

COMMITTEE OF THE WHOLE
Council of the County of Maui

MINUTES

November 5, 2009

Council Chamber, 8th Floor

CONVENE: 9:01 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Danny A. Mateo, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (In 9:12 a.m.; Out 11:01 a.m.)
Councilmember Sol P. Kaho'ohalahala, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member (In 9:02 a.m.)
Councilmember Joseph Pontanilla, Member (In 9:27 a.m.)

EXCUSED: Councilmember Michael P. Victorino, Member

STAFF: Kirstin Hamman, Legislative Analyst
Camille Sakamoto, Committee Secretary

ADMIN.: Roy Silva, Executive Assistant, Office of the Mayor (Item No. 2(9))
Madelyn S. D'Enbeau, Deputy Corporation Counsel, Department of the
Corporation Counsel (Item No. 1(11))
Jeffrey T. Ueoka, Deputy Corporation Counsel, Department of the Corporation
Counsel (Item Nos. 2(9) and 3(2))

OTHERS: Daniel Kanahele (Item No. 2(9))
Kaneloa Kamaunu (Item No. 2(9))
Johanna Kamaunu (Item No. 2(9))
Lucienne deNaie (Item No. 2(9) and 3(2))

Evelyn Goo (Item No. 1(11))
Anthony Ranken (Item No. 1(11))
Four (4) additional unidentified attendees

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for November 5th, 2009 is now in session. For the record, we have in attendance Committee Vice-Chair and Council Chair Danny Mateo.

VICE-CHAIR MATEO: Morning.

CHAIR MOLINA: Committee Member Gladys Baisa.

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COUNCILMEMBER BAISA: Good morning.

CHAIR MOLINA: Good morning. Committee Member Sol Kaho'ohalahala.

COUNCILMEMBER KAHO'OHALAHALA: Good morning.

CHAIR MOLINA: Morning. And Committee Member Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha. Good morning.

CHAIR MOLINA: Morning. And Chair Molina. Excused this morning, we have Committee Members Johnson, Nishiki, Pontanilla, and Victorino. Members, we have three items on our agenda today. But before we proceed any further, the Chair would like to recognize Staff in attendance. We have our Committee Analyst Kirstin Hamman, the Committee Secretary Camille Sakamoto; and from the Corporation Counsel's office, we have Jeffrey Ueoka; and from the Mayor's Office, we have Roy Silva.

MR. SILVA: Good morning.

CHAIR MOLINA: Morning. And joining us for our proceedings this morning is Committee Member Nishiki. Good morning.

COUNCILMEMBER NISHIKI: Morning.

CHAIR MOLINA: All right, Members, let me first. . .consult with our Committee Secretary to see if we have any signups for public testimony for any of our three agenda items. Ms. Sakamoto?

MS. SAKAMOTO: I don't have any, currently, Mr. Chair, but I notice there's some people signing up.

CHAIR MOLINA: Okay. All right. I know we have some folks in the gallery. At this point, the Chair would like to offer you one opportunity if you want to testify on any of our three items. I believe we do have some folks that are signing up currently. Am I correct?

. . . Okay, we'll go ahead and get the. . .uh. . .testimony papers or requests.

NOTE: Silence and pause.

CHAIR MOLINA: . . . Okay, you can go ahead and. . .just open up with testimony and fill out your. . .your forms later. Good morning. And if you could just state your name--

MR. KANAHELE: Thank you.

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CHAIR MOLINA: Before you, before you start let me just go over a few ground rules. For testifiers, please state your name and any organization you may be representing. And you'll be given three minutes to testify with one minute to conclude. And please turn off all cell phones and pagers so as not to disrupt our proceedings this morning. Good morning. Go ahead, Mr. Kanahele.

...BEGIN PUBLIC TESTIMONY...

MR. KANAHELE: Um. . . Good morning, County Council Members, Chair Molina. Thank you for the opportunity to come before you and testify this morning. I'm testifying on Item COW-2(9) regarding the consideration of the nomination of Orlando Tagorda to replace John B. Guard to the Maui Planning Commission for a term expiring on March 31st, 2011. And I understand that the, the Council must approve or disapprove the nomination by December 15th, 2009 or the nomination will be approved and that the Committee may consider whether to recommend approval or disapproval of the nomination. The Committee may also consider other related action.

Again, my name is Daniel Kanahele and I'm speaking as an individual. And I regularly have the opportunity to attend Planning Commission meetings and sometimes testify before the Planning Commission. And I understand that the Planning Commission has broad powers when it comes to advising and even authorizing things that pertain to land use practices here in the County of Maui. The term for the. . . those that are nominated usually is five years so that's a term longer than County Council Members or the Mayor or even the President of the United States. In this case, it's just till 2011 because the, the nomination you're considering would be to replace Mr. Guard.

I just have. . . wanted to express a few things because the Planning Commission do make decisions, which are very impactful to our community whether it's in an advisory role or a role that's authorizing the approval of say an Environmental Impact Statement. I think it would be incumbent upon the Council to take every opportunity that they can to, to get to know the, the nominee. And including interviewing the individual, especially if you're not acquainted with anyone who is being nominated for a, a position on the Planning Commission. I would hope that you would get as much firsthand knowledge as possible. If you don't personally know the, the individual, if you have an opportunity to perhaps meet that individual, perhaps in a meeting like this, invite them in and ask questions. I think that would be a wonderful thing to do.

Again, the, the Planning, the Planning Commission makes decisions that relate to zoning, Community Plan Amendments, the acceptance of Environmental Impact Statements, decisions that affect. . . impact infrastructure, parking at beaches, view plains, cultural sites, sites, historical sites, and the list goes on and on and on. And when it comes to land use practices, I think, their, their, their power is only second to the County Council. And, and as I stated, stated earlier many of their decisions are advisory in nature but some of them actually give them the, the power to make final determinations on many, many things.

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MS. HAMMAN: Three minutes.

MR. KANAHELE: So, that's basically all that I want to say. And again, as someone who has stood before the Planning Commission many, many times I appreciate the hard work that they put in and the many, many important decisions that they, they need to make in behalf of the citizens of the County of Maui. And I thank you for your time this morning. Mahalo nui loa.

CHAIR MOLINA: Okay, thank you, Mr. Kanahele. Committee Members, questions for the testifier? Seeing none, thank you for your testimony this morning, Mr. Kanahele.

MR. KANAHELE: Thank you, Chair.

CHAIR MOLINA: Next to testify, we have Kaneloa Kamaunu followed by Johanna Kamaunu.

MR. KAMAUNU: Good morning, Council and Council Chair. My name is Kaneloa Kamaunu and I'm also speaking and referring to COW-2(9) on the Committee, the nominations. And the reason I, I feel it's important to make a comment is going and participating within the last year and a lot of years, not only with the County Council, but with the Planning Commission due to the Waihee. . .due to the General Plan that they had for Maui as well as the other commissions and councils.

I've come to find out and I don't know if this is how it's done actually to get members of the boards on but some of the concerns were the affiliations that some of them had with other organizations that had special interests in, in areas, especially for the, you know, the Planning. It is a, it is a tremendous responsibility to meet there and decide whether or not things are going to happen, developments will be coming up on Maui. I find it discouraging a lot of times that. . .and maybe it is the fault of the public not being aware of a lot of the things that are coming up. But it, it's hard when you have to try to explain yourself and your concerns as a citizen or as a, as a public member and their mind is somewhere else because they have other obligations. And my thing is, you know, I mean, if other obligations are in play these things should be noted. . .especially when it comes to nominations. And a lot of things that go on in the Planning Commission involves the public and involves changes to the public. And when you start involving changes to the public, you start infringing on certain things that the people of that area may be used to or don't want to lose, and we find ourselves, you know, fighting to keep our areas the way that we've always had them. Noted that things, you know, do need to progress but we find that some times that a lot of the progression is very intrusive. We find that a lot of things have happened and it doesn't come to the public because they felt, oh, it's just a small thing, so the public really didn't need to be notified and we kind of get that last hand. And my concern is--

MS. HAMMAN: Three minutes.

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MR. KAMAUNU: --you know those that become part of the Board that they, you know, I mean, be more of the public instead of. . .and I guess the questions that need to be posed to them is to make sure that they're, they're there for the public interest and for the interest of the culture, especially on my point of view being that I'm Kanaka, yeah. And especially in, in sensitive areas like Waihee where I'm from and we try to keep it, you know, as agricultural and rural as possible. And making a comment on that . . .I just was aware that, I guess, was a week that they put up those. . .they're going to put up those 20 foot or 24 foot antennas up on that old warehouse by the mac nuts fields. And by the time I got to go and testify, and I came from work, they were already closed testimony, I think. They had testimony for like half an hour. By the time I got there, you know, we couldn't say much and they approved it, so. Those are kind of concerns, you know, I don't how that antenna or that for mobile--

MS. HAMMAN: Four minutes.

MR. KAMAUNU: --for the mobile phones are going to affect our area but I wasn't able to comment. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Kamaunu. Committee Members, questions for the testifier? Member Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you. Mr. Kamaunu, I, I just wanted to understand because you mentioned about what the process is. Are you aware of how this works in terms of being, being considered for nominations to a board or commission?

MR. KAMAUNU: No, I don't.

COUNCILMEMBER KAHO'OHALAHALA: Okay. Maybe you want to take some time and you can go online to the County website. Everyone who is interested in serving in any one of the boards or commissions within the County simply needs to make an application to the Administration's Office and that's how you get on a list for consideration, because if you're willing to serve and from what I'm hearing you in your participation that's something that you might be interested in, so.

MR. KAMAUNU: Okay.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

MR. KAMAUNU: Yeah, I will do that. Thank you.

COUNCILMEMBER KAHO'OHALAHALA: Thank you, Chair.

CHAIR MOLINA: Okay, thank you. Thank you, Member Kaho'ohalahala. Committee Members, any other questions for the testifier? Okay, seeing none, thank you for your

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testimony. And the Chair would like to recognize Member Johnson to our proceedings this morning as well.

COUNCILMEMBER JOHNSON: Good morning.

CHAIR MOLINA: Good morning. Next to testify, we have Johanna Kamaunu and she'll also be testifying on Committee of the Whole Item 2(9). Good morning.

MS. KAMAUNU: Aloha, I'm Johanna Kamaunu. I'm from Waihee and I'm kind of concerned about this situation and it's new to me as well on the nomination and acceptance or approval of the names that come before you for the commissions and councils. As my husband mentioned, having sat in the Planning Commission meetings, I'm really concerned that the group that has been approved thus far doesn't adequately represent my interest. And I understand that they're to represent the people of Maui, but I don't think the community of people that have the same kind of situations that I am in are represented adequately on that Commission. And I believe that maybe it's just something we've never paid attention to, but I believe something needs to be done to correct that, to even it out a little bit.

As you know, I'm from a rural area. I'm not in any way connected to construction, development, or commerce. I have been an educator in the school. I've. . .I work with a company right now that provide services to the incarcerated, but I don't see any of these interests being represented on the Commission. In fact, I see quite the opposite represented there. And so, if it is within your purview to have a say in the appointment or the approval of someone, I would ask that you could exercise that right and see if there's any connections or links to these types of interests that are being represented already.

I've just been reading something lately. It's just something that I come across and it's this biology [*sic*] who talks about the biology of belief and his hypothesis was that if you take away the nucleus, the cell will still, will still function, and he proved that to be true. Within the cell are organelles, much like the organs in our body, and they continue to function after what he concludes as the brain of the cell is removed. So, then the theory he comes up with is. . .if the brain doesn't or the nucleus doesn't control what happens in there, what does? And his conclusion thus far is that it's the environment and that there's still an opportunity for the cell to determine what it wants to be or where it will go. So, much like us these people are in an environment on this Commission. I don't know what all their environments are but I do know they--

MS. HAMMAN: Three minutes.

MS. KAMAUNU: --have an environment that's contrary or that's opposite of what I'm in. And I would really like to see that that environment change a little bit. This environment is supposed to be representative of all of us and I'm concerned that our natural resources and the, the ability to be self-sufficient is being imposed upon and degraded [*sic*] by

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this. So, I would really encourage some, some direction in the selection of these people. Thank you.

CHAIR MOLINA: Okay, thank you, Ms. Kamaunu. Committee Members, questions for the testifier? Member Johnson?

COUNCILMEMBER JOHNSON: Ah, yes, thanks so much for being here today. Because we have one of the nominees that is coming forward today, have you had an opportunity to review this particular nominee with regard to the suitability for the Planning Commission? And if so, do you have any opinion one way or the other?

MS. KAMAUNU: I'm not real familiar with the nominee but in some of the conversations I've had, I've not heard anything negative about the nominee. But I didn't do enough of my homework on this subject. It's coming to me rather late. I, I wished I had a little more time to do that research. I just hope you're not in that position that I'm in.

COUNCILMEMBER JOHNSON: Well and, and we do have one more opportunity because this is the Committee so it will come to the full Council. So, if you avail yourself of the opportunity to gather that information, I look forward to any comments that you have.

MS. KAMAUNU: Thank you, I will.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: Okay, thank you, Member Johnson. Committee Members, any other questions for the testifier? Member Baisa?

COUNCILMEMBER BAISA: Thank you, thank you very much for being here this morning. It's important. One of the things that is available is an application form that is filled out so, you know, I'm sure that because it's in our binders, am I correct, is this public once it's published in the binder? So, you could get a copy of that and it has a resume and it has an application. So, you can look at the details.

MS. KAMAUNU: Yes, I will.

COUNCILMEMBER BAISA: Okay.

MS. KAMAUNU: Thank you.

CHAIR MOLINA: Okay, thank you, Member Baisa. Any other questions for the testifier? Seeing none, mahalo for your testimony, Ms. Kamaunu. Next to testify, we have Lucienne deNaie and Ms. deNaie will be testifying on Committee of the Whole Item 2(9) and also Committee of the Whole Item 3(2).

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MS. deNAIE: Thank you, Committee Chair Molina and Members of the Committee. I wish to share my manao on these two items. How do you prefer? Should I like address one and then we start the clock again?

CHAIR MOLINA: Yeah, we can go ahead--

MS. deNAIE: Okay.

CHAIR MOLINA: --and do that by separate clocks for each item.

MS. deNAIE: Well, first of all I'd like to address the agenda of the Association of Counties, you know, the Hawaii Association of Counties. There's one item on there that I've seen for many years and that is to transfer the authority of the State Land Use Commission over, redesignating land use categories to our local Planning Commissions. And many people have pointed out while this would make a lot of financial sense instead of decisions being made by Commissioners that are appointed from all over the State, they'd be made by Commissioners that are appointed right here on Maui. And, you know, it's. . .would really make a lot of sense, to just cut the red tape and go to square one here.

I want to bring up another set of information that might be useful for you folks. I know, you know, counties have been pushing this because they want to have, I think, more say and that is excellent. But the caliber of the people who are appointed to the Land Use Commission, and I've spent many, many, many hours at the Land Use Commission, it's very customary to have a cross section of folks and skills. It's not unusual to have someone who has a degree in planning. It's not unusual, in fact, a former Planning Director of Maui County is on the Land Use Commission right now. It's not unusual to have someone with a background in the construction industry, so that, you know, they know what's going on. It's not unusual to have an attorney or two who really understands the law and the intricacies of the law. It's not unusual to have a biologist or scientist. It's not unusual to have someone who, you know, understands the, the business point of view. It's a very balanced committee in many ways but a high level of expertise and the questions that are asked by the Land Use Commission are often very, very probing and the conditions that are opposed. . .imposed by the Land Use Commission because they are a Statewide body some of the things that our own Planning Commission is told, well we don't really have jurisdiction there because this is your Planning Commission, you're, you're a Maui County Planning Commission. Well the State Land Use Commission does have jurisdiction over some of these issues. They took the lead on affordable housing long before we had an ordinance. They took the lead on shoreline protection measures, on cultural protection. Many of these things you'll find our own Planning Commission did not put any conditions on at all on the same project, and you get to the State Land Use Commission and they go wait a second, you know, you're overlooking something here. So, I would just caution you it's sometimes better to have two sets of eyes look at something than only one set of eyes. And that provision--

MS. HAMMAN: Three minutes.

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MS. deNAIE: --although it's very popular may not really serve the best interest of our long-range planning.

Segueing right into Item No. 2.

CHAIR MOLINA: Oh, hang on, let, let me ask the Members if they have questions for you first.

MS. deNAIE: Oh, okay, I'm sorry.

CHAIR MOLINA: Members, any questions for Ms. deNaie related to Committee of the Whole Item 3(2)? Okay, seeing no questions for that particular item. Proceed, Ms. deNaie.

MS. deNAIE: Thank you, Mr. Molina. On the item of the Planning Commission appointees, this too is one of these situations where you really want to have balance. You want to have geographical balance. You want to have expertise balance. I have spent a lot time at the Planning Commission recently so I haven't been neglecting you guys but, you know, they've been reviewing the, the Maui Island Plan. I, I've sat in on virtually every meeting and I would just urge you before you take a stand on any nominee, please have them here and ask them questions, because every person who's appointed as a potential member is a good person. Every person is an honest person. Every person is a well meaning person. You're not going to get crooks that are, you know, the Mayor sends up for you to, to look at. What you need to know is do they have the depth of background, especially if you're considering giving all of the powers of the State Land Use Commission to this Planning Commission. Do they have the great depth of background? Are they going to be bringing something to fill a puka on that Commission?

Right now, we have no representative from Lahaina. We have two people that work in Lahaina and that's very nice and they're, they're great people and they have a lot of, you know, background on Lahaina but their point of view is the tourist industry. They're not representing just the average person on the street in Lahaina. And boy do you hear it from the average person on the street in Lahaina when something comes up. They're there and I would hope that we spread things out a little bit. We have plenty of people from Kihei, Wailuku. We don't have anybody from Haiku on that Commission. So, it, it, . . . I would urge you at the very least to before you make any decision request that any applicant that come before that is, . . . whose name is put before you, come before you in person and ask questions.

You may recall a number of years ago that Lance Holter was nominated to the Board of Variances and Appeals. It was very controversial, you know, here's this President of the Sierra Club, isn't he going to be prejudice and so forth and so on. Well, he came here and answered questions and at the end of that he was appointed and he served honorably and chaired that Committee and gave five years of his time. So, it's really good to get someone before you and have an opportunity to find out who they are, more than just a little resume. That's a great start but they're going to be making very, very important decisions. And I personally am concerned when I'm at the Planning Commission when

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person after person says, well we don't have any expertise in this. Well, let's get someone on the Planning Commission that does have some expertise in some of these areas. And you'll only do that in your role of, you know, reviewing the Mayor's nomination by being able to ask those tough questions. So, give yourself the opportunity. Thank you.

CHAIR MOLINA: Thank you, Ms. deNaie. Committee Members, questions for Ms. deNaie related to Committee of the Whole Item 2(9)? Seeing none, thank you for your testimony. Committee Secretary, do we have any additional signups for public testimony this morning?

MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay, the Chair will offer the...those sitting in the gallery one last opportunity to testify on any of our three agenda items. Seeing no one approaching, Members, the Chair's recommendation will be to close public testimony for all three agenda items.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, thank you, so ordered by the Committee.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: All right then Members we will go right into business.

**ITEM NO. 2(9): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS
(MAUI PLANNING COMMISSION) (C.C. No. 09-15)**

CHAIR MOLINA: First with Committee of the Whole Item 2(9), which, which relates to Nominations to Boards, Committees, and Commissions and this to the Maui Planning Commission. The Committee is in receipt of a correspondence dated October 16, 2009 from the Mayor, requesting consideration of the nomination of Orlando Tagorda (replacing John B. Guard) to the Maui Planning Commission, for a term expiring on March 31st, 2011; and transmitting a copy of Mr. Tagorda's application form. And to give us a brief overview of the nominee, we have from the Mayor's Office, Mr. Roy Silva. Mr. Silva, can you have you give us some opening comments on the nominee?

MR. SILVA: Thank you, Chair. The Mayor has nominated Mr., Mr. Tagorda to fill the vacancy from now until 2011. He does have prior experience with the Water Board and with that I'm...questions?

CHAIR MOLINA: Okay, thank you, Mr. Silva. Members, before we...before I open the floor for questions, the Chair would like to just inform you that as typically, typically with any nominee for any Board or Commission, emails are sent out to the all Members who may

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want to request the nominee to come in. The deadline was set at October 27th. However, we did get a request from Member Nishiki two days ago. The Chair did as a courtesy call Mr. Tagorda informing him of a Member and possibly two others requesting his presence. Mr. Tagorda did send to me. . .wanted me to relate to you that he is at a funeral, one of his near relatives passed away, and he obviously is unable to be here but would be. . .would make himself available to meet with any of you should you wish to meet with him and ask him the questions you need to do. So, there are a number of options available if it is the body's decision to move this on to the Council then there's that option too of asking him to appear before the Council, with of course, that would be up to Council Chair Mateo as well. So, I do want to let you know we. . .I did consult and talked to Mr. Tagorda so that is his reason for not being here this morning, which relates to a funeral with, for, with. . .of one of his family members. So, with that being said I will open up the floor.

And the Chair would like to recognize Mr. Pontanilla at our proceedings this morning.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: Good morning. Mr. Nishiki followed by Mr. Medeiros.

COUNCILMEMBER NISHIKI: Yeah, thank you. Mr. Silva, you heard. . .well first I want to read from the Charter under Section 13.2, Boards and Commissions. And I'll just go straight to the area that I'm concerned with. In making appointments to all boards and commissions, the Mayor shall give due consideration to balance geographic representation.

Now, I want to educate you in case you don't know because you didn't say it in your opening statement. You have now two members from Wailuku, Johnathan Starr and Wayne Hedani. You have two members from Kihei, Donna Domingo and Lori Sablas. You got one member from Kahului, Kent Hiranaga. You got one member from Kula, Warren Shibuya; one member from Paia, Bruce U'u; one member from Hana, Douglas Mardfin. As one testifier said earlier today, no member from West Maui.

I want to also tell you that when I look at some of the decisions and I don't know if all of these developments, Jo Anne maybe knows, but I did some work anyway of developments that are coming up in West Maui. They are numerous, numerous. I don't know how many fall under the SMA area. But my concern that no one, zero, nada, no one is from West Maui, and why any consideration was given or not given. And, and I would think that as we make a decision today this may be a, a, a concern and a reason why we should ask you. . .we should deny this person and get someone from West Maui 'cause as I said they got some big developments, Mr. Chairman, coming from West Maui.

CHAIR MOLINA: Okay, Mr. Silva?

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COUNCILMEMBER NISHIKI: And again, no one there? Why? Or, did you know?

CHAIR MOLINA: Mr. Silva?

MR. SILVA: Yes, Councilman, we do know about that and thank you for the question. We do have two members coming off the Planning Commission in 2010. At that time, we will be looking to put someone from Lahaina on the Commission.

COUNCILMEMBER NISHIKI: Well, right now, you don't, so, why, why is that you don't. . .we don't do it now?

MR. SILVA: This is the name that came down from the Administration, Councilman.

COUNCILMEMBER NISHIKI: Well, I guess, for me, it's not acceptable. Um, I'll, I'll, I'll allow other Members.

CHAIR MOLINA: Okay, thank you, Mr. Nishiki. Mr. Medeiros followed by Ms. Johnson.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Silva, thank you for being here. I just wanted to ask are you aware of how many applicants submitted applications for this Board to be considered?

MR. SILVA: No, I'm not.

COUNCILMEMBER MEDEIROS: Okay, the way . . .*(end of tape, start 1B)*. . . is there a nominating committee that makes recommendations to the Mayor and she makes a final selection? How does it work for the Administration?

MR. SILVA: I believe the Mayor works with her staff and goes over the list that they have and then they pick the best person that's qualified for the position.

COUNCILMEMBER MEDEIROS: I see. Okay, thank you for that information. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Prior to recognizing Member Johnson, Mr. Silva, Mr. Tagorda resides in Kahului and Mr. Guard who is being considered to replace he, Mr. Guard resides in the Paia area?

MR. SILVA: Yes, that's correct, Chair.

CHAIR MOLINA: Okay, I was just curious. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and, and I want to thank Member Nishiki for raising some of the same issues that I've been concerned with. I know when we had former nominees, like particularly, when we did not have a Hana representative, I have always

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made myself available as a Council Member, because many people have approached me who I think have very good skill sets and they have submitted applications basically in keeping with my recommendations to them. So, I can attest to the fact that there have been applicants from Lahaina.

With regard to balance apart from geographics, I'm looking at the expertise and the, I guess, skill set if you will, of the individuals that serve on the Planning Commission. I note that Mr. Tagorda and, and I don't know him but, you know, he, I guess, from '71 to '73, he was at Maui Community College exploring hotel management. Also, up until 2006 he was working for HC&S. So, because that to me represents two specific areas, which would be, again, looking at the visitor industry with hotel management experience. And also looking at a major employer on the island with plans at some point for development of some sort, and particularly of a lot of their lands, and depending on what happens with water.

How do you feel his skill set works in providing a whole new approach or a different perspective from the people that are already on the Commission?

CHAIR MOLINA: Mr. Silva?

MR. SILVA: Thank you, Chair. Well right now, on the Planning Commission there is no one with the background in water that Mr. Tagorda has. So, he will bring a strong background of water.

COUNCILMEMBER JOHNSON: Okay, and was it Mr. Starr on the Board of Water Supply with extensive experience in water?

MR. SILVA: Yes, you're right, Council Member. But he also. . .if you look at the application from Mr. Tagorda he also worked in the fields with water. So, not, not only, not only does he have expertise of the office and he, he has, also has the expertise of the actual working.

COUNCILMEMBER JOHNSON: Yeah, and I just have a different perspective on that. Anyway, I am really concerned, not so much about this particular individual, but I feel that as Mr. Nishiki stated we have so many developments coming up in West Maui. And if there is no one there really to protect the interest and I cannot oversee. I have been chastised many times for speaking out on issues before the Planning Commission and they have sent me a very clear message that they don't want my input with regard to their decision-making. So, it leaves me sometimes at a loss. So, for the people of Lahaina, and particularly because we are one of the largest components that really supports the whole County economically, I feel it is really critical to provide that kind of oversight for projects that may negatively impact the bottom line here in Maui County.

So, with all due respect to Mr. Tagorda, it is not sufficient for me to have someone who is coming forward from a completely different area that basically is already represented,

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irrespective of his particular expertise. I think Mr. Starr has done a remarkable job on looking at issues having to do with water. I think that issue is well covered.

As a result, Mr. Chair, I cannot support for the reasons I've stated. This particular nominee I, I would like the Administration, if they have any questions at any time, my door is always open. And I would just like to be accorded that respect to at least come to me if you cannot find someone from the Lahaina area. Timing is of the essence and particularly given the current economic climate that we have. Thank you.

CHAIR MOLINA: Okay, thank you, Member Johnson. Committee Members, any other questions for Mr. Silva. Ms. Baisa?

COUNCILMEMBER BAISA: Just a . . . I need another point of reference. When we began, you mentioned some dates about the Members were given the opportunity to ask for the person to be here. Can, can you restate that, I missed it?

CHAIR MOLINA: Ah, yeah, we, through the Committee, I believe, it was October 27 was the initial deadline to get your request in for the nominee to come in.

COUNCILMEMBER BAISA: And then you said you got a request later?

CHAIR MOLINA: And then the deadline passed. There was no request made from any of the Members and then just two days ago, Mr. Nishiki called and consulted the Committee Secretary to request Mr. Tagorda's appearance. And then I consulted Mr. Tagorda to inform him that there was one Member, possibly two others, that would request that he be here. However, he is at a funeral today and, you know, the Chair's opinion is we have to give our nominees some consideration to plan their schedules as well. So, Mr. Tagorda, did tell me that he is at a funeral but he is open to meeting with any of you if have questions, if, provided, of course, if this should move on to the full Council. Well, so, there's a lot ifs at, at this point, Member Baisa.

COUNCILMEMBER BAISA: Well, what I, what I, why I wanted to make sure I had those dates correct was, you know, after an experience, I personally had started asking all Planning Commission Members to come. . . member applicants to come here because, I think, it's important for the Members who don't know them. In this case, I happen to know the applicant well. But some of them I've never met, never heard of before, and, I think, it's really important that we get them here. But when I didn't see anybody else ask, I didn't put my name in because I thought well I know the applicant and nobody else wants so I let it go at that. And so, that's the reason why there's no request for Mr. Tagorda earlier to be here, because I thought everybody was okay with it and I knew him personally. So, I think, paying attention to the deadlines that we're given becomes an issue that, you know, we have to meet the deadlines, and when we ask we need to ask, you know, how we do with an email to everybody so everyone is aware that someone is trying to get the applicant here. I was not aware of that. Thank you.

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CHAIR MOLINA: Okay, thank you. Members, as you know, this is a, a carryover of an existing policy that I believe occurred when former Councilmember Kane was Chair of the Committee of the Whole with regards to asking at least the minimal of three Members to have a nominee come in because of several instances that I witnessed and Members of the Council back then where one Council Member would request a nominee come in and when that day came the Council Member doesn't show. It leaves the other Members in an awkward position and we've had several nominees who have. . .who are employed. They have hourly wages they gave up. I remember one nominee gave up three hours of wages to be here and not one Member asked that individual a question. So, I believe, that was the nexus for that policy being put in and that was carried over by me the next term as the Committee of the Chair Whole [*sic*] and then current Council Chairman Mateo when he chaired the Policy Committee last term and up until now. So, just wanted to provide you all a brief history as to why. So, so, it's a policy that provides some courtesy to the nominees as well. But, again, as it relates to Mr. Tagorda, I did call him and again left it up to him if he wanted to come. But for obvious reasons, the funeral, he's unable to be here.

Okay, Members, any other questions for Mr. Silva--

VICE-CHAIR MATEO: Chairman?

CHAIR MOLINA: --with regards to Mr. Tagorda? We have Chairman Mateo followed by Member Kaho'ohalahala and Member Nishiki.

VICE-CHAIR MATEO: Chairman, thank you. Mr., Mr. Silva, in reviewing the applications or potential applicants interested in serving in this particular capacity, did, did. . .are you aware whether or not Administration did consider the geographic location or the geographics inclusive with all of the applicants or the potential applicants?

MR. SILVA: Ah, Council Member, when the Mayor and, and Administration looked over their applications, they look for the best person for the position.

VICE-CHAIR MATEO: I'm not even going to go there.

COUNCILMEMBER NISHIKI. . .(*laughter*). .

VICE-CHAIR MATEO: Ah, Chairman, thank you very much.

CHAIR MOLINA: Thank you, Mr. Mateo. Mr. Kaho'o...Kaho'ohalahala?

COUNCILMEMBER KAHO'OHALAHALA: Thank you. Mr. Silva, this applicant is going to be replacing another member who's now vacant at that and for an expiration of 3/11. Now, does that make this particular applicant now eligible for reappointment?

MR. SILVA: Yes, it does.

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COUNCILMEMBER KAHO'OHALAHALA: So, beyond then. . .so we are looking at a possibility of continuation into a next full term of five years plus the remaining time here then?

MR. SILVA: Yes, but he would. . .yes, but he would need to reapply again.

COUNCILMEMBER KAHO'OHALAHALA: No, but it makes us, makes this important because what we're saying is that while there will be openings occurring in the near term as you, you said. If we make this appointment today, we're almost assuring that this person will continue not only in the remaining but also in an extended potential full term. And then we would say that he has served for a brief time and therefore he is now experienced and therefore we should just almost, it's a bye, yeah? So, so, that's why, I think, it's important for us to know the condition is, is it's not only this remaining, but is also potentially looking into the next five-year term as well. Your comments on that?

MR. SILVA: Well, again, he would need to reapply. And, and, again, the Council would have the chance to question him again and go over it again.

COUNCILMEMBER KAHO'OHALAHALA: Okay, in the application, the, the applicant says that he is semi-retired. What does that mean?

MR. SILVA: It. . .good question. He, he's currently working part-time, I believe.

COUNCILMEMBER KAHO'OHALAHALA: And do you know where that is?

MR. SILVA: No, I don't.

COUNCILMEMBER KAHO'OHALAHALA: Okay, and to me, then the application is not complete because I have no way of understanding in what is sent here and what you have before us in understanding because he says he's semi-retired. But there is no indication on who his current employer is. Okay, so that's information that, that would be helpful for us to know that would update this application but there is no information whatsoever. So, I will leave it at that.

CHAIR MOLINA: Okay, thank you, Mr. Kaho'ohalahala. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, thank you. A concern raised by testifiers but I'll, I'll ask it in this manner. Mr. Silva, I happened to research a little bit just because I thought it would be important for my fellow Committee Members to make. . .in making a, a decision. Now, whether you're for or against is not the circumstance, okay. I just want to make that real clear.

So, I looked at what. . .where these people came from, job, job occupation as stated by a previous testifier. Mr. Hedani, President, General Manager of Kaanapali Operations Association, KOA manages Kaanapali Resort, resident Wailuku. Jonathan Starr,

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business, he's an entrepreneur, Wailuku. Bruce U'u, Paia, Carpenter's Union. Lori Sablas, Kihei, Director of Pookela of Kaanapali Beach Hotel. Donna Domingo, Kihei, Vice President of the ILWU Local 142. Kent Hiranaga, Realtor. Warren Shibuya, retired; his background was with retired Space and Missile Systems Center; worked on Land Use Directed Growth Investigative Review for a Committee of the General Plan Advisory Committee. And then, Douglas Mardfin, Mardfin, Hana, retired; works part-time now for Hui Malama; was a college professor of Economics in 2001; and then he returned to Hana High School and taught Social Studies. So, like I said, whether you're for or against, I think, that we need to see some of the connections and then you can make good decision.

Connections. Hedani, we could say Visitor Industry. Sablas, definitely Visitor Industry. Union ties, Bruce U'u, Carpenter's Union. Donna Domingo, Vice President ILWU, union oriented. And then real estate, Hiraga [*sic*]. And then you got, Jonathan Starr, independent businessman. Shibuya, retired, space man. And then, Mardfin, I guess, education. So, despite that what is missing is representation from a particular area, which the Charter states. And, and I guess, Mr. Mateo, you were not satisfied with the answer, again, that was given and, and so was I. We have a definite group of people that are visitor, and union, and development oriented. Not good or bad, just the fact that, that's where they are from and represent.

So, then, we ask the rest of the people that live here in, in, in Maui County, well as was brought up, well we need some other people then. You know, maybe a farmer, somebody that's close to the land, somebody that's maybe also a background of the environment because SMA covers ocean and, and a lot of the activities that are around the ocean. What else is missing? Maybe a housing expert, yeah, someone from a nonprofit or somebody of this sort. You know, because that's another big eyesore here in Maui County as we develop.

So, I, I think that in reviewing the areas that we may possibly want or, or, or, or need and, and maybe somebody that's active in the community association because they hear a lot from their communities, you know. Somebody like that or even a school teacher, I would think, you know, someone that's familiar with the concerns of the youth as they're growing up or, you know, something like this. But these parts of our community are, are left out. And I, and I would, would hope that this Administration looks at that.

And so, Gladys, you bring up the point of and, and, and Mr. Molina about requesting and, and maybe for some commission that is as important as this maybe the. . .we can look at it at another day, but just. . .I'll, I'll just say it maybe until a majority does not request for it then we automatically get these applicants to come. But just as a suggestion, I will admit that I was remiss and was not. . .didn't meet the deadline but for me, when I did the homework, it wasn't against this person and that's the reason why I didn't feel like I needed to grill him. It was because of what is now there and the type of person that I'd like to see fill this position and he did not. So, not against him, but against what came down from Administration.

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And so, again, I'm going to be voting against this person not because he didn't meet what I thought he should be but because I was looking for someone that he did not fit the shoes of in lieu of the sitting Commission members. So, anyway, thank you again, Mr. Chairman.

CHAIR MOLINA: Okay, thank you, Mr. Nishiki. Committee Members, any other questions or comments with regards to Mr. Tagorda's nomination? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Just a comment that happened four years ago when I was being replaced, not four years, maybe seven years, that, when I was being replaced on the Planning Commission. And I was looking for someone to represent Kahului that, that works in agriculture. And at that time, I was told that they already selected two people from South Maui. And to me, a good representation across the board should be gotten in regards to Planning. . .our Planning Commission. But I just like to let the Members know that some of the sitting members today did not support my, my recommendation in trying to select somebody from Kahului that belong in the agriculture business. So, I, I just want to make that comment to be clear. Thank you.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. And Members, just as an FYI, the Council must approve or disapprove this nomination by December 15, 2009 or the nomination will be deemed approved. So, anyway, just to remind you all of what we're facing here today. Members, any additional questions or comments as it relates to Mr. Tagorda's nomination or consideration?

VICE-CHAIR MATEO: Chairman, brief recess prior to the Chair's recommendation.

CHAIR MOLINA: Okay, thank you. The Chair will call for a brief recess. Members, we shall reconvene at 10 o'clock. Okay. Committee of the Whole meeting is in recess till 10:00 a.m. . . .(gavel) . . .

RECESS: 9:54 a.m.

RECONVENE: 10:02 a.m.

CHAIR MOLINA: . . .(gavel) . . . The Committee of the Whole meeting for Thursday, November 5th, 2009 is now back in session. Thank you very much, Members, for that recess.

Members, the Chair is going to offer you a recommendation with regards to Mr. Tagorda's nomination. At this point, the Chair is going recommend a deferral on this matter. As I mentioned earlier, we have until December 15th to consider him. We do. . .our next Committee, scheduled Committee meeting will be November 18th, excuse me, November 19th, and at that point either way a decision must be made by that time. And this will also afford Mr. Tagorda the opportunity to come before you. I think it's only fair that we at least give him a chance to be in front of us and respond to the

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questions and issues that some of you had. And the Chair does. . . would like to let the Administration know their. . . I can certainly understand the geographic concerns with regards to representation and also the application not being quite complete as Member Kaho'ohalahala pointed out. It does not seem to indicate who he is currently employed by. So, I think, the Committee is entitled to know that as well.

So, Members, any objections to deferral?

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: MPV)

CHAIR MOLINA: Okay, so ordered by the Committee. Committee of the Whole Item 2(9) is deferred. Thank you, Members.

ACTION: DEFER pending further discussion.

ITEM NO. 1(11): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: EVELYN GOO, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 08-00172 DAE BMK; and IN THE MATTER OF MAUI'S BEST GIFT AND CRAFT FAIR, LLC, APPEAL OF THE NOTICE OF VIOLATION, DOCKET NOS. BVA 2005-0013, BVA 2005-0024, AND BVA 2005-0027) (C.C. No. 09-14)

CHAIR MOLINA: Members, moving on to Committee of the Whole Item 1(11) related to Litigation Matters: Evelyn Goo, et al., v. The County of Maui, et al., Civil Case No. 08-00172; In the Matter of Maui's Best Gift and Craft Fair, LLC, Appeal of the Notice of Violation. The Committee is in receipt of a correspondence dated October 27, 2009, from the Corporation Counsel's Office, requesting consideration of the proposed resolution authorizing settlement of Evelyn Goo, et al. v. County of Maui, et al., Civil Case No. 08-00172 and in the matter of, again, Maui's Best Gift and Craft Fair, LLC, Appeal of the Notice of Violation issued by the Director of Planning in regard to the use of property located at 270 Lahainaluna Road, Lahaina, Maui, Hawaii. The complaint, which was filed in Federal Court alleges interference with contractual relations and prospective economic advantage, breach of the duty of good faith and fair dealing, and violation of the plaintiffs' constitutional rights through the maintenance of illegal customs and policies. The purpose of the proposed resolution is to authorize settlement of the cases.

And we have before us here from the Corporation Counsel's Office, Ms. Madelyn D'Enbeau to give us an overview of this matter. And, Members, we did previously meet on this matter if you can recall. So, Ms. D'Enbeau?

MS. D'ENBEAU: Thank you, Mr. Chair, Members. This is as you recall our second meeting on this matter attempting to settle the case with Maui's Best Gift and Craft Fair and Evelyn Goo. As the Chair pointed out, there are two different matters that are on the agenda for settlement: the Federal lawsuit, which is scheduled to go to trial in. . . on February 23rd and the notice of violation, notices of violation actually that were issued

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and then consolidated. And that matter is presently scheduled to be heard by the Hearing Officer, December 16th of this year. So, in an attempt to settle, we appreciate very much your taking time from your busy schedule to discuss this matter.

At the last meeting, there was a request that Ms. Goo provide out-of-pocket expenses and she has done so. I believe that she distributed those in the public portion of the, of the meeting. It should be in your binder. It's a letter dated October 6, 2009. I did make copies just in case it's not there, but I believe it should be. And in that she lists for you the various expenses that she believes are connected with the, with the dispute.

Essentially, as I understand her claim, I guess, it could be divided into three parts. The first is that these notices of violation should have not been issued, that there was nothing wrong with her operation, her Gift and Craft Fair was on land that she leased from another individual who owned it, on the corner of Honoapiilani Highway and Lahainaluna Road. And that matter, whether or not the notices of violation should be sustained as I said before the Hearing Officer. Daily fines are accruing and have been for some time so that that would be a significant part of a settlement would be dealing with those, with those daily fines.

The Federal lawsuit essentially alleges that not only should these notices of violation not have been issued, that they were issued for some improper purpose, and that it's taken too long to have that matter resolved. But also alleges that, but for actions of the County, Ms. Goo would have been able to purchase the land at the corner of Lahainaluna Road and Honoapiilani Highway and continued, excuse me, to operate her Gift and Craft Fair there. And then, further that when the land was purchased by the West Maui Federal Credit Union, I've left out a word, I think, it's Community Credit Union, that she should have been able to stay as a tenant of the Credit Union but for as she alleges of wrongful acts on the part of the County and she was given a notice to vacate and has done so. So, that's essentially the, the framework of the, of the litigation.

I would ask for an executive session to respond to the items that are set forth in Ms. Goo's October 6, 2009 letter, but I'm happy to answer any questions that the Members might have in open session that wouldn't relate to legal advice.

CHAIR MOLINA: Okay, thank you, Ms. D'Enbeau. Members, you've heard the comments from our Corporation Counsel, Ms. D'Enbeau, with regards to this matter. Are there currently any questions in open session? The Chair will certainly recommend as well Executive Session, so Ms. D'Enbeau can further expound on the items that have been given to the Committee. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, Ms. D'Enbeau, I just want to understand because we have this correspondence received from the Administration and, I believe, it's in response to a request for information. Allegedly if we just move forward, we're authorizing you to settle. Is that what my understanding is that because the information has been provided,

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no matter what you would be negotiating the settlement and the resolution of this case based on the resolution that is, that is before us?

MS. D'ENBEAU: Yes, the resolution that's before you states that we. . .we will be authorized to settle the case on the terms that are. . .be set forth in executive session. So, we don't yet know what those terms are and, of course, I should say we, we authorize to negotiate a settlement because obviously that may or may not be agreeable to the Plaintiff.

COUNCILMEMBER JOHNSON: Okay, but the, the information that has been provided us, if that were to form the basis of, you know, 'cause obviously you're, you're going to do whatever you're going to do to protect the interest of the County, and move this issue forward. But the amounts that are there, whether we agree or disagree, whether they can, I guess, be discussed or not discussed, you're going to move forward with whatever you feel is appropriate. Is that correct?

MS. D'ENBEAU: I guess you're referring to the October 6, 2009 letter and the amounts that Ms. Goo sent forward?

COUNCILMEMBER JOHNSON: Yes, yes.

MS. D'ENBEAU: Yes, I would be discussing those amounts with the Committee in executive session if that's what the Committee desires and then making a recommendation for a settlement amount. But, of course, it's totally within the discretion of the Committee to choose that amount or some other amount during our executive session.

COUNCILMEMBER JOHNSON: All right, yeah, I, I just, you know, I. . .Mr. Chair, because we have the amounts there, because the information that we received from Ms. Goo is going one way or another, it's a back-and-forth situation. And as far as I'm concerned, you know, if we authorize them to settle based on the information that we requested be provided, frankly, I, I personally myself don't see a reason to go into executive session, because I really think that we should just allow the Administration to move forward in good faith and we've received the information. It's up to the Administration to then just negotiate that settlement and if they feel something is justified, they're going to go back-and-forth anyway. That's what we've done in every other case. So, that's just my perspective on this. Thank you.

CHAIR MOLINA: Okay, thank you, Member Johnson. Any other questions in open session for Ms. D'Enbeau? Members, as an FYI, this item is also on the docket for tomorrow's Council meeting as well. There is a, I believe, a. . .this relates to a time-sensitive matter. I don't know if Staff would care to further expound on this, I believe, is it November 17th? And if we were to get through the Committee process. . .*(end of tape, start 2A)*. . .we may not be able to make the settlement hearing.

MS. D'ENBEAU: Excuse me?

CHAIR MOLINA: Yes? Go ahead.

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MS. D'ENBEAU: Thank you very much, Mr. Chair--

CHAIR MOLINA: You want to elaborate, Ms. D'Enbeau?

MS. D'ENBEAU: Yes. That's a settlement conference in front of the Federal Judge. I'm sorry, I should have mentioned that that. . .that's a deadline that's also coming up. And so. . .to the extent that we have developed authority from the. . .for settlement from this body, then we would go forward to the settlement. . .judge and have that discussion on the 17th.

CHAIR MOLINA: Okay. All right, Members. . .Member Johnson?

COUNCILMEMBER JOHNSON: So. . .and, and I'm reading. . .you know, Committee Chair Molina, I'm reading your correspondence, too. And that essentially what you're going to ask is that the Committee be discharged from further consideration so that we could take it up tomorrow.

CHAIR MOLINA: Exactly.

COUNCILMEMBER JOHNSON: Okay. Well--

CHAIR MOLINA: However . . . Yeah. And then. . .I would like to provide you the option of either, if there are any questions that may be deemed sensitive, to have the executive session here today rather than tomorrow because--

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: --we do have a--

COUNCILMEMBER JOHNSON: I understand.

CHAIR MOLINA: --busy agenda tomorrow as well. So this would be the opportunity for the Committee to go into executive session today, rather than tomorrow. So I just throw that out at you, Members. Now, Members, any other questions in open session before the Chair makes a recommendation to go into executive session?

. . . Seeing none, then, the Chair will entertain a motion to go into 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.

VICE-CHAIR MATEO: Chairman, move for executive session.

COUNCILMEMBER NISHIKI: Second.

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CHAIR MOLINA: Okay. It's been moved for executive session by Vice-Chair Mateo, and seconded by Committee Member Nishiki. Any comments with regards to the motion to go into executive session?

... Seeing none, all those signify your approval by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

... Thank you. The Chair will mark it 8 "ayes" with 1 "excusal", Member Victorino.

VOTE: AYES: Councilmembers Baisa, Johnson, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Victorino.

MOTION CARRIED.

ACTION: APPROVE; RECESS Open Session and CONVENE Executive Session.

CHAIR MOLINA: Members, we will take a recess to prepare the Chambers to go into executive session. This Committee of the Whole meeting is now in recess. ...*(gavel)*... *(end of tape, start 3A)*

RECESS: 10:15 a.m.

RECONVENE: 11:23 a.m.

CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for Thursday, November 5, 2009 is now reconvened in open session. Members, it's 11:23 a.m.. Members, the Chair as it relates to Committee of the Whole Item 1(11), because this matter will be up for consideration again at tomorrow's Council meeting, the Chair's recommendation for today will be to defer this matter. Any objections?

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: JJ and MPV)

ACTION: DEFER pending further discussion.

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CHAIR MOLINA: Okay, so ordered by the Committee.

ITEM NO. 3(2): HAWAII STATE ASSOCIATION OF COUNTIES (HSAC) (2010 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE) (C.C. No. 09-17)

CHAIR MOLINA: Moving on Members, our last item for today is Committee of the Whole Item 3(2), Hawaii State Association of Counties (HSAC) (2010 Legislative Package). The Committee is in receipt of a correspondence dated October 29, 2009, from Councilmember Joseph Pontanilla, HSAC Treasurer, transmitting and requesting the Committee's consideration of the following proposals for inclusion in the 2010 HSAC Legislative Package. So, Members, bear with the Chairman. I'm just going to read into the record the nine considerations.

Number (1), a proposed State resolution entitled "RESOLUTION REQUESTING THAT THE STATE REFRAIN FROM UTILIZING THE WIRELESS ENHANCED 9-1-1 SPECIAL FUND FOR PURPOSES OTHER THAN AS DESIGNATED BY ACT 159 (2004) AND REMOVE THE SPENDING CAP ON THE FUND".

(2) A proposed State resolution entitled "RESOLUTION IN SUPPORT OF ALLOWING COUNTIES ACCESS TO THE STATE DEPARTMENT OF TAXATION'S INCOME TAX DATABASE".

(3) A proposed State resolution entitled "RESOLUTION REQUESTING THE STATE CONSIDER TRANSFERRING THE DUTIES, FUNCTIONS AND RESPONSIBILITIES OF THE STATE LAND USE COMMISSION TO EACH RESPECTIVE COUNTY PLANNING COMMISSION".

(4) A proposed State resolution entitled "RESOLUTION URGING THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND TO CONDUCT A FEASIBILITY STUDY TO ESTABLISH A CAPTIVE INSURANCE PROGRAM FOR HEALTH INSURANCE AND ESTABLISH SUCH A PROGRAM".

(5) A proposed State resolution entitled "URGING THE GOVERNOR, CHIEF ELECTION OFFICER, AND HAWAII STATE LEGISLATURE TO PROVIDE APPROPRIATE LEVELS OF SERVICES FOR THE 2010 ELECTIONS".

(6) A proposed State bill entitled "A BILL FOR AN ACT RELATING TO TAXATION".

(7) A proposed State bill entitled "A BILL FOR AN ACT RELATING TO LAND USE".

(8) A proposed State bill entitled "A BILL FOR AN ACT RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND BOARD OF TRUSTEES"; and.

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(9) A proposed State bill entitled "A BILL FOR AN ACT MAKING AN APPROPRIATION RELATING TO ELECTIONS".

So, Members, you've heard the nine considerations. At this point, the Chair will turn matters over to our HSAC Treasurer, Councilmember Pontanilla. Mr. Pontanilla, you have the floor.

COUNCILMEMBER PONTANILLA: Thank you, Chairman. As the Chairman of the Committee had read, the HSAC Committee came out with nine proposals. But Chairman, at this time, being the HSAC Representative, I want to defer Items 1 through 5 because of . . . we had some issues in regards to the format of the resolution the way it's written. And we're going to bring it up at the next HSAC meeting since resolutions are taken up later in the year when they're discussing their budget. . . the State. I think they're going to be hearing resolutions in, in the April month timeframe. So, I want to defer Items 1 through 5.

For Items, 6, 7 and 8, I'm requesting the Members to approve the request on a proposed State bill entitled "A BILL FOR AN ACT RELATING TO TAXATION" and a justification sheet for the bill has been also presented. For Maui County, we've been trying to get this particular State income tax database. I understand that although we, we do have the cooperation of the State but some of the counties in, in . . . throughout the State have not been successful. So, this is going to be benefiting the State, counties, and in regards to their crosscheck on the taxation, especially homeowners within the State.

The second one is an item that was offered by City and County of Honolulu. A bill for an act relating to Land Use and the justification sheet also is in your packets regarding that particular item.

And the third one that I'm requesting approval is a bill for an act relating to the Hawaii Employer-Union Health Benefits Trust Fund Board of Trustees. Presently, the State of Hawaii does have five trustees and the bargaining unit have five trustees. All we're saying is that the counties, since we fund the, the health fund, you know, by more than half, that the counties should have a say. So, all we asking the State is to include one trustee from the counties and that can be selected at a later time.

So, Members, I'm requesting approval for the three bills that is being proposed and the deferral of the first five. And on No. 9, it's already been taken care of. I talked to our County Clerk and he had indicated that we already got paid. So, we can also eliminate Item No. 9.

CHAIR MOLINA: Okay, thank you for that information, Member Pontanilla. Members, any questions for Mr. Pontanilla or Corp. Counsel related to any of the three recommendations from Mr. Pontanilla? We'll start with Member Medeiros followed by Member Kaho'ohalahala and Member Nishiki.

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COUNCILMEMBER MEDEIROS: Okay, Mahalo, Chairman. I just wanted to ask Member Pontanilla, even though he asked to defer one through five, I believe, but I just had a question on three, Mr. Pontanilla, if it makes a difference or not. But the verbiage on it says, each respective County Planning Commission “singular”. So, for Maui County, where we have Molokai Planning Commission, Lanai Planning Commission, and Maui Planning Commission, is that understood as inclusive of those other two Commissions within our County?

COUNCILMEMBER PONTANILLA: Um, because we asking for the deferral, we could also include the different, the other two Planning Commissions that supports the Maui Planning Commission. Members, I failed to also say that some of this, two of the proposals on, on the resolution are basically tied into two of the bills that I also mentioned. So, you know, we, we need to take care of that also at the next HSAC meeting.

COUNCILMEMBER MEDEIROS: Okay, Mr. Chairman, yeah, I, I think, we need to be specific on Maui County. The other Counties only have one Commission but, you know, we have three. So, I think, that should be identified. And thank you, Member Pontanilla, to bring that up at the next meeting.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. That’s quite observant of you. Maybe adding an “s” to that word Commission, in right of, yeah, that would help. Member Kaho’ohalahala?

COUNCILMEMBER KAHO’OHALAHALA: Yeah, thank you, Chair. Member Pontanilla, you said that the, the justification sheets are in...

COUNCILMEMBER PONTANILLA: Our handout.

COUNCILMEMBER KAHO’OHALAHALA: In a handout?

COUNCILMEMBER PONTANILLA: In the booklet, in the booklet, yeah.

MS. HAMMAN: Mr. Chair?

COUNCILMEMBER KAHO’OHALAHALA: Yeah, I’m, I’m missing.

MS. HAMMAN: Within the binders, there should be a packet that includes all of the proposals. The justification sheets for the bills do follow or are behind the bill.

CHAIR MOLINA: It’s under Committee of the Whole Item 3(2), Members, in your binders.

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COUNCILMEMBER KAHO‘OHALAHALA: Okay, then, my, my binder is not complete, Chair, and that’s why I can’t find some of the.

CHAIR MOLINA: Members, would you like a brief recess to locate that? Members, have you located--

COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: --. . .(inaudible). . . Okay.

NOTE: Silence and pause.

COUNCILMEMBER KAHO‘OHALAHALA: Okay.

CHAIR MOLINA: Member Kaho`ohalahala?

COUNCILMEMBER KAHO‘OHALAHALA: Thank you, Staff. You know, at this time, the, the only thing I can say in Item No. 7...is that the same thing? Okay. In Item No. 7, the proposed State bill entitled “A BILL FOR AN ACT RELATING TO LAND USE”, and I just wanted a chance to see the justification ‘cause this is an issue that has been. . .that has surfaced for quite a while--

COUNCILMEMBER PONTANILLA: Many years.

COUNCILMEMBER KAHO‘OHALAHALA: --and I’ve have had prior involvement in that at the State Legislature. And so, it’s not something I’m, I’m fully supportive of at the moment, so I just wanted to know, are we going to be dealing with this as an entire package to. . .for us to, to, to take a vote on? Or, are we looking at individual items?

COUNCILMEMBER PONTANILLA: Mr. Chairman?

CHAIR MOLINA: I guess this could be a request for separation. We vote on each item.

COUNCILMEMBER PONTANILLA: Yeah, um.

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Yeah, we could ask for separation because all of the four counties got to agree to what we’re doing. So, if we don’t agree with any of this, you know, the resolution or the bill, then it doesn’t go forward.

CHAIR MOLINA: Okay. Mr. Kaho`ohalahala?

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COUNCILMEMBER KAHO‘OHALAHALA: Okay. I would just like the chance to see it ‘cause it’s not in my packet and I want to look at the justification for that but you can move ahead.

CHAIR MOLINA: Okay. Thank you, Mr. Kaho‘ohalahala. And again, Members, if there’s a matter that you would like to request separation for a separate vote, that is at, at your purview. Mr. Nishiki?

COUNCILMEMBER NISHIKI: Yeah, just a concern. I’m, I, I asked my Staff to do some research but, of course, it’s not completed yet. But, I think, this is real important in regards to No. 3, the resolution requesting the State consider transferring the duties. And I read the justification sheet on it, Joe, and I think we should be real careful. The justification talks about giving it back to the. . .each county.

COUNCILMEMBER PONTANILLA: Respective county.

COUNCILMEMBER NISHIKI: Yeah, but each county has a definite difference in some of it being advisory to the Council, so they don’t really make any decisions. And in our situation, our Planning Commission makes decisions. So, I don’t know what Kauai and the Big Island do also. But in Honolulu, theirs is basically advisory. So, if the Planning Commission makes a decision because of their Charter, the Council makes the final decision and that’s my concern, Joe, the fact that personally myself if this was going to be done I would want to have our Charter changed so the Planning Commission becomes advisory, you know.

Um, um, I’m not. . .that’s why I’m not in favor because then this Commission becomes super-powerful, you know, and that they make the final decision in regards to the SMA. Um, in, in studying the SMA law, you know, you know, the, the Federal government created that law but then I don’t know what the history of it is, Mr. Chairman. But the history of it is, is that Honolulu is advisory and we’re not because of how it, it is written in the Charter.

And again, Joe, as, as I said, if it becomes advisory and we can make the Charter change, then I would be in favor of it. But right now, I think, it becomes super-powerful. Right now, I think, if they are given any kind of change if it’s what 15 acres or less, I think, but other than that you talking about, you know, thousand acres and an unelected body. Um, I’d be really concerned, you know, in the. . .how then a developer can go to the Planning Commission and, and get drastic changes for a thousand acres from an unelected body, appointed body. And so, there goes my concern.

CHAIR MOLINA: Thank you, Mr. Nishiki. I think it is certainly interesting and what Mr., Mr. Pontanilla can take back or you have the option of providing a letter from out of your office with your concerns to Mr. Pontanilla or HSAC itself. Yeah, because all the Planning Commissions. . .*(inaudible)*. . .

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COUNCILMEMBER PONTANILLA: Yeah. Mr. Chairman, yeah. You know--

CHAIR MOLINA: Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: --if we, we do have a problem in regards to that, you know, like Member. . .what we discussed earlier we can separate it out, and if we don't feel comfortable as a body today in regards to this here, we, we can vote it down. And it doesn't go forward as an HSAC Package but if City and County of Honolulu want to pursue it then, you know, it's fine.

COUNCILMEMBER NISHIKI: Right.

COUNCILMEMBER PONTANILLA: As an individual county.

CHAIR MOLINA: Okay, thank you. Member Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. I, too, would like a little bit more time spent and a little more input from other people. For one thing, I'd be interested in listening to the Planning Department's reaction to this proposal, because what we're going to do essentially is bring a lot more work here. And are we ready to deal with it? We don't have the staff. We don't, you know, we have enough trouble processing what we need to process right now. Don't do a very good job of moving things. So, we're going bring more over here and ball us more up in, in red tape. So, I'd like to hear a little bit more. I, I understand the home rule thing. I understand the duplication thing. But I want to know the mechanics and the cost before I can support.

CHAIR MOLINA: Okay, thank you, Member Baisa. Well, as you've heard Member Pontanilla's recommendation is to defer action on this, on that No. 3 for the time being. And we will again have a meeting once HSAC is done then this will have to come back to us.

COUNCILMEMBER PONTANILLA: Yeah, so, Items 1 to 5, you know, I'm asking for deferral since, you know, we still got a lot of time to, to do the resolutions. And on the bills, we need to complete this act and if we feel uncomfortable in regards to the Land Use one, then we vote it down. . . .*(inaudible)*. . .

CHAIR MOLINA: And, I think, prior to the. . .when it does get back to us at that point we can also seek comments from our own Planning Department as well--

COUNCILMEMBER PONTANILLA: Yeah, yeah.

CHAIR MOLINA: --because as Member Baisa noted, we're, would be considering more work, more costs to the County, so, anyway. All right, Members, you've heard the recommendation from Mr. Pontanilla to defer action on Items 1 through 5. And No. 9, we've basically eliminated. Staff, any comment?

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MS. HAMMAN: I would just, um, recommend that deferral would not be appropriate of those, I mean, if HSAC. . .HSAC can send a separate communication through Councilmember Pontanilla and it can be taken up at a later time. So, my understanding it from Councilmember Pontanilla is that the recommendation is just to include those three bills in the HSAC Package.

COUNCILMEMBER PONTANILLA: Yeah.

CHAIR MOLINA: Okay, so, not a formal deferral of the other items then?

MS. HAMMAN: That's right, Mr. Chair. And also just to clarify the bill that's listed in No. 7 on the agenda and also on Councilmember Pontanilla's communication also deals with the issue of the Land Use Commission and that is one of the bills that Mr. Pontanilla is asking be included in the HSAC Package.

CHAIR MOLINA: Mr. Pontanilla, with some of the concerns expressed about the Land Use Commission, is that related to No. 3? And do you think maybe we should defer action on No. 7 as well?

COUNCILMEMBER PONTANILLA: Well, Chairman, because the bills need to be completed before the end of the year, and because of our timeframe, if we don't want to go forward with the bill relating to Land Use, as a body, we can vote it down.

CHAIR MOLINA: Take a vote on it, okay.

COUNCILMEMBER PONTANILLA: And it doesn't go through as an HSAC Package and then the other two would be included in the HSAC Package.

CHAIR MOLINA: . . .*(Inaudible)*. . .

COUNCILMEMBER PONTANILLA: If any county don't agree with any of the nine proposals, they can just vote it down and it doesn't go.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. So, what the Chair would ask the Committee to consider then now in one vote, in one motion we'll consider No. 6 and 8 together. And if that's appropriate, Staff, procedurally?

MS. HAMMAN: If that's the, the wish of the Committee.

CHAIR MOLINA: Yeah, the, the Chair is going to make a request for separation on No. 7 as well 'cause I've heard some of the concerns that may be related to that. So, we'll go from here then. The Chair will recommend approval of Items No. 6 and 8 to be included into the HSAC Package. The Chair will entertain a motion.

COUNCILMEMBER PONTANILLA: So moved.

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VICE-CHAIR MATEO: Second.

CHAIR MOLINA: Okay, it's been moved by Member Pontanilla, seconded by Member Mateo.
Any discussion on Items 6 and 8?

. . .Seeing none, all those in favor, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

. . .Okay, thank you, the Chair will mark it 7 "ayes", 2 "excusals", Members Johnson and Victorino. These two items will be included into the HSAC Package.

VOTE: AYES: Councilmembers Baisa, Kaho'ohalahala, Medeiros, Nishiki, Pontanilla, Vice-Chair Mateo, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVE proposed bills and justification sheets for Nos. 6 and 8 (as noted on the meeting agenda) for inclusion in the 2010 HSAC Legislative Package, and TRANSMIT copy of the committee report to the HSAC Executive Committee.

CHAIR MOLINA: And now, we are on proposal No. 7. The Chair will, well I'll give you the option to, I'll leave it. . .the floor open or the Chair will make a recommendation at this point to deny including Item No. 7 into the HSAC proposal. The motion is to deny.

COUNCILMEMBER PONTANILLA: So moved.

COUNCILMEMBER NISHIKI: Second.

CHAIR MOLINA: It's been moved by Member Pontanilla.

MS. HAMMAN: I'm sorry, Mr. Chair?

CHAIR MOLINA: Excuse me, hang on. Staff?

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MS. HAMMAN: I would just note, I, I'm not sure that, that's necessary. I mean, if, if it's the wish of the Committee to include it then there would be a motion.

CHAIR MOLINA: Okay, so, we will just withdraw the recommendation. Okay, all right, Members, we will withdraw the motion. I believe, Member Pontanilla--

COUNCILMEMBER PONTANILLA: Oh, okay.

CHAIR MOLINA: --if you will withdraw that and the second. So, we will just leave No. 7 as is with basically no action taken. That's what we're looking at.

So, at this point we have passed Items 6 and 8 to be included into the HSAC Package. And, I believe, that is it. As far as the item itself, Staff, then we'll just leave it open?

COUNCILMEMBER MEDEIROS: Mr., Mr. Chair?

CHAIR MOLINA: Hang on. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, so, it's my understanding that Member Pontanilla asked for 1 through 5, which we didn't act on at all, that HSAC will do more work on it then it will come back to us again?

CHAIR MOLINA: At a future meeting.

COUNCILMEMBER MEDEIROS: At a future, okay.

CHAIR MOLINA: So we still have some time before the deadline.

COUNCILMEMBER MEDEIROS: Yeah. Okay, thank you.

CHAIR MOLINA: So, 1 through 5, No. 7, and No. 9 is basically moot now, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Number 7 is moot and No. 9 is moot.

CHAIR MOLINA: Okay, so, we're looking at basically Nos. 1 through 5 coming back in the future.

COUNCILMEMBER PONTANILLA: Yes.

CHAIR MOLINA: Okay. Staff, as far as the item itself now?

COUNCILMEMBER KAHO'OHALAHALA: Wait, let me clarify.

CHAIR MOLINA: Hang on. Member Kaho'ohalahala?

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COUNCILMEMBER KAHO'OHALAHALA: Yeah, on No. 7, we are, we're not, we're not dealing with anything today, so, it's, it's still. . .

CHAIR MOLINA: It's going to go back to HSAC, HSAC.

COUNCILMEMBER PONTANILLA: Um, I, I need action on No. 7. Either we up or down it right at this meeting, because we have a deadline by the first of the year to complete our HSAC Package. Um, if we're not comfortable, we can bring it up again next year, once we get more information. That can be done.

CHAIR MOLINA: Meaning HSAC, can bring it back for?

COUNCILMEMBER PONTANILLA: Yeah, but as far as any other county, if they want to move forward on their own, then it, it is okay.

CHAIR MOLINA: Okay, Staff, you have comments?

MS. HAMMAN: I would just note that if it's the wish of the Committee or any Member of the Committee to include that bill in the HSAC Package, then a motion to include it would be appropriate. If there is no will to include that in the package we don't need a motion to deny it, it will, it will file.

COUNCILMEMBER KAHO'OHALAHALA: Okay.

CHAIR MOLINA: Okay.

COUNCILMEMBER KAHO'OHALAHALA: Okay, thanks for that clarification.

CHAIR MOLINA: So, No. 7, again, so, Mr. Pontanilla, you . . .

COUNCILMEMBER PONTANILLA: Can get one short recess?

CHAIR MOLINA: All right, Members, recess, subject to the call of the Chair. Don't go anywhere, we're going to discuss a procedural matter as it relates to No. 7. Meeting in recess. . . .(gavel). . .

RECESS: 11:43 a.m.

RECONVENE: 11:45 a.m.

CHAIR MOLINA: . . .(gavel). . . The Committee of the Whole meeting for Thursday, November 5, 2009 is now back session. Thank you, Members, for that recess for the Chair to confer with Staff on a procedural matter related to Committee of the Whole Item 3(2), Hawaii State Association of Counties.

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So, Members, we are at an understanding here that Items 6 and 8 will be included into the HSAC Package. Items 1 through 5 as well as 7 are pretty much no action taken at this point. At a future time, Member Pontanilla will relay to us the considerations that are before us 1 through 5 and 7 and that will be brought up at a future Committee of the Whole meeting for us to make a decision on. Am I . . .are we clear on that?

COUNCILMEMBER PONTANILLA: Chairman? Um, I'll be bringing back information on the resolutions Items 1 through 5 and as far as the bill itself, it, it will not be included in the HSAC Package at this time.

CHAIR MOLINA: Okay, that the bill related to No. 7, right?

COUNCILMEMBER PONTANILLA: Yes.

CHAIR MOLINA: Okay. Okay, Members, that all clear to everyone? Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you, and, and you may, you may tell me that I'm out of order. But perhaps if when Mr. Pontanilla returns from HSAC, if he can also share information with us whether or not HSAC will have a lobbyist who will sheppard these bills through the Legislature as well as follow up on the resolutions that will be, I, I guess, brought forward at a later time as well.

CHAIR MOLINA: Okay, I think, that's a reasonable request to make to Mr. Pontanilla who can relay that consideration.

COUNCILMEMBER PONTANILLA: Yeah, thank you, Chairman. And thank you, Chair, Chair Mateo for that inquiry because right now HSAC is looking at its budget in, in regards to, you know, cutting costs. And to hire a lobbyist at this time, I, you know, if, if the various counties want to support that then, you know, I'll bring it forward.

CHAIR MOLINA: Okay, thank you, Mr. Pontanilla. Any other considerations for Mr. Pontanilla to take to his fellow HSAC colleagues? Seeing none, okay, we have taken action on that particular item, those two items. So, with that being said, Members, I believe we don't have anything else on our agenda.

We do have two site inspections today for the Economic, Agricultural, and Recreational Committee [*sic*], Chaired by Member Johnson.

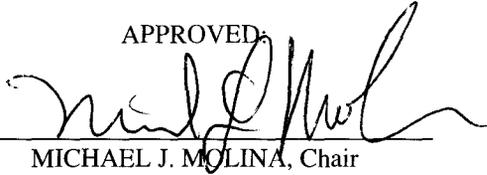
So, with that being said the Chair wants to thank you all for your hard work, very hard and productive day, but thank you all for your efforts, to Corporation Council's office, Administration, as well as our hardworking Committee Staff. Mahalo for all your work. It is 11:47 on Thursday, November 5th, 2009. This Committee of the Whole meeting is now adjourned. . . .(*gavel*) . . .

ADJOURN: 11:47 a.m.

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APPROVED:

A handwritten signature in black ink, appearing to read 'Michael J. Molina', written over a horizontal line.

MICHAEL J. MOLINA, Chair
Committee of the Whole

cow:min:091105

Transcribed by: Delfey Fernandez

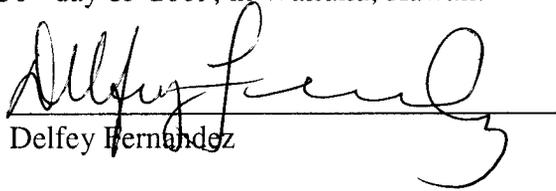
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CERTIFICATE

I, Delfey Fernandez, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 30th day of 2009, in Wailuku, Hawaii.



Delfey Fernandez