



## PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

DONNA APISA, CHAIR  
GERALD AKO, VICE CHAIR  
HELEN COX, MEMBER  
FRANCIS DEGRACIA, MEMBER  
GLENDA NOGAMI STREUFERT, MEMBER  
JERRY ORNELLAS, MEMBER  
LORI OTSUKA, MEMBER

RECEIVED

\*24 AUG -7 P12 :02

- The Planning Commission Meeting will be at:

Līhu'e Civic Center, Moikeha Building  
Meeting Room 2A-2B  
4444 Rice Street, Līhu'e, Kaua'i, Hawai'i

OFFICE OF  
THE COUNTY CLERK  
COUNTY OF KAUAI

- Oral testimony will be taken on specific agenda items, at the public meeting location indicated on the meeting agenda.
- Written testimony indicating your 1) name or pseudonym, and if applicable, your position/title and organization you are representing, and 2) the agenda item that you are providing comment on, may be submitted on any agenda item in writing to [planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov) or mailed to the County of Kaua'i Planning Department, 4444 Rice Street, Suite 473, Līhu'e, Hawai'i 96766. Written testimony received by the Planning Department at least **24 hours** prior to the meeting will be posted as testimony to the Planning Commission's website prior to the meeting (<https://www.kauai.gov/Government/Boards-and-Commissions/Planning-Commission>). Any testimony received after this time will be retained as part of the record, but we cannot assure the Commission will receive it with sufficient time for review prior to the meeting.

**IF YOU NEED AN AUXILIARY AID/SERVICE, OTHER ACCOMMODATION DUE TO A DISABILITY, OR AN INTERPRETER FOR NON-ENGLISH SPEAKING PERSONS, PLEASE CONTACT THE OFFICE OF BOARDS & COMMISSIONS AT (808) 241-4917 OR [ADAVIS@KAUAI.GOV](mailto:ADAVIS@KAUAI.GOV) AS SOON AS POSSIBLE. REQUESTS MADE AS EARLY AS POSSIBLE WILL ALLOW ADEQUATE TIME TO FULFILL YOUR REQUEST. UPON REQUEST, THIS NOTICE IS AVAILABLE IN ALTERNATE FORMATS SUCH AS LARGE PRINT, BRAILLE, OR ELECTRONIC COPY.**

**PLANNING COMMISSION MEETING NOTICE AND AGENDA**

**Tuesday, August 13, 2024**

**9:00 a.m. or shortly thereafter**

**Līhu‘e Civic Center, Moikeha Building**

**Meeting Room 2A-2B**

**4444 Rice Street, Līhu‘e, Kaua‘i, Hawai‘i**

**A. CALL TO ORDER**

**B. ROLL CALL**

**C. APPROVAL OF AGENDA**

**D. MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

1. July 9, 2024.

**E. RECEIPT OF ITEMS FOR THE RECORD**

**F. HEARINGS AND PUBLIC COMMENT**

**1. Continued Agency Hearing**

- a. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) to allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamihi Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC**. [Director’s Report received and Agency Hearing Deferred, July 9, 2024.]

1. Transmittal of public testimony to Planning Commission.
2. Transmittal of Supplemental #2 to Planning Commission.
3. Supplement to Director’s Report pertaining to this matter.

**2. New Agency Hearing**

- a. None for this meeting.

3. **Continued Public Hearing**

- a. ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = **KAUAI COUNTY COUNCIL**. [Director's Report received and Public Hearing Deferred, June 4, 2024.]

1. Transmittal of public testimony to Planning Commission.
2. Transmittal of agency comments to Planning Commission.
3. Supplement #1 to Director's Report pertaining to this matter.

4. **New Public Hearing**

- a. None for this meeting.

**G. CONSENT CALENDAR**

1. **Status Reports**

- a. None for this meeting.

2. **Director's Report for Project(s) Scheduled for Agency Hearing**

- a. None for this meeting.

3. **Class III Zoning Permits**

- a. None for this meeting.

**H. GENERAL BUSINESS MATTERS**

1. Status Report and request to amend Condition No. 10 of Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, and Special Permit SP-2015-1 involving a parcel situated at 5730 Olohena Road, further identified as Tax Map Key: (4) 4-4-003:045, CPR Unit 3, Kapaa Homesteads = **Steelgrass Farm LLC**.

- a. Transmittal of public testimony to Planning Commission.
- b. Director's Report pertaining to this matter.

**I. COMMUNICATION**

1. None for this meeting.

## **J. COMMITTEE REPORTS**

### **1. Subdivision Committee Report.**

- a. Subdivision Application No. S-2024-10  
Lima Ola Phase 2 Subdivision  
**County of Kaua'i Housing Agency**  
Proposed 4-Lot Consolidation and Resubdivision into 70-Lots  
TMK: (4) 2-1-013: 044, 052, 053, and 055  
'Ele'ele, Kaua'i
- b. Subdivision Application No. S-2023-4  
Kukui'ula Parcel J1-A Subdivision  
**BBCP Kukui'ula Development, LLC.**  
Proposed 18-Lot Subdivision  
TMK: (4) 2-6-023: 040  
Kōloa (Makai), Kōloa, Kona, Kaua'i
- c. Subdivision Application No. S-2024-1  
**Jiro Yukimura Trust and Jennie T. Yukimura Trust**  
Proposed 4-Lot Subdivision  
TMK: (4) 3-7-006: 002  
Hanamā'ulu, Līhu'e, Kaua'i

## **K. UNFINISHED BUSINESS (For Action)**

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) to allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.** [Director's Report received and Agency Hearing Deferred, July 9, 2024.]
2. ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = **KAUAI COUNTY COUNCIL.** [Director's Report received and Public Hearing Deferred, June 4, 2024.]

## **L. NEW BUSINESS (For Action)**

1. None for this Meeting.

## **M. EXECUTIVE SESSION**

Pursuant to Hawaii Revised Statutes Sections 92-4 and 92-5(a)(4), the purpose of this executive session is to consult with the County's legal counsel on questions, issues, status, and procedural matters. This consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Commission and the County as they relate to the following matters:

1. SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) to allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC**. [Director's Report received and Agency Hearing Deferred, July 9, 2024.]
2. ZA-2024-3: A bill (2919) for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, relating to the Comprehensive Zoning Ordinance (CZO). The purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential (R-1 to R-6 and R-10 to R-20), Neighborhood Commercial (C-N), General Commercial (C-G), Agriculture (A), Open (O), and University (UNV), and make other technical edits = **KAUAI COUNTY COUNCIL**. [Director's Report received and Public Hearing Deferred, June 4, 2024.]
2. Status Report and request to amend Condition No. 10 of Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, and Special Permit SP-2015-1 involving a parcel situated at 5730 Olohena Road, further identified as Tax Map Key: (4) 4-4-003:045, CPR Unit 3, Kapaa Homesteads = **Steelgrass Farm LLC**.
3. Subdivision Application No. S-2024-10 Lima Ola Phase 2 Subdivision  
**County of Kaua'i Housing Agency**  
Proposed 4-Lot Consolidation and Resubdivision into 70-Lots  
TMK: (4) 2-1-013: 044, 052, 053, and 055  
'Ele'ele, Kaua'i
4. Subdivision Application No. S-2023-4  
Kukui'ula Parcel J1-A Subdivision  
**BBCP Kukui'ula Development, LLC**  
Proposed 18-Lot Subdivision  
TMK: (4) 2-6-023: 040  
Kōloa (Makai), Kōloa, Kona, Kaua'i
5. Subdivision Application No. S-2024-1  
**Jiro Yukimura Trust and Jennie T. Yukimura Trust**  
Proposed 4-Lot Subdivision  
TMK: (4) 3-7-006: 002  
Hanamā'ulu, Līhu'e, Kaua'i

**N. ANNOUNCEMENTS**

1. Topics for Future Meetings.

The following regularly scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter, on September 10, 2024. The Planning Commission anticipates this meeting to be held in-person at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, Hawaii. The Commission will announce its intended meeting method via an agenda electronically posted at least six days prior to the meeting date.

**O. ADJOURNMENT**

**DEPARTMENT OF PLANNING**

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

SPECIAL MANAGEMENT AREA (SMA) Minor Determinations

Date (Action)	SMA Minor Permit Number	Location (TMK)	Activity/ structure
Approved (7.16.2024)	SMA(M)-2024-24	Hanalei (5-8-008:040)	Construction/ Entry wall and fence.

Pursuant to Section 8-27.8 (6) of the Kaua'i County Code (1987), as amended, the following shoreline setback determinations by the Director are disclosed for purposes of public notification.

August 13, 2024

SHORELINE SETBACK DETERMINATIONS

<b>Application No.</b>	<b>Name of Applicant(s)</b>	<b>Property I.D. (Tax Map Key)</b>	<b>Location</b>	<b>Development/Reasons</b>
SSD-2025-1	Kaua'i Coast Resort	4-3-002:014	Kapa'a	Repair existing purlins and Photovoltaic (PV) panels. / Required setback is 72 feet. PV structure approximately 300 to 400 feet away from evidenced shoreline.
SSD-2025-2	David Bassett	5-8-008:033	Hanalei	Repair deck footings and posts, kitchen and bathroom repair, and door and window repair. / Work deemed unsubstantial repairs. No increased size of deck.
SSD-2025-3	Nou Nou Tower Kalapaki Beach Club	3-5-002:002	Lihu'e	Repair of Lanai sliding glass doors/ Repair work deemed unsubstantial.
SSD-2025-4	The Po'ipū Sands	2-8-020:008	Kōloa	Repair roof for Building 4 and 5. / Another parcel is between the development and the high cliff bluff rocky shoreline. Required setback is 100 feet. Building 4 and 5 are an additional 140 to 200 feet from the required shoreline setback.
SSD-2025-5	Puu Poa Condominium	5-4-012:011 CPR Unit 40	Princeville	ooof addition/ The development is located on a 100-foot-high cliff bluff and is set back an additional 60 feet from the required 100-foot setback.



SSD-2025-6	Thronas Investments LLC	1-3-010:093	Kekaha	Relocation of a single-family residence and new carport addition. / Relocation of a single-family residence and new carport addition.
SSD-2025-7	Puu Poa Condominium	5-4-012:011 CPR Unit 27	Princeville	Roof addition. / The development is located on a 100-foot-high cliff bluff and is set back an additional 63 feet from the required 100-foot setback.
SSD-2025-8	Puu Poa Condominium	5-4-012:011 CPR Unit 47	Princeville	Roof addition. / The development is located on a 100-foot-high cliff bluff and is set back an additional 184 feet from the required 100-foot setback.

KAUA'I PLANNING COMMISSION  
REGULAR MEETING  
July 09, 2024  
**DRAFT**

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Donna Apisa at 9:00 a.m. - Webcast Link: <https://www.kauai.gov/Webcast-Meetings>

The following Commissioners were present:

Mr. Gerald Ako  
Ms. Donna Apisa  
Ms. Helen Cox  
Mr. Francis DeGracia  
Ms. Glenda Nogami Streufert  
Ms. Lori Otsuka

Excused or Absent

Mr. Jerry Ornellas

The following staff members were present: Planning Department – Deputy Director Jodi Sayegusa, Staff Planner Kenny Estes, Romio Idica; Planning Secretary Shanlee Jimenez; Office of the County Attorney – Deputy County Attorney Laura Barzilai, Office of Boards and Commissions – Support Clerk Lisa Oyama.

Discussion of the meeting, in effect, ensued:

**CALL TO ORDER**

Chair Donna Apisa: It's 9:00. We'll call the meeting to order. Roll call, please.

**ROLL CALL**

Planning Department Deputy Director Jodi Sayegusa: Commissioner Ako?

Commissioner Gerald Ako: Here.

Ms. Sayegusa: Commissioner Cox?

Commissioner Helen Cox: Here.

Ms. Sayegusa: Commissioner DeGracia?

Commissioner Francis DeGracia: Here.

Ms. Sayegusa: Commissioner Ornellas, I believe, is excused today. Commissioner Otsuka?

Commissioner Lori Otsuka: Here.

Ms. Sayegusa: Commissioner Streufert?

Commissioner Glenda Nogami Streufert: Here.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Here.

Ms. Sayegusa: You have a quorum.

### **APPROVAL OF AGENDA**

Chair Apisa: Approval of Agenda. Does anyone have any comments, or do we have a motion to approve?

Ms. Streufert: I move to approve the agenda.

Ms. Cox: Second.

Chair Apisa: No further discussion. All in favor? Aye (unanimous voice vote). Any opposed. Motion carried. 6:0.

### **MINUTES OF THE MEETING(S) OF THE PLANNING COMMISSION**

Chair Apisa: Minutes of the April 9, 2024, meeting, motion to approve if there are no comments.

Ms. Cox: Motion to approve.

Ms. Streufert: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Any opposed. Hearing none, the minutes of April 9, 2024, are approved. And now the June 4, 2024, minutes.

Mr. DeGracia: I move to approve the minutes for June 4, 2024.

Ms. Otsuka: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). Any opposed. Hearing none, the minutes of June 24, 2024, are approved.

### **RECEIPT OF ITEMS FOR THE RECORD**

Ms. Sayegusa: Okay. Item E, Receipt of Items for the Record. On your folks desk you do have two items that were received, public testimonies or other comments received after the 24-hour period for receipt.

Chair Apisa: Do we want to take 10 minutes to read this? We'll have about a 10-minute recess to read the recent information.

The Commission went into recess at 9:02 a.m.  
The Commission reconvened from recess at 9:12 a.m.

Chair Apisa: Meeting back to order.

## **HEARINGS AND PUBLIC COMMENT**

Ms. Sayegusa: We are on Item F., Hearing and Public Comment.

### **Continued Agency Hearing (None)**

### **New Agency Hearing**

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.**

1. Transmittal of Agency Comments to Planning Commission.
2. Transmittal of Supplemental Information to Planning Commission.
3. Director's Report pertaining to this matter.

Chair Apisa: Do we have a planner?

Ms. Sayegusa: This is for the agency hearing.

Chair Apisa: Oh, for the Agency Hearing.

Deputy County Attorney Laura Barzilai: You can call for testimony now.

Chair Apisa: Is there anyone here that would like to testify? Identify yourself for the record. We know who you are. Thank you, Caren.

Ms. Caren Diamond: Good morning.

Chair Apisa: There's a little button on top. Pull it forward. Is that the same as ours?

Ms. Sayegusa: Yeah.

Ms. Diamond: Good morning, Caren Diamond for the record. Thank you for giving me this opportunity to testify this morning. This project happens to be on an incredibly special place when we drive into Wainiha and go around the Kepuhi Point and arrive at the ocean, the highway follows along the ocean, it's one of the most magical, beautiful views that we have

coming into Wainiha. The smell of the salt air comes in and pervades the air. The breeze is always amazing there and it really feels like, oh my gosh, you are, you are at the ocean. It's really why people come to Kaua'i, it's why it's one of the places that you can really feel how beautiful and amazing it is and you are right at the ocean. And that entire stretch there are very few developable lots. There's very few houses. Most of them are older houses and then you get to this particular lot and I was very surprised to see a proposal for a 4,000 square foot house plus where there already is an existing house and I definitely feel like the size of the house needs to be reduced because it's not in keeping with the neighborhood and if you look at the sea level rise maps, the sea level rise is predicted to take up that entire lot and so it's very not intuitive to want to build a 4,000 square foot house when you already have one house on the lot and you are between the ocean and the highway. And so, I really feel like you need to reduce the size of this structure to be in keeping. When they got their shoreline setback determination, it was for an ADU, this is, the project is no longer consistent, the SMA is now for a full-size house that's more than double the size of the house that exists on the property. If you look at coastal zone management laws and rules, one of the first things that you're supposed to do is protect our scenic view plains. This house will take up the scenic view plain, you will no longer see the ocean from the highway and especially in it being a two-story house that has the entire ground floor enclosed. So, that if the house were built up there's a 24-foot base flood elevation and the house would go 15 feet more than that, so it will be a house looming 39 feet up in the air, which is really huge. That's very imposing on the neighborhood. Most of the houses and most of the lots do not have two houses. It's almost open zone. Fronts most of Wainiha and on both sides of this project there's open zoning on most of it, so I really feel like it's appropriate to reduce the size, make the..

Chair Apisa: Three minutes. Could you wrap it up?

Ms. Diamond: Yes, sorry.

Chair Apisa: Thank you.

Ms. Diamond: So, the other issue is really if you're going to put a second house on this lot, I feel like there needs to be conditions for removing the first house when the ocean reaches the house. The shoreline is coming for these those structures that are along the ocean and will eliminating any possibility of retreat for this structure by putting another structure on the entire lot. And so, I'd urge you to please consider a condition that makes them have to retreat that first structure, along with the condition for no armoring of the shoreline there, and my last point, and I'll wrap it up, and encourage you to be the testimony I submitted. My last point is this is a known area of iwi kupuna and the architectural things do not, didn't really go where the footings of this house is proposed to go, and over and over again when septic systems get in and house footings get put in, they dig up iwi, and it's more fitting to do a ground penetrating radar ahead of time and see if there are iwi there then to trust that there may be and when we dig, we will find them and desecrate.

Chair Apisa: Okay. Thank you.

Ms. Diamond: So, I urge you to do studies in advance, so we don't desecrate the iwi there. Thank you.

Chair Apisa: Thank you.

Ms. Sayegusa: Anyone else here to testify on this agenda item?

Ms. Barzilai: So, the intent is to leave the agency hearing open...

Ms. Sayegusa: Yes.

Ms. Barzilai: ...at this time.

Ms. Sayegusa: Yeah, we, the department and we can discuss it at during the action item, but we recommend that the item be kept open. We are still, you know again we'll discuss it during the action item and we do want to work with, have an opportunity to work with the applicant a little bit more and so, and they're making, there's small chances of request for deferral. So, the request at this time is to keep the agency hearing open.

Ms. Barzilai: You need a motion, Chair. (Inaudible).

Chair Apisa: Okay, so if there's no motion, we will consider this item concluded for today. We'll keep it open and then we'll move on to our next one.

Ms. Sayegusa: Item F.2. b.

CLASS IV ZONING PERMIT (Z-IV-2024-6) and VARIANCE PERMIT (V-2024-2) involving a 4-lot subdivision to allow a deviation from the maximum pole length requirement of a flag lot, pursuant to Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kawaihau Road in Kapa'a, approximately 500 feet west of the Kawaihau Road/Makaleha Place intersection, and further identified as 6501 Kawaihau Road, Tax Map Key: (4) 4-6- 007:058, and containing a total area of 4.669 acres = **MANUEL DeSILVA JR, TRUSTEE.** [Director's report received 5/27 /2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Ms. Sayegusa: Is there anyone in the audience wishing to testify on this item? Seeing none.

Chair Apisa: Seeing none.

Ms. Sayegusa: So, I guess the remaining matter we recommend any recommendation to close the agency hearing.

Ms. Streufert: I move to close the agency hearing on the Class IV Zoning Permit, Z-IV-2024-6 and Variance Permit V-2024-2.

Ms. Cox: Second.

Chair Apisa: Any discussion? We'll take a roll call on these.

Ms. Sayegusa: Sure.

Chair Apisa: Thank you.

Ms. Sayegusa: Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. On to Item C.

CLASS IV ZONING PERMIT (Z-IV-2024-7) and VARIANCE PERMIT (V-2024-3) involving a 10-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5- 004:100 through 109, and containing a total area of 6.2 acres = **TOWER KAUAI LAGOONS SUB 1, LLC.** [Director's report received 5/27/2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.1

Ms. Sayegusa: Is there anybody in the audience wishing to testify on this item? There is one. Please state your name for the record and there's 3 minutes.

Ms. Ruby Pap: Aloha mai kākou e Planning Commissioners. My name is Ruby Pap. I'm actually testifying as a community member. I live in Lihu'e, so I'm not representing my employer in any way. I'd like to testify on the Hōkūala variance request, particularly in respect to sidewalks and

access. I do support the Planning Department's recommendation to not deviate from their required sidewalks for the subdivision. I regularly walk with my neighbors and recreate at Hōkūala, which is actually in my mind, one of the only walkable park like areas in Lihu'e, it's a really special place for us. I really appreciated the ownership and the, for providing access, especially when I was rehabbing my back and other things. There's, you know, there's sidewalks and golf cart paths and things everywhere. But recently there was an incident where I was asked by an employee to stay off a golf cart path, which I believe, I know is not an official access way. So, I totally understood, and I went somewhere else, but it was an area that had been sort of unenforced by the ownership, you know, and then people were allowed to walk for a while, even though it wasn't part of the officially required access system. So, now we need to stay on more official access ways as required by previous permits and some of these are improved paved pathways and some are unimproved pathways to the shoreline like along the lagoon or to the shoreline to the lighthouse and for kupunas or others that may be injured or disabled, it's sometimes difficult to exercise on those types of paths safely, so I say all this because I feel that this new subdivision and any future developments, it will bring more people, more cars to the area and should require, you know, improved sidewalks for all people to access and walk and recreate, including residents and folks from the community, so, yeah, I support the recommendation to continue the requirement for sidewalks and hope that they're large and adequate enough for all users. And I note that the Public Works Division had some good comments about the need for continuity within the subdivision for walking as well and just safe, safe access. So, thank you for the opportunity to testify.

Chair Apisa: Alright, thank you.

Ms. Sayegusa: Is there anyone else in the audience wishing to testify on this agenda item? Okay, seeing none.

Ms. Barzilai: Ready to close the hearing, Madam Chair.

Chair Apisa: Do we have a motion to close the hearing on this agency, on this item?

Ms. Cox: I move, we close the agency hearing on Zoning Permit Z-IV-2024-7 and Variance Permit V-2024-3.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Is...we'll take a roll call again.

Ms. Sayegusa: Oh, do we have a second?

(Multiple people speaking at once)

Ms. Barzilai: Commissioner Streufert.

Ms. Sayegusa: Okay, thank you.

Ms. Barzilai: No discussion?



Chair Apisa: Yeah, there's no discussion.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. We're on Item F.2.d.

CLASS IV ZONING PERMIT (Z-IV-2024-8) and VARIANCE PERMIT (V-2024-4) involving a 13-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the northern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5- 001:027 (Par.) & 168 (Par.), and containing a total area of 4.6 acres = **TOWER KAUAI LAGOONS GOLF, LLC./TOWER KAUAI LAGOONS LAND, LLC./TOWER KAUAI LAGOONS SUB 7, LLC.** [Director's report received 5/27/2024.]

1. Transmittal of Agency Comments to Planning Commission.
2. Director's Report pertaining to this matter.

Ms. Sayegusa: Is there anyone in the audience wishing to testify on this agenda item?

Chair Apisa: It's very similar to the last one, but it is a separate item.

Ms. Pap: Aloha again, Ruby Pap. Just the same comments, bring those forward for this one as well. Thank you.

Chair Apisa: Thank you.

Ms. Sayegusa: Okay. Anyone else wishing to testify in this agenda item? Seeing none, Chair.

Chair Apisa: We have a motion to close this hearing.

Mr. DeGracia: I move to close Class IV Zoning Permit Z-IV-2024-8 and Variance Permit 5-2024, V-2024-4.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Any discussion? I'll take a roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. Item F.3.

### **Continued Public Hearing (None)**

### **New Public Hearing**

Ms. Sayegusa: F.3, I'm sorry, F. 4., New Public Hearing.

Proposed Amendments to Chapter 4 of the Rules of Practice and Procedure of the County of Kauai Planning Commission, regarding Petition to Intervene, which details the applicability of intervention for Planning Commission actions, the requirements and contents to file a petition to intervene, multiple petitioners and

intervenors, arguments for and against petitions to intervene, and action on petitions for intervention = COUNTY OF KAUAI, PLANNING COMMISSION.

1. Director's Report pertaining to this matter.

Ms. Sayegusa: So, I can do, I guess a real brief overview and then we can seek any comments and testimonies. Okay. So, this is just one of, intended to be one of the first public hearings, really it's just the initiation of this period to, seeking to amend this chapter of your folks Planning Commission Rules of Practice and Procedure. And so really this is just really the beginning of the intent is I think we're going to ask to have this public hearing be kept open and continue to the meeting in September, I believe it would, I believe there'll be a first meeting, the first meeting in September or second depending on when there is an agenda ripe enough to have a meeting and your folks quorum, of course. So, again to have another public hearing in September and then action, no sooner than October. Reason for this is we also have to go and go before the State of Hawai'i Small Business Regulatory Review Board in August and September, it's a process, an additional process or anytime an agency rule is being is amended that commission will have to weigh in and provide any recommendations based on any impacts to small businesses, which this could impact. So, it's really a generous hearing process and amendment process that we we're affording. So, this again this is one of the first and so and just you know, with this, the amendments are proposed to seek further clarification, to help really you folks with additional clarity and how to analyze and review petitions for intervention. You know, it's no secret there's and as you folks well know, there's been an increase in general on litigation, in addition to petitions to intervene and so based on a lot of the things we've been wrestling with, this is the proposed rules is an attempt to seek clarification and allow additional standards to, you know, for excusing, you know, filing, late filings and things like that. So, I think it's really a balance between accommodating and allowing the public the ability to be able to navigate the rules and be able to provide petitions for intervention, but also you folks some clarification how to review it. That's really in the nutshell and again, we'll be discussing this in at least two more meetings in the future. So, with that, I think we can call for if there's any public testimony at this time on this agenda item. Okay, all right. Well, seeing none, I think we can just again the recommendation is to keep the public hearing open, and it will come back on the agenda in September and October.

Ms. Barzilai: Should we take initial questions at this time?

Ms. Sayegusa: Sure, yeah. I mean, yes, we can also, if there's any questions or initial concerns, I can receive that too.

Chair Apisa: Anyone out there have any questions or concerns or just any comments on it?

Ms. Barzilai: Among the Commissioners too, Chair.

Chair Apisa: Commissioners, do you have questions, comments?

Ms. Streufert: I always do. I have a question about, on page 4, oh, I'm sorry, it could also be on page 3, which is an excusable neglect, what exactly, is an excusable neglect within the control of the petition.

Ms. Sayegusa: Right, so, you know based on the rules, I mean and good cause has come up before, before you folks on, you know, excusing a timeline of being missed for filing the petition, and so researching that and of course, through the guidance of Laura, your attorney, we've discovered that good cause is really a standard by the court rules, and so in addition to good cause which it's a good cause, you know we found I guess based on the court rules and then case law related to what the standard means is that's for reasons not in control of the applicant, so that would be, you know, there's a major storm that shuts down a highway that prevents an applicant from reaching the department to file a petition. So, in addition to that, in addition to clarifying good cause reasons beyond the control, we've also included reasons within the control. So, it's there's two ways, right, so, excusable going get neglect, there is nothing, it's a misunderstanding or a misconstruing of the law of the of the timing and so it, although so just ignorance of it, you know, saying like, I just don't know it and I don't know the law like, that's not good enough excusable neglect. You have to, you have to kind of know and you have to care enough to understand what the standard is, but if there's a misconstrual, you know like I thought, you know, four days is include, you know includes a weekend or a holiday, things that are, that are reasonable and excusable in your folks mind that could be something that you say, okay, well fine, you didn't file it within four days, that's okay, you know, and you'll accept it.

Ms. Barzilai: So, there's another example from case law where a person didn't know that he was a party to another case that was decided against him, so when he learned about it, he took action that would be considered excusable neglect. We wanted to sort of not be bound to specific examples because it's a fact determinative. When it comes before the commission, it will be at your discretion to decide if you find good cause or excusable neglect, as opposed to being bound to specific factual scenarios.

Ms. Streufert: But issuance of the law is not excusable.

Ms. Barzilai: Attorneys are held to higher standards than a per se litigant would be.

Ms. Sayegusa: Or if somebody would were to come and say, I don't know, I don't care, can I do it now. Like if there's no, you know, like you just there has to be some caring or some thought or some understanding of it, you know, it's just to be, you know, we have to have some sort of standards to have it excusable. But of course that's up for discussion, if you folks think that's a good idea or if you don't want to take, you want to take that out, that's fine. It's just, it's a proposal at this point.

Ms. Otsuka: For me I think it's just a little too vague yet.

Ms. Sayegusa: Okay.

Ms. Otsuka: I feel like each individual's good cause are interpreted differently. So, for me, I would like, I don't know if more examples are a little bit more specific...

Ms. Sayegusa: Okay.

Chair Apisa: Yeah, maybe some examples would be helpful.

Ms. Otsuka: Yeah, good cause, cause I mean, first I thought of, like if someone has if someone has an untimely passing, somebody else might not think it is a big deal and yet if somebody passes, I think is it an act of God...

Chair Apisa: Yeah, that would be a decision that commissioners would have to make.

Ms. Barzilai: Yes, because it would be factually determined to have (inaudible because other people interrupted).

Ms. Otsuka: But I'm thinking it was more specific, there would be no need for this future discussion. You know, like if it's just more detailed.

Ms. Sayegusa: Okay.

Ms. Otsuka: But I don't know if it's possible, but I feel just to avoid further discussion, like if it's...

Ms. Streufert: More litigation.

Ms. Otsuka: Oh, it's right there, okay. I can't...It's not good cause. Oh, yes, it's good cause.

Ms. Sayegusa: Okay.

Ms. Otsuka: I'm just trying to lessen the discussion and...

Ms. Streufert: I agree with you.

Ms. Otsuka: Oh, thank you.

Ms. Cox: And I actually disagree with you.

Ms. Otsuka: Yeah?

Ms. Cox: I think it'd be a great idea to add some examples for excusable (inaudible), but on the other hand, I do think it's case by case and so I think it does make sense for the commission to look at the particular circumstances that come before us and determine, but some examples, so that we have a sense of what the, what might, the kind of thing that might arise, I think would be extremely helpful (inaudible).

Chair Apisa: A good case example of this that comes to my mind is the TVR laws, which are hard and fast that if you don't meet your deadline, it's out. There's no second chance or opportunity to extend and we've had cases where, you know, Hanalei flooded and they missed it by a few days, and I'm sorry, but the laws, the law. So, there is no excusable reason for that, for the TVR laws. So, I think this is just allowing that something like that or, you know, as was brought up with that a death in the family or some extenuating circumstance, but I can, I would definitely agree that some examples would be helpful.

Ms. Streufert: But that's outside of the control, this is within the control.

Chair Apisa: Control of whom?

Ms. Streufert: Of the...

Ms. Cox: Excusable negligences.

Ms. Otsuka: The petitioner.

Ms. Streufert: Within the control of the petitioner. So that's how that's written. An act of God is not within the control of the (inaudible).

Ms. Sayegusa: But that would, that would fall within the good cause, right. So, good cause are acts of God or things beyond the control. In addition, another if there's things that are extenuating circumstances within the control that if you folks determine it's excusable then, that that's they would be allowed to file a petition late.

Chair Apisa: It does put a lot of responsibility in decision making on the commissioners, yes.

Ms. Streufert: Doesn't this open us up to more litigation, as opposed to decreasing it?

Ms. Otsuka: That's how I see.

Ms. Sayegusa: Well, I think existing rule read as, you know, it just said good cause, yeah.

Ms. Barzilai: So, we're adding an element of excusable (inaudible)...

Ms. Sayegusa: Yeah.

Ms. Barzilai: ...to give you more flexibility and availability to allow for late filings. But one of the things that I was hoping to achieve is to focus more on timeliness and how do we encourage the community to be timely as opposed to focusing upon what happens when folks are late, because we have this seven-day proposal and a four-day proposal, we hope that it simplified the rules so that people can aim to be on time.

Chair Apisa: So, maybe reversing that from a positive of how what, what excusable neglect is maybe reversing it to say that these are not excusable neglect examples like, I forgot, my rabbit ate it, or whatever, you know.

Ms. Barzilai: One of the examples is that an attorney read the rule wrong, that's not excusable neglect.

Chair Apisa: Right, yeah.

Ms. Barzilai: Part of misconstrue is a rule, and they don't have experience it might be excusable neglect. (Inaudible) are kind of slim on examples.

Ms. Sayegusa: I hear you though. I mean, I think that the attempt is to flush out a bit more what previously existed, again it just said good cause, right, and so it was really a lot of wrestling and what does that mean. And so, when we researched it further, you know it did or that term of art

came from, you know, a court rule standard. So, and then, you know, they attempt to add excusable, and so the good cause stand under the court rules really does keep it only to reasons beyond the control. So, acts of God...

Ms. Streufert: So, it is totally different.

Ms. Sayegusa: ...which, yeah, which would take out or, you know the other excuse of you know, I was sick or, you know, or some other things that you know is with kind of within more of the control of an applicant, so it was an attempt to increase the opportunities for you folks to find sufficient reason to say, it's fine, you can, we will accept a late filing, but of course we don't want to create more confusion. So, I think we can research it further and provide more examples if that helps and for further discussion, and if it's too much, we can you, you folks have the option of deciding, let's just say good cause and keep it at that, but that meaning facts beyond the control.

Ms. Streufert: Because there are two different causes or clauses on that under C.1. is good cause, but that's without, outside the control of the petitioner. The second one is excusable neglect that is within. That's the part that I'm having a really hard time trying to (inaudible).

Ms. Sayegusa: To flush out a little bit more.

Ms. Streufert: Yeah.

Ms. Sayegusa: Okay.

Ms. Streufert: And I'm not sure that examples are going to help because examples would just sort of even (inaudible) more, so, before we get it, if the intent is to increase the possibility that there is good cause, then I think that's that you can cover it under another good cause within the control of the petitioner (inaudible).

Ms. Barzilai: The issue is, Chair and Commissioner Streufert, that the case is defined it differently. So, as Jodi mentioned, we're trying to expand the flexibility that the commission has to know it when you see it and be able to evaluate it within your discretion when it occurs.

Ms. Sayegusa: I think at this, I think...

Ms. Barzilai: Each case will be different.

Ms. Sayegusa: Yeah, as written, I think what's clearly not allowable is just carelessness or ignorance of the rules, or deliberate or willfully not knowing the rules.

Ms. Barzilai: And there's a prejudice component is the applicant prejudice by the lateness of the filings. That's another determinative factor.

Ms. Streufert: Well, maybe something like that rather than how we have it right now would be more useful, but...

Ms. Barzilai: We can look at that.

Ms. Sayegusa: Okay.

Ms. Streufert: I have a question, but is that, if you have a TVR, going back to us (inaudible) case, and your realtor forgets the timeline, is that...

Chair Apisa: It doesn't matter. The timeline is the timeline.

Ms. Streufert: I understand that, but does that, is that covered in this?

Ms. Sayegusa: Again, that would be really a factual discussion I think in your folk's discretion, you know whether you feel that realtors should similarly be, you know, knowledgeable enough to know the time timelines to file the application.

Ms. Barzilai: The position of the department on that currently is no. The answer to that is no.

Chair Apisa: When you entrust a professional, being a realtor and attorney, then they are responsible for meeting deadlines.

Ms. Streufert: But will that be excusable neglect in this case?

Chair Apisa: I think the consensus is no.

Ms. Barzilai: If it's trusted to a professional, who is expected to know, the answer would be no.

Ms. Sayegusa: But ultimately, you folks will make that determination.

Ms. Otsuka: Yeah, so it is up to the commission to make that decision.

Ms. Sayegusa: Yes. Yes.

Ms. Barzilai: It's in the law.

Mr. Ako: Madam Chair, if I can add. You know, in my mind, I'm just looking at this as just being basic guidelines in terms of whether you have good cause or not. I think that there's a lot of subjectivity that comes in there and in my mind, we really want to look at a checklist to see whether it falls in the good cause side or it falls on the other side and to look at it at that way because it makes it a lot easier. And yet I think because of the subjectivity of it, and I think we look at it at a case-by-case basis as it comes up, it does put a lot more responsibility I believe on the commission because now they need to insert their, you know, their subjectivities in there and take out the biases that they have. But I think to list a bunch of reasons why I think that list goes on and on and on, I don't think there's an end to it. So, in my mind, I think if I look at this as a guideline for it and I think as was said earlier, yeah, once you see it, you kind of know, you kind of know what it is, yeah, but I think in the end it comes down to a vote and there's still that subjectivity is in there and I guess whoever's got the full votes.

Chair Apisa: The checklist is actually, I think that's a great idea. Give more guidance of it, but this is all good input. Like Jodi said, this is...



Mr. Ako: Well, I think if you put the checklist, yeah, there's going to be a lot of things that is not on the checklist.

Ms. Otsuka: Yeah, it's going to be overwhelming.

(Multiple commissioners speaking at once)

Ms. Barzilai: I think it allows the commission (inaudible). That's the suggestion.

Ms. Sayegusa: Well, perhaps we can, I mean through, like our discussion you know for the sake of discuss at the next hearing and beyond, you know, I, we could, I could flush something out where there's examples, but that won't necessarily be verbiage within the rule because that would kind of make it a little bit too complicated, I think if it's in the rule itself, but you know, for you folks to digest and kind of run through the scenarios, I can do that.

Ms. Otsuka: Yeah, it's just hoping to just shorten the discussions within the commission, so it doesn't get too heavy and too (inaudible).

Chair Apisa: Commissioner Ako, do you have any input you would like to add?

Ms. Streufert: Commissioner DeGracia.

Ms. Cox: DeGracia.

Chair Apisa: Oh, I'm sorry, DeGracia, sorry.

Mr. DeGracia: Well, concerning what we've been talking about, I believe as decision makers, you know it does fall upon our shoulders to make that determination. And like Commissioner Ako mentioned, that list could go on and on and on, so, you know, examples would be good, but you know, over time I guess precedence is probably what you know, future commissioners is going to follow.

Ms. Barzilai: It's also interesting that the courts don't give many examples either because it is within the discretion of the commission.

Ms. Otsuka: Well, good job.

Unknown Commissioner: Working with Laura.

Mr. DeGracia: I did have one question...

Ms. Sayegusa: Yeah, sure.

Mr. DeGracia: ...concerning the filing. So, I'm looking at the change of language from agency hearing to public hearing, but when looking through the rules in agency hearing, I see that there is a time frame in which the notice of agency hearing, but when I go through the public hearing procedures, I don't really see what the timeline is for that.

Ms. Sayegusa: Yeah. So, the intent of changing that verbiage from like, capital, (inaudible) agency, capital H hearing to just the first public hearing, so just to kind of broaden it because there are, I mean it's that agency hearing is sort of a term of art reference in the CZO, and then really your rules that make it clear that that is a hearing attached to the you know Class IV Zoning Permits, Use Permits, etc. But it got confusing because, you know, we wanted to brought it, because there's also other hearings that aren't necessarily publicly noticed, like sub, subdivisions, and so what's the deadline for that, and so we clarified that it's no less than seven days prior to the first public hearing. So, like, a public hearing just being an opportunity for the public to provide testimony. So, the first public hearing for which notice to the public has been published. So, that's seven days. So, those are pursuant to the CZO and SMA rules that says those are SMA Use Permits and Class IV Use, Class IV Permits, Use Permits and Variance applications, so those by the existing laws require publication in the newspaper, right and distributed statewide, and so there will be at least 20 days prior to the hearing of publication in the newspaper, and so for those the deadline for petitions for interventions are seven days prior to the first public hearing that's been publicly noticed by a newspaper for publication, for hearings that aren't required to have a public publication by a newspaper so, those are for example, subdivision application matters, the method the public will be able to know when that's going to come up with a hearing is going to come up is through the, your folks agenda, the Planning Commission agenda and that is at least six days prior to your meeting, right, or the public hearing, and so the deadline for the petition to intervention in that scenario is four days prior to your first public hearing or your, your, your commission meeting and that is just we play with shortening or not (inaudible), but we're balancing our ability to process and file things in addition to propagating it to the applicant and having the applicant then opportunity to prepare for you know, this anticipated petition to intervene and, you know, provide their arguments for or against and things. So, we felt four days was minimal, and so, again, we changed the verbiage from capital agency hearing, A agency hearing to just the first public hearing. To kind of broaden and catch all the possible matters that could be intervened upon.

Mr. DeGracia: Is that 20 days outlined in the current rules? I'm just not sure...

Ms. Sayegusa: It is.

Mr. DeGracia: ...I'm looking under a public hearing procedures.

Ms. Barzilai: It's in the CZO.

Ms. Sayegusa: It's Chapter 8, Article 3. So, I think that's, you know, when you look through the various procedures for like for instance, Class IV or Use Permit or Variance applications, it's a minimum 20 days for publication.

Mr. DeGracia: Thank you.

Chair Apisa: All good input, commissioners. Thank you very much. Anyone else have anything. And remember, this is just being introduced. It will be continued but it's good input.

Ms. Streufert: This may be splitting hairs, but how is carelessness and ignorance of the law not being excusable neglect within the control of the applicant?

Ms. Sayegusa: I think we just wanted to cut it some way right where it's not, you know that the deadlines are meaningful in some way, where so if in a petitioner just really doesn't care to know the rules and they just want to be able to file a petition, you know it was, that would be one reason to not allow for the excusable.

(Multiple people speaking at once)

Ms. Barzilai: (Inaudible) the filing party.

Ms. Streufert: But if you were to come before the commission on something like this, would you ever say, I didn't care? As opposed to...

Ms. Sayegusa: Could.

Ms. Streufert: It doesn't, somehow it doesn't quite make it because...

Ms. Sayegusa: Okay.

Ms. Streufert: ...make a careless or, you know, carelessness or ignorance of the rules is still excusable neglect, I mean it is neglect.

Ms. Barzilai: That would be your vote.

Ms. Sayegusa: It's neglect, but is it excusable in your eyes?

Ms. Otsuka: Yeah.

Ms. Cox: Yeah.

Ms. Streufert: It would be. It's a question of really how you define excusable and neglect, I guess.

Ms. Barzilai: What might be helpful is if I brief the commissioners a little bit further on this and give some examples from the cases, if we haven't provided.

Ms. Sayegusa: Sure.

Ms. Otsuka: That would help.

Ms. Sayegusa: Yeah.

Ms. Barzilai: Okay.

Chair Apisa: At another time, you're referring to.

Ms. Otsuka: Yes, another time.

Ms. Barzilai: At another time before it comes before you again and then we can open it for discussion again.

Chair Apisa: And we all have a little time to digest it and give it more thought.

Mr. Ako: Madam Chair, if I can add one more thing, yeah.

Chair Apisa: Sure.

Mr. Ako: You know, regarding the timelines, I just want to make sure that in my mind I'm clear because a lot of times when I read the 20 days that notice if it's published you get 20 days prior to, you need to submit seven days prior to the public hearing, right? But that is from when the notices sent out. I think we had scenarios where the public hearing itself was deferred and we never really had a public hearing and then there was a question about whether I have another seven days or not, yeah, to file, so, I'm not sure whether I'm the only one that's reading it like that, and I get confused whether it's from the initial date that it was published in the newspaper or it's seven days from the public hearing itself, whenever that takes place, so...

Ms. Sayegusa: Okay.

Ms. Barzilai: I answer that.

Mr. Ako: It was just...I mean, if everybody gets it, we good man, you know.

Chair Apisa: Laura said she can explain.

Ms. Barzilai: I think our goal is seven days before the first time that it comes before the commission, and this would align it with the other counties as well.

Mr. Ako: Yeah.

Ms. Otsuka: I think, I'm not sure there was HPM, the attorney came, and we didn't allow, we denied him intervention, but he filed, in his mind he filed timely according to the agency hearing, but because the agency hearing was deferred. I remember that because it really bothered me.

Ms. Barzilai: That issue went to the courts, Commissioner.

Ms. Otsuka: Yeah.

Ms. Barzilai: And I think that our amendment here is addressing that.

Ms. Otsuka: I think it's important that the agency hearing versus the public hearing.

Ms. Sayegusa: Right. Yeah. And so, I think that's why we put the verbiage, first public hearing.

Ms. Otsuka: Yeah, looks like it (inaudible) big difference.

Ms. Sayegusa: Yeah. So, the seven days would be that first public hearing. If the hearing continues, that deadline, I think the intent is that deadline has passed. It would be the first public hearing.

Ms. Otsuka: Yeah. Good, good language.

Mr. DeGracia: I got one more. So, the proposal amended 141.D., says, the Planning Department will be, shall be automatically admitted as party, but was that in addition? What happened prior, because was my understanding is that when, you know, two parties intervene and if they're assigned a hearings officer, it's normally between the two parties and the hearing officer, but is this adding the Planning Department in as party?

Ms. Sayegusa: Well, in the scenario where there is a third party admitted as an intervener, then you know, the whole matter is then set for contested case, subject to HRS 91, and so the department is automatically a party because, you know, we are issuing a recommendation for your folks' consideration. So, as a party, right, issuing a recommendation in addition to, of course, the applicant being a party and then the third-party intervener being an additional party in the whole contested case proceeding. So, in that scenario, automatically the department is admitted. I think this new section 4-1, 1-4-141a, all departments and agencies of the state and the county shall be admitted as parties upon timely applications for intervention. That was added, it's included in Maui's intervention rules, and we thought it a good idea to include it here, you know, for instance, the Department of Health wish to file a petition to intervene. We're not necessarily going to run them through the standards, you know, actual threats and injury, be fairly traceable to the applicant's action. Just because by nature of them being an agency of the state with an interest, you know, I think we've, this isn't a clause that would allow them to automatically be, to be an intervener party and then the matter be set for a contested case.

Mr. DeGracia: Okay.

Mr. Ako: Madam Chair, I get one more. Like him, I get one more, yeah, I just wanted to bring up for the sense of transparency and awareness that part of the rule changes in here also is the fact of the increase of the fees, the filing fees, yeah, that's in there, and it's a rather substantive increase. So, I just wanted to bring it up for awareness purposes.

Ms. Otsuka: And non-refundable.

Ms. Sayegusa: Yeah. And of course this is up for discussion. If the proposal, the \$25.00 was initiated in 2014 and since then really there's been a dramatic increase to litigation in addition to petitions having to process and hear petitions to intervene, and so the increased fee we thought necessary as you know, something to increase and reflect the, and the overall time and expense and effort spent by staff to process and file, distribute, prepare for you know, the petition to intervene and provide you folks council and things like that. So, it's really an attempt to offset the service and the effort that's provided that the Planning Commission, Planning Department provides to process these petitions and just based on the survey of other jurisdiction municipalities, filing fees for petitions to intervene, we found it within the range of course, Maui County imposes an \$828.00 petition to intervene, fee, filing fee. Hawai'i County imposes a \$200.00 filing fee, and so we're kind of right in the middle, but of course you know, that is up for a discussion.

Chair Apisa: Well, I know we've seen a lot of inflation in the last few years since it was initiated, but 25 is really way too low today, but to be determined. Any further discussion? This has all been great commissioners, very good input. Anything further before I call for a motion to continue. Okay, do we have a motion to continue the public hearing?

Ms. Streufert: I so move.

Ms. Cox: I second.

Chair Apisa: We have a motion on the floor. Any further comments? Roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0. Item G. Consent Calendar

## **CONSENT CALENDAR**

### **Status Reports (None)**

Ms. Sayegusa: There are no Status Reports.

### **Director's Report for Project(s) Scheduled for Agency Hearing (None)**

Ms. Sayegusa: No Director's Reports. Let's see. Continue, on the Consent Calendar, that is.

### **Class III Zoning Permits (None)**

Ms. Sayegusa: And then also no Class III Zoning Permits on the Consent Calendar.

## **GENERAL BUSINESS MATTERS (None)**

Ms. Sayegusa: Also, no Item H., I., J.

**COMMUNICATION (None)**

**COMMITTEE REPORTS (None)**

**UNFINISHED BUSINESS (For Action) (None)**

Ms. Sayegusa: So just skipping down to Item L. New Business for Action.

**NEW BUSINESS (For Action)**

Ms. Sayegusa: Special Management...

Chair Apisa: Excuse me, I think I'd like to take like a 8 or 8-minute break, and we'll be right back. Thank you.

The Commission went into recess at 10:00 a.m.  
The Commission reconvened from recess at 10:13 a.m.

Chair Apisa: Call the meeting back to order.

Ms. Sayegusa: We're on Item L., New Business (For Action)

SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10) allow construction of a new single-family residence within Lot 79-A of the Wainiha Hui Partition in Wainiha, involving a parcel situated on the makai side of Kuhio Highway, approximately 200 feet west of the Kuhio Highway/Alamih Road intersection, further identified as 5-7070 Kuhio Highway, Tax Map Key: (4) 5-8-011:049 containing a total area of 22,736 square feet = **BRUCE HOLDINGS LLC.**

Chair Apisa: We have the Director's Report?

Ms. Sayegusa: Sure. Did you want to...

Ms. Barzilai: Chair, I might...

Ms. Sayegusa: I might ask for additional public testimony at this point or...

Chair Apisa: Oh yeah...good (inaudible).

Ms. Barzilai: Probably should.

Chair Apisa: Okay, yeah. Thank you.

Ms. Sayegusa: Is there anyone else in the audience for this agenda item wishing to testify? Okay, seeing none. We can turn it over to Romio.

Staff Planner Romio Idica: Hello. Okay, sorry. Aloha, Madam Chair, Planning Commissioners for your consideration, Special Management Area Permit SMA(U) 2024-10).

Mr. Idica read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Mr. Idica: And I would like to open it up for questions from the commissioners for myself or the applicant.

Chair Apisa: So, it is, floor is open for the commissioners.

Ms. Otsuka: Oh, now is the time, okay. I have a question, Romio.

Mr. Idica: Yes.

Ms. Otsuka: According to the County DPW engineering, it says the property is located within flood zone VE, the application incorrectly states the property is in flood zone AE.

Mr. Idica: Okay.

Ms. Otsuka: So, when this kind of thing happens, does the application have to be corrected and come back to the department?

Mr. Idica: That kind of items are usually taken care of at the time of building permit submittal. We understand also within the Director's Report, it does state as VE, coastal high hazard, so at the time of building permit submittal, DPW will ensure that the dwelling does comply to VE coastal high hazards. Yes.

Ms. Otsuka: And I was curious on their project description, why is it not mentioned there's a kitchen?

Mr. Idica: In this property description? Are you talking to, in regards to the Directors report?

Ms. Otsuka: Yes, it says the upper floor contains the main living area with three bedrooms, three bathrooms and a study room, and then when I looked at the floor plan, it's just labeled as main, main room, so I was wondering where the kitchen.

Mr. Idica: There is a kitchen, there is a kitchen. It could be just a little oversight on my part...

Ms. Otsuka: Okay, so (inaudible)...

Mr. Idica: ...in the Director's Report, but...

Ms. Otsuka: ...there is a kitchen.

Mr. Idica: There is a kitchen. Yeah, the main living area, main area would...

Chair Apisa: Include.

Mr. Idica: ...be composed of the living room and the kitchen.



Ms. Otsuka: Okay. Thank you.

Mr. Idica: You're welcome.

Ms. Otsuka: I know, it was called the Great Room.

Mr. Idica: Okay.

Ms. Streufert: I have a question about the, I'm looking over the comments by, that was done and submitted, and I was concerned about the, where the trenches were laid. My understanding based upon the proposal as well as the Planning Department's comments that the footings, the trenches were dug where the footings would be, which means that's where we have ground, ground disturbing activities, but according to the, Ms. Diamonds comments, it does not appear to be the case, is that...which one's accurate?

Mr. Idica: According to the archaeology assessment, yes, it does show that the trenches were done outside of the proposed footings. Now the question in regards to why, I would like to maybe defer to the applicant into kind of maybe explaining or giving a reason to why the trenches were dug outside of the proposed footings.

Chair Apisa: Open to further questions or comments from the commissioners.

Ms. Otsuka: Yes, I have another question. Sorry. Per Ms. Diamond, it's, she states that it's a new owner and I was wondering if the permit or the application or permit comes, goes with the land.

Mr. Idica: Yes, it does.

Ms. Otsuka: Because she states that the property, should the property be granted additional exemptions for more improvements...

Mr. Idica: Oh, my apologies...

Ms. Otsuka: ...or did they reach (inaudible).

Mr. Idica: Commissioner Otsuka. I believe that's a different agenda...

Ms. Cox: It is.

Mr. Idica: ...you're looking at. This is SDD.

Ms. Otsuka: Oh.

Mr. Idica: Yeah. So, that's not pertaining to this project.

Ms. Otsuka: Okay, I apologize.

Mr. Idica: No.

Ms. Otsuka: Oh yeah, Shoreline Setback, in bold.

Ms. Streufert: I have a question that's more general, I guess, not just for this one, but if we allow buildings in an area where it's possibly going to flood because of the erosion that we know is happening and that we can identify what the rate of erosion is going to be, does the county have any liability when it does happen because we have allowed that building to occur?

Ms. Sayegusa: So, I think as reviewed and analyzed, there's several things at play right, there the Shoreline Setback Ordinance analyzes and makes sure that the structure, proposed structure is outside and set back right, and the structure is set back based on the certified shoreline based, which is based on a historical erosion rate. So, as far as the erosion line, that analysis and the approval and proposed location where the house is going to be is out is set back pursuant to the Shoreline Setback Ordinance. Under the other regulations and code regulations that, and SMA those kind of analyze other standards and facets right, so as far as the sea level rise exposure area or with hazards, those hazards surpass the flooding and wave inundation. The recommendation to an, of course SMA considerations those, that's why the recommendation is to, you know, have the structure raised up even beyond any of those standards and to be compliant with flood to make sure that it's the, any habitation is not being done under the base (inaudible) of elevation and everything is up high. So, as far as the, you know, there are various considerations to add analyze. I think as far as we're, we've analyzed and proposed the application of, and everything is compliant, but as far as for SMA, you know there's still priorities like view plains, like you know, other priorities under the SMA that we, that we also have to consider and mitigate for and so, you know I think some of the concerns that Caren Diamond, the testifier brought up seem to be valid and right within the 205 a., considerations, i.e., the Coastal Zone Management Act recommendation. So, I think we're trying to see whether we can work with the applicant to see whether, if there's adjustments to the structure, you know, I think it's kind of skewed at an angle that so when folks pass along the public highway it really does prevent or restrict the view, the views from the public vantage point to the ocean, and so, if there's any way we could work with the applicant to try to make some minor adjustments or if there's any way to have the floor and the structures, i.e., the garage that is currently enclosed, to if there's any other alternatives to allow for further viewing, you know, that view to preserve the view plain, I think we're trying to look at that because that is a standard under, and a priority of the SMA law is to view plains and preserve the rural nature of that area.

Ms. Streufert: But if we know that there is going to be erosion, sea level rise and erosion, if we're planning for it and we still allow someone to build and they become, I'm looking at the north shore of O'ahu, and what's happening there. Does the county retain any liability for that?

Ms. Barzilai: If I can ask Jodi, are we in the constraint district in this matter?

Ms. Sayegusa: It...sorry, I can rely on Romio to...

Mr. Idica: The constraint district...

Ms. Barzilai: This is one way this is being addressed.

Mr. Idica: ...would be flooding and tsunami. That would be the constraint, yes.

Ms. Barzilai: So, the elevation is required, that we...

Mr. Idica: The elevation required is to Department of Public Works standards and also with the North Shore Development Plan.

Ms. Barzilai: But not within our, what we refer to as the constraint district.

Mr. Idica: Yes, our sea level rise constrained district is not applicable to this particular dwelling, because DPW's regulations are more stringent. So, if our sea level rise constraint was to be put in force, the house wouldn't be as high, but since it is in close to VE coastal high hazards, it does push up the building to meet, you know, the North Shore Development Plan standards.

Ms. Sayegusa: So, and as far as the structure this current structure that's proposed is compliant with the Shoreline Setback Ordinance that analysis has already been done. It's more of a, if your question is whether we're allowing for development anywhere within the shoreline, and eventually one day it's going to erode, I mean, that's kind of like a bigger, broader question on you know, are we going to have a more aggressive set back ordinance, you know, where, because right now the, again based on the historical data we've crafted this standard to set back within, I believe it was, correct me if I'm wrong, 40 anticipated timeline of the existence of the structure, right, and so we're trying to, it's a reasonable policy where we are, and one that is kind of more, most, one of the more aggressive of in this state right, to allow for development, certain development to exist because that structure as proposed won't be eroded within the lifetime of the structure, that's the intent of that, of the ordinance at this point, but if your question is, whether we should even more so look at more aggressive measures to just prevent it, that's, I think that's a bigger broader question.

Ms. Streufert: I'm wondering whether there could be a condition about that.

Ms. Barzilai: So...

Ms. Sayegusa: Right.

Ms. Streufert: (Inaudible) the liability based upon whatever the commission decides.

Ms. Sayegusa: Okay.

Ms. Barzilai: There was an application before the commission with regard to moving the structure within a certain time frame.

Ms. Streufert: For Kekaha, I think it was.

Ms. Cox: Yeah.

Ms. Sayegusa: Right. We did...I'm sorry.

Mr. Ako: If I can kind of clarify. I think when we're looking at some of the homes that were built on the shoreline, that was probably before certain codes were implemented and those are falling down and I think there's a lot of questions about liability in those, right. And this one here, we kind of looking at projections, yeah not really sure whether it's going to here or here, but we kind of have an idea that it's projected to be at this point, so if we working on projections and we

implementing that into codes and then something should happen to the facility or to the development, knowing that they're still projections, but knowing that this is what we follow, and something happened, would that bring liability to the county?

Ms. Barzilai: Based upon what we know, we've implemented what we can to address it at this point, I think that's what Jodi explained.

Mr. Ako: Yeah. Right. So, if the water comes up, boom, house falls down, we told you that was your risk to put it up, kind of like that.

Ms. Barzilai: We could implement a condition that it be moved once there's an encroachment of sea water.

Ms. Streufert: Or some kind of...

Mr. Ako: No, I don't think it's going to be moved, right, because it's, we just projecting it's going to be here, so we don't know. But if something does happen and say the sea rise comes up faster than we think it is, you know, County of Kaua'i, you said it was okay to build here, and now it isn't. So, did we actually say that it's okay by allowing this permit?

Ms. Sayegusa: Yeah. And there's, you know, various risks, right, where again, so as far as the constant progressive march of erosion, you know, that's going to happen over a certain time. Again, that's what the Shoreline Setback Ordinance is aimed to address other hazards like wave inundation or big storm events, those are going to happen, right, and so, but we we're not necessarily creating or preventing structures being built for those rarer storms, big storm events, right, and so and even for things like highway (inaudible) that we have to further analyze, you know, the volume and the rate of the waves coming up in, in and reaching a structure you know, for if a structure, if a wave comes and it's just one inch and it kind of just, you know, dissipates, that's why the house is required to be raised up and nobody can live on the bottom floor, you know, but that doesn't necessarily, at this point we're not saying that you can't build or you can't have a structure there because at this point it's not like the wave is, it's you know that's the analysis whether the wave is coming at a velocity and a volume where the whole structure is going to be decimated then obviously that's something we want to make sure that we're not allowing for development in that scenario, but if again, if the wave is just two inches and it kind of dissipates, I think, though the policy call is at this point, we're not going to say you can't build that structure because it's not going to necessarily impact habitation or the structure from being, it's existing there for a certain amount of time, so it's really this balance of what's the risk, what's the data, and I think it's a bigger, broader call. But again, for this particular proposal, this is a second structure, and this is a structure located more mauka in back of an existing structure, that is closer to the shoreline. And so, I think in this, you know, we're kind of really looking at it in for this particular structure. I think again there are good concerns that were brought up by the, the public testimony that we would want a little bit of opportunity to work with the applicant or even having to be able to for the applicant to be respond today. If there's any possibility to work on some of the elements, design elements to lessen any impacts to the view plains or the just if there's any issue there's also the issue that the size of the structure is proposed, so if there's any we would, you know, under the SMA guidelines what we would like to have an opportunity to work with the applicant.

Ms. Streufert: Just a question about, if you have an inundation, is the septic system better than a cesspool or...

Mr. Idica: Nowadays, nowadays, the...well, you could look at it like if a septic tank is underground and it rains, right, the water it doesn't enter the tank unless there's something really faulty with the system. Same thing with an annual wave run up, it'll just come up maybe stay there for like, a day or so, and then it'll probably recede back or evaporate.

Ms. Streufert: Okay.

Mr. Idica: Yeah. So, that's how we kind of like look at the septic systems.

Chair Apisa: Cesspools are banned, you know.

Ms. Streufert: No, I understand that. I was just wondering about how (inaudible) handling that, I don't know anything about it.

Ms. Cox: (Inaudible).

Chair Apisa: They do aerobic septic systems...

Mr. Idica: That one I would probably have to defer to the applicant. It does note on the plans, septic system, but the type, not to sure.

Chair Apisa: Good question. Thank you. Is it maybe time to call the applicant up?

Ms. Otsuka: Can I just...

Chair Apisa: Oh sure.

Ms. Otsuka: There's a letter dated July 1st from SHPD, requesting a archaeological monitoring plan to be submitted and accepted prior to issuing permit. So, doesn't that kind of hold us back?

Mr. Idica: That's what we usually do, Commissioner Otsuka, is we will, at the time of building permit submittal, we will hold that building permit until all the regulations and a concurrence letter is submitted, submitted by SHPD. So, we definitely, we will hold it until we know that SHPD will issue us a letter saying that county permitting process may continue.

Ms. Otsuka: Okay, so, it's not our responsibility. (Inaudible).

Mr. Idica: In a way it is. We kind of are responsible, make sure we have that concurrence letter submitted.

Ms. Otsuka: (Inaudible) department.

Mr. Idica: Yes, yes.

Ms. Otsuka: Not the (inaudible).

Mr. Idica: That is correct.

Ms. Otsuka: Yeah, okay. Thank you.

Chair Apisa: Any other questions or comments before we have the applicant come up? Would the applicant please come up. Identify yourself for the record.

Mr. Jonathan Chun: Good morning, Jonathan Chun on behalf of the applicant, Bruce Holdings, Inc. Want to make sure that you don't confuse me with Ian Jung, who's the one that filed it. We get confused so often. Anyway, also with me is Matt Schaller, who is the architect in this project. I'm going to leave it to Matt to answer some of the questions that have been asked, but I just want to address some of the questions that I'm, for example, the last one on the archaeological monitoring plan, that is correct, the applicant is currently working on that, they're going to be hiring a consultant. The consultant will be doing the archaeological monitoring plan as required by SHPD. Not a dispute on that and the regular process is that once the archaeological monitoring plan is approved because of the SHPD has to approve it, they will send a letter to the department indicating that there is approved archaeological monitoring plan at that point in time, Planning then will release the building permit for, or sign off on the building permit and then we can go there. But yeah, nothing will be done on any of the permits until SHPD approves the archaeological monitoring plan. The flood zone, yes, we are aware it did, the initial application indicated that it could have been written a little better, but it noted that the part of it is in the AE, but the actual development site as noted in the application is in the VE zone and so it was designed to be in the VE zone and to meet the VE, oh VE is the tsunami, it designed to meet the tsunami requirements, which right now is the stricter one, which is the BFE, the Base Flood Elevation, plus one foot. So, we're over the base elevation plus one foot, and designed to meet that requirement, and I believe that the architect can testify as to the work he did to revise it to make sure that it met the BFE plus one. So, I believe a lot of the questions I think were good questions and I'm going to ask the architect to address some of those questions and to answer those concerns raised by the Commission. Mr. Schaller.

Mr. Matt Schaller: Thank you very much.

Chair Apisa: If we start out, Commissioner Strafford had a good question about the waste disposal. So, can you start with that, if you don't mind?

Mr. Schaller: Yes, I'm not responsible for doing the IWS it is a regular IWS Individual Wastewaters Disposal System with the leach fields and a septic tank. The plans for that were being developed by another engineer and it is in the vacant portion of the lot between the existing house and the new house to the west, on the west portion of the lot, it is a large vacant area there, and that's where the septic, leach field and the septic tank will be located.

Chair Apisa: Is it a shared system with the two buildings?

Unknown Person: No.

Chair Apisa: No.

Mr. Schaller: Individuals for each residence. The other residence has theirs in place. This will be a new one that's constructed with the new residence. The other item that came up was the footings that were located outside of the area where many of the trenches were dug, the, my client, the owner, applicant had a conceptual plan, if they came in with originally, and presented it to the archaeological survey people, who did the survey, and the preliminary plan that they had showed the house in a slightly different location than where it originally ended up. Several reasons for that, the first one was, the first assessment for the shoreline setback, came in at 66 feet and that was just a preliminary assessment, and so the house was located based on a 66-foot set back. The final Shoreline Setback determination came in at 88 feet and the house had to be relocated, and it actually had to be shrunk, we had to take out literally four feet out of the middle of the house to make it comply because we had to move it to a narrower part of the lot and relocate it because of those constraints. So, that is why the footings as depicted now are slightly outside of where the trenches were originally dug. But with the archaeological monitoring plan that will be in place, and they'll have a archaeologist on site during the excavations and that should be mitigate those concerns. The second item that came up was the view plain to the ocean. If the commissioners might take a look at the map, you'll noticed that behind this lot is not the ocean but it happens to be part of the Hanalei Colony Resort, so there's really no view plain to the ocean through this particular lot, that view plain is to the backside of one of the Hanalei Colony Resort buildings. The ocean view is actually to the side, which is to the lot next door to this particular lot, and that's actually quite honestly the view plain that (inaudible).

Mr. Chun: If I can reference. If you look at the application, Exhibit C.4. You will see an area view of the property, and I think what Mr. Schaller's referencing is on the right side of the property. Unfortunately, C.4 is not labelled as the subject property, but the right side of the subject property, that side, that boundary goes straight into the Hanalei Colony Resort building, so if you look from Kuhio Highway down the right or the eastern boundary of the subject property, that goes straight, the view plain is straight to the back of a building of Hanalei Colony Resort. It is the western though, I mean, and that's what Mr. Schaller was saying, it's the western boundary of the subject property that has a direct ocean view through that view plain, and so, Mr. Schaller was explaining that that was what he was trying to preserve that plain, so...

Mr. Schaller: Thank you. The other items were when we first had a conceptual plan presented to me and then during the modifications of the home because it's very difficult to put a house 14 feet in the air, and structurally, and so, when we were reducing the size, we actually were allowed to reduce the number of columns, which also reduces the impacting of the site, and we managed to reduce the column count by 12 from the original design. I managed to increase spans and reposition some of the columns in order to reduce the number, which definitely is a good idea and allows for viewer, more open space underneath, but again, we're still 14 feet in the air, so somebody driving by it on the road actually will only see the bottom portion and the front yard and the side yards of the property.

Mr. Chun: So, if I may, I believe what, and going back to the trenches, so it is correct that the trenches right now as we're developing does not exactly follow of the footprints of the current design of the house or the footings. And like I said, Mr., the reason why that was done, it was, that was based, the trenches, were based upon an earlier design. In addition, if you would note, if you do look at the archaeological report that was attached to the application, and I think that was Exhibits F, and page 24 of Exhibit F indicates, and it shows that the place of the trenches. T6 was

a trench, that's not, obvious that's not a footing for the building, but that's where approximately the septic systems will be going and that's what one reason why a trench was put there, not because of the building, but that was where they're anticipated a septic, and so it would be wise to try to see if there is any near the septic system, or the area where the septic system is going to go to figure out whether or not, you know, there are any iwi's buried there. We do, I did review the comments by Ms. Diamond, I do appreciate her views and we did take that into consideration. I did agree with her, and just this morning, I said yeah, yeah, I looked at her, and it says in the original application, the square foot of the house is 4,000, it is not a 4,000 square foot house. The house itself as currently as indicated in the supplemental application or the exhibits submitted by Mr. Jung, the actual house now is 1,000, where is it, I have it written right over here, 1,682, yeah, 1,682, not 4,000. Ms. Diamond was correct that there was a discrepancy and so I wanted to clarify it for the commission that the house is not 4,000 square feet. It is only 1,682 square feet. In comparison, just to give you a comparison, the existing house on the property is 2,299 square feet, which is which is larger than the proposed house, so the proposed house is being asked is, being asked is, being asked for is smaller than the existing house in terms of square footage. The concern raised in terms of, well, it's bigger than what the neighborhood has, and their concerns raised by that. And again, I do appreciate the fact that it is Wainiha, oh Ha'ena, it is, it is not a resort area, per se. So, I did, looking at the county zone records in terms of what are the house sizes in that area based on the county zone record, you know, for example, it is, and the 1,682 is within reason of what is also in there currently existing in the neighborhood. For example, next door and TMK 5-8-011:054, it's a 1,276 square foot house, two bedrooms, 2 bath. Next to that 5-8-011:012, is a 1,942 square foot house, and I believe that was 3 bedrooms and three baths, and next to that on 5-8-011:010, is a 2,106 square foot house, which is a three-bedroom 3 bath house also. So, the 1,600 and, you know odd number is well within the reason in terms of the immediate square footages of the houses in that area. Across the street from the subject property across Kuhio, not street, Kuhio Highway on TMK 5-8-011:026 that house is 1,500 square foot, 3 bedrooms, 2 bath, and right next to that one is 5-8-011:025, that's a two-bedroom, 2 Bath, 1,232 square foot. So, within the immediate area, 1,600, you know, is close, is not the smallest, I would say it's not the smallest house, it's not the largest house either, but it's within the range of what you find in that area. And these are based upon the County of Kauai's real property tax workers themselves. I'm not making it up, that is (inaudible). And if you go further down the road and I would say, and I would agree with Ms. Diamond that further down the roads, not quite that neighborhood, but further down, in that area, pass Hanalei Colony Resort, the houses do get bigger. In fact, there's one 2,000 square foot house pass Hanalei Colony Resort, and there's a few of those houses. So that's what your neighborhood looks like right now, not because of what the client is doing, but that's what exist there now. So, and I, you know, so as Mr. Schaller indicated earlier in his testimony, you know, it was designed to be a bigger house originally, but because of the Shoreline Setback of what it needed to be done, and I think there were concerns with Ms. Diamond did raise in terms of the view plain, at least on the right or western side, that houses was reduced, and I don't know what the first (inaudible) was, but it was reduced to 1,600 and so square feet. So, I mean that was an attempt by the applicant to look at those issues. It was not like it was totally ignored. If the Planning Department wants to discuss with Mr. Schaller some more, I believe Mr. Schaller would be open to discussing that with him. So, those are what's, you know, what is being proposed right now. We don't believe it's really out of the ordinary. We don't think it's extraordinary out of character with the neighborhood, the design itself is within reason, that



plantation style, it's within reason of what this is actually going there. The concerns based on Ms. Diamond is a legitimate concern regarding lockouts. I believe no one wants lockouts. Planning Department does not want to see that and I'm sure they will let us know if they'll see a lockout. There are, from my review of the plans and it can be confirmed by planning, there are no lockouts right now on that, they're all interior entrances or entrances, or what was the entrances, or connections between all the rooms. So, there is no room that cannot be entered in only from the exterior. That would be a lockout, so that doesn't exist right now. There's no vacation rentals allowed on any of these properties, either existing or the proposed, so that would not happen. And if it happens, it would definitely be a violation, the two stairways I can see Ms. Diamonds point, but you know from the practical point, I think it's a safety issue that you have two potential exits. If something happens, either one and then the fires at the bottom of that stairway, you can jump, but that's about it, and I don't think that would be a good idea. So, I think the architect rightfully, and the owner rightfully supported that as we have two separate stairways to allow for a safety issue for exiting the top of that building. And again, that's not a lockout, it does not lead to a lockout. So again, those comments I think were made by Ms. Diamond, I believe they were legitimate comments, I think there were also good reasons for them to have done what they did. So, I just want to bring those facts out to the commission for their consideration. Also, yes, as pointed out by Ms. Diamond, it was correct the first SSD indicated was an ADU, later on, it became aware, the applicant became aware that the lot itself is large enough to support two dwelling units because of the zoning. I believe they probably thought the zoning was something else, then what it was. So, because of the zoning, it allowed for two dwelling units rather than ADU, and so it was changed, the SSD added as an ADU. Now this application the application shows it as a permitted under CZO, second dwelling. So, the question that really, I think that was brought out today is, can the design of the building be brought in, so that it meets the concerns of, I believe the architect has done what he could to meet those concerns about, at least preserving on the western side of the boundary and looking towards the ocean, where you will have the ocean, I think he's looked at that and landscaping can help on that, I believe we could probably do that. I'm not sure and I can't talk for the architect, the owner, but if planning has a concern regarding the bottom floor, maybe they could look at that, but again, if we did that, you probably just stare into the other building anyway, so we could (inaudible), but it's worth taking a look at, but I just want to let the commission know that the planning of this building with the architect, some of those concerns were considered, and we're taking consideration as best they could. So, if the commission or the staff has any questions, I'm sure Mr. Schaller would be open to answering them.

Chair Apisa: Commissioners?

Ms. Cox: I have a question about some of Caren Diamond's concerns that you didn't address. I mean, you sort of did, but...the requiring ground penetrating radar studies, because the original trenches weren't where the footings are going to go and there, there have been iwi discovered nearby, would the applicant be willing to actually do penetrating radar study?

Mr. Chun: I mean...

Ms. Cox: Before rather than waiting, I mean, Caren had the point of if you do have monitoring, it's already happened, right, you've discovered them, so I was just wondering.

Mr. Chun: Yeah, I would, I mean I'm not discounting that concern. I'm not familiar with ground penetrating radar or who does it and, you know, how many machines we have on island, if it is on island, but I think it is worth something as we go forward to discuss and I think that is something that probably we're going to ask our person doing the archaeological monitoring plan maybe would that be something that from the archaeological point of view, would that be worthwhile doing? I have no, personally, I have no idea how it's done, how much it costs, the availability of it, but I think that's a worthwhile question to ask the person doing the AMP, whether that should be put into the AMP. I think that that's a reasonable suggest for that, yeah, that's the archaeological monitoring, and we use all these acronyms, sorry.

Ms. Cox: Yeah, I know what they mean, right.

Mr. Chun: Okay. And that would requires to be approved by the department, SHPD...

Ms. Cox: SHPD.

Mr. Chun: ...before that. So, that would be a legitimate question to ask our person doing the archaeological monitoring plan is, whether it would be wise or recommended to do a radar or ground penetrating something, prior to doing that just to make sure.

Mr. Ako: If I can follow up on that. Do you know that if you do that radar penetrating method, that you would also need to have a monitor on site during the actual construction, do you need to do both? I mean, can you just do one, I mean just the radar penetration? No? No?

Mr. Chun: I will leave that to the SHPD to determine whether or not, but you know, you're asking the not too smart attorney about whether or not iwi would be discovered by ground penetrating radar...

Mr. Ako: Yeah.

Mr. Chun: ...I'm not sure.

Mr. Ako: Well, obviously this Commissioner doesn't know either, so...but okay, thank you.

Mr. Chun: I will not go down that road, Commissioner Ako, but yeah, I mean that is again I would say that is a legitimate question. I leave it to the people to know more about ground penetrating radars and what bones or other, I mean, I don't know any bones, right, I mean there, there are bones or other artifacts that could be found and whether or not how well it could be discovered or uncovered with the ground penetrating radar, I really don't know the answer.

Chair Apisa: I think our Deputy Planning Director may have.

Ms. Sayegusa: Oh no, just to chime in, I think the ground penetrating radar we would, we want, we definitely want to check in with the SHPD and have an opportunity to check in, just anecdotally, with other projects that we've been involved with, some feedback we've received was, you know, some and in some circumstances, it really depends on who or how it's being done and there's some, there's some, the feedback was that there could be some inaccuracies. So, we just want to make sure and check in with SHPD to see if it, you know, in the field if this is a

mechanism or strategy that's, you know, readily used and whether there's even availability of firms or equipment to be able to do such work, but I think it could be an opportunity going forward, I think you know, assuming that it is a viable method to look at that type of mitigation strategy going forward, especially in areas where it's very vulnerable, like, you know, certain areas that we know they're likely to, there's a high likelihood that there are burials, and so, it's something that we definitely, it's a very good point, something that we want to, you know, be in a position to look at implementing the future, but we want to make sure we check with the professionals or the folks who are in the field to know that this is a viable method.

Ms. Streufert: I have another question on the engineering report indicates that there is a driveway, or two driveways intended, but it is not your plan, and that might have an impact upon the land coverage that you have.

Mr. Schaller: The plans indicate a gravel driveways as the existing home has a gravel driveway that is beautifully covered with grass now. The new driveways is planned to be a gravel driveway that will probably be beautifully covered with grass overtime as well, so the intent is a gravel driveway at this time.

Mr. Chun: And I apologize, I was supposed to cover that also. Yes, it is going to be, it is currently a gravel driveway. There are no plans right now to have it paved and I would represent that in the, if that ever changes, I will represent that that would be need, the applicant would need to come back for a separate SMA (inaudible) middle minor for that, right, I mean...

Mr. Idica: Yes, (inaudible).

Mr. Chun: ...because it would not be covered under this.

Mr. Idica: That is correct.

Mr. Chun: ...at all.

Mr. Idica: It will probably be under reviewed as a separate structure. If it's over 200 square feet.

Mr. Chun: I don't know how big is it.

Mr. Schaller: It might be less than 200 square feet because it's (inaudible) very close. It's a very small driveway, but at this point it is indicated to be gravel, and any future changes would have to be in the future changes.

Ms. Cox: I have a question. I think it's more for the department rather than the applicant and it's again looking at Caren Diamond's concerns. The existing house, which it is probably going to be done in by sea level rise, all indications are, and so she is, was suggesting adding a condition that that house be removed when the shoreline reaches the structure. My understanding is that's because the new house will be further back on the lot, so there's no ability to kind of retreat. What is the, I mean, that's seems like a different situation, it's a different piece other than the permit for the house, so I was just wondering about how (inaudible).

Mr. Idica: Yes, that is correct. As a matter of fact, Jodi and I were discussing this and maybe Jodi can kind of...

Ms. Sayegusa: Sure. Yeah, no, I think, we want to make sure that each of the conditions that we impose, you know, pass muster that, you know, rough proportionality and there's that essential nexus. And so, I think one of the concerns is because this is an application for that, the additional second dwelling, you know, that the current dwelling already exists, right. or that current structure exists, but this is an application for that second dwelling more mauka. They're, you know, having trouble or just, you know, I'm a little concerned on whether there is that nexus between the second dwelling and imposing a condition on another structure that already exists on the property. Although yes, it's it would be, it's good, it'll be a concern and there's many examples of this and across the island, right, where there's already permitted existing structures and waves are coming up and now you're facing erosion, and at that point, we have to work with OCCL, and the land owner, and of course to address how to, how to tackle it, and it's, yeah.

Ms. Cox: (Inaudible).

Ms. Sayegusa: Right.

Ms. Cox: Thank you.

Mr. DeGracia: I have a question for the department, I guess procedurally, I believe we left this item, agenda item open for New Agency Hearing, are we taking action, and what are we doing moving forward...

Ms. Sayegusa: You know, I...

Mr. DeGracia: ...from this point?

Ms. Sayegusa: I think based on the conversation and I think you know and the testimony, we, at this point we still would like an opportunity to maybe work with the applicant and the architect to see if there's any possibilities to, you know, mitigate some of the concerns as far as the views, I understand perhaps the, there is already the response was there on the western area there could be a view plain preserved because that's the straight shot to the, to the coastline, but if there's any opportunity to just even look at the garage and see if there's any opportunity to open it up and further allow for preservation of their new plain. So, I think at this point we probably would still recommend deferral at this point. And then, and then we can also look at, we already did a lot of the analysis on the other requested conditions of Caren Diamond, but we could also allow for additional opportunity for us to fine tune and kind of work with the applicant to see some of the, whether the other conditions could be workable, I mean some of, we kind of analyzed already that, you know, we don't necessarily want to be in a position recommending or imposing conditions on other existing structures, but there's other conditions that are very valid as, you know, for instance, prohibiting seawalls and things like that, that's already prohibited under the law. So, I think at this point, we're still going to ask for a deferral.

Mr. DeGracia: Should we ask the applicant if they're willing to defer this item?

Ms. Barzilai: If I may, we need express consent to wait the 60-day action deadline under the ordinance.

Mr. Chun: The 60-day only stops upon, upon closing of the public hearing. I don't think you're closing the public hearing.

Ms. Barzilai: That's true.

Mr. Chun: Yeah.

Ms. Barzilai: We still have open agency hearing.

Mr. Chun: So, yeah so, Yeah, it doesn't, you know, as long as you keep it open, your clock doesn't start.

Ms. Barzilai: That's right.

Ms. Sayegusa: Right, and this is an SMA permit, so there's no CZO action...

Mr. Chun: Yeah.

Ms. Sayegusa: ...requirements as well. So, but...

Ms. Barzilai: We have a deadline of July 19, otherwise, if we were to close the hearing.

Mr. Chun: If you (inaudible).

Ms. Sayegusa: Right.

Mr. Chun: We're not going close.

Ms. Sayegusa: Right. Yeah. And I mean, the intent is not to prolong it forever, of course, but I mean, I think it's reasonable to just have one deferral and try, to an opportunity to work with applicant at this point.

Mr. DeGracia: What would that action be today?

(Multiple people speaking at once)

Ms. Barzilai: Motion to defer.

Mr. DeGracia: Or are we not taking action, we're just discussing?

Chair Apisa: What I'm hearing is that our deadline to respond is July 19?

(Multiple people speaking at once)

Ms. Sayegusa: No, no, no. There wouldn't be.

Ms. Barzilai: No, because the hearing is open, Chair.

Chair Apisa: Oh, oh, okay. The hearing is open, okay, okay. My mistake.

Ms. Sayegusa: Right. So, just a request to defer this, the consideration of this SMA permit until the next commission meeting.

Chair Apisa: Which is probably on July 23rd would be our next commission hearing.

Ms. Sayegusa: Yeah, I, you know, I got to, I got to make sure and confirm with whether the there's items on the agenda. I think we're trying to; we're trying to manage and juggle things that are kind of ripening. So, but we're not sure if there's still going to be in the second meeting in July. I don't think there might be. So, it could be, so that's why I think the deferral would just be to the next meeting so, which could be in August instead. Yeah.

Mr. Idica: May I?

Ms. Sayegusa: Go ahead.

Mr. Idica: The public testimony. Is it closed?

Ms. Sayegusa: No.

Mr. Idica: Okay. So, wouldn't it be a continuance instead or a deferral?

Ms. Sayegusa: Well, the public hearing was continued or left open, but this action item should be deferred.

Mr. Idica: Thank you.

Ms. Barzilai: I think Romio was asking about how to frame the motion. Motion to be continued.

(Multiple people speaking at once)

Ms. Sayegusa: I would say defer because this is the action item.

Ms. Barzilai: Yeah, and we're gonna actually put it on a date certain, let's say the August Agenda.

Mr. Idica: Okay, thank you.

Ms. Sayegusa: Okay.

Mr. Idica: Thank you for your clarification.

Ms. Sayegusa: Well...okay, that's fine. I mean, if the, so again, the next meeting could be the second meeting in July. I don't, I, at this point I do not think there's going to be a second meeting in July, but don't hold me to it because I think Ka'aina really is managing some of, some things that are that are coming up. So, you know, I would just say the next meeting.

Ms. Cox: Yeah.

Chair Apisa: So, any other questions or discussion? Or else we could entertain a motion to defer to the commission's next meeting.

Ms. Cox: I move that we have moved this Agenda Item, Special Management Area Use Permit SMA(U)-2024-10 to the next, motion to defer to the next agenda, the next commission meeting.

Ms. Streufert: Second.

Chair Apisa: We have a motion on the floor. Any further discussion? Roll call, please.

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Chair Apisa: Motion is deferred.

Ms. Sayegusa: Okay.

Mr. Chun: Thank you, Madam Chair and members of the commission. See you at the next meeting.

Ms. Otsuka: Thank you.

Ms. Cox: Thank you.

Ms. Sayegusa: Okay. Item L. New Business 2.

CLASS IV ZONING PERMIT (Z-IV-2024-6) and VARIANCE PERMIT (V-2024-2) involving a 4-lot subdivision to allow a deviation from the maximum pole length requirement of a flag lot, pursuant to Section 8-4.4(a)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kawaihau Road in Kapa'a, approximately 500 feet west of the Kawaihau Road/Makaleha Place intersection, and further identified as 6501 Kawaihau Road, Tax Map Key: (4) 4-6- 007:058, and containing a total area of 4.669 acres = **MANUEL DeSILVA JR, TRUSTEE.** [Director's report received 5/27 /2024.]

Ms. Sayegusa: I think we can...oh, did you want...is there anyone in the audience wishing to testify on this item? Seeing none, I think we can turn it over to Kenny.

Staff Planner Kenny Estes: Good morning, Madam Chair, and members of the Planning Commission. I will summarize the report for the record.

Mr. Estes read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Chair Apisa: Thank you. The applicant?

Ms. Sayegusa: Sure, or any questions.

Ms. Otsuka: Questions.

Chair Apisa: Any questions of the department before we call up the applicant?

Ms. Streufert: I have a question under...

Ms. Otsuka: Kenny, under agency comments. Did you already receive the reviewing agency's County Public Works Engineering and Department of Water comments?

Mr. Estes: No, I did not receive comments from the Engineering Division and water at this time. However, those two agencies would have an opportunity to comment if this variance is approved and when the subdivision application is routed to their reviewing agencies.

Ms. Streufert: What is the purpose of a maximum pole length?

Ms. Cox: Good question.

Ms. Sayegusa: You know, we're kind of trying to analyze that or trying to try to get the back story of it. I think at the time, it's just, this is a, the maximum was set anticipating that most of these are within the residential zone and we didn't, I think at the time there wasn't an anticipation that there be a very lengthly flag lot. I just, we couldn't necessarily figure out why that was initially set as the standard. I think there could be some reason on fire, you know, fire source, access to fire source, but you know, this is, this again, this is just the an application to vary or the



variance. At the time of subdivision, we'll have to go and get assurance or clearance from the Fire Department to see if there's the ability to fire source or water source to mitigate any fires or anything like that and what other, if not then what's the other requirements to be able to mitigate any fire impacts.

Ms. Otsuka: Because yeah, would be nice if it gets clarified and the footage changes the standards, so, the applicants don't have to keep coming to the commission for approval.

Ms. Sayegusa: Right. Yeah, I think it just, it's not something that typically comes up. I think the more so the standard is it would catch most of the proposals. It's just by nature of how this was laid out and subdivided, it resulted in this very long flag lot.

Chair Apisa: Any other questions for the department?

Ms. Otsuka: I have. I have a question regarding the Condition No. 6, is there any particular reason why the word revised was omitted? That's something we should be made aware of the? The commission should be made aware of. Condition No. 6, the Planning Commission reserves the right to revise and or delete conditions. The word revise is omitted. Is there a reason it was omitted?

Mr. Estes: There's no reason. We can add that in if you choose, if you would like.

Ms. Otsuka: It's actually for the next three.

Mr. Estes: Okay.

Ms. Otsuka: Yeah. Thank you.

Chair Apisa: No other comments. I'd like to call the applicant up please.

Mr. Chun: Good morning, Madam Chair and members of the commission. Jonathan Chun, on behalf of the applicant, along with Macky DeSilva, who is the owner, represents owner the property and also Bill Eddy, who's the engineer that prepared the plans on this matter. We are in receipt of the report, we have no additions or corrections for comments. I believe the report is accurate. We have no objections to No. 6, Condition 6 is a standard condition that the Planning Department normally adds on and, you know, it is something that us, you know, practitioners, we anticipate, and we are aware of that normal condition. That is a very good question that was asked why the pole length and I, that was a question that I asked a long, long time ago and I unfortunately I am one of the older people that worked in this before, the one that would answer that would be Max Graham or Mike Belles, they're older than I am, they might know that that was done back in the 70s, but when I was working with the county, I did ask that question too, like why, and one of the answers I got from the older person than myself was that it was done initially as part of the rec, well, initially the CZO was taken from a mainland company and a mainland consultant and so it was in there, but a lot of the comments on that type of (inaudible) was based upon public safety, fire was one of them, ambulance was another one and there were concerns about the distance the Fire Department had to travel between the public road and the actual house (inaudible), and that's why if you, not if you recall because I'm not going to ask you to think back that long, but there was at one time in the ordinances very specific provision

regarding that the house itself had to be a certain distance from a public road, and it was in addition to this, the pole length thing, but there was all intended to kind of all fit together, but gradually and as correctly stated by the Deputy Planning Director, it really was designed for urban situations and it really didn't work well for agricultural lots because it was taken from, the model was taken from an urban area, but in general that's how it, the county has changed the ordinance over a period of time, the one regarding the distance of the residence from the public road was changed from, taken out of the CZO. This is probably the last thing that probably could be looked at, but to be totally honest it's not a priority because it goes through variances, I mean people do it, it doesn't happen a lot, it does happen, but the variance process does fit well with this type of application of the flag lot restrictions to ag lots. It does fit well with that. So, that's one reason why there's no pressing need to change the CZO on that. I mean you could, but you know, as the staff will tell you, it will takes a long time and effort to change the ordinance so, why, why put more work into it, whether we can do it this way, but from my recollection, being not the oldest person here, that was the reason why the flagpole width and distance restrictions, replaced in the subdivision ordinance originally in 72, I believe. Which I was in high school back then.

Ms. Streufert: Well, if you're Asian, age probably equates to wisdom. So, the older you are, the more wise (inaudible).

Mr. Chun: My grandmother said, wisdom is based upon how wide your belt size is, and I'm working on that one right now. Thank you, Commissioner Streufert. We can answer any other, any other questions, if the commission has, we'll be happy to address them.

Chair Apisa: Any other questions or comments?

Ms. Streufert: So, the Fire Department's concerns about access and water supply will be addressed during the subdivision or during, before, they'll come out before they actually build or anything like that. Is that correct?

Mr. Estes: Yes, correct. So, if this variance is approved, the applicant would submit a subdivision application and that subdivision application will be routed to the Fire Department and other reviewing agencies for review, and they would have a chance to comment, and any infrastructure improvements would be relating to water would be worked out during the subdivision process.

Ms. Barzilai: Any other discussion or are you ready for a motion?

Chair Apisa: Yeah, I'm not hearing any other discussion.

Ms. Barzilai: We got a recommendation from the department.

Chair Apisa: Recommendation. Anything further?

Ms. Sayegusa: No.

Chair Apisa: Okay, recommendation from the department.

Mr. Estes: So, based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2024-6, and Variance Permit 2024-2 be approved as amended, subject to the following conditions noted in the Director's Report with a revision to Condition No. 6, and I can read it for the record, the revision.

Chair Apisa: Yes.

Mr. Estes: Okay. The Planning Commission reserves the right to revise, add, or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.

Ms. Streufert: I move to approve Class IV Zoning Permit Z-IV-2024-6 and Variance Permit V-2024-2, as amended.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Is there any further discussion? Roll call vote, please.

Ms. Sayegusa: Sure. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Chun: Thank you, Madam Chair and members of the commission.

Ms. Otsuka: Thank you.

Mr. Chun: Have a good day.

Ms. Sayegusa: Thank you. Okay. Item L.3. and 4., if I may I think for the purposes of the next two items, this is the Variance Permits on the curbs, gutters and sidewalks, I think it might be clearer or easier to call them both up together if that's okay with you. Oh, sorry. Oh okay.

Chair Apisa: We'll take a 5-minute recess.

The Commission went into recess at 11:21 a.m.  
The Commission reconvened from recess at 11:32 a.m.

Chair Apisa: Thank you very much. Meeting is called back to order.

Ms. Sayegusa: Okay, and I was saying for the sake of efficiency, I think I'm gonna, if I may call Item L.3. and 4. up together and I'll read them now.

CLASS IV ZONING PERMIT (Z-IV-2024-7) and VARIANCE PERMIT (V-2024-3) involving a 10-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the southern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5-004:100 through 109, and containing a total area of 6.2 acres = **TOWER KAUAI LAGOONS SUB 1, LLC.** [Director's report received 5/27 /2024.]

CLASS IV ZONING PERMIT (Z-IV-2024-8) and VARIANCE PERMIT (V-2024-4) involving a 13-lot subdivision to allow a deviation from the requirement involving the construction of curbs, gutter, and sidewalks for a subdivision within the Residential zoning district, pursuant to Section 9-2.3(e)(3) of the Kauai County Code (1987), as amended, for a parcel situated along the northern side of Kahilipulu Way within the Kauai Lagoons project area in Lihu'e, further identified as Tax Map Keys: (4) 3-5-001:027 (Par.) & 168 (Par.), and containing a total area of 4.6 acres = **TOWER KAUAI LAGOONS GOLF, LLC./TOWER KAUAI LAGOONS LAND, LLC./TOWER KAUAI LAGOONS SUB 7, LLC.** [Director's report received 5/27 /2024.]

Ms. Sayegusa: Is there anybody in the audience, I know I think aside from the applicant, I do not see another public testimony at this point. So, I think it's safe to provide, turn it over to Kenny.

Mr. Estes: I'll summarize the report for the record. area.

Mr. Estes read the Summary, Project Data, Project Description and Use, Additional Findings, Preliminary Evaluation, and Preliminary Conclusion sections of the Director's Report for the record (on file with the Planning Department).

Chair Apisa: Thank you. I know, just going back because we started this and not everyone was here, so, if there is anyone, some people have come back now after we have reconvened. If there's any further public testimony on this, does anyone else want to testify just to open it up? I know some of you already have. Okay. Thank you. I just wanted to be certain. Thank you. Questions of the planner.

Ms. Cox: I don't have a question, but I, like the testifier earlier, Ruby Pap also walk along that area regularly and have been walking in the road or on the grass, but I can see the problem is the bike path that, the unimproved bike path is far enough away that if you're going to go left when you get to the end of that and go toward the farm, it's not at all convenient to be on that one that's behind the other the subdivision. So, and plus if, not if, when the subdivisions are completed there is going to be more traffic, so I'm very supportive of the department's recommendation to put a sidewalk. I think it's, I think it's going to be needed.

Chair Apisa: Thank you.

Ms. Streufert: As I understand it, the department is recommending the sidewalk in front of a, of 1 but, not in front of 1A. Can you explain why?

Mr. Estes: Yes. So, the way the layout of the land is for Subdivision 1, it extends essentially from Ho'Olaulea Way where there is an existing sidewalk all the way, the subdivision frontage goes all the way around and passes Ninini Point Street. and continues pretty much the length of Kāhilipulu Way, whereas the frontage of Subdivision 1A, starts from Pohaiula Place, as noted on the map, and it only, it doesn't extend all the way to Ninini Point Street, there's the resident, the subdivision on either side of Subdivision 1A, there's property that's zoned open, and that's, part of it is a golf course and a green space, so the subdivision ordinance requires the applicant to construct sidewalks along the subdivision frontage, so if that was the case, then the sidewalk would only be from Pohaiula Place along the subdivision frontage and end at the subdivision frontage and not go on entire length of Kāhilipulu Way.

Ms. Streufert: Would we, would we require them some other kind of walkway that would continue this all the way through or is this, you're just going to leave it like...

Mr. Estes: We, yeah, we could in discussions with the applicant that could be a possibility, to require sidewalk along Subdivision 1, one the side of Subdivision 1, which would extend from Ho'Olaulea Way to Ninini Point Street, however, I think if a sidewalk, a sidewalk on the side of Subdivision 1, since the subdivision frontage already expands the length of Kāhilipulu Way it would be kind of more appropriate to have a sidewalk on that side as through the requirement of the of the subdivision. They would have to construct a sidewalk along that full length of the roadway.

Ms. Sayegusa: I think, so just the one at the 1A and the subject of the permit and the variance and the subdivision application for Subdivision 1A, only, doesn't expand from Ho'Olaulea Way all the way to Ninini Point Street, and so there is concern. As far as satisfying the suggestion or the comments that were given by the Engineering Division, their aim was really to make sure that there is connection between all the points and so it makes sense for us to look at more so the

sidewalk on along one, Subdivision 1, that subdivision and the subject of the subdivision itself expands from Ho'Olaulea Way all the way down to Ninini Point, so I think based on that, that would create a cohesive connection between Ho'Olaulea Way all the way through Ninini Point, which is a, I'm sorry, I didn't....Sorry. Which is a, the multi-use path and so there's that. I think there is something that we did come out, that did come up and we hope to catch it through the subdivision process, was to ensure that, 1A also had a connection to that one sidewalk, so hopefully you know, through, as we go through further the subdivision process, although we're recommending that in lieu fee for Subdivision 1A hopefully we can get, seek further guidance through engineering and then also work with the applicant to ensure that there is also a connection for 1A down to that sidewalk that we're going to require along Subdivision 1.

Chair Apisa: Any other questions of the director or we could have the applicant come up.

Mr. Gary Siracusa: Good morning, Madam Chair and Commissioners. For the record, Gary Siracusa, Director of Construction at Hōkūala. Happy to answer any questions you may have.

Ms. Streufert: Do you have any objections to what was just discussed here, with the 1 and 1A?

Chair Apisa: Regarding the sidewalk.

Ms. Streufert: The sidewalk, and also at some point 1A would also be required to have a sidewalk that would connect.

Ms. Cox: No, it's not.

Ms. Sayegusa: A connection between to have, from that one subdivision down to the other sidewalk.

Mr. Siracusa: If I'm understanding that part of it would be, where Pohaiula Place is, you're saying connect that into, up to Ho'Olaulea Way, correct? On the west side.

Ms. Sayegusa: I think if there's a means to further to visit how the resident, eventual future residents of 1A will be able to also link up to, yeah, Ho'Olaulea Way and then access the, you know, go through the street and then go through the other side of along Subdivision 1 to that sidewalk that's going to be required, or if there's a way to have a crosswalk at some point between 1A and Kāhilipulu that would connect to that sidewalk.

Mr. Siracusa: Thinking about the logistics, I would agree that at the east end of 1 and 1A, well, first of all, let's take the frontage along Subdivision 1, that will have a continuous sidewalk all the way from Ho'Olaulea fronting Subdivision 1, and then intersecting up with Ninini Point Street, that's understood by us. As to the connection, and for 1A to Subdivision 1, to get to that sidewalk we have an existing crosswalk at Ho'Olaulea, we can put in another crosswalk there and we could also improve, put a crosswalk in at the far east end as well, and Ninini Point Street. Once that path system with the county as well comes in, the frontage, sidewalk frontage at Subdivision 1 is going to be the more sensible connecting point for all the pedestrian and bike traffic that will access county and our rather robust pass system through the resort.

Chair Apisa: I would just like to confirm the width of the sidewalk. I mean, it's going to be a nice new modern, wide two passenger passing sidewalk.

Mr. Siracusa: Two passengers?

Chair Apisa: Well, I mean not two passenger, but two people can walk side by side or two people going in opposite directions, you don't have to step aside, I mean, it's going to be adequate with.

Mr. Siracusa: Yeah, it would match up our other subdivision walkways right now that I believe are four feet, Kenny?

Mr. Estes: I think right now, the design standards from the Engineering Division, it's a minimum of five feet, five-foot width (inaudible).

Chair Apisa: I think that...

Mr. Siracusa: I have no objection to five for this frontage along Subdivision 1. If that's the recommendation from DPW.

Chair Apisa: Thank you for clarifying.

Mr. Siracusa: Thank you.

Mr. Estes: It will be a minimum of five feet, but that would be worked out during the subdivision process when the construction plans are, when the applicant comes in for construction plan approvals.

Chair Apisa: Thank you.

Mr. Ako: Madam Chair. Perception is it's a real big deal when you're driving and, you know, for safety and for just the way things look, yeah. Do you know if drivers drive faster with swales or with sidewalks? Because I know you've got the roadway, and some other places, and you get your bike way, and you get the buffer zone and, you know what was once this two way highway, now it's really wide open and cars feel like they can go really fast, very safely, they can feel like, so, I'm trying to wonder whether if there's a difference between swales and sidewalks and the connection with the speed that people drive cars.

Mr. Siracusa: In our resort, my personal opinion, it doesn't make a difference, we've got folks that are just in a hurry whether there's a curb and gutter or non-improved road edge, and it's our loss prevention folks are on the road, sorry for the pun, continually, as well part of their rounds slowing people down, and find them both on again, roads without curb and gutter, as well as in our resort area where it's a fully improved curb and gutter as well. Like some other of the resort developments, we have even gone to the extent of speed limit signs that are posted at 14 miles an hour, hoping well, maybe that kind of registers with them. It's a little bit different or there is a slower speed limit through the resort, but you folks that are in a hurry just to...it's human nature. They're just going to ignore it. Fortunately, most folks are cognizant, and the resort that they're not the only folks on the road.

Mr. Ako: I'm just curious to if you are willing to pay the fee, yeah, in lieu of making the sidewalks, what's the theory beside, between not building the sidewalks, I guess.

Mr. Siracusa: Personally, yes, as far, on behalf of the resort as well, we find that hardening of the surface on both sides to be redundant and everything in that general area is Subdivision 4, which is the intersecting subdivision there, and the golf course are all soft edge and have got maintained the, rural field, and that that's in concert with that subdivision ordinance and the goals of subdivision ordinance, and in addition to public safety is protect the topography and the landscaping as you will. So, that's what we're looking at and also being lead sensitive in terms of more hardened surfaces and just in general out there trying to preserve what we have in terms of grass and landscaped areas, and again having one in our estimation would serve the purpose versus one each side.

Mr. Ako: Thank you.

Ms. Cox: I want to thank you for explaining the 14 mile an hour. I've been wondering about that when I see it there. And also, I guess I just want to compliment the resort in general, for making it so accessible to the public and so welcoming and such great paths. So, seems like this sidewalk, your willingness to put that sidewalk in would really just continue the legacy you already have.

Mr. Siracusa: We would appreciate your comments, Commissioner, and are in agreement as well that the frontage on the Subdivision 1 side will, again enhance safety.

Chair Apisa: Thank you. Any other questions or comments? Are we ready for the department's recommendation?

Ms. Streufert: 1A is and R2 region and it has, and your, and it's over a golf course area and then there's another R2 area a little to the, I guess it's to east, is that correct? If I'm looking at this.

Mr. Siracusa: This Subdivision 1A and Subdivision 1 are actually R4, but we're subdividing them as 1/3 acre lots, not quarter acre. Is it the subdivision that's above?

Ms. Streufert: Yes, there's an R2 area here.

Mr. Siracusa: Oh, I think that's what I was referring to as Subdivision 4, which is 24 half acre lots.

Ms. Streufert: Do you anticipate at some point in time that you will actually be developing that area?

Mr. Siracusa: That's fully developed now.

Ms. Streufert: It is developed.

Mr. Siracusa: It's in the 85% sold, approximately.

Ms. Streufert: And that's not going to have any connection to A1, or 1A?



Mr. Siracusa: Correct. As far as any type of a sidewalk improvement there is the roadway that goes into Subdivision 4. Subdivision 4 terminates as a cul-de-sac. And you're correct, Commissioner, that is R2, that subdivision.

Mr. Estes: Commissioner Streufert, if I could clarify, that the curbs, gutters and sidewalks requirement is for residential properties of R4 or greater. So, in reviewing the subdivision, it's Residential R2, so we couldn't require the curbs, gutters and sidewalks requirement.

Ms. Otsuka: Can you help me understand? I think it's time for lunch. I'm getting fuzzy. The applicant is requesting, wait, the applicant wants to deviate request to waive requirement of sidewalks, so originally it was supposed to be two sidewalks, yeah, so, and you're asking for no sidewalks or you're asking for one, or we're asking for one.

Ms. Cox: We're asking for one.

Mr. Estes: If I'd like to clarify so, in both the variance applications the applicants was, is requesting in the application to have a waiver for sidewalks for both subdivisions. However, in reviewing the applications and speaking with the applicant, the Planning Department is recommending, and the Engineering Division is recommending one sidewalk.

Ms. Otsuka: One fronting. Okay.

Mr. Estes: One fronting, yeah.

Ms. Otsuka: Because when we make a motion because, so the department is recommending and it is being approved and preliminary recommendation #1 does state, the applicant shall construct the sidewalk along the subdivision frontage, but if, when, when we approve, if, when we approve this, do we need to verify that they agree?

Ms. Cox: They already did.

Ms. Otsuka: That's my point.

Mr. Estes: Yeah, so for Hōkūala for Subdivision 1, we would keep the condition as is, recommendation.

Ms. Otsuka: Okay.

Mr. Estes: But the recommendation would only be for approval of curbs and gutters and would not be for the waiver of the sidewalk requirement. Because we're having them, we're recommending that sidewalks are constructed along the Subdivision 1's frontage. For Subdivision 1A, our approval would be to recommend, to approve the variance permits as is, but we would amended Condition 1, which I have written up for you that I would read onto the record.

Ms. Otsuka: Okay.

Mr. Estes: That would require instead of constructing sidewalks, it would require the applicant to pay an in-lieu fee.

Ms. Otsuka: I'm sorry, the applicant...

Mr. Estes: Would be required to pay an in-lieu fee. For the required sidewalk construction.

Ms. Sayegusa: So, instead of...

Ms. Otsuka: Instead of...

Ms. Sayegusa: ...instead of constructing the sidewalk, they would, the request would be to pay the fee that would be equivalent to the cost of constructing it.

Ms. Otsuka: I'm just trying to understand how the motion is going to be.

Ms. Sayegusa: Yeah, I think, well...

Ms. Cox: Probably two.

Ms. Sayegusa: ...yeah, we'll probably separate the actions and we wanted to kind of bring it up and have the presentation together, but I think as far as the recommendation and action, we'll have Kenny review, read each separately, the recommendation.

Ms. Otsuka: Okay. Thank you.

Ms. Cox: So, Jodi, I have a question because you were mentioning that the connection, you know having the connection from 1A to 1, the sidewalk on one, can we add that as a condition?

Ms. Sayegusa: We could, I think, or I think the, what we were discussing is perhaps through the subdivision because this is, this is an application to vary from the standard requirements, but when we go back and work with the applicant through the subdivision, hopefully we can seek further comment from engineering on you know, and or work with the applicant to ensure that 1A would have some sort of connection to you know, whether it's to Pohaiula and then eventually down to Ho'Olaulea, or if there's a sidewalk that could connect from 1A to the sidewalk on the other side of the along Subdivision 1. So, I think, I think we could do that through the subdivision process.

Ms. Cox: Okay. Thanks.

Ms. Sayegusa: Yeah.

Chair Apisa: I would like to clarify that as we're talking about sidewalk, we're talking about one side of the street and not both sides.

Mr. Estes: Correct.

Ms. Cox: Correct.

Chair Apisa: Thank you for clarifying that. Further comments?

Ms. Streufert: Would there, as Commissioner Otsuka had requested earlier for the other one, for Condition No. 7, could the Planning Commission reserves the right to revise, add or delete...

Ms. Sayegusa: Sure.

Ms. Streufert: ...so, adding the term, we're getting the word revise.

Mr. Estes: Okay, I can amend that in there.

Ms. Streufert: Thank you.

Ms. Sayegusa: So, I guess with that perhaps we could hear the recommendation for Z-IV-2024-7 and Variance V-2024-3 first.

Chair Apisa: Yeah. We will take action on one, on that one first, and then the other one after action is taken.

Mr. Estes: Correct. So, this is for Hōkūala Resort Subdivision 1. Based on the foregoing evaluation and conclusion, it is hereby recommended the Class IV Zoning Permit. Z-IV-2024-7 and Variance Permit V-2024-3 be approved as amended subject to the following conditions noted in the Director's Report, and the revision to Condition No. 7, which states the Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create, or revoke the permits through the proper procedures, should conditions of approval be violated or adverse impacts to be created that cannot be properly addressed.

Chair Apisa: Any discussion on the department's recommendation, and maybe clarification from the applicant that they are in agreement with the conditions.

Mr. Siracusa: We are in complete agreement with the condition. Thank you.

Chair Apisa: Call for the vote, or I mean a motion.

Ms. Cox: I would like to make a motion, that we approve as recommended Class IV Zoning Permit Z-IV-2024-8, Variance Permit V-2024...

Ms. Sayegusa: 7.

Ms. Barzilai: Commissioner Cox, we're on the one prior to that.

Ms. Cox: Oh sorry. I have the wrong...

Chair Apisa: Item number 3.

Ms. Barzilai: No problem.

Ms. Cox: Where is it...okay. Z, IV, Z-IV-2024-7, sorry, and Variance Permit V-2024-3, be approved according to the conditions as amended.

Ms. Otsuka: Second.

Chair Apisa: We have a motion on the floor. Any further discussion on it? Hearing none, a roll call, please.

Ms. Sayegusa: Okay. Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Chair Apisa: Congratulations. Now moving on to Item No. 4 here on the agenda. For Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4.

Ms. Sayegusa: Can Kenny give the recommendation?

Chair Apisa: Yes, please.

Ms. Sayegusa: Sure.

Mr. Estes: I'll read the recommendation. So, this is for Hōkūala Resort Subdivision 1A. Based on the foregoing evaluation and conclusion, it is hereby recommended that Class IV Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4 be approved as amended, subject to the following conditions, noted in the Director's Report with an amendment to Condition No. 1, that reads, the applicant may use drainage swales in-lieu of raised curbs and gutters, provided that the proposed design conforms to the standards of County Department of Public Works Engineering

Division and is submitted to the Department of Public Works Engineering Division for their review and approval. Additionally, pursuant to Section 9-2.3(e) (3)(c) and Section 9-2.3(e) (3)(c), of the Subdivision ordinance, Kaua'i County code 1987 as amended prior to Final Subdivision Map Approval of Subdivision Application No. S-2024-8, the applicant shall pay a fee in-lieu of the required sidewalk construction equal to or greater than 100% of the cost of constructing the sidewalk as determined by the County Engineering. And also, an amendment to Condition No. 7 of the Director's Report, which (inaudible), the Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts this project may create or revoke the permits through the proper procedures should conditions of approval be violated or adverse impacts be created that cannot be properly addressed.

Chair Apisa: Do we have any further discussion, or I will entertain a motion.

Ms. Streufert: I move to accept the departments recommendation to approve Class IV Zoning Permit Z-IV-2024-8 and Variance Permit V-2024-4 as noted and revised.

Ms. Cox: Second.

Chair Apisa: We have a motion on the floor. Any further discussion? Hearing none, roll call, please.

Ms. Sayegusa: Commissioner Ako?

Mr. Ako: Aye.

Ms. Sayegusa: Commissioner Cox?

Ms. Cox: Aye.

Ms. Sayegusa: Commissioner DeGracia?

Mr. DeGracia: Aye.

Ms. Sayegusa: Commissioner Otsuka?

Ms. Otsuka: Aye.

Ms. Sayegusa: Commissioner Streufert?

Ms. Streufert: Aye.

Ms. Sayegusa: And Chair Apisa?

Chair Apisa: Aye.

Ms. Sayegusa: Motion carries. 6:0.

Mr. Siracusa: Thank you, Madam Chair, commissioners, Jodi, and Kenny as well. Enjoy your lunch.

Ms. Otsuka: Thank you for your time.

Ms. Cox: Thank you for your patience.

Ms. Otsuka: Thank you.

### **EXECUTIVE SESSION (None)**

Ms. Sayegusa: Okay, with that. No need for Item M.

### **ANNOUNCEMENTS**

Ms. Sayegusa: N. Announcements. Again, I think we do, I have to double check whether there will be a meeting, the next meeting in July 23rd. We will give you folks notice if so, if not, we'll see you folks in August.

### **ADJOURNMENT**

Ms. Sayegusa: Okay, and we're on Item O., Adjournment.

Chair Apisa: Motion to adjourn?

Ms. Otsuka: Motion to adjourn.

Ms. Cox: Second.

Chair Apisa: All in favor. Aye (unanimous voice vote). The meeting is adjourned. 6:0.

Chair Apisa adjourned the meeting at 12:06 p.m.

Respectfully submitted by:

    *Lisa Oyama*    

Lisa Oyama,  
Commission Support Clerk

- ( ) Approved as circulated (date of meeting approved).
- ( ) Approved as amended. See minutes of \_\_\_\_\_ meeting.

**DEPARTMENT OF PLANNING**

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

**TRANSMITTAL OF PUBLIC TESTIMONY TO**  
**PLANNING COMMISSION**

**DATE: August 7, 2024**

**PERMIT NUMBER(S): SMA(U)-2024-10**

**APPLICANT(S): BRUCE HOLDINGS LLC**

Attached for the Planning Commission's reference are public testimony for the permit referenced above.

**F.I.A.I.**

**AUG 13 2024**



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**From:** Michael Taylor <mtaylorconstruction@gmail.com>  
**Sent:** Tuesday, July 9, 2024 8:59 AM  
**To:** Planning Department  
**Subject:** Fwd: Bruce Holdings, LLC SMA(U)-2024-10  
**Attachments:** BRUCE.pages

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

**RE: Application of Bruce Holdings, LLC, for Special Management Area Use Permit for Property described as Lot 79-A Wainiha Hui Partition SMA(U)-2024-10**

Response written by  
Renee and Michael Taylor  
5-7084 Kuhio Hwy, Haena HI 96714  
Email: [mtaylorconstruction@gmail.com](mailto:mtaylorconstruction@gmail.com)  
Home phone (808) 320-3590

We are here today not to speak in legalese, but rather to speak from the heart. We are a family who built our home next door to Bruce's property nearly 2 years ago. We purchased the land 14 years ago hoping that one day we could make our dream come true to build our family home in Wainiha and raise our boys in this magnificent community.

My husband designed our home and built it while we lived in a trailer and tent for over 2 years on a neighbor's property.

Now we are thrilled to actually be living in our Wainiha home and are grateful for each day we hear the surf and see the sunrise from our deck.

Our home has become a place for local keiki to congregate and enjoy with our two sons.

But with Bruce's proposed project, this will change everything for us.

The size of his home will completely block out our ocean view and breeze. We are concerned that he might take down the coconut trees that frame our property and provide incredible cocos- a no-no in Kauai to destroy a food source.

**RE: Application of Bruce Holdings, LLC, for Special Management Area Use Permit for Property described as Lot 79-A Wainiha Hui Partition SMA(U)-2024-10**

His vision does not fit in with our neighborhood feel. It seems to be a typical developer's blatant operation of "build big/ sell big" endeavor and it hurts our hearts to know that this sort of project will ultimately taint the humble nature of our Aina.

In addition, his structure is a threat to our home in the possibility of a tsunami. There is much too little space between his home and ours.

We understand that he has every right to build on his land- we simply ask for the following two adjustments:  
1 - that he reduce the square footage significantly  
2 -that he cannot CPR his Ohana structure after his build

We also would like clarification on the placement of his driveway.

It is to be built right next to our property line, which happens to be over the utility easement, which holds the electrical underground vault for three shared properties (including ours) as well as the overhead power lines and low voltage and water lines.

This will block any access for KIUC who informed us when we were building that building in this area cannot be done.

He did initially tell us he would build for his brother but then later admitted to a change in plans- that he would build and sell.

We do hope that you take our concerns into serious consideration and truly appreciate your time.

----- Forwarded message -----

From: **Michael Taylor** <[mtaylorconstruction@gmail.com](mailto:mtaylorconstruction@gmail.com)>

Date: Tue, Jul 9, 2024 at 8:57 AM

Subject: RE: Bruce Holdings, LLC SMA(U)-2024-10

To: <[planningdepartment@kauai.gov](mailto:planningdepartment@kauai.gov)>

To Whom It May Concern:

Attached please find our letter to contest the building of Bruce Holdings, LLC SMA(U)-2024-10 that is to be discussed in this morning's meeting.

Thank you for your time and consideration.

Kindly,

Renee and Michael Taylor

5-7084 Kuhio Hwy

Haena, HI 96714

(808)320-3590

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## TRANSMITTAL OF SUPPLEMENTAL #2 INFORMATION TO PLANNING COMMISSION

July 31, 2024

PERMIT NUMBER: Special Management Area Use Permit SMA(U)-2024-10

APPLICANT: Bruce Holdings LLC

1. Attached for Planning Commission's reference is supplemental #2 information to project's application.

**F.I.A.2.**  
**AUG 13 2024**

**BELLES GRAHAM LLP**

IAN K. JUNG 8626-0  
3135 Akahi Street, Suite A  
Lihue, Kauai, Hawaii 96766  
Telephone: (808) 245-2163  
Facsimile: (808) 245-3277  
Email: [ikj@kauai-law.com](mailto:ikj@kauai-law.com)

Attorney for Applicant,  
BRUCE HOLDINGS LLC,  
a Hawaii limited liability company

BEFORE THE PLANNING COMMISSION  
OF THE  
COUNTY OF KAUAI

In The Matter Of The Application	)	SPECIAL MANAGEMENT AREA
	)	USE PERMIT SMA(U)-2024-10
Of	)	
	)	
BRUCE HOLDINGS LLC, a Hawaii limited	)	
liability company, for Special Management	)	<b>SUPPLEMENT NO. 2 TO APPLICATION;</b>
Area Use Permit for property described as	)	<b>REVISED EXHIBIT "E-1" AND ADDED</b>
Lot 79-A, Wainiha Hui Partition, and further	)	<b>EXHIBIT "E-3"</b>
identified by Kauai Tax Map Key	)	
No. (4) 5-8-011:049.	)	
_____	)	
	)	
	)	

**SUPPLEMENT NO. 2 TO APPLICATION**

Comes now, BRUCE HOLDINGS LLC, a Hawaii limited liability company,  
Applicant in the above-captioned proceedings, by and through its undersigned attorney, and  
hereby submits the following Supplement No. 2 to Application.

This Supplement No. 2 is in response to comments received by the Planning Commission and members of the community at the Planning Commission Meeting, dated July 9, 2024:

**SECTION 1. SUPPLEMENT NO. 2 TO APPLICATION.**

1.1 Supplement to Section 3.3 Revised Exhibit "E-1". The Applicant proposes a second single-family dwelling unit as shown in Exhibit "E-1" and illustrated in Exhibit "E-2". The proposed second single-family dwelling unit is an elevated single-story structure designed in a modern Hawaiian plantation style of architecture. (See, Exhibits "E-1" and "E-2"). The second single-family dwelling unit is noted as 1,682 square feet.

In addition to the development of the Project pursuant to the Site Plan, the Applicant proposes to undertake the following new and/or related work that constitutes "Development" for the purposes of the SMA Rules and Regulations, as shown on the Site Plan (Exhibits "E-1" and "E-2"): (1) Second Single-family Dwelling Unit (Four (4) Bedrooms and three (3) Bathrooms); (2) Storage on Ground Floor; (3) Outdoor Shower; (4) Driveway Improvements; (5) Drainage Improvements; (6) Landscaping; and, (7) related site utilities as shown on the enclosed Site Plan (collectively referred to as "Project") (See, Exhibits "E-1" and "E-2").

The Applicant proposes to revise the Plan Set as follows: Sheet A01 stair case revision; Sheet A02 revised floor plan with the former study noted as a bedroom (with window revisions); Sheet A03 revised exterior elevation with new windows; Sheet A04 revised exterior elevation with new windows; Sheet A05 revised section; Sheet A06 interior elevations added; Sheet E01 revised electrical plans and modified staircase; S01 revised foundation plan and modified staircase; and, Sheet S02 revised floor framing for modified staircase. The revised *Exhibit "E-1"*, attached hereto, reflects changes to revise the floor plan and bedroom count as

well as to minimize the entry staircase to allow views under the elevated residence. Further, the concerns raised during the Planning Commission did not address the facts that the fencing on the neighboring property (to the east) prevents the view to the shoreline and the existing residence on the Subject Property is at the narrowing of the lot toward the shoreline. As such, there is no anticipated impact to the views to the shoreline from the Project given the existing residence and neighboring fence already impacts the view to the shoreline. Attached as an added *Exhibit "E-3"* provides for photographs from Kuhio Highway noting the existing residence and neighboring property's fence line.

## SECTION 2. CONCLUSION.

The Applicant respectfully requests that the Planning Commission:

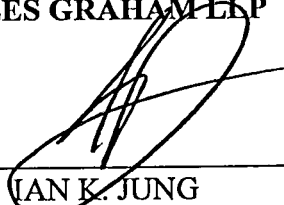
1. Find that the Project will not have any substantial environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.
2. Find that the Project is consistent with the objectives, policies, and guidelines set forth in Hawaii Revised Statutes Chapter 205A and Sections 3.0 and 4.0 of the SMA Rules.
3. Find that the Project is consistent with permitted uses in the SLUC Urban District, the Kauai General Plan, the North Shore Development Plan, and the CZO Residential (R-4) District.

4. Approve the issuance of a SMA Use Permit for the Project on the Subject Property as described herein, subject to such reasonable conditions as the Planning Commission shall impose.

DATED: Lihue, Kauai, Hawaii, 7/29/2024

**BELLES GRAHAM LLP**

By \_\_\_\_\_

  
IAN K. JUNG  
Attorney for Applicants,  
BRUCE HOLDINGS LLC,  
a Hawaii limited liability company

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In The Matter Of The Application Of BRUCE HOLDINGS LLC, a Hawaii limited liability company, for Special Management Area Use Permit for property described as Lot 79-A, Wainiha Hui Partition, and further identified by Kauai Tax Map Key No. (4) 5-8-011:049; **SUPPLEMENT NO. 2 TO APPLICATION; REVISED EXHIBIT "E-1" AND ADDED EXHIBIT "E-3"**

**REVISED EXHIBIT LIST**  
(SPECIAL MANAGEMENT AREA USE PERMIT APPLICATION)

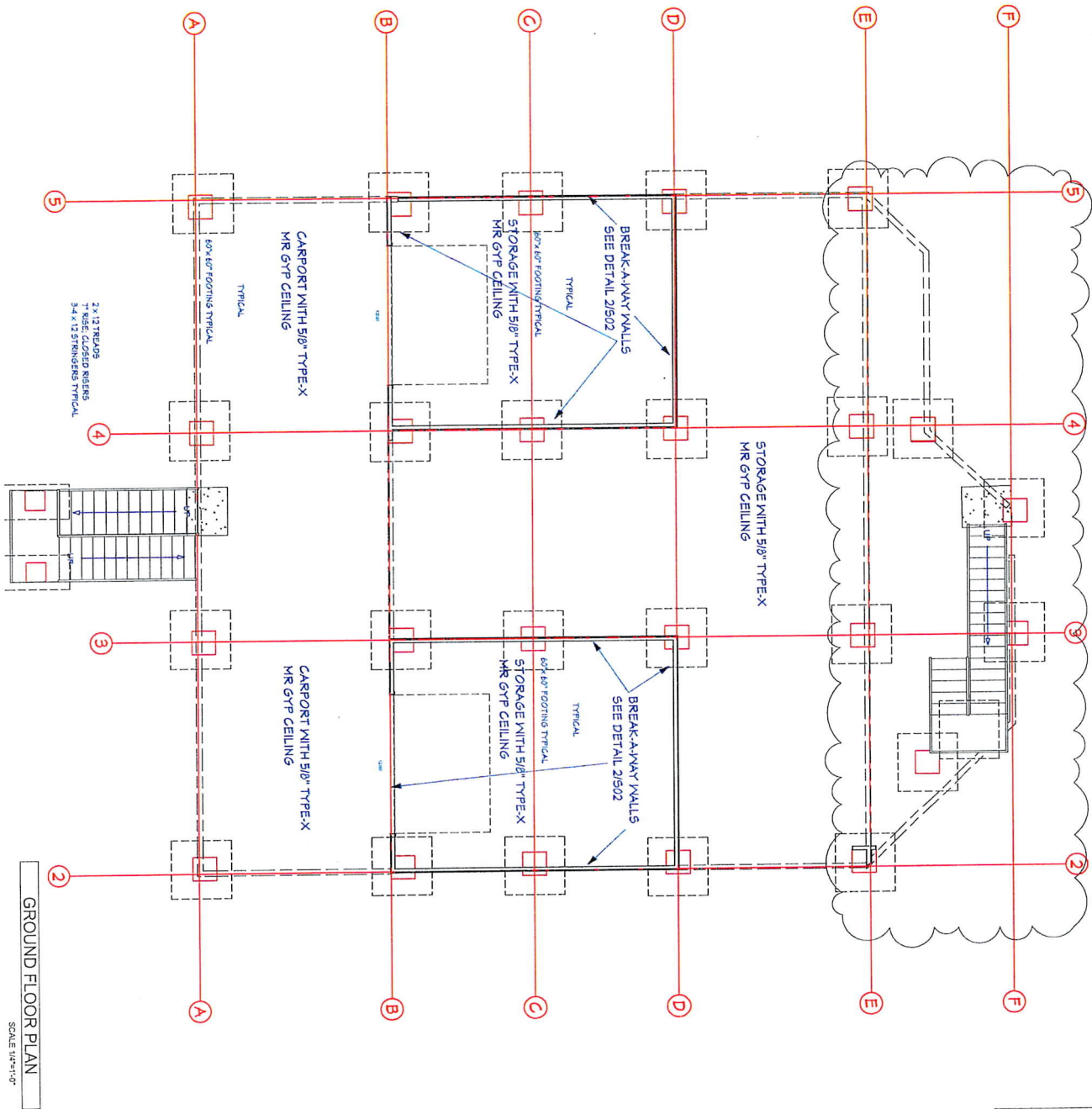
**EXHIBIT**

E. **PLANS**

Plan Set (Revised).....	E-1
Renderings of Project (Existing).....	E-2
Photographs (Added) .....	E-3



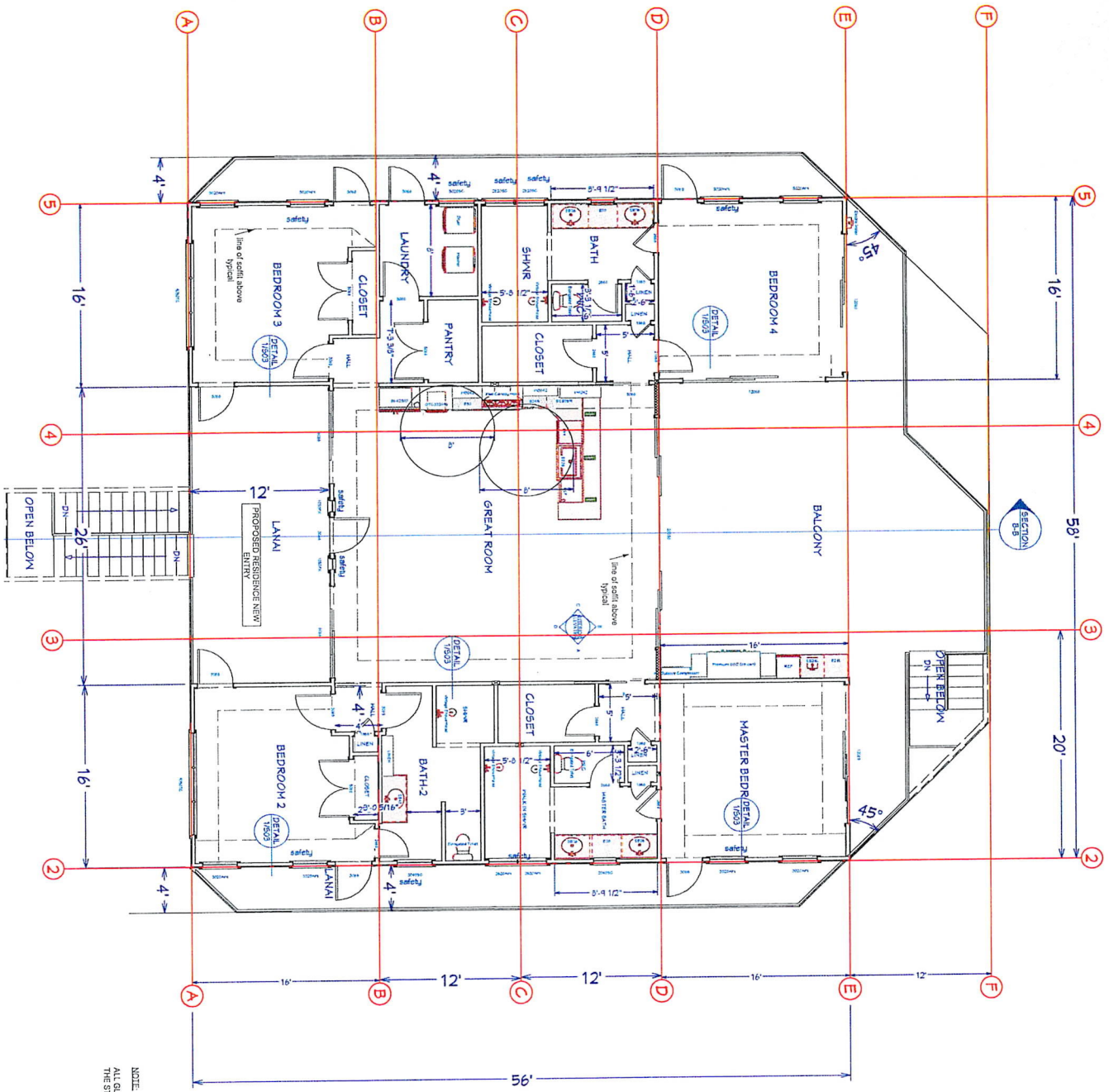




GROUND FLOOR PLAN

SCALE 1/4"=1'-0"

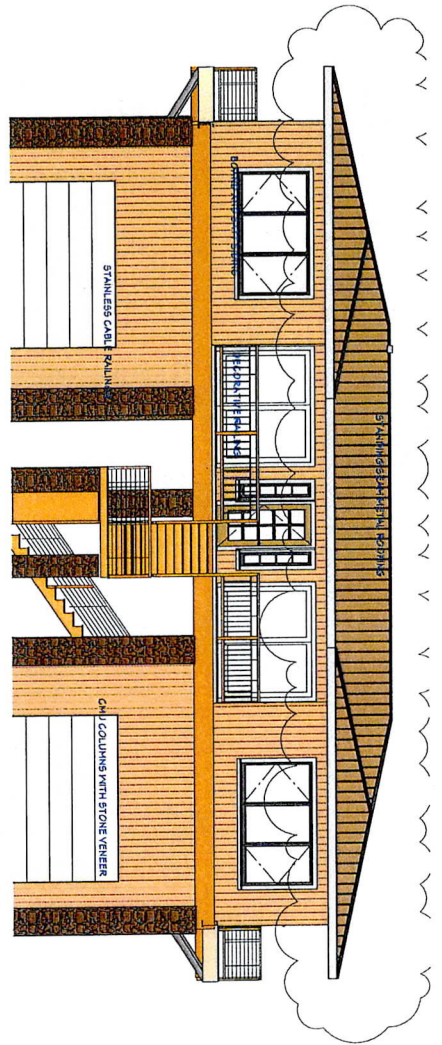
<p><b>A01</b></p>	<p>PERMIT 11-24-23 REV 6-25-24 REV 7-29-24</p>	<p><b>MATTHEW SCHALLER, ARCHITECT INC.</b> P.O. BOX 120 HANALEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697 <b>NEW RESIDENCE</b> TMK [4] 5-8-011:049; KUHIO HWY, HANALEI, KAUAI, HAWAII</p>	<p>THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION. <i>[Signature]</i> Matthew Schaller CP 4-0-07</p>	
	<p>GROUND FLOOR PLAN</p>			



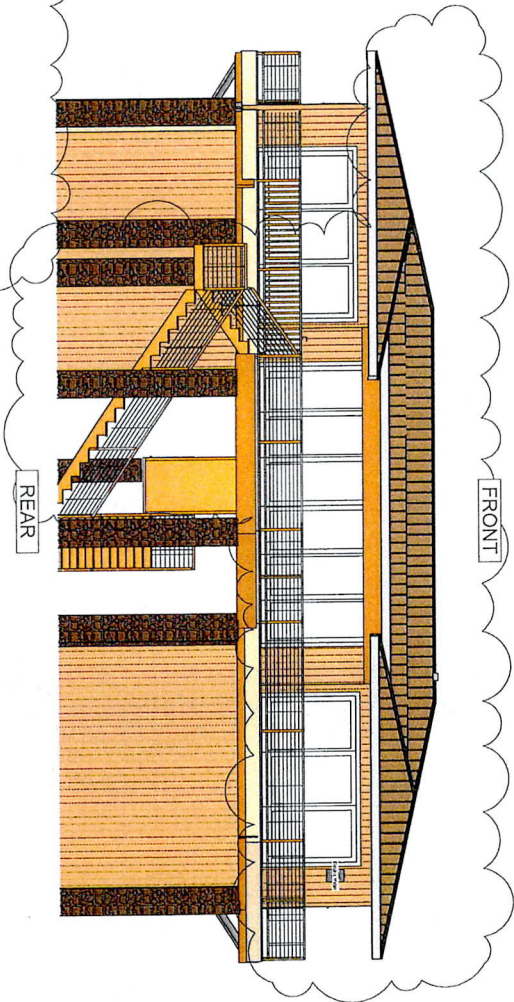
NOTE:  
 ALL GLAZED OPENINGS SHALL BE IMPACT RESISTANT AND SHALL MEET OR EXCEED  
 THE STANDARDS IN SECTION 05110 AND ASTM F 1886

MAIN FLOOR PLAN  
 SCALE 1/4" = 1'-0"

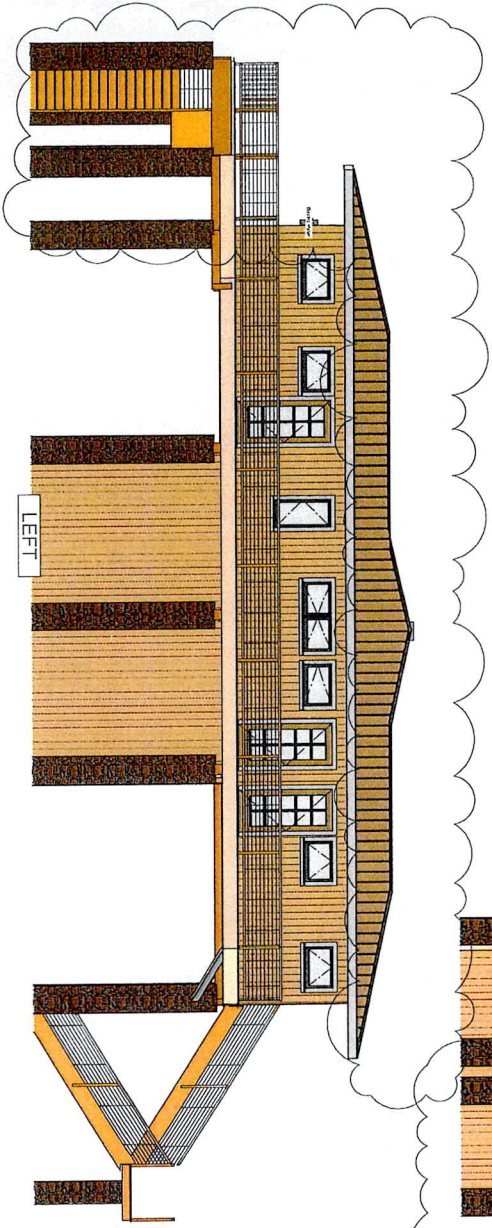
<h1 style="margin: 0;">A02</h1>	<p><b>MAIN FLOOR PLAN</b></p>	<p><b>MATTHEW SCHALLER, ARCHITECT INC.</b>          P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697</p>	
	<p><b>NEW RESIDENCE</b></p> <p>TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII</p>	<p><small>THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT SHALL BE UNDER MY SUPERVISION.</small></p>	



FRONT



REAR



LEFT

EXTERIOR ELEVATIONS

SCALE 3/16"=1'-0"

A03

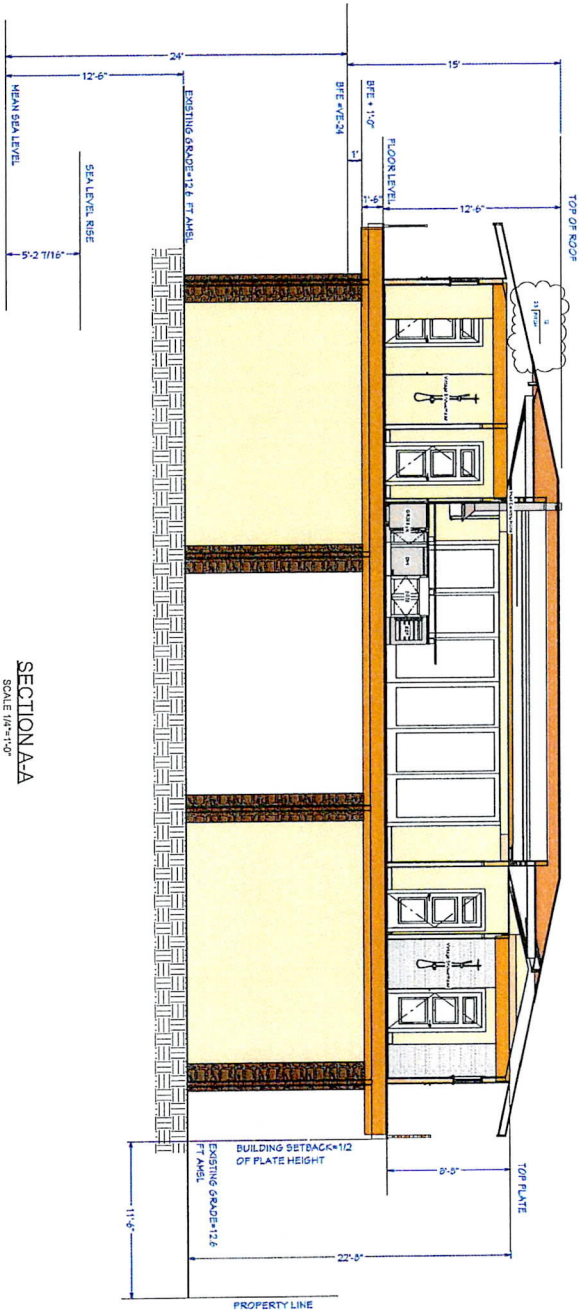
EXTERIOR ELEVATIONS

PERMIT 11-24-23  
REV 6-25-24  
REV 7-29-24

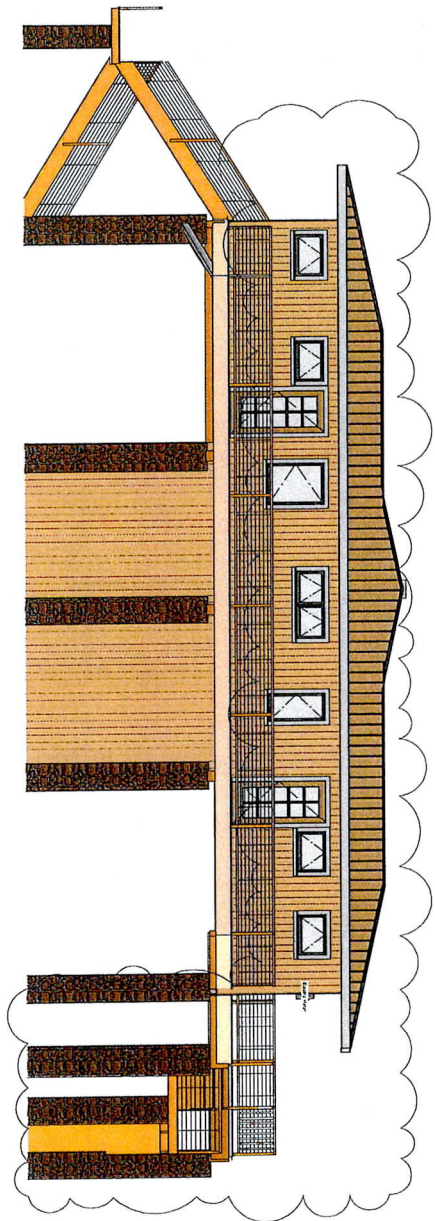
MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.  
Signature DATE 10/24





SECTION A-A  
SCALE 1/4"=1'-0"



RIGHT ELEVATION  
SCALE 1/4"=1'-0"

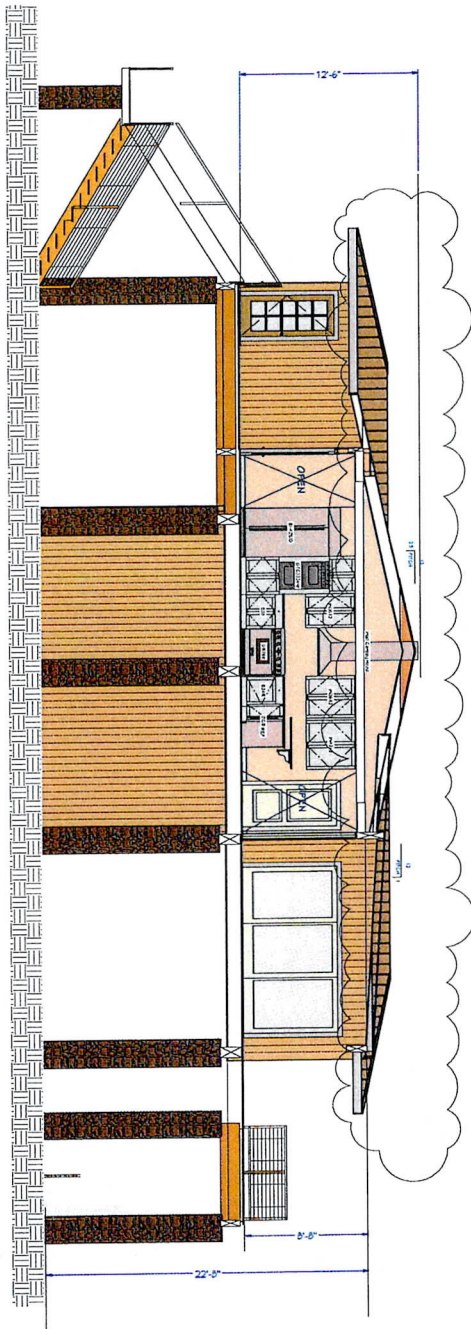
A04

PERMIT 11-24-23  
REV 5/25/24  
REV 7/25/24

BUILDING SECTIONS

MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.  
Signature  
MATTHEW F. SCHALLER  
LICENSED PROFESSIONAL ARCHITECT  
NO. 5198  
HAWAII, U.S.A.



SECTION B-B  
SCALE 1/4"=1'-0"

PERMIT 11-24-23  
REV 6-5-24  
REV 7-29-24

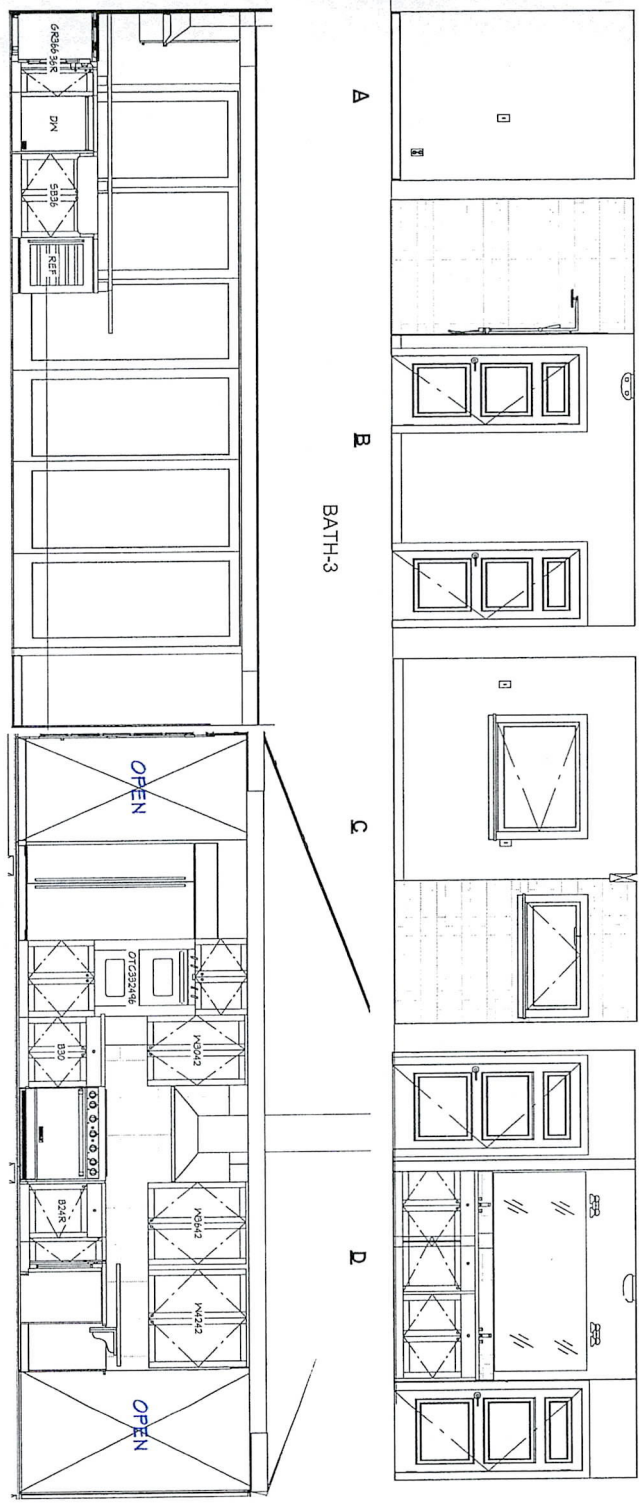
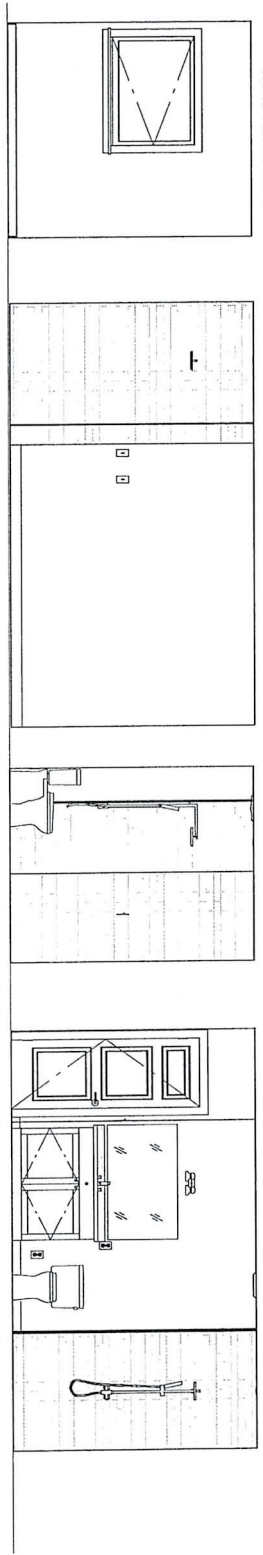
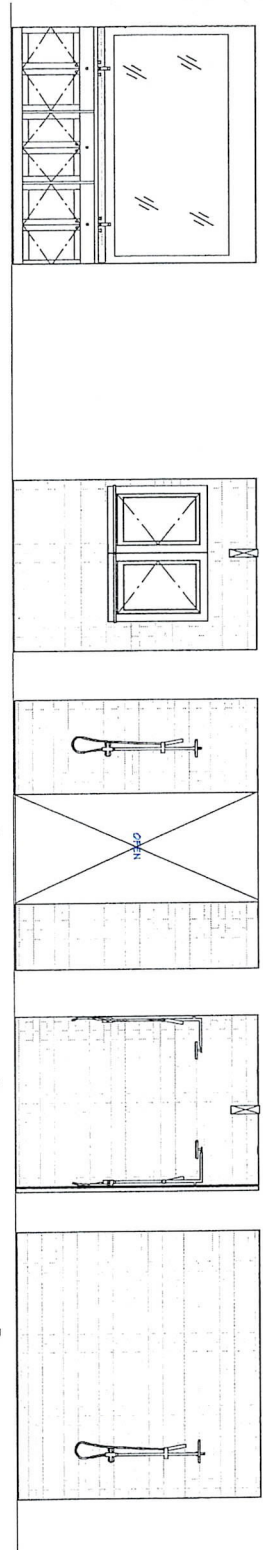
BUILDING SECTIONS

MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANALEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANALEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.  
M.S.  
Signature



A05



INTERIOR ELEVATIONS

SCALE: 1/2"=1'-0"

A06

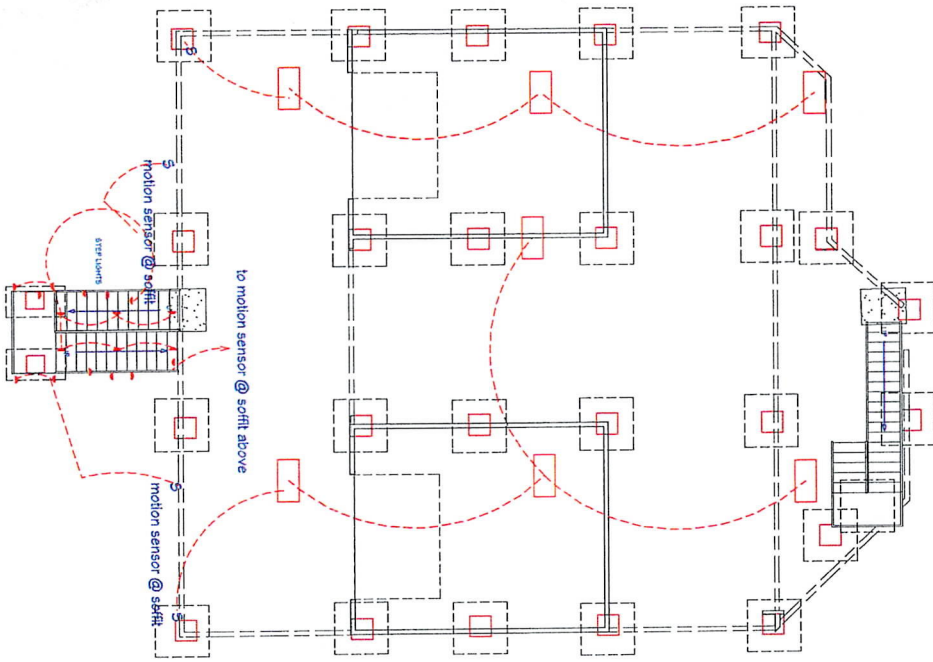
PERMIT 11-24-23  
REV 5-25-24  
REV 7-29-24

INTERIOR ELEVATIONS

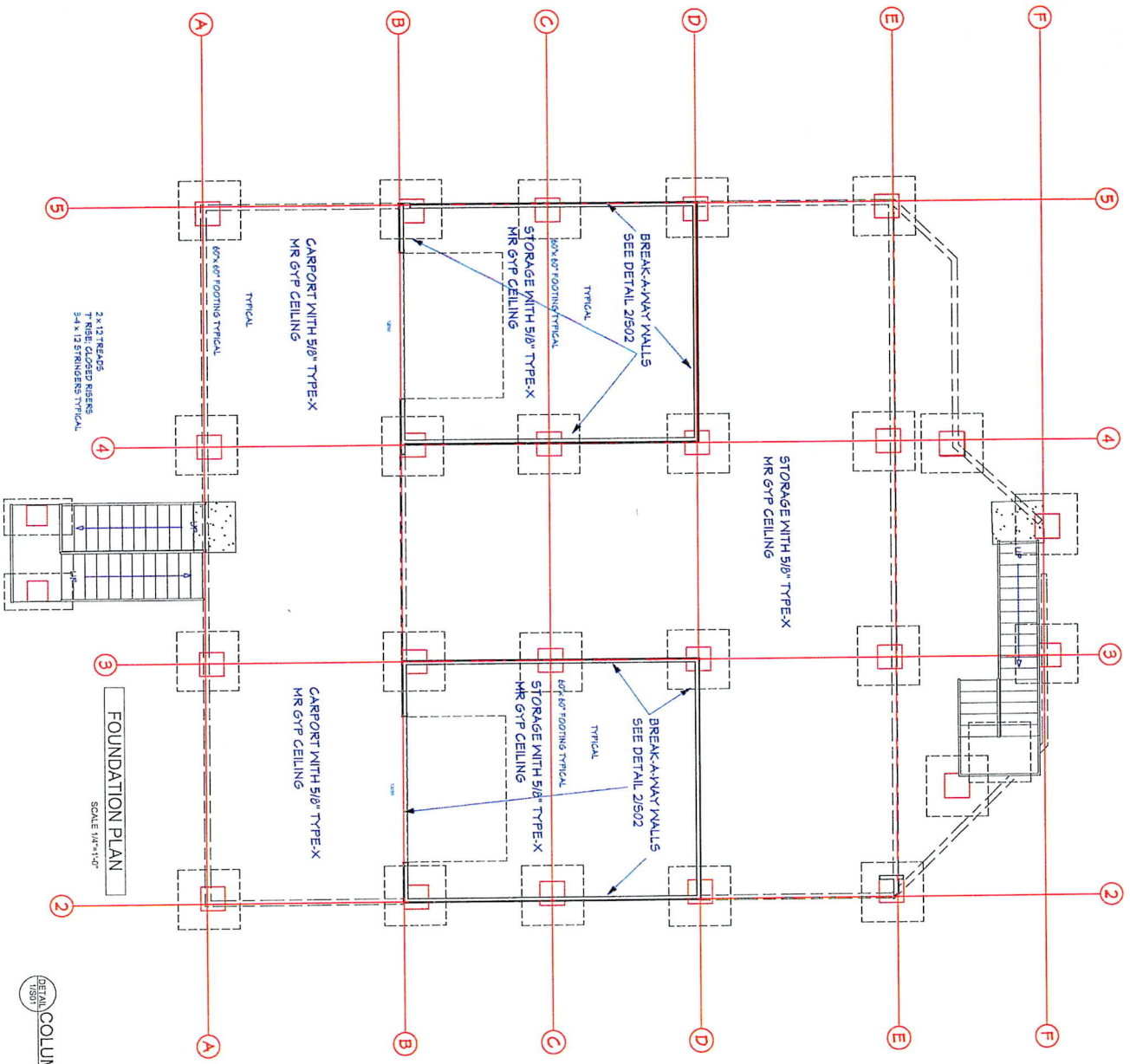
MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.  
Signature: [Signature] 10/4/2024



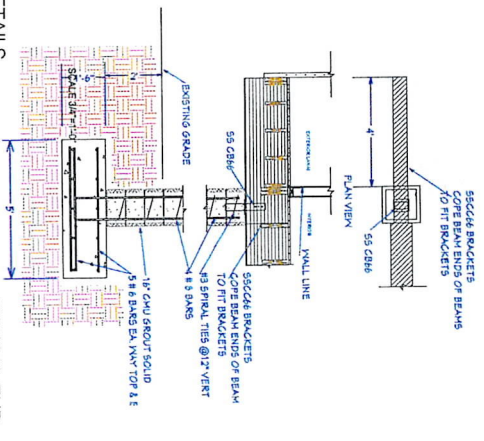
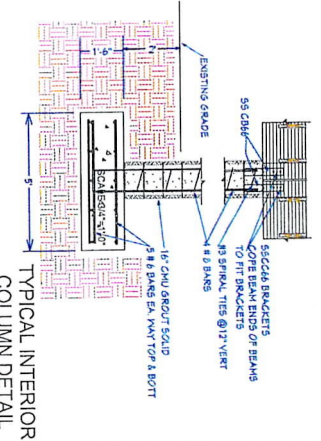
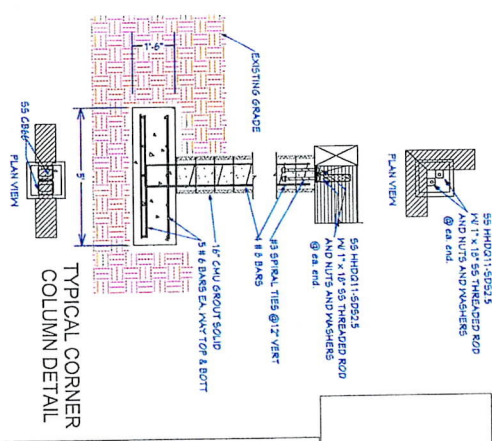




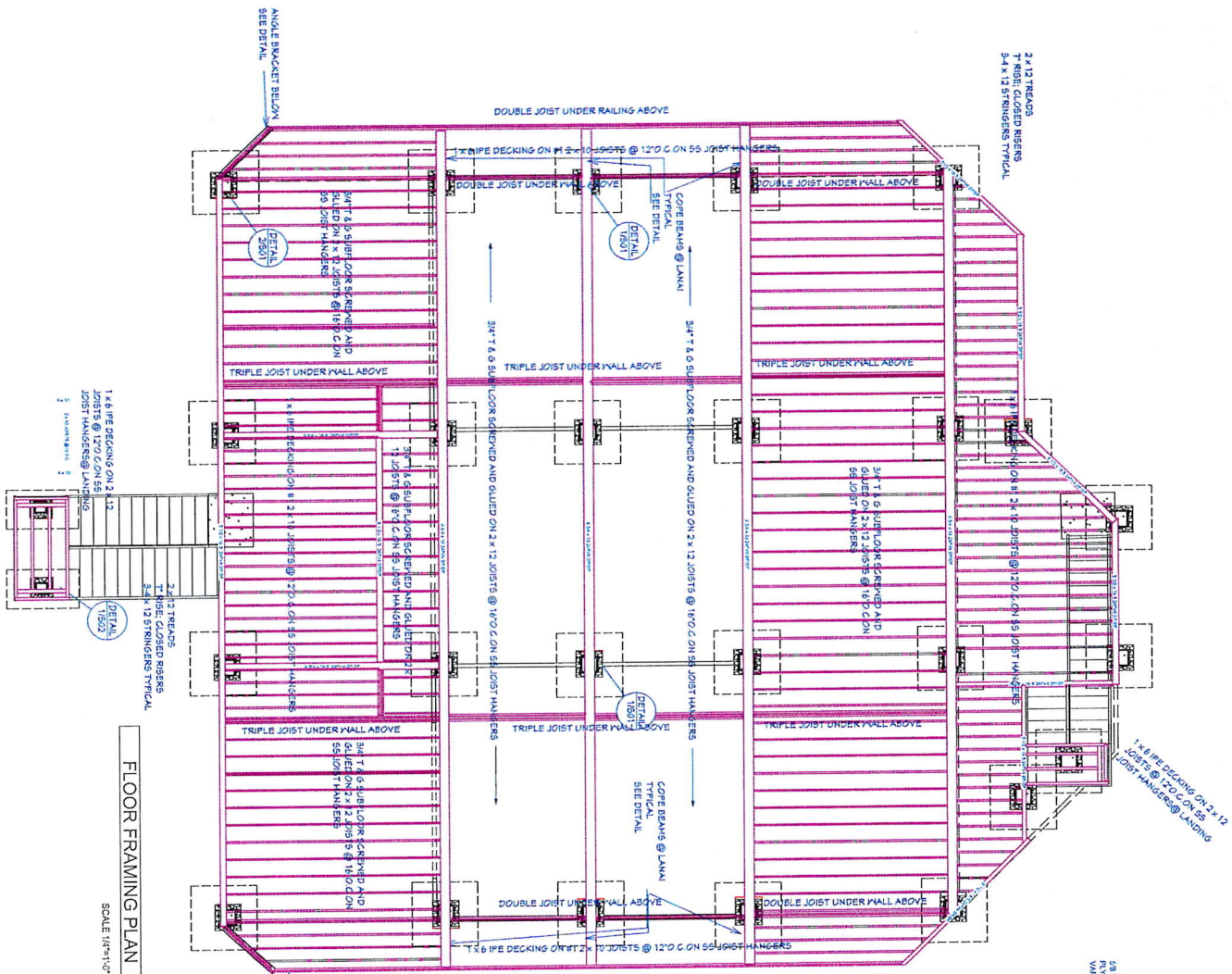


**FOUNDATION PLAN**  
SCALE 1/4"=1'-0"

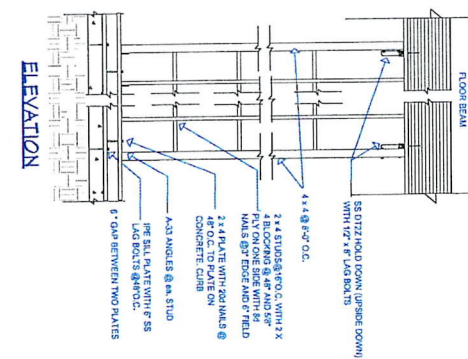
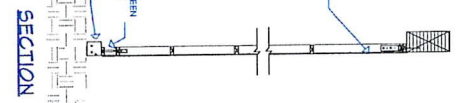
**TYPICAL CORNER COLUMN DETAIL**  
SCALE 1/2"=1'-0"



<h1 style="font-size: 2em;">S01</h1>	<b>FOUNDATION PLAN DETAILS</b>	<b>MATTHEW SCHALLER, ARCHITECT INC.</b> P.O. BOX 120 HANALEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697 <b>NEW RESIDENCE</b> TMK [4] 5-8-011-049; KUHIO HWY, HANALEI, KAUAI, HAWAII	
	PERMIT 11-24-23 REV 6-25-24 REV 7-29-24		
			<small>THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.</small>
			<small>DATE: 06/24/24</small>

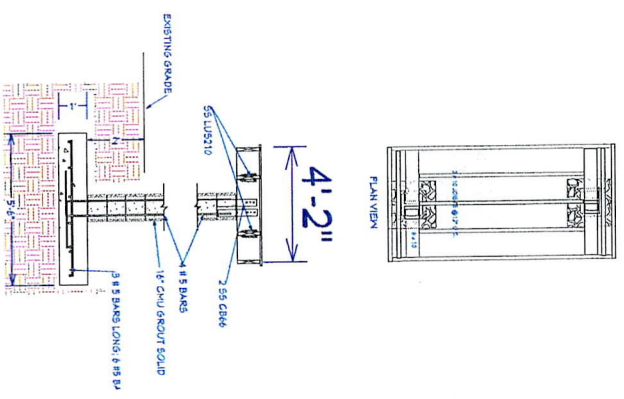


FLOOR FRAMING PLAN  
SCALE 1/4"=1'-0"



BREAK-A-WAY WALL DETAIL  
SCALE 1/2"=1'-0"

COLUMN DETAIL  
SCALE 1/2"=1'-0"



FLOOR FRAMING PLAN DETAILS

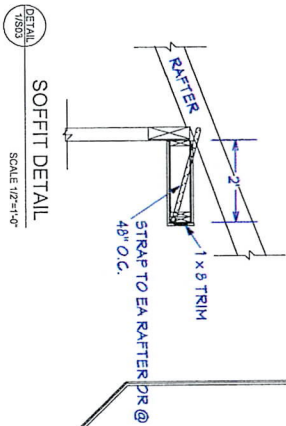
MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE IN ACCORDANCE WITH THE HAWAIIAN ARCHITECTURE CAPTIONED ACT.

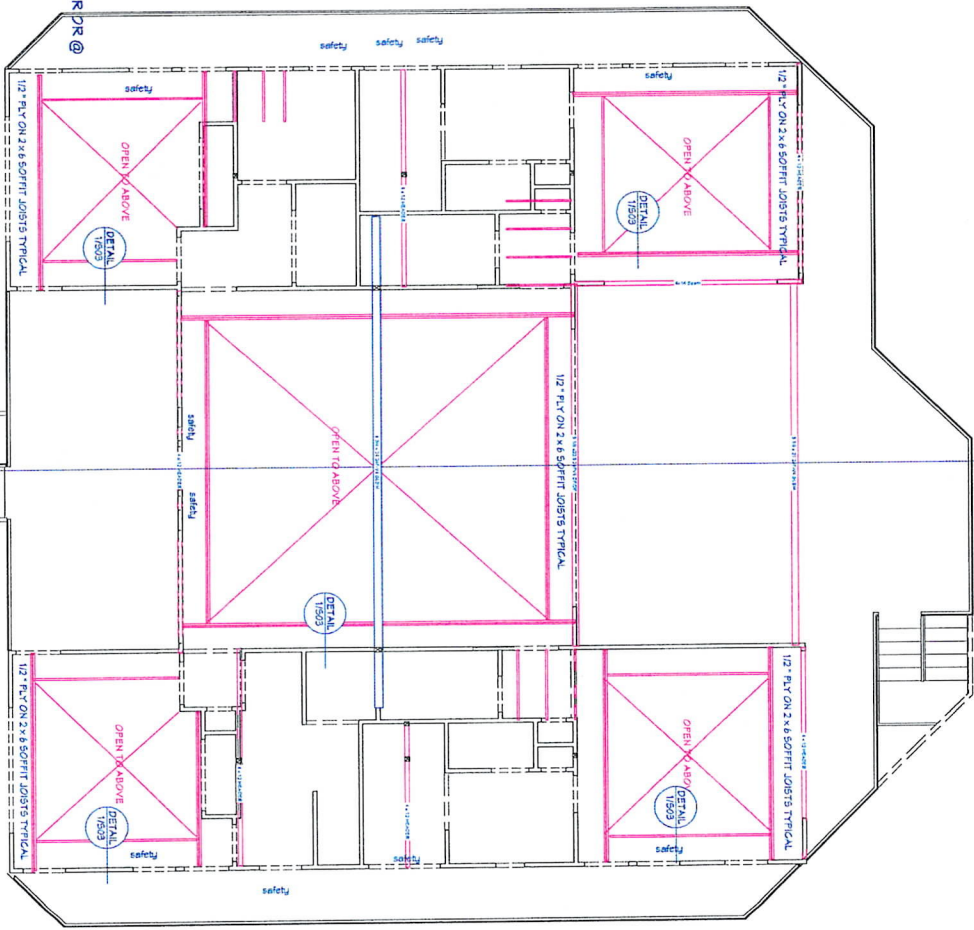
NEW RESIDENCE  
PROJECT NO. 2018-001  
DATE: 11/24/23

REGISTERED PROFESSIONAL ARCHITECT  
HAWAII  
MATTHEW SCHALLER  
NO. 11502

S02  
PERMIT 11-24-23  
REV 6-25-24  
REV 7-29-24



SOFFIT DETAIL  
SCALE 1/2"=1'-0"



NOTE:  
ALL HEADERS 4 x 6 UNO  
(unless noted otherwise)

CEILING FRAMING PLAN

SCALE 1/4"=1'-0"

S03

PERMIT 11-24-23  
REV 6-25-24  
REV 7-29-24

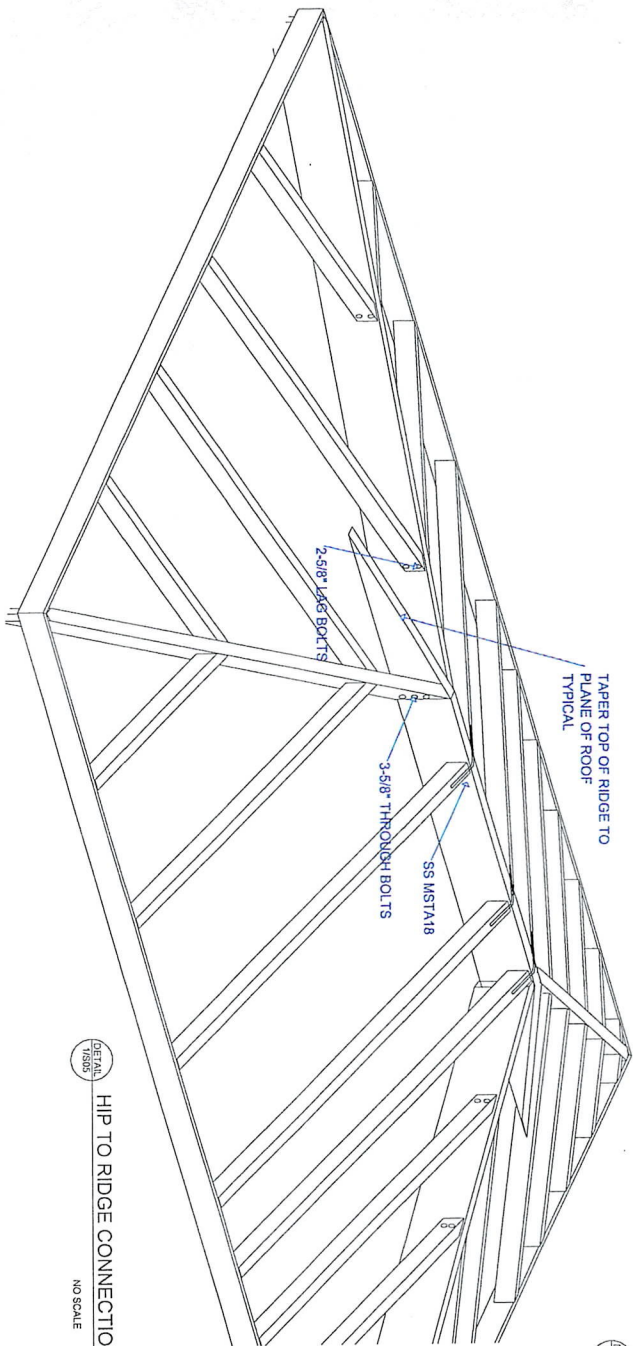
CEILING FRAMING PLAN  
DETAILS

MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANALEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANALEI, KAUAI, HAWAII

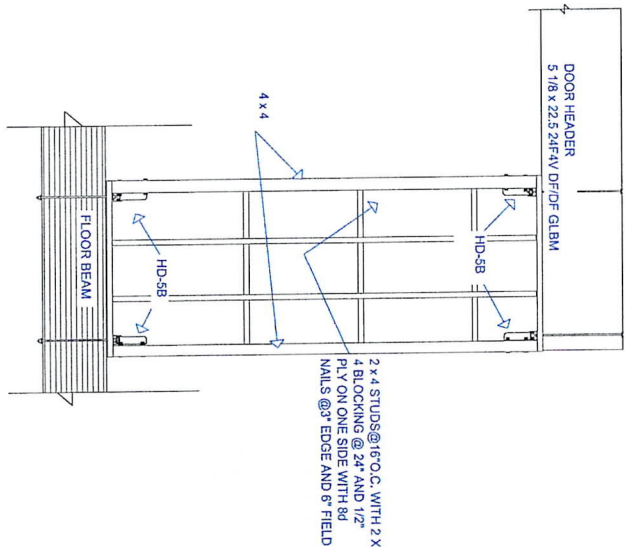
THIS WORK WAS PREPARED BY ME  
OR UNDER MY SUPERVISION AND  
CONSTRUCTION OF THIS PROJECT  
WILL BE UNDER MY SUPERVISION.  
Signature DATE







DETAIL 1009  
HIP TO RIDGE CONNECTION  
NO SCALE



DETAIL 2005  
SHEAR WALL AND DOOR HEADER  
SCALE 3/4" = 1'-0"

PERMIT 11-24-23  
REV 6-25-24  
REV 7-25-24

DETAILS

MATTHEW SCHALLER, ARCHITECT INC.  
P.O. BOX 120 HANAIEI, KAUAI, HAWAII 96714 (808) 826-4699; FAX 826-9697  
NEW RESIDENCE  
TMK [4] 5-8-011:049; KUHIO HWY, HANAIEI, KAUAI, HAWAII

THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION AND CONSTRUCTION OF THIS PROJECT WILL BE UNDER MY SUPERVISION.  
Matthew Schaller  
EX-1002



S05

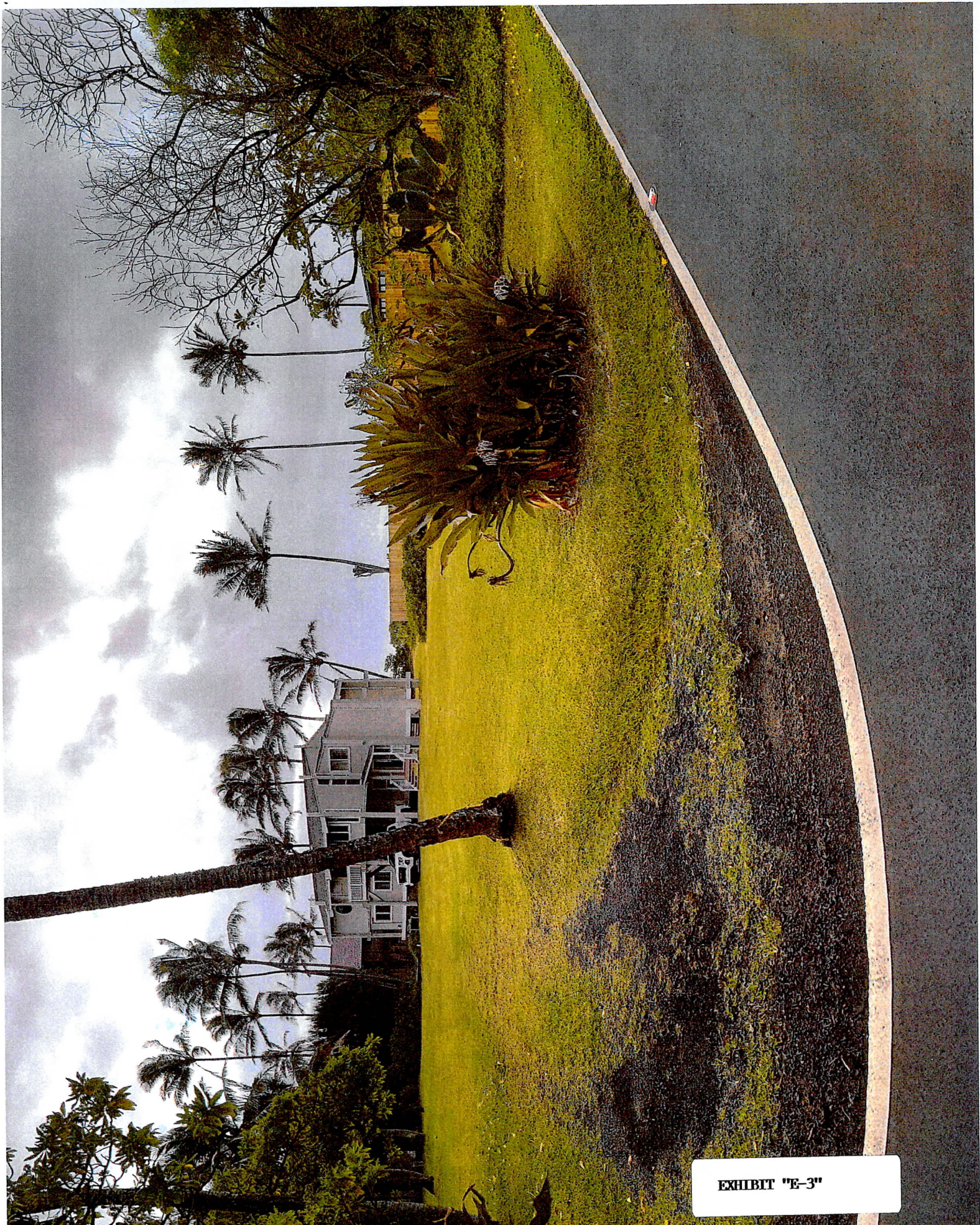


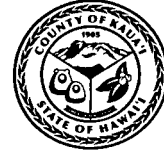
EXHIBIT "E-3"



# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## SUPPLEMENT TO PLANNING DIRECTOR'S REPORT

### I. SUMMARY AND BACKGROUND:

The project site, identified as Tax Map Key Numbers (4) 5-8-011:049, contains 0.5219 acres and includes an existing 3-bedroom single-family dwelling constructed in 1979. The subject site is within the County Residential (R-4) district and falls within the Special Management Area.

The applicant proposes a second single-family dwelling unit with 1,682 square feet of living area. This elevated single-story structure is designed in a modern Hawaiian plantation style, as detailed in Revised Exhibit "E-1" and illustrated in Exhibit "E-2".

This Supplement No. 2 of the application, addresses comments from the Planning Commission and community members on July 9, 2024, regarding concerns about how the proposed residence's size and placement would impact coastal and scenic views from Kūhiō Highway.

### II. PRELIMINARY EVALUATION (Cont'd):

In addressing the concerns raised by the Commission and community members, the revised Exhibit "E-1" reflects changes to the floor plan, overall bedroom count, and minimizes the entry staircase in order to allow views under the proposed elevated residence. The applicant notes that concerns raised during the Planning Commission meeting relating to views to the shoreline were not correctly reflected in the illustration submitted with the Application. It did not include the neighboring property's fence to the east that presently obstructs views to the shoreline, as well as the existing residence on the Subject Property. Based on the existing factors, the shoreline views are presently impeded. For your reference, attached Exhibit "E-3" provides photo documentation from Kūhiō Highway, showing the existing residence and neighboring property's fence line.

As represented in this supplemental the following Plan Set revisions include:

1. Sheet A01: staircase revision.
2. Sheet A02: revised floor plan with the former study noted as a bedroom, including window revisions.
3. Sheet A03: revised exterior elevation with new windows.
4. Sheet A04: revised exterior elevation with new windows.
5. Sheet A05: revised section.

*F.I.A.M.*  
AUG 13 2024



6. Sheet A06: added interior elevations.
7. Sheet E01: revised electrical plans and modified staircase.
8. Sheet S01: revised foundation plan and modified staircase.
9. Sheet S02: revised floor framing for modified staircase.

### III. PRELIMINARY CONCLUSION (Cont'd):

Based on the additional information and pictures submitted, the scenic and coastal view between the subject property and the neighboring property to the east, are already obscured by the placement of the existing single-family residence, an existing fence, and the Hanalei Colony Resort located to the rear of the existing single-family residence on adjacent parcels on the north. Together, these existing structures already obscure scenic and coastal view planes from Kūhiō Highway. Therefore, the proposed single-family residence does not significantly add impact to the scenic sand coastal view planes.

In an effort to minimize the impact on coastal and scenic view planes, however, the applicant has revised their plans for the proposed single-family residence by reconfiguring the design of the staircase to be more compact.

In addition, the Planning Department is proposing additional conditions based on the comments and concerns from the public through testimony on July 9, 2024.

### IV. PRELIMINARY RECOMMENDATION:

Based on the foregoing evaluation and conclusion, it is hereby recommended that the construction of a second single-family dwelling through Special Management Area Use Permit SMA(U)-2024-10 be **approved** with the following conditions as amended:

1. The proposed development shall be constructed and operated as represented. Any changes to the project shall be reviewed by the County of Kaua'i, Department of Planning to determine whether Planning Commission review and approval is required.
2. To ensure that the project is compatible with its surroundings and to minimize the visual impact of the structure, the external colors of the single-family dwelling shall be moderate to dark earth-tone color. The proposed color and landscape plan should be submitted to the County of Kaua'i, Department of Planning for review and acceptance prior to building permit submittal.
3. Prior to the commencement of construction activities, the applicant shall retain a qualified archaeologist to monitor all ground-disturbing activities, including excavation for the dwelling and any associated infrastructure. The archaeologist shall be on-site during all

phases of excavation to ensure the protection and documentation of any archaeological resources that may be encountered during construction.

4. Should any archaeological or historical resources be discovered during ground disturbing/ construction work, all work in the area of the archaeological/ historical findings shall immediately cease and the Applicant shall contact the State Department of Land and Natural Resources, Historic Preservation Division and the County of Kaua'i, Department of Planning to determine mitigation measures.
5. The dwelling shall be no higher than twenty-five (25) feet from ground level or the base flood elevation plus fifteen (15) feet, whichever is greater. The Applicant shall work closely with the Planning Department prior to submittal of building permit application in order to ensure that the development complies with the height requirements under the North Shore Development Plan.
6. The proposed dwelling shall not be utilized for any transient accommodation purposes. It shall not be used as a transient vacation rental (TVR) or as a homestay. This restriction shall be incorporated into the deed restrictions of the subject parcel in the event the property is sold to another party, draft copies of which shall be submitted to the Planning Department prior to building permit application approval.
7. To minimize adverse impacts on the Federally Listed Threatened Species, Newell's Shearwater and other seabirds, if external is to be used in connection with the proposed project, all external lighting shall be only of the following types: downward facing, shielded lights, spotlights aimed upward of spotlighting of structures shall be prohibited.
8. The Applicant shall develop and utilize Best Management Practices (B.M.P's) during all phases of development to minimize erosion, dust, and sedimentation impacts of the project to abutting properties.
9. The Applicant shall resolve and comply with the applicable standards and requirements set forth by the State Health Department, State Historic Preservation Division-DLNR, Office of Hawaiian Affairs, and County Department of Public Works, Fire, Transportation, and Water.
10. To the extent possible within the confines of union requirements and applicable legal prohibitions against discrimination in employment, the Applicant shall seek to hire Kaua'i contractors as long as they are qualified and reasonably competitive with other contractors and shall seek to employ residents of Kaua'i in temporary construction and permanent resort-related jobs. It is recognized that the Applicant may have to employ non- Kauai residents for particular skilled jobs where no qualified Kaua'i residents possesses such skills. For the purposes of this condition, the Commission shall relieve the Applicant of this requirement if the Applicant is subjected to anti-competitive restraints on trade or other monopolistic practices.
11. The Applicant shall implement to the extent possible sustainable building techniques and operational methods for the project, such as Leadership in Energy and Environmental

Design (L.E.E.D.) standards or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, and strategies, which may include but is not limited to recycling, natural lighting, extensive landscaping, solar panels, low-energy fixtures, low energy lighting and other similar methods and techniques. All such proposals shall be reflected on the plans submitted for building permit review.

12. The Planning Commission reserves the right to revise, add or delete conditions of approval in order to address or mitigate unforeseen impacts that the project may create, or revoke the permits through the proper procedures should conditions of approval not be complied with or violated.
13. Unless otherwise stated in the permit, once permit is issued, the Applicant must make substantial progress, as determined by the Director, regarding the development or activity within two (2) years, or the permit shall be deemed to have lapsed and be no longer in effect.
14. Prior to construction the required shoreline setback of 88 feet from the State certified shoreline shall be marked on the ground.
15. All wastewater systems on the subject property shall be upgraded to State of Hawai'i Department of Health standards prior to commencement of construction.
16. The Applicant shall consider requiring all construction related vehicles to park off site and not parking along Kūhiō Highway adjacent to property.
17. The Applicant shall consider preventing construction refuse and trash from being stockpiled on site.
18. The construction of seawalls or any type of shoreline hardening structure shall be prohibited.

The Planning Commission is further advised that this report does not represent the Planning Department's final recommendation in view of the forthcoming public hearing process scheduled for August 13, 2024, whereby the entire record should be considered prior to decision making. The entire record should include but not be limited to:

- a. Pending government agency comments;
- b. Testimony from the general public and interested others; and
- c. The Applicant's response to staff's report and recommendation as provided herein.

**\*NOTE:** Material to be deleted in brackets & strikethrough, and new material is underlined.

By   
ROMIO IDICA  
Planner

Approved & Recommended to Commission:

fr By   
KA'AINA S. HULL  
Director of Planning

Date: 7/31/24

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## TRANSMITTAL OF PUBLIC COMMENTS TO PLANNING COMMISSION

**DATE:** August 7, 2024

**ZONING AMENDMENT:** ZA-2024-3

**APPLICANT(S):** Kaua'i County Council

Attached for the Planning Commission's reference are public comments for the zoning amendment referenced above.

*F.n.a.l.*  
AUG 13 2024

William Mondy & Geoffrey Farmer  
2-3161P Kaumualii Hwy  
Kalaheo, HI 96741  
[billmondy@yahoo.com](mailto:billmondy@yahoo.com)  
310-650-7902

July 15, 2024

Planning Commission  
c/o Kauai Planning Dept  
4444 Rice Street, Suite A473  
Līhu'e, Hawai'i 96766

AUG 6 '24 AM 8:58  
PLANNING DEPT

RE: Support Letter for Proposed Bill No. 2919

Dear Planning Commission,

My husband and I are writing to express our strong support for Proposed Bill No. 2919. As residents of Kaua'i and stewards of our 8-acre AG property, we believe this bill will significantly benefit our community.

Currently, we have two Farm Dwelling Units and one Guest House on our land and are only permitted one additional FDU. This bill would allow us to add another FDU and two more Guest Houses, addressing the critical issue of affordable housing on the island. Additional living spaces will support local residents in need and our extended family.

My husband, graduating from this year's GoFarm program on August 13, and I are fully utilizing our land for agriculture, contributing to the local food supply. Additional living spaces would house family members or local farm workers, enhancing our farming operations.

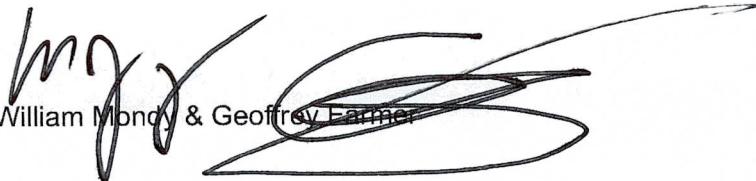
The flexibility to build additional Guest Houses on AG land encourages sustainable development, allowing landowners to maximize their properties. This potential for increased housing provides economic benefits and strengthens community bonds.

We appreciate the bill's regulations ensuring new structures meet existing standards and are used for long-term residential purposes, maintaining neighborhood integrity and aligning with community values.

In conclusion, we strongly urge the Kaua'i County Council to pass Proposed Draft Bill No. 2919. This legislation addresses our community's housing needs while allowing better land use. Your support for this bill will have a lasting positive impact on Kaua'i and its residents.

Thank you for considering our views. We look forward to the positive changes this bill will bring.

Sincerely,

  
William Mondy & Geoffrey Farmer

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## TRANSMITTAL OF AGENCY COMMENTS TO PLANNING COMMISSION

**DATE:** August 7, 2024

**ZONING AMENDMENT:** ZA-2024-3

**APPLICANT(S):** Kaua'i County Council

Attached for the Planning Commission's reference are agency comments for the zoning amendment referenced above.

**F.n.a.2.**  
**AUG 13 2024**



JUN 5 '24 PM 12:50  
PLANNING DEPT

County of Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

FROM: Kaaina S. Hull, Director

Planner: Alisha Summers

5/10/2024

SUBJECT: Zoning Amendment ZA-2024-3  
Applicant: Kauai County Council  
Zoning Amendment for Guest Houses

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

6/3/2024

CTA HAS NO FURTHER COMMENT ON THIS ACTION.

MAHALO!

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!



**ENGINEERING DIVISION**  
DEPARTMENT OF WATER, COUNTY OF KAUAI  
JASON F. KAGIMOTO, P.E.



JOSEPH E. TAIT  
MANAGER AND CHIEF ENGINEER

DATE: June 4, 2024  
TO: Planning Department  
Kaaina Hull, Director (Alisha Summers)  
SUBJECT: Zoning Amendment ZA-2024-3, Zoning Amendment for Guest Houses,  
(County of Kauai-County Council)

DOW COMMENTS:

The Department of Water (DOW) has concerns regarding the increase in water demand associated with this Zoning Amendment ZA-2024-3 application.

We recommend to the Planning Department that any approval of the proposed ZA-2024-3 permit application be conditioned; whereby, the applicant shall be made aware that prior to the DOW recommending water meter service or building permit approval for a proposed guest house with a kitchen, the applicant will be required to:

1. Submit a formal request for water service for the proposed guest house with a kitchen for DOW's review and approval.

Requests for additional water meters or an increase in water meter size will be dependent on the adequacy of the source, storage, and transmission facilities existing at that time.

2. Requirements of Table 100-19A shall apply when County building permit approval is sought from the Department for any dwelling unit in excess of the second dwelling unit on a lot of record.

The applicant is required to submit fire flow test data or calculations prepared and signed by your Engineer. The DOW's comments may change depending on the additional information provided.

3. Pay the applicable charges in effect at the time of payment to DOW. Charges are based on the applicant's water service request.
4. The applicant shall be made aware that the applicant is required to have the backflow device, if applicable.

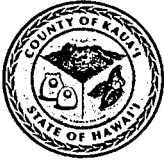
*Regina Reyes-Flores*

Regina Reyes-Flores, P.E.  
Water Resources and Planning Section

Jun 4, 2024

Date

ZA-2024-3, 20240604, COK-Kauai County Council, Guest Houses/RF:mlm



County of Kauai  
Planning Department  
4444 Rice St., Suite A473 Lihue, HI 96766  
(808) 241-4050

FROM: Kaaina S. Hull, Director

Planner: Alisha Summers

5/10/2024

SUBJECT: Zoning Amendment ZA-2024-3  
Applicant: Kauai County Council  
Zoning Amendment for Guest Houses

TO:

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

FOR YOUR COMMENTS (pertaining to your department)

This matter is scheduled for a public hearing before the County of Kauai Planning Commission on 6/4/2024 at the Lihue Civic Center, Moikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Lihue, Kauai, at 9:00 am or soon thereafter. If we do not receive your agency comments within one (1) month from the date of this request, we will assume that there are no objections to this permit request. Mahalo!



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
3040 Umi St. Lihue  
Hawaii 96766

DATE: June 17, 2024

TO: To whom it may concern

FROM: Ellis Jones  
District Environmental Health Program Chief

SUBJECT: RESPONSE\_Amendment to Guest House\_ZA-2024-3

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

**Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.**

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

**Clean Air Branch**

1. All project activities shall comply with the Hawaii Administrative Rules (HAR), Chapters 11-59 and 11-60.1.
2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.

3. Standard comments for the Clean Air Branch are at:  
<https://health.hawaii.gov/epo/landuse/>

#### **Clean Water Branch**

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55:  
<https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standardcomments/>.

#### **Hazard Evaluation & Emergency Response Office**

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at:  
<https://health.hawaii.gov/epo/landuse/>.

#### **Indoor and Radiological Health Branch**

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

#### **Safe Drinking Water Branch**

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of: 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related the Safe Drinking Water program:  
<https://health.hawaii.gov/sdwb/>.
2. Standard comments for the Safe Drinking Water Branch can be found at:  
<https://health.hawaii.gov/epo/landuse/>.

#### **Solid & Hazardous Waste Branch**

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H and 342I, and HAR Chapters 11-58.1, and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the

electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.

3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

#### **Wastewater Branch**

Wastewater Branch has no objections to the zoning amendment. However, (5)(A) should remove the word 'cesspool' from the language. Dept. of Health does not allow new dwellings including guest houses to be connecting to cesspools.

#### **Sanitation / Local DOH Comments:**

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, "Community Noise Control," shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

#### **Other**

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Kauai District Health Office at 808-241-3492.

*Ellis Jones*

*Ellis Jones*

District Environmental Health Program Chief  
Office Phone: (808) 241-3326

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## SUPPLEMENT #1 TO PLANNING DIRECTOR'S REPORT

RE: Zoning Amendment ZA-2024-3

APPLICANT: KAUA'I COUNTY COUNCIL

### Additional Findings

Based on the review of the proposed bill (No. 2919), which would authorize the development of additional guest houses in various zoning districts (Residential R-1 to R-6 and R-10 to R-20, Neighborhood Commercial, General Commercial, Agriculture, Open, and University) it became clear that there are opportunities to strengthen the proposed legislation. The following considerations should be addressed:

- The proposed bill, in its current draft form, permits the expansion of guest house development without considering high hazard risk areas, such as vulnerable coastal zones. Increasing guest house development in low-lying coastal regions may heighten susceptibility to the adverse effects of rising sea levels. This increased vulnerability could exacerbate risks associated with coastal erosion, flooding, and other impacts of sea level rise, thereby amplifying the risks of property damage, safety hazards, and the narrowing and loss of beaches. Comprehensive strategies will be necessary to address and mitigate these potential consequences.
- Higher density may strain existing infrastructure and services, such as water and sewage, potentially compromising their adequacy. It is important to note that a building permit will be required for all Guest House applications, necessitating any additional improvements to serve the respective unit prior to construction and operation. However, proceeding with the building permit process before confirming that the Guest House application meets the necessary infrastructure requirements can be both costly and time-intensive for the applicant.
- According to the Department of Health Wastewater Branch's review, the term "cesspool" should be removed from the proposed bill, as the Department does not permit new dwellings, including guest houses, to connect to cesspools.

## **Evaluation**

### *Coastal Hazard Risk Areas:*

Regarding the concern of permitting the expansion of guest house development in high coastal hazard risk areas, the Director's Report notes that the County of Kaua'i General Plan specifies actions to minimize coastal development in areas at high risk for erosion, flooding, tsunami inundation, and sea level rise. The coastal area, particularly the Special Management Area (SMA), is also known to be a speculative market, raising further concern about the impact of guest house development. Authorizing the development of additional guest houses in various zoning districts, irrespective of their proximity to vulnerable coastal areas, could potentially heighten vulnerability to coastal hazards and exacerbate the impacts of climate change.

The SMA was established in 1975 as part of the Hawaii Coastal Zone Management (CZM) program, which prioritizes the protection and restoration of beaches, dunes, and other coastal ecosystems. In implementing the CZM program, the County's Special Management Area Rules and Regulations guide development activities within the SMA. Given that the SMA includes areas in close proximity to the shoreline and represents the most sensitive part of the coastal zone, requiring more intensive management, it may be appropriate to not allow the expansion of Guest Houses within the Special Management Area (SMA).

### *Infrastructure and Services:*

The increase in guest house development may present challenges in providing infrastructure and services. The County of Kaua'i General Plan also details goals and actions related to sustainability in managing growth to promote efficiencies in infrastructure and service delivery. Through the building permit review process, any necessary infrastructure improvements to support the guest house will be identified and required before construction and operation can proceed. As previously noted, the building permit process can be costly and onerous for applicants who later realize that their Guest House application does not meet the necessary infrastructure requirements.

Currently, Additional Dwelling Units (ADU) and Additional Rental Units (ARU) require an interdepartmental agency clearance form to ensure that applications meet the necessary infrastructure requirements prior to applying for a building permit. This process ensures a thorough review of infrastructure needs and can save time and money for applicants interested in developing an ADU or ARU. Implementing a similar interdepartmental agency clearance form process for the development of Guest Houses may be beneficial in ensuring that infrastructure requirements are met before entering the building permit process.

### *Cesspools:*

Act 125, enacted during the 2017 legislative session, mandates the replacement of all cesspools by 2050. Since the Department of Health does not authorize new dwellings, including guest houses, to connect to cesspools, the proposed bill should be amended to remove any language permitting the use of cesspools for wastewater management.

### **Conclusion**

The implications of the proposed bill on coastal hazard risk areas, infrastructure and services, and agricultural lands necessitate careful evaluation to ensure alignment with the County of Kaua'i's General Plan. Key considerations and suggested changes are as follows:

- Permitting the expansion of guest house development in high coastal hazard risk areas does not align with the County of Kaua'i General Plan and may increase vulnerability to coastal hazards, exacerbating climate change impacts. It may be most appropriate to prohibit the expansion of guest houses within the Special Management Area (SMA) to protect sensitive coastal ecosystems and mitigate risks to property and safety.
- Although the building permit review process identifies and requires necessary infrastructure improvements for guest houses, this process can be costly and time-intensive for applicants. Adopting an interdepartmental agency clearance form process similar to that used for Additional Dwelling Units (ADU) and Additional Rental Units (ARU) could ensure that infrastructure requirements are addressed before the building permit stage, thereby saving time and resources for applicants and ensuring early evaluation of infrastructure needs.
- In light of the requirement to replace all cesspools by 2050 and the prohibition against connecting new dwellings, including guest houses, to cesspools, the language concerning cesspools for lots with additional dwelling units and guest houses should be removed.

### **Recommendations**


Attached to this document is the updated proposed Bill No. 2919, which includes the following revisions:

- The proposed bill shall not apply to properties within the County of Kaua'i's Special Management Area. Accordingly, properties situated within the Special Management Area shall be limited to a maximum of one guest house.
- Prior to the review of a building permit for a guest house, the Guest House Clearance




Form, as prescribed by the Planning Director, shall be completed prior to application for a building permit and shall be submitted with the building permit application. All requirements and conditions specified in the completed Guest House Clearance Form must be satisfied before a building permit is issued.

- The language pertaining to the use of cesspools for servicing lots with additional dwelling units and guest houses shall be removed.

By  \_\_\_\_\_  
Alisha Summers  
Staff Planner

Transmitted to the Commission:

By  \_\_\_\_\_  
Kā'aina S. Hull  
Director of Planning

Date: 7-31-24

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 8,  
KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE  
COMPREHENSIVE ZONING ORDINANCE, INCLUDING MATTERS  
PERTAINING TO GUEST HOUSES**

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Council of the County of Kauai finds that housing supply remains limited and that even residents with means of payment or who are approved for housing assistance struggle to locate available homes for rental or purchase. Therefore, the purpose of this Ordinance is to expand the permissiveness of guest houses in zoning districts Residential R-1 to R-6 and R-10 to R-20, CN (Neighborhood Commercial), CG (General Commercial), AG (Agriculture), O (Open), and UNV (University), and make other technical edits.

SECTION 2. Chapter 8, Section 8-1.4 (Application of Regulations), Kauai County Code 1987, as amended, is amended by adding a new Subsection (i) to be appropriately inserted and read as follows:

“(i) The development of one (1) guest house per one (1) dwelling unit is authorized in zoning districts R-1 to R-6, R-10 to R-20, CN, CG, AG, O, and UNV, provided that every guest house shall:

(1) Meet all applicable development standards and other requirements for the particular Use District;

(2) Meet all other applicable governmental rules, regulations, ordinances, statutes, and laws;

(3) Be provided with one (1) off-street parking space per guest house in addition to the required off-street parking for all dwelling unit(s);

(4) Never be separated in ownership from the ownership of its primary dwelling by any owner or any heir, successor, or assign of any owner, including but not limited to submitting the lot or any portion thereof to a condominium property regime (CPR); and

(5) A guest house shall not be used for a transient vacation rental (TVR) or homestay operation within or outside of the visitor destination area (VDA).”

(6) A parcel situated within the Special Management Area (SMA) shall be limited to a maximum of one guest house per lot of record.

(7) Prior to building permit review for a guest house, the following public facilities shall be found adequate to service the guest house:

(A) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system or an individual wastewater system shall be confirmed in writing by the State of Hawai'i Department of Health.

(B) The availability of water (including but not limited to source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(C) Approval in writing for a guest house from the Kaua'i Fire Department shall be required.

(8) The Guest House Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. All requirements and conditions on the completed Guest House Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit issuance. The Planning Director shall certify the Guest House Clearance Form as complete only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director.

SECTION 3. Chapter 8, Section 8-2.1 (Districts), Kaua'i County Code 1987, as amended, is amended by clarifying that the Agriculture District can read as either "A" or "AG," and by adding reference to the Special Treatment—ST:Coastal Edge—ST-CE (created in 2020) and the University District (created in 2017), to read as follows:

"To carry out the purposes of this Chapter, the major and minor districts into which the County of Kaua'i may be divided and their official abbreviated designations are as follows:

- (a) Residential—R:
  - (1) R-1
  - (2) R-2
  - (3) R-4
  - (4) R-6
  - (5) R-10
  - (6) R-20
  - (7) R-40
- (b) Resort—RR:
  - (1) RR-10
  - (2) RR-20
- (c) Commercial—C:
  - (1) Neighborhood Commercial—CN
  - (2) General Commercial—CG
- (d) Industrial—I:
  - (1) Limited Industrial—IL
  - (2) General Industrial—IG
- (e) Agriculture—A or AG
- (f) Open—O
- (g) Special Treatment—ST:
  - (1) Public Facilities—ST-P
  - (2) Cultural/Historic—ST-C

- (3) Scenic/Ecological—ST-R
- (4) Open Space—ST-O
- (5) Coastal Edge—ST-CE
- (h) Constraint—S:
  - (1) Drainage—S-DR
  - (2) Flood—S-FL
  - (3) Shore—S-SH
  - (4) Slope—S-SL
  - (5) Soils—S-SO
  - (6) Tsunami—S-TS
- (i) University—UNV

SECTION 4. Chapter 8, Section 8-2.4 (Uses in Districts), Kaua'i County Code 1987, as amended, is amended by amending its Table 8-2.4 (Table of Uses) by deleting the entire row Sec. 8-2.4(a)(2) ("Accessory structures and uses, including one guest house") and renumbering the remaining row Sec. 8-2.4(a)(1), at column "Sec." only, to read as: "8-2.4(a)".

SECTION 5. Chapter 8, Section 8-15.1 (Additional Dwelling Unit on Other Than Residentially Zoned Lots), Kaua'i County Code 1987, as amended, is amended by amending its Subsection (d) to read as follows:

"(d) Notwithstanding the expiration of Subsection (a), and subject to compliance with all applicable legal requirements and conditions, a Building Permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Subsection (a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007, or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a Building Permit application prior to November 22, 2006, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Subsection (d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable County requirements not inconsistent with Sec. 46-4(c), Hawai'i Revised Statutes, and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were rezoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the Residential District requirement.

(3) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, [no] guest house [under Sec. 8-4.3(a)(2) shall be allowed.] allowances shall be governed by Section 8-1.4(i). [An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.]

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system ~~(or cesspool)~~, or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewered areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a Building Permit and shall be submitted with the Building Permit application. Completion of the ADU Facilities Clearance Form shall not guarantee the issuance of a Building Permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a Building Permit based on legal requirements at the time of Building Permit issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the Form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying: (A) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot; and (B) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a Building Permit, and that all conditions and requirements in existence at the time of Building Permit application shall be met before a Building Permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) The applicant shall obtain a re-certification from the Planning Department certifying that applicant has met the requirements set forth in Sec. 8-15.1(d)(6). A regulatory fee of Two hundred fifty dollars shall be charged upon registration for a re-certification. If the applicant fails to obtain a re-certification by June 30, 2017, the entitlement to the additional dwelling unit shall be deemed terminated and no building permit shall be issued for the additional dwelling unit. The Planning Director shall notify the applicant in writing that the entitlement to the additional dwelling unit has been terminated. The applicant may appeal the termination to the Planning Commission in accordance with the Rules of Practice and Procedure of the Planning Commission.

(8) Where a regulatory fee has been paid, the fee payment shall be deposited to the "ADU Re-certification Fund." There is hereby established and created a fund to be known as the "ADU Re-certification Fund." The fees collected pursuant to this subsection are hereby deemed appropriated upon receipt, and may be expended by the Department of Planning for the hiring of persons employed on a fee, contract, or piecework basis, or independent contractors to assist in conducting inspections. The maximum number of persons that may be hired with these fees shall be determined by the Budget Ordinance. The fees may also be expended for materials, supplies, and equipment that facilitate inspections, and for payment of overtime to conduct inspections.

(9) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a [second dwelling unit] specified number of dwelling units on any lot.

(10) Notwithstanding any law to the contrary:

(A) it is the applicant's responsibility to resolve any outstanding conditions with the respective governmental agencies; and

(B) new assessments may be applicable to the property that is the subject of the ADU Facilities Clearance Form."

SECTION 6. Chapter 8, Section 8-15.2 (Additional Dwelling Unit on Residentially Zoned Lots), Kaua'i County Code 1987, as amended, is amended to read as follows:

"(a) Notwithstanding other provisions to the contrary, for any residentially zoned lot where only [one] one (1) [single family] single-family residential dwelling is permitted, [one] one (1) additional [single family] single-family residential dwelling unit (attached or detached) may be developed, provided:

(1) All applicable County requirements, not inconsistent with [Sec.] Section 46-4(c), Hawai'i Revised Statutes and the County's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(2) The provisions of this Subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For residentially zoned lots on which an additional dwelling unit is developed, [no] guest house [under Sec. 8-4.3(a)(2) shall be allowed.] allowances shall be governed by Section 8-1.4(i). [An existing guest house may be converted into a dwelling unit but no additional guest house may be constructed.].

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system ~~(or cesspool)~~, or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(5) Facilities clearance may be obtained prior to application for Building Permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the Building Permit application. Where complete plans and specifications are submitted for Building Permit application processing, the submission of the Facilities Clearance Form will be attached with the Building Permit and processed concurrently.

(6) Nothing contained in this Section shall affect private covenants or deed restrictions that prohibit the construction of a [second dwelling unit] specified number of dwelling units on any residential lot. The provisions of this Section shall be subject to the provisions of Chapter 22, Kaua'i County Code 1987, as amended, Section 22-28. Limiting or Prohibiting Long-Term Rentals, Additional Dwelling Units, Additional Rental Units, and Guest Houses."

SECTION 7. If any provision of this Ordinance or application thereof to any person or circumstance is held invalid, the invalidity does not affect the other provisions or applications of this Ordinance that can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable.

SECTION 8. Ordinance material to be repealed is bracketed. New Ordinance material is underscored. When revising, compiling, or printing this

Ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 9. This Ordinance shall take effect upon its approval.

Introduced by:

MEL RAPOZO

BILL DECOSTA

DATE OF INTRODUCTION:

Līhu'e, Kaua'i, Hawai'i



**DEPARTMENT OF PLANNING**  
KA'ĀINA HULL, DIRECTOR  
JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR

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DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

**TRANSMITTAL OF PUBLIC TESTIMONY TO**  
**PLANNING COMMISSION**

**DATE:** August 5, 2024

**PERMIT NUMBERS:** CLASS IV ZONING PERMIT Z-IV-2015-10  
USE PERMIT U-2015-9  
SPECIAL PERMIT SP-2015-1

**APPLICANT:** STEELGRASS FARM, LLC.

Attached for the Planning Commission's reference are public testimony for the permit referenced above.

**H.I.A.**  
**AUG 13 2024**

**FW: Letter of support for Will Lydgate/Lydgate Farms**

Planning Department &lt;planningdepartment@kauai.gov&gt;

Wed 7/24/2024 8:29 AM

To:Dale Cua &lt;dcua@kauai.gov&gt;

**From:** Emily Lydgate <elydgate@gmail.com>**Sent:** Wednesday, July 24, 2024 2:11 AM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Will Lydgate <wlydgate@gmail.com>; Kaaina Hull <khull@kauai.gov>**Subject:** Letter of support for Will Lydgate/Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Dear Planning Commission,

I am writing this letter of support for Will Lydgate, my younger brother. I have been impressed by Will's dedication to creating value for the island of Kaua'i by pursuing, and in many ways pioneering, a model of sustainable tourism which is connected to, and enhances, the identity of the Island. He has been extremely committed to the wellbeing of his staff and his land, and to giving back. He has a strong vision for the Island's chocolate industry that involves sustainable prosperity, to make Kaua'i a more vibrant place with increased opportunities for both residents and visitors. He has developed an extremely high-quality, internationally award-winning product, which is connected to the unique history and ecology of Kaua'i.

On a personal level, I am proud of the way he has managed our farm, which was in considerable debt and is now thriving. Will is very generous, and he wants people around him to be happy. I have been impressed by the efforts he has made to ensure that the neighbors feel that they are part of the farm, through for example community harvest days and frequent gifts of chocolate. He has also shared his skills and vision generously at the State level, through for example working with others in the agri-tourism industry.

Best wishes,

Emily Lydgate

**FW: Exceptional Tour of Lydgate Farms**

Kaaina Hull &lt;khull@kauai.gov&gt;

Thu 7/25/2024 2:08 PM

To: Dale Cua &lt;dcua@kauai.gov&gt;; Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;

PC testimony

**From:** Alan Ching <aching@holynativityschool.org>**Sent:** Thursday, July 25, 2024 2:06 PM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Kaaina Hull <khull@kauai.gov>; wlydgate@gmail.com**Subject:** Exceptional Tour of Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

To Whom It May Concern,

This is Alan K.I. Ching from Holy Nativity School on Oahu.

In April 2024 I brought our 6th grade class to Kauai for their Annual Neighbor Island Trip. We were able to tour many parts of the island but one of the highlights of the trip was our tour of the Lydgate Cacao Farm!

When we got there we were welcomed with open arms by their friendly staff. Our Tour guide Mason immediately connected with our students and taught them all about the process of growing cacao as well as the many other plants on the farm. He took us on a journey from the cacao seed all the way up to the way their chocolate was made! He gave us a great "hands-on" experience where the class was able to touch, smell and taste the cacao plant itself as well as the many different chocolates it was made into. Mason was able to answer all the questions the students and chaperones had and he even gave us a cacao fruit which we took back to Oahu and are growing the seeds on campus as we speak!

As the school wound down in late May, the class was still talking about the things they learned on the tour. They even went so far to say that if they went on a family vacation to Kauai they would want to go back to Lydgate Farms so that their parents and siblings could go on the tour and learn all about the cacao!

All in all, we had a great time at the farm and are looking forward to bringing this years 6th grade class to the farm in April 2025!

Mahalo,

Alan K.I. Ching

--



**Alan K.I. Ching**  
Grade 4 Lead Teacher

(808) 373-3232  
5286 Kalaniana`ole Hwy. Honolulu, Hawai`i 96821

[www.holynativityschool.org](http://www.holynativityschool.org)



**FW: Support for Lydgate Farms**

Kaaina Hull &lt;khull@kauai.gov&gt;

Fri 7/26/2024 11:03 AM

To:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;;Dale Cua &lt;dcua@kauai.gov&gt;

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**From:** Greg D'alesandre <gregd@dandelionchocolate.com>  
**Sent:** Friday, July 26, 2024 10:49 AM  
**To:** Planning Department <planningdepartment@kauai.gov>  
**Cc:** Will Lydgate <wlydgate@gmail.com>; Kaaina Hull <khull@kauai.gov>  
**Subject:** Support for Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Hello Kauai Planning Commission!

I am writing to provide details of how Lydgate Farms has impacted cacao farming throughout the islands and throughout the world with their work.

I am co-owner of a chocolate company named Dandelion Chocolate in San Francisco, CA and the Treasurer of the Hawaiian Cacao and Chocolate Association. I first met Will Lydgate over 10 years ago when my chocolate business was just getting started. Will has opened his farm to my business and employees to the point where we bring our employees out to Hawaii just to visit his farm. Dandelion Chocolate also runs trips to bring chocolate lovers from all over the World with the promise of visiting Lydgate Farms. Lydgate has been instrumental in inspiring and educating a new generation of chocolate makers and cocoa farmers.

There are farmers from Ghana to Thailand to Brazil who know Lydgate Farms and the work they do. While cocoa is a much beloved crop, many farmers have a hard time making ends meet in just selling cocoa. Ag-tourism provides the additional income needed to shift people into believing it's possible to work in agriculture and make a reasonable living. Lydgate Farms is, without question, the best example of outstanding Ag-tourism in the world. I say this as a cocoa sourcer who has visited 100s of farmers in 35 countries.

In serving on the board of the Hawaiian Cacao and Chocolate Association with Will, I've seen the impact he has on the local industry first hand. We recently co-organized our annual conference which drew attendees from many of our islands and more than 10 countries. Will's focus isn't just in building his business but rather building the whole industry. He'll jump at the chance to share details of his business in order to help other farmers in Hawaii. He's constantly looking for ways to encourage new farmers and young farmers. He's one of the largest employers in cocoa in the State. He's the strongest advocate for Hawaii to become the Global center of excellence for Education, Research, Quality, and Ag-tourism. This vision is infectious and in progress. His goal is to ensure that cocoa farming becomes a long-term and lucrative career path for farmers in Hawaii, and he's making real progress toward that goal.

I hope this helps illustrate the value that Lydgate Farms brings to our whole industry. I am more than happy to provide any additional details or information which could be helpful. Please feel free to reach out to me if it would be useful.

Greg D'Alesandre  
Chief Sourcing Officer, Dandelion Chocolate  
Treasurer, Hawaiian Cacao and Chocolate Association

**FW: Lydgate Chocolate Farm**

Kaaina Hull &lt;khull@kauai.gov&gt;

Fri 7/26/2024 11:43 AM

To:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;;Dale Cua &lt;dcua@kauai.gov&gt;

---

**From:** ds.kauai@hawaiiantel.net <ds.kauai@hawaiiantel.net>**Sent:** Friday, July 26, 2024 11:31 AM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Kaaina Hull <khull@kauai.gov>; Wlydgate <wlydgate@gmail.com>**Subject:** Lydgate Chocolate Farm

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

I am sending this in regards to my neighbor Will Lydgate, whom I have known about 20 years, and cherish as a friend. What a perfect neighbor, so gracious and helpful, and has wonderful dark chocolate. His chocolate has won national awards, who would guess our little Island of Kauai ranked so high in the chocolate competition!

Will also created jobs for our local people. His staff is so charming, always waving at me as they go by to work, smiling and sometimes stop to chat. Who could ask for a better neighbor!

One of our residents issued some complaints about the farm, though they don't even travel on his driveway. A large portion of the drive up to the farm is along my property and I have never had littering or fast driving from the tourists.....can't say that for some heavy footed residents! I have had wonderful conversations with tourists who stop for a picture of the valley, I enjoy them.

I endorse Will in his endeavors with his farm. He has my 100% support.

Aloha..... Susanne Gould

**FW: Lydgate Farms**

Kaaina Hull <khull@kauai.gov>

Fri 7/26/2024 3:36 PM

To:Shanlee Jimenez <sjimenez@kauai.gov>;Dale Cua <dcua@kauai.gov>

---

**From:** ShinDo <inspirewe@gmail.com>

**Sent:** Friday, July 26, 2024 3:17 PM

**To:** Planning Department <planningdepartment@kauai.gov>

**Cc:** Kaaina Hull <khull@kauai.gov>; wlydgate@gmail.com

**Subject:** Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

To the Kauai Planning Dept and to whom it may concern:

My name is Brandon Jones I am a property owner and neighbor of Will Lydgate (Lydgate Farms). As a neighbor I can tell you they have been great, super friendly and very helpful. Over the last 6 years I've been invited to help harvest cacao on their farm and I learned a lot from them.

Also they're chocolate is world renowned and delicious! I am a customer and a fan :)

Congrats to their success it has always been a pleasure for me to refer guests and clients to them for their tours and people really appreciate the beauty and professionalism of their tours/property/products.

Please let me know if you have any questions or concerns and I am happy to support Lydgate Farms!

Sincerely,

Brandon Jones



Marvin & Melanie Cameron  
5704 Olohena Road  
Kapaa HI 96746

July 27, 2024

To Whom It May Concern,

We own a home in the Lydgate Rise community and have for almost 10 years. During the time we have owned our home, we have not experienced any negative impact of having Lydgate Farms in our community. In fact, as an agricultural community, it has assisted with meeting the requirements of being agricultural landowners and the benefits enjoyed by being part of this type of a landowner.

Lydgate Farms also proposed, facilitated and paid to upgrade the mailboxes for the community, which were in complete disarray and an eyesore to anyone driving past the entrance to our neighborhood. They have also made other improvements to our community, at their own expense, which are not widely recognized.

We are aware that some individuals in our neighborhood have a problem with traffic the farm brings to our community and have voiced their concerns to many of the homeowners. We know Lydgate Farms management is also aware of this issue and have made changes to minimize the impact on our community by diverting tourists to their recently opened tasting experience in downtown Kapaa and other production and storage changes to their operations, which will reduce traffic in our neighborhood.

We support their activities in our community and enjoy seeing their products sold in stores around the island and their accomplishments on the global stage, which highlights the beautiful island of Kauai. We love seeing chocolate, coffee and other products produced on Kauai enjoyed by individuals from all over the world.

Respectfully,

Marvin & Melanie Cameron  
Homeowners  
Lydgate Rise Community

**FW: Lydgate Farms**

Planning Department <planningdepartment@kauai.gov>

Mon 7/29/2024 6:40 AM

To:Dale Cua <dcua@kauai.gov>

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**From:** bluemoon@kahala.net <bluemoon@kahala.net>

**Sent:** Saturday, July 27, 2024 7:31 AM

**To:** Planning Department <planningdepartment@kauai.gov>

**Cc:** wlydgate@gmail.com

**Subject:** Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha. We are neighbors to the Lydgate Chocolate Farm. We have been there since the beginning. We have always supported Will Lydgate in his ambitious business. He has made remarkable progress with something we feel is so important to this community, Agriculture and Education. We always like to see small business thriving on Kauai and Will is no exception. He has created something really special. On a personal note, he is kind, thoughtful and considerate. In our experience, his crew also exhibits the same quality which tells us, he is a good leader. He has gone above and beyond to be a great neighbor. We support Will and his Chocolate Farm.

Sincerely,

Melvyn and Laverne Alves

**FW: Lydgate Chocolate Farm**

Planning Department <planningdepartment@kauai.gov>

Mon 7/29/2024 6:40 AM

To:Dale Cua <dcua@kauai.gov>

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**From:** MakersKauai <makerskauai@gmail.com>

**Sent:** Saturday, July 27, 2024 7:40 AM

**To:** Planning Department <planningdepartment@kauai.gov>

**Cc:** wlydgate@gmail.com

**Subject:** Lydgate Chocolate Farm

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

I reside in Lydgate Rise Estates. I am an advocate of agriculture and small businesses on Kauai. I admire Will Lydgate for growing his Chocolate Farm and bringing to Kauai education, heritage, and tasty chocolate. Will and his staff have always been courteous and lend a helping hand when needed. I continue to support Will Lydgate and Lydgate Chocolate Farms.

Mahalo,  
Mario Perez

**FW: Lydgate Farms Chocolate Tours**

Planning Department &lt;planningdepartment@kauai.gov&gt;

Mon 7/29/2024 6:41 AM

To:Dale Cua &lt;dcua@kauai.gov&gt;

**From:** Charlotte Lydgate <charlotte.princess@icloud.com>**Sent:** Sunday, July 28, 2024 8:34 PM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Kaaina Hull <khull@kauai.gov>; Will Lydgate <wlydgate@gmail.com>**Subject:** Lydgate Farms Chocolate Tours

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

I live in the Lydgate Rise, a residential/agricultural zoned subdivision. Lydgate Farms are bordering on my land and have been my neighbors for many years. They grow cacao and produce excellent chocolate for which Mr. Lydgate received international awards in Paris and Amsterdam.

It's great to have a successful agricultural enterprise in the neighborhood. This farm creates highest quality products, contributes to the community and is a true asset to the neighborhood and the island of Kauai.

I appreciate them, fully support them, and congratulate their success.

All these years Lydgate Farms, their owners and employees, have been consistently pleasant and friendly neighbors!

Aloha,  
Charlotte Lydgate

**FW: In Support of Lydgate Farm**

Planning Department <planningdepartment@kauai.gov>

Mon 7/29/2024 2:40 PM

To:Dale Cua <dcua@kauai.gov>

-----Original Message-----

From: Sabra L Kauka <sabrakauka@icloud.com>

Sent: Monday, July 29, 2024 2:22 PM

To: Planning Department <planningdepartment@kauai.gov>

Cc: Kaaina Hull <khull@kauai.gov>; Will Lydgate <wlydgate@gmail.com>

Subject: In Support of Lydgate Farm

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Kākou,

This letter is written in support of Lydgate Farm.

It is a pleasure to have known Will Lydgate since he was a student at Island School. His heart has always been on Kaua'i and he is a strong supporter of Hawaiian culture.

Lydgate Farms is a strong supporter of Hawaiian cultural arts. It is one of the few places on Kaua'i, outside of the National Tropical Botanical Garden, where wauke is grown for teaching purposes. I know because I gave them the plants and have taught their staff how to use it.

Their logo incorporates Kapa designs. And they grow the most delicious chocolate in the world.

Please support Lydgate Farm in their effort to support Hawaiian culture while they grow the best chocolate in the world.

Malama pono,

Sabra Kauka

Sent from my iPhone

**FW: Lydgate Farms Support**

Kaaina Hull &lt;khull@kauai.gov&gt;

Tue 7/30/2024 8:34 AM

To:Dale Cua &lt;dcua@kauai.gov&gt;

Cc:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;

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**From:** Anastasiya Shvets <ana@lydgatefarms.com>**Sent:** Tuesday, July 30, 2024 8:31 AM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Kaaina Hull <khull@kauai.gov>; Will Lydgate <wlydgate@gmail.com>**Subject:** Lydgate Farms Support

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

To whom it may concern,

I am currently a full-time employee at Lydgate Farms and have worked here for about two years. I found Lydgate Farms on a search for a fulfilling job where I could be connected to a purpose and interact with wonderful people. In the last two years my role on the farm has evolved as has the popularity of the farm itself. My starting position was working as a tasting guide in the farm retail stand, then Guest Services to support the farm tours, and now Front of House Manager as I help coordinate the day to day operations of our farm and now our Lydgate Chocolate Tasting Room in Kapaa.

In the last two years I have seen more and more guests driving up to visit our farm retail stand in hopes of tasting the chocolate grown on this farm and have seen them leave with an awe for Hawaiian grown cacao and what this farm stands for - the future of Hawaiian agriculture.

When we realized that more guests were driving up to the farm to visit our retail store compared to those taking a tour, Will made a brilliant decision to move our retail experience down to Kapaa town. This was a very well thought out and costly endeavor as we had to find a retail location, come up with a new system for guest interactions, and even hire additional staff to support the new location.

Since the opening of our Lydgate Chocolate Tasting Room in Kapaa we have seen a significant drop of drive up visitors searching to taste our amazing chocolate. While there have been complaints from residents about the traffic, I would like to argue that Will Lydgate has gone to great lengths to move the majority of visitors down to Kapaa town and the visitors that drive up to the farm have scheduled tours.

Working at Lydgate Farms I have found joy in learning about Hawaiian grown cacao, being connected to the land of this island, and sharing that joy with individuals who visit Kauai and are in search of the same experiences. We are proud to change the way people think about chocolate - one visitor at a time - whether it be our tour guests on the farm or the visitors we see at our Lydgate Chocolate Tasting Room. I really hope that the generations after us can have opportunities to have sustainable agriculture.

**Ana | FOH Manager**

*Lydgate Farms*, Kauai Chocolate

Follow us: [@lydgatefarms](#)

Visit us: [lydgatefarms.com/chocolate-farm-tour/](https://lydgatefarms.com/chocolate-farm-tour/)

Shop products: [lydgatefarms.shop](https://lydgatefarms.shop)

# Mason Poki'i Alfaro

## Tour Guide

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Mason Alfaro  
PO BOX 1605  
Kapa'a, HI 96746  
808.258.6783  
Masonalfaro1@gmail.com

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30 JULY 2024

### County of Kauai

Planning Commission  
4444 Rice St suite 473  
Lihue, HI, 96766

Dear Kauai Planning Commission

This letter is on behalf of Lydgate Farms. I have been an employee for almost two years. As a combat veteran, I am proud to represent Hawaii agriculture globally, as a new way to serve my community and my country. This career has financially stabilized my new family. When our newborn was four months at the time, my partner and I were struggling financially while working on the Boat tours in Port Allen. Then we found Lydgate Farms just ten minutes away from home, where now I have financial stability to care for our son without ever needing outside income assistance. Moreover, I have more time with my family being nearby. I have worked in the outdoor tourism industry for almost a decade, sharing our Hawaiian principles and history. With many tour operators I have been a part of, Lydgate Farms has allowed me to connect more people intimately by welcoming them into the doors of Lydgate Farms, our home.

Growing up in Hawai'i my mom taught us one thing that I will always remember. You better show respect when you enter someone's home. This advice from that stern raspy voice from my Hawaiian Filipino mother still sticks with me today. And that core memory has taken me further than any other advice. When I went to college in the mainland, my roommates parents were surprised by the respect I lent for them to invite me into their home. Many local kids that leave for college would say the same story. That we, kamaaina, is a reflection of our family when we enter someone's home. There is something different about how someone behaves when they enter someone else's home, than to meet outside in public. We take our shoes off, we don't touch things, we ask how we could help in the kitchen, we don't put our feet on the couch, we greet everyone when we enter. WE LISTEN. When we welcome visitors to Lydgate Farms, THEY listen.

I am proud to represent Lydgate Farms. We emulate Regenerative Agriculture through the vehicle of Agricultural Tourism by sharing with visitors the principles of respect on Hawaii land when we bring them onto our farm, our home. Visitors leave with a sense of respect for the land of Kauai through witnessing the care we put into the tour experience and how that care is incorporated into the quality of agriculture.

My mothers advice now lives with thousands of visitors today and more as we continue to operate our farm.

Very Respectfully

Mason Poki'i Alfaro





Waimea Research Center  
1-385 Kaunualii Hwy.  
PO Box 609  
Waimea, HI 96796

Planning Commission  
c/o County of Kauai Planning Department  
4444 Rice Street, Suite A473  
Lihue, HI 96766

**July 30, 2024**

**RE : Lydgate Farms Land Use Permit**

Dear Kauai Planning Commission,

I am writing to express support for the ongoing use permit for Lydgate Farms and their innovative ag-tourism model for Kauai and the State of Hawaii.

Corteva Agriscience is a leading developer and supplier of plant genetics to farmers worldwide, committed to enhancing agricultural productivity, profitability, and sustainability. Operating in over 90 countries, we have been active in Hawaii for more than 50 years, focusing on developing new crop breeding materials and partnering with local farmers, including Lydgate Farms.

Corteva has collaborated with Lydgate Farms on a pioneering vanilla research trial to determine the optimal system for vanilla production in Hawaii. Additionally, we volunteer to support various operations at Lydgate Farms, fostering a mutually beneficial relationship. Lydgate Farms has developed an ag-tourism model that provides award-winning chocolate and tour experiences, positioning them as a leader in the state's cacao industry. They are poised to lead the growing cacao industry in Kauai and across Hawaii, and they need the continued support of the Planning Commission to expand and grow their operations.

The direct sales of value-added products, along with a world-class ag-tourism experience, will play a significant role in Hawaii's agricultural future. Corteva is excited to partner with Lydgate Farms to expand Hawaii's agricultural sector and urges your continued support to help small, locally grown farms like Lydgate thrive on Kauai.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Stoutemyer", with a long horizontal flourish extending to the right.

Mark Stoutemyer, Hawaii Research Lead

**FW: Letter of support for Lydgate Farm**

Kaaina Hull &lt;khull@kauai.gov&gt;

Wed 7/31/2024 11:29 AM

To:Dale Cua &lt;dcua@kauai.gov&gt;

Cc:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;

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**From:** Tina Wartman <tinawkauai2009@gmail.com>**Sent:** Wednesday, July 31, 2024 11:23 AM**To:** Planning Department <planningdepartment@kauai.gov>**Cc:** Kaaina Hull <khull@kauai.gov>; wlydgate@gmail.com**Subject:** Letter of support for Lydgate Farm

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

In my 26 years of living on Kauai I have seen many changes, including the decline of viable agriculture. With the price of land skyrocketing it has been a challenge for those that want to keep the rural beauty of Kauai alive by making a living off of the land. Will Lydgate has found a successful way of utilizing his love for the land as well as incorporating Hawaii's true money maker, tourism, to create a viable business that sustains both the aina and its people.

I am honored to work for a company so committed to Hawaii's future. Will has a passion for not only Lydgate Farm, but all of the cacao industry in the state. He has created a memorable tourist experience while also providing well paying jobs to those in his community.

The success of the farm relies on committed employees as well as the income provided by agritourism. I believe Will Lydgate and Lydgate Farms is an ideal model for future farmers in Hawaii and I hope you provide your support.

Mahalo,

Christine Wartman

**FW: In Support of Lydgate Chocolate Farms**

Kaaina Hull &lt;khull@kauai.gov&gt;

Wed 7/31/2024 3:29 PM

To:Dale Cua &lt;dcua@kauai.gov&gt;

Cc:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;

-----Original Message-----

From: Eugene Punzal &lt;eugenepunzal@gmail.com&gt;

Sent: Wednesday, July 31, 2024 2:40 PM

To: Planning Department &lt;planningdepartment@kauai.gov&gt;; Kaaina Hull &lt;khull@kauai.gov&gt;; Will Lydgate Ben, Mahea, &lt;wlydgate@gmail.com&gt;

Subject: In Support of Lydgate Chocolate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

My name is Eugene "Onio" Punzal, a Cultural Weaving Practitioner at the Kauai Museum, and I am writing this letter in support of Lydgate Chocolate Farms, here on Kauai.

I have known the Lydgate Ohana for many years, since the inception of Steelgrass Chocolate Farms. I have come to meet and get to know Will about 10 years ago, and found him to be one to perpetuate, support, and promote the Hawaiian Culture. On a mission to get Bamboo for the Kamehameha Day Parade, I asked Will for permission to pick bamboo, and he was more than willing to help the Malie Foundation with our Float making. He was so gracious to show me his Coconut Trees on property, and allow me to pick whatever I need to continue my Kuleana to promote Coconut Weaving, to our Kamaaina and Malihini. The staff that he employs are very friendly and accommodating and truly guide themselves with the Spirit of Aloha.

Please contact me should you need more information.

Me Ke Aloha Pumehana

(With warm regards)

Eugene Punzal

6025 Kapahi Road

Kapaa, HI. 96746

Sent from my iPad

**FW: Letter of Support for Lydgate Farms**

Kaaina Hull &lt;khull@kauai.gov&gt;

Mon 8/5/2024 7:25 AM

To:Dale Cua &lt;dcua@kauai.gov&gt;

Cc:Shanlee Jimenez &lt;sjimenez@kauai.gov&gt;

-----Original Message-----

From: kailey carlson &lt;kailey.carlson8@gmail.com&gt;

Sent: Sunday, August 4, 2024 4:47 PM

To: Planning Department &lt;planningdepartment@kauai.gov&gt;

Cc: Kaaina Hull &lt;khull@kauai.gov&gt;; Will Lydgate &lt;wlydgate@gmail.com&gt;

Subject: Letter of Support for Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha Kauai Planning Department,

This letter is to express my gratitude and support for Lydgate Farms. As a farm worker at Lydgate for over 3 years now, and the current Farm Manager, I've had the privilege to watch us grow from a small scale cacao farm to a thriving agritourism business doing good for the Kauai community. Lydgate Farms serves as a model, illustrating how to make agriculture a viable and sustainable business in Hawaii where cost of land and living make practicing agriculture a major financial challenge.

Lydgate Farms takes care of its employees with fair wages and fosters community involvement through our volunteer harvest program run every 3 weeks, bringing people together. The tours we run teach locals and visitors the importance of knowing where your food comes from, and inspires an appreciation for Hawaii local agriculture in every guest.

Because of the stability that agritourism provides the farm, Lydgate is also able to conduct valuable agricultural research for the cacao industry. We're actively running experiments on local cacao varieties, have an extensive study on vanilla, and have partnered with CTAHR to help in cacao variety trial studies. We are eager to share this knowledge with the community and other local farmers.

Lydgate Farms has certainly changed my life for the better, by providing a sense of community and stable job where I can pursue my passion for local agricultural research, and the agritourism side of this business has made that possible. I recognize the complaints posed against the farm by means of traffic, but feel that Ag leased land should be used for agriculture, and Lydgate Farms is doing just that, plus so much more. If you stand for local Hawaii agriculture, you're standing with us.

Mahalo for hearing us,

Kailey Carlson

Farm Manager



**Letter to the Kaua'i Planning Commission  
4444 Rice Street, Suite A473  
Lihu'e, Kaua'i, HI 96766**

RE: Support for Lydgate Farms

Dear Chair Apisa, Vice Chair Ako, and Members of the Commission:

The Kaua'i Chamber of Commerce wishes to express our strong support for the innovative and community-focused agricultural practices underway at Lydgate Farms. Under the leadership of Will Lydgate, their farm exemplifies the type of business that fosters sustainable prosperity within our local community.

Lydgate Farms has been a pioneering force in diversifying Kauai's agricultural sector, particularly with their internationally recognized cacao. Their efforts not only place Kaua'i on the global map but also contribute significantly to our local economy through agritourism and educational initiatives.

The Kaua'i Chamber lends its voice and support to efforts that maintain and grow opportunities for Kaua'i businesses and residents, reduce the costs and regulatory burdens of doing business, and manage growth to improve the quality of life for our residents. Lydgate Farms' initiatives are in alignment with these goals, promoting agricultural innovation and economic diversification while preserving Kauai's unique character and natural resources.

The Chamber's mission is to champion economic prosperity by being the voice of business, promoting collaboration, and helping our members thrive. Lydgate Farms is a shining example of the type of agricultural enterprise we believe is crucial for the future of our island. Their work not only supports local employment but also serves as a model for sustainable agricultural practices and community engagement. We are confident that Lydgate Farms will continue to contribute positively to our community and economy.

Mahalo for your time and support.

Warmest regards,

Mark Perriello  
President & CEO

**FW: Support for Lydgate farms chocolate**

Planning Department <planningdepartment@kauai.gov>

Fri 8/2/2024 7:43 AM

To:Dale Cua <dcua@kauai.gov>

---

**From:** Andrew Ecker <aecker706@yahoo.com>

**Sent:** Thursday, August 1, 2024 9:07 PM

**To:** Planning Department <planningdepartment@kauai.gov>

**Cc:** Kaaina Hull <khull@kauai.gov>; Will Lydgate <wlydgate@gmail.com>

**Subject:** Support for Lydgate farms chocolate

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

My name is Andrew Ecker I am an employee at Lydgate Farms and resident at 5971 Waipouli road. Lydgate farms is a successful small business grown here on Kauai making an impact in its industry and setting a good example of the type of world class agricultural products and experiences this county and state can produce.

Our farm tour guests make lifelong memories while helping fund our operations and the numerous families that make their living from it. It is hard to compete and survive growing any agricultural crop and agritourism can help farmers become a profitable and worthwhile venture. Agritourism in Kauai should be encouraged and is good for both local residents and guests.

Thank you for your time and considerations  
From Andrew Ecker

## Shanlee Jimenez

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**From:** Kaaina Hull  
**Sent:** Monday, August 5, 2024 7:39 AM  
**To:** Dale Cua  
**Cc:** Shanlee Jimenez  
**Subject:** FW: Lydgate Farms  
**Attachments:** LydgateFarmsLetter\_TGoldman.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

**From:** toni@oz.net <toni@oz.net>  
**Sent:** Thursday, August 1, 2024 5:07 PM  
**To:** Planning Department <planningdepartment@kauai.gov>  
**Cc:** Kaaina Hull <khull@kauai.gov>; wlydgate@gmail.com  
**Subject:** Lydgate Farms

**CAUTION:** This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

August 1, 2024

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**To the Planning Department, County of Kaua'i,**

My name is Toni Goldman, and I work for Lydgate Farms. I have only been with Lydgate for about a month, but it is absolutely the best job I have ever had. The Lydgate core values resonate with my personal ideals and principles. And, I really do feel like I am part of the "Chocolate Ohana."

Not only is the company culture a great fit for me, but I also believe in what we are doing agriculturally. I am very proud of how we are growing and maintaining our farm using sustainable processes.

Aloha,

---

**Toni Goldman**

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To the Kauai County Planning Commission,

We are writing to declare our support and appreciation for Lydgate Farms for their leadership and role as a pioneer in the Hawaii agricultural tourism industry. As a small commercial farm on Big Island that has recently begun to integrate educational tours as part of our business model, we have looked to Lydgate Farms for guidance and proof of concept. Their dedication to uplifting and supporting the Hawaii cacao and chocolate industry has paved the road for others, like ourselves, to contribute to this burgeoning sector of Hawaiian agriculture.

Aloha,

Colin Hart  
Honolii Orchards LLC  
Owner  
(808) 987-9258  
[Colin@honolii.estate](mailto:Colin@honolii.estate)

Signed:  Date: 07/31/24



Alex Bivens, Ph.D.  
4401 Kapuna Road  
Kilauea, HI 96754

August 2, 2024

Kauai Planning Commission  
4444 Rice Street, Suite A473  
Lihue, HI 96766

Dear Commissioners,

I have known Will Lydgate for more than 20 years, and I have watched him develop Lydgate Farms into the active agricultural operation that it is today. Presently, Lydgate Farms is an expanding endeavor that includes a retail store for Kauai-grown agricultural products, and plans to expand cacao farming and value-added processing across larger portions of Kauai. Like most of the Kauai community, I am grateful to the Planning Commission for providing Lydgate Farms with a use permit for agricultural tours so that visitors and locals can support farming on our island.

Will's personal commitment to the welfare of our aina and the Kauai community runs very deep. About 20 years ago he set out to farm cacao on Kauai, a crop that is healthy, sustainable, and has immense popular appeal. By producing other high-value crops such as honey and vanilla, and by collaborating with other Kauai-based businesses (such as Koloa Rum), Lydgate Farms has innovated ways to make agriculture a viable business for the benefit of the local economy. From the island residents who work on his farm and in his retail store to community stakeholders who appreciate the positive publicity generated by producing delicious, international-award-winning Kauai chocolate, Lydgate Farms is a huge net positive.

As you understand, conducting agriculture on Kauai is particularly challenging financially. The high costs of farmland and labor on Kauai dwarf the expenses associated with production in other cacao-producing regions like central Africa and Central and South America. At some level, Lydgate Farms has to compete with producers from these regions that have very cheap land and utilize exploitative labor practices.

Thankfully, Lydgate Farms has developed effective solutions that compensate for these challenges. Their agricultural tours provide an additional stream of income to their sustainable farm on Kauai, making producing here more financially viable. Of course there are many other benefits that these tours bring to the local economy, such as revenues from advertising paid to local media companies, wholesale purchases of locally-made souvenirs, concierge commissions, and the tax revenues that are generated by all of these activities. The tours also make a positive contribution to the overall visitor experience on Kauai: the Lydgate Chocolate Farm tour has repeatedly been voted "Best Tour on Kauai!" More modestly, the agricultural tours can reasonably be regarded as a classic example of a "win-win" and I believe Kauai can benefit from much more of this kind of sustainable industry.

Unfortunately, as most of us are aware, some people from the mainland move here with their money, buy land that is zoned "Agricultural" by the county, and then proceed to complain about any actual farming activities carried out by their similarly-zoned neighbors. My understanding is there is a current complaint about "too much traffic." As a person who has frequented Lydgate Farms with some regularity during regular business hours (to purchase what may be the best-tasting chocolate in the world), I have never passed a car in the driveway up to the farm and usually only see one or two cars parked up there. (From now on I will be shopping for chocolate, vanilla, and honey at the retail store in Kapaa Town).

Complaints about sustainable farming activities on property that is zoned for agricultural use are literally out of place. They seek to squelch local prosperity, and are bad for our community. Local residents who are committed to the welfare of the island and our families that grow up here, depend on local government entities like the Planning Commission to resist the influence of this kind of "me first" attitude.

I sincerely hope that the Commission will continue to support Lydgate Farms as they expand their operations toward ever greater benefits for Kauai residents, businesses, and visitors. I also hope that the Commission will grant permits to other farmers who are willing to educate and share aloha with locals and visitors alike, as they make their agricultural operations more viable and sustainable for our beautiful Garden Island.

With sincere appreciation and aloha,

A handwritten signature in black ink, appearing to read "Alex Bivens". The signature is fluid and cursive, with several loops and a long horizontal stroke at the end.

Alex Bivens, Ph.D.  
Invested Kauai Community Member

**FW: Lydgate Farms**

Planning Department <planningdepartment@kauai.gov>

Mon 8/5/2024 9:10 AM

To:Dale Cua <dcua@kauai.gov>

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**From:** Jim Berg <jmberg77@gmail.com>

**Sent:** Saturday, August 3, 2024 2:54 PM

**To:** Planning Department <planningdepartment@kauai.gov>

**Subject:** Lydgate Farms

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

I reside at 5752 Olohena Rd, Kapa'a, HI 96746. We are direct neighbors of Lydgate Farms and support their farm operation on their property. They are good stewards of the land and good neighbors.

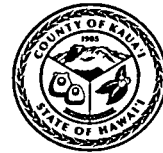
Mahalo,

Jim Berg

# DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



DEREK S.K. KAWAKAMI, MAYOR  
REIKO MATSUYAMA, MANAGING DIRECTOR

## PLANNING DIRECTOR'S REPORT

**RE:** Updated Status Report per Condition 10  
Class IV Zoning Permit Z-IV-2015-10  
Use Permit U-2015-9  
Special Permit SP-2015-1  
Tax Map Keys: (4) 4-4-003:045 (Por.)  
Kapa'a Homesteads, Kaua'i

**APPLICANT:** STEELGRASS FARM, LLC.

### PROJECT BACKGROUND

The subject permits were approved by the Planning Commission on February 25, 2015 that authorized agriculture commercial tours and operation of a gift shop on a portion of the subject parcel. As originally represented, the commercial tour incorporates agricultural education programs that consists of a 3-hour tour where participants are informed of the agricultural history of Kauai and of the subject property. In addition, the project involves the operation of a gift shop where participants are able to purchase products generated from the agricultural activities on the property.

In mitigating potential impacts of the operation to neighboring properties, the Commission supported a condition that limited the number of tours within the week as well as the number of participants per tour. Condition No. 2 of the permit originally read:

*"2. The agriculture commercial tours shall be limited to no more than three (3) days per week, with no more than twenty-five (25) participants per tour."*

In 2017, the Applicant requested an amendment to the foregoing condition to allow two (2) additional tours per week. The Commission approved the request and Condition No. 2 was subsequently revised to read as follows:

*"2. The agriculture commercial tours limited to no more than five (5) days per week, with no more than twenty-five (25) paying participants per tour and the hours of operation shall be from 8:00am to 6:00pm."*

Then in 2022, the Applicant requested another amendment to Condition No. 2 and it involved elimination of the restriction concerning the number of patrons for each tour and a revision to its hours of operation from 8:00 am to 6:00 pm to 8:00 am to 4:00 pm. At the Commission meeting, concerns were raised regarding the vehicular traffic generated by the operation. As noted in the Applicant's submittal, a traffic study was conducted to evaluate the traffic impacts from the project.

The Applicant's amendment request was eventually approved by the Commission on March 22, 2022. However in monitoring the impacts of the project as a result of the requested amendment, a new

H.I.B.  
AUG 13 2024

condition was introduced and the requirement read:

*"10. The project shall be monitored for a period of two (2) years from the date that the amendment is approved. In that time, the Department shall record any grievances related to the project, if any. Within the 2-year period, the project shall be revisited by the Planning Commission. If there are no grievances, the Applicant may be allowed to continue to operate with no patron limitation; however, additional mitigation measures may be imposed to address any issues or impacts, if any. If project results in impacts to the surrounding neighborhood due to the removal of the maximum number of patrons per tour, the Planning Commission may consider requiring the tour operation to revert back to a maximum of 25 patrons per tour as originally conditioned."*

The intent of the condition was to monitor the impacts of the project. If it proved to be detrimental to the surrounding neighborhood, then the amendment to Condition No. 2 would be reversed where the previous limitations would be re-imposed for the project.

#### APPLICANT'S SUBMITTAL

In accordance with Condition No. 10, the Applicant is providing the attached status report (dated July 24, 2024), refer to Exhibit 'A'. As a part of its submittal, the Applicant has included an updated 2024 Traffic Assessment Report (Exhibit 'C' of the Application) which supplements the previous traffic study conducted in 2022.

#### PRELIMINARY EVALUATION

Since its inception, the main concern with the project as raised by the adjacent property owners has been vehicular traffic impacts. It is noted that vehicular access to the project site is through a shared driveway that leads up to the facility. In monitoring this concern, the Commission approved the project with a limitation on the number of tours per week and number of patrons per tour.

Since amending the condition in 2022 where there is no longer a restriction on the number of tours per week as well as the number of participants in each tour, the operation has attracted a number of complaints from its neighbors in early 2024 (refer to Exhibit 'B') and it focuses on vehicular traffic.


In the traffic study conducted in 2022 as well as the recent 2024 study, it concludes that the traffic generated by Lydgate Farms remains below the threshold established by the Federal Highway Administration (FHWA) and information contained in the Honolulu Complete Streets Implementation Study Location Report.

In following up with the complaints received, the department conducted a site visit to observe the traffic conditions at the project site. The department concluded that most of the traffic generated was associated with the gift shop operation. Recognizing this, there was some discussion of the possibility of relocating the retail activity (gift shop) off-site preferably in a commercial area. In July 2024, the Applicant opened a retail shop in Kapa'a Town.

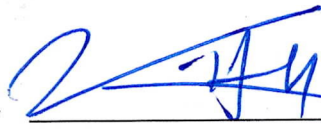
Based on the information contained in the traffic study and the relocation of the gift shop operation to Kapa'a Town, the department supports the conclusion that traffic conditions are negligible and that relocating the retail activity offsite would further reduce the amount of vehicular traffic along the common driveway.

RECOMMENDATION

It is recommended that the Commission receives the Applicant's Status Report dated July 24, 2024 and that Condition No. 10 be eliminated. Additionally, the Applicant is advised that all applicable conditions of approval shall remain in effect.

By  \_\_\_\_\_  
Dale A. Cua  
Planner

Approved and recommended to Commission:

By  \_\_\_\_\_  
Ka'aina S. Hull  
Director of Planning  
Date: 8/5/2024

# EXHIBIT "A"

(Status Report dated 7/24/24)

For reference





# LYDGATE FARMS

## KAUAI CHOCOLATE

July 24, 2024

County of Kaua'i Planning Commission  
4444 Rice Street, Suite A473  
Lihue, Hawaii 96766  
[planningdepartment@Kauai.gov](mailto:planningdepartment@Kauai.gov)

Re: Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit 2015-1 (Steelgrass Farm, LLC nka Lydgate Farms)

Dear Planning Commission Chair Apisa, Vice Chair Ako and Commissioners:

Lydgate Farms, LLC fka Steelgrass Farm, LLC is currently conducting agricultural farm tours on its farm located in the Lydgate Rise Agricultural Condominium Property Regime pursuant to the terms and conditions of the Class IV Zoning Permit Z-IV-2015-10, Use Permit U 2015-9, Special Permit 2015-1 (Steelgrass Farm, LLC nka Lydgate Farms) (the "**Special Use Permit**"). The Special Use Permit was originally granted on February 24, 2015, amended on August 8, 2017, and then amended again on March 23, 2022. As part of the March 23, 2022 amendment, Lydgate Farms agreed to monitoring of the agricultural farm tours and return to the Planning Commission after two (2) years.

The number of agricultural farm tours has increased in the last two (2) years and enabled Lydgate Farms to expand its business (and employment) and increase access to high quality local food sources which has been recognized locally, nationally and internationally while maintaining the agricultural character of the farm and the agricultural community which surrounds it. The operations of Lydgate Farms and its agricultural farm tours are daily, active reminders of implementation of the key policies of Kaua'i Kākou (the County of Kaua'i's General Plan, approved by the Kaua'i County Council in 2018), including but not limited to managing growth to preserve Kaua'i's rural character, protecting Kaua'i's scenic beauty, upholding Kaua'i as a unique visitor destination, helping Kaua'i businesses thrive, and helping Kaua'i's agricultural lands to be productive. Furthermore, impacts have been consistent with the Kaua'i Destination Management Action Plan 2021-2023 which, in part, supports diversification of other sectors of (traditional) tourism. This includes supporting and preserving Kaua'i's agriculture industry, such as value-added products and agritourism.

Under its Special Use Permit, as amended, agricultural farm tours are permitted Monday-Friday from 8 am to 4 pm. Lydgate Farms operates up to four (4) tours a day. There have been recent concerns expressed by a few neighbors about private vehicle traffic to the farm (along the roadway access leading to Lydgate Farms) during business hours. No comments have been expressed that agricultural farm tours cannot occur or that parking or traffic congestion is an issue. None of the concerns raised indicate that: (i) surrounding neighbors have had difficulty in traversing the access roadway, (ii) access is being blocked or (iii) visitors are damaging neighboring properties.

As part of this review and based on the information contained in this submission, Lydgate Farms respectfully requests that all conditions of its Special Use Permit relating to time, dates and monitoring of its agricultural farm tours be removed at this time.

#### Lydgate Rise Agricultural Condominium

Lydgate Farms is part of the Lydgate Rise Agriculture Condominium community which has sixteen (16) separate apartment lots. Each condominium interest is on "agriculturally zoned land" with certain restrictions associated with the interest. Lydgate Farms and its neighboring agriculturally zoned properties are not in a residentially zoned area. Each original unit owner entered into a Farm Dwelling Agreement with the County of Kaua'i. Neighbors are well aware that their properties are in agricultural zoning and are subject to Farm Dwelling Agreements, which run with their land, and were signed in or around 2001. As part of the Farm Dwelling Agreement, each owner is made aware that their property is within the State Agriculture Land Use District which permits only "farm dwellings" or a "single family dwelling located on and used in connection with a farm where agricultural activity provides income to the family occupying the dwelling."

Lydgate Farms signed a Farm Dwelling Agreement and has been farming its property since Day One. See Exhibit A attached hereto. Active farming has occurred for decades. Farming is not new to Lydgate Farms or its neighbors. There has been full transparency to all residents (original or successor owners) that Lydgate Farms and surrounding properties are agriculturally zoned properties with ongoing agricultural activities permitted per zoning.

Lydgate Farms is compliant with the expectations and obligations set forth in its Farm Dwelling Agreement and presumably all neighbors and residents should be compliant with respect to farm dwellings and agricultural activities.

#### Monitoring of Special Use Permit

As part of approving the March 23, 2022 amendment to the Special Use Permit, it was suggested and Lydgate Farms agreed to return to the Planning Commission after two (2) years to review impacts to the surrounding neighborhood. In March of 2024, Lydgate Farms followed up with the Kaua'i Planning Department on the timely review of the Special Use Permit, as amended. After some discussion with the Planning Department, Lydgate Farms agreed to conduct a third-party professional Traffic Assessment because of their recent correspondence to the Planning Department relating to traffic concerns expressed by a few neighbors.

## Traffic Assessments

In March of 2022, Austin Tsutsumi & Associates (“**Austin Tsutsumi**”), a local engineering firm with a specialty in transportation engineering, reviewed a future operations scenario on the access roadway leading to Lydgate Farms. Using **one hundred (100) vehicles per day** for a “worst case” traffic operations scenario, Austin Tsutsumi’s analysis concluded that:

... operations of a two-way, one-lane segments can be up to **1400 vehicles per hour**. Traffic generated by Lydgate Farms will fall far below this threshold, and as a result, **no significant impacts to traffic operations are anticipated as a result of Lydgate Farms permit amendment** (emphasis added).

See Exhibit B attached hereto. At the time of the March 2022 review, there were 30-35 vehicles a day for the agricultural farm tour and agricultural retail store (gift shop). The agricultural retail store or gift shop is a lawful activity (no permit required) on agriculturally zoned property.

In May of 2024, Austin Tsutsumi was hired to conduct an updated Traffic Assessment to document the existing traffic conditions on the access roadway. See Exhibit C attached hereto. Austin Tsutsumi conducted an in-person traffic count at the driveway access of Lydgate Farms on June 19, 2024 between 8:30 am to 3:30 pm. Agriculture farm tours start at 9:00 am with the last tour ending not later than 3:00 pm depending on the number of tours that day. The number of tour bookings was typical for “busier” times of year. Seventy-nine (79) vehicles entering Lydgate Farms were well distributed over the seven (7) hour period. In addition, Lydgate Farms (not Austin Tsutsumi) surveyed the cars visiting the Lydgate Farms and provided a further breakdown of the volume data based on the purpose of their visit: (1) tour, (2) agricultural retail store (gift shop) with no tour and (3) other purpose. Forty-five percent (45%) of vehicles were attending the tour, forty-three percent (43%) of vehicles were visiting the agricultural retail stand (with no tour) and the remaining nine percent (9%) were “other”. The analysis concluded that traffic generated by Lydgate Farms is currently far below the national and County of Honolulu threshold, and as a result, traffic operates within the accepted guidelines and no operational concerns occur as a result of traffic generated by Lydgate Farms. The Federal Highway Administration operations of two-way, one-lane segments continued to be up to 1400 vehicles per hour and the Honolulu Complete Streets Implementation Study Location Report capacity of urban streets is 800-900 vehicles per lane per hour (about 1600-1800 vehicles on a two-way, two-lane roadway). These benchmarks evaluate traffic and number of vehicles on a “per hour” basis while the cumulative number of vehicles (79) entering Lydgate Farms was for the entire seven (7) hour observation/assessment period.

The Traffic Assessments demonstrate that traffic generated by Lydgate Farms tours is far below the per hour vehicular traffic to raise traffic operational concerns. For example, in the June 19, 2024 Traffic Assessment conducted by Austin Tsutsumi, the maximum number of one-way vehicular trips entering and departing Lydgate Farms was twenty-

seven (27) during a one-hour period. This is only 2-3% of the accepted guidelines and capacity (this is inclusive of both tour and agricultural retail stand traffic). Again, this includes all vehicles including more than 50% who were at Lydgate Farms for other than tour purposes. There was no observation of “big” tour buses during the recent Traffic Assessment.

#### Update of Lydgate Farms Since 2022

Some brief highlights of Lydgate Farms operations since 2022 (the Special Use Permit Second Amendment approval):

- Increase full-time agriculture employment from thirteen (13) to twenty-eight (28) professional and skilled positions. Paying a living-wage plus full benefits.
- Increase farm production by double digits each year.
- Three (3) to four (4) daily agricultural farm tours. Tours arranged by reservation only.
- Relocate the agricultural retail stand (gift shop) from Lydgate Farm property to Kapa’a town. Lydgate Farms is no longer operating a standalone agricultural retail stand (gift shop) at the farm property; retail sales are only generated by tour visitors. Through emails and marketing, the agricultural retail stand (gift shop) traffic has been redirected to Kapa’a town. Prior to relocation, the agricultural retail stand (gift shop) with no tour generated approximately forty-five percent (45%) of the vehicle traffic to Lydgate Farms.
- In process of acquiring adjoining property with the intent to introduce agricultural use to that agricultural lot and expand the Lydgate Farm production.
- Agricultural farm tours allow Lydgate Farms to provide education/community related tours and support local charitable events on a regular basis.
- Diversified farming (produce) – cacao, vanilla, honey and tropical fruits.
- Diversified farming (accessory and tour use) - palms, fruit trees, hardwood and flowering trees, tropical flowering plants, bamboo and Hawaiian plants, lime, sugarcane, mango, rambutan, lilikoi, starfruit, and fruit trees.
- Recognized locally, national and internationally:
  - Kaua’i County Council Proclamation on July 3, 2024
  - Congressional Recognition – Hawaii on the Hill and meetings with Congressional delegation
  - Internationally recognized cacao producer – Cacao of Excellence Award (2017, 2021 and 2023)

See Exhibit D attached hereto for general background on Lydgate Farms.

### Future Plans for Lydgate Farms

Lydgate Farms has been a steward of agricultural lands as well as mindful, thoughtful and intentional in its business operations and strategies. Kaua'i has been home to the Lydgate 'ohana for well over a century. A critical component of Lydgate Farm's strategic planning for the continued viability and sustainability of its operations for future Lydgate generations is the overall health and sustainability of Kaua'i island. There must be synergies between the two for the success of our island, and in turn, Lydgate Farms. Future plans and opportunities that Lydgate Farms is pursuing or reviewing for its agricultural operations are as follows:

- Growth of the agricultural retail stand (gift shop) which has recently been relocated to Kapa'a town allowing for more space for farm production and operations at the Lydgate Farms property.
- Relocating warehouse facilities to Kapa'a town. Our storage and fulfillment operations and other activities would run out of this facility allowing for more space for farm production and operations at the Lydgate Farm property.
- Continued growth of farm production and diversifying the value-added and retail opportunities for Lydgate Farms.
- Continued review and diversification of agricultural farm tours depending on interest and demand for tours.
- Acquisition or leasing of property on Kaua'i island for agricultural use and expansion of the Lydgate Farms production.

### Response to Neighbors' Concerns

The concerns expressed by a few neighbors within this agriculturally zoned community can be categorized into four (4) areas: (i) no notification of March 2022 amendment request; (ii) increased traffic; (iii) health and well-being concerns; and (iv) alternate access to Lydgate Farms.

(i) No Notification of March 2022 Amendment Request. On February 19, 2022, all Association Members (owners) were invited by email to a zoom board meeting scheduled for February 22, 2022. The board meeting was to follow up on an annual meeting discussion about formalizing the voting process for the bylaws. Will Lydgate also invited everyone to a neighborhood forum about Lydgate Farms and its future plans. He gave a short presentation and then had a discussion afterward. A written agenda sent to all Association Members was attached to the February 19, 2022 email which included reference to "Neighborhood Discussion on Lydgate Farms proposed use permit amendment." See Exhibit E attached hereto.

Several neighbors expressing current concerns were in the meeting where Mr. Lydgate shared the vision of Lydgate Farms expanding, including the relocation of agricultural retail stand (gift shop) to Kapaa. The only request was to cut down a coconut tree in the easement by Olohena Road.

Letters of support for the March 2022 Amendment Request also refer to the notice of the Special Use Permit amendment, tours and use of the roadway easement. See Exhibit E.

(ii) Increased Traffic. The Special Use Permit only considers agricultural tour traffic. The Special Use Permit does not monitor or limit the traffic from the farm staff, agricultural retail stand (gift shop) visitors or business deliveries. Agricultural farm tours at Lydgate Farms are a very low impact agricultural activity (use) especially compared to other permitted activities and support the economic sustainability of the farming operations. If agricultural tours are limited then Lydgate Farms may need to revisit returning the agricultural retail stand (gift shop) back to the farm property and explore other permitted retail activity on the farm property such as a commercial nursery. Traditional farm vehicles, such as tractors, actually have a more moderate impact on the land. Finally, big buses are not part of the tours. Large tour buses cannot physically drive onto the access roadway leading to the entrance to Lydgate Farms. See also subsection (iv)(2) below.

(iii) Health and Wellbeing Concerns. With the relocation of the agricultural retail stand (gift shop) to Kapaa town, there will be approximately forty (40) to fifty (50) vehicles utilizing the access roadway easement at five (5) miles per hour over an eight (8) hour period. Schools, hospitals and residential neighborhoods see far more traffic. There was no evidence provided of adverse health conditions due to tour traffic; just mimicked statements of the Director's Report from 2022. Owners either built on their lots in proximity to the access roadway or purchased lots knowing the proximity to the access roadway and knowing that the access roadway leads to Lydgate Farms. Again, there was full knowledge and transparency not only as to the location of their residence in proximity to the access roadway and the permissible use of the roadway easement but that their choice of residence was within an agriculturally zoned community and that their neighbors, such as Lydgate Farms, were active farmers.

(iv) Alternative Access. Neighbors offered two (2) alternative access routes; neither of which are possible and/or viable for Lydgate Farms.

- (1) Unimproved Waipouli Road is not a viable option. Lydgate Farms does not own the Waipouli Road land. Currently Lydgate Farm leases some of the land for farming. More importantly, for safety considerations, access to or exit from the Lydgate Farm property via Waipouli Road is very limited because it is an unimproved roadway not suitable for daily, regular traffic. Access is limited to large vehicles, such as school and community field trip buses or delivery trucks, which otherwise cannot traverse the access roadway and whose use is infrequent.
- (2) Lydgate Farms operating a shuttle service from Kapaa town to Lydgate Farms is also not a viable option. A shuttle would require multiple trips in vehicles larger than the private vehicles which now arrive for the agricultural farm tour. Lydgate Farms would need to arrange safe parking, coordination of shuttles between those beginning and ending tours, compliance with regulatory requirements, and purchase and

maintain safety equipment such as children's car seats. The additional staff and costs make this option economically not feasible and unnecessary when Lydgate Farms has adequate parking for agricultural farm tour visitors and staff and has redirected its agricultural retail stand (gift shop) traffic to its new location in Kapaa town.

#### Mitigation of Any Impacts

Part of Lydgate Farms' strategic vision, consistent with the State of Hawaii and County of Kaua'i plans, is to create a robust agriculture industry and preserve the rural character of special places like Kaua'i. Lydgate Farms is particularly sensitive to being a good neighbor and balancing both the opportunities and challenges that come with growth. For Lydgate Farms its aloha for Kaua'i starts with its own 'aina within the Lydgate Rise Agricultural Condominium community. 'Aina that has been part of its 'ohana for five (5) generations. Being pono within its community is a foremost consideration as evidenced by its actions:

- Open communication with neighbors
- Improvements to the access roadway – re-gravel the road
- Appropriate time for visitation and farming
- Business working hours
- Signage along the access roadway for traffic easing
- Installation of mailboxes for ease of delivery
- Good neighbor program
- Supporting efforts of neighbors to farm –sharing agricultural intelligence, planting trees, etc.
- Offering agricultural farm tours for neighbors and their families and visitors
- Ongoing pig and chicken mitigation

#### Summary/Special Use Permit Request

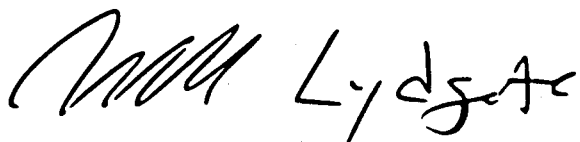
Lydgate Farms is functioning properly under its Special Use Permit. The farm operations are consistent with the lawful use and zoning. The agricultural farm tours have not been a detriment to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the surrounding areas and do not cause any substantial harmful environmental consequences. Furthermore, the operations of the agricultural farm tours are consistent with the criteria outlined for the granting of the Special Use Permit.

Lydgate Farms appreciates the support of State and County in recognizing the need to diversify Kaua'i's economy by revitalizing and diversifying the agricultural ecosystem, including but not limited to support and promotion of agritourism. The benefits of agritourism have been evidenced within our community and demonstrated as sustainable both nationally and internationally. We concur with the State and County that agritourism operations offer significant benefits such as: (i) educational opportunities for our keiki and 'ohana; (ii) provides supplemental income for owners of agricultural enterprises which are often small and family run businesses; (iii) supports economic development in rural communities; (iv) preserves agricultural heritage and (v) assists agriculture diversification.

Consistent with the intention of the State and County's promotion of agritourism, such as Lydgate Farms agricultural farm tours, and Lydgate Farm's demonstrated stewardship of its agricultural lands and agritourism, Lydgate Farms respectfully requests that all conditions of its Special Use Permit relating to time, dates and monitoring of its agricultural farm tours be removed. This will allow Lydgate Farms to strategically plan its farm and tour operations based on changing and evolving opportunities while continuing to ensure the mitigation of impacts.

Mahalo for your continued support of Lydgate Farms and your dedication to the preservation of the distinctive character of Kaua'i.

Very truly yours,

A handwritten signature in black ink, appearing to read "Will Lydgate". The signature is written in a cursive, flowing style.

Will Lydgate

Exhibit A – Farm Dwelling Agreement

Exhibit B – 2022 Austin Tsutsumi Traffic Assessment Study

Exhibit C – 2024 Austin Tsutsumi Traffic Assessment Study

Exhibit D – General Background Information on Lydgate Farms

Exhibit E – February 2022 AOA Notice and Agenda and Supporting Letters



# 'EXHIBIT A'

Sample farm dwelling agreement.



DEPARTMENT OF PLANNING  
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR  
MICHAEL A. DAHILIG, MANAGING DIRECTOR

KA'ĀINA S. HULL  
DIRECTOR

JODI A. HIGUCHI SAYEGUSA  
DEPUTY DIRECTOR

**INSTRUCTIONS FOR COMPLETING  
FARM DWELLING AGREEMENT**

**PLEASE NOTE:** It is very important that you follow these instructions to avoid unnecessary delays.

1. Please **READ** the entire Agreement and these instructions carefully.
2. All information on blank lines must be **typewritten** or legibly written in "**black ink**".
3. All individual names in instruments presented for recordation shall be **typewritten** or stamped **BENEATH** all signatures. No discrepancy in any name shall exist between the printed name, as it appears in the **BODY** of the instrument and **NOTARY'S** certificate of acknowledgment. All signatures must be **NOTARIZED**.
4. Each page must be 8 ½" X 11" in size. Make a total of three (3) sets of the Agreement.
5. If the instrument contains more than one page, it shall be stapled once in the upper left corner and shall not have a cover or backer attached.
6. The Registrar will not record any instrument that does not reproduce legibly, under photographic or electrostatic methods.
7. "EXHIBIT A", as noted on the first page of the Agreement, shall be the legal description of the property (metes and bounds), which can be found with the deed of your property. A subdivision map will not be acceptable. Attach one copy with each set of the Farm Dwelling Agreement.
8. Should there be several interests (owners) to the property or a power of attorney agreement, a written statement which authorizes the applicant to process the necessary permits and to obtain a Farm Dwelling Agreement must also be signed, notarized, and attached to each agreement and be identified as "EXHIBIT B".
9. Documents must include original signatures and be printed single-sided. No paper or materials can be secured or attached to a page in any manner that may conceal any written text.
10. Submit three (3) sets of completed Farm Dwelling Agreements to the Planning Department to obtain signatures of the Planning Department. The Applicant will be contacted by phone or mail to pick up completed documents.



11. Applicants will be responsible for submitting 1 (one) original and 1 (one) copy of the documents along with a RECORDATION FEE of \$41.00 to the Bureau of Conveyances along with 2 (two) self-addressed stamped envelopes to the address below.

State of Hawai'i  
Department of Land and Natural Resources  
Bureau of Conveyances  
P. O. Box 2867  
Honolulu, HI 96803

[www.hawaii.gov/dlnr/boc](http://www.hawaii.gov/dlnr/boc)  
Phone: (808) 587-0147

12. The Applicant is responsible for submitting a recorded copy of the agreement to the Planning Department to show proof of recordation. The Planning Department will process Zoning Permits upon receipt of the recorded copy of the agreement.
13. Changes by the Applicant to the text of the Agreement (other than its fillable fields), or use of Agreement templates other than the most recent form, will result in the Agreement being forwarded to the Office of the County Attorney for review and approval.



WHEREAS, a “farm dwelling” is defined by Chapter 205, Section 4.5, Hawai’i Revised Statutes as “a single-family dwelling located on and used in connection with a farm, including clusters of single family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling”; and

WHEREAS, a “family” as used in the definition of a “farm dwelling” shall be defined as “an individual or two or more persons related by blood, marriage or adoption or a group comprising of not more than five persons, not related by blood, marriage or by adoption”; and

WHEREAS, the APPLICANT(S) acknowledge that a violation of Chapter 205, Section 4.5, Hawai’i Revised Statutes, and the State Land Use Agricultural District restriction is subject to a citation and fine of not more than \$5,000.00 pursuant to Chapter 205, Section 13(a), Hawai’i Revised Statutes, as amended; and

WHEREAS, the APPLICANT(S) also acknowledge that failure to abide by this AGREEMENT may result in the removal of the prohibited structure at their sole expense; and

WHEREAS, the DEPARTMENT is charged with the enforcement of the restrictions in Chapter 205, Hawai’i Revised Statutes.

NOW, THEREFORE, for and in consideration of the terms, covenants and conditions hereafter contained, the DEPARTMENT and the APPLICANTS(S) (hereinafter the “PARTIES”) hereby agree as follows:

That the dwelling permitted to be constructed on the parcel of LAND classified Agricultural by the State Land Use Commission shall be a “farm dwelling,” as defined by Chapter 205, Hawai’i Revised Statutes, and the State Land Use District Regulations, as recited herein; and

1. That the dwelling shall only be occupied by a “family”, as defined herein, who derive income from the agricultural activity on the parcel; and

2. That the APPLICANT(S) and all present and future owners, lessees and occupants of said LAND hereby grant the DEPARTMENT the right of entry at the request of the DEPARTMENT to inspect the premises to ensure compliance with the provisions of this AGREEMENT; and

3. That this AGREEMENT shall be a covenant running with the portion of LAND described in Exhibit A, and be binding on the APPLICANT(S), and all present and future owners, lessees and occupants of said LAND and anyone claiming under said APPLICANT(S), their heirs, executors, administrators, successors and assigns, as owners or occupants thereof or otherwise; and

4. That this AGREEMENT shall remain in effect so long as the LAND retains its Agricultural classification under the State Land Use Commission and the pertinent restrictive provisions of Chapter 205, Hawai'i Revised Statutes, and the State Land Use District Regulations remain in effect; and

5. That the APPLICANT(S) expressly agree(s) to expressly set forth the provisions of this AGREEMENT in any subsequent conveyance, deed, lease or rental agreement to said LAND executed by them, so as to give effect to said covenant; and

6. That this AGREEMENT shall be recorded with the State of Hawai'i Bureau of Conveyances, fees and costs to be paid by the APPLICANT(S); and

7. The APPLICANT(S), for itself and its successors and assigns, does hereby waive and release the DEPARTMENT and the County of Kaua'i, a political subdivision of the State of Hawai'i, whose principal place of business is 4444 Rice Street, Suite 473, Lihu'e, Kaua'i, Hawai'i 96766, from all claims and causes of action, either legal or equitable, which may hereafter accrue by reason of the DEPARTMENT'S execution of this AGREEMENT; and

8. The APPLICANT(S), for itself and its successors and assigns (collectively "INDEMNIFYING PARTY"), does hereby agree to indemnify, hold harmless, and defend the DEPARTMENT and the County of Kaua'i, its successors, assigns, officers, employees, agents, attorneys, or any other person or legal entity connected with or legally responsible to them (collectively, "INDEMNIFIED PARTY"), from any and all losses, damages, liabilities, claims, actions, causes of action, lawsuits, demands, judgements, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising out of or related to the DEPARTMENT'S execution of this AGREEMENT.

9. INDEMNIFIED PARTY shall give APPLICANT(S) written notice (a "CLAIM NOTICE") of any losses or discovery of facts on which INDEMNIFIED PARTY intends to base a request for indemnification (an "INDEMNIFIED CLAIM"). INDEMNIFIED PARTY'S failure to provide a CLAIM NOTICE to INDEMNIFYING PARTY under this Section 9 does not relieve INDEMNIFYING PARTY of any liability that INDEMNIFYING PARTY may have to INDEMNIFIED PARTY, but in no event shall INDEMNIFYING PARTY be liable for any losses that result directly from a delay in providing a CLAIM NOTICE, which delay materially prejudices the defense of the related third-party claim. Each CLAIM NOTICE must contain a description of the third-party claim and the nature and amount of the related losses (to the extent that the nature and amount of the losses are known at the time). INDEMNIFIED PARTY shall furnish promptly to INDEMNIFYING PARTY copies of all papers and official documents received in respect of any losses.

10. INDEMNIFIED PARTY may defend an INDEMNIFIED CLAIM with counsel of its own choosing and without the INDEMNIFYING PARTY'S participation if: (a) the INDEMNIFIED CLAIM is one for which INDEMNIFIED PARTY properly gave

INDEMNIFYING PARTY a CLAIM NOTICE under Section 9, and INDEMNIFYING PARTY fails to assume the defense or refuses to defend the INDEMNIFIED CLAIM); (b) the INDEMNIFIED CLAIM seeks only an injunction or other equitable relief against INDEMNIFIED PARTY; or (c) INDEMNIFIED PARTY reasonably believes: (i) that there are one or more legal or equitable defenses available to it that are different from or in addition to those available to INDEMNIFYING PARTY; and (ii) counsel for INDEMNIFYING PARTY could not adequately represent the interest of INDEMNIFIED PARTY because such interest could be in conflict with those of INDEMNIFYING PARTY; or (iii) such action or proceeding involves, or could have a material effect on, any material matter beyond the scope of the indemnification or defense obligations of INDEMNIFYING PARTY.

11. The terms of this Farm Dwelling Agreement have been approved as to form and legality by the County Attorney as required by the Charter of the County of Kauai. No modification of any term herein, other than the completion of the fillable fields, is permitted without the express written approval of the County Attorney or a Deputy County Attorney. Any such modification made without the express written approval of the County Attorney or a Deputy County Attorney will result in the revocation of the approval as to form and legality.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the PARTIES hereto have caused this Farm Dwelling Agreement to be executed on this \_\_\_\_\_ day of \_\_\_\_\_ of \_\_\_\_\_.

APPROVED:

APPLICANT(S):

\_\_\_\_\_  
Director of Planning  
County of Kaua'i  
Planning Department

\_\_\_\_\_  
Click or tap here to enter text.  
NOTICE ADDRESS:  
Click or tap here to enter text.

\_\_\_\_\_  
Click or tap here to enter text.  
NOTICE ADDRESS:  
Click or tap here to enter text.

[Signature Page to Farm Dwelling Agreement]



STATE OF HAWAI'I        )  
                                  ) ss.  
COUNTY OF KAUA'I     )

On this day of \_\_\_\_\_, before me  
personally appeared \_\_\_\_\_  
\_\_\_\_\_, to  
me known to be the person described in and who executed the foregoing instrument,  
and acknowledge that \_\_\_\_\_ executed the same as  
\_\_\_\_\_ free act and deed.

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Hawai'i

My commission expires: \_\_\_\_\_

STATE OF HAWAII        )  
                                  ) ss.  
COUNTY OF KAUA'I     )

On this day of \_\_\_\_\_, before me  
personally appeared \_\_\_\_\_, who

swore that \_\_\_\_\_ is the

\_\_\_\_\_ of the PLANNING DEPARTMENT of

the COUNTY OF KAUA'I and acknowledged that \_\_\_\_\_

executed the foregoing instrument as \_\_\_\_\_ free act and deed in their capacity

as \_\_\_\_\_ of the of the PLANNING

DEPARTMENT of the COUNTY OF KAUA'I .

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Hawai'i

My commission expires:

# **‘EXHIBIT B’**

2022 Austin Tsutsumi Traffic Assessment Study.



TERRANCE S. ARASHIRO, P.E.  
ADRIENNE W.L.H. WONG, P.E., LEED AP  
DEANNA M.R. HAYASHI, P.E.  
PAUL K. ARITA, P.E.  
ERIK S. KANESHIRO, L.P.L.S., LEED AP  
MATT K. NAKAMOTO, P.E.  
GARRETT K. TOKUOKA, P.E.

FINAL

March 3, 2022

Mr. Will Lydgate  
Lydgate Farms  
5730 Olohena Road  
Kapaa, Hawaii 96746

Dear Mr. Lydgate:

Subject: **Traffic Letter Assessment  
Lydgate Farms  
Kapaa, Kauai, Hawaii**

Austin, Tsutsumi & Associates, Inc. (ATA) has prepared this traffic assessment (TA) for Lydgate Farms located in Kapaa, Kauai, Hawaii.

### **Project Description**

Lydgate Farms is a 46-acre farm located in Kapaa, Hawaii, which grows vanilla, honey, and cacao to make chocolate. Lydgate Farms also offers a three-hour Chocolate Farm Tour once a day, Monday through Friday, beginning at 9:00 AM and ending at 12:00 PM, and a gift shop which guests may visit even if not attending the tour. Currently, Lydgate Farm accommodates approximately 50 visitors, arriving in approximately 20 vehicles, per day on average. During peak visitor season, the farm may host as many as 80 visitors per day, arriving in approximately 30-35 vehicles. Lydgate Farms is seeking a permit amendment that will allow them to increase the number of visitors they can book on their farm tours.

### **Existing Conditions**

Lydgate Farms is located at 5730 Olohena Road within the Lydgate Rise subdivision. The site is accessed from a single concrete driveway off of Olohena Road and a combination of gravel and dirt roads within the subdivision which also serves several other residential homes. The main roadway within the subdivision is wide enough for two vehicles; though the local roadway approaching the farm, which serves 5 other properties, has short segments where only one vehicle can be accommodated at a time. Near the one-way, two-lane segments, there is generally ample space for one of the vehicles to pull over to allow the other through.



Mr. Will Lydgate  
Lydgate Farms

March 3, 2022

### Future Conditions

Based upon Client-furnished information, the maximum number of visitors that Lydgate Farms wants to host per day would be 100 visitors. While the Client has indicated that Lydgate Farms has no immediate plans to host the maximum number of visitors, conditions with 100 vehicles per day were considered to constitute the "worst case" traffic operations scenario.

Based on analysis published by the Federal Highway Administration (FHWA)<sup>1</sup>, operations of two-way, one-lane segments can be up to 1400 vehicles per hour.

Traffic generated by Lydgate Farms will fall far below this threshold, and as a result, no significant impacts to traffic operations are anticipated as a result of Lydgate Farms' permit amendment.

We appreciate the opportunity to prepare this traffic assessment for the Project. If you have any questions or require additional information, please contact me at (808) 533-3646.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

KELCEE A. FUJIMOTO, P.E.  
Project Transportation Engineer

<sup>1</sup> Traffic Analysis Tools Volume IX: Work Zone Modeling and Simulation, Federal Highways Administration, 2014, [http://ops.fhwa.dog.gov/wz/traffic\\_analysis/tatv9\\_wz/cs8.htm](http://ops.fhwa.dog.gov/wz/traffic_analysis/tatv9_wz/cs8.htm)

# 'EXHIBIT C'

2024 Austin Tsutsumi Traffic Assessment Study.



TERRANCE S. ARASHIRO, P.E.  
ADRIENNE W.L.H. WONG, P.E., LEED AP  
DEANNA M.R. HAYASHI, P.E.  
PAUL K. ARITA, P.E.  
ERIK S. KANESHIRO, L.P.L.S., LEED AP  
MATT K. NAKAMOTO, P.E.  
GARRETT K. TOKUOKA, P.E.

FINAL

July 8, 2024

Mr. Will Lydgate  
Lydgate Farms  
5730 Olohena Road  
Kapaa, Hawaii 96746

Dear Mr. Lydgate:

Subject: **Traffic Letter Assessment  
Lydgate Farms  
Kapaa, Kauai, Hawaii**

Austin, Tsutsumi & Associates, Inc. (ATA) has prepared this traffic assessment (TA) for Lydgate Farms located in Kapaa, Kauai, Hawaii.

### **Project Description**

Lydgate Farms is a 46-acre farm located in Kapaa, Hawaii, which grows vanilla, honey, and cacao to make chocolate. Lydgate Farms currently offers farm tours during regular business hours, Monday through Friday, 9:00 AM to 3:00 PM, and a gift shop which guests may visit even if not attending the tour. A Traffic Assessment was previously completed by ATA, dated March 3, 2022, pursuant to a permit amendment that would allow Lydgate Farms to increase the booking capacity of the farm tours. This permit amendment was subsequently approved.

At this time, the Client has requested that a Traffic Assessment (TA) be completed to document existing traffic conditions only. There are no planned changes to the operations of the farm except that the gift shop (agricultural retail stand) is planned to be relocated off-site in the future; therefore, this TA will study full operations of the farm (including planned tours and gift shop operations). This report is intended for informational purposes and not intended for use as part of any application process.

### **Existing Roadways**

Lydgate Farms is located at 5730 Olohena Road within the Lydgate Rise subdivision. The site is accessed from a single concrete driveway off of Olohena Road and a combination of gravel and dirt roads within the subdivision which also serves several other residential homes. The main roadway within the subdivision is wide enough for two vehicles; though the local roadway approaching the farm, which serves 5 other properties, has short segments where only one vehicle can be accommodated at a time.



Mr. Will Lydgate  
Lydgate Farms

July 8, 2024

Near the one-way, two-lane segments, there is generally ample space for one of the vehicles to pull over to allow the other through.

### Existing Volumes

Manual turning movement data was collected in 15-minute intervals at an in-person traffic count at the driveway access of Lydgate Farms on Wednesday, June 19, 2024 between the hours of 8:30 AM and 3:30 PM, which corresponds to 30 minutes prior to the start of the first tour of the day, and 30 minutes after the conclusion of the last tour of the day. Staff from Lydgate Farms indicated that the number of tour bookings was typical for “busier” times of the year, including the summer season or holidays, and that bookings are generally lower in the tourist off-season.

Over the course of the 7-hour study period, a total of 79 vehicles entered the site and 75 exited the site. These volumes were generally well-distributed over the course of the day, with volumes being low and steady throughout the study period. The highest volume observed occurred during the interval from 11:00 AM – 11:15 AM, in which nine (9) vehicles entered the site, and six (6) vehicles exited the site, equivalent to one (1) farm-generated vehicle per minute during this 15-minute interval. Traffic count data collected by ATA is included in Enclosure A.

In addition to the turning movement data collected by ATA, Lydgate Farms staff surveyed visitors to the farm and provided a further breakdown of the volume data based on the purpose of their visit. Approximately 45% of the vehicles accessing the farm were attending the tour, 43% of vehicles accessing the farm visited the gift shop only (did not attend tour), and the other 9% of vehicles accessing the site were categorized as “other” purposes.

Based on analysis published by the Federal Highway Administration (FHWA)<sup>1</sup>, operations of two-way, one-lane segments can be up to 1400 vehicles per hour. Based on information in Honolulu Complete Streets Implementation Study Location Report<sup>2</sup>, capacity on urban streets is approximately 800-900 vehicles per lane per hour (about 1600-1800 vehicles on a two-way, two-lane roadway). Traffic generated by Lydgate Farms is currently far below this threshold, and as a result, traffic operates within the accepted guidelines and no operational concerns are expected to occur as a result of traffic generated by Lydgate Farms.

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<sup>1</sup> Traffic Analysis Tools Volume IX: Work Zone Modeling and Simulation, Federal Highways Administration, 2014, [http://ops.fhwa.dot.gov/wz/traffic\\_analysis/tatv9\\_wz/cs8.htm](http://ops.fhwa.dot.gov/wz/traffic_analysis/tatv9_wz/cs8.htm)

<sup>2</sup> Honolulu Complete Streets Implementation Study Location Report, City & County of Honolulu Department of Transportation Services, 2015, [https://www.honolulu.gov/rep/site/dts/dts\\_docs/160907\\_CS\\_Implementation\\_Report\\_Kalakaua\\_FINAL](https://www.honolulu.gov/rep/site/dts/dts_docs/160907_CS_Implementation_Report_Kalakaua_FINAL)





Mr. Will Lydgate  
Lydgate Farms

July 8, 2024

We appreciate the opportunity to prepare this traffic assessment for the Project. If you have any questions or require additional information, please contact me at (808) 533-3646.

Sincerely,

AUSTIN, TSUTSUMI & ASSOCIATES, INC.

By

KELCEE A. F. MIRA, P.E.  
Project Manager

# Austin Tsutsumi & Associates

501 Sumner St, Suite 521  
Honolulu, Hawaii 96817

*Phone: (808) 533-3646 Fax: (808) 526-1267*

File Name : Lydgate Farms Dwy  
Site Code : 00000000  
Start Date : 6/19/2024  
Page No : 1

Groups Printed- Class 1

Start Time	SOUTHBOUND				LYDGATE FARMS DWY (IN) WESTBOUND				NORTHBOUND				LYDGATE FARMS DWY (OUT) EASTBOUND				Int. Total
	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	Left	Thru	Right	Peds	
08:30 AM	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	2
08:45 AM	0	0	0	0	0	5	0	0	0	0	0	0	0	2	0	0	7
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>9</b>
09:00 AM	0	0	0	0	0	3	0	0	0	0	0	0	0	1	0	0	4
09:15 AM	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	1
09:30 AM	0	0	0	0	0	7	0	0	0	0	0	0	0	0	0	0	7
09:45 AM	0	0	0	0	0	3	0	0	0	0	0	0	0	3	0	0	6
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>18</b>
10:00 AM	0	0	0	0	0	2	0	0	0	0	0	0	0	2	0	0	4
10:15 AM	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1
10:30 AM	0	0	0	0	0	5	0	0	0	0	0	0	0	2	0	0	7
10:45 AM	0	0	0	0	0	6	0	0	0	0	0	0	0	0	0	0	6
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>13</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>18</b>
11:00 AM	0	0	0	0	0	9	0	0	0	0	0	0	0	6	0	0	15
11:15 AM	0	0	0	0	0	3	0	0	0	0	0	0	0	1	0	0	4
11:30 AM	0	0	0	0	0	2	0	0	0	0	0	0	0	1	0	0	3
11:45 AM	0	0	0	0	0	5	0	0	0	0	0	0	0	0	0	0	5
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>19</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>27</b>
12:00 PM	0	0	0	0	0	6	0	0	0	0	0	0	0	3	0	0	9
12:15 PM	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	8
12:30 PM	0	0	0	0	0	2	0	0	0	0	0	0	0	4	0	0	6
12:45 PM	0	0	0	0	0	1	0	0	0	0	0	0	0	3	0	0	4
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>27</b>
01:00 PM	0	0	0	0	0	5	0	0	0	0	0	0	0	1	0	0	6
01:15 PM	0	0	0	0	0	2	0	0	0	0	0	0	0	2	0	0	4
01:30 PM	0	0	0	0	0	2	0	0	0	0	0	0	0	1	0	0	3
01:45 PM	0	0	0	0	0	0	0	0	0	0	0	0	0	6	0	0	6
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>9</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>10</b>	<b>0</b>	<b>0</b>	<b>19</b>
02:00 PM	0	0	0	0	0	3	0	0	0	0	0	0	0	3	0	0	6
02:15 PM	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
02:30 PM	0	0	0	0	0	2	0	0	0	0	0	0	0	7	0	0	9
02:45 PM	0	0	0	0	0	1	0	0	0	0	0	0	0	5	0	0	6
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>17</b>	<b>0</b>	<b>0</b>	<b>23</b>
03:00 PM	0	0	0	0	0	0	0	0	0	0	0	0	0	8	0	0	8
03:15 PM	0	0	0	0	0	2	0	0	0	0	0	0	0	3	0	0	5
<b>Grand Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>79</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>75</b>	<b>0</b>	<b>0</b>	<b>154</b>
Apprch %	0	0	0	0	0	100	0	0	0	0	0	0	0	100	0	0	
Total %	0	0	0	0	0	51.3	0	0	0	0	0	0	0	48.7	0	0	

# 'EXHIBIT D'

General Background Information on Lydgate Farms.

# Farms in Kauai

Enter dates

Sort

Map

All things to do

18 places sorted by traveler favorites

Clear all filters

### Category types

#### Attractions

- Tours
- Day Trips
- Outdoor Activities
- Concerts & Shows
- Food & Drink
- Show more



LYDGATE FARMS  
KAUAI CHOCOLATE



### 1. Lydgate Farms Kauai Chocolate

2,678

Farms

By Maureenp

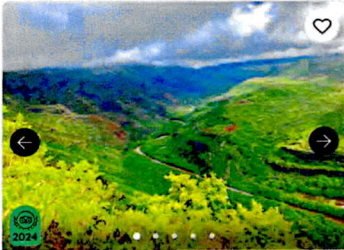
Terrific information juicy and unusual fruit tastings and exploring the incredible flora and fauna on this magical farm.

## Top Attractions in Kauai

Map

See all

These rankings are informed by Tripadvisor data—we consider traveler reviews, ratings, number of page views, and user location.



### 1. Waimea Canyon State Park

8,636

State Parks

✦ Canyon landscape with diverse hiking trails, panoramic lookouts, and red dirt waterfalls. Scenic drives lead to multiple viewpoints, showcasing the area's vibrant color palette.

See ways to experience (34)



### 2. Lydgate Farms Kauai Chocolate

2,678

Farms

✦ Cacao farm tour through tropical groves with hands-on chocolate-making lessons, tastings of cocoa and exotic fruits, and insights into sustainable agriculture.



### 3. Poipu Beach Park

4,969

Beaches

✦ Sandy beach with lifeguard-protected swimming zones, ideal for snorkeling amidst sea turtles and seals. Close to dining and rental options, plus regular sightings of monk seals.

See ways to experience (10)





**Hawaii**  
ORIGIN

**Will Lydgate and the Lydgate Farms Ohana**  
NAME OF PRODUCER

Cacao bean sample submitted to Cacao of Excellence for the 2023 Edition, selected as part of the Best 50 samples and awarded a

**2023 CACAO OF EXCELLENCE GOLD AWARD**

8 February 2024 – Amsterdam, Netherlands

**232**  
COEX 2023 SAMPLE CODE

**5730 Olohena Rd | Kapa'a, Kauai**  
LOCATION

**HWCOEX23-LF-004 | Commercial**  
ORIGINAL SAMPLE CODE | TYPE OF SAMPLE



*J. Restrepo*  
**Juan Lucas Restrepo**  
Director General  
Global Director for Partnerships & Advocacy, CGIAR  
Alliance of Bioversity International and CIAT

*S. Weise*  
**Stephan Weise**  
Cacao of Excellence – A. Director  
Alliance of Bioversity International and CIAT

LED BY:  

SUPPORTED BY:

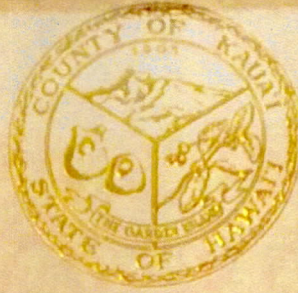












The Council  
of the  
County of Kaua'i

Hereby presents this Certificate to

**WILL LYDGATE**

**LYDGATE FARMS**

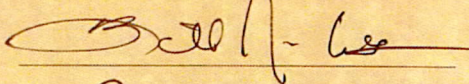
**2023 CACAO OF EXCELLENCE GOLD AWARD**

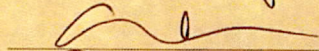
The Kaua'i County Council honors Lydgate Farms and its visionary leader, Will Lydgate, for their outstanding commitment to excellence in cacao farming and chocolate production.

Lydgate Farms has garnered international acclaim by receiving the prestigious Gold Award at the 2023 Cacao of Excellence Awards, a testament to their dedication to cultivating high-quality cacao beans on the island of Kaua'i, Hawai'i and acknowledges Lydgate Farms' significant contribution to the global cacao industry and their unwavering commitment to producing top-quality chocolate.

The Kaua'i County Council congratulates Will Lydgate and the entire Lydgate Farms 'ohana for this remarkable achievement. Your dedication and passion have elevated Kaua'i's reputation as a hub for premium chocolate production and have inspired countless individuals worldwide.

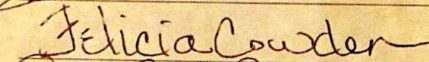
Members of the Council

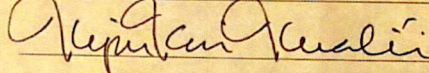












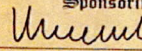
Certificate No. 34

Done this 3<sup>rd</sup> day of July, 2024

Lihu'e, Hawai'i

**Addison Bulosan**

Sponsoring Councilmember



Chairperson of the Council

  
County Clerk







GRAND

KAMEHAMEHA

FIRST KING  
OF  
HAWAII  
UNITED THE ISLAND  
CHIEFDOMS INTO A  
PEACEFUL KINGDOM  
1758-1819





# LYDGATE FARMS

KAUAI CHOCOLATE

## Hawaiian Grown Chocolate in the Heart of Kapaa

*Lydgate Chocolate Tasting Room Now Open in Old Kapaa Town*



### FOR IMMEDIATE RELEASE:

KAPAA, HAWAII – July 18, 2024 | Lydgate Farms has officially soft launched its new Lydgate Chocolate Tasting Room in downtown Kapaa. The 1200 sq. ft. storefront serves as the farm's retail shop, offering guests complimentary tastings of award-winning Hawaiian grown chocolate.

[Centrally located in Old Kapaa Town](#) across the street from Java Kai, Mermaids, and Fish Bar Deli, the store operates Monday through Friday from 10am-4pm each day. The chocolate tasting is a

good opportunity to learn about the farm and sample its chocolate – also a good option for families of all ages.

Recognized internationally for growing gold-standard cacao, Lydgate Farms is also a pioneer of farm tours on Kauai. Ranked both as TripAdvisor's [#1 Tour on Kauai](#) and the [#1 Farm in Hawaii](#), it offers guests a unique opportunity to see a working cacao farm and to taste top-quality Hawaiian grown chocolate. Farms tours by appointment only and can be booked online or by calling 808-821-1857.

###

**Lydgate Farms** wants to change the way the world tastes chocolate, one person at a time, one bar at a time. Owned and operated by a 5th generation Kauai family, the farm business employs 26 staff that steward over 3,000 cacao trees across 46-acres, in addition to vanilla, and other tropical plants. The farm offers farm tours Monday-Friday at their upcountry estate on the east side of Kauai and chocolate tastings at their new Lydgate Chocolate Tasting Room in Kapaa Town. Learn more at [lydgatefarms.com](http://lydgatefarms.com)

*Media Contact:*

Ryan Gallagher  
General Manager  
[ryan@lydgatefarms.com](mailto:ryan@lydgatefarms.com)  
808-821-1857











Literally certified the best cocoa beans in the world.

[@lydgatefarms](#)



[Lydgate Farms Hawaiian Chocolate](#)

# **‘EXHIBIT E’**

February 2022 AOA Notice and Agenda, and Letters of Support for Permit Amendment (2022) from Lydgate Rise Agricultural Condominium Neighbors.



Will Lydgate &lt;wlydgate@gmail.com&gt;

## AOAO board meeting and forum this Tuesday the 22nd at 4:30pm HST

21 messages

Will Lydgate &lt;wlydgate@gmail.com&gt;

Sat, Feb 19, 2022 at 11:59 AM

To: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>

Cc: Loucinda Livae <LLivae@assochawaii.com>

Bcc: Curtis Graham <socalpaving@gmail.com>, Joan F Luzney <jfluzney@hawaii.rr.com>, charlotte.princess@icloud.com, "Steven Dick Jr." <SSDJR1@gmail.com>, Okhman Yelena <yelenastars@gmail.com>, Jim Berg <jmberg77@gmail.com>, Dirk-Michael Lambert <dml@lambert-akademie.de>, Susanne Gould <ds.kauai@hawaiiantel.net>, Pamela Gartin <pamelagartin@yahoo.com>, Desiderio Anne & Bob <desiderioanne5720@gmail.com>, John Garrison <johngarrison50@gmail.com>, Bunni Miller <Bunnimiller33@gmail.com>, David Keener <highseasoncatering@gmail.com>, Schaal Carl & Pam <schaalpc@q.com>, Judy Arrigo <jaa.assoc75@gmail.com>

Aloha Neighbors,

I wanted to inform you we will be holding an aoao meeting this coming Tuesday the 22nd at 4:30pm. At this meeting the board will be following up on our annual meeting discussion about formalizing the voting process for the bylaws, and authorizing them to send out for your votes.

I'd also like to provide the space for a neighborhood forum about my farm and our future plans. I'll give a short presentation and we can have a discussion after. If you'd like to be there, I'd like to hear from you at this forum.

I hope you are all enjoying the new signage, we have one more round of signage coming, a new speed bump sign and a few others. I also plan to buy a round traffic mirror to help see around the blind corner at the bottom bend of the driveway.

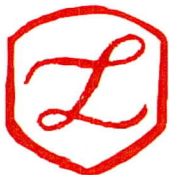
Our neighbors Bart and Kerry of Snyder Pacific will be working to install the new mail boxes and we are finalizing plans with them now. It should be a major improvement over the current situation.

The link to the meeting Tuesday at 4:30 is here

<https://us04web.zoom.us/j/72849861399>


Aloha,  
Will

--



**Will Lydgate | Owner**  
*Lydgate Farms, Kaua'i Chocolate*

Follow us: @lydgatefarms  
Visit us: [lydgatefarms.com/chocolate-farm-tour/](http://lydgatefarms.com/chocolate-farm-tour/)  
Shop products: [lydgatefarms.shop](http://lydgatefarms.shop)

 **LRAOAO February 22nd 2022 Board Meeting .pdf**  
82K

Steven Dick &lt;ssdjr1@gmail.com&gt;

Sat, Feb 19, 2022 at 12:45 PM

To: Will Lydgate &lt;wlydgate@gmail.com&gt;

Cc: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>, Loucinda Livae <LLivae@assochawaii.com>

Thanks for the update/invite, Will.

I will be with clients during that Tuesday time.  
Please keep me in the loop in regards to the permit amendment.

Looking forward to the mailbox project!

Mahalo,  
Steven

[Quoted text hidden]

---

**Will Lydgate** <wlydgate@gmail.com>

Sat, Feb 19, 2022 at 3:58 PM

To: Steven Dick <ssdjr1@gmail.com>

Cc: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>, Loucinda Livae <LLivae@associahawaii.com>

Mahalo Steven, will do!

Will

[Quoted text hidden]

---

**Anne Desiderio** <desiderioanne5720@gmail.com>

Sun, Feb 20, 2022 at 6:49 AM

To: Will Lydgate <wlydgate@gmail.com>

Cc: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>, Loucinda Livae <LLivae@associahawaii.com>

We plan to attend. Via zoom.

[Quoted text hidden]

---

**Will Lydgate** <wlydgate@gmail.com>

Sun, Feb 20, 2022 at 11:02 AM

To: Anne Desiderio <desiderioanne5720@gmail.com>

Cc: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>, Loucinda Livae <LLivae@associahawaii.com>

Awesome, looking forward to seeing you there.

W

[Quoted text hidden]

---

**Loucinda Livae** <LLivae@associahawaii.com>

Tue, Feb 22, 2022 at 9:35 AM

To: Will Lydgate <wlydgate@gmail.com>, Anne Desiderio <desiderioanne5720@gmail.com>

Cc: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>

Hi All,

I apologize, I have returned to work today. I was not able to get sufficient notice out for this board meeting.

Are you all okay with me posting a notice on Town Square today? Pleas advise.

**Mahalo,**

*Loucinda Livae*

Community Manager

**Associa® Hawaii** – *Delivering unsurpassed management and lifestyle services with aloha to communities throughout Hawaii.*

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Office: 808-821-2122

Fax: 808-821-2131



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**From:** Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
**Sent:** Sunday, February 20, 2022 11:02 AM  
**To:** Anne Desiderio <[desiderioanne5720@gmail.com](mailto:desiderioanne5720@gmail.com)>  
**Cc:** MarvinL Cameron <[marvin@cameron123.com](mailto:marvin@cameron123.com)>; Kerry & Bart Snyder <[keeptheten@aol.com](mailto:keeptheten@aol.com)>; Mel Alves <[bluemoon@hawaiian.net](mailto:bluemoon@hawaiian.net)>; mario perez <[mariofilmshawaii@gmail.com](mailto:mariofilmshawaii@gmail.com)>; Annette Den <[lydgateaoao@gmail.com](mailto:lydgateaoao@gmail.com)>; Annette Denbeau <[anniesart@aol.com](mailto:anniesart@aol.com)>; Loucinda Livae <[LLivae@associahawaii.com](mailto:LLivae@associahawaii.com)>  
**Subject:** Re: AOA board meeting and forum this Tuesday the 22nd at 4:30pm HST

**[EXTERNAL EMAIL]** This email originated from outside of Associa.

[Quoted text hidden]

---

**Will Lydgate** <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
 To: Loucinda Livae <[LLivae@associahawaii.com](mailto:LLivae@associahawaii.com)>

Tue, Feb 22, 2022 at 9:52 AM

Cc: Anne Desiderio <desiderioanne5720@gmail.com>, MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoao@gmail.com>, Annette Denbeau <anniesart@aol.com>

I sent out a notification to everyone in the neighborhood 72 hours before the meeting, so I think we are good. Yes to town square, although I don't think anyone here uses that site.

Aloha,  
Will

[Quoted text hidden]

---

**Will Lydgate** <wlydgate@gmail.com>  
To: Loucinda Livae <LLivae@associahawaii.com>

Tue, Feb 22, 2022 at 9:52 AM

Heads up Anne Desiderio is not on the board, please don't include her in board communications in the future. You replied all to that last email and included her.

W

On Tue, Feb 22, 2022 at 9:35 AM Loucinda Livae <LLivae@associahawaii.com> wrote:

[Quoted text hidden]

---

**Loucinda Livae** <LLivae@associahawaii.com>  
To: Will Lydgate <wlydgate@gmail.com>

Tue, Feb 22, 2022 at 9:54 AM

Thank you for that, noted.

I wont post to Town Square if no one uses it.

See you all virtually at 4:30 PM 😊

Please let me know if you need anything from me.

[Quoted text hidden]

---

**Will Lydgate** <wlydgate@gmail.com>  
To: Loucinda Livae <LLivae@associahawaii.com>

Tue, Feb 22, 2022 at 10:00 AM

Ok right on!

Shana didn't used to attend our meetings, but it would be fun to have you if you want to attend. And hopefully it's a chance to meet some more owners.

Aloha,  
Will

[Quoted text hidden]

---

**Loucinda Livae** <LLivae@associahawaii.com>  
To: Will Lydgate <wlydgate@gmail.com>

Tue, Feb 22, 2022 at 10:05 AM

I wanna get more insight of this bylaws thing. And of course meet more owners. I do have a 5:30 meeting , so I might have to hop off a little before than. I hope that's ok

**Mahalo,**

*Loucinda Livae*

Community Manager

**Associa® Hawaii** – *Delivering unsurpassed management and lifestyle services with aloha to communities throughout Hawai`i.*

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**From:** Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
**Sent:** Tuesday, February 22, 2022 10:00:00 AM  
[Quoted text hidden]

[Quoted text hidden]

---

**Will Lydgate** <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
To: Loucinda Livae <[LLivae@associahawaii.com](mailto:LLivae@associahawaii.com)>

Tue, Feb 22, 2022 at 10:24 AM

Ok super! I'm sure we'll be mostly wrapped up by 5:30  
[Quoted text hidden]

---

**Loucinda Livae** <[LLivae@associahawaii.com](mailto:LLivae@associahawaii.com)>  
To: Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>

Tue, Feb 22, 2022 at 3:31 PM

Hi Will,

I apologize for the late notice. I will not be able to attend this board meeting due to a family emergency that has come up. I will be out of office for the remainder of today.

**Mahalo,**

*Loucinda Livae*

Community Manager

**Associa® Hawaii** – *Delivering unsurpassed management and lifestyle services with aloha to communities throughout Hawai`i.*

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**From:** Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
**Sent:** Tuesday, February 22, 2022 10:24:24 AM  
[Quoted text hidden]

[Quoted text hidden]

---

**Will Lydgate** <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
To: Loucinda Livae <[LLivae@assochawaii.com](mailto:LLivae@assochawaii.com)>

Tue, Feb 22, 2022 at 4:19 PM

Sending all the best Lou!  
[Quoted text hidden]

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**Will Lydgate** <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>

Tue, Feb 22, 2022 at 5:03 PM

To: MarvinL Cameron <[marvin@cameron123.com](mailto:marvin@cameron123.com)>, Kerry & Bart Snyder <[keeptheten@aol.com](mailto:keeptheten@aol.com)>, Mel Alves <[bluemoon@hawaiian.net](mailto:bluemoon@hawaiian.net)>, mario perez <[mariofilmshawaii@gmail.com](mailto:mariofilmshawaii@gmail.com)>, Annette Den <[lydgateaoao@gmail.com](mailto:lydgateaoao@gmail.com)>, Annette Denbeau <[anniesart@aol.com](mailto:anniesart@aol.com)>, Pamela Gartin <[pamelagartin@yahoo.com](mailto:pamelagartin@yahoo.com)>, Judy Arrigo <[jaa.assoc75@gmail.com](mailto:jaa.assoc75@gmail.com)>  
Cc: Loucinda Livae <[LLivae@assochawaii.com](mailto:LLivae@assochawaii.com)>

Map attached

On Sat, Feb 19, 2022 at 11:59 AM Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)> wrote:  
[Quoted text hidden]

---

 **Lydgate Rise Utility Map1.pdf**  
100K

---

**Anne Desiderio** <[desiderioanne5720@gmail.com](mailto:desiderioanne5720@gmail.com)>  
To: Will Lydgate <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>

Wed, Feb 23, 2022 at 10:46 AM

Sorry about yesterday zoom connection. Grandson tripped on computer cord and pulled it off the table causing connection to drop. Please [email.me](#) by laws and any other information from meeting. Thanks.  
[Quoted text hidden]

---

**Will Lydgate** <[wlydgate@gmail.com](mailto:wlydgate@gmail.com)>  
To: Anne Desiderio <[desiderioanne5720@gmail.com](mailto:desiderioanne5720@gmail.com)>

Wed, Feb 23, 2022 at 11:07 AM

No problem, I saw you had left.

Bylaws are attached.

We voted to approve to send them to the membership for an up or down vote.

We then closed the meeting and we had a forum and I shared my farm plans, which there were no objections to. If you are interested to hear about them, let's catch up on the phone sometime, I'd be happy to share with you.

Nice to chat with you! Let me know anything I can do to help here on the ground while you are away.

Aloha,  
Will



[Quoted text hidden]

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 **Lydgate Rise Amended Bylaws JChun.pdf**  
3615K

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**Robert Desiderio** <rdesiderio@smdlegal.com>  
To: "wlydgate@gmail.com" <wlydgate@gmail.com>

Thu, Feb 24, 2022 at 5:53 AM


Will,

I just read your interview with Paul Wolf in Tax Notes State Today. (I am a tax lawyer). Interesting and informative.

Bob Desiderio

[Quoted text hidden]

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 **LRAOAO February 22nd 2022 Board Meeting .pdf**  
82K

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**Will Lydgate** <wlydgate@gmail.com>  
To: Robert Desiderio <rdesiderio@smdlegal.com>

Thu, Feb 24, 2022 at 4:26 PM

Bob,

Cool to hear that. Philip came on a farm tour and we chatted after and hit it off. I think he looks for interesting stories that have enough of a tax angle for Tax Notes but are also interesting to read. Hope to see you if you come out this summer, please do let me know. Anything you need here on the ground, don't hesitate to ask.

Aloha,  
Will

[Quoted text hidden]

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**Will Lydgate** <wlydgate@gmail.com>  
To: MarvinL Cameron <marvin@cameron123.com>

Thu, Aug 24, 2023 at 8:35 AM

Marvin,

Below is the notification for the board meeting April 22nd at 4:30 pm. Here is a screenshot of the list of emails in bcc. I typically use bcc because not everyone wants their email address known to certain members. You can see Judy's email there in the bcc. Judy attended the meeting, spoke in the forum and stated that she had no issue with our farm's plans. She requested that we cut down a coconut tree for her, which I did at my own expense. Many other members of the community attended, there was no opposition to the farm plans spoken and much support voiced.

Emails of support were submitted to the county by many in the neighborhood, including John Garrison.

Let me know any other information I can provide.

Best,

Will

----- Forwarded message -----  
From: **Will Lydgate** <wlydgate@gmail.com>

3/5/24, 12:35 PM

Gmail - AOA board meeting and forum this Tuesday the 22nd at 4:30pm HST

Date: Sat, Feb 19, 2022 at 10:59 PM

Subject: AOA board meeting and forum this Tuesday the 22nd at 4:30pm HST

To: MarvinL Cameron <marvin@cameron123.com>, Kerry & Bart Snyder <keeptheten@aol.com>, Mel Alves <bluemoon@hawaiian.net>, mario perez <mariofilmshawaii@gmail.com>, Annette Den <lydgateaoa@gmail.com>, Annette Denbeau <anniesart@aol.com>

Cc: Loucinda Livae <LLivae@associahawaii.com>

[Quoted text hidden]



**LRAOAO February 22nd 2022 Board Meeting .pdf**  
82K

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**Will Lydgate** <wlydgate@gmail.com>

Thu, Aug 24, 2023 at 8:36 AM

To: MarvinL Cameron <marvin@cameron123.com>

Associa also gave 72 hour notice of this meeting

[Quoted text hidden]

LYDGATE RISE AGRICULTURAL CONDOMINIUM

BOARD OF DIRECTORS MEETING

**AGENDA for THURSDAY, February 22nd 2022, 4:30 PM**

Meeting Link: <https://us04web.zoom.us/j/72849861399>

- I. Call to Order
- II. Approval of August 31<sup>st</sup> 2021 meeting minutes
- III. Old Business
  - A. Discussion and action on **Bylaws Revisions**. The board has received draft bylaws revisions from Jonathan Chun, for a total of \$2722.51. At the annual meeting it was decided that the board would send these draft bylaws out to the neighborhood for a vote. The board needs to decide on the parameters on the vote and make a motion for Associa to implement that process.
  - B. Neighborhood Discussion on Lydgate Farms proposed use permit amendment.



Will Lydgate <wlydgate@gmail.com>

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**Lydgate Farms Petition**

1 message

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**Susanne Gould** <ds.kauai@hawaiiantel.net>  
To: planningdepartment@kauai.gov  
Cc: dcua@kauai.gov, wlydgate@gmail.com

Thu, Mar 3, 2022 at 9:51 AM

Dear Commissioners,

I am writing you to voice my support for Lydgate Farms in their permit amendment petition. I am a neighbor of the farm, and we share the

same easement. I don't have any issues with their operations and wish them lots of success. We need more working farms on Kauai. I hope

that you will consider my testimony and grant them their requests.

Lydgate Farms has been a responsible neighbor over the years, and I whole heartedly urge you grant their petition. We need to support our

farms!

Aloha

Susanne Gould



Will Lydgate <wlydgate@gmail.com>

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**Lydgate Farms Permit Amendment**

1 message

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**Annette Denbeau** <anniesart@aol.com>

Fri, Mar 4, 2022 at 9:10 AM

Reply-To: Annette Denbeau <anniesart@aol.com>

To: "planningdepartment@kauai.gov" <planningdepartment@kauai.gov>

Cc: "dcua@kauai.gov" <dcua@kauai.gov>, "wlydgate@gmail.com" <wlydgate@gmail.com>

Dear Commissioners,

I am writing you with regard to the Lydgate Farms permit amendment petition.

I am a neighbor with contributing easement access for his residential farming business.

My family and I support Mr. Lydgate's pursuit for the success of his working Cacao Farm and hope that it is not only prosperous for him personally, but represents the rich agricultural value of this island.

I also appreciate his efforts in supporting the interests and concerns of our community members, he's a good neighbor.

I am thankful for the protective oversight of this department and hope this testimony assists in the confidence of your decision for this request.

With sincerest regards and Aloha,

Annette Denbeau



Will Lydgate <wlydgate@gmail.com>

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**Lydgate Farms**

1 message

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**Melanie Cameron** <melanie@cameron123.com>

Fri, Mar 4, 2022 at 7:39 AM

To: "planningdepartment@kauai.gov" <planningdepartment@kauai.gov>

Cc: "dcua@kauai.gov" <dcua@kauai.gov>, "wlydgate@gmail.com" <wlydgate@gmail.com>

Dear Commissioners,

My name is Melanie Cameron. I am a neighbor to Lydgate Farms and we share the same easement. I completely support them in their permit amendment petition.

I am proud of Lydgate Farms and Will Lydgate. I applaud their farming and educational tours which I have personally been on. They do an exceptional job teaching people about our land, the chocolate making process, and the culture of the island. I believe these things are very much needed on Kauai.

I would be thrilled for Lydgate Farms to continue and increase their success.

If you have any questions, please contact me.

Sincerely, Melanie Cameron



Will Lydgate &lt;wlydgate@gmail.com&gt;

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**Testimony in support of Lydgate Farms petition**

2 messages

**John Garrison** <johngarrison50@gmail.com>

Tue, Mar 1, 2022 at 1:28 PM

To: planningdepartment@kauai.gov

Cc: dcua@kauai.gov

Dear Commissioners,

I am writing to you to voice my support for Lydgate Farms in their permit amendment petition. I am a neighbor of the farm and we share the same easement. I don't have any issues with their operation and wish them much success. They produce great chocolate! We need more working farms on Kauai. I hope that you will consider my testimony and grant their request.

Aloha,

John Garrison  
5708 Olohena Road  
Kapaa, HI 96746

808-631-0855

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**Will Lydgate** <wlydgate@gmail.com>

Wed, Mar 2, 2022 at 8:57 AM

To: John Garrison &lt;johngarrison50@gmail.com&gt;

Mahalo John!

[Quoted text hidden]

# EXHIBIT "B"

(Complaints)



Judith A. Arrigo  
5700 Olohena Road – Unit 18  
Kapaa, HI 96746

February 2, 2024

Bamby Emayo  
Mike Laureta  
Kauai Planning Commission  
County of Kauai, State of Hawaii  
4444 Rice Street  
Kapule Building, Suite A-473  
Lihue, HI 96766-1326

RE: Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit SP 2015-1  
Tax Map Key (4) 4-4-003:045

Dear Mr. Laureta,

We would like to submit a complaint to the permit issued to Steelgrass Farm, LLC dated March 22, 2022. The permit allowed Steelgrass Farm to allow tours with no capacity restrictions. When this revision to their permit was issued, the residents of Lydgate Rise were not notified of the request and therefore, could not submit a complaint to the Planning Commission. We are not against the farm or the tours, but our complaint is the traffic.

Recently, the traffic going up to the farm has become a major problem to those of us who live in the complex. Traffic starts at 6:45 A.M. with workers going to the farm and continues until 4:30 P.M. five days per week. Tours are given five days per week beginning at 9:00 A.M, 10:00 A.M. 11:00 A.M. and 12:00 P.M. Monday through Friday and traffic starts about one half hour before each tour. In your report dated February 13, 2015 in the Evaluation section #4, you state *“While the commercial application may serve to increase agricultural awareness and provide ancillary resources to the existing agricultural operation, excessive use of the site for commercial tours could negatively impact the health, safety, peace, morals, comfort and general welfare of persons residing in the surrounding area”* The increase number of tours has definitely impacted the peace, comfort and general welfare of the residents of Lydgate Rise.

We have requested copies of the permits to ascertain that the increased number of tours has been permitted by the Planning Commission. That is when we found out that in March 2022 Steelgrass Farms was approved for unlimited tours and unlimited capacity five days per week. None of the residents of Lydgate Rise were apprised of this action. Letters from the members of the Board of Directors and two other residents were sent earlier to the Planning Commission approving the farm – however, tours were not mentioned in any of those letters. Since there was no notification of the request to increase the tours with no limits to the capacity, we did not have the opportunity to express our opinion. The tours have now increased substantially.

The road into Lydgate Rise is partially paved and partially gravel. Tour attendees tend to drive in the middle of the road so that entering Lydgate Rise is sometimes hazardous as there is a blind curve at the entrance. When attendees leave the tour, they sometimes do not look when making the right turn to

exit the property so that if you are entering from Olohena, you need to be careful and look for oncoming traffic in the wrong lane or in the middle of the road. Those of us who live here know to drive in the proper lane and slow down when making an exit or entrance to the property – attendees do not know this and tend to drive without regard for oncoming traffic.

We have spoken with Mr. Will Lydgate regarding the traffic concerns and were told that they have determined the gift shop has more traffic than the tours and that they would be opening a retail store in Kapaa to relieve some of the traffic. That may be the case, but the tour traffic will continue with four tours per day and unlimited capacity, the traffic will continue even after the gift shop is opened some time later this year. With four tours per day and conservatively say 10 people per tour, that is at least eighty round trips per day if there are two people in each car, or 400 round trips per week not counting the gift shop traffic. We offered suggestions to Mr. Lydgate to either have tour traffic enter off of Waipouli Road where they have additional acreage for the cacao trees or have attendees park somewhere in Kapaa and bus them to the farm. This would eliminate most of the traffic. Again, our complaint is not with the tours themselves, but with the traffic on our small road serving eighteen residents of Lydgate Rise.

We sincerely hope that you will take our complaint seriously and make appropriate changes to the permit for Steelgrass Farms (aka Lydgate Farms.)

Sincerely,

*Judith A. Arrigo*

Judith A. Arrigo

Cc: Planning Commission

Heather and Shawn Miller  
5706 Olohena Road  
Kapaa, HI 96746

February 5, 2024

Mr. Michael A. Dahilig  
Director Kauai Planning Commission  
Planning Commission  
County of Kauai, State of Hawaii  
4444 Rice Street  
Kapule Building, Suite A-473  
Lihue, HI 96766-1326

RE: Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit SP 2015-1

Dear Mr. Dahilig,

We would like to submit a complaint to the permit issued to Steelgrass Farm, LLC dated March 22, 2022. The permit allowed Steelgrass Farm to allow tours with no capacity restrictions. When this revision to their permit was issued, the residents of Lydgate Rise were not notified of the request and therefore, could not submit a complaint to the Planning Commission. We are not against the farm or the tours, but our complaint is the traffic.

Recently, the traffic going up to the farm has become a major problem to those of us who live in the complex. Traffic starts at 6:45 A.M. with workers going to the farm and continues until 4:30 P.M. five days per week. Tours are given five days per week beginning at 9:00 A.M, 10:00 A.M. 11:00 A.M. and 12:00 P.M. Monday through Friday and traffic starts about one half hour before each tour. In your report dated February 13, 2015 in the Evaluation section #4, you state *"While the commercial application may serve to increase agricultural awareness and provide ancillary resources to the existing agricultural operation, excessive use of the site for commercial tours could negatively impact the health, safety, peace, morals, comfort and general welfare of persons residing in the surrounding area"* The increase number of tours has definitely impacted the peace, comfort and general welfare of the residents of Lydgate Rise.

We have requested copies of the permits to ascertain that the increased number of tours has been permitted by the Planning Commission. That is when we found out that in March 2022 Steelgrass Farms was approved for unlimited tours and unlimited capacity five days per week. None of the residents of Lydgate Rise were apprised of this action. Letters from the members of the Board of Directors and two other residents were sent earlier to the Planning Commission approving the farm – however, tours were not mentioned in any of those letters. Since there was no notification of the request to increase the tours with no limits to the capacity, we did not have the opportunity to express our opinion. The tours have now increased substantially.

The Lydgate chocolate farm has caused unnecessary traffic down our private gravel road and cars turning into our property to turn around has become disruptive and is unnecessary at all hours of the day."

We have spoken with Mr. Will Lydgate regarding the traffic concerns and were told that they have determined the gift shop has more traffic than the tours and that they would be opening a retail store in Kapaa to relieve some of the traffic. That may be the case, but the tour traffic will continue with four tours per day and unlimited capacity, the traffic will continue even after the gift shop is opened some time later this year. With four tours per day and conservatively say 10 people per tour, that is at least eighty round trips per day if there are two people in each car, or 400 round trips per week not counting the gift shop traffic. We offered suggestions to Mr. Lydgate to either have tour traffic enter off of Waipouli Road where they have additional acreage for the cacao trees or have attendees park somewhere in Kapaa and bus them to the farm. This would eliminate most of the traffic. Again, our complaint is not with the tours themselves, but with the traffic on our small road serving eighteen residents of Lydgate Rise.

We sincerely hope that you will take our complaint seriously and make appropriate changes to the permit for Steelgrass Farms (aka Lydgate Farms.)

Sincerely,

*Heather and Shawn Miller*

Heather and Shawn Miller

Bidyut Bose & Rosalind Lwin  
5710 Oloheua Road  
Kapa'a, HI 96746

February 23, 2024

Mr. Ka'āina S. Hull  
Planning Director  
County of Kauai, State of Hawaii  
4444 Rice Street, Ste A473  
Lihue, HI 96766

RE: Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit SP 2015-1

Aloha Mr. Hull,

We would like to submit a complaint to the permit issued to Steelgrass Farm, LLC (AKA Lydgate Farms) dated March 22, 2022. The permit allowed Steelgrass Farm to operate tours with **no capacity restrictions, i.e. unlimited tours with unlimited participants.**

In your Director's Report from March 8, 2022, you specify in Section VIII TENTATIVE PRELIMINARY EVALUATION, section I Use Permit: **"The use must not be detrimental to persons or property in the area."** and "While the commercial application may serve to increase agricultural awareness and provide ancillary resources to the existing agricultural operation, **excessive use of the site for commercial tours could negatively impact the health, safety, peace, morals, comfort and general welfare of persons residing in the surrounding area"**

The road from Oloheua Road to the farm wraps around our little corner plot (Unit #14) and runs 60 feet from the front of our home on the east side where we often have meals on our lanai, and runs less than 20 feet from our bedrooms and offices all along the north side (please see attached map). **The allowance of unlimited tours has a) increased air and noise pollution from the dust and exhaust fumes which impacts our health; b) been a visual intrusion/nuisance to our privacy; c) has had a significant impact on our peace, morale, and comfort; and d) has been detrimental to the condition of our shared road.**

Currently, tours are given five days per week beginning at 9:00 A.M, 10:00 A.M. 11:00 A.M. and 12:00 P.M. Monday through Friday and traffic starts about one half hour before each tour. In Section 2 Special Permit, Traffic, the report mentions some AADT data provided by the applicant that we believe is grossly under-reported: *"On average*

(per tour) there were 10 passenger cars (coming and going), resulting in a total of 20 trips per day or 100 trips per week." **We have observed up to 100+ vehicles (including passenger cars, trucks, SUVs, minivans and large tour buses) per day Monday through Friday, equaling 200+ trips (coming and going) per day, which can result in over 1,000 trips (coming and going) some weeks.**

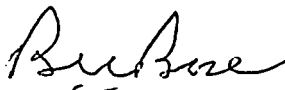
Though Mr. William Lydgate, the owner, is taking steps to divert some of the traffic attributed to their gift shop, **much of the observed traffic pattern matches the timing of their farm tours, and without a cap on the number of tours and participants, we have no assurances that the planned gift shop in town will make a meaningful and sustaining difference in our small neighborhood.**

We understand that when the Planning Commission approved unlimited tours with unlimited capacity, none of the residents of Lydgate Rise were apprised of this action. Since there was no notification of the request to increase the tours with no limits to the capacity, residents did not have the opportunity to express their opinion. We have noted the pattern/progression of Planning Commission applications and approvals for increasing tour traffic: 3 days/week to 5 days/week, 2 tours/day to unlimited tours/day, 25 participants/tour to unlimited participants/tour - all within the course of just 9 years (2015 to the present). **We would like to request the Planning Commission to discontinue approval to operate with no patron limitation, and to require that residents are notified in writing of future applications, so those impacted most by the outcome of the application can have the opportunity to exercise their right to voice concerns and work towards a mutually supportive agreement.**

We suggested to Mr. Lydgate that he have tour and store traffic enter off Waipouli Road, a county road which runs very close to the farm. This would eliminate most of this traffic, which is becoming unbearable and detrimental to us and our small road serving eighteen units of Lydgate Rise.

We thank you for your time, and fervently hope that you will take our grievances seriously and make appropriate limits to the permit for Steelgrass Farms/Lydgate Farms.

Mahalo,



Bidyut Bose



Rosalind Lwin



Paul M. Arrigo  
5700 Olohena Road  
Kapaa, HI 96746  
February 26, 2024

Bamby Emayo  
Mike Laureta  
Clerk Kauai Planning Commission  
Planning Commission  
County of Kauai, State of Hawaii  
4444 Rice Street  
Kapule Building, Suite A-473  
Lihue, HI 96766-1326

RE: Class IV Zoning Permit Z-IV-2015-10, Use Permit U-2015-9, Special Permit SP 2015-1  
Tax Map Key (4) 4-4-003:045

Dear Mr. Emayo,

We would like to submit a complaint to the permit issued to Steelgrass Farm, LLC dated March 22, 2022. The permit allowed Steelgrass Farm to allow tours with no capacity restrictions. When this revision to their permit was issued, the residents of Lydgate Rise were not notified of the request and therefore, could not submit a complaint to the Planning Commission. We are not against the farm or the tours, but our complaint is the traffic.

Recently, the traffic going up to the farm has become a major problem to those of us who live in the complex. Traffic starts at 6:45 A.M. with workers going to the farm and continues until 4:30 P.M. five days per week. Tours are given five days per week beginning at 9:00 A.M, 10:00 A.M. 11:00 A.M. and 12:00 P.M. Monday through Friday and traffic starts about one half hour before each tour. In your report dated February 13, 2015 in the Evaluation section #4, you state *"While the commercial application may serve to increase agricultural awareness and provide ancillary resources to the existing agricultural operation, excessive use of the site for commercial tours could negatively impact the health, safety, peace, morals, comfort and general welfare of persons residing in the surrounding area"* The increase number of tours has definitely impacted the peace, comfort and general welfare of the residents of Lydgate Rise.

We have requested copies of the permits to ascertain that the increased number of tours has been permitted by the Planning Commission. That is when we found out that in March 2022 Steelgrass Farms was approved for unlimited tours and unlimited capacity five days per week. None of the residents of Lydgate Rise were apprised of this action. Letters from the members of the Board of Directors and two other residents were sent earlier to the Planning Commission approving the farm – however, tours were not mentioned in any of those letters. Since there was no notification of the request to increase the tours with no limits to the capacity, we did not have the opportunity to express our opinion. The tours have now increased substantially.

I believe it is time to put a stop to this nonsense. I am in full agreement that Kauai needs more local farming, but to put a neighborhood on the "must see" tourist list is not fair to all seventeen other folks who call this home.



We have spoken with Mr. Will Lydgate regarding the traffic concerns and were told that they have determined the gift shop has more traffic than the tours and that they would be opening a retail store in Kapaa to relieve some of the traffic. That may be the case, but the tour traffic will continue with four tours per day and unlimited capacity, the traffic will continue even after the gift shop is opened some time later this year. With four tours per day and conservatively say 10 people per tour, that is at least eighty round trips per day if there are two people in each car, or 400 round trips per week not counting the gift shop traffic. We offered suggestions to Mr. Lydgate to either have tour traffic enter off of Waipouli Road where they have additional acreage for the cacao trees or have attendees park somewhere in Kapaa and bus them to the farm. This would eliminate most of the traffic. Again, our complaint is not with the tours themselves, but with the traffic on our small road serving eighteen residents of Lydgate Rise.

We sincerely hope that you will take our complaint seriously and make appropriate changes to the permit for Steelgrass Farms (aka Lydgate Farms.)

Sincerely,

Paul M. Arrigo  
5700 Olohena Road  
Kapaa, Hi. 96746  
808-634-7628