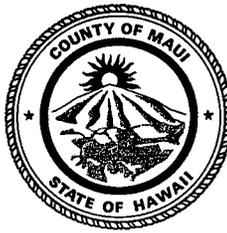


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

EDWARD S. KUSHI
First Deputy

LYDIA A. TODA
Risk Management Officer
Tel. No. (808) 270-7535
Fax No. (808) 270-1761

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET, 3RD FLOOR
WAILUKU, MAUI, HAWAII 96793
EMAIL: CORPCOUN@MAUICOUNTY.GOV
TELEPHONE: (808) 270-7740; FACSIMILE: (808) 270-7152

September 22, 2015

MEMO TO: Honorable Don S. Guzman, Chair
Committee of the Whole

F R O M: Brian A. Bilberry, Deputy Corporation Counsel

SUBJECT: **COW 5 – Special Counsel Authorization: Christopher Salem v.
County of Maui, et al., Civil No. 15-1-0496(3)**

Enclosed are the following file-marked documents in the above-entitled matter:

1. Complaint, Affidavit of Joanne Johnson Winer, Exhibits "A – "D";
Summons filed on September 18, 2015.
2. Errata to Face Page and Page Two of Complaint filed on September
18, 2015.

If you have any questions or concerns, please feel free to call me

BAB:ma
Enclosures

2015 SEP 22 PM 3:01
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

THE LAW OFFICES OF BURTON D. GOULD LLLC #4775
2020 Main Street, Suite 1010
Wailuku, HI 96793
(808) 242-8288
burtongould@ymail.com

FILED

2015 SEP 18 PM 3:42

Burton D. Gould, Attorney for Plaintiff CHRISTOPHER SALEM

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

CIVIL NO. 15-1-0496(3)

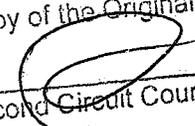
Plaintiff,

vs.

ERRATA TO FACE PAGE AND
PAGE TWO OF COMPLAINT FILED
SEPTEMBER 18TH, 2015

ALAN ARAKAWA individually and in his official capacity as MAYOR OF THE COUNTY OF MAUI; THE COUNTY OF MAUI by and through The DEPARTMENT OF THE CORPORATION COUNSEL, DEPARTMENT OF PUBLIC WORKS, DEPARTMENT OF PLANNING and THE DEPARTMENT OF FINANCE; PATRICK WONG, individually and in his official capacity as CORPORATION COUNSEL, THE COUNTY OF MAUI; KEITH REGAN, individually and in his official capacity as former DIRECTOR OF DEPARTMENT OF FINANCE, COUNTY OF MAUI; DAVID GOODE, individually and in his official capacity as DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; MILTON ARAKAWA, individually and as former DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; WILLIAM SPENCE, individually and in his official capacity as DIRECTOR OF PLANNING, COUNTY OF MAUI; JOHN MINN, individually and as former DIRECTOR OF DEPARTMENT OF

I hereby certify that this is a full, true and correct copy of the Original


Clerk, Second Circuit Court

Dear Sir,

Thank you,

PLANNING, COUNTY OF MAUI;
JEFFREY HUNT, individually and
as former DIRECTOR OF
DEPARTMENT OF PLANNING,
COUNTY OF MAUI; JOHN DOES
1-20, JANE DOES 1-20; DOE
PARTNERSHIPS 1-20; DOE
CORPORATIONS 1-20; ROE
GOVERNMENTAL AGENCIES 1-20;
ROE GOVERNMENTAL ENTITIES
1-20; ROE NON-PROFIT
CORPORATIONS 1-20

Defendants.

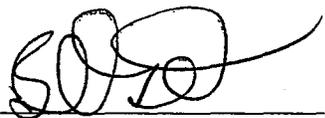
ERRATA TO FACE PAGE AND PAGE TWO OF COMPLAINT FILED SEPTEMBER 18TH, 2015

Comes now Plaintiff Christopher Salem, (hereinafter "Salem") by and through his Attorney Burton D. Gould of The Law Offices of Burton D. Gould, LLC and for his Errata to Face Page and Page Two of Complaint filed September 18th, 2015 ("Complaint") states as follows:

Salem became aware immediately after filing his Complaint and prior to service of his Complaint that the Face page of the Complaint stated Exhibits "A"- "D" when it should have stated Exhibits "A"- "E". Exhibit "E" was already included in the body of the Complaint upon filing. Furthermore, on the Face page of the Complaint "DOE ENTITIES 1-20 AND DOE GOVERNMENTAL AGENCIES 1-20" were removed and the numbers 1-20 were added to ROE NON-PROFIT CORPORATIONS 1-20, (as already noted on the filed Complaint.) Finally, "Doe Entities 1-20" was removed accordingly from page two of said Complaint and "Roe Governmental Agencies 1-20; Roe Governmental Entities 1-20; Roe Non-Profit Corporations 1-20" which were inadvertently omitted from page two are corrected, and thereby added, in this Errata.

Respectfully submitted,

Dated: 9/18/2015
Wailuku, HI


Burton D. Gould, Attorney
for Plaintiff Christopher Salem

THE LAW OFFICES OF BURTON D. GOULD LLLC #4775
2020 Main Street, Suite 1010
Wailuku, HI 96793
(808) 242-8288
burtongould@ymail.com

Burton D. Gould, Attorney for Plaintiff CHRISTOPHER SALEM

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

CIVIL NO 15-1-0496(3)

Plaintiff,

vs.

COMPLAINT; AFFIDAVIT OF
JOANNE JOHNSON WINER;
EXHIBITS "A"- "E"; SUMMONS

ALAN ARAKAWA individually and
in his official capacity as MAYOR
OF THE COUNTY OF MAUI; THE
COUNTY OF MAUI by and
through The DEPARTMENT OF
THE CORPORATION COUNSEL,
DEPARTMENT OF PUBLIC
WORKS, DEPARTMENT OF
PLANNING and THE
DEPARTMENT OF FINANCE;
PATRICK WONG, individually and
in his official capacity as
CORPORATION COUNSEL, THE
COUNTY OF MAUI; KEITH
REGAN, individually and in his
official capacity as former
DIRECTOR OF DEPARTMENT OF
FINANCE, COUNTY OF MAUI;
DAVID GOODE, individually and
in his official capacity as
DIRECTOR OF PUBLIC WORKS,
COUNTY OF MAUI; MILTON
ARAKAWA, individually and as
former DIRECTOR OF PUBLIC
WORKS, COUNTY OF MAUI;
WILLIAM SPENCE, individually
and in his official capacity as
DIRECTOR OF PLANNING,
COUNTY OF MAUI; JOHN MINN,
individually and as former
DIRECTOR OF DEPARTMENT OF

PLANNING, COUNTY OF MAUI;
JEFFREY HUNT, individually and
as former DIRECTOR OF
DEPARTMENT OF PLANNING,
COUNTY OF MAUI; JOHN DOES
1-20, JANE DOES 1-20; DOE
PARTNERSHIPS 1-20; DOE
CORPORATIONS 1-20; ROE
GOVERNMENTAL AGENCIES 1-20;
ROE GOVERNMENTAL ENTITIES
1-20; ROE NON-PROFIT
CORPORATIONS 1-20

Defendants.

COMPLAINT

COMES NOW Plaintiff Christopher Salem (hereinafter "Salem"), by and through his counsel, Burton D. Gould, of The Law Offices of Burton D. Gould, LLC for a Complaint against Defendant Alan Arakawa, individually and as Mayor of The County of Maui ("Mayor"); Defendant The County of Maui, ("County") by and through The Department of The Corporation Counsel ("Dept. Corp Counsel or County Corp Counsel"), Department of Public Works ("Public Works"), Department of Planning ("Planning"); Department of Finance ("Finance") (The County departments hereinafter "County Defendants"); Patrick Wong, individually and as Corporation Counsel, County of Maui ("Wong"); Keith Regan, individually and as former Director of Finance, County of Maui ("Regan"); David Goode, individually and as Director of Public Works, County of Maui ("Goode"); Milton Arakawa individually and as former Director of Public Works ("Arakawa"); Jeffrey Hunt individually and as former Director of Planning ("Hunt"); John Min individually and as former Director of Planning ("Min"); William Spence, individually and as Director of Planning ("Spence"); John Does 1-20; Jane Does 1-20; Doe Partnerships; Doe Corporations 1-20; Roe Governmental Agencies 1-20; Roe Governmental Entities 1-20; Roe Non-Profit Corporations 1-20 (sometimes collectively referred to herein as "Defendants") who allege and aver as follows:

THE LAW OFFICES OF BURTON D. GOULD LLLC #4775
2020 Main Street, Suite 1010
Wailuku, HI 96793
(808) 242-8288
burtongould@ymail.com

MML - 9/21/15
9:00 a.m.
For County
only

Burton D. Gould, Attorney for Plaintiff CHRISTOPHER SALEM

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

CHRISTOPHER SALEM,

CIVIL NO. 15 1-0496 (3)

Plaintiff,

vs.

COMPLAINT; AFFIDAVIT OF
JOANNE JOHNSON WINER;
EXHIBITS "A"- "D"; SUMMONS

ALAN ARAKAWA individually and in his official capacity as MAYOR OF THE COUNTY OF MAUI; THE COUNTY OF MAUI by and through The DEPARTMENT OF THE CORPORATION COUNSEL, DEPARTMENT OF PUBLIC WORKS, DEPARTMENT OF PLANNING and THE DEPARTMENT OF FINANCE; PATRICK WONG, individually and in his official capacity as CORPORATION COUNSEL, THE COUNTY OF MAUI; KEITH REGAN, individually and in his official capacity as former DIRECTOR OF DEPARTMENT OF FINANCE, COUNTY OF MAUI; DAVID GOODE, individually and in his official capacity as DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; MILTON ARAKAWA, individually and as former DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; WILLIAM SPENCE, individually and in his official capacity as DIRECTOR OF PLANNING, COUNTY OF MAUI; JOHN MINN, individually and as former DIRECTOR OF DEPARTMENT OF

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

2015 SEP 18 AM 10:00

FILED

I hereby certify that this is a full, true and correct copy of the Original

Clerk, Second Circuit Court

PLANNING, COUNTY OF MAUI;
JEFFREY HUNT, individually and
as former DIRECTOR OF
DEPARTMENT OF PLANNING,
COUNTY OF MAUI; JOHN DOES
1-20, JANE DOES 1-20; DOE
PARTNERSHIPS 1-20; DOE
CORPORATIONS 1-20; ~~DOE ENTITIES
1-20 and DOE GOVERNMENTAL
AGENCIES 1-20~~; ROE GOVERNMENTAL
AGENCIES 1-20; ROE GOVERNMENTAL
ENTITIES 1-20; ROE NON-PROFIT
CORPORATIONS 1-20

Defendants.

COMPLAINT

COMES NOW Plaintiff Christopher Salem (hereinafter "Salem"), by and through his counsel, Burton D. Gould, of The Law Offices of Burton D. Gould, LLC for a Complaint against Defendant Alan Arakawa, individually and as Mayor of The County of Maui ("Mayor"); Defendant The County of Maui, ("County") by and through The Department of The Corporation Counsel ("Dept. Corp Counsel" or "County Corp Counsel") . Department of Public Works ("Public Works"). Department of Planning ("Planning"); Department of Finance ("Finance") (The County departments hereinafter "County Defendants"); Patrick Wong, individually and as Corporation Counsel, County of Maui ("Wong"); Keith Regan, individually and as former Director of Finance, County of Maui ("Regan"); David Goode, individually and as Director of Public Works, County of Maui ("Goode"); Milton Arakawa individually and as former Director of Public Works ("Arakawa"); Jeffrey Hunt individually and as former Director of Planning ("Hunt"); John Min individually and as former Director of Planning ("Min"); William Spence, individually and as Director of Planning ("Spence"); John Does 1-20, Jane Does 1-20, Doe Corporations 1-20, Doe Entities 1-20, (sometimes collectively referred to herein as "Defendants") who allege and aver as follows:

PARTIES

1. At all times relevant hereto, Plaintiff Salem was a resident of the County of Maui, State of Hawaii and owner of the real property located at 8 Hui Road E, Lahaina, Hawaii, and fifty percent owner of 5106 Lower Honoapiilani Road along with his brother.

2. At times relevant hereto, Plaintiff Salem was an employee of the County of Maui, executive assistant to an elected member of the Maui County Council and to the Chair of the Planning Committee for the Maui County Council.

3. At times relevant hereto, Defendant Alan Arakawa was the Mayor of The County of Maui.

4. At all times relevant hereto, Defendant County was a government body, has rights, duties and obligations to Plaintiff Salem and others within its area of responsibility.

5. Defendant County has various subordinate divisions and departments for which it is ultimately responsible including, but not limited to, The Department of The Corporation Counsel, The Department of Planning, The Department of Public Works, and The Department of Finance.

6. At all times relevant hereto, Defendant County Corp Counsel was a government body charged with the duty and responsibility to support County government by providing legal advice, representation, and drafting of legislation that promotes public interest and to act as the legal advisor to the County Council, Mayor, and all County of Maui departments and employees, including Plaintiff Salem, relating to the their official duties and responsibilities

7. At all times relevant hereto, Defendant County Department of Public Works was a government body charged with the duty and responsibility to protect the public's health, safety, property, and environment, by operating the County's infrastructure, administer subdivision ordinances and rules adopted by the Maui County Council thereunder, approve subdivision plans

which and in conformity with the subdivision ordinance, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

8. At all times relevant hereto, Defendant County Department of Planning was a government body charged with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area (“SMA”) on behalf of the citizens of Maui County and Plaintiff Salem.

9. At all times relevant hereto Defendant County Department of Finance was a government body charged with duties and obligations “for the overall financial administration of all County of Maui Departments.” Defendant County Department of Finance’s published mission is “to assure the efficient and effective management of the public’s financial and physical resources by providing quality financial services”.

10. At all times relevant hereto, Defendant Wong was an employee of the County of Maui as the Corporation Counsel charged with the responsibility to uphold Federal and State laws, State of Hawaii Supreme Court Rules of Attorney Professional Conduct, and ordinances publicly adopted by the Maui County Council in accordance with the will of the people as established in the Maui County Charter.

11. At times relevant hereto, Defendant Regan was an employee of the County of Maui as the Director of the Department of Finance charged with the responsibility to insure the competent financial administration of all County of Maui Departments including, but not limited to collecting and receiving monies due to the County and reviewing assessment rolls for assessable public improvements prior to approval by the council and preparing bills for collection after approval.

12. At times relevant hereto, Defendant Arakawa was an employee of the Executive Branch of the County of Maui as Deputy Director and Director of Public Works with duty and responsibility to protect the public’s health, safety, property, and environment by operating the County’s infrastructure, administer subdivision ordinances and rules adopted by the Maui County

Council thereunder, approve subdivision plans which and in conformity with the subdivision ordinance, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

13. At times relevant hereto, Defendant Arakawa was a partner of the land planning firm Munekiyo, Arakawa, and Hiraga, Inc. ("MAH") with a public contractual agreement with the County of Maui to perform environmental and drainage studies on the County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)) Capital Improvement Project ("CIP") which lies immediately adjacent to the underlying subdivision wherein Plaintiff Salem formally owned a single family residence.

14. At times relevant hereto, Defendant Arakawa was simultaneously contracted by private Developer Lot 48A, LLC with the professional responsibility to perform land planning and environmental Shoreline Management Area ("SMA") studies for the Re Subdivision of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision which lies immediately adjacent to the Phase IV CIP and is a parent parcel of the underlying 3 lot subdivision wherein Plaintiff Salem owned a single family residence.

15. At times relevant hereto, Defendant Arakawa's employment with the Executive Branch of the County of Maui as Deputy Director and Director of Public Works occurred while developer Lot 48A, LLC was in final phases of the subdivision permitting process and development of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision, which is a re subdivision of one of the parent parcels of the underlying 3 lot subdivision wherein Plaintiff Salem owned a single family residence.

16. At times relevant hereto, Defendant Goode was an employee of the Executive Branch of the County of Maui as Deputy Director and Director of Public Works with duty and responsibility to protect the public's health, safety, property, and environment by operating the County's infrastructure, administer subdivision ordinances and rules adopted by the Maui County Council thereunder, approve subdivision plans which are in conformity with the subdivision

ordinance, and administer building codes on behalf of the citizens of Maui County and Plaintiff Salem.

17. At times relevant hereto, Defendant Goode was the Vice President of Development Operations for Smith Development which was engaged in subdivision applications, environmental studies, public hearings, infrastructure engineering analysis, and development activities on two major developments immediately adjacent to the underlying subdivision wherein Plaintiff Salem owned a single family residence and along County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)).

18. At times relevant hereto, Defendant Hunt was an employee of the Executive Branch of the County of Maui as the Director of Planning with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem.

19. At times relevant hereto, Defendant Min was an employee of the Executive Branch of the County of Maui as the Director of Planning with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem

20. At times relevant hereto, Defendant Spence was an employee of the Executive Branch of the County of Maui as the Director of Planning with duties and obligations to oversee and enforce the zoning ordinances, regulations, cultural resources, and administer and enforce the policies of the Federal Coastal Zone Management Act in the Shoreline Management Area on behalf of the citizens of Maui County and Plaintiff Salem.

21. John Does 1-20, Jane Does 1-20, Doe Partnerships, Doe Corporations 1-20, Doe Entities 1-20 and Roe Governmental Agencies 1-20; Roe Governmental entities; Roe Non-Profit Corporations are persons or entities whose names, identities, and capacities are presently unknown to

Plaintiffs and who are or may be liable to Plaintiffs for actions alleged in the Complaint and may be responsible for the damages to Plaintiffs alleged herein. Plaintiffs have undertaken a diligent and good faith effort to ascertain the names and identities of such Defendants.

22. All of the acts and failures to act alleged herein were duly performed by and attributable to all Defendants, John Does 1-20, Jane Does 1-20, Doe Partnerships, Doe Corporations 1-20, Doe Entities 1-20 and Roe Governmental Agencies 1-20; Roe Governmental Entities; Roe Non-Profit Corporations each acting as a successor, agent, alter ego, employee, indirect employer, joint employer, integrated enterprise and/or under the direction and control of the others, except as specifically alleged otherwise. Said acts and failures to act were within the scope of such agency, and/or employment, and each Defendant participated in, approved and/or ratified the unlawful acts and omissions by the other Defendants complained of herein. Whenever and wherever reference is made in this Complaint to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

JURISDICTION

23. The Court has subject matter jurisdiction over this action pursuant to HRS 603-21.5, (general civil jurisdiction including, but, not limited to, “civil actions and proceedings...actions for impeachment of county officers, who are subject to impeachment... criminal offenses cognizable under the laws of the State, committed within their respective circuits...”).

24. All matters and events giving rise to the claims set forth in this Complaint arose in the County of Maui, State of Hawaii.

25. Jurisdiction for this Complaint is proper pursuant to State of Hawai'i Constitution, Art. 1 Equal Protection Clause and Art. XI Section 9; 42 U.S.C. 1983, 1985; HRS Ch. 46, including HRS 46-72; HRS Ch. 205A; the Hawai'i Environmental Protection Act (HEPA); the Maui County Charter and General Plan, Maui County Code, Zoning and Subdivision Codes, the

Comprehensive Zoning Ordinance and the Maui County Planning Commission Special Management Area Rules.

26. Jurisdiction is proper pursuant to HRS 657-20.

27. Venue is proper in the Circuit Court of the Second Circuit pursuant to HRS 603-36(5), as the claims for relief in this case arose within the jurisdiction of the Circuit Court of the Second Circuit of the Second Circuit, State of Hawaii and the majority of the parties and the properties, in question, are within the County of Maui, State of Hawaii.

NOTICE OF CONFLICTS OF INTEREST

RE: DEFENDANT COUNTY CORP COUNSEL AND DEFENDANT PATRICK WONG

28. At times relevant hereto, Defendant County Corp Counsel established an attorney client relationship with Defendant Public Works Director Milton Arakawa who was a private land planning consultant for SMA Permit studies and environmental review for private developer Lot 48A, LLC at the same time is his firm was retained the County of Maui to complete the SMA Permit and environmental studies for County of Maui Federal Aid Project Phase IV of Lower Honoapiilani Road (STP 3080(8)) immediately adjacent to the Plaintiff's property.

29. At times relevant hereto, and without proper disclosure to the members of the Maui County Council and citizens of Maui County during the outside counsel procurement process, Dept. Corp Counsel employed the legal services of Hawaii Attorney Margery Bronster (hereinafter "Bronster") while Bronster was simultaneously representing land Developer Lot 48A, LLC (involving legal disputes over discovery of County of Maui records and subdivision entitlement documents relating to developer subdivision obligations within Mailepai Hui Partition, wherein Plaintiff Salem owned a single family home on Lot 48C).

30. At times relevant hereto, while Developer Lot 48A, LLC's legal counsel was employed by the Department of Corporation Counsel, and Corporation Counsel provided legal

defense for disputed decisions of Defendant Public Works Director Milton Arakawa, who was a private land planning consultant for SMA Permit studies and environmental review for private developer Lot 48A, LLC within Mailepai Hui Partition, wherein Plaintiff Salem owned a single family home on Lot 48C.

31. At times relevant hereto, and while employed by the County of Maui Department of Corporation Counsel and Developer Lot 48, LLC, Salem alleges that special counsel Margery Bronster intentionally concealed government records and SMA Permit studies authored by Defendant Arakawa's land planning firm during legal proceedings involving conflicting client Developer Lot 48, LLC.

32. As evidenced herein, Corporation Counsel and County Corp Counsel violated Rule 1.7 of the State of Hawaii Supreme Court Rules Professional Conduct by failing to adopt reasonable procurement procedures for public review to determine potential conflicts of interest with private parties in both litigation and non-litigation matters within the Department of The Corporation Counsel. Oversight and procurement errors caused by a failure to institute such procedures does not excuse Corporation Counsel's violation of Rule 1.7 during the public procurement of Lot 48A, LLC's legal counsel.

33. Public Works Director David Goode informed the Maui County Council during public hearings, that the execution of unaccounted for development agreements by Corporation Counsel over the last four decades (which has allowed private developers to intentionally shift millions of dollars of their financial obligations to the County of Maui), has gotten "crazy". This statement constitutes an admission against interest, as these agreements also include the drafting and recording of overlapping "one time" deferrals of developer's financial obligations. As such, Director Goode has witnessed to the public and the Maui County Council that the Dept. Corp Counsel's legal services have been misused and have allowed the Department of Corp Council and the Department of Public Works to cause financial injury and incur financial obligations upon the County of Maui which is a direct violation of Section 9-12 of the Maui County Charter.

34. At times relevant hereto, Department of Transportation Director and former Council Member JoAnne Johnson Winer witnessed by Affidavit that no ordinance adopted by Maui County Council allows for County Corp Counsel to defer developer's infrastructure financial obligations more than once.

35. County Corp Counsel issued a declaration of Public Work Director Goode in the United States Federal Courts asserting that the Administration has the *discretionary authority* to "may, or may not" collect upon the debts owed from the executed developer agreements. Again, as evidenced in the attached Affidavit of JoAnne Johnson Winer, a senior public official employed by the County Administration has declared this statement by Goode and supported by County Corp Counsel, violates Ordinance #3731 adopted by the Maui County Council *and* the County Corp Counsel. Further, Goode's Declaration therefore constitutes perjury, and County Corp Counsel is in violation of HRPC Rule 3.3(a)(1) and Rule 3.4 (a)(b).

36. Further, a Directly Adverse Conflict, pursuant to HRCF Rule 1.7, exists as County Corp. Counsel cannot represent, or cross examine, two appointed Directors who have exerted two opposing declarations and opinions relating to the rule of laws and ordinances adopted by the Maui County Council and consent cannot properly be given. *When a disinterested lawyer would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.*

Prohibited Representations [15]

37. HRCF Rule 1.7 also identifies a Personal Interest Conflict "[10] *The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice.*"

38. Allegations by Salem in this Complaint, of acts of retaliation and malice by Pat Wong, as Corporation Counsel against a former employee of the County of Maui, on at least two separate occasions, creates further conflict of interest in representation. These alleged acts relate to failures by

Corporation Counsel to disclose possible conflicts of interests; failure to disclose the existence of ongoing settlement negotiations with the County to the County Council, and retaliation against Salem for his attempts to address, through legislation, the assessment and collection of existing debts from developer deferral agreements.

39. At times relevant hereto, Corporation Counsel, Pat Wong, had established an attorney client relationship and provided legal advice to public officials including Defendant Arakawa, Defendant Goode, Defendant Spence, on matters involving disputes and complaints by Plaintiff Salem over breaches of Defendants' administrative duties and responsibilities relating to a overlapping subdivision of oceanfront Lot 48A of the Mailepai Hui Partition Subdivision; which contains the underlying 3 lot subdivision wherein Plaintiff Salem owned a single family home on Lot 48C.

40. At times relevant hereto, Salem asserts in this Complaint that the County Corp Counsel's legal services, and conflicting employment of Lot 48A, LLC's legal counsel, Margery Bronster, have been used to cause financial injury to the County of Maui and to Salem. Under Rule 1.6(c) of the HRCPP, Corporation Counsel is obligated to reveal and to rectify the consequences of such harmful acts.

41. At times relevant hereto, and in direct violation of the Hawaii Rules of Professional Conduct Rule 1.6(c), Defendant Wong has failed to reveal documents that clearly establishes criminal or fraudulent acts by Defendant Arakawa in the furtherance of which the lawyer's services had been used. Such disclosures are necessary to strictly comply with law and fiduciary obligations to the County of Maui; to the extent reasonably necessary to rectify the consequences of such acts, where the acts have resulted in substantial injury to the financial interests or property of another, as in the case-at-bar.

42. At times relevant hereto, County Corp Counsel has provided legal advice and provided both published and non-published legal opinions and directives to Honorable Mayor Charmaine Tavares, Honorable Mayor Alan Arakawa, and to the select members of the County of

Maui Council relating to their Department's irresponsible and unlawful execution of upwards of a thousand contractual financial agreements by County Corp Counsel with private developers that have never been accounted for, collected upon, or revealed to the citizens of Maui County or the Maui County Council for almost four decades.

43. The Department of The Corporation Counsel is a government agency of Defendant County of Maui, comprising government attorneys with a duty to advise the Mayor of Maui and the Maui County Council as well as to draft and to authorize legislation. Corp Counsel, Defendant Patrick Wong, and County Corp Counsel and are bound by the State of Hawai'i Professional Rules of Conduct and subject to the Hawai'i Supreme Court and the Disciplinary Board of the Hawai'i Supreme Court, and the Office of Disciplinary Counsel of the State of Hawai'i.

44. As such, under Rule 1.7 of the Hawaii Rules of Professional Conduct, Salem asserts that County Corp Counsel and Corp Counsel are hereby conflicted on their further legal influence, representation, or advising the Maui County Council and, or Mayor Alan Arakawa as to the claims in this Complaint; including, but not limited to, the concealed public documents and concealed and, or undisclosed conflicting private relationships which are the direct cause of immense damages to Plaintiff Salem; occurring prior, during and after developer Lot 48A, LCC's legal counsel was employed by the Department of Corporation Counsel and while Lot 48A, LLC's land planning consultant Defendant Arakawa was employed by the County of Maui.

45. The circumstances described in paragraphs above also result in Material Limitations Conflicts, pursuant Rule 1.7.[8] Even where there is no direct adversity of interest, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend, or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests... The critical questions are the likelihood that a difference in interests will arise and, if it does, whether it will materially interfere with the lawyer's independent professional judgment..."

46. Salem asserts that both Wong and County Corp Counsel have engaged in unscrupulous and unlawful activity in their most recent attempts to block Salem from communicating with County government public officials prior to the filing of this Complaint in his sincere effort for the County Administration and the County Council to address the issues and claims herein, in order to resolve these matters amicably; to create a plan of correction and reconciliation.

47. Salem alleges that in response, Wong and County Corp Counsel attorney Richard Rost have written letters of intimidation in violation of Salem's civil rights. Moreover, attorney(s) of County Corp Counsel have communicated false information to County Administration officials and to the Maui County Council asserting falsely that Salem had "filed" a suit against the County of Maui, and that there had been a "preliminary investigation" wherein the allegations of Salem's Complaint appeared to "lack merit." In letters to Councilman Mike White, and Director of Council Services attorney David Raatz, Salem has requested full disclosure of information pertaining to the above and to the apparent violations of the Sunshine Laws. The Office of Information Services ("OIP") have been forwarded these requests and thereby noticed of the same. (*see* Exhibit "A")

48. The Council Chair, Mike White, and Director of Council Services David Raatz, Esq. (hereinafter "Raatz") publicly posted false and misleading proposed resolutions in official Council Communications, and with such false information as its basis. Neither County Corp Counsel nor Raatz have retracted, corrected and, or apologized for this defamatory Council Communication, which was put on the Council Agenda and then sent to the Committee of the Whole, *at a public hearing*, despite prior notice from Salem of its flawed, erroneous, misleading and harmful nature. (*see* Exhibit "B ")

49. Salem believes and asserts that Defendant County Corp Counsel and Defendant Patrick Wong, as legal counsel to the County of Maui, must therefore remain silent and refrain from representation of the County of Maui regarding all claims of this Complaint and to also refrain from further influence, intimidation, and defamation, and any and all public statements regarding Plaintiff Salem and his counsel.

INTRODUCTION

50. As evidenced herein, Plaintiff asserts that Defendants jointly and severally have breached the public trust and engaged in ongoing unscrupulous, forbidden, and unlawful behavior to perpetuate a scheme of massive fraud against the citizens of Maui County in the interests of private developers. Defendants, and, or County Defendants, both individually and in collusion with each other, have, through acts and omissions constituting and including, but not limited to, fraud, gross negligence and civil conspiracy, have concealed public documents. Defendants and County Defendants have had, and continue to have, a direct role in serving the financial interests of private developers through the misuse of public funds and by providing administrative favors to developers in multiple capacities throughout the County of Maui and within the Plaintiff Salem's subdivision.

51. For over 14 years, Plaintiff Salem has unfairly placed at the forefront of conflicts in his neighborhood with a powerful and influential and hostile developer's and their conflicted legal counsel and professional representatives. Plaintiff Salem was forced to take unthinkable measures and exhaust his family's life savings to attempt to preserve his property rights on his once cherished land.

52. Maui County administration officials have been grossly negligent and have defrauded Salem and the residents of Maui through their continuous irresponsible administration of the SMA permit process. Maui County Code Title 18 subdivision ordinances insure that all County department conditions shall be implemented into the engineering plan as presented at the initial preliminary approval. Public Works is responsible for all agency conditions to be put into the engineering plan. **But for** Department of Planning failing to review final Developer's engineering plan for inclusion of all SMA permit obligations and mitigations required in preliminary approval; **But for** the Department of Public Works failure to insure that these same conditions are incorporated into final plan; **But for** the fact that there is also no final field inspection required by the County of Maui to insure that the SMA environmental mitigations required in Salem's subdivision were

implemented; all the above being in violation of both County Ordinance, HRS 205A and Environmental Law HRS Chapter 343; Salem wouldn't have been financially ruined attempting to protect his family's property rights which the County was lawfully obligated to protect and insure. (see Exhibit "C")

53. In addition to all the above, and ***But for*** and despite the fact that the Mandatory Order of Magnitude Estimate in Salem's subdivision's SMA permit is also false and intentionally undervalued, in order to circumvent the law pursuant to HRS 205A and HRS Chapter 343, which laws require public hearings and environmental assessments if the Mandatory Order of Magnitude Estimate is above a requisite amount, there is, nonetheless, a signed SMA Minor permit issued by Planning Department Director Defendant John Min. There are no checks and balances to insure that the engineering plan implements the environmental mitigation conditions set forth in the SMA permit. The County Administration Directors are aware of this fact. The Developers representatives are also aware of this fact.

54. There is also no County engineering oversight or review of Developer's Mandatory Order of Magnitude Estimate which determines whether a subdivision requires a Minor Permit or a Major Permit. In Salem's subdivision, the Order of Magnitude Engineering Estimate falsely qualified the subdivision for an SMA minor permit. Notwithstanding the fact that the evaluations in the engineering estimate referenced above were fraudulent; these evaluations, set forth in the estimate, obligated the developer to roadway, engineering, and drainage mitigation improvements along the underlying subdivision frontages of Lower Honoapiilani Road and Hui Road E. The Developer signed the SMA Permit and agreed to make engineering improvements, and environmental mitigations based on those evaluations by their professional consultants and civil engineer. These obligations are, to date, unfulfilled and were concealed from Salem by both the County of Maui Department of Planning, the Developer, and their conflicted legal counsel Margery Bronster while employed by the Department of Corporation Counsel.

55. The County and developers are using the negligently administered SMA permit process as way for Developers to avoid their obligations, pursuant to the SMA Permit, knowing that the environmental mitigations required never get checked either by plan review or by final field inspection. (see Affidavit of JoAnne Johnson Winer – Page 9 #42 to Page 12 #52) Defendant Arakawa and his land planning firm MAH are SMA application and permitting experts. As the Director Public Works, Defendant Arakawa knows that neither the Department of Public Works, Department of Planning, nor the Department of Finance have been keeping track of the developer deferral agreements and developers financial obligations. (see Exhibit “D”) In Salem’s subdivision a deferral agreement is misused to defer roadway frontage improvements that actually are SMA Permit environmental mitigations. **There is no County, State or Federal law to allow for the deferral of environmental mitigations.** Through investigation, it has been discovered that this abuse may be widespread throughout the Island and County of Maui, as deferrals have been executed by Public Works and Corporation Counsel in the SMA areas, as discovered in Salem’s oceanfront subdivision. (see Exhibit “E”) While the Director Public Works had the discretion to defer roadway frontage improvements “one time” in a “3 Lots or Less” subdivision, the Director of Public Works does not have the discretion to defer roadway and drainage improvements that mitigate environmental impacts that are part of conditioned SMA permit studies established in the subdivision approval process; as which occurred in Salem’s subdivision.

56. As evidenced herein: 1. Unlawful and deceptive developer contractual agreements executed by Defendant Corporation Counsel and concealed developer subdivision entitlement documents affecting Plaintiff Salem’s property rights as well as 2. Director decisions in violation of Maui County Code exceeding their administrative authority; 3. Defendant’s multiple false public notices of commencement of the Phase IV Lower Honoapiilani Road Capital Improvement Project, (“CIP”); 4. Conflicts of interest in violation of the Maui County Charter and the State of Hawaii Supreme Court Rules of Professional Conduct; 5. Grossly negligent and fraudulent administration of the State of Hawaii Coastal Zone Management Program; and, 5. the

failure and refusal of the Defendants' to enforce developer's and former client's signed Shoreline Management Area ("SMA") permits and engineering conditions of approval; are the direct and proximate cause of Plaintiff Salem's complete financial ruin.

57. Plaintiff Salem's family home has now been lost to foreclosure due to the unlawful acts by the Defendant's named herein.

58. To avoid responsibility and consequence, Defendants have engaged in violations of the United States Constitution, State of Hawaii Constitution, Hawaii Whistleblower Act, intimidation tactics, collusion, defamation, and have intentionally inflicted emotional duress upon Plaintiff Salem and his family. Further discovery may reveal that the Defendants in collusion with private developers and their attorneys' have engaged in criminal misconduct.

59. Adopted by the will of people, the Maui County Charter provides the power and responsibilities of the Chief Executive Officer of the Administrative branch, and the entrusted members of the legislative branch, the Maui County Council, to investigate the operations of any department and to adopt by ordinance the appropriate punishment for violations of the Maui County Charter, violations of publicly adopted County ordinances, and the contravention of rules having the force and effect of law.

60. The Mayor of the County of Maui is the Chief Executive Officer of the County of Maui and shall conduct system a systematic and continual review of the methods of each department of the most effective expenditure of public funds and to determine that such expenditures are in accordance with the budget laws and controls in force.

61. As witnessed by Mayor Alan Arakawa, Department of Transportation Director JoAnne Johnson Winer, Environmental Coordinator Rob Parsons, and numerous current and prior members of the Maui County Council, demands for investigations and releases of developer agreements executed by Defendant Corporation Counsel to the public and the Maui County Council have been continuously circumvented and squashed by Corp Counsel and County Corporation Counsel.

62. As evidenced herein, Corporation Counsel has deceptively and unlawfully deemed the release and discovery of concealed of public documents as “an interruption of legitimate government function”.

63. As history has proven, from the shorelines of Montana Beach to back yards of Palama Drive, Defendant Corporation Counsel’s vexatious legal diversions and frivolous defense of illicit decisions by politically appointed Directors have forced innocent citizens to engage the Courts to enforce the ordinances and laws of adopted by the Maui County Council. Ten of millions of dollars of public funds have been pointlessly squandered by Defendant Corporation Counsel in collusion with County Directors.

64. Under Article 10 of the Maui County Charter, elected and appointed officials 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.

65. Plaintiff Salem asserts that Mayor Alan Arakawa and elected members of the Maui County Council have failed to exert their collective courage, power, authority, and ethical responsibility defined in the Maui County Charter to serve the public interest by seeking justice and accountability for the unlawful administrative decisions and specific abuses of law exhibited by the Defendants named herein.

But For...

66. *But for* Christopher Salem’s detrimental reliance on the lawful administration of the Coastal Zone Management Act by the Department of Planning; which allowed for only a “one time” exemption from a SMA Major permit referenced in the underlying Anka Inc. 3 Lot subdivision conditions of approval (Luca File #4.686), thus insuring that the cumulative impacts caused by any further division of the oceanfront parent parcels of the “3 Lots or Less” subdivision would require public hearings, environmental assessment studies, public parking for shoreline access, and public

view preservation; Christopher Salem would not have purchased the property located at 8 Hui Road E, Lahaina, Maui.

67. **But for** the grossly negligent hiring and retention by the County of Maui of Milton Arakawa, (a partner of the land planning and SMA Permitting consulting firm Munikiyo, Arakawa, and Hiraga), as the Deputy Director of the Department of Public Works, allowing for ongoing unethical and unlawful director decisions and development favors for *former clients* on subdivision applications under review by the County of Maui; which decisions included issuing final subdivision approval for Lot 48A, LLC's 3 lot re: subdivision of an oceanfront underlying parcel of Christopher Salem's Anka, Inc. 3 lot subdivision, given that the conditioned SMA Permit authored by his land planning firm was incomplete and not signed off by the Department of Planning; Christopher Salem would not have been forced to engage in a costly yearlong dispute and litigation with Lot 48A, LLC's legal counsel Tom Welch over Lot 48A, LLC's 3 Lot overlapping re-subdivision obligations.

68. **But for** the Department of Planning's, and Planning Director John Min's concealment of Unemori Engineering, Inc's SMA Permit Order of Magnitude Engineering Valuation for Lot 48A, LLC's proposed 3 lot oceanfront re-subdivision; which permit included false engineering valuations for roadway and drainage improvements along the entire frontages of underlying "3 Lots or Less" land subdivided by Anka, Inc., Lot 48ALLC attorney Tom Welch could not have made the fraudulent claims to Christopher Salem that his developer client Lot 48A, LLC was not required by County of Maui code and permit conditions, to install roadway and drainage improvements along the entire frontages Hui Road E and Lower Honoapiilani Road.

69. **But for** the Department of Planning's grossly negligent administration of the Coastal Zone Management act which allowed Munikiyo, Arakawa and Hiraga, and Unemori Engineering Inc.(Director Milton Arakawa's Land Planning Firm) to submit intentionally fraudulent Order of Magnitude Engineering Valuation of \$91,400.00, denying the citizens of Maui County and

Christopher Salem of their rights to public hearings, environmental assessment(s), shoreline preservation and parking, and public view preservation; Lot 48A, LLC would not have received the substantial financial rewards of the increased density of their unlawful oceanfront land division at the expense of the public interest and to the detriment of Christopher Salem's loss of property rights and property value.

70. **But for** Public Works Director Milton Arakawa's failure to insure that the roadway and drainage improvements, (referenced in the signed and issued SMA permit and engineering studies authored by his land planning firm), were incorporated into the engineering improvement drawings; Lot 48A, LLC attorney Tom Welch could not have made the fraudulent claims to Christopher Salem that his developer client Lot 48A, LLC was not obligated by the County of Maui to install roadway and drainage improvements along the entire frontages Hui Road E and Lower Honoapiilani Road.

71. **But for** Public Works Director Milton Arakawa's failure to insure the roadway and drainage improvements, referenced in the signed and issued SMA permit and engineering studies authored by his land planning firm, were **bonded** prior to issuing final subdivision approval to private client Lot 48A, LLC; Christopher Salem would never have been coerced into a fraudulently induced settlement agreement with attorney Tom Welch's client Lot 48A, LLC and would have instead filed suit against the County of Maui for failure to uphold the Maui County Code.

72. **But for** the legal disputes over Lot 48A, LLC's breaches of a settlement agreement that was itself fraudulent and evidenced collusion and conspiracy between Public Works Director Milton Arakawa, developer Lot 48A, LLC, and their legal counsel Tom Welch; Christopher Salem's would not have endured years grief and hundreds of thousands of dollars in legal fees and expenses.

73. **But for** the detrimental reliance by Christopher Salems on Public Works Director Milton Arakawa's public notice that the construction of Phase IV of Lower Honapiilani Road was

scheduled to commence construction in 2002, Christopher Salem's attorney Tom Pierce would never have permitted a 5 year settlement condition for Lot 48A, LLC to pay for the anticipated assessment and collection by the County of Maui, of the pro rata share of the deferred Anka, Inc "3 Lots or Less" roadway and drainage improvements, along the Lower Honoapiilani Road and the entrance to Hui Road E.

74. **But for** Christopher Salem's detrimental reliance on the reasonable expectation of the lawful administration by County of Maui officials of the "3 Lots or Less" subdivision "deferral" agreement, recorded on the property title of 8 Hui Road E, which insured that any further division of the underlying Anka Inc. 3 lot subdivision would result in the installation of roadway and drainage mitigations along the entire frontages of the original Anka, Inc land; and thereby resulting in the one time "3 Lots or Less" subdivision agreement, being removed as an encumbrance on his 8 Hui Road E property title almost 20 years ago; Christopher Salem would never have agreed to accept as a condition of purchase the County of Maui's open ended financial obligations recorded in the Anka Inc "3 Lots or Less" subdivision agreement.

75. **But for** Public Works Director Milton Arakawa's and Lot 48A, LLC's attorney Tom Welch's inside knowledge that the Department of Corporation Counsel and the Department of Public Works did not keep track of the developers "3 Lots or Less" financial obligations or have any intention of assessing or collecting upon the developer contractual agreements; and knowing full well that developer Lot 48A, LLC's roadway and drainage improvements would be incurred and paid for with public funds, as a part of the Phase IV of Lower Honoapiilani Road Capital Improvement Project; Christopher Salem would never have been deceived into believing that the recorded developer "deferral" agreement provided critical protection and insurance against further development of his subdivision.

76. **But for** the Mayor Alan Arakawa, Department of Finance Director Keith Regan, assistant to the Mayor Don Couch, and Public Works Director David Goode, who took part with

Corporation Counsel in knowingly continuing to incur the financial obligations of private developers after notice in 2001, in direct violation of Section 9-12 of the Maui County Charter, (a valid and stated cause for their removal from office); the County of Maui would not have ended up with the burden of paying for hundreds more developers' "deferred" financial obligations.

77. **But for** at Christopher Salem's personal expense and consistent demands for responsible government, which resulted in the termination by ordinance in 2007, the County of Maui officials' ability to use the unaccounted for "3 Lots or Less" subdivision agreements to shift developers financial obligations to the public; the Department of Public Works and Department of Corporation Counsel would have continued to incur obligations upon the County of Maui to pay for private developers subdivision financial obligations for years to come.

78. **But for** attorney Welch's secret drafting and recording of private warranty deeds, that unlawfully altered a government contract by placing 5 lots on a underlying Anka, Inc "3 Lots or Less" subdivision agreement; Christopher Salem would not have been induced into a fraudulent settlement agreement with Tom Welch and would not have suffered an unlawful \$270,000.00 lien caused by the Department of Corporation Counsel attorney Margery Bronster, who also simultaneously represented developer Kahana Paradise, LLC, the multimillion dollar buyer and developer of Lot 48A-2 of Lot 48A, LLC's oceanfront 3 lot re subdivision of Lot 48A.

79. **But for** Christopher Salem's detrimental reliance on an unlawful warranty deed drafted by Tom Welch on behalf of Anka, Inc that only allowed further division of Lot 48A by developer Lot 48A, LLC, if further development would not result in any costs incurred by fellow "3 Lots or Less" subdivision owners Lot 48B and Lot 48C; Christopher Salem would not have invested \$1,700,000.00 in design and construction of his personal home.

80. **But for** the legal disputes over Lot 48A, LLC's breaches of a settlement agreement (which agreement was entered into under fraud, collusion, and conspiracy between Public Works

Director Milton Arakawa and developer Lot 48A, LLC, and their legal counsel Tom Welch);

Christopher Salem was unable to market and sell his home for the appraised value of \$4,000,000.00.

81. **But for** Planning Director Jeff Hunt and subsequently Director William Spence's unwillingness to enforce the Developer Lot 48A, LLC's expired and unfulfilled SMA Permit, Christopher Salem's 8 Hui Road E property would not be bound by a judgement lien for \$270,000.00 for legal fees; which legal fee lien was acquired by Corporation Counsel special Counsel Margery Bronster through intentional concealment of developer client Lot 48A, LLC's signed SMA Permit studies and engineering valuations.

82. **But for** Milton Arakawa unlawfully written notices that 5 lots were bound by the Anka Inc "3 Lots or Less" subdivision agreement, authored and recorded by the Department of Corporation Counsel, fraudulently stating that Christopher Salem would be required to "haggle" with fellow property owners over the "deferred" amounts owed to the County of Maui ; professional real estate brokers and certified appraisers would not have declined to represent Christopher Salem's property for sale or appraisal.

83. **But for** the gross negligence or fraud by Department of Planning on administration of the Coastal Zone Management Act; allowing for the issuance of another SMA Permit exemption on the oceanfront Lot 48A-2 of Lot 48A, LLC's subdivision, which subdivision already had an unfulfilled and expired SMA Permit; and **But for** the shoreline setback being allowed to be unlawfully pushed back into the ocean to increase the building pad area; Corporation Counsel Attorney Bronster's developer client Kahana Paradise, LCC would not have been able to develop a massive 6 bedroom oceanfront speculation home on small parcel of oceanfront land which ultimately sold for over \$12,000,000.00. (see HRS 205A-32 penalties)

84. **But for** Public Director David Goode's issuance of an preliminary subdivision approval for the Pu'uKahana subdivision, for future development proposed by Goode's future employer Smith, directly mauka of Christopher Salem's 8 Hui Road E property (which development

was also engineered by Unemori Engineering, Inc.); Christopher Salem would not have spent \$50,000.00 in legal fees to attorney Tom Pierce to protect the public interest and to prove to the Maui County Planning Commission that the subdivision was unlawful. After a year and a half of neighborhood disputes and intervention, the Planning Commission reversed Director Goode's administrative decision and denied the subdivision application.

85. ***But for*** Director Goodes' unethical decision to issue an unlawful preliminary subdivision approval to Smith Development just prior to his employment with the developer Kent Smith, (a violation of the Maui County Charter - Section 10-4.(f)); Christopher Salem would not have endured a written and implied death threat from Developer Kent Smith.

86. ***But for*** Public Works Director Milton Arakawa's issuance of subdivision approval for unlawful engineering designs by Unemori Engineering, Inc., along the streets of Maui Lani and Palama Drive; which designs were discovered to be in violation the Maui County Code; the County of Maui and citizens of Maui County would not have endured tens of millions of dollars in damages and losses.

87. ***But for*** Christopher Salem's being forced to investigate the violations of the Maui County Code by Unemori Engineering Inc, in two subdivisions surrounding his property (one in which the Maui County Planning Commission agreed with Salem's findings and subsequently denied the development); Christopher Salem would not have had the knowledge or resolve to assist the County of Maui in settlement resolution relating to Unemori Engineering, Inc.'s unlawful Maui Lani engineering grading designs.

88. ***But for*** Corporation Counsel, Patrick Wong's, failure to disclose business dealings with and his personal and professional relationship with the legal counsel for the Palama Drive developers; Christopher Salem and his professional associates would not have spent and year and half and \$72,000.00 in legal fees and land planning consultants fees to facilitate a 100% affordable housing solution and litigation settlement proposal that was hidden from the Maui County Council, by attorney Pat Wong.

89. **But for** the Department of The Corporation Counsel's violations of Rule 1.6(7)'(c) of the Supreme Court of the State of Hawaii Rules of Professional Conduct by the department and Corporation Counsel failing to reveal and rectify the discovery of information that clearly established a criminal or fraudulent act of the Department of Public Work's in the furtherance of which the Department of The Corporation Counsel's services had been used, to the extent reasonably necessary to rectify; Christopher Salem would not have entered Chapter 11 Bankruptcy in order to attempt to remove an open ended government lien on his property which incurred \$55,000 in unnecessary and unwarranted legal fees.

90. **But for** detrimental reliance on the Maui County Code on right of way designation for the continuation of the Capital Improvement Project Phase IV of Lower Honoapiilani Road, Christopher Salem would not have purchased 5106 Lower Honoapillani Road and incurred the loss of hundreds of thousands of dollars in family and personal investment.

91. **But for** the Departments of Planning concealing SMA permit studies, upon which said SMA Permit was granted, and **But for** the fraudulent valuation estimates negligently or intentionally permitted by the County of Maui within those permit studies, which circumvented Environmental laws as well as property owner rights including, but not limited to, the protection and preservation of public and private views; and, **But for** the falsely undervalued capital improvement obligations agreed to by the developer and then fraudulently concealed from Salem by the County of Maui Department of Planning, the developer, and his attorney; and, **But for** Attorney Tom Welch, because of the above concealment and deception of the County of Maui, being able to hide the same SMA permit which revealed the Developer's obligations and fraudulent engineering estimates; and, **But for** the concealment of 3 lots or less one-time only developer deferral agreements by County Corp Counsel of Maui; and, **But for** the unlawful overlapping subdivisions permitted and, or executed by County Defendants; and **But for** an unwarranted, unnecessary and unlawful Notice of Intent to Collect sent to Salem by Director of Public Works Milton Arakawa which created an open ended government lien on Salem's property; and, **But for** Attorney Margery Bronster working

simultaneously for the Department of Corporation Counsel and the Developer Lot 48 LLC; and, **But For** Bronster concealing the same above referenced SMA permit studies on behalf of Developer Lot 48 LLC from Salem in arbitration;

Salem would not have been fraudulently induced by Developer Lot 48A, LLC and their attorney, Tom Welch to sign an unnecessary and harmful settlement agreement which itself was the end result of unnecessary and unwarranted costly litigation by Salem; Salem would not endure further legal expense caused by adjacent property owner constructing in his "preserved" ocean and scenic views allegedly protected by Lot 48A, LLC in the above referenced fraudulently induced settlement agreement that was unnecessary for Salem to sign in the first place; Salem would not have had to enter, subsequently, into *further* litigation with Developer Lot 48A, LLC to protect his property rights yet again unnecessarily; Salem would not have incurred a lien of \$270,000 placed on his property by Margery Bronster on behalf of Developer Lot 48 LLC in 2009 which prevented him subsequently from effectuating a settlement agreement with the Bank holding the mortgage on his property and closing a sale that was in escrow; Salem would have had the encumbrance created by an unlawful deferral agreement expunged from his property before it turned into an unlawful open ended government lien; Salem would have been able to have his property listed by a well-established and esteemed realtor company on Maui; which listing was instead denied him; Salem would not have suffered a subsequent foreclosure on his family home in 2015; Salem would not have been financially ruined; Salem's excellent credit rating would not have been ruined; Salem and his wife and two minor children would not have endured continuous and ongoing harm and suffering.

PERTINENT FACTS*

*references cited below are to exhibits to be produced subsequent to this filing.

A. General – The Malepai Hui Partition Subdivision

92. On October 14, 1994, Anka, Inc., which owned Lot 48 of the Mailepai Hui Partition along Lower Honoapiilani Road and Hui Road E, received conditions of subdivision

approval from the County of Maui Department of Public Works for a three (3) lot subdivision of their oceanfront land. (LUCA File #4.696) A1 - Aerial photo.

93. Condition #17 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

“A Special Management Area (“SMA”) permit is not required for subdivision of land into four or fewer parcels when no associated construction activities are proposed; provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels. However, if construction activities are proposed or required then a permit may be required. See A-2 - Department of Public Works letter dated October 14, 1994

(a) Condition #4 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

“Provided this is the final subdivision of the parent parcel and no further subdivision is contemplated, we would agree the project is exempt from SMA. However, on previous plans we noted a gate was proposed at the entrance and 3 public parking stalls were shown. What happened to this plan?” A2 - Department of Public Works letter dated October 14, 1994

94. Hui Road E is a substandard roadway that provides a State of Hawaii designated Shoreline Access (#217) with no public beach parking stalls. As we now know, the parking lot plan described on the Condition #4 lies on the corner of Hui Road E and Lower Honoapiilani Road on a portion of Lot 48C, the property formerly owned by Plaintiff Salem. A3 - Public Parking lot plan.

95. Condition #13 of the County of Maui Department of Public Works preliminary subdivision approval stated as follows;

“Submit the original and four (4) copies of the Subdivision Agreement (“for Three Lots or Less”) executed by the owners and extended to their heirs and executors or assigns to pay the pro rata share of the cost of future road improvements for Lower Honoapiilani Road and Hui Road E, pursuant to Section 18.20.40, subsection A of the Maui County Code.” A4 - Department of Public Works letter dated October 14, 1994

96. In 1994, the Maui County Code, 18.020.040A., stated as follows;

“Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County. The land so subdivided shall not thereafter

qualify for the exemption with respect to any subsequent subdivision of any of the resulting parcels.”
45- Maui County Code Title 18.20.040A.

B. Plaintiff's acquisition of Lot 48C of the Mailepai Hui Partition Subdivision

97. In February of 1999, Plaintiff Salem used his life savings to purchase the corner parcel Lot 48C in the Anka, Inc. “3 Lots or Less” subdivision. The pristine open space and lack of density in the adjacent parcels Lot 48A and Lot 48B of the “3 Lots or Less” subdivision was desirable and memorable. B1 - Anka, Inc. Subdivision Map and Photo's

98. Plaintiff Salem reviewed and accepted the pro rata cost sharing of future roadway improvement obligations set forth in the “3 Lots or Less” Subdivision Agreement recorded by Defendant Corporation Counsel with the State of Hawaii Board of Conveyances in senior position on the Lot 48C title. B2 - Document No 95-145123

99. Plaintiff Salem agreed that the pro rata sharing of the open ended one-time deferred costs to improve the roadway frontages along Lower Honoapiilani Road and Hui Road E was an acceptable condition in exchange for the expansive open space, privacy, panoramic views, and valuable limited density resulting from of Anka, Inc 3 Lot Subdivision.

100. Plaintiff Salem understood that in accordance with Maui County Code Title 18.020.040A., any further division of oceanfront Lot 48A “land so subdivided” that caused the underlying subdivision to end up with more than 4 lots, would require a substantial developer expense of full engineering and construction of roadway, drainage, and utility improvements to the entire frontages of the land of the underlying “3 Lots or Less” subdivision, which lies adjacent to Hui Road E and Lower Honoapiilani Road.

101. Plaintiff Salem understood that the open ended “3 Lots or Less” encumbrance recorded by Defendant Corporation Counsel on Defendant Salem's property title would be removed by Defendant Corporation Counsel if further subsequent land division occurred on the “land so subdivided” and any of the resulting parcels in the Anka, Inc. “3 Lots or Less” subdivision.

102. Plaintiff Salem understood that any further subdivision of the oceanfront parcel Lot 48A parent parcels that caused the underlying subdivision to end up with more than 4 lots, would also require a substantial developer expense of an SMA Major Permit, public hearings, shoreline access parking, park land dedication, environmental assessment, and public review in an open forum with the County of Maui Planning Commission.

103. On February 23, 1999, Plaintiff Salem closed Title Guarantee Escrow No. 98020671 on the purchase of Lot 48C of the Mailepai Hui Partition. Plaintiff Salem was provided a Warranty Deed from Anka, Inc. approved as to form by the Law Offices of Mancini, Rowland, and Welch. B3 - Warranty Deed for Tax Key 4-3-015-055.

104. At the time of purchase of Lot 48C in 1999, Plaintiff Salem had a clear understanding that the lawful administration by the County of Maui of the one-time Anka, Inc subdivision conditions and recorded subdivision agreements, and one time exemptions from SMA Permit obligations including public hearings and environmental studies, would make the re subdivision of the adjacent oceanfront parcel, Lot 48A, financially impractical and unlikely.

C. County of Maui Capital Improvement Project - Phase IV of Lower Honoapiilani Road

105. In 1998, the County of Maui began the engineering design process and environmental review for the roadway and drainage improvements along the Lower Honoapiilani Road frontage of Plaintiff Salem's property. The County of Maui CIP, Phase IV of Lower Honoapiilani Road, began at Hoohui Road and terminated at Napilihau Street. (STP3080(3)(1)) CI - Public Notice prepared by the County of Maui Department of Public Works

106. In 1999, the land planning firm MAH was retained by the County of Maui Department of Public Works to complete an Environmental Assessment for the impacts of the proposed Phase IV of Lower Honoapiilani Road engineering and roadway improvements.

107. Preparation of the MAH Draft Environmental Assessment included consultation with Federal, State, and County agencies. C2 - MAH Agencies and Organizations Contacted During Preparation of Draft Environmental Assessment for Phase IV of Lower Road

108. On March 31, 1999, the County of Maui produced a report depicting appropriation and expenditures for CIP's, including Phase IV of Lower Honoapiilani Road. C3- Capital Improvement Projects Report, dated March 31, 1999

109. On July 7, 1999, George P. Young, P.E. Chief of the Regulatory Branch of the Department of the Army, responded to a June 29, 1999 letter from Defendant Arakawa, a partner of the land planning firm MAH. C4- Letter from George P. Young, P.E of the Department of the Army, dated July 7, 1999.

110. Based on information and belief, Defendant Arakawa was directly involved with, and received financial compensation for the drafting and review of a 600 page Environmental Assessment by private consultant MAH for County of Maui Phase IV of Lower Honoapiilani Road CIP.

111. On February 12, 2000, the project Engineer Austin, Tsutsumi & Associates, Inc ("ATA") produced to the County of Maui Department of Public Works a detailed set of demolition, drainage, and roadway improvement plans for Phase IV of Lower Honoapiilani Road. C5 - Roadway Improvement Plans for Phase IV of Lower Honoapiilani Road dated February 12, 2000.

112. In February of 2000, the project engineer ATA produced to the County of Maui Department of Public Works a detailed Drainage Report and Roadway Improvement Plans for Phase IV of Lower Honoapiilani Road. C6- Roadway Drainage Report and Plans for Phase IV of Lower Honoapiilani Road, dated February, 2000.

113. The February 2000 Phase IV of Lower Honoapiilani Road Drainage Reports and Roadway Improvement Plans, Station 130+50 to 142+60, provided clear delineation of required underground drainage structures and inlets along roadway frontage to the underlying Anka, Inc

Subdivision and the roadway entry to Hui Road E. C-7 - Page 5 of Drainage Report and Roadway Improvement Plans for the frontage to the Anka, Inc Subdivision and entry to Hui Road E.

114. On May 4, 2000, MAH provided written notice to the Chief of the Maui Police Department of the commencement of construction of the Phase IV Lower Honoapiilani Roadway Improvement project "in the spring of 2001." C8 - letter from MAH to Thomas M. Phillips, Chief of the Maui Police Department

115. On June 30, 2000, the County of Maui produced an Engineer's Preliminary Detailed Estimate for the construction costs related to the proposed Phase IV roadway and drainage improvements. C9 - Engineers Preliminary Detailed Estimate for Phase IV of Lower Honoapiilani Road

116. On November 2, 2000, Defendant Goode sent a memo to Engineering Divisions Chief Lloyd Lee relating to the Maui County Council Committee of the Whole's decision relating to Condemnation of the Fujiwara Property to provide for right-of-way frontage land acquisition to facilitate Phase IV of Lower Honoapiilani Road. C10 - Memo from Defendant Goode

117. On August 17, 2001, MAH informed Planning Director John Min of the publication of public notices of the availability of Environmental Assessment and Public Hearing relating to Phase IV Lower Honoapiilani Roadway Improvement project. C11 - MAH notice to Planning Director Min, dated August 27, 2001.

118. On August 17, 2001, Defendant Goode produced a public notice soliciting comments by September 12, 2001 on the proposed Phase IV Lower Honoapiilani Road Capital Improvement Project. ("CIP") C12 - Defendant Goode Public Comment Notice.

119. The published notice included an estimated project cost of \$10,000,000.00 with contributions of Federal Funds through the Federal Transportation Efficiency Act for the 21st Century.

120. Based on information and belief, to acquire the \$6,400,000.00 contribution in Federal Transportation Funds for the Phase IV of Lower Honoapiilani Road CIP, the County of Maui

Department of Public Works submitted project engineering estimates and scope of work to the State of Hawaii, Department of Transportation.

121. In August of 2001, Maui Electric ("MECO") provided public notice of the August 29, 2001 public hearing relating to the Federal Environmental Assessment for Phase IV of Lower Honoapiilani Road. The notice provided a forecasted commencement of MECO construction of Phase IV Lower Honoapiilani Road in August of 2002. C13 - MECO Fact Sheet.

122. On August 29, 2001, Defendant Arakawa, former partner of MAH and newly employed Deputy Director of Public Works for the County of Maui, presented the Phase IV roadway Capital Improvement Project plans to the community of West Maui in public hearings.

123. At the August 29, 2001 public hearing, County of Maui Department of Public Works Project Engineer Joe Krueger announced Phase IV of Lower Honoapiilani Road CIP would commence construction in June or September of 2002. C14 - Transcript of Public Hearing relating to the commencement of construction of Phase IV of the Lower Honoapiilani Road.

124. At the August 29, 2001, public hearing, written comments and concerns were solicited from citizens of West Maui and cataloged by the Department of Public Works. See Comments Received following the August 29, 2001 Public Hearing.

125. On October 24, 2002, Defendant Arakawa, acting on behalf of the County of Maui Department of Public Works, presented to Director Genevieve Salmonson, Director of the State of Hawaii Office of Environmental Quality Control, 4 copies of the Final Environmental Assessment prepared by his former land planning firm MAH. C15 - Defendant Arakawa Letter to Director Salmonson dated October 24, 2002

126. On November 24, 2002, Plaintiff Salem sent a follow up letter to Defendant Goode requesting the status of suggested design modifications to the Phase IV of Lower Honoapiilani Road. The letter provided Plaintiff Salem's graphic solutions for vehicular speed control, drainage outlets, and pedestrian friendly roadway frontages. C16- Letter to Defendant Goode, dated November 24, 2002.

127. On December 10, 2002, Defendant Goode presented to the Maui County Planning Commission a request for a Special Management Area Use Permit for the Phase IV of Lower Honoapiilani Road CIP. C17 - Planning Commission Agenda, December 10, 2002.

128. On February 12, 2003, newly appointed Public Works Director Gilbert Coloma-Agaran responded to Plaintiff Salem's November 24, 2002 requested design modifications to Phase IV of Lower Honoapiilani Road as follows;

"A total of 10 speed tables are proposed for installation at approximately 600 feet intervals along the corridor.

It should also be noted, that to minimize right-of-way acquisition requirement and impacts to landscaping and private properties (without contravening public safety and welfare) the roadway alignment has been moved Makai as much as possible in certain areas and typical roadway section has been modified.

In lieu of steel guardrails, CRM walls or Jersey-type barriers are being reviewed as alternatives. C-18 Letter from Director Coloma-Agaran, dated February 12, 2003.

129. On April 17, 2003, ATA engineer Kent Morimoto sent copies of Plaintiff Salem's revised roadway section designs for Phase IV of Lower Honoapiilani Road directly to Plaintiff Salem and County of Maui engineer Joe Krueger. C19 - ATA Facsimile Coversheet, date April 17, 2003.

130. On April 21, 2003, Defendant Arakawa sent a memo to Ralph Nagamine, Development Services Administrator noting that the Engineering Division has recently received all discretionary approvals for the Lower Honoapiilani Road Phase IV roadway improvement project. C20 - Memo of Defendant Arakawa, dated April 21, 2003.

131. On April 26, 2004, West Maui Council Member JoAnne Johnson sent a copy of the proposed 2005 County of Maui Budget depicting \$8,500,000.00 in proposed County and Federal expenditures for construction of Phase IV of Lower Honoapiilani Road. C21 - Six Year Capital Improvement Program, April 26, 2004.

132. Based on information and belief, the Maui County Budget adopted annually by the Maui County Council over the last four decades, has never recognized or quantified current

the future revenues from developer's "3 Lots or Less" subdivision agreements to offset public expenditures on CIP roadway projects throughout Maui County.

133. On November 5, 2004, project engineer ATA sent a complete ledger to the Department of Public Works depicting the large group of unresolved roadway frontage right of way land easements from private land owners along Phase IV of Lower Honoapiilani Road that were necessary for the County of Maui to commence construction. C22 - ATA Easement Summary.

134. On July 5, 2007, during Maui County Council Public Works and Facilities Committee hearings, almost ten years after commencement of the Phase IV of Lower Honoapiilani roadway improvement project, Defendant Arakawa informed the County Council and general public that the Department of Public Works failed to acquire the necessary land frontages during the early stages of the engineering design period which prevented the County of Maui from commencing construction of the Phase IV of Lower Honoapiilani Road CIP. C23 - Minutes to Maui County Council, July 5, 2007.

135. On August 14, 2007, Defendant Arakawa sent a letter to Plaintiff Salem stating the following;

"Thank you for your interest in our project. The Lower Honoapiilani Road improvements project is being scheduled through the Statewide Transportation Improvement Program ("STIP") process conducted by the State Department of Transportation. The project is tentatively scheduled for construction in 2011 and we are currently processing land rights and utility easement documents."
C24 - Defendant Arakawa letter dated August 14, 2007.

136. On September 18, 2009, West Maui Council Member JoAnne Johnson sent a letter to Defendant Arakawa stating it was her understanding that Phase IV of Lower Honoapiilani Road was slated to commence the following year. C25 - Council Member Johnson letter dated September 18, 2009.

137. On May 27, 2010, Defendant Arakawa sent a "Notice of Intent to Collect" to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owned on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. Defendant Arakawa informed the Phase IV property owners that the County of Maui is

seeking to commence construction in calendar year 2012. C26 - Letter from Defendant Arakawa, dated May 27, 2010.

138. On March 20, 2011 Mayor Alan Arakawa of the County of Maui provided notice in the Maui News of \$9.5 million dollars being allocated in his 2012 budget for the construction of Phase IV of Lower Honoapiilani Road CIP. C27 - Maui News article dated March 20, 2011

139. On March 30, 2012, Council Member Elle Cochran requested from Defendant Goode a status update for the Phase IV of Lower Honoapiilani Road CIP including a breakdown of County and Federal funds expended each year since 1998, status of land right of way acquisition, and status of governmental permitting approvals. C28 - Letter from Council Member Elle Cochran, dated March 30, 2012.

140. On April 16, 2012, Defendant Goode responded to Council Member Elle Cochran's March 30, 2012 letter as follows;

1. Funds Appropriated 1998 to 2012 – 7,849,000.00
2. Phase IV CIP expenditures from 1998 to 2012 - \$1,146,710.48.
3. 34 Easements and land frontage parcels need to be acquired. 27 have accepted offers.

Due to outstanding legal issues surrounding all agreements executed in connection with the project area; privacy issues for the affected land owners; and ongoing negotiations, the Department is constrained from providing further detail.

4. List of agency approvals attached. All agency approvals granted during 2003-2006 have expired.
5. The Department is considering re scoping the project. Until a final design is complete the Department is constrained from providing further detail which would only be speculative at this point. Anticipated challenges include: funding, community support and acquisition of clear title to required land interests without resorting to eminent domain proceedings. C29 - Goode Letter April 16, 2012.

141. On May 18, 2012, Council Member Elle Cochran sent a follow up letter to Defendant Goode's April 16, 2012 letter requesting further explanation regarding Phase IV of Lower Honoapiilani CIP as the follows;

“Please explain the reasoning behind the Department’s consideration to re-scope the subject project.

If the Department intends to change the scope of this project, will public hearings be held to gather community input?” C29 - Council Member Cochran letter dated May 3, 2012.

142. On June 4, 2012, Defendant Goode provided a status update to Council Member Elle Cochran on the Phase IV Lower Honoapiilani Road improvement project.

“At this point we are holding off on the redesign of Lower Honoapiilani Road Phase IV and working on the Kahananu Bridge portion of the project only. The previous design for Lower Honoapiilani Road Phase IV had been permitted and was ready to go with the main exception being land acquisition. So we are proceeding with completing, and working with owners that have questions regarding our proposed acquisitions.” C30- Goode Letter June 4, 2012.

143. On June 12, 2012, Plaintiff Salem sent a letter to Defendant Goode requesting clarification on why the previously approved engineering plans for Phase IV of Lower Honoapiilani Road CIP was under redesign consideration. Defendant Goode did not respond Plaintiff Salem’s letter. C31 - Plaintiff letter to Defendant Goode, date June 12, 2012.

144. On August 6, 2014, the State of Hawaii Department of Transportation held a public hearing relating to 200 million dollars in funding for multiple roadway CIP’s throughout the County of Maui. The funds, provided through the Statewide Transportation Improvement Program, (“STIP”) were allocated for fiscal years 2015-2018. C32 - State of Hawaii Department of Transportation Notice of Public Hearing

145. The funding ledger includes MC-19, Phase IV of Lower Honoapiilani Road (Route 3080, MP 2 MP 3.4) with an Estimated Project Cost by the County of Maui of \$16,000,000.00, \$6,000,000.00 above the costs for the previously approved and permitted roadway improvement project. C33 - STIP Project Ledger

146. Based on information and belief, Defendant Goode and Defendant Arakawa’s negligence and failure to obtain the necessary roadway easements and right of way dedications along Phase IV of Lower Honoapiilani Road has prolonged a the Phase IV Capital Improvement Project to a time frame now exceeding over 20 years.

147. Further evidenced herein, the negligent administration and irresponsible multiple false public notices of commencement of construction of the Phase IV of Lower Honoapiilani CIP by Defendant Goode and Defendant Arakawa, has caused an extreme waste of public funds and unforeseen devastating consequences to Plaintiff Salem and his family.

D. History of Uncollected and Unaccounted for Developer's financial obligations.

148. Defendant Corporation Counsel, Defendant Wong, Defendant Goode, and Defendant Arakawa, have concealed from the public and the Maui County Council thousands of developer contracts and recorded subdivision agreements throughout the County of Maui executed by Defendant Corporation Counsel over the last 40 years.

149. The developer contractual agreements, commonly known as "3 Lots or Less Subdivision Agreements", were adopted by the County of Maui Council on May 3, 1974, as a one-time deferral of developers financial expense of roadway, drainage, and utility improvements along the frontages of "3 Lots or Less" subdivisions. D1 - Minutes of the Council of the County of Maui – May 3, 1974

150. The open ended "3 Lots or Less" Subdivision Agreements, with no adopted formula or value for assessment to developers or their heirs in interest, executed by Defendant Corporation Counsel on behalf of private developers in accordance with Title 18.20.040 of the Maui County Code, are recorded by Defendant Corporation Counsel in the Bureau of Conveyances as an open ended encumbrance in senior position on the title of the resulting 3 parcels of land.

151. Maui County Code, 18.020.040, amended by Bill #34 in 1990, stated as follows;

"Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County.." D2 - Maui County Code Title 18.20.040

152. Maui County Charter Section 3-6. Powers of Council, states as follows;

“The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:

1. To legislate taxes, rates, fees, assessments and special assessments and to borrow money, subject to the limitations provided by law and this charter. D3 - Maui County Charter 3-6.

153. Maui County Charter, Section 9-7. Restrictions on Budget and Capital

Program states as follows;

3. Unless otherwise specifically provided for in this charter, all fees, rates, assessments and taxes imposed by the county shall be set in the annual budget. D4 - Maui County Charter 9-7.

154. Pursuant to Title 18.20.040 B. of the Maui County Code, developers of subdivisions of 4 lots or more are required by ordinance to complete full engineering design and construction of roadway, drainage, and utility improvements along subdivision frontages to address the public impacts and increased density caused by the developer’s land division.

155. In late 2001, during the final stages of commencement of County of Maui CIP Phase IV of Lower Honoapillani Road, (STP-3080(8)) Plaintiff Salem discovered that no records or assessment rolls of the developer’s “3 Lots or Less” subdivisions agreements executed throughout Maui County by Defendant Corporation Counsel were being kept by Defendant Corporation Council, Defendant Goode, or the County of Maui Department of Finance.

156. In 2001, the Maui County Council Adopted Ordinance 2963, Bill No. 41, Fiscal Year 2002 Budget including South Kihei Capital Improvement appropriations for South Kihei Road from Lipoa Street to Kulanihakoi Street. The Budget was signed my Council Members Alan Arakawa, JoAnne Johnson, and Riki Hokama. D5 - Ordinance 3040 (2002)

157. Plaintiff Salem further discovered that no formula for assessment for collection of the developer “3 Lots or Less” subdivision agreements had ever been adopted by ordinance on the countless CIP’s funded and previously approved by the Maui County Council during decades of annual budget hearings.

158. In early 2002, Plaintiff Salem provided written notice of his discovery and findings to newly elected Mayor Alan Arakawa and West Maui Council Member JoAnne Johnson.

D6 - Letter to Mayor Alan Arakawa

159. April 24, 2002, Council Member Johnson received a letter from Defendant Goode with the following responses to Council Member JoAnne Johnson's inquiries;

Response: "*We do not have records which indicate the number of agreements that have been recorded over time.*"

Response: "*The Department of Public Works and Waste Management is responsible for insuring that subsequent subdivisions construct required road improvements*" D7 - Letter from Defendant Goode dated April 24, 2002

160. In November 24, 2002, Plaintiff Salem sent letters to Defendant Goode and newly elected Mayor Alan Arakawa, informing them that the recorded developer contractual obligations by Defendant Corporation Counsel requiring developers to pay for their subdivision impacts are not being accounted for, collected upon, and public funds are being used pay for private developers obligations. D8 - Letter to Defendant Goode and Mayor Alan Arakawa

161. As we now know, in the years thereafter, despite notice by Plaintiff Salem of Defendant Goode of Defendant Corporation Counsel's intentional shifting developer's financial obligations through unaccounted for "3 Lots or Less" subdivision agreements was an unlawful misuse of public funds, Defendant Corporation Counsel, Defendant Goode, and Defendant Arakawa, continued writing hundreds more defective agreements with private developers and continued to conceal the developer agreements from the public and the Maui County Council.

162. On February 12, 2003, newly appointed Public Works Director Gilbert Coloma-Agaran responded to Plaintiff Salem's November 24, 2002 requested design modifications to Phase IV of Lower Honoapiilani Road as follows;

"Funds related to previous development agreements will be researched and investigated for utilization for this project. D8 - Letter from Director Coloma-Agaran, dated February 12, 2003.

163. On April 21, 2003, Defendant Arakawa sent a memo to Ralph Nagamine, Development Services Administrator in response to Plaintiff Salem's notice of uncollected developer deferral agreements. Defendant Arakawa's memo states as follows;

“Where there is an applicable agreement, we would like DSA to proceed with the collection of the applicable pro rata share of monies of deferred frontage improvements for properties which is being undertaken by the Department. We note that the Engineering Division has recently received all discretionary approvals for its Lower Honoapiilani Road Phase IV project...

As a general policy, Engineering Division shall notify DSA of any imminent roadway improvement projects where such deferral agreement may be in force. Thereafter, DSA **shall** perform the necessary review and compliance of said agreements.” D9 - Letter from Defendant Arakawa April 21, 2003

164. On May 12, 2003, DSA Administrator Nagamine sent a memo to Engineering Division Chief Lloyd Lee, requesting the following information relating to fifteen (15) “3 Lots or Less” parcels along Phase IV of the Lower Honoapiilani Road Capital Improvement Project;

“Please calculate the pro-rata share for each parcel and send us that information. We will work with the Finance Department to collect the money.” D10 - Memo from Ralph Nagamine, April 21, 2013

165. On September 22, 2003, County of Maui Engineering Chief Lloyd Lee sent a Memo to Ralph Nagamine of Development Services Administration regarding Road Improvement Deferral Agreements along Phase IV of Lower Honoapiilani Road stating as follows;

“Thank you for sending the list of parcels affected by the deferral agreements. Please send a copy of the agreements and subdivision maps so we can calculate the pro-rata share for each parcel. Also, if there are drainage reports and traffic reports, send them to us.” D11- Chief Lee Memo date September 22, 2003.

166. On September 29, 2003, Public Works Director Gilbert S. Coloma-Agaran wrote a letter to Plaintiff Salem responding to Plaintiff Salem’s August 14, 2003 letter questioning whether all the previous developer deferral agreements along Phase IV of Lower Honoapiilani Road have been researched to verify improvement obligations.

“We have identified the parcels that have obligations to participate in this Phase IV project. We are in process of contacting the appropriate person(s) regarding this. D12 - letter from Coloma-Agaran, September 29, 2003

167. On October 1, 2003, Ralph Nagamine of Development Services Administration sent to County of Maui Engineering Chief Lloyd Lee copies of subdivision files affected by “3 Lots or Less” subdivision agreement along Phase IV of Lower Honoapiilani Road.

D12 - Memo from Ralph Nagamine dated October 1, 2003.

168. April 15, 2004, Defendant Arakawa sent to Council Member JoAnne

Johnson complete copies of the Phase IV of Lower Honoapiilani Road engineering plans, Engineers Project Cost Estimate, STIP list showing the Project, CIP Information Sheet, and Phase IV Deferral Agreements. D13 - Letter of Transmittal from Defendant Arakawa

169. On April 23, 2004, Council Member JoAnne Johnson requested from Civil Engineer Kent Morimoto, of ATA the Honolulu, HI, engineering design firm contracted by the County of Maui for roadway improvements to Phase IV of Lower Honoapiilani Road, a complete breakdown of Engineer's Estimates of costs for the frontages of the subdivision with "3 Lots or Less" Subdivisions Agreement along Phase IV of Lower Honoapiilani Road. D14 - Council letter dated April 23, 2004.

170. On April 30, 2004, Engineer Morimoto provided to Council Member Johnson a detailed Engineer's Estimate of each "3 Lots or Less" subdivision frontage improvements costs along with roadway section plots from the approved engineering plans for Phase IV of Lower Honoapiilani Road. D15 - ATA Transmittal dated April 30, 2004.

171. Evidenced by ATA's licensed professional engineer Morimoto's calculations, the estimate of pro rata roadway assessments for Phase IV of Lower Honoapiilani provided to Council Member Johnson totaled \$608,785.00. D16 - detailed ATA's Engineers Estimate, dated April 30, 2004.

172. On April 30, 2004, Defendant Arakawa had the necessary information from the project engineering ATA to provide to the Maui County Council to establish the appropriate formula for pro rata assessments for the individual "3 Lots or Less" subdivision agreements along Phase IV of Lower Honoapiilani Road.

173. On July 5, 2007, without disclosure by Defendant Corporation Council or Defendant Arakawa of the quantity of executed and recorded developer "3 Lots or Less" subdivision agreements in Maui County, the Maui County Council Public Works and Facilities Committee

eliminated by ordinance "3 Lots or Less" developer loophole in the Maui County Code. In public hearings, Defendant Arakawa made the following statement;

"Yes the Department has, we admit, you know, we haven't done a good job as far as admitting, as far as the enforcing the deferral agreements. "D17 - Minutes to Maui County Council hearing, July 5, 2007.

174. The July 5, 2007, Maui County Council Public Works and Facilities

Committee public hearing included comments from Council Member Riki Hokama as follows;

"Well, I'm more concerned about whether or not we, we can lien the property, because if we can lien the property and incorporate in the next following year's property tax payment to the County then that's another way the capture the required dollar amount. And if they don't pay, we can always foreclose and sell the property as the worse scenario." D18 - Minutes to Maui County Council hearing, July 5, 2007.

175. The Maui County Charter, Chapter 4, Department of Finance, Section 8-4.3.9,

Powers, Duties, and Functions, provides the authority to the Department of Finance as follows

*"Sell real property upon which improvement assessments or real property taxes are not paid..
D19 - Maui County Charter, Chapter 4, Section 8-4.3*

176. The July 5, 2007, Maui County Council Public Works and Facilities

Committee public hearing included comments from attorney Cindy Young of Defendant Corporation Counsel as follows;

"Yeah, if I could just take a moment to confer with, to look at HRS., there's a recent revision on Counties placing liens but it, I, I can't recall the provisions. If I could just take a moment to research." D20 - Minutes to Maui County Council hearing, July 5, 2007.

177. On August 27, 2007, Defendant Arakawa sent a letter to Plaintiff Salem

stating the following;

"Although to our knowledge, the County of Maui has not collected on Subdivision Agreements (Three Lots or Less) in the past, we are anticipating collecting upon such agreements with the Lower Honoapiilani Road Improvement Project. D21 - Defendant Arakawa letter dated August 14, 2007.

178. On October 12, 2009, during public hearings by the Infrastructure

Management Committee Meeting of the Maui County Council, Defendant Arakawa informed the Council as follows;

"No we don't. (Have records of how much has been deferred.) And like I mentioned when the projects do come up, our intent is we would research the stretch of road to be improved, and then we

will collect on the deferral agreements. D22 - Minutes to Maui County Council hearing, October 12, 2009.

179. On February 1, 2010 during public hearings by the Infrastructure Management Committee Meeting of the Maui County Council, Defendant Corporation Council's attorney David Galazin informed the Council as follows;

"These deferral agreements, and, and it depends on the specific one in issue, but general speaking these are contracts that we have with private individuals who have done development at some point. It is what the County is putting in and you're going to have to pay a portion of that." D23 - Minutes to Maui County Council hearing, February, 1, 2010.

180. In February 19, 2010, the Maui County Council adopted ordinance 3731, a further amendment to Title 18.20.040 H. The ordinance was adopted to insure the Defendant Corporation Council and Defendant Arakawa provided property owners with Notices of Intent to collection at commence of funding for CIP as follows;

"All pre-existing conditions and roadway improvement obligations and agreements shall remain in effect and be enforced solely by the Director authored 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 owner at the time of right of way acquisition of County initiated or co-sponsored roadway projects." D24 -Maui County Code Title 18.20.040 H.

181. On May 27, 2010, in accordance with Ordinance 3731, Defendant Arakawa sent a Notice of Intent to Collect to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owned on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. The letter provided the following notice;

"It should be emphasized that the final project costs have not been determined as this juncture, so it not possible to provide you with the pro rata share of the relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original subdivision. The timing of the payment is uncertain although the County is seeking to start construction sometime in calendar year 2012." D25 - Letter from Defendant Arakawa, dated May 27, 2010.

182. On June 1, 2010, Defendant Arakawa sent a follow up letter to Plaintiff Salem informing him the **5 lots** in his subdivision were now encumbered by the "3 Lots or Less" Anka, Inc. Subdivision Agreement. D26 - Letter from Defendant Arakawa, dated June 1, 2010.

183. November 15, 2010, two months prior his termination as Public Works

Director, during a Maui County Council Planning Committee meeting, Milton Arakawa finally admitted to the Maui County Council the quantity of the recorded Developer "3 Lots or Less" Subdivision Deferral Agreements.

"It's roughly around 1,700 – 1,800 of those." D27 - Minutes to Maui County Council hearing, November 15, 2010.

184. In response to Defendant Arakawa's disclosure, Council Member Gladys Baisa had the following response;

"This is sobering information." D28 - Minutes to Maui County Council hearing, November 15, 2010.

185. In response to Defendant Arakawa's disclosure, Council Member Mike Victorino had the following response;

"And it's astonishing that 33 years and some seven administrations and I don't know how many Councils between, that this has languished and languished, and I will take responsibility, four years, I've just heard about it. I never had any idea what the heck was going on. And now, now to have some reality set in, Mr. Chair, it's astonishing." D29 - Minutes to Maui County Council hearing, November 15, 2010.

186. On November 15, 2010, during the Planning Committee Meeting of the Maui County Council, Defendant Arakawa provided clarification of his position regarding property owner being required to consult with each other on their share of the amounts owed to the County of Maui as follows;

"But the agreements that-and I have not seen all of the agreements, of course-but the agreements that I've seen all of agreements of course, they do not mention what the percentage shares... for each lot are and that's gonna be what the individual lot owners will have to haggle or negotiate over." D30 - Minutes to Maui County Council hearing, November 15, 2010.

187. On November 16, 2010, the Maui News published an article on the uncollected developer "3 Lots or Less" subdivision agreements. Attorney Michael Hopper of Defendant Corporation Counsel was quoted as follows;

"Deputy Corporation Counsel Michael Hopper said the County of Maui may need to craft laws in order to collect fees and also determine if the subdivision developer or homeowner would be responsible for a lesser amount owed."

"I don't see any reason why the county can't collect on those agreements. D31- Maui News "County Unpaid for Roadwork for Decades", November 16, 2010.

188. On December 17, 2010, Planning Committee item PC-17: DEFFERAL AGREEMENTS FOR SUBDIVISION IMPROVEMENTS, was referred to the Council Chair for term beginning January 2, 2011. D32 - Planning Committee Communication, dated December 17, 2010.

189. On January 9, 2012, Defendant Goode sent a letter to Elle Cochran, the Chair of the Infrastructure Management Committee for the Maui County Council, providing a status update on the collection of the "3 Lots or Less" subdivision deferral agreements. The letter was signed and approved for transmittal by Mayor Alan Arakawa and stated the following;

"The status of the deferral agreements is that we, through our Development Services Administration, have completed cataloging all known deferral agreements in the County of Maui.

Engineering Division has begun the process of identifying which deferral agreements are relevant to the Lower Honoapillani Road Phase IV improvements. This process may be more time consuming than originally contemplated as some of the tax map keys that were originally encumbered with the agreements have further subdivided, or otherwise had their tax map key changed.

Once we have identified which agreements are applicable, we will work with Department of Finance and Corporation Counsel to arrive at the fair calculation of the costs contemplated in the agreements, and then notify the affected land owners of their required contributions.

Once land owners have contributed, the deferral agreements can be expunged as an encumbrance to their title". D33 - Defendant Goode letter dated January 9, 2012.

190. On March 30, 2012, Council Member Elle Cochran sent a follow letter to Defendant Goode's January 9, 2012 letter stating the following;

"In your letter dated January 9, 2012, it states that Development Services Administration has completed cataloging all known deferral agreements in Maui County. These deferral agreements represent a major revenue that is continuously overlooked each year. In an attempt to maintain compliance with the responsibilities established in the Charter of the County of Maui, Article 9, I respectfully ask your response to the following requests.

191. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 9: Financial Procedures, provides structure and procedures for

preparation, submission, and funding of the annual County of Maui Budget and Capital Improvement

Programs as follows;

“Section 9-3.1. The budget shall present a complete financial plan for the operations of the county and its departments for ensuing fiscal year, showing all county funds on whether encumbered or unencumbered and estimated reserves and revenues. It shall be set up as provided by the council after consultation with the Mayor.

Section 9-6.c. The capital improvements proposed for five (5) years next succeeding the ensuing fiscal year, together with the method of financing it.

Section 9-7.3. Unless otherwise specifically provided for in this chapter, all fees, rates, assessments, and taxes imposed by the county shall be set in the annual budget.” See 34 - Maui County Charter, Article 9

192. On April 16, 2012, Defendant Goode sent a follow letter to Council Member Elle Cochran’s March 30, 2012 letter relating to Deferral Assessments as they Relate to Budget Revenues - Fees Rates, Assessments and Taxes, stating the following;

“We are in receipt of your letter dated March 30, 2012 regarding the above-referenced subject. Upon review, we are able to offer the following responses corresponding to each item in your letter.

1. A Complete catalog of all deferral agreements island wide, along with recorded agreements.
2. A list of roadway projects, both ongoing and proposed for the next five years, and an estimate of revenues from properties and deferral agreements located within each respective roadway project area.

The estimated revenues are based on the lineal feet of property fronting the County roadway. A typical deferral agreement does not specify the exact methodology for collecting these costs.

1. South Kihei Road – A total of six parcel 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 – This project has already been addressed in separate correspondence and currently under review.” D35 - Defendant Goode letter dated March 30, 2012.

193. On April 19, 2012, during Maui County Council hearings, Defendant Goode acknowledged his obligations to account for and collect upon developers deferred financial obligation as follows;

But it's our job, I feel our Department's job to find those deferral agreements and make people accountable for what they agreed to do. So we will figure it out and we will work to, you know, find

those and make sure those monies come in when we do projects in those areas. "D36 - Minutes to Maui County Council meeting April 19, 2012.

194. On May 18, 2012, Council Member Elle Cochran sent a follow letter to Defendant Goode's April 16, 2012 letter stating the following;

"It was stated in your response letter that the current cost for roadway frontage improvements is estimated at \$250 per lineal foot of property fronting the County Roadway.

1. Please provide explanation of how this value was derived. If applicable, please included references from recent improvement projects to support this cost derivation.
2. Please provide confirmation as to whether the Department has quantified the amount of roadway frontage for each deferral agreement that has been cataloged.

During the Budget and Finance Committee Meeting of April 19, 2012, you had stated that there exists instances where deferral agreements encumbers more than 3 lots.

3. Please provide confirmation as to whether the Department has identified which deferral agreements now encumber more than 3 lots. D37 - Letter from Council Member Cochran dated May 18, 2012.

195. On June 4, 2012, Defendant Goode sent a follow letter to Council Member Elle Cochran's May 18, 2012, letter regarding Deferral Assessments as they Relate to Budget Revenues - Fees Rates, Assessments and Taxes, stating the following;

"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, and 2) working out a formula for assessment for compensation on certain agreements."

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. D38 - Defendant Goode letter dated June 4, 2012.

196. On January 16, 2013, Maui Time Magazine published a cover story "Unpaid Debts – Will the County of Maui ever collect it's Deferral Agreements?" Defendant Goode made the following public statements;

"The Department of Public Works is going ahead with deferral agreements where applicable, and not going ahead when nothing is going on. When they come up, I'm guessing they will get rectified.

When the County comes in and does a project, then we would exercise the agreements. We are coming up on our first project now where we'd send out a letter to those with deferral agreements. The project, Goode explained, is the Lower Honoapiilani Road Phase IV development that affects Salem.

As for Salem's "Fairness Bill", Goode said that the County Corporation Counsel office said it wasn't legal." D39 - Maui Time, January 16, 2013

197. On March 22, 2014, Defendant Goode wrote a Viewpoint story published in the Maui News with statements as follows;

"If the sub divider elected to defer the improvements, he/she would be required to compensate the County of Maui for the cost of the improvements when performed by the County.

Many properties in Maui County have recorded agreements against their property for adjacent roadway improvements that were deferred by the original sub dividers, as allowed by ordinance. The recorded agreements make the clear that the subsequent owner of the property is responsible for the deferred improvements." *D40 - Viewpoint, March 22, 2014.*

198. On October 27, 2014, the State of Hawaii Department of Transportation Improvement Program approved 200 million dollars in funding for roadway Capital Improvement Projects throughout the County of Maui. The funds, provided through the Statewide Transportation Improvement Program (STIP) are allocated for funding in fiscal years 2015-2018. *D41 - Statewide Transportation Program Fiscal Years 2015-2018.*

199. Based on information and belief, prior to the request for State of Hawaii funding submission cutoff date of February 7, 2014, Defendant Goode provided the individual CIP project engineering estimates in accordance with the STIP program criteria to obtain the 2015-2018 Federal funding.

200. Based on information and belief, Defendant Goode has the necessary engineering information in his possession to issue the commencement of funding County Ordinance Title 18.020.020 H. "Notices of Intent to Collect" to property owners throughout the County of Maui who are obligated to pay their pro rata share of the approved 2015-2018 Capital Improvement Projects.

201. For almost four decades, Defendant Corporation Counsel has encumbered thousands of Maui County property titles, including Plaintiff Salem's, with an undefined open ended encumbrance in senior position on their title report that obligates property owners to pay for and unknown amount of the original developer's "deferred" financial obligations.

202. Based on information and belief, Defendant Goode and Defendant Corporation Council has authored and executed, and failed to account for, deferral agreements requiring pro rata contributions from developers for other forms of public improvements along the frontages of residential and commercial developments. D42 - County of Maui Agreement Deferring Placement of Utilities Underground

203. Based on information and belief, millions of dollars in public funds have been used by the County of Maui to pay for the entire cost of private developer's roadway, environmental drainage mitigations, utility improvements, and land division impacts throughout Maui County over the last four decades.

204. As evidenced herein, in accordance with the Maui County Charter, Section 9-6.c., on March 30, 2012, Defendant Goode provided to Council Member Elle Cochran a valuation for anticipated revenues for deferred roadway frontage improvements along Phase IV of Kihei Road of \$250.00 a lineal foot.

205. The Maui County Charter, Chapter 4, Department of Finance, Section 8-4.3.12, Powers, Duties, and Functions, provides the authority to the Department of Finance as follows "Review Assessment rolls for accessible public improvements prior to approval by the counsel and issue bills therefor after such approval has been granted. D43 - Maui County Charter, Chapter 4, Section 8-4.12

206. Based on information and belief, Defendant Goode and the Department of Finance had the necessary engineering estimates and rolls of "3 Lots or Less" subdivision agreements in their possession to adopt by ordinance through the Maui County Council's Budget process a formula for assessment of the pro rata amounts owed on the developer "3 Lot or Less" subdivision agreements for property owners affected by the approved 2015-2018 Capital Improvement Projects.

E. Defendant Corporation Counsel's obstruction of assessment legislation.

207. Plaintiff Salem is a former executive assistant to the Maui County Council under the Chair of Planning with extensive professional resume in land planning, roadway engineering design and construction, and residential subdivision design and development.

208. In early 2011, newly elected Mayor Alan Arakawa instructed Plaintiff Salem and Department of Transportation Director JoAnne Johnson Winer to work with attorney Ed Kushi of Defendant Corporation Counsel to establish by ordinance a prudent and fair method and formula of assessment and collection of the developer "3 Lots or Less" subdivision agreements.

209. Plaintiff Salem engaged the professional services of Willdan Financial Services, a professional engineering, geotechnical, and environmental consulting firm, to provide roadway assessment studies to the County of Maui.

210. On March 21, 2011, a Willdan Financial Services Proposal to Provide Assessment and Engineering Services for Phase IV of Lower Honoapiilani Road was sent to Department of Transportation Director JoAnne Johnson along with a Statement of Professional Qualifications. The proposal included the following professional assessment services;

Task 1: Review Development Agreements, Studies, and Existing Legislation.

Task 2: Prepare Parcel Database and Boundary Map.

Task 3: Develop Benefit Analysis and Method of Appropriation

Task 4: Technical Memorandum Summarizing Assessment Analysis. EI - Willdan Financial Services Proposal, dated March 21, 2011

211. Beginning in 2012, Plaintiff Salem, as a private citizen, over a period of almost one year, took it upon himself to meet with the elected Members of the Maui County Council on multiple occasions to seek insight and support for the drafting of legislative to adopt a formula of assessment and a prudent method of collection of the open ended "3 Lots or Less" subdivision deferral agreements.

212. On January 9, 2012, Mayor Alan Arakawa signed and approved for transmittal a letter from Defendant Goode to Council Member Elle Cochran, Chair of the Infrastructure Management Committee. The letter informed Council Member Cochran of the following;

“The status of the deferral agreements is that we, through our Development Services Administration, have completed the cataloging all known deferral agreements the County of Maui.

Once we have identified which agreements are applicable, we will work with the Department of Finance and Corporation Counsel to arrive at a fair calculation of the costs contemplated in the agreements, and then notify the affected land owners of their required contributions.

Once land owners have contributed, the deferral agreements can be expunged as an encumbrance from their title. E2- Letter from Defendant Goode, dated January 9, 2012

213. On April 5, 2012, Willdan Financial Services sent a letter of introduction to Council Member Elle Cochran along with a proposed scope of service including developing a benefit analysis and pro rata assessment allocation model for collection of roadway deferral agreements for the County of Maui. E3 - Willdan letter to Council Member Elle Cochran, dated April 5, 2012.

214. On March 19, 2012, May 18, 2012, and July 1, 2012, Plaintiff Salem sent letters to Council Members Joseph Pontanilla, Chair of the Budget and Finance Committee for the Maui County Council, and Elle Cochran, Chair of the Infrastructure Management Committee, seeking assistance on obtaining individual copies of the “3 Lots or Less” subdivision agreements to determine which agreements are adjacent to prior and currently proposed Capital Improvement Projects. E4 - Letters to Council Members Pontanilla and Cochran.

215. On July 26, 2012, Plaintiff Salem sent a letter to Danny Mateo, the Chair of the Maui County Council stating as follows;

“There has never been an adopted ordinance in the Maui County Code to allow the Department of Public Works to defer the developer’s financial obligations more than one time.

The Department of Public Works has intentionally violated the Charter by failing to account for these subdivision agreements that are future revenues to the County of Maui. Since this bill will first address the unaccounted for revenues in the annual Budget, I am hereby requesting the bill be transmitted to Council and referred to the Budget and Finance Committee. E5 - Letter to Danny Mateo, Chair of the Maui County Council, dated July 26, 2012

216. On October 8, 2012, Plaintiff Salem submitted a copy of the "Fairness Bill" to Chair of the County of Maui Cost of Government Commission seeking support for the Commission for the adoption of a formula for collection and assessment of the uncollected developer obligations.

E6 - Letter to Frank De Rego, Chair of the Cost of Government Commission, dated October 8, 2012.

217. Plaintiff Salem was assisted in the drafting of the "Fairness Bill" by Jordan Molina, executive assistance to Council Member Elle Cochran, Chair of the Infrastructure Management Committee of the Maui County Council.

218. On October 11, 2012, the Cost of Government Commission reviewed and discussed the "Fairness Bill" stating as follows;

"Mr. Salem is working with a current member of the County Council to develop a bill to resolve this issue fairly both for property owners and the County.

The Commissions Deputy Corporation Counsel, Scott Hanano, explained that the Office of Council Services has staff attorneys that draft bills it is only the Department of Corporation Counsel that has the power to draft and approve the form and legality of bills considered by the Council.

He also commented that draft bill Mr. Salem request commission to review has not been approved by the Department of Corporation Counsel." E7 - Cost of Government Minutes, October 11, 2012

219. On October 18, 2012, Council Member Danny Mateo, Chair of the Maui County Council, sent the "Fairness Bill" (PC-17) to Council Member Don Couch for Maui County Council Planning Committee scheduling. The proposed amendment to Title 18.20.040 of the Maui County Code, was reviewed by Council Services of the Maui County Council prior to submission to Council Member Couch. E8 - Council Communication October 18, 2012.

220. On November 7, 2012, Plaintiff Salem sent a follow up letter to Frank De Rego, Chair of the Cost of Government Commission. The theme and foundation of the letter is stated as follows;

"History has proven there is no place for citizens or County employees to go with their complaints or concerns relating to Corporation Counsel and decisions of appointed Directors.

The current structure of Maui County Government allows Corporation Counsel to influence every branch of government and every citizen trying to protect their property rights and this community". E9 - Plaintiff Letter to Cost of Government Commission, November 7, 2012.

221. Plaintiff Salem has obtained a defaming and underhanded internal communication sent by Defendant Wong to Mayor Arakawa, Council Chair Danny Mateo, and all Members of the Maui County Council dated November 23, 2012 during the final stages of the scheduling of Plaintiff Salem's "Fairness Bill" for public review and Maui County Council consideration. E10 - Defendant Wong Memorandum dated November 23, 2012.

222. For reasons unexplained and yet discovered, Defendant Wong went against Mayor Alan Arakawa's directive and obstructed Plaintiff Salem's and Director Johnson Winer's efforts to adopt through the legislative a formula for assessment and a method of collection of the developers "3 Lots or Less" subdivision deferral agreements.

223. Defendant Wong not only influenced and obstructed the legislative process by advising Council Member Don Couch to extinguish Plaintiff Salem's good faith efforts to follow Mayor Arakawa's directive, but also induced a campaign of untruthful defamatory allegations against Plaintiff Salem, a former County employee attempting to continue to serve the public interest.

224. Based on information and belief, Defendant Corporation Counsel has exhibited a pattern of obstructing citizen's access to elected Members of the Maui County Council when questions and concerns are raised relating to the decisions of the politically appointed Directors of the Maui County executive branch of government, and the Department of Corporation Counsel. E11 - Corporation Counsel Letter dated November 17, 2014.

225. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, County Council, Section 3-6.5 provides the power and duty to the elected members of the Maui County Council to conduct investigations of any department or function of the County and subject upon which they the Council may legislate. E12 - Maui County Charter, Article 3, Section 3-6.5.

F. Defendant's unlawful shifting of Developers financial obligations to public.

226. As evidenced *inter alia*, on May 18, 2012, Council Member Elle Cochran inquired with Defendant Goode on whether the Department of Public Works had identified which developer roadway improvement deferral agreements now encumber more than 3 lots. F1 - Letter from Council Member Cochran dated May 18, 2012.

227. Based on information and belief, Defendant Goode has failed, refused, and neglected to identify to the Maui County Council the subdivisions which Defendant Corporation Counsel has executed overlapping "one time" deferrals on developers financial obligations.

228. Plaintiff Salem has now obtained from dedicated public servants over 10,000 pages of the developer contractual "3 Lots or Less" subdivision deferral agreements executed by Defendant Corporation Counsel. At Plaintiff Salem's sole expense, the developer "Lots or Less" agreements are now cataloged in 21 notebooks and plotted by individual development location in Maui County on aerial Google maps. F2 - Aerial Plots and 21 Notebooks of "3 Lots or Less" Subdivision Agreements.

229. As evidenced therein, Defendant Arakawa, Defendant Goode, and Defendant Corporation Counsel have violated the ordinances adopted by the Maui County Council by unlawfully executing overlapping one time "3 Lots or Less" subdivision deferral agreements on the same parent parcels of land thru out Maui County including the Plaintiff's subdivision.

230. Undeniably, Defendant Public Works Directors Arakawa and Goode, and Defendant Corporation Counsel, have violated the ordinances adopted by the Maui County Council by intentionally assisting developers in circumventing the Title 18.20.040 - 4 lot subdivision required roadway engineering, improvements, and environmental mitigation conditions throughout Maui County.

231. On April 19, 2012, during Maui County Council hearings, Defendant Goode admitted his direct knowledge of Defendant Corporation Counsel's "crazy" execution and recordation of unlawful overlapping developer agreements as follows;

"Compounding all that that some deferral agreements, three lots had another future three lots and a future three lot, 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..." F3 - Budget and Finance Committee Minutes, April 19, 2012

232. On June 17, 2013, during Maui County Council Infrastructure Management Committee hearings, Defendant Goode presented a request for Dedication of Road Widening Lot for the oceanfront Waiohuli-Keokea Beach Homesteads Subdivision along South Kihei Road. See Minutes to Maui County Council Infrastructure and Environmental Management Committee, June 17, 2013.

233. The Defendant Goode request involved an illegitimate grandfathering of a "3 Lots or Less" subdivision roadway improvement deferral agreement along Phase IV of South Kihei Road, executed by Defendant Corporation Counsel on February 22, 2005. Defendant Goode stated as follows;

"This subdivision was submitted a number of years ago and had.. It was grandfathered in as it relates to its ability to do the three lots or last subdivision agreement also known as deferral agreements. So, it means when that section of South Kihei Road, which I think is Phase IV, if I'm not mistaken" F4 - Minutes to Maui County Council Infrastructure and Environmental Management Committee, June 17, 2013.

234. On June 25, 2013, Plaintiff Salem's Chapter 11 Bankruptcy Attorney David Cain sent a letter to the Maui County Council requesting the Members conduct an investigation into the irrefutable violations of the Maui County Code and Maui County Charter by the Defendants name herein. F5 - Attorney Cain letter to Council Member Riki Hokama, Chair of Policy and Intergovernmental Affairs Committee, dated June 25, 2013.

235. On July 5, 2013, the Maui County Council Infrastructure and Environmental Management Committee adopted by resolution the dedication of the frontage land of Lot 2-A-2-D of the Waiohuli-Keikea Beach Homesteads "3 Lots or Less" subdivision along Phase IV of South Kihei Road. F6 - Maui County Committee Report 13-72.

236. On August 2, 2013, Council Member Riki Kakama transmitted to the members of the Maui County Council the Attorney Cain communication relating to a request for investigation into the overlapping subdivision deferral agreement. F7 - County of Maui Council Regular Meeting Communication NO. 13-238, dated August 2, 2013

237. On November 19, 2013 during the Maui County Council Infrastructure and Environmental Management Committee meeting, the subject of the deferral of developer subdivision requirements was addressed by attorney Council Member Don S. Guzman has follows;

"And when you stated previously, you mentioned cost assessments are being deferred. That is a concern to me. What kind of cost of assessment is being deferred? Things, I mean those are questions that I have in mind because is it something that the developer should have done and now we're taking it over and later on we absorb the cost?"

F8 - Minutes to Maui County Council Infrastructure and Environmental Management Committee, November 13, 2013.

238. On February 2, 2014, after the receipt and plotting of the 10,000 pages of individual developer "3 Lots or Less" Subdivision Agreements, Plaintiff Salem sent a letter to attorney Michael Hopper of Defendant Corporation Counsel stating as follows;

"Since 1974, the Maui County Code required subdivisions of more than 4 lots to install full roadway and drainage improvements to their subdivision frontages. The original oceanfront parent parcel along South Kihei Road has been subdivided 3 times resulting in 6 oceanfront parcels. Three separate overlapping one time "3 Lots or Less" subdivision deferral agreements have been drafted and recorded by Corporation Counsel.

If history repeats itself, County and Federal taxpayer funds will be used to pay for oceanfront developer's subdivision entitlement obligations along Phase IV of South Kihei Road." F9 - Letter to Attorney Michael Hopper of Department of Corporation Counsel, dated February 2, 2014.

239. Evidence now proves that Defendant Corporation Council, Defendant Arakawa, and Defendant Goode, along with their predecessor Directors' of the Department of Public Works, have expanded the exploitation of the "3 Lots or Less" subdivision deferral agreements to large residential subdivisions wherein each single family home in the development is now encumbered with a "3 Lots or Less" subdivision agreement. F10 - A&B Subdivision SF-7 - 55.871 Acres (LUCA File No. 2.1860)

240. Evidence now proves that Defendant Corporation Council, Defendant Arakawa, and Defendant Goode, along with their predecessor Directors' of the Department of Public Works, have expanded the exploitation of the "3 Lots or Less" subdivision deferral agreements to commercial and industrial developments throughout Maui County. F11 - Lipoa Land, LLC and Trans Warehouse Associates (LUCA File No, 3.2036)

241. Evidence further proves that Defendant Goode and Defendant Arakawa have also exploited the one time exemption for developer's payment of Park Fees for subdivisions, and overlapping subdivisions, containing "3 Lots or Less", throughout Maui County. F12- Maui County Code, Title 18.16.320I.2.

242. On December 2, 2013, Plaintiff Salem sent a letter to Defendant Goode documenting the confirmed findings of the Department of Parks and Recreation that no records of Park Fee payments or assessments exist in the two unlawful overlapping re subdivisions of the oceanfront "3 Lots or Less" subdivision file #3.1206. F13 - Plaintiff Salem letter to Defendant Goode, dated December 2, 2013.

243. Evidenced by the "History of Uncollected Developer Agreements", in direct violation of the Maui County Charter, Defendant's Corporation Counsel, Defendant Goode, and Defendant Arakawa, by and through the continuous execution of "3 Lots or Less" subdivision agreements, and overlapping "3 Lots or Less" Subdivision Agreements have knowingly violated the procedures and policies established by ordinance for the County of Maui to incur and to pay for millions of dollars of private developers financial obligations. F14 - "History of Uncollected Developer Agreements".

244. As evidenced herein, Defendant Corporation Counsel has failed to serve the public interest by taking lawful corrective action or enforcement to address the multiple admissions of violations of the provisions of the Maui County Code and the Maui County Charter by Defendant Goode and Defendant Arakawa, including the multiple Defendant violations in Plaintiff Salem's subdivision which is direct and proximate cause of Plaintiff Salem being harmed and his damages.

G. Defendant Corporation Counsel's concealment of evidence and public documents.

245. In 2001, Plaintiff Salem discovered that unknown quantities of developer's "3 Lots or Less" subdivision deferral agreements executed throughout Maui County by Corp Counsel were unaccounted for by Corp Counsel and Defendant Goode.

246. Since 2001, Corp Counsel has obstructed every public and Maui County Council Member request and demand for complete production of all forms and types of developer deferral and assessment agreements.

247. The Maui County Charter, Article 13, Section 13-9 states as follows;

Section 13-9: All books and records of every department shall be open to inspection of any person at any time during business hours, except as other provided by law. G1 - Maui County Charter, Article 13, Section 13-9.

248. On November 14, 2012, to facilitate the adoption of legislation for assessment of a fair formula of collection of the developer obligations, Plaintiff Salem once again submitted a formal Request for Inspection of Public Documents to the Department of Public Works including requests for copies of ledgers and GIS maps depicting parcels of land throughout Maui County encumbered by "3 Lots or Less" Subdivision Agreements. G2 - Request for Inspection of Public Documents.

249. On December 18, 2012, the Department of Public Works **denied** Plaintiff Salem's request for the public documents claiming a "Deliberate Process Privilege / Frustration of a Legitimate Government Function". G3 - Written Acknowledgment to Requester dated December 18, 2012.

250. In June of 2014, Corp Counsel obstructed and refused to honor Rule 2004 Subpoenas issued in the United States Bankruptcy Court for production of complete copies of the uncollected developer contractual agreements during Plaintiff's Salem's Chapter 11 Bankruptcy. G4 - Rule 2004 Subpoenas served upon Defendant Corporation Counsel.

251. ~~Ank~~ will be proven at trial, Defendant Corporation Counsel's concealment of public documents during Defendant's 2014 Chapter 11 Petition are the direct and proximate cause of irreparable harm and damages to Plaintiff Salem and his family.

252. As of the date of this complaint, the degree of malfeasance, misfeasance, and nonfeasance by the Defendants involving violations of the Maui County Code and the Maui County Charter have as yet to be quantified and fully discovered.

H. Defendant's unlawful and damaging infringement of Plaintiff's property title.

253. As evidenced herein, in accordance with Maui County Code Title 18.20.040 H, adopted by the Maui County Council on May 27, 2010, Defendant Arakawa sent via US Mail, an open ended "Notice of Intent to Collect" to property owners along Phase IV of Lower Honoapiilani Road for their pro rata share of monies owned on roadway improvements in accordance with the recorded "3 Lots or Less" Subdivision Agreements. H1 - Letter from Defendant Arakawa, dated May 27, 2010.

254. The Court is respectfully asked to take Judicial Notice of the fact the May 10, 2010, Notice of Intent to Collect sent to Plaintiff Salem from Defendant Arakawa, states as follows;

"It should be noticed the final project costs have not been determined as of this juncture, so it not possible to provide you with the pro rata share of the costs relevant to the original subdivision.

It is also noted that your share would likely be determined in consultation and agreement with other lots comprising the original subdivision" H2 - Defendant Arakawa Notice of Intent to Collect, dated May 27, 2010

255. As evidence herein, the original Anka Inc subdivision contained "3 Lots or Less", Lot 48A, Lot 48B, and Lot 48C. H3 - Anka, Inc subdivision map.

256. On June 1, 2010, Defendant Arakawa sent a follow up letter via US Mail to Plaintiff Salem informing him that 5 parcels were now bound by the Anka, Inc "3 Lots or Less" subdivision deferral agreement, including the 3 parcels created by the re subdivision of Lot 48A,

resulting in Lot 48A-1, Lot 48 A-2, and Lot 48A-3. See Letter from Defendant Arakawa, dated June 1, 2010.

257. As evidenced herein, on November 15, 2010, Defendant Arakawa informed the Maui County Council Planning Committee of the following;

“Yes. And again, it’s going to be between the owners of the original 3 lots for them to figure out who pays what portion of County tab. And that’s what the original lot owners will have to haggle or negotiate over.

But I don’t believe, or the Public Works Director has the authority to now to basically determine what share would be because the preexisting agreements do not mention anything of the sort.” H4 - Planning Committee Minutes, November 15, 2010

258. The November 15, 2010 public statement by Defendant Arakawa contradicts Defendant Arakawa’s public statement to the Maui County Council Infrastructure Management Committee on February 1, 2010 as follows;

“So the County would have to determine what the pro rata share would be.” H5 - Minutes to Infrastructure Management Committee, February 1, 2010

259. As evidenced herein, the preexisting “3 Lots or Less” Subdivision Agreement recorded on Plaintiff Salem’s Lot 48C property states as follows;

“Improvements to existing streets may be deferred for a subdivision containing 3 Lots or Less, provided sub-divider or owner, their heirs, executors for assigns agree to pay their pro rata share of the cost of road improvements pursuant to the terms of the ordinance authorizing said improvements by the County or to a formula determined by the County.” H6 - Subdivision Agreement, 3 Lots or Less, recorded November 7, 2013, Maui County Code Title 18.20.040

260. On January 15, 2011, Defendant Salem entered escrow with Old Republic Title and Escrow for the sale of the Hui Road property. (Escrow No. 6827002856) In accordance with Section C-12 of the Hawaii Association of Realtors purchase and sale agreement, Plaintiff Salem disclosed to the buyer the “Notice of Intent to Collect” mailed to Phase IV property owners by Defendant Arakawa. H7 - Hawaii Association of Realtors Purchase and Sale Agreement, Section C-12, signed February 2, 2011

261. On February 3, 2011, Old Republic Title and Escrow sent Defendant Corporation Counsel a Request for Payoff of Lien or Judgment to obtain a pro rata payoff amount for

the County of Maui "3 Lots or Less" subdivision agreement lien on Plaintiff Salem's property. See Request for Payoff of Lien or Judgment, dated February 3, 2011.

262. On February 24, 2011, Old Republic Title and Escrow Officer Connie Stevenson sent a communication directly to Defendant Wong as follows;

"On February 7, 2011 a request for figures to pay off an open Subdivision Agreement (3 Lots or Less) for TMK (2) 4-3-015055 was delivered to your office. I have spoken with Angela Andrette twice since then and she is aware the seller of the property is anxious to have this agreement paid off for his property or removed from his title so he can issue title to his buyer free and clear of this potential lien.

I have been now been asked by the seller to communication in writing. So I am requesting a statues on the demand for payment or if the County will be issuing a partial release of agreement for this parcel with a zero demand." H8 - Old Republic communication, dated February 24, 2011.

263. Corp Counsel failed, refused, and neglected to respond to Old Republic Title and Escrow's request to facilitate Plaintiff Salem's good faith attempt to pay his "alleged" pro rate share of the noticed collection of the roadway improvement costs associated with the Phase IV of Lower Honoapiilani Road "3 Lots or Less" subdivision agreement.

264. On February 21, 2011, Prudential Maui Realtors Agent Lawrence Carnicelli sent a letter to Old Republic Title and Escrow Officer Connie Stevenson as follows;

"Based on the professional opinions of two appraisers that have determined this property cannot be assessed due to the open ended County encumbrance, unfortunately we are limited solely to all cash buyers that do not require bank loans or appraisals. H9 - Prudential Maui Realtors letter dated February 21, 2011.

265. Attached hereto, is copy of a letter from Hawaii Certified Residential Appraiser Blue Hawaii Consulting (#CRA-690) informing Plaintiff Salem that without a committed dollar amount owed on the senior County of Maui encumbrance on the Hui Road home, the property is not appraisable. H10 - Letter to Plaintiff Salem from Blue Hawaii Consulting.

266. Attached hereto, is a copy of Plaintiff Salem's letter to Ted Yamamura, appraiser for ACM Consultants, Inc., confirming his denial of a requested appraisal of the 8 Hui Road E property due to the open ended County of Maui encumbrance recorded in senior position on the subject property. H11 - Plaintiff Salem letter to ACM Consultants, Inc. dated November 24, 2010.

267. On March 25, 2011, a notice of cancelation of the Hui Road escrow was sent to Plaintiff Salem from Old Republic Title and Escrow. H12 - Old Republic Title and Escrow Notice of Cancelation dated March 25, 2011.

268. On August 30, 2011, Whaler's Realty wrote a letter to Plaintiff Salem relating to their review of the Hui Road title report in preparation for a real estate broker listing of Plaintiff's Salem's Hui Road property as follows;

"Because of the unknown financial obligations to any owner of this property, this subdivision agreement on your title provides poses an unexplainable disclosure issue and clouds the title of the subject property.

Regretfully, we must decline the opportunity to assist you with the sale of your property." H13 - Whalers Realty letter dated August 30, 2011.

269. In May of 2014, during the a judicial foreclosure of the Plaintiff's Hui Road home, the tenant occupying the Hui Road home approached Plaintiff Salem with an offer to purchase the home for his family.

270. To facilitate the sale and escrow, on May 13 and June 24, 2014, escrow Office Rena Day of First American Title Company sent to Defendant Corporation Counsel a Request for Payoff Amount of the pro rata share of Plaintiff Salem's "3 Lots or Less" roadway improvement costs associated with Phase IV of Lower Honoapiilani Road. H14 - First American Title Request for Payoff Amount

271. As evidenced herein, on the date of "Notice of Intent to Collect", Defendant Arakawa and the Maui County Council had in their possession complete Phase IV of Lower Honoapillani Road engineering plans and pro rata roadway construction estimates provided to the Department of Public Works, and Council Member JoAnne Johnson, by the Phase IV project engineer, ATA, for each individual "3 Lots or Less" subdivision frontage along Phase IV.

272. As evidence herein, based on information and belief, Defendant Goode completed and submitted the individual CIP project engineering cost estimates prior to the submission cutoff date of February 7, 2014, in accordance with the STIP program criteria to obtain

\$16,000,000.00 in funding for Phase IV of Lower Honoapiilani Road during the 2015-1018 Federal funding period.

273. As evidenced herein, on April 16, 2012, Defendant Goode provided to Maui County Council Member Elle Cochran a current roadway calculation for the anticipated assessment amount of \$250.00 per lineal foot for “3 Lots or Less” subdivisions along Phase IV of South Kihei Road.

274. On June 30, 2014, attorney Michael Hopper of Defendant Corporation Counsel sent a letter and discreditable Declaration from Defendant Goode to Rena Day, Escrow Officer for First American Title stating as follows;

“In response to your letters of May 13, 2014, and June 24, 2014, attached please find an affidavit of David Goode provided to One West Bank, FSB proceeding. As the affidavit makes clear there is currently no pay off demand for the subdivision agreement recorded on the identified property.

Should the County perform the improvements covered by the agreement in the future, it may assess the property owner for their pro rata share in accordance with the agreement.” See H15 - letter from attorney Michael Hopper, dated June 30, 2014.

275. The Declaration of Defendant Goode attached to attorney Hopper’s letter dated June 30, 2014, declared under Penalty of Perjury as follows;

“The County of Maui, may or may not, elect to assert a monetary assessment against the properties at some point in the future”.

276. Since 2001, Defendant Arakawa, Defendant Goode, and Corp Counsel have testified before the Maui County Council acknowledging their failure to keep records and track during annual budget hearings the revenues owed to the County of Maui from thousands of developer “3 Lots or Less” contractual subdivision agreements.

277. As evidenced herein, Defendant Arakawa, Defendant Goode, and Defendant Corporation Council have confirmed in public testimony their administrative obligations in Title 18.20.040 H of the Maui County Code adopted by the Maui County Council to notice and collect upon the “3 Lots or Less” developer agreements.

278. As evidenced herein, on January 9, 2012, Defendant Goode obtained the authorization from Mayor Arakawa to send a letter to Council Member Elle Cochran stating that once the Department of Finance and Corporation Counsel arrived at a fair calculation of the costs contemplated in the agreements the affect land owners would be notified of their “**required contributions**”.

279. Under Chapter 5, Section 8-5.3, Maui County Charter, Powers, Duties, and Function of the Director of Public Works, Defendant Goode does not have the administrative authority to erase and amend ordinances adopted by the Maui County Council and govern whether the County of Maui “may or may not” collect upon developer’s contractual obligations. HI6 - Maui County Charter, Section 8-5.3

280. As will be proven at trial, the damaging “*may or may not*” Declaration of Defendant Goode in June of 2014, along with the grossly negligent and, or fraudulent Notice of Intent to Collect mailed by Defendant Arakawa alerting property owners they will have “haggle” with fellow property owners, developers, and attorneys employed by Defendant Corporation to determine the pro rata costs owed to the County of Maui, are not supported by any law or ordinance adopted by the Maui County Council.

I. Defendant Corporation Counsel’s concealment of attorney conflicts of interests

281. On July 3, 2008, the County of Maui’s Professional Services Procurement Selection Committee met to consider the procurement of outside counsel attorney Margery Bronster to assist the County of Maui in various legal matters arising out of the announced decision of Molokai Utilities, Inc., et al to cease and desist water services as of August 31, 2008. The Corporation Counsel procurement communication forwarded to the Maui County Council stated as follows;

“The Bronster firm has completed its conflict check and reports no conflicts” II - Department of Corporation Counsel Attorney Brian Moto communication dated July 3, 2008

282. August 8, 2008, the Maui County Council adopted Resolution 08-67, authorizing the employment of attorney Margery Bronster of the law firm Bronster & Hoshibata as special counsel to represent the County of Maui in all matters pertaining to the legal claims relating to water and wastewater public utility service on Molokai. 12 - Maui County Council Resolution 08-67, April 8, 2008.

283. On December 19, 2008, the Maui County Council adopted Resolution 08-105, authorizing an additional \$200,000.00 in legal fees to Attorney Bronster above the original \$100,000.00 authorized in Resolution 08-67. 13 - Maui County Council Resolution 08-105, December 19, 2008.

284. On June 3, 2010, the Defendant Corporation Counsel attorney Jane Lovell informed the Council Members that Defendant Corporation Counsel was running out of money on the Bronster firm's contract. Attorney Bronster provided a litigation update to the Council Members including the following statement;

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

So it's important for us to fight the fight to show the utility is not there standing alone. Standing behind it is a developer who made promises to the County and we are going to pursue those promises in the Second Circuit Court action."

285. On June 18, 2010, the Maui County Council adopted Resolution 09-14, authorizing an additional \$200,000.00 in legal fees to Attorney Bronster in addition to the original \$300,000.00 authorized in Resolution 08-67 & 08-105. 14 - Committee of the Whole communication, dated June 18, 2010.

286. On August 8, 2010, Chris Hamilton of the Maui News published an article "Costs piling up two years into Molokai water lawsuit" informing the public of the following;

"The County has already paid \$500,000.00 for former Attorney General Margery Bronster to serve as outside counsel, in addition to the time spent by County attorneys on the case." 15 - Maui News, August 8, 2010.

287. May 21, 2012, Defendant Corporation Counsel Attorney Jane Lovell

responded to Plaintiff Salem's May 11, 2012, Request for Government Records pertaining to the procurement of Attorney Bronster along with copies of Conflicts of Interest Checks. Attorney Lovell informed Plaintiff Salem as follows;

“Regarding conflict checks, our offices routinely reviews County’s litigation databases prior to engaging outside counsel. (emphasis Salem) In addition, prospective outside counsel are also asked to perform a conflict check based on their records. **Documents are not usually generated by this department in the course of these checks, as was the case here.** (emphasis Salem)

Therefore, we have no documents to produce in response to category number 3, above, other than the reference to (Bronster) conflict check contained in the procurement committee report itself.” I6 - Letter from attorney Jane Lovell of Defendant Corporation Counsel, dated May 21, 2012

288. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, Section 3-6.6, provides the power and duty to the elected members of the Maui County Council to retain and employ outside Counsel for any special matter presenting a real necessity for such employment. I7 - Maui County Charter, Article 3, Section 3-6.6

289. On July 3, 2008, the date of procurement and employment of Bronster & Horshibata, and for years thereafter, attorney Bronster was representing developer Lot 48A, LLC in legal Arbitration proceedings and in the United States District Court (Civil No. 07-1-0540(3) relating to Plaintiff Salem's requests and demands for production of Lot 48A, LLC's oceanfront subdivision SMA permit, applications, engineering valuations, studies, and correspondence with the County of Maui.

290. On July 3, 2008, the date of procurement and employment of Bronster & Horshibata by Defendant Corporation Counsel, and for years thereafter, Developer Lot 48A, LLC private land planning firm and SMA Permit author and consultant MAH partner Defendant Arakawa, was also employed by the County of Maui as Director of Public Works.

291. On July 9, 2009, Plaintiff Salem issued a First Request for Production of Documents to Lot 48A, LLC's legal counsel Bronster Hoshibata in Arbitration Case No. 07-0357 including the following document requests;

8. Any and all documents constituting, referring, or relating to Lot 48A, LLC's application for a Special Management Area permit, including but not limited to all correspondence with, and approvals issued by government authorities, permits, and variances.

15. Any and all documents constituting, referring, or relating to estimates, proposals, and / or valuations of the cost of obtaining a Special Management Area Permit with regard to the Lot 48A, LLC Subdivision and / or any individual lots with the Lot 48A, LLC Subdivision.

292. In Response to the Plaintiff Salem's First Request for Production of Documents, Lot 48A, LLC's and Corp Counsel's legal counsel Bronster Hoshibata untruthfully and deceptively stated as follows;

"Respondent Lot 48A, LLC objects to this request on the grounds that it is overly broad, unduly burdensome, harassing, vague, and ambiguous and seeks documents already in possession of claimant.

Based on these objections, **Respondent will not be producing documents relating to or relating to the Special Management Area Permit.**" (emphasis Salem) 18 - Respondent lot 48A, LLC's Response to Claimant Christopher Salem's First Request for Production of Documents

293. Evidenced by the attached letter from Maui County Council Member JoAnne Johnson, Corp Counsel and attorney Bronster concealed from the Maui County Council, Bronster Hoshibata's simultaneous representation of Defendant County of Maui and Developer Lot 48A, LLC in a legal dispute with Plaintiff Salem over violations of the County of Maui's subdivision ordinances and Shoreline Management Area (SMA) permitting, rules, and regulations. 19 - Council Member JoAnne Johnson's letter to Plaintiff Salem

294. Evidenced the attached letter from Maui Council Member JoAnne Johnson, the discovery of unfulfilled, expired, and intentionally concealed Lot 48A, LLC SMA permits and studies authored by Defendant Arakawa's land planning firm MAH was made while Lot 48A, LLC's attorney Bronster was employed by Corp Counsel.

295. As we now know, special counsel Bronster Hosibata received over a half million dollars in public funds for legal fees while employed by Defendant Corporation Counsel. As will be proven at trial, Bronster Hoshibata simultaneously received upwards to a half of million dollars in legal fees from private developer Lot 48A, LLC while employed by Defendant Corporation Counsel.

296. February 7, 2014, Plaintiff Salem's Chapter 11 Attorney David Cain

provided notice and demand to Defendant Wong to address the financial injury to Plaintiff Salem caused by Defendant County Corp Counsel's conflicting employment and the collective concealment of County of Maui public documents by attorney Margery Bronster, Corp Counsel, and Defendant Arakawa on behalf of developer Lot 48A, LLC. 110 - letter to Defendant Pat Wong from attorney David Cain, dated February 7, 2014

297. In direct violation of the State of Hawaii Supreme Court Rules of Professional Conduct, Defendant Wong refuses to take corrective action to reconcile the damages caused by Corp Counsel's professional attorney violations. Defendant Wong continues to serve the financial interests of private developer Lot 48A, LLC at the expense of the public and further injury to Plaintiff Salem and his family.

J. History of Developer Lot 48A, LLC's Unlawful (re) Subdivision of Oceanfront Lot 48A

298. On March 10, 2000, Anka, Inc sold oceanfront Lot 48A to developer Lot 48A LLC by Warranty Deed recorded with the Bureau of Conveyance. 11 - Declaration of Covenants, Conditions, and Restrictions Affecting Lot 48A, dated March 10, 2000 (Document No. 2000-032185)

299. The Warranty Deed and Anka, Inc Declarations attached thereto, were prepared by the law firm of Mancini, Welch and Rowland, LLP on behalf of Anka, Inc.

300. The Court is respectfully asked to take Judicial Notice that attorney Paul Mancini was formerly employed by Defendant County Corp Counsel.

301. The Anka, Inc. Declaration provided further development restrictions, view preservation, and specific financial protection for the underlying subdivision property owners including Plaintiff Salem's Lot 48C as follows;

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

302. Based on information and belief, immediately thereafter, Lot 48A LLC began the re-subdivision process on Lot 48A to create Lots 48A-1, 48A-2 and 48A-3. *J2* - Munekiyo, Arakawa, and Hiraga, Inc. ("MAH") plat of Lot 48A, LLC's re subdivision of Lot 48A.

303. At the time of the sale of Lot 48A to Lot 48A, LLC, Plaintiff Salem was in the architectural design process for his personal home of the adjacent parcel, Lot 48C.

304. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on April 6, 2000, a shoreline certification on the upper wash of waves was performed on Lot 48A by Unemori Engineering, Inc. *J3* - Unemori, Engineering, Inc. shoreline certification dated April 6, 2000.

305. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on May 9, 2000, developer Lot 48A, LLC, sent a letter to Planning Director John Min authorizing Munekiyo, Arakawa (Milton), and Hiraga, Inc. to proceed with the preparation, filing, and processing for a Special Management Assessment (SMA) Permit for a 3 lot (re) subdivision of oceanfront parcel 48A. *J4* - Lot 48A, LLC, letter to Planning Director John Min from Developer, dated May 9, 2000.

306. As evidence herein, at the time the May 9, 2000 MAH letter of authorization was sent from developer Lot 48A, LLC to Planning Director John Min, MAH was also employed by the County of Maui Department of Public Works to complete a 600 Page Environmental Assessment for the impacts of the proposed Phase IV of Lower Honoapiilani Road engineering, roadway, and drainage improvements.

307. Based on information and belief, at the time Defendant Arakawa's MAH land planning firm was simultaneously employed by the County of Maui Department of Public Works and developer Lot 48A, LLC, MAH had in their immediate possession a detailed set of demolition, drainage reports, and roadway improvement plans for Phase IV of Lower Honoapiilani Road from the project engineer Austin, Tsutsumi & Associates, Inc. ("ATA")

308. Evidenced herein, the Phase IV of Lower Honoapiilani Road Drainage Reports and Roadway Improvement Plans, Station 130+50 to 142+60, provided clear delineation of roadway improvements, required underground drainage structures and inlets along the entire Lower Honoapiilani Road frontage to the underlying Anka, Inc Subdivision and the roadway entry to Hui Road E.

309. On June 23, 2000, County of Maui Public Works Director Charlie Jencks provided Preliminary Subdivision Approval to Warren S. Unemori Engineering, Inc. for the re subdivision of the oceanfront Lot 48A of the Mailepai Hui Partition Subdivision, TMK (2) 2-3-015:004, LUCA File No. 4.805. J5 - County of Maui Preliminary Subdivision Approval Letter, dated June 23, 2000

310. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc. stated the following in Condition #11: "The one time exemption from construction of roadway improvements on existing streets (Hui Road E & Lower Honoapiilani Road) abutting subdivisions containing 3 Lots or Less **was used as part of the previous Mailepai Hui Partition subdivision** (Luca File No 4.686)

311. The Maui County Subdivision Code, adopted by the Maui County Council, Section 18.08.100 – Approval, states as follows;

(c) Approval of the preliminary plat shall indicate the Director's directive to prepare detailed drawings on the plat submitted, provided there is no change in the plan of subdivision as shown on the preliminary plant and there is full compliance with all requirements of this chapter.

312. Later discovered and unavailable to Plaintiff Salem at the time, without notice to the general public or fellow owners of the Anka, Inc 3 Lot Subdivision, on May 16, 2010, the May 11, 2000 the Lot 48A, LLC re subdivision preliminary plat was submitted by Warren S. Unemori Engineering, Inc. to the Engineering Division of the Department of Public Works for LUCA File #4.805.

313. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, the Engineering redline comments and notations by the Engineer Division of the Department of Public Works on the Lot 48A, LLC May 11, 2000 preliminary subdivision plans included references

to roadway improvements to Lower Honoapiilani Road and the roads return into Hui Road E. J6 -

County of Maui Engineering Division red line comments for LUCA file #4.805

314. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc stated the following in Condition #12;

"A detailed final drainage report and site specific erosion control plan shall be submitted with the construction plans for review and approval. The drainage report shall include, but not limited to, hydrologic and hydraulic calculations, and the schemes for disposal of runoff waters.

315. The Preliminary Subdivision Approval sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc stated the following in Condition #15;

"Comply with the conditions of the Special Management Area (SMA) Minor Permit (SMA@ 2000 /0042 granted on June 6, 2000).

NOTE: Upon approval of the construction plans, the sub divider should verify with the Department of Planning to verify if a SMA Major Permit is required or if another SMA Minor Permit is required due to the additional construction work."

316. The Maui County Code Section adopted by the Maui County Council, Section 18.08.070 A. & 18.08.080 G, provides specific requirements to the engineer and applicant for information which shall be include with the submission of preliminary subdivision plat as follows;

Streets showing location, widths, proposed names, and approximate radii curves. The relationship of all streets to projected streets shown on the general plan, projected streets suggested by the Director to assure adequate traffic circulation in the area.

Improvements to be made by the developer and approximate time such improvements are to be completed. Sufficient detail regarding proposed improvements shall be submitted so that they may be check for compliance with the objectives of this chapter, State Laws, and other applicable ordinances.

Approval of the preliminary plat shall indicate the Directors directive to prepare detailed drawings on 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.

317. On June 6, 2000, Lot 48A, LLC was issued a SMA Minor Permit by the Department of Planning for Three Lot Subdivision of Lot 48A at Hui Road E and Related Subdivision Improvements at TMK: 4-3-105:004. J7 - Department of Planning SMA Permit SM@ 2000 / 0042, dated June 6, 2000.

318. In accordance with Special Management Area Rules for the Maui Planning Commission, Sections 12-2002-12 and 12-202, the Planning Department made the following determinations based on the developer Lot 48A, LLC's SMA Permit application and representations;

1. The project is a development.
2. The projects has a valuation not in excess of \$125,000.00 (Valuation: \$91,400.00)

319. At the time of issuance the Lot 48A, LLC SMA Permit issuance, in accordance with the Rules of Planning Commission, the threshold for a SMA Major Permit, public hearings, and environment assessment was a development valuation greater than \$125,000.00

320. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, on March 4, 2000, Lot 48A, LLC's engineering firm Unemori Engineering, Inc. executed and transmitted a \$91,400.00 Order of Magnitude Estimate development valuation to Lot 48A, LLC developer Tim Farrington. The transmittal stated as follows;

"Hope you're successful in convincing Planning that improvements will costs less than \$125,000.00"
J8 - Telecopier Transmittal from Warren S. Unemori Engineering, Inc, dated March 4, 2000.

321. Later discovered and unavailable for public viewing by Plaintiff Salem at the time, the Unemori Engineering, Inc. \$91,400.00 development valuation was Exhibit #6 to Defendant Arakawa's land planning firm MAH's authorized Special Management Area Permit Application and Assessment study prepared on behalf of Lot 48A, LLC in May of 2000. J9 - MAH's Special Management Area Assessment, dated May of 2000.

322. As evidenced therein, Defendant Arakawa's May 11, 2000 MAH SMA Permit application and SMA permit assessment provided a narrative description of the proposed development improvements, anticipated impacts, shoreline certification by Warren S Unemori, Inc., engineering plans, and construction valuations by licensed engineering firm Warren S. Unemori Engineering, Inc.

323. On June 6, 2000, Lot 48A, LLC was issued a SMA Minor Permit by the Department of Planning subject to the following conditions;

1. The construction shall be in accordance with the plans submitted on May 11, 2000.

324. As evidenced therein, Defendant's Arakawa May 11, 2000 MAH SMA Permit Application and Assessment, Section 5: Project Assessment Report: Description of the Proposed Improvements and Anticipated Impacts, stated as follows;

B. Proposed Action
Improvements proposed in connection with the subdivision include the following;

1. Installation of approximately 220 lineal feet of curb, gutter, sidewalk, and related improvements along Lower Honoapiilani Road.
2. Installation of approximately 142 lineal feet of curb, sidewalk and related improvements along the north side of Hui Road.

325. As evidenced therein, Defendant's Arakawa's May 11, 2000 MAH SMA permit Application and Assessment, Section 6.: Engineers Cost Estimate, provided a complete description, quantities, and unit prices for the grading, paving, and concrete curb and gutter, sidewalk, driveway apron, traffic control, and grassing of the entire roadway frontage improvements along Hui Road E and Lower Honoapiilani Road.

326. As will be proven at trial, the Defendants named herein were provided indisputable evidence that the Unemori Engineer, Inc.'s \$91,402 SMA Permit Order of Magnitude Estimate was false and deceptive with the stated intent of wishing "good luck" to the Developer in convincing the Department of Planning. Plaintiff Salem will be able to prove that the cost estimates denied the public and Plaintiff Salem their rights pursuant to Hawai'i State and Federal law, to protect both the coastal resources and violated Plaintiff Salem's personal property rights.

327. On October 9, 2009, Hunt admitted to the Maui County Council Planning Committee that the Department of Planning does not have the experience to question engineers SMA permit Order of Magnitude valuations.

"It's difficult to question a professional engineer who is willing to put their stamp, which we look at as a stamp of professional integrity on a document.

We talked to Public Works and asked them well could you look at it, and their response was kind of rely on the engineers stamp." J10 - Minutes to Maui County Council Planning Committee, October 12, 2009

328. In defense of Unemori Engineering, Inc.'s professional conduct, in accordance with Condition #11 of the Department of Public Works Preliminary Subdivision Approval letter sent to the Developer Lot 48A, LLC's authorized representative Warren S. Unemori Engineering, Inc., the MAH SMA Permit Order of Magnitude cost assessment did address the fact the one time deferral of the roadway improvements to Lower Honoapiilani Road and Hui Road E were exhausted on the underlying Anka, Inc "3 Lots or Less" subdivision and therefore was a requirement by ordinance for the Lot 48A, LLC (re) subdivision of the underlying Anka, Inc 3 Lots or Less Subdivision.

329. As evidenced herein, on May 11, 2000, Developer Hugh Farrington of Lot 48A, LLC signed, notarized, and authorized preparation, filing, and processing of Defendant Arakawa's MAH Application for Special Management Area Assessment for the (re) Subdivision of Lot 48A. J11 - Application for Special Management Area Assessment for the (re) Subdivision of Lot 48A, notarized dated May 11, 2000.

330. The Court is respectfully asked to take Judicial Notice of the findings expressed by attorney Galazin of Defendant County Corp Counsel on February 1, 2010, during Maui County Council Infrastructure Management Committee meeting as follows;

"What that was meant to spell out was were all of the different situations in which a property owner might have to pay for roadway improvements. So it's not only if you do a subdivision you have pay for roadway improvements, but also it might be for a SMA Permit." J12 - Minutes to Maui County Council Infrastructure Management Committee, February 1, 2010.

331. As evidenced herein, SMA Permit SM2 2000/0042 was signed and issued to Lot 48A, LLC by the Department of Planning subject to the MAH studies, conditions, assessments, and roadway construction and drainage mitigations along the frontages of Lower Honoapiilani Road and Hui Road E referenced in Defendant Arakawa's MAH SMA Permit Application and Assessments.

332. The Planning Commission's SMA rules and conditions, Section 12-202-24: Conflicts with other laws, states as follows;

“In case of conflict between the requirements of any other state law or County ordinance regarding the special management area, the more restrictive requirements shall (emphasis Salem) apply in furthering of this part.” J13 - Rules of County of Maui Planning Commission, Section 12-202-24

333. The Department of Planning has confirmed in writing Lot 48A, LLC’s SMA Permit SM2 2000 / 0042 has expired, no amendments were approved by the Department of Planning, and no final compliance reports were submitted to the Department of Planning by Developer Lot 48A, LLC. J14 - KIVA printout and letter from Department of Planning

334. On October 9, 2009, with Defendant Hunt present at the public meeting, Defendant Arakawa made the following statement to the Maui County Council Planning Committee; “Mr. Chair, the second three lot subdivision was the subject of Minor Permit, if I am correct. But the Conditions of the SMA Minor Permit, I mean it would still apply. (underline and emphasis Salem) From, from our standpoint, we, we would look to the Planning Department to basically enforce those SMA Permit conditions.” (underline and emphasis Salem) J15 - Minutes to Maui County Council Planning Committee, October 12, 2009

335. As of this date of this complaint, Developer Lot 48A, LLC’s remains in violation of the expired SMA Permit 2000 / 0042. Lot 48A, LLC’s SMA Permit conditions, assessments, and roadway construction and drainage mitigations referenced in the \$91,402.00 Unemori Engineering, Inc. Order of Magnitude SMA Permit valuation and the signed MAH SMA Permit Application and Assessment remain incomplete.

336. Defendant Spence was been noticed in writing by Department of Transportation Director and former elected member of the Maui County Council JoAnne Johnson Winer, that Lot 48A, LLC’s unfulfilled SMA Permit requires notice of noncompliance and enforcement by the Planning Department. J16 - Letter from JoAnne Johnson Winer to Planning Director Spence

337. On August 14, 2014, Plaintiff Salem’s bankruptcy attorney David Cain sent a letter to Defendant Wong warning the County of Maui of the extensive damages Plaintiff Salem would continue to suffer if Developer Lot 48A, LLC was not issued a Notice of Non Compliance. J17 - Attorney Cain Letter to Defendant Wong

338. Despite notice from a fellow Director of the County of Maui, Defendant Wong and Defendant Spence have failed to take any legal corrective action or enforcement of Lot 48A, LLC's unfulfilled and expired SMA Permit in accordance with the adopted Special Management Area Rules of Enforcement, Section 12-202-23.

K. Evidence of Defendant Arakawa's unlawful favors for private client Lot 48A, LLC

339. In February of 2001, Plaintiff Salem discovered Developer Lot 48A, LLC's intentions to (re) subdivide Lot 48A into 3 developable lots without completing the roadway frontage improvements to Lower Honoapiilani Road and Hui Road E.

340. On February 6, 2001, Plaintiff Salem filed an Information Request Form with the County of Maui Department of Public Works requesting a review of Developer Lot 48A, LLC's proposed Lot 48A (re) subdivision map and subdivision conditions. K1 – Department of Public Works Request Form.

341. As will be proven at trial, immediately upon employment with the County of Maui, on behalf of private client Lot 48A, LLC, **Defendant Arakawa concealed from the public and Plaintiff Salem** the signed MAH SMA Permit Application and Order of Magnitude Valuation depicting the required roadway frontage improvements to Lower Honoapiilani Road and Hui Road E.

342. Evidenced by the Transmittal of Developer Hugh Farrington sent to Plaintiff Salem on March 13, 2001, Developer Lot 48A, LLC falsely represented to Plaintiff Salem that they were not obligated to construct the roadway and drainage improvements to the Hui road frontage of Plaintiff Salem's Lot 48C along Hui Road E, or along the Lower Honoapiilani Road frontages to Lot 48B or Lot 48C. K2 – Transmittal of Hugh Farrington

343. Evidenced by the Transmittal of Developer Hugh Farrington, on March 13, 2001, Developer Lot 48A, LLC was now represented Mancini, Rowland, and Welch, the same law firm that drafted the Anka, Inc; Covenants and Conditions insuring the further division of Lot 48A would not result in any costs to be incurred by Lot 48B or Plaintiff Salem, owner of Lot 48C.

344. May 10, 2001, Planning Director John Min granted to Munekiyo & Hiraga, Inc a second time extension to Condition No. 3 of Lot 48A, LLC's SMA Permit SM2 2000/0042 as follows;

"3. That the construction of the subdivision improvements shall be initiated by August 31, 2001, and shall be completed within one (1) year of said initiation. K3 - Planning Director John Min letter to Munekiyo & Hiraga, Inc, dated May 10, 2001

345. The Court is respectfully asked to take Judicial Notice of the fact Defendant Arakawa is no longer a named partner of Munekiyo, Arakawa, and Hiraga, Inc on the May 10, 2001 letter from Planning Director John Min.

346. On July 19, 2001, Plaintiff Salem filed a Request for Government Records with the Planning Department for re subdivision of Lot 48A, including the following documentation;

- SMA Application - #SM220000042
- Improvement Valuation Summary

347. The Court is respectfully asked to take Judicial Notice that no documents were produced by the Department of Planning as requested by Plaintiff Salem.

348. As we now know, on July 19, 2001, the 30 Page Munekiyo, Arakawa, and Hiraga, Inc Special Management Area Assessment study, including the \$91,402.00 Unemori Engineering, Inc. Order of Magnitude Estimate prepared for Lot 48A, LLC, was missing from the County of Maui files.

349. As we now know, in direct violation of the Maui County Charter and the Maui County Code, immediately upon his employment as Deputy Director of Public Works in late 2000, Defendant Arakawa facilitated the October 31, 2001 final approvals of Lot 48A, LLC's (re) subdivision of Lot 48A in non-conformity with the Title 18 subdivision ordinances and noncompliance of the subdivision ordinances adopted by the Maui County Council and conditions of the signed and issued SMA Permit 2000 / 0042 authored by Defendant Arakawa's personal land planning firm MAH.

350. Charter of the County of Maui, Article 6, Chapter 5, Section 8-5.2

provides the duty and function of Director of Public Works as follows;

The Director of Public Works and Environmental Management shall:

1. Administer the building, housing, and subdivision ordinances and rules there under.
2. Approve proposed subdivision plans which are in conformity with the subdivision ordinance.

351. Maui County Code, Section 18.12.070 : Technical Review, states as follows;

Final Plat shall be examined as to whether it is substantially similar to the approved Preliminary Plat.

352. Evidenced by the County of Maui's Department of Public Works subdivision approval tracking system for Lot 48A, LLC's LUCA File No. 4805, in accordance with Condition #15 of the Preliminary Subdivision Approval letter dated June 23, 2000, the May 11, 2000 roadway engineering construction plans referenced in the signed MAH SMA Permit Application were not submitted to the Planning Department K4 – Maleipai Hui Partition Subdivision File No. 4805

353. As evidenced herein, Defendant Arakawa and MAH had direct knowledge that the roadway improvements and drainage mitigations referenced in Lot 48A, LLC's SMA Permit 2000 / 0042 and May 11, 2000 Subdivision Preliminary Plan would be become a financial obligation incurred by the County of Maui as a part of the Phase IV of Lower Honoapiilani Road CIP.

354. Defendant Arakawa, in direct violation of procedures, policies and provisions adopted by ordinance, incurred an illegal obligation for the County of Maui to pay for upwards to quarter million dollars in a private client Lot 48A, LLC's financial obligations.

355. As will be proven at trial, Defendant County Corp Counsel and Defendant Arakawa shall be held jointly and severally liable for the violations of the Maui County Charter as evidenced herein.

L. Evidence of Defendant Arakawa's collusion with private Developer Lot 48A, LLC

356. Under the terms and conditions of the underlying Anka, Inc "3 Lots or Less" Subdivision Agreement, upon issuance of (re) subdivision development rewards, entitlements, and SMA Permit to Developer Lot 48A, LLC, Defendant Arakawa and Corp Counsel were legally obligated to expunge the senior cloud and encumbrance on Plaintiff Salem's Lot 48C property title.

357. Evidenced by the findings set forth in the complete history of the Developer Lot 48A, LLC's Violations of SMA Permit and noncompliance of the County of Maui's Department of Public Works subdivision Condition #15, in August of 2001, Attorney Tom Welch entered Plaintiff Salem's neighborhood making fraudulent claims that his client was not obligated to complete roadway and drainage improvements to Hui Road E and Lower Honoapiilani Road. LI - History of Developer Lot 48A, LLC Violations

358. As we now know, Attorney Welch was facilitating the fraudulent acts of developer Lot 48A, LLC by drafting a warranty deed to privately amending the "3 Lots or Less" contractual agreement authored and recorded by Corp Counsel to obligate 5 property owners on two separate subdivisions to a pro rata share of the first developer's financial obligations.

359. As we now know, Defendant Arakawa, a public official, facilitated a conspired fraudulent act to conceal public documents to serve the financial interests of private client Developer Lot 48A, LLC.

360. As will be further proven at trial, Defendant Arakawa's unlawful acts then continued and compounded by Defendants Goode, Wong and Spence, were the direct and proximate cause of fifteen years of duress and financial demise of Plaintiff Salem and his family. Defendant Arakawa's willful, intentional and deceptive acts shall be proven to constitute egregious criminal conduct that violates the Maui County Charter, Maui County Code, Hawai'i State Law, and Federal law, including, but not limited to mail fraud and racketeering charges.

361. All times, Defendant County of Maui was responsible for Arakawa's, Goode's, Wong's, and Spence's acts and omissions which have harmed the public interest and are the direct and proximate cause of harm and damages to Plaintiff Salem and his family.

M. NOAA Studies, SMA Permit Enforcement, and Demands for Director Discipline:

362. In January of 2010, the Office of Ocean and Coastal Resource Management of the United States Department of Commerce produced Final Evaluation Findings for State of Hawaii Coastal Zone Management Program. ("HICZMP") MI - Hawaii Coastal Zone Management Program – Final Evaluation Findings

363. Evidenced by the findings therein, "compliance and enforcement of SMA Permit conditions continues to remain an issue".

364. HICZMP SMA Permit applications and conditions for the County of Maui are monitored and enforced solely under the authority of the County of Maui Planning Department.

365. The Court is respectfully asked to take Judicial Notice of the multiple previous lawsuits filed by private citizens against the County of Maui were caused by the Planning Director's refusal and failure to enforce and seek compliance for Developer's signed and issued SMA Permit conditions and environmental mitigations.

366. As will be proven at trial, during the same time period when Defendant Arakawa was issuing the illicit final subdivision approval to private client Developer Lot 48A, LLC, Defendant Goode issued final subdivision to developer Olowalu Elua Associates, LLC for the Olowalu Mauka Subdivision (LUCA File No. 4.766) M2 – Olowalu Mauka Final Subdivision Approval.

367. Final subdivision approval was conditioned upon compliance with SMA Major Permit 99/0021. Pursuant to the County of Maui Planning Commission's SMA Major Permit conditions, all infrastructure improvements, including fire, drainage, and traffic-related

improvements, were to be completed prior to final subdivision approval, or be bonded in accordance with Maui County Code. (Title § 18.04.020)

368. On February 25, 2010, Maui County Zoning Inspection Sonny Huh issued a notice of violation to developer Olowalu Elua Associates, Inc. for non-compliance with the SMA Permit issued ten years prior on September 19, 2000. M3 – Notice of Non Compliance

369. In October of 2010, after years of seeking compliance and enforcement by the Planning Director for the County of Maui of the SMA Major Permit, a lawsuit was filed by against the County of Maui by a property owner for the failure to enforce the conditions of Developer Olowalu Elua Associates, LLC's SMA Major Permit. M4 – Maui News Article, October 3, 2010

370. As a result of the private citizen's complaints and lawsuit, Developer Olowalu Elua Associates, LLC was required to apply for a new SMA Major Permit and complete the millions of dollars of roadway, infrastructure, and environmental mitigation improvements over ten years after the subdivision received final subdivision approval from Defendant Goode in violation of the Maui County Code, Maui County Charter, and Rules of Planning Commission.

371. As will be proven at trial, Defendant Goode has a documented history of violating the Maui County Charter, including Section 10.4., Prohibitions, to serve the financial interests of private developers and his future employers. *See H5* - History of Defendant Goode's violation of Maui County Charter

372. The Olowalu action occurred on the heels of the costly Montana Beach litigation involving a Christina Hemming's private legal action against the County of Maui involving the disputed permitting of an oceanfront 3 unit project wherein the development was initially granted unlawful waivers from the public hearings by the Planning Director during the SMA Permitting process. See M5 - Star Bulletin Article March 25, 2008

373. The Court is respectfully requested to take Judicial Notice that attorney Tom Welch of the law firm Mancini Welch and Geiger, represented developer Montana Beach, LLC,

developer Anka, Inc., developer Lot 48A, LLC, and developer Olowalu Elua Associates during the subdivision and SMA Permitting process during the time period of 2000 to 2002.

374. In August of 2001, Attorney Welch entered Plaintiff's neighborhood claiming his client Lot 48A, LLC had no obligations to complete the roadway improvements and drainage mitigations along Lower Honoapiilani Road and Hui Road E. As we now know, Defendant Arakawa, a public official and employee, and private developer Lot 48A, LLC, conspired to conceal from Plaintiff Salem the MAH SMA Permit studies and signed and executed subdivision entitlement documents which exhibited just the opposite.

375. As will be proven at trial, during the period of injurious acts to Plaintiff Salem, Attorney Welch acted as a professional consultant for multiple developers throughout Maui County, assisting and seeking circumvention and sidestepping of the policies and procedures adopted in the HICZMP.

376. The Court is respectfully requested to take Judicial Notice of the fact the violations and injury to Plaintiff Salem caused by the Planning Departments and Defendant Min's negligent and irresponsible administration of the HICZMP, occurred during the same month's developers SMA Permit obligations were being ignored in Olowalu Mauka subdivision and being waived in Montana Beach oceanfront development

377. As will be proven at trial, the land planning procedures and environmental policies adopted in the HICZMP SMA Permit doctrines continue to be ignored by the Defendants resulting in an unjustified and immense burden placed on private citizens who are forced to engage the Courts to seek compliance and prosecution of private Developers who attempt to circumvent and skirt their SMA Permit and environmental mitigation obligations.

378. Defendant Wong refuses to acknowledge the costly legal precedence endured by the County of Maui and the repeating harm suffered by the citizens and the Maui County Council caused by irresponsible administration of the HICZMP compounded with the repeating pattern by

Defendant Goode and Defendant Arakawa of issuing unlawful final subdivision approvals to private developers.

379. As will be proven at trial, under the advice and counsel of Defendant Wong, acting upon the interests of private Developer Lot 48A, LLC, Defendant Hunt and Defendant Spence have failed to fulfill their duty to administer and enforce the policies and procedures of the HICZMP and Rules of the Planning Commission causing irreparable harm to Plaintiff Salem and his family.

THE MAUI COUNTY CHARTER

380. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 10, Code of Ethics, Section 10-1., and Section 10-5, states as follows;

Section 10-1. Declaration of Policy.

Elected and appointed officers and employees shall demonstrate the highest standards of ethical conduct to the public may justifiably have trust and confidence in the integrity of government. *See* Maui County Charter, Article 10, Section 10-1

381. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 13, General Provisions, Section 13-9. Records and Meetings Open to the Public, states as follows;

Section 13-9 Records and Meetings Open to Public

1. All books and records of every department shall be open to inspection of any person at any time during business hours, except as otherwise provided by law. Certified copies or extracts from such books and records shall be given by the office having custody of the same to any person demand the same and paying or tendering a reasonable fee to be fixed by ordinance for such copies of extracts. *See* Maui County Charter, Article 13, Section 13-9.

382. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 7 Office of the Mayor, Section 7-5., states as follows

Section 7.5. Powers, Duties, Functions

8. Conduct a systematic and continual review of the finances, organizations, and methods of each department of the County to assist each department in achieving the most effective expenditure of

public funds and to determine that such expenditures are in accordance with the budget laws and controls in force.

17. Enforce the provisions of this Charter, the ordinances of the County and all applicable laws. *See* Maui County Charter, Article 7, Section 7-5

383. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 13, General Provisions, Section 13-1.3., states as follows;

Section 13-1. Definitions

The term "law" shall mean any Federal law, any law of the State, or any ordinance of the County of Maui or any other rule having the force and effect of law. *See* Maui County Charter, Article 13, Section 13.1.3.

384. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 3, Power of the Council, Section 3-6., states as follows;

Section 3-6. Powers of the Council.

1. To legislate taxes, rates, fees, assessments, and special assessments and to borrow money, subject to the limitations provided by law in this Charter.
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.
4. To require periodic and special reports from all County Departments concerning their functions and operations. Such reports shall be requested by and through the Mayor. *See* Maui County Charter Article 3, Section 3-6.

385. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 9, Financial Procedures, Section -12, states as follows;

Section 9-12. Payments and Obligations.

1. Every payment made in violation of the provisions of this Charter shall be illegal, and all county officers who knowingly authorize or make such payment or any part thereof shall be jointly and severally liable to the County for the full amount so paid or received."

If any County officer or employee knowingly authorizes or makes any payments or incurs any obligation in violation of the provisions and procedures and polices established by ordinance, or take part therein, that action shall be cause for removal from office. *See* Maui County Charter Article 9, Section 9-12.

386. The Maui County Charter, a Constitutional document drafted in accordance with the will of the people, Article 10, Code of Ethics, Section 10-5, states as follows;

Section 10-5. Penalties

Any person who violates the provisions of this article shall be subject to a fine to be provided by ordinance adopted by the County Council, and in addition to such fine that may be imposed, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority and elected officers may be removed through the impeachment proceedings pursuant to Section 13-13.

387. The indisputable violations of the provisions, procedures, and policies established by ordinance involving acts of malfeasance, misfeasance, nonfeasance, fraud, collusion, conflicts of interest, concealment of public documents, unfair and deceptive practices, misuse of public funds, and unwarranted intimidation tactics by the Defendants named herein have violated the trust and integrity of Maui County government.

CLAIMS

388. In accordance with Article 13-6. Claims, of the Maui County Charter, Plaintiff Salem through his legal counsel claims injury to his person and property and to the public interest by actions and omissions of all the Defendants and County Defendants named in this Complaint, jointly and severally, including, but not limited to Breaches of Fiduciary Duty, Environmental Law Violations, Gross Negligence, Fraud, Negligent Hiring and Retention, Civil Conspiracy, Civil Rights Violations, violations of the "Honest Services" Act, Breaches of Public Trust, Perjury, Obstruction of Justice, violations of United States Bankruptcy Law, Breaches of the Maui County Charter and the Maui County Code, violations of Hawai'i State Law, and violations of Federal Law.

389. Plaintiff Salem has suffered harm within 2 years of the date of injury and, or within the time pursuant to applicable law, including, but not limited to HRS 657-20, the continuing violation doctrine, and the time allowed for the enforcement of government contracts; breaches to those contracts; harm and damages due to fraud and unfulfilled, open and unenforced County permits, and all other damages to Salem and to the Public Interest that may be proven at trial.

390. Plaintiff Salem's family home and investment property were auctioned for sale by the Courts on January 20, 2015. Attempts by County Officials to harm Plaintiff Salem, which began in 2001, has continued unabated and irrepressible to present time.

391. Plaintiff Salem has exhausted his life savings on legal fees spent to protect his property and his interests, as a direct and proximate result of an unfulfilled, open, and unenforced Lot 48A, LLC SMA Permit.

392. Plaintiff Salem and the residents of Maui County have been harmed by Defendants, jointly and severally, by fraudulently and, or negligently implemented public policy and, or by a pattern of local custom, constituting the same, as well as by county officials exceeding their authority, in conspiracy with each other and with private interests, and by conflicts of interest which have harmed Salem and the public interest and have violated the constitutionally protected civil rights of both Plaintiff Salem and the public-at-large.

393. Plaintiff Salem has also exhausted every form of legislative and administrative remedy and notice to the Defendants to prevent the escalation of this complaint.

394. Plaintiff Salem, as a former executive assistant to the Maui County Council, has attempted to serve the public interest by avoiding filing this complaint.

395. Under the doctrine of laches, the Defendants cannot claim prejudice caused by the timing of this complaint. Developer Lot 48A, LLC's violations and fines relating to their unfulfilled SMA Permits continue to escalate and allow for financial recovery to the County of Maui.

396. Developer subdivision agreements, executed by Defendant Corporation Council, yet to be quantified, allow for the assessment and collection of funds owed to the County of Maui, under the powers and authority of the Maui County Council.

397. Defendant Salem, at his sole and personal expense and consequence, discovered and continuously demanded the recovery of the public funds owed to the County of Maui through the developer subdivision agreements by Defendant Corp Counsel.

398. Conversely, if the developer subdivision agreements authored and recorded by Defendant Corp Counsel are unenforceable and uncollectable, then the County of Maui has the duty to expunge the encumbrances on citizens land titles throughout Maui County.

399. Further, Defendant County of Maui has the obligation to enforce the Maui County Charter against those responsible for incurring millions of dollars of financial obligations to Maui County and repair the undeserved injury Plaintiff Salem and his family has suffered for over 15 years.

400. Moreover, pursuant to the continuing violation doctrine, the statute of limitations is tolled when the harmful act(s) continue to exist. "Hawai'i has long recognized that a continuing wrong may, in effect, toll the statute of limitations with respect to tortious conduct that is ongoing. In effect, the date that the tort "first accrues" moves forward into the future so long as the tortious conduct continues." Garner v. State, No. 27912 (Haw. App. 10/30/2009) (Haw. App. 2009) "...because the Court finds that these incidences are 'sufficiently related' to the latter incidences, they will be considered part of the continuing violation." Maluo v. Nakano, 125 F. Supp. 2d 1224 (Hawaii 2000) "The continuing violation inquiry does not define whether a violation has occurred. Rather, it simply determines whether violations which occurred outside the statute of limitations period are sufficiently related to the violations within the limitations period, to find the former violations are not time-barred." Counts v. Reno, 949 F. Supp. 1478 (Hawaii, 1996)

401. Plaintiff Salem has provided written notices of conflicts of interest to Corp Counsel.

402. Plaintiff Salem, and his bankruptcy counsel David Cain, have provided written notices to Defendant Corporation Counsel to retract the false statements of Declaration of Defendant Goode issued by Defendant Corporation Counsel to the United States District Court for the State of Hawaii.

403. Plaintiff Salem, and his bankruptcy counsel David Cain, have presented proper notice to Defendant Corporation Counsel to reconcile the consequences of newly discovered evidence.

404. Plaintiff Salem, and his then bankruptcy attorney David Cain, have issued Rule 2004 Subpoenas in the United States Bankruptcy Court to Defendant Corporation Counsel to

release copies of all contracts executed by the Defendant Corporation Counsel on behalf of private developers.

405. As evidenced herein, Mayor Alan Arakawa and the elected members of the Maui County Counsel have the authority, obligation, and responsibility to exert their powers of enforcement and investigation of the violations exhibited herein, and to resolve and mitigate further unwarranted financial injury and harm to Plaintiff Salem and his family as well as to the citizens of Maui County, which investigation, mitigation, and resolution is in the public interest, and in the interest of judicial economy.

406. Failure of Defendant Maui County to act now, as set forth above in paragraph 348 of this Complaint, shall show justifiable cause to amend and expand upon this complaint to include the elected and appointed officials who are failing in their duties and obligations to the citizens of Maui County in accordance with all applicable County, State and Federal law.

407. The unpardonable acts exhibited by the Defendants, jointly and severally named herein, are grounds for commencement of a class action suit by the property owners affected by the illicit developer "3 Lots or Less" subdivision agreements, and for commencement of impeachment proceedings in the Circuit Court for the Second Circuit, State of Hawaii in accordance with Article 13, Section 13-13. Impeachment of Officers, of the Maui County Charter. See Maui County Charter, Article 13, Section 13-13

408. Plaintiff asserts this complaint falls under the private attorney general doctrine, as this action vindicates a right that benefits a large number of people, requires private enforcement, and is of societal importance.

409. Plaintiff Salem alleges that Defendants named herein failed in their duties to administer and enforce the conditions which were imposed upon developer(s) through the Maui County Code, developer contractual agreements, and issued developer permits.

410. Plaintiff Salem seeks the court to compel Mayor Arakawa and the Maui County Council to seek remediation and damages from the responsible parties, and not at the further expense of public funds or interest.

411. Plaintiff Salem seeks the court to compel Mayor Alan Arakawa and the Maui County Council to act dutifully and responsibly to remedy and repair the harm and consequences of the Defendants unlawful, fraudulent and, or gross negligent acts and omissions, set forth below, which have harmed Plaintiff Salem in defiance of the public interest, as follows;

- a. Defendant County of Maui, through their Departments' Corporation Counsel, and Department Public Works, have misused a Maui County Ordinance to benefit private developers in contravention of the intent and purpose of the original ordinance; which ordinance was meant to assist local families, not opportunistic private developers. The Defendants have then compounded this misuse by failing to assess and collect on developer one-time deferral agreements, thereby defrauding the County of Maui, it's residents, the State of Hawaii, and the Federal Government.
- b. For approximately more than four decades, and through present time, Defendant Corp Counsel has failed to provide proper legal advice to the Department of Public Works, and to the Maui County Council, to insure developer contractual agreements of all forms executed and recorded by their department were accounted for and made available for tracking and assessment during annual public budget hearings; and for collection by the Department of Finance and the Maui County Council.
- c. For approximately more than four decades, and through present time, Corp Counsel disregarded the public interest by executing and recording developer agreements in senior position on residential and commercial properties; which agreements create encumbrances and government liens that are open ended and which have no adopted formula for assessment or collection.
- d. County Corp Counsel has violated and failed to honor the Maui County Charter by insuring that the financial obligations incurred by their authored and executed developer agreements and contracts did not become an obligation for payment by the County of Maui with public funds.
- e. County Corp Counsel, Arakawa, and Goode have failed to provide proper notice to State and Federal agencies and authorities that funds requested for infrastructure Capital Improvements Projects are being used to pay for private developers, and their heirs, deferred financial obligations.
- f. County Corp Counsel, Arakawa, Wong, and Goode, have failed to honor the Maui County Charter by continuing to author, execute, and incur financial obligations upon the County of Maui to pay for deferred private developer subdivision infrastructure improvements with public funds after written notices of violations of the Maui County Code and Maui County Charter were issued by members of Maui County Council and Plaintiff Salem beginning in 2001.

- g. Upon discovery by Plaintiff Salem, County Corp Counsel and Defendant Arakawa stated publicly and continuously that all the “one time” developer deferral agreements already executed and recorded by Corp Counsel were collectible, yet failed to make any efforts to collect on them at any time.
- h. County Corp Counsel, Arakawa, and Goode have violated the Maui County Code and have failed to honor the Maui County Charter by executing and recording overlapping one time “3 Lots or Less” subdivision agreements on the same underlying parent parcel of land thereby incurring and expanding the shifting of private developer financial obligations to the citizens and the County of Maui.
- i. County Corp Counsel and Wong failed to advise the Maui County Council to investigate and remediate consequences of the representation and admission by Defendant Goode that the execution of overlapping “3 Lots or Less” subdivision agreements had gotten “crazy”.
- j. County Corp Counsel and Wong has failed to expunge the encumbrances of title on the underlying properties affected by the overlapping one time “3 Lots or Less” subdivision agreements that have been executed in violation of that Maui County Code and where a Notice of Intent to Collect was sent to Plaintiff Salem; Corp Counsel harmed Salem by failing to expunge its unlawful open-ended government lien on his property.
- k. Defendant County Corp Counsel failed to provide a legal opinion to the Maui County Council on whether the “3 Lots or Less” subdivision agreements were lawful instruments for relieving commercial and industrial developers of their infrastructure improvements and drainage mitigation obligations.
- l. County Corp Counsel, Arakawa and Goode have failed, and continue to fail to honor the Maui County Charter and have violated the Maui County Code by not providing notices of intent collect upon the developer agreements to all affected property owners upon commencement of funding of Capital Improvement Projects throughout Maui County.
- m. County Corp Counsel failed to insure the language of Defendant Arakawa’s Notice of Intent to collect upon the “3 Lot or Less” subdivision agreements sent to Plaintiff Salem reflected the language of the Maui County Code, and the recorded subdivision agreements.
- n. The Mayor, County Corp Counsel, Arakawa, Regan, and Goode have failed, and continue to fail, to honor the Maui County Charter and have violated the Maui County Code by not providing anticipated revenues to be collected upon each individual developer subdivision agreement along each Capital Improvement Project proposed during annual Maui County Council public budget hearings.
- o. County Corp Counsel and Wong have failed to advise the Maui County Council to adopt, through legislation, a bill to insure the property’s owner encumbered by the developer contracts have the ability to remove the government cloud, encumbrance and, or lien on title through payment and compensation.
- p. Defendant Wong failed and refused to follow the instructions and directives of Mayor Arakawa to work with Department of Transportation Director JoAnne Johnson Winer and Plaintiff Salem to adopt a formula for assessment of collection of the “3 Lots or Less” subdivision agreements.

- q. Defendant Wong failed to provide a legal opinion to the Maui County Council, Plaintiff Salem, and the general public to support the published conclusion by Defendant Goode that Plaintiff Salem's "Fairness Bill" was unlawful legislation.
- r. Defendant Wong violated Plaintiff Salem's civil rights and due process by issuing a private memo to all branches of government making false, unwarranted, and defamatory representations against Salem to derail the "Fairness Bill" while it was traveling through the legislative process and while the grossly negligent and fraudulent acts of the Defendants were under review by the County of Maui Cost of Government Commission.
- s. Defendant Goode, under the representation of Defendant Wong, falsely represented in Court documents that the County of Maui "may or may not" collect upon the developer's deferred financial obligations.
- t. County Corp Counsel authorized the "may or may not collect upon the developer agreement" language issued by Defendant Goode in Declaration to the United States District Court for the State of Hawaii, which false representations in court documents were inaccurate, incorrect, and not in accord with Ordinance 3731 adopted by the Maui County Council.
- u. Defendant Goode explicitly violated Maui County Ordinance 3731 to cover-up the Defendant's long term pattern of gross negligence and fraud regarding the collection of developer's deferred financial obligations.
- v. Defendant Wong has failed to honor the State of Hawaii Rules of Professional Conduct on multiple occasions.
- w. Arakawa, Wong, Goode and Spence committed Honest Services Fraud pursuant to 18 U.S.C.1341,1326 by devising and perpetuating a scheme against Salem and against the residents and citizens of Maui County, in contravention of the public interest, by making knowingly false representations in official documents that were sent through the U.S. Postal Mail and, or exceeding their authority and, or conspiring with private interests to the detriment of Salem, Maui County, and it's citizens and residents.
- x. County Corp Counsel failed to honor the Maui County Charter and protect Plaintiff Salem, and the public interest by failing to respond to a request and demand to provide a payment amount to collect upon the developer agreements and facilitate the removal of senior lien and cloud on title on Plaintiff Salem's property, which encumbrance became a lien, once Plaintiff Salem was noticed for collection by Defendant Arakawa.
- y. Defendant Corporation Counsel failed to protect Plaintiff Salem and the public interest by insuring conflicts of interests, and potential appearances of conflicts of interest, were avoided, documented, and disclosed to the Maui County Council and public during the employment of outside special counsel.
- z. County Corp Counsel failed to remove themselves as legal counsel upon notice of conflicts of interests by Plaintiff Salem and Department of Transportation Director JoAnne Johnson Winer.
- aa. County Corp Counsel failed to disclose to the office of Mayor, Administration Directors, and the Maui County Council that the disputes involving developer Lot 48A, LLC occurred while developer Lot 48A, LLC's legal counsel was employed by their Department.

- bb. The Mayor and County Corp Counsel failed, and continue to fail, to insure that prospective public employees, Directors, and attorneys under consideration for employment by the County of Maui have provided complete disclosures of all ongoing private applications and interests that may come under their review and decision making while being employed by the County of Maui.
- cc. Defendant Wong failed to inform the public and the Maui County Council of his professional relationships with private developers and their legal counsel who were directly involved in litigation and legal disputes for violations of the Maui County Code and Maui County Charter by Defendant Arakawa and the County of Maui.
- dd. County Corp Counsel, Defendant Arakawa, and Developer Lot 48A, LLC's legal counsel failed to insure Developer Lot 48, LLC's SMA permit studies and valuations were not concealed, and, or actively concealed the same, from the Plaintiff Salem and the Maui County Council, while Lot 48A, LLC's legal counsel was employed by Defendant County of Maui Corporation Counsel.
- ee. County Corp Counsel and Defendant Arakawa failed to remove the senior lien on Plaintiff Salem's property upon discovery of Developer Lot 48A, LLC's SMA Permit studies and subdivision entitlement documents which obligated Lot 48A, LLC to complete the roadway infrastructure and drainage mitigations referenced in the "3 Lots or Less" subdivision agreement.
- ff. Defendant Arakawa failed to disclose to the Maui County Council that his land planning firm MAH authored and executed the SMA Permit studies for Lot 48A, LLC while his firm was employed as special consultant for the County of Maui Department of Public Works for environmental studies along Phase IV of Lower Honoapiilani Road.
- gg. The Mayor, County Corp Counsel, Defendant Goode, Defendant Regan, and Defendant Arakawa, have failed to protect the public interest by further expanding and incurring the obligation of payment by the County of Maui for private developer interests and financial obligations in the signed and executed Lot 48, LLC SMA Permit.
- hh. Defendant Goode failed to honor the Maui County Code and Maui County Charter by issuing final subdivision approval to a former private client Lot 48A, LLC prior to final acceptance and compliance with the developer signed and issued Lot 48A, LLC SMA permit.
- ii. Defendant Arakawa failed to execute a bond with Developer Lot 48A, LLC in the instance where all infrastructure improvements and drainage mitigations were not completed prior to subdivision approval.
- jj. Defendant Arakawa failed to insure the roadway improvements and drainage mitigations referenced in developer Lot 48A, LLC's issued and signed SMA Permit were incorporated in the subdivision engineering plans.
- kk. Defendant Arakawa failed to insure the roadway and drainage mitigations referenced in the Lot 48A, LLC's SMA Permit application were a true and accurate accounting and representation of the actual infrastructure and drainage improvements required along the Lower Honoapiilani Road subdivision frontage.
- ll. County Corp Counsel, Defendant Spence, and formerly Defendant Hunt, failed to honor the Maui County Code, Rules of Planning Commission, and Maui County Charter by failing to

- issue a Notice of Non Compliance to Lot 48A, LLC, thereby not requiring the private developer to return to the subdivision and complete their roadway infrastructure and drainage mitigations.
- mm. Defendant Spence and formerly Defendant Hunt failed to honor the HCZMP and the Rules of the Planning Commission by failing to investigate developer Lot 48A, LLC's false and deceptive Engineering Valuation which denied citizens the right to public hearings and environmental review.
 - nn. Defendant Goode failed to honor the Maui County Code and Maui County Charter by issuing final subdivision approval to Olowalu Elua Associates, LLC prior to final acceptance and compliance with the developer signed and issued SMA Major Permit.
 - oo. Defendant Goode failed to honor the Maui County Code by failing to execute a bond with Developer Olowalu Elua Associates, LLC in the instance where all infrastructure improvements and drainage mitigations were not completed prior to subdivision approval.
 - pp. Defendant Goode failed to honor the Maui County Code by erasing the conditioned roadway infrastructure improvements and drainage improvement for developer Smith Development along the Lower Honoapiilani Road frontage of the Kahana Vai subdivision just prior to issuing final subdivision approvals and Goode's employment with Smith Development.
 - qq. Defendant Goode failed to honor the Maui County Code on the issuance of a Preliminary Subdivision approval to Smith Development for the Pu'uKahana subdivision along Lower Honoapiilani Road just prior to termination of employment as the Director of Public Works and employment with Smith Development.
 - rr. Defendant Goode failed to honor the Maui County Charter by receiving compensation for services rendered for the public solicitation of final approvals of the Pu'uKahana subdivision application immediately after employment as Director of Public Works.
 - ss. Defendant Arakawa failed to insure the necessary land acquisitions were secured for the Capital Improvement Project Phase IV of Lower of Honoapiilani Road, prior to twice providing public notice of project commencement.
 - tt. Defendant Arakawa failed to honor the Maui County Code by failing to continue the publicly adopted right of way width designation for Phase IV of Lower Honorapiilani Road along the frontage of Plaintiff Salem's family land division located @ 5106 Lower Honoapiilani Road.
 - uu. Defendant Goode and Defendant Arakawa failed to honor the Maui County Code and Maui County Charter by failing to insure that Park Fees are collected on each and every subdivision, and overlapping subdivision, approved by the Department of Public Works.
 - vv. In 2012, Plaintiff Salem alerted the Maui County Council of Defendant Wong's undisclosed personal and professional relationship with legal counsel of the Palama Drive developers. To resolve the long standing legal dispute over alleged developer's violations of the Maui County Code, Defendant Wong advised the Maui County Council to provide financial restitution to the developers.
 - ww. As such, Defendant Wong's Financial Disclosure Statements alleging "Gambling Winnings" beginning in 2012 and thereafter, are also justifiable cause for public concern and investigation by the Maui County Council.

xx. As evidenced herein, immediately thereafter, Defendant Wong's engaged malicious and intentional in acts of intimidation against Plaintiff Salem, a former County of Maui Council employee, to retaliate against Plaintiff Salem for "blowing the whistle" on County of Maui Public officials.

CAUSES OF ACTION

COUNT 1. BREACH OF FIDUCIARY DUTY

412. Plaintiff incorporates by reference paragraphs 1-411 of Plaintiff's Complaint as if fully set forth herein.

413. Defendant Mayor, Defendant Keith Regan, Defendant Milton Arakawa, Defendant Jeff Hunt, Defendant David Goode, Defendant John Min, Defendant William Spence, and Defendant Pat Wong and Defendant County breached their fiduciary duty to the County of Maui, to the residents and taxpayers of the County of Maui, and to Plaintiff Salem by their actions and omissions in violation of the Maui County Charter and the Maui County Code, and by engaging in undisclosed conflicts of interest, fraud, and gross negligence as well as for violations of the Coastal Management Zone HRS 205A and HEPA.

414. Defendant County breached its fiduciary duty to Plaintiff Salem and to the residents and taxpayers of the County of Maui by its actions and omissions in violation of the Maui County Charter and the Maui County Code, and by engaging in undisclosed conflicts of interest, fraud, and gross negligence as well as for violations of the Coastal Management Zone HRS 205A and HEPA.

415. As public officials, Defendants owed a fiduciary duty to act in utmost good faith toward the County of Maui, its residents and taxpayers, and Plaintiff Salem. Defendant County owed a fiduciary duty to act in utmost good faith toward the County of Maui, its residents and taxpayers, and Plaintiff Salem.

416. The Defendants' and Defendant County's violations of the Maui County Charter and the Maui County Code through acts of fraud and gross negligence, violated their public duty, entitle

Plaintiff Salem to compensatory and punitive damages, and entitled the residents and citizens of Maui County to declaratory, injunctive and equitable relief.

COUNT II. SUBSTANTIVE AND PROCEDURAL ULTRA VIRES

417. Plaintiff incorporates by reference paragraphs 1-416 of Plaintiff's Complaint as if fully set forth herein.

418. The Doctrine of Ultra Vires holds that a public body granted power must not exceed the power so granted. Substantive ultra vires is where a decision has been reached outside the powers conferred on the decision taker; and procedural ultra vires is where the prescribed procedures have not been properly complied with.

419. Defendant Arakawa acted ultra vires when he sent out Notices to Collect to Plaintiff Salem which indicated that all the owners of an unlawful overlapping subdivision would have to "haggle" over the assessment of their pro-rata shares.

420. Defendants Wong and Goode acted ultra vires when Goode made public statements that the debts incurred by developer deferral agreements "may or may not be collected".

421. Defendants Wong and Goode acted ultra vires when the above statement in paragraph 421 was also made in a Declaration to a Federal District Court wherein Plaintiff Salem was a party.

422. Defendants Arakawa, Goode, Wong, and Defendant County Corp Counsel acted ultra vires by failing to assess and to collect debts owed to the County of Maui from developer deferral agreements drafted, executed and recorded by Defendant Corp Counsel and Defendant County of Maui Department of Public Works.

423. Defendant Wong and Goode acted ultra vires by obstructing legislation that would allow the County of Maui to properly assess and collect debts owed to the County of Maui. Defendant Goode stated that the "Fairness Bill" was illegal/unlawful and Defendant Wong supported that director decision without issuing any supportive memorandum of law.

424. Defendants Hunt and Spence acted ultra vires by failing to enforce an open SMA permit on lot 48 LLC wherein Plaintiff Salem owned property and failed to issue a notice of non-compliance to the developer.

425. Defendant Arakawa acted ultra vires by issuing final subdivision approval for former client Lot 48A, LLC with unfulfilled SMA permit that lacked the environmental mitigations set forth in the Environmental Assessment completed by Arakawa's land planning firm; which EA was part of the Phase IV of Lower Honoapiilani Road Capital Improvement Project.

426. Defendants Arakawa, Goode, Wong, Min, Hunt and Spence acted outside their authority and abused powers, acting improperly and unreasonably when they acted in contravention of County Code and the Maui County Charter and, or failed to perform their duties and obligations pursuant to their administrative responsibilities. These acts, ultra vires, are the direct and proximate cause of Plaintiff Salem's injuries and damages.

COUNT III. VIOLATIONS OF COASTAL MANAGEMENT ZONE HRS 205A

427. Plaintiff incorporates by reference paragraphs 1-426 of Plaintiff's Complaint as if fully set forth herein.

428. Defendants jointly and severally and Defendant County have committed acts and, or omissions that are in violation of HRS 205A in Special Management Areas including, but not limited to Salem's subdivision which acts, and or omissions have been set forth in the foregoing Complaint. Such acts and, or omissions by Defendants constitute the grossly negligent administration and, or fraudulent administration of Special Management Areas through the State of Hawaii Coastal Zone Management Program (CZM) in the County of Maui.

429. Defendants jointly and severally, and Defendant County, through the concealment of SMA permit evaluations and studies; as well as the unlawful deferral of roadway and drainage improvements that mitigate environmental impacts; unfulfilled developer obligations in conditioned SMA permit studies established in the subdivision approval process; the concealment of one-time

developer deferral agreements on 3 lots or less subdivisions as well as unlawfully overlapping subdivision deferral agreements, hiding unfulfilled developer obligations; have harmed Salem, his property rights and County of Maui residents and, or property owners in SMA areas with unfulfilled Developer obligations to environmental mitigations.

430. Defendant John Min and Defendant County granted an SMA minor permit in violation of the Rules of the Planning Commission, established pursuant to CZM, based upon false and fraudulent Order of Magnitude Engineering Estimates in Salem's subdivision.

431. Defendant County Department of Planning also allowed for the issuance of another SMA Permit exemption on the oceanfront Lot 48A-2 of Lot 48A, LLC's subdivision, which subdivision already had an unfulfilled and expired SMA Permit. As such, the shoreline setback was allowed to be unlawfully pushed back into the ocean to increase the building pad area. Kahana Paradise, LCC was thus allowed to develop a massive 6 bedroom oceanfront speculation home on small parcel of oceanfront land which ultimately sold for over \$12,000,000.00.

432. HRS 205A-32 sets forth penalties for violations of this section of the State of Hawai'i Coastal Zone Management Program.

COUNT IV. VIOLATIONS OF HAWAII ENVIRONMENTAL PROTECTION ACT HRS 343

433. Plaintiff incorporates by reference paragraphs 1-432 of Plaintiff's Complaint as if fully set forth herein.

434. Defendants jointly and severally and Defendant County failed to include in the conditioned SMA permit for Salem's subdivision, the environmental evaluations and mitigations set forth in an Environmental Assessment produced by Defendant Arakawa's Land Planning firm for the County of Maui. By said failure, Defendants approved a false engineering Order of Magnitude Estimate which resulted in an SMA permit being approved without public hearings and in violation of HRS 343. Defendants failed to implement the requirements for approval of an SMA Major permit.

435. Defendant jointly and severally and Defendant County have concealed SMA permit studies along with concealed one-time Developer deferral agreements for 3 lots or less subdivisions (hereinafter "Agreements") and Defendant County through County Corp Counsel has unlawfully drafted and executed agreements, which developer obligations may contain engineering estimates in SMA areas in the County of Maui that would require developers to fulfill requirements pursuant to HRS 343.

COUNT V. NEGLIGENT HIRING AND NEGLIGENT RETENTION

436. Plaintiff Salem incorporates paragraphs 1-435 of Plaintiff's Complaint as if fully set forth herein.

437. Defendant Maui County had actual, and, or constructive knowledge through numerous notices to all Defendants, as well as to Maui County Council members and Mayor Alan Arakawa, of the violations of the Maui County Code, Maui County Charter, and the outrageous and unlawful conduct by Defendants jointly and severally that are set forth herein this Complaint, that were causing serious injuries to Plaintiff Salem and to the Public Interest.

438. Defendant Mayor and Defendant Maui County has a duty to maintain only competent, qualified, and safe employees who, as public officials, provide "honest services" in the administration of their duties to both the County of Maui and to the citizens and residents of Maui County.

439. Defendant Mayor and Defendant Maui County breached their duty of hiring to Plaintiff Salem and to the citizens and residents of Maui County by the hirings of Defendants Arakawa, Goode, Wong, and special counsel Margery Bronster.

440. Defendant Mayor and Defendant County of Maui's failed to exercise its duty to the Plaintiff Salem, to the County of Maui, and to the citizens and residents of Maui County by hiring and, or retaining incompetent, unfit, and dangerous employees. Notice had been given by Salem to Defendant Mayor and to Defendant County of Maui regarding the unlawful and, or harmful practices of each and every Defendant, jointly and, or severally.

441. Defendant County of Maui's hiring the Defendant Directors Arakawa, Goode, Min, Wong and special counsel Margery Bronster in violation of the Maui County Charter, is the direct and proximate cause of the injuries and losses suffered by Plaintiff Salem.

442. Defendants actions and omissions jointly and severally constitute willful and wanton behavior with gross disregard for Plaintiff Salem's interests, safety, and well-being.

443. As a direct and, or proximate result of Defendant's wrongful acts and omissions jointly and severally; Plaintiff Salem has sustained injuries and damages as set forth herein and is therefore entitled to receive special damages, general damages, and punitive damages in amounts to be determined at trial or hearing thereof.

COUNT VI. NEGLIGENT SUPERVISION

444. Plaintiff Salem incorporates by reference paragraphs 1-443 Plaintiff's Complaint as if fully set forth herein.

445. Defendant Mayor Alan Arakawa and Defendant County failed in their duty to properly supervise Defendants Arakawa, Hunt, Min, Wong, Goode, Spence and Regan pursuant to the Maui County Charter Section 7-5 (1) and (8). As a direct and proximate result of the Mayor's failure to properly supervise the Directors and the Departments pursuant to his duties set forth in the Maui County Charter, Plaintiff Salem and the public interest have been harmed.

COUNT VII. VIOLATIONS OF BANKRUPTCY LAW

446. Plaintiff Salem incorporates paragraphs 1-445 of Plaintiff's Complaint as if fully set forth herein.

447. Defendant County of Maui Department of The Corporation Counsel, Defendant Wong, Defendant Goode violated Bankruptcy law as set forth herein, by making false and misleading statements and representations to the Bankruptcy Court in Salem's Chapter 11 Bankruptcy Petition proceedings.

448. Defendant County of Maui Department of The Corporation Counsel filed pleadings and Motions to obstruct Plaintiff Salem from obtaining highly relevant public documents relating to his property rights and claims that would reveal the extent of the fraud and / or gross negligence by the named Defendants; which false representations referred to in paragraph 448 and Defendant County Corp Counsel, Defendant Wong, and Defendant Goode's deliberate obstruction, concealment and cover-up was the direct and proximate cause of the recoverable injuries and damages suffered by Plaintiff Salem to complete the Chapter 11 Plan and Petition.

449. Under 18 U.S.C. § 157 : Bankruptcy Fraud states as follows; "Attorneys may not devise a fraudulent scheme and, for purpose of executing or concealing that scheme, either (3) make a false statement, claim, or promise (a) in relation to a bankruptcy proceeding either before or after the filing of the petition. (emphasis Salem)

450. United States Code 18 §1519, destruction, alteration, or falsification of records in Federal investigations and Bankruptcy states the following; "Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, **imprisoned not more than 20 years, or both**. (emphasis Salem) Comment: Depending on the nature of the offense, as well as individual state laws, falsifying documents can result in a prison sentence of 5-10 years. Also, if government documents or federal authorities were involved, the legal penalties may be more severe. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose February 14, 2014 35 commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information."

451. In United States v. Hunt, 526 F,3d. 739 (11th Cir. 2008); "Attorneys (emphasis Salem) may not alter, destroy, documents or tangible objects, with the intent to impede, obstruct, or influence

investigation or proper administration of any matter with the jurisdiction of any department or agency of the United States, or any bankruptcy case.”

452. 18 U.S. Code § 152 A person who; (8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or (9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

453. In Gutman v. Klein, F. Supp. 2d, No. 03 CV 1570 (E.D.N.Y. Oct. 15, 2008) Judge Levy recommended default judgment for discovery misconduct. (underline Salem)

**COUNT VIII. CIVIL CONSPIRACY AND 42 U.S.C.1983, 1985
AND 14TH AMENDMENT CIVIL RIGHTS VIOLATIONS**

454. Plaintiff Salem incorporates paragraphs 1-453 of Plaintiff's Complaint as if fully set forth herein.

455. Munekiyo, Arakawa and Hiraga, a private land planning consulting firm (of which Defendant Arakawa is a partner); former employer and private developer Smith Development and Defendant Goode ; Defendant Maui County Dept. Corp Counsel and former Hawaii Attorney General Margery S. Bronster, Esq.; Defendant Wong and Defendant Goode; Defendant Spence and Defendant Maui County Dept. Corp Counsel; Defendant Wong and Defendant Spence, and County Defendants with each other, committed unlawful acts, and at times with an unlawful purpose. The acts and, or omissions, as set forth in Plaintiff's Complaint Salem covered-up a pattern of gross negligence and, or fraud as it pertains to: the failed execution of developer deferral agreements; the concealment of deferral agreements; the concealment of studies and evaluations belonging to SMA permits; the

failure to enforce the fulfillment of obligations for Capital Improvement projects; the failure to review the engineering estimates in permit studies and evaluations that determine whether the permit should be minor or major; and, conflicts of interest involving the unlawful benefiting of private interests, at the expense of Salem and the public interest. *"To establish a civil conspiracy, a plaintiff must demonstrate that the alleged conspirators undertook concerted action to accomplish a criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful by criminal or unlawful means"*. Bracken v. Okua, 955 F. Supp. 2d 1138 (D. Haw. 2013)

456. Plaintiff Salem sets forth underlying torts, in his Complaint, as required by the Hawai'i Supreme Court in Ellis v. Crockett, 51 Haw. 45, 57, 451 P.2d 814, 822 (1969).

457. Defendant Wong, Defendant Goode and Defendant Regan have conspired to defraud the County of Maui, its citizens and its residents, Plaintiff Salem, the State of Hawaii and the Federal Government by failing to assess and collect debts from developer Deferral Agreements which Deferral Agreements, the two Wong and Goode have represented, and continue to represent, are collectible contracts.

458. Defendant County of Maui Dept. Corp Counsel and Defendant Spence have conspired to defraud the County of Maui and Plaintiff Salem by their refusal to enforce a developer's unfulfilled and open SMA permit.

459. All the named Defendants, jointly and severally, have conspired to defraud Salem and the County and residents of Maui by concealing and, or trying to conceal documents that reveal: 1) Developer Agreements which indicate Capital Improvements that they have obligated themselves to do and, or to pay for and, 2) fraudulent engineering estimates in SMA permit evaluations

460. Defendant Pat Wong and Defendant David Goode have conspired to violate Plaintiff Salem's due process and equal protection Constitutional Rights by making false representations in Salem's Bankruptcy Court action violating Salem's Civil Rights pursuant to 42 U.S.C. 1983, 42 U.S.C. 1985 (2), and pursuant to the 14th Amendment, which prohibits States from depriving individuals of due process. Further, Salem's civil rights were violated pursuant to above mentioned

Federal Laws, by the removal of Defendant Hunt and subsequently Defendant Spence, in collaboration with Defendant County Dept. Corp Counsel, and, or Wong, to enforce an SMA permit; which permit reveals concealed unfulfilled permit conditions, fraudulent engineering estimates, and conflicts of interest between County Directors and private interests. Moreover, Wong and Spence nonetheless, continue to enforce permit violations, selectively, in the County of Maui, in further violation of Plaintiff Salem's 14th Amendment Constitutional Rights.

461. Defendant Maui County Dept. Corp Counsel conspired with Margery S. Bronster, Esq. to conceal developer obligations and studies and evaluations pertaining to Lot 48, LLC which is the subdivision in which Plaintiff Salem had his family home.

462. As a direct result of fraud, and egregious breaches of the public trust by Defendants' County of Maui, Dept. Corp Counsel, Mayor, Regan, Wong, Hunt, Min, Spencer, Arakawa and Goode; Salem incurred an unnecessary and fraudulently conceived personal lien on Salem and his Hui road property title which resulted in Salem unnecessarily, and unlawfully, losing his family's home.

463. Defendant County Dept. Corp Counsel conspired to conceal evidence on behalf of private developers, and impede, obstruct, and influence the proper administration of the Plaintiff Salem's Chapter 11 petition in the United States Bankruptcy Court. Under U.S.C. 18 §1519, Defendants may be found guilty of a criminal offence and fined or imprisoned up to 20 years, or both. Defendant County Dept. Corp Counsel and Defendant Wong obstructed Plaintiff Salem from meeting and communicating with elected members of the Maui County Council. Defendants and County Defendants, disenfranchised and deprived Plaintiff Salem of the rights or privileges secured to other citizens and by doing so violated the Hawai'i State Constitution, Article 1: Right of Citizens.

464. Defendant Wong sent private communications to Mayor Arakawa, appointed Directors, and members of the Maui County Council to interfere and obstruct Plaintiff Salem's civil rights under Title 42 U.S.C. 1983, in retaliation, and with intent to deny to Plaintiff Salem the equal protection of the law, and to injure him and his property for lawfully attempting to enforce his rights,

and the rights of a class of persons, to the equal protection of the laws.

465. Defendant Wong threatened in writing to file a restraining order against Plaintiff Salem when Plaintiff Salem reasonably demanded disclosure to the Maui County Council of Defendant Wong's personal and professional relationship with legal counsel for a private developer the County of Maui was engaged with in protracted litigation and settlement negotiations.

466. Both actions Salem alleges in paragraphs 394 and 395 above violates Salem's First Amended rights as "1. Plaintiff [Salem] was engaged in constitutionally protected activities; 2. Defendant [Wong's] adverse action caused Plaintiff [Salem] to suffer an injury that would likely chill a person of ordinary firmness from continuing to engage in that activity; and 3. That the adverse action was motivated at least in part as a response to the exercise of Plaintiff's [Salem's] constitutional rights." Paige vs. Coyner July 26, 2010 Fed 6th Cir. Appellate (citing Bloch v. Ribar, 156 F.3d 673, 678 (6th Cir. 1988); see also id at 682,687 Further, Salem meets "an additional requirement common to all Section 1983 Claims: 'a plaintiff must allege that [h]e was deprived of a right secured by a Federal Constitution or Laws of the United States by a person acting under the color of state law.'" Id citing Wolotsky v. Huhn, 960 F.2d 1331, 1335 (6th Cir. 1992) (emphasis added)

467. "That is not to say that public officials lack the right to inquire into the motivations and goals of their colleagues or constituents. **What they cannot do, however, is take action in order to punish a citizen for exercising his or her constitutional rights.** That is 'an act taken in retaliation for the exercise of a constitutionally protected right is actionable under Section 1983 even if the act, when taken for a different reason, would have been proper.'" Paige vs. Coyner citing Bloch, 156 F.3d at 681-82 (citation and internal alteration omitted) (emphasis Salem)

468. 42 U.S.C. 1983 states "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall

be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”

469. Defendants Arakawa and his private land planning consulting firm Munekiyo, Arakawa and Hiraga, conspired to defraud, and deceive the residents of Maui County by colluding unlawfully to benefit the private firm, at the expense of Salem, the County of Maui and its residents.

470. Defendant Goode and his former employer, Smith Development, conspired to defraud, and deceive the residents of Maui County by unlawfully colluding to benefit a private interest and former employer of Goode, at the expense of Salem, the County of Maui and its residents.

471. Further, Plaintiff Salem was sent an implied death threat from Developer Kent Smith in retaliation against Salem for exposing violations of Maui County Code in the preliminary subdivision approval issued by Defendant Goode as Director of Public Works. The implied death threat was sent to Plaintiff Salem while Defendant Goode was employed by Developer Kent Smith immediately after his employment as Director of Public Works.

472. The Maui County Planning Commission agreed with Plaintiff Salem’s findings, and denied the application for the proposed subdivision located immediately across from Plaintiff Salem’s property.

473. Plaintiff Salem alleges that Defendants’ Arakawa and Goode’s conspiracies constituted fraud and violated the Maui County Charter and may also constitute violations of Federal Racketeering laws i.e. RICO. *“Each defendant in a Racketeer Influenced and Corrupt Organizations Act (RICO) conspiracy must have joined knowingly in the scheme and been involved himself, directly or indirectly, in the commission of at least two predicate offenses. 18 U.S.A. Sec. 1962(d).”* Tomaselli v. Beaulieu, 967 F. Supp. 2d 423 (D. Mass. 2013)

COUNTY OF MAUI HONEST SERVICE FRAUD 18 U.S.C. 1341, 1326

474. Plaintiff Salem incorporates paragraphs 1-473 of Plaintiff's Complaint as if fully set forth herein.

475. Defendants Pat Wong, Goode, Arakawa, and Spence committed violations of 18 USC 1341, 1346 constituting "Honest Services Fraud".

476. The public "has an intangible right to honest government" Shushan v. United States, 117 F.2d 110 (5th Cir. 1941), cert. denied, Waguespack v. U. S., 313 U.S. 574 (1941), cert denied, Waguespack v. U. S., 314 U.S. 706 (1941).

477. Defendant Arakawa mailed, through the U.S. Postal Mail, an unlawful Notice of Intent to Collect on a developer deferral agreement, which notice constitutes a scheme to defraud Plaintiff Salem and the County of Maui and its residents and citizens of their intangible right to honest services, sent through the U.S. Postal Mail to Salem.

478. Defendant Arakawa's actions, omissions and false representations violated 2010 Maui County Ordinance 3731 knowingly and willfully. While making false statements to the contrary, Defendants Arakawa, Goode and Wong's actions and omissions, jointly and severally, have consistently failed to honor and to enforce the Maui County Code in regards to the assessment and collection of Developer Deferral Agreements, to the benefit of private interests, and to the detriment of the citizens and residents of Maui County, the County itself, Plaintiff Salem, the State of Hawai'i, and the United States Federal Government.

479. Furthermore, Defendant Arakawa and Goode's, Defendant County Dept. Corp Counsel's public statements in public hearings, in the media, and in letters to Plaintiff Salem and in Bankruptcy court pleadings and declaration(s), have been unlawful, and inconsistent. Defendants' conduct reveals a long term pattern of neglect and failure and abuse of the public trust by Defendants, both jointly and severally, by their failure to comply with the Maui County Code acts and omissions in outright contravention of the Code.

480. Defendants Pat Wong and Defendant David Goode knowingly and willfully committed Honest Services Fraud by devising a scheme to defraud the Plaintiff Salem, the U.S. Bankruptcy Court, and the residents/citizens of Maui County by making false statements in court documents sent through the U.S. Postal Mail to cover-up the failure of Defendants since 2010 to enforce and to comply with Maui County Ordinance 3731.

481. Defendants Arakawa, Goode, Wong and Defendant County Dept of Corp Counsel's failure to implement, comply with and to enforce the Maui County Code, is the direct and proximate cause of harm to Plaintiff Salem, Maui County, its tax residents and citizens. Defendants' conduct has also harmed the Hawaii State and U.S. Federal Government, which have been defrauded into subsidizing County capital improvements unlawfully, to the benefit of private interests.

482. Defendant, Hunt and Defendant Spence and Defendant County Dept. Corp Counsel unlawfully refused to enforce an unfulfilled open SMA permit, harming Plaintiff Salem and the public interest and benefiting private developer interests. Defendant County Corp Counsel, sent a letter to Plaintiff Salem unlawfully supporting Defendant William Spence's decision as the Director of the Maui County Planning Department.

**COUNT X: BREACH OF DUTY BY PUBLIC OFFICERS/ BREACH OF THE PUBLIC TRUST
AND OFFENSES AGAINST PUBLIC ADMINISTRATION**

483. Plaintiff Salem incorporates by reference paragraphs 1-482 of Plaintiff's Complaint as if fully set forth herein.

484. Article 10-1 of the Maui County Charter states that "*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.*"

485. Section 10-4 Prohibitions: "*No officer or employer of the County shall... [Article 10-4 c.] Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer's or employee's official duties or which*

may tend to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.”

486. Section 10-5. Penalties. “Any person who violates the provisions of this Article shall be subject to a fine to be provided for by ordinance adopted by the county council, and in addition to any such fine that may be imposed, non-elected officers or employees may be suspended or removed from office or employment by the appropriate appointing authority and elected officers **may be removed through impeachment proceedings pursuant to Section 13-13.**”(emphasis Salem)

487. Through false representations to Plaintiff Salem, and to Maui County and its residents and citizens, as well as the concealment of both SMA Permit studies and evaluations, and approximately ten thousand pages of developer deferral agreements; fraudulent engineering estimates, and undisclosed conflicts of interests, Defendants jointly and severally have unlawfully assisted private interests.

488. Maui County Charter 8.2-3(b) restricts the Office of Corporation Counsel’s representation “to matters relating to... official duties.” The Hawai’i Supreme Court in Machado v. Bal, 31 Haw. 559 , 564(1930) (quoting 43 C.J. 695) see also E. McQuillin, *The Law of Municipal Corporations* Sec. 29.14 (3d.1990) quoted a decision which stated “ [i]t is within the discretionary power of a municipality to indemnify one of its officers against liability incurred by reason of any act done by him in the **boda fide** discharge of his official duties....”[emphasis added] It was further stated by the Hawai’i Supreme Court that “ It would seem wisest to leave the indemnification of the officer to the discretion of those who represent the interests of the city, that on one hand they should not be without the power to indemnify a meritorious officer, acting in good faith, for the consequences of his conduct, **and on the other hand, they should not be obliged to protect every officer, though acting in good faith, seem to them to indicate a blamable want of good care and caution.**” (emphasis Salem) Id. At 1357, 157. Quoting from Machado, 31 Haw. at 564 (which was quoting Moorhead v. Murphy, 94 Minn. 123, 102 N.W. 219, 220 (1905)) Plaintiff alleges that

Defendants jointly and severally did not act in good faith, and, or acted with reckless and wanton disregard for the rights and interests of Salem, and the public interest.

489. Defendants and County Defendants jointly and severally, have made numerous “materially false statements” in official proceedings, pursuant to HRS 710-1060, 1063. “Falsification before a court, legislative committee, administrative agency, or other official proceeding, as defined in Section 710-1000(12), is deemed more culpable and more socially dangerous than similar falsity in a report, license application, or like matter, especially when these types of statements are often prepared by a lawyer.[3]...”

490. Defendant Wong obstructed government operations by intentionally obstructing, impairing, and hindering Plaintiff Salem, in his capacity as a public servant, by physical interference, obstacles, and threats of force.

491. Defendant Wong blocked the drafting of legislation by Department of Transportation Director JoAnne Johnson Winer which was directed by Mayor Arakawa, in order to address the failure of the County of Maui to collect on its recorded Developer Deferral Agreements. Mayor Arakawa directed Plaintiff Salem and Joanne Johnson Winer to perform this task, for the purpose of collecting over forty years of uncollected debts owed to the County from Developer Deferral Agreements drafted by Corporation Counsel.

492. Defendant Wong then advised County officials, not to have communications with Plaintiff Salem and characterizing him as a “potential litigant” in order to impede and preclude Salem’s efforts to draft and promote legislation, known as the “Fairness Bill”; which Salem then pursued as a private citizen, after Wong squashed the previous efforts.

493. Defendant Wong concealed from the Maui County Council a responsible resolution to the mitigate the County of Maui’s losses and damages protracted litigation involving the , one which provided for affordable housing by a credible nationwide affordable housing firm. Instead, Defendant Wong advised the Maui County Council to purchase the developers

494. Defendant Goode further obstructed government operations by representing to the public that Defendant County Corp Counsel had concluded the Fairness Bill would be unlawful.

495. Defendant Goode then made knowingly false and unlawful representations in official court documents in Salem's Bankruptcy case, and to the public through the media, that the County "may or may not" collect on the development Deferral Agreements.

496. Meanwhile, Defendant County Corp Counsel, drafted and supported the 2010 Maui County Ordinance that provided for notice of collection to property owners who were heirs to the developer deferral agreements. Then, Maui County Corp Counsel blocked the "Fairness Bill" legislation; which legislation provided a formula for assessment of the developer deferral agreements

497. For 45 years or more, Defendant County Corp Counsel kept drafting developer deferral agreements while never actually intending to collect the millions of dollars owed to the County of Maui.

498. Defendants, however, have allowed multiple overlapping, "one-time", three lots or less developer deferral Agreements on the same underlying property and allowed private attorneys to draft and record private warranty deeds to alter government contracts on property(s) with overlapping, "one time" three lot or less subdivision deferral agreements.

499. Defendants Hunt and Spence refuse to enforce unfulfilled SMA permits, allow unlawful minor permits with false engineering estimates.

500. Furthermore, Defendants Jeff Hunt and William Spence, working in collusion with Corporation Counsel and Defendant Pat Wong, have demonstrated a pattern of intentionally not enforcing SMA permits that would expose the unlawful subdivision practices of the Defendants.

501. *"A public official can be held liable for damages for the malicious exercise of discretion."* 2 H. App. 176, 628 P.2d 634. (Cited from Case Notes Part I HRS 663-1)

COURT XI. PERJURY AND OBSTRUCTION OF JUSTICE

502. Plaintiff Salem incorporates by reference paragraphs 1-501 of Plaintiff's Complaint as if fully set forth herein.

503. Defendant Goode, acting under the legal representation and counsel of Defendant Corporation Counsel, committed perjury and made false representations in a Declaration filed with United States District Court for the State of Hawaii.

504. Defendant Goode's statement that the County of Maui "may or may not" be collecting upon the "3 Lots or Less" subdivision agreement contradicts Defendant Arakawa's written notices on intent to collect and Title 18 of the Maui County Code adopted as a rule of law by the Maui County Council.

505. Acting in good faith and beyond his contractual obligations of the underlying Anka, Inc "3 Lots or Less" subdivision agreement, during an open escrow, Plaintiff Salem attempted to pay a pro rata share of the developers financial obligations to facilitate the sale of his home and removal of the senior lien on title.

506. In response to a request to Defendant Corporation Counsel for an amount to pay off and remove the senior lien from Plaintiff Salem's property title, Defendant Goode and Defendant Corporation Counsel attempted to deceive the Court by declaring an invalid rule of law beyond their statutory authority to obstruct the sale and transfer of Plaintiff Salem's property.

507. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 8.4(c), "It is professional misconduct for a lawyer engage in conduct involving dishonest, fraud, deceit or misrepresentation."

508. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 1.2(d), "a lawyer shall not counsel to engage, or assist a client, in conduct a lawyer knows is criminal or fraudulent".

509. The State of Hawaii Supreme Court Rules of Professional Conduct, Rule 1.6(b) "a lawyer shall reveal information which clearly establishes a criminal or fraudulent act of the client in

the furtherance of which the lawyers services have been used to the extent reasonably necessary to rectify the consequences of such act, where the act has resulted in substantial injury the financial interests or property of another.”

510. Hawaii Revised Statute; Section 710-1063, states “the materiality of the falsification distinguishes perjury, a felony, from the lesser offenses in this Part. Given the requisite state of mind with regard to truthfulness of the statement, falsification, in an official proceeding, which is material, constitutes the greatest risk of obstruction of justice. A "materially false statement" means: any false statement, regardless of its admissibility under the rules of evidence, which could have affected the course or outcome of the proceeding”.

511. As a direct and proximate cause result of Defendant Goode’s perjury and fraudulent representations in the United States District Court for the State of Hawaii which contradict established rule of law, Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

512. Plaintiff Salem is entitled to relief from Defendants Wong, Goode, Hunt, and Spence’s acts and omissions which constitute the obstruction of justice and perjury pursuant to the penalties set forth in HRS 710 1000-1063.

COUNT XII. CONFLICTS OF INTEREST AND UNJUST ENRICHMENT

513. Plaintiff repeats and incorporates by reference herein paragraphs 1 through 512 of this Complaint.

514. Pursuant to the Maui County Charter, Chapter 2, Section 8-2.3.4., Defendant Corporation shall perform their duties as required by law.

515. The Maui County Charter, Article 13-1.3. Definitions, defines “law” as “Federal law, any law of the State or any ordinance of the County of Maui or any other rule having the force and effect of law”.

516. In accordance with the State of Hawaii Supreme Court attorney Rules of Professional Conduct, (“HRCP”) Rule 1.11, attorneys shall not exploit public office to the advantage of a private client. A lawyer shall not have access to government information only obtainable through the lawyer’s government service.

517. In accordance with HRCP, Rule 1.11, written notice shall be promptly provided to the appropriate government authority to ascertain compliance with the agencies conflicts of interest rules.

518. Pursuit to the Maui County Charter, Article 3, Section 3-6.6., the appropriate authority for written notice of potential conflicts of interest and employment of special counsel is the elected members of the Maui County Council.

519. Defendant Corporation Counsel employed attorney Margery Bronster without notice to the Maui County Council that attorney Bronster was simultaneously representing developer Lot 48A, LLC’s in judicial matters, investigations, legal conflicts, and discovery involving County of Maui government records, subdivision approval documents, and administrative decisions by Defendant Arakawa.

520. Defendant Corporation Counsel denied the public and members of the Maui County Council of their ability and rights to due process to protect the public interest during the procurement of developer Lot 48A, LLC’s legal counsel.

521. In accordance with the State of Hawaii Supreme Court attorney Rules of Professional Conduct, Rule 1.13.(b)(f), if a lawyer representing a government agency knows that a government officer or employee is engaged in an action or matter which is in violation of law which reasonably might be imputed to the government, the lawyer shall take the necessary measures, including divulging of information to persons outside of the government in accordance with Rule 1.6.

522. Defendant Corporation Counsel violated HRCP Rule 1.6 by failing to prevent a public official and government agency from committing an illegal act and causing substantial injury to the public good and Plaintiff Salem.

523. Defendants, their current, former, and prospective developer employers and partners, and their conflicted legal counsel have been unjustly enriched at the public expense by Defendant's decisions evidenced herein and to a further degree yet discovered as follows;

- (a) Millions of dollars in uncollected developer contractual obligations shifted to and incurred by the County of Maui, and taxpayers of Maui County.
- (b) Upwards to \$500,000 in unjustified and unethical legal fees paid to Lot 48A, LLC's legal counsel while employed by Defendant Corporation Council.
- (c) Over \$250,000.00 in incomplete infrastructure and drainage mitigations by Lot 48A, LLC.
- (d) \$100,000.00 in initial fine and \$10,000 a day in daily fines for developer Lot 48A, LLC's unfulfilled and expired SMA Permit.
- (e) Unknown and undiscovered amount of uncollected Park Fees.
- (f) All other relevant conflicts of interest as set forth in paragraph 353 of Salem's Complaint.

524. Under the power entrusted in the Maui County Charter, the Maui County Council has the right and duty to seek financial restitution and removal from office of the officials who have taken part in the violations of law and ordinances adopted by the Maui County Council.

525. As a direct and proximate cause result of Defendants Arakawa, Goode, and Wong's conflict of interest resulting in their unjust enrichment; Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure, excessive and unwarranted financial losses, and severe emotional distress.

526. Plaintiff is entitled to General, Special, Compensatory, Aggravated and Punitive damages for the harm caused by Defendants (jointly and severally) including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

COUNT XIII. GROSS NEGLIGENCE

527. Plaintiff repeats and incorporates by reference herein paragraphs 1 – 526 of Plaintiff Salem’s Complaint. Plaintiff alleges that Defendants Wong, Arakawa, Goode, Hunt and Regan committed willful and wrongful acts in their individual capacities as well as in their official capacities. Plaintiff alleges that the acts and omissions of Defendants, each and every one, and in their official capacities, constituted willful misconduct with a reckless disregard for the rights of Salem and, the public interest; failing to use the kind of care a reasonable person would use.

528. The Mayor acted grossly negligent when he failed and continues to fail to exercise his duties pursuant to the Maui County Charter, Section 7-5, (1), (8) regarding the actions and, or omissions of Defendant County Corp Counsel, Defendants Wong, Arakawa, Goode, Hunt, Spence, and Regan. Such actions and, or omissions being noticed to the Mayor on numerous occasions and set forth in this Complaint. Salem alleges that such gross negligence by the Mayor has resulted in unlawful Director decisions and unlawful decisions by Corporation Counsel and the Department of The Corporation Counsel which decisions have: wrongfully incurred financial obligations to the County of Maui to the benefit of private interests; contravened environmental law, violated the Maui County Code and administrative rules and regulations; and have harmed Salem and his property.

529. Plaintiff, in reliance upon the terms and conditions of the “3 Lots or Less” subdivision agreement authored by Defendant Corporation Counsel, purchased a parcel of land in west Maui believing the contractual agreements would preserve his property rights and intrinsic property value.

530. The developer “3 Lots or Less” subdivision agreements authored by Defendant Corporation Counsel have resulted in an open ended, unexplainable, unquantifiable, and unmovable Government encumbrances recorded on and clouding the title of thousands of property titles throughout Maui County.

531. Defendant Corporation Counsel has acted grossly negligent by infringing upon the property rights and title of thousands of parcels of land in Maui County, including Plaintiffs former home, Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

532. Defendants have provided continuous and overlapping financial favors for private developers at the public and Plaintiffs expense, failed to adopt a formula and system for assessment, collection and a process for the removal of a government encumbrance and, or lien of citizen's property title, and failed to release public documents for the review and investigation of the Maui County Council.

533. Defendants including Defendant Regan, have acted grossly negligent by failing to keep accurate records of developer financial obligations and by failing to prevent and, or knowingly causing unlawful overlapping execution of one time agreements, thereby unlawfully increasing the obligation for the County of Maui and taxpayers to incur and pay for private developers financial obligations. Defendant Regan failed to insure the competent financial administration of all County of Maui Departments including, but not limited to collecting and receiving monies due to the County

534. Through their grossly negligent actions described herein, Defendant's, acting individually and collectively in conspiracy with each other, in violation of the Maui County Charter, Article 9, Financial Procedures, Section 9-12. Payments and Obligations, unlawfully breeched the public trust by executing countless contractual agreements with private developers knowing the developers financial obligations would be incurred by the citizens of the County of Maui in direct violation of the procedures and policies established by ordinance.

535. Plaintiff, a former executive assistant with the Maui County Council, discovered the continuous pattern of gross negligence by the Defendant County of Maui Corporation Council.

536. Defendants Arakawa, Goode, Wong, Hunt and Spence have made representations that are inconsistent and their public statements and actions contravene the Maui County Code and the Maui County Charter as they pertain to Title 18 Ordinance 3731 and undisclosed conflicts of interests. Improper and ineffectual attorney conflict checks allowed former Attorney General Margery Bronster to work both for Defendant Maui County Corp Counsel and simultaneously for a Developer who colluded with the Defendant Maui County Corp Counsel to conceal permit studies from both the County Council and from Plaintiff Salem. Both Defendants Arakawa and Goode both

are in violation of the Maui County Charter for their being employed by the very same developers, whose interests benefited in the County by Arakawa and Good serving Defendant Maui County as department directors to the detriment of Salem, Maui County, and its residents.

537. Public hearing, County of Maui, February 1st, 2010, Infrastructure Management Committee: Corporation Counsel: "We can't have legislation that's going to destroy an existing contractual rights... Those existing contracts that we already have with these landowners are out there, and we are in a good position with those contracts."

538. Defendant Arakawa: "Any preexisting deferral agreement runs with the land and so they are still in effect and as I mentioned we intend to collect on those."

539. For over five years involving five annual budget hearings by the Maui County Council, there has been no attempt to assess or collect upon the developer deferral agreements.

540. County Defendants and, or Defendants, jointly and severally, have acted grossly negligent as follows;

**A. Gross Negligence of Department of Public Works
("3 Lots or Less" Subdivision Agreements)**

- (a) Failure of Department of Public Works to keep any developer financial obligations.
- (b) Signing off on Subdivision with SMA Permit condition unfulfilled.
- (c) Failure to immediately remove deferral cloud from Salem property after issuance of new entitlement conditions and permits to subsequent to Lot 48A, LLC.
- (d) False Public Notices of Commencement of Federal Aid roadway improvement Project without necessary land dedications in place.
- (e) Public Works Director Notices of Intent to Collect sent to property owners suggesting owners will have to haggle with each other to determine pro rata shares of obligation on government contract.
- (f) Failure to send notices of intent to collect after 2010 ordinance change.
- (g) Rather than insure Phase IV of Lower Honoapiilani Road was a viable Capital

Improvement Project properly prepared to commence construction upon, the Defendant's acted negligently in their false public notices and expense of public funds.

- (h) The Defendants engaged, and continue to engage, in private meetings, private communications, and unlawful conduct that serve private interests.
- (i) Lower Road Right of Way Designation
- (j) All other relevant claims set forth in paragraph 353 of Salem's Complaint

B. Gross Negligence of Department of Planning

(SMA Permit)

- (k) Issuance of a SMA Minor Permit to Lot 48A, LLC.
- (l) Failure to insure Lot 48A, LLC SMA Permit fulfilled prior to Subdivision Approval.
- (m) Planning Director Hunt False claims of completed SMA Permits by Lot 48A, LLC
- (n) Refusal to enforce Lot 48A, LLC Permit upon discovery of expiration and non-compliance.
- (o) Concealment of Public Documents – SMA Permit Studies.
- (p) Issuance of oceanfront single family home SMA Permits on Subdivision Lots where underlying subdivision SMA is not fulfilled.
- (q) Issuance of shoreline certifications for private developers outside underlying subdivision boundaries established by prior shoreline certifications.
- (r) All other relevant claims as set forth in paragraph 353 of Salem's Complaint

C. Gross Negligence of Department of Corporation Counsel

- (s) Failure of Corporation Council to keep any records of developer financial obligations.
- (t) Continuation of the drafting and recording Developer Subdivision Deferral Agreements by Corporation Counsel after notices to implement assessment

forms and collection measures of outstanding Developer assessment obligations and recorded agreements.

- (u) Executing multiple one time subdivision deferral agreement on parent parcel.
- (v) Failure of Corporation Council to perform Conflict Check on Lot 48A. LLC Attorney Margery Bronster.
- (w) Corporation Counsels failure to respond to Old Republic Title request to obtain pay off amount to remove lien from title.
- (x) Failure of Government Agency to perform Conflict Check on Appointed Directors.
- (y) All other relevant claims as set forth in paragraph 353 of Salem's Complaint.

N. Gross Negligence of the Department of Finance

- (z) Failure of Defendant Regan and Defendant County Department of Finance to keep any records of Developers financial obligations.

E. Defendants Breaches of Duty

541. The Maui County Council and Maui County Planning Commission has a duty to adopt reasonable procedural requirements for the review and approval of the residential subdivision applications and Shoreline Management Area permit applications.

542. The Maui County Council adopted reasonable procedural requirements and ordinances in Title 18 of the Maui County Code for the review and approval of residential subdivision applications.

543. The Maui County Planning Commission adopted reasonable procedural requirements in Title 12 of the Maui County Code for the review and approval of the requirements of the Coastal Zone Management Act through Shoreline Management Area applications.

544. Under Hawaii State law, the Defendants, as public officials and County employees, owe the same duty to act in a non-negligent manner as do ordinary citizens acting in like circumstances.

545. The Defendants repeatedly breached their duty to follow the adopted procedural requirements by acting grossly negligent in their decision making that contract ordinances, rules, and administrative duties, as follows;

- a. Defendant Arakawa and Defendant Goode repeatedly and continuously neglected and breached their official duties established in Chapter 5, Section 8-5.3.2 of the Maui County Charter, by approving developer's subdivisions prior to insuring compliance with conditions of the issued developer SMA Permits.
- b. Defendant Spence and Hunt repeatedly and continuously neglected their official duties established in Chapter 8, Section 8-8.3 of the Maui County Charter, by failing to insure developers issued SMA Permits conditions and environmental mitigations were constructed, inspected, enforced, and in compliance with engineering valuations and consultant studies.
- c. Defendant Wong and, or Defendant County Corp Counsel have repeatedly and continuously officially supported Defendant Directors Arakawa, Goode, Hunt and Spence in decisions that have been in direct contravention of the Maui County Charter and the Maui County Code.

F. Defendant County's and Defendants Breach of Administrative Responsibilities

- (a) Failure and refusal of Defendant Maui County Corporation Counsel to remove encumbrances for property owners and lien for Salem creating a cloud on property Titles.
- (b) Defendant Maui County Counsel Corporation Counsel and Defendant Directors' Wong, Goode, Spence making public representations in contravention of County law.
- (c) Failure of Defendant Maui County to Investigate Consultant/Engineering Fraud on SMA Valuations resulting in the granting of unlawful minor permits and the circumvention of Hawai'i State Environmental law.
- (d) Refusal by Maui County Planning Department Directors to enforce signed and issued SMA Permit Conditions

- (e) Grossly Negligent Administration of Federal CMA Environmental Laws
- (f) Failure and unwillingness to honor State law on 45 day review period for preliminary subdivisions.
- (g) Failure and unwillingness to honor Maui County code relating to continuation of established right of way established via a public hearing process.
- (h) Failure of Maui County and its departments to enforce laws and ordinances pursuant to the Maui County Code, the Maui County Charter, Hawai'i State and U.S. Federal law.
- (i) All other relevant claims set forth in paragraph 353 of Salem's Complaint.

546. As a direct and proximate cause result of Defendants and County Defendants grossly negligent acts, jointly and severally, Salem suffered extensive injuries and damages, including, but not limited to, the loss of his family home through foreclosure and excessive debilitating financial losses and severe emotional distress.

547. Plaintiff is entitled to General, Special, Compensatory, Aggravated, and Punitive damages in an amount to be proven at trial, including recovery of all expenses, costs, and attorney(s) fees.

COUNT XIV. BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

548. Plaintiff repeats and incorporates by reference herein paragraphs 1 through 547 of this Complaint.

549. Through their actions described herein, Defendant's, acting individually and collectively in conspiracy with each other, breeched the covenant of good faith and fair dealing implied in every contract under Hawaii law, and made a part of Plaintiff's purchase agreements for Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

550. Defendants failed to abide by the contractual terms of a “3 Lots or Less” subdivision agreement recorded in senior position on the property acquired by Plaintiff Salem.

551. As a direct and proximate cause result of Defendants breaches, Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

552. Plaintiff is entitled to General, Special, Compensatory, Aggravated and Punitive damages for the harm caused by Defendants (jointly and severally) including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

COUNT XV. FRAUD

553. Plaintiff repeats and incorporates by reference herein paragraphs 1 through 552 of this Complaint.

554. Under H.R.S. contract law, through their actions described herein, Defendant Corporation Counsel, acting individually and collectively in conspiracy with each other, engaged in fraud by making false representations and inducing the Plaintiff to justifiably rely, to his detriment, upon the expressed terms and conditions of the “3 Lots or Less” subdivision agreement made a part of Plaintiff’s purchase agreements for Lot 48C of the Mailepai Hui Partition located at 8 Hui Road E, Lahaina, Hawaii.

555. Defendant Corporation Counsel and Defendant Arakawa facilitated the fraud referred to in paragraph 446, by allowing a contractual agreement between 3 property owners and the County of Maui to be privately altered by land developers without notice to Plaintiff Salem. Through a private warranty deed drafted and recorded by Developer Lot 48A, LLC’s private attorney Tom Welch, 3 new parcels were added to a contractual agreement authored and recorded by a government agency, Defendant Corporation Counsel.

556. Defendant Arakawa provided written notice to Plaintiff Salem that 5 lots were bound by the “3 Lots or Less” subdivision agreement. In doing so, he acted beyond his authority by

attempting to establish a new rule of law and to assist an act of fraud constructed by a private developer and Defendant Arakawa's former client in private practice.

557. Defendant Arakawa also provided written and public notice to Plaintiff Salem and the Maui County Council stating the pro rata share of monies owed would be determined through consultation and negotiations between 5 property owners unlawfully bound by a "3 Lots or Less" subdivision agreement.

558. At the time of written notice, property owners within the Mailepai Hui Partition who were added to the "3 Lots or Less" subdivision agreement were represented by legal counsel who was simultaneously employed by Defendant Corporation Counsel.

559. Defendant Arakawa acted beyond his authority when he attempted to make a new rule of law that contradicted the expressed language of the "3 Lots or Less" subdivision agreement adopted through Maui County Code Title 18 by the Maui County Council.

560. Pursuant to H.R.S. Chapter §91(b), a court is required to declare that an agency's rule is void if it goes beyond the agency's statutory authority or was adopted without complying with statutory rule making procedures.

561. Defendant Arakawa's unethical, unfair, deceptive and injurious acts include, but are not limited to, the following;

- (a) While employed as a County of Maui official, Defendant Arakawa concealed a private developer client Lot 48A, LLC's subdivision approval, engineering valuations, and land division entitlement documents.
- (b) Defendant Arakawa issued final subdivision approval to a private developer client in violation of Title 18 of the Maui County Code and in violation of Article 8, Chapter 5, and Section 8-5.3 of the Maui County Charter.
- (c) Assisted a private developer client in deceiving the Department of Planning to deny citizens their rights to protect coastal resources and personal property rights adopted under Title 12 of the Maui County Code.

- (d) In the violation of the Anka, Inc covenants, conditions, and deed restrictions, assisted and conspired with a private developer client and legal counsel employed by Defendant Corporation Counsel by concealing Lot 48A, LLC SMA Permit studies and Order of Magnitude development valuation from Plaintiff Salem and members of the Maui County Council.
- (e) Approved subdivision infrastructure construction plans on behalf of a private developer client Lot 48A, LLC that did not represent conditions of subdivision approval, in violation of Title 18 of the Maui County Code.
- (f) Continued to execute contracts on behalf of private developer knowing the County of Maui and taxpayers would incur countless developer's financial obligations, in direct violation of Article 9, Section 9-12.1, of the Maui County Charter.
- (g) Assisted Defendant Corporation Counsel in concealment of hundreds of developer contractual agreements from the Maui County Council and public in violation of Article 13, Section 13-9.1., of the Maui County Charter.
- (h) Facilitate, and conspired with Defendant Corporation Council on the execution of overlapping "3 Lots or Less" subdivision agreements for developers in violation of Title 18 of the Maui County Code and Article 8, Chapter 5, Section 8-5.3 of the Maui County Charter.
- (i) Provided multiple false public notices of commencement of construction of Capital Improvement Project Phase IV of Lower Honoapiilani Road.
- (j) Provided written notice to property owners of intent to collect upon the "3 Lots or Less: subdivision agreements that misrepresented rule of law adopted by the Maui County Council in Title 18 of the Maui County Code.
- (k) Informed the Maui County Council that it was the Planning Departments responsibility to enforce Lot 48A, LLC's expired and unfulfilled SMA Permit; a

condition of subdivision approval which Defendant Arakawa signed off on and disregarded.

562. Defendant's unethical, fraudulent and deceptive practices induced Plaintiff Salem to do that which he would otherwise not do, or even consider doing, in multiple events and actions involving the acquisition and futile efforts to preserve his vested property rights over a period of over 15 years which severely harmed Salem.

563. Defendant Wong and Defendant Goode exceeded their authority, jointly and severally, by representing to the public and to the Bankruptcy Court, during a Chapter 11 Bankruptcy proceeding of Salem, that the County of Maui "may or may not collect" on uncollected developer deferral agreements, in contravention of County Ordinance 3731.

564. Defendants Arakawa, Goode, Wong, and Spence in collusion with the developer adjacent to Salem's hui road subdivision, had concealed subdivision permit studies and evaluations regarding Plaintiff Salem's subdivision; which documentation revealed that the adjacent developer was responsible for the developer deferral debt charged to Salem.

565. As a direct and proximate cause result of Defendant's grossly fraudulent acts, as set forth herein, including any and all other relevant claims of fraud set forth in paragraph 353 of Salem's Complaint. Salem suffered extensive injuries and damages, including, but not limited to, the loss of his family home through foreclosure.

566. Plaintiff is entitled to general, special, compensatory, aggravated and punitive damages due to the acts and omissions Defendant Arakawa, Defendant Maui County Corp Counsel, Defendant Goode, Defendant Hunt and Defendant Spence including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

COUNT XVI. UNFAIR AND DECEPTIVE TRADE PRACTICES

567. Plaintiff repeats and incorporates by reference herein paragraphs 1 - 566 of Plaintiff Salem's Complaint.

568. Defendants, acting individually and collectively in conspiracy with each other, breached the State of Hawaii Unfair and Deceptive Trade Practice Act, H.R.S. §§480-2 and 480-13 by engaging in a practice that is unfair, deceptive, offends public policy, and substantially injurious to consumers and Citizens of Maui County, including, but not limited to Plaintiff Salem.

569. “Consumer” means a natural person who, primarily for personal, family or household purposes...commits money, property, or services in a personal investment.” “Real estate or residences did not qualify as “goods” under this section, but did qualify as “personal investments”; homebuyer thus had standing as “consumer” to bring claim under Section 480-13. 80 H. 54, 905 P.2d 29.

570. As a direct and proximate cause result of Defendant’s fraudulent acts, Salem suffered extensive injuries and damages, including the loss of his family home through foreclosure.

571. Plaintiff Salem is entitled to treble damages as set forth in HRS 480-2 and HRS 480-13, for the harm caused by Defendants (jointly and severally) to Salem’s property in an amount to be proven at trial.

COUNT XVII. FALSE LIGHT

572. Plaintiff Salem incorporates paragraphs 1-571 of Plaintiff Salem’s Complaint as if fully set forth herein.

573. Defendant Patrick Wong, in a memo written and circulated to County government officials, published false and misleading statements about Plaintiff Salem which portrayed Salem in a false light intentionally and knowingly, and without regard for the false light in which Plaintiff Salem would be placed.

574. Defendant Patrick Wong committed this act with the intent to harm Salem and to ruin Salem’s credibility thereby preventing Salem from bringing to light the fraudulent and other unlawful conduct of Defendants, including, but not limited to, Defendant Patrick Wong.

575. Defendant Patrick Wong's action to harm Salem in this manner would be considered highly offensive to a reasonable person. In fact, it was highly offensive to County Officials who know and who work and have worked with Plaintiff Salem.

576. Furthermore, Defendant Patrick Wong and Defendant Goode's knowingly false representations in court documents in Plaintiff Salem's Chapter 11 Bankruptcy case also portrayed Salem in a false light and caused harm to Plaintiff Salem thereby.

577. As a direct and proximate cause result of Defendant Wong and Defendant Goode's intentional acts, Salem suffered injuries and damages, to his reputation and his credibility and obstructed legislation and blocked the collection of millions of dollars of debts owed to the County and maintained an open-ended government encumbrance which became an open-ended lien, on Salem's property.

578. Plaintiff Salem is entitled to general, special, compensatory and punitive damages caused by the Defendants including recovery of all expenses, costs, and attorney(s) fees in an amount to be proven at trial.

COUNT XVIII. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

579. Plaintiff repeats and incorporates by reference herein paragraphs 1-578 of Plaintiff Salem's Complaint.

580. "An individual is liable for intentionally inflicting emotional distress when his conduct is 'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency'" Howell v. New York Post Co. 81 N.Y. 2D 115, 121,595 N.Y.S. 2D 350 (1993). "Specifically, a plaintiff must prove (1) extreme and outrageous conduct; (2) intent to cause, or reckless disregard of a substantial probability of causing, severe emotional distress; (3) causal connection between the conduct and injury; and (4) severe emotional distress." Stuto v. Fleishman, 164 F. 3d 820, 827 (2nd Cir. 1999) cited in Turley v. Arcedlor-Mittal

581. The conduct exhibited by Defendants (jointly and severally) constitutes a pattern of behavior that constitutes outrageous conduct that is extreme and which has a substantial probability of causing severe emotional distress in the Plaintiff and for which all the Defendants (jointly and severally) showed a completely reckless disregard.

582. Defendant Goode issued preliminary subdivision approval to developer Smith Development on the Pu'uKahana subdivision application directly across the street from Plaintiff Salem's property. Immediately thereafter, Defendant Goode was employed by Smith Development.

583. Defendant Goode violated the Maui County Charter, Article 10, Code of Ethics, Section 10-4., by receiving compensation from a private interest on a subdivision application which was under Defendant Goode's direct and active consideration as Director of Public Works.

584. After years of opposition from multiple property owners impacted by the proposed Pu'uKahana subdivision, including Plaintiff Salem and his legal counsel Tom Pierce, the Pu'uKahana subdivision application was denied by the Maui County Planning Commission.

585. Defendant Goode's preliminary subdivision approval was rejected by the Planning Commission due to violations of the Maui County Code. Immediately upon denial, Defendant Goode's employer Kent Smith sent Plaintiff Salem an implied death threat.

586. Defendant Wong's attempts to character assassinate Salem; his motions to interfere with Salem's requests for discovery of concealed documents by Defendants have directly caused Salem severe distress.

587. Defendant Goode's attempt, in a declaration to the Bankruptcy Court, during Salem's Chapter 11 was a brazen attempt, through false representations, to harm Salem by misrepresenting the County Code and Title 18 Ordinance of 2010 requiring the assessment and collection of uncollected obligations.

588. Defendants' attempts, jointly and severally, to cover-up acts and omissions constituting fraud and, or gross negligence and civil conspiracy harmed Salem and caused him unimaginable emotional distress.

589. Defendants acted intentionally and recklessly, conduct was extreme and outrageous; acts are the cause of the distress; and Plaintiff suffers severe emotional distress as a result of defendant's conduct.

590. As a direct and proximate cause result of Defendant's negligent acts, Salem suffered extensive injuries and damages, including severe anxiety due to the loss of his family home through foreclosure, the complete exhaustion of all Salem's financial resources attempting to address the harm being caused to Plaintiff by Defendants jointly and severally as set forth in the Complaint herein, and the consequence of excessive stress on his wife and family.

591. As a direct and, or proximate result of Defendants wrongful acts, and, or omissions against Salem, (jointly and severally) Salem has suffered injuries and damages as set forth herein and is therefore entitled to receive special damages, and, or general damages in amounts to be determined at trial or hearing thereof.

COUNT XVIII. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

592. Plaintiff repeats and incorporates by reference herein paragraphs 1-591 of Plaintiff Salem's Complaint.

593. As a result of Defendants wrongful conduct (jointly and severally), Salem sustained a mental condition requiring medication.

594. As a direct and, or proximate result of Defendants wrongful conduct, (jointly and severally) Salem has suffered injuries and damages as set forth herein and is therefore entitled to receive special damages, and, or general damages in amounts to be determined at a trial or hearing thereof.

COUNT XX. TRESPASS TO CHATTEL

595. Plaintiff repeats and incorporates by reference herein paragraphs 1-594 of Plaintiff Salem's Complaint.

596. Defendants jointly and severally knowingly interfered with Plaintiff Salem's lawful possession of his property on Hui road; interfering with Salem's possessory interest by maintaining and supporting an open-ended government encumbrance and cloud over Salem's title on his Hui Road property which precluded Salem from being able to market and to sell his property and which substantially diminished its value.

597. Furthermore, and later when Salem entered into escrow with a tenant, who desired and intended to purchase said property; Defendant Pat Wong made materially false representations to the Title company, to the effect that the encumbrance recorded on said property by the County of Maui did not constitute a lien; and that the County may or may not collect on the debt owed through a developer deferral agreement; which debt, in actuality, was required to be assessed and collected by law.

598. Defendant Arakawa and Defendant Goode unlawfully interfered with Salem's property by failing to assess and collect the fees Salem allegedly owed the County which open-ended encumbrance and cloud over Salem's title, became a lien after Defendant Arakawa issued a Notice to Collect the debt to Plaintiff Salem.

599. Through Fraud, false representations and, or gross negligence, Defendants committed Trespass to Chattel against Plaintiff Salem's property.

COUNT XXI. CONSTRUCTIVE TAKING

600. Plaintiff Salem incorporates paragraphs 1-599 of Plaintiff Salem's Complaint as if fully set forth herein.

601. Failure of Defendant Maui County Corp Council to respond to Title Company demand for compliance with C-12 of State of Hawaii real property purchase contract resulted in loss of sale and diminishment of value of Plaintiff Salem's property interest.

602. Defendant Maui County Corp Council and Defendant Goode allowed an open ended government lien on Salem's property title, precluding appraisers and mortgage lending to Plaintiff

Salem, resulting in substantial diminishment of real property value and his inability to sell his property.

603. Further, Defendant Wong and Defendant Goode exceeded their authority by falsely representing to an escrow title officer in Salem's escrow proceeding that the open-ended County government encumbrance on Salem's property did not constitute a lien

604. Defendants Maui County Corp Council, Defendant Arakawa and Defendant Goode committed fraud through the concealment of SMA permit studies and evaluations and undisclosed conflicts of interest creating \$250,000 lien on Salem's hui road property; resulting in Salem's inability to eliminate fraudulent lien, sell his property, and avoid foreclosure.

RELIEF

WHEREFORE, based upon the facts and findings detailed above, the Plaintiff requests that judgment be entered against the Defendants and for Plaintiff Salem and in the public interest as follows:

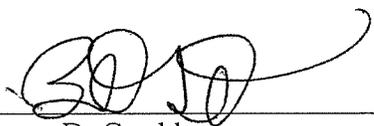
- (i) Enter an Order to restrain any and all Defendants named herein to discontinue further public defamation and intimidation against Plaintiff Salem and his family.
- (ii) Enter an Order to the Defendants named herein to disclose all conflicts of interests, or appearance of conflicts of interest, for all claims and parties named herein.
- (iii) Enter a Restraining Order, due to conflicts of interest, to Defendant Wong and to Corp Council to restrain said Defendants from representing the Defendants named herein (with the exception of allowing individual Defendants to represent themselves as individuals, but not in their official capacities)
- (iv) Enter an Order to Compel the County of Maui to release to the public and to the Maui County Council all development contractual agreements of all types and categories executed by Defendant Corporation Counsel which are subject by County Ordinance to past, current, and future assessment and collection.
- (v) Enter an Order to restrain the Defendant County of Maui from funding roadway Capital Improvement Projects until all developer reimbursement agreements have been accounted for and released to the Maui County Council and public for review.
- (vi) Enter an Order to the Defendant County of Maui, Corporation Counsel to declare which individual developer agreements are assessable and collectable currently or retroactively by ordinance and law.
- (vii) Enter an Order to Defendant County of Maui to appoint a special investigator to review all engineering valuations in developer agreements for which minor permits have been issued by the County of Maui.

- (viii) Enter an Order to the Maui County Council to disclose all personal, professional, or direct and distant family members who are heirs to assessable development agreements executed by Defendant Corporation Counsel throughout Maui County.
- (ix) Enter an Order to the County of Maui to immediately expunge from citizen's property titles all one time "3 Lot or Less" subdivision agreements which have been overlapped by subsequent unlawful "3 Lots or Less" subdivision agreements.
- (x) Enter an Order to Maui County Council to adopt through legislation a formula for assessment or rescission of the notices of intent to collect upon the "3 Lots or Less" Subdivision Agreements sent to property owners and their heirs in interest by Defendant Arakawa.
- (xi) Enter an Order to Corp Counsel to declare a breach of contract with the owners and heirs to the Anka, Inc one "3 Lots or Less" subdivision agreement by allowing 5 lots to bound by the "3 Lots or Less" agreement without notice to fellow contractual properties including Plaintiff Salem.
- (xii) Enter Findings that Defendant Corporation Counsel Pat Wong and Defendant David Goode committed perjury in a Declaration filed with the United States Bankruptcy Court for the State of Hawaii which is not supported by law, and, or ordinance and simultaneously violated Salem's civil rights pursuant to 42 U.S.C. 1983, 1985 and the 14th Amendment to the United States Constitution.
- (xiii) Enter an Order to declare SMA Permit SM2 2000 / 0042 is a valid and enforceable subdivision entitlement condition between the County of Maui and developer Lot 48A, LLC.
- (xiv) Enter an Order to declare SMA Permit SM2 2000 / 0042 is unfulfilled, expired, and requires reapplication to the Planning Department of the County of Maui.
- (xv) Enter an Order to prevent further issuance of Building permits or SMA Permits in oceanfront 3 lot subdivision developed by Lot 48A, LLC until all subdivision infrastructure and drainage improvements are complete and accepted.
- (xvi) Enter an Order to Defendant Spence and Mayor Arakawa to impose maximum sanctions including maximum fines and penalties to Developer Lot 48A, LLC for attempting to defraud Maui County and shift their financial obligations to citizens of Maui County.
- (xvii) Enter an Order for the Maui County Council to impose appropriate penalties pursuant to the Maui County Charter, upon Defendant Goode for violations of ordinances and rules having the force and effect of law.
- (xviii) Enter an Order for the Maui County Council to impose appropriate penalties pursuant to the Maui County Charter, upon Defendant Pat Wong for failing to and, or causing violations of ordinances and rules having the force and effect of law; and for retaliating against a resident and former employee of Maui County engaged in the implementation of legislation at the direction and request of the Mayor of Maui County.
- (xix) Issuing a finding that Defendants Arakawa, Wong, Goode and Spence violated Plaintiff Salem's civil rights pursuant to U.S.C. 42 Section 1983.
- (xx) Issuing a finding that Defendants Arakawa, Wong, Goode and Spence have committed violations of 18 USC 1341, 1346 constituting "Honest Services Fraud".

- (xxi) Enter an Order for Mayor Arakawa and the Maui County Council to remove Defendant Goode from office for multiple violations of the Maui County Charter and Maui County Code.
- (xxii) Enter Order that Maui County Council impose maximum punishment on Defendant Arakawa including incarceration for violations of Maui County ordinances and rules having the force and effect of law and for acts of conspiracy and collusion with a private client with clear intent harm a private citizen while employed by the County of Maui.
- (xxiii) Enter an Order to the Maui County Council to investigate and account for uncollected park fees for subdivisions approved by the Department of Public Works throughout Maui County.
- (xxiv) General, Special and Compensatory damages to Plaintiff Salem for the loss of family home, financial ruin incurred by protecting property interests, lost economic opportunities; impairment of earning capacity; ruined 600 + credit score; for medical bills past, present and future, pain and suffering and mental anguish and emotional distress; and loss of enjoyment of life. Punitive damages to compel the Defendant County of Maui and individual Defendants who are and, or were public officials to uphold and maintain the public trust and render "honest services" in the exercise of their duties and responsibilities as public servants, and so that Defendant the County of Maui will retain County employees properly and adequately and to deter acquiescence or approval of similar breaches of the public trust and tortious conduct in the future.
- (xxv) Aggravated damages for the manner in which Plaintiff's injuries have been aggravated by Defendants unethical and unlawful behavior in response to Plaintiff's notices and good faith attempts to rectify and resolve the issues set forth in Salem's Complaint.
- (xxvi) prejudgment and post judgment interest
- (xxvii) Attorneys' fees and costs incurred in this matter.
- (xxviii) Such other and further recovery as the Court may deem just and proper.

Respectfully submitted,

Dated: September 17, 2015
Wailuku, Hawaii



Burton D. Gould
Attorney for Plaintiff Christopher Salem

AFFIDAVIT OF JO ANNE JOHNSON WINER

I, JoAnne Johnson Winer, state as follows;

1. I am a citizen of the United States of America, a resident of the County of Maui, State of Hawaii and I am over 21 years of age.

2. As a resident of West Maui, I was elected to the Maui County Council on November 2, 1999 and served for ten years until reaching term limitations and I currently serve as Director of Transportation for the County of Maui.

3. On or about 1999, I hired Kathy Kaohu as my executive assistant to the Maui County Council. Ms. Kaohu is currently an executive assistant to Maui County Council Member Don Guzman. She also assisted me in research on issues while on the Council and on issues related to "deferral agreements."

4. On or about late in 2000, my office was contacted by West Maui resident Christopher Salem regarding questions and concerns over the proposed design for a County of Maui Capital Improvement Project for Phase IV of Lower Honoapiilani Road relating to public safety, environmental impacts and view planes, since the project ran adjacent to his property.

5. In cooperation with Austin, Tsutsumi Associates, Inc. (project consultants for Phase IV) and County Project Manager Joe Krueger, Mr. Salem volunteered his professional knowledge and expertise to help create a more sensitive and safe redesign of the Phase IV roadway improvements, which I believe are still on file with the County.

6. As a member of the Maui County Council, I approved the expenditures for this Phase IV Capital Improvement Project during our annual budget hearings as a part of

our annual budget process. During this process, I understood from the information provided that the project would begin in 2002 and the construction would take about a year.

7. I do not believe that Council members were aware at the time the funding was approved that the Department of Public Works had failed to acquire the numerous land rights and necessary easements to initiate the field construction of the Phase IV roadway upgrades. To the best of my knowledge the Phase IV Capital Improvement Project is currently stalled and I am unclear if approvals and/or funding are in place.

8. In late 2000, Mr. Salem also brought to my attention outstanding obligations owed to the County of Maui from developer contractual agreements commonly known as "3 Lots or Less" roadway improvement "Deferral Agreements."

9. We met with Councilmember Riki Hokama to determine if his historical knowledge could help us to understand this process and how these obligations could still be outstanding. Councilmember Hokama was not aware of who was tracking these obligations and was also concerned about these obligations. He did not want to use public monies to pay for improvements that were the responsibility of either developers or owners.

10. Since Mr. Salem owned a property along Phase IV of Lower Honoapiilani Road he shared his firsthand knowledge of how this worked with us. He advised us that in accordance with terms of a "3 Lots or Less" subdivision agreement recorded on his land title by our attorneys in Corporation Counsel, the original developers deferred the cost of roadway and drainage improvements. Mr. Salem explained that this obligated

current and future property owners within the 3 Lot subdivisions to pay to the County of Maui their “pro rata” share of the Phase IV Capital Improvement Project.

11. I later learned from Mr. Salem’s ongoing inquiries and notices to our County departments, the Department of Corporation Counsel, Department of Finance, and Department of Public Works that no department was assigned to track the collection and assessment of an unknown quantity of developers contractual financial obligations owed to the County of Maui. As a result, it was unknown how many of these agreements existed or how much money might be owed to the County of Maui. I believe I also received a letter from Public Works confirming that no records were being kept by their department of these agreements.

12. Through this process I also learned that subdivisions of 4 lots or more were required by ordinance to mitigate the impacts of their developments by installing complete roadway and drainage improvements along their frontages without any form of deferral or developer exemptions available.

13. I recall receiving a copy of a letter sent from Mr. Salem to Mayor Alan Arakawa alerting the administration that public funds were likely being used to pay for private developer’s financial obligations without any form of reimbursement to the County of Maui, since deferral agreements were not being tracked.

14. From 2002 and for years thereafter, I continued to raise my concerns in annual Maui County Council budget hearings regarding how these deferral agreements actually obligated the County of Maui to pay for and incur private owner’s financial obligations.

15. Prior to my tenure as a council member, I learned that the first three phases of Lower Honoapiilani Road had been upgraded and improved as County of Maui Capital Improvement Projects with County of Maui and Federal funds. However, no funds were provided through deferral agreement collections.

16. As I came to learn over time, on these 3 phases, the County of Maui paid with public taxpayer funds the entire costs of developer's roadway frontage and financial obligations without making any attempts to notice or collect upon the development debts owed.

17. My numerous inquiries to then Department of Public Works Director Milton Arakawa, requesting a list of developer's subdivisions that were subject to assessment and collection throughout Maui County, failed to achieve any results.

18. In 2007, out of frustration, I proposed legislation to the members of Maui County Council to Title 18 that was adopted (I think it was ordinance 3513 and Bill Number 77) by Maui County Council in 2007. I believed that by doing so, it would limit the expenditure of public funds on private developer's or owners financial obligations that had been ongoing since 1974.

19. On October 12, 2009, I proposed further language to a proposed Title 18 bill that would insure that financial obligations set forth in previously executed and recorded "deferral agreements" would be assessed and collected by the County of Maui.

20. The resulting Ordinance 3731 was enacted and insured that proper advanced Notice of Intent to Collect would be sent by the director authorized to administer the developer agreement at the commencement of future funding of roadway

Capital Improvement Projects and at the time land right of way acquisition was initiated by the County of Maui.

21. Ordinance 3731 insured that developers and their heirs would be obligated to pay a pro rata share of roadway capital improvements in order to prevent those costs from being shifted to Maui County taxpayers.

22. In compliance with the adopted ordinance, I recall that Director of Public Works, Milton Arakawa, then sent letters of Notice of Intent to Collect to multiple property owners along the Phase IV Capital Improvement Project of Lower Honoapiilani Road, including Mr. Salem.

23. Director Arakawa informed property owners that the County would ask them for a payment of the pro rata share of costs of the Phase IV roadway improvements as per the terms of their deferral agreements. Director Arakawa also notified the property owners that Phase IV construction would now commence in 2012.

24. Director Arakawa, I believe also informed the affected property owners that their pro rata share would likely be determined in consultation and agreement between other property owners within their subdivision. However, I could never find any authorization within our legislation that would allow such a notice and determination.

25. It was not until November of 2010 that Public Works Director Milton Arakawa finally disclosed to the County Council that he believed there were perhaps as many as 1800 open-ended deferral agreements affecting the land title of thousands of properties in Maui County that had been executed and recorded by Corporation Counsel. This was very disturbing to many of us.

26. I was also made aware by Mr. Salem that Director Arakawa had informed

the property owners in Mr. Salem's subdivision that 5 property owners from two separate overlapping 3 Lot subdivisions were obligated to pay a pro rata share of the 3 Lots or Less Subdivision Agreement. Mr. Salem asked me if I was aware of how this could happen and I advised him that I knew of no ordinance adopted by the Maui Council that would allow two separate overlapping subdivisions of the same parcel of land to twice defer their roadway infrastructure and financial obligations and I had no explanation as to how this could even happen.

27. In early 2011, I met with Mayor Alan Arakawa and Mr. Salem and I was instructed by Mayor to work with Corporation Counsel Attorney Ed Kushi and Mr. Salem to see if there was a possible formula or process for assessment and collection of the deferred developer financial obligations that the Mayor might present for consideration to the Maui County Council. The knowledge that both Mr. Salem and I had of the subject matter was why I believe we were asked to come up with some possible suggestions to the Mayor.

28. The effort to provide input never came to fruition since Corporation Counsel advised the Mayor that our input was not needed. I was also questioned by Corporation Counsel as to why I was even involved in this matter inasmuch as I was no longer a Councilmember. I explained that I had specific knowledge of the issue and felt that I could contribute to resolving the matter to the benefit of all concerned. I am aware that after Corporation Counsel countered Mayor Arakawa's directive, Mr. Salem took it upon himself as a private citizen to meet with Council members and their assistants to draft legislation to adopt a fair and reasonable process for collection and assessment of the developer's deferred financial obligations.

29. I read what I term the "Fairness Bill," prepared with assistance from Mr. Salem in cooperation with Council Member Elle Cochran's executive assistant Jordan Molina. The bill provided what I thought could be the start to achieving a fair and responsible process for collection and assessment of developer's deferred financial obligations. Mr. Salem advised that the bill also appeared to have support from members of the Maui County Council. I do not know what happened to the legislation beyond what I was told by Mr. Salem.

30. I am unaware if the Department of Public Works or Corporation Counsel ever addressed the concerns raised by Mr. Salem regarding the five owners with two overlapping three lot subdivisions. There should be some type of response as it does not appear to be allowed under our county ordinances. If it is not legal, then how can Corporation Counsel allow it to be permitted?

31. Corporation Counsel informed Mr. Salem, and I believe, during public testimony, our County Council as well as the general public, that releasing copies of the developer contractual agreements would be "an interruption of a legitimate government function". I did not agree with this interpretation.

32. I recalled reading in a Maui News article that Public Works Director David Goode publicly stated that Corporation Counsel deemed the "Fairness Bill" illegal. From what I understood, the "Fairness Bill" was reviewed by Council Services attorneys prior to being forwarded to the County Council for consideration and no issues regarding illegality were raised.

33. I question whether or not a written memorandum was ever issued by Corporation Counsel to the members of the Maui County Council explaining why the

"Fairness Bill" was unlawful or inconsistent with the 2010 Ordinance that was approved by Corporation Counsel. This was always a part of the standard procedure when I was on the Council.

34. During my years of public service as a Council Member of the County of Maui, the attorneys in Corporation Counsel always led me to believe that the "3 Lot or Less" contractual agreements drafted and recorded by the Department were collectable debts owed to the County of Maui.

35. Why the Fairness Bill that was submitted was not considered or an alternate proposal drafted so that monies owed to the people of Maui County were able to be collected? I was disturbed with the way Mr. Salem's integrity was questioned and how his motivation to resolve this issue was portrayed both privately and publicly during the discussions surrounding the bill.

36. I believe Mr. Salem's efforts in seeking responsible government over the past fifteen years were on behalf of the best interests of the citizens of Maui County. From what I personally witnessed, his dedication and commitment to the youth programs of West Maui has been exemplary despite the suffering his family has endured and continues to endure by bringing these issues into the public light.

37. It was recently brought to my attention that Public Works Director David Goode advised that the County of Maui "*may or may not*" be collecting upon the developer contractual obligations previously noticed for collection to property owners by Public Works Director Arakawa. I do not agree with this position as it contradicts the intent and stated language of ordinance 3731 that was publicly adopted by our Maui

County Council. Consistent with all legislation adopted by the Maui County Council, Ordinance 3731 was reviewed and approved by Corporation Counsel and is a law.

38. I have reviewed a letter from Director Goode, which was approved by Mayor Arakawa on January 9, 2012, wherein he stated his department has completed the cataloging of all known deferral agreements and it is his intent to work with the Department of Finance and Corporation Counsel to arrive at fair formula for calculation and assessment and notify the affected land owners of their required contributions.

39. I have also reviewed a letter from Director Goode on April 16, 2012, which provided the projected revenues from collection of developer deferral agreements on affected parcels along the South Kihei Road Capital Improvement Project.

40. I also reviewed a recent document showing Mr. Salem's analysis of the developer deferral agreements on residential, commercial, and industrial properties recorded by the Department of Public Works and Corporation Counsel throughout Maui County.

41. Why are public officials not bound to follow ordinance 3731 which required that Notices of Intent to Collect deferred developer contractual financial obligations were distributed? Why does it appear that the County is shifting private obligations to the public in violation of the County Charter?

42. An additional concern is the obligation to insure that there are no unfulfilled SMA Permit obligations wherein developers have failed to complete their roadway improvement and drainage mitigations that also may end up being paid for with County funds during Capital Improvement Projects. What is being done to insure that these obligations are being met and who is tracking them?

43. During a Maui County Council Infrastructure Management meeting on February 1, 2010, Attorney Galazin of Corporation Counsel informed the Council members of the different situations in which a developer may have to pay for roadway improvements and drainage mitigations, including obligations set forth in subdivision applications and SMA Permit studies and applications.

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.

46. During my latter days as of member of the Maui County Council, I became aware that developers of Olowalu Mauka subdivision had failed to complete their subdivision obligations and environmental mitigations conditioned in an SMA Major Permit issued almost 10 years prior and as a result a lawsuit was filed by a private resident who was sold a property in the developers Olowalu Mauka subdivision.

47. My understanding was that the Olowalu subdivision received final subdivision approval from the County even though there were incomplete SMA Permit conditions. This occurred during the very same time period that Mr. Salem raised his concerns that developer's "3 Lots or Less" contractual agreements executed by Corporation Counsel were not being kept track of, assessed, or collected upon. Mr. Salem

also complained that his 3 lot subdivision was being re-subdivided a second time by Developer Lot 48A, LLC in violation of the Maui County Code and the SMA Permitting process.

48. As I learned from being called as a witness in legal arbitration proceedings involving a dispute over Developer Lot 48A, LLC's obligations to pay their pro rata share of the Phase IV Capital Improvements affecting the land title of Mr. Salem's property, the County Department of Public Works signed off on Developer Lot 48A, LLC's oceanfront subdivision with what I viewed as an incomplete and unfulfilled SMA Permit during the same time period whereby the same county department granted the Olowalu subdivision approvals with unfulfilled SMA Permit obligations.

49. I also learned that the Developer Lot 48A, LLC's attorney was working for the County of Maui Department of Corporation Counsel at the same time she was employed by Lot 48A, LLC in the legal proceedings. I saw nowhere in the procurement reports that this was disclosed to the members of the Council. I also learned Developer Lot 48A, LLC's SMA Permit studies were not provided to the arbitrator and they included the disputed roadway and drainage improvements to the frontage of Mr. Salem's property along of Phase IV of Lower Honoapiilani Road.

50. When I was informed that the former land planning firm of a county official was the same SMA consultant retained by the County of Maui to complete the SMA environmental studies and permitting for Phase IV of Lower Honoapiilani Road as well as being the SMA Permit consultant for the Developer Lot 48A, LLC for the re-subdivision of the "3 Lots or Less" subdivision I became extremely concerned. This is

the same subdivision in which Mr. Salem owned an original parcel of land abutting Phase IV of Lower Honoapiilani Road. To my knowledge there was no disclosure made to this effect.

51. I witnessed Mr. Salem's vehement protest and complaints that the overlapping subdivision of the original "3 Lots or Less" subdivision by Lot 48A, LLC required developer Lot 48A, LLC to obtain a SMA Major Permit through public hearings. My belief is that the one-time exemption from an SMA Major permit was exhausted on the original 3 Lots or Less Subdivision. I still question how this could happen if laws are in place to protect the rights of the public?

52. Mr. Salem further argued that the engineering valuation for the Lot 48A, LLC's SMA permit underestimated the impacts of the oceanfront subdivision and costs associated with the development to intentionally avoid environmental studies and public review. Even after my inquiries to the Planning Department about this issue and also the SMA requirements I do not believe this has ever been resolved or investigated.

53. I was made aware that deferral agreements recorded by Corporation Counsel on Mr. Salem's property along with Director Arakawa's written notice to Mr. Salem caused residential appraisers and real estate brokers to refuse to represent his property for sale.

54. I was also advised that Mr. Salem attempted to pay the County of Maui a pro-rata share of the "3 Lots or Less" subdivision agreement to try to remove the open ended lien on his property during an open escrow even though it was developer Lot 48A, LLC's obligation to do so. I was told by Mr. Salem that Corporation Counsel refused to accept his payment or remove the lien on his property to facilitate the escrow.

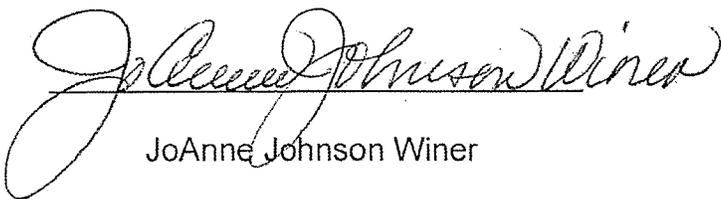
55. I remain dedicated to the people of Maui County and I truly believe that our citizens expect all public officials to protect their interests and act with integrity.

56. As a former member of the Maui County Council, I witnessed time and again where private citizens were forced to uphold the ordinances adopted by the Maui County Council to protect citizen's individual and public property rights, when this should in effect be the obligation of the County of Maui.

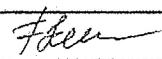
57. I have gone through Mr. Salem's lengthy and detailed timelines and also his analysis of what has taken place and I would agree that what he has uncovered appears to reveal a failure to enforce laws uniformly, collect monies due the County, adhere to SMA and subdivision laws and disclose possible conflicts of interest. These issues should be thoroughly investigated and resolved, which I believe Mr. Salem has attempted to do on a number of occasions.

58. Mr. Salem should not be punished for shining the light on these issues but thanked for having the courage to bring them to the County in the first place.

59. I am prepared to testify under oath to the events described in this affidavit to insure that the public's trust is fairly represented.

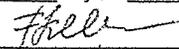

JoAnne Johnson Winer

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

 8-11-15
Notary Signature Date
NOTARY CERTIFICATION

State of Hawaii
County of Maui

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



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

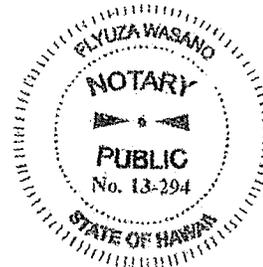
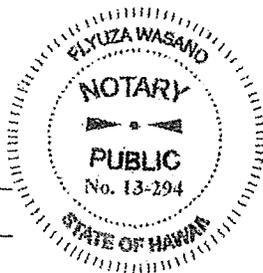


Exhibit 'A'

September 2nd, 2015

Dear Mr. David Raatz,

Please see attached letter and enclosures (attachments).

Sincerely,

Burton D. Gould

Burton D. Gould, Esq.
The Law Offices of Burton D. Gould, LLC.
2020 Main St. Suite 1010
Wailuku, Hawai'i 96793
808-269-7100
burtongould@gmail.com

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5 Attachments [View all](#) [Download all](#)

- | | | |
|--|----------------------|--------------------------|
| ltr to David Raatz.pdf | View | Download |
| Letter to Council re... .pdf | View | Download |
| Letter to Mike Whi... .pdf | View | Download |
| CC 15-219.pdf | View | Download |
| Council Agenda Au... .pdf | | Download |



THE LAW OFFICES OF BURTON D. GOULD, LLC

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burtongould@ymail.com

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Wailuku, Hawai'i 96793
Phone: (808) 269-7100
Fax: (808) 242-8288

September 2, 2015

County of Maui Council
Council Services
200 South High Street
Kalana O Maui Bldg. 7th Floor

Attention: Director of Council Services – David Raatz, Esq.

RE: Requests for Information
HRS Chapter 92 Sunshine Laws

Dear Mr. Raatz;

Upon further review of the Council Communication 15-219, it has come to my attention that as the Director of Council Services, you are the author of the publicly posted resolution forwarded by the Chair of the Maui County Council Mike White to County Clerk Danny Mateo on August 18, 2015.

As a licensed attorney in the State of Hawaii, your professional obligations regarding lawful disclosures and the avoidance of conflicts of interest expand beyond those of other public officials and employees. That being said, I am requesting that you publicly retract and reconcile the consequences of your apparent oversights, evidenced in this false and misleading public Council Communication.

Furthermore, I have been made aware of your long standing employment with the County of Maui and previous direct involvement with my client and members of the Maui County Council, including current Department of Transportation Director JoAnne Johnson Winer, on the matters raised in my recent communications to the members of the Maui County Council. I am requesting that you personally make available to my office and, or address the following;

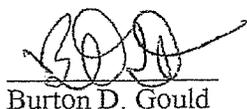
1. Copy of a filed lawsuit with the Second Circuit Court for the State of Hawaii referenced in Maui County Council communication 15-219.
2. Names of individuals involved with the investigation referenced in Maui County Council communication 15-219.

3. Copy of published scope of investigation, minutes of meetings, the findings, and the conclusions of the investigation referenced in Maui County Council communication 15-219.
4. Conflicts of interest disclosures by the individuals who conducted the investigation referenced in Maui County Council communication 15-219.
5. Disclosure of all communications to Maui County Council Members and their executive assistants which may have obstructed and, or continue to obstruct my ability to engage in resolution discussions which serve the public interest and attempt to avoid unnecessary litigation.

Please be advised, the information requested herein fall under the enforcement provision of HRS 92-12, which provides enforcement compliance jurisdiction with the Circuit Court for the State of Hawaii for violations of this Act and related decisions of the public body. Failure to produce this information shall result in a commencement of an action with the Circuit Court along requests for payments reasonable attorney fees and costs.

Further, as previously noticed in my letter dated August 24, 2015 , Maui County Council resolution 15-219, dated August 18, 2015, was posted publicly, contained false and misleading information, was not publicly retracted at the August 24th, 2015 Council Meeting and was subsequently, during that meeting, referred to the Maui County Council Committee of the Whole. As stated previously, I am calling upon you as the Director of Council Services as well as pursuant to your attorney professional obligations, to address this matter immediately, and in writing, to my office.

Sincerely,



Burton D. Gould

- Enc. First letter to Mike White August 24th, 2015
- Enc. Second letter to Mike White and Don Guzman August 30th, 2015
- Enc. Council Communication 15-219
- Enc. Council Agenda for August 25th, 2015
- cc: County Clerk - Mr. Danny A. Mateo
- cc: Office of Information Practices (OIP)



THE LAW OFFICES OF BURTON D. GOULD, LLLC

Burton D. Gould
burtongould@ymail.com

2020 Main St., Suite 1010
Wailuku, Hawai'i 96793
Phone: (808) 269-7100
Fax: (808) 242-8288

August 24th, 2015

Chair of the Counsel Mike White
200 High Street – 8th Floor
Wailuku, HI 96787

Re: Council Communication 15-219

Dear Mr. White,

I am bringing to your attention that you have published an erroneous and false notice in Maui County Council communication 15-219, dated August 18, 2015, that my firm has filed a lawsuit in the Second Circuit Court for the State of Hawaii on behalf of Christopher Salem against the County of Maui, individual Directors, and the Department of Corporation Counsel, alleging fraud and violations of the Maui County Charter.

Mr. White, are you aware that the Department of The Corporation Counsel has also issued written and verbal communications to Maui County government officials falsely stating that my client has filed a lawsuit against the County of Maui? It appears that Corporation Counsel is engaged in unfair and deceptive practices by misleading public officials, the citizens of Maui County, and the Maui County Council in order to continue the illegitimate concealment of unlawful written agreements with developers that have furthered private interests at the expense of the taxpayers.

Your Council communication also contains findings from a “preliminary investigation” of the allegations against the individuals named in the above referenced “filed” complaint. I request that you please immediately disclose to the public and to my office;

1. What public officials or members of the Maui County Council were involved in the so-called investigation?
2. The scope of investigation, the findings, and the conclusions of the investigation.
3. Under what authority in the Maui County Charter was the investigation conducted?
4. Were conflicts of interest checks performed by the individuals who conducted the investigation and are they available for public viewing?

I request that you confirm that the individuals who performed the so-called investigation were provided a copy of the attached affidavit of Department of Transportation Director JoAnne Johnson Winer. Director Johnson Winer’s findings support my client’s allegations of numerous violations of law by The Department of Corporation Counsel and the Administration that have

caused immense financial injury to the public and to my client. Director Winer's willingness to step forth is admirable, and I believe that she represents truly authentic courageous leadership that all public officials can follow.

Mr. White, I am concerned that private meetings may have been conducted in violation of the Sunshine Laws. Otherwise, the proposed Council Resolutions, apparently and purposefully misuse the term "investigation" and propose false findings to mislead the Council, and the public. As such, the proposed Council Resolutions in Council Communication 15-219 raise serious legal, ethical, and procedural questions.

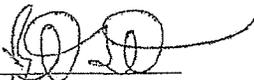
I am also concerned about the continuing conflicted influence by Corporation Counsel and the Department of The Corporation Counsel in this matter. It is our position that pursuant to the Supreme Court of the State of Hawai'i Rules of Professional Conduct, Corporation Counsel, Deputy Corporation Counsel, and the staff attorneys of the Department of Corporation Counsel are all conflicted from continuing to influence, and or advise the Maui County Council or the Administration regarding the issues raised by my client, a former executive assistant to the Maui County Council.

Finally, these resolutions seek to have the Maui County Council procure special counsel for an unfiled complaint as well the procurement of special counsel for Corporation Counsel Pat Wong in his individual capacity. It should be noted that this is prior to a legitimate and valid investigation by the Counsel into significant allegations of wrongdoing, and, or prior to a suit being filed, which we have been trying to avoid. It also seems odd that one of the resolutions seeks to procure special counsel for Pat Wong, alone, in his individual capacity, and not any of the Directors.

Please inform my office and your fellow members of the Maui County Council on Monday August 24th, 2015 who initiated, conducted, and was involved in the investigation referred to in Council Communication 15-219.

It continues to be my hope that the substantive issues relating to my client's claims may be addressed and resolved in an amicable manner, so that the interests of the County and my client may be best served.

Respectfully,



Burton D. Gould

cc. Maui County Council members

cc. Office of Information Practices

enclosed: Affidavit of JoAnne Johnson Winer

AFFIDAVIT OF JO ANNE JOHNSON WINER

I, JoAnne Johnson Winer, state as follows;

1. I am a citizen of the United States of America, a resident of the County of Maui, State of Hawaii and I am over 21 years of age.

2. As a resident of West Maui, I was elected to the Maui County Council on November 2, 1999 and served for ten years until reaching term limitations and I currently serve as Director of Transportation for the County of Maui.

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current and future property owners within the 3 Lot subdivisions to pay to the County of Maui their "pro rata" share of the Phase IV Capital Improvement Project.

11. I later learned from Mr. Salem's ongoing inquiries and notices to our County departments, the Department of Corporation Counsel, Department of Finance, and Department of Public Works that no department was assigned to track the collection and assessment of an unknown quantity of developers contractual financial obligations owed to the County of Maui. As a result, it was unknown how many of these agreements existed or how much money might be owed to the County of Maui. I believe I also received a letter from Public Works confirming that no records were being kept by their department of these agreements.

12. Through this process I also learned that subdivisions of 4 lots of more were required by ordinance to mitigate the impacts of their developments by installing complete roadway and drainage improvements along their frontages without any form of deferral or developer exemptions available.

13. I recall receiving a copy of a letter sent from Mr. Salem to Mayor Alan Arakawa alerting the administration that public funds were likely being used to pay for private developer's financial obligations without any form of reimbursement to the County of Maui, since deferral agreements were not being tracked.

14. From 2002 and for years thereafter, I continued to raise my concerns in annual Maui County Council budget hearings regarding how these deferral agreements actually obligated the County of Maui to pay for and incur private owner's financial obligations.

15. Prior to my tenure as a council member, I learned that the first three phases of Lower Honoapiilani Road had been upgraded and improved as County of Maui Capital Improvement Projects with County of Maui and Federal funds. However, no funds were provided through deferral agreement collections.

16. As I came to learn over time, on these 3 phases, the County of Maui paid with public taxpayer funds the entire costs of developer's roadway frontage and financial obligations without making any attempts to notice or collect upon the development debts owed.

17. My numerous inquiries to then Department of Public Works Director Milton Arakawa, requesting a list of developer's subdivisions that were subject to assessment and collection throughout Maui County, failed to achieve any results.

18. In 2007, out of frustration, I proposed legislation to the members of Maui County Council to Title 18 that was adopted (I think it was ordinance 3513 and Bill Number 77) by Maui County Council in 2007. I believed that by doing so, it would limit the expenditure of public funds on private developer's or owners financial obligations that had been ongoing since 1974.

19. On October 12, 2009, I proposed further language to a proposed Title 18 bill that would insure that financial obligations set forth in previously executed and recorded "deferral agreements" would be assessed and collected by the County of Maui.

20. The resulting Ordinance 3731 was enacted and insured that proper advanced Notice of Intent to Collect would be sent by the director authorized to administer the developer agreement at the commencement of future funding of roadway

Capital Improvement Projects and at the time land right of way acquisition was initiated by the County of Maui.

21. Ordinance 3731 insured that developers and their heirs would be obligated to pay a pro rata share of roadway capital improvements in order to prevent those costs from being shifted to Maui County taxpayers.

22. In compliance with the adopted ordinance, I recall that Director of Public Works, Milton Arakawa, then sent letters of Notice of Intent to Collect to multiple property owners along the Phase IV Capital Improvement Project of Lower Honoapiilani Road, including Mr. Salem.

23. Director Arakawa informed property owners that the County would ask them for a payment of the pro rata share of costs of the Phase IV roadway improvements as per the terms of their deferral agreements. Director Arakawa also notified the property owners that Phase IV construction would now commence in 2012.

24. Director Arakawa, I believe also informed the affected property owners that their pro rata share would likely be determined in consultation and agreement between other property owners within their subdivision. However, I could never find any authorization within our legislation that would allow such a notice and determination.

25. It was not until November of 2010 that Public Works Director Milton Arakawa finally disclosed to the County Council that he believed there were perhaps as many as 1800 open-ended deferral agreements affecting the land title of thousands of properties in Maui County that had been executed and recorded by Corporation Counsel. This was very disturbing to many of us.

26. I was also made aware by Mr. Salem that Director Arakawa had informed

the property owners in Mr. Salem's subdivision that 5 property owners from two separate overlapping 3 Lot subdivisions were obligated to pay a pro rata share of the 3 Lots or Less Subdivision Agreement. Mr. Salem asked me if I was aware of how this could happen and I advised him that I knew of no ordinance adopted by the Maui Council that would allow two separate overlapping subdivisions of the same parcel of land to twice defer their roadway infrastructure and financial obligations and I had no explanation as to how this could even happen.

27. In early 2011, I met with Mayor Alan Arakawa and Mr. Salem and I was instructed by Mayor to work with Corporation Counsel Attorney Ed Kushi and Mr. Salem to see if there was a possible formula or process for assessment and collection of the deferred developer financial obligations that the Mayor might present for consideration to the Maui County Council. The knowledge that both Mr. Salem and I had of the subject matter was why I believe we were asked to come up with some possible suggestions to the Mayor.

28. The effort to provide input never came to fruition since Corporation Counsel advised the Mayor that our input was not needed. I was also questioned by Corporation Counsel as to why I was even involved in this matter inasmuch as I was no longer a Councilmember. I explained that I had specific knowledge of the issue and felt that I could contribute to resolving the matter to the benefit of all concerned. I am aware that after Corporation Counsel countered Mayor Arakawa's directive, Mr. Salem took it upon himself as a private citizen to meet with Council members and their assistants to draft legislation to adopt a fair and reasonable process for collection and assessment of the developer's deferred financial obligations.

29. I read what I term the "Fairness Bill," prepared with assistance from Mr. Salem in cooperation with Council Member Elle Cochran's executive assistant Jordan Molina. The bill provided what I thought could be the start to achieving a fair and responsible process for collection and assessment of developer's deferred financial obligations. Mr. Salem advised that the bill also appeared to have support from members of the Maui County Council. I do not know what happened to the legislation beyond what I was told by Mr. Salem.

30. I am unaware if the Department of Public Works or Corporation Counsel ever addressed the concerns raised by Mr. Salem regarding the five owners with two overlapping three lot subdivisions. There should be some type of response as it does not appear to be allowed under our county ordinances. If it is not legal, then how can Corporation Counsel allow it to be permitted?

31. Corporation Counsel informed Mr. Salem, and I believe, during public testimony, our County Council as well as the general public, that releasing copies of the developer contractual agreements would be "an interruption of a legitimate government function". I did not agree with this interpretation.

32. I recalled reading in a Maui News article that Public Works Director David Goode publicly stated that Corporation Counsel deemed the "Fairness Bill" illegal. From what I understood, the "Fairness Bill" was reviewed by Council Services attorneys prior to being forwarded to the County Council for consideration and no issues regarding illegality were raised.

33. I question whether or not a written memorandum was ever issued by Corporation Counsel to the members of the Maui County Council explaining why the

"Fairness Bill" was unlawful or inconsistent with the 2010 Ordinance that was approved by Corporation Counsel. This was always a part of the standard procedure when I was on the Council.

34. During my years of public service as a Council Member of the County of Maui, the attorneys in Corporation Counsel always led me to believe that the "3 Lot or Less" contractual agreements drafted and recorded by the Department were collectable debts owed to the County of Maui.

35. Why the Fairness Bill that was submitted was not considered or an alternate proposal drafted so that monies owed to the people of Maui County were able to be collected? I was disturbed with the way Mr. Salem's integrity was questioned and how his motivation to resolve this issue was portrayed both privately and publicly during the discussions surrounding the bill.

36. I believe Mr. Salem's efforts in seeking responsible government over the past fifteen years were on behalf of the best interests of the citizens of Maui County. From what I personally witnessed, his dedication and commitment to the youth programs of West Maui has been exemplary despite the suffering his family has endured and continues to endure by bringing these issues into the public light.

37. It was recently brought to my attention that Public Works Director David Goode advised that the County of Maui "*may or may not*" be collecting upon the developer contractual obligations previously noticed for collection to property owners by Public Works Director Arakawa. I do not agree with this position as it contradicts the intent and stated language of ordinance 3731 that was publicly adopted by our Maui

County Council. Consistent with all legislation adopted by the Maui County Council, Ordinance 3731 was reviewed and approved by Corporation Counsel and is a law.

38. I have reviewed a letter from Director Goode, which was approved by Mayor Arakawa on January 9, 2012, wherein he stated his department has completed the cataloging of all known deferral agreements and it is his intent to work with the Department of Finance and Corporation Counsel to arrive at fair formula for calculation and assessment and notify the affected land owners of their required contributions.

39. I have also reviewed a letter from Director Goode on April 16, 2012, which provided the projected revenues from collection of developer deferral agreements on affected parcels along the South Kihei Road Capital Improvement Project.

40. I also reviewed a recent document showing Mr. Salem's analysis of the developer deferral agreements on residential, commercial, and industrial properties recorded by the Department of Public Works and Corporation Counsel throughout Maui County.

41. Why are public officials not bound to follow ordinance 3731 which required that Notices of Intent to Collect deferred developer contractual financial obligations were distributed? Why does it appear that the County is shifting private obligations to the public in violation of the County Charter?

42. An additional concern is the obligation to insure that there are no unfulfilled SMA Permit obligations wherein developers have failed to complete their roadway improvement and drainage mitigations that also may end up being paid for with County funds during Capital Improvement Projects. What is being done to insure that these obligations are being met and who is tracking them?

43. During a Maui County Council Infrastructure Management meeting on February 1, 2010, Attorney Galazin of Corporation Counsel informed the Council members of the different situations in which a developer may have to pay for roadway improvements and drainage mitigations, including obligations set forth in subdivision applications and SMA Permit studies and applications.

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.

46. During my latter days as of member of the Maui County Council, I became aware that developers of Olowalu Mauka subdivision had failed to complete their subdivision obligations and environmental mitigations conditioned in an SMA Major Permit issued almost 10 years prior and as a result a lawsuit was filed by a private resident who was sold a property in the developers Olowalu Mauka subdivision.

47. My understanding was that the Olowalu subdivision received final subdivision approval from the County even though there were incomplete SMA Permit conditions. This occurred during the very same time period that Mr. Salem raised his concerns that developer's "3 Lots or Less" contractual agreements executed by Corporation Counsel were not being kept track of, assessed, or collected upon. Mr. Salem

also complained that his 3 lot subdivision was being re-subdivided a second time by Developer Lot 48A, LLC in violation of the Maui County Code and the SMA Permitting process.

48. As I learned from being called as a witness in legal arbitration proceedings involving a dispute over Developer Lot 48A, LLC's obligations to pay their pro rata share of the Phase IV Capital Improvements affecting the land title of Mr. Salem's property, the County Department of Public Works signed off on Developer Lot 48A, LLC's oceanfront subdivision with what I viewed as an incomplete and unfulfilled SMA Permit during the same time period whereby the same county department granted the Olowalu subdivision approvals with unfulfilled SMA Permit obligations.

49. I also learned that the Developer Lot 48A, LLC's attorney was working for the County of Maui Department of Corporation Counsel at the same time she was employed by Lot 48A, LLC in the legal proceedings. I saw nowhere in the procurement reports that this was disclosed to the members of the Council. I also learned Developer Lot 48A, LLC's SMA Permit studies were not provided to the arbitrator and they included the disputed roadway and drainage improvements to the frontage of Mr. Salem's property along of Phase IV of Lower Honoapiilani Road.

50. When I was informed that the former land planning firm of a county official was the same SMA consultant retained by the County of Maui to complete the SMA environmental studies and permitting for Phase IV of Lower Honoapiilani Road as well as being the SMA Permit consultant for the Developer Lot 48A, LLC for the re-subdivision of the "3 Lots or Less" subdivision I became extremely concerned. This is

the same subdivision in which Mr. Salem owned an original parcel of land abutting Phase IV of Lower Honoapiilani Road. To my knowledge there was no disclosure made to this effect.

51. I witnessed Mr. Salem's vehement protest and complaints that the overlapping subdivision of the original "3 Lots or Less" subdivision by Lot 48A, LLC required developer Lot 48A, LLC to obtain a SMA Major Permit through public hearings. My belief is that the one time exemption from an SMA Major permit was exhausted on the original 3 Lots or Less Subdivision. I still question how this could happen if laws are in place to protect the rights of the public?

52. Mr. Salem further argued that the engineering valuation for the Lot 48A, LLC's SMA permit underestimated the impacts of the oceanfront subdivision and costs associated with the development to intentionally avoid environmental studies and public review. Even after my inquiries to the Planning Department about this issue and also the SMA requirements I do not believe this has ever been resolved or investigated.

53. I was made aware that deferral agreements recorded by Corporation Counsel on Mr. Salem's property along with Director Arakawa's written notice to Mr. Salem caused residential appraisers and real estate brokers to refuse to represent his property for sale.

54. I was also advised that Mr. Salem attempted to pay the County of Maui a pro-rata share of the "3 Lots or Less" subdivision agreement to try to remove the open ended lien on his property during an open escrow even though it was developer Lot 48A, LLC's obligation to do so. I was told by Mr. Salem that Corporation Counsel refused to accept his payment or remove the lien on his property to facilitate the escrow.

55. I remain dedicated to the people of Maui County and I truly believe that our citizens expect all public officials to protect their interests and act with integrity.

56. As a former member of the Maui County Council, I witnessed time and again where private citizens were forced to uphold the ordinances adopted by the Maui County Council to protect citizen's individual and public property rights, when this should in effect be the obligation of the County of Maui.

57. I have gone through Mr. Salem's lengthy and detailed timelines and also his analysis of what has taken place and I would agree that what he has uncovered appears to reveal a failure to enforce laws uniformly, collect monies due the County, adhere to SMA and subdivision laws and disclose possible conflicts of interest. These issues should be thoroughly investigated and resolved, which I believe Mr. Salem has attempted to do on a number of occasions.

58. Mr. Salem should not be punished for shining the light on these issues but thanked for having the courage to bring them to the County in the first place.

59. I am prepared to testify under oath to the events described in this affidavit to insure that the public's trust is fairly represented.


JoAnne Johnson Winer

Doc. Date: 8-11-15 # Pages: 14
Flyza Wasano Second Circuit
Doc. Description: Affidavit

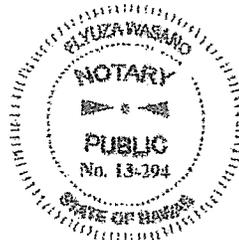
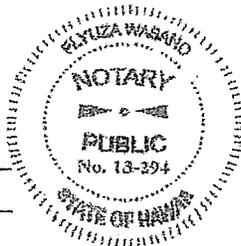
Flyza 8-11-15
Notary Signature Date
NOTARY CERTIFICATION

State of Hawaii
County of Maui

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

Flyza

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





LAW OFFICES OF BURTON D. GOULD LLLC

Burton D. Gould, Esq.
burtongould@ymail.com

2020 Main St, Suite 1010
Wailuku Hawai'i 96793
Phone (808) 269-7100
Fax (808) 242-8288

August 30th, 2015

County of Maui Council
200 South High Street
Kalana O Maui Bldg. 7th Floor

Attention: Chair of Council Mike White
Chair of Litigation Committee Don Guzman

RE: Requests for Information
HRS Chapter 92 Sunshine Laws

Dear Council Member White and Guzman;

In accordance with Sunshine laws HRS Chapter 92, we hereby request that you provide the following information.

1. Copy of filed lawsuit with the Second Circuit Court for the State of Hawaii referenced in Maui County Council communication 15-219.
2. Names of individuals involved with investigation referenced in Maui County Council communication 15-219.
3. Copy of published scope of investigation, minutes of meetings, the findings, and the conclusions of the investigation referenced in Maui County Council communication 15-219.
4. Conflicts of interest disclosures by the individuals who conducted the investigation referenced in Maui County Council communication 15-219.

Please be advised that the information requested herein, falls under the enforcement provision of HRS 92-12, which provides enforcement compliance jurisdiction with the Circuit Court for the State of Hawaii for violations of this Act and related decisions of the public body. Failure to produce this information shall result in a commencement of an action with the Circuit Court along with requests for payment of reasonable attorney fees and costs. This is my firm's second notice of request for this public information.

My first request was in a letter of August 24th, 2015, received by your office prior to the August 25th, 2015 Council Meeting. It provided you notice that the proposed Resolution 15-219,

contained patently false and misleading information. Your proposed resolution was dated August 18th, 2015 and was a publicly posted Council Communication. My letter, which has neither been addressed, nor responded to, was also submitted to the County Clerk's office as testimony on the above referenced resolution. As such, the above referenced information and request was also presumably made available to all council members.

Finally, and significantly, Maui County Council resolution 15-219, dated August 18, 2015, was not publicly retracted at the August 25th, 2015 Council Meeting and was subsequently, during that meeting, referred to the Maui County Council Committee of the Whole.

Sincerely,

A handwritten signature in black ink, appearing to read "BD Gould", with a long horizontal flourish extending to the right.

Burton D. Gould

Exhibit 'B'

Council Chair
Mike White

Vice-Chair
Don S. Guzman

Presiding Officer Pro Tempore
Michael P. Victorino

Councilmembers
Gladys C. Baisa
Robert Carroll
Elle Cochran
Don Couch
Stacy Crivello
Riki Hokama



Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 18, 2015

RECEIVED
2015 AUG 18 AM 11:52
OFFICE OF THE
COUNTY CLERK

Mr. Danny A. Mateo, County Clerk
Office of the County Clerk
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Mateo:

SUBJECT: **SPECIAL COUNSEL IN CHRISTOPHER SALEM V.
COUNTY OF MAUI, ET AL.**

May I request the attached proposed resolutions, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." and "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR PATRICK WONG, IN HIS INDIVIDUAL CAPACITY, IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL.," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike White".

MIKE WHITE
Council Chair

chr:ltr:150818a:dr

Attachments

COUNTY COMMUNICATION NO. 15-219

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL.

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of a conflict of interests, there is a real necessity to retain special counsel to represent the County and, to the extent consistent with Hawaii Rules of Professional Conduct, other Defendants in Christopher Salem v. County of Maui, et al., an action filed in the Second Circuit Court for the State of Hawaii, alleging fraud and violations of the Charter; and

WHEREAS, based upon a preliminary investigation of this matter, it appears the allegations against individually named Defendants contained in the complaint are without merit; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rule 1.7 of the Hawaii Rules of Professional Conduct prevent the Corporation Counsel from representing the County's interests in this case; and

WHEREAS, it appears at this time it would be in the best interest of the County of Maui to authorize the employment of special counsel to represent the County and, to the extent consistent with Hawaii Rules of

Resolution No. _____

Professional Conduct, other Defendants in this case and that there is a real necessity to do so; and

WHEREAS, special counsel shall be selected in a procedure in compliance with the Hawaii Public Procurement Code; and

WHEREAS, special counsel take all possible steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel, particularly including Deputy Corporation Counsel without conflicts of interests in this case and legal support staff, shall provide necessary support services to special counsel and, if consistent with the Hawaii Rules of Professional Responsibility, joint legal representation, along with special counsel; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of special counsel in Christopher Salem v. County of Maui, et al.;

2. That total compensation for the employment of special counsel shall not exceed \$75,000;

3. That the hourly rate of compensation for special counsel shall not exceed \$250;

4. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920;

5. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in

Resolution No. _____

the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters;

6. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead;

7. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

8. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

chr:misc:150818b

Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR
PATRICK WONG, IN HIS INDIVIDUAL CAPACITY, IN
CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL.

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of a conflict of interests, there is a real necessity to retain special counsel to represent Patrick Wong, Corporation Counsel, who has been named as a Defendant in his individual capacity, in Christopher Salem v. County of Maui, et al., an action filed in the Second Circuit Court for the State of Hawaii, alleging fraud and violations of the Charter; and

WHEREAS, based upon a preliminary investigation of this matter, it appears the allegations contained in the complaint are without merit; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rule 1.7 of the Hawaii Rules of Professional Conduct prevent the Corporation Counsel from representing his individual interests and the County's interests in this case; and

Resolution No. _____

WHEREAS, it appears at this time it would be in the best interest of the County of Maui to provide special counsel to Patrick Wong, Corporation Counsel, to represent him in his individual capacity in this case and that there is a real necessity to do so; and

WHEREAS, special counsel shall be selected in a procedure in compliance with the Hawaii Public Procurement Code; and

WHEREAS, special counsel take all possible steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel, particularly including Deputy Corporation Counsel without conflicts of interests in this case and legal support staff, shall provide necessary support services to special counsel and, if consistent with the Hawaii Rules of Professional Responsibility, joint legal representation of Patrick Wong, in his individual capacity, along with special counsel; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the Council hereby authorizes the employment of special counsel to represent Patrick Wong, Corporation Counsel, in his individual capacity, in Christopher Salem v. County of Maui, et al.;

2. That total compensation for the employment of special counsel shall not exceed \$75,000;

3. That the hourly rate of compensation for special counsel shall not exceed \$250;

Resolution No. _____

4. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920;

5. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters;

6. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead;

7. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

8. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

chr:misc:150818

COUNCIL OF THE COUNTY OF MAUI

RECEIVED

2015 AUG 18 PM 4:03

A G E N D A

Regular Meeting of August 25, 2015
9:00 a.m.

OFFICE OF THE
COUNTY CLERK

Meeting Site: Council Chamber, 8th Floor, 200 South High Street, Wailuku, Hawaii

Remote Testimony Sites: Hana Council District Office – Hana Community Center, 5091 Uakea Road, Hana, Hawaii
Lanai Council District Office – Lanai Community Center, 8th Street, Lanai City, Hawaii
Molokai Council District Office – 100 Ainoa Street, Kaunakakai, Hawaii

website: <http://www.mauicounty.gov/county/clerkSub/Agenda.php>
e-mail: county.clerk@mauicounty.us

ORAL OR WRITTEN TESTIMONY

ORAL OR WRITTEN TESTIMONY on any agenda item will be accepted. Each testifier may be allowed to speak for three minutes on each item. If approved by the presiding officer and announced prior to any oral testimony being taken, the testifier shall be allowed one minute to conclude the testimony on the item. No further oral testimony by the testifier on the item shall be permitted. An individual's request to testify shall be deemed withdrawn if the individual does not answer when called to testify.

REMOTE TESTIMONY SITES: Oral testimony may be received by telephone from each of the Council district offices noted above. If the audio connection between the meeting site in the Council Chamber and any of the remote testimony sites is lost, the meeting in the Council Chamber will still continue. Members of the public interested in information about offering testimony on an agenda item from a remote testimony site may contact the Office of the County Clerk (808-270-7748) prior to the meeting. While oral testimony is being received the district offices cannot provide other services. The audio connection will be terminated after all oral testimony has been received.

If written testimony is submitted at the meeting site, 15 copies are requested. If written testimony is e-mailed or faxed (808-270-7171), it must be received at least 24 hours prior to the meeting; provided, that if a meeting will be held on a Monday, written testimony shall be received by 12:00 noon on the business day preceding the meeting.

A. ROLL CALL

B. OPENING REMARKS: COUNCILMEMBER GLADYS C. BAISA

C. PLEDGE OF ALLEGIANCE

D. TESTIMONY ON CEREMONIAL RESOLUTIONS

E. CEREMONIAL RESOLUTIONS:

NONE.

F. PRESENTATION OF WRITTEN OR ORAL TESTIMONY

G. MINUTES:

Regular Meeting of June 5, 2015
Regular Meeting of June 19, 2015
Special Meeting of June 22, 2015

H. COMMITTEE REPORTS:

NO. 15-98 - BUDGET AND FINANCE COMMITTEE:

Recommending the following:

1. **ADOPTION** of resolution authorizing the employment of Hawkins, Delafield & Wood LLP as special counsel to represent the County on bond and disclosure matters relating to issuance of the 2015 general obligation bonds, for a total compensation not to exceed \$70,000 and expenses not to exceed \$2,500; and
2. **FILING** of communication.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

NO. 15-99 - BUDGET AND FINANCE COMMITTEE:

Recommending **FIRST READING** of bill authorizing the disbursement of \$14,930,000 from the Post-Employment Obligations Fund to the Hawaii Employer-Union Health Benefits Trust Fund, for payment of the County's health benefit obligations for Fiscal Year 2016.

H. COMMITTEE REPORTS (continued):NO. 15-100 - COMMITTEE OF THE WHOLE:

Recommending **FILING** of correspondence dated February 25, 2015, from the Department of the Corporation Counsel, relating to the proposed settlement of Alvin F. Jardine, III v. State of Hawaii, et al., Civil 13-1-0062(2).

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

NO. 15-101 - COMMITTEE OF THE WHOLE:

Recommending **ADOPTION** of resolution to authorize settlement of Claim 1843115 of Eleanor Kondo.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

NO. 15-102 - COMMITTEE OF THE WHOLE:

Recommending **ADOPTION** of resolution to authorize settlement of Kyoko Armstrong-Nishioka v. County of Maui, Disability Compensation Division Case 7-11-01318.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

H. COMMITTEE REPORTS (continued):

NO. 15-103 - COMMITTEE OF THE WHOLE:

Recommending **ADOPTION** of resolution to authorize settlement of John M. Newell v. County of Maui, Disability Compensation Division Case 7-13-01509.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee; and Section 92-5(a)(8), Hawaii Revised Statutes, to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law, or a court order.

NO. 15-104 - COMMITTEE OF THE WHOLE:

Recommending **ADOPTION** of resolution to raise the compensation limit for the employment of special counsel in Hawaii Wildlife Fund, et al. v. County of Maui, Civil 12-00198 SOM BMK, by an additional \$500,000 for trial preparation, motions, trial, and appeal, for a total compensation not to exceed \$2,750,000.

With reference to this agenda item, one or more executive meetings are anticipated pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

NO. 15-105 - ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE:

Recommending the following:

1. **ADOPTION** of resolution to authorize the grant of a 50-year lease for \$50 per year, of 73.25 acres, cumulatively identified as tax map keys (2) 1-5-007:001 and 012, in Hana, Maui, Hawaii, to Na Mamo O Mu'olea, a nonprofit organization, for the purposes of managing, restoring, and maintaining the natural, cultural, historic, and marine resources of the subject property; and
2. **FILING** of communication.

NO. 15-106 - ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE:

Recommending **FILING** of communication relating to the Upcountry Dog Park in Makawao, Maui, Hawaii.

H. COMMITTEE REPORTS (continued):NO. 15-107 - HOUSING, HUMAN SERVICES, AND TRANSPORTATION COMMITTEE:

Recommending **ADOPTION** of resolution authorizing forgiveness of Ka Hale A Ke Ola Homeless Resource Centers, Inc.'s outstanding debt related to the construction of the Hale Makana O`Waiale affordable housing rental project.

NO. 15-108 - LAND USE COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill granting a request from Hula Maui LLC for a Change in Zoning from R-1 Residential District to SBR Service Business Residential District for a parcel consisting of 11,117 square feet at 2241 West Vineyard Street, Wailuku, Maui, Hawaii, to make the subject property's zoning consistent with the Wailuku-Kahului Community Plan; and
2. **FILING** of communication.

NO. 15-109 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending **ADOPTION** of resolution disapproving the appointment of Timothy Riley to the Molokai Planning Commission.

NO. 15-110 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill authorizing the Mayor to enter into an intergovernmental agreement with the State Department of Accounting and General Services to establish a sewer line maintenance and repair program at the Lahaina Civic and Recreation Center; and
2. **FILING** of communication.

NO. 15-111 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending the following:

1. **ADOPTION** of resolution authorizing the grant of six leases to the State for the installation of emergency outdoor warning sirens at: (a) Kenolio Park, Kihei; (b) Richard "Pablo" Caldito Park, Waihee; (c) Airport-Kanaha Beach, Kahului; (d) Paia Youth and Cultural Center, Paia; (e) Papohaku Beach Park, Molokai; and (f) One Alii Park, Molokai; and
2. **FILING** of communication.

H. COMMITTEE REPORTS (continued):

NO. 15-112 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill authorizing the Mayor to enter into an intergovernmental agreement with the State of Hawaii Employees' Retirement System relating to the acquisition of a Governmental Accounting Standards Board Statement 68 report; and
2. **FILING** of communication.

NO. 15-113 - POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill authorizing the Mayor to enter into an intergovernmental agreement with the State Office of the Auditor to audit the schedule of allocations of the State of Hawaii Employees' Retirement System; and
2. **FILING** of communication.

I. COMMUNICATIONS:

1. COUNTY COMMUNICATIONS:

NO. 15-217 - DIRECTOR OF WATER SUPPLY, transmitting the Department of Water Supply's Monthly Source Report and Groundwater Use Report for the month ending July 2015.

NO. 15-218 - CHAIR, ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE, transmitting a floor amendment to the resolution entitled "AUTHORIZING THE GRANT OF A LEASE OF COUNTY REAL PROPERTY KNOWN AS MU'OLEA POINT, HANA, MAUI, HAWAII TO NA MAMO O MU'OLEA", attached to Committee Report No. 15-105.

NO. 15-219 - COUNCIL CHAIR WHITE, transmitting the following proposed resolutions entitled:

1. "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL."; and
2. "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR PATRICK WONG, IN HIS INDIVIDUAL CAPACITY, IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL."

1. COUNTY COMMUNICATIONS (continued):

NO. 15-220 - COUNCILMEMBER COUCH, transmitting a proposed resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO TRANSIENT VACATION RENTALS IN PLANNED DEVELOPMENTS".

NO. 15-221 - COUNCILMEMBER COCHRAN, transmitting a proposed resolution entitled "URGING THE BOARD OF DIRECTORS FOR THE MAUI REGION OF HAWAII HEALTH SYSTEMS CORPORATION TO REQUIRE TRANSPARENCY REGARDING RATE SETTING FOR PATIENT SERVICES".

2. GENERAL COMMUNICATIONS:

NO. 15-9 - GRANT CHUN, VICE PRESIDENT, A&B PROPERTIES, INC., submitting an annual status report in accordance with Condition 17 of Ordinance No. 3312, change in zoning from Interim District to R-1 Residential District and PK-1 Neighborhood Park District, Conditional zoning, for property situated at Haliimaile, Maui, Hawaii. (Haliimaile Subdivision)

J. RESOLUTIONS:

NONE.

K. ORDINANCES - SECOND AND FINAL READING:

BILL NO. 52 (2015) - "A BILL FOR AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE AND SPECIFYING CERTAIN TERMS OF NOT TO EXCEED SEVEN MILLION NINE HUNDRED TWENTY-NINE THOUSAND FOUR HUNDRED EIGHTY-FIVE DOLLARS (\$7,929,485) AGGREGATE PRINCIPAL AMOUNT OF GENERAL OBLIGATION REFUNDING BONDS OF THE COUNTY OF MAUI FOR THE PURPOSE OF REFUNDING ALL OR A PART OF CERTAIN OUTSTANDING USDA RURAL DEVELOPMENT LOAN OF THE COUNTY; AUTHORIZING THE DIRECTOR OF FINANCE TO DETERMINE CERTAIN TERMS OF SUCH BONDS; PROVIDING FOR THE RETIREMENT OF THE USDA RURAL DEVELOPMENT LOAN TO BE REFUNDED; AND PROVIDING FOR OTHER ACTIONS RELATED TO THE ISSUANCE, SALE AND DELIVERY OF SUCH BONDS (KIHEI POLICE STATION)"

K. ORDINANCES - SECOND AND FINAL READING (continued):

BILL NO. 53 (2015) - "A BILL FOR AN ORDINANCE AMENDING THE OUTDOOR LIGHTING STANDARDS RELATING TO COMPLIANCE DEADLINES, SHIELDING REQUIREMENTS, AND USAGE RESTRICTIONS"

BILL NO. 54 (2015) - "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT FOR APPROXIMATELY TWO ACRES OF COUNTY-OWNED PROPERTY ON MAHALANI STREET, WAILUKU, MAUI, HAWAII, LEASED TO KA LIMA O MAUI, LTD."

L. UNFINISHED BUSINESS:

COMMITTEE REPORT:

NO. 15-91 - ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE:

Recommending the following:

1. **FIRST READING** of bill to allow as accessory uses and special uses within the County Agricultural District, commercial agricultural structures for the display and selling of agricultural products, including value-added agricultural products, subject to appropriate restrictions and standards; and
2. **FILING** of communication.

NOTE: ITEMS LISTED ON THE AGENDA MAY BE INSPECTED AT THE OFFICE OF THE COUNTY CLERK, 200 SOUTH HIGH STREET, WAILUKU, HAWAII, PRIOR TO THE MEETING DATE. PHOTOCOPIES MAY BE ORDERED, SUBJECT TO CHARGES IMPOSED BY LAW (MAUI COUNTY CODE, SECTION 2.64.010). PLEASE CONTACT THE OFFICE OF THE COUNTY CLERK TO MAKE ARRANGEMENTS FOR INSPECTION OR PHOTOCOPYING OF DOCUMENTS.

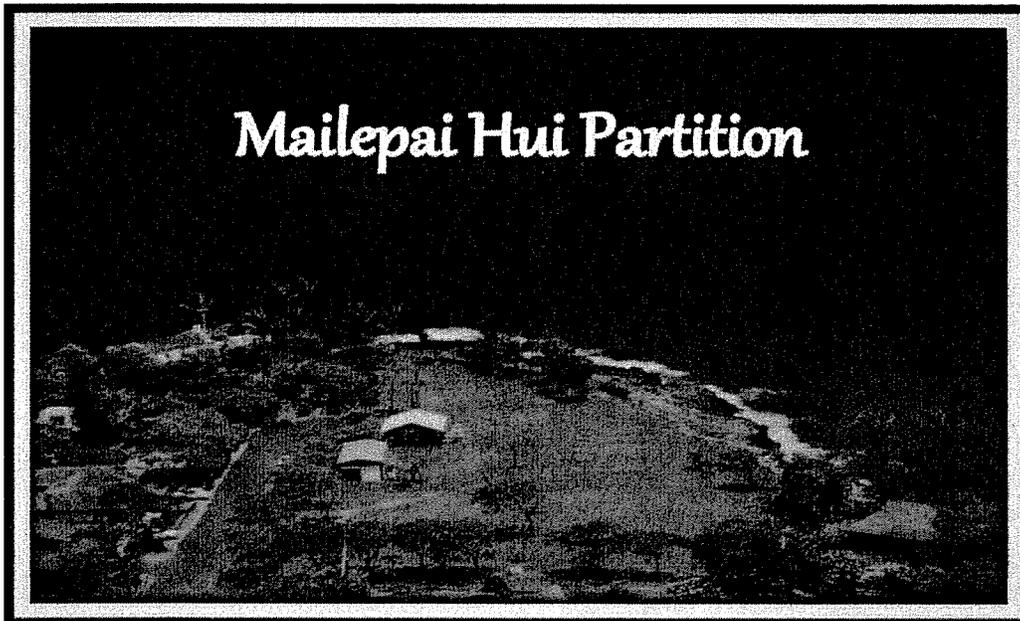
INDIVIDUALS WHO INTEND TO ATTEND THE MEETING AND WHO HAVE DISABILITIES REQUIRING SPECIAL ASSISTANCE SHOULD CALL THE OFFICE OF THE COUNTY CLERK AT 270-7748, AT LEAST THREE DAYS IN ADVANCE.

Exhibit 'C'

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

Tennessee Judge Larry Potter, Guest

Mailepai Hui Partition

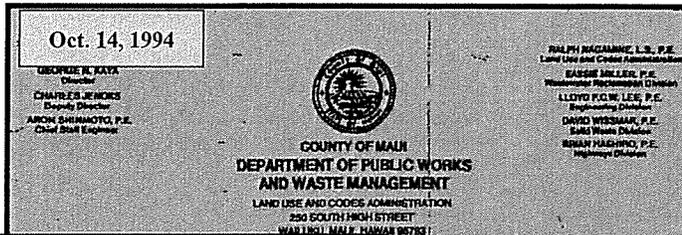
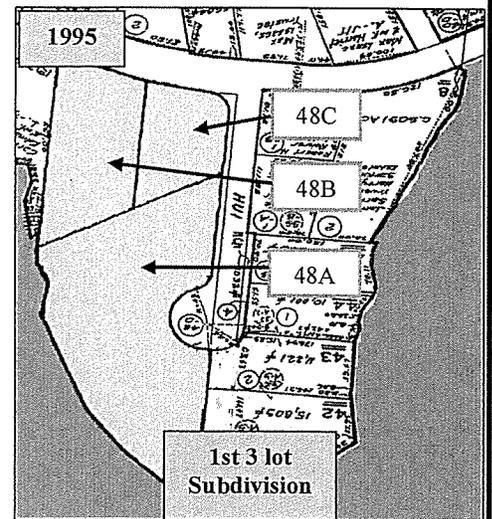


In 1994, Anka, Inc., which owned Lot 48 of the Mailepai Hui Partition along Lower Honoapiilani Road, applied to the County of Maui for a 3 lot subdivision of their oceanfront land.

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

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

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

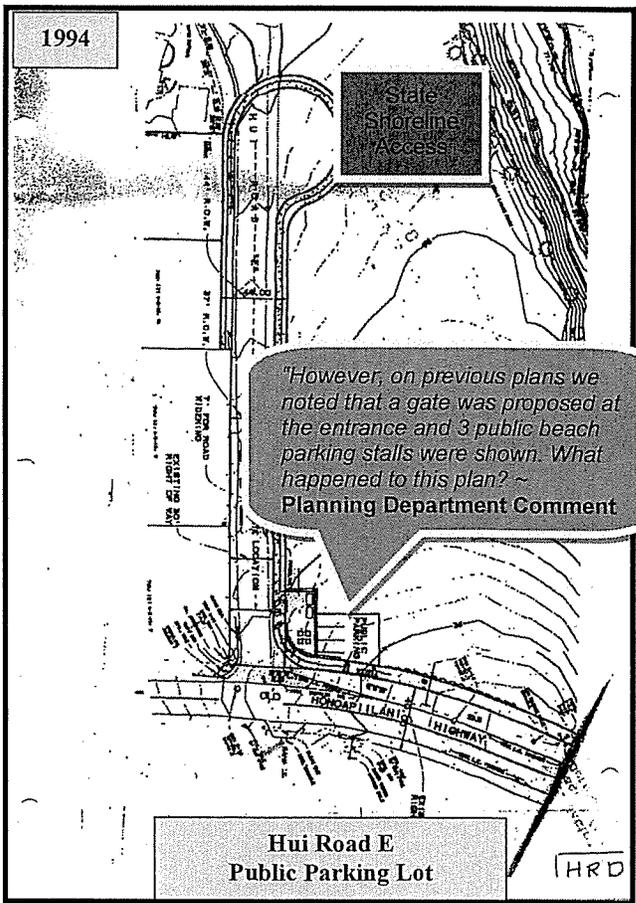


Planning Dept. Condition #4
 Provided this is the final subdivision of the parent parcel, and no further subdivision is contemplated, would agree that the project is exempt from SMA.

Planning Dept. Condition #11
 Improve the adjoining halves of Lower Honoapiilani Road and Hui Road E to the provisions of the subdivision ordinance for roads within the urban district or comply with Condition #13.

Planning Dept. Condition #13
 Submit the original and four copies of a the roadway deferral agreement (3 Lots or Less) for the cost of the roadway frontage improvements.

Dept. of Public Works
Anka, Inc. 3 lot Subdivision

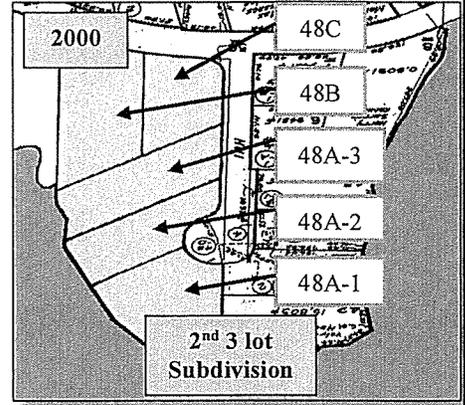


MAUI COUNTY CODE
 Title 18 - Section 18.20.040 (A)
"The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any resulting parcels."

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

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

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



March 7, 2000

Condition B.4.(iii) of Recorded Covenants
 Lot 48A may be subdivided, but only upon the condition that the subdivision will NOT result in any cost or expense incurred by the owners of Lot 48B and Lot 48C (Salem) of the underlying Anka, Inc. Subdivision.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AFFECTING LOT 48-A OF THE 1st LAND OF MALEPAI

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, ANKA, INC., a Hawaii corporation, is the owner of Lot 48-A of the subdivision of Lot 48 of the "1st Land of Malepai" (the "Subdivision"), designated as Maui tax key no. 4-0-154 (hereinafter "Lot 48-A"); and

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

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

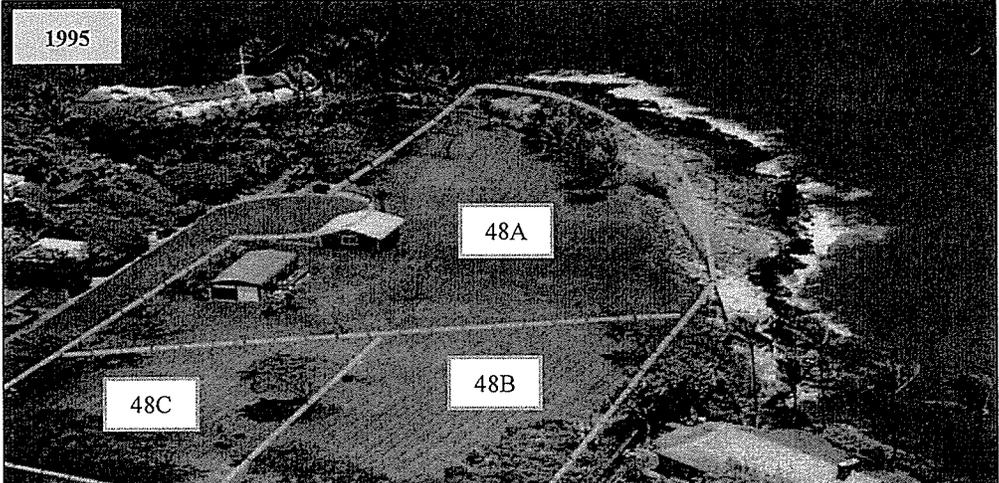
February 16, 2000

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

Akamai Land Surveying, Inc.

**View Easements & Shoreline Setbacks
 Akamai Land Surveying, Inc.**

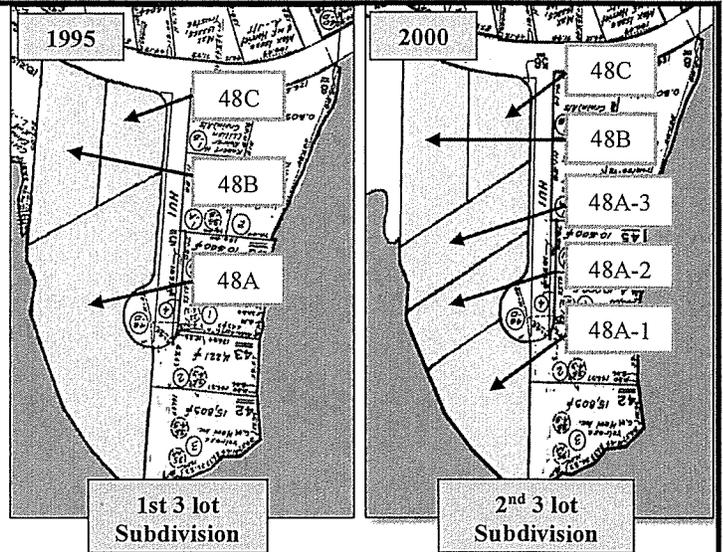
A detailed survey map showing the shoreline and various setbacks. A callout box points to the shoreline with the text: 'Shoreline as surveyed on August 10, 1993, January 11, 1995, and resurveyed on April 6, 2000 (Upper reach of wash waves)'. The map is attributed to Akamai Land Surveying, Inc.



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

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

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



June 23, 2000

WEDD G. DOORER
Public Director

RALPH M. NADARAME, L.S., P.E.
Land Use and Code Administrator

DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CODE ADMINISTRATION
250 SOUTH MOHAI STREET
WAILUKU, HAWAII 96793

June 23, 2000

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

Dear Mr. Arivosh:

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

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

Committee: Final approval of the subdivision is recommended. The

**Department of Public Works
Preliminary Subdivision Approval**

June 6, 2000

Mr. Hugh Ferguson
Lot 48A, LLC

COUNTY OF MAUI
DEPARTMENT OF PLANNING
June 6, 2000

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

Sections 18-08-12 and 18-08-14, a determination has been made relative to the above project that:

1. The project is a development.

In consideration of the above referenced determination you are hereby granted an SMA Minor Permit approval, subject to the following conditions:

1. The Construction shall be in accordance with the plans submitted on May 11, 2000.

**Department of Planning
SMA Permit**

THE MAUI COUNTY CODE

SECTION 18.08.020 PREPARATION AND SUBMISSION:

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

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

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

SECTION 18.08.100 APPROVAL

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

SECTION 18.12.070 TECHNICAL REVIEW

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

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

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

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

May 10, 2001

May 10, 2001

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

Mr. Michael T. Munekiyo,
Munekiyo & Hiraga, Inc.
305 High Street, Suite 10
Wailuku, Hawaii 96793

Dear Mr. Munekiyo:

Re: Special Management Area Minor Permit for the Subdivision of Lot 48-A at Hui Road E, TMK: 4-3-015:004, Napili, Maui, Hawaii (SM2 2000/0042)

In response to your request for a second time extension dated May 8, 2001, the Maui Planning Department hereby amends Condition No. 3 of the above-referenced permit and grants a two month extension as follows:

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

Thank you for your cooperation. If additional clarification is required, please contact Ms. Colleen Suyama, Staff Planner, of this office at 270-7735.

Very truly yours,

JOHN E. MIN
Planning Director

JEM:CMS:omb
C: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shimoto, Planning Program Administrator (2)
Colleen Suyama, Staff Planner

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

February 6, 2001

INFORMATION REQUEST FORM
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT

TO: _____
DIV: _____
FROM: CHRIS SALEM
REQUESTOR: Salem
ADDRESS: #8 Hui Road DATE: 2/6/01
TELEPHONE: 808 669-8376
REQUEST: Review Proposed Map & Conditions
COMMENTS: MAP on 48-A / TMK-4-3-15-54

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

Department of Public Works
Information Request Form

July 19, 2001

COUNTY OF MAUI
DEPARTMENT OF PLANNING

DATE: 7/19/01
FROM: CHRIS SALEM TO: PLANNING DEPT
REQUESTOR: CHRIS SALEM DATE: 07-19-2001

Requestor: Chris Salem
I would like the following government record:
SMA Application
#SM220000042
Improvement Valuation Summary
314816 - Box 1065

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

Department of Planning
Request for Government Records

MAUI COUNTY CHARTER

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

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

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

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

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

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

DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT
 February 12, 2000
 COUNTY OF MAUI
 WAILUKU, MAUI, HAWAII

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

DISTRICT OF LAHAINA
 ISLAND OF MAUI

PRINTED BY: ATA
 DATE: FEB 12 2000

VICINITY MAP	INDEX OF DRAWINGS																						
	<table border="1"> <thead> <tr> <th>NO.</th> <th>DESCRIPTION</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>GENERAL NOTES</td> </tr> <tr> <td>2</td> <td>PROPOSED ROAD AND DRIVE IMPROVEMENT SECTION</td> </tr> <tr> <td>3</td> <td>PLAN - 8' X 11' (SHEET 10 OF 8 SHEETS)</td> </tr> <tr> <td>4</td> <td>PLAN - 8' X 11' (SHEET 11 OF 8 SHEETS)</td> </tr> <tr> <td>5</td> <td>PLAN - 8' X 11' (SHEET 12 OF 8 SHEETS)</td> </tr> <tr> <td>6</td> <td>PLAN - 8' X 11' (SHEET 13 OF 8 SHEETS)</td> </tr> <tr> <td>7</td> <td>PLAN - 8' X 11' (SHEET 14 OF 8 SHEETS)</td> </tr> <tr> <td>8</td> <td>PLAN - 8' X 11' (SHEET 15 OF 8 SHEETS)</td> </tr> <tr> <td>9</td> <td>PLAN - 8' X 11' (SHEET 16 OF 8 SHEETS)</td> </tr> <tr> <td>10</td> <td>PLAN - 8' X 11' (SHEET 17 OF 8 SHEETS)</td> </tr> </tbody> </table>	NO.	DESCRIPTION	1	GENERAL NOTES	2	PROPOSED ROAD AND DRIVE IMPROVEMENT SECTION	3	PLAN - 8' X 11' (SHEET 10 OF 8 SHEETS)	4	PLAN - 8' X 11' (SHEET 11 OF 8 SHEETS)	5	PLAN - 8' X 11' (SHEET 12 OF 8 SHEETS)	6	PLAN - 8' X 11' (SHEET 13 OF 8 SHEETS)	7	PLAN - 8' X 11' (SHEET 14 OF 8 SHEETS)	8	PLAN - 8' X 11' (SHEET 15 OF 8 SHEETS)	9	PLAN - 8' X 11' (SHEET 16 OF 8 SHEETS)	10	PLAN - 8' X 11' (SHEET 17 OF 8 SHEETS)
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"We will bid out the job in June (of 2002) and probably start in September."

~ Department of Public Works
 August 2001

May 4, 2000

Thomas M. Phillips
 Maui Police
 County of Maui
 55

May 4, 2000

proposed project
 Waste Management,
 to commence by the
 Honoapiilani
 in
 traffic during
 The referenced in your be by the County
 and Road

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

Department of Public Works
 August 2001

February 2000

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

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

VI. PROPOSED DRAINAGE IMPROVEMENTS
 Existing drainage outlets adjacent to Hui Road "D"

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

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

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

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

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

February 26, 2003

Mossman: County erred in Montana Beach case

By HARRY EAGAR, Staff Writer

Maui News, February 26, 2003 (front page)

WAILUKU - In the Montana Beach special management area permit controversy, hearing officer Boyd Mossman said in his findings of fact that county employees repeatedly gave advice and approvals that contradicted both state law and the commission's rules.

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

- Boyd Mossman, Hearings Officer

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

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

Maui News

August 24, 2001

PAUL JOHNSON PARK & NILES

ATTORNEYS AT LAW, A LAW CORPORATION

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

Attorney Tom Pierce
Paul, Johnson, Park, & Niles

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

Re: **Chris and Gloria Salem/Lot 48A LLC**

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

Attorney Tom Pierce
Paul, Johnson, Park, & Niles

CONCERNS

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

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

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

Attorney Tom Pierce
Paul, Johnson, Park, & Niles

HONOLULU OFFICE 1001 Pacific Tower 1001 Market Street Post Office Box 4288 Honolulu, Hawaii 96812-4138

MAUI OFFICE

Letter to Attorney Welch
Paul, Johnson, Park & Niles

Maui: 967-9470

October 19, 2001

SETTLEMENT AGREEMENT

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

RECITALS

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

RECITALS

subdivision Alaeolu, Kauai TMK # (2) 4 Lot 48A is a 4.805 ("Sub 48A-1, Lot

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

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

AGREEMENT

SECTION 4. HONOAPIILANI ROAD IMPROVEMENTS

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

SECTION 6. PARKING COVENANT

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

herein, the Parties hereby agree as follows:

SECTION 1. PAYMENT TO SALEMS

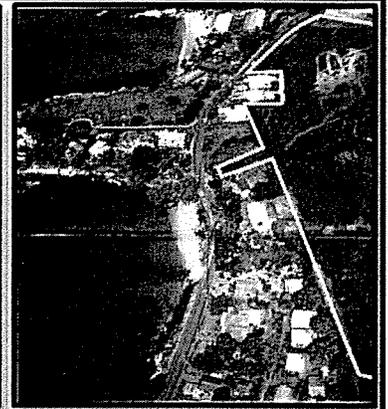
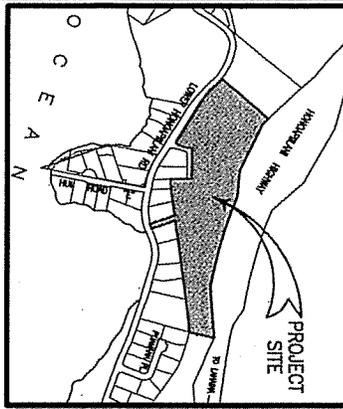
Lot 48A LLC agrees to pay the Salems Twelve Thousand and No/100

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

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

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

The engineer of record was Unemori Engineering.



January 14, 2002

MELTON B. UNEMORI, P.E.
Deputy Director

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

Waterworks Permutation Division
LLOYD P.C.W. LEE, P.E.
Engineering Division
JOHN D. HARDER
Solid Waste Division
SHAWN HANABUO, P.E.
Highways Division

January 14, 2002

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

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

SUBJECT: PUU KAHANA SUBDIVISION
TMK: (2) 4-3-001:039
LUCA FILE NO. 4-842

Dear Mr. Unemori:

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

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

Comments: Easements are required by our Land Agent, Ralph Kubota. He can be contacted at 871-2267.

If you have any questions, please contact Mr. Alan Miyazaki at 871-2380.

Department of Public Works
Preliminary Subdivision Approval

September 23, 2003

SMITH DEVELOPMENT
Real Estate Development & Consulting

1043 Makawao Avenue, Suite 208, Makawao, HI 96768
Phone: (808) 572-3011 Fax: (808) 572-8378
www.SDHawaii.com email: KRS@SDHawaii.com

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

September 23, 2003

Puu Kahana Neighboring Property Owners

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

Dear Neighboring Property Owner,

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

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

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

Sincerely,

David C. Goode
Vice President
Development Operations

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

THE MAUI COUNTY CHARTER

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

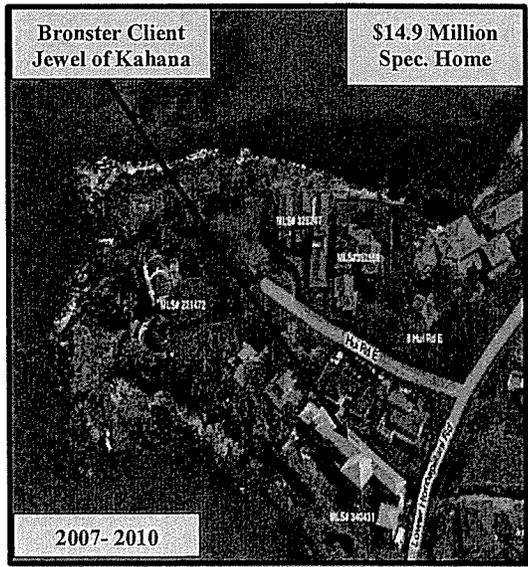
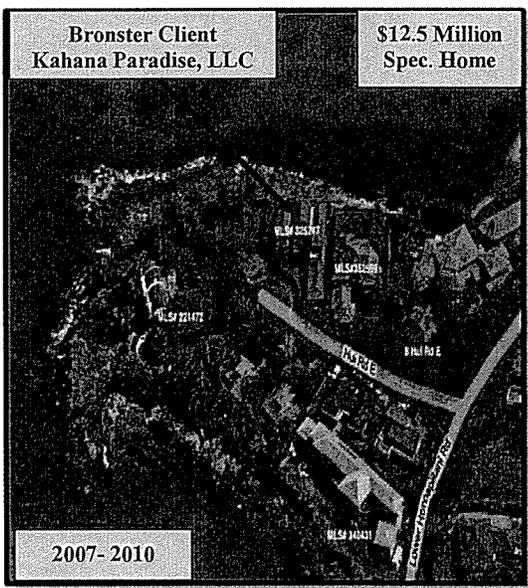
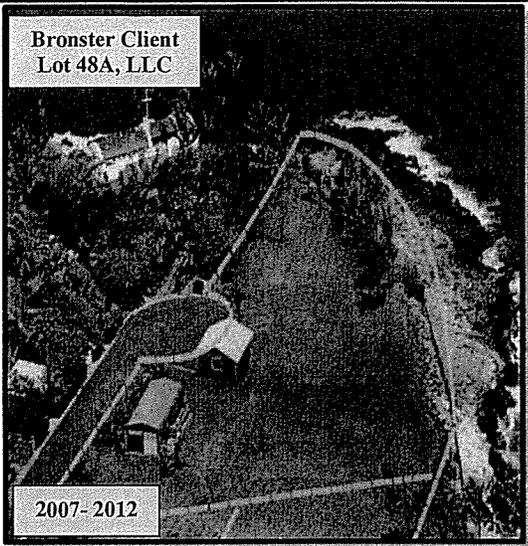
PROHIBITIONS 2.b. NO FORMER NON-ELECTED SALARIED EMPLOYEE OF THE COUNTY SHALL APPEAR FOR COMPENSATION BEFORE ANY DEPARTMENT OR OTHER AGENCY OF THE COUNTY BY WHICH SUCH EMPLOYEE OR OFFICER WAS LAST EMPLOYED WITH A PERIOD OF ONE YEAR AFTER TERMINATION OF SERVICE TO OR EMPLOYMENT WITH THE COUNTY.

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

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

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

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



July 9, 2008

BRONSTER HOSHIBATA
A Law Corporation

MARGERY S. BRONSTER 4750-0
SANDRA D. LYNCH 6684-0
1008 Bishop Street
Paradise Tower, Suite 2300
Honolulu, Hawaii 96813
Telephone: (808) 524-8644
Facsimile: (808) 590-1681

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

CHRISTOPHER SALEM,	CASE NO. 07-0887-M/A
Claimant,	RESPONDENT LOT 48A-LLC's RESPONSE TO CLAIMANT CHRISTOPHER SALEM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO LOT 48A LLC, A HAWAII LIMITED LIABILITY COMPANY
and	
LOT 48A LLC,	
Respondent.	

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

Christopher Salem's First Request for Production of Documents and Things to Lot 48A LLC dated June 8, 2008 and served upon Respondent on July 9, 2008 ("Request"), as follows:

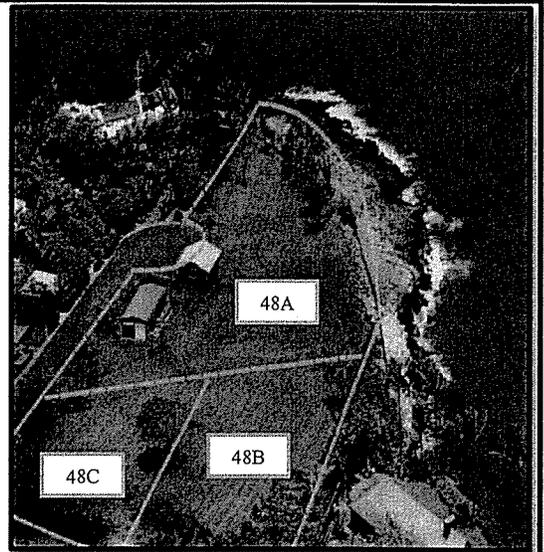
**Response to Request
for Production of Documents
Attorney Margery Bronster**

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

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

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

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



January 2, 2008

WRIGHT AND KIRSCHBRAUN
A Limited Liability Law Company

DEBORAH K. WRIGHT 4444-0
KEITH D. KIRSCHBRAUN 4971-0
1885 Main Street, Suite 108
Wahiula, HI 96793
Telephone: (808) 244-8644
Facsimile: (808) 244-1013
Email: wrightkirsch@aol.com

Attorneys for Plaintiff

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

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

CHRISTOPHER SALEM, in his individual capacity, and as owner of certain claims of BAY POINTE LOT 48 LLC, a Hawaii Limited Liability Company,
Plaintiff,
vs.
WARREN S. UNEMORI ENGINEERING, INC., a Hawaii Limited Liability Company, ARIYOSHI, LLC, a Hawaii Limited Liability Company, FARRINGTON ROBERT J. CELL, SCHATZ, and ARCHITECTS, Liability Partners
Defendants.

CIVIL NO. (7-1-0540(3)
(Other Civil Action)

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

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

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

**Request for Documents
Second Circuit Court**

January 18, 2008

Request 10.

WSUE and ARIYOSHI have no documents responsive to this request; neither WSUE nor Ariyoshi were employed to perform any services in connection with the SMA Minor Permit Process."
Attorney Bruce Ito
Attorney for Unemori Engineering, Inc.

Request 13.

WSUE and ARIYOSHI will produce these documents if the attorney client privilege between Tom Welch and this clients is waived.

Request 14.

Objection. Relevance.

Bruce M. Ito
Bruce M. Ito

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

DATED: Honolulu, Hawaii, *Jan 15, 2008*

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

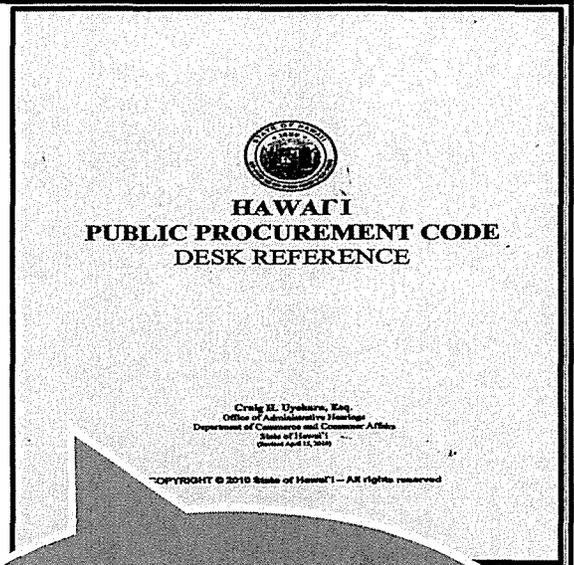
**Unemori Engineering, Inc.
Response to Request for SMA Documents**

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

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

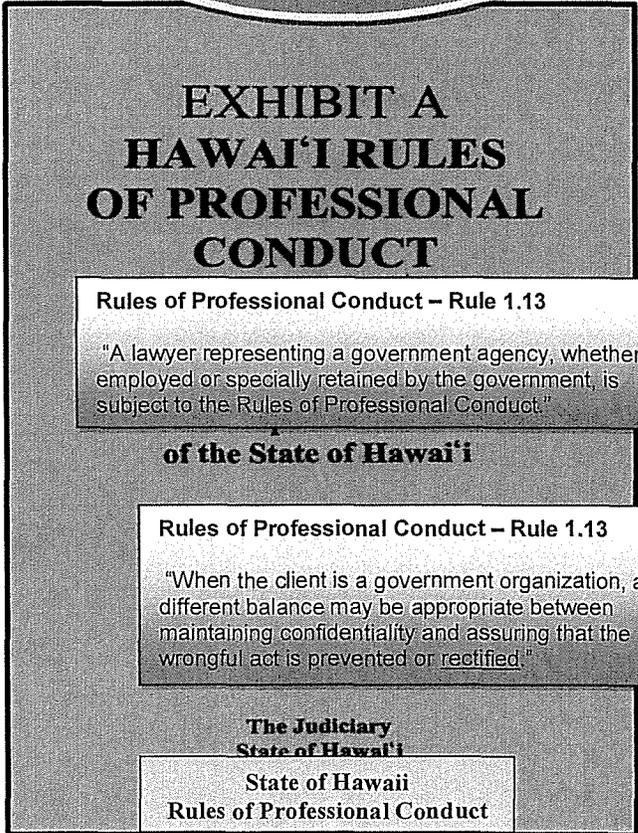
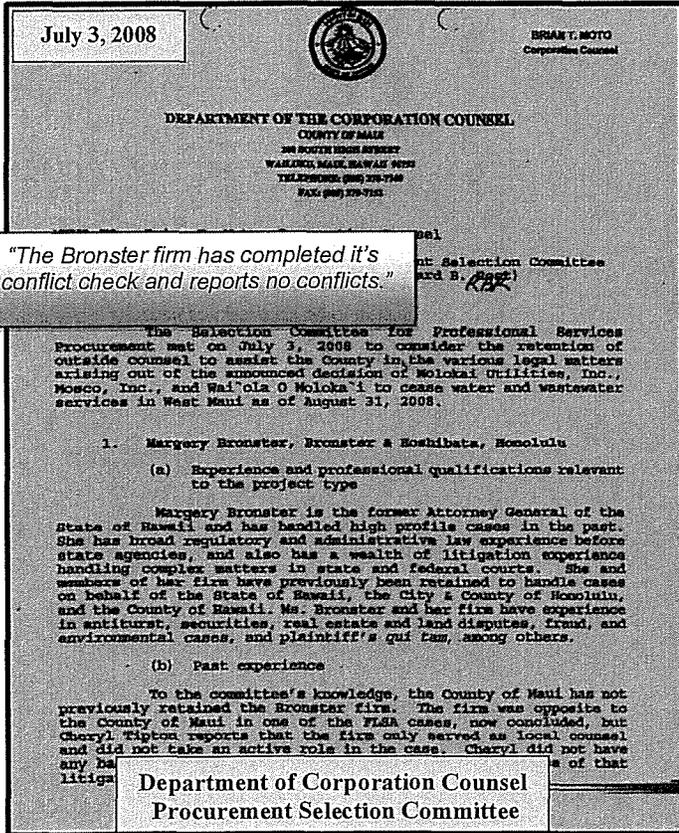
As we now know, at the same time Attorney Bronster was soliciting her services to the County of Maui, she was also representing multiple developers in different stages of permitting and disputes in Maui County including developer Lot 48A, LLC.

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



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

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



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

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

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

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

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

March 4, 2000

TELECOPIER TRANSMITTAL

Warren S. Unemori Engineering, Inc.
2145 Wake Street, Suite 403
Waipahoehoe, Maui, Hawaii 96797
(808) 242-4403 FAX (808) 242-4404

TO: Tim Farrington DATE: March 4, 2000
P.O. Box 1516 PROJECT: Malepeai Hui Subdivision
Kihei, Hawaii 96753 of Lot 48-A into 3 Lots

JOB NO.:
RE:

ATTENTION:

TELECOPIER NO.: 874-6450

We are transmitting 3 page(s) including this cover sheet. If they are not received, please call us and we will retransmit them as soon as possible.

Originals to be Mailed: () Yes (X) No

Documents: Order of Magnitude Estimate of Construction Cost of Anticipated Improvements

Remarks: I wasn't exactly sure about existing improvements on Hui Road E. Therefore I assumed the worst case scenario. I also assumed that the existing 6-inch line will be able to deliver the required fire flow of 1000 gpm because of the very short run. Hope you're successful in convincing Planning that improvements will cost less than \$125,000.

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

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

*"Lot 4A, LLC has represented that it has produced all relevant SMA permit documents in its possession or control. Accordingly, the request to compel production of this request is moot."
Arbitrator Andy Winer
Circuit Court Testimony - October 2009*

May 11, 2000

Special Management Area Assessment

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

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

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

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

Prepared for: _____ May 2000

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

June 23, 2000

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LEAD USE AND DUSTS SUPERVISION
225 SOUTH MAUI STREET
HALEKALI, MAUI, HAWAII 96793

June 23, 2000

Mr. Reed M. Artyosh, P.E., P.L.S.
WARREN S. UNEMORI ENGINEERING, INC.
2145 Wake Street, Suite 403
Waipahoehoe, Hawaii 96793

SUBJECT: MALEPAI HUI PARTITION SUBDIVISION,
TMK(2) 4-3-015-004
LUCA FILE NO. 4-808

Condition #15.
Comply with the conditions of the Special Management Area (SMA) Minor Permit (SM2 2000/0042) granted on June 6, 2000. Note: Upon the approval of the construction plans, the subdivider should verify with the Department of Planning to verify if an SMA Major Permit is required.

d. Requires the extension (overhead and/or underground) within private road or property.

Comments: Final approval of the subdivision is recommended. The extension requirement for Lot 48-A-2 can be deferred until it is developed.

Preliminary Subdivision Approval
Department of Public Works

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

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

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

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

File 4.805

Project Name	Project Number	Project Status	Project Date
Lot 48A, LLC	SM2 2000/0042	Expired	2009

Construction Plan Review:

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

**County of Maui
Department of Public Works**

August 27, 2009

CHUNMARE TAVARES
Mayor
JEFFREY B. HUNT
Director
KATHLEEN ROSS AOKI
Deputy Director

**COUNTY OF MAUI
DEPARTMENT OF PLANNING**
August 27, 2000

Mr. Chris Salem
8 Hui Road "E"
Lahaina, Hawaii 96781

Dear Mr. Salem:

SUBJECT: GOVERNMENT RECORDS FOR FILE ASSOCIATED WITH LOT 48-A, LLC; TMK: (2) 4-3-016-004 (SM2 2000/0042)

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

1. November 9, 2000: submitted to June 30, 2001; and
b. May 10, 2001: extended to August 31, 2001.

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

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

5. May 2000;
6. \$91,402.00;
7. An "Order of Magnitude Estimate for Subdivision of Lot 48-A into 3 Lots" was dated May 4, 2000.

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

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793
CURRENT DIVISION (808) 270-7253

**Department of Planning
Government Records**

March 24, 2010

From: KIVA printout
From: Joseph Prutch <Joseph.Prutch@maui.hawaii.gov> Add to Contacts
To: chrisalem@maui.hawaii.gov
Sent: 11:07 AM (HST)

Wed, March 24, 2010 12:12 PM HST

Attached is the KIVA printout you asked for.

Joe Prutch, Staff Planner
Maui County, Current Planning
250 South High Street
Wailuku, HI 96793
office: (808) 270-7512
fax: (808) 270-1775
jprutch@maui.hawaii.gov

SM2 2000/0042 - Status - "OPEN"

**Department of Planning
Current Planning Division**

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

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

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

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



Hawaii CZM Program
Coastal Zone Management

Program Initiatives
OCRM MACZAC
Resources

Federal Consistency

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

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

Federal Consistency Forms

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

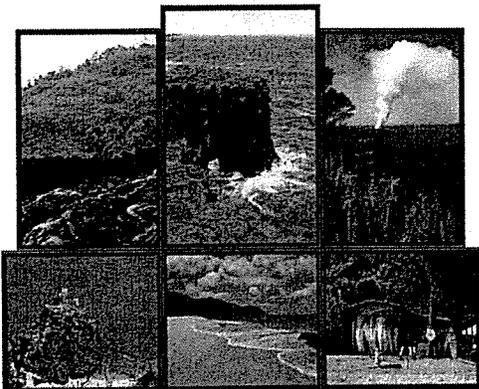
- [Federal Consistency Instructions and Application](#)
- [Federal Consistency Assessment Form](#)

2013 Hawaii's CZM Routine Program Changes

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

January 2010

FINAL Evaluation Findings
Hawaii Coastal Zone Management Program
September 2004 – July 2008
January 2010





Office of Ocean and Coastal Resource Management
National Ocean Service
National Oceanic and Atmospheric Administration
United States Department of Commerce

FINAL Evaluation Findings
Hawaii Coastal Zone Management Program

G. COASTAL DEPENDENT USES AND COMMUNITY DEVELOPMENT

1. Special Management Area Permit System and Community Planning

The HICZMP manages Hawaii's coast in a partnership with the four counties of Maui, Kauai, Oahu, and County of Honolulu, and Hawaii. Chapter 205A, HRS calls for each county to regulate development in geographically designated Special Management Areas (SMA) through a SMA permit system. Each County has developed its own ordinances and regulations for carrying out the SMA permit system and ensuring that development proposals are in compliance with the CZM objectives, policies, and SMA guidelines in the HRS. The HICZMP has direct SMA authority over limited areas under the jurisdiction of the Hawaii Community Development Authority.

The previous evaluation found that it was a necessary action for the HICZMP to improve the enforcement of local SMA programs and ensure open communication between all networked programs. The evaluation also encouraged the HICZMP to continue its outreach and educational activities. Since the previous evaluation, the HICZMP has taken several steps to address these concerns.

The HICZMP has focused on raising the public's understanding and awareness of the SMA permit system. The Coastal Program developed a *Participant's Guide to the Special Management Area Permit Process in the State of Hawaii*. The Guide is directed towards citizens and provides them with basic information on what an SMA permit is, what types of development are regulated, opportunities for public information, and contacts for more information at the state and county level. The guide is available in printed form and on the HICZMP website. The Coastal Program has also conducted SMA workshops for different audiences. Those attending SMA workshops have included planners, Planning Commissioners, developers, and the public. The workshops address the requirements of the SMA permit and the need for SMA permit conditions to have a CZM context. OCRM commends the HICZMP for continuing to increase awareness and understanding of the SMA permit process through the provision of training sessions and

"Evaluation participants raised a concern with the need to better monitor and enforce SMA permit conditions. Although the HICZMP has taken significant steps to improve the SMA permit system and expanded ongoing educational efforts, enforcement of permit conditions continues to remain an issue..." ~ NOAA

and challenges in administering the SMA permit and help ensure consistency in implementation.

In addition, the HICZMP also initiated a Special Management Area Permit System Assessment. The Assessment provides a comparative overview of the procedures and practices of each County's SMA permit system. The report includes a discussion of: (1) Effectiveness and efficiency of procedures for evaluating and regulating development (2) Consistency among

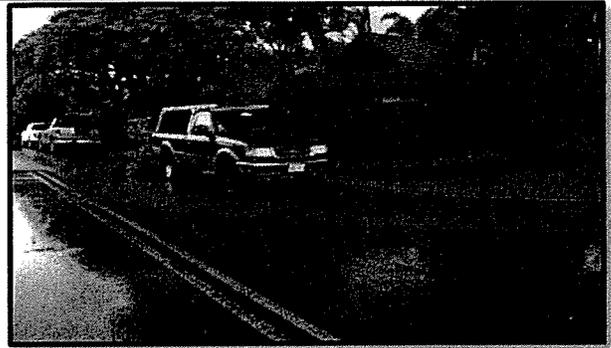
HAWAII COASTAL ZONE MANAGEMENT PROGRAM
FINAL EVALUATION FINDINGS -- 2010 22

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

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

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

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



June 23, 2000

CHARLES JENCKS
Director

YVON C. DOODE
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CODES ADMINISTRATION
250 SOUTH HIGH STREET
WAILUKU

RALPH M. NAGAMINE, L.S., P.E.
Land Use and Codes Administration

RONALD R. RESKA, P.E.
Wastewater Reclamation Division

LLOYD P. W. LEE, P.E.
Engineering Division

ANDREW M. HAROGE
Solid Waste Division

BRIAN HANSHRO, P.E.
Highways Division

June 23, 2000

Mr. Reed M. Ariyoshi, P.E., P.L.S.
WARREN S. UNEMORI ENGINEERING
2145 Wells Street, Suite 403
Wailuku, Hawaii 96793

SUBJECT: MAILEPAI HUI PARTITION SUBDIVISION
TMK:(2) 4-3-015:004
LUCA FILE NO. 4,805

Dear Mr. Ariyoshi:

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

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

c. Requires line extension (overhead and/or underground) within private road or property.

Comments: Final approval of the subdivision is recommended. Line extension requirement for Lot 48-A-2 can be deferred until it is developed.

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

Department of Public Works
Preliminary Subdivision Approval

May 16, 2000

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

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

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

Subdivision: Lot 48A LLC
Location: State Land Use: Urban
County Zoning: R-3
Community Plan: SF
No. of Lots: 3

Transmitted by: Warren S. Unemori Engineering, Inc.
2145 Wells Street, Suite 403
Wailuku, Hawaii 96793

Received: 5/18/00 Sent: 5/11/00

Engineering: LUCA Inspector
Supply: SD Permits
Electric Co. DLNR
State Health Wastewater Reclamation Division
Planning

Submit your comments by 6/18/00, or we will proceed without your review.

By: [Signature]

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

Submit your comments by [] or we will proceed without your review.

By: [Signature]

FINAL PLAT & SUBDIVISION REVIEW
Received: Sent: 06/06/01
Engineering Division State DOT

Department of Public Works
Engineering Division

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

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

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

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

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



April 29, 2008

P.B. Sullivan Construction Inc.
P.O. Box 734
Kihel, HI 96753
Phone: 808-876-2833
Fax: 808-874-5690
License # AC-22090

Date: 4-29-2008

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

Item #	Description	Bid Qty./UM	Unit Price	Price
1	Roadway Excavation	102 CY	\$239.91	\$24,470.82
2	6" Permeable Pipe W/ Permeable	210 LF	\$76.34	\$16,031.40
3	6" UTB Under Roadway	40 TON	\$189.45	\$7,578.00
4	3" AC Pavement	27 TON	\$343.73	\$9,280.71
5	5" Asphalt Treated Base	37 TON	\$343.73	\$12,718.01
6	4" Base Course Under Swale	33 TON	\$218.27	\$7,202.91
7	1 1/2" Asphalt All Paved Swale	13 TON	\$343.73	\$4,468.49
8	18" Storm Drain	13 LF	\$178.58	\$2,321.54
9	24" Storm Drain	95 LF	\$172.78	\$16,414.10
10	Type "B1614P" Drain Inlet (3' X 4')	3 EACH	\$4,579.08	\$13,737.24
11	ARV W/ Type F Manhole	2 EACH	\$2,745.71	\$5,491.42
12	12" Waterline (CL 52)	91 LF	\$999.88	\$90,989.08
13	Concrete Jacket (12" Waterline)	91 LF	\$512.36	\$46,824.76
14	Engineering Design		By Others	
15	Control Survey/Staking		By Others	
16	Permits			
17	Construction Water			

**Lower Honoapiilani Road
P.B. Sullivan Valuation
\$257,328.48**

Estimate prepared using plan sheets C-4, C-5, C-32, C-32, C-37, C-38 drawn by Kent Morimoto dated 6/2001 for the Lower Honoapiilani Road Improvements Phase 4

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

**P.B. Sullivan Construction, Inc.
Improvements Valuation**

March 4, 2000

**ORDER OF MAGNITUDE ESTIMATE
FOR
SUBDIVISION OF LOT 48-A INTO 3 LOTS**

March 4, 2000

Description	Approx. Quan.	Unit	Unit Price	Total
ROADWIDENING				
L. Honoapiilani Road				
Grading L. Honoapiilani Road	220	LF	\$ 5.00	\$ 1,100
2 1/2" AC	41	ton	\$ 85.00	\$ 3,485
4" ATB	66	ton	\$ 82.00	\$ 5,412
6" BFC	100	ton	\$ 35.00	\$ 3,500
Primer	103	gal.	\$ 4.00	\$ 412
Conc. Curb and Gutter	220	LF	\$ 20.00	\$ 4,400
4" Skidwalk				
Driveway Curb Cut and Apron				
Traffic Control				
Grassing Shoulder				
Dust Control				
Subtotal - L. Honoapiilani Road:				\$ 27,709
Hui Road E				
Grading L. Honoapiilani Road	400	LF	\$ 5.00	\$ 2,000
2" AC	36	ton	\$ 85.00	\$ 3,060
6" UTB	106	ton	\$ 35.00	\$ 3,780
Primer	112	gal.	\$ 4.00	\$ 448
Conc. Curb and Gutter	142	LF	\$ 20.00	\$ 2,840
Skidwalk	142	LF	\$ 18.00	\$ 2,556
Driveway Curb Cut and Apron	2	each	\$ 1,000.00	\$ 2,000
Traffic Control		L.S.		\$ 1,000
Grassing Shoulder	600	s.f.	\$ 0.50	\$ 300
Dust Control		L.S.		\$ 2,000
Subtotal - Hui Road E:				\$ 19,984
WATER SYSTEM:				
Fire Hydrant	1	each	\$ 4,000.00	\$ 4,000
Double Service			\$ 2,000.00	\$ 2,000
System:				\$ 6,000

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

**Unemori Engineering, Inc.
SMA Valuation**

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

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

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

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

**EXHIBIT A
HAWAII RULES
OF PROFESSIONAL
CONDUCT**
(SCRU-11-9001047)

Rule 1.2. SCOPE OF REPRESENTATION

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

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

The Judiciary

State of Hawaii
Rules of Professional Conduct

September 23, 2009

1
2 IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
3 STATE OF HAWAII
4
5
6 CHRISTOPHER SALEM,
7 Claimant,
8 vs.
9 LOT 48A LLC,
10 Respondent.

Civil No. 09-1-0040 (3)
TRANSCRIPT OF PROCEEDINGS

13 TRANSCRIPT OF PROCEEDINGS
14 had before the Honorable Joseph E. Cardoza, Circuit
15 Court Judge presiding, on Wednesday, September 23,
16 2009, in the above-entitled matter.

24
25 Reported By:
Melissa Noble, RPR, CSR 376

Circuit Court of the Second Circuit Court
Motion to Vacate

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

Bronster Hoshibita
Circuit Court Testimony - October 2009

October 12, 2009

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

CHAIR KAHO'U
VICE-CHAIR J
CHAIR KAHO'
VICE-CHAIR J
CHAIR KAHO'
VICE-CHAIR J
CHAIR KAHO'

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

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

conditions are placed on by the Planning Department for a permit, and does moving to the second subdivision or SMA, are those compliance, are those conditions still attached to the original? Because you were talking about those were the original conditions for an SMA permit, and there were those compliance issues that were placed as conditions. And then if you move that same, and then you're going to re-subdivide another, a parcel that then it goes to the SMA part of it, I guess. The question is are those compliance requirements still attached in the, the, the new subdivision?

MR. ARAKAWA: Mr. Chair, the second three-lot subdivision was the subject of an SMA Minor Permit, if I'm correct. But the conditions of the SMA Minor Permit, I mean would, it would still apply. From, from our standpoint, we, we would look to the Planning Department to basically enforce those SMA Minor Permit conditions. If there are any violations regarding the actual subdivision regulations and it's brought to our attention then of course we would go out and investigate. But the, the SMA Minor Permit conditions should be enforced by, by Planning.

CHAIR KAHO'OHALAHALA: Okay. And I guess just what I want to understand is that we got two departments that are interacting and then you have several other agencies. And when we're looking at the compliance then I want to be sure that how, how is this organized within your own Department's review? Is it always going to go back to the Planning Department for, for review? Or is it going, do you have a jurisdiction over that SMA so that you make approval, you know, from Public Works? Can you just help me understand where the interaction is between the departments itself? Because now it's coming back to Planning that has all of that jurisdiction. So any, any comments on that?

MR. ARAKAWA: We, we basically, of course as you know, administer Title 16 and 18 in, in general. Title 16 being the, the building code and plumbing, electrical codes as well as Title 18 which is subdivisions. If there are any potential violations regarding those two codes and investigate. But if

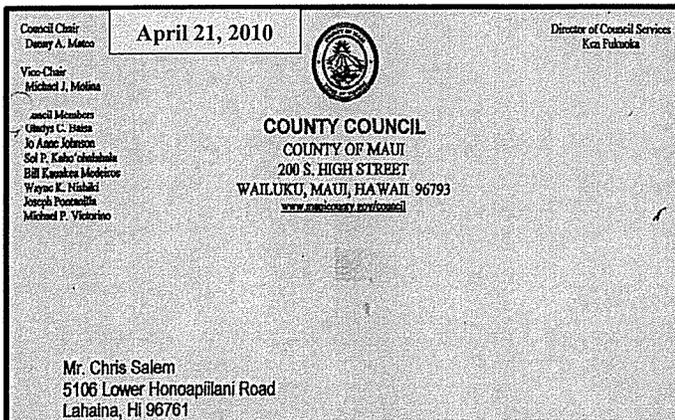
Planning Committee Minutes
Maui County Council

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

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

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

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



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

Councilmember Jo Anne Johnson

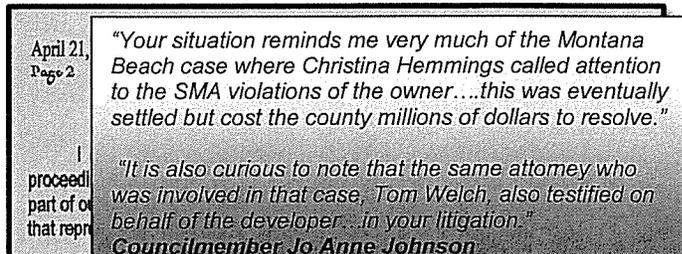
As you are aware I too have been placed in an untenable situation by the developer's attorney, Ms. Bronster and our own Public Works Director, Milton Arakawa. The fact that Ms. Bronster was also representing the County of Maui on another case during the very same time period is disturbing. It was not until this case unfolded that I became aware that the developer of the property adjacent to yours, was legally required (and already submitted studies by his consultants and received SMA Permits on the same) to honor the obligations that you were simply trying to have the county enforce. I know that this was something that was not known to either of us when this case began. I cannot understand how Ms. Bronster appears to have been made aware of the existence of these documents, and yet failed to produce them during the legal proceeding. I do not know what the legal ramifications are for failure to produce documents before the hearing officer or your attorney. At the very least this

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

Councilmember Jo Anne Johnson

the County's potential financial losses. If this had been done and the information made available, it would have been clear to you and your attorney that you did not need to have any agreement with the developer from the beginning, let alone attempt to enforce the terms of the agreement, since the County already had put these conditions in the SMA at

**Maui County Council Letter to Salem
Jo Anne Johnson, Councilmember**



Your situation reminds me very much of the Montana Beach case where Christina Hemmings called attention to the SMA violations of the owner and yet had to take the issue further through years of legal proceedings to compel the county to follow the law. This was eventually settled but cost the county millions of dollars to resolve. It is also curious to note that the same attorney who was involved in that case, Tom Welch, also testified on behalf of the developer who was involved in your litigation. Perhaps this issue bears further investigation as well.

I cannot help but feel that you and the County of Maui have been defrauded, the taxpayers have been cheated out of financial obligations that the developer should rightfully have paid, and that I have been placed in a position that is unacceptable and now creates a

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

I am so sad that as a public official since it appeared during the hearings that my comments were irrelevant and I was made to look foolish before the hearings officer Andrew Winer. Please let me know what the status of this situation is and please feel free to share my comments with those who can help bring this matter to a satisfactory close.

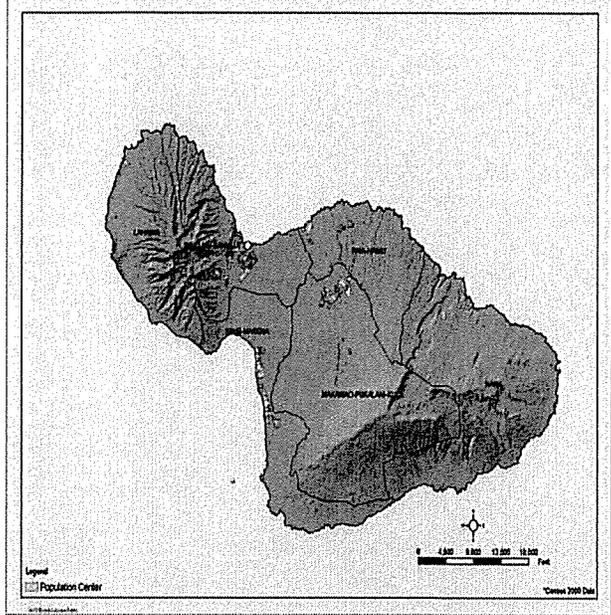
Sincerely,
Jo Anne Johnson
JO ANNE JOHNSON
Councilmember

**Maui County Council Letter to Salem
Jo Anne Johnson, Councilmember**

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

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

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



December 22, 2011

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

County of Maui
150 South High Street
Waikuku, HI 96793

ATTENTION: Planning Director Will Spence

RE: Request for Notice of Non Compliance
SMA Permit SA2 20090042
THK (@) 43-015004

Dear Mr. Spence,

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

Chris Salem

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

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

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

Chris Salem

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

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

Chris Salem Letter to Planning Director Will Spence

April 11, 2011

Date: April 11, 2011
To: Will Spence - Director of Planning
From: Jo Anne Johnson Winer - Director of Transportation
Re: Lingersing issue on SMA violations and compliance per attached Maliepei Hui Partition Subdivision 1

Aloha Will-
Thanks so much challenge who

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

~ Jo Anne Johnson, Director of Transportation
Arakawa Administration

I have attached came to be an This data shows incumbent upon the County to send forward a letter to the Developers that they are not in compliance with the original conditions of their SMA Permits.

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

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

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

If the Developer within the pro their rights to

~ Jo Anne Johnson, Director of Transportation
Arakawa Administration

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

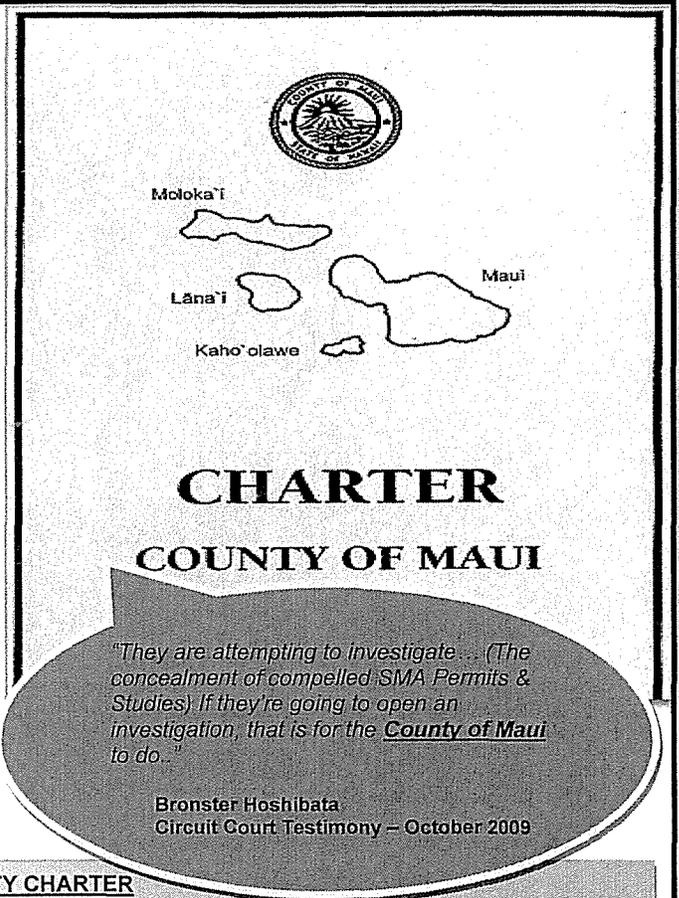
Jo Anne Johnson Letter to Planning Director Will Spence

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

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

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

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



THE MAUI COUNTY CHARTER

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

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

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

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

SECTION 9-12. PAYMENTS AND OBLIGATIONS.

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

SECTION 13-10. PENALTIES:

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



CONCLUSION

As exhibited at Montana Beach and recently in Olowalu, innocent citizens have suffered the burden of the enforcement of the County and developers obligations to comply with SMA permit conditions and environmental laws.

Ten years after their subdivision was signed off by the County of Maui Public Works Director with incomplete SMA permit conditions and environmental mitigations, the Olowalu developers were forced through legal intervention and investigation to obtain new SMA Permits and return to their development to complete millions of dollars of unfulfilled obligations. The developer's legal and professional consultants are the same as evidenced in this case-at bar.

Since 2000, tens of millions of dollars of public funds have been wasted on the senseless defense of Directors' who clearly exceeded their authority by issuing decisions which were in violation of the ordinances publicly adopted by the Maui County Council.

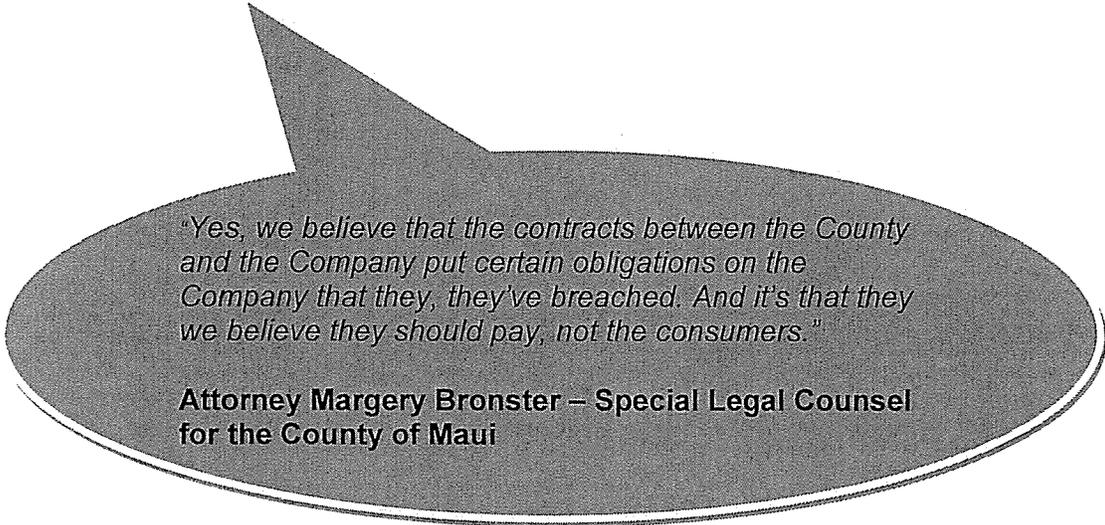
A most costly, and disastrous example was the defense of Director Milton Arakawa's decision to ignore the grading laws adopted by the Maui County Council at Palama Drive along the borders of Maui Lani. The County of Maui now owns the developer's land in the same form of legal settlement fashioned along the shores of Montana Beach by The Department of The Corporation Counsel at the public's expense.

Coupled with the grossly negligent administration and, fraudulent administration of the unaccounted for "3 Lots or Less" subdivision developer deferral agreements (which have shifted tens of millions of dollars of developer's financial obligations to the citizens of Maui for over 38 years), along with the grossly negligent and fraudulent administration of SMA Permit valuations and compliance; the County administration has caused the complete financial devastation of an innocent citizen and former County employee. Mr. Salem is now being forced to seek judicial assistance to uphold the laws adopted by the Maui County Council.

Laws designed to protect environmental resources and vested property rights have been violated by both the County and developers through acts of deception and collusion. The 15 year history of dishonorable acts by County Directors, and a developer's conflicted legal counsel, has resulted in Salem losing his family home and suffering financial ruin.

The Maui County Council has failed to use their authority and obligation to investigate violations of County ordinances, rules and regulations, pursuant to Section 3-6 of the Maui County Charter. This includes the choices by the Department of The Corporation Counsel to defend Director decisions that are not supported by law or ordinance, the Department of Corporation Counsel's repeating actions to conceal public documents, and their procuring of conflicting legal representations.

Moreover, with well documented conflicts of interests in the Department of The Corporation Counsel; and notices of violations made again and again; the elected members of the Maui County Council have the responsibility to restore public trust and prevent further escalation and legal exposure for Maui County. To date, and in accordance with Section 13-10 of the Maui County Charter, the Maui County Council has failed to provide by ordinance for the punishment of the violations of County ordinances and rules; which would have the force and effect of law.



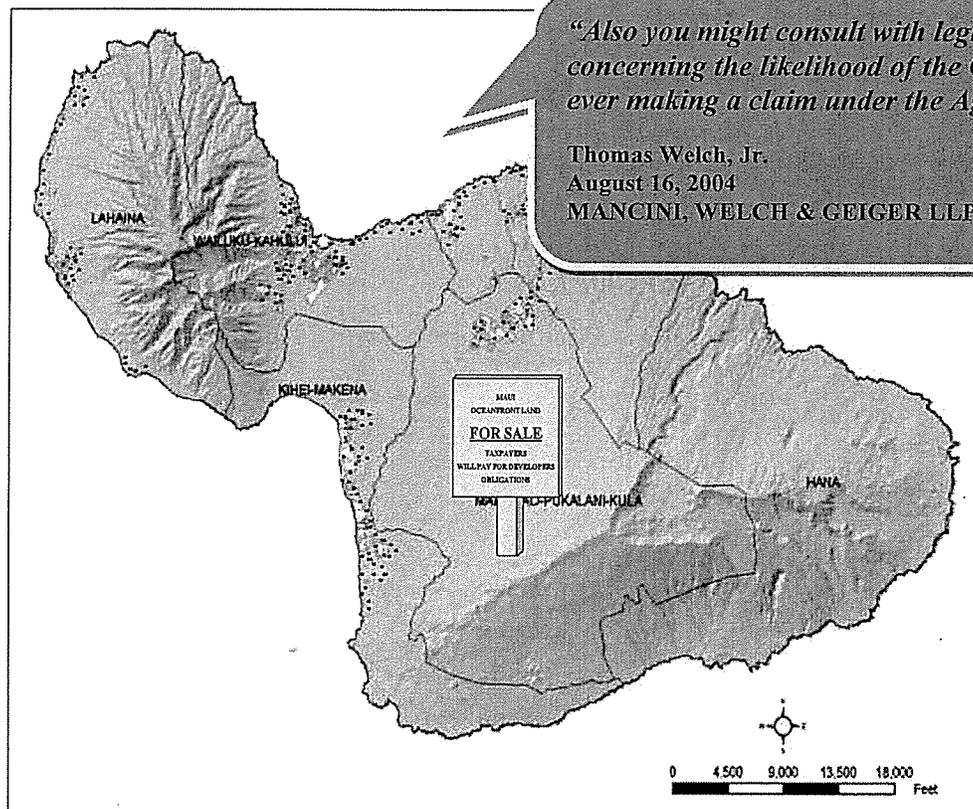
"Yes, we believe that the contracts between the County and the Company put certain obligations on the Company that they, they've breached. And it's that they we believe they should pay, not the consumers."

**Attorney Margery Bronster – Special Legal Counsel
for the County of Maui**



Exhibit 'D'

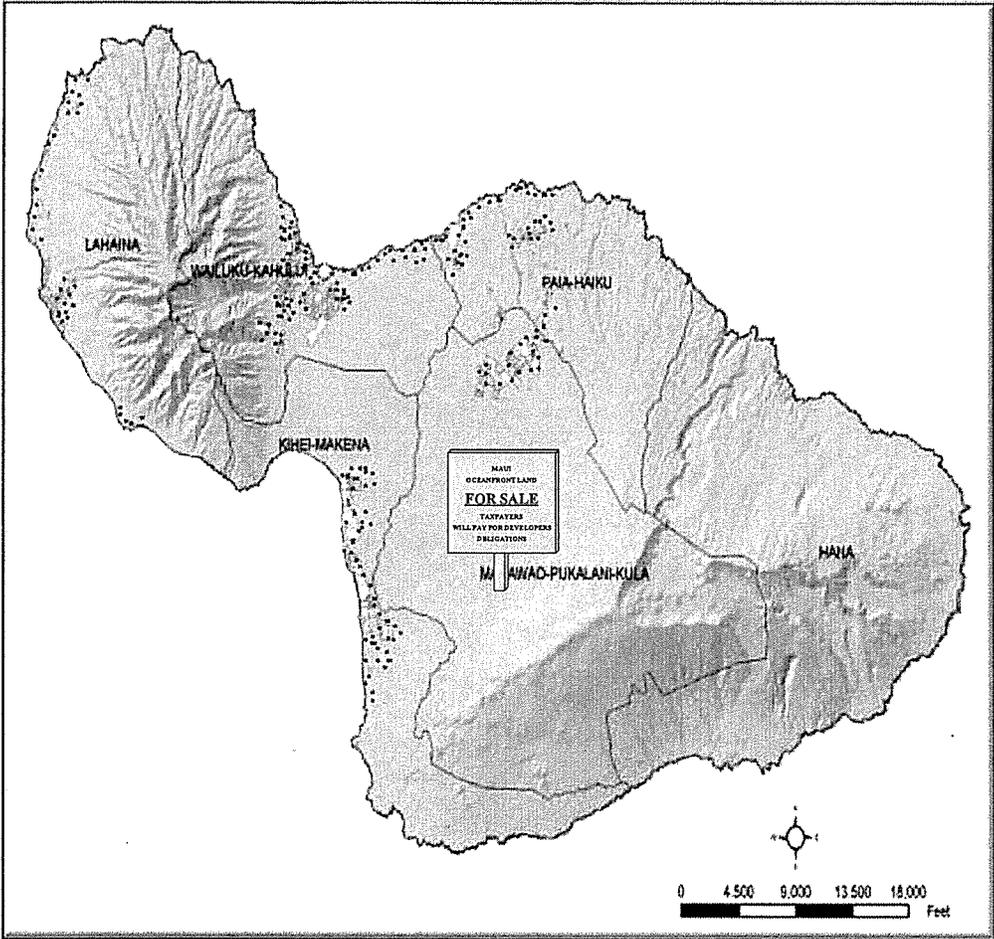
**POLITICALLY APPOINTED OFFICIALS SHIFT
MILLIONS IN DEVELOPER OBLIGATIONS TO THE
CITIZENS OF MAUI WITH PHANTOM AGREEMENTS
AND UNLAWFUL DECISIONS**



**OPEN ENDED DEVELOPER AGREEMENTS ENCUMBER
THOUSANDS OF PROPERTIES IN MAUI COUNTY AND
SET THE STAGE FOR CONFLICT, LITIGATION, AND A
GOVERNMENT TAKING OF CITIZENS LAND**



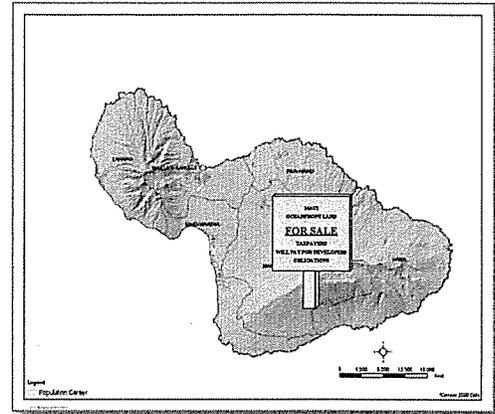
**HISTORY
OF
UNCOLLECTED
DEVELOPER OBLIGATIONS
I**



For almost 4 decades, politically appointed Directors have knowingly burdened the citizens of Maui with the obligation to pay for millions of dollars of Developer's subdivision improvement costs.

By drafting and recording subdivision "deferral agreements" with full knowledge there was no adopted system in place for the collection of the monies owed, the County of Maui has intentionally shifted Developer obligations' to innocent taxpayers.

Since 2001 when the loophole in Maui County Code was first brought to the attention of the Maui County Council, council members have continuously tried to obtain from the Director of Public Works and Corporation Counsel a complete accounting of the monies owed.



Subdivision Deferral Agreement

R-73 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 19, 2002 08:01 AM
Doc No(s) 2002-028288

1/31 CARL AC REGISTRAR

LAND COURT
AFTER RECORDATION, RETURN BY: MAIL (X) FCI
Land Use and Codes Administration
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

CODE

COUNTY OF MAUI:
DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT

By David Goode
DAVID GOODE
Its Director

IN WITNESS WHEREOF
I have caused this instrument to be signed on the 20th day of January, 2002.

APPROVED AS TO FORM AND LEGALITY:
Gregory J. Carneal
Gregory J. Carneal
Deputy Corporation Counsel
County of Maui
(Print Name Above)

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..

18.20.040 OF THE MAUI COUNTY CODE
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

SCHEDULE B EXCEPTIONS:

- The open ended subdivision agreements are recorded on Schedule B of the owner's property Title ahead of bank mortgages and notes.
-
- The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT _____ (OR LESS)
DATED _____
RECORDED _____
PARTIES _____

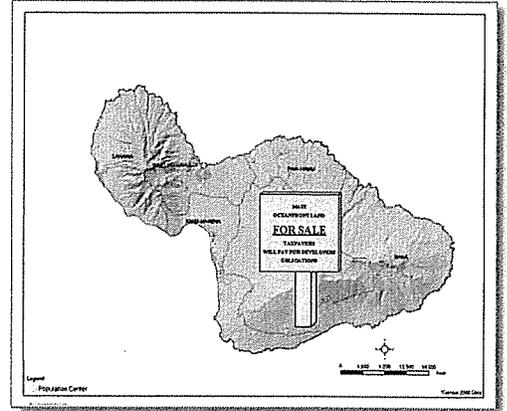
Title Schedule B _____
on, and COUNTY _____

380789 TITLE GUARANTY OF HAWAII Page 2
HONOLULU, HAWAII

Ten years later, Public Works finally sorted through thousands of subdivision files to locate the unaccounted for developer deferral agreements. The degree of manipulation of the Maui County Code by the Department Public Works is overwhelming.

In 1974, the Maui County Council adopted Bill # 18 allowing Subdivision's containing 3 Lots or Less to defer "one time" the cost of their roadway frontages and drainage improvements.

In accordance with the Maui County Charter, the assessment and collection of the Developer obligations would occur when funds were requested for Capital Improvement Projects along the subdivision frontages during annual County Budget hearings.



1974

MINUTES
of the
COUNCIL OF THE COUNTY OF MAUI
May 3, 1974

THE REGULAR MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBERS, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON FRIDAY, MAY 3, 1974, AT 10:05 A.M., WITH CHAIRMAN HOKAMA PRESIDING.

ROLL CALL

BILL NO. 18-1974 OF THE MAUI COUNTY CODE

(1) IMPROVEMENTS ON EXISTING STREETS.

NO IMPROVEMENTS SHALL BE REQUIRED UPON EXISTING STREETS FOR A SUBDIVISION CONTAINING THREE (3) LOTS OR LESS, PROVIDED THE SUBDIVIDER OR OWNER, THEIR HEIRS, EXECUTORS OR ASSIGNS AGREE TO PARTICIPATE IN AN IMPROVEMENT DISTRICT WHEN AND IF SUCH IMPROVEMENT DISTRICT IS PROPOSED.

EXCUSED: Councilman

DEPARTMENT

#123 - 141--Reports from the Department of

COUNTY CODE

99 - **ELMER F. CRAVALHO, MAYOR:** Transmitted for appropriate attention is report of the meeting of the Traffic Safety Council of the County of Maui held March 27, 1974.

AT THE SUGGESTION OF THE CHAIR, AND THERE BEING NO OBJECTION, COUNTY COMMUNICATION NO. 99 WAS REFERRED TO THE PUBLIC WORKS COMMITTEE.

#100 - **ELMER F. CRAVALHO, MAYOR:** Subject: Hydrant Easement on Lower Main Street, Wailuku, Maui, Conveyed by Capital Development Company Transmitted for your files is a recorded copy of the subject document which was accepted by the Board of Water Supply of the County of Maui and duly recorded.

AT THE SUGGESTION OF COUNCILMAN TOKUNAGA, AND THERE BEING NO OBJECTION, COUNTY COMMUNICATION NO. 100 WAS PLACED ON FILE.

ment and appeals may approve such modification thereof reasonably necessary in the interest of the public and contrary to the intent and purposes of this article. In making any such modification, the board of adjustment appeals shall refer the request for any such modification to the director of public works and the director for recommendations.

(k) Swales and channels.

All swale areas of streets without curb and gutters exceed five percent (5%) in grade shall be planted in grass or designed to prevent erosion according to the standards on file in the department of public works. No open ditches or channels, other than normal roadside swales, shall be permitted within the street right-of-way. Where necessary within the subdivision, drainage ditches and swales shall be designed to meet existing and surrounding conditions; otherwise, the flow should be kept as natural as possible.

(1) Improvements on existing streets.

No improvements shall be required upon existing streets in a subdivision containing three (3) lots or less, provided the subdivider or owner, their heirs, executors or assigns agree to participate in an improvement district when and if such improvement district is proposed.

In subdivisions containing four (4) lots or more, improvements conforming to the requirements specified in the following sections shall be constructed as follows:

(a) Where substandard existing streets are within the boundaries of a subdivision, all improvements shall be constructed upon those portions of said streets

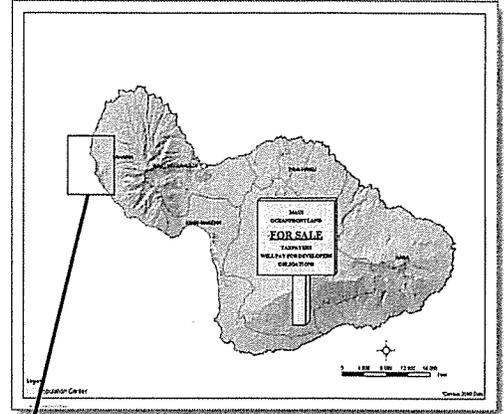
"If they are doing a subdivision of four lots or more we would require the sub divider to install their frontage improvements at their cost"

Milton Arakawa
Public Works Director - 2010

In 1998, the land planning firm Munikeyo, Arakawa, and Hiraga, Inc was retained by the County of Maui to perform a 600 Page Environmental Assessment for the proposed Phase IV of Lower Honoapiilani Road Capital Improvement Project.

In 2001, newly employed Deputy Director, Milton Arakawa, a former partner of Munikeyo, Arakawa, and Hiraga, Inc. noticed the citizens in public hearings that the Phase IV roadway project would commence in 2002.

In direct violation to the Maui County Charter, the Capital Improvement Project and the County of Maui Annual Budget made no reference to the anticipated revenues from any of the “deferred” Developer financial obligations along Phase IV of Lower Honoapiilani Road.



**Phase IV
Lower
Honoapiilani
Road**

“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

Sub-division
A
B
C
D
E

E

D

C

B

A

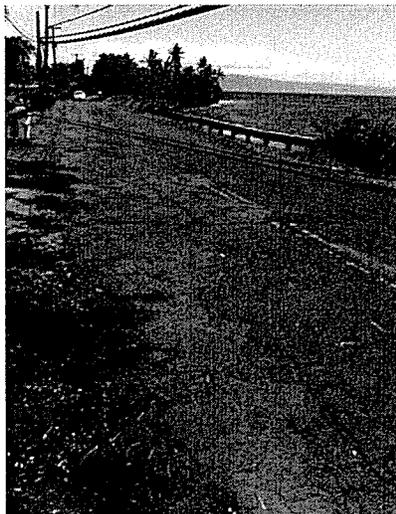
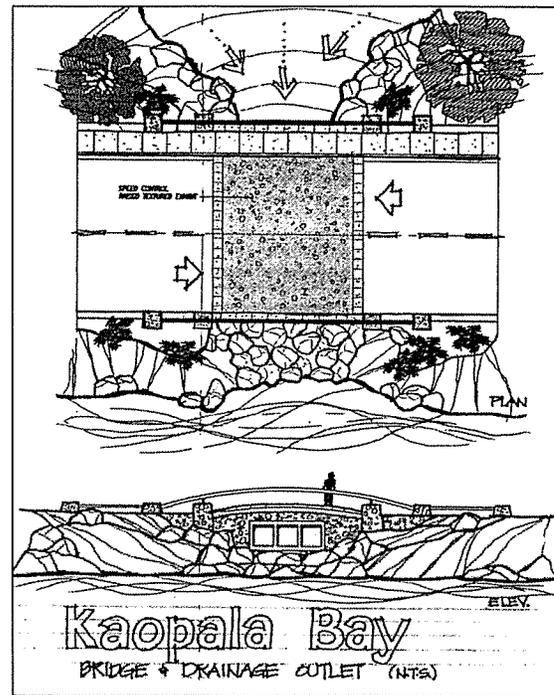
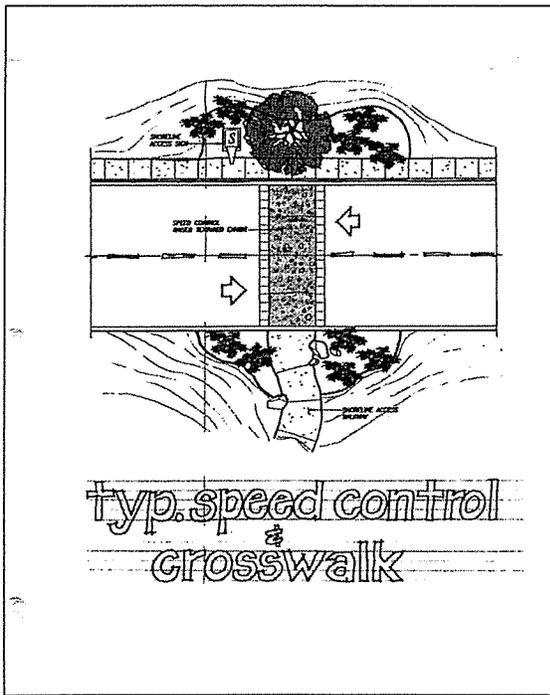
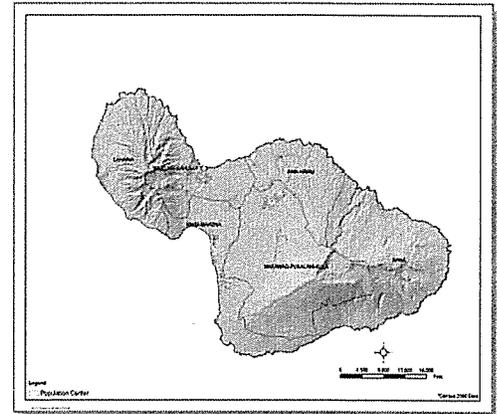
“We note that the engineering division has received all required discretionary approvals for its Phase IV Lower Honoapiilani project.”

Milton Arakawa
Public Works Director 2002

Previous

In 2002, West Maui resident Christopher Salem provided graphic engineering design suggestions to the Department of Public Works for the Phase IV Lower Honoapiilani Road Capital Improvement Project.

The suggested modifications included speed control devices, indigenous stone walls to replace steel barricades, and the undergrounding of overhead power lines along the scenic open bays. The drawings were presented to County of Maui Engineering Chief Lloyd Lee in a meeting with resident Christopher Salem.



Mr. Lee: "We have no money for those type of improvements"

Salem: "What about the funds from the multiple Developer reimbursement agreements along Phase IV?"

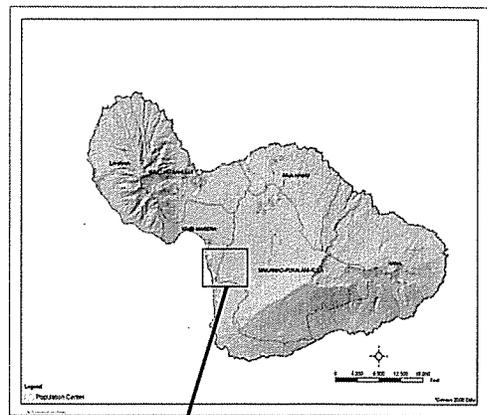
Mr. Lee: "Ah, we never collect those.."

Salem: "Ever?"

Mr. Lee: "Never.."

Undisclosed to the Maui County Council at the time, three weeks after informing Mayor Apana and Council Member JoAnne Johnson that no records have been kept of the developer agreements, Milton Arakawa on behalf of Public Works Director David Goode, granted final approval for an oceanfront 3 Lot Subdivision on South Kihea Road.

The developer's financial obligations were secretly "deferred" at the very moment the Maui County Council was trying to investigate the quantity of the agreements.



JAMES HAOY APOA Mayor
 DAVID C. GOODE Deputy
 MILTON M. ARAKAWA A.I.C.P. Deputy Director

TRACY TAKAMURA, P.E. Waipahoehoe Planning Director
 LLOYD P. W. LEE, P.E. Engineering Director
 JEFF D. WARDON Solid Waste Division
 BRUCE HARRISON, P.C. Highway Division

COUNTY OF MAUI DEPARTMENT OF PUBLIC WORKS AND WASTE MANAGEMENT LAND USE AND CODES ADMINISTRATION 200 SOUTH HIGH STREET WAIKUKU, HAWAII 96793

June 7, 2002

2002

Mr. Edgardo V. Valera, P.L.S. VALERA, INC. P.O. Box 3173 Waikuku, Hawaii 96793

SUBJECT: WAOHULIHOEKA BEACH HOMESTEADS TRM: (2) 24-001-016 LUCA FILE NO. 3-1871

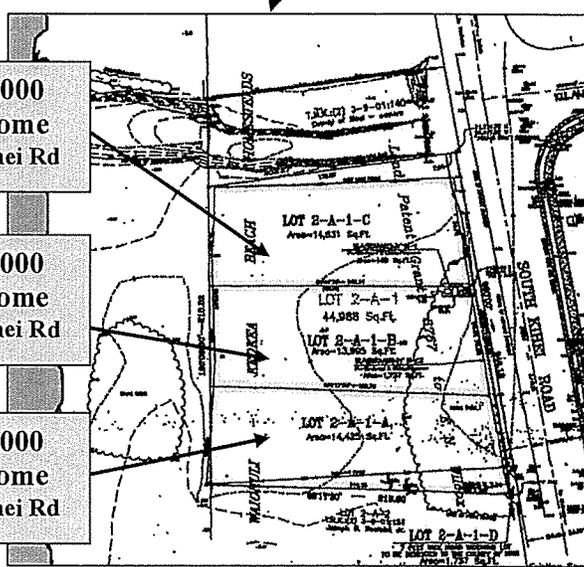
Dear Mr. Valera:

Final approval for the subject subdivision has been granted on June 7, 2002. An approved final plat is enclosed for your records.

We will commence processing of the Warranty Deed for the acceptance of Lot 2-A-1-D (road widening lot along South Kihea Road) by the County Council.

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our Land Use and Codes Administration at 279-7252.

- \$6,300,000 Spec Home 820 S. Kihei Rd
- \$8,000,000 Spec Home 840 S. Kihei Rd
- \$8,000,000 Spec Home 850 S. Kihei Rd



Very truly yours,
 DAVID GOODE
 Director of Public Works
 And Waste Management

Approved Final Plat
 County of Maui
 Dept. of Finance, Tax Map & Building Permit Section
 Engineering Division
 Dept. of Planning
 Dept. of Water Supply, SD
 Police Dept.
 State Dept. of Health
 Maui Electric Co.

STATE OF HAWAII BUREAU OF CONVEYANCES RECORDED MAR 26 2002 08:21 AM DEC 04 2007 005156

IN CARL T. WATAMANE ACTING REGISTRAR OF CONVEYANCES

LAND COURT REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()

County of Maui
 200 South High Street
 Waiuku, Maui, Hawaii 96793

TRK No. (2) 24-001-016
 LUCA File No. 3-1871

SUBDIVISION AGREEMENT THREE LOTS OR LESS

WHEREAS, HAWAII MARKETING VENTURES, LLC, a Hawaii limited liability company, whose residence is at Suite 201, Kihei, Maui, Hawaii 96753, and whose mailing address is at Suite 201, Kihei, Maui, Hawaii 96753, and whose owner(s) of a certain parcel described in Land Use and Codes Administration File No. 24-001-016, incorporated herein by reference and made a part hereof, and situated at Waihoiuli, Waiuku, Kula, Maui, Hawaii

Subdivision Agreement 3 lots or less

HEREBY, the parties hereto have executed this day of October 20 01.

COUNTY OF MAUI, DEPARTMENT OF PUBLIC WORKS AND MASTER HOUSING

By: DAVID GOODE, its Director

OWNER: Hawaii Marketing Ventures, LLC (see Above)
 Deb F. DeLo

CHARTER COUNTY OF MAUI

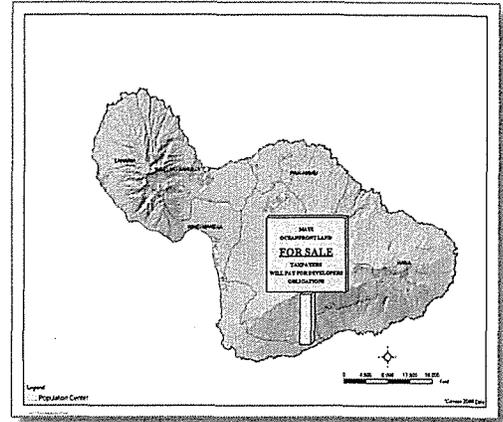
Address	Frontage
820	98'
840	75'
850	70'
Total	243'

THE MAUI COUNTY CHARTER
SECTION 13-9. RECORDS AND MEETINGS OPEN TO PUBLIC.
ALL BOOKS AND RECORDS OF EVERY DEPARTMENT SHALL BE OPEN TO THE INSPECTION OF ANY PERSON AT ANY TIME DURING BUSINESS HOURS, EXCEPT AS OTHERWISE PROVIDED BY LAW.

"Yes the Department has, we admit, you know, we haven't done a good job as far as admitting, as far as the enforcing the deferral agreements."

Milton Arakawa
 Public Works Director - 2007

In December of 2002, newly elected Mayor Arakawa and Public Works Director David Goode were once again sent written notice by West Maui Resident Christopher Salem of the intentional shifting of Developer financial obligations by the Public Works Director to the citizens of Maui with the uncollected "3 Lots or Less" Subdivision Agreements.



2002

Chris Salem
8 Llu'i Road E.
Napili, Maui, HI 96761
808 669-8776 / 808 669-8868

Dear Mayor Elect Mr. Arakawa:

Congratulations on your victory as the new Mayor of Maui County !!

Enclosed you will find a recent correspondence to the Public Works Director David Goode referencing the proposed Phase IV Improvements to the Lower Honoapiilani Road on the West Side of Maui.

- Previous private development obligations to pay the portion of the subject improvements are not being collected by the County of Maui.
- Public funds are being used to accommodate private development without any form of reimbursement to the County.

natural environment which is uniquely Hawaiian". *

Perhaps in your search for a new Transportation Director you will find an individual with the motivation to seek out the finest engineering practices which will honor this beautiful island. Being creative is not a matter of funding, it just takes planning, preparation

"It is very hard for us to listen to the County officials as they tell citizens on one hand there are zero funds available for beauty and sensitivity and on the other hand private developers are being subsidized with citizens tax dollars to complete their projects."

Chris Salem
8 Llu'i Road E.
Napili, Maui, HI 96761
808 669-8776 / 808 669-8868

In the case of the next phase of Lower Honoapiilani Road, we are faced with an opportunity where just a bit of more effort and cooperation could create a public improvement that truly emulates a change in consciousness and vision. Since we are approaching the final stages of the working drawings, some of our requests will require additional funding. Which raises the main issue of this correspondence:

- Previous private development obligations to pay for their portion of the subject improvements are not being collected by the County of Maui.
- Public funds are being used to accommodate a future private development without any form of reimbursement to the County.

We are dealing with potentially hundreds of thousands of dollars !!!

It is very hard for us to listen to the County officials as they tell citizens on one hand there are zero funds available for beauty and sensitivity, and on the other hand private developers are being subsidized with citizens tax dollars to complete their projects. This is a misuse of taxpayer dollars and borders on misappropriation of public funds. However, rather than dwell on the negative aspects of poor decision making, the intent of this letter is to offer constructive suggestions on how to improve the outcome of these projects that will impact our community for many years.

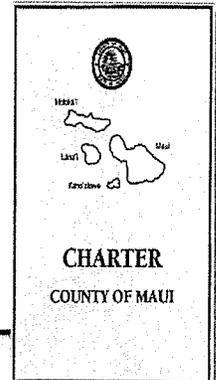
person to provide you with the necessary documentation to address the issues raised in this letter.

Sincerely;

Chris Salem

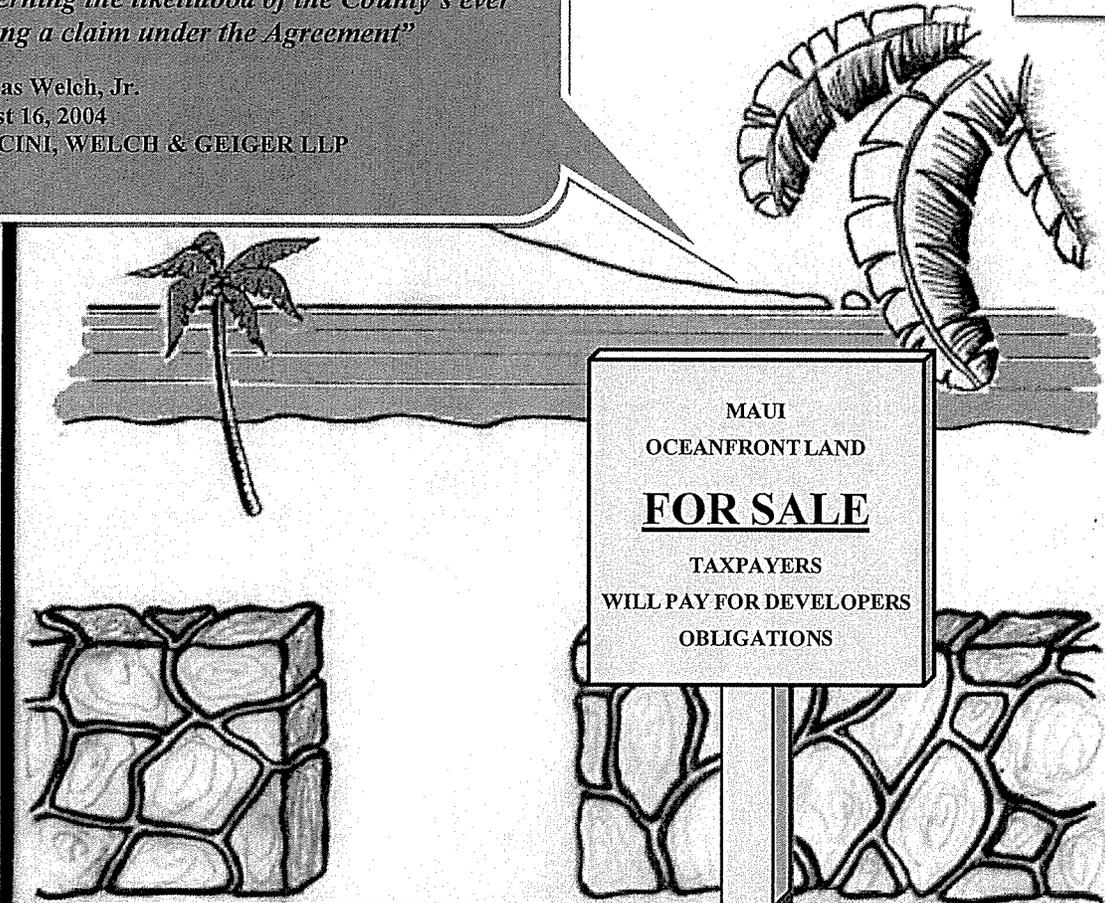
In direct violation of the Maui County Charter, County of Maui Public Works Directors and Corporation Counsel have allowed developers to shift their financial obligations to the County of Maui without notice.

The developer's representatives, many of which are former high ranking employees with the County of Maui, have admitted and exploited their use of inside knowledge of these phantom subdivision agreements.



"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



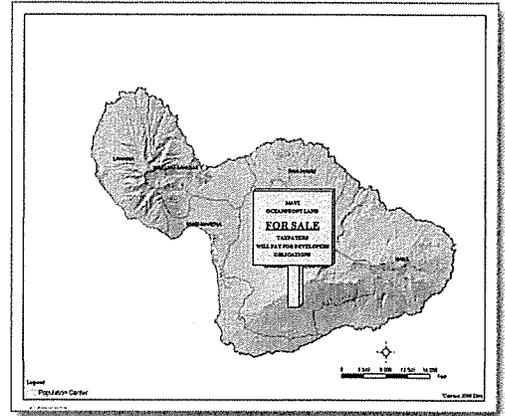
THE MAUI COUNTY CHARTER

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.

In 2007, the Maui County Council amended Title 18 of the Maui County Code to prevent any further shifting of Developer's Financial Obligations to the Citizens of Maui.

The 3 Lots or Less Subdivision Deferral Agreements were no longer allowed on final subdivision approvals.

As we now know, former Public Works Director Milton Arakawa continued to shift developer's financial obligations to the citizens of Maui for years after the law was changed.



COUNCIL OF THE COUNTY OF MAUI
**PUBLIC WORKS AND
FACILITIES COMMITTEE**

December 7, 2007

Committee
Report No. 07-149

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

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Regular Meeting of the Council of the County of Maui
December 7, 2007
Page 68

COUNCILMEMBER JOHNSON: I support this measure because as Mr. Arakawa knows, I have been harassing him for a long time about collecting money on deferral agreements that are very, very old. And if we added up all of the money collectively throughout the County for deferral agreements, we would have a substantial amount for roadway repaving and sidewalks.

So I heartily support this, and I think that it's appropriate because it just has proven that we not only can we not track, but we can't collect.

Thank you.

VICE-CHAIR MATEO: Thank you, Ms. Johnson.

Members, additional comments? Hearing none, Members, the Chair will call for question.

COUNCILMEMBER ANDERSON: Mr. Chair.

VICE-CHAIR MATEO: I'm sorry. Ms. Anderson, go ahead.

COUNCILMEMBER ANDERSON: Yeah, I'm sorry, Chairman.

I just want some clarification. I've read the committee report. Not being a member of the Committee, I am still slightly confused and maybe either the Committee Chair or Mr. Arakawa could help me.

In subdivisions, for family subdivisions, will they still have the deferral or will they have to pay upfront for in--infrastructure improvements--

VICE-CHAIR MATEO: Director Arakawa.

COUNCILMEMBER ANDERSON: --on road access.

DIRECTOR OF PUBLIC WORKS: Mr. Chair. As far as family subdivisions are concerned, I, I would note that that's a separate provision of the Code, and the changes that you have before you today would not affect that.

COUNCILMEMBER ANDERSON: Great. Thank you very much.

Thank you, Chairman.

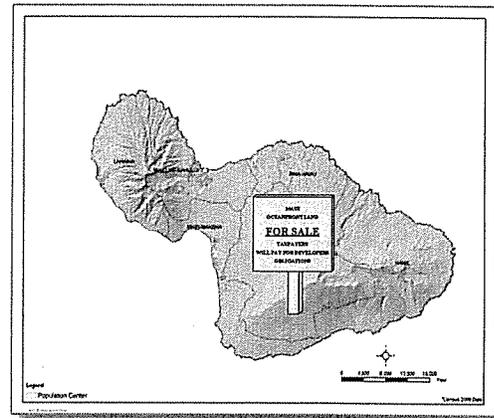
"The purpose of the bill is to delete the allowance for deferral of frontage improvements on 3 Lots or Less."

"I support this measure because as Mr. Arakawa knows, I have been harassing him for a long time about collecting the money on the deferral agreements that are very, very old."

"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

In 2010, two months prior to his termination as Public Works Director, Milton Arakawa finally admitted to the Maui County Council the quantity of the recorded Developer “3 Lots or Less” Subdivision Deferral agreements found in the County files.



PLANNING COMMITTEE
Council of the County of Maui

MINUTES
November 15, 2010
Council Chamber

CONVENE: 1:35 p.m.

PRESENT: Councilmember Sol P. Kaho'ohalahala, Chair
Councilmember Jo Anne Johnson, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Michael J. Molina (in 2:21 p.m.)
Councilmember Wayne K. Nishiki (out 2:23 p.m.)
Councilmember Michael P. Victorino

EXCUSED: Councilmember Bill Kauaeka Medeiros

STAFF: David Raatz, Legislative Attorney
Clarita Balala, Committee Secretary

ADMIN: Milton M. Arakawa, Director, Department of Public Works (Item No. 17)
Cary Yamashita, Chief, Engineering Division, Department of Public Works (Item No. 17)
Kaikele L. Young, Director, Department of Finance (Item No. 17)
Kathleen Ross Aoki, Director, Department of Planning (Item No. 22)
John Summers, Administrator, Long Range Planning Division, Department of Planning (Item No. 22)
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

Seated in the gallery:
Debra M. Tegarden, Coordinator, Office of Economic Development
Clark S. Hashimoto, Economic Development Specialist
Office of the Mayor
Scott Teruya, Acting Administrator, Real Property Tax Division, Department of Finance

OTHERS: Elle Cochran
(1) additional attendee

PRESS: Akaka: Maui Community Television, Inc.

"It's roughly around 1,700 – 1,800 of those."

Milton Arakawa
Public Works Director

PLANNING COMMITTEE MINUTES
Council of the County of Maui

November 15, 2010

CHAIR: CHAIR KAHO'OHALAHALA: Good afternoon. And to my far right, Member Michael Victorino.

VICE-CHAIR: COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

CHAIR: CHAIR KAHO'OHALAHALA: Good afternoon. And today also we have from the Department of Corporation Counsel representative Michael Hopper, Deputy Corporation Counsel. Aloha, Michael. And attending today's meeting from the Planning Department, we have Director Kathleen Young, Administrator and Long Range Planning Division, Department of Planning, we have who's present.

And we have also in the audience at this time, Milton Arakawa, the Director of Public Works is here, and then along with him is also Tracy Takamine [sic], Division Chief. So they're in the audience. Our Committee Staff to my far right, we have our Legislative Attorney, Mr. David Raatz, is with us. And then also our Committee...Secretary is Clarita Balala. So Chair would like to thank everyone for being here this, this afternoon.

We have, Members, two items on our agenda today. And that would be...hold on, just a second here. I have Items PC-17 and 18's the Deferral Agreements for Subdivision Improvements. And also second it would be PC-22 which would be Agricultural Impact Fees.

Before we begin, the Chair's intention for today's meeting is to look at these two items in terms of what or not we would like to consider moving them forward in anticipation that this is the, probably the secret to the last meeting for this Planning Committee. And therefore, the Chair would like to at least get so direction as to how we can move these items to the newly-seated Council when they come to take their seats in January of next year.

So we have no, no one signed up for testimony at this time, but before we close that, if there is anyone that would like to testify on any of these items before us today and have not signed up, the Chair will allow you to do so. Then seeing none, then if there is no objections, the Chair will accept the testimony.

COUNCIL MEMBERS: No objections.

ITEM NO. 17 DEFERRAL AGREEMENTS FOR SUBDIVISION IMPROVEMENTS (C.C. No. 09-276)

CHAIR KAHO'OHALAHALA: Okay. So, Members, if we can begin by going to PC Item No. 17 and, and at this time then the Chair would like to invite the Director of Public Works to come forward. Yeah, and before we go to, to the Director, you know, this has been an item that, that we have had, I believe, one previous Committee meeting on. And I know that this has been an item that's been lingering and really carried on from a lot of the work that had been pursued by Member Johnson during your tenure which is now coming to a close, of ten years. So with that, then the Chair would first of all like to allow you to, to discuss this particular item as a means of getting the Committee to understand what the issues are, where you've come from and where you'd like this to go and we'll have the Director make any comments following that.

VICE-CHAIR JOHNSON: Thank you very much, Mr. Chair. I think one of the things that was done is many years ago when we were looking for revenues...*(chuckles)*...one of the areas that we had looked, of course, was on deferral agreements. Deferral agreements are basically a, if you will, a promissory note that an individual who's developing a property but who has not yet reached the trigger point would be required to make. So what's being deferred is the actual improvements themselves. So what the individual who does the subdivision basically takes upon themselves is a responsibility to, at some point in time, either agrees to deliver the infrastructure or their proportionate share of such infrastructure when they reach whatever the threshold is.

"The County has made no effort at all to collect these monies."

JoAnne Johnson
Council Member – Nov. 15, 2010

"The Director has the power to defer it, allow them to defer it... But the Director isn't taking responsibility to collect them."

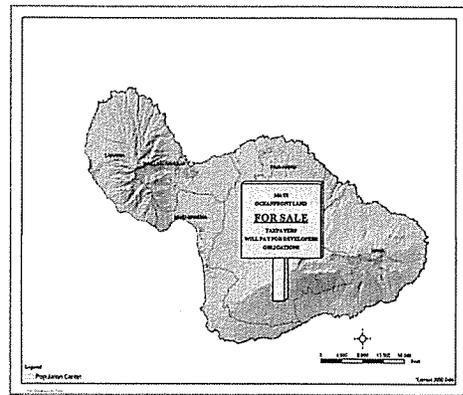
Wayne Nishiki
Council Member – Nov. 15, 2010

"This is sobering information... What boggles me is the amount of money undetermined or unclaimed by the County"

Gladys Baisa
Council Member -2010

In May of 2010, acting outside of an adopted ordinance by the County Council relating to Phase IV Capital Improvement Project, former Public Works Director Milton Arakawa sent problematic notices of collection to the owners along Phase IV of Lower Honoapiilani Road.

The letters made reference to owners being required to "consult" with each other on the pro-rata sharing of the open ended developer obligations.



2010

MILTON M. ARAKAWA, A.I.C.P.
Director

MICHAEL M. MIYAMOTO
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7855



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

May 27, 2010

RALPH NAGAMINE, L.S., PE
Development Services Administration

CARY YAMASHITA, F
Engineering Division

BRIAN HASHIRO, J
Highways Division

Mr. Christopher Salem
5106 Lower Honoapiilani Road
Lahaina, Maui, Hawaii 96761

Dear Mr. Salem:

Pursuant to Ordinance No. 3731 which took effect on March 16, 2010, we would like to provide you the following "Notice of Intent to Collect". It should be emphasized that this is not a bill for collection of monies owed, but it is simply an advance warning of this

The timing of payment is uncertain although the County is seeking to start construction of Lower Honoapiilani Road in 2012.

The County of Maui has been working to implement the Lower Honoapiilani Road Improvements Project Phase IV which involves roadway, drainage, and sidewalk improvements along the segment of Lower Honoapiilani Road, between Hooiui Road and Napilihau Road. As part of this project, the County will be seeking a payment of a pro rata share of roadway improvements as included in the terms of the deferral agreement. This would pertain to lands along the frontage of Lower Honoapiilani Road included in the original subdivision.

It should be emphasized that the final project costs have not been determined as of this juncture, so it is not possible to provide you with the pro rata share of the costs relevant to the original subdivision. It is also noted that your share would likely be determined in consultation and agreement with the other lots comprising the original

This is an advanced warning for financial obligations which apply at an undetermined future date."

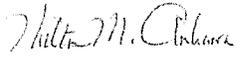
It should be emphasized that is it not possible to provide you the pro-rata share of the costs.

Your share would likely be determined in consultation with the other lots comprising the original agreement.

"It's going to be between the owners of the original three (3) lots to figure out who pays what portion of the County's tab. The original owners will have to haggle over their pro rata share"

Milton Arakawa
Public Works Director
County Council Hearing - 2010

Sincerely,



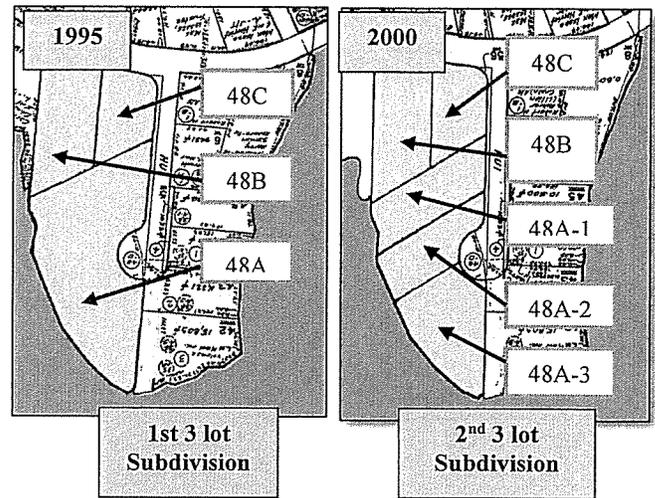
MILTON M. ARAKAWA, A.I.C.P.
Director of Public Works

MMA:jso
Enclosures
s:\milton\deferral agreement ntc of intent to collect.frm

In 2001, the re-subdivision of a previous 3 Lot Subdivision along Phase IV of Lower Honoapiilani Road was the development that exposed the uncollected obligations. The hidden abuse of the deferral ordinance by former Public Works Director Milton Arakawa on this subdivision is no longer an isolated case.

In 1995, the oceanfront parcel was subdivided into 3 Lots. The developer signed a "3 Lot or Less" Subdivision Agreement to defer their roadway frontage obligations "one time" for Hui Road E and Lower Honoapiilani Road.

In 2000, Developer Lot 48A, LLC submitted a subdivision application to the County of Maui to re subdivide oceanfront lot 48A into 3 new parcels. On June 23, 2000 Preliminary Subdivision Approval was granted by Public Works Director Charlie Jencks with the conditions to comply with the issued SMA Permit and a condition to resubmit the construction plans for further review of the Planning Department to verify if a SMA Major Permit was required.



June 23, 2000

The one time exemption from construction of roadway improvements was used as part of the previous Mailepa Hui Partition subdivision Luca file # 4686

Comply with the conditions of the SMA Minor Permit (SM22000/0042) granted on June 06, 2000. Note: Upon approval of Construction Plans, the sub divider should verify if a SMA Major Permit is required..

PUBLIC WORKS PRELIMINARY SUBDIVISION APPROVAL

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

Mr. Hugh Farrington
Lot 48-A, LLC
P. O. Box 1518

The project has a Valuation not in excess of \$125,000 (\$91,400.)

with the Special Management Area Rules for the Maui Planning Commission.

Condition 1: That construction shall be in accordance with the plans submitted on May 11, 2000.

PLANNING DEPARTMENT SMA PERMIT

Hugh Farrington
Hugh Farrington

THE MAUI COUNTY CODE

SECTION 18.08.020 PREPARATION AND SUBMISSION:

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

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

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

SECTION 18.08.100 APPROVAL

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

SECTION 18.12.070 TECHNICAL REVIEW

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

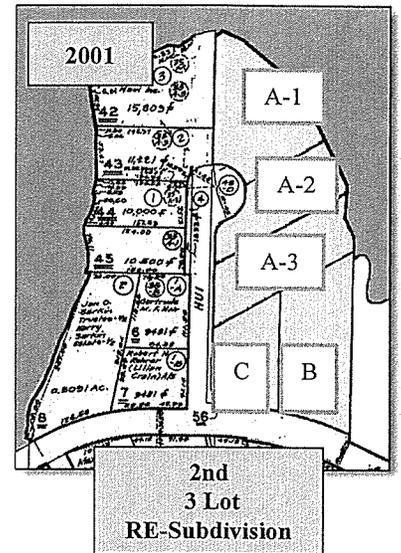
In early 2001, Milton Arakawa, a former Partner of the Lot 48A, LLC's land planning firm Munikiyo, Arakawa, and Hiraga, Inc went to work for the County of Maui as Deputy Director of Public Works in the middle of his client's re subdivision of Lot 48A.

In late 2001, with full knowledge the Lower Honoapiilani Road improvements were included in his client's issued permits and subdivision conditions, Milton Arakawa, signing on behalf of Public Works Director David Goode, issued final subdivision approval for the re subdivision of Lot 48A.

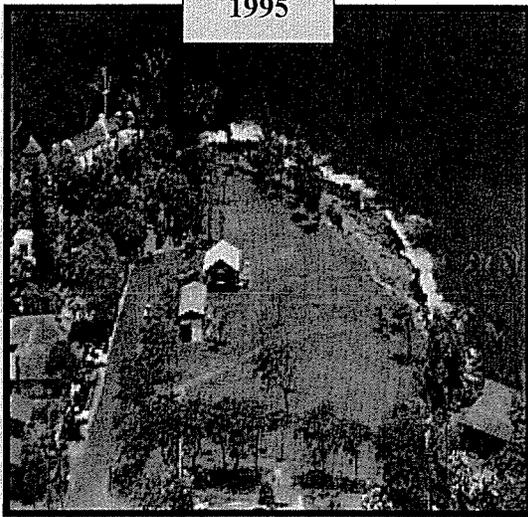
Without notice of the two other properties bound by the subdivision agreement, the 1995 "3 Lots or Less" document was recorded against the three new parcels.

5 lots on two separate subdivisions of the same underlying parcel were suddenly bound by the 1995 "3 lots or Less" subdivision agreement. No ordinance adopted by the Maui County Council supports this unauthorized decision by Deputy Director Arakawa for a former client.

Instead of insuring his former client's construction plans were in compliance with the Director Jencks approvals, Milton Arakawa ignored the issued SMA Permits and subdivision conditions and deferred the Lower Honoapiilani Road Improvements a second time. With no records being kept of the deferral agreements, the unethical decisions shifted his former client's financial obligations to the citizens of Maui.



1995



2007



"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 MAUI COUNTY CHARTER

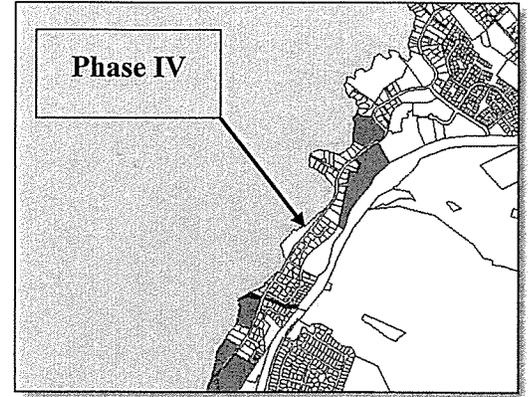
CHAPTER 5: DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT

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.

In April 2012, Public Works Director David Goode provided a status update of Phase IV of Lower Honoapiilani Road. After 15 years of engineering design, public hearings, discretionary approvals and misleading notices of commencement and collections, the publicly adopted roadway project approvals have expired.

Public Works failed to acquire the necessary land rights to complete the project during the initial design process.



2012
 COUNTY OF MAUI
 DEPARTMENT OF PUBLIC WORKS
 200 SOUTH HIGH STREET, ROOM NO. 434
 WAILUKU, HAWAII 96793

APR 16, 2012

Honorable Alan Arakawa
 Mayor, County of Maui
 200 South High Street
 Wailuku, Hawaii 96793

Honorable Eile Cochran
 Council Member
 Maui County Council
 200 South High Street
 Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL
 [Signature] Date

Dear Council Member Cochran:

SUBJECT: LOWER HONOAPIILANI ROAD IMPROVEMENT PROJECT - PHASE IV

We are in receipt of your letter dated March 30, 2012 regarding the subject project. Upon review, we are able to offer the following responses corresponding to each item in your letter.

- A breakdown of funding from project initiation to present. Please include the following information in the breakdown:
 - Funds appropriated, encumbered and lapsed for each year the project has been ongoing
 - Fund source
 - Project phase (construction, design, land acquisitions, others, etc.) for which funds were intended
 See Attached
- A breakdown specific to funds expended for each year that the project has been ongoing. Please include the following information in the breakdown:
 - Fund source
 - Project phase for which the funds were expended
 - Contract numbers referenced for each expenditure
 See Attached
- Provide a status update on the rights-of-way acquisitions that includes a listing of Tax Map Key numbers of the remaining properties that are delaying land acquisitions process. Also, please include an estimated cost anticipated to complete the remaining land acquisitions.

Sincerely,
 [Signature]
 DAVID C. GOODE
 Director of Public Works

"Based on construction plans dated 2003, a total of 19 easements and 15 parcels were required to complete the project."

David Goode
 Public Works Director - 2012

"The department is considering re-scoping the project"

David Goode
 Public Works Director - 2012

"Anticipated challenges would include; funding community support and acquisition of title without resorting to eminent domain"

LOWER HONOAPIILANI ROAD PHASE IV PERMIT STATUS

PERMIT	AGENCY	APPROVALS	STATUS
CZM	DEBET	Approved - 2004	Lapsed. Resubmittal required.
EA	OCDC		Valid
SMA	COM Department of Planning		Expired
Section 404	Department of Army		Expired
Water Quality Certification	Department of Health		Expired
Section 105	DLNR - SHPD		Consultation with SHPD required to determine if still valid
NPOES	Department of Health		Expired
SCAP	DLNR		Expired
Right of Way Certification	COM Public Works		Land acquisition required.
Eleclite	MECO		Awaiting approval
Telephone	Hawaiian Telephone		Awaiting approval
Water	COM Water Supply		Awaiting approval
CATV	Cablevision		Will need to resubmit
DCAB	DCAB		Reconfirmation required
Bridge sufficiency	DOT HWYS		Update required
Pavement Justification	DOT HWYS		Update required
Transportation management plan	DOT HWYS		New item, need to submit

Permit Status expired

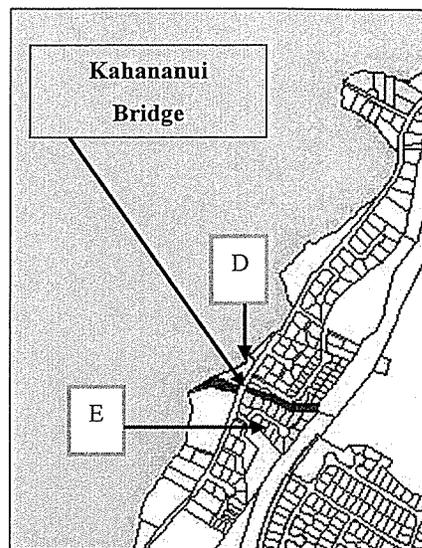
Contract No. C1120

Contract Expense	Funds Encumbered	Funds Lapsed
387410	\$1,146,710.	119,311
317209		1,129,000
387214		434,220
317210		1,810,000
317213		108,027,000
387216		
317212		
317212	377,810	115,028,300
317212		44

In June of 2012, Public Works Director David Goode provided notice that the publicly adopted Phase IV Improvement Project was being redesigned and the Kahananui Bridge was being bifurcated out as a standalone Capital Project.

The Kahananui Bridge lies immediately adjacent to a 17 Lot Smith Development and a 3 Lot Oceanfront Subdivision. The two developments have conditions and agreements to pay their fair share of drainage and roadway improvements.

In accordance with the Maui County Charter, the assessments and amendments to the Capital Improvement Project require public actions by the County Council.



Kahana Wai Subdivision

PLANNING DEPARTMENT
 COUNTY OF MAUI
 1110 W. WAILUKU DRIVE, SUITE 200
 WAILUKU, HI 96793
 PHONE: (808) 243-2100
 FAX: (808) 243-2101
 WWW.MAUICOUNTY.HI.GOV

Condition 11.
 In accordance with Section 18.20.040 (B) MCC,
 Improve the adjoining half of Lower Honoapiilani Rd

Condition 19a.
 The Kahananui Stream which traverses the subject
 property shall be established as a drainage reserve.

Condition 19b.
 The applicant, it's successors or assigns shall
 participate in their fair share of Drainage Improvements
 as determined by the Director of Public Works

Condition 19c.
 The applicant, it's successors or assigns shall
 participate in their fair share of traffic improvements
 as determined by the Director of Public Works.

**Kahananui Stream House
 Lots Subdivision**

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, and 2) working out a formula for compensation for certain agreements.

David Goode
 Public Works Director - 2012

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

THE MAUI COUNTY CHARTER

SECTION 3-6. POWERS OF THE COUNCIL

1. TO LEGISLATE TAXES, TAXES, RATES, FEES, ASSESSMENTS, AND SPECIAL ASSESSMENTS

SECTION 9-6. CAPITAL PROGRAM

3. AFTER A PUBLIC HEARING ON THE CAPITAL PROGRAM, THE COUNCIL MAY PASS THE PROGRAM WITH OR WITHOUT AMENDMENT.

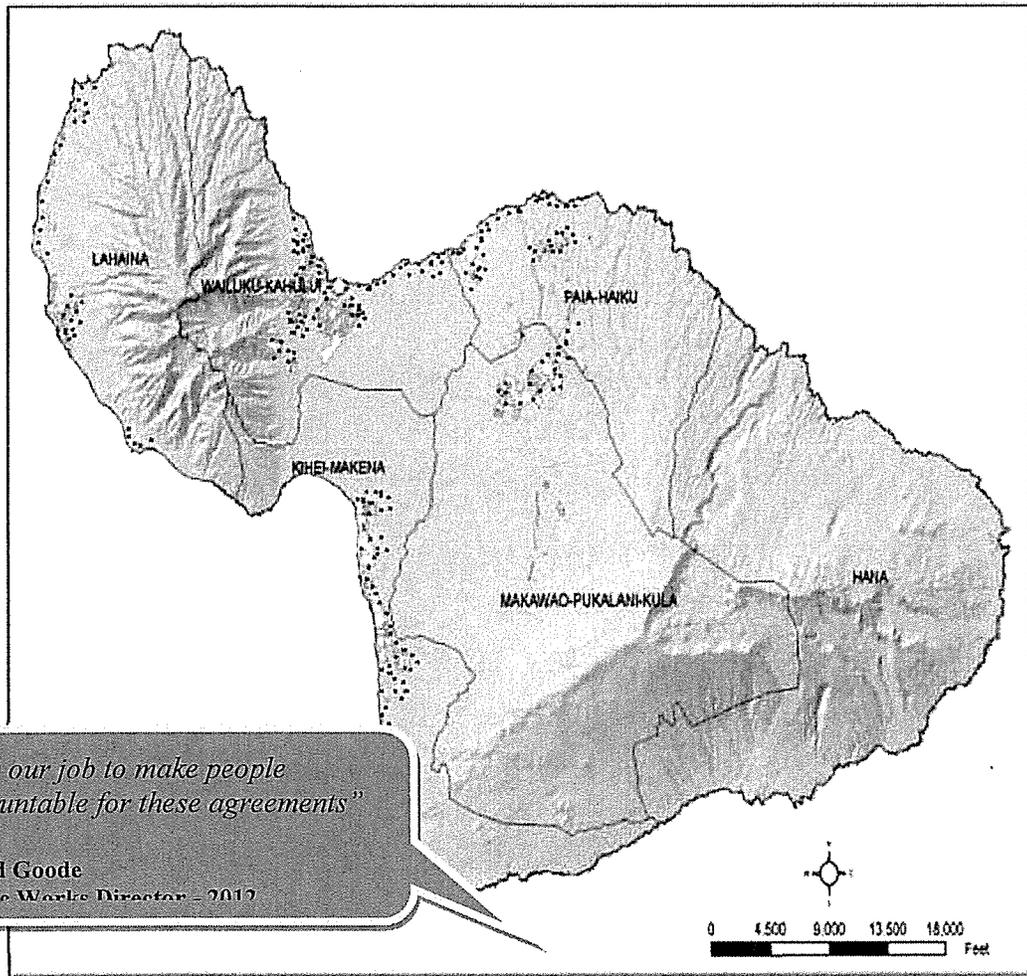
5. AT ANY TIME DURING THE FISCAL YEAR THE CAPITAL PROGRAM MAY BE AMENDED BY ORDINANCE

SECTION 9-7. RESTRICTIONS ON BUDGET AND CAPITAL PROGRAM

1. ANY CONDITION, LIMITATION, OR RESTRICTION TO BE CONTROLLED BY THE COUNCIL WITH RESPECT TO THE DISBUSEMENT OF ANY APPROPRIATION SHALL BE SET FORTH IN THE BUDGET OR IN THE CAPITAL PROGRAM, AS THE CASE MAY BE.

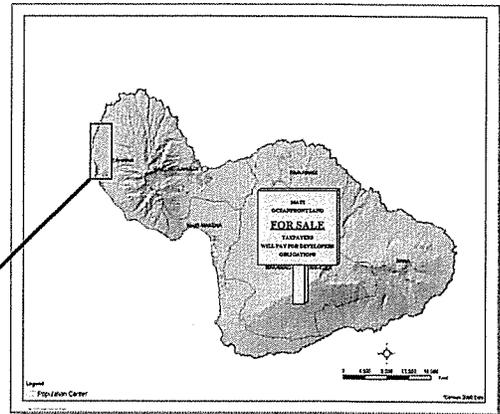
3. UNLESS OTHERWISE SPECICALLY PROVIDED FOR IN THIS CHARTER, ALL FEES, ASSESSMENTS, AND TAXES IMPOSED BY THE COUNTY SHALL BE SET IN THE ANNUAL BUDGET.

**FUTURE RECOVERY
&
UNNECESSARY WASTE
II**



In accordance with the Maui County Code, Subdivisions along Phase IV of Lower Honoapiilani Road containing 4 lots or more were required to install full roadway improvements.

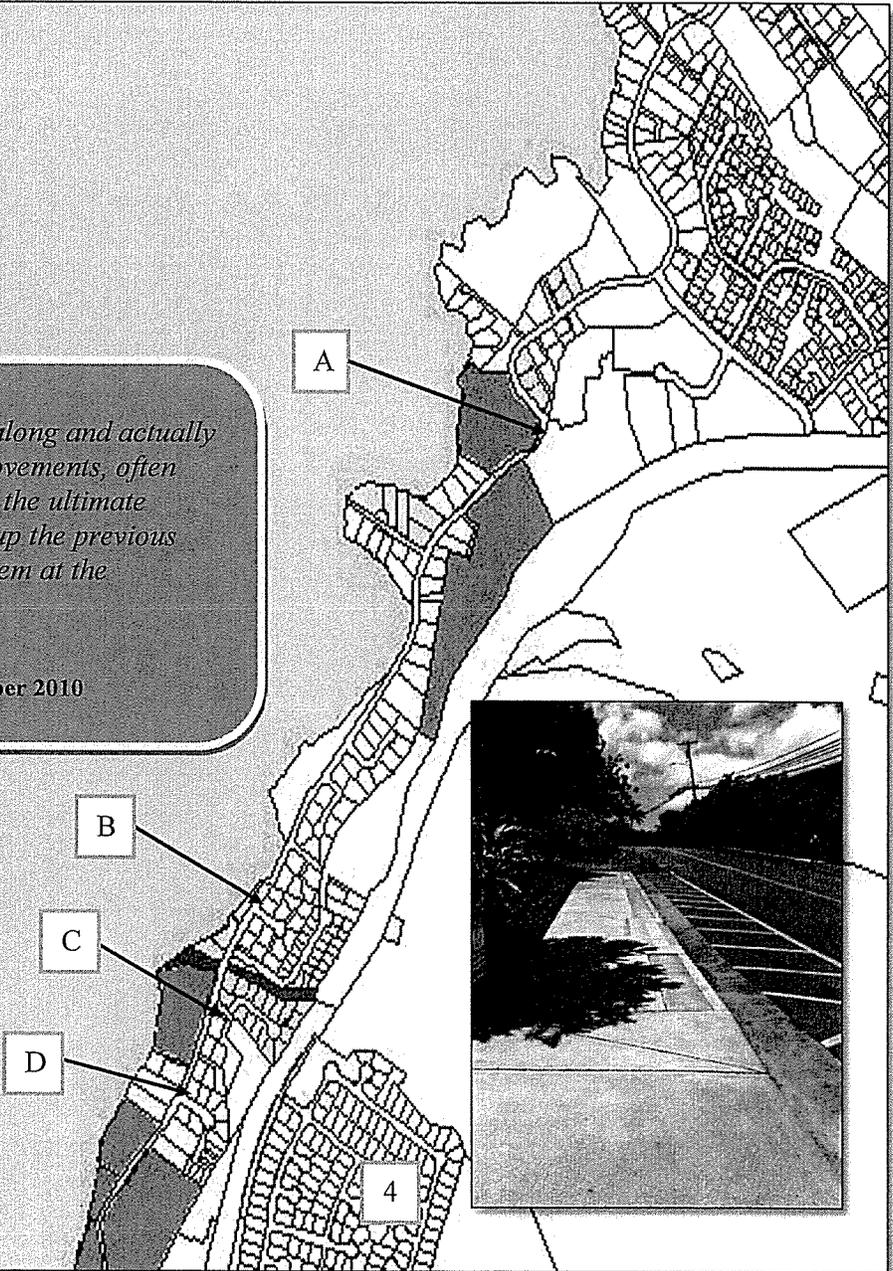
However, because there was not an adopted overall engineering plan when the subdivisions were approved, millions of dollars of both public and private roadway improvements will be torn out & replaced at citizen's expense.



**Phase IV
of
Lower Honoapiilani
Road**

"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."

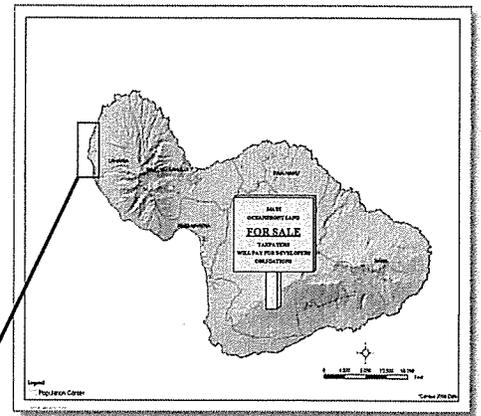
Milton Arakawa
Public Works Director – November 2010



The "3 Lots or Less" subdivision ordinance adopted in 1974 by the Maui County Council anticipated the formation of assessment districts to collect the developer's deferred financial obligations.

On Phase IV of Lower Honoapiilani Road in addition to the existing deferral agreements there are eight large vacation rental developments with unimproved frontages and one large vacant parcel that will be subdivided in the future.

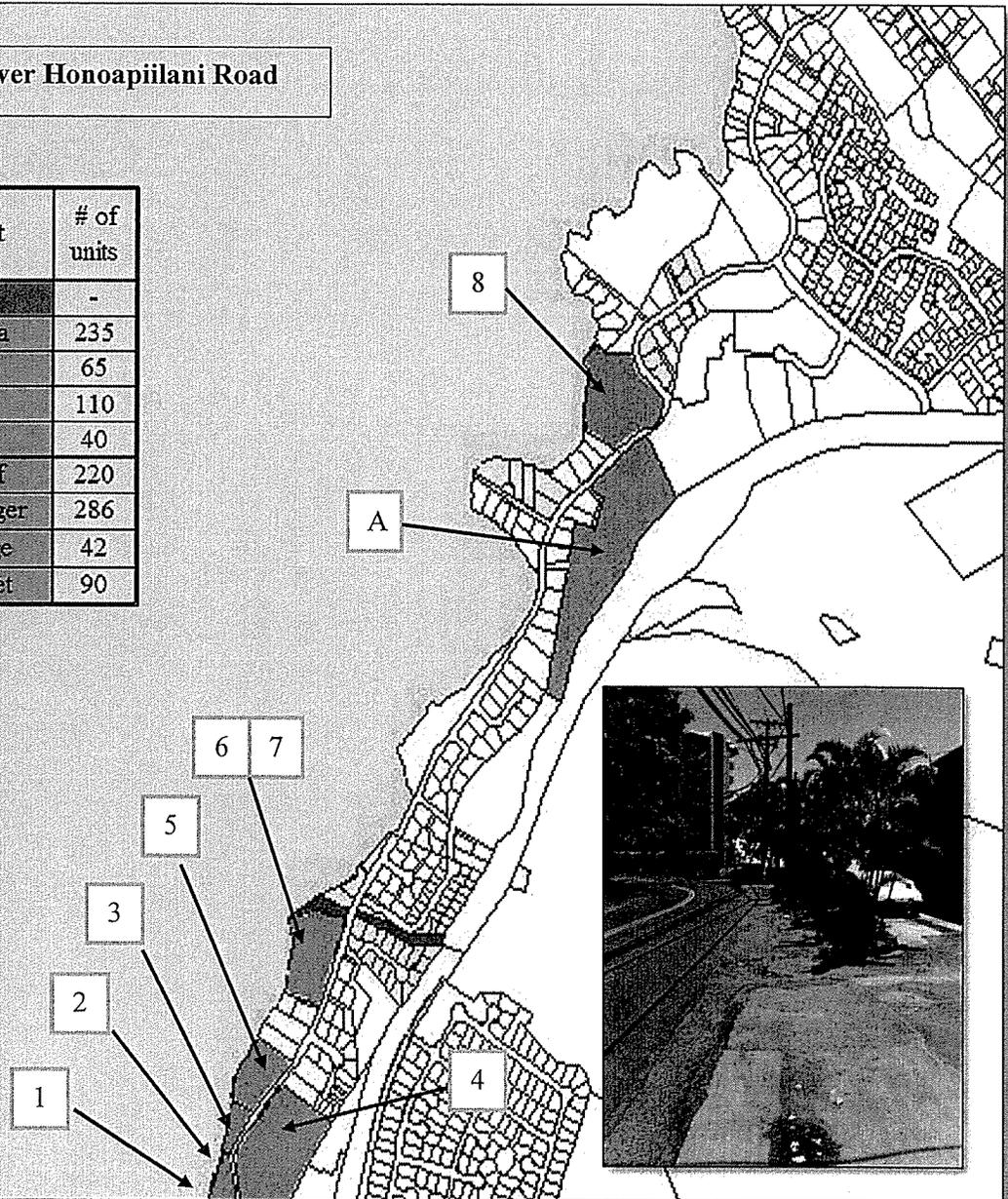
By retaining an infrastructure management consulting firm the County of Maui can insure a fair share of past and future development impacts are collected while also providing for shoreline access, parking, and public facilities.



Phase IV of Lower Honoapiilani Road

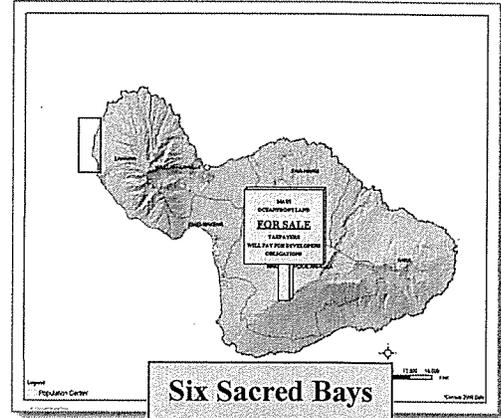
	Development	# of units
A	Vacant	-
1	Royal Kahana	235
2	Holoani	65
3	Pohiani I	110
4	Pohiani II	40
5	Kahana Reef	220
6	Kahana Outrigger	286
7	Kahana Village	42
8	Kahana Sunset	90

- Previous
- Proposed



In 2005, the County of Maui retained consultant Oceanit, Inc. to perform a Shoreline Access Study. The area along Phase IV of Lower Honoapiilani Road scored one of the highest ratings in their needs assessment report.

In 2009, the scenic roadway that travels along a portion of the six sacred bays of Pi'ilani was given Federal Scenic Byway Designation.



Shoreline Access Inventory Update - Final Report

**County of Maui
Job #01-02/P-31**

Prepared for:
Department of Planning
County of Maui
250 South High Street
Wailuku, HI 96793

Prepared by:
oceanit
1001 Bishop Street
ASB Tower 2
Honolulu, HI 96813




March 2010

THE SENATE
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

S.C.R. NO. 71
SD 1

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF TRANSPORTATION TO CONDUCT STATEWIDE COMMUNITY SCENIC BYWAYS EDUCATIONAL WORKSHOPS FOR PROPOSED FEDERAL DESIGNATIONS OF SCENIC BYWAYS INCLUDING THE PI'ILANI TRAIL ON MAUI.

WHEREAS, scenic byways are recognized as roads that

Maui County Planning Dept.
Job #01-02/P-31

Shoreline Access Inventory Update 2005
Section 8: Priority Recommendations

Kahana Sunset TMK: 4-3-003:015



Kahana Sunset Area

This area contains a large condominium development with no public access and negligible space for public access parking. The development was completed prior to SMA provisions requiring public access as part of development. The closest access point is the Kahana paved access point just south of the development. However, there is no formal parking in the area and patrons currently park along the side of the road and then must jump off a cliff and swim gain access to the beach. As noted above, the West Maui area is expected to percent through 2010. The demand for access and adequate parking is acute. be acquired across Lower Honoapiilani Road for a beach support park and/or and an access easement through the development should be made a condition the SMA permit for changes to the development.



Location of Kahana Sunset Condominium Development
(Source: County of Maui website)

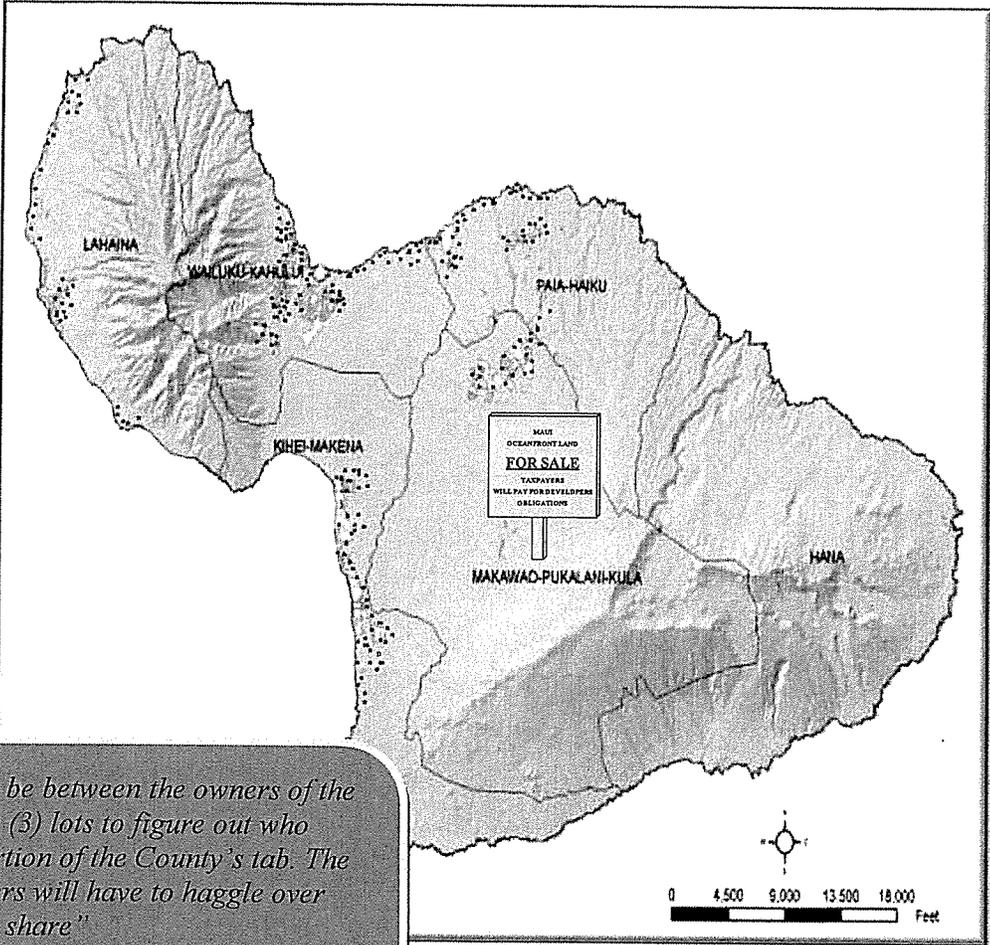
Page 36

Site	Big Beach (Oheona)	Bahana Beach	Oheona	Maui	Kaunapali Resort	Kahana Sunset Area	Spreckelsville	Waialeale Promenade	Kaunapali	Jaws (Oahu Bay)	Bahana Beach	Kaunapali (Blue Tile)	Kipahulu	Hana Bay	Score
Final Appropriateness of Acquiring Access	1	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Environmental Sustainability	1	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Likelihood of Acquiring Prescriptive Rights	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Parking Adequacy	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Food Sources	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Level of Use	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Activities/Recreation	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Investment Return of Public Access Improvements	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Carrying Capacity	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100
Score	5	10	5	10	1	10	5	5	5	5	5	5	5	5	100

Table 1: Site Assessment Criteria Review (continued)

LOOMING DEBACLE

III



"It's going to be between the owners of the original three (3) lots to figure out who pays what portion of the County's tab. The original owners will have to haggle over their pro rata share"

Milton Arakawa
Public Works Director
County Council Hearing - 2010

In 2011, after review of the Real Property disclosures, the open ended lien collection notices sent by former Milton Arakawa that require owners to “haggle” over the amounts owed, the unanswered requests for pay-off amount sent to Corporation Counsel, and the Planning Departments written verification that the Subdivision is incomplete, well respected West Maui Real Estate firms have determined the property should not be listed for sale until the title issues are resolved.

WARNING

- **Property Title Cloud**
- **No Ceiling On Liability**
- **Foreclosure If Unpaid**
- **Cloud Cannot be**


Prudential
 Maui REALTORS®
 256 Papalaus Street
 Lahaina, HI 96761

Chris Salem
 8 Hui Rd. E
 Lahaina, HI 96761

February 21, 2011

Re: Maui County Lien

Aloha Chris,

I am concerned over our current escrow at 8 Hui Rd. E.

We have been waiting for a response and payoff amount from the County of Maui in regards to their “Three lot or less subdivision deferral” lien for weeks now. We are on

We have been waiting for a response and payoff amount from the County of Maui. We are on the verge of losing our all cash buyer..

Based on the professional opinion of two appraisers that have determined this property cannot be assessed due to the open ended County encumbrance.

As part of our listing presentation we preformed a thorough review of the title report on and the related subdivision agreements that encumber your property.

August 30, 2011

Chris Salem
 10 Hui Road E
 Lahaina, HI 96761


Whalers Realty

Chris,

Thank you for the opportunity to make a listing presentation for your home at 8 Hui Road E, Napili. As part of our listing preparation, we have performed a thorough review of the title report and the related subdivision agreements that encumber your property. We noted in Schedule B that a subdivision agreement exists for the original three lot subdivision. Within this agreement there appears to be an open ended commitment for the owner of this property to pay a one third (1/3) share of the any offsite improvements installed by the County of Maui.

Because of the unknown financial obligations to any owner of this property, this subdivision agreement on your title poses an unexplainable disclosure issue and clouds the title for the subject property. This clause is in essence a lien that runs with this property forever and renders you unable to deliver marketable clear title to a potential buyer. We have exhausted all available resources for information to research and clarify this issue with no success.

Regretfully, we must decline the opportunity to assist you with the sale of your property. Should you be able to resolve this matter with your title company or the County of Maui, we would appreciate the opportunity to assist you with the professional sale and marketing on your property.

Sincerely,

Because of the unknown financial obligations to any owner of this property, this subdivision agreement on your title poses an unexplainable disclosure issue and clouds the title for the subject property.

Regretfully, we must decline the opportunity to assist you with the sale of your property. Should you be able to resolve this matter with your title company or the County of Maui, we would appreciate the opportunity to assist you with the professional sale and marketing of your property.

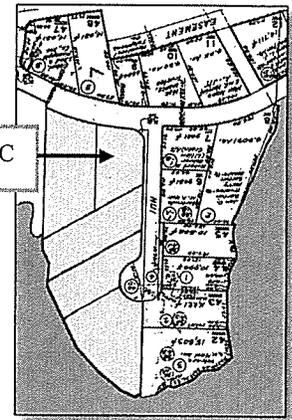
“And if they don't pay, we can always foreclose and sell the property at the worst case scenario”

Riki Hokama,
 Council Member – July 5, 2007

In 2011, during escrow for the sale of Lot 48C, Corporation Counsel failed to respond to multiple requests by Old Republic Title for a payoff amount.

West Maui resident Christopher Salem attempted to pay off the open ended "3 Lots or Less" lien in accordance with section C-12 of Hawaii Real Estate Purchase and Sale agreement.

Without an adopted ordinance by the Maui County Council, it is not possible for a property owner to remove the open ended cloud on their title.



C-11 Closing Costs. The following are customary closing costs (including Hawaii General Excise Tax where applicable) and are not intended to be an all-inclusive list. Escrow may charge the appropriate party other closing costs as directed by the parties.

Check in Power of Attorney: _____ Date of Title Insurance: _____

47%
48%
49%
50%
51%
52%
53%
54%
55%
56%
57%
58%
59%
60%

OLD REPUBLIC TITLE & ESCROW OF HAWAII, LTD.
24 Kupuohi Street, Suite 104 • Lahaina HI • 96761 • (808) 661-1999 • FAX (808) 661-3700

February 03, 2011

REQUEST FOR PAYOFF OF LIEN OR JUDGMENT

County of Maui
Corporation Counsel
200 S. High St. 3rd Floor
Kalaheo O'ahu Building
Waikuku, HI 96793

Attention:
Re: Escrow No.: 6827002856-CS
Property Address: 10 Hui Road E, Lahaina, Hawaii 96761

In connection with the above escrow, please be advised that we may be in a position to payoff the lien recorded by your office as referenced below:

Debtor: ANKA Inc
Creditor: County of Maui
Recorded On: 11/07/1995
Recording Information: 95-145123
Case or Reference No.: LUCA File No 4,686
Social Security No.:

We are enclosing the following items:
(1) Copy of the recorded lien or judgment
(2) This is a demand for Lot 48-C only and a partial release for this lot.

Please submit your demand for payment and recordable Release of Lien as soon as possible.

Old Republic Title & Escrow of Hawaii, Ltd.
34 Kupuohi Street, Suite 104
Lahaina, HI 96761
Attn: Connie Stevenson

If this lien has been paid, we require your demand statement to indicate a zero balance due.

Should you have any questions, please contact the undersigned.

Sincerely,
Connie Stevenson
Connie Stevenson
Escrow Officer
cc: Planning Department
LAND USE DIVISION

CS/cs Page 1 of 1

Connie Stevenson
Escrow Officer
cc: Planning Department
LAND USE DIVISION

CS/cs Page 1 of 1

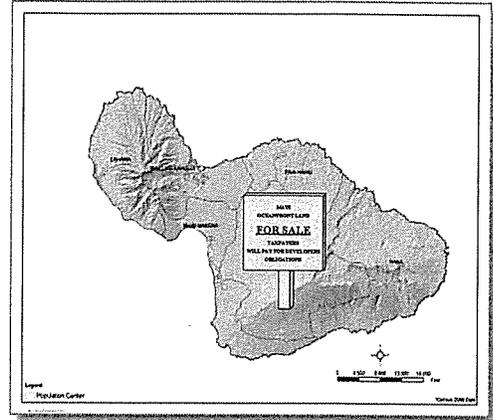
Hawaii Real Estate Purchase and Sale Agreement Section C12 – Payment by seller of government Liens & Assessments.

Escrow and title company request to County of Maui for pay-off amount.

"County of Maui has not responded to our multiple requests for pay-off amount."

"Now in the instance where the dollar amount is not known where it's just an agreement for action later on, it's some future amount to be determined, that gets a little tricky. How that plays out in escrow or to clear it off with the Bureau of Conveyances.. I would have to leave that to the Attorneys."

Kalbert Young
County Department of Finance – 2010



DECISIONS

OUTSIDE

OF

ADOPTED ORDINANCES

&

IN

VIOLATION

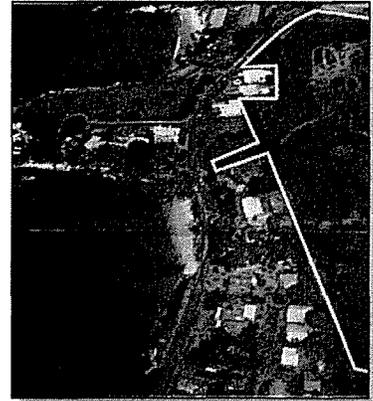
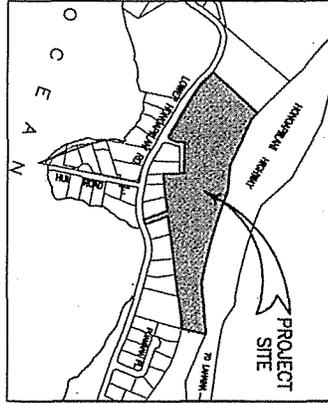
OF

COUNTY CHARTER

IV

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 development application.



JAMES "JOE" APANA Mayor
 DAVID C. GOODE Director
 MELTON M. ARAKAWA, A.L.C.P. Deputy Director

County of Maui
 DEPARTMENT OF PUBLIC WORKS
 AND WASTE MANAGEMENT
 LAND USE AND CODES ADMINISTRATION
 250 SOUTH HIGH STREET,
 WAILUKU, MAUI, HAWAII 96793

January 14, 2002

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

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

Dear Mr. Unemori:

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

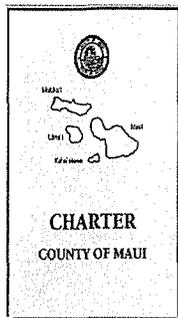
- Requirements/comments from Maui Electric Company:
 - Electricity is available from nearby existing facilities (overhead and/or underground).
 - Requires line extension (overhead and/or underground) within existing County or State road right-of-way.
 - Requires line extension (overhead and/or underground)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

Comments: EA
 If you have any

2002

David C. Goode
 Director of Public Works
 County of Maui

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



SMITH DEVELOPMENT Real Estate Development & Consulting

1043 Makawao Avenue, Suite 208, Makawao, HI 96768
 Phone: (808) 572-3011 Fax: (808) 572-8378
 www.SDHawaii.com email: KRS@SDHawaii.com

September 23, 2003

Puu Kahana Neighboring Property Owners

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

Dear Neighboring Property Owner,

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

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

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

Sincerely,

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

2003

Sincerely,
David C. Goode
 David C. Goode
 Vice President
 Development Operations

THE MAUI COUNTY CHARTER

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.

September 11, 2000, in accordance with the Maui County Code, Section 18.08.100, Deputy Director of Public Works David Goode issued Preliminary Subdivision Approval to Smith Development for the 17 Lot Kahana Vai Subdivision along Lower Honoapiilani Rd. The Subdivision conditions of Approval included roadway improvements to Lower Honoapiilani Road & pro-rata sharing of drainage improvements to Kahananui Stream. On January 18, 2001, Public Works Director David Good scribbled out Condition #11 of the Subdivision Approval letter. The Developers roadway and drainage obligations with be paid with County, State, and Federal taxnaver finds.

KSD HAWAII

**David Goode
President
Since 2002**

CREATING INNOVATIVE HAWAII COMPANIES AND PROFESSIONALS AS ONE OF HAWAII'S PREMIER OWNERSHIP GROUPS FOR HUNDREDS OF THE COMMON RESIDENTS, P.S.D. HAWAII

Current projects are aimed throughout all life unmet quality and value as well as excellent investment potential for joint venture and financial partners.

Here is a short profile of our management team:

David C. Goode
President, has been with the company since 2002. Previously, he worked for the County of Maui Department of Public Works and Waste Management for more than 20 years as Deputy Director and then Director. His previous experience also includes project management for Schuler Homes on Maui, Kauai, and Oahu and owner of a general contracting firm in California.

David is currently on the Board of Directors of the Capital Authority of Maui, the State of Hawaii Board of Land and Natural Resources, and is President of the Maui Contractors Association. He has also been named as one of the Maui 2000 Outstanding Task Force. He graduated with a Bachelor's in Electrical Engineering with honors from the University of California, Santa Barbara.

Phone: (808) 572-3911

JAMES TONG APANA
Mayor

CHARLES BROADIE
Deputy Mayor

DAVID C. GOODE
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
AND WASTE MANAGEMENT
LAND USE AND CONSTRUCTION DIVISION
200 SOUTH HIGH STREET
HALEKULU, MAUI, HAWAII 96703

SEPTEMBER 11, 2000

Mr. Bruce R. Lee, P.L.S.
NEWCOMER-LEE LAND SURVEYORS, INC.
1430 Lower Main Street, Suite D
Wailuku, Hawaii 96783

SUBJECT: KAHANA VAI SUBDIVISION
TKM121 4-3-005-070
LUCA FILE NO. 4.612

Dear Mr. Lee:

Preliminary approval was granted to the subject site on 9/11/00. Final approval shall be contingent upon concurrence with the following conditions:

11. In accordance with Section 18.20.040 (Existing streets) MCC, improve the adjoining halves of Lower Honoapiilani Road and Lot 6 to the provisions of the subdivision ordinance for roadways within the urban district.

12. In accordance with Section 18.20.030 (Pavement of streets), improve the proposed subdivision roads (Lots 18, 19 and 20) to the provisions of the subdivision ordinance for roadways within the urban district.

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 Kahanarui Stream.

Condition 13b. – The applicant, it's successors or assigns shall participate in their pro-rata share of traffic improvements as determined by the Director of Public Works

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

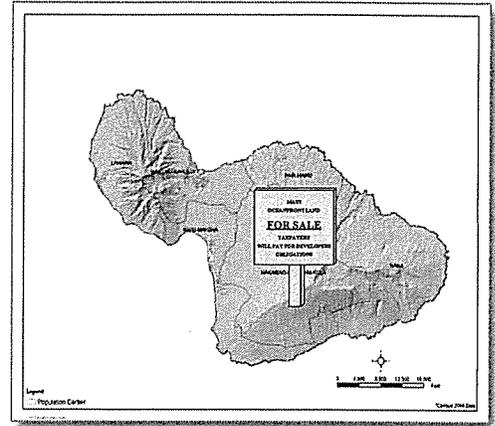
"We agreed that the fact the bridge is to be rebuilt as part of Lower Honoapiilani Road Phase IV improvements by the County (at the citizen's expense) that we would have no responsibility to improve the bridge as called out (by the County Engineering Division) on our the redline comments on our construction drawings."

Smith Development
Letter to Public Works Director David Goode—January 2001

THE MAUI COUNTY CODE

18.08.100 APPROVAL. C. APPROVAL OF THE PRELIMINARY PLAT SHALL INDICATE THE DIRECTOR'S DIRECTIVE TO PREPARE DETAILED DRAWINGS ON 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. THE ACTION OF THE DIRECTOR WITH REFERENCE TO ANY ATTACHED DOCUMENTS DESCRIBING ANY CONDITIONS SHALL BE NOTED ON TWO COPIES OF THE PRELIMINARY PLAT. ONE COPY SHALL BE RETURNED TO THE SUBDIVIDER AND THE OTHER RETAINED BY THE DIRECTOR. AT SUCH TIME THE DIRECTOR SHALL STAMP THE TWO PRELIMINARY PLATS; AS FOLLOWS:

1. "SUBDIVIDER AUTHORIZED TO PREPARE DETAILED DRAWINGS ON PLAT AS SUBMITTED INCLUDING CORRECTIONS NOTED."



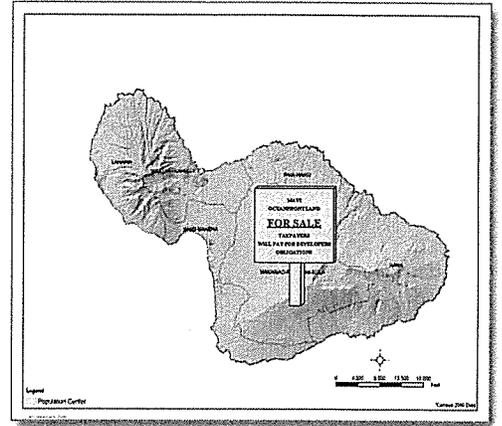
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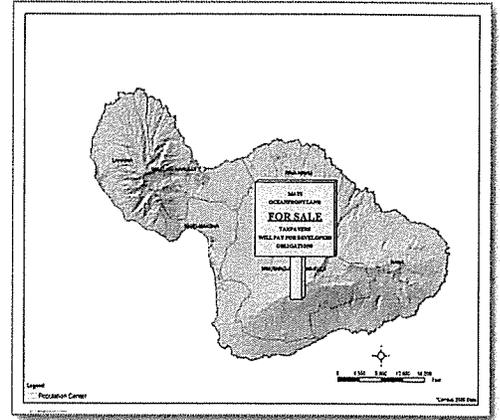
SHORELINE

SETBACKS

V



**ATTORNEY
CONFLICTS
VI**



SETTLEMENT
&
SHORELINE
PARKING
VII

April 21, 2010
Page 2

I cannot believe that the key facts in this case never came out during your proceedings and especially the failure to disclose a possible conflict of interest on the part of our Public Works Director, who was working for the very same land planning firm that represented the developer at the same time this SMA was processed.

Your situation reminds me very much of the Montana Beach case where Christina Hemmings called attention to the SMA violations of the owner and yet had to take the issue further through years of legal proceedings to compel the county to follow the law. This was eventually settled but cost the county millions of dollars to resolve. It is also curious to note that the same attorney who was involved in that case, Tom Welch, also testified on behalf of the developer who was involved in your litigation. Perhaps this issue bears further investigation as well.

I cannot help but feel that you and the County of Maui have been defrauded, the taxpayers have been cheated out of financial obligations that the developer should rightfully have paid, and that I have been placed in a position that is unacceptable and now creates a conflict between myself and the administration. I too, as an elected official, am an officer of the County and duty bound to report what I believe to be unethical or illegal conduct by anyone who is involved with the County. I am more than willing to verify what I know about this case to any authority or investigator and to answer any questions that need to be asked to address this most serious matter.

I am so sorry that this has taken place and I too feel personally compromised as a public official since it appeared during the hearings that my comments were irrelevant and I was made to look foolish before the hearings officer Andrew Winer. Please let me know what the status of this situation is and please feel free to share my comments with those who can help bring this matter to a satisfactory close.

Sincerely,

Jo Anne Johnson
JO ANNE JOHNSON
Councilmember

Council Chair
Danry A. Matco

Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kawakea Medeiros
Wayne K. Nishiki
Joseph Poutanilla
Michael P. Victorino



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/council

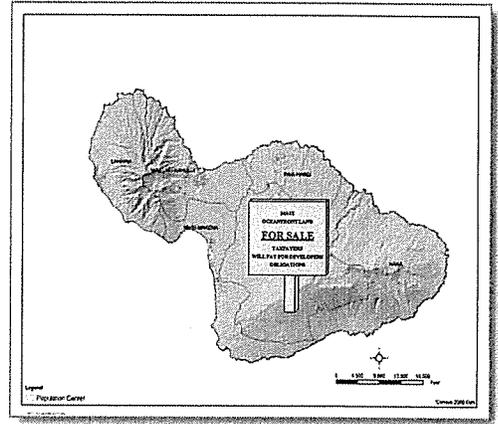
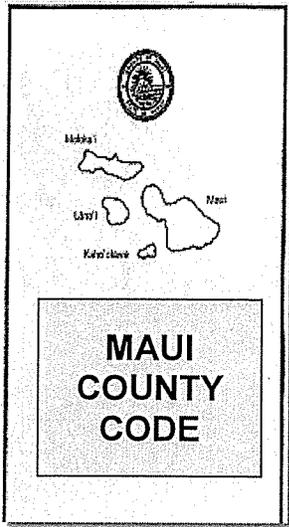
Mr. Chris Salem
5106 Lower Honoapiilani Road
Lahaina, HI 96761

Dear Mr. Salem,

I am deeply saddened to hear about your current situation. I find it disturbing that you have been, in my opinion, wronged on so many fronts and you are now on the verge of losing your home.

As you are aware I too have been placed in an untenable situation by the developer's attorney, Ms. Bronster and our own Public Works Director, Milton Arakawa. The fact that Ms. Bronster was also representing the County of Maui on another case during the very same time period is disturbing. It was not until this case unfolded that I became aware that the developer of the property adjacent to yours, was legally required (and already submitted studies by his consultants and received SMA Permits on the same) to honor the obligations that you were simply trying to have the county enforce. I know that this was something that was not known to either of us when this case began. I cannot understand how Ms. Bronster appears to have been made aware of the existence of these documents, and yet failed to produce them during the legal proceeding. I do not know what the legal ramifications are for failure to produce documents before the hearings officer or your attorney. At the very least, this information should have been disclosed by Ms. Bronster when its existence became known.

Also, the fact is that Ms. Bronster allowed me to actually be placed in a position of conflict whereby I gave testimony that contradicted the Public Works Department when this could have been avoided. The focus, had I been given this information by Ms. Bronster, would have been shifted toward enforcement of the issued permits to mitigate the County's potential financial losses. If this had been done and the information made available, it would have been clear to you and your attorney that you did not need to have any agreement with the developer from the beginning, let alone attempt to enforce the terms of the agreement, since the County already had put these conditions in the SMA and the developer was legally required to honor their obligations.



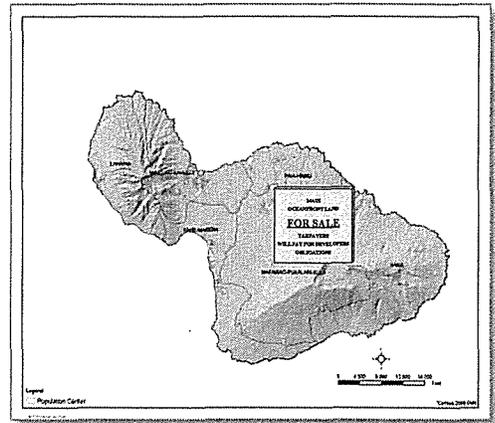
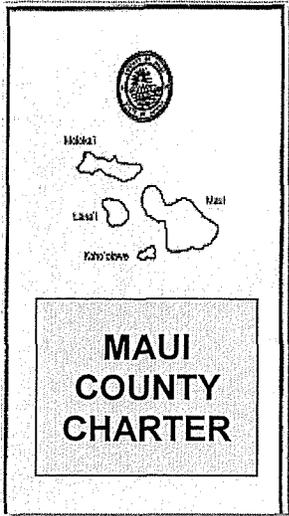
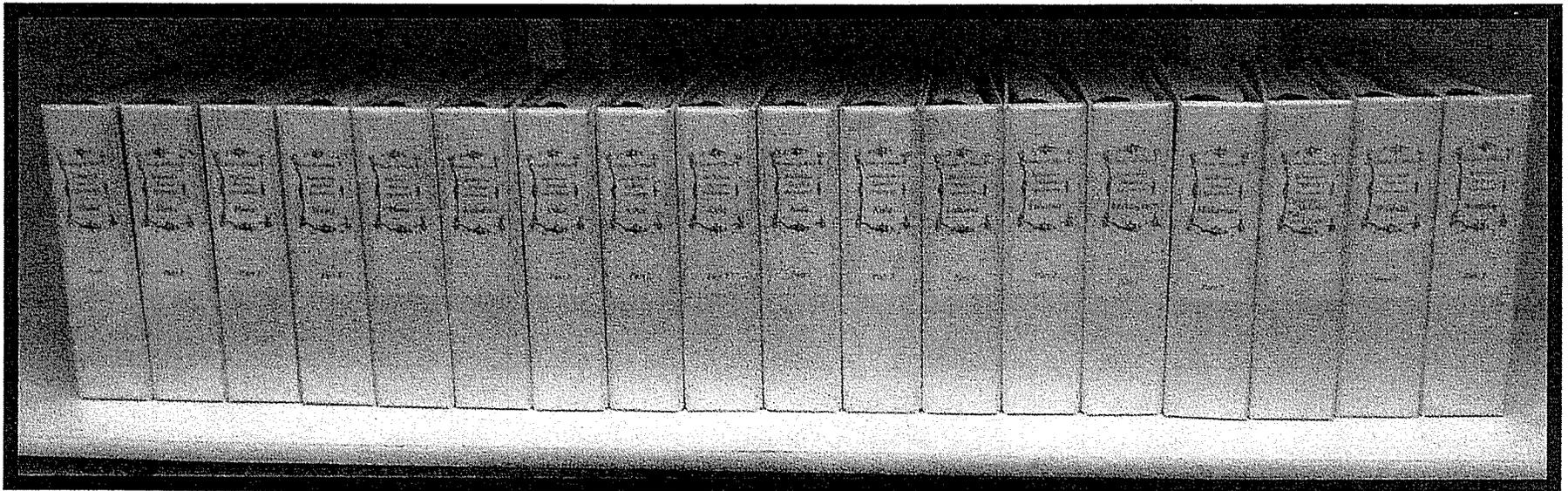
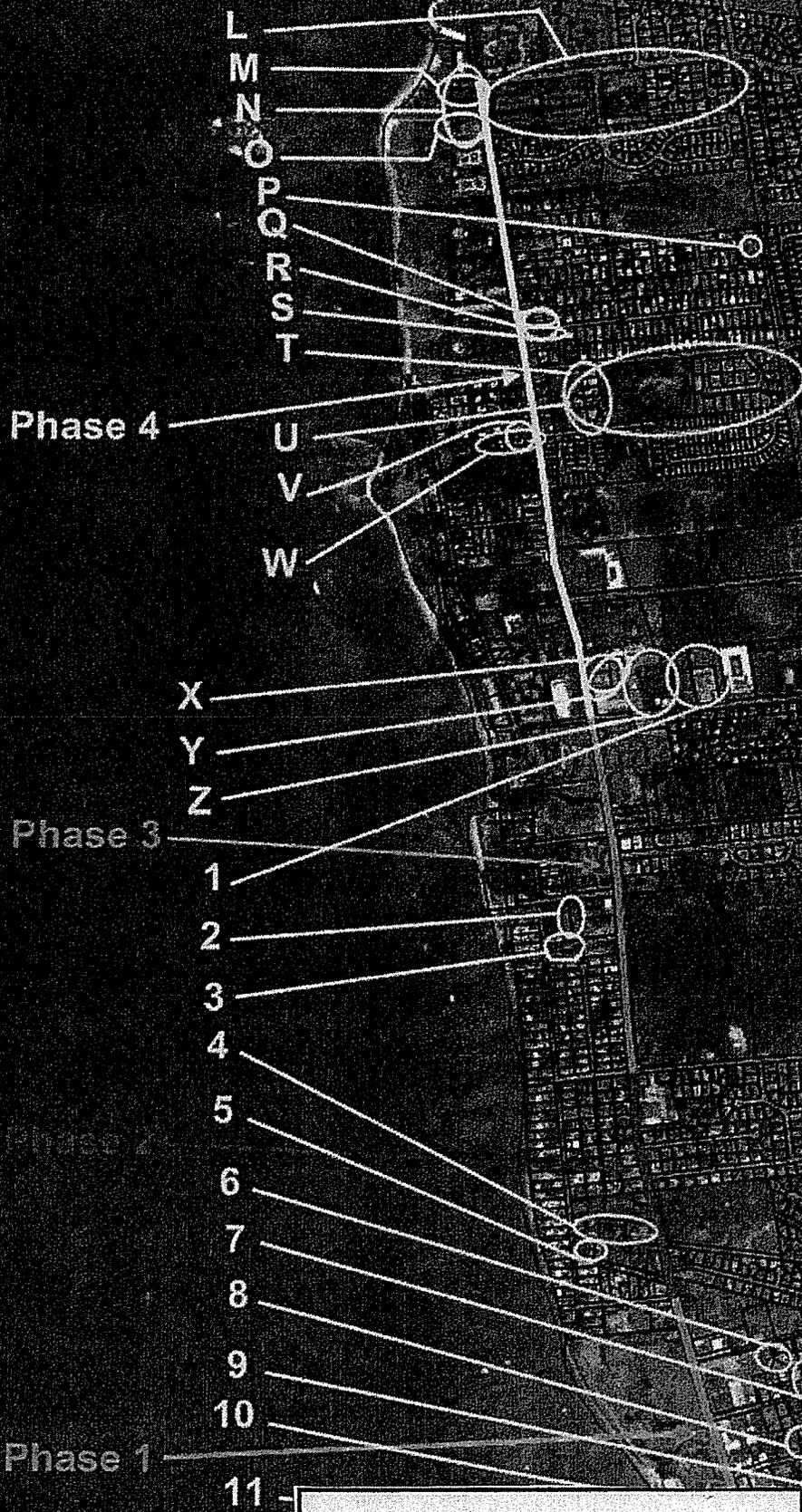


Exhibit 'E'



**"3 Lots or Less"
Subdivision Agreements
County of Maui
21 Notebooks
10,000 Pages**



"3 Lots or Less"
 Subdivision Agreements
 Kihei

Chris Salem
February 2, 2014

5106 Lower Honoapiilani Road
Lahaina, HI 96761

...

County of Maui
Department of Corporation Counsel
200 South High Street
Wailuku, Hawaii 96793

Attention: Attorney Michael Hopper

RE: Disclosure to the Maui County Council

Dear Mr. Hopper;

On June 17, 2013, at the scheduled meeting of the Council of Maui County Infrastructure and Environmental Management Committee, an oceanfront 3 lot subdivision on South Kihei Road was grandfathered into a "deferral" of the developer's roadway frontage improvement obligations.

Public Works Director David Goode stated to the Council Members that the "deferral" of the developer's financial obligations was in accordance with the ordinance and was approved by Corporation Counsel. The submission included a request for acceptance of the dedication of the subdivision frontage road widening lot along Phase IV of South Kihei Road.

I question whether full disclosure on the history of this oceanfront subdivision was submitted to the Council Members to allow them to decide whether grandfathering of the "deferral" ordinance was warranted, lawful, or in the public interest.

Since 1974, Title 18 of the Maui County Code states that subdivisions of land into 4 parcels or more requires full roadway and drainage improvements with no exceptions. Under the specific language of the Maui County Code, Section 18.20.040, the deferral of developer's roadway and drainage obligations for "3 Lots or Less" subdivisions was a onetime event. Further divisions of the parent parcel do not qualify for developers to defer their financial obligations.

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

The public documents indicate that Corporation Counsel and the Department of Public Works may not have provided the full disclosure to the Maui County Council of the historic facts relating to the prior divisions of the parent parcel which include multiple recorded subdivision agreements drafted and recorded by the Department of Corporation Counsel.

Attached is a map that exhibits the land division history on this oceanfront land along with the recorded agreements;

- 1) In 1984, the underlying parent parcel was subdivided (Luca File #3.1206) and the Department of Corporation Counsel executed and recorded a "3 Lots or Less" roadway improvement deferral agreement. (Document #17681523)

Chris Salem
February 2, 2014

5106 Lower Honoapiilani Road
Lahaina, HI 96761

The developer was represented by Attorney Paul Mancini of the Law Firm of Case, Kay, and Lynch. For the record, Attorney Mancini is a former Attorney with the Department of Corporation Counsel.

- 2) In 2002, one of the two resulting oceanfront parcels of the 1984 subdivision was further divided by Hawaii Marketing Ventures into a 3 lot subdivision. (Luca File#3.1871) The Department of Corporation Counsel executed and recorded a second "one time", "3 Lots or Less" roadway improvement deferral agreement. (Document #2002-055168)

In 2002, on behalf of Public Works Director David Goode, former Deputy Director Milton Arakawa of the Department of Public Works signed off on the 3 lot re subdivision of the oceanfront parcels originally divided in 1984.

The original parent parcel was now divided into 4 oceanfront parcels.

- 3) In 2005, the other resulting oceanfront parcel of the 1984 subdivision was further divided in a 3 lot subdivision. (Luca File 3.2119) Attorney Michael Hopper of the Department of Corporation Counsel executed and recorded a third "one time", "3 Lots or Less" roadway improvement deferral agreement. (Document #2005-034849)

In 2005, on behalf of Public Works Director Gil Agaran, former Deputy Director Milton Arakawa of the Department of Public Works signed off on the re subdivision of the oceanfront parcel originally divided in 1984.

The original parent parcel was now divided into 6 oceanfront parcels.

Summary

Since 1974, the Maui County code required subdivisions of more than four lots to install full roadway and drainage improvements to their subdivision frontages. The original oceanfront parent parcel along South Kihei Road has been subdivided 3 times resulting in 6 oceanfront parcels. Three separate overlapping "one time" "3 Lots or Less" Subdivision Agreements have been drafted and recorded by Corporation Counsel.

- If history repeats itself, County and Federal taxpayer funds will be used to pay for oceanfront developers' subdivision entitlement obligations along Phase IV of South Kihei Road. The length of the development frontage along South Kihei Road is 423 lineal feet. Engineering studies indicate that similar frontage improvement costs range from \$300 to \$1,000 per linear foot.

The purpose and intent of this letter is to provide you the opportunity to explain why these historic facts are not a part of the June 17, 2013 public record and submission to the Maui County Council? Of equal concern, the public records indicate that no Park Fees were paid on either of the 3 overlapping oceanfront subdivisions.

Chris Salem
February 2, 2014

5106 Lower Honoapiilani Road
Lahaina, HI 96761

Conclusion

The Administration and Corporation Counsel has never proposed to the Maui County Council any system or formula for assessment of these "deferred" developer financial obligations. There are no records or ledgers with the Department of Finance to track the monies owed. There has never been an anticipated revenue submitted by the Department of Public Works for any County Budget that the Council has approved. Reasonable minds agree with Public Works Director Goode that the whole "deferral" history spanning many decades has become "crazy".

To further this point, the developers of 3 separate oceanfront subdivisions resulting in 6 multimillion dollar homes will end up paying nothing for their development rewards. There is every indication that this abuse of the "3 Lots or Less" ordinances has now expanded to the Park Fee category and SMA Permits.

To substantiate this claim and investigation, I would like to inform you that we now have in our possession over 10,000 pages of Corporation Counsel developer contractual agreements that have been concealed from the public and the Maui County Council for over 13 years. At immense personal expense, each and every "deferral" agreement has been plotted on Google maps and cataloged in 21 notebooks by location, parcel number, and frontage linear feet of "deferred" financial obligations.

The degree of manipulation of this ordinance is overwhelming. Commercial developments, multi family developments, and overlapping "3 Lots or Less" agreements approved to form and legality by the Department of Corporation Counsel are executed all over the islands of Maui County. I have attached a photo of the 21 notebooks containing the previously concealed deferral agreements along with a sample plot of just one of the aerial maps. The South Kihei Road Phase IV subdivision referenced above is "M-N-O".

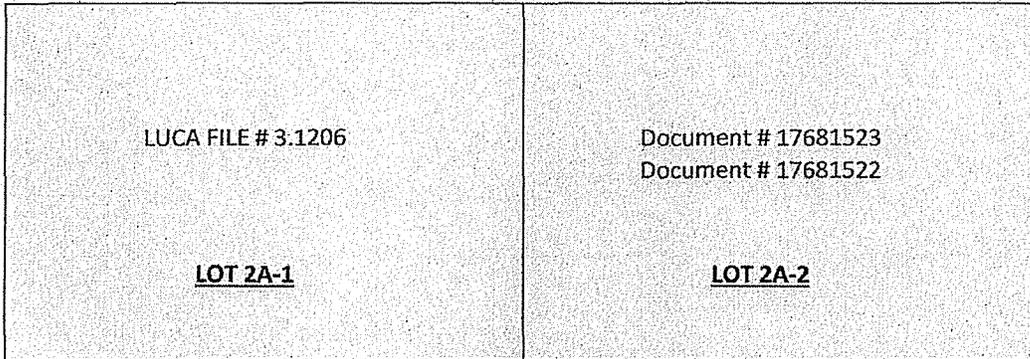
My estimates, which will be supported by engineering data, concludes that developers of multimillion dollar developments have shifted tens of millions of dollars of their entitlement obligations to the taxpayers. In many instances, the developers were represented by Attorneys previously employed by the Department of Corporation Counsel. In the case of my personal home and subdivision, the developer's attorney was employed simultaneously by Corporation Counsel and the Developer and failed to inform the Maui County Council and the public of this fact during the procurement process.

In closing, the Department of Corporation Counsel is hereby noticed to respect the Maui County Charter and allow the Maui County Council to independently investigate these findings without influence, intimidation, or continuing character assassinations. My attorney David Cain will address this request in further detail directly to the Maui County Council.

Sincerely;

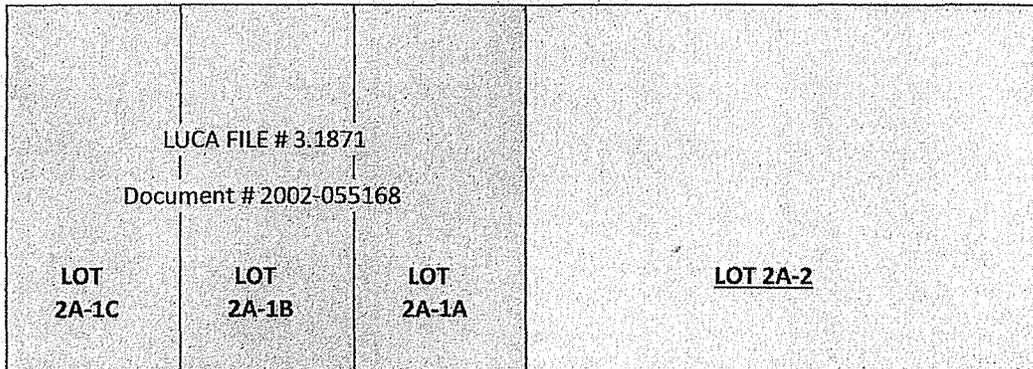
Chris Salem

KIHEI ROAD



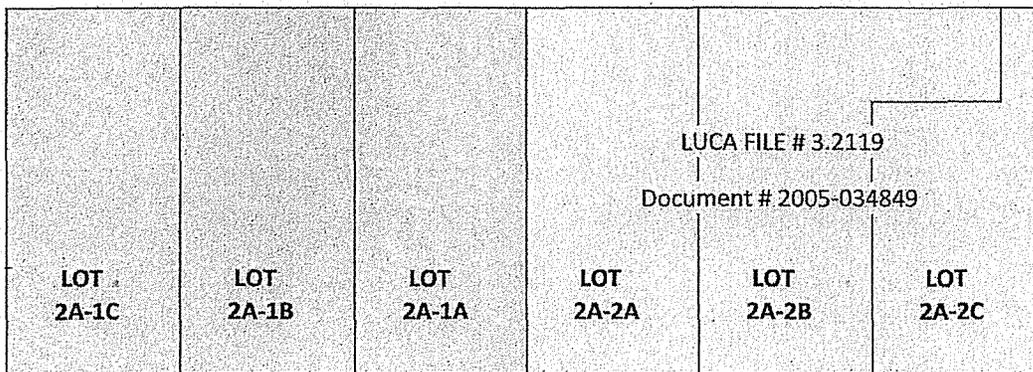
Pacific Ocean

KIHEI ROAD



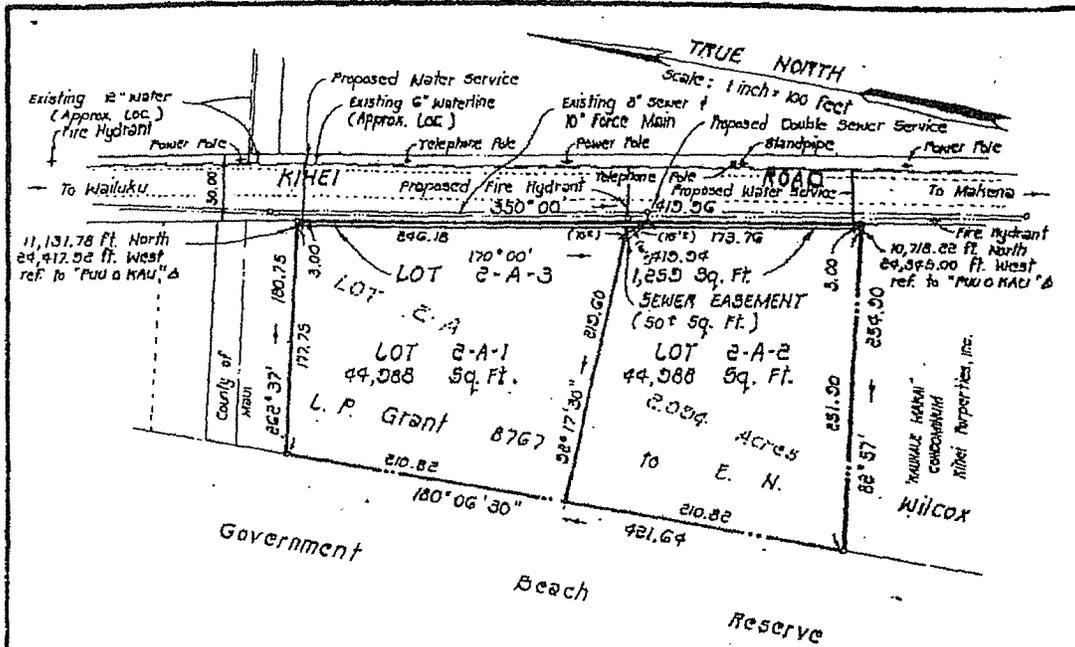
Pacific Ocean

KIHEI ROAD



Pacific Ocean

"3 Lots or Less"
South Kihei Road



WAIHOHULI - KEOKEA BEACH HOMESTEADS
SUBDIVISION OF LOT 2-A INTO LOTS 2-A-1, 2-A-2 AND 2-A-3
AND DESIGNATION OF A SEWER EASEMENT

Being a portion of L. P. Grant 8767 to E. N. Wilcox
 WAIHOHULI, WAILUKU, (KULA), MAUI, HAWAII

OWNERS: Joseph G. Kealoha Jr.
 Edwin T. Ige
 Elsie A. Ige
 Edwin T. Ige Jr.

SCALE: 1 inch = 100 feet
 DATE: January 12, 1983
 REVISED: March 3, 1983
 REVISED: August 18, 1983
 REVISED: December 20, 1983

Prepared at the request of owners:

Prepared by:

KILOLAHI HUI
 250 Waiehu Beach Rd.
 Wailuku, HI 96793

NORMAN SAITO
 ENGINEERING CONSULTANTS, INC.
 Kahului, HI. 96732

Final Subdivision Approval
 Approved for Recordation with the Bureau of Con-
 veyances and Department of Taxation, State of
 Hawaii

NOTES:

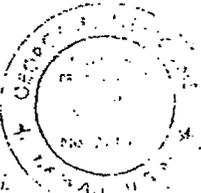
1. Sewer Easement for lateral purposes in favor of Lot 2-A-1.
2. All azimuths and record coordinates refer to Government Survey Triangulation Station "PUU O KAU".
3. Owners of adjoining land parcels taken from Tax Maps.
4. All lot corners marked with 1/4" inch pipe unless otherwise noted.
5. Lot 2-A-3 is a 3-ft. wide road widening lot, to be dedicated to the County of Maui.

[Signature] JAN 12 1984
 Director of Public Works date

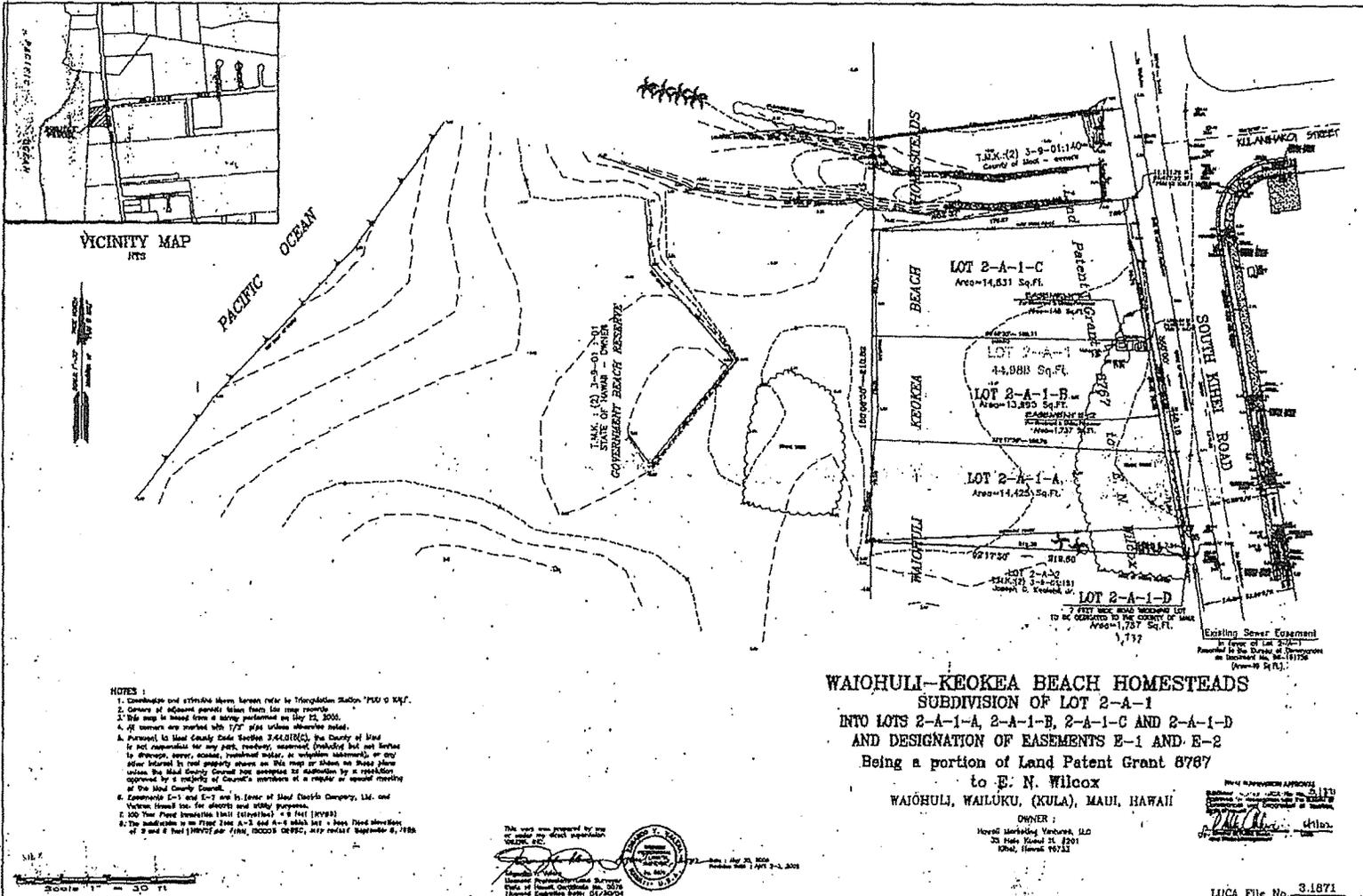
This work was prepared by me or under my direct supervision.

[Signature]

George F. Newcomer
 Registered Professional
 Land Surveyor No. 2715-3
 LUCA File No. 3.1206



(2) 3-9-001: 010, 166 & 167



NOTES:

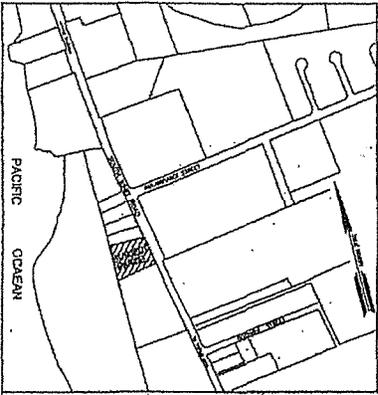
1. Dimensions and bearings shown herein refer to Triangulation Station "T10 9 847".
2. Corners of adjacent parcels shown herein list true bearings.
3. This map is based upon a survey performed on May 12, 2000.
4. All corners are marked with 1/2" steel spikes unless otherwise noted.
5. Pursuant to Maui County Code Section 241.0(1)(C), the County of Maui is not responsible for any past, present, or future (including but not limited to) trespass, injury, damage, loss, or liability (including but not limited to) or any other interest in real property shown on this map or shown on these plans unless the Maui County Council has accepted its adoption by a resolution approved by a majority of Council's members at a regular or special meeting of the Maui County Council.
6. Easements E-1 and E-2 are in favor of Maui Pacific Company, Ltd. and Veterans Home Inc. for access and utility purposes.
7. 100 Year Flood Elevation Data (Elevations) = 8 feet (1995)
8. The boundaries in this Plan (Lots A-1, A-2, and A-3) shall not be used for identification of 2 and 4 foot (1995) sea level, NOAA's OESFC, may release September 8, 1988.

**WAIHOLI-KEOKEA BEACH HOMESTEADS
SUBDIVISION OF LOT 2-A-1
INTO LOTS 2-A-1-A, 2-A-1-B, 2-A-1-C AND 2-A-1-D
AND DESIGNATION OF EASEMENTS E-1 AND E-2
Being a portion of Land Patent Grant 8787
to E. N. Wilcox
WAIHOLI, WAILUKU, (KULA), MAUI, HAWAII**

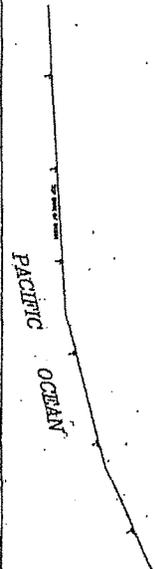
OWNER:
E. N. Wilcox
1001 Wailuku Road, Wailuku, HI 96793

This was prepared by me
on 05/12/00
Surveyor
Professional Seal
Date of Issue: 05/12/00
Expiry Date: 05/12/03

LUCA File No. 3.1871



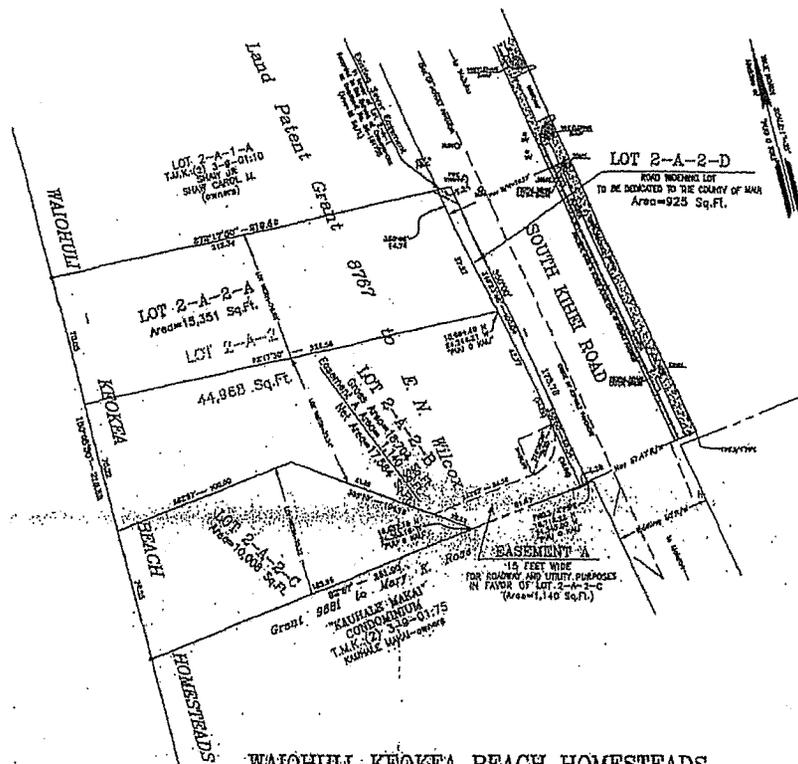
VICINITY MAP
NTS



NOTES :

1. Coordinates and elevations shown herein refer to Triangulation Station "PUNO O KALE"
2. Owners of adjacent parcels taken from tax map records.
3. This map is based from a survey performed on November 7, 1985 and May 22, 2008.
4. All corners are marked with 1/2" pipe unless otherwise noted.
5. Easement A is a 15 feet wide for roadway and utility purposes to favor of Lot 2-A-2-C affecting Lot 2-A-2-B.
6. Pursuant to Maui County Code Section 3.6.6.15(C), the County of Maui is not responsible for any park, roadway, easement (including but not limited to drainage, sewer, access, residential water, or irrigation easement), or any other interest or real property shown on this map or shown on these plans unless the Maui County Council has accepted its dedication by a resolution approved by a majority of Council's members at a regular or special meeting of the Maui County Council.
7. Lots are located in Flood Zone AE with a base flood elevation of 7' above mean sea level datum.
8. Lot 2-A-2-B is a road widening lot to be dedicated to the County of Maui.
9. Existing Survey Easement affecting Lots 2-A-2-A and 2-A-2-B for sewer purposes, varying width, 45 square feet in favor of Lot 2-A-1 is recorded in the Bureau of Conveyances as Document No. 88-16175B.

TAK. (2) 3-9-01:101
OWNER
STATE OF HAWAII
GOVERNMENT BEACH RESERVE



WAIOHULI-KEOKEA BEACH HOMESTEADS
SUBDIVISION OF LOT 2-A-2
INTO LOTS 2-A-2-A, 2-A-2-B, 2-A-2-C AND 2-A-2-D
AND DESIGNATION OF EASEMENT A
Being a portion of Land Patent Grant 8767
to E. N. Wilcox

WAIOHULI, WAILUKU, (KULA), MAUI, HAWAII

OWNER:
Joseph G. Keefe Jr.
P.O. Box 1142
Wailuku, Maui, Hawaii 96793

FINAL SUBDIVISION APPROVAL
Subdivision File No. 2-2-117
Approved for Registration with the Bureau of
Conveyances and Department of Health,
date of filing:
Date

This work was prepared by me
or under my direct supervision.
LARRY V. OSTER, L.L.C. 01/14
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 8074

DATE: August 3, 1985
RECORDED: September 12, 1985
RECORDED: September 15, 2008
RECORDED: May 8, 2012
RECORDED: September 20, 2015
RECORDED: September 27, 2015
RECORDED: March 11, 2018

LUCA File No. 3.2119



R-250 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 FEB 22, 2005 08:01 AM
 Doc No(s) 2005-034849



/s/ CARL T. WATANABE
 REGISTRAR OF CONVEYANCES

20 1/1 23

LAND COURT	REGULAR SYSTEM
AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()	
Development Services Administration	TG A. 351474C
County of Maui	RS
200 South High Street	
Wailuku, Maui, Hawaii 96793	
S:\CLERICAL\KAO\FW\Master Templates\3lotsRev.wpd(4/03)	Total Pages (10)

TMK No. (2) 3-9-001:151 Total No. of Pages: 10
 Subdivision File No. 3,2119

SUBDIVISION AGREEMENT
 (THREE LOTS OR LESS)

THIS AGREEMENT is made and entered into this 1st day
 of February, 2005, by and between Joseph G. Kealoha Jr.
 _____, whose principal place
 of business is 409 Liholiho St., Wailuku, Maui, Hawaii 96793
 _____ and whose mailing address is _____
 _____, ("Owner"), and the
 COUNTY OF MAUI, through its Department of Public Works and
 Environmental Management, a body politic and corporate, and a
 political subdivision of the State of Hawaii, having its principal
 place of business and mailing address at 200 South High Street,
 Wailuku, Maui, Hawaii 96793.



R-1655 STATE OF HAWAII
 BUREAU OF CONVEYANCES
 RECORDED
 MAR 28, 2002 08:02 AM
 Doc No(s) 2002-055168



/s/ CARL T. WATANABE
 ACTING
 REGISTRAR OF CONVEYANCES

LAND COURT REGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (X) PICK-UP ()

Land Use and Codes Administration
 County of Maui
 200 South High Street
 Wailuku, Maui, Hawaii 96793

A:\FORMS\3lotsRev.wpd(9/00)

8 pages

TMK No. (2) 3-9-001:010

LUCA File No. 3.1871

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, HAWAII MARKETING VENTURES, LLC,
a Hawaii limited liability company, whose residence
 address/principal place of business is 35 Hale Kuai Street,
Suite 201, Kihei, Hawaii 96753 and whose
 mailing address is 35 Hale Kuai Street, Suite 201, Kihei,
Hawaii 96753, ("the Owner"), is/are the owner(s) of a
 certain parcel of real property identified and described in Land
 Use and Codes Administration File No. 3.1871,
 incorporated herein by reference and made a part hereof, and
 situate at Waiohuli, Wailuku, Kula, Maui, Hawaii,

TG Ige / Kealoha

RECORDATION REQUESTED BY:

84- 21588

APR 23 1984

17681 522

AFTER RECORDATION RETURN TO:

Paul R. Mancini, Esq.
Case, Kay & Lynch
33 Lono Avenue, Suite 470
Kahului, HI 96732

RETURN BY: MAIL () PICK-UP ()

SUBDIVISION AGREEMENT
(THREE LOTS OR LESS)

WHEREAS, Edwin T. Ige, Elsie A. Ige, Edwin T. Ige, Jr. (the "Iges"), and Joseph G. Kealoha, Jr. ("Kealoha") are the owners, as cotenants, of that certain 2.22 acre parcel of land, portion of the land described in and covered by Land Patent Grant Number 8767 to Mrs. Eleanor N. Wilcox, situate, lying and being at Waiohuli-Keokea, in the District of Wailuku, Island and County of Maui, State of Hawaii, being Lot Number Two-A (2-A) of the "Waiohuli-Keokea Beach Homesteads" (the "Property"), also referred to by tax map key as 3-9-01:10, which is shown as Exhibit "A" attached hereto and by this reference incorporated herein;

WHEREAS, by an "Order Dividing Property And Referring Partition Plan To The County Of Maui", entered January 25, 1983, by the Second Circuit Court of the State of Hawaii (the "Court"), in a partition action entitled Ige v. Kealoha, Civil No. 6440(2), the Court approved a plan for the partition of the Property into "Lot 2-A-1", which the Court allotted to the Iges, and Lot 2-A-2, which the Court allotted to Kealoha (the "Partition" and the "Partition Plan").

WHEREAS, the County of Maui (the "County") is a body politic and corporate, and a political subdivision of the

Chris Salem

December 2, 2013

5106 Lower Honoapiilani Road

Lahaina, HI 96761

County of Maui
250 South High Street
Wailuku, HI 96793

Attention: Public Works Director David Goode

RE: Subdivision Parks Fees

Dear Mr. Goode;

The Department of Parks & Recreation has confirmed they have no records of park fees being paid on Subdivision file #3.2119, #3.1871, and #4.805. Please confirm these findings are accurate.

Thank You.

Sincerely;

Chris Salem

Cc: Parks & Recreation

Cell 808 280-6050
Chrissalem8@yahoo.com

STATE OF HAWAI'I CIRCUIT COURT OF THE SECOND CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF CHRISTOPHER SALEM	vs.	DEFENDANT See Attached
PLAINTIFF'S ADDRESS (NAME, ADDRESS, TEL. NO.) The Law Offices of Burton D. Gald, LLC Burton D. Gald, Esq. # 4775 2020 main St. Ste 1010 Waiuku, HI 96793 808-269-7100		
<p>TO THE DEFENDANT(S):</p> <p>You are hereby summoned and required to file with the court and serve upon plaintiff's attorney, whose address is stated above, and answer to the complaint which is attached. This action must be taken within twenty days after service of this summons upon you, exclusive of the day of service.</p> <p>If you fail to make your answer within the twenty day time limit, judgment by default will be taken against you for the relief demanded in the complaint.</p> <p style="text-align: center;">If you fail to obey this summons this may result in an entry of default and default judgment.</p> <p style="text-align: center;">Pursuant to Rule 4(b) of the <u>Hawai'i Rules of Civil Procedure</u>, this summons shall not be delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the District or Circuit courts permits, in writing on the summons, personal delivery during those hours.</p>		
DATE ISSUED SEP 18 2015	CLERK OF COURT /sgd/ D. PELLAZAR (seal)	

 In accordance with the Americans with Disabilities Act and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office at **PHONE NO.** 244-2969, **FAX** 244-2932, or **TTY** 244-2865, at least ten (10) working days prior to your hearing or appointment date.

DEFENDANT(S)

ALAN ARAKAWA individually and in his official capacity as MAYOR OF THE COUNTY OF MAUI; THE COUNTY OF MAUI by and through The DEPARTMENT OF THE CORPORATION COUNSEL, DEPARTMENT OF PUBLIC WORKS, DEPARTMENT OF PLANNING and THE DEPARTMENT OF FINANCE; PATRICK WONG, individually and in his official capacity as CORPORATION COUNSEL, THE COUNTY OF MAUI; KEITH REGAN, individually and in his official capacity as former DIRECTOR OF DEPARTMENT OF FINANCE, COUNTY OF MAUI; DAVID GOODE, individually and in his official capacity as DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; MILTON ARAKAWA, individually and as former DIRECTOR OF PUBLIC WORKS, COUNTY OF MAUI; WILLIAM SPENCE, individually and in his official capacity as DIRECTOR OF PLANNING, COUNTY OF MAUI; JOHN MINN, individually and as former DIRECTOR OF DEPARTMENT OF PLANNING, COUNTY OF MAUI; JEFFREY HUNT, individually and as former DIRECTOR OF DEPARTMENT OF PLANNING, COUNTY OF MAUI; JOHN DOES 1-20, JANE DOES 1-20; DOE PARTNERSHIPS 1-20; 1-20
DOE CORPORATIONS; ROE GOVERNMENTAL AGENCIES 1-20; ROE GOVERNMENTAL ENTITIES; ROE NON-PROFIT CORPORATIONS 1-20