

William H. Strong
2676 Kauapea Road
Kilauea, Hawai'i 96754

December 23, 2010

Mr. Ian Costa
Director - Planning Department
County of Kauai
444 Rice Street, Suite 473
Lihue, Hawai'i 96766

Dear Mr. Costa:

I am part of a group of citizens in Kilauea that wants to let the County know of our concerns about the improved trail (the "Trail") that has been constructed and improved, without a permit, on sensitive conservation land. The Trail has been constructed across and through a 23-acre parcel of property that is identified on the Kauai tax maps as TMK No. (4) 5-2-5:36 (the "Property"), all of which we understand lies within the Special Management Area (the "SMA"). According to public records, the Property is owned by Secret Beach Properties LLC, a Delaware limited liability company, of which Justin and Michele Hughes are the sole members. (Those same public records indicate that the Hughes have homes at 2884-A and 2908-B Kauapea Road in Kilauea, as well as an address at 6 Rolling Hills Road, Tiburon, California 94920.)

The Property consists primarily of sensitive bluff land overlooking Secret Beach, one of the State's most beautiful beaches. The Trail, in part, runs parallel to the ocean, about 1/3 of the way down from the vertical top (mauka portion) of the Property and traverses almost the entire length of the Property. The Trail also proceeds vertically up and down certain portions of the Property.

Despite attempts by me and others to encourage the Hughes to remove the Trail, they have refused to do so. In fact, Secret Beach Properties is now seeking an after-the-fact conservation district use permit for the Trail from the State of Hawaii Board of Land and Natural Resources (the "BLNR"). (In addition to being within the SMA, the Trail is within the "limited" subzone of the State's Conservation Land Use District.) As a result of the Trail, the BLNR, at its March 11, 2010 Land Board meeting, fined Secret Beach Properties \$9,000 for unauthorized uses on private property in the Conservation District.

We understand that your office is actively investigating possible violations of laws and regulations resulting from the Trail and fences on the Trail. We certainly support and appreciate the County's efforts to cure such violations on the Property caused by the Trail or otherwise and to penalize any wrongdoing by the owners of the Property.

Violations of the Law

Pursuant to Hawaii Revised Statutes ("HRS") Section 205A-28, a permit should have been obtained prior to constructing or improving the Trail on the Property.¹ We have found no evidence that any such permit was obtained. HRS Section 205A-32(a)(1) authorizes a civil fine of up to \$100,000 for a violation of Section 205A-28 and Section 205A-32(b) authorizes a civil fine of up to \$10,000 per day for each day in which a violation persists. Although such fines may be warranted, we are hopeful that the County will also seek the penalty authorized under Section 205A-32(a)(2), which would make Secret Beach Properties liable for the cost of returning the land to the condition existing before the violation (i.e., before the Trail and fences were installed on the Property).

Not requiring full remediation of the land (i.e., removal of the Trail and all of its components and putting the land back to the state it was before the Trail was constructed) would set a very bad precedent. As you know, the owners of the Property are sophisticated, experienced real estate developers, for whom obtaining permits and paying fines are just part of the cost of doing business. To allow the Trail to remain would tell the public that a landowner can knowingly violate the Special Management Area laws and permitting requirements, pay a fine, and then just apply for and obtain a permit for the illegal acts they had already performed.

Photographs

To provide your office with some photographic evidence of the destruction that has been caused by the Trail and to help show that laws relating to the use of land within the SMA may have been violated, we'd like to share the following photographs with you:

1. To give you some perspective, Photo #1 was taken from Secret Beach, looking mauka. A portion of the Trail can be seen right in the middle of the photograph where the green cover meets the brown earth. Photo #2 was taken from the Trail, looking makai onto Secret Beach.
2. Photo #3, Photo #4 and Photo #5 show the result of clearing of plant cover on portions of the Trail.
3. Photo #6, Photo #7 and Photo #8 show the removal or significant cutting of live (non-diseased) trees on or near the Trail, none of which appear to pose a hazard to public safety.
4. Perhaps the most telling photos are the ones showing the improvements that were made to construct the Trail. Photo #9, Photo #10, Photo #11 and Photo #12 show portions of the Trail as being comprised of wooden steps and barriers, steel rebar

¹ Section 205A-28 of the Coastal Zone Management Act states that "No development shall be allowed in any county within the special management area without obtaining a permit in accordance with this part."

reinforcements, PVC drainage piping, and stakes and wire boundary fencing. These photos also show the extent to which the surrounding vegetation was cut, cleared and trampled, and the topography was altered, to accommodate the construction of the Trail.

It appears to us that the unpermitted development of the Trail and clearing of vegetation in the vicinity of the Trail has meaningfully damaged important and sensitive land in the SMA that is contiguous with one of the State's most beautiful beaches.

Trail Built to Enhance Property Values

Although in BLNR meetings it has been represented by or on behalf of the Hughes that the Trail was constructed for maintenance purposes, it is clear in our judgment that the Trail was constructed and improved to enhance the financial value of the Property and other properties in the vicinity that are owned by the Hughes or by Hughes-controlled entities.² Based on personal observations and on information obtained over the internet, it is our understanding that the Trail has been used, and continues to be used, to provide tours to prospective purchasers of the Property and as an amenity to the Hughes' other properties. For example, on December 21, 2010, the website for The Michele Hughes Company (www.secretbeachkauai.com) included the following passage:

The Secret Beach Hideaway is one of the most stunning properties on Kauai. Every tree and flower on the lushly landscaped and very steep terrain has been planted by the owners, Michele and Justin Hughes, who carefully developed a master plan that makes every effort to respect the rural heritage of Kauai.

For years the sugar industry dominated the economy of Kauai and much of the land was planted with sugar cane. Since the 1990's the sugar industry has all but disappeared and the island has struggled to replace sugar with alternative agricultural products. Coffee, trees and flowers, organic fruit and vegetables, taro, tea and hardwoods are some of the new crops.

The 50 acres of land owned by Michele and Justin Hughes is zoned agricultural but most of it is unsuitable for farming because of its location on the rocky bluff above Secret Beach and Anini Beach. Despite the adversarial conditions, they have made, at considerable expense, a concerted effort to irrigate, add steps and trails for access, and plant the hillsides and whatever small flat areas available.

² According to public records, other properties owned by the Hughes or by Hughes-controlled entities include: (a) Apartment A of the Secret Cove condominium project, located at 2878 Kauapea Road (TMK No. (4) 5-2-5:31 CPR 001), is owned by SBH, The Villas, LLC ("SBH"). (The sole members of SBH are Justin and Michele Hughes.); (b) the property located at 2884-A Kauapea Road (TMK No. (4) 5-2-5:32) is owned by the Michele and Justin Hughes Trust; and (c) the property located at 2908-B Kauapea Road (TMK No. (4) 5-2-5:33) is owned by the Michele and Justin Hughes Trust.

* * *

Secret Beach Hideaway luxury homes and cottages provide private access to remote beaches of golden sands, where spinner dolphins and whales can be seen frolicking just off the shore.

Also, attached as page 2 to Exhibit 6 to the March 11, 2010 report submitted to the BLNR by the Office of Conservation and Coastal Lands ("OCCL") is a printout of an MLS listing dated August 5, 2009 that lists SBH's property at 2878 Kauapea Road for sale for \$8,700,000 (see item (a) of footnote 2 above). The listing includes the following quote: "Along with the purchase of this property is a coveted beach access on a private manicured trail leading to world renowned Secret Beach." (See Exhibit 1 to this letter).

In further support of my belief that construction of the Trail was not for maintenance purposes, but rather to enhance the financial value of the Property and other Hughes' properties in preparation for their sale or rental, I am attaching a July 25, 2009 email from Mrs. Hughes to me in which she indicates using the Trail for real estate marketing purposes. (See Exhibit 2 to this letter).

Walking Away from Obligation to Remediate

It is our understanding that, over the past few months, banks holding mortgages secured by two of the Hughes' properties on Kaua'i caused those two properties to be auctioned off to pay for all or part the outstanding mortgage balances. Based upon a review of public documents, it appears that the Hughes obtained an additional mortgage of approximately \$5.4 million secured by the Property that is the subject of this letter. Given that the Property generates no income and likely has no building sites, we are fearful that the Hughes will turn the Property over to the bank in California that holds the mortgage and, in so doing, simply walk away from any obligations they have to remediate the Property through removal of the Trail. We urge the County to take such action as it believes appropriate to insure that the Hughes satisfy any obligations of remediation.

Increased Crime

In addition to the illegality and impropriety of the Trail itself, I have been informed that there have been several incidents of trespassing around homes on Kauapea Road from people using the Trail for access to such homes. Prior to the Trail being constructed, I had not heard of a single incident of such trespassing. In addition, there have been at least three incidents of theft of personal property from homes on Kauapea Road. I had previously expressed to Mr. and Mrs. Hughes a concern about the Trail leading to this type of activity. They were unmoved by my and the other residents' concerns.

We all know that Kaua'i, like many other communities, experiences robberies and related crimes. Although no area on Kaua'i is immune to this type of activity, neither a robbery nor this type of trespassing has ever, to my knowledge, occurred in the 12 years that we have been living around the Kilauea Lighthouse and on Kauapea Road.

We filed a report with the Kaua'i Police Department in connection with the incidents that we have directly experienced. The police were appreciative of us taking the time to bring them up-to-date and said they will do all that they can. As you will understand, the homeowners along Kauapea Road are very concerned about this sudden increase in theft-related incidences. We are hopeful that they do not escalate to more serious matters.

First Responder Issue

According to the minutes from the August 12, 2010 meeting of the BLNR, where the Trail was discussed, a consultant for the Hughes stated that "a number of first responder agencies were interested in continuing to have access to the trails through the property", and that "[a] number of first responder agencies have been using the trails to get down to the beach." (Item K-1, page 4) (See Exhibit 3 to this letter). From my personal experience, however, the supposed need to use the Trail for emergency access purposes just does not exist. I know for a fact that first-responder access to the beach is already available over a set of stairs, but that, over the 10+ years those stairs have been in place, there has not been a single request to use the stairs by a first responder agency--not one. As such, to argue that the Trail is needed by first responders is simply disingenuous.

Mr. Costa, we are very pleased that the County is investigating this matter and trust that, if it is determined that laws and/or regulations were violated, the County will cause the removal of the Trail and the restoration of the land to its previous unspoiled state.

Finally, due to the important public policy implications this matter has and due to the negative impact that the Trail has on the Kilauea community, it is very important that members of the public be given an opportunity to voice their opinions on the Trail. As such, please consider this letter a request for a public hearing with respect to decisions the County makes relating to the Trail, where such a hearing is authorized.

Should you or your colleagues wish, I would be happy to discuss this matter with you in more detail. I can be reached at 808 828 0429.

Thank you very much for your consideration of this matter

Very truly yours,

William H. Strong

Enclosures



PHOTO #1



PHOTO #2



PHOTO #3



PHOTO #4



PHOTO #5



PHOTO #6



PHOTO #7



PHOTO #8



PHOTO #9



PHOTO #10



PHOTO #11



PHOTO #12

2878 Kauapea Rd

Kilauea, Kauai | \$8,700,000 FS

Details

Pics

Map

Email

Save

Request Additional Info

Virtual tours, video, more photos, sales history, lien info... or call 1+ (800) 667-5028

Listing Price	Land Area	Living Area	Bedrooms	Baths	Days on Market
\$8,700,000	4.02 acres	3,104 sq.ft.	4	4	246



View all photos large

- Request More Info
- Ask a Question
- Schedule a Showing
- Make an Offer

Description: Located on Kauapea Road, one of the north shore's most exclusive and sought after locations, the Villa at Lewalani (meaning the highest of the heavens) reigns majestically over 4+ acres of lush landscaping. Perched on the bluff with flawless views of sweeping coastline and Bali Hai sunsets is this 4 bedroom, 4 bath home which enjoys the perfect sense of indoor/outdoor harmony that is a signature of its owners, real estate investors and innovators, The Michele Hughes Company.

Along with the purchase of this property is a coveted beach access on a private manicured trail leading to world renowned Secret Beach

The focus of this property is to create the ultimate experience of living in the most sought after location in the Hawaiian Islands.

The zoning allows for a Guest House.

Status: Active

Included: Ceiling Fan, Chandelier, Dryer, Garbage Disposal, Dish Washer, Fire Place, Floor Tile, Car Garage, Landscaped, Microwave, Pool Equipment, Pool, Refrigerator, Range, *see Remarks, Tv Cable, Washer

Utilities: County Water, Overhead Electric, Telephone Service, Tv Cable

Car Storage: 2 Car, Garage

Car Storage Area: 550 sq.ft.

Deck / Lanai : Lanai

Deck / Lanai area: 840 sq.ft.

Road: County, Paved

Foundation: Contrete slab

Roof: Composition

Property Tax	Assessed Value	Year Built	Views	Tax Key	MLS#
\$36,731	\$5,615,100	1996	Ocean, mountain	4520050310001	218427

Comparable Properties

4971 Hanalei P...

\$8,950,000

4283 Anini Vis...

\$7,800,000

4160 Wailapa Rd

\$9,500,000

57534 Kuhio Hwy

\$9,000,000

2445 Makenano Pl

\$8,490,000

0 Anini Vista Dr

\$9,800,000

4460 Kuhio Hwy

\$7,900,000

0 Kalihiwai Rd.

\$7,300,000

3292 Kalihiwai Rd

\$8,895,000

51105 Kuhio Hwy

\$8,400,000

Barborek-Dehart, Donna (IBD)

From: Michele Hughes [mhdc@lava.net]
Sent: Saturday, July 25, 2009 10:57 PM
To: Strong, William (IBD)
Subject: RE: More People on Trail

Bill,
That was me with some people looking to purchase land here on Kauai.
Michele

From: Strong, William [mailto:William.Strong@morganstanley.com]
Sent: Saturday, July 25, 2009 1:09 PM
To: Michele Hughes
Subject: More People on Trail

Michele, simply standing on my property by coincidence I saw four people using your trail whom I did not recognize. This safety problem will continue. Bill

William H. Strong
Vice Chairman
Morgan Stanley
440 South LaSalle Street
Chicago, IL 60605
Tel: 312 706 4400

This communication is intended for the addressee(s) and may contain confidential information. We do not waive confidentiality by mistransmission. If you have received this communication in error, any use, dissemination, printing or copying is strictly prohibited; please destroy all electronic and paper copies and notify the sender immediately. We are required by applicable rules to advise you that we may own or act as market maker for securities/instruments mentioned or may advise the issuers; and that past performance is not indicative of future returns. We may monitor and store emails to the extent permitted by applicable law.

Whenever they find the insurance is lapsing staff notifies the tenant to renew and issue staff a certificate.

Unanimously approved as submitted (Pacheco, Goode)

Item D-13 Issuance of Revocable Permit to Waikiki Roughwater Swim Committee, Inc. for Swim Race Event at Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-37:por. 21.

Mr. Atta related that this is a routine request.

Unanimously approved as submitted (Morgan, Goode)

Item K-1 Request to Extend a Deadline Set by the Board of Land and Natural Resources to Submit an After-the-Fact Conservation District Use Application in Regards to Unpermitted Land Uses (Trails) by Secret Beach Properties Located at Kauapea (Secret Beach), Namahana, Hanalei, Kaua'i, TMK (4) 5-2-005:036

Written testimony was distributed.

Sam Lemmo representing Office of Conservation and Coastal Lands (OCCL) reported on item background and reminded the Board that they took up a violation case on March 11, 2010 for unauthorized uses on the private property in the conservation district. The property owner was fined a total of \$9,000 which was paid. The Board imposed a condition that the owner would have to file an after the fact CDUP or they would have to remediate the site and were given a time frame in which to do that. Mr. Lemmo raised some errors in the staff report. Page 2, condition #5 says 160 days which should be changed to 120 days. Also, on the same page in the last paragraph September 1, 2010 should change to July 11, 2010 and March 1, 2011 should change to January 11, 2011. The owners have hired a consultant to work on this matter and staff doesn't have a problem with the extension request.

But, Mr. Lemmo noted for the record that the land is being auctioned on August 23rd and apologized if that wasn't true. There was some discussion regarding the new owner who would be responsible with complying with this condition or they would be subject to daily fines as determined by the Board.

Member Pacheco asked if the Board decides not to extend this does that mean the owner is in violation because they should have had the trail remediated also. Member Morgan added and/or applied for the CDUP. Mr. Lemmo confirmed that saying the owners submitted in June a request for the extension, but because we're down to 1 Board meeting a month staff did their best to schedule it.

Member Pacheco queried at the last Board meeting on this didn't they have an extensive discussion about giving the length of time to remediate and apply for the CDUA. Mr.

Lemmo confirmed that was an issue. Member Pacheco wondered what changed to allow the owners to do this – whether the EA was done. Mr. Lemmo said he spoke to the consultants and he went to the property last month where there are a lot of things happening. Apparently, it's taking the owners a long time to get the survey in place to do the necessary environmental analysis and to get the documents in order, etc. After Member Pacheco's inquiry Mr. Lemmo said he has met with the owner's consultants on a couple occasions.

Member Edlao questioned where Mr. Lemmo's information came from which was from the public.

Member Agor asked whether the Board's decision from the last meeting that this came up prompted an environmental assessment and Mr. Lemmo confirmed that.

Mr. Lemmo noted that he had received an Aug. 10th letter which the Board did receive.

Yvonne Izu representing Secret Beach Properties confirmed that they did submit a request for an extension on June 10th however, the letter from OCCL stated 160 days which would have been September 1st. She was hired subsequent to the violations having occurred and the owner paid the fines. The owner asked her to process the CDUA application. Her law firm and Secret Beach also hired SSFM to prepare the environmental assessment. We had gone out there to talk to the owner about what they wanted to remediate as opposed to what they wanted to file for an after-the-fact application form. It's a big piece of property and it's very steep. One of the things the owners had emphasized to them as the consultants was that a number of first responder agencies were interested in continuing to have access to the trails through this property. One of the first things they needed to do was to determine which trails to get an after-the-fact permit for. Most of the trails that are there were constructed prior to the present owners taking possession of the property. It doesn't excuse the fact that there is no permit for it. A number of first responder agencies have been using the trails to get down to the beach. The owner wanted to talk to these first responder agencies to determine which trails were important for these agencies to continue to have access to and what to seek a CDUA for which took some time. Also, to advise the owner that not only was there conservation district use issues, but special management area permit issues that triggered discussions with the County as to what needed to be done on the County side and depending on what the issues are all of that needed to be rolled into the environmental assessment. The environmental assessment is being worked on right now and there have been meetings with the County as to what is required under the County's procedures. Ms. Izu has spoken to Mr. Lemmo a couple times regarding the CDUP process. She was surprised to learn that this property was on the auction block and she couldn't speak about it because she hasn't heard. When she returns to the office she will check with the owners on what the situation is.

It was questioned by Member Agor what the time frame was to publish an EA. Ms. Izu said from a draft EA to a final EA about 3 to 4 months. Mr. Lemmo said there is a 30 day public comment period, then a couple months to address the comments and prepare