

## EDB Committee

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**From:** Amy <wahine96779@yahoo.com>  
**Sent:** Thursday, July 25, 2019 1:41 AM  
**To:** EDB Committee  
**Subject:** Economic Development and Budget Committee 7/25/19  
**Attachments:** 6C144E93-C3F4-4F76-B1CE-7097A89256C2.jpeg; E92972E0-F628-4ABE-B5CE-B0E266EB0C3E.jpeg; 461FD36E-60C0-45E4-9157-2D5F2626F186.jpeg

July 25, 2019

Dear Maui County Councilmembers,

In regards to the earth materials at the proposed affordable housing project slated for the highly controversial, problematic, litigious County-owned land situated at the north end of the Maui Lani Fairways development and adjacent to , Pālama Drive, I wish to dispel a false allegation recently made by a Maui County official: The earth material that was deposited in this former ravine is NOT topsoil.

In fact, according to a Maui News article written by journalist Valerie Monson: “The gulch, however, has been cleared and filled with mill mud from the old Pā’ia Sugar Mill, a substance that has been questioned by other neighbors because it could be laced with chemicals, including arsenic.” (Maui News, June 12, 2006, p.1).

This toxic material presents a hazard to not only the current Pālama Drive residents and those in the vicinity, but to the future affordable homeowners and their children who will occupy this affordable housing project.

Furthermore, the height of this deposited material has not only compromised the original lay of the land but deprived residents of the vista of Mauna Kahalawai (or the West Maui Mountains) that was once enjoyed by those living in what was originally known as Alexander & Baldwin’s Dream City Increment #7:

“... the level of the full has been built up so high that the new plateau is above some of the Pālama Drive rooftops— and that’s without the two rows of two-story houses expected to follow, making the finished height possibly 50 feet or more in places.” (Maui News, June 12, 2006, p.1).

I applaud the Maui County Council’s determination to create affordable housing. However, this particular affordable housing proposal is extremely problematic. In fact, it poses numerous insidious hazards for not only the future affordable homeowners but for the residents of Pālama Drive and the adjacent areas. Rain showers regularly flood the streets of this community due to inadequate drainage. The risk of landslides is a real possibility. There appears to be no grout in the retaining wall built by the original developer who intended to sell market value homes with an ocean view. When it rains, water seeps through the retaining wall and regularly threatens the houses below. The truckloads of toxic mill mud has very possibly compromised and endangered the wellbeing of several community members. During high winds, the white vinyl fencing presents a deadly hazard to all, especially kūpuna and keiki. The design of the swale made by the original developer is inherently dangerous. The roadway infrastructure in this area is inadequate in this already densely populated neighborhood. There are also concerns about imperiled Iwi Kūpuna and historic properties in this area.

Before you forge ahead with your agenda, please meet with and listen to the concerns of the Pālama Drive community as well as those of the Fairways development. Many community members are home bound and unable to testify today. And others work during the daytime and are unable to attend this meeting.

With so many unresolved issues and concerns, it seems irresponsible to build affordable housing here. Post and pier construction will not mitigate the looming threats posed by the unstable foundation sitting upon an infilled gulch. A toxicology report is absolutely mandatory. A structural engineer and hydrologist must be consulted. The State Historic Preservation Division must also review this proposed project. This data will reveal the hazards and dangers of construction in such an precarious, dangerous location. Why imperil lives and property when a more suitable location can be found elsewhere?

In closing, rather than offer the community only two options, there needs to be a third option: Remove the toxic fill and restore the ravine and the original lay of the land. This is a cultural landscape. Create an open space in this heavily populated and developed area of the Central Maui Pu'uone Sand Dunes System. Mahalo.

Most Sincerely,

Amy Halas

# THE MAUI LANI RISE

Developer raises grades, blocks views of neighbors — with county OK



The Maui News / MATTHEW THAYER photos

A view from a Palama Drive rooftop shows the extent of earth trucked in to fill what had been a low-lying area next to neighbors of a Maui Lani subdivision under construction late last week. Residents of Palama and Nākoa drives say they're alarmed to see their views obstructed by the rapidly rising topography of

the new subdivision. The grading work was allowed by Mayor Alan Arakawa's administration because the development received its construction approvals more than 25 years ago when building heights were determined from the final, altered grade and not the original topography.

### Maui Lani

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county attorneys and other members of his staff last year when the issue came up. "We talked about what position we could defend in court because of the change of rules," said Arakawa. "Approvals were given to Maui Lani and the owner progressed on the assumption that those approvals were valid. You can't apply rules that weren't in place when it was approved. In court, we'd get killed."

The mayor's decision drew fire during a council Planning Committee meeting last week in which residents of Nakoa Drive pleaded their case. Some council members were outraged that it appeared Arakawa had approved the old building heights on his own. There was even talk among council members about launching an investigation and, if wrongdoing were found, to possibly take the mayor to court.

"What authority does the mayor have to contradict the county code?" asked Council Member Michelle Anderson, who said it was "reprehensible" that developers were allowed to create such hardships on existing residences. Arakawa said it was a decision he didn't enjoy making.

"There will be traumatic effects on individuals, but how can you interpret this in any other way?" he said. "I'm not going to disagree (that the existing homeowners won't suffer), but we had to make this decision based not on any one project but for the county."

The two Maui Lani parcels are owned by separate limited liability corporations that are headed by the same man, Val Peroff of Oahu. Peroff was on the Mainland last week and unavailable for comment. Project Manager Jack Watkins also could not be reached.

The mayor said he worried that the county could get caught up in another "Montana Beach" lawsuit in which taxpayers ended up spending more than \$4 million for an oceanfront development near Paia because previously issued permits were rescinded.

"We're not arbitrarily making the decision," said Arakawa. "We're looking at facts based on the law."

If the current ordinance were enforced, certain homes in the new subdivisions might be limited to 10 feet or less because of the 20-foot fills already in place, "making some of these lots undevelopable," Arakawa wrote in a letter to Peroff.

"To resolve this conflict, I made an administrative decision to allow the project to proceed with building heights determined from finished grade," the mayor concluded in a letter he signed May 31, 2005 - 11 days after 17 residents of Nakoa Drive sent a petition and photographs to Arakawa complaining about the rising sea of land behind their homes.

In apparent response to the controversy, the Planning Department has proposed a change to the county code that states that the 1991 amendment would not apply to site plan approvals granted with a special management area permit or approvals of Project District Phase II or Planned Development Phase II. The Maui and Lanai planning commissions have recommended adoption of that language, but the Molokai Planning Commission still wants to review any project that intends to use the finished grade as its base.

The situation at Palama and Nakoa drives - Palama runs



The Maui News / MATTHEW THAYER photo

Palama Drive resident Annette Heu said residents are concerned about drainage as their properties are now downhill of the newly constructed subdivisions. Because it's already in a depression, Palama Drive floods so easily that "when we hear it start raining at night, we all jump out of bed and move our cars" to higher ground, Heu said.

along the Kahului edge of Maui Lani and Nakoa follows the Wailluku boundary - has stirred up other concerns regarding the county's policy in approving grading permits, either at the department level or during the public review process. Because projects are usually in their early stages when they get their entitlements, decision-makers often have no idea what the final lay of the land will look like. The huge increases in elevation at Maui Lani have taken most everybody by surprise.

Planning Director Mike Foley declined to comment for this story, referring all questions to Arakawa. But he shed some light on the situation at Nakoa Drive during a Maui Planning Commission meeting a year ago.

"Some of these projects have been around for a long time, but one of the controversial areas is in Sandhills (that borders Nakoa Drive), a portion of Maui Lani where the new project has been graded to the extent where the new houses are blocking the views from existing houses," Foley said, according to the meeting transcript. "The fill is 15, 20 feet on some of these lots and it was approved, but it was approved with inadequate review by the county staff and by the commission and by council and now we're seeing the unfortunate impacts of these approvals."

At that same meeting, Susan Moikeha, then chair of the commission, said development plans that routinely come before the panel are almost always "conceptual" in nature "so we don't see grading." She said more information should be required early in the process so everyone realizes how much the original topography will be altered.

Foley told commissioners he hoped that the new language would be approved and that the Planning Department would be able to "prepare some standards with Public Works regarding grading... so that we have some criteria to look at that doesn't exist now."

Corporation Counsel Brian Moto didn't respond to a phone call for comment, but he also spoke at that planning commission meeting. Moto said that some projects, particularly those with golf courses, often use fill to elevate the houses to resolve drainage issues. Golf courses often substitute for drainage areas, he said.

Drainage is one of the key concerns of the Palama Drive neighbors. Their street, already in a depression, floods so easily that "when we hear it start raining at

*It's not that we're anti-development (but) if they're going to build, don't destroy the original lay of the land.*

— Karen Goo  
Palama Drive resident

Heu. Her mother has a home just down Palama where a tall dust fence now separates her backyard from the new construction by inches. Goo said she's been trying to recover from surgery even as the trucks and bulldozers grind overhead, sometimes six days a week and even recently on Memorial Day.

"It's not that we're anti-development," said Goo. But, "if they're going to build, don't destroy the original lay of the land."

Annette Heu agreed. "I don't think we'd be complaining if the houses were all on the same level and if they would fix the drainage," she said.

Foley told planning commissioners last year that there's nothing in the law that ensures protection of private views.

"Our regulations currently tell us to address the views from the roads, from the public domain, from parks and highways," he said. "We don't have regulations that specifically protect the private views and people do complain about that."

Two years ago, the Haiku community pushed for conditions that set a precedent on protecting views along Hana Highway by restricting a developer's building heights to 20 feet from the original grade (10 feet less than the law allows) and implementing permanent building footprints that permits structures to be constructed only where they would be the least intrusive.

In that case, members of the public told landowner Francesco Moretti that being limited to a one-story home was the tradeoff for living in such a beautiful location with spectacular views that should be enjoyed by everyone. The Maui Planning Commission essentially agreed.

Before commissioners made a site visit to his property early in the process, Moretti erected "story poles" along his 45-acre agricultural subdivision that were as high as his proposed structures on the eight lots. Commissioners and neighbors alike were able to assess the impacts.

According to Foley, story poles can be helpful on large-lot applications but can be less effective in dense projects or ones that follow a slope. However, he noted that in one of the jurisdictions where he previously worked, the poles were automatically required of developers - and were often beneficial to all parties.

"We had a lot of projects that were modified by the owners and the architects when they realized what the result looked like on the site," Foley told commissioners last year. "So it worked for both the neighbors and for the applicants."

Of course, it could be too late to help the neighbors of Palama and Nakoa drives, but they're not giving up. And neither are members of the council's Planning Committee who are gathering more facts and expect to hold more meetings on the subject.

But work continues as usual. Karen Goo lives next to the Valerie Monson can be reached at [vmonson@mauinews.com](mailto:vmonson@mauinews.com).

### Isumami

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The advocacy group said the island would have to be evacuated in the event of a tsunami but if the floating bridge is raised, evacuation may not be possible.

In addition, scientists at the tsunami center object to the move because a host of operational and logistical problems and the possibility of nullifying much of the benefit from the \$16.7 million currently being spent to upgrade its system, PEER said.

Ruch said his group was contacted by the tsunami center employees because they thought their "own chain of command was not taking the issues they raised seriously."

Shuart Weinstein, acting director of the Pacific Tsunami Warning Center, said employees have brought up concerns about the move to NOAA.

"Let's just say, there's a range of opinions here at the center regarding the move," he said. "Some people here think it's a good idea. Some people are not quite happy about it."

Weinstein said based on the

limited information believes Ford is at least as safe as the center's in Ewa Beach, a level a few feet from the ocean a tsunami zone. NOAA says cents brought cees' union, an taken into co PEER, sa Crater, horr fense facti high volca more appor tsunami w "If the move it able tsun said. The g rejected center it called i saying even ce "Th er Dit "We v tsunar lookin

### CRIME STORIES

#### Police seeking man facing drug charges

This week the Maui Police Department and Maui Crime Stoppers seek the public's assistance in locating Riehlen T.K. Nakamoto, who is sought on multiple drug charges.

Nakamoto is charged with first-degree promotion of a dangerous drug, attempted first-degree promotion of a dangerous drug, and prohibited acts relating to drug paraphernalia.

Bail was set at \$100,000. He is described as a Japanese male, 34 years old, 5 feet 10 inches tall, weighing 230 pounds, with black hair and brown eyes.

Anyone with information concerning Nakamoto's recent movements or whereabouts is asked to call Maui Crime Stoppers at 242-6966. Neighbor Island residents can call toll free at 1-(888)-242-6966. Callers to Crime Stopper should not give their names; the remain anonymous and are given a code number.

Maui Crime Stoppers pays cash rewards of up to \$1,000 for information leading to the arrest a

### DUI S

THE FOLLOWING SENTENCES for driving under the influence of intoxicating liquor occurred on 7. The listings include the offender's name, age, residence and charges. First offenders under a 14-hour alcohol abuse retaliation program, a substance abuse evaluation and have

### Kula associati

KULA - The Kula County Association will host a on the "Future of Up Maui," 7 to 9 p.m. Wednesday at the Kula Community Center.

The guest speakers include Maui Community professor Kiopio Raymon will discuss plans for construction of a new telescope atop Haleakala. Civil Defense Administrator Gen Iinuma, answer questions about the county's efforts to prepare for

golf course, and I knew about the plan to build the first group of houses that went up several years ago (The Island), but that didn't bother me because I knew we had the gulch and all the kiawe trees in there separating us."

That gulch, however, has been cleared and filled with mill mud from the old Paia Sugar Mill, a substance that has been questioned by other neighbors because it could be laced with chemicals, including arsenic. Across from Heu's house, the level of the fill has been built up so high that the new plateau is above some of the Palama Drive rooftops — and that's without the two rows of two-story houses expected to follow, making the finished height possibly 50 feet or more in places.

On the other side of Maui Lani, residents of Nakoa Drive

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