

**Harry Kim**  
Mayor



**Christopher J. Yuen**  
Director

**Brad Kurokawa, ASLA**  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

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October 16, 2007

Ms. Judy S. Hiller  
65-1230 Mamalahoa Hwy., Ste. C14  
Kamuela, HI 96743

Dear Ms. Hiller:

**SUBJECT: MUD LANE**  
**TAX MAP KEY: 4-8-003:005**

This letter is in response to requests made by a number of citizens that the County not permit the owners of a parcel of land to improve that portion of Mud Lane leading to their property, so that it would be a pedestrian trail (or possibly a pedestrian/equestrian trail.) In other words, the request is that the County keeps this portion of Mud Lane in a condition that would require some property owners to access their property by non-vehicular means, although the owners want to make the improvements to permit vehicular access at their own expense. The Mayor has received a number of phone calls, letters, and emails with this same message, and has asked us to reply.

We are writing to explain why the County cannot support this request, and also to suggest a possible way where a portion of Mud Lane could be used as a trail, and also to suggest an approach to the preservation of remnants of an older road that may exist on Mud Lane.

Some background: Mud Lane has, at times in the past, been used as a cart road and later as a jeep road between Kukuihaele and Waimea. At one time, this was considered a "road in limbo", that is, a public road that neither the State nor County would accept responsibility for. More recently, the County has accepted that it is under County jurisdiction and has paved the road from the Hawaii Belt Road to Waikoekoe Lane.

The current controversy involves a portion of the road, about .5 miles long, that has fallen into disuse over the years. Trees have grown up in the right-of-way, leaving a narrow path on the ground. This is located between the Waikoekoe subdivision and the Waimea 660 LLC property, TMK No. 4-8-3:005. The attached map shows these areas, and

labels the .5 mile section as "trail". As this map shows, Mud Lane is the sole legal access to the Waimea 660 property.

Waimea 660 wants to improve Mud Lane to allow vehicular access to that portion of Mud Lane that leads to Waimea. The County and Waimea 660 have agreed on the general nature of these improvements and the County has given Waimea 660 a right-of-entry to make the improvements.

In today's world, owners of property typically want to be able to drive to their land. This is true not just for residential use but also for agriculture and ranching as well. The owners of homes usually want to be able to drive to the home. Vehicular access is helpful in getting building materials to a site. Farmers will usually want vehicular access to be able to haul in fertilizer and supplies, and to haul out their crops. Ranchers generally want vehicular access to truck cattle in and out of a pasture, to bring in supplies such as fencing materials, and to get in and out themselves. Mud Lane goes through land in the state land use agricultural district, and road construction is one of the permitted uses.

The County would not necessarily consider it to be the County's responsibility to improve an old government road to allow someone to drive to their property, and the County would have minimum requirements for safety, drainage, and maintenance, but the County should not prohibit a property owner from improving a road across agricultural land, at the owner's expense, so that the owner can have vehicular access. This permits reasonable use of the property.

An example may be useful to explain why it is unreasonable to forbid the landowners from improving the access to their property. Suppose a storm caused trees to fall on Mud Lane between the Waikoeke subdivision properties and the highway, blocking Mud Lane, and the owners of the Waikoeke subdivision properties wanted to remove the trees themselves so that they could drive to their land, but another group of citizens felt that instead of removing the trees, it would be a nice idea if the County just cut a footpath through the fallen trees to make a hiking trail, and tried to stop the County from letting the lot owners remove the fallen trees. Surely the Waikoeke lot owners would consider this very unreasonable, but this is not much different than what is currently being requested.

It is true that on paper, at least, Mud Lane continues to Kukuihaele and the Waimea 660 owners could get access from Kuikuihaele rather than Waimea. The Kukuihaele connection would take considerably more expense and improvement.

Again, it might be useful to give a comparison: the owners of lots in the Waikoekoe subdivision would probably not consider it reasonable for the County to shut off their access to Waimea and direct them to go out to Kukuihaele. This might be different if there were a huge public expense to restoring access to an area, and there was a cheaper alternative, but again, this is a situation where a private landowner wants to make improvements to a public road at its own expense in order to gain access in the most convenient way.

There was a recent question about a road lot that exists east of Mud Lane, TMK No. 4-7-7-74. This is owned by the Parker Ranch Trust according to real property tax records; it is not a legal access to the Waimea 660 property.

The fact that the Waimea 660 owners are currently subdividing the property to six lots increases the level of improvement that the County considers necessary, but it does not change the basic analysis that the owners of property served by this public road should be able to improve it, at their expense, so that they can drive to their property.

The County also sold the Waimea 660 property to the current owners, without any indication that the County would then put extraordinary limits on the use of Mud Lane. While some members of the public may criticize this sale, it was a decision publicly made, and authorized by County Council resolution. We think the public can understand why the County would not think it fair to now prevent the purchasers from constructing improvements so that they can drive to the property they bought from the County.

A related question has come up about the historic aspects of Mud Lane. The Wolforth archaeological report, and more recent follow-up, indicates that there are segments of a road paved with stones within the overgrown .5 mile section. His most recent correspondence describes a pavement about 8' wide, that he believes was certainly built after the mid-1850's, and probably in the early 1900's. His research also indicates that Mud Lane may coincide with the alignment of an ancient Hawaiian trail from Waipi'o to Waimea, but the paved areas described are not remnants of an ancient trail.

It is quite common in Hawai'i and elsewhere to find that a road has evolved over time from a footpath to a wagon road to a modern highway, and that physical remnants of earlier construction can be found. Portions of Ali'i Drive, for example, have gone through this kind of evolution. As a general rule, this does not prevent the government from making improvements to the road. If it did, we could not maintain or improve many of our older rural roads. In some cases, we might want to preserve the historical ambiance of an old road, but this is not really the case with this .5 mile section of Mud Lane. It may be a good idea to preserve features of older roads for their historic interest:

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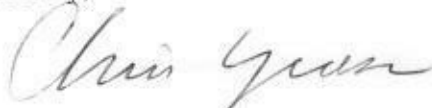
if they are a rare type of construction, or if they are a good example of workmanship, for example. This has to be balanced against the function of the road as access to property. We understand that the Waimea 660 owner is now checking the location of the older roadbed to see if some of this can be preserved while making the necessary access improvements. These issues are also being reviewed by the State Historic Preservation Division and there is currently a stop-work on the road improvement project until we can determine what steps, if any, should be taken to preserve the historic roadbed features.

We understand the need for hiking trails in Waimea and elsewhere on the island, but we would encourage people to try to establish such trails in ways that don't force a property owner to hike to his own property.

It is possible that a portion of Mud Lane can be reserved for pedestrian and equestrian use: the Waimea 660 owner only needs to improve Mud Lane for another 3000' in the Kukuihaele direction from their mauka property line; the remainder of access to the proposed subdivision is through roads within their property. We cannot promise this outcome: we would have to discuss this with other property owners in the area, and there may be other points of view, including people who would like to be able to drive Mud Lane from Kukuihaele to Waimea, as once was possible. This is a matter that would take further community dialogue.

We hope that you can understand and accept these reasons for allowing the Waimea 660 owner to improve portions of Mud Lane to allow vehicular travel.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director



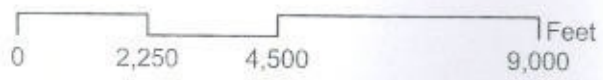
BRUCE C. McCLURE, P.E.  
Director of Department of Public Works

CJY:pak  
Wpwin60/Chris 07/Mud Lane Reasons2 - Hiller

Attachment

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cc: Mayor Harry Kim  
Honorable Robert Hoffmann  
Honorable Dominic Yagong  
Corporation Counsel  
Mr. Sidney Fuke  
Mr. David Katz  
State Historic Preservation Division  
SUB-05-000125 – Waimea 660, LLC



# WAIMEA 660, LLC

Print Date: Oct. 12, 2007