

GET Committee

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>
Sent: Tuesday, January 22, 2019 9:16 AM
To: GET Committee
Cc: Kelly King; Keani N. Rawlins; Tasha A. Kama; Riki Hokama; Alice L. Lee; Mike J. Molina; Tamara A. Paltin; Shane M. Sinenci; Yukilei Sugimura; Teresa Allred; Moke Bergau; John Blumer-Buell; Ellen Kahookele; Jean Mary Kahookele; Sharon Kahookele; Terry Kristiansen; JEFFREY C PAISNER; Irene Pavao
Subject: PUBLIC TESTIMONY FOR 1-23-2019. LETTER AND THREE EXHIBITS. PLEASE CONFIRM RECEIPT. MAHALO!
Attachments: Concil Governance Committee Testimont 1-23-2019 .pdf; 2019 County Council Regarding Nahiku .pdf; Nahiku-State Land Board.pdf; Council IEM Committee 12-29-2018.pdf

**TERESA ALLRED, MOKE BERGAU,
JOHN BLUMER-BUELL, ELLEN KAHOOKELE, JAMES KAHOOKELE III,
JEANMARY KAHOOKELE, SHARON KAHOOKELE, TERRY KRISTIENSEN, MAX
MATTSON, JEFFREY PAISNER and IRENE PAVAO**

Contact <blubu@hawaii.rr.com> <greentoes@alohaservices.net> <iphana@yahoo.com> or
telephone John @ 248-8972 or Terry @ . 248-7600

January 23, 2019, Public Testimony.

Maui County Council Governance, Ethics, and Transparency Committee, Michael
J. Molina, Chair.

200 South High Street, Wailuku, Maui, Hawai'i. 96793

Sent Via Email GET.Committee@mauicounty.us

With Phone Request for Confirmation of Receipt. 270-7838.

Please Print and Distribute for Meeting.

Subject: Public Testimony for January 23, 2019, Governance,
Ethics, and Transparency Committee Meeting. "Appointment and Removal of
Administrative Heads of Departments".

Aloha Chair Molina and Committee Members,

- * **Managing Director, GET-1(1)**. We support the appointment of Sananda K. Baz as Managing Director of Maui County. Sandy has always demonstrated ethical, transparent and civil behavior in our nearly ten years of conflicts with the Arakawa Administration regarding the Arakawa proposed Nahiku Community Center.

- * **Director of Parks and Recreation, GET-1(11)**. We have no recommendation regarding the appointment of Karla H. Peters as Director of Parks and Recreation. However, we ask your committee to be certain the candidate is fully informed regarding Hawaii Revised Statute Chapter 343. It needs to be fully understood former Parks and Recreation Director Correa signed a fraudulent "Declaration of Exemption" regarding the proposed Nahiku Community Center.

This, and numerous other legal issues, have led to the ongoing lawsuit.

- * **Planning Director, GET-1(8). We strongly oppose the appointment of Michele McLean as Planning Director.** Her administrative handling of the proposed Nahiku Community Center issues before the Maui Planning Commission demonstrated a lack of good governance, fairness, legal due process, ethics and transparency. Her demonstrated behavior does not meet the high standards of the 2017 Maui County Charter. ARTICLE 10, CODE OF ETHICS, Section 10-1, Declaration of Policy states, “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”.

We have repeatedly requested a forensic (criminal) audit of every aspect of the proposed Nahiku Community Center. That audit would certainly include examination of the actions and behavior of Planning Director Michele McLean, former Planning Director William Spence, former Mayor Arakawa, Corporation Council Patrick Wong and others.

- * **Corporation Council, GET-1(2). We strongly oppose the appointment of Patrick K. Wong as Corporation Council.** Mr. Wong has enabled a lack of legal due process in the proposed Nahiku Community Center. He has been in the position to legally, ethically and transparently advise the Mayor of Maui, the Maui County Council, the Maui Planning Department, the Maui Planning Commission and the Hana Advisory Committee to the Maui Planning Commission. He has failed to do so. His demonstrated behavior does not meet the high standards of the 2017 Maui County Charter. ARTICLE 10, CODE OF ETHICS, Section 10-1, Declaration of Policy states, “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”.

Again, we request a forensic (criminal) audit of every aspect of the proposed Nahiku Community Center.

Attached for your information and consideration is our December 18, 2018, letter to the Maui County Council elect, the 2007 State Land Board “Set Aside” decision and our November 29, 2018, letter to the Maui County Council Infrastructure and Environmental Management Committee. Our informative “Petition to Intervene” was previously sent to you and is in the public record.

Malama Pono,

*TERESA ALLRED, MOKE BERGAU, JOHN BLUMER-BUELL, ELLEN
KAHOOKELE, JAMES KAHOOKELE III, JEANMARY KAHOOKELE, SHARON
KAHOOKELE, TERRY KRISTIANSEN, MAX MATTSON, JEFFREY PAISNER and
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or telephone John @ 248-8972 or Terry @ . 248-7600

December 14, 2018

Members of the 2019 Maui County Council

Riki Hokama <riki.hokama@mauicounty.us>
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Kelly King <kelly.king@mauicounty.us>
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Shane Sinenci <ssinenci@yahoo.com>
Yuki Lei Sugimura <yukilei.sugimura@mauicounty.us>
Cc: Mayor Elect Mike Victorino

***Subject: URGENT HEALTH, SAFETY, LIABILITY, MONETARY AND LEGAL
DUE PROCESS ISSUES NEGATIVELY IMPACTING THE NAHIKU COMMUNITY.
URGENT REQUEST FOR A "TIME OUT" UNTIL WE CAN MEET WITH YOU TO
DISCUSS FACT BASED RESOLUTION OF THE ISSUES.***

Aloha 2019 Maui County Council Members,

Congratulations to each of you for your recent re-election or election to our Maui County Council. We look forward to working with each and all of you for the betterment of Maui County.

We write today to inform you of urgent issues and problems negatively impacting the Nahiku Community. We do not like sending this letter prior to your inauguration and celebration. However, the issues are too timely and destructive to

the community to delay informing you. Sadly, the problems have been festering for nearly ten years.

The numerous unaddressed legal problems, the continued failure to follow the law, the continued failure to facilitate legal due process for the community and the failure to establish credible “reports” and “facts” by County of Maui Planning Directors Spence and McLean have led to many threatening problems for the unique Nahiku Community. Here are four documented examples for your consideration.

1. The County of Maui is suing Maui Kuponu Builders, LLC, Civil Case 15-1-0421(1). This case is currently scheduled to go to a jury trial on May 7, 2019.

This trial is important and may bring forth important facts regarding the formative “Set Aside/Transfer of Jurisdiction” agreement between the County of Maui and the State of Hawai’i, land title issues, historic access issues and jurisdiction issues.

It is important to note that Mayor Arakawa and Corporation Council Wong have also ignored the facts and, instead, have supported their incorrect political interpretations of the law.

We think a “time out” by the County of Maui is called for now until the trial and possible appeals are finished. Of course, a settlement agreement may not settle any of the legal issues.

2. The County of Maui continues to advocate and advance a County of Maui proposed, not a community proposed, two million dollar project in Lower Nahiku for the second time. A second time? Yes. The first time, the county fraudulently approved itself a Special Management Area (SMA) Permit based upon the false representation of a four hundred and fifty thousand dollar project. In addition, in 2012 former County of Maui Parks Director Correa made a fraudulent “Declaration of Exemption” from Hawaii Revised Statute 343. In addition, on May 12, 2012, the County Planning Department issued a self serving memorandum stating the county did not need to perform an Environmental Assessment for a Community Plan Amendment initiated by themselves. The involvement of the State Office of Environmental Quality Control in this self declared “exemption” is

very concerning. The legality of this memorandum needs to be challenged. The community was not aware of the “secret” memorandum until the October 26, 2017, Hana Advisory Committee meeting in Hana. In addition, the county did not legally process the required “Community Plan Amendment”, “State Land Use District Boundary Amendment”, “Change of Zoning” and “Special Management Area Use Permit”.

Please note, the County of Maui has already spent more than \$246,000.00 (two hundred and forty six thousand dollars) of taxpayer money for consultants without any entitlements. The expenditures were documented by the credible County of Maui Budget Director Baz in an email to us dated July 26, 2018. The presumptuous and brazen expenditures have taken place without the legally required Hawai’i Revised Statute 343 “Environmental Assessment” process, the legally required entitlements of a “Community Plan Amendment”, a “Change in Zoning”, a “District Boundary Amendment”, or an “SMA Permit”. **We have already asked for a forensic audit of the entire matter.** We restate our request to you, our new council. Ironically, the County of Maui even held a publicized ground breaking party years ago with none of the legally required entitlements in place.

Why so many problems? From day one, **the County of Maui advocated and advanced the proposed “political” project without first following the legal intent of the “Set Aside/Transfer of Jurisdiction” order from the State Land Board to the County of Maui.** For your information, the June 22, 2007, State of Hawai’i Land Board record is attached in pdf. The “Set Aside/Transfer of Jurisdiction” order required the County of Maui to follow Hawaii Revised Statute 343 and conduct an Environmental Impact Statement process. Why? Because, the proposed project uses both public lands and public funds. However, the legal title to the “public lands” is still disputed as documented by the Maui News. The title issue, and other potentially fatal issues, remain unresolved.

The HRS 343 process would establish documented facts through a transparent and interactive public process. This could enable informed decision making and consideration of other options preferred by the community. It should be noted, the community opposes the project as proposed.

3. Since September 26, 2014, private property owners paying County of Maui property taxes have been denied access to their properties since the County of Maui closed the Lower Nahiku Bridge without legal notice or jurisdiction. Please read our recent letter to the Maui County Council IEM Committee dated November 29, 2018. It is attached in pdf. The issues of legal access and jurisdiction are integral to the proposed county project. Without legal title, legal access or legal jurisdiction the proposed project is fatally flawed.

Also enclosed for your consideration is our “Petition to Intervene”. The document was legally filed and received by the County of Maui on October 10, 2017. The document contains additional relevant information and documentation.

4. The Hana Advisory Committee to the Maui Planning Commission (HAC) held a well attended Public Hearing at Helene Hall on October 26, 2017, to hear four new applications for the proposed county community center development in Lower Nahiku.

The applications submitted by the County of Maui for the County of Maui were for a “Community Plan Amendment”, a “State Land Use District Boundary Amendment”, a “Change of Zoning” and a “Special Management Area Use Permit”.

After presentations by the Maui County Planning Department, hired consultants and lengthy public testimony, the HAC deliberated and made unanimous recommendations to the Maui Planning Commission that an Environmental Impact Statement process be conducted for both the “Community Plan Amendment” and the “Special Management Area Use Permit” as required by Hawaii Revised Statute Chapter 343. Community members, regardless of opinions, loudly applauded the recommendations.

However, on August 14, 2018, the Maui Planning Commission and Planning Department IGNORED AND DID NOT DISCUSS the unanimous and well considered advice of the Hana Advisory Committee to the Maui Planning Commission regarding the proposed development. The advice of the Hana

Advisory Committee was sound, PONO and in the best interests of the Nahiku and East-Maui Community.

There remain important unanswered questions of law and due process regarding the August 14, 2018, Maui Planning Commission meeting. The meeting appears to have been noticed and conducted illegally, without following “TITLE MC-12, DEPARTMENT OF PLANNING, SUBTITLE 02, MAUI PLANNING COMMISSION, CHAPTER 201, RULES OF PRACTICE AND PROCEDURE, Subchapter 1, Authority, Purpose, and Definitions”.

Our “Petition to Intervene” was timely and legally filed and received by the County of Maui on **October 10, 2017**. “TITLE MC-12, 12-201-44” states, “Opposition to intervention. If any party opposes the petition for intervention that party shall file, within five days after being served, his or her motion opposing the petition on the commission, all other parties and the intervenor. [Eff 7/25/93]. (Auth: HRS 91-2) (Imp: HRS 91-2)”.

Corporation Council Patrick Wong and Deputy Corporation Council Thomas Kolbe filed a ten page “RESPONDENT COUNTY OF MAUI, DEPARTMENT OF PARKS AND RECREATION'S MEMORANDUM IN OPPOSITION TO PETITION TO INTERVENE” on **August 7, 2018**, on behalf of “KAALA BUENCONSEJO, DIRECTOR DEPARTMENT OF PARKS AND RECREATION”.

Corporation Council Wong and Deputy Corporation Council Kolbe appear to have missed the five day filing deadline requirement of “Opposition to intervention” by approximately 296 days.

The “OPPOSITION TO PETITION TO INTERVENE” document filed on August 7, 2018, and the failure to follow the law by the County of Maui Planning Department and Corporation Council PREJUDICED the entire Maui Planning Commission meeting of August 14, 2018. We request the entire meeting be declared null and void

We restate our request for a **forensic** audit of the entire situation including a “BACKGROUND” statement in the 2007 “Set Aside” document. The document states in part, “On January 3, 2007, the Department of Land and Natural Resources received a letter from former Maui Mayor Alan Arakawa requesting the Old Nahiku School property be transferred to the County of Maui via an executive order. The letter further indicated that the County would then develop the old Nahiku School property and provide a venue for culture, social and community events for the Nahiku community.” Who was **former** Mayor Arakawa actually representing? By whose authority? Who profited, stood to profit or stands to profit?

Mahalo for your careful consideration.

We look forward to meeting with you.

Best wishes to each and all of you for your important community service.

Mele Kalikimaka a Hau‘oli Makahiki Hou!

TERESA ALLRED, MOKE BERGAU, JOHN BLUMER-BUELL, ELLEN KAHOOKELE, JAMES KAHOOKELE III, JEANMARY KAHOOKELE, SHARON KAHOOKELE, TERRY KRISTIENSEN, MAX MATTSON, JEFFREY PAISNER and IRENE PAVAO

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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

June 22, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07MA-016

Maui

Set Aside to County of Maui for Community Center Purposes,
Nahiku Homesteads, Nahiku, Koolau, Tax Map Key: (2) 1-2-
002:023.

APPLICANT:

County of Maui, Department of Parks and Recreation

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Nahiku Homesteads,
Nahiku, Koolau, Maui, identified by Tax Map Key: (2) 1-2-002:023,
as shown on the attached map labeled Exhibit A.

AREA:

1.090 acres, more or less.

ZONING:

State Land Use District: Agriculture
County of Maui CZO: Interim Agriculture

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO X

CURRENT USE STATUS:

The subject parcel is currently unencumbered. The parcel was
formerly leased to Mr. James Sagawinit for recreational and
community use, landscaping and maintenance purposes under Revocable
Permit number S-6161 that was issued on January 1, 1985. On April

20, 2007 Revocable Permit S-6161 was cancelled.

PURPOSE:

Community Center purposes.

CHAPTER 343-ENVIRONMENTAL ASSESSMENT:

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. In as much as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

This parcel is known as the former Nahiku School Lot and was encumbered by Mr. Donald A. Wallace from December 1, 1972 to October 31, 1984 under Revocable Permit No. S-4894. Upon Mr. Wallace's request the permit was cancelled.

The parcel was then encumbered by Mr. James Sagawinit under Revocable Permit No. S-6161 on January 1, 1985, for recreational and community use. On December 13, 2005 the old Nahiku School building located on the parcel burned down, possibly due to arson. To date, there is no record that anyone has been arrested or charged with regards to the arson investigation.

On January 3, 2007, the Department of Land & Natural Resources received a letter from former Mayor Alan Arakawa requesting the old Nahiku School property be transferred to the County of Maui via an executive order. The letter further indicated that the County would then develop the old Nahiku School property and provide a venue for cultural, social and community events for the Nahiku community.

The Nahiku Community Association has requested a right-of-entry permit to do clean-up work on the subject parcel. At the time of the request Mr. Sagawinit denied the requestors access to enter the property. Currently clean-up responsibilities for the parcel is that of Mr. James Sagawinit. Land Division has no objections to allowing the County of Maui to accept the parcel in its current (as is) condition. Revocable Permit No. S-6161 to Mr. James Sagawinit was cancelled on April 20, 2007.

REMARKS:

Staff has no objections to the County's proposed use because it is for the benefit of the residents of Nahiku.

Agency or community comments were solicited from the County of Maui, Department of Planning and the Office of Hawaiian Affairs.

RECOMMENDATION:

That the Board, subject to Applicant fulfilling the Applicant Requirements above:

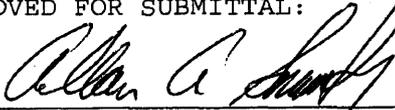
1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Maui under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



Larry Pacheco
Land Agent

APPROVED FOR SUBMITTAL:



Allan A. Smith, Interim Chairperson

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<iphana@yahoo.com> or Telephone John @ 248-8972 or Terry @ 248-7600

November 29, 2018.

Maui County Council Infrastructure and Environmental Management Committee,
Elle Cochran, Chair.

200 South High Street, Wailuku, Hawaii 96793

Sent Via Email IEM Committee to <iem.committee@mauicounty.us>

With Request for Confirmation of Receipt.

Public Testimony for Monday, December 3, 2018.

**RE: “THE COMMITTEE MAY RECOMMEND THE FOLLOWING
COMMUNICATIONS BE REFERRED TO THE COUNCIL CHAIR FOR
THE TERM BEGINNING JANUARY 2, 2019, PURSUANT TO RULE 23 OF
THE RULES OF THE COUNCIL”.**

Aloha Chair Cochran and Committee Members,

We are particularly concerned and involved with two of the items you are considering; “OLD GOVERNMENT ROADS (IEM-1) and LOWER NAHIKU BRIDGE HEALTH AND SAFETY CONCERNS (NAHIKU) (IEM-10)”.

We request you refer these two items to the new council chair for consideration after January 2, 2019.

These are both critical health and safety issues for the Nahiku Community that urgently need to be resolved before anyone, including visitors, is hurt or killed.

There are profound liability and budgetary issues that urgently need to be further considered and resolved by the County of Maui in cooperation with the community.

Please consider, the County of Maui closed the Lower Nahiku Bridge across Makapipi Stream without any notification or jurisdiction. As one result, property tax payers on the makai side of the bridge have been denied access to their properties.

At a previous meeting of your committee Public Works Director Goode stated the county had no jurisdiction over the bridge or the road from the bridge to the ocean. The full range of issues were not vetted or clearly understood by Director Goode or committee members.

Please consider, the County of Maui has proposed a two million dollar community center in Lower Nahiku without any proven access from the Hana Highway to the proposed Lower Nahiku site or the Lower Nahiku bridge.

Historically, the “old road” ran from the old Nahiku Landing south along the coast to Ulaino. The different mauka-makai route from the current Hana Highway to Lower Nahiku was a trail. Significantly, the County of Maui and State of Hawaii have legally renounced jurisdiction in court proceedings for the Ulaino to Kaeleku part of the coastal route. Decedents of the Nahiku Homesteaders have offered a historical perspective that could lead to better understanding and resolution of what can be confusing to those unfamiliar with the area.

Please consider, we have tried to get the County of Maui to follow Hawaii Revised Statute 343 and conduct an Environmental Assessment process for years. An Environmental Assessment would document the history and the facts. But, the County of Maui continues to break the law and break the legal intent of the “transfer of jurisdiction agreement” with the State of Hawai’i. Further, the current Planning Director and Maui Planning Commission ignored the carefully considered recommendation of the Hana Advisory Committee to the Maui Planning Commission to conduct an Environmental Assessment process as required by HRS Chapter 343. The unanimous recommendation in Hana was made after hours of public testimony and deliberations by the Hana Advisory Committee.

Moving the “OLD GOVERNMENT ROADS (IEM-1) and LOWER NAHIKU BRIDGE HEALTH AND SAFETY CONCERNS (NAHIKU) (IEM-10)” to the new council chair for consideration after January 2, 2019, is the best path to resolving these conflicts and restoring PEACE in Nahiku for the New Year.

Mahalo for your important work on the Infrastructure and Environmental Management Committee.

Mele Kalikimaka a Hau'oli Makahiki Hou!

TERESA ALLRED, MOKE BERGAU, JOHN BLUMER-BUELL, ELLEN KAHOOKELE, JAMES KAHOOKELE III, JEANMARY KAHOOKELE, SHARON KAHOOKELE, TERRY KRISTIANSSEN, MAX MATTSON, JEFFREY PAISNER, IRENE PAVAO and STEVEN SNYDER

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