department shall not be responsible for notifying the holder of any pertinent deadlines. Renewals postmarked by the deadline and received within seven (7) days after the deadline shall be accepted by the Planning Department as submitted timely.

**F. Late Renewal Applications.** Renewal applications received by the Planning Department within thirty days (30) after the deadline may renew, provided that in addition to the renewal fee, a certificate holder shall pay an administrative processing fee of twice the renewal fee.

**E. Non Compliance Timeline.** After the thirtieth (30<sup>th</sup>) day after the renewal deadline, the Department shall reject any renewal application and issue a forfeiture letter.

**F. Forfeiture.** Determination of forfeiture shall be subject to an appeal of the Planning Director's Decision pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

G. **Voluntary Forfeiture.** A certificate holder may voluntarily forfeit the non-conforming use certificate provided an declaration attesting to the voluntary action is submitted contemporaneously with a form provided by the Planning Department.

**DRAFT**  
**for discussion purposes**

## **II. VIOLATIONS**

**A. Transient Vacation Rentals with NCUC and Violations.** Pursuant to KCC Section 8-17.12(h)(2), the Planning Department may withhold the renewal of a NCUC if a violation of the Comprehensive Zoning Ordinance (CZO) or other pertinent land use laws are identified on the property. A temporary cease and desist order shall be issued to the certificate holder to immediately suspend vacation rental activities until the violation has been rectified. Should the vacation rental use continue in violation of the temporary cease and desist order, and the order has not been appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission, fines shall be applicable as a non-allowed use outside the Visitor Destination Area.

1. CZO Violations. For lots with active transient vacation rental NCUCs, the Planning Department shall keep a record of any complaints and violations on the property. Along with a withhold notice, any violations shall require the issuance of a temporary cease and desist order to the certificate holder within ten (10) days from submittal of the renewal form. The letter shall clearly state that any vacation rental use must cease until the violation is rectified or if the order is appealed. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). Fines for the actual CZO violations leading to certificate withholding shall be issued as a separate order and separately appealable.

2. Violations of other Pertinent Land Use Laws. For lots with active transient vacation rental NCUCs, the Planning Department shall notify other County agencies of the nonconforming use with instructions to carbon copy any violation notices of their relevant codes to the Planning Department. The Department shall catalog these violation notices. At the time of renewal, should a cataloged violation notice be present and active in the file, the Planning Department shall issue a temporary cease and desist order along with information the certificate holder that the a future renewal will be withheld pending resolution of any violations. The letter shall clearly state that any vacation rental use must cease until the violation is rectified and the order is appealable. Failure to rectify the violation within one (1) year of the temporary cease and desist order shall be considered abandonment pursuant to KCC Section 8-23.2(b). A letter from the County agency that the violation has been rectified must be submitted to the Planning Department to release the hold on the renewal.

**B. Single-Family Transient Vacation Rentals Operating Without Certificate.** A Zoning Compliance notice shall be issued on a lot where an inspection has ascertained a Single-Family Transient Vacation Rental use. An after-the-fact NCUC shall not be issued by the Planning Department, the final appealable decision of the Director shall be upon the second notice, should the use persist, whereby the Director has levied a fine.

### III. ENFORCEMENT.

- A. **Zoning Compliance Notice.** A Zoning Compliance Notice related to Single-Family use shall require a response from the person notified within ten (10) days of service. A withholding of the renewal and temporary cease and desist order shall be treated as a Zoning Compliance Notice.
- B. **Notice of Violation.** Should no response be received after service of a Zoning Compliance Notice, or the Planning Director finds lack of progress to timely rectify the violation the Planning Department shall issue a Notice of Violation. The Notice of Violation shall include a levy of fines, which may be appealed pursuant to Chapter 9 of the Rules of Practice and Procedure of the Planning Commission.

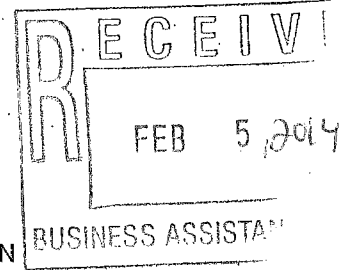
### IV. FINE SCHEDULE

Fines shall be levied in addition to any permitting fees required to rectify the violation.

TVR NCUC FINE SCHEDULE		
Type	Example	Fine per instance or per day
<b>STRUCTURE VIOLATIONS:</b>		
Class I or II required	Lawn Building/Unpermitted addition	Starting at \$250
Class III required	Unpermitted Construction	Starting at \$500
Class IV required	Unpermitted Construction	Starting at \$2,500
Use Permit/Variance required	Building height violation	Starting at \$5,000
Not allowed in the zoning district	Illegal Density	\$10,000
<b>USE VIOLATIONS</b>		
Use Permit/Variance required	Baseyard in Res District	Starting at \$5000
Not allowed in the zoning district	TVR w/o NCUC	\$10,000
<b>OTHER VIOLATIONS</b>		
Non-Compliance with Ordinance	No NCUC Sign	Starting at \$250

## Exhibit 2

SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)



DEPARTMENT OR AGENCY: COUNTY OF KAUAI PLANNING COMMISSION

Relevant HRS Chapter or Section: N/A

Administrative Rule Chapter and Title: Interpretive Administrative Zoning Rules and Regulations (2014) of the Kauai Planning Commission Relating to Chapters 8, 9 and 10 of the Kauai County Code (1987)

Name: Michael Dahilig/Ian Jung

Title: Director of Planning/Deputy County Attorney

Phone Number: 808-241-4050

Email Address: mdahilig@kauai.gov

A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:

B. RULE DESCRIPTION:

1. ☒ New ☐ Repeal ☐ Amendment ☒ Recompilation

2. Nature of Proposed Changes:

a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No

b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No

c. Will the proposed rule affect small business because it:

1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_ Yes X No
- 3) Is directly related to the formation, operation, or expansion of a small business? X Yes \_\_\_ No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

The rule amendments can be categorized into two efforts: A) Recodification of previous interpretive rules to the CZO by the Commission rules; B) Introduction of additional interpretive rules. The amendments directly related to small business matters involve the sections on Food Trucks, Minor Food Processing and Film Production .

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

- D.** Are there new or increased fees or fines? \_\_\_ Yes X No

The rules only establish the process to appeal a new fine structure already instituted through county legislation.

- E.** Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule? X Yes \_\_\_ No  
If no, why not?

- F.** Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.

N/A

- G.** Departmental Impact (i.e. fiscal, personnel, program)?

\_\_\_ Yes X No

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.



**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**

☒ Yes ☐ No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

**J. Final result anticipated from the proposed rule change.**

The final result will provide for a more organized document for the public to review, and clarity on the implementation of the CZO.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

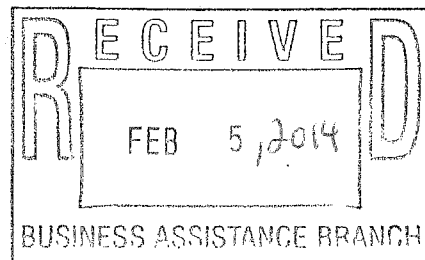
None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.

**INTERPRETIVE ADMINISTRATIVE ZONING RULES AND REGULATIONS (2014)**

**OF THE**

**KAUAI PLANNING COMMISSION**

**RELATING TO CHAPTERS 8, 9 and AND 10 OF THE KAUAI COUNTY CODE (1987)**



## FOREWORD:

Generally, as relating to these codified rules, pursuant to Article XIV Section 14.03.E of the Kauai County Charter, the Planning Commission of the County of Kauai has adopted the following administrative rules and regulations pertaining to the responsibility of the Department to enforce various elements of the Kaua'i County Code, 1987, as amended, ("Comprehensive Zoning Ordinance") and other related zoning ordinances.

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### CHAPTER

#### KPAR-8-1.5 DEFINITIONS

- 1. Kitchens, Installed Equipment
- 2. Dwelling, Multiple Family, Single-Family Detached
- 3. Food Trucks
- 4. Fruit Stands

#### KPAR-8-2.4 USES

- 1. Film Productions as Accessory Use and Structures
- 2. Minor Food Processing

#### KPAR-8-19 SINGLE FAMILY TRANSIENT VACATION RENTALS

- 1. Non-Conforming Use Certificate Renewal
- 2. Violations
- 3. Enforcement
- 4. Fine Schedule

#### KPAR-9-2.9 PUBLIC ACCESS RIGHT-OF-WAY FOR SUBDIVISIONS

- 1. Referral to Public Access, Open Space, and Natural Resources Preservation Fund Commission; Preferred Public Access Right-of-Way

#### KPAR-10-5A LIHUE TOWN CORE URBAN DESIGN DISTRICT

- 1. Paint Colors

**KPAR-8-1.5-1**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

**KITCHENS, INSTALLED EQUIPMENT**

*(Adopted by the Commission February 26, 2013; Approved by the Mayor XX/XX/2013)*

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definition of "Kitchen."

Under the Comprehensive Zoning Ordinance, "Kitchen" is defined as, "any room used or intended or designed to be used for cooking and preparing food."

**FINDINGS:**

As enforcement of Ordinance 935 hinges upon the definition of "Kitchen," and there have been abuses to create structures considered "Dwelling, Multiple Family" from those previously permitted as "Dwelling, Single Family Detached."

**RULE:**

1. "Installed equipment" is further defined by the Commission and shall be interpreted by the Department as any appliance used to cook and prepare food including but not limited to a stove tops or ranges, griddle, rice cooker, toaster oven, microwave, hot plate, and or deep fryer. Installation, by nature, shall be considered complete upon a connection to an electrical socket or fuel source. Installed equipment can be distinguished from blenders and food processors which are used only to prepare food.
2. Under Ordinance 935, "[a]ny room used or intended...for cooking and preparing food" shall be interpreted by the Department as to include any room where installed equipment is connected to or intended to be connected to an electrical socket. Evidence of any instructions, written, oral or posted, to "unplug" installed equipment when the installed equipment is not in use shall be considered installation.
3. All plans submitted to the Planning Department must demarcate surfaces where installed equipment will be connected to an electrical socket and used. Surfaces shall be outlined on all plans with a dashed line, labeled and cross hatched. Uses of installed equipment outside these surfaces will be considered a violation of Ordinance 935.
4. Rooms "[d]esigned to be used for cooking and preparing food" shall require surfaces for installed equipment to be no more than eight-feet from a sink and a refrigerator.

**KPAR-8-1.5-2**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

**DWELLING UNITS; DWELLING, MULTIPLE FAMILY**

(Adopted by the Commission February 26, 2013; Approved by the Mayor)

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definitions of "Dwelling Unit" and "Dwelling, Multiple Family."

Under the Comprehensive Zoning Ordinance:

"Dwelling Unit" means any building or any portion thereof which is designed or intended for occupancy by one (1) family or persons living together or by a person living alone and providing complete living facilities, within the unit, for sleeping recreation, eating and sanitary facilities, including installed equipment for only one (1) kitchen. Any building or portion thereof that contains more than one (1) kitchen shall constitute as many dwelling units as there are kitchens."

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

**RULE:**

1. "[A]ny building or portion thereof" shall be interpreted by the Department as any enclosed portion of residential structure.
2. "Installed equipment" is further defined by the Commission and shall be interpreted by the Department as any appliance used to cook and prepare food including but not limited to a stove tops or ranges, griddle, rice cooker, toaster oven, microwave, hot plate, and or deep fryer. Installation, by nature, shall be considered complete upon a connection to an electrical socket. Installed equipment can be distinguished from blenders and food processors which are used only to prepare food.
3. "[L]iving independently of each other" shall be interpreted by the Department as any building or portion of residential structure designed and constructed in a manner to impede the free flow of all individuals permanently or temporarily residing in the structure from entering and exiting all rooms in the structure. This independence shall be evidenced by, for example, including but not limited to: locks on doors meant to only allow unlocked ingress in one direction; doors facing each other within the structure with keyed locks facing each other; and/or separate clearly marked or identified entrances to a building or portion thereof for complete living facilities.

**KPAR-8-1.5-4**

**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**  
**FOOD TRUCKS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-1.5 of the Kaua'i County Code, 1987, as amended, concerning the definition of "Structure" and its applicability to the operation of vehicles used for food service activities.

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

These rules do not pertain to the Department's application of Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations.

**FINDINGS:**

As enforcement of Comprehensive Zoning Ordinance as it pertains to vehicles used for food service activities hinges upon the definition of "Structure," further clarification of the terms, "food service" and "vehicle" used within the Comprehensive Zoning Ordinance are necessary.

**RULE:**

1. "Food Service" as referenced throughout Chapter 8, Kauai County Code, yet without a definition set forth in Section 8-1.5 of the code shall be interpreted to mean "use of the property whereby consideration is paid by an invitee in exchange for food."
2. "Vehicle" as referenced throughout Chapter 8, Kauai County Code, yet without a definition set forth in Section 8-1.5 of the code shall be interpreted to mean "anything capable of usage and licensure by the state for the transport of persons or goods."
3. Vehicles utilized for food service activities shall not be interpreted as "structures" for the purposes of Chapter 8, Kauai County Code application provided that:
  - a. Vehicles are maintained in full operable condition, and can be made immediately mobile at the request of a Planning Department official.
  - b. Vehicles are self-contained and do not require external utilities on the parcel to engage in food service activities.
  - c. Appurtenant structures including but not limited to pop-up tents, benches, tables clearly used for food service shall not remain stationary and shall be stored within

the vehicle or in a properly permitted enclosed structure when the food service is not in operation.

**KPAR-8-1.5-5**  
**DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**  
**FRUIT STANDS**

[Separate proposed rule - To be coditified if adopted]

**KPAR-8-2.4-1**  
**USES, COMPREHENSIVE ZONING ORDINANCE**  
**FILM PRODUCTIONS AS ACCESSORY USES AND STRUCTURES TO ALL ZONING DISTRICTS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-2.4 of the Kaua'i County Code, 1987, as amended, concerning uses. In particular, "accessory structures" and "accessory uses" are allowed in all zoning districts under Sections 8-2.4(a)(2); 8-2.4(g)(1); 8-2.4(i)(1); 8-2.4(j)(1); 8-2.4(m)(1); 8-2.4(n)(1); 8-2.4(q)(1); 8-2.4(s)(1), Kauai County Code

**FINDINGS:**

Kauai's urban and natural form is a desired drop back for photography, film and television shoots. The images and scenery meant to be captured on film are the uses and/or structures already permitted under the zoning code.

Photography, film and television production shoots are limited in duration, and do not alter the permitted use beyond the process, again, of capturing the images on film.

**RULE:**

1. "Film Productions" shall mean the use of a parcel or erection of any temporary structure on a parcel related to a limited duration film operation holding a permit to conduct filming as approved by the Film Commissioner of the County of Kauai. Limited duration film operations without a permit from the Film Commissioner are not considered "Film Productions."
2. Film Productions are considered an accessory use pursuant to Section 8-2.4, Kauai County Code, specifically Sections 8-2.4(a)(2); 8-2.4(g)(1); 8-2.4(i)(1); 8-2.4(j)(1); 8-2.4(m)(1); 8-2.4(n)(1); 8-2.4(q)(1); 8-2.4(s)(1).
3. Temporary structures to assist with the Film Production must be removed at the end of



the limited duration film operation, unless subsequent permits are sought. Should a subsequent permit be sought to permit said structures, they shall not be considered after-the-fact provided the requisite applications are submitted within ninety (90) days of the expiration of the Film Commissioner's permit.

4. Helicopter landings at the shoot location are beyond the scope of "Film Productions" and are considered a prohibited use without the proper zoning permits. Aerial helicopter usage shall be in accordance with all Federal laws, and any additional conditions of the Film Commissioner's permit.
5. Violation of the terms of the Film Commissioner's permit shall lead to a determination by the Department that the activity is beyond a "Film Production" and shall be subject to civil and or criminal penalties by the Department or the Prosecutor.
6. These rules do not encompass compliance with Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations.

#### **KPAR-8-2.4-2**

#### **DEFINITIONS, COMPREHENSIVE ZONING ORDINANCE**

#### **MINOR FOOD PROCESSING**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 8, Section 8-2.4 of the Kaua'i County Code, 1987, as amended, concerning uses. In particular "Minor Food Processing" is allowed in zoning districts pursuant to Section 8-2.4(j)(11); and 8-2.4(q)(9), Kauai County Code.

#### **FINDINGS:**

There is a need to distinguish "Food Processing" under section 8-2.4 from "Minor Food Processing" to more clearly delineate whether a use permit versus an over the counter permit is required. The clarity is meant to encourage the growth of small scale value added food production.

#### **RULE:**

1. "Minor Food Processing" means the production of such goods as cracked seeds, jellies, candies and ice cream or agricultural products
2. These goods shall be for the purpose of creating value added products whereby the materials brought into the structure for production are primarily in a raw, unadulterated form
3. Production of the goods or value added products shall be limited to a gross processing work area that is no more than a total of 2,500 square feet, not including any area directly related to over-the-counter sales or direct consumption.

4. This work area shall be clearly identified and labeled on plans submitted to the Department.
5. These rules do not encompass compliance with Chapter 205A, Hawaii Revised Statutes and the County of Kaua'i Special Management Area Rules and Regulations.

#### **KPAR-8-19-1**

#### **TRANSIENT ACCOMMODATION UNITS**

**[Separate proposed rule - To be coditified if adopted]**

#### **KPAR-9-2.9**

#### **PUBLIC ACCESS RIGHT-OF-WAY FOR SUBDIVISIONS**

#### **Referral to Public Access, Open Space, and Natural Resources Preservation Fund Commission; Preferred Public Access Right-of-Way**

Pursuant to Article XIV Section 14.03.E the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the responsibility of the Department to enforce Chapter 9, Section 9-2.9 of the Kaua'i County Code, 1987, as amended, concerning the exaction of public rights of way as part of a subdivision action. In particular, specifications of the Planning Department are required as part of the approval documents to be submitted to the Kauai Planning Commission.

#### **FINDINGS:**

Since the recent creation of the Public Access, Open Space, and Natural Resources Preservation Fund Commission, there is a need to clearly integrate the role of the Commission in providing input to the application of this particular ordinance.

#### **RULE:**

1. Upon intake of a subdivision action, the Department shall determine whether a public accessway is required by ordinance pursuant to Section 9-2.9, Kauai County Code.
2. Should an accessway be required, the Department shall refer the application to the Public Access, Open Space, and Natural Resources Preservation Fund Commission for input concerning the location of the eventual access.
3. The Department shall also seek guidance from the Open Space Commission whether not only mauka-to-makai access is needed, but whether lateral access and the preservation of historical accesses should also be exacted.
4. The Department shall provide a 60-day window upon transmittal to the Open Space Commission to receive comments back before advancing any application documents to the Planning Commission.

**KPAR-10-5A-1**

**LIHUE TOWN CORE URBAN DESIGN DISTRICT**

**PAINT COLORS**

(Adopted by the Commission February 26, 2013; Approved by the Mayor)

**1-1. Purpose.**

Pursuant to Chapter 10, Article 5A, Kaua'i County Code, 1987, as amended, these rules define the Department of Planning's statutory requirement to preserve, maintain and restore the appearance and design Līhu'e Town Core Urban Design District.

**1-2. Authority.**

These rules are authorized under Hawai'i Revised Statute Chapter 91, Kaua'i County Charter Section 14.03.E. and incorporated by Kaua'i County Code, 1987, as amended, Chapter 10 and Chapter 8, Article 3, which allows the Planning Director to enforce the requirements set forth in the Līhu'e Town Core Urban Design District.

**1-3. Definitions.**

In addition to terms defined in Chapter 10, Article 5A, Kaua'i County Code 1987, as amended:

- (a) "Color Palette" means an array of "Dark Earth Tones", "Light Earth Tones" and "Warm Earth Tones", and "Earth Tones" and other colors commonly found in the Līhu'e Town Core as approved by the Planning Director.
- (b) "Dark Earth Tones" means colors that are of a darker shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (c) "Earth Tones" means colors that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (d) "Light Earth Tones" means colors that are of a lighter shade that draw from a palette of browns, tans, greys, greens and some reds, and are muted and flat in emulation of the natural colors found in dirt, rocks and vegetation.
- (e) "Planning Director" means the Director of the Planning Department of the County of Kaua'i.
- (f) "Reflective" means colors or glass/metallic surfaces that are capable of reflecting light.
- (g) "Special Planning Areas D, E, F, and G" means Special Planning Areas authorized under Kauai County Code, 1987 as Amended, Chapter 8, Article 11 and established by the Līhu'e Town Core Urban Design District in Chapter 10, Article 5A.
- (h) "Warm Earth Tones" means colors that have a red or yellow undertone and draw from a palette of browns, tans, greys, greens and some reds, and emulate the natural colors found in dirt, rocks and vegetation.

**1-4 Setting of the Color Palette.**

- (a) The Planning Director shall form an advisory committee to recommend a Color Palette that identifies at least ten (10) colors each of Earth Tones, Dark Earth Tones, Light Earth Tones,

Warm Earth tones, and other colors commonly found in the Lihue Town Core. The advisory committee formed by the Planning Director shall review and decide colors to recommend to the Planning Director for approval of the Color Palette.

(b) The advisory committee formed by the Planning Director shall identify and determine which colors appropriately reflect the cultural and historical significance of the Lihue Town Core as defined in the Lihue Town Core Urban Design Plan.

(c) The Planning Director shall make the final decision based on the advisory committee's determination of which colors shall constitute the Color Palette.

(d) Should an applicant wish to propose specific colors that are not substantially similar to the Color Palette, the Planning Director shall evaluate the proposed colors and make a decision that the proposed color(s) is consistent with the respective Special Planning Area. In evaluating an applicant's proposed color(s), the Planning Director shall also find that the proposed color(s) significantly resembles that of any of the color(s) on the Color Palette.

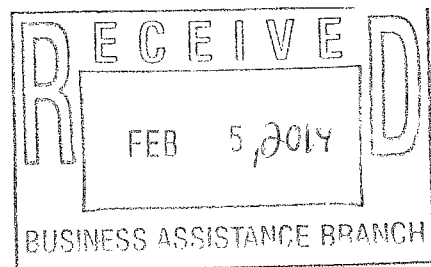
#### **1-5. Exterior Building Color Alterations/Appearance.**

(a) The exterior of any new building or repainting of any building within any of the Special Planning Areas shall comply with the Color Palette as approved by the Planning Director, unless the Planning Director approves an applicant's requested color pursuant to Sec. 1-4(d) of these Rules.

(b) All items affixed to buildings, including but not limited to awnings, canopies, overhangs, and other architectural features shall also comply with the Color Palette as approved by the Planning Director. This Section shall not apply to signs affixed to buildings given signage is regulated within each of the Special Planning Areas of the Lihue Town Core Urban Design District.

(c) All roofs are required to be non-reflective and any items to be mounted or affixed on the roof of any building shall also be non-reflective. This Section shall not apply to photovoltaic equipment, solar water heating, air-conditioning equipment, skylight, or vents. Should an applicant propose other Reflective utility equipment, the applicant must seek approval by the Planning Director to ensure minimal non-reflectiveness. All roof-mounted or affixed utility equipment, other than photovoltaic or solar paneling, shall be screened to minimize the visibility from public streets and pedestrian connections. Screens shall be consistent with the building's architectural design and finishes.

## Exhibit 3



**SMALL BUSINESS IMPACT STATEMENT  
(SEC 201M-2, HRS)**

**DEPARTMENT OR AGENCY:** COUNTY OF KAUAI PLANNING COMMISSION

**Relevant HRS Chapter or Section:** N/A

**Administrative Rule Chapter and Title:** Administrative rules pertaining to the processing and review of use permits concerning the construction and operation of fruit and vegetable stands in the agriculture and open zoning districts

**Name:** Michael Dahilig/Ian Jung

**Title:** Director of Planning/Deputy County Attorney

**Phone Number:** 808-241-4050

**Email Address:** mdahilig@kauai.gov

**A. Provide the following information described in Section 201M-2(b), HRS and in Governor's Administrative Directive No. 09-01:**

**B. RULE DESCRIPTION:**

1. ☒ New ☐ Repeal ☐ Amendment ☐ Recompilation

**2. Nature of Proposed Changes:**

- a. Is the proposed rule authorized by a federal or state law or statute that does not require an agency to interpret or describe the requirements of the law or statute? ☐ Yes ☒ No
- b. Is the proposed rule an emergency regulation? ☐ Yes ☒ No
- c. Will the proposed rule affect small business because it:
  - 1) Will apply to "small business" defined as a for-profit enterprise with fewer than 100 full-time or part-time employees? ☒ Yes ☐ No

The proposed rules concern the approval of land use permits by the Planning Commission throughout the County. Small businesses may be applying for land use permits in order to construct places of businesses, or are involved directly in land use development or construction contracting.

- 2) Will cause a direct and significant economic burden upon a small business? \_\_\_Yes XNo
- 3) Is directly related to the formation, operation, or expansion of a small business? XYes \_\_\_No

**3. Summarize the proposed rule(s) and reasons for the proposed rule(s):**

See draft findings in rules

**C. Small Business Impact Statement pursuant to 201M-2(b):**

The proposed rules should not have a detrimental impact on small businesses as they involve the implementation of a county law, and streamline current procedures under the existing rules.

**D. Are there new or increased fees or fines?** \_\_\_Yes XNo

**E. Did the agency consult small businesses, departmental advisory committees, or were other small businesses organizations consulted during the drafting of the proposed rule?** XYes \_\_\_No  
If no, why not?

**F. Other alternatives or less stringent measures proposed by affected businesses to reduce direct or indirect costs and, if proposed, why those proposals were not adopted.**

N/A

**G. Departmental Impact (i.e. fiscal, personnel, program)?**  
\_\_\_Yes XNo

If yes, describe long and short-range impacts, estimated in dollar amounts or personnel, due to enforcement, administration, execution, or implementation of the proposed rule that may result in a savings or shortfall under the current program budget.

**H. Impact on General Public (i.e. individuals, consumers, and large businesses)?**

XYes \_\_\_No

If yes, describe long- and short-range impacts due to the enforcement, implementation, or execution of the proposed rule.

The general public could experience a less cumbersome process through the commission by making clear interpretive standards.

**I. Impact on state economy?**

☐ Yes ☒ No

**J. Final result anticipated from the proposed rule change.**

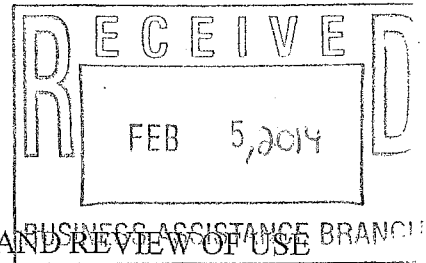
The final result will provide for a more organized document for the public to review, and clarity on the implementation of the CZO.

**K. Alternatives explored to carry out the statutory purpose other than rulemaking.**

None because the code has already been adopted. Amendment of the source law by additional ordinance adoption is more cumbersome.



**PLANNING COMMISSION**  
**County of Kaua'i    State of Hawai'i**



**ADMINISTRATIVE RULES PERTAINING TO THE PROCESSING AND REVIEW OF USE  
PERMITS CONCERNING THE CONSTRUCTION AND OPERATION OF FRUIT AND  
VEGETABLE STANDS IN THE AGRICULTURE AND OPEN ZONING DISTRICTS**

**AUTHORITY:**

Pursuant to Article XIV Section 14.03.E of the Kauai County Charter the Planning Commission of the County of Kaua'i adopts the following administrative rules pertaining to the processing and review of use permits for fruit and vegetable stands.

**FINDINGS:**

Hawai'i Revised Statutes, Section 205-2, permits the following uses in the State Land Use Agriculture District:

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

Pursuant to Chapter 8, referred to as the Comprehensive Zoning Ordinance (CZO) of the Kaua'i County Code, 1987 as amended, any type of commercial use in the Agriculture and Open Zoning Districts requires a Use Permit pursuant to Article 3 of the CZO.

Pursuant to Ordinance 935, "commercial use" is defined as, "the purchase, sale or other transaction involving the handling or disposition (other than that included in the term "industry" as defined in this Section) of any article, substance or commodity for profit or a livelihood, including in addition, public garages, office buildings, offices of doctors and other professionals, public stables, recreational and amusement enterprises conducted for profit, shops for the sale of personal services, places where commodities or services are sold or are offered for sale, either by direct handling of merchandise or by agreements to furnish them but not including dumps and junk yards." Therefore, any type of commercial use, including but not limited to fruit and vegetable stands, in the Agriculture and Open Zoning Districts requires a Use Permit.

In order to prevent a proliferation and/or large massing of fruit and vegetable stands throughout Kaua'i's agricultural lands, it is appropriate to establish rules restricting the size and operations of these stands.

**RULE:**

1. A Fruit or Vegetable Stand reviewed under a Use Permit application shall be restricted to the display and sale of agricultural products grown in Hawai'i, value-added products that were produced using agricultural products grown in Hawai'i, logo items related to the producer's agricultural operations, and other food items.
2. A Fruit or Vegetable Stand reviewed under a Use Permit shall be restricted to the following development standards:
  - a. It shall be an open air, unenclosed structure, except for secured areas no greater than four hundred (400) square feet in size;
  - b. It shall not exceed eight hundred (800) square feet in size;
  - c. All other development standards, including but not limited to setbacks, shall be the same as those established under Section 8-8.2 of the Kaua'i County Code, otherwise referred to as the Agricultural District Development Standards.

## Exhibit A

**Chair's Monthly Report for**  
**February 2014**

1. Reviewed and approved memoranda corresponding to administrative rules reviewed at January board meeting
2. Board meeting preparation – February agenda, January minutes