

INTRODUCTION – (Page 1 - Title)

Thank you Ms Cochran for your invitation to speak today, as always it's an honor to participate in the democratic process and i'm happy to share the fruits of Maui Causes extensive research for our documentary on the contributing factors of Maui's shoreline degradation. Anyone interested in learning more about that, please see me after.

We're here to day to talk about 3 lot-or-less subdivision infrastructure deferral agreements.

(Page 2 - Maui Time Weekly)

Let me start with a quote from a cover story published by Maui Time Weekly:

"The war in Maui County over deferral agreements is raging again. It flares up now and then through the years, only to dissipate a few weeks later. Silent for the last couple years, the issue began getting discussed a few weeks ago. In fact, county officials are insisting that the problem may even be coming to an actual solution."

Problem is, that written by Anthony Pignataro in Jan of 2013 - just over five years ago.

Let's look at what's happened lately that's caused this issue to flair back up, and how we can solve these problems.

(Page 3 - Cover to Goode's Powerpoint)

On January 8, Public Works proposed the creation of an Improvement District for the substandard roadway Hui Road F in West Maui which, in part, involves collecting on several 3 lot-or-less subdivision infrastructure deferral agreements as a funding source. So collecting on deferral agreements along Hui Rd F is on the front burner. And Public Work's proposal is historic. Not only has the county never once collected on any of the thousands of deferral agreements it has written since 1974, this is the first time Public Works has publically addressed the unpaid agreements since 2014.

(Page 4 - Audit Resolution)

In December the council unanimously approved Mr. Guzman's resolution urging the independent county auditor to audit the Department of Public Works and make specific determinations needed, so the council can move forward with county business.

Unfortunately, the Audit won't happen soon enough to address Hui Rd F.

The council stated it needs determinations on; the number of agreements that actually exist, the parcels involved, the CIPs that impact the parcels involved, the different permutations that exist, and their collectability relative to CIPs already completed as well as future CIPs.

The resolution included a partial history relating to the agreements. Briefly:

They were created in 1974.

(Page 5 - goode 2002)

No one knows how many agreements were written between 1974 and 1990.

Prior to 1990 the ordinance was silent as to whether subsequent subdivisions of the resulting lots could also defer their infrastructure improvements.

In 1990 it was made clear they could not: "The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels." A one time event, that's really important. **Remember that please.**

No one knows how many agreements were written between 1990 and 2007 when 3 lot or less deferral agreements were eliminated by the Council.

In 2015 the Upcountry Water Bill fully exempted 2 lot or less subdivisions from having to make any improvements to existing streets, or from contributing a pro rata share to any future County roadway projects. This exemption was added into the upcountry water bill at the last minute.

There's a few relevant county actions that the recent auditor resolution did not reference:

(Page 6 - Title 18)

In 2010 the council addressed the fact that the county had never actually collected on any these agreements. Essentially, "When and if" was replaced with SHALL. "Notices of Intent to Collect SHALL be sent to property owners bound by the deferral agreements upon commencement of funding and frontage land acquisition." Responding to the new ordinance Public Works sent out notices of intent to collect to 14 landowners in West Maui with deferral agreements because a CIP, 15 years in the making, was finally scheduled for construction. That project wasn't Shovel Ready. County records show Public Works spent 1.2 million without first acquiring the necessary land rights.

(Page 7 - PC-17)

Also unreferenced in the recent reso was the extensive 2012 proposed legislation to address these oversights by hiring a professional firm to form assessment districts and collect on developer agreements. The bill also stipulated that all CIPs be Shovel Ready, with all land rights secured before actual construction drawings get authorized.

Council Services approved that proposed legislation as to its form and legality and it was forwarded, not to IEM, but rather to Planning, where it was killed. The Public Works Director told MauiTime weekly simply that Corp Counsel said the bill was not lawful. No further details were given, the differing legal opinions were not reconciled, and it's never been revisited.

(Page 8 - Goode 2012 Letter)

Also in 2012, Council Member Cochran put forth an extensive effort to establish a formula and method of assessment and collection when Phase IV of South Kihei Road was approved for funding. That hit a wall when Public Works wrote Member Cochran that "We are unable to respond at this time as we are researching the applicability of certain agreements on the ability to seek compensation and working out a formula for compensation on certain agreements. Rest assured we are actively working on the issue..." It's now 6 years later. They have still not revealed which agreements they were researching, proposed any formula for collection, or offered any determination as to whether any of the agreements can be collected on.

(Page 9 - Viewpoint)

In 2014 the Director of Public Works wrote in a Maui News Viewpoint "It's unfortunate that anyone would insinuate these agreements are invalid, secret or a big pot of gold that the county is not collecting. They are agreements, plain and simple, and the county is abiding by them." he further wrote: **"The Department of Public Works is currently enforcing the agreements per their express terms."**

In your deliberations over the auditor resolution a few weeks ago member Cochran mentioned that discussions about deferral agreements came to a standstill because of pending litigations. It should be noted that there were no lawsuits involving deferral agreements until 2015, three full years after Public Works stopped responding to your request for determinations. The lawsuits came because Corp Counsel invited them.

The administration has been silent and so today the public and this council are stuck wondering if Hui Rd F or **any** CIP island wide can be legally initiated and performed without first resolving the question as to whether the various forms of these 3 lot or less

deferral agreements can be collected on or not.

The 2015 two lot subdivision exemption, further complicates the collection question. The stated intention of it was to exempt only applicants on the upcountry water meter priority list, but we now know, the exemption is being applied to two lot subdivisions islandwide. For previously deferred subdivisions that actually only contain 2 lots, has their deferral now been replaced with an exemption? Either way, its clear that the citizens will continue to pay for the impacts and the improvements for private subdivisions. As the Hui Road F improvement district contains multiple 2 Lot subdivisions and overlapping deferral agreements, these questions must be addressed.

(Page 10 - proposal)

The county needs to move quickly to avoid uncertainty and public outrage and whatever is done here will set the precedence island-wide. Municipal standards and practices exist to manage this process and the council has already received proposals get it all handled professionally.

(Page 11 - ordinance 1990)

Understanding how all this evolved will help illuminate what systemic changes are needed going forward so that Maui can mature as a modern municipality with healthy transparency and accountability.

As I understand it, the intent of this ordinance was to allow parents to subdivide their properties for their kids and not face the immediate expense of performing infrastructure improvements, like road widening, overhead utility relocation, storm drain structures, curb, gutters, and sidewalks, etc. Instead, families could defer the cost of improving their subdivision frontage until the County performed an overall roadway project along that frontage. The owners simply agreed to pay a prorated share at some future date.

The whole thing made a lot of sense. For years the County didn't have overall roadway plans, so putting in costly improvements along relatively short frontages of a County road which will, in all likelihood, not match what the County did, whenever they did it, would only end up getting ripped out and replaced. A lose / lose end result and complete waste of millions of dollars of both public and private resources.

By County ordinance, subdivisions of 4 lots or more specifically require developers to install all conditioned roadway improvements to all or most of the frontage of their subdivisions. While not the stated intent, the 3-lot-or-less deferral alternative surely provided incentive to keep housing density low.

Should I do 4 lots or more and pay a fortune in infrastructure now or do I accept a one time only 3-lot-or-less limit, defer the costs now and maybe even pass them along to future owners? You bet!

It was a prudent and logical idea but the original ordinance was not well fleshed out and subsequent revisions, though well intended, have only made matters worse.

The troublesome unintended consequences, and why I think we are here today, have come from what the ordinance didn't do. What's missing from the ordinance has spawned systemic loopholes that have been the key to the exploitation of Maui's taxpayers and our environment, for decades. Here's what seems to have happened:

(Page 12 - Milton Arakawa quote)

The ordinance didn't provide for any guidance or oversight of how to execute the agreements or manage them over time. For decades Corp Counsel wrote thousands of these agreements, recorded them with the Bureau of Conveyance, and then stored them in boxes and never referenced them again. Corp Counsel, Public Works & the Dept of finance have never successfully coordinated on cataloging them or collecting on them.

(Page 13 - Hui F Power Point Parcels)

Remember how these subdivision deferrals were supposed to be a one-time event? That's just the deferral part. If the lots were big enough, additional subdivisions **could** be added, but the ordinance restricted the new subdivisions from deferring, once again, the infrastructure improvements on the original subdivision's entire roadway frontage.

If additional lots were carved-out and added, beyond 3, that would logically trigger the 4-lot-or-more subdivision requirement and all improvements across the entire parent parcel must now be performed. It's a fair trade financially: Since the original owner's value gets decreased by the increased neighboring density and the new developers benefit financially by being able to build, the cost of all the improvements on the entire parent parcel, that were previously deferred, but now must be performed, are assumed by the incoming developers.

The intent of the original ordinance has clearly been obscured by the fact because the agreements were not cataloged and tracked, rather than adhere to the one-time-only limit, Corp Counsel continued to write deferral agreements for subsequent subdivisions. Developers, who knew how the system was flawed, applied for and got sequential,

overlapping 3 lots or less deferrals that allowed them to subvert the 4 lots or more requirements.

This map is from the Hui Road F PowerPoint presentation given by Public Works. You can see here that there are multiple numbers on certain parcels. Those are overlapping one-time deferrals on the same parent parcels. That's a problem when it comes time to collect.

But that's not the only problem.

The ordinance did not put any limitations on the size and acreage of the 3 Lots or Less subdivisions. It didn't put any limitations on what type of developments could take place on the resulting 3 Lots. As you'll soon see, over the years these agreements have been applied to commercial and massive residential and condominium developments, providing financial benefits to big developers far beyond the relief that was intended for local families. Is the new 2 lot or less exemption now being abused the same way?

The ordinance also didn't go into specific dollar amounts and provided no formula to calculate the future costs. It also didn't create any method of collection to complete the back end of the agreements.

The agreements Corp Counsel wrote did get recorded and attached to the land's deed, so they would travel over time with the parcel, not the original developer or land divider. But with no value, formula or payoff mechanism established on the agreements, they are open ended and there is no way for a property owner to satisfy and remove them from their title.

On titles the agreements show up in Schedule B as a nonspecific cloud and encumbrance. They only become an actual lien if and when the County sends a notice of its intent to collect. Remember that too because its important and we'll come back to it, Notice of intent to collect.

(Page 14 - Tom Welch qoute)

For decades prospective buyers and mortgage companies have been told by attorneys, real estate brokers and title companies not to worry about these agreements, simply, truthfully, because the County has never, ever, yet collected on any of them and that its questionable that they ever will.

(Page 15 - Auditors letter)

When Capital Improvement projects that should have triggered collection did occur, and CIP's did occur many times, the County has never collected from the landowners their fair share. One of the legal questions that Corp Council has not addressed, and maybe the auditor will, is whether since the County did not pull the trigger at the time the roadway projected was completed, can they go backwards now to try to collect?

(Page 16 - Director Goode's Figures)

How much money are we talking about? Let's apply the suggested assessment figures that Director Goode sent to Council Member Cochran on April 16, 2012 to a typical 3 Lot Subdivision. We know they come in much larger shapes and sizes, but let's establish a minimum foundation of the magnitude of what's uncollected.

Minimally lets say a lot has 100 linear feet of roadway frontage, that's the width of this room.

100 feet at a cost \$250 per lineal foot which the Director of Public Works applied to development along South Kihei Road = \$25,000.00 per lot. Who wouldn't cough up \$25,000 to obtain an extra buildable lot on Maui? That's a gift.

3 lots would equal \$75,000. Think you could improve 300 feet of road widening, drainage, utility relocations, curb, gutter and sidewalk for just \$75,000? Again it's a gift, way low by real world cost estimates, but let's use it as our base.

If there were just 1000 of these agreements that's 75 million dollars.

(Page 17 - sullivan quote)

Our research shows the director's \$250 per linear foot is way low. We've got actual bids from actual engineering firms on actual County roadway projects which show the number may be more than 3 times the director's estimate. If we find this to be case islandwide, the number mushrooms to over 200 million dollars.

Keep in mind, this is a 100 lineal foot per parcel estimate. I know of a development upcountry that is 65 acres. That could be a ¼ mile of uncollected deferred improvements that get absorbed by Maui taxpayers. The public has, and will continue to foot the bill for the private developers obligations.

These 3 Lots or Less subdivisions are also completely exempt from having to pay Park Assessment Fees, regardless of size or assessed value of the resulting parcels.

Multimillion dollar ocean front homes, no park fees paid, ever. Another huge giveaway of what would otherwise be the public's assets.

The money owed from these agreements are revenues to offset the expenditures of public funds for projects approved during annual budget hearings. Our Charter requires the Administration to establish and track a 5 year projection of anticipated revenues for future projects. But because the administration has not cataloged the agreements, even if we went with The Director's \$250 per linear foot, no one knows how many roadway feet are involved. The County really has no idea how much money is missing every year from the annual budget which the Council is asked to approve. That the owed amounts are not included as a line item in the annual budget appears to be a repeating violation of the County Charter.

(Page 18 - south kihei areal 4 phases)

And so the simple questions are: how many subdivision deferral agreements are there? This view shows just a small section of S kihei rd. Each circle is a deferred subdivision. Some of the sites are huge. Can these be collected on? What would be a real world formula to use to collect on them?

Those are basically the questions that the council just voted 9 to 0 to ask the independent county auditor to answer because no one else has.

(Page 19 - W&K beach homesteads)

Let's look at what took place on just one oceanfront development along South Kihei road:

(Page 20 - chart part 1)

1) In 1984, the underlying oceanfront parent parcel was subdivided into 2 lots and Corp Counsel executed and recorded a "3 Lots or Less" roadway improvement deferral agreement on the resulting parcels.

(Page 21 - chart part 2)

2) In 2002, one of those lots was further divided with another 3 lot subdivision, making a total of 4 lots. It's not that the subdivision itself was a problem, rather the problem came when Corp Counsel executed and recorded another "one time", "3 Lots or Less" deferral agreement of the second subdivision parcels.

Not only did the overlapping subdivision NOT qualify for the deferrals, the overlapping subdivision triggered the 4-lot or more requirement and roadway improvements should have been made right then to the frontage along the entire parent parcel.

(Page 22 - chart part 3)

3) In 2005, a Public Works Deputy Director signed off on yet another 3 lot subdivision, making it 6 multi million dollar, oceanfront parcels. Both these overlapping, one-time deferrals were outside the Director's authority and represent a complete disregard for County ordinance.

In 2001, Council Member JoAnne Johnson Winer had already informed the Director and the Mayor that 4 lot or more requirements were being subverted using 3 Lots or Less deferral agreements and the citizens were incurring the costs.

Finally in 2007 Johnson Winer forced an end to the 3 lot or less deferral program. I'd like to note that at that time 26 parcels were grandfathered in and though they have not yet been developed they still carry the entitlement to do so and can still defer their infrastructure costs.

(Page 23 - Kihei Aerial Map 1)

This is also kihei. Letter k is a massive development with enormous collective frontage, involving acres and acres of homes that were all carved out from the same original 3 Lots or Less subdivision. Each and every home has a "3 Lots or Less" deferral agreement recorded on it's title.

(Page 24 - Kihei Aerial Map 2)

Here letters x y & Z shows a commercial development along Lipoa with a mini storage and office buildings that was allowed to use a "3 Lots or Less" deferral agreement. And notice how many parcels have circle over circles which represent multiple overlapping deferral agreements.

(Page 25 - goode quote 1)

All of these questionable applications in just one area of Maui grew out of the "3 Lots or Less" deferral ordinance, shifting tens of millions of dollars of the both commercial and residential developer's financial obligations to us, the taxpayers. Phase 1, 2 and 3 of s kihei rd have been completed, Phase 4 has been funded, and none of that has triggered the collection required by the ordinance.

How many different variations of deferral agreements has Corp Counsel written?

1. 3 Lots or Less prior to 1990 amendment.
2. 3 Lots or Less after 1990 amendment.
3. 3 Lots or Less with multiple overlapping applications of additional 3 Lots or Less.

4. 3 Lots or Less with countless condominiums on one of the resulting parcels.
5. 3 Lots or Less with Multi Single Family Homes in a Planned Development on one of the resulting parcels.
6. 3 Lots or Less in Commercial / Industrial zones.
7. 3 Lots or Less on “Crazy” overlapping subdivisions that the director of Public works has referenced, without disclosing where they occurred.
8. And finally, there’s one application that we know of, and may be more, where a private attorney actually altered the 3 Lots or Less County agreement by writing private warranty deeds to add parcels beyond the 4 lot threshold, with no notices to or approvals from the county or the other subdivision participants.

So what happens if the County tries to start collecting on one or more of these many different types of agreements as they are proposing on Hui Road F? This is where It gets thorny.

Who do they collect from?

Wouldn’t the owners of the first layer of deferrals claim that the subsequent deferrals which agreed to pay the future amounts, absolves them of the financial burden established in the original agreement? Wouldn’t the second say that of the third? Or would the second and the third realize that in issuing their agreements the County made a faulty decision that violated the one time only stipulation of the county’s own ordinance, making their agreement unenforceable?

That’s reminiscent of Montana Beach where the county vigorously defended a Director’s faulty decision, and ultimately lost, and Maui Taxpayers ended up having to make the developer whole. How many Montana Beaches are out there? How many overlapping multiple applications of one time only deferral agreements are out there?

(Page 26 - goode quote 2)

In his viewpoint the Director of Public Works wrote, this is not a “countywide conspiracy, it actually boils down to a conflict between neighbors that has been ongoing for years.”

The fireworks have NOT begun yet. Just wait until the county moves to collect countywide, which they actually tried to do along one CIP in 2010, with disastrous results that are still working their way through the courts today.

As the Director asked recently: If one of the lots is oceanfront with just a narrow driveway that fronts along a major roadway, while the other two lots front the County

roadway completely, do they split the bill in thirds or does the oceanfront owner, with a property of obvious greater value, just pay for the linear footage of his narrow driveway?

Are neighbors to “haggle” over how to determine pro-rata shares amongst themselves, as one Director put it in public hearings? Where in the ordinance is that dispute driven language?

(Page 27 - goode quote 3)

In his 2014 Maui News Viewpoint the Public Works Director wrote “the agreements state that if and when the County of Maui does a capital improvement project along a roadway fronting a property that has one of these agreements recorded against it property, the county **may** recover the costs of doing those improvements that were specifically deferred. That may have been true before 2010, but not after. In 2010 the council mandated that all CIP’s must trigger notices of intent to collect, which triggers the whole encumbrance transition to lien debacle.

(Page 28 - sma permit record)

Public records reveal that the impacts of how deferral agreements are managed goes beyond financial, to include the degradation of our shorelines. Installing roadway and drainage improvements, storm drains, curb inlets, retention basins, that are assessed as environmental protections under SMA Minor permits often get lumped into the work that gets deferred under a 3 lot or less subdivision deferral agreement, and the environmental protections never get installed.

We believe this is actually a violation of the Federal Shoreline Management Act which ironically, the County of Maui is paid by the State of Hawaii to administer and uphold.

(Page 29 - johnson)

In 2015 former County Council Member Joanne Johnson wrote: “As I have learned during the final years of my tenure as a Council Member, the Planning Department was not tracking SMA requirements that would insure compliance of developers in completing their SMA Permit roadway and drainage mitigations. They appear to rely solely on the integrity of developers and complaints from citizens to administer developer compliance.

I am deeply concerned that the SMA permitting process has become a means for private developers to skirt their infrastructure and environmental mitigation responsibilities, since enforcement may be absent or selective.”

(Page 30 - brown water)

We all see the impacts as we sit in traffic along the shoreline roadways. Is this an unethical manipulation of county ordinances that violates federal law and contributes directly to the degradation of our precious shoreline?

(Page 31 - petition)

Because we've seen no movement from the county to close these loopholes that are impacting the public and our environment Maui Causes recently initiated a public petition that also calls on the county's independent auditor to assess the losses to the public from both deferral agreements AND SMA Permit application fraud. We've got 1757 signatures represented right here. At the council's request we'd be happy to make a separate presentation on how that SMA permit fraud works.

(Page 32 - end Title)

Looking forward, there are some silver linings manifested from this all of this research once we tackle the hard realities of this sobering history. So let's look at how to put an end to the mess, admit our oversights, and repair the injuries we've all suffered;

First, the Council and the public needs a sample of each of the different forms and applications of deferral agreements that Corporation Counsel has executed so the entire playing field can be evaluated as a whole.

Second, Each individual form of agreement needs a legal determination as to its enforceability and collectability.

Third, we need a legal opinion as to whether collecting on one form of agreement and not another constitutes selective enforcement, which could force the forgiveness of them all.

Fourth, we need a determination as to whether an agreement can be collected on if it relates to a CIP that has already been completed, or, if the County failed to collect on prior phase of a roadway, can they collect on future phases.

Fifth, if the agreements are deemed collectable, we need to establish a database, boundary map, a formula of assessment for each type of deferral agreement, a process for proper noticing and collection, and the removal of the encumbrance on the affected parcels.

Sixth, if the Council determines the collection and assessment process will lead to overwhelming disputes between property owners and repeating legal challenges, we need to swallow our pride and expunge them and all look to apply the lessons learned going forward.

Seventh, as a Council, while the immediate legal review is taking place, we can make sure we don't repeat these errors by adopting legislation to insure every future development pays their fair share their roadway infrastructure.

We should look back at the legislation that was shelved at the direction of Corporation Council in 2012 which provided concise solutions to accomplish these goals. For example;

- If the frontage lies along a roadway without an adopted plan, we can collect a fee in lieu with district specific accounts like park fees.
- We can avoid the legal challenges that could stall all new roadway projects by replacing the questionable islandwide upcountry water bill 2 lot exemption with an appropriately determined Fee in Lieu.
- We can avoid millions of dollars of waste by insuring CIP's are shovel ready before approving funding. What this means is the overall plan has been presented to the public and adopted by the Council and the land rights along the roadway frontages have been negotiated and secured.
- We can amend the County code to ensure all developments including condominiumization and re-subdivision and consolidation of Agricultural subdivisions are treated the same. For example, the overlapping splitting of land ownership through condominiumization of Ag lots should be treated the same as other land subdivisions.
- We can eliminate the ongoing Park fee exemption for 3 Lots or Less and only provide relief for subdivisions processed under the family subdivision ordinances. For example, oceanfront subdivisions and resulting multi million dollar residences should not receive ongoing exemptions from paying their share of park fees.
- We can amend Title 18 of the Maui County Code to ensure that SMA Permit environmental mitigations are implemented into the roadway engineering plans and completed as assessed and not deceptively discarded, deferred, or exempted.
- We can amend Title 18 of the Maui County Code to ensure, as most municipalities do, that all order of magnitude estimates created by development consultants for the issuance of SMA Permits are signed off by engineers in Public

Works for their accuracy to insure they have not been purposely underestimated to avoid public review and environmental assessments.

Maui Causes seeks positive and urgent change and we hope this presentation aids in this purpose on the issues presented today.

(Page 1 - Title)

(Page 2 - Maui Time)

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3 Lot or Less Subdivision Infrastructure Deferral Agreements





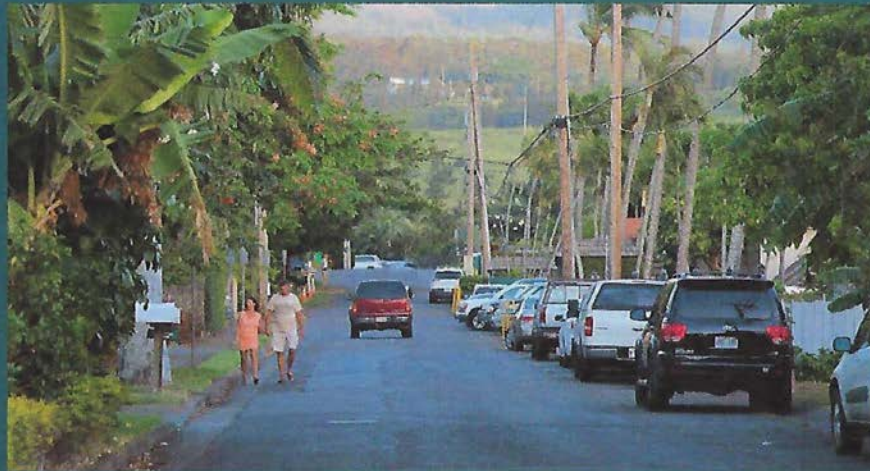
January 16, 2013 | 08:02 AM

The war in Maui County over deferral agreements is raging again. It flares up now and then through the years, only to dissipate a few weeks later. Silent for the last couple years, the issue began getting discussed a few weeks ago. In fact, county officials are insisting that the problem may even be coming to an actual solution.

Maui Time

January 16, 2013





1

Hui Road F

TO BE A COUNTY ROAD OR NOT TO BE A COUNTY ROAD...

DEPARTMENT OF PUBLIC WORKS
IEM COMMITTEE – JANUARY 8, 2018

REQUEST FOR LEGAL SERVICES

Date: December 15, 2017
From: Don S. Guzman
Councilmember

RECEIVED

By Dept. of The Corporation Counsel at 11:25 am, Dec 18, 2017

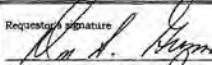
TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Patrick K. Wong, Esq.

Subject: Resolution Requesting Inclusion of Subdivision Deferral Agreements in County Auditor's Plan of Audit for Fiscal Year 2019

Background Data: Please review and approve attached resolution. A hard copy is required for this response.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor Signature  Don S. Guzman, Councilmember	Contact Person Executive Assistant Kathy Kaoh (Telephone Extension: 5500)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)
☒ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☐ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES):


REASON:

FOR CORPORATION COUNSEL'S RESPONSE

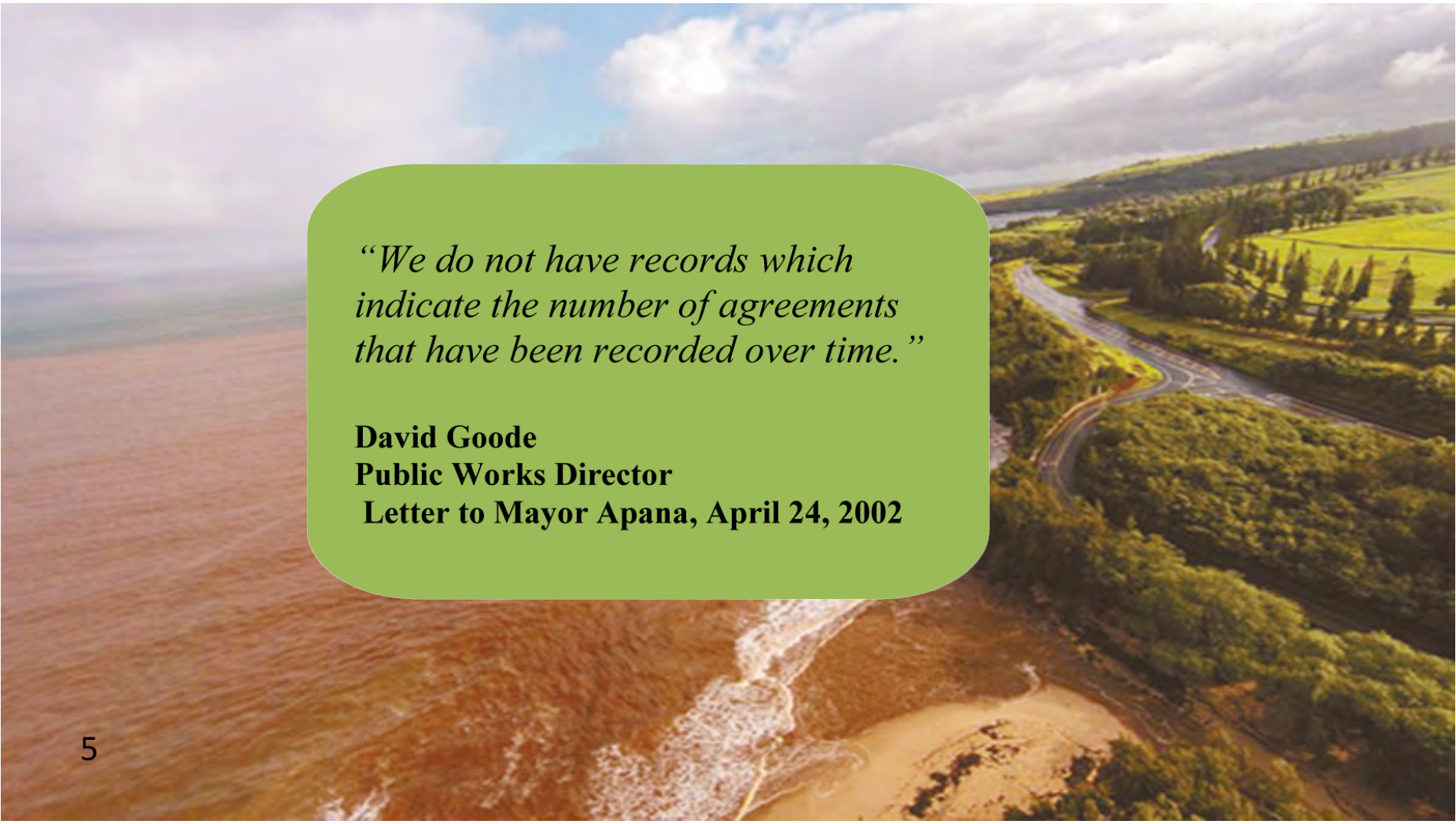
ASSIGNED TO: ESK	ASSIGNMENT NO. 2017-1511	BY: kku
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TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING-PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL
Date: 12/20/17 By: 
(Rev. 7/03)

Attachment:

An aerial photograph of a coastal landscape. On the left, a wide, brownish body of water meets a sandy beach. A winding asphalt road curves through a lush green forested area on the right. In the background, rolling hills are visible under a sky with scattered white clouds.

*“We do not have records which
indicate the number of agreements
that have been recorded over time.”*

**David Goode
Public Works Director
Letter to Mayor Apana, April 24, 2002**

COUNCIL OF THE COUNTY OF MAUI
**INFRASTRUCTURE MANAGEMENT
COMMITTEE**

February 19, 2010

Committee
Report No. 10-21

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Infrastructure Management Committee, having met on October 12, 2009, and February 1, 2010, makes reference to County Communication No. 09-260, from the Director of Public Works, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS".

Title 18.04.020

"All pre-existing conditions and roadway improvement obligations and agreements shall remain in effect and be enforced solely by the director authorized to administer the subject agreements.

"Notices of Intent to Collect" shall be sent to property owners with outstanding obligations at the commencement of project funding, followed by collection notices to property owners at the time of right-of-way acquisition of County initiated or co-sponsored roadway projects."

ORDINANCE NO. _____

BILL NO. ____ (2012)

A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE,
RELATING TO SUBDIVISION IMPROVEMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. The purpose and intent of this ordinance is to address uncollected developer obligations and incorporate an assessment option and collection method for future subdivisions to eliminate waste of public funds in the County of Maui by achieving the following objectives;

- A. Provide for collection and assessment of deferred developer financial obligations for roadway improvements on existing streets adjacent to subdivisions that have been recorded against real property by the Department of Corporation Counsel since 1974.
- B. Insure the future submissions and agreements for residential subdivisions eliminate the continuing waste of public funds used to tear out roadway improvements that are conditioned on existing streets adjacent to subdivisions prior to the adoption of an overall roadway design and appropriate right-of-way designation.

October 18, 2012

RECEIVED

*12 OCT 18 P5:46

MEMO TO: Donald G. Couch, Jr., Chair
and Members of the Committee

F R O M: Danny A. Maffei
Council Chair

SUBJECT: DIRECT REFERRAL (PC-17)

This document pertains to a matter that has already been referred to your Committee. I received the document on behalf of the Council, and I am forwarding it to your Committee in accordance with the authority granted by Rule 6(A) of the Rules of the Council.

DAM:as

Attachments

We are unable to respond at this time on the matter as we are,
1) researching the applicability of certain agreements on the ability to seek compensation, and
2) working out a formula for compensation on certain agreements.

Rest assured we (Departments of Public Works and Corporation Counsel) are actively working on this issue...

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGGAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793
June 4, 2012

RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran, Council Member
Maui County Council
200 South High Street
Wailuku, Maui, Hawaii 96793

APPROVED FOR TRANSMITTAL

[Signature] 6/5/12
Mayor Date

Dear Council Member Cochran:

SUBJECT: DEFERRAL AGREEMENTS AS THEY RELATE TO BUDGET REVENUES - FEES, RATES, ASSESSMENTS AND TAXES

This is in response to your May 18, 2012 follow-up letter to our previous letter regarding deferral agreements.

After our meeting with our Corporation Counsel on this issue, we are unable to respond at this time on the matter as we are 1) researching the applicability of certain agreements on the ability to seek compensation, and 2) working out a formula for compensation on certain agreements.

Rest assured we (Departments of Public Works and Corporation Counsel) are actively working on this issue as our first project (Kahananui Bridge Project) has a few parcels that are affected by the above two items that are still being researched.

Should you have any questions, please contact me at Ext. 7845.

Sincerely,

[Signature]

DAVID C. GOODE
Director of Public Works

DCG:jso

xc: Patrick Wong, Corporation Counsel

Cary Yamashita, Engineering Division Chief

s:\david2\transmittals\ecochran_deferral agr as they relate to budget revenue

The Maui News

February 10, 2018 | Today's Paper | Submit News | Subscribe Today

Roadway improvement obligations are not being hidden from property owners

LETTERS TO THE EDITOR

MAR 22 2018

This is a response to the March 2 Viewpoint, "Liens need to be removed," regarding deferral agreements on certain properties in Maui County.

The March 2 Viewpoint writer attempts to frame this as a countywide conspiracy, it actually boils down to a conflict between neighbors that has been ongoing for years. In his argument, he also completely misunderstand and mischaracterize these agreements as liens.

Record straight.

place from the 1970s up to 2007, codified as Maui County Code Section 19-10. If the subdivider of three lots or less, at his or her election, to defer required improvements. If the subdivider elected to defer the improvements, he/she would be responsible to the County of Maui for the cost of the improvements when performed by the County. That this was done, the subdivider was required to enter into an agreement with the County for the improvements when performed. The agreements were recorded on the land to make sure that selling the property would not eliminate the required improvements.

It is unfortunate that anyone would insinuate these agreements are invalid, secret, or a big pot of gold that the county is not collecting.

They are agreements, plain and simple, and the County is abiding by them.

The Department of Public Works is currently enforcing the agreements per their express terms.

April 5, 2012

County Council
County of Maui
ATTN: Council Member Elle Cochran
200 High Street
Wailuku, Hawaii 96793

**Re: Proposal to Provide Assessment Engineering Services to the County of Maui
Phase IV Lower Honoapiilani Road, Kahana, Maui**

Dear Ms. Cochran:

Willdan Financial Services ("Willdan") is pleased to provide the following proposed scope of services, fee and staffing to assist the County of Maui with the development of a benefit analysis and prorata allocation model for distributing capital infrastructure costs installed by the County that benefit the privately owned parcels associated with the development identified as Phase IV Lower Honoapiilani Road. Our analysis will lead to quantified assessments to be placed on the subject parcels.

Scope of Services

Below is Willdan's proposed scope of services described in detail by task. We explain how each task will be accomplished and identify associated meetings and deliverables. We want to ensure that our scope of services is responsive to the County of Maui's needs and specific local circumstances. We will work with the County to revise our proposed scope based on input prior to approval of a contract, and as needed during the course of the study.

Consult with County staff to obtain needed documentation and data to aide our analysis of the project area, the improvements and facilities to be funded.

Willdan will review available data and documentation related to this project, which is anticipated to include the following:

- Developer/subdivision agreements;
- Traffic studies and other land use related reports that provide information on the infrastructure demand by the subject project;
- Existing State of Hawaii legislation relevant to assessments and cost reimbursements;
- County boundary and parcel maps; and
- Budget and financing information related to the existing improvements and facilities, as well as any new facilities planned for the future.

One (1) meeting to initiate the project, as well as gather pertinent information.

Client to provide relevant supporting documentation for review.

Prepare parcel database and boundary map containing all parcels of land that comprise the development and benefited area.



WE HEREBY CERTIFY that the foregoing BILL NO. 34 (1990)

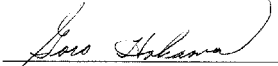
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of April , 1990 , by the following votes:

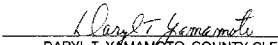
Linda CROCKETT LINGLE	Goro HOKAMA Chairman	Patrick S. KAWANO	Howard S. KIHUNE Vice-Chairman	Alice L. LEE	Ricardo MEDINA	Wayne K. NISHIKI	Verma M. SANTOS	Joe S. TANAKA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 20th day of April , 1990 .

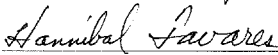
DATED AT WAILUKU, MAUI, HAWAII, this 20th day of April , 1990 .

RECEIVED
COUNTY CLERK
APR 20 1990


GORO HOKAMA, CHAIRMAN
Council of the County of Maui

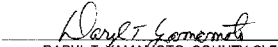

DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 4th DAY OF May , 1990 .


HANNIBAL TAVARES, MAYOR,
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 1907 of the County of Maui, State of Hawaii.

Passed First Reading on April 6, 1990.
Effective date of Ordinance May 4, 1990.


DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

RECEIVED
COUNTY CLERK
MAY 4 1990

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1907 , the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui



“Even on those Capital Improvement Projects where full improvements have been implemented, we frankly have not done a good job of tracking these deferral agreements.”

Milton Arakawa

Public Works Director - 2007

12

**MINUTES
PUBLIC WORKS AND FACILITIES COMMITTEE**

Council of the County of Maui

Council Chamber

July 5, 2007

Time: 9:05 a.m.

Councilmember Michael P. Victorino, Co-Chair
Councilmember G. Riki Hokama, Member
Councilmember Danny A. Mateo, Member
Councilmember Joseph Pontanilla, Member

Councilmember Bill Kaukea Medeiros, Co-Chair

Scott Jensen, Legislative Analyst
Arlene Martins, Committee Secretary

Michael Kihn, Executive Assistant to Councilmember Medeiros
Stephanie Ohigashi, Executive Assistant to Councilmember Victorino

Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 31 & 28)
Maura Horcajo, Director, Department of Parks and Recreation (Item Nos. 31 & 28)

Patrick Matsui, Planning and Development Chief, Department of Parks and Recreation (Item Nos. 31 & 28)
Linda Young, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 26 & 44)

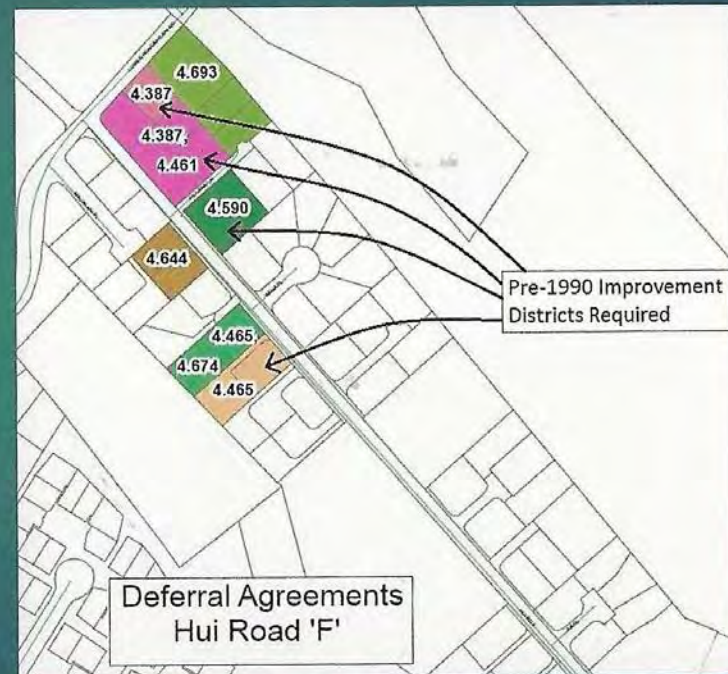
Milton Arakawa, Director, Department of Public Works (Item Nos. 26 & 44)
David Galazín, Deputy Corporation Counsel, Department of the Corporation Counsel

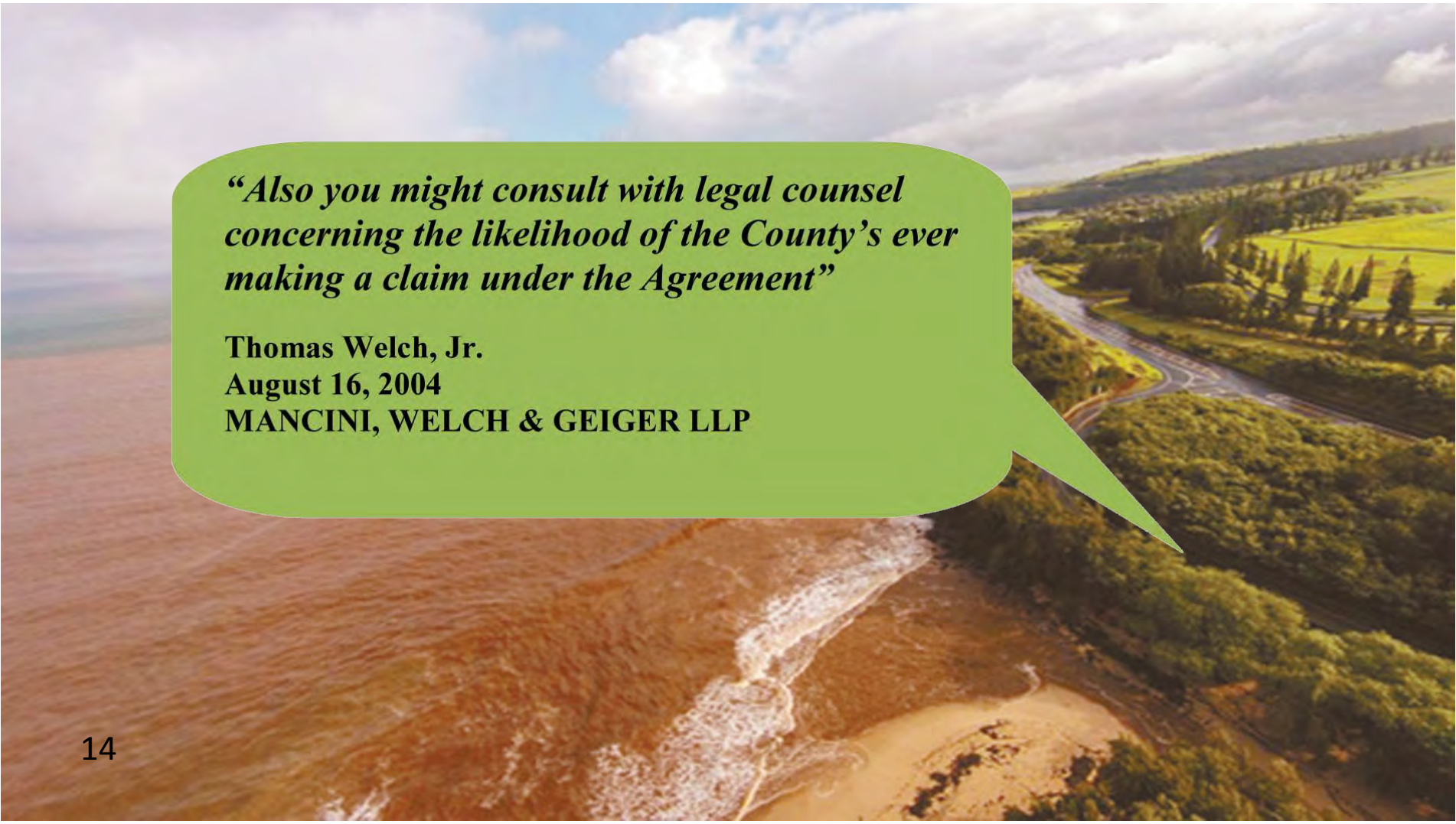
John Hirano, Project Manager, Munekiyo & Hiraga, Inc.
Others (2) other people

Maui Community Television, Inc.

Road Frontage Deferral Agreements

- ▶ Total of nine deferral agreements entered into over the years as allowed by ordinance for three lots or less subdivisions.
- ▶ Five of the nine deferral agreements require the current owners to participate in an Improvement District.
- ▶ Deferred improvements typically include curb, gutter, sidewalks, and drainage.



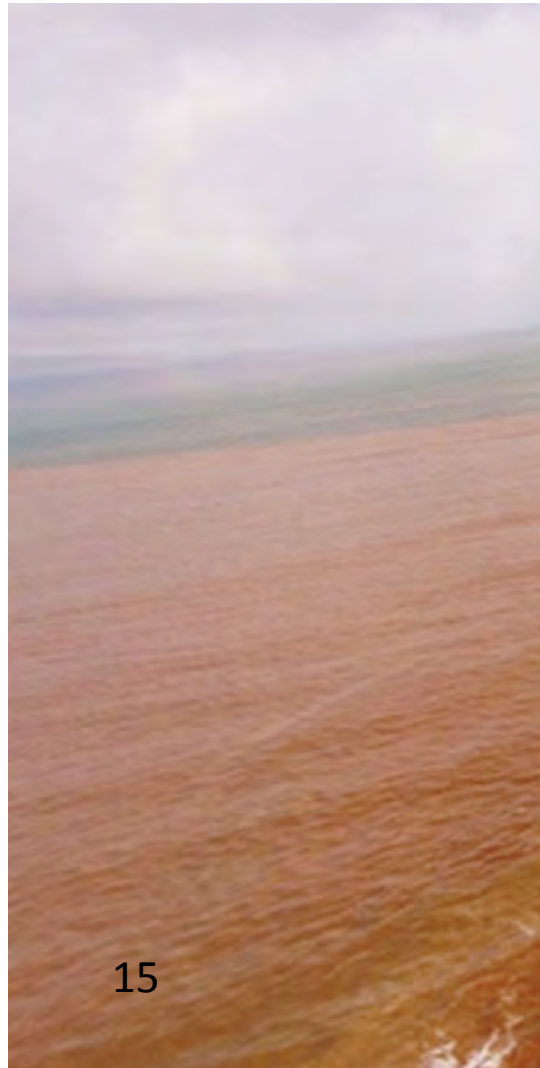
An aerial photograph of a coastal area. In the foreground, there is a body of water with a sandy beach and some rocks. A road curves along the coastline, bordered by a dense forest. The sky is blue with scattered white clouds.

***“Also you might consult with legal counsel
concerning the likelihood of the County’s ever
making a claim under the Agreement”***

Thomas Welch, Jr.

August 16, 2004

MANCINI, WELCH & GEIGER LLP



15

County Auditor
Lance T. Taguchi



OFFICE OF THE COUNTY AUDITOR

COUNTY OF MAUI
2145 WELLS STREET, SUITE 106
WAILUKU, MAUI, HAWAII 96793
<http://www.mauicounty.gov/auditor>

February 7, 2018

Honorable Mike White, Chair
and Members of the Council
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Chair White and Members:

**SUBJECT: RESOLUTION REQUESTING A PERFORMANCE
AUDIT OF THE DEPARTMENT OF PUBLIC WORKS
RELATING TO THREE (3) LOTS OR LESS
SUBDIVISION DEFERRAL AGREEMENTS**

I am in receipt of Council Resolution No. 17-174 requesting that a performance audit of the Department of Public Works relating to three (3) lots or less subdivision deferral agreements be included on my plan of audits for Fiscal Year 2019.

As you are aware, the tracking and enforcement of deferral agreements has been an issue facing the County for a long time. This issue is complicated by various litigation against the County as well as a recent push by some members of the public for this matter to be resolved.

While I have not yet added such an audit to my plan of audits, prior to receiving Resolution No. 17-174 I began moving towards retaining special counsel. Special counsel will assist my office in looking into these matters and, if appropriate, in carrying out such an audit.

Please contact me if you have any questions. Thank you.

Sincerely,

LANCE T. TAGUCHI
County Auditor

i:\audit plan\correspondence_out\180207auc01.docx:lit

COUNTY COMMUNICATION NO. 18-72

RECEIVED

2018 FEB -7 PM 2:45

OFFICE OF THE
COUNTY COUNCIL

RECEIVED
2018 FEB -8 AM 10:52
OFFICE OF THE
COUNTY CLERK



Honorable Elle Cochran, Council Member
SUBJECT: DEFERRAL AGREEMENTS
April 16, 2012
Page 2

The estimated revenues are based on current costs of \$250 per lineal foot of property fronting the County roadway. A typical deferral agreement does not specify the exact methodology for collecting these costs. Therefore, projected revenues are also dependent on a number of factors that would include the involvement of the Department of Finance and may involve legal action for enforcement.

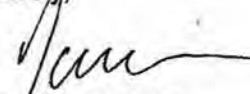
1) South Kihei Road - A total of six parcels may be affected by deferral agreements. The six parcels add up to 345 lineal feet of roadway frontage for a total of \$86,250 of potential revenue.

2) Waiko Road - No deferral agreements.

3) Lower Honoapiilani Road Phase IV - This project has already been addressed in a separate correspondence and currently under review.

Thank you for your attention to this matter. Should you have any questions, please contact me at Ext. 7845.

Sincerely,



DAVID C. GOODE
Director of Public Works

P.B. Sullivan Construction Inc.

P.O. Box 734
Kihei, HI 96753
Phone: 808-875-2833
Fax: 808-874-5690
License # AC-22090

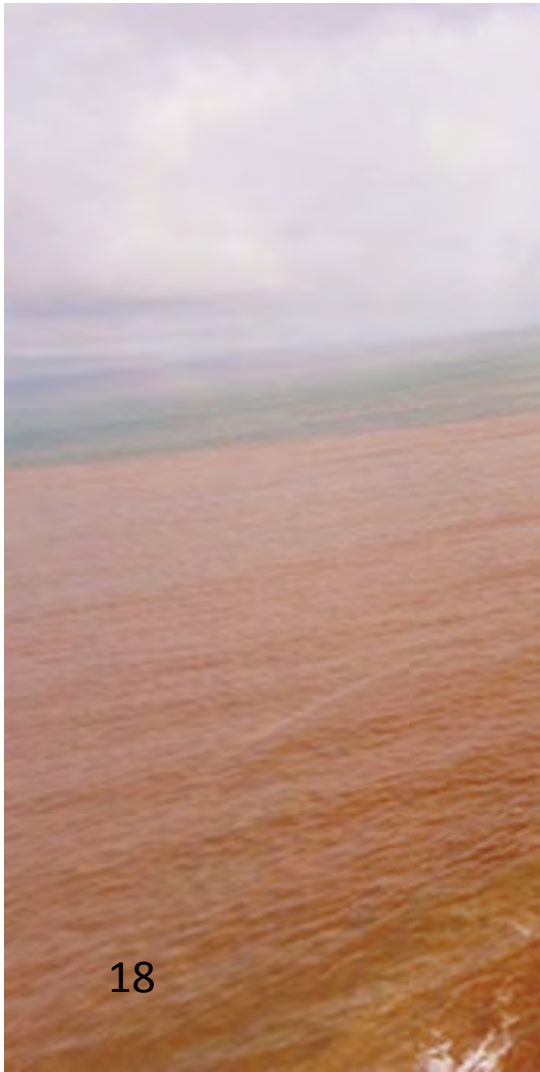
Project: Lower Honoapiilani Road Improvements Phase 4 at Lots 48-C and 48-B

Item #	Description	Bid Qty.	UM	Unit Price	Price
1	Roadway Excavation	102	CY	\$239.91	\$24,470.82
2	6" Permeable Pipe W/ Permeable	210	LF	\$76.34	\$16,031.40
3	6" UTB Under Roadway	40	TON	\$189.45	\$7,578.00
4	3" AC Pavement	27	TON	\$343.73	\$9,280.71
5	5" Asphalt Treated Base	37	TON	\$343.73	\$12,718.01
6	4" Base Course Under Swale	33	TON	\$218.27	\$7,202.91
7	1 1/2" Asphalt At Paved Swale	13	TON	\$343.73	\$4,468.49
8	18" Storm Drain	13	LF	\$178.58	\$2,321.54
9	24" Storm Drain	95	LF	\$172.78	\$16,414.10
10	Type "61614P" Drain Inlet (3' X 4')	3	EACH	\$4,579.08	\$13,737.24
11	ARV W/ Type F Manhole	2	EACH	\$2,745.71	\$5,491.42
12	12" Waterline (CL 52)	91	LF	\$999.88	\$90,989.08
13	Concrete Jacket (12" Waterline)	91	LF	\$512.36	\$46,624.76
14	Enginnering Design			By Others	
15	Control Survey/Staking			By Others	
16	Permits			By Others	
17	Construction Water			By Others	
Total					\$257,328.48

Estimate prepared using plan sheets C-4, C-5, C-32, C-32, C-37, C-38 drawn by Kent Morimoto dated 6/2001 for the Lower Honoapiilani Road Improvements Phase 4

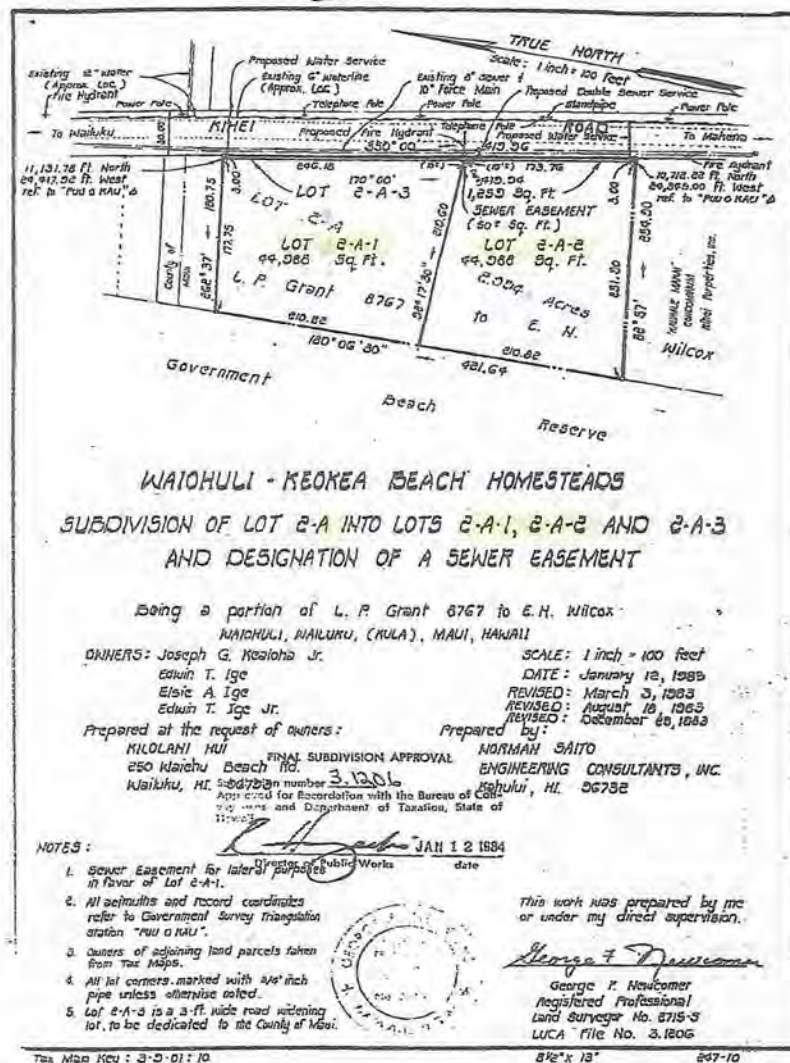
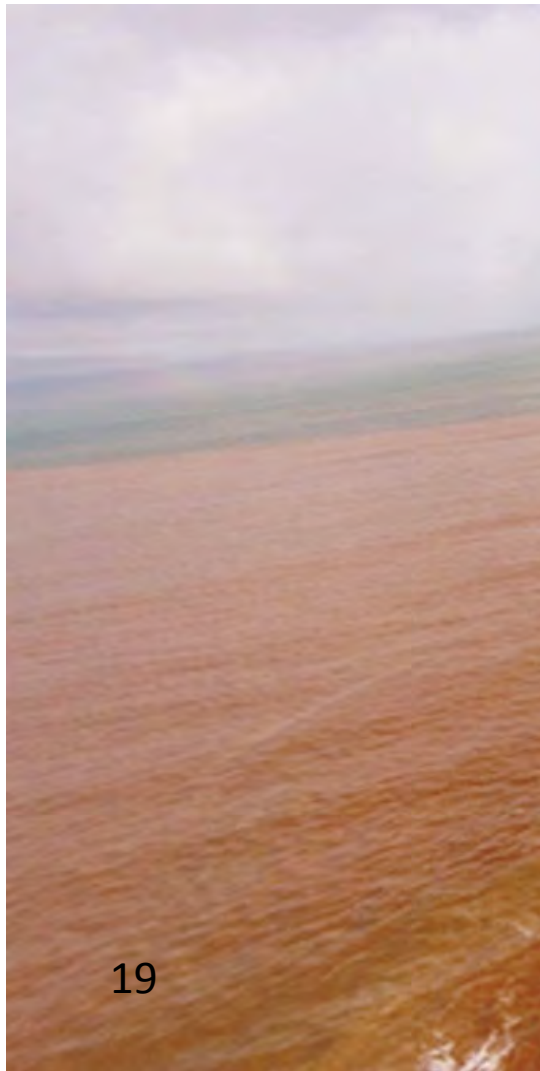
Price Excludes:

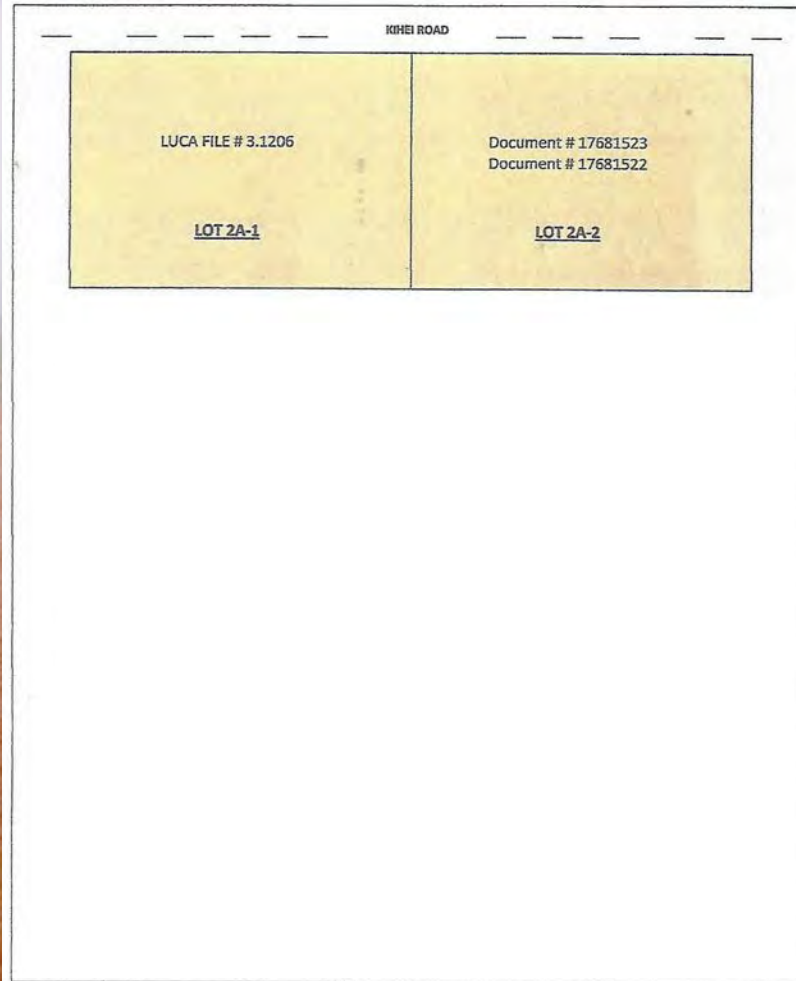
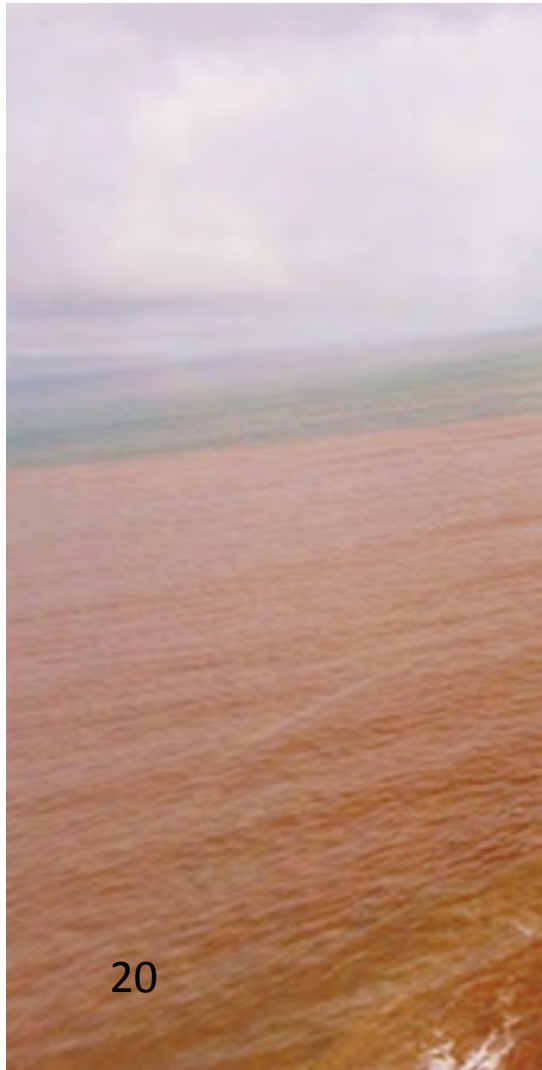
Design, Authority Approvals, Construction Water or any items not specifically mentioned in this estimate.



18

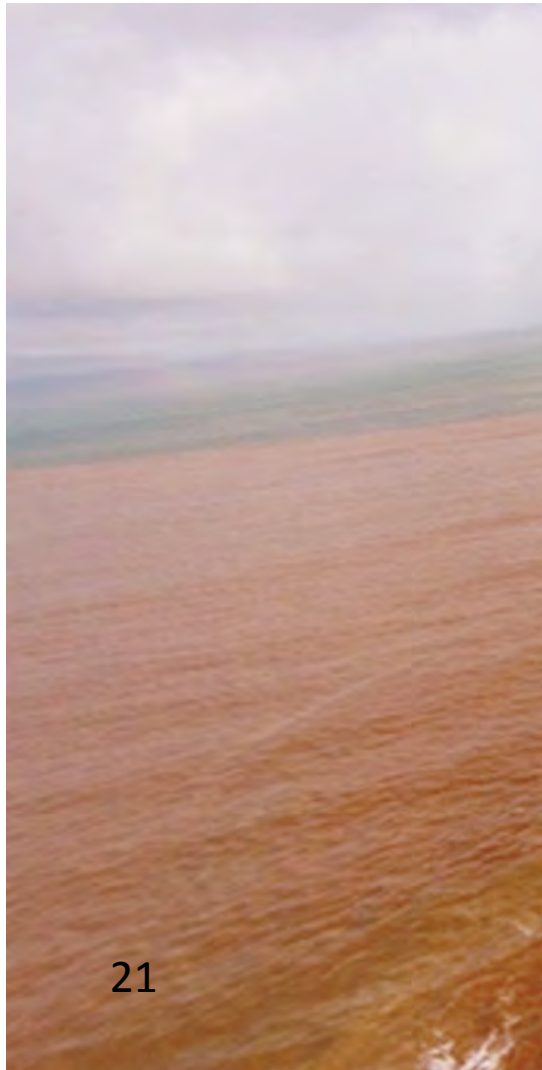




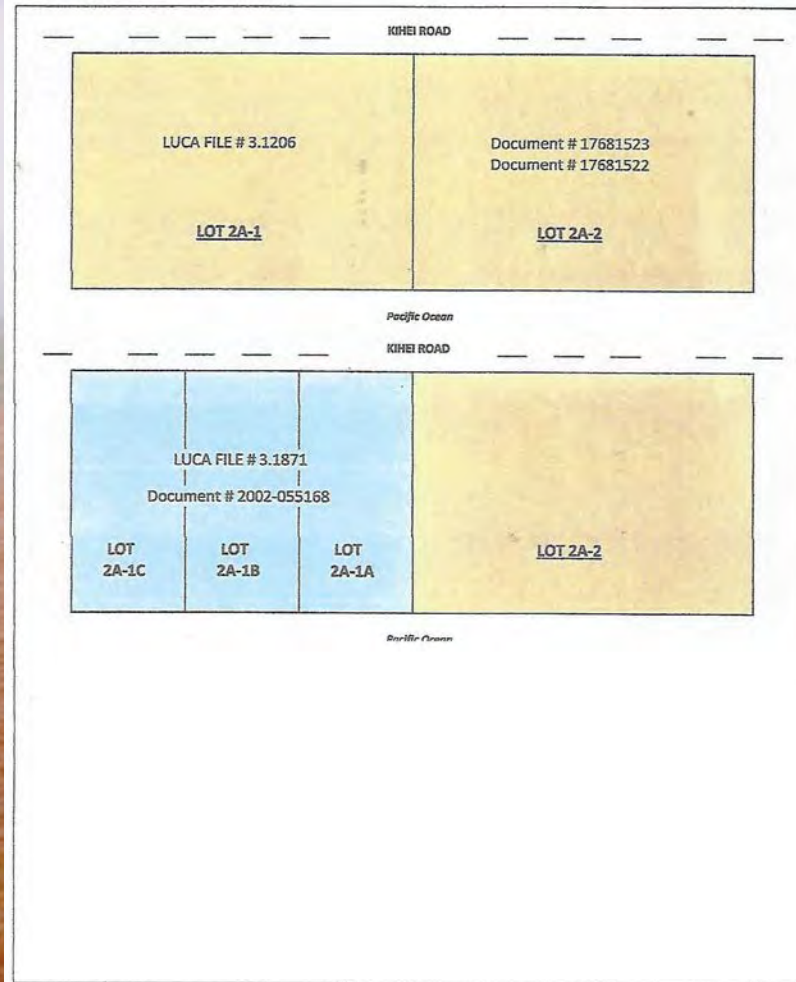


"3 Lots or Less"
South Kihel Road

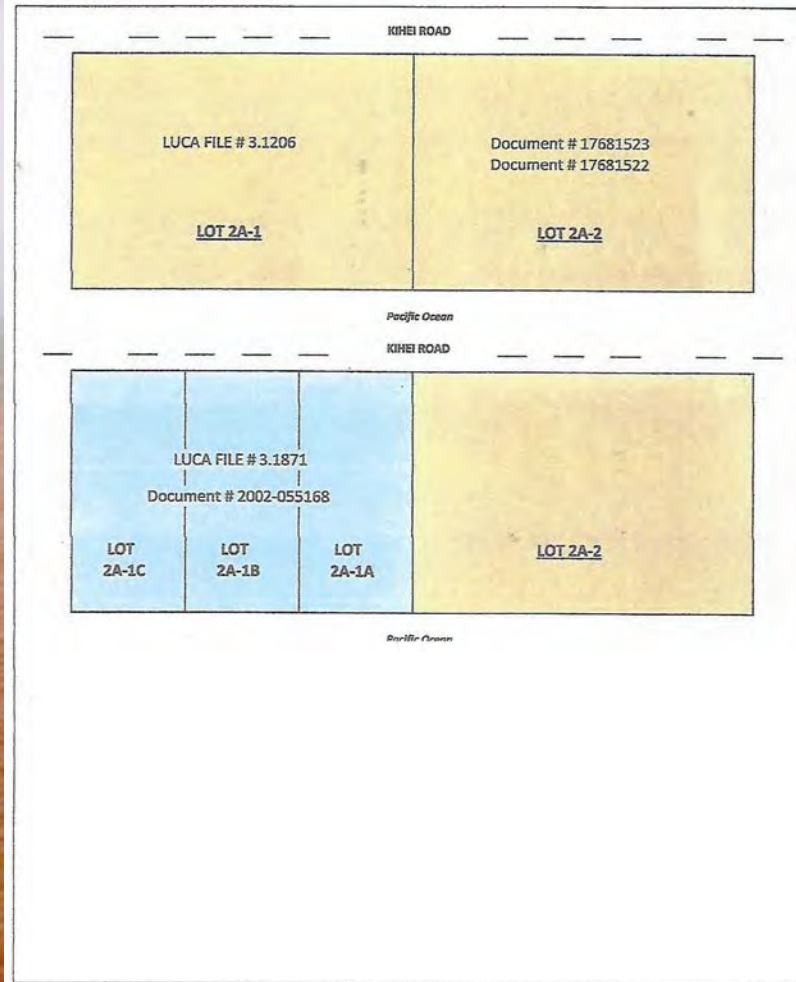


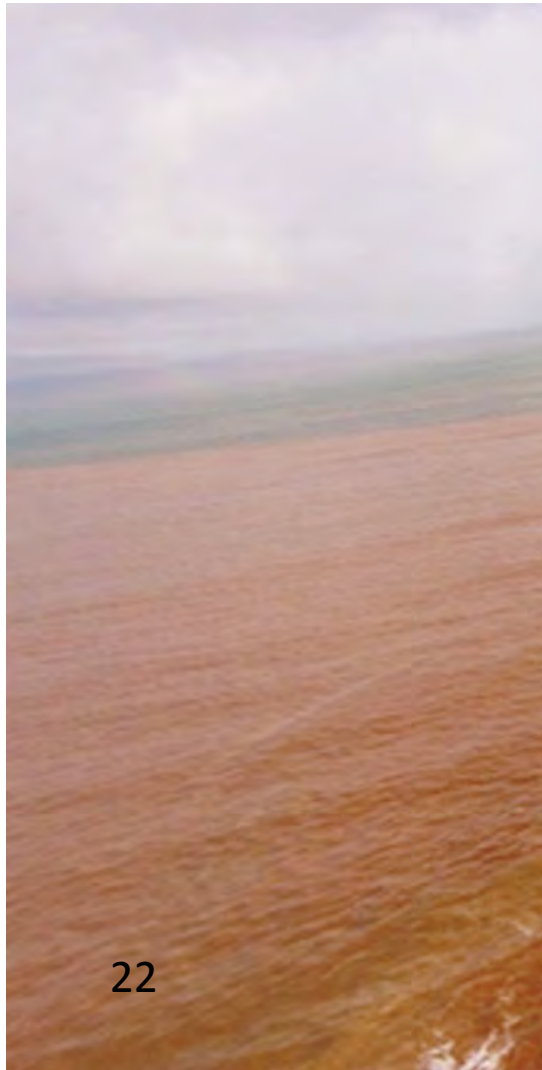


21

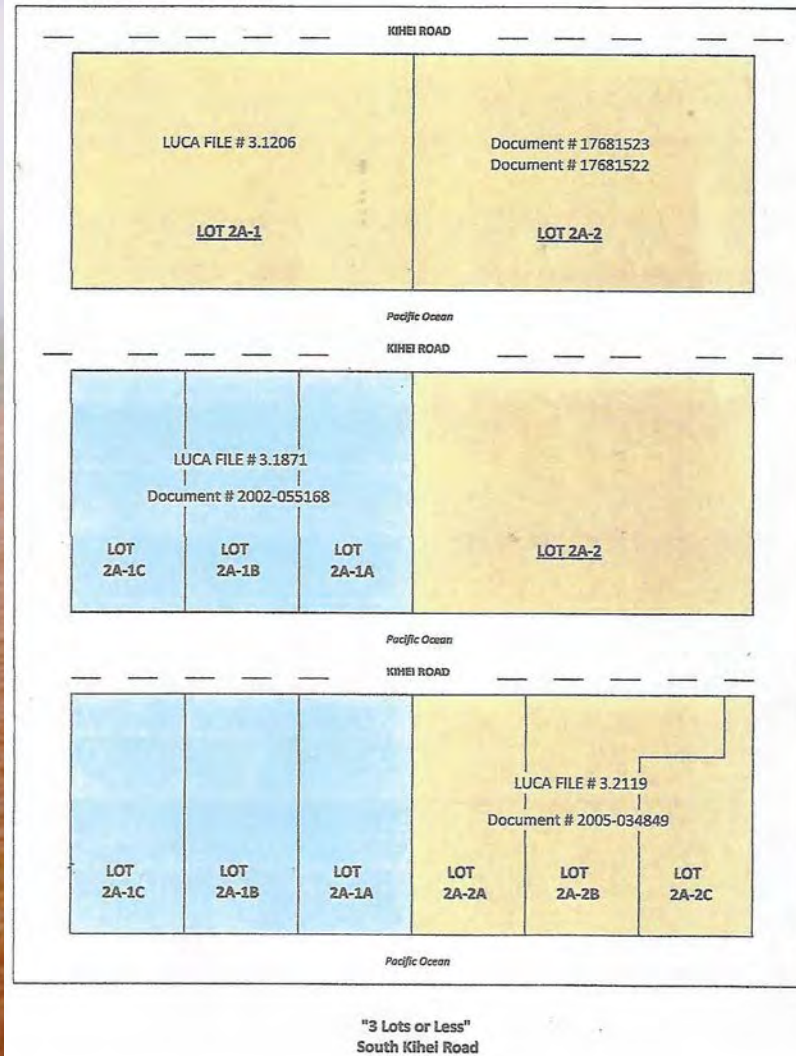


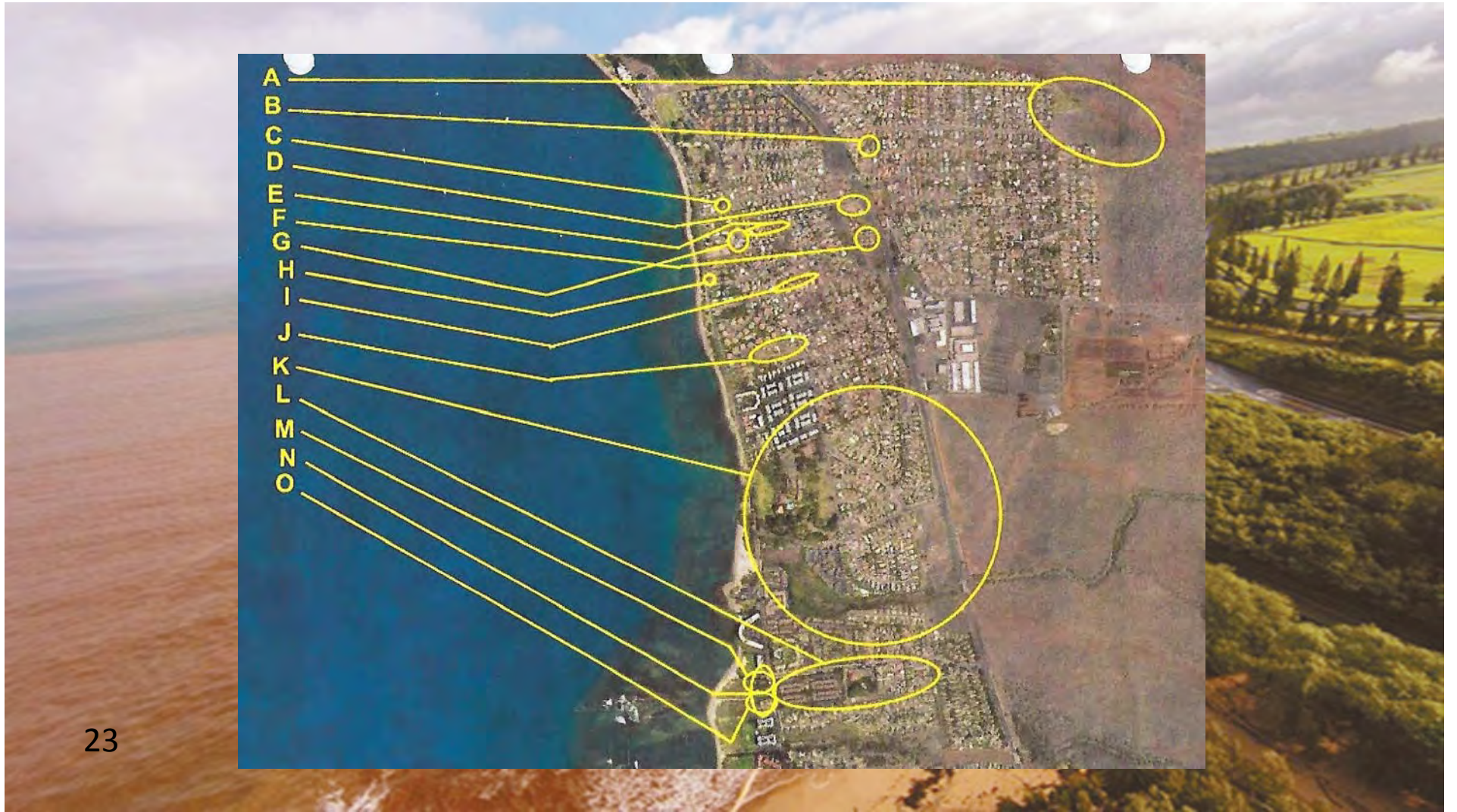
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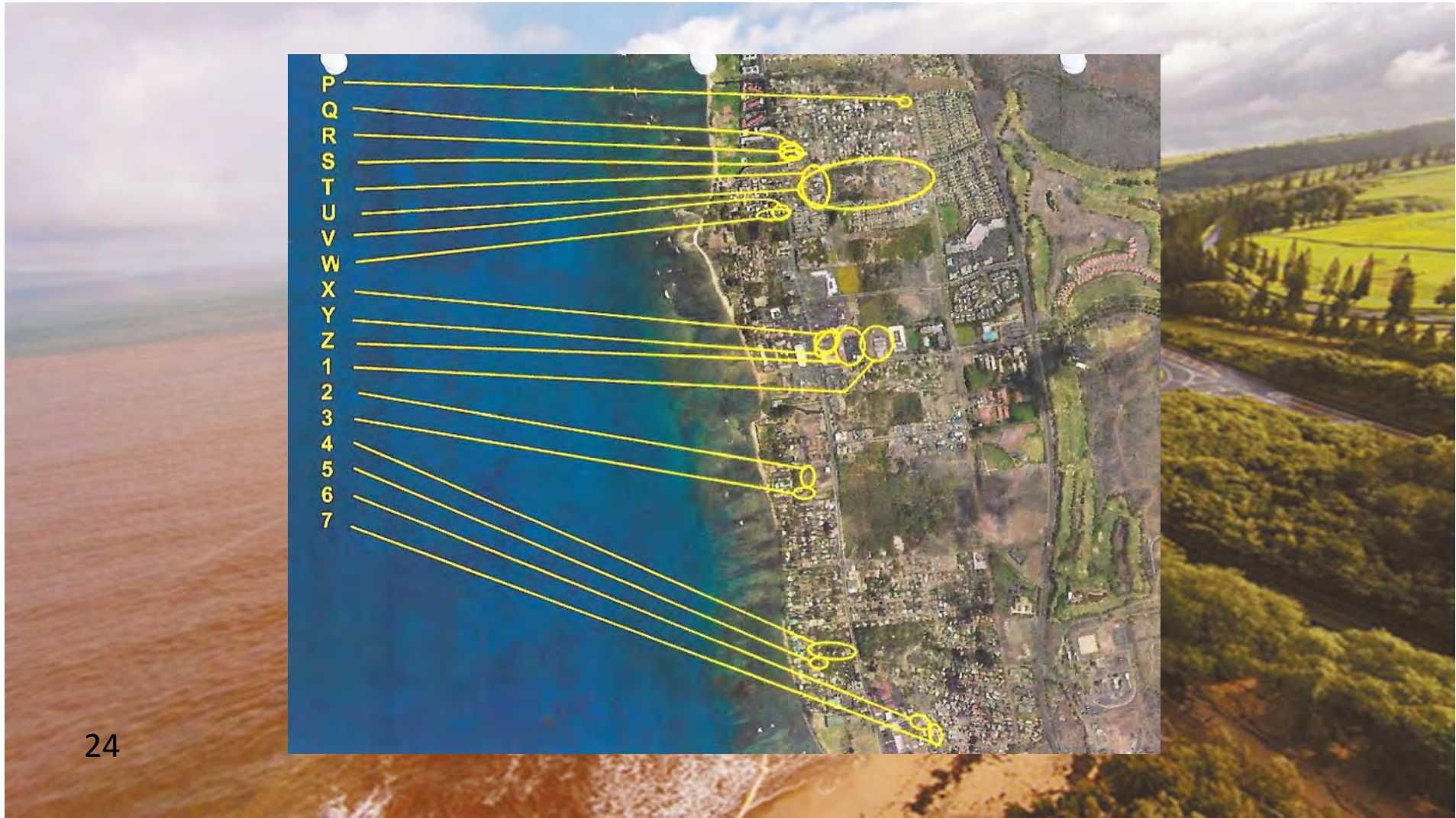


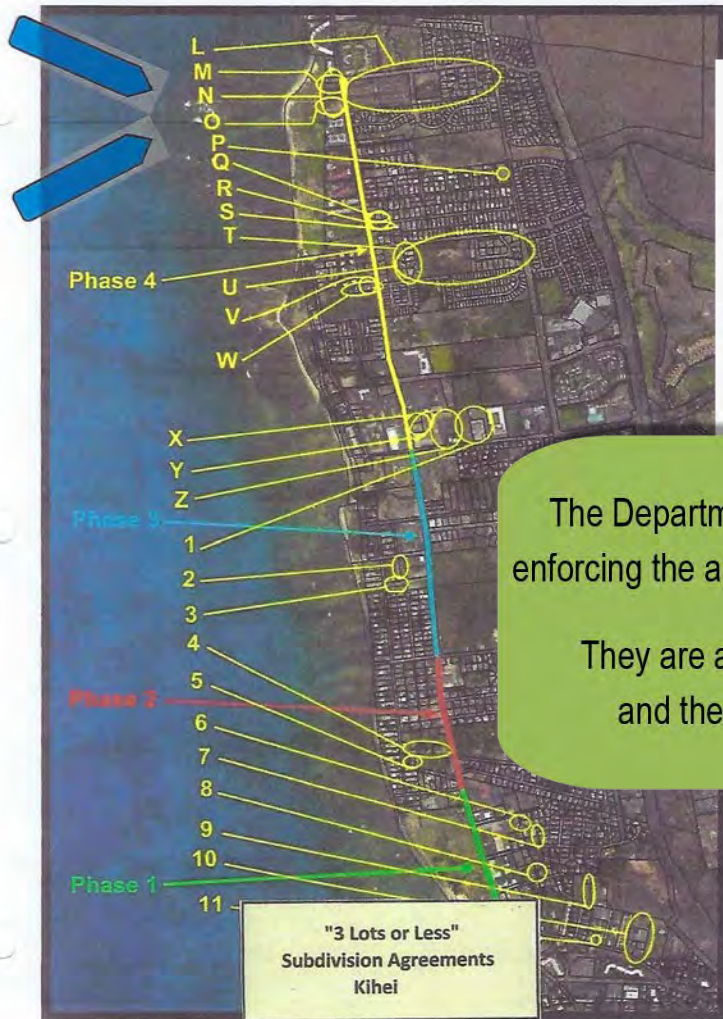


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Roadway improvement obligations are not being hidden from property owners

LETTERS TO THE EDITOR

MAR 22, 2014

f SHARE t TWEET



This is a response to the March 2 Viewpoint, "Liens need to be removed," regarding deferral agreements on certain properties in Maui County.

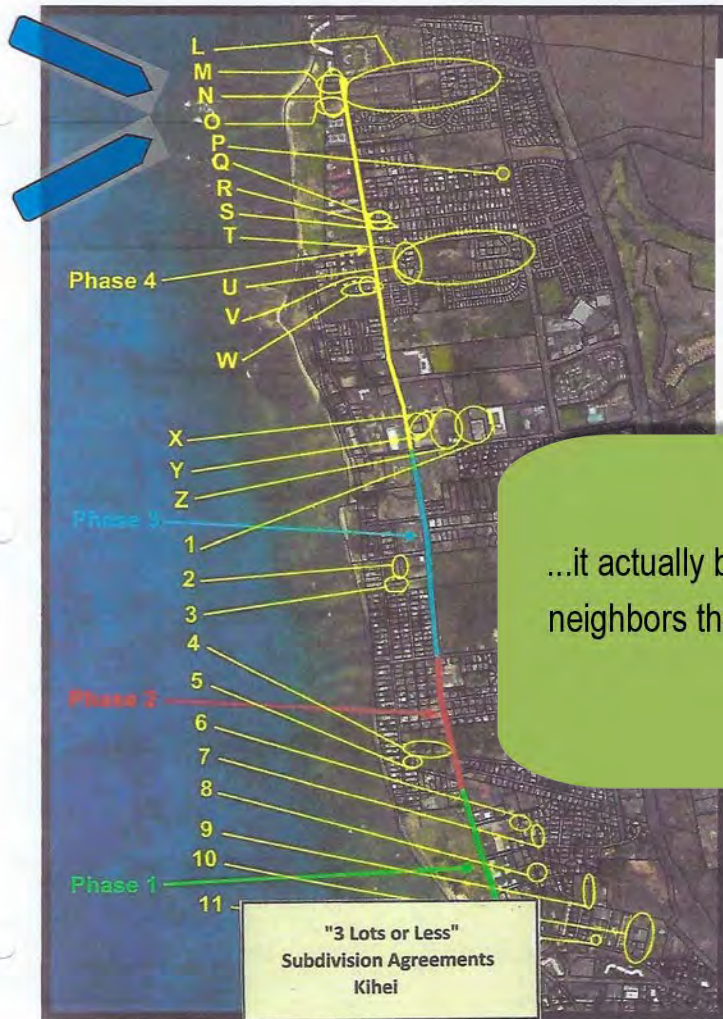
While the Viewpoint writer attempts to frame this as a countywide conspiracy, it actually boils down to a conflict between neighbors that has been ongoing for years. In his argument, he also seems to completely misunderstand and mischaracterize these agreements as liens.

Allow me to set the record straight.

A county ordinance in effect from the 1970s up to 2007, codified as Maui County Code Section 18.20, allowed a property owner of three lots or less, at his or her election, to defer required improvements when performed by the owner. If the owner elected to defer the improvements, he/she would be responsible for the cost of the improvements when performed by the owner. The agreements were recorded and the property would not eliminate the

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MAR 22, 2014

f SHARE t TWEET



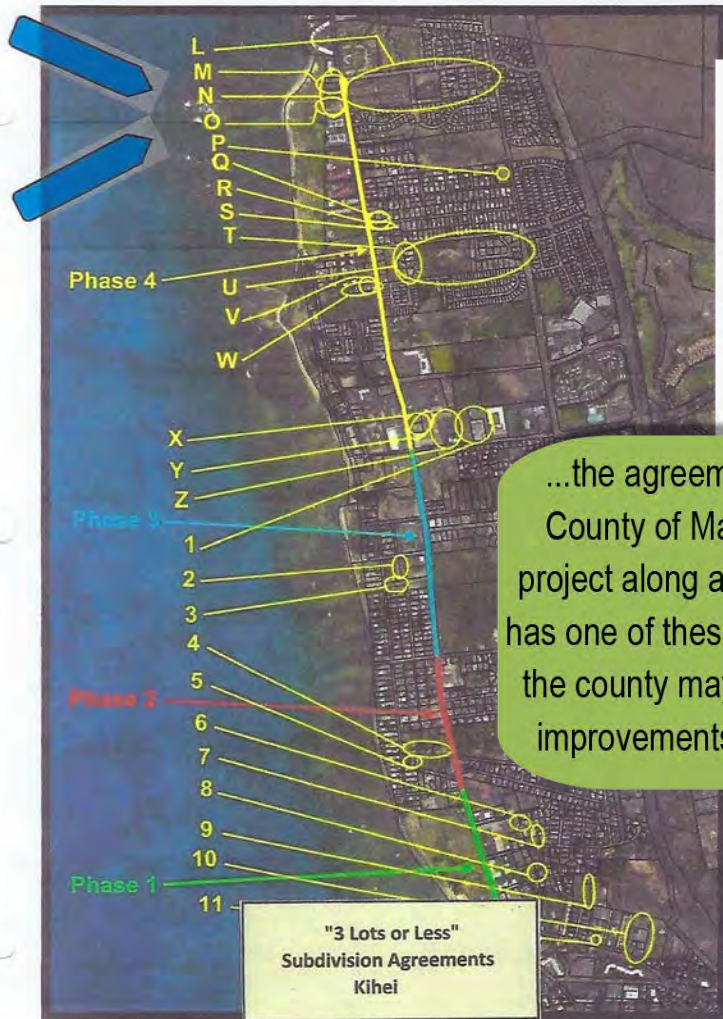
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...the agreements state that if and when the County of Maui does a capital improvement project along a roadway fronting a property that has one of these agreements recorded against it, the county may recover the costs of doing those improvements that were specifically deferred.

Inspections							
Inspection	Result	Completed Date	Completed By	Schedule	CORR		N
					O	C	
There are no inspections for this permit.							

Activities								
Description	Assigned	Nodes		Dur.	Est. Completion	Target End	Decision	Decision Date
		Beg	End					
INITIAL PERMIT APPL REVIEW	9930	1	2	5	13-May-2000	13-May-2000	A	11-May-2000
PRELIMINARY APPROVAL	9930	3	4	15	24-May-2000	24-May-2000	A W/COND	23-Jun-2000
CONSTRUCTION PLAN APPROVAL	0680	4	5	30	?	?	?	?
Comment: SEE ROUTING.								
FINAL PLAT REVIEW	9930	6	7	15	24-May-2000	24-May-2000	A	10-Sep-2001
FINAL REVIEW APPROVAL	9930	7	8	19	13-Jun-2000	13-Jun-2000	A	08-Sep-2000
Comment: TAX CLEARANCE EXPIRES 12/31/00								

Permit Flags		
Flag	Description	Status
There are no flags on this application		

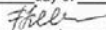
44. As I learned during the final years of my tenure as a Council Member, the Planning Department was not tracking SMA requirements that would insure compliance of developers in completing their SMA Permit roadway and drainage mitigations. They appear to rely solely on the integrity of developers and complaints from citizens to administer developer compliance.

45. I am deeply concerned that the SMA permitting process has become a means for private developers to skirt their infrastructure and environmental mitigation responsibilities, since enforcement may be absent or selective.

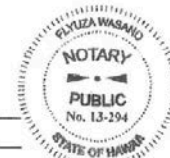

JoAnne Johnson Winer

State of Hawaii
County of Maui

Sworn to and subscribed before me on
day of AUG 11 2015

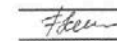


Flyuza Wasano
Notary Public, State of Hawaii
My commission expires 08/11/2017



13

Doc. Date: 8-11-15 # Pages: 14
Flyuza Wasano Second Circuit
Doc. Description: ATTORNEY'S

 8-11-15
Notary Signature Date
NOTARY CERTIFICATION





Petitioning Maui County Auditor Lance Taguchi, Maui County Auditor



Maui Causes Makawao, HI

Petition to Protect Maui

**Close Permit Loopholes
That
Damage Our Environment**

**Delivered to Maui's
Independent Auditor**



Continue your support

 You and 1,764 others signed
this

**CONTRIBUTE TO THE
FUNDRAISER**



**Help Maui Causes
Promote Our Petition
to Protect Maui**

[View fundraiser](#)

HELP THIS PETITION WIN



Share on Facebook



An aerial photograph of a coastal area. On the left, there is a body of water with a sandy beach. To the right, a paved road curves through a lush green, forested hillside. The sky is filled with soft, white clouds, and the sun is visible, creating a bright glow. The overall scene is scenic and natural.

3 Lot or Less Subdivision Infrastructure Deferral Agreements

A red heart-shaped logo with a white outline. Inside the heart, the text "MAUI Causes .org" is written in white. The heart is positioned in the lower-left quadrant of the slide.

MAUI Causes .org



January 16, 2013 | 08:02 AM

The war in Maui County over deferral agreements is raging again. It flares up now and then through the years, only to dissipate a few weeks later. Silent for the last couple years, the issue began getting discussed a few weeks ago. In fact, county officials are insisting that the problem may even be coming to an actual solution.

A relatively ancient anecdote is in order.

Back in 2002, when the County of Maui first began talking of the Lower Honoapiilani Highway "Phase IV" development between Kahana and Napili, West Maui resident Christopher Salem visited an engineer who worked for the county. Salem, who lived in the area, had some infrastructure improvement ideas: speed control devices, using indigenous stone walls to replace the current steel barricades, and even burying overhead power lines underground to improve the neighborhood's aesthetics. According to Salem, the engineer looked over his proposal, then said the county had no money to make those kinds of improvements.

"What about the funds from the multiple developer reimbursement agreements along Phase IV?" Salem said he asked.

"Ah, we never collect those," Salem said the engineer told him.

"Ever?"

"Never."

Ah, deferral agreements. I had first heard of these a year or two after Salem's meeting, when I was discussing land development with then-Maui County Council member Jo Anne Johnson (now named Jo Anne Johnson Winer, she went to work in 2011 as the county transportation director). Deferral agreements were one of her perennial bugbears—an itch in the county's planning/public works/finance nexus that, no matter how much she scratched at it, never seemed to get better.

Put simply, deferral agreements were deals the County of Maui used to strike with those who wanted to divide up their land into three lots or less. The landowners had a choice: pay for whatever sidewalk, pavement, curb or gutter improvements were needed right then, or defer the payment. The practice began in 1974, and was mainly to help local families divide up their land for their offspring without having to become full-fledged developers.

Even simple questions like how many of these agreements exist aren't simple to answer. According to Maui County Public Works Director David Goode, a mid-2011 search by his office discovered 600 such agreements. That seems great, except that in 2010, his predecessor Milton Arakawa told the Maui County Council Planning Committee that his office found about "1,700" agreements.

"That was before we did our count," Goode told me. "The previous number, I can only imagine, is an estimate."

Goode, by the way, was County Public Works Director back in 2002 around the time when Salem first found out that the county "never" collects deferral agreements. A decade later, in 2012, Goode lamented to the County Council during budget hearings how "crazy" the whole situation had gotten.

"[I]n some cases, especially in West Maui, the original three-lot subdivision was a huge piece of land that went halfway up the mountain," Goode said during an April 19, 2012 budget hearing. "And so there's a possibility there's going to be some deferral agreements where theoretically there's 1,000 different owners and they each owe us \$25. I mean it's getting really crazy."

In any case, the issuing of these deferral agreements to those building three lots or less ended in 2007 after a number of problems emerged. First, as Salem discovered five years earlier, the county simply didn't collect any of the deferred monies. The deferral agreements just sat there, without the landowners making any payments, even as county officials actually went ahead and made some of the required infrastructure improvements.

"This is money," Johnson said at a Nov. 15, 2010 Maui County Council Planning Committee hearing on the matter. "It's not owed to me. It's not owed to Public Works. This is taxpayer money that is able to be collected if we would simply send people a bill for their proportionate share of whatever the improvements were made to the frontage abutting their property."

They did this, county public works officials admitted years later, because they had very little notion of who exactly owed them what. Just how many of these deferral agreements hadn't yet been paid, how many infrastructure improvements were made without first securing payment—even figuring out how many deferral agreements actually existed—were all unknowns at the County of Maui, even as late as 2010.

"[W]e intend to collect the necessary information on deferral agreements as we need it," then-Public Works Director Milton Arakawa told the Council's Planning Committee at a Nov. 15, 2010 hearing (this is the same hearing when he threw out the 1,700 figure that Goode disputes. "There are approximately 4,900 subdivision files at Kalana Pakui and an, an additional 5,800 files in storage. And, of course, not all of these have deferral agreements. So we do not need the information, all of this information, at the current time. And it would take many months of research to find deferral agreements through the 33 years that this provision was in existence."

As for how much money that added up to, Johnson estimated that the figure would run into the "millions of dollars."

Councilman Mike Victorino, who at that point had been on the council for four years, admitted during the hearing that he'd known nothing of deferral agreements, and what he was hearing "astonished" him.

"And it's astonishing that 33 years and some seven Administrations and I don't know how many Councils in between, this has just languished and languished," he said, according to the hearing minutes. "And I, I'll take responsibility, four years, I've just heard about it. I've never had any idea what the heck was going on. And now, now to have some reality set in, Mr. Chair, it's astonishing. But this could be millions and millions and millions of dollars that is due this County. And the problem is maybe some people even passed away, you know, people have left, sold it six, seven times, I don't know."

Victorino's last point, about the possibility of properties with deferral agreements on the books getting sold and re-sold, throwing the question of who owed the county what completely askew, was important. At the hearing, Arakawa agreed that property sales since the agreement made it all that more difficult to figure out dollar amounts.

Then Victorino called for action. "But it's the point that this County is due this money," he said. "And whether the next Administration takes it on or not I think the, the Council should make it, you know, very much an important issue that we need to work on this problem along with a few others because these are monies that the people of Maui County are owed."

The next day, The Maui News ran a story on the hearing under the pretty sensational but nonetheless

accurate headline "County unpaid for roadwork for decades." And then, as is often the case where these types of things are concerned, nothing changed. For all his talk of being "astonished," Victorino apparently didn't do anything after the hearing (he did not return a phone call for this story).

But Salem, the guy who discovered more than a decade ago the untapped potential of deferral agreements, decided to do something. There were two reasons for this. First, he had also worked as a County Council aide, and was very familiar with both engineering and legislative matters. And second, he owns a house in the Lower Honoapiilani Highway Phase IV area.

In mid-2010, Salem received a letter (dated May 27, 2010) from Public Works Director Arakawa. "[W]e would like to provide you the following "Notice of Intent to Collect," Arakawa wrote, referring to the fact that a deferral agreement was attached to his house, which was in the Phase IV project area. "As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement."

The letter would have been alarming enough if Arakawa had stopped there. The letter included no due date, but was rather just a warning that such a collection notice would someday come. Deferral agreements are, after all, contingent liens—homeowners who don't pay them risk foreclosure.

But the letter also stated that the county didn't actually have a "pro rata share of the costs" to give him. Instead, Arakawa's letter said, Salem would have to negotiate his final share of the cost with the other original lot owners.

Title companies call that an "open-ended encumbrance"—a bill that, someday, will come due in some amount that's yet undetermined. Good luck selling a home—much less getting it appraised—with that attached to your deed.

Needless to say, Arakawa's letter outraged Salem. It was one thing to ask him to pay a bill—that was perfectly reasonable. But to put in writing that someday he'd have to pay an indeterminate amount that he'd have to negotiate himself? That was too much.

"He didn't have the authority to send that letter," Salem said. "There is no formula adopted by ordinance for the assessment and collection of these agreements. The county Charter says assessments have to be adopted by the Council."

Salem, who spent about 15 years working with the County Council, then wrote up the "Fairness Bill" (dubbed PC-17). The bill, said Salem, would get all the deferment agreements off the county's books and set up a method of collecting whatever money was still owed to the county. It would develop a formula for assessing and collecting the agreement amounts. He said it was partly based on a similar county parks ordinance.

"There already is an ordinance with parks," Salem said. "If you develop, you give up land for a park or pay a fee. That came out in 1987, and is exactly what's needed for deferral agreements." Of course, Salem said there was a three lots or less exemption built into the parks ordinance as well.

Anyway, the Fairness Bill seemed to be moving along until early December. Then, Salem said, Councilmember Don Couch suddenly killed it. What's more, the bill was not rolled over to the next council session.

According to Couch, the bill was "auto-filed," meaning that if a council member didn't ask for it to come up again during the next term, it was filed away. His reason, he told me, was that the bill simply wasn't necessary.

"The Department of Public Works is going ahead with deferral agreements where applicable, and not going ahead where nothing is going on. When they come up, I'm guessing a lot of them get rectified."

Goode agreed. "When the county comes in and does a project, then we would exercise the agreements," he said. "We're coming up on our first project now where we'd send out a letter [to those with deferral agreements]." The project, Goode explained, is the Lower Honoapiilani Highway Phase IV development that affects Salem.

As for Salem's "Fairness Bill," Goode said it that the County Corporation Counsel's office had said it wasn't legal.

"There was discussion on amending the law," Goode said. "But our attorneys said that you can't. It's a done deal and we have to live with it. I don't think at this point that there's any way to change the deal. It wouldn't fly."

For his part, Salem says he still concludes that the Maui County Charter is clear on this. "The park fee ordinance does have a formula for collection," he said. "They're never acknowledging these things. Will they acknowledge them in this year's budget?"

AFFIDAVIT OF JO ANNE JOHNSON WINER

I, JoAnne Johnson Winer, state as follows;

1. I am a citizen of the United States of America, a resident of the County of Maui, State of Hawaii and I am over 21 years of age.

2. As a resident of West Maui, I was elected to the Maui County Council on November 2, 1999 and served for ten years until reaching term limitations and I currently serve as Director of Transportation for the County of Maui.

3. On or about 1999, I hired Kathy Kaohu as my executive assistant to the Maui County Council. Ms. Kaohu is currently an executive assistant to Maui County Council Member Don Guzman. She also assisted me in research on issues while on the Council and on issues related to "deferral agreements."

4. On or about late in 2000, my office was contacted by West Maui resident Christopher Salem regarding questions and concerns over the proposed design for a County of Maui Capital Improvement Project for Phase IV of Lower Honoapiilani Road relating to public safety, environmental impacts and view planes, since the project ran adjacent to his property.

5. In cooperation with Austin, Tsutsumi Associates, Inc. (project consultants for Phase IV) and County Project Manager Joe Krueger, Mr. Salem volunteered his professional knowledge and expertise to help create a more sensitive and safe redesign of the Phase IV roadway improvements, which I believe are still on file with the County.

6. As a member of the Maui County Council, I approved the expenditures for this Phase IV Capital Improvement Project during our annual budget hearings as a part of

our annual budget process. During this process, I understood from the information provided that the project would begin in 2002 and the construction would take about a year.

7. I do not believe that Council members were aware at the time the funding was approved that the Department of Public Works had failed to acquire the numerous land rights and necessary easements to initiate the field construction of the Phase IV roadway upgrades. To the best of my knowledge the Phase IV Capital Improvement Project is currently stalled and I am unclear if approvals and/or funding are in place.

8. In late 2000, Mr. Salem also brought to my attention outstanding obligations owed to the County of Maui from developer contractual agreements commonly known as “3 Lots or Less” roadway improvement “Deferral Agreements.”

9. We met with Councilmember Riki Hokama to determine if his historical knowledge could help us to understand this process and how these obligations could still be outstanding. Councilmember Hokama was not aware of who was tracking these obligations and was also concerned about these obligations. He did not want to use public monies to pay for improvements that were the responsibility of either developers or owners.

10. Since Mr. Salem owned a property along Phase IV of Lower Honoapiilani Road he shared his firsthand knowledge of how this worked with us. He advised us that in accordance with terms of a “3 Lots or Less” subdivision agreement recorded on his land title by our attorneys in Corporation Counsel, the original developers deferred the cost of roadway and drainage improvements. Mr. Salem explained that this obligated

current and future property owners within the 3 Lot subdivisions to pay to the County of Maui their “pro rata” share of the Phase IV Capital Improvement Project.

11. I later learned from Mr. Salem’s ongoing inquiries and notices to our County departments, the Department of Corporation Counsel, Department of Finance, and Department of Public Works that no department was assigned to track the collection and assessment of an unknown quantity of developers contractual financial obligations owed to the County of Maui. As a result, it was unknown how many of these agreements existed or how much money might be owed to the County of Maui. I believe I also received a letter from Public Works confirming that no records were being kept by their department of these agreements.

12. Through this process I also learned that subdivisions of 4 lots or more were required by ordinance to mitigate the impacts of their developments by installing complete roadway and drainage improvements along their frontages without any form of deferral or developer exemptions available.

13. I recall receiving a copy of a letter sent from Mr. Salem to Mayor Alan Arakawa alerting the administration that public funds were likely being used to pay for private developer’s financial obligations without any form of reimbursement to the County of Maui, since deferral agreements were not being tracked.

14. From 2002 and for years thereafter, I continued to raise my concerns in annual Maui County Council budget hearings regarding how these deferral agreements actually obligated the County of Maui to pay for and incur private owner’s financial obligations.

15. Prior to my tenure as a council member, I learned that the first three phases of Lower Honoapiilani Road had been upgraded and improved as County of Maui Capital Improvement Projects with County of Maui and Federal funds. However, no funds were provided through deferral agreement collections.

16. As I came to learn over time, on these 3 phases, the County of Maui paid with public taxpayer funds the entire costs of developer's roadway frontage and financial obligations without making any attempts to notice or collect upon the development debts owed.

17. My numerous inquiries to then Department of Public Works Director Milton Arakawa, requesting a list of developer's subdivisions that were subject to assessment and collection throughout Maui County, failed to achieve any results.

18. In 2007, out of frustration, I proposed legislation to the members of Maui County Council to Title 18 that was adopted (I think it was ordinance 3513 and Bill Number 77) by Maui County Council in 2007. I believed that by doing so, it would limit the expenditure of public funds on private developer's or owners financial obligations that had been ongoing since 1974.

19. On October 12, 2009, I proposed further language to a proposed Title 18 bill that would insure that financial obligations set forth in previously executed and recorded "deferral agreements" would be assessed and collected by the County of Maui.

20. The resulting Ordinance 3731 was enacted and insured that proper advanced Notice of Intent to Collect would be sent by the director authorized to administer the developer agreement at the commencement of future funding of roadway

Capital Improvement Projects and at the time land right of way acquisition was initiated by the County of Maui.

21. Ordinance 3731 insured that developers and their heirs would be obligated to pay a pro rata share of roadway capital improvements in order to prevent those costs from being shifted to Maui County taxpayers.

22. In compliance with the adopted ordinance, I recall that Director of Public Works, Milton Arakawa, then sent letters of Notice of Intent to Collect to multiple property owners along the Phase IV Capital Improvement Project of Lower Honoapiilani Road, including Mr. Salem.

23. Director Arakawa informed property owners that the County would ask them for a payment of the pro rata share of costs of the Phase IV roadway improvements as per the terms of their deferral agreements. Director Arakawa also notified the property owners that Phase IV construction would now commence in 2012.

24. Director Arakawa, I believe also informed the affected property owners that their pro rata share would likely be determined in consultation and agreement between other property owners within their subdivision. However, I could never find any authorization within our legislation that would allow such a notice and determination.

25. It was not until November of 2010 that Public Works Director Milton Arakawa finally disclosed to the County Council that he believed there were perhaps as many as 1800 open-ended deferral agreements affecting the land title of thousands of properties in Maui County that had been executed and recorded by Corporation Counsel. This was very disturbing to many of us.

26. I was also made aware by Mr. Salem that Director Arakawa had informed

the property owners in Mr. Salem's subdivision that 5 property owners from two separate overlapping 3 Lot subdivisions were obligated to pay a pro rata share of the 3 Lots or Less Subdivision Agreement. Mr. Salem asked me if I was aware of how this could happen and I advised him that I knew of no ordinance adopted by the Maui Council that would allow two separate overlapping subdivisions of the same parcel of land to twice defer their roadway infrastructure and financial obligations and I had no explanation as to how this could even happen.

27. In early 2011, I met with Mayor Alan Arakawa and Mr. Salem and I was instructed by Mayor to work with Corporation Counsel Attorney Ed Kushi and Mr. Salem to see if there was a possible formula or process for assessment and collection of the deferred developer financial obligations that the Mayor might present for consideration to the Maui County Council. The knowledge that both Mr. Salem and I had of the subject matter was why I believe we were asked to come up with some possible suggestions to the Mayor.

28. The effort to provide input never came to fruition since Corporation Counsel advised the Mayor that our input was not needed. I was also questioned by Corporation Counsel as to why I was even involved in this matter inasmuch as I was no longer a Councilmember. I explained that I had specific knowledge of the issue and felt that I could contribute to resolving the matter to the benefit of all concerned. I am aware that after Corporation Counsel countered Mayor Arakawa's directive, Mr. Salem took it upon himself as a private citizen to meet with Council members and their assistants to draft legislation to adopt a fair and reasonable process for collection and assessment of the developer's deferred financial obligations.

29. I read what I term the “Fairness Bill,” prepared with assistance from Mr. Salem in cooperation with Council Member Elle Cochran’s executive assistant Jordan Molina. The bill provided what I thought could be the start to achieving a fair and responsible process for collection and assessment of developer’s deferred financial obligations. Mr. Salem advised that the bill also appeared to have support from members of the Maui County Council. I do not know what happened to the legislation beyond what I was told by Mr. Salem.

30. I am unaware if the Department of Public Works or Corporation Counsel ever addressed the concerns raised by Mr. Salem regarding the five owners with two overlapping three lot subdivisions. There should be some type of response as it does not appear to be allowed under our county ordinances. If it is not legal, then how can Corporation Counsel allow it to be permitted?

31. Corporation Counsel informed Mr. Salem, and I believe, during public testimony, our County Council as well as the general public, that releasing copies of the developer contractual agreements would be “an interruption of a legitimate government function”. I did not agree with this interpretation.

32. I recalled reading in a Maui News article that Public Works Director David Goode publicly stated that Corporation Counsel deemed the “Fairness Bill” illegal. From what I understood, the “Fairness Bill” was reviewed by Council Services attorneys prior to being forwarded to the County Council for consideration and no issues regarding illegality were raised.

33. I question whether or not a written memorandum was ever issued by Corporation Counsel to the members of the Maui County Council explaining why the

“Fairness Bill” was unlawful or inconsistent with the 2010 Ordinance that was approved by Corporation Counsel. This was always a part of the standard procedure when I was on the Council.

34. During my years of public service as a Council Member of the County of Maui, the attorneys in Corporation Counsel always led me to believe that the “3 Lot or Less” contractual agreements drafted and recorded by the Department were collectable debts owed to the County of Maui.

35. Why the Fairness Bill that was submitted was not considered or an alternate proposal drafted so that monies owed to the people of Maui County were able to be collected? I was disturbed with the way Mr. Salem’s integrity was questioned and how his motivation to resolve this issue was portrayed both privately and publicly during the discussions surrounding the bill.

36. I believe Mr. Salem’s efforts in seeking responsible government over the past fifteen years were on behalf of the best interests of the citizens of Maui County. From what I personally witnessed, his dedication and commitment to the youth programs of West Maui has been exemplary despite the suffering his family has endured and continues to endure by bringing these issues into the public light.

37. It was recently brought to my attention that Public Works Director David Goode advised that the County of Maui “*may or may not*” be collecting upon the developer contractual obligations previously noticed for collection to property owners by Public Works Director Arakawa. I do not agree with this position as it contradicts the intent and stated language of ordinance 3731 that was publicly adopted by our Maui

County Council. Consistent with all legislation adopted by the Maui County Council, Ordinance 3731 was reviewed and approved by Corporation Counsel and is a law.

38. I have reviewed a letter from Director Goode, which was approved by Mayor Arakawa on January 9, 2012, wherein he stated his department has completed the cataloging of all known deferral agreements and it is his intent to work with the Department of Finance and Corporation Counsel to arrive at fair formula for calculation and assessment and notify the affected land owners of their required contributions.

39. I have also reviewed a letter from Director Goode on April 16, 2012, which provided the projected revenues from collection of developer deferral agreements on affected parcels along the South Kihei Road Capital Improvement Project.

40. I also reviewed a recent document showing Mr. Salem's analysis of the developer deferral agreements on residential, commercial, and industrial properties recorded by the Department of Public Works and Corporation Counsel throughout Maui County.

41. Why are public officials not bound to follow ordinance 3731 which required that Notices of Intent to Collect deferred developer contractual financial obligations were distributed? Why does it appear that the County is shifting private obligations to the public in violation of the County Charter?

42. An additional concern is the obligation to insure that there are no unfulfilled SMA Permit obligations wherein developers have failed to complete their roadway improvement and drainage mitigations that also may end up being paid for with County funds during Capital Improvement Projects. What is being done to insure that these obligations are being met and who is tracking them?

43. During a Maui County Council Infrastructure Management meeting on February 1, 2010, Attorney Galazin of Corporation Counsel informed the Council members of the different situations in which a developer may have to pay for roadway improvements and drainage mitigations, including obligations set forth in subdivision applications and SMA Permit studies and applications.

44. As I learned during the final years of my tenure as a Council Member, the Planning Department was not tracking SMA requirements that would insure compliance of developers in completing their SMA Permit roadway and drainage mitigations. They appear to rely solely on the integrity of developers and complaints from citizens to administer developer compliance.

45. I am deeply concerned that the SMA permitting process has become a means for private developers to skirt their infrastructure and environmental mitigation responsibilities, since enforcement may be absent or selective.

46. During my latter days as of member of the Maui County Council, I became aware that developers of Olowalu Mauka subdivision had failed to complete their subdivision obligations and environmental mitigations conditioned in an SMA Major Permit issued almost 10 years prior and as a result a lawsuit was filed by a private resident who was sold a property in the developers Olowalu Mauka subdivision.

47. My understanding was that the Olowalu subdivision received final subdivision approval from the County even though there were incomplete SMA Permit conditions. This occurred during the very same time period that Mr. Salem raised his concerns that developer's "3 Lots or Less" contractual agreements executed by Corporation Counsel were not being kept track of, assessed, or collected upon. Mr. Salem

also complained that his 3 lot subdivision was being re-subdivided a second time by Developer Lot 48A, LLC in violation of the Maui County Code and the SMA Permitting process.

48. As I learned from being called as a witness in legal arbitration proceedings involving a dispute over Developer Lot 48A, LLC's obligations to pay their pro rata share of the Phase IV Capital Improvements affecting the land title of Mr. Salem's property, the County Department of Public Works signed off on Developer Lot 48A, LLC's oceanfront subdivision with what I viewed as an incomplete and unfulfilled SMA Permit during the same time period whereby the same county department granted the Olowalu subdivision approvals with unfulfilled SMA Permit obligations.

49. I also learned that the Developer Lot 48A, LLC's attorney was working for the County of Maui Department of Corporation Counsel at the same time she was employed by Lot 48A, LLC in the legal proceedings. I saw nowhere in the procurement reports that this was disclosed to the members of the Council. I also learned Developer Lot 48A, LLC's SMA Permit studies were not provided to the arbitrator and they included the disputed roadway and drainage improvements to the frontage of Mr. Salem's property along of Phase IV of Lower Honoapiilani Road.

50. When I was informed that the former land planning firm of a county official was the same SMA consultant retained by the County of Maui to complete the SMA environmental studies and permitting for Phase IV of Lower Honoapiilani Road as well as being the SMA Permit consultant for the Developer Lot 48A, LLC for the re-subdivision of the "3 Lots or Less" subdivision I became extremely concerned. This is

the same subdivision in which Mr. Salem owned an original parcel of land abutting Phase IV of Lower Honoapiilani Road. To my knowledge there was no disclosure made to this effect.

51. I witnessed Mr. Salem's vehement protest and complaints that the overlapping subdivision of the original "3 Lots or Less" subdivision by Lot 48A, LLC required developer Lot 48A, LLC to obtain a SMA Major Permit through public hearings. My belief is that the one time exemption from an SMA Major permit was exhausted on the original 3 Lots or Less Subdivision. I still question how this could happen if laws are in place to protect the rights of the public?

52. Mr. Salem further argued that the engineering valuation for the Lot 48A, LLC's SMA permit underestimated the impacts of the oceanfront subdivision and costs associated with the development to intentionally avoid environmental studies and public review. Even after my inquiries to the Planning Department about this issue and also the SMA requirements I do not believe this has ever been resolved or investigated.

53. I was made aware that deferral agreements recorded by Corporation Counsel on Mr. Salem's property along with Director Arakawa's written notice to Mr. Salem caused residential appraisers and real estate brokers to refuse to represent his property for sale.

54. I was also advised that Mr. Salem attempted to pay the County of Maui a pro-rata share of the "3 Lots or Less" subdivision agreement to try to remove the open ended lien on his property during an open escrow even though it was developer Lot 48A, LLC's obligation to do so. I was told by Mr. Salem that Corporation Counsel refused to accept his payment or remove the lien on his property to facilitate the escrow.

55. I remain dedicated to the people of Maui County and I truly believe that our citizens expect all public officials to protect their interests and act with integrity.

56. As a former member of the Maui County Council, I witnessed time and again where private citizens were forced to uphold the ordinances adopted by the Maui County Council to protect citizen's individual and public property rights, when this should in effect be the obligation of the County of Maui.

57. I have gone through Mr. Salem's lengthy and detailed timelines and also his analysis of what has taken place and I would agree that what he has uncovered appears to reveal a failure to enforce laws uniformly, collect monies due the County, adhere to SMA and subdivision laws and disclose possible conflicts of interest. These issues should be thoroughly investigated and resolved, which I believe Mr. Salem has attempted to do on a number of occasions.

58. Mr. Salem should not be punished for shining the light on these issues but thanked for having the courage to bring them to the County in the first place.

59. I am prepared to testify under oath to the events described in this affidavit to insure that the public's trust is fairly represented.

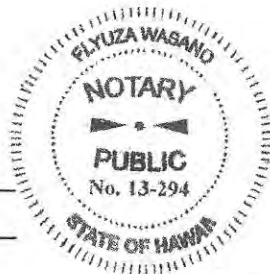

JoAnne Johnson Winer

State of Hawaii
County of Maui

Sworn to and subscribed before me on
day of AUG 11 2015



Flyuza Wasano
Notary Public, State of Hawaii
My commission expires 08/11/2017



13



Doc. Date: 8-11-15 # Pages: 14
Flyuza Wasano
Doc. Description: Second Circuit Affidavit

 8-11-15
Notary Signature Date
NOTARY CERTIFICATION

R-545

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

NOV 07, 1995 08:30 AM

Doc No(s) 95-145123

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT

AFTER RECORDATION, RETURN BY:

MAIL (x)

REGULAR SYSTEM

PICK UP ()

Land Use Codes Division
COUNTY OF MAUI
250 South High Street
Wailuku, Maui, Hawaii 96793
a:\forms\3lots.rev(11/93)

T.M.K. No. 4-3-15:04

LUCA File No. 4.686

SUBDIVISION AGREEMENT
(3 LOTS OR LESS)

WHEREAS, ANKA, INC., a Hawaii corporation, whose address/principal place of business is 41 Hui Road "E", Lahaina, Hawaii 96761 and whose mailing address is same as above, ("the Owner"), is the Owner of a certain parcel of real property identified in Land Use & Codes Administration File No. 4.686, incorporated herein by reference and a made a part hereof, and situate at Alaeloa, Kaanapali, Maui, Hawaii, Tax Map Key No. 4-3-15:04, containing an area of approximately 2.772 acres, which property is incorporated herein by reference (the "Property");

WHEREAS, the Owner desires to subdivide the above referenced Property in an undertaking known as the Mailepai Hui Partition, Subdivision of Lot 48, hereinafter called the "Subdivision"; and

WHEREAS, the County of Maui (the "County") is a body politic and corporate and a political subdivision of the State of Hawaii, which has adopted and is responsible for the enforcement of the ordinance which regulates subdivisions within the County of Maui (the "Subdivision Ordinance"); and

WHEREAS, the Subdivision Ordinance provides for certain requirements which must be met prior to approval of the subdivision; and

WHEREAS, Section 18.20.040 of the Maui County Code states in part:

"18.20.040 Existing Streets. A. No improvements shall be required upon existing streets for a consolidation of lots; for a designation of an access easement; for a subdivision creating only road widening lots; and for a consolidation of three developable lots or less which is resubdivided without creating additional developable lots. Improvements to existing streets may be deferred for a subdivision containing three lots or less, provided the Subdivider or Owner, their heirs, executors or assigns agree to pay their pro rata share of the cost of road improvements upon the existing street pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to: pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels."

WHEREAS, the subdivision contained three (3) or fewer lots;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the Owner, for him or her self and heirs, devisees, executors, administrators, person representatives, successors and assigns, and the County, as follows:

1. The Owner, his or her heirs, executors, administrators, personal representatives, successors and assigns shall pay the pro rata share of the cost of road improvements for Lower Honoapiilani Road and Hui Road "E", pursuant to the terms of the ordinance

authorizing said improvements by the County or to a formula determined by the County, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to, pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land in the Subdivision shall not thereafter qualify for a deferral of the requirement to improve existing streets pursuant to Section 18.20.040 of the Maui County Code with respect to any subsequent subdivision of any of the resulting parcels.

2. The County shall permit the subdivision process to proceed with respect to the Subdivision.

3. Where there is more than one owner, all obligations of the Owner set forth herein shall be joint and several obligations of each Owner.

4. The Owner does hereby declare that the Property, and all parts thereof, is and shall be held subject to the foregoing covenants, conditions and restrictions and that all of such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this instrument (the "Agreement") with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, or assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement.

5. This Agreement and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Property or any part thereof by the County.

6. The term "Owner" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the Owner, his or her heirs, devisees, executors, administrators, personal representatives, successors and assigns.

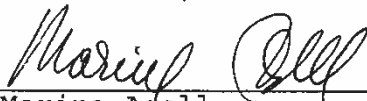
7. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 28th day of February, 1995.

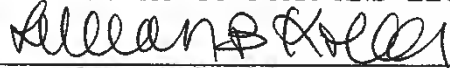
COUNTY OF MAUI:
Department of Public Works
& Waste Management

By 
Charles Jencks
Its Director

OWNER: ANKA, INC.


Marina Agell
Its Secretary-Treasurer

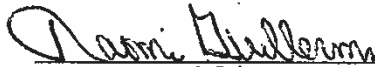
APPROVED AS TO FORM AND LEGALITY:


~~Harold H. Subachine~~ **LILLIAN B. KOLLER**
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 28th day of September, 1995, before me personally appeared Charles Jencks, to me personally known, who, being by me duly sworn, did say that he is the Director of Public Works of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Title 18 of the Maui County Code, the Subdivision Ordinance, and the said Charles Jencks acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public, State of Hawaii

My commission expires: 7/21/97

4

County unpaid for roadwork for decades

Developers could owe millions for deferred infrastructure fees

By CHRIS HAMILTON
Staff Writer

WAILUKU — Departing Maui County Council Member Jo Anne Johnson on Monday said she wants to see her successors make certain that some developers and homeowners are held responsible for road projects built by Maui County — with taxpayer money — to support new, small, private subdivisions.

The county could be owed millions of dollars because of uncollected fees for road improvement projects done over a three-decade period for subdivisions of three lots or less, council members and county officials revealed Monday during a Planning Committee meeting.

Public Works Department Director Milton Arakawa said officials know as many as 1,800 "deferral agreements" for subdivisions that size. From 1974 until 2007, developers could either do the work themselves or ask the county to do it, deferring payment. The ordinance was changed so now property owners must build the widened roads, sidewalks and other agreed-upon improvements themselves.

The number of agreements could range in the thousands, Johnson and Arakawa said, but finding out who owes what would be very labor intensive, county staff said. Further com-

to the idea of re-negotiating invoices, setting up payment plans or even granting amnesty in certain cases. She's been pushing for the Public Works Department to move forward on doing something about the problem for about a year, according to committee documents.

Johnson is leaving her West Maui residency seat after the new year because of term limits. The powerful Planning Committee has been bogged down for months dealing with the General Plan 2030 Update and has only a few meetings before four of its seven voting members must leave office.

Chairman Sol Kaho'ohalahala is among them. He, at Johnson's request, agreed to defer the matter for further study. No legislation has been proposed yet.

With a new mayor coming in as well, Alan Arakawa, Johnson used Monday's meeting to call on the next administration and council to pursue the matter. It could be a valuable source of revenue in a time of budget stringency and cuts.

Finance Director Kalbert Young said there could be liens, deed restrictions or other contractual methods already in place against property owners. That could be one way of approaching the issue, he said.

"This could be millions and millions and millions of dollars owed this county," Victorino said in agreeing this should be

a government priority. Victorino said that he and Johnson became aware of the issue as county officials investigated how to pay for improvements to an upcoming phase of construction to Lower Honoapiilani Road.

Milton Arakawa said that for any subdivision with four lots or more, the developer has all ways needed to pay for the road improvements before he could get final subdivision approval.

But because of past policy, apparently, the smaller lots were given the deferrals, he said.

"So have you guys been collecting on it?" said Council Member Wayne Nishiki.

"No, we have not," Arakawa said. Nishiki, who will also be out of office come January, suggested that the county hire a private contractor, such as a collection agency, to get back what's owed to the county. He also said that council members need "to bite" the Public Works Department to get the developers to pay for the road improvements.

Deputy Corporation Counsel Michael Hopper said the County Council may need to craft laws in order to collect the fees and also to determine if the subdivision developer or homeowner would be responsible for a lesser amount of money.

Milton Arakawa said there is no billing or payment system agricultural zoning of longtime

non-ag properties, such as country stores and rural churches. Meanwhile, Maui County continues to have thousands of acres of "fallow agricultural lands."

The organization suggested that the county instead follow the state constitution and Act 183 of the 2005 Legislature, which called on county officials to identify and apply to protect "important agricultural lands," according to a letter by Dave DeLeon of the Realtors association.

But with a finite amount of land in Hawaii, Kaho'ohalahala said he was worried that many county lands would continue to be categorized as "rubbish lands" — as they have been in the past — if their age use is not immediately apparent.

He said he expects that attitude to change as food and energy sustainability efforts continue to grow. Everyone knows the state is 90 percent reliant on imported foods, and that food sustainability and security is a top priority these days, he said.

"I think it's come to the point where we need some tools to further implement agriculture," Kaho'ohalahala said.

He also recommended that the next council push for county officials to study all of the available ag lands, so "we can feed our people."

Chris Hamilton can be reached at chamilton@maui.news.com.

EXHIBIT "B"

County of Maui
Department of Public Works
SUBDIVISION AGREEMENTS

4-Apr-12

SUB FILE NO.	#	PARCELS	SUBDIVISION NAME	LOCATION	FINAL APPROVAL DATE
4.0387	1	3	PARTITION OF HUI LAND OF MAILEPAI	Lahaina	6/7/1979
2.1112	2	3	RAYMOND SUBDIVISION	Kula	7/17/1979
3.1008	3	3	PRATT-ODA SUBDIVISION	Wailuku	7/31/1979
2.1217	4	3	IRA O. WELL SUBDIVISION	Haiku	8/3/1979
2.1241	5	3	MAKAWAO RANCH ACRES, UNIT 2	Makawao	9/11/1979
2.1210	6	3	KAHIAMOE PITT SUBDIVISION	Haiku	9/13/1979
4.0389	7	3	KAHANA NUI SUBDIVISION	Lahaina	9/20/1979
2.1174	8	3	SEGASER AND SMITH SUBDIVISION	Haiku	10/18/1979
3.0957	9	3	PIONEER SUBDIVISION	Kihei	12/4/1979
2.0878	10	3	HENRY T. KOBAYASHI SUBDIVISION	Kula	12/31/1979
2.1194	11	3	MIYAMOTO SUBDIVISION	Haiku	12/31/1979
3.0911	12	3	ALLEN Y. TING SUBDIVISION	Wailuku	2/4/1980
4.0356	13	3	MAILEPAI HUI LAND SUBDIVISION	Lahaina	3/11/1980
2.1193	14	3	IRA O. WELL SUBDIVISION	Haiku	8/7/1980
2.1227	15	3	KEALAHOU SUBDIVISION	Kula	8/26/1980
3.1091	16	3	PAUKUKALO LARGE-LOT SUBDIVISION	Wailuku	9/5/1980
2.1042	17	3	COOPER PARK TRACT	Haiku	9/12/1980
2.1226	18	3	THE JEFF WHITE SUBDIVISION	Haiku	9/18/1980
2.1221	19	3	HALIIMAILE VILLAGE SUBDIVISION	Makawao	9/23/1980
2.1231	20	3	ANTHONY A. TAM SUBDIVISION	Makawao	11/10/1980
2.0987	21	3	MAU-WIKOLI SUBDIVISION	Kula	11/21/1980
2.1248	22	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	11/22/1980
4.0349	23	3	WAIKULI HOUSE LOTS 1ST SERIES	Lahaina	12/12/1980
3.1053	24	3	COUNTRY CLUB LOT SUBDIVISION	Paia	12/18/1980
2.1315	25	3	MARSHALL M. GOODSILL SUBDIVISION	Kula	12/24/1980
2.1205	26	3	RICHARD ANTONE SUBDIVISION	Haiku	1/13/1981
2.1295	27	3	LILIKOI FARM LOTS	Haiku	1/26/1981
4.0400	28	3	UPPER KAPUNAKEA LARGE-LOT SUBDIVISION NO. 2	Lahaina	2/2/1981
3.1106	29	3	KIHEI-KAONOULU SUBDIVISION	Kihei	2/10/1981
2.1269	30	3	HALEAKALA FOREST SUBDIVISION	Makawao	3/16/1981
2.1312	31	3	ORVILLE RICHIE SUBDIVISION	Haiku	3/16/1981
2.1321	32	3	OLSEN TRACT #8	Haiku	3/18/1981
3.1003	33	3	NORA COOPER SUBDIVISION	Wailuku	3/20/1981
2.1255	34	3	KEALAHOU ACRES	Kula	4/10/1981
2.1311	35	3	RUTH RICHIE SUBDIVISION	Haiku	4/20/1981
2.1286	36	3	MAKAWAO RANCH ACRES - UNIT 1	Makawao	5/22/1981
2.1292	37	3	HOME PADDOCK SUBDIVISION	Makawao	5/28/1981
2.1330	38	3	MANUEL GOMES SUBDIVISION	Makawao	6/18/1981
2.1211	39	3	KUIAHA-KAUPAKALUA HOMESTEADS	Haiku	7/27/1981
4.0398	40	3	MAX ISAAC SUBDIVISION	Lahaina	8/28/1981
2.1297	41	3	HALEAKALA VIEW TRACT	Pukalani	9/15/1981
2.1278	42	3	BERTRAM BRAS SUBDIVISION	Haiku	9/17/1981
4.0406	43	3	MARY SHIM SUBDIVISION	Lahaina	10/7/1981
2.1338	44	3	LAND COURT APPLICATION 1320	Haiku	10/8/1981
2.1298	45	3	CRAVALHO TRACT	Haiku	10/9/1981
2.1304	46	3	MAKALANI SUBDIVISION	Makawao	10/21/1981
3.1055	47	3	SUNSET ESTATES SUBDIVISION	Kihei	10/21/1981
3.1066	48	3	SUNSET ESTATES SUBDIVISION	Kihei	10/21/1981
3.1101	49	3	KANALOA AVENUE SUBDIVISION	Wailuku	10/22/1981
3.1118	50	3	PUUNENE SWITCHING STATION SUBDIVISION	Kahului	10/30/1981
5.0344	51	3	JULES DUDOIT SUBDIVISION	Molokai	11/3/1981
2.1272	52	3	CARDOZA SUBDIVISION	Makawao	12/2/1981
2.1349	53	3	ALAE 3 & 4 HOMESTEADS	Kula	12/8/1981
2.1209	54	3	KUIAHA-KAUPAKALUA HOMESTEADS	Haiku	12/17/1981
5.0393	55	3	KUMUKOA-HALEAKALANI SUBDIVISION	Molokai	2/24/1982
5.0334	56	3	CORREA SUBDIVISION	Molokai	4/13/1982
3.1046	57	3	WAIAKOA MAKAI HOMESTEADS	Kihei	5/6/1982
2.1299	58	3	HALEAKALA HOMESTEADS	Makawao	7/9/1982
2.1394	59	3	LOUIS TEXEIRA FARM SUBDIVISION	Kula	7/9/1982
3.1162	60	3	MAUI ELECTRIC CO. GENERATING STATION SUBD.	Wailuku	7/19/1982
2.1369	61	3	KEALAHOU SUBDIVISION	Kula	8/30/1982
5.0413	62	3	LAND COURT APPLICATION 632	Molokai	9/14/1982
2.1384	63	3	UMENO SUBDIVISION	Kula	9/17/1982
3.1108	64	3	KAHAKULOA AGRICULTURAL PARK SUBDIVISION	Wailuku	10/21/1982
5.0328	65	3	CHOW SUBDIVISION	Molokai	11/5/1982

2.1320	66	3	AYATO KIYOMOTO SUBDIVISION	Kula	12/5/1982
2.1386	67	3	NAKANISHI SUBDIVISION	Kula	1/20/1983
2.1410	68	3	HAIKU CIRCLE SUBDIVISION	Haiku	2/14/1983
2.1795	69	3	OPAEPILAU TANK LOT SUBDIVISION	Haiku	2/18/1983
2.1402	70	3	HITOYE KAJIHARA SUBDIVISION	Makawao	4/12/1983
2.1259	71	3	CALASA SUBDIVISION	Kula	5/3/1983
2.1443	72	3	KAONOULU LOTS SUBDIVISION	Kula	5/3/1983
2.1379	73	3	MARCIEL SUBDIVISION	Makawao	6/2/1983
2.1380	74	3	MARCIEL SUBDIVISION	Makawao	6/2/1983
3.1163	75	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	6/7/1983
4.0450	76	3	MAILEPAI HUI LANDS	Lahaina	8/2/1983
3.1148	77	3	H. FUJII SUBDIVISION	Kihei	8/9/1983
2.1266	78	3	LABASAN SUBDIVISION	Haiku	8/26/1983
2.1303	79	3	FELIPE SUBDIVISION	Haiku	8/26/1983
2.1413	80	3	M & C. ARUDA SUBDIVISION	Haiku	8/26/1983
2.1300	81	3	IRA O. WELL SUBDIVISION	Haiku	8/30/1983
2.1409	82	3	J. SHIBUYA SUBDIVISION	Kula	9/6/1983
1.0129	83	3	HANA HOUSE LOTS	Hana	9/13/1983
3.1184	84	3	VIDA SUBDIVISION	Wailuku	9/21/1983
5.0407	85	3	LAND COURT APPLICATION 1714	Molokai	11/17/1983
2.1333	86	3	IRA O. WELL SUBDIVISION	Haiku	12/2/1983
2.1490	87	3	MAKAWAO RANCH ACRES	Makawao	1/2/1984
3.1206	88	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	1/12/1984
2.1475	89	3	MAKANI KAI SUBDIVISION	Makawao	1/25/1984
2.1466	90	3	KAUHIKOA ROAD SUBDIVISION	Haiku	2/14/1984
2.1459	91	3	H. ELSNER SUBDIVISION	Haiku	3/15/1984
2.1462	92	3	CIVIL NO. 1993 PARTITION	Haiku	4/2/1984
3.1202	93	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	4/13/1984
2.1464	94	3	OMAPIO HOMESTEADS	Kula	5/7/1984
3.1171	95	3	TAYLOR SUBDIVISION	Kihei	5/18/1984
3.1161	96	3	SHOICHI MORI SUBDIVISION	Wailuku	6/4/1984
2.1430	97	3	MOKUPAPA SUBDIVISION	Haiku	6/15/1984
2.1468	98	3	ROMERO SUBDIVISION	Haiku	8/6/1984
5.0421	99	3	LAND COURT APPLICATION 1714	Molokai	9/2/1984
2.1283	100	3	HALEAKALA RANCH HOMESTEADS SUBDIVISION	Makawao	9/4/1984
3.1166	101	3	PALAR SUBDIVISION	Kahului	9/19/1984
2.1463	102	3	HALEAKALA HOMESTEADS	Makawao	10/24/1984
2.1495	103	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	10/24/1984
3.1125	104	3	KUI SEU HEW SUBDIVISION	Wailuku	10/24/1984
2.1483	105	3	MAKANI SUBDIVISION	Makawao	11/21/1984
2.1552	106	3	KULA ORCHARDS SUBDIVISION	Kula	12/3/1984
3.1230	107	3	KAHAKULOA HOMESTEADS	Wailuku	1/7/1985
2.1544	108	3	MILNE SUBDIVISION	Kula	2/12/1985
3.1226	109	3	KESAJI SUBDIVISION	Wailuku	2/14/1985
4.0478	110	3	KAHANA SUNSET BEACH LOTS	Lahaina	4/3/1985
2.1439	111	3	JOHNSON SUBDIVISION	Haiku	4/9/1985
2.1481	112	3	A.K. SUBDIVISION	Haiku	4/18/1985
2.1502	113	3	MAKANI SUBDIVISION UNIT II	Pukalani	4/18/1985
2.1529	114	3	KAUHIKOA SUBDIVISION	Haiku	5/6/1985
3.1193	115	3	REMNIANT 4 SUBDIVISION	Wailuku	5/21/1985
2.1565	116	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	5/28/1985
2.1492	117	3	COOPER PARK TRACT	Haiku	5/29/1985
2.1519	118	3	SILVA TRACT	Makawao	6/5/1985
3.1243	119	3	NAKAMURA-ARAKAKI SUBDIVISION	Wailuku	7/29/1985
4.0477	120	3	SMITH SUBDIVISION	Lahaina	8/8/1985
2.1470	121	3	TAKITANI FARM LOTS SUBDIVISION NO.2	Haiku	8/22/1985
2.1575	122	3	PUKALANI ACRES	Pukalani	9/16/1985
3.1181	123	3	WAIKOA HOUSELOTS	Kihei	9/23/1985
4.0475	124	3	MAILEPAI HUI PARTITION	Lahaina	10/2/1985
2.1553	125	3	PAIA DEPOT VILLAGE SUBDIVISION	Paia	10/9/1985
3.1231	126	3	KAHULUI TOWN DEVELOPMENT SIXTH INCREMENT	Kahului	11/21/1985
2.1584	127	3	MAKAWAO RANCH ACRES SUBDIVISION UNIT 2	Makawao	1/13/1986
3.1251	128	3	FONG CONSTRUCTION BASEYARD SUBDIVISION	Kahului	1/28/1986
3.1281	129	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	1/28/1986
5.0405	130	3	MAPULEHU PARTITIONS 2 & 3	Molokai	2/2/1986
2.1550	131	3	TAVARES TRACT	Makawao	2/27/1986
2.1611	132	3	C.E. CHATTERTON SUBDIVISION	Kula	3/6/1986
2.1616	133	3	A.K. SUBDIVISION	Haiku	3/6/1986
2.1578	134	3	FLEMING LOTS	Makawao	3/21/1986
2.1596	135	3	H. ELSNER SUBDIVISION	Haiku	3/21/1986
4.0465	136	3	A. RAMELB SUBDIVISION	Lahaina	3/21/1986
2.1473	137	3	HUI KUAI AINA O ULUMALU SUBDIVISION	Haiku	5/14/1986
2.1557	138	3	RAYMOND AUGUST SUBDIVISION	Makawao	5/16/1986
2.1589	139	3	HALEAKALA HOMESTEADS	Makawao	5/16/1986
2.1484	140	3	HARADA SUBDIVISION	Kula	6/2/1986
3.1255	141	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	6/26/1986
2.1604	142	3	TAKITANI FARM LOTS SUBDIVISION NO. 2	Haiku	7/10/1986
3.1297	143	3	KALANIKAU SUBDIVISION	Kihei	7/25/1986
2.1648	144	3	MAKAWAO RANCH ACRES - UNIT 2	Makawao	7/28/1986

4.0501	145	3	ALICE HOAPILI SUBDIVISION	Lahaina	7/31/1986
4.0462	146	3	KAHANA NUI SUBDIVISION	Lahaina	9/5/1986
5.0448	147	3	KALAE TRACT SUBDIVISION	Molokai	9/19/1986
2.1608	148	3	EDMUND LOCKE SUBDIVISION	Kula	10/15/1986
3.1210	149	3	COUNTRY CLUB LOTS SUBDIVISION	Kahului	10/21/1986
2.1457	150	3	PRUCHER SUBDIVISION	Kula	10/29/1986
3.1307	151	3	PUUNENE SUGAR STORAGE SUBDIVISION	Kahului	11/12/1986
2.1603	152	3	RICE FAMILY SUBDIVISION	Makawao	11/20/1986
2.1639	153	3	KAIMANALANI SUBDIVISION	Haiku	11/26/1986
3.1276	154	3	4TH MAUI COUNTRY CLUB SUBDIVISION	Kahului	12/23/1986
2.1583	155	3	JOHN T. HASHIMOTO SUBDIVISION NO. 4	Kula	1/30/1987
2.1690	156	3	LAND COURT APPLICATION 960	Makawao	2/12/1987
4.0488	157	3	GALLAGHER SUBDIVISION	Lahaina	3/6/1987
2.1641	158	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	3/10/1987
3.1343	159	3	OWA SUBDIVISION	Wailuku	3/11/1987
2.1660	160	3	PARTITION OF THE HUI KUAI AINA O PEAHI	Haiku	4/7/1987
2.1630	161	3	KUSUMOTO TRACT	Makawao	5/5/1987
2.1680	162	3	M. YAMAMURA RURAL SUBDIVISION NO. 2	Haiku	5/15/1987
4.0497	163	3	RESNICK SUBDIVISION	Lahaina	5/19/1987
2.1658	164	3	HALEAKALA HOMESTEADS	Makawao	6/15/1987
2.1487	165	3	LILIKOI FARM LOTS	Haiku	6/19/1987
2.1646	166	3	KUIAHA-KAUPAKALUA HOMESTEADS	Haiku	6/24/1987
2.1691	167	3	STEPHENS SUBDIVISION	Haiku	7/8/1987
2.1710	168	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	8/14/1987
2.1685	169	3	HUELO HUI PARTITION LOTS	Haiku	8/18/1987
2.1712	170	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	8/20/1987
2.1638	171	3	PEAHI HUI PARTITION	Haiku	9/9/1987
2.1521	172	3	JACOB T.S. MAU SUBDIVISION	Haiku	9/10/1987
2.1482	173	3	HILLCREST TRACT	Makawao	9/28/1987
2.1707	174	3	MAKAWAO RANCH ACRES-UNIT I	Makawao	10/20/1987
2.1546	175	3	JACINTHO SUBDIVISION	Kula	12/4/1987
2.1695	176	3	VIRGINIA CAIRES SUBDIVISION	Haiku	12/17/1987
2.1734	177	3	PULEHUNUI SUBDIVISION	Kula	1/8/1988
3.1335	178	3	FIRST ASSEMBLY OF GOD SUBDIVISION	Wailuku	1/27/1988
2.1562	179	3	BALISON SUBDIVISION	Kula	2/17/1988
2.1698	180	3	KUIAHA-KAUPAKALUA HOMESTEADS	Haiku	2/25/1988
2.1751	181	3	KAMETANI SUBDIVISION	Kula	3/17/1988
3.1357	182	3	12TH INCREMENT KAHULUI TOWN DEVELOPMENT	Kahului	3/18/1988
3.1288	183	3	KAMAOLE HOMESTEADS	Kihei	5/12/1988
2.1621	184	3	BOWMAN SUBDIVISION	Haiku	5/16/1988
2.1709	185	3	VON TEMPSKY TRACT	Kula	6/9/1988
2.1748	186	3	ULUPALAKUA-SEIBU SUBDIVISION	Makawao	6/14/1988
2.1656	187	3	ERNEST M. ROBELLO SUBDIVISION	Kula	7/29/1988
2.1686	188	3	MARCIEL SUBDIVISION	Makawao	8/9/1988
3.1401	189	3	WAIEHU KAI SUBDIVISION	Wailuku	8/25/1988
2.1542	190	3	RAYMOND SUBDIVISION	Kula	9/1/1988
3.1305	191	3	KAHULUI TOWN DEVELOPMENT	Kahului	9/23/1988
5.0480	192	3	LAND COURT APPLICATION 1681	Molokai	9/29/1988
2.1713	193	3	LILIKOI FARM LOTS SUBDIVISION	Haiku	10/6/1988
2.1689	194	3	KEALAHOU ACRES SUBDIVISION	Kula	10/24/1988
2.1742	195	3	LAND COURT APPLICATION 1320	Pukalani	11/18/1988
3.1353	196	3	WAOHULI-KEOKEA BEACH HOMESTEADS	Kihei	11/18/1988
2.1688	197	3	JOHN DE COSTA LOTS	Makawao	11/30/1988
2.1762	198	3	HUI KUAI AINA O PEAHI PARTITION	Haiku	12/16/1988
2.1504	199	3	MAKAWAO RANCH ACRES, UNIT 2	Makawao	12/22/1988
1.0155	200	3	ALLEN Y. AND DUANE P. TING TRUST SUBDIVISION	Hana	12/23/1988
3.1250	201	3	WAOHULI-KEOKEA BEACH LOTS	Kihei	1/13/1989
2.1719	202	3	WRIGHT SUBDIVISION	Kula	2/16/1989
2.1714	203	3	LAND COURT APPLICATION 960	Haiku	2/24/1989
2.1746	204	3	HUI KUAI AINA O ULUMALU PARTITION	Makawao	3/8/1989
3.1331	205	3	WAOHULI-KEOKEA BEACH HOMESTEADS	Kihei	3/17/1989
3.1399	206	3	KAHULUI TOWN DEVELOPMENT	Kahului	4/14/1989
2.1804	207	3	MAKANI SUBDIVISION	Makawao	5/9/1989
2.1554	208	3	WOLFORD SUBDIVISION I	Haiku	5/11/1989
2.1555	209	3	WOLFORD SUBDIVISION II	Haiku	5/11/1989
2.1675	210	3	KUIAHA-KAUPAKALUA HOMESTEADS	Haiku	6/1/1989
2.1667	211	3	KAHAMOE-PITT SUBDIVISION	Haiku	6/5/1989
2.1815	212	3	BOTEILHO ESTATE 3	Kula	6/21/1989
2.1780	213	3	HALEAKALA HOMESTEADS	Makawao	7/28/1989
2.1737	214	3	HARUKI NAKAMURA SUBDIVISION	Kula	8/8/1989
5.0464	215	3	EDITH B. MEYER SUBDIVISION	Molokai	8/17/1989
2.1831	216	3	MAKENA SURF SUBDIVISION	Kihei	9/12/1989
2.1806	217	3	KEAWAKAPU BEACH LOTS	Kihei	9/15/1989
2.1796	218	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	10/20/1989
5.0453	219	3	WILLIAM KAMAKANA AND EDITH KAMAKANA BEACH LOTS	Molokai	11/1/1989
2.1820	220	3	ULUMALU HUI PARTITION	Haiku	11/15/1989
3.1382	221	3	WHARF INDUSTRIAL SUBDIVISION NO. 2	Kahului	12/7/1989
2.1840	222	3	HAIKU FARMS SUBDIVISION	Haiku	1/17/1990
4.0584	223	3	THE PLANTATION AT KAPALUA LARGE LOT SUBDIVISION	Lahaina	3/27/1990

2.1782	224	3	ALAE 3 & 4 HOMESTEADS	Kula	3/30/1990
2.1903	225	3	ONE LOA SUBDIVISION	Kihei	3/30/1990
2.1574	226	3	CIVIL NO. 2251 PARTITION	Haiku	4/6/1990
3.1460	227	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	5/21/1990
3.1461	228	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	5/21/1990
2.1857	229	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	6/8/1990
3.1369	230	3	COUNTRY CLUB LOTS SUBDIVISION 1ST EXTENSION	Kahului	6/15/1990
2.1765	231	3	FORSBERG SUBDIVISION	Kula	6/20/1990
2.1771	232	3	CARRIE FURTADO SUBDIVISION	Kula	6/26/1990
2.1882	233	3	DR. SUN YET SEN SUBDIVISION	Kula	7/9/1990
3.1440	234	3	D. WISSMAR SUBDIVISION	Wailuku	7/13/1990
2.1862	235	3	PIILANI NORTH LARGE LOT SUBDIVISION	Kihei	8/2/1990
2.1659	236	3	LILIKOI FARM LOTS	Haiku	8/21/1990
2.1847	237	3	MAC ISAAC SUBDIVISION	Makawao	8/24/1990
2.1826	238	3	PUKALANI ACRES	Pukalani	9/5/1990
1.0171	239	3	PHILLIPS-LEANDRO SUBDIVISION	Hana	9/28/1990
3.1456	240	3	KIHEI HEIGHTS SUBDIVISION	Kihei	10/1/1990
4.0517	241	3	KAHANA MAUKA	Lahaina	10/2/1990
2.1874	242	3	HONOKALA SUBDIVISION	Haiku	11/19/1990
2.1894	243	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	11/27/1990
4.0562	244	3	WAIKULI HOUSE LOTS, THIRD SERIES	Lahaina	12/13/1990
2.1838	245	3	VISION HAWAII	Haiku	1/2/1991
2.1947	246	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	1/8/1991
4.0522	247	3	NAKA-TANI SUBDIVISION	Lahaina	2/28/1991
2.1848	248	3	LUBAN SUBDIVISION	Kula	4/8/1991
2.1842	249	3	TEXEIRA-MEDEIROS SUBDIVISION	Kula	4/19/1991
2.1844	250	3	ROBERT A. HASKIN SUBDIVISION	Haiku	4/26/1991
2.1845	251	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	5/3/1991
2.1942	252	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	6/19/1991
4.0590	253	3	PARTITION OF HUI LAND OF MAILE	Lahaina	7/9/1991
2.1887	254	3	MAKAWAO RANCH ACRES - UNIT 2	Makawao	7/24/1991
2.1864	255	3	LAND COURT APPLICATION 960	Haiku	8/26/1991
2.1839	256	3	ALAE FARM SUBDIVISION	Kula	8/30/1991
2.1564	257	3	KULA ORCHARDS	Kula	10/9/1991
2.1678	258	3	MITSUO ITO SUBDIVISION	Kula	10/31/1991
2.1735	259	3	ALAE FARM SUBDIVISION	Kula	11/7/1991
2.1841	260	3	KOKOMO IKI SUBDIVISION	Haiku	11/8/1991
3.1453	261	3	KAMAOLE HOUSELOTS	Kihei	11/19/1991
2.2019	262	3	PULEHUIKI PARTITION	Kula	11/21/1991
3.1483	263	3	PUUONE TRACT	Wailuku	11/26/1991
3.1455	264	3	WAIKO MAUKA SUBDIVISION	Wailuku	12/16/1991
1.0154	265	3	KANUHA SUBDIVISION	Hana	1/13/1992
2.1920	266	3	FUMIKO KUNIOKI SUBDIVISION	Kula	2/4/1992
2.1930	267	3	KUIAHA-PAUWELA HOMESTEADS	Makawao	2/21/1992
2.1944	268	3	HO'KULEANA SUBDIVISION	Haiku	2/25/1992
2.1981	269	3	RALPH NISHIDA SUBDIVISION	Kula	4/3/1992
2.1951	270	3	KEALAHOU FARM LOTS	Kula	4/9/1992
2.1896	271	3	ASA F. BALDWIN SUBDIVISION	Makawao	4/10/1992
3.1500	272	3	COUNTRY CLUB LOTS SUBDIVISION	Kahului	4/24/1992
2.1895	273	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	5/22/1992
3.1431	274	3	HALE PIILANI SUBDIVISION	Kihei	6/3/1992
2.1886	275	3	H.P. CO'S HOUSE LOTS	Haiku	6/9/1992
2.1900	276	3	ULUMALU HUI PARTITION	Haiku	6/18/1992
2.2008	277	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	7/7/1992
2.1901	278	3	HO'OKULEANA SUBDIVISION	Makawao	7/9/1992
1.0133	279	3	NAHIKU HOMESTEADS SUBDIVISION	Hana	7/15/1992
2.1913	280	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	8/14/1992
1.0135	281	3	NAHIKU HOMESTEADS SUBDIVISION	Hana	9/9/1992
2.2013	282	3	CARRIE FURTADO SUBDIVISION	Kula	9/11/1992
1.0169	283	3	HANA HOUSE LOTS	Hana	9/29/1992
3.1468	284	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	9/29/1992
4.0640	285	3	MAILEPAI HUI LANDS	Lahaina	9/30/1992
1.0175	286	3	IBBETSON SUBDIVISION	Hana	10/6/1992
2.1827	287	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	10/7/1992
2.2039	288	3	MAKANI SUBDIVISION UNITS I AND II	Pukalani	11/4/1992
2.1955	289	3	STEWART SUBDIVISION	Haiku	11/13/1992
2.1791	290	3	VICTORINO M. PIRES SUBDIVISION	Kula	12/2/1992
2.1790	291	3	OLSEN TRACT NO. 5	Haiku	12/17/1992
4.0661	292	3	KAHANA SUNSET BEACH LOTS	Lahaina	12/23/1992
3.1559	293	3	KAMAOLE HOMESTEADS	Kihei	12/31/1992
2.1999	294	3	STEIN SUBDIVISION	Makawao	1/19/1993
2.2015	295	3	S. ISAGAWA SUBDIVISION	Makawao	1/19/1993
3.1344	296	3	HAMAMURA SUBDIVISION	Wailuku	2/2/1993
2.2053	297	3	SODETANI SUBDIVISION	Kula	3/19/1993
3.1531	298	3	KAHAKULOA HOMESTEADS	Wailuku	4/12/1993
2.1855	299	3	TOSHIO YAMADA SUBDIVISION	Kula	4/21/1993
2.1904	300	3	JOAN-FEITEIRA SUBDIVISION	Makawao	4/28/1993
2.2073	301	3	KAUHIKOA ROAD SUBDIVISION	Haiku	4/28/1993
2.1926	302	3	KAMETANI SUBDIVISION	Kula	4/29/1993

2.2064	303	3	HALEAKALA HOMESTEADS	Makawao	5/5/1993
3.1532	304	3	KAHAKULOA HOMESTEADS	Wailuku	5/7/1993
3.1534	305	3	KAHAKULOA HOMESTEADS	Wailuku	5/7/1993
2.1937	306	3	HUI KUAI AINA O PEAAH PARTITION	Haiku	5/11/1993
3.1533	307	3	KAHAKULOA HOMESTEADS	Wailuku	5/27/1993
4.0635	308	3	YAMAUCHI	Lahaina	6/10/1993
2.2029	309	3	OMAOPIO HOMESTEADS	Kula	6/16/1993
2.1873	310	3	MAKENA SURF SUBDIVISION - PHASE III	Kihei	8/16/1993
2.1914	311	3	KULA ORCHARDS SUBDIVISION	Kula	9/16/1993
2.2016	312	3	WITHERS SUBDIVISION	Haiku	9/27/1993
2.2048	313	3	WALSH SUBDIVISION	Kula	9/30/1993
2.2069	314	3	OLINDA VISTA SUBDIVISION	Makawao	10/14/1993
2.2057	315	3	MARK SHEEHAN SUBDIVISION	Haiku	10/19/1993
2.2093	316	3	WAIPIO BAY SUBDIVISION	Haiku	10/21/1993
3.1284	317	3	ALA LANI UNITED METHODIST CHURCH LOT SUBDIVISION	Wailuku	10/21/1993
1.0177	318	3	KAAPAHU SUBDIVISION	Hana	10/22/1993
2.1860	319	3	SF-7 SUBDIVISION	Kihei	10/22/1993
2.2036	320	3	LAND COURT APPLICATION 1320	Kula	10/22/1993
2.2028	321	3	HALEAKALA HOMESTEADS	Makawao	12/27/1993
4.0660	322	3	KAUMEHEIWA SUBDIVISION	Lahaina	1/10/1994
2.2104	323	3	KEALAHOU FARM LOTS	Kula	1/12/1994
3.1488	324	3	AIRPORT INDUSTRIAL SUBDIVISION	Kahului	2/18/1994
2.2072	325	3	VISION HAWAII SUBDIVISION	Haiku	3/3/1994
5.0514	326	3	ACKERMAN/RICE SUBDIVISION	Molokai	3/10/1994
2.2145	327	3	VICTORINO M. PIRES SUBDIVISION NO. 2	Kula	3/24/1994
3.1576	328	3	BARBARA LONG SUBDIVISION	Wailuku	4/15/1994
3.1508	329	3	KAMAOLE HOMESTEADS SUBDIVISION	Kihei	5/26/1994
2.2086	330	3	RAYMOND SUBDIVISION	Kula	6/7/1994
2.2111	331	3	FERNANDEZ SUBDIVISION	Haiku	6/25/1994
4.0644	332	3	MALIALANI SUBDIVISION	Lahaina	7/26/1994
2.1954	333	3	MOMI KAI SUBDIVISION	Haiku	8/9/1994
2.1893	334	3	SPALDING/WATUMULL SUBDIVISION	Haiku	8/10/1994
3.1538	335	3	WAIKOA MAKAI HOMESTEADS	Kihei	8/26/1994
2.2025	336	3	SHIMOTE-MATSUMURA SUBDIVISION	Makawao	8/30/1994
2.1916	337	3	TAKASHI KAJIHARA SUBDIVISION	Makawao	8/31/1994
2.2119	338	3	HIPOLITO SUBDIVISION	Makawao	10/20/1994
2.2135	339	3	PIIHOLO FARMS SUBDIVISION	Makawao	11/16/1994
2.2220	340	3	OPAEPILAU TANK LOT SUBDIVISION	Makawao	12/2/1994
2.1877	341	3	LAND COURT APPLICATION	Kihei	12/14/1994
2.2043	342	3	HALEAKALA HOMESTEADS	Makawao	1/17/1995
2.1837	343	3	HUELO HUI PARTITION	Haiku	1/18/1995
2.2109	344	3	JACK MAGOON SUBDIVISION	Kula	1/18/1995
4.0674	345	3	A. RAMELB SUBDIVISION	Lahaina	1/18/1995
2.2107	346	3	JOSEPH SANTOS SUBDIVISION	Haiku	1/27/1995
3.1573	347	3	HAMADA-TANAKA SUBDIVISION	Kihei	3/3/1995
5.0512	348	3	KALAE TRACT SUBDIVISION	Molokai	3/8/1995
2.2089	349	3	SAKUGAWA FAMILY SUBDIVISION	Kula	3/15/1995
2.2132	350	3	SAKUGAWA FAMILY SUBDIVISION	Kula	3/15/1995
2.2240	351	3	HOWARD SUBDIVISION	Kula	4/6/1995
3.1641	352	3	DAIRY ROAD INDUSTRIAL SUBDIVISION	Kahului	4/6/1995
2.2032	353	3	CHANG SUBDIVISION	Kihei	5/4/1995
2.2256	354	3	KULA VIEW ESTATES SUBDIVISION	Kula	5/18/1995
2.1870	355	3	KULAMANU SUBDIVISION	Kula	6/26/1995
2.2162	356	3	POOHINA TRACT	Kula	8/1/1995
2.2035	357	3	SAKUGAWA FAMILY SUBDIVISION	Kula	8/11/1995
2.2056	358	3	DOLDER SUBDIVISION	Haiku	8/16/1995
1.0179	359	3	HANA AGRICULTURAL PARK - UNIT II	Hana	8/17/1995
2.2040	360	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	9/14/1995
5.0537	361	3	MEO SUBDIVISION	Molokai	10/6/1995
2.2208	362	3	CHANG PARTITION, CIVIL NO. 88-0039 (1)	Kihei	10/20/1995
2.1936	363	3	LINDEN HILL SUBDIVISION	Kula	10/25/1995
2.1962	364	3	HO'OKULEANA SUBDIVISION	Haiku	10/27/1995
2.2226	365	3	SHERMAN THOMPSON SUBDIVISION	Kula	10/31/1995
3.1610	366	3	FIRST ASSEMBLY OF GOD SUBDIVISION	Kahului	11/13/1995
2.2124	367	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	11/24/1995
2.2152	368	3	MAU SUBDIVISION	Kula	11/30/1995
2.2123	369	3	BLAIR SUBDIVISION	Kula	2/15/1996
2.2130	370	3	MAUKA ALAE SUBDIVISION	Kula	2/23/1996
2.2209	371	3	PUKALANI TERRACE SUBDIVISION	Pukalani	2/28/1996
3.1647	372	3	OWA SUBDIVISION	Wailuku	3/12/1996
2.2196	373	3	CRAVALHO SUBDIVISION	Haiku	3/13/1996
2.2121	374	3	PUKALANI ACRES	Pukalani	3/18/1996
3.1588	375	3	SMITH SUBDIVISION	Wailuku	4/3/1996
3.1657	376	3	KEPPLER SUBDIVISION	Kihei	4/18/1996
5.0560	377	3	KAWELA SUBDIVISION	Molokai	4/18/1996
2.2042	378	3	IKE ODACHI FAMILY SUBDIVISION	Kula	5/7/1996
3.1602	379	3	IAO DOJO SUBDIVISION	Wailuku	5/8/1996
2.2255	380	3	LLOYD SUBDIVISION	Makawao	5/29/1996
2.2070	381	3	KYOKO ARMSTRONG SUBDIVISION	Kula	5/30/1996

2.2128	382	3	THE JOSEPH F. CAIRES, SR. FAMILY SUBDIVISION	Haiku	6/5/1996
3.1590	383	3	AINA-HAU TRACT	Wailuku	6/18/1996
2.2284	384	3	RICHARD HOEHN SUBDIVISION	Haiku	6/27/1996
2.2120	385	3	PUKALANI LOTS	Pukalani	8/19/1996
2.2125	386	3	HALEAKALA HOMESTEADS	Makawao	9/17/1996
2.2345	387	3	HOWARD TAVARES SUBDIVISION	Haiku	9/19/1996
2.2351	388	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	9/19/1996
1.0174	389	3	PAPAHONUA SUBDIVISION	Hana	10/22/1996
3.1621	390	3	PLUNKETT SUBDIVISION	Kihei	11/26/1996
5.0517	391	3	KAUNAKAKAI HOMESTEAD LOTS	Molokai	12/2/1996
4.0686	392	3	MAILEPAI HUI PARTITION	Lahaina	12/12/1996
2.2059	393	3	HARTLEY SUBDIVISION	Makawao	12/13/1996
2.2143	394	3	OMAOPIO HOMESTEADS	Makawao	3/13/1997
1.0197	395	3	WAIHONU-KAKIO HOMESTEADS	Hana	3/21/1997
2.2165	396	3	LAND COURT APPLICATION 342	Kula	4/16/1997
2.2268	397	3	MAUI LAND & PINE LARGE LOT SUB	Makawao	4/29/1997
2.2260	398	3	TANIZAKI SUBDIVISION	Makawao	4/30/1997
2.2188	399	3	HALEAKALA HOMESTEADS	Makawao	5/15/1997
2.2090	400	3	HASHIMOTO SUBDIVISION	Kula	6/2/1997
2.2150	401	3	KULA ORCHARDS SUBDIVISION	Kula	7/8/1997
2.2288	402	3	VIRGINIA CAIRES SUBDIVISION	Makawao	7/25/1997
3.1490	403	3	KUUNAHAEU LARGE LOT SUBDIVISION	Wailuku	8/27/1997
4.0676	404	3	PAUNAU TRACT	Lahaina	9/15/1997
2.2234	405	3	HANEHOI GARDENS	Haiku	10/7/1997
2.2330	406	3	SHIM SUBDIVISION	Kula	11/14/1997
2.2153	407	3	OMAOPIO HOMESTEADS	Kula	11/28/1997
2.2235	408	3	KAHIAMOE SUBDIVISION	Haiku	11/28/1997
2.2083	409	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	12/3/1997
2.2265	410	3	HUELO HUI PARTITION	Haiku	12/9/1997
4.0693	411	3	SATOKI YAMAMOTO SUBDIVISION	Lahaina	12/11/1997
2.2230	412	3	ROSE P. MACHADO ESTATES SUBDIVISION	Kula	1/16/1998
2.2295	413	3	OTOMO KAWAMOTO SUBDIVISION	Kula	2/18/1998
2.2445	414	3	MAKENA BEACH LOTS	Kihei	2/18/1998
2.2049	415	3	LAND COURT APPLICATION 342	Kula	3/13/1998
2.2337	416	3	KAHIAMOE-PITT SUBDIVISION	Haiku	6/24/1998
3.1742	417	3	KIHEI FARM SUBDIVISION	Kihei	8/27/1998
2.2018	418	3	VERNON GARRISON SUBDIVISION	Makawao	9/21/1998
2.2324	419	3	LILIKOI FARM LOTS	Haiku	12/2/1998
3.1760	420	3	KIHEI FARM SUBDIVISION	Kihei	12/2/1998
2.2379	421	3	KAUHIKOA ROAD SUBDIVISION	Haiku	12/15/1998
2.2164	422	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	2/16/1999
2.2167	423	3	OLLIE DAVIS SUBDIVISION	Haiku	2/19/1999
4.0721	424	3	WAHIKULI HOUSE LOTS, SECOND SERIES	Lahaina	3/2/1999
2.2078	425	3	LAND COURT APPLICATION 342	Kula	3/9/1999
2.2325	426	3	HUELO HILLSIDE SUBDIVISION - PHASE II	Haiku	3/18/1999
2.2426	427	3	SONNY VICK'S SUBDIVISION	Kihei	4/6/1999
1.0206	428	3	WAIHONU-KAKIO HOMESTEADS	Hana	4/14/1999
1.0208	429	3	E.T.I. HANA PROPERTIES SUBDIVISION	Hana	4/20/1999
3.1757	430	3	KAHAKULOA HOMESTEADS	Wailuku	6/18/1999
2.2006	431	3	WAIKOA HOMESTEADS	Kula	6/25/1999
2.2408	432	3	HUELO HUI PARTITION	Haiku	9/7/1999
2.2455	433	3	OMAOPIO HOMESTEADS	Kula	9/29/1999
2.2526	434	3	MANAWAI HOMESTEADS	Haiku	10/11/1999
2.2242	435	3	H.A. BALDWIN "KALUANUI"	Makawao	10/21/1999
2.2182	436	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	12/29/1999
2.2538	437	3	MACCLAIR SUBDIVISION	Kihei	1/19/2000
2.2554	438	3	MANAWAI HOMESTEADS	Haiku	3/30/2000
2.2494	439	3	LAND COURT APPLICATION 342	Kula	4/3/2000
2.2122	440	3	TADATSUGU ENDO SUBDIVISION	Kula	5/12/2000
2.2327	441	3	CLARK SUBDIVISION	Makawao	8/14/2000
2.2416	442	3	LILIKOI FARM LOTS SUBDIVISION	Haiku	11/15/2000
2.2485	443	3	MANAWAI HOMESTEADS	Haiku	1/3/2001
2.2103	444	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	1/26/2001
1.0238	445	3	KIPAHULU SUBDIVISION	Hana	3/5/2001
2.2592	446	3	MAKENA BEACH LOTS	Kihei	3/6/2001
6.0067	447	3	FIRST ASSEMBLY OF GOD SUBDIVIS	Lanai	3/20/2001
2.2427	448	3	KAUFMAN SUBDIVISION	Kihei	4/3/2001
3.1725	449	3	KIHEI FARMS SUBDIVISION	Kihei	5/17/2001
2.2522	450	3	LAND COURT APPLICATION 1804	Kihei	6/7/2001
3.1953	451	3	KOPAA SUBDIVISIONNO. 2	Wailuku	6/7/2001
2.2355	452	3	HALEAKALA HOMESTEADS	Makawao	6/13/2001
3.1525	453	3	WAILUKU BEACH LOTS SUBDIVISION	Wailuku	6/27/2001
1.0234	454	3	HONOMAELE SUBDIVISION	Hana	6/29/2001
2.2302	455	3	BUCHANAN-LOMONGO SUBDIVISION	Kula	6/29/2001
1.0231	456	3	KAKIO SUBDIVISION	Hana	7/27/2001
2.2175	457	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	8/6/2001
2.2567	458	3	MATHILDA CARVALHO SUBDIVISION	Haiku	8/22/2001
3.1876	459	3	MORETTI SUBDIVISION	Wailuku	9/13/2001
2.2096	460	3	ALAE 3 & 4 HOMESTEADS	Kula	11/20/2001

2.2535	461	3	KUIAHA-PAUWELA HOMESTEADS	Makawao	12/28/2001
2.2608	462	3	WALTMAN/CASTELLINI SUBDIVISION	Haiku	12/28/2001
3.1826	463	3	MOLINA SUBDIVISION	Wailuku	12/28/2001
1.0232	464	3	HONOMAELE SUBDIVISION	Hana	2/8/2002
3.1869	465	3	B.B.C. HALAMA SUBDIVISION	Kihei	5/17/2002
3.1871	466	3	WAI OHULI-KEOKEA HOMESTEADS	Kihei	6/7/2002
4.0819	467	3	KAHANANUI STREAM HOUSE LOTS SUBDIVISION	Lahaina	6/24/2002
2.2579	468	3	BEREAN MISSION SUBDIVISION	Haiku	9/10/2002
2.2102	469	3	BOTEILHO ESTATE 3	Kula	10/1/2002
1.0250	470	3	HONOMAELE SUBDIVISION	Hana	10/18/2002
3.1970	471	3	H.R. AUHANA SUBDIVISION	Kihei	10/22/2002
2.2663	472	3	MANAWAI HOMESTEADS	Haiku	11/7/2002
2.2464	473	3	E.C.B. PERREIRA SUBDIVISION	Haiku	11/15/2002
2.2599	474	3	HONOKALA SOUTH SUBDIVISION	Haiku	12/17/2002
2.2610	475	3	JAMES DEREGO SUBDIVISION	Pukalani	12/26/2002
2.2137	476	3	PIIHOLO FARMS SUBDIVISION II	Makawao	1/6/2003
2.2627	477	3	HUELO HUI PARTITION	Haiku	2/25/2003
2.2453	478	3	OHATA SUBDIVISION	Paia	3/5/2003
4.0820	479	3	WAHIKULI HOUSE LOTS (FIRST SERIES)	Lahaina	6/30/2003
3.1833	480	3	WAIKOA HOUSE LOTS	Kihei	10/22/2003
3.2036	481	3	WAI OHULI-KEOKEA HOMESTEADS	Kihei	11/26/2003
2.2710	482	3	BATAKIS SUBDIVISION	Haiku	12/26/2003
3.2000	483	3	NELSON SUBDIVISION	Kihei	2/13/2004
3.1964	484	3	GOVERNMENT LAND OF KAMAOLE	Kihei	4/1/2004
2.2511	485	3	MARY DE CAMBRA SUBDIVISION	Makawao	5/11/2004
2.2385	486	3	PARTITION OF THE HUI LANDS OF PEAHI	Haiku	5/12/2004
1.0252	487	3	ULUNAELE SUBDIVISION	Hana	5/17/2004
2.2751	488	3	DANIELLS/CURELL/CAIRES SUBDIVISION	Haiku	6/10/2004
2.2752	489	3	DANIELLS/CURELL/CAIRES SUBDIVISION	Haiku	6/10/2004
2.2777	490	3	KOKOMO IKI SUBDIVISION	Haiku	7/28/2004
3.1967	491	3	LEVAL TRACT	Wailuku	9/7/2004
3.1870	492	3	B.B.C. WAI OHULI SUBDIVISION	Kihei	9/9/2004
2.2658	493	3	R & H SUBDIVISION	Kula	10/8/2004
2.2356	494	3	FEVELLA SUBDIVISION	Makawao	11/18/2004
2.2843	495	3	R.VON TEMPSKY-T. BUCHANAN - LOMONGO SUBDIVISION	Kula	11/30/2004
2.2642	496	3	KAILUA HOUSE SUBDIVISION	Haiku	12/2/2004
2.2792	497	3	JN AND RS SUBDIVISION	Haiku	12/15/2004
2.2113	498	3	MACKIE SUBDIVISION	Haiku	12/20/2004
2.2650	499	3	LILIKOI FARM LOTS	Haiku	12/30/2004
2.2691	500	3	KULA LODGE EXTENSION	Kula	2/25/2005
3.2110	501	3	WAILUKU HEIGHTS	Wailuku	4/26/2005
2.2261	502	3	ARAFILES SUBDIVISION	Haiku	5/16/2005
3.1680	503	3	WAILUKU HEIGHTS	Wailuku	5/23/2005
2.2659	504	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	6/30/2005
6.0148	505	3	LAND COURT CONSOLIDATION 170	Lanai	8/22/2005
5.0657	506	3	PAPAHAKU RANCHLANDS SUBDIVISION	Molokai	8/25/2005
2.2505	507	3	OLINDA VISTA SUBDIVISION	Makawao	9/14/2005
2.2818	508	3	HUELO HUI SUBDIVISION	Haiku	10/25/2005
4.0898	509	3	WAHIKULI HOUSE LOTS	Lahaina	10/25/2005
2.2820	510	3	HOOLAWA POINT SUBDIVISION	Haiku	12/6/2005
3.2062	511	3	KIHEI FARM SUBDIVISION	Kihei	12/14/2005
2.2631	512	3	PULEHUIKI-KAMEHAMEIKI HOMESTEADS	Kula	2/23/2006
2.2855	513	3	GARCIA SUBDIVISION	Haiku	5/12/2006
2.2682	514	3	HONOKALA FARM SUBDIVISION	Haiku	6/13/2006
2.2301	515	3	WOLFORD SUBDIVISION I	Haiku	6/28/2006
2.2907	516	3	SERLE SUBDIVISION	Haiku	8/4/2006
2.2867	517	3	BKJK SUBDIVISION	Makawao	8/7/2006
3.2165	518	3	THE MILLYARD SUBDIVISION	Wailuku	8/21/2006
2.2834	519	3	KEAWAKAPU BEACH LOTS	Kihei	8/31/2006
2.2248	520	3	TAKITANI FARM LOT SUBDIVISION NO. 2	Haiku	9/27/2006
2.2693	521	3	TAKITANI FARM LOT SUBDIVISION NO. 2	Haiku	11/14/2006
2.2689	522	3	LAND COURT APPLICATION 1531	Kula	11/28/2006
2.2262	523	3	STICE SUBDIVISION	Makawao	12/19/2006
2.2694	524	3	TEXEIRA AND MEDEIROS SUBDIVISION	Kula	12/19/2006
1.0279	525	3	HANA AGRICULTURAL PARK - UNIT II	Hana	2/6/2007
2.2231	526	3	HALEAKALA HOMESTEADS	Makawao	3/9/2007
2.2644	527	3	KAHUI PONO SUBDIVISION NO. III	Haiku	3/16/2007
2.2846	528	3	KUIAHA-KAUPAKULUA HOMESTEADS	Haiku	3/16/2007
3.2138	529	3	KAMAOLE HOUSE LOTS	Kihei	3/30/2007
1.0269	530	3	WAI OHONU-KAKIO HOMESTEADS	Hana	4/19/2007
2.2698	531	3	PARTITION OF HUI KUAI AINA O PEAHI	Haiku	6/1/2007
1.0273	532	3	WAI OHONU-KAKIO HOMESTEADS	Hana	6/7/2007
2.2793	533	3	ALAE 3 AND 4 HOMESTEADS	Kula	6/19/2007
2.2390	534	3	LAND COURT APPLICATION 342	Kula	6/20/2007
2.2868	535	3	BKJK SUBDIVISION	Makawao	6/22/2007
4.0904	536	3	WAHIKULI HOUSE LOTS	Lahaina	6/22/2007
2.2941	537	3	PARTITIONING OF PARCEL 29	Haiku	8/8/2007
3.2159	538	3	YATES SUBDIVISION	Wailuku	8/21/2007
2.2845	539	3	KULAMALU OFFSITE RESERVOIR SUBDIVISION II	Makawao	9/13/2007

4.0921	540	3	MAILEPAI HUI LAND	Lahaina	10/26/2007
2.2759	542	3	VIRGINIA CAIRES SUBDIVISION	Haiku	3/19/2008
2.2939	543	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	8/14/2008
4.0892	544	3	WAIHOLI HOUSE LOTS	Lahaina	9/29/2008
1.0276	545	3	HANA AGRICULTURAL PARK - UNIT II	Hana	10/28/2008
3.2112	546	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	2/18/2009
2.2887	547	3	LINDSAY SUBDIVISION	Haiku	4/13/2009
1.0242	548	3	KIPAHULU KAI SUBDIVISION	Hana	6/10/2009
2.2646	549	3	HARRIMAN SUBDIVISION	Haiku	6/29/2009
3.2049	550	3	KAMAOLE HOMESTEADS	Kihei	6/30/2009
2.2723	551	3	KAMEHAMEIKI-PULEHUIKI HOMESTEADS	Kula	8/4/2009
4.0894	552	3	KAUNUOHUA AWARD	Lahaina	8/10/2009
2.2654	553	3	OMAOPIO HOMESTEADS	Kula	12/16/2009
2.2859	554	3	PHILLIPS MAUKA SUBDIVISION, PHASE II	Kula	5/24/2010
2.2896	555	3	EDWARD F. NELSON, SR. TRUST SUBDIVISION	Haiku	10/15/2010
2.2643	556	3	KAHUI PONO SUBDIVISION NO. II	Haiku	12/28/2010
3.2190	557	3	SKY LEWIS SUBDIVISION	Kihei	3/17/2011
1.0192	559	3	LOKO NUI SUBDIVISION	Hana	
1.0243	560	3	KIPAHULU KAI SUBDIVISION	Hana	
1.0244	561	3	KIPAHULU KAI SUBDIVISION	Hana	
1.0256	562	3	HANA AGRICULTURAL PARK SUBDIVISION	Hana	
1.0264	563	3	NORDGREN SUBDIVISION	Hana	
1.0266	564	3	COON SUBDIVISION	Hana	
1.0282	565	3	NAHIKU OCEAN VIEW FARM LOT SUBDIVISION	Hana	
2.2244	566	3	CAMERON KALUANUI SUBDIVISION	Makawao	
2.2578	567	3	KULAIKI SUBDIVISION	Kula	
2.2622	568	3	JOE DECOITE SUBDIVISION	Haiku	
2.2692	569	3	HONOKALA SUBDIVISION	Haiku	
2.2732	570	3	A. TAM SUBDIVISION	Kula	
2.2733	571	3	KA'ONO'ULU LOTS	Kula	
2.2764	572	3	SING SUBDIVISION	Haiku	
2.2768	573	3	KULA ORCHARDS	Kula	
2.2785	574	3	JOHN A. ROBELLO SUBDIVISION	Kula	
2.2806	575	3	MANAWAI HOMESTEADS	Haiku	
2.2811	576	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	
2.2819	577	3	HALEAKALA HOMESTEADS	Makawao	
2.2830	578	3	A.L. & P. PHILLIPS SUBDIVISION	Kula	
2.2881	579	3	GROVE RANCH AGRICULTURAL SUBDIVISION NO. 2	Makawao	
2.2885	580	3	PURDY SUBDIVISION	Kula	
2.2915	581	3	HALEAKALA RANCH HOMESTEADS	Makawao	
2.2926	582	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	
2.2929	583	3	HAROLD SUBDIVISION	Haiku	
2.2938	584	3	PARTITION OF HUI KUAI AINA O PEAH	Haiku	
2.2962	585	3	WAIKOA HOMESTEADS	Kula	
2.2974	586	3	WAIHOLI-KEOKEA HOMESTEADS	Kula	
2.2982	587	3	HARVEY-GRONQUIST-HOMESLEY SUBDIVISION	Haiku	
2.3002	588	3	EMILY DO REGO SUBDIVISION	Makawao	
2.3014	589	3	KRENK SUBDIVISION	Haiku	
2.3017	590	3	D. T. HILL SUBDIVISION	Makawao	
2.3021	591	3	KUIAHA-PAUWELA HOMESTEADS	Haiku	
2.3025	592	3	HALEAKALA HOMESTEADS	Makawao	
2.3026	593	3	LAND COURT APPLICATION 1320	Kula	
2.3031	594	3	OMAOPIO EHIKU SUBDIVISION	Kula	
3.1644	595	3	K. WATANABE LOTS	Wailuku	
3.1847	596	3	KA HINANO ACRES SUBDIVISION	Kihei	
3.2032	597	3	COUNTRY CLUB LOTS SUBDIVISION	Paia	
3.2119	598	3	WAIHOLI-KEOKEA BEACH HOMESTEADS	Kihei	
3.2142	599	3	MONTAGUE SUBDIVISION	Paia	
3.2150	600	3	WAILUKU BEACH LOTS	Wailuku	
3.2155	601	3	WAILUKU BEACH LOTS	Wailuku	
4.0867	602	3	WAIHOLI HOUSE LOTS (SECOND SERIES)	Lahaina	

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1806

Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

January 11, 2018

David Goode, Director
Public Works
County of Maui
200 South High Street
Wailuku, Hawaii 96793

Dear Mr. Goode:

**SUBJECT: DEFERRAL AGREEMENTS AS THEY RELATE TO
BUDGET REVENUES-FEES, RATES, ASSESSMENTS
AND TAXES**

This letter is a request for an update in response to a letter from yourself,
dated June 4, 2012.

In the 2012 letter you state:

*"After our meeting with our Corporation Counsel on this issue, we are unable
to respond at this time on the matter as we are:*

- 1) researching the applicability of certain agreements on the ability to seek
compensation, and*
- 2) working out a formula for compensation on certain agreements.*

*Rest assured we (Department of Public Works and Corporation Counsel) are
actively working on this issue as our first project (Kahanui Bridge Project)
has a few parcels that are affected by the above two items that are still
being researched."*

May I please request a copy of the findings that resulted from the active
work done on this topic, conducted by Corporation Counsel and Public Works;
and receive a response to my letter dated May 18th 2012 (see attached).

Mahalo,

Elle Cochran

ELLE K. COCHRAN
Councilmember

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

RALPH NAGAMINE, L.S., P.E.
Development Services Administration

RECEIVED
2012 APR 16 PM 3:22
CARY YAMASHITA, P.E.
Engineering Division

OFFICE OF THE MAYOR
BRIAN HASHIRO, P.E.
Highways Division

April 16, 2012

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Elle Cochran
Council Member
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL



Mayor Date 4/19/12

12 APR 19 P2:33
OFFICE OF THE
COUNTY COUNCIL

Dear Council Member Cochran:

SUBJECT: DEFERRAL AGREEMENTS AS THEY RELATE TO BUDGET REVENUES - FEES, RATES, ASSESSMENTS AND TAXES

We are in receipt of your letter dated March 30, 2012 regarding the above-referenced subject. Upon review, we are able to offer the following responses corresponding to each item in your letter.

1. *A complete catalog of all deferral agreements island wide, along with the recorded agreements.*

See Enclosed Disk

2. *A list of roadway projects, both ongoing and proposed for the next 5 years, and an estimate of revenues from properties with deferral agreements located within each respective roadway project area.*

The following is a summary of ongoing and projected roadway projects anticipated for the next five years. New projects are added as needed along with notable emergency projects due to severe weather. Resurfacing and other maintenance of existing roadways is not considered roadway projects and would not in any case trigger any deferral agreement. Current and projected roadway projects are dependent upon adequate funding, timely legal acquisition of land rights and the existence of community support. A deficit in any one of these three key areas could cause lengthy or indefinite delays. Therefore, no one should speculate or rely on the completion of any particular roadway project.

A

Honorable Elle Cochran, Council Member
SUBJECT: DEFERRAL AGREEMENTS
April 16, 2012
Page 2

The estimated revenues are based on current costs of \$250 per lineal foot of property fronting the County roadway. A typical deferral agreement does not specify the exact methodology for collecting these costs. Therefore, projected revenues are also dependent on a number of factors that would include the involvement of the Department of Finance and may involve legal action for enforcement.


1) South Kihei Road - A total of six parcels may be affected by deferral agreements. The six parcels add up to 345 lineal feet of roadway frontage for a total of \$86,250 of potential revenue.

2) Waiko Road - No deferral agreements.

3) Lower Honoapiilani Road Phase IV - This project has already been addressed in a separate correspondence and currently under review.

Thank you for your attention to this matter. Should you have any questions, please contact me at Ext. 7845.

Sincerely,



DAVID C. GOODE
Director of Public Works

LM(ED12-426)
S:\ENGIN\GTRAF\CORRESPONDENCE\Maui County Council\CC-ECochran-DefAgreem_120416.wpd

Attachment

Liens need to be removed

VIEWPOINT

March 2, 2014

By DAVID CAIN , The Maui News

Save | 

The County of Maui holds a recorded lien on thousands of properties in Maui County which have no formula or ceiling for assessments to property owners. The administration has taken the position it can send out bills to property owners and, if left unpaid, the property can be taken through foreclosure by the county in the same fashion as property taxes.

This form of assessment by the administration violates the Maui County Charter. Assessments must be adopted by ordinance by the Maui County Council and placed in the county budget after annual public hearings. A politically appointed director cannot dictate the amounts owed.

As a bankruptcy and criminal law attorney who recently learned that I have one of these defective liens on my property, I conclude this form of infringement of land title is unconstitutional. Simply put, a government cannot record an encumbrance on a citizen's land that can lead to a taking without some form of valuation or ability for the property owner to remove the cloud on title.

The liens are a result of developers' incomplete subdivision improvements along property frontages that were deferred by the Department of Public Works through a subdivision ordinance adopted by the Maui County Council in 1974. My findings conclude that the original intent of the ordinance was to provide relief for families wishing to divide their land into parcels involving three or fewer lots.

Unknown to the public for almost four decades, the administration and corporation counsel have secretly expanded the recordation of the three or fewer lots deferral agreements to include massive tracts of land resulting in large subdivisions, commercial properties and multifamily condominiums.

Unknowingly, citizens end up picking up the developers' entire roadway improvement tab, costing taxpayers millions of dollars. The developers pay nothing. The administration and corporation counsel continue to deny any wrongdoing. The fact that these developer deferral agreements have been concealed from our elected council members and the public for 13 years speaks otherwise. The public requests for full disclosure have been deemed an interruption of a legitimate government function.

Through the exhausting efforts of West Maui resident Christopher Salem, a 13-year battle to obtain copies of these subdivision agreements from corporation counsel has been accomplished with the quiet efforts of unnamed employees of the county. One by one, thousands of properties affected by the illegitimate recorded agreements have been cataloged and plotted on Google aerial maps. The degree of manipulation of the Maui County Code is appalling.

Evidence now suggests a similar abuse has occurred with uncollected developer park fees.

The administration and corporation counsel have knowingly and intentionally shifted private developers' financial obligations to the public. This is an inexcusable violation of Section 9-12 of the Maui County Charter, which allows for government officials to be held personally liable and be removed from office for incurring a public expense in violation of the policies and procedures adopted by ordinance. It doesn't take a lawyer to figure out how the dishonorable exploitation of the Maui County Code has already resulted in public funds being spent on private developer obligations.

Mayor Alan Arakawa attempted to clean up this mess by instructing Jo Anne Johnson Winer and Salem to adopt, through legislation, a formula of assessment. Going against the mayor's wishes, corporation counsel slammed the door on a resolution to shield questionable decision-making.

For property owners, the harmful effect of these open-ended liens is just beginning to be realized. Prominent professional appraisers and real estate brokers in Maui County have denied representation of properties with these unexplainable county clouds on citizens' titles. The potential ripple effect on bank loans and real property disclosures is overwhelming.

I am stepping forward to alert my fellow citizens of the destructive impact of these unexplainable clouds on our property titles. Citizens of Maui County are called upon to demand their elected officials to investigate this administrative misconduct to prevent escalation to the courts. These developer liens must be immediately removed from our property titles.

To protect your property rights, contact Public Works Director David Goode (270-7845) and your elected representatives to demand full disclosure on the county website of all properties affected by these illegitimate county liens.

* David Cain is an attorney who specializes in bankruptcy and criminal law. He is a partner in the Wailuku law firm Cain & Herren

BUDGET AND FINANCE COMMITTEE MINUTES
Council of the County of Maui

April 19, 2012

MR. GOODE: I'm well aware of this one. Ms. Silva subdivided property. As part of the subdivision requirements she had to dedicate road widening lots, because a portion of Olinda Road I think fronting her property was not up to 40 feet as standard. So those dedications was probably...probably, 'cause I'm not super positive but a shoulder, so it wasn't intended to make the road wider in that area at all. So as part of the benefit of getting the subdivision, the road widening lot was required. So it's uncommon, what she provided, to a lot of other ag-type subdivisions.

CHAIR PONTANILLA: Thank you for asking though.

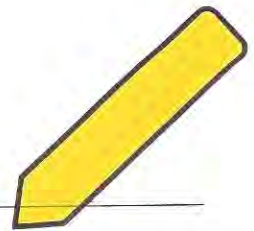
COUNCILMEMBER COCHRAN: Thank you.

CHAIR PONTANILLA: The other thing that I had over here is in regards to whenever we do road improvements, how do we handle the deferral agreements?

MR. GOODE: Yeah, that came up earlier so I'm glad you mentioned it. And I have a pretty comprehensive response coming back to the Committee. I don't know if you've received that yet. We're still putting it together because it was...there was a lot of questions and they required a fair amount of research. You know this Council, I think the last term, you know, had the issue, deferral agreements came up, and there's...and at the time the Department didn't have a good handle on how many agreements were out there or where they were, et cetera. And what we've done is since then our staff has gone through over 3,000 subdivision files and gone through them all to find all the deferral agreements. They've made copies of them all and they've made a GIS layer of exactly where all these deferral agreements are. And since that time, they've actually gone in and re-colored all that layer so you can see a specific agreement, what area it affects. So it's an extremely useful tool for us now to know on any given roadway whether there's a deferral agreement or not. And there's large sections of the County where there's hardly any of them, and there's other sections where they're concentrated. West Maui is one of them and the Upcountry area, especially like this ag subdivision-type thing. But it's basically for three lots or less, so these are small subdivisions, a lot of them. They were just three lots at the time. And so they were given the option then of either improving the road that adjoins them or deferring it to a future time when the County comes in and improves that road. And so we estimate roughly that per lineal foot of frontage road we're owed when we do the work, about \$250 per foot. So if a property has 100 feet, that property owner is going to owe the County roughly, I mean real rough, \$25,000 when we do a project there. And right now other than Lower Road 4, there was one other project which I can't remember which will be in that letter, you know, that we have some deferral agreements. And possibly to Lower Road 3, which we finished already, may have some deferral agreements. Compounding all that is that some deferral agreements, three lots, had another future three lot and a future three lot, so it got subdivided again and again, had different deferrals. And in some cases especially in West Maui, the original three-lot subdivision was a huge piece of land that went halfway up the mountain, and so there's a possibility there's going to be some deferral agreements where theoretically there's 1,000 different owners and they each owe us \$25. I mean it's getting...it potentially is getting really crazy as it relates to us

BUDGET AND FINANCE COMMITTEE MINUTES
Council of the County of Maui

April 19, 2012



trying to administer it. So we're going to devise some ideas and probably come back to this body in one Committee or another and try to figure out a way to handle those complex ones. But the simpler ones, it's going to be pretty straightforward. So I know there's a perception out there that as you drive down our roadways there's like money bags hidden in there, that there's this, a pot of gold on every road 'cause these people owe us money, and I'm here to tell you it's chasing rainbows, okay. There's money here and there, but they are not large sums of money that are going to rain down on us in any way, shape, or form. But it's our job, I feel our Department's job is to find those deferral agreements and make people accountable for what they agreed to do. Even if they bought and sold down the road, those are recorded agreements on their property. So we will figure it out and we will work to, you know, find those and make sure that those monies come in when we do projects in those areas. But it's not as...it's not millions and millions of dollars.

CHAIR PONTANILLA: Okay, thank you. Okay, Members, that concludes the CIP portion.

MR. GOODE: Mr. Chair, could I have one more thing --

CHAIR PONTANILLA: Sure, go ahead.

MR. GOODE: --on the CIP, if I could? Thanks in allowing me to indulge this. I just wanted to maybe brag a little bit and also thank our staff, but let you and the public know, you know, last year or FY 2011--I'm looking at hopefully some final numbers here--we had in County appropriations about 18½ million, we spent 14½ or encumbered which is about 78 percent. So those funds that were lapsed, almost all of them were due to low bids. It wasn't due that we didn't do the project, it was due to low bids. And one project we had it was supposed to be for a Federal match and the Feds changed the rules and they did 100 percent of it, so our match just evaporated. So if you take out the lapsed...excuse me, that change in that Federal project and the low bids, 99 percent of the funds you allocated were either spent or just came back because we got great bids or this change in Federal. And then if you throw in the Federal dollars that we got, almost \$12 million and you look at the original 18.5 appropriation that you had for County funds, 87 percent of all those funds were spent or encumbered. And I think that's...you know we talk about...we'll probably talk later about performance measures, et cetera, that's exactly what we, you know, we want to see from the Administration level. I'm sure you folks want to see it. The public wants to see it, how we appropriated these funds, and so I just wanted to make sure I got that in at some point today. It seemed like a good place to discuss it, so hats off to the Engineering Division and Cary Yamashita is the head.

CHAIR PONTANILLA: Good. Very good. Mr. Couch?

COUNCILMEMBER COUCH: Thank you. And good job to your Department. The question I have is, is this a situation where if you had a little bit more leeway in your projects, you could have let's say paved more roads if it was a road paving project? We talked about it prior to the break. Is this this situation here?

FINAL Evaluation Findings

Hawaii Coastal Zone Management Program

September 2004 – July 2008

January 2010



Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

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I. EXECUTIVE SUMMARY

Section 312 of the Coastal Zone Management Act of 1972, as amended (CZMA), requires the National Oceanic and Atmospheric Administration's (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to conduct periodic evaluations of the performance of states and territories with federally approved coastal management programs. This review examined the operation and management of the Hawaii Coastal Zone Management Program (HICZMP or Coastal Program) by the Department of Business, Economic Development and Tourism (DBEDT), the designated lead agency, for the period from September 2004 to July 2008.

This document describes the evaluation findings of the Director of OCRM with respect to the HICZMP during the review period. These evaluation findings include discussions of major accomplishments as well as recommendations for program improvement. This evaluation concludes that the DBEDT is satisfactorily implementing and enforcing its federally approved coastal program, adhering to the terms of the Federal financial assistance awards, and addressing the coastal management needs identified in section 303(2)(A) through (K) of the CZMA.

The evaluation team documented a number of HICZMP accomplishments during this review period. A key accomplishment was the development of a new Ocean Resources Management Plan in partnership with other state agencies and stakeholders, and statewide implementation through the Executive Policy Group and Working Group. Other important accomplishments include: streamlining of Hawaii's federal consistency process; support of many key hazard mitigation projects; and contributions toward the development and implementation of the national Performance Measurement System. In addition, the HICZMP created a Special Management Area (SMA) Permit Coordinator Position to improve implementation of the SMA Permit System. The SMA Coordinator has increased information sharing between the state, counties, and public and facilitated resolution of permitting issues.

The evaluation team also identified areas where the implementation of the HICZMP could be strengthened. The recommendations for the HICZMP are in the form of Program Suggestions and describe actions that OCRM believes DBEDT should consider to improve the program, but that are not mandatory. A key program suggestion is the need to ensure that state budget planning and funding levels support the essential components of the program necessary to maintain approvability of the HICZMP under the CZMA. Opportunities identified for strengthening the HICZMP include: providing leadership for climate change adaptation planning; consideration of how MACZAC and the HICZMP might more effectively work together to address coastal management issues; and finalizing Hawaii's draft Coastal and Estuarine Land Conservation Program Plan.

II. PROGRAM REVIEW PROCEDURES

A. OVERVIEW

NOAA began its review of the HICZMP in May 2008. The §312 evaluation process involves four distinct components:

- An initial document review and identification of specific issues of concern;
- A site visit to Hawaii, including interviews and a public meeting;
- Development of draft evaluation findings; and
- Preparation of the final evaluation findings, partly based on comments from the State regarding the content and timetables of recommendations specified in the draft document.

Accomplishments and recommendations made by this evaluation appear in boxes and **bold** type and follow the findings section where facts relevant to the recommendation are discussed. The recommendations may be of two types:

Necessary Actions address programmatic requirements of the CZMA's implementing regulations and of the HICZMP approved by NOAA. These must be carried out by the date(s) specified;

Program Suggestions denote actions that OCRM believes would improve the program, but which are not mandatory at this time. If no dates are indicated, the State is expected to have considered these Program Suggestions by the time of the next CZMA §312 evaluation.

A complete summary of accomplishments and recommendations is outlined in Appendix A. Failure to address Necessary Actions may result in a future finding of non-adherence and the invoking of interim sanctions, as specified in CZMA §312(c). Program Suggestions that must be reiterated in consecutive evaluations to address continuing problems may be elevated to Necessary Actions. The findings in this evaluation document will be considered by NOAA in making future financial award decisions relative to the HICZMP.

B. DOCUMENT REVIEW AND ISSUE DEVELOPMENT

The evaluation team reviewed a wide variety of documents prior to the site visit, including: (1) the 2004 Hawaii CZMP §312 evaluation findings; (2) the federally-approved Environmental Impact Statement and program documents for the Hawaii CZMP approved in 1978; (3) draft of a new program document that was submitted to OCRM for informal review in May of 2008. (4) federal financial assistance awards and work products; (5) semi-annual performance reports; (6) official correspondence; (7) Ocean Resources Management Plan; and (8) relevant publications on coastal management issues in Hawaii.

Based on this review and discussions with NOAA's OCRM, the evaluation team identified the following priority issues prior to the site visit:

- Program accomplishments since the last evaluation;
- Changes to the core statutory and regulatory provisions of the Hawaii CZMP;
- Ocean resource management planning;
- Management of coastal hazards;
- Public access;
- Special Management Area permitting process;
- Implementation of federal and state consistency authority;
- Performance measures;
- Effectiveness of interagency and intergovernmental coordination and cooperation at local, regional, state, and federal levels;
- Public participation and outreach efforts;
- The Coastal Nonpoint Pollution Control Program;
- The manner in which the Hawaii CZMP has addressed the recommendations contained in the §312 evaluation findings released in 2005.

C. SITE VISIT TO HAWAII

Notification of the scheduled evaluation was sent to the Hawaii Department of Business, Economic Development and Tourism, Office of Planning, relevant environmental agencies, members of Hawaii's congressional delegation, and regional newspapers. In addition, a notice of NOAA's "Intent to Evaluate" was published in the *Federal Register* on June 18, 2008.

The site visit to Hawaii was conducted from July 23 – August 4, 2008. The evaluation team consisted of Carrie Hall, Evaluation Team Leader and Kate Barba, Chief, OCRM, National Policy and Evaluation Division; John Parks, Coastal Program Specialist, OCRM, Coastal Programs Division; and Paul Klarin, Policy Specialist, Oregon Coastal Program.

During the site visit, the evaluation team met with HICZMP staff, the Hawaii State Office Planning Director, and other state officials, federal agency representatives, county representatives, nongovernmental representatives, and private citizens. Appendix C lists individuals and institutions contacted during this period.

As required by the CZMA, NOAA held an advertised public meeting on Wednesday, July 30th, 2008, at 7:00 p.m. in the Hilo State Office Building, Conference Rooms A, B, and C, 75 Aupuni Street, Hilo, Hawaii. The public meeting was an opportunity for members of the general public to express their opinions about the overall operation and management of the HICZMP. Appendix D lists persons who registered at the public meeting. OCRM's response to written comments submitted during this review is summarized in Appendix E.

The support of the HICZMP staff were crucial in setting up meetings and arranging logistics for the evaluation site visit. Their support is most gratefully acknowledged.

III. COASTAL MANAGEMENT PROGRAM DESCRIPTION

NOAA approved the Hawaii Coastal Zone Management Program (HICZMP or Coastal Program) in 1978. The lead agency is the Department of Business, Economic Development and Tourism (DBEDT) and the HICZMP is located within the State Office of Planning (OP). The HICZMP is a framework for designing and carrying out permitted land and water uses and activities while respecting the resources and values expressed by the Coastal Program's objectives and policies.

The Hawaiian Island archipelago spans the distance of 1,523 miles (2,451 km) from the Big Island of Hawaii in the southeast to Kure Atoll in the northwest. This makes Hawaii the world's longest island chain. Hawaii is situated approximately 3,200 km (1,988 miles) southwest of the North American mainland, and is the southernmost state of the United States and the second westernmost state after Alaska. Hawaii's total coastline is 1052 miles, with a total population of 1,211,537 people (2000 Census). As an island archipelago, the 'coastal zone' in Hawaii is inclusive of all land area.

The primary authority of the HICZMP, Chapter 205A, Hawaii Revised Statutes (HRS), was enacted in 1977. The Coastal Program provides a coordinated perspective for government and the private sector in the use and protection of coastal resources. In building on existing authorities rather than creating new ones, the HICZMP relies on a network of authorities and partnerships for implementation. The planning departments of the Counties of Hawaii, Kauai, Maui, and the City and County of Honolulu play a crucial role in implementing the regulations outlined under Chapter 205A, HRS. In particular, the counties implement the Special Management Area (SMA) permit system and shoreline certifications that manage development in the shoreline areas of the coastal zone.

Annual Coastal Zone Management (CZM) funding provides ongoing support of coastal zone management functions such as policy analysis and legislative review, State and County Agency compliance, federal consistency, public education and outreach, public participation through the Marine and Coastal Zone Advocacy Council, County implementation of the special management area permit, coastal hazards preparedness planning, and development of a coastal nonpoint pollution control program. Funding also supports newly strengthened initiatives such as County-wide implementation of the legislatively-approved (in 2007) Ocean Resources Management Plan, including the initiation of several culturally-appropriate and community- and place-based ocean resource management projects in coordination with local non-government organizations and community groups.

IV. REVIEW FINDINGS, ACCOMPLISHMENTS, AND RECOMMENDATIONS

A. OPERATIONS AND MANAGEMENT

Overall, OCRM finds that the Hawaii Department of Business, Economic Development and Tourism, State Office of Planning, is satisfactorily implementing the Hawaii Coastal Zone Management Program as approved by NOAA in 1978.

1. Organization and Administration

The HICZMP was built upon existing authorities and is a network of authorities and partnerships collectively implementing the objectives and policies of Chapter 205A, HRS. State agencies are required to ensure that their statutes, ordinances, rules, and actions comply with the coastal zone management objectives and policies in Chapter 205A, HRS.

The Department of Business, Economic Development and Tourism (DBEDT) is the lead agency for the HICZMP which is housed within the State Office of Planning (OP). DBEDT has the primary administrative responsibility for a range of services including: promoting economic diversification and high technology industries; increasing foreign trade; economic research and analysis; promoting tourism; encouraging energy and ocean related research; housing finance and development; and long range planning for the state. The Department also houses the Land Use Commission which works with the counties to implement the state's land use planning program. In addition to managing the state's coastal zone, the OP is responsible for guiding development in the state through a continuous process of comprehensive, long-range, and strategic planning, and manages a statewide geographic information system.

County governments play a crucial role in implementing the HICZMP by regulating development in geographically designated Special Management Areas (SMAs). Through their respective SMA permit systems, the Counties assess and regulate development proposals for compliance with the HICZMP objectives and policies and SMA guidelines set forth in Chapter 205A, HRS. Since 1990, the State through the OP, has the authority to regulate development within limited SMAs under the jurisdiction of the Hawaii Community Development Authority.

The Counties of Hawaii, Kauai, and Maui implement the SMA permit system in direct partnership and coordination with the HICZMP. This includes the receipt, expenditure, and reporting of federal award monies through the annual CZM cooperative agreement with NOAA. In 2007, the City and County of Honolulu declined to further partner with the HICZMP, including the receipt of federal CZM funds. The City and County of Honolulu choose not to accept federal funds for several reasons, including concerns with implied obligations to implement the new Ocean Resources Management Plan and increased reporting requirements. The City and County of Honolulu, however, continues to implement its SMA permit system and attends joint quarterly HICZMP and County SMA meetings when issues discussed are of interest. OCRM is concerned that the reduced level of participation by the City and County of Honolulu will affect the implementation of the federally approved HICZMP and will continue to monitor the situation.

2. Staffing and State support

At the time of the site visit, the Coastal Program was staffed by ten dedicated and knowledgeable staff and one position was vacant. The evaluation team heard from many HICZMP partners the value of staff's work, their knowledge, and HICZMP staff's ability to bring people together to successfully address coastal issues.

The Coastal Program is staffed by employees with a wide range of coastal zone management experience, from 20+ years to newer staff who have only recently been hired. Like many federal and state agencies, the Coastal Program is likely to see the retirement of key personnel in the next 5–10 years. To ensure that new staff are ready to step into coastal zone management leadership roles, the HICZMP has encouraged its staff to participate actively in the national program and to take on leadership roles within the coastal zone management community. OCRM encourages the Coastal Program to continue to support workforce development and to undertake a succession planning process to prepare staff to be leaders in coastal zone management, both at the state and national level.

The National Coastal Zone Management Program is a voluntary partnership between the federal government and U.S. coastal states and territories authorized by the Coastal Zone Management Act to better manage our nation's coasts. The evaluation team noted with concern that state financial support for the partnership declined during the evaluation period. The decline in funding impacts the Counties' ability to successfully implement their SMA permit systems and could impact the Coastal Program's ability to fill vacant positions. In addition, only two HICZMP staff members are currently funded with state funds.

Since the evaluation site visit, the State budget has continued to contract as a result of the national economic downturn and loss of tourism income. The HICZMP is implemented through the SMA permitting process and the Coastal Program provides both federal and state support to the county governments to assist them with implementing their SMA Programs. For the fiscal year (FY) 2008, the contracts to the counties were voided by the State at the last processing stage because of budget cuts, resulting in a loss of \$266,573 in state funds. In order to cover the costs incurred by the counties in FY 2008, additional Federal and County funds were reprogrammed to cover the loss of State funds.

In addition, in the fall of 2009, the State implemented a Reduction-in-Force process eliminating 1,000 state funded positions, including the Coastal Program Manager position, in order to align the budget with revenue projections. The Program Manager position is a key position, providing oversight and direction for the Coastal Program and oversight of ten employees. OCRM worked with DBEDT to maintain the Program Manager position and agreed to support the position with federal funds for two fiscal years, FY 2010 and FY 2011, with the condition that the State actively take steps to ensure that this position be funded with State funds as soon as they become available. OCRM is very concerned that the reduced level of state funding and support endangers the State's and counties' ability to implement the federally approved HICZMP.

Program Suggestion: DBEDT and the HICZMP should ensure State budget planning and funding levels support the essential components of the program necessary to maintain approvability of the HICZMP under the Coastal Zone Management Act.

3. Marine and Coastal Zone Advocacy Council

In 2001, the Hawaii state legislature created the Marine and Coastal Zone Advocacy Council (MACZAC) which is composed of twelve advisory members from the Islands of Kauai, Oahu, Maui, Molokai, Lanai, and Hawaii representing diverse backgrounds in business, environment, native Hawaiian practices, terrestrial and marine commerce, recreation, research, and tourism. MACZAC is an independent Council that pursuant to HRS, provides support to the lead coastal zone management agency through: (1) advice regarding marine and coastal zone management planning, (2) coordination, and (3) facilitation of HICZMP functions. MACZAC is tasked with: (1) evaluating the program, including the activity of networked agencies and making recommendations for improvements, (2) advocating for program, (3) providing for citizen input, and (4) working towards the implementation of an integrated and comprehensive management system for marine and coastal zone resources.

During the evaluation period, MACZAC developed working groups that were comprised of MACZAC members, members of the public, and experts to address significant coastal issues. Working groups have included Legislative, Shoreline Certification, Shoreline Parking and Access, and Cultural Resources workgroups. MACZAC members also participate in other state working groups such as the Ocean Resources Management Plan Policy Group. MACZAC has worked on a number of marine and coastal issues during the evaluation period, including coastal parking, shoreline certification, commercial boating regulations and harbor facilities, ocean resource management planning, and cultural resource management. OCRM commends MACZAC for its active engagement in resolving coastal zone management issues.

MACZAC's broad mission provides the Council with the flexibility to engage in many activities but members' time is limited. Several evaluation participants stated that MACZAC members could increase their effectiveness by further clarifying and focusing the Council's role and efforts. During the evaluation, questions were also raised regarding the primary role of MACZAC in relation to its support of the HICZMP and whether MACZAC should focus on representing HICZMP goals when engaging with the public, or organizing citizens around key coastal management issues, or bringing citizen concerns to the HICZMP.

Since the site visit, MACZAC has narrowed its focus to four workgroups which focus on tasks laid out in the HRS for MACZAC: (1) CZM Evaluation Group, (2) Advocacy Group, (3) Community Input Group, and (4) ORMP Implementation Group. However, opportunities to further clarify and enhance MACZAC's role remain. OCRM recommends that MACZAC and the HICZMP discuss existing collaborative efforts and new opportunities for using the strengths of the state Coastal Program and Council to better manage Hawaii's coastal resources. MACZAC could use this information to further clarify and prioritize its role in implementing the Coastal Program. A

formal description of MACZAC's clarified role and focus areas could be included in an updated Program Document.

Program Suggestion: OCRM encourages the HICZMP and MACZAC to work together to further clarify MACZAC's role and how together, they can best address coastal management issues and implement the state's Coastal Program.

4. Grants Management

OCRM awards the State of Hawaii federal grant funds for the implementation and enhancement of the Coastal Program. OCRM requires the HICZMP to submit semi-annual performance reports that provide information about the status of tasks in the financial assistance award.

During the evaluation period, the HICZMP has had difficulty spending funds in a timely manner. The state contracting system can add a significant amount of time between federal approval and when a project can be contracted and initiated. HICZMP has requested extensions up to the full three years allowed for its grants in order to expend the funds. OCRM encourages DBEDT to pursue streamlining approval of contracts to ensure funds are spent in a timely manner and do not have to be returned to the federal government.

5. Performance Measurement System

NOAA, the state coastal management programs, and the national estuarine research reserves have created the Coastal Zone Management Act (CZMA) Performance Measurement System to track national indicators of the effectiveness of state coastal management programs and national estuarine research reserves in achieving CZMA and strategic objectives. The Performance Measurement System was devised to provide flexibility and accommodate varying management structures and differing coastal priorities across coastal states. The System consists of a suite of contextual indicators to provide information on environmental and socioeconomic factors influencing program actions, and a set of performance measures to assess how well states are achieving CZMA objectives. The six categories of performance measures include: coastal habitats, coastal hazards, coastal water quality, coastal dependent uses and community development, public access, and government coordination and decision-making. Measures are aggregated across programs for a national and regional picture of coastal zone management.

The HICZMP participates in this effort and has invested a significant amount of staff time and funding to implement the national Performance Measurement System. To better fulfill this national mandate, the HICZMP contracted with an outside company to help develop and implement the state's Performance Measurement System. The contractor worked with the HICZMP and counties to develop reporting forms and instructions to ensure that the necessary data is collected. The HICZMP also anticipates analyzing the data and determining how the information can be used at the state level to inform coastal management efforts. The HICZMP has provided valuable input into the improvement and refinement of the Performance Measurement System at the national level. OCRM commends and appreciates the HICZMP's contributions to the development and implementation of the National Performance Measurement System.

Accomplishment: HICZMP has successfully contributed to the development and implementation of the National Performance Measurement System.
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OCRM has been working with state coastal programs to streamline the new Performance Measurement System and to reduce the work load at the state level while still collecting enough data to effectively measure national program performance. The HICZMP has also been working with its county partners to simplify the reporting forms. County staff appreciate this work, although, they noted that the simplified reporting requirements still require significant staff time and do not measure the impacts of enforcement, a significant part of their programs. OCRM acknowledges that the Performance Measurement System has increased the workload of state coastal programs in order to demonstrate success at the national level.

B. GOVERNMENT COORDINATION AND DECISION-MAKING

Two objectives of the HICZMP are to “*Improve the development review process, communication, and public participation in the management of coastal resources and hazards*” and “*Stimulate public awareness, education, and participation in coastal management*,” Chapter 205A, HRS. The HICZMP’s development and implementation of an updated Ocean Resources Management Plan has provided new opportunities for coordination and public input into coastal management.

1. Ocean Resources Management Plan (ORMP)

During the evaluation period the HICZMP focused on enhancing its role as a facilitator and coordinator of statewide and regional coastal and ocean management efforts. The keystone of this effort was the development of the 2006 ORMP. State legislation requires the HICZMP to periodically develop an ocean resources management plan. The prior plan was approved in 1998. During 2005, the HICZMP worked with federal, state and nongovernmental partners and obtained public input into the development of the new Plan. The planning process brought partners together to build upon traditional Hawaiian management principles and lessons and to move toward integrated and area-based approaches to natural and cultural resource management. The Plan was completed in 2006 and approved by the legislature in 2007. The goal of the Plan is to “improve and sustain the ecological, cultural, economic, and social benefits we derive from ocean resources today and for future generations.” The initial Plan covers a five-year time frame and lays out management goals and strategic actions under three perspectives (1) Connecting Land and Sea, (2) Preserving Our Ocean Heritage, and (3) Promoting Collaborative Governance and Stewardship. The management goals and strategic actions provide a comprehensive list of activities that support Plan implementation. It is hoped that over the 30-year planning horizon, natural and cultural resource management will be fully integrated throughout state government and community groups, through collaborative governance mechanisms and stewardship agreements.

HICZMP staff members continue to lead the implementation of the ORMP. In 2007, an Executive-level multi-agency Policy Group was established to oversee the implementation and further development of the Plan. A Working Group consisting of the managers and staff of the

Executive Policy Group is tasked with coordinating their agency's implementation efforts. Members prioritized activities and developed two-year agency work plans. The Working Group meets monthly to streamline implementation and further develop the ORMP. The Policy Group meets twice annually to give overall guidance, approve work tasks and recommendations, and commit staff time and support. The Policy and Working Groups include: state agencies; the University of Hawaii; Hawaii, Kauai, and Maui Planning Departments; the Board of Water Supply, City and County of Honolulu; MACZAC; OCRM; U.S. Coast Guard; and U.S. Army Corps of Engineers.

The ORMP implementation has opened many opportunities for improving coordination of ocean and coastal resource management and serving as a conduit of information throughout the state. For example, the ORMP development and implementation has led to increased coordination between the Coral and HICZM Programs (*see Section D*). The ORMP process has also provided a venue for state agencies to interact more closely with community groups and to identify partnership opportunities. OCRM commends the HICZMP for undertaking the development of the ORMP and ensuring its implementation through ongoing leadership and staffing of the Policy Group and Working Group.

Accomplishment: The HICZMP has shown vision and leadership in the development of a new Ocean Resources Management Plan and the institutionalization of a process to coordinate state agency activities around joint marine and coastal management goals and strategic actions.

The ORMP is a new and innovative approach to addressing coastal and ocean resource management issues. Ensuring that the ORMP is implemented through the coordination of federal, state, and community group activities is a significant ongoing effort requiring staff and management time. OCRM encourages the Coastal Program to document and advertise their successes as they implement the ORMP to provide encouragement and motivation in this significant endeavor. OCRM also encourages the HICZMP to reach out to additional federal agencies, such as the National Marine Sanctuary Program and other possible partners, and to provide with them with information on the ORMP and how they can contribute.

2. Climate Change

The CZMA states that “because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence.” At the time of the site visit, the HICZMP was not actively engaged in climate change adaptation efforts. Many evaluation participants identified climate change as one of the biggest emerging issues for the state and coastal zone management. Many evaluation participants also stated that the HICZMP was uniquely positioned, capable, and needed to take the lead in initiating state and county climate change adaptation efforts. The HICZMP is an integral player in statewide hazard mitigation efforts and could draw upon this expertise and staff's relationships with key partners to bring them together to build on existing hazard mitigation efforts to develop and implement climate change adaptation plan(s).

The ORMP has several goals related to hazards but does not specifically address climate change. During the site visit, the evaluation team heard from staff that the HICZMP and ORMP partners were beginning initial discussions on how to incorporate climate change into the ORMP. Since the site visit, the HICZMP has taken a lead role in climate change adaptation planning through the ORMP process. The ORMP Working Group developed a document, “A Framework for Climate Change Adaptation in Hawaii.” While the development of the Framework was ongoing, the legislature passed SB266, establishing a Climate Change Task Force to assess impacts and possible adaption measures and to provide a preliminary report with recommendations to the 2010 legislature. The Task Force is housed in the OP, and the OP Director is the Chair of the Taskforce. As of October 2009, the Task Force members had been identified but had not yet convened their first meeting. OCRM encourages the HICZMP to continue to show leadership in addressing climate change adaptation through appropriate planning processes such as the ORMP process, working with the Climate Change Task Force, and incorporating climate change adaptation into hazard mitigation plans.

Program Suggestion: OCRM encourages the HICZMP to continue to show leadership in addressing climate change adaptation through the ORMP and Climate Change Task Force and other appropriate planning processes.

3. Federal Consistency

The CZMA’s federal consistency provision (§307) is a primary incentive for states to participate in the national coastal zone management program. It is also a powerful tool that states use to manage coastal uses and resources and to facilitate cooperation and coordination with federal agencies. The federal consistency provision requires that federal agency activities that have reasonably foreseeable effects on any resource in the coastal zone must be consistent to the maximum extent practicable with the enforceable policies of a state’s coastal management program and that non-federal applicants for federal licenses or permits and state agency and local government applications for federal funding be fully consistent. Federal consistency reviews are the responsibility of the lead state agency that implements or coordinates the state’s federally approved coastal management program. In Hawaii, DBEDT exercises the state’s authority to review most federal activities in the coastal zone to ensure that they are consistent with the ACMP’s enforceable policies.

Federal Agency partners who participated in the evaluation site visit felt that the federal consistency process in Hawaii worked well, due in large part to the frequent dialogue and discussion of issues between the federal consistency program and federal agencies. They also noted that the HICZMP Federal Consistency Coordinator was fair, responsive, and helpful, alerting agencies to possible issues with a proposed permit application or federal activity.

The state of Hawaii has a large military presence and numerous ongoing military activities. In order to better coordinate review of military activities, the U.S Army Space and Missile Defense

Command and the Navy Region Hawaii host quarterly coordination meetings among various Federal and state regulatory agencies. HICZMP staff actively participates in these meetings and the early coordination enhances communication throughout the federal consistency process.

The HICZMP continues to enhance its consistency process through an internship program with the Navy region Hawaii. In 2006, a Navy intern worked with HICZMP staff to develop a de minimis list of Navy activities that could be excluded from federal consistency review because these activities are expected to have negligible coastal effects. This effort streamlined the federal consistency process and the Navy intern gained a more in-depth understanding of the federal consistency process. The de minimis list includes 17 categories of activities and a corresponding list of mitigation measures and general conditions. The areas covered include: Pearl Harbor Naval Complex; Naval Magazine Lualualei; Naval Communications and Telecommunications Area Master Station Pacific; Pacific Missile Range Facility; and all associated installations, facilities and equipment located outside of these Navy properties. CZM consistency concurrence was issued in April 2007. OCRM commends the HICZMP for initiating efforts to streamline the federal consistency process.

Accomplishment: The HICZMP has streamlined the federal consistency process, including the development of a de minimis list covering 17 naval activities and corresponding list of mitigation measures and general conditions.

The HICZMP Federal Consistency Coordinator has extensive experience dealing with complex federal consistency issues including those associated with military activities. The U.S. territories in the Pacific may be able to benefit from this expertise as they face new issues. For example, the military is expanding its presence and scope of activities on the island of Guam. OCRM encourages the HICZMP federal consistency staff to pursue additional opportunities to share their expertise.

C. PUBLIC ACCESS

Two objectives of the HICZMP are to “*Protect beaches for public use and recreation,*” and “*Provide coastal recreational opportunities accessible to the public,*” Chapter 205A, HRS. The HICZMP relies on the SMA permitting process to ensure public access to the beach and coastal recreational opportunities.

The state has enhanced public access since the early 1970’s through the SMA permit process. The SMA regulations require a subdivider or developer, in cases where public access is not already provided, to dedicate land for public access by right-of-way easement for pedestrian travel from a public street to the land below the high-watermark. Hawaii like most coastal states has an increasing population and increased demand for beach real estate and access to the beach. The evaluation team received numerous comments from members of the public on beach access. The comments from members of the general public focused on three concerns: (1) private landowners encouraging the growth of vegetation on the public beach through the planting and watering of salt tolerant plant species causing a narrowing of the beach and affecting the public’s ability to walk

along the beach; (2) the gating of private roads that had previously provided perpendicular access to the coast, particularly in the Kailua area (Kahala Beach) of Oahu; and (3) the lack of adequate funding for the acquisition of new public access.

The HICZMP coordinated a site visit of Kahala Beach with members of the community and State and City officials focusing on encroaching vegetation and wrote a memorandum outlining recommendations as to how to proceed. In 2008, the Hawaii state legislature passed House Concurrent Resolution No. 258 based on the memorandum. The resolution calls for city and state agencies to develop a strategy for the removal of vegetation to enhance public use and enjoyment of the beach and to submit the report to the legislature. OCRM encourages the HICZMP to continue to lead and participate in efforts to address removal of vegetation that is encroaching on public access.

In areas of Hawaii, in particular the Kailua area, the gating of previously open private roads has caused nearby residents to be concerned and upset as their traditional access ways have been closed off. Nearby residents are also concerned that emergency vehicles will no longer have quick access in case of an emergency on the beach. Residents along the roads have expressed concerns with safety, increased trash, and late night activity and cited these as reasons for gating off roads. This reduction in coastal access has occurred in areas built out prior to the implementation of the SMA permit system. The roads are private and the Counties and State believe the residents are legally within their rights to close off the roads. OCRM encourages the HICZMP to continue to monitor the issue and, to the extent possible, to work with state, county, and community partners to find innovative ways to encourage continued perpendicular access to the beach.

Another need identified by public participants in the evaluation, was the need for information on resources to increase public access, in particular, funding sources for purchase of lands adjacent to the beach. One possible resource is the Coastal and Estuarine Land Conservation Program (CELCP) which is managed by OCRM. As described in Section D, CELCP provides funding for projects that protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic values. The public looks to the HICZMP to ensure public access and to provide information on public access. OCRM encourages the HICZMP to add a public access section to the HICZMP website. The public access section could include a list of possible funding sources for acquiring new public access, links to public access guides, and a list of county contacts to report access violations.

During the evaluation site visit, a public meeting was held in Hawaii to provide the opportunity for public comment. Dr. Jim Anthony, representing the Hawai'i--La'ieikawai Assn. Inc., provided comments emphasizing the importance of shoreline access issues in the state. He noted the need for more information regarding potential funding sources and possible partnerships to assist nonprofits in their efforts to acquire lands for public access and to protect culturally important areas. Since the evaluation site visit, the HICZMP has continued to explore public access related opportunities with Dr. Anthony and the Hawai'i--La'ieikawai Assn. Inc. and the HICZMP has had the opportunity to benefit from their expertise on climate change issues.

During the evaluation period the HICZMP has undertaken a range of activities to ensure and enhance public access. The HICZMP discussed public access at a quarterly SMA meeting with the Counties and brought in the Attorney General to discuss legal issues surrounding public access in the state. The HICZMP also provided funding to Hawaii County for the development of an online public access guide. HICZMP staff noted that they were interested in working with the Counties to develop a statewide online public access guide. OCRM encourages the HICZMP in its efforts to develop a statewide access guide.

D. COASTAL HABITAT

Two objectives of the HICZMP are to “*Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems*” and “*Promote the protection, use, and development of marine and coastal resources to assure their sustainability,*” Chapter 205A, HRS. The HICZMP works with its partners through the ORMP process to protect coastal ecosystems and ensure their sustainability and supports projects that give land use managers the tools they need to better understand and protect coastal ecosystems.

1. Watershed Management and Coordination

The HICZMP promotes and encourages watershed-based management and habitat protection through the ORMP process. The ORMP stresses the connection between the land and sea and also the importance of collaboration and community involvement and empowerment. The ORMP has a strong focus on coastal habitat protection and promotes community watershed management as an important tool, necessary for successful implementation of the ORMP. One of the goals of the ORMP is to build the capacity for community participation in natural resource management.

Community stewardship groups in Hawaii are actively involved in habitat management. To better understand all the many ongoing management efforts, the HICZMP surveyed community stewardship groups throughout the state on their best practices, successful projects, needs, and institutional resources in 2007. The information was used to create a popular community stewardship directory of the 60 plus groups. The on-line directory allows community stewardship groups to find groups doing similar activities, or activities that might compliment their management efforts. The information was also used to develop five draft principles to guide the State toward place-, culture-, and community-based approaches to natural and cultural resources management. A workshop was held in January of 2008 to gain input from community stewardship groups and develop implementation options. The HICZMP’s efforts led to new connections between the HICZMP and the community stewardship groups and provided a forum for all the groups to begin discussing projects they could work on together. OCRM encourages the HICZMP to continue to build relationships with, and among, community stewardship groups.

The ORMP implementation process has also allowed HICZMP staff to build relationships with other state programs, including the Coral Program which is run by the Division of Aquatic Resources in the Department of Natural Lands and Resources (DNLR). The United States Coral Reef Task Force (USCRTF) leads U.S. efforts to preserve and protect coral reef ecosystems and

includes 12 Federal agencies, seven U.S. states, territories, and commonwealths, and three freely associated states. NOAA helps implement the work of the Taskforce through the Coral Reef Conservation Program which is co-located in the Office of Ocean and Coastal Resource Management with the Coastal Zone Management Program. The evaluation team met with several participants who stated that CZMA projects should be better coordinated with Coral Reef Conservation Program projects to avoid duplication of effort. During the year prior to the site visit, coordination with the Coral Program improved. HICZMP is currently represented by a staff member on the Coral Program Working Group and two other staff are on the Coral Program's Local Action Strategy Steering Committee. In addition, the HICZMP has also participated in the planning of two workshops for the August 2009 Coral Reef Task Force meeting held in Kona, Hawaii. Through the ORMP and other planning processes the Coastal and Coral Programs are working more closely together and eliminating duplication of effort. OCRM anticipates that the two programs will also be working more closely together at the federal level in the future.

The Coastal Program also supported the development of the Wai'anae Ecological Characterization, which synthesizes historical and current physical, ecological and cultural information. An innovative part of the ecological characterization was the addition of a Nonpoint Source Pollution Evaluation and Comparison Tool (N-SPECT) for the Wai'anae Coast. N-SPECT allows users to examine the relationship between land cover, nonpoint source pollution, and erosion. The Wai'anae Ecological Characterization is a tool that can be used by educators, planners, and decision-makers for land use planning, resource management, and educational curriculum development. However, the evaluation team found little evidence that the Wai'anae Ecological Characterization was being used by the target audience. OCRM encourages the HICZMP to work with the community and other partners to ensure that its use and value is maximized.

2. Coastal and Estuarine Land Conservation Program

Congress established the Coastal and Estuarine Land Conservation Program (CELCP) in 2002 to protect coastal and estuarine lands considered important for their ecological, conservation, recreational, historical or aesthetic values. The program provides state and local governments with matching funds to purchase significant coastal and estuarine lands, or conservation easements on such lands, from willing sellers. Lands or conservation easements acquired with CELCP funds are protected in perpetuity so that they may be enjoyed by future generations.

The CELCP guidelines outline the criteria and process for states to nominate land conservation projects to a national competitive process. The program is coordinated at the state level through each state's CELCP lead within the state's lead coastal management agency. According to the CELCP guidelines, a state must have an approved CELCP plan in order to compete for funding. The HICZMP organized a Hawaii Coastal and Estuarine Land Conservation Plan Advisory Committee, representing a wide range of program partners, to assist with the development of the Plan. The Advisory committee guided the prioritization of land conservation projects and shoreline habitats and coastal wetland habitats and adjacent upland habits were chosen as priorities. The planning process was also used to reach out to the public for support and input. OCRM commends the HICZMP on conducting an inclusive CELCP planning process.

Hawaii's draft CELCP Plan was submitted to NOAA in August of 2007. The draft plan was reviewed by NOAA staff and comments were returned to the state in October 2007. OCRM encourages the HICZMP to submit their revised CELCP Plan and to work with NOAA to obtain final approval.

Program Suggestion: The HICZMP should submit their revised CELCP Plan for approval by July 2010 to ensure Hawaii remains eligible to participate in CELCP.

E. WATER QUALITY

The Coastal Nonpoint Pollution Control Program (CNPCP), created by §6217 of the Coastal Zone Act Reauthorization Amendments of 1990, is jointly administered by NOAA and the Environmental Protection Agency (EPA). Two of the CNPCP's key purposes are to strengthen the links between federal and state coastal zone management and water quality programs, and to enhance state and local efforts to manage land use activities that degrade coastal waters. NOAA and EPA must approve each state's coastal nonpoint program. Hawaii's Coastal Nonpoint Program was conditionally approved in 1998.

The HICZMP works closely with the Hawaii Department of Health's Polluted Runoff Control Program, which receives federal funding from the EPA, to implement the state's Nonpoint Program and to address the remaining conditions placed on the Program. Over the evaluation period, Hawaii has provided several submissions to OCRM addressing outstanding management measures and administrative elements. OCRM has issued four interim decision documents in response to the submittals. The state has received interim approval of three Agricultural management measures (MMs), one Urban MM, five Marina and Boating MMs, the Enforceable Policies and Mechanisms administrative element (AE), and the Technical Assistance portion of the Critical Coastal Areas Additional MMs and Technical Assistance AE. The Program has an additional 14 MMs and AEs that still need approval.

To reach full approval of its Coastal Nonpoint Program, the state of Hawaii is currently pursuing the development of a Watershed Guidance Package which will include management measures and associated practices. The development of the Watershed Guidance will be a valuable tool as the HICZMP and partners begin to implement the ORMP and increase management efforts at the watershed level. OCRM commends the Coastal Program on making progress towards full approval of its Coastal Nonpoint Program and for having addressed several outstanding conditions during this evaluation period. OCRM encourages the State to continue to work with NOAA and EPA to address the remaining conditions and achieve a fully approved Coastal Nonpoint Program.

During the evaluation period, the HICZMP has supported projects to address coastal nonpoint pollution including:

- **Low Impact Development (LID) Guide and Training:** The HICZMP contracted for the development of a workbook *LID Hawaii: Practitioner's Guide* covering building and site

design techniques for managing stormwater, drainage, and small-scale wastewater systems to reduce nonpoint pollution. A technical workshop was held in each county and in addition, the contractor held several meetings with county staff to discuss LID approaches and county concerns and restrictions.

- **On-site Waste Water Treatment and Disposal Systems:** The HICZMP hired a contractor to develop guidance on the various treatment and disposal systems available. The *Onsite Wastewater Treatment Survey and Assessment* describes the advantages and constraints of different systems, to assist practitioners with choosing the best system for a site.
- **Hilo Bay watershed Advisory Group:** The HICZMP provided funding to the Watershed Advisory Group to develop a water quality monitoring program and a website to bring the community together to understand and protect the ecology of the Hilo Bay Watershed. This project was selected for funding to further implement the ORMP.

During discussions of the Coastal Nonpoint Program, evaluation participants raised several key needs in the state including: (1) the need for a state agency to provide leadership and bring different groups together to address nonpoint pollution; (2) building capacity, and in particular, developing and holding trainings for county permitting staff, county planning boards, and county water boards; and (3) building local watershed capacity. The HICZMP has begun to work through the ORMP to bring different groups together to build watershed capacity and to address coastal issues, including coastal nonpoint, and the Coastal Program has held trainings for county staff. However, there is still a need for additional training and capacity building at the local level. OCRM encourages the HICZMP to continue to build on the ORMP implementation process to address coastal nonpoint pollution. OCRM also encourages the HICZMP to explore partnerships and facilitate training opportunities building on the use of the information contained in the Low Impact Development Guide and the Assessment of On-site Waste Water Treatment and Disposal Systems, both are excellent resources whose use could be increased.

F. COASTAL HAZARDS

An objective of the HICZMP is to *reduce hazards to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence, and pollution*, Chapter 205A, HRS. Hawaii is vulnerable to many natural hazards including volcanic activity, earthquakes, flooding, hurricanes, storm surge, shoreline erosion, and tsunamis. The population of Hawaii continues to grow from 1,108,229 in 1990 to 1,288,198 in 2008 (U.S. Census), putting more people and property at risk.

The Hawaii 2006 §309 five-year Assessment and Strategy ranked hazards as a high priority, as did the 2001 Assessment and Strategy. The Assessment of hazards noted several key needs in the state including: continued hazard mitigation assessments and planning, especially pertaining to hurricanes; public education and outreach on hazard preparedness; revision of the statutory definition of the shoreline; implementation of development standards to incorporate additional hazard mitigation requirements; and completion of research on probable tsunami impacts on the Hawaiian Islands. The HICZMP is addressing coastal hazards through partnerships, planning, technical support, and education and outreach.

1. Partnerships

The HICZMP works with many partners throughout the state, nationally, and internationally to mitigate the risks posed by natural hazards. Throughout the site visit, the evaluation team heard that the HICZMP is an integral player who brings the right people and partners together to complete projects, and provides financial and technical assistance for crucial projects.

The HICZMP is an active member of key forums and groups engaged in hazard mitigation, including the Statewide Hazard Mitigation Forum. The Forum is composed of seventeen state, federal, county, and private representatives, and provides a venue for coordinating hazard mitigation efforts in the state. Members have provided leadership and funding for the development of mitigation plans for the state and four counties, and helped educate the public on risks associated with natural hazards. In addition, the HICZMP is represented on the Hawaii State Earthquake Advisory Committee, the Tsunami Technical Review Committee, and the State Lava Flow Mitigation Technical Committee. These hazard-specific committees provide technical expertise to the Forum and State Civil Defense. Active membership in these committees ensures coastal management concerns are incorporated into the many ongoing state hazard efforts and facilitates HICZMP efforts to bring organizations together to address coastal hazards. The HICZMP is also contributing to national coastal management efforts through participation on a Coastal Resiliency Steering Committee formed by the Coastal States Organization to explore whether coastal resilience can be used as a CZMA performance measure.

Although staff time and funding is limited, the HICZMP has been involved in select regional efforts to reduce coastal hazard risks. The HICZMP was instrumental in bringing together Pacific state and territorial coastal managers to provide input into the development of the Pacific Integrated Ocean Observing System. The HICZMP has also worked to raise international awareness and knowledge of tsunamis and partnered with the International Tsunami Information Center (ITIC) to print revised versions of “Tsunami: The Great Waves” which incorporates the latest science and mitigation techniques. OCRM commends the HICZMP for its active engagement in many ongoing coastal hazard reduction efforts.

However, while the HICZMP has been involved in regional projects they are not actively engaged with several regional groups working on hazard issues such as the Pacific Climate Information System and Pacific Risk Management Ohana. OCRM encourages the HICZMP to consider whether involvement in these region-wide groups would be beneficial to the Coastal Program. These region-wide initiatives could also benefit from the substantial expertise of HICZMP staff.

2. Hazard Mitigation Planning

The HICZMP 2006 §309 Hazards Strategy exemplifies key strengths of the HICZMP’s hazard program, facilitating the building of partnerships and bringing diverse groups together to address hazard issues. The Hazards Strategy focuses on working with the state, counties, and others to encourage the adoption of state-of-the-art building codes with customized coastal hazard mitigation standards. In addition, the strategy includes providing training on the interpretation and

application of the newly adopted codes with architects, builders, inspectors, and others involved in the building industry.

The HICZMP has supported the development of a statewide building code, and in 2007, the Governor signed SB795 which created a nine-member state Building Code Council tasked with establishing a state building code based on the International Building Code (IBC). The HICZMP has been instrumental in moving this process forward. The IBC is based on storm models that do not give accurate results in Hawaii due to differences in geography and wind patterns. Therefore, the HICZMP funded wind risk assessment work for both Maui and Hawaii County that could be translated into maps and building code amendments. In conjunction with the City and County of Honolulu Building Division and other partners, the HICZMP held a training on the 2003 IBC and International Residential Code (IRC) which was attended by over 850 government and industry building professionals. The training was in high demand as the City and County of Honolulu had just adopted the 2003 IBC and IRC in September 2007. Due to the demand, the HICZMP partnered with the Hawaii Association of County Building Officials to offer six more courses on the new 2006 IBC and IRC. Several evaluation participants noted that HICZMP's support was instrumental in developing and conducting the trainings.

The HICZMP has also assisted the State and Counties in their efforts to develop FEMA approved Multi-Hazard Mitigation Plans. The Plans create a framework for risk-based decision making to reduce damages to lives, property, and the economy from future disasters. The plans are essential for receipt of federal post-disaster funding and pre-disaster mitigation grant funding, including flood mitigation assistance, fire management assistance, certain categories of public assistance, and two hazard mitigation grant programs. As a member of the State Hazard Mitigation Forum the HICZMP also has oversight for Multi-Hard Mitigation Plan approval and implementation.

3. Research, Tool Development, and Education and Outreach

The HICZMP is actively involved in the development of many research, tool development, and education and outreach projects. The Coastal Program has provided technical and financial assistance to support key projects during the evaluation period including:

- **Tsunami Education: A Blueprint for Coastal Communities:** The HICZMP provided funding to the Pacific Tsunami Museum to assist Downtown Hilo prepare for and recover from a tsunami. The project included the development of educational materials and implementation of an outreach program including a guide offering instructions on how to create a similar program.
- **Climatic Atlas of Tropical Cyclones over the Central North Pacific:** The Atlas provides access to track records of tropical cyclones over the Central North Pacific and can be used by weather forecasters, emergency managers, and researchers interested in studying changes in tropical cyclones in the Central North Pacific in an environment of increasing sea surface temperatures.
- **Legal Study, Building in High Hazard Areas:** The HICZMP and State Civil Defense Agency developed a proposal that was accepted by the University of Hawaii

Environmental Law Clinic. Students researched the history of relocation efforts in Hawaii, the public trust aspects of land transfer, and laws and programs in other states. The students made recommendation and presented their report to County of Hawaii officials, the State Lava Flow Mitigation Technical Committee, and the Hawaiian Volcano Observatory.

- **Hawaii Earthquake Loss Estimation Modeling:** The HICZMP partially funded the customization of FEMA's loss estimation model HAZUS 00. The customized model was validated in the wake of the October 2006 Kiholo earthquake. Comparisons with reported losses demonstrated that only using the entire set of model improvements produced comparable results.
- **Earthquake Loss Estimation Report:** The HICZMP led and funded the development of the "Earthquake Hazards and Estimated Losses in the County of Hawaii." The report provides decision makers and others with easily understandable technical information on the likely losses following an earthquake. As a follow-up, training was held in the County of Hawaii in 2005 and attended by over 100 county leaders, including the Mayor, county council members, building officials, planners, first responders, hospital officials, and scientists who have a role in earthquake hazards mitigation.
- **Tsunami Risk Assessment Project:** The HICZMP funded the acquisition of data which was utilized to determine exposure and sensitivity to tsunami hazards in Hawaii. This information will be used to help identify and tailor future preparedness, mitigation, response, and recovery planning efforts to specific communities and economic sectors.
- **Hazards Preparedness Wheel:** The Hazards Preparedness Wheel was developed during the prior evaluation period but the Hazards Wheel has remained a popular education tool and is used by the navy, hospitals, teachers, schools, and community groups. After the December 2004 tsunami, the HICZMP partnered with the ITIC and the ITIC distributed the hazards wheel and bookmarks to nations affected by the December 2004 tsunami, in hope that those products would be an impetus for development of local educational products. Subsequently, the National Disaster Warning Center of Thailand produced a similar hazards wheel.

OCRM commends the HICZMP for its leadership and support of hazard mitigation projects and for providing decision makers and the general public with the information and tools needed to mitigate risks.

Accomplishment: The HICZMP has facilitated the development of key research and tools and supported education and outreach efforts resulting in greater statewide preparedness for coastal hazards.

The evaluation team noted that Hawaii had many ongoing efforts to reduce risks to tsunami hazards but they had yet to perform a warning system drill. Tsunami drills are an essential tool to identify weaknesses and areas for improvement. OCRM encourages the HICZMP to work with partners to promote full testing of their tsunami warning system.

G. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

1. Special Management Area Permit System and Community Planning

The HICZMP manages Hawaii's coast in a partnership with the four counties of Maui, Kauai, City and County of Honolulu, and Hawaii. Chapter 205A, HRS calls for each county to regulate development in geographically designated Special Management Areas (SMA) through a SMA permit system. Each County has developed its own ordinances and regulations for carrying out the SMA permit system and ensuring that development proposals are in compliance with the CZM objectives, policies, and SMA guidelines in the HRS. The HICZMP has direct SMA authority over limited areas under the jurisdiction of the Hawaii Community Development Authority.

The previous evaluation found that it was a necessary action for the HICZMP to improve the enforcement of local SMA programs and ensure open communication between all networked programs. The evaluation also encouraged the HICZMP to continue its outreach and educational activities. Since the previous evaluation, the HICZMP has taken several steps to address these concerns.

The HICZMP has focused on raising the public's understanding and awareness of the SMA permit system. The Coastal Program developed a *Participant's Guide to the Special Management Area Permit Process in the State of Hawaii*. The Guide is directed towards citizens and provides them with basic information on what an SMA permit is, what types of development are regulated, opportunities for public information, and contacts for more information at the state and county level. The guide is available in printed form and on the HICZMP website. The Coastal Program has also conducted SMA workshops for different audiences. Those attending SMA workshops have included planners, Planning Commissioners, developers, and the public. The workshops address the requirements of the SMA permit and the need for SMA permit conditions to have a CZM context. OCRM commends the HICZMP for continuing to increase awareness and understanding of the SMA permit process through the provision of training sessions and development and distribution of the SMA Guide.

The HICZMP also dedicated a position to serve as an SMA Coordinator. The SMA Coordinator serves as a liaison with county staff and the general public. The SMA Coordinator facilitates communication between the public and SMA administrators and assists with resolving issues. The Coordinator also holds quarterly meetings with the County Planning Directors and staff focused on addressing issues of mutual concern. Meeting topics have included public access, human-induced overgrowth of vegetation on beaches, and cumulative impacts of proposed development. The meetings also provide the Counties with the opportunity to exchange their experiences, successes, and challenges in administering the SMA permit and help ensure consistency in implementation.

In addition, the HICZMP also initiated a Special Management Area Permit System Assessment. The Assessment provides a comparative overview of the procedures and practices of each County's SMA permit system. The report includes a discussion of: (1) Effectiveness and efficiency of procedures for evaluating and regulating development (2) Consistency among

Counties in evaluating and regulating development (3) Effectiveness of public participation; and (4) Areas of concern for which guidance by the HICZMP may be needed. This assessment will be used by the HICZMP to streamline and improve the SMA permit system and to determine if the existing framework is sufficient to address the ORMP's strategic actions.

Accomplishment: The HICZMP has taken multiple steps to raise awareness of, and improve the implementation of, the SMA Permit System including: creating an SMA Permit Coordinator position, developing a Participants Guide, holding SMA permit workshops, and initiating an assessment of the SMA Permit System.

Evaluation participants raised a concern with the need to better monitor and enforce SMA permit conditions. Although the HICZMP has taken significant steps to improve the SMA permit system and expanded ongoing educational efforts, enforcement of permit conditions continues to remain an issue. SMA permit conditions are monitored and enforced at the County level. The HICZMP may wish to explore opportunities for assisting counties with monitoring and enforcement of SMA permit conditions.

2. Community EnVisioning

The EnVision Downtown Hilo 2025 project began as interested citizens, the Hilo Downtown Improvement Association and a County of Hawaii Planning Department staff member came together and began a process to envision Downtown Hilo's future. The group, the Friends of Downtown Hilo Steering Committee, reached out to hundreds of Hilo residents and stakeholder groups who provided input into a community based vision and a Living Action Plan that lays out a five year implementation plan. The EnVision Downtown Hilo project was the first time in Hawaii County that community members had come together to develop a shared vision for their future. The community is currently in the process of executing its Living Action Plan. OCRM commends the HICZMP for funding innovative community planning which encourages broad public participation.

3. Shoreline Certifications and Setbacks

The Coastal Program manages coastal development through shoreline setbacks in order to reduce hazard risks and protect public access. The Shoreline Setback program is implemented through DNLR and the Counties. DNLR is responsible for approving a shoreline certification and county zoning boards then use this information to determine the construction setback. The previous evaluation included a program suggestion that the HICZMP should work with DNLR to develop a scientifically-based shoreline definition process. This program suggestion arose out of a controversy surrounding the basis of shoreline certifications. The shoreline is defined in the HRS as the "upper reaches of the wash of the waves, other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves."

During the previous evaluation review period, DNLR administrative rules gave preference to using the vegetation line to determine the shoreline. This became an issue when some landowners were engaging in the controversial practice of encouraging growth of vegetation by planting salt tolerant vegetation and installing watering systems to encourage growth further down the beach. Induced vegetation growth results in a reduced shoreline setback and increased risk to property and reduced public access. In 2006, the Hawaii Supreme Court ruled that the vegetation line trumps the debris line only when the vegetation line lies more inland than the debris line and furthers the public policy of extending to public ownership and use “as much of Hawaii’s shoreline as is reasonably possible.” This ruling clarified the definition of “shoreline.”

State law requires setbacks from the certified shoreline of at least 20 feet and no more than 40 feet. Counties are allowed to require additional setbacks. The HICZMP provided financial assistance to Kauai County to assist with collecting shoreline erosion and accretion data and synthesizing the information to develop annual erosion rates. In 2007, the County of Kauai passed a setback ordinance mandating a 40-foot minimum setback plus 70 times the annual coastal erosion (70 years is considered the average lifespan of a building by the Federal Emergency Management Agency). The ordinance could not have been passed without the collection and scientific analysis of erosion data to develop erosion rates for all coastal areas. OCRM commends the HICZMP for providing assistance to the County of Kauai and enabling the implementation of setbacks that will reduce future risks to life and property. OCRM encourages the HICZMP to continue to support other counties in their efforts to develop similar strong setback regulations that protect property and increase personal safety.

Accomplishment: The HICZMP provided support to the County of Kauai in their efforts to collect and synthesize the information they needed to mandate a minimum setback based on annual erosion rates and equivalent to the life of a structure (70 years).

V. CONCLUSION

For the reasons stated herein, I find that the State of Hawaii is adhering to the programmatic requirements of the Coastal Zone Management Act and its implementing regulations in the operation of its approved Hawaii Coastal Zone Management Program (HICZMP).

The HICZMP has made notable progress in the following areas: development of the Ocean Resources Management Plan; streamlining federal consistency processes; facilitating research and the development of coastal hazard tools; improving the implementation of the SMA Permit System; and the development and implementation of the national Performance Measurement System.

These evaluation findings also contain four recommendations in the form of four Program Suggestions. The Program Suggestions should be addressed before the next regularly-scheduled program evaluation, but they are not mandatory at this time. Program Suggestions include: the need to ensure that state budget planning and funding levels support the essential components of the HICZMP; providing leadership for climate change adaptation planning; consideration of how MACZAC and the HICZMP might more effectively work together to address coastal management issues; and finalizing Hawaii's draft CELCP Plan. Program Suggestions that must be repeated in subsequent evaluations may be elevated to Necessary Actions. Summary tables of program accomplishments and recommendations are provided in Appendix A.

This is a programmatic evaluation of the HICZMP which may have implications regarding the State's financial assistance awards. However, it does not make any judgment about or replace any financial audits.



Donna Wieting
Acting Director, Office of Ocean and
Coastal Resource Management

JAN 11 2010

Date

VI. APPENDICES

APPENDIX A: SUMMARY OF ACCOMPLISHMENTS AND RECOMMENDATIONS

Accomplishments

Issue Area	Accomplishment
Performance Measures	HICZMP has successfully contributed to the development and implementation of the National Performance Measurement System.
Ocean Planning	The HICZMP has shown vision and leadership in the development of a new Ocean Resources Management Plan and the institutionalization of a process to coordinate state agency activities around joint marine and coastal management goals and strategic actions.
Federal Consistency	The HICZMP has streamlined the federal consistency process, including the development of a de minimis list covering 17 naval activities and corresponding list of mitigation measures and general conditions.
Coastal Hazards	The HICZMP has facilitated the development of key research and tools and supported education and outreach efforts resulting in greater statewide preparedness for coastal hazards.
Permitting	The HICZMP has taken multiple steps to raise awareness of, and improve the implementation of, the SMA Permit System including: creating an SMA Permit Coordinator position, developing a Participants Guide, holding SMA permit workshops, and initiating an assessment of the SMA Permit System.
Coastal Hazards/ Community Development	The HICZMP provided support to the County of Kauai in their efforts to collect and synthesize the information they needed to mandate a minimum setback based on annual erosion rates and equivalent to the life of a structure (70 years).

Recommendations

Recommendations are in the form of Necessary Actions (NA) or Program Suggestions (PS).

Issue Area	Recommendation
Program Approvability	PS: DBEDT and the HICZMP should ensure State budget planning and funding levels support the essential components of the program necessary to maintain approvability of the HICZMP under the Coastal Zone Management Act.
Advisory Council	PS: OCRM encourages the HICZMP and MACZAC to work together to further clarify MACZAC's role and how together, they can best address coastal management issues and implement the state's Coastal Program.
Climate Change	PS: OCRM encourages the HICZMP to continue to show leadership in addressing climate change adaptation through the ORMP and Climate Change Task Force and other appropriate planning processes.
CELCP	PS: The HICZMP should submit their revised CELCP Plan for approval by July 2010 to ensure Hawaii remains eligible to participate in CELCP.

APPENDIX B. PERSONS AND INSTITUTIONS CONTACTED

Hawaii Coastal Management Program

Name	Position
Doug Tom	Program Manager
Susan Feeney	Budget
Melissa Iwamoto	Community-Based Resource Management
Shichao Li	Special Management Area
Marnie Meyer	Ocean Resources Management Plan
John Nakagawa	Federal consistency Program
Ann Ogata-Deal	Coastal Hazards
Kenneth Roberts	Coastal Nonpoint Source Pollution
Connie Hoong	Performance Measures

Hawaii State Office of Planning

Name	Position
Abbey Mayer	Director
Mary Lou Kobayashi	Planning Program Administrator

Marine and Coastal Zone Advocacy Council

Name	Organization
Arnold Lum	MACZAC
Sue Sakai	MACZAC
Jim Coon	MACZAC
Ron Terry	Former MACZAC member

Consultants and Business Community

Name	Organization
Dr. Catherine Courtney	Tetra Tech, Inc.
Daniel Akaka, Jr.	Mauna Lani Hotel
Joe Root	Project Director, Kohanaiki Development
Gary Chock	Martin and Chock

State Agencies

Name	Department
Laura Thielen	Chair, DLNR
Risa Oram	Department of Land and Natural Resources (DLNR)
Dolan Eversole	University of Hawaii Sea Grant and DLNR
Lawana Collier	Department of Health, Clean Water Branch
Brian Hunter	Department of Health, Clean Water Branch
Hudson Slade	Department of Health, Clean Water Branch
Dawn Johnson	State Civil Defense
Larry Kanda	State Civil Defense

Petra MacGowen	DNLR, Department of Aquatic Resources
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Counties

Name	County
Jamie Peirson	City and County of Honolulu Department of Planning and Permitting
Brad Kurokawa	Hawaii County Planning Department
Alice Kawaha	Hawaii County Planning Department
Christian Kay	Hawaii County Planning Department
Ron Whitmore	Hawaii County Planning Department
Esther Imamura	Hawaii County Planning Department
Susan Gagorik	Hawaii County Planning Department
Terri Miura	County of Hawaii, Division of Parks and Recreation
Timothy Hiu	City and County of Honolulu, Department of Planning and Permitting, Building Division

Federal Agencies

Name	Agency
Larry Yamamoto	USDA NRCS
Wendy Wiltse	US EPA
Audrey Shileikis	US EPA
Kathy Chaston	NOAA, Coastal Programs and Coral Program
Paul Wong	NOAA, Hawaii Humpback Whale National Marine Sanctuary
Malia Chow	NOAA, Papahānaumokuākea National Marine Sanctuary
Eileen Shea	NOAA, NOAA IDEA Center
Bill Thomas	NOAA, Pacific Services Center
Kristina Kekuewa	NOAA, Pacific Services Center
Jean Tanimoto	NOAA, Pacific Services Center
Alan Everson	NOAA NMFS
George Balazs	NOAA NMFS
Jason Philibotte	NOAA NMFS
Irene Kelly	NOAA NMFS
Kim Mason	NOAA NMFS
Meghan Gombos	NOAA Coral Program
Kelvin Char	NOAA, Coastal America Program
Rebecca Hommon, Esq.	US Navy
Dr. Connie Chang	US Navy
CDR Dan Eldredge	US Navy
Dr. George Young	US Army Corps of Engineers, Regulatory Branch
Michael Molina	US FWS
Chris Swenson	US FWS, Coastal Program

Other

Name	Organization
Mary James	Hilo Bay Watershed Advisory Group
Steve Godzsak	Hilo Bay Watershed Advisory Group
Cindi Punihaole Kennedy	The Kohala Center
Manuel Mejia	The Nature Conservancy
Koalani Kaulukukui	Earth Justice
Miwa Tamanaha	KAHEA
Keith Tanaka, AIA	Construction Institute
Laura Kong	International Tsunami Information Center
Brian Yanagi	International Tsunami Information Center
Genevieve Cain	Pacific Tsunami Museum
Donna Saiki	Pacific Tsunami Museum

Academia

Name	Organization
Dr. Kem Lowry	University of Hawaii
Dr. Chip Fletcher	University of Hawaii
Dr. Brian Szuster	University of Hawaii

APPENDIX C: PERSONS ATTENDING THE PUBLIC MEETING

One public meeting was held on Wednesday, July 30, 2008, at 7:00 p.m. at the Hilo State Office Building, Conference Rooms A, B, and C, 75 Aupuni Street, Hilo, Hawaii. A list of attendees follows:

Name	Affiliation
Dr. Jim Anthony	Hawai'i--La'ieikawai Assn. Inc.
John Nakagawa	Hawaii CZMP
Shichao Li	Hawaii CZMP

APPENDIX D: NOAA’S RESPONSE TO WRITTEN COMMENTS

OCRM received eight sets of written comments regarding the Hawaii Coastal Management Program. Comments are summarized below and followed by OCRM’s response.

Lea Hong through Kevin Chang
Hawaiian Islands Program Director
Trust for Public Land
Honolulu, Hawaii

Comments: On behalf of The Trust for Public Land’s Hawaiian Islands Program, Ms. Hong commented that the State had secured Coastal Estuarine Land Conservation Program (CELCP) funding to complete three land acquisition projects to protect coastal and estuarine habitats: Mū’olea Poin, on the Island of Maui, Honu‘apo Bay on the Island of Hawai‘i, and Pūpūkea-Paumalūsits on the Island of Oahu. The Trust for Public Land worked with government agencies, private landowners, and local communities to complete these projects.

Ms. Hong raised concerns that public access to shorelines remains problematic and developers have built, and continually propose to build, large-scale gated communities that are rapidly eroding the public’s right of access for cultural, recreational and subsistence purposes. She commented that private landowners who are not familiar with Hawai‘i’s unique laws and traditions have resisted public shoreline access. She explained that Hawai‘i law protects the public’s right of access and mandates that the City and State work together to acquire rights of way to facilitate public access. She stated that despite these mandates, public access has and is eroding and public concern and protest has increased. Ms. Hang believes that the HICZMP should adopt as a top priority, the maintenance and enhancement of public access to Hawai‘i’s shorelines. She concluded by noting that public partnerships supported by programs such as CELCP could help to continue the people of Hawai‘i’s vital connection to shorelines, beaches, and fishing areas.

OCRM’s Response: OCRM appreciates Ms. Hang’s comments. The Coastal Zone Management Act of 1972, as amended, calls for the development of Coastal Zone Management Programs to address a wide range of coastal zone management issues including “public access to the coasts for recreation purposes.” OCRM acknowledges that an increasing population and development place additional pressures on public access. As discussed in Section C, OCRM encourages the HICZMP to continue to address public access issues and to work with partners to ensure lateral and perpendicular access to the shoreline and to consider developing additional informational resources for the public.

Isabel Figel
Resident
Kailua, Hawaii

Comments: Ms. Figel raised concerns over the proliferation of locked gates on private and public beach side roads over the past few years. Ms. Figel stated that each time a gate goes up, the number of people using the remaining open roads increases, those homeowners get upset about increased foot traffic, and then they put up a gate too. She stated that in Kailua, there are at least 17 gated roads and just five public beach right-of-ways on a three mile stretch of shoreline—not counting access via two public beach parks. Ms. Figel commented that road closures are a public health issue and noted first responders in Kailua told the Neighborhood Board that they were afraid people would die because of delays in reaching accident victims caused by locked gates. She also raised concerns that the State may be held negligent in event of a death which could cost taxpayers millions of dollars.

Ms. Figel also noted that Hawaii is dependent upon tourism and locked gates enforce the image that tourists are not welcome on public beaches. She believes the state needs to force counties to take action and give them clear standards to follow.

OCRM's Response: OCRM appreciates Ms. Figel's comments. Please see response to Ms. Hang's comments.

Daniel and Blanch Hickman
Residents
Kailua, Hawaii

Comments: Mr. and Ms. Hickman believe it is important for the State to take a lead role in addressing public access, as public access is a statewide problem. They describe how a new gate has forced community members to drive a mile and a half to a public park for beach access, whereas before they could easily walk to the beach. Mr. and Ms. Hickman noted that no property taxes are paid on these "private" accesses and "private" beach lanes, which are valued at \$100, and they are serviced by public services such as water, sewer, and trash pick-up. Mr. and Ms. Hickman call for the HICZMP to work on opening the beaches to all Hawaii residents and visitors.

OCRM's Response: OCRM appreciates Mr. and Ms. Hickman's comments. Please see response to Ms. Hang's comments.

Kenneth and Miriam Rappolt
Residents
Kailua, Hawaii

Comments: Mr. and Ms. Rappolt expressed concern over the growing number of gates on "private" streets on the beach side of North Kalaheo Avenue in Kailua and the increasing distance needed to travel to reach the public beach. Mr. and Ms Rappot expressed doubt that many lanes closed off as "private" roadways are really private as they receive public services such as refuse collection and mail delivery. In addition, they expressed concern that blocking beach access limits the ability of EMT personnel to respond to an emergency. Mr. and Ms. Rappolt urge

OCRM to consider action which might prevent the erection of future barriers to the beaches of Oahu.

OCRM's Response: OCRM appreciates Mr. and Ms. Rappolt's comments. Please see response to Ms. Hang's comments.

Rich Figel
Beach Access Hawaii
Kailua, Hawaii

Comments: On behalf of Beach Access Hawaii, Mr. Figel implored the evaluation team to make the protection of shoreline access a high priority for HICZMP. He described the founding of Beach Access Hawaii in response to a Kailua homeowners' association decision to put up a locked gate on a privately-owned street. Mr. Figel stated that the group found out that in Kailua alone, there were 17 gated roads, and some of the public rights of way were over half a mile apart.

Mr. Figel believes that although the state has made it clear that Hawaii's beaches belong to the public, neither the counties nor the State take responsibility for ensuring public access. He stated that the Honolulu City Council statutes say there "should be" public beach access every quarter mile of beach in "urbanized" areas—but the City Council attorney has stated it is merely a "suggested guideline." He mentioned that the City says it cannot afford to do anything involving acquisition of more public rights-of-way, although he believes easements could be negotiated with private homeowners at little cost to the City or State. He stated that the State says it's up to the counties to provide access or take measures to acquire additional rights-of-way, even though beaches are State property. He concluded that the Honolulu City Council and State Legislature have both failed to take any action whatsoever to protect or improve public shoreline access.

He noted that lateral access to the public shoreline is also a problem and is being impacted by vegetation being grown by owners of beachfront property, causing people to have to wade into the ocean to traverse the shoreline. He stated there is evidence that the plantings act like seawalls that lead to increased beach erosion. He also expressed concern that shoreline access is affected by commercial activities taking place on public beaches and that the lack of uniform statewide shoreline building setbacks leads landowners to build closer to the shoreline.

He recommended that the HICZMP should set aside funds to assess just how much public shoreline access currently is available throughout the islands, and analyze where additional public rights of way are needed to serve the residents of Hawaii.

OCRM's Response: OCRM appreciates Mr. Figel's comments. Please see response to Ms. Hang's comments.

Jonathan Toby Boxold
Resident

Kailua, Hawaii

Comments: Mr. Boxold stated that he is a supporter of Beach access Hawaii due to the alarming efforts of a small number of people, who have taken it upon themselves to try and block off the beaches to the public. He expressed the importance of public access for a multitude of cultural, safety and family issues.

Mr. Boxold advocated that the State to step in and establish uniform guidelines for shoreline access throughout Hawaii. He also recommended that the public needs to know where additional public access ways are needed. He described his frustration with the inaction of the City Council and State Legislature, and noted that they were "passing the buck" rather than addressing serious public access issues. He concluded that there was a need for a State agency to take responsibility for providing direction and guidelines, before more public access is lost.

OCRM's Response: OCRM appreciates Mr. Boxold's comments. Please see response to Ms. Hang's comments.

Bob Finch Resident Kailua, Hawaii

Mr. Finch expressed deep concern that the HICZMP was not taking the lead in providing beach access to the general public. He believes that the HICZMP is the logical agency to guarantee the public access to public beaches and stated beach access should not be limited to the wealthy.

OCRM's Response: OCRM appreciates Mr. Finch's comments. Please see response to Ms. Hang's comments.

Dr. Jim Anthony, Ph.D. Executive Director Hawaii Laieikawai Assn. Inc. Ka'a'awa, Hawai'i 96730

Comments: Dr. Anthony believes there is an urgent need to address shore line access issues across the State. He noted that a commitment was made at the public meeting for the Federal and State, representatives to meet with him to further address public access issues. He provided the evaluation team with information on an ongoing public access project on O'ahu and discussed the need for more funding. He also discussed that there are special places along the coast of O'ahu and that these areas are currently being researched. He also noted that he had requested fiscal information under the Freedom of Information Act. He also encouraged the evaluation team to hold more frequent review meetings in Hawaii in hopes of engendering a greater sense of accountability on the part of HICZMP.

Dr. Anthony also commented that NOAA is associated with the faulty conclusion that the single most important cause of fish depletion is the use of gill nets and stated that there are not credible, replicated studies that support such a conclusion.

Dr. Anthony also expressed concern that the dominant environmental organizations in Hawaii are led and controlled by haoles who control the back channels to State and Federal bureaucracies and their funding. He believes that environmental organizations that are focused on people of color issues and are led by people of color are lacking access to these resources and that this is an environmental justice issue that needs to be discussed and addressed.

He also urged the evaluation team to look at the full range of important issues in the state, and highlighted water issues including streams, near shore marine ecosystems, subterranean flow, rising salinity levels in aquifers, and ground water/surface water relationships. He noted that these issues call for interagency collaboration and the importance of bringing in USGS, Water Resources Division into discussions.

OCRM's Response: OCRM appreciates Dr. Anthony's comments. Please see response to Ms. Hang's comments. In addition, OCRM has provided the information requested by Dr. Anthony through the Freedom of Information Act.

OCRM strives to evaluate coastal zone management programs on a three-year cycle. OCRM does not have the staff to hold more frequent evaluations. OCRM's program staff is responsible for ongoing monitoring of programs throughout the review cycle. During the evaluation period, an OCRM program staff position was re-located to Honolulu, Hawaii, enabling staff to work more closely with the HICZMP, partners, stakeholders, and the public.

Dr. Anthony's comment regarding a faulty conclusion in NOAA research is beyond the scope of this evaluation.

OCRM acknowledges Dr. Anthony's concern regarding environmental justice issues. Dr. Anthony's comments have been passed on the HICZMP. OCRM provides funding directly to state coastal management programs to implement the Coastal Zone Management Act.

OCRM acknowledges Dr. Anthony's concerns regarding coastal zone management issues and in particular, water issues. The program evaluation addresses the wide range of coastal zone management issues and water issues are addressed primarily in Section D and Section E.

APPENDIX E. 2004 EVALUATION FINDINGS

1. Necessary Action: The gubernatorial letter of May 2003, directing the Office of Planning to answer to the Chairperson of DLNR is not clearly supported by State law and is inconsistent with the organizational structure of the CZM Hawaii Program approved by NOAA. The State must resolve this issue either by formally submitting a program change, with adequate legal justification to support such a reassignment of responsibility, or the State can appoint a new director of the Office of Planning, who can meet the responsibility of leading the CZM Hawaii Program.

2. Necessary Action: CZM Hawaii needs to complete the necessary action from the previous evaluation, addressing the need to improve the enforcement of local SMA programs, on an expedited schedule. This schedule must be provided to NOAA OCRM within six months of the receipt of the final findings. Furthermore, CZM Hawaii is to develop a strategy to assure open communication between and among all networked partners within a year of the receipt of final findings.

3. Program Suggestion: CZM Hawaii should look at alternative hiring practices as a potential mechanism to fill existing staff vacancies as it works within the State personnel practices framework to facilitate staff recruitment. In concert with this activity, CZM Hawaii is encouraged to look at other personnel needs to facilitate coordination of CZM Hawaii management practices where they are merited.

4. Program Suggestion: CZM Hawaii should maintain its stress on regional coordination and, as the lead for the synchronization of efforts under CZM Hawaii, should continue its high degree of leadership in these efforts.

5. Program Suggestion: CZM Hawaii should work with DLNR to develop a scientifically-based shoreline definition process.

6. Program Suggestion: CZM Hawaii is encouraged to pursue a rigorous strategic planning effort with the support of the networked State agencies, the Counties, appropriate interested groups and the public.

7. Program Suggestion: CZM Hawaii is encouraged to work with the Governor's Education Office to facilitate ongoing CZM Hawaii education and outreach activities both in support of actions required as a part of use of Federal CZMA funding and in support of other Programmatic initiatives.

8. Program Suggestion: CZM Hawaii is encouraged to maintain its ongoing coordination and communication activities within the full coastal resource management community. CZM Hawaii is strongly encouraged to continue outreach activities directed toward providing the knowledge and the tools to networked agencies, Counties and local governments, relevant groups and the general public to properly decide the appropriate use and protection of the State's coastal resources

9. Program Suggestion: CZM Hawaii should look at the major/minor permit process of the Counties to assure that the process and decision points provide for adequate environmental protection while allowing suitable development to proceed in a timely manner.

APPENDIX F. PROGRAM RESPONSE TO 2004 EVALUATION FINDINGS

The HICZMP provided a response to the recommendations in the 2004 Evaluation Findings in a letter dated April 27, 2006, included below.

Ref. No. P-11333

April 27, 2006

VIA FEDERAL EXPRESS

Mr. Douglas Brown, Acting Director
Office of Ocean and Coastal Resource Management
National Oceanic and Atmospheric Administration
N/ORM 10th Floor SSMC4
1305 East-West Highway
Silver Spring, Maryland 20910

Attention: Ms. Masi Okasaki

Dear Mr. Brown:

Subject: Hawaii Coastal Zone Management (CZM) Program Fulfillment of the
Necessary Actions Specified in the *Final Evaluation Findings for the Coastal
Zone Management Program for Hawaii*, of January 10, 2003 and November
2005

The Office of Planning, as lead agency for the Hawaii CZM Program, has fulfilled the necessary action specified in the *Final Evaluation Findings for the Coastal Zone Management Program for Hawaii*, dated January 10, 2003, and continued in the evaluation findings dated November 2005: "CZM Hawaii must work with the counties to develop a plan to strengthen the counties' implementation of their SMA (Special Management Area) authorities." We also fulfilled the necessary action of the November 2005 evaluation findings: "CZM Hawaii is to develop a strategy to assure open communication between and among all networked partners within a year of the receipt of final findings." The Hawaii CZM Program has strengthened and improved its statewide SMA program as described below.

To improve implementation of the SMA permit provisions and overall administration of the SMA, we contracted a statewide assessment of the SMA permit system. The findings and recommendations were collaborated with the County SMA agencies and are presented in a report titled, *Special Management Area (SMA) Permit System Project Final Assessment Report*, dated November 2005 (hereafter referred to as SMA Assessment). A copy of the report is included as an attachment.

Statewide SMA Program

The statewide SMA program is strengthened and improved. In response to the Section 312 evaluation findings, the statewide SMA program is designed to:

- (1) Strengthen the Counties' implementation of their SMA authorities and ensure consistent application of their SMA rules (2003 evaluation findings); and
- (2) Assure open communication between and among all networked partners (2005 evaluation findings).

The SMA program elements are described below.

Program Organization and Function

A dedicated statewide SMA program coordinator has been established within the CZM Program along with assigned CZM staff to assist with SMA administration. The SMA coordinator oversees all SMA matters and serves as the CZM Program liaison for all the Counties. The coordinator communicates with all the Counties on a frequent and regular basis. As the point of contact, the coordinator employs a statewide perspective to identify subjects of statewide interest, as opposed to local. When issues of statewide interest or inter-jurisdictional responsibilities arise, such as responding to citizen complaints on shoreline access or shoreline protection, the SMA coordinator contacts appropriate CZM network partners within the State and County governments and convenes meetings if necessary.

In addition, the CZM Program provides support and assistance to the Counties on SMA and CZM matters. For example, we inform the Counties of proposed State legislation relevant to the SMA and CZM and coordinate testimonies on those measures as appropriate or requested. Information about the national CZM program and national legislation is often shared with the Counties to provide a better context for the State's CZM Program and the SMA permit. We also assist on SMA and shoreline area issues by coordinating among the Counties and at times with non-government interest groups. When SMA and shoreline issues involve other State agencies, we facilitate communication and coordination among the affected agencies.

CZM Program Compliance

Proactive measures are employed to ensure compliance with the Hawaii CZM Program. Although not a new approach for us, we strengthened compliance efforts through the activities of a dedicated SMA coordinator and ongoing communication with all networked partners. Attending various board meetings provide information about development trends and early data

to gauge potential CZM issues and concerns. The result is a better statewide perspective on SMA administration and CZM compliance. The SMA coordinator can better identify emerging issues of statewide interest or concern and seek solutions early by contacting applicable State and County agencies and convening meetings if necessary. Frequent communication with the Counties and State networked agencies keeps us abreast of emerging compliance issues and conflicts, and alerts us to necessary monitoring for “hot spots” and controversies. The increased interaction with the Counties and State agencies promotes monitoring for CZM Program compliance on a continuous proactive basis rather than on a reactive basis, where monitoring for program compliance occurs only after agency actions have been taken or when a citizen complaint is received.

Monitoring and Enforcement

Hawaii CZM Program compliance occurs at two different levels:

(1) CZM Program compliance. We monitor State and County agencies’ actions for compliance with the CZM Program. Enforcement of CZM Program compliance is often helped by our administrative review and coordination process involving affected agencies. When there are inter-jurisdictional differences or conflicts between agencies on CZM issues, the CZM Program attempts to facilitate resolution. Specific improvements to monitoring and enforcement have been made, such as strengthening the partnerships with the Department of Land and Natural Resources and the County Planning Departments on actions in the shoreline area, such as public access, shoreline certification, and shoreline protection to address issues in a proactive and coordinated way for more efficient and effective results.

(2) SMA and shoreline area compliance. Within the SMA and shoreline area, the Counties are responsible for monitoring and enforcing compliance. We assist the Counties with monitoring and enforcing SMA and shoreline area compliance by providing technical assistance, facilitating inter-jurisdictional coordination if compliance issues involve other agencies, and by providing funding for enforcement activities, staff, and equipment. This helps ensure the Counties are carrying out their SMA compliance and implementation responsibilities consistent with Chapter 205A. We monitor County SMA actions for compliance with the SMA guidelines and CZM Program objectives and policies. When questionable actions are taken by the Counties, we seek resolution first through administrative means, such as by meeting with County agencies, briefing decision-makers, and seeking legislative remedy when appropriate. Legal remedy is the action of last resort.

Coordination and Communication among CZM Network Agencies

The SMA coordinator serves as the point of contact for all CZM network agencies on matters relating to the SMA and shoreline areas. The coordinator maintains frequent

communication with the CZM network agencies and participates in various activities and meetings hosted by these agencies.

The CZM Program hosts regularly scheduled meetings, usually quarterly, convening all of the County Planning Directors to discuss SMA and CZM matters. These meetings are also attended by the Counties' SMA staff. The meetings are beneficial to the Counties because they provide an opportunity to discuss issues of statewide interest, compare SMA issues, share their experiences with enforcement, and interact with other Counties. They also provide the Counties with a statewide perspective of the SMA program and help to improve SMA administration. For example, the Counties have discussed streamlining procedures for assessing and processing SMA minor permits and exemptions. The SMA Assessment (p. 21) recommends that, "the Hawaii CZM Program should provide a forum for the Counties to share their experiences and to learn from each other how they may improve their respective enforcement programs." That is exactly what these meetings do.

Promoting Public Awareness

In collaboration with the Counties, the CZM Program recently completed an informational publication on the SMA process entitled, *A Participant's Guide to the Special Management Area (SMA) Permit Process in the State of Hawaii* (hereafter referred to as SMA User Guide). The SMA User Guide will help the public and County decision-makers better understand the purpose and processes of the SMA permit, as recommended in the SMA Assessment (p. 17). A copy of the guide is attached. It describes the regulatory scope of the SMA permit and its role within the broader regulatory regime so the public can better understand where and how their concerns are addressed. This should result in a more consistent application of the State SMA guidelines and CZM objectives and policies by the Counties, as well as the public. It also educates the public so that their efforts in the public participation process can be more effective. The guide complements existing County information. It will also be used to promote public awareness of the Hawaii CZM Program and the role of the Counties and the State in SMA administration. Contact information for the Hawaii CZM Program and the four County Planning Departments are provided in the guide. The Hawaii CZM Program web site makes the SMA User Guide available for viewing and downloading. The guide is also available at libraries throughout the State.

Responding to Citizen Concerns

Having a dedicated SMA coordinator has strengthened the CZM Program's role in responding to citizen concerns. The SMA coordinator oversees all SMA matters, is knowledgeable of the State SMA provisions, as well as each County's SMA rules, and can interface with the public and investigate their concerns. Because the SMA coordinator communicates frequently with each of the County SMA staffs, the coordinator can access information and research citizen concerns more readily. The SMA coordinator serves as the

point of contact for the public and County and State agencies, and provides a consistent message to the public about interpreting CZM objectives and policies.

The SMA coordinator assists the public when inquiries and complaints are received. The SMA Assessment (p. 17) recommends “providing a point-of-contact in each County to which inquiries and complaints regarding public participation in the SMA permit process would be directed.” The SMA coordinator implements this recommendation at a more comprehensive statewide level. The public is encouraged to contact the CZM Program. This is promoted through the CZM Program website, the SMA User Guide (see next paragraph), the Coastal Zone News section in the State Office of Environmental Quality Control publication, *The Environmental Notice*, and in dealings with the public.

Response to 312 Concerns

The 2003 final evaluation findings (p. 6) cited a concern about “community perceptions of inconsistency among counties regarding their implementation of the SMA rules.” While the SMA Assessment noted differences and variations among the Counties’ SMA permit practices and procedures, they are acceptable and prescribed by the Hawaii CZM law, Chapter 205A, Hawaii Revised Statutes. Chapter 205A allows for variations among the Counties in processing and evaluating SMA permit applications by delegating the SMA permit and rule-making authority to each County and requiring that developments in the SMA be consistent with each County’s general plan and zoning. Accordingly, each County authority has adopted its own rules for SMA permit procedures based on the statutory SMA guidelines in Part II of Chapter 205A.

The SMA Assessment noted that the County of Maui’s SMA processing is substantively different from the other Counties in that Maui is more comprehensive when evaluating SMA permit applications. According to the assessment, “Maui County takes an integrated coastal zone management approach which differs significantly from that of the other counties in Hawaii.” “Maui County is experiencing some of the strongest real estate development in the nation and seeks to minimize adverse impacts to its coastal resources through concurrent planning evaluation that balances environmental quality, economic development, and sectoral (jurisdictional) concerns.” (SMA Assessment, p. 3)

Maui’s SMA procedures and practices are very thorough and involve an extensive assessment and review. Maui requires a comprehensive review for Chapter 205A objectives and policies, state land use designations, County zoning, and community plan requirements. Proposals with potential adverse coastal resource impacts are sent to applicable resource agencies for review. For example, any development in the SMA on vacant land is sent to the State Historic Preservation Division for archaeological and historic resources, the U.S. Fish and Wildlife Service for impacts on endangered species, the Natural Resources Conservation Service for potential impacts on drainage, and the U.S. Army Corps of Engineers for impacts on wetlands. Therefore, although Maui’s SMA review procedures are different from the other

Counties, i.e., more comprehensive, Maui's procedures are consistent with the SMA provisions in Chapter 205A.

Mandatory Considerations from 312

This section addresses each of the four mandatory considerations identified in the 2003 Final Evaluation Findings and explains how the Hawaii CZM Program has fulfilled the necessary action requirements.

- (1) *Strengthening the role that CZM Hawaii plays in responding to citizen concerns, including promoting public awareness of CZM Hawaii's program compliance program and Public Concerns process, and considering the creation of an Ombudsman, who is knowledgeable of SMA rules, and can interact with the public and investigate their concerns.*

Responding to Citizen Concerns, Creating an Ombudsman: Having a dedicated SMA coordinator strengthens our role and ability to respond to citizen concerns. The SMA program coordinator functions similarly to an ombudsman. The coordinator oversees all SMA matters, is knowledgeable of the State SMA provisions, as well as each County's SMA rules, and can interface with the public and investigate their concerns. Because the coordinator communicates frequently with each of the County SMA staffs, the coordinator can access information and research citizen concerns more readily.

The SMA coordinator serves as a single point of contact for all SMA matters statewide and assists the public when inquiries and complaints are received. The SMA Assessment (p. 17) recommends "providing a point-of-contact in each County to which inquiries and complaints regarding public participation in the SMA permit process would be directed." The SMA coordinator implements this recommendation at a more comprehensive statewide level. The public is encouraged to contact the CZM Program. This is promoted through the CZM Program website, the SMA User Guide (see next paragraph), the Coastal Zone News section in the State Office of Environmental Quality Control publication, *The Environmental Notice*, and in dealings with the public.

Promoting Public Awareness: The CZM Program's recently completed SMA User Guide, which is an informational publication on the SMA permit process, will promote public awareness and understanding. The guide will help the public and County decision-makers better understand the purpose and processes of the SMA permit, as recommended in the SMA Assessment (p. 17). It describes the regulatory scope of the SMA permit and its role within the broader regulatory regime so the public can better understand where and how their concerns are addressed. This should result in a more consistent application of the State SMA guidelines and CZM objectives and policies by the Counties, as well the public. The intent is to educate the public so that their efforts in the public participation process are more effective. The guide

complements existing County information. It will also be used to promote public awareness of the Hawaii CZM Program and the role of the Counties and the State in SMA administration. Contact information for the CZM Program and the four County Planning Departments is provided in the guide. The Hawaii CZM Program web site makes the SMA User Guide available for viewing and downloading. In addition, the guide is available for public review at libraries throughout the State.

- (2) *Working with the counties to increase opportunities for public involvement in the SMA permitting process and clarify appeal procedures.*

Opportunities for public involvement in the SMA permit process are adequate and the provisions for public hearings are prescribed by each County's rules or ordinances. The Counties provide at least one public hearing for SMA major permits. Public notices for SMA minor permits are published by the CZM Program in the State Office of Environmental Quality Control's semi-monthly publication, *The Environmental Notice*, under our own section entitled, Coastal Zone News. The City and County of Honolulu provides additional opportunities for public input through its legislative decision-making process.

The 2003 evaluation findings (p. 36) stated that, "some citizens also expressed concern about public participation in the SMA permitting process in Maui, which they felt was inadequate and negates public input." They said that, "at Planning Commission hearings, developers receive unlimited time to present their proposals, whereas the public gets 3 minutes to present their opposing views." It is common for the Counties to set time limits for presenting oral testimonies when there are a large number of people testifying. Also, all the Counties provide applicants with adequate time at public hearings to allow for a thorough explanation of the proposal to ensure that decision-makers fully understand the proposal. The time given to applicants to explain their proposals is not unlimited but is usually more than individuals are given. This procedure is reasonable and is not contrary to Chapter 205A SMA provisions. The Counties also accept written testimony for which there are no limits.

Increasing awareness of the SMA permit process and educating the public about SMA review guidelines and CZM objectives should result in more effective and meaningful public input. The SMA User Guide identifies county procedures and provides County and State program contacts. Promoting the public's understanding of the scope of relevant SMA considerations will help the public participate more effectively, as recommended by the SMA Assessment (p. 16).

- (3) *Providing training to County Planning Commissions and City Council members, County Public Works Departments, and other interested parties, on SMA authorities and requirements.*

Mr. Douglas Brown
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Training workshops for the County administrators and decision-makers will be planned and scheduled for each County. SMA workshops for the public may also be planned. The SMA User Guide will be made available as a handout and will serve as an informational source for the training workshops.

- (4) *Including increased reporting in CZM Hawaii's annual report to the State Legislature and performance reports to NOAA/OCRM on substantive aspects of SMA implementation, including citizen complaints, effectiveness of SMA implementation, and emerging issues needing attention.*

The Hawaii CZM Program will be able to report on the effectiveness of the statewide SMA program with the coordinator monitoring citizen complaints, SMA implementation by all the Counties, and emerging issues.

If you wish to discuss our response to the Section 312 necessary actions, please call me at (808) 587-2833.

Sincerely,



Laura H. Thielen
Director

Attachments

JDN/do
Disk #8

Mayor

DAVID C. GOODE
Director

MILTON M. ARAKAWA, A.I.C.P.
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT

LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

Land Use and Codes Administration

TRACY TAKAMINE, P.E.
Wastewater Reclamation Division

LLOYD P. W. LEE, P.E.
Engineering Division

JOHN D. HARDER
Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

April 30, 2002

Mr. Robert Horcajo, Project Manager
OLOWALU ELUA ASSOCIATES, LLC
173 Hoohana Street, Suite 201
Kahului, Hawaii 96732

SUBJECT: **OLOWALU MAUKA SUBDIVISION**
TMK: (2) 4-8-003:010, 050-070, & 073-082
(2) 4-8-004:011-016
LUCA FILE NO. 4.766

Dear Mr. Horcajo:

Final approval for the subject subdivision (consolidation of 38 lots and resubdivision into 34 lots and 5 roadway lots) has been granted on April 30, 2002. This final approval is based upon Section 18.04.020(C) of the Maui County Code (Ordinance 2372). An approved final plat is enclosed for your records.

The State of Hawaii, Department of Land and Natural Resources, State Historic Preservation Division has attached the following condition to this final approval:

"...the terms specified in the accepted preservation plan and burial treatment plan are followed and an acceptable archaeological monitoring plan for sites 4820 and 4821 is submitted to this office for review prior to the commencement of any ground-altering activities. In addition, an acceptable report documenting the findings of the monitoring activities will be submitted to this office for review upon 180 days following the completion of the proposed undertaking."

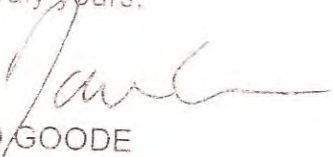
In accordance with Section 18.04.020(D) of the Maui County Code, the lots created by this subdivision shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

Mr. Robert Horcajo, Project Manager
SUBJECT: **LOWALU MAUKA SUBDIVISION**
LUCA FILE NO. 4766

April 30, 2002
Page 2 of 2

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 270-7252.

Very truly yours,



DAVID GOODE
Director of Public Works
And Waste Management

Enclosure: Approved Final Plat

LSN 6V S 11/04/01 SUBD/LUCASUBD REG 4-4766-1 1/2

xc: Dept. of Finance, Real Property Tax Division w/final plat
Dept. of Finance, Tax Map Division w/final plat
Building Permit Section w/final plat
Engineering Division w/final plat
Dept. of Planning w/final plat
Dept. of Water Supply w/final plat
Police Dept. w/final plat
State Dept. of Health w/final plat
Maui Electric Co. w/final plat

CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

April 26, 2010

CERTIFIED MAIL – RETURN RECEIPT REQUESTED
#7007 2560 0001 7799 7861

Olowalu Elua Associates, LLC
33 Lono Avenue, Suite 450
Kahului, Hawaii 96732

Attention: Mr. Peter Martin

Dear Mr. Martin:

SUBJECT: REQUEST FOR SERVICE NO. 10-0000452: FAILURE TO COMPLY WITH SPECIAL MANAGEMENT AREA (SMA) USE PERMIT FOR THE OLOWALU SUBDIVISION, LOCATED AT OLOWALU, MAUI, HAWAII; TMK(S): (2) 4-8-003:005, 10 (POR.), 41, 42, 43, 50 (POR.), 63 (POR.), AND 78 (POR.); AND (2) 4-8-004:011, 12, 13, 14, 15, AND 16 (SM1 99/0021)

This is in reply to your letter dated March 15, 2010, attached as Exhibit No. 1, a response letter to our Notice of Warning issued on February 25, 2010.

The following are responses to your replies to Conditions No. 2, 4, 8, 11, 12, 14, 19, 32, and 33, attached to SM1 99/0021. The original conditions of approval for SM1 99/0021 are attached as Exhibit No. 2:

Condition No. 2 - The project was to commence no later than September 30, 2002, which it did; however, Condition No. 2 states that the project "shall be completed within five years after the date of initiation." Failure to complete this project within the five-year period coupled with no recorded and/or approved time-extension requests may indicate that this SMA Use Permit 99/0021 has been automatically terminated;

Condition No. 4 - Final construction does not appear to have been completed and current construction does not appear to be in accordance with preliminary subdivision plans received on November 9, 1999. Dirt fire roads do not appear to have been completed according to the Uniform Fire Code with the road ending in a locked gate at the Honoapiilani Highway, the preservation plan is not fully implemented, few greenways have been installed, bikeways are not evident, and highway improvements for ingress and egress off the Honoapiilani Highway have not commenced. The interior road system as originally designed on the subdivision plan does not appear to match that which was constructed. The road identified as Luawai Street at the Olowalu Mauka Subdivision sign is not in agreement with the plans filed with the County and appears to have been constructed without revisions to the subdivision map;

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Condition No. 8 - Full compliance with government regulations has not occurred as the project is out of compliance with both the SMA conditions and the Conservation District Use Permit (CDUP) conditions as noted in this letter;

Condition No. 11 - The property has not been developed in substantial compliance with the representations made to the Maui Planning Commission (Commission). At this time it appears this failure to develop the property in accordance with the SMA may lead to the revocation of this SMA Use Permit 99/0021;

Condition No. 12 - Infrastructure improvements including roads, traffic related improvements, greenways, and possibly drainage have not been completed prior to final subdivision approval and bonds are not on file with the County per the wording of Condition No. 12;

Condition No. 14 - The roadways do not appear to have been constructed in substantial compliance with the greenway plan. The greenways do not appear to have been completed per the application plan and neither have improvements been made for a channelized intersection and means of ingress and egress from the Honoapiilani Highway as noted in the subdivision plans;

Condition No. 19 - The preservation plan has not been implemented. There is no evidence of viewing platform construction for historical sites No. 4710 and No. 4718 as outlined in the Department of Land and Natural Resources (DLNR) letter of March 7, 2002. The growth of invasive species of trees and bushes is evident especially at the important site No. 04, Kawaialoa/Kaiwaloa heiau. Little to no maintenance appears to be occurring on numerous sites. There is no interpretative signage evident at the sites. The condition of the petroglyph viewing site in the Olowalu valley is in very poor condition. There is no interpretative signage, the red railings are unsafe and deteriorated, and the platforms for viewing are nonexistent;

Condition No. 32 - No roadway improvements for ingress and egress from the Honoapiilani Highway to the Mauka Subdivision have been initiated per the Environmental Assessment (EA) and the Subdivision plans. The originally approved highway improvements consisted of Driveways A, B, C, and D as noted in the Final EA and plans submitted to the Commission for review and approval. Driveways A, B, C, and D are depicted on the original subdivision plans that were included in the traffic study and EA submitted by the developer in connection with the issuance of the SMA. The developer is now proposing a relocation of Driveway D. This revised proposal was discussed with the Maui Department of Transportation (DOT) in 2003. However, no EA has been completed to date although a Draft EA is being processed by Munekiyo & Hiraga, Inc. as of late 2009. This relocation of Driveway D may be problematic in its connection with the internal road system for the development, the increase in traffic in this area, and the plan originally approved by the Commission. The relocation of Driveway D does not connect to an approved Olowalu Mauka subdivision access road approved in the original subdivision. Failure to complete a channelized intersection according to plan with left turn lanes, acceleration lanes, bike lanes, and paved shoulders is a violation of the SMA conditions. Although there was a caveat to hold off developing the highway improvements if a phasing plan for project development was agreed to, no phasing plan is evident and at this stage of the development there should have been roadway improvements as initial phases of

Mr. Peter Martin
April 26, 2010
Page 3

the project have been completed. There is no evidence of this "phasing plan" on file with the DOT. The inability of the Developer to move forward on this critical road improvement signals non-compliance with the SMA conditions. The efficacy of a relocation of Driveway D from that originally proposed is not evidenced in any updated traffic report analysis on file. The original Olowalu Mauka roadway system connects to the original location of Driveway D, not the relocated Driveway D as proposed; and

Condition No. 33 - The roadway light within the subdivision meeting a maximum wattage of 100 w hps does not appear to have been completed.

In conclusion, the Olowalu Subdivision is in noncompliance with SM1 99/0021 according to a project site visit held on January 22, 2010, for Conditions No. 2, 4, 8, 11, 12, 14, 19, 32, and 33, as approved by the Commission on September 19, 2000.

Thank you for responding to your Notice of Warning. Please be advised that a Notice of Violation will be issued if the responsible party does not show any effort to comply with our Notice of Warning. Should you require further clarification, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at (808) 270-1789.

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

Attachments

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Kurt F. Wollenhaupt, Staff Planner
Sonny Huh, Zoning Inspector, Zoning Administration and Enforcement Division
Project File
General File

JSH:KFW:vb

K:\WP_DOCS\PLANNING\SM1\1999\99sm121Olowalu\Review\Department Response to NOW Letter.DOC

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

September 19, 2000

Mr. Robert Horcajo
Olowalu Elua Associates, LLC
173 Ho Ohana Street, Suite 201
Kahului, Hawaii 96732

Dear Mr. Horcajo:

RE: Special Management Area (SMA) Use Permit for the Proposed
Olowalu Subdivision at TMK: 4-8-003:5, 10 (Por.), 41, 42, 43,
50 (Por.), 63 (Por.), and 78 (Por.) and 4-8-004:11, 12, 13, 14,
15, and 16 at Olowalu, Maui, Hawaii (SM1 990021) *4.760/4.758*

At its regular meeting on September 12, 2000, the Maui Planning Commission (Commission) conducted a public hearing on the above-referenced application. At the meeting, the Commission clarified the record as follows:

1. Commissioner Star Medeiros who was a member of the Citizens Advisory Committee (CAC) for the West Maui Community Plan clarified the park designation and language. During the CAC's discussions on the park site at Olowalu, the reduction of 50 percent of agriculture related to the reduction of sugar cane cultivation and not to other agricultural crops that could be grown on the site. As such, the 50 percent reduction of agriculture has occurred. Based on the language, the applicant is advised that a 30-acre park should be reserved on the Camp Pecusa side of the makai lands in Olowalu.
2. Commissioner Joe Bertram III requested that the applicant work with Maui Electric Company to encourage energy efficiency in the project and use of alternative energy options such as solar panels.

The Commission, after due deliberation, voted to grant approval of the Special Management Area Use Permit, subject to the following conditions:

STANDARD CONDITIONS:

1. That construction of the proposed project shall be initiated by **September 30, 2002**. Initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply

within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.

2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the Maui Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That final construction shall be in accordance with preliminary subdivision plans included in the submittal received on November 9, 1999.
5. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
6. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with Section 12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County

of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

8. That full compliance with all applicable governmental requirements shall be rendered.
9. That the applicant shall submit plans regarding the location of any construction-related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
10. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of a grading permit. A final compliance report shall be submitted thirty (30) days after the completion of the subdivision to the Planning Department for review and approval.
11. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.

PROJECT SPECIFIC CONDITIONS:

12. That the applicant shall be responsible for all required infrastructural improvements including, but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements, and utility upgrades. Said improvements shall be constructed concurrently with the development and shall be completed prior to final subdivision approval or bonded in accordance with Title 18, Maui County Code, relating to the subdivision ordinance.

13. That as represented by the applicant, an approximate 54-acre cultural reserve for historic and cultural preservation operated and managed by the Olowalu Cultural Reserve, a non-profit organization, shall be established in perpetuity to ensure preservation of historic and cultural resources, as well as to perpetuate the Hawaiian culture and continued access to Native Hawaiians to "gather", to perform religious practices, and to attend to their own kuleana. Access to the cultural reserve shall be open to the general public as a cultural reserve. Access for recreational purposes shall be as approved by the Olowalu Cultural Reserve (as amended).
14. As represented by the applicant, the roadways for the proposed subdivisions shall be constructed in substantial compliance with the proposed greenway plan identified in the application. For each phase of development, final plans for the applicable increments of the approximate sixty (60) acres of greenways shall be submitted to the Maui Planning Department for review and approval. Said greenway areas shall be regularly maintained and access to the greenways shall be open to the general public for access and recreational purposes (as amended).
15. That the applicant shall establish an irrigation system for the proposed agricultural subdivisions which addresses the supply, storage, and distribution of irrigation water to the proposed lots, and is secured in terms of permit acquisition, quality, quantity, availability, and year-round operations and maintenance. Documentation that the irrigation system has been established shall be submitted to the Maui Planning Department within ninety (90) days of construction of the subdivision.
16. That the applicant shall prepare a dust- and erosion-control plan for review and approval by the Maui Planning Department to ensure that any fallow agricultural lands do not create future adverse dust and erosion impacts on the surrounding area. Said plan shall be reviewed and approved by the appropriate State of Hawaii agencies and implemented as soon as practicable by the applicant and its assigns and successors. A copy of the approved dust- and erosion-control plan for the agricultural lands shall be submitted to the Maui Planning Department and the Department of Public Works and Waste Management for our records (as amended).
17. That potential buyers will be advised that the lots are for sale as commercial agricultural lots and of Hawaii's Right to Farm Act which prohibits conditions, covenants, and restrictions that will prevent or impede reasonable agricultural use of the lots.
18. That the Maui/Lanai Islands Burial Council shall review the mitigation proposals for all burials.

19. That the applicant shall submit a detailed preservation plan (scope of work) for the sites identified for preservation to the Department of Land and Natural Resources, State Historic Preservation Division (SHPD), for approval. This plan will include buffer zones, interim protection measures (as needed), and long-range preservation plans. No land alteration may occur in the vicinity of these sites until minimally the buffer zones and interim protection measures are approved and the SHPD verifies the interim protection measures are in place. No preservation activities may occur in these sites until the preservation plan is approved. The SHPD shall verify in writing to the County when the plan has been successfully executed.
20. That archaeological data recovery shall occur at the sites identified in the survey reports. The applicant shall submit an archaeological data recovery plan (scope of work) for these sites to the SHPD for approval. The SHPD shall verify in writing to the County when the plan has been successfully executed. Further, as noted, the gleyed marsh soils shall also undergo archaeological data recovery. Minimally, data recovery fieldwork must be successfully concluded (and verified in writing by SHPD) prior to land alteration in this part of the project area. The SHPD shall verify in writing to the permitting agencies when the plan has been successfully completed.
21. That archaeological monitoring of land-altering construction in the sand areas along the shore shall occur, as a contingency to identify, document, and treat any burials that might be found. A monitoring plan (scope of work) shall be submitted to and be approved by the SHPD prior to the beginning of the monitoring. This plan must specify how any burials that are found will be documented archaeologically, notification procedures, and treatment measures that will be taken. This scope should be completed before a monitoring contract is negotiated.
22. All preservation areas and buffer zones shall be clearly marked on the subdivision plans and recorded with the property documents to ensure that future owners of the lots are aware of these restrictions to the lots.
23. That as represented by the applicant, the oral history work shall be expanded to include more people of the Olowalu area, such as existing and former residents, persons who have knowledge of their ancestors living in the area, and the kupunas.
24. That adequate buffers between the cultural preserve areas and the agricultural lots shall be established to ensure that the cultural experience is not impacted by the agricultural use and structures on the adjoining lots. Mitigation measures from high boundary

walls, residences, farm buildings, and operations shall be submitted to the Maui Planning Department for review and approval.

25. Unless removal is necessary for intersection improvements, to the extent practicable, the Monkey Pod trees within the subject property on both sides of Honoapiilani Highway shall be retained and consideration shall be given to extending the Monkey Pod trees as part of the cultural landscape (as amended).
26. That structures located within the floodway Flood Zone A0 and A4 shall be constructed above the flood elevation. Measures such as post and pier construction shall be considered to conform to the Flood Hazard District and to allow flood waters to continue to traverse the property (as amended).
27. That future buyers of lots shall be informed that development within flood hazard areas shall be implemented in accordance with Chapter 19.62, Maui County Code (as amended).
28. That use of soil as fill is prohibited within the Shoreline Setback Area, except for clean sand. Further, any grading or mining of a coastal dune is prohibited.
29. That a minimum shoreline setback of 150 ft. from the certified shoreline shall be established for all lots on the makai portion of the subdivision regardless of a government beach reserve fronting the subdivided lots. No structures shall encroach into the Shoreline Setback Area to ensure that future shoreline erosion and storm-wave action will not adversely affect structural development on the properties.
30. That public lateral pedestrian access along the shoreline within the Shoreline Setback Area shall be provided. Landscaping in the area within 50 ft. of the shoreline should be spaced far enough apart so as not to interfere with lateral access. Further, as represented by the applicant, mauka/makai public shoreline access from Honoapiilani Highway and public beach parking shall be provided near the Olowalu Mill site to Olowalu Landing, as well as access points to the shoreline from both ends of the makai Olowalu lands. Documentation that access, as required, has been provided shall be filed with the Departments of Public Works and Waste Management, Parks and Recreation, and Planning prior to final subdivision approval (as amended).
31. As represented by the applicant, the existing cane haul road (approximately 80 ft. wide) on the mauka side of Honoapiilani Highway shall be set aside as a reserve (Roadway Lot 39) for

future roadway expansion or relocation of Honoapiilani Highway (as amended).

32. That roadway improvements to Honoapiilani Highway, including left-turn storage lanes, acceleration and deceleration lanes, driveway connections, etc., as identified in the applicant's Traffic Impact Assessment Report (TIAR), and as required by the Department of Transportation shall be provided in conjunction with the development of the subdivision. The roadway improvements shall be reviewed and approved by the Department of Transportation. Construction of the improvements shall be completed prior to occupancy of the agricultural lots unless a phasing plan for the improvements is reviewed and approved by the Department of Transportation.
33. That the outdoor lighting plans for the subdivision shall be submitted to the Maui Planning Department for review and approval to reduce the negative impacts on seabirds, especially the dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) which is a federally endangered species. All potential owners of the lots shall be informed that appropriate measures approved by the Maui Planning Department shall be taken to reduce the negative impacts of night lights (as amended).
34. That future buyers of the lots shall be informed that there may be potential waste from the old mill site (Olowalu Mill) and other vacated agricultural industrial areas. Remedial cleanup must be conducted before any new development occurs.
35. That future buyers of the lots shall be informed of the survey monuments located within the boundaries of their lots which need to be protected from any development activities. Further, in the event the survey monuments are disturbed or destroyed during development of the subdivision or properties, it will be the responsibility of the applicant, assigns or successors to reference and replace the monuments.
36. That Condition Nos. 16, 17, 21, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35 shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances within sixty (60) days from the date of receipt of this decision. A copy of the recorded unilateral agreement shall be filed with the Planning Director and the Director of the Department of Public Works and Waste Management within ten (10) days of recordation.

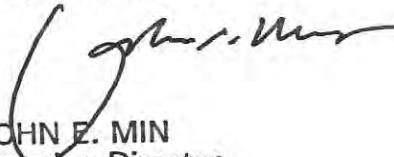
The conditions of this Special Management Area Use Permit shall be enforced pursuant to Sections 12-202-23 and 12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

Mr. Robert Horcajo
September 19, 2000
Page 8

Further, the Commission adopted as its Findings of Fact, Conclusions of Law, Decision and Order the Planning Department's Report and Recommendation Report prepared for the September 12, 2000 meeting and authorized the Planning Director to transmit said Decision and Order for the Commission.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

JEM:CMS:cmb

c: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shinmoto, Planning Program Administrator (2)
LUCA (2)
Department of Water Supply
Michael Munekiyo, AICP, Munekiyo, Arakawa & Hiraga, Inc.
Patricia Nishiyama, Na Kupuna O Maui
Ed Lindsey
Buck Buchanan
Timothy Johns, Department of Land and Natural Resources
Kazu Hayashida, Department of Transportation
James Nakatani, Department of Agriculture
Gary Gill, Department of Health
Colleen Suyama, Staff Planner
Project File
General File

(K:\Planning\SM1\99SM121\99SM121v)

Mayor

DAVID C. GOODE
Director

MILTON M. ARAKAWA, P.E.
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

Land Use and Codes Administration

TRACY TAKAMINE, P.E.
Wastewater Reclamation Division

LLOYD POW LEE, P.E.
Engineering Division

JOHN D. HARDER
Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

April 30, 2002

Mr. Robert Horcajo, Project Manager
OLOWALU ELUA ASSOCIATES, LLC
173 Hoohana Street, Suite 201
Kahului, Hawaii 96732

SUBJECT: OLOWALU MAUKA SUBDIVISION
TMK: (2) 4-8-003:010, 050-070, & 073-082
(2) 4-8-004:011-016
LUCA FILE NO. 4.766

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"...the terms specified in the accepted preservation plan and burial treatment plan are followed and an acceptable archaeological monitoring plan for sites 4820 and 4821 is submitted to this office for review prior to the commencement of any ground-altering activities. In addition, an acceptable report documenting the findings of the monitoring activities will be submitted to this office for review upon 180 days following the completion of the proposed undertaking."

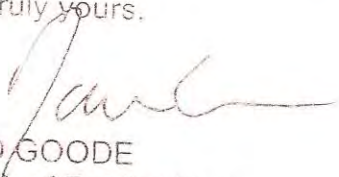
In accordance with Section 18.04.020(D) of the Maui County Code, the lots created by this subdivision shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

Mr. Robert Horcajo, Project Manager
SUBJECT: **LOWALU MAUKA SUBDIVISION**
LUCA FILE NO. 4766

April 30, 2002
Page 2 of 2

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 270-7252.

Very truly yours,



DAVID GOODE
Director of Public Works
And Waste Management

Enclosure: Approved Final Plat

LSN 61 S1 LUCA ALL SUBD LUCA SUBD REG 4 4766-1 1-

XC: Dept. of Finance, Real Property Tax Division w/final plat
Dept. of Finance, Tax Map Division w/final plat
Building Permit Section w/final plat
Engineering Division w/final plat
Dept. of Planning w/final plat
Dept. of Water Supply w/final plat
Police Dept. w/final plat
State Dept. of Health w/final plat
Maui Electric Co. w/final plat

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

CHRISTOPHER SALEM,

Requestor,

vs.

THE COUNTY OF MAUI; THE COUNTY OF
MAUI, by and through WILLIAM SPENCE, as
DIRECTOR OF PLANNING, and BRIAN
BILBERRY, DEPUTY THE CORPORATION
COUNSEL WITH THE DEPARTMENT OF
CORPORATION COUNSEL,

Defendants.

Civil No.: 17-1-0208 (1)

MEMORANDUM IN SUPPORT OF
MOTION

MEMORANDUM IN SUPPORT OF MOTION

I. FACTS

Requestor Christopher Salem ("Requestor") has filed the instant complaint alleging that he has been denied access to a public record. Under H.R.S. § 92F-15, judicial enforcement is allowed after ". . . denial of access to a government record. . . ." However, the County has not denied Requestor access to any government record. Instead, the record sought simply does not exist. Declarations of William R. Spence and Brian A. Bilberry. Requestor has been informed that the requested record does not exist but is unable, or incapable, of accepting that fact.

There is no basis for this lawsuit to proceed, as there is no claim upon which relief can be granted. As such, dismissal is warranted under Rule 12(b)(6) of the Hawaii Rules of Civil Procedure ("HRCP"). In the alternative, dismissal is appropriate under 56 of the HRCP.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Requestor,

vs.

THE COUNTY OF MAUI; THE COUNTY OF
MAUI, by and through WILLIAM SPENCE, as
DIRECTOR OF PLANNING, and BRIAN
BILBERRY, DEPUTY THE CORPORATION
COUNSEL WITH THE DEPARTMENT OF
CORPORATION COUNSEL,

Defendants., .

Civil No.: 17-1-0208 (1)

DECLARATION OF WILLIAM R.
SPENCE

DECLARATION OF WILLIAM R. SPENCE

WILLIAM R. SPENCE does hereby declare:

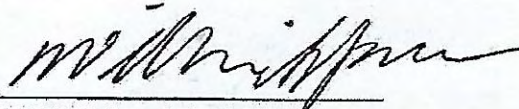
1. I make this declaration upon personal knowledge and am competent to testify to the matters stated herein.
2. I am the Director of Planning. I have held this position since January 2, 2011. In my capacity as Director, I am familiar with Christopher Salem and his requests for public records related to SMA Permit #SM2 2000/0042.
3. In November 2016, my department received a request from Salem requesting public records "... of the date and final acceptance and closure of SMA Permit #SM2 2000/0042. . . [a]lso the name of the Planning Department Individual that closed the referenced SMA Permit. . .". There is no document responsive to this request and Salem was informed of that fact.

4. It is my belief that SM2 2000/0042 was closed when the approval was issued on June 6, 2000 via letter to Hugh Farrington. Salem received a copy of that letter well before the filing of the current lawsuit.

I hereby declare under penalty of perjury that the above is true and correct.

DATED: Wailuku, Maui, Hawaii, June 6, 2017.

Mr. Hugh Farrington
Lot 48-A, LLC
P. O. Box 1519
Kihel, Hawaii 96753


WILLIAM R. SPENCE

Dear Mr. Farrington:

RE: Special Management Area (SMA) Minor Permit - For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2: 2000/0042)

In response to your application received on May 11, 2000, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-203-14, a determination has been made relative to the above project that:

1. The project is a development;
2. The project has a valuation not in excess of \$125,000.00 (Valuation: \$91,400.00);
3. The project has no significant adverse environmental or ecological effect, taking into account potential cumulative effects; and
4. The project is consistent with the objectives, policies and Special Management Area guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A and is consistent with the County General Plan and Zoning.

In consideration of the above-referenced determination, you are hereby granted a Special Management Area Minor Permit approval, subject to the following conditions:

JOHN E. MIN
DirectorCLAYTON I. YOSHIDA
Deputy DirectorCOUNTY OF MAUI
DEPARTMENT OF PLANNING

June 6, 2000

Mr. Hugh Farrington
Lot 48-A, LLC
P. O. Box 1516
Kihei, Hawaii 96753

Dear Mr. Farrington:

RE: Special Management Area (SMA) Minor Permit – For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042)

In response to your application received on May 11, 2000, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above project that:

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In consideration of the above-referenced determination, you are hereby granted a Special Management Area Minor Permit approval, subject to the following conditions:

Mr. Hugh Farrington

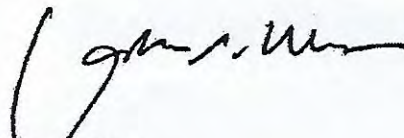
June 6, 2000

Page 2

1. That construction shall be in accordance with plans submitted on May 11, 2000.
2. That a subdivision approval shall be obtained prior to the initiation of construction (if applicable).
3. That construction of the subdivision improvements shall be initiated by December 31, 2000 and shall be completed within one (1) year of said initiation.
4. As represented, the existing chain-link fencing located within the minimum 48 ft. shoreline setback area shall be removed within sixty (60) days of the date of this approval. Documentation shall be submitted to the Maui Planning Department that the condition has been fulfilled.
5. That continued public-lateral shoreline access shall be allowed along the rock ledge, makai (ocean side) of the existing embankment and vegetation fronting the shoreline area of Lot 48-A.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

Mr. Hugh Farrington
June 6, 2000
Page 3

JEM:CMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shinmoto, PE, Planning Program Administrator
Colleen Suyama, Staff Planner
Michael Munekiyo, AICP, Munekiyo, Arakawa & Hiraga, Inc.
LUCA (2)
2000/SM2 Minor Permit File
General File
(S:\CMS\HuiRoadE2)

EXHIBIT B

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 6, 2000

Mr. Hugh Farrington
Lot 48-A, LLC
P. O. Box 1516
Kihei, Hawaii 96753

Dear Mr. Farrington:

RE: Special Management Area (SMA) Minor Permit – For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042)

In response to your application received on May 11, 2000, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above project that:

1. The project is a development;
2. The project has a valuation not in excess of \$125,000.00 (Valuation: \$91,400.00);
3. The project has no significant adverse environmental or ecological effect, taking into account potential cumulative effects; and
4. The project is consistent with the objectives, policies and Special Management Area guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A and is consistent with the County General Plan and Zoning.

In consideration of the above-referenced determination, you are hereby granted a Special Management Area Minor Permit approval, subject to the following conditions:

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
PLANNING DIVISION (808) 270-7735; ZONING DIVISION (808) 270-7253; FACSIMILE (808) 270-7634

Planning RFS Responses 000003

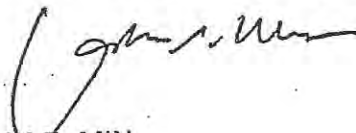
F

Mr. Hugh Farrington
June 6, 2000
Page 2

1. That construction shall be in accordance with plans submitted on May 11, 2000.
2. That a subdivision approval shall be obtained prior to the initiation of construction (if applicable).
3. That construction of the subdivision improvements shall be initiated by December 31, 2000 and shall be completed within one (1) year of said initiation.
4. As represented, the existing chain-link fencing located within the minimum 48 ft. shoreline setback area shall be removed within sixty (60) days of the date of this approval. Documentation shall be submitted to the Maui Planning Department that the condition has been fulfilled.
5. That continued public-lateral shoreline access shall be allowed along the rock ledge, makai (ocean side) of the existing embankment and vegetation fronting the shoreline area of Lot 48-A.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

JAMES "KIMO" APANA
Mayor

CHARLES JENCKS
Director

DAVID C. GOODE
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

FEPPINGTON
RALPH M. NAGAMINE, L.S., P.E.
Land Use and Codes Administration

RONALD R. RISK, P.E.
Wastewater Reclamation Division

LLOYD P.C.W. LEE, P.E.
Engineering Division

ANDREW M. HIROSE
Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

June 23, 2000

Mr. Reed M. Ariyoshi, P.E., P.L.S.
WARREN S. UNEMORI ENGINEERING, INC.
2145 Wells Street, Suite 403
Wailuku, Hawaii 96793

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
TMK:(2) 4-3-015:004
LUCA FILE NO. 4.805

Dear Mr. Ariyoshi:

Preliminary approval was granted to the subject subdivision on June 23, 2000.
Final approval shall be contingent upon compliance with the following conditions:

1. Requirements/comments from Maui Electric Company:

- a. Electricity is available from nearby existing facilities (overhead and/or underground).
- b. Requires line extension (overhead and/or underground) within existing County or State road right-of-way.
- c. Requires line extension (overhead and/or underground) within private road or property.

Comments: Final approval of the subdivision is recommended. Line extension requirement for Lot 48-A-2 can be deferred until it is developed.

If you have any questions, please contact Mr. Alan Miyazaki at 871-2390.

G

Mr. Reed M. Ariyoshi, P.E., P.L.S.

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
LUCA FILE NO. 4.805

June 23, 2000

Page 2 of 6

2. Comply with requirements/comments from the State of Hawaii, Department of Land and Natural Resources, Historic Preservation Division. For further information, please contact Ms. Cathleen Dagher at (808) 692-8023.
3. ^{Rev. 12/4/00} Comply with requirements/comments from the Department of Planning. For further information, please contact Mr. Francis Cerizo at 270-7253.
4. Requirements/comments from the Department of Water Supply:
 - a. Provide water service to each lot in accordance with the standards.
 - b. Water system development fees will be charged upon application for water meters.
 - c. The applicant should be advised that the department's processing of this subdivision does not in any way imply that water service for the subdivision will be available. Approval of water service to each lot will be subject to rules and regulations of the department at the time water service is applied for.

If you have any questions, please contact the Department of Water Supply at 270-7835.

5. Requirements/comments from the Department of Public Works and Waste Management, Engineering Division:

6. Provide approved certified shoreline documents.

NOTE: Your "Checklist For Preliminary Plats" indicated that the Shoreline Certification was submitted. However, your letter of transmittal dated May 8, 2000, does not indicate that the certified shoreline survey map was submitted.

If you have any questions, please contact Mr. Lloyd Lee at 270-7745.

000028

Mr. Reed M. Ariyoshi, P.E., P.L.S.

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
LUCA FILE NO. 4.805

June 23, 2000

Page 3 of 6

6. Requirements/comments from the Department of Public Works and Waste Management, Wastewater Reclamation Division:

- a. Provide a sewer system to the proposed lots for connection to the existing County sewer system.
- b. The developer should be informed that the Wastewater Reclamation Division cannot insure that wastewater system capacity will be available for the project.
- c. Developer is not required to pay assessment fees for this area at the current time. 7
- d. The construction plans shall show the installation of an advance riser at each lot.
- e. Indicate on the plans the ownership of each easement (in favor of which party). **NOTE: County will not accept sewer easements that traverse private property.**
- f. Forcemains in Hui Road "E" and new SMH to remain private. SMH should be installed in private roadway (Discussed with Reed Ariyoshi).

If you have any questions, please contact Scott Rollins at 270-7417.

7. In accordance with Section 18.12.040(B) MCC, submit a copy of any deed restrictions or covenants applicable to the subdivision. If there are none, please indicate this in writing.

8. In accordance with Section 18.12.030(E)(13.a.) of the Maui County Code (MCC), submit a certificate signed and acknowledged by all persons vested with record title in the land subdivided consenting to the preparation and recording of the plat, provided that no consent is required by any person having any non-governmental easement, lease or license affecting the land subdivided, provided further that the director shall not approve any subdivision that causes any lot to be landlocked on the land subdivided or any adjacent land.

Mr. Reed M. Ariyoshi, P.E., P.L.S.

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
LUCA FILE NO. 4.805

June 23, 2000

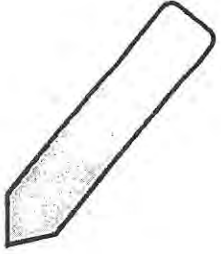
Page 4 of 6

9. In accordance with Section 18.12.040(C) MCC, submit a tax clearance certificate (issued by Department of Finance, Real Property Tax Division) to show written proof that all taxes and assessments on the tract are paid to date. An "Application for Tax Clearance" form is enclosed for your use.
NOTE: The tax clearance certificate shall be valid at the time of final subdivision approval.
10. Submit a revised original notarized letter of authorization from the owner consenting to the subdivision of TMK:(2) 4-3-15:04. The letter of authorization previously submitted by the owner consented to the subdivision of TMK:(2) 4-3-15:42.
11. In accordance with Section 18.20.040(B.2.) (Existing streets) MCC, improve the adjoining half of Hui Road "E" and the road widening lot to the provisions of the subdivision ordinance for roadways within the urban district. The one-time exemption from construction of roadway improvements on existing streets abutting subdivisions containing three lots or less was used as part of the previous Mailepai Hui Partition subdivision (LUCA File No. 4.686).
12. Design and construct the drainage facilities to the requirements of the Department of Public Works and Waste Management. A detailed final drainage report and site specific erosion control plan shall be submitted with the construction plans for review and approval. The drainage report shall include, but not be limited to, hydrologic and hydraulic calculations, and the schemes for disposal of runoff waters. The site specific erosion control plan shall show the location and details of structural and non-structural best management measures. The drainage and erosion control plans shall provide verification that the grading and all runoff water generated by the project will not have an adverse effect on the adjacent and downstream properties.
13. Comply with or show compliance with Section 18.16.210 (Shoreline and other access rights-of-way) MCC.
14. As noted on the preliminary plat, the two existing structures will be removed. These two structures must be removed prior to final subdivision approval.

Mr. Reed M. Ariyoshi, P.E. P.L.S.
SUBJECT: MAILEPAI PARTITION SUBDIVISION
LUCA FILE NO. 4.805

June 23, 2000

Page 5 of 6

- 
15. Comply with the conditions of the Special Management Area (SMA) Minor Permit (SM2 2000/0042) granted on June 6, 2000. **NOTE:** Upon the approval of the construction plans, the subdivider should verify with the Department of Planning to verify if an SMA Major Permit is required or if another SMA Minor Permit is required due to the addition of construction work. *
16. Submit ten (10) sets of the construction plans and three (3) sets of a drainage and soil erosion control report for review and approval by the applicable agencies. In accordance with Section 18.24.010(D) MCC, a construction plan review fee (\$50/lot) shall be paid upon submission of the construction plans.
17. Submit fifteen (15) prints of the final plat in accordance with Chapter 18.12 (Final Plat) MCC. The final plat shall include all revisions addressing the comments noted on the enclosed preliminary plat.

Within one (1) year from the date of preliminary approval of the subdivision, all requirements shall be completed, unless an extension of time is granted. Applications for extension of time should be made in writing to the Department of Public Works and Waste Management at least fifteen days before the expiration date.

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 270-7252.

Very truly yours,



for CHARLES JENCKS
Director of Public Works
And Waste Management

Enclosures: Preliminary Plat
Application For Tax Clearance

Mr. Reed M. Ariyoshi, Esq., P.L.S.

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
LUCA FILE NO. 4.805

June 23, 2000

Page 6 of 6

LSN/GAU S:\LUCA\ALL\SUBDIV\LUCASUBDIV\REG4\4#805-1.pre

xc: Dept. of Finance, Real Property Tax Div. (unmarked preliminary plat only).
Dept. of Finance, Tax Map Div. (unmarked preliminary plat only)
Engineering Division w/preliminary plat
Wastewater Reclamation Division
Dept. of Water Supply, SD 00-42
Dept. of Planning
State Dept. of Health
Maui Electric Company



Permit Summary

Permit:	SM2 20000042	Flags:	NO
Description:	SMA MINOR PERMIT		
Project:	HUI RD."E" 3 LOT SUBD.LOT 48-A HUI RD."E"		
Status:	DONE	Entered:	27-Jun-2000
Issued:	27-Jun-2000	Completed:	06-Jun-2000
Decision:	A W/COND		
Expiration:		Last Renewal:	
Location Desc.:			

Parcel Information		
Address	TMK	
40 HUI E RD	2430150040000	GIS Parcel

Scope of Work
Special Management Area (SMA) Minor Permit ? For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042)
In response to your request for a second time extension dated May 8, 2001, the Maui Planning Department hereby amends Condition No. 3 of the above-referenced permit and grants a two month extension as follows:
"3. That construction of the subdivision improvements shall be initiated by August 31, 2001, and shall be completed within one (1) year of said initiation."

Professionals / Contractors
There are no professionals for this application.

[\[QUANTITIES\]](#)

Structure Classification			
Initial Value:	\$0.00	Calculated Value:	\$0.00
Standard Plan:		Public Project:	
# of Structures:		# of Res. Units:	
Total Floor Area:			
Model:			

Occupancy Group	Construction Type	Structure Class
None attached.	None attached.	None attached.

Inspections							
Inspection	Result	Completed Date	Completed By	Schedule	CORR		N
					O	C	
There are no inspections for this permit.							

Activities								
Description	Assigned	Nodes		Dur.	Est. Completion	Target End	Decision	Decision Date
		Beg	End					
There are no activities for this application.								

Permit Flags		
Flag	Description	Status
There are no flags on this application		



DAVID Y. IGE
GOVERNOR

STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.oiip.hawaii.gov

CHERYL KAKAZU PARK
DIRECTOR

August 16, 2017

VIA EMAIL

Mr. Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, Hawaii 96761

Re: CORR 2017-0815-01

Dear Mr. Salem:

The Office of Information Practices has received your letter of August 12, 2017. In your letter, you posed the question that if an agency maintains a record which is the subject of a record request under Part II of the Uniform Information Practices Act, must the agency disclose the record to the requester. If the agency maintains a record, the record must be disclosed subject to the exceptions in section 92F-13, Hawaii Revised Statutes (HRS).

In your particular situation, you had received an e-mail message on July 11, 2017, from Ms. Susan Foley, Executive Assistant to Councilmember Kelly T. King, with an attached copy of a County of Maui, Hawaii, Permit Summary for Permit SM2 2000/0042 ("KIVA net 10.g") (hereafter referred to as "KIVA net 10.g Permit Summary"). On November 28, 2016, you had submitted an RFS Information form to the County of Maui for access to the "public record of the date of final acceptance and closure of SMA Permit #SM2 2000/0042. Also, name of Planning Department individual with Planning Department that closed the reference SMA Permit in the County records." Your specific question was that if Maui County/Planning Department (Maui County) maintained the record referred to as the KIVA net 10.g Permit Summary at the time of your November 28, 2016, record request, was Maui County required to disclose the KIVA net 10.g Permit Summary to you at that time? The answer is yes, subject to the exceptions in section 92F-13, HRS.

If you have any questions, please contact OIP.

Sincerely,

A handwritten signature in black ink, appearing to read "Donald H. Amano".

Donald H. Amano
Staff Attorney

B

Permit Summary

Permit:	SM2 20000042	Flags:	NO
Description:	SMA MINOR PERMIT		
Project:	HUI RD."E" 3 LOT SUBD.LOT 48-A HUI RD."E"		
Status:	DONE	Entered:	27-Jun-2000
Issued:	27-Jun-2000	Completed:	06-Jun-2000
Decision:	A W/COND		
Expiration:		Last Renewal:	
Location Desc.:			

Parcel Information

Address	TMK	
40 HUI E RD	2430150040000	GIS Parcel

Scope of Work

Special Management Area (SMA) Minor Permit ? For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042)

In response to your request for a second time extension dated May 8, 2001, the Maui Planning Department hereby amends Condition No. 3 of the above-referenced permit and grants a two month extension as follows:

"3. That construction of the subdivision improvements shall be initiated by August 31, 2001, and shall be completed within one (1) year of said initiation."

Professionals / Contractors

There are no professionals for this application.

Permit ID
SM2-20000042
Description
Special Management Area (SMA) Minor Permit ? For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042) In response to your request for a second time extension dated May 8, 2001, the Maui Planning Department hereby amends Condition No. 3 of the above-referenced permit and grants a two month extension as follows: "3. That construction of the subdivision improvements shall be initiated by August 31, 2001, and shall be completed within one (1) year of said initiation."
Address
40 HUI E RD LAHAINA, HI 96761
Contacts
PERMIT APPLICANT:, HUGH FARRINGTON
Conditions
CONST ACRD - CONSTRUCTION IN ACCORD W/PLANS CONSTRUCTION IN ACCORD W/PLANS Recorded by: 1080
OBTAIN BP - OBTAIN BUILDING PERMIT (IF APPLICABLE) OBTAIN BUILDING PERMIT (IF APPLICABLE) Recorded by: 1080
MITIGATE - APPROPRIATE MITIGATE MEASURES APPROPRIATE MITIGATE MEASURES Recorded by: 1080
INITIATE2 - INITIATE CONSTUCTION INITIATE CONSTUCTION Recorded by: 1080
FULL COMP - FULL COMPLIANCE FULL COMPLIANCE Recorded by: 1080
Additional Information
General Permit Information - Permit Name: Permit Location: Project: HUI RD."E" Entry Date: 27-Jun-2000 Accept Date: 27-Jun-2000 Issue Date: 27-Jun-2000 Expiration Date: Completion Date: 06-Jun-2000

Permit ID
SUBD-20000045
Description
MAILEPAI HUI PARTITION SUBDIVISION - Subdivision of Lot 48-A into Lots 48-A-1, 48-A-2 & 48-A-3.
Address
40 HUI E RD LAHAINA, HI 96761
Contacts
PERMIT CONTACT:, WARREN S. UNEMORI ENGINEERING, INC.
PERMIT APPLICANT:, WARREN S. UNEMORI ENGINEERING, INC.
PERMIT OWNER:, LOT 48 LLC
Additional Information
General Permit Information - Permit Name: Permit Location: Project: 4.805 Entry Date: 09-May-2000 Accept Date: 09-May-2000 Issue Date: 09-May-2000 Expiration Date: Completion Date: 03-Oct-2001

Permit Summary

Permit:	SUBD 20000045	Flags:	NO
Description:	SUBDIVISION		
Project:	4.805 MAILEPAI HUI PARTITION SUBDIVISION		
Status:	DONE	Entered:	09-May-2000
Issued:	09-May-2000	Completed:	03-Oct-2001
Decision:	FINAL		
Expiration:		Last Renewal:	
Location Desc.:			

Parcel Information

Address	TMK	
40 HUI E RD	2430150040000	GIS Parcel

Scope of Work

MAILEPAI HUI PARTITION SUBDIVISION - Subdivision of Lot 48-A into Lots 48-A-1, 48-A-2 & 48-A-3.

Professionals / Contractors

REED M ARIYOSHI
 WARREN S. UNEMORI ENGINEERING
 WAILUKU, HI 96793
 CE - CIVIL ENGINEER
 License: 5465 Expires: 30-Apr-2018
 Phone: 242-4403

[\[QUANTITIES\]](#)

Structure Classification

Initial Value:	\$0.00	Calculated Value:	\$0.00
Standard Plan:		Public Project:	
# of Structures:		# of Res. Units:	
Total Floor Area:			
Model:			

Occupancy Group	Construction Type	Structure Class
None attached.	None attached.	None attached.

Inspections

Inspection	Result	Completed Date	Completed By	Schedule	CORR		
					O	C	N
There are no inspections for this permit.							

Activities

Description	Assigned	Nodes		Dur.	Est. Completion	Target End	Decision	Decision Date
		Beg	End					
INITIAL PERMIT APPL REVIEW	9930	1	2	5	13-May-2000	13-May-2000	A	11-May-2000
PRELIMINARY APPROVAL	9930	3	4	15	24-May-2000	24-May-2000	A W/COND	23-Jun-2000
CONSTRUCTION PLAN APPROVAL	0680	4	5	30				
Comment: SEE ROUTING.								
FINAL PLAT REVIEW	9930	6	7	15	24-May-2000	24-May-2000	A	10-Sep-2001
FINAL REVIEW APPROVAL	9930	7	8	19	13-Jun-2000	13-Jun-2000	A	08-Sep-2000
Comment: TAX CLEARANCE EXPIRES 12/31/00								

Permit Flags

Flag	Description	Status
There are no flags on this application		

Inspections							
Inspection	Result	Completed Date	Completed By	Schedule	CORR		N
					O	C	
There are no inspections for this permit.							

Activities								
Description	Assigned	Nodes		Dur.	Est. Completion	Target End	Decision	Decision Date
		Beg	End					
INITIAL PERMIT APPL REVIEW	9930	1	2	5	13-May-2000	13-May-2000	A	11-May-2000
PRELIMINARY APPROVAL	9930	3	4	15	24-May-2000	24-May-2000	A W/COND	23-Jun-2000
CONSTRUCTION PLAN APPROVAL	0680	4	5	30	?	?	?	?
Comment: SEE ROUTING.								
FINAL PLAT REVIEW	9930	6	7	15	24-May-2000	24-May-2000	A	10-Sep-2001
FINAL REVIEW APPROVAL	9930	7	8	19	13-Jun-2000	13-Jun-2000	A	08-Sep-2000
Comment: TAX CLEARANCE EXPIRES 12/31/00								

Permit Flags		
Flag	Description	Status
There are no flags on this application		

[Help](#)
[Home](#)
[Look Up](#)
[Print](#)
[Genealogy](#)
[Summary](#)
[RFS](#)

Activities

Permit:	SUBD 20000045	Project:	4.805
Address:	40 HUI E RD		

[\[ACTIVITY LIST\]](#)

Activity:	CONST APPR	Activity Status:	OPEN
Description:	CONSTRUCTION PLAN APPROVAL		
Assigned To:	RENEE M. G SEGUNDO		
Available:		Target End:	
Start Work:		Est. Completion:	
Total Days:		Allocated Days:	
Duration:	30	Working Days:	
Comments:	SEE ROUTING.		

Actions

Description	Tickler Date	Status	Completed	Notes
There are no actions for this activity.				

PLANNING COMMITTEE MINUTES
Council of the County of Maui

October 12, 2009

CHAIR KAHO`OHALAHALA: I, I wanted to get back to the --

VICE-CHAIR JOHNSON: Sure.

CHAIR KAHO`OHALAHALA: --the compliance because we're, part of today's agenda
...*(inaudible)*...

VICE-CHAIR JOHNSON: Right. Right is compliance.

CHAIR KAHO`OHALAHALA: ...compliance. And so my, my only follow-up question if I,
...*(inaudible)*...

VICE-CHAIR JOHNSON: No, please go right ahead.

CHAIR KAHO`OHALAHALA: ...to look at the compliance part of it. Now when the, when conditions are placed on by the Planning Department for a permit, and does moving to the second subdivision or SMA, are those compliance, are those conditions still attached to the original? Because you were talking about these were the original conditions for an SMA permit, and there were these compliance issues that were placed as conditions. And then if you move that same, and then you're going to re-subdivide another, a, a parcel that then it goes to the SMA part of it, I guess. The question is are those compliance requirements still attached in the, the, the new subdivision?

MR. ARAKAWA: Mr. Chair, the second three-lot subdivision was the subject of an SMA Minor Permit, if I'm correct. But the conditions of the SMA Minor Permit, I mean would, it would still apply. From, from our standpoint, we, we would look to the Planning Department to basically enforce those SMA Minor Permit conditions. If there are any violations regarding the actual subdivision regulations and it's brought to our attention then of course we would go out and investigate. But the, the SMA Minor Permit conditions should be enforced by, by Planning.

CHAIR KAHO`OHALAHALA: Okay. And I guess just what I want to understand is that we got two departments that are interacting and then you have several other agencies. And when we're looking at the compliance then I want to be sure that how, how is this organized within your own Department's review? Is it always going to go back to the Planning Department for, for review? Or is it gonna, do you have a, jurisdiction over that SMA so that you make approvals, you know, from Public Works? Can you just help me understand where the interaction is between the departments itself? Because now it's coming back to Planning that has all of that jurisdiction. So any, any comments on that?

MR. ARAKAWA: We, we basically, of course as you know, administer Title 16 and 18 in, in general. Title 16 being the, the building code and plumbing, electrical codes as well as Title 18 which is subdivisions. If there are any potential violations regarding those two codes and people bring up their concerns to us this is what we will investigate. But if

Pacific Rim
land
Incorporated

PO Box 220, Kihei, Hawaii 96753
Phone (808) 874-5263 fax (808) 879-2557

Facsimile

June 4, 1999

Mr. Thomas Welch, Jr.
Mancini Rowland & Welch
33 Lono Ave., Suite 470
Kahului, HI 96732

Via facsimile (808) 871-0732, four (4) pages, no hard copy to follow

RE: Ukumehame
Consolidation and Reconfiguration of Parcels with no SMA Permit required

Dear Tom:

We are finalizing the Ukumehame Consolidation and Reconfiguration Plan, and are trying to get a handle on the SMA issue. Our goal is to come up with the best lot configurations possible and avoid an SMA requirement.

To recap, we have twelve clear parcels (parcels 9, 48, 53, 54, 55, 56, 60, 61, 65, 66, 68, and 70) included our Consolidation Application which we are reconfiguring into thirteen new lots. In the new lots, nine are clear, and four have the clouded parcels within them. (We may go with a different layout that creates 11 clear and only 2 clouded.) We were planning on excluding all the clouded parcels from the application. If we reconfigure thirteen parcels, will we need to include one clouded parcel in our application? What are the ramifications of including clouded parcels in our application, especially if we are creating clouded parcels? We have received comments from LUCA to list all existing parcels and identify which are included/excluded in the application.

So that leads me to our next question: In April, you sketched the "Before" and "After" parcels in the SMA 'zone' (attached for your convenience) showing nine parcels before and seven after. I have scribbled my notes on your drawing. We have four clear parcels (9, 48, 68, & 70) which are included in the consolidation and five clouded (57, 58, 59, 67, & 69) which are not included. How does this affect our application?

Finally, to be exempt from an SMA: "The subdivision of lands into more than four lots where the minimum lot area is less than 20 acres qualifies as a development, and is therefore, subject to the permit procedures of the SMA rules." How do you interpret this? Does this mean we can only have three lots under 20 acres in the SMA area, and the remainder lots in the zone must be over 20 acres? If all lots are over 20 acres, how many can we have in the SMA zone?

AFTER: 7 Parcels in SMC
4 of which are
leaving a Subdivi

Please review this information and call Becky and me at (808) 874-5263 to discuss further at your earliest convenience. Thank you.

Sincerely,
5263 Corp.



Heidi Bigelow
Project Coordinator

Attachment

BEFORE

9 PARCELS IN SMC

AFTER:

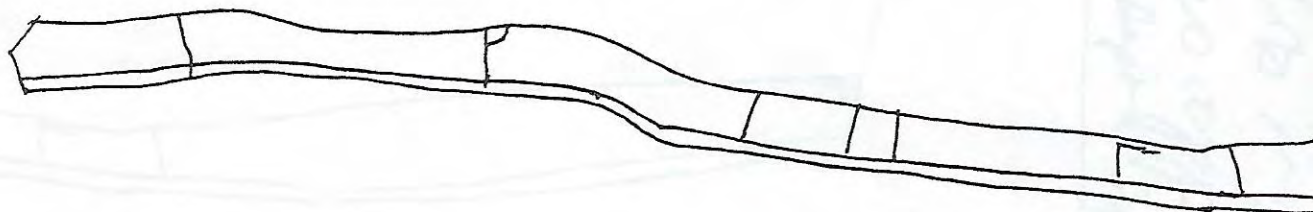
7 PARCELS IN SM.

4 OF WHICH ARE
Leaving a subdivision



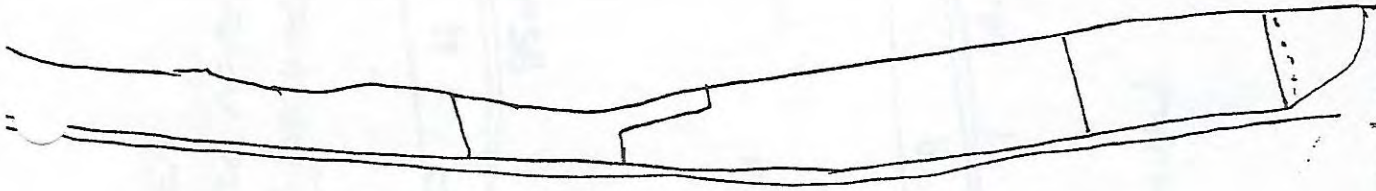
BEFORE

9 PARCELS IN SM.



PARCELS IN SMA AREA

1 OF WHICH ARE OVER 20 ACRES,
leaving a subdivision of 3 lots under 20 acres.



PARCELS IN SMA AREA



This shows that you 4 lots or less SMA
Exception should also apply!
This was presented to planning Dept in Sept 1998

Grant 23 clear, but not included b in SMA.

PAUL R. MANCINI*
ROBERT E. ROWLAND*
THOMAS D. WELCH, JR.
MATTHEW V. PIETSCH

COUNSEL
ROBERT A. RICHARDSON
ROSALYN LOOMIS

*A LAW CORPORATION

MANCINI, ROWLAND & WELCH

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

THE KAHULUI BUILDING
33 LONO AVENUE
SUITE 470
KAHULUI, HAWAII
96732-1681

TELEPHONE:
(808) 871-8351

FACSIMILE:
(808) 871-0732

September 3, 1998

Clayton Yoshida, AICP
Planning Program Administrator

Colleen Suyama
Staff Planner
MAUI COUNTY DEPT. OF PLANNING
250 South High Street
Wailuku, HI 96793

RE: Ukumehame: TMK (2) 4-8-2-9: SMA Assessment Application

Dear Clayton and Colleen:

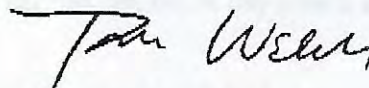
Thanks for meeting with me Tuesday.

Just to confirm our conclusions for the file, we agreed that paragraph 1 of your July 17 letter to Jim Judge does not intend to say that the full (major) SMA permit requirement is triggered by the subdivision itself. Instead, the application will be processed as a minor permit by virtue of the proposed work in the SMA area costing less than \$125,000, and that a major SMA permit would be required only if the DLNR, DOT or other agency were to say that the construction work, increased traffic or other factors, taken together, create cumulative effects which would result in "substantial adverse environmental or ecological effect" under H.R.S. §205A-22.

You suggested that we might want to anticipate the DOT's response by providing for a traffic study up front, similar to Pete Martin's handling of a similar situation at Launiupoko. I will pass that suggestion on to my client.

Again, thanks for your help. If you have any questions or further thoughts at this point, please let me know.

Regards,

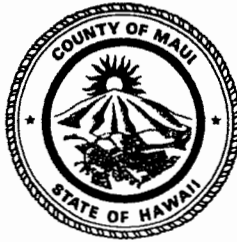


Thomas D. Welch, Jr.

TDW:dkw

cc: James R. Judge, Esq. (fax 242-4368)
Tim Farrington (fax 874-6450)

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 244-2646

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

November 17, 2014

R.C. Sinnott
52A Waimahaihai Street
Kihei, HI 96753

RE: Meeting with Council members

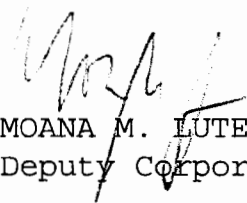
Dear Mr. Sinnott:

This is to address your requests to meet with Council member Couch and Chair Baisa. Based on your repeated threats of litigation, council members have been instructed to not meet with you.

If you would like to address your concerns in writing, that is fine. However, there will be no in person meetings.

If you have any questions or comments, please direct them to me in writing so that we can maintain a clear record of our communication. Thank you for your attention to this matter.

Sincerely,


MOANA M. LUTEY
Deputy Corporation Counsel

cc: Gladys Baisa, Council Chair
Don Couch, Council member

52 A Waimahaihai Street
Kihei, Hi 96753

19 November 2014

Ms. Moana Lutey
Department of the Corporation Counsel
County of Maui
200 South High Street, 3rd Floor
Wailuku, Maui 96793

Dear Ms. Lutey:

Thank you for your opinion. Suing the County from my observation is clearly the method of doing business here in Maui County and is a self serving method for your department. As I stated in my most recent letter, I am not interested in suing the County. The County seems to be making every effort to encourage me to do that.

My goal is simple. The County via multiple departments participated in activities that it should not have done and I am trying to correct that failure while trying to insure that my community in Kihe is protected from the negligent behavior of the County, which your office seems to have little interest in correcting.

I note from your letter that your office “*instructs*” the Maui County Council. Does that extend to their apparel and the correct way to say “yes” ?

I am quite certain that the council members have an obligation under the 1st Amendment to listen to my grievances. They most assuredly can make sound judgments on their own. I wish to make certain that they have availed themselves of my grievances and that this is done in a neutral environment without the intimidation of an overseer, unless that is their wish. Unless you have some information that would preclude my speaking to them, I suggest strongly that your office stop interfering with my Constitutional rights.

Sincerely

Robert Sinnott MD
COL USA Rtd

Maui County must repay \$11M in time-share suit

Honolulu Star-Advertiser 28 Aug 2017 1 more By Andrew Gomes agomes@staradvertiser.com

A state judge has rebuked Maui County attorneys and property tax officials for collecting \$10.7 million in improper taxes from owners of a Kaanapali time-share because the owners challenged the county's tax policy.

Circuit Judge Peter Cahill said in a written decision earlier this month that the county abused its taxation power to create a weapon against taxpayers who had sued to dispute the legality of a unique treatment of time-shares for property tax purposes.

In the decision, Cahill ordered the county to refund \$10.7 million in taxes to the owners of 1,114 units in the Westin Kaanapali Ocean Resort Villas, plus interest and \$83,325 in fees the owners paid to initially appeal the improper tax bills.

The owners also are expected to seek extra damages and recovery of roughly \$400,000 in attorneys fees.

"This all never had to happen," said Robert Klein, a local attorney

and former Hawaii Supreme Court justice representing the timeshare owners.

Klein said a poorly designed legal tactic by the county to retroactively "reassess" property taxes backfired. "They went way out there," he said of the county. "Basically, (Cahill) said the reassessments were illegal."

In a written statement, Maui County and its corporation counsel strongly disagreed with the findings and rulings of the court.

County attorney Pat Wong said in the statement that a "highly questionable" lawsuit filed in 2013 by the Ocean Resort Villas time-share owners challenging the county's special tax rate for time-shares led county property tax assessors to uncover that they had undercharged the owners in 2006, 2007 and 2008 by \$10.7 million, so the county tried to collect the correct amount.

Wong said the county will refund the \$10.7 million along with interest and fees but will appeal

the court ruling.

Maui County claims that backlogged property tax assessment rolls resulted in Ocean Resort Villas being billed about \$8 million based on the land value and value of construction costs on two parcels that make up the time-share complex built between 2003 and 2006. This valuation method is typical for condominiums while they are being built, and the county usually switches to assessing the value of individual condo units when construction is finished.

That didn't initially happen in the case of Ocean Resort Villas.

The county made the change for the time-share in 2009, and owners paid the higher assessments though they appealed the amount and settled with the county for 2009 and 2010 bills.

Then in 2013, Ocean Resort Villas owners, through two owner association boards, filed a lawsuit that alleged the county didn't follow Hawaii open-meetings laws and that having a separate prop-

erty tax rate for time-shares wasn't fair. The suit alleged that the county owed the owners \$30 million.

In 2015, one month before a scheduled trial date, the county filed a counterclaim seeking to recover a "tax windfall" from 2006, 2007 and 2008 — \$10.7 million in underpayments — for Ocean Resort Villas. Circuit Judge Rhonda Loo dismissed the counterclaim in March 2016.

Two months later the county Real Property Assessment Division sent Ocean Resort Villas 1,114 "amended" tax assessments for the three years totaling an extra

\$10.7 million and gave owners 30 days to pay it. The notice also said, "For questions, call Maui County Department of Corporation Counsel."

The time-share owners appealed the amended assessments to a county tax review board but had to first pay the \$10.7 million and an appeal fee of \$75 per owner, for a total of \$83,325.

In January the board upheld the higher assessments, and the time-share owners further appealed to the state Tax Appeal Court in February, paying \$100 for each of the 1,114 appeals. The Tax Court had yet to rule when Cahill issued his decision Aug. 8.

Cahill said no evidence was presented that the county would have issued the amended assessments in the normal course of real property tax functions.

"The county issued the amended assessments not as part of its routine assessment and taxation function, but, viewing the facts in the light most favorable to the county, abused (its) taxation power to create a weapon — a new \$10-plus million tax obligation — against taxpayers with whom it was in litigation," Cahill said in his order.

Issues over the validity of Maui County's tax rate for time-share property have yet to be decided in the case.

 Write a comment...



Share



Comment



Save



More



Bump it 12



Dump it

CHARMAINE TAVARES
Mayor
JEFFREY S. HUNT, AICP
Director
KATHLEEN A. AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

FACSIMILE TRANSMISSION COVER SHEET

DATE: August 3, 2009
TO: Chris Salem
TELEPHONE NO.: (808) 288-1166 **FACSIMILE NO.:** (808) 669-8779
FROM: Joe Prutch *JP*
NO. OF PAGES (INCLUDING COVER SHEET): 6
REMARKS OR SPECIAL INSTRUCTIONS:

On June 22, 2009, you requested to access government records for (2) 4-3-015:004 (Lot 48A, LLC). You specifically requested SMA File SM2 2000/0042 and Shoreline Certification Maps. As you know, the SM2 file cannot be found at the County. Without the file I could only locate documents on the computer and was only able to find the following:

1. SMA Minor Permit
2. Scope of SMA Permit
3. Conditions of Approval for permit
4. Extension approval letter dated Nov 6, 2000 (not signed)
5. Extension approval letter dated May 10, 2001 (not signed)

Sorry, I was not able to find a compliance report or any shoreline certification maps. You might check with Dev. Services Admin. (DSA: 270-7252) to locate the Subd 4.805 file, maybe there is some information available there.

MAUI COUNTY CODE IS AVAILABLE ON THE INTERNET

<http://ordlink.com/codes/maui/index.htm>

If you do not receive all pages, or if there is a problem with this transmittal, please call (808) 270-7735. Our facsimile number is (808) 270-1775.
planning@mauicounty.gov

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
PLANNING DIVISION (808) 270-7735; ZONING DIVISION (808) 270-7253; FACSIMILE (808) 270-7634

CHARMAINE TAVARES

Mayor

JEFFREY S. HUNT

Director

KATHLEEN ROSS AOKI

Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

October 13, 2009

Mr. Shichao Li
State of Hawaii
Office of Planning
P.O. Box 2359
Honolulu, Hawaii 96804-2359

Dear Mr. Li:

**SUBJECT: SPECIAL MANAGEMENT AREA (SMA) MINOR PERMIT FOR
LOWER HONOAPIILANI ROAD PROJECT**

We have received your email dated October 5, 2009, requesting relevant materials for the above project, more defined as Subdivision of Lot 48-A at Hui Road "E".

Attached you will find the following materials:

1. SMA Assessment application packet;
2. SMA Minor Permit dated June 6, 2000; and
3. Tax Map Key (TMK) maps showing three (3) lots and five (5) lots.

Thank you for your cooperation. Should you have any questions regarding this letter, please contact Staff Planner Joseph Prutch via email at joseph.prutch@mauicounty.gov or at 270-7512.

Sincerely,

A handwritten signature in black ink, appearing to read "Clayton I. Yoshida".

CLAYTON I. YOSHIDA, AICP
Planning Program Administrator

for JEFFREY S. HUNT, AICP
Planning Director

Attachments

xc: Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Joseph M. Prutch, Staff Planner
Project File
General File

JSH:CIY:JMP:vb

K:\WP_DOCS\PLANNING\LETTERS\tr2009\Shichao_100509.doc

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

Planning RFS Responses 000072

JAMES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 6, 2000

Mr. Hugh Farrington
Lot 48-A, LLC
P. O. Box 1516
Kihei, Hawaii 96753

Dear Mr. Farrington:

RE: Special Management Area (SMA) Minor Permit – For the Three-Lot Subdivision of Lot 48-A at Hui Road "E" and Related Subdivision Improvements at TMK: 4-3-015:004, Lahaina, Island of Maui, Hawaii (SM2 2000/0042)

In response to your application received on May 11, 2000, and in accordance with the Special Management Area Rules for the Maui Planning Commission, Sections 12-202-12 and 12-202-14, a determination has been made relative to the above project that:

1. The project is a development;
2. The project has a valuation not in excess of \$125,000.00 (Valuation: \$91,400.00);
3. The project has no significant adverse environmental or ecological effect, taking into account potential cumulative effects; and
4. The project is consistent with the objectives, policies and Special Management Area guidelines set forth in the Hawaii Revised Statutes (HRS), Chapter 205-A and is consistent with the County General Plan and Zoning.

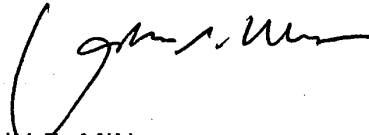
In consideration of the above-referenced determination, you are hereby granted a Special Management Area Minor Permit approval, subject to the following conditions:

Mr. Hugh Farrington
June 6, 2000
Page 2

1. That construction shall be in accordance with plans submitted on May 11, 2000.
2. That a subdivision approval shall be obtained prior to the initiation of construction (if applicable).
3. That construction of the subdivision improvements shall be initiated by December 31, 2000 and shall be completed within one (1) year of said initiation.
4. As represented, the existing chain-link fencing located within the minimum 48 ft. shoreline setback area shall be removed within sixty (60) days of the date of this approval. Documentation shall be submitted to the Maui Planning Department that the condition has been fulfilled.
5. That continued public-lateral shoreline access shall be allowed along the rock ledge, makai (ocean side) of the existing embankment and vegetation fronting the shoreline area of Lot 48-A.
6. That full compliance with all other applicable governmental requirements shall be rendered.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,



JOHN E. MIN
Planning Director

Mr. Hugh Farrington
June 6, 2000
Page 3

JEM:CMS:osy

c: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shinmoto, PE, Planning Program Administrator
Colleen Suyama, Staff Planner
Michael Munekiyo, AICP, Munekiyo, Arakawa & Hiraga, Inc.
LUCA (2)
2000/SM2 Minor Permit File
General File
(S:\\CMS\\HuiRoadE2)



COUNTY OF MAUI
DEPARTMENT OF PLANNING
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7735; FAX (808) 243-7634

**MAUI PLANNING COMMISSION
SPECIAL MANAGEMENT AREA ASSESSMENT AND/OR
MINOR PERMIT APPLICATION**

00 MAY 11 P3:48

DATE: _____

PERMIT TYPE: SMA Minor PROJECT NAME: Subdivision of Lot 48-A

PROPOSED DEVELOPMENT: Three (3) lot subdivision

TAX MAP KEY NO.: 4-3-15:4 CPR/HPR NO.: --- LAND AREA: 1.4 acres

PROPERTY ADDRESS: Along Hui Road "E", Napili, Maui, Hawaii

OWNER: Lot 48-A, LLC PHONE: (808) 875-7000

ADDRESS: P.O. Box 1516

CITY: Kihei STATE: Hawaii ZIP CODE: 96753

SIGNATURE: *Heugh J. Larrington*

APPLICANT: Lot 48-A, LLC

ADDRESS: P.O. Box 1516

CITY: Kihei STATE: Hawaii ZIP CODE: 96753

PHONE (HOME): --- PHONE (BUSINESS): (808) 875-7000 FAX: (808) 875-7075

SIGNATURE: *Heugh J. Larrington*

CONTACT: Munekiyo, Arakawa & Hiraga, Inc.

ADDRESS: 305 High Street, Suite 104

CITY: Wailuku STATE: Hawaii ZIP CODE: 96793

PHONE (HOME): --- PHONE (BUSINESS): (808) 244-2015 FAX: (808) 244-8729

EXISTING USE OF PROPERTY: The property contains two small storage sheds within its fenced boundaries. Lawn and landscaped areas comprise the balance of the property.

CURRENT STATE LAND USE DISTRICT BOUNDARY DESIGNATION: Urban

COMMUNITY PLAN DESIGNATION: Single Family

MAUI COUNTY ZONING DESIGNATION: R-3, Residential

OTHER SPECIAL DESIGNATIONS: _____

I. DESCRIPTION OF THE PROPOSED IMPROVEMENTS AND ANTICIPATED IMPACTS

A. PROJECT LOCATION AND SETTING

The landowner and applicant, Lot 48-A, LLC, proposes a three (3) lot subdivision of TMK 4-3-15:4, located at Napili, Maui, Hawaii. See Figure 1 and Figure 2. Encompassing approximately 1.4 acres, the subject property is located along the north side of Hui Road "E". Bordering Hui Road "E" along its southern extent are single-family residential units. Two (2) vacant parcels (TMK 4-3-15: 54 and 55) border the property to the east. The property's northern boundary is defined by the coastline, while a pedestrian shoreline accessway, extending from the Hui Road "E" cul-de-sac, borders the property along its southwest property line. Access to the subdivided lots will be via Hui Road "E". Beyond Hui Road "E", surrounding land uses in the immediate vicinity include single-family residential, condominium and multi-family uses.

The property contains two (2) storage sheds measuring approximately 840 square feet and 580 square feet, respectively. A maintained lawn and landscaped perimeter make up the balance of the property.

B. PROPOSED ACTION

A three (3)-lot subdivision is proposed by the applicant. The lot sizes will range between approximately 16,900 square feet and 23,700 square feet. Improvements proposed in connection with the subdivision include the following:

1. Installation of approximately 220 lineal feet of curb, gutter, sidewalk and related improvements along Lower Honoapiilani Road;
2. Installation of approximately 142 lineal feet of curb, gutter, sidewalk and related improvements along the north side of Hui Road "E";

-
3. Installation of a fire hydrant;
 4. Installation of a 2-inch diameter force main to allow the conveyance of wastewater from each lot to the existing County sewerline on Lower Honoapiilani Highway; and
 5. Electrical, telephone and cable TV service.

The estimated cost for the foregoing improvements is \$91,400.00. Implementation of subdivision improvements will commence upon receipt of required permits and upon approval of construction documents.

C. RELATIONSHIP OF THE PROPOSED ACTION TO LAND USE PLANS, POLICIES AND CONTROLS

The property is within the State "Urban" district. The West Maui Community Plan designates the property as Single-Family. Underlying zoning for the property is R-3, Residential. The proposed subdivision is in consonance with the applicable land use designations.

The property is a shore-fronting parcel and must conform with setback requirements set forth in the Rules of the Maui Planning Commission Relating to the Shoreline Area of the Islands of Kahoolawe, Lanai, and Maui. Setbacks for the three (3) lots will range from approximately 42 feet to 55 feet. See Exhibit "A". No improvements are proposed within the setback area.

It is noted that the shoreline bordering the property is rocky and fixed.

D. PROBABLE IMPACTS

Construction activities associated with the proposed subdivision improvements may create temporary inconveniences, as construction vehicles and equipment (e.g., backhoes, concrete trucks) are used to

complete curb, gutter and sidewalk work. Appropriate traffic control measures will be used to ensure the safe and efficient passage of vehicles along both Lower Honoapiilani Highway and Hui Road "E". In addition to possible construction traffic impacts, construction noise and fugitive dust impacts will need to be addressed by the contractor. In this regard, construction is anticipated to be limited to daylight hours to help mitigate nuisance impacts. As required, sections of Hui Road "E" and Lower Honoapiilani Highway will be watered down while roadway improvements are undertaken. Existing grades of each lot will be maintained.

The creation of three (3) lots is not anticipated to have adverse long-term impacts upon infrastructure and public services. In particular, the subject action is not expected to affect traffic operations, water and wastewater systems. The development of the properties for three (3) single-family residences will not alter drainage patterns and characteristics. The increased runoff resulting from the new roofed and paved areas of the single-family residences will not adversely affect downstream or adjacent properties.

The property has been previously cleared and landscaped. There are no significant or sensitive habitats on the property. There are no surface archaeological features on the site.

E. ALTERNATIVES TO THE PROPOSED ACTION

With the exception of the "no action" alternative, no other subdivision alternative has been considered by the applicant. In the context of the property's existing land use designation and physical characteristics, the three-lot configuration proposed is deemed to be both appropriate and viable.

F. MITIGATING MEASURES TO MINIMIZE IMPACTS

The primary impacts associated with the proposed subdivision are those related to the attendant roadway improvements. These impacts include additional noise, dust and construction traffic. To mitigate the effects of these impacts, construction will be limited to daylight hours. As appropriate, traffic control, as well as noise and dust mitigation measures will also be implemented to ensure that nuisance and inconveniences to neighboring residents are minimized.

G. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES

The proposed subdivision would involve the commitment of fuel, labor, funding and material resources. No other irreversible or irretrievable commitment of resources resulting from the project is anticipated.

**ORDER OF MAGNITUDE ESTIMATE
FOR
SUBDIVISION OF LOT 48-A INTO 3 LOTS**

March 4, 2000

Description	Approx. Quan.	Unit	Unit Price	Total
<u>ROADWIDENING</u>				
<u>L. Honoapiilani Road</u>				
Grading L. Honoapiilani Road	220	I.f.	\$ 5.00	\$ 1,100
2½ AC	41	ton	\$ 85.00	\$ 3,485
4" ATB	66	ton	\$ 82.00	\$ 5,412
6" SBC	100	ton	\$ 35.00	\$ 3,500
Primer	103	gal.	\$ 4.00	\$ 412
Conc. Curb and Gutter	220	I.f.	\$ 20.00	\$ 4,400
4' Sidewalk	220	I.f.	\$ 18.00	\$ 3,960
Driveway Curb Cut and Apron	1	each	\$ 1,000.00	\$ 1,000
Traffic Control		L.S.		\$ 2,000
Grassing Shoulder	880	s.f.	\$ 0.50	\$ 440
Dust Control		L.S.		\$ 2,000
Subtotal - L. Honoapiilani Road:				\$ 27,709
<u>Hui Road E</u>				
Grading L. Honoapiilani Road	400	I.f.	\$ 5.00	\$ 2,000
2" AC	36	ton	\$ 85.00	\$ 3,060
6" UTB	108	ton	\$ 35.00	\$ 3,780
Primer	112	gal.	\$ 4.00	\$ 448
Conc. Curb and Gutter	142	I.f.	\$ 20.00	\$ 2,840
Sidewalk	142	I.f.	\$ 18.00	\$ 2,556
Driveway Curb Cut and Apron	2	each	\$ 1,000.00	\$ 2,000
Traffic Control		L.S.		\$ 1,000
Grassing Shoulder	600	s.f.	\$ 0.50	\$ 300
Dust Control		L.S.		\$ 2,000
Subtotal- Hui Road E:				\$ 19,984
<u>WATER SYSTEM:</u>				
Fire Hydrant	1	each	\$ 4,000.00	\$ 4,000
Double Service Conn.	1	each	\$ 2,000.00	\$ 2,000
Subtotal - Water System:				\$ 6,000

Description	Approx. Quan.	Unit ¹	Unit Price	Total
<u>SEWER SYSTEM:</u>				
2" HPE Force Main	900	l.f.	\$ 20.00	\$ 18,000
Connection to Existing SMH	1	each	\$ 3,000.00	\$ 3,000
Conc. Anchor Beam Block	3	each	\$ 300.00	\$ 900
Subtotal - Sewer System:				\$ 21,900
<u>ELECTRICAL, TELEPHONE, CATV SYSTEM:</u>				
Service Lateral	3	each	\$ 2,500.00	\$ 7,500
Subtotal - Electrical, Telephone, CATV System:				\$ 7,500
SUM OF ALL ITEMS:				\$ 83,093
10% CONTINGENCY:				\$ 8,309
PROBABLE CONSTRUCTION COST:				\$ 91,402

JAMES "KIMO" APANA
Mayor

DAVID C. GOODE
Director

MILTON M. ARAKAWA, A.I.C.P.
Deputy Director



RALPH M. NAGAMINE, L.S., P.E.
Land Use and Codes Administration

RONALD R. RISK, P.E.
Wastewater Reclamation Division

LLOYD P.C.W. LEE, P.E.
Engineering Division

Solid Waste Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

October 3, 2001

Mr. Reed M. Ariyoshi, P.E., P.L.S.
WARREN S. UNEMORI ENGINEERING, INC.
2145 Wells Street, Suite 403
Wailuku, Hawaii 96793


SUBJECT: **MAILEPAI HUI PARTITION SUBDIVISION**
TMK: (2) 4-3-015:004
LUCA FILE NO. 4.805

Dear Mr. Ariyoshi:

Final approval for the subject subdivision has been granted on October 3, 2001. An approved final plat is enclosed for your records.

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 270-7252.

Very truly yours,


for DAVID GOODE
Director of Public Works
And Waste Management

Enclosure

LSN S:\LUCA\ALL\SUBD\LUCASUBD\REG4\4#805-1.fin

xc: Dept. of Finance, Real Property Tax Division w/final plat
Dept. of Finance, Tax Map Division w/final plat
Building Permit Section w/final plat
Engineering Division w/final plat
Wastewater Reclamation Division w/final plat
Dept. of Planning w/final plat
Dept. of Water Supply, SD 00-42 w/final plat
Police Dept. w/final plat
State Dept. of Health w/final plat
Maui Electric Co. w/final plat

P.B. Sullivan Construction Inc.

P.O. Box 734
Kihei, HI 96753
Phone: 808-875-2833
Fax: 808-874-5690
License # AC-22090

Project: Lower Honoapiilani Road Improvements Phase 4

Item #	Description	Bid Qty.	UM	Unit Price	Price
1	Roadway Excavation	102	CY	\$239.91	\$24,470.82
2	6" Permeable Pipe W/ Permeable	210	LF	\$76.34	\$16,031.40
3	6" UTB Under Roadway	40	TON	\$189.45	\$7,578.00
4	3" AC Pavement	27	TON	\$343.73	\$9,280.71
5	5" Asphalt Treated Base	37	TON	\$343.73	\$12,718.01
6	4" Base Course Under Swale	33	TON	\$218.27	\$7,202.91
7	1 1/2" Asphalt At Paved Swale	13	TON	\$343.73	\$4,468.49
8	18" Storm Drain	13	LF	\$178.58	\$2,321.54
9	24" Storm Drain	95	LF	\$172.78	\$16,414.10
10	Type "61614P" Drain Inlet (3' X 4')	3	EACH	\$4,579.08	\$13,737.24
11	ARV W/ Type F Manhole	2	EACH	\$2,745.71	\$5,491.42
12	12" Waterline (CL 52)	91	LF	\$999.88	\$90,989.08
13	Concrete Jacket (12" Waterline)	91	LF	\$512.36	\$46,624.76
14	Enginnering Design			By Others	
15	Control Survey/Staking			By Others	
16	Permits			By Others	
17	Construction Water			By Others	
Total					\$257,328.48

Estimate prepared using plan sheets C-4, C-5, C-32, C-32, C-37, C-38 drawn by Kent Morimoto dated 6/2001 for the Lower Honoapiilani Road Improvements Phase 4

Price Excludes:

Design, Authority Approvals, Construction Water or any items not specifically mentioned in this estimate.

0

0

02/12 '08 14:03 NO.700 01/03



Warren S. Unemori Engineering
2143 Wells Street, Suite 403
Wailuku, Maui, Hawaii 96793
(808)242-4403 FAX: (808)244-4856

TELECOPIER TRANSMITTAL

TO: Tim Farrington DATE: March 4, 2000
P.O. Box 1516 PROJECT: Mailepai Hui Subdivision
Kihei, Hawaii 96753 of Lot 48-A into 3 Lots
 JOB NO.: _____
 RE: _____

ATTENTION: _____

TELECOPIER NO.: 874-6450

We are transmitting 3 page(s) including this cover sheet. If they are not received, please call us and we will retransmit them as soon as possible.

Originals to be Mailed: ☐ yes ☒ no

Documents: Order of Magnitude Estimate of Construction Cost of Anticipated Improvements

Remarks: I wasn't exactly sure about existing improvements on Hui Road E. Therefore I assumed the worst case scenario. I also assumed that the existing 6-inch line will be able to deliver the required fire flow of 1000 gpm because of the very short run. Hope you're successful in convincing Planning that improvements will cost less than \$125,000.

Copies To: _____

By: _____

Good luck;

Warren S. Unemori

CONFIDENTIAL COMMUNICATION: This message is intended only for the use of the designated recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that you have received this document in error, and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this message in error, kindly notify us immediately by telephone. Thank you.

V:\PROJDATA\Prelim\Farrington Topo - Mailepai TMK 4-3-15 Par. 04\Corrptn\Fax\Fh00001.wpd

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000250

DEFENDANTS WARREN S. UNEMORI ENGINEERING INC. AND REED M.
ARIYOSHI'S RESPONSE TO PLAINTIFFS' FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS

Comes now Defendants WARREN S. UNEMORI ENGINEERING, INC. and REED M. ARIYOSHI hereinafter "WSUE/ARIYOSHI", by and through their attorney and responds to PLAINTIFFS' First Request for Production of Documents as follows:

General Objections and Conditions

1. Duplicative Discovery. WSUE/ARIYOSHI object to each request which purports to require it to produce documents which are already in the possession of PLAINTIFF.
2. Unduly Burdensome and Oppressive. WSUE/ARIYOSHI object to each request which seeks "ANY" or "ALL" documents on the grounds that such a request is unduly burdensome and oppressive.
3. Relevance Objection. WSUE/ARIYOSHI object to each request which seeks "ANY" or "ALL" documents on the grounds that such documents are neither relevant to the subject matter of this litigation nor reasonably calculated to lead to the discovery of admissible evidence.
4. Attorney Client Privilege and Work Product. WSUE/ARIYOSHI object to each request which seeks documents prepared by WSUE/ARIYOSHI's counsel, counsel's agents or consultants, or which seeks documents constituting or referring to communications between counsel, counsel's agents, counsel's consultants and/or WSUE/ARIYOSHI or their agents or representatives on the grounds that such documents are protected by the attorney-client privilege and/or work product doctrine.
5. Only Reasonable Inquiry. WSUE/ARIYOSHI object to each request to the extent that it purports to require WSUE/ARIYOSHI to search WSUE/ARIYOSHI facilities and inquire of WSUE/ARIYOSHI employees other than those facilities and employees which would reasonably be expected to have responsive information, on the ground that such request is unduly burdensome and oppressive. WSUE/ARIYOSHI's responses are based upon (1) a reasonable

search, given the time allotted to WSUE/ARIYOSHI to respond to the requests, of facilities and files or sections of document collections that could be reasonably expected to contain responsive information, and (2) inquiries of WSUE/ARIYOSHI employees or representatives who could reasonably be expected to possess responsive information. The subject matter of these requests is under continuing investigation. WSUE/ARIYOSHI expressly reserves the right to use or rely upon documents not identified in this Response if such documents are uncovered through WSUE continuing investigation.

6. Vague, Overbroad and No Time Limit. WSUE/ARIYOSHI object to these requests on the ground that they are vague and overbroad and require it to guess at what documents PLAINTIFF wants. Further, there is no limitation relevant to the time period for the requested documents.

7. No Knowledge of Plaintiff's Activities. WSUE/ARIYOSHI object to these requests to the extent that they seek the production of records solely within the knowledge of the PLAINTIFF.

8. Site of Production. WSUE/ARIYOSHI objects to production at the law offices of WRIGHT & KIRSCHBRAUM 1885 Main Street, Suite 108, Wailuku, HI 96793. WSUE/ARIYOSHI will make copies of the WSUE/ARIYOSHI files and other documents responsive to this Request available at the offices of Bruce M. Ito, 810 Richards Street, Suite 748, Honolulu, Hawaii, 96813 in addition, the original project files will be retained at the office of Bruce Ito for a limited time so that comparisons can be made with the original if the copies are illegible. Copies of such documents will be made at PLAINTIFF'S expense.

Responses to Requests for Production.

Requests 1.

Documents responsive to this request will be produced.

Request 2.

WSUE and ARIYOSHI have no documents responsive to this request as neither provided services for ANKA Inc.

Request 3.

Documents responsive to this request will be produced.

Request 4.

Documents responsive to this request will be produced.

Request 5.

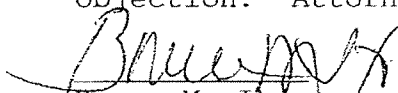
Documents responsive to this request will be produced.

Request 6.

No documents responsive to this request will be produced as neither WSUE nor ARIYOSHI performed any services for Boy Pointe Lot 48 LLC.

Request 7.

Objection. Attorney-Client privilege.

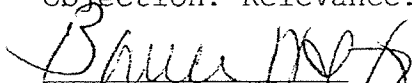

Bruce M. Ito

Request 8.

WSUE and ARIYOSHI have no documents responsive to this request as neither did work on potential building site on Lot 48A.

Request 9.

Objection. Relevance.


Bruce M. Ito

Without waiving the foregoing objection, documents responsive to this request will be produced.

Request 10.

WSUE and ARIYOSHI have no documents responsive to this request as neither performed any services for ANKA, Inc.

Request 11.

WSUE and ARIYOSHI will produce documents in its possession for the shoreline certification application that were submitted for Lot 48 A LLC.

Request 12.

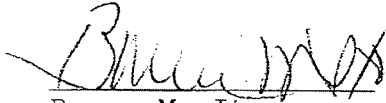
WSUE and ARIYOSHI have no documents responsive to this request; neither WSUE nor ARIYOSHI were employed to perform any services in connection with the Special Management Area Minor permit process.

Request 13.

WSEU and ARIYOSHI will produce these documents if the attorney client privilege between Tom Welch and this clients is waived.

Request 14.

Objection. Relevance.


Bruce M. Ito

Without waiving the foregoing objection, documents responsive to this request will be produced.

DATED: Honolulu, Hawaii, Jan 18, 2007.


BRUCE M. ITO

Attorney for Defendant WARREN
S. UNEMORI ENGINEERING, INC.
and REED M. ARIYOSHI

|
DECLARATION OF MATSON KELLEY

I, Matson Kelley (hereinafter “Declarant”) make the following Declaration and hereby declare the following under penalty of perjury:

1. I am a citizen of the United States of America and a resident of the Island and County of Maui, State of Hawai’i. I am over 21 years of age. I was the attorney for Christopher Salem in Dispute Prevention and Resolution Arbitration No. 07-0357-M/A.

2. I was the attorney for Christopher Salem in an action for a Motion to Vacate the above referenced Arbitration ruling before The Honorable Judge Joseph Cardoza in the Circuit Court of the Second Circuit Civil No. 09-1-0040(3).

Introduction

3. I have been informed that through the Request for Information (RFI) requests and with the assistance of staff attorneys with State of Hawaii Information Practices (“OIP”), the individual departments of the County of Maui have recently produced public documents and SMA Permit studies that were previously not disclosed in the arbitration and public officials during legal proceedings involving private developer Lot 48A, LLC. The newly released evidence now confirms that Lot 48A, LLC’s SMA Permit Project Assessment Report and related environmental studies were in the possession of the County of Maui during critical stages of dispute resolution in the above entitled referenced case.

Public documents received.

4. I have received from Mr. Salem a copy of 94 pages of a “Complete file and copy of SMA Permit application, issued SMA Permit, related SMA Permit studies, SMA Permit extensions, and final SMA inspection and approvals issued by the Department of Planning to

developer Lot 48A, LLC, SMA Permit # SM2 2000/0042” issued by the County of Maui Department of Planning on November 4, 2015, in response to Mr. Salem’s Request for Inspection of Public Documents (#15-0001744).

The file contains the following relevant documents;

- Doc # 000002 – Letter from State of Hawaii Office of Information Practices dated November 2, 2015.

- Doc # 000006 – Cover Page to a “Special Management Area Assessment” stamped “ORIGINAL” which was prepared for Lot 48A, LLC by the land planning firm Munikeyo, Arakawa, & Hiraga, Inc. For the record, Arakawa is former County of Maui Public Works Director Milton Arakawa.

- Doc # 000007 – 000026 Cover Page and related contents including proposed action, impacts, mitigation measures, order of magnitude estimate, subdivision plan, etc. to a “Special Management Area Assessment” prepared by for Lot 48A, LLC by Munikeyo, Arakawa, & Hiraga, Inc., dated May, 2000.

- No “ORIGINAL” stamp.

- Doc # 000027 – #000048 Cover Page and related contents including proposed action, impacts, mitigation measures, order of magnitude estimate, subdivision plan, etc. to a “Special Management Area Assessment” prepared by for Lot 48A, LLC by the land planning firm Munikeyo, Arakawa, & Hiraga, Inc., dated May, 2000.

- No “ORIGINAL” stamp.

- Doc # 0000066 – Cover Page and related contents including proposed action, impacts, mitigation measures, order of magnitude estimate, subdivision plan, etc. to a “Special Management Area Assessment” prepared by for Lot 48A, LLC by the land planning firm Munikeyo, Arakawa, & Hiraga, Inc., dated May, 2000.

- No “ORIGINAL” stamp

- Jan 3, 2005 Fax from Lot 48A, LLC Partner Colin Moreton

- Doc 000081 - July 19, 2001 Request for Government Information from Chris Salem to the County of Maui Planning Department including the following;

- Request for SMA Application SM2 2000/0042

- Request for Improvement Valuation Summary

- Doc 000049 - June 22, 2009 Request to Access Government Record from Chris Salem (RFS#09-0002016) relating to Lot 48A, LLC’s SMA File – SM2 2000/0042.

- Note 7/23/09 – “Can’t locate file, informed Chris”
 - Doc 000052 – August 3, 2009 letter to Mr. Salem from the Department of Planning in response to Request for Government Record relating to SM2 2000/0042 and Shoreline Certification Maps.
 - Letter states “The SM2 File cannot be found”
 - No. of Pages including Cover Sheet – Only 6
 - Doc 000072 – October 13, 2009 letter from Department of Planning Program Administrator Clayton Yoshida on behalf of Planning Director Jeff Hunt to Mr. Li of the State of Hawaii Office of Planning.
 - Referenced documents are not attached to letter
 - Doc 000089 – Order relating to County of Maui’s Motion to Quash Debtor Christopher Salem’s Rule 2004 Subpoenas, including requests for a copy of final inspection and acceptance by the Department of Planning for SMA Permit – SM2 2000/0042 for Lot 48A, LLC
 - Power point presentation authored by Mr. Salem titled “Developer Violations of Special Management Area Permits”

What was presented by my firm previously to The Honorable Judge Joseph Cardoza

5. Attached hereto as Exhibit ____ is a true and correct copy of the transcript of Proceedings from the hearing on September 23, 2009 before the Hon. Joseph E. Cardoza in *Christopher Salem v. Lot 48A LLC*, Civ. No. 09-1-0040(3).

- The compelled and requested Lot 48A, LLC SMA Permit Project Assessment Report and Order of Magnitude Estimate authored by former Public Works Director Milton Arakawa’s land planning firm were never produced to myself or Mr. Salem by the County of Maui, Developer Lot 48A, LLC, or Unemori Engineering, Inc. at any time during Arbitration proceedings, or dating back to 2001 to Mr. Salem.
- Doc #000025, dated May 9, 2000, represents a signed SMA Permit application by Hugh Farrington authorizing Munekiyo, Arakawa, and Hiraga, Inc. for the preparation, filing, and processing of an application for Special Management Area Assessment for the subject subdivision.
- Doc 000037- 000939 is an Engineer’s Cost Estimate and Order of Magnitude Estimate for Subdivision of Lot 48A into 3 Lots.

- Doc 000038 describes Road widening of Lower Honoapiilani Road with related quantities, unit prices, and total cost of \$27,709.00.
- Doc 000042 is a photo of the subdivision frontage area of road widening along Lower Honoapiilani Road.
- Doc 000031 is a narrative description of Description of Proposed Improvements and Anticipated Impacts - “Proposed Action”, including “Installation of approximately 220 lineal feet of curb, gutter, sidewalk, and related improvements along Lower Honoapiilani Road.

Statement of Related Facts

6. During arbitration proceedings, I submitted a discovery request and filed a motion to compel the complete copies of Developer Lot 48A, LLC’s SMA Permit files, including all studies, reports, valuations, etc., and was informed by Lot 48A, LLC’s legal counsel “*that they are not relevant, and therefore they will not be produced*”.

7. To my knowledge and belief, my former client has never been involved with any litigation involving the County of Maui. It is my understanding that his efforts are in support of the public interest and bring forth financial recovery and transparency to the Maui County Government.

Conclusion

8. The investigation into the whereabouts of public documents that were compelled, subpoenaed, and requested through written requests to Developer Lot 48A, LLC; their Counsel; Unemori Engineering, Inc.; and, the County of Maui Department of Planning dating back to August of 2001, have finally resulted in additional documents being produced.

9. As stated in my argument to Honorable Judge Cardoza on September 29, 2009; “*We fought tooth and nail in this case to get documents as evidenced by our motions to compel, and we were stonewalled*”.

10. Developer Lot 48A, LLC's SMA Permit file and related studies and communications authored by former Public Works Director Milton Arakawa's land planning firm Munekiyo, Arakawa, and Hiraga, Inc , have now been discovered to have been in the possession of the County of Maui. *I argued to the Court at the original hearing that "My client should not have been required to fight over this issue. It's incredible. A half million dollars in litigation was spent on this when this document clearly shows that they were required to do it."*

The "it" referenced in the quotation above, was a subdivision entitlement obligation to complete the roadway engineering improvements and environmental mitigations along Lower Honoapiilani Road and Hui Road E which were vested in an SMA Permit SM2 2000/0042, issued, signed, and agreed to between Developer Lot 48A, LLC, their authorized consultant Munekiyo, Arakawa, and Hiraga Inc., their civil engineer Unemori Engineering, Inc., and the County of Maui Department of Planning; which Developer Lot 48A, LLC was obligated to complete, and failed to do so. The Lot 48A, LLC SMA Permit SM2 2000/0042 is now expired and unfulfilled.

11. As I stated to the Honorable Circuit Court of the Second Circuit on September 29, 2009;

I also argued to the Court at the original hearing that "Now there's testimony at the arbitration that -- there's testimony from the respondent, Lot 48, LLC, the only person that assisted with the subdivision was Unemori Engineering. They lied to me. They lied to the arbitrator. That was not disclosed. And ultimately -- even through the declaration, which we initially supported, attached to our motion -- they lied to this Court."

12. The May 27, 2010 "Notice of Intent to Collect" sent to Christopher Salem by former Public Works Director Milton Arakawa, claiming that Mr. Salem was obligated to pay

the County of Maui for roadway frontage engineering and drainage improvements along his Lower Honoapiilani property frontage that were already vested in Munikiyo, Arakawa, and Hiraga, Inc SMA Permit SM2 2000/0042 assessment studies issued to his former client Lot 48A, LLC and related Unemori, Inc engineering valuation, is the “smoking gun” held by Public Works and Lot 48A, LLC.

13. The “deferral” cloud on Mr. Salem’s property title, that we demanded upon Public Works Director Milton Arakawa to expunge from my client’s property prior to arbitration with Lot 48A, LLC, should have been removed by the County of Maui in 2001 when Lot 48A, LLC was issued County entitlement and subdivision approvals of the 3 Lot re subdivision of Lot 48A.

I, MATSON KELLEY, declare under penalty of law that the foregoing is true and correct to the best of my knowledge and belief.

DATED: Wailuku, Maui, Hawai’i, March 15, 2016.


MATSON KELLEY
Declarant

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL K. SCHMITT
ATTORNEY

DIRECT #S:
PHONE - (808) 529-7422
FAX - (808) 535-8018

June 6, 2017

VIA HAND DELIVERY

Office of Disciplinary Counsel
1132 Bishop Street, Suite 300
Honolulu, Hawai'i 96813

Re: Chris Salem - Allegations of Professional Misconduct by Maui
Corporation Counsel

Dear Sir/Madam:

A former client of mine, Christopher Salem, a resident of the County of Maui, has asked me to bring to your attention potential professional misconduct by certain attorneys for the County of Maui related to his claims for matters relating to Lot 48A of the Olowalu Mauka subdivision. This firm represented Mr. Salem in an action brought against certain design professionals related to that development, *Salem et al. v. Unemori et al*, Civil No. 07-1-0540 (M). We represented Mr. Salem from approximately October 2010 through February 2012 and have not had any substantive involvement in the matter since that time. While I was counsel for Mr. Salem, however, I prepared a letter to Milton Arakawa, then the Director of Public Works for Maui, dated December 28, 2010, a copy of which is enclosed for your reference. That letter sought the production of certain key records related to the development. Not only did the County not produce the requested records, but also, then deputy corporation counsel, Jane Love, threatened me with Rule 11 sanctions. The requested materials were not produced.

We withdrew as counsel for Mr. Salem in that lawsuit in February 2012 but subsequent events seem to indicate that the records that we requested so many years ago did and do exist. Attached hereto is the affidavit of Jo Anne Johnson Winer dated August 11, 2015, the declaration of Matson Kelley dated March 15, 2016 and a complaint filed in Second Circuit Court by Mr. Salem (Civil No. 17-1-0208(3)), which provide greater detail of the actions related these important documents since our withdrawal.

MCCORRISTON MILLER MUKAI MACKINNON LLP

ATTORNEYS AT LAW

RANDALL K. SCHMITT
ATTORNEY

DIRECT #S:
PHONE - (808) 529-7422
FAX - (808) 535-8018

December 28, 2010

BY REGISTERED MAIL
RETURN RECEIPT REQUESTED

Milton Arakawa, A.I.C.P.
Public Works Management Director
200 S. High Street
Wailuku, Maui, Hawai'i 96793

Re: C. Salem Claims

Dear Mr. Arakawa:

Please be advised that this firm has been retained by Christopher Salem to pursue claims against you personally and prepare and file the appropriate lawsuit. While your recent admission to the County Council that under your authority over 1800 subdivision agreements involving developer roadway obligations have gone unaccounted for and uncollected is both shocking and disturbing on a County wide level, Mr. Salem's claims and damages are both personal and substantial.

Mr. Salem owns a home on Hui Road E over which there was an original 3 lots or less subdivision agreement. As originally drafted, that subdivision agreement allowed a onetime deferral of specific drainage and roadway improvements. As we now know, when your developer client in private practice with Munikiyo, Arakawa, and Hiraga, Inc. ("MAH") submitted a plan to re-subdivide one of the 3 parent parcels, engineering studies, project assessments, SMA permits and land entitlements were issued and conditioned upon that Developer completing the originally deferred roadway improvements.

Your company, MAH, was personally contracted by this Developer to process the necessary SMA assessment studies and SMA Permits just prior to your appointment to your present position with the County of Maui. Immediately after the start of your employment with the County of Maui, you unilaterally shifted the subdivision and SMA Permit drainage and roadway conditions back onto to Mr. Salem and the other owners without notice to Mr. Salem, the general public, or the Planning Commission by using as second set of 3 lots or less deferral agreements. This was illegal and done with the clear intent to benefit an MAH client while in public office.

Formal requests for production of documents related to this secret decision, both compelled and formally requested of the Department of Public Works, have proven this shifting was done in the secret without any apparent consultation with authorized County Directors nor

240539.3

P.O. Box 2800 • Honolulu, Hawaii 96803-2800
Five Waterfront Plaza, 4th Floor • 500 Ala Moana Boulevard • Honolulu, Hawaii 96813
Telephone: (808) 529-7300 • FAX: (808) 524-8293

was it in any way within your authority. I am informed that Mr. Munikiyo was not consulted prior to the alterations to the MAH studies and SMA assessment submissions. It was, we believe, an *ultra vires* act for which you personally orchestrated. As it was to the clear benefit of this former developer client involving hundreds of thousands of dollars, they too may have been involved in a collective action (also known as a conspiracy) to commit this unlawful and subversive act. Questions remain on how many of the 1800 3 lots or less agreements involve this type of intentional manipulation of County ordinances.

Unfortunately for my client, the contributing circumstances to your unlawful administrative decisions do not end with the manipulation of the 3 lots or less agreements. The underlying oceanfront land has now been subdivided twice into five lots with no public or environmental review. This raises further questions regarding your administration of the order of magnitude estimates by the engineer of record for the SMA application. Despite being notified of the intentionally misleading valuations by the engineer of record, you have refused to investigate this matter and take appropriate action to the detriment of my client.

This letter is to place you on notice of these claims and to demand that you immediately notify your various insurance carriers of this cause of action. Mr. Salem has suffered serious financial losses relating to your actions including but not limited to hundreds of thousands of dollars spent in litigating this issue. Your notice to your insurance carriers should include notice to your partners at Munikiyo Arakawa and Hiraga of these claims.

In an effort to resolve this matter, please be advised that we would be willing to enter into good faith mediation with a neutral mediator prior to filing the lawsuit. This option is predicated on your intent to do so in a meaningful fashion with the intent to resolve this situation prior to incurring additional losses and substantial fees and costs.

Please also provide me with contact information for your legal counsel if you retain an attorney to assist you with this claim.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP


Randall K. Schmitt

RKS:jmc

cc: C. Salem (via email only)

Office of Disciplinary Counsel
June 6, 2017
Page 2

I would be happy to discuss any aspect of this matter with you concerning the period of my involvement but since we no longer represent Mr. Salem, most of the information concerning any recent events must necessarily come from him.

Sincerely,

McCORRISTON MILLER MUKAI MacKINNON LLP

A handwritten signature in black ink that reads "Randall K. Schmitt". The signature is written in a cursive, flowing style.

Randall K. Schmitt

RKS:jmc

Enclosures

cc: Christopher Salem (via email only) (with enclosures)
358973.1

ORIGINAL

DEPARTMENT OF THE CORPORATION COUNSEL 205

PATRICK K. WONG 5878
Corporation Counsel
MOANA M. LUTEY 6385
CHRISTIE M. TRENHOLME 10095
Deputies Corporation Counsel
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
Telephone No.: (808) 270-7741
Facsimile No.: (808) 270-7152
E-mail: moana.lutey@co.maui.hi.us
E-mail: christie.trenholme@co.maui.hi.us

FILED

2017 JUL -6 PM 3:00

M. FERNANDEZ-KAHAKAUWILA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorneys for Defendants

COUNTY OF MAUI, WILLIAM SPENCE and BRIAN BILBERRY

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

Requestor,

vs.

THE COUNTY OF MAUI; THE COUNTY OF
MAUI, by and through WILLIAM SPENCE, as
DIRECTOR OF PLANNING, and BRIAN
BILBERRY, DEPUTY THE CORPORATION
COUNSEL WITH THE DEPARTMENT OF
CORPORATION COUNSEL,

Defendants.

Civil No.: 17-1-0208 (1)

DEFENDANTS COUNTY OF MAUI,
WILLIAM SPENCE AND BRIAN
BILBERRY'S REPLY
MEMORANDUM IN SUPPORT OF
THEIR MOTION TO DISMISS OR, IN
THE ALTERNATIVE, FOR
SUMMARY JUDGMENT;
CERTIFICATE OF SERVICE

Hearing:

Date: July 11, 2017

Time: 8:15 a.m.

Judge: Honorable Rhonda I. L. Loo

No Trial Date Set

**DEFENDANTS COUNTY OF MAUI, WILLIAM SPENCE AND BRIAN BILBERRY'S
REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS OR,
IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT**

I. ARGUMENT

JUDGMENT IN FAVOR OF THE DEFENDANTS IS APPROPRIATE

The County agrees that, in general, government records are subject to disclosure when requested. Unfortunately, the document Plaintiff seeks does not exist. *See* Declarations of William R. Spence and Brian A. Bilberry, attached to Defendants' Motion. Therefore, there is no basis for this lawsuit to continue because there is absolutely no relief that the Court can grant Plaintiff in this matter.

Plaintiff's arguments related to what the County should have done in terms of record keeping are misplaced. This litigation is to address the County's failure to produce public records to Plaintiff – not how the County conducts its business. As cited in the County's motion, the UIPA only requires the County to provide access to public records. There is no affirmative obligation to maintain records. *State of Hawaii Organization of Police Officers v. Society of Professional Journalists*, 83 Hawai'i 378, 401, 927 P.2d 386, 393 (1996).

As the record currently exists, there is no evidence before this Court that disputes Defendants' position. The declaration provided from Matson Kelley is in reference to a separate matter where the documents were eventually produced. That declaration is completely irrelevant in the current matter.

Likewise, the letter from Plaintiff's former legal counsel, Randall K. Schmitt, is equally irrelevant. That letter was sent to the Office of Disciplinary Counsel from litigation legal counsel withdrew from in 2012.¹ Clearly that letter does not dispute the County's position that the requested document that forms the basis of this lawsuit does not exist.

¹ A declaration from JoAnne Johnson Winer is referenced in the letter but was not attached to the Exhibit "B".

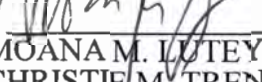
In the absence of any admissible evidence to dispute Defendants' evidence, judgment in favor of Defendants is appropriate. There is no issue of material fact remaining in this matter.²

II. CONCLUSION

Defendants respectfully request that their motion be denied as there are no records responsive to Plaintiff's request. As such, there is no claim upon which relief can be granted and there are no issues of material fact remaining.

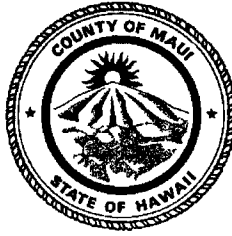
DATED: Wailuku, Maui, Hawaii, JUL 06 2017.

PATRICK K. WONG
Corporation Counsel
Attorney for Defendants
THE COUNTY OF MAUI, WILLIAM SPENCE
and BRIAN BILBERRY

By 
MOANA M. LUTEY
CHRISTIE M. TRENHOLME
Deputies Corporation Counsel

² Plaintiff's arguments related to a conflict of interest is incomprehensible. There is no conflict of interest with the Department of the Corporation Counsel being involved in this matter.

ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740
FACSIMILE: (808) 270-7152

October 6, 2017

Donald Amano
State of Hawaii
Office of Information Practices
No. 1 S. Hotel Street, Ste. 107
Honolulu, HI 96813

RE: U Appeal 18 - 7 (Christopher Salem)

Dear Mr. Amano:

This responds to Mr. Salem's appeal documented in the letter received from your office on September 28, 2017.

The County has no further documentation to provide Mr. Salem. Everything that the County has in its possession related to Lot 48A has previously been produced at Mr. Salem's request. As noted in prior correspondence with your office, Mr. Salem has made approximately 30 UIPA requests related to Lot 48A.

The record Mr. Salem most recently requested does not exist in any County record. Mr. Salem acknowledged that this document did not exist in his letter to you dated September 6, 2017.

In spite of Mr. Salem's confirmation that the requested record does not exist, the Department of Public Works and Department of Planning also checked their records. No responsive record was discovered.

Donald Amano
State of Hawaii
Office of Information Practices
October 6, 2017
Page 2

The County remains committed to providing all documents within its possession that are not protected from disclosure in compliance with the UIPA. However, there is nothing that we have in our possession that has not already been provided to Mr. Salem.

Thank you for your attention to this matter. Please contact me if you have any questions or comments.

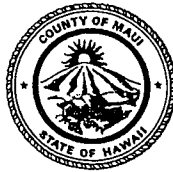
Best,



Moana M. Luzey
Deputy Corporation Counsel

MML:chs

CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

MEMO TO: Brian T. Moto, Corporation Counsel

FROM: Professional Services Procurement Selection Committee
(Moana Luteva, Jane Love, Richard B. Ross)

DATE: July 3, 2008

The Selection Committee for Professional Services Procurement met on July 3, 2008 to consider the retention of outside counsel to assist the County in the various legal matters arising out of the announced decision of Molokai Utilities, Inc., Mosco, Inc., and Wai`ola O Moloka`i to cease water and wastewater services in West Maui as of August 31, 2008.

1. Margery Bronster, Bronster & Hoshibata, Honolulu

- (a) Experience and professional qualifications relevant to the project type

Margery Bronster is the former Attorney General of the State of Hawaii and has handled high profile cases in the past. She has broad regulatory and administrative law experience before state agencies, and also has a wealth of litigation experience handling complex matters in state and federal courts. She and members of her firm have previously been retained to handle cases on behalf of the State of Hawaii, the City & County of Honolulu, and the County of Hawaii. Ms. Bronster and her firm have experience in antitrust, securities, real estate and land disputes, fraud, and environmental cases, and plaintiff's *qui tam*, among others.

- (b) Past experience

To the committee's knowledge, the County of Maui has not previously retained the Bronster firm. The firm was opposite to the County of Maui in one of the FLSA cases, now concluded, but Cheryl Tipton reports that the firm only served as local counsel and did not take an active role in the case. Cheryl did not have any bad experiences with the Bronster firm in the course of that litigation.

(c) Capacity to accomplish the work in the allotted time

According to Ms. Bronster, she and her colleagues had set aside a significant amount of time for a lengthy trial scheduled to start in early July, but the trial date was vacated when the plaintiff died suddenly. She indicates that she and her colleagues have time to begin immediately, and that the firm has sufficient staff to handle litigation going forward on multiple fronts. The Bronster firm specializes in litigation. Should transactional work be necessary, Ms. Bronster would recommend counsel from other firms.

(d) Additional criteria

Ms. Bronster charges between \$275 and \$400 per hour. John Hosibata charges between \$200 and \$350 per hour. Jeanette Castagnetti and Rex Fujichaku charge between \$200 and \$300 per hour. The firm has negotiated lower rates for special counsel work on behalf of state and county agencies.

The Bronster firm has completed its conflict check and reports no conflicts.

Rank: First Choice

REDACTED

2.

- (a) Experience and professional qualifications relevant to the project type

REDACTED

- (b) Past experience

REDACTED

REDACTED

- (c) Capacity to accomplish the work in the allotted time

REDACTED

- (d) Additional criteria

REDACTED

Rank: Second Choice

REDACTED

3

- (a) Experience and professional qualifications relevant to the project type

REDACTED

- (b) Past experience

REDACTED

- (c) Capacity to accomplish the work in the allotted time

REDACTED

Professional Services Procurement Selection Committee
July 3, 2008
Page 4

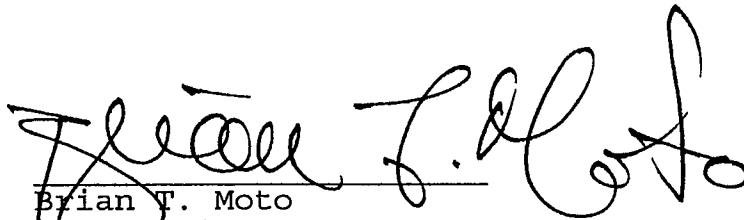
REDACTED

(d) Additional criteria

REDACTED

Rank: Third Choice

Recommendations approved:



Brian T. Moto
Corporation Counsel

S:\ALL\JEL\Litigation Section Administration\7.3.08selectioncomm.wpd

Resolution

No. 08-67

AUTHORIZING THE EMPLOYMENT OF
SPECIAL COUNSEL BRONSTER & HOSHIBATA
WITH RESPECT TO POSSIBLE LEGAL CLAIMS
RELATING TO WATER AND WASTEWATER
UTILITY SERVICE ON MOLOKAI

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch, the largest private landowner on Molokai, has unilaterally announced that it intends to cease operating its water and wastewater utilities, namely, Molokai Public Utilities, Inc., Wai`ola O Moloka`i, Inc., and Mosco, Inc. (hereafter collectively referred to as "the Utilities") which provide water and wastewater service to residents, businesses, and public facilities in West Molokai; and

WHEREAS, § 128-9(4), Hawaii Revised Statutes, grants to the Governor emergency powers to take over and operate the Utilities, if necessary to assure continuation of utility service; and

WHEREAS, § 342D-10, Hawaii Revised Statutes, grants to the Governor or the Director of the State Department of Health emergency powers to avoid adverse health consequences and environmental impacts that will likely result if the Utilities abandon their wastewater treatment facilities; and

WHEREAS, the Utilities are subject to regulation by several State agencies, including the Public Utilities Commission, the State Commission on Water Resource Management, the State Department of Health, and the State Department of Agriculture; and

WHEREAS, the County has filed a formal complaint against the Utilities with the Public Utilities Commission, bearing Docket No. 2008-0116; and

WHEREAS, the Public Utilities Commission has made the County a party to a Temporary Rate Relief proceeding, bearing Docket No. 2008-0115; and

WHEREAS, to protect public health and safety, to prevent environmental harm, and to avoid substantial financial costs to the affected Molokai residents, businesses, and public facilities, as well as to the County's taxpayers, the County may need to pursue a variety of legal and equitable claims arising under County, State, Federal and/or international law; and

WHEREAS, the potential legal and equitable claims may encompass a wide range of legal specialties, including environmental law, public utility law, administrative law, water law, constitutional law, plaintiff's *qui tam*, international law, and complex litigation; and

WHEREAS, the Selection Committee of the Department of the Corporation Counsel has met as required by the State Procurement Code, and has identified and ranked three law firms on the County's eligibility list, of which the firm Bronster & Hoshibata was ranked first; and

WHEREAS, the recommendation of the Selection Committee was accepted by the Corporation Counsel; and

Resolution No. 08-67

WHEREAS, pursuant to Chapter 3-6.6 of the Revised Charter of the County of Maui (1983), as amended, the Council alone is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote; and

WHEREAS, the Council finds that, because of the need for specialized expertise and the urgency and complexity of these matters, there is a real necessity to retain the law firm of Bronster & Hoshibata as special counsel to advise and represent the County; and

WHEREAS, Bronster & Hoshibata and the Department of the Corporation Counsel shall work as a team in this matter and take all possible steps to minimize the amount of attorneys' fees and costs; and

WHEREAS, Bronster & Hoshibata's conduct in this matter shall reflect the firm's understanding that the County of Maui is a public entity that has obligations, concerns, and interests that may extend beyond those of a similarly-situated private litigant; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of the firm Bronster & Hoshibata as special counsel to represent the County of Maui in all legal matters pertaining to the Utilities; and

Resolution No. 08-67

2. That total compensation for the employment of the firm Bronster & Hoshibata as special counsel shall not exceed \$100,000.00; and

3. That the hourly rate for partner Margery Bronster shall not exceed \$275.00; and

4. That the hourly rate for all other attorneys in the firm shall not exceed \$225.00; and

5. That the hourly rate for paralegal staff shall not exceed \$100.00; and

6. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

7. That the compensable costs shall include: (1) fees for printing and witnesses; (2) fees for copies necessarily obtained for use in the case; (3) fees of the clerk and marshal; (4) fees of the court reporter for necessary transcripts; (5) docket fees; and (6) compensation of court-appointed experts and interpreters; and


8. That the non-compensable costs shall include: (1) telephone calls; (2) facsimile charges; (3) postal charges; (4) messenger charges; (5) fees for computerized legal research; (6) travel, unless pre-approved by the Corporation Counsel; (7) investigative expenses, unless pre-approved by the Corporation Counsel; and (8) other costs reasonably considered part of a law firm's overhead; and

9. That in instances of travel, both inter-island and out-of-state travel includes travel on regular coach economy fare and must be pre-approved by the Corporation Counsel; and

10. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require Council approval; and

11. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

S:\ALL\JEL\Molokai Ranch Formal Complaint\Reso\Special Counsel.wpd

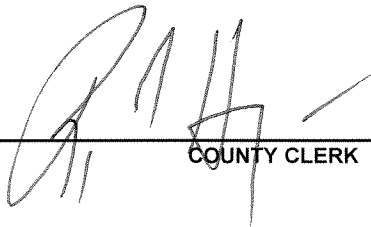
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 08-67 was adopted by the Council of the County of Maui, State of Hawaii, on the 8th day of August, 2008, by the following vote:

MEMBERS	G. Riki HOKAMA Chair	Dennis A. MATEO Vice-Chair	Michelle ANDERSON	Gladys C. BAISA	Jo Anne JOHNSON	William J. MEDEIROS	Michael J. MOLINA	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Excused	Excused	Aye	Aye	Excused	Aye	Aye	Aye



COUNTY CLERK

Resolution

No. 08-105

AUTHORIZING ADDITIONAL COMPENSATION OF
SPECIAL COUNSEL BRONSTER HOSHIBATA, A LAW CORPORATION,
WITH RESPECT TO LEGAL CLAIMS
RELATING TO WATER AND WASTEWATER
UTILITY SERVICE ON MOLOKAI

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch, the largest private landowner on Molokai, unilaterally announced its intention to cease operating its water and wastewater utilities, namely, Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc. (hereafter collectively referred to as "the Utilities") which provide water and wastewater service to residents, businesses, and public facilities in West Molokai; and

WHEREAS, the Public Utilities Commission has made the County a party to a Temporary Rate Relief proceeding, bearing Docket No. 2008-0115; and

WHEREAS, the County has filed a formal complaint against the Utilities with the Public Utilities Commission, bearing Docket No. 2008-0116; and

WHEREAS, the Department of Health initiated enforcement proceedings against the Utilities and Molokai Properties, Ltd., dba Molokai Ranch, bearing Docket Nos. 08-SDW-EO-01 and 08-WW-EO-01, in which the County intervened; and

Resolution No. 08-105

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch has appealed from the Department of Health's decisions and orders to the First Circuit Court, bearing Civ. No. 08-1-1877-08 EEH; and

WHEREAS, the Department of Health initiated enforcement proceedings against the County, bearing Docket Nos. 08-SDW-EO-02 and 08-WW-EO-02; and

WHEREAS, the County has appealed from the Department of Health's decisions and orders to the Second Circuit Court, bearing Civ. Nos. 08-1-0533(1) and 08-0534(1); and

WHEREAS, the County has filed a civil suit in the Second Circuit Court entitled COUNTY OF MAUI VS. MOLOKAI PROPERTIES, LTD., FORMERLY KNOWN AS MOLOKAI RANCH, LTD., ET AL., CIVIL NO. 08-1-0493(1), seeking damages for breach of contract and other remedies; and

WHEREAS, the existing and potential legal claims encompass a wide range of legal specialities, including environmental law, public utility law, administrative law, water law, constitutional law, plaintiff's *qui tam*, international law, and complex litigation; and

WHEREAS, the Council alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of Bronster Hoshibata, A Law Corporation, as special counsel to represent the County of Maui in the above-

referenced matters because of the multiplicity of actions and the complexity of the issues; and

WHEREAS, the Council has by Resolution No.08-67, authorized the employment of special counsel Bronster Hoshibata, A Law Corporation ("special counsel") for \$100,000; and


WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$200,000 for the prosecution of the above-referenced matters; now therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby approves and authorizes the increase of compensation for the employment of special counsel by \$200,000; and

2. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and Bronster Hoshibata, A Law Corporation.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

S:\ALL\JEL\Molokai Ranch Formal Complaint 20080116\Reso\Special Counsel Additional Funds.wpd

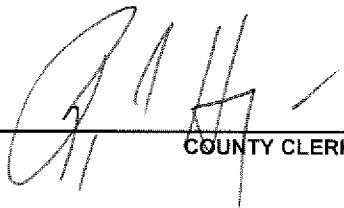
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 08-105 was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of December, 2008, by the following vote:

MEMBERS	G. Riki HOKAMA Chair	Dennis A. MATEO Vice-Chair	Michelle ANDERSON	Gladys C. BAISA	Jo Anne JOHNSON	William J. MEDEIROS	Michael J. MOLINA	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK

Resolution

No. 10-32

AUTHORIZING ADDITIONAL COMPENSATION OF
SPECIAL COUNSEL BRONSTER HOSHIBATA, A LAW CORPORATION,
WITH RESPECT TO LEGAL CLAIMS
RELATING TO WATER AND WASTEWATER
UTILITY SERVICE ON MOLOKAI

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch, the largest private landowner on Molokai, unilaterally announced its intention to cease operating its water and wastewater utilities, namely, Molokai Public Utilities, Inc., Wai'ola O Moloka'i, Inc., and Mosco, Inc. (hereafter collectively referred to as "the Utilities") which provide water and wastewater service to residents, businesses, and public facilities in West Molokai; and

WHEREAS, the Public Utilities Commission has made the County a party to a Temporary Rate Relief proceeding, bearing Docket No. 2008-0115; and

WHEREAS, the County has filed a formal complaint against the Utilities with the Public Utilities Commission, bearing Docket No. 2008-0116; and

WHEREAS, the Department of Health initiated enforcement proceedings against the Utilities and Molokai Properties, Ltd., dba Molokai Ranch, bearing Docket Nos. 08-SDW-EO-01 and 08-WW-EO-01, in which the County intervened; and

Resolution No. 10-32

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch appealed from the Department of Health's decisions and orders to the First Circuit Court, bearing Civ. No. 08-1-1877-08 EEH; and

WHEREAS, Molokai Properties, Ltd., dba Molokai Ranch has appealed to the Intermediate Court of Appeals from the decision and order of the First Circuit Court, bearing Docket No. 30056; and

WHEREAS, the Department of Health initiated enforcement proceedings against the County, bearing Docket Nos. 08-SDW-EO-02 and 08-WW-EO-02; and

WHEREAS, the County appealed from the Department of Health's decisions and orders to the Second Circuit Court, bearing Civ. Nos. 08-1-0533(1) and 08-1-0534(1); and

WHEREAS, the State has advised that it intends to appeal from the decision and order of the Second Circuit Court; and

WHEREAS, the County has filed a civil suit in the Second Circuit Court entitled COUNTY OF MAUI VS. MOLOKAI PROPERTIES, LTD., FORMERLY KNOWN AS MOLOKAI RANCH, LTD., ET AL., CIVIL NO. 08-1-0493(1), seeking damages for breach of contract and other remedies; and

WHEREAS, the County has intervened as a party in two permanent rate relief proceedings before the Public Utilities Commission, bearing Docket Nos. 2009-0048 and 2009-0049; and

WHEREAS, the existing and potential legal claims encompass a wide range of legal specialities, including environmental law,

Resolution No. 10-32

public utility law, administrative law, water law, constitutional law, plaintiff's *qui tam*, international law, and complex litigation; and

WHEREAS, the Council alone is authorized to retain or employ special counsel upon a resolution passed by two-thirds vote; and

WHEREAS, the Council finds that there is a real necessity to retain the firm of Bronster Hoshibata, A Law Corporation, as special counsel to represent the County of Maui in the above-referenced matters because of the multiplicity of actions and the complexity of the issues; and

WHEREAS, the Council by Resolution No.08-67, authorized the employment of special counsel Bronster Hoshibata, A Law Corporation ("special counsel") for \$100,000; and

WHEREAS, the Council by Resolution No. 08-105 authorized additional compensation for special counsel in the amount of \$200,000; and

WHEREAS, the Corporation Counsel has requested authorization to raise the compensation limit for the employment of special counsel by an additional \$200,000 for the prosecution and defense of the above-referenced matters; now therefore,

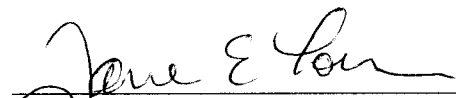
BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby approves and authorizes the increase of compensation for the employment of special counsel by \$200,000; and

Resolution No. 10-32

2. That certified copies of this Resolution be transmitted to the Mayor, the Corporation Counsel, the Director of Finance, and Bronster Hoshibata, A Law Corporation.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in cursive script, appearing to read "Jane E. Lovell", is written over a horizontal line.

JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

S:\ALL\JEL\Molokai Ranch Formal Complaint 2008-0116\Reso\2010 Reso Addt'l Funds Special Counsel.wpd


COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 10-32 was adopted by the Council of the County of Maui, State of Hawaii, on the 18th day of June, 2010, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye	Excused


COUNTY CLERK

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

June 1, 2010

Mr. Chris Salem
5106 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mr. Salem:

Thank you for your letter of May 31, 2010 pertaining to our Notice of Intent to Collect letter dated May 27, 2010. In response to your request for a list of the other parcels in your subdivision receiving a similar letter, we provide the following:

(2) 3-4-15:004
(2) 3-4-15:058

(2) 3-4-15:054

(2) 3-4-15:057

Enclosed is a map showing the parcels that were sent similar Notice of Intent to Collect letters. If you have any questions, please contact me at 270-7845.

Sincerely,

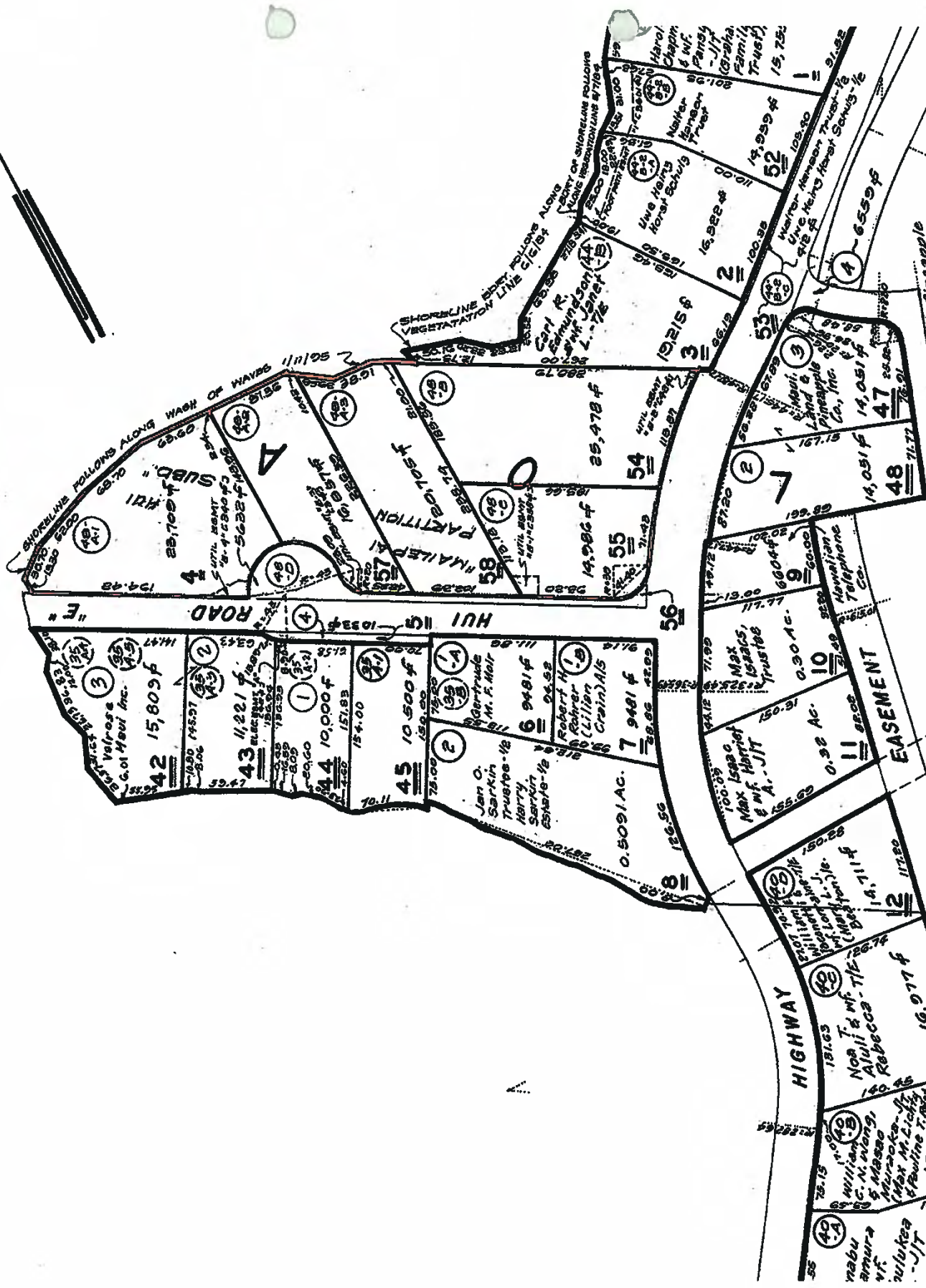
A handwritten signature in cursive script, reading "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director

MMA:MMM:jso

Enclosure

xc: ✓ Milton M. Arakawa, Director of Public Works
s:\mike\csalem_ntc to collect request



Chris Salem

May 31, 2010

5106 Lower Honoapiilani Rd

Lahaina, HI 96761

JUNE 1 *for*
'10 MAY 32 A8:27

County of Maui
Department of Public Works
200 South High Street Room 434
Wailuku, Maui, HI 96793
Phone 808 270-7845
Fax 808 270-7955

COUNTY OF MAUI
PUBLIC WORKS

Attention: Director Arakawa

RE: Notice of Intent to Collect

Dear Mr. Arakawa;

I am in receipt of your Notice to Collect dated May 27, 2010. Please confirm in writing which specific parcels in our subdivision have been sent a similar notice and therefore are subject to your interpretation of the deferral obligations.

Please forward your response to my e-mail address listed below.

Sincerely;

Chris Salem

Chris Salem

Cc: file

*Please send response
of tasks. I'll
provide map. &*

821

NO.	NAME	DATE	TIME	STATUS
1
2
3
4
5
6
7
8
9
10

Return to _____
By _____

808 280-6050
chrisalexm8@yahoo.com

Maiepa Kai Pactor, Lot 48

OWNER	ADDRESS	SUBDIVISION DATE	# OF LOTS	SUBDIVISION FILE NO.	T.M.K.
Kai Pali LLC	708 Canyon Rd. Suite 3 Santa Fe, NM 87501-2751	12-12-96	3	4.686	4-3-15: 004
Island Civil Holdings, LLC c/o Harris Myco Inc	P.O. Box 19019 Atlanta, GA 31126	12-12-96	3	4.686	4-3-15: 054
Christopher Saleem	5106 L. Monaspidoni Rd. Lahaina 96761	12-12-96	3	4.686	4-3-15: 055
Doshi Family Trust of 1999 Allen E. & Karen E. Doshi	P.O. Box 675210 Rancho Santa Fe, CA 92067	12-12-96	3	4.686	4-3-15: 057
Thomas H. Mass, Jr & Martha P. Mass Revoc Living Trust	49 Hale Malie Pl. Lahaina, 96761	12-12-96	3	4.686	4-3-15: 058

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Kai Pali, LLC
708 Canyon Road, Suite 3
Santa Fe, New Mexico 87501-2751

Ladies and Gentlemen:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on December 12, 1996 to create three (3) lots (LUCA File No. 4.686). One of the lots from the original subdivision is TMK 4-3-15:004, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohei Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

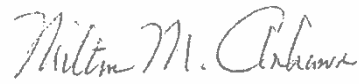
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Kai Pali, LLC
May 27, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
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CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Island Girl Holdings, LLC
c/o Harris MYCFO, Inc.
P. O. Box 19019
Atlanta, Georgia 31126

Ladies and Gentlemen:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on December 12, 1996 to create three (3) lots (LUCA File No. 4.686). One of the lots from the original subdivision is TMK 4-3-15:054, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be

Island Girl Holdings, LLC

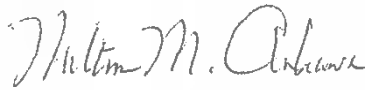
May 27, 2010

Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso

Enclosures

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CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Mr. Christopher Salem
5106 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mr. Salem:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on December 12, 1996 to create three (3) lots (LUCA File No. 4.686). One of the lots from the original subdivision is TMK 4-3-15:055, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

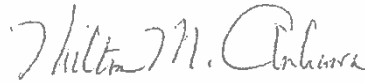
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Mr. Christopher Salem
May 27, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
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CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

DOSHAY Family Trust of 1999
Mr. Glenn R. and Mrs. Karen E. Doshay
P. O. Box 675210
Rancho Sante Fe, California 92067

Dear Mr. and Mrs. Doshay:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on December 12, 1996 to create three (3) lots (LUCA File No. 4.686). One of the lots from the original subdivision is TMK 4-3-15:057, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

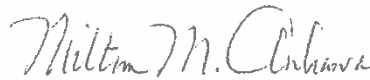
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be

DOSHAY Family Trust of 1999
Mr. Glenn R. and Mrs. Karen E. Doshay
May 27, 2010
Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
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CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
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RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Thomas H. Maass, Jr. and Martha P. Maass Revocable Living Trust
49 Hale Malia Place
Lahaina, Maui, Hawaii 96761

Dear Mr. and Mrs. Maass:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on December 12, 1996 to create three (3) lots (LUCA File No. 4.686). One of the lots from the original subdivision is TMK 4-3-15:058, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

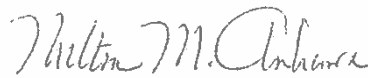
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Thomas H. Maass, Jr. and Martha P. Maass Revocable Living Trust
May 27, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

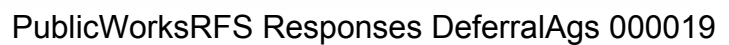
If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
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R-545

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

NOV 07, 1995 08:30 AM

Doc No(s) 95-145123

/s/CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT

AFTER RECORDATION, RETURN BY:

MAIL (x)

REGULAR SYSTEM

PICK UP ()

Land Use Codes Division
COUNTY OF MAUI
250 South High Street
Wailuku, Maui, Hawaii 96793
a:\forms\3lots.rev(11/93)

T.M.K. No. 4-3-15:04

LUCA File No. 4.686

SUBDIVISION AGREEMENT
(3 LOTS OR LESS)

WHEREAS, ANKA, INC., a Hawaii corporation, whose address/principal place of business is 41 Hui Road "E", Lahaina, Hawaii 96761 and whose mailing address is same as above, ("the Owner"), is the Owner of a certain parcel of real property identified in Land Use & Codes Administration File No. 4.686, incorporated herein by reference and a made a part hereof, and situate at Alaeloa, Kaanapali, Maui, Hawaii, Tax Map Key No. 4-3-15:04, containing an area of approximately 2.772 acres, which property is incorporated herein by reference (the "Property");

WHEREAS, the Owner desires to subdivide the above referenced Property in an undertaking known as the Mailepai Hui Partition, Subdivision of Lot 48, hereinafter called the "Subdivision"; and

WHEREAS, the County of Maui (the "County") is a body politic and corporate and a political subdivision of the State of Hawaii, which has adopted and is responsible for the enforcement of the ordinance which regulates subdivisions within the County of Maui (the "Subdivision Ordinance"); and

WHEREAS, the Subdivision Ordinance provides for certain requirements which must be met prior to approval of the subdivision; and

WHEREAS, Section 18.20.040 of the Maui County Code states in part:

"18.20.040 Existing Streets. A. No improvements shall be required upon existing streets for a consolidation of lots; for a designation of an access easement; for a subdivision creating only road widening lots; and for a consolidation of three developable lots or less which is resubdivided without creating additional developable lots. Improvements to existing streets may be deferred for a subdivision containing three lots or less, provided the Subdivider or Owner, their heirs, executors or assigns agree to pay their pro rata share of the cost of road improvements upon the existing street pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to: pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels."

WHEREAS, the subdivision contained three (3) or fewer lots;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the Owner, for him or her self and heirs, devisees, executors, administrators, person representatives, successors and assigns, and the County, as follows:

1. The Owner, his or her heirs, executors, administrators, personal representatives, successors and assigns shall pay the pro rata share of the cost of road improvements for Lower Honoapiilani Road and Hui Road "E", pursuant to the terms of the ordinance

authorizing said improvements by the County or to a formula determined by the County, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to, pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land in the Subdivision shall not thereafter qualify for a deferral of the requirement to improve existing streets pursuant to Section 18.20.040 of the Maui County Code with respect to any subsequent subdivision of any of the resulting parcels.

2. The County shall permit the subdivision process to proceed with respect to the Subdivision.

3. Where there is more than one owner, all obligations of the Owner set forth herein shall be joint and several obligations of each Owner.

4. The Owner does hereby declare that the Property, and all parts thereof, is and shall be held subject to the foregoing covenants, conditions and restrictions and that all of such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this instrument (the "Agreement") with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, or assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement.

5. This Agreement and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Property or any part thereof by the County.

6. The term "Owner" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the Owner, his or her heirs, devisees, executors, administrators, personal representatives, successors and assigns.

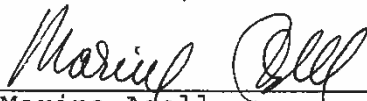
7. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 28th day of February, 1995.

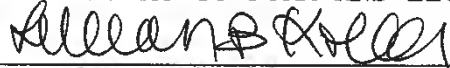
COUNTY OF MAUI:
Department of Public Works
& Waste Management

By 
Charles Jencks
Its Director

OWNER: ANKA, INC.


Marina Agell
Its Secretary-Treasurer

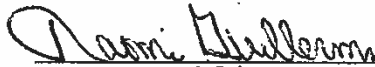
APPROVED AS TO FORM AND LEGALITY:


~~Harold H. Pukachinski~~ **LILLIAN B. KOLLER**
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 28th day of September, 1995, before me personally appeared Charles Jencks, to me personally known, who, being by me duly sworn, did say that he is the Director of Public Works of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Title 18 of the Maui County Code, the Subdivision Ordinance, and the said Charles Jencks acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public, State of Hawaii

My commission expires: 7/21/97

4

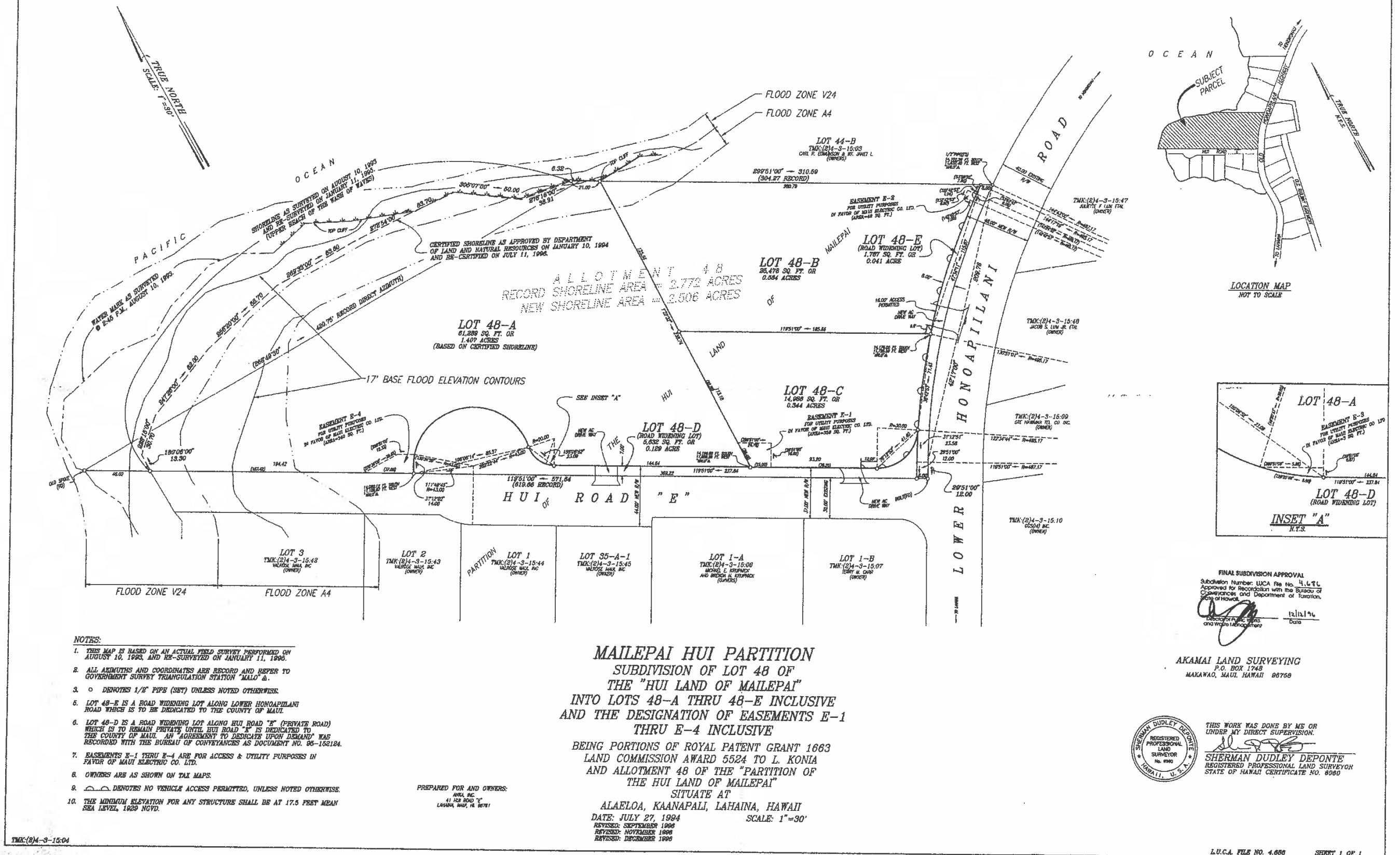
STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 26 day of July, 1995, before me personally appeared Marina Agell, to me personally known, who being by me duly sworn, did say that she is the Secretary-Treasurer of ANKA, INC., a Hawaii corporation; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public, State of Hawaii.
My commission expires: 4.20.99.



[illegible]

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Walter F. Hester, III Trust
P. O. Box 7900
Incline Village, Nevada 89452

Ladies and Gentlemen:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on June 25, 2002 to create two (2) lots (LUCA File No. 4.819). One of the lots from the original subdivision is TMK 4-3-19:046, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napili Hau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

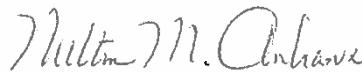
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be

Walter F. Hester, III Trust
May 27, 2010
Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Kahana Nui, LLC
c/o Mr. William Moffett
4560 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Ladies and Gentlemen:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on June 25, 2002 to create two (2) lots (LUCA File No. 4.819). One of the lots from the original subdivision is TMK 4-3-19:049, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

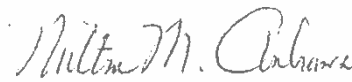
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Kahana Nui, LLC
May 27, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



R-73 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

FEB 19, 2002 08:01 AM

Doc No(s) 2002-028288

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()
Land Use and Codes Administration
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

A: \FORMS\3lotsRev.wpd(9/00)

PG-315316-B

RS

9 pgs.

TMK No.(2) 4-3-19:046

LUCA File No. 4.819

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, Kahana Nui, LLC

_____, whose residence
address/principal place of business is 115 Aloalo Place

Lahaina, HI 96761 and whose
mailing address is 115 Aloalo Place Lahaina, HI 96761

_____, ("the Owner"), is/are the owner(s) of a
certain parcel of real property identified and described in Land
Use and Codes Administration File No. 4.819,
incorporated herein by reference and made a part hereof, and
situate at 4591 L. Honoapiilani Rd. Lahaina, HI 96761,

Tax Map Key No. (2) 4-3-019:046, containing an area of approximately 25,446 Square Feet (the "Property");

WHEREAS, the Owner desires to subdivide the above referenced Property in an undertaking known as the Kahananui Stream House lots subdivision, hereinafter called the "Subdivision"; and

WHEREAS, the County of Maui (the "County") is a body politic and corporate and a political subdivision of the State of Hawaii, which has adopted and is responsible for the enforcement of the ordinance which regulates subdivisions within the County of Maui (the "Subdivision Ordinance"); and

WHEREAS, the Subdivision Ordinance provides for certain requirements which must be met prior to approval of the subdivision; and

WHEREAS, Section 18.20.040 of the Maui County Code states in part:

"18.20.040 Existing streets. A. No improvements shall be required upon existing streets for a consolidation of lots; for a designation of an access easement; for a subdivision creating only road widening lots; and for a consolidation of three developable lots or less which is resubdivided without creating additional developable lots. Improvements to existing streets may be deferred for a subdivision containing three lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to pay their pro rata share of the cost of road improvements upon the existing street pursuant to the terms of the ordinance authorizing said improvements by the county or to a formula determined by the county, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be

limited to, pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels. Churches shall also dedicate land necessary for road widening purposes to comply with the requirements of this chapter."

WHEREAS, the subdivision contained three (3) or fewer lots;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the Owner, for himself and his heirs, devisees, executors, administrators, person representatives, successors and assigns, and the County, as follows:

1. The Owner, his heirs, executors, administrators, personal representatives, successors and assigns shall pay the pro rata share of the cost of road improvements for _____
Kahananui Stream House Lots Subdivision,
pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County, taking into account reasonable factors such as the actual cost of the road improvements and the number of feet of roadway abutting the subdivided property. Said improvements shall include but not be limited to, pavement widening, construction of curb, gutter and sidewalk, and relocation of utilities underground. The land in the Subdivision shall not thereafter qualify for a deferral of the requirement to improve existing streets pursuant to Section

18.20.040 of the Maui County Code with respect to any subsequent subdivision of any of the resulting parcels.

2. The County shall permit the subdivision process to proceed with respect to the Subdivision.

3. Where there is more than one Owner, all obligations of the Owner set forth herein shall be joint and several obligations of each Owner.

4. The Owner does hereby declare that the Property, and all parts thereof, is and shall be held subject to the foregoing covenants, conditions and restrictions and that all of such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this instrument (the "Agreement") with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, or assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the

Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement.

5. This Agreement and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Property or any part thereof by the county.

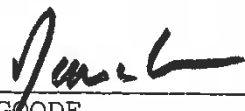
6. The term "Owner" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the Owner, his heirs, devisees, executors, administrators, personal representatives, successors, and assigns.

7. The parties hereto agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all the parties hereto, notwithstanding all the parties are not signatory to the original or the same counterparts. For all purposes, including without limitation, recordation, filing and delivery of this instrument duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties hereto have executed this
Agreement on the 30th day of January, 2002.

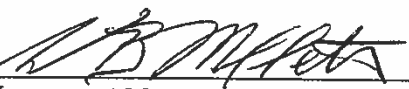
COUNTY OF MAUI:

DEPARTMENT OF PUBLIC WORKS AND
WASTE MANAGEMENT

By 
DAVID GOODE
Its Director

OWNER:

Kahana Nui LLC
(Print Name Above)

By 
Name: William B. Moffett
Its Managing Member

By _____
Name:
Its


By _____
Name:
Its

By _____
Name:
Its

By _____
Name:
Its

By _____
Name:
Its

APPROVED AS TO FORM
AND LEGALITY:




Gregory J. Carneau
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 30th day of January, 2002, before me personally appeared DAVID GOODE, to me personally known, who being by me duly sworn, did say that he is the Director of Public Works and Waste Management of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Title 18 of the Maui County Code, the Subdivision Ordinance, and the said DAVID GOODE acknowledged the said instrument to be the free act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

L.S.


NOTARY PUBLIC, State of Hawaii.
Print Name JILL ANNE S. ONO
My commission expires: 11/30/02

STATE OF HAWAII)
) SS.
_____)

On this _____ day of _____, 20____, before me personally appeared _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that _____ executed the same as _____ free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC, State of Hawaii.
Print Name _____
My commission expires: _____

STATE OF HAWAII)
) SS.
)

On this _____ day of _____, 20____, before me personally appeared _____ and _____, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

NOTARY PUBLIC, State of Hawaii.
Print Name _____
My commission expires: _____

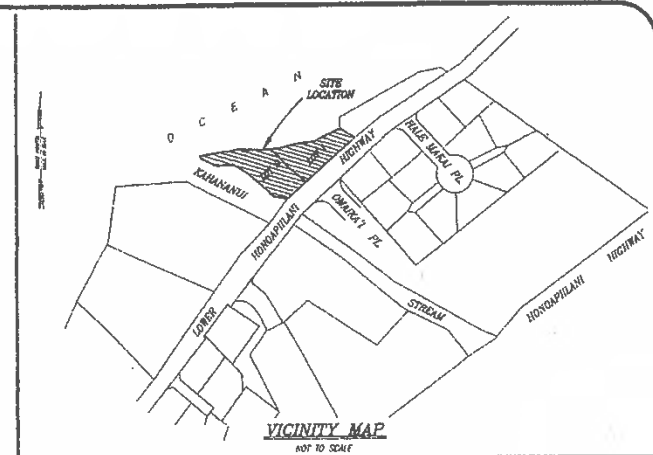
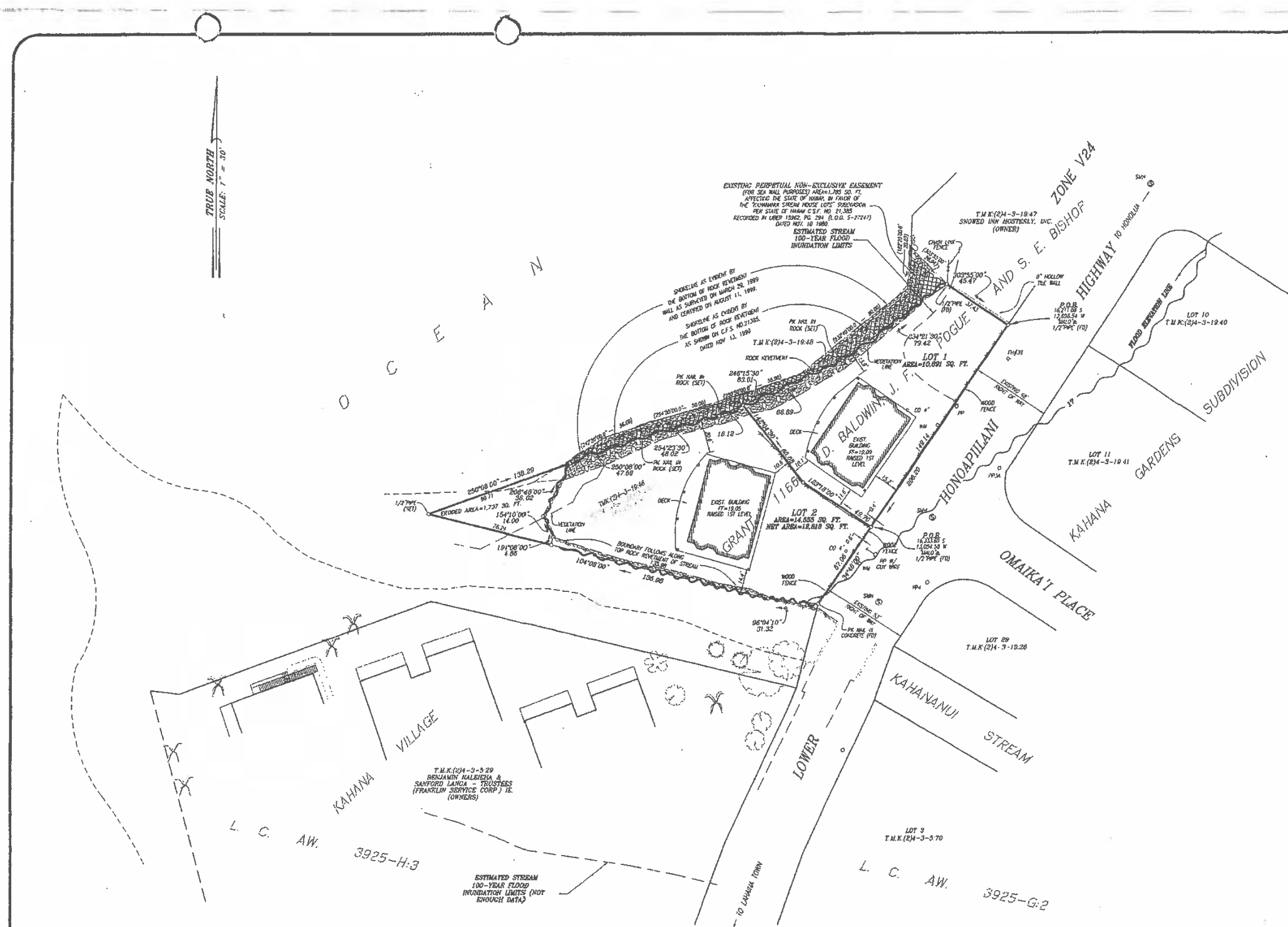
STATE OF HAWAII)
COUNTY OF MAUI) SS.
)

On this 15th day of January, 2002, before me personally appeared William B. Moffett and _____, to me personally known, who being by me duly sworn, did say that ~~they~~ ^{he is} ~~are~~ the partners of Kahana Nui LLC, a ~~general~~ partnership organized under the laws of the State of Hawaii and said William B. Moffett, Managing Member acknowledged that ~~they~~ ^{he} executed the foregoing instrument as ~~their~~ ^{his} free act and deed as such general partners.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

DeAnn K. Kaina
NOTARY PUBLIC
STATE OF HAWAII

DeAnn K. Kaina
NOTARY PUBLIC, State of Hawaii.
Print Name DeAnn K. Kaina
My commission expires: My Commission Expires June 10, 2005



FINAL SUBDIVISION APPROVAL
Subdivision Number: LUCA File No. 4.819
Approved for Recordation with the Bureau of
Conveyance and Department of Taxation,
State of Hawaii
[Signature] 6-25-02
Director of Public Works
and Waste Management

**KAHANANUI STREAM
HOUSE LOTS SUBDIVISION
SUBDIVISION OF A PORTION OF
GRANT 1166 TO D. BALDWIN,
J. F. POGUE, AND S. E. BISHOP
INTO LOTS 1 & 2**

SITUATE AT KAHANA,
KAANAPALI, LAHAINA, MAUI, HAWAII

DATE: JANUARY 21, 2000 SCALE: 1" = 30'
REVISED: SEPTEMBER 5, 2000
REVISED: JANUARY 30, 2002
REVISED: MAY 28, 2002
REVISED: JUNE 18, 2002

AKAMAI LAND SURVEYING, INC.
P.O. BOX 1748
MAKAWAO, MAUI, HAWAII 96768

OWNER:
KAHANANUI LLC
115 ALDADO PLACE
LAHAINA, MAUI, HAWAII 96761

PROPERTY ADDRESS:
4591 LOWER HONOPILANI RD
KAHANA, MAUI, HAWAII



THIS WORK WAS DONE BY ME OR
UNDER MY DIRECT SUPERVISION
[Signature]
SHERMAN DUDLEY DEPONTE
LICENSED PROFESSIONAL LAND SURVEYOR
STATE OF HAWAII CERTIFICATE NO. 6960

- NOTES:**
1. THIS MAP IS BASED ON AN ACTUAL FIELD SURVEY PERFORMED ON MARCH 29, 1989, AND AGAIN ON OCTOBER 1, 1989.
 2. AZIMUTHS AND COORDINATES ARE RECORD AND REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "MALO" Δ.
 3. ELEVATIONS SHOWN HEREON ARE BASED ON THE FLOOD INSURANCE RATE MAP, REFERENCE MARK, RM.16 ELEVATION TAKEN AS 11.65 FT. ABOVE MEAN SEA LEVEL, 1929 N.G.V.D.
 4. PURSUANT TO MAUI COUNTY CODE SECTION 3.44.015(C), THE COUNTY OF MAUI IS NOT RESPONSIBLE FOR ANY PARK, ROADWAY, EASEMENT (INCLUDING BUT NOT LIMITED TO DRAINAGE, SEWER, ACCESS, RECLAIMED WATER, OR AVIGATION EASEMENT), OR ANY OTHER INTEREST IN REAL PROPERTY SHOWN ON THIS MAP OR SHOWN ON THESE PLANS, UNLESS THE MAUI COUNTY COUNCIL HAS ACCEPTED ITS DEDICATION BY A RESOLUTION APPROVED BY A MAJORITY OF COUNCIL'S MEMBERS AT A REGULAR OR SPECIAL MEETING OF THE MAUI COUNTY COUNCIL.
 5. ALL BOUNDARY CORNERS ARE 1/2" PIPE (SET) EXCEPT WHERE NOTED OTHERWISE.
 6. ESTIMATED STREAM 100 YEAR FLOOD INUNDATION LIMITS SHOWN HEREON WAS STUDIED AND PROVIDED TO THIS OFFICE BY OTOMO ENGINEERING INC.
 7. FLOOD ZONE INFORMATION SHOWN HEREON IS BASED ON THE INTERPRETATION OF THE FLOOD INSURANCE RATE MAP COMMUNITY - PANEL NO. 15003-0151 C, DATED SEPTEMBER 17, 1997



T.M.K.: (2)4-3-19:46

LUCA FILE NO. 4.819

Macera / Her Land

OWNER	ADDRESS	SUBDIVISION DATE	# OF LOTS	SUBDIVISION FILE NO.	T.M.K.
Donald H. Valley	1333 Costa Brava Shall Beach, CA 93449	3-11-80	3	4.356	4-3-3:104
McNear Trust	48 Peacock Dr. San Rafael, CA 94901-1505	3-11-80	3	4.356	4-3-3:105
Burton E. Lund Mac Mac P. Lund	4946 L. Honocjilani Rd. Lahaina, HI 96761-9210	3-11-80	3	4.356	4-3-3:106
Mary L. Padgett c/o Longlin, Peter/Lora	1481 Seminole Dr South Lake Tahoe, CA 96150-4048	3-11-80	3	4.356	4-3-3:106

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Mr. Donald H. Valley
1333 Costa Brava
Shell Beach, California 93449

Dear Mr. Valley:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on March 11, 1980 to create three (3) lots (LUCA File No. 4.356). One of the lots from the original subdivision is TMK 4-3-3:104, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napili Hau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be

Mr. Donald H. Valley
May 27, 2010
Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

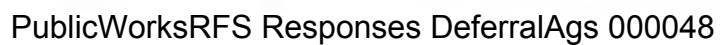
If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

McNear Trust
48 Peacock Drive
San Rafael, California 94901-1505

Ladies and Gentlemen:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

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McNear Trust
May 27, 2010
Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

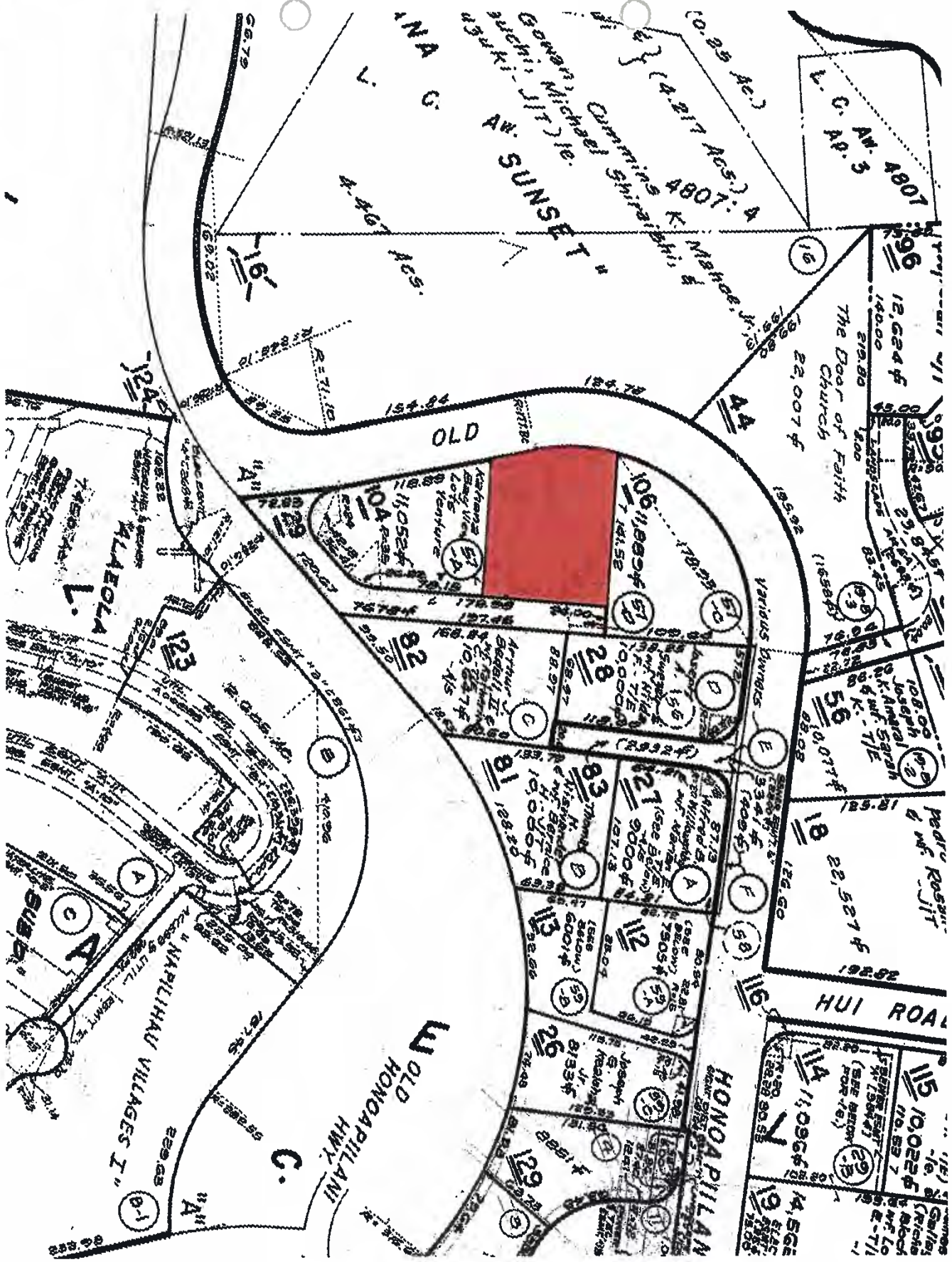
If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

June 18, 2010

Mr. Peter Loughlin
Mrs. Lora Loughlin
1481 Seminole Drive
South Lake Tahoe, California 96150-4848

Dear Mr. and Mrs. Loughlin:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on March 11, 1980 to create three (3) lots (LUCA File No. 4.356). One of the lots from the original subdivision is TMK 4-3-3:106, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napili Hau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

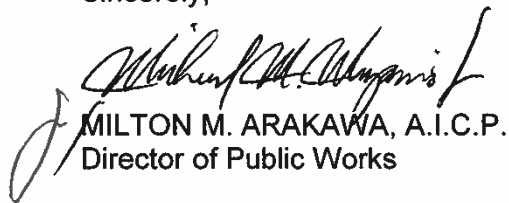
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Mr. Peter Loughlin
Mrs. Lora Loughlin
June 18, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm

From: Dawn Matney
To: Ono, Jill-Anne; Teruya, Scott
CC: Miyamoto, Michael
Date: 6/17/2010 9:53 AM
Subject: Re: 4950 LOWER HONOAPIILANI ROAD, LAHAINA (TMK: 4-3-3:106)
Attachments: 4303-106.pdf

Aloha,
attached is a TT report showing owner history for the above referenced parcel.

Address for owners Peter & Lora Loughlin:

1481 Seminole Drive
South Lake Tahoe, CA 96150-4848

Regards, Dawn

>>> Scott Teruya 6/16/2010 1:53 PM >>>
Dawn,

Please reply to all with the information requested.

Thanks,
Scott

NOTICE: The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by, or on behalf of, the intended recipient.
If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal.
Thank you.

Scott K. Teruya, Division Administrator
Real Property Tax Division
Department of Finance
County of Maui
70 E. Kaahumanu Avenue, Suite A-16
Kahului, HI 96732

Assessment: (808) 270-7297
Billing and Collection: (808) 270-7697
Fax: (808) 270-7884

Visit us on the web at www.mauipropertytax.com (<http://www.mauipropertytax.com/>)

>>> Jill-Anne Ono 6/16/2010 1:43 PM >>>
Good afternoon, Mr. Teruya~

Public Works Deputy Director Michael Miyamoto would like to know the name and address of the current owner of the above-referenced address.

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, the Department is currently in the process of notifying owners of our "Notice of Intent to Collect" financial obligations which apply to a deferral agreement which the original subdivider executed back on March 11, 1980.

Any information you can provide us would be greatly appreciated!

Jill Anne S. Ono, Private Secretary
Department of Public Works
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793
(808) 270-7845

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

June 7, 2010

Mr. Burton R. Lund
Mrs. Mae P. Lund
4950 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

*Letter returned.
Got owner info +
address from RPT*

*6/4/10: Letter addressed
to 4946 L. Honoapiilani Rd
returned. Mike
provided new address.
JW*

Dear Mr. and Mrs. Lund:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on March 11, 1980 to create three (3) lots (LUCA File No. 4.356). One of the lots from the original subdivision is TMK 4-3-3:106, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hoohui Road and Napili Hau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

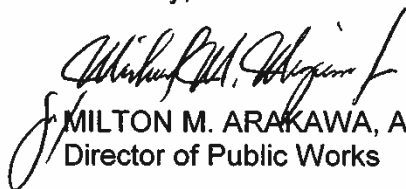
It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

Mr. Burton R. Lund
Mrs. Mae P. Lund
June 7, 2010
Page 2

subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Mr. Burton R. Lund
Mrs. Mae P. Lund
4946 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mr. and Mrs. Lund:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

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Mr. Burton R. Lund
Mrs. Mae P. Lund
May 27, 2010
Page 2

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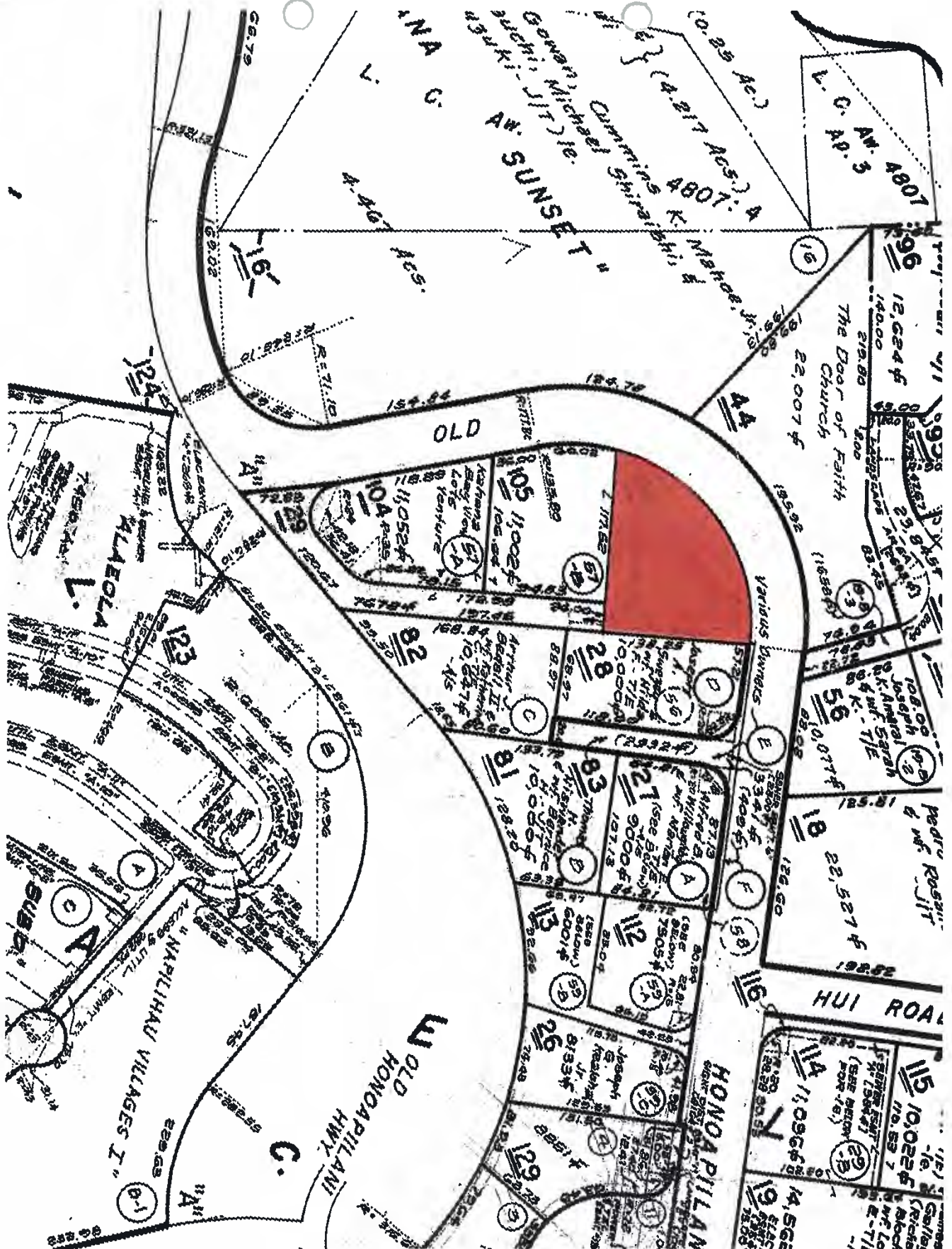
If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

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Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Ms. Mary L. Padgett
c/o Peter and Lora Loughlin
1481 Seminole Drive
South Lake Tahoe, California 96150-4848

Dear Ms. Padgett:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

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Ms. Mary L. Padgett
May 27, 2010
Page 2

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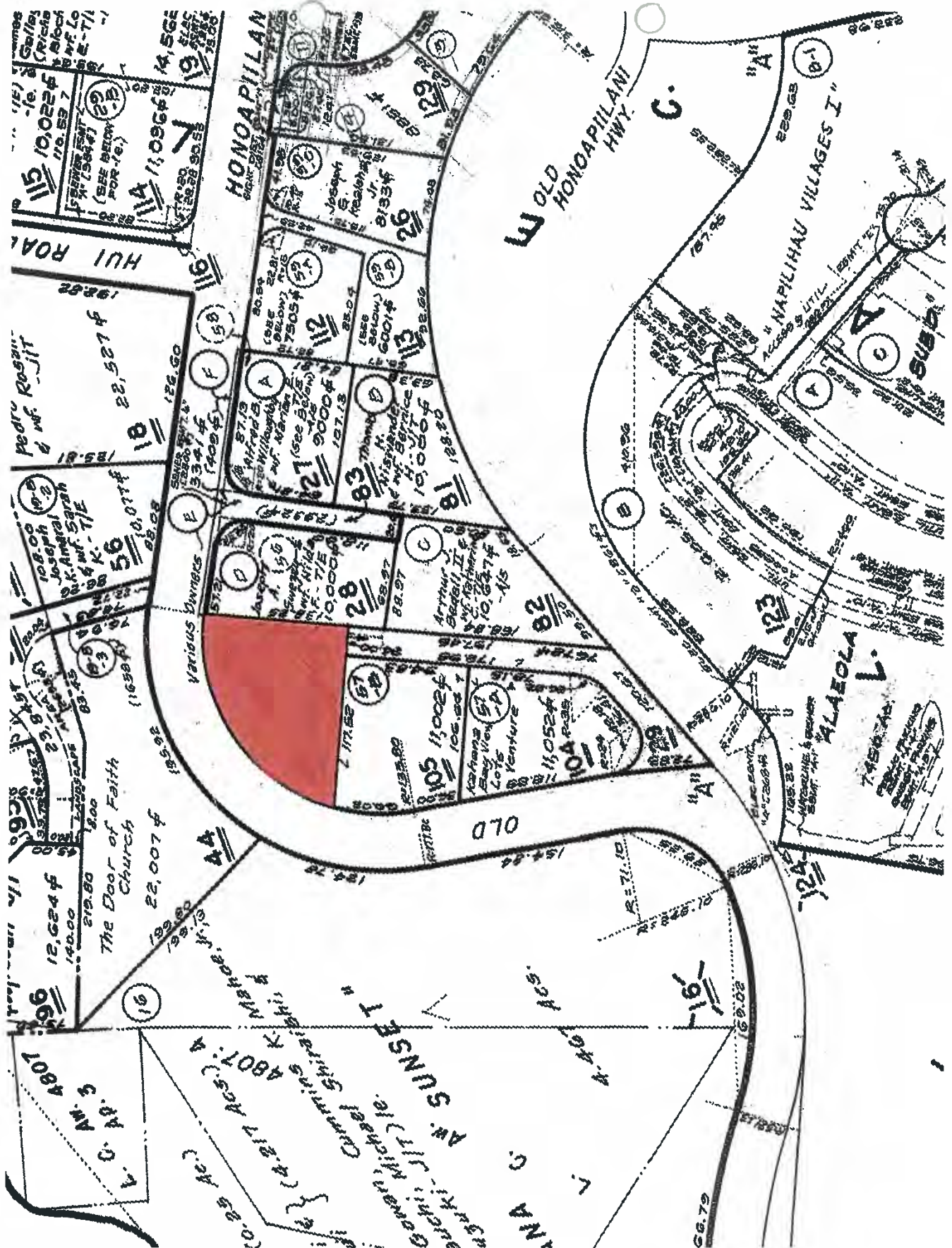
If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm



RECORDATION REQUESTED BY
LAND USE & CODES ADMINISTRATION DIVISION
AFTER RECORDATION, RETURN TO:
LAND USE & CODES ADMINISTRATION DIVISION
DEPARTMENT OF PUBLIC WORKS
COUNTY OF MAUI
200 SOUTH HIGH STREET
HAWAII, HAWAII 96793 (✓) PICK-UP ()

80- 29233

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

30 MAR 14 P 3: 20

14576 755

LIBRARY
C.F. NEUMANN III, REGISTRAR

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, NEIL O. WARNER, Trustee of Employees Profit and
Sharing Trust, Phillips & Co., P.C., and MANO ENTERPRISES, INC.,
"owner" are the owners of a certain parcel of real property
at Alaeloa, Lahaina,, County of
Maui, State of Hawaii, Tax Map Key 4-3-03:29,
containing an area of approximately 0.9781 Acres
(the "Property"),

WHEREAS, the Owner desires to subdivide the above-referenced
Property in an undertaking known as the Mailepai Hui Land
Subdivision;
and

WHEREAS, the County of Maui (the "County") is a body politic
and corporate, and a political subdivision of the State of Hawaii,
which has adopted and is responsible for the enforcement of the
ordinance which regulates subdivisions within the County of
Maui (the Subdivision Ordinance"); and

WHEREAS, the Subdivision Ordinance provides for certain requirements which must be met prior to approval of the Mailepai Hui Land Subdivision; and

WHEREAS, the Subdivision Ordinance provides that certain requirements may be deferred by agreement between the Owner and the County;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the Owner and the County, as follows:

1. The Owner shall participate in an improvement district for Honoapiilani Highway at Alaeloa, Lahaina, Maui, Hawaii if and when such improvement district is proposed.

2. The County shall permit the subdivision process to proceed with respect to Mailepai Hui Land Subdivision.

3. Where there is more than one Owner, all obligations of the Owner set forth herein shall be joint and several obligations of each Owner;

4. The Owner does hereby declare that the Property, and all parts thereof, is and shall be held subject to the foregoing covenants, conditions and restrictions and that all of such covenants, conditions and restrictions shall be effective as to the Property from and after the recording of this instrument (the "Agreement") with the Bureau of Conveyances of the State of Hawaii or the Land Court of the State of Hawaii, as the case may be, shall run with the land, and shall continue to be effective and run with the land in perpetuity, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by Owner, the County of Maui, or any heir, executor, administrator,

14576 757

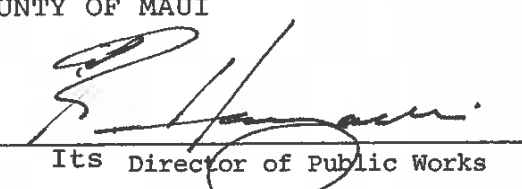
personal representative, successor, or assign, as the case may be, or any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe ^{AND 198} or perform all of the covenants, ^{Sup.} conditions and restrictions of this Agreement; PROVIDED, HOWEVER, that the Agreement may be released by the County by the execution and recordation of any appropriate instrument in the Bureau of Conveyances or the Land Court of the State of Hawaii, as the case may be.

5. The term "Owner" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the Owner, his heirs, executors, administrators, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 30th day of January, 19 80.

COUNTY OF MAUI

BY


Its Director of Public Works

OWNER

14576 758

By Neil O. Warner, Trustee
Neil O. Warner, Trustee of Employees
Pension Profit Sharing Trust,
Warner, Phillips Co., P.C.

By Russell A. Meyers, President
MANO ENTERPRISES, INC.

APPROVED AS TO FORM
AND LEGALITY:

Em Kow
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 30th day of January, 1980,
before me appeared R. HAYASHI, to me personally known, who,
being by me duly sworn, did say that he is the Director of
Public Works of the County of Maui, a political subdivision
of the State of Hawaii, and that the seal affixed to the
foregoing instrument is the lawful seal of the said County
of Maui, and that the said instrument was signed and sealed
on behalf of said County of Maui pursuant to Chapter 11 of
the Permanent Ordinances of the County of Maui 1971, the
Subdivision Ordinance, and the said R. HAYASHI, acknowledged
the said instrument to be the free act and deed of the said
County of Maui.

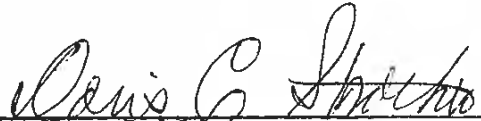
Gregory R. Henderson
Notary Public, State of Hawaii

My commission expires: 4/20/82

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

14576 759

On this 25th day of September 1979, before me personally appeared NEIL O. WARNER, who by me being sworn, did say that he is the Administrator and a Trustee of the Employees Pension and Profit Sharing Trust, Warner, Phillips & Co., P.C., and that said instrument was signed on behalf of said Trust by authority of its Trustees, and the said NEIL O. WARNER acknowledged said instrument to be the free act and deed of said Trust.

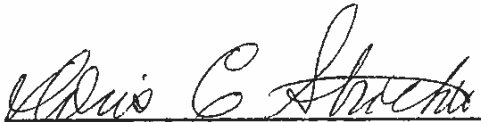


Notary Public
Second Judicial Circuit

My commission expires: 4/1/81

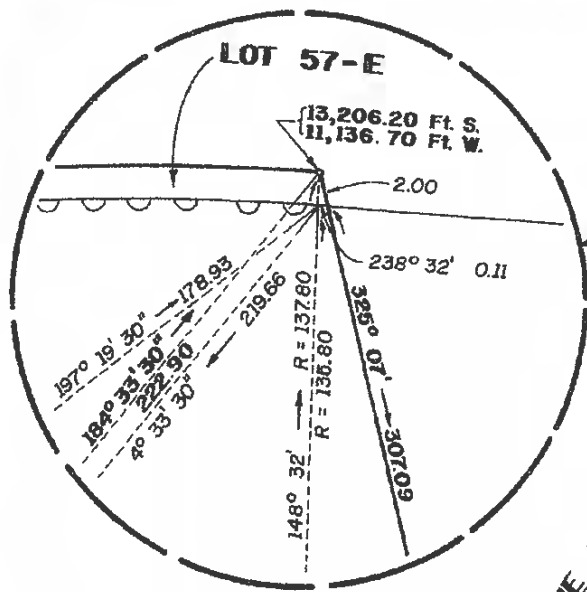
STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 25th day of September 1979, before me personally appeared RUSSELL A. MEYERS, to me personally known, who, being by me duly sworn, did say that he is the President of MANO ENTERPRISES, INC.; that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that the said RUSSELL A. MEYERS acknowledged the said instrument to be the free act and deed of said corporation.



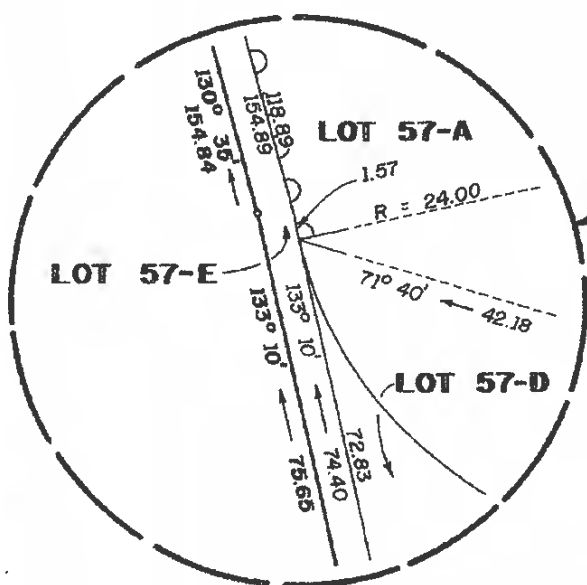
Notary Public,
Second Judicial Circuit

My Commission expires: 4/1/81

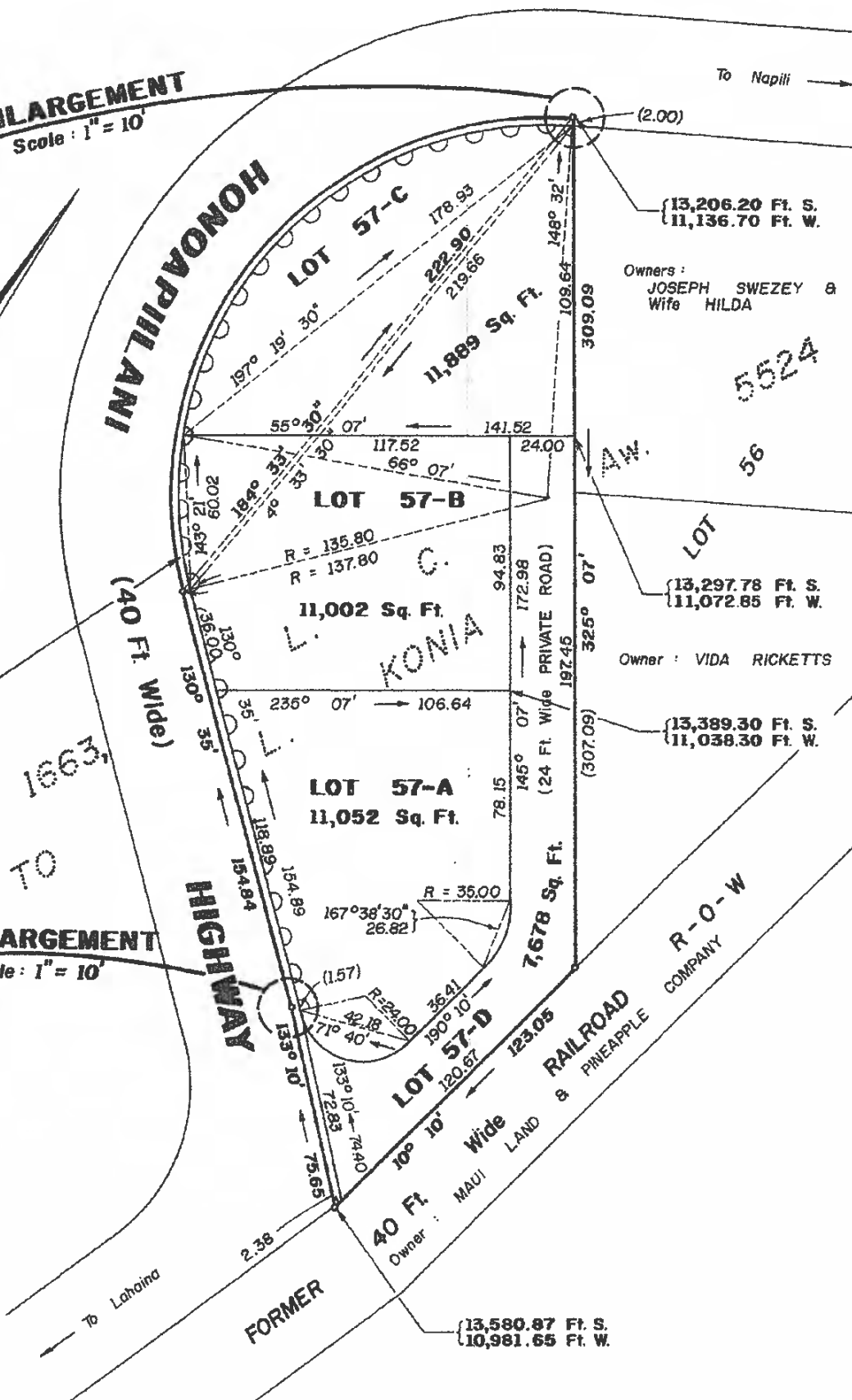


ENLARGEMENT
Scale: 1" = 10'

LOT 57-E
Area = 974 Sq. Ft.
(2 Ft. Wide For ROAD
WIDENING PURPOSES)



ENLARGEMENT
Scale: 1" = 10'



NOTES:

- OWNERS AS SHOWN TAKEN FROM TAX MAP KEY.
- COORDINATES AS SHOWN REFER TO "MALO" Δ .
- LOT 57-E TO BE DEDICATED FOR ROAD WIDENING PURPOSES.
- ALL CORNERS MARKED BY 1/2" PIPE UNLESS OTHERWISE NOTED.
- AREA OF LOT 57 = 42,595 Sq. Ft.
- Δ DENOTES NO ACCESS PERMITTED (ACCESS PERMITTED ONLY THROUGH LOT 57-D).

FINAL SUBDIVISION APPROVAL

Subdivision number 4356
Approved for Recordation with the Bureau of Con-
veyances and Department of Taxation, State of
Hawaii.

Director of Public Works

date

"MAILEPAI HUI LAND SUBDIVISION"

SUBDIVISION OF ALLOTMENT No. 57 INTO LOTS 57-A TO 57-E INCLUSIVE

BEING PORTION OF R. P. 1663, L. C. Aw. 5524 TO L. KONIA
AT ALAELOA, KANAPALI, LAHAINA, MAUI, HAWAII

Owner :
RUSSELL MEYERS
Address :
LAHAINA, MAUI, HAWAII

TAX MAP KEY : 4-3-03:29

R. T. TANAKA ENGINEERS, INC.
CIVIL ENGINEERING — LAND SURVEYING



THIS PLAN WAS PREPARED BY ME OR
UNDER MY DIRECT SUPERVISION.

ROBERT T. TANAKA DATE
Reg. Professional Surveyor
Cert. No. 1754 E-S
Revised: JUL. 24, 1979

GALLAGHER

OWNER	ADDRESS	SUBDIVISION DATE	# OF LOTS	SUBDIVISION FILE NO.	T.M.K.
Barbara L. Shields Morgan T. Shields Jennifer L. Quay Anna M. Shields	5029 L. Honoapiilani Rd. Lahaina 96761	3/6/87	3	4.488	4-3-03:019
Ralph E. III & Kimberly D. Carpenter	5027 L. Honoapiilani Rd. Lahaina, 96761	3/6/87	3	4.488	4-3-03:115
Richard A. & Andrina M. Cochrane	P.O. Box 10595 Lahaina, 96761	3/6/87	3	4.488	4-3-03:114

CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Ms. Barbara L. Shields
Ms. Morgan T. Shields
Ms. Jennifer L. Quail
Ms. Anna M. Shields
5029 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mesdames Barbara L. Shields, Morgan T. Shields, Jennifer L. Quail and Anna M. Shields:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

The financial obligations stem from a deferral agreement which the original subdivider executed on March 6, 1987 to create three (3) lots (LUCA File No. 4.488). One of the lots from the original subdivision is TMK 4-3-03:019, of which you are shown as the current owner of record. We note that this agreement has been recorded in the Bureau of Conveyances. The agreement runs with the land and binds and constitutes notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. For your information, we have included a copy of the final subdivision map and the deferral agreement for your reference.

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Ms. Barbara L. Shields
Ms. Morgan T. Shields
Ms. Jennifer L. Quail
Ms. Anna M. Shields
May 27, 2010
Page 2

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If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,



MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

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Enclosures
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(2.707 ACS.)

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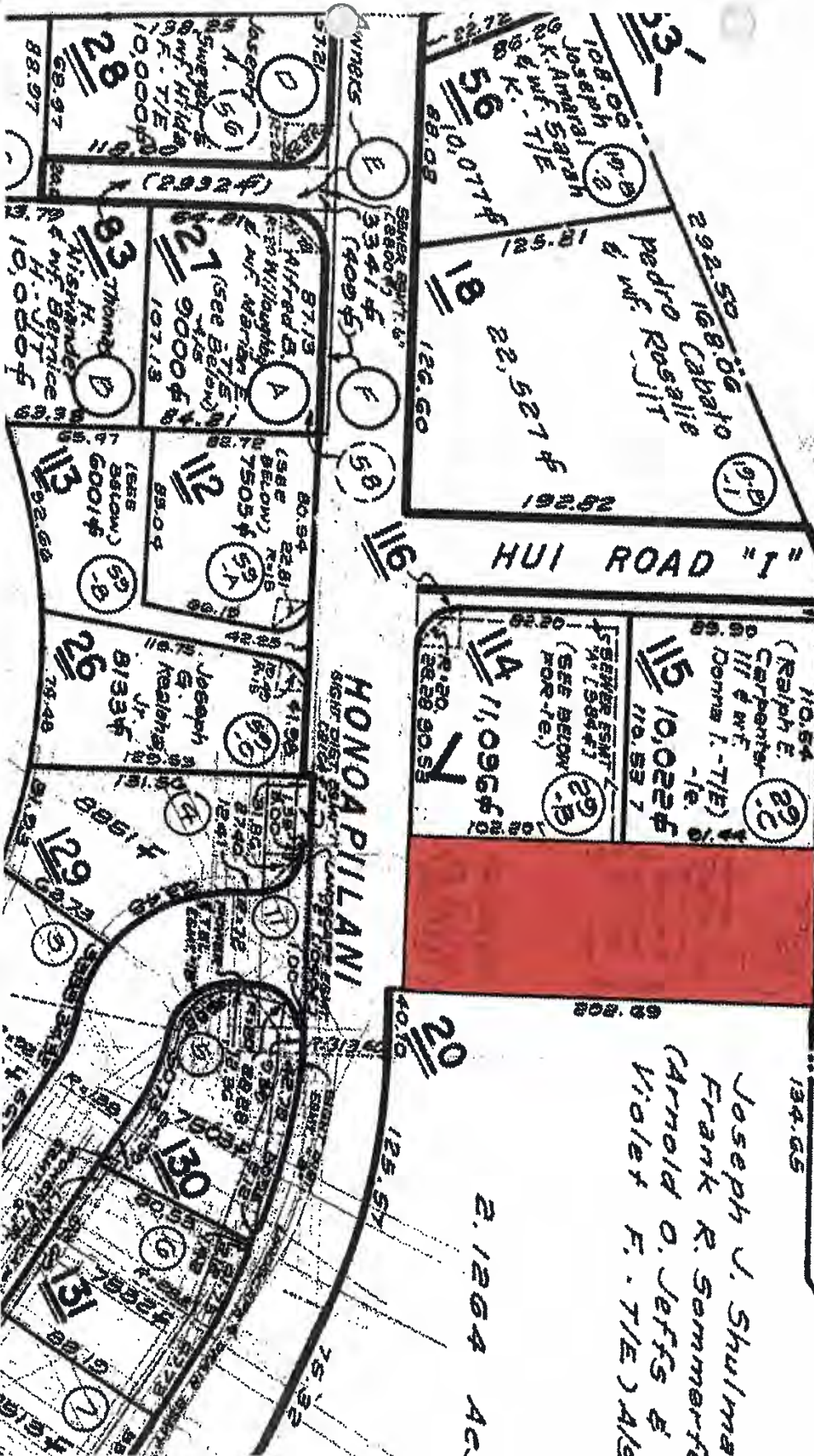
21.6
21.6

Joseph J. Shulma
Frank R. Sommer
Arnold O. Jeffs &
Violet F. (T/E) A/E

2.1264 AC.

HUI ROAD "I"

HONOAPILANI



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Mr. Ralph E. III and Mrs. Kimberly D. Carpenter
5027 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mr. and Mrs. Carpenter:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

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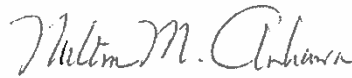
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Mr. Ralph E. III and Mrs. Kimberly D. Carpenter
May 27, 2010
Page 2

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If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm

Am.

0 (6.718 Acs.)



CHARMAINE TAVARES
Mayor

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

Mr. Richard A. and Mrs. Andrina M. Cochrane
P. O. Box 10595
Lahaina, Maui, Hawaii 96761

Dear Mr. and Mrs. Cochrane:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning for financial obligations which apply at an undetermined future date to the owner of this property.

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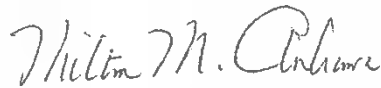
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Mr. Richard A. and Mrs. Andrina M. Cochrane
May 27, 2010
Page 2

determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment also is uncertain although the County is seeking to start construction sometime in calendar year 2012.

If you have any questions, please feel free to call me at (808) 270-7845. Thank you for your future attention to this matter.

Sincerely,

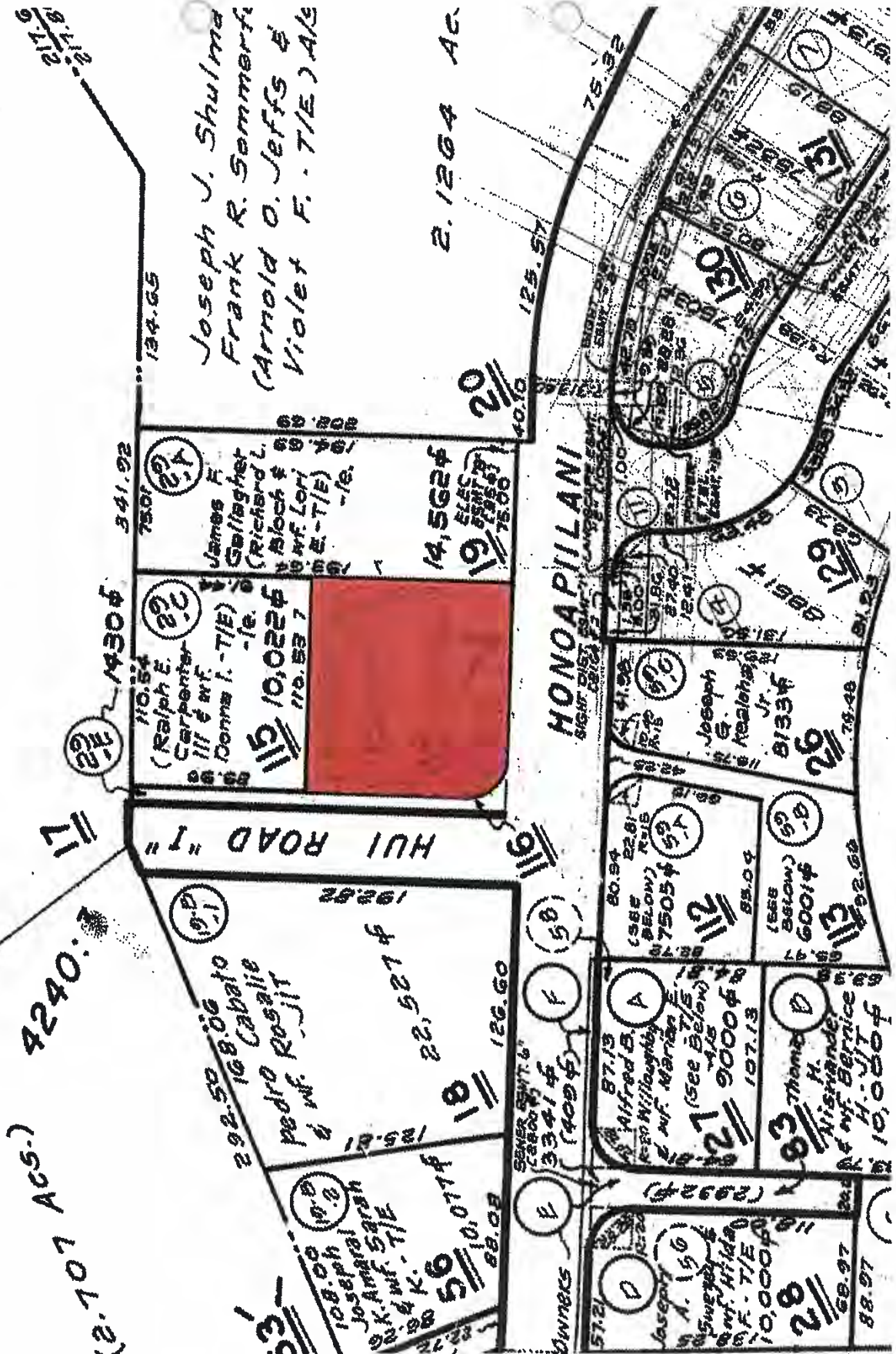
A handwritten signature in cursive script that reads "Milton M. Arakawa".

MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm

AW.

0 (6.718 Acs.)



RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL (✓) PICKUP ()

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
OFFICE OF
BUREAU OF CONVEYANCES
Received for record this AUG - 8 1986
day of _____, A.D., 19____
at _____, O'Clock _____ M. and
recorded in Liber _____
on Pages 19749 321

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, James F. Gallagher, un-married

("Owner"), is the owner of a certain parcel of real property at Kaanapali, Lahaina, County of Maui, State of Hawaii, Tax Map Key 2nd, 4-3-03:19, containing an area of approximately 38,766 Square Feet (the "Property");

WHEREAS, the Owner desires to subdivide the above-referenced Property in an undertaking known as the Gallagher Subdivision; and

WHEREAS, the County of Maui (the "County") is a body politic and corporate, and a political subdivision of the State of Hawaii, which has adopted and is responsible for the enforcement of the ordinance which regulates subdivisions within the County of Maui (the "Subdivision Ordinance"); and

WHEREAS, the Subdivision Ordinance provides for certain requirements which must be met prior to approval of

STATE OF HAWAII
BUREAU OF CONVEYANCES
DEPARTMENT OF LAND & NATURAL RESOURCES

96593
06/08/86 7.00
111 1755 8/08/86 7.00
06/06/86
06/06/86

the Gallagher Subdivision;
and

WHEREAS, Section 18.20.040 of the Maui County Code states in part:

"18.20.040 Existing streets. A. No improvements shall be required upon existing streets for a subdivision containing three lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to participate in an improvement district when and if such improvement district is proposed."

WHEREAS, the Gallagher Subdivision
is a subdivision containing three or fewer lots;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between the Owner, for himself and his heirs, executors, administrators, personal representatives, successors and assigns, and the County, as follows:

1. The Owner, his heirs, executors, administrators, personal representatives, successors and assigns shall participate in an improvement district for Lower
Honoapiilani Highway & Hui Road "I" if and when such improvement district is proposed.

2. The County shall permit the subdivision process to proceed with respect to Gallagher Subdivision.

3. Where there is more than one Owner, all obligations of the Owner set forth herein shall be joint and several obligations of each Owner.

4. The Owner does hereby declare that the Property, and all parts thereof, is and shall be held subject to the

foregoing covenants, conditions and restrictions and that all of such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this instrument (the "Agreement") with the Bureau of Conveyances of the State of Hawaii without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Owner, the County of Maui, or any heir, executor, administrator, personal representative, successor, or assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Agreement by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Agreement.

5. This Agreement and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the same is released as to the Property or any part thereof by the County.

6. The term "Owner" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine

or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the Owner, his heirs, executors, administrators, personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 1st day of August, 1986.

COUNTY OF MAUI

By Brian Hashio
for ALVIN K. FUKUNAGA
ITS DIRECTOR OF PUBLIC WORKS

OWNER

James F. Gallagher
JAMES F. GALLAGHER
(Print Name Above)

(Print Name Above)

APPROVED AS TO FORM
AND LEGALITY:

James B. Takayama
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this 1st day of August, 1986,
before me appeared BRIAN HASHIRO, to me personally known, who being
by me duly sworn, did say that he is the Deputy Director of Public
Works of the County of Maui, a political subdivision of the State of
Hawaii, and that the seal affixed to the foregoing instrument is the
lawful seal of the said County of Maui, and that the said instrument
was signed and sealed on behalf of said County of Maui pursuant to
Title 18 of the Maui County Code, the Subdivision Ordinance, and the
said BRIAN HASHIRO acknowledged the said instrument to be the free
act and deed of the said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

Dawni Gullerms

Notary Public, State of Hawaii

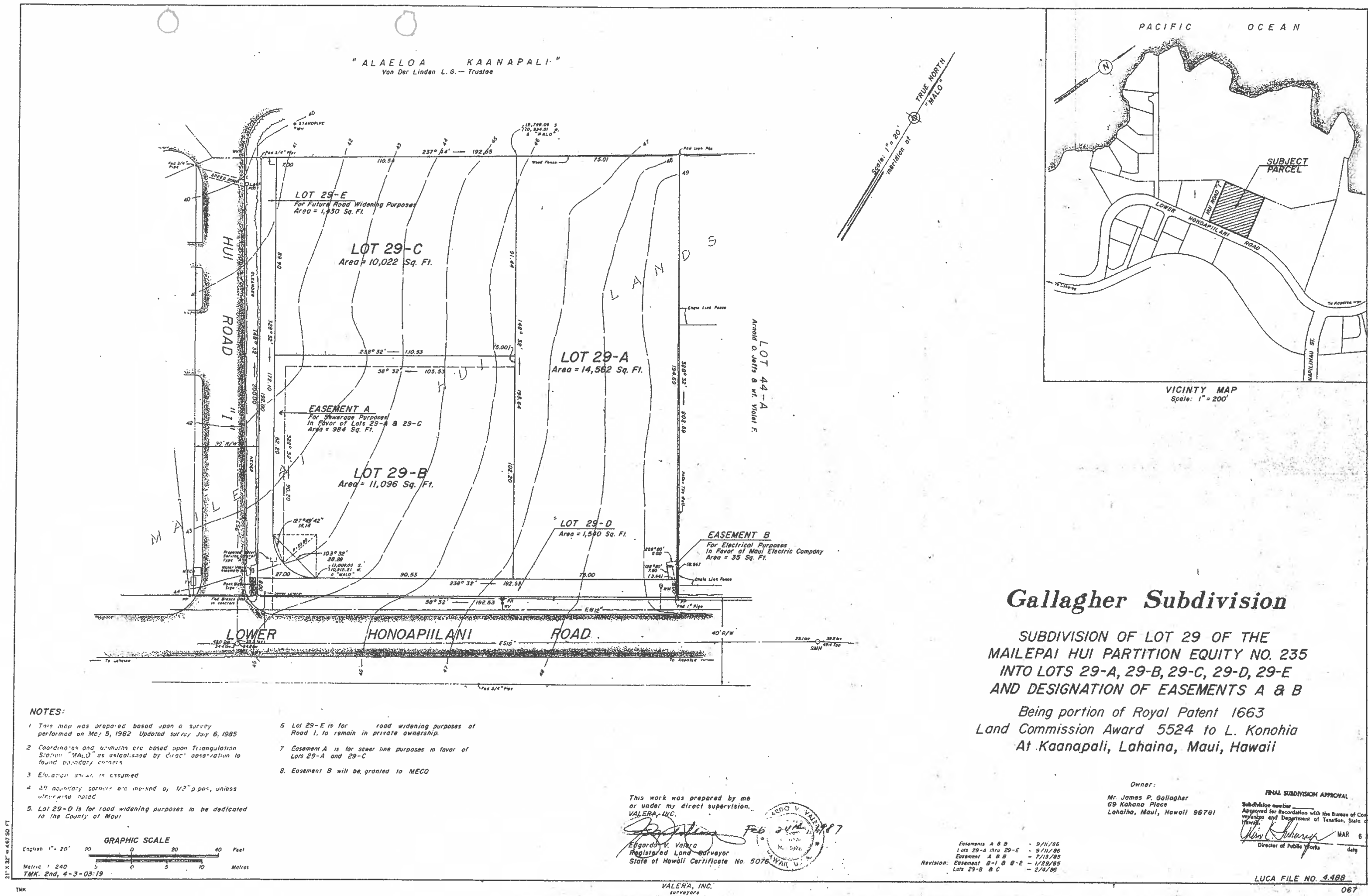
My commission expires: 7/21/89

STATE OF HAWAII)
 : SS.
COUNTY OF MAUI)

On this 5th day of March, 1986,
before me appeared James F. Gallagher,
to me known to be the person described in and who executed
the foregoing instrument and acknowledged that he
executed the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand
and official seal.

Rita J. Matsumoto
Notary Public, State of Hawaii
My commission expires: 1-1-87



Gallagher Subdivision

SUBDIVISION OF LOT 29 OF THE
MAILEPAI HUI PARTITION EQUITY NO. 235
INTO LOTS 29-A, 29-B, 29-C, 29-D, 29-E
AND DESIGNATION OF EASEMENTS A & B

Being portion of Royal Patent 1663
Land Commission Award 5524 to L. Konohia
At Kaanapali, Lahaina, Maui, Hawaii

Owner:
Mr. James P. Gallagher
69 Kahana Place
Lahaina, Maui, Hawaii 96761

FINAL SUBDIVISION APPROVAL
Subdivision number _____
Approved for Recordation with the Bureau of Con-
veyances and Department of Taxation, State of
Hawaii.
MAR 6 1985
Director of Public Works

Revisions:
Easements A & B - 9/11/86
Lots 29-A thru 29-E - 9/11/86
Easements A & B - 7/13/86
Easement B-1 & B-2 - 1/29/85
Lots 29-B & C - 2/4/86

This work was prepared by me
or under my direct supervision.
VALERA, INC.
Edgardo V. Valera
Registered Land Surveyor
State of Hawaii Certificate No. 5076

VALERA, INC.
Surveyors
Waialae, Maui, Hawaii

LUCA FILE NO. 4488

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Stacy Crivello

Councilmembers
Alika Atay
Elle Cochran
Don S. Guzman
Riki Hokama
Kelly T. King
Yuki Lei K. Sugimura



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

May 8, 2018

Director of Council Services
Maria E. Zielinski

RECEIVED

2018 MAY -8 AM 9:42

OFFICE OF THE
COUNTY CLERK

The Honorable Mike White
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair White:

SUBJECT: **AMENDING TITLE 3, MAUI COUNTY CODE, BY
ADDING A NEW CHAPTER TO ESTABLISH AN
INFRASTRUCTURE DEVELOPMENT FUND (BF-1)**

May I request the attached proposed bill, entitled "A BILL FOR AN ORDINANCE ADDING A NEW CHAPTER TO TITLE 3, MAUI COUNTY CODE, RELATING TO AN INFRASTRUCTURE DEVELOPMENT FUND," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Riki Hokama".

RIKI HOKAMA, CHAIR
Budget and Finance Committee

bf:2019bgt:001ach07:cmn

Attachment

COUNTY COMMUNICATION NO. 18-177

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE ADDING A NEW CHAPTER TO TITLE 3, MAUI COUNTY CODE, RELATING TO AN INFRASTRUCTURE DEVELOPMENT FUND

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 3, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 3.91

INFRASTRUCTURE DEVELOPMENT FUND

Sections:

- 3.91.010 Fund established.
- 3.91.020 Purpose.
- 3.91.030 Administration.

3.91.010 Fund established. There is established and created a fund to be known as the “infrastructure development fund.” For purposes of this chapter, infrastructure shall exclude water, wastewater, and parks improvements.

3.91.020 Purpose. The infrastructure development fund is established for the purpose of funding infrastructure improvements, including funding for debt service.

3.91.030 Administration. A. The director of finance shall establish a separate account to record all revenues credited to, and expenditures made from, the fund. An accurate accounting shall be maintained to identify funds required for expenditure in a specific geographical area.

B. All revenue received from the following sources shall be deposited to the fund:

- 1. The cash value of subdivision roadway improvements estimated at final subdivision approval, collected in lieu of installation of improvements.

2. Funds received as a result of the collection of deferred subdivision roadway improvements.

3. Funds required to be paid to the County for infrastructure development as a condition of a change in zoning, shoreline management area approval, or other land use approval.

4. Funds required to be paid to the County for infrastructure development as a result of a settlement.

5. Donations received by the County for infrastructure development.


C. Assessment fees for water, wastewater, and parks improvements shall not be deposited to the fund.

D. Expenditures from the fund shall be through appropriations set forth in the annual budget ordinance.

E. On or before March 1 of each year, the director of finance shall transmit to the council a detailed report of the fund during the preceding year."

SECTION 2. This ordinance shall take effect on July 1, 2018.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Department of the Corporation Counsel
County of Maui
2018-0458
2018-04-17 Ordinance



May 20, 2011

Chris Salem
8 Hui Rd. E
Lahaina, HI 96768

Re: Listing Agreement

Aloha Mr. Salem,

I have now submitted six offers to purchase your property. At this time we have two major issues with your property rendering it "unsalable".

First, the County of Maui has an open-ended, undefined lien on the property which negates appraisals, lending and payoff amounts on a HUD1 closing statement. Second is your lender's non-responsiveness towards any and all offers. Your bank has not replied nor even counter offered to bonafide real all-cash buyers.

Therefore, as per the terms and conditions of our listing agreement contract I hereby cancel Prudential Maui Realtors' listing for 8 Hui Rd. E. Should you be able to clear up these two hurdles I would very much like the opportunity to help you sell the property in the future.

Mahalo,

A handwritten signature in black ink, appearing to read "LPC", with a stylized flourish extending to the right.

Lawrence P. Carnicelli, Broker
Prudential Maui Realtors
256 Papalaua Street
Lahaina, HI 96761
LPC@LahainaMaui.com
(808) 283-6090