

The Honorable Bernard P. Carvalho, Jr.,
Mayor, County of Kauai
4444 Rice Street
Lihue, Hawaii 96766

October 20, 2014

Dear Mr. Mayor,

Thank you for meeting with us on October 13, 2014. As you will recall, we shared a message supported by many who, like us, care deeply about the health and safety of our island and the people who enjoy its great beauty. We feel strongly that serious and irreparable harm will result if the industrial dairy proposed for Maha'ulepu is not relocated to another area. There is already abundant, credible evidence that the soils of Maha'ulepu are "very limited" (2014 NRCS Conservation Study) in their ability to tolerate the animal feed operation and land waste application intended by Hawaii Dairy Farms (HDF). The Natural Resource Conservation Service (NRCS) completed a detailed "Custom Soil Resource Report" June 5, 2014, of the proposed Maha'ulepu farm site and found that more than half of the soils on the proposed site are unsuitable and at high risk for runoff because of the predominantly clay-based soils there. To quote a very experienced CTAHR department head, "you can transfer dairy plans from one location to another, but you cannot transfer the soil type or the weather." Our fresh water resources, oceans and precious reefs, are all at risk now.

In an effort to establish a water quality baseline before the dairy imports its cows into Maha'ulepu, Surfrider's Blue Water Task Force began sampling the fresh waters that drain from the proposed farm site in March 2014, after HDF had begun grubbing and grading to prepare the pastures. Tests were taken from multiple locations in the Waiopili Stream monthly thereafter. Unexpectedly, high levels of pollution were detected. Initially the bacteria, nitrates, and increased turbidity were thought to be a result of the grubbing and grading. Unfortunately, the dangerously high bacteria counts have persisted well after the grubbing and grading stopped. The geometric mean of the bacteria levels in the fresh waters sampled at Maha'ulepu is more than twice the sum of all the abnormal levels from the other locations tested by Surfrider. These seriously abnormal levels were confirmed by recent testing by the Hawaii Department of Health (HDOH) and other laboratories. Due to the seriousness of the fresh water contamination, evident from testing the Waiopili Stream, there is little question that it would be disastrous to add 699 pregnant cows and the waste they are certain to produce to this already polluted area.

This is especially true now that we know there are three County Wells and one private well very nearby. These County Wells, Koloa "C", "D" and "F," provide the drinking water for all of Po'ipu and Koloa. To add an industrial dairy at this location would surely create a serious health risk. If nothing else, we now know that it is unlikely HDF will be able to prevent the hundreds of thousands of pounds of manure and urine from further contaminating the receiving waters of the Waiopili Stream, which drains directly from the proposed dairy site. The current HDF Plan indicates that even their reduced "start-up" herd will add 3 million pounds of fresh manure per month, all of which they claim will remain on the pastures. Based on the current pollution already finding its way to the stream, and in view of HDF's failure to offer any factual support for their "zero discharge" claim, it is pretty clear how the animal discharge will flow. Months of testing have proven that the waters draining from the proposed site into the Waiopili Stream will carry the industrial dairy's waste directly to the ocean and its fragile coral reefs via the Waiopili, the Wailaau and the recently opened sugar irrigation/drainage ditches which all leave the farm and drain into the ocean.

It is well established in our own country as well as others (New Zealand) that the waste produced by large herds of cows can devastate the environment, resulting in long term water pollution for many years. A review of the recent report from New Zealand's independent Parliamentary Commissioner for the Environment, released November 2013, confirms that dairy farming in New Zealand has in fact caused significant damage to their environment and has cost them water quality to the extent that swimming and fishing were characterized as something that may become "a thing of the past," absent an agreement to

restrict all dairy farming from proximity to major waterways (www.dairynz.co.nz/file/fileid/45931, www.forestandbird.org.nz/what-we-do/publications/media-release/one-conclusion-water-report-dairy-conversions-need-moderatin-0). Because of the problems experienced in New Zealand with concentrated dairy farms like the one proposed for the Maha'ulepu area, New Zealand has now formed the Dairy Environment Leadership Group (DELG), which has recently adopted a "Sustainable Dairying: Water Accord," which prohibits any dairy farming near significant waterways and wetlands because of a serious decline in water quality (www.dairynz.co.nz/file/fileid/47273). According to a contamination study conducted by Minnesota agricultural extension engineer, John Chastain, "the pollution strength of raw manure is 160 times greater than raw municipal sewage." In fact, waste generated by factory farms has already polluted more than 35,000 miles of river in 22 states and has contaminated groundwater in 17 states. (<http://www.peta.org/issues/animals-used-for-food/health-risks-meat-industry/#ixzz3AWIac9qC>)

We request and appreciate your serious consideration of this matter. As you are aware, another aspect of the proposed operation causing public alarm is the fact that the industrial dairy will be dealing with toxic waste material. The personnel, who are to operate the industrial dairy, have already made critical misrepresentations of the facts causing loss of public trust. A binder of materials will be delivered to your offices October 21st, 2014, to confirm our contention that the misrepresentations made were sufficiently egregious to support this County's denial of any building or operating permits at the Maha'ulepu site. We ask for your careful review of these materials because the operation of a large dairy involves dealing with a large volume of toxic waste. If the waste is not properly contained, there is no question of the extreme and devastating damage that will be done.

Finally, there is little question that an industrial dairy such as is being proposed, has the potential to put human health and life at risk. The link below details injuries like death from hydrogen sulfide gas when effluent ponds are de-sludged, loss of eyelids from sulfuric acid burns when hydrogen sulfide mixes with moisture, etc. <http://thedeliberateagrarian.blogspot.com/2008/06/smell-from-7800-cow-dairy.html?m=1> , all of which were caused by industrial dairy operations. Block H, on the lower southwest corner of the proposed location is one of the designated de-sludge areas and closest to Maha'ulepu Beach (less than one mile away). Does it make any sense to take this kind of risk? Do we really want to expose children and others enjoying the Waiopili Stream as it reaches Maha'ulepu Beach area? What types of injuries are likely to occur when the hydrogen sulfide gas is emitted by the sludge being pumped to Block H that then mixes with moisture and forms sulfuric acid?

In addition to the above, there will also be flies and odor as detailed in the letter sent by Carlos White, an industrial entomologist from Princeville. His letter, copy provided October 13, 2014 and attached here as well, described the billions of biting flies that would be attracted to the dairy because of its volume of waste. He also explained that those flies would disperse for a distance of five miles or greater depending on the trade winds. None of this will be beneficial for Maha'ulepu and nearby South Shore Community. An additional health hazard will be introduced in the form of these billions of biting flies, known vectors for many diseases.

Another matter for serious consideration is the likely damage to a thriving tourist industry and South Shore Community that contributed over \$21,000,000.00 to the revenue raised from County taxes collected in 2013. This represents more than 25% of the total County Revenue for 2013.

In its most recent decision, the Hawaii State Supreme Court harkened back to earlier Public Trust decisions and held:

"When an agency or other deciding body considers an application for permits under circumstances that require the deciding body to perform as a public trustee to protect a public trust resource, the agency or other deciding body must make findings sufficient to enable an appellate court to track the steps that the agency took in reaching its decision. Kilauea Neighborhood Assn. 7 Haw. App. at 230, 751 P.2d at 1034.

An agency is encouraged to be clear; “clarity in the agency's decision is all the more essential . where the agency performs as a public trustee and is duty bound to demonstrate that it has properly exercised the discretion vested in it by the constitution and the statute.” Waiāhole I, 94 Hawai‘i at 158, 9 P.3d at 470 (quotation marks omitted)....

f. To assist agencies in the application of the public trust doctrine, we distill from our prior cases the following principles:²⁵

a. The agency's duty and authority is to maintain the purity and flow of our waters for future generations and to assure that the waters of our land are put to reasonable and beneficial use.²⁶

b. The agency must determine whether the proposed use is consistent with the trust purposes:

i. the maintenance of waters in their natural state;

ii. the protection of domestic water use;

iii. the protection of water in the exercise of Native Hawaiian and traditional and customary rights; and

iv. the reservation of water enumerated by the State Water Code.

c. The agency is to apply a presumption in favor of public use, access, enjoyment, and resource protection.²⁷

d. The agency should evaluate each proposal for use on a case-by-case basis, **recognizing that there can be no vested rights in the use of public water.**²⁸

e. **If the requested use is private or commercial, the agency should apply a high level of scrutiny.**²⁹ (emphasis added) Kauai Springs, Inc., Petitioner/Appellant-Appellee, vs. Planning Commission of the County of Kauai, Respondent/Appellee-Appellant SCWC - 29440 February 28, 2014 (emphasis added).

As you referenced in a recent speech, Article 11, Section 1 of the Hawaii State Constitution is the genesis for the Public Trust Doctrine: "For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources, including land, water, air, minerals and energy sources, and shall promote the development and utilization of these resources in a manner consistent with their conservation and in furtherance of the self-sufficiency of the State. All public natural resources are held in trust by the State for the benefit of the people."

The herd is not here. Nothing has been built. Now is the time to let HDF know that the soils of Maha'ulepu are "very limited," and unable to handle the industrial dairy and its waste, which would be too close to Koloa and Po'ipu drinking water, the beautiful coastline, and fragile reefs, putting them at risk of irreparable harm. Thousands of nearby residences are certain to have their quality of life and health adversely impacted. HDF truly needs to find a more suitable location.

Respectfully,

Bridget Hammerquist, on behalf of,
Friends of Maha'ulepu