

County of Maui
Office of Mayor Victorino
Christopher Salem

December 5, 2019

Maui County Auditor
2145 Wells Street #303
Wailuku, Hawai'i 96793
RE: Plan of Audits for 2020

Dear Mr. Taguchi,

This letter is in regard to the attached Plan of Audits proposed for 2020. (See #1) Specifically, the Audit of the developer roadway infrastructure "deferral" agreements executed by Corporation Counsel that have never been assessed or collected upon by the County of Maui. Left unaccounted for, private citizens and taxpayers will ultimately pay for tens of millions of dollars of private developer's "deferred" financial obligations.

As County records now show, private developers entered into potentially thousands of "deferral" agreements with the Corporation Counsel obligating them to pay back their fair share of roadway infrastructure expenses along the frontages of their subdivisions. As of this date, not one dime has been assessed or collected. Furthermore, the developer agreements nor the anticipated revenues have never been tracked or accounted for by the Department of Finance.

As a result, upon my employment by Mayor Victorino, I was tasked to provide an updated and comprehensive draft of the "Fairness Bill" (PC-17) to the Maui County Council to adopt by ordinance a fair and equitable system of collection and assessment of the developer "deferral" agreements. As you may be aware, I was the individual who discovered and is responsible for this recovery of public funds. (See #2)

This controversial task has become even more challenging by my discovery of further harm to taxpayers. Through an "island wide" roadway infrastructure exemption that was slipped into the UpCountry Water Bill by Corporation Counsel in 2015, citizens will incur millions of dollars of additional infrastructure costs from commercial and residential developments "island wide".

I first noticed Corporation Counsel Deputy attorney Oana of this violation of Sunshine laws and Council Rule 4(d) in 2016. Former Council Chair Baisa has stated she has never seen the letter. (See "3") With no action taken by Corporation Counsel for over three years, Council Member Tamara Paltin recently introduced a Bill to repeal the damaging ordinance. (See "4") The Bill was originally presented to the Council by member Donald Guzman in 2018.

Council Member Alice Lee presented an alternative Bill to allow for exemptions to continue for applicants on the UpCountry Water List. (See "5") While the Council continues to debate

Hawai'i Revised Statutes Chapter §378-62 – 378-65;

Under the expanded statute, employers are advised to be especially vigilant towards employee notices and complaints that involve alleged violations of a law, rule, ordinance, regulation, or government contract. As an employee of the Office of the Mayor, my notices have not been acted upon. As a private citizen, former executive assistant to the Maui County Council, and current employee of the Office of the Mayor, I hereby assert my rights to protection from retaliation under;

Hawaii Revised Statute Chapter §378-70;

Protected disclosure by a public employee. (a) In addition to any other protections under this part, a public employer shall not discharge, threaten, or otherwise discriminate against a public employee regarding the public employee's compensation, terms, conditions, location, or privileges of employment because the public employee, or a person acting on behalf of the public employee, reports or is about to report to the public employer or a public body, verbally or in writing:

(1) Any violation or suspected violation of a federal, state, or county law, rule, ordinance, or regulation;

RECEIVED AT PSLV MEETING ON 1-22-2020
(SAM SHALL)

County of Maui
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Christopher Salem

December 5, 2019

solutions to the "mistake" legislation that was "not the intent" of the ordinance, the Department of Public Works continue to shift private developer financial obligations to the County and taxpayers.

During an August 13, 2019 office meeting, Mayor Victorino was surprised when I informed him of how much "island wide" abuse had occurred under the UpCountry Water Bill legislation. Over thirty subdivisions, involving developments of upwards to 1200 acres, have now been granted exemptions from roadway infrastructure improvements. (See "6") Mayor Victorino was a voting member of the Maui County Council when the UpCountry Water Bill "island wide" infrastructure exemption "mistake" legislation was adopted. The exemption ledger and specific calls for action by Mayor Victorino to end the financial harm to residents and taxpayers are attached. (See #7)

Despite being served with a copy of the growing infrastructure exemption ledger including problematic last minute infrastructure exemption approvals (See "8"), notices of a private citizen's lawsuit against Corporation Counsel Deputy attorneys (See "9"), a Board of Ethics complaint against Corporation Counsel Deputy attorneys that is causing further expense for special legal counsel (See #10), and a copy of a Mayor Victorino staff employee letter asserting professional dishonesty and violations of the Hawai'i Supreme Court Rules of Professional Conduct (See #11); Corporation Counsel Director Moana Lutey has failed to take any action to mitigate the ongoing financial harm to the County and taxpayers.

Unbelievably, I have just discovered the Department of Public Works is currently being allowed to exempt roadway infrastructure on individual parcels in "3 lots or Less" subdivisions that have "deferral" obligations to pay their pro-rata shares of County roadway Capital improvements. (See #12) My research of Council records does not find an adopted ordinance to support the erasing of existing "deferral" agreements through overlapping developer infrastructure exemptions.

Based on recent public testimony and County records, I am deeply concerned the developers that are currently being granted last minute infrastructure exemptions far outside the Upcountry area, may have some form of influence or alliances with the County officials or Corporation Counsel. With that said, I believe the attached findings and facts provide conclusive further evidence that Corporation Counsel has knowingly served private developer's financial interests for decades through the authoring of the overlapping "one time" "deferral" agreements. (See #13 - #15)

As this current exemption abuse has a direct nexus to the scheduled "deferral" Audit, I respectfully request the attached notices and findings be included in the current Audit research and investigation.

Respectfully; *Christopher Salem*

Hawai'i Revised Statutes Chapter §378-62 – 378-65;

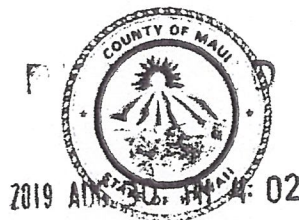
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(1) Any violation or suspected violation of a federal, state, or county law, rule, ordinance, or regulation;

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

OFFICE OF THE MAYOR

August 28, 2019

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Alice L. Lee, Chair
Water and Infrastructure Committee
County Council, County of Maui
200 South High Street
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 8/30/19
Mayor Date

Dear Chair Lee:

SUBJECT: EXISTING STREETS (WAI-38)

Thank you for your letter dated August 20, 2019 regarding your question on the number of applications for a variance from Section 18.20.040, Maui County Code, for two-lot subdivisions from 2007 to 2015.

After searching our records, we found six (6) variance applications during the above timeframe. Of these, five (5) were approved by the Board of Variances and Appeals, and the remaining application was withdrawn.

We appreciate the opportunity to respond to your question. Feel free to contact me if you require additional information.

Sincerely, .

MICHELE MCLEAN, AICP
Planning Director

MCM:DAD:atw
P:\LETTER\Council Transmittal-Lee-Existing Streets 082819.docx

County of Maui
Office of Mayor Victorino
Community Liaison
Christopher Salem

December 11, 2019

Honorable Mayor Michael Victorino
200 High Street – 9th Floor
Wailuku, Hawai'i

RE: Council Agenda Item – Water and Infrastructure Committee WAI-38

Dear Honorable Mayor Victorino,

I hope this is my final letter regarding the financial harm the taxpayers continue to incur due to the “island wide” shifting of private developer’s subdivision roadway infrastructure obligations through the Upcountry Water Bill.

Through my review of the minutes to recent Council public hearings, I believe the Council is being misinformed while private developers far outside the UpCountry area are being granted roadway infrastructure exemptions by the Department of Public Works. I spoke with Council Member Alice Lee today and informed her of the potential consequences of delaying the correction of the “mistake” legislation which continues to benefited private developers at the taxpayer’s expense.

With that said, I do not understand why Corporation Counsel is being allowed to prolong litigation with a West Maui resident when everyone acknowledges the original intent of the ordinance was NOT to provide exemptions to developer’s “island wide”. I believe further litigation against the County of Maui will soon result if the “island wide” exemptions continue to be granted by the Department of Public Works.

I also feel Corporation Counsel should not be advising the Council while there is ongoing litigation. As you are aware, Deputy Corporation Counsel Oana is a named Defendant. Perhaps Council Services attorney David Raatz should opine on whether this is a violation of the Supreme Court of Hawai'i attorney Rules of Professional Conduct.

For over three years, I have taken every respectful step possible to protect the hard working taxpayers from the harm caused by questionable acts of County officials surrounding this legislation. With no appropriate action being taken to support this effort, I have sent a letter to the County Auditor along with the referenced exhibits. A copy is attached for your review.

Sincerely; *Christopher Salem*

‘cc: Chair of the Maui County Council Kelly King / Council Chair of the WAI Committee Chair Alice Lee

Hawai'i Revised Statutes Chapter §378-62 – 378-65; Under the expanded statute, employers are advised to be especially vigilant towards employee notices and complaints that involve alleged violations of a law, rule, ordinance, regulation, or government contract.

Hawaii Revised Statute Chapter §378-70; Protected disclosure by a public employee. (a) In addition to any other protections under this part, a public employer shall not discharge, threaten, or otherwise discriminate against a public employee regarding the public employee's compensation, terms, conditions, location, or privileges of employment because the public employee, or a person acting on behalf of the public employee, reports or is about to report to the public employer or a public body, verbally or in writing:

(1) Any violation or suspected violation of a federal, state, or county law, rule, ordinance, or regulation;

July 23, 2016

Maui County Council
Council Member Gloria
Chair of the Water Resources
Kalana O Maui Building
200 South High Street
Wailuku, HI 96793

RE: State of Hawaii

Dear Council Member

I am writing to you with
concerns regarding the
Chair of the Water Resources
involvement of the Department

At issue is an ordinance that deceptively shifts public works to the citizens and taxpayers of Maui County. The adoption of an amendment to the Title 18 Subdivision Ordinance, violates the lawful requirements for Notice under the State of Hawaii Revised Statutes § 92-7(a). It also appears that unnoticed meetings took place which also violate the Hawaii Sunshine Laws, HRS Section 92.

These findings come on the heels of a previous discovery that for over 4 decades, the Department of Public Works and the Department of Corporation Counsel entered into contractual agreements with private developers which shifted those developers' subdivision financial obligations to the taxpayers of Maui County involving tens of millions of dollars. Unbelievably, it appears that this is happening once again, this time deceptively obscured in an Upcountry Water Meter Bill.

The process by which Director Goode has slipped in a major change to the island wide Title 18 subdivision ordinance through a proposed bill relating solely to Upcountry water meter applicants, is unlawful and inexcusable.

Findings

I was just informed by the developer of the property next door to my Napili residence that his proposed subdivision was exempt from offsite infrastructure roadway and drainage improvements under a recent change in the subdivision ordinance of the Maui County Code. My research of the agendas and minutes of the Infrastructure and Environmental Management Committee of the Maui County Council found no recent postings for proposed amendments to Title 18 of the Maui County Code. (See Exhibit "A")

After contacting Council Services, I was directed towards a proposed Bill for and ordinance amending section 14.13.060 of the Maui County Code entitled "**Water Meter Issuance Provisions for**

11/14/19

I have
NEVER SEEN
This. I had,
I would have
reacted but I
would have
been advised
to give to
Legal!

raises serious
your direction as
the assistance and
Director of Public Works.

lawful public notice,

Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

July 23, 2016

Maui County Council
Council Member Gladys Baisa
Chair of the Water Resources Committee
Kalana O Maui Building, 8th Floor
200 South High Street
Wailuku, HI 96793

RE: State of Hawaii Sunshine Law Violation

Dear Council Member Baisa;

I am writing this letter to bring to your attention a recent discovery that raises serious concerns regarding clear violations of the State of Hawaii Sunshine Laws under your direction as Chair of the Water Resources Committee of the Maui County Council, along with the assistance and involvement of the Department of Corporation Counsel and David Goode, Director of Public Works.

At issue is an ordinance recently adopted under your purview, without lawful public notice, that deceptively shifts private developer's financial obligations to the citizens and taxpayers of Maui County. The adoption of an amendment to the Title 18 Subdivision Ordinance, violates the lawful requirements for Notice under the State of Hawaii Revised Statutes § 92-7(a). It also appears that unnoticed meetings took place which also violate the Hawaii Sunshine Laws, HRS Section 92.

These findings come on the heels of a previous discovery that for over 4 decades, the Department of Public Works and the Department of Corporation Counsel entered into contractual agreements with private developers which shifted those developers' subdivision financial obligations to the taxpayers of Maui County involving tens of millions of dollars. Unbelievably, it appears that this is happening once again, this time deceptively obscured in an Upcountry Water Meter Bill.

The process by which Director Goode has slipped in a major change to the island wide Title 18 subdivision ordinance through a proposed bill relating solely to Upcountry water meter applicants, is unlawful and inexcusable.

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I was just informed by the developer of the property next door to my Napili residence that his proposed subdivision was exempt from offsite infrastructure roadway and drainage improvements under a recent change in the subdivision ordinance of the Maui County Code. My research of the agendas and minutes of the Infrastructure and Environmental Management Committee of the Maui County Council found no recent postings for proposed amendments to Title 18 of the Maui County Code. (See Exhibit "A")

After contacting Council Services, I was directed towards a proposed Bill for and ordinance amending section 14.13.060 of the Maui County Code entitled " **Water Meter Issuance Provisions for**

Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

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the Upcountry Water System", relating to fire protection, which was initially referred from you the Water Resources Committee on June 5, 2015. (See Exhibit "B")

The PUBLIC MEETING NOTICE, WATER RESOURCES COMMITTEE, dated Wednesday June 17, 2015, states as follows; (See Exhibit "C")

The Committee is in receipt of the following;

1. County Communication 15-174, from Council Member from Council Member Gladys C. Baisa, relating to amending Section 14.13.060, Maui County Code, regarding Upcountry water meter installation.

2. Correspondence dated June 9, 2015 from the Department of Corporation Counsel, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 14.13.060, MAUI COUNTY CODE, ENTITLED "WATER METER ISSUANCE **PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM**", RELATING TO FIRE PROTECTION". The purpose of the proposed bill is to provide the applicants on the Upcountry priority list who have been offered water meters from the Department of Water Supply and are able to connect to the department's existing water system shall not be required to make further infrastructure improvements for the fire protection under certain conditions.

On Wednesday, July 22, 2015, the Water Resources Committee, by Public notice conducted further deliberation on the proposed Bill. The description of the proposed bill was identical to the June 9, 2015 PUBLIC MEETING NOTICE - "**UPCOUNTRY WATER METER INSTALLATION**" (See Exhibit "D")

On Wednesday, August 5, 2015, the Water Resources Committee, by Public notice conducted further deliberation on the proposed Bill. The description of the proposed bill was identical to the June 9, 2015 PUBLIC MEETING NOTICE - "**UPCOUNTRY WATER METER INSTALLATION**" (See Exhibit "E")

On Wednesday, September 2, 2015, the Water Resources Committee, by Public Notice conducted further deliberation on the proposed Bill. The description of the proposed bill was identical to the June 9, 2015. PUBLIC MEETING NOTICE - "**UPCOUNTRY WATER METER INSTALLATION**". (See Exhibit "F")

The September 2, 2015 Agenda adds a reference to Section 18.20.040, "**RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM**". And further, "the proposed bill to provide the applicants on the Upcountry water meter list."

The Minutes to the September 2, 2015 Water Resources Committee Meeting "**RELATING TO WATER METER ISSUANCE PROVISIONS FOR THE UPCOUNTRY WATER SYSTEM**" show Public Works Director David Goode was in attendance on the proposed legislation for the **first time**. Director Goode stated to the Committee and the general public; "Thanks for opportunity for joining in this bill that's important for the **Upcountry Water users**."

On September 18, 2015, you provided a formal report to the Honorable Chair and members of the Maui County Council which clearly stated "The purpose of the bill is to provide that applicants on the Upcountry Water list who have been offered water meters from the Department of Water

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Christopher Salem
5100 Lower Honoapiilani Road
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Supply and are connect to the existing water system shall not be required to make further infrastructure improvement for fire protection, subject to certain conditions. The entire communication references **"applicants on the Upcountry Priority list."** (See Exhibit "G")

The Communication makes reference to the Committee being informed by the Director of Public Works that **"some applicants"** could face costly infrastructure requirements for street upgrades as condition of a subdivision approval. This could prevent them from building a home, even if with a waiver from the requirement from **fire protection infrastructure"**. And further stated; the revised proposed bill adds an exemption from street upgrades **for qualified applicants on the Upcountry Priority List"**.

In fact, it has been discovered that the added language to the bill by Public Works Director David Goode, provides for developers to be exempted from offsite roadway and drainage improvements on subdivisions **throughout the entire County of Maui.** Factually, the final bill and ordinance does not reflect the Public Notices, Agendas, and notice communications authored under your direction.

Consequently, the citizens and taxpayers of Maui County; **without notice or public testimony,** will end up paying for developer's subdivision roadway and drainage obligations throughout Maui County. This will include all types of subdivisions, including, but not limited to oceanfront developments, and high end developments involving millions of dollars. My neighbor's subdivision falls in the category. This was not the stated intent of the published bill. The proposed bill, Water Resources Committee reports, and public notices which were limited only to the **applicants on the Upcountry Water Priority List.**

Also, subdivision ordinances fall under the purview of the Chair of the Committee for the Infrastructure and Environmental Management, **not** with the Water Resources Committee. As such, "A board can only discuss, deliberate, act on, or otherwise consider matters that were included on the board's agenda as filed will generally define and limit the issues the board can consider at the meeting." Also, "The statute notice requirement is to among other things, give interested members of the public enough information so that they can decide whether to participate in the meeting". In addition, Reports by Board Members, "all topics that will be included in **the report must be described on the agenda with enough detail to all the public to understand those topic will be discussed"**". (See Exhibit "H")

On September 18, 2015, the Council of the County of Maui posting the FIRST READING of bill amending chapter 14.13 and Section 18.20.040, Maui County Code, **relating to water meter applicants on the Upcountry Priority List;** and filing of Communication. On October 6, 2015, a SECOND AND FINAL READING of Bill 70 using the very same language. (See Exhibit "I")

Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

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Legal Enforcement

The Legal Requirements under the State of Hawaii Sunshine Law have been violated under your direction. The citizens of Maui County have been deprived of their rights. This letter provides notice to immediately retract, repeal, and amend the language of the **"Upcountry Water Meter Installation"** to apply only to **"qualified applicants on the Upcountry Priority List"**. The amended ordinance must eliminate the undisclosed subdivision amendment which shift developer's financial obligation to the citizens of Maui County Island wide.

Under HRS 92-12, any person may commence a suit in the Circuit Court for the State of Hawaii and any person who willfully violates any provisions of the law shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. The reviewing Court may order of stay the enforcement of any agency. Therefore, you are hereby provided notice to commence retraction of the subdivision language outside of the limited scope of the applicants for Upcountry Water Meters within 10 days or legal action shall commence against you pursuant to the provisions of the State of Hawaii Sunshine Laws.

Conclusion

At no time were the citizens of Maui County informed, properly and lawfully, pursuant to the State of Hawaii Sunshine Laws, **that the subdivision ordinance for the entire island of Maui County was under consideration for amending by the Maui County Council.**

As such, it was never brought to the public's attention that an amendment was being proposed to the Maui County Code by the Water Resources Committee of the Maui County Council **that would shift private developer's financial obligations to the taxpayers of Maui County Island wide.** At the time this occurred, a lawsuit was already filed against County officials, including but not limited to Director Goode, for unlawfully shifting developer's financial obligations to the citizens of Maui County by the failure to implement and, or enforce the very same section of the Maui County Code that was being deceptively amended, at that time, through Mr. Goode's misleading testimony to your Committee and the general public.

Creating subdivision approvals, under this unlawful ordinance, create the conditions for more Palama Drives and Montana Beach's. I have been advised that any and all preliminary subdivision approvals, already provided to developers, made pursuant to this unlawfully amended ordinance, are null and void, and, or voidable. I recommend and encourage the repeal of this newly adopted amended ordinance as quickly as possible, before the Council inadvertently creates new liabilities for the County of Maui County and its taxpayers.

Sincerely;

Christopher Salem

cc. Mayor Alan Arakawa
cc. Department of The Corporation Counsel
cc. Mike White, Chair of Maui County Council

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Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

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Quotes

Page 18 of June 17, 2015 Minutes – Corporation Counsel Attorney Edward S. Kushi

“Madam Chair, if I may? Just to kindah back up (Water) Director Taylor, when our office looked at the bill and we asked the same question, why are you distinguishing Upcountry versus everybody else? There may be some, you need a justification, and the justification is the priority list is it only applies to Upcountry, everyplace else there’s no waiting list. That’s the distinguishing characteristic and the justification to apply this just to UpCountry. Now without that, you want to open it up to everyone, well, again that’s a policy decision, but I think the as is can be supported and defended because of the priority list.

Page 6 of July 22, 2015 Minutes – Committee Chair Baisa

“It is Chair's recommendation that we try to help those who have been on this list forever and who simply want one meter so that they can do something with their land that we try to take care of them first. And we give them that opportunity to get that meter. And yes, there are others that wanna build subdivisions, there are people who wanna subdivide into dozens of lots and hundreds of lots. But our idea was we wanted to help with the small person first. And so that's how this legislation is written..”

Notes

Council Member Mike Victorino and Corp Counsel Attorney Ed Kushi were not present at the September 2, 2015 first reading of the proposed Bill which was Public Works Director David Goode’s first and only presentation to the Water Resources Committee.

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