

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

August 12, 2024

Public testimony received by the Planning Department as of August 12, 2024, 9:00 am for the August 13, 2024, Planning Commission meeting regarding the following item:

- F.1.a./K.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/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.]

County of Kauai Planning Commission
4444 Rice Street, Suite A473,
Lihue, Hawaii, 96766
planningdepartment@kauai.gov
8/11/2024

Comments Re: Agenda Item F. 1.a.
SPECIAL MANAGEMENT AREA USE PERMIT (SMA(U)-2024-10)

- a. 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/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.

Planning Commission Chair Apisa, Vice-Chair Ako and Commissioners,
I support the added conditions but still have concerns:

1. The size of the proposed house needs to be clarified, the blueprints included have the same footprint that the house plans previously showed and conflict with the stated size of 1650 sq. ft. The size of this structure must be clarified, the drawings and submittals must be corrected before approval.
2. Coastal views from this lot are currently blocked only because a fence was recently constructed next door on lot 58011011 that blocks coastal views that were open to all forever. Certainly, it is questionable how and why a fence was allowed to block views to the ocean from the highway next door, but construction of a house that block these views adds lasting impacts. The view plane should be restored not further impacted.
3. Wastewater/ testing arbitrary trenches not located where development and the footings are proposed to be located is meaningless. Having a monitor onsite does not resolve the issue, the archaeological study should be required to be revised to study the actual area where the footings and wastewater systems are proposed to be located before construction.
The trench numbered #5 is far too close to the ocean. Since the shoreline did not locate or map the upper reaches of the wash of the waves on the easement portion, the proximity of the ocean here was not mapped. There is not adequate distance from the ocean to trench 5 and it should be relocated. There are 2 wastewater systems being constructed, the impacts would be less if required to have one wastewater system serve both structures on the property.
4. SMA process, we are here because this is the second house on this property being proposed. The houses are on one lot of record and allowing a second house impacts the ability of the first house to retreat. The ocean is coming for the existing structure, the size of the new proposed house takes up the rest of the lot, eliminating the possibility for future retreat of the existing structure. **Add condition, existing house must be removed before or when the shoreline reaches the structure.** SLR, erosion, high waves must be planned for. The addition of the new proposed structure will foreclose all options of retreat on the property for the existing structure. Condition of retreat should be added as a condition of approval and required to be filed with the BOC before building permits are issued for building another structure on the lot.
5. Add condition requiring Coastal High Hazard Disclosure form be signed recognizing the hazards.

Mahalo for your consideration, Caren Diamond



08-12-2024

**RE: Supplement No. 2 TO APPLICATION REVISED EXHIBIT "E-1" AND
ADDED EXHIBIT "E-3"**

**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
Heather Manolakas
5-7088 Kuhio Hwy, Haena HI 96714
Email: hjmanolakas@yahoo.com
Phone: (310) 497-4916

To Whom It May Concern:

I would like to share my input and concerns regarding the Supplement to the Planning Director's Report and Revised Exhibit E1 and E3 for the application referenced above:

In the Supplement, in terms of obstructing views of the shoreline and ocean, Bruce Holdings justifies the construction of a second residence by stating that a neighbor's fence and existing neighborhood structures already blocks views. I am not sure that the Planning Commission should consider this as a reason to allow Bruce Holdings to construct a second residence. First, I have no idea if the fence is legal. Second, this would seem to support a contrary conclusion - there is all the more reason to keep the remaining, existing views unobstructed. Finally, Bruce Holdings indicated that it would use the lower level as storage, which is allowable under existing code. This means, contrary to Bruce Holdings's statements, that there will not be any "views under the proposed elevated residence."

Despite the minor re-design, this is a large **second** structure on the land, and appears larger than most of the surrounding structures (except Hanalei Colony Resort). In addition to my previous objections to the issuance of this Special Management Area Use Permit.

Sincerely,
s// Heather Manolakas
Heather Manolakas

Romio Idica

From: Planning Department
Sent: Monday, August 12, 2024 7:25 AM
To: Romio Idica; Shanlee Jimenez
Subject: FW: Bruce Holdings, LLC SMA(U)-2024-10 letter of concern

From: Renee Beaulaurier <reneebeaulaurier@yahoo.com>
Sent: Sunday, August 11, 2024 9:46 PM
To: Planning Department <planningdepartment@kauai.gov>
Subject: Re: Bruce Holdings, LLC SMA(U)-2024-10 letter of concern

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
Home phone (808) 320-3590
Cellular (310) 683-8810

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.

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.

Mahalo Nui Loa,
Renee and Michael Taylor

Sent from Yahoo Mail for iPhone

Romio Idica

From: Planning Department
Sent: Monday, August 12, 2024 7:25 AM
To: Romio Idica; Shanlee Jimenez
Subject: FW: Bruce Holdings, LLC for Lot 79A Wainiha Hui Partition

From: Renee Beaulaurier <reneebeaulaurier@yahoo.com>
Sent: Sunday, August 11, 2024 9:34 PM
To: Planning Department <planningdepartment@kauai.gov>
Subject: Re: Bruce Holdings, LLC for Lot 79A Wainiha Hui Partition

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,

Below is our letter that shares our concerns with the proposed build by Bruce Holdings, LLC for Lot 79A Wainiha Hui Partition SMA(U)-2024-10.

Please take this into consideration when making your decisions. We would greatly appreciate it.

Mahalo,
Renee and Michael Taylor

08-09-2024

**RE: Supplement No. 2 TO APPLICATION REVISED EXHIBIT "E-1" AND ADDED EXHIBIT "E-3"
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
Home phone (808) 320-3590; Cellular (310) 683-8810

To Whom It May Concern:

We would like to share our concerns regarding Bruce's Revised Exhibit E1 and E3:

1 - FOOTPRINT

The footprint of Bruce's house has not changed.

Based on the plans that are provided, we calculated the approximate square footage as the following:

Living area	2,520 Sq. Ft
Balcony	769. Sq. Ft.
Lanais.	730 Sq. Ft.
Total structure	4,046 Sq. Ft.

Since his existing structure is a pole house, the lower level can only be considered as "storage", not living space. Because of this, its total square footage is only 1,400 square feet, which includes living area and lanais. Doesn't he need to have his second structure's square footage the same size or smaller than original home?

This remains a massive structure in overall size- practically three times larger than most of our neighborhood homes. It will block all views of Kepuhi and Wainiha Bay.

2- DRIVEWAY

The plot plan shows the existing driveway at the east property line. However, Bruce told me that he plans to change the driveway to the west side of the property line, which we share.

KIUC has a utility easement in the location. Kiuc said that they will determine how far away the driveway will need to be, which is a minimum of five to ten feet from the property line.

This must be determined before final placement of the house in its planning stage.

3- FENCE

The fence at the east property line is six feet in height. We still wonder how they received a permit for this structure since neighbors were never notified and it does block ocean view from ground level. However, it is only six feet tall.

Bruces structure is a massive 28 1/2 feet height. How could he compare his build to the impact of a six foot fence.

We have attached a photo of the fence and ocean view from our balcony for your convenience. The fence does not block our ocean view but his home most certainly will.

It seems as though some *minor* adjustments have been made from the original plans. But they ultimately do NOT make a difference to the impact his structure will have on the beauty of our North Shore.

A substantial reduction to his house footprint, we believe, is necessary in order to honor this area's integrity.

This is the historic gateway to Kauai's North Shore jewel. Bruce's project would be a significant blockage to its beauty.

Thank you for your time and consideration.

Mahalo Nui Loa,
Renee and Michael Taylor



DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

August 12, 2024

Public testimony received by the Planning Department as of August 12, 2024, 9:00 am for the August 13, 2024, Planning Commission meeting regarding the following item:

F.3.a./ K.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.]

August 8, 2024

County of Kauai Planning Commission
c/o County of Kauai Planning Department
4444 Rice Street, Suite 473
Lihue, HI 96766

Re: ZA-2024-3 (August 13, 2024 Planning Commission Meeting Agenda Items F.3.a and K.2)

Aloha Planning Commissioners,

I write to you in support of the Planning Director's proposal to add Section 2(i)(6) to ZA-2024-3. Exempting parcels in the SMA from the bill's increased density provisions addresses much of my June 2, 2024 testimony's concern that additional residential density should not be encouraged in coastal areas that are vulnerable to flooding or tsunamis and in tsunami evacuation zones that have insufficient evacuation capacity.

However, I once again urge you to seriously consider whether ZA-2024-3 goes too far in increasing the density in already-dense existing residential neighborhoods.

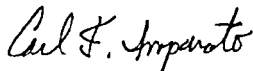
Consider an R-4-zoned neighborhood of quarter-acre parcels... or of even greater concern, a neighborhood like Wailua Houselots, where many parcels are about half that size:

- Originally, only one residence (plus a 500 square foot guest house with no kitchen) was allowed on such parcels.
- Over time, the zoning rules have been liberalized again and again. Now three residences are allowed on such parcels: the originally-allowable dwelling unit, plus an ADU, plus an 800 square foot ARU (subject, of course, to meeting the CZO's other development and parking standards).
- Section 2(i) of ZA-2024-3 would allow one "guest house" (which is no longer a true guest house, but is instead a complete residential unit of up to 800 square feet with a kitchen) for each of the three dwelling units on such a parcel. That means a potential total of six residences would be allowed on such parcels.

It is certainly true that many small parcels would not be able to accommodate 6 dwelling units because of constraints imposed by other CZO development standards. But it is also a certainty that there will be cases in which 6 small dwelling units (say 800 square feet each) could be crammed onto on small residential parcels, creating very undesirable impacts on immediate neighbors, as well as on neighborhood parking, traffic and noise.

I ask that you consider whether enabling this type of development in Kauai's existing residential neighborhoods is desirable, is appropriate, or would be fair to the residents of those neighborhoods. If you agree that it is not, please consider amending ZA-2024-03 so that the increased density provision would not be applicable in the R-2 through R-40 zoning districts.

Thank you for considering this testimony.



Carl Imperato
P.O. Box 1102
Hanalei HI 96714

carl.imparato@juno.com

County of Kauai Planning Commission
4444 Rice Street, Suite A473,
Lihue, Hawaii, 96766
planningdepartment@kauai.gov
August 11, 2024

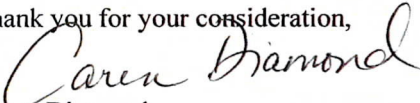
Comments Re: ZA-2024-3 (August 13, 2024 Planning Commission Meeting Agenda Items F.3.a and K.2)

Planning Commission Chair Apisa, Vice-Chair Ako and Commissioners,

This testimony is in support of the Planning Director's proposal to exempt parcels in the SMA by adding Section 2(i)(6) to ZA-2024-3(Bill 2919). Exempting parcels in the SMA from the bill's increased density provisions is good planning. Adding density in the coastal high hazard areas vulnerable to flooding and tsunami would be absurd. While the island desperately needs more housing, safe placement of that housing is crucial to reduce risk exposure and improve outcomes during hazard events.

Extensive flooding vulnerabilities exist west of the Hanalei Bridge, especially in Wainiha along the rivers and streams, density increases should be limited here as well. There is limited evacuation possibilities from the Hanalei, Wainiha, Hā`ena area and density increases would be very detrimental to the safety, welfare and resilience of those communities. Increased density should be limited to areas that are not so vulnerable. Consider exempting west of the Hanalei Bridge along with exclusion of SMA areas. Increasing density in flood land and coastal high hazard areas would substantially increase the vulnerability of these communities. Increased density needs to be safely located outside of high hazard areas, please consider exempting density increases on parcels west of the Hanalei Bridge along with exempting parcels in the SMA.

Thank you for your consideration,


Caren Diamond
PO Box 536
Hanalei, HI 96714
808 652-0780
Kaimanacd22@yahoo.com

Aug. 13, 2024, 9 a.m.
Kauai Planning Commission
Lihue Civic Center, Mo'ikeha Building

To: Kauai Planning Commission
Donna Apisa, Chair
Gerald Ako, Vice Chair

From: Grassroot Institute of Hawaii
Jonathan Helton, Policy Researcher

RE: Bill 2919 — RELATING TO THE COMPREHENSIVE ZONING ORDINANCE, INCLUDING MATTERS PERTAINING TO GUEST HOUSES

Aloha Chair Apisa, Vice-Chair Ako and other members of the Commission,

The Grassroot Institute of Hawaii **supports** [Bill 2919](#), which would allow one guest house per dwelling unit in most of the county's residential districts and commercial, agriculture, open and university districts in an effort to increase the availability of housing for rent.

Amendments proposed by the Kaua'i planning director would limit this expansion of guest houses to areas outside the special management area, require that anyone seeking to build a guest house receive confirmation that their lot has adequate access to water and wastewater infrastructure, and remove old references to cesspools.

Grassroot does not object to the inclusion of these amendments.

As defined by existing county code, a guest house is "a building with a floor area of no more than 800 square feet, may contain a kitchen, and is used for dwelling purposes by guests, tenants, or owner(s)."

The code further specifies that guest houses cannot be used as homestays or short-term rentals, regardless of whether they are build in visitor destination areas¹ — a requirement that this bill would not change.

¹ Kauai County Code, [§ 8-1.5 Definitions](#), accessed March 22, 2024.

The bill also would allow guest houses to be built on lots that already have an “additional dwelling unit,” which is defined as “a structure or portion thereof designed and used for single-family residential purposes as permitted under Article 15 of this Chapter, and which can be detached from or attached to an existing residence, to be used for single-family occupancy and containing one kitchen.”²

The expansion of guest houses contemplated by this bill would offer homeowners the opportunity to build more dwellings on their properties either for their children, aging parents or extended families, enabling multigenerational families to live on the same property.

This bill could also generate wealth for existing homeowners by allowing them to rent out their guest houses.

This bill is in accord with the 2018 update to Kauai’s General Plan, which recommended that the County “facilitate the development of small-footprint homes or ‘tiny homes’ on small lots”³ in existing urban areas as a way to alleviate Kauai’s housing crisis.

That update also recommended that the County seek to “avoid sprawl development patterns and inefficient infrastructure and service delivery by maximizing density in new communities,”⁴ which this bill would allow.

As the Grassroot Institute of Hawaii pointed out in its recent report “[How to facilitate more homebuilding in Hawaii](#),” allowing more homes on the same lot is a powerful approach that many states and cities across the county have used to increase housing supply.

Such areas include the cities of Minneapolis, Houston, Milwaukee and Columbus, Ohio; and the entire states of California and Montana. A good international example is Auckland, New Zealand.⁵

All have “upzoned” their residential areas to allow greater housing density on lands already zoned for housing, and the research indicates these changes can increase supply and incrementally lower prices.⁶

Thank you for the opportunity to testify.

Jonathan Helton, Policy Researcher
Grassroot Institute of Hawaii

² [Ibid.](#)

³ “[Kaua’i General Plan](#),” 2018 Update, p. 119.

⁴ [Ibid.](#), p. 121.

⁵ Laurel Wamsley, “[The hottest trend in U.S. cities? Changing zoning rules to allow more housing](#),” NPR, Feb. 17, 2024; and Ryan Greenaway-McGrevy, “[Can Zoning Reform Reduce Housing Costs? Evidence from Rents in Auckland](#),” University of Auckland Business School, Economic Policy Centre Working Paper No. 016, June 2023.

⁶ Christina Plerhoples Stacy, Christopher Davis, Yonah Freemark, Lydia Lo, Graham MacDonald, Vivian Zheng and Rolf Pendall, “[Land-Use Reforms and Housing Costs](#),” Urban Institute, March 29, 2023; and Vicki Been, Ingrid Gould Ellen and Katherine M. O’Regan, “[Supply Skepticism Revisited](#),” New York University Law and Economics Research Paper forthcoming, Nov. 10, 2023

DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

August 12, 2024

Public testimony received by the Planning Department as of August 12, 2024, 9:00 am for the August 13, 2024, Planning Commission meeting regarding the following item:

- H.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.**

KUALOA RANCH
PRIVATE NATURE RESERVE

8/10/24

To: Kauai Planning Commission
From: Taylor Kellerman
Director of Diversified Agriculture and Land Stewardship
Kualoa Ranch Hawaii

To whom it may concern,

I am writing this letter of support for Lydgate Farms as a leader and key component of Hawaii's growing Agritourism initiative.

Kualoa Ranch operates a 3800-acre cattle ranch, farm, and agritourism operation. We are located on the windward side of Oahu, produce over 60 different products including but not limited to grass fed beef, local pork, oysters, shrimp, chocolate, 20 various fruits, and 10 various vegetables. We currently sell approximately 90% of our products direct to consumer/community through our onsite market and utilize our visitor operations to subsidize both our agriculture and Natural Resource conservation (we have 12 full time conservation techs) efforts.

Lydgate Farms has been a stalwart partner over the past few years and has assisted Kualoa Ranch in our efforts to develop a premium chocolate business, as well as providing a successful template for cacao agritourism. Through proper farm management, good agronomic practices, and creative leadership, Lydgate Farms has inspired other agricultural operations to take the leap into value add and direct sales, and this was very apparent at this year's HCCA cacao conference. It was under the leadership of Will Lydgate (HCCA chair) that the 2024 conference was one of the most attended, dynamic, and valuable sessions I have attended to date

I consider Lydgate Farm to be a leader in the Hawaii Cacao ad Cacao Tourism efforts.

Sincerely,

Taylor Kellerman
Director of Diversified Agriculture and Land Stewardship
Kualoa Ranch Hawaii
tkellerman@kualoa.com

WHERE LEGENDS ARE MADE

Paul M. Arrigo
5700 Olohena Road
Kapaa, HI 96746
August 10, 2024

Ka'aina Hull
Planning Director
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. Hull:

We have submitted a complaint to the permit issued to Steelgrass Farm, LLC dated March 22, 2022(attached)0. 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.

My ohana purchased our home in 2004. At that time we were totally unaware there was to be a chocolate farm tours and gift shop on the property. If we had known that this was to become a MUST SEE for our visitors we never would have purchased our home. 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. Add in the traffic to the gift shop during the afternoon hours and you can get an understandong for our frustration. 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.

We are 1-1/8 owners of Lydgate Rise, not Lydgate Farm. All 17 owners bought into Lydgate Rise, not the Farm and I feel that we do have a voice about what happens here.

Granted, that there only four homeowners who filed this complaint, but there are those who ("do not want to get involved)" and then there are the six absentee owners who do not live here and could care less, and then there are those who fear retaliation from the Lydgate's due to prior instances

We have spoken with a real estate broker, (see attached printout of text message Exhibit B) stating that it is possible that property values may be decreased if seller discloses traffic problem). We have also spoken to a real estate appraiser, and he stated unequivocally that you must disclose the traffic on your easements when listing your home for sale. This information confirmed my original thoughts that there should be no tours traffic on our easements.

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. 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.

After we notified that Mr. Lydgate postponed the original hearing in June due to his insistence that he do his own traffic study, we were forced to do our own study. After many futile searches here on Kauai for a Ptraffic study company and on Oahu, we were forced to do our own. We used two students with a hand clicker and a friend of family to do a partial study of traffic entering the farm at business hours. (See attached survey Exhibit C).

We have attempted to communicate with the Board of Lydgate Rise, of which Mr. Lydgate is President, about our concerns with the traffic. He has ignored two written requests to address the problem with the Association nor was he willing to listen and/or discuss the problem. (See Exhibit 'D')

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

STEELGRASS FRAMS LLC

Class IV Zonng Permit Z-IV-2015-10 Use Permit U2015-9, Special permit SP 015-1

Tax Map Key (4)4-4-003:045

SUMMARY OF DOCUMENTS SUBMIYRF

- Letters supporting the complaint against continued tour traffic going to Steelgrass Farm LLC
 - Paul M. Arrigo
 - Judith A Arrigo
 - John Garrison
 - Bidyut Bose & Rosalind Lwin
 - Heather and Shawn Miller
 - Judith P Capertina
- Text message from Neil Sazlow real estate broker regarding home sales in busy traffic areas
- Traffic Study documentation
- Questions submitted to the Board of Directors for January 2024 Annual meeting regarding traffic going to Steelgrass Farms
- Statements submitted to the Board of Directors for January 2023 Annual Meeting regarding traffic going to Steel Farms

ORIGINAL COMPLAINTS
FILED w/ MIKE LAURETO

Paul M. Arrigo
5700 Olohena Road
Kapaa, HI 96746
February 26, 2024

Bamby Emayo
Mike Laureto
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

Planning Commission
County of Kauai, State of Hawaii
4444 Rice Street
Kapule building, Suite A-473
Lihue, HI 96766-1326

RE: Lydgate Farms Complaint: 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

Gentlemen:

I am not against the farm or the tours themselves, only the sharply increased traffic on our private road maintained by the association. We have seen busses and vans going up to Lydgate Farms as well as passenger vehicles.

The road is maintained by the association and is paved for a portion of the way and gravel the remainder of the way to Lydgate Farms. There are eighteen units in Lydgate Rise and each shares equally in contributing to the reserve to maintain the road. Each unit pays 1/18th of the annual amount contributed to reserves, however a major user of the road is Lydgate Farms.

The Association has an annual meeting where members can ask questions. At the last two annual meetings, we asked that the traffic be on the agenda. The question did not come up at either meeting and was not discussed to the best of my knowledge.

When Mr. Lydgate applied to the Planning Department to increase his tours to the Chocolate Farm, it was done without the knowledge of the owners of Lydgate Rise. If it was brought up at all, it would have been in a Board of Directors meeting which is comprised of a maximum of six units – out of a total of 18 units for the entire complex. The other owners were not aware of the request to increase the tours to an unlimited number of tours and vehicles. If there was a board meeting where this was discussed, the minutes of that meeting were not posted on the Association website, nor were they mailed or emailed to the other owners of the association. Therefore, we were not aware of the increase in tours until after it was approved by the Planning Department.

Since the approval on March 22, 2022, the traffic going to Lydgate Farms has increased substantially. My primary issue with the increased traffic is safety. Tourists entering our subdivision from Olohena tend to use the entire driveway and then stop at the top of the drive to either check their GPS or talk on their phones. Since it is a blind curve upon entering, if you come up the driveway, often a car will be stopped in the middle of the road which you don't see until you are right on their bumper. Since they stop in the middle of the road, you cannot get around the car and must wait until they start their vehicle and proceed up the hill.

On the way out of Lydgate Farms, tourists tend to make the right hand turn at the bottom of the hill without looking to see if there are oncoming vehicles. I personally have come close to being broadsided by tourists who do not look at the intersection to see if a car is coming. The intersecting road is gravel, so perhaps they don't think anyone would be coming from that direction.

As I mentioned earlier, I am not against the tours or the farm, but hope that the Planning Commission would direct Lydgate Farms to either bus their tour attendants to the farm or direct them to come in by way of Waipouli Road (there is direct access to the Farm from Waipouli Road) If they bus in the attendees, that would be a maximum of one bus five times per day entering and departing – a substantial decrease from the average of 41 vehicles per day now accessing the farm.

**Judith A Arrigo
5700 Olehena Road, Unit 18**

John Garrison
5708 Olohena Road
Kapaa, HI 96746

February 29, 2024

Bambi Emayo and Mike Lauretta
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
TMK (4)-4-003:045

Dear Planning Commission ,

I would like to submit comments related to the amendment to the above permits issued to Steelgrass Farm, LLC dated March 22, 2022. The amendment allows for Steelgrass Farm to conduct tours with no capacity restrictions. Neither I nor the other residents of Lydgate Rise were notified of the request and therefore could not submit comments regarding the proposed increase in visitors and resultant traffic to the Planning Commission. I am not against the farm or the tours, but my complaint is the substantial increase in the amount of traffic that is now negatively impacting the quiet of the neighborhood. In January 2022 I wrote a letter in support of the farm. I remain a supporter of the farm but believe there should be capacity restrictions on the amount of traffic on our private road. In early December 2023, I noticed a multi-fold increase in traffic in our previously quiet neighborhood.

I have spoken with Mr. Will Lydgate regarding the traffic concerns and was told that he has determined the gift shop generates more traffic than the tours and that he would be opening a retail store in Kapaa to relieve much (60-75%) of the traffic. We are hopeful that this will result in a significant decrease in the amount of traffic going up our private road to the farm. If this turns out not to be the case, then other measures should be taken to reduce the traffic. I offered suggestions to Mr. Lydgate to either have tour traffic enter from Waipouli Road onto the farm or have attendees park somewhere in Kapaa and be bussed to the farm. This would eliminate much of the traffic. Again, our complaint is not with the tours themselves, but with the traffic on our small road serving eighteen residences in Lydgate Rise. I realize the importance of the agricultural industry on Kauai and understand that Lydgate Farms is a significant contributor to the growth of the agricultural sector. Hopefully the farm can continue to prosper while at the same time find a way to reduce the volume of vehicles going up the private road five days a week.

Thank you for your consideration of this matter.

Sincerely,

JOHN GARRISON
5708 OLOHENA ROAD

Bidyut Bose & Rosalind Lwin
5710 Olohena 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 referenced above, 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 Olohena 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.

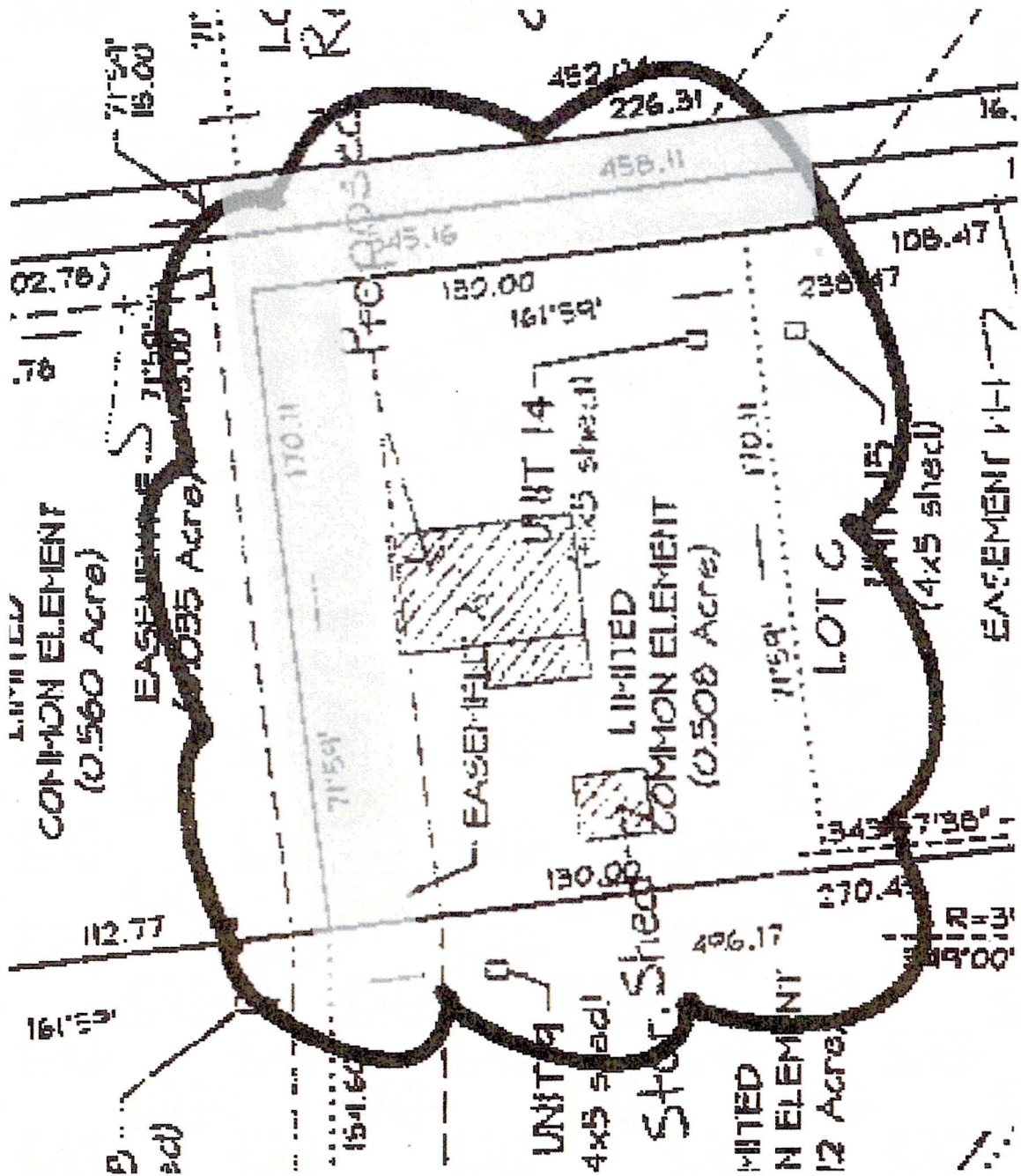
We thank you for your time, and fervently hope that you will take our grievances seriously and make appropriate limits to the permit for Steelgrass Farms/Lydgate Farms.

Mahalo,

Bidyut Bose & Rosalind Lwin

Bidyut K. Bose, PhD
bkbose@gmail.com
510.508.1653

One attachment • Scanned by Gmail



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."

Judith P. Capertina
5700 Olohena Road
Kapaa, HI 96746

March 5, 2024

Bamby Emayo
Mike Laureta
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

Aloha,

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.

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I, Judith Capertina have been a resident of Lydgate Rise since 2016, at 5706 and 5700 Olohena Rd. I am a Food Industry Business Owner, a member of the Kauai Farm Bureau, and a resident. The impact of my residence has been negatively affected by a large increase in vehicle traffic entering the residential area at Lydgate Rise. It is almost on a daily basis that either entering or leaving, I am confronted with tourist traffic stopped, looking at their phones for direction and totally blocking

entrance or exit on the drive leading up the Farm. Safety is a huge issue. At some point there will be a collision and possible injury. Also, the car exhaust and noise has definitely put a negative impact on life and our atmosphere. Huge Carbon footprint created here. I am sure that the vegetation and living quality have taken an adverse turn. We need to look at preserving our Aina. Example should be taken from Hanalei Valley with the parking at Waipa, and shuttle service to Haena and the North Shore areas. This has been done Statewide with regards to parks and Tourist attractions on all the Hawaiian Islands. I understand that we are promoting our Local Treasures, but sustainability is key. This would create a better balance for both the residents and the visitors.

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 P. Capertina

Cc: Planning Commission



Hi Paul ,
Neil just mentioned to me that you are having increases traffic and noise .

I am sorry to hear about the problem. I definitely think it's possible for your home to drop in value due to increased noise , traffic , Enviormental smells, concerns over pets and children on the driveway.

EXHIBIT 'B'



+1 (808) 639-3675 >

Many factors determine a homes value .
I can give you a quick idea of the comparable SOLD properties in your area now and that may give you some insight on the current market price .
I am not qualified to give you a figure of how a new increase on the road usage for commercial tours may decrease your home value .

It might be a good

Subject



iMessage







 +1 (808) 639-3675 >

It might be a good idea if you spoke directly with a home appraiser to see if they have any recommendations.

I do wish I could be of more help , I did research it online and internet that suggests -

Traffic in a residential area can significantly impact a home's value

Subject

iMessage



and how long it takes to sell. Homes on busy roads can sell for up to 20% less than similar homes on quiet streets. This is because many people prefer to live away from noise and traffic, and busy roads can also pose safety concerns.

Have you already filed a complaint with the county ?

Mahalo

App

Subject

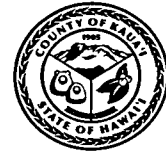
iMessage



DEPARTMENT OF PLANNING

KA'ĀINA HULL, DIRECTOR

JODI A. HIGUCHI SAYEGUSA, DEPUTY DIRECTOR



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

August 12, 2024

Public testimony received by the Planning Department as of August 12, 2024, 9:00 am for the August 13, 2024, Planning Commission meeting regarding the following item:

Application No.	Name of Applicant(s)	Property I.D. (Tax Map Key)	Location	Development/Reasons
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.

County of Kauai Planning Commission
4444 Rice Street, Suite A473,
Lihue, Hawaii, 96766

planningdepartment@kauai.gov

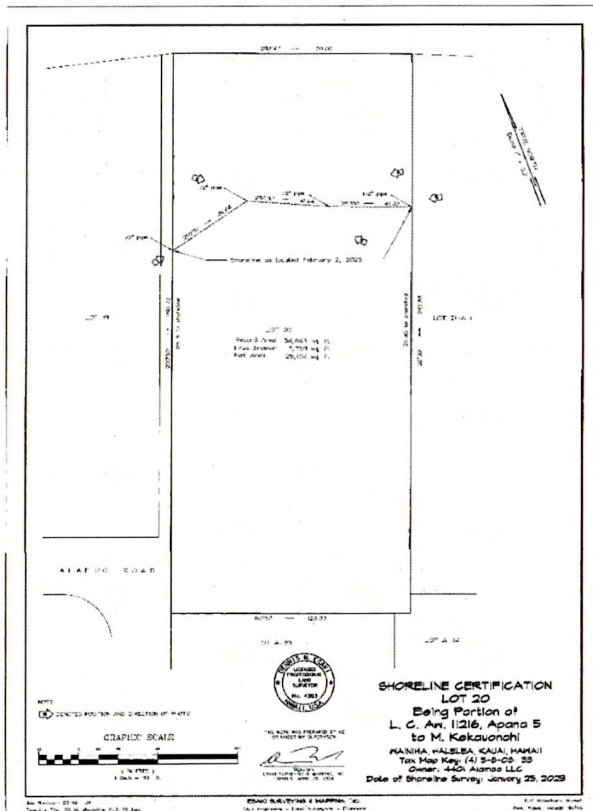
SSD-2025-2, 4401 Alamo'o LLC, David Bassett

TMK 5-8-008:033

Comments Re: August 13, 2024 SHORELINE SETBACK DETERMINATIONS- 2025-2

Planning Commission Chair Apisa, Vice-Chair Ako and Commissioners,

SSD-2025-2 approval gives away more than 9, 759 sq. feet of public beach. The state has jurisdiction over lands seaward of the shoreline, the county administers the setback from the shoreline. Shoreline Setback Determinations affect public rights, and should not allow an applicant to unilaterally determine the location of the shoreline. One of the purposes of the certified shoreline determination is so we know where the public and private land is, whether state or county jurisdiction. Without this, the county is usurping public and state rights. State law requires a certified shoreline, not an "estimated shoreline." The county is not vested with determination of the shoreline. Shoreline application KA-474 for this lot was submitted to DAGS State Land Surveyor and published in the OEQC April 2023. The proposed shoreline was inspected on the ground by the state surveyor, a DLNR representative and OCCLs coastal lands specialist June 13, 2023, the site visit included the landowner's surveyor and community members. The location was adjusted landward in places, and the applicant was required by the state to remove the vegetation on the seaward side of the proposed shoreline and revise the maps and photos. The shoreline application was withdrawn by the landowner September 8, 2023. The vegetative encroachments were never removed.



Map, photos and survey were submitted by applicant for certification to the state. It was published in the OEQC shoreline notices as KA-474.

The original lot size was noted as 34,863 sq. ft
Erosion was identified as 9,759 sq. ft.

The new lot size was identified as **25, 104 sq. ft.**

In SSD 2025-2, the County allowed the landowner to solely determine the shoreline using the original lot size of 34, 863 sq. ft., taking more than 9,759 sq ft of public beach.

4435 Alamo'o Road

TMK : 5-8-008:022

Bldg. Permit # : 20-1585

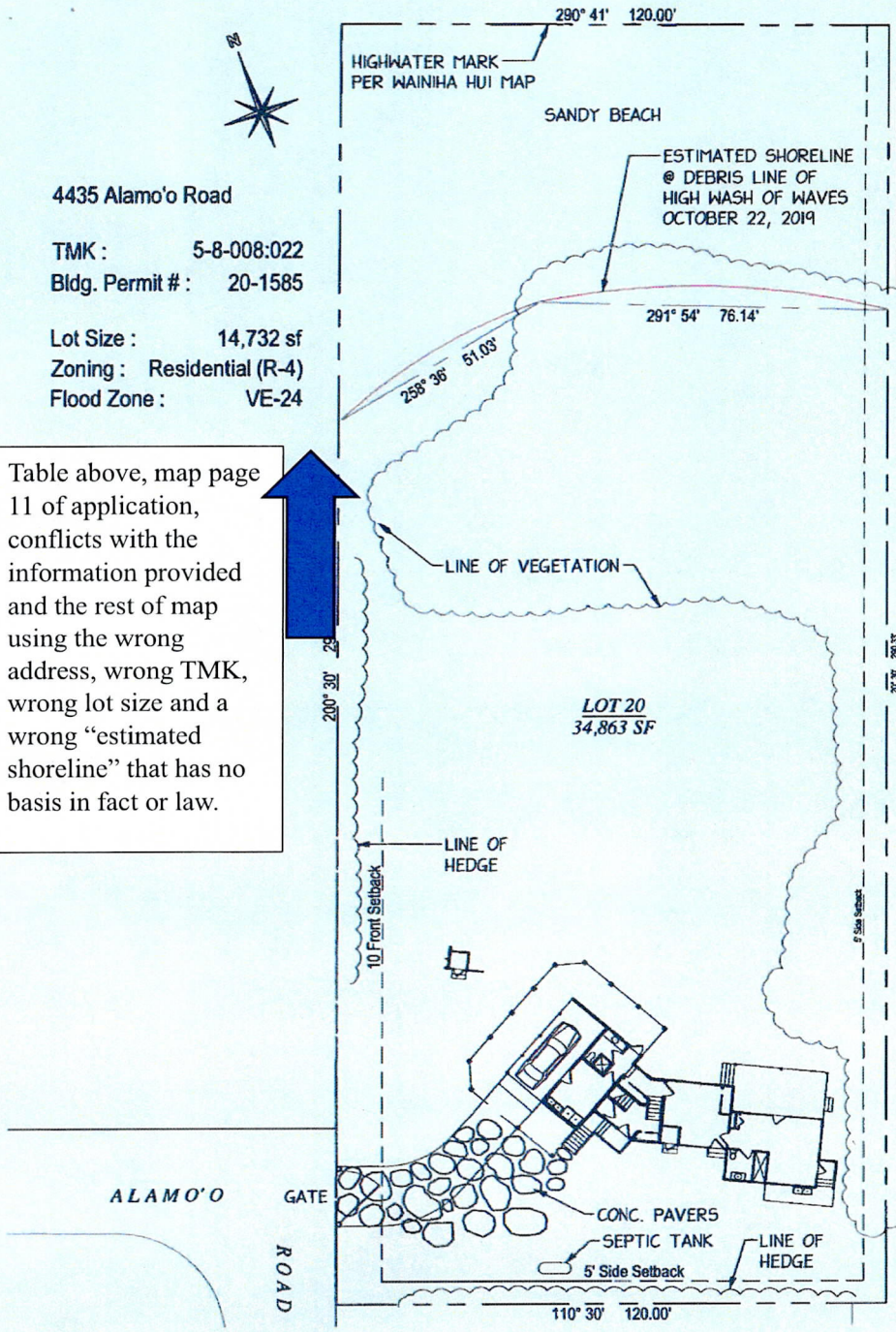
Lot Size : 14,732 sf

Zoning : Residential (R-4)

Flood Zone : VE-24

Table above, map page 11 of application, conflicts with the information provided and the rest of map using the wrong address, wrong TMK, wrong lot size and a wrong "estimated shoreline" that has no basis in fact or law.

Applicants Map submitted for SSD 2025-02 and page 1 list the lot size as 34,863 sq. ft.



Plot Plan

1"=30'-0"

Application 2025-2 uses the edge of vegetation as the “approximate shoreline” despite that location being **9,759 sq. ft.** seaward of the proposed shoreline that applicants submitted and withdrew.

Applicants’ approximate shoreline used in SSD 2025-02 extends to the edge of vegetation, the same vegetation that was required by the state to be removed due to being an encroachment on public lands.



The original house was built in 1961, the property **never** had a certified shoreline. This “estimated shoreline” wrongly privatizes the beach due to the substantial vegetative encroachments on the sandy beach here. Vegetation line and shoreline are not synonymous. The estimated shoreline in SSD 2025-2 does not represent the shoreline pursuant to Hawai‘i Revised Statutes (HRS) Chapter 205A which defines the shoreline as “the upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth or the upper limit of debris left by the wash of the waves.”

What is an “approximate shoreline”? Where in law does the county have the authority to set or accept an approximate shoreline? What reliance might a landowner infer from it? Why use an arbitrary location rather than requiring a certified shoreline be obtained?

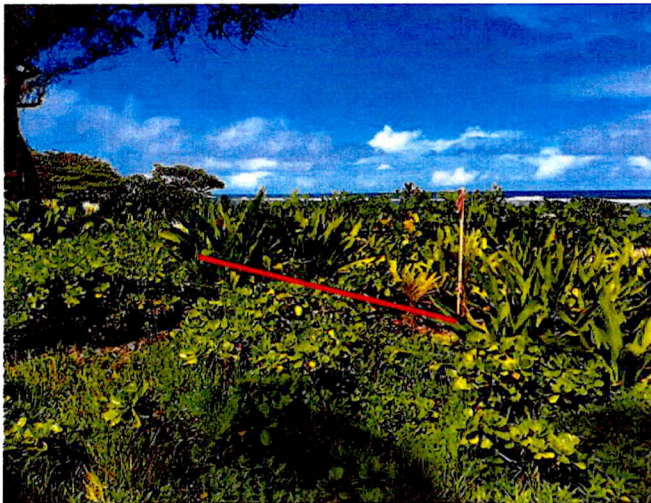
Pursuant to Hawaii Administrative Rules 13-222-19, property owners are required to resolve vegetative encroachments that interfere with the natural shoreline processes before the shoreline is certified. As this shoreline was withdrawn by the landowner, the vegetation was not removed. Thick copious salt tolerant

vegetation encroachments cover the entire coastal dune and keep expanding evermore seaward covering the beautiful sandy beach. The edge of vegetation does not represent the shoreline. The shoreline is not the vegetation line. The County is usurping both public and state rights on the beach.



February 2, 2023; 1:11 pm

Photo 5



February 2, 2023; 1:07 pm

Photo 3

Left-Landowners survey photos,

All the vegetation seaward of the red line was required by the state to be removed as it is an encroachment on the public beach.

The vegetation has encroached exponentially here, creating a thick vegetative barrier that blocks the beach transit corridor hindering the public right of access during times of high surf. As this lot abuts County Beach Access Path G, safe lateral access here is critical. The Hawai'i Supreme Court stated it is axiomatic that the "longstanding public use of Hawaii's beaches . . . has ripened into a customary right." *Diamond II*, 319 P.3d at 1034 (quoting *Cty. of Hawai'i v. Sotomura*, 517 P.2d 57, 61-62 (Haw. 1973)). Additionally, the Hawai'i Supreme Court has explained that the "utilization of artificially planted vegetation in determining the certified shoreline encourages private land owners to plant and promote salt-tolerant vegetation to extend their land further makai, which is contrary to the objectives and policies of HRS chapter 205A as well as the public policy we set forth in *Sotomura*." *Diamond I*, 145 P.3d at 718.

Under what authority is the county allowing landowners to set the shoreline giving away invaluable public trust lands?

The exemption to the county setback laws must not result in the loss of public trust lands. The Planning Commissioners should not accept approval of this application and should require the landowner obtain a certified shoreline to accurately determine the shoreline location and then proceed with the SSD. It is in both the landowners and the public interest to know where the shoreline is. The "approximate shoreline" causes confusion about rights and boundaries, diminishes public trust rights and creates public hazards as this arbitrary location does not in any way represent the shoreline.

Respectfully,

Caren Diamond

Caren Diamond, August 11, 2024

PO Box 536

Hanalei, HI 96714

808 652-0780

Kaimanacd22@yahoo.com