

PSLU Committee

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>
Sent: Tuesday, January 07, 2020 9:32 AM
To: PSLU Committee
Subject: ADDITIONAL PUBLIC TESTIMONY RE (PSLU-32). EXHIBIT 6. "COMMUNITY PLAN AMENDMENT, DISTRICT BOUNDARY AMENDMENT, AND CHANGE IN ZONING FOR THE NAHIKU COMMUNITY CENTER (HANA)". PLEASE CONFIRM RECEIPT.
Attachments: Planning Commission Meeting of August 14, 2018 .pdf

Aloha PSLU Committee Staff,

Additional public testimony enclosed for 1-8-2020 hearing re PSLU-32.
Please confirm receipt.

Mahalo,

John

EXHIBIT 6

August 5, 2018, letter to the Maui Planning Commission from the eleven intervenors;

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

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

August 5, 2018.

Please Timely Distribute to Maui Planning Commission Members.

County of Maui Planning Department,
Attention: Maui Planning Commission, Chair Keaka Robinson
2200 Main Street One Main Plaza Bldg, Suite 315 Wailuku, HI 96793
Sent Via Email with Request for Confirmation of Receipt to:
planning@mauicounty.gov michele.mclean@mauicounty.gov
clayton.yoshida@mauicounty.gov paul.fasi@mauicounty.gov
and U.S. Certified Mail with Return Receipt.

Cc: Maui County Council. Mike White, Chair county.council@mauicounty.us
Maui County Council Budget and Finance Committee, Riki Hokama, Chair
bf.committee@mauicounty.us

**Subject: Public Testimony for the Maui Planning Commission Meeting of
August 14, 2018. Agenda: The Hana Advisory Committee to the Maui
Planning Commission's Recommendations on Applications Submitted by and
for the County of Maui Proposed Nahiku Community Center.**
(No Agenda Item No. is currently posted on the county website)

Aloha Chair Robinson and Members of the Maui Planning Commission,

We, the Intervenors, respectfully request the Maui Planning Commission to DEFER the County of Maui proposed Nahiku community center applications and the Hana Advisory Committee to the Maui Planning Commission's recommendations until 1) The "Six Unresolved Issues" have been timely addressed and resolved. 2) The issues of "Title, Ownership and Jurisdiction" have been timely resolved. 3) The issues of a "Forensic Financial Audit" and a "Forensic Performance Audit" have been timely addressed and resolved. Only after the

resolution of these vital issues would consideration by the Maui Planning Commission and the public be financially prudent, legal and appropriate.

Why would we make the request to defer? Because several of the “Six Unresolved Issues” and the additional issues of “Title, Ownership and Jurisdiction” are potentially and realistically FATAL to the county proposed project.

There is no reasonable or sound justification to continue to waste taxpayer money and community resources to extend this process by performing an Environmental Assessment (EA) at this time. There are already documented unresolved legal ownership issues and documented unresolved legal jurisdiction issues. Please resolve those two potentially fatal issues first.

It would be wasteful and irresponsible not to do so.

Three Examples and Evidence to Support our Requests.

1. FIRST EXAMPLE; The issue of “Title, Ownership and Jurisdiction”. **The longstanding and ongoing public dispute regarding ownership and title of the subject parcel. If Dorothy Kaho’okele or the Kaho’okele ‘Ohana own the subject parcel as claimed, there is no need to process the application any further or spend any more taxpayer money to conduct an Environmental Assessment process.**

The March 12, 2012 Maui News article “Nahiku community center moves closer to reality” states in one paragraph of the story, “Currently, the state owns the property, although Kaho’okele said it was formerly owned by her family and the land was supposed to be returned to her family after the school closed. **She said she has documents to prove ownership.**” (Exhibit 1, pages 36-39)

It is time to require Dorothy (aka Lena, aka Kamalu) Kaho’okele and the Kaho’okele ‘Ohana to legally prove her and/or their claim of ownership through a certified title report and court proceedings before any more taxpayer money is spent toward a project unsupported by the actual community.

If this project were built on the parcel claimed and owned by Kaho'okele it would amount to, potentially, a million dollar+ gift of taxpayer money. That would be FRAUD.

Why has the County of Maui refused to address this longstanding public controversy and already spent more than \$246,000 to advance this project? There are potential prosecutable crimes in this example.

2. SECOND EXAMPLE; The County of Maui or State of Hawaii have not shown or proven any legal access rights or legal title for the use of the dangerous one lane road from the Hana Highway to the proposed community center site in Lower Nahiku. If there is no legal access, the center cannot legally be built on that site. The expense of an Environmental Assessment would not be required.

The proposed project would be essentially “dead” at that location. There could be another location. Perhaps, adjoining the Hana Highway.

The route from the Hana Highway to the subject site was historically a mauka makai trail. This is not the “old road.” As residents and historians know, the actual “old road” ran from the Old Nahiku Landing site, adjoining the ocean at Lower Nahiku, to Ulaino along a coastal route. The old road was not the trail from the Hana Highway to the subject site.

Unfortunately, the State of Hawaii Legislature has not conducted the investigation of the old road and Lower Nahiku bridge over Makapipi Stream it committed to performing years ago by legislation.

Recently, the Maui County Council IEM Committee publicly disclosed the County of Maui has no legal title or ownership in the Lower Nahiku Bridge over Makapipi Stream. The committee has not, yet, resolved legal jurisdiction issues in Nahiku. They include the trail from the Hana Highway to the proposed project site, the Lower Nahiku Bridge over Makapipi Stream and the “old road” beginning at the Old Nahiku Landing. Again, **on what legal basis does the County of Maui claim access to the subject project site?**

It should be noted the County of Maui barricaded and closed the Lower Nahiku bridge over Makapipi Stream in September, 2014. The closure was done without public notice, without proven legal authority, without due process for the community, and without due process for individual landowners cut off from their property. Currently, vehicular access to legal landowners and taxpayers on the makai side of the bridge continues to be cut off. A dangerous situation and enormous liability have been created by the County of Maui.

It is also worth noting the State of Hawaii and County of Maui “renounced” any jurisdiction regarding another “old road” from Kaeleku to Ulaino in court proceedings. This related case could have some bearing or influence regarding the “old road” running from the the Old Lower Nahiku Landing to Ulaino and the trail beginning at Hana Highway to the proposed project site. The case number is Civil No. 07-1-0281 (3), Second Circuit Court. See (Declaratory Action) “MOTION TO DISMISS FOR LACK OF JURISDICTION”.

It is time for the County of Maui and State of Hawaii to legally prove jurisdiction, access rights and/or ownership in court proceedings. The proof must include a certified meets and bounds survey to prove the road does not trespass on private property.

3. THIRD EXAMPLE; Resolution of lawsuit County of Maui versus Maui Kaponono Builders, LLC. That is COUNTY OF MAUI VERSUS MAUI KUPONO BUILDERS LLC, ET AL., CIVIL 15-1-0421(1).

This lawsuit against the “defaulted”, or more accurately, “accused”, builder by the County of Maui needs to be settled with full public disclosure before any further processing of the proposed Nahiku community center applications.

It is our current understanding that the lawsuit may be scheduled to go to trial in December, 2018. Perhaps, there will be proposed “Finding of Facts and Conclusions of Law”. Perhaps, a settlement will be reached before a trial. The records from this case will be educational and revealing to all concerned. The

records could legally impact the new applications for the proposed Nahiku community center before you.

All documents regarding the suit, including Maui County Council Executive Session Minutes, must be made public for consideration in the current application. Based upon their behavior to date, the County of Maui could and likely would prejudice a settlement in favor of building their proposed Nahiku community center without lawful due process. That would not be acceptable to the community or taxpayers. Many, probably most, in the community are on record as opposing the proposed Nahiku community center.

Citizens are well aware that their legal rights in community decision making have been trampled on and ignored by the County of Maui and others.

The “Six Unresolved Issues”, the issues of “Title, Ownership and Jurisdiction”, the issues of a “Forensic Financial Audit” and a “Forensic Performance Audit” have been addressed in our “Petition to Intervene” (Exhibit 1), our letter dated November 20, 2017 (Exhibit 2), and this August 5, 2018 letter.

Therefore, we respectfully request you completely read, review and carefully consider the information in our 47 page “Petition to Intervene”, our 17 page letter dated November 20, 2017, and this 11 page letter before acting upon the proposed Nahiku community center applications and the Hana Advisory Committee recommendations. The “Petition to Intervene” is officially in your records. The November 20, 2017 letter was previously emailed to the Maui Planning Commission. It has been resubmitted in pdf and hard copies to be officially part of the record for this meeting.

There is no valid reason to continue to waste more taxpayer money if there are already fatal flaws that have been discovered and publicly documented over nearly ten years of controversy with the actual community and unethical and illegal actions by the County of Maui and others.

Clearly, there are very serious issues and potentially criminal acts that are already documented and in the public record. In fairness and justice, a full and independent investigation is called for and needed now.

Who should conduct the investigation and audits? Certainly not the County of Maui. However, the County of Maui employs an auditor who may be acceptable to perform the audits. However, that issue would have to be discussed and agreed upon. There certainly is the issue of independence. Perhaps, an informed mediation could resolve the issues. We request the Intervenors be one party included in a mediation.

We respectfully request the Maui Planning Commission to defer the applications and Hana Advisory Committee recommendations and require that a “Full and Independent Investigation”, a “Forensic Financial Audit” and a “Forensic Performance Audit” be completed for the Maui Planning Commission as a “condition” for any future hearing on the County of Maui applications or recommendations from the Hana Advisory Committee regarding the proposed Nahiku community center.

We sincerely hope the Maui Planning Commission will recognize the seriousness of the facts regarding the applications for a proposed Nahiku community center. Please help solve the problems with your informed decisions on behalf of the community and taxpayers. Malama Pono.

* . * . *

Following are our comments regarding the Hana Advisory Committee to the Maui Planning Commission meeting on October 26, 2017, and our intervention in this process. The Hana Advisory Committee conducted a very credible, fair and peaceful meeting. We thank and congratulate them. Mahalo nui! We agree with their recommendations and intentions. **However, we request our previous recommendation be adopted before a decision regarding an Environmental Assessment.** For clarity, our previous recommendations follow in quotes.

“We respectfully request the Maui Planning Commission to defer the applications and Hana Advisory Committee recommendations and require that a “Full and

Independent Investigation”, a “Forensic Financial Audit” and a “Forensic Performance Audit” be completed for the Maui Planning Commission as a “condition” for any future hearing on the County of Maui applications or recommendations from the Hana Advisory Committee regarding the proposed Nahiku community center.”

We, the Intervenors are writing in support of the Hana Advisory Committee to the Maui Planning Commissions’ (HACMPC) unanimous recommendations and intentions made at their meeting of October 26, 2017, in Hana. We have reservations and request a number of important clarifications.

As stated in the county produced “Regular Minutes”

“It was moved by Committee Member Kaina, seconded by Committee Member Ross, then VOTED: to recommend to the Maui Planning Commission the deferral of agenda items C.1.a., b., and c. until an EA can be provided or circumstances are provided for an EA, and the deferral of item C. 2. on the basis of HRS 343-1”.

“(Assenting - L. Clark; D. Lono; M. Ross; K. Kaina; G. Notestone) (Excused - L. Cosma; S. Crawford)

Chair Notestone: Unanimous. We're going to move on to the next item of the agenda, which is the Director's Report. Thank you, ladies and gentlemen, for attending”.

It is clear and unambiguous the Hana Advisory Committee to the Maui Planning Commission publicly recommended deferral of Agenda items C.1.a. (Community Plan Amendment from Agriculture to Public/ Quasi-Public, (CPA 2017/0002), b. (State Land Use District Boundary Amendment from State Agriculture District to State Rural District, (DBA 2017/0002), and c. (Change of Zoning from Agriculture to P-1 Public\Quasi-Public, (CIZ 2017/0002) until a public and legitimate Environmental Assessment document process is agreed upon as intended and provided for by the law.

And, the deferral of item C.2. (A Special Management Area Use Permit for the Nahiku Community Center Project and related improvements located at 0 Nahiku

Road, TMK: (2) 1-2-002: 023, Nahiku, Hana, Island of Maui. (SM1 2017/0002) on the basis of HRS 343-1).

If a fully informed and public Environmental Assessment is completed, it will certainly illustrate the need for a comprehensive SMA Major Permit that incorporates all the information contained in the Environmental Assessment.

Frankly, we do not trust part of the approved motion language which states “can be provided or circumstances are provided for an EA”. That language may have been created by the Planning Department to facilitate its own questionable and unethical intentions.

Please understand, the County of Maui has not followed the laws for nearly ten years. Please understand, the County of Maui has clearly demonstrated a “conflict of interest” in processing the project for itself. Or, is the County of Maui actually processing the project for someone else? Will this language allow the Maui Planning Department to, once again, circumvent the intent and clear understanding of the Hana Advisory Committee to the Maui Planning Commission and the public at the Hana meeting?

Please require a clear and unambiguous legal reading and case law to demonstrate the County of Maui has only one clear and lawful way to follow the HACMPC recommendations.

If the Maui Planning Commission adopts the clear intentions and recommendations of the Hana Advisory Committee to the Planning Commission in favor of deferral of all applications and in favor of a public Environmental Assessment (EA) process we will withdraw our demand for a “Contested Case Hearing”.

We sincerely offered to do so in our “Intervention” filing.

As community members, we have simply tried year after year to get the County of Maui to follow the laws and listen to the actual community. The historical record shows the county of Maui has **not** done either.

We intervened only to protect our rights as citizens, the laws and due process for the community and taxpayers. As concerned community members, we understand there is little community support for the proposed project which has been pushed forward illegally by uninformed and out of touch politicians, the County of Maui and the self serving Nahiku Community Association. To be perfectly clear, the Nahiku Community Association does NOT represent the community.

After years of documented conflict and fraud created by the County of Maui and the possible illegal spending of more than \$246,000 of taxpayer money to date (Exhibit 3), excluding County Planning Department, County Council, County Corporation Council and County Administration personnel and materials costs, **it appears the County of Maui may have finally decided to follow the laws. However, based upon the public record, we know appearances can be deceiving.**

We, therefore, request the Maui Planning Commission to consider making its recommendations and conditions in strict compliance with the law, unambiguous in intent, and not allow the Maui Planning Department any “wobble room”. No County of Maui declared “Exemptions” to ANY part of the process. No “Loopholes” in the legal process. No “memorandum” or “back room deals” with the Hawaii State Office of Environmental Quality Control (OEQC).

We make the statement regarding the Office of Environmental Quality Control because of information revealed to us for the first time in the “MAUI COUNTY PLANNING DEPARTMENT’S REPORT TO THE HANA ADVISORY COMMITTEE, October 26, 2017 MEETING”.

The report states in part on page 4 under ***Community Plan Amendment***: “Hawaii Revised Statutes states that an Environmental Assessment (EA) or Environmental Impact Statement (EIS) **shall** be submitted along with the application for a community plan amendment. The County of Maui Department of Planning issued a memorandum dated May 11, 2012, which confirmed that the preparation of an EA is not triggered for a community plan amendments initiated by the the County, whether by Council or Administration, per the direction from the State of Hawaii OEQC”. Please read the entire paragraph from the report for complete context.

This County of Maui “Memorandum” needs investigation, complete legal scrutiny and may need to be legally challenged in court. It is contrary to the law and good sense planning for our communities. Please require the Planning Department to make the memorandum documents public now. And, require release and disclosure of all communications between the Planning Department and the State OEQC. It is outrageous the County Planning Department has never revealed this to the community before now. The County of Maui led the community to believe that former County Parks Director Correa’s fraudulent “Declaration of Exemption” was the reason for lack of an EA or EIS.

The County of Maui Memorandum goes against the legal intent of Hawaii Revised Statute 343. **The memorandum also directly contradicts and goes against the Hawaii State Land Board requirements and intent in the transfer documents dated June 22, 2007 (Exhibit 1, pages 28-31 and Exhibit 2 pages 12-14).**

The Planning Department interpreted “Shall” for their own self serving purposes to bypass the law and due process for the community and taxpayers. The Planning Department needs to be held accountable.

We also request the County of Maui Planning Department NOT be allowed to conduct the Environmental Assessment process. A truly neutral, agreed upon third party, should conduct the EA process. The County of Maui has already demonstrated it is willing to avoid due process and the law in the proposed Nahiku community center issues. Please do not allow this misuse of power and abuse to continue.

If you need additional proof of fraud, simply look at the May 23, 2012 SMA Minor Permit signed by County Planning Administrator Clayton Yoshida for Planning Director William Spence (Exhibit 1, pages 40 and 41). They administratively approved an SMA Minor Permit represented at \$450,000 in value. By doing so they avoided the legally required SMA Major process which would have been triggered at \$500,000. The proposed center was referenced as worth much more from the outset. The **Maui News** article of March 12, 2012, puts the value at \$815,000 (Exhibit 1, pages 36-39). Subsequently, Mayor Arakawa publicly estimated the costs at two million dollars.

According to a recent communication from Maui Budget Director Baz, there are **no** designated funds in the 2019 County of Maui Budget or “carry over” funds for the proposed Nahiku community center project (Exhibit 3).

It is time for much more credible and honest accountability.

Malama Pono Nahiku!

Mahalo Maui Planning Commissioners for your most careful examination and consideration.

Sincerely yours,

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

Teresa Allred <TeresaAllred@mac.com>, Moke Bergau <mauiaprn@yahoo.com>, John Blumer-Buell <blubu@hawaii.rr.com>, Ellen Kahookole <ek2nahiku@gmail.com>, Jean Mary Kahookole <JMKNahiku@gmail.com>, Sharon Kahookole <sarkele@aol.com>, Terry Kristiansen <greentoes@alohaservices.net>, JEFFREY C PAISNER <jeffreypaisner@mac.com>, Irene Pavao <iphana@yahoo.com>

Exhibits referenced in this letter:

Exhibit 1) **“Petition to Intervene”**. 47 pages.. Hard copies timely received and certified by Planning Department. **Already in Maui Planning Commission records.**

Exhibit 2) **Petitioners letter dated November 20, 2017**. 17 pages. Previously sent to Planning Commission via email.. Enclosed as pdf. **Hard copies submitted for Maui Planning Commission meeting of August 14, 2018, to be certain letter is in the record.**

Exhibit 3) **“Proposed Project Financial Allocations and Expenditures to Date” and “Available Funds”**. Enclosed in emails received from Maui County Budget Director Sandy Baz. Enclosed in pdf. Hard copies submitted for Maui Planning Commission meeting of August 14, 2018.

* * *

Possible use email from Baz regarding current funds.

Aloha Mr. Blumer-Buell,
Please contact the Department of Corporation Counsel for legal status of the project.
Mahalo,
Sandy

>>> John and Christel Blumer-Buell <blubu@hawaii.rr.com> 4/12/2018 7:14 PM
>>>
Mahalo Sandy,

We look forward to the requested accounting regarding #3.

On Apr 12, 2018, at 4:01 PM, Budget Office <Budget.Office@co.maui.hi.us> wrote:
Aloha Mr. Blumer-Buell,

In answer to your questions, I provide the following responses:

- 1) No funds are proposed in the FY2019 budget for the center in Nahiku.
- 2) There are no "carry over" funds in the proposed budget for the center in Nahiku.
- 3) I need further time to prepare a response on the amount of funds that has already been spent on the previously proposed center in Nahiku.

Mahalo,
Sandy

Budget Office
OFFICE OF THE MAYOR
COUNTY OF MAUI
808-270-7855
www.mauicounty.gov/budget

>>> John and Christel Blumer-Buell <blubu@hawaii.rr.com> 4/12/2018 11:23 AM

>>>

Aloha Budget Director Baz,

We have not received any response to our April 4, 2018, letter.

Tonight is the Council Budget Hearing in Hana. Please respond IMMEDIATELY.

Without your cooperation we are unable to offer fully informed testimony.

You are welcome to call me at 248-8972.

Sincerely yours,

John Blumer-Buell

Begin forwarded message:

From: John and Christel Blumer-Buell <blubu@hawaii.rr.com>

**Subject: A BETTER COPY OF TODAY'S LETTERS TO SANDY BAZ
AND COUNCIL BUDGET COMMITTEE. MAHALO!!**

Date: April 4, 2018 at 6:53:58 PM HST

To: budget.office@mauicounty.gov

Cc: riki.hokama@mauicounty.us, bf.committee@mauicounty.us

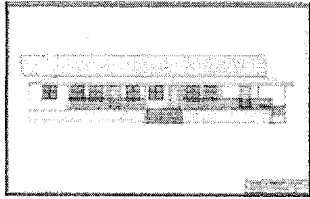
March 12, 2012

By MELISSA TANJI - Staff Writer (mtanji@mauinews.com) , The Maui News Save |

The Nahiku community is seeing its long-awaited community center come to fruition as the county and the state move ahead to fund the estimated \$815,000 center that will be built on the grounds of the former Lower Nahiku Grammar School.

Those involved in getting the center built say it could be used for private receptions, public gatherings, as well as a shelter in times of emergencies and as a place for first responders, such as police, fire and paramedics, to stop in to write up their reports.

Nahiku Community Association board President Kumu Kamalu Kaho'okele, the lead organizer for the community center, said that she had a "vision" to see the area formerly occupied by the Lower Nahiku Grammar School she once attended not be privatized.



Article Photos

This is a preliminary drawing of what the Nahiku comm... BILL SIDES drawing

She said the school, a victim of arson, was destroyed in the early 2000s. The school had closed in the late 1950s, Kaho'okele said.

"The proper thing is we put something back; replace what was lost unfortunately through foolishness. Just put something back that would be a legacy for Nahiku, a legacy that came with a dream, a dream that came through a vision," she said.

On Friday, the County Council is scheduled to vote on second and final reading on a bill to amend the 2012 fiscal county budget and allow \$250,000 for the project to be carried

over from last year's budget. The \$250,000 is earmarked for the planning, design and construction of the community center, organizers said.

Both the county and the state have indicated that they would each release \$250,000 for the center as long as the other does.

The \$315,000 balance for the project will be in Mayor Alan Arakawa's 2013 fiscal budget, county officials confirmed.

Kaho'okele said plans for the community center will move forward as soon as the initial funds are approved.

The community center will be along Lower Nahiku Road and near the Nahiku Hawaiian Protestant Church, she said.

The building will be a replica of the old Nahiku School but will include modifications, such as a certified kitchen.

Kaho'okele estimates that the building will have a capacity of around 150 people and can serve as a shelter in emergencies when there are landslides along the East Maui roadways or rockfalls and accidents that temporarily strand people in the area.

She added that nearby community facilities in Keanae and Hana fill up quickly and are heavily used. Those living in neighboring communities will be welcome to use the Nahiku community center as well.

Bill Medeiros, executive assistant to Arakawa, said that although plans are not finalized yet, the county probably will have jurisdiction over the center, with it being managed by the Nahiku Community Association.

Currently, the state owns the property, although Kaho'okele said it was formerly owned by her family and the land was supposed to be returned to her family after the school closed. She said that she has documents to prove ownership.

Kaho'okele thanked Medeiros and state Rep. Mele Carroll, who represents the area, for their help as well as the Arakawa administration, East Maui Council Member Bob Carroll and other current council members.

Mele Carroll has worked on the Nahiku community center project for several years, even when she spent time in county government before moving on to become a legislator, where she helped secure funds from the state.

"I'm hopeful that the governor will release these funds . . . This community center is not just your normal community center. It's a center we know that our elders will have a place to gather and share genealogy, our practices and the history of that place, which is dear to all of our hearts," Mele Carroll said.

* Melissa Tanji can be reached at mtanji@mauinews.com. © Copyright 2012 The Maui News. All rights reserved.

Exhibit 3 of "Petition to Intervene"