



Friends of Maha'ulepu

friendsofmahaulepu.org

12/30/2024

Mike DeFrino, CEO
Kimpton Hotels & Restaurants
222 Kearny St., #200
San Francisco, CA 94108

RE: Proposed Coco Palms Resort, Wailua, Hawaii

Dear Mr. DeFrino:

We are writing to you in follow up to the press release announcing your company's "partnership" with Reef Capital Partners of Lehi, Utah, whose subsidiary, RP21 Coco Palms LLC, proposes to build a 350 room hotel at Wailua, Kauai, on land that is culturally, historically, and environmentally sensitive and unsuited for large resort development, most of which is a wetland subject to State and Federal oversight, and title to some of which remains an issue with the recent Appellate Court reversal of the prior Reef Capital foreclosure.

Given your company's description in the press release as a "luxury hotel brand," and the "first" Kimpton property in Hawaii, we feel it is imperative to share with you the community's overwhelmingly strong opposition to the proposed development. Attached to the email forwarding this letter, are nine sworn Declarations filed with the County exemplary of the local island sentiment. The area currently propose to support a 350 room luxury resort was a significant traditional Hawaiian gathering spot for hundreds of years before it was home to the Guslander cabins and Coco Palms hotel (between 1956 and 1992).

Reef Capital conducted a survey asking questions of island residents unrelated to Coco Palms. There were only 2 questions that were related to the rebuild at the former Coco Palms site (questions 12 and 14). The results for the question that asked participants if they supported rebuilding a resort at the site were not disclosed to the public. Rather, the results to the question asking if the participants favored a restoration at the site were released. However, to many, restoration at the site was interpreted to mean returning the site to its former natural vegetative beauty when it was the summer palace and home to the Hawaiian royals (Ali'i), their families and community members. This site was a very special place for Hawaiians for hundreds of years as confirmed in the historical YouTube documentary of the Wailua River Valley by Randy Wickman.

We invite you to meet with us to discuss the issues which present significant obstacles to a successful resort development at this historic site.

PENDING LEGAL CASES

A. FORECLOSURE ACTION

As you are aware, as a result of a foreclosure judgment obtained by Private Capital Group, RP21 Coco Palms obtained a Commissioner's Foreclosure Deed to the three fee simple parcels which comprise approximately half of the land area proposed for the development. The judgment of foreclosure was appealed by Defendants Paul Honkavaara and Chad Waters. While Waters purportedly settled with Plaintiff Private Capital Group, Defendant Honkavaara continued the appeal. On **June 28, 2024**, the Foreclosure Judgment was vacated and remanded to the Fifth Circuit Court, State of Hawaii. See *Private Capital Group v. Coco Palms Hui, Et al*, CAAP 20-0000249 (State of Hawaii). The decision reverses the Findings of Facts; Conclusions of Law, Decision and Order of the lower court. In other words, the foreclosure action must start over. RP21 Coco Palms does not have legal title to the subject parcels inasmuch as the Commissioner's Deed is void. The decision effectively nullifies the leases and revocable permits granted RP21 Coco Palms by the Board of Land and Natural Resources. Any renewed foreclosure action could take months, if not years. A copy of the ICA Decision is enclosed for your review.

B. PETITION TO REVOKE PERMITS

On November 22, 2023, Friends of Maha`ulepu, a Hawai'i non-profit organization, filed a Petition to Revoke Coco Palms development permits issued by the County of Kauai to Chad Waters and Tyler Green, doing business as Coco Palms Hui, LLC. The basis for the Petition to Revoke was the developers' failure to meet the specific conditions of their permits up through the present. The Kauai Planning Commission did not reach the merits of the case, finding the Petitioners did not have "standing." Petitioners are filing an appeal to the decision which will be pending before the Interim Court of Appeal, State of Hawaii.

LEGAL and REGULATORY VIOLATIONS

A. Unpermitted Removal of Coconut Trees

On or about April 12, 2023, RP21 Coco Palms agents, independent contractors, and/or employees cut down dozens of coconut trees on State Conservation land without the knowledge, consent, or permission of the State Department of Land and Natural Resources. *"The department gave no permission. It is our understanding there was a fire lane that was cleared on that property which removed approximately 77 coconut trees,"* according to Dawn Chang, director of the Department of Land and Natural Resources (DLNR) at a Kauai County Council hearing on May 10, 2024. The Kauai Fire Department failed to corroborate that they had requested the fire lane expansion or the tree removal when served with a Freedom of Information Act Request (FOIA). Even if they had made such a request, the removal of the coconut trees was unauthorized by the State of Hawaii. We are informed and believe the unpermitted removal of the coconut trees by RP21 Coco Palms remains under investigation by the DLNR.

B. Failure to Obtain NPDES Permit

On December 20, 2023, Reef Capital Partners, parent company of RP21 Coco Palms LLC, was issued a Notice and Finding of Violation and Field Citation for failure to obtain a National Pollutant Discharge Elimination System (NPDES) permit, in violation of Hawaii Revised Statute 342D and Hawaii Administrative Rules Chapter 11-55, for commencing construction and/or construction support activities without a NPDES permit. While the developer acknowledged the violation, paid the fine, and filed for the required permit, we are concerned that the historic fishpond on parcel 7 and State-owned drainage ditch on parcel 11 have been compromised due to recent flooding for which inadequate mitigative measures were taken by the developer. See attached State reports of December 18, 2023 and May 10, 2024. Also see confirmation of violations attached to the email transmitting this letter. Due to the subject property being

historically prone to flooding, any development activity will irreparably harm the ancient fishpond, ditch system, significant archeological sites, and the known state historic preservation documented burials at this site.

C. Failure to Obtain Conservation District Use Permit

On July 5, 2024, the Department of Land & Natural Resources, State of Hawaii, issued a Notice of Civil Resource Violation to RP21 Coco Palms for failure to obtain the required Conservation District Use Permit. According to OCCL Michael Caine, RP21 paid the fine but did not apply for the CDUP.

D. Failure to Immediately Report Findings of Iwi (Bones)

Earlier this year, RP21 Coco Palms agents, independent contractors and/or employees unearthed bone fragments which their attorney, Mauna Kea Trask, admitted they found in “backfill” and failed to immediately report the finding to the appropriate authorities as required by Hawaii law. In Hawai’i, iwi kupuna (bones of ancestors/burials) are considered sacred. Unearthing any iwi, whether inadvertent or not, requires an immediate stop of all work, reporting to the Hawai’i Historic Preservation Division and the Police. Eventually, RP21 Coco Palms did make the report but only after the finding became publicly known via workers on site sharing it with members of the public.

We are informed and believe that lidar technology has identified hundreds of iwi kupuna/Hawaiian ancestral remains located on the subject property. It is inevitable that iwi will be disturbed, damaged or destroyed during construction of the proposed development. While a “burial plan” supposedly has been approved for relocation of discovered iwi, any failure to report such iwi will likely result in immediate suspension of all development activities and/or revocation of permits.

LAPSED PERMITS

While the Kauai Planning Department issued the developers a Class IV zoning permit, Special Management Area Permit, and Use permit, *building* permits were issued by the Building Department of the Department of Public Works in 2015, 2016 and 2017. These permits are not under the jurisdiction of the Planning Department. According to the County Ordinance regulating the duration of building permits, all building permits previously issued by Public Works have expired (Kauai County Building Code Chapter 12-15- 105.5 Expiration). In their Petition to Revoke, Friends of Maha`ulepu is requesting revocation of the development permits based on the lapsed building permits.

While there has been an attempt to transfer the permits to the current owner, there are numerous non-conforming buildings within the proposed resort, to wit:

1. The commercial building has no set back from the Kuhio Highway right-of-way.
2. The lot coverage exceeds the 50% lot coverage allowed under the Comprehensive Zoning Ordinance (CZO).
3. The first floor of the building does not have the required elevation above the base flood now applicable to the property.
4. The number of stalls provided given the number of rooms and other users does not meet the required parking requirements under the CZO.
5. Two of the King’s cottages and the Queen’s Audience Hall do not meet the required boundary setback with the property on which part of the Coconut Grove is located.

6. The Queen's Lagoon Building (for the spa that did not exist pre-Iniki and thus is not grandfathered in under the Iniki Ordinance) does not have the required setback from the southern property line.

The above violations were acknowledged by Coco Palms Hui in its Petition for Class IV Zoning Permit, Variance and Use Permit filed in October 2014. To date, these violations have not been remedied.

TRAFFIC

The 2015 Traffic Impact Analysis Report prepared for the proposed resort is obsolete. The population of the island has increased in the past nine years and so has the traffic bottleneck fronting the proposed resort. Despite a recent road widening in front of the location completed by the State Department of Transportation (DOT), the Wailua/Kapaa crawl persists.

Mr. Day is out of touch with reality and the day to day quality of life currently experienced by those who rely on this one travel option when he claims your guests will not rent cars but utilize "shuttles" provided by the hotel. With the opening of the new 210 room Hilton Hotel in 2026, traffic jams and drivers' tempers will reach a breaking point. We have requested an updated traffic study that will reflect more realistically the inadequacy of our roads to accommodate further resort developments. There is one road for the all the islanders to travel from the North of Kauai to Lihue and beyond.

SEWAGE TREATMENT

Your proposed resort intends to utilize the antiquated Wailua Wastewater Treatment Plant (one mile from the proposed resort) that has a history of failures, line breakages, sewage spills and EPA fines. Everyone travelling through this corridor of Kuhio Highway smells fecal odors daily. We can't imagine hotel guests wanting to stay at the proposed Kempton hotel site when the odor outside the hotel room is so foul. The odor spans at least a mile of the Kuhio Highway, worst odors being right in front of the proposed hotel site.

According to Surfrider Foundation water quality monitoring reports, Wailua Bay, fronting the proposed Coco Palms resort, has some of the highest fecal bacteria levels on the island. An outfall pipe from the plant releases wastewater directly into the ocean, one of the few locations in the United States where such an environmental atrocity is permitted. The proposed hotel will only exacerbate the sewage crisis.

Further, on April 20, 2024, failure of a critical pump controller at the Wailua Coco Palms sewer pump station (on RP21's property) resulted in a wastewater spill of at least 6,000 gallons of untreated raw human waste. According to a statement from RP21's agents and/or employees, crews "pumped down the ponded materials and disinfected the area." However, with the spill being in such close proximity to the ocean, it is all but certain the "ponded materials" that were "pumped down" went right into Wailua Bay.

WETLAND PRONE TO FLOODING

You are probably aware of the unprecedented flooding that occurred in Wailua on April 11, 2024. Construction trailers on site of the demolition contractors were overturned and much equipment was damaged or lost. Portable toilets were also overturned as reported in the State Inspection report of May 10, 2024 because they were not properly secured.

Historically, the old Coco Palms Hotel, which is surrounded by federally designated wetlands, experienced flooding and evacuations when it was in operation. David Penhallow's iconic book, *The Story of the Coco Palms Hotel*, shows photos of the ground floor of the hotel underwater following a rain storm. There is a story in the book about the evacuation of the hotel guests during a tsunami that resulted in damage to the hotel. Your proposed development is located in the Tsunami Evacuation Zone and, given climate change, it is not a matter of if but when a destructive tsunami will inundate the Coco Palms properties. As you know, the hotel was destroyed by Category 4 Hurricane Iniki in 1992, not the first hurricane to make landfall on the island.

SEA LEVEL RISE

Climate change and rising sea levels are real and have been observed at this location already. There is a high water table on the site and historically the parking garage had to be pumped 24 hours a day 7 days a week to rid the parking garage of the brackish water that would pool there. We, as islanders, are the proverbial canaries in the coal mine. We are daily witnesses to the ravages of coastal erosion from increasingly frequent storm surf that has eaten away the once sandy beaches of Wailua Bay and destroyed the public parking lot across the highway from your proposed resort. It is just a matter of time before Kuhio highway erodes because of its proximity to the ocean.

We are not making these statements to alarm you. This is our reality and, as a foreign corporation, we felt you would want to have this information. There will be another tsunami, hurricane, recurrent 100 year floods that have been happening annually since 2018, unprecedented storm surf, and rising sea levels that will reach the ground floors of the proposed resort, flood the garages and basements, and force the evacuation of your guests, assuming the Wailua Bridge has not been compromised.

ENDANGERED SPECIES

At least several endangered bird species make their home in the Coco Palms properties including, but not limited to, the Hawaiian Nene and Hawaiian Moorhen. The Endangered Species Act requires not only the protection of the endangered species but their habitat as well. We are informed and believe that the habitat of these endangered species has been disturbed by RP21. Penalties for noncompliance of the Act include civil and criminal penalties, and revocation of development permits.

FAILING INFRASTRUCTURE

Infrastructure on the island is wholly inadequate to support a 350 room resort at the Coco Palms location. Besides the deterioration of the Wailua Wastewater Treatment Plant and its pump stations, loss of shoreline due to sea level rise, salt water intrusion that compromises underground utilities and contaminates drinking water, traffic congestion fronting the property, and a lack of planning for storm water run-off and flooding, the island utility, Kauai Island Utility Cooperative (KIUC), experiences frequent power outages. In recent months, KIUC apologized for outages in the Kapaa (including Wailua) area. While KIUC is working on renewable energy that will hopefully move the island towards self-sustainability, their initiative is based on the current residential and visitor population and does not account for future resort developments such as the proposed Coco Palms Resort and Hilton developments. The proposed Coco Palms resort development imposes an undue and unfair energy burden on the residents of the island and visitors who stay at established

resorts. Your guests are certain to experience the same ongoing power outages and inconveniences as our local residents.

The above concerns are not a comprehensive list of the problems you will face as an affiliate of RP21 Coco Palms when you attempt to develop your 350 room resort. If you are interested in meeting with us, we welcome the opportunity to discuss these and other issues. Despite Reef Capital assertions to the contrary, the overwhelming majority of Kauai residents are not supportive of a resort at this location even though it holds the promise of employment for many because they are well aware of its negative quality of life impact.

Sincerely,

Bridget Hammerquist, President
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