

An aerial photograph of a coastline. The water is a muddy brown color, suggesting sediment or a river mouth. A road curves along the shore, bordered by a dense green forest. The sky is overcast with grey clouds. The text is overlaid on the left side of the image.

**Citizen's Ethics Complaint  
to Deny David Goode's  
Employment as the  
Director of Public Works**

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# **Citizen's Ethics Complaint to Deny David Goode's Employment as the Director of Public Works**

## **Statement of Complaint**

Private citizens, residents of Maui County, hereby assert Public Works Director David Goode has engaged in multiple unethical acts that are outside of his authority as a public official, in violation of The Maui County Charter, including making false and misleading representations to the Maui County Council, and violations of Maui County Ordinances.

As evidenced herein, Director Goode has also abused his authority as a public official, breached his official duties and violated his oath to serve the public's best interest. Instead, at the public's expense, Director Goode has chosen to directly and willfully serve and enrich private developers with whom he has direct and indirect personal financial interest.

The evidence attached to this complaint is grounds for his removal as Interim Director and denial of his application for continued employment as the Director of Public Works.

## **Related Violations**

Private citizens, residents of Maui County, also assert that Director Goode has both tampered with and manufactured false government records, which is a prosecutable violation of the State of Hawai'i Penal Code.

## **Relevant Authorities**

### **Maui County Charter § Section 10-1**

Declaration of Policy. Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

### **Maui County Charter: Section 3-6 Powers of the Council**

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
6. To retain, employ, or designate, by a vote of two-thirds of its entire membership, special counsel as legal representative for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services
7. To designate attorneys within the office of council services to serve as legal advisors. (Amended 2016)

### **Maui County Charter - Section § 9-12 / Penalties**

- (a) Any person who intentionally violates this chapter or any rules adopted pursuant to this chapter shall be guilty of a misdemeanor and shall be;
  - (1) Subject to removal from office

- (2) Liable to the State or the appropriate county for any sum paid by it in connection with the violation, and that sum, together with interest and costs, shall be recoverable by the State or county; and
- (3) Subject to imposition of an administrative fine under subsection (b).

**Hawai'i Revised Statutes § 710-1017 (c) (d)ii**

- (1) **A person commits an offense of tampering with government records if;**
  - (b) The person knowingly presents or uses a written instrument which is or purports to be a government record or a true copy thereof, know that it has been falsely made, completed, or altered, or that a false entry, has been made therein, with the intent to be taken as genuine; or
  - (c) The person knowingly records, registers, or files, or offers for recordation, registration, or filing in a governmental office or agency, a written statement which has been falsely made, completed, or altered, in which a false entry has been made, or contains a false statement or false information; or
  - (d) Knowing the person lacks the authority to do so;

**Evidence of Director Goode's False and Misleading Statements**

**Intentional Shifting of Private Developers financial obligations to Maui County residents**

**Evidence of Director Goode's Violations of County Ordinances and Maui County Charter**

**Violation 1: Director Goode makes false and misleading statements to the Maui County Council**

**The Facts:** On February 7, 2019 while seeking employment as Director of Public Works, David Goode made false and misleading statements to the Members of the Maui County Council regarding the Department of Public Works' failure to track and collect upon private developer's pro rata shares of deferred subdivision roadway improvement costs along their subdivision frontages.

The Maui County Auditor is presently investigating the non-assessment and non-collection of developer roadway infrastructure deferral agreements, violations of County Budget requirements and the enrichment of private developers at taxpayers' expense.

**David Goode Quote:** *"To date, we have not had a project that installed those improvements per one of the agreements that required their contribution..."*  
(See #4 / #15)

**The Truth:** County records show that multiple Capital Improvements Projects on subdivision frontages with developer deferral agreements, including Phase I-III of South Kihei Road and Phase I-III of Lower Honoapiilani Road, have been improved using public funds, and that the private developer's pro rata share of the costs have not been accounted for or collected upon. (See #16 / #18)

**The Truth:** County records show that in 2011, under Director Goode’s authority, Phase IV of South Kihei Road and Phase IV of Lower Honoapiilani roadway Capital Improvement Projects were adopted into the County Budget.

**Substantiation:** Public Works Director Milton Arakawa testified to the Maui County Council in 2007 that relevant CIP’s have been completed: *“Even on those Capital Improvement Projects where full improvements have been implemented, we frankly have not done a good job of tracking these deferral agreements.”* (See #12)

**The Law:** In accordance with Maui County Code Title 18, as amended in 2010, the Department of Public Works **shall** send out Notices of Intent to Collect to property owners bound by the developer deferral agreements at the commencement of project funding. (See #16)

**Violation 2: David Goode writes false and misleading letter to Council Chair of Infrastructure**

**The Facts:** On June 2, 2012, while Council Member Elle Cochran, the Chair of Infrastructure, was attempting to obtain from Public Works Director David Goode a formula for assessment and collection of private developer’s pro rata share of the costs of the Phase IV of South Kihei Road roadway improvements, Director Goode wrote a false and misleading letter to Ms. Cochran to terminate the assessment and collection process as required by the Maui County Charter.

Quote: *“This is in response to your May 18, 2012 follow up letter to our previous letter regarding deferral agreements. After our meeting with Corporation Counsel on this issue, we are unable to respond at this time on the matter as we are 1) researching the applicability of certain agreements on the ability to seek compensation...”* (See #8)

**The Truth:** County records obtained by a FOIA Request demonstrate NO agreements exist that were being researched by Director Goode and the Department of Corporation Counsel, under Director Patrick Wong. to determine their collectability.

**Violation 3: Director David Goode continues to violate and knowingly misrepresent Title 18 of the Maui County Code and Article 9 Section 9-12.1 Maui County Charter from 2000 to present time.**

**Facts:** Under Director David Goode in 2000 – 2001, Tom Welch, a private developer’s attorney, without notice to the property notices affected, altered a government document through the execution of private warranty deeds. When one of the oceanfront lots of a “3 Lots or Less” subdivision was being subdivided a second time by a private client of Deputy Director Milton Arakawa, attorney Welch added parcels to the “one time” County of Maui deferral agreement.

The original parent parcel now unlawfully contained 5 lots through 2 separate overlapping subdivisions.

- (a) By allowing 5 lots to be bound by a “one time” “3 lots or Less” deferral agreement through private developer warranty deeds, Director Goode tampered with government records, and intentionally circumvented the existing 4 lot Title 18

County ordinance which requires full infrastructure improvements to a subdivision involving 4 or more parcels.

**Quote(s):** *If they are doing a subdivision of four lots or more we would require the subdivider to install their frontage improvements at their cost*“ Milton Arakawa Public Works Director – 2010

*“But any lots that are further subdivided that have deferral agreements cannot continue to use the deferral agreements for the resulting subdivision.”* Milton Arakawa Director of Public Works - 2010

**The Code:** Director Goode’s decision to allow 5 lots to be bound by a “3 Lots or Less” subdivision agreement through private developer warranted deeds violated Title 18 the Maui County Code

**The Proof:** *“Compounding all that is that some deferral agreements, three lots, had another future three lots, so it got subdivided again and again, had different deferrals, And in some cases especially in West Maui, the original three-lot subdivision was a huge piece of land that went half way up the mountain.”*

*And so, there’s a possibility there’s going to be some deferral agreements where theoretically there’s 1,000 different owners and they each owe us \$25. I mean it’s getting really crazy“* David Goode Public Works Director – April 19, 2012

**The Truth:** From 2000 onward, Director Goode played a direct role in the execution of “crazy” unlawful overlapping “one time” deferral agreement to serve the financial interest of private developers by intentionally shifting their financial obligations to citizens.

**The Law:** THE MAUI COUNTY CHARTER SECTION 9-12: IF ANY COUNTY OFFICER OR EMPLOYEE KNOWINGLY AUTHORIZE OR MAKES ANY PAYMENTS OR INCURS ANY OBLIGATION IN VIOLATION OF THE PROVISIONS, OR IN VIOLATION OF PROVISIONS OF THE PROCEDURES AND POLICIES, ESTABLISHED BY ORDINANCE, OR TAKES PART THEREIN, THAT ACTION SHALL BE CAUSE FOR REMOVAL FROM OFFICE.

**Violation 4:** Director David Goode continues to violate and knowingly misrepresent Title 18 Maui County Code and Article 9 Section 9-12.1 of the Maui County Charter from 2000 to present time.

**The Facts:** Under Director Goode’s authority, an oceanfront subdivision along South Kihei Road was re-subdivided 3 times with each subsequent subdivision developer being granted a “one time” “3 Lots or Less” deferral of their roadway improvements by the Department of Public Works and the Department of Corporation Counsel.

**Quote:** *“We do not have records which indicate the number of agreements that have been recorded over time.”* Director Goode’s Letter to Mayor Apana, April 24, 2002 (See #5)

**The Truth:** Director Goode continued issuing overlapping “one time” deferral agreements even after it became publicly known that the developer agreements were not being tracked or accounted for by the Department of Public Works, the Department of Corporation Counsel, or the Department of Finance.

**The Law:** THE MAUI COUNTY CHARTER SECTION 9-12 PAYMENTS AND OBLIGATIONS. EVERY PAYMENT MADE IN VIOLATION OF THE PROVISIONS OF THIS CHARTER SHALL BE ILLEGAL, AND ALL COUNTY OFFICERS SHALL BE JOINTLY AND SEVERALLY LIABLE TO THE COUNTY FOR FULL AMOUNT SO PAID OR RECEIVED. IF ANY COUNTY OFFICER OR EMPLOYEE KNOWINGLY AUTHORIZE OR MAKES ANY PAYMENTS OR INCURS ANY OBLIGATION IN VIOLATION OF THE PROVISIONS, OR IN VIOLATION OF PROVISIONS OF THE PROCEDURES AND POLICIES, ESTABLISHED BY ORDINANCE, OR TAKES PART THEREIN, THAT ACTION SHALL BE CAUSE FOR REMOVAL FROM OFFICE.

**Related Cover Up:** In 2014, A detailed letter was sent to Deputy Corporation Counsel attorney Michael Hopper requesting a legal opinion on the overlapping “one time” deferral agreements on South Kihei Road. Deputy Hopper refused to respond to the citizens request for a legal review and opinion of the overlapping developer agreements.

As the record shows, Director Goode and the Department of The Corporation Counsel under Patrick Wong, have worked together to prevent the assessment and collection of the 3 lots or less developer deferral agreements.

**Violation 5: Through the Department of Corporation Counsel, Director David Goode issued a false representation of Title 18 of the Maui County Code to the United States District Court for the State of Hawai’i.**

**The Law:** Maui County Code, Title 18, as amended in 2010, clearly states that the County “shall” provide a Notice of Intent to Collect upon the developer deferral agreements upon commencement of roadway Capital Improvement Project funding. (See #6)

**False Representation:** *“The County may, or may not, elect to assert a monetary assessment, against the properties at some point in the future.”* David Goode Public Works Director – 2013. (See #27)

**Facts:** On August 22, 2013 a private resident was attempting to pay off and remove a “3 Lots or Less” subdivision deferral cloud recorded by the Department of Corporation Counsel on behalf of the County of Maui on their real property title. Under Penalty of Perjury, Director Goode made a false representation of the adopted Title 18 of the Maui County Code.

**Quote to the Council:** *“It is our job to make people accountable for these agreements.”* David Goode Public Works Director – 2012

**Quote to the Council:** On February 7, 2019, Director Goode made the following statement to the members of the Maui County Council;

*“So, it is our job is to enforce the agreements and we will enforce the agreements.”*

*“So, like any other agreement we’ve talked to Corp Counsel about it and we can enforce the agreements.”*

**The Cover Up:** On June 14, 2014, Corporation Counsel attorney Michael Hopper wrote a letter to First American Title Company, Inc. stating as follows;

*“Should the County perform the improvements covered by the agreement in the future, it may assess the property owner for the pro rata share in accordance with the agreement.”*

**The Truth:** Director Goode’s representation to the District Court was in clear contravention of Title 18 of the Maui County Code and covered-up his department’s gross negligence in failing to establish a formula for collection and assessment. Nevertheless, property owners were still sent a Notice of Intent to Collect upon a pro rata share of the costs of the Phase IV of Lower Honoapiilani Road improvements, and a resident property owner was unable to remove the County of Maui “3 Lots or Less” subdivision cloud on their property title.

**The Truth:** Under the current system, property owners have no process or mechanism to remove the open-ended County of Maui cloud on their property titles.

**Violation 6: Director David Goode issued a false representation of Title 18 of the Maui County Code to a private citizen.**

**Facts:** In 2018, Director Goode wrote a County resident stating that the multiple overlapping developer agreements were allowable based on an amendment to Title 18 of the Maui County Code adopted in 1990.

**The Code: 18.20.040 OF THE MAUI COUNTY CODE IMPROVEMENTS TO EXISTING STREETS MAY BE DEFERRED FOR A SUBDIVISION CONTAINING 3 LOTS OR LESS, PROVIDED THE SUBDIVIDER OR OWNER, THEIR HEIRS, EXECUTORS, OR ASSIGNS, AGREE TO PAY THERE PRO RATA SHARE OF THE ROAD IMPROVEMENTS UPON EXISTING STREETS.**

**THE LAND IN THE SUBDIVISION SHALL NOT THEREAFTER QUALIFY FOR THE DEFERRAL OF THE REQUIREMENT THE REQUIREMENT TO IMPROVE EXISTING STREETS PURSUANT TO SECTION 18.20.040 OF THE MAUI COUNTY CODE WITH RESPECT TO ANY SUBSEQUENT SUBDIVISION OF ANY OF THE RESULTING PARCELS. (See #11)**

**The Truth:** The specific adopted language to the Title 18 Ordinance is completely opposite to Director Goode’s false representation of the Maui County Code. There is no language in the Maui County Code to allow overlapping deferrals to be “grandfathered in”.

In violation of his official duties, Director Goode engaged in law-making to serve the financial interests of private developers. Director Goode acted out outside of his discretionary authority by allowing private developers to defer their roadway improvement financial obligations on overlapping subdivisions of the same parent parcels.

In December of 2002, Director David Goode was given written notice, for a second time, of the intentional shifting of developer’s financial obligations by the Department of Public Works to the citizens of Maui, with unassessed and uncollected “3 Lots or Less” Subdivision Agreements.

**Violation 7: Director Goode makes false representation of the Department of Public Works official duties to cover up and serve the financial interests of a private developer and**

**violates Article 10 of Maui County Charter; violates Article 8-5.3 (2), unlawful Conflicts of Interest; and violates Subdivision Ordinance**

**Facts:** On March 13, 2018, Director Goode wrote a false letter to a County resident stating that his Department's civil engineers "were unable" to compare a private developer's overlapping re-subdivision SMA Permit civil engineering Order of Magnitude Valuation of roadway and drainage improvements with the roadway infrastructure and drainage improvements that were deferred "one time" on the original "3 Lots or Less" subdivision.

**Quote:** *"Given that the two documents were processed by different departments, were prepared for subdivision of different lots, and were created for different purposes, the Department of Public Works is unable to provide "confirmation that the roadway improvements listed the two public records produced are the same".*

**The Law:** Director Goode's department has a licensed civil engineer that are required, pursuant to the established duties in the County Charter and Maui County Code to review all agency and department comments and conditions "for different purposes" to insure they are incorporated into the subdivisions civil engineering plans.

By doing so, the engineers owe a duty to insure the roadway infrastructure that was deferred "one time" through a Department of Public Works deferral agreement is not deferred a second time on an overlapping subdivision of one of the original 3 Lots.

Director Goode also owes a duty to remove the "3 Lots or Less" subdivision cloud on the original 3 Lots when a parcel being re subdivided is granted final approvals by his Department.

**The Truth:** Director Goode is attempting to cover up the fact that his Department breached their official duties by failing to insure a private developer's conditioned SMA Permit roadway infrastructure and drainage improvements were incorporated into the civil engineering plans.

Director Goode is serving the financial interests of a private developer by failing to confirm the conditioned SMA Permit environmental mitigations and roadway infrastructure are the very same of the two public records, and the SMA Permit is therefore incomplete and unfulfilled by the developer.

Director Goode also breached of his official duties by failing to review the private developer's civil engineering Order of Magnitude Valuations to insure they were accurate. By an independent engineering contractor's estimate, the valuations are 10 times higher than represented by the private developer's civil engineer. The false civil engineering valuations were clearly designed to avoid an SMA Major Permit and public review.

**Related Violations:** Director David Goode, through his deputy Director Milton Arakawa, unlawfully granted final approval for a private client on the oceanfront 3 Lot re-subdivision knowing the developer was in non-compliance with the conditioned SMA Permit. The subdivision and SMA Permit remain in non-compliance to present time.

Deputy Arakawa’s land planning firm was the authorized SMA Permit consultant who prepared the private developers SMA Permit application at the same time they were employed by the County of Maui for environmental review of proposed roadway Capital Improvements to Phase IV of Lower Honoapiilani Road.

This violation occurred only months after Director David Goode signed off on Olowalu Subdivision with an incomplete SMA Permit in violation of County of Maui Subdivision Ordinance.

**Violation 8: In violation of the Maui County Code and Maui County Charter, Director Goode served the financial interests of a private developer and violated Article 10 of Maui County Charter; violated Article 8-5.3 (2), unlawful Conflicts of Interest; and violated the Maui County Subdivision Ordinance**

**Facts:** On September 11, 2000, in accordance with the Maui County Code, Section 18.08.100, Director Goode issued Preliminary Subdivision Approval to Smith Development for the 17 Lot “Kahana Vai” Subdivision along Lower Honoapiilani Road.

The Subdivision Conditions of Approval included roadway frontage improvements to Lower Honoapiilani Road & pro-rata sharing of drainage improvements to Kahananui Stream.

On January 18, 2001, Public Works Director David Goode scribbled out condition 11 of the Subdivision Approval Letter and erased the pro-rata sharing of drainage obligations;

- Condition 11 – In accordance with Section 18.20.040 improve the adjoining halves of the Lower Honoapiilani Road.
- Condition 13a. – Required to participate in the pro-rata share of drainage improvements to the Kahananui Stream.

In 2002, shortly after shifting the Smith Development’s financial obligations to the citizens, David Goode became the President of Smith Development.

**Quote:** *“We agreed that the fact the bridge is to be rebuilt as part of Lower Honoapiilani Road Phase IV improvements by the County (at the citizen’s expense) that we would have no responsibility to improve the bridge as called out (by the County Engineering Division) on our the redline comments on our construction drawings.”*  
Smith Development Letter to Director Goode–January 2001

**The Code: THE MAUI COUNTY CHARTER CHAPTER 5: DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT SECTION 8-5.3. POWERS, DUTIES, AND FUNCTIONS, THE DIRECTORS OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT SHALL: APPROVE PROPOSED SUBDIVISION PLANS, WHICH ARE IN CONFORMITY WITH THE SUBDIVISION ORDINANCE**

**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**

**The Truth:** Acting outside of his authority, during his department’s subdivision application review, Director David Goode scribbled out the Engineering Division conditions issued to a private developer to install roadway frontage improvements to a residential subdivision and immediately thereafter went to work for the private developer. (See #8)

*“Rest assured we (Department of Public Works and Corporation Counsel) are actively working on this issue as our first project (Kahananui Bridge Project) has a few parcels that affected by the above two items that are still being researched.”* David Goode Public Works Director - 2012

Over a decade later, in violation of the Maui County Charter, Director Goode’s developer associate’s roadway and drainage obligations with be incurred by the citizens of Maui County and paid with County, State, and Federal taxpayer funds.

**The Law:** THE MAUI COUNTY CHARTER SECTION 9-12 PAYMENTS AND OBLIGATIONS. EVERY PAYMENT MADE IN VIOLATION OF THE PROVISIONS OF THIS CHARTER SHALL BE ILLEGAL, AND ALL COUNTY OFFICERS SHALL BE JOINTLY AND SEVERALLY LIABLE TO THECOUNTY FOR FULL AMOUNT SO PAID OR RECEIVED. IF ANY COUNTY OFFICER OR EMPLOYEE KNOWINGLY AUTHORIZE OR MAKES ANY PAYMENTS OR INCURS ANY OBLIGATION IN VIOLATION OF THE PROVISIONS, OR IN VIOLATION OF PROVISIONS OF THE PROCEDURES AND POLICIES, ESTABLISHED BY ORDINANCE, OR TAKES PART THEREIN, THAT ACTION SHALL BE CAUSE FOR REMOVAL FROM OFFICE

**Violation 9:** In violation of the Maui County Charter, Director David Goode issued Preliminary Subdivision Approval to Smith Development, and then continued to solicit the final subdivision approvals as the President of Smith Development.

**Facts:** In 2002, Public Works Director David Goode issued Preliminary Subdivision Approval for the “Pu’u Kahana” development application submitted by Smith Development.

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” subdivision application.

**The Law:** PROHIBITIONS 1.f. NO OFFICER OR EMPLOYEE OF THE COUNTY SHALL RECEIVE ANY COMPENSATION FOR ANY SERVICE RENDERED IN 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 WTHE 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.

**The Truth:** Despite receiving Preliminary Subdivision approval from Director Goode, and having Michele McLean as the land planning consultant, the Maui County Planning Commission agreed with neighbors' complaints that the project violated the Community Plans. The Planning Commission subsequently denied the Smith Development subdivision application after almost two years of neighborhood disputes and legal intervention.

**Violation 10: Director Goode makes misleading representations to the Maui County Council regarding 2 Lot subdivision exemptions for roadway infrastructure improvements.**

**Facts:** Director Goode, in collusion with the Department of the Corporation Counsel, deceived the Maui County Counsel into amending Title 18 to provide roadway infrastructure exemptions to 2 lot or less subdivisions ISLAND WIDE. The 2 Lot exemptions were intended solely for qualified homeowners on the Upcountry Water Meter List and were for non-commercial development use only.

**Quote:** *"We'll look at it and we can help you folks modify it. But our role there and we did not purposely mislead anyone."* Director Goode – Feb 7, 2019

**The Truth:** On February 7<sup>th</sup>, 2019 Director Goode also misled the County Council into believing that litigation by a County resident for an injunction against these islands wide 2 Lot exemptions, which violated the County Charter and Council Rule 4(D) was *"thrown out"*.

**The Law:** Director Goode is not licensed professional attorney and his statement to the Council during public hearings about the disposition of ongoing litigation was outside of his authority.

In fact, the litigation is still presently pending to stop Director Goode from continuing to shift private developer's financial obligation to the citizens through the continuing approvals of 2 Lot subdivision infrastructure exemptions island wide.

**Violation 11: Director Goode's negligence continues to waste and misuse of public funds, to the benefit of private consultants.**

**Facts:** In accordance with the Maui County Code, Subdivisions containing 4 lots or more are required to install full roadway improvements. In most instances, the Director Goode failed to insure there is and overall adopted plan establishing the proposed roadway right of way width.

Consequently, millions of dollars of both public and private roadway improvements will be torn out & replaced at County and taxpayers' expense.

**Quote:** *"When a subdivision comes along and actually constructs the frontage improvements often there is no overall design for the ultimate roadway. We would just dig up the previous improvements and replace them at the County's cost."*

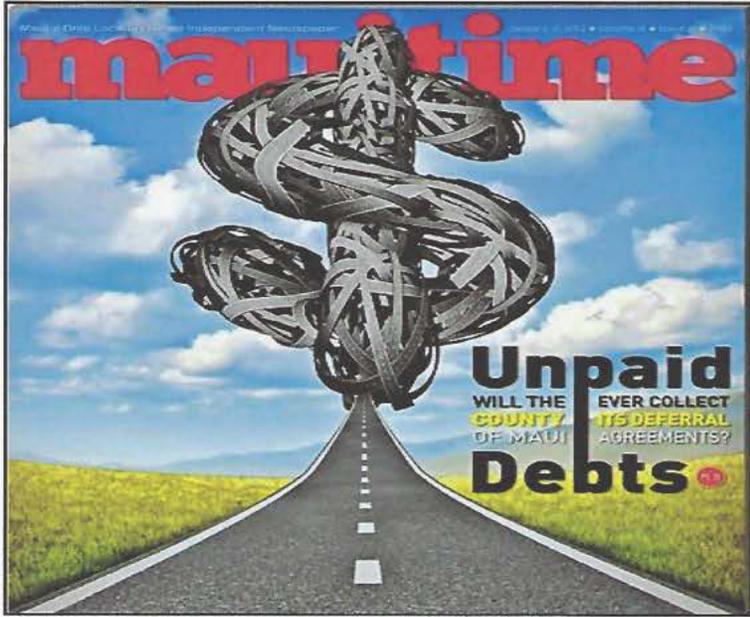
**The Truth:** Director Goode, from 2000 onward, is aware that public funds will be used to tear out and replace private developer's roadway infrastructure improvements. Private consultants, engineering firms, and contractors benefit from Director Goode's negligence.

An aerial photograph of a coastline. The ocean is a deep blue, meeting a sandy beach. A paved road curves along the edge of a lush green hillside. The sky is filled with soft, white clouds. The text '3 Lot or Less Subdivision Infrastructure Deferral Agreements' is overlaid in the center in a white, sans-serif font with a slight drop shadow.

# 3 Lot or Less Subdivision Infrastructure Deferral Agreements

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

MAUI Causes .org

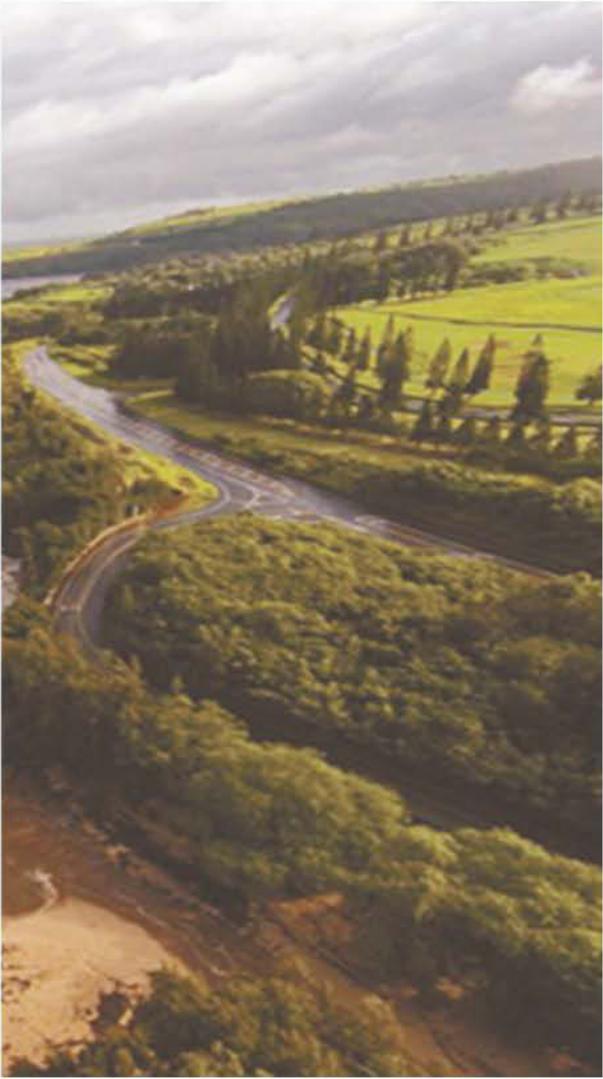


January 16, 2013 | 08:02 AM

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

Maui Time

January 16, 2013





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# Hui Road F

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

DEPARTMENT OF PUBLIC WORKS  
IEM COMMITTEE – JANUARY 8, 2018

**REQUEST FOR LEGAL SERVICES**

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

**RECEIVED**  
By Dept. of The Corporation Counsel at 11:25 am, Dec 16, 2017

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

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

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

**Work Requested:**  FOR APPROVAL AS TO FORM AND LEGALITY  
 OTHER:

Requestor's signature <i>Don S. Guzman</i> Don s. Guzman, Councilmember	Contact Person Executive Assistant Kathy Kaohi (Telephone Extension: 5506)	OFFICE OF THE COUNTY COUNSEL 2017 DEC 20 PM 1:45 RECEIVED
<input type="checkbox"/> ROUTINE (WITHIN 15 WORKING DAYS) <input type="checkbox"/> RUSH (WITHIN 5 WORKING DAYS) <input checked="" type="checkbox"/> PRIORITY (WITHIN 10 WORKING DAYS) <input type="checkbox"/> URGENT (WITHIN 3 WORKING DAYS) <input type="checkbox"/> SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): REASON:		

**FOR CORPORATION COUNSEL'S RESPONSE**

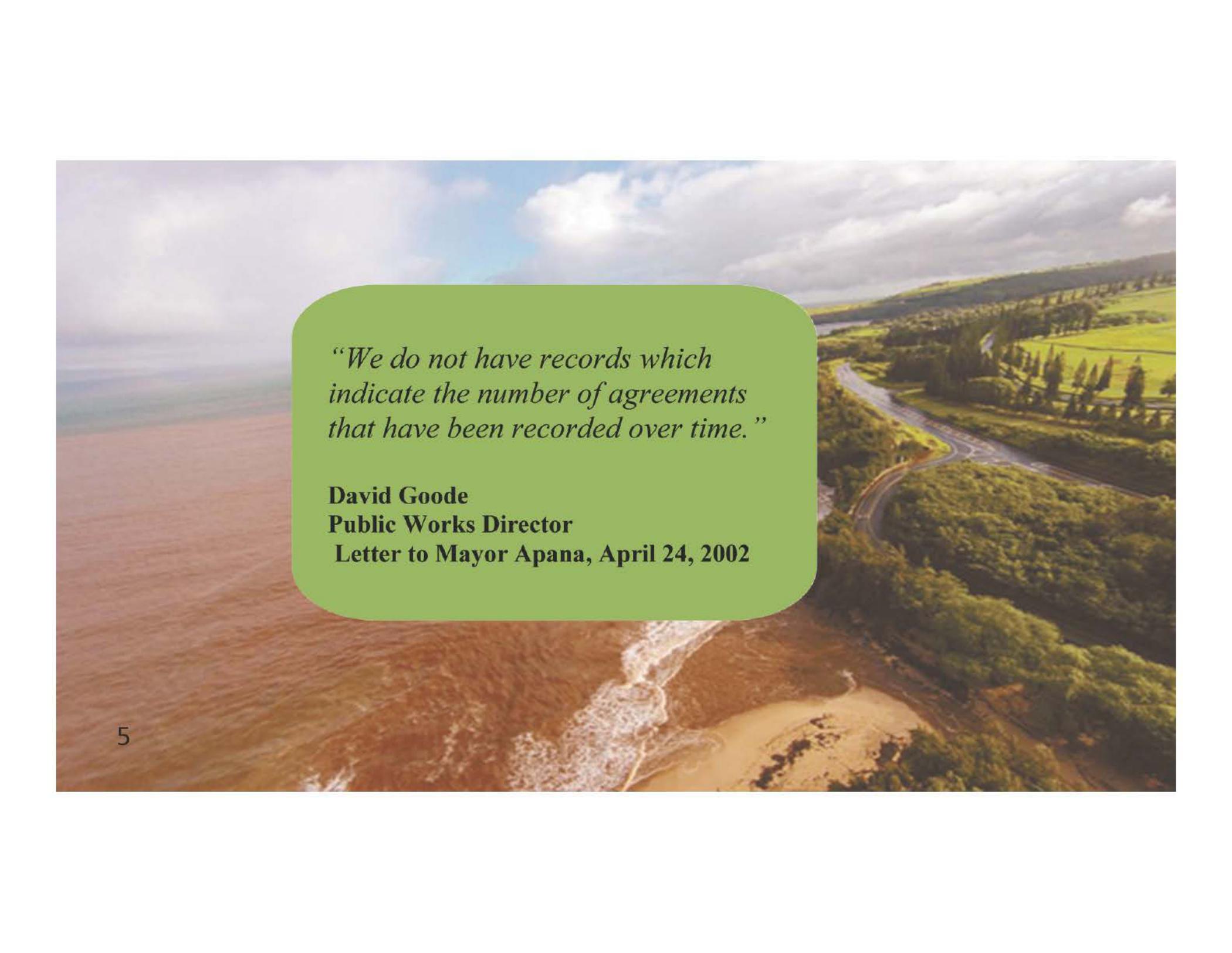
ASSIGNED TO: <b>ESK</b>	ASSIGNMENT NO. <b>2017-1511</b>	BY: <b>kku</b>
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TO REQUESTOR:  APPROVED     DISAPPROVED     OTHER (SEE COMMENTS BELOW)  
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

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

Attachment

An aerial photograph of a coastal area. On the left, there is a wide, muddy-brown river or estuary. A road curves along the right side of the water, through a lush green forest. In the background, there are rolling hills under a cloudy sky. A green rounded rectangle is overlaid on the image, containing text.

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

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



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

February 19, 2010

Committee  
Report No. 10-21

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

Chair and Members:

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

**Title 18.04.020**

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

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



ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_ (2012)

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

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

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

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

October 18, 2012

RECEIVED

'12 OCT 18 P5:46

OFFICE OF THE  
COUNTY COUNCIL

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

F R O M: Danny A. Mares  
Council Chair

SUBJECT: DIRECT REFERRAL (PC-17)

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

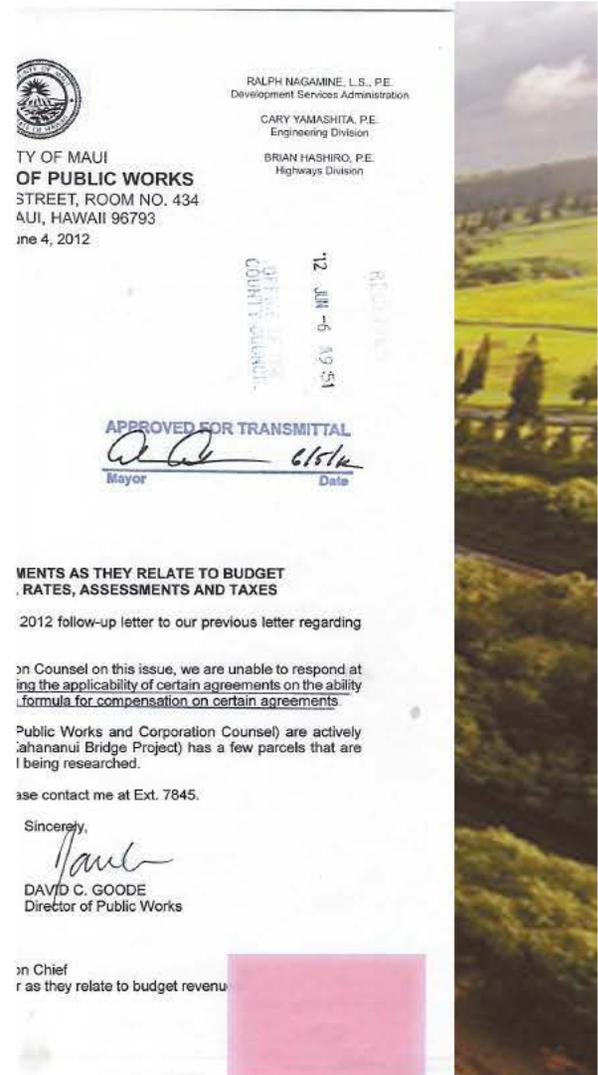
DAM:as

Attachment

We are unable to respond at this time on the matter as we are,

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

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



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

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

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

9



April 5, 2012

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

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

Dear Ms. Cochran:

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

### Scope of Services

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

#### Task I: Review Development Agreements, Studies and Existing Legislation

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

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

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

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

Client to provide relevant supporting documentation for review.

#### Task II: Prepare Parcel Database and Boundary Map

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



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

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

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

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

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

RECEIVED  
17th APR 20 11 41-28  
OFFICE OF THE MAYOR

*Goro Hokama*  
\_\_\_\_\_  
GORO HOKAMA, CHAIRMAN  
Council of the County of Maui

*Daryl T. Yamamoto*  
\_\_\_\_\_  
DARYL T. YAMAMOTO, COUNTY CLERK,  
County of Maui

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

*Hannibal Favares*  
\_\_\_\_\_  
HANNIBAL FAVARES, MAYOR,  
County of Maui

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

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

*Daryl T. Yamamoto*  
\_\_\_\_\_  
DARYL T. YAMAMOTO, COUNTY CLERK,  
County of Maui

RECEIVED  
17th APR 20 11 41-28  
OFFICE OF THE MAYOR

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

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui



**MINUTES**  
**PUBLIC WORKS AND FACILITIES COMMITTEE**

**Council of the County of Maui**

**Council Chamber**

**July 5, 2007**

**Time: 9:05 a.m.**

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

Councilmember Bill Kauakea Medeiros, Co-Chair

Scott Jensen, Legislative Analyst  
Melanie Martins, Committee Secretary

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

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

Patrick Matsui, Planning and Development Chief, Department of Parks and Recreation (Item Nos. 31 & 28)

Andy Young, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 26 & 44)

Milton Arakawa, Director, Department of Public Works (Item Nos. 26 & 44)

David Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

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

Maui Community Television, Inc.

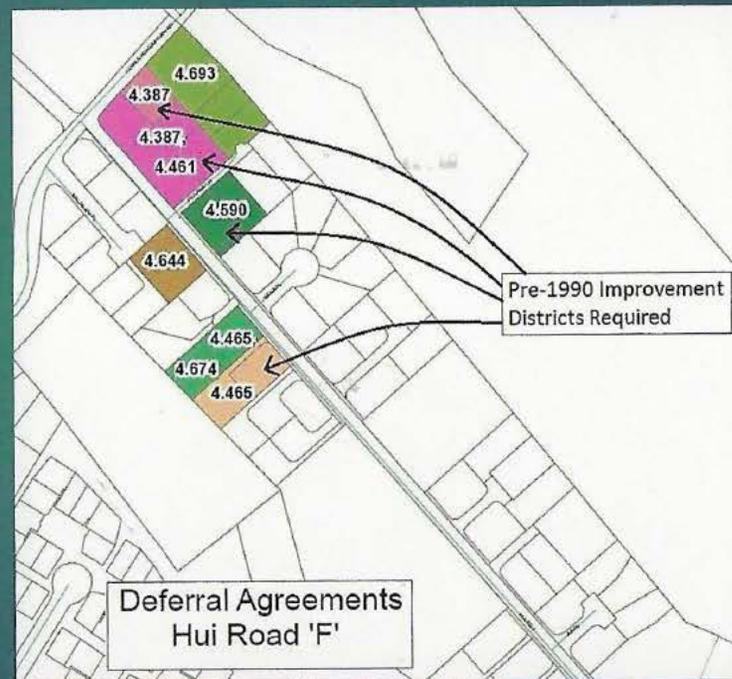
*“Even on those Capital Improvement Projects where full improvements have been implemented, we frankly have not done a good job of tracking these deferral agreements.”*

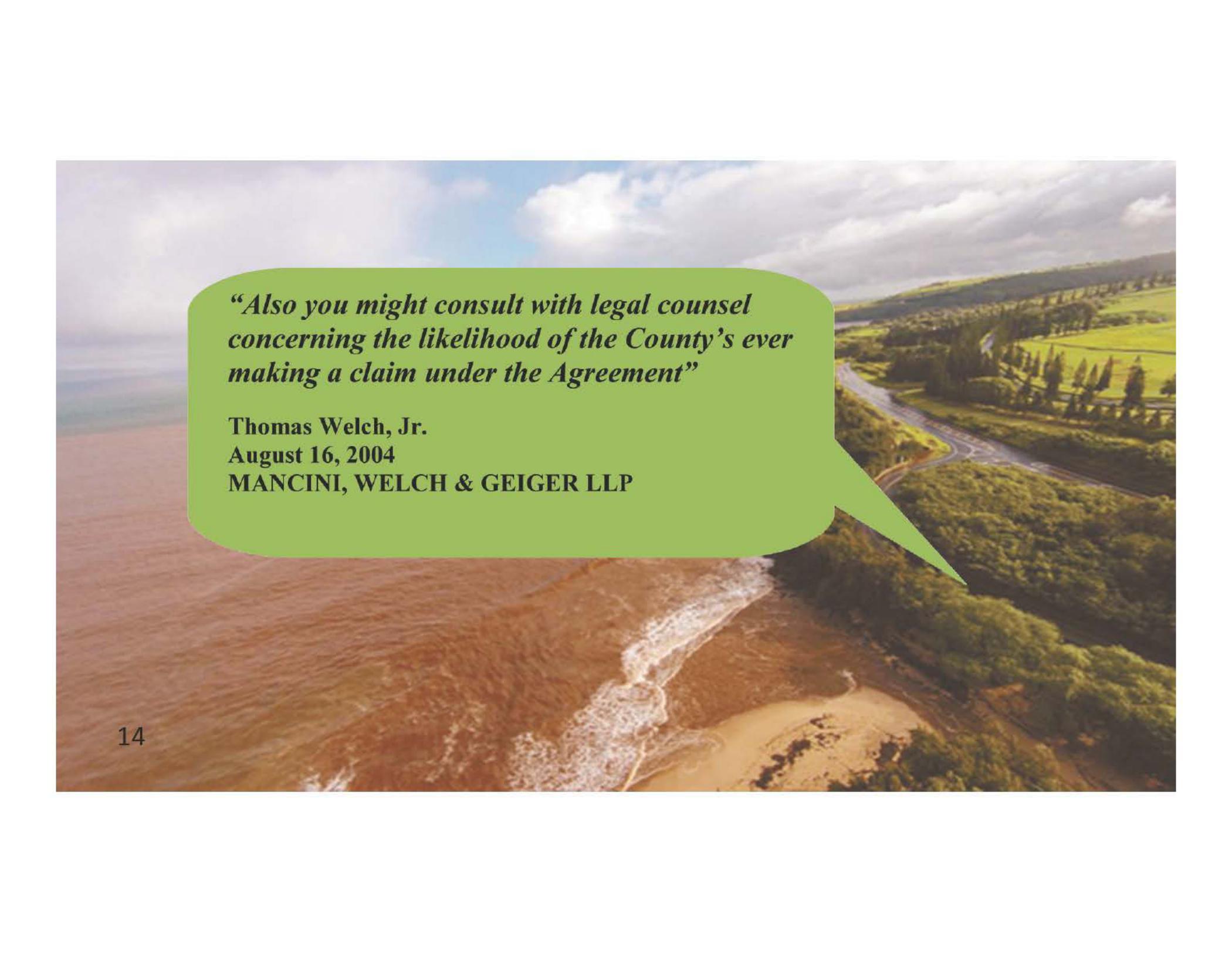
**Milton Arakawa**  
**Public Works Director - 2007**

# Road Frontage Deferral Agreements

11

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



An aerial photograph of a coastal area. On the left, a wide, brown river flows towards the ocean. The ocean waves are breaking onto a sandy beach. To the right of the beach, a road curves through a lush green landscape with rolling hills and scattered trees. The sky is filled with white and grey clouds.

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

**Thomas Welch, Jr.**

**August 16, 2004**

**MANCINI, WELCH & GEIGER LLP**

County Auditor  
Lance T. Taguchi



**OFFICE OF THE COUNTY AUDITOR**

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

February 7, 2018

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

Dear Chair White and Members:

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

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

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

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

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

Sincerely,

LANCE T. TAGUCHI  
County Auditor

E:\audit plan\correspondence\_out\180207amc01.docx:lt

COUNTY COMMUNICATION NO. 18-72

RECEIVED

2018 FEB -7 PM 2:45

OFFICE OF THE  
COUNTY COUNCIL

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

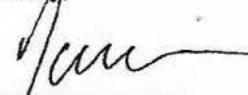
Honorable Elle Cochran, Council Member  
SUBJECT: DEFERRAL AGREEMENTS  
April 16, 2012  
Page 2

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

- 1) South Kihei Road - A total of six parcels may be affected by deferral agreements. The six parcels add up to 345 lineal feet of roadway frontage for a total of \$86,250 of potential revenue.
- 2) Waiko Road - No deferral agreements.
- 3) Lower Honoapiilani Road Phase IV - This project has already been addressed in a separate correspondence and currently under review.

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

Sincerely,

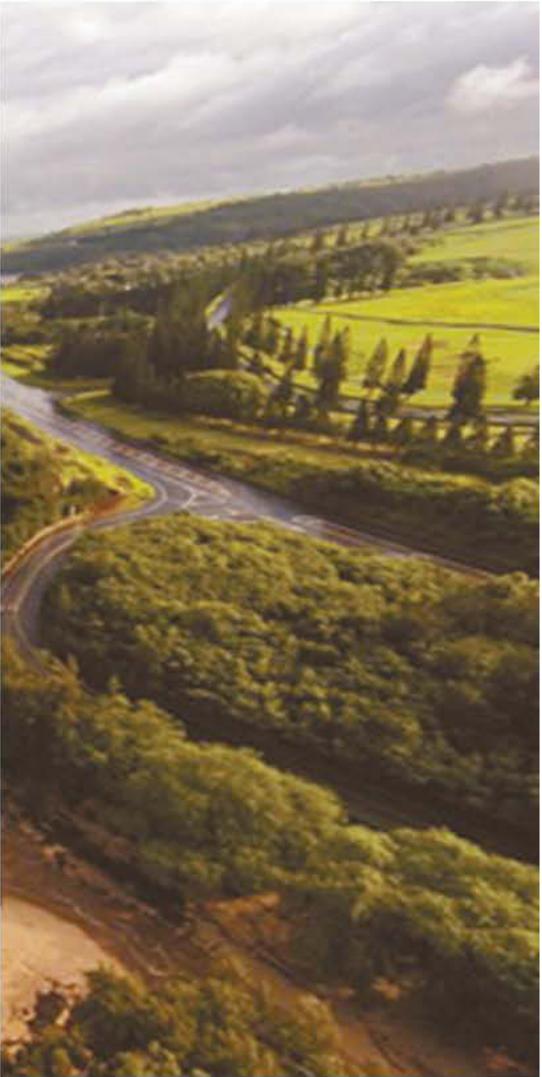
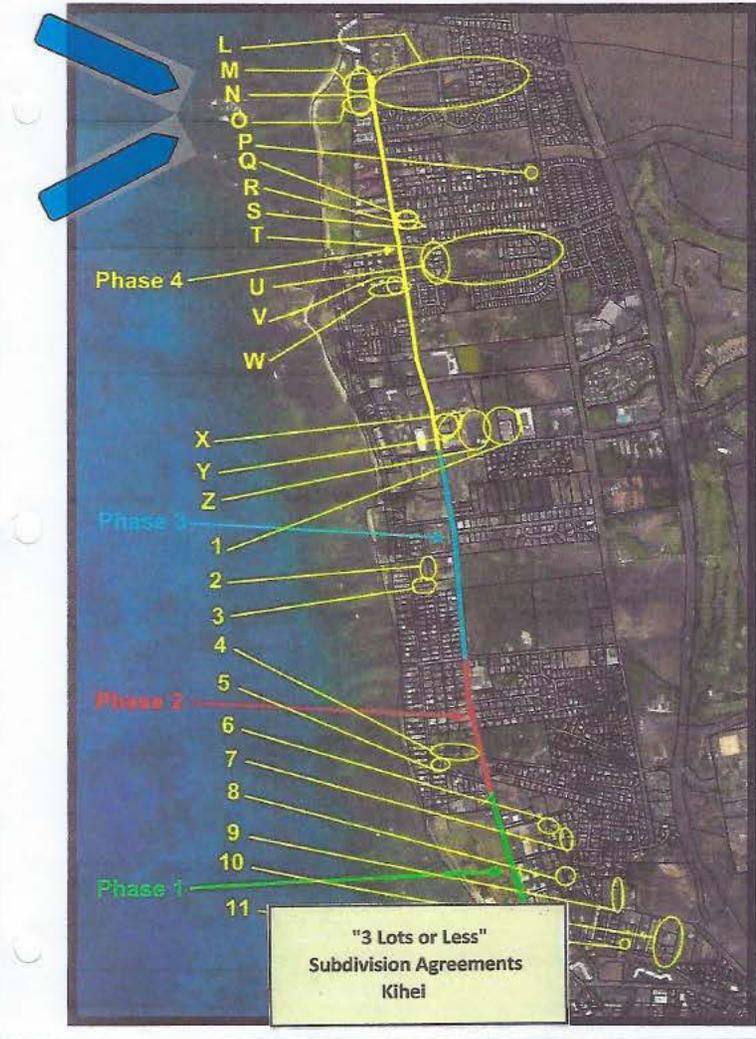


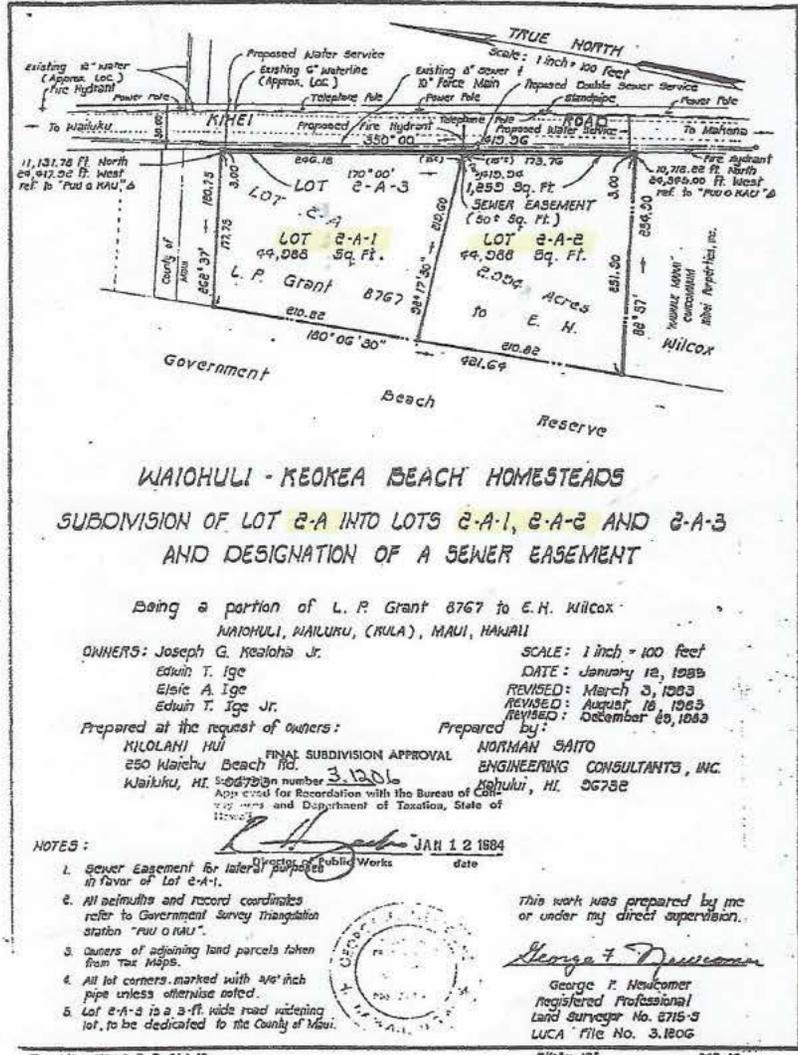
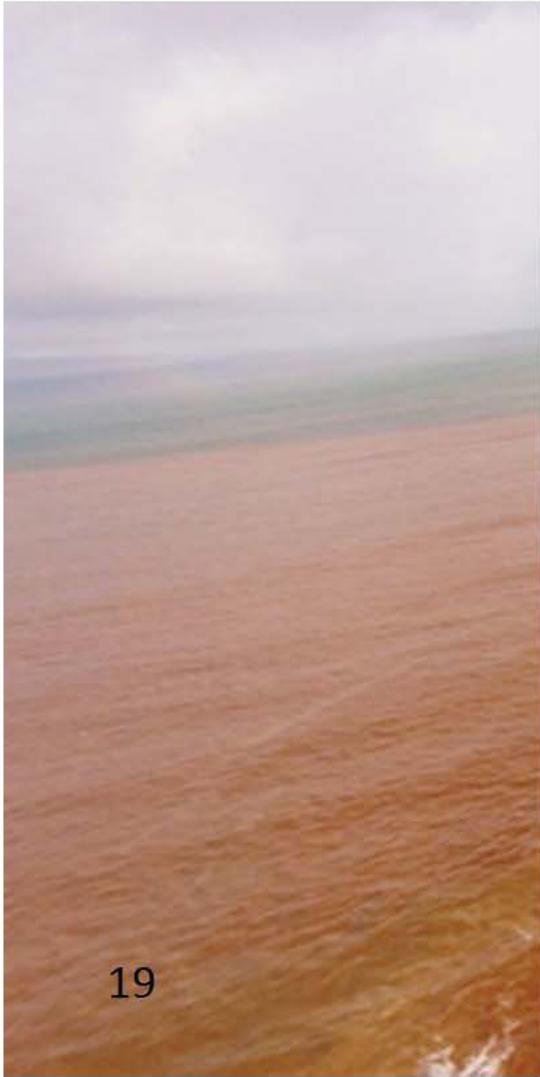
DAVID C. GOODE  
Director of Public Works





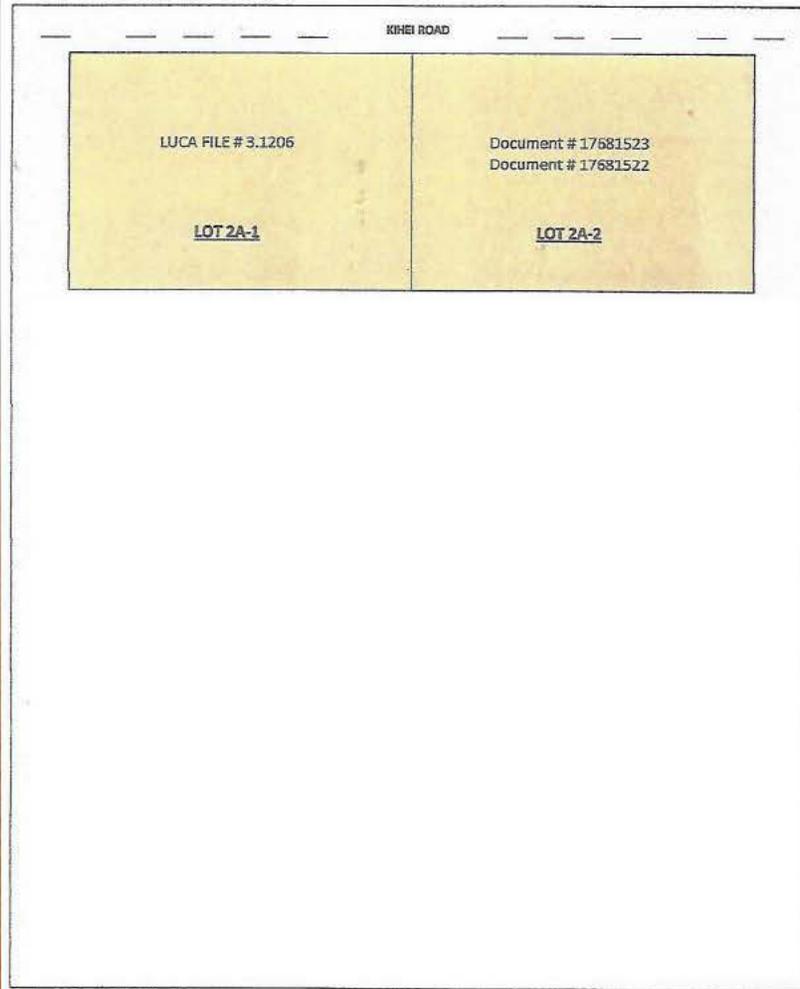
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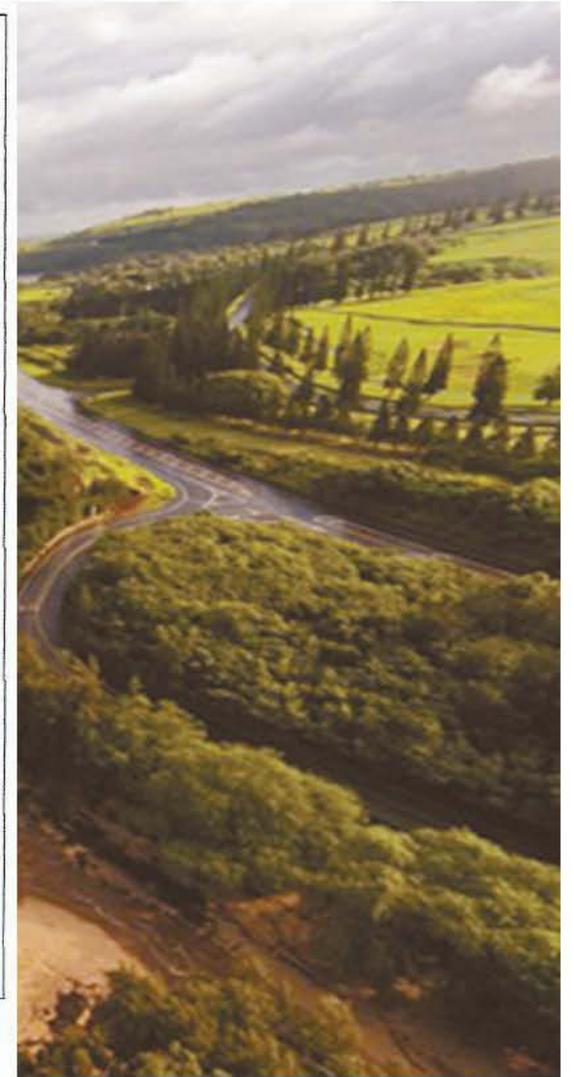


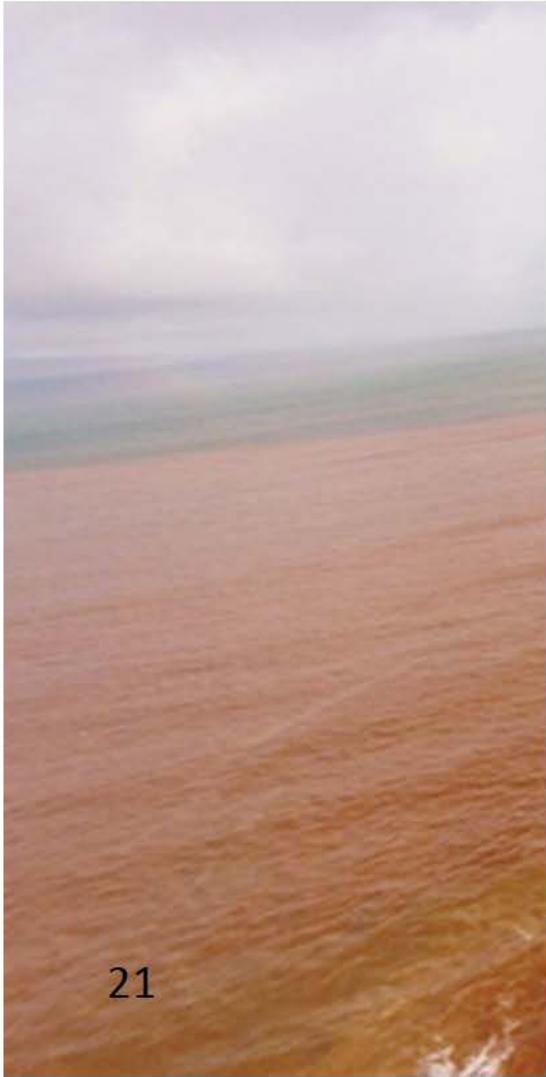


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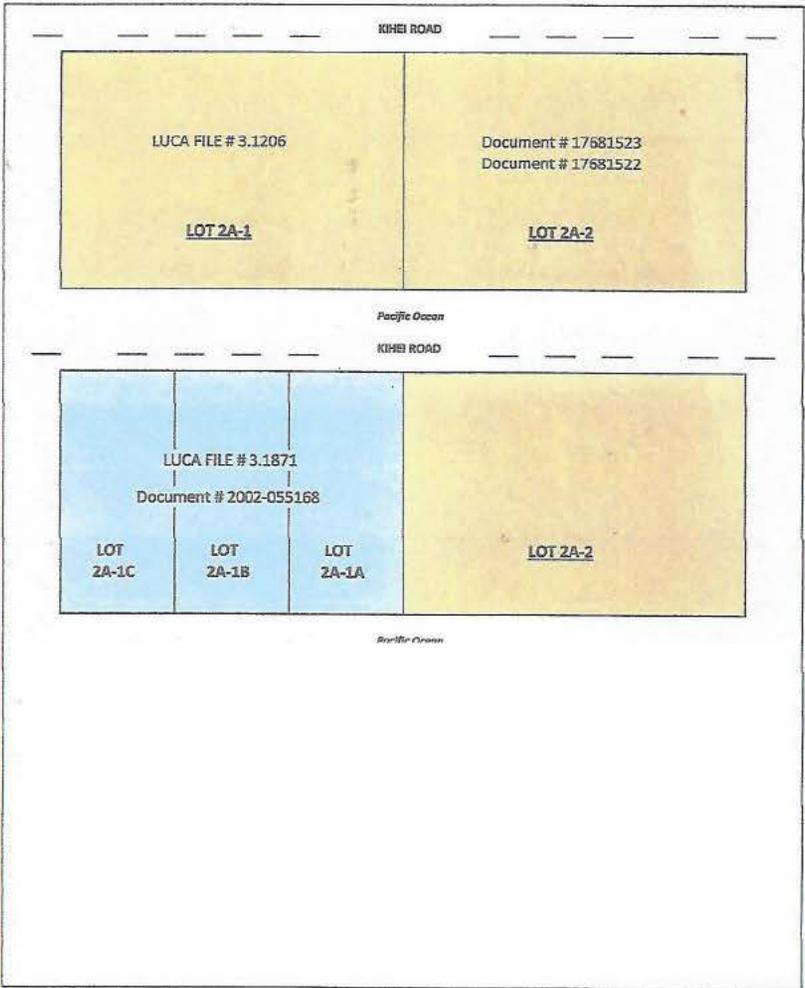


"3 Lots or Less"  
South Kihei Road



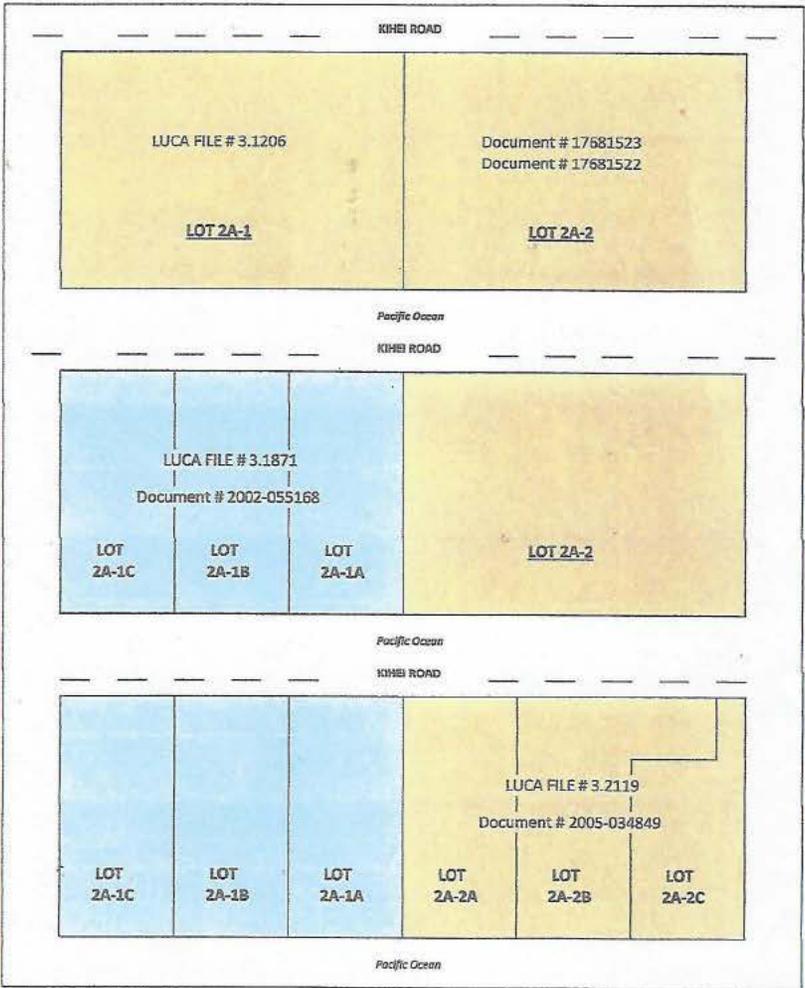


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"3 Lots or Less"  
South Kihei Road

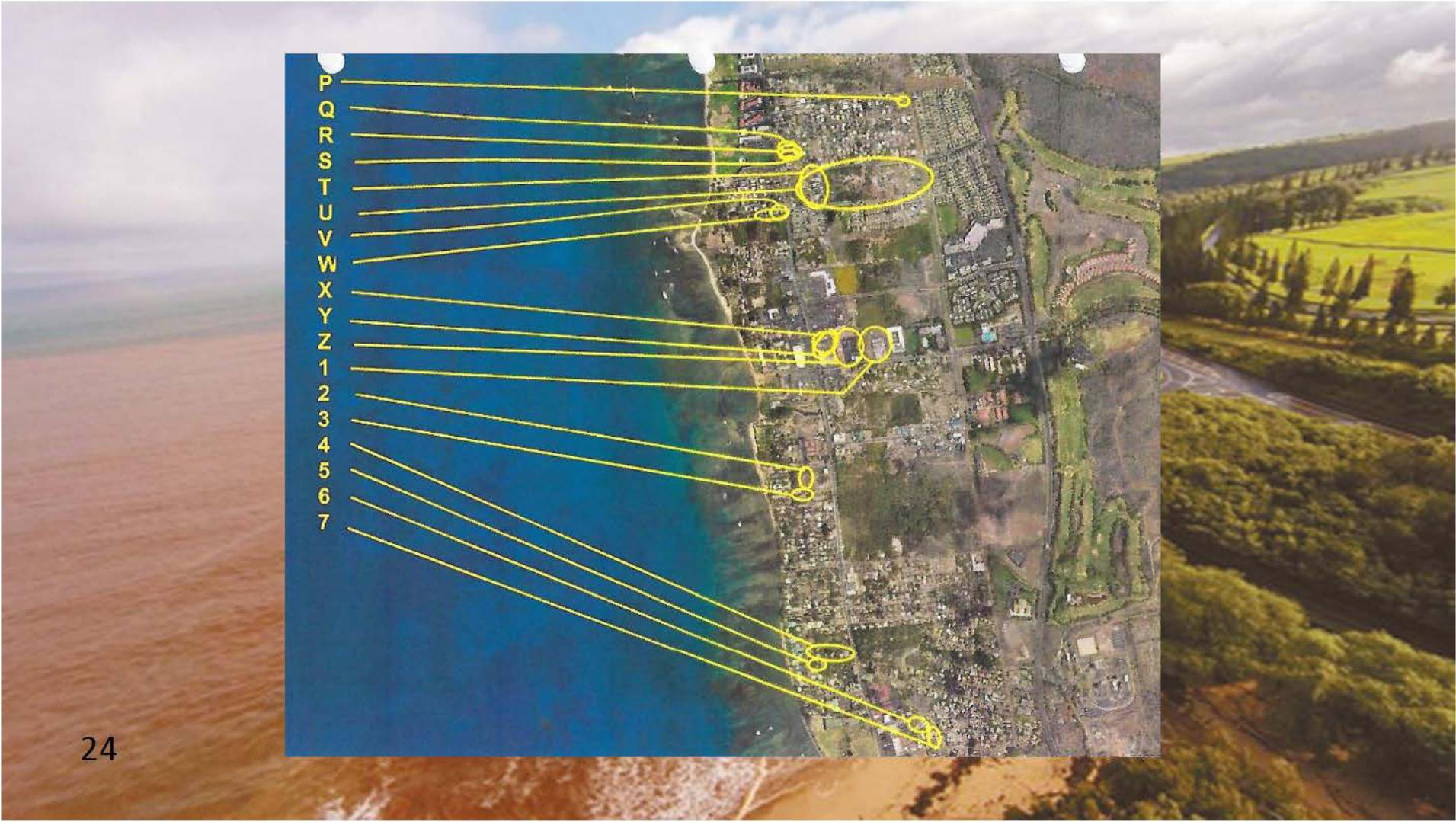


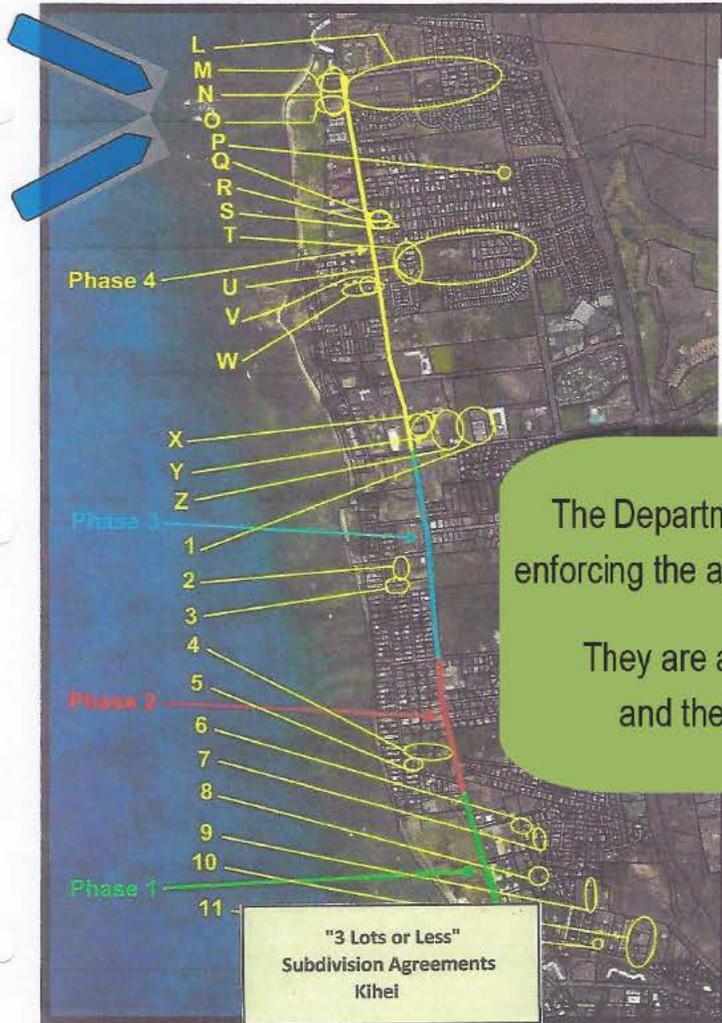


"3 Lots or Less"  
South Kihel Road









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

**Roadway improvement obligations are not being hidden from property owners**

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

MAR 22, 2018

[f SHARE](#) [TWITTER TWEET](#)

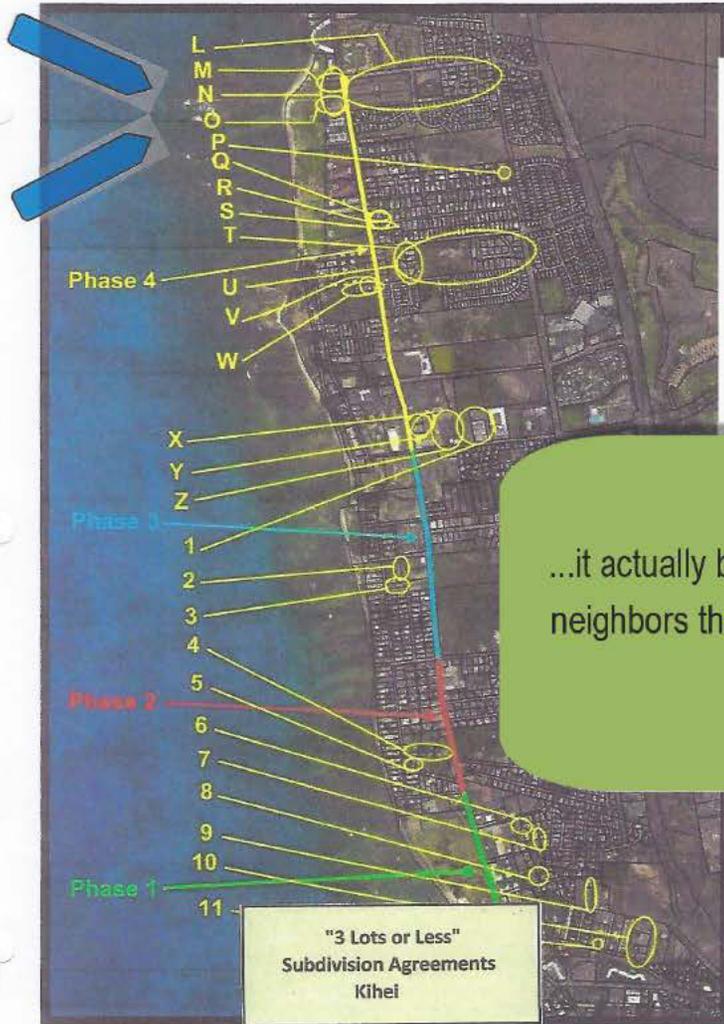
While the Viewpoint writer attempts to frame this as a countywide conspiracy, it actually boils down to a conflict between neighbors that has been ongoing for years. In his argument, he also seems to completely misunderstand and mischaracterize these agreements as liens.

Allow me to set the record straight.

A county ordinance in effect from the 1970s up to 2007, codified as Maui County Code Section 18.20.01, allowed a property owner of three lots or less, at his or her election, to defer required improvements. If a property owner elected to defer the improvements, he/she would be responsible for the cost of the improvements when performed by the county. The property owner was required to enter into an agreement with the county when the improvements were performed. The agreements were recorded in the county records. If the property owner failed to do so, the county would not eliminate the

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

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



# The Maui News

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## Roadway improvement obligations are not being hidden from property owners

LETTERS TO THE EDITOR  
MAY 22, 2014

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f SHARE t TWEET

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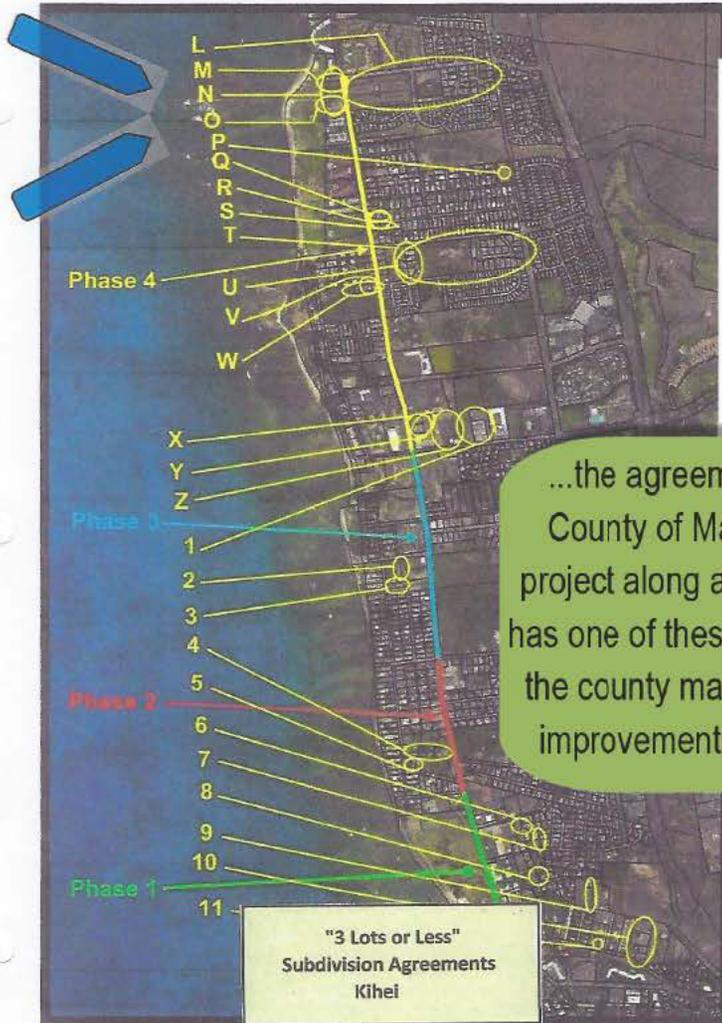


Allow me to set the record straight.



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

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# The Maui News

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MAR 22, 2014

f SHARE t TWEET

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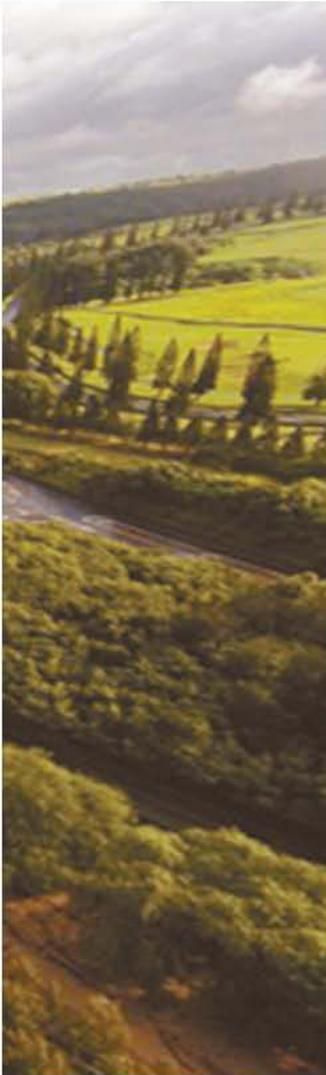
...the agreements state that if and when the County of Maui does a capital improvement project along a roadway fronting a property that has one of these agreements recorded against it, the county may recover the costs of doing those improvements that were specifically deferred.



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

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

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



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

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

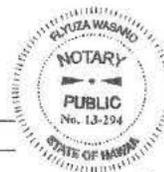
  
JoAnne Johnson Winer

State of Hawaii  
County of Maui

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

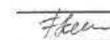


Fiyuza Wasano  
Notary Public, State of Hawaii  
My commission expires 08/11/2017



13

Doc. Date: 8-11-15 # Pages 14  
Fiyuza Wasano Second Circuit  
Doc. Description affidavit

 8-11-15  
Notary Signature Date  
NOTARY CERTIFICATION



Petitioning Maui County Auditor Lance Taguchi, Maui County Auditor



**Maui Causes** Makawao, HI

## Petition to Protect Maui

**Close Permit Loopholes  
That  
Damage Our Environment**

**Delivered to Maui's  
Independent Auditor**

MAUI Causes .org

## Continue your support

 You and 1,764 others signed this

CONTRIBUTE TO THE FUNDRAISER



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

[View fundraiser](#)

HELP THIS PETITION WIN



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# 3 Lot or Less Subdivision Infrastructure Deferral Agreements

MAUI Causes .org