

WATER RESOURCES COMMITTEE
Council of the County of Maui

MINUTES

September 29, 2004

Council Chamber

CONVENE: 9:08 a.m.

PRESENT: Councilmember Danny A. Mateo, Chair
Councilmember Charmaine Tavares, Vice-Chair
Councilmember G. Riki Hokama, Member (Arrive 10:11 a.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Dain P. Kane, Member
Councilmember Michael J. Molina, Member
Councilmember Wayne K. Nishiki, Member
Councilmember Joseph Pontanilla, Member

EXCUSED: Councilmember Robert Carroll, Member

STAFF: Richelle Kawasaki, Legislative Attorney
Tammy M. Frias, Committee Secretary
Ken R. Fukuoka, Director, Office of Council Services
Jock Yamaguchi, Executive Assistant to Councilmember Dain P. Kane

ADMIN.: George Tengan, Director, Department of Water Supply
Edward S. Kushi, Jr., Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: Benjamin A. Kudo, Esq., Imanaka Kudo & Fujimoto
Jamie Y. Cheng, Esq., Imanaka Kudo & Fujimoto
Others (2)

CHAIR MATEO: . . .(*gavel*). . . Good morning, Members. The Water Resources Committee for . . .meeting for September 29 is now called to order. For the record, Members present this morning: Committee Vice-Chair Charmaine Tavares, Members Johnson, Kane, Molina, Nishiki, Pontanilla. Excused this morning is Member Carroll, and Member Hokama will be joining us later this morning. Are there any, any individuals signed up to testify this morning?

MS. FRIAS: No, Mr. Chair.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

September 29, 2004

CHAIR MATEO: Thank you. Members, if it's okay with you, we'll go ahead and leave public testimony open a little while, a little while longer.

COUNCILMEMBER KANE: No objections.

CHAIR MATEO: Thank you. Also with us this morning, Department of Water Supply Director Mr. George Tengan and Corporation Counsel Ed Kushi, Jr.

ITEM NO. 19: SPECIAL COUNSEL FOR WATER-RELATED MATTERS (C.C. No. 03-211)

CHAIR MATEO: Members, before we go into WR-19, special counsel for water-related matters, I would like to also recognize and introduce to you special counsel Benjamin Kudo and Jamie Cheng of Imanaka Kudo & Fujimoto. Also, Members, you had been provided your packets. The Committee had been in receipt of a report entitled "Maui Water Issues and Recommendations Regarding Questions Presented in Resolution 03-146", dated September 20, 2004, that was prepared by special counsel Kudo and Kuwaye and Cheng of Imanaka Kudo & Fujimoto. Special counsel has determined that this report is considered confidential attorney-client privileged and is requesting executive session to discuss the matter. Members, I will allow special counsel to provide comment on, on the report relative to that request and then ask the Members for your comments regarding the executive session. At this time, Mr. Kudo.

MR. KUDO: Thank you. As the special counsel or attorney for the legislative body, the County Council in this particular matter, we have looked at the various issues presented and questions that the Council has posed to us for response. In the performance of our duties as your attorney, there are matters that have arisen which rise to the level of liability that potentially may be imposed on the County of Maui. As a result and as your attorneys, in the normal course we advise our clients that such matters in regard to our opinion on liability of the County of Maui should be protected under the attorney-client privileged. If discussion of this particular report is done outside of this particular body, that is before third parties that are not our client, then there is a potential waiver of that attorney-client privilege. That is it's not protected by the privilege and, therefore, is discoverable by any parties who may in the future bring actions against the County. As a result, it is our recommendation that matters pertaining to this particular subject which we have been engaged in to study for you should be discussed in executive session in order to preserve the attorney-client privilege and to prevent your waiver of that privilege and, therefore, the discovery of any information that is before you by individuals who may file claims against the County. And, therefore, our recommendation is to go and to discuss this in an executive session.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

September 29, 2004

CHAIR MATEO: Member Kane.

COUNCILMEMBER KANE: As far as comments to the opening statements, Mr. Chair, first and foremost I think it is important that the public has a right to know what, what we're. . .what the report's content is. However, before we have that discussion I think it would be prudent for us as a body to have a discussion with, with Mr. Kudo and special counsel regarding the contents of this material or of this report. If it does indeed rise to the level of liability, then I think our duty is to, to protect the County's interest in that and until we have a discussion to understand the full depth of it, it would be premature in my opinion--and I would ask the, the Members to consider this--it would be premature for us to, to waive the attorney-client privilege prior to understanding what the contents are. And I think it is just a process because in the end we're going to make the determination of what is discussed in open session, and it's not with the intent to. . .intentionally withhold from the public information. Quite frankly, the public does not have access to this document yet and I think it's prudent for us as a body to sit down and have the discussion with our attorney to discuss the contents of this report. To do anything else would be in my opinion, and, and respectfully, would not be a responsible action at this time. So, Mr. Chair, I would, as an individual Member, request that we concur with the request of special counsel and we have that discussion and then make our choice as, as Members with the authority to do so on how we are going to proceed with this item. Thank you, Chair.

CHAIR MATEO: Thank you. Thank you, Mr. Kane. Members, any additional comments? . . .Any comments regarding the request for executive session, Members?

COUNCILMEMBER KANE: Your recommendation, Chair?

CHAIR MATEO: Thank you. Mr. Kane, thank you very much. The Chair would like to entertain a motion to meet in executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

COUNCILMEMBER KANE: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR MATEO: It's been moved and seconded. Moved by Member Kane, second by Molina. Any discussion? Hearing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

September 29, 2004

COUNCILMEMBER HOKAMA: Chairman, I just . . .bring forward that at this point we have no sunset date as of yet, and I'm sure that was part of your intentions in your proposal to us. Is there any consideration you would like us to consider at this time or just as provided in your proposal you wish to go forward?

CHAIR MATEO: Mr. Hokama, thank you. I would at this particular point prefer just leaving it as is because eventually we will have to revisit this to add the specifics and particulars to this particular bill, but for now the urgency was in just extending the existing bill.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR MATEO: Mr. Hokama.

COUNCILMEMBER HOKAMA: Just, just a question. When we talk about extending the Water Meter Issuance Rule, we're talking about the Priority List and not the Reservations List?

CHAIR MATEO: Staff?

VICE-CHAIR TAVARES: It's supposed to be the Priority List.

COUNCILMEMBER HOKAMA: I just want to be clear on what we're extending.

CHAIR MATEO: Alright. Staff?

MR. FUKUOKA: The, the rule talks about the Priority List and also makes reference to what is essentially the Reservations List or, or the ability to make reservations. Now what this does is it just . . .it just takes away the effect of the provision that would terminate the effectiveness of these, this set of regulations and allow it to continue, and so it's a very limited. . .it's very limited kind of change that's being implemented here and the idea is that it would have to be revisited to clarify the order of the . . .of, of the properties in that Priority List but, more importantly, to codify the set of regulations. . .put it in ordinance form. Right now all that's happening is it's making that provision in the rule that had that sunset date ineffective. It's just destroying the effect of that sunset date. But to do more than that may require a lot of discussion, and that's the reason why this would be the first step.

COUNCILMEMBER HOKAMA: Thank you, Mr. Fukuoka, and thank you, Chair. I'm still unclear, but . . .I don't think I'm alone. So thank you, Chairman.

CHAIR MATEO: Thank you. Member Johnson.

WATER RESOURCES COMMITTEE MINUTES
Council of the County of Maui

September 29, 2004

and should be kept as such. Thank you very much. If there's no additional announcements, Members, thank you. This meeting is adjourned. . . .(gavel). . .

ADJOURN: 11:37 a.m.

APPROVED:



DANNY A. MATEO, Chair
Water Resources Committee

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Transcribed by: Tammy M. Frias