

**KAPOHO KAI WATER ASSOCIATION
BY-LAWS**

(as amended on January 29 , 2011)

ARTICLE I

PURPOSE

1. The purpose of the KAPOHO KAI WATER ASSOCIATION is to provide potable water for the benefit of the property owners of the Vacationland Subdivision of Kapoho, Hawaii, and to encourage and support the implementation of wastewater treatment septic systems approved by the Department of Health in order to maintain or improve water quality in ground water and near shore waters.
2. Income Use: The purpose of a minimum of 85% of the income derived from the membership of the ASSOCIATION is solely to cover operating expenses derived from the operation of the ASSOCIATION, with any excess being returned to the Subscribers or retained for future losses and expenses.

ARTICLE II

DEFINITIONS

1. In these bylaws, THE ASSOCIATION shall mean KAPOHO KAI WATER ASSOCIATION, a non-profit corporation chartered and registered under the laws of the State of HAWAII, in February of 2000.
2. SUBSCRIBER shall mean and refer to those property owners within the VACATIONLAND SUBDIVISION who subscribe to the Rules, Charter and By-laws of this ASSOCIATION, are current in the payment of all assessments, and who are in good standing.
3. PROPERTY shall mean and refer to any parcel of land within VACATIONLAND SUBDIVISION, as designated and enumerated on the tax maps of the State of Hawaii. Roadways and easements shall not be considered property.
4. COMMON LINE shall mean and refer to the mains, valves, laterals, meters and all other appurtenances necessary to provide water service within the VACATIONLAND SUBDIVISION, owned and operated by the ASSOCIATION.
5. MAINS shall mean and refer to the 6" water line running along Kapoho Kai Drive from the Red Road to the main meter situated at the entrance of the House Lots of the Vacationland Subdivision. At the completion of this installation, this is to be dedicated to the Department of Water Supply - County of Hawaii, which will maintain and operate it from that point on.

ARTICLE III

SUBSCRIPTIONS

1. DEFINITION: Each subscription shall consist of an individual meter serving individual property or each residential dwelling.
2. TRANSFER OF SUBSCRIPTIONS: Subscriptions in the ASSOCIATION will be held by each Subscriber and may be transferred upon the conveyance of the land for which the water service is subscribed in accordance with the requirements of Section 3 of this Article. If a Subscriber conveys his/her property, the Subscriber shall notify the ASSOCIATION in writing, of the name, address, and phone number of the buyer. The new owner of the property shall be permitted to be the new Subscriber, provided the new owner accepts and abides by the Rules, Charter and By-Laws_of the ASSOCIATION. If the new owner does not comply with the Rules, Charter and By-Laws_or declines to be a Subscriber, the water service to said property should be terminated with no rebate or refund. Subscriptions shall not be sold, assigned or used for another lot or additional dwelling, or donated. The new owner needs to apply for transfer of subscription within 30 days of conveyance.- Any subdivision of a property and/or dwelling shall require a new meter_hook-up and subscription for each added TMK or dwelling seeking water service.
3. CONDITIONS OF TRANSFER OF OWNERSHIP OF PROPERTY OR NEW SUBSCRIPTION: As a condition of (a) the transfer or conveyance of any lot or dwelling for which a Subscription is to be transferred, (b) the commencement of new water service to a lot or to a new dwelling which has not been previously been provided water service by the Association, or (c) the re-commencement of water service to a lot or dwelling for which water service was terminated or discontinued for a period of three (3) months or more due to nonpayment of assessments or for other good cause, the Subscriber shall be required to have a septic treatment or other wastewater treatment system approved by the Department of Health of the State of Hawaii serving each dwelling. The Application for Water Service must contain either: (1) an engineer certification that the current wastewater treatment system in place meets State Department of Health **standards for new construction**, or (2) that a contract has been entered into **to bring the system up to that standard within 6 months**. No water service will be provided unless one of these two conditions is met.

ARTICLE IV

ASSESSMENTS

1. WATER USAGE ASSESSMENTS: The ASSOCIATION shall levy regular water usage assessments to each metered Subscriber, which shall be payable to the ASSOCIATION upon notice of such assessments.
2. SERVICE CHARGE ASSESSMENT: The ASSOCIATION may levy regular service charge assessments to each Subscriber. All service charge assessments shall be payable to the ASSOCIATION upon notice. Service charges include all common causes,

which are to include without limitation, all charges for labor, materials and services arising from the operation and administration of the ASSOCIATION, including reasonable management costs, meter replacements, unaccountable water losses, repairs and maintenance and reserves for capital replacement and improvement.

3. SPECIAL ASSESSMENTS: The ASSOCIATION may levy special assessments in cases of natural disasters, which shall be payable to the ASSOCIATION upon notice.

4. BILLING: A billing shall be made to each Subscriber at the same frequency as the County of Hawaii bills the ASSOCIATION. It is the responsibility of the Subscriber to supply correct contact addresses to the ASSOCIATION. Billings must be in the name of the Subscriber and Subscriber is responsible for the payment of the bill.

5. DEFAULT: All bills are payable on the due date shown thereon and shall be considered delinquent 30 days thereafter. Delinquent bills shall carry an interest charge of 1.5% per month on the unpaid balance. Failure to pay within 60 days will result in the permanent waiver of all rights to water, and connection will be terminated. A written notice shall be sent by certified mail, return receipt requested, 15 days prior to disconnection. Restoration of service (\$50 charge) may be permitted subject to board approval, installation of wastewater treatment system required in Article III, Section 3, and payment of all expenses arising out of the default.

6. LIEN FOR ASSESSMENTS: A delinquency lien for any delinquent assessment unpaid for 12 months from the original date shall be filed with the Bureau of Conveyances of the State of Hawaii. The Treasurer shall prepare the necessary filing forms for the signature of the President and Secretary and the affixation of the Corporate Seal, and forward them to the Bureau of Conveyances for recordation without delay or further action by the Board of Directors.

7. SUIT TO RECOVER JUDGMENT: The ASSOCIATION may, at its sole option, elect to sue to recover a money judgment for any unpaid assessments and such suit may be maintained without foreclosing or waiving the lien. If suit is brought, the Subscriber shall be responsible for all costs thereof, including reasonable attorney's fees.

ARTICLE V

The Board of Directors shall have the authority to adopt rules and regulations relating to service and usage of the common line and to implement these Bylaws.

ARTICLE VI

MEETINGS OF SUBSCRIBERS

1. PLACE OF MEETING: Unless otherwise designated by the Board of Directors, all meetings of the ASSOCIATION shall be held within the VACATIONLAND Subdivision, Kapoho, Hawaii.

2. ANNUAL MEETING: There shall be an annual meeting of the Subscribers of the ASSOCIATION, which shall be held in January of each year. The purpose of these meetings is to transact such business that properly comes before the Board of Directors of

the ASSOCIATION. The elections of the Directors of the ASSOCIATION shall take place at Annual Meetings. Notice will be sent to each Subscriber a minimum of 15 days prior to the Annual Meeting. The elected Directors shall serve two-year terms.

3. SPECIAL MEETINGS: Special Meetings of the Subscribers may be called at any time upon the request of the entire Board, or upon the request of one-third of the Subscribers of the ASSOCIATION. Only the business as specified in the Notice of Meeting may be transacted at a Special Meeting. Notice will be sent to each Subscriber a minimum of 15 days prior to the Special Meeting.

4. NOMINATIONS AND NOTICES: Any Subscriber in good standing may be nominated as a Director by written nomination received by the Secretary not less than 30 days prior to the annual meeting. The nomination shall include a written statement prepared by or for the nominee setting forth his or her qualifications and/or other pertinent information. If the nomination is by a person other than the nominee, there shall also be included evidence that the nominee has agreed to serve. The Secretary will mail, or cause to be mailed, to all Subscribers, not less than 15 days prior to the annual meeting, a notice of the time, date and place of the Annual Meeting. This notice shall include ballot listing nominees in alphabetical order together with the nominees' statements.

5. NUMBER OF VOTES: Each subscription shall be entitled to one vote only. In case of multiple ownership of a subscription, the person whose name appears first in the tax record shall be entitled to vote.

6. VOTING AND VOTING FOR DIRECTORS: Voting on issues shall be by showing of hand, by ballot or proxy. The voting for directors shall be by written ballot, sent to each Subscriber a minimum of 15 days prior to the Annual Meeting.

7. PROXIES: Any Subscriber may, in writing, authorize another Subscriber to vote his or her proxy. Each Subscriber may authorize alternate Subscribers to vote his/her proxy in case a designated Subscriber is not present or eligible to cast the proxy. Proxies and alternate proxies will be assigned to Subscribers attending the Meeting so as to maximize the number of proxies which may be voted. A Subscriber may also submit his/her proxy for quorum purposes only.

8. QUORUM: 25% of the Subscribers of the ASSOCIATION, having a right to vote in person or by proxy, shall constitute a quorum.

9. ORDER OF BUSINESS: The following order of business shall be observed at all Annual and Special Meetings, so far as practicable:

- a. Determination of quorum
- b. Reading, correcting and approval of minutes of the last meeting
- c. Reports of Directors/Officers
- d. Reports of committees
- e. Announcement of election of Directors
- f. Unfinished business
- g. New business
- h. Announcements

10. RULES OF ORDER: The annual and special meetings shall be conducted according to Roberts Rules of Order, as revised as necessary to be consistent with these Bylaws.

ARTICLE VII

DIRECTORS

1. **QUALIFICATION:** Directors shall be Subscribers in good standing with the ASSOCIATION.
2. **NUMBER OF DIRECTORS:** The Board of Directors shall be comprised of five Directors.
3. **TERM:** Directors shall serve a term of 2 years.
4. **REMOVAL OF DIRECTORS:** Any Director may be removed at any time by a majority vote of the Subscribers. Any Director missing 3 consecutive meetings shall be subject to removal from office with unanimous vote of the remaining Board.
5. **MEETINGS AND QUORUMS:** The Board of Directors shall have at least 2 regularly scheduled meetings each year. Special Meetings may be called at any time by the President, or by the Vice-President if the President is not available, or by a majority of the Board members. Not less than 3 Directors present shall constitute a quorum. All meetings of the Board shall be conducted according to Roberts Rules of Order, revised as necessary to be consistent with these Bylaws.
6. **POWERS:** The Directors shall be given all the rights, which are, permitted them under Hawaii law, Charter of Incorporation and these Bylaws.
7. **VACANCIES:** In the event of a vacancy, the Board of Directors may fill such vacancy for the remainder of the term, by appointing a Subscriber in good standing.

ARTICLE VIII

OFFICERS

1. **ENUMERATION AND APPOINTMENT:** The Officers of the ASSOCIATION shall consist of a President, Vice President, Secretary, Treasurer, and any other officers as may from time to time be designated by the Board of Directors. They shall be chosen and appointed by the Board of Directors.
2. **QUALIFICATION:** All Officers shall be Subscribers in good standing. The Board of Directors retains the right to hire a Bookkeeper from outside the ASSOCIATION if no one within the ASSOCIATION is qualified for or willing to serve as Bookkeeper.
3. **PRESIDENT:** The President shall preside at all meetings of the Directors and Subscribers and shall have general charge of the affairs of the ASSOCIATION subject to the Board of Directors.
4. **VICE PRESIDENT:** The Vice President shall perform such duties as may be assigned to him/her, and shall serve as the President in case of his/her absence, or for any reason the President's office is vacant.
5. **SECRETARY:** The Secretary shall keep minutes of meetings and shall give all notices required by these Bylaws.
6. **TREASURER:** The Treasurer shall bill and collect assessments.
7. **DUAL OFFICERS:** Officers may serve in dual roles at any time by the decision of the

Board members.

8. REMOVAL: Any officer may be removed at any time by a majority vote of the Board of Directors.

9. TERMS AND VACANCIES: Officers shall serve a term of two years, or until replaced. The Board of Directors shall fill vacancies.

10. EXCULPATION: Each Director or Officer shall be free from all personal liability for any acts performed on behalf of the ASSOCIATION, or from losses incurred or sustained by the ASSOCIATION, unless the said act or loss occurred through his/her willful or fraudulent misconduct.

11. INDEMNIFICATION: The ASSOCIATION shall save harmless the Directors and Officers against costs, expenses and liabilities necessarily incurred by or imposed upon him/her in connection with or resulting from any claim, action, suit, proceeding, investigation or inquiry of whatever nature in which he/she may be involved as a party, or otherwise by reason of his/her being or having been a Director or Officer of the ASSOCIATION, whether or not he/she continues to be such a Director or Officer of the ASSOCIATION at the time of the incurring imposition of such costs, expenses or liabilities, except in relation to matters in which he/she shall have been adjudged in such action, suit, proceeding, investigation or inquiry to be liable for willful misconduct or fraud against the ASSOCIATION in the performance of his/her duties as such Director or Officer. The foregoing right to indemnification shall be in addition to and not in limitation of all other rights to which such person may be entitled as a matter of law.

ARTICLE IX

INDEPENDENT CONTRACTORS AND EMPLOYEES

The Board may hire independent contractors and employees as needed to operate the ASSOCIATION.

ARTICLE X

LIABILITY

As its common line is a private and secondary system and not installed to County specifications, the ASSOCIATION, its Directors, Officers and Subscribers shall be held harmless for loss of any water service arising from the common line and for any loss or damage resulting therefrom.

ARTICLE XI

AMENDMENT

These Bylaws may be amended by the Board of Directors, subject to the approval of a

majority of the Subscribers at the next special or annual meeting.

ARTICLE XII

MISCELLANEOUS

1. Dissolution Clause - Upon dissolution, KKWA shall distribute the gains to such distribution from the sale of appreciated assets to all persons who were members during the period that the organization owned the assets, in proportion to the amount of business done by the members during that period-
2. Non-forfeiture Clause - The rights and interests of a Subscriber may ~~not~~ be forfeited upon withdrawal or termination of the subscription.
3. Subscriber's proportional rights and interest - The rights and interests of Subscribers in the organization's savings must be determined in proportion to their business with the organization.
4. Records - The organization must keep such records as are necessary to determine at any time each Subscriber's rights and interests in its assets.
5. Audit - An independent audit to the board shall be produced at three (3) year Intervals

CERTIFICATE OF ADOPTION. The undersigned hereby certifies that the Subscribers have adopted the foregoing as these Bylaws of the Kapoho Kai Water Association, as amended,

this _____ day of _____, 2011.

KAPOHO KAI WATER ASSOCIATION

By _____
President

By _____
Secretary