

GET Committee

From: md@sonic.net
Sent: Saturday, June 27, 2020 10:09 AM
To: GET Committee
Subject: Remove Corporation Counsel Now!

Support: (GET-10(17) "To allow the Council to remove Corporation Counsel." NOW!

Michael Di Rosario
Maui Homeowner and full-time resident

Enlightenment is when a wave realizes it is the ocean. — Thich Nhat Hahn

GET Committee

From: 'Chelle . <hawaiigurl55@hotmail.com>
Sent: Saturday, June 27, 2020 7:15 AM
To: GET Committee
Subject: Testimony in support of GET-10(17)

I Support: (GET-10(17)) "To allow the Council to remove Corporation Counsel." They should be allowed to do so if they see fit in cases such as counsel misconduct and misrepresentation.

Mahalo

Michelle Ramos

Sent from Outlook

GET Committee

From: Valerie Lasciak <valerielasciak@me.com>
Sent: Monday, June 29, 2020 2:20 PM
To: GET Committee
Subject: County council

The amendment is necessary to enforce the the dual obligation of the Counsel to the Council and the Mayor. Her action to disregard the council decision has cost the county considerable money, in order to take this to the Supreme Court and the citizens of Maui lost their democratic rights by the counsel disregarding their Elected Council.'s decision.

Polluting the Ocean is unacceptable. Injecting sewage into an in adequate system does not take the obligation away from the County to preserve one of our most precious resources as well as the world's. I side with the decision of the Council and now in addition the decision of the Supreme Court.

Sincerely

Valerie Lasciak

Sent from my iPhone

GET Committee

From: Jason Schwartz Maui <jasonschwartzmaui@gmail.com>
Sent: Saturday, June 27, 2020 11:34 PM
To: GET Committee
Cc: jason
Subject: Support for a number of GET 10 items for your consideration

GET 10(x) items I would like to support

Some I feel more specifically passionate about, but all these do I support:

10 (1, 4, 7,8,9,10,11,13,14,15,16,17)

There are numbers of very pivotal and important items here

Thank you for your understanding of my support.

I have seen good reason to limit terms and authorize council and mayoral authority as narrated in these items

Aloha,
Jason Schwartz
Kahului
808-874-5900

Sent from my iPhone

GET Committee

From: John Gelert <jgelert@yahoo.com>
Sent: Sunday, June 28, 2020 8:55 PM
To: GET Committee
Subject: Corporation Counsel

Aloha GET Committee,

Most of our Council Members only found out after the fact that Moana Lutey publically lied in her confirmation hearings in order to secure her extremely powerful job as Maui's top lawyer. By then it was too late to protect the citizen's interests as our current charter allows only the Mayor to remove Corporation Counsel.

Corporation Counsel is supposed to represent both the Mayor and the County Council, yet Director Lutey took it upon herself to ignore the Council's legitimate vote to settle the Injection Well case in favor of the Mayor's conflicting choice to continue on to the Supreme Court.

Lutey clearly violated her ethical responsibility to serve her client, the Council, when she personally chose sides without first bothering to have a court determine whether the Mayor has the authority to overrule the County Council's vote.

Lutey's action set a precedent that undermines the Council's authority which will surely be asserted again next time the Council and the Mayor disagree.

Lutey's mishandling of the injection well case is just one example of why Council Member Keani Rawlins Fernandez has thoughtfully proposed a Charter Amendment to give the Council the authority to remove "their lawyer" should the Council see fit to do so.

Please support these changes to correct this problem:

(GET-10(8)) "Establish standards for interpreting and complying with the Charter, including by requiring a judicial action to be filed within 30 days to seek clarity when a conflict in the interpretation of the Charter is identified."

(GET-10(10)) "Allow attorneys within the Office of Council Services to serve as legal representatives of the Council and its members."

(GET-10(14)) "Authorize the Council to appoint and remove a Director of Council Services and a Supervising Legislative Attorney, by resolution, and authorize the Director of Council Services to appoint and remove other necessary staff in the Office of Council Services."

(GET-10(9)) "Authorize the County Council to retain and terminate special counsel by a simple-majority vote of its members." This would make it easier for the Council to get it's own representation by a vote of 5 out of 9 and fixes the 2016 Charter Amendment that even the author of which, Don Guzman, admits was flawed because the threshold is too high requiring a super-majority: 6 out of 9.

(GET-10(1)) "Any person appointed as an acting head of a department should not have been previously denied by the Council as the administrative head for the same department." This is in reaction to when in 2019, after the Council denied David Goode's nomination as Public Works Director, Mayor Victorino immediately reinstated him as interim director.

This one is SUPER IMPORTANT in order to return a measure of control to the Council over future development on Maui through the Planning Commission. Currently, the Planning Commission is entirely appointed by the Mayor and the County Council has zero ability to represent your interests in this vital arena:

(GET-10(16)) "Allow the Council to appoint seven of the nine members of the Maui, Molokai, and Lanai planning commissions, with the Mayor appointing the remaining two members.

And similarly for the Council to appoint members of Charter Commission:

(GET-10(11)) "Authorize the Council to appoint nine members, and the Mayor to appoint two members, of the 11-member Charter Commission, which is required to study and review the operation of the County government."

All of the above serve to enhance and protect the authority to the County Council that has over the years been grossly subverted.

These next offer two options on Council Member terms and limits that voters can choose:

(GET-10(13)) "Establish stricter term limits for Council members by limiting the number of terms a person may serve as a Council member to five full terms." This is so a council member can't serve 4 consecutive terms, then take time off and come back for another 5 terms.

and/or

(GET-10(7)) "Establish shorter lifetime term limits for Council members from five two-year terms to two four-year terms." This would lessen the burden on Council Members to run for reelection every two years, which is arguably a huge time-suck and distraction.

And finally two proposed revisions to the council committee's structure for voters to consider:

(GET-10(4)) "Require the Department of Housing and Human Concerns be divided to form two separate departments, a Department of Housing and a Department of Human Concerns."

and

(GET-10(15)) "Establish a Department of Agriculture to develop a sustainable regional agricultural system for Maui County."

Mahalo nui,

John Gelert
Kihei, Hawaii

GET Committee

From: Brett Gobar <uluusurf@gmail.com>
Sent: Monday, June 29, 2020 7:59 AM
To: GET Committee
Subject: county counsel removal by Council... i support !

aloha,

plz count me in support of measures to allow Council to decide to remove attorneys for the county

this particular Attorney does not listen to the voice of the people of maui and is abusing, perhaps illegally, her position

brett gobar
127 aleiki place
paia, maui, hawaii

Brett Gobar Broker Gobar Realty
808 633 6916..above signature & msg.is nonbinding; any contract must be in detailed writings & signed personally by
brett gobar

GET Committee

From: Maui_County Council_mailbox
Sent: Monday, June 29, 2020 7:46 AM
To: GET Committee
Subject: FW: GET 10(17) - Resident Written Testimony
Attachments: Letter to Director Lutey 6 5 20.pdf

From: Chris Salem <chrissalem8@yahoo.com>
Sent: Monday, June 29, 2020 7:23 AM
To: Maui_County Council_mailbox <county.council@mauicounty.us>; Mike J. Molina <Mike.Molina@mauicounty.us>; Kathy L. Kaohu <Kathy.Kaohu@mauicounty.us>; County Clerk <County.Clerk@mauicounty.us>; David M. Raatz <David.Raatz@mauicounty.us>
Cc: Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Kelly King <Kelly.King@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Riki Hokama <Riki.Hokama@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>
Subject: GET 10(17) - Resident Written Testimony

June 27, 2020

Maui County Council
Chair of the Governance, Ethics, and Transparency

RE: Resident Written Testimony - GET 10(17)

Dear Council Member Molina;

The attached letter to Director Moana Lutey along with recent complaints filed by Council Members with State of Hawaii Supreme Court Office of Disciplinary Counsel, provide indisputable evidence of Director Lutey's professional misconduct. I believe the record shows Director Lutey has failed to demonstrate by her actions the highest standards of ethical conduct, as follows;

Director Lutey's false and deceptive statements during her appointment hearings are grounds for her removal.

Director Lutey's false representations of government records to the 2nd Circuit Court are grounds for her removal.

Director Lutey's tortious interference with a contractual agreement signed by the Mayor to enforce a private developers unfulfilled SMA Permit is a breach of duty and grounds for her removal under Article 9 Section 9.12 of the Charter.

Director Lutey's decision to go against the majority vote of the Council on the settlement of the injection well case is an unethical abuse of power.

"Our job is only to advise you... And in this body and or the Mayor combined would need to make that call and we will support that." Director Lutey - Appointment Hearings

Under the Powers and Duties set forth in the Maui County Charter, I pray to the entrusted members of the Maui County Council to investigate these findings.

Mayor Victorino has been served in good faith with the attached letter to Director Lutey. I hope and pray he takes the appropriate ethical action as a direct witness to prevent further harm to my family and the citizens of Maui County.

This resident testimony is in support of GET Item 10(17).

Christopher Salem

Maui County Charter

ARTICLE 10 CODE OF ETHICS

Section 10-1. Declaration of Policy. Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

June 4, 2020

County of Maui
Director of the Department of The Corporation Counsel
200 South High Street - 3rd Floor
Wailuku, HI 96793

RE: 2nd Request for Ho'oponopono¹ healing to avoid litigation

Dear Ms. Lutey;

As a taxpaying resident, employee and staff member of the Office of Mayor Victorino, and former executive assistant to the Maui County Council, I believe the records reveal you have exhibited a repeating pattern of abuse of power and deceptive legal practices which justifies a calling for professional attorney reconciliation or your resignation.

A recent decision by the staff attorneys with the State of Hawai'i Office of Information Practices ("OIP") on a case reopened from 2017,² once again raises serious questions about your commitment to ethically serve the citizens of Maui County.

The OIP case centers on your 2nd Circuit Court pleading³ where you falsely alleged that Developer Lot 48A, LLC's SMA Permit environmental studies were "**eventually produced**" in response to over "30 UIPA" requests for the County records. A parallel issue is your dubious representation to the 2nd Circuit Court of the County's duty to maintain public records.⁴

During your appointment hearings, you responded to Council Member Paltin's questions about this specific SMA Permit as follows:⁵

***"..do you know of any reason the County should not enforce a
SMA permit that the Mayor agreed to?"***

Council Member Tamara Paltin - May 28, 2019

***"I'm not sure what that one's about. I have really no idea.
If you gave me a specific, I could go figure that out but I haven't been involved in
any SMA's or being consulted on it so I'm just not sure what that issues about."***

Acting Corporation Counsel Moana Lutey - May 28, 2019

As the County of Maui attorney of record on multiple cases involving the SMA Permit in question, (*See References Below*) you made dishonest statements to Council Member Paltin to avoid exposing your inability "*to be completely neutral on cases you have had for years*"⁶. You also made a false representation of Judicial records to Council Member Sinenci⁷ stating "*There has been no appeal of that case*".⁸ The case is in fact under appeal. (*See CAAP-18-0000105*)

¹ Ho'oponopono is a practice that can occur within the Ohana,(family) Kaiaulu,(community) or Hui. (organization)

² State of Hawaii Office of Information Practices ("OIP") Case No. 18-07

³ 2nd Circuit Court Civil Case No. 17-1-0208(1) Page 2 / Paragraph 3

⁴ 2nd Circuit Court Civil Case No. 17-1-0208(1) Page 2 / Paragraph 2

⁵ Minutes of Maui County Council Special Meeting – May 28, 2019 – Page 26

⁶ Minutes of Maui County Council Special Meeting – May 28, 2019 – Page 26

⁷ Minutes of Maui County Council Special Meeting – May 28, 2019 – Page 30

⁸ Intermediate Court of Appeals State of Hawai'i Case No. – CAAP-18-0000105

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5100 Lower Honoapiilani Road
Lahaina, HI 96761

In simple terms, you deceived the public and the Council members to avoid scrutiny of your decision making to pursue the most powerful position of influence in County government. Mayor Victorino, along with other creditable public officials such as County Clerk Kathy Kaohu, are fully aware that Developer Lot 48A, LLC's complete SMA Permit file was not **"eventually produced"** as you falsely alleged to the 2nd Circuit Court.

Therefore, under HRS §92F-42(1), the OIP has been noticed that a lawsuit shall be filed against you in the 2nd Circuit Court to obtain access to government records from Corporation Counsel. The records will reveal that your pleading to the 2nd Circuit Court regarding **"eventually produced"** government records was falsely made with the intent to be taken as genuine.⁹

Acting Corporation Counsel Director Lutey withheld Mayor Victorino's settlement agreement.

As the records reveal, on May 2, 2019, you're dishonest **"no idea"** statement was made at the same time you were unethically withholding from the members of the Maui County Council a legal settlement agreement that Mayor Victorino negotiated and willingly signed.

Mayor Victorino's side of the contractual agreement would have ensured that Public Works Director Milton Arakawa's former developer client, Lot 48A, LLC, would return to their oceanfront subdivision to complete the unfulfilled infrastructure and drainage obligations as required and represented by their conditional SMA Permit and previously concealed environmental studies.

"Milton, when I look at what he did, took advantage of the situation to take care of his friends"

"There is a definite, I hate to use the word collusion, but there is."

"He deserves more than a slap on the wrist, far more than a slap on the hand"

Mayor Elect Michael P. Victorino - December 2018

As a former elected member of the Maui County Council during the times relevant, Mayor Victorino was a direct witness to the conspired scheme orchestrated by Director Arakawa to conceal the public records of his client's SMA Permit application and environmental studies.

On April 17, 2019, with Mayor Victorino's support and approval, the signed settlement agreement and resolution proposal was sent to your attention as Acting Director of Corporation Counsel. The communication included a cover letter which outlines the terms of the agreement and consideration being granted to the County of Maui.

On May 2, 2019, during your Director appointment hearings, you also stated;¹⁰

".. when you work on something for years and years, you get so deeply invested at times that it's hard to contemplate settlement. "

As Mayor Victorino's appointed legal counsel, you are perpetuating a crime and wrongful act to protect and shield former Public Works Director Milton Arakawa. In violation of your professional and ethical duties, you have obstructed the members of the Maui County Council from acting upon a settlement agreement signed by Mayor Victorino.

⁹ See Hawai'i Penal Code - HRS Title 37 §710-1017 Tampering with Government Records

¹⁰ Minutes of Maui County Council Special Meeting – May 28, 2019 – Page 79

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Therefore, in accordance with Hawai'i Penal Code - HRS Title 37 §710-1017 Tampering with Government Records, the evidence of your falsification of government records and knowingly false statements before the members of the Maui County Council, shall be presented to the County of Maui Prosecutors Office.

Mayor Victorino's Signed Agreement exposes Corporation Counsel's false representations.

Mayor Victorino's performance on the contractual agreement would have galvanized into government records the evidence of years of concealment and misrepresentations of the SMA Permit records by the Department of Corporation Counsel attorneys in multiple legal cases.

***"We worked long enough on this case.
I don't want you to drop the case, I believe you are right."***
Mayor Elect Michael P. Victorino - December 2018

The agreement with Mayor Victorino provides conclusive evidence to support a post-judgement Motion in the Court of the 2nd Circuit that will expose Developer Lot 48A, LLC's fraud and malicious conspiracy with Director Arakawa to intentionally harm my family.

***"I do recognize there's still one issue -- at least one issue under investigation,
and it's possible that something that could lead to a
post-judgement motion related to fraud."***
Honorable Judge Joseph Cardoza ¹¹

***"As I cannot help but feel that you and County of Maui have been defrauded,
the taxpayers have been cheated out of financial obligations the developer
should have been rightfully paid."***
Council Member JoAnne Johnson Winer¹²

As the Director of Corporation Counsel, you have obstructed justice and interfered with Mayor Victorino's performance upon the signed contract in violation of your official duties and the laws and ordinances of Maui County. Nevertheless, your dishonorable interference does not invalidate the contract signed by Mayor Victorino's nor his witnessing of Director Arakawa's collusion with Developer Lot 48A, LLC.

Therefore, as a direct result of interference with Mayor Victorino's duties and promises, a Rule 60(b) Motion shall be filed in the 2nd Circuit Court, supported by a cause of action for interference and claim for specific performance by Mayor Victorino on the signed contractual agreement. I believe a recent statement by 2nd Circuit Court Judge Peter Cahill will bring to justice for your obstruction of the Mayor's duty to uphold the environmental laws;

***"The irreparable harm here is the people of the County of Maui
having a right to have their laws enforced."***
Judge Peter Cahill -- January 22, 2020¹³

¹¹ Civil No. 09-1-0040(3) -- Transcript Page 35

¹² Notarized Affidavit of JoAnne Johnson Winer -- August 11, 2015

¹³ Civil No. 17-1-0393(2)

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Christopher Salem
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Corporation Counsel's direct role in concealment of the requested SMA Permit records.

The financial expenses incurred by the County of Maui through unjustified legal defense, along with the prolonged monetary and emotional injuries to my family, are a direct result of Corporation Counsel's role in the concealment of the Developer Lot 48A, LLC's complete SMA Permit file and the manipulation of the unaccounted-for "3 Lots or Less" developer infrastructure "deferral" agreements.

In 2014, in the United States Bankruptcy Court, a Rule 2004 Subpoena was issued to the Department of Planning and the Department of Corporation Counsel requesting government records relating to Developer Lot 48A, LLC's SMA Permit file. Corporation Counsel immediately filed a Motion to Quash my access to the SMA Permit government records.¹⁴

"Use of a Rule 2004 Subpoena constitutes abuse and harassment of the County. Planning has nothing whatsoever to do with the acts, conduct, or property or liabilities and financial condition of the Debtor. (Salem)"¹⁵

Corporation Counsel Director Patrick Wong

As the County records represent, On August 3, 2009, the Planning Department responded to my request for access to Public Records relating to Developer Lot 48A, LLC's SMA Permit file SM2 2000/0042, as follows;

".. The SM2 file cannot be found at the County. Without the file I could only locate documents on the computer and was only able to find the following."

Department of Planning – August 3, 2009

As late as 2014 Corporation Counsel was aggressively conspiring to conceal and obstruct my access to the "***eventually produced***" Developer Lot 48A, LLC's SMA Permit File. As the records reveal, Director Arakawa fraudulently clouded my family's real property title with an illegitimate subdivision lien for "deferred" roadway infrastructure improvements which were the financial obligations of his private client, as discovered in Developer Lot 48A, LLC "***cannot be found***" Planning Department SMA Permit file.

Developer Lot 48A, LLC's concealed Planning Department SMA Permit records are the "***smoking gun***" government records referenced by attorney Matson Kelley in pleadings presented to Honorable Judge Cardoza.¹⁶ Contrary to Corporation Counsel's falsified representations to the United States Bankruptcy Court, the concealed Planning Department records strike to the heart of the Debtor's liabilities to the unpaid Creditors, and the financial condition of the Debtor. (Salem)

¹⁴ United States Bankruptcy Court Case No. 14-00878 Dkt #61 – 8/13/14

¹⁵ Rule 3.4. **FAIRNESS TO OPPOSING PARTY AND COUNSEL.** A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value.

¹⁶ Civil No. 09-1-0040(3)

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Therefore, the agreement signed by Mayor Victorino provides conclusive evidence to support a Motion to the Federal Bankruptcy Court under the United States Bankruptcy Code, 18 U.S. Code § 157: Bankruptcy Fraud.

Mayor Victorino's Signed Agreement exposes Corporation Counsel to Bankruptcy Fraud.

As the Director of Corporation Counsel, your interference with Mayor Victorino's signed agreement shall be the direct cause for a Motion to Reopen Debtor's Chapter 11 Petition. (Case No.: 14-00878) The Bankruptcy Court has broad discretionary authority to reopen a case "to administer assets, to accord relief to the debtor, or for other cause." 11 U.S.C. § 350(b).

For the record, my wages as an employee with the Office of the Mayor have been garnished by one of the unpaid creditors who lost their security when my family home was foreclosed upon. The illegitimate County induced liens were the direct cause of the foreclosure, and to this day have an ongoing financial stranglehold on my family.

Therefore, to remove the ongoing harm to my family, and to allow the damaged Creditors to recover their financial injuries, an Adversary Proceeding shall be filed under Federal Rule of Bankruptcy (FRBP) §7701 to expose Creditor County of Maui and Creditor Developer Lot 48A, LLC's scheme to create fraudulent liens on my family's real property title.

Please be advised, there is further conclusive evidence involving professional consultants and Corporation Counsel attorneys who played a conspiring role in Director Arakawa's concealment scheme which will be filed with the Bankruptcy Judge and the Prosecutor's Office under seal to protect my family.

Director Lutey has a duty under the Maui County Code to correct the violations.

In accordance with **Title 18.44 – VIOLATION - PENALTY**, as Director of Corporation Counsel, you have a PRESENT-DAY duty to defend Mayor Victorino's signed agreement by instituting an action against Director Arakawa's client Developer Lot 48A, LLC to correct, fine, and abate their violations of the Maui County Code as follows;

In accordance with Maui County Code Title 18.44.010 – **Violation & Penalty**;

- A. Any person, firm, or Corporation which knowingly violates this title **shall be fined** not more than one thousand dollars. The continuance of any such violation shall be deemed a new violation for each day of such continuance.

In addition, **the County attorney** may institute an action to prevent, restrain, correct, or abate any violation of this title and seek such relief by way of injunction or otherwise, as may be proper under the facts and circumstances of the case, in order to effectuate the purposes of this title.

- B. In any illegal subdivision, the Director may require such improvements as would reasonably comply with the provisions of this title. Such remedial improvements **shall be applicable to the sub divider**, if he may be found, or the owners of the lots in the illegal subdivision at the time of discovery, or both.

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In accordance with Title 18 of the Maui County Code, the Developer's consultants, including Director Arakawa's land planning firm, had a professional duty to ensure the infrastructure improvements as represented in the conditioned SMA Permit environmental studies were included in the roadway improvement civil engineering drawings. They knowingly failed to do so. The consultants continue to be granted County contracts.

Believing the "**cannot be found**" SMA Permit records would never be found, Director Arakawa's scheme was to shift his client's roadway infrastructure financial obligations into the County of Maui's Phase IV of Lower Honoapiilani Road Capital Improvement Program ("CIP") project. At the very same time, Director Arakawa's land planning firm was the County's paid consultant for the Phase IV CIP project.

Therefore, as the "**County attorney**", you have a duty to notice, or seek injunctive relief, to require Developer Lot 48A, LLC to return to their subdivision to complete their environmental and financial obligations as represented in their conditioned SMA Permit.

Director Lutey's failure to perform her duties under the Charter will be cause for removal.

The Department of Corporation Counsel had a PAST duty to remove the one-time County of Maui "3 Lot or Less" subdivision deferral agreement clouds from the underlying subdivision property titles immediately upon issuance of the Developer Lot 48A, LLC's conditioned SMA Permit in 2001. Corporation Counsel's failure to keep track of the potentially thousands of developer deferral agreements executed by their staff attorneys was a contributing cause to their negligence.

The Phase IV Lower Honoapiilani Road CIP project is now listed as a priority project in the Maui Metropolitan Planning Organizations ("MPO") Final Report with funding projected in 2020 -2023. Consequently, you have a PRESENT duty to institute an action to ensure that Developer Lot 48A, LLC corrects their violations to safeguard the citizens and taxpayers from incurring Developer Lot 48A, LLC's roadway infrastructure financial obligations.

The Maui County Charter - **Article 9: FINANCIAL PROCEDURES** Section 9-12, states as follows;

- C. If any County officer or employee ... incurs any obligation in violation of the provisions of the Charter, or in violation of the procedures and policies established by ordinance, or takes part therein, that action shall be cause for removal from office.

To avoid even further litigation from the five (5) affected property owners, Corporation Counsel has a PRESENT duty to expunge the illegitimate "3 Lots or Less" County lien that currently slanders the five (5) real property titles. Despite multiple written notices from me as an employee of the Office of the Mayor,¹⁷ you have failed and refused to take the appropriate action to protect the County of Maui from incurring further expense and legal liability.

The prior notices to Corporation Counsel shall be sent to Mayor Victorino with a copy to the County Auditor, the Cost of Government Commission, and the Council Chair of the

¹⁷ See Office of the Mayor transmittal and letter issued to Director Moana Lutey dated December 2019.

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Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

Governance, Ethics, and Transparency Committee. ("GET") I believe a comprehensive Performance Review of the Department of Corporation Counsel by the Auditor or independent auditing firm, is long overdue.

Therefore, I hereby assert my rights to employee whistleblower protection under the Maui County Charter Article 10, Section 10-4.4., Hawaii Revised Statutes ("HRS") Chapter 378-62-378-65, §378-70, and HRS §661-21.

Corporation Counsel Director Moana Lutey's conduct is a calling for change in leadership.

As a self-proclaimed "Dinosaur" litigator employed by the Department of Corporation Counsel since 1999, you have exposed through multiple recent actions your inability to remain neutral, or accept your "client" Mayor Victorino's decision to settle a case your Department has battled for years.

Your unethical conduct has dishonored Mayor Victorino's promises to transform Corporation Counsel into a Department which represents community-based leadership. I share Council member Rawlins-Fernandez's outcry for change.

"Our community has lost faith in Corporation Counsel and I do not see the change in leadership since Ms. Lutey has become Director.

I believe I was voted onto the Council for change and I promised that I would fight for that change."

Council Member Keani Rawlins-Fernandez – May 28, 2019

Under ARTICLE 10 - **CODE OF ETHICS** Section 10-1. Declaration of Policy. Elected and appointed (County) officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

Under the Maui County Charter - Article 13, Section 13-13. **Impeachment of Officers:** Appointed or elected officers may be impeached for malfeasance, misfeasance, or nonfeasance in office or violation of the provisions of Article 10.

Therefore, a comprehensive Board of Ethics complaint and charges for a verified Petition for Impeachment shall be filed against you in Circuit Court for the 2nd Circuit for violating your duties to serve the public interest.

Director Lutey's interference with a contractual relationship will cause further litigation.

I agreed to Mayor Victorino's offer of employment as an executive assistant of the Office of the Mayor with the stated purpose of establishing a fair and equitable system of assessment and collection of the millions of dollars of developer debts owed through unaccounted for "3 Lots or Less" developer agreements. Also, to apply my extensive professional resume towards streamlining roadway infrastructure Capital Improvement Projects.

My delayed employment in 2019 was intended to allow for the enforcement of Developer Lot 48A, LLL's unfulfilled conditioned SMA Permit and immediate dispute resolution. Both

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Christopher Salem
5100 Lower Honoapiilani Road
Lahaina, HI 96761

contractually and verbally, Mayor Victorino promised to provide a clear path towards my peaceful and productive employment.

"I asked for mediation and mediation is going to happen."

Mayor Elect Michael P. Victorino – December 2019

Mediation has not happened because in May of 2019, you took it upon yourself to go against Mayor Victorino's directive and refused to present the signed settlement agreement and resolution proposals to the members of the Maui County Council. In a letter to the Chair of the Maui County Council, you alleged there was no consideration provided for settlement and no further litigation. Recent communications, including the notices presented herein, affirms that both of your written claims to the Council Chair were false and misleading.

I just received a copy of an email you sent to staff attorney with the OIP February of 2020 which affirms, as late as March of 2019, that there was in fact ongoing litigation. In good faith, in January of 2019, in detrimental reliance on Mayor Victorino's anticipated performance on the contractual agreement, I terminated the litigation. I also contractually agreed to release the County of Maui from further liability.

Your personal decision to unethically interfere with and obstruct Mayor Victorino's performance on the contractual agreement shall result in further litigation through multiple legal actions describe herein. As my legal counsel with the County of Maui on my official duties, your unethical acts have placed me in a conflicted and hostile work environment which has caused both physical and psychological duress and blocked me from the performance of my job.

For the record, the Chief of Staff of the Office of the Mayor, Director of Personal for the County of Maui, and Manager for the Office of the Mayor, have been continuously noticed of the workplace harassment and duress that has been caused by your unethical leadership as our legal Counsel and representative.

Therefore, I once again assert my rights to employee protection under the Maui County Charter Article 10, Section 10-4.4., Hawaii Revised Statutes ("HRS") Chapter 378-62-378-65, §378-70, and HRS §661-21.

Corporation Counsel has a Pattern of Serving of Private Developers Financial Interests

The citizen-driven SMA Permit lawsuit at Montana Beach occurred in 2001 during the same time frame as when Developer Lot 48A, LLC's complete file of SMA Permit records were first requested from the County of Maui. At the same time, Director Arakawa left his land planning firm partnership for a politically appointed Deputy position in the Department of Public Works. The question is; Why?

As the record shows, almost immediately after his employment, Deputy Arakawa began signing off on private developers' subdivisions in violation of the Maui County Code. The massive concrete walls staring in the faces of the local families along Palama drive are just one of the unscrupulous monuments of Director Arakawa's agenda to serve private developers' financial interests at the public expense.

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Also, in 2001, through my dispute with Developer Lot 48A, LLC on their overlapping subdivision of one of the parent parcels of my “3 Lots or Less” subdivision, I informed West Maui Council Member JoAnne Johnson and Mayor Arakawa that Corporation Counsel and the Department of Public Works were executing an unknown quantity of agreements with private developers that intentionally shifted their infrastructure financial obligations onto the taxpayers.

The unethical practice continued on with hundreds more unaccounted for deferral agreements until 2007 when the “deferral” ordinance was repealed by the County Council. As I have just discovered during my performance of my assigned duties by Mayor Victorino, as late as 2009 along South Kihei Road, Director Arakawa and Corporation Counsel continued to grant unlawful, unauthorized overlapping “one time” deferrals to private developers.

Therefore, I once again assert my rights to employee protection under the Maui County Charter Article 10, Section 10-4.4., Hawaii Revised Statutes (“HRS”) Chapter 378-62-378-65, §378-70, and HRS §661-21.

Corporation Counsel has a pattern of abuse of power and authority and intimidation tactics.

Mayor Victorino’s staff includes five former Council Members. When they speak about Corporation Counsel, it is evident that acts of intimidation and strong-arming by your office have taken place to influence legal and legislative decisions. The reopened OIP case from 2017, illuminates how far beyond decency Corporation Counsel conducts their affairs.

As an example, Corporation Counsel filed an intimidating lawsuit against me alleging I was engaging in some fabricated form of “violation of due process” by issuing multiple requests for the SMA Permit records under the Uniform Information Practices Act. (“UIPA”) Your inability to produce a government record to support your “eventually produced” 2nd Circuit Court pleading provides the evidence of the SMA Permit concealment, and justifies the repeating UIPA requests.

Therefore, a question for consideration by the members of the Maui County Council; Does Corporation Counsel have the right to spend public funds to file intimidating lawsuits without first obtaining authorization from the members of the Maui County Council? Is this not an abuse of power and Corporation Counsel’s authority?

Director Lutey’s unethical professional decisions are grounds for resignation or impeachment.

Corporation Counsel continues to gamble and lose in their baseless defenses of unlawful Director decisions.¹⁸ Tens of millions of dollars of financial injuries to the taxpayers have been the direct result. As an elected Council member, Mayor Victorino witnessed Director Arakawa’s repeating dishonorable acts, and voted on the costly legal settlements.¹⁹

Mayor Victorino’s bold decision to uphold the laws of Maui County and sign an agreement to hold a private developer accountable for their conditioned SMA Permit occurred

¹⁸ Montana Beach - Maui County Council Resolution No. 08-3 – CVO6-00430 ACK KSC

¹⁹ Civil No. 09-1-0245(1) Cabebe V. New Sand Hills, ET AL

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after hours of meetings and negotiations. Mayor Victorino's motivation was to issue the violation notices to the developer and terminate the longstanding dispute through mediation.

As acting Director of Corporation Counsel, you made a personal decision to withhold Mayor Victorino's signed settlement from your clients, the members of the Maui County Council. By doing so, you were serving the financial interests of a private developer. You proceeded to deceive the members of the Council and the public when questioned on the Mayor's decision to enforce the SMA Permit.

The recent evidence received from the OIP affirms your reasons for withholding Mayor Victorino's signed agreement and resolution proposal were an abuse of power and violation of the Professional Rules adopted by the Supreme Court of the State of Hawai'i. Contrary to your claims, further litigation in multiple Courts of Law will be the likely result of your decision.

In conclusion, from the outset of your appointment as Director of Corporation Counsel, concerns were raised on your ability to see things clearly when you're in the middle of a battle. As a longstanding litigator, can you provide objective neutral advice and avoid influencing your clients on cases you have been fighting for years? After one year in your new Director role, your performance proves you are not qualified for a community-based leadership position.

With that said, I feel it is important to support this belief with a reminder of our meeting in Mayor Victorino's office. As you recall, I offered to engage in the cultural practice of Ho'opononono to help heal our differences and find a common spirit in our public service. Against the wishes of the Mayor and best interests of citizens of Maui County, my sincere offer was rejected with an aggressive and spiteful tone.

Prayer to Director Lutey to reconcile the harm caused to my family and the community.

Under the professional attorney rules adopted by the Supreme Court of the State of Hawai'i, I believe the Courts will find you have professional duty to rectify the consequences of your false statement of material fact to the 2nd Circuit Court. ²⁰

As a measure of good faith to prevent further litigation and burden upon Mayor Victorino's administration, the members of the Maui County Council, and my wife and children during these challenging times, I ask you to rewrite the wrongs and facilitate a peaceful resolution by forwarding the Mayor's signed settlement agreement to the members of the Maui County Council for their consideration. ²¹

²⁰ **Rule 3.3. CANDOR TOWARD THE TRIBUNAL.** (a) A lawyer shall not knowingly:

- (1) make a false statement of material fact or law to a tribunal;
- (4) offer evidence that the lawyer knows to be false.

If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take remedial measures .. to rectify the consequences.

²¹ ***"Well, normally what happens, I don't want to belabor this answer, I will contact the committee and inform them that I have a settlement.
I normally do that very quickly, if not the same day..***

Acting Director of Corporation Counsel Moana Lutey – May 2, 2019

June 4, 2020

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"You've treated everyone with respect and have retained your dignity thru all this and allowed wiggle room for the accused to own up and take back their dignity, but they are too scared..."

County Clerk Kathy Kaohu to Chris Salem – May 20, 2020

Respectfully; *Christopher Salem*