

January 24, 2019

Board of Land and Natural Resources
1151 Punchbowl Street, Room 130
Honolulu, HI 96813

Re: January 25, 2019 BLNR Meeting Item K.1 (Helios Hanalei) TMK (4) 5-4-004:032

Aloha Board members,

I urge you to **DENY** the Conservation District Use Permit for the Helios Hanalei project and **REJECT** CDUA KA-3828 unless the applicant relocates the project to a location that: (i) guarantees that the project will not create any visual impacts and (ii) is set back at least 100 feet from the edge of the cliff above Kuhio Highway.

1. The proposed location of the project guarantees visual impacts on Hanalei valley.

- This unique parcel has a commanding presence over Hanalei valley.
- Despite substantial testimony submitted by myself, the Hanalei-to-Ha'ena Community Association, and other members of the Hanalei community regarding the irreparable harm that this project would inflict on Hanalei valley viewplane, the applicant has made no changes to either the location or design of the proposed project.
- Further, the applicant has refused to credibly demonstrate - for example, through the use of story poles connected by highly-visible sheeting (with invasive vegetation removed as it certainly will be after the project is built) - that the project will not have serious visual impacts.
- Instead, the applicant has submitted long-distance photographs which purport to indicate that the project would not have visual impacts. But those photographs actually indicate that the project would be at least as visible as a similarly-designed structure further north on the ridge (but located on non-Conservation land and in a location that is not in the as-yet undisturbed viewplane on the ridge above the Wildlife Refuge and Hanalei valley taro loi).



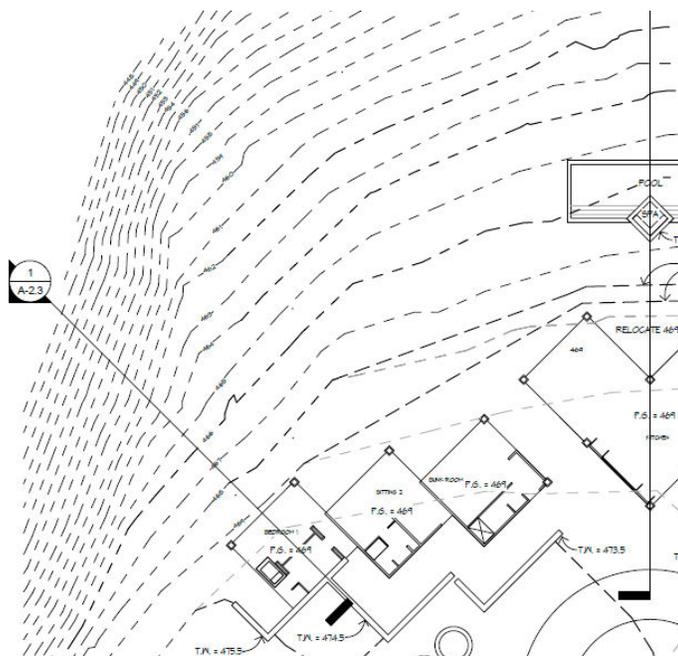
- Neither the CDUA nor the Environmental Assessment included an Alternative in which the proposed structures would be set further back from edge of the bluff to address these visual concerns (as well as the safety concerns outlined below).

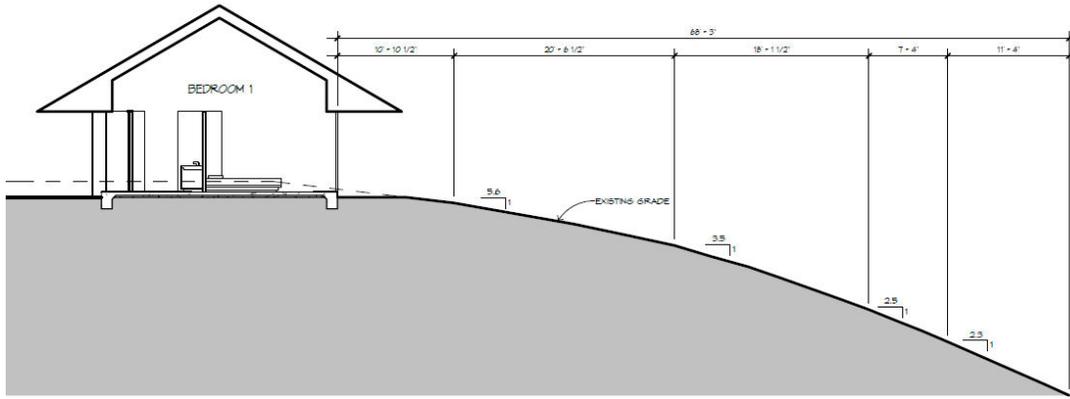
2. The proposed location of the project would threaten Kuhio Highway and the safety of the residents of Hanalei, Wainiha and Ha'ena.

The proposed location of the project would increase the likelihood that erosion, landslides and/or falling objects will threaten users of Kuhio Highway.

- Contrary to the applicant's assertions, both during and after the disastrous April 2018 storm, debris from the applicant's property required closures of Kuhio Highway, the lifeline for the thousand-plus residents of Hanalei, Wainiha and Ha'ena.
- It is very surprising that the CDUA claimed that "virtually no damage occurred" along Kuhio Highway below the project site after last April's rainstorms, as there were several very visible landslides in the area at that time (and again at the time of the October public hearing on the project).
- Further, any visitor to the Hanalei-Wainiha-Ha'ena area can clearly see highly visible evidence of substantial recent slope failures on a number of the cliffs above Kuhio Highway. The future impacts of climate change on this area (increased rainfall, increased erosion and slope failure, etc.) may be uncertain, but it would be ludicrous and reckless for the BLNR to close its eyes to the likelihood that there will be slope failure on the applicant's hillside above Kuhio Highway.

Such slope failure may well require - as it has required elsewhere on Kuhio Highway - moving the roadway further mauka. But the proposed location of the applicant's project (note that Bedroom 1 would be located just 10 feet from the slope, and just 30 feet from the 30% grade), would reduce the buffer zone needed to enable that important option for repair of the highway.





3. For the reasons outlined above, the CDU Permit should be denied.

The proposed location of the project is unacceptable from both a safety perspective and a viewplane perspective.

It is unconscionable, but not surprising in light of the applicant's non-responsiveness to community concerns, that the applicant gives higher priority to his views than to the risks, burdens and impacts that he would impose on the Hanalei community.

So it falls to the BLNR to protect the safety of the community:

- The BLNR must ensure that this project does not increase the possibility, by even a very small amount, that Kuhio Highway would be harmed, that objects might fall on vehicles traveling on the highway, or that the future ability to repair and/or re-route the highway would be impaired.
- The BLNR has the both the duty and the ability to ensure that the location of the project will not have any possibility of increasing the likelihood of erosion, landslides or falling objects on Kuhio Highway below, for the 60-to-100 year expected life of the project.

The serious safety and viewplane problems discussed in this testimony are real, not hypothetical. But they can easily be solved by moving the proposed project back from the cliff so that it neither mars the viewplane nor poses any threat to Kuhio Highway.

- I.e., there is no reason to allow the applicant to impose any problems or risks on the community, as the project could be safely sited further back from the cliff's edge.

I therefore ask that the BLNR either deny the CDU Permit, or alternatively, require that the structures be set back at least 100 feet from the edge of the bluff for safety reasons, plus whatever additional setback is needed to eliminate visual impacts.

Thank you,

Carl Imperato
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January 23, 2019

The Honorable Suzanne Case, Chairperson & Members of the Board of Land & Natural Resources
State of Hawaii, Board of Land & Natural Resources
1151 Punchbowl Street
Honolulu, HI 96813

Ref: Conservation District Use Application KA-3828
Helios Hanalei, LLC Single Family Residence

Aloha Madame Chairperson and Members of the Board of Land & Natural Resources:

While I can appreciate the Staff of the Office of Conservation and Coastal Lands' substantial workload, the 1/15/2019 Land Board Submittal and recommendation appears to give inadequate context as to why a single family residence of this size may not be appropriate for this parcel and why the discretionary approval of such a permit by the BLNR threatens losing what the Hanalei community has identified, as reflected in numerous planning documents and ordinance, and have tried to protect and preserve for almost 50 years beginning with the dedication/donation of approximately 1,000 acres which consists of the Hanalei Wildlife Refuge commencing in 1968.

Also, there are two critical agencies that appear not to have commented on this proposal, the State of Hawaii Department of Transportation (slope stabilization and traffic ingress/egress) and the U.S. Fish & Wildlife Service (Hanalei Wildlife Refuge). However, these agencies' lack of a response should not be construed as there are no issues. This parcel is situated in a critical area that impacts public safety and provides a buffer for habitat for endangered and threatened species.

In my October 12, 2018 testimony at Hanalei School I said I was dismayed that zoning and land use designation loopholes and lack of recordation of intent at the time of the original subdivision have not protected parcels like this one from development. In the land subdivisions that occurred in the late 1960's-early 1970's affecting the development of Princeville, lots along the perimeter of Hanalei Valley were intended to be green belts, a buffer zone, to protect the Hanalei Valley area from the visual impacts of development.

The subdivision and sales history of this parcel needs to be understood and given close scrutiny. In keeping with the original intent of this lot as a green belt buffer, this parcel was valued at \$0.00 prior to 2005. Sales information on the Kauai County real property assessment website show the sale price in an April 15, 1988 transaction as zero dollars. As you may already know, Princeville went through several ownership changes around this period. Through these ownership changes and aging, institutional memory has been lost and land use designations loopholes and lack of recordation have failed to protect the parcel from speculation. In March 2005 and May 2006 transactions, the sale price was \$5,600, ballooning to \$1.1 million in a March 2012 sale. The last recorded sale transaction was \$4.3 million on November 2016. (See Attachment "A", or link at: http://qpublic9.qpublic.net/hi_kauai_display.php?county=hi_kauai&KEY=540040320000)

While the Applicant attempts to assert that torrential rains in April did not cause a situation for lengthy closure of Kuhio Highway between Princeville and Hanalei bridge, page 8 of the Staff report contradicts the circumstances:

Slope mitigation work covering approximately 3-acres of the subject parcel was completed by State of Hawaii Department of Transportation (HDOT) to alleviate rock fall and erosion issues along Kuhio Highway. The completed work includes rock anchors, cables, steel mesh and netting that will remain in place preventing further rockfall events in this area. However, **staff notes that more recently (2018) a rockfall/landslide occurred along the same slope, but closer to the proposed SFR position. While the road has been reopened and debris cleaned up the slope failure has yet to be mitigated by HDOT.** (emphasis added)

Please note that there have already been two (2) recent landslide events after the April event which closed Kuhio Highway not one as indicated by staff, and the April event did result in small slides which closed the highway albeit not a lengthy closure. The proximity of the area to be developed (the western end of the lot) is well-known for water seepage appearing on the highway causing recurring potholes. This ongoing hazard area is currently marked with concrete barriers along the highway.

What kind of right of way will be available to the State to implement slope mitigation projects in the future if access is impeded by built structures approved in this Application? Slope stabilization is an on-going issue that involves public safety. Access to the parcel for slope stabilization/mitigation work should be preserved by the State and a condition of this permit with the stipulation that built structures should not impede this access.

Similarly, traffic (ingress and egress to the property) is discussed in a dismissive manner. Page 15 of the Application states:

The volume of traffic from one single-family dwelling used for residential purposes will be immaterial to the current Kuhio Highway traffic . . . instances of vehicles turning into the lot will be infrequent.

To describe this project as merely a single family dwelling intended for residential use is a misnomer. First of all, there is no "family" identified with this project. The land is owned by Helios Hanalei, LLC who lists its only member as JMG Partners, LP. The only JMG partner identified in public records is Michael Gearon. If this development is not intended for commercial use, how will the DLNR enforce the project's use as strictly residential intended for family and friends when ownership and permitting is through a holding or shell company? Given the size of the project, how will traffic concerns be mitigated during construction of the project? Again, given the size of the dwelling, how will traffic concerns be mitigated when a development of this size is expected to utilize housekeepers, groundskeepers or other maintenance or specialized services? How often will this development be occupied? Traffic impact can only be gauged by knowing the expected usage of this development.

The scale of this development and visual impact to the cultural landscape of Hanalei Valley is not inconsequential. While I understand that Conservation District Resource Subzone may allow for a single family dwelling, such a dwelling should be scaled and designed to have a minimal impact to the surrounding area. I urge the board to revisit the original intent when the subdivision of Princeville occurred, that the parcels surrounding the perimeter of Hanalei Valley were intended to be greenbelts and in line with the conservation, protection and preservation of natural and cultural resources of the State of Hawaii.

I note on page 18 that OCCL Staff asked the Applicant for an alternative design with a smaller footprint and this information was not provided. As the Applicant does not have the right to the maximum developable area, I too urge the BLNR to consider a smaller residence to mitigate environmental effects as well the ability for the State to access the area for slope mitigation unimpeded.

Unless these issues are resolved through adequate and appropriate conditions to the permit prior to the BLNR approval, I request a contested case hearing as a resident and property owner in Hanalei Valley for 40 years, concerned about the impacts of this project to Hanalei's unique cultural landscape and potential slope and traffic hazards this development may create. The current boilerplate language of conditions of the permit do not give confidence that public

safety and protection of the Hanalei Valley's cultural landscape will be protected. I believe the following issues must be addressed prior to the approval of this Application:

1. An alternative plan to allow the BLNR to consider a smaller residence to mitigate most issues, if none is provided the Application should be denied.
2. Proper placement of structures to ensure the State's access to conduct slope mitigation work and maintenance is not impeded to protect public safety as it affects Kuhio Highway. The plan and permit conditions should address this prior to approval.
3. As the Applicant is a holding company, clarification is needed as to who has the right to use the single family dwelling and how family and friends are defined to avoid any abuses of use and to help mitigate ingress/egress issues onto Kuhio Highway. These restrictions should be clearly stated in the conditions of the permit. The proposed boilerplate language does not appear to suffice.
4. As the landscape plan and vegetation screening is crucial to mitigate the visual impacts of the structures from the lower Hanalei Valley, conditions should be explicit about this protect for this important cultural landscape with accompanying penalties for such non-compliance.

Thank you for your consideration of my comments and concerns.

Sincerely,



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Hanalei, HI 96714
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[Recent Sales in Area](#)

Owner and Parcel Information

Owner Name/ Type	HELIOS HANAIEI LLC / Fee Owner	Today's Date	October 12, 2018
Mailing Address	3350 RIVERWOOD PKWY STE 425 ATLANTA, GA 30339	Parcel Number	540040320000
Location Address	KUHIO HWY	Project Name	
Tax Classification	CONSERVATION	Parcel Map	Show Parcel Map
Neighborhood Code	5625-5V	Land Area (acres)	14.109
Legal Information	POR OF LOT 4-A 14.109 AC DES	Land Area (approximate sq ft)	614,588

[Generate Owner List By Radius](#)

Assessment Information [Show Historical Assessments](#)

Year	Tax Classification	Total Market Value	Total Assessed Value	Total Exemption	Total Net Taxable Value
2018	CONSERVATION	\$ 3,639,000	\$ 3,639,000	\$ 0	\$ 3,639,000

Improvement Information

No improvement information available for this parcel.

Other Building and Yard Improvements

Description	Quantity	Year Built	Area	% Complete
No information associated with this parcel.				

Permit Information

Date	Permit Number	Reason	Permit Amount
No permit information associated with this parcel.			

Sales Information

Sale Date	Price	Instrument #	Instrument Type	Instrument Description	Date Recorded	Document #	Cert #	Book/Page	Conveyance Tax	Document Type
11/01/2016	\$ 4,300,000	16-A-61660864	FEE CONVEYANCE		11/18/2016				36550	
03/05/2012	\$ 1,100,000	12-A-44540296	FEE CONVEYANCE		03/12/2012				3300	
04/06/2010	\$ 0	10-000301	OTHER		01/04/2010					
05/03/2006	\$ 5,600	06-085546	FEE CONVEYANCE		05/08/2006				8.4	
03/18/2005	\$ 5,600	05-053747	FEE CONVEYANCE		03/18/2005	3242561	738987		56	
04/15/1988	\$ 0	8800056064	FEE CONVEYANCE		04/27/1988			21857/763	0	