

Olowalu Talk Story
A Community-Based Planning Process

March 2, 2012

Mr. Orlando Davidson
Executive Officer
State Land Use Commission
P.O. Box 2359
Honolulu, HI 96804-2359

Re: LUC Docket No. A10-786
Olowalu Town, LLC and Olowalu Ekolu, LLC
Olowalu Town Master Plan at Olowalu, Maui, Hawaii

LAND USE COMMISSION
STATE OF HAWAII
2012 MAR 25 A 8 08

Dear Mr. Davidson:

You recently received a copy of a letter dated January 24, 2012, from Mr. Randy D. Ragon addressed to me. The letter contained false and misleading claims and allegations against me and my business partner David Ward, our company Frampton & Ward, LLC (F&W), Olowalu Elua Associates, LLC (OEA), as well as the County of Maui. By way of his letter, Mr. Ragon requests the Land Use Commission (LUC) use these false and misleading claims and allegations as justification to deny our proposed Olowalu Town Master Plan; as well as requests the LUC to initiate an investigation to address his claims and allegations. Accordingly, I am respectfully submitting this letter to provide you with the facts.

1. **F&W did *not* plan or develop Olowalu Mauka Subdivision** - Mr. Ragon's claim that F&W played a role in obtaining the land use approvals for the Olowalu Mauka Subdivision is both legally impossible and unfounded. F&W was established and registered with the State Department of Commerce and Consumer Affairs (DCCA) on **May 30, 2002**. The land use and entitlement approvals for Olowalu Mauka Subdivision were granted before F&W was established; including:

- Special Management Area Use Permit (SMA) in **September 2000**;
- Conservation District Use Approval (CDUA) in **October 2001**; and
- Final Subdivision Approval from the County in **April 2002**.

Olowalu Town LLC
2073 Wells Street
Suite 101
Wailuku, HI 96793

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As such, there is no basis for Mr. Ragon to claim F&W assisted OEA in obtaining the required land use approvals for Olowalu Mauka Subdivision since F&W wasn't even in existence until after the approval was granted. Further, given that F&W does not have any ownership interest in OEA; accordingly F&W does not have any responsibilities related to the development of Olowalu Mauka Subdivision¹.

- 2. Mr. Ragon files lawsuit against County for failure to enforce all permits; then Mr. Ragon dismisses the County from lawsuit -** In 2010, Mr. Ragon sued the County of Maui (*Randy Ragon v. County of Maui, et al., Civil No. 10-1-0160(3)*) claiming that it failed to enforce the land use permits and approvals for Olowalu Mauka Subdivision, which are the same claims and allegations referenced in his January 24, 2012 letter. Mr. Ragon alleged that the Olowalu Mauka Subdivision approval expired; the SMA Major Use Permit conditions were unfulfilled and thus the SMA expired; and that OEA and F&W had "knowingly and intentionally violated the land entitlement conditions." The County of Maui rejected his claims and filed a motion to dismiss Mr. Ragon's lawsuit. Faced with the facts, Mr. Ragon agreed to delete the County of Maui as a party to that lawsuit. *Attachment No. 1* is a copy of this January 2011 stipulation to dismiss and to stop pursuing claims against County.

- 3. Mr. Ragon files lawsuit against F&W; then Mr. Ragon dismisses F&W from lawsuit -** After the County rejected Mr. Ragon's claims and allegations, he subsequently amended his complaint by naming F&W and OEA as the new defendants; while counting on the same claims used in his initial failed lawsuit against the County. In his January 24, 2012 letter, Mr. Ragon re-states many of the same claims used in his lawsuits; including:
 - F&W played a role in planning and developing Olowalu Mauka Subdivision,
 - F&W failed to comply with the land use approvals,
 - F&W knowingly and intentionally violated the land entitlement conditions, and
 - F&W has manipulated and deceived Olowalu residents and government agencies.F&W filed a motion with the court rejecting Mr. Ragon's claims and requesting that F&W be dismissed from the lawsuit. As was the case with the County's lawsuit; when confronted with the facts and our motion to dismiss; Mr. Ragon offered to dismiss F&W from that lawsuit. *Attachment No. 2* is a copy of the March 2011 agreement dismissing F&W from the lawsuit.

- 4. Mr. Ragon files lawsuit against OEA; then Mr. Ragon dismisses OEA from lawsuit -** As noted above, Mr. Ragon amended his earlier lawsuit against the County by

¹ After the approvals for Olowalu Mauka Subdivision were granted, F&W acted as consultants for OEA; however, this was only limited to assisting with satisfying conditions of approval for the Olowalu subdivisions; and did *not* include obtaining final approvals of Olowalu Mauka Subdivision as alleged by Mr. Ragon.



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naming F&W and OEA as the new defendants. Again, the lawsuit raised many of the claims he asserted in his January 24, 2012 letter. Mr. Ragon was asked by OEA to provide the documents which he believed substantiated his claims against them. Mr. Ragon refused to provide the documents. Mr. Ragon was then ordered by the court to produce these documents and to pay the attorney's fees of OEA that were incurred in forcing Mr. Ragon to provide the documents he felt substantiated his claims. Instead of providing documents and paying the attorney's fees, Mr. Ragon offered to dismiss his claims against OEA with prejudice - meaning that Mr. Ragon could not assert those claims against OEA any time in the future. *Attachment No. 3* is copy of the August 2011 stipulation dismissing those claims and OEA. Again, when faced with the actual facts; it was Mr. Ragon who again offered to dismiss the lawsuit which he had filed against OEA and give up his claims forever.

5. **Mr. Ragon claims OEA violated the Uniform Land Sales Practice Act** - Mr. Ragon's assertion that the developer of the Olowalu Mauka subdivision violated the Hawaii Uniform Land Sales Practices Act is baseless. Chapter 484, Hawaii Revised Statutes, is the Hawaii Uniform Land Sales Practices Act. Section 484-3(b)(6) states that the sale of less than twenty (20) lots are exempt from the Act. OEA has sold a total of fourteen (14) lots in Olowalu Mauka Subdivision. As such, OEA is exempt from the provisions of the Act. Thus, Mr. Ragon's assertions that the developer of the Olowalu Mauka subdivision violated the Hawaii Uniform Land Sales Practices Act are baseless as the sale of 14 lots was exempt from the provisions of that Act.

6. **Mr. Ragon and other individual lot owners; not OEA, amended the subdivision declaration to allow Condominium Property Regimes** - Mr. Ragon claims that the developer of the Olowalu Mauka subdivision, OEA, and their attorney, unilaterally acted to increase the density of use of the subdivision by amending the Declaration of Covenants, Conditions and Restrictions ("Declaration") to allow for condominiumization of lots within the subdivision. This is completely false. In truth, it was the owners of ten (10) of the fourteen (14) lots in the subdivision (none of which were OEA) who voted and agreed to make the change. Although OEA as the declarant had the right to amend the Declaration, OEA did not exercise that right. This fact was known to Mr. Ragon as he was one of the 10 individuals who signed and notarized the document amending the Declaration. *Attachment No. 4* is a copy of the document (executed by Mr. Ragon) amending the Olowalu Mauka Declaration and recorded on December 5, 2007 in the Bureau of Conveyances of the State of Hawaii.

In conclusion, Mr. Ragon's January 24, 2012 letter addressed to me contains false and misleading claims and allegations. Mr. Ragon filed lawsuits against the County of Maui, F&W, and OEA regarding Olowalu Mauka Subdivision in which he made erroneous and flawed claims; many of the claims which are identified in his



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January 24, 2012 letter. All of the lawsuits have been dismissed; furthermore, the dismissals of the lawsuits were at the beckoning of Mr. Ragon.

Lastly, please note that we will provide a separate and more detailed letter responding to each issue raised by Mr. Ragon in conjunction with our Final Environmental Impact Statement for our proposed Olowalu Town Master Plan.

Thank you very much for your time and consideration. We regret that you have to spend your valuable time reviewing these unfounded and inaccurate claims; nonetheless, we are compelled to provide you with the facts. If you have any questions, or if you require further clarification on any of the above issues, please feel free to contact me.

Very truly yours,

William Frampton

Enclosures

cc: Randy D. Ragon (with enclosures)
Mrs. Colleen Suyama, Munekiyo & Hiraga, Inc. (with enclosures)

FILED

2011 JAN 12 PM 2:52

V. ISHIHARA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

McCORRISTON MILLER MUKAI MacKINNON LLP

RANDALL K. SCHMITT 3752-0
500 Ala Moana Boulevard
Five Waterfront Plaza, 4th Floor
Honolulu, Hawaii 96813
Telephone: (808) 529-7300
Facsimile: (808) 524-8293

Attorney for Plaintiff
RANDY RAGON
59424

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

RANDY RAGON,)	CIVIL NO. 10-1-0610
)	(Contract)
* Plaintiff,)	
)	STIPULATION FOR LEAVE TO
vs.)	FILE FIRST AMENDED
)	COMPLAINT AND ORDER;
COUNTY OF MAUI; JOHN DOES 1-20,)	EXHIBITS "1" AND "2"
JANE DOES 1-20; DOE PARTNERSHIPS)	
1-20; DOE CORPORATIONS 1-20; DOE)	
ENTITIES 1-20 and DOE)	
GOVERNMENTAL AGENCIES 1-20,)	
)	
Defendants.)	

STIPULATION FOR LEAVE
TO FILE FIRST AMENDED COMPLAINT

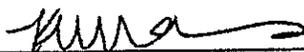
IT IS HEREBY STIPULATED by and between Plaintiff RANDY RAGON and Defendant COUNTY OF MAUI, through their respective counsel, that Plaintiff shall be permitted to file a First Amended Complaint in the form attached hereto as Exhibit "1," pursuant to Rule 15 of the Hawai'i Rules of Civil Procedure.

RECEIVED
JAN 14 2011

N. YOTSUYA

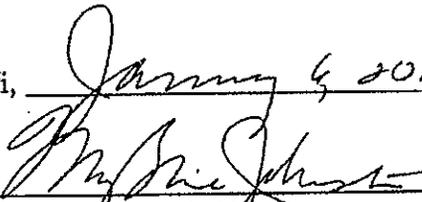
The First Amended Complaint deletes Defendant County of Maui as a party, and adds as Defendants Olowalu Elua Associates, LLC, a Hawai'i limited liability company, and Frampton & Ward, LLC, a Hawai'i limited liability company. The First Amended Complaint also includes a number of other changes which are identified in the redlined copy attached hereto as Exhibit "2."

DATED: Honolulu, Hawai'i, JAN 10 2011

FOR 
RANDALL K. SCHMITT

Attorney for Plaintiff
RANDY RAGON

DATED: Wailuku, Maui, Hawai'i, January 6, 2011


PATRICK K. WONG
Acting Corporation Counsel
MARY BLAINE JOHNSTON
Deputy Corporation Counsel

Attorneys for Defendant
COUNTY OF MAUI

APPROVED AND SO ORDERED:


JUDGE OF THE ABOVE-ENTITLED COURT

Randy Ragon v. County of Maui, et al.; Civil No. 10-1-0610; STIPULATION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND ORDER; EXHIBITS "1" AND "2"

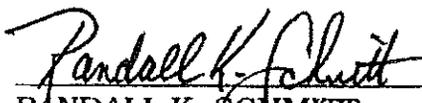
without prejudice pursuant to Rule 41(a)(1) of the Hawai'i Rules of Civil Procedure.

Upon entry of this Stipulation, Plaintiff's claims against Defendant OLOWALU ELUA ASSOCIATES, LLC remain active in this action. This Stipulation has been signed by all appearing parties. The parties further agree that this Stipulation may be signed in counterparts with the same effect as if all parties had signed the same document.

No trial date has been set. Each party is to bear its own attorneys' fees and costs.

MAR 16 2011

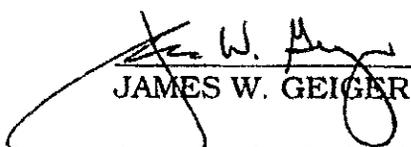
DATED: Honolulu, Hawai'i, _____.



RANDALL K. SCHMITT
Attorney for Plaintiff

MAR 15 2011

DATED: Kahului, Hawai'i, _____.



JAMES W. GEIGER

Attorney for Defendants
FRAMPTON & WARD, LLC and
OLOWALU ELUA ASSOCIATES, LLC

Randy Ragon v. Olowalu Elua Assocs., LLC, et al.; Civil No. 10-1-0610(3); In the Circuit Court of the Second Circuit; **Stipulation for Partial Dismissal Without Prejudice of All Claims Against Defendant Frampton & Ward, LLC**

Each party is to bear his or its own attorneys' fees and costs.

There is no trial date, and there are no other parties and/or issues that remain to be resolved or dealt with in this case. Defendant Framton & Ward, LLC was dismissed from this case by way of that Stipulation for Partial Dismissal Without Prejudice of All Claims Against Defendant Frampton & Ward, LLC, filed March 24, 2011. Defendant County of Maui was originally named as a defendant in this action, but was removed as a party in Plaintiff Randy Ragon's First Amended Complaint, filed January 18, 2011, by way of that Stipulation for Leave to File First Amended Complaint and Order, dated January 12, 2011.

Dated: Lāhaina, Hawai'i, July 29, 2011



RANDY RAGON

Plaintiff

AUG 17 2011

DATED: Honolulu, Hawai'i, Randall K. Schmitt

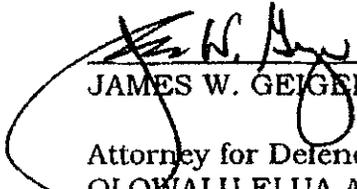
RANDALL K. SCHMITT

Attorney for Plaintiff
RANDY RAGON

Ragon v. Olowalu Elua Associates, LLC et al.; Circuit Court of the Second Circuit, State of Hawai'i, Civil No. 10-1-0610(3); **STIPULATION FOR DISMISSAL OF ALL CLAIMS AND ALL PARTIES WITH PREJUDICE**

AUG 11 2011

DATED: Kahului, Hawai'i, _____.



JAMES W. GEIGER

Attorney for Defendant
LOWALU ELUA ASSOCIATES, LLC

Ragon v. Olowalu Elua Associates, LLC et al.; Circuit Court of the Second Circuit, State of Hawai'i, Civil No. 10-1-0610(3); STIPULATION FOR DISMISSAL OF ALL CLAIMS AND ALL PARTIES WITH PREJUDICE

This is a copy of Bureau of Conveyances
Document No. 2007-209922-2007-209923, and / or

Land Court Document No. _____,

affecting Certificate of Title No. _____,

recorded on 12-6-07 at 8:01 o'clock a.m.

TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () to:

MANCINI, WELCH & GEIGER LLP (jact)
33 LONO AVENUE, SUITE 470
KAHULUI, HI 96732

102347 tdw wd mz

Tax Key: (2) 4-8-3:10, 69 & 76

Total No. of Pages: 6

Amendment to Olowalu Mauka Declaration
of Covenants, Conditions and Restrictions

This Amendment is made this 19th day of November, 2007 and is
executed by the following persons, who are the President and Treasurer of the Olowalu
Mauka Homeowners Association Inc., a Hawaii nonprofit corporation, and the owners of
two Properties in Olowalu Mauka:

1. DEBRA ARAKAKI, of 506 Kai Hele Ku Street, Lahaina, Hawaii 96761,
President of said Association

2. ELLEN B. ERNISSE, of 5295 Lower Honoapiilani Road, #C-21, Lahaina,
Hawaii 96761, Treasurer of said Association

3. ENGLISH MOUNTAIN ESTATES, INC., a Nevada corporation, whose mailing address is P. O. Box 915, Carson City, Nevada 89702, owner of Lot 11 of Olowalu Mauka, and

4. RANDY D. RAGON, Trustee of the Randy D. Ragon Revocable Trust dated July 2, 1996, of 713 Front Street A, Lahaina, Hawaii 96761, owner of Lot 6 of Olowalu Mauka.

RECITALS. Reference is made to the Olowalu Mauka Declaration of Covenants, Conditions and Restrictions dated as of July 15, 2002, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2002-138595 (the "Declaration"). Pursuant to Section 11.04 of the Declaration, the owners of ten (10) Properties in Olowalu Mauka have executed and delivered to the Association their written consent to amend the Declaration as set forth below. The Association holds said written consents in its official records and they are available for inspection at any time. Said Properties constitute not less than 65% of all Properties which are subject to the Declaration as required by Section 11.04 of the Declaration.

Further, the written consent of Olowalu Elua Associates to this Amendment is attached hereto.

AMENDMENT. The Declaration is hereby amended as follows:

1. Section 3.19 is hereby amended by deleting the prohibition on the division of ownership of any property by condominium conversion. Said Section 3.19, as so amended, shall hereby read in its entirety as follows:

"3.19 Further Additional and Divisions of Properties.
Declarant reserves the right to add additional Properties to this Declaration. See Section 11.4 below. This Declaration hereby prohibits the division of any Property into smaller lots by subdivision but shall not prohibit the division of ownership by submission of a Property to a Condominium Property Regime under HRS Chapter 514B or any successor statute."

2. The following additional sentence is added to Section 2.06:

"For purposes of allocating and assessing common expenses under Section 5.03 of this Declaration and the Bylaws, and for allocating and casting votes in the affairs of the Association, any condominium unit established on a "Property"

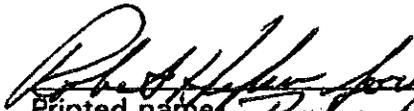
shall not be deemed to be a separate "Property" or "Lot". For example, if two condominium units are established on an individual Lot each of said units shall have one-half of the vote and one-half of the common expense share which was originally allocated to said Lot as a whole. The owner of each condominium unit shall be deemed to be a co-"Owner" (with the Owner(s) of each other condominium unit) of the Property on which said Condominium Property Regime has been established."

3. In all other respects the Declaration shall remain in full force and effect and unmodified.

Each of the undersigned hereby swears to the truth of all of the Recitals set forth above and that the Association has received the affirmative written consent of owners of 10 lots in Olowalu Mauka, constituting more than 65% of all Properties subject to the Declaration.

Executed the day and year above first written.


Printed name: Debra Arakaki


Printed name: Robert Hughes
ENGLISH MOUNTAIN ESTATES, INC.
CORPORATE SECRETARY

ELLEN B. ERNISSE
Printed name: ELLEN B. ERNISSE


Printed name: RANDY LAGON
Trustee aforesaid

Printed name: _____

Printed name: _____

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

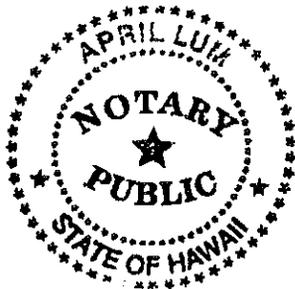
On this 19 day of NOVEMBER, 2007, before me personally appeared DEBRA ARAKAKI, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

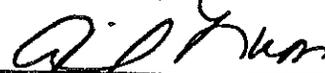



Notary Public, State of HAWAII
Printed Name: APRIL LUM
My Commission Expires: SEPTEMBER 9, 2009

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 19 day of NOVEMBER, 2007, before me personally appeared ROBERT HUGHES, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

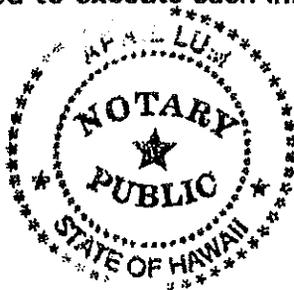


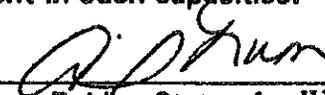

Notary Public, State of HAWAII
Printed Name: APRIL LUM
My Commission Expires: SEPTEMBER 9, 2009

STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

On this 19 day of NOVEMBER, 2007, before me personally appeared ELLEN B. ERNISSE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

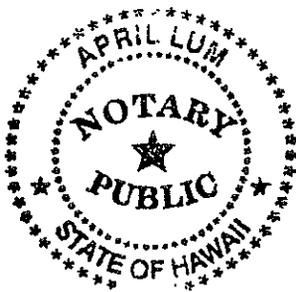


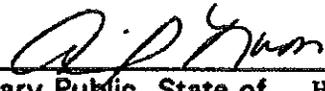

Notary Public, State of HAWAII
Printed Name: APRIL LUM
My Commission Expires: SEPTEMBER 9, 2009

STATE OF HAWAII)
)
COUNTY OF MAUI)

SS.

On this 19 day of NOVEMBER, 2007, before me personally appeared RANDY RAGON, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.




Notary Public, State of HAWAII
Printed Name: APRIL LUM
My Commission Expires: SEPTEMBER 9, 2009

