

POLICY COMMITTEE

Council of the County of Maui

MINUTES

May 8, 2012

Council Chamber, 8th Floor

CONVENE: 1:03 p.m.

PRESENT: VOTING MEMBERS:

Councilmember G. Riki Hokama, Chair
Councilmember Robert Carroll, Vice-Chair
Councilmember Gladys C. Baisa, Member
Councilmember Elle Cochran, Member
Councilmember Donald G. Couch, Jr., Member
Councilmember Danny A. Mateo, Member (In 1:04 p.m.)
Councilmember Joseph Pontanilla, Member (Out 1:43 p.m.)
Councilmember Michael P. Victorino, Member (In 1:19 p.m.)
Councilmember Mike White, Member

STAFF: Carla Nakata, Legislative Attorney
Tammy M. Frias, Committee Secretary

ADMIN.: Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel (Items POL-1(23) and 1(22))
Jane E. Lovell, Deputy Corporation Counsel, Department of the Corporation Counsel (Item POL-1(23))
Richelle M. Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel (Item POL-1(23))
Kyle K. Ginoza, Director, Department of Environmental Management (Item POL-1(23))
Scott Rollins, Civil Engineer, Wastewater Reclamation Division Chief, Department of Environmental Management (Item POL-1(23))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel (Item POL-1(22))
Scott K. Hanano, Deputy Corporation Counsel, Department of the Corporation Counsel (Item POL-48)
Leighton K. Kanaele, Lieutenant, Department of Police (Item POL-48)
Edward S. Kushi Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel

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

CHAIR HOKAMA: . . .(*gavel*). . . The Policy Committee shall come to order. This is the regular meeting of Tuesday, May 8th, 2012. Present for today's committee meeting is Vice-Chairman

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Carroll; Members Baisa, Cochran, Couch, and White. Excused are Mr. Mateo, Mr. Victorino. And joining us at this time is Mr. Pontanilla.

Members, we do have some serious matters to take up this afternoon so let me first direct you to Policy Item 1(23). We'll be getting comments from our Chief Counsel Mr. Wong, and Deputy Lovell who also assist. This is a status report on the Hawaii Wildlife - Maui Group, Surfrider Foundation, and West Maui Preservation Association vs. County of Maui, Civil No. 12-00198 SOM BMK. If need be, we shall enter into executive session on this matter, Members. But at this time in open session, I will ask Corporation Counsel Wong to give us opening remarks. But before that, Members, since we have no request for testimony, with no objections we shall close testimony for today.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Okay. Testimony is closed for today's Policy Committee meeting. Thank you.

ITEM POL-1(23): LITIGATION MATTERS (STATUS: HAWAII WILDLIFE FUND, SIERRA CLUB - MAUI GROUP, SURFRIDER FOUNDATION, AND WEST MAUI PRESERVATION ASSOCIATION V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK) (CC 11-30)

CHAIR HOKAMA: Also joining us is Chairman Mateo. Thank you very much. So, Mr. Wong, if you or Ms. Lovell will, in open session, give the Committee a status, please?

MR. WONG: Thank you, Council Chair [*sic*], I shall allow Ms. Lovell to orient the Committee to the proceedings before you today.

CHAIR HOKAMA: Okay, thank you. Ms. Lovell?

MS. LOVELL: Thank you, Chair. Good afternoon, Members. We requested this opportunity to provide you with a brief status report on the lawsuit indicated by your Committee Chair, which was filed on April 16th of this year. We had been expecting it for some time because these groups gave us written notice of their intent to file the lawsuit back in June. However, for whatever reason they just filed their complaint in April. The County's response to the complaint is due tomorrow and I have drafted that response of pleading; it will be filed on time tomorrow. Basically, the complaint alleges two causes of action. It alleges that the County is discharging pollutants into a navigable waterway of the United States without a so-called NPDES Permit. And the second claim for relief is failure to obtain and comply with the terms of an NPDES Permit. As you know, our injection wells in Lahaina are covered by other kinds of permits issued by both the EPA and the Department of Health, namely, Underground Injection Control or UIC Permits. In this lawsuit, the various Plaintiff groups are trying to get a court order requiring the County to get a different kind of permit in addition to the Federal and State permits that we already operate under. It is our intent to defend this lawsuit, and if you have any further questions, we can see how far we can go in open session but I believe that an executive session would be in order if you wish to discuss anything in depth.

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CHAIR HOKAMA: Okay, thank you very much. Members, you've heard the comments from Deputy Lovell. Questions for open session? Is there a request for executive session? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, move for executive session.

COUNCILMEMBER COCHRAN: Second.

CHAIR HOKAMA: I have a motion made by Mr. Mateo; seconded by Ms. Cochran to enter into executive session. The Chair will state that executive session can be considered by this Committee according to Hawaii Revised Statutes 92-5(a)(4), which allows this Committee to consult legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee. Any discussion on the motion, Members; if not, all in favor of the motion please say "aye"?

COUNCIL MEMBERS: "Aye".

CHAIR HOKAMA: Opposed say "no"? Motion is carried with 8 ayes; 1 excused - Mr. Victorino.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, and White.

NOES: None.

EXC.: Councilmember Victorino.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

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

CHAIR HOKAMA: Prior to entering into executive session, I'd like to call up also at this time, Deputy Lutey, in case we need to consider this also for executive session. So, we'll take a short break from Policy 1(23). May I direct you to, please, Policy 1(22).

ITEM POL-1(22): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LILIA CARDONES AND NOEL CARDONES V. COUNTY OF MAUI, ET AL., CIVIL 11-1-0293(1)) (CC 11-30)

CHAIR HOKAMA: This is specifically a settlement authorization regarding Lilia Cardones and Noel Cardones vs. County of Maui, et al., Civil 11-1-0293(1). And this is regarding alleged damages

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resulting from a collision of motor vehicle and a motor vehicle driven by a County employee. Ms. Lutey, is there anything you can, you wish to say in open session at this time, please?

MS. LUTEY: Yes. Thank you. On April 14, 2009 at about 2:47 in the afternoon, Mrs. Cardones was driving in the south bound lane on South Papa Avenue waiting to turn left onto One Street. The police officer turned onto South Papa from Kaahumanu Avenue rear ending her and causing damages to Mrs. Cardones' vehicle as well as injuries to her. Because this matter is in active litigation, I am asking for executive session to discuss the possibility of a settlement agreement but I am open for questions that don't require executive session.

CHAIR HOKAMA: Okay, thank you. Members, any questions for Deputy Lutey in open session regarding this settlement authorization consideration? Further request for executive session? I have a motion, Mr. Carroll, thank you.

VICE-CHAIR CARROLL: Move for executive session.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Moved by Mr. Carroll; seconded by Ms. Baisa. Members, this Committee is allowed to go into executive session by two parts of Hawaii Revised Statutes, Section 92-5(a)(4), which the Chair already read regarding this authority for the earlier matter as well as Section 92-5(a)(8) of the Hawaii Revised Statutes, which is to deliberate and make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a State or Federal law or a court order. Any further discussion on the motion for executive session regarding Policy Item 1(22)? Having none, all in favor of the motion, please say "aye"?

COUNCIL MEMBERS: "Aye".

CHAIR HOKAMA: Opposed say "no"? Motion is carried. We'll take a recess; we'll enter into executive session.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Pontanilla, and White.

NOES: None.

EXC.: Councilmember Victorino.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

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

CHAIR HOKAMA: So because of the timing of both Deputies that are critical to both cases, I'm going to take Ms. Lutey first since she has a 2 o'clock Federal conference call, and then Ms. Lovell needs to leave by 2:45. So as soon as we're done with Ms. Lutey's case, we'll take up Ms. Lovell's case. So, this Committee shall stand in recess and prepare for executive session. . . .(gavel) . . .

RECESS: 1:12 p.m.

RECONVENE: 1:59 p.m.

CHAIR HOKAMA: . . .(gavel) . . . Policy Committee shall return to open session. Thank you, Members. So taking in order regarding Policy 1(23), you know, since this may take longer than shorter regarding, again, our uncertainty when the Federal court will schedule motions and filings regarding this particular civil case, Members, the Chair would prefer that we just file this communication and allow the Corporation Counsel again under Rule 6a of the Rules of the Council for a direct transmittal in the future should we need so.

ITEM POL-1(23): LITIGATION MATTERS (STATUS: HAWAII WILDLIFE FUND, SIERRA CLUB - MAUI GROUP, SURFRIDER FOUNDATION, AND WEST MAUI PRESERVATION ASSOCIATION V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK) (CC 11-30)

CHAIR HOKAMA: So, if there's no objection, Members, the Chair will file this County communication regarding Policy 1(23)?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JP).

CHAIR HOKAMA: Okay, thank you. We shall file it.

ACTION: Recommending FILING of correspondence dated April 20, 2012.

ITEM POL-1(22): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: LILIA CARDONES AND NOEL CARDONES V. COUNTY OF MAUI, ET AL., CIVIL 11-1-0293(1)) (CC 11-30)

CHAIR HOKAMA: Regarding Policy Item 1(22), I'm going to ask for a motion to grant settlement authorization as discussed in this executive session. Mr. Carroll?

VICE-CHAIR CARROLL: So moved.

COUNCILMEMBER BAISA: Second.

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CHAIR HOKAMA: Okay, there's a motion made by Mr. Carroll; seconded by Ms. Baisa to recommend to Council the terms of settlement as discussed in executive session regarding Policy Item 1(22), which is the Lilia Cardones and Noel Cardones vs. County of Maui, et al; Civil 11-1-0293(1). Any further discussion, Members, on the motion? Having none, all in favor of the motion please say "aye"?

COUNCIL MEMBERS: "Aye".

CHAIR HOKAMA: Opposed say "no"? Motion passes with 8 ayes; 1 excused - Mr. Pontanilla. Thank you.

VOTE: **AYES:** **Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Victorino, and White.**

NOES: **None.**

EXC.: **Councilmember Pontanilla.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending ADOPTION of resolution.**

ITEM POL-3(7): **HAWAII STATE ASSOCIATION OF COUNTIES ("HSAC") (COUNCIL'S REPRESENTATIVES FOR FISCAL YEAR 2013 HSAC EXECUTIVE COMMITTEE) (CC 11-32)**

CHAIR HOKAMA: May I direct you please to Policy Item 3(7). This is from the Hawaii State Association of Counties - Maui County Council's representative for Fiscal Year 2013 Executive Committee. Mr. Pontanilla left. But I am asking you and this is what we've done in the past and so if you have no objections, Members, we have a proposed draft resolution which is just to allow Mr. Pontanilla and myself to finish the term, which is another six months, and allow the new Council to pick their representatives for the upcoming term. Is there any question for the Chair? Mr. Couch?

COUNCILMEMBER COUCH: Yeah. The resolution is to . . . the resolution shows . . .

CHAIR HOKAMA: The resolution says that Mr. Pontanilla will continue to serve on the Executive Committee and that I would continue to serve as the alternate --

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CHAIR HOKAMA: Yes.

MS. NAKATA: Thank you.

ITEM POL-10(14): PROPOSED CHARTER AMENDMENTS (VACANCY IN OFFICE) (CC 09-229)

CHAIR HOKAMA: Okay. We are now on Policy Item 10(14), Members. We are well aware of what the Charter Commission is recommending to the electorate, and that is within their purview and this Committee and this Chair respects their ability and authority to do so. Regarding Policy 10(14), however, the Commission did not bring this forward, and in our review of the original Charter Commission's recommendations, the Chair has picked up this proposed Charter amendment under the section called "vacancy in office" to provide clarity and to avoid additional need for litigation in the future should the similar situation occur as we've experienced with Mr. Mateo's unique situation. So, is there additional discussion, Members, on the proposal that is attached to my memo of April 17, 2012? We've had this reviewed by Corporation Counsel. It hasn't been signed off . . . let me take that back. It has been signed off, thank you, on the April 25th memo, Members. And in this one, the Charter proposal would add the sentence - *the remainder of the unexpired terms served by Council member filling such a vacancy shall not be counted towards the maximum number of consecutive terms the Council member may serve*. The vacancy shall be filled, and that's the end of the proposed amendment. Questions? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, no specific question because I think this is self-explanatory as it reads at this point. However, it does provide the direction that becomes necessary because of several challenges that can arise out of not being clear enough and recognizing what a term actually is. So, I like the Mateo amendment. I think it's appropriate in alleviating some of the potential difficulties for both -- for the sitting member that may be appointed in the event of, and it helps to bring that kind of clarity and better understanding to avoid unnecessary litigation and costs. So, thank you for this particular amendment, Mr. Chair.

CHAIR HOKAMA: Okay. Any further discussion? Questions from the Members? Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, sir. And, you know, again, I agree with Mr. Mateo that this clarifies it. The question I have for you, Chair, you know, it says that this amendment to clarify the remainder of an unexpired term served by the Councilman filling the vacancy of an office should not count towards the maximum number of consecutive terms the Council member may serve. I pretty much understand that. However, I think the question is just like Mr. Mateo mentioned, you used the words "full terms".

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER VICTORINO: And again, this is where that gray area comes out again, right, full terms. Should that not say, full consecutive terms or consecutive full terms or something of that

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nature just to ensure that this is exactly what we mean. That there's no way you can dick around with this once it's been set. I think that's the one. You don't want to be going back and forth on this in the future, right?

CHAIR HOKAMA: Good point, Mr. Victorino. We'll ask Mr. Kushi for his thoughts on this matter if consideration of maybe adding the word "full", consecutive full terms might bring better clarity. Mr. Kushi, any comments, please?

MR. KUSHI: Mr. Chair, first of all, I think you should leave it as is, as proposed. If you put the word "full" in front of the term "consecutive terms" it may confuse the issue more at this time. As you know, there will be two proposals on the election. One is the Charter Commissions' proposal about the two to four years. And this body's proposal to the four years, however, your proposal, the Council's proposal does state full terms.

CHAIR HOKAMA: Right.

MR. KUSHI: Charter Commission's just says three consecutive terms whether full or not, whether two years or four years based on the staggering concept.

CHAIR HOKAMA: Uh-huh.

MR. KUSHI: Let's assume that both of them don't pass and you're back to two year terms. The existing language as is right now I believe states, "No member of the County Council shall serve more than five consecutive full terms". By adding this language to Section 3-4, basically any person filling an unexpired term mainly an unexpired term is not a term at all. So it really doesn't matter. You don't count it as a term whether either version passes.

CHAIR HOKAMA: Okay. Mr. Victorino, you've heard Mr. Kushi's response?

COUNCILMEMBER VICTORINO: Yeah, you know, I'm not one of those legal type entities that I can answer that but if you feel that that's enough safeguard to prevent, I mean, you cannot absolutely stop all people from challenging and suing or whatever, yeah. We understand that. But we want to minimize, you know, to a point where it becomes really as clear cut as possible that challenges frivolous, in other words, and that we can move on and not putting Mr. Mateo or anybody else through this in the future. Now, I think that's a waste of County effort and time, but more importantly, if it's clearly stated that it's consecutive terms in my mind just like what our Charter amendment is trying to propose, you know it's consecutive terms. It's nothing else. But I will go with what Mr. Kushi says. He's a little more knowledgeable than I am in the legal realm.

CHAIR HOKAMA: Okay.

COUNCILMEMBER VICTORINO: Thank you, Mr. Chair.

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CHAIR HOKAMA: Okay, thank you. Further questions, Members? Any further discussion? If not, the Chair would ask for a motion to recommend to Council that the attached proposed amendment to the revised Charter of the County of Maui, 1983, as amended, relating to "Vacancy in Office" pass on first reading. Mr. Carroll?

VICE-CHAIR CARROLL: So move.

COUNCILMEMBER BAISA: Second.

CHAIR HOKAMA: Have a motion made by Mr. Carroll; seconded by Ms. Baisa. Members, is there additional discussion on the motion regarding the proposed Charter amendment -- Vacancy in Office, Section 3-4? Having none; all in favor of the motion, please say "aye"?

COUNCIL MEMBERS: "Aye".

CHAIR HOKAMA: Opposed say "no"? Motion passes with 8 ayes; 1 excused - Mr. Pontanilla. Thank you very much, Members.

VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and Councilmembers Baisa, Cochran, Couch, Mateo, Victorino, and White.

NOES: None.

EXC.: Councilmember Pontanilla.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending FIRST READING of resolution.

ITEM POL-48: INTERGOVERNMENTAL AGREEMENT WITH HAWAII AIR NATIONAL GUARD REGARDING USE OF UKUMEHAME FIRING RANGE (LAHAINA) (CC 12-81)

CHAIR HOKAMA: The last item we have for today is Item-48, under Intergovernmental Agreements. We do have a proposal before us regarding the County of Maui, specifically the Department of Police with State of Hawaii Air National Guard. And we have Mr. Hanano from Corporation [sic] to assist us. And I believe it's Lieutenant Leighton Kanaele joining us.

MR. HANANO: Good afternoon, Chair.

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CHAIR HOKAMA: Good afternoon, Mr. Hanano, and Lieutenant, thank you for joining us. Members, if you look at your item under Policy-48, it's regarding the Ukumehame Firing Range. And interesting enough it is a Department of Parks facility, which has four separate firing ranges. They have a pistol range, a rifle range, a player target range, and the Police range. And correspondence of May 4th, 2012, the Department of the Corporation Counsel transmitted a revised proposed resolution to clarify that the agreement relates to the Police Department's firing range only. It is attached to you, your documents, Members, as the new Exhibit 1. It is intended to show the applicable portion of the firing range. Please note, however, that the revised resolution calls out a revised title to the Memorandum of Agreement, and although the MOA hasn't been revised. So that's a technicality. And we'll ask Mr. Kushi and Mr. Hanano whether the intention is to revise the MOA to clarify our intent in the title regarding the Police firing range only for the authorized use. Okay. And Deputy Hanano, if you would like to give a comment?

MR. HANANO: First of all, Mr. Chair, I have to make one correction that was brought to my attention. On Exhibit 1, I guess the Lieutenant here can explain it in further detail. The area that's going to be utilized actually the next one over, the lot over. Maybe I can have him explain the configuration of that particular firing range.

CHAIR HOKAMA: Okay, Lieutenant, if you would, please, share your comments?

MR. KANAELE: Good afternoon.

CHAIR HOKAMA: Good afternoon.

MR. KANAELE: The area that's marked off that's our actually the Valley Isle Shooter's Club range. It's the one that's right next door to it is our police range.

COUNCILMEMBER COUCH: Which direction?

MR. KANAELE: To the right towards Maalaea.

CHAIR HOKAMA: Okay, the green demarked area that is correct or incorrect at this time, Lieutenant?

MR. KANAELE: That is incorrect the one that's marked right now. That's another private range.

CHAIR HOKAMA: Okay, okay. So we'll need to get that squared away. You know, couple things, you know, since . . . looks like we're going to need to do some additional revision. We'll get the exhibit revised, Members. Should we also, and again my apologies - this is not a resolution; this is a bill for an ordinance to authorize the Mayor to enter into this intergovernmental agreement. Do we need to also, Mr. Kushi, Mr. Hanano, regarding the MOA, do we need to revise the title for clarity? Is that something you folks would recommend or what is currently proposed is . . . satisfies the County's requirements?

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MR. HANANO: Yes. I guess we should make it clear that it's only the MPD portion of the total firing range.

CHAIR HOKAMA: Okay. So that's two that we're going to need to revise. One thing I wanted to ask you for comment and, Lieutenant, also Kanaele, if you would give us . . . you know, for me, as my experience has told me not to allow unending agreements to go forward. So, I'm happy to consider a length of time that makes sense but I think every now and then situations change. Maybe the Department's needs and use of the range changes, or the National Guard or even the County. So I was looking at maybe a ten-year agreement, and is that something that you folks feel is . . . going to be detrimental but you know within ten years you come back and ask for extension or a new agreement with a new return. Any comments, please, Lieutenant or Mr. Hanano?

MR. KANAELE: It wouldn't be a problem with us as long as we pass it on to the next generation coming through the section. Someone will need to come and ask for permission for the use of the range.

CHAIR HOKAMA: Okay, thank you. Maybe this would motivate the State to maybe help you with maintaining or expanding or improving the County's range. Any questions, Members, for either the Lieutenant or Mr. Hanano regarding this? Okay. I'm going to ask at this time then, Members, that we defer this item. We'll send a correspondence to Mr. Hanano and also make sure the Police Department is aware for three things - put in a termination of ten years, get the exhibit appropriately corrected to show the specific range as well as adjusting the title of the Memorandum of Agreement. Anything else, Members? Okay. Is there any objection to deferral?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: JP).

ACTION: DEFER pending further discussion.

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CHAIR HOKAMA: Okay, Policy 48 at this meeting shall be deferred for future action. Thank you, Lieutenant. We appreciate the time. Mr. Hanano, thank you very much. There being no further business, anything else, Staff? Okay, there being no further business for this Committee, the Policy Committee of May 8th of 2012 is adjourned. . . .(gavel). . .

ADJOURN: 2:20 p.m.

APPROVED:



G. RIKI HOKAMA, Chair
Policy Committee

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Transcribed by: Jo-Ann Sato