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.

"However, on previous plans we noted that a gate was proposed at the entrance and 3 public beach parking stalls were shown. What happened to this plan? ~ Planning Department Comment"
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.
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.

**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 Munikiyo, 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.

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

May 10, 2001

Mr. Michael T. Munikiyo,
Munikiyo & Hiraga, Inc.
305 High Street, Suite 101
Wailuku, Hawaii 96793

Dear Mr. Munikiyo:

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

(SM2-20000042)

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, at this office at 270-7735.

Very truly yours,

JOHN E. MIN
Planning Director

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.

“Preliminarily, construction of the proposed project is anticipated to commence by the spring of 2001.”
- Glenn Tadaki, Planner
- Munikiyo, Arakawa, & Hiraga, Inc.

“We will bid out the job in June (of 2002) and probably start in September.”
- Department of Public Works
- August 2001

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

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.

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.

“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

“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.

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.

“I have no documents responsive to this request; neither WSUE nor Ariyoshi were employed to perform any services in connection with the SMA Minor Permit Process.”

Attorney Bruce Ito
Attorney for Unemori Engineering, Inc.

January 2, 2008

Request #8.
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.

Request #15.
Any and all documents constituting, referring or relating to Lot 48A, LLC’s application for a Special Management Area Permit.
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.

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.”

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 Hawaii

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:

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.

May 11, 2000

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.”

Munikiyo, Arakawa, & Hiraga, Inc.
SMA Project Assessment Report

June 23, 2000

Prepared for:
Lot 48-A

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.

Preliminary Subdivision Approval
Department of Public Works
On August 27, 2009, Clayton Yoshida of the Department of Planning confirmed the SMA Permit issued to Lot 48A, LLC was expired and unfulfilled and no amendments or extensions were requested or granted to Developer Lot 48A, LLC.

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 was required after completion of the construction plans.

As we now know, in 2001, the Department of Public Works did not send copies of the engineering drawings to the Planning Department to confirm the SMA Permit conditions and mitigations were included on the plans. Planning officials did not perform a construction plan review as directed.

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.

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, gutter, sidewalk, and related improvements along Lower Honoapiilani Road.

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.

The document referenced in No. 7 above included estimates for road widening of both Lower Honoapiilani Road and Hui Road “E.”
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.

January 2010

FINAL Evaluation Findings
Hawaii Coastal Zone Management Program

"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

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 a 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 both 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
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.

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**June 23, 2000**

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

1. Road Widening Lots Required
2. Radius Return @ Lower Honoapiilani Road Required

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**Condition #15.**

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

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**May 16, 2000**

Department of Public Works Preliminary Subdivision Approval

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.

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**April 29, 2008**

P.B. Sullivan Construction, Inc.

P.O. Box 734
Kiele, HI 96753
Phone: 808-675-2653
Fax: 808-674-8969

License #: AC-22006

Date: 4-26-08

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

**Item #** | **Description** | **Bid Qty, Unit** | **Unit Price** | **Price**
--- | --- | --- | --- | ---
1 | Roadway Excavation | 100 CY | $2,096.81 | $209,681.02
2 | 2\% Permeable Pipe W/Permeable | 20 LF | $67.34 | $1,346.80
3 | 3\% UTB Under Roadway | 40 TON | $198.45 | $7,938.00
4 | 3\% AC Base | 27 TON | $334.73 | $9,537.21
5 | 5\% Asphalt Topped Base | 37 TON | $343.73 | $12,716.91
6 | 4\% Base Course Under Swale | 33 TON | $218.27 | $7,202.91
7 | 11\% Asphalt at Paved Swale | 13 TON | $432.73 | $5,624.49
8 | 11\% Swale | 13 LF | $175.00 | $2,275.00
9 | 24\% Storm Drain | 95 LF | $172.70 | $16,414.10
10 | Type 4/10x4/10 Drain Int (F X 4) | 3 EACH | $4,079.08 | $12,237.24
11 | ARV W/Type F Manhole | 2 EACH | $2,165.71 | $4,331.42
12 | 7\% Waterline (CL 52) | 91 LF | $999.88 | $90,999.08
13 | Concrete Catch Basin (12 Waterline) | 51 LF | $512.38 | $26,321.78
14 | Engineering Design | By Others | | |
15 | Control Survey/Mapping | By Others | | |
16 | Permits | | | |
17 | Construction Water | | | |

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

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**March 4, 2000**

**Order of Magnitude Estimate**

**For Subdivision of Lot 48-A into 3 Lots**

**Roadway: Lower Honoapiilani Road**

**Description** | **Approx. Quan.** | **Unit** | **Unit Price** | **Total**
--- | --- | --- | --- | ---
1 | Lower Honoapiilani Road | | | |
2 | Grading L. Honoapiilani Road | 220 | LF | $5.00 | $1,100.00
3 | 2\% AC | 41 | TON | $85.00 | $3,485.00
4 | 4\% UTB | 60 | TON | $82.00 | $5,920.00
5 | 6\% RSC | 100 | TON | $35.00 | $3,500.00
6 | Palu | 103 | GALL | $4.00 | $412.00
7 | Conc. Curb and Gutter | 220 | LF | $20.00 | $4,400.00
8 | 4\% Sidewalk | | | |
9 | Driveaway Curb Cut and Apron | | | |
10 | Traffic Control | | | |
11 | Grassing Shoulder | | | |
12 | Dust Control | | | |
13 | Lower Honoapiilani Road | | | |
14 | Grading L. Honoapiilani Road | 400 | LF | $5.00 | $2,000.00
15 | 2\% AC | 30 | TON | $85.00 | $2,550.00
16 | 4\% UTB | 108 | TON | $35.00 | $3,780.00
17 | Palu | 112 | GALL | $4.00 | $448.00
18 | Conc. Curb and Gutter | 142 | LF | $20.00 | $2,840.00
19 | Sidewalk | 142 | LF | $10.00 | $1,420.00
20 | Driveaway Curb Cut and Apron | 2 each | | | $1,000.00
21 | Traffic Control | | | |
22 | Grassing Shoulder | | | |
23 | Dust Control | | | |
24 | Lower Honoapiilani Road | | | |

**SMA Valuation:** $27,709

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**P.B. Sullivan Valuation: $257,328.48**

**Lower Honoapiilani Road SMA Valuation: $27,709**

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**Unemori Engineering, Inc. SMA Valuation:**
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.

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.”

“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.”

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
In February of 2009, Council Member JoAnne Johnson was a key witness in the Arbitration involving Developer Lot 48A, LLC. Undisclosed by Developer Attorney Margery Bronster were her conflicting attorney relationships with Corporation Counsel of the County of Maui, Developer Lot 48A, LLC, and Public Works Director Milton Arakawa.

In August of 2001, Attorney Welch disputed his client's obligation to install roadway improvements to Lower Honoapiilani Road and Hui Road E. In his back pocket were already signed and issued SMA Permits with the conditions and studies requiring the same roadway improvements and drainage mitigations to Lower Honoapiilani Road.

As we now know, Attorney Bronster's legal filings claiming that the SMA Permit and related studies were not relevant to the Attorney Welch Settlement Agreement were fraudulent, financially self-serving, and resulted in years of unnecessary and costly litigation which has shattered the lives of an innocent Maui family.

Council Member Johnson documented the events of fraud, concealment of government documents, and conflict of interest involving Attorney Margery Bronster and Public Works director Milton Arakawa in a letter dated April 10, 2010.

"The fact that Ms. Bronster was also representing the County of Maui on another case during the very same time period is disturbing."

Councilmember Jo Anne Johnson

"I cannot understand how Ms. Bronster appears to have been made aware of the existence of these documents, and yet failed to produce them during the legal proceeding."

Councilmember Jo Anne Johnson

"Your situation reminds me very much of the Montana Beach case where Christina Hemmings called attention to the SMA violations of the owner….this was eventually settled but cost the county millions of dollars to resolve."

"It is also curious to note that the same attorney who was involved in that case, Tom Welch, also testified on behalf of the developer...in your litigation."

Councilmember Jo Anne Johnson

"I cannot help but feel that you and the County of Maui have been defrauded, the taxpayers have been cheated out of financial obligations that the developer should have rightfully paid...."

Councilmember Jo Anne Johnson
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
 Lahaina, HI 96761

County of Maui
 315 South High Street
 Wailuku, HI 96793

Attention: Planning Director Will Spence

Re: Request for Notice of Non-Compliance
- SMA Permit Lot 48A LLC (13-02-048)

Dear Mr. Spence,

As verified 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

Jo Anne Johnson Letter to Planning Director Will Spence

February 28, 2012

Dear Mr. Spence,

I have attached and forwarded to Planning Director Will Spence a letter from Jo Anne Johnson, Director of Transportation, dated April 11, 2011.

Jo Anne Johnson Letter to Planning Director Will Spence

April 11, 2011

To: Will Spence – Director of Planning

From: Jo Anne Johnson – Director of Transportation

Re: Letters of SMA Violations and Compliance per Attached Mailings

Abdou Will

Thanks so much for your letter of April 11, 2011.

I have attached to this email a letter that I sent to the Developers. The letter states:

"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

Chris Salem

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

Jo Anne Johnson Letter to Planning Director Will Spence

December 22, 2011

Dear Mr. Spence,

I have attached and forwarded to Planning Director Will Spence a letter from Chris Salem, dated December 22, 2011.

"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

"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

Chris Salem

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
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