

Revised 12/20/06, 1/26/07, 2/13/07, 7/25/09, 9/10/10, 4/17/15, 8/14/2016, and ***11/01/2018*** (Latest revisions are in italics)

November 1, 2018

To: Kohala by the Sea Owners

Subject: Design Rules

Attached are the latest revisions to the KBS Design Rules. This was done to keep all owners current on Design Requirements. *The latest changes are in italics.*

Note that the Design Requirements apply to all lots in Kohala by the Sea.

In summary the following updates were made in this November 2018 revision and become effective November 1, 2018.

Updated management company name and phone number on all applicable pages and forms.

Added owner signature acknowledgment on Application for Construction of Improvements-Part I.

Please replace the Design Rules in your possession with these revised Rules. The most current Design Rules may also be found on the kohalabythesea.net website.

For the Board of Directors,

Associa Hawaii

Agent for Kohala by the Sea

Dominic Yagong, Senior Community Association Manager

cc. KBTS Board; KBTS Design Review Committee

KOHALA BY THE SEA DESIGN REQUIREMENTS Page 1
REVISED November 1, 2018

The following design and construction requirements (the Design Requirements) are hereby established and adopted by the Kohala By the Sea Design Review Committee (the Design Committee) pursuant to Section 5.04 of the Declaration of Covenants, Conditions and Restrictions for KOHALA BY THE SEA dated May 14, 1990, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. 1731526 as the same may be amended from time to time (the "Declaration"). The revision made effective as of November 1, 2018 are in *italics*.

Except as otherwise specifically provided herein, the terms used in these Design Requirements shall have the meanings given to them in the Declaration.

The use of each lot in the Development and the rights of each owner of a lot in the Development shall be subject to these Design Requirements and the Declaration.

A. GENERAL PROVISIONS

(1) Design Review Committee Approval Required. Except as otherwise provided in the Declaration, no new improvement may be constructed nor may any existing improvement be altered on any lot, except in accordance with plans, specifications and other materials (the plans) submitted to and approved by the Design Committee, and in accordance with these Design Requirements.

(2) Public Regulations. Each lot owner is responsible for being informed of and complying with the appropriate federal, state and county laws, rules, regulations, codes and ordinances which are applicable to the owner's property. If a standard set forth herein differs from standards established by the various regulating agencies, the stricter standard shall apply.

(3) Land Use and Building Type. All owners of lots in the Development shall comply with the use restrictions and construction standards contained in Sections 3.02 and 3.03 of the Declaration.

(4) Variances. The Design Review Committee may grant variances from these Design Requirements as to any one or more individual lots. The Design Review Committee may only grant variances from the requirements of the Declaration to the extent permitted under Section 5.06 of the Declaration.

KOHALA BY THE SEA DESIGN REQUIREMENTS Page 2

A. GENERAL PROVISIONS (cont)

(5) Applicable Law, Government Regulations, and Building Codes. All proposed improvements shall comply with all applicable laws, government regulations and building codes.

B. SITE IMPROVEMENT STANDARDS

(1) Utilities. Except as otherwise provided in the Declaration, all utilities within a lot shall be placed underground. All utilities between the service poles installed by Declarant at or along road rights-of-way and a lot shall also be underground. Electric meters and panels containing such meters shall, if located at the front boundary of a lot, be placed at locations and on walls or panels of such design and materials approved by the Design Committee. Utility meters visible from the street or neighboring properties shall be landscaped and/or faced with rock, and shall be shown on submittal drawings.

(2) Sewage Disposal. No outside toilet shall be constructed on any lot. All plumbing fixtures, toilets or sewage disposal systems shall be connected to a septic tank, cesspool or other sewage system approved by the appropriate governmental authorities. [Declaration, Section 3.03(f)].

(3) Propane Gas. Propane gas tanks shall be located in vaults, behind walls, or screened from view from neighboring properties and streets with a fence or wall and shall not be located within the setback areas. Owners must conceal the tanks to comply with gas company requirements. Variances may be allowed by specific approval of the Design Review Committee.

(4) Drainage. No owner shall construct, or permit to be constructed on their lot any improvement which will create a problem of flooding, erosion, or interference with natural water flow or original runoff pattern, damaging to such lot, the common areas, or adjacent properties, nor shall any owner fail to reasonably act so as to minimize runoff damage or interfere with the natural flow of surface waters. Each owner shall provide for the installation of necessary culverts, dry wells, area drains and drainage facilities upon the owner's lot, and for keeping the culverts and drainage facilities in good repair. Water catchment systems shall not be permitted except for fifty- five (55) gallon or smaller containers used to collect rain water to be used for landscape irrigation only.

B. SITE IMPROVEMENT STANDARDS (cont.)

(4) (cont.) Each owner shall keep all the drainage facilities and culverts so installed on the owner's lot, as well as any other drainage facilities and culverts located on the owner's lot, free and unobstructed.

(5) Required Setbacks. The required front and rear yard setbacks shall be (30) feet and the side yard setbacks shall be twenty (20) feet from the respective boundaries of each lot. In the case of flag lots and corner lots, thirty (30) foot front and rear yard setbacks and twenty (20) foot side yard setbacks shall be required as provided in Chapter 25 of the Hawaii County Code. The Design Review Committee has establish building envelopes on each lot, which may impose additional restrictions on the location of buildings or structures on the lot and each applicant and Owner should consult such building envelopes prior to plan submittal. [Declaration, Section 3.03(d)].

The Design Review Committee has adopted a plan showing building envelopes for lots in the Development which may be subject to revision from time to time. The Design Committee may approve the construction of buildings or structures or portions of buildings or structures outside of building envelopes where such construction will not significantly interfere with ocean views from sites within building envelopes on other lots in the Development upon application for a variance by the Owner. If there are conflicting building envelopes, the decision of the Design Review Committee resolving such a conflict shall be final.

(6) No building, patio, fence, wall or other improvement except (i) a fence or wall not more than seventy-two (72) inches in height; (ii) landscaping; or (iii) driveways and walkways shall be placed in whole or in part upon or over any portion of any lot which is designated as a setback area.

No paving, except for paving of driveways, and no storage or other use of the front yard setback area shall be permitted, except that the setback area may be landscaped. No walls may be erected or placed within the first fifteen (15) feet of a setback area along any road. [Declaration, Section 3.03(d)]. Pools must be fenced to meet Hawaii County requirements.

(7) Building Height. The maximum building height for any building, structure or other improvement (including landscaping) constructed or placed on a lot, shall be twenty feet (20') above the existing grades within the buildable area (as shown on the Development Grading Plan) where the maximum slope of the buildable area is less than fifteen percent (15%);

B. SITE IMPROVEMENT STANDARDS (cont.)

(7) Building Height (cont.). twenty-five feet (25') above the existing grades where the maximum slope of the buildable area is more than fifteen percent (15%) but less than thirty percent (30%); and thirty feet (30') above the existing grades where the maximum slope of the buildable area is greater than thirty percent (30%). See attached Building Height Limits for varying Sloped Lots. Note that Slope is used to determine building height.

The elevation of the slab is generally determined by resort to the median of the highest and lowest points within the building envelope utilizing the formula for determining slope, and will be considered to be the existing grades; this formula may be adjusted where the particular area of the proposed slab contains unusually steep contours and an adjustment will better serve to carry out the standards of review. The calculation is as follows:

Maximum elevation + minimum elevation = slab elevation. See Appendix 3.

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The Design Review Committee requires that a benchmark be located within the building envelope at the slab elevation, but not in an area where the slab will be poured. It shall be clearly marked and left undisturbed until the slab is poured. Further, the DRC requires that the elevation of the slab be certified by a licensed surveyor, and that survey shall be kept in the records of the DRC until the final inspection of the home is complete. This work shall be done at the expense of the owner.

(8) Site Grading. Grading shall be kept to a minimum and shall be blended with the natural contours of the lot. Excavation cuts shall not exceed ten feet (10'). Filled areas in excess of six feet (6') shall be step-terraced with a minimum horizontal step of four feet (4'). Surplus material may not be stockpiled or stored beyond the 12-month construction period. The Design Review Committee may require retaining walls, at their discretion, in cases where fill exceeds six feet and the slope of the lot is sufficiently steep to destabilize the fill. Where the proposed grading on any lot requires a permit from the County of Hawaii or a conservation plan approved by a Soil and Water Conservation District, a copy of the permit or approval shall be delivered to the Design Review Committee prior to the commencement of grading work or improvement on the lot.

Each owner shall control the emission of dust and other airborne particles while performing any grading, grubbing or fill work on any lot, so as to minimize the inconvenience and annoyance to other lot owners, both during site preparation and subsequent construction. Each owner shall also provide erosion and mud control measures as necessary to prevent silt or mud from being washed or tracked from the property. All such steps and preventative efforts shall comply with current rules of the State of Hawaii Department of Health and such other statutes, rules or regulations as may be adopted.

B. SITE IMPROVEMENT STANDARDS (cont.)

(9) Dwelling Requirements. Each single family dwelling erected on a lot in the Development shall have a total floor area of not less than two thousand (2000) square feet, exclusive of lanais, porches, patios, garages, exterior stairways and landings; provided, however, that if a single family dwelling is financed by means of a Farmers Home Administration (FHA) loan, the maximum permissible sized dwelling under the FHA 1000 program will be permitted. Each single-family dwelling shall be single story unless split-level or two-story construction is specifically approved for that lot by the Design Committee.

(10) Construction Schedule. Except for improvements in the nature of landscaping, every improvement constructed on a lot, once construction is begun, shall be completed within twelve (12) months or such other time period (longer or shorter) as may be specifically permitted or imposed by the Design Committee. Improvements not completed within such time period, improvements for which construction is interrupted for ninety (90) days, and improvements partially or totally destroyed and not rebuilt within such time period shall be deemed nuisances. The time for completion of any construction, repair or rebuilding shall be extended for a period of time equal to the number of days during which construction is prevented or unreasonably interfered with because of strikes, lockouts, embargoes, unavailability or shortages of labor or materials, wars, insurrections, rebellions, acts of God or other causes beyond the owner's reasonable control (financial inability excepted).

(11) Landscaping Planting. Within twelve (12) months after completion of construction, the owner shall complete the installation of the landscape planting, including appropriate irrigation as approved by the Design Review Committee. Landscape planting shall be located throughout the buildable area and into the setbacks totaling twenty percent (20%) of the entire lot area. To better preserve makai views, landscape planting with a mature height exceeding six feet (6') within the setback areas, shall be permitted by specific approval of the Design Committee. Further, certain trees known to grow in excess of 20 feet high are prohibited, including Ficus, Banyan, and Monkeypod trees and others to be determined by the DRC. The maximum height allowed for any planting is 20 feet, except for palm trees, which have no height limit. For new construction, the Design Review Committee will disallow any of the above named trees, and any other variety known to impede ocean (makai) views. If such trees are planted, and not approved by the DRC, they must be removed at the owner's expense within 30 days of notification.

B. SITE IMPROVEMENT STANDARDS(cont.)

(11) Landscaping Planting (cont.)

Note: The CC &R's stipulate that we may not, in general, block neighbor's ocean views and so, there may be instances where trees 20 feet in height may block views and may have to be trimmed to lower levels or removed. (Declaration Section 3.03(m))

(12) Mechanical Equipment and Trash Enclosures. Mechanical equipment and trash receptacles shall be screened with a fence or wall and may not be located within the building setback area. Equipment noise, measured at the complainant's property line, shall be mitigated with sound attenuation adequate to reduce the noise level below 60 decibels. Testing shall be performed by an acoustical engineer or other professional at the expense of the complainant.

(13) Utility Sleeves. Installation of a four-inch (4") utility sleeve at the common area beneath the driveway apron (connecting street and driveway) shall be required. The installation of a four-inch (4") utility sleeve beneath the driveway six feet (6') into the lot from the driveway apron shall be encouraged for the owner's personal use.

(14) Off-Street Vehicle Storage. Permanent or routine storage of vehicles, exclusive of in a garage, is limited to two (2) vehicles. "Garage" is defined as a vehicle storage structure fully enclosed with a garage door.

(15) Lumber and Exposed Structural Posts. All non-dimensional exterior lumber, on trim or posts, which are not from a certified mill, must be approved by the Design Review Committee. The minimum size for any exposed structural posts will be 6" x 6" nominal.

(16) Firewise Construction Guidelines. The Design Review Committee adopted the National Firewise Committee guidelines. Firewise information will be distributed by the Design Review Committee to owners, or displayed on a bulletin board within the community, or is available from the Firewise Committee chair.

C. ARCHITECTURAL STANDARDS

(1) Architectural Character. The purpose of the Design Requirements is not to create look-alike residences, but to promote harmonious and compatible design and to protect and enhance property values throughout the Development. In so doing, Kohala by the Sea shall set an architectural

C. ARCHITECTURAL STANDARDS (cont.)

(1) Architectural Character (cont.).

...character that is appropriate to Hawaii, that has a sensitivity to the blending of Hawaii's architectural forms and environment, complementing rather than dominating, architecture that is designed with consideration to the site, the sun, the wind, and the views, that blends the interior to the exterior with wide lanais and generous roof forms and eaves, constructed of natural materials; architectural character that is Hawaii.

Geodesic domes, A-frames, kit type construction and panelized homes are prohibited. Limited period and regional type designs shall be allowed by specific approval of the Design Review Committee.

(2) Materials. The materials used for structures shall be new and of a quality consistently associated with that used in quality buildings. All building materials shall be installed in a neat and workmanlike manner, consistent with generally accepted construction practices. No used buildings shall be placed on any lot, nor shall any used lumber or materials be a part of the construction of any improvement. Notwithstanding the generality of the foregoing, however, aged materials may be used in the construction of improvements to achieve a desired aesthetic effect with the approval of the Design Review Committee.

(3) Foundation and Support Structure. Perimeter exterior siding material shall extend to grade (except as required by Hawaii County building codes). Open, exposed under floor structure or skip sheathing shall not be permitted. Exterior walls shall be supported by continuous perimeter concrete foundation footing. Post and pier supports at exterior perimeter walls are prohibited. Exposed foundation sections shall be coated to match exterior colors.

(4) Exterior Walls. The building material of the exterior walls of all dwellings shall be wood, masonry, stucco or composite materials by specific approval of the Design Committee. No bare wood shall be exposed.

All exterior surfaces of all improvements shall be in neutral or earth shades. Colors used shall be subdued to compliment and blend with the surrounding natural landscape and environment. Samples of exterior colors shall be submitted to the Design Review Committee for review and approval. Plywood siding shall be allowed when all joints are concealed with boards or

C. ARCHITECTURAL STANDARDS (cont.)

(4) Exterior Walls (cont.).

battens with a minimum size and spacing of 1 x 3 at 16" on center. Walls in excess of twelve feet (12') high shall be broken and interrupted with vertical offset or an intervening lanai or veranda. All exterior elevations shall have a minimum of two (2) wall planes. Exterior walls paralleling the building setback lines (without offset of undulation) shall not be allowed.

(5) Roofs. Roofs shall be of ceramic or concrete tile, slate, high relief fiberglass reinforced composite shingle, (Celotex Presidential Series with 1/2" shadow line or equal), architectural standing seam metal in dark color shades, copper, or other materials by specific approval of the Design Committee. Corrugated metal roofs are specifically prohibited. Wood shake roofs are not allowed because of their flammability. In addition to corrugated metal roofs, shed, straight gable and mansard roofs are also not permitted. Full hip or hip and gable combination roofs are encouraged. All re-roofing applications must adhere to Firewise construction guidelines. Flat roof sections are permitted on a case-by-case basis as long as such areas do not exceed 25% of total roof area.

Single pitch roofs shall have a minimum pitch of 4 in 12 and a maximum of 8 in 12. The lower portion of a double-pitch roof shall have a minimum pitch of 3 in 12 and a maximum of 4 in 12. The upper portion of a double-pitched roof shall have a minimum pitch of 6 in 12 and a maximum of 8 in 12. Flat roofs shall be permitted only by specific approval of the Design Review Committee.

Main structure roofs shall have a minimum of six (6) planes. Detached accessory structures shall have a minimum of four (4) planes. The minimum of roof eave overhang from structural walls or support shall be forty inches (40").

(6) Solar Heating Systems. Roof panels for solar heating systems should be sited so as to minimize their visibility from the roads and adjacent lots within the Development. All such roof panels shall be mounted in a plane parallel to the plane of the roof and shall be subject to review and approval by the Design Committee. Refer to the rules and guidelines adopted for solar energy devices concurrently with the April 2015 revisions.

C. ARCHITECTUAL STANDARDS (cont.)

(7) Glare Prevention. No highly reflective finish, other than glass (which, however, may not be mirrored), shall be used on exterior surfaces, including without limitation, roofs, exterior walls, retaining walls, doors, trim, fences, pipes, permanent outdoor equipment, mailboxes and newspaper tubes.

(8) Chimneys. Chimneys are permitted but shall be subject to the review of the Design Review Committee in regard to height material, color, spark arrestor and appearance.

(9) Parking Requirements. Each single family dwelling constructed on a lot shall have as an accessory thereto a garage large enough to accommodate at least two (2) automobiles. In addition, two (2) guest parking spaces shall be provided on each lot. [Declaration Section 3.03(c)].

(10) Abandoned Construction. If construction of a dwelling or any other improvement is at any time abandoned, the lot owner shall cause the lot to be cleared and returned to its original condition until recommencement of construction, except that landscaping and other features which, in the opinion of the Design Review Committee, are an asset to the appearance of the property, shall be left in place.

(11) Driveways. Driveways shall use asphalt or concrete pavement, crushed stone, or other materials approved by the Design Review Committee, provided that the portion of the driveway between the road pavement and the front yard setback of any lot shall be paved with either asphalt or concrete. Other paving material may be approved by the Design Review Committee on a case-by-case basis.

(12) Exterior Lighting. Exterior light sources including landscape and exterior house lighting shall not have bulbs visible from neighboring properties and streets. Lighting shall be canopy type garden and up/down wall sconce lighting or other by specific approval of the Design Review Committee. Lighting for tennis, basketball court and other recreational facilities is prohibited. Pool and spa lighting shall be permitted.

(13) Chain Link Fences. No chain link fencing shall be permitted, except where approved by the Design Review Committee for minor installations, such as dog runs. Such installations shall not be visible from neighboring lots and roadways.

C. ARCHITECTUAL STANDARDS (cont.)

(14) Agriculturally Related improvements. All agriculturally related improvements shall be subject to special review as to placement on the lot, materials used and design with respect to the functional nature and use of such improvements. The architectural design requirements of materials, roofs and exterior walls for such improvements may be modified by the Design Committee where appropriate for the intended and actual agricultural use. Floriculture or nursery structures may, for example, utilize shade cloth material for the roofs or sides; equipment, storage and processing structures may be partially enclosed or utilize metal siding or roofing materials provided such structures incorporate other design features and color finishes to enhance their visual appearance, are not open to road view, blend with the surrounding landscape, are maintained in good repair and condition and are used for continuous, full time agricultural purposes. The Design Review Committee may require special landscaping or screening, where appropriate for agriculturally related improvements. These modifications as to materials for agriculturally related improvements shall not apply to any single-family dwelling, guesthouse or garage used in connection with such dwelling or guesthouse.

(15) Skylights visible from neighboring properties and streets shall be tinted.

D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS

(1) Pre-Design / Conceptual Design Meeting. Upon completion of the Application for Construction of improvements, the topographical plan, and payment of Design Review fee, the owner's architect may meet with the Association Architect to review the Design Requirements and submittal procedures and review freehand conceptual design diagrams or sketches.

(2) Submittals and Fees. A non-refundable review fee of \$1800 is required to accompany the Application for Construction of improvements prior to scheduling the Pre-Design Meeting. Review costs in excess of \$1800 shall be borne by the Applicant. The review fee for additions, renovations or other similar type of proposed construction will be based on the current hourly rate charged by the Design Review Committee and/or their representative. Additionally, a separate refundable deposit of \$2000 is also required at the time the review fee above is paid. The refundable deposit will be held until all County and DRC final inspections are completed. The deposit less any deductions for Association costs or expenses will be refunded within 30 days of completion of inspections. A separate check shall be submitted for this deposit.

KOHALA BY THE SEA DESIGN REQUIREMENTS Page 11

D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS (cont.)

(2) Submittals and Fees (cont.)

Any submittal for an additional improvement, renovation of an existing dwelling, or similar type of proposed construction as required by the Declaration that was not included in the original submittal (such as accessory buildings, pool, guest house, studio, etc.) will incur a minimum non-refundable submittal fee of \$350. Two (2) CD (compact disc) copies of all drawings for new building, grading, or other improvement within the development shall be submitted to the Association Management Company, along with an email of the plans, drawings and appropriate forms. The Design Review Committee reserves the right to request a hard copy of preliminary and/or final plans.

Architectural drawings shall be prepared by an architect licensed to do business in Hawaii. All submitted plans must be stamped and signed by their respective licensed architect, structural, civil, and mechanical license holder on every page including date of license expiration. Grading plans shall be prepared by a civil engineer or land surveyor. Structural, mechanical, and electrical engineering drawings shall be prepared by that respective engineering discipline. Landscape drawings shall be prepared by a landscape architect or landscape contractor. All of the above shall be professionally licensed in the State of Hawaii. All homes built in the Development shall be constructed by a Hawaii licensed general contractor.

(a) Preliminary Submittal: (to Association Architect and Design Review Committee via Management Co.)

(i) Plot Plan with buildable area indicated, showing all structures with roof plans, utilities, service area, fences and walls, paved and parking areas, height elevations of the improvements, north arrow and prevailing wind direction(s). 1/20" scale min.

(ii) Grading Plan showing structures, with existing and proposed finish grades, contours and elevations. 1/20" scale min. Plans submitted must bear the stamp of a Hawaii-certified civil engineer and include notation of the required compaction of material whether or not imported.

(iii) Floor Plan(s) showing layout, dimensions and area(s). 1/8" scale min.

(iv) Building Section showing the structural elements, existing and finish grades and the maximum building height envelope. 1/8" scale min.

(v) Exterior Elevations: showing two (2) exterior elevations with all material indicated. 1/8" scale min.

KOHALA BY THE SEA DESIGN REQUIREMENTS Page 12

D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS (cont.)

(b) Final Submittal: (to Design Review Committee via Management Co.)

(i) Plot Plan with buildable area indicated, showing all structures with roof plans, utilities, service area, fences and walls, paved and parking areas, height elevations of the improvements, north arrow and prevailing wind direction(s). 1/20" scale min.

(ii) Grading Plan showing structures, with existing and proposed finish grades, contours and elevations. 1/20" scale min. Plans submitted must bear the stamp of a Hawaii-certified civil engineer and include notation of the required compaction of material whether or not imported.

(iii) Floor Plan(s) showing layout, dimensions, area(s), 1/4" scale min.

(iv) Building Section(s) showing the structural elements and dimensions, and maximum building height envelope. 1/4" scale min.

(v) Exterior Elevations: showing four (4) exterior elevations with all material indicated. 1/4" scale min.

(vi) Landscape Plan: showing all landscape planting, irrigation and landscape lighting. 1/16" scale min.

(vii) Specifications of all exterior materials.

(viii) Exterior color scheme/product brochures or cut sheets. Other items as required by the Design Committee from time to time for review of a specific project.

Post Final Approval Modifications Any design modifications following final design approval shall be submitted to the Design Committee in writing for review and approval prior to constructing modifications.

Performance Bond The Design Review Committee, in connection with final approval, may require, at their sole discretion, a payment and/or performance bond for the construction, naming the KBS Homeowner's Association as co-obligee.

(3) Inspections.

(a) Pre-grading- by surveyor

(b) Pre-foundation- by civil engineer (before form boards)

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D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS (cont.)

(c) Certification of Slab Elevation (with form boards, before concrete poured). The Design Committee or representative shall make a site inspection to confirm construction conformance with the approved final drawing submittal. As noted in B.(7) above, the DRC requires that the elevation of the slab be certified by a licensed surveyor, and that survey shall be kept in the records of the DRC until the final inspection of the home is complete.

(d) Verification of roof height (upon placement of trusses)- by Association Architect and Design Review Committee member

(e) Final Inspection Approval (after Final County Inspection)-upon substantial completion of the home or auxiliary building, including swimming pools, etc., the Association Architect and DRC Chairman shall make a final site inspection to confirm construction conformance with the approved final drawing submittal. Notification of required site inspections by the Association architect is the responsibility of the owner. Only in-ground pools are permitted.

(4) Waiver for Agriculturally Related Improvements. The Design Committee may waive or modify any or all of the requirements for plans, under subsection C.(14) above, for any agriculturally related improvement to be erected on a lot. This provision for waiver or modification of the requirements for plans shall not apply to any single-family dwelling, guest house or garage to be used in connection with a single family dwelling or guest house.

(5) Review of Plans. The Design Committee shall review and act on the plans submitted as provided within the Declaration, within the 30 day time limit stated in the Declaration. The review process does not begin until the complete submittal is received by the Design Review Committee.

(6) Standards of Review. In reviewing plans submitted to it, the Design Committee shall consider whether the plans conform to any applicable Design Requirements, and the effect of the proposed building, landscaping, grading, or other improvement on the Development. The approval or disapproval of the plans by the Design Committee in any one case shall not be deemed a waiver by the Design Committee of its right to approve, disapprove, object to or consent to any of the features or elements embodied therein when the same features or elements are embodied in plans submitted in any other cases.

(7) Revocation of Design Committee Approval: Inspection of Work by Design Review Committee. Failure to commence construction within one hundred eighty (180) days from the date of approval of plans by the Design....

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D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS (cont.)

(7)(cont.).....Committee, cessation of work being performed pursuant to approved plans for a continuous period of ninety (90) days or more, or failure to complete the proposed work strictly in accordance with the plans approved by the Design Committee, shall operate to automatically revoke the approval of plans previously approved by the Design Committee. Upon demand by the Design Committee, the lot upon which such construction, alteration or other work was undertaken shall be restored or caused to be restored by the lot owner as provided in paragraph C.(10) above. The Design Committee and its duly appointed agents may enter upon any lot at any reasonable time to inspect the progress or status of any construction, alteration or other work being performed on the lot.

(8) Professional Advice. The Design Review Committee may employ the services of an attorney, architect, landscape architect, or civil or structural engineer licensed to practice in the State of Hawaii or any other consultant to render professional advice, and may pay a reasonable compensation for such services, which compensation may be charged to any person who has submitted plans requiring review by such attorney, architect, engineer or other consultant, in addition to any other processing fee. The Design Review Committee will only review plans presented by a lot owner. Any such costs or expenses may be deducted from fees held under Section D.(2) above.

(10) Approved Plans. When a house plan is approved and the lot owner sells the lot with the approved plans:

(a) Construction must start within 180 days from the date of approval and this time passes without a break in sequence from buyer to seller or plan approval is revoked.

(b) Cessation of work for a continuous period of 90 days or more, continuing without break in sequence from seller to buyer, will result in revocation of previously approved plans.

(c) Work must be strictly in accordance with the approved plans. No adjustment, additions, removals, or alterations of any kind are permitted. Failure to comply with (a), (b) or (c) allows the Design Review Committee all rights and remedies in connection therewith. Under the above buyer to seller circumstances, whether construction has started or not, if the current owner wants to make any changes as listed in the Declaration, Section 7, Paragraph 3, the plans must be resubmitted to the Design Review Committee. A fee of \$350 is charged for the re-submittal and the 180 days or 90 days time requirement continue to apply during this time without a break.

D. REQUIREMENTS AND PROCEDURES FOR SUBMISSION AND APPROVAL OF PLANS

E. **REMEDIES** In the event that any lot owner fails to comply with the Declaration or any of these Design Requirements, the Design Review Committee shall have available to it all of the rights and remedies described in the Declaration, including without limitation the following:

(1) **Enforcement Costs.** Lien Rights. If any court proceedings are instituted in connection with the right of enforcement or the remedies provided in these Design Requirements or the Declaration, the Design Committee shall be entitled, in the event that it prevails in such proceeding, to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and court costs.

The Design Committee shall have a lien against an owner's lot for any unpaid fees, compensation or other charges for which such owner is obligated under these Design Requirements or the Declaration to pay to the Design Committee. Such lien shall be enforceable in the manner provided by the Declaration. Pursuant to its authority under §7.02(e) or §7.04 of the Declaration, the Design Committee and the Association may determine that such unpaid fees, compensation or other charges are maintenance or special assessments for which a lien may be recorded against the affected lot.

The rights and remedies provided for in this section are cumulative with all other rights and remedies available to the Design Committee under these Design Requirements, the Declaration and at law and in equity.

(2) **Notice of Nonconformance.** The Design Review Committee may record a notice of nonconformance against an owner's lot if improvements have not been approved, if any approval has been revoked, if any improvement has not been completed in accordance with approved plans, if any improvement has not been completed within the appropriate time period, or if any improvement has not been maintained in conformity with these Design Requirements, including the building and landscaping.

(3) **Fines for Violations.** In accordance with Kohala by the Sea fines policy latest revision. (see Appendix 1)

EFFECTIVE AS OF the **1st day of November 2018**

Dean Bowman

Chair, Design Review Committee
cc. Board members, DRC members

Kohala By The Sea 11/1/2018
Design Committee

**APPLICATION FOR CONSTRUCTION OF IMPROVEMENTS - PART I
(Submit at Pre-Design/Conceptual Design Meeting)**

As provided in the Kohala By Sea Declaration of Covenants, Conditions and Restrictions (CC&R's), the Design Committee exists to maintain high standards for the development, design, and use of the property. This four-part package consists of the Application for Construction of Improvements, the Pre-Design Meeting Checklist, the Preliminary Submittal Checklist, and the Final Submittal Checklist, and is required by the Design Committee to confirm proposed improvements are in compliance with the Kohala By The Sea Design Requirements. Each completed part shall be submitted at or with the appropriate meeting or submittal. Please call *Associa Hawaii* at (808) 443-5961 if you have questions.

Property Owner(s): _____ Lot # _____

Address: _____

Telephone / Fax: () _____ () _____

Architect / License No: _____

Telephone / Fax: () _____ () _____

Civil/Surveyor / Lic. No: _____

Telephone / Fax: () _____ () _____

Contractor / License No: _____

Telephone / Fax: () _____ () _____

Proposed Improvements: _____

Improvement Areas: _____

Owner's signature*: _____

Architect's Signature: _____

**By signing the above the Owner(s) acknowledges and agrees that they have read, understand and will comply with the Kohala By The Sea CC&Rs and Design Rules; these can be found in the Kohalabythesea.net website or at our property managing agent, Associa Hawaii in Kailua-Kona.*

Kohala By The Sea
Design Committee

11/1/2018

**PRE-DESIGN/CONCEPTUAL DESIGN MEETING CHECKLIST -- PART II
(Submit at Pre-Design/Conceptual Design Meeting)**

The owner's architect shall schedule a Pre-Design Meeting with the Design Committee or representative. The purpose of this meeting is to review the Design Requirements, submittal procedures and review design concepts. Call *Associa Hawaii* at (808) 443-5961 to schedule. Submit the following at this meeting (**check items to indicate inclusion or note NA if not applicable**):

Owner/Lot No.

Date

- ____ 1. Completed Application for Construction of Improvements
- ____ 2. Check for the Review Fee in the amount of \$1,800.00
- ____ 3. Check for the Refundable Deposit in the amount of \$2000.00
- ____ 4. Site Plan (1/20") w/ 2' grade intervals keyed to Subdivision benchmarks

Kohala By The Sea 11/1/2018
Design Committee

**PRELIMINARY SUBMITTAL CHECKLIST -- PART III
(Submit at Preliminary Design Submittal)**

The owner's architect shall make Preliminary Submittal to the Design Committee. The purpose of this submittal is for the Design Committee to confirm the design is developing in conformance with the Kohala By The Sea Design Requirements and Declaration of Covenants, Conditions, and Restrictions. Submit to *Associa Hawaii, 75-169 Hualalai Rd., Kailua-Kona, Hawaii, 96740. Call (808) 443-5961* if you have questions. **Two copies** of the following shall be included (**check items to indicate inclusion or note NA if not applicable**):

Owner/Lot No.

Date

Site Plan - including:

- ____ 1. Minimum scale: 1/20" = 1' - 0"
- ____ 2. Building location (all structures)
- ____ 3. Property boundary lines and dimensions
- ____ 4. Existing tree locations (if any)
- ____ 5. Utility routings
- ____ 6. Service areas/equipment locations
- ____ 7. Driveway, parking, paving and walkway locations
- ____ 8. Fences/walls locations
- ____ 9. Height of all structures, fences/walls
- ____ 10. North arrow, primary view and wind directions
- ____ 11. Pool and spa locations (if any)
- ____ 12. Building setbacks and easements
- ____ 13. Waste water system location

Grading Plan (or include with Site Plan) - including:

- ____ 1. Minimum scale: 1/20" = 1' - 0"
- ____ 2. Topography - existing and finish grade contours at 2' intervals

Floor Plan(s) - including:

- ____ 1. Minimum scale: 1/8" = 1' - 0"
- ____ 2. Walls and partitions
- ____ 3. Doors and windows
- ____ 4. Stairs
- ____ 5. Room names
- ____ 6. Dimensions
- ____ 7. Areas (interior/garage/lanai)

Building Section - including:

- 1. Minimum scale: $1/8'' = 1' - 0''$
- 2. Roof, wall, partition, floor and decks

- 3. Dimensions
- 4. Exterior materials
- 5. Existing and finish grades
- 6. Building height limit

Exterior Elevations (minimum 2) - including

- 1. Minimum scale: $1/8'' = 1' - 0''$
- 2. Exterior features (roofs, walls, door/windows, decks/railings)
- 3. Materials and finishes
- 4. Building height limit

Kohala By The Sea
Design Committee

FINAL SUBMITTAL CHECKLIST -- PART IV
(Submit with Final Submittal)

The owner's architect shall make Final Submittal to the Design Committee. The purpose of this submittal is for the Design Committee to confirm the final design is in conformance with the Kohala By The Sea Design Requirements and the Declaration of Covenants, Conditions and Restrictions. Submit to *Associa Hawaii, 75-169 Hualalai Rd., Kailua-Kona, Hawaii, 96740. Call (808) 443-5961* if you have questions. **Two copies** of the following shall be included **(check items to indicate inclusion or note NA if not applicable):**

_____ **Owner/Lot No.**

_____ **Date**

Site Plan - including:

- _____ 1. Minimum scale: 1/20" = 1' - 0"
- _____ 2. Building location (all structures)
- _____ 3. Property boundary lines and dimension
- _____ 4. Existing tree locations (if any)
- _____ 5. Utility routings
- _____ 6. Service areas/equipment locations
- _____ 7. Driveway, parking, paving and walkway locations
- _____ 8. Fences/walls locations
- _____ 9. Height of all structures, fences/walls
- _____ 10. North arrow, primary view and wind directions
- _____ 11. Pool and spa locations (if any)
- _____ 12. Pool safety fencing or grade separation
- _____ 13. Exterior lighting
- _____ 14. Building setbacks and easement
- _____ 15. Waste water system location
- _____ 16. Surface drainage arrows
- _____ 17. HELCO electric meter location
- _____ 18. Solar panels location (if any)
- _____ 19. Construction staging/storage area location(s)
- _____ 20. Temporary structure location(s)

Grading Plan (or include with Site Plan) - including:

- _____ 1. Minimum scale: 1/20" = 1' - 0"
- _____ 2. Topography - existing and finish grade contours at 2' intervals

Floor Plan(s) - including:

- _____ 1. Minimum scale: 1/4" = 1' - 0"
- _____ 2. Walls and partition
- _____ 3. Doors and windows

- _____ 4. Stairs
- _____ 5. Room names
- _____ 6. Dimensions
- _____ 7. Areas (interior/garage/lanais)
- _____ 8. Exterior lighting locations

Building Section(s) - including:

- _____ 1. Minimum scale: 1/4" = 1' - 0"
- _____ 2. Roof, wall, partition, floor and decks
- _____ 3. Dimensions
- _____ 4. Exterior materials
- _____ 5. Existing and finish grades
- _____ 6. Building height limit

Exterior Elevations (minimum 4) - including:

- _____ 1. Minimum scale: 1/4" = 1' - 0"
- _____ 2. Exterior features (roof, walls, doors/windows, decks/railings)
- _____ 3. Materials and finishes
- _____ 4. Building height limit
- _____ 5. Floor elevations(s) and existing & finish grades

Landscape Plan - including:

- _____ 1. Minimum scale: 1/16" = 1' - 0"
- _____ 2. Landscape planting
- _____ 3. Plant materials
- _____ 4. Irrigation
- _____ 5. Landscape lighting

Specifications

- _____ 1. Specifications for exterior materials

Miscellaneous (8-1/2" x 11" format) - including:

- _____ 1. Exterior color samples - roof and walls (field/trim)
- _____ 2. Exterior material/product brochure or cut sheet
- _____ 3. Exterior light fixture(s) cut sheet
- _____ 4. Landscape light fixture(s) cut sheet
- _____ 5. Construction Completion Schedule
- _____ 6. Grading and building permits

Appendices to Kohala by the Sea Design Rules

1. Fine Enforcement Policy Dated 2010
2. Firewise Summary Information 2010, amended 2015
3. Permissible maximum building height chart dated 3/4/10

Appendix 1 Fine Enforcement Policy: 8/23/10

Kohala By The Sea Homeowners Association

FINE ENFORCEMENT POLICY

Effective September 16, 2010

Approved by the Board of Directors on August 20, 2010

On August 20, 2010, the Board of Directors adopted the following schedule of fines for any violation of the Association's CC&R's, By-Laws or Design Review Guidelines. These fines were adopted by the Board under its authority stated in Article VI, Section 6.4 (h) of the Declaration, and I-IRS §421J-10(3), which resolution the Board has determined to be necessary and proper for the peace, health, comfort, safety and in the best interests of the members of the Association. These fines shall be imposed against the owner. Owners will be responsible for their own actions and the actions of their tenants, family members, guests, agents, employee's, or anyone else using the property who violates any project documents.

A. Courtesy Notice:

Before any notices go out, a member of the Board, SRC, or DRC will make the initial contact via telephone (preferred method), letter, or in person with an owner if there is a violation or question of a violation. If the violation turns out to be a valid violation, then if that violation isn't remedied within the predetermined time limit, the following will occur:

1. AMOUNT OF FINES.

B. First Offense-

A written citation and a \$100 fine will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

C. Second Offense-

A written citation and a \$200 fine will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

Fine Enforcement Policy Page 2

Amount of Fines

D. Third Offense-

A written citation and a \$300 fine will be assessed to the property owner. Any costs of enforcement, including Management Co. and/or attorneys' fees incurred by the Association to rectify a violation will be chargeable to the owner and would, together with the fine itself, become a lien against the owner's property.

E. Continuing Violations-Per Diem fines may be assessed for one continuing violation. The per diem fine will be assessed at a maximum of \$500 dollars per month until the violation is remedied. Any costs of enforcement, including attorneys' fees incurred by the Association to rectify a violation, will be chargeable to the Owner, and would, together with the fine itself, become a lien against the Owner's property. A "continuing violation" means a transient activity or condition which continues to exist after notice thereof is given to an owner and is not remedied as required by such notice, and the determination by the Board of Directors is final as to such violating owner, subject to appeal as called for in Section 4 of this Fine Enforcement Policy.

2. CITATIONS.

Each citation issued shall briefly describe in detail the nature of the violation. Copies of citations issued to the property owner who is responsible for themselves, their tenants, guests, family members, agent, or employees] will be kept on file with the records of the Association.

3. PAYMENT OF FINES AND LIABILITY.

Unless appealed as permitted below, a fine must be paid to the Association within thirty (30) days of the citation and assessment of the fine.

A. Owners shall be liable for their own fines and for the fine assessed against their tenants, guests, family members, agents, or employees. If the owner fails to pay or appeal a fine within thirty (30) days after the fines is assessed against the owner or against their tenants, guests, family members, agents, or employees, the fine shall be deemed a common expense chargeable against the owner's lot. The Association may file a lien against the owner's lot for the unpaid fines and may collect the unpaid fines.

4. APPEAL OF FINES. (Any fine may be appealed as provided in this

subsection)

Fine Enforcement Policy Page 3

- Owners shall be given full opportunity to present to the Board any facts, which may bear on the propriety and/or amount of fine, and to present such evidence as may be necessary to support that position. Owners may request re-consideration of an appeal ONLY where information not available at the time of the original appeal becomes known. Such request for re-consideration must be sent in writing to the Managing Agent no later than ten (10) days after the Board disposes of the original appeal.
 - Within thirty (30) days of the date of a fine, an owner shall have the right to appeal to the Board of Directors by mailing or delivering written notice of appeal to the Managing Agent.
 - The Board of Directors will acknowledge receipt of appeal, review, and present a decision to the owner within (60) days.
 - The Board may reduce or rescind any citation or fine after consideration of the appeal.
 - A fine may only be appealed to the Board of Directors one-time. No future consideration will be allowed except for allowable requests for reconsideration as described above.
 - Only after all appeals have been exhausted, an Owner may apply for mediation pursuant to HRS 4211.13 for any allowable dispute regarding the enforcement of the CC&R's, but such request for mediation must (a) be made within thirty (30) days after the Board has taken final action on any violation and (b) such request for mediation will not stay the enforcement of the fine(s) and assessment of costs and fees, and a Notice of Lien may be filed by the Association immediately after the final appeal has been determined by the Board.
 - The Design Committee shall be authorized from time to time to recommend that the Board consider enforcement of the Design Committee Rules and the applicable portions of the CC&R's, including the imposition of fines. In the event of such a referral from the Design Committee, the above rules shall otherwise apply, for which the Board will make an independent determination of the propriety and amount, if any, of such fines or other assessments.
5. MISCELLANEOUS. This schedule of fines shall be sent to all current owners of record of Kohala By The Sea and should be kept with the owners Association Documents. The Board reserves the right to establish a new schedule of fines at any time.

Fine Enforcement Policy Page 4

NOTHING CONTAINED IN THIS RESOLUTION SHALL BE INTERPRETED TO PREVENT OR DELAY THE BOARD OR THE MANAGING AGENT FROM ENJOINING, ABATING, REMOVING OR REMEDYING ANY VIOLATION OR BREACH WHICH MAY IMPAIR OR IN ANY WAY AFFECT THE VALUE OR SAFETY OF THE PROPERTY OR THE USE, ENJOYMENT, SAFETY OR HEALTH OF ANY OWNER.

This Resolution was adopted on August 20, 2010 and will become effective on September 16, 2010.

Firewise Summary Information.: Appendix 2, updated 4/17/2015:

You may not know that Kohala by the Sea (KBTS) is the only Firewise community in Hawaii, and has been so honored for more than ten years. When investing a large sum of money in your home at KBTS, it is important to know that we are located in a lava desert, and that wildfires are common here. In designing your home or retrofitting it for maximum fire resistance, it is critical to have a zone surrounding your home that is fire resistant; either covered with gravel, stone or grass, and a good distance from flammable material. Be aware that the nearest fire department is at milepost 74 on the Queen Kaahumamu Highway, nearly ten miles away. The KBTS Firewise committee works closely with our fire department, who are fully aware of the steps that we have taken over the last several years to "fire proof" our community. The Kohala Ranch Volunteer Fire Department has a 4WD off-road tanker that will be summoned if a fire threatens KBTS. This apparatus was purchased through donations from the residents of our surrounding communities, including KBTS, and cost over \$100,000.

We have a Firewise work day once a year, during which time we all pitch in to remove fire hazards. In 2010, KBTS received a grant from the Federal Firewise Program for \$50,000, which was matched in the next two years. Plantings on Hokulele Drive were designed to save water and to be fire resistant, and replaced diseased Hibiscus shrubs previously in these locations.

When a Firewise work day is held we offer home inspection services to all owners, should they desire to have an assessment of their Firewise conditions. We also ask absentee owners to voluntarily contribute \$150, the cost of a morning's work. In the past we have cleared out nearly all of the dead kiawe trees in the entire community, and trimmed plants that are a fire hazard. We have a wildfire management company as a consultant, and are working closely with them to identify external risks.

There are steps you should take with your home BEFORE a fire in order to safe guard it as much as possible.

- 1) Your landscaping should be fire resistant.
- 2) All tree limbs should be trimmed to 10 feet away from your house.
- 3) All flammable vegetation should be cleared to allow a 30 foot defensible green belt or gravel barrier around your home which, in the former case, is well irrigated.
- 4) Fire resistant shrubs should be planted at least 10 feet apart to prevent fire from jumping from tree to tree ladder fashion toward the house.

Firewise Summary Information, Page 2

- 5) Tree limbs should be pruned 8-10 feet above the ground and any dead limbs should be removed to prevent fire from spreading UP the tree.
- 6) Clear the area near your propane gas tank of flammable grasses.
- 7) Post your house number and make sure it is easily visible so firefighters can find it.
- 8) If you have a pool, purchasing a portable high capacity pumps may assist you before a fire arrives.
- 9) Have a plan and practice your plan.
- 10) Know your Fire Automated Call Procedure.

Building Height Calculations: Appendix 3

KBS Building Height Maximums for vacant lots

Lot #	Roof height maximum, ft.	Slope	Max. Roof Height ft.
2	243	0.07	20 ft.
3	239	0.02	20 ft.
5	204.5	0.13	20 ft.
6	189	0.16	25 ft.
9	256	0.09	20 ft.
11	319	0.17	25 ft.
12	294	0.13	20 ft.
13	314.5	0.11	20 ft.
14	330	0.15	25 ft.
16	355	0.09	20 ft.
17	356	0.1	20 ft.
18	344	0.22	25 ft.
19	314.5	0.13	20 ft.
22	355	0.12	20 ft.
24	362	0.10	20 ft.
25	373	0.03	20 ft.
27	393.5	0.09	20 ft.(30 ft.)

Note 1

Appendix 3 (page 2)

KBS Building Height Maximums for vacant lots

Lot #	Roof height ft.	Slope	Max. Roof Height ft.	
570	311.5	0.28	25 ft.	
<u>575</u>	257.5	0.13	20 ft.	
580	191	0.12	20 ft.	
582	242	0.16	25 ft.	
586	271	0.03	20 ft.	
590	291	0.07	20 ft.	
593	318.5	0.07	20 ft.(25 ft.)	Note 2
594	311	0.04	20 ft.	
596	341	0.09	20 ft.	
599	359	0.08	20 ft.(30 ft.)	Note 1
601	369	0.08	20 ft.(30 ft.)	Note 1
<u>605</u>	<u>292</u>		<u>20 ft.</u>	
614	220	0.05	20 Ft.	

**Note 1: Variance required for 25 or 30 feet
(Back of the Development)**

**Note 2: If slab is excavated 5 feet, 25 foot home is
allowed. DRC Decision dated 1/17/09**