

**From:** [Stacey Alapai](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1  
**Date:** Wednesday, April 24, 2024 9:36:46 AM

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Aloha,

I am writing about agenda item D-1. Please support option B3, without being subject to access easement by RP21. I would also like to express support for option C4.

I support I Ola Wailuanui's applications requesting 3 RP parcels located in the Wailua Kai area.

Mahalo,  
Stacey Alapai  
96768

**From:** [Brad Warren](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] FW: Support of Coco Palms: Agenda item D1  
**Date:** Wednesday, April 24, 2024 9:56:30 AM

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As a resident of Kauai, I am writing to express my support for the Coco Palms project by Reef Capital. This project holds immense promise for our Kauai Ohana. After 30 plus years of lawsuits and developers trying to improve the Coco Palms property, it was great to hear that Reef Capital was willing to take on the project of developing the land. It is an absolute disgrace that a few people have stalled and forced previous developers to abandon projects. It's well overdue that someone (that has the resources) is willing to clean up the mess and developing this property.

These developers have already begun removing the dangerous structures. They are spending a lot of money that benefits residents of Kauai. This is the first meaningful progress on restoration for more than thirty years. It's very important that we create a viable path for them to be successful in the restoration of this property.

I strongly urge the board to Approve Option B4. This will allow a public auction for the lease of "Parcel B". Also approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms.

These actions would benefit both the owners of the property and the State since it would allow this parcel to be utilized by both, and it would create a fair process for competitive bidding on a lease of Parcel B. We don't want to create a situation where it's not viable for Reef Capital to revitalize Coco Palms.

Best Regards,  
Brad warren

**From:** [Braelee Bergon](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 5:37:29 AM

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Hello,

My name is Braelee Bergon, and I am testifying on agenda item D1 and in support of the restoration of Coco Palms. After 30 years, the hotel is finally being restored after years of failure by prior owners. Just last month, the new owners began removing dilapidated and dangerous structures. This is the first meaningful progress on restoration for more than three decades.

I strongly urge the board to:

Approve Option B4 to allow a public auction for the lease of "Parcel B".

Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms.

These actions would be in the best interest of the State since it would:

Provide a fair process for competitive bidding on a lease of Parcel B.

Provide non-exclusive uses at Parcel C so both parties can utilize the property.

Thank you,

Braelee Bergon

**From:** [ZJB](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Coco Palms  
**Date:** Wednesday, April 24, 2024 10:37:03 AM

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Dear Board Members,

My name is Zach Beynon, and I am writing to testify on agenda item D1 in strong support of the restoration of Coco Palms. After 30 years of neglect, I am thrilled to witness the long-awaited progress towards revitalizing this iconic hotel. The recent efforts by the new owners to remove dilapidated and hazardous structures mark a significant milestone in the restoration process, signaling a renewed commitment to bringing Coco Palms back to its former glory.

It is imperative to recognize that this progress represents the first meaningful steps taken towards restoration in over three decades. As such, I urge the board to consider the following crucial points:

1. **Approve Option B4:** I strongly advocate for the approval of Option B4, which would enable a public auction for the lease of "Parcel B." This approach ensures a fair and transparent process for competitive bidding, ultimately benefiting the state and its constituents.
2. **Approve Option C2:** Additionally, I urge the approval of Option C2, granting a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms. This arrangement allows both parties to utilize the property effectively, fostering cooperation and maximizing the potential for successful restoration efforts.

By approving these options, the board would demonstrate its commitment to facilitating the restoration of Coco Palms in a manner that serves the best interests of the state. It ensures fair and competitive opportunities for lease agreements while promoting collaborative use of resources to expedite the revitalization process.

Thank you for considering my testimony and for your dedication to the preservation and enhancement of our cultural heritage. I trust that your decision will reflect the shared vision of seeing Coco Palms restored to its rightful place as a cherished landmark.

Sincerely,  
Zach

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Zach Beynon | (801) 860-8040

**From:** [Kapali Bilyeu](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony of Support: D-1  
**Date:** Wednesday, April 24, 2024 2:35:49 PM

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Aloha to the representatives of BLNR,

This letter is sent to express my support of the applications by I Ola Wailuanui:

1. Option B3 (TMK 4-1-003:017), **without** being subject to access easement by RP21
2. Option C4 (TMK 4-1-005:017)

As a kanaka maoli, a life-long resident of Kaua'i, and a first-hand witness to the severe negative impacts of resort developments on this island's natural resources and fellow residents, I urge the Board to also support I Ola Wailuanui in its efforts to preserve these areas within Wailua Kai without threat of access easement in favor of RP21 Coco Palms, LLC.

Na'u,

Kapali Bilyeu  
Kīlauea, Kaua'i

Sent from [Outlook](#)

**From:** [STEPHENIE BLAKEMORE](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] 3 parcels in Wailua Kai  
**Date:** Wednesday, April 24, 2024 9:13:56 AM

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I Ola Wailuanui has submitted applications requesting to be granted annual leases of three Revocable Permit (RP) parcels located within the Wailua Kai area. The Tax Map Key (TMK) numbers are 4-1-003:044, 4-1-003:017, 4-1-005:017

As a resident and property owner on Kauai I am asking you to grant the annual lease request for 3 RPs within Wailua Kai to I Ola Wailuanui. This organization strives to provide responsible stewardship of irreplaceable cultural and environmental lands that are endangered by rising sea levels and irresponsible, unwanted and unnecessary hotel development in the area.

Unsavoury political, unsound environmental, and culturally destructive actions have been carried out for far too long with regard to the land parcels in this area, both before and after 1992's Hurricane Iniki. I Ola Wailuanui is a community based, well educated and welcome applicant who will provide the care and protection these fragile lands require.

Please say yes to their request.

Mahalo

[Sent from AT&T Yahoo Mail on Android](#)

**From:** [Kalei Carvalho](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Do NOT support Item D1  
**Date:** Wednesday, April 24, 2024 10:08:05 AM

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Aloha,

To keep this short, I absolutely DO NOT support item D1 on the April 26, 2024 agenda. Wailua is a sacred site to our people. Not to mention, we do not need any more buildings for non-locals to add to the existing problems, including traffic.

Mālama pono,

Kalei Carvalho  
Kaua'i Community College  
[kalei677@hawaii.edu](mailto:kalei677@hawaii.edu)

Wai'ale'ale Student Academic Support  
[Click to book a WAI'ALE'ALE appointment](#)

Academic Advisor - Liberal Arts  
[Click to book an ACADEMIC ADVISING appointment](#)

**A'ohe pau ka 'ike i ka hālau ho'okahi**  
Not all knowledge is found in one school.

**COUNTY COUNCIL**

Mel Rapozo, Chair  
KipuKai Kualii, Vice Chair  
Addison Bulosan  
Bernard P. Carvalho, Jr.  
Felicia Cowden  
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Ross Kagawa



**OFFICE OF THE COUNTY CLERK**

Jade K. Fountain-Tanigawa, County Clerk  
Lyndon M. Yoshioka, Deputy County Clerk

Telephone: (808) 241-4188  
Facsimile: (808) 241-6349  
Email: cokcouncil@kauai.gov

**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kauai, Hawaii 96766

April 23, 2024

**Re: Agenda Item D-1-1 – Please Defer Coco Palms Leases**

Aloha Chair Chang and Land Board Members:

As an individual Kauai County Council member and Committee Chair of the Public Safety Committee, **I wish to offer the following comments on the need to defer the assignment of these leases of state lands to the development entities of Coco Palms; RP21.** The reasons for consideration of deference are as follows:

**1). Recent Wailua Flooding 4/11-4/13/2024 demonstrates continued challenges of climate change patterns and timber debris in our waterways.** This creates liability potential for high investment properties that are adjacent to properties affected by poor drainage. Coastal Wailua, Kauai has just experienced 4-6 feet of floodwaters from a 1-foot rain, exacerbated by the river mouth being clogged with woody debris and timber. Please see photos below/attached that highlight the damage to leased built environment caught on a construction dock. The Coco Palms Resort demolition project was flooded by several feet of water. Equipment trailers at Coco Palms were flooded, damaging construction tools, without insurance coverage. Ho'omana Thrift Store on Kuamo'o Road, directly across from Parcel B, (4) 4-1-003:017 on the drainage ditch from the Coco Palms fishpond, serves as a repeat example in which they lost have all their inventory, incurred drywall damaged and general property degradation, again.

**2). Adjacent HDOT work on Wailua Bridge amplified the drainage challenge, with a debris pile of albizia timber blocking the river mouth, increasing flooding for the third significant event in six years causing business closures and property damage.** During this flood, Wailua Bridge was compromised by equipment failure. A dock holding large pile-driving equipment broke loose and the 855,000 pound piece of heavy equipment fell against the Wailua Bridge. See attached photos. At the same time, mauka Kuamo'o road has been experiencing slope failure, with traffic restricted to one lane. Kūhio Highway just north of Coco Palms was flooded over 3 feet of water by Coconut Marketplace. Rescues were made from residences and businesses. The rock revetment on the north bank of the river along the residences is beginning to fail. It is perilous to think of over a thousand guests at Coco Palms trying to evacuate during flood events, as well as the destruction of all the parked vehicles in the resort lots, and 3 open, underground parking garages.



**3). Board submittal for D-1-1 includes an August 10, 2017 letter from Hawaii Department of Transportation (HDOT) Director Ford Fuchigami to Michael Dahilig, Kauai Planning Director, PS 2015-047, evaluating the traffic impact analysis report (TIAR) submitted by Coco Palms resort in 2015.**

HDOT included 12 responses, including #'s 11 & 12. - that the 2015 TIAR be updated and that all HDOT responses be addressed. **These conditions have not been met.**

**HDOT Conditions 1, 2, and 3 address the need to update the 2015 TIAR to current volumes and to include the new southbound lane.**

**4). HDOT's Access Points need clarification and TIAR agreement;**

**HDOT Condition 4** considers the relocation of the main Kuamo'o Road entrance 75-250' mauka of Kūhio Highway, on State property (4) 4 1-003:017. This 25' perpetual easement was located just mauka of the highway. HDOT has determined it must be moved mauka for safety.

This property is part of the Coco Palms Resort Historic District, was part of the historic coconut grove and is likely to contain cultural features and possible human remains. SHPD must be. Consulted. For this alteration of the Historic District.

More of historic coconut grove planting will have to be removed for this new driveway location. The Weuweu-Kawai'iki Fishpond Preservation plan establishes a protective 20' barrier to the fishpond and 'auwai, which must be avoided by this new main entrance to Coco Palms Resort.

This new entrance has not been mapped and a new drainage plan has not been submitted.

**HDOT's Condition 6** includes a request for the TIAR to consider traffic volumes to be adjusted to include consideration for the retail/commercial operations on site to be included. Since the completion of the 2015 TIAR, at least 4 new businesses have been added to the Coco Palms Historic District: rooftop bar, rooftop spa, 4 story spa building, and the Event Center. Additional traffic volume impacts and travel times to these new businesses must be considered.

**HDOT Condition 7** considers proper sight distance for Kūhio Highway be considered. **Proper sight distance for the new proposed Kuamo'o entrances must also be considered: the newly located main entrance, the Coconut Grove entrance to the newly constructed roads, the new Event Center.**

**HDOT Condition 8** considers a Construction Traffic Plan be submitted. A Demolition Traffic Plan should also be submitted.

In Condition 9, HDOT questions the safety of the new proposed right-in and right-out access to Kūhio Highway from Coco Palms Resort

:

**9. The HDOT does not agree with the right-in access and the right-out access with Kūhio Highway.** There is concern of the proximity of these accesses with the intersection of Hale'ilio Road and Kuamo'o Road, respectively. These accesses may degrade the congestion benefit of the additional south-bound lane, cause vehicular weaving conflicts with the intersections and additional conflict points of vehicles, pedestrians and bicyclists.

**The HDOT recommends no direct access onto Kūhio Highway.** However, in the case an access is pursued, one midblock access may be considered with a deceleration lane and no acceleration lane. This midblock access requires accommodation by the HDOT's Kūhio Highway Short Term Improvements project. Therefore, a preliminary design of this midblock access should be submitted to the HDOT for coordination with the ongoing environmental and design work of the project. If the Coco Palms Resort LLC does not provide the midblock design in time of the HDOT's completion of the preliminary engineering for this project segment, the HDOT will not accommodate a midblock access in its project.

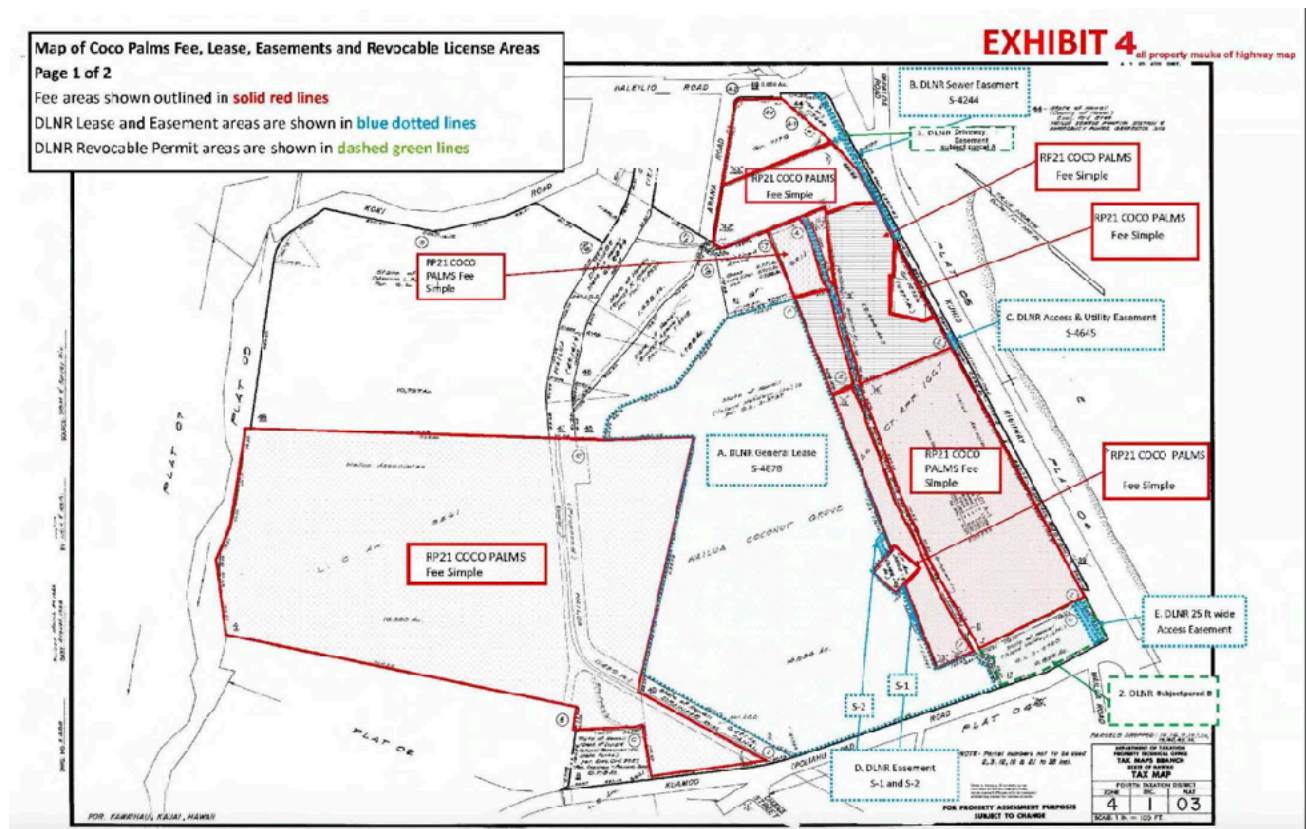
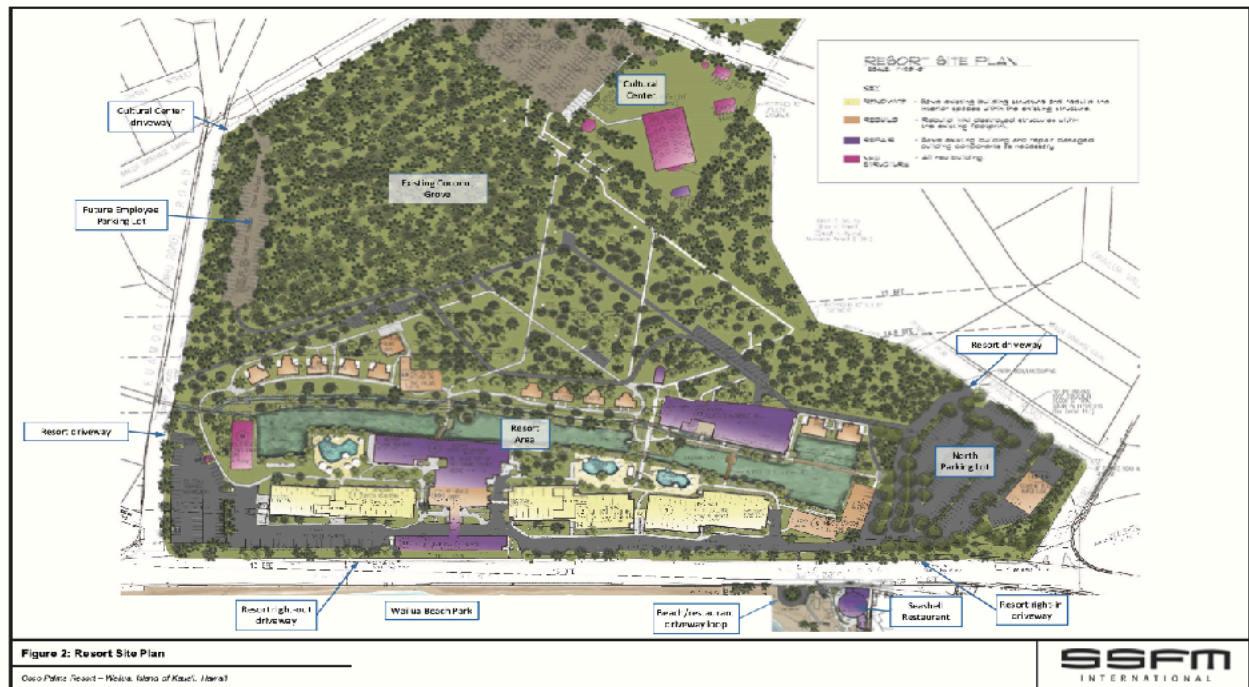


Exhibit 4 on Page 3 in the D-1-1 submittal includes a map of the Coco Palms project mauka of the highway, showing all Kuamo'o access ways are held by the state.

**The 2015 TIAR does not include access into the Coconut Grove or locate any fire roads.** It shows an Employee Parking lot on state lease land in the Coconut Grove and access to the new Event Center also on state land. The 2023 site plan locates a 174-unit parking lot at the Event Center. The 2015 TIAR must be updated to reflect right-in and right-out safety with the new southbound lane.

**Condition 10 reemphasizes no pedestrian egress** from middle of Coco Palms, that guests should use Kuamo'o and Hale'ilio signalized crosswalks.

**Condition 11 recommends the 2015 TIAR be revised to include HDOT's comments, and that the Existing and Future forecast years traffic be updated.**



I do not believe a new updated TIAR has been submitted.

5). Public egress over these state parcels for these private commercial businesses needs clarification, definition, and location.

6). Fire access must be determined, and an Evacuation Plan must be formulated for this project to continue.

7). Public Beach Parking in Wailua must be implemented as soon as possible, not waiting for resort opening.

As stated in page 3 of the D-1-1 submittal, **“There is little to no public parking in the area for those who want to use the beach across the road from the hotel...”**. The County of Kauai recently passed Resolution 2023-44 considering the need for public access in Wailua. Public beach parking in Wailua is at such a premium, folks are having to park in unsafe highway locations and actually on the pedestrian bike path. Public parking in the state parking lot on the corner of Kuamo’o and Kuhio Highway should be made available as soon as possible, not when the resort opens.

Of the four options for the existing parking lot on Parcel B, only I Ola Wailuanui’s option B-3 includes any consideration of parking. RP21 Coco Palms Hui LLC proposal B-1 is for access purposes; B-2 is RP21 for Access and Landscaping purposes. Parking has been eliminated.

**Do not approve a lease to Parcel B that does not include public beach parking.**

The promised public beach park bathroom with shower has been eliminated from the Coco Palms resort site plan, replaced with a key card entry single stall per gender bathroom.

**Do not approve a lease to Parcel B that does not include public beach bathrooms and showers.**

**8). Do not approve a right-in entrance over Parcel A (4) 4-1-003:044 unless approved by HDOT considered in an updated TIAR, as noted in HDOT’s Condition 9.**

An updated TIAR must be completed and approved before any lease of this property for ingress and egress.

**9). A shoreline certification must be preformed before any consideration of use of any of the makai lands, including the County of Kauai’s Wailua Beach Park consumed in a Shuttle Turnaround.**

**The County of Kauai has been held responsible for the beach clean up of timber debris from upstream.** The County of Kauai Department of Parks and Recreation recently received a poor performance evaluation in our management of FEMA funding for Rain 18 and Rain 20 flood events. It severely overtaxes our Parks department to clean the timber debris from the beach area. The Coco Palms Resort project, without a drainage plan, has a great potential to increase the number of people in harms way during Wailua flood events, with a viable means of evacuation or escape.

**Please defer consideration of long term leases for these critical state properties.** Should you have any questions, please feel free to contact me or Council Services staff at 808-241-4188.

Sincerely,



Councilmember, Kauai County Council

## Debris threatens bridge

By [Dennis Fujimoto/The Garden Island](#) | Wednesday, April 18, 2018, 12:05 a.m.

Share this story [f](#) [t](#) [e](#)



Dennis Fujimoto/The Garden Island

The scope of debris accumulation at the Wailua River bridge.

## Nearly 200 evacuated from North Shore

By [The Garden Island](#) | Monday, April 16, 2018, 12:58 p.m.

Share this story [f](#) [t](#) [e](#)



Photo courtesy HDCT Debris piles up at the Wailua Bridge. One southbound lane of the bridge will be closed tonight, while the debris is removed.





CHRIS JENSEN  
HAWAII STREAM



*Fallen albizia limbs and branches washed down from the mountains during the rains of March 2020, which damaged the Wailua Bridge*





## KAUAI STORM AFTERMATH

- **MULTIPLE RESCUES & EVACUATIONS**
- **ALL PUBLIC SCHOOL CLASSES CANCELLED**
- **SHELTERS OPEN IN KOLOA & KAPAA**
- **DRIVERS URGED TO STAY OFF ROADS**





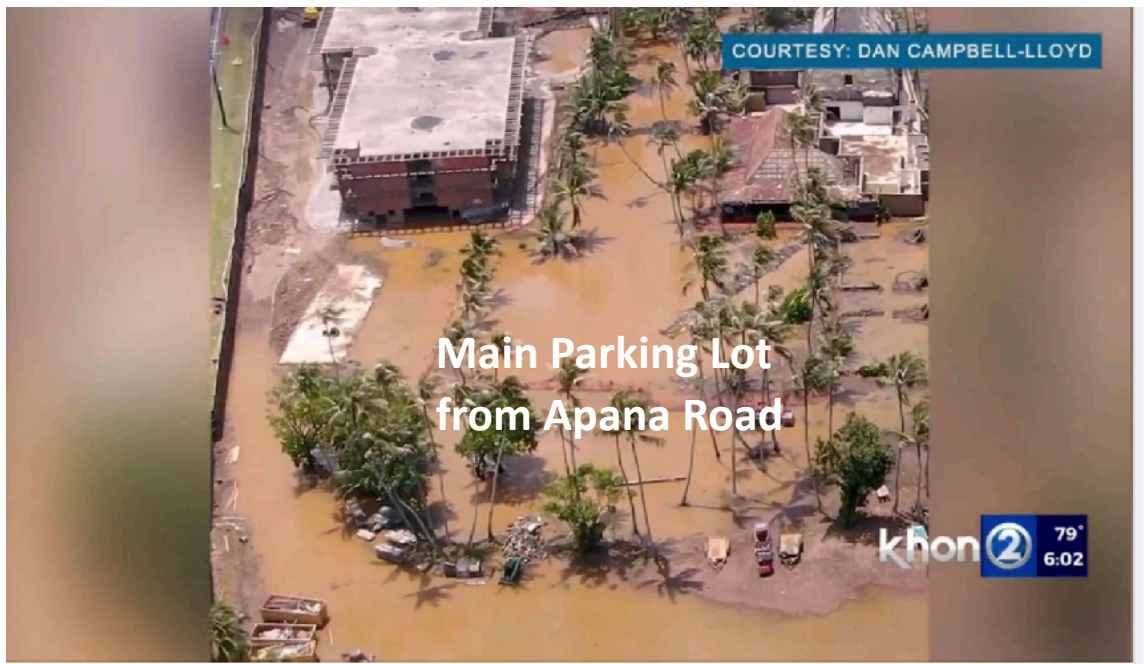
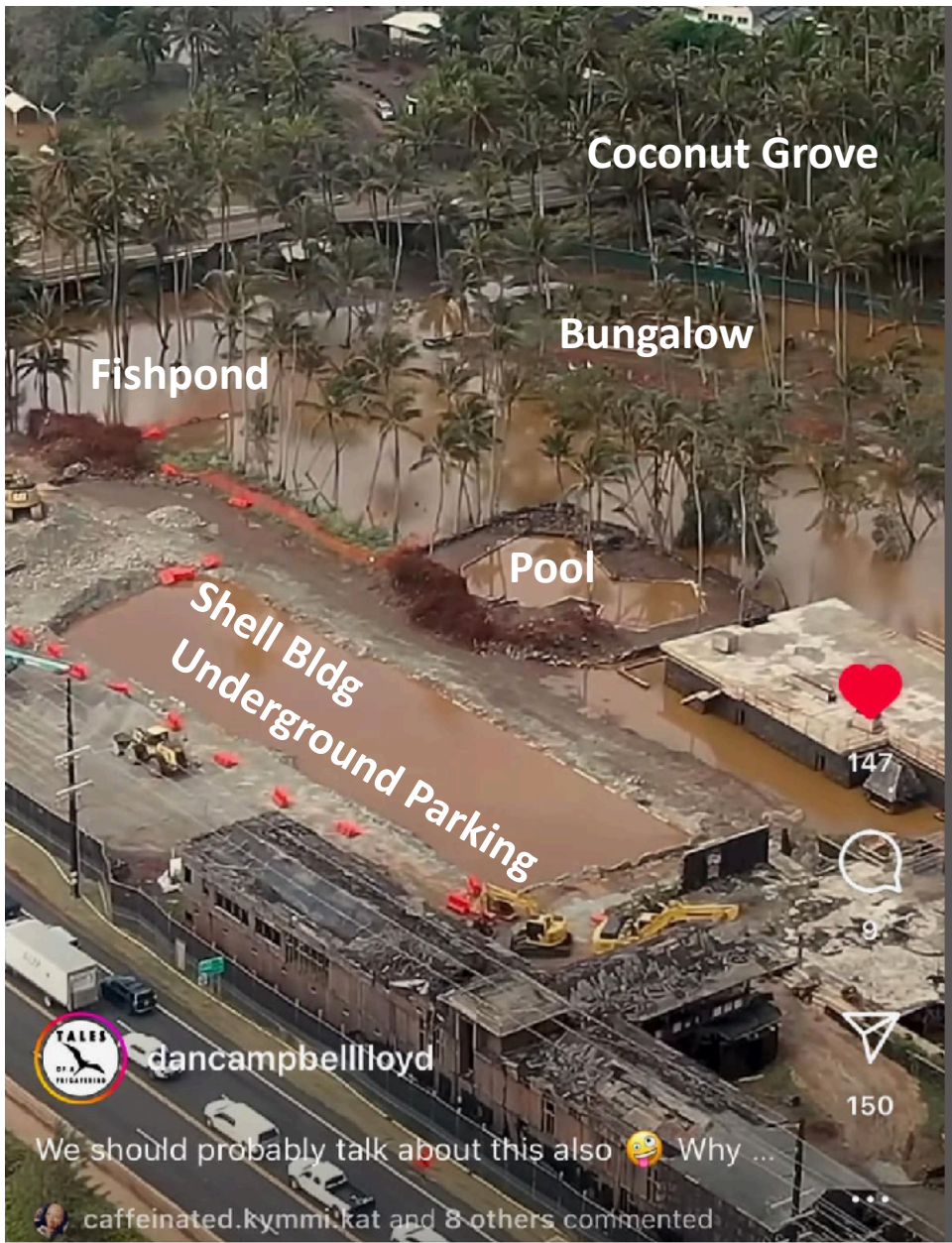
2024 - Wailua River half blocked by construction dam that caught timber debris.



When Wailua River is restricted to less than half flow due to construction dam and equipment, where is the water supposed to go? Where is the woody debris supposed to go? Mahalo for photos by Jack Harter Helicopters.



### Wedding Chapel in Coconut Grove



**From:** [Regina Floyd](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Re: Item D1 on Agenda for 4/26/2024 - Coco Palms  
**Date:** Tuesday, April 23, 2024 7:25:20 PM

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Aloha and Mahalo for allowing me to submit written testimony on behalf of this agenda item relating to Coco Palms Property.

I am a transplant who has lived here on Kauai since 2015. I have lived on Kuamoo Road, just up the road from the Coco Palms property (near the Opeaka'a falls) since 2016. I am not of Hawaiian descent but I have had the honor and privilege of learning about the cultural significance of the area in which I live.

I am certain you have, and you will hear and read, ALL the various reasons that people don't want another hotel on the Coco Palms property (traffic, flooding, etc.)

I have personally seen several times the terrible flooding that has happened on that entire corner of Kuamoo and Kuhio Highway. Much like the recent rains of April 11/12. You can surely see images online of the impact the rains and overflowing river had on that property. Many homes and businesses nearby were flooded out and lost just about everything.

I am asking that you do NOT award permits to property developers RP21 Coco Palms LLC and instead DO AWARD permits to I **Ola Wailuanui, Inc.** I ask this because I believe that the best interest of the lands is to be in control and managed by those most sensitive to cultural significance, and those willing to continue to perpetuate the Hawaiian culture here on Kauai before it is erased. We do not need another hotel in this specific area.

Again, I am not Hawaiian. I do not have ancestors buried there, but even I can see and sense the importance of preserving what little is left of this special area. I toured the property many years ago and saw the endangered ducks and other birds in the ponds.

I believe by granting permits to I Ola Wailuanui, Inc., you help protect this sacred space. You likely already know this, but they have a vision.

**A COMMUNITY VISION TO RESTORE  
WAILUANUIAHO‘ANO TO A FLOURISHING SPACE  
FOR CULTURAL ENRICHMENT, EDUCATION,  
CONSERVATION & FOOD PRODUCTION.**

We don't have enough of that here on Kauai.

Even though I am NOT Hawaiian, I want to be a part of this vision and steward this area I've been blessed to live in for 8 years.

Thank you for your consideration. Again, Please grant permits in favor of I Ola Wailuanui, Inc

Mahalo Nui Loa

--

Regina L Floyd  
Social Media Content Creator  
**Simple Online Business Development**  
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[Instagram.com/ReginaLFloyd](https://www.instagram.com/ReginaLFloyd)



**From:** [Matt Gilbert](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Support for Agenda Item D1: Restoration of Coco Palms  
**Date:** Wednesday, April 24, 2024 3:08:24 AM

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To whom it may concern:

My name is Matt Gilbert, and I am writing to express my support for agenda item D1, which focuses on the restoration of the Coco Palms Hotel. This project, after being stagnant for over 30 years due to previous ownership failures, is finally seeing progress under the new owners who started removing unsafe structures last month. This is the first significant advancement in the restoration efforts in decades.

I strongly urge the board to take the following actions:

1. Approve Option B4 to conduct a public auction for the lease of "Parcel B". This will ensure a transparent and competitive bidding process that is in the state's best interest.
2. Approve Option C2 to grant a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms. This will allow both parties to utilize the property effectively.

These steps are crucial for the successful restoration and utilization of Coco Palms, and they will serve the best interests of the State by ensuring fairness and optimal use of the property.

Thank you for considering my testimony on this important matter.

Sincerely,  
Matt Gilbert

**From:** [Regina Gregory](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] meeting 4/26/24, item D-1  
**Date:** Wednesday, April 24, 2024 8:54:37 AM

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Please approve option B3, without easement, and option C4.  
Regina Gregory



**From:** [Maen Halawani](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D-1, support for options B3 and C4  
**Date:** Wednesday, April 24, 2024 2:56:52 PM

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Aloha BLNR,

I am submitting testimony regarding agenda item D-1.

I am in favor of option B3 which provides a direct lease to I Ola Wailuanui. Currently it is subject to access easement in favor of RP21; I support it WITHOUT being subject to access easement by RP21, Coco Palms LLC. I ask that in future options be provided that do NOT provide favor to RP21.

I also strongly support option C4, which provides direct lease to I Ola Wailuanui without access easements or favor to RP21.

I hope that these three parcels will serve as a foot in the door towards community management of the larger area, and I Ola Wailuanuis management of them will demonstrate the community's ability and commitment to care for these spaces.

Mahalo for your time and consideration,

Ma'en Halawani 96822

**From:** [Renee Rosemark Harper](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Old Coco Palms  
**Date:** Wednesday, April 24, 2024 1:40:43 PM

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Please do not approve permits for this project. Most of the Kauai community does not want a hotel there in the first place. The traffic is unbearable and these TMK'S have several environmental issues such as flooding with run off going into the ocean. These parcels need to be saved for the community and not a hotel.

Thank you for your time and consideration in saving these properties for Kauai and the state of Hawaii.

Sincerely,  
Renee Rosemark Harper  
Lawai, HI



## HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST

650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

April 26, 2024

Via Email: [blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

To: **The Honorable Dawn Chang, Madam Chair**  
**Board of Land and Natural Resources**  
1151 Punchbowl Street, Room 132  
Honolulu, Hawaii 96813

Re: **Agenda Item (D1) SUPPORT To Approve One or More Dispositions to RP21 Coco Palms, LLC**

FOR HEARING ON APRIL 26, 2024 at 9:00 AM (KALANIMOKU BUILDING)

**Aloha Honorable Madam Chair Chang and Members of the Board,**

The **Hawaii Laborers & Employers Cooperation and Education Trust** (Hawaii LECET) is a labor + management partnership established in 1992 between the 5,000 statewide members of the Hawaii Laborers Union and over 250 construction companies from the *General Contractors Association* and the *Building Industry Association*.

**Hawaii LECET strongly supports the restoration of Coco Palms Resort.** The Coco Palms restoration is strongly supported by Kauai voters, and will fund benefits sought by the community, including public parking and public restrooms. The restoration will help to support cultural activities such as a lo'i kalo managed by lineal descendants, a cultural advisory group comprised of Kauai Native Hawaiian leaders, and a cultural center and museum required by the county as part of the project's community benefits.

**We also urge you to approve Option B4 to allow a competitive public auction for Parcel B, and to approve Option C2 for a non-exclusive easement on Parcel C to RP21,** who are the first owners to make meaningful progress towards restoration of the Coco Palms property, for the first time in over thirty years.

Mahalo,

**Hawai'i Laborers & Employers  
Cooperation and Education Trust**

**From:** [Koko Head](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 11:42:26 AM

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Aloha! My name is Koko Head and yes, that is my given name! I have long been a distant admirer of the Islands--perhaps because of my name's sake. Today I want to speak to **Agenda Item D1** and express my full support for the restoration of **Coco Palms**. After nearly 30 years, this iconic hotel is finally being restored following many years of failure by prior owners who half-heartedly attempted a "quick fix". Finally, last month, the new owners began removing dilapidated and dangerous existing structures and the first meaningful progress on restoration in more than three decades has begun by responsible new owners.

In light of this effort by the responsible new owners, I strongly urge the Honorable Board Members to do the following:

- \* Approve Option B4 to allow a public auction for the lease of "Parcel B"; and
- \* Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21 to Coco Palms owner.

These two actions are in the best interest of the State of Hawaii and would provide a fair process for competitive bidding for leasing of Parcel B and would provide non-exclusive uses at Parcel C so both parties can utilize the property. Thank you for your consideration of this important step forward. Mahalo!

***Koko Head***  
32 Waterline Drive  
St. Johns, FL 32259  
Mobile: (904) 535-0642  
Email: [kokoheadFL@gmail.com](mailto:kokoheadFL@gmail.com)

**From:** [Joan Heller](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] (TMK) numbers are 4-1-003:044, 4-1-003:017, 4-1-005:017. April 26, 2024 meeting testimony  
**Date:** Wednesday, April 24, 2024 10:03:27 AM

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To BLNR members,

I agree with I Ola Wailuanui's commitment towards the sensible restoration (no hotel) to this area that carries the potential to flip into an extreme risk of loss of lives and high recovery costs pending any (un)natural climate conditions due to its off-shore proximity and (lack of) elevation!

Just a reminder of what you folks are already aware of!!!

I support the following:

agenda item D-1 in favor of option B3, without being subject to access easement by RP21, as well as support for option C4

Appreciate the opportunity to share my voice,  
Joan Heller from lawai  
3820 Uakea Place, 96765



April 24, 2024

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

RE: My written testimony for agenda item D-1 at BLNR's 4/26/2024 meeting regarding Coco Palms, Kauai, requesting BLNR's leases and easements for any Coco Palms properties NOT be awarded to RP21 Coco Palms LLC, nor to I Ola Wailuanui, Inc., and that BLNR instead adopt its options B5 and C5.

Board of Land and Natural Resources (**BLNR**):

Please accept this as my written testimony for BLNR's 4/26/2024 meeting regarding agenda item D-1; the Coco Palms development on Kauai.

### **Introduction**

RP21 Coco Palms, LLC's ownership of the Coco Palms development properties is hotly disputed and contested, including my pending appeal filed with Hawaii's Intermediate Court of Appeals (**ICA**) (see "Notice of Pending Appeal" attached as **Exhibit A**) awaiting its decision, which affects ownership of the Coco Palms properties, including the likely outcome that the ICA will determine if RP21 Coco Palms does NOT own those properties (see my attached Opening Brief and Reply Brief to ICA as **Exhibits B & C**). Since I filed my Reply Brief with the ICA, it has issued several key decisions regarding other wrongful foreclosure case that greatly increase (virtually guarantee) the ICA will rule in my favor, which will result in RP 21 Coco Palms no longer being the owner of the Coco Palms properties.

In 2017, I recorded with Hawaii's Bureau of Conveyances an "Exemplified Foreign Judgment" against the Coco Palms development properties, which appear to be attached to BLNR's subject leases and easements on its 4/26/2024 Hearing regarding those properties. See "Exemplified Foreign Judgment" attached as **Exhibit D**.

## **My Background & Involvement with the Coco Palms Hui LLC & Its Development**

I am the commercial mortgage broker who arranged the ~ \$22 million loan for Coco Palms Hui LLC from/through Private Capital Group, Inc. that funded on 5/6/2016.

Coco Palms Hui LLC violated its agreement to pay me the fee it owed me for obtaining that ~\$22 million loan, resulting in me obtaining a default judgement against it. Please see my “Exemplified Foreign Judgment” attached that was recorded with Hawaii’s Bureau of Conveyances on 11/15/2017, thus making me a judgment creditor against Coco Palms Hui LLC.

Afterwards, Private Capital Group Inc. foreclosed on the Coco Palms properties that secured the \$22 million loan to Coco Palms Hui LLC for lack of payment and that then lead to RP21 Coco Palms LLC tentatively owning the Coco Palms development properties subject to the outcome of my pending appeal seeking to reverse that foreclosure.

In 2022 (12/21/2022), I had a “Notice of Pending Appeal” filed with the Bureau of Conveyances against the Coco Palms development properties, which affecting RP21 Coco Palms LLC’s owner. It is still recorded against those properties.

My appeal with the ICA has been fully brief and is awaiting a decision by it. Please see attached my Opening Brief and Reply Brief attached **as Exhibits B and C**.

My “Exemplified Foreign Judgment” and “Notice of Pending Appeal” with the ICA were previously provided to the BLNR on or about July 26, 2023.

Until my pending appeal with the ICA, awaiting its decision, and related issues are fully resolved, it is highly likely that the fee interest ownership in the Coco Palms parcels will be taken away from RP21 Coco Palms, LLC. Due to my pending ICA appeal, I respectfully request that BLNR NOT issue any lease or easements regarding the Coco Palms properties to any party, including any of the lease(s) or easement(s) that are on its April 26, 2024 meeting agenda at least until my pending ICA appeal is fully resolved in the Courts, including any subsequent appeals to the Hawaii Supreme Court, on remand to the Circuit Court that handled the prior foreclosure that is being appealed.

## **BLNR’s Minutes of Its May 25, 2018 Hearing Re Coco Palms Development**

The meeting minutes from the BLNR’s 5/25/2018 hearing, attached **as Exhibit E**, memorialize that the BLNR unanimously voted as follows:

Consent to Assign General Lease No. S-4828, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-22,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignor/Second Assignee, to Coco Palms Hui LLC as Second Assignee,

Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por.044.

By that BLNR action those items became assets of Coco Palms Hui LLC.

At the time of that BLNR's May 25, 2018 hearing and unanimous vote, my Exemplified Foreign Judgment had already been recorded with the Bureau of Conveyances in 2017 and thus attached to those items listed in the above paragraph. **They continue to be assets of Coco Palms Hui LLC, are encumbered by my 2017 judgment lien and now require that Coco Palms Hui LLC receive a "reasonably equivalent value" for the assets should anyone want to take them.**

### **Commissioner's Deed Allegedly Vesting Ownership Is Disputed & On Appeal**

In at least seven instances in the DLNR report dated April 26, 2024 RP21 Coco Palms LLC is incorrectly referred to as the "successor in interest to Island Holidays, Limited et al" or similar language. It has been presumed by BLNR and others that RP21 Coco Palms LLC is the "successor in interest" to Coco Palms Hui, LLC. But that is NOT so.

The US government Consumer Financial Protection Bureau defines a "Successor In Interest" as:

Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:

- (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
- (2) A transfer to a relative resulting from the death of a borrower;
- (3) A transfer where the spouse or children of the borrower become an owner of the property;
- (4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
- (5) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

See: <https://www.consumerfinance.gov/rulespolicy/regulations/1024/31/#a-14>

The "Commissioner's [Foreclosure] Deed" dated April 20, 2022, which memorializes Private Capital Group's disputed foreclosure against Coco Palms Hui LLC and its Coco Palms development properties, states:



4. By Order Granting Plaintiff's Motion Filed August 21, 2021, For Confirmation Of Sale By Commissioner, Exhibit A filed in the Foreclosure Action on October 26, 2021, and to be recorded in the Bureau of Conveyances, State of Hawaii, the sale of all the property hereinafter described in Exhibit A to Private Capital Group, Inc. or its nominee, was ratified, approved and confirmed, and the Grantor, as Commissioner, was ordered and directed to convey the mortgaged property to Grantee or its nominee.

6. The nominee of Private Capital Group, Inc. is RP21 Coco Palms LLC, a Utah Limited Liability Company.

(See "Commisioner's Foreclosure Deed" attached as **Exhibit F**)

It is clear that RP21 Coco Palms LLC is not the "successor in interest to Island Holidays, Limited et al", nor to Coco Palms Hui LLC because RP21 Coco Palms LLC does not fit the definition of a "Successor In Interest". **Thus, RP21 Coco Palms LLC does not have any successor rights or interest in the Coco Palms development properties and should not be awarded any lease(s) or easement(s) for those properties.**

At a minimum, RP21 Coco Palm LLC's ownership of those properties is hotly disputed and contested, and any lease(s) or easement(s) for those properties should NOT be awarded to RP21 Coco Palms until AFTER my pending appeal with the ICA is decided and its ownership of the Coco Palms properties is resolved in Hawaii's Courts.

Respectfully, it would be imprudent and a violation of the public's trust for BLNR to award any lease(s) or easement(s) to a party (RP21 Coco Palms LLC) whose ownership of the properties that those leases and easements are for is hotly disputed and is awaiting a decision regarding that very issue by the ICA.

It is important to note that the items that BLNR gave to Coco Palms Hui, LLC at BLNR's May 25, 2018 meeting where not encumbered by the ~ \$22 million mortgage that was foreclosed upon, and thus those items were not transferred by the 2022 Commissioner's Deed. Those May 25, 2018 BLNR items are currently assets of Coco Palms Hui LLC (not RP21 Coco Palms).

//

//

//

//

//

## Summary

The items listed in the minutes from BLNR's May 25, 2018 meeting continue to be assets of Coco Palms Hui LLC that are encumbered by my judgment lien. Now, for anyone to take them requires that Coco Palms Hui LLC receive reasonably equivalent value to then be used to pay my recorded "Exemplified Foreign Judgment".

Please do not transfer any State leases, grant of easements, or land office deeds listed in the BLNR meeting minutes of May 25, 2018, or any other items related to Coco Palms Hui LLC or the Coco Palms development properties to any party, including to RP21 Coco Palms LLC and/or to I Ola Wailuanui, Inc., prior to my pending ICA appeal being fully resolved in the Courts, including any subsequent appeals to the Hawaii Supreme Court, on remand to the Circuit Court that handled the prior foreclosure that is being appealed.

Instead, please adopt BLNR's options B5 and C5.

Sincerely,

/s/ Paul M. Honkavaara

Paul M. Honkavaara

Attachments (5): Notice of Pending Appeal, recorded 12/21/2022, (Exhibit A)  
My Opening Brief filed with ICA (Exhibit B)  
My Reply Brief filed with ICA (Exhibit C)  
Exemplified Foreign Judgment, recorded 11/15/2017  
(Exhibit D)  
BLNR Minutes of Meeting May 25, 2018 (Exhibit E)  
Commissioner's Deed, 4/20/2022, (Exhibit F)

# **Exhibit A**

OFFICE OF THE  
ASSISTANT REGISTRAR, LAND COURT  
STATE OF HAWAII  
(Bureau of Conveyances)

The original of this document was  
recorded as follows:

DOCUMENT NO. Doc T - 12042209  
CT 1237067  
DATE/TIME December 21, 2022 3:01 PM

LAND COURT SYSTEM

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS:  
STATE OF HAWAII  
BUREAU OF CONVEYANCES  
DOCUMENT NO. Doc A - 83900768  
DATE - TIME December 21, 2022 3:01 PM

REGULAR SYSTEM

---

AFTER RECORDATION, RETURN BY MAIL TO

Keith M. Kiuchi, ALC  
American Savings Bank Tower  
1001 Bishop Street, Suite 985  
Honolulu, HI 96813  
(Phone: 808-533-2230)

Document No. T-11820232  
Document No. A-81680740

TMK: (4) 4-1-003-007; (4) 4-1-003-004; (4) 4-1-005-014

---

**NOTICE OF PENDING APPEAL**

RE: Notice of Appeal was filed in CAAP-20-0000429 on or about August 25, 2020 with the **Hawaii Intermediate Court of Appeals ("ICA")** from Fifth Circuit Court's Judgment in Civil No. 5CC191000086; *PRIVATE CAPITAL GROUP, Plaintiff-Appellee, v. PAUL M. HONKAVAARA dba Chartered Financial Group, Defendant-Appellant, et. al.* (hereafter referred to as "**Appeal**").

Tax Map Key Numbers (4) 4-1-003-007; (4) 4-1-003-004; (4) 4-1-005-014 ("**Land**").

PAUL M. HONKAVAARA dba Chartered Financial Group, obtained an Exemplified Foreign Judgment against Coco Palms Hui LLC, a Delaware limited liability company in the First Circuit Court on November 3, 2017 in S.P. No. 1CC17100360. Said Exemplified Foreign Judgment (Judgment) was recorded with the Bureau of Conveyances of the State of Hawaii on

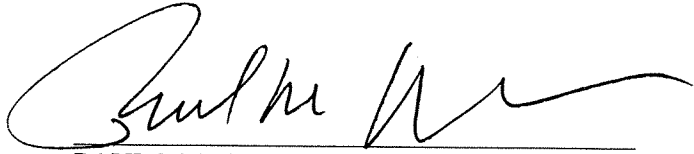
November 15, 2017 as Document No. 65280627. Therefore, Paul M. Honkavaara dba Chartered Financial Group, asserts an interest in the Land by way of this Judgment.

After the Judgment was recorded, Private Capital Group filed a foreclosure complaint against Coco Palms Hui LLC, a Delaware limited liability company in *PRIVATE CAPITAL GROUP, Plaintiff–Appellee, v. COCO PALMS HUI LLC, a Delaware limited liability company, TYLER SCOTT GREENE, CHAD WATERS and PAUL M. HONKAVAARA dba Chartered Financial Group*, Defendants, et. al., Civil No. 5CC19100008. The Land described by the Tax Map Key numbers described above, is the subject Land in this foreclosure complaint. A judgment foreclosing the Land was entered in favor of Private Capital Group by the Fifth Circuit Court. Pursuant to the foreclosure, the Land was conveyed by a Commissioner’s Deed to RP21 Coco Palms LLC, a Hawaii limited liability company, recorded in the aforesaid Bureau on April 20, 2022 as Document No. A-81680740, and also filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as T-11820232, from with Certificate No. 1237067 was issued.

On this 25th day of November, 2022, PAUL M. HONKAVAARA dba Chartered Financial Group, Defendant-Appellant in the above Appeal, by and through his attorney, KEITH M. KIUCHI, hereby give public notice to all parties that they filed, on or about August 25, 2020, an appeal in CAAP-20-0000429 with the Hawaii Intermediate Court of Appeals (“ICA”) from the Fifth Circuit Court Judgment in Civil No. 5CC191000086. That case on appeal is entitled: *PRIVATE CAPITAL GROUP, Plaintiff–Appellee, v. PAUL M. HONKAVAARA dba Chartered Financial Group, Defendant–Appellant*, et. al.; CAAP-20-0000429.

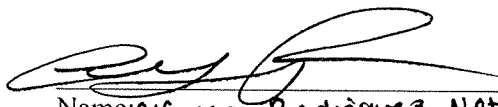
NOTICE IS FURTHER GIVEN that PAUL M. HONKAVAARA dba Chartered Financial Group, intends to pursue his right to keep any lien or judgment that he has relating to the Land in the event the Appeal is decided in his favor.

IN WITNESS WHEREOF, PAUL HONKAVAARA has executed these presents the day and year first above written.

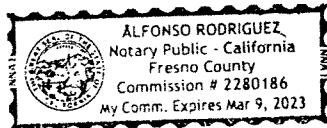
  
\_\_\_\_\_  
PAUL M. HONKAVAARA

STATE OF CALIFORNIA                    )  
  ) SS:  
COUNTY OF Fresno                    )

On this December 20, 2022, before me personally appeared PAUL M. HONKAVAARA, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
\_\_\_\_\_  
Name: Alfonso Rodriguez, Notary Public

(Stamp or Seal)



Notary Public, State of California  
My commission expires: 03/09/2023

# **Exhibit B**

**Electronically Filed**  
**Intermediate Court of Appeals**  
**CAAP-20-0000429**  
**01-FEB-2021**  
**05:31 PM**  
**Dkt. 70 OB**

CAAP-20-0000429

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	Case No. 5CC191000086
	)	
Plaintiff-Appellee,	)	Appeal from: (A) Final Judgment
	)	Filed on August 10, 2020; and (B)
vs.	)	Findings of Fact and Conclusions
	)	of Law and Order Granting
	)	Plaintiff's Motion for and
PAUL M. HONKAVAARA dba Chartered Financial Group,	)	Interlocutory Decree of
	)	Foreclosure Filed November 5,
Defendant-Appellant,	)	2019, dated June 17, 2020
	)	
	)	Circuit Court of the Fifth Circuit,
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREENE; CHAD WATERS;	)	State of Hawaii, Honorable Judge
	)	Randal G. B. Valenciano
	)	
Defendants-Appellees,	)	
_____	)	

**DEFENDANT-APPELLANT PAUL M. HONKAVAARA'S OPENING BRIEF;**

**APPENDICES A – G; STATEMENT OF RELATED CASES**

**AND**

**PROOF OF SERVICE**

KEITH M. KIUCHI #2735  
1001 Bishop Street, Suite 985  
Honolulu, HI 96813  
Tel. No.: (808) 533-2230. FAX No.: (808) 533-4391  
E-mail: kkiuchi106@cs.com

Attorney for Defendant-Appellant PAUL M. HONAKVAARA dba  
Chartered Financial Group



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## DEFENDANT-APPELLANT PAUL M. HONKAVAARA'S OPENING BRIEF

### **I. INTRODUCTION**

This is a foreclosure action brought by a loan servicer (Private Capital Group, Inc., “PCG”) against the property that was the site of the storied Coco Palms Hotel on Kaua`i. The action was not defended by the borrower, which is Defendant Coco Palms Hui LLC (“Coco Palms”), because a subsidiary of PCG took over management of Coco Palms and did not oppose the foreclosure. The foreclosure was opposed by Defendant-Appellant Chad Waters (“Waters”), who guaranteed the mortgage and Defendant-Appellant Paul Honkavaara (“Mr. Honkavaara”). Mr. Honkavaara has an interest in this action because he holds a California judgment against Coco Palms in the amount of \$521,878.44 (JIMS #14, Record on Appeal, Part 2, JEFS Dkt. 43, Par. 5, Honkavaara Declaration).<sup>1</sup> That judgment was exemplified in Hawaii on Nov. 3, 2017 and remains in full force and effect (ROA2, JEFS Dkt. 43, Par. 5, Honkavaara Declaration).

Plaintiff PCG filed this Complaint on June 4, 2019, asserting that they: “service the mortgage sought to be foreclosed through this litigation as the agent of the said individuals and entities, and has full power and authority to initiate and prosecute this action on their behalf and/or as the real party in interest.” (ROA2, JEFS Dkt. 1, Pg. 2) The foreclosure was brought against property that was the location of the Coco Palms Hotel (ROA2, JEFS Dkt. 1, Pg. 2-3). Defendant Coco Palms is the owner of this property (ROA2, JEFS Dkt. 1, Pg. 3) and Defendants Tyler Greene and Waters guaranteed the loan by executing a Guaranty Agreement (ROA2, JEFS Dkt. 1, Pg. 3). Coco Palms executed a Promissory Note to a list of holders that were described in Schedule A of the Note: WCMF Inc., Coco Lenders Partnership, Blue Glacier Fund, Crestline AK Opportunistic Fund, and PCG Credit Partners LLC (collectively the “Lenders”). (ROA2, JEFS Dkt. 1, Exhibit 3, attached as **Appendix A**). The Note was NOT endorsed. The “Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement” (“Mortgage”) also names the Lenders as these same five entities. (ROA2, JEFS Dkt. 1, Exhibit 1, attached as **Appendix B**) Plaintiff, and not the Lenders, foreclosed on the Note and Mortgage. Mr. Honkavaara asserts that the Circuit Court erred when it granted Plaintiff’s

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<sup>1</sup> JIMS references are to all documents filed in CAAP-20-0000429. JIMS #14 is the Record on Appeal, Part 2, which is hereafter referred to as ROA2. All references in ROA2 are JEFS references, which are references to the JEFS docket with the Fifth Circuit Court, because ROA2 does not have any imaged documents and references the JEFS record.

Motion for Summary Judgment filed on November 5, 2019 (ROA2, JEFS Dkt. 8), because PCG did not have standing to bring this foreclosure, PCG suffered no injury or damages from the default of Coco Palms and because PCG's subsidiary controlled Coco Palms, thus essentially insuring that the foreclosure would not be opposed by the Borrower.

## II. STATEMENT OF THE CASE

Mr. Honkavaara was owed money from Coco Palms because he found the financing for Defendant Coco Palms Hui, and that financing was through PCG, who found the Lenders mentioned above (ROA2, JEFS Dkt. 43, Par. 4, Honkavaara Declaration).<sup>2</sup> Coco Palms had agreed to pay Mr. Honkavaara 2% of the loan as compensation for finding the financing (ROA2, JEFS Dkt. 43, Par. 5, Honkavaara Declaration). As Mr. Honkavaara was not been paid, he filed a lawsuit in California and obtained a judgment against Coco Palms in the amount of \$521,878.44 (ROA2, JEFS Dkt. 43, Par. 5, Honkavaara Declaration).<sup>3</sup>

Coco Palms executed, through its Manager KK 1&2 LLC, the Mortgage on April 22, 2016 (ROA2, JEFS Dkt. 1, Exhibit 1, **Appendix B**). The Note was not executed until May 2, 2016 (ROA2, JEFS Dkt. 1, Exhibit 3, **Appendix A**). A "Loan Agreement", which was between Coco Palms and PCG, was also executed on May 2, 2016 (ROA2, JEFS Dkt. 1, Exhibit 2, **Appendix C**). Also on May 2, 2016, Defendants Greene and Waters executed separate Guaranty

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<sup>2</sup> Mr. Honakvaara's declaration was filed as part of his Memorandum in Opposition to Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure, which was filed on February 24, 2020 (ROA2, JEFS Dkt. 43)

<sup>3</sup> In December, 2018, Coco Palms attempted to set aside Mr. Honkavaara's Default Judgment in California (ROA2, JEFS Dkt. 43, Par. 6, Honkavaara Declaration). In filing this motion the Declaration of Paul Bringhurst was attached, alleging that Stillwater, LLC was now the managing member of Coco Palms (ROA2, JEFS Dkt. 46). That motion was denied. After receiving that motion and seeing the Declaration of Paul Bringhurst, Mr. Honkavaara called Greene and was provided with several documents which were attached as Exhibits F and G to his opposition to PCG's summary judgment motion (ROA2, JEFS Dkts. 49 and 50), which showed that Stillwater Equity Partners controlled Coco Palms. As asserted in Mr. Honkavaara's opposition (ROA2, JEFS Dkts. 51 - 53), as of December, 2018, the "managing member" of Coco Palms was Stillwater Equity Partners ("SEP"), a subsidiary of Plaintiff. Exhibit F to Mr. Honkavaara's opposition (ROA 2, JEFS Dkt. 49, Exhibit "C", **Appendix F** attached), shows how SEP became the "managing member" of Coco Palms, as Par. 3 under Management states: "In the event that the Obligation has not been reduced by \$5,000,000 by June 1, 2018 SEP (Stillwater Equity Partners) shall become the sole Manager of the Company and shall have all of the management powers as set forth in Article IV of this Operating Agreement."

Agreements, personally guaranteeing the loan (ROA2, JEFS Dkt. 1, Exhibits 5 and 6). The original Maturity Date for the Promissory Note was February 2, 2017 (ROA2, JEFS Dkt. 1, Exhibit 3, **Appendix A**).

The Mortgage was subsequently amended by an Amended Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement dated May 13, 2016, which was recorded in the Bureau of Conveyances on August 8, 2016 as Document Number A-60640164 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T9716090, noted on Certificate of Title No. 1116173, that amended the Mortgage by correcting the percentage interests of two of the Lenders, Blue Glacier Fund, L.P., a Delaware limited partnership, and Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, and by adding “for the benefit of its Class C-2 holders” to the description of Blue Glacier Fund, L.P. (ROA2, JEFS Dkt. 1, Par. 15, Exhibit 4, **Appendix D**).<sup>4</sup>

PCG’s Complaint states that the interest of one of the Lenders and Holders, WCMF Inc., a Nevada corporation was subsequently assigned by WCMF Inc. to Robert Conte by Assignment of Mortgage dated September 7, 2018, and thereafter subsequently assigned by Robert Conte to WSNT LLC, Assignment of Mortgage also dated September 7, 2018 and recorded in the BOC on October 23, 2018, as Document Number A-68700791 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-10522309, noted on Certificate of Title No. 1116173 (ROA2, JEFS Dkt. 1, Par. 18), but again the Note was not amended.

As stated in PCG’s Complaint, the Maturity Date for the Note was extended to February 2, 2018 (ROA2, JEFS Dkt. 1, Par. 23), but when that date came, Coco Palms failed to make its payment of all amounts due under the Note (ROA2, JEFS Dkt. 1, Par. 24). By letter dated May 5, 2019, Coco Palms, Greene and Waters were notified that Coco Palms was in default under the Note and Mortgage (ROA2, JEFS Dkt. 1, Par. 25, Exhibit 7, **Appendix E**). The notification to Coco Palms was sent to SEP. PCG filed the Complaint on June 14, 2019 (ROA2, JEFS Dkt. 1).

An Entry of Default was entered on September 25, 2019 against Greene and Waters for

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<sup>4</sup> The Amended Mortgage was signed by PCG as the agent for the Lenders, but the original Mortgage (**Appendix B**), was never signed by anyone for the Lenders. The Note was NOT revised, and the percentage interests of the Lenders in the Note remained the same as the Mortgage. Of significance, there is no document relevant to the foreclosure that was ever signed by any of the Lenders.



failure to answer the Complaint (ROA2, JEFS Dkt. 7). Plaintiff filed their Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure on November 5, 2019 (ROA2, JEFS Dkt. 8). Attached to this motion were the Mortgage (ROA2, JEFS Dkt. 9, **Appendix B**), Loan Agreement (ROA2, JEFS Dkt. 10, **Appendix C**), Note (ROA2, JEFS Dkt. 11, **Appendix A**), the Amended Mortgage dated May 13, 2016 (ROA2, JEFS Dkt. 12, **Appendix D**), and the letter constituting the notice of default (ROA2, JEFS Dkt. 13, **Appendix E**). No other exhibits were attached to the summary judgment motion and there was no document attached to the summary judgment motion that was signed by any of the Lenders.

Mr. Waters moved to set aside the entry of default on Nov. 13, 2019 (ROA2, Dkt. 18) and this was granted by an order filed on Nov. 21, 2019 (ROA2, Dkt. 22). Waters subsequently filed, through his counsel an opposition to the motion for partial summary judgment (ROA2, Dkt. 24), and he filed an answer to the Complaint on December 4, 2019 (ROA2, Dkt. 29). A hearing was held on Dec. 5, 2019 at which the court clarified that it would set aside the default and set the hearing on the motion for partial summary judgment for March 3, 2020 (ROA2, Dkt. 32). Mr. Greene never set aside the entry of default against him. Mr. Honkavaara filed his opposition to the motion for partial summary judgment on Feb. 24, 2020 (ROA2, Dkt. 43 - 54). Waters filed another memorandum in opposition on Feb. 24, 2020 (ROA2, Dkt. 57 – 65). Plaintiff's reply memorandums (ROA2, Dkt. 71 and 73), included a Declaration of Benjamin Schramm dated 2/29/2020, stating: "After Borrower's execution of the Note, Plaintiff maintained physical possession of the original Note and continues to maintain physical possession of the Note to the date of the execution of this Declaration." (Dkt. 73, Par. 13)

At the hearing on the motion for partial summary judgment the Circuit Court did not allow Waters' counsel to make arguments over the phone, but allowed both Mr. Honkavaara's counsel and PCG's counsel to argue (ROA2, Dkt. 75).<sup>5</sup> At this March 3, 2020 hearing Mark Zenger appeared as counsel for Coco Palms but made no argument (ROA2, Dkt. 75). Mr. Zenger did not file any opposition to the motion for partial summary judgment nor did he make any argument against this motion at the March 3, 2020 hearing. The Circuit Court continued the

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<sup>5</sup> Mr. DeVries, Counsel for Waters, ordered the transcripts from four separate hearings before the Circuit Court, making that order on August 21, 2020 (JIMS #10). After Mr. Honkavaara's counsel reviewed the JIMS docket, he could not find any evidence that these transcripts had been filed with the Court. Therefore, a request will be made to supplement the record on appeal to add transcripts of the last three hearings in this matter.

matter to April 2, 2020 for decision-making and asked counsel to submit supplemental pleadings not to exceed 5 pages (ROA2, Dkt 75). The decision-making hearing was continued to May 12, 2020, at which time only PCG's counsel and Mr. Honkavaara's counsel presented argument (ROA2, Dkt. 83). The Circuit Court continued the matter to June 9, 2020 for a hearing and asked the parties to submit proposed Findings of Fact and Conclusions of Law (ROA2, Dkt. 83). At the hearing on June 9, 2020, the Circuit Court allowed Waters' counsel to submit objections to the Proposed Findings of Fact and Conclusions of Law (ROA2, Dkt. 89) The Circuit Court entered PCG's Proposed Findings of Fact and Conclusions of Law on June 17, 2020 (ROA2, Dkt. 93), but a Judgment was not entered until August 10, 2020 (ROA2, Dkt. 106). Mr. Honkavaara timely filed his Notice of Appeal on August 25, 2020 (JIMS #1).

### **III. STATEMENT OF POINTS OF ERROR**

- A. The Circuit Court Erred in Granting PCG's Motion for Partial Summary Judgment Because PCG Had No Standing to Enforce The Note Because: (A) PCG Was Not a "Non-Holder in Possession of the Instrument Who Has the Rights of a Holder", and (B) Possession of the Note, Without an Endorsement and Without PCG Being a Holder of the Note, was Insufficient to Give PCG Standing.

In his opposition to PCG's Motion for Partial Summary Judgment (ROA2, Dkt. 43 – 54), Mr. Honkavaara asserted that: (1) PCG Must Prove That It Is Entitled to Foreclose the Note and Mortgage By Showing That It Is BOTH a Holder of the Note and a Person Entitled to Enforce the Note; (2) PCG is NOT a "Holder" of the Note, Nor Is Plaintiff a "Person Entitled to Enforce" the Note; and (3) PCG Has Not Proven That It Possessed The Note At the Time It Commenced this Lawsuit.<sup>6</sup> In its reply, PCG produced the Declaration of Benjamin Schramm dated 2/29/2020, stating: "After Borrower's execution of the Note, Plaintiff maintained physical possession of the original Note and continues to maintain physical possession of the Note to the date of the execution of this Declaration." (Dkt. 73, Par. 13) This was the first time that PCG showed any evidence that it was in possession of the Note at the time the Complaint was filed.

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<sup>6</sup> Mr. Honkavaara's memorandum setting forth these arguments are in ROA2, Dkt. 43. In this memorandum Mr. Honkavaara also argued that: (1) Mr. Honkavaara Has Standing to Object to this Foreclosure; (2) Plaintiff Has Not Proven It Has An Injury in Fact, and (3) As Plaintiff's Subsidiary, Stillwater Equity Partners, is the Managing Member of Defendant Coco Palms Hui, Making the Plaintiff and Defendant Essentially Alter Egos of Each Other, Under the Doctrine of Unclean Hands, Plaintiff Should Not be Allowed to Foreclose. Points 2 and 3 are raised as Points of Error in this Appeal. On the first issue, the Circuit Court did allow Mr. Honkavaara to object to the foreclosure so this is not an issue on appeal.

As PCG had asserted for the first time in its Reply Memorandum that it did have possession of the Note when the Complaint was filed, when the Circuit Court requested supplemental briefing, Mr. Honkavaara raised two of these issues again in his memorandum filed on March 20, 2020, arguing: (1) that Possession of the Note, Without Indorsement of the Note, is Insufficient to Give Plaintiff Standing, and (2) Plaintiff is Not a “Non-Holder in Possession of the Instrument Who Has the Rights of a Holder Because It Has Not Shown it Has Those Rights (ROA2, Dkt. 81). The Circuit Court rejected these arguments in granting PCG’s Motion for Partial Summary Judgment.

B. The Circuit Court Erred in Granting PCG’s Motion for Partial Summary Judgment Because PCG Has Not Proven That it Has Suffered an Injury in Fact

This was raised by Mr. Honkavaara when the Circuit Court in his initial Memorandum in Opposition to the motion for partial summary judgment (ROA2, Dkt. 43), and once again when the Circuit Court requested supplemental briefing (ROA2, Dkt. 81). Specifically, in his supplemental memorandum filed on March 20, 2020 (ROA2, Dkt. 81), Mr. Honkavaara argued that in *Wells Fargo Bank, N.A. v. Behrendt*, 142 Haw. 37, 41, 414 P.3d 89 (2018), the Hawaii Supreme Court held that under the doctrine of standing, a plaintiff must have suffered an injury-in-fact to “justify exercise of the court’s remedial powers on his or her behalf.” citing *Bank of America, N.A. v. Reyes-Toledo*, 130 Haw. 361, 368, 390 P.3d 1248, 1255 (2017) and *Mottl v. Miyahira*, 95 Haw. 381, 389, 23 P.3d 716, 724 (2001). Mr. Honkavaara argued that Plaintiff failed to prove this, but the Circuit Court rejected this argument in granting PCG’s Motion for Partial Summary Judgment.

C. The Circuit Court Erred in Granting PCG’s Motion for Partial Summary Judgment Because as PCG’s Subsidiary, Stillwater Equity Partners, is the Managing Member of Defendant Coco Palms, Making PCG and Defendant Coco Palms Essentially Alter Egos of Each Other, and Under the Doctrine of Unclean Hands, PCG Should Not be Allowed to Foreclose.

This was raised in Mr. Honkavaara’s opposition to PCG’s Motion for Partial Summary Judgment filed on February 24, 2020 (ROA2, Dkt. 43). The record is clear and not disputed by PCG that PCG’s subsidiary, SEP, controls Defendant Coco Palms Hui by becoming a member and manager of Coco Palms, and under the doctrine of unclean hands Plaintiff should not be allowed to foreclose. The Circuit Court rejected this argument and granted Plaintiff’s motion for partial summary judgment.

#### IV. STANDARD OF REVIEW

The Intermediate Court of Appeals of the State of Hawaii reviews the Circuit Court's grant or denial of summary judgment de novo. *Querubin v. Thronas*, 107 Hawaii 48, 56, 109 P.3d 689, 697 (2005).

Under Hawaii Rules of Civil Procedure ("HRCPP") Rule 56, summary judgment is not appropriate unless the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Hawaii Cmty. Fed. Credit Union v. Keka*, 94 Haw. 213, 221, 11 P.3d 1, 9 (2000). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. *Id.* The evidence and inferences drawn therefrom must be viewed in the light most favorable to the non-moving party. *Id.* In other words, the Court must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion. *Id.*

It is well settled that summary judgment should not be granted unless the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances. *Beamer v. Nishiki*, 69 Haw. 572, 578, 670 P.2d 1264, 1270 (1983).

Where a plaintiff-moving party has satisfied its initial prima facie burden that there is no genuine issue of material fact as to the elements of its claim—the burden shifts to the defendant-non-moving party to produce materials regarding any affirmative defenses. *GECC Fin. Com. v. Jaffarian*, 79 Hawaii 516, 526, 904 P.2d 530, 540 (1995) (Acoba, J., concurring), concurring opinion adopted by the Hawaii Supreme Court in *GECC Fin. Com. v. Jaffarian*, 80 Haw. 118, 119, 905 P.2d 624, 625 (1995). If the defense produces material in support of an affirmative defense, the burden shifts back to the plaintiff who is obligated to disprove the affirmative defense. *Jaffarian*, 79 Hawaii at 526, 904 P.2d at 540.

Summary judgment is only appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Nuuanu Valley Ass'n v. City & Cnty. of Honolulu*, 119 Hawaii 90, 96, 194 P.3d 531, 537 (2008) (citations omitted). A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by

the parties. *Id.* The evidence must be viewed in the light most favorable to the non-moving party. *Id.* In other words, the Court must view all of the evidence and inferences drawn therefrom in the light most favorable to the party opposing the motion. *Id.*

Furthermore, in deciding a motion for summary judgment, a Circuit Court must keep in mind an important distinction: a judge ruling on a motion for summary judgment cannot summarily try the facts; his role is limited to applying the law to the facts that have been established by the litigants' papers. *Childs v. Harada*, 130 Hawaii 387, 396, 311 P.3d 710, 719 (App. 2013) (concluding the lower court exceeded its role in adjudicating the motions for summary judgment by drawing disputed inferences from predicate facts to determine the essential fact at issue). A party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. *Id.* This is true even if both parties move for summary judgment. *Id.* If the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ as to its significance, summary judgment is improper.

In reviewing a circuit court's grant or denial of a motion for summary judgment, the appellate court "must view all of the evidence and the inferences drawn therefrom in the light most favorable to the party opposing the motion" and any doubt should be resolved in favor of the non-moving party. *Crichfield v. Grand Wailea Co.*, 93 Haw. 477, 483, 6 P.3d 349, 355 (2000) (internal quotation marks, brackets, and citation omitted). Similarly, [A] party moving for summary judgment is not entitled to a judgment merely because the facts he offers appear more plausible than those tendered in opposition or because it appears that the adversary is unlikely to prevail at trial. This is true even though both parties move for summary judgment. Therefore, if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ as to its significance, summary judgment is improper. *Makila Land Co., LLC v. Kapu*, 114 Haw. 56, 67, 156 P.3d 482, 493 (App. 2006) (citation omitted).

In a motion for summary judgment, the Circuit Court must also take into account the different standard by which evidence submitted by the non-moving party is to be judged:

Courts will treat the documents submitted in support of a motion for summary judgment differently from those in opposition. Although they carefully scrutinize the materials submitted by the moving party to ensure compliance with the requirements of Rule

56(e), HRCP (1990), the courts are more indulgent towards the materials submitted by the non-moving party.

*Miller v. Manuel*, 9 Haw. App. 56, 66, 828 P.2d 286, 292 (1991)

## VI. ARGUMENT

### A. **PCG Did Not Have Standing to Enforce The Note Because: Because: (1) PCG Was Not a “Non-Holder in Possession of the Instrument Who Has the Rights of a Holder“, and (2) Possession of the Note, Without an Endorsement and Without PCG Being a Holder of the Note, was Insufficient to Give PCG Standing.**

The Hawaii Supreme Court in *Bank of America, N.A. v. Reyes-Toledo*, 139 Haw. 361, 370-371, 390 P.3d 1248, 1257 - 1258 (2017) (*Reyes-Toledo I*”), held that a party/person seeking to judicially foreclose on a mortgage following a promissory note default must establish that it was the “person entitled to enforce [the note]” as defined by HRS § 490:3-301 at the time of the filing of the foreclosure complaint.” The Hawaii Supreme Court there noted that HRS § 490:1-201(1) defines a “holder” of the note as: “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” As the Hawaii Supreme Court pointed out, this often comes down to the possession of a note and allonge at the time of the filing of the foreclosure complaint for that party to be able to proceed with the foreclosure.<sup>7</sup> In footnote 10, the Hawaii Supreme Court noted that HRS § 490:3-301 required that: “plaintiff establish that it is the holder of, or otherwise entitled to enforce, the promissory note and mortgage in order to be entitled to summary judgment in a foreclosure action.” 139 Haw. at 367, note 10. After the initial Memorandum in Opposition (ROA2, Dkt. 43) and PCG’s Reply Memorandum (ROA2, Dkt. 71 and 73), one issue on standing became whether PCG was, under HRS § 490:3-301(ii) a: “nonholder in possession of the instrument who has the rights of a holder”.

#### 1. **PCG Was Not a “Non-Holder in Possession of the Instrument Who Has the Rights of a Holder“**

For the first time in its **Reply** Memorandum in support of its Motion for Partial Summary

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<sup>7</sup> In *Reyes-Toledo I* the Supreme Court held that a foreclosing plaintiff must also “prove the existence of an agreement, the terms of the agreement, a default by the mortgagor under the terms of the agreement, and giving of the cancellation notice.” Id at 367, 390 P.3d at 1254.

Judgment, PCG asserted that: “Plaintiff is entitled to enforce the Promissory Note under HRS §490:3-301(ii), because it is a non-holder in possession of the instrument who has the rights of a holder.” (ROA2, Dkt. 73, Pg. 2). PCG asserts that it became a “non-holder in possession” because of a transfer of an instrument under HRS §490:3-203(b). (ROA2, Dkt. 73, Pg. 4) PCG’s Reply Memorandum focuses solely on PCG it becoming a “non-holder in possession” because of a transfer.<sup>8</sup> Plaintiff has presented NO documents in support of any transfer and instead SOLELY relies on possession of the Note. As important, PCG’s own representative, Benjamin Schramm, asserts: “After Borrower’s execution of the Note, Plaintiff maintained physical possession of the original Note and continues to maintain physical possession of the Note to the date of the execution of this Declaration.” (Dkt. 73, Par. 13) HRS §490:3-203(a) states” An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.” Thus on one hand PCG asserted that it was a non-holder in possession because of the transfer of an instrument, while on the other hand its own representative denies that any such transfer occurred because the instrument was always in PCG’s possession.

There is no dispute here that PCG is not a “holder” of the Note. A “holder” is “the person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession” (HRS §1–201[b][21]; see HRS §3–301 [“The holder of an instrument whether or not he is the owner may enforce payment in his own name”] ). In this case, as noted above, the Note was made payable to five entities (referred to as the Lenders), and subsequent to the execution of the Note, one of those Lenders, WCMF Inc., assigned its interest to Robert Conte by Assignment of Mortgage dated September 7, 2018. The Note was NOT made payable to PCG, and the Note wasn’t even amended after this 2018 assignment to Robert Conte. Nothing in the record shows any documents executed by any of these five Lenders. There is also nothing in the record showing what the relationship was between PCG and these Lenders. The Complaint asserted: “Pursuant to Loan Servicing Agreements with the individuals and entities variously identified as Lenders (Schedule A to Exhibit 1 hereto and Schedule A to Exhibit 2 hereto) and Holders (Schedule A to Exhibit 3 hereto), modified as discussed below,

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<sup>8</sup> PCG cites the federal court decision in *Pascual v. Aurora Loan Servs., LLC*, 2012 U.S. Dist. LEXIS 84561 \*19-20 (D. Hawaii 2012), where the court recognized that there are alternative means that allow for a person to properly be entitled to enforcement of an instrument, including the transfer of an instrument (ROA2, Dkt. 73, Pg. 4).

Plaintiff services the mortgage sought to be foreclosed through this litigation as the agent of the said individuals and entities, and has full power and authority to initiate and prosecute this action on their behalf and/or as the real party in interest (ROA2, Dkt. 1, Par. 2). Despite the assertion that “loan servicing agreements” exist, none were presented to the Circuit Court and the record is devoid of any such agreements.

The first time that PCG raised the claim that it was a “non-holder in possession of the Note” was in its Reply (ROA2, Dkt. 73). In *U.S. Bank, N.A. v. Pinkney*, 2016 WL 2647709 (N.C.App. May 10, 2016), a North Carolina appellate court in an unpublished opinion held that U.S. Bank could not claim this nonholder status under §3-301 of the Uniform Commercial Code because the complaint did not contain this theory and U.S. Bank did not seek to amend its complaint to allege this alternate theory of recovery. A New York appellate court has held that if a plaintiff asserts standing based upon a written assignment executed after the commencement of the action, the plaintiff must also prove physical delivery of the note before commencement. *Wells Fargo Bank, N.A. v. Marchione*, 69 AD3d 204, 210, 887 N.Y.S.2d 615 (2009).

In this case PCG did not even raise, as an alternative theory of recovery, that it was a non-holder in possession of the Note until its Reply in support of its motion for partial summary judgment, and here there was no transfer of the Note, as PCG has admitted that at all times it was in possession of the Note. PCG’s argument, in its Reply Brief, that asserted it was a non-holder in possession, cited only case law that allowed them to be a non-holder in possession because of a transfer, which clearly did not occur here.

In *Anderson v. Burson*, 196 Md. App 457, 9 A.3d 870 (2010), a Maryland appellate court specifically addressed whether Deutsche National Bank was a: “non-holder in possession of the instrument who has the rights of a holder”. There the court held that even though the Note was not indorsed to Deutsche National Bank, that they acquired the holder’s rights as a successor in the chain of title. The court held that while only Wilmington Finance Inc. could claim it was a holder, by virtue of the fact that it was the only entity that had a valid indorsement. The court found that the evidence showed, without dispute, that Deutsche was one of the “successors to the holder”, and was, therefore, a note holder in possession of the instrument with the rights of the holder. That is what is missing here, there is nothing to show that PCG was a “successor to the holder”, and as noted above, it appears that PCG and not the holder, at all times had possession of the Note. In *Bank of N.Y. Mellon Tr. Co., N.A. v. Conley*, 188 So.3d 884, 885 (Fla. 4<sup>th</sup> DCA



2016), a Florida appellate court held that: “A nonholder in possession may prove its right to enforce the note through (1) evidence of an effective transfer; (2) proof of purchase of the debt; or (3) evidence of a valid assignment.” PCG here has presented NO documents proving that it is a nonholder in possession, and based upon the Florida court decision, PCG would not qualify as a nonholder in possession merely as a “servicer” of the mortgage, and that phrase would only apply to a successor in interest (hence the requirement of evidence of a transfer, proof of purchase or assignment). Plaintiff has not proven that it qualifies as a nonholder in possession of the note with the rights of a holder.

PCG has not presented any evidence of any documentation supporting its non-holder in possession document, and as noted above, at all times the only “Lender” named were the original five lenders and the one replacement. PCG’s argument really relies on an agency theory, which as explained below, does not apply in the case of the Note, which is a negotiable instrument.

**2. PCG’s Possession of the Note, Without an Endorsement and Without Plaintiff Being a Holder of the Note, was Insufficient to Give PCG Standing**

A promissory note is a negotiable instrument within the meaning of the Uniform Commercial Code (HRS § 490:3-104(e)). Because a Note is a negotiable instrument, it can be transferred by an endorsement. The requirement that the holder of the note needed an endorsement of the note is reinforced by the provisions of HRS § 490:3-201(b), which states: “Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument AND its indorsement by the holder.” (Emphasis added) A Note is a negotiable instrument, but if Plaintiff’s name is not on the Note, then absent an indorsement, Plaintiff cannot negotiate the Note. This was discussed by the Intermediate Court of Appeals in *Bank of America, N.A. vs. Hill*, CAAP-13-0000035 (October 30, 2015)(Appendix G).<sup>9</sup>

In *Caraballo v. Homecomings Fin.*, 2014 U.S. Dist. LEXIS 69942, at \*15 (S.D.N.Y. May 21, 2014), a federal district court held that physical possession of the Note is sufficient to

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<sup>9</sup> Although the ICA affirmed the trial court’s granting of summary judgment, the ICA noted (Pg. 8), that “Bank of America would be the holder of the note only if the note was properly negotiated to it.” Then the ICA proceeded to define negotiation, cited HRS §490:3-201(a) and 201(b). The ICA noted there that the indorsement in blank was sufficient because such an indorsement is payable to the bearer.

transfer mortgage rights only under limited circumstances: where there is an allonge or indorsement in blank on the face of the Note, . . . [or possession by the holder to whom the Note was specifically indorsed.]” Another New York U.S. District Court reached a similar conclusion in *1077 Madison St., LLC v. Smith*, 2015 U.S. Dist. LEXIS 135025, at \*18 (E.D.N.Y. Aug. 27, 2015), where the court held that it does NOT follow that physical possession of the note establishes standing as physical possession of a note is sufficient only where there is an indorsement in blank on the face of the Note. In *PNC Mortgage v. Romero*, 2016-NMCA-064 (April 26, 2016), a New Mexico appellate court addressed a case in which PNC Mortgage was in possession of an unendorsed note. PNC Mortgage argued that it had the right to enforce the note because it was a successor in interest. The court stated that the lack of information regarding the transfer of the unendorsed note created a genuine issue of material fact as to whether PNC Mortgage was the holder of the unendorsed note at the time the complaint was filed. In *Russell v. Aurora Loan Services, LLC*, 40 Fla. L. Weekly D967a (Fla. 2d DCA Apr. 24, 2015), Florida’s Second District Court of Appeal rejected a lender’s argument that it had standing to bring the foreclosure. The lender asserted in its complaint that it was authorized to bring the lawsuit as the servicer of the loan. Attached to the complaint were a copy of the note, an allonge with three special endorsements, none of which were to Aurora, and an assignment of mortgage to Aurora dated November 23, 2010 that only purported to transfer the mortgage, not the note. Aurora’s verified complaint did not include exhibits demonstrating that it was authorized to prosecute the action on behalf of the real party in interest, Deutsche Bank Trust Company Americas as Trustee. The court held that the plaintiff in that case, which was Nationstar, did not prove that it, and Aurora as its predecessor, were authorized by Deutsche Bank to service Russell’s loan and thus had standing to foreclose. In that case the Note was never endorsed to the Aurora or Nationstar.

Finally in *US Bank N.A. v. Zwisler*, 147 A.D.3d 804, 46 N.Y.S.3d 213 (2017), a New York court held that the plaintiff failed to demonstrate that it was a holder or assignee of the note prior to commencement of the action. A note with an allonge containing an endorsement was submitted by the plaintiff, but the endorsement was not made in blank or payable to the plaintiff.

PCG’s argument in its supplemental memorandum focuses on an agency argument, but that does not apply in the context of a Note as a negotiable instrument. PCG could not cite, in its supplemental memorandum, any instance where an agency argument applied on the foreclosure

of a Note because, as noted above, both possession of the Note and an indorsement of the Note, whether in blank or as a special indorsement are required. Here the Note was made payable to five Lenders, not to PCG, and it was not endorsed either in blank or to PCG. And even then, when one lender changed PCG assigned the mortgage without amending the Note.<sup>10</sup> Thus PCG's possession of the Note, without an endorsement, was insufficient to give PCG standing.<sup>11</sup>

**B. PCG Has Not Proven That it Has Suffered an Injury in Fact**

In *Wells Fargo Bank, N.A. v. Behrendt*, 142 Haw. 37, 41, 414 P.3d 89 (2018), the Hawaii Supreme Court held that under the doctrine of standing, a plaintiff must have suffered an injury-in-fact to “justify exercise of the court’s remedial powers on his or her behalf.” citing *Bank of America, N.A. v. Reyes-Toledo*, 130 Haw. 361, 368, 390 P.3d 1248, 1255 (2017) and *Mottl v. Miyahira*, 95 Haw. 381, 389, 23 P.3d 716, 724 (2001). Kansas courts have followed this analysis, requiring that the plaintiff must have suffered some cognizable injury and that there is a causal connection between the injury and the challenged conduct. *Solomon v. State*, 303 Kan. 512, 521, 364 P.3d 536 (2015) Another Kansas court held that a foreclosing plaintiff must

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<sup>10</sup> In *Reyes-Toledo I* the Hawaii Supreme Court emphasized that the note controls, writing: “An assignment of the Mortgage to Bank of America prior to the commencement of the action would not be sufficient to establish standing as an injury to the plaintiff in a foreclosure proceeding, which is premised on the default under the note. Although the security follows the debt, the debt does not automatically follow the security. See HRS § 490:9-203(g) & cmt. 9 (2008)(codifying the common law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien). See also, e.g. *Vega v. CTX Mortg. Co., LLC*, 761 F.Supp.2d 1095, 1097 (D.Nev.2011) “The Traditional Rule is that the mortgage or deed of trust (the security instrument) automatically follows the secured debt, but not vice versa.” 130 Haw. at 371, note 17.

<sup>11</sup> Courts across the nation have held that more than possession is required to foreclose on a Note. In *U.S. Bank, N.A. v. Ibanez*, 458 Mass. 637 (2011), the Massachusetts Supreme Judicial Court held that a foreclosing entity must hold an assignment of the mortgage at the time of the publication of the notice of sale. In *Wells Fargo Bank, N.A. v Wine*, 90 A.D.3d 1216, 1217 (N.Y. App. Div. 3d Dep’t 2011), one court held: “a plaintiff has standing where it is both the holder or assignee of the subject mortgage and the holder or assignee of the underlying note at the time the action is commenced.” One Florida court has said a party must “present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action.” *Gee v. U.S. Bank N.A.*, 72 So. 3d 211, 213 (Fla. Dist. Ct. App. 5th Dist. 2011). However, another Florida court held that standing to bring a judicial foreclosure requires “either an assignment or an equitable transfer of the mortgage prior to the filing of the complaint.” *McLean v. JP Morgan Chase Bank N.A.*, 79 So. 3d 170, 172 (Fla. Dist. Ct. App. 4th Dist. 2012) The point is that mere possession is insufficient to establish standing.

show a sufficient stake in the outcome to warrant invocation of the court's jurisdiction and a cognizable injury. *Gannon v. State*, 298 Kan. 1107, 1122, 319 P.3d 1196 (2014).

In this case PCG has not shown what stake they have in the outcome of this case or how they would suffer injury. At best PCG is a mortgage servicer, and it has presented no evidence that it has the authority to service the mortgage. Instead Plaintiff relies on the language embedded in the mortgage and note, but PCG has never pointed out what language this is, nor has PCG presented any documentation. This case is notable for the complete lack of documents produced by Plaintiff. No indorsement on the note, no loan servicing agreement, and no assignment or transfer of the note (because it was never assigned to Plaintiff). Instead we are left to guess what that relationship is. PCG relies almost solely on an agency theory (PCG did execute the loan agreement on behalf of the Lenders), but can point to no cases which would allow them, as an agent, to proceed with foreclosure.

**C. PCG's Subsidiary, Stillwater Equity Partners, is the Managing Member of Defendant Coco Palms, Making PCG and Defendant Coco Palms Essentially Alter Egos of Each Other, and Under the Doctrine of Unclean Hands, PCG Should Not be Allowed to Foreclose.**

A “[m]ortgage foreclosure is a proceeding equitable in nature and is thus governed by the rules of equity.” *Beneficial Haw., Inc. v. Kida*, 96 Hawai‘i 289, 312, 30 P.3d 895, 918 (2001). Because equity abhors forfeitures, *Jenkins v. Wise*, 58 Haw. 592, 597, 574 P.2d 1337, 1341 (1978), and “regards and treats as done what ought to be done,” *Bank of Haw. v. Horwoth*, 71 Haw. 204, 211, 787 P.2d 674, 679 (1990), it is typical in foreclosure cases that a right to cure a default and stop the foreclosure continues up to the day of the confirmation of the sale. *Hoge v. Kane*, 4 Haw. App. 533, 541, 670 P.2d 36, 41 (1983). That didn't happen here because, as stated above, SEP became the “managing member” of Coco Palms no later than January 2018 (ROA2, Dkt. 46, Declaration of Paul Bringham, Par. 13). PCG allegedly sent a letter dated May 5, 2019 advising Defendant Coco Palms that it was in default under the Loan Documents. (ROA2, JEFS Dkt. 1, Par. 25, Exhibit 7, **Appendix E**) PCG also asserts that Coco Palms failed, on February 2, 2018, to make its payment of the outstanding principal, interest, and other amounts due under the terms of the Loan Agreement and Promissory Note. (ROA2, Dkt. 8, Plaintiff's Memorandum, Pg. 6) BOTH of those dates are after SEP became the “managing member” of Coco Palms. In essence, PCG, through its subsidiary SEP, was controlling Coco Palms as its “managing member” at the time of both the default under the Note and the demand letter dated May 5, 2019.

Thus by its own actions PCG essentially prevented the borrower, Coco Palms, from curing the default. There is something also inherently wrong about PCG's subsidiary being the "managing member" of the Coco Palms, even if Waters and Greene did not have the ability to cure the default. Mr. Honkavaara asserts that this amounts to "unclean hands".

Under the doctrine of unclean hands: "he who comes into equity must come with clean hands." *7's Enters., Inc. v. Del Rosario*, 111 Haw. 484, 494, 143 P.3d 23, 33 (2006). In that case the Hawaii Supreme Court described the doctrine of unclean hands as follows:

Broad as the principle is in its operation, it must still be taken with reasonable limitations; it does not apply to every unconscientious act or inequitable conduct on the part of a plaintiff. The maxim, considered as a general rule controlling the administration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands. *Woodward v. Auyong*, 33 Haw. 810, 811-12 (1936) (emphasis added). It has also been stated by this court that the clean hands doctrine "is not one of absolutes, and each case must be judged on its particular facts and circumstances." *Shinn v. Edwin Yee, Ltd.*, 57 Haw. 215, 230-31, 553 P.2d 733, 744 (1976) (citing *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 54 S.Ct. 146, 78 L.Ed. 293 (1933)).

So the basic question here is can Plaintiff seek a foreclosure, where Plaintiff's own subsidiary controls the very party it is seeking to foreclose upon? The answer should be no, given the actions that PCG has taken, through its subsidiary SEP. SEP has signed, on behalf of Coco Palms, a listing agreement (ROA2, Dkt. 51), to market the property as "Fully-entitled development land (ROA2, Dkt. 54, Pg. 3). Thus PCG has, in essence, already taken control of the subject property and has been attempting to sell the subject property. The ONLY reason for filing this foreclosure complaint is to: (a) eliminate Mr. Honkavaara's judgment in a foreclosure sale by having the subject property sold to PCG without assuming the judgment that Coco Palms is subject to, and (b) obtain a judgment against Defendants Greene and Waters, individually. For all intents and purposes PCG controls the very land it seeks to foreclose upon, and has been marketing that land since, February, 2019. Allowing this sham foreclosure, without ANY of the requirements imposed by the Hawaii Supreme Court in *Reyes-Toledo I* and *Wells Fargo Bank*,

*N.A. v. Behrendt*, 142 Haw. 37, 414 P.3d 89 (2018) would be the essence of “unclean hands”, where the foreclosure would be for the very limited purposes stated above. What PCG really seeks to do is eliminate Mr. Honkavaara’s judgment.<sup>12</sup>

#### **IV. CONCLUSION**

PCG was able to have the Circuit Court grant its motion for summary judgment on a foreclosure case even though the record is devoid of any evidence that PCG was entitled to a foreclosure, especially since it stacked the deck by insuring it had control over the Borrower, thus silencing the Borrower from making any arguments against the foreclosure. Here, PCG was NOT the Lender, either in the Note or the Mortgage, and claims standing to foreclose solely upon possession of the Note, without anything more. The Note here is not indorsed, either in blank or as a special indorsement, and thus could be negotiated only by the Lenders. Despite lacking this crucial indorsement, PCG claims that it has standing to foreclose because it possesses the Note. But this, in and of itself, is insufficient to give PCG standing, especially where: (a) one Lender changed, which was reflected in an assignment of mortgage but not on the note itself, (b) NO documents were presented to the Circuit Court showing any relationship between PCG and the Lenders, despite a reference to a loan servicing agreement in the Complaint, (c) where PCG is unable to establish that it suffered an injury in fact, and (d) PCG has been proven to be in control of the very entity it seeks to foreclose upon. And since PCG controls the entity it seeks to foreclose upon, and since PCG is thus already marketing the property for sale (and is not in need of a commissioner to sell the property at auction), it’s only motive for foreclosing is to prevent Mr. Honkavaara from being able to collect on his judgment and seek a personal judgment against Waters and Greene who guaranteed the loan. For the reasons outline above, this Court should vacate the Circuit Court’s order and judgment granting

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<sup>12</sup> While not raised below by Waters or any other party, Mr. Honkavaara points out that in light of Coco Palms, who was controlled at that point by PCG, not opposing PCG’s motion for summary judgment, it was error for the Circuit Court not to allow Waters’ counsel to argue at the March 3, 2020 hearing. It can be argued that Waters and Coco Palms were denied due process when this argument was not allowed. The basic elements of due process of law require both notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Sandy Beach Def. Fund v. City County of the City & Cnty of Honolulu*, 70 Haw. 361, 378, 773 P.2d 250, 261 (1989). The argument for due process in a foreclosure proceeding is even strong as it: “is a proceeding equitable in nature and is thus governed by the rules of equity.” *Beneficial Haw., Inc. v. Kida*, 96 Haw. 289, 312, 30 P.3d 895, 918 (2011)

PCG's motion for partial summary judgment and remand this matter back to the Circuit Court for further proceedings.

DATED: Honolulu, Hawaii, February 24, 2020.

/s/ Keith M. Kiuchi

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KEITH M. KIUCHI

Attorney for Defendant-Appellant PAUL M.  
HONKAVAARA dba Chartered Financial Group

## **STATEMENT OF RELATED CASES**

Defendant-Appellant PAUL M. HONKAVAARA dba Chartered Financial Group is not aware of any pending cases that would be related to his appeal.



IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	Case No. 5CC191000086
	)	
Plaintiff-Appellee,	)	Appeal from: (A) Final Judgment
	)	Filed on August 10, 2020; and (B)
	)	Findings of Fact and Conclusions
vs.	)	of Law and Order Granting
	)	Plaintiff's Motion for and
PAUL M. HONKAVAARA dba Chartered Financial Group,	)	Interlocutory Decree of
	)	Foreclosure Filed November 5,
	)	2019, dated June 17, 2020
Defendant-Appellant,	)	
	)	Circuit Court of the Fifth Circuit,
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREENE; CHAD WATERS;	)	State of Hawaii, Honorable Judge
	)	Randal G. B. Valenciano
	)	
Defendants-Appellees,	)	
_____	)	

**PROOF OF SERVICE**

I HEREBY CERTIFY that on February 1, 2021, the Statement of Jurisdiction was served by electronic notification through the JEFS system or by U.S. Mail to the following parties at their last known address:

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/s/ Keith M. Kiuchi

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# **Exhibit C**

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CAAP-20-0000429  
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CAAP-20-0000429

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	Case No. 5CC191000086
	)	
Plaintiff-Appellee,	)	Appeal from: (A) Final Judgment
	)	Filed on August 10, 2020; and (B)
vs.	)	Findings of Fact and Conclusions
	)	of Law and Order Granting
	)	Plaintiff's Motion for and
PAUL M. HONKAVAARA dba Chartered Financial Group,	)	Interlocutory Decree of
	)	Foreclosure Filed November 5,
	)	2019, dated June 17, 2020
Defendant-Appellant,	)	
	)	Circuit Court of the Fifth Circuit,
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREENE; CHAD WATERS;	)	State of Hawaii, Honorable Judge
	)	Randal G. B. Valenciano
	)	
Defendants-Appellees,	)	
	)	

**DEFENDANT-APPELLANT PAUL M. HONKAVAARA'S REPLY BRIEF;**

**AND**

**PROOF OF SERVICE**

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## DEFENDANT-APPELLANT PAUL M. HONKAVAARA'S REPLY BRIEF

### I. INTRODUCTION

In its Answering Brief, Plaintiff Private Capital Group, Inc. (“PCG”) maintains that it had standing to bring the foreclosure complaint even though: (a) the Note was made payable to: “the order of those individuals/entities listed on the attached Schedule “A”” (ROA2, JEFS Dkt. 1, Exhibit 3, **Appendix A**)<sup>1</sup>, and Plaintiff was not one of those entities, and (b) there is nothing presented in the record showing any authority given by the Lenders to Plaintiff by way of a pooling and servicing agreement, loan servicing agreement, or agency agreement. PCG asserts that: “the plain language of the Promissory Note, PCG’s execution of the Loan Agreement as the agent for the Lenders, and other references in the Loan documents, make PCG the agent of the Lenders.” (Pg. 19, Answering Brief). But the relevant document is NOT the Loan Agreement, but is the Note and Mortgage, which both name the Lenders, and not PCG, as the Lender. As important, the Note here is NOT endorsed and thus is NOT payable to PCG and is payable only to the Lenders and may only be enforced by the Lenders. PCG brings this foreclosure complaint WITHOUT any express authority signed by the Lenders, and as pointed out in Mr. Honkavaara’s Opening Brief, PCG became the “managing member” of Coco Palms no later than January 2018 (ROA2, Dkt. 46, Declaration of Paul Bringhurst, Par. 13), which presents a case where PCG was essentially foreclosing on itself, as it controlled the entity that signed the Note and Mortgage. PCG: (a) has no standing to foreclose because the Note was not endorsed to them and no evidence was presented to show that they had authority to foreclose on the Note and Mortgage, (b) did not contest the

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<sup>1</sup> The entities listed in Schedule A are: (1) WCMF, Inc., a Nevada corporation, (2) Coco Lenders Partnership, a Utah general partnership, (3) Blue Glacier Fund, L.P., (4) Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, and (5) PCG Credit Partners LLC, a Delaware limited liability company. (See, Appendix A, Schedule A; hereafter the “**Lenders**”).



argument in Mr. Honkavara’s Opening Brief that they failed to show that they suffered an “injury in fact”, which would entitle them to foreclose (Pg. 14. Opening Brief), and (c) has “unclean hands” in a foreclosure action, which is an action in equity, because it is in control as managing member of the very entity it seeks to foreclose on.

## II. ARGUMENT

### A. **PCG did not have standing to foreclose because they were not a “Non-Holder in Possession of the Instrument Who Has the Rights of a Holder” and there is nothing presented in the record to show that they were an agent of the Lenders.**

In *Bank of America, N.A. v. Reyes-Toledo*, 139 Haw. 361, 367, 390 P.3d 1248, 1254 (2017) (“*Reyes-Toledo I*”), the Hawai`i Supreme Court stated that “whether a party is entitled to enforce a promissory note is determined by application of HRS § 490:3-301 (2008).” (139 Haw. at 369). That statute reads:

“Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to section 490:3-309 or 490:3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

The definition of “Holder” under HRS § 490:1-201 is as follows:

- (1) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;
- (2) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or
- (3) The person in control of a negotiable electronic document of title.

While PCG possessed the Note at the time that the Complaint was filed, the Note was NOT endorsed, and was made payable to the Lenders, and NOT PCG. (ROA2, JEFS Dkt. 1, Exhibit 3, **Appendix A**) § 490:1-201(1) requires that for PCG to be a holder of the Note, it must be: “The

person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” PCG does not qualify as a holder under subsection (1) and under subsection (2), PCG was not in possession of an endorsed Note. Therefore, PCG could not have been the “holder” of the Note. HRS § 490:3-309 does not apply here, as that section relates to a lost, destroyed, or stolen instrument.

PCG argues that it is a “nonholder in possession of the instrument that has the rights of the holder”, but in its Answering Brief the basis of this claim is that PCG was the “agent” of the Lenders (Pg. 19, Answering Brief), and they rely on the Restatement (Third) of Agency as a basis to foreclose.<sup>2</sup> The emphasis of their authority should not be based upon agency, but should be grounded instead in the Uniform Commercial Code, which applies to negotiable instruments like the Note here. PCG presents absolutely no evidence that it is the agent of the Lenders, citing only to a Loan Agreement, executed by PCG on behalf of the Lenders that does not give PCG any other agency authority. In its Complaint, PCG asserts that it services the loan (ROA2, JEFS Dkt. 1, Par. 2), but claims that Plaintiff, which is PCG, is entitled to foreclose, rather than the true Lenders (ROA2, JEFS Dkt. 1, Par. 31). Nowhere in the Complaint (ROA2, JEFS Dkt. 1), does PCG assert that it has the right to foreclose because it is a “nonholder in possession of the instrument that has the rights of the holder”.

While Hawai'i appellate courts have not ruled on the issue of whether an agent can foreclose on a Note and Mortgage, other courts have held that the party claiming the agency relationship has the burden of proving that relationship in a mortgage foreclosure action. In *Jarvis v. Deutsche Bank Nat'l Trust Co.*, 169 So. 3d 194, 196 (Fla. 4th DCA 2015), a Florida appellate

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<sup>2</sup> This case is not a simple case of proving an agency relationship, as the foreclosure of a property is dependent upon Hawaii's Uniform Commercial Code which defines when a party can enforce a Note as a “holder”.

court rejected Deutsche Bank’s argument that a Pooling and Servicing Agreement from the trust that stated when the loans were to have been transferred to the trust and testimony from a bank representative that the trust had physical possession of the note were insufficient to establish standing where the original note contained no blank or special indorsements and no assignment of mortgage was offered into evidence. The *Jarvis* court relied on *Kiefert v. Nationstar Mortg., LLC*, 153 So. 3d 351, 353 (Fla. 1st DCA 2014). In *Kiefert*, the mortgage servicer’s witness was only able to testify that its predecessor was in possession of the note when the complaint was filed, “Not that the note had been endorsed at the time the complaint was filed.” Similarly, a New York court in *Bank of N.Y. v. Alderazi*, 900 N.Y.S.2d 821, 824 (Sup. Ct. 2010), held that the “party who claims to be the agent of another bears the burden of proving the agency relationship.” (See, also, *In re Maisel*, 378 B.R. 19, 22 (Bankr. D. Mass. 2007), quoting *In re Parrish*, 326 B.R. 708, 720 (Bankr. N.D. Ohio 2005)<sup>3</sup>: “agent cannot foreclose without proof of its agency relationship and a showing of the chain of mortgage assignments giving its principal a right to foreclose.”)

Without any proof showing this agency relationship PCG did not have standing at the time of the filing of the Complaint. While PCG, in its Answering Brief, cites the law of agency, the controlling law here, as argued above, is the Uniform Commercial Code, and in other jurisdictions, where the plaintiff has asserted it had standing, courts have required proof of the agency relationship, which is non-existent in the record here. The most important fact is that the Note is made payable to the Lenders, not to PCG, and that there has been no endorsement of that Note.

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<sup>3</sup> The bankruptcy court in *In re Parrish*, 326 B.R. 708, 720 (Bankr.N.D.Ohio 2005), stated: “If the claimant is the original lender, the claimant can meet its burden by introducing evidence as to the original loan. If the claimant acquired the note and mortgage from the original lender or from another party who acquired it from the original lender, the claimant can meet its burden through evidence that traces the loan from the original lender to the claimant. A claimant who is the servicer must, in addition to establishing the rights of the holder, identify itself as an authorized agent for the holder.”

Therefore, even if PCG had possession of the Note, it did not, under the Uniform Commercial Code, and the right to take any action on the Note. Again, PCG’s own complaint asserts that PCG, and not the Lenders, were entitled to foreclose (ROA2, JEFS Dkt. 1, Par. 31).

**B. PCG failed to respond to Mr. Honkavaara’s argument that PCG must prove that it suffered an “injury in fact”.**

As argued in the Opening Brief, in *Wells Fargo Bank, N.A. v. Behrendt*, 142 Haw. 37, 41, 414 P.3d 89 (2018), the Hawai’i Supreme Court held that under the doctrine of standing, a plaintiff must have suffered an injury-in-fact to “justify exercise of the court’s remedial powers on his or her behalf.” citing *Bank of America, N.A. v. Reyes-Toledo*, 130 Haw. 361, 368, 390 P.3d 1248, 1255 (2017) and *Mottl v. Miyahira*, 95 Haw. 381, 389, 23 P.3d 716, 724 (2001). PCG failed to respond to this argument. Courts in other jurisdictions have required lenders to prove that it suffered an “injury in fact” or that it had an interest in the Note and/or Mortgage. In *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, 979 N.E.2d 1214 (2014), the Ohio Supreme Court held that where a plaintiff who has filed a foreclosure action “fails to establish ‘an interest in the note or mortgage at the time it filed suit, it [has] no standing to invoke the jurisdiction of the common pleas court.’” The decision in *Schwartzwald* is based upon the proposition that “[i]t is an elementary concept of law that a party lacks standing to invoke the jurisdiction of the court unless he has, in an individual or representative capacity, some real interest in the subject matter of the action.”<sup>4</sup>

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<sup>4</sup> See, also: *Bayview Loan Servicing, LLC v. Nelson*, 382 Ill.App. 3d 1184, 1188 (2008), reversing a grant of summary judgment in favor of a financial entity in a foreclosure action, holding that there was “no evidence that [the entity] ever obtained any legal interest in the subject property.”; and *U.S. Bank National Association v. Ibanez*, 458 Mass. 637, 651 (2011), where the Mass. Supreme Court held that: “A foreclosing entity may provide a complete chain of assignments linking it to the record holder of the mortgage, or a single assignment from the record holder of the mortgage.” There, proof of a servicing agreement would satisfy this requirement, but: “there must be proof that the assignment was made by a party that itself held the mortgage.”

PCG did not respond to the “injury in fact” argument in its Answering Brief and based upon the case law cited this Court should reverse the circuit court’s order and judgment on this basis alone.

**C. Mr. Honkavaara did not waive his “unclean hands” argument and PCG clearly has “unclean hands” here.**

PCG asserts in its answering brief that Mr. Honkavaara waived “unclean hands” as a claim because it was not plead as an affirmative defense (Pg. 21-22. Answering Brief). Mr. Honkavaara’s Answer (ROA2, JEFS Dkt. 6), did state that he reserved the right to raise defenses apparent during the course of litigation, and PCG did not argue that Mr. Honkavaara waived this claim at the hearing held on March 3, 2020.<sup>5</sup> But as important, PCG failed to cite a single Hawaii case in support of the proposition that “unclean hands is an affirmative defense” (Pg. 21, Answering Brief). In *Wagner v. World Botanical Gardens, Inc.*, 126 Haw. 190, 268 P.3d 443

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<sup>5</sup> At the hearing on March 3, 2020, PCG’s counsel made the following argument on the “unclean hands” issue raised by Mr. Honkavaara:

Mr. BATTERMAN: First of all, I'm not entirely certain why we get the idea that Stillwater Equity Partners is a direct subsidiary of Private Capital Group. I don't believe Private Capital Group -- I believe they're actually owned by a different entity. But we can pass on that. The fact remains that at the time Stillwater Equity Partners was made a managing member, this loan was already in default, long past default. There is no authority for this is being an unclean hands argument because there was a restructuring or to give the individuals the opportunity to get the note out of default, which they were unable to do. I think unclean hands requires a little bit more than arguing --

MR. BATTERMAN: The issue is not how Honkavaara fits within that issue. The issue is whether or not the circumstances as alleged and without any real evidence, frankly -- a lot of it is information and belief -- raises a triable issue of fact that there's unclean hands in this situation where essentially there's no defense to a foreclosure because there's a default. And there's no party that's been able to come forward and say there hasn't been a default. It's clearly obviously a default. It's not unclean hands until they proceed at that point to, you know, attempt to salvage the situation. And if you can't, you proceed with the foreclosure --

Trans. of Proceed. from 3/3/20 (JIMS Dkt. 89) Pg. 12, Lines 8–20; Pg. 13, Lines 14-24.

(Haw.App. 2011), the Intermediate Court of Appeals held, in reviewing whether a summary judgment motion should have been granted, that there were genuine issues of material fact as to whether the plaintiff was barred from recovering on his quantum meruit claim because of the doctrine of unclean hands. The ICA stated that “he who comes into equity must come with clean hands”. Thus for PCG to “come into equity” in a mortgage foreclosure action, which is an action in equity, the burden is on PCG to prove it comes in with clean hands. PCG has failed to do this.

The ICA, in citing the Hawaii Supreme Court, defined “unclean hands” as follows:

Broad as the principle is in its operation, it must still be taken with reasonable limitations; it does not apply to every unconscientious act or inequitable conduct on the part of a plaintiff. The maxim, considered as a general rule controlling the administration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands. *Woodward v. Auyong*, 33 Haw. 810, 811–12 (1936) (emphasis added). It has also been stated by this court that the clean hands doctrine “is not one of absolutes, and each case must be judged on its particular facts and circumstances.” *Shinn v. Edwin Yee, Ltd.*, 57 Haw. 215, 230–31, 553 P.2d 733, 744 (1976) (citations omitted).

126 Haw. at 203

The ICA noted that for purposes of a claim of unclean hands: “Whether a party ‘engaged in iniquitous conduct is primarily a question of fact.” 126 Haw. at 190, quoting *Shinn v. Edwin Yee, Ltd.*, 57 Haw. 215, 230, 553 P.3d 733, 743 (1976).

Here, PCG’s subsidiary is Stillwell Equity Partners (SEP), which became the “managing member” of Defendant Coco Palms Hui.<sup>6</sup> SEP, as the managing member of Defendant Coco Palms

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<sup>6</sup> As stated in the Opening Brief, as asserted in Mr. Honkavaara’s opposition (ROA2, JEFS Dkts. 51 - 53), as of December 2018, the “managing member” of Coco Palms was Stillwater Equity Partners (“SEP”), a subsidiary of Plaintiff. Exhibit F to Mr. Honkavaara’s opposition (ROA 2,

Hui, did not oppose PCG's motion.<sup>7</sup> In essence, the defendant being foreclosed upon was controlled by the entity doing the foreclosing. PCG thus limited the opposition to its foreclosure by insuring that the foreclosed upon entity would not be able to respond. Mr. Honkavaara asserts that this is the essence of "unclean hands". Two things should be emphasized on Mr. Honkavaara's claim of "unclean hands". First, the appearance, in and of itself, of the foreclosing party controlling the entity being foreclosed on is not good, and reeks of "unclean hands". Second, and as important, the very fact that PCG's subsidiary, SEP, is now the manager of Defendant Coco Palms Hui, imposes a fiduciary duty upon SEP, which supports the doctrine of "unclean hands".

Hawaii case law and the Hawaii limited liability company statute, HRS Chapter 428, are both silent on the duty that a manager owes the members of a limited liability company, but one recent case, an Arizona Supreme Court decision in 2019, and an older Delaware appellate court case, both hold that a manager of a limited liability company owes its members a fiduciary duty. In *Sky Harbor Hotel Props., LLC v. Patel Props., LLC*, 443 P.3d 21 (2019), the Arizona Supreme Court, on a matter submitted for three certified questions from the U.S. bankruptcy court in

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JEFS Dkt. 49, Exhibit "C", **Appendix F**), shows how SEP became the "managing member" of Coco Palms, as Par. 3 under Management states: "In the event that the Obligation has not been reduced by \$5,000,000 by June 1, 2018 SEP (Stillwater Equity Partners) shall become the sole Manager of the Company and shall have all of the management powers as set forth in Article IV of this Operating Agreement." PCG has not disputed that SEP is its' subsidiary.

<sup>7</sup> At the hearing on March 3, 2020, counsel for Defendant Coco Palms Hui, engaged in the following exchange with the court:

THE COURT: Okay. I'm okay with Mr. Zenger making a limited appearance. Mr. Zenger, were you going to actually make argument today?

MR. ZENGER: No, we're not taking a position, Your Honor.

THE COURT: And you're representing who, Mr. Zenger?

MR. ZENGER: Coco Palms Hui, LLC.

THE COURT: Make sure you file a document indicating the scope of your representation of Coco Palms Hui so that the attorneys are aware of that.

Trans. of Proceed. from 3/3/20 (JIMS Dkt. 89) Pg. 4, Lines 1 – 11.

Arizona, found that the relationship if a manager to a member in a limited liability company was similar to an agency relationship, and did impose a fiduciary duty from the manager to the member, subject to the terms of the company’s operating agreement. The Arizona Supreme Court then elaborated on the extent of this fiduciary duty:

We have characterized a fiduciary duty as imposing “the obligation of loyalty,” *Ghiz v. Millett*, 71 Ariz. 4, 8 (1950), “the obligation of the utmost good faith in their dealings,” *DeSantis v. Dixon*, 72 Ariz. 345, 350 (1951), and “requiring a high degree of care,” *Master Records, Inc. v. Backman*, 133 Ariz. 494, 497 (1982) (quotations omitted). Thus, the nature of the fiduciary relationship for agents includes a duty of loyalty, a duty of good faith, and a duty of care. Partnerships, joint ventures, and corporations are all owed fiduciary duties by those empowered to act on behalf of such businesses. See *DeSantis*, 72 Ariz. at 350 (describing the fiduciary nature of duties owed by partners to a partnership); *Ghiz*, 71 Ariz. at 8-9 (describing the fiduciary nature of those involved in a joint venture); *Monterey Water Co. v. Voorhees*, 45 Ariz. 338, 347 (1935) (describing the fiduciary duties owed by officers to a corporation).

443 P.3d 21, ¶7

The Arizona court specifically addressed the effect of the operating agreement on the obligations of the parties in a limited liability company. The court wrote: “Under the LLC Act, an operating agreement may lawfully limit or eliminate common law fiduciary duties owed to the LLC by its members or managers, although it may not erase the covenant of good faith and fair dealing implied in every contract.”

In the Delaware case, *Auriga Capital Corp. v. Garz Properties, LLC*, 40 A.3d 839 (Del Ch. 2012), an appellate court found that a manager in a limited liability company owed the members a fiduciary duty. Here, the Second Amended Operating Agreement (ROA 2, JEFS Dkt. 49, Exhibit “C”, **Appendix F**), did limit, under Par. 4.4, the waive any fiduciary duty that the PCG Manager may have had, but the Manager still had a: “duty of care in the discharge of its duties to the Company and its Members is limited to refraining from engaging in grossly negligent conduct or intentional misconduct.” Mr. Honkavaara asserts that failing to answer a foreclosure complaint,



which is what happened here, is grossly negligent or intentional misconduct, and that at a minimum the Operating Agreement imposes a duty of care on the part of SEP. All of this amounts to “unclean hands”, which is what Mr. Honkavaara argued as a point of error in his Opening Brief.

#### **IV. CONCLUSION**

This is a foreclosure complaint brought by a party that: (a) was not on the Note, (b) was not on the Mortgage, and (c) was in possession of an unendorsed Note made payable to another party. In response to this PCG cites the “long-standing rule of law permitting an agent to bring an action on behalf of its principal” (Pg. 12, Answering Brief). But this is not a contract case, this is a foreclosure case, and PCG’s rights are controlled by the Uniform Commercial Code and not the “long-standing” rule of agency. And in a foreclosure action, a plaintiff must be able to prove an injury in fact, which PCG has not. And finally, Mr. Honkavaara has argued that PCG has unclean hands, as it had its subsidiary, SEP, take over Defendant Coco Palms Hui, which resulted in that entity not filing a defense to the foreclosure complaint. There is nothing on the record signed by the actual Lenders here, which are: (1) WCMF, Inc., a Nevada corporation, (2) Coco Lenders Partnership, a Utah general partnership, (3) Blue Glacier Fund, L.P., (4) Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, and (5) PCG Credit Partners LLC, a Delaware limited liability company. For the reasons outline above, this Court should vacate the Circuit Court’s order and judgment granting PCG’s motion for partial summary judgment and remand this matter back to the Circuit Court for further proceedings.

DATED: Honolulu, Hawaii, May 3, 2021.

/s/ Keith M. Kiuchi

---

KEITH M. KIUCHI

Attorney for Defendant-Appellant PAUL M.  
HONKAVAARA dba Chartered Financial Group

IN THE INTERMEDIATE COURT OF APPEALS OF THE STATE OF HAWAII

PRIVATE CAPITAL GROUP, INC., a Utah corporation,	)	Case No. 5CC191000086
	)	
Plaintiff-Appellee,	)	Appeal from: (A) Final Judgment
	)	Filed on August 10, 2020; and (B)
vs.	)	Findings of Fact and Conclusions
	)	of Law and Order Granting
	)	Plaintiff's Motion for and
PAUL M. HONKAVAARA dba Chartered Financial Group,	)	Interlocutory Decree of
	)	Foreclosure Filed November 5,
	)	2019, dated June 17, 2020
Defendant-Appellant,	)	
	)	Circuit Court of the Fifth Circuit,
COCO PALMS HUI LLC, a Delaware Limited Liability Company; TYLER SCOTT GREENE; CHAD WATERS;	)	State of Hawaii, Honorable Judge
	)	Randal G. B. Valenciano
	)	
Defendants-Appellees,	)	
	)	

---

**PROOF OF SERVICE**

I HEREBY CERTIFY that on May 3, 2021, the Statement of Jurisdiction was served by electronic notification through the JEFS system or by U.S. Mail to the following parties at their last known address:

TO: **BRADLEY R. PULICE, ESQ.** (Via JEFS System)  
bpulice@paclawteam.com  
**SCOTT I. BATTERMAN, ESQ.**  
sib@paclawteam.com  
**CLAY CHAPMAN IWAMURA PULICE & NERVELL**  
Topa Financial Center  
700 Bishop Street, Suite 1200  
Honolulu, HI 96813  
Phone: (808) 535-8400

Attorney for Plaintiff

**JAMIE PORTER DeVRIES, ESQ.**

(Via JEFS System)

porter@devriespc.com

**DeVRIES & ASSOC., PC**

Finance Factors Center

1164 Bishop St., Suite 1555

Honolulu, HI 96813

Phone: (808) 465-2500

Attorney for Defendant Chad Waters

**MARK R. ZENGER, ESQ.**

(Via JEFS System)

mrz@richardsandzenger.com

**RICHARDS & ZENGER**

P.O. Box 3966

Lihue, Kauai, HI 96766

Phone: (808) 632-0723

Attorney for Defendant Coco Palms Hui LLC

**TYLER SCOTT GREEN**

(Via U.S. Mail)

310 Kamakee St., #6

Honolulu, HI 96814

Defendant Pro Se

DATED: Honolulu, Hawaii, May 3, 2021.

/s/ Keith M. Kiuchi

---

KEITH M. KIUCHI

Attorney for Defendant-Appellant PAUL M.  
HONKAVAARA dba Chartered Financial Group

# **Exhibit D**

KEITH M. KIUCHI, ALC  
KEITH M. KIUCHI #2735  
ASB Tower  
1001 Bishop Street, Suite 985  
Honolulu, Hawaii 96813  
Tel. No. 533-2230  
Fax. No. 533-4391

FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2017 NOV -3 PM 3:41

F. OTAKE  
CLERK

Attorney for Petitioner

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

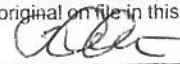
17 - 1 - 0 3 6 0 B | A  
S.P. NO. \_\_\_\_\_  
(Other Civil Action)

EXEMPLIFIED FOREIGN JUDGMENT;  
DECLARATION OF KEITH M. KIUCHI;  
EXHIBITS " 1 " - "2"; and CERTIFICATE  
OF SERVICE

**EXEMPLIFIED FOREIGN JUDGMENT**

COMES NOW PETITIONER PAUL M. HONKAVAARA dba CHARTERED FINANCIAL GROUP, by and through his attorney, KEITH M. KIUCHI, and hereby files with Circuit Court of the First Circuit, State of Hawaii, a request for an Exemplification of a Foreign Judgment that is dated October 26, 2017 and is entered in the Fresno County Superior Court, for the State of California, in favor of Petitioner PAUL M. HONKAGAARA dba CHARTERED FINANCIAL GROUP, as against Respondent COCO PALMS HUI, LLC, a Delaware limited liability company.

I do hereby certify that this is a full, true, and  
correct copy of the original on file in this office.

  
Clerk, Circuit Court, First Circuit

The Certificate of Exemplification signed by the Deputy Clerk of the Superior Court for Fresno County is dated October 26, 2017 and the Certificate of Exemplification signed by the Clerk of the Superior Court for Fresno County is dated October 30, 2017, and the Judgment is dated October 26, 2017, and both Certificates of Exemplification and the Judgment are attached hereto and identified as Exhibit "1".

DATED: Honolulu, Hawaii, November 3, 2017.

A handwritten signature in black ink, appearing to read "Keith M. Kiuchi", written in a cursive style. The signature is positioned above a horizontal line.

KEITH M. KIUCHI  
Attorney for Petitioner

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

S.P. NO. 17 - 1 - 0 3 6 0 B I A  
(Other Civil Action)

DECLARATION OF KEITH M. KIUCHI

**DECLARATION OF KEITH M. KIUCHI**

KEITH M. KIUCHI, declares and says:

1. That Declarant is an attorney licensed to practice law in the court of the State of Hawaii and that he is the attorney representing Petitioner in the above entitled matter in the State of Hawaii.

2. That attached hereto as Exhibit "1" is a true and correct copy of: (a) a Certificate of Exemplification signed by the Deputy Clerk of the Superior Court for Fresno County dated October 26, 2017, (b) a Certificate of Exemplification signed by the Clerk of the Superior Court for Fresno County dated October 30, 2017, and (c) the Judgment in favor of Petitioner Paul M. Honkavaara dba Chartered Financial Group as against Respondent Coco Palms Hui, LLC, dated October 26, 2017, filed in the Superior Court for the Fresno County Superior Court, State of California, having been signed by Kimberly Gaab, Presiding Judge of the Superior Court of California, Fresno County, granting Judgment in favor of Petitioner Paul

M. Honkavaara dba Chartered Financial Group as against Coco Palms Hui, LLC, in the following amounts:

Damages	\$444,620.00
Prejudgment Interest	\$ 65,533.78
Attorney Fees	\$ 11,139.50
Costs	\$ 585.56
TOTAL	\$521,878.84

3. The principal on said judgment shall bear interest at a rate of 10% per annum.

4. That attached hereto as Exhibit "2" is a true and correct copy of the information on file for Respondent Coco Palms Hui LLC with the Dept. of Commerce and Consumer Affairs, which shows that

5. That the name and current address of the Petitioner, Judgment creditor, is:

Paul M. Honkavaara dba Chartered Financial  
c/o Steven R. Stoker, Esq.  
Pascuzzi, Pascuzzi & Stoker  
2377 W. Shaw Avenue, Suite 101  
Fresno, CA 93711

6. That upon information and belief and the information set forth in Exhibit 2, the name and current address of the Respondent Coco Palms Hui LLC, which is the Judgment debtor, is:

Coco Palms Hui LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

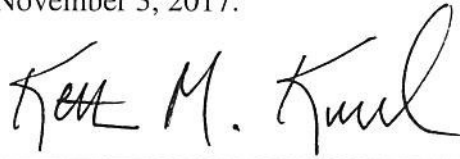
7. That upon information and belief and the information set forth in Exhibit 2, the name and current address of the registered agent in the State of Hawaii for Respondent Coco Palms Hui LLC, which is the Judgment debtor, is:



KK1&2 LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

That I declare under the penalty of perjury under the laws of the United States of America that the foregoing are true and correct.

DATED: Honolulu, Hawaii, November 3, 2017.

A handwritten signature in black ink, appearing to read "Keith M. Kiuchi". The signature is written in a cursive style with a large, looped initial "K".

---

KEITH M. KIUCHI

EXHIBIT "1"

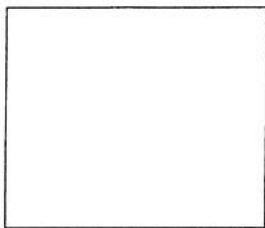
CASE TITLE <b>Paul M. Honkavaara dba Chartered Financial Group vs. Coco Palms Hui, LLC</b>	CASE NUMBER: <b>17CECG02343</b>
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STATE OF CALIFORNIA,  
County of Fresno

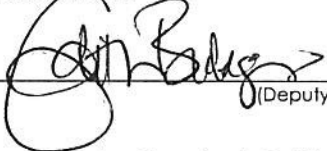
I, Edith Bidegain, Deputy Clerk of the Superior Court of California, County of Fresno, which is a court of record having by law a clerk and a seal, do hereby certify that I have compared the following copies, and each of them, respectively, with the original:

in Case No. **17CECG02343** of said Superior Court, entitled: Judgment

as the said originals now remain on file and of record in my office and that said copies are, and each of them respectively is, a full, true and correct copy of such originals and of the whole thereof.



Witness, Deputy Clerk of the Superior Court, with the seal of the Court affixed.  
Date: 10/26/2017

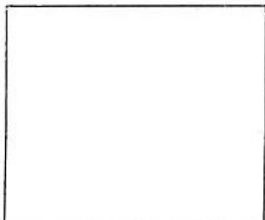
  
\_\_\_\_\_  
(Deputy Clerk of the Superior Court)

I, Kimberly Gaab, Presiding Judge of the Superior Court of California, County of Fresno, do hereby certify that said Court is a court of record and that Edith Bidegain, whose signature is affixed above is a Deputy Clerk of said Superior Court; that said certificate is attested in due form according to the laws of the State of California; that the aforesaid signature of said Deputy Clerk is genuine; that said Deputy Clerk is a proper officer to execute the said certificate and attestation, and the seal thereto affixed is the seal of said Superior Court.

Witness, my hand at Fresno, California  
Date: 10-30-17

  
\_\_\_\_\_  
(Presiding Judge of the Superior Court of California, County of Fresno)

I, Sheran Morton, Clerk of the Superior Court of California, County of Fresno, do hereby certify that said Court is a court of record and having by law a clerk and a seal, do hereby certify that Kimberly Gaab, Presiding Judge, whose name is subscribed in the foregoing certificate, is a Judge of the Superior Court of California, County of Fresno, duly elected, sworn and qualified and that the signature of said Judge to said certificate is genuine.



Witness, Clerk of the Superior Court, with the seal of the Court affixed.  
Date: 10/30/2017

  
\_\_\_\_\_  
(Clerk of the Superior Court)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state and address): <b>Steven R. Stoker</b> 154947 Pascuzzi, Pascuzzi & Stoker 2377 W. Shaw Avenue, Suite 101 Fresno, CA 93711 TELEPHONE NO.: (559) 227-1100 FAX NO. (Optional): (559) 227-1290 E-MAIL ADDRESS (Optional): sstoker@pascuzzi.net ATTORNEY FOR (Name): Paul M. Honkaavara dba Chartered Financ	FOR COURT USE ONLY  <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">FILED</div> OCT 26 2017 FRESNO COUNTY SUPERIOR COURT By _____ DEPUTY		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Fresno STREET ADDRESS: 1130 "O" Street MAILING ADDRESS: CITY AND ZIP CODE: Fresno, CA 93721 BRANCH NAME:	CASE NUMBER: 17 CE CG 02343		
PLAINTIFF: Paul M. Honkavaara dba Chartered Financial Group DEFENDANT: Coco Palms Hui, LLC			
<table style="width:100%; border: none;"> <tr> <td style="text-align: center;"><b>JUDGMENT</b></td> </tr> <tr> <td> <input type="checkbox"/> By Clerk      <input checked="" type="checkbox"/> By Default      <input type="checkbox"/> After Court Trial  <input checked="" type="checkbox"/> By Court      <input type="checkbox"/> On Stipulation      <input type="checkbox"/> Defendant Did Not Appear at Trial                 </td> </tr> </table>		<b>JUDGMENT</b>	<input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial
<b>JUDGMENT</b>			
<input type="checkbox"/> By Clerk <input checked="" type="checkbox"/> By Default <input type="checkbox"/> After Court Trial <input checked="" type="checkbox"/> By Court <input type="checkbox"/> On Stipulation <input type="checkbox"/> Defendant Did Not Appear at Trial			

**JUDGMENT**

1.  **BY DEFAULT**
  - a. Defendant was properly served with a copy of the summons and complaint.
  - b. Defendant failed to answer the complaint or appear and defend the action within the time allowed by law.
  - c. Defendant's default was entered by the clerk upon plaintiff's application.
  - d.  **Clerk's Judgment** (Code Civ. Proc., § 585(a)). Defendant was sued only on a contract or judgment of a court of this state for the recovery of money.
  - e.  **Court Judgment** (Code Civ. Proc., § 585(b)). The court considered
    - (1)  plaintiff's testimony and other evidence.
    - (2)  Plaintiff's written declaration (Code Civ. Proc., § 585(d)).
  
2.  **ON STIPULATION**
  - a. Plaintiff and defendant agreed (stipulated) that a judgment be entered in this case. The court approved the stipulated judgment and
  - b.  the signed written stipulation was filed in the case.
  - c.  the stipulation was stated in open court       the stipulation was stated on the record.
  
3.  **AFTER COURT TRIAL.** The jury was waived. The court considered the evidence.
  - a. The case was tried on (date and time) :  
before (name of judicial officer) :
  - b. Appearances by:
 

<input type="checkbox"/> Plaintiff (name each) : (1) (2) <input type="checkbox"/> Continued on Attachment 3b. <input type="checkbox"/> Defendant (name each) : (1) (2) <input type="checkbox"/> Continued on Attachment 3b.	<input type="checkbox"/> Plaintiff's attorney (name each) : (1) (2) <input type="checkbox"/> Defendant's attorney (name each) : (1) (2)
--	--
  - c.  Defendant did not appear at trial. Defendant was properly served with notice of trial.
  - d.  A statement of decision (Code Civ. Proc., § 632)  was not  was requested.

PLAINTIFF: Paul M. Honkavaara dba Chartered Financial Group  
 DEFENDANT: Coco Palms Hui, LLC, Private Capital Group, Inc. NUMBER: 17 CE CG 02343

JUDGMENT IS ENTERED AS FOLLOWS BY:  THE COURT  THE CLERK

4.  **Stipulated Judgment.** Judgment is entered according to the stipulation of the parties.

5. **Parties.** Judgment is

a.  for plaintiff (*name each*):  
 Paul M. Honkavaara dba Chartered Financial Group  
 and against defendant (*names*):  
 Coco Palms Hui, LLC

c.  for cross-complainant (*name each*):  
 and against cross-defendant (*name each*):

Continued on Attachment 5a.

Continued on Attachment 5c.

b.  for defendant (*name each*):

d.  for cross-defendant (*name each*):

6. **Amount.**

a.  Defendant named in item 5a above must pay plaintiff on the complaint:

c.  Cross-defendant named in item 5c above must pay cross-complainant on the cross-complaint:

(1) <input checked="" type="checkbox"/> Damages	\$	444,620.00
(2) <input checked="" type="checkbox"/> Prejudgment interest at the annual rate of 10 %	\$	65,533.78
(3) <input checked="" type="checkbox"/> Attorney fees	\$	11,139.50
(4) <input checked="" type="checkbox"/> Costs	\$	585.56
(5) <input type="checkbox"/> Other ( <i>specify</i> ):	\$	
(6) <b>TOTAL</b>	\$	521,878.84

(1) <input type="checkbox"/> Damages	\$	
(2) <input type="checkbox"/> Prejudgment interest at the annual rate of %	\$	
(3) <input type="checkbox"/> Attorney fees	\$	
(4) <input type="checkbox"/> Costs	\$	
(5) <input type="checkbox"/> Other ( <i>specify</i> ):	\$	
(6) <b>TOTAL</b>	\$	0.00

b.  Plaintiff to receive nothing from defendant named in item 5b.  
 Defendant named in item 5b to recover costs \$  
 and attorney fees \$

d.  Cross-complainant to receive nothing from cross-defendant named in item 5d.  
 Cross-defendant named in item 5d to recover costs \$  
 and attorney fees \$

7.  Other (*specify*):

Date: 10/26/17

  
 JUDICIAL OFFICER

Date:  Clerk, by \_\_\_\_\_, Deputy

(SEAL)

CLERK'S CERTIFICATE (*Optional*)

I certify that this is a true copy of the original judgment on file in the court.

Date:

Clerk, by \_\_\_\_\_, Deputy

EXHIBIT "2"

# DCCA State of Hawaii

Downloaded on November 3, 2017.

The information provided below is not a certification of good standing and does not constitute any other certification by the State.

Website URL: <http://hbe.ehawaii.gov/documents>

## Business Information

MASTER NAME	COCO PALMS HUI LLC
BUSINESS TYPE	Foreign Limited Liability Company (LLC)
FILE NUMBER	149586 C6
STATUS	Active
PLACE INCORPORATED	Delaware UNITED STATES
REGISTRATION DATE	Apr 21, 2016
MAILING ADDRESS	1050 BISHOP ST STE 303 HONOLULU, Hawaii 96813 UNITED STATES
PARTNER TERMS	AT-WILL
MANAGED BY	MANAGER(S)
AGENT NAME	KK1&2 LLC
AGENT ADDRESS	1050 BISHOP ST STE 303 HONOLULU, Hawaii 96813 UNITED STATES

## Annual Filings

FILING YEAR	DATE RECEIVED	STATUS
2017	Apr 24, 2017	Processed

## Officers

NAME	OFFICE	DATE
WATERS, CHAD	MGR	Apr 21, 2016
GREENE, TYLER	MGR	Apr 21, 2016

## Trade Names

NAME	TYPE	CATEGORY	REGISTRATION DATE	STATUS
COCO PALMS	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Active
COCO PALMS RESORT	Trade Name	NO CATEGORY SELECTED	Nov 1, 2016	Active

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

PAUL M. HONKAVAARA dba  
CHARTERED FINANCIAL GROUP,

Petitioner,

vs.

COCO PALMS HUI LLC, a Delaware limited  
liability company;

Respondent.

S.P. NO. 17-1-0360 BIA  
(Other Civil Action)

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing document was duly served upon the following interested parties by depositing same in the U.S. Post Office, postage prepaid, at Honolulu, Hawaii, on the 3<sup>rd</sup> day of November, 2017.

Coco Palms Hui LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

Respondent

KK1&2 LLC  
1050 Bishop St. Suite 303  
Honolulu, HI 96813

Registered Agent for Respondent

DATED: Honolulu, Hawaii, November 3, 2017.



\_\_\_\_\_  
KEITH M. KIUCHI  
Attorney for Petitioner



# **Exhibit E**

**MOTION**

**Denied (Roehrig, Gomes) 4/2. Motion carries. (Case and Oi opposed).**

*Yvonne Izu noted for the record that they will pursue their contested case.*

**ITEM J-1** Denial of Petition Filed by Henry K. Pomroy for Amendment of Hawai'i Administrative Rules Sections 13-231-67(a) and (d) (20).

Ed Underwood presented for Division of Boating & Recreation. Pomroy wants the ramp unlimited to commercial activity. DOBOR does not believe this is the correct thing to do.

Downing verified that the Rule Change went out to public hearing. At the time, Staff recommended (4) commercial moorings, and there were no comments on the number of moorings. Meeting was held in Hilo, not at launch ramp.

Roehrig noted that you cannot access Pohoiki launch ramp because its surrounded by lava.

Case noted that 80 homes have now been destroyed so our hearts go out to the people in Puna.

Public Testimony- None

**MOTION**

**Approved as submitted (Yuen, Roehrig) unanimous.**

There was a written request for a contested case hearing. AG said you cannot contest rules.

**ITEM D-1** Consent to Assign General Lease No. S-4878, Grant of Easement Nos. S-4244 & S-4645, and Land Office Deed Nos. S-12,850 & S-27,442, Coco Palms Ventures LLC, as First Assignor, to PR II Coco Palms LLC, as First Assignee/ Second Assignor, and from PR II Coco Palms LLC, First Assignee/ Second Assignor, to Coco Palms Hui LLC, as Second Assignee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039, and por. 044.

Amendment of Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442, Coco Palms Hui LLC, Grantee, Wailua, Kawaihau (Puna), Kauai, Tax Map Keys: (4) 4-1-003:005, por. 017, por. 039 & por. 044, and 4-1-005:017.

Grant of Easement Nos. S-4244 and S-4645, and Land Office Deed Nos. S-12,850 and S-27,442 already exist. The purpose of amending the documents is to insert a provision allowing the easements to "Run with the Land," thereby becoming

assignable without the written consent of the Board of Land and Natural Resources. The easements will be appurtenant to and inure to the benefit of Coco Palms Hui LLC's private property identified as Tax Map Key: (4) 4-1-003:007.

*"Chair Case noted a request for Contested Case hearing (it was worded if the Board does not deny the assignments and easements). Chair Case said, it is not an active request at this time."*

Kevin Moore, Land Division presented the submittal. This is to assign an existing lease and grant of easements, and Land Office deeds for utility purposes that service private lands adjacent to leased premises.

#### Board Discussion

Roehrig asked if this had an assignment premium on this lease? Moore replied, we do not because it is an older lease form. Roehrig asked if the matter before the 5<sup>th</sup> Circuit Court? Moore said he was not aware, but the Applicant is present to address the question.

John Pang, Attorney for Coco Palms Hui, there was a lawsuit filed in the 5<sup>th</sup> Circuit by someone in Virginia. She is claiming violations of endangered species act. Nothing to do with the assignment of the leases. The Judge has decided not to hear it and is going to rule on the motions based on the pleadings. Roehrig asked if the Judge is going to rule on the Motion to Dismiss or Summary Judgement? Pang said he believed it was a Motion to Dismiss. Pang said he has not ruled, but expected it soon. One of the reason why he decided not to hear this is that this particular Plaintiff has filed these types of lawsuits across the Country. Pang said the bottom line is she has not filed in opposition of the request here.

Roehrig asked if there were any claims for Kuleana rights of claimers? Pang said he believed they were done. The initial litigation was there were people who claimed the right to occupy. The District Court on Kauai issued an Ejectment Order.

Roehrig asked if Title was an issue? Pang said the Court had to determine they did not have the right to be there. Roehrig said his understanding of summary possession, the issue of Title is not before the Court. If the Title is in dispute and there is a factual basis, the Court has to refer it to Circuit Court. Pang agreed with Roehrig.

Pang said the Judge issued the Ejectment Order not only on our fee simple property but also on the DLNR parcels. Roehrig said his concern in approving this consent to assign, is that we are not interfering with any on-going legislation before the 5<sup>th</sup> Circuit Court. Pang said Roehrig is correct. This has nothing to do with Title.

Pang said, there was a Quiet Title action filed by some of the people who were occupying including Mr. Liko Martin. That Order came out yesterday. The Action was dismissed with Prejudice. No one is claiming they own our interest in the leases. For them to object, they would

have to say, you cannot consent to the transfer to Coco Palms because they own our interest. If they want to say they own the land, they have to say they own the State's land, not our interest.

Oi commented, you want to take over these lease for landscaping, and maintenance purposes. It is all overgrown and his hope is that they will abide by the lease and maintain the property. Pang replied, now that the occupiers are gone, we can move forward.

Tyler Green, Coco Palms Hui, addressed Oi's concerns. Due to the occupiers aggressive behavior, they decided to go through the legal process of removing them before they began. They would be happy to walk him through the property.

Oi asked about the pump that is used when it floods. Green said that pump is no longer working, we will be repairing the pump. Oi asked do you have a completion date? Green said we have a target, about an 18-months depending on any other issues coming up.

Gomes commented that he was concerned that the lineal decedents right to title has been cleared up. Pang said that they have had researched done and expert testimonies by Title companies and had long searches even from lineal decedents.

#### Public Testimony-None

#### MOTION

Approve as submitted (Oi, Yuen) unanimous.

#### **Further Discussion:**

*Kevin Moore, Land Division mentioned that Russell Tsuji, Land Division Administrator, asked him to assert the Contested Case.*

*Dan Morris, Deputy Attorney General said that his understanding was that the written request said, if the Board rules in a certain way on this agenda item, that they would like a Contested Case and it was a conditional request. Now that the Board has made its action. Chair Case said it is now an active request and can we hear it after we hear the rest of public testimony?*

*Pang commented on the Contest Case request needs to be on the Consent to Assignment of Lease. His understanding is the person requesting the contested case is not claiming to own our leases. Their claim is to have some property interest in the State's land. He feels they do not have standing to contest the consent.*

*Yuen said that there is nothing to decide or discuss now. It was not submitted before we voted. His suggestion was to give to the AG's and they will give us a determination whether it is subject to a Contested Case hearing and they will bring it back to us to approve or reject on a future agenda.*

# **Exhibit F**

## **COMMISSIONER'S DEED**

THIS COMMISSIONER'S DEED is made this 20th day of April, 2022, by **Craig A. DeCosta**, as Commissioner, whose address is 4028 Rice Street, Suite B, Lihue, HI 96766, hereinafter called the "Grantor" to RP21 Coco Palms LLC, a Utah Limited Liability Company, whose address is 160 West Canyon Crest Rd., Alpine, UT 84004, hereinafter called the "Grantee".

### **RECITALS:**

1. Coco Palms Hui LLC, a Delaware Limited Liability Company, was the owner of that certain fee simple property described in Exhibit "A" attached hereto and incorporated herein by reference, subject to the first mortgage lien of WCMF Inc., a Nevada corporation, Coco Lenders Partnership, a Utah general partnership, Crestline AK Opportunistic Fund, L.P., a Delaware limited partnership, Blue Glacier Fund, L.P., a Delaware limited partnership, and PCG Credit Partners LLC, a Delaware limited liability company, being the Lenders listed in Amended Mortgage, Security Agreement, Assignment of Leases and Rents, Fixture Filing, and Financing Statement, which was recorded in the Bureau of Conveyances, State of Hawaii, on August 8, 2016 as Document Number A 60640164 and also in the Office of the Assistant Registrar of the Land Court, State of Hawaii, as Document No. T-9716090, noted on Certificate of Title No. 1116173 (the "Lenders");

2. Private Capital Group, Inc., as agent for the Lenders, instituted legal proceedings in the Fifth Circuit Court, State of Hawaii, entitled Private Capital Group, Inc., "Plaintiff" v. Coco Palms Hui LLC, et al., "Defendants", Civil No. 5CC191000086 (the "Foreclosure Action"), for the foreclosure of its mortgage lien on the property described in Exhibit "A".

3. By Findings of Fact, Conclusions of Law and Order Granting Plaintiff's Motion for Partial Summary Judgment and Interlocutory Decree of Foreclosure, filed in the Foreclosure Action on November 5, 2019, and to be recorded in the Bureau of Conveyances, State of Hawaii, in said proceedings, the mortgage lien was foreclosed, and the Grantor was duly appointed Commissioner and was authorized and directed to sell all the property described in Exhibit "A".

4. By Order Granting Plaintiff's Motion Filed August 18, 2021, For Confirmation Of Sale By Commissioner; Exhibit A filed in the Foreclosure Action on October 26, 2021, and to be recorded in the Bureau of Conveyances, State of Hawaii, the sale of all the property hereinafter described in Exhibit A to Private Capital Group, Inc. or its nominee, was ratified, approved and confirmed, and the Grantor, as Commissioner, was ordered and directed to convey the mortgaged property to Grantee or its nominee.


6. The nominee of Private Capital Group, Inc. is RP21 Coco Palms LLC, a Utah Limited Liability Company.

**CONVEYANCE:**

The Grantor, for a valuable consideration, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the Grantee, "As Is", without warranty express or implied, all the property described in Exhibit "A".

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed therewith, unto said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor, has executed these presents on the day and year first above written.

  
\_\_\_\_\_  
**Craig A. DeCosta**  
Commissioner

"Grantor"

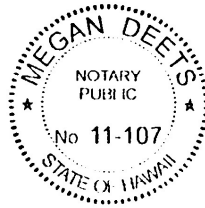
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STATE OF HAWAII )  
 ) SS:  
COUNTY OF KAUAI )


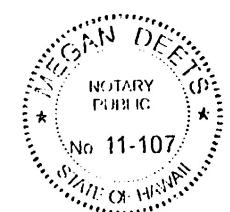
On this 20th day of April, 2022, before me Megan Deets, a Notary Public in and for said State, personally appeared **Craig A. DeCosta**, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

  
PRINT NAME: Megan Deets  
Notary Public, State of Hawaii



My commission expires 04/10/2023

Doc. Date: <u>04/20/2022</u>	# Pages: <u>4</u>
Notary Name: <u>Megan Deets</u>	<u>Fifth</u> Circuit
Doc. Description: <u>Commissioner's Deed</u>	
 Notary Signature	<u>04/20/2022</u> Date
 Stamp or Seal	
NOTARY CERTIFICATION	



**From:** [Brady Hutchins](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Coco Palms Agenda Item  
**Date:** Wednesday, April 24, 2024 3:14:15 AM

---

Hi, my name is Brady Hutchins and I'm writing in support of the restoration of Coco Palms. I am very excited about the progress that the new owners have made this past month on improving the property by tearing down run-down and dangerous structures. It is awesome that Coco Palms is getting this attention after decades of neglect by the previous owners.

I would like to voice my support of options B4 and C2 - allowing a public auction of Parcel B's lease and approving a non-exclusive easement on Parcel C to the new owners. I think approving the options would be beneficial to the State, the new owners, *and* the general public, so please consider doing so!

Thanks,  
Brady Hutchins

**From:** [Jake Taylor](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Supporting Coco Palms Restorations Item D1  
**Date:** Wednesday, April 24, 2024 2:51:11 AM

---

Hey Hawaii Board of Land and Natural Resource!

Hope you're doing awesome! I wanted to shoot you a quick message about agenda item D1 – you know, the Coco Palms restoration thing? Super important!

I'm Jake, and I'm totally jazzed about supporting Coco Palms getting back in action after, like, forever. I mean, it's been, what, like 30 years of neglect? Crazy, right?

But guess what? The new owners are finally doing something about it! Last month, they started tearing down all the old, busted stuff. It's like the first real progress we've seen in ages!

So, here's the deal – I'm really hoping you'll back these two things:

1.  
Let's go with Option B4 so we can have a public auction for leasing "Parcel B."  
Seems fair, right?
2.  
And then there's Option C2, which gives RP21 a non-exclusive easement on "Parcel C." This way, everyone gets to share the space.

It's not just about fixing up Coco Palms; it's about making sure we do it right. These choices would mean a fair shot for everyone and let us all enjoy the place together.

Thanks a ton for listening! Your support means a bunch.

Catch you later!

Jake

**From:** [Aja Jacobsen](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D-1, support for options B3 and C4  
**Date:** Wednesday, April 24, 2024 12:54:44 PM

---

Aloha BLNR,

My name is Aja Jacobsen and I am a resident of Kilauea. I am submitting testimony regarding agenda item D-1.

I am in favor of option B3 which provides a direct lease to I Ola Wailuanui. Currently it is subject to access easement in favor of RP21; I support it WITHOUT being subject to access easement by RP21, Coco Palms LLC. I ask that in future options be provided that do NOT provide favor to RP21.

I also strongly support option C4, which provides direct lease to I Ola Wailuanui without access easements or favor to RP21.

I hope that these three parcels will serve as a foot in the door towards community management of the larger area, and I Ola Wailuanuis management of them will demonstrate the community's ability and commitment to care for these spaces.

In general, it is my opinion and the opinion of many of my fellow citizens that we do not need to give any more Hawaiian land to resorts, rich land developers, or anyone other than the people of Hawaii to preserve, protect, and keep in trust for future generations.

Mahalo for your time and consideration,

-Aja

**From:** [Kevin Jensen](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 6:30:40 AM

---

My name is Kevin Jensen, and I am testifying on agenda item D1 and in support of the restoration of Coco Palms.

After 30 years, the hotel is finally being restored after years of failure by prior owners. Just last month, the new owners began removing dilapidated and dangerous structures. This is the first meaningful progress on restoration for more than three decades. The new owners have responsible plans in place to renew this area and are looking to expand this plan to adjacent properties.

I strongly urge the board to:

- Approve Option B4 to allow a public auction for the lease of “Parcel B”.
- Approve Option C2 for a non-exclusive easement on “Parcel C” to RP21, the owners of Coco Palms.

These actions would be in the best interest of the State since it would:

- Provide a fair process for competitive bidding on a lease of Parcel B.
- Provide non-exclusive uses at Parcel C so both parties can utilize the property.

Thank you for your consideration in this matter!

Sincerely,  
Kevin Jensen

Dawn Chang, Chair  
Board of Land and Natural Resources  
[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Aloha e Chair Chang and BLNR Members:

**Do not approve long term leases to RP21 Coco Palms Hui, LLC as this project eliminates endangered species waterbirds from this project area.**

‘Alae’ula came to earth in the wetlands of Ka Papa’alae in Wailua just mauka of Coco Palms, during the time of Maui, Hina and mo’olelo and have inhabited the area now known as Coco Palms Resort ever since. Until RP21 Coco Palms Hui, LLC took over and began demolition.



Ka Papa’alae, Wailua is “Ground Zero” for ‘Alae’ula.

In *Hanohano Wailuanuiaho'āno: Remembering, Recovering, and Writing Place*, Ku'ualoha Ho'omanawanui wrote:

Wailua is connected to several mo'olelo associated with the demigod Maui and his mother, Hina. In one, Maui lives in Wailua; the eight paeki'i (row of images) stones at the mouth of the river are his brothers (Dickey, 1916, p. 16). In another, while Hina is living in Kahiki she dreams of surfing in Wailua with a handsome man. Her brother Nulohiki transforms into a canoe, and Hina sails to Wailua where she meets the man, Makali'i, who has descended from the heavens. After Maui and his brothers are born, Makali'i returns there. At Molohua, an area "just north of the [Wailua] river mouth," Hina sticks the canoe form of Nulohiki into the sand, where it transforms into the first coconut tree. Maui would climb this tree to visit with his father Makali'i. **On the plains of Papa 'Alae (Mudhen Flats), the marshland on the north side of the Wailua River, Maui discovers the secret of fire from the 'alae (mudhens), the fire-keeping bird kupua who lived there.**<sup>1</sup>

'Alae'ula came to earth at Ka Papa'alae in Wailua. There were numerous families of 'Alae'ula enjoying feral Coco Palms and Wailua Kai. There were noted frequent sitings of 'alae'ula over the years since Hurricane Iniki and the population there expanded., living even in the flooded underground parking garages at Coco Palms.

Mitigation of impacts to these endangered species was never considered by Coco Palms. The developers chose only to mitigate for impacts to out migrating seabirds, not residential waterbirds, by down pointing lighting. 'Alae'ula do not fly. Downpointing lighting is to mitigate impacts to flying birds. Annual Director's Report for Coco Palms fail to include any consideration for 'alae'ula.

There are only about 1,000 'alae'ula left in the world due to habitat loss and invasive predators. Residential 'alae'ula families should have been trapped and relocated during the demolition and construction phase at Coco Palms, to be re-introduced to their habitat later.

---

<sup>1</sup> [https://kamehamehapublishing.org/wp-content/uploads/sites/38/2020/09/Hulili\\_Vol8\\_9.pdf](https://kamehamehapublishing.org/wp-content/uploads/sites/38/2020/09/Hulili_Vol8_9.pdf)'A

Suitable habitat and refugia can be designed into the landscape plan for Coco Palms, if the developer was held accountable for impacts to the endangered species present at Coco Palms. They should not be allowed to ignore 'alae'ula.

'Alae'ula at Coco Palms Resort



Adult 'Alae'ula and 5 babies at Coco Palms



'Alae'ula in fishpond at Coco Palms.



'Alae'ula in flooded underground Shell Building Parking Garage





According to USFW, Wailua is important habitat to the population of 'alae'ula in Hawai'i.<sup>2</sup>

## **Habitat and Range**

The 'alae 'ula prefers lowland wetlands and river valleys, including habitats like: freshwater marshes, taro patches, irrigation ditches, reservoirs, and wet pastures. Due to a multitude of factors like habitat loss and predation, the 'alae 'ula now only resides on O'ahu and Kaua'i.

'Alae 'ula forage and nest in open water or shorelines less than 1 meter deep that have dense emergent vegetation, because they are more secretive. These vegetation mats provide food sources and platforms for their nests, which require standing freshwater.

**Therefore, most live in the Hanalei and Wailua river valleys of Kaua'i** and between Hale'iwa and Waimanalo on O'ahu. 'Alae 'ula are territorial and defend their wetland areas.

'Alae'ula have disappeared from Coco Palms area since intensive demolition and land clearing has eliminated suitable habitat. These endangered species native waterbirds should have been protected , not just the seabirds flying over Coco Palms

Maui was of great importance in ancient Wailua. His brothers ended up as Pae Ki'i Mahu, petroglyphs on rocks by Wailua River mouth There is another famous Maui mo'olelo about the first coconut tree, Niu Hiki Loa (or Niu Lolo Hiki), originating from this area around Molohua,

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<sup>2</sup> [https://www.fws.gov/story/species-spotlight-hawaiian-moorhen-alae-ula#:~:text=According to Hawaiian legend, fire,ula or "burnt forehead"](https://www.fws.gov/story/species-spotlight-hawaiian-moorhen-alae-ula#:~:text=According to Hawaiian legend, fire,ula or ).

Wailua, famous for producing coconuts before some German guy planted cocos in rows forming the Coconut Grove, on the socio-political center village of Wailua. Niu Hiki Loa could pelt you with his coconuts and lele to other islands

'Alae'ula have been in the wetlands of Wailua for ever. Since the time of Maui and Hina. They should not be eliminated from Coco Palms for this commercial development in a wetland. These birds are important culturally and sensitive to environmental changes. There is no consideration from Fish and Wildlife for the protection of 'Alae'ula in Wailua Kai.

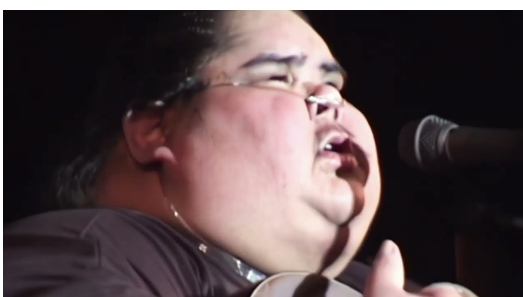
**Do not let RP21 Coco Palms Hui LLC obtain long term leases for these properties. They do not honor Hawaiian endangered species as they have eliminated them from their breeding habitat at Coco Palms Resort, Wailua.**

Israel Kamakawiwo'ole understood the importance of 'alae'ula, memorializing them in the song "Maui" on the album Facing Future:

*The secret of fire was locked somewhere in time  
So when the ahi died in the hale kuke, no way to reignite  
So off he goes in search of those who hold the information  
So that fire could be used by all the future generations*

*He found out the 'Alae held the fire connection  
But his plan of deception fell short of perfection  
With no other choice he had to get mean  
So he squeezed 'Alae's throat until she screamed the secret.*

**I do not want to face a future in Wailua without 'alae'ula because of the Coco Palms development**



Mahalo for your consideration and cancelling leasing state land to RP21 Coco Palms Hui, LLC. They should be fined for killing coconut trees in the Coconut Grove and not allowed to be considered for state leases or revocable permits.



Please ensure the future of 'ala' ʻula at Coco Palms, Wailua.



Joe Kamai      Aha Moku. Kaua'i

Dawn Chang, Chair  
Board of Land and Natural Resources  
[blnr.testimony@hawaii.gov](mailto:blnr.testimony@hawaii.gov)

Aloha e Chair Chang and BLNR Members:

**Do not approve long term leases to RP21 Coco Palms Hui, LLC as this project eliminates endangered species waterbirds from this project area.**

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Wailua is connected to several mo'olelo associated with the demigod Maui and his mother, Hina. In one, Maui lives in Wailua; the eight paeki'i (row of images) stones at the mouth of the river are his brothers (Dickey, 1916, p. 16). In another, while Hina is living in Kahiki she dreams of surfing in Wailua with a handsome man. Her brother Nulohiki transforms into a canoe, and Hina sails to Wailua where she meets the man, Makali'i, who has descended from the heavens. After Maui and his brothers are born, Makali'i returns there. At Molohua, an area "just north of the [Wailua] river mouth," Hina sticks the canoe form of Nulohiki into the sand, where it transforms into the first coconut tree. Maui would climb this tree to visit with his father Makali'i. **On the plains of Papa 'Alae (Mudhen Flats), the marshland on the north side of the Wailua River, Maui discovers the secret of fire from the 'alae (mudhens), the fire-keeping bird kupua who lived there.**<sup>1</sup>

'Alae'ula came to earth at Ka Papa'alae in Wailua. There were numerous families of 'Alae'ula enjoying feral Coco Palms and Wailua Kai. There were noted frequent sitings of 'alae'ula over the years since Hurricane Iniki and the population there expanded., living even in the flooded underground parking garages at Coco Palms.

Mitigation of impacts to these endangered species was never considered by Coco Palms. The developers chose only to mitigate for impacts to out migrating seabirds, not residential waterbirds, by down pointing lighting. 'Alae'ula do not fly. Downpointing lighting is to mitigate impacts to flying birds. Annual Director's Report for Coco Palms fail to include any consideration for 'alae'ula.

There are only about 1,000 'alae'ula left in the world due to habitat loss and invasive predators. Residential 'alae'ula families should have been trapped and relocated during the demolition and construction phase at Coco Palms, to be re-introduced to their habitat later.

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<sup>1</sup> [https://kamehamehapublishing.org/wp-content/uploads/sites/38/2020/09/Hulili\\_Vol8\\_9.pdf](https://kamehamehapublishing.org/wp-content/uploads/sites/38/2020/09/Hulili_Vol8_9.pdf)'A

Suitable habitat and refugia can be designed into the landscape plan for Coco Palms, if the developer was held accountable for impacts to the endangered species present at Coco Palms. They should not be allowed to ignore 'alae'ula.

'Alae'ula at Coco Palms Resort



Adult 'Alae'ula and 5 babies at Coco Palms



'Alae'ula in fishpond at Coco Palms.



'Alae'ula in flooded underground Shell Building Parking Garage



According to USFW, Wailua is important habitat to the population of 'alae'ula in Hawai'i.<sup>2</sup>

## **Habitat and Range**

The 'alae 'ula prefers lowland wetlands and river valleys, including habitats like: freshwater marshes, taro patches, irrigation ditches, reservoirs, and wet pastures. Due to a multitude of factors like habitat loss and predation, the 'alae 'ula now only resides on O'ahu and Kaua'i.

'Alae 'ula forage and nest in open water or shorelines less than 1 meter deep that have dense emergent vegetation, because they are more secretive. These vegetation mats provide food sources and platforms for their nests, which require standing freshwater.

**Therefore, most live in the Hanalei and Wailua river valleys of Kaua'i** and between Hale'iwa and Waimanalo on O'ahu. 'Alae 'ula are territorial and defend their wetland areas.

'Alae'ula have disappeared from Coco Palms area since intensive demolition and land clearing has eliminated suitable habitat. These endangered species native waterbirds should have been protected , not just the seabirds flying over Coco Palms

Maui was of great importance in ancient Wailua. His brothers ended up as Pae Ki'i Mahu, petroglyphs on rocks by Wailua River mouth There is another famous Maui mo'olelo about the first coconut tree, Niu Hiki Loa (or Niu Lolo Hiki), originating from this area around Molohua,

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<sup>2</sup> [https://www.fws.gov/story/species-spotlight-hawaiian-moorhen-alae-ula#:~:text=According to Hawaiian legend, fire,ula or "burnt forehead"](https://www.fws.gov/story/species-spotlight-hawaiian-moorhen-alae-ula#:~:text=According to Hawaiian legend, fire,ula or ).



Wailua, famous for producing coconuts before some German guy planted cocos in rows forming the Coconut Grove, on the socio-political center village of Wailua. Niu Hiki Loa could pelt you with his coconuts and lele to other islands

'Alae'ula have been in the wetlands of Wailua for ever. Since the time of Maui and Hina. They should not be eliminated from Coco Palms for this commercial development in a wetland. These birds are important culturally and sensitive to environmental changes. There is no consideration from Fish and Wildlife for the protection of 'Alae'ula in Wailua Kai.

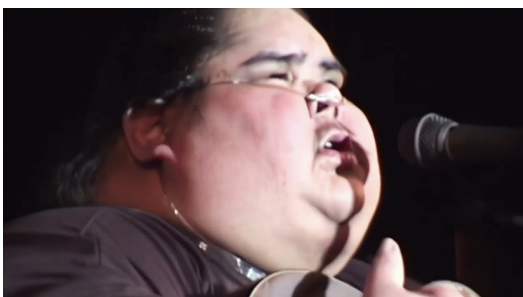
**Do not let RP21 Coco Palms Hui LLC obtain long term leases for these properties. They do not honor Hawaiian endangered species as they have eliminated them from their breeding habitat at Coco Palms Resort, Wailua.**

Israel Kamakawiwo'ole understood the importance of 'alae'ula, memorializing them in the song "Maui" on the album Facing Future:

*The secret of fire was locked somewhere in time  
So when the ahi died in the hale kuke, no way to reignite  
So off he goes in search of those who hold the information  
So that fire could be used by all the future generations*

*He found out the 'Alae held the fire connection  
But his plan of deception fell short of perfection  
With no other choice he had to get mean  
So he squeezed 'Alae's throat until she screamed the secret.*

**I do not want to face a future in Wailua without 'alae'ula because of the Coco Palms development**



Mahalo for your consideration and cancelling leasing state land to RP21 Coco Palms Hui, LLC. They should be fined for killing coconut trees in the Coconut Grove and not allowed to be considered for state leases or revocable permits.



Please ensure the future of 'ala' ʻula at Coco Palms, Wailua.



Joe Kamai      Aha Moku. Kaua'i

**From:** [Chicken Little](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Testimony  
**Date:** Wednesday, April 24, 2024 11:41:27 AM

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To: The Board of Land and Natural Resources  
Re: Leases within the Wailua Kai area  
From: Gail Spicuzza

I, Gail Spicuzza, respectfully submit my request that I Ola Wailuanui be granted annual leases on 3 Revocable Permit (RP0f parcels located within the Wailua Kai area  
TMK 4-1-003: 044, 4-1-003: 017, 4-1-005: 017 to support agenda D-1 in favor of option B3 without being subject to access easement by RP21, as well as expressing support for C4.

Sent from my iPad

**From:** [Michael L Smith](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] I Ola Wailuanui  
**Date:** Wednesday, April 24, 2024 9:24:10 AM

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As a resident of Wailua Houselots I strongly support I Ola Wailuanui leasing the three parcels at issue. These parcels are integral to the safety, the convenience and the access to our seashores by local residents and have been for decades. I Ola Wailuanui, with its mission for community welfare, would provide a much needed support for protecting against commercial exploitation of those parcels such as billboards, fencing, shrubbery etc as is so often done. As an example there is an “ocean access” nearby that has been significantly blocked by tree growth from neighboring properties over the years limiting such access.

Mahalo nui loa,

Michael L Smith  
389 Laaukea Place  
Kapaa, HI., 96746

Sent from my iPad

**From:** [JENN MASON](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 4:14:23 AM

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My name is Jenn Mason, and I am testifying on agenda item D1 and in support of the restoration of Coco Palms.

After 30 years the hotel is finally being restored after years of failure by prior owners. Just last month, the new owners began removing dilapidated and dangerous structures. This is the first meaningful progress on restoration for more than three decades.

I strongly urge the board to:

- Approve Option B4 to allow a public auction for the lease of "Parcel B."
- Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms

These actions would be in the best interest of the State since it would:

- Provide a fair process for competitive bidding on a lease of Parcel B.
- Provide non-exclusive uses at Parcel C so both parties can utilize the property.

Thank you for your consideration,

Jenn Mason

**From:** [judith\\_matola](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Wailua Kai revocable permits D1  
**Date:** Wednesday, April 24, 2024 1:59:12 PM

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I'm writing to you in regard to the hearing about the annual leases of three revocable permits located within the Wailua area. I've given testimony many times against building the new Coco Palms resort. Once again, there's proof that there shouldn't be a resort built in that area just look at the flooding that happened two weeks ago. It's not feasible, it's irresponsible. The community at large does not want this hotel to be built. Please please consider the Ohana of Kauai. Listen to them respect them. Please don't sell out to this huge company, the robbing us of our culture of our land and our future. Mahalo Judi Matola.

Sent from my iPhone

**From:** [Colin McCubbin](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Cc:** [I Ola Wailuanui Org](#)  
**Subject:** [EXTERNAL] Agenda item D-1. Board of Land and Natural Resources meeting, Friday, April 26, 2024.  
**Date:** Wednesday, April 24, 2024 1:32:32 PM

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Re: Board of Land and Natural Resources meeting, Friday, April 26, 2024.

Agenda item D-1.

Aloha mai kākou,

I understand that I Ola Wailuanui has submitted applications requesting to be granted annual leases of three Revocable Permit (RP) parcels located within the Wailua Kai area. The Tax Map Key (TMK) numbers are 4-1-003:044, 4-1-003:017, 4-1-005:017.

In respect of Agenda item D-1. I am in favour of option B3, without being subject to access easement by RP21, and support option C4.

It is my firm belief that these lands should be made available to I Ola Wailuanui to maintain and respect, and that they should NOT be subject to access easement(s) in favor of RP21 Coco Palms, LLC.

With best wishes, a me ka 'ha'aha'a,

Colin McCubbin.



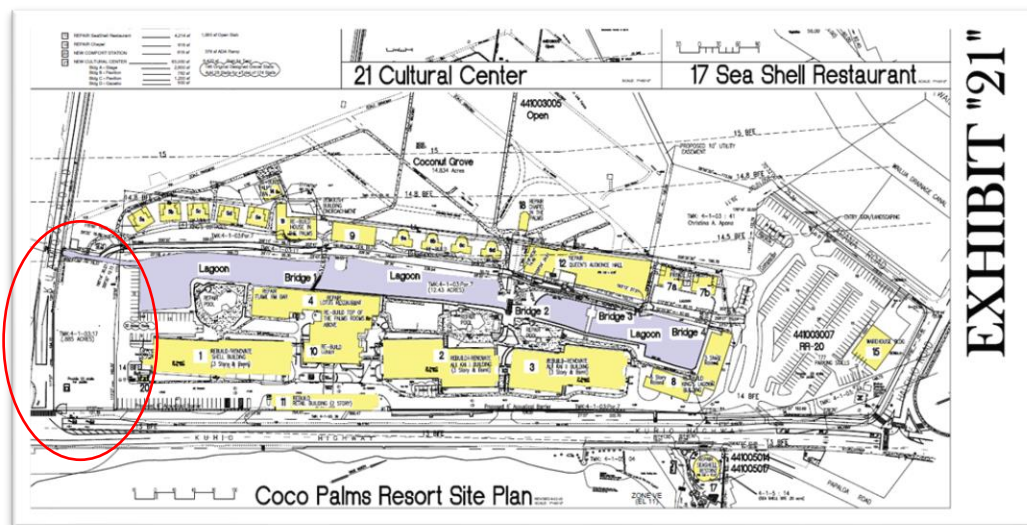


With regard to Option B3, I recommend not approving a new “Subject Access Easement” through Parcel B (TMK 4-4-1-3-17). That new easement, if 25 feet wide and following the path in the staff submittal, would consist of about 4,495 square feet, which amounts to 12% of Parcel B.

Below is Exhibit 6 in the staff submittal for item D-1-1 by Alison Neustein dated April 26, 2024. The site plan is **dated 2014** in lower right corner.




A more recent site plan was presented as “Exhibit 21” in Kauai County’s Planning Commission meeting of March 12, 2024. This site plan below was revised on **9/22/23** and it does not include a parking lot in Parcel B (circled in red).



At the March 2024 meeting of the Planning Commission, a letter was presented as an exhibit, wherein Ka'āina Hull (Director of Planning) concurred that **parking does not need to be provided in parcel 17 (i.e., 4-4-1-3-17 or Parcel B)**. Below is a screenshot of said Exhibit 15. Available [online](#) as image 1340 of 1548.

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



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

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October 6, 2023

CADES SCHUTTE  
c/o Mauna Kea Trask, Esq., Agent  
Contact email: [mtrask@ca-des.com](mailto:mtrask@ca-des.com)

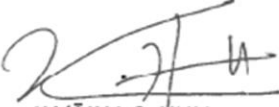
**Subject: Department Determination DD-2024-7**  
Coco Palms Resort  
Tax Map Key: (4) 4-1-003:004, 005, 007, 017; 4-1-005:014, 017  
Wailua, Kaua'i

The department has reviewed your request for a determination regarding the subject parcel, as reflected in your correspondence dated September 20, 2022. Please note the following:

- CLARIFICATION OF PLANNING COMMISSION PERMIT CONDITIONS – In reviewing the summary and analysis represented in your correspondence dated October 3, 2023, the department concurs with your findings that Condition Nos. 18 & 19 does not require the Applicant to provide parking on Parcels 5 and 17. Further, the parking analysis provided identified a total of 399 parking stalls would be needed to facilitate the project.

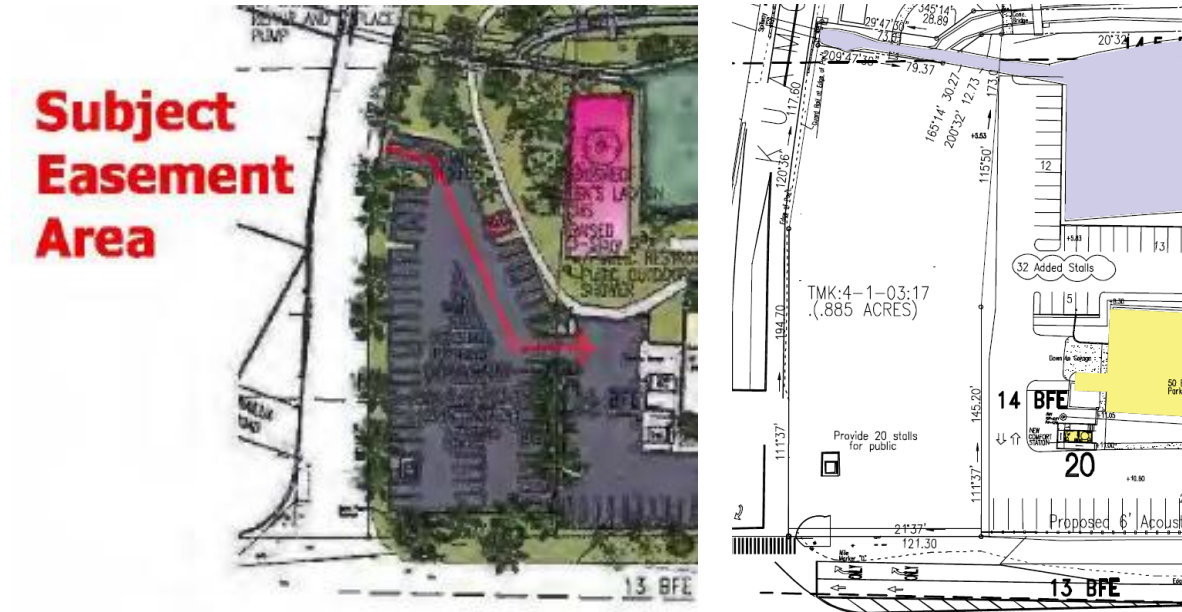
The department has reviewed the revised parking layout that was attached as Exhibit 'H' in your transmittal and finds it acceptable since it well exceeds the required number of parking spaces for the project. As shown in the revised parking layout, there are a total of 560 stalls. Additionally, the revised parking layout does not warrant further review by the Planning Commission.

Should you have further questions regarding this matter, please contact staff Planner Dale A. Cua at 808.241.4050. Aloha!

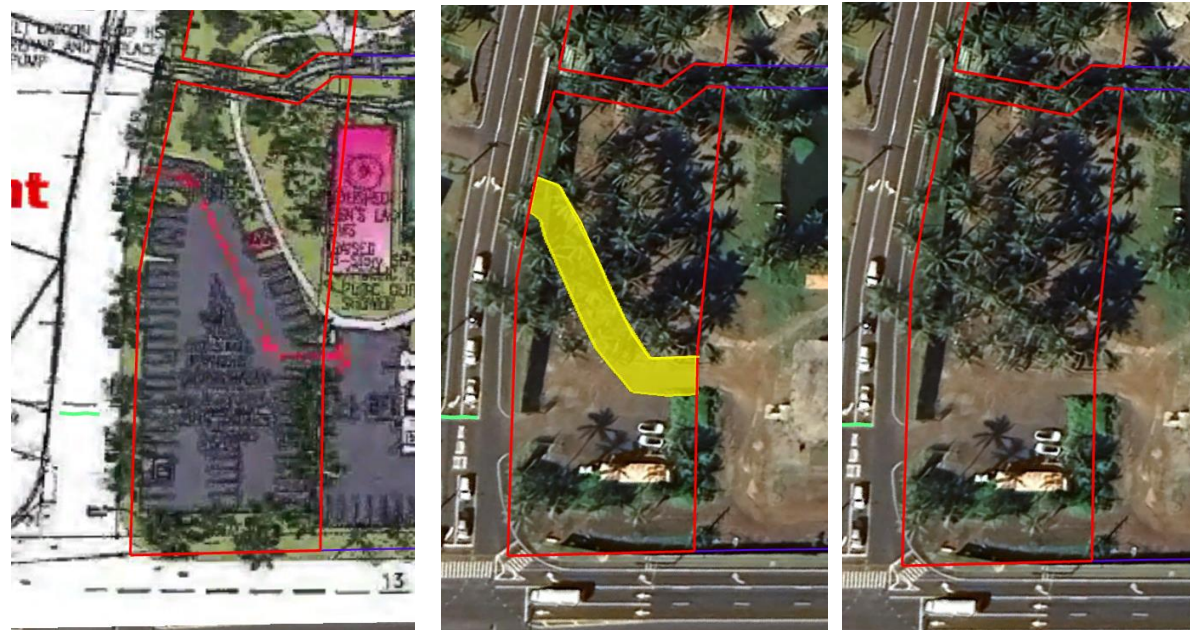


KA'ĀINA S. HULL  
Director of Planning

Below is a close up of Parcel B (TMK 4-1-03:17) on the old 2014 site plan (left) vs the new 2023 site plan (right).



As you can see below in the left picture, the proposed “subject easement area” through the parking lot divides the parcel (Parcel B). In the middle picture, I drew the yellow polygon to show the extent of a 25 ft access easement. **At about 4,495 sq ft, the “subject access easement” would take up about 12% of the parcel and run through a stand of Coconut trees (Google Earth imagery 11/2/23).** (The green line shows that 25 feet is the width of two lanes of traffic.)



For reference, I sketched a white polygon showing the approximate location of the “perpetual access easement” known as LOD 12,850 which consists of 3,033 sq ft. **If the BLNR also approves the assignment of LOD 12,850 to RP21, then the two easements over Parcel B would constitute 20% of the area.** (Parcel B is 37,244 sq ft).



I have not read LOD 12,850 because I could not find it online at the Bureau of Conveyances. **I urge the BLNR to read LOD 12,850 before approving it since it is rather old.** (The BLNR submittal of May 25, 2018, says the annual rent was a one-time payment of \$518.33 paid in January 1955, i.e., pre-statehood). **The BLNR may want to consider limiting access to pedestrian and emergency vehicle access only at this point.**

Kind regards,

Theresa Menard

Kapa'a, Kauai

**From:** [Mike Pedersen](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 5:19:41 AM

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To Whom it May Concern,

My name is Mike Pedersen and I am writing to voice my support of item D! and the restoration of Coco Palms.

It is exciting to see that after 30 years and many previous failures, the hotel is finally being restored. The new owners have already begun removing old and dangerous structures. This is the first meaningful progress on the restoration in more than three decades. I am excited to see the continual progress and the redevelopment of this area.

I urge the board to approve option B4 to allow a public auction for the lease of Parcel B. Also, to approve option C2 for a non-exclusive easement on Parcel C to RP21, the owners of Coco Palms.

Allowing these actions would be in the best interest of the State and community since it would provide a fair process for competitive bidding on a lease of Parcel B and provide non-exclusive uses at Parcel C so both parties can utilize the property.

Mahalo

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Mike Pedersen

**From:** [bpenn@hawaii.rr.com](mailto:bpenn@hawaii.rr.com)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item D-1  
**Date:** Wednesday, April 24, 2024 2:18:33 PM

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Aloha Board members,

I would like your support on Option B3 and C4 on Agenda Item D-1. I feel that as a resident of Wailua I agree with the non profit group I Ola Wailuanui and their vision of what is the pono usage of these sacred lands.

Mahalo,

Barbara Penn  
644 Kamalu Road  
Kapaa, HI 96746

**From:** [Christine Porter](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Support of Coco Palms: Agenda item D1  
**Date:** Wednesday, April 24, 2024 6:59:28 AM

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My name is Christine Porter, and I am writing to you about agenda item D1, in support of the restoration of Coco Palms.

This property has been an absolute eyesore! I am so pleased that after 30 years, the hotel is finally being restored. This is after years of failure by prior owners.

These developers have already begun removing the dilapidated and dangerous structures. They are expending a great deal of money that benefits every single resident and visitor to our lovely island. This is the first meaningful progress on restoration for more than three decades!!! It is very important that we create a viable path for them to be successful in the restoration of this property. As I've done my research, I *strongly* urge the board to:

*Approve Option B4. This will allow a public auction for the lease of "Parcel B".*  
*Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms.*

These actions would benefit both the owners of the property AND the State since it would allow Parcel to to be utilized by both of them, and it would create a fair process for competitive bidding on a lease of Parcel B. The WORST thing we could do is create a situation where it's not viable for the current owners, and the property is again left as a blight in this beautiful community.

Thank you.

--

Christine Porter

**From:** [Jenifer Prince](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda ITEM D-1  
**Date:** Wednesday, April 24, 2024 9:52:04 AM

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Aloha,  
I am submitting testimony for..

**agenda item D-1 in favor of option B3, without being subject to access easement by RP21, as well as expressing support for option C4.**

**Mahalo!**

Sent from my iPad



**From:** [Alex Remy](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 5:21:26 AM

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To whom it may concern,

My name is Alex Remy and I am reaching out to testify on agenda item D1 to express my support of the restoration of Coco Palms.

I believe that the current owners of the property are beginning to make incredible progress and the hotel is finally being restored after 30 years of failure in the past. As recently as last month, many of the dangerous and run down buildings are in the process of removal which will create a much safer and more attractive site.

In summary, I strongly encourage the board to approve Option B4 to allow a public auction for the lease of Parcel B. This would allow for a fair process and competitive bids on the property. Thus, the state could see the most benefit possible and all interested parties have a chance to bid on the lease. In addition, I encourage the board to Approve option C2 for a non-exclusive easement on Parcel C to RP21, who currently owns Coco Palms. This option would allow both parties to utilize the property.

I look forward to your decision and hope you will take my comments into consideration.

Thank you,

**From:** [Sadie Taylor](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Support Coco Palms Agenda Item D1  
**Date:** Wednesday, April 24, 2024 2:55:57 AM

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Hi there!

Hope you're having a great day! I wanted to reach out quickly about agenda item D1, the Coco Palms restoration. It's kind of a big deal, and I'd love your support on it!

I'm Sadie, and I'm really passionate about seeing Coco Palms get back to its former glory. It's about time something happened!

But here's the exciting part – the new owners are finally taking action! Just last month, they started tearing down all the old, rundown stuff. It's such a relief to see progress finally happening!

So, here's what I'm hoping for:

1.  
Let's get behind Option B4 so we can have a public auction for leasing "Parcel B." It seems like the fairest way to handle things.
2.  
And then there's Option C2, which would give RP21 a non-exclusive easement on "Parcel C."

It's not just about fixing up Coco Palms; it's about doing it in a way that benefits everyone. These choices would give everyone a fair chance.

Thanks a bunch for considering! Your support would mean a lot.

Take care!

Sadie

**From:** [sadie sarkissian](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] I Ola Wailuanui  
**Date:** Wednesday, April 24, 2024 3:15:54 PM

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To BLNR and All Concerned,

My name is Sadie Mileka Eckart and I reside in Kailua, Hi. I am submitting written testimony on agenda item D-1 in favor of Option B3. I have Ohana and friends there that will be greatly affected, so I am concerned. This should be without being subject to access easement by RP21! And lastly, expressing my sincere and huge support for Option C4.

Sincerely,  
Sadie M. Eckart

[Yahoo Mail: Search, Organize, Conquer](#)

**From:** [Ben Schramm](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 4:30:12 AM

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Aloha, I wanted to just take a minute and express my thoughts on the restoration of the Coco Palms hotel which I believe is agenda item D1. This property needs to be reinvigorated and cleaned up which the new owners seem to be intent on doing. Although there are some loud people complaining as there always will be, I think that if done right this project could be the best thing to happen on the island in a while. As I understand it, the developers would like and I ask the board to 1, Approve Option B4 to allow a public auction for the lease of "Parcel B" and 2, approve Option C2 for a non-exclusive easement on "Parcel C" to RP21 for the owners of Coco Palms. This would allow the work to continue and progress to be made instead of the endless neglect and rot that has been happening here for 30 years.

Thanks,

Ben Schramm

**From:** [Emily Shepperd](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 9:34:25 AM

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My name is Emily and I am testifying on agenda item D1 and in support of the restoration of Coco Palms. I am excited to see this site restored after all this time and have enjoyed seeing the new owners begin removing dilapidated and dangerous structures. I strongly urge the board to approve notion B\$ and C2 to provide a fair process for competitive bidding on a lease of Parcel B and provide non-exclusive uses at Parcel C so both parties can utilize the property.

Best,

Emily Shipp

**From:** [Carol Ann Shields](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 8:41:10 AM

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My name is Carol Ann Shields, and I am testifying on agenda item D1 and in support of the restoration of Coco Palms.

After 30 years, the hotel is finally being restored after years of failure by prior owners. Just last month, the new owners began removing dilapidated and dangerous structures. This is the first meaningful progress on restoration for more than three decades.

I strongly urge the board to:

- Approve Option B4 to allow a public auction for the lease of “Parcel B”.
- Approve Option C2 for a non-exclusive easement on “Parcel C” to RP21, the owners of Coco Palms.

These actions would be in the best interest of the State since it would:

- Provide a fair process for competitive bidding on a lease of Parcel B.
- Provide non-exclusive uses at Parcel C so both parties can utilize the property.

Thank you.

Carol Ann Shields

**From:** [Shannan Smith](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Meeting on 4/26  
**Date:** Wednesday, April 24, 2024 8:46:09 AM

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I'd like to submit testimony on item D1. I am in favor of option B3, without being subject to access easement by RP21. I am also supporting C4!

Thanks!  
Shannan Smith

**From:** [Jory Taylor](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Urgent Support for Agenda Item D1: Restoration of Coco Palms  
**Date:** Wednesday, April 24, 2024 2:37:14 AM

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To Whom It May Concern:

I hope this email finds you well. I am writing to express my strong support for agenda item D1 regarding the restoration of Coco Palms. I urge your consideration of the following points:

My name is Jory,, and I am testifying on agenda item D1 in support of the restoration of Coco Palms.

After three decades of neglect, the restoration of Coco Palms represents a pivotal moment in our collective history. The recent efforts by the new owners to remove dilapidated and hazardous structures mark the first significant progress in over 30 years.

It is crucial that the board takes decisive action to support the restoration efforts. Therefore, I strongly urge the board to:

1. Approve Option B4 to enable a public auction for the lease of "Parcel B".
2. Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms.

These actions are not only essential for the revitalization of Coco Palms but also serve the best interests of the State. They provide a fair and transparent process for competitive bidding on Parcel B's lease and ensure non-exclusive uses at Parcel C, facilitating the mutual utilization of the property.

Your support in approving these options would signify a commitment to the community's heritage and economic growth. Thank you for your time and attention to this matter.

Warm regards,

Jory



**From:** [Jeremiah Thee](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda item D1 Support of Coco Palms  
**Date:** Wednesday, April 24, 2024 5:13:39 AM

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My name is Jeremiah Thee, and I am testifying on agenda item D1 and in support of the restoration of Coco Palms. After 30 years, the hotel is finally being restored after years of failure by prior owners. Just last month, the new owners began removing dilapidated and dangerous structures. This is the first meaningful progress on restoration for more than three decades.

I strongly urge the board to approve Option B4 to allow a public auction for the lease of "Parcel B".

Mahalo,

**From:** [teresa tico](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] BLNR Agenda Item D-1 for 4/26/2024 meeting, In Support of IOW  
**Date:** Tuesday, April 23, 2024 9:11:32 PM  
**Attachments:** [USA v Enloe Amended Judgment.pdf](#)  
[Coco Palms Teixeira Letter re NPDES permit.docx](#)

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Aloha Chair and Board Members,

I am writing in regard to Item D-1 (4/26/2024 meeting) and in **full support of the award of the three Revocable Permit (RP) parcels (TM 4-1-003:044; 4-1-003:-17; and 4-1-005:017) to applicant I Ola Wailuanui ("IOW")**, a Hawaii non profit organization whose mission is to preserve, protect, and restore Wailuanui on the Island of Kauai. I am **opposed to the award of the RPs to the developer (RP21 Coco Palms)** of three adjacent fee simple parcels.

As an attorney, I have been advising IOW on legal issues for the past three years, on a pro bono basis. I am a 48 year resident of Kauai and have been in private legal practice on Kauai since 1977. I was present at a Kauai County Council hearing when RP21's attorney represented to the Council that **RP21 does not need** the RPs to develop their resort as the resort is exclusively on their fee simple parcels. If they do not need the parcels, then why would you award the RPs to a profit-motivated, private entity from Utah and not a Kauai based non profit organization whose concern is to preserve, protect and restore Wailuanui?

There are too many reasons to **not award** the RPs to RP21. This developer has not displayed good faith to our community. They cut down dozens of healthy and mature coconut trees on State land without State knowledge or consent. They commenced demolition in a designated wetland without a NPDES permit, for which they were fined by DOH (see attached Teixeira letter). They failed to report **iwi** that were unearthed during their grading activities. Further, their representative before the Kauai County Planning Commission is a convicted felon who engaged in a conspiracy to commit mail, wire, and bank fraud. I personally spoke with the Deputy Attorney General who prosecuted the case and who sent me the attached Judgment.

Personally, I cannot fathom why RP21 wants to develop a wetland that historically floods, that will place their hotel guests in harm's way every time we have a flooding event (which is becoming more frequent as we've seen in the last decade). How will they evacuate 1,000 guests and employees when our roads are already compromised by sea level rise and erosion? They must have their heads in the sand (what sand is left).

The officers and directors of IOW are native Hawaiian with generational ties to Wailuanui. They were here for generations before RP21 and they will be here for generations after RP21 leaves the island and goes back to Utah. IOW has the wisdom and resources to care for Wailuanui. There is no other option as we move into the future. Award them the RPs.

Aloha,

Teresa Tico, Attorney  
PO Box 220  
Hanalei, HI 9674  
(808) 639-9080

**Teixeira, Bobbie** <[Bobbie.Teixeira@doh.hawaii.gov](mailto:Bobbie.Teixeira@doh.hawaii.gov)>

Fri, Apr 19, 7:36 AM (4 days ago)

to Reef, Darryl, me, iolaloudon@gmail.com, fern@hapahi.org

Aloha Ms. Tico ,

Thank you for your follow up email concerning the Coco Palms Resort (Site). The DOH-CWB conducted an inspection of the Site on November 27, 2023 which resulted in a Field Citation for conducting construction activities without an NPDES permit. The Field Citation assessed a monetary penalty and required them to apply for a NPDES Notice of General Permit Coverage (NGPC) to authorize the discharge of storm water associated with construction activities.

The owners accepted and fulfilled all requirements outlined in the Field Citation and the Field Citation was closed on February 6, 2024. NPDES NGPC file number HIR10H353 was issued to Layton Construction (the operator) on behalf of the owners, RP21 Coco Palms, on January 17, 2024. HIR10H353 was renewed on March 8, 2024 and expires on January 28, 2029.

A construction storm water inspection was conducted earlier this week on the morning of April 16, 2024 to verify the Permittee's compliance with the issued NGPC. A DOH contractor, Mr. Andrew Rimelman, along with Ms. Randee Tubal of the CWB and Mr. Peter Reich of the EPA accompanied the state contractor on the inspection. The report from this recent inspection is currently being drafted.

Please feel free to contact us should you have further questions regarding this Site.

**Bobbie Teixeira**

Environmental Management Division/Clean Water Branch/Enforcement Section Supervisor  
Hawai'i State Department of Health | Ka 'Oihana Olakino  
2827 Waimano Home Rd # 225 Pearl City, HI 96782

**Office:** (808) 586-4309

[bobbie.teixeira@doh.hawaii.gov](mailto:bobbie.teixeira@doh.hawaii.gov)

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

UNITED STATES OF AMERICA

v.

PARKER ENLOE

) Amended  
) **JUDGMENT IN A CRIMINAL CASE**

) Case Number: 2:10-CR-0319-JCM-PAL

) USM Number: 45173-048

) ROBERT DRASKOVICH

) Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) ONE [1] OF THE INFORMATION

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title &amp; Section</u> ?	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §1349, 1341, 1343, 1344	Conspiracy to Commit Mail, Wire and Bank Fraud	4/30/2009	1

See additional count(s) on page 2

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

Count(s) \_\_\_\_\_  is  are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

JANUARY 18, 2013

Date of Imposition of Judgment

*James C. Mahan*  
Signature of Judge

JAMES C. MAHAN, U.S. DISTRICT JUDGE

Name of Judge

Title of Judge

April 30, 2013

Date

DEFENDANT: PARKER ENLOE  
CASE NUMBER: 2:10-CR-0319-JCM-PAL

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

(1) MONTH

The court makes the following recommendations to the Bureau of Prisons:

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 12:00 pm on 7/8/2013

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

a \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: PARKER ENLOE  
CASE NUMBER: 2:10-CR-0319-JCM-PAL

Judgment Page: 3 of 7

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
(5) years

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually. Revocation is mandatory for refusal to comply.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: PARKER ENLOE  
CASE NUMBER: 2:10-CR-0319-JCM-PAL

Judgment Page: 4 of 7

### **SPECIAL CONDITIONS OF SUPERVISION**

1. Possession of Weapons - You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
2. Warrantless Search - You shall submit your person, property, residence, place of business and vehicle under your control to a search conducted by the United States Probation Officer or any authorized person under the immediate and personal supervision of the probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision; failure to submit to a search may be grounds for revocation; the defendant shall inform any other occupant that the premises may be subject to a search pursuant to this condition.
3. Home Confinement with Location Monitoring - You shall be confined to home confinement with location monitoring, if available, for a period of 5 months. You shall pay 100% of the costs of electronic monitoring services.
4. Debt Obligations - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
5. Access to Financial Information - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
6. Employment Restriction - You shall be restricted from engaging in employment, consulting, or any association with any marketing, real estate, or finance business only with the approval of the probation officer for a period of 5 years.
7. Financial Polygraph/Truth Verification Testing - You shall submit to polygraph/truth verification testing as directed by the probation officer to insure compliance with your financial condition.
8. Report to Probation Officer After Release From Custody - You shall report in person, to the probation office in the district in which you are released within 72 hours of discharge from custody.

Note: A written statement of the conditions of release was provided to the Defendant by the Probation Officer in open court at the time of sentencing.

DEFENDANT: PARKER ENLOE  
 CASE NUMBER: 2:10-CR-0319-JCM-PAL

Judgment Page: 5 of 7

**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$ 0.00	\$ 839,047.01

The determination of restitution is deferred until \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Federal Home Loan Mortgage Attn: Hyacinth Kucik 8200 Jones Branch Drive McLean, Virginia 22102	\$183,760.00	\$183,760.00	
Fannie Mae Attn: Accounting 14221 Dallas Parkway, Suite 100 Dallas, Texas 75254	\$191,935.46	\$191,935.46	
Citimortgage, Inc. Department 0010 5280 Corporate Drive. Frederick, MD 21702	\$463,351.55	\$463,351.55	
<b>TOTALS</b>			

**TOTALS**

Restitution amount ordered pursuant to plea agreement \$ 839,047.01

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

The court determined that the defendant does not have the ability to pay interest and it is ordered that:

the interest requirement is waived for the  fine  restitution.

the interest requirement for the  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.



DEFENDANT: PARKER ENLOE  
CASE NUMBER: 2:10-CR-0319-JCM-PAL

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A  Lump sum payment of \$ 100.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined with  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F  Special instructions regarding the payment of criminal monetary penalties: \_\_\_\_\_  
\_\_\_\_\_ subject to an \_\_\_\_\_  
\_\_\_\_\_ officer based upon your ability to pay.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

Angela Ockunzzi -2:10-cr-0272-LDG-GWF; Todd Emond - 2:10-cr-0320-KJD-PAL; Shari Wong-Culotta -2:10-cr-0300-JCM-PAL. Parker Enloe - 2:10-cr-0319-JCM-PAL. Total amount: \$839,047.01

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:  
"ORDER OF FORFEITURE ATTACHED"

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



**From:** [Maria Walker](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Concerning agenda item D-1  
**Date:** Wednesday, April 24, 2024 11:18:10 AM

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Aloha BLNR members,

I am writing to you concerning agenda item D-1. I am strongly in support of option B-3, without being subject to an RP-21 access easement; I also strongly support option C-4. Allowing the RP-21 easement could result in eventual hotel operations, and I firmly believe that the best use of the entire Coco Palms property, with the greatest benefit to both the resident community and to visitors, is to give I Ola Wailuanui the opportunity to steward these parcels and make them available to Kaua'i for cultural and educational purposes, while improving the health and protection of the land and shoreline at Wailua.

Granting these proposals will be a way for BLNR to acknowledge and pay respect to these parcels' cultural importance, their sensitive environment, and profound historical impact. I trust I Ola Wailuanui to protect iwi kupuna at these sites, to malama the land that has been so impacted by past development, and to help both visitors and locals to understand the deep history of the place while preserving shoreline access and planting native vegetation to stave off the erosion and the negative environmental impacts of previous development.

Please support these options so that we can move toward creating a cultural and historical asset to our community at the former Coco Palms; a hotel/resort is, for so many reasons (including sea level rise, over development, traffic, destruction of burial sites, and erasure of cultural and historical significance), the worst possible choice for Wailua and all the residents of the east side, as well as the many visitors we host here every day.

Mahalo for hearing my testimony,  
Maria Walker  
1728 Hulu Rd.  
Kapa'a, HI 96746

**From:** [Luann Warren](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Support of Restoration of Coco Palms  
**Date:** Wednesday, April 24, 2024 9:40:35 AM

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My name is LuAnn Warren, and I am writing to you about agenda item D1, in support of the restoration of Coco Palms.

My husband and I have been living part-time in Kauai for the past 20 years. Part of that time we were in Kapaa. We drove by Coco Palms almost daily. It is heartbreaking to drive by the beautiful Wailua River and see the blight of the Coco Palms Resort, it truly takes away from the Aloha spirit of this island. I am so pleased that after 30 years, the hotel is finally being restored. It was awesome to see something happening after years of failure by prior owners.

These developers have already begun removing the dilapidated and dangerous structures. I am sure they are expending a great deal of money that benefits every single resident and visitor to our lovely island. This is the first meaningful progress on restoration for more than three decades!!! It is very important that we create a viable path for them to be successful in the restoration of this property. I *strongly* urge the board to:

*Approve Option B4. This will allow a public auction for the lease of "Parcel B".  
Approve Option C2 for a non-exclusive easement on "Parcel C" to RP21, the owners of Coco Palms.*

These actions would benefit both the owners of the property and the State since it would allow Parcel to to be utilized by both of them, and it would create a fair process for competitive bidding on a lease of Parcel B. The WORST thing we could do is create a situation where it's not viable for the current owners, and the property is again left as a blight in this beautiful community.

Sincerely,  
LuAn Warren

**From:** [Cabot Woolley](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Coco Palms restoration  
**Date:** Wednesday, April 24, 2024 8:28:55 AM

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To whom it may concern:

My name is Frank Woolley. I am writing to you regarding agenda item D1 in support of the restoration of Coco Palms.

I am thrilled that the hotel is finally being restored. It's been such an eyesore and I think it will be great for the local economy. Finally! After more than 30 years!

I strongly urge the board to approve Option B4 to allow a public auction for the lease of Parcel B; and also to approve Option C2 for a non-exclusive easement on Parcel C to RP21 (the owners).

In my opinion this is in everyone's best interest to provide a fair process for competitive bidding on a lease of Parcel B and have non-exclusive uses at Parcel C so both parties can use the property.

Thank you for your consideration.

Mahalo,  
Frank Woolley

**From:** [Robin Yost](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item D-1  
**Date:** Wednesday, April 24, 2024 11:08:30 AM

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Dear BLNR,

I am writing in regards to Agenda Item D-1, in favor of Option B3.

Please grant the annual leases of three Revocable Permit parcels located in the Wailua Kai area, to I Ola Wailuanui.

It is imperative that I Ola Wailuanui be granted these RPs , to steward the land.

A hotel on these lands will be another catastrophe for Kauai.

Do what's Pono for Kauai, and seven generations to come.  
Thank you for granting the RP leases to I Ola Wailuanui.

Mahalo nui,  
Robin Yost  
Wailua, Hawaii

**From:** [Magenta Zelkovsky](#)  
**To:** [DLNR.BLNR.Testimony](#)  
**Subject:** [EXTERNAL] Agenda Item D-1 BLNR HEARING ON APRIL 26, 2024  
**Date:** Wednesday, April 24, 2024 9:10:33 AM

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Aloha,

I support I Ola Wailuanui,  
agenda item D-1 in favor of option B3, without being subject to access easement by RP21, as well as expressing support for option C4.  
Magenta Zelkovsky