

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

October 14, 2010

Council Chamber, 8th Floor

CONVENE: 9:04 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 9:43 a.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Wayne K. Nishiki, Member (In 9:07 a.m.; Out 10:40 a.m.)
Councilmember Joseph Pontanilla, Member

EXCUSED: Councilmember Sol P. Kaho‘ohalahala, Member
Councilmember Michael P. Victorino, Member

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

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 42 and 4(2))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 1(34))
Jane E. Lovell, Chief, Litigation Section, Department of the Corporation Counsel (Item No. 1(35))
Milton M. Arakawa, Director, Department of Public Works (Item No. 1(34), 1(35), and 42)
Joseph Alueta, Planner, Department of Planning (Item No. 42)

Seated in the gallery:

Brian T. Moto, Corporation Counsel, Department of the Corporation Counsel (Item No. 1(34), 1(35), and 42)
Jeffrey K. Eng, Director, Department of Water Supply (Item No. 1(35))
Mahina Martin, Executive Assistant, Office of the Mayor (Item No. 1(35))
Roy Silva, Executive Assistant, Office of the Mayor (Item No. 1(35))

OTHERS: Stan Franco, President, Faith Action for Community Equity (FACE) Maui (Item No. 42)

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

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CHAIR MOLINA: ...*(gavel)*... The Committee of the Whole meeting for Thursday, October 14, 2010 is now in session. It's five minutes after the hour of 9 a.m. Good morning, Members.

COUNCIL MEMBERS: Good morning.

COUNCILMEMBER MEDEIROS: Morning.

COUNCILMEMBER BAISA: Good morning.

CHAIR MOLINA: Good morning, and joining us this morning, we have bare quorum. Thank you, Members, for showing up

COUNCILMEMBER MEDEIROS: ...*(laughter)*...

CHAIR MOLINA: --to this nine-Member Committee.

COUNCILMEMBER MEDEIROS: ...*(laughter)*...

CHAIR MOLINA: But anyway like, the Chair would like to recognize the Committee Vice-Chair, Council Chair, Mr. Mateo. Good morning.

VICE-CHAIR MATEO: Good morning, Chairman.

CHAIR MOLINA: And also Committee Member, Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MOLINA: Morning, and Committee Member, Bill Medeiros.

COUNCILMEMBER MEDEIROS: Aloha, and good morning, Chair.

CHAIR MOLINA: And Committee Member, Joe Pontanilla.

COUNCILMEMBER PONTANILLA: Good morning.

CHAIR MOLINA: Good morning. And excused we have Members Johnson, Kaho'ohalahala, Nishiki, and Victorino. Members, we have about four items on our agenda today, but before we do that the Chair would like to recognize our hardworking Staff--Committee Secretary, Camille Sakamoto and Committee Analyst, Kirstin Hamman; and joining us from the Corporation Counsel's office, we have Moana Lutey and also the Public Works Director, Mr. Arakawa. At this time we do, I believe, have one person signed up for testimony. Is that correct, Ms. Sakamoto?

MS. SAKAMOTO: Yes, Mr. Chair.

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CHAIR MOLINA: Okay. Thank you. Chair would like to go over a few ground rules for public testimony. You'll be given three minutes to testify with one minute to conclude. Please state your full name for the record and any organization that you may be representing. So with that--and also please turn off all cell phones or any noisemaking devices so as not to disrupt our proceedings today. So with that being said, I'd like to call up our first and only testifier at this point, for Committee of the Whole Item 42, Mr. Stan Franco.

. . . And, Members, just as a reminder, we do have a 1:30 Economic Development Committee meeting, at 1:30 under the leadership of Member Johnson.

. . . Good morning.

MR. FRANCO: Morning.

COUNCILMEMBER BAISA: Good morning.

MR. FRANCO: Morning, Chair Molina and Council Members. I'm Stan Franco, I am the President of FACE Maui. I'm speaking on the Residential Districts and accessory dwellings issue, specifically accessory dwellings. I have spoken to you guys before, FACE Maui is in support of this ordinance. In fact it came from one of our agencies that belong to FACE Maui--the Housing for the Local Person. And so we are very much interested in the Council passing this. We believe that in, in dwelling or infill development is an important piece on, on the puzzle of trying to create affordable housing for our local people. And this is, I think, one of the, the examples of how we can build affordable housing where infrastructure is already in place and we don't have to go through the high cost of developing infrastructure. We, we like this particular legislation, we have been speaking about affordable housing for some time now and, you know, on other issues. In fact, I wanted to leave with you our newsletter. And on, on, in the newsletter we are also supporting the Affordable Housing Fund. That is another issue, but it's part of the whole idea of, you know, creating affordable housing for our residents. It's something that is very much a part of FACE Maui's agenda. It's a, a leading discussion item that we have over and over again in our meetings. So, we are concerned and we thank you very much for taking up the, the affordable housing issue and approving this ordinance for accessory dwellings. Thank you, again.

CHAIR MOLINA: Okay. Thank you, Mr. Franco. Committee Members, questions for the testifier?

. . . Seeing none, thank you for your testimony, Mr. Franco.

. . . Ms. Sakamoto, do we have any additional sign-ups for public testimony on any of our agenda items this morning?

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MS. SAKAMOTO: No, Mr. Chair.

CHAIR MOLINA: Okay. Thank you. Members, at this point if there are no objections the Chair will close public testimony on all of our agenda items for today. Any objections?

COUNCILMEMBER MEDEIROS: No objections.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered by the Committee, public testimony is closed.

...END OF PUBLIC TESTIMONY...

ITEM NO. 1(34): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: SHERI GAIL DURHAM, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL NO. CV08-00342 JMS LEK) (C.C. No. 09-14)

CHAIR MOLINA: So we'll get down to business to Committee of the Whole Item (1)34, which is a proposed settlement authorization, Sheri Gail Durham, et al. versus the County of Maui, et al.; Civil case No. CV08-00342 JMS LEK. The Committee is in receipt of a correspondence dated September 16th, 2010, for, from the Corporation Counsel related to this matter. The complaint alleges the wrongful death of Mark Allen Durham and injuries to his two daughters resulting from a vehicle collision that occurred on July 26, 2006, at the intersection of Pulehu Road and Hansen Road in Kahului, Maui, Hawaii. The purpose of the proposed resolution to authorize settlement of the case. Before the Chair recognizes Ms. Lutey to give us an overview of the matter, the Chair would like to recognize Committee Member Nishiki to our proceedings this morning. Ms. Lutey, I'll yield the floor to you, to give the Members an overview of this matter.

MS. LUTEY: Thank you, Chair. This case is currently an active litigation, so executive session to discuss strategy and our impressions in this matter has been requested. There may be some matters that can be discussed in open session, but if we venture into areas that involve strategy, our theories in this case and certain medical concerns that are *not* a part of public record, I will ask that we take those types of questions up in executive session. The facts of this case are as follows. On July 26, 2006, Mark Allen Durham was driving his daughters to Kanaha Beach Park in Kahului. One of his daughters had a windsurf lesson that day. Decedent was a regular user at Kanaha Beach Park as a windsurfer. His daughter, Marisa, was his front seat passenger while his daughter, Jessica, was seated directly behind him. The Durhams were very familiar with Maui; they had stayed here for three months at a time during the 1980s. After they had their children, they would stay at a cottage on Pulehu Road. They stayed there for the month of July, from 1997 to 2006. And because the most direct route to Kanaha Beach Park was Pulehu Road, that was typically the road that this family would take to get there. At some point before Mr. Durham left the cottage on that morning, he used marijuana. When he got to the intersection of Pulehu Road and Hansen Road, he collided into Patty Conte's SUV which

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was traveling from the Kihei side of Hansen Road towards Hana Highway. Immediately before the accident occurred there were people in one vehicle that were driving in the opposite direction on Hansen Road. So they were traveling from Hana Highway towards the Mill. These people had a clear view of the intersection at Hansen and Pulehu. They saw defendant's vehicle fail to stop at the stop sign, before colliding into Patty Conte's vehicle. One of these witnesses believes that Mr. Durham was traveling about 25 to 30 mph, but that really is an estimate based on her perceptions. Patty Conte never saw Mr. Durham's vehicle until it was too late to avoid the collision. Her description of what she saw was a silver flash. Marisa Durham, during her deposition, testified that her father did in fact stop at the stop sign--which contradicts a prior statement that she'd given to police, but be that as it may, that is the record in this case. Before reaching the stop sign at Pulehu Road, decedent would have driven by stop ahead warnings, an intersection warning, gone over rumble bumps, and then seen the stop bar on the roadway as well as the stop sign. In spite of his un-obstructive view of Hansen Road and all of these warnings that I've detailed for you, for some reason some of our witnesses say that Mr. Durham failed to stop. Mr. Durham died at the scene. His daughter, Marisa, had minor injuries due to the deployment of an air bag; and his daughter, Jessica, suffered a broken left femur, which is the biggest bone in your body, and a broken right arm. Part of the autopsy included an analysis on his blood; that is how we know that Mr. Durham had used marijuana. Based on the THC amounts in his system, we know that the use was recent. Jessica Durham died on Christmas Day in 2008, at the age of 14. Her cause of death was a heart attack. As a result of her death, there's also a wrongful death claim made on her behalf in this lawsuit. The plaintiffs have sued Patty Conte, the driver on Hansen Road; Ford; Maui Windsurf Vans; Dr. Izuka who treated Jessica Durham at Kapiolani; Hawaii Pacific Health; Kapiolani Medical Center; and Drs. Patel and Dr. Sim who also treated her at Kapiolani. Defendants Patty Conte and Ford have settled with the plaintiffs. Nobody else has settled. We have retained Ken Robbins' firm on Oahu to assist in the trial of this matter. He is on a flat rate contract. To date, we have paid Mr. Robbins \$50,000. There is an outstanding amount of \$100,000 on his contract, which become due in two separate payments prior to trial. This is by Resolution. So, those are the facts of this matter. I would like to discuss settlement in executive session with you, but I am available for questions that we could handle in open session.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Committee Members, any questions in open session on this matter. Member Baisa?

COUNCILMEMBER BAISA: I, I'll, I'll ask and then, you know, if it's something that you think we should ask in executive session, then that's okay.

MS. LUTEY: Sure.

COUNCILMEMBER BAISA: When you mentioned the injuries to the two girls in the car, you, or the truck or whatever it was, you said that one had a broken femur--

MS. LUTEY: Yes.

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COUNCILMEMBER BAISA: --and one was, had minor injuries 'cause of an airbag.

MS. LUTEY: Uh-huh.

COUNCILMEMBER BAISA: Which of those two girls passed away...following this?

MS. LUTEY: Oh, it was the daughter who had the broken femur who was seated behind her father. That would've been the side of impact. The daughter seated in the front seat had just minor injuries to her nose. . .and that was from the air bag deployment. She suffered no broken bones.

COUNCILMEMBER BAISA: And so the people that are suing us claim that that the accident had something to do with her subsequent death?

MS. LUTEY: Yes.

COUNCILMEMBER BAISA: Okay, thank you.

MS. LUTEY: Sure.

CHAIR MOLINA: Thank you, Member Baisa. Committee Members, any other questions in *open* session on this particular matter? Okay. Seeing none, as you heard the...Ms. Lutey recommending executive session for more, I guess, extensive questioning on this item. If there are no objections, the Chair is going to make a motion to enter into executive session pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on question and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

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

COUNCILMEMBER BAISA: Mr. Chair, second.

CHAIR MOLINA: Okay, the motion has been made by Vice-Chair Mateo and seconded by Committee Member Baisa to enter into executive session for Committee of the Whole Item 1(34). Any discussions, Members?

. . . Seeing none, all those in favor of the motion to enter into executive session, signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair mark it, six "ayes" with three "excusals", Members Johnson, Kaho'ohalahala, and Victorino.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Johnson, Kaho'ohalahala, and Victorino.

MOTION CARRIED.

ACTION: APPROVE; RECESS open meeting and CONVENE executive meeting.

CHAIR MOLINA: Members before we enter into executive session the Chair would like to consider, have you consider this, the Chair would like to look at the Committee of the Whole Item 1(35), which is another litigation matter.

ITEM NO. 1(35): LITIGATION MATTERS (INDEMNIFICATION AUTHORIZATION: MOLOKAI VETERANS CARING FOR VETERANS, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL NO. CV10-00538 JMS LEK) (C.C. No. 09-14)

CHAIR MOLINA: And because the, there may be a possibility of executive session, I would like to ask the Corporation Counsel representative to give us a brief overview on this matter, and. . .but the whole intent here is if there is a recommendation to enter into executive session for *this* item to also, you know, rather than, than us having to reopen after discussing Committee of the Whole Item 1(34), just continue on in executive session for *this* particular item--and that is the item related to the Molokai Veterans Caring for Veterans, et al., County of Maui matter, which is an indemnification authorization. And we have Ms. Lovell from the Corporation Counsel's office here to give us a brief overview of this matter. And thank you for being here, and I'm sorry I didn't kind of give you a heads-up as to what the Chair was considering in terms of procedures. So if you could go ahead and give us an overview on this matter?

MS. LOVELL: Yes. Good morning Chair, and good morning. . .Committee Members. For the record I'm Jane Lovell, Deputy Corporation Counsel, and I am the litigator to whom this latest lawsuit, filed by Mr. Fosbinder, has been assigned. The lawsuit arises out of a. . .dispute with respect to a building permit for the Molokai Veterans' Center. I believe most, if not all of you, are very familiar with *that* situation. In this lawsuit. . .various members of the Administration are being sued by Mr. Fosbinder on behalf of various veterans on the theory that they have violated the civil rights of the veterans, and in particular that they have violated their First Amendment rights. As is our custom and as I believe I'm required to do, I have done some investigation of the facts before coming

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down and requesting indemnification for the various individually named defendants. The complaint itself does not state with any clarity whether the named defendants are named in their *official* capacities, or their individually capacities, or both. But Mr. Fosbinder's office has clarified that his *intent* was to sue everybody both in their official and in their individual capacities. As I believe you know...if someone is sued in his or her *individual* capacity, our office cannot represent them unless there, it is clear that there is no conflict. One way to be sure that there is no conflict is to pass an indemnification resolution so that if any damages, or costs, or attorney's fees were ever collected against that person, they would be paid by the County as opposed to by the individual. I, I look forward to discussing with you in greater depth in executive session my initial thoughts and, and strategies and so forth. But I do recommend and would like to state publicly that on a basis of our investigation to date, I do recommend indemnification of each of the individuals in this lawsuit.

CHAIR MOLINA: Okay. Thank you, Ms. Lovell. Before I turn matters over to the Members for questions in open session, for the record, the individuals up for consideration for indemnification are Mayor Tavares; Roy Silva, Executive Assistant to the Mayor; Mahina Martin, County Community Relations and Communications Director; Jeffrey K. Eng, Director of the Department of Water Supply; and Clayton Yoshida, Administrator, Planning Department, in this matter. So for the record. I'd like to ask for the Members for, if they have any questions in open session. I'll recognize the area representative first, Mr. Mateo, if there's anything you would like to ask in open session at this point.

VICE-CHAIR MATEO: Mr. Chairman, thank you. Perhaps, perhaps Ms. Lovell can, can just recognize the plaintiffs. . .because there's a list of them, and there's several of them who are also deceased, and how those names will...how do those names play into any kind of a complaint because they are deceased at this point?

MS. LOVELL: Yes, thank you very much, Councilmember Mateo. That is one issue that I did raise with Mr. Fosbinder's office. There are, are three veterans who are listed in the caption of the complaint as deceased. You *cannot* bring a lawsuit in the name of a deceased person. What you must do is, you must if, if someone who has died has a legal claim that survives the death, then the way to do it is to have the *estate* sue or a legal representative appointed by the probate court. And *not* every claim that a person might have survives their death. This complaint does *not* allege that anything that the County or any County official or employee *caused* any of these peoples' deaths. It doesn't state the *date* of death of any of them. So I believe that this is something that is, is not proper and that the Fosbinder firm really should amend the complaint to either substitute a legal representative and to state clearly what the claim is so that we can see whether it's the type of legal claim that survives a person's death or not, or to, to drop these people from the, from the complaint. I've also written a rather extensive letter to Mr. Fosbinder, pointing out other defects in the complaint. I've invited him to *amend* the complaint, and in fact he has agreed to do so, but I don't know how far-reaching his amendments will be.

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VICE-CHAIR MATEO: Yeah.

MS. LOVELL: At this point, I have not seen any amended complaint...to date.

VICE-CHAIR MATEO: Right. Thank you, Mr. Chair. I have no further questions. . .unless we do go into executive session.

CHAIR MOLINA: Thank you.

VICE-CHAIR MATEO: Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Mateo. Members, any other questions in *open* session before, before the Chair makes a recommendation?

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR MOLINA: Okay. Chair, at this point, then, will recommend--

COUNCILMEMBER PONTANILLA: Chairman?

CHAIR MOLINA: Yes? Oh, yes, Mr. Pontanilla? Go ahead.

COUNCILMEMBER PONTANILLA: During the executive session. . .we're going to have the Water Department personnel...Director as well as the Fire Inspector here?

MS. LOVELL: I. . .I know that Mr. Eng *could* be here if you want him, but I, I think it's important to understand that. . .the *complaint* is about whether anyone violated civil rights. It's really not about the underlying dispute about whether fire flow is adequate or not; whether the Fire Department measured properly; whether the. . .the Water Department measured properly; and so on. The *allegation* is that the. . .Mayor. . .Mr. Silva, Ms. Martin, Mr. Eng, and Mr. Yoshida violated veterans' First Amendment rights. And in *my* view that really doesn't have anything to do with the *measurement* of the fire flow; whether or not--

COUNCILMEMBER PONTANILLA: It's *not* the measurement of fire flow, but the process that we approve things.

MS LOVELL: . . . Yeah. Well, in any event, Mr. Eng has told me that he *can* be here. I, I did *not* ask anyone from the Fire Department to be here because no one from the Fire Department has been sued. And *again* I just want to emphasize that *nothing* in the complaint goes *directly* to the, what I would call the *merits* of the issue about the permit. Instead, there is a violation of civil rights that is alleged. So, I, I leave it to you, but I, I know that Mr. Eng can be here if, if necessary. I would like, *however*, *not* to get into executive session into the actual *permitting* and all of that. I don't, I don't think that would be appropriate, and I don't think it would be necessarily covered by Chapter 91 in

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an executive session. I, I think what we would need to do in an executive session is, is *limit* our discussion to the, to the, you know, liabilities, strategies, and so forth.

COUNCILMEMBER PONTANILLA: . . .*(sigh)*. . .

MS. LOVELL: . . . So with that, I mean I'm happy to invite him down, but with those clarify, but with those clarifications.

COUNCILMEMBER PONTANILLA: Okay. Um . . .

CHAIR MOLINA: Mr. Pontanilla, you want, would you want to request Mr. Eng's presence. . .should we--

COUNCILMEMBER PONTANILLA: Well, for me--

CHAIR MOLINA: --go into executive session?

COUNCILMEMBER PONTANILLA: --it gives me a better understanding.

CHAIR MOLINA: Okay--

COUNCILMEMBER PONTANILLA: Uh . . .

CHAIR MOLINA: And I'll also add--Members, if there's any of the other named defendants you would like to have in executive session, please let the Chair know, and Staff, and we'll try to accommodate you as much as we can . . .*(inaudible)*. . .

COUNCILMEMBER NISHIKI: I got a question.

CHAIR MOLINA: Okay. Hang on, hang on. I'm still recognizing Mr. Pontanilla. Are you done?

COUNCILMEMBER PONTANILLA: Yeah, and basically...probably Public Works, too.

CHAIR MOLINA: Okay, we'll. . .all right. . .we'll--

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: I saw Mr. Arakawa was here earlier, so we'll ask him to be available as well. Hang on, Mr. Nishiki. Mr. Medeiros had his hand up first, then I'll recognize you after. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah. Mahalo, Mr. Chairman. And, Ms. Lovell, just for the Members and for the viewing public, would you explain. . .because one of the

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allegations is the violation of First Amendment rights, so would you explain First Amendment rights so we all know what you are talking about?

CHAIR MOLINA: Ms. Lovell?

MS. LOVELL: Well. . .thank you. I'm, I'm happy to do my best, Mr. Medeiros. I think that *I* understand the First Amendment. I'm not so sure that Mr. Fosbinder does, and certainly I do not *agree* that the *complaint*, as it's alleged, *alleges* any violation of the First Amendment. But basically what he's saying in the first. . .in, in the complaint is that by discussing with veterans from Molokai a planned demonstration that they were planning to do--and in fact that they *did* hold--that certain County officials, namely the Mayor, Ms. Martin, and, and Mr. Silva. . .violated the First Amendment rights of the. . .of the Molokai veterans to demonstrate. I do *not* believe that those claims have merit, first of all because I don't think they are factual correct; and secondly, I don't believe they are legally correct. Under the First Amendment, a public official does not *violate* First Amendment rights unless it somehow *prevents* someone from exercising those rights--in this case, the right to demonstrate. The legal *test* is whether the. . .actions of the official would deter a person of ordinary steadfastness or ordinary resolve from exercising those rights. Generally, those kind of cases arise. . .for example, during the civil rights movement in the deep South. We all know of instances where the Ku Klux Klan threatened people. . .people of color who tried to register to vote, or who actually tried to exercise their right to vote, through threats, through lynching, through cross burnings, through beatings. Those kind of things, I think, *would* deter a person of, you know, ordinary courage and resolve from exercising their, their First Amendment rights. I do not believe that even if the allegations in this complaint turned out to be true--which I do not believe that all of them are--that that would rise to a level of a First Amendment violation.

COUNCILMEMBER MEDEIROS: Okay. Thank you for that explanation, and a follow-up question would be--and if you feel it needs to go to executive session. . .that in this complaint it says that these officials, and I'm not quoting verbatim. . .either intentionally or negligently in withholding permit approvals. Was that correct?

MS. LOVELL: . . . Uh. . .well, I, I think you would have to look at *exactly* at what is, at what is *alleged* in the complaint because the, the actual language . . .

. . . governs whether or not the complaint can stand as is, or whether it will be dismissed by the court for failure to state a legal claim. But. . .withholding a permit, if that happened. . .we *know* that they *don't* have their permit. So we know that, that no permit has been issued. Whether a permit has been quote, "intentionally or negligently withheld", is, is an issue of fact, but, as well as an issue of law. . .but *that* does *not* arise to the level of a First Amendment violation. We've have *numerous* examples from Mr. Fosbinder, I'm sorry to say, of cases that are. . .are permit cases, water meter cases, zoning disputes, that kind of thing that should be resolved in the first instance by either our Board of Water Supply, by our Board of Variances and Appeals, or by the Maui

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Planning Commission. And in those cases, he has gone to the U.S. District Court and tried to make a Federal case out of it. And he has not been treated well in the Federal courts because the Federal Court does not like to serve as the Board of Variances and Appeals for Maui County. He has an avenue...an appeal right in front of the Board of Variance, of, of the Board of Water Supply. My understanding is that the Board of Water Supply has set a pre-hearing conference in that appeal for later this month. I believe it's October 23rd, I could be off a day or two, I don't have my calendar with me. And I am assured by the Secretary of the Board of Water Supply that a hearing *can* be scheduled in either November or December of this year. *That* is where, in my view, the underlying *permit* issues should be decided, and not in the Federal Court in Honolulu.

COUNCILMEMBER MEDEIROS: Okay. And just finally, Mr. Chairman, a follow-up on what Member Pontanilla was requesting. . .and you, Ms. Lovell, said that you didn't think it was necessary to call on some of these County officials. But if their names are on the complaint and we indemnifying them, I think it's very appropriate that we be able to ask them questions about, as Mr. Pontanilla said, the process. *That's* what we're concerned with--the process and how it's, it was done and you know why the County officials came to certain decisions in that. So what would be your comments on that?

MS. LOVELL: Well, I, I certainly understand your concerns, Councilmember Medeiros, but *again* I, I just want to ask all of you to please focus on precisely what is being asked here.

CHAIR MOLINA: Uh-huh--

MS. LOVELL: The complaint--

CHAIR MOLINA: Ms. Lovell, I'm sorry, if I could just interject real quickly? And for Mr. Medeiros and the Committee's. . .to refresh our memories, there is a separate item on that matter in the Water Resources--

UNIDENTIFIED SPEAKER: Right.

CHAIR MOLINA: --Committee, if you do recall. That was the time where Members could ask procedurally what happened. I, I think where Ms. Lovell is coming from and I, I can see where she's...you know, her, her point of view. The focus should be to, for today's sake is on the indemnification and the alleged violation of First Amendment rights. On what actually happened on the process and everything else, those were questions that, I think, are more appropriate to ask in the Water Resources Committee. And of course Water Resources Committee, they have that option of going into executive session as well. So, I, I think she's making the clear distinction that we should separate what actually happened in terms of procedure because we have *that* item that's totally separate in Mr. Victorino's Committee. And then we have this item, which is the indemnification and the alleged violation of First Amendment rights, and the whole process of the indemnification. So I would agree with Ms. Lovell--if we could keep the questions just solely on the indemnification.

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COUNCILMEMBER MEDEIROS: Uh-huh.

CHAIR MOLINA: And then should Mr. Victorino...unfortunately, he's not here, he's at a water conference. But when he comes back, maybe Mr. Victorino can bring that item back in his next Committee meeting, and then *that* is the time where we can get into the nuts and bolts of the--

COUNCILMEMBER MEDEIROS: Uh-huh.

CHAIR MOLINA: --you know what happened and what's the process, and so forth. So, I just wanted to, you know--

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: --leave that with you, Members. So, Ms. Lovell, if you want to go ahead and continue?

MS. LOVELL: Certainly. I think the key...elements in the complaint against the individuals deal with whether or not an official improperly tried to stop someone from exercising their First Amendment rights. This complaint doesn't really go to the nuts and bolts of the permit and the permitting process itself. Or at least if it *does*, it doesn't do so very clearly. Now I understand that Clayton Yoshida is named as a defendant.

COUNCILMEMBER MEDEIROS: Yeah.

MS. LOVELL: For the life of me I can't, reading this complaint, figure out why he is even named in here.

. . . Mr. Eng is named. . .in the complaint, but again. . .nothing very specific is said about him. The main focus seems to be on this demonstration and whether certain members of the Administration tried to prevent the veterans from demonstrating. We all know that the veterans *did* demonstrate. And if you look at the actual *language* of what was *said* and so forth, in my view even if that were *true*--which I don't believe it was, you know, it's, it's all necessarily true or accurate--that, that is not a First Amendment violation. There were no threats of bodily harm, there no threats of, of a, of a...any, anything like that at all. There. . .there was more *advice*, I would say, given. . .than, than something that would violate First Amendment rights.

COUNCILMEMBER MEDEIROS: Uh-huh.

. . . However, isn't that the responsibility or jurisdiction of the court to decide that?

MS. LOVELL: Yes. Definitely--

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COUNCILMEMBER MEDEIROS: Right.

MS. LOVELL: And, and it is...I, I think I can say this in open session because I've said this already to Mr. Fosbinder's office--that it is our intent. . .once we know that we are allowed...because you have agreed, I hope, to indemnify all of the defendants, it is our intention to file a Motion to Dismiss this lawsuit, just as we have filed motions to dismiss previous lawsuits filed by the same attorney.

COUNCILMEMBER MEDEIROS: Okay.

MS. LOVELL: And pretty much on the same grounds that the--the lawsuit as, as drafted, even if everything in it were true, which we *don't* agree with, it would not state a legal claim that you can go to Federal Court.

COUNCILMEMBER MEDEIROS: Okay. And Mr. Chairman, thank you for that information on that item in the Water Resources Committee. My only concern--and that does give us an opportunity to discuss that further--but my concern would be what about the other people named, the Administration representatives, the Planning Department. . .what kind of opportunity do we have to question *them* if there's no item separate from this, like the Water Department item? I mean the Water Resources item.

CHAIR MOLINA: I, I've been advised by legal Staff, Mr. Medeiros, if the Members do want to question any of these individuals named, it would, should be appropriately. . .be done in *open* session.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: But again if, preferably the direction should be on the indemnification and the alleged First Amendment violations. If it's a matter of the permit process and other procedures, we already have an item that's in Mr. Victorino's Committee. As the Chair, I can express on behalf of the Committee a need...maybe a letter to the Water Resources Committee Chair, Mr. Victorino, that he can bring, you know, that item up. If I recall, it was deferred. We did have, I believe one meeting on it--

COUNCILMEMBER MEDEIROS: Uh-huh.

CHAIR MOLINA: --it was deferred. And maybe as soon as possible, if he could bring it up in his next Water Resources--

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA:, --executive session where we can delve more into, you know, what happened here, you know, why all these other individuals are being named as well. So--

COUNCILMEMBER MEDEIROS: Okay.

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CHAIR MOLINA: --I, I just put that out to you, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah. Thank you, Mr. Chairman, for the further clarification on our purpose and this item.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: So I'll, I'll let the other Members ask their questions and at the end of questioning we'll see where we are as far as the Members asking for representatives of this different departments and Administration. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Mr. Nishiki?

COUNCILMEMBER NISHIKI: No. I, I, I, my question was in the regards to the First Amendment right. . .and, and just because I've got some personal feelings about this whole thing that I'll discuss. . .as we discuss the executive...in executive session. My, my, my concern is this, Mr. Chairman. . .you know. . .and, and Corporation Counsel, you need to quell this at this point if it...this so, just because...

CHAIR MOLINA: I'm sorry, Mr. Nishiki, you can pull the mic closer?

COUNCILMEMBER NISHIKI: Yeah. Just because, you know, we're, we're, we're talking about having Mr. Victorino take up this. . .circumstances.

. . . If there is a suit. . .shouldn't we be **concerned** about what is being said today about having. . .Mr. Victorino take up all these circumstances in regards to this, Corporation Counsel?

CHAIR MOLINA: Ms. Lovell?

MS. LOVELL: Yes, Mr. Nishiki, I believe that if. . .if people are called from the Administration to testify in front of either this Committee or another committee, we would take questions sort of on a question-by-question basis and see if we thought that that could be done in open session or closed, it would have to be in executive session due to on-going litigation. **However**, again I just want to. . .**direct** the Committee's attention to the fact that **this** complaint alleges **civil rights** violations. It does **not** really go to the undermitting, underlying permitting issues. Those issues **will** be **publicly** discussed in the Board of Water Supply. The Board of Water Supply has an appeal before it right now, and. . .this Committee or any other committee is...the Water Resources Committee and, and probably other committees of the Council are also. . .fully free to investigate anything dealing with the underlying permitting issues. Here, we are talking about a **Federal** civil rights claim that the County and various County employees and officials have somehow violated peoples' civil rights.

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COUNCILMEMBER NISHIKI: Okay. I, I, I, I, I just ...

. . . That's all right. I'll, I'll just save it just because. . . I guess the underlying reason, I think, as public officials we need to examine. . . you know, individually. . . what. . . we're trying to do. Thank you. And I'll, I'll keep it with that and let you guys answer it in your heart personally. . . what you're trying to do. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Members, any other questions in open session before the Chair makes a recommendation? Member Baisa?

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair, and thank you, Ms. Lovell. I have the highest regard for your. . . legal competencies, I mean, you know, it's a pleasure to work with you. *However*, I am very *clear* about the issue before us, and I don't, I, I totally understand why we're not here to discuss the, the *permit* situation, which I find very hard to understand . . . (*laughter*). . . And I very strongly would like to see these veterans . . . (*laughter*). . . get their permit. I just think it's the *right* thing to do. But I also, you know, when you talk about First Amendment violations and you read the complaint. . . there's some *really* strong stuff in here. And it might be, you know, very helpful for us to be able to ask a few questions of the. . . folks that we're talking about indemnifying. So, I support Member Pontanilla's position, and I definitely am not here to decide whether or not anybody should be six inches, eight inches, or should be, you know, move valves or hydrants, or whatever. That's for the Water Department. But what is going on here today is the condition. . . I mean the *concerns* about civil rights and threats, and harassment, and those kind of things, which are very serious.

NOTE: Silence.

MS. LOVELL: . . . Uh--

CHAIR MOLINA: Ms. Lovell?

MS. LOVELL: Thank you, Councilmember Baisa. If I could suggest this? There are certain things that I would like to. . . there's one document in particular that I would like to share with the Committee, that I think sheds some light on some of the allegations of the complaint. There are certain things that I would like to be able to discuss with you in executive session. If I could *suggest*. . . that we do that before. . . seeing if you still feel the strong need to *question* the various people who are named in the complaint? And the reason I, I ask that for a *number* of reasons. One of which is that in this, you know, in this early stage of the, of the. . . of the legal proceedings. . . it's, it's kind of delicate about what people can say, particularly when they've been, you know, named as a defendant in a lawsuit. I think many of you have been in that position yourself.

COUNCILMEMBER BAISA: Right.

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MS. LOVELL: And, therefore, I would not like to *unnecessarily* put these individuals in a situation where they *have to*. . .discuss these matters in depth, particularly when it hasn't been decided whether or not our office can provide them with legal advice and representation.

COUNCILMEMBER BAISA: Uh, I will respect your advice, but I do want to share that, you know, I, I understand *why* we would want to talk to them at some point. Thank you.

MS. LOVELL: Certainly.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, any other comments? The Chair is hearing what several of you are asking. If this is...be the case, then the Chair will ask *all* named individuals to come up front and we do this in open session, Members. I--one, I don't want to violate any potential Sunshine Law issues. Ms. Lovell, if we're going to *openly* ask questions of the named individuals, based on what's on the agenda, do you see any potential Sunshine Law issues if we do a, do this at the request of the Members? Because it seems like I'm just--this is what I'm guessing from the Members. . .to help them make their decision on indemnifying, they want to question the named individuals about their role in this matter. And I was advised that it should be done in open session. So...and I'm...as the Chair, I'm concerned, always, about Sunshine Law issues. So, Members, if we're going to do this, I would hope that you would *stay* for the duration of this. And we do have other Committee items, so we do have a 1:30 meeting, but the Chair is prepared to go all day, and if need be come back for a recess. So I'm certainly open to that.

COUNCILMEMBER NISHIKI: Chairman?

CHAIR MOLINA: Hang on, I want to recognize Ms. Lovell, Sunshine Law. I just want to make sure we got that clear, and then I'm open to going in the direction of the Committee.

MS. LOVELL: Thank you, Chair Molina. I think on the Sunshine Law issue, it would very much depend on the nature and scope of the, of the questioning. And I think that's about all that I can say on that, on that subject. I completely agree with you that any such questions. . .should be in open session, but then that, of course, causes concerns because of the on-going litigation.

CHAIR MOLINA: Okay.

COUNCILMEMBER NISHIKI: Yeah.

CHAIR MOLINA: Thank you, Ms. Lovell. Members, Chair is gonna call for recess to confer with Staff. . . .*(gavel)*. . .

RECESS: 9:45 a.m.

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RECONVENE: 9:56 a.m.

CHAIR MOLINA: . . .(*gavel*). . . The Committee of the Whole meeting for Thursday, October 14, 2010 is now back in session. It's 9:55. Members, thank you for that break, allowing the Chair to confer with Staff on this consideration for Committee of the Whole Item 1(35). When we broke for recess, I believe it was either Mr. Nishiki or Mr. Pontanilla had a question. I'll recognize Mr. Nishiki, followed by--

COUNCILMEMBER NISHIKI: Yeah--

CHAIR MOLINA: --Pontanilla.

COUNCILMEMBER NISHIKI: Yeah. Thank you. Members. . .you know . . .(*sigh*). . . I, I, I, I, don't wanna get really heavy about this, but. . .I'm, I'm *really* concerned what you're trying to do. Bottom line in this case is, you've heard the different people--the Water Director, Mahina, Jeff, Clayton, Roy Silva. If you *believe*, if you *believe*. . .that they are County employees. . .and I can't say much about this lawsuit, but if you believe. . .if they were not. . .it's another story. But if you believe that they are County employees, then. . .we need to indemnify them. *That's* the bottom line. Nothing more. I think that. . .once you start bringing them up and everything else, I mean what's, what's, what's the reason? You know, Jane explained to us First Amendment. You know, if you got any more questions in regards that, then fine. But please. . .let's be fair about this whole issue and not try to cloud it. And, and, and, and nothing against you people individually, but as I said, you know, this circumstance is, to me, really crystal clear. They're County employees, they need indemnification. And, and, and let's move on. So I would hope that we *not* pursue the direction, Mr. Chairman, that we were initiating earlier.

CHAIR MOLINA: Okay. Thank you, Mr. Nishiki. Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. And I believe Member Nishiki, you know, put it loud and clear--that whenever an employee of this County gets sued that, you know, we have a responsibility as far as defending those employees. And my request earlier in regards to having some department heads here, I think. . .yeah, I would love to have them. But it could be in a different setting, like what you mentioned Water Resources Committee. And I think we discussed in the Water Resources Committee, when this item came up, in length. And in all of those department that are responsible for permits were here, and we asked a lot of questions. But I think. . .Corporation Counsel, Ms. Lovell, you know, is trying to tell us stick to the civil rights violation. And we should. I agree with her. So, my request in regards to having individuals come up in open session or even closed session. . .I request, I withdraw my request. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. And the, the Chair certainly appreciates that. As stated earlier, the Chair's preference was to go with Ms. Lovell's recommendation so as not to, you know, clog the whole matter up with other issues. And the other issues, as I

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stated earlier, could be discussed in Mr. Victorino's Committee with, with regards to this particular item. Chair would like to recognize Member Johnson. Do you have any comments at this point?

COUNCILMEMBER JOHNSON: Yeah. And, and I understand what Mr. Nishiki is saying, too. And I guess because we always have a desire to understand the scope of what it is that we're considering. . . I look at my own situation . . . *(laughter)*. . . where, you know, many years ago I, you know, was basically by this body given the benefit of the doubt too...and my legal fees were paid, you know, for a totally separate issue. But I, I think that. . .even irrespective of whether we believe, through the unveiling which would happen, of course, during the course of any litigation. . .if it's revealed that somebody acted outside the scope of their authority or did something *deliberately wrongful*, then I think that's going to be revealed through other means. But it's not for us to be the court. And because I was accorded that, I guess, benefit of the doubt all those many years ago, I, I to say well, if I were in a similar situation once again or sitting where they are, I, I would *certainly* want to be indemnified. And I would give that same courtesy that was accorded to me. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Members, any other questions in open session? Well, first of all let me ask you at this point...well, Ms. Lovell, you're still recommending possibly executive session on this matter?

MS. LOVELL: It, it depends on the, the will of, of the body. I, I do have. . .advice and documents that I don't feel that I can give you in open session. But if...I, I leave that to, to you, Chair--

CHAIR MOLINA: Okay.

MS. LOVELL: --and to the, to the Members as to whether they are willing to vote at this time, or whether they--

CHAIR MOLINA: Okay.

MS. LOVELL: --desire further discussion.

CHAIR MOLINA: All right. Members, there are some sensitive documents that Ms. Lovell would suggest if we do review these documents that we do go into executive session. What is the preference of the body? I'll recognize Member Mateo, first, as their representative, if there is a need for executive session, or if, Members, you are satisfied with taking action on this, at this point. Mr. Mateo?

VICE-CHAIR MATEO: Thank you, Mr. Chairman. Mr. Chairman the request before us is one of indemnification, and that particular process is one that we've, we've been asked many times prior. I, I myself, I don't have a need at this point to go into executive session because as this particular case evolves, and if there is further need for Corporation

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Counsel to provide us with additional information. . .response, or even additional considerations, they will be coming back to the body to provide that information, that update, and the new information back to this body. And at that time, we can have a more in-depth discussion to discuss the merits and the strategies that would then become involved in that, in the particular proceedings. So myself, I do not have a need for an executive session. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Mateo, and you certainly bring up a good point. This is certainly not the end all here 'cause I'm sure this matter will come back before this Committee at a future date. So the Chair's recommendation at this point would be not to consider executive session. Member Baisa, followed by Member Medeiros.

COUNCILMEMBER BAISA: Yes. Thank you very much, Chair. I think it's been very *clear* and we been clarified as to the parameters of the decision before us today. And that decision is strictly limited to do we indemnify or do we do not indemnify. And as been in the past, we normally indemnify County employees. So I have no need to go into executive session. And as I said earlier, I respect the advice of Corp. Counsel. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. And I agree that, you know, if we're discussing indemnifying the employees, certainly we want to do that because, you know, they're representatives of the County. However, on the other side, I just wanna be sure, and I asked Ms. Lovell to explain First Amendment. . .and I, I just want to read, you know, what, what is says in the First Amendment. The First Amendment to the United States Constitution is part of the Bill of Rights. The Amendment prohibits the making of any law, respecting an establishment of religion, impeding the free exercise of religion, infringing on the freedom of speech, infringing on the freedom of the press. And I think this next two, you know, are most applicable to what the veterans, Molokai Veterans Caring for Veterans Group, I think is citing. And that is, interfering with the right to peaceably assemble or prohibiting the petitioning of a government redress of grievances. And certainly they have a lot of grievances, you know, in the whole process for them. But I just wanna be sure that, you know, that we recognize that First Amendment and. . .but we also recognize the need to consider indemnifying the County employees. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Members, with that being said Chair's going to make a recommendation to entertain a motion to support a proposed resolution entitled: Indemnifying Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida in Molokai Veterans Caring for Veterans, et al. versus County of Maui et. al.; CV 10-00538 JMS LEK.

VICE-CHAIR MATEO: Mr. Chairman, I move for the adoption of the proposed resolution as you had just read.

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COUNCILMEMBER PONTANILLA: Mr. Chairman, I second.

CHAIR MOLINA: Okay. The motion has been made by Committee Vice-Chair and Council Chairman Mateo, and seconded by Committee Member Pontanilla, to support the resolution to indemnify the named individuals. Members, any discussion?

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

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair mark it, seven "ayes"; two "excusals", Members Kaho'ohalahala and Victorino.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Kaho'ohalahala and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR MOLINA: Thank you, Ms. Lovell, and thank you very much, Members. All right, Members, at this point the Chair would like to go back to the first item. We had taken a vote to go into executive session on that item. So at this point, the Chair will call for a recess to prepare the Chambers for executive session related to Committee of the Whole-1(34). So this meeting is in recess, and when we reconvene it will be in executive session. Members, might as well. . .we'll just go and do our morning break. So if you could report back to the Chambers at 10:20, Members?

COUNCILMEMBER ____: Yes.

CHAIR MOLINA: Okay. This meeting is in recess. . . .(*gavel*). . .

RECESS: 10:07 a.m.

RECONVENE: 10:43 a.m.

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CHAIR MOLINA: . . .*(gavel)*. . . Committee of the Whole meeting for Thursday, October 14th, 2010 is now back in open session. We've reconvened.

ITEM NO. 1(34): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: SHERI GAIL DURHAM, ET AL. V. COUNTY OF MAUI, ET AL.; CIVIL NO. CV08-00342 JMS LEK) (C.C. No. 09-14)

CHAIR MOLINA: Members, we had a discussion on Committee of the Whole Item 1(34), related to a proposed settlement authorization, Sheri Gail Durham, et. al. versus County of Maui, et. al.; Civil case No. CV08-00342 JMS LEK. And based on the recommendations from counsel in executive session, the Chair's going to recommend a motion to approve the proposed resolution authorizing settlement of this particular matter and transmitting a copy of the complaint.

VICE-CHAIR MATEO: Mr. Chair, move for the adoption of the proposed resolution as . . .you've, as you've recognized.

CHAIR MOLINA: Thank you, Mr. Mateo.

COUNCILMEMBER PONTANILLA: Mr. Chairman, second.

CHAIR MOLINA: Okay. The motion has been made by Committee Vice-Chair Mateo, and seconded by Committee Member Pontanilla, to approve the propose resolution. Members, any discussion?

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

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you. The Chair mark it six "ayes"; three "excusals", Members Kaho'ohalahala, Nishiki, and Victorino.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kaho'ohalahala, Nishiki, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR MOLINA: Thank you very much, Members.

MS. LUTEY: Thank you.

CHAIR MOLINA: Thank you, Ms. Lutey.

CHAIR MOLINA: Members, we have two more items on the agenda, and I believe we have a little bit more positive--

ALL: . . .*(laughter)*. . .

CHAIR MOLINA: --than the two prior items that we've been discussing. So . . .

COUNCILMEMBER JOHNSON: . . .*(laughter)*. . .

CHAIR MOLINA: . . . anyway just to shed a little bit light on this. . .cloudy morning. The next item is Committee of the Whole 42, Residential Districts and Accessory Dwellings.

**ITEM NO. 42: RESIDENTIAL DISTRICTS AND ACCESSORY DWELLINGS
(C.C. No. 09-82)**

CHAIR MOLINA: The Committee is in receipt of the following: County Communication No. 09-82 from Michael J. Molina, Council Vice-Chair, transmitting the following: A draft bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS. The purpose of the draft bill is to permit affordable accessory dwelling units on lots of 6,000 square feet or more in Residential Districts. Letter "b", a draft bill entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.35 RELATING TO ACCESSORY DWELLINGS. The purposes of the draft bill are to, one, permit affordable accessory dwelling units on lots of 6,000 to 7,499 square feet; two, increase the maximum gross square footage of accessory dwelling units; and three, require that accessory dwelling

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units built on lots of 6,000 to 7,499 square feet remain affordable. And also a correspondence was received February 9th, 2010 from the Council Chair, transmitting a correspondence dated February 8th, 2010, from the Planning Director, transmitting comments on the draft bill from the Lanai, Maui, and Molokai Planning Commissions, and the Hana Advisory Committee, in response to Resolution No. 09-60, entitled REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS AND THE HANA ADVISORY COMMITTEE DRAFT BILLS AMENDING CHAPTER 19.08 AND 19.35, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS AND ACCESSORY DWELLINGS, RESPECTIVELY, adopted on July 7th, 2009. Members, Chair has said. . .certainly said a mouthful. At this point, the Chair would like to confer with Staff on a procedural matters. Being that this is a bill that I'm asking the Committee to consider, would it be appropriate for the Committee Vice-Chair to assume the helm here, and then I go down to the floor? Or do we still have the flexibility where I, as the Committee Chair, can propose this bill from where I am right now?

MS. HAMMAN: . . . Thank you, Mr. Chair. I think that it's appropriate for you to continue to Chair the meeting.

CHAIR MOLINA: Okay. Members, any objections to having the introducer of the bill and the Committee Chair remain on the rostrum?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: No objections. Okay. Thank you. So ordered, Members. Members, again thank you for your consideration of this matter and I appreciate. . .although he's not here, Planning Committee Chair Kaho'ohalahala for agreeing to having this item moved to Committee of the Whole where we can have a, at the very least a discussion on the matter. My intentions for this bill, Members, as you know is to basically allow for the construction for those who. . .need to, the building of an affordable, excuse me, an *ohana* unit. You know, as it's commonly known here, as district and accessory dwellings, we more commonly know it as *ohanas*. And the first bill, of course, which would allow ohanas to be built on property that are 6,000 feet or larger, the current. . .I guess, footage that is allowed is 7,500, a minimum size. The proposed bill would be to reduce it to 6,000 square feet. And the second bill also would *increase* the size of the ohana units on properties of 7,500 square feet or larger; and in addition sets a maximum lot coverage area not to exceed 25 percent, and floor area ratio shall not exceed 50 percent of lot size. And this was suggested by the Planning Department. And by the way, we do have Mr. Alueta here from the Planning Department to share comments. I'd like to invite Mr. Alueta up for questions. The Chair would also like to welcome Mr. Hopper from the Corporation Counsel. In addition, the second bill would establish guidelines for accessory dwellings; and units shall not accommodate immediate family as defined as related by blood, adoption, or marriage, spouse, children, brothers and sister, or individuals of very-low to gap income levels consistent with the Workforce Housing Ordinance. So, Members, also in addition to the second bill, a deed restriction would

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have to go with the property, property that requires the ohana; and the ohana *must* remain affordable for the life of the unit; and the owner is to notify the Housing Corporation upon any sale of that property; and the new owner must comply with deed restrictions and rental rates set by the . . .Hawaii Housing Corporation based on HUD income limits. So, anyway this is, I guess an opportunity for us to, I guess throw another tool in the proverbial tool box for the matter of affordable housing, and this Council now and in the pass have made a commitment to address this very important issue. And it will be a first. But again I know this is the first meeting on it. I...at this point would entertain all of your comments. I believe you've had an opportunity to look at the comments from the Molokai, Lanai, and Maui Planning Commissions, as well as the Hana Advisory Committee. And so just for the record, this is what the Council has already done in the areas of affordable housing: First Time Home Buyers Fund, the Affordable Housing Fund, the Workforce Housing Ordinance, and also the Rental Assistance Program. So I, I believe--not to be somewhat . . .*(laughter)*. . . bias, but Maui County, the Council as well as . . .this Administration and prior Administrations have taken the initiative to certainly address the *very* important issues of affordable housing as well as affordable rentals. And this proposal can also be looked as another way to stimulate our economy. You know, it would certainly--if this does pass. . .when and if it does, it will certainly encourage building and construction, help the struggling real estate market, and put more people to work through building, and also encouraging spending and lending as well. So there's a lot, I guess there will be a domino effect if something like this would happen, at least in the retail industry and building industry as well. So I'm sure there, there are some issues that may be of concern, and that is why I've invited Corporation, Corporation Counsel as well as Mr. Alueta. And we do have Mr. Arakawa from Public Works, again, waiting in the gallery to share any issues with...which relates to any, you know, Public Works matters. So the Chair has said a mouthful. At this point, I'd like to recognize Members if you have questions, or maybe we could have Planning Department give us an overview and their comments. Mr. Arakawa, I'd like to invite you down as well. At this point, the Chair would certainly love to hear your input and engage in a discussion with the Committee on this matter. So, Mr. Alueta, any issues that you would like to bring up? I know at least from the Planning Department's perspective what happened on Molokai, Lanai, and Hana, and so forth, and the Maui Planning Commission. So I'll turn matters to you, Mr. Alueta.

MR. ALUETA: Thank you, Mr. Chair. Yeah, I guess the, the overall riding theme that came through with some of the...from the Department but as well as the . . .three Planning Commissions, or from the Commissions was the . . .one, of the affordability, what was the definition. Because based on the amount of affordability, it seems like it went pretty far up on the, the scale. So it seems like you know almost everybody would qualify under the existing provisions. Also because of the, going down to 6,000 square foot lots less...some areas of the County may not have the adequate infrastructure ...*(inaudible)*...provisions. We provided a . . .a map, hopefully a colored map that you were able to get. We sent up colored maps. . .hopefully, that was reproduced so that you could see what areas of Maui County fall in that category--where they have single-family lot...single-family residential lots that fall...that would all of a sudden become eligible

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for accessory dwellings or the affordable accessory dwellings. But quickly going over the, the comments from the three Planning Commissions as well as the Hana Advisory Committee. From the Maui's . . . Planning Commission standpoint. . . that the Council should analyze the infrastructure adequacies for existing lots within that range of 6,000 to 7,499, especially with regards to on-street or off-street parking. Maximum lot coverage ratio should be consistent with the applicable zoning ordinances. . . so that it would, we do not have two different development standards. Council should consider adding incentives to encourage future accessory dwellings meet the proposed affordable accessory dwellings standards. As you know from the past history that was in my memo report, I showed you the history of, of the concept of ohana dwellings. And their initial intent was for family members, as well as for providing some type of affordable housing. However, there wasn't any real restrictions on those, and so as you know, many of those units are basically market rate, which is fine. And, and. . . and by the B&B bill, we also have found that a lot of those are being converted to vacation rentals or part of a B&B operation.

. . . Also have language should be added to clarify what the deed restriction should be incorporated and how it would be recorded against the subject property.

. . . And basically it should read: deed restriction should be incorporated into deed which shall run with the land. This coming from Maui Planning Commission. And Council should explore adding incentives to encourage the rental of affordable housing, accessory dwellings to the lower-income categories; language should be added to 19.35, to read Rural District. That's coming from the Maui Planning Commission. With regards to Molokai. . . again, they wanted to be exempted from it. They don't feel that the dense, they wanna have that type of densities in their neighborhoods. On Lanai, they actually recommend that the. . . it be filed, they were not in support of the proposal. And for Hana Advisory Committee, again . . .

. . . they feel that it should be amended so that it's. . . individuals in the very low income, instead of saying "gap group". Again, they wanted to bring it down so that these units are restricted to the, the lower income. . . would be affordable to the lower-income groups.

. . . Voted to add parking requirements to on, two on-site parking spaces be required for the accessory. Currently, we require only *one*, under the County Code. Voted to make recommendations that floor area ratio not exceed 40 percent or instead, instead of the 50 percent. And that's primary the comments from the, the. . . four bodies, advisory bodies to this Council that. . . on the proposed matter.

CHAIR MOLINA: Okay. Thank. . . thank you, Mr. Alueta. And, Members, for your information, if you look in your binder, February--attached to a February 8, 2010 letter from the Planning Department, all of the recommendations from Mr. Alueta is posted on a letter, Page 2 and Page 3 from the, the comments from the various Planning Commissions. So you've heard Mr. Alueta's report. And as you can tell, our sister islands you know are choosing not to go that way. Molokai, more the fact that they

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prefer to have less density. Lanai, I think *naturally* they already have small lots already. So how it's applicable to Lanai, I can certainly understand how it wouldn't, you know, more or less apply to them. I would like to give Mr. Arakawa from Public Works an opportunity to give his comments.

MR. ARAKAWA: Thank you, Mr. Chair. I'll be brief. The Department of Public Works is in favor of the bill. We just had two...main concerns, which have pretty much been touched on by Mr. Alueta. We...one concern is that...*if* there is increased density that would be caused by additional units, that we just make sure that...infrastructure is taken into account prior to approval. And the other concern we would have is that, if there's going to be additional units, that there be adequate on-site parking. 'Cause otherwise if there is *inadequate* on-site parking, then the parking problems spill onto the streets. So that's basically our comments.

CHAIR MOLINA: Okay. Thank you, Mr. Arakawa. And, Members, Mr. Alueta's made...stated there were maps in your binders, if you look towards the end and Mr. Alueta, if you can correct me the red is...are, are the lots that would be affected by the ordinance like this. I guess where lots that are 6,000 to 7,499 square feet. Those are the areas, if people so choose to, would have the opportunity to put in ohana. Am I, am I correct with that?

MR. ALUETA: That is correct.

CHAIR MOLINA: Okay. Thank you. Alright, Members, the floor is open now for questions to either Department, Member Johnson?

COUNCILMEMBER JOHNSON: With regard to the, the structures that we're now giving permission. If somebody already has through, you know, a variance or some other mechanism, already has a, a dwelling, you know, on a lot of that size would they be allowed to have *another* dwelling then? So in other words, if somebody went to BVA and they said--you know, 'cause ordinarily our ordinances would not...they would *prohibit* ohanas. So now...how would that be dealt with? Would, would they have to, at any point in time, come back and would they be allowed a second dwelling, or would that dwelling now be in accordance with this particular law and they wouldn't have to...I guess do anything further?

CHAIR MOLINA: Mr. Alueta?

MR. ALUETA: Sorry, but I wouldn't be able to answer that at this time. I, I really don't know. I'd have to check with our Corp. Counsel, as well as our staff at the BVA as how they would interpret that. I think it would all dependent on *how* their variances was *written*.

COUNCILMEMBER JOHNSON: Was written. Okay.

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MR. ALUETA: And, yeah, there could be some people who may view it as, just as you said that, oh, I got a variance for one additional, but now the law allows me *another* one so I can get another one--

COUNCILMEMBER JOHNSON: Yeah, I know, I, I know. That, that, that's one of those things that I think is really important . . . *(laughter)* . . . to figure out before we pass something. We don't want an unintended consequence. And the other thing would be with regard to the conditions that you would be recommending that we place in that. Do you already have draft language set up so that those conditions, you know, if this moves forward, can be added in? You know, as far as the deed restrictions or, you know, with parking. . . they're already part of the, are they incorporated?

MR. ALUETA: Those are just our comments--

COUNCILMEMBER JOHNSON: Your comments, okay.

MR. ALUETA: --from, from the Planning Commissions and from the Department as well as others. I--

COUNCILMEMBER JOHNSON: Okay. All right. The, the other and final thing is, in terms of somebody coming forward, and then--let's assume that this passes and you're reviewing it, whether its Public Works or whether its Planning--how will the...I guess the, the affordability aspect...let's assume that its somebody in there that's not a relative and that they're, they're in a, a category, what...would there be an *annual* certification? How would that issue be addressed with regard to enforcement, or would you just request a copy of the lease?

MR. ALUETA: . . . Uh. . . that's, that's our concern. We *don't* know... *(chuckle)*... And that, and that's our, that's our problem--is like...how, how does the Council ... *(clears throat)*... excuse me, *want* it to be administered? You're, you're kind of blending Zoning as well as Housing Code, as well as the planning... Public Works' looking at infrastructure. And that's why the Planning Department is a little concerned.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. ALUETA: Because once you put it into Title 19, we're in charge of enforcement. And so--

COUNCILMEMBER JOHNSON: Okay.

MR. ALUETA: --again that's, that's our concern. But I mean we're willing to work with you as far as. . . you know we just would like to have some clear direction should the bill get passed. We'd like to have some of these gray areas clarified before the passage.

COUNCILMEMBER JOHNSON: Yeah, and, and the other thing would be have you spoken with Housing and Human Concerns? 'Cause ordinarily *they* would be the ones looking at

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affordables, they would be kind of more *familiar* with the income oversight on that. Have you spoken with them as to what their possible role might be?

MR. ALUETA: Didn't. . .*spea*k with them, I did download from the. . .County website and from their site, and that's--if you look at my Staff Report or memo report to the Planning Commissions, dated October 8th. . .I had downloaded on Exhibit 7. . .as well as Exhibit 8. And that's the income limits on the rental.

COUNCILMEMBER JOHNSON: Okay.

MR. ALUETA: And so I, I provided that information more so. . .for the Planning Commissioners, as well as us, to find out exactly what is meant by, you know, the, the language, because it does make reference back to another section of the Code dealing with affordable housing. And so we, again. . .however that is clarified, either through Administrative Rules or authorized in the Code itself. . .by saying who's gonna be responsible for it. Uh, that, that's what we're looking forward to finding out how to . . .(*inaudible*). . .

COUNCILMEMBER JOHNSON: Okay. I, I really appreciate that. And, Mr. Chair, those would be my main areas that I would *need* to have information on. Because it's very difficult if you pass an ordinance, but then you haven't really addressed, you know, all of the intricacies of *how* it would actually be enforced over time. And as you well know, people will do things and then it's like . . .(*laughter*). . . we already have problems on enforcement. So I would *not* want to put any additional burden, you know, on the Department if they're tasked with doing this. *That* would be one of my major concerns--is to have kind of some sense of where and who and do. . .does the Department have sufficient resources? Because once the dwelling is *built*. . .you know it's like what are you going to do? . . .(*laughter*). . . Tear it *down* . . .(*laughter*). . . because they're not in compliance? I don't think so. So you've gotta look at what *is* the consequence *if* you do violate this and you got somebody in there, and you're just, you know, doesn't matter and they're helping you to pay your mortgage. Which is what's happened, as we already know--the original intent for ohanas was basically, you know, the grandma and the grandpa, and the relatives coming for a brief period of time. And now *that* is now being looked at as a long-term rental unit, *not* always in the affordable category either, being utilized sometimes for vacationers or other, you know, purposes that kind of go outside that original intent. So those, those are my issues--that before we go down the road of allowing it to be built. . .how, how do we address if there's non-compliance. What's the punishment?

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER JOHNSON: You know, because *to me* I don't think we are going to be seeing, you know, the units be torn *down*.

CHAIR MOLINA: Uh-huh.

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COUNCILMEMBER JOHNSON: But, you know, who's gonna . . .*(laughter)*. . . who's gonna be, I guess Big Brother and look at those kinds of things? 'Cause as we well know, we have difficult already with our Finance Department . . .*(laughter)*. . . when it just comes to people representing that they're homeowners or non-homeowners . . .*(laughter)*. . . So, you know, I just wanna make sure that we understand--

CHAIR MOLINA: Oh, yeah.

COUNCILMEMBER JOHNSON: --what task we have. Thank you.

CHAIR MOLINA: No, no, yeah. . .certainly any legislation we're going to have to deal with the enforcement challenges. And I'm, I'm all for...if we want to make this really...those who really *want* this option, that they have to understand they may have to jump through a few hoops. So I would hope, you know hope...you know, if and when this legislation does pass that, that we have to put all those who apply for some of this, they have to go through some form of scrutiny, if you will. Some people may call it "red tape", but all for the reasons that you have stated, Member Johnson. And if you'd like, you, maybe we can work with Staff some of the questions that you have brought up, we can, through Staff, have those questions answered by the Department and Corp. Counsel as well. So for...and for the sake of today's meeting, Members, it's just to get input. The Chair doesn't have the intent to *rush* anything like this out. But it's been...this whole matter has been out for a while and, you know, I was hoping we could've discussed it earlier in the term but, you know, we've had our other, other issues to deal with. So I'm just happy that we can at least have the discussion at this point. And, you know, whether this matter passes out by the end of this term or...at least, I would hope that it's up for consideration next term as well. So, but again this is just fact finding and comments at this point today. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Mr. Alueta, I think I heard you allude to some of the recommendations made by the Hana Advisory Committee. And one of 'em was to require two parking stalls. Did I hear that correctly?

MR. ALUETA: Yes.

COUNCILMEMBER MEDEIROS: Okay. And. . .is there a specification on how you describe the parking stalls? I mean, does it need to be marked off or you just have an area that two cars can fit in? How, how does that normally work?

MR. ALUETA: I'm going to turn that over to Public Works--

COUNCILMEMBER MEDEIROS: Okay . . .*(laughter)*. . .

MR. ALUETA: --as far as this. Maybe they can help me out 'cause--

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COUNCILMEMBER MEDEIROS: Okay . . . *(laughter)* . . .

MR. ALUETA: I mean, in the Residential District--

COUNCILMEMBER MEDEIROS: Yeah.

MR. ALUETA: --I'm not too familiar how--

COUNCILMEMBER MEDEIROS: Right. Okay. Public Works?

CHAIR MOLINA: . . . Mr. Arakawa?

MR. ARAKAWA: Councilmember Medeiros, I'll try to answer it as best as I can, but . . . generally parking stalls have a certain dimension that is required and it needs to be on-site. We also have driveway requirements as well--that is, you cannot have your parking along your frontage...along your entire frontage and have four cars parked and do stacking out directly onto the roadway. So--

COUNCILMEMBER MEDEIROS: Right.

MR. ARAKAWA: --there, all the specifications, actually, is in Title 19 of the Code, as far how you can configure your parking spaces on the site.

CHAIR MEDEIROS: Okay.

MR. ARAKAWA: And we just want to make sure that there is adequate parking spaces on-site. And I think the requirement--whether it's one or two parking stalls--I think that's a, you know, a discretionary item. And the, the Council can decide as to what should be required. But from our side, at least *one*--

COUNCILMEMBER MEDEIROS: Hmmm.

MR. ARAKAWA: --should be required.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Arakawa. There might...Mr. Chairman, I'm looking at your Communication, 10-199, dated September 8, 2010, which is attached to the final documents in this agenda item, binder index. And the second page, which is the letter of February 26, 2009, also from you, Mr. Chairman--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: --and, you know, the subject being accessory dwellings. I was trying to look also through the, the bill. . . in the wording. But in your February 26, 2009 letter, Mr. Chairman--

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CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: --where you put into parenthesis, after “accessory dwellings” you put “ohana unit”.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: You know, the --

CHAIR MOLINA: Spelling?

COUNCILMEMBER MEDEIROS: --the okina--

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: --is in the wrong place, you know.

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

COUNCILMEMBER MEDEIROS: That, that would be correct if it was an Irish name or something . . .*(chuckles)*...

CHAIR MOLINA: . . .*(laughter)*. . . Yeah . . .*(laughter)*. . .

COUNCILMEMBER MEDEIROS: . . .*(laughter)*. . . You know?

CHAIR MOLINA: Yeah, it looks more like an “O” and--

COUNCILMEMBER MEDEIROS: Yeah.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Yeah, so--

CHAIR MOLINA: Certainly.

COUNCILMEMBER MEDEIROS: --in case you’re going to put that as part of the bill for an ordinance, yeah, if the Staff can be sure that that okina mark is in front of the “o”, to the left of the “o” and not to the right.

CHAIR MOLINA: Thank you--

COUNCILMEMBER MEDEIROS: Okay?

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CHAIR MOLINA: Thank you very much for pointing that out.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: Certainly wanna, don't wanna do anything unintentional to disrespect the culture . . . *(laughter)*. . . And I'll make sure you and Mr. Kaho'ohalahala--

COUNCILMEMBER MEDEIROS: . . . *(laughter)*. . .

CHAIR MOLINA: --we'll count on you for consultation as well. Yeah.

COUNCILMEMBER MEDEIROS: . . . *(laughter)*. . . Okay. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Member Baisa?

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. Funny that Member Medeiros would mention the word ohana.

. . . This is something that I've muller over for a very long time. And looking at the proposal in the ordinance, the...with the underlined areas . . .

. . . provided that the units will be built to accommodate *immediate* family members related to the applicant by blood, adoption, marriage, spouse, children, brothers, sisters, or individuals of very low to gap income. This is very interesting to me because, you know, we call them "ohanas", but all of us know that at the moment probably many of the ohanas do not have people that are, can be described in any of this.

. . . And, you know, to me if we're going to continue to use the word ohana and even put this in a *bill*, then my concern is who's going to be the person to make sure that, you know, when you do the bed check, that it's aunty in the bed--

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER BAISA:*(chuckle)*...

UNIDENTIFIED SPEAKER: . . . *(laughter)*. . .

COUNCILMEMBER BAISA: --or at the stove or wherever people are in the house. You know, it's not a practical thing in terms of enforcement. And you know, my experience with ohanas in the neighborhood is lengthy. And most ohanas that I know of, very few people have their grandmother, or their mother, or their cousin, or their sister living in it. Most of these are rented for the public. And if this is what we're doing, then we should call a spade a spade. But this idea of ohana, you know, I know it was a great idea somebody had, that it would be a mother-in-law cottage. But this is not the way it *is*. And, so I'm concerned that if this is what we're going to call it and this is what we're

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gonna pass, then there has to be some teeth in it. Otherwise, let's just call it we're going to build cottages for rent.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER BAISA: And--

CHAIR MOLINA: Leave it as "accessory dwellings"?

COUNCILMEMBER BAISA: You know, call, call a spade a spade. If you're going to call it an "accessory dwelling" so that people can have a cheap place to rent, well, that's fine. But I worry about this ohana thing 'cause, you know, it's just another law that people say oh, you guys can't enforce the laws you make. I also have a thing about the parking. You know, I've lived many, many years in an area that has a lot of so-called ohanas. And there's much, much parking on the streets because people *cannot* accommodate the vehicles on their property. And so this is *another* issue. If we are going to make it even more common and more people are going to be able to do this, then we have to deal with the parking issue. And I really support the recommendation that, you know, there be some kind of restriction. You know, when we did the B&Bs, we said that you have to accommodate the cars on the property. And I don't think that, that's unreasonable--that, you know, if you're gonna have people coming or living on your property, then you need to have the cars on the property. Otherwise, they're all over the roads, and to me it's really unsafe. You know, I have nightmares about children being killed because they walk. . . cars that are parked on the street. And if a little toddler comes out in between those cars, you can't see them until....even though you're supposed to be driving very slowly, but we all know we also have speeding problems. So those things kind of bother me. I mean, I'm not *against* the idea of people being able to earn income. Everybody's looking and trying real hard to find ways to create income. But I think we have to be a little careful. First of all, if we're going to make it unenforceable to make sure that it's a relative in the cottage, then why require it? And secondly, I'm concerned about the parking. And the last thing, of course, is this renting to very low or gap income people--that's another thing that's gonna put a crimp in the whole, in the whole thing because of self, self-declaration it sounds like to me we're going with, that we're gonna have people come in and say, I'm gonna do an ohana and I'm gonna report if, you know, the person in my ohana unit doesn't fit...he got a raise last month, his wife went to work, she was home, now she worked. I mean, you know, the *tracking* of all this, that we create. And *then* what do we create? We create the need for more staff. And here we're being told we need to reduce government, we can't afford to pay everybody. So these are the concerns. I do not have the, the concern about, you know, the actual building of accessory dwellings.

CHAIR MOLINA: Thank, thank you, Member Baisa. Chair certainly appreciates your, your comments and, you know, the whole intent for this, more to accommodate a segment of our community, you know, I guess in most cases it will be kamaainas who live here. This Council has shown an interest in doing legislation for bed and breakfast, and now looking

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at TVRs. So the question is, we're accommodating *one* segment, what about the other segment? You know, and even with the bed and breakfast there's issues of enforcement.

COUNCILMEMBER BAISA: Uh-huh.

CHAIR MOLINA: With the pending TVR, when that will be addressed, some of the same concerns will be brought up. So my intent is to, you know, give an option to another segment of our community, a kamaaina. Because it's been generally looked at with TVRs and bed and breakfast that a lot of folks who are in there. . .many of 'em are not kamaaina. But this accessory dwelling or *relaxation* of the...the, the rules and regulations that would *allow* kamaaina to build an accessory dwelling, I'm just presenting that as option to our community. Because if this Council is gonna accommodate one segment of the community, we gotta be open to making an offer for *another* segment of our community. So I, I certainly appreciate all of, all of the comments. So we have to be, in my view, very balanced--not only entertain the concerns of *one* segment, but also the other, the, the silent--you heard Mr. Franco from FACE. He represents an organization of kamaainas who are looking for additional options. So while we have, you know, those who has lobbied for TVRs and bed and breakfasts, I think it's important we need to respect the concerns coming from the, the kamaaina segment of our community for *additional* options for affordable housing. Members, any other comments? Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you, Chairman, and, and thank you for forwarding this thing to this Committee. One, one of the things, you know, I represent Kahului, and Kahului, I think . . .(laughter). . . has the most ohanas, you know, buildings in this...on Maui, actually. And what I find is that most prevalent is the parking. And I, I know part of the requirements, as one of the Planning *Commission* had done was to include "X" amount of parking for those areas that wanna build these. . .ohanas on a 6,000 square foot lot. You know, that is really good. But again, you know, to do the enforcement...because I live in Kahului, and I, I look at the streets, some of the homes, you know, they're renting out *rooms* and they're renting out the, the back. . .ohana, and you have, you know, a great deal of vehicles just park on the County road, right-of-away. I, I know we do have ordinance in regards to, you know, how long you can park on County property. But. . .the question I have, you know--and I, I, I guess we got to work out the details and everything else should this thing go--is that one of the biggest issue like, you know, Director Arakawa had mentioned, is the infrastructure of the County facilities. And you know, there are also association requirements. And we impose ourselves on not building ohanas on 6,000 square foot lots. So all of these things, we need to take a look at.

. . . You know, creating affordable units for our. . .community, those that cannot afford to purchase a home. . .even family units, you know, this bill is noble. Yeah. So I look forward more discussions.

CHAIR MOLINA: Uh-huh.

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COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: Yeah. Thank you, Mr. Pontanilla. As a representative of an area that's, that's dense already, and you know, I certainly appreciate that. And, again, I don't foresee this...if, if and when this, this Committee or, or a Committee in the future decides to pass it, that this is going to *explode* and go wild because of the, I think the strict language that you'd have to put in for parking. And you know, let's face it, every legislation we, we've put out, there will *always* be enforcement challenges. And so I don't see you're going to have a ton of people suddenly just pounding our doors and putting up ohanas. It, this is just, again, another option for people to consider instead of waiting for affordable housing. They can, you know, maybe you could have children moving into their parents' house, then they can build a little ohana for their parents in the future on lots that are maybe, you know, 6,000, have a minimum of 6,000 or so forth.

VICE-CHAIR MATEO: ...*(inaudible)*...

CHAIR MOLINA: So I, I certainly am taking all of this in. And... 'cause, again, I think we need to provide an option for the kamaainas. And, and you had Hana people that--it was interesting that Hana was open to it as well. I can certainly appreciate that. And with all the additional restrictions, I think it's really good. So again I, the Chair didn't have any language proposed. I wanted to get all your feedback first. And I'm certainly appreciative of Member Baisa shepherding the bed and breakfast bill, and you know, we're, a future Council will look at the TVR as well. So I want to make sure *everybody* is given equal opportunity to have their considerations heard. We heard people from FACE and also from several citizens which gave the Chair the impetus to put out a proposal like this. I'm sorry, Mr. Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. Did we receive any comments from like, say Police Department, Fire Department. . .you know, in regards to the intent of this bill? Because we gonna add density. . .to any given area here in Maui County. When you look at the maps, you know, especially ...*(laughter)*... for Member Johnson, Lahainaluna Road--

COUNCILMEMBER JOHNSON: ...*(laughter)*...

COUNCILMEMBER PONTANILLA: --you know, all you see is red; and then in Paia, Skill Village, it's solid red. So maybe input from those two Departments would be good.

NOTE: *Silence.*

CHAIR MOLINA: . . . Okay. Maybe through Staff we can get comments. I don't know if we did get comments on this bill from the Police and Fire, but this Chair will certainly . . .

COUNCILMEMBER PONTANILLA: Okay.

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CHAIR MOLINA: --send out the request--

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: --from you, Mr. Pontanilla. Thank you. Members? Mr. Mateo?

VICE-CHAIR MATEO: Chairman, thank you. Mr. Alueta, in looking over the Molokai Planning Commission's review of the bill, prior to their motion to exempt Molokai, they referenced that, they felt that they didn't have enough information to make some determination. Can you tell me what kind of information the Commission was in need of?

NOTE: Silence.

MR. ALUETA: . . . I, I don't have the minutes in front of me, so I, I, I couldn't. . . I couldn't tell you what...I, I can't recall.

VICE-CHAIR MATEO: Okay. Okay. And for the, the Molokai Planning Commission. . . currently, their, that is the body that does the approvals for permits for ohana and accessory buildings, yeah?

MR. ALUETA: Um. . . only. . . only if a Special Management Area permit is required in the SMA. But for the most part, it's administratively done.

VICE-CHAIR MATEO: Okay. And. . . you're the one that participated with, with all the respective commissions for this particular discussion?

MR. ALUETA: Yes.

VICE-CHAIR MATEO: Yeah. So, so other than, you know, differing from the Commission themselves being the, the body that does the approvals to, you know, issues with parking and issues of density, and issues of resource like water and sewage, was there any additional issues that the Commissions discussed during their review of the bill?

MR. ALUETA: I think all of them...well, I, I should say primarily Hana as well as Maui had issues, I guess, with *how* you would enforce it and *who* would be responsible. Because you're, you're, like I say, you're crossing over between three different departments.

CHAIR MOLINA: Yeah.

MR. ALUETA: So it's just, I think they, they just wanted to have clarity for the sake of the government officials who would be responsible for the inspectors, whether it would be Public Works...*Planning* officials, which is where it's right now. It's in Title 19, they would be the responsibility, and then somehow we would have to work with the

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Department of Housing and Human Concerns who's . . . who's responsible with regards to certifying who's, qualifies under the affordability. Most of them also looked at, as you said, the densities, you know, whether or not the adequate infrastructure within it. Currently, Public Works has *that* form, and it's attached to the Staff report, where they do some type of cursory review with regards to the adequacy of the infrastructure. But then again, they also were looking at how far . . . what's affordable. And when they looked at the list, they felt that, one, either the bill should be amended to have *all* accessory dwellings going forward, regardless of the lot size should have an affordable housing component, because that was the initial intent. . . or if you're going to have it for these small lot size, that it be really affordable to the lower income categories so that they would have some type of protected. . . housing market that they could tap into when needed.

VICE-CHAIR MATEO: Okay. Where, where there . . . was discussion had regarding those areas that do not . . . that are not serviced with County sewer and they would have to install their own septic tanks and still have the small parcels, the small lots?

MR. ALUETA: . . . They weren't. . . they weren't specifically on that. I think they were more specific upon . . . the parking issues as, as we talked about. If . . . if the sewer was inadequate, like they were on a septic system or a cesspool, they knew that Department of Health would have to come into play. So they, they knew that was an impact. They were concerned about it, obviously. They were also concerned about the water usage, water capacity. Obviously, that's always a hot topic on Molokai--

VICE-CHAIR MATEO: Uh-huh.

MR. ALUETA: --as well as, you know, on Maui . . . whether or not there's adequate infrastructure within, within the system to support the additional thing. And there were some . . . again talk of how does this play into the Island Plan, the Maui Island Plan. . . which has its urban growth boundaries and talks about . . . has a calculation of how many housing units are needed. So does the urban growth boundaries get . . . if this bill is passed, does the urban growth boundaries get pulled in because now all of the sudden you opened up more land within your urban core that can accommodate those additional housing units. So there was a myriad of discussions with regards to the --

VICE-CHAIR MATEO: Thank you--

MR. ALUETA: --Commissions.

VICE-CHAIR MATEO: --thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah, and you raise, you know when you were speaking, you raised a very interesting point, because ordinarily when a developer comes before us and

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they give a housing development on a new site, there's the impact analysis done based on density, based on. . .can we accommodate traffic safely, even the ingress/egress, you know, issue. Because I know some of these properties, particularly in West Maui, they are on cul-de-sacs. So what ends up happening, Mr. Medeiros. . .okay, can he go--

CHAIR MOLINA: Uh--

COUNCILMEMBER JOHNSON: --or are we gonna lose quorum if he leaves?

CHAIR MOLINA: Yeah, we have bare, bare quorum with Mr.--

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: Yeah. We still have five--

COUNCILMEMBER JOHNSON: All right.

CHAIR MOLINA: --so go ahead, continue, Member Johnson.

COUNCILMEMBER JOHNSON: Anyway, yeah, you know, I just don't want to have, you know . . .*(laughter)*. . . we have to immediately adjourn. Anyway. . .what, what my thought is, is that because this is...it would be a wider, it would have a wider impact. In fact the passage of this bill, as you say, you know, just going through the process though of accommodating with building permits and analysis and everything else, we always criticize, you know, every time developers come before us. And we say, well we wanna see the whole picture so that we get the proper impact analysis. And yet when we pass legislation ourselves . . .*(laughter)*. . . where is that comprehensive review? Because we always say we don't want to segment development, you don't wanna look at just each individual parcel, but you want to look at the overall impact. So I think it might be worthwhile to just get an, a comment from Office of Environmental Quality Control, just to say how would this issue, you know, I mean...and, and I, I know that Mr. Alueta . . .*(laughter)*. . . may not agree, but because when we pass legislation, oftentimes when it has a wider impact. . .where's the review process? If it's just an ordinance, you know, and we're not looking at each individual application, what is the wider review that, that would be a trigger? Is there any trigger whatsoever? You know, because it is the commission also of the infrastructure--which would be water, sewage capacity, police, fire, and then the final area . . .*(laughter)*. . . is taxation. Because if this is permitted, I would like a comment from Department of Finance, too, because obviously if these people are *not* related...if they are paying, are helping to assist in some way because of a rental and that money is then coming in as additional income, how is this going to be viewed? Does that person lose their homeowner exemption because now they're using their property for, you know, commercial purpose? How does Finance view that?

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CHAIR MOLINA: Uh-huh.

COUNCILMEMBER JOHNSON: So I think those things, for me, Mr. Chair, are really important questions. Even if they don't have triggers attached, I think that we have to look at the bigger picture and what is the ultimate impact. So I, I really appreciate your bringing this forward though, because it gets us thinking about...well, sometimes we have to be careful what we ask for . . .*(laughter)*. . . Thank you.

CHAIR MOLINA: And thank you, Member Johnson. The Chair is, of course, always open to each one of your comments, and certainly we don't want to ramrod any legislation--

COUNCILMEMBER JOHNSON: Yeah, oh, yeah.

CHAIR MOLINA: --that could have some unintended consequences. But I certainly appreciate having the discussion. Members, Staff has informed me we are going to be losing quorum in another 15, maybe 20 minutes. So at this point, I think we've, have taken in a lot--

COUNCILMEMBER JOHNSON: . . .*(inaudible)*. . .

CHAIR MOLINA: --from you with regards to the . . .*(laughter)*. . . the bills, and you know, we'll...I'll ask Staff to take into consideration all the comments, and we'll send out the various letters to the various departments for additional comment on Committee of the Whole Item 42 Residential Districts and Accessory Dwellings. So with that said-- Mr. Medeiros, you have one final question?

COUNCILMEMBER MEDEIROS: Yes. Thank you--

CHAIR MOLINA: Go ahead.

COUNCILMEMBER MEDEIROS: --Mr. Chair. Yeah, I wanted to ask the Planning Department. Uh. . .for, for this consideration. . .part of the description says Residential Districts. Is this ohanas limited to certain zoning?

CHAIR MOLINA: . . . Mr. Alueta?

MR. ALUETA: Yes, according to the accessory. . .bill, I believe that it's. . .limited to. . .the Residential District as well as the Rural District --

COUNCILMEMBER MEDEIROS: Rural?

MR. ALUETA: --if I'm not mistaken.

COUNCILMEMBER MEDEIROS: So...

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MR. ALUETA: As well as it does allow for it in the Agricultural District, I believe also. Pardon me?

NOTE: Silence while Mr. Alueta conferred with Corporation Counsel.

MR. ALUETA: ...I'm sorry, no, it's just the Rural and then the Residential.

COUNCILMEMBER MEDEIROS: Okay, so Rural and Residential. And in those zoning districts or zoning areas, the minimum that this is requiring as far as the lot size and so forth, there's no challenges in those zoning areas about that?

MR. ALUETA: ...*(inaudible)*...

COUNCILMEMBER MEDEIROS: You know, some places, some zoning like Ag, you know, and I know Ag is not one of them, but you know it requires the...property to be two acres minimum, and you know, you can build accessory buildings as it's identified for that kind of zoning. My question is, is there any, you know, restrictions for ohanas in these zonings, Residential District and Rural?

MR. ALUETA: In the, in the Residential Districts, it...the, the... as indicated in the bill, certain lot sizes can--

COUNCILMEMBER MEDEIROS: Right.

MR. ALUETA: --build. So all, within the Residential District right now, you need to have a minimum lot size of 7,500 square feet.

COUNCILMEMBER MEDEIROS: Okay.

MR. ALUETA: This would bring it down to 6,000 square feet. And the bill...if I'm not mistaken, the bill also increases the *size* of the ohana unit or accessory dwelling that can be *built*. So it's, I think its 500 for...between 6,000 and 7,499 can be 500, and then it also *raises* up the other lot sizes so that instead of being, like right now on the 10,000 square foot lot you could build like a 600 square feet. I think it raises the numbers up to...on the various lot sizes based on that.

COUNCILMEMBER MEDEIROS: I see.

MR. ALUETA: Currently in the Rural, District, my...from the last time I worked on it, it's still half an acre, so minimum lot size of .half acre; and then you could build, I believe, up to 750 square foot or something like that. And then there is a provision within the State Land Use Code which allows you to subdivide...down to about 18,500. So you know Wahikuli, not "Wahikuli", but in the...Rural house lots right along Hana Highway across, down from the Hana High School?

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COUNCILMEMBER MEDEIROS: Uh-huh.

MR. ALUETA: All those areas--

COUNCILMEMBER MEDEIROS: Right.

MR. ALUETA: --you know where, between Hana Medical Center or Hana Health Center?

COUNCILMEMBER MEDEIROS: Yeah, the Wakiu area.

MR. ALUETA: The Wakiu area--

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. ALUETA: --those are all one-acre Rural lots. And many of them--

COUNCILMEMBER MEDEIROS: Correct.

MR. ALUETA: --have come in for State Special Use Permits to get...to be able to subdivide where one lot is going to be half acre, and the other lot is going to be slightly less than half acre.

COUNCILMEMBER MEDEIROS: Oh. Okay.

MR. ALUETA: And so all of those would be subject, would have been able to build a house as well as an accessory dwelling.

COUNCILMEMBER MEDEIROS: Okay. And are there any challenges with interim zoning? Because we have a lot of that in Hana, as far building ohanas?

MR. ALUETA: Um. . . I have to do some research on that--

COUNCILMEMBER MEDEIROS: Okay.

MR. ALUETA: --because in the, the Interim Zone has their own, that's under 19.02.

COUNCILMEMBER MEDEIROS: Right.

MR. ALUETA: I'll have to look whether or not that allows for accessory dwellings, also.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: Thank you--

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COUNCILMEMBER MEDEIROS: Mr. Chairman, yeah, I just wanna say, you know, I, I, I agree with your perspective about this serving that segment of our community that, you know, which is I guess, the purpose of calling it an ohana unit. Because I, I think as, as you describe, you know, we have other options for other segments of the community, and this is certainly an important one to keep and to be able to offer family members affordable housing or at least a place, you know, they can move into to be their place of residence. So thank you for that perspective.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Okay. Mahalo.

CHAIR MOLINA: And Mr. Medeiros, I think Mr. Hopper wanted to add additional--

COUNCILMEMBER MEDEIROS: Oh.

CHAIR MOLINA: --clarification.

COUNCILMEMBER MEDEIROS: Okay.

MR. HOPPER: Just to clarify, it appears the ordinance is written is that there is something called an "affordable accessory dwelling", which is separate from a accessory dwelling.

COUNCILMEMBER MEDEIROS: Okay.

MR. HOPPER: I think it would need to be clarified in the ordinance that this "affordable accessory dwelling" is a dwelling on a square footage from 6,000 to 7,499, and that *that* is the type of dwelling that would have these deed restrictions and things on it. With the way that's structured, there's also an amendment to the Residential Zoning ordinance--

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. HOPPER: --which right next to the permitted use of accessory dwelling it says, an affordable accessory dwelling pursuant to 19.35.110. So it appears the way this ordinance is proposed, is that if someone's going to do an affordable accessory dwelling, that has to be specifically set forth in that zoning district. And the only one that is proposed in *this* ordinance is in the Residential zoning ordinance.

COUNCILMEMBER MEDEIROS: Okay.

MR. HOPPER: I don't see that in Rural or Agricultural. I think you could, if you wanted to, expand that. And I think the intention is to have all dwellings that are on lot, all accessory dwelling on lots between 6,000 and 7,499. . .to be these affordable dwellings. Again, these are things that I think just need to be clarified before...and I could draft it

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either way, but just wanted to have that clarified. Right now, though, it looks like only *Residential* is the area where these affordable dwellings are, or these--

COUNCILMEMBER MEDEIROS: Going to be allowed.

MR. HOPPER: --affordable accessory dwellings are going to be permitted, even though regular accessory dwellings are in these other zoning categories--

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. HOPPER: --or may be. I just checked Rural and Agricultural, and Rural has these accessory dwellings listed.

COUNCILMEMBER MEDEIROS: Okay.

MR. HOPPER: There's nothing stated about affordable accessory dwellings, so it looks like this is kind of a new definition, that the intention is to have this in only certain areas. So that's how I would read the current draft of the ordinance.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Hopper, for that information and for clearing some things up. Mr. Chairman, thank you for having this item up again for discussion. And as you described, you know, if we come to discuss it again by the end of this time or next Council, then certainly we can work on it more. But thank you for this item.

CHAIR MOLINA: Yeah. Thank you, Mr. Medeiros, and in terms of the zoning. . .if down the road if it's the will of whichever Council to expand it, you know, to include Rural as well, that's an option. Certainly...I guess in your area, you know your area very well as it relates to housing units. So, Members, thank you for your comments on this particular matter. Chair will...certainly has a laundry list of comments and concerns to address.

COUNCILMEMBER JOHNSON: . . .*(laughter)*. . .

CHAIR MOLINA: And at some point in time we'll certainly get this back to you. But thank you very much for allowing us to have the discussion on this. If there are no objections, the Chair's gonna defer action on Committee of the Whole Item 42.

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So ordered, thank you very much, Members.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (excused: SPK, WKN, and MPV)

ACTION: DEFER pending further discussion.

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CHAIR MOLINA: Now to our last Item of the day, and this is the Maui County Legislative Package, the 2011 version of it, Committee of the Whole Item 4(2).

ITEM NO. 4(2): MAUI COUNTY LEGISLATIVE PACKAGE (2011 MAUI COUNTY LEGISLATIVE PACKAGE) (C.C. No. 09-16)

CHAIR MOLINA: The Committee is in receipt of the following: a correspondence dated, from Michael J. Molina, Chair of the Committee of the Whole, requesting that proposals for inclusion in the 2011 Maui County Legislative Package be submitted. --And I'll just be very brief in running down the bills. By correspondence dated July 21st, from Member Baisa, transmitting a draft State bill entitled A BILL FOR AN ACT RELATING TO NOMINATION PAPERS. And we also received a correspondence dated July 21st, 2010, from Councilmember Johnson, transmitting a draft State bill entitled A BILL FOR AN ACT RELATING TO TAXATION. And another correspondence dated July 22nd, 2010, from Councilmember Medeiros, transmitting a draft State bill related to . . . TO PROHIBIT THE DEVELOPMENT, TESTING, AND PROPAGATION RELATING TO TARO SECURITY. And finally a July 23rd, 2010, correspondence from Councilmember Medeiros, transmitting a draft State bill entitled A BILL FOR AN ACT RELATING TO AQUARIUM AQUATIC LIFE. The Committee may consider whether to recommend approval, with or without revisions, of the above-listed proposals for inclusion in the 2011 Maui County Legislative Package. Or the Committee may consider other related action. So, Members, there you have it. The Chair is open to comments from those Members, especially who are submitting these bills. . . for inclusion into the Maui County Legislative Package. I'll recognize Member Baisa first.

COUNCILMEMBER BAISA: Thank you very much, Chair. No further comments. I think what we have before us is self-explanatory. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Johnson, any comments on your bill?

COUNCILMEMBER JOHNSON: Yeah, and I, I feel the same way. I think we, you know, even though the one bill I think with the HSAC was not. . . you know, because of my issue with regard to taxation on historic structures, I can understand why that was not, you know, included, because we really have not had an opportunity to consider it and any ramifications. But I really thank you for including it, and I thank the members for supporting it because . . . *(laughter)*. . . there's. . . the destruction is still continuing, and those pesky little weekend. . . accidental demolitions . . . *(laughter)*. . . are still occurring . . . *(laughter)*. . . in our community. So I, I hope that, you know, we can resolve this and give people an incentive to actually maintain our historic structures and the integrity and really charm of our, of our historic areas.

CHAIR MOLINA: Okay. Thank you, Member Johnson. And finally, Mr. Medeiros, any comments on your two proposals?

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COUNCILMEMBER MEDEIROS: Just a few, you know, appreciate the Council's support of, of these two bills which will go to the, well, we're recommending to go to the State Legislature 2011 session. And the taro. . .which we passed here, to band GMO taro, certainly has gotten attention on other counties. The Big Island does have their own ban on GMO taro *and* coffee. And then after we did ours, I got a call from Kauai. . .asking if, you know, I could assist in their consideration of that taro bill. So it is, it is being looked at Statewide. And I think the State should take a position on it. And then as far as the aquatic life which we discussed a lot, I think there should be State legislation and regulations regarding this item. . .because this is really damaging our nearshore reefs with the taking, unlimited taking of aquatic life. So thank you for the Council's support on, you know, considering this. Mahalo, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. And, Mr. Pontanilla, as our dedicated HSAC representative--

COUNCILMEMBER MEDEIROS: . . .*(laughter)*. . .

CHAIR MOLINA: --any comments?

COUNCILMEMBER PONTANILLA: Thank you. Yeah. I'll bring this forward. . .forward to HSAC in regards to our proposals. But, Members, we still can add proposals to the HSAC packages, and should one of these fail, then we still have the opportunity as a County to include it as a County package. So one of the things that we talk about, you know, the affordable housing, 201H process. . .and you know what we just went through, 45 days is just not enough.

UNIDENTIFIED SPEAKER: Yeah.

COUNCILMEMBER PONTANILLA: So. . .City and County of Honolulu experienced the same thing, so you know we, we're going to go again and reintroduce that one particular package. . .forthcoming. It's not going to be included in here, but we have the ability to add more. Thank you.

CHAIR MOLINA: Thank you, Mr. Pontanilla. And last but not least, Council Chairman Mateo, any final comments before the Chair makes a recommendation?

VICE-CHAIR MATEO: No. I'm ready for the Chairman's recommendations. But Mr. Pontanilla, you know, his ability to be able to provide additional issues of concern, I've always hoped that sunshine, or the limitations of, would be something that both HSAC and us...through our County Legislative packages would be able to include that since it continues to limit our abilities. You know? Thank you, Mr. Chair.

CHAIR MOLINA: And thank you, Mr. Chairman. The Chair would also like to acknowledge the work of our hardworking HSAC Staff member, Ms. Hamman, on, on these matters as well. So that being said, the Chair will entertain a motion to include the following bills in

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the 2011 Maui County Legislative Package: A BILL FOR AN ACT RELATING TO NOMINATION PAPERS; A BILL FOR AN ACT RELATING TO TAXATION; A BILL FOR AN ACT RELATING TO TARO SECURITY; and A BILL FOR AN ACT RELATING TO AQUARIUM AQUATIC LIFE.

VICE-CHAIR MATEO: Mr. Chairman, I move for the approval of those bills that you just recognized into the 2011 Maui County Legislative Package.

COUNCILMEMBER PONTANILLA: Mr. Chairman, I second.

CHAIR MOLINA: Okay. It's been moved by Committee Vice-Chair Mateo and Council Chair Mateo to include the following bills into the 2011 Maui County Legislative Package, and seconded by Member Pontanilla. Members, discussion? Seeing none, all those in favor signify by saying "aye".

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Thank you, the Chair mark it six "ayes" with three "excusals", Members Kaho'ohalahala, Nishiki, and Victorino.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Kaho'ohalahala, Nishiki, and Victorino.

MOTION CARRIED.

ACTION: Recommending APPROVAL of proposed bills and justification sheets for inclusion in the 2011 Maui County Legislative Package; and TRANSMITTAL of copy of committee report to the Mayor.

CHAIR MOLINA: Members, this concludes our business for today, for the October 14, 2010 Committee of the Whole Meeting. Chair, as always, thanks you all for your dedication and professionalism, and of course to our hardworking Staff members, as well as the

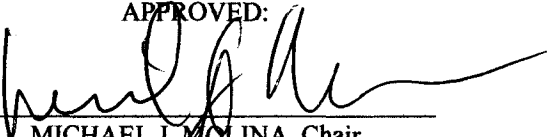
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Corporation Counsel and Administration, for their participation. It is 11:44. This Committee of the Whole meeting for October 14, 2010 is now adjourned. . . .(*gavel*). . .

ADJOURN: 11:44 a.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Committee of the Whole

cow:min:101014

Transcribed by: Michelle Cabaccang

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CERTIFICATE

I, Michelle Cabaccang, 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 the 5th day of November, 2010, in Wailuku, Hawaii.



Michelle Cabaccang