

04/03/2018
Maui County Council
Council Member Donald Guzman
Chair of Legal Affairs
Vice Chair of Infrastructure Management

RE: Infrastructure and Environmental Management Committee

Don:

Based on documents recently received, the County's ability to perform any roadway Capital Improvement Project at all may be blocked until the question of the County's legal rights to collect upon the "3 Lots or Less" subdivision agreements is resolved. These documents reveal an increased risk and exposure of the County to further litigation and liability.

1st: On 1/11/18 I sent a letter to Director Goode attached hereto, asking him to follow up on his 6/4/12 response to my inquiry about outstanding Deferral Agreements where he wrote:

"After our meeting with our Corporation Counsel on this issue, we are unable to respond at this time on the matter as we are: 1) researching the applicability of certain agreements on the ability to seek compensation, and 2) working out a formula for compensation on certain agreements. Rest assured we (Department of Public Works and Corporation Counsel) are actively working on this issue as our first project (Kahanui Bridge Project) has a few parcels that are affected by the above two items that are still being researched"

On 3/8/18, in response to RFS:18-0000209, attached hereto, submitted by Upcountry resident Sam Small, which quotes Goode's 6/4/12 letter to me, and requests Director Goode to "provide copies of each of the certain agreements you referenced." Deputy Director Dagdag-Andaya stated: "No specific agreements were identified in 2012." Does not this response explicitly contradict Director Goode's 2012 letter?

2nd; On 3/8/18, Director Goode sent a letter directly to Christopher Salem, attached hereto, alleging that Public Works is "unable" to confirm that the specific roadway improvements detailed on two different public records, from two different departments, represent the same roadway frontage improvements.

Even a novice can see that the roadway frontages represented on this subdivision deferral agreement is identical to the subsequent subdivision's civil engineering order of magnitude estimate. As the original inquiry was sent to Leslie L. Otani, P.E., L.S., a professional engineer of the Department of Public Works, Director Goode's assertion that the Department is "unable" to draw this conclusion is alarming.

What rules have been violated by Director Goode in sending a letter directly to a Plaintiff in litigation against the County pertaining to public records that are at the core of the litigation? Also, does this action now establish our ability to communicate with Mr. Salem directly to help resolve the legal dispute and mitigate the County's exposure?

3rd; A request for public documents by West Maui resident Eric Poulsen reveals that 2 Lot exemptions for roadway improvements, intended to benefit only family residences on the upcountry water meter list, are indeed being applied by Public Works to residential and commercial developments island wide.

Mr Poulsen alleges that neither the public nor the Council Members were made aware that the language that Corporation Counsel approved as to legality and form and inserted into the 2015 Upcountry Water Bill on final read was inconsistent with the bill's stated intentions.

Does this ordinance eliminate the ability to assess and collect upon existing 2 lot subdivision deferral agreements that may now qualify for exemption?

Closing;

My staff and our fellow Council members have invested extensive time and frustration on these issues which continue to escalate. I don't want myself or my fellow council members to be held responsible or liable for failing to perform our duties to account for revenues to offset public expenditures on County roadway projects due to the inaction or misrepresentations of Director Goode or Corporation Counsel.

As the records show, since 2012, Director Goode and Corporation Counsel have been breaching their duty to determine whether the many forms of "3 Lots or Less" subdivision agreements executed by their Departments are fact in legally collectible. The impact of the two lot exemption ordinance and questionable inability of the Department to compare subdivision engineering records further complicates the legal issues surrounding the "3 Lot or Less" Subdivision agreements.

Given the urgency of these interrelated issues and recent representation I conclude that to serve and protect the public interest we must immediately seek legal advice from independent non conflicted legal counsel as was the intent of the public referendum in 2016.

By the end of business today, I would appreciate it if you would please confirm receipt of this letter and confirm whether you will support my efforts to serve the public interest.

Mahalo for your immediate attention, Elle Cochran

Alt ending:

Since 2012, Director Goode's and Corporation Counsel's breach of duties has frustrated our Council's legitimate function, mandated by our Charter, to account for the revenues owed to the County that offset public expenditures on CIP's. I don't want this Council to be vulnerable to liabilities due to their inaction or misrepresentations.

Given the urgency triggered by these new contradictions pertaining to the Administration's mismanagement of the "3 Lots or Less" subdivision agreements, questionable 2 Lot exemptions, and the County's growing exposure to litigation, I conclude that to serve and protect the public interest we must immediately seek legal advice from independent counsel, as was the intent of the public referendum in 2016

By the end of business today, I would appreciate it if you would please confirm receipt of this letter and confirm whether you will support my efforts to obtain legal advice from non-conflicted legal counsel.

Mahalo for your immediate attention, Elle Cochran