

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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(Page 32 - end title)

An aerial photograph of a coastal area. On the left, there is a body of water with a sandy beach. A road runs along the coastline, curving towards the right. The land to the right of the road is covered in dense green trees and vegetation. In the background, there are rolling hills under a sky with scattered white clouds.

3 Lot or Less Subdivision Infrastructure Deferral Agreements

A red heart-shaped logo with a white silhouette of the island of Maui inside. The text "MAUI Causes .org" is written in white across the heart.

MAUI Causes .org

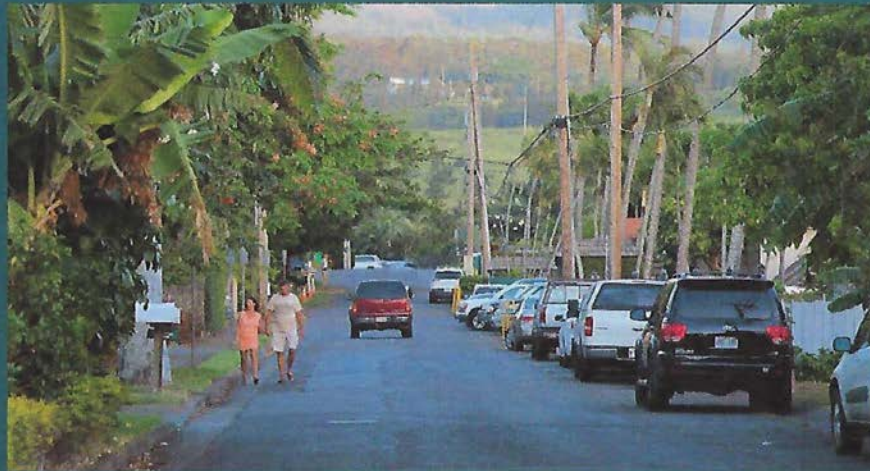


January 16, 2013 | 08:02 AM

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.

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

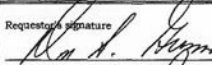
TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Patrick K. Wong, Esq.

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's 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

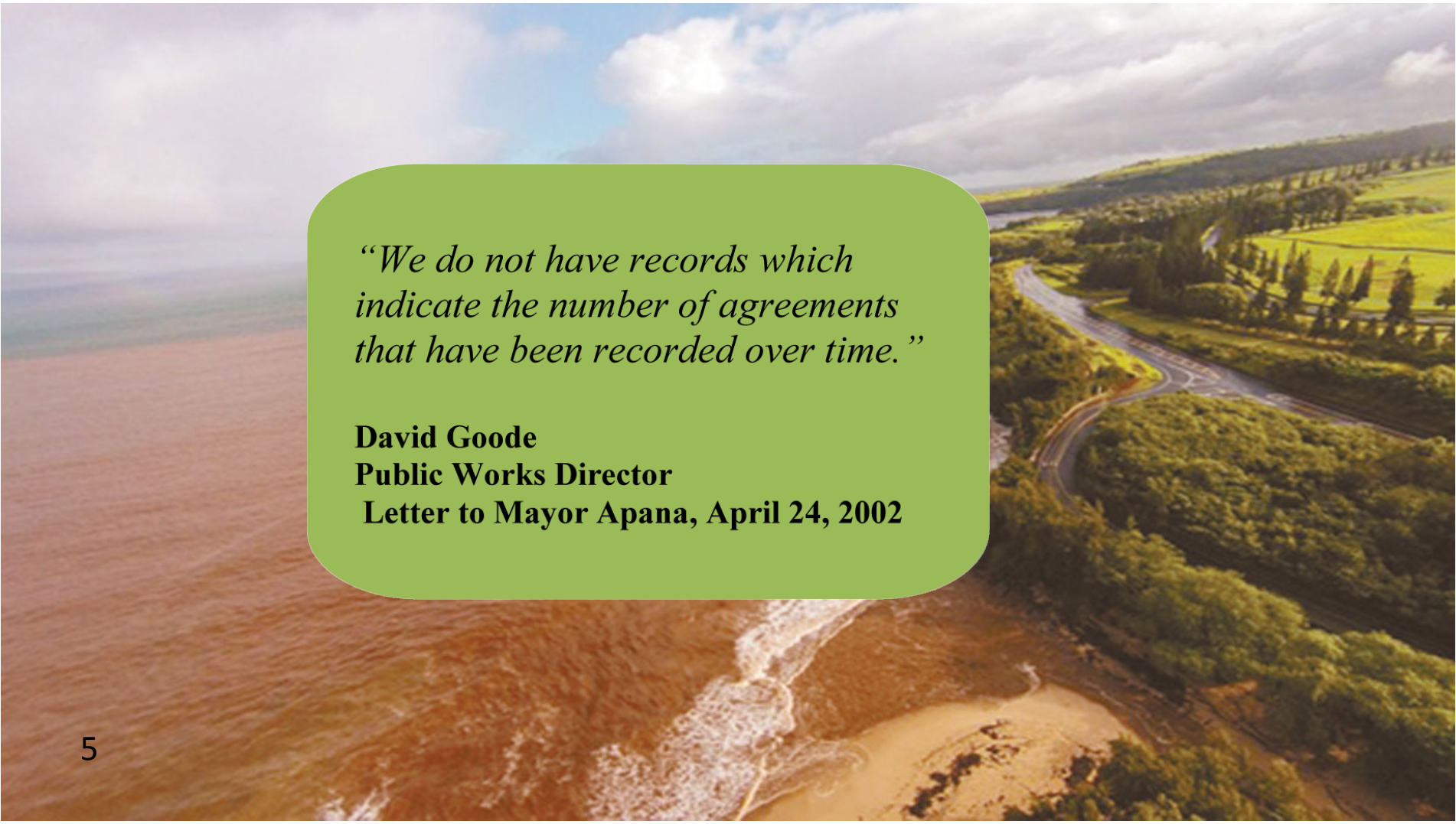
ASSIGNED TO: ESK	ASSIGNMENT NO. 2017-1511	BY: kku
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TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)
☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

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

Attachment

An aerial photograph of a coastal area. On the left, a wide, muddy-brown river flows towards the ocean. The ocean is visible in the bottom left corner with white foam from breaking waves. To the right of the river, a paved road with white lane markings curves through a lush green landscape. The road is bordered by dense trees and shrubs. In the background, rolling green hills are visible under a sky filled with large, white, fluffy clouds. The overall scene is a scenic view of a natural coastal environment.

*“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

Attachment

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...

8

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
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

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,

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

RECEIVED
OFFICE OF THE
COUNTY CLERK
JUN -6 10 51 AM '12

APPROVED FOR TRANSMITTAL

6/5/12
Mayor Date

LETTERS TO THE EDITOR

MAR 22, 2014

newspoint 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.

word straight.

place from the 1970s up to 2007, codified as Maui County Code Section 19-10. The subdivision was required to provide for the subdivision 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. At the time this was done, the subdivider was required to enter into an agreement with the County for the improvements when performed. The agreements were recorded in the County's records. The subdivider was required to make sure that selling the property would not eliminate the required improvements.

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.

Task 1: Review Development Agreements, Studies and Existing Legislation

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:

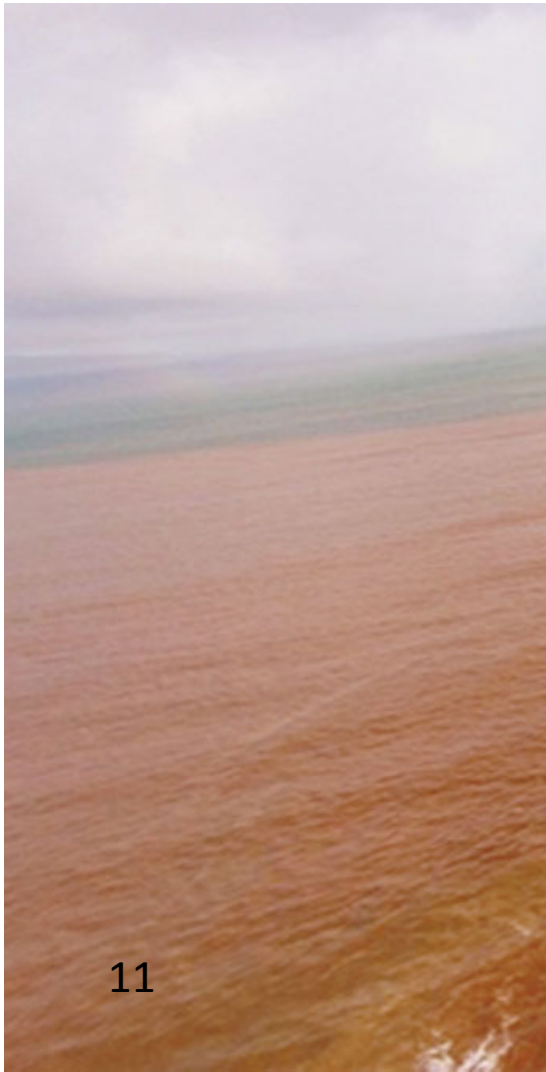
- Developer/subdivision agreements;
- Traffic studies and other land use related reports that provide information on the infrastructure demand by the subject project;
- Existing State of Hawaii legislation relevant to assessments and cost reimbursements;
- County boundary and parcel maps; and
- Budget 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.

Task 2: Prepare Parcel Database and Boundary Map

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)

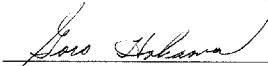
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 20th day of April, 1990, by the following votes:

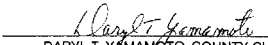
Linda CROCKETT LINGLE	Goro HOKAMA Chairman	Patrick S. KAWANO	Howard S. KIHUNE Vice-Chairman	Alice L. LEE	Ricardo MEDINA	Wayne K. NISHIKI	Verma M. SANTOS	Joe S. TANAKA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

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

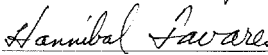
DATED AT WAILUKU, MAUI, HAWAII, this 20th day of April, 1990.

RECEIVED
COUNTY CLERK
APR 20 1990


GORO HOKAMA, CHAIRMAN
Council of the County of Maui

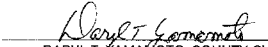

DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

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 Kauakea Medeiros, Co-Chair

Scott Jensen, Legislative Analyst
Arlene Martins, Committee Secretary

Michael Kihm, 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)
Marina 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)
Gladys Young, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 26 & 44)

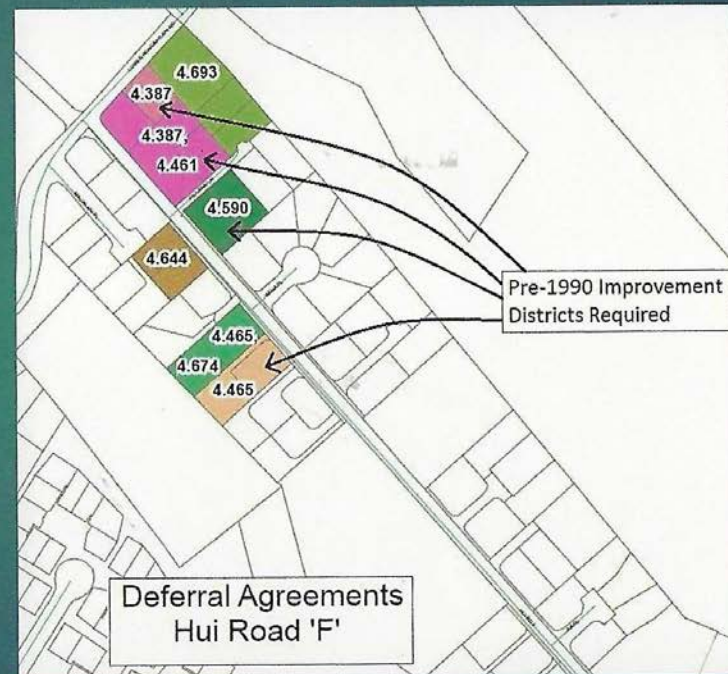
Milton Arakawa, Director, Department of Public Works (Item Nos. 26 & 44)
David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

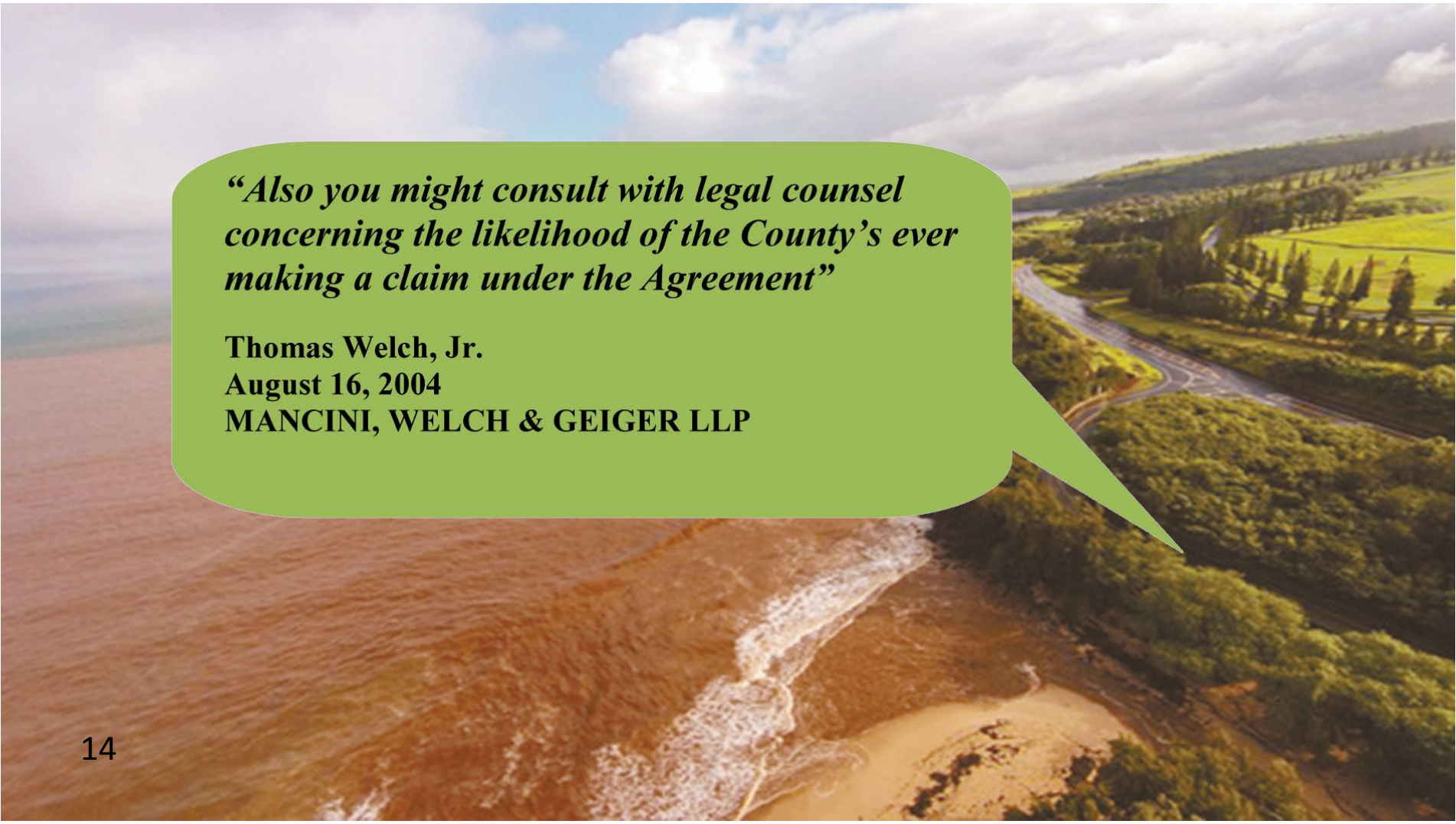
Michael Hirano, Project Manager, Munekiyo & Hiraga, Inc.
and (2) other people

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. On the left, a wide river with brownish water flows towards the bottom. To the right of the river, a paved road curves through a lush green landscape. The background shows rolling hills under a sky 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

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\180207amc01.docx:ltt 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.

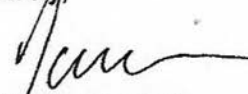
1) South Kihei Road - A total of six parcels may be affected by deferral agreements. The six parcels add up to 345 lineal feet of roadway frontage for a total of \$86,250 of potential revenue.

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

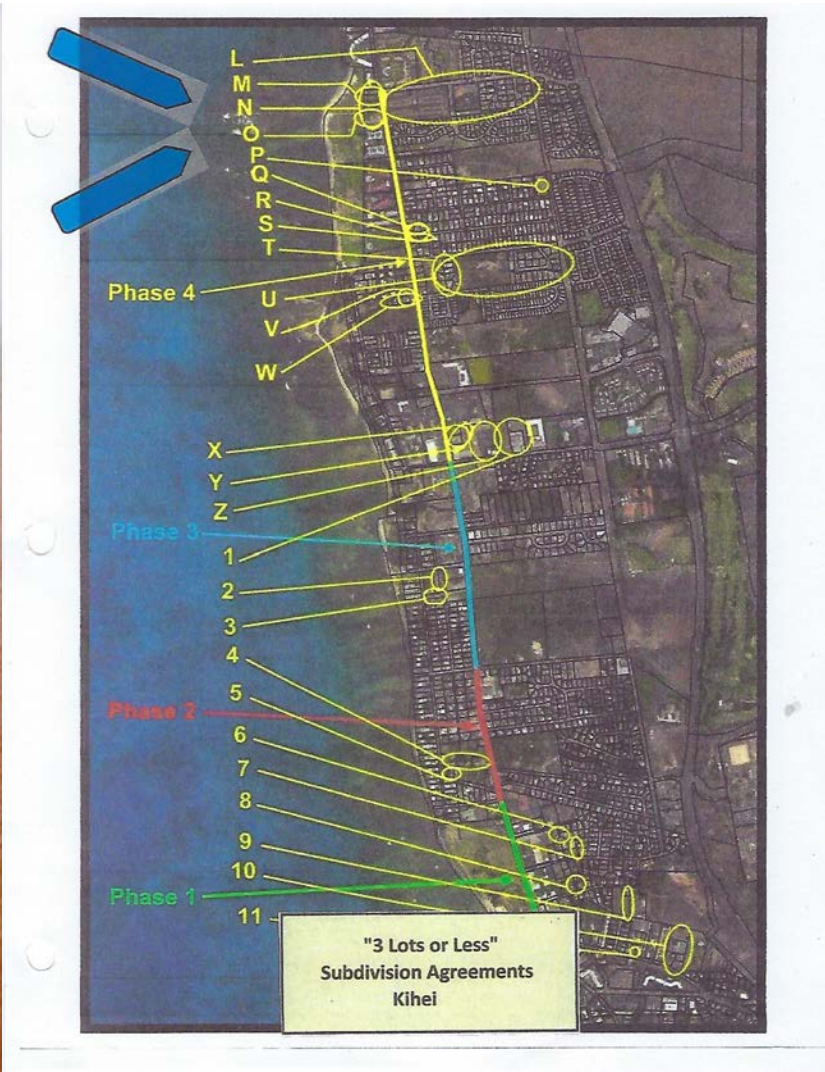
Project: Lower Honoapiilani Road Improvements Phase 4 at Lots 48-C and 48-B

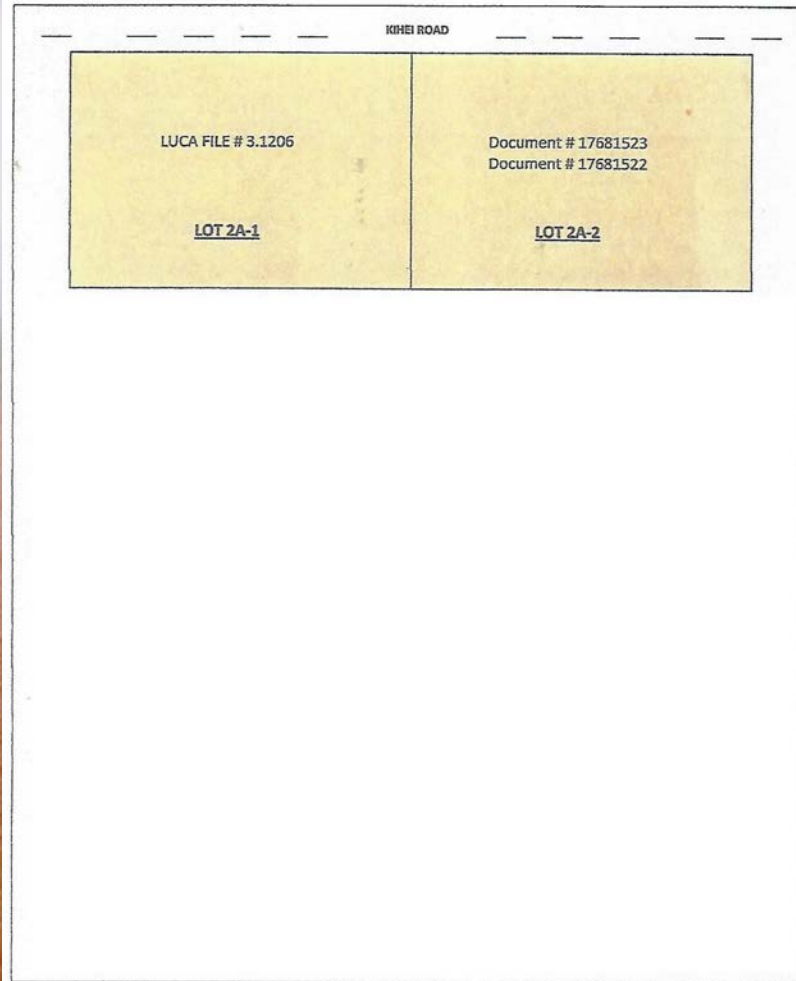
Item #	Description	Bid Qty.	UM	Unit Price	Price
1	Roadway Excavation	102	CY	\$239.91	\$24,470.82
2	6" Permeable Pipe W/ Permeable	210	LF	\$76.34	\$16,031.40
3	6" UTB Under Roadway	40	TON	\$189.45	\$7,578.00
4	3" AC Pavement	27	TON	\$343.73	\$9,280.71
5	5" Asphalt Treated Base	37	TON	\$343.73	\$12,718.01
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.



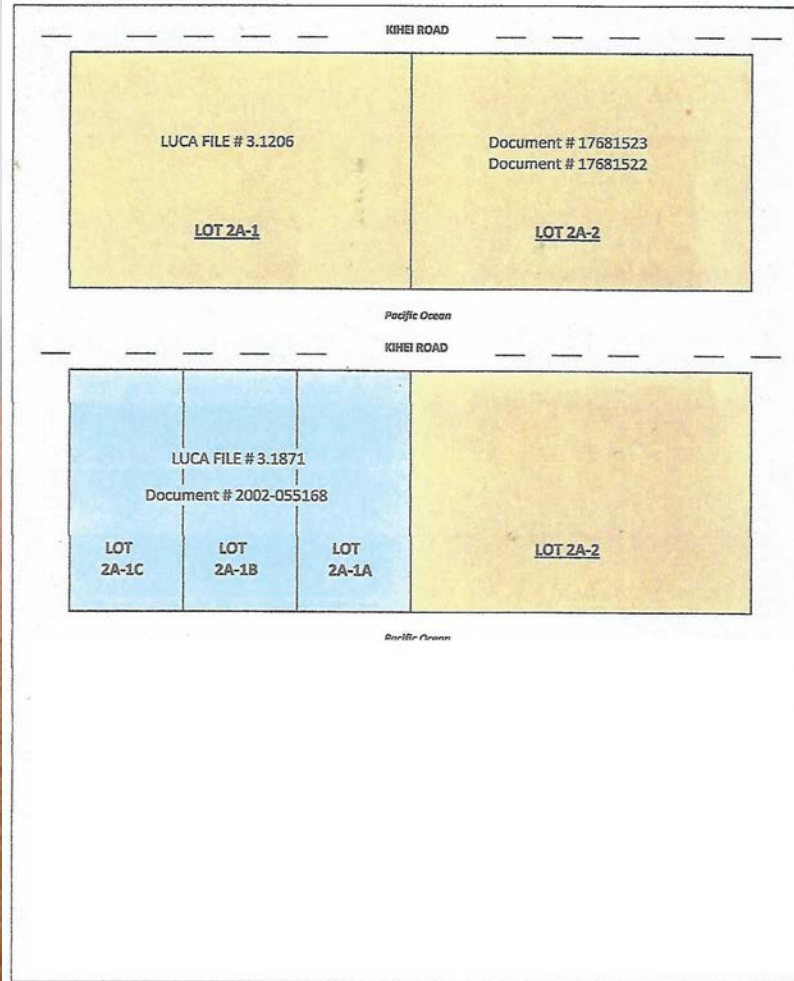


"3 Lots or Less"
South Kihel Road





21

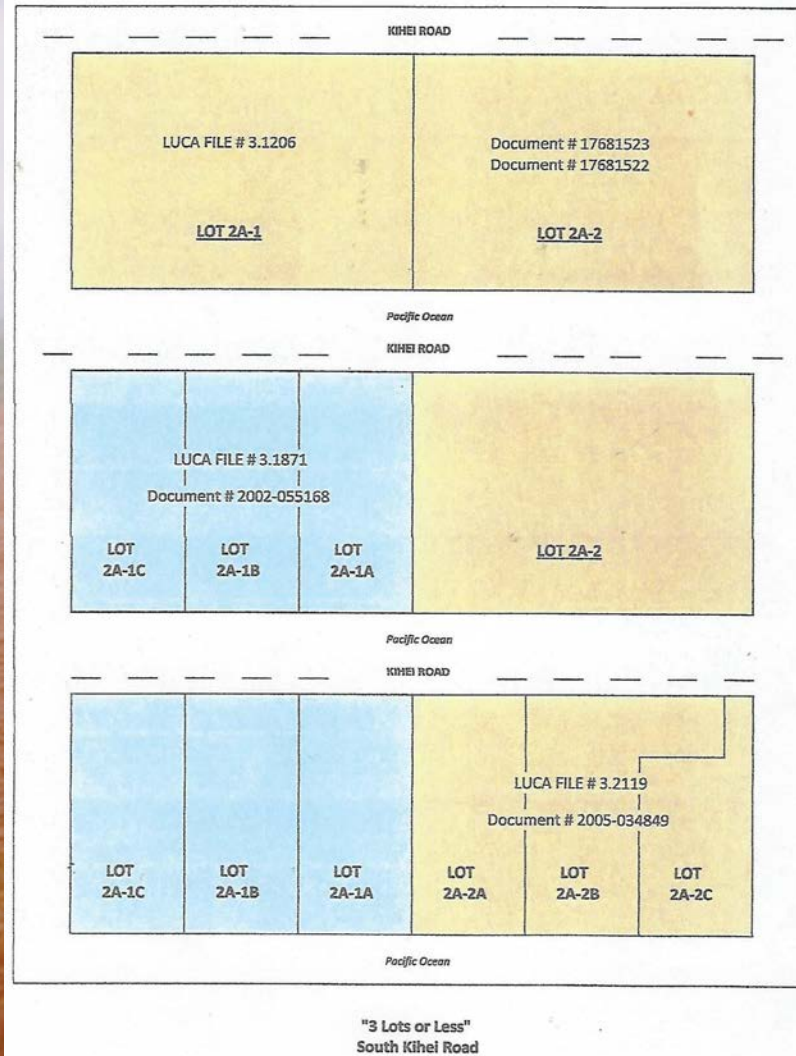


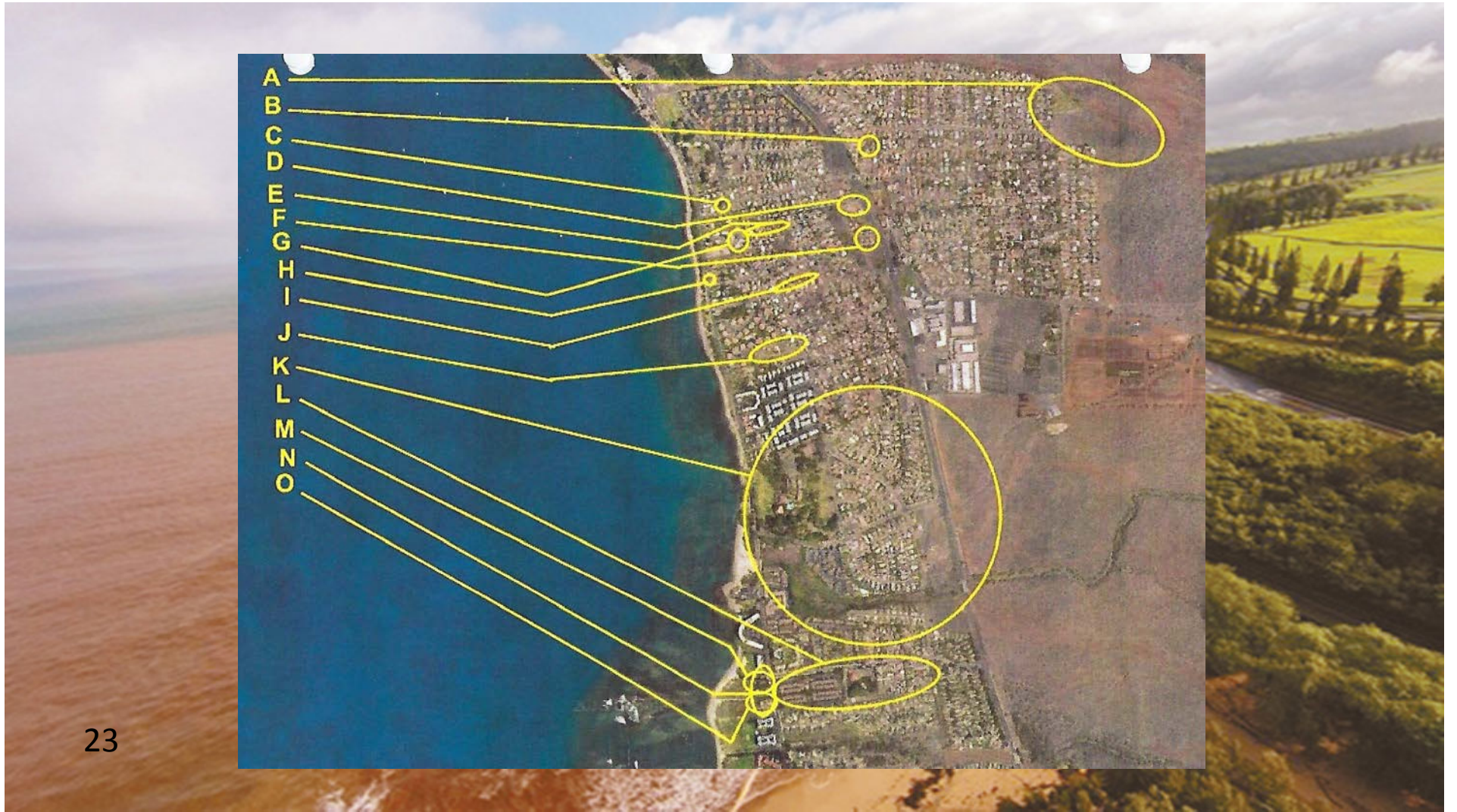
"3 Lots or Less"
South Kihei Road

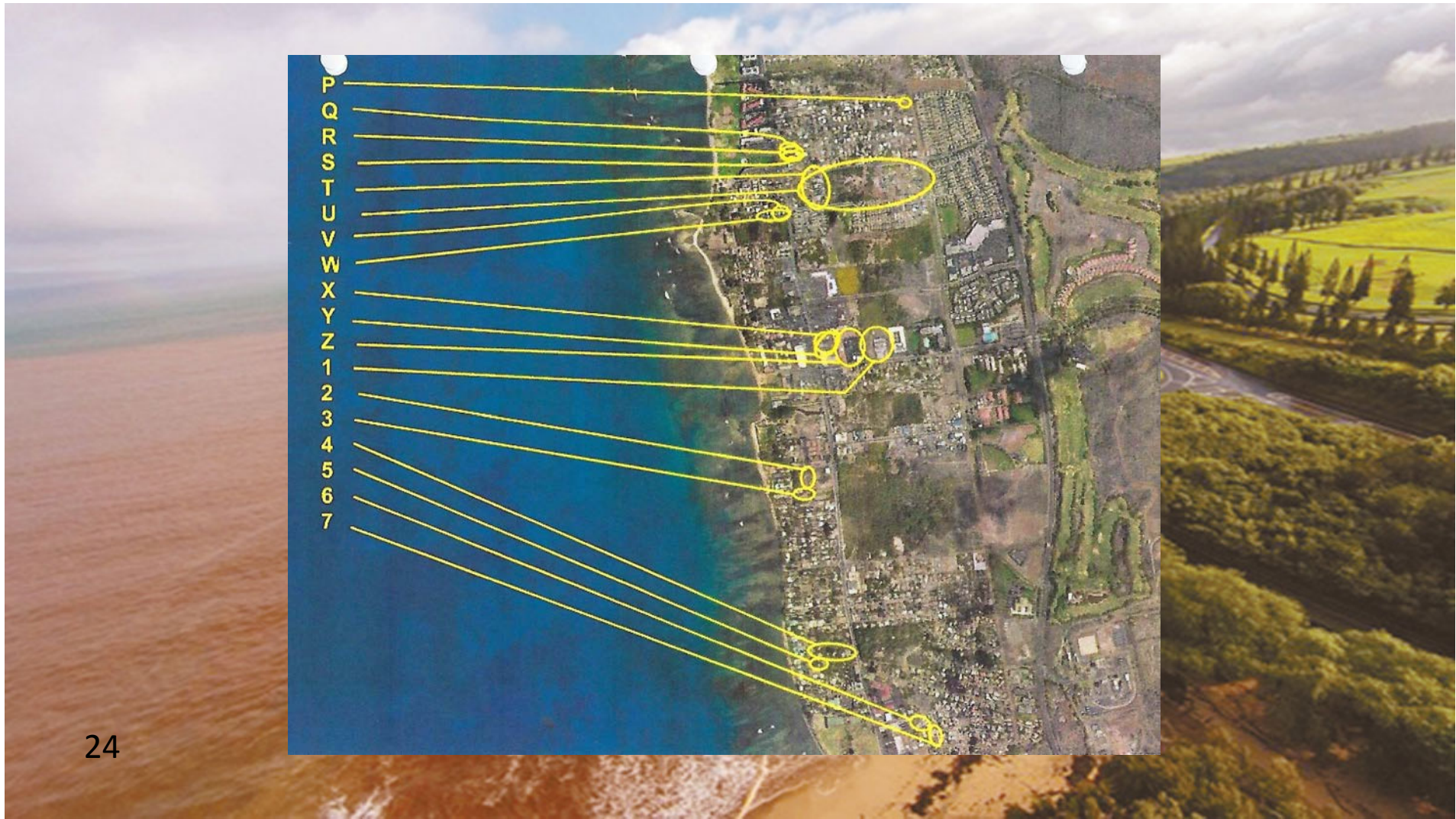


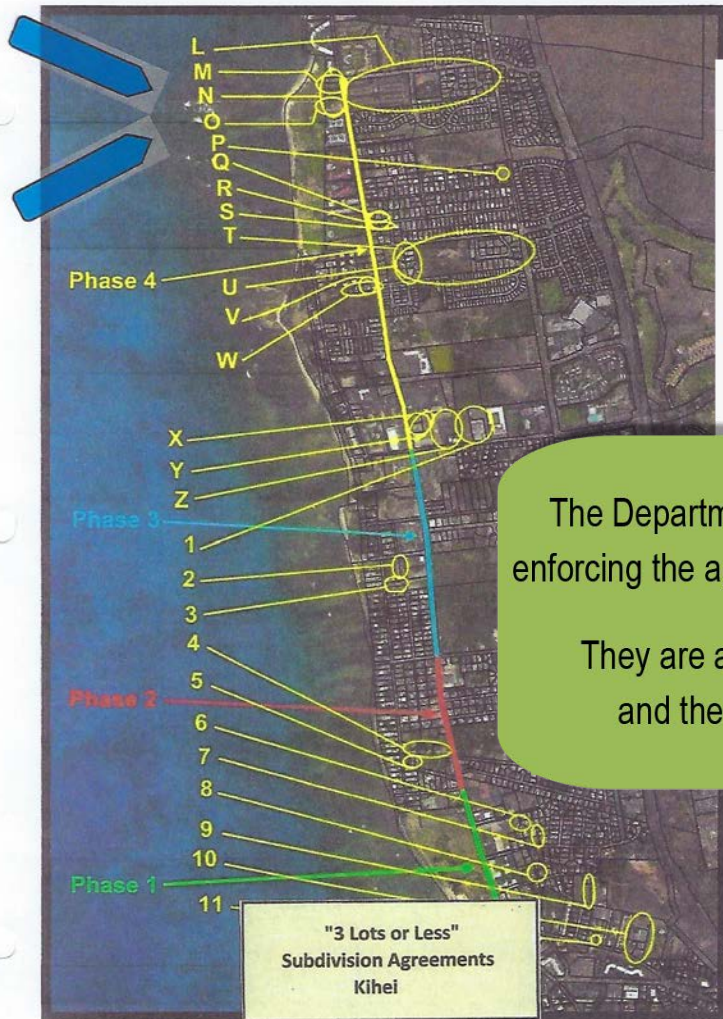


22









The Maui News

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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.

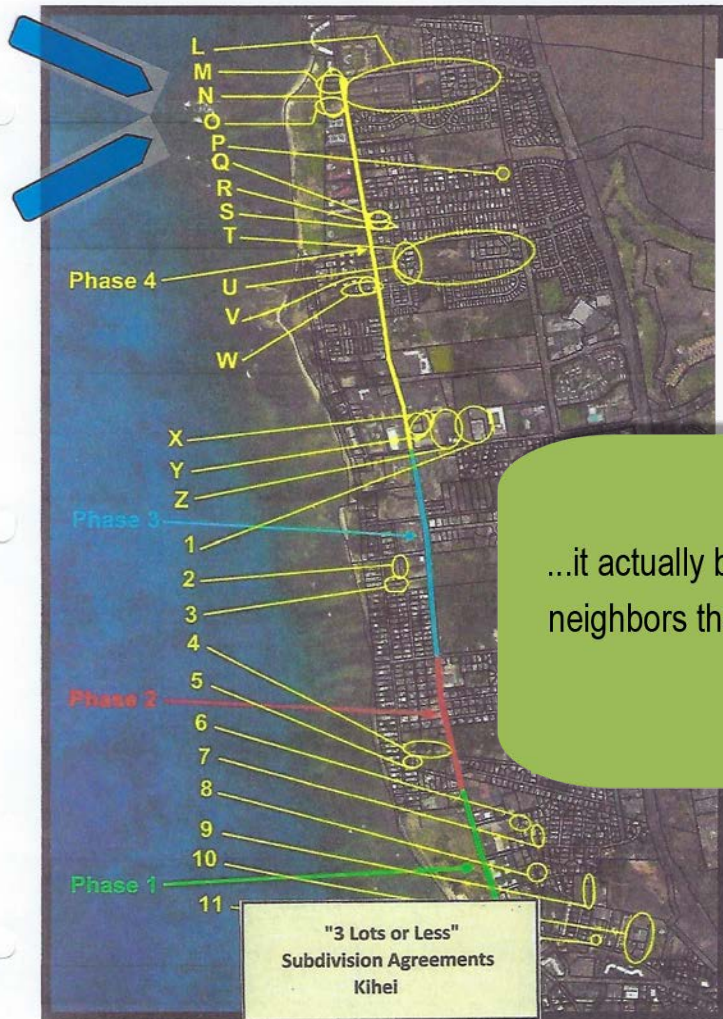
While the Viewpoint writer attempts to frame this as a countywide conspiracy, it actually boils down to a conflict between neighbors that has been ongoing for years. In his argument, he also seems to completely misunderstand and mischaracterize these agreements as liens.

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. If the owner elected to defer the improvements, he/she would be responsible for the cost of the improvements when performed by the county. The owner was required to enter into an agreement with the county when the improvements were performed. The agreements were recorded in the county records. Selling the property would not eliminate the

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

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



The Maui News

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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



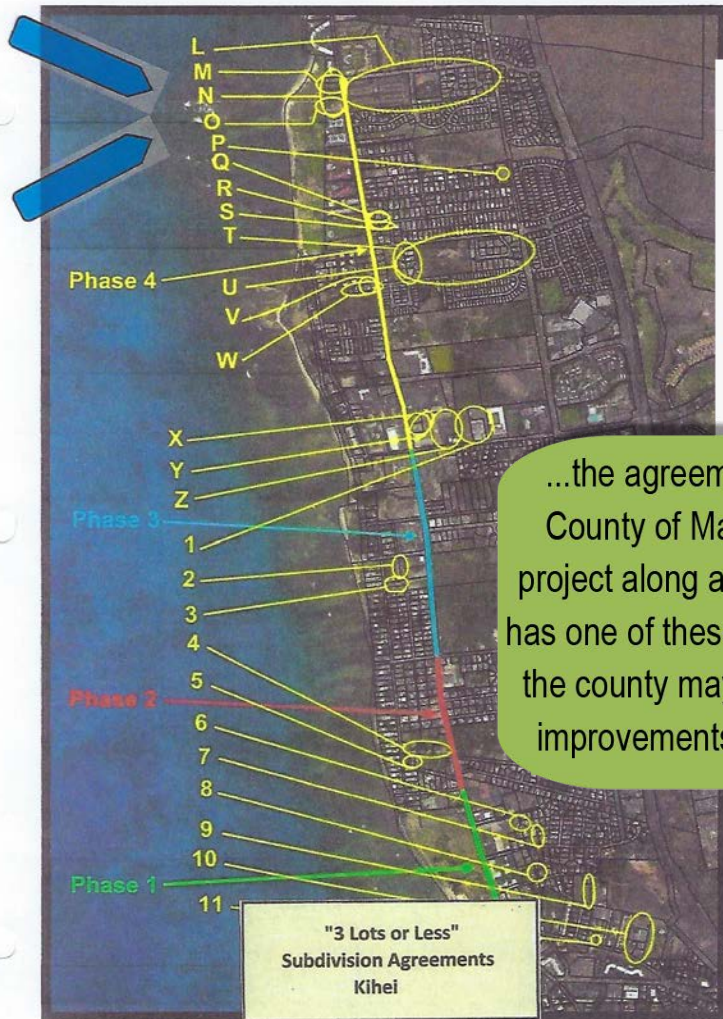
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The Maui News

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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		

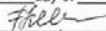
44. As I learned during the final years of my tenure as a Council Member, the Planning Department was not tracking SMA requirements that would insure compliance of developers in completing their SMA Permit roadway and drainage mitigations. They appear to rely solely on the integrity of developers and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

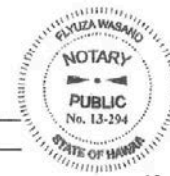

JoAnne Johnson Winer

State of Hawaii
County of Maui

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

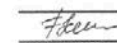


Flyuza Wasano
Notary Public, State of Hawaii
My commission expires 08/11/2017



13

Doc. Date: 8-11-15 # Pages: 14
Flyuza Wasano Second Circuit
Doc. Description: 9th FID 0.118

 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



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An aerial photograph of a coastal area. On the left, there is a body of water with a sandy beach. A road curves along the right side of the water, bordered by a dense line of green trees. In the background, there are rolling green hills under a sky with scattered white clouds.

3 Lot or Less Subdivision Infrastructure Deferral Agreements

