

JAN 30 2012

January 27, 2012

Aloha Michael Munekiyo,

This response letter to Frampton is a chronology of the facts explaining what has happened in our subdivision, which is grounds for our request to deny the developers application.

A handwritten signature in black ink, appearing to be 'RR' or 'Ragon' with a stylized flourish.

Randy Ragon

Olowalu Mauka Lot 6 Homeowner

713 A Front Street

Lahaina, HI 96761

808-298-1461

RR077@hotmail.com

Jan 24, 2012

Olowalu Town LLC.
2035 Main St. Suite 1
Wailuku Hi. 96793

Attention: Bill Frampton

SUBJECT: Response to December 28, 2011 letter
Re: Comments on the Environmental Impact Statement Preparation Notice
(EISPN) for the Olowalu Town Master Plan at Olowalu, Maui, Hawaii

Dear Mr. Frampton:

Your letter dated December 28, 2011 states that the numerous Subdivision Land Entitlement Violations filed on behalf of Olowalu Mauka with the Maui Planning Department have since been resolved by that agency.

You also state that the Olowalu Town Master Plan is proposed by Olowalu Town, LLC and Olowalu Ekolu, LLC. and you claim they are separate entities from Olowalu Elua Associates, LLC.

As the former president of the Olowalu Mauka HOA and the father of a family, I have endured the daily disruption of my life for over five years in order to force you and your developer clients into subdivision compliance. You clearly had no intention of honoring your development obligations. Your letter once again misrepresents the reality that our homeowners and my family continue to face in our non compliant Subdivision.

As a developer and land planner on Maui, your firm is well aware that the County of Maui Department of Planning has no final inspections for SMA permits. The administration for the Coastal Zone Management Environmental Program relies solely on developer's and their consultant's integrity and on citizen's complaints for the monitoring of developer compliance with issued permits. In the case with Olowalu Mauka, the SMA Major Permit and conditions were unfulfilled by the developer and the permit expired in 2005. Despite the fact the developer violated their land entitlement conditions without public notice, the developer continued to market and sell properties to the general public which raises multiple issues that only further civil remedies will resolve.

In accordance with the State of Hawaii Uniform Land Sales Act the developer was required to register their subdivision with the State of Hawaii. This public registration is intended to protect buyers as it insures that the developer provides full disclosure of all relevant conditions, restrictions, and obligations related to the subdivision. The State of Hawaii has confirmed in writing that the Olowalu Mauka developers did not register the subdivision and are in violation of the Uniform Land Sales Act.

Had the developer followed the State Laws and registered the subdivision with full disclosures of the specific conditions, restrictions, and obligations outlined in the consultant studies and mandated by government agencies there would have been notice to the general public prior to recordation of any sales contracts. In accordance with state law, the remedy for this violation could include rescission of sales contracts. Personally, I would have never entered into a purchase contract had I known the truth related to this non compliant subdivision.

There is also a strong legal argument that in accordance with Title 18 of the Maui County Code that the underlying subdivision map expired when the conditions of approval were left unfulfilled prior to the specific dates set forth in the original subdivision approvals. This also raises the question of vesting and clear land title.

As we now know, when the subdivision map was recorded there was a written condition by the State Department of Transportation that the subdivision was to remain unoccupied until there was full compliance with the issued permits. Knowingly and intentionally the developers and their agents solicited innocent buyers and recorded the sale of properties in the Olowalu Mauka Subdivision placing them in harms way with incomplete fire roads and unsafe ingress and egress from a major highway along with many other unfulfilled obligations.

As you are well aware there have been multiple fires in our subdivision that resulted in life threatening evacuations of our families from their homes that should never have been permitted and occupied. These original conditions of approval remain incomplete as well as many other conditions and unfulfilled obligations.

During this entire exhausting process when this information was exposed you and your consulting firm partner Dave Ward and the Olowalu Mauka developer chose to continue to manipulate and deceive our homeowners and government agencies rather than simply fulfill your developer obligations in our subdivision. At the very same time that my family and our HOA was seeking compliance for these unfulfilled obligations you and the developer were seeking community support for your next development venture Olowalu Town.

In response to your unwillingness to bring our subdivision into compliance a complaint was filed with the County of Maui Planning Department. Ultimately, as a harmed homeowner, I was advised to file a lawsuit to force you back in the direction of compliance of your ethical and developer obligations. As a result of this lawsuit, the County issued a letter on December 16, 2010 which you refer to as **Exhibit A** agreeing with my position that the developer had knowingly and intentionally violated their land entitlement conditions.

Consequently, you were required to go back to the Maui County Planning Commission to start over and seek new SMA permits. Rather than simply completing the original underlying subdivision conditions and engineering roadway and drainage designs in accordance with your approvals which we based our purchases on, you shifted the

multiple violations into an opportunity to amend and eliminate your prior obligations and agreements. You fooled the Maui County Planning Commission into believing there was a verbal agreement between Olowalu Elua Associates and the Maui County Department of Transportation for an occupancy phasing plan for our subdivision.

There is nothing in the Maui County Code or for that matter any other government approval process that allows for undisclosed retroactive verbal agreements between developers and government agencies at the expense and safety of unknowing purchasers.

This decision completely contradicted the prior written opinion of the State of Hawaii Director of Transportation Brennen Morioka who stated "that the subdivision was not to be occupied until the permit conditions were met unless there was a phasing plan of which there was none on record." He also stated that the County of Maui was responsible for the enforcement of the subdivision permit conditions.

Because of the disjointed communications between the Department of Public Works which issues building permits and the Department of Planning, building permits were issued to unaware purchasers in Olowalu Mauka in direct violation of the written agency conditions of approval for the underlying subdivision.

All of these further manipulations of government agencies orchestrated by your planning firm, the developer, their, and their agents took place after the sale of the entire subdivision, the formation of our homeowner's association, and after occupancies within the Olowalu Mauka development. By circumventing the vested homeowner's rights you took it upon yourselves to amend the engineering subdivision design to our development without the approval or authority of our board.

Additionally, the 2372 Lot Line Consolidation and Resubdivision Ordinance that the subdivision was developed under was intended to preserve agriculture. The developer's attorney Tom Welch testified years ago at a County Council meeting that the proposed 2372 Ordinance would not result in any quote "development activities".

Subsequently, and without full disclosure, attorney Tom Welch self amended our homeowner's bylaws to allow for further division of the resulting parcels via state land use laws pertaining to condominiumization. Unknown to us at the time is the fact this action violated the County of Maui Ordinance 2372 which the Olowalu Mauka subdivision was approved under with specific language and limitations for further land division in our subdivision.

While you may publicly claim Olowalu Town, LLC. and Olowalu Ekolu LLC are separate entities from Olowalu Elua Associates, the principals involved in the companies are the same and in fact share the same office location and employ the same lawyers, agents and consultants. The only separation is the name on your letterhead.

You are a partner in Olowalu Town LLC., along with the principals who were involved in developing Olowalu Mauka. Despite your partner Dave Ward's statement in a public

hearing that he had nothing to do with Olowalu Mauka or the highway improvements for our subdivision it has since been documented and verified by the Department of Transportation that he was very involved in the promises made to that agency as a planner for the Olowalu Mauka developer.

Before you move on with your next development venture, you must immediately address the deficient deceptive approvals you have recently received and the documented financial impacts on my family for being forced to be your personal watchdog.

You have knowingly and intentionally manipulated the State Department of Transportation, State Real Property and Disclosure Act, and the State Real Property Division Laws as well as many County agencies at the personal expense, safety and well being of my family and other homeowners. If you continue down this manipulative and deceptive path you will once again leave me and others no choice but to seek civil remedies to reconcile the consequences of your actions.

In closing, it is imperative that the State Land Use Commission understands how all of your developer manipulations of Olowalu Mauka tie together. The underlying land areas that created the Olowalu Mauka subdivision are once again being altered and incorporated into the application for Olowalu Town that is currently under review.

It is my hope that the Land Use Commission will use the information provided in this correspondence to initiate an investigation that will address the multiple violations and manipulation of State and County agencies that have harmed my family and have created a nightmare of real property disclosures and title issues.

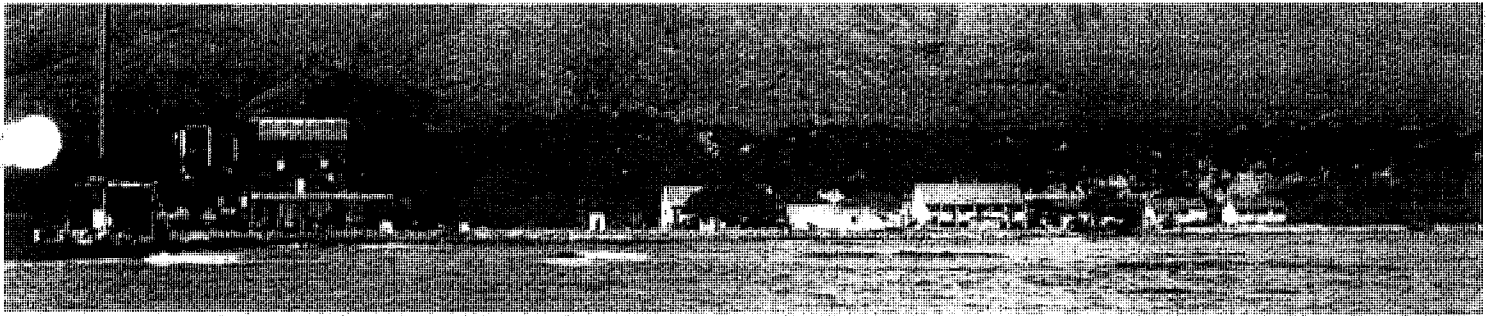
Through this correspondence I am hereby requesting the State Land Use Commission deny your application for Olowalu Town.

Sincerely,



Randy D. Ragon
Olowalu Mauka Lot 6 Homeowner

cc. Orlando "Dan" Davidson, Executive Director, Land Use Commission
Michael Munikiyo, Munekiyo & Hiraga, Inc.
William Spence, Maui Planning Director
Maui County Council Members



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

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

Tel: 808 249.2930
Fax: 808 249.2333
Email: talkstory@olowalu.net
Website: olowalu.net

Photo: Olowalu Sugar Mill
and Oceanside Camp,
Hawaii State Archives.



Olowalu Talk Story

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.



Olowalu Talk Story

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



Olowalu Talk Story

Mr. Orlando Davidson
LUC Docket No. A10-786
March 2, 2012
Page 4

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)

ATTACHMENT NO. 1

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
300 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,)	
vs.	)	STIPULATION FOR LEAVE TO
	)	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

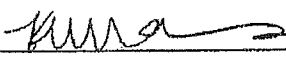
IT IS HEREBY STIPULATED by and between Plaintiff RANDY RAGON and Defendant COUNTY OF MAUI, through their respective counsel, that Plaintiff shall be permitted to file a First Amended Complaint in the form attached hereto as Exhibit "1," pursuant to Rule 15 of the Hawai'i Rules of Civil Procedure.

RECEIVED
JAN 14 2011

N. YOTSUYA

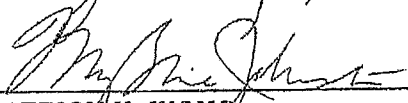
The First Amended Complaint deletes Defendant County of Maui as a party, and adds as Defendants Olowalu Elua Associates, LLC, a Hawai'i limited liability company, and Frampton & Ward, LLC, a Hawai'i limited liability company. The First Amended Complaint also includes a number of other changes which are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

ATTACHMENT NO. 2

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

FILED
2011 MAR 18 AM 11:22

J. KAYE, JR.
CLERK OF COURT
STATE OF HAWAII

Attorney for Plaintiff
RANDY RAGON
59424

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

RANDY RAGON,	)	CIVIL NO. 10-1-0610(3)
	)	(Contract)
Plaintiff,)	
	)	STIPULATION FOR PARTIAL
vs.	)	DISMISSAL WITHOUT
	)	PREJUDICE OF ALL CLAIMS
OLOWALU ELUA ASSOCIATES, LLC, a	)	AGAINST DEFENDANT
Hawai'i limited liability company;	)	FRAMPTON & WARD, LLC
FRAMPTON & WARD, LLC, a Hawai'i)	
limited liability company; JOHN DOES)	
1-20; JANE DOES 1-20; DOE)	
PARTNERSHIPS 1-20; DOE	)	No Trial Has Been Date Set
CORPORATIONS 1-20; DOE ENTITIES)	
1-20 and DOE GOVERNMENTAL)	
AGENCIES 1-20,)	
)	
Defendants.)	

**STIPULATION FOR PARTIAL DISMISSAL WITHOUT PREJUDICE
OF ALL CLAIMS AGAINST DEFENDANT FRAMPTON & WARD, LLC**

IT IS HEREBY STIPULATED, by and between Plaintiff RANDY RAGON
("Plaintiff") and Defendant FRAMPTON & WARD, LLC, through their respective
undersigned counsel, that all claims asserted by Plaintiff against Defendant
FRAMPTON & WARD, LLC in the above-entitled matter are hereby dismissed

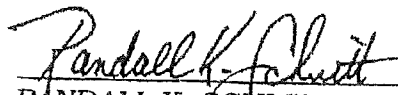
without prejudice pursuant to Rule 41(a)(1) of the Hawai'i Rules of Civil Procedure.

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

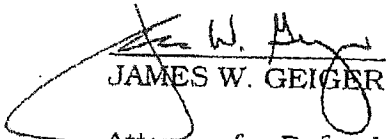
DATED: Honolulu, Hawai'i, _____.



RANDALL K. SCHMITT
Attorney for Plaintiff

MAR 15 2011

DATED: Kahului, Hawai'i, _____.



JAMES W. GEIGER

Attorney for Defendants
FRAMPTON & WARD, LLC and
LOWALU 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

FILED

2011 AUG 23 AM 8:12

Handwritten signature/initials

McCORRISTON MILLER MUKAI MacKINNON LLP

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

D. MORIOKA, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

Attorney for Plaintiff
RANDY RAGON

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

RANDY RAGON,	)	CIVIL NO. 10-1-0610 (3)
	)	(Contract)
Plaintiff,)	
	)	STIPULATION FOR DISMISSAL OF
vs.	)	ALL CLAIMS AND ALL PARTIES
	)	WITH PREJUDICE
LOWALU ELUA ASSOCIATES, LLC, a)	
Hawai'i limited liability company;)	
FRAMPTON & WARD, LLC, a Hawai'i	)	NO TRIAL DATE SET
limited liability company; 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,)	
Defendants.)	

**STIPULATION FOR DISMISSAL WITH PREJUDICE
OF ALL CLAIMS AND ALL PARTIES**

IT IS HEREBY STIPULATED by and among all of the parties who have appeared and remain herein that, pursuant to Rule 41(a)(1)(B) of the Hawai'i Rules of Civil Procedure, this action is hereby dismissed with prejudice as to all remaining claims and all parties.

I hereby certify that this document is a true and correct copy of the original.

Handwritten signature
Clerk, Second Circuit Court, State of Hawaii

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

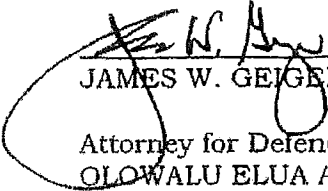
RANDALL K. SCHMITT

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
OLOWALU 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**

ATTACHMENT NO. 4

This is a copy of Bureau of Conveyances
Document No. 2007-204922, 2007-204922 and/or
Land Court Document No. _____
affecting Certificate of Title No. _____
recorded on 12-5-07 at 8:01 o'clock a.m.
TITLE GUARANTY OF HAWAII, INCORPORATED

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (☒) Pickup () to:

MANCINI, WELCH & GEIGER LLP (joint)
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"

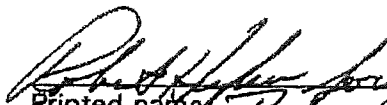
shall not be deemed to be a separate "Property" or "Lot". For example, if two condominium units are established on an individual Lot each of said units shall have one-half of the vote and one-half of the common expense share which was originally allocated to said Lot as a whole. The owner of each condominium 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 Aekaki

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

ELLEN B. ERNISSE
Printed name: ELLEN B. ERNISSE

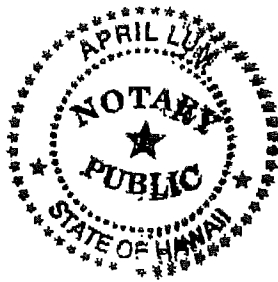

Printed name: RANDY LAGON
Trustee aforesaid


Printed name: _____

Printed name: _____

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

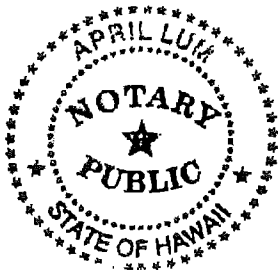
On this 19 day of NOVEMBER, 2007, before me personally appeared DEBRA ARAKAKI, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having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

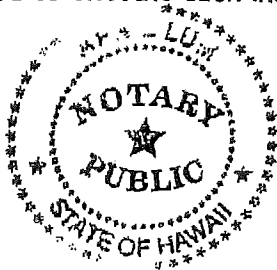
On this 19 day of NOVEMBER, 2007, before me personally appeared ROBERT HUGHES, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having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

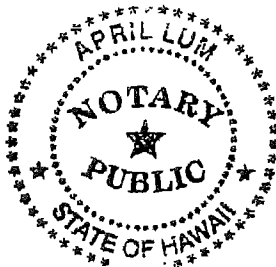
On this 19 day of NOVEMBER, 2007, before me personally appeared ELLEN B. ERNISSE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having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



April Lum
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.



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

Consent of Declarant

Olowalu Elua Associates LLC, of 33 Lono Avenue, Suite 450, Kahului, Maui, Hawaii 96732, the "Declarant" under the Olowalu Mauka Declaration of Covenants, Conditions and Restrictions, hereby consents to the foregoing Amendment.

Dated November 20, 2007

Olowalu Elua Associates LLC

By: Olowalu Land Company, LLC,
Its: Managing Member,

Peter K. Martin
By: Peter K. Martin
Its: Managing Member

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 20th day of November, 2007, before me personally appeared Peter K. Martin, 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.

L.S.

Laura R.
Notary Public, State of Hawaii
Printed Name: Laura Gina
My Commission Expires: February 29, 2008

April 19, 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 APR 23 A 8:37

Dear Mr. Davidson,

This letter is in response to a March 2, 2012 letter sent to you by William Frampton. In that letter Mr. Frampton accuses me of using false and misleading claims and allegations as justification for the Commission (LUC) to deny their proposed Olowalu Town Master Plan as well as requesting the Commission to initiate an investigation to address my claims and allegations.

On behalf of the homeowners participating in the Intervention process I am also asking the LUC to investigate and address the continued blatant misrepresentations made by the applicant to your agency and for the LUC to take appropriate action to prevent further harm to the parties involved in the Intervention as well as the other homeowners in the proposed Olowalu Town Master Plan area.

Although I do not agree with the language in the numerical bold headings in the March 2, 2012 letter from Mr. Frampton to you because they are nothing more than another attempt to mislead government agencies, I will nonetheless use his headings to further illustrate to the LUC how deceptive this group can be.

1. F&W did not plan or develop Olowalu Mauka Subdivision- in my January 24, 2012 letter to Mr. Frampton that he refers to I did not state that F&W planned or developed the Olowalu Mauka Subdivision. References were made regarding the relationship between the developer and Dave Ward and Bill Frampton where I stated that all parties chose to manipulate and deceive our homeowners and government agencies rather than fulfill their obligations in our subdivision.

By F&W's own admission they are partners with the developer in Olowalu Town. Where Mr. Frampton is misleading you involves the participation by Dave Ward and himself in the Olowalu Mauka Subdivision. As developer representatives and planners they acted as the public face of the developer in many aspects of the developer's non fulfillment of the SMA permit conditions and particularly in the non fulfillment of the developer's obligations of the highway improvements which are still not completed over 12 years after the original SMA permit was granted.

This is not surprising because one of the key issues regarding the Olowalu Mauka Subdivision and the proposed Olowalu Town Plan is the relocation of the original approved access to the Olowalu Mauka Subdivision as well as the proposed location of a new four lane highway that heads mauka of the existing highway toward the subdivision at approximately the same location as the original approved Olowalu Mauka ingress and egress location.

In a letter dated December 16, 2010 from the Maui Planning Department to developer Peter Martin (exhibit A in the December 28, 2012 letter from Frampton to me) the County made a determination that the developer had complied with the violations of the permit conditions that I had noticed except for the completion of the highway improvements. In that letter they also noted that a new SMA application for the relocation of the original approved entryway to a new location (driveway "D") had been received by their department.

Their approval was based on a verbal agreement between the developer and the Maui DOT office that apparently established a phasing plan for the subdivision. They did not note, however, that the decision circumvented the State of Hawaii Department of Transportation Director's position that there should have been no occupancy in the subdivision until the SMA permit conditions were met unless a phasing plan was established of which they had none on record. Mr. Morioka also stated that it was the County of Maui's responsibility to enforce the permit conditions. **(See Exhibit A- March 24, 2010 letter from director Morioka to me).**

To this day, Director Morioka has not approved the ingress and egress for the Olowalu Mauka subdivision and has not approved a phasing plan. Both Dave Ward and developer Peter Martin have been aware of the State DOT's position since 2003. They were also well aware that they could not occupy the subdivision until the improvements were completed but they ignored the director and sold and occupied anyway. **(See Exhibit B- June 26, 2003 letter from developer Peter Martin to Maui DOT engineer Ferdinand Cajigal).**

While Mr. Frampton's statement that F&W was not established until 2002 and they were not involved in the land use and entitlement approvals for Olowalu Mauka and they have no ownership interest in OEA is true it is grossly misleading for Mr. Frampton to say that F&W does not have any responsibilities related to the development of the Olowalu Mauka Subdivision.

In fact, they have been participating with the developer to mislead government officials, the public and the homeowners in the Olowalu area for years as they are the leaders and co- beneficiaries of any approvals for Olowalu Town. **(See exhibit C-documents 1-9) for a detailed analysis of F&W's involvement with the Olowalu Mauka Subdivision).**

2. Mr. Ragon files lawsuit against County for failure to enforce all permits; then Mr. Ragon dismisses the County from lawsuit- True, I filed suit against the County when

they stated it was not their responsibility to enforce the permit conditions against the developer after they determined that the developer was noncompliant on 9 of the 36 permit conditions. Shortly after I filed the suit the County forced the developer to comply with the unfulfilled conditions and made their December 16, 2010 decision stating that the subdivision was now compliant except for the highway improvements.

In that decision the County acknowledged that the developer was not compliant and that the original SMA Permit had expired in 2005. Their objection to my claim was based on whether a private citizen had a right to bring a claim against a government agency for not enforcing SMA permit conditions.

While I did not agree with the decision and strongly felt that the County of Maui did not enforce against the developer according to the law and that they circumvented the authority of the State of Hawaii DOT I decided to release the County without prejudice knowing that I could re-establish the claim against the County in the future if I chose to do so.

I made the decision to release the County knowing that I had accomplished part of the goal which was to get the County to act against the developer and to issue a decision which at least on paper made the subdivision compliant so that homeowners in the subdivision who wanted to sell could do so with disclosure of the County's decision. Prior to the County's decision the subdivision was noncompliant making it virtually impossible for owners to sell.

My decision to release the County was also a strategic decision as I realized that there were other avenues that other owners and I could take to recover our damages and force the County to follow the laws.

3. Mr. Ragon files lawsuit against F&W; then dismisses F&W from lawsuit- true, I amended my complaint against the County by naming F&W and OEA as the new defendants using the same or similar claims. I don't agree with Mr. Frampton's assessment that the County rejected my claim or that my lawsuit failed because as pointed out earlier in this correspondence, the County did take action against the developer after I filed the claim.

Given the history of the County's refusal to enforce against developers, the subsequent action and decision by the County after I filed the claim was a milestone accomplishment for a citizen in the County of Maui.

I also don't agree with Mr. Frampton's assessment of the claims filed in the lawsuit as he states them in his letter to you. Rather than respond to them, I believe that the exhibits I attached to this correspondence will provide clear evidence of F&W's involvement in the Olowalu Mauka Subdivision as well as their involvement in the marketing and propaganda campaign for the approval of Olowalu Town.

F&W was dismissed not because of being confronted with the facts and their motion to dismiss, as stated by Mr. Frampton. They were dismissed by way of Partial Dismissal Without Prejudice which also allows me to re-establish a claim against them. Once again, this was a strategic move based on other options available to other homeowners and myself which includes but is not limited to filing claims in other jurisdictions beside the Maui District Court.

4. Mr. Ragon files lawsuit against OEA; then Mr. Ragon dismisses OEA from lawsuit- Once again Mr. Frampton's assessment of what transpired in that suit is not factual and is way off base. His statement that I refused to provide documents is completely untrue. My attorney testified that he gave OEA's attorney Jim Geiger over 1,000 pages of documents. Mr. Frampton's attorney in my claim was Jim Geiger of the law firm of Mancini, Welch and Geiger. It should be noted that Tom Welch is the developer's attorney who created the Olowalu Mauka Subdivision and is the mastermind behind the developer's other subdivisions in the West Maui Mountains.

All of these subdivisions were created under Ag Ordinance 2372, which is a lot line readjustment. The purpose of the ordinance was to help local farmers subdivide their ag properties without going through the normal subdivision process. The ordinance was intended to preserve agriculture.

In a County Council meeting in 1994 attorney Tom Welch testified that this ordinance would never be used by his developer clients to create subdivisions. Despite this testimony this is exactly what Tom Welch did to create the Olowalu Mauka Subdivision as well other subdivisions in the West Maui Mountains for his developer clients whose principals are partners in OEA and with F&W in Olowalu Town. **(See Exhibit D- Ag District and Ordinance 2372).**

My decision to dismiss OEA was once again a strategic decision knowing that claims would and have been filed by other owners in jurisdictions other than the Maui District Court where historically decisions have favored developers over citizens. The Superferry case was a prime example of this as the Maui District Court was overruled by the Hawaii Supreme Court on a case brought by citizens against government agencies not enforcing or following the rules.

5. Mr. Ragon claims the developer violated the Uniform Land Sales Practice Act- Mr. Frampton's statement that Section 484-3(b)(6) states that the sale of less than twenty (20) lots are exempt from the Act is true. What he doesn't mention is that the Final Subdivision Map approved for the Olowalu Mauka Subdivision is 38 lots and is therefore not exempt. Even if his assertion that OEA has sold only 14 lots was valid, OEA is still in violation according to Lorie Beth Wong with the State Subdivision registration office who stated that the developer must still apply for an exemption and that she has never received any application from the OEA development group.

The 38 lots approved in the Final Subdivision Approval are in the subject land area that the LUC is being asked to approve for a boundary amendment from ag to

urban and rural. The 14 lots in the Olowalu Mauka subdivision is part of the 38 lots that the developer admitted in the EIS study that they do not own. The subdivision has never been completed. (see Exhibit E- April 30, 2002 letter from Maui Public Works director David Goode to Project Manager Robert Horcajo and refer to Figure 4 and 7 maps in the EIS submitted by the developer).

6. Mr. Ragon and other lot owners; not OEA, amended the subdivision declaration to allow Condominium Property Regimes- It is true that the owners of the subdivision voted and agreed to make the change to amend the CC&R's to allow for condominiumization of lots within the subdivision. It is also true that I was one of ten individuals who voted in favor of amending the CC&R's. It is also a fact that the developer had to approve the amendment and did so through their attorney Tom Welch.

At the time that the other owners and I approved the amendment we were unaware of several material facts that were not disclosed to us by the developer or their attorney Tom Welch. Because we had witnessed other homeowners cpr in developer ag subdivisions in the West Maui Mountains we asked the developer if we could do the same in Olowalu Mauka. We were told we could if 10 of the 14 owners voted favorably.

The most important fact that was never disclosed to us was that the Olowalu Mauka subdivision was illegal from the beginning. As previously stated, the subdivision was not properly registered so we had no disclosure information. We were also unaware that it should never have been occupied until the SMA permit conditions had been met, which they had not.

We also were not informed by the developer or their attorneys that the SMA permit had expired in 2005 and that the developer had not reapplied for a new permit.

Most important, we were unaware that condominiumization in a 2372 ag subdivision was never approved by any legislative act. In reality, our subdivision was nothing more than a manipulation of the subdivision laws by the developer's attorney that was approved by the County Director's who acted outside of their authority.

A legislative opinion was never given by the County Council who approved the 2372 ag Ordinance to begin with. Had this occurred, it is very likely that condominiumization would never have been allowed or that the subdivision would never have been allowed because it violated the purpose and the intent of the 2372 ordinance which was to preserve agriculture, not to create a vehicle for developer's to build subdivisions by circumventing the subdivision laws.

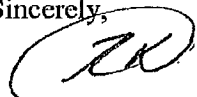
The key questions that the LUC must address are as follows:

- 1. Can a developer rezone land that is a portion of an ag subdivision that has not been subdivided out of the Final Subdivision Map via the Title 18 Subdivision Process?**
- 2. Can a developer rezone a land area on a ag subdivision map where the developer has never completed the conditions of the underlying application where the SMA permit has expired?**
- 3. Can a developer rezone land without the approval of the owners when the underlying map and roadway lots are what were sold to the owners?**
- 4. Can 2372 ag ordinance lots be further divided when County law does not allow further division?**
- 5. Can a developer rezone land in a subdivision that was never registered with the state and is in violation of the Uniform Land Sales Act?**
- 6. Can the developer rezone land that is a portion of a subdivision where the State DOT director has never approved the ingress and egress to the state highway and has never approved occupancy in a subdivision that is part of the developer's original map?**

In conclusion, I trust that this letter helps clarify the issues addressed in the March 2, 2012 letter to you from William Frampton as well as addresses the issues and concerns of the residents in Olowalu who filed the Notice of Intent to Intervene. We also trust that it provides further evidence of the ongoing false and misleading claims by the applicants of the Olowalu Town Master Plan. In light of the fact that the applicant is flat out lying to the LUC we ask that you immediately deny their application.

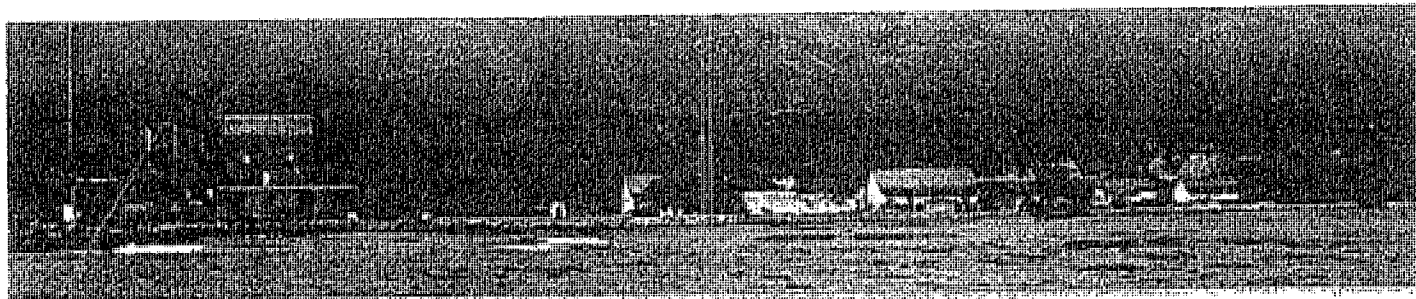
Thank you for your consideration in this matter.

Sincerely,



Randy D. Ragon
Olowalu Mauka Lot 6

cc. Frampton and Ward



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

LAND USE COMMISSION
STATE OF HAWAII
2012 APR 23 A 8 43

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

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
673 Waike Street
Suite 101
Honolulu, HI 96793
tel: 808 249.2930
fax: 808 249.2333
dlk@oia.org
www.olowalu.net

Olowalu Town LLC
673 Waike Street
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Honolulu, HI 96793

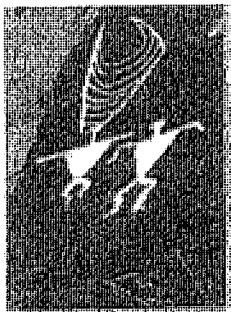


Olowalu Talk Story

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.



Olowalu Talk Story

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



Mr. Orlando Davidson
LUC Docket No. A10-786
March 2, 2012
Page 4

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

Olowalu Talk Story

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)

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

BRENNON T. MORIOKA
DIRECTOR

Deputy Directors
MICHAEL D. FORMBY
FRANCIS PAUL KEENO
BRIAN H. SEKIGUCHI
JIRO SUMADA

IN REPLY REFER TO:

HWY-PS
2.4811

March 24, 2010

Mr. Randy Ragon
President
Olowalu Mauka Homeowners Association
713-A Front Street
Lahaina, Hawaii 96761

Dear Mr. Ragon:

Subject: Olowalu Mauka Subdivision Roadway Improvements
Request for Information
Maui, Lahaina, TMK: (2) 4-8-3:10, 50-70, 73-82 and 84; 4-8-4: 11-16

LAND USE COMMISSION
STATE OF HAWAII
2012 APR 23 A 8:43

We apologize for the delay in responding to your request for information regarding the highway improvements for the Olowalu Mauka Subdivision and understand your concerns with the development.

The developer had been required to complete all necessary roadway improvements prior to occupancy under the conditions set forth by the Special Management Area Permit (SMA) approval letter dated September 19, 2000 from the Maui County Department of Planning which defines under condition No. 32 that the "Construction of the improvements shall be completed prior to occupancy of the agricultural lots unless a phasing plan for the improvements is reviewed and approved by the Department of Transportation." Per our records, no such approval of a phasing plan has been granted to the developer. Do keep in mind that the State Department of Transportation is not responsible for enforcing any conditions set forth by the County. The responsibility of the conditions imposed upon the developer and established within the SMA approval lies with Maui County.

We understand that you were provided access to the files in the Highways Division, Maui District Office and were given copies of various documents that you needed. It is our understanding from the attachments in your request that you already have the SMA approval, Environmental Assessment (EA), and Traffic Impact Analysis Report (TIAR) for the subject

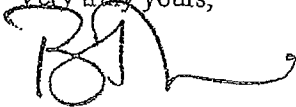
EXHIBIT A

subdivision. The files within our Highways Division branch offices include the aforementioned documents and several departmental correspondence letters from various years. We will be glad to offer you copies of the correspondence we have for a fee of \$0.25 per page as described in Part 2, Chapter 4 Government Records, Processing Requests to Inspect or Copy, of the Department's Service Manual.

Additionally, we have been consulted on the relocation of Driveway "D" for the subject subdivision. For your information, a supplemental EA is not required, as determined by the accepting agency, Department of Land and Natural Resources (DLNR). A copy of DLNR's letter dated January 21, 2010 to our Department is attached. Also, it is our understanding that the relocation of the driveway will trigger a SMA.

If you have any questions, please contact Ken Tatsuguchi, Head Planning Engineer, Highways Division, at (808) 587-1830.

Very truly yours,

A handwritten signature in black ink, appearing to read 'BM', with a long horizontal flourish extending to the right.

BRENNON T. MORIOKA, Ph.D., P.E.
Director of Transportation

Attachment

WEST MAUI LAND COMPANY, INC.

LAUNIPUPOKO ■ OLOWALU ■ KAUAAULA ■ KAHOMAKU ■ KILA

33 Lono Ave., Suite 450
Kahului, Maui, Hawaii 96732

Phone: (808) 877-4202
Fax: (808) 877-9409

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LAND USE COMMISSION
STATE OF HAWAII
2012 APR 23 A 8:53

June 26, 2003

Mr. Ferdinand Cajigal
State Department of Transportation, Maui Division
650 Palapala Drive
Kahului, HI 96732

Re: Follow-up on May 22, 2003 meeting regarding DOT sign off on three Building Permits to construct farm dwellings on existing lots and construction plan approval for Olowalu Mauka Subdivision.

Dear Mr. Cajigal:

On May 22, 2003, Kirk Tanaka, David Ward, Heidi Bigelow and I met with you to discuss the Proposed Highway Access for Olowalu Mauka. building permits being delayed until the County obtains an approval letter from the State DOT and construction plan approval for 14 lot Olowalu Mauka Subdivision. In the meeting, it felt as though we found solutions to the concerns at hand that could be fairly efficiently resolved. More than a month later, we have not made much progress. I understand you are busy, but we are anxious to resolve these issues and move forward. To my knowledge, our consultants have provided you with all the information requested in a timely manner.

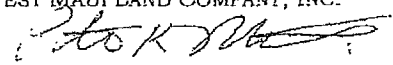
Of the items discussed, my highest priority is getting the building permits processed for the three Olowalu Mauka lot owners who are unable to obtain building permits until an 'Approval letter from the State Department of Transportation for access onto a State Highway' is received. (Copies of the Department of Public Works comments are attached.) In our meeting, it was agreed that DOT would write approval letters.

To review, the Olowalu Mauka lots, which have been in existence since the early 1900s, were consolidated and reconfigured under County Ordinance No. 2372 in April 2002. This process is also called a lot line adjustment subdivision. Each lot has the same legal rights as before the consolidation/resubdivision. There were no additional lots created in the Olowalu Mauka Subdivision. As these lot owners hold legal title and pay real property taxes, they are allowed to build houses. Before the re-configuration and still today, lot owners can access the highway at any of the numerous permitted accesses from the Olowalu Dump along our property to the Ukumehame Access. Perhaps until the access across from Camp Pecussa is approved, we could direct the lot owners to use our cane road to access at the Olowalu dumpsite for safety reasons. Please let us know how we get this resolved quickly and efficiently.

My second priority is to obtain construction plan approval from the State DOT for roadway and related infrastructure for the fourteen Olowalu Mauka Subdivision lots. In the May 22, 2003 meeting you questioned why the plans were even sent to your office since the improvements do not touch a State Highway. In fact, the improvements are approximately 1/2 mile away. We agreed, but acknowledge that once the County sent them to DOT and required approval, we must get a response. My understanding was that DOT would notify Public Works that they would not be reviewing the construction plans other than for drainage since the improvements were not in the vicinity of the State Highways. We have received all approvals from all other agencies, and are anxious to receive approval from DOT.

I will call to set up a meeting. The lot owners are frustrated. Please call me at 877-4202 or 283-1273 if you would like to discuss further.

Sincerely,
WEST MAUI LAND COMPANY, INC.


Peter Martin

Enclosures

EXHIBIT B

ME 02-01

DOT 22
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Frampton & Ward's Involvement in the Olowalu Mauka Subdivision

Dave Ward publically testified that he and Bill Frampton had nothing to do with the development of the Olowalu Mauka Subdivision. This assertion was made in order to convince the GPAC that the serious problems that have arisen in the development of the subdivisions in Olowalu by Olowalu Elua Associates (OEA) will not reoccur. However, the statements made by Mr. Ward at the GPAC hearing that his company was not involved in the development of the Olowalu Mauka Subdivision are false. Frampton & Ward were intimately involved in the project and closely connected to OEA. The following is a mere sampling of documents evidencing their ties to the project:

1. **Final Compliance Report for the Olowalu Mauka Lands (Redacted).**
A letter dated September 19, 2000 on behalf of the Planning Commission to OEA is contained in the report wherein SMA approval was provided subject to 36 conditions. Special note should be taken as to conditions 2, 4, 12, 14, 19, and 32. Of particular importance, all required infrastructural improvements including traffic related improvements were to be constructed concurrently with the development and be completed prior to final subdivision approval or be bonded. (Condition 12). Further, roadway improvements to the highway, including left storage lanes, acceleration and deceleration lanes, were to be provided and constructed prior to occupancy of the lots unless a phasing plan for the improvements was approved by the Department of Transportation. (Condition 32.) OEA's "Response to the SMA Use Permit Conditions-Mauka Report" was included in Final Compliance Report and represented that all infrastructure improvements would be constructed concurrently with the development or bonded (Item no. 12) and that highway improvement plans had been reviewed and approved by the DOT and that such improvements would be constructed prior to lot occupancy unless a phasing plan was approved (Item 32.)
2. **Letter dated February 11, 2003 to the DOT** stating that David Ward and Bill Frampton had met with Mr. Cajigal of the local DOT related to highway improvements for the Olowalu Mauka Subdivision.
3. **Fax letter dated February 19, 2003 to the DOT** related to the highway improvements in preparation for a meeting with the DOT, which was to take place on February 24, 2003 with David Ward.
4. **Letter dated April 16, 2003 from Frampton & Ward to the Department of Planning** in response to the Department's concerns related to construction plans for the Olowalu Mauka Subdivision. Of particular importance, under item #4 related to "SMA Compliance," Mr. Ward reverses the prior position of OEA stated in its final compliance report and contends that the SMA permit requirement that the subdivision improvements be bonded only applied to the Makai subdivision. (See g,

LAND USE COMMISSION
STATE OF HAWAII
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EXHIBIT "C"

Condition #12.) This is not true, especially since many of the infrastructure improvements such as the highway intersections are in or impact the SMA. Of even greater importance, Mr. Ward represents to the Planning Department that OEA was then processing approval from the DOT to relocate the highway improvements. (See m, condition #32.)

5. **Letter dated May 15, 2003 from Frampton & Ward to the Department of Planning** in follow up to a discussion that took place between Mr. Ward and the department relevant to SMA compliance for the subdivision. It discussed construction related structures, landscaping, the irrigation system, and roadway improvements within the subdivision. Of particular importance, see item #4 wherein Mr. Ward references that Olowalu Mauka Construction Plan approval was contingent upon State DOT approval or resolution of the relocation of the mauka highway access.
6. **Memo from Frampton & Ward dated May 22, 2003 to the developer's engineers** outlining a meeting which took place with representative of the DOT, OEA and Dave Ward related to the highway access for the Mauka subdivision.
7. **Emails dating June 3, 2003 to and from David Ward to the Planning Department** related to approval of the Construction Plans for the Subdivision, including the approval of landscaping plans and the highway improvements.
8. **Undated letter from David Ward to the DOT** urging the DOT to sign a letter which had been drafted for its use providing an "exemption" from an Environmental Assessment for the proposed highway improvements.
9. **Letter dated September 19, 2003 from the DOT** to David Ward stating that the highway improvements for the subdivision did not qualify for the EA exemption. The DOT declined to sign the letter Mr. Ward had previously forwarded for it to place on its letterhead and sign.

The above referenced documents clearly show that Frampton and Ward were heavily involved in the development of the Olowalu Mauka Subdivision, contrary to their representations to the GPAC and others. It should be noted, many of the conditions of both the Special Management Area Permit (SMA) and the Conservation District Use Application (CDUA) related to the subdivision have to this date not been met. The deadlines for completion of the project have long expired, yet the subdivision and its infrastructure improvements have not been fully constructed. Many of the most serious developer defaults related to the subdivision can be directly linked to the activities of Frampton & Ward in their representation of OEA. The highway improvements were never made, no amendment to the EA or SMA permit was ever filed and the developer at

one point met with homeowners and told them it would not be installing the mandated intersection at all. No bond is on file for the improvements and the DOT was completely unaware that the highway improvements had not been installed until homeowners complained in the fall of 2008. In response to those complaints, the local representative contacted Frampton & Ward and accused them of "burning him." Most recently, OEA has admitted it has done nothing for years to construct the intersection with the only excuse being that one of the principal members, Peter Martin, didn't feel it, "was any big deal." Obviously, should Olowalu Town be included in the 2030 Plan, impacts from that project will be much greater and widespread. The type of attitude exemplified by the developers involved does not give much hope that such impacts will be appropriately mitigated should development be allowed.

Frampton & Ward have attempted at all times to distance themselves from Olowalu Elua Associates in order to get Olowalu Town approved for the 2030 General Plan. However, Olowalu Town, LLC is a business entity formed by OEA and Frampton & Ward for the sole purpose of promoting and developing Olowalu Town. The venture may be launched under a different name, but the parties involved are the same. The main capital contributor to the project is OEA and it is unmistakable that they have influenced and will continue to influence the development.

Exhibit 1

FINAL COMPLIANCE REPORT
SPECIAL MANAGEMENT USE PERMIT

(SM1 990021)

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MAR 15 193:44

OLOWALU MAUKA LANDS

LAHAINA, MAUI

March 2002

Olowalu Elua Associates, Inc.
173 Ho'ohana Street, Suite 201
Kahului, Hawaii 96732
Telephone: (808) 877-4202
Fax: (808) 877-9409

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FINAL COMPLIANCE REPORT
SPECIAL MANAGEMENT USE PERMIT
(SM1 990021)

LOWALU MAUKA LANDS
LAHAINA, MAUI

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- I. Introduction
- II. Special Management Area Use Permit Approval Letter and Review Letter of Preliminary Compliance Report
- III. Response to SMA Use Permit Conditions
- IV. Individual Reports
 - A. Insurance Binder for \$1M (SMA condition #7)
 - B. *Revised* Construction Related Structures Plan (SMA condition #9)
 - B. *Revised* Greenway System Plan (SMA condition #14)
 - D. Irrigation System Plan (SMA condition #15)
 - E. *Revised* Dust and Erosion Control Plan (SMA condition #16)
 - F. Burial Preservation Plan-Mauka Lands (SMA condition #18)
 - G. Archaeological Mitigation and Preservation Plan-Mauka Lands (SMA conditions 19-21)
 - H. *Revised* Cultural Reserve Buffer Plan (SMA condition #24)
 - I. *Revised* Lighting Standards (SMA condition #33)
 - J. Unilateral Agreement (SMA conditions 16,17,21,24,25,26,27,28,30,31,33,34,35)

V. Exhibits

- A Master Subdivision Plan
- B Construction Related Structures Plan
- C Irrigation System Plan
- D Final Plat-Olowalu Mauka Subdivision (LUCA FILE No. 4.766)

INTRODUCTION

Olowalu Elua Associates, LLC applied for a Special Management Area Use Permit for the subdivision of lands at Olowalu, Lahaina, Maui. At a public hearing on September 12, 2000, the Maui Planning Commission granted approval of the SMA Use Permit, subject to thirty six (36) conditions.

Pursuant to Condition # 10 of the SMA Use Permit, a Preliminary Compliance Report dated November 29, 2000 was submitted to the Maui County Planning Department for review and approval. Based on comments from the Planning Department review, this Final Compliance Report is being submitted to the Planning Department for review and approval.

As the project is being developed in phases, namely makai (oceanside of highway) and mauka (mountainside of highway), separate Final Compliance Reports will be submitted for each phase. The Final Compliance Report for the makai lands was approved September 28, 2001. This report is for the mauka lands.

SPECIAL MANAGEMENT AREA USE PERMIT APPROVAL
LETTER AND REVIEW OF PRELIMINARY COMPLIANCE
REPORT

SEP 21 2000

JANES "KIMO" APANA
Mayor

JOHN E. MIN
Director

CLAYTON I. YOSHIDA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

September 19, 2000

Mr. Robert Horcajo
Olowalu Elua Associates, LLC
173 Ho Ohana Street, Suite 201
Kahului, Hawaii 96732

Dear Mr. Horcajo:

RE: Special Management Area (SMA) Use Permit for the Proposed
Olowalu Subdivision at TMK: 4-8-003:5, 10 (Por.), 41, 42, 43,
50 (Por.), 63 (Por.), and 78 (Por.) and 4-8-004:11, 12, 13, 14,
15, and 16 at Olowalu, Maui, Hawaii (SM1 990021)

At its regular meeting on September 12, 2000, the Maui Planning Commission (Commission) conducted a public hearing on the above-referenced application. At the meeting, the Commission clarified the record as follows:

1. Commissioner Star Medeiros who was a member of the Citizens Advisory Committee (CAC) for the West Maui Community Plan clarified the park designation and language. During the CAC's discussions on the park site at Olowalu, the reduction of 50 percent of agriculture related to the reduction of sugar cane cultivation and not to other agricultural crops that could be grown on the site. As such, the 50 percent reduction of agriculture has occurred. Based on the language, the applicant is advised that a 30-acre park should be reserved on the Camp Pecusa side of the makai lands in Olowalu.
2. Commissioner Joe Bertram III requested that the applicant work with Maui Electric Company to encourage energy efficiency in the project and use of alternative energy options such as solar panels.

The Commission, after due deliberation, voted to grant approval of the Special Management Area Use Permit, subject to the following conditions:

STANDARD CONDITIONS:

1. That construction of the proposed project shall be initiated by September 30, 2002. Initiation of construction shall be determined as construction of offsite improvements, issuance of a foundation permit and initiation of construction of the foundation, or issuance of a building permit and initiation of building construction, whichever occurs first. Failure to comply

within this two (2) year period will automatically terminate this Special Management Area Use Permit unless a time extension is requested no later than ninety (90) days prior to the expiration of said two (2) year period. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.

2. That the construction of the project shall be completed within five (5) years after the date of its initiation. Failure to complete construction of this project will automatically terminate the subject Special Management Area Use Permit. A time extension shall be requested no later than ninety (90) days prior to the completion deadline. The Planning Director shall review and approve a time-extension request but may forward said request to the Maui Planning Commission for review and approval.
3. The permit holder or any aggrieved person may appeal to the Maui Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. That final construction shall be in accordance with preliminary subdivision plans included in the submittal received on November 9, 1999.
5. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
6. That the subject Special Management Area Use Permit shall not be transferred without prior written approval in accordance with Section 12-202-17(d) of the Special Management Area Rules of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Special Management Area Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
7. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Special Management Area Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Special Management Area Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County

Mr. Robert Horcajo
September 19, 2000
Page 3

of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this permit. Proof of a policy naming County of Maui as an additional named insured shall be submitted to the Planning Department within ninety (90) calendar days from the date of transmittal of the decision and order.

8. That full compliance with all applicable governmental requirements shall be rendered.
9. That the applicant shall submit plans regarding the location of any construction-related structures such as, but not limited to trailers, sheds, equipment and storage areas and fencing to be used during the construction phase to the Maui Planning Department for review and approval.
10. That the applicant shall submit to the Planning Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Special Management Area Use Permit. A preliminary report shall be reviewed and approved by the Planning Department prior to issuance of a grading permit. A final compliance report shall be submitted thirty (30) days after the completion of the subdivision to the Planning Department for review and approval.
11. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Special Management Area Use Permit. Failure to so develop the property may result in the revocation of the permit.

PROJECT SPECIFIC CONDITIONS:

12. That the applicant shall be responsible for all required infrastructural improvements including, but not limited to water source and system improvements for both domestic and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements, and utility upgrades. Said improvements shall be constructed concurrently with the development and shall be completed prior to final subdivision approval or bonded in accordance with Title 18, Maui County Code, relating to the subdivision ordinance.

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Mr. Robert Horcajo
September 19, 2000
Page 4

13. That as represented by the applicant, an approximate 54-acre cultural reserve for historic and cultural preservation operated and managed by the Olowalu Cultural Reserve, a non-profit organization, shall be established in perpetuity to ensure preservation of historic and cultural resources, as well as to perpetuate the Hawaiian culture and continued access to Native Hawaiians to "gather", to perform religious practices, and to attend to their own kuleana. Access to the cultural reserve shall be open to the general public as a cultural reserve. Access for recreational purposes shall be as approved by the Olowalu Cultural Reserve (as amended).
14. As represented by the applicant, the roadways for the proposed subdivisions shall be constructed in substantial compliance with the proposed greenway plan identified in the application. For each phase of development, final plans for the applicable increments of the approximate sixty (60) acres of greenways shall be submitted to the Maui Planning Department for review and approval. Said greenway areas shall be regularly maintained and access to the greenways shall be open to the general public for access and recreational purposes (as amended).
15. That the applicant shall establish an irrigation system for the proposed agricultural subdivisions which addresses the supply, storage, and distribution of irrigation water to the proposed lots, and is secured in terms of permit acquisition, quality, quantity, availability, and year-round operations and maintenance. Documentation that the irrigation system has been established shall be submitted to the Maui Planning Department within ninety (90) days of construction of the subdivision.
16. That the applicant shall prepare a dust- and erosion-control plan for review and approval by the Maui Planning Department to ensure that any fallow agricultural lands do not create future adverse dust and erosion impacts on the surrounding area. Said plan shall be reviewed and approved by the appropriate State of Hawaii agencies and implemented as soon as practicable by the applicant and its assigns and successors. A copy of the approved dust- and erosion-control plan for the agricultural lands shall be submitted to the Maui Planning Department and the Department of Public Works and Waste Management for our records (as amended).
17. That potential buyers will be advised that the lots are for sale as commercial agricultural lots and of Hawaii's Right to Farm Act which prohibits conditions, covenants, and restrictions that will prevent or impede reasonable agricultural use of the lots.
18. That the Maui/Lanai Islands Burial Council shall review the mitigation proposals for all burials.

Mr. Robert Horcajo
September 19, 2000
Page 5

19. That the applicant shall submit a detailed preservation plan (scope of work) for the sites identified for preservation to the Department of Land and Natural Resources, State Historic Preservation Division (SHPD), for approval. This plan will include buffer zones, interim protection measures (as needed), and long-range preservation plans. No land alteration may occur in the vicinity of these sites until minimally the buffer zones and interim protection measures are approved and the SHPD verifies the interim protection measures are in place. No preservation activities may occur in these sites until the preservation plan is approved. The SHPD shall verify in writing to the County when the plan has been successfully executed.
20. That archaeological data recovery shall occur at the sites identified in the survey reports. The applicant shall submit an archaeological data recovery plan (scope of work) for these sites to the SHPD for approval. The SHPD shall verify in writing to the County when the plan has been successfully executed. Further, as noted, the gleayed marsh soils shall also undergo archaeological data recovery. Minimally, data recovery fieldwork must be successfully concluded (and verified in writing by SHPD) prior to land alteration in this part of the project area. The SHPD shall verify in writing to the permitting agencies when the plan has been successfully completed.
21. That archaeological monitoring of land-altering construction in the sand areas along the shore shall occur, as a contingency to identify, document, and treat any burials that might be found. A monitoring plan (scope of work) shall be submitted to and be approved by the SHPD prior to the beginning of the monitoring. This plan must specify how any burials that are found will be documented archaeologically, notification procedures, and treatment measures that will be taken. This scope should be completed before a monitoring contract is negotiated.
22. All preservation areas and buffer zones shall be clearly marked on the subdivision plans and recorded with the property documents to ensure that future owners of the lots are aware of these restrictions to the lots.
23. That as represented by the applicant, the oral history work shall be expanded to include more people of the Olowalu area, such as existing and former residents, persons who have knowledge of their ancestors living in the area, and the kupunas.
24. That adequate buffers between the cultural preserve areas and the agricultural lots shall be established to ensure that the cultural experience is not impacted by the agricultural use and structures on the adjoining lots. Mitigation measures from high boundary

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Mr. Robert Horcajo
September 19, 2000
Page 6

walls, residences, farm buildings, and operations shall be submitted to the Maui Planning Department for review and approval.

25. Unless removal is necessary for intersection improvements, to the extent practicable, the Monkey Pod trees within the subject property on both sides of Honoapiilani Highway shall be retained and consideration shall be given to extending the Monkey Pod trees as part of the cultural landscape (as amended).
26. That structures located within the floodway Flood Zone A0 and A4 shall be constructed above the flood elevation. Measures such as post and pier construction shall be considered to conform to the Flood Hazard District and to allow flood waters to continue to traverse the property (as amended).
27. That future buyers of lots shall be informed that development within flood hazard areas shall be implemented in accordance with Chapter 19.62, Maui County Code (as amended).
28. That use of soil as fill is prohibited within the Shoreline Setback Area, except for clean sand. Further, any grading or mining of a coastal dune is prohibited.
29. That a minimum shoreline setback of 150 ft. from the certified shoreline shall be established for all lots on the makai portion of the subdivision regardless of a government beach reserve fronting the subdivided lots. No structures shall encroach into the Shoreline Setback Area to ensure that future shoreline erosion and storm-wave action will not adversely affect structural development on the properties.
30. That public lateral pedestrian access along the shoreline within the Shoreline Setback Area shall be provided. Landscaping in the area within 50 ft. of the shoreline should be spaced far enough apart so as not to interfere with lateral access. Further, as represented by the applicant, mauka/makai public shoreline access from Honoapiilani Highway and public beach parking shall be provided near the Olowalu Mill site to Olowalu Landing, as well as access points to the shoreline from both ends of the makai Olowalu lands. Documentation that access, as required, has been provided shall be filed with the Departments of Public Works and Waste Management, Parks and Recreation, and Planning prior to final subdivision approval (as amended).
31. As represented by the applicant, the existing cane haul road (approximately 80 ft. wide) on the mauka side of Honoapiilani Highway shall be set aside as a reserve (Roadway Lot 39) for

future roadway expansion or relocation of Honoapiilani Highway (as amended).

32. That roadway improvements to Honoapiilani Highway, including left-turn storage lanes, acceleration and deceleration lanes, driveway connections, etc., as identified in the applicant's Traffic Impact Assessment Report (TIAR), and as required by the Department of Transportation shall be provided in conjunction with the development of the subdivision. The roadway improvements shall be reviewed and approved by the Department of Transportation. Construction of the improvements shall be completed prior to occupancy of the agricultural lots unless a phasing plan for the improvements is reviewed and approved by the Department of Transportation.
33. That the outdoor lighting plans for the subdivision shall be submitted to the Maui Planning Department for review and approval to reduce the negative impacts on seabirds, especially the dark-rumped petrel (*Pterodroma phaeopygia sandwichensis*) which is a federally endangered species. All potential owners of the lots shall be informed that appropriate measures approved by the Maui Planning Department shall be taken to reduce the negative impacts of night lights (as amended).
34. That future buyers of the lots shall be informed that there may be potential waste from the old mill site (Olowlu Mill) and other vacated agricultural industrial areas. Remedial cleanup must be conducted before any new development occurs.
35. That future buyers of the lots shall be informed of the survey monuments located within the boundaries of their lots which need to be protected from any development activities. Further, in the event the survey monuments are disturbed or destroyed during development of the subdivision or properties, it will be the responsibility of the applicant, assigns or successors to reference and replace the monuments.
36. That Condition Nos. 16, 17, 21, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, and 35 shall run with the land and shall be set forth in a unilateral agreement recorded by the applicant with the Bureau of Conveyances within sixty (60) days from the date of receipt of this decision. A copy of the recorded unilateral agreement shall be filed with the Planning Director and the Director of the Department of Public Works and Waste Management within ten (10) days of recordation.

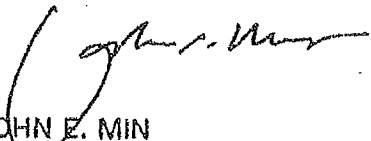
The conditions of this Special Management Area Use Permit shall be enforced pursuant to Sections 12-202-23 and 12-202-25 of the Special Management Area Rules for the Maui Planning Commission.

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Mr. Robert Horcajo
September 19, 2000
Page 8

Further, the Commission adopted as its Findings of Fact, Conclusions of Law, Decision and Order the Planning Department's Report and Recommendation Report prepared for the September 12, 2000 meeting and authorized the Planning Director to transmit said Decision and Order for the Commission.

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:cmb

c: Clayton Yoshida, AICP, Deputy Planning Director
Aaron Shinmoto, Planning Program Administrator (2)
LUCA (2)
Department of Water Supply
Michael Munekiyo, AICP, Munekiyo, Arakawa & Hiraga, Inc.
Patricia Nishiyama, Na Kupuna O Maui
Ed Lindsey
Buck Buchanan
Timothy Johns, Department of Land and Natural Resources
Kazu Hayashida, Department of Transportation
James Nakatani, Department of Agriculture
Gary Gill, Department of Health
Colleen Suyama, Staff Planner
Project File
General File

(K:\Planning\SM1199SM121199SM121v)

RESPONSE TO SMA USE PERMIT CONDITIONS-MAUKA REPORT

Conditions:

1. Applicant is expected to initiate construction of the proposed project by September 30, 2002.
2. Applicant expects that the construction of the project will be completed within five (5) years after the date of its initiation.
3. Applicant understands that applicant or any aggrieved person may appeal to the Maui Planning Commission any action taken by the Planning Director on the subject permit no later than ten (10) days from the date the Director's action is reported to the Commission.
4. Applicant acknowledges that final construction shall be in accordance with preliminary subdivision plans included in the SMA submittal received by the Planning Department on November 9, 1999.
5. Applicant acknowledges that appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.
6. Applicant understands that subject SMA Use Permit shall not be transferred without prior written approval by the Planning Commission.
7. A \$1,000,000 comprehensive liability insurance policy naming the County of Maui as additional insured, is attached under IV. **Individual Reports-Insurance Binder.**
8. Applicants intends to comply will all government requirements.
9. A *Revised* Construction Related Structures Plan is herewith submitted under IV. **Individual Reports-Revised Construction Related Structures Plan.** This plan was approved on September 28, 2001 with the Final Compliance Report for the makai lands.
10. A Preliminary Compliance Report dated November 29, 2000 was submitted to the Planning Department for review and approval. This Final Compliance Report for the makai lands was approved September 28, 2001.
11. Applicant intends to develop the property in substantial compliance with the representations made to the Commission in obtaining the SMA Use Permit.

12. Applicant acknowledges that all required infrastructure improvements shall be constructed concurrently with the development and shall be completed prior to final subdivision approval or bonded in accordance with Title 18, Maui County Code.
13. Applicant acknowledges that an approximate 54-acre cultural reserve will be established in perpetuity, to be managed by the Olowalu Cultural Reserve, a non-profit organization. Access shall be open to the general public as a cultural reserve, however, access for recreational purposes shall be as approved by the Olowalu Cultural Reserve.
14. A *Revised Greenway System Plan* is herewith submitted under **IV. Individual Reports-Revised Greenway System Plan**. This plan was approved on September 28, 2001 with the Final Compliance Report for the makai lands.
15. An Irrigation System Plan for the proposed agricultural subdivision is herewith submitted under **IV. Individual Reports-Irrigation System Plan**.
16. A *Revised Dust and Erosion Control Plan* is herewith submitted under **IV. Individual Reports-Revised Dust and Erosion Control Plan**. This plan was approved on September 28, 2001 with the Final Compliance Report for the makai lands. Copies of the approved plan were previously submitted to the Planning Department and Department of Public Works and Waste Management.
17. Through the recordation of the SMA Unilateral Agreement and the Declaration of Covenants, Conditions and Restrictions, as encumbrances on the property, potential buyers will be advised of Hawaii's Right to Farm Act and that lots are being sold as commercial agricultural lots.
18. The Maui/Lanai Island Burial Council approved the Preservation Plan for the mauka lands during its February 22, 2000 meeting. A copy of the Preservation Plan and approval letter are herewith attached **under IV. Individual Reports-Burial Preservation Plan-Mauka Lands**.
19. The State Historic Preservation Division (SHPD) has reviewed and approved the Mitigation and Preservation Plan for archaeological sites within the Olowalu mauka lands. A copy of the final approval letter dated March 7, 2002 is herewith submitted with this report under **IV. Individual Reports-Archaeological Mitigation and Preservation Plan-Mauka Lands**. No land alteration will occur in the vicinity of any sites without verification by SHPD that the approved interim protection measures are in place.
20. The State Historic Preservation Division (SHPD) has reviewed the Mitigation and Preservation Plan for archaeological sites within the Olowalu Mauka

Lands. As all the sites were being preserved, no data recovery actions were taken. A copy of the final approval letter dated March 7, 2002 is herewith submitted with this report under **IV. Individual Reports- Archaeological Mitigation and Preservation Plan-Mauka Lands.**

21. The State Historic Preservation Division (SHPD) has reviewed the Mitigation and Preservation Plan for archaeological sites within the Olowalu Mauka Lands. There are no required monitoring areas within the mauka lands, therefore, no report is being submitted.
22. All archaeological preservation areas and buffer zones are identified on the subdivision final plat and will be noted as an encumbrance on conveyance documents for the affected lots. Upon recordation, a copy of the final plat will be forwarded to the Planning Department. **See Exhibit D.**
23. It was the intent that most of the oral history work previously started by applicant would be expanded by the Olowalu Cultural Reserve (OCR), the Lessee of the cultural reserve. The Olowalu Cultural Reserve however, have not organized themselves enough to continue the oral history at this time.
24. A *Revised* Cultural Reserve Buffer Plan is herewith submitted **under IV. Individual Reports-Revised Cultural Reserve Buffer Plan.** This plan was approved on September 28, 2001 with the Final Compliance Report for the makai lands.
25. Unless removal is necessary for intersection improvements, applicant will retain the Monkey Pod trees along the highway, both within applicants property and the State Honoapiilani Highway right of way. Applicant will consider the addition of Monkey Pod trees along the highway corridor, as part of the cultural landscape.
26. Through the recordation of the Unilateral Agreement and the Declaration of Covenants, Conditions and Restrictions, as encumbrances on the property, all lots within the Flood Zone AO and A4 will be subject to requirements that structures will be constructed above the flood elevation and that measures such as post and pier construction shall be considered to allow flood waters to traverse the property.
27. Through the recordation of the Unilateral Agreement and the Declaration of Covenants, Conditions and Restrictions, as encumbrances on the property, future buyers of lots shall be informed that development within flood hazard areas shall be implemented in accordance with Chapter 19.62, Maui County Code.

28. As none of the mauka lands front the shoreline, there is no report being submitted regarding the prohibition of soil as fill material or coastal dune actions.
29. Through the recordation of the Unilateral Agreement and the Declaration of Covenants, Conditions and Restrictions, as encumbrances on the property, a shoreline setback of 150 ft from the certified shoreline will be established for all the makai lots of the subdivision regardless of a government beach reserve fronting the subdivided lots. No structures shall encroach into this Shoreline Setback Area.
30. This condition pertains to lateral shoreline access and mauka/makai access from Honoapiilani Highway to the shoreline, therefore, no report is being submitted.
31. Roadway lot #39 of the mauka subdivision, 80 ft wide and within the existing cane haul road corridor, is being set aside as a reserve for future roadway expansion or relocation of Honoapiilani Highway. **See Exhibit D.**
32. Plans for required roadway improvements involving Honoapiilani Highway have been reviewed and approved by the State Department of Transportation. Roadway improvements shall be provided in accordance with said approval prior to occupancy of the subdivided lots, unless a phasing plan for said improvements is approved by the DOT.
33. An *Revised* Outdoor Lighting Plan is herewith submitted under **IV. Individual Reports-Revised Outdoor Lighting Plan**. This plan was approved on September 28, 2001 with the Final Compliance Report for the makai lands.
34. Through the recordation of the "Unilateral Agreement" and the "Declaration of Covenants, Conditions and Restrictions" as encumbrances on the property, future buyers of lots shall be informed that there may be potential waste from the old Olowalu Mill site and other vacated agricultural industrial areas, and that remedial cleanup must be conducted before any new development occurs.
35. Through the recordation of the "Unilateral Agreement" and the "Declaration of Covenants, Conditions and Restrictions" as encumbrances on the property, future buyers of lots shall be informed that any survey monuments within their property, if any, need to be protected from any development activities. Also, it is the lot owners responsibility to reference or replace any disturbed or destroyed monuments.
36. An executed and recorded Unilateral Agreement is herewith submitted under **IV. Individual Reports-Unilateral Agreement**.

Exhibit 2

FINAL COMPLIANCE REPORT
SPECIAL MANAGEMENT USE PERMIT
(SM1 990021)

OLOWALU MAUKA LANDS
LAHAINA, MAUI

March 2002

Olowalu Elua Associates, Inc.
173 Ho'ohana Street, Suite 201
Kahului, Hawaii 96732
Telephone: (808) 877-4202
Fax: (808) 877-9409

*Phil - Kase
Honor Submittal
Please. I am
Vignally
this
signing*



CIVIL & STRUCTURAL ENGINEERING • LAND SURVEYING • CONSTRUCTION MANAGEMENT & INSPECTIONAL SERVICES

February 11, 2003

*Ward!
2/20/03*

State of Hawaii
Department of Transportation
Highways Division
650 Palapala Drive
Kahului, HI 96732

Attention: Mr. Ferdinand Cajigal, P.E.
District Engineer

Re: **Proposed Access Relocation
Lahaina-Wailuku Road
Olowalu-Pali Section
for F.A.P. No. F 30(3)
for Olowalu Mauka Subdivision
I.D. No. ME 02-01**

Gentlemen:

Pursuant to a meeting with Mr. Paul Chung on August 28, 2002 and your more recent meeting with Mr. David Ward and Mr. Bill Frampton, we respectfully request your review and approval of our proposal to relocate the proposed driveway improvements from where they are currently designed at Honoapiilani Highway Station 65+68.68 to approximately across from the existing Camp Pecusa driveway at approximate Highway Station 36+40.

We believe that the relocation of this proposed driveway improvements would create a win-win situation for both the Owners and the State Department of Transportation due to the following reasons:

1. Improved sight distances along Honoapiilani Highway as the proposed driveway entrance is along a long highway tangent.
2. Creates a driveway access for the mauka property that is directly across from the existing Camp Pecusa access roadway.
3. The owners of the Olowalu Mauka Subdivision property are willing to exchange the two (2) existing 40 feet wide access permitted (approximate Highway Stas. 40+30 and 43+90) for the requested access at Sta. 36+40, thereby, consolidating the accesses for the existing residential lots and the Olowalu Mauka Subdivision lots through a driveway that would be built to current highway standards and shared by the Olowalu Mauka Subdivision and the existing residences.

*290
1770*

State Dept. of Transportation
Attn: Mr. Ferdinand Cajigal
Page - 2
February 11, 2003

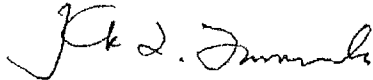
4. The proposed driveway location (Sta. 36+40) provides a more central access to the Olowalu Mauka Subdivision and existing residences than the currently designed access.
5. The relocation of the proposed driveway (Sta. 36+40) would eliminate any conflicts with proposed passing lanes along Honoapiilani Highway in the vicinity of the presently designed access (Sta. 65+68.68).

Thank you for your assistance in this matter.

We will be eagerly awaiting your response to our request.

Should you have any questions or comments, please do not hesitate to call me.

Very truly yours,



Kirk T. Tanaka, P.E., L.S.
President

KTT:sh

cc: Mr. Peter Martin (via Fax)
Mr. Dave Ward (via Fax)

292

Exhibit 3

T. Tanaka Engineers, Inc.

871 Kolu Street, Suite 201 Wailuku, Maui, Hawaii 96793-1436
Phone: (808) 242-6861 Fax: (808) 244-7287 E-Mail: rttanaka@gte.net

civil engineering land surveying construction management inspectional services

State of Hawaii
Department of Transportation
Highways Division
650 Palapala Drive
Kahului, HI 96732

Date February 19, 2003
Project: Olowalu Mauka Subdivision
ME 02-01
Proposed Access Relocation

Attn: Mr. Paul Chung, P.E.

Gentlemen:

We are sending you:

☒ Herewith

☐ Separately

Sent by: ☐ Mail

☒ Deliver

☐ Pick-Up

☐ Fax

☐ Revised Drawings
☐ Specifications
☐ Letter

☒ Prints
☐ Tracings
☐ Invoice

☒ For Approval
☐ As Requested
☐ For Submission

☐ For Your Use
☐ Approved as Noted
☐ Other: See Remarks

No. of Copies	Description
1	Print of Preliminary Layout of Proposed Subdivision Access on Highway at Sta. 36+40±

Remarks: Please review the attached intersection layout for our meeting on February 24 at 1:00 p.m.
Mr. David Ward, owner's representative, will also be at the meeting.

Thank you for your support and attention to this matter.

Very truly yours,

Rogelio Hidalgo

Rogelio Hidalgo, P.E., L.S.
Project Engineer

sh

cc: Mr. David Ward (via Fax)

0323

Exhibit 4

FRAMPTON & WARD, LLC

Real Estate Consulting • Development • Project Management

173 Ho'ohana St., Suite 202A

Kahului, HI 96732

Office (808) 893-2300

April 16, 2003

Mr. Francis Cerizo
Department of Planning
County of Maui
250 South High Street
Wailuku, HI 96793

RECEIVED

APR 17 2003

RT TANAKA ENGINEERS, INC

Via Hand Delivery

Re: Olowalu Mauka Construction Plan – Response to Comments

Dear Francis,

On behalf of Olowalu Elua Associates, LLC, the following address your comments on the Construction Plans for the Olowalu Mauka Subdivision:

1. *Protection of Archaeological Sites* - In compliance with the January 15, 2001 (Final Revisions – March 8, 2001) approved Preservation Plan for the Olowalu Mauka Area, the sites scheduled for preservation have been marked with orange-plastic construction fencing delineating the site preservation perimeters.
2. *100 Year Flood Limits* - The 100 yr. inundation limits have been added onto the construction plans; please note that the driveway access road has been relocated out of Lot 18.
3. *Flood Zones and Flood Permits* - The flood zones have been added to the construction plans. No work will be performed within the flood limits.
4. *SMA Compliance* - The Maui Planning Commission granted approval of an SMA Use Permit on September 12, 2000 subject to thirty-six conditions. Pursuant to Condition #10 of the SMA Permit, a Final Compliance Report for the Subdivision of Olowalu Mauka Lands was reviewed and approved by the Department of Planning on April 9, 2002. The following is a follow up review of the pertinent issues related to the Olowalu Mauka Construction Plans:
 - a. Condition #1 – The “proposed project” listed in Condition # 1 relates to the construction of the improvements within the SMA application. These improvements are limited to the Makai Subdivision. Construction of the Makai Subdivision was initiated prior to September 30, 2002.
 - b. Condition #2-3 – There is no update or change to the approved responses to these conditions.
 - c. Condition #4 – The preliminary subdivision plans included in the November 9, 1999 submittal are for the Makai Subdivision plans. The final construction of the Makai Subdivision was in accordance with the preliminary subdivision plans.

- d. Conditions #5-8 – There is no update or change to the approved responses to these conditions
- e. Condition #9 - The construction related structures for this subdivision will include a small construction trailer and a 20 ft container to store materials. The temporary construction area will be established within the boundaries of the approved Construction Related Structures Plan on Lot 9 of the Olowalu Mauka Subdivision (see attached map highlighting this area). The temporary construction base yard will be limited to one base yard in operation at any given time.
- f. Condition #10-11 - There is no update or change to the approved responses to these conditions.
- g. Condition #12 – This condition relates to the construction of the improvements within the SMA application. These improvements are limited to the Makai Subdivision. The Makai Subdivision improvements were bonded in accordance with Title 18 relating to the subdivision ordinance.
- h. Condition #13 – There is no update or change to the approved responses to these conditions.
- i. Condition #14 – The approved responses to this condition have not changed. The requested Construction Plans will not greatly intensify the from agricultural or agricultural conservation practices of the parcels adjoining the Greenway Improvement Plan. As noted in the Revised Greenway System Plan within the Final Compliance Report, the perimeter portions adjacent to Lots #9-14 within Easement "13" (portion of Lot #24) will be defined by plantings of large and medium size trees in conjunction with the landscape improvements for the Olowalu Mauka Construction Plans.
- j. Condition #15 – The Irrigation System Plan approved within the Compliance Report has not changed. The submitted construction plans include the installation of a potable and a non-potable water system with meters from each supplied to Lots #1-14. These construction plans have been reviewed and approved by the State Department of Health Clean Water Branch including the non-potable and potable water system.
- k. Condition #16 – The Revised Dust and Erosion Control Plan within the Compliance Report has not changed. Olowalu Elua Associates, LLC has applied for and received a NPDES permit and will comply with restrictions related to such permit.
- l. Condition #17-31 - There is no update or change to the approved responses to these conditions.
- m. Condition #32 – The roadway improvements required in conjunction with the development of the subdivision (Makai Subdivision) have been completed. Please note that Olowalu Elua Associates, LLC is currently processing approval from the State Department of Transportation related to the relocation of mauka access including storage lanes.

Mr. Francis Cerizo
April 16, 2003
p. 3 of 3

- n. Condition #33 - There is only one Roadway Lighting Light within the construction plans for Olowalu Mauka. Such light will meet the maximum wattage of 100W HPS as an internal road intersection.
- o. Conditions #34-36 - There is no update or change to the approved responses to these conditions.

Please let me know if you have additional concerns or comments on these construction plans.

Sincerely,



David Ward

Cc: Jim Riley
Leslie Otani - Land Use and Codes (encl. Final Compliance Information)
Rogelio Hidalgo - Tanaka Engineers

Exhibit 5

FRAMPTON & WARD, LLC

Real Estate Consulting • Development • Project Management

173 Ho'ohana St., Suite 202A

Kahului, HI 96732

Office (808) 893-2300

May 15, 2003

Mr. Francis Cerizo
Department of Planning
County of Maui
250 South High Street
Wailuku, HI 96793

Via Hand Delivery

4.766

Re: Olowalu Mauka Construction Plan – Response to Comments
SM1 990021 – Compliance with Approved Final Compliance Report

Dear Francis,

Per our meeting yesterday, attached are the most recent construction plans for the construction of the infrastructure at Olowalu Mauka. The following address the issues we discussed yesterday in reviewing the SMA Compliance section of my April 15th letter:

1. Condition #9 - The construction related structures for this subdivision will include a small construction trailer and a 20 ft container to store materials. The temporary construction area will be established within the boundaries of the approved Construction Related Structures Plan on Lot 9 of the Olowalu Mauka Subdivision (see sheet C-4 of the enclosed plans). The temporary construction base yard will be limited to one base yard in operation at any given time.
2. Condition #14 – The approved responses to this condition have not changed. The requested Construction Plans will not greatly intensify the land use from agricultural or agricultural conservation practices of the parcels adjoining the Greenway Improvement Plan. As noted in the Revised Greenway System Plan within the Final Compliance Report, the perimeter portions adjacent to Lots #9-14 within Easement "13" (portion of Lot #24) will be defined by plantings of large and medium size trees in conjunction with the landscape improvements for the Olowalu Mauka Construction Plans (see sheet L-1 and L-5 of the enclosed plans). Please note that Colleen Suyama is in the process of approving the landscape plans for the Olowalu Mauka Subdivision (see attached transmittal).
3. Condition #15 – The Irrigation System Plan approved within the Compliance Report has not changed. The submitted construction plans include the installation of a potable and a non-potable water system with meters from each supplied to Lots #1-14 (see sheet C-2 of the enclosed plans). These construction plans have been reviewed and approved by the

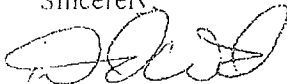
Mr. Francis Cerizo
May 16, 2003
p. 2 of 2

State Department of Health Clean Water Branch including the non-potable and potable water system.

4. Condition #32 – The roadway improvements required in conjunction with the development of the subdivision (Makai Subdivision) have been completed. Please note that Olowalu Elua Associates, LLC is currently processing approval from the State Department of Transportation related to the relocation of mauka access including storage lanes. The Olowalu Mauka Construction Plan approval is contingent on the State Department of Transportation approval or resolution.

Please let me know if you have additional concerns or comments on these construction plans.

Sincerely,



David Ward

Cc: Jim Riley (w/o encl.)
Leslie Otani – Land Use and Codes (w/o encl.)
Rogelio Hidalgo – Tanaka Engineers (w/o encl.)
Colleen Suyama – Department of Planning (w/o encl.)

16

Exhibit 6

FRAMPTON & WARD, LLC


Real Estate Consulting • Development • Project Management

33 Lono Ave., Suite 450A
Kahului, HI 96732

Office (808) 893-2300
Fax (808) 893-0043

Memorandum

To: Kirk Tanaka

From: David Ward 

Date: May 22, 2003

Cc: Freddie Cajigal, Paul Chung, Peter Martin, and Heidi Bigelow

Re: Olowalu Mauka Access - Follow-up for May 22nd SDOT Meeting

The following outlines our meeting today with Freddie Cajigal (SDOT), Peter Martin (Developer), Heidi Bigelow (West Maui Land), Kirk Tanaka (Tanaka Engineering) and David Ward (Frampton & Ward):

Meeting Overview – Kirk provided an overview of the access relocation for Olowalu Mauka (Olowalu Elua Associates mauka lots on the Ma'alaea side of Olowalu Stream). Kirk previously provided SDOT with a concept sketch and overview. The overview included the reduction in the number of permitted access location by consolidating two permitted accesses into a single revised access location. The revised access plan is currently being reviewed by SDOT in Honolulu. The following additional items were discussed:

- Olowalu Village Access** – Access for the various groups including the existing Olowalu Village owners was discussed. In order to provide all land owners the opportunity to access the highway at the safest location (the proposed revised access location), Peter Martin agreed to modify the location of the existing cane haul road outside of the State ROW to safely connect the cane road into the proposed revised access location.
Follow-Up Item – Kirk Tanaka will update the proposed access location sketch with the proposed modification of the cane haul road.
- Building Permit Applications** – Three or four of the existing lot owners on the mauka side of the highway have received letters related to building permit applications that require an "Approval letter from State Department of Transportation for access onto a State Highway." Heidi Bigelow provided Freddie with these letters. Freddie agreed to provide the approval letter for the lot owners once he has reviewed the revised proposed access sketch (above).
Follow-Up Item – Heidi Bigelow (877-4202) to communicate with SDOT to provide any additional required information.

DOT
23

May 22, 2003 Memorandum
p. 2 of 2

3. **Construction Plan Approval** – The pending construction plan approval was discussed briefly. Development Services Administration (formerly LUCA) is requiring the developer to "Provide State Department of Transportation Approval". Freddie mentioned that drainage was the only concern of the Department of Transportation given that the subdivision does not neighbor the state highway.

Follow-Up Item – David Ward to provide Paul Chung with the most recent construction plans and drainage report. DOT to review and provide "approval letter" to David Ward or Kirk Tanaka.

If you have any concerns related to this memo, please contact me at 893-2300.

Exhibit 7

From: Francis Cerizo
To: David Ward
Date: 6/3/03 10:15AM
Subject: Re: Olowalu Mauka Construction Plans

As discussed, the plans are acceptable for approval provided that DOT Highways approval is obtained.

>>> "David Ward" <dave@fwmaui.com> 05/28/03 04:26PM >>>
Francis,

Thanks for meeting with me yesterday related to the Olowalu Mauka Construction Plans approval. Based on our meeting, I understand that the 2 remaining issues are 1) Colleen's sign-off of landscape plans and 2) SDOT approval. I am hopeful that you will receive a response from Colleen in the next day or so related to the approval of the landscape plans. As we discussed, the only other major comment on the construction plans is "to obtain SDOT approval". As such, I am hopeful that you will forward your approval of the construction plans (once you hear from Colleen) to Development Services Administration with language that your approval is contingent on SDOT approval.

Please respond via e-mail or call me at 893-2300 with any questions.

Thanks,.

David Ward

FRAMPTON & WARD, LLC
Phone; (808) 893-2300
Fax: (808) 893-0043
Cell: (808) 357-1952
33 Lono Avenue - Suite 450A
Kahului, HI 96732

CC: Lance Nakamura; Lesli Otani

From: Lesli Otani
To: Francis Cerizo; Lance Nakamura
Date: 6/3/03 10:45AM
Subject: Re: Olowalu Mauka Construction Plans review

Thank you for the e-mail, we will add your conditional approval to our files

>>> Francis Cerizo 06/03/03 10:19AM >>>

We find the plans acceptable for approval provided state dot approval is obtained.

CC: Aaron Shinmoto; David; Howard Hanzawa

Exhibit 8

FRAMPTON & WARD, LLC

Real Estate Consulting • Development • Project Management

33 Lono Ave., Suite 450A
Kahului, HI 96732

Office (808) 893-2300
Fax (808) 893-0043

Mr. Ferdinand Cajigal
Maui District Engineer
State Department of Transportation
650 Palapala Dr.
Kahului, HI 96732

Re: Proposed Olowalu Intersection Improvements

Dear Freddie,

As you know, Olowalu Elua Associates, LLC is planning to relocate the "Olowalu Mauka Intersection" along Honoapiilani Highway. In conjunction with this relocation, Munekiyo & Hiraga, Inc. has been contracted to assist Olowalu Elua Associates, LLC with processing an amendment to the existing SMA permit. Attached is a DRAFT letter provided by Munekiyo & Hiraga related to an exemption from an Environmental Assessment for the proposed intersection improvements.

Please review this draft letter. If acceptable, please process, execute and forward the letter to Olowalu Elua Associates, LLC. If you have any questions, I will be happy to set up a meeting to discuss this letter. If you would like a "digital" copy of this letter to assist in processing, please contact Karlynn Kawahara at Munekiyo & Hiraga at 244-2015.

Please give me a call at 893-2300 with any questions.

Sincerely,



David Ward

Cc: Peter Martin – Olowalu Elua Associates
Kirk Tanaka – Tanaka Engineering
Karlynn Kawahara – Munekiyo & Hiraga

Freddie,

Do you discuss any interim improvements? The only improvements I know are the ultimate ones, which include RT. Oscar, L.T. pockets, Tapers, etc. If this is the case, I don't think this warrants for exemption. | *Ally!!*
Case closed! In situation making money.

1633

Mr. Peter Martin
August 21, 2003
Page 2

DRAFT

Should you have any further questions, please do not hesitate to contact me at 873-3535.

Very truly yours,

FERDINAND CAJIGAL
Maui District Engineer

FC:tn

cc: Michael T. Munekiyo, Munekiyo & Hiraga, Inc.
(A copy of this document is being furnished to the Maui District Engineer.)

DRAFT

August 21, 2003

Mr. Peter Martin
Olowalu Elua Associates, LLC
33 Lono Avenue #450
Kahului, Hawaii 96732

Dear Mr. Martin:

Subject: Olowalu Elua Associates' Proposed Intersection Improvements at Olowalu,
Maui, Hawaii

We have reviewed the plans for the proposed Olowalu Elua Associates, LLC (OEA) intersection on Honoapiilani Highway in the Olowalu vicinity. We understand that OEA has filed a Special Management Area Use Permit Amendment with the County of Maui Planning Department to move the proposed "Intersection D" further west along Honoapiilani Highway. The new intersection site is located approximately 3,200 feet west of its original location.

In reviewing the plans and scope of this project, we find that an Environmental Assessment (EA) will not be required for this project as it qualifies for an exemption under the Department of Transportation's Comprehensive Exemption List as approved by the Environmental Council on December 16, 1992. The proposed action falls under Exemption Class 4 which states, "3. *Paving of shoulder areas within existing highway rights-of-way for driveways and subdivision street connections. These shoulder pavings will provide vehicular access to the highway pavement lanes from the adjacent common property line for residential and commercial driveways and subdivision street connections. These actions will not alter the character of the highway facility.*"

Exhibit 9

LINDA LINGLE
GOVERNOR



RODNEY K. HARAGA
DIRECTOR

DEPUTY DIRECTOR
BRUCE Y. MATSUI

FILE COPY

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION**

MAUI DISTRICT
650 PALAPALA DRIVE
KAHULUI, HAWAII 96732-2321

IN REPLY REFER TO:
HWY-M 2,411-03

September 19, 2003

Mr. David Ward
Frampton & Ward, LLC
33 Lono Avenue, Suite 450A
Kahului, Hawaii 96732

Dear Mr. Ward:

SUBJECT: OLOWALU ELUA ASSOCIATES' PROPOSED INTERSECTION
IMPROVEMENTS AT OLOWALU
I.D. NO. ME-02-01

It is our understanding that the relocation of the "Olowalu Mauka Intersection" will result in highway improvements, such as installation of a deceleration lane and left turn pocket, tapers and asphalt paved shoulders. Under the Department of Transportation's Comprehensive Exemption List, Class 4, Item 3, these improvements do not qualify for an Environmental Assessment exemption. The exemption is intended for minor alterations for driveway and subdivision street connections that will not alter the character of the highway.

If you wish to discuss this matter further, please call Paul Chung at 873-3535.

Very truly yours,

A handwritten signature in cursive script, reading "Ferdinand Cajigal".

FERDINAND CAJIGAL
District Engineer, Maui

PMC:dmf

*...DING THIN LITTER AT THE
12/08 BOARD MEETING, FRAMPTON
WARD SAID THEY WERE AT THE MEETING
TO GET THE BOARD'S SUPPORT FOR OLOWALU TOWN
AND IF WE WERE NOT GOING TO SUPPORT THEM, THERE WAS NO
REASON TO CONTINUE THE MEETING.*

From: "Debbie" <debarakaki@hawaii.rr.com>; "E Ernisse" <peaceandaloha@hotmail.com>;
 To: "Randy Ragon" <rr077@hotmail.com>; <loriekruse@aol.com>; <cabanaboy@ableweb.net>; <lars@valleyislebuilders.com>;
 <driverfamily@sbcglobal.net>; <dave@mchawaii.com>; <rich@richvon.com>;
 <mailjoanne@adelphia.net>; <gabija333@aol.com>; <jan@richvon.com>; <bill@mchawaii.com>;
 <peter@longhi.com>; <henry@seagoddess.net>; <wena49@cs.com>
 Sent: Sunday, August 10, 2008 10:43 AM
 Subject: Re: IMPORTANT!!!! PLEASE REPLY! Olowalu Mauka HOA Board MEETING, August 12, 2008

I also think that an endorsment to the Olowalu project should be on an individual basis , not necessarily from the entire community of Olowalu Mauka.

Deb

----- Original Message -----

From: Randy Ragon
 To: E Ernisse ; loriekruse@aol.com ; cabanaboy@ableweb.net ; lars@valleyislebuilders.com ;
 driverfamily@sbcglobal.net ; dave@mchawaii.com ; rich@richvon.com ; debarakaki@hawaii.rr.com ;
 mailjoanne@adelphia.net ; gabija333@aol.com ; jan@richvon.com ; bill@mchawaii.com ; peter@longhi.com ;
 henry@seagoddess.net ; wena49@cs.com
 Sent: Sunday, August 10, 2008 10:28 AM
 Subject: RE: IMPORTANT!!!! PLEASE REPLY! Olowalu Mauka HOA Board MEETING, August 12, 2008

I am off island and will not be able to attend the next board meeting. Safety issues and quality of initial infrastructure development remain my primary concerns. Another accident, another fire and no acceptable exits are placing all of our lives in danger. In the meantime, we still have common area problems and water problems and a list of items that have been promised to us and not delivered. While I support Frampton and Ward's concept of village communities on Maui, I can no longer support WML or anyone affiliated with them such as Frampton and Ward until they prove to me that they can develop high quality subdivisions that are safe for the homeowners. Instead of talking about building new communities, maybe they could help us clean up the existing problems, which I believe have mainly been caused by the developer who seem to always look for ways to save money and spend less instead of doing things right in the beginning. The board needs to make a public records request to the county to obtain a copy of all records reflecting any conditions attached to the subdivision approval as well as the subdivision approvals so we can ascertain whether conditions have been met. I cannot believe that the county would allow a subdivision approval with the existing entrance/exit and with only one way out. How many more lives need to be lost? This should be the focus of any meeting with WML or any of their affiliates, not future development. Furthermore, I believe that WML and Frampton and Ward should be put on notice that Olowalu Mauka homeowners will oppose any future endeavors by this group until we are convinced they are delivering on their promises which means action instead of empty promises.

From: peaceandaloha@hotmail.com
 To: loriekruse@aol.com; cabanaboy@ableweb.net; lars@valleyislebuilders.com; rr077@hotmail.com;
 peaceandaloha@hotmail.com; driverfamily@sbcglobal.net; dave@mchawaii.com; rich@richvon.com;
 debarakaki@hawaii.rr.com; mailjoanne@adelphia.net; gabija333@aol.com; jan@richvon.com;
 bill@mchawaii.com; peter@longhi.com; henry@seagoddess.net; wena49@cs.com
 Subject: IMPORTANT!!!! PLEASE REPLY! Olowalu Mauka HOA Board MEETING, August 12, 2008
 Date: Sat, 9 Aug 2008 14:44:29 -1000

IMPORTANT! PLEASE REPLY! before August 12, 2007

NEITHER FRAMPTON NOR WML HAS
DONE ANYTHING TO CORRECT THE PROBLEM
OR FULFILL THEIR PROMISES TO OLOWALU MAUKA

Aloha All,

Bill Frampton and Dave Ward of Olowalu Town LLC/WML will attend our Board Meeting on Tuesday, August 12, 2008 at 9 a.m. at the Olowalu Plantation House to provide information to Olowalu Mauka Homeowners regarding the upcoming General Plan meetings to be held in Lahaina on August 21 and 23rd, since no one from Olowalu Mauka attended their meeting on August 3rd (see attached meeting notification.)

I consider this to be an excellent opportunity to ask questions concerning the past, present, and future status of our subdivision in relation to West Maui Land's ultimate plans for Olowalu. Are we supporters of Olowalu Town? Your Board MUST know your opinion since we will be testifying at these meetings representing Olowalu Mauka HOA.

PLEASE:

1. Let me know if you will be able to attend this meeting, and
2. If you are unable to attend, email your questions, comments and suggestions for me to ask Olowalu Town/WML at this meeting.

Thank you. I hope to see you at this VERY IMPORTANT meeting.

I apologize for the late notice, but I have been off-island.
Remember to email your questions, so, hopefully, we will have some answers regarding Olowalu Mauka!

Ellen Ernisse
President
Olowalu Mauka Homeowners Association
email: peaceandaloah@hotmail.com
phone: 808-669-9275

From: bill@mchawaii.com
Subject: Olowalu Town meeting date Sunday, August 3rd at 1:00 pm
Date: Thu, 31 Jul 2008 16:06:29 -1000

Aloha, Invitation attached to meet with the General Plan Advisory Committee (GPAC) to review a Draft General Plan.

Bill East
Community Association Manager
Management Consultants Hawaii (MCH)
Office (808) 661-8795
Fax (808) 667-7608
bill@mchawaii.com

Reveal your inner athlete and share it with friends on Windows Live. [Share now!](#)

1 AFTER RECEIVING THIS LETTER AT THE
AUGUST 12/08 BOARD MEETING, FRAMPTON
AND WARD SAID THEY WERE AT THE MEETING

Randy Ragon TO GET THE BOARD'S SUPPORT FOR OLOWALU TOWN
AND IF WE WERE NOT GOING TO SUPPORT THEM, THERE WAS NO

From: "Debbie" <debarakaki@hawaii.rr.com>
To: "Randy Ragon" <rr077@hotmail.com>; "E Ernise" <peaceandaloha@hotmail.com>;
<loriekruse@aol.com>; <cabanaboy@ableweb.net>; <lars@valleyislebuilders.com>;
<driverfamily@sbcglobal.net>; <dave@mchawaii.com>; <rich@richvon.com>;
<mailjoanne@adelphia.net>; <gabija333@aol.com>; <jan@richvon.com>; <bill@mchawaii.com>;
<peter@longhi.com>; <henry@seagoddess.net>; <wena49@cs.com>
Sent: Sunday, August 10, 2008 10:43 AM
Subject: Re: IMPORTANT!!!! PLEASE REPLY! Olowalu Mauka HOA Board MEETING, August 12, 2008

I also think that an endorsement to the Olowalu project should be on an individual basis, not necessarily from the entire community of Olowalu Mauka.

Deb

----- Original Message -----

From: Randy Ragon

To: E Ernise; loriekruse@aol.com; cabanaboy@ableweb.net; lars@valleyislebuilders.com;
driverfamily@sbcglobal.net; dave@mchawaii.com; rich@richvon.com; debarakaki@hawaii.rr.com;
mailjoanne@adelphia.net; gabija333@aol.com; jan@richvon.com; bill@mchawaii.com; peter@longhi.com;
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debarakaki@hawaii.rr.com; mailjoanne@adelphia.net; gabija333@aol.com; jan@richvon.com;
henry@seagoddess.net; wena49@cs.com

FACT SHEET

CHAPTER 19 AGRICULTURE DISTRICT AND ORDINANCE 2372

The subdivision falls under Chapter 19.04 as an Agriculture District of the Maui County Code with the purpose and intent to discourage developing or subdividing.

It was created under Ordinance 2372. The purpose of the ordinance was to allow the consolidation of two or more developable lots and a resubdivision into the same or fewer developable lots for residents without having to comply with the full requirements of 18.04.020.

It was never intended for developers to circumvent subdivision laws to build subdivisions for sale to the public.

See developer attorney Tom Welch's testimony in the minutes of the 1994 County Council meeting on Ordinance No. 2372, Bill No. 83.

Welch testifies that the ordinance was for neighbors or abutting property owners to relocate boundaries. Not a situation where it would increase the impact to the County or increase the burden on the County infrastructure which would be applicable to a "development situation".

Olowalu Mauka is clearly a subdivision along with the thousands of acres that have been developed along and have impacted the shoreline from Maalea to Lahaina.

A portion of the subdivision is located in the shoreline management area which triggered an SMA for the subdivision. Nonetheless, since the subdivision was processed under ordinance 2372 public works director Milton Arakawa returned the subdivision bond which would have insured compliance with the subdivision and SMA conditions.

What is disturbing is that the ENVIRONMENTAL ASSESSMENT WAS PREPARED BY MILTON ARAKAWA'S COMPANY JUST PRIOR TO HIS EMPLOYMENT WITH THE COUNTY OF MAUI.

LAND USE COMMISSION
STATE OF HAWAII
2012 APR 23 A 8:43

EXHIBIT D

ITEM NO. 9: PROPOSED BILL ENTITLED "A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF THE MAUI COUNTY CODE, PERTAINING TO SUBDIVISIONS" (C.C. 94-227)

CHAIRMAN KAWANO: . . . Okay, we're on. . . we're running a little late, and we're on Item 9. . . proposed bill ent. . . a bill, this is an ordinance amending Chapter 18 of the Maui Code, pertaining to subdivision. Okay. . .

MS. SUZUKI: Mr. Chair--

CHAIRMAN KAWANO: . . . Mr. Kaya, you have anything or. . .

VICE-CHAIRMAN MORROW: Martha--

CHAIRMAN KAWANO: . . . Corp. . . Corp. Counsel, go ahead.

VICE-CHAIRMAN MORROW: . . . Move to approve.

CHAIRMAN KAWANO: . . . Okay. Howard, can. . . can you hang on? We have somebody who wish to testify.

. . . Martha, who. . . go ahead.

MS. SUZUKI: The first person to testify is Thomas Welch.

CHAIRMAN KAWANO: Thomas. . . Thomas, you may, please state your name. If. . . an organization you wanna represent or yourself. You have three minutes to give us your thought. Go ahead.

MR. WELCH: Yeah. Thank you, Mr. Chairman and Members of the Committee.

. . . I'm Tom Welch. . . in the law firm of Case and Lynch. And. . . I wanted to. . . testify that. . . as a. . . as a firm, we're strongly in favor of this. . . of this proposed amendment. Both, for our. . . on our own behalf because we think it makes good sense, and on behalf of many of our clients. We represent. . . of course, we represent developers, but we also represent people who. . . have smaller real estate problems--including neighbors or abutting property owners who want to relocate boundaries between them to correct. . . encroachments. . . . to add, maybe, a little bit of land from one lot onto another. In a situation where it's not in. . . increasing the development, impact to the County or. . . or. . . increasing any burden on the County infrastructure. . . . in a. . . and, under those circumstances. . . we've. . . lot of people have expressed frustration with the fact that they have to go to the County for a full subdivision approval process which. . . would be applicable to more of a development situation. We feel that this. . . this proposal is an excellent one.

. . . And, in that it abbreviates that process for those kinds of people where no new developable lots are created as a result of the subdivision change. Also, I wanna note that these, that this provision is essentially. . . well, similar to provisions in effect on Oahu and the Big Island where. . . and, I know on the Big Island, where I've done a lot of work. . . the. . . the. . . boundary line adjustment between properties is not subject to subdivision approval. There's an abbreviated process where a plan is filed.

...So, this conforms, I think, with the general trend... concerning... the, the regulatory approach to these kinds of problems.

...It, it is clear that... the County, by adopting this, will not be giving up any measure of... control and regulatory authority over true development situations because it's clear here that this does not change the requirement of zoning, SMA, building permit, driveway permit and all of the approve... the approval requirements that apply to... to... actual development. And, I think that this will... probably also alleviate some of the administrative, unnecessary administrative burden with the County... agencies dealing with subdivisions.

...Uh... that's basically it. There may be some...

...discussion concerning the best way, you know, the language and so forth, and...

...I think in principle, however, I think this is a very good measure. And... we hope that the Council will... will adopt it. Thank you very much, Mr. Chairman.

CHAIRMAN KAWANO: Thank you. Any questions?

...Thank you.

VICE-CHAIRMAN MORROW: ... (inaudible) ...

CHAIRMAN KAWANO: ... Okay, Martha, who else?

MS. SUZUKI: That was the last...

CHAIRMAN KAWANO: Julie, you have anything you... from Planning... you folks know Julie. You have anything you wanna say as far as that goes?

MS. HIGA: We... worked with... the Deputy Corporation Counsel on this and... he has addressed most of our concerns.

CHAIRMAN KAWANO: ... Any of the Members have any questions for Planning?

...Thank you. Okay, Howard, lets go.

Bring up... you can... you wanna explain the bill? No?

* MR. FUKUSHIMA: Oh, yeah... essentially, Mr. Welch has... has explained it... quite well. The reason for this bill is to... alleviate some of the hardship that is created when... when adjoining property owners wish to correct the boundary line.

...Additionally, we have included...

...we have included... ingress and egress, or... or, excuse me, access easements... into the same category as these... consolidations and resubdivisions. Oftentimes, when somebody

ORDINANCE NO. 2372

BILL NO. 83 (1994)

A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF
THE MAUI COUNTY CODE, PERTAINING TO SUBDIVISIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The purpose of this legislation is to allow the consolidation of two or more developable lots and a resubdivision into the same or fewer developable lots without having to comply with the full requirements of this title.

SECTION 2. Section 18.04.20, Maui County Code, is amended by adding a new subsection to be appropriately designated and to read as follows:

"18.04.020 Authority and scope.

A. Authorized by [8-6.3] 8-5.3 of the charter of the county of Maui, all subdivisions and consolidations, and all streets or ways within the county created for the purpose of subdividing land, shall be approved by the director in accordance with [these regulations] this title.

B. Any person desiring to subdivide or consolidate land shall submit plans and documents for approval as provided by this title. No subdivision plat may be filed with the bureau of conveyances or land court or state department of taxation until submitted to and approved by the director. Land shall not be offered for sale, lease or rent in any subdivision, nor shall options or agreements for the purchase, sale, lease or rental of land in any subdivision be made until approval for recordation of the final plat is granted by the director as provided [herein] in this title.

C. The requirements of this title shall not apply to a consolidation/resubdivision of two or more developable lots resulting in the same or fewer number of developable lots that existed before the consolidation/resubdivision action or to the establishment of easements for ingress and egress where no new developable lots are created together with the establishment of the easement subject to the following conditions.

1. Compliance with title 19 of this code or chapter 205, Hawaii revised statutes or both.
2. Compliance with chapter 18.08 of this title except for section 18.08.090.
3. Compliance with chapter 18.12 of this title except for Section 18.12.070.
4. Compliance with chapter 18.24 of this title.

D. Parcels that have undergone consolidation/resubdivision under this subsection shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

E. If the director of public works and waste management finds that the subdivision will have a significant or substantial impact upon public facilities or infrastructure, the director of public works and waste management may impose those requirements in title 18 that are appropriate.

F. The director of public works and waste management shall adopt rules to implement the provisions of section 18.04.020E."

SECTION 3. Chapter 18.04, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"18.04.111 Consolidation/resubdivision. "Consolidation/resubdivision" means a consolidation of lots concurrent with a subdivision."

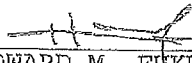
SECTION 4. Chapter 18.04, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"18.04.123 Developable lot. "Developable lot" means a lot with a minimum area of one thousand two hundred square feet."

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material or the underscoring.

SECTION 6. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



HOWARD M. FUKUSHIMA
Deputy Corporation Counsel
County of Maui
c:\wp51\ords\title16.rev(pk)

WE HEREBY CERTIFY that the foregoing BILL NO 83 (1994)

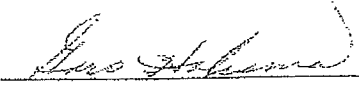
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of October, 1994, by the following votes:

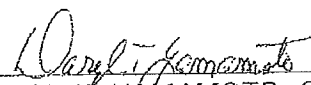
Goro HOKAMA Chair	Dennis Y. NAKAMURA Vice-Chair	James H. APANA, Jr.	B. Lynn BRITTON	Patrick S. KAWANO	Alice L. LEE	Ricardo MEDINA	Manuel MONIZ, Jr.	Thomas P. MORROW
Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of October, 1994.

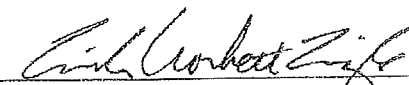
DATED AT WAILUKU, MAUI, HAWAII, this 21st day of October, 1994.

RECEIVED
OCT 21 PM 1:45
OFFICE OF THE MAYOR

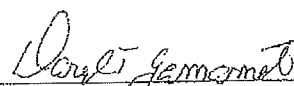

GORO HOKAMA, CHAIR
Council of the County of Maui


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 27th DAY OF October 1994.


LINDA CROCKETT LINGLE, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 2372 of the County of Maui, State of Hawaii.


DARYL T. YAMAMOTO, COUNTY CLERK
County of Maui

Passed First Reading on October 7, 1994.
Effective date of Ordinance October 27, 1994.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2372, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui



HRS Chapter 514B - Condominium Property

"Property" means the land, whether or not contiguous and including more than one parcel of land, but located within the same vicinity, the building or buildings, all improvements and all structures thereon, and all easements, rights, and appurtenances intended for use in connection with the condominium, which have been or are intended to be submitted to the regime established by this chapter. "Property" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water.

"Record", "recordation", "recorded", or "recording" means to record in the bureau of conveyances in accordance with chapter 302, or to register in the land court in accordance with chapter 501.

"Resident manager" means any person retained as an employee by the association to manage, on-site, the operation of the property.

"Structures" includes but is not limited to buildings.

"Time share unit" means the actual and promised accommodations, and related facilities, that are the subject of a time share plan as defined in chapter 514E.

"Unit" means a physical or spatial portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in the declaration or pursuant to section 514B-35, with an exit to a public road or to a common element leading to a public road.

"Unit owner" means the person owning, or the persons owning jointly or in common, a unit and its appurtenant common interest; provided that to such extent and for such purposes as provided by recorded lease, including the exercise of voting rights, a lessee of a unit shall be deemed to be the unit owner.

[§514B-4] **Separate titles and taxation.** (a) Each unit that has been created, together with its appurtenant interest in the common elements, constitutes, for all purposes, a separate parcel of real estate.

(b) If there is any unit owner other than a developer, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements. The laws relating to home exemptions from state property taxes are applicable to individual units, which shall have the benefit of home exemption in those cases where the owner of a single-family dwelling would qualify. Property taxes assessed by the State or any county shall be assessed and collected on the individual units and not on the property as a whole. Without limitation of the foregoing, each unit and its appurtenant common interest shall be deemed to be a "parcel" and shall be subject to separate assessment and taxation for all types of taxes authorized by law, including, but not limited to, special assessments.

(c) If there is no unit owner other than a developer, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.

[§514B-5] **Conformance with county land use laws.** Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county.

Chapter 19.30A

AGRICULTURAL DISTRICT

Sections:

19.30A.010	Purpose and intent.
19.30A.020	District criteria.
19.30A.030	District standards.
19.30A.040	Limitations on resubdivision.
19.30A.050	Permitted uses.
19.30A.060	Special uses.
19.30A.070	Private agricultural parks.
19.30A.080	Agricultural leases.
19.30A.090	Substandard agricultural lots.
19.30A.100	Exemptions pursuant to state law.
19.30A.110	Permits issued prior to the enactment of this ordinance.
19.30A.120	Rule-making authority.

19.30A.010 Purpose and intent.

A. Purpose. The purpose of the agricultural district is to:

1. Implement chapter 205, Hawai'i Revised Statutes, and the goals and policies of the Maui County general plan and community plans;
2. Promote agricultural development;
3. Preserve and protect agricultural resources; and
4. Support the agricultural character and components of the County's economy and lifestyle.

B. Intent. It is the intent of this chapter to:

1. Reduce the land use conflicts arising from encroachment of nonagricultural uses into agricultural areas;
2. Mitigate rising property values of farm lands to make agricultural use more economically feasible;
3. Discourage developing or subdividing lands within the agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development;
4. Discourage establishment of nonagricultural subdivisions;
5. Ensure that the rezoning of land from the agricultural district shall be open for public debate and in the overall public interest, as evidenced by conformance with the Maui County general plan and community plan land use designations and policies, State land use law, this chapter and good planning practices; and
6. Notify the public that lands within the agricultural district are used for agricultural purposes. Owners, residents, and other users of such property or

neighboring properties may be subjected to inconvenience, discomfort, and the possibility of injury to property and health arising from normal and accepted agricultural practices and operations. Such normal and accepted agricultural practices and operations include but are not limited to noise, odors, dust, smoke, the operation of machinery of any kind, including aircraft, and the storage and disposal of manure. Owners, occupants, and users of such property or neighboring properties shall be prepared to accept such inconveniences, discomfort, and possibility of injury from normal agricultural operations. (Ord. 2749 § 3 (part), 1998)

19.30A.020 District criteria.

Agricultural lands that meet at least two of the following criteria should be given the highest priority for retention in the agricultural district:

A. Agricultural Lands of Importance to the State of Hawai'i (ALISH);

B. Lands not classified by the ALISH system whose agricultural land suitability, based on soil, topographic, and climatic conditions, supports the production of agricultural commodities, including but not limited to coffee, taro, watercress, ginger, orchard and flower crops and nonirrigated pineapple. In addition, these lands shall include lands used for intensive animal husbandry, and lands in agricultural cultivation in five of the ten years immediately preceding the date of approval of this chapter; and

C. Lands which have seventy-five percent or more of their boundaries contiguous to lands within the agricultural district. (Ord. 2749 § 3 (part), 1998)

19.30A.030 District standards.

Except as otherwise provided in this chapter, the following district standards shall apply for uses, facilities and structures in the agricultural district:

- A. Minimum lot area: two acres;
- B. Minimum lot width: two hundred feet;
- C. Minimum yard setbacks: front yards, twenty-five feet; side and rear yards, fifteen feet;
- D. Maximum developable area: ten percent of the total lot area. This restriction shall apply to farm dwellings, but shall not apply to any structure or portion thereof which is used to support agriculture, including but not limited to storage facilities, barns, silos, greenhouses, farm labor dwellings, and stables, and shall not apply to utility facilities as permitted by this chapter;

pursuant to section 514B-6, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514B-32(a)(13) or 514B-84(a).

[§514B-6] Supplemental county rules governing a condominium property regime. Whenever any county deems it proper, the county may adopt supplemental rules governing condominium property regimes established under this chapter in order to implement this program; provided that any of the supplemental rules adopted shall not conflict with this chapter or with any of the rules adopted by the commission to implement this chapter.

[§514B-7] Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

[§514B-8] Severability. If any provision of this chapter or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provisions or applications, and to this end the provisions of this chapter are severable.

[§514B-9] Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement.

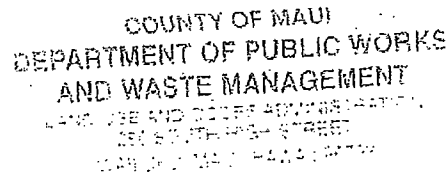
§514B-10 Remedies to be liberally administered. (a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.

(b) Any deed, declaration, bylaw, or condominium map shall be liberally construed to facilitate the operation of the condominium property regime.

(c) Any right or obligation declared by this chapter is enforceable by judicial proceeding.

PART II. APPLICABILITY

[§514B-21] Applicability to new condominiums. This chapter applies to all condominiums created within this State after July 1, 2006. The provisions of chapter 514A do not apply to condominiums created after July 1, 2006. Amendments to this chapter apply to all



Mr. Robert Horcajo, Project Manager
LOWALU ELUA ASSOCIATES, LLC
 173 Hoonana Street, Suite 201
 Kahului, Hawaii 96732

Dear Mr. McCreary:

The State of Hawaii, Department of Land and Natural Resources, State Historic Preservation Division has attached the following condition to this final approval:

In accordance with Section 18.04.020(D) of the Maui County Code, the lots created by this subdivision shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

EXHIBIT E

Mr. Robert Hordajo, Project Manager


SUBJECT: GLOWA LUMA MAUIA SUBDIVISION
LUCA FILE NO 4766

April 30, 2002

Page 2 of 2

If you have any questions regarding this letter, please call Mr. Lance Nakamura of our
Land Use and Codes Administration at 270-7252

Very truly yours,

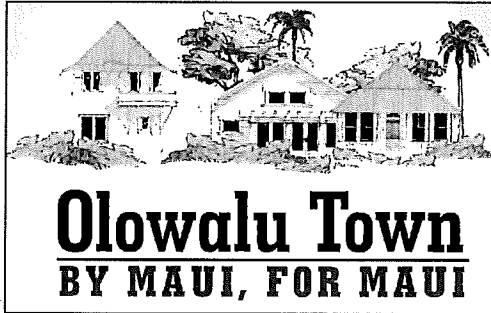


DAVID GOODE

Director of Public Works
And Waste Management

Enclosure: Approved Final Plat

cc: Dept. of Finance, Real Property Tax Division w/final plat
Dept. of Finance, Tax Map Division w/final plat
Building Permit Section w/final plat
Engineering Division w/final plat
Dept. of Planning w/final plat
Dept. of Water Supply w/final plat
Police Dept. w/final plat
State Dept. of Health w/final plat
Maui Electric Co. w/final plat



2035 MAIN STREET WAILUKU HAWAII 96793
OFFICE: 808-249-2224 / FAX: 249-2333

October 26, 2015

Mr. Randy Ragon
713-A Front Street
Lahaina, Hawaii 96761

SUBJECT: Land Use Commission Docket No. A10-786
Olowalu Town, LLC and Olowalu Ekolu, LLC
Olowalu Town Master Plan at Olowalu, Maui, Hawaii

Dear Mr. Ragon:

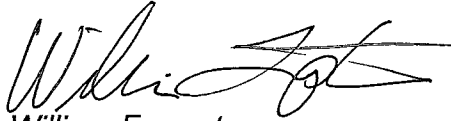
We are in receipt of your letter dated April 19, 2012 to Orlando Davidson who was Executive Director of the Land Use Commission (LUC) at the time. Although you may disagree with our letter of March 2, 2012, we believe our responses reflect an accurate representation of the facts.

During the District Boundary Amendment process before the LUC, you will have the opportunity to be a participant in the proceedings should you choose to do so. Your six (6) questions addressed to the Executive Director can be addressed by the LUC during proceedings before the Commission.

Mr. Randy Ragon
October 26, 2015
Page 2

A copy of your letter and this response will be included in the Final Environmental Impact Statement (EIS). Should you wish to receive a copy of the Final EIS document or portion thereof, please submit your request in writing to Munekiyo Hiraga at 305 High Street, Suite 104, Wailuku, Hawaii 96793 (Attention: Colleen Suyama).

Very truly yours,



William Frampton
Olowalu Town LLC



David Ward
Olowalu Town LLC

WF:DW

Cc: Daniel Orodener, Executive Director, Land Use Commission
Peter Martin, Olowalu Ekolu, LLC
Jennifer Lim, Carlsmith Ball LLP
Colleen Suyama, Munekiyo Hiraga

K:\DATA\OlowaluTown\MasterPI\Draft EIS\Response Letters\Ragon Response.doc

Prof. Dick Mayer
1111 Lower Kimo Dr.
Kula, Maui, HI 96790

dickmayer@earthlink.net

April 21, 2012

Applicant: Olowalu Town, LLC and Olowalu Ekolu, LLC
2035 Main Street, Suite 1, Wailuku, Hawai'i 96793.
Contact: Bill Frampton, (808) -

bill@fwmaui.com

Approving Agency: State Land Use Commission
P.O. Box 2359, Honolulu, Hawai'i 96804.
Contact: Dan Davidson, (808) 587-3826

luc@dbedt.hawaii.gov

Consultant: Munekiyo & Hiraga, Inc.
305 High Street, Suite 104, Wailuku, Hawai'i 96793.
Contact: Colleen Suyama, (808) 244-2015

colleen@mhplanning.com

Director, Planning Department
County of Maui Kalana Pakui Building, Suite 200
250 High Street Wailuku, Hawaii 96793

william.spence@mauicounty.gov
planning@mauicounty.gov

Hawaii State Office of Environmental Quality
235 South Beretaina Street
Honolulu, Hawaii, 96813-2419

oeqc@doh.hawaii.gov

Comments on Draft EIS for OLOWALU TOWN MASTER PLAN

Although I was the Vice-Chairman of the General Plan Advisory Committee (GPAC), I do not represent that committee in my comments here. However many of my comments below, will reflect my experience serving on that committee. I do very much appreciate having the opportunity to comment on this project's DEIS.

Despite the fact that this Draft-EIS is very lengthy and comes in 2 large volumes, it has many omissions and makes numerous assertions which are either untrue or incomplete. Hopefully, the Final EIS will give a complete description of the impacts and mitigations connected to this project proposal.

Note: All page references are to volume 1, except when specifically mentioning volume 2.

Ohana units: Page 20 makes it quite clear that there will be many ohana units in this project. All of the 15-20 agricultural homes are allowed ohana units. All of the 75-100 rural homes are allowed ohana units. And all of the 400-800 town lot homes are also allowed ohana units. That means there may be a total of up to 920 potential ohana units in addition to the 1,500 units often cited for this project!

Nowhere in the subsequent analysis do these ohana units get analyzed, for example: the children who would be attending schools, the considerable traffic generated by each residence, the water consumption, the wastewater sent out, the parking spaces needed, the solid waste generated, etc. Although it will be a major effort, the Final EIS must include these ohana units in all of its calculations, impacts, and mitigations. Alternatively, the applicants may wish to make a statement in their application for a LUC boundary amendment that only a total of 1,500 units would be allowed in the Olowalu project and that there will be a prohibition on any ohana units.

Number of affordable/workforce homes: When the applicants came before the General Plan Advisory Committee (GPAC), they stated explicitly that there would be 1,000 below market price homes in the project. 500 of these homes would be in the affordable range; and 500 homes would meet the needs of gap housing at below market prices. Here is the graphic from the applicant's GPAC presentation:

Space/Community/Roadways - 53%. The price ranges for all of the housing will be allocated into the following:

- 500 units or 1/3 of project for affordable (below 120% median income level);
- 500 units or 1/3 of project for gap-group/under-market (below existing average market prices); and
- 500 units or 1/3 of project for market (above average market prices).

It was partially on the basis of that affordable housing assertion that the GPAC voted to recommend the inclusion of this project within the urban and rural growth boundaries.

Now the Draft EIS states that there will be a maximum of ONLY 750 affordable homes and hints that there may be even fewer if the County's Workforce Housing policy would allow a lower number. The Final EIS should make it clear what the exact number of affordable homes will be. Hopefully, it will be at the promised 1,000 unit level. Otherwise, this would be a classic case of "bait and switch".

Is the Olowalu Town project even needed? There is inadequate analysis in the DEIS of West Maui's housing needs and potential "already entitled" supply. If that analysis is done, it will show that the proposed Olowalu Town project is not needed. On page 25 of the Draft EIS it states that there will be a need for an additional 3,456 units by the year 2030.

The Maui County Planning Department's Long-Range Division has prepared an updated list of the already fully entitled housing units in West Maui. Please see:

[http://www.co.maui.hi.us/documents/Planning/Long%20Range%20Division/GIS%20Maps/Web 20110215DevProjs WestMauiNorth sm.PDF](http://www.co.maui.hi.us/documents/Planning/Long%20Range%20Division/GIS%20Maps/Web%20110215DevProjs%20WestMauiNorth.sm.PDF)

The County Planning Department's list shows that there were 3,963 already entitled units in early 2011. Subsequently during 2011, ML&P's Pulelehua project was fully entitled providing an additional 882 units plus ohanas. Given the fact that there are already about 5,000 fully entitled units available in West Maui, much closer to available jobs, there is no need for the Olowalu Town project at this time and no need for a Boundary Amendment.

Furthermore, the GPAC, Maui Planning Commission, and the County's planning department have all recommended to the County Council urban growth boundaries (UGBs) in West Maui that would permit several thousand additional entitled units much closer to the job locations in Lahaina, Kaanapali, and Kapalua.

Size of the Commercial Area (Page 105): When the applicants came before the General Plan Advisory Committee (GPAC), they stated explicitly that the commercial area would be a modest 25,000 sq. ft. with an additional 15,000 sq. ft. for restaurants. Now, this Draft DEIS claims a desire to build 300,000 sq. ft. of commercial space for this "small town". Another "bait and switch". The Final EIS must include a comprehensive justification for whatever commercial space is being proposed, and an explanation why the large existing (and growing) shopping areas in West Maui and Central Maui cannot meet the needs of Olowalu.

Public Infrastructure Costs: When the applicants came before the General Plan Advisory Committee (GPAC), they explicitly proposed that, "*A significant component of OT includes the design and building of innovative infrastructure systems at no cost to the state or county (applicant's underlining). . . .OT believes strongly in responsible development and will construct and pay for the following infrastructure systems:*" The applicants then provided a long list of infrastructure and public facility improvements which they would pay for. Unfortunately, no similar list exists within the Draft EIS.

Infrastructure – Mauka Highway: The Draft EIS makes it clear that the applicant plans to relocate the highway in a mauka direction within a 200 ft. right-of-way. The applicant proposes to construct a two-lane highway within that corridor, a pair of "O" turns to reduce the need for left-hand turns, and space between the two lanes for a future transit line that presumably would run from Central Maui to West Maui.

Several transportation related issues arise:

a) Page 3 of Appendix L in Volume 2 states that only \$18 million has been set aside for this rather long and probably much more expensive infrastructure project that also includes a bridge. It would seem that this commitment of only \$18 million for the mauka realignment will be grossly inadequate and the applicant may come to the county or state begging for additional funding.

- b) The maps in the Draft EIS did not give a clear indication of the roads connecting the makai and mauka sections of this project. How many intersections will there be on the new mauka highway? How will traffic get across the highway? Lights? Using the "O" turns? What difficulties will the existing mauka agricultural lot residents encounter to get to the ocean?
- c) The maps in the Draft EIS are not very clear as to all of the internal roads that will be contained within the project. The routes of each of the roads should be indicated as well as the width of the roads so that they may be properly assessed by the fire department.
- d) What provision is being made for the future transit rail line to cross the two "O" turns?
- e) What space provisions are being made for a transit station and an adjacent parking and bus connections?

Infrastructure – Existing Honoapi'ilani Highway: The plan is to cut the existing coastal highway in two locations so that travelers on the road would have less access to the Olowalu coastline. The Final EIS should indicate the specific parking facilities, access routes/rights-of-way to the ocean, restrooms that will be available to both the Olowalu town residents and the tourists who now use the Olowalu coastline for snorkeling, fishing etc. Who will own/manage this State property where the present highway will no longer be located? Since visitors would no longer pass the Olowalu store and restaurant, what provision is being made for these changes? How will the owners be compensated for their loss of business?

Infrastructure – Schools: This is one of the biggest issues because the proposed town is so isolated from the existing school infrastructure. On page 31 the Draft EIS states, "As a mixed-use community, public facilities such as schools, community centers, police, fire and emergency services are proposed which will serve the existing and new residential community. The improvement in public facilities will improve the quality of life for existing and future residents of Olowalu."

On page 134 the Draft EIS indicates that all four of the schools in West Maui are already over-capacity!! Then on page 135 the Draft EIS projects that there will be 462 additional students coming from the 1,500 units. However, this projection is much too low because it fails to include the many students that will come from the potential 920 ohana units. Because these ohana units will most likely have young families with school-age children there could be a considerably larger number than 462 students.

There are several implications that can be drawn from the above paragraph.

- a) There will be a need to build a new elementary and middle and high school if students from Olowalu are to attend schools in Lahaina. However, funds for these three schools are unavailable as can be noted by the fact that South Maui with a population of 30,000 still does not have a high school.

- b) The DOE needs to assess impact fees on not only the 1,500 units but also the ohana units. The DOE impact fees are much too low to cover the costs of constructing even one school let alone the three needed ones.
- c) Will the applicant be willing to build the necessary schools in Olowalu?

Infrastructure – Police and Fire: Page 133 trivializes the additional costs of establishing a new police substation and fire station. The provision of land to the County is not adequate; there will be considerable expenses in constructing the stations and ongoing costs to maintain their presence. Estimates of these County costs should be clearly specified. A more robust discussion of the multiple causes and significant effects of fires in this area needs to be included.

Will the County have adequate funds to build the needed fire and police facilities in a timely manner to meet the needs of this project? Those facilities will each need to go through the environmental process as well as receive allocations within the County budget. There are competing needs in other communities for those scarce funds, and there are proposed residential projects in other communities much closer to existing fire and police facilities.

Finally, there should be a complete discussion of (both fire and tsunami) evacuation plans for Olowalu residents with consideration of the likelihood that the highway traffic between Central Maui and Lahaina would be stopped and backed up, making evacuation even more difficult. Given the large number of fires in this area, an effective evacuation plan is absolutely essential to the survival of this community.

Infrastructure – Parks: On page 137 there is an effort to show that this project will meet its parks requirement by providing 223 acres of park and open space. It would be much clearer to indicate separately the number of acres of park land, since open space does not necessarily indicate an ability to use the land for recreational purposes.

Infrastructure – Ambulance: There needs to be an explanation about emergency medical care for a community of this size. What provisions are there for ambulances within the community, or will the community need to rely on an ambulance coming from Lahaina or Central Maui?

Infrastructure – Beach Access: With a resident population of over 4,000, many of whom will be buying homes because of the proximity to the ocean, describe the facilities that will be available to accommodate this large number plus the usual users of this wonderful coral reef area. How will the reef be protected from so many users?

Infrastructure – Hydro-Electricity: On page 170 there is a mention of developing hydroelectric power. Please describe in considerable detail the environmental impacts of utilizing hydroelectric power. What streams will be affected? Will it be on the 640 acres? Etc.

Public Facilities and Financing: County and State Expenditures: Appendix “L”: *Economic and Fiscal Impact Assessment, Olowalu Town Master Plan Development* attempts to provide information and analysis to determine the impacts of the Olowalu Town on County and State finances.

It fails miserably!! Its primary weakness is its lack of ability (or intentional desire) to hide the very real and high costs of needed government expenditures. Those results should not be a surprise since the two authors are “appraisers”, and not economists or CPAs. They have assumed (without any basis) that only 5% of the residents in Olowalu will be in-migrants to Maui; only these people will need additional government services. The authors incorrectly assume that there will be very little additional government expenditure to take care of the needs of 95% of the town’s residents. This totally neglects the large amount of public funds that will be needed to build and maintain schools, police protection, fire protection, ambulance service, solid waste removal, etc.

Phony Numbers: Both Appendix K and L, by the same two authors, develop a set of phony numbers to make the Olowalu Town project look good. For example, they multiply by a factor of 10, all job numbers, residents supported, and households that will benefit!! For example: 477 jobs on Maui and Oahu are made to look like 4,770 jobs; 351 households magically and inappropriately become 3,510. They hope no one will notice.

Number of Jobs: Throughout the Draft EIS mention is made that there will be 1,000 jobs within the community. This number arises on page 5 of Appendix L, out of nowhere, and then is used throughout the Draft EIS. This nice round guesstimate looks like a piece of fiction. Provide supporting data and information in the Final EIS on how this number was derived. This is very important because if the number is significantly lower, it will mean that much more commuter traffic will be leaving the town in both directions.

Agricultural Land: A major concern is the protection of prime agricultural lands; in fact there are both State constitutional requirements as well as obligations within the State’s General Plan. The Draft EIS has considerable discussion about agriculture and agricultural land in general and makes a strong effort to say that this former sugarcane land is only a small part of Maui’s agricultural land. It entirely misses the point.

The real issue here is that the agricultural lands being proposed for a boundary amendment and eventual development into an urbanized area are "PRIME" agricultural lands. These are very special and need to be preserved for Hawaii's future generations. On the bottom of page 112 the EIS indicates that for a mere \$1 million the irrigation system could be repaired and the water could be made available to hundreds of acres of Olowalu's prime agricultural lands. As stated (bottom of page 124) biofuel crops (in addition to those that could be grown in Central Maui) could be a very valuable crop on these sunny lands and would provide real jobs. That is what this land should be used for.

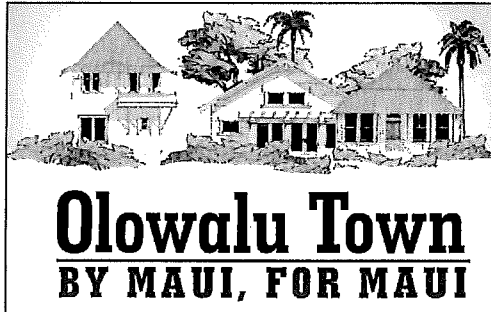
Management and ownership issues: Throughout the Draft EIS it is asserted that certain infrastructure will be maintained by the applicant, and not by the County or State. The Final EIS should clearly indicate who will be responsible for maintaining the infrastructure, the applicant? A homeowners association? Some kind of civil improvement district (County Code chapter 19.34)? The responsible entity will not only make decisions on maintenance, but also will need to have a source of funds to do the maintenance. What is that source of funds? How will it be guaranteed so that the County and/or the State do not have to subsidize the project?

Vagueness: Almost every section that discusses infrastructure ends with a paragraph indicating that plans still need to be developed in that area because discussions are underway with government agencies. Consequently, it is very difficult for the public and decision-makers to do the necessary assessment of whether the EIS is adequately analyzing the impacts and proposing the necessary mitigation measures.

Some Other issues:

- 1.** The Draft EIS makes no statement on the chronological order in which development will take place:
What infrastructure will be complete when the first homeowners are ready to move in?
The statement in the middle of page 129 is too vague. "Infrastructure improvements will be phased concurrently with residential development within the Master Plan to ensure that new residences are adequately served by basic services." There should be an infrastructure schedule.
Which houses will be built first: the needed affordable units or the profitable market units?
- 2.** The Draft EIS is mute with regard to vacation rentals and timeshares. Given the strong promises of smart growth and small-town living it would seem inappropriate for these types of developments. The Final EIS should make it clear that vacation rentals and timeshares will play no role in this residential community.

3. Solid Waste Near the top of page 131 there is a use of the word "considered". It would be far better to indicate the methods by which the solid waste issue will be handled. "Consideration" is not an operative word in an environmental impact statement.
4. Page 160. The Draft EIS mis-states the position of the GPAC and the Maui Planning Commission whose recommendations for the Urban and Rural Growth boundaries differ from the Olowalu Town Master Plan, specifically on the makai side of Honoapi'ilani Highway.
5. There seems to have been no contact with the adjacent community of residents on the mauka side of the property: their concerns, effects on their lifestyle, etc.
6. On page 105 next to last paragraph: suddenly the Draft EIS says that there will be "industrial" jobs. There is no basis elsewhere for such an assertion.



2035 MAIN STREET WAILUKU HAWAII 96793

OFFICE: 808-249-2224 / FAX: 249-2333

October 26, 2015

Dick Mayer
1111 Lower Kimo Drive
Kula, Hawaii 96790

SUBJECT: *Draft Environmental Impact Statement for the Proposed Olowalu Town Master Plan at Olowalu, Hawaii*

Dear Mr. Mayer:

Thank you for your letter of April 21, 2012 providing comments on the Draft Environmental Impact Statement (EIS) for the Olowalu Town Master Plan. We offer the following information to the comments noted in your letter.

Comment:

Despite the fact that this Draft-EIS is very lengthy and comes in 2 large volumes, it has many omissions and makes numerous assertions which are either untrue or incomplete. Hopefully, the Final EIS will give a complete description of the impacts and mitigations connected to this project proposal.

Note: All page references are to Volume 1 except when specifically mentioning Volume 2.

Ohana units: Page 20 makes it quite clear that there will be many ohana units in this project. All of the 15-20 agricultural homes are allowed ohana units. All of the 75-100 rural homes are allowed ohana units. And all of the 400-800 town lot homes are also allowed ohana units. That means there may be a total of up to 920 potential ohana units in addition to the 1,500 units off often cited for this project!

Nowhere in the subsequent analysis do these ohana units get analyzed, for example: the children who would be attending schools, the considerable traffic generated by each residence, the water consumption, the wastewater sent out, the parking spaces needed, the solid waste generated, etc. Although it will be a major effort, the Final EIS must include these ohana units in all of its calculations, impacts, and mitigations.

Alternatively, the applicants may wish to make a statement in their application for a LUC boundary amendment that only a total of 1,500 units would be allowed in the Olowalu project and that there will be a prohibition on any ohana units.

Response:

Ohana units will be an option allowed in the Olowalu Town Master Plan (OTMP). Although it is anticipated that some owners will exercise this option there are others who will not. Planning for infrastructure and public services utilize historical information available for Maui Island, such as the average water use in a region by general use categories (i.e. single-family, multi-family, commercial, etc.). These historic averages include ohana units that have been built on existing lots. The consultants utilized the available State and County criteria in their analysis of infrastructure and public services.

Comment:

Number of affordable/workforce homes: When the applicants came before the General Plan Advisory Committee (GPAC), they stated explicitly that there would be 1,000 below market price homes in the project. 500 of these homes would be in the affordable range; and 500 homes would meet the needs of gap housing at below market prices. Here is the graphic from the applicant's GPAC presentation:

Space/Community/Roadways - 53%. The price ranges for all of the housing will be allocated into the following:

- 500 units or 1/3 of project for affordable (below 120% median income level)*
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- 500 units or 1/3 of project for market (above average market prices)*

It was partially on the basis of that affordable housing assertion that the GPAC voted to recommend the inclusion of this project within the urban and rural growth boundaries.

Now the Draft EIS states that there will be a maximum of ONLY 750 affordable homes and hints that there may be even fewer if the County's Workforce Housing policy would allow a lower number. The Final EIS should make it clear what the exact number of affordable homes will be. Hopefully, it will be at the promised 1,000 unit level. Otherwise, this would be a classic case of "bait and switch".

Response:

Since the preparation of the Draft Environmental Impact Statement (EIS), the Maui Island Plan (MIP) was adopted by the County of Maui through Ordinance No.4004 on

December 28, 2012. The Directed Growth Plan included in Chapter 8 of the MIP describes OTMP as having 1,500 units. It also makes provisions that additional units may be permitted through a transfer of development rights program or to provide more affordable housing in excess of what is required. During this conceptual phase of the process, a total of 1,500 units are proposed. Minimally, the affordable housing units will be in accordance with Chapter 2.96, Residential Workforce Housing Policy, Maui County Code. The intent of the OTMP is to provide as much affordable housing as possible balancing the cost of development with sales prices.

Comment:

Is the Olowalu Town project even needed? There is inadequate analysis in the DEIS of West Maui's housing needs and potential "already entitled" supply. If that analysis is done, it will show that the proposed Olowalu Town project is not needed. On page 25 of the Draft EIS it states that there will be a need for an additional 3,456 units by the year 2030.

The Maui County Planning Department's Long-Range Division has prepared an updated list of the already fully entitled housing units in West Maui. Please see: http://www.co.maui.hi.us/documents/Planning/Long%20Range%20Division/GIS%20Maps/Web_20110215DevProjs_WestMauiNorth_sm.PDF

The County Planning Department's list shows that there were 3,963 already entitled units in early 2011. Subsequently during 2011, ML&P's Pulelehua project was fully entitled providing an additional 882 units plus ohanas. Given the fact that there are already about 5,000 fully entitled units available in West Maui, much closer to available jobs, there is no need for the Olowalu Town project at this time and no need for a Boundary Amendment.

Furthermore, the GPAC, Maui Planning Commission, and the County's planning department have all recommended to the County Council urban growth boundaries (UGBs) in West Maui that would permit several thousand additional entitled units much closer to the job locations in Lahaina, Kaanapali, and Kapalua.

Response:

The MIP reviewed the future housing needs for not only the West Maui region but the entire island. Consideration was given to the existing and future housing inventory for each region to establish housing projections as a long range planning tool with a degree of flexibility. While the projections are a satisfactory planning tool, it is not necessarily a good predictor of how the housing market will react in the next decade. The conditions of the market will determine which projects get built.

Although proposed, for various reasons, history has shown that not all planned projects get built. As such, the long range land use plans in the MIP included OTMP in the Directed Growth Plan as a future growth area. As stated in the MIP, "the project is intended to meet the needs of Maui residents as a revitalized and sustainable Olowalu community. The OTMP will provide housing, employment, recreational, and cultural opportunities in the context of a mixed-use sustainable community that preserves the area's natural, cultural, and historic resources". The market will determine the sequencing of units built, their location and target customers. The question of need also ignores the fact that unlike older style developments, OTMP is a master planned, mixed-use community designed to be pedestrian-friendly which will allow residents to live within walking distance of stores, schools, parks, employment opportunities, community centers, beaches, and social and civic resources, ultimately reducing reliance on automobiles. OTMP proposes infrastructure improvements that will incorporate innovative, efficient, and sustainable technology to minimize adverse impacts upon the natural environment. In addition, the OTMP will include an internal roadway network, consisting of an assortment of interconnected greenways and bikeways linkages in the community that support overall well-being and health of residents while reducing dependency on automobiles. These differences will give OTMP a distinct market advantage over other more traditional suburban developments.

Comment:

Size of the Commercial Area (Page 105): When the applicants came before the General Plan Advisory Committee (GPAC), they stated explicitly that the commercial area would be a modest 25,000 sq. ft. with an additional 15,000 sq. ft. for restaurants. Now, this Draft DEIS claims a desire to build 300,000 sq. ft. of commercial space for this "small town". Another "bait and switch". The Final EIS must include a comprehensive justification for whatever commercial space is being proposed, and an explanation why the large existing (and growing) shopping areas in West Maui and Central Maui cannot meet the needs of Olowalu.

Response:

Since the General Plan Advisory Committee (GPAC,) several years have passed in which the conceptual plans have been modified several times as technical studies were developed. Prior to the adoption of the MIP, it was disclosed to the County of Maui and the public that the OTMP would include approximately 300,000 sq. ft. of commercial use. The commercial uses within the OTMP is to provide services and employment for the residents as a mixed-use sustainable community as envisioned in the MIP. We note that the project's Market Study prepared by ACM concludes that the proposed commercial uses can be expected to be absorbed within the project's development timetable. See Appendix "K" in the Draft EIS. The Draft EIS included an Assessment of

Economic and Fiscal Impacts from the OTMP, associated with the proposed 300,000 sq. ft. of commercial uses. See Appendix "L" in the Draft EIS.

ACM Consultants, Inc. (ACM) recently reviewed the economic data and overall economic condition of Maui since the preparation of the Assessment of Economic and Fiscal Impact report. According to ACM, although sectors of the real estate market have improved, overall economic indicators have improved only slightly as evidenced by minimal upward changes in the Consumer Price Index. Although overall revenue may have increased slightly, costs have also increased at a similar pace. The overall rate of inflation in the past three (3) to four (4) years has been nominal but steady as the economy continues to recover. ACM determined the findings in the Fiscal Impact Study are still deemed applicable.

Comment:

Public Infrastructure Costs: When the applicants came before the General Plan Advisory Committee (GPAC), they explicitly proposed that, "A significant component of OT includes the design and building of innovative infrastructure systems at no cost to the state or county (applicant's underlining). . . .OT believes strongly in responsible development and will construct and pay for the following infrastructure systems:" The applicants then provided a long list of infrastructure and public facility improvements which they would pay for. Unfortunately, no similar list exists within the Draft EIS.

Response:

As represented, infrastructure systems will be constructed in phases in conjunction with the development phases of the OTMP. Much of the improvements will be by Olowalu Town, LLC and Olowalu Ekolū, LLC, however, it does not preclude opportunities to partner with public and private organizations and/or agencies in the development of school, recreational and public facilities.

Comment:

Infrastructure – Mauka Highway: The Draft EIS makes it clear that the applicant plans to relocate the highway in a mauka direction within a 200 ft. right-of-way. The applicant proposes to construct a two-lane highway within that corridor, a pair of "O" turns to reduce the need for left-hand turns, and space between the two lanes for a future transit line that presumably would run from Central Maui to West Maui.

Several transportation related issues arise:

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- also includes a bridge. It would seem that this commitment of only \$18 million for the mauka realignment will be grossly inadequate and the applicant may come to the county or state begging for additional funding.
- b) The maps in the Draft EIS did not give a clear indication of the roads connecting the makai and mauka sections of this project. How many intersections will there be on the new mauka highway? How will traffic get across the highway? Lights? Using the "O" turns? What difficulties will the existing mauka agricultural lot residents encounter to get to the ocean?
 - c) The maps in the Draft EIS are not very clear as to all of the internal roads that will be contained within the project. The routes of each of the roads should be indicated as well as the width of the roads so that they may be properly assessed by the fire department.
 - d) What provision is being made for the future transit rail line to cross the two "O" turns?
 - e) What space provisions are being made for a transit station and an adjacent parking and bus connections?

Response:

The following addresses your comments in the order of your letter:

- a. Appendix "L" in the Draft EIS is an Assessment of Economic and Fiscal Impacts prepared in 2011. The \$18 million was a preliminary estimate of cost in 2011 used in the foregoing report. As part of the District Boundary Amendment, an updated projected cost for the relocation of Honoapiilani Highway inland and bridge crossings will be provided to the Land Use Commission (LUC).
- b. In coordination with the State of Hawaii, Department of Transportation (HDOT), access from the relocated highway will be limited to three (3) access points. The three (3) access points are shown on Figure 4 in the Draft EIS. The mid- and north-access points will provide access to the mauka lands above the relocated highway, including the 14-lot Olowalu Mauka Subdivision. Also, a bridge crossing will be located at Olowalu Stream crossing, providing pedestrian and bicycle connectivity between the mauka and makai areas of the OTMP. Figure 17 in the Draft EIS conceptually illustrates how traffic is expected to cross the new mauka highway utilizing the O-turns.
- c. At this conceptual phase of the OTMP, the primary streets are shown on the Conceptual Land Use Plan. Refer to Figure 4 in the Draft EIS. The smaller secondary internal roadways will be developed as each development site is planned and designed. As required, the future roadways will meet the urban and

rural roadway standards established by the County of Maui to ensure access for emergency vehicles including fire trucks.

- d. The right of way for the mauka highway is 160 feet which should be able to accommodate a future transit rail line. Future planning and design of a transit rail line will need to make accommodations for the proposed O-turn.
- e. Future planning for a transit rail line will need to make accommodations for a transit station within the proposed right-of-way.

Comment:

Infrastructure – Existing Honoapiʻilani Highway: The plan is to cut the existing coastal highway in two locations so that travelers on the road would have less access to the Olowalu coastline. The Final EIS should indicate the specific parking facilities, access routes/rights-of-way to the ocean, restrooms that will be available to both the Olowalu town residents and the tourists who now use the Olowalu coastline for snorkeling, fishing etc. Who will own/manage this State property where the present highway will no longer be located? Since visitors would no longer pass the Olowalu store and restaurant, what provision is being made for these changes? How will the owners be compensated for their loss of business?

Response:

As shown on Figure 4 in the Draft EIS, the existing Honoapiilani Highway will connect to the new mauka highway at the north and south end of the OTMP. Travelers through OTMP will have the option to utilize the mauka bypass or the existing highway. The Olowalu General Store will be within the commercial core of the OTMP. As such, the number of patrons to the General Store is expected to increase to include residents in the OTMP.

The public will continue to have access to the shoreline through the existing Honoapiilani Highway segment. As a slower speed roadway, there will be the opportunity to create driveway accesses to the existing Honoapiilani Highway that will provide safer access to the shoreline. Conceptually, the OTMP proposes to include access driveways, parking, restrooms, and recreational facilities within a network of cultural, park and open space areas. The intent of the OTMP is to create enhanced public access to the shoreline.

It is envisioned that the portion of the State right-of-way to be realigned near the shoreline would be incorporated into this network of cultural, park and open space amenities. Unless and until title to the property is transferred, the State land will remain under State control. Specific management considerations will be addressed as part of the OTMP's implementation phase of development.

Comment:

Infrastructure – Schools: This is one of the biggest issues because the proposed town is so isolated from the existing school infrastructure. On page 31 the Draft EIS states, “As a mixed- use community, public facilities such as schools, community centers, police, fire and emergency services are proposed which will serve the existing and new residential community. The improvement in public facilities will improve the quality of life for existing and future residents of Olowalu.”

On page 134 the Draft EIS indicates that all four of the schools in West Maui are already over-capacity!! Then on page 135 the Draft EIS projects that there will be 462 additional students coming from the 1,500 units. However, this projection is much too low because it fails to include the many students that will come from the potential 920 ohana units. Because these ohana units will most likely have young families with school-age children there could be a considerably larger number than 462 students.

There are several implications that can be drawn from the above paragraph.

- a) There will be a need to build a new elementary and middle and high school if students from Olowalu are to attend schools in Lahaina. However, funds for these three schools are unavailable as can be noted by the fact that South Maui with a population of 30,000 still does not have a high school.*
- b) The DOE needs to assess impact fees on not only the 1,500 units but also the ohana units. The DOE impact fees are much too low to cover the costs of constructing even one school let alone the three needed ones.*
- c) Will the applicant be willing to build the necessary schools in Olowalu?*

Response:

For long range planning purposes, the OTMP envisions the 1,500 units to include an option for an ohana unit available to future owners. Although some owners will exercise this option, there are others who will not. The Department of Education (DOE) utilized available historical information during the preparation of the West Maui Impact Fee report to determine average student generation rates (SGR). According to the DOE, the SGR may give a rough estimate of the number of students expected to reside in the OTMP at maturity.

Olowalu Town, LLC and Olowalu Ekolu, LLC have initiated discussions with the DOE to determine the educational requirements for the OTMP. The OTMP's land use plan makes accommodation for a future school site. Refer to Figure 4 in the Draft EIS. The

applicants will comply with the requirements of the DOE and at the appropriate time enter into an agreement with the DOE to address school impact issues.

Comment:

Infrastructure – Police and Fire: Page 133 trivializes the additional costs of establishing a new police substation and fire station. The provision of land to the County is not adequate; there will be considerable expenses in constructing the stations and ongoing costs to maintain their presence. Estimates of these County costs should be clearly specified. A more robust discussion of the multiple causes and significant effects of fires in this area needs to be included.

Will the County have adequate funds to build the needed fire and police facilities in a timely manner to meet the needs of this project? Those facilities will each need to go through the environmental process as well as receive allocations within the County budget. There are competing needs in other communities for those scarce funds, and there are proposed residential projects in other communities much closer to existing fire and police facilities.

Response:

For planning purposes, provision has been made to include potential sites for a police and/or fire station site to accommodate future population growth. Through the entitlement process, the agencies will have the opportunity to review police and fire protection services. As may be required, the applicants will provide their fair share contribution to such services.

Funding for the construction and maintenance of such facilities is the function of the County Administration and Council. The Council, through their budgetary process, will determine the allocation of monies to be utilized for such facilities. Olowalu Town, LLC and Olowalu Ekolu, LLC will work with the County of Maui to ensure that the needed facilities are constructed. We noted that tax revenues generated from OTMP will support the County's budget process.

As requested, the EIS has been revised to include additional discussion on police and fire protection. See **Exhibit "1"**. Olowalu Town, LLC and Olowalu Ekolu, LLC will provide their fair share contributions toward police and fire protection to be determined by the County of Maui. Examples of contribution may include the dedication of land and/or provision of design support. As noted previously, the Council through their budgetary process, will determine the allocation of monies to be utilized for such facilities. The Applicants intend to work with the County of Maui to ensure that the needed facilities are constructed. Further, tax revenues generated from OTMP will support the County's budget process. Opportunities to partner with public and private

organizations and/or agencies in the development of public facilities, such as fire and police, will also be explored.

Relating to fires, the OTMP will reduce the vacant acreage and vegetation that would be susceptible to wildfires. Additionally, the Olowalu Cultural Reserve (OCR), and as noted in the Draft EIS, the creation of parks, greenways and open space areas, are anticipated to provide a buffer to the adjacent State lands that may be susceptible to wildfires.

Comment:

Finally, there should be a complete discussion of (both fire and tsunami) evacuation plans for Olowalu residents with consideration of the likelihood that the highway traffic between Central Maui and Lahaina would be stopped and backed up, making evacuation even more difficult. Given the large number of fires in this area, an effective evacuation plan is absolutely essential to the survival of this community.

Response:

During implementation of the OTMP, Olowalu Town, LLC and Olowalu Ekolū, LLC will work with the State and County Civil Defense agencies to develop an emergency notification and evacuation plan that would include, at minimum, appropriate signage directing the public to safe locations in the event of an emergency.

As noted previously, the OTMP will reduce the vacant acreage and vegetation that would be susceptible to wildfires. Additionally, the OCR and creation of parks, greenways, and open space areas are anticipated to provide a buffer to the adjacent State lands that may be susceptible to wildfires.

Comment:

Infrastructure – Parks: On page 137 there is an effort to show that this project will meet its parks requirement by providing 223 acres of park and open space. It would be much clearer to indicate separately the number of acres of park land, since open space does not necessarily indicate an ability to use the land for recreational purposes.

Response:

Currently, the OTMP is a conceptual land use plan for planning purposes. There are approximately 223 acres available for open space and park use, which is more than sufficient to ensure that adequate park lands for recreational purposes will be available for the OTMP. As plans for the OTMP move forward, consideration of environmental constraints such as topography, cultural sites, etc. will be analyzed to determine the

optimum areas for park development in relation to the residential, public, and commercial land uses.

Comment:

Infrastructure – Ambulance: There needs to be an explanation about emergency medical care for a community of this size. What provisions are there for ambulances within the community, or will the community need to rely on an ambulance coming from Lahaina or Central Maui?

Response:

As with other emergency services (i.e. fire and police), ambulance service will be coordinated with the County of Maui in conjunction with the implementation of the OTMP. As appropriate, ambulance service may be co-located with the proposed fire station.

Comment:

Infrastructure – Beach Access: With a resident population of over 4,000, many of whom will be buying homes because of the proximity to the ocean, describe the facilities that will be available to accommodate this large number plus the usual users of this wonderful coral reef area. How will the reef be protected from so many users?

Response:

According to the marine water quality report (Appendix “D” of Draft EIS), the major stressor of coral reefs in the area is from sediments. A reduction of sediment deposits is expected in conjunction with the proposed stormwater quality enhancements that will be implemented as part of the OTMP.

Notwithstanding, protection of reefs from human intrusion will also need to be considered as part of the overall recreation area management regime. Tools such as signage and interpretive placards, combined with educational programs are deemed an effective means of resource protection and management, and will be implemented as part of the OTMP.

Comment:

Infrastructure – Hydro-Electricity: On page 170 there is a mention of developing hydroelectric power. Please describe in considerable detail the environmental impacts of utilizing hydroelectric power. What streams will be affected? Will it be on the 640 acres? Etc.

Response:

A hydro-electric facility may be considered for the OTMP. However, at this preliminary stage of infrastructure systems analysis, we are unable to provide specifics on a future hydro-electric facility at this time. However, should Olowalu Town, LLC and Olowalu Ekolu, LLC decide to develop such a facility, then appropriate environmental and permit review will be undertaken.

Comment:

Public Facilities and Financing: County and State Expenditures: Appendix "L": Economic and Fiscal Impact Assessment, Olowalu Town Master Plan Development attempts to provide information and analysis to determine the impacts of the Olowalu Town on County and State finances.

It fails miserably!! Its primary weakness is its lack of ability (or intentional desire) to hide the very real and high costs of needed government expenditures. Those results should not be a surprise since the two authors are "appraisers", and not economists or CPAs. They have assumed (without any basis) that only 5% of the residents in Olowalu will be in-migrants to Maui; only these people will need additional government services. The authors incorrectly assume that there will be very little additional government expenditure to take care of the needs of 95% of the town's residents. This totally neglects the large amount of public funds that will be needed to build and maintain schools, police protection, fire protection, ambulance service, solid waste removal, etc.

Response:

The growing population of the island of Maui will result in an increase in housing needs, basic goods and services. However, the increase in population, together with socio-economic development, will also provide for an increase in the tax base for both the State and County, resulting in an increase in amount of public funds available for the increases in demand and needs for government services. On Page 7 of the "Economic and Fiscal Impact Assessment" report (See Appendix L in the Draft EIS), it was assumed that 95 percent of residents that will reside in OTMP will come from other areas of Maui and the need of existing services in other areas would be re-allocated to OTMP without necessarily creating the need for all "new" services.

A key factor which helps to determine where to allocate needed government services is based upon the geographic distribution of approved areas to build and develop communities. For instance, if a certain geographic location is selected for future development, and as new growth and development occurs over time, government will allocate appropriate resources to that geographic location to address various

government services which would be funded by the increased tax base attributed from the new development. Thus, the additional cost for in-migrants or new residents from outside of the island of Maui is expected to be minimal.

Comment:

Phony Numbers: Both Appendix K and L, by the same two authors, develop a set of phony numbers to make the Olowalu Town project look good. For example, they multiply by a factor of 10, all job numbers, residents supported, and households that will benefit!! For example: 477 jobs on Maui and Oahu are made to look like 4,770 jobs; 351 households magically and inappropriately become 3,510. They hope no one will notice.

Response:

To clarify your example, the multiplier of "10" is *not* a factor but the number of years projected to complete the OTMP. Thus, any annual figure identified in the report is multiplied by 10 to arrive at the total over the projected 10-year development period. The multiplier of "10" is based on the anticipated timeframe for full buildout of OTMP.

Comment:

Number of Jobs: Throughout the Draft EIS mention is made that there will be 1,000 jobs within the community. This number arises on page 5 of Appendix L, out of nowhere, and then is used throughout the Draft EIS. This nice round guesstimate looks like a piece of fiction. Provide supporting data and information in the Final EIS on how this number was derived. This is very important because if the number is significantly lower, it will mean that much more commuter traffic will be leaving the town in both directions.

Response:

In discussion with ACM, the 1,000 jobs estimated to be created within the community is based on an average of one (1) employee per 300 square feet of commercial space projected to be developed within the OTMP. A copy of the information is attached as **Exhibit "2"** for your information.

Comment:

Agricultural Land: A major concern is the protection of prime agricultural lands; in fact there are both State constitutional requirements as well as obligations within the State's General Plan. The Draft EIS has considerable discussion about agriculture and

agricultural land in general and makes a strong effort to say that this former sugarcane land is only a small part of Maui's agricultural land. It entirely misses the point.

The real issue here is that the agricultural lands being proposed for a boundary amendment and eventual development into an urbanized area are "PRIME" agricultural lands. These are very special and need to be preserved for Hawaii's future generations. On the bottom of page 112 the EIS indicates that for a mere \$1 million the irrigation system could be repaired and the water could be made available to hundreds of acres of Olowalu's prime agricultural lands. As stated (bottom of page 124) biofuel crops (in addition to those that could be grown in Central Maui) could be a very valuable crop on these sunny lands and would provide real jobs. That is what this land should be used for.

Response:

According to our agricultural consultant, modern technology has altered the way in which farming is conducted in the 21st Century. For example, there is a strong and well-established trend of growing food hydroponically in greenhouses. In comparison to field farming, hydroponic farming in greenhouses provides higher quality produce; generates far higher yields, allows for year-round production regardless of season, provides secure production unaffected by droughts and storms, does not require good-quality farmland, requires much less land, water and energy, and requires no pesticides or herbicides. In this regard, modern farming is not dependent on the use of prime agricultural lands. We note that current agricultural use within the OTMP is limited.

Comment:

Management and ownership issues: Throughout the Draft EIS it is asserted that certain infrastructure will be maintained by the applicant, and not by the County or State. The Final EIS should clearly indicate who will be responsible for maintaining the infrastructure, the applicant? A homeowners association? Some kind of civil improvement district (County Code chapter 19.34)? The responsible entity will not only make decisions on maintenance, but also will need to have a source of funds to do the maintenance. What is that source of funds? How will it be guaranteed so that the County and/or the State do not have to subsidize the project?

Response:

The private water system and sewage treatment plant will be operated and maintained through the Olowalu Water Company and a private wastewater company anticipated to be formed to operate the wastewater treatment facility. Both are to be regulated by the Public Utilities Commission. The Applicants will be responsible for the design and construction of these improvements. As with other developments within Maui County,

once constructed in accordance with County standards, the drainage system and roadway networks will be dedicated to the County of Maui.

Olowalu Town, LLC and Olowalu Ekolu, LLC propose to continue discussions with the various State and County agencies throughout the entitlement and permitting process to determine its pro rata share for public improvements.

As with other development projects, Olowalu Town, LLC and Olowalu Ekolu, LLC will front the costs of initial infrastructure improvements to the extent required. Where partnerships with other private development and governmental entities are possible, such partnerships for funding will be pursued. As the project is implemented and product sales and tenant leases are executed, revenues from these transactions will be used to repay infrastructure financing debt and enable financing arrangements for subsequent phases of the OTMP.

Capital improvements for project development are not anticipated to be borne by the homeowners association.

Comment:

Vagueness: Almost every section that discusses infrastructure ends with a paragraph indicating that plans still need to be developed in that area because discussions are underway with government agencies. Consequently, it is very difficult for the public and decision-makers to do the necessary assessment of whether the EIS is adequately analyzing the impacts and proposing the necessary mitigation measures.

Response:

The evolution of land planning concepts and attendant engineering solutions are a phased process which includes feedback on early stage planning schemes such as those presented in the EIS document. As comments are received, plans are refined and solidified as they progress through the various land entitlement processes. With commitments made at each stage of land use approval, engineering solutions can be defined with greater certainty. This progression of infrastructure planning and engineering is considered appropriate given the stage of land use approvals being sought.

Comment:

1. *The Draft EIS makes no statement on the chronological order in which development will take place:*

What infrastructure will be complete when the first homeowners are ready to move in? The statement in the middle of page 129 is too vague. "Infrastructure improvements will be phased concurrently with residential development within the Master Plan to ensure that new residences are adequately served by basic services." There should be an infrastructure schedule.

Which houses will be built first: the needed affordable units or the profitable market units?

Response:

Implementation of the OTMP will begin with backbone infrastructure systems, including water, wastewater and roadway facilities needed to initiate each specific increment of residential and commercial development. The spatial progression of development will, in part be determined by market conditions, but will by necessity, include the concurrent provision of market and workforce housing. In general, the Applicants will develop commercial elements of the OTMP in coordination with development of residential components, and will coordinate with governmental agencies such as the Department of Education, Department of Fire and Public Safety and Department of Parks and Recreation to ensure that applicable provisions of law are addressed to meet public facility development requirements.

Comment:

2. *The Draft EIS is mute with regard to vacation rentals and timeshares. Given the strong promises of smart growth and small-town living it would seem inappropriate for these types of developments. The Final EIS should make it clear that vacation rentals and timeshares will play no role in this residential community.*

Response:

The OTMP is being proposed as a Project District. During Project District processing, consideration may be given to include a small hotel or inn in the project district to allow guests of residents to stay within the OTMP. Other transient accommodation formats such as bed and breakfast homes will be required to comply with applicable zoning ordinances such as Section 19.64 of the Maui County Code relating to "Bed and Breakfast Homes". Timeshare units are not permitted within lands zoned Project District, as set forth in Section 19.37, "Time Sharing Plans".

Comment:

3. *Solid Waste* Near the top of page 131 there is a use of the word "considered". It would be far better to indicate the methods by which the solid waste issue will be handled. "Consideration" is not an operative word in an environmental impact statement.

Response:

As noted in our response to Comment No. 20, above, the phased progression of infrastructure and public service parameters for the project will be refined through the land use entitlement processes. We note that as new technologies and methods for managing solid waste are developed over the next few years, such technologies and methods will be incorporated into the project plans, as appropriate.

Comment:

4. Page 160. The Draft EIS mis-states the position of the GPAC and the Maui Planning Commission whose recommendations for the Urban and Rural Growth boundaries differ from the Olowalu Town Master Plan, specifically on the makai side of Honoapi'ilani Highway.

Response:

Appendix "O" of the Draft EIS included the Directed Growth Maps prepared by the Maui Planning Department of both the GPAC and the Maui Planning Commission (MPC). Although both bodies did not approve the entire Olowalu Master Plan, they did recommend a significant portion of the Master Plan to be included in the Urban Growth Boundary and Rural Growth Boundary. The MIP was adopted on December 28, 2012. The EIS includes a section on the MIP and the adopted Directed Growth Map for Olowalu. See **Exhibit "3"**.

Comment:

5. There seems to have been no contact with the adjacent community of residents on the mauka side of the property: their concerns, effects on their lifestyle, etc.

Response:

Throughout this process, Olowalu Town, LLC and Olowalu Ekolu, LLC have conducted meetings with the residents on the mauka side of Honoapi'ilani Highway, in particular the

long-time residents of Kapaiki Village, as well as residents in the 14-lot Olowalu Mauka Subdivision. Dialogue with these residents will continue throughout the process.

Comment:

6. On page 105 next to last paragraph: suddenly the Draft EIS says that there will be "industrial" jobs. There is no basis elsewhere for such an assertion.

Response:

Infrastructure such as the sewage treatment plant, R-1 Recycled water and drinking water facilities will generate industrial jobs in order to operate and maintain these facilities.

Thank you again for your participation in the Chapter 343, Hawaii Revised Statutes review process. A copy of your letter and this response letter will be included in the Final EIS. Should you wish to receive a copy of the Final EIS document or portion, thereof, please submit your request in writing to Munekiyo Hiraga at 305 High Street, Suite 104, Wailuku, Hawaii 96793 (Attention: Colleen Suyama).

Very truly yours,



William Frampton
Olowalu Town, LLC



David Ward
Olowalu Town, LLC

WF:DW

Enclosures

Cc: Peter Martin, Olowalu Ekolu, LLC
Dominic Suguitan, ACM Consultants, Inc.
Jennifer Lim, Carlsmith Ball, LLP
Colleen Suyama, Munekiyo Hiraga

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of the tunnel. These services currently are provided by the Lāhainā Fire Station.

The Master Plan for Alternatives 1 and 2 is not anticipated to adversely impact medical services.

3. Police and Fire Protection and Emergency Services

a. Existing Conditions

The Master Plan area is for Alternatives 1 and 2 is within the Lāhainā Police Station service area, which services all of the Lāhainā district. The Lāhainā Station is located in the Lāhainā Civic Center complex at Wahikuli, approximately 7.5 miles from the Master Plan area.

Fire prevention, suppression and protection services for the Lāhainā District are provided by the Lāhainā Fire Station, also located in the Lāhainā Civic Center and the Napili Fire Station, located in Napili. The Lāhainā Fire Station includes an engine and a ladder company. The Napili Fire Station consists of an engine company. Ambulance service is provided from the Napili Fire Station.

Information received from the State Civil Defense agency confirms that there is an existing civil defense siren located on the makai side of Honoapiʻilani Highway near Camp Olowalu.

b. Potential Impacts and Mitigation Measures

The Maui Police Department commented that OTMP at full build-out will require an additional patrol beat. A new patrol beat will require six (6) police officers to cover a 24-hour period over a seven-day work week and would operate out of the Lāhainā Police Station. The new police beat is estimated to cost \$360,000.00 annually for salaries and benefits and \$51,000.00 for a new police vehicle which is replaced every four (4) years. A new Police Station in OTMP is not required at this time. If deemed necessary in the future, a police substation can be accommodated in Olowalu Town (Hudson, 2012).

The Master Plan for Alternatives 1 and 2 includes future areas to accommodate facilities that may be necessary for police and fire protection and emergency service. Although the Lāhainā Fire Station is located just 7.5 miles away from the Master Plan area for Alternatives 1 and 2, the Maui Fire Department has indicated that 1,500 new homes would impact emergency services. The Fire Department indicated that a future facility for emergency services would help to mitigate the impact and compliment protection provided on the north (Lāhainā) side of the Honoapiʻilani Highway tunnel. The Master Plan for Alternatives 1 and 2 includes areas along the relocated and widened Honoapiʻilani Highway for future emergency facilities.

The Department of Fire and Public Safety (Fire) supports the establishment of the new fire station in OTMP. Discussion with Fire indicated that a new fire station will require a total of 15 personnel to cover three (3) shifts with five (5) personnel each. A new fire station will require a fully equipped fire engine which is estimated to cost approximately \$1 million. To operate the new fire station will cost approximately \$1.25 million annually. It is estimated that a new fire station will cost \$11 million to construct (Haake, 2012).

The West Maui area is susceptible to wildfires and the location of a new fire station in Olowalu will improve the Fire's Department's response time to such fires in the Pali to Lāhainā Town area. Through consultation with Fire, the department has indicated that although the alternatives should diminish the likelihood of such fires, the project's design should include measures that may address impacts to the project from wildfires which originate in surrounding outside areas. The department provided the example of designing greenways at the outer edge of the project that offer a defensible space against wildfires. It is noted that a significant area of the alternatives are envisioned for parks, greenways and open space.

The applicantApplicants will continue to dialogue with the police and fire departments to ensure the location and adequate area for future facilities within the Master Plan for Alternatives 1 and 2 are accommodated.

The existing siren will provide coverage of the central area of the OTMP. Additional omni-directional 121 db(c) sirens will be required to complete coverage of the proposed development for Alternatives 1 and 2. The Applicants will coordinate with the State Civil Defense Agency, the placement

of the additional sirens and the timing when installation of the sirens are warranted.

4. Educational Facilities

a. Existing Conditions

The West Maui region is served by four (4) public schools (Lāhaināluna High School, Lāhainā Intermediate School, Princess Nahi'ena'ena Elementary School, and Kamehameha III Elementary School) operated by the State of Hawai'i, Department of Education (DOE) and two (2) smaller private schools (Sacred Hearts School and Maui Preparatory Academy). All four (4) of the public schools are located within Lāhainā town and three (3) of those schools are located along Lāhaināluna Road, mauka of Honoapi'ilani Highway. The enrollments in the four (4) schools have grown significantly in concert with the growth of residential development in the West Maui area. See **Table 1931**.

Table 1931. Actual and Projected Enrollments at Department of Education Schools in West Maui

School	Actual Enrollment			Rated Capacity	Projected Enrollment
	SY 09-10	SY 10-11	SY 11-12		SY 15-16
Lāhaināluna High School	969	1027	1057	969	1081
Lāhainā Intermediate	693	653	651	571	672
Kamehameha III Elementary	713	733	760	646	788
Princess Nahi'ena'ena Elementary	610	607	643	612	675
Source: Department of Education, 2011.					

BUILDING AREA PER EMPLOYEE BY BUSINESS TYPE

Land-Use	ITE		USDOE Sq.Ft./ Employee	SANDAG Sq.Ft./ Employee
	Land-Use Code	Sq.Ft./ Employee		
Commercial Airport	21	224		
General Aviation Airport	22	392		
Truck Terminal	30	427		
General Light Industrial	110	463		
Heavy Industrial	120	549		
Industrial Park	130	500		
Manufacturing	140	535		
Warehousing	150	781	2114	
Elementary School	520	1250	1131	
High School	530	1587		
Hospital	610	372	486	
General Office - Suburbs	710	304		
Corporate HQ - Suburbs	714	260		
Single Tenant Office	715	295		
Medical-Dental Building	720	207		
U.S. Post Office	732	230		
Office Park	750	278		
Research & Development Center	760	405		
Business Park	770	332		249
Building Material - Lumber Store	812	806		
Specialty Retail Store	814	549		
Discount Store	815	654		
Hardware Store	816	1042		
Nursery-Garden Center	817	529		
Quality Restaurant (Sit Down)	831	134		
High Turnover (Sit Down)	832	100		
Fast Food w/o drive-thru	833	70		
Fast Food w/ drive-thru	834	92		
Grocery			938	
Lodging			1124	917
Bank				317
Office under 100,000 sq.ft.				228
Office over 100,000 sq.ft.				221
Neighborhood Retail				588
Community Retail				383

Sources:

ITE -- Institute of Transportation Engineers

USDOE -- U.S. Department of Energy

SANDAG -- San Diego Assn of Governments

~~project and will incorporate innovative, efficient, and sustainable technologies to minimize adverse impacts to the environment.~~

~~The Master Plan will preserve important open space and cultural resources. Approximately 223 acres of parks and open space will be provided. In addition, no development will occur within 150 feet of the shoreline.~~

The development of the Master Plan ~~both Alternatives 1 and 2~~ embodies the core principles advocated by the Countywide Policy Plan. Importantly, since 2005, the Maui community, especially the Olowalu community, has been involved in the project's planning process. Respecting its natural environment and cultural heritage, ~~the Master Plan is~~ ~~both Alternatives 1 and 2~~ are modeled after the Hawaiian ahupua'a system of land use recognizing the importance of Olowalu Stream and the connection between the ocean and mountain environments, as well as the rich cultural heritage of the area. ~~The Master Plan~~ ~~Both Alternatives 1 and 2~~ incorporates the principles of sustainability, cultural preservation and economic diversity to create neighborhoods sensitive to its environment and cultural heritage.

~~The Master Plan~~ ~~Both Alternatives 1 and 2~~ proposes to establish an economic base consisting of agriculture, community needs, and support services and new entrepreneurialism to support the community's sustainability goals. The Master Plan ~~is~~ ~~for Alternatives 1 and 2~~ is envisioned to disperse population growth into a distinct community from Lāhainā Town separated by agricultural open space and topographic boundaries. The Master Plan ~~alternatives~~ includes retaining approximately 28 acres of agricultural lands in Olowalu as 14 agricultural homesteads ~~and, as part of well as~~ expand the OCR in order to perpetuate native Hawaiian agricultural practices.

In summary, ~~the Master Plan is~~ ~~both Alternatives 1 and 2~~ are consistent with the themes and principles of the Countywide Policy Plan.

Maui Island Plan

~~The second component of the Maui County General Plan 2030 is the MIP. The MIP will set forth an islandwide land use strategy for Maui and encompasses a managed and directed growth plan which includes the delineation of urban and rural growth boundaries. The MIP has undergone review by the GPAC and the MPC and is currently under review by the Maui County Council. Both the GPAC and MPC recommended the inclusion of the Master Plan in the MIP. The Planning Director's transmittal of the MIP to the Maui County Council on~~

October 16, 2009 excluded the Master Plan from the MIP's directed growth boundaries. While the process for review and approval of the MIP is ongoing, the applicant will continue to be an active participant in the MIP process. Due to the uncertainties surrounding the timing of the County Council's approval of the MIP and the lengthy entitlement process for the proposed project, the applicant is continuing to proceed with land entitlement applications for the proposed project while the MIP review continues. If the MIP is adopted prior to the submittal of the Final EIS, the Final EIS will address the project's compliance with the MIP goals, objectives, and policies. It is noted that the respective regional community plans will be updated following the adoption of the MIP. Refer to **Appendix "O"**. The MIP is applicable to the island of Maui only, providing more specific policy-based strategies for population, land use, transportation, public and community facilities, water and sewage systems, visitor destinations, urban design, and other matters related to future growth.

As provided by Chapter 2.80B, the MIP shall include the following components:

1. *An island-wide land use strategy, including a managed and directed growth plan*
2. *A water element assessing supply, demand and quality parameters*
3. *A nearshore ecosystem element assessing nearshore waters and requirements for preservation and restoration*
4. *An implementation program which addresses the County's 20-year capital improvement requirements, financial program for implementation, and action implementation schedule*
5. *Milestone indicators designed to measure implementation progress of the MIP*

It is noted that Ordinance No. 4004 does not address the component relating to the implementation program. Chapter 2.80B of the Maui County Code, relating to the General Plan, was amended via Ordinance No. 3979, October 5, 2012, to provide that the implementation program component be adopted no later than one (1) year following the effective date of Ordinance No. 4004. In December 2013 and March 2014, the Council approved time extensions for approval and adoption of the implementation chapter of the MIP. The implementation program component of the MIP was adopted by Ordinance No. 4126 on May 29, 2014.

The MIP addresses a number of planning categories with detailed policy analysis and recommendations which are framed in terms of goals, objectives, policies and implementing actions. These planning categories address the following areas:

1. *Population*
2. *Heritage Resources*
3. *Natural Hazards*
4. *Economic Development*
5. *Housing*
6. *Infrastructure and Public Facilities*
7. *Land Use*

An essential element of the MIP is its directed growth plan which provides a management framework for future growth in a manner that is fiscally, environmentally, and culturally prudent. Among the directed growth management tools developed through the MIP process are maps delineating UGB, small town boundaries (STB), and RGB. The respective boundaries identify areas appropriate for future growth and their corresponding intent with respect to development character.

The MIP designates Olowalu as an appropriate location for future growth on its Directed Growth Maps. The mauka portion of the proposed Master Plan for Alternative 1 is located within the UGB and RGB. The lands makai of Honoapiʻilani Highway in Alternative 1 are not included in the UGB. However, the MIP states that “the future delineation of potential urban growth areas makai of the existing Honoapiʻilani Highway may be undertaken in conjunction with updates or amendments to the West Maui Community Plan” (MIP at 8-64). Such delineation may consider the need to protect adjacent coastal and marine ecosystems (including the reefs at Olowalu), enhance public shoreline access and open space, and implement the proposed Pali to Puamana Parkway plan. See **Figure 29** and **Appendix “R”**.

Alternative 2 does not include the makai lands and is in the UGB and RGB in the MIP. Refer to **Figure 29** and **Appendix “R”**.

In addition, both Alternatives 1 and 2 have been reviewed with respect to pertinent goals, objectives, policies and implementing actions of the MIP. A summary of policy statements most relevant to the proposed action is provided below:

CHAPTER 1 POPULATION

Goal: Maui’s people, values, and lifestyles thrive through strong, healthy, and vibrant island communities.

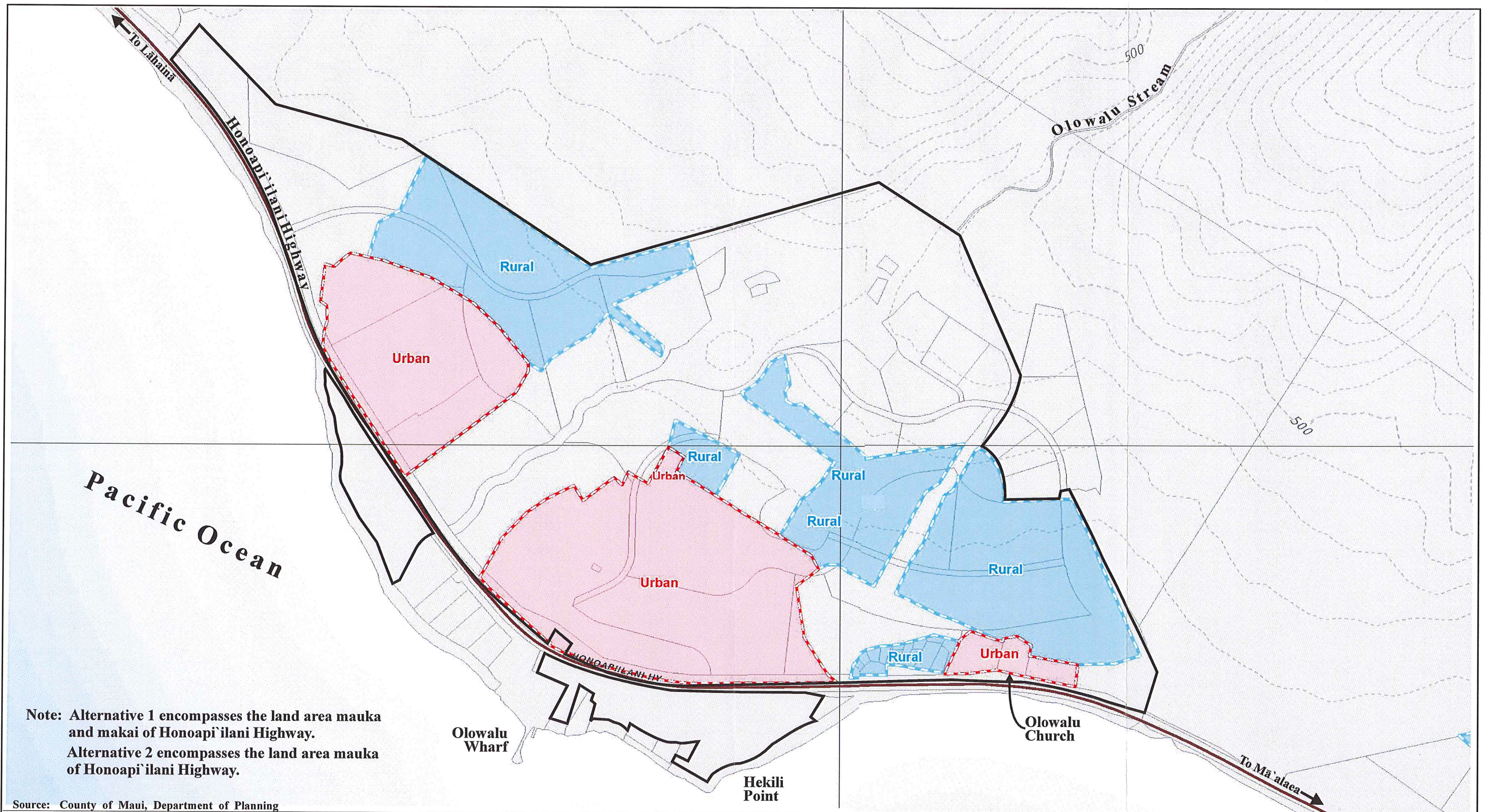


Figure 29

Proposed Olowalu Town Master Plan Maui Island Plan Map

NOT TO SCALE



Objective: Greater retention and return of island residents by providing viable work, education, and lifestyle options.

Policy: Expand housing, transportation, employment, and social opportunities to ensure residents are able to comfortably age within their communities.

CHAPTER 2 HERITAGE

Cultural, Historic, and Archaeological Resources

Goal: Our community respects and protects archaeological and cultural resources while perpetuating diverse cultural identities and traditions.

Objective: An island culture and lifestyle that is healthy and vibrant as measured by the ability of residents to live on Maui, access and enjoy the natural environment, and practice Hawaiian customs and traditions in accordance with Article XII, Section 7, Hawai'i State Constitution, and Section 7-1, Hawai'i Revised Statutes (HRS).

Policies: Ensure traditional public access routes, including native Hawaiian trails, are maintained for public use.

Support the education of visitors and new residents about the customs and etiquette of the Hawaiian culture, as well as other cultures.

Objective: Enhance the island's historic, archaeological, and cultural resources.

Policy: Support opportunities for public involvement with the intent to facilitate the protection and restoration of historic and archeological sites, including consultation with stakeholders.

Shoreline, Reefs, and Nearshore Waters

Goal: An intact, ecologically functional system of reef, shoreline, and nearshore waters that are protected in perpetuity.

Objective: Improved reef health, coastal water quality, and marine life.

Policy: Create additional mechanisms, where needed, to contain and control runoff and pollution.

Objective: Water quality that meets or exceeds State Clean Water Act standards.

Policies: Reduce the amount of impervious surface and devise site plan standards that aim to minimize storm runoff and Nonpoint Source (NPS) pollution.

Require an on-site monitoring program, where applicable, when grading may pose a threat to water quality or when recommended in the Erosion and Sediment Control Plan (ESCP).

Avoid development actions that impair Maui's reef systems and remove identified stressors.

Phase out cesspools and restrict the use of septic systems in ecologically sensitive coastal areas by converting to environmentally-friendly alternative sewage treatment systems, and connecting to central sewerage systems when and where feasible.

Prohibit the development of new wastewater injection wells, except when unavoidable for public health and safety purposes.

Implementing Action: Transition from the use of wastewater injection wells to appropriate, environmentally sound methods of wastewater disposal, and promote the beneficial reuse of wastewater effluent.

Objective: Acquire additional shoreline lands and shoreline access rights.

Watersheds, Stream and Wetlands

Goal: Healthy watersheds, streams, and riparian environments.

Objective: Greater protection and enhancement of watersheds, streams, and riparian environments.

Policies: All present and future watershed management plans shall incorporate concepts of ahupua`a management based on the interconnectedness of upland and coastal ecosystems/species.

Support regulations to require developments to utilize ahupua`a management practices.

Work with private and non-profit entities to educate the public about the connection between upland activities within the watershed and the impacts on nearshore ecosystems and coral reefs.

Objective: Decreased NPS and point source pollution.

Policies: Support the use of Low Impact Development (LID) techniques such as those described in the State of Hawai`i LID Practitioner's Guide (June 2006), as amended.

Encourage farmers and ranchers to use agricultural Best Management Practices (BMPs) to address NPS pollution.

Objective: Greater preservation of native flora and fauna biodiversity to protect native species.

Policies: Work with appropriate agencies to eliminate feral ungulate populations and invasive species.

Support the work of conservation groups and organizations that protect, reestablish, manage, and nurture sensitive ecological areas and threatened indigenous ecosystems.

Implementing Action: Develop strategic partnerships with conservation groups and organizations to maximize Federal, State, County, and private funding; and increase cooperation to achieve conservation goals.

Objective: Enhance the vitality and functioning of streams, while balancing the multiple needs of the community.

Wildlife and Natural Areas

Goal: Maui's natural areas and indigenous flora and fauna will be protected.

Objective: A comprehensive management strategy that includes further identification, protection, and restoration of indigenous wildlife habitats.

Policy: Identify and inventory the following:

- (1) Natural, recreational, and open space resources;
- (2) Flora and fauna with medium, high, and very high concentrations of threatened or endangered species; and
- (3) Location and extent of invasive species.

Objective: A decrease in invasive species through programs and partnerships that eradicate undesirable species and protect native habitat.

Objective: Greater protection of sensitive lands, indigenous habitat, and native flora and fauna.

Policies: Secure an interconnected network of sensitive lands, greenways, watercourses, and habitats.

Protect Maui's sensitive lands.

Scenic Resources

Goal: Maui will continue to be a beautiful island steeped in coastal, mountain, open space, and historically significant views that are preserved to enrich the residents' quality of life, attract visitors, provide a connection to the past, and promote a sense of place.

Objective: A greater level of protection for scenic resources.

Policies: Protect views to include, but not be limited to, Haleakalā, ʻĪao Valley, the Mauna Kahalawai (West Maui Mountains), Puʻu Oʻlaʻi, Kahoʻolawe, Molokini, Molokaʻi, and Lānaʻi, Mauna Kea, Mauna Loa, sea stacks, the Pacific Ocean, and significant water features, ridgelines, and landforms.

Protect “night sky” resources by encouraging the implementation of ambient light ordinances and encouraging conversion of all sources that create excessive light pollution, affecting our ability to view the stars.

Protect ridgelines from development where practicable to facilitate the protection of public views.

Protect scenic resources along Maui’s scenic roadway corridors.

Implementing Action: Establish design guidelines that integrate techniques such as development clustering, greenbelts, and open space buffers, site plan configuration to protect view planes, building design and height limitations, setbacks from public roadways, landscaping, and other techniques.

CHAPTER 3 NATURAL HAZARDS

Goal: Maui will be disaster resilient.

Objective: Greater protection of life and property.

Policy: Encourage the use of construction techniques that reduce the potential for damage from natural hazards.

CHAPTER 4 ECONOMIC DEVELOPMENT

Economic Diversification

Goal: Maui will have a balanced economy composed of a variety of industries that offer employment opportunities and well-paying jobs and a business environment that is sensitive to resident needs and the island’s unique natural and cultural resources.

Objective: A more diversified economy.

Policies: Support the creation of new jobs and industries that provide a living wage.

Facilitate and expedite permits and approvals.

Objective: Increase activities that support principles of sustainability.

Policies: Support industries that are sustainable, and culturally and environmentally sensitive.

Encourage and support local businesses.

Support the development of economic development clusters in targeted industry sectors.

Encourage all businesses to save energy, water, and other resources.

Objective: Improve the island's business climate.

Policies: Ensure an adequate supply of affordable workforce housing.

Develop neighborhoods and communities that are attractive to the workforce of a diversified economy.

Visitor Industry

Objective: Comprehensively manage future visitor-unit expansion.

Policy: Allow, where permitted by the community plan, the development of business hotels and small, sensitively-designed inns.

Agriculture

Goal: Maui will have a diversified agricultural industry contributing to greater economic, food, energy security, and prosperity.

Policies: Strive to substitute food/agricultural product imports with a reliable supply of locally produced food and agricultural products.

Encourage growing a diverse variety of crops and livestock to ensure the stewardship of our land while safeguarding consumer safety.

Implementing Action: Encourage the development of community gardens, including gardens on greenbelts that separate communities.

Emerging Sectors

Goal: A diverse array of emerging economic sectors.

Policy: Support new industries that are environmentally and culturally sensitive such as health and wellness, sports and outdoor activities, cultural activities, the arts, film-making, entertainment, and digital media.

Small Business Development

Goal: Small businesses will play a key role in Maui's economy.

Policies: Assist traditional "mom and pop" business establishments.

Support community markets and venues that sell locally-made produce, goods, and services.

Health Care Sector

Goal: Maui will have a health care industry and options that broaden career opportunities that are reliable, efficient, and provide social well-being.

Objective: Expand the economic benefits of the health care sector.

Policy: Encourage expansion and improved access to emergency care in all communities.

Education and Workforce Development

Goal: Maui will have effective education and workforce development programs and initiatives that are aligned with economic development goals.

Policy: Encourage the education and training of our residents to meet the needs of a diversified economy.

CHAPTER 5 HOUSING

Goal: Maui will have safe, decent, appropriate, and affordable housing for all residents developed in a way that contributes to strong neighborhoods and a thriving island community.

Objectives: More livable communities that provide for a mix of housing types, land uses, income levels, and age.

Provide affordable housing, rental or in fee, to the broad spectrum of our island community.

Provide infrastructure in a more timely manner to support the development of affordable housing.

Policies: Prioritize the development of infrastructure that supports the development of affordable housing.

Tailor infrastructure requirements to correspond with appropriate level-of-service standards to help control housing costs and to maintain safety.

Objectives: A wider range of affordable housing options and programs for those with special needs.

Reduce the cost to developers of providing housing that is affordable to families with household incomes 160 percent and below of annual median income.

Policy: Require the construction of affordable for-sale and rental housing units as part of the construction of new housing developments.

CHAPTER 6 INFRASTRUCTURE AND PUBLIC FACILITIES

Wastewater

Goal: Maui will have wastewater systems that comply with or exceed State and Federal regulations; meet levels-of-service needs; provide adequate capacity to accommodate projected demand; ensure efficient, effective, and environmentally sensitive operation; and maximize wastewater reuse where feasible.

Policy: Establish new wastewater treatment plant(s) outside the tsunami zone.

Objective: Adequate levels of wastewater service with minimal environmental impacts.

Policies: Meet or exceed all State and Federal standards regulating wastewater disposal or reuse.

Strongly encourage the phase out of cesspools.

Objective: Increase the reuse of wastewater.

Water

Goal: Maui will have an environmentally sustainable, reliable, safe, and efficient water system.

Objectives: More comprehensive approach to water resources planning to effectively protect, recharge, and manage water resources including watersheds, groundwater, streams, and aquifers.

Increase the efficiency and capacity of the water systems in striving to meet the needs and balance the island's water needs.

Policies: Maximize the efficient use of reclaimed wastewater to serve non-drinking water needs.

Acquire and develop additional sources of drinking water.

Transportation

Goal: An interconnected, efficient, and well-maintained, multimodal transportation system.

Objective: Provide for a more integrated island-wide transportation and land use planning program that reduces congestion and promotes more efficient (transit-friendly) land use patterns.

Policies: Plan for an integrated multi-modal transportation system comprised of public transit, bicycle, pedestrian, automobile, and other transportation modes.

Refocus transportation investment from the construction of additional roadways only for the automobile to the expansion of a multimodal transportation system.

Encourage the use of “complete streets” design methods.

Objective: Safe, interconnected transit, roadway, bicycle, equestrian, and pedestrian network.

Policies: Ensure transit-, roadway-, and pedestrian-facilities design and level-of-service standards respect the unique character of our communities.

Prioritize transportation improvements list to cost-effectively meet existing and future needs consistent with the MIP.

Require new development, where appropriate, to integrate sidewalks, pathways, bikeways, and transit infrastructure into new commercial and residential projects while enhancing community character.

Transit

Goal: An island-wide transit system that addresses the needs of residents and visitors and contributes to healthy and livable communities.

Objective: An integrated transit system that better serves all mobility needs of Maui's residents and visitors.

Policies: Maximize access to public transit in town centers, commercial districts, and employment centers.

Expand regional and inter-regional transit services, where appropriate, in heavily traveled corridors and within communities.

Increase the frequency of current service, add additional bus routes as demand requires, and transition to nonpolluting transit vehicles, as funding permits.

Provide adequate transit infrastructure (e.g., bus pullouts, waiting benches and shelters, signs) along existing and future transit right-of-ways.

Parks

Goal: Maui will have a diverse range of active and passive recreational parks, wilderness areas, and other natural-resource areas linked, where feasible, by a network of greenways, bikeways, pathways, and roads that are accessible to all.

Policies: Support, consistent with the MIP, the implementation of open-space and recreational plans, such as the Pali to Puamana Parkway Master Plan and the *Upcountry Greenways Master Plan*.

Utilize the ahupua'a approach by integrating mauka-to-makai natural landscapes into an island-wide parks and recreation functional plan.

Provide a balanced mix of passive and active parks, including neighborhood, community, and regional parks, in each community plan area.

Objective: Achieve parks and recreation opportunities to meet the diverse needs of our community.

Policies: Establish appropriate level-of-service standards at the neighborhood, community, and regional levels.

Identify and acquire parks and recreational facilities that address existing park inadequacies and complement and enhance neighborhoods, communities, and natural land features.

Design park facilities to preserve and enhance natural site characteristics, maximize views, protect environmental and cultural sites, and minimize water demands.

Acquire lands along the shoreline, between coastal roadways and the ocean.

Encourage the development of regional parks, district parks, and greenways in a manner that helps to contain sprawl, provide separation between distinct communities, or offer open space within urban communities.

Require large master-planned communities that incorporate a mixture of park facilities pursuant to parks standards and functional plans.

Support public-private partnerships to implement the acquisition and development of parks when consistent with the General Plan.

Objective: An expanded network of greenways, trails, pathways, and bikeways.

Policies: Link existing and future park sites, natural areas, the shoreline, and residential areas with a network of bikeways, pedestrian paths, trails, and greenways.

Collaborate with the State and private land owners to ensure perpetual access and proper stewardship of traditional trails and access systems.

Public Facilities

Goal: Maui will have adequate public facilities that meet the diverse needs of residents.

Policies: Adequately plan and fund public safety facilities (fire, police, ambulance, civil defense) to meet community needs.

Encourage public-private partnerships to identify and resolve public facility plan shortcomings when consistent with the General Plan.

Incorporate community/area residents' input to determine the appropriate location and design of public facilities.

Schools and Libraries

Goal: Maui will have school and library facilities that meet residents' needs and goals.

Objective: Assist in providing appropriate school and library facilities in a timely manner and in strategic locations.

Policies: Work in partnership with all educational institutions to meet current and future needs including appropriate location, timing, and design of future facilities.

Encourage the Department of Education to build and maintain smaller, community-oriented schools.

Support partnerships (public/private/nonprofit) to build and staff new schools and improve existing facilities.

Objective: Provide a more expansive network of safe and convenient pedestrian-friendly streets, trails, pathways, and bikeways between neighborhoods and schools where appropriate.

Policy: Encourage the State to build new school facilities in appropriate locations that minimize time and distance for students to travel to and from school.

Implementing Action: Encourage the State to build new school facilities in appropriate locations that minimize time and distance for students to travel to and from school.

Health Care

Goal: All of Maui residents will have the best possible health care to include healthy living, disease prevention, as well as acute and long-term care.

Policies: Support the immediate development of a critical access hospital in West Maui.

Improve medical service to remote and outlying regions.

Energy

Goal: Maui will meet its energy needs through local sources of clean, renewable energy, and through conservation.

Policies: Support energy efficient systems, processes, and methods in public and private operations, buildings, and facilities.

Encourage the installation of renewable energy systems, where appropriate.

CHAPTER 7 LAND USE

Agricultural Lands

Policy: Strongly discourage the conversion of productive and important agricultural lands (such as sugar, pineapple, and other produce lands) to rural or urban use, unless justified during the General Plan update, or when other overriding factors are present.

Objective: Support and facilitate connectivity between communities.

Policy: Discourage land use and urban design that impedes interconnectivity between adjacent communities.

Rural Areas

Goal: Maui will have a rural landscape and lifestyle where natural systems, cultural resources, and farm lands are protected and development enhances and compliments the viability and character of rural communities.

Policies: Focus development to areas inside urban, small town, and rural growth boundaries to preserve natural, cultural, and agricultural resources.

Encourage the use of alternative stormwater management techniques that minimize land disturbance and preserve natural drainage features.

Encourage green belts, open space buffers, and riparian zones to minimize conflicts between agriculture and residential uses.

Objective: More appropriate service/infrastructure standards to enhance and protect the island's rural character and natural systems.

Policies: Minimize impermeable surfaces within rural areas.

Use infrastructure, public service, and design standards that are appropriate to rural areas.

Discourage land use and urban design that impede interconnectivity between adjacent communities.

Urban Areas

Goal: Maui will have livable human-scale urban communities, an efficient and sustainable land use pattern, and sufficient housing and services for Maui residents.

Objective: Facilitate and support a more compact, efficient, human-scale urban development pattern.

Policies: Encourage the development and implementation of neighborhood design standards that are environmentally friendly, such as LEED for Neighborhood Development (LEED –ND) standards.

Promote agriculture by encouraging community gardening, community-supported agricultural programs, and farmers markets within and adjacent to urban areas.

Discourage land use and urban design that impedes inter-connectivity between adjacent communities.

Objective: Facilitate more self-sufficient and sustainable communities.

Policies: When developing new communities, provide sufficient lands for commercial, appropriate industrial, educational, spiritual, and non-profit uses to serve the daily needs of community residents.

Site community facilities such as schools, parks, libraries, and community centers within walking and biking distance of residences.

Develop communities that provide sufficient parks, schools, libraries, and other essential public facilities and services to serve resident needs.

Promote agriculture by encouraging community gardening, edible landscaping, community-supported agricultural programs, and farmers markets within and adjacent to urban areas.

CHAPTER 8: DIRECTED GROWTH

The Directed Growth Maps include UGB, RGB, and STB as a directed growth strategy for Maui island. According to the MIP the UGBs, STBs, and RGBs are used to identify and protect farms and natural areas from sprawl and to promote the efficient use of land, and the efficient provision of public facilities and services within the respective growth boundaries. The UGBs, STBs, and RGBs take into account future growth projections through 2030, the availability of infrastructure and services, environmental constraints, and an approximate density of land development to determine the placement of the boundary. Land outside of the UGB is intended to remain rural in character with a strong agricultural and natural-resource

presence. The MIP designated Olowalu as an appropriate location for future growth and establishes UGB and RGB boundaries in this locale.

Alternative 1 and Alternative 2 of the OTMP have been reviewed with respect to the following directed growth goals and policies of the MIP:

Urban and Small Town Growth Area

Goal: Maui will have well-serviced, complete, and vibrant urban communities and traditional small towns through sound planning and clearly defined development expectations.

Policies: Community plans shall provide for urban density land use designations only within UGBs and Small Towns. The County may only support and approve State Urban Land Use Designations for areas within UGBs, STBs, and Rural Villages.

New development shall be consistent with the UGBs, STBs, and all other applicable policies of the MIP. New urban-density development shall not be allowed outside of a UGB or STB.

Rural Growth Areas

Goal: Maui will maintain opportunities for agriculture and rural communities through sound planning and clearly defined development expectations.

Policies: New development shall be consistent with RGB and all other applicable policies and requirements of the MIP. Public, quasi-public, civic, and limited commercial or industrial uses may be allowed in the RGB when the proposed uses demonstrate a public need and are consistent with the Community Plan and zoning.

Environmental protection and compatibility will be a top priority in rural growth areas.

Rural growth areas include Rural Residential Areas and Rural Villages. Rural residential areas may be designated when they are located in association with or on the border of urban growth areas or small towns; and/or when they

provide for complete, self-sufficient rural communities with a range of uses to be developed at densities that do not require urban infrastructure.

Urban-scale infrastructure and public facilities shall not be provided in rural areas except as described in the defined Level-of-Service (LOS) standards. There should be no expectations of urban services in rural areas.

The unique character and function of existing small towns and rural communities shall be protected to retain and preserve their sense of place.

Preserve rural landscapes in which natural systems, cultural resources, and agricultural lands are protected and development compliments rural character and contributes to the viability of communities and small towns.

The MIP addresses the following regions: Wailuku-Kahului; Kihei-Mākena, Makawao-Pukalani-Kula; Paʻia-Haʻikū; West Maui; and Hāna. The West Maui region includes the Olowalu sub-region. According to the MIP, Olowalu Town is intended to meet the needs of Maui residents as a revitalized and sustainable community. Olowalu Town will provide housing, employment, recreational, and cultural opportunities in the context of a mixed-use sustainable community that preserves the area's natural cultural and historic resources. It is envisioned as a pedestrian-friendly community that integrates a variety of housing types with employment opportunities, commercial, and recreational uses developed concurrently with public services and infrastructure.

Olowalu Town will be designed to recognize and perpetuate the land and resource management system of the ahupuaʻa, provide public access between the ocean and mountains, and protect the natural environment.

UGB and RGB were established in Olowalu mauka of Honoapiʻilani Highway. Refer to **Figure 29** and **Appendix "R"**. However, the MIP states that "the future delineation of potential urban growth areas makai of the existing Honoapiʻilani Highway may be undertaken in conjunction with updates or amendments to the West Maui Community Plan" (MIP at 8-64). Such delineation may consider the need to protect adjacent coastal and marine ecosystems, enhance public shoreline access and open space, and implement the proposed Pali to Puamana Parkway plan. The distinct boundaries of parks and open space, specific location of the recreational uses, and the precise amenities will be further defined during the West Maui Community Plan update and

the project review and approval process. Both Alternatives 1 and 2 will require a Community Plan Amendment.

FG. WEST MAUI COMMUNITY PLAN

Within Maui County, there are nine (9) community plan regions. From a General Plan implementation standpoint, each region is governed by a community plan which sets forth desired land use patterns, as well as goals, objectives, policies, and implementing actions for a number of functional areas including infrastructure-related parameters. The proposed Master Plan project is located within the West Maui Community Plan region. The existing land use designations for the Master Plan area under the Community Plan are set forth in the existing West Maui Community Plan Land Use Map. The lands underlying the Master Plan area are designated “Agricultural”, “Open Space”, and “Park (Golf Course)” on the Land Use Map. Refer to **Figure 8** and **Table 4**.

At the appropriate time, the Applicants will file a Community Plan Amendment (CPA) application to change the designation from “Agricultural”, “Conservation”, and “Park (Golf Course)” to “Project District” to reflect the land use spatial relationships and allocations set forth in the proposed Master Plan. This land use entitlement action will apply to both Alternative 1 and Alternative 2.

Examples of goals, objectives, and policies from the West Maui Community Plan supporting the proposed Master Plan are provided below:

LAND USE

Goal:

An attractive, well-planned community with a mixture of compatible land uses in appropriate areas to accommodate the future needs of residents and visitors in a manner that provides for the stable social and economic well-being of residents and the preservation and enhancement of the region’s open space areas and natural environmental resources.

Objectives and Policies:

- Protect and enhance the quality of the marine environment.