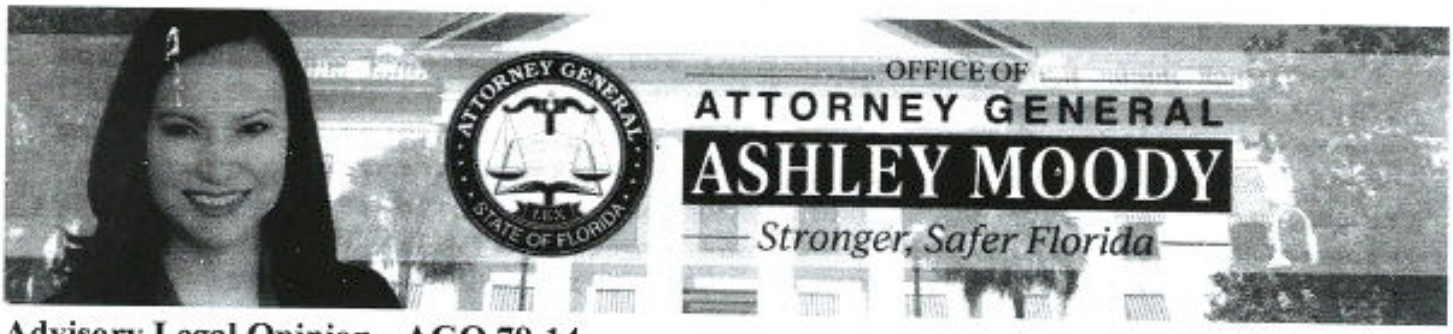


Advisory Legal Opinion - AGO 79-14

Print Version

Number: AGO 79-14
Date: February 16, 1979
Subject: Public funds, private roads

MUNICIPALITIES--PUBLIC FUNDS--MUNICIPALITY NOT AUTHORIZED TO EXPEND PUBLIC FUNDS TO REPAIR PRIVATELY OWNED ROADS OR STREETS

To: Roger G. Saberson, City Attorney, Delray Beach

Prepared by: Jerald S. Price, Assistant Attorney General

QUESTION:

Can a city spend public funds to maintain privately owned streets in a residential subdivision located within the city without violating s. 10, Art. VII of the State Constitution?

SUMMARY:

A municipality may not lawfully expend public funds to repair or maintain *privately* owned roads or streets located within the municipality. Any expenditure of public funds must be for a primarily public purpose, with only incidental or secondary benefit to private interests.

I must point out, first, that only the courts, not this office, can officially determine and rule whether a particular expenditure of funds by a municipality violates s. 10, Art. VII, or any other provision of the State Constitution. Short of judicial adjudication of this matter, it is primarily and initially your responsibility as city attorney to advise the city council as to the validity of a particular expenditure or the likelihood that it might be ruled unconstitutional by the courts.

You stated in your letter that the roads or streets in question are

"private streets" and that they are "privately owned." Given this premise, it is certainly to be presumed that maintenance or repair of such private streets would be the responsibility of the private owners thereof. The test for any expenditure of public funds by a municipality or other governmental entity in this state is whether the expenditure is for a purpose which primarily benefits the public, with any benefits to private interests being only incidental and secondary. O'Neill v. Burns, 198 So.2d 1 (Fla. 1967). I assume that in making the various references to "private streets" and "privately owned streets" in your letters you have determined that no municipal or public right to use of or easement over such roads or streets exists or has arisen, such as by prescriptive easement, common law dedication, or operation of law. *See* AGO's 078-88 and 073-222 for discussion of the several ways in which a municipality or the public (as distinct from the municipality) may gain the right to use land for public roadway purposes. In any event, such determinations, as pointed out in AGO 078-88, are mixed questions of fact and law which this office cannot determine. If any such factors exist, it is your responsibility to establish them and to apply to them the legal principles referred to herein.

Based on your statement of the facts involved, your question appears to have been answered by AGO 073-222. Although that opinion concerned maintenance of roads by a county, the home rule powers of municipality are of no real significance here, as the matter at issue is controlled by constitutional law and the fundamental doctrine of public purpose. In AGO 073-222, the question was: "May a county provide minor work or repairs on private roads and expend county funds therefor?" The answer to that question was in the negative. It was stated in that opinion:

"The fundamental criterion for the expenditure of county funds is that such expenditure will serve a county as contrasted to a private purpose. Article VII, s. 1, State Const., impliedly limits the imposition of taxes and the expenditure of tax revenues to public purposes."

This principle of constitutional law applies with equal effect to municipalities and municipal funds. It was further stated in AGO 073-222 that "[a] private road is, by its very nature, not available to the public, and the *public has no right to travel* by motor vehicle thereon. This being the case, the repair or maintenance of such a road cannot serve a public or county purpose." (Emphasis supplied.) In O'Neill v. Burns, 198 So.2d 1, 4 (Fla. 1967), the Supreme Court applied the prohibitions of s. 10, Art. IX, State Const. 1885 (the predecessor of current s. 10, Art. VII), to a proposed grant of state funds to the Junior Chamber of Commerce and quoted with approval the following analysis of the public purpose doctrine as stated by the trial court:

Exhibit #36

"It is only when there is some *clearly identified and concrete public purpose* as the primary objective and a reasonable expectation that such purpose will be substantially and effectively accomplished, that the *state or its subdivision* may disburse, loan or pledge public funds or property to a non-governmental entity such as a non-profit corporation . . .." (Emphasis supplied.)

See also Brumby v. City of Clearwater, 149 So. 203 (Fla. 1933), wherein the court found invalid a contract entered into by a municipality and a private individual, under which the municipality was to dredge a channel leading to the private individual's place of business. The court found such an expenditure of municipal funds to be violative of s. 10, Art. IX, State Const. 1885 (which, for the purposes of this opinion, was essentially the same as present s. 10, Art. VII, State Const.), as being for a primarily private purpose. *Cf.* Padgett v. Bay County, 187 So.2d 410 (1 D.C.A. Fla., 1966); and Collins v. Jackson County, 156 So.2d 24 (1 D.C.A. Fla., 1963), in which, although the issue had become moot by the county's acquisition of title to the roads and incorporation of them into the county road system during the pendency of the suit, the District Court of Appeal emphasized at 27 that its conclusion therein was "not to be construed as condoning the expenditure of public funds on private property or the abuse of discretion that results when public funds are expended for purposes other than in furtherance of lawful objectives serving the public necessity and convenience."

Based on the above-cited authorities, I am of the opinion that your question as stated should be answered in the negative. The expenditure of public funds by a municipality to repair or maintain *private* streets (in which the municipality has no property rights or interest and over which the public has no easement or right to use for roadway purposes or to travel) would appear to contravene s. 10, Art. VII, State Const., and would not meet the test of being for a primarily public purpose with only incidental private benefit.

Exhibit #36

CV 23-00006-JMS-KJM

My Summons + Complaint received by

cc: Filer only

CM
For: Matt K

[✔] ORDER SETTING RULE 16 SCHEDULING CONFERENCE

[ ] ORDER SETTING STATUS CONFERENCE

for **Monday, March 6, 2023** at 9:30 a.m. before:

[ ] Magistrate Judge Rom Trader via ZOOM Teleconference (Call: 1-833-568-8864 / Access Code 161 5641 6035)

[ ] Magistrate Judge Wes Reber Porter via ZOOM Teleconference (Call: 1-833-568-8864 / Access Code: 161 0084 2470)

[✔] Magistrate Judge Kenneth J. Mansfield via ZOOM Teleconference (Call: 1-833-568-8864 / Access Code 160 8983 1896)

- Parties are reminded that, unless otherwise ordered by the Court, a meeting of the parties must occur at least 21 days prior to the Scheduling Conference and a report submitted to the Court. Except as otherwise provided by L.R. 26.1(c), no formal discovery may be commenced before the meeting of the parties.
- Each party shall file a Scheduling Conference Statement pursuant to L.R. 16.2(b), and shall attend in person or by counsel.
- Failure to file and/or attend will result in imposition of sanctions, (including fines or dismissal), under Fed.R.Civ.P. 16(f) and L.R. 11.1.

DATED at Honolulu, Hawaii on Friday, January 6, 2023.

/s/ Derrick Watson
Chief, U.S. District Judge

THIS SCHEDULING ORDER IS ATTACHED TO THE INITIATING DOCUMENT (COMPLAINT/NOTICE OF REMOVAL) & MUST BE SERVED WITH THE DOCUMENT. PLEASE DO NOT REMOVE.

Exhibit #37 page 1 of 8

more emails than this at least one

FERN FOREST COMMUNITY ASSOCIATION, HANNAH HEDRICK AND MELISSA FLETHCER

From: Thunderfoot Thunderfoot (msthunderfoot@yahoo.com)

To: matt.kanealii-kleinfelder@hawaiicounty.gov

Date: Monday, May 22, 2023, 09:30 AM HST

Aloha,

I am writing you to inform you that I need to speak with you immediately, as soon as possible. The Fern Forest Community Association ("FFCA") is throwing your name around as a co-conspirator in the "connectivity"/opening up the subdivision roads and the spraying of poison on fern Forest roads. None of the land owners have been asked to vote about these issues. All land owners own the roads in tenancy in common, according to the State of Hawaii Land Appl. 1053, and Map 52, and it is written in the deeds to Fern Forest properties and registered with the State of Hawaii Bureau of Conveyances, and recognized by the County of Hawaii Planning Department in an email I received from them on or about February 2, 2021 (as seen in a screen shot edited version of the email that "whites out" any personal information and I did not include a copy of my deed.); which supersedes anything Melissa is attempting to Claim; which is ownership of the Fern Forest roads so that she can operate her facist regime unimpeded.

Therefore, this information coupled with our previous meeting with the Justice Council several years ago, and your recent time-stamped receipt of the a copy of the Federal Court filing for Civil Case No. C23 00006 JMS KJM clearly puts you on notice that if you collude and conspire with them to expend public/government time and services (which is every time you and the County of Hawaii spend time to speak and/or collaborate with County of Hawaii publicly funded services by anyone representing the FFCA about benefitting private property owners, it is a misappropriation of government time) that you will become an active participant in their criminal activities. Plus, expending public funds to benefit private property owners is a gross and shocking crime of misappropriation of public/government funds to provide time and services to benefit private property owners; and are acts of ultra vires, due to the government cannot seize control of my property and deprive me of my ability to control it; that is unlawful seizure and more. All of this falls under U.S.C. § 241, 242, 371,641, 648, 653, 1341, 1343, 1349, 1964, 1968, 1981, 1982, 1986, 1988, 2233, 3363A, etc... on top of many applicable HRS, such as HRS § 46-16 which prohibits County control over private agricultural roads..

The FFCA, the County of Hawaii and yourself, have no right to unlawfully seize and control the Fern Forest private roads. None of you have any legal rights to "connectivity" of private subdivisions with private roads that lead nowhere public. Nor does any of you have the right to conspire to spray poison on the FF roads and peoples private properties. Judge Freitas in Civil case 16-1-00304 made it clear that if they spray poison and it causes damages to me, that I can sue for damages. So, if you are going to collaborate with criminals, you should be aware that you can be construed as a co-conspirator to unlawfully seize control of private roads for harmful and injurious activities.

Still further, these activities, as declared above, are residential activities and are not consistent with agricultural zoning activities. This applies to other resdiential activiites as well,

such as : the neighborhood watch, traffic enforcements of HCCs, abandoned and derelict vehicle removals, and bus service, etc... These residential activities substantiate my Claims that the COUNTY OF HAWAII, the FFCA, and every one of their Board members, and other named Defendants in the Civil Case C23 00006 JMS KJM never intended for the Fern Forest to remain agriculture from the beginning of the County of Hawaii's approval of the subdivision as agricultural land, but stamps approval to name the subdivision fern Forest vacation Estates; which sounds like a tourist destination and blurs the separation between agricultural and nonagricultural use. All of this equates to fraud, collusion and conspiracy, and a trip to Federal Court since no one wants to correct their wrongdoings on their own volition. I was fraudulently sold agricultural land, with no intentions of it ever remaining such. And yet I was still sold agricultural lands; which is FRAUD !

If I do not get a response from you in a reasonable amount of time, then I shall be forced to add your name to the lawsuit as a Defendant.

Sincerely, Thunderfoot
(808) 345-3075

347817940_224962473608556_8948464540833063688_n.jpg 151.3kB Matt's copy of the image I supplied in Exhibit #9 of property damage discovered on May 8, 2023 after he received the lawsuit

Matt receives a copy of lawsuit C23 00006 JMS KJM.pdf 83kB first time on May 3, 2023. Note this is the second copy he received of this lawsuit, the first time he received it was on May 3, 2023, as seen in page 1 of this Exhibit #37, AND still he passed Bill 82. It supports my claims of criminal intent by Matt Honeali'i Kleinfelder and the rest of the entire Hawaii County Council.

Exhibit #37.1

Addendum to Exhibit #37 and Additional information about Hawaii County Councilman Matt-Kaneali'i-Kleinfelder

1. Also at the 2019 TJC event, I personally told Matt Kaneali'i-Kleinfelder ("Matt") that the Defendant FFCA was not a legal entity; AND how it was criminal and he appeared to shake his head as it in agreement with me. In fact, he played a part in even organizing the TJC event but fell short on providing a location for the event, so I found the location;
   a. Therefore, there was more conversation about this with Matt prior to the event; event (and FFCA and County wrongdoing)

2. Further, at the 2019 TJC event I personally told Matt that the FFCA was not a community association, yet Bill 82; and the May 2023 property damage (*) by the County, and their unlawful Ordinance 08-16 ("PCDP") in conspiracy with the FFCA (□) and its Board supports my claims he had prior knowledge of wrongdoing and chose, and continues to choose, aiding and abetting, and/or accessory to crimes, and/or misprison of a felony by making a Law that enables them more power to magnify their crimes under the color of Law by introducing Bill 82 and giving unlawful authority to criminal communities entities (like Defendant FFCA) (knowing they are criminal), to control my interests in my properties by unlawfully having the government control my interests through that criminal community association;
   a. Still further, at the 2019 TJC event I told Matt:

(*) Exhibits #8-#9

(Δ) Exhibit #22

(□) see Exhibit #28

Exhibit #37.1

1. That the County needs to change its' procedures for public testimony to the meetings held for such purpose, because the way it is set up they are depriving me of my right to be heard since they don't publically announce the meetings properly or in enough time for the public to know about them and attend; AND

a. Even if I did attend and give testimony is doesn't not matter when they do not take the proper time to research, digest and consider testimony when they vote on the matter not even five minutes after everyone testifies; It is humanly impossible to take in a large amount of information and not need time to contemplate it; this means they are passing laws without the people. I said some other things on this issue to Matt; AND then ~~[redacted]~~ shook his head in ayes ~~motion, but, didn't respond verbally~~ (2)

b. Part of the problem is the County Council is supposed to be for the people and this is impossible when it is a corporation and employs the "Corporation Counsel" whose job is it to protect the corporation, not the people. It's right there in the title. He put his head down and looked somber at that point; AND

c. I told him I should NOT be forced to "watchdog" the government to ensure it isn't violating my Constitutional & Civil Rights AND Laws of the U.S. their sworn oaths, duties, ethics, codes of conduct etc., and as elected officials ~~are~~ are the factors that were supposed to ensure governmental officials are NOT corrupt; AND here we are "public corruption commingled with corporate corruption."

1. Plus, Matt owns a business and sits on the County Council violates HRS § 84-14; I have been unable to find the name of the business thus far.

(2) He had prior knowledge the public was not being heard and still acted without public input; it is criminal intent.

(1) See date Matt did Draft 4 in Exhibit #1 as Dec. 22 2023, and pages 19-20 of this document, AND this is example of how the public is left out of county decisions

Note: All declarations about Matt herein this document are ALL good cause to add him and the rest of the County Council members & corp. counsel as Defendants.

By this transaction, the Government relinquished its interests in both coastal lots, granting them to W.H. Shipman; in return for the new school lot.

Exhibit #38

Kea'au Surveys 1901, 1911, and 1912 (Note: See also Exhibit #38,1)

In the period between 1901 to 1912, A.B. Loebenstein and Thos. Cook conducted surveys of Kea'au. The surveyor's field books, in the collection of the State Survey Division contain several important drawings and notations of features along the Puna Trail-Old Government Road, and along the coast of the present study area. Additionally, because the surveyors were working with native residents of the Waiäkea-Maku'u vicinity (e.g., Hawelu, Keanaha Pu'ukohola, and Kawailohi), they recorded a number of place names and features in the coastal region. ***Appendix B*** **at the end of this study provides readers with copies of selected pages from the original field note books (courtesy of Randy Hashimoto - State Survey Division).**

March 31, 1923

W.H. and Mary Shipman convey 14.6 acre parcel of land bounded by the road leading to Hilo in coastal Kea'au to Herbert C. Shipman (Bureau of Conveyances, Liber 673:143); and W.H. and Mary Shipman conveyed to Clara Shipman-Fisher (and husband), a 20 acre parcel in coastal Kea'au, bounded on the *makai* **side, by a stone wall along the ancient Puna Road (Liber 673:144)**

Kea'au and Waikahekahe -

Land Court Application 1053

By 1930, W.H. Shipman initiated Land Court proceedings to record the boundaries of the *ahupua'a* **of Kea'au. On December 17, 1930, Charles L. Murray, Assistant Government Surveyor, notified R.D. King, Surveyor, Territory of Hawaii, that he was transmitting under a separate cover, working sheets of surveys for Kea'au and vicinity. The work was conducted as a part of Land Court Application 1053, included surveys of the "old volcano trail, the Pahoa Road and a tracing of the closure, coordinates, and area of Keaau." (Murray to King, Dec. 17, 1930; in the files of the State Survey Division). Of general interest to this study, and the condition of trails in the vicinity of the boundaries between Kea'au and the Olaa Homesteads at the time of the surveys, Murray wrote:**

The trails on these maps are shown where they are clearly defined. There are no signs to show that this trail is still in use. In many places a heavy moss has grown on the grooved trail in the pahoehoe and in other places the trail is covered with "uluhi" fern. Still in other places new

Exhibit #38 page 1 of 7

trails have been opened away from the old trail. All this goes to show that the old trail is very seldom used if ever& **(Murray, Dec. 17, 1930:2; in the collection of the State Survey Division - Land Court Application Folder 1)**

Survey records for the lands near the coastal section of Kea'au, including the section crossed by the old Puna Government Road. Murray also references Mäwae (Mawae)-famed in the history of Kamehameha I as the place where he was struck over the head with a paddle, thus forming the *Känäwai Mämala-hoe* (*Mämalahoa*), or Law of the splintered Paddle-and he cited the location of the *heiau* (ceremonial site) "Kawikawa." The following documentation is excerpted from Murray's field notes:

10. Waiakea-Keaau Bdy: - The bearing of the line *maul:a* of the angle "Mawae" was calculated from the new set of coordinates given to the "angle in the woods" (Keaau corner) derived from the new Volcano traverse, and the coordinates of "Mawae." The bearing and distance between "Mawae" and the sea was calculated from a point at highwater mark as the end of a concreted stonewall. This line is slightly different in azimuth from the Terr. Survey office records and considerably different in distance due to the fact that "Kawikawa"s heiau is a short ways above high water mark, and the Survey office records bring the boundary only to the heiau and not to highwater mark. "Mawae" is at the point where the old Puna-Hilo Boundary sign originally stood and altho Mr. W.H. Shipman claims that "Mawae" should have been a few hundred feet toward the Hilo he has conceded to the present location of "Mawae" which has been considered the correct bdy point by the Government for over 30 years& (ibid.:3)

12. Government Beach Rd.: (exception No. 1) The Government beach road is in fact a well built trail which is 10 feet wide from curbing to curbing. It does not wind in and out to follow the contour of the land but goes in straight lines as described. It has been substantially marked especially where the Keaau boundaries cross it& (ibid.:4)

(See the approved 1933 map, "*Trails of Kea'au, Waikeahekahe Nui and Waikahekahe Iki*" prepared by the County of Hawaii.)

Excerpts from Documentation Recorded in:

Land Court Application 1053 - W.H. Shipman Limited,

to Register and Confirm Title to Land Situate

at Island of Hawaii, Territory of Hawaii.

Exhibit #38 page 2 of 7

I. THE AHUPUAA OF KEAAU: R. P. 7223, L.C.A. 8559-B, Apana 16 to W.C. Lunalilo.

&After W.H. Shipman acquired title in the early '80s [1882] he made no transfer of any portion of the Ahupuaa for more than ten years. Then came the coffee boom between 1894 and 1900 he sold nearly 4000 acres, chiefly in the vicinity of what is now called "9 miles Olaa". Twelve deeds were executed&

In 1899 Shipman leased nearly 4000 acres of Keaau to Olaa Sugar Company, Limited, for a term of 40 years&

HILO RAILROAD COMPANY: Various grants of rights-of-way to this company appear in the Abstract (Pp. 145, 157, 305). The petition and map filed herein show that these rights are now claimed by the Hawaii Consolidated Railway, Limited, by virtue of a deed from John L. Flemming and others to Hawaii Consolidated Railway, Limited, Dated March 15th, 1916, and recorded in Book 450 at Page 113&

OLAA SCHOOL LOT. By various exchanges with the Territory of Hawaii, W.H. Shipman divested himself of title to 5.97 acres of Keaau situate on the Puna Road near its junction with the Volcano Road&

II. AHUPUAA OF WAIKAHEKAHE-NUI. L.C.A. 8525; R.P. 2236, Apana 3 to Kale.

This is a narrow sliver of land with a short frontage on the sea adjoining Keaau on its easterly side and running several miles *mauka.*

The awardee, Kale, seems to have been Sally Davis, daughter of Isaac Davis, a colleague of John Young, a follower of Kamehameha First, and one of the first white men to settle in Hawaii. W.H. Shipman claimed through a complete paper title from Sally Davis' heirs. The land is chiefly ancient lava flows covered in part with forest, and the boundaries were uncertain and the surveys defective owing to the difficulty of the terrain&

IV. L.C.A. 8081. R.P. 4360 to HEWAHEWA:

This is a kuleana within the boundaries of Keaau and petitioner has good title by unbroken chain of conveyances from the original awardee - a rather unusual condition, seldom met with in discussions of Hawaiian kuleanas.

V. ROYAL PATENT GRANTS 3 AND 4, LOTS 8 and 18 to the BOARD OF EDUCATION:

These were small lots on the beach of Keaau set aside in early days for school purposes. The native population in this vicinity was scant at best and with the advent of Olaa plantation the schools on the beach were closed for lack of pupils, and a large school lot was acquired near the junction of the Pahoa and Volcano Roads in Olaa village. This was obtained by exchanges hereinabove discussed with W.H. Shipman, and the two grants above were given to Shipman. The title to these grants is good. (Land Court Application 1053, File Pages 61-69)

Exhibit #38

Sept. 2, 1932

Land Court Application 1053

E.L. Wung, County Engineer; to

Honorable Robert D. King, Surveyor, Territory of Hawaii:

&I have received the advance sheet of Land Court Application No. 1053, for which I wish to thank you.

I notice that on the map that only the main trail, "Exception No. 1", was reserved for the Government. It is also noted that the other old trails leading to Papai, Papuaa, Kahului, etc. and also the trails along the beach and another trail from the present Olaa-Pahoa road to the beach are not being reserved.

My attention has been called time and time again about the public being barred from fishing and gathering opihis along the Keaau coast, as well as all fishermen after landing on the beach from canoes and sampans. Also in some instances men walking along the beach from Waiakea were driven out.

I regret to bring these charges up at this time, however; as county engineer and a public servant, I feel that it is my duty to inform you of the conditions here that you may investigate the matter thoroughly and act for the interest of the general public.

You will note that in the Geological Survey maps that some of the trails are shown, but there is no doubt that you have older maps which show several other trails.

About eleven years ago, a poor Hawaiian was charged and brought before court and indicted for trespassing the Keaau land to gather opihis,, finally public sentiment became so great that it was squashed.

Now, land court petition No. 1053 plainly shows that the public will be forever barred from the beach if said land court passes. I feel it is your duty as well as mine to see that the public is not deprived of such rights.

Kindly have the high waterline defined more correctly on the ground and have all the trails relocated and reserved for the public before it is too late.

Kindly keep this letter to yourself as the owners of Keaau are very powerful both politically and financially& (State Survey Division File - Land Court Application 1053)

September 15, 1932

Land Court Application 1053

Robert D. King, Surveyor, Territory of Hawaii; to

Exhibit #38

Mr. E.L. Wung, County Engineer of Hawaii:

&This is in acknowledgment of your letter of the 2nd instant, in the above entitled matter, and I beg to advise you that all matters regarding the government and the public interests, as they may be affected by this application, will be taken up as soon as the advertisement is published for the hearing of this case.

We have had a case of a similar nature on the island of Kauai and both the County Attorney and County Engineer cooperated in doing much of the initial work and studies regarding the preservation of the public interests. So in this instance the Attorney General's Department, as well as this office will have to depend to a great extent on the information, data and testimony that officials on the ground can much more conveniently gather. I would therefore ask you to cooperated with us to this extent.

There is one feature of Land Court titles that may not be generally understood and that is: a Land Court title does not take away nor does it extinguish any rights of easement and others of like nature in existence prior to the adjudication of such a title. **It is well however, to have such rights, if any, defined at the time of the hearing, so it would be advisable for you and the legal department of the County to make all preliminary surveys and investigations as will preserve any existing rights.**

If a map of this application will be of any assistance, I shall be glad to have one made and forwarded to you& (State Survey Division File - Land Court Application 1053)

On September 16, 1932 R.D. King sent a similar communication to Senator William K. Kama'u.

October 24, 1932

Land Court Application 1053

Robert D. King, Surveyor, Territory of Hawaii; to

Harry R. Hewitt, Attorney General:

Honolulu, Hawaii.

&I beg to report as follows:

That when the field and office check of the survey and map presented with Land Court. Application 1053, was made and reported to the Land Court by this department, it was considered that the government road along near the beach, which is described in the application as "Exception No. 1", was sufficient to protect the public thoroughfare in vicinity of the coast and that there were no public roads or trails other than that provided for in the various exceptions described in the application. Other trails were noticed by the field surveyor

Exhibit #38

but these were assumed to be cattle trails as Keaau is a cattle ranch.

Whilst I was in Hilo September last, the County Engineer called on me and reported that there were a number of trails which he considered public easements running from the public highways to the sea, so I asked for a conference with officials of the County of Hawaii at which were present the County Engineer, the Deputy County Attorney (Correa) and myself, and drew their attention to the fact that this application would shortly come before the Land Court, and that if it was the wish of the county to make any claims of any nature whatsoever that evidence should be gathered to substantiate such claims and present it through you to the Land Court.

I had previously received letters from Senator William K. Kamau and County Engineer Wung, regarding certain trails which they felt should be preserved in the land of Keaau&

Mr. Wung, the County Engineer of Hawaii, stated that there were no funds available for surveying the trails over which easements should be claimed in the nature of public rights-of-way and he requested that this department make such surveys, but if such public easements exist, descriptions by metes and bounds are not as satisfactory as a map showing the general location of the trails; for in the case of old trails there is often a difference of opinion as to the exact line followed, and the court as in previous cases been willing to reserve such claims by general clause and reference to the applicant's map on which the trails are delineated.

But if you advise that a further survey ought to be made in connection with the claims now being presented by the County Engineer of Hawaii, and that such additional surveys should be made by this department, then it is felt that such additional surveys would only be considered when the county officials of Hawaii have satisfied that there are in fact public interests involved&

I have now received from the County Engineer and enclose you herewith a blue print copy of a plan prepared in the office of the County Engineer of Hawaii on which are shown the trails over which the public easements are claimed. **There are also enclosed copies of correspondence between the Territorial Surveyor and County Engineer Wung regarding these claims& (State Survey Division File - Land Court Application 1053)**

November 16, 1932

E.L. Wung, County Engineer; to

Robert D. King, Surveyor, Territory of Hawaii:

&The Board of Supervisors discussed with Mr. Herbert Shipman for about two days relative to the Keaau Land Court Petition No. 1053, with many interested people attending.

The County was willing to abandon all the trails above the Waiakea-Kapoho trail (exception No.1) provided Mr. Shipman will turn his private road (Keaau Road) to the Government, but

Exhibit #38

Mr. Shipman would not agree. So, therefore, the Board of Supervisors has instructed Honorable W.H. Beers, County Attorney, and myself to take the matter up with you and Mr. McGhee and request the surveying and reservation of all the old trails below the Kapoho-Waiakea trail (exception No. 1) and at least one trail above the Kapoho-Waiakea trail (exception No. 1) to the Pahoa-Olaa Government road as noted in red on the blue print submitted herewith.

It is recalled that Papai and Papuaa were quite large villages formerly and there were trails along the beach as well as on all parts of the Island of Hawaii where fishermen had the free right to go fishing any time and anywhere with few exceptions.

While you were last you mentioned about helping me to locate and reserve the trails for the Public. Mr. Beers also pointed out that the above subject is a Territorial matter and should be taken care of by the Territory.

However, the County* is more that willing to cooperate, so therefore kindly advise me as to what steps to follow.

*Not County of Hawaii because it wasn't born until after Statehood in 1959 with the Δ

The Board of Supervisors instructed me to spend not more than $1,000.00 to have the trails surveyed, therefore, I believe with the help of Mr. Charles Murray, your assistant, we can push the work thru. I'll have Mr. John Smith, Surveyor, and some radiomen to help out.

Mr. Beers has already asked Mr. McGhee to postpone hearing of the petition& (State Survey Division File - Land Court Application 1053)

<-Back Next ->

Δ Constitutional Convention for the State of Hawaii

The government could have made its' own road not force a private land owner to "surrender" his for their convience and gov. officials' corporate interest and land speculating activities under the guise of public interest is fraud at a minimum; AND the same kind of thing is happening to me today; clearly establishes long term pattern of corp.* public corruption of Constitutional, Civil and U.S. Laws violations that began long ago and continue to today Exhibit #38 page 7 of 7

Kapoho.

&Puna. The roads of this district through the Paniewa [Pana'ewa] Woods on both the upper and lower roads have very recently been pùt in good repair. Some slight repairs are required on the lower road from Keau [Kea'au] to Kapohu [Kapoho] a distance of 13 miles as this is only a Bridle trail these repairs will be light. Cutting the brush out of the way and throwing out loose stones and repairing any soft spots that exists. I estimate the cost of this at $50 per mile or $650& **(Subject File - Roads Hawaii)**

December 3rd, 1887

C.N. Arnold, Road Superintendent-in-Chief, Hawaii; to

L.A. Thurston, Minister of the Interior:

Describes work on Lower Puna Road, and difficulty in getting men to do the work.

&Your favor in reference to work on the Puna Roads is at hand and in reply I beg to say that the work has been well and cheaply performed. Mr. C. Moore has had a contract for the most of it that portion through the Paniewa [Pana'ewa] woods at the rate of $50 per mile and there is also about 1 ½ miles between there and Kapoho which was paid at the same rate. 12 miles of road was let to him at the rate of $25 per mile. Juan Souza had a contract in the Paniewa woods at the same rate Viz $50 per mile and finished 1 1/3 miles $116.65. Hawelo's [Hawelu] work was done on the upper, or Volcano Road above the half way house and was about 1 mile in length. The total length of road repaired was as near as I could say without an actual survey 25 ¾ miles or about 2 ½ miles beyond Kapoho. **I enclose you herewith a sworn statement from Moore who had the most of the work in charge. As I had no road Supervisor in that district [Puna] the only way in which I could get the work done was to contract for it on the best terms I could make. I have not had a Supervisor there for 5 years and have done the work of the district myself without pay&** **(Subject File - Roads Hawaii)**

owned Hilo Railroad ← large land owner

January 16, 1888

L.A. Thurston, Minister of the Interior appointed W.H. Shipman to be a member of the Road Board for the Taxation District of Puna, Island of Hawaii. (Subject File - Roads Hawaii)

government and corporate commingling their interests for personal benefit.

Exhibit #38.1 page 1061

E Nihi Ka Helena I Ka Uka O Puna

Travel carefully in the uplands of Puna

An Ethnohistorical Study of Wao Kele O Puna
Moku o Puna, Hawai'i Island

Prepared For:
The Office of Hawaiian Affairs

Prepared By:
Kelley Lehuakeaopuna Uyeoka, MA
Momi Wheeler, BS
Li'ula Mahi, BA
Lokelani Brandt, BA
Halena Kapuni-Reynolds, BA
Pueo McGuire, BA

May 2014

Kumupa'a Cultural Resource Consultants, LLC

Even though this resource establishes northern boundary of Fern forest in 1958. the subdivision existed prior to

Exhibit #39 page 1 of 2

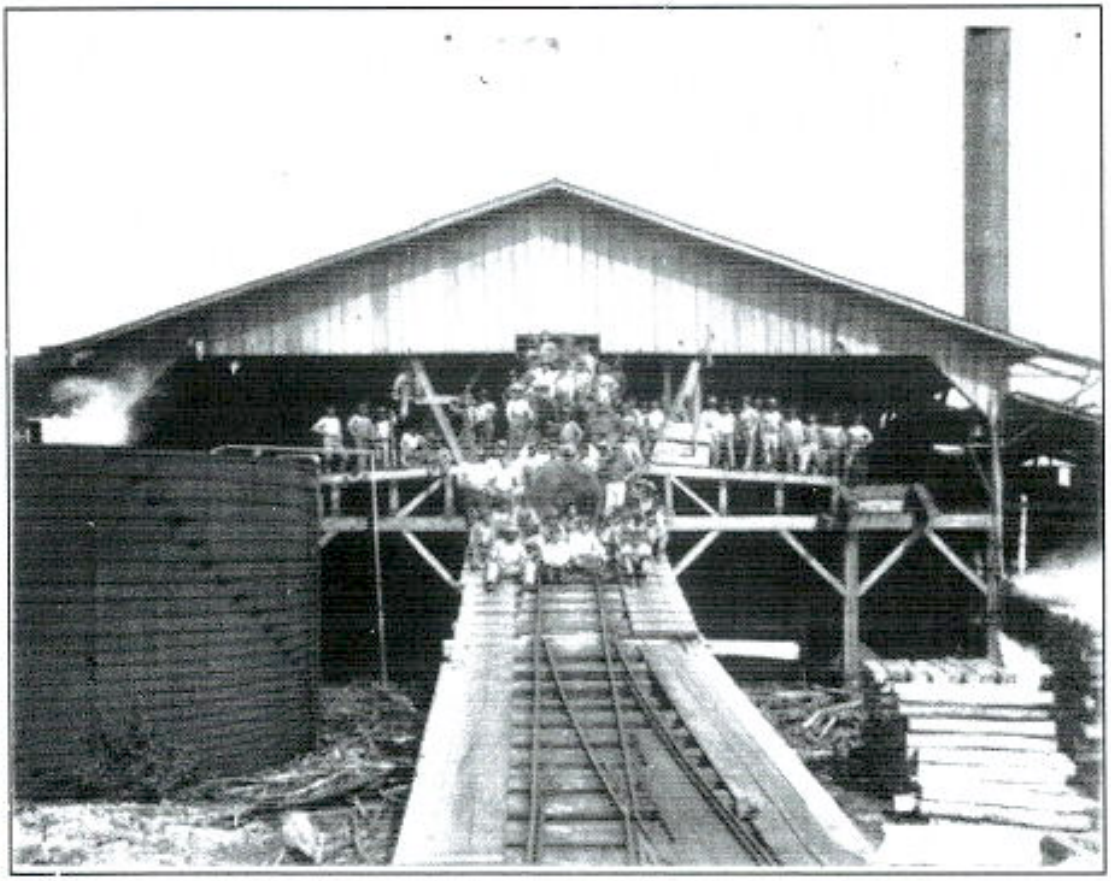


Figure 56. Pahoa Lumber Mill employees surrounding a large cutting blade and the narrow gauge track to stub switch for incoming log cars. Also called Hawaiian Mahogany Company. New mill built Feb-Mar 1913 after original burned to ground January 1913 (Lyman Museum, # PL86.4.215)

Residential and Agricultural Subdivision Contiguous To Wao Kele O Puna

Following Hawai'i's statehood in 1959, Puna experienced a boom in residential and agricultural subdivisions. The price of land in Puna was cheap and affordable. Although many of these subdivisions lacked (and some continue to lack) infrastructure, numerous land purchases were made then and continue to be made today. The subdivisions listed below along with many others contributed to the significant growth in population and infrastructure in Puna. All of the subdivisions below share at least one boundary point with Wao Kele O Puna (Figures 57-59).

Boundary	Subdivision	Year Established
Northern Boundary	Eden Rock Estates	1960
	Fern Acres	1958
	Fern Forest Estates	1958
	Kopua Farmlots	1970's
	Hawaiian Acres	1958

FF Before 1959

Exhibit 282 #39 page 2 of 2

1963 VAL. U.F.V.
366
1977

LCApp. 1053 Map 52 Lot 64 "Fern Forest Vacation Estates" Keaau
BK FP

DESCRIPTION — Third — 1 1 27 65

OWNER	TITLE HISTORY	NET AREA
Finance Realty Co. Ltd.	For 1959 fr 1604-7 & 9 D 5-21-58 R 7-3-58 Cert 218231 fr R F Tongg	3.00 Ac.
~~Edward A Lewis & wf~~	A/S: 9/22/59 with Finance Realty Co., Ltd 3.00 Ac tog/parcel 1-1-27-66.	3.00 Ac.
~~Frances Moore - T/2} A/S~~	Cons.$1,800 DP:$250 R: 5/27/60 Doc.257630 Cert. 71960 TMB 1241'60.	
~~Edward Abraham Lewis &wf:-Frances Moore- T/E~~	D10/3/63 fr FinRlty 3.0ac tog/par-66 RS$2.20 R10/7/63 Doc31489/93746	
Edward A Lewis (w)	D: 2/4/80; Death of Frances Moore Lewis on 11/13/79; LCD# 55621; CERT# 93746; R: 2/5/80; TMB 2204'80	
Donald G. Hasenyager &wf Shirley Ann - T/E	D: 3/22/82 fr Edward Abraham Lewis (widr) tog/w und 1/3000ths int in rdwy lot 8214 SCT$4.50 R: 4/13/82 LCD# 1112023 Cert# 239617 TMB 4359'1982.	

Source: County of Hawaii Property tax Office

Exhibit #40 - shows Property Deed / Title transfers reflecting land in my subdivision changed hands prior to 1959 when Defendant Finance Realty Ltd sold many lots to RF Tongg by 1959 (year of Hawaii Statehood) This supports my claims that my subdivision existed prior to 1959; And RF Tongg was selling lots to individuals years prior to 1978 when Defendant Fern Forest Community was born (in this example the year sold to Frances Moore was 1963);

And on page 2 the date sold to Kurihara and Kaoru was 1958 and names percentage of road ownership; AND

1958 is prior to birth of the official County of Hawaii and State of Hawaii so this supports my claims the government cannot claim it overlooked laws to govern/control private property unlawfully and make that false claim as back dated prior to their existance;

ALL of this supports my claims of collusion, conspiracies, and wrongdoings as declared herein this document.

1965	1971						
1978	1979	1980	1981	1982	1983	1984	1985	1986	1987

Exhibit #40 page 1 of 5

Exhibit #40

page 1 of 5

LCApp. 1053 Map 52 Lot 85

DESCRIPTION

"Fern Forest Vacation Estates" Kauu

OWNER		TITLE HISTORY		Zone	Sec.	Third Plat	Division Parcel
				1	1	28	85
~~Finance Realty Co. Ltd.~~		For 1959 fr 1604-7 & 9 D 5-23-58 R 7-3-58 Cert 218131 fr R F Tongg					
~~Fungio Kurihara and wf Kaoru T/E~~	~~1/2~~	A/S:8/4/56 w/Finance Realty Co., Ltd. 3.00 ac tog/w und 1/3000 int in	←			3.00 Ac	
~~George Tetsuo Kurihara and wf Alice~~		1-1-20-170 Cons$800 DP$100 Inst$10 R:10/9/56 L431223/Cert71980 TMB 4449'58				3.00 Ac.	
~~Kaoru T/E – 1/8)~~	~~A/S~~						
Fungio Kurihara & wf Kaoru-T/E	- 1/2	D: 9/19/66 tog/und 1/3000 int in rdwy R$$1.10 R: 10/3/67 Doc. 428275					
George T. Kurihara & wf Alice K – T/E	- 1/2	Cert. 117008 TMB 4294'67.					

↑
1958 is prior to Statehood of Hawaii

There are pages and books of this information about my subdivision at County of Hawaii Property Tax office

1980	1981	1982	1983	1984	1985	1986	1987
3594	4313	5176	10184	11647	10183	9018	7618

Exhibit #40 page 4 of 5

1963 VAL.	U.P.V.
366	
1977 2600	
1965 1976	1966 1972
844	1080
1978	1979
2628	2946

OTHER LAND IMPROVEMENTS
- paved driveway
- fence/walls
- walkway/patio
- retaining wall

1960 VAL	U.V.	ADJ. U.V.	YR.	1963 VAL
180	137			
1970				216
840	360		71-72	
1.74				1330
1516	600		74-75	
.77				1800
2167				

Exhibit #40 pg 3 of 5

LCApp. 1053 Map 52 Lot 21 "Fern Forest Vacation Estates" Keaau

Third: 1 1 27 109

OWNER	TITLE HISTORY	NET AREA
~~Finance Realty Co. Ltd.~~	Por 1999 fr 1604-7 & 9 D 5-23-58 R 7-3-58 Cert 218231 fr R F Tungg	
~~Marie Cancimilla (a)~~	D: 11/30/59 fr Finance Realty Co., Ltd. Deed data refer to 1-1-27-109.	3.00 Ac. 3.00 Ac.
~~Marie C. Vitacula Trust Estate~~	F/O/D8/2/69 tog/109: 1157-62,-63&-82; R9/25/69 Bk6697/40 TMB 8424'69	
~~Raymond Achiba & wf Florence - T/E~~	D: 10/2/70 tog/par 1-1-27-109 & tog/und 2/3000 int in rdwy S.C.T.81.50 R: 11/19/70 LCD 519743 Cert 137142 TMB 4552'70-71.	
	Keyed only: LD CT ORD NO 32260: 9/3/70 transfer Cert of Title No. 78060 was issued to Marie Cancimilla Vitacula(Improperly issued under her former name of Marie Cancimilla), who died & petitioner is the duly appointed & acting Trustee under the Will & of the Est of said decedent; That said Cert has been lost or destroyed & that said Cert could not be found among the papers & effects of said decedent; That said Cert should carry the notation that the full & correct name of said decedent is Marie Cancimilla Vitacula, all as set forth in Land Court Order No. 32038; That siad Cert should also contain the notation of the distribution of said land to First Hawaiian Ban, whose address is 165 South King Street Honolulu, as Trustee under the Will & of the Est of the said Marie Cancimilla Vitacula, as appears in Doc No. 510954. New Cert of Title No. 135820 issued to First Hawaiian Bank, as Trustee, to replace Certificate No. 78060 & to cancel same tog/par 1-1-27-109 R: 10/1/70 Cert 135820 TMB 2928'70-71.	
Jerry Whitman & wf Diana - T/E	D3/29/72 SCT81.25 R4/6/72 LCD576876/148033 TMB11546'71-72	
	F/O8/2/69 tog/pars-109, 1157-62, 63 & 82 fr Est of Marie Cancimilla Vitacula Prov 30205 1st Cir Died 12/16/67 to First Hawn Bank Trustee under Will & of the Est of Marie C Vitacula, dec'd R9/12/74 LCD695898 Cert170906 TMB3013'74-75 (Keyed Only) LD CT ORD 40582: marriage of Marie Cancimilla to Dominic D Vitacula 10/18/48/ divorce on 12/5/58 of Marie Vitacula & Dominic D Vitacula.	
	F/O:8/2/69 fr Est of Marie Cancimilla Vitacula, dec'd Prob No. 30205, 1st Cir Ct to First Hawaiian Bank, Trustee tog/pars 1127-109;1157-62,63, &82 R:9/12/86 Liber 19849/290 TMB 10729'86. (KEYED ONLY - Previously recorded)	

Exhibit #40 - was obtained from the Defendant County of Hawaii Property Tax Office and show property deed (title) transfers
pgs. 1-5

1980	1981	1982	1983	1984	1985	1986	1987
2995	3594	1/313	8985	9704	8/4	7013	7513

DESCRIPTION

LCApp. 1053 Map 52 Lot 20 "Fern Forest Vacation Estates" Keaau

		Third	
1	1	27	109

OWNER	TITLE HISTORY	
~~Finance Realty Co. Ltd.~~	For 1959 fr 1604-7 & 9 D 5-23-58 R 7-3-58 Cert 218231 fr R F Tong	
~~Marie Cancinilla (s)~~	D: 11/20/59 fr Finance Realty Co., Ltd 3.00 Ac tog/parcel 1-1-27-108.	3.00 Ac.
	R.S.$1.65 R: 12/1/59 Doc. 248079 Cert. 78060 TMB 5186'59.	3.00 Ac.
~~Marie C. Vitacula Trust Estate~~	F/O/D8/2/69 data re:par-108	
	Keyed only: LD CT ORDER NO. 32260 data refer to 1-1-27-108 TMB 2928'70-71.	
~~Raymond Sabiea & wf Florence - T/E~~	D: 10/2/70 data refer to 1-1-27-108 TMB 4552'70-71.	
~~William B Lee & wf Ada Beth - T/E~~	D4/5/72 BCT$1.25 R4/13/72 LCD577622/148190 TMB11915'71-72	
	F/O8/2/69 data re: par-108 TMB3013'74-75 (Keyed Only)	
Ada Beth Lee	For 1985: Ld Ct Order70586 Cert148190 7/19/84 7/26/84 Death of Wm B Lee 11/15/80 TMB8855'84	
	F/O:8/2/86 data refer to 1127-108 TMB 10729'86. (KEYED ONLY - Previously recorded)	

1980	1981	1982	1983	1984	1985	1986	1987
2995	2594	4813	9955	9704	9464	770	7713

1963	VAL	U.F.V.	VAL
	366		
1977			
2467			

1965 / 1970	YR	1980 71-72
	AR	
	L	
	I	
	T	
	EX	
1260	NT	1010

1978	YR	1979
	AR	
	L	
	I	
	T	
	EX	2456
2232	NT	

Exhibit 64-40 page 4 of 5

DEPARTMENT OF FINANCE

LCApp. 1053 Map 52 Lot 29

DESCRIPTION: "Fern Forest Vacation Estates" Keaau

ZONING: | CARD ___ OF ___ CARDS | Third Division | Zone 1 | Sec. 1 | Plat 28 | Parcel 116

OWNER	TITLE HISTORY	NET AREA
~~Finance Realty Co. Ltd.~~ ~~Francis Weber) A/S~~	For 1959 fr 1604-7 & 9 D 5-21-58 R 7-3-58 Cert 218231 & R F Tong A/S: 3/24/59 with Finance Realty Co., Lot 3.00 Ac tog/und 1/3000 int in 1-1-20-170, Cons.$650 DP:$100 R: 3/13/59 Doc.236344 Cert. 71960 TMB 1308'59.	3.00 Ac.
~~J. L. Weber~~	D:11/28/62 RS$1.10 R:11/30/62 LCDoc 295766 Cert 89390 For 1966 3.0ac fr par-117	3.00 Ac.
~~J F Weber Estate~~	R/S: Est of J F Weber, dec'd Probate No. 4384, 3rd Cir Ct Died 8/7/67 Info per Inverntory List fr Inheritance Tax Unit, 7/24/74 TMB3347'74-75	3.00Ac 6.00 Ac.
~~Hara & wf. Judith - T/E~~	D: 11/21/75 fr Robert Carlsmith, Admr of the Est of John Weber, dec'd SCT$4.00 R: 12/11/75 LCD# 745020 Cert.# 179600 TMB 6111'75-76.	
~~D. Santiago & wf~~ ~~Mary Ann - T/E)-A/S~~	A/S: 6/18/79 tog/und 1/3000 int in rdwy Cons$12,000 DP$2,500 Mo$125 R: 6/20/79 LCD 946366 Cert 179600 TMB 10326'79.	
D. Santiago &wf Mary Ann - T/E	D: 5/25/82 fr Stanley Hara &wf Judith tog/w und 1/3000ths int in rdwy lot 8214 (each Lot 28 & Lot 29) SCT 00.00 R: 5/28/82 LCD# 1117803 Cert# 240697 TMB 6659'1982. NOTE: Parcel 117 dropped into parcel 116.	

	75-76	76-77	1977	1978	1979	1980	1981	1982	1983
	2100	2767		2232	2455	2995	[illegible]	[illegible]	3996
	1223	1048		858	859	858	[illegible]	[illegible]	1745
	3323	3215		3090	3314	3853	[illegible]	[illegible]	14784
				1					
				3090	3314	3853			14730

U.P.V. VAL

1970 | 71-72 | 1979

1080

Exhibit #40 page 5 of 5

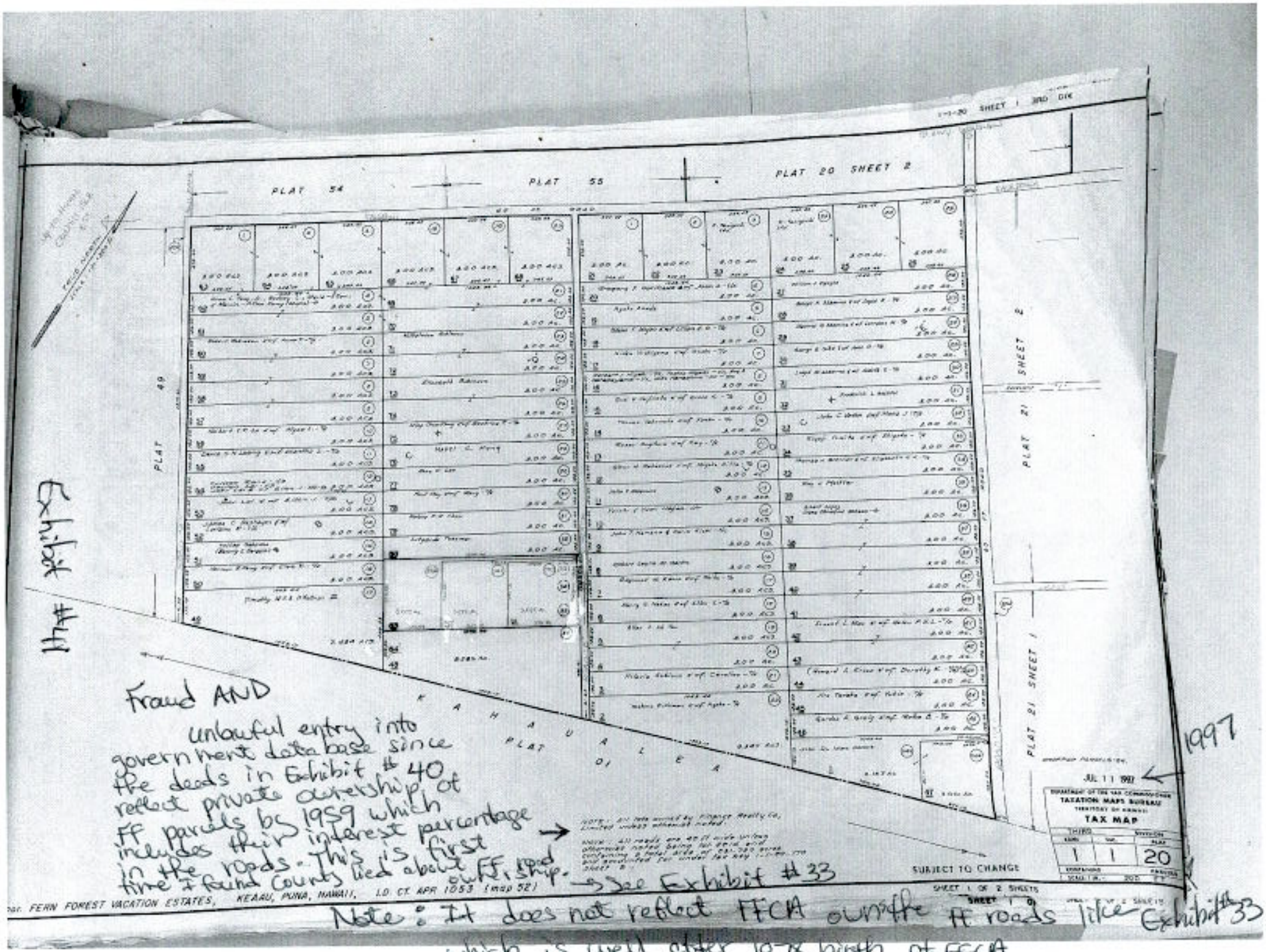


Exhibit #33

Fraud AND

unlawful entry into government data base since the deeds in Exhibit # 40 reflect private ownership of FF parcels by 1959 which includes their interest percentage in the roads. This is first time I found County lied about our FF road ship.

→ See Exhibit #33

1997

Note: It does not reflect FFCA owns the roads like Exhibit #33 which is well after 1978 birth of FFCA

THE UNITED STATES CONFERENCE OF MAYORS

Digital Track Session - Smart Cities: Strategies for Achieving Smart Urban Growth

Organized by the U.S. Conference of Mayors

Location: Mile High Ballroom 3A

Time: Thursday, April 27, 10:00-12:00

- Keynote: Bruce Harrell, Mayor of Seattle, Washington, United States

Panel:

- Moderator: Chelsea Collier, Editor of Smart Cities Connect
- David Holt, Mayor of Oklahoma City, Oklahoma, United States
- Hillary Schieve, Mayor of Reno, Nevada, United States
- Bruce Harrell, Mayor of Seattle, Washington, United States
- Lily Mei, Mayor of Fremont, California, United States
- Elizabeth Kautz, Mayor of Burnsville, Minnesota, United States
- Luis Donaldo Colosio Riojas, Mayor of Monterrey, Mexico

Panel:

- Frank Cownie, Mayor of Des Moines, Iowa, United States
- Bonnie Crombie, Mayor of Mississauga, Canada

CAF BANCO DE DESARROLLO DE AMÉRICA LATINA

Exhibit #42

Mayor Hosts Cantankerous Meeting In Volcano Village

by Big Island Video News
on Aug 25, 2023 at 7:08 am

143 Shares

LATEST NEWS

Council Votes Down Puna Makai Alternate Route Study

Submarine Optical Fiber Cable To Link Hawaiian Islands

Exhibit #42

STORY SUMMARY

VOLCANO, Hawai'i - "15-minute smart cities", mandatory vaccinations, and emergency preparedness were the hot issues at Thursday's meeting.

NEWS RELEASE

Utah Man Dies After Possible Drowning In Kona

Boaters Reminded To Go Slow For Returning Humpback Whales

Military Exercise Could Cause Flight Delays At Kona Airport

Nighttime At The Wall That Heals In Hilo

(BIVN) – Hawai'i County Mayor Mitch Roth and his cabinet held another town hall event Thursday evening at a crowded Cooper Center in Volcano Village, where officials heard the usual questions and concerns from residents about roads, planning, and emergency preparedness.

However, many of the attendees came looking to question the mayor on a variety of other issues, like vaccinations, the Maui wildfires, and a concept referred to as "15-minute smart cities", which Mayor Roth said he was unfamiliar with.

One outburst, concerning the allowance of sexually explicit materials in schools and public libraries, led to a situation that required the intervention of security.

One speaker from Volcano apologized that so many residents from outside town

Exhibit #42

came to the meeting to speak out on matters that were not directly related to village concerns.

A video recording of the event is available for viewing on **Mayor Roth's Facebook page** and Nā Leo TV, Channel 55.

Filed Under: Volcano Tagged With: Mitch Roth

← Note: it is alarming that at a public meeting that involves an area larger than Volcano Village, such as my subdivision and Mauna Loa Estates, etc... that one person would attempt to exclude other members of the public at a public meeting! this is the perfect example of the oppression I am ~~experien~~ experiencing; that violates my rights, 1st, 4th, 5th, 14th, etc., Amendment rights!

Exhibit #42

CLIMATE RESILIENT HOUSING
BUILD CHANGE

Policy for the People in Hawaii: In Conversation with Mayor Mitch Roth

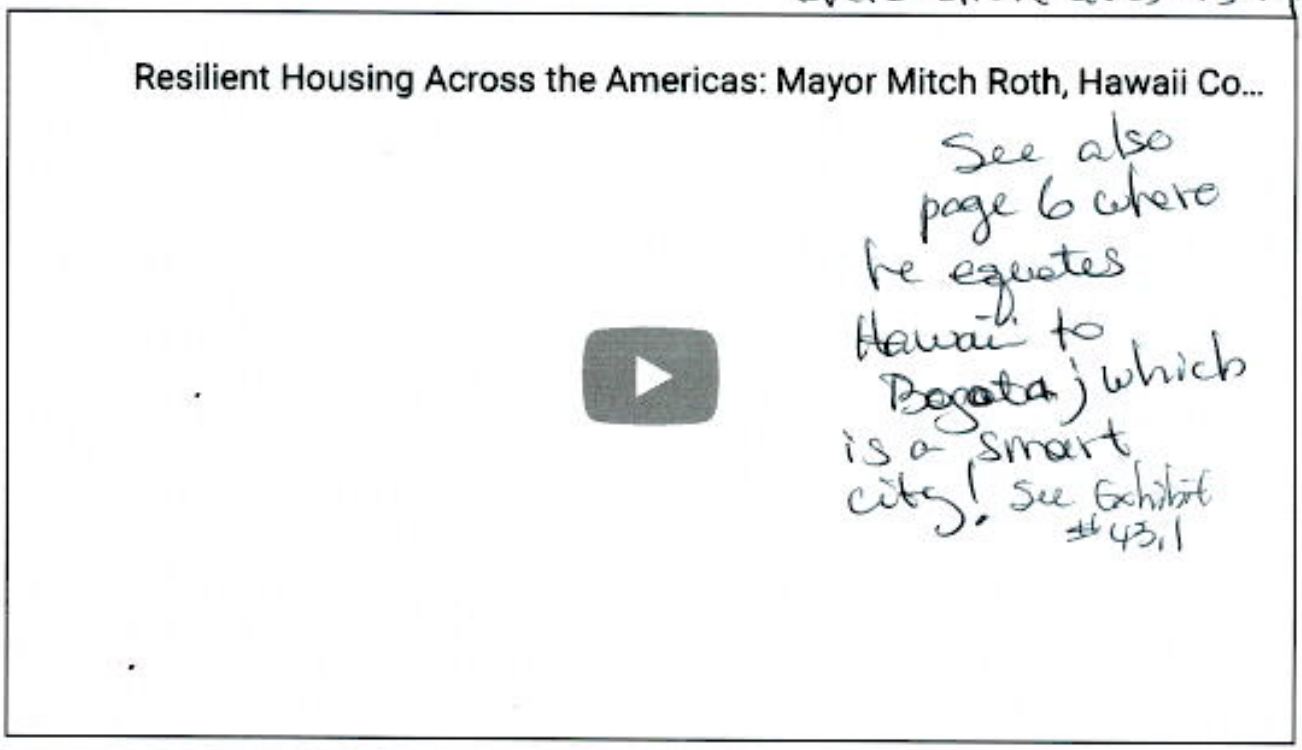
JUNE 20, 2023 BUILD CHANGE NO COMMENTS

We're excited to launch a new web-series, *Resilient Housing Across the Americas*, a series of conversations with housing leaders across industries, countries and interests. In the first installment of this

series, filmed during hte Cities Summit of the Americas in Denver, Colorado, we're in conversation with Mitch Roth, Mayor of Hawaii County, Hawaii about how policies and building codes need to work *for* the people they serve.

Mitch Roth attended "The United States Conference of Mayors" (See Exhibit #43 where "Smart cities" is topic.

This conversation has been edited for length and clarity.



See also page 6 where he equates Hawaii to Bogota, which is a smart city! See Exhibit #43.1

Elizabeth Hausler (EH): So we're here at the Cities Summit of the Americas launching Build Change's Resilient Housing across the Americas webinar series with the mayor of Hawaii County, Mayor Mitch Roth. So thank you so much, Mayor Roth, for coming and joining our conversation.

Mayor Mitch Roth (MR): Our pleasure.

Hawaii has some of the most difficult permitting and housing laws in

the country. And, you know, it doesn't just go to what's in the house, it goes to land use. It goes to, you know, culture, goes to water.

On my island, you know, our island is the size of Connecticut. And on one side we have rain, the other side we have the dry side. A lot of people want to go to the dry side. One of the problems on the dry side is a lack of available water that we can go to. So one of the things that we are looking at now with the Governor of the State of Hawaii and all the mayors, we're looking at a housing emergency proclamation and that emergency proclamation may loosen up certain restrictions that we have.

We, at the current time, have a homeless emergency proclamation that is out there. And what that does is, again, that allows us to look at different ideas. And I think, you know, you need to sometimes take off some of the rules that you have. I often say that we've seen the enemy and the enemy is us.

And so where, in other places, it may take a week or two to get a permit. It may take you...when it first started, it took about 8 to 12 months to get a permit.

We've been working on our system and working on computer systems that help, you know, mom and pops or, you know, that young couple build a house. That's also important because it's not only large developments where you're going to have affordable housing, but it's also, you know, the young teacher or the police officer or those other people that are building in their community.

And so whatever the government can do to work with them to make it

a little bit easier to get through the system, I think that's, you know, really important. You know, if you have too many rules, oftentimes what we found is if you have rules out there that people forget why the rules were set up in the first place. And so you also have to go back and say, okay, why is this here? Is this still applicable today as to when it was first put in?

In Hawaii, you know, we have the International Building Code, for example. And, you know, the International Building Code is great, but sometimes it doesn't fit. For example, you don't have to worry about snow loads in Hawaii...or other things.

One of the things that we're looking at in our emergency proclamation is under the, I think it's the International 2018 Building Code and wind speeds. You know, we want our houses to be safe. If it's over 130 miles an hour, the building code requires you have an engineer sign off on the wind speeds. Well, right now, it takes about 6 to 8 months just to get an engineer who's willing to look at, you know, what the architect has. And a lot of times, they have systems online where they can check those wind speeds. So, if it's at 132, maybe you don't have to have a structural engineer put his stamp on there. As long as the architect is signing off and using, you know, qualified wind speeds, we want the houses to be safe. And, you know, what we're finding is oftentimes there's no changes made in the plans.

EH: This is so interesting because it's exactly parallel to our work in Colombia, where it's been the same issue. The permitting process and the regulatory environment is so onerous and so difficult and so prohibitive for upgrading an existing house. There's a government

subsidy out there to do it. But homeowners weren't taking advantage of it because there were so many steps in the process. So making the process easier is essential here.

I agree with you about building codes. They're necessary, but they can sometimes be too conservative and they paralyze folks and no action is taken.

MR: Well, what we found is that sometimes it even works against you because people will build anyhow. And they will build without a permit. And, you know, the governments don't have enough resources to go out and necessarily know that a house has been built outside of code. I mean, we often catch up several years later and maybe several owners later. And, you know, that's also a problem.

Also, what happens is, you know, people need housing. People aren't going to move. And so we've seen people living in blue tarp tents, which really isn't a very good situation either. So we need to look at it with a mind of how do we solve this problem, how do we work together but do so where, you know, it's not paralyzing people.

EH: How is technology involved? Are you using AI to maybe move through that engineering evaluation a little bit more quickly? Or are you using technology platforms to facilitate anything?

MR: Not yet. But part of the idea is to hopefully get there. And, you know, we're seeing a lot of new technology, you're working with a code and, you know, you're working with human beings who haven't seen this. And so, because they haven't seen it, it may be the greatest idea on Earth. But I call it the Dr. Phil question. And the Dr. Phil question is,

is this how's that working for you? And if it's not working for you, then you need to make a change.

We know that some of the new technology is a lot cheaper. And it's engineering sound. And it may be tested someplace else, but it hasn't been tested locally. That's a problem. We need to get over some of those things as well.

EH: The local testing and the buy-in by the homeowner or the home occupant is so critical because if you bring in a new technology and no one wants to live there or it's not appropriate for the climate or culture or it doesn't work in the local supply chain...

MR: Well, the owner is one part, but the buy-in by the government is another. And, you know, like I said, oftentimes it's the people who are in these positions. They know what they like. They know what they've approved before. And if they have new things, it just paralyzes them as well. And so we need to change on the government side as well.

EH: I so appreciate your leadership. I am so excited to help spread the story of what you've done with some of our international programs. It's striking really, the parallels between two completely different parts of the world. Bogota and Hawaii County. But the challenges are the same, the solutions are there. Yeah, It's really impressive. Congratulations.

Exhibit #43

"

If you have too many rules... people forget why the rules were set up in the first place. And so you also have to go back and say, okay, why is this here? Is this still applicable today as to when it was first put in?

Learn more about Hawaii County's housing related programs at the Office of Housing and Community Development and about Mayor Roth's plan for affordable housing.

Note did not include adversement pages, see next 10 pgs only

News

See all the news

SMART CITIES
(HTTPS://INNOVATION.ENGIE.COM/EN/NEWS/DOMAINS/SCITIES)

Bogotá's Race To Become Latin America's Smartest Smart City

It would be a mistake to limit the term "smart city" to the widespread use of the latest technologies for services like security cameras and traffic lights. For experts, the concept goes further than that, integrating practices that may seemingly have nothing to do with technology, such as the idea of "smart citizens" which could have an impact on mobility, the environment and other factors.

For Miguel Gamiño, executive vice president of Global Cities Mastercard, instead of "smart cities", it would be more appropriate to call it "inclusive urbanization." In his experience, he has witnessed the discourse around smart cities shift away from tech tools, and evolved into a conversation about quality of life. For example, in Bogotá, it would make no sense to integrate smart traffic lights since people currently do not respect the rules of transit anyway.

Another issue he sees around the term "smart city" is that it sounds like a destination or end result. "In fact it is a journey that takes hundreds of years, and that will continue for many more," he says, pointing out that the internet of things, data retrieval and information technologies are seen as tools of progress, the same way the construction of roads and aqueducts once were.

Hawaii compared to Bogota's journey that takes hundreds of years is a pattern; that is long term? collusion and conspiracies for land speculation and profit and personal gain by

Exhibit # 4311

LINKS Regarding Smart Cities and rogue Prosecutor Mayors

This is in direct contradiction to his interview with "CLIMATE RESILIENT HOUSING.ORG" article titled "Policy forth people in Hawaii : In Conversation with Mayor MITCH ROTH" at https://climateresilienthousing.org/2023/06/20/policy-for-the-people-in-hawaii/ (see Exhibit #43.1) which uses the term "Resilient Housing", another buzz word for smart cities, like "connectivity".
https://www.popularmechanics.com/technology/infrastructure/g2867/7-cities-spring-up-timelapse/

https://governor.hawaii.gov/chiefhousingofficer/emergency-proclamation-relating-to-housing/

https://www.bigislandvideonews.com/2023/08/26/hawai'i-county-to-participate-in-cities-forward-program/

https://www.citiessummitoftheamericas.org/agenda

https://www.heritage.org/sites/default/files/2020-10/LM275.pdf **rogue prosecutor syndrome**

https://www.civilbeat.org/beat/big-islands-new-climate-change-office-will-create-a-unified-front/?fbclid=IwAR07awEfjVEuZXIy_dUsCTFJF_7UwFt2C9JaT7vaiN7Xtgr9UVsiidpZ9xs

https://www.heritage.org/sites/default/files/2020-10/LM275.pdf **legal memorandum about progressive prosecutors sabotage the rule of Law, raise crime rates and ignore victims**

Exhibit #43.2 page 1 of 1

THE BIG LIE–FALSE AND MISLEADING TESTIMONY BY A CIVIL LITIGANT DOES HAVE SERIOUS CONSEQUENCES

Vol. 73, No. 7 July/August 1999 Pg 20

Donald A. Blackwell Misc

Okay, so maybe offering false or misleading testimony in a civil deposition is not a legally or constitutionally sufficient basis for impeaching a sitting President, particularly in good economic times. However, the reality is that an ever-increasing number of state and federal courts, in Florida and elsewhere, are taking a much harsher and more aggressive approach toward civil litigants and nonparty witnesses, who, in an effort to create or bolster a claim for relief or otherwise obstruct the judicial process, repeatedly lie under oath. The result is a whole new set of potential problems for lawyers of less than candid clients and an arguably underutilized weapon in the arsenal of the vigilant litigator, who is willing to devote the time, energy, resources, and patience to uncover the truth. The following is a brief overview of the cases at the forefront of this evolving area of the law.[1]

Let's assume, for the sake of discussion, that you've just completed the deposition of an opposing party and, while you are not yet in a position to prove it, you're convinced that the witness lied about a myriad of issues relating to his educational background, his

Exhibit #44

employment history, his history of other accidents, his medical history, and his social history. Fortunately, you have a client who is as outraged as you are and expresses a willingness to fund a "no stone unturned" investigation geared toward uncovering the truth. After several months of digging and thousands of dollars in fees and costs, you discover you were right. The paper trail of your opponent's life is littered with medical and psychological records that he previously concealed, employment and insurance records that belie his testimony that no such claims existed, academic records that directly contradict testimony regarding years of schooling completed and degrees obtained, proof of substance abuse, and, perhaps, evidence of an alter ego.

The issue then becomes what to do with this treasure trove of information. Traditionally, litigators have focused their efforts on the courtroom, marshalling and stockpiling impeachment evidence and then skillfully weaving it into a dramatic cross-examination. Their hope is that their dishonest adversary will crumble on the witness stand, under the weight of the contradictions and inconsistencies in their sworn testimony, and that the jury ultimately will punish their opponent's lack of candor by returning an adverse verdict. Often, this strategy works. However, for societal and psychological reasons that are well beyond the scope of this article, there also are times when the more traditional approach does not work or, worse yet, backfires. In such instances, jurors sympathize with the beleaguered party, whom they already view as a victim, and punish the diligent litigator and his or her client for

what they perceive to be unwarranted and unjustified intrusions into the offending litigant's background and private life. Fortunately, there is an alternative which allows the skillful litigator to bypass the jury and still achieve the desired result.

It is hornbook law that state and federal courts have "the inherent power to regulate litigation and to sanction litigants for abusive practices." *Vargas v. Peltz*, 901 F. Supp. 1572, 1579 (S.D. Fla. 1995). *See also Malautea v. Suzuki Motor Co.*, 987 F.2d 1536, 1545 (11th Cir.), *cert. denied*, 510 U.S. 863 (1993) (recognizing that federal courts have the inherent power to impose reasonable and appropriate sanctions on those appearing before them); *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989) ("[A] federal district court possesses the inherent power to deny the court's processes to one who defiles the judicial system by committing a fraud on the court"); *Pope v. Federal Express Corp.*, 138 F.R.D. 675, 683 (W.D. Mo. 1990), *aff'd in part, vacated in part on other grounds*, 974 F.2d 982, 984 (8th Cir. 1992) (court has inherent power to sanction litigants for improper conduct); *Telectron, Inc. v. Overhead Door Corp.*, 116 F.R.D. 107, 126 (S.D. Fla. 1987) (stating the general rule).

It is equally well-established that those inherent powers include the authority to dismiss the claims or defenses of or enter a default judgment against a litigant who engages in dishonest conduct, obstructs the discovery process, abuses the judicial process, or otherwise seeks to perpetrate a fraud on the court. *See, e.g., Link v. Wabash Railroad Co.*, 370 U.S. 626, 630–632 (1962). *See also Aoude*, 892 F.2d at 1118; *McDowell v. Seaboard*

Farms of Athens, Inc., 1996 WL 684140, 2-3 (M.D. Fla. 1996) (cases cited therein); *Sun World, Inc. v. Lizarazu Olivarria*, 144 F.R.D. 384, 389 (E.D. Cal. 1992) (holding that, when a litigant commits a fraud upon the court, "the inherent powers of the court support the sanction of dismissal and entry of default judgment"); *Pope*, 138 F.R.D. at 682 (dishonest conduct by a party or conduct that "threatens the integrity of the judicial process" is grounds for dismissal with prejudice under Rule 41(b)); *Amway Corp. v. Shapiro Express Co.*, 102 F.R.D. 564, 569–70 (S.D.N.Y. 1984); *Cox v. Burke*, 706 So. 2d 43 (Fla. 5th DCA 1998); *Kornblum v. Schneider*, 609 So. 2d 138 (Fla. 4th DCA 1992).

As a general rule, a litigant is deemed to have perpetrated a fraud on the court when "it can be demonstrated, clearly and convincingly, that a party has "sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the [trier of fact] or unfairly hampering the presentation of the opposing party's claim or defense." *Cox*, 706 So. 2d at 46 (quoting *Aoude*, 892 F. 2d at 1118). The "clear and convincing" standard is an intermediate standard of proof between a "preponderance of the evidence" and "beyond a reasonable doubt." *Smith v. Department of HRS*, 522 So. 2d 956 (Fla. 1st DCA 1988). For evidence to be "clear and convincing" "[it] must be of such weight that it produces in the mind of the trier of a fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."

Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983). *See also Small Business Admin. v. Echevarria*, 864 F. Supp. 1254 (S.D. Fla. 1994).

Historically, courts have reserved the harsh sanction of dismissal for instances when a party deliberately or willfully does not comply with court orders. *See, e.g., Bailey v. Woodlands Co.*, 696 So. 2d 459 (Fla. 1st DCA 1997); *Ferrante v. Waters*, 383 So. 2d 749 (Fla. 4th DCA 1980) (trial court properly struck defendant's pleadings and entered default, pursuant to Fla. R. Civ. P. 1380, based on defendant's failure to comply with court order compelling her to answer plaintiff's interrogatories for nearly six months). *See also Levine v. Del American Properties, Inc.*, 642 So. 2d 32 (Fla. 5th DCA 1994) (affirming a default entered against a defendant who failed to appear for his deposition three times); *Marr v. State, Dept. of Transp.*, 614 So. 2d 619 (Fla. 2d DCA 1993) (trial court did not abuse its discretion in dismissing plaintiff's complaint, with prejudice, based, in part, on plaintiff's noncompliance with discovery order); *Dominguez v. Wolfe*, 524 So. 2d 1101 (Fla. 3d DCA 1988) (wherein the court affirmed the dismissal, with prejudice, of a medical and dental malpractice claim, based on plaintiff's failure to comply with pretrial order requiring plaintiff to disclose the names of her expert witnesses); *Johnson v. Landmark First Nat'l Bank*, 415 So. 2d 161 (Fla. 4th DCA 1982).

Repeated neglect or contumacious conduct by counsel also may form the basis for an order of dismissal with prejudice, so long as the trial court concludes that the conduct satisfies the criteria that the Florida Supreme

Court established in *Kozel v. Ostendorf*, 629 So. 2d 817 (Fla. 1994). The *Kozel* factors include:

1) Whether the attorney's disobedience is willful, deliberate, or contumacious, rather than an act of neglect or inexperience;

2) Whether the attorney has been sanctioned previously;

3) Whether the client was presumably involved in the act of disobedience;

4) Whether the delay prejudiced the opposing party through undue expense, loss of evidence, or in some other fashion;

5) Whether the attorney offered reasonable justification for noncompliance; and

6) Whether the delay created significant problems of judicial administration.
Kozel, 629 So. 2d at 818. *Compare Elder v. Newton*, 711 So. 2d 586 (Fla. 2d DCA 1998) (dismissal was "too drastic and severe" when there was no evidence that the plaintiff "played an active role in abusing the discovery process"); *Cole v. Bayley Prods., Inc*, 661 So. 2d 1299 (Fla. 4th DCA 1995) (reversing default judgment on the grounds that the sanctionable actions were the fault of defendant's former counsel instead of the defendant himself).

However, an increasing number of Florida courts have relied on their inherent authority to sanction litigants for abusive practices as a basis for dismissing or striking the claims of litigants who repeatedly lie under oath. *See, e.g., Cox*, 706 So. 2d at 47 (a litigant's repeated lies and deception "must be discouraged in the strongest possible way"); *Savino v. Florida Drive-In Theatre Mgt., Inc.*, 697 So. 2d 1011 (Fla. 4th DCA 1997) (trial court properly dismissed personal injury claim of plaintiff, with prejudice, when plaintiff lied under oath and to his treating physicians about his educational background, his ability to work, and his level of intelligence); *O'Vahey v. Miller*, 644 So. 2d 550 (Fla. 3d DCA 1994); *Kornblum v. Schiender*, 609 So. 2d 138 (Fla. 4th DCA 1992); *Horjales v. Loeb*, 291 So. 2d 92 (Fla. 3d DCA 1974). *See also Hazel Atlas Glass Co. v. Hartford Empire Co.*, 322 U.S. 238 (1944) (wherein the Court noted that "tampering with the administration of justice. . . is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society").

In *O'Vahey*, for example, a personal injury plaintiff repeatedly lied under oath about his personal background and education. The trial court, in turn, dismissed plaintiff's claim as a sanction, notwithstanding the fact that the plaintiff's "established perjury did not directly concern the cause of action itself." *O'Vahey*, 644 So. 2d at 551 n.1. The Third District Court of Appeal affirmed, holding that plaintiff's lies "constituted such serious misconduct and such an obvious affront to the administration of justice that [the Court could] not interfere with the trial judge's

Lies are misconduct!

discretionary determination to dismiss the action outright." *Id.* (citations omitted). The court went on to note that its decision was influenced in part by the fact that the circumstances of the alleged accident and the extent of plaintiff's alleged injuries were "at least seriously open to question." *Id.* at n.1. *See also Figgie Int'l, Inc. v. Alderman*, 698 So. 2d 563, 567–68 (Fla. 3d DCA 1997) (citing *O'Vahey* for the proposition that "the ultimate sanctions of dismissal or default are justified by the repeated presentation of false testimony under oath which was ultimately uncovered by the assiduous efforts of opposing counsel").

The court in *Cox* reached a similar result. *Cox* was a legal malpractice action arising out of the defendants' alleged failure to advise the plaintiff that they would not represent her in a medical malpractice case until the day after the expiration of the applicable statute of limitations. During the pendency of the legal malpractice action, the plaintiff repeatedly lied, under oath (*i.e.*, in interrogatories, in her deposition, and in an affidavit), about, among other things, her identity and her prior medical history. Specifically, the plaintiff testified at her deposition that she had not sustained any injuries prior to those that formed the basis for her underlying medical malpractice action and that she had never seen an orthopedist. The defendants, however, discovered medical records and other evidence which demonstrated the falsity of plaintiff's testimony. *Cox*, 706 So. 2d at 45, 46. The defendants, in turn, moved to dismiss plaintiff's claim, based on her misconduct, and the trial court granted the motion. The Fifth District Court of Appeal affirmed the dismissal. In

reaching its decision, the court reasoned as follows:

> The integrity of the civil litigation process depends on the truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure, which is why this kind of conduct [*i.e.*, giving false or misleading answers in sworn discovery that either appear calculated to evade or stymie discovery] must be discouraged in the strongest possible way. Although [plaintiff] insists on her constitutional right to have her case heard, she can, by her own conduct, forfeit that right.

Id. at 47. The court went on to conclude that, by her misconduct, the plaintiff had, in fact, forfeited that right.

The claims of the plaintiff in *Savino* met the same fate. Savino claimed that he had suffered brain damage and lost wages as the result of a fall on the defendant's property. Plaintiff also claimed that he had a master's degree in engineering from New York University and testified that he had been unable to work since the accident. Through discovery, the defendant established that the master's degree diploma from NYU that the plaintiff had produced was fraudulent, that plaintiff also had lied to his treating physician about his academic background and above average level of intelligence, and that plaintiff had, in fact, worked as an independent contractor since the accident. Defendant then moved to dismiss plaintiff's claims based on fraud on the court and the trial court granted the motion. The Fourth District Court of Appeal affirmed. The court reasoned that the plaintiff's "repeated fabrications" went to the

heart of his claims and "undermined the integrity of his entire action." *Savino*, 697 So. 2d at 1012. The court concluded that, under such circumstances, "the trial court has the right *and*obligation to deter [such conduct]" and properly did so by dismissing plaintiff's claim with prejudice. *Id.* (emphasis added). *See also Vargas*, 901 F. Supp. 1579.

Similarly, in *Figgie Int'l*, the trial court struck the pleadings of and entered a default against a corporate defendant, whose conduct it characterized as "the most egregious case of discovery abuse [the] court [had] ever seen." *Figgie Int'l,* 698 So. 2d at 564. According to the trial court's findings of fact, which were adopted by the Third District in affirming the trial court's order, the defendant: 1) had lied about its retention and use of outside human factors experts in the design and labelling of its open end sectional scaffold in sworn answers to interrogatories; 2) had concealed pertinent data relating to other accidents involving the same model of scaffolding in response to plaintiff's initial discovery requests; 3) initially had testified, through its product safety director, that certain documents did not exist, only to later admit, under oath, that they had disposed of such documents; and 4) had engaged in a pattern of false and evasive deposition testimony calculated to conceal relevant information from the plaintiff. The trial court concluded and the Third District agreed "that the ultimate sanctions of dismissal or default [were] justified by the [defendant's] repeated presentation of false testimony under oath, which. . . ultimately [was] uncovered by the assiduous efforts of opposing counsel." *Id.* at 567, 568.

Federal courts in Florida and elsewhere also have held that a litigant who repeatedly lies under oath forfeits all rights to prosecute his or her claims. In *Vargas*, for example, Judge Ryskamp dismissed, with prejudice, the Title VII claims of a plaintiff, who 1) had fabricated evidence of the allegedly hostile work environment and lied about the authenticity of that evidence at her deposition; 2) had lied under oath concerning a State Department letter, which she claimed was the product of an attempt by her former employer to "lure" her to Costa Rica and force her to drop her lawsuit; 3) had entered the United States illegally; 4) had provided false information on employment applications; and 5) had lied at her deposition about her prior involvement in jewelry sales. In reaching his decision, Judge Ryskamp emphasized that plaintiff's misconduct, which included fraud on the court, fabrication of evidence, and perjury, was "designed to and had the effect of obstructing the discovery process and impeding defendant's ability to conduct discovery vital to its defense" and, therefore, warranted the dismissal of plaintiff's action. *Id.* at 1582.

Similarly, in *McDowell*, the Middle District dismissed, with prejudice, the Title VII claim of a pro se plaintiff, based on its finding that he had fabricated a diary of allegedly discriminatory encounters with his former employer and had lied repeatedly before and during an evidentiary hearing on defendant's motion to dismiss or strike. The court concluded that it was evident from the fabricated evidence and plaintiff's perjured deposition testimony, which included lies about his prior arrest record, his involvement in prior discrimination actions, and the basis for his wife's health problems, that

"plaintiff [held] in total disregard the integrity of the judicial system." *Id.* at 23, 24. The court then went on to hold that "the gravity of plaintiff's behavior" warranted the dismissal of his claims with prejudice. *Id. See also Pope*, 138 F.R.D. at 682 (wherein the court involuntarily dismissed a Title VII sexual harassment claim, based on evidence that plaintiff had fabricated a document which purported to support her claim and then lied about its authenticity and the circumstances relating to its transmission at her deposition and in sworn answers to interrogatories).

Conclusion

The message of these cases for litigants who are intent on trying to deceive their adversary, the courts, their employers, or, in the case of personal injury plaintiffs, their treating physicians is compelling: Proceed at your own risk, because if you are found out there is a strong probability that, at a minimum, you will forfeit your claim for relief or, in the case of deceptive defendants, your right to assert a defense.[2] However, the message to practicing attorneys is equally clear: Take time to interview and evaluate the credibility of your own client and witnesses before a problem of credibility arises, educate your client about the civil and, in some instances, criminal sanctions and other penalties that can be imposed against persons or entities who affirmatively misrepresent and/or conceal relevant information in sworn and unsworn discovery responses, and act promptly to correct any such misstatements or deception. If you fail to do so, be assured that there are diligent litigators who eventually will ferret out the

truth, and an increasingly intolerant civil justice system that is prepared, with ample precedential support, to mete out the ultimate sanction. q

[1] The rules governing a lawyer's ethical obligations in the context of false testimony are beyond the scope of this article. Suffice it to say, however, that Rule 4-3.3(a)(4) of the Rules Regulating The Florida Bar strictly prohibits a lawyer from knowingly "[p]ermitting any witness, including a criminal defendant, to offer testimony or other evidence that the lawyer knows to be false." Moreover, it is equally well established that a violation of Rule 4-3.3(a)(4) can result in disciplinary action by The Florida Bar. *See Dodd v. The Florida Bar*, 118 So. 2d 17, 19 (Fla. 1960) ("No breach of professional ethics, or of the law, is more harmful to the administration of justice or more hurtful to the public appraisal of the legal system than the knowledgeable use by an attorney of false testimony in the judicial process. When it is done it deserves the harshest penalty"). *See also The Florida Bar v. Kleinfeld*, 648 So. 2d 698, 701 (Fla. 1994) ("An officer of the court who knowingly and deliberately seeks to corrupt the legal process can logically expect to be excluded from that process") (citing *Dodd*); *The Florida Bar v. Agar*, 394 So. 2d 405 (Fla. 1980) (holding that where a lawyer, actively *orpassively*, arranges for a witness to testify falsely, the rule stated in *Dodd* should be adhered to and the lawyer should be disbarred).

[2] Some jurisdictions have gone so far as to criminally prosecute individuals for obstructing the discovery process. In *United States v. Lundwall*, 1 F. Supp. 2d 249 (S.D.N.Y. 1998), for example, the government indicted

two former Texaco employees who allegedly withheld and later destroyed corporate documents sought by the plaintiff in a race discrimination action against the company, and charged them with violating 18 U.S.C. §1503, which makes it a federal offense to corruptly obstruct or impede the due administration of justice, and with conspiracy to obstruct justice in violation of 18 U.S.C. §371. The defendants moved to dismiss the indictment, claiming, in part, that §1503 is not available to punish persons for civil discovery violations. Instead, the defendants argued that the sanctions provided for in Fed. R. Civ. P. 37 were more than adequate to punish them for their alleged discovery abuses and provided ample remedies to the injured plaintiff. The Southern District of New York disagreed. The court held that, even though there is a paucity of authority on the issue, §1503 plainly encompassed the defendants' alleged misconduct (*i.e.*, the deliberate concealment and destruction of relevant documents), because it was certain to impede or, at least, attempt to impede justice in the underlying civil action. The court also rejected the defendants' argument regarding the adequacy of Rule 37 sanctions, noting that the indictments did not involve misconduct by *a party* to the civil action, but rather by individuals who acted independent of their employer and its counsel. In any event, the court held that "a court [is free] to impose civil and criminal sanctions in connection with the same contumacious behavior."

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received his law degree from the University of Virginia School of Law. He is a former adjunct professor of law at Southern Methodist University and St. Thomas University. Mr. Blackwell's areas of practice include all aspects of commercial and personal injury litigation.

and convert the entire tone, culture, climate, beauty, dynamic, democracy, justice, and what America stands for into an oppressive "Big Brother" "guilty until proven innocent" "privacy invading" "13th Amendment violation" [redacted] (see S.B. 3372 information as declared herein, AND in my second Demand to Amend my Complaint in the U.S. District Court District of Hawaii, as if ALL fully inserted herein) [redacted] etc.!!! multiple towns in Hawaii to "smart cities" against the U.S. Constitution AND Laws of this country is criminal, paper tyranny and Declaration of Independence requires me as a citizen, as my "duty" to root out corruption and replace it. This goes beyond a "right". It is a "duty"; AND this includes ALL of the Defendants, Judges, lawyers, this Court, etc.!!!;

The shocking and egregious nature of government / corporate officials [redacted] those whom are entrusted by "the people", to violate "the people" and myself, in such a as seen as declared herein this document; [at all, much less] AND in ALL documents I have submitted in this case;

the very officials that are supposed to protect and guarantee my rights are the very ones removing them; AND for greed and power! It is repugnant! It destroys public trust and threatens democracy (the very thing democracy is built on is "public trust")! And supports my claims for "The Freedom Lives Act", as declared in my Complaint to help prevent public [redacted] corruption and unConstitutional Bills and Laws since existing Laws are not working!

State of Hawai'i
Department of Agriculture
Ka 'Oihana Mahi'ai

AGRICULTURAL LAND USE BASELINE STUDY UPDATED

Posted on May 4, 2021 in Main

Planted acreage grows on O`ahu, Hawai`i Island and Kaua`i Pre-Pandemic

NR21-13
May 4, 2021

HONOLULU – The Hawai`i Department of Agriculture (HDOA) has released an updated study on agricultural land use that indicates that overall acreage of planted crops had been increasing in Hawai`i pre-pandemic. The newly released study compiles agricultural land use data in 2020 for O`ahu, Hawai`i Island and Kaua`i and updates data in a 2015 baseline report. Due to budget constraints, updated Maui figures are expected to be released in November 2021 at which time a statewide comparison may be accomplished. It should be noted that the severe impacts of COVID-19 on agriculture over the past year are not reflected in the 2020 report as much of the data was collected prior to the pandemic.

The baseline studies provide a wide range of maps and graphics depicting the location of crops with island-by-island summaries. It is a snapshot in time intended to help industry, government and the community in making decisions that affect agricultural land use in the state.

The 2020 updated report and the 2015 report were completed under contracts with the University of Hawai`i at Hilo's Spatial Data Analysis and Visualization Lab (SDAV) which used Geographic Information System technology and aerial imagery from several sources to digitally document the footprint of lands engaged in commercial scale agriculture statewide. Both reports are available on the HDOA website at: https://hdoa.hawaii.gov/salubreports **(Update: Metadata is now available on both baseline reports at the HDOA website)**

"Our administration continues to focus on increasing local food production throughout the state," said Gov. David Ige. "The events over the past year have made our entire community realize how

critical our mission is to raise the level of our food security."

"While the cumulative impacts of the COVID-19 pandemic on agriculture over the past year are not reflected in this report, it is encouraging to see that productive lands in agriculture were increasing over the past five years," said Phyllis Shimabukuro-Geiser, chairperson of the Hawai'i Board of Agriculture. "The data is an indicator of growth through many diverse crops and it emphasizes the importance of preserving and protecting agricultural lands for future cultivation and improving the state's economic growth."

On O'ahu, highlights in the 2020 data show a total ag acreage of 41,310 acres, an increase of 493 acres (+1.2 percent) from the data in the 2015 study. However, crop acreage rose by 921 acres (+4.1 percent) and were mostly driven by diversified agriculture with an increase of 730 acres (+7.4 percent). Taro acreage also increased by 26 acres (+50 percent) and tropical fruit acreage increased by 33 acres (+15 percent) from 2015. The gains on O'ahu were offset by loss of acreage in pasture lands which decreased by a total of about 430 acres, mainly due to the creation of a solar project on former cattle pasture lands in Waipio. The study also tallied the loss of 360 acres of diversified agricultural lands to a subdivision development alongside the H-2 Highway.

On Hawai'i Island, total agricultural acreage was 614,552, a drop of 891 acres (-0.14 percent) from 2015. During the past five years, the island has been challenged by natural disasters, including adverse weather and volcanic activity. In addition, island agriculture contended with invasive pests such as the coffee berry borer and spittle bug.

The 2018 eruption at Kilauea Volcano's East Rift Zone covered about 1,000 acres of productive agricultural lands in Puna, which included diversified crops, horticulture, macadamia nut, papaya and tropical fruit farms. Despite those losses, most of those crops gained acreage during the survey period with diversified crops gaining 1,076 acres (+33 percent), papaya gaining 640 acres (+25 percent) and tropical fruits gaining 167 acres (+5 percent). Acreage in dairy production dropped about 1,000 acres due to the closure of Big Island Dairy in 2019. The survey did note the first return of sugar cultivation to the island with 14 acres in Hawi that is part of a distillery operation.

Kaua'i posted total ag acreage of 65,538, gaining 2,294 acres (+3.6 percent) over 2015. Kauai crops in particular gained more than 1,880 acres (+8.8 percent) over 2015. Of that increase, more than 950 acres was attributed to seed production and 816 acres attributed to commercial forestry operations. Banana, coffee, taro and tropical fruits also gained acreage on the island. However, diversified crops lost 53 acres
(-4.4 percent) from 2015. Pasture lands continue to make up the majority of agricultural acreage (65 percent) on Kaua'i.

###

This Exhibit shows agricultural lands acreage dropped on the island of Hawai'i and for sure the unlawful conversion of Aniaba subdivision contributed to this; AND if that trend continues, ALL of the subdivisions zoned agriculture in Pura are under immediate threat of the same unlawful conversion of irreversible damage to not only me and ALL citizens of Hawai'i, but ALL future generations to come if not remedied immediately!

This Bill 82 Injunction document is just one example and presentation of evidence that supports my claims contained herein this document and those in my Complaint and ALL documents I have submitted, and will submit, in this case.