

# DEVELOPER VIOLATIONS OF Special Management Area Permits (SMA)

*"I've learned over the years that you get them by their wallet, their hearts and minds will follow. The environment is everything here. It's so precious to the people and the culture. And y'all need a court to protect all this beauty."*

**Tennessee Judge Larry Potter, Guest Speaker  
Keep Hawaiian Islands Beautiful Conference  
August 2012**

## INTRODUCTION

The County of Maui, with its revolving doors of politically appointed Directors safeguarded by politically appointed Attorneys in Corporation Counsel, continue to ignore their ethical and administrative responsibilities to “promote the public interest” by failing to follow the laws and ordinances adopted through the legislative process designed to protect and preserve the acquired property rights and environmental resources of the County of Maui and State of Hawaii.

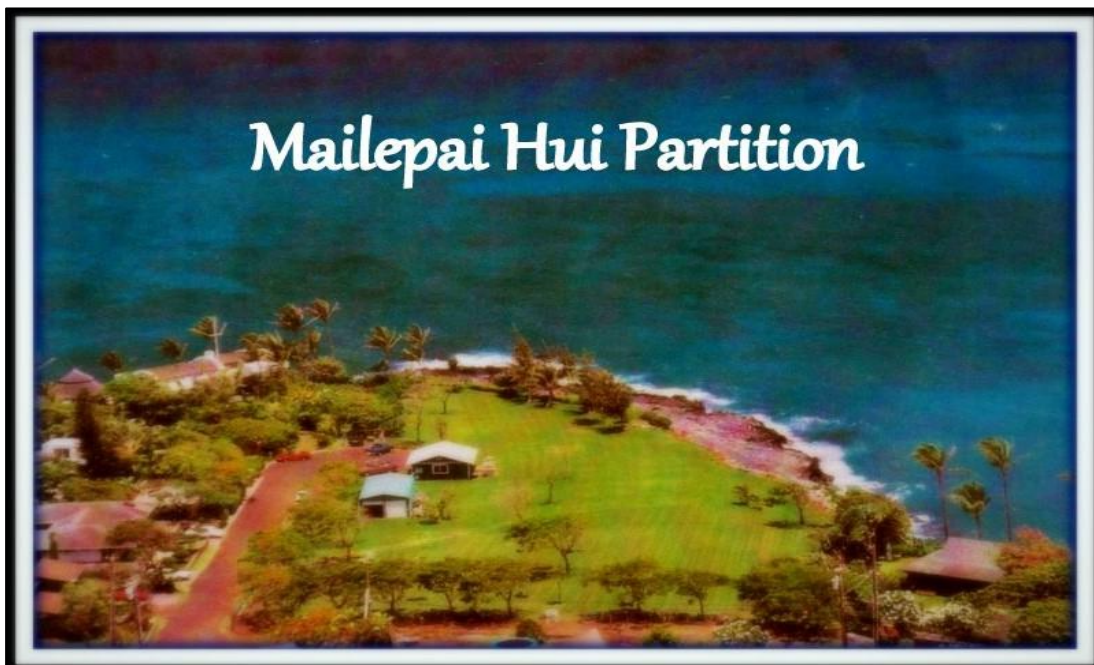
Dedicated citizens seeking compliance, responsibility, and impartiality from these impervious Directors in accordance with the Maui County Charter are forced to seek judicial remedies to defend these constitutional doctrines against a plethora of litigious diversions, intimidation, make believe legislative interpretations, and public displays of arrogant admissions that inflame and humiliate these innocent individuals.

This complaint will expose these truths and exhibit the unjust consequences suffered by a dedicated Maui father seeking preservation of his family’s property rights and developer compliance with their oceanfront subdivision entitlements and environmental obligations.

The role of the County of Maui former Directors and Attorneys played in the attempted concealment of evidence and erasing of developer obligations for their conflicting relationships with private developers explain their aggressive responses and merciless character assassinations.

The documented history and specific abuses involved in this complaint have an eerie similarity with the Montana Beach coercion and were orchestrated by the very same Developer representatives along with the assisting County of Maui Directors. The events and legal posturing of this complaint occurred during the very same months during 2001 and continue on to this very day.

Left unattended, the unethical decision documented in this complaint will cause immeasurable consequences for all parties involved and will further cause unnecessary expenditure of precious public funds. The goal of this filing is just the opposite. Financial recovery to County of Maui and reconciliation for the public and private losses will occur through appropriate investigation and compliance with the Maui County Charter by our trusted elected members of the Maui County Council.

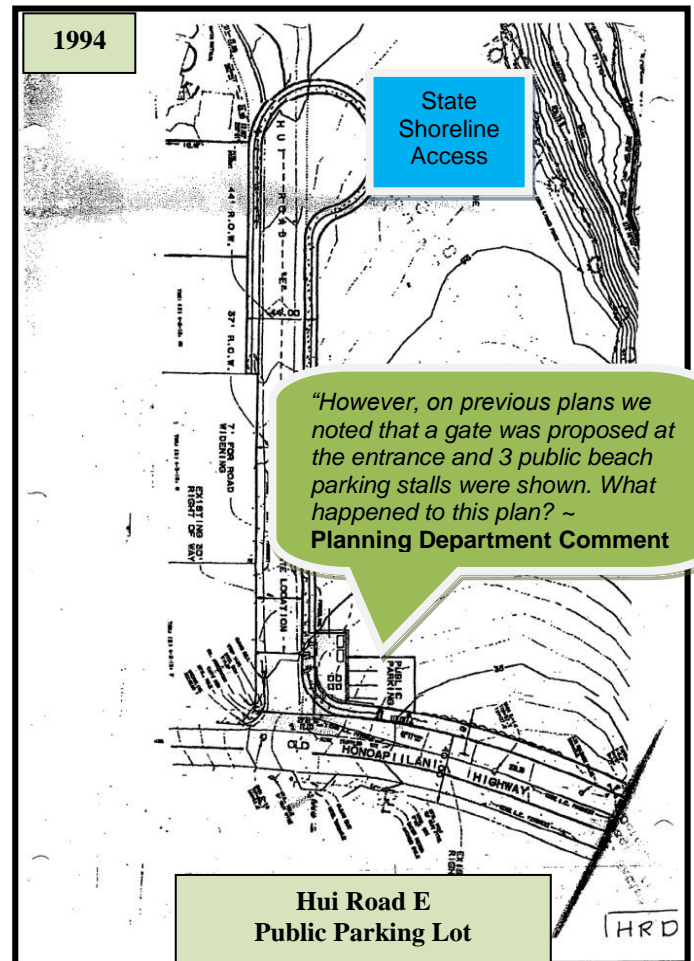
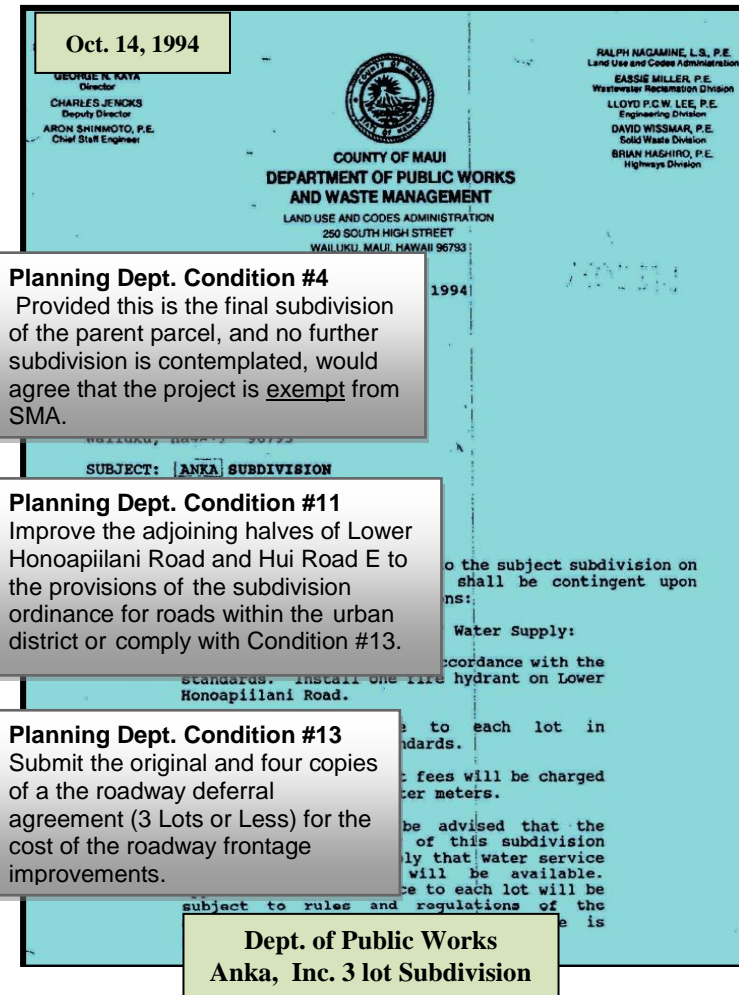
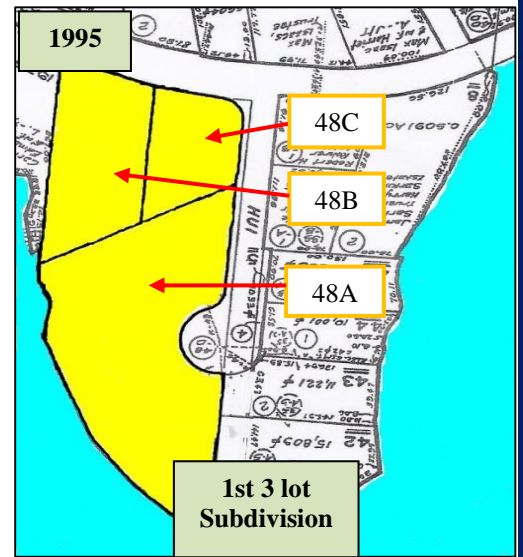


In 1994, Anka, Inc., which owned Lot 48 of the Mailepai Hui Partition along Lower Honoapiilani Road, applied to the County of Maui for a 3 lot subdivision of their oceanfront land.

In accordance with the Rules of the Planning Commission, a subdivision involving less than 4 lots was granted an exemption from SMA permits, public hearings, and environmental review, provided it was the final subdivision of the parent parcel.

In accordance with Title 18 of the Maui County Code, the conditioned roadway improvements to Lower Honoapiilani Road and Hui Road E were deferred "one time" with a "3 Lots or Less" subdivision agreement. 4 Lot subdivisions require full improvements and drainage mitigations to all subdivision frontages.

Hui Road E is a State of Hawaii designated Shoreline Access (#217) with no public beach parking.



#### MAUI COUNTY CODE

Title 18 - Section 18.20.040 (A)

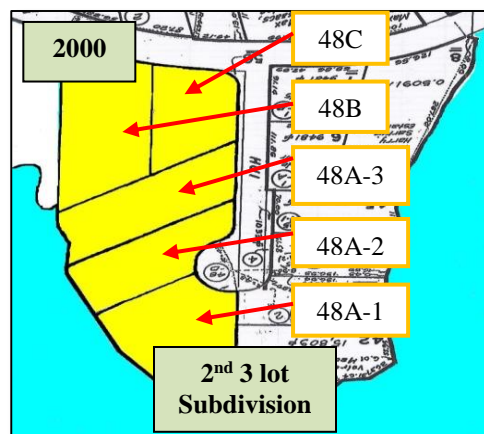
*"The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any resulting parcels."*



In 2000, Anka, Inc sold Lot 48A to developer Lot 48A, LLC. Lot 48B and Lot 48C had already been sold in years prior. Anka, Inc retained the law firm Mancini, Welch, and Rowland LLP to prepare the warranty deed for the sale of Lot 48A. The recorded document identified covenants and development restrictions on Lot 48A.

The restrictions included preservation of coastal views, open space, and specific limitations on future development of Lot 48A. Specifically, that further subdivision of Lot 48A would not cause financial harm to Lot 48C.

A site plan was attached to the declaration which clearly referenced the certified subdivision shoreline setbacks established along the oceanfront boundaries of Lot 48A.



March 7, 2000

#### Condition B.4.(iii) of Recorded Covenants

Lot 48A may be subdivided, but only upon the condition that the subdivision will NOT result in any cost or expense incurred by the owners of Lot 48B and Lot 48C (Salem) of the underlying Anka, Inc. Subdivision.

Total No. of Pages: 10  
After Recordation, Return by Mail (xxx) Pickup ( ) To:  
TITLE COMPANY ESCROW SERVICES, INC.  
41 East Uluwau Street, Suite 20  
Honolulu, Hawaii 96813  
Tax Key Nos. (2) 4-3-15:4

#### DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING LOT 48-A OF THE HUI LAND OF MALEPAI

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, ANKA, INC., a Hawaii corporation, is the owner of Lot 48-A of the subdivision of Lot 48 of the "Hui Land of Malepai" (the "Subdivision"), designated as Maui tax key no. 4-3-15:4 (hereinafter "Lot 48-A"); and

WHEREAS, ANKA, INC. is the wholly owned subsidiary of VALROSE MAUI, INC., a Hawaii corporation; and

NR-48085

Covenants, Conditions, & Restrictions  
Mancini, Rowland, & Welch, LLP

February 16, 2000

Shoreline as surveyed on August 10, 1993, January 11, 1995, and resurveyed on April 6, 2000.  
(Upper reach of wash waves)

Akamai Land Surveying, Inc.

View Easements & Shoreline Setbacks  
Akamai Land Surveying, Inc.

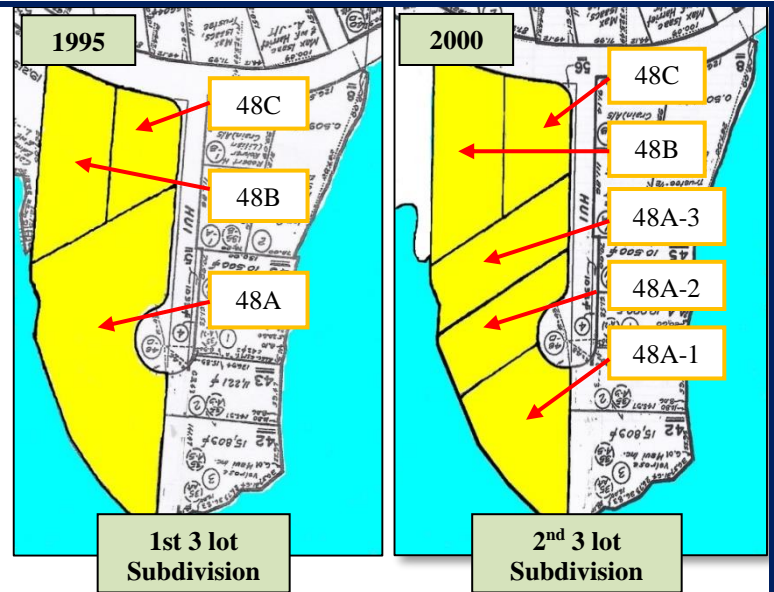
1995



In 2000, Developer Lot 48A, LLC submitted a subdivision application to the County of Maui to re-subdivide oceanfront lot 48A into 3 new parcels.

On June 23, 2000 Preliminary Subdivision Approval was granted by Public Works Director Charlie Jencks with the condition to comply the SMA Permit issued on June 6, 2000 and to verify with the Planning Director if a SMA Major Permit was required after completion of the construction plans.

Unknown at the time was the authorized representative and consultant for the developer's SMA permits and studies was the land planning firm Munikiyo, Arakawa, and Hiraga, Inc. The civil engineer and licensed land surveyor for the shoreline setbacks was Unemori Engineering, Inc. Unemori Engineering, Inc is the design engineer of record for Palama Drive.



**June 23, 2000**

WILLIAM G. 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

June 23, 2000

**Condition 11. Of Preliminary Subdivision Approval**  
The one time exemption from construction of roadway improvements was used as part of the previous Mailepai Hui Partition subdivision Luca file #4686.

Dear Mr. Ariyoshi:

Preliminary approval was granted to the subject subdivision on June 23, 2000.

**Condition 15. Of Preliminary Subdivision Approval**  
Comply with the conditions of the SMA Minor Permit (SM22000/0042) granted on June 6, 2000. Note: Upon approval of Construction Plans, the sub divider should verify if a SMA Major Permit is required.

Comments: Final approval of the subdivision is recommended. Line work for Lot 48A-3 can be deferred until it is approved.

**Department of Public Works  
Preliminary Subdivision Approval**

**June 6, 2000**

Deputy Director

**COUNTY OF MAUI  
DEPARTMENT OF PLANNING**  
June 6, 2000

Mr. Hugh Farrington  
Lot 48-A, LLC

The project has a valuation not in excess of \$125,000 (\$91,400.00)  
The Construction shall be in accordance with the plans submitted on May 11, 2000.

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;

In consideration of the above referenced determination you are hereby granted an SMA Minor Permit approval, subject to the following conditions:  
1. The Construction shall be in accordance with the plans submitted on May 11, 2000.

**Department of Planning  
SMA Permit**

#### THE MAUI COUNTY CODE

##### **SECTION 18.08.020 PREPARATION AND SUBMISSION:**

A. THE SUBDIVIDE SHALL HAVE PREPARED BY AN ENGINEER OR SURVEYOR A PRELIMINARY PLAT, TOGETHER WITH SUCH IMPROVEMENT PLANS AND OTHER SUPPLEMENTARY MATERIAL REQUIRED TO INDICATE THE GENERAL PROGRAM...SHALL BE SUBMITTED TO THE DEPARTMENT OF PLANNING.

##### **SECTION 18.08.080 EXPLANATORY INFORMATION. THE FOLLOWING INFORMATION SHALL BE SUBMITTED WITH THE PRELIMINARY PLAT.**

A. STREETS SHOWING LOCATION, WIDTHS, PROPOSED NAMES AND APPROXIMATE RADII IF CURVES.  
G. IMPROVEMENTS TO BE MADE BY THE DEVELOPER

##### **SECTION 18.08.100 APPROVAL**

C. APPROVAL OF THE PRELIMINARY PLAT SHALL INDICATE THE DIRECTOR'S DIRECTIVE TO PREPARE DETAILED DRAWINGS IN THE PLAT SUBMITTED, PROVIDED THERE IS NO CHANGE IN THE PLAN OF SUBDIVISION AS SHOWN ON THE PRELIMINARY PLAT AND THERE IS FULL COMPLIANCE WITH ALL REQUIREMENTS OF THIS CHAPTER.

##### **SECTION 18.12.070 TECHNICAL REVIEW**

FINAL PLAT SHALL BE EXAMINED AS TO WHETHER IT IS SUBSTANTIALLY SIMILAR TO THE APPROVED PRELIMINARY PLAT.



In late 2000, Milton Arakawa, a former partner of the land planning firm Munekiyo, Arakawa, and Hiraga, Inc. went to work for the County of Maui for the Department of Public Works as Deputy Director.

In early 2001, impacted owner of Lot 48C Christopher Salem objected to the re-subdivision of Lot 48A on the grounds that the development required a SMA Major Permit, public hearings, environmental studies, and full roadway improvements and drainage mitigations to Hui Road E and Lower Honoapiilani Road.

The only documents made available to the public at the County of Maui in 2001 was the SMA Minor Permit issued in June of 2000 with a Planning Department reference to the \$91,402 project valuation that kept the proposed development under the \$125,000.00 public hearing threshold. Despite numerous written requests, the studies to support the SMA Permit valuations and mitigations were not made available by the Planning Department to the public.

May 10, 2001

May 10, 2001

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

Mr. Michael T. Muneikiyo,  
Munekiyo & Hiraga, Inc.  
305 High Street, Suite 104  
Wailuku, Hawaii 96793

Dear Mr. Muneikiyo:

Re: Special Management Area Minor Permit for the Subdivision of Lot 48-A at Hui Road E, TMK: 4-3-015:004, Napili, 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."

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:cmh

c: Clayton Yoshida, AICP, Deputy Planning Director  
Aaron Shinmoto, Planning Program Administrator (2)  
Colleen Suyama, Staff Planner

**Planning Director John Min's Letter  
Of Conditions for Subdivision to Lot 48A, LLC**

February 6, 2001

**INFORMATION REQUEST FORM**  
DEPARTMENT OF PUBLIC WORKS  
AND WASTE MANAGEMENT

Please  
☐ READ  
☐ HANDLE  
☐ APPROVE  
and  
☐ FORWARD  
☐ RETURN  
☐ KEEP ON DISCARD  
☐ REVIEW WITH ME

TO: \_\_\_\_\_  
DIV: \_\_\_\_\_  
FROM: CHRIS SALEM  
REQUESTOR: Salem  
ADDRESS: #8 Hui Rd E DATE: 2/6/01  
TELEPHONE: 808 669-8776  
REQUEST: Review Proposed Map & Conditions  
COMMENTS: MAP on 48-A / TMK-4-3-15:55

**Requestor: Chris Salem**

Review Proposed Map & Conditions  
Map of Lot 48A  
TMK 4-3-15:54

**Department of Public Works  
Information Request Form**

July 19, 2001

**COUNTY OF MAUI  
DEPARTMENT OF PLANNING**

DATE: 7/19/01  
FROM: Planning Dept  
TO: CHRIS SALEM  
Contact Information: \_\_\_\_\_

Although you are not required to provide this information, please provide the following information to help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

**WOULD LIKE THE FOLLOWING**

Describe the government record as subject matter, date, location, purpose, etc. (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

SMA Application - # SM220000042  
Improvement Valuation Summary  
314816 - Box 1065

WOULD LIKE: (please check one or more of the options below)

☒ To inspect the government record.  
☐ A copy of the government record: (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.

☐ Pick up at agency (date and time): \_\_\_\_\_

☐ Mail

☐ Fax (fee and only if available): 1-808-886-8868

☐ If the

**Department of Planning  
Request for Government Records**

**MAUI COUNTY CHARTER**

Section 13-9. Records and meetings open to public.

1. All books and records of every department shall be open to the inspection of any at any time during business hours except as otherwise provided by law.

In 1998, consulting firm Munikiyo, Arakawa, and Hiraga, Inc was retained by the County of Maui to perform a 600 Page Environmental Assessment for the County of Maui the Phase IV of Lower Honoapiilani Road Capital Improvement Project. (STP 3080 (8))

In February of 2000, County of Maui civil engineering consultant Austin, Tsutsumi, and Associates, Inc. submitted a drainage report and roadway improvement plans to the Department of Public Works for Phase IV of Lower Honoapiilani Road. The Capital Improvement Project was publicly noticed by the Department of Public Works to commence in 2002.

In early 2000, the Phase IV roadway engineering designs, drainage reports, & environmental studies were directly available to Lot 48A, LLC from their consultant to properly assess the SMA Permit valuations and mitigations. Public Works Director Milton Arakawa had first-hand knowledge of the specific roadway improvements required for the immediate frontage of the proposed development.

On June 6, 2000, Lot 48A, LLC was issued a SMA Minor Permit with a questionable development valuation of \$91,402 authored and signed by Unemori Engineering, Inc.

DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT  
COUNTY OF MAUI  
WAILUKU, MAUI, HAWAII

February 12, 2000

PLANS FOR  
**LOWER HONOAPIILANI ROAD IMPROVEMENTS PHASE - 4**  
FEDERAL AID PROJECT NO.

DISTRICT OF LAHAINA  
ISLAND OF MAUI

PRINTED BY: ATA  
DATE FEB 12 2000

VICINITY MAP		INDEX OF DRAWINGS	
		NO. 1	TITLE SHEET, INDEX OF DRAWINGS AND LOCATION MAPS
		2	GENERAL PLAN
		3	TYPICAL ROAD AND BRIDGE CROSSING SECTIONS
		4	PLAN - E STA. 874+00 TO E STA. 884+00
		5	PLAN - E STA. 884+00 TO E STA. 894+00
		6	PLAN - E STA. 894+00 TO E STA. 904+00
		7	PLAN - E STA. 904+00 TO E STA. 914+00
		8	PLAN - E STA. 914+00 TO E STA. 924+00
		9	PLAN - E STA. 924+00 TO E STA. 934+00
		10	PLAN - E STA. 934+00 TO E STA. 944+00

"We will bid out the job in June (of 2002) and probably start in September."

~ Department of Public Works  
August 2001

May 4, 2000

Thomas M. Phillips, Chief  
Maui Police Department  
County of Maui  
55 Mahalanui Street  
Wailuku, Hawaii 96793

May 4, 2000

on the proposed project.  
and Waste Management,

"Preliminarily, construction of the proposed project is anticipated to commence by the spring of 2001."

Glenn Tadaki, Planner  
Munikiyo, Arakawa, & Hiraga, Inc.

Preliminarily, construction of the proposed project is anticipated to commence by the spring of 2001. This is well after the completion of the Honoapiilani Highway Widening Project (Kaanapali Parkway to Honokowai Stream), which is expected to occur by the summer of 2000. As noted in the project's Draft Environmental Assessment, a traffic control plan and public notification procedures will be utilized to minimize impacts to traffic during construction of the proposed project.

The construction work referenced in your letter, which is to be undertaken by the County and its contractor (Goodfellow Brothers), involves improvements along Lower Honoapiilani Road from Mahinahina Stream to Hooihui Road. This improvements project is expected to begin around the time the Honoapiilani Highway Widening Project is completed and is anticipated to be finished prior to the start of construction for the proposed project.

With regard to parking, the provision of intermittent parallel parking along the market side of the roadway has been deleted from the project since the time the project's early consultation project summary was originally prepared.

Environmental Study for Phase IV  
Munikiyo, Arakawa, & Hiraga, Inc.

February 2000

**DRAINAGE REPORT FOR  
LOWER HONOAPIILANI ROAD IMPROVEMENTS  
(HOOHUI ROAD TO NAPILIHU STREET)  
West Maui, Hawaii**  
Second Division TMK: 4-3-01, 03, 05, 15, and 19

Prepared for  
County of Maui  
Department of Public Works and Waste Management

Prepared by  
Austin, Tsutsumi & Associates, Inc.  
Civil Engineers • Surveyors  
Honolulu • Wailuku, Hawaii

VI. PROPOSED DRAINAGE IMPROVEMENTS  
Existing drainage outlets adjacent to Hui Road "D" and Hui Road "E" will be upgraded.

Drainage Report for Phase IV  
Austin, Tsutsumi & Associates, Inc.



In August of 2001, after receiving no assistance or information from the Planning Department on the SMA studies or the questionable consultant SMA valuation, owner Salem was forced to seek advice from legal counsel to address his property rights and the SMA laws.

Attorney Tom Welch, the former legal counsel for seller Anka, Inc. was now acting as legal counsel for the buyer Lot 48A, LLC. During the same time period he was also embroiled in the Montana Beach controversy involving a 3 lots subdivision and related SMA permits.

Attorney Welch disputed the claims that the exhausted "one time" deferral referenced in the preliminary subdivision approval letter required his client to install full roadway improvements to Hui Road E and Lower Honoapiilani Road. Issues were raised about the questionable \$91,402 SMA valuation.

Left with the distasteful choice of seeking civil remedies against the County of Maui or resolving the dispute with the Developer, Salem was advised to enter into a settlement agreement to mitigate his damages and the public impacts of the proposed development.

February 26, 2003

### Mossman: County erred in Montana Beach case

By HARRY EAGAR, Staff Writer

Maui News, February 26, 2003 (front page)

WAILUKU - In the Montana Beach special management area permit controversy, hearings officer Boyd Mossman wrote that "county employees repeatedly gave advice and approvals that contradicted both state law and the commission's rules."

Mossman agreed with the appellants and supported their argument for SMA exemption, while the county argued for denial.

In his findings of fact, Mossman wrote that "county employees repeatedly gave advice and approvals that contradicted both state law and the commission's rules."

~ Boyd Mossman, Hearings Officer

In his findings of fact, Mossman wrote that county employees repeatedly gave advice and approvals that contradicted both state law and the commission's rules.

However, he added, "Neither the appellants nor their representatives, nor the director, nor Planning Department employees apparently took the time to read these rules or obtain an opinion from the corporation counsel until August of 2001."

Maui News

August 24, 2001

### PAUL JOHNSON PARK & NILES

ATTORNEYS AT LAW, A LAW CORPORATION

"Lot 48A, LLC's proposed subdivision has and will continue to cause Salems to incur substantial costs and expenses."

Attorney Tom Pierce

Paul, Johnson, Park, & Niles

Tom Welch, Esq.  
Mancini, Rowland & Welch  
33 Lono Avenue, Suite 470  
Kahului, HI 96732

Re: Chris and Gloria Salem/Lot 48A LLC

"Lot 48A, LLC intentionally misrepresented the cost of the improvements to the County in order to avoid triggering a SMA use permit and public hearings."

Attorney Tom Pierce

Paul, Johnson, Park, & Niles

CONCERNS.

The Salems continue to believe the remaining issues may be resolved in an amicable manner. To that end, we extend an offer that the parties, with the assistance of

"The Salems continue to believe the remaining issues can be resolved in an amicable manner;"

- 1) Protection of existing views.
- 2) Compensation for Lower Honoapiilani Road Improvements
- 3) Possible privacy barriers between properties.
- 4) Joint maintenance agreement for Hui Road E.

Attorney Tom Pierce

Paul, Johnson, Park, & Niles

HONOLULU OFFICE Suite 1200 Pacific Tower 1001 Bishop Street Post Office Box 4438 Honolulu, Hawaii 96812-4438

MAUI OFFICE

Letter to Attorney Welch  
Paul, Johnson, Park & Niles

October 19, 2001

### SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") dated October 19, 2001, is made between Chris and Gloria Salem (collectively "the Salems"), and Lot 48A LLC, a Hawai'i limited liability company. The Salems and Lot 48A LLC are collectively referred to as "the Parties."

### RECITALS

WHEREAS, Lot 48A LLC is the fee simple owner of, and is seeking

subdivision  
Alaola, Ka  
TMK # (2) 4  
Lot 48A is c  
4.805 ("Sub  
48A-1, Lot

### RECITALS

"WHEREAS, the Salems have objected to the subdivision of Lot 48A, LLC and have alleged violations of applicable law and recorded covenants."

WHEREAS, the Salems are fee simple owners of Lot 48C, which is adjacent to Lot 48A, and proposed Lot 48A-3.

### AGREEMENT

#### SECTION 4. HONOAPIILANI ROAD IMPROVEMENTS

"Lot 48A, LLC shall pay to the County Lot 48C's and Lot 48B's assessed pro rata shares of the costs determined by the County."

#### SECTION 6. PARKING COVENANT

"With the objective of reducing the burden of parking on Hui Road E by guests and visitors, Lot 48A, LLC shall record a restrictive covenant which will require not less than two guest parking spaces within each lot."

herein, the Parties hereby agree as follows:

#### SECTION 1. PAYMENT TO SALEMS

Lot 48A LLC agrees to pay the Salems Twelve Thousand and No/100

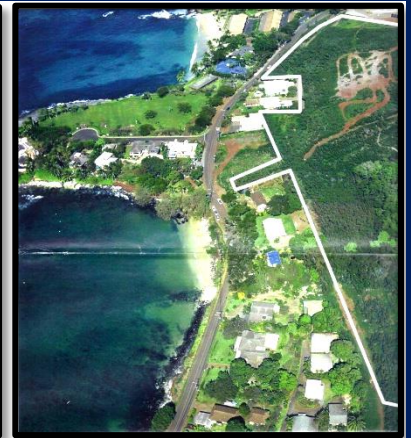
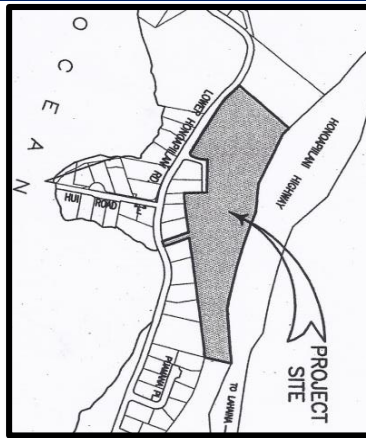
Settlement Agreement  
Lot 48C / Salem & Lot 48A, LLC



In 2002, Public Works Director David Goode issued Preliminary Subdivision Approval for the Pu'u Kahana development application submitted by Smith Development. The proposed development is immediately adjacent to Hui Road E.

In 2003, David Goode, acting as Vice President of Development Operations for Smith Development, received compensation for soliciting the final approvals of the same ongoing Pu'u Kahana development application.

The engineer of record was Unemori Engineering.



**January 14, 2002**

County of Maui  
Department of Public Works  
Land Use and Codes Administration  
230 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

Wastewater Reclamation Division  
LLOYD P.C.W. LEE, P.E.  
Engineering Division  
JOHN D. HARDER  
Solid Waste Division  
BRIAN HASLUND, P.E.  
Highways Division

January 14, 2002

Mr. Warren S. Unemori, President  
WARREN S. UNEMORI ENGINEERING, INC.  
2145 Wells Street, Suite 403  
Wailuku, Hawaii 96793

**RECEIVED**  
JAN 15 2002  
WARREN S. UNEMORI ENGINEERING, INC.

SUBJECT: PUU KAHANA SUBDIVISION  
TMK:(2) 4-3-001:039  
LUCA FILE NO. 4.842

Dear Mr. Unemori:

Preliminary approval was granted to the subject subdivision on January 14, 2002. Final approval shall be contingent upon compliance with the following conditions:

- Requirements/comments from Maui Electric Company:
  - Electricity is available from nearby existing facilities (overhead and/or underground).
  - Requires line extension (overhead and/or underground) within existing County or State road right-of-way.
  - Requires line extension (overhead and/or underground) within private road or property.
  - Requires easement(s) from owner/subdivider/developer within subdivision for new or existing MECO facilities.

Comments: Easements are required by our Land Agent, Ralph Kubota. He can be contacted at 871-2367.

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

**Department of Public Works  
Preliminary Subdivision Approval**

**September 23, 2003**

SMITH DEVELOPMENT  
Real Estate Development & Consulting  
1043 Makawao Avenue, Suite 208, Makawao, HI 96768  
Phone: (808) 572-3011 Fax: (808) 572-8378  
www.SDHawaii.com email: KRS@SDHawaii.com

September 23, 2003

**Additional Information Regarding the Proposed  
Puu Kahana Residential Subdivision Located at  
TMK 4-3-001:039**

Puu Kahana Neighboring Property Owners

RE: Additional Information Regarding the Proposed Puu Kahana Residential Subdivision Located at TMK 4-3-001:039

Dear Neighboring Property Owner,

In an effort to provide you with the latest project related information, enclosed please find copies of FEMA's letter of map revision regarding detailing out the existing floodways in Ka'opala Gulch and findings from a water quality report on Ka'opala and Keonenui Bays prepared by Sea Engineering.

Should you like additional information on either of these reports, please contact Yichia at Smith Development offices.

If you have any questions or comments regarding these two reports, please forward them to our office by October 8, 2003.

Sincerely,

*David C. Goode*  
David C. Goode  
Vice President  
Development Operations

cc: **Smith Development  
David Goode, V.P. Development Operations**

#### THE MAUI COUNTY CHARTER

**PROHIBITIONS 1.f.** NO OFFICER OR EMPLOYEE OF THE COUNTY SHALL RECEIVE ANY COMPENSATION FOR ANY SERVICE RENDERED ON BEHALF OF ANY PRIVATE INTEREST AFTER TERMINATION OF SERVICE TO OR EMPLOYMENT WITH THE COUNTY IN RELATION TO ANY CASE, PROCEEDING, OR APPLICATION WITH RESPECT TO WHICH THE OFFICER OR EMPLOYEE WAS DIRECTLY CONCERNED, OR WHICH WAS UNDER HIS OR HER ACTIVE CONSIDERATION..

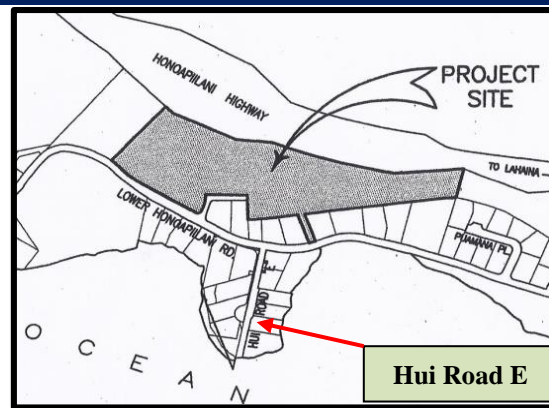
**PROHIBITIONS 2.b.** NO FORMER NON-ELECTED SALARIED EMPLOYEE OF THE COUNTY SHALL APPEAR FOR COMPENSATION BEFORE ANY DEPARTMENT OR OTHER AGENCY OF THE COUNTY BY WHICH SUCH EMPLOYEE OR OFFICER WAS LAST EMPLOYED WITH A PERIOD OF ONE YEAR AFTER TERMINATION OF SERVICE TO OR EMPLOYMENT WITH THE COUNTY.

**10.5. PENALTIES.** ANY PERSON WHO VIOLATES THE PROVISION OF THIS ARTICLE SHALL BE SUBJECT TO A FINE TO BE PROVIDED FOR BY ORDINANCE ADOPTED BY THE COUNTY COUNCIL AND IN ADDITION MAY BE SUSPENDED OR REMOVED FROM OFFICE OR EMPLOYMENT.

In May of 2003, after 2 years of public intervention, the Department of Planning and the Department of Corporation Counsel agreed with concerned neighbors and Christopher Salem and denied the Pu'u Kahana subdivision application and Special Management Area use permit.

In June of 2003, Christopher Salem, a neighbor to the denied development, was sent a threatening email from Smith Development that made parallel references to events of murder.

The Maui Police Department has the documented events on record.



ALAN M. ARAKAWA  
Mayor  
MICHAEL W. FOLEY  
Director  
WAYNE A. BOTELHO  
Deputy Director

COUNTY OF MAUI  
DEPARTMENT OF PLANNING

May 1, 2003

Mr. Kent Smith  
Smith Development  
1043 Makawao Avenue, Suite 208  
Makawao, Maui, Hawaii 96768

Dear Mr. Smith:

RE: Change in Zoning and Special Management Area Use Permit Applications for the Pu'u Kahana Project, TMK: 4-3-001:039, Kahana, Maui, Hawaii (CIZ 200110016) (SM1 200110021)

The Planning Department has consulted with the Corporation Counsel's office on the matter of new public hearings for the above Change in Zoning and Special Management Area Use Permits. It is the opinion of the Deputy Corporation Counsel that with the preparation of an Environmental Assessment for the project, new information which was not available at the public hearings will be presented as part of the EA process. This information must be part of the record, and as such, new public hearings will be required.

If you have further questions, please contact this office at 270-7735.

Sincerely,  
*Michael W. Foley*  
MICHAEL W. FOLEY  
Planning Director

Department of Planning  
Notice of Denial

PAUL JOHNSON PARK & NILES  
ATTORNEYS AT LAW, A LAW CORPORATION

June 27, 2003

VIA FACSIMILE 579-8350

Jack R. Naiditch, Esq.  
P.O. Box 790279  
Paia, HI 96779

RE: *Maui Police Department*

Dear Mr. Naiditch:

We do not further threaten. On the evening of June 27, 2003, which is attached to mail identifies "Ken" and the statements in every indicia of belief.

Based on Smith's recent criminal record, the e-mail content, the e-mail was libelous. The subject explain is a reference to the murder of Keaton's character.

MAUI POLICE DEPARTMENT  
Report: *7-7-2-16*  
Date: *6/27/03* Officer: *Costa*  
Type of Incident: *HARASSMENT*

HOW TO OBTAIN A COPY OF YOUR POLICE REPORT

Visit the Maui Police Department Record Section, Mon-Fri, 7:45am to 4:30pm, at the address below. Please take our Police Report Number with you.

OR

Write to the Maui Police Department Record Section and request a copy of your Police Report. Please include the Police Report Number and a self-addressed stamped envelope.

Maui Police Department Address:  
35 Mahalani Street, Wailuku, HI 96793  
ATTN: Record Section  
Telephone: (808) 244-6355  
(808) 244-6345 (Motor vehicle accident)

Notes: There is a charge of \$0.50 per page for your Police Report (average cost per report is \$1.00).

If you should require further assistance as a visitor to Maui, please contact the Maui Visitors Bureau by calling (808) 244-3530 or writing to P.O. Box 580, Wailuku, HI 96793

Once you receive the report, please explain to the reporter that you are a victim of a crime and that you are requesting a copy of the report for legal purposes. If you are a victim of a crime, you are entitled to a copy of the report.

Mr. Salem, as well as Mr. Smith, to which he pleaded no contest and harassing. To the best of my knowledge, it is also defamatory and the e-mail's contents are a real life and leave a threat to the life of the victim.

Heights, he could draw no conclusion from the e-mail's contents except that they were meant as a warning to stop investigating the flawed Pu'u Kahana development proposal or risk the threat of physical harm -- the ending of the movie that Mr. Smith "especially enjoyed" appears to be a reference to the murder of Keaton's character.

HONOLULU OFFICE: Suite 208, 1043 Makawao Avenue, Suite 208, Makawao, HI 96768  
MAUI OFFICE: 203 N. Mahealani Street, Wailuku, HI 96793

Police Report

Smith Development Consultants

PU'U KAHANA  
Application for Change in Zoning and Special Management Area Use Permit  
TMK No. 4-3-001:039  
Kahana, Maui, Hawaii

CHOUTEAU CONSULTING

PAUL JOHNSON PARK & NILES  
ATTORNEYS AT LAW, A LAW CORPORATION  
March 14, 2003

VIA FACSIMILE 244-6964

David M. Jorgensen, Esq.  
Big Brothers & Sisters  
2145 Wells Street, Suite 204  
Wailuku, HI 96793

RE: Pu'u Kahana Subdivision

Dear Mr. Jorgensen:

This supplements our settlement letter to you of March 10, 2003 and follows the letter of March 11, 2003 from Kase Smith on behalf of CH Maui, LLC (the "Developer") to Michael Foley and Gilbert Coloma-Aguero (the "Smith Letter").

The Developer states that Mr. Salem is attempting to "delay the project through procedural and legal wrangling." To the contrary, Mr. Salem seeks swift resolution of these issues either by obtaining final decisions through administrative or judicial decisions or by resolving this matter with the Developer through settlement. We continue to believe settlement would be best for all parties.

The Developer questions Mr. Salem's standing to raise the issues he has raised. The sole basis for the Developer's argument on standing is that Mr. Salem "decided to not [sic] intervene into [sic] the project's Special Management Area proceeding." First, as you well know, and can advise your client, Mr. Salem's standing to sue under HRS Chapter 341 or under HRS Chapter 205A, or to take administrative appeals from Planning Director's decisions or Public Works Director's decisions, or to appeal those administrative decisions under HRS Chapter 91, has no relationship to the Developer's SMA permit application and the related contested case.

We also want to make clear that Mr. Salem does not "negotiate" his decision regarding the timing of his intervention in the contested case. The Developer's comments suggest it fails to understand the procedural and substantive strength of the laws we have focused on in our prior settlement letter as well as in the letters to the County. Contrary to the Developer's mistaken belief, the SMA contested case is but a small part of the legal process.

HONOLULU OFFICE: Suite 208, 1043 Makawao Avenue, Suite 208, Makawao, HI 96768  
MAUI OFFICE: 203 N. Mahealani Street, Wailuku, HI 96793

September 23, 2003

Pu'u Kahana Neighboring Property Owners

RE: Additional Information Regarding the Proposed Pu'u Kahana Residential Subdivision Located at TMK: 4-3-001:039

Dear Neighboring Property Owners:

In an effort to provide you with the latest project related information, enclosed please find copies of FEMA's letter of map revision regarding detouring out the existing roadways in Ka'opua Gulch and findings from a water quality report on Ka'opua and Keonani. They prepared by Sea Engineering.

Should you like additional information on either of these reports, please contact Yvonne at Smith Development offices.

If you have any questions or comments regarding these two reports, please forward them to our office by October 6, 2003.

Sincerely,  
*David M. Jorgensen*  
David M. Jorgensen  
Vice President  
Development Operations  
cc: Michele Choumou  
Kent B. Smith

2002

Smith Development's Land Planning Consultant, Attorney, and Vice President of Development Operations for the Pu'u Kahana Subdivision are all former high ranking employees with the County of Maui.



In 2006, a dispute arose over the breaches of the Settlement Agreement by Developer Lot 48A, LLC. Parking covenants were never recorded on the oceanfront parcels by Attorney Welch as agreed, building was taking place in protected view areas, and Attorney Welch argued that Lot 48A, LLC no longer had obligations to pay for the pro rata share of the Lower Honoapiilani Roadway improvements.

In 2007, Margery Bronster, the Attorney for the spec developer on Lot 48A2 and the Attorney for the developer of the massive oceanfront "Jewel of Kahana", replaced Attorney Tom Welch in as legal counsel for developer Lot 48A, LLC.

On July 9, 2008, during Circuit Court and Arbitration proceedings relating to the breaches of the settlement agreement by developer Lot 48A, LLC, Attorney Margery Bronster responded to a First Request for Production of the Developer's SMA permits and consultant studies stating she was unwilling to release the developer's SMA Permits based on a personal legal opinion that they were not relevant to the Lot 48A, LLC Settlement Agreement.

**Bronster Client  
Lot 48A, LLC**



2007- 2012

**Bronster Client  
Kahana Paradise, LLC**

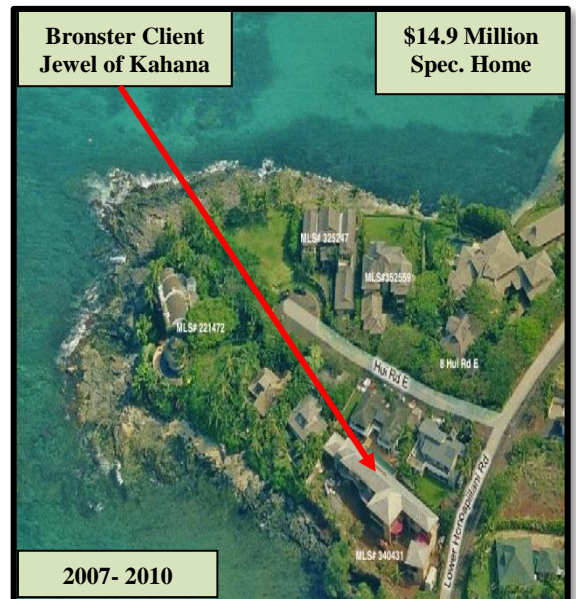
**\$12.5 Million  
Spec. Home**



2007- 2010

**Bronster Client  
Jewel of Kahana**

**\$14.9 Million  
Spec. Home**



2007- 2010

July 9, 2008

BRONSTER HOSHIBATA  
A Law Corporation

MARGERY S. BRONSTER 4750-0  
SANDRA D. LYNCH 8584-0  
1008 Bishop Street  
Pauahi Tower, Suite 2300  
Honolulu, Hawaii 96813  
Telephone: (808) 524-5644  
Facsimile: (808) 598-1881

"Lot 48A, LLC objects to this request on grounds the Special Management Area is not an issue on this Arbitration. Respondent Lot 48A, LLC will not be producing documents referring or relating to the Special Management Area Permit."

**Attorney Margery Bronster**

CHRISTOPHER SALEM, ) CASE NO. 07-0357-M/A  
Claimant, )  
and )  
LOT 48A LLC, )  
Respondent. )  
RESPONDENT LOT 48A-LLC's  
RESPONSE TO CLAIMANT  
CHRISTOPHER SALEM'S FIRST  
REQUEST FOR PRODUCTION OF  
DOCUMENTS AND THINGS TO LOT  
48A LLC, A HAWAII LIMITED  
LIABILITY COMPANY

"Lot 48A, LLC has represented that it has produced all relevant documents in it's possession or control. Accordingly, the request to compel production of the SMA studies is moot."

**Arbitrator  
Dispute Prevention and Resolution, Inc.**

Christopher Salem's First Request for Production of Documents and Things to Lot 48A LLC dated June 6, 2008 and served upon Respondent on July 9, 2009 ("Request"), as follows:

**Response to Request  
for Production of Documents  
Attorney Margery Bronster**

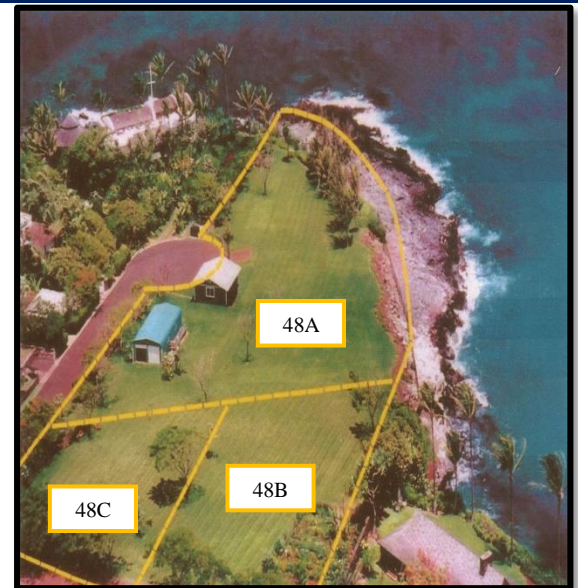


In January of 2008, Lot 48A, LLC's subdivision engineer Unemori Engineering, Inc. was also served with a Request for Production of Documents in the Second Circuit Court.

Unemori Engineering, Inc was the authorized representative, civil engineer, and licensed land surveyor for the development and re-subdivision of oceanfront Lot 48A.

The request was filed in Second Circuit Court and included a specific demand for all documents, valuations, and approval for the Lot 48A, LLC Special Management Area Permit.

Attorney Bruce Ito, legal counsel for Unemori Engineering, Inc, responded to the document demand with a false written statement denying any involvement or services performed by Unemori Engineering, Inc in connection with the SMA Permit process.



**January 2, 2008**

WRIGHT & KIRSCHBRAUN  
A Limited Liability Law Company

DEBORAH K. WRIGHT 4444-0  
KEITH D. KIRSCHBRAUN 4971-0  
1885 Main Street, Suite 108  
Wailuku, HI 96793  
Telephone: (808) 244-6644  
Facsimile: (808) 244-1013  
Email: wrightkirsch@aol.com

Attorneys for Plaintiff

**Request #8.**  
Any and all documents constituting, referring or relating to Lot 48A, LLC's application for a Special Management Area Permit.

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

CHRISTOPHER SALEM, in his individual capacity, and as owner of certain claims of BAY POINTE LOT 48 LLC, a Hawaii Limited Liability Company,

Plaintiff,

vs.

WARREN S. UNEMORI ENGINEERING, INC., a Hawaii  
ARIYOSHI, LLC  
Limited Liability  
FARRINGTON  
ROBERT J. CELLA  
SCHATZ, and  
ARCHITECTS  
Liability Partners

Defendants.

**Request #15.**  
Any and all documents constituting, referring or relating to estimates, proposals, and/or valuations of the improvement costs to obtain a Special Management Area Permit

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS LOT 48A LLC, HUGH J. FARRINGTON, COLIN MORETON, ROBERT J. CELLA, DOUGLAS S. SCHATZ AND FARRINGTON BAYLESS ARCHITECTS LLP

**Request for Documents  
Second Circuit Court**

**January 18, 2008**

Request 10.

WSUE and ARIYOSHI have no documents responsive to this request.

Request 11.

WSUE and ARIYOSHI have no documents responsive to this request; neither WSUE or Ariyoshi were employed to perform any services in connection with the SMA Minor Permit Process."

Attorney Bruce Ito  
Attorney for Unemori Engineering, Inc.

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*  
Bruce M. Ito

Without waiving the foregoing objection, documents responsive to this request will be produced.

DATED: Honolulu, Hawaii, Jan 18, 2008.

*Bruce M. Ito*  
BRUCE M. ITO  
Attorney for Defendant WARREN S. UNEMORI ENGINEERING, INC.

**Unemori Engineering, Inc.  
Response to Request for SMA Documents**

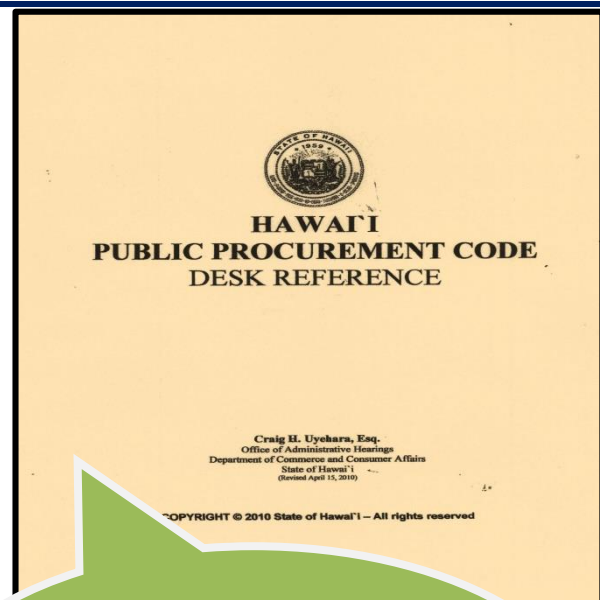


In early 2008, Attorney Bronster was soliciting her services to the County of Maui on a case involving the Department of Public Works and Public Utilities in Molokai of Maui County.

On July 3, 2008, the Professional Services Procurement Committee for the County of Maui recommended approval of Special Counsel Margery Bronster. The committee report referenced the Bronster firm's completion of a conflict check. Attorney Bronster reported she had no conflicts.

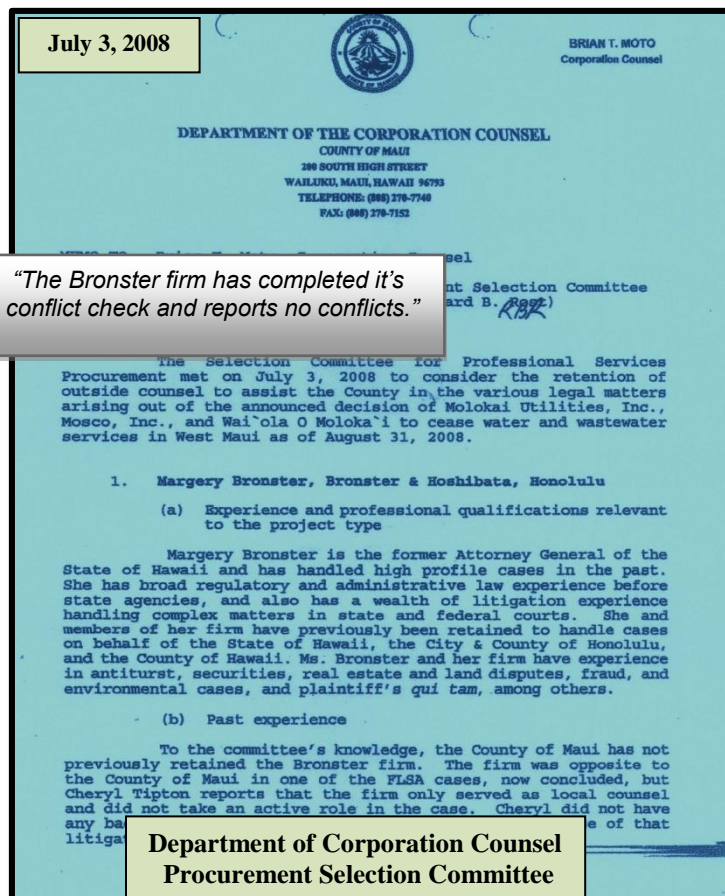
As we now know, at the same time Attorney Bronster was soliciting her services to the County of Maui, she was also representing multiple developers in different stages of permitting and disputes in Maui County including developer Lot 48A, LLC.

In July of 2008, Developer Lot 48A, LLC's Attorney Margery Bronster and SMA Consultant Milton Arakawa were employed by the County of Maui while their client Lot 48A, LLC was in litigation and discovery in the Second Circuit Court. Neither party disclosed their conflicts to the Maui County Council Members or the Procurement Committee.

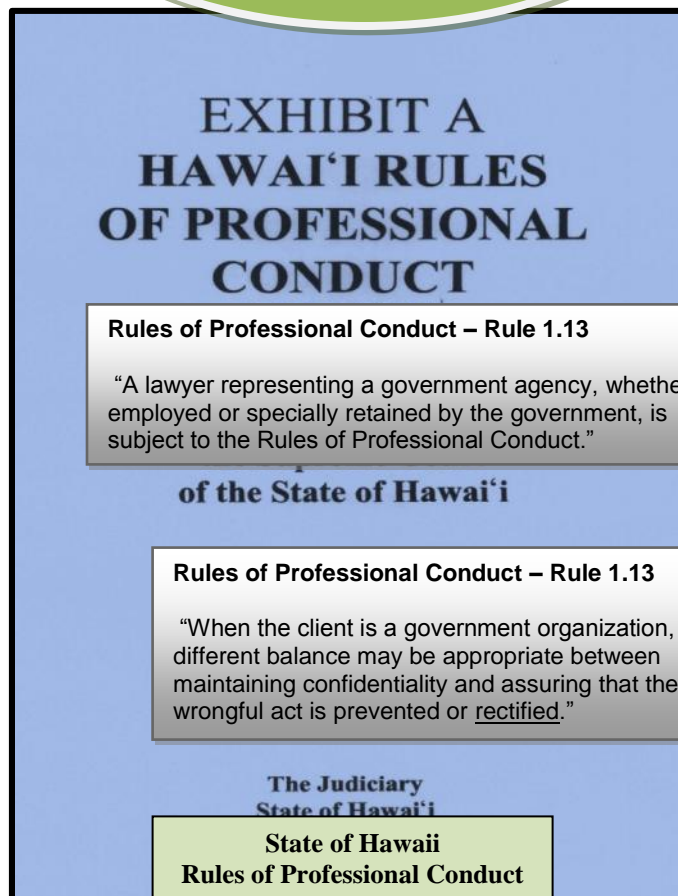


*"Prospective outside counsel is asked to perform a conflict check based on their records. Documents are not usually generated by this department in the course of these checks."*

Attorney Jane Lovell  
County of Maui – Dept. of Corp. Counsel  
May 2012



*"The Bronster firm has completed it's conflict check and reports no conflicts."*



#### Rules of Professional Conduct – Rule 1.13

*"A lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct."*

of the State of Hawai'i

#### Rules of Professional Conduct – Rule 1.13

*"When the client is a government organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified."*

The Judiciary  
State of Hawai'i

State of Hawaii  
Rules of Professional Conduct

In August of 2009, 45 days after obtaining the Arbitrators ruling on the terms of the Lot 48A, LLC Settlement Agreement, a shocking discovery was made at the County of Maui.

After years of filing Requests for Production of Documents in Second Circuit Court, Requests to Compel Documents in Arbitration, and Requests for Services with the County of Maui relating to the SMA Permit for Lot 48A, LLC, a 40 Page Special Management Area (SMA) Report authored by Munikiyo, Arakawa, and Hiraga, Inc was uncovered.

The study was completed in May of 2000 just prior to Milton Arakawa's employment with the County of Maui. The study included the following;

- 1) Signed SMA Permit Application by Developer Hugh Farrington, May 11, 2000.
- 2) Order of Magnitude SMA Valuation by Unemori Engineering, Inc.
- 3) Narrative, engineering drawings, and valuations for the roadway improvements to the underlying subdivision frontages dated May 11, 2000, including Hui Road E and Lower Honoapiilani Road.

Discovery also unveiled a transmittal from Warren Unemori wishing the developer Lot 48A, LLC "good luck" convincing the Planning Director the project would falsely require a SMA Minor permit, thereby denying citizens their rights to a public hearing and shoreline preservation.

Warren S. Unemori Engineering  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
(808)242-4403 FAX: (808)244-4856

**March 4, 2000**

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.

**"Hope you're successful in convincing Planning that the improvements will cost less than \$125,000."  
~ Warren S. Unemori**

Copies To: By: *Warren S. Unemori*  
Warren S. Unemori

**"Lot 4A, LLC has represented that it has produced all relevant SMA permit documents in its possession or control. Accordingly, the request to compel production of this request is moot."**

**Arbitrator Andy Winer  
Circuit Court Testimony – October 2009**

**May 11, 2000**

**Special Management Area Assessment**

**PROPOSED SUBDIVISION OF LOT 48-A AT HUI ROAD "E"**

Roadwidening  
Lower Honoapiilani Road \$27,709  
Hui Road E \$19,984

Installation of approximately 220 linear feet of curb, gutter, sidewalk, and related improvements along Lower Honoapiilani Road.

Installation of approximately 142 linear feet of curb, gutter, sidewalk, and related improvements along the north side of Hui Road "E."

Prepared for: May 2000

Lot 48- Munikiyo, Arakawa, & Hiraga, Inc.  
SMA Project Assessment Report

**June 23, 2000**

Director  
DAVID C. GOODE  
Deputy Director

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

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

**Condition #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.

o. 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.

**Preliminary Subdivision Approval  
Department of Public Works**



FILE# : KALEPAI RUI PARCELS SUBDIVISION  
 Revision: LUC 4B & Site Logo  
 A-1, 4B-A-2 & 4B-A-3.

TAX MAP KEY: 4-3-01:SG

**File 4.805**

State Urban	<b>LUC District:</b>	<b>Agency Zoning:</b> SMA - MICHN	<b>I Owner:</b> LUCASA LLC <b>I File No.:</b> T-805 <b>I No. of Lots:</b> 3
----------------	----------------------	--------------------------------------	-----------------------------------------------------------------------------------

<b>PRELIMINARY PLAN</b>	<b>6/23/00</b>		
Submitted:	6/29/00		
Comments:			
/ LUCA Inspector	1. 0A(00)		
/ Engineering	1. 011-100		
/ Water Supply	1. 012-00		
/ Med Electric	1. 013-00		
/ State Health	1. 014-00		
/ Wastewater Div.	1. 015-00		
/ State Highways			
/ State Agricultural			
/ State DLNR	1. 016-00		
/ Planning	1. 017-00		
/ Flood			
/ Parks	1. 018-00		
/ APPROVAL	1. 019-00		
/ Conditions	1. 020-00		

<b>CONSTRUCTION PLANS</b>			
Submitted:	12/28/00	1/24/01	

## Construction Plan Review:

Engineering	x	State Health	x
Water Supply	x	State DOG	x
NRCS	x	State DLNR	x

<b>RECORDING INFO:</b>			
<b>APPROVED</b>			
<b>AGMTS/BOND</b>			
Submitted			
Corp Counsel			
Engineering			
Water Supply			
<b>APPROVED</b>			
<b>RECORDED</b>			

<b>FINAL PLAN</b>			
Submitted	11/21/00	12/1/00	
30 days	12/1/00		
/ Engineering	1. 019-00		
/ Water Supply	1. 020-00		
/ Med Electric Co.	1. 021-00		
/ State DLNR	1. 022-00		
/ Planning	1. 023-00		
/ Other: LUCA	1. 024-00		
<b>FINAL APPROVAL:</b>	10/25/01		

<b>DEEDS</b>			
Submitted			
Corporation Counsel			
Engineering			
Other:			

ACCEPTED  
 RECORDED  
 PARK ASSESSOR  
 TAX CLEARANCE

**County of Maui  
 Department of Public Works**


1996

On March 24, 2010, Planning Department Staff Planner Joseph Prutch confirmed the County of Maui SMA permit tracking system listed the SMA Permit SM2 2000/0042 as still "open" and not complete.

CHARMAINE TAVARES  
Mayor

JEFFREY S. HUNT  
Director

KATHLEEN ROSS AOKI  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

August 27, 2009

Mr. Chris Salem  
8 Hui Road "E"  
Lahaina, Hawaii 96761

Dear Mr. Salem:

**SUBJECT: GOVERNMENT RECORDS FOR FILE ASSOCIATED WITH  
LOT 48-A, LLC; TMK: (2) 4-3-015-004 (SM2 2000/0042)**

On pages No. 1 & No. 4 in the Project Assessment Report under Section B Proposed Action, the Document refers to installation of 220 linear feet of curb, butter, sidewalk, and related improvements along Lower Honoapiilani Road.

a. November 6, 2000; extended to June 30, 2001; and  
b. May 10, 2001; extended to August 31, 2001.

Please note that the file did not include signed copies of the above letters;

An Order of Magnitude Estimate for Subdivision of Lot 48A into lots was included as the Engineer's Cost Estimate (Unemori Eng., Inc) dated March 4, 2000.

5. May 2000;  
6. \$91,402.00;  
7. An "Order of Magnitude Estimate for Subdivision of Lot 48-A into 3 Lots" was dated 4, 2000; estimates for road widening of both Lower Honoapiilani Road and Hui Road "E".

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793

CURRENT DIVISION (808) 270-7253

**Department of Planning  
Government Records**

March 24, 2010

Fwd: KIVA printout

From: Joseph Prutch <Joseph.Prutch@co.mauhi.hi> Add to Contacts  
To: chrisalean@yahoo.com  
Scan001.PDF (88KB)

Wed, March 24, 2010 12:16:25 PM

Attached is that KIVA printout you asked for.

Joe Prutch, Staff Planner  
Maui County, Current Planning  
250 South High Street  
Wailuku, HI 96793  
office: (808) 270-7512  
fax: (808) 270-1775  
[joseph.prutch@mauicounty.gov](mailto:joseph.prutch@mauicounty.gov)

SM2 2000/0402 – Status – “OPEN”

Department of Planning  
Current Planning Division



The Department of Planning holds the responsibility of administering the Federal Coastal Zone Management Act (CZMA). As we now know, the Planning Department has no formal process for final field inspections for developers SMA Permit conditions and mitigations. Compliance occurs only upon citizen's complaints.

Federal review of policies and practices of the administration of CZMA in the State of Hawaii has confirmed that the SMA compliance measures employed by the Counties are flawed and ineffective.

From the upfront SMA valuations to the back end SMA Permit compliance procedures, the entire administration of the Federal CZMA program in Maui County relies solely on the dubious integrity of the developers and their paid consultants.

Recent attempts by members of the County of Maui Planning Department to strengthen the laws of enforcement in the SMA permitting process were protested in public hearings by Attorney Tom Welch on behalf of his developer clients.



**Hawaii CZM Program**  
Coastal Zone Management

Program ORMP  
Initiatives MACZAC  
Resources

## Federal Consistency

The national Coastal Zone Management Act (CZMA) requires direct federal activities and development projects to be consistent with approved state coastal programs to the maximum extent practicable. Also, federally-permitted, licensed, or assisted activities occurring in, or affecting, the state's coastal zone must be in agreement with the Hawaii CZM Program's objectives and policies. Federal agencies cannot act without regard for, or in conflict with, state policies and related resource management programs that have been officially incorporated into state CZM programs (Code of Federal Regulations, 15 CFR 930).

- [Federal Consistency Overview](#)
- [Federal Consistency Resources](#)

## Federal Consistency Forms

"Both forms are now fillable on Adobe Acrobat. Please complete forms, print using the "Print" button at the end of each form, sign and date appropriate lines and submit as indicated on instructions. Or, if you prefer, print the forms first and complete them manually.

- [Federal Consistency Instructions and Application](#)
- [Federal Consistency Assessment Form](#)

## 2013 Hawaii's CZM Routine Program Changes

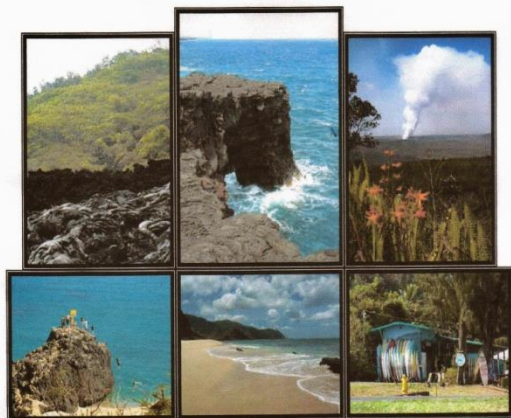
- [Concurrence Letter – NOAA Office of Ocean and Coastal Resource Management](#)
- [Public Notice – February 6, 2013](#)
- [Submission of Federal Assistance Applications and Review Time Frame](#)
- [Required Necessary Data and Information for Consistency Reviews of Activities Requiring a Federal License or Permit](#)

January 2010

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

**FINAL Evaluation Findings**  
**Hawaii Coastal Zone Management Program**

## 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

"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..." ~ NOAA

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

HAWAII COASTAL ZONE MANAGEMENT PROGRAM  
FINAL EVALUATION FINDINGS – 2010

22



In October of 2001, Deputy Director Milton Arakawa signed off on the Final Subdivision Plat for former developer client Lot 48A, LLC.

In direct violation of the Maui County Code, Deputy Director Arakawa ignored the Public Works condition to comply with the SMA Permit issued to his former company Munikiyo, Arakawa, & Hiraga, Inc.

As we now know, on May 16, 2000, prior to Arakawa's employment with the County of Maui, the Engineering Division for the Department of Public Works also required the roadway and drainage improvements to Hui Road and Lower Honoapiilani Road. The engineering conditions were noted on the same plans referenced in the signed SMA Permit.

In further violation of the Maui County Code, Deputy Director Milton Arakawa failed to require a bond or security for the construction related conditions referenced in the issued SMA Permit. The erosion and runoff from the unimproved frontage continues to impact the State of Hawaii Shoreline Access.



**June 23, 2000**

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, HAWAII 96793**

RALPH M. NAGAMINE, L.S., P.E.  
Land Use and Codes Administration  
RONALD R. FISKA, 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  
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:

**Condition #15.**  
Comply with the conditions of the Special Management Area (SMA) Minor Permit granted on June 6, 2000.

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.

**Department of Public Works  
Preliminary Subdivision Approval**

**May 16, 2000**

**RECEIVED**  
MAY 16 2000  
ENGINEERING DIV.  
DEPT. OF PUBLIC WORKS

County of Maui  
Department of Public Works & Waste Management  
LAND USE & CODES ADMINISTRATION  
250 S. High Street  
Wailuku, Hawaii 96793  
(808) 270-7252 FAX: (808) 270-7972

**1) Road Widening Lots Required  
2) Radius Return @ Lower Honoapiilani Road Required**

Subdivision:  
Location:

Owner: Lot 48A LLC  
State Land Use: Urban  
Surveyor/Engineer: Reed M. Ariyoshi  
County Zoning: R-3  
Transmitted by: Warren S. Unemori Engineering, Inc.  
2145 Wells Street, Suite 403  
Wailuku, Hawaii 96793  
Community Plan: SF  
No. of Lots: 3

☒ PRELIMINARY PLAT REVIEW  
Received: 5/9/00 Sent: 5/11/00  
Engineering: LUCA Inspector  
Water Supply, SD Permits  
Electric Co. DLNR  
State Health Wastewater Reclamation Division  
Planning

Submit your comments by 6/8/00, or we will proceed without your review.

**CONSTRUCTION PLAN REVIEW**  
Received: Sent:  
Engineering w/drainage report State Health  
Water Supply, SD State DOT w/3 plans  
NRCS w/drainage report & State DLNR  
erosion control report Wastewater Reclamation Division

Submit your comments by , or we will proceed without your review.

**FINAL PLAT & SUBDIVISION REVIEW**  
Received: Sent: 000002  
Engineering Division State DOT

**Department of Public Works  
Engineering Division**

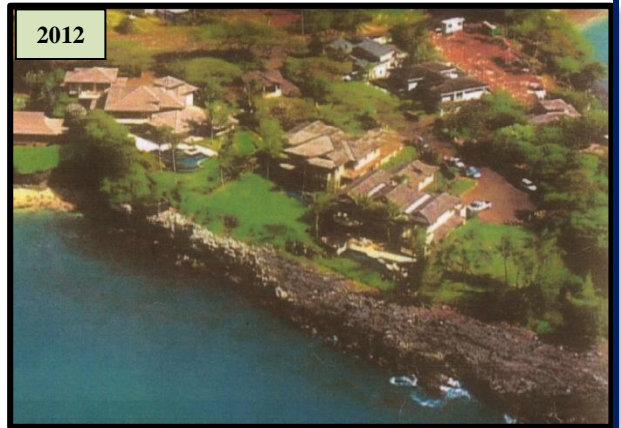
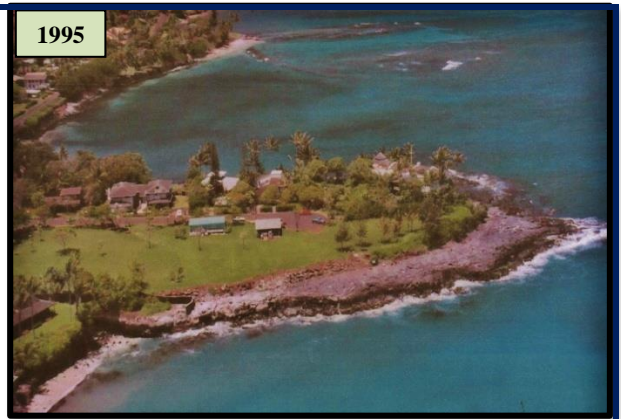
On Hui Road, a pristine section of oceanfront land has gone through the entire subdivision process two times resulting in over 30 million dollars in speculation and developers financial reward.

As we now know, the "Good Luck" \$27,900.00 SMA valuation by Unemori Engineering, Inc for the Lower Honoapiilani Road roadway improvements and drainage mitigations have been proven by a licensed engineering contractor to be ten times that amount.

With the secretive assistance of Director Arakawa, Developer Lot 48A, LLC has intentionally avoided any form of public review and responsibility for their signed and permitted development obligations.

In 2001, the citizens of Maui County were denied public hearings and their civil rights to defend their vested property rights and the shoreline due to intentional SMA valuation fraud by Developer Lot 48A, LLC and Unemori Engineering, Inc.

As we now know, the Unemori Engineering, Inc filings in the Second Circuit Court of the State of Hawaii stating that they played no role in the SMA Permitting and studies was a blatant lie.



April 29, 2008				
<p><b>P.B. Sullivan Construction Inc.</b>  P.O. Box 734  Kihei, HI 96753  Phone: 808-875-2833  Fax: 808-874-5690  License # AC-22090</p>				
Date: 4-29-2008				
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	Engineering Design			By Others
15	Control Survey/Staking			By Others
16	Permits			
17	Construction Water			
<p><b>Lower Honoapiilani Road</b>  <b>P.B. Sullivan Valuation</b>  <b>\$257,328.48</b></p>				
<p>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</p>				
<p>Price Excludes:  Design, Authority Approvals, Construction Water or any items not specifically mentioned in this estimate</p>				
<p><b>P.B. Sullivan Construction, Inc.</b>  <b>Improvements Valuation</b></p>				

March 4, 2000				
<p><b>ORDER OF MAGNITUDE ESTIMATE</b>  <b>FOR</b>  <b>SUBDIVISION OF LOT 48-A INTO 3 LOTS</b></p>				
March 4, 2000				
Description	Approx. Quan.	Unit	Unit Price	Total
<b>ROADWIDENING</b>				
<b>L. Honoapiilani Road</b>				
Grading L. Honoapiilani Road	220	Lf.	\$ 5.00	\$ 1,100
2 1/2 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	Lf.	\$ 20.00	\$ 4,400
4' Sidewalk	220	Lf.	\$ 10.00	\$ 2,200
Driveway Curb Cut and Apron				
Traffic Control				
Grassing Shoulder				
Dust Control				
Subtotal - L. Honoapiilani Road:				\$ 27,709
<b>Hui Road E</b>				
Grading L. Honoapiilani Road	400	Lf.	\$ 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	Lf.	\$ 20.00	\$ 2,840
Sidewalk	142	Lf.	\$ 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
<b>WATER SYSTEM:</b>				
Fire Hydrant	1	each	\$ 4,000.00	\$ 4,000
Double Service			\$ 2,000.00	\$ 2,000
System:				\$ 6,000
<p><b>Unemori Engineering, Inc.</b>  <b>SMA Valuation</b></p>				



On October 12, 2009, after discovery of the Munikiyo, Arakawa, & Hiraga, Inc SMA Permit studies, Public Works Director Milton Arakawa informed the Maui County Council that the Lot 48A, LLC SMA Permit conditions still applied and he would look to the Planning Department for enforcement.

One month prior, on September 23, 2009, Honorable Judge Cardoza presided over a motion to vacate the Arbitrator's decision due to the discovery of the concealed Munikiyo, Arakawa, & Hiraga, Inc. SMA Permit studies and Unemori Engineering, Inc. valuations.

To satisfy a motion for corrective action and post judgment motion related to fraud, the Courts would require from the County of Maui a Notice of Non Compliance for the unfulfilled SMA Permit.

In a meeting with County Council Member Sol Ko'ohalahala, Chair of the Planning Committee, and Executive Assistant Kathy Kaohu, Planning Director Jeff Hunt informed the group he was unwilling to enforce the Developers SMA Permit and take the wrath for Public Works Director Milton Arakawa's misdealing.

## EXHIBIT A HAWAII RULES OF PROFESSIONAL CONDUCT

(SCRU-11-0001047)

### Rule 1.2. SCOPE OF REPRESENTATION

(d) "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent...."

December 6, 1993  
Effective January 1, 1994  
With Amendments as Noted

The Judiciary

State of Hawaii  
Rules of Professional Conduct

September 23, 2009

1  
2 IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
3 STATE OF HAWAII  
4  
5  
6 CHRISTOPHER SALEM,  
7 Claimant,  
8 vs. Civil No. 09-1-0040(3)  
9 LOT 48A LLC, TRANSCRIPT OF  
10 Respondent. PROCEEDINGS  
11  
12  
13 TRANSCRIPT OF PROCEEDINGS  
14 had before the Honorable Joseph E. Cardoza, Circuit  
15 Court Judge presiding, on Wednesday, September 23,  
16 2009, in the above-entitled matter.

"They are attempting to investigate...(The concealment of compelled SMA Permits & Studies) If they're going to open an investigation, that is for the County of Maui to do..."

**Bronster Hoshibita**  
**Circuit Court Testimony – October 2009**

24  
25 Reported By:

Melissa Noble, RPR, CSR 376

Circuit Court of the Second Circuit Court  
Motion to Vacate

October 12, 2009

PLANNING COMMITTEE MINUTES  
Council of the County of Maui  
October 12, 2009

CHAIR KAHO'O  
VICE-CHAIR JO  
CHAIR KAHO'O  
... (inaud)  
VICE-CHAIR JO  
CHAIR KAHO'O  
... (inaud)  
VICE-CHAIR JO  
CHAIR KAHO'O

"Mr. Chair, the second three lot subdivision was the subject of the SMA Minor Permit, if I'm correct would still apply. But the conditions of the SMA Minor Permit, I mean it would still apply. From our standpoint we would look to the Planning Department to enforce the SMA Permit conditions."

**Public Works Director Milton Arakawa**  
**Public Testimony to the Maui County Counsel**  
**October 12, 2009**

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 investigate. But if

Planning Committee Minutes  
Maui County Council

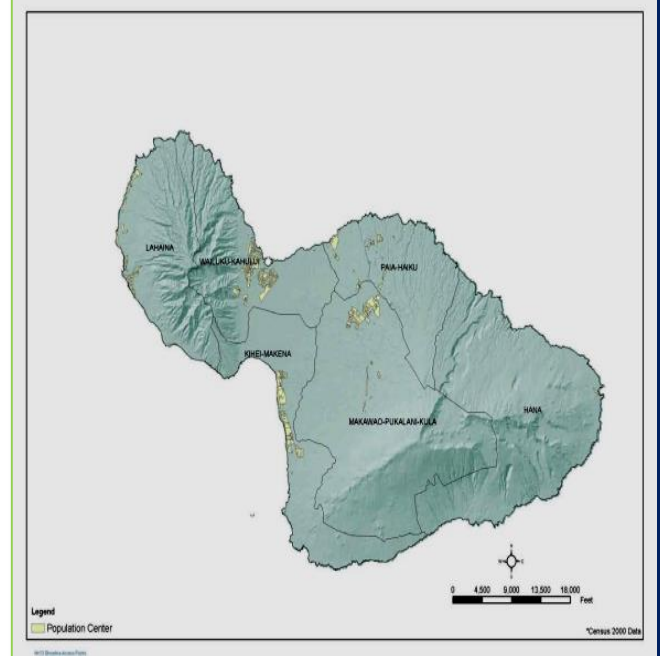




Requests for compliance and demands for enforcement of the expired Lot 48A, LLC SMA permit have been formally submitted to Planning Director Will Spence and Mayor Arakawa. Further demands have been made to investigate and reprimand the "Good Luck" valuation submitted by the developer's professional consultant.

Despite being warned and witnessed by fellow members of the Arakawa Administration, under the conflicting influence and representation of Corporation Counsel, Planning Director Will Spence refuses to enforce the SMA Permit conditions upon developer Lot 48A, LLC and investigate the consultant's false valuation.

Planning Director Will Spence and Corporation Counsel are obstructing justice in the Second Circuit Court of the State of Hawaii by refusing to remedy the unlawful decisions of former Public Works Director Milton Arakawa. The Palama Drive history is now repeating itself in West Maui.



**December 22, 2011**

Chris Salem 5106 Lower Honoapiilani Road  
December 22, 2011 Lahaina, HI 96761

County of Maui CERTIFIED MAIL  
250 South High Street  
Wailuku, HI 96793

Attention: Planning Director Will Spence

RE: Request for Notice of Non Compliance  
SMA Permit SM2 2000/0042  
TMK (@) 4-3-015-004

Dear Mr. Spence,

*"The Developers have failed to honor their land entitlement obligations and shoreline mitigation impacts, as clearly documented in the attached findings of Clayton Yoshida, Planning Program Administrator for the County of Maui."*

**Chris Salem**

Permits and relies solely on the Developers' integrity as a compliance measure.

In 1999, Munikiyo, Arakawa, and Hiraga, Inc. were retained by the County of Maui to complete a 600-page Environmental Assessment Report as a part of the Phase IV Lower Honoapiilani Improvement District.

*"As confirmed by County of Maui Staff Planner, Joe Prutch, the SMA Permit is documented in County Records as "open." This SMA Permit is now expired and the Developers' conditions have been left unfulfilled."*

**Chris Salem**

event took place. As confirmed by County of Maui Staff Planner Joe Prutch, the SMA Permit is documented in County records as "open". (See Exhibit "B") This SMA Permit is now expired and the Developers' conditions have been left unfulfilled.

The Honorable Mayor Arakawa made campaign promises to the citizens and to me personally that he will enforce the laws and ordinances of Maui County and insist that developers perform their land entitlement obligations. The developers of Hui Road made millions of dollars in profits and failed to complete the oceanfront subdivision as they agreed in their signed permits and subdivision approval documents, causing continuing dan

**Chris Salem Letter to  
Planning Director Will Spence**

**April 11, 2011**

Date: April 11, 2011  
To: Will Spence - Director of Planning  
From: Jo Anne Johnson Winer - Director of Transportation  
Re: Lingering Issue on SMA violations and compliance per attached Maillepei Hui Partition Subdivision T

Aloha Will-

Thanks so much  
challenge who

I have attached  
came to be an  
This data shows

incumbent upon the County to send forward a letter to the Developers that they are not in compliance with the original conditions of their SMA Permits.

If you are able to quickly review this file information and confirm the findings that the entire subdivision needs to comply with their issued SMA Permits and their Private Consultant studies and reports, he would only ask that you send out a letter to the Developers. Mr. Salem is in a position where he cannot resolve his issues on his own and is at risk of losing him home if the County of Maui Planning Department does not send notice of non compliance to the Developer by April 14, 2011.

I know this a lot to absorb, but the matter is truly not complicated. The Developer received all the rewards of their oceanfront subdivision and must fulfill their land entitlement obligations. I have been dealing with this particular issue for quite some time and it now appears that to avoid further difficulties for addressing this Developer to c benefits of the

If the Develop  
within the pro  
their rights to

Thank you for me at 270-6236. I met with Ed Kushi and Rowena Andaya about the deferral agreement side of this issue and he is working with her (with some assistance from Mr. Salem via me) to look at options for collections. He is familiar with Mr. Salem and I am sure he will concur when you speak to him that protecting the County is upmost in his mind, and I agree with him. That is why I am trying to assist in resolving this asap.

*"It is incumbent upon the County to send forward a letter to the Developers that they are not in compliance with the original conditions of their SMA Permits."*

**~ Jo Anne Johnson, Director of Transportation  
Arawaka Administration**

*"The Developer received all the rewards of their oceanfront subdivision and must fulfill their land entitlement obligations."*

**~ Jo Anne Johnson, Director of Transportation  
Arawaka Administration**

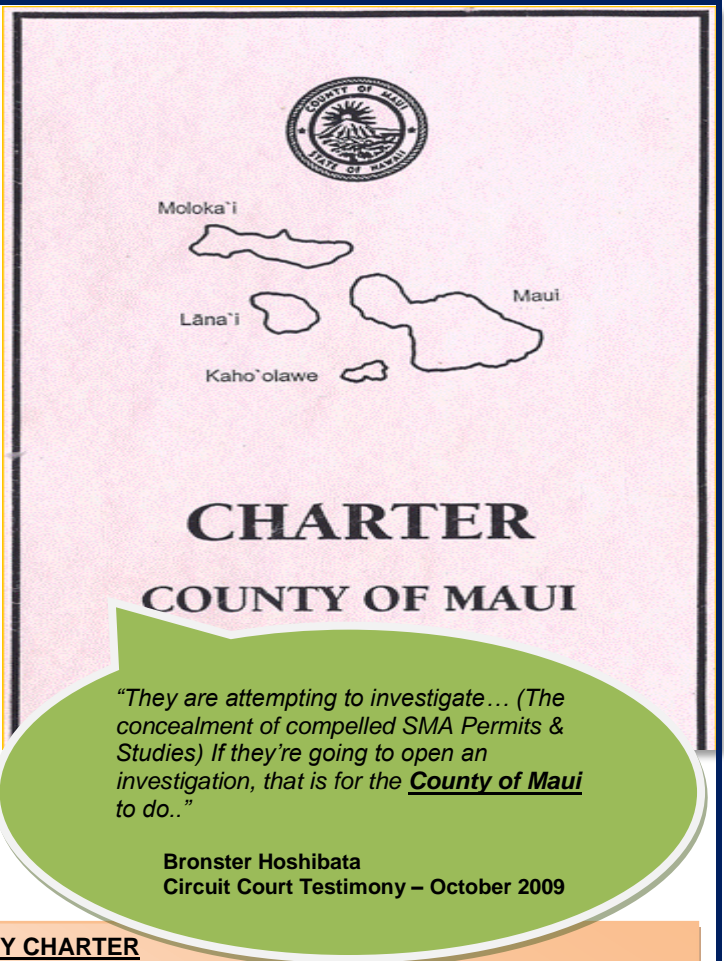
**Jo Anne Johnson Letter to  
Planning Director Will Spence**

The Maui County Charter is a constitutional doctrine adopted by the people to protect the citizens and the precious resources of the islands of Maui County. The Department of Corporation Counsel is charged with the responsibility of protecting and defending the public interest.

To ensure the balance of government is preserved and realized, the elected officials in the Maui County Council have the sole authority and obligation to review, investigate, and discipline administrative decisions and violations of the laws and ordinances adopted through the legislative process.

The Maui County Charter also provides for personal liability for any elected official, director, or employee that incurs financial obligations upon the County of Maui.

To prevent the County of Maui from incurring further financial liability at the hands of former Director Milton Arakawa, the Maui County Council is hereby compelled to investigate and punish the documented abuse of the SMA laws and phantom "3 Lots or Less" subdivision deferral agreements that have led to a decade of frustration and financial destruction a dedicated citizen and his family.



#### THE MAUI COUNTY CHARTER

**SECTION 3-6. POWERS OF COUNCIL. THE COUNCIL SHALL BE THE LEGISLATIVE BODY OF THE COUNTY. WITHOUT LIMITATION OF THE FOREGOING GRANT OR OF OTHER POWERS GIVEN IT BY THIS CHARTER, THE COUNCIL SHALL HAVE THE POWER:**

**3. TO CONDUCT INVESTIGATIONS OF (A) THE OPERATION OF ANY DEPARTMENT OR FUNCTION OF THE COUNTY AND (B) ANY SUBJECT UPON WHICH THE COUNCIL MAY LEGISLATE.**

**SECTION 7- 5. POWERS, DUTIES AND FUNCTIONS. THE MAYOR SHALL BE THE CHIEF EXECUTIVE OFFICER OF THE COUNTY. THE MAYOR SHALL:**

**17. ENFORCE THE PROVISIONS OF THIS CHARTER, THE ORDINANCES OF THE COUNTY AND ALL APPLICABLE LAWS.**

**SECTION 9-12. PAYMENTS AND OBLIGATIONS.**

**1. WITH THE EXCEPTION OF DEBT SERVICE CHARGES, NO PAYMENT SHALL BE AUTHORIZED OR MADE AND NO OBLIGATION INCURRED AGAINST THE COUNTY, EXCEPT IN ACCORDANCE WITH APPROPRIATIONS DULY MADE AND UNDER SUCH PROCEDURES AND POLICIES AS MAYBE ESTABLISHED BY ORDINANCE. EVERY OBLIGATION INCURRED AND EVERY AUTHORIZATION OF PAYMENT IN VIOLATION OF THE PROVISIONS OF THIS CHARTER SHALL BE VOID. EVERY PAYMENT MADE IN VIOLATION OF THE PROVISIONS OF THIS CHARTER SHALL BE ILLEGAL, AND ALL COUNTY OFFICERS WHO KNOWINGLY AUTHORIZE OR MAKE SUCH PAYMENT OR ANY PART THEREOF SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE COUNTY FOR THE FULL AMOUNT SO PAID OR RECEIVED. IF ANY COUNTY OFFICER OR EMPLOYEE KNOWINGLY AUTHORIZES OR MAKES ANY PAYMENTS OR INCURS ANY OBLIGATION IN VIOLATION OF THE PROVISIONS OF THIS CHARTER, OR IN VIOLATION OF THE PROVISIONS OF THE PROCEDURES AND POLICIES ESTABLISHED BY ORDINANCE, OR TAKES PART THEREIN, THAT ACTION SHALL BE CAUSE FOR REMOVAL FROM OFFICE.**

**SECTION 13-10. PENALTIES:**

**THE COUNCIL SHALL, BY ORDINANCE, PROVIDE FOR THE PUNISHMENT OF VIOLATIONS OF ANY PROVISIONS OF THIS CHARTER AND MAY PROVIDE FOR PUNISHMENT OF VIOLATIONS OF ORDINANCES AND RULES HAVING THE FORCE AND EFFECT OF LAW, BUT NO PENALTY SHALL EXCEED THE AMOUNT OF \$1,000.00, OR ONE (1) YEAR'S IMPRISONMENT, OR BOTH.**





## CONCLUSION

As exhibited at Montana Beach and recently in Olowalu, innocent citizens suffer the burden of enforcement by being left with no choice but to retain legal counsel to demand the developers comply with permitted conditions and environmental laws.

Since 2000, tens of millions of dollars of public funds have been wasted on the senseless defense of Director decisions which are clearly outside of their authority and the ordinances publicly adopted by the Maui County Council.

The most costly and disastrous example was the defense of Director Milton Arakawa's decision to ignore the grading laws adopted by the Maui County Council at Palama Drive along the borders of Maui Lani. The County of Maui now owns the developer's land in the same form of resolution fashioned at Montana Beach.

In 2001, after making millions on their oceanfront development, instead of just honoring their land entitlement obligations and SMA permits signed with the County of Maui, Lot 48A, LLC, employed Montana Beach Attorney Tom Welch in order to deceive an innocent neighbor by making false claims of his client's development obligations. In his back pocket were the very same government permits and concealed obligations in dispute.

From 2007 to 2011, Lot 48A, LLC employed the most powerful and influential law firm to manipulate public officials to deceptively shield themselves from their development obligations and dishonest behavior.

On July 19, 2010, Lot 48A, LLC Attorney Margery Bronster solicited the Maui County Council for additional compensation for her Special Counsel legal services involving public utilities in Molokai.

From 2008 thru 2010, Attorney Bronster's compensation from the County of Maui totaled \$500,000.00 while claiming to be protecting the public interest and demanding the Company honor their obligations.

From 2008 thru 2010, Attorney Bronster's compensation from Developer Lot 48A, LLC totaled over \$500,000.00. The collective concealment of government documents from the Second Circuit Court and an innocent owner prolonged a dispute over developer obligations that never should have occurred.

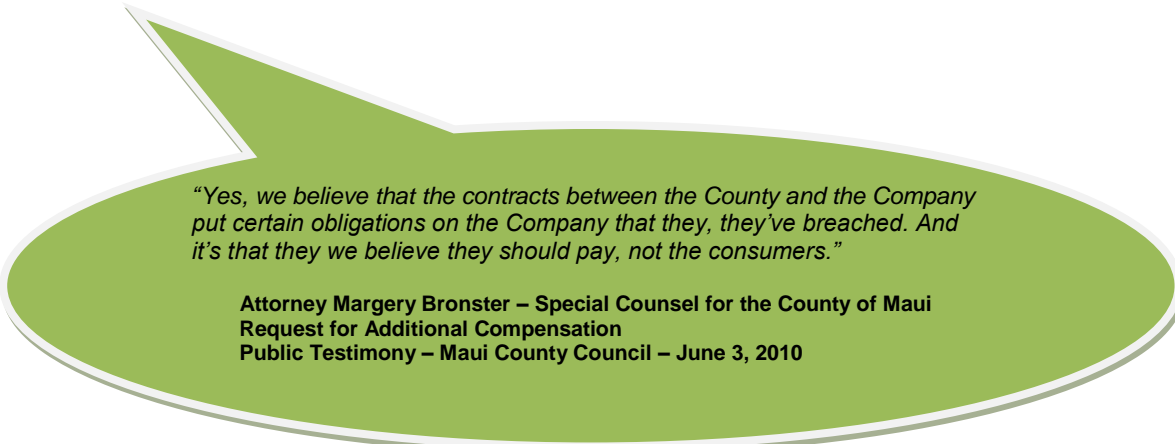
Coupled with their negligent administration of the unaccounted for "3 Lots or Less" subdivision deferral agreements, which have intentionally shifted tens of millions of dollars of developer's financial obligations to the citizens of Maui for over 38 years, along with the irresponsible administration of SMA Permit valuations and compliance, the County administration has caused the complete financial destruction of an innocent citizen that has once again been forced to uphold the laws adopted by the Maui County Council.

Laws designed to protect the resources and vested property rights have become a conduit of manipulation and acts of greed and deception by self serving individuals and their financially compensated representatives.

The recent acknowledgment by the administration that it is the responsibility of the County of Maui to collect on the "3 Lots or Less" development agreements will now lead to millions in financial recovery for the County of Maui. The rewards come at the unnecessary financial expense of Christopher Salem and his family. The 11 year history of dishonorable acts of a conflicting County Director and the developer's legal counsel has now forced Mr. Salem into personal bankruptcy.

Through the powers afforded by Section 3-6 of the Maui County Charter, the Maui County Council has the authority and obligation to investigate the operations of every department or function of the County on any subject which the Council may legislate. This includes the prior dubious decisions of the Department of Corporation Counsel to defend Director decisions that are not supported by law or ordinance and under concealment of public documents and conflicting legal representations. In this specific case history, the list Director and Attorney violations are lengthy and well documented.

With the known conflicts of interests in Corporation Counsel, the elected members of the Maui County Council have the sole responsibility to restore public trust and prevent further escalation and legal exposure. In accordance with Section 13-10 of the Maui County Charter, the Maui County Council shall, by ordinance, provide for the punishment of the attached violations of ordinances and rules which have the force and effect of law.



*"Yes, we believe that the contracts between the County and the Company put certain obligations on the Company that they, they've breached. And it's that they we believe they should pay, not the consumers."*

**Attorney Margery Bronster – Special Counsel for the County of Maui  
Request for Additional Compensation  
Public Testimony – Maui County Council – June 3, 2010**