

EXHIBIT LIST: Section 1

GUYER APPLICATION STATES THE FOLLOWING:	FINDINGS & FACTS
<p>Certified Mail to Barbara Robeson (received 12-10-14) included the following:</p> <ul style="list-style-type: none"> • Letter from Chun dated December 8, 2014 • “Notice of Public Hearing” by the Planning Department for a December 12, 2014 Publication <p>The letter stated that “<i>The Applicants propose to use the <u>existing main house on the Subject Property as a homestay.</u></i>”</p>	<ul style="list-style-type: none"> • The conversion of “<i>the existing main house</i>” is an after-the-fact permit to convert a un- permitted transient use into an application for a homestay. • <u>See</u> Intervenor Exhibit Section 1.
<p><i>KIRBY B. GUYER and MILTON SEARLES, for a Use Permit, Special Management Area Permit and Class IV Zoning Permit on property situated at <u>Ha’ena</u>, Kaua’i, Hawaii, identified by Kaua’i TMK No. (4) 5-8-012:22 containing 11,827 square feet.</i></p> <p>Page 1</p>	<ul style="list-style-type: none"> • Property is situated in Wainiha, not Ha’ena.
<p>I. <u>APPLICANT AND PROPERTY INFORMATION</u></p> <p><i>The <u>Applicants in this matter are KIRBY B. GUYER and MILTON SEARLES, (hereinafter referred to as “Applicants”)</u> who are the fee owners of the Subject Property located at 7083 Alamihi Road, Hā’ena, Kaua’i, Hawai’i and identified as TMK No. (4) 5-8-012:022 (hereinafter referred to as “Subject Property”). Attached hereto as <u>Exhibit “A” is a copy of the Deed conveying the Subject Property to the Applicants.</u></i></p> <p>Page 1</p>	<ul style="list-style-type: none"> • <u>It is disputed</u> whether Kirby Guyer and Milton Searles are still in fact “the fee owners” of this property. • <u>See</u> Intervenors Exhibit Section 1 with Quitclaim Deed, dated March 17, 2015 by State Bureau of Conveyances. • The property title was transferred by the Quitclaim Deed, Document No. 2001-099503: “<i>This Deed made this 4th day of February 2015...</i>” was notarized in February of 2015, and was signed and conveyed by Guyer and Searles, to Grantee: Kirby Guyer and Milton Searles, Jr. Trustees of the Guyer-Searles Revocable Trust.

V. FLOOD ZONES AND REQUIRED ELEVATIONS

The subject Property is with AE 26 flood zone The single family dwelling is currently elevated above the designated flood elevation/ The flood zones on the Subject Property are shown on the flood insurance rate map for Kaua'i County, Hawaii (Flood Insurance Rate Map 150002 – 00035E). A portion of FIRM Map 150002-0035E showing the Subject Property is attached hereto as Exhibit “G”.

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- The subject Property is not in the AE 26 flood zone
- The location of the property is in the **VE Tsunami Evacuation Zone**, the Coastal High Hazard (tsunami) area, more commonly known as the Tsunami Inundation Areas.
- The impacts and hazards have not been properly disclosed or evaluated in this Application.
- Current flood insurance maps are located at: <http://gis.hawaiinfip.org/fhat/>.
- See Intervenor Exhibits in Section 2 with current NFIP flood maps for VE zone.
- See Building Permit Intervenor Exhibits in Section 5 which list the parcel in the VE zone.
- At issue are the health, safety, and welfare of the residents and visitors to the North Shore of Kaua'i, including Wainiha.

- See pages 3 & 16 of Application

VI. LOCATION, SIZE AND DIMENSIONS OF EXISTING AND PROPOSED STRUCTURES AND USES

The Subject Property is 11,827 square feet in size and contains an elevated single story four bedroom, three bathroom single family dwelling, with an attached one bedroom, one bathroom additional dwelling unit (“ADU”).

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- The County Building Permit #03-2224 was for a “Duplex”, not an ADU.
- Real Property website shows “Duplex”.
- Real Property lists 5 bedrooms, 5 bathrooms, and half bath (i.e. “5/5/1” – structure is not 4/3). Each main house bedroom/ “suite” has its own bathroom.
- Advertisements in the Exhibits list 5 ½ bathrooms (11-10-15).
- “ADU” is attached to single story dwelling. Also see Sections VII and XVIII for “attached” references.
- Exhibit I of the Application shows the two attached dwelling units. Each has its own kitchen, bedroom(s), and bathroom(s).
- North Shore Ordinance prohibits “single-family attached and multiple-family dwellings” (Sec. 10.2.4(a)(1))
- Throughout the application, there are conflicting references to “attached” dwelling units/ADU, guest house & main house.
- Advertised from about 2006 as a Hotel and as a Bed &Breakfast. See pages 4, 5, 7, 9 & 17 of Application

<p>...set forth in the K.C.C. Section 15-1.5(c)(4)(A) provides for a height limit of 40'.</p> <p>Page 4</p>	<ul style="list-style-type: none"> • Height limit in the North Shore Planning Area is 25 ft. <u>not</u> 40 ft. • K.C.C. Sec. 15.1.5(c)(4)(A) and Sec. 15.1(a)(3)(E)(i) state "...No structure shall be higher than twenty-five feet from ground level or the base flood elevation plus fifteen (15) feet..."
<p><u>VII. BUILDING SETBACK DISTANCES TO PROPERTY LINES, BETWEEN BUILDINGS, RIGHTS OF WAY AND PARKING LOTS</u></p> <p>The existing single family dwelling and the attached ADU are in compliance with the setback requirements...</p> <p>Page 5</p>	<ul style="list-style-type: none"> • North Shore Ordinance prohibits "<i>single-family attached and multiple-family dwellings</i>" (Sec. 10.2.4(a)(1)) • The building permit was for a "duplex" and is listed on Real Property as a "duplex".
<p><u>VIII. OFFSTREET PARKING LAYOUTS AND CALCULATIONS FOR EXISTING AND PROPOSED USES</u></p> <p>...There are currently two dwelling units on the Subject Property...</p> <p>Page 5</p>	<ul style="list-style-type: none"> • There are <u>two</u> dwelling units on the Subject Property, the main house, and the ADU. Real Property and building permits identify it as a "duplex" • The main house and the ADU are attached in violation of the North Shore Planning Area Ordinance. • See photos in Exhibit Section 1.
<p><u>XIII. EXISTING AND PROPOSED ROADWAYS AND ACCESSES TO THE PROJECT</u></p> <p>...The only vehicles that will be on the Subject Property on a regular basis are the Applicant's vehicles and one other vehicle from the proposed renters...</p> <p>Page 7</p>	<ul style="list-style-type: none"> • Application erroneously implies that there is only <u>one</u> other vehicle on the property besides the Applicants, i.e., 2 + 1 = 3 vehicles. • Each of the 4 Suites have an assigned parking space labeled the same as the unit, Mango Suite, Pineapple Suite, Guava Suite or Papaya Suite. • Each of the 4 "suite"/bedroom renters could have one or more cars, i.e., 2 + 4 = 6 vehicles, or more including the employees on the premises as stated on page 13, where the application says "<i>The Applicants will be hiring a housekeeper, a handyman to maintain the homestay operation and a part time assistant to help them in the operation.</i>" • Existing parking stalls include four under main structure (one for each suite), plus parking area for owners. • <u>See</u> Intervenors Exhibit Section 1 for photos of the nine (9) vehicles parked on the parcel.

<p><u>XVII. BUILDING HEIGHTS...</u></p> <p><i>The elevations on the single family dwelling and the attached ADU on the Subject Property is in compliance with the thirty foot (30') roof height restriction ...</i></p> <p>Page 7</p>	<ul style="list-style-type: none"> • Height restriction in the North Shore Ordinance is 25 feet. • K.C.C. Sec. 15.1.5,(c)(4)(A) “...<i>No structure shall be higher than twenty-five feet from ground level or the base flood elevation plus fifteen (15) feet...</i>” • Inconsistent Application information.
<p><u>XVIII. FLOOR PLANS OF ALL BUILDINGS</u></p> <p><i>The floor plans and elevations of the guest house on the Subject Property are attached hereto as Exhibit “I”.</i></p> <p>Page 8</p>	<ul style="list-style-type: none"> • Conflicting information within the application. • Guest houses are not allowed kitchens, though this “guest house” has a kitchen. Homestays are not allowed in guest houses either. • Application in Exhibit I has an attached ADU and main structure on property, not a guest house. • North Shore Ordinance prohibits “<i>single-family attached and multiple-family dwellings</i>” (Sec. 10.2.4(a)(1)). • Guest house is further inconsistency in the Application.
<p><u>XIX. PROPOSED PROJECT AND USES</u></p> <p><i>The Applicants propose to use the existing main house on the Subject Property as a homestay. Homestays are defined in the CZO as “a owner-occupied dwelling unit in which overnight accommodations are provided to transient guests for compensation, for one hundred eighty (180) days or less, within the same dwelling unit in which the owner or lessee resides or in a guest house.” ...</i></p> <p><i>...There are no outside displays in front of the house....</i></p> <p><i>...the rental of rooms is secondary and incidental to the dwelling purposes of the house and it does not change the character of the house.</i></p> <p>Page 8</p>	<ul style="list-style-type: none"> • The “homestay” unit/main house is <u>not</u> “owner occupied” as the Applicants state that the owners reside in the attached ADU, not the main house dwelling unit. • “Homestay” means an owner occupied dwelling unit in which overnight accommodations are provided to transient guests within the same dwelling unit in which the owner resides and the respective owner currently benefits under Sec. 5A- 11 of this Code for a homeowner’s exemption for the homestay site. A guest house may not be used as accommodations for transient guests in a homestay operation.” • Clearly, this application does not fit the legal Homestay definition. • <u>See</u> Intervenor’s Exhibit Section 7 of Guyer testimony: owners live in ADU. • Not true, there are outside sign displays, <u>See</u> photos of outside displays in Intervenor’s Exhibit Section 1. • How could the “rental of rooms” be <u>secondary</u> when applicants live in the ADU (~500 sq. ft.), main house (~3000 sq. ft.) has 4 Suites with 4 bathrooms, Suites are individually rented as Papaya Suite, Guava Suite, Pineapple Suite and Mango Suite, a kitchen, dining area, living area, two laundries, arcade/game room, business center, elevator. Downstairs has “work room”, ½ bath, and hot tub, etc. Bathrobes (like hotels).

<p>...The Applicants will reside within the attached ADU on the Subject Property and the main house will be rented to only one family or group. The main house has four bedrooms and three bathrooms.</p> <p>Page 9</p>	<ul style="list-style-type: none"> • Applicants do reside in the illegally attached ADU. See Exhibit Section 7 of Guyer testimony: owners live in ADU • "...main house rented to <u>only one family or group</u>". According to the advertisements and Applicants testimony, the Suites are individually rented as Papaya Suite, Guava Suite, Pineapple Suite and Mango Suites and are rented to different groups. • Per Application Exhibit I, the main house has 4 bedrooms and 4 bathrooms. • Real Property and Petitioners advertisements identify 5 ½ bathrooms. • Was the septic system approved to accommodate 10 people?
<p>XX. SUMMARY OF PERMITS REQUIRED</p> <p>Assuming the proposed use is not deemed a home business, the Applicants needs the following permits to operate a homestay within the Subject Property:...</p> <p>Page 9</p>	<ul style="list-style-type: none"> • We agree the proposed use is not a Home Business, See Intervenor Exhibit Section 3. • The proposed use does not qualify as a Homestay as defined in the CZO, Ordinance 987.
<p>XXI. POLICIES AND OBJECTIVES OF THE GENERAL PLAN...</p> <p>(A) <u>Kaua'i General Plan</u>. ...The proposal by the Applicants is consistent with the policies outlined in the Kaua'i General Plan. The proposed homestay use for the Subject Property is residential in nature with a limited related commercial component (i.e. vacation rental)....</p> <p>...The Kaua'i General Plan states as a matter of policy that "<u>single-unit B&Bs and vacation rentals</u> should be allowed with development standards and a use permit...</p> <p>Pages 10 & 11</p>	<ul style="list-style-type: none"> • The main house is more like a vacation rental, not a homestay. • Application describes two structures: main house and ADU. • Owners don't reside in the main house, and therefore the Application does not qualify for a "homestay" permit. • See definition of "Homestay" in Intervenor Exhibit Section 2. • It is clear the main house & use is commercial in nature and that the visitor use is the predominate use. The residential use is limited and ancillary to the vacation rental use. • The General Plan citation omits other important guidance, such as Section 4.2.8.2 Alternative Visitor Accommodations <ul style="list-style-type: none"> (c) County development standards and permit processes shall be scaled to the size and potential impact of the use: (d) Permitting processes should consider the cumulative impact that a large concentration of alternative visitor units can have on a residential neighborhood. • Application is for a homestay when it is a hotel/vacation rental. • Owners did not previously apply for or obtain a TVR NUC permit to operate. See Intervenor Exhibit Section 1.

(B)...*The use of the Subject Property as a homestay by no more than one family is consistent with the use of a single family dwelling within the residential district.*

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- Inconsistent with advertisements describing rental of four separate suites to tourists. See Intervenors Exhibit Section 8.
- Application is misleading or disingenuous and attempts to portray the proposal as far less significant a development than it actually is.
- This conflicts with testimony given by the applicants as well as all the advertisements and their calendar that clearly state they rent four (4) individual units, with (4) individual baths, the Suites are individually rented as Papaya Suite, Guava Suite, Pineapple Suite and Mango Suite.
- We dispute the factualness of this statement as clearly the property is advertised and rented to multiple families at the same time, and is not limited to one family as the Application states. See Intervenor Exhibit Section 8 for ads and calendar and CZO multifamily prohibitions.
- See Intervenors Exhibit Section 1 for photos of multiple cars parking on parcel.

XXII. DETAILED LAND USE HISTORY...

C. *Violations. Applicants have not found any notices of violations that have been issued against the Subject Property.*

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- Disingenuous “at best”. The Petitioners failed to properly disclose that a Zoning Compliance Notice, a Notice of Violation was served by the Planning Department to Guyer-Searles dated July 1, 2014 for Transient Vacation Rental (TVR) use outside of the Visitor Destination Area without the proper approval. See Intervenors Exhibit Section 1.
- The Real Property Use Survey for this property returned to the Real Property Division was signed by both Milton Searles and Kirby Guyer and the applicant checked the box that said “primary residence with exclusive use (one dwelling only and no other uses)”, however the verification by the Division revealed their online advertisements for transient use. Their tax status was changed to Short Term Vacation Rental and the applicants did not dispute the facts. Listed as a vacation rental for 2013 and 2014.
- Advertisements document that transient rental activities took place back to about 2006. See Intervenors Exhibit Section 8.
- Operations without a Use Permit have been in violation of law since at least 2006 at this location.

<p><u>XXIII. ANALYSIS OF SECONDARY IMPACTS OF PROPOSED USE</u></p> <p><i>B. Population. The Applicants' request use will not trigger migration to the Kapa'a area by other business owners or employees.</i></p> <p><i>G. Compatibility with Surrounding Uses. ...There are only eight registered transient vacation rentals within the same tax map plat as the Subject Property. Of these eight TVRs none are within 300 feet of the Subject Property, the nearest being almost 400 feet away. In the neighboring tax map plat there are only seven registered TVRs of which only one is within 300' of the Subject Property....</i></p> <p>Page 13 & 14</p>	<ul style="list-style-type: none"> • Sloppy Application. Not Kapa'a. • This Application <u>adds another</u> TVR to this tax map plat. <u>See</u> Intervenor Exhibit Section 3. • This statement implies that there would be little negative impact to the area. <u>See</u> Intervenor Exhibit Section 2. • SMA/Cumulative impacts are not addressed. • Within the Wainiha/Haena area, there are approximately 85 TVRs with NUCs. No info about the number without NUCs except that the Hawai'i Tourism Authority 2014 report documented 355 visitor units in the Hanalei-Hā'ena non-VDA area. <u>See</u> Exhibit Section 4. • Illegal TVRs and B&Bs in the area are not identified in this Application.
<p><u>XXV. SEWAGE DISPOSAL ANALYSIS</u></p> <p><i>The Subject Property is currently being served by an individual wastewater system. The proposed use permit request will not impact the current sewage flows.</i></p> <p>Page 14</p>	<ul style="list-style-type: none"> • The wastewater system operated without approval until finally being approved on 1/8/14. <u>See</u> Intervenor Exhibit Section 5. Despite being sent multiple letters from the Department of Health, Environmental Engineer, Wastewater, Kauai on 8/8/07 and 9/8/08, Applicants failed to submit their Individual Wastewater system information and operated the business without wastewater approval from the Department of Health for 10 years. • Applicant has not done sufficient analysis to show there will be no impacts.
<p><u>XXVII. SOLID WASTE DISPOSAL ANALYSIS</u></p> <p><i>The Applicants will utilize the County's existing <u>residential trash service</u>.</i></p> <p>Page 14</p>	<ul style="list-style-type: none"> • The commercial operation should not utilize <i>residential</i> trash service which includes trash from renters of four Suites (i.e., 8 people or more) in addition to the residential trash.

<p>XXIX. SMA ANALYSIS</p> <p>K. The <i>Development is consistent</i> with the objectives, policies, and guidelines set forth in HRS Chapter 205A and Sections 3.0 and 4.0 of the SMA Rules.</p> <p>L. The <i>Development is consistent</i> with the Kaua'i General Plan, the North Shore Development Plan, and the CZO.</p> <p>Page 18</p>	<ul style="list-style-type: none"> • This development has increased the intensity of use and the cumulative impacts within the SMA. • Applicants did not apply for a SMA permit previous to using the property to establish a business. • The number of people in this TVR/B&B/Hotel Application is higher than the number of residential occupancy living in the area: <ul style="list-style-type: none"> ○ 2010 census CDP for Wainiha has appx. 2.89 persons per unit. ○ This TVR has 8 or more people in the main structure, plus the 2 Applicants and the employees or independent contractors used. • This Application will also increase the number of vehicles in the Wainiha area which will increase the traffic on the road during a tsunami evacuation. • We disagree with the assertions that <i>Development is consistent</i> with the objectives, policies, and guidelines set forth Sections 3.0 and 4.0 of the SMA Rules as the Application fails to disclose the true intensification of use and cumulative impacts. • We disagree with the assertions that the <i>Development is consistent</i> with the Kaua'i General Plan, the North Shore Development Plan, and the CZO.
<p>EXHIBIT "G"</p> <p>Flood zone map is attached.</p>	<ul style="list-style-type: none"> • Application says the parcel is in the AE zone, but it is in the VE zone. • See Intervenors Exhibit Section 2.
<p>EXHIBIT" I" Shows: 4 Bedroom Residence and ADU</p> <p>Main structure has:</p> <ul style="list-style-type: none"> • 4 bedrooms with a bathroom (labeled as a "Suite") • Each bedroom has a separate "deck" • 2 Laundrys • Kitchen <p>ADU has:</p> <ul style="list-style-type: none"> • Living area & Kitchen • Bedroom & bathroom 	<ul style="list-style-type: none"> • Again, there are <u>multiple</u> inconsistencies within the Application describing the structures. • Exhibit I contradicts the information disclosed in the application.