

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

Council of the County of Maui

MINUTES

March 17, 2014

Council Chamber, 8th Floor

CONVENE: 9:08 a.m.

PRESENT: Councilmember G. Riki Hokama, Chair
Councilmember Donald G. Couch, Jr., Vice-Chair
Councilmember Elle Cochran, Member (In 9:17 a.m.)
Councilmember Stacy Crivello, Member
Councilmember Don S. Guzman, Member (Out 12:08 p.m.)
Councilmember Michael P. Victorino, Member
Councilmember Mike White, Member

EXCUSED: Councilmember Gladys C. Baisa, Member
Councilmember Robert Carroll, Member

STAFF: Carla Nakata, Legislative Attorney
Tammy M. Frias, Committee Secretary
Raynette M. Yap, Committee Secretary
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Michael J. Molina, Executive Assistant, Office of the Mayor (Item PIA-2(22))
William R. Spence, Director, Department of Planning (Items PIA-1(34) and 1-(35))
Michele N. McLean, Deputy Director, Department of Planning (Items PIA-1(34) and 1-(35))
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
(Items PIA-1(34) and -1(35))
Mary Blaine Johnston, Deputy Corporation Counsel, Department of the Corporation
Counsel (Items PIA-1(34) and 1-(35))
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
(Item PIA-1(36))
Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel (Items
PIA-1(34), -1(35), and -1(36))
Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: John Noble (Item PIA-2(22))
Jonathan Starr (Item PIA-2(22))

PRESS: Susan Halas, *Maui Weekly*
Melissa Tanji, *The Maui News*

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Akaku--Maui County Community Television, Inc.

CHAIR HOKAMA: . . .(gavel). . .The Council's Committee on Policy and Intergovernmental Affairs shall come to order. This is the regular meeting of March 17, 2014. Present is Vice-Chairman Mr. Couch.

VICE-CHAIR COUCH: Good morning, Mr. Chair.

CHAIR HOKAMA: Good morning. Committee Members, Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR HOKAMA: Morning. Mr. White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR HOKAMA: And Mr. Victorino.

VICE-CHAIR VICTORINO: Aloha and good morning, Chair.

CHAIR HOKAMA: Excused are Mr. Carroll, Ms. Cochran, Ms. Baisa, and also present is Mr. Guzman so we have a quorum to conduct the business. We shall take testimony before we take our agenda items for discussion, Members. Those wishing to provide testimony, you have three minutes. When your name is called please come forward, state your name, if you represent a group, please state that group's or organization's name. You have, again, three minutes. We shall assist you with a light. At the two minute-30 second mark you shall have the yellow light. At the three minute mark you shall be asked to conclude your comments. Members may ask for clarification after testimony, and then we'll move on to discussion and decision-making.

. . .BEGIN PUBLIC TESTIMONY. . .

CHAIR HOKAMA: This morning we have a request from Mr. John Noble to come and give testimony.

MR. NOBLE: Good morning.

CHAIR HOKAMA: Good morning.

MR. NOBLE: My name is John Noble. I have been at 160 Market Street, North Market Street in Wailuku since 1977. I'm here to talk against the appointment of Mr. Starr to the MRA and here doing damage control because Mr. Starr is not qualified. And he supported all the failed policies of the past 20 years. Three million dollars to Jocelyn, \$3 million to a parking study, not one parking spot, \$78,000 to tell us we need more restaurants and so on and so on. The policies that this MRA has conducted, it made it dangerous for those of us in the business community. The

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bum benches, they've taken away the zoning. The MRA, they keep talking about it morphing. They're not following the law. They've destroyed the zoning. They've destroyed the parking. Twenty-five million dollars' worth of parking for these bum benches and stuff. He supported all of these policies, and he likes to call me "disruptive" for what we used to call "taking care of business". And what we need in this MRA is somebody to start taking care of business instead of just wasting money. We need infrastructure, security, parking, and things like that need to be dealt with. We need somebody that's a leader in this...that's going to follow the redevelopment law. Mr. Starr hasn't done that. He's been a proponent of these dangerous policies that have destroyed our parking, our zoning, our signage, and all down the line. And we've got 20 vacant lots, 20 vacant stores, 20 nonprofits, 20 buildings that need to be...dilapidated and need to be torn down. We need to have somebody in this MRA that knows what they're doing, and knows, follows the law, and does the things that need to be done. Thank you.

CHAIR HOKAMA: Thank you, Mr. Noble. Any questions for the gentleman on his testimony, Members? Having none, Mr. Noble, thank you very much. Hana Office, Ms. Lono, anyone wishing to provide testimony?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR HOKAMA: Thank you. Ms. Fernandez, Lanai?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR HOKAMA: Thank you. Ms. Alcon, Molokai?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR HOKAMA: Okay. Thank you. Anyone else wishing to provide testimony in the Chambers? Having none, Members, the Chair will close testimony for today's meeting.

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Thank you, Members. Thank you Offices, District Offices.

...END OF PUBLIC TESTIMONY...

ITEM PIA-2(22): NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (KULA AGRICULTURAL PARK COMMITTEE; MAUI REDEVELOPMENT AGENCY; AND URBAN DESIGN REVIEW BOARD) (CC 13-42)

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CHAIR HOKAMA: We shall now move on to Policy Item 2(22) under the heading of Nominations to Boards, Committees, and Commissions. This morning we have three considerations: one for the Kula Agricultural Park Committee, one for the...a member to the Maui Redevelopment Agency, and one, a member to the Urban Design Review Board. This morning joining us is Mr. Molina from the Office of the Mayor is also available to give comment. We'll go in order. Regarding the Agricultural Park Committee for Kula, the Mayor has nominated Douglas Wright for a term to expire March 31, 2019. There was no request for attendance before the Committee but we'll ask Mr. Molina for comments.

MR. MOLINA: Good morning, Mr. Chair and good morning, Committee Members. Mr. Wright has expressed interest to the Administration in serving on the Kula Ag Park. As you will note on his application, he has a very extensive legal background. And he is originally a Maui boy, a St. Anthony graduate, and attended school at Notre Dame, and then for a while lived in Upstate New York, and also I believe, attended college over at Hofstra University so he certainly has the credentials. And in his, I guess his feeling is to come back to Maui and also give back to the community in this particular capacity. And I'm available for any questions from the Committee Members, Mr. Chairman. Thank you.

CHAIR HOKAMA: Okay. Thank you very much. Any questions for Mr. Molina on the nomination of Mr. Wright to the Kula Ag Park Committee? Okay. Having none, we'll go to the next one. Maui Redevelopment Agency. We have Mr. Starr is also present so if Mr. Starr, you can come down and introduce yourself and give your remarks to the Committee, please.

MR. STARR: Thank you, Mr. Chair. Good morning, Chair Hokama, Vice-Chair Don Couch, able and honorable Council members. Thank you for having me before you. I am...been involved in Wailuku for, oh, about 15 years. We are major property owners here and we believe that Wailuku should be the gem of Maui. It should be the place where the streets are busy in the afternoon and evening, where people are going for lunch, and where the streets are clean, and safe, and vibrant. And it certainly has its issues. It's not clean and safe at this time. It's not vibrant and it's really the time for different levels of the community, both government, citizens, storeowners, business people plus also the other outside of the County-levels of government, such as the State and Federal government to start working together and find ways to try to make Wailuku live up to its potential. There's a lot of issues and impact, clean and safe is one area. I, I've been a member of the International Downtown Association and Urban Land Institute, and while I was on the Maui Planning Commission I attended a lot of the American Planning Association conferences, and the discussion there when you talk about a small town is first it has to be clean and safe to make people want to be a part of it, to make them feel proud of the, of the place and the community. And that's, I feel the first step that Wailuku really needs to, needs to tackle, and so if I'm confirmed to the MRA I'm going to work very hard to create a program where we can make the streets safe during the day and at night and where they are clean. Now Lahaina has a similar type of program which is very successful. Makawao's got an emerging program and Wailuku certainly should work to do what perhaps County government and police find difficult, is having a presence on the street, and having entities to keep it clean, and then we need to try to make the town more vibrant. Right now the town as a place of business is failing.

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It's very difficult for a property owner to lease spaces and to get rents that pay the expenses of owning and operating those properties. I know that well myself and we need to get beyond that. Wailuku should be a place where people who work in Wailuku, there are, I believe it's 19,000 at last count, people who work in the vicinity of Wailuku for County, State, Federal government, the hospital, the college, teach at the schools, attorneys and other, many other walks of life work around Wailuku. Very few of them live in town and it would be a much better thing if we can create an atmosphere where people want to be close and where everyone doesn't need to get in a car every day where we have that option along with other options. So I do feel a passion for the town. A lot of you have known me for many years and have heard this before, and I believe that this is the time, and the Maui Redevelopment Agency should take a leading role in, in helping create a coordination and a consensus that we can work together and we can really make Wailuku the place that we want it to be, the place we can be proud of as our seat of government, and the center of our Maui island and Maui County. And I really ask for your kokua in this appointment to the MRA so that I can engage and do my best to try to move it in that direction. I really like the people on the MRA. It has good members existing. Our Planning staff is really great, all the way from our Director and Erin Wade who works with, with Wailuku and small towns in particular, Michele and everyone else, the Long Range people. The vision is there. We just need to put the pieces together and the economic conditions are right. The town can really move forward and I hope that we can all work together and I, if I am appointed you're going to be hearing from me lots because the Council, as well as the Administration, will play leading roles in moving Wailuku forward. Well, enough, enough rambling. I'm happy to answer any questions and thank you for being here.

CHAIR HOKAMA: Thank you, Mr. Starr. I'll ask the Members if they have questions. We recognize the presence of Ms. Cochran. Good morning.

COUNCILMEMBER COCHRAN: Good morning, Chair. Thank you.

CHAIR HOKAMA: Mr. Victorino, questions for the gentleman?

COUNCILMEMBER VICTORINO: Yeah. Thank you. And Jonathan, thank you for being here. You've heard the testimony of the testifier. How do you address something of that nature that he, and everyone has right to have their opinions and their feelings and, but how do you address something that was said in that manner?

MR. STARR: Well, you know, I like Mr. Noble and appreciate he's always got something interesting and something to add to the discussion, and he's right that a lot of the previous attempts to improve the town have not worked as we've wanted, but to me that doesn't mean we stop trying to do things. It's means that we have to find ways to do them better. I personally believe that the MRA is a useful structure. I know that for a long time Mr. Noble had a banner that said "abolish the MRA" and I, and I never really agreed with that. I always felt what we wanted to do is empower it and have it create consensus and partnerships. So while, you know, I respect his point of view, my feeling is different. I really want to, to move forward and do things better, and I hope that as we do that Mr. Noble becomes part of the, part of the team, and we can make the

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town safe. We can make it clean; we can increase parking, but parking is only part of the transportation issue 'cause we also need sidewalks so you can walk around, bikeability and transit, and so I hope we're going to work together. I, you know, I feel that I certainly have a track record. I spent five years on the Maui Planning Commission, two of them as the Chair. I think my...what I stand for and the way I go about things is, is pretty open to understanding. My record is very public and I stand on it and I'm proud of it.

COUNCILMEMBER VICTORINO: Well, I will agree with you. You're bio here, you know, you've been a part of just about anything and everything you can think of from nonprofits to other issues, and on Board of Water Supply, Hana Advisory, you name it, you've been there. So I think that at least in my mind, Mr. Chair, shows the commitment and the care that we look in some of our candidates. Again, again, the concern on Mr. Noble and others that I've, have called me, is not something that deters me from saying that I rather enjoyed working with you in the past and I hope to continue working with you in the future on not only Wailuku and MRA but other issues. So thank you, Jonathan, for addressing that question and being very upfront and honest. Appreciate that. Thank you, Mr. Chair.

CHAIR HOKAMA: Mr. Guzman, questions?

COUNCILMEMBER GUZMAN: Not at this time. Thank you, Chair.

CHAIR HOKAMA: Mr. White?

COUNCILMEMBER WHITE: No. Mr. Victorino asked my question. Thank you.

CHAIR HOKAMA: Mr. Couch?

VICE-CHAIR COUCH: Thank you, Mr. Chair. Thank you, Mr. Starr for being here. I noticed that you're on the Hawaii State Commission on Water Resource Management and the Kaupo Community Association Board. Those are the only two things you're currently involved in?

MR. STARR: Well, my own, my own personalized business, but --

VICE-CHAIR COUCH: Well, yeah.

MR. STARR: --yeah, those are the...

VICE-CHAIR COUCH: And the concern that we have, usually, is your time commitment to the MRA. Like you said that they haven't had quorum for a while. If they start, if you're on, and they start getting quorum are you going to be able to make the meetings?

MR. STARR: Yes, sir. The meetings are on Fridays. I have no other, nothing else scheduled on Fridays and I have a record where it's really rare that I miss meetings. I think I missed one Planning Commission meeting in five years; I was at a conference and the same with Water Commission.

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I take this stuff seriously and I work very hard to be, to be serious and good and I have a perfect or near perfect attendance.

VICE-CHAIR COUCH: Okay. Thank you. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair and pardon my tardiness this morning. And good morning, Mr. Starr. Thank you.

MR. STARR: Good morning.

COUNCILMEMBER COCHRAN: Not any questions, but I just do know of Mr. Starr's participation in the neighborhood, you know, I mean, in a lot of different venues, but I know that his place is smack dab pretty much in the middle of Wailuku and brings a voice to that area firsthand knowledge, and so I just looking forward to having his participation on this board, this Commission and thank you for your, yeah, your volunteerism. So again, thank you. Just a comment. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: No comments at this time, Chair. Thank you.

CHAIR HOKAMA: Okay. Thank you. How do you view the municipal parking site?

MR. STARR: I feel that we have a real need to create more parking and as well as more activity of all types in the center of the town. And we need develop, develop a way of creating that parking that, first of all, will, you know, it can't impact County government too greatly so there have to, has to be a number of different mechanisms to fund it. Right now parking in Wailuku is free and that's a problem because it's not free. A property owner has to spend, I once calculated, it's about \$75 a month per parking space to maintain a parking space, so it's not free. The County employees all pay for parking and so although it should, when fee-based parking, which has been called for in all the parking management plans and planning that we've done, comes into effect it should start very low and very affordable, but we do need that to create a fund. We need to have a consensus on the plan and we need to bring in other entities to help fund it. The State has a lot of impact on parking and transportation in Wailuku. Not only is Main Street a State highway but the Judiciary and the State offices use a lot of the parking inventory, and a lot of the impact, and I really believe that they would be willing to contribute when we have a process going to create parking. But one of the projects that has been with the MRA for, since 2011, is a multi-modal circulation plan application which is a Federal grant to try to integrate both traffic, as well as, walkability, sidewalks, as well as a better integration with public transit and bikeability and that's, in the longer term, the way we're going to have to move forward is really improve the town's infrastructure and get Federal help in doing it. But the lack of parking spaces has been the impediment as long as I've been around the town. It's where the discussion always starts and

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stops when you talk about Wailuku, and until we get past the shortage of parking and create parking...

CHAIR HOKAMA: So are you into building this or talking about this?

MR. STARR: I'm into finding a way to build it as soon as we can and with as much consensus as possible.

CHAIR HOKAMA: Well, my thing is if the MRA and the departments listened to Council the last three times we had this before us, this structure would have been built. Okay. Nobody listens to what Council is saying. We're willing to fund and we're willing to build, you know.

MR. STARR: Yes, sir. And...

CHAIR HOKAMA: This is a 50-year old project. So I would say either make use of the MRA or as what created by Council, Council can take away and we can abolish the MRA too. It's a creature of the Council. No editorial comments, please.

MR. STARR: I cannot disagree with you. I think that in many ways the Council has been more forthright and willing to move forward, and the problem has been that, you know, people have not been on the same page. And I think that we can change that and I'm looking forward to the opportunity of working with the Council and with other entities so that we can do it and do it quickly, in the next year we should really see some motion.

CHAIR HOKAMA: Well, I'm willing to give the agency another chance but I'm tired of waiting too.

MR. STARR: Me too, sir.

CHAIR HOKAMA: What is your idea of financing for the parking structure?

MR. STARR: I think there needs to be a number of different mechanisms. I think there needs to be a parking fee which will be, will pay for some of the bonding when you look long term that money will go toward a fund. I think the State should kick in some of it. I think County should, should participate. I think one way or another a property owner should, should be a part of it as well, you know, not on a short term but on a longer term. There are mechanisms that other communities have used such as tax incremental financing, and I know there's a bill, that I believe it's still alive in the Legislature, that would, would allow that. And you know, there are a number of mechanisms that have to be applied together. It's not all going to come out of one pot.

CHAIR HOKAMA: Would this be a priority for you and the agency?

MR. STARR: It's a, it's a first priority because in everyone's mind there's a blockage and until we get past that discussion, it's very difficult to get any further discussion on the town until it is dealt with. So yeah that and the public safety is also a really great priority right now. We've had

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incidents on my own property almost every day and the same with many of the merchants. So those are the two, the two top, top tier items.

CHAIR HOKAMA: Thank you. Mr. Victorino, other questions?

COUNCILMEMBER VICTORINO: Oh, yeah. Thank you, and you know, Mr. Chair, I do agree too that it's been a long arduous process and nothing seems to be happening. You and I know when I first came in back in 2007, we had the whole charette and we went through the whole process with then Mr. Chris Hart, the late Chris Hart and his group, and had it all set, and it just went to the wayside again. You know, we had even Federal funds set and it went to the wayside. So I agree with you if the MRA is not able to push something through soon then maybe it should just come back to us and let us take care of it from that point forward. I agree.

CHAIR HOKAMA: We can move forward, Mr. Victorino. All it takes is, takes is money, right, Mr. White?

COUNCILMEMBER VICTORINO: Well, we can...but the thing is we had Federal funds committed to it and now we've lost that and once lost it's so difficult to get it back. You, you're well aware of that, Mr. Chair, so, but anyhow, I hope Mr. Starr, Jonathan, you'll, you'll be more apt to come to us, and let's look for solutions, and really work for solutions not just talk about it 'cause the time for talking is over now. It's really something needs to be done in the very near future and whether it's money from us or some other source, public/private partnership, I don't care, just so long as we get the job done.

MR. STARR: Well said, well said.

COUNCILMEMBER VICTORINO: Thank you, Mr. Starr. Thank you, Chair.

CHAIR HOKAMA: Okay. Mr. Guzman, any questions?

COUNCILMEMBER GUZMAN: No further questions.

CHAIR HOKAMA: Thank you. Mr. White?

COUNCILMEMBER WHITE: No further.

CHAIR HOKAMA: Mr. Couch?

VICE-CHAIR COUCH: No further.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: No, I'm good. Thank you, Chair.

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CHAIR HOKAMA: Ms. Crivello?

COUNCILMEMBER CRIVELLO: No. Thank you.

CHAIR HOKAMA: Any closing comment, Mr. Starr, you wish to leave with the Committee?

MR. STARR: Just that I'm, I really want to give it a try and I, I do agree that if the MRA can't move things forward in the next year or two then maybe it's time to rethink it, but I'm committed to giving it a try. I think it's a different climate. I think that we're in a different economic climate and I really have confidence in a lot of the people involved, starting with this Council, starting with the Department of Planning, and I really believe that they're going to help commit the resources we need. I really think State government will help and I'm out to get it done.

CHAIR HOKAMA: Well, I'm not as optimistic as you regarding the State government, but I can tell you, this is the County seat and I'm committed to this community and its civic responsibility of the role it plays for the whole County. So people like me want things done, please, Mr. Starr.

MR. STARR: If I may, just finish, that's all I've heard, that's all I've heard since I, my name came up in this regard is people telling me we want to get it done, we want to get it done now. And I really think maybe that's the difference between now and before.

CHAIR HOKAMA: Okay. Thank you very much for your presence. We thank you for making the time and your willingness to volunteer.

MR. STARR: Okay. Thank you very much. Aloha.

CHAIR HOKAMA: The next one we have is Hunton Conrad, Urban Design Review Board, term expiring March 31, 2019. Mr. Molina, your comments, please.

MR. MOLINA: Yes. Thank you, Mr. Chair. Mr. Conrad, as the Members will note, previously served on the Urban Design Review Board and is certainly interested in contributing his time to this Board again. He has certainly a lot of years here on Maui and has been involved in many different community organizations. Currently he is a board member of the Hui Noeau and with regards to time we did ask him about his availability to attend meetings, and he assured us that he will be able to attend these meeting from the Urban Design Review Board which is overseen by the Planning Department. Thank you, Mr. Chairman.

CHAIR HOKAMA: Okay. Thank you very much. Any further comments of...(coughs)...excuse me, comments of Mr. Molina. Any questions for the, Mr. Molina? Mr. Couch?

VICE-CHAIR COUCH: Nope.

CHAIR HOKAMA: None. Ms. Cochran?

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COUNCILMEMBER COCHRAN: No, Chair.

CHAIR HOKAMA: Ms. Crivello?

COUNCILMEMBER CRIVELLO: No, thank you, Chair.

CHAIR HOKAMA: Mr. Victorino?

COUNCILMEMBER VICTORINO: None at this time, Mr. Chair. Thank you.

CHAIR HOKAMA: Mr. Guzman?

COUNCILMEMBER GUZMAN: Nothing further. Thank you, Chair.

CHAIR HOKAMA: Mr. White?

COUNCILMEMBER WHITE: Nothing further. Thank you.

CHAIR HOKAMA: Unless there is a request for separation, the Chair is willing to move forward a, one motion for all three proposed resolutions.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GCB).

CHAIR HOKAMA: Chair is open to entertain a motion to send to Council a recommendation to pass three proposed resolutions. One, appointment of a member to the Kula Ag Park Committee for the County of Maui, and in that resolution the Mayor is recommending Douglas Wright for a term to expire March 31, 2019. The second proposed resolution, appointment of a member to the Maui Redevelopment Agency for the County of Maui. The Mayor is nominating Jonathan Starr for a term expiring March 31, 2019. And the final proposed resolution, appointment of a member to the Urban Design Review Board for the County of Maui. The Mayor is nominating Hunton Conrad for a term expiring March 31, 2019. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. I move to adopt the following resolutions. Number one, appointment of a member to the Kula Agricultural Park Committee for the County of Maui and moving the name of Douglas Wright to Exhibit "B". And then number two, appointment of a member to the Maui Redevelopment Agency for the County of Maui by moving Mr. Jonathan Starr's name to Appendix, I mean, Exhibit "B". And then number three, appointment of a member to the Urban Design Review Board for the County of Maui and moving the name of Hunton Conrad to Exhibit "B".

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

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CHAIR HOKAMA: We have a motion made by Mr. Couch, seconded by Mr. Victorino. Any further discussion, Members? All in favor of the motion, please say “aye”.

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed say “no”? Motion passes. Seven “ayes”, two excused, Mr. Carroll and Ms. Baisa.

VOTE: AYES: Chair Hokama, Vice-Chair Couch, and Councilmembers Cochran, Crivello, Guzman, Victorino, and White.

NOES: None.

EXC.: Councilmembers Baisa and Carroll.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: Recommending ADOPTION of revised resolutions approving the nominations.

ITEM PIA-1(34): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 07-1-0496(3)) (CC 13-41)

ITEM PIA-1(35): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: WILLIAM L. LARSON, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 09-1-0413(2)) (CC 13-41)

CHAIR HOKAMA: Thank you very much, Members. May I direct you to Policy Item 1(34). Thank you, Mr. Molina.

MR. MOLINA: Thank you, Chair.

CHAIR HOKAMA: This is under heading of Litigation Matters (Settlement Authorization: Douglas Leone, et al. v. County of Maui, et al., Civil 07-1-0496(3)). We have a proposed resolution dated March 5th, Authorizing Settlement of Douglas Leone and Patricia A. Perkins-Leone v. County of Maui, et al., Civil No. 07-1-0496(3). Okay. This is a complaint alleging inverse condemnation, denial of substantive due process rights, denial of equal protection, and demands damages including punitive damages, arising out of a dispute concerning plaintiffs’ proposal to construct a single-family residence on property located at 4492 Makena Keoneoio Road, Makena. And what I’ll do also, Members, is also have Corporation Counsel bring up 1(35) at the same time. There’s two separate cases with the same issues involved and it is basically neighboring properties, as I

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read it, the complaint. And so I'll let...oh, we got a team of, today. So who's going to start?
Mr. Rowe?

MR. ROWE: Yes. Thank you, Chairman. So we have, we have two cases here, the fact patterns are and the allegations are pretty much identical and so we would like discuss them at the same time rather than as separate issues. In both of these, we have been given settlement demands and we would like to discuss those with the County Council. Because this matter is in ongoing litigation, I would like to request an executive session.

CHAIR HOKAMA: Okay. We also have...and this two cases deals with also Department of Planning so we have the Director and Deputy present should we need them as resources for the vetment process of the Committee. Any other comments, Mr. Rowe, regarding either one, 34 or 35? No additional comments?

MR. ROWE: No, Chairman.

CHAIR HOKAMA: Okay. The Chair will be open to a motion for executive session on Policy Item 1(34) as well as Policy Item 1(35). The Chair will seek the Committee's ability to enter into executive session under Hawaii Revised Statutes 92-5(a)(4) which allows us to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and this Committee. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. I move that we go into an executive session pursuant to HRS 92-5(a)(4) for item number PIA-1(34) and PIA-1(35).

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

CHAIR HOKAMA: Thank you. I have a motion by Mr. Couch, seconded by Mr. Victorino for executive session. Any further discussion, Members? All in favor of the motion, please say, "aye".

COUNCILMEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"? Motion passes with seven "ayes", two excused.

VOTE: AYES: Chair Hokama, Vice-Chair Couch, and Councilmembers Cochran, Crivello, Guzman, Victorino, and White.

NOES: None.

EXC.: Councilmembers Baisa and Carroll.

ABSENT: None.

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ABSTAIN: None.

MOTION CARRIED

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

ITEM PIA-1(36): LITIGATION MATTERS (JOHN DOE V. COUNTY OF MAUI, LODGED UNDER SEAL IN CIVIL NO. CV14-00102 JMS BMK) (CC 13-41)

CHAIR HOKAMA: Before we call for a recess, I'm going to bring up Policy Item 1(36) under Litigation Matters. This is under the heading of John Doe v. County of Maui, originally lodged under seal in Civil No. CV14-00102 JMS BMK.

COUNCILMEMBER GUZMAN: Chair?

CHAIR HOKAMA: One second, Mr. Guzman. This matter originally came as a sealed complaint to the Committee and we have posted a proposed resolution which is requesting consideration of special counsel Marr Jones and Wang, A Limited Law Partnership in John Doe v. County of Maui. As your Chair understands it, the seal has been lifted end of last week, I believe, it was Friday, we now know who the plaintiff is. It is public information of...and the question has been whether or not this Committee can continue to move forward on this matter since under posting, it was posted under seal and under the generic John Doe v. County of Maui. The question also is whether or not the case...this has changed so much that the noticing we provided is insufficient to the public and that whether or not this would require a new posting before the Committee can take up the subject matter. I have my opinion, but I'm not the lawyer, so I'll ask Mr. Wong if he would give us a counsel on this issue, please.

MR. WONG: Sure. I'll take a stab at it. Quite frankly, the matter was posted as John Doe because the Court had it under seal as you discussed earlier. It's not within the control of the lawyers involved whether or not the Court maintained that seal or not. In the interim since we transmitted the matter to you, the Court released its seal, and has made the information public. You can move forward on this matter and not violate Sunshine Law as John Doe v. County of Maui. We all know who John Doe is simply because the Court has released that information. I don't believe that the Court's release of the information jeopardizes or causes any Sunshine Law violation. It's still the John Doe v. of County of Maui matter. It's the same identical matter. The Court has released it before we did, so in terms of whether or not the County or the general public is aware that, you know, this matter is before us, it was posted properly. It was listed properly as we received the document. Given the change by the Court in releasing the information, you know, we're just providing the clarified information by the Court and that is to provide you with a copy of it. It's public information, anyone in the community can search the Court docket and receive that information, anyone. You can go down to the Federal Court and get a copy of it so we're not hiding anything. We published it and noticed it as we received it. You continue to hear the matter as we posted it. You know, the fact that the Court has unsealed it

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doesn't change the legality of our posting, at least that's my humble opinion. If you have any questions, I can further clarify.

CHAIR HOKAMA: Okay. Thank you. So the Chair is...ruling is going to be we can continue to proceed on this matter at this time. The Chair will allow at this time questions from the Members to Corporation Counsel or the Chair regarding what the Chair and Corporation Counsel has just shared with the Committee. We are in open session. This is a case that is in litigation so I just advise be careful how we state or propose things in open session, please. Mr. Couch?

VICE-CHAIR COUCH: I guess the first question is is the amount sufficient or is that something we need to talk about in executive session?

MS. LUTEY: I actually think at this point we can address this matter in open session. We're just requesting a special counsel due to a conflict with our office. I have requested authority at \$150,000. Since that posting, I can tell you that another pleading has been filed. It's a temporary restraining order request and any time you get additional pleadings like that require court appearances and so forth, it drives up your cost so I don't think \$150,000 is going to be sufficient but I can certainly return to Council when we exhaust that amount.

VICE-CHAIR COUCH: Okay.

CHAIR HOKAMA: You have a follow-up?

VICE-CHAIR COUCH: Well, I guess that's a discussion probably we have to have eventually as to whether we just do it now or wait 'til it comes back. Can we change the amount, I mean, regard to the Sunshine Law, if we decide to do this?

CHAIR HOKAMA: Well, eventually after this question, opportunity of questions of you to myself or Mr. Wong, the Chair is going to recommend executive session because one, we need to first find out what is the conflict? Is it sufficient for us to consider special counsel or not? So we have to reach those determinations yet. We are still considering everything. Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Not at this time, Chair.

CHAIR HOKAMA: Ms. Crivello?

COUNCILMEMBER CRIVELLO: So if I'm understanding correctly, we would, you would recommend for us to go into executive session to discuss if we should approve monies for special counsel or approve hiring of the special counsel.

CHAIR HOKAMA: Well, those...it's a...I would say it's a logical step of questions we're going to need to ask in executive session, Ms. Crivello. And the first one is is the conflict sufficient that we need to consider a special counsel? I'm not...I haven't reached that point yet that I can tell

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you I've made a decision or recommendation, so it's something we're going to need to talk about in executive session regarding the strategy and what is the true liability before the County.

COUNCILMEMBER CRIVELLO: Okay.

CHAIR HOKAMA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you. My question was along those lines, Mr. Chair, that the ability of our Corporation Counsel to also defend us without outside counsel being part of it, so I will wait 'til executive session to ask that question and you, you're right on, you know, that in my mind there may be some, some area that we should look at before we go that step. But we'll do that in executive session. Thank you, Mr. Chair.

CHAIR HOKAMA: Mr. Guzman?

COUNCILMEMBER GUZMAN: Thank you, Chair. Is it my understanding that the Chair is going to take what we would call judicial notice that's it's already published in the newspapers and so on and so forth, the complaint itself has been published along with exhibits?

CHAIR HOKAMA: The Chair's understanding is it is public information --

COUNCILMEMBER GUZMAN: Okay.

CHAIR HOKAMA: --since the Court released the protection of sealed, and therefore, you know, what, I guess, the media had access to was all public information so to me that can be discussed in open session.

COUNCILMEMBER GUZMAN: Okay. And so in terms of going into executive session under Section 92-5, since the Corporation Counsel is requesting it or at least you're requesting it, you're basing it off of the 92-5(8)...

CHAIR HOKAMA: No. I would...*(inaudible)*...

COUNCILMEMBER GUZMAN: So that's already knocked out so we're basically looking at 92-5(4) --

CHAIR HOKAMA: Correct.

COUNCILMEMBER GUZMAN: --to consult with the boards under HRS, it says to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. So in this definition, "boards" can be I guess, replaced with "Council" or "Committee" or "Commission" but in the item agenda you've included the word "County" which the HRS Section does not include. So are we talking about the conflict with the County or are we talking about conflict with the Council, conflict with the Committee? I don't think this is within the exception to talk about in executive session the conflict with the

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Corporation Counsel, because they're not a committee, and they're not, they're not a board, so I need some clarification. So you need to...I'm asking to narrow the scope of the motion to go into executive session and specifically state on the record why we're going into executive session. And I also further need to relate to the Chair that as an overabundance of caution, I'm going to disclose a potential conflict of interest pursuant to Rule 9 of the Rules of the Council. And I want to reiterate what I've been stating to the media at this point that this disciplinary action taken on Commissioner Neldon Mamuad regarding the violation of the Administrative Violence in the Workplace Action Plan was handed down by the Managing Director, Keith Regan and pertains to the Commissioner's Mamuad's position as a Liquor Commissioner. It does not involve his employment as a part-time employee in a Council office. It is my understanding that Chair Baisa has already ruled on this matter months ago and so this matter or issue is moot in regards to the employment side. And in revealing my conflict, Chair, is that Mr. Mamuad is a part-time employee with me in my office. And I have utmost due respect to our Corporation Counsel as he is without a doubt the highest integrity and I know it's difficult to take on that position to take the bullets. He's also the godfather of my youngest child and I have a deep respect for him, so I at this time would like to ask the Chair for permission to abstain from voting on this matter.

CHAIR HOKAMA: The Chair has heard your request, Mr. Guzman, and the Chair is going to rule that he's in agreement with your request. I'm going to grant you to be excused from voting. I have no problem with you continuing to participate in discussions in the open session, but should we go into executive session, you would not be allowed to be in the executive session or to participate with the executive session. That's how the Chair understands the Rules of the Council and how we've conducted business in the past or as I have ruled in the past. So yeah, is there any questions to the Chair regarding his ruling?

MR. WONG: Chair, if I may?

COUNCILMEMBER VICTORINO: Chair?

CHAIR HOKAMA: Mr. Wong.

COUNCILMEMBER VICTORINO: Oh, sorry.

MR. WONG: I'd like to clarify that Mr. Guzman's, Councilmember Guzman's abstention should instead be a recusal as opposed to an abstention.

CHAIR HOKAMA: So noted. We'll mark it accordingly, recusal. Any other questions for the Chair?

COUNCILMEMBER VICTORINO: Chair?

CHAIR HOKAMA: Mr. Victorino.

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COUNCILMEMBER VICTORINO: Yeah so, as you were stating that you, we already voted on the other two to go into executive session.

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER VICTORINO: Is it my understanding that when, if we vote on this third one to go into executive session then it would, like in the past, we've had continuums of executive session that we would recess after items 1(34) and 1(35) and then reenter into executive session to 1(36) because Mr. Guzman could participate in the prior two.

CHAIR HOKAMA: That's correct.

COUNCILMEMBER VICTORINO: Yeah. So just so that the audience is clear that he can participate in 34 and 35 when it comes to 36 then you're asking him to recuse himself.

CHAIR HOKAMA: It's case specific.

COUNCILMEMBER VICTORINO: Case specific. Thank you very much for that clarification.

CHAIR HOKAMA: And the reason again on why the Chair wants to go into executive session on 1(36) is to discuss the matter whether or not we need special counsel, and I need to know what is the legal ramifications and impacts should we agree or do not agree with the request. That is the reason we are going to go into this session. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. Yeah, and this one's a kind of a sticky one in that, I believe, this is based on Mr. Mamuad's position as an officer of the County on the Administrative side but not as an employee of the County. Is that separable, first of all, in order to keep, potentially keep Mr. Guzman involved, or is that, are they so combined that he shouldn't be involved?

CHAIR HOKAMA: I will ask Mr. Wong but my...you know, as the Chair understands it, commissioners even if volunteer, once they accept the responsibility, they become officers of the County.

VICE-CHAIR COUCH: Agreed, but not as an employee of Mr. Guzman, that's, that's where the weirdness comes in.

CHAIR HOKAMA: He has, yeah, multiple dragons to deal with on this one. So Mr. Wong, any comments?

MR. WONG: Absolutely, Chair, I'd like to address that. Quite frankly, the topic of separating the Administrative versus the Legislative role that Mr. Mamuad serves really is a moot topic right now, because Councilmember Guzman has already recused himself and it's already been accepted by, by the Chair. If I may, Chair, I could address conflict issues and special counsel

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retainage to the extent possible in open session and it may, it may obviate the need to go into executive session.

CHAIR HOKAMA: Mr. Couch.

VICE-CHAIR COUCH: That's fine. Thank you.

CHAIR HOKAMA: Okay. Ms. Crivello.

COUNCILMEMBER CRIVELLO: Clarification, please. So being that Mr. Mamuad was supposedly [*sic*] disciplined as a County employee, does he --

UNIDENTIFIED SPEAKER: No.

COUNCILMEMBER CRIVELLO: --well, on an Administrative side as a volunteer for a commission, does he also qualify for special counsel monies?

CHAIR HOKAMA: Mr. Wong.

MR. WONG: Let me address it this way. If you look at the face of the pleadings, as published in open court, Mr. Mamuad is the plaintiff; he is represented by multiple attorneys. He has chosen to file the claim against the County. In that regard, typically the analysis is he's not being attacked in that complaint. In fact, the County is being attacked and so there would be no need for any analysis on special counsel. You know, we can get into what's already public information and the text of the allegations in the complaint which on its face creates a conflict for my office.

COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR HOKAMA: Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. You know, as a, as a manager with over 28 years of running an operation and many years of having a violence in the workplace policy, I see this, at least on its face, to be a situation that's completely avoidable and it could've been avoided. And it seems to me that the, the complaint was most likely precipitated by the actions of the County as opposed to just the actions of the plaintiff. And I'm troubled by the fact that we're sitting here now looking at hiring special counsel, now hearing that it may...that \$150,000 may not be adequate. I look at this situation and say this is very easily reparable if one or both parties just simply take a very small step backwards instead of standing at the precipice playing tiddlywinks, and, you know, this is, this is a really manini issue and it seems to me like it's a pretty strong case that, you know, we should all have the ability to speak our minds and I'm a little concerned that if, you know, well, I have not seen and hopefully will hear at some point what, what specific comments were made that, that were offensive or inappropriate based on the Violence in the Workplace Act, policy rather. But at this point I don't see anything really all that egregious or concerning and if, and if they are egregious or considered egregious and concerning then I'm

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concerned about some of the things that we say about each other and others in the County. And I really, I'm very concerned about the direction this is seemingly taking us. So that in addition to the fact that with the post office issue, this body couldn't even come together for a \$20,000 fee for special counsel and yet now we're being asked to fund in excess of \$150,000. I think we should be able to see our way clear to setting up the same Chinese wall in this case that we did in the post office case. So I would like to hear a, if we can do it in open session, I'd like to hear a point-by-point chronology of how we got here if that's possible in open session.

CHAIR HOKAMA: Mr. Wong.

MR. WONG: Unfortunately, Councilmember White, the point-by-point chronology would get to the substance of what's before you, and I would not have that method of discussion in open session. The basis for the need for special counsel I believe you can glean from the allegations in the complaint itself, but as to the specifics of the allegations and its merit, we would not want to have that engagement in open session. We could certainly have that in executive session and you would be able to go through allegations one through, I don't remember what the end number was, but in numerical order. It could be done. Unfortunately, that would be getting to the heart of the issues involved and the merit or meritlessness of those allegations and I couldn't do that in open session.

COUNCILMEMBER WHITE: Chair, if I might follow up? My concern with that is that this is a really fundamental argument and it's a case in which I think the County might have overstepped their bounds, and I think this in particular is the kind of item that I would prefer discussed in open session, because I think it's important for the public to know what the, what the range of, the range of motion, or range of action that the County sees appropriate to take against various citizens whether they're employees of the County or officers of the County through their involvement on a board or commission. So I think this is one of those cases where the, I don't see huge liabilities on the side of the County, because I would guess that this is something that can be dismantled pretty quickly if we put our minds to it in the right way. Similarly, it could become much more complicated real fast if we both jump over the precipice. So I won't be supporting the motion to go into executive session when one is made, Chair.

CHAIR HOKAMA: Mr. Guzman.

COUNCILMEMBER GUZMAN: I just want some clarification. I asked to abstain from the vote but apparently, you said it was an adequate position to take. Mr. Victorino piped in and then Mr. Wong said "recuse" so I want a firm ruling from you, Chair, am I abstaining or am I recusing?

CHAIR HOKAMA: You're recusing yourself.

COUNCILMEMBER GUZMAN: Okay. Thank you. Getting back to my initial issue in going into executive session, I want it completely, clearly stated why we're going into executive session for the record and not just, I don't see anywhere in HRS 92-5, the wording "County" and I know

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Corporation Counsel is not a “board” or a “committee”. So tell me where they’re adding in “County” in the description in where they’re relying on that on HRS 92-5(a)(4). They’ve added the word “County” in here and it’s not in the HRS. HRS says “boards” and “boards” can be synonymous with “Council” or “Committee”. So I state that for the record and I want a motion specifically narrowed to the scope of what you’re going to talk about in executive session, and I am in agreement with Mr. White that this should be in open session but I am now recused so that’s fine. Thank you, Chair.

CHAIR HOKAMA: The Chair is going to allow continued discussion before I make any additional comments. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. I know we’ve gone into executive session before regarding personnel matters, and according to some of the things in this item we received that this, there are personnel privacy issues that we have to deal with on both sides of this even though one of the, one of the people are a volunteer, they’re still an officer of the County and potential, I mean, there were some private personnel issues involved with that person and other employee of the County. So I know we’ve done that before but I don’t see that in the language here. I’m not quite sure where, is there another section in HRS I think that we call up for personnel issues, private personnel issues?

CHAIR HOKAMA: Would be 8. We use 8 for personnel issues too.

VICE-CHAIR COUCH: Okay. That, that’s the only other thing that we have to deal...because in reading this, there’s obviously a couple of personnel actions that have gone on that, that I don’t think are public. So that’s one of the reasons why we’d go in executive session.

CHAIR HOKAMA: Okay. Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you. And I just want to make something...I wanted to clear the record on one issue. Mr. Guzman mentioned that I chimed in and then after that Mr. Wong stated about recusing him. That was never my question. My question was the separation of 34 and 35 with 36 to make sure that if he abstain or recuse himself, that wasn’t my question. My question was about separation so I want that clear that I had no hand in that other statement, Mr. Guzman. Okay? I mean, you know, I don’t like when my name thrown out in between something and I’m like--whoa, wait a minute--you know, I asked one question specific on 34, 35 being making sure that we recessed and took on 36.

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER VICTORINO: And totally separating the two items so that you could participate in 34 and 35 ‘cause that’s part of your responsibilities, and 36 whatever we decided then that would be your call, Mr. Chair, and you’ve made your call. Secondly, I wanted to say that I do agree with Mr. White that it’s a sad day when we gotta go to this point of getting into courts with employees or even boards and commission members over items for which you could use the

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word freedom of speech or freedom of opinion and we all have 'em. In fact, opinions are like armpits, everyone has 'em and some stink, and I've said that before and I put it on the record again. But with all that being said, it's important to know that if Corporation Counsel or anybody in here feels uncomfortable, needs to have a discussion for which attorney/client privileges are needed, that's what we have executive session for. I agree we should vent this all in open session. I'd like it to be vented in open session. I'd like it to be settled. I'd like it for everybody sit on the table and put their egos outside and boom, let's finish this. We could settle this. We're reasonable people, however, if I'm hearing Mr. Wong correctly, Mr. Chair, we, maybe, crossed the line already with the filings and all of that. I'm not sure, you know, and I'm not a lawyer. I'm not as smart as Mr. Guzman when it comes to the law, but I think my practices here in the last eight years or seven-and-half years has taught me one thing when we could mediate or collaborate on an issue we usually got good results. Whenever we enter litigation ...(*inaudible*)... the results were not very good and we spent all that money. So I just wanted that clarification and, and so that there's no...the public doesn't find that I'm the one that said he has to recuse. I did not say that. I just wanted separation. That was my question and the other thing is I agree. Whatever we can do in open session, the public should understand what happened. I don't know how far it can go, Mr. Chair, you're the one that makes that call and with the advice of the Corporation Counsel, so I'll wait to hear what your recommendation is, Mr. Chair. Thank you.

CHAIR HOKAMA: Okay. Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, one last comment before you call for the question. In regards to Mr. Couch's statement that, oh, there might be other personnel issues that we don't know about, well, what's made public is the complaint. You have the complaint in front of you. You have some exhibits there so there is no other personnel issues that he's talking about. We're talking about a volunteer commissioner, a volunteer commissioner and we've got to go to court for this? This should have been handled way further along and I have a suspicion and I, it's open court...okay. That's fine. That's fine.

CHAIR HOKAMA: Further...

MR. WONG: Chair?

CHAIR HOKAMA: Mr. Wong.

MR. WONG: If I may. This matter is alleged by Mr. Mamuad in his complaint. It's not, unfortunately, limited to Mr. Mamuad. It also involves Officer Keith Taguma whose name is identified in the complaint. The disciplinary action referenced in the complaint is as a result of an investigation, also referenced in the complaint, an investigation triggered by the complaint generated by a County employee, Officer Keith Taguma. That is all in the complaint, all public information once the Court unsealed the docket. The conflict is also defined in the complaint itself. It alleges that I had direct involvement in certain things. Whether or not that's accurate or not cannot be discussed in open session, unfortunately, because it goes to the heart of the substance

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of the complaint. Should this matter have been dealt with a long time ago? Absolutely. I believe that it could have been given the efforts involved. Unfortunately, we do not as a County and as a Department of Corporation Counsel, have any say on when we will be sued. The County gets sued all the time. We do not have the luxury of convincing a plaintiff when or when not to file their claim, when or when not to resolve their claim. Settlement can be achieved when you have reasonable minds that want to resolve a claim. You need two sides to resolve a claim. One side wanting to resolve doesn't make the other come to the table. To the extent possible, this case can and will be settled in the future. Currently, given the pressing litigation before us, if we do nothing we will be at an extreme disadvantage. There's a motion pending before the Court currently for which we need to make an appearance. I cannot appear and no one from my office, in my opinion, can appear because allegations are against me. Quite frankly, if that's not a conflict in the eyes of any Office of Disciplinary Counsel, I don't know what would be. That's as clear as day a conflict. Unfortunately, I didn't draft the complaint. I can only respond to it like we do in every other form of litigation, you respond to the complaints. At the end of the day, you will be fully informed and fully advised as to the underlying facts and its application to law, and how it impacts the County. I agree with you that the monies should be spent in a certainly better manner, but we cannot change the course because we don't choose the method of the litigation or the timing of it. It's before us now; we need action now. If we wait on it we put ourselves in greater harm than not acting now.

COUNCILMEMBER WHITE: Chair, could I have a brief recess, please?

CHAIR HOKAMA: We'll take a recess 'til 10:30. . . .(gavel). . .

RECESS: 10:20 a.m.

RECONVENE: 10:38 a.m.

CHAIR HOKAMA: . . .(gavel). . . Okay. Policy Committee shall return to order. We are still on discussion regarding Policy Item 1(36) which is the complaint of Nelson [sic] Mamuad v. County of Maui. So the discussion is whether or not we should enter into executive session to hear the strategy and reasons from Corporation Counsel about their request for special counsel which is the Marr Jones and Wang law firm to represent the County.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR HOKAMA: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: You know, I guess, I'm at a quandary right now and I want some clarification maybe from you, maybe from Mr. Wong, or maybe a combination of both, if I may. My question has two parts to it. First part of it is, I understand what you're trying to determine, should we go into executive session or keep this in public session, and I think that's part of the question I have. And secondly, if we were to vote on it and the vote was in the negative, in other words, we said, no, we don't want executive session, then my question, again to you or

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Mr. Wong, is how far can we go before Mr. Wong would say, sorry, I cannot discuss that because of matters pertaining to the case. I guess this is my question because I'd like to see it in public, in the public venue, I'd like the public to know what's going on, but also I understand that their complaint has been filed. It's not like just talk story. We've gone beyond that and put it into litigation so and the courts have accepted it so, Mr. Chair and Mr. Wong, I throw it in your court to clarify it in my mind and some of the public who's listening to this right now.

CHAIR HOKAMA: Well, the Chair is going to always rule on the side of being cautious to protect the County's position should we go into a judicial setting, so that is one of my top priorities as your Chair is to protect this Committee and the Council's position. And I was going to give you my recommendations after hearing out the request and again, there is a request before us regarding special counsel. We have not made a determination yet on special counsel and for me that is part of the vetment process that we, your Chair expects to do in executive session. And also in reviewing the statutes, there is a component under 92-5 is (a)(2). Under (a)(2), the Committee can consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee in consideration of matters affecting privacy will be involved.

COUNCILMEMBER GUZMAN: Provided that if that individual concerned requests an open meeting an open meeting shall be held.

CHAIR HOKAMA: That's correct.

COUNCILMEMBER GUZMAN: Right. So if Mr. Mamuad --

CHAIR HOKAMA: There was no request.

COUNCILMEMBER GUZMAN: --had come down here --

CHAIR HOKAMA: And requested --

COUNCILMEMBER GUZMAN: --to request then open session then --

CHAIR HOKAMA: --then the Chair...

COUNCILMEMBER GUZMAN: --it would have been held to an open session, so that's the component that we're missing. Thank you very much, Chair.

CHAIR HOKAMA: That is correct according to the statute. Yes, Mr. Couch.

COUNCILMEMBER VICTORINO: Mr. Chair, before you go to Mr. Couch.

CHAIR HOKAMA: Yeah.

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COUNCILMEMBER VICTORINO: Mr. Wong's been raising his hand. I don't think you saw it.

CHAIR HOKAMA: Mr. Wong.

COUNCILMEMBER VICTORINO: I apologize.

MR. WONG: Chair, again, it's not limited to Mr. Mamuad. It also involves Officer Taguma so as it applies to Mr. Mamuad it so too shall apply to Officer Taguma. Just with that clarification.

COUNCILMEMBER GUZMAN: Thank you, Chair. I am more, I feel more comfortable with that statement because it has more substance to it in terms of the law. Your previous motions did not have the clarity of that, so if you're going under Section 92-5(2), please restate the motion.

VICE-CHAIR COUCH: There's no motion.

CHAIR HOKAMA: Yeah, the Chair has not recognized any motion --

COUNCILMEMBER GUZMAN: Oh, okay.

CHAIR HOKAMA: --as of yet, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. Thank you, but your motion should include that section. Thank you.

CHAIR HOKAMA: Okay. Thank you for that comment. Anything further, Members? Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. And I would like to have as much of this in open session as well. The question, and Mr. Wong, stop me if I'm exceeding the bounds here, the question is before us, essentially, is going to be are we going to hire special counsel? And as Mr. White brought up we've had other situations where we didn't have to hire special counsel because we have the, they call it the "firewall", the Chinese, I forgot what it's called. Can we not do that in this case here? Is that something we can discuss in open session as far as that is concerned?

CHAIR HOKAMA: Mr. Wong.

MR. WONG: The complexities of a conflict within my office, you know, I would not want to discuss that topic aside from referencing the allegations in the complaint because that is public information, but beyond that I would not want to get into, in open session, the details of the extent of the prospective conflict. So this is a different scenario than the previous Chinese wall scenario where I alone can be carved out. This is different than the post office scenario where we would, we were able to formulate separate teams. I would prefer not to get into the internal intricacies at this point unless we're in executive session.

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UNIDENTIFIED SPEAKER: Chair?

CHAIR HOKAMA: Are you done, Mr. Couch?

VICE-CHAIR COUCH: For now. I...this one's a tough one because, you know, we...I, I wanted it on record that, that the 150 is not going to be the final amount, so we're talking about a substantial amount of money and like Mr. White said, we were reluctant to go to 20,000 on another issue, on the post office issue, I think it was, and to go this high...but I also understand that we have to defend ourselves and if we can't defend ourselves with our huge, not huge, but our good-sized office downstairs because of the intricacies of this matter, I...we almost have to go into executive session to find out what those are because I still am not convinced that, that we can't separate the stuff out, but without the information it's hard to make a decision. So very interesting situation we're in.

COUNCILMEMBER GUZMAN: Chair?

CHAIR HOKAMA: Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you. I see the analysis between the other matters or the other cases that we, we have handled in this Chambers in terms of providing a proverbial, I wouldn't say Chinese wall, but it's a proverbial wall and between the various Deputy Corporation Counsels. In those cases, you had opposing parties. You had plaintiffs and defendants wherein the Corporation Counsel was the neutral. In this case, it's still the same because all of them are defendants. They're all on the same team. We're all County and on the plaintiffs' side, he's got ACLU and four other attorneys, by the way, they're all five pro bono, you know, doing a case for free on a situation where they're not going to get paid for but the only advantage there is to get the publicity on a winning case. But I think that this should be all settled. It should've been settled way before. It's an avoidable, it's an avoidable, avoidable situation. And I think that we shouldn't be spending any money except for the salaries that are getting paid to our Deputy Corporation Counsels. This can be defended as a team because all defendants are County. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you for that. Mr. Couch.

VICE-CHAIR COUCH: Thank you. And Mr. Guzman brings up an interesting point although if you look at the Request for Relief, number C, I believe, that he's, they're looking for...I'm sorry, E, award reasonable attorneys' fees, costs, and other expenditures incurred, so is this more of a contingency case or are they not going to take any money so E's kind of out?

COUNCILMEMBER GUZMAN: Chair, that's standard, that's standard in every complaint. Winner of the case gets their attorneys' fees, a motion to request the judge to consider the attorneys' fees. We have that same advantage or right if we, as the County, were the plaintiffs to ask for attorneys' fees whether it's the judge is going to grant it or not is up to the judge. So that's

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standard language in almost every complaint there is out there. They're still doing it pro bono and if the judge doesn't grant the attorneys' fees, they get nothing.

CHAIR HOKAMA: ...(*Coughs*)... excuse me. Other questions for the Chair?

COUNCILMEMBER VICTORINO: Chair?

CHAIR HOKAMA: Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. I won't repeat what I said earlier because I think many of the points that have been made are very accurate and I think this, this is a ultimately avoidable situation. I don't see any reason why there shouldn't be an ability within the ranks of our Corporation Counsel for one individual to handle this or two individuals to handle it without allowing others to know what's going on. The other concern I have is that I want to be able to speak freely about this case, because I think it is fundamental...of a fundamental concern to all of us that we not have a government that's trying to hush people up, and so I will not only be voting against going into executive session but should that vote prevail then I will choose not to attend the executive session so that I can continue to speak freely about this without worrying about what happened in executive session and what happened outside, and trying to figure out what, what I learned from the outside versus what was specific to executive session. So that's my --

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER WHITE: --my concern and my feelings, and I appreciate your letting me have the opportunity to say so. Thank you, Chair.

CHAIR HOKAMA: Okay.

COUNCILMEMBER GUZMAN: Chair? I too will recuse myself for executive session. I do not want to be muffled on this issue, once any Council member enters executive session we are bound to the confidentiality of executive session. So I, too, will not be, even though I did recuse myself, I will not attend executive session. I want this First Amendment issue in the books and I want the people to know what's going on here. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Mr. Victorino.

COUNCILMEMBER VICTORINO: Whew. This is getting interesting at best. And it is a sad day that we've even gotten this point where Council members feel this way and my answer, my question has never been answered. And I apologize 'cause I have not heard my answer yet. If we were to say no to executive session, can we conduct an open session? That was my question and that never got answered from you, Mr. Wong, so I still want that answered. And secondly, Mr. Chair, I would, I'd like to request, if at all possible, before we go any further that some kind of

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mediation be dictated, and I don't know because the Courts have gotten it already, right, Mr. Wong? Haven't the Courts received this at this point?

MR. WONG: Yes.

COUNCILMEMBER VICTORINO: Okay. So I guess I can't tell a court what to do. I'd like to strongly suggest that but, you know, I don't know if the Court watches this, but if they are, I would like to ask that request that mediation and work this problem out because I think the Courts is not where this needs to be. Pro bono, ACLU, whoever, whatever, I think, you know, this should be a matter handled by this County and this employee, or this Commissioner, or whatever. I mean, I'm totally confused which, which the individual is being classified under 'cause I've heard different statements being made, you know. And so, you know, Mr. Chair, I'll wait for your ruling, but I would like to know if we say no that we do not want to do this in open, I mean, in executive session, which I agree once we go into executive session, anything said, done, that binds any of us who are in there from discussing it any further in the public, and I think we have that right but once we go into executive session I give that right up. I understand that. But I really want to know if we say no to this motion to go into executive session, I understand why we going to hire an attorney and all this other stuff, but if we say no, what would be the next step for you, Mr. Chair and Mr. Wong? So please.

CHAIR HOKAMA: I'll let Mr. Wong give comment --

COUNCILMEMBER GUZMAN: Chair?

CHAIR HOKAMA: Yes, Mr. Guzman.

COUNCILMEMBER GUZMAN: I believe the issue is moot. You have to go into executive session because what you've just stated is 92-5 to consider the hire, evaluation, dismissal or discipline of an officer, or of employee, or charges brought against an officer where consideration of the matter affecting privacy will be involved provided that the individual concerned requests an open meeting, an open meeting shall be held. We, you do not have Mr. Mamuad here or Mr. Taguma here to request an open meeting, so the way I read that is that you have to go to executive session. And like I stated earlier, I will recuse myself too from executive session so that I may be freely and open to talk about this issue. Thank you, Chair.

COUNCILMEMBER VICTORINO: Well, Mr. Chair, I understand what Mr. Guzman has just said, but were these two parties ever asked, were they ever asked to do something in open session? Were they asked if they would be allowed? I'm, you know, you bring up a subject, I'm going to counter with were they asked? And from what I'm hearing right now, neither one. Maybe if we asked them and they say yes, we'd like to do this in open session, that's a moot point. So that's my question. First and foremost, if we say no, what happens? That's my first question. And secondly, is it possible to defer this matter and have it brought it up to these two parties, would they be willing to go in open session? And I don't know how far that could go too, Mr. Wong, so I guess I go back and I defer to Mr. Wong. Thank you, Mr. Chair.

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CHAIR HOKAMA: Thank you, Mr. Victorino. I'll ask Mr. Wong if he has any comments before the Chair makes a ruling.

MR. WONG: Thank you, Chair. In answer to your question, Councilmember Victorino, the topic to the extent possible can be discussed in open session. Unfortunately, when you get into the substance of the allegations, whether those allegations are admitted or denied, is not something that I would typically have a discussion of in open session. That goes to the heart of the strategy in the defense and, you know, typically is not discussed in open session. At some point, as the litigation, if it does progress to a court hearing, all that information would be public information and open for full review by the media and what have you. Until we get to that point, we don't as a Department litigate any matters in the public forum or in the eye of the media. Typically, our response to media inquiries is not to make comments about the status of litigation, because we don't like to reveal what our strategies are, inclusive of the engagement of special counsel and the need for it. You know, I appreciate the comments from Councilmembers White and Guzman in wanting it to be vetted in open session. There's things that maybe at the conclusion of this matter in all of that issue and topics can be vetted in open session. I appreciate your want to be in a position in not having to maintain the confidentiality and that's fine also. It's my obligation as the Corporation Counsel to, as far as possible as I can, protect all interests of the County whether I want to reveal information to you or not, it is my obligation to protect the interests of the County, and in that vein I cannot say that all that you want to discuss can currently be discussed in open session. There're just, we're just too early in these proceedings to have that type of discussion. Whether or not the parties, again, want to mediate, Councilmember Victorino, that is a topic that we always explore is the possibility of mediation and/or some method of settlement negotiations. That is, in my view, a very cost-effective manner to resolve disputes. Unfortunately, both parties must agree to be at the table. If only we, the County, are sitting at the table, it makes no sense for us to negotiate with ourselves. Quite frankly, the litigation is not generated by us. We're responding to it as we do in almost every circumstance, unless we decide to be the party plaintiff, and in this case we are not. We're defending the interests of the County to the extent that we're required to and we're obligated to do given our position and given my oath. So I take it very seriously and in as much as I would love to share with you the details of what transpired in this matter, I cannot at this moment. And in terms of the internal conflict with my office, it is a conflict that will run throughout my office, unfortunately, in this case. And you'll understand that once, in the future, that all matters become unveiled for you, and it may not occur until we're standing in Federal Court in a trial in this matter. So I'll offer you that as my best explanation as to why this matter is even before you to seek special counsel. We would not have presented this to you if we believed that we could defend it. So with that in mind, I don't think I can get into any further detail about the need for special counsel. The values that you've discussed, you know, I, it's a, to me, it's a placeholder, we may not even get to 150,000. I'm not going to suggest that it will exceed it. It's not my inclination that it exceeds it at all, but if it does, the answer to your question, Councilmember Couch, has to have been in the affirmative, that there is a risk that it could exceed 150,000. That measurement is really based on how aggressive the plaintiff pursues his claim. He's lined up attorneys to do that. It's curious that I'm hearing for the first time today that these attorneys are

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acting on a pro bono fashion. Typically, and as you, and if you gleaned from the complaint itself it charges allegations under Section 1983. That's not a discretionary function. That's a statute that requires the court to look at the award of attorneys' fees. In these cases in Federal Court when they glean and they allege a 1983 and a 1988 action, typically, the whole press, moving forward, is solely for the accumulation of attorneys' fees. So in this matter, it may be at the end of the day that the attorneys' fees far outweigh any other form of damages that may be measured in this case. So I'd be pleased to hear directly from the party litigant and its counsel that this matter is being pressed on a pro bono basis such that none of the attorneys involved in this matter on the plaintiff's side will be seeking an award of attorneys' fees, will be looking for payment of attorneys' fees. It's very curious that I hear that today and I'm actually pleasantly surprised that they would take it on a pro bono basis and not seek fees and costs. Unfortunately, I don't know whether or not that is going to be something that the plaintiff's side will maintain moving forward. I look forward to receiving that type of communication though.

COUNCILMEMBER GUZMAN: Chair?

CHAIR HOKAMA: Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, I can appreciate Corporation Counsel's position. He is hired as an attorney to defend the County, and every position he takes is to look at the interests of the County and this is wherein, I believe, we can save the County money by making sure, by allowing his Department to handle the case. Basically, I don't see a conflict of interest in this. I just don't see it. We're all defendants in it and so they shouldn't be able to go out and hire a, you know, billion-dollar law firm to defend something so frivolous as this, when like I say, you read the facts here, it basically could have been avoidable situation. But in any regards, I also believe, and I don't know if the Corporation Counsel would like to divulge this, but I think there was, may have been some offerings or negotiations prior to the even this, this upcoming hearing and maybe those, those, those negotiations fell through. I haven't heard of that. They're stating, Corporation Counsel is stating oh, we're just reacting. Well, I, I feel that possibly there might have been some type of negotiations to avoid this TRO hearing and basically, it may have been the County that pulled the rug on that one, but I don't know, I mean, seems to me that there, efforts have been made and someone's playing hardball somewhere. Thank you, Chair.

CHAIR HOKAMA: Okay.

COUNCILMEMBER CRIVELLO: Chair?

CHAIR HOKAMA: Yes, Ms. Crivello.

COUNCILMEMBER CRIVELLO: I just want to chime in because I think we've sort of come with some deliberation if we want to go into executive session and hearing where we're referencing to 92-5(a)(2), I mean, we really don't have much of a choice to go into executive session, but what I hear before us is are we going to be willing to expend monies to hire a special counsel and how we can utilize teams from the Corporation Counsel to provide the kind of resources that they

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may have available instead of us going into bigger expense, and I can appreciate where we have to recognize that there's more than just two employees involved. There's a management team that's also involved whether or not we agree with what we may see superficially but I think that's something the courts will decide. So it, it behooves me to think that our Corporation Counsel cannot put together a team to provide the kind of resources we need but we'll get that into further discussion. And it's only because I reflect back on some other conversations or deliberations that we've had in regards to expenditures for special counsel. So I hope we can come to some sort of understanding that the expenditures will be deeply considered for best. I was hoping we can have some open session discussion, because there are a number of employees within the County that are in positions that maybe cannot afford the kind of legal support, other than maybe their union can provide, and for them to have a more open view of processes where they, they can also challenge, perhaps, maybe some of the decisions that been made by management on, on their employ. But being that what it is, I think we can move on, in my opinion, with your recommendation and hopefully, we can come to something conclusive as to how we're going to be spending monies or not spending monies. Thank you.

CHAIR HOKAMA: Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And I've been trying to hear everyone out and sifting through this, needless to say, yeah, very interesting situation we're in, but my, my first impression was very similar to Mr. White's take on, you know, the frivolousness of this. I mean, there's, I'm browsing through and I guess there's a lot of questions that have gone, gone unanswered by, by the plaintiff about in regards to an appeal process, and it just, I know, Corporation Counsel is reacting to an, to an event that's occurred. But the person on the other half has made attempts to, you know, counter and make it right, and address the concerns that were occurring, and I guess this is back from August, and here we are, you know, in March, and so there's just a lot of questions. I think the person made good effort, good faith effort to, you know, apply himself and in the right manner. And then my one question was, but I found it in our documents, about what is the definition of "acts of violence", and I mean, it's up against stuff like rape and sexual assault and stabbing and strangulations and things of that nature which to me, you know, some verbal words on a Facebook page or whatever, I have a hard time comparing it to that. I understand there's a lot cyberbullying and things of that nature but as I understand, and it's public record that, you know, things were there and then it was taken off and words were changed, the title of the site and what have you. So again, I see it as something that I would think and hope we could do things, address this in open session, but again, I see a laundry list of Administrative personnel and people that are involved and perhaps, you know, therein lies the reason. But you know, I, it's a tough one, Chair, and I think it might be precedent setting because as Mr. White mentioned, I mean, God forbid things we say to each other, and I mean, you know, jokingly, but yeah, you can call it harassingly, you can call it whatever but I mean, in the end we work and we, we do our job together. So, you know, and the question was brought up about mediation and I know courts urge it, support it. I was part of the process and so were the parties ever asked to sit together and verbally, you know, adult-like manner speak to each other, and say listen, you know? I mean, to me what I'm gathering, the site, you know, was changed, the name and all that, then perhaps, the, Mr. Taguma, whoever, the Administration, would say,

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oh, wonderful, you know, things look okay and you got great news going and people appreciate it, you know, you have a lot of supporters of your site and what have you. So anyways, Chair, I just, you know, wanted to chime in and for me, yeah, it's a little difficult to want to fork out tons of money to defend this when I think there's a lot of questions that were never answered to begin with and it should have been as Mr. Guzman said, settled out many months ago. So just wanted to chime in, Chair, and thank you for this opportunity.

COUNCILMEMBER GUZMAN: Chair?

CHAIR HOKAMA: Okay. Thank you. Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Since my colleague, Elle Cochran, has opened the door to talking about the process, it's my understanding, and it's in public record that when Mr. Mamuad, Commissioner Mamuad was investigated and the report came out and went up to Managing Director's Office, and it's there in Page 27 of the complaint, clearly stating that Managing Director sent him a letter stating that he was violation of the policy, he had 90 days to comply and take these classes, and if he didn't comply within the 90 days he would be subject to further disciplinary action. There was no invitation for a face-to-face meeting. There was no one calling him for a face-to-face meeting. Just a plain letter saying whether if you meet...upon meeting the deadline if you haven't complied, you would be subject to further disciplinary action. That was back in January and now we're getting close to the 90 days which is basically, April. So apparently, Commissioner Mamuad had contacted Managing Director's Office, this is all public record, it's right there in Page 27, had contacted Managing Director's Office to find out what the appeal process was. Managing Director's Office calls him back and says we'll get back to you, we'll get back to you. Two months later there's documented correspondence saying that hey, they don't know what they're doing. They don't have an appeal process. So basically, Commissioner Mamuad calls Personnel, and they have documented correspondence there, and asks Personnel Division hey, do you guys handle the appeal? Personnel Division says hey, we don't handle commissioners, volunteer commissioners, go back to Managing Director's Office. As this is all happening, the time table is ticking to April and now we are here in April. They filed their complaint last week purely because there is no appeal process. We have to, as a Council, revisit these policy plans to make sure that they're Constitutional and to make sure that we don't infringe on anybody's First Amendment rights and we have to have a due process. We have to have an appeal process in these type of plans. And if it takes going to court and having the judge decide and the only person that can decide whether a policy or a plan is Constitutional is a Federal judge, and let the Federal judge decide is this plan Constitutional or un-Constitutional. That's where I say and do we need to defend this by hiring megabucks attorneys in Honolulu? I say, no, because this should have been avoided first, and number two, hey, this definitely can be mediated out and changing the policies and re-examining. That policy is back in, like 2000 before even Facebook even was created. You know, it's stated by Cochran, Member Cochran, the definition of harassment is about hitting, assaulting, nothing about social media. We need to update that, that policy plan and that's when I said this was all triggered by the negligence of not having that policy...an appeal process and then sitting on your hands, the Managing Director's Office sitting on their hands and not doing anything about it. Do we want

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to send a message to every volunteer commissioner out there that says, look, we're going to, we're going to infringe on your personal rights and there's no appeal process. This is Commissioner Mamuad's record. That's his record. He has now has on his record a harassment thing on his record and without due process. Come on, Chair. Doesn't take a brilliant scientist to realize that he has every right to file a case when he's getting no response from the Administration for an appeal process. This is a man's record, harassment record. You think he's going to take that? You think anybody would take that without an appeal process? This could've been avoided.

CHAIR HOKAMA: Well, the Chair wishes his title was judge and then I could settle this right now.

COUNCILMEMBER VICTORINO: We could change that now, Chair.

CHAIR HOKAMA: But I am not the judge. I'm your Chair and therefore, we will not get into adjudicating this request for special counsel. We are not in settlement mode. We are not in, we are not the court. We are here to consider a request for special counsel and whether or not we are going to recommend to Council, the full Council to do so or not regarding this law case. The Chair still feels that there are things that the Committee needs to hear and discover in executive session. I think it's still appropriate for us to consider the request to go into executive session and make a determination whether or not we are going to consider the request. One, is the request warranted and if it is warranted will we agree to the special counsel being requested and to agree to the ceiling that is being proposed of not to exceed \$150,000? The Chair will just say that, you know, the basic Amendments of the Constitution, you know, is protected. We have judicial rulings and standings, and I would agree there are times when we should have updated certain things sooner than later and Mr. Guzman brought up a very specific issue before us today. I would agree but I would, as your Chair, I would say harassment for your Chair, whether it's a verbal thing, a physical thing, against employees or fellow employees or not, the Chair deems it to a very serious matter, harassment in any form. So saying that, while the discussion has been a lot on Mr. Mamuad, I would advise and mention that there are other parties involved in this litigation also, and we need to respect those individuals or groupings of individuals regarding their rights as well and their privacy as well. So stating that, the Chair is going to put up a...

COUNCILMEMBER VICTORINO: Chair?

CHAIR HOKAMA: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: Before you make your recommendation, I'd like to make one more comment and then I'll listen to your recommendation. Knowing what your, and I don't know what your recommendation, but knowing what we facing today and to have, and I respect my colleagues and understand one, you know, needs to recluse [*sic*] himself and the other decides not to attend so that he can still continue to speak out on the matter, where if we decide to attend we become mum, you know, phfft, that's it. And I have no problem with that but then we're going to go five Members, bare quorum to make that decision. And again, I'm not a happy cat whenever we've got to go to bare quorum, understanding the two Members that are excused,

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I have no problem with that, but, you know, we're going to lose one because of recluse [*sic*], I can't even think of the name, so I won't say it, but he cannot participate and the other one chooses not to participate and that's, by all means, I, I have no qualms with that. But then we go down to a bare quorum again making a decision and if one vote goes one with the other, again, that leaves us in a quandary. And I'm not happy with everything that's been done to this point, and I'm not blaming you, Mr. Chair, you're stuck like you say you're not the judge and we're not the jury and there's been a legal action taken, could've been prevented. Could've, would've, should've, ain't done, end of story. But I'm not happy with all of this and I'm not, and particularly, I'm not happy that, you know, we're forced in a box again to make a decision based upon five out of our nine and understanding that two, I have no qualms with that. The other two, I guess, that's their choice, and one has no choice because of the connection with the individual in this case. So I'm just putting it on the record that I'm not happy with what's going on. I'm not happy that this hasn't been resolved and coming to this point, and I am very close to saying "no" to an executive session. My mind's kind of in that manner right now, but I'm going to wait 'til your recommendation and then I'll make my final decision, but this is not something I relish when employees and Administration have to get to this point. Yet I understand, at times there's bridges that are crossed, some time they can't cross back, but I think this could've been all resolved long time ago. Should've, could've, would've, too late now, but I hope in the future everyone's listening, especially the Administration, to be more careful and have whatever procedures, policies, whatever is needed so that we don't have to come to this point. We don't have to be sitting here because we have more pressing problems in this County and I'll end right there. Thank you, Mr. Chair.

CHAIR HOKAMA: Okay. Mr. Couch.

VICE-CHAIR COUCH: Thank you. And I'd like to make some comments before potentially making a motion that I won't be able to speak against so. I agree wholeheartedly with Mr. Victorino, shocking as that might be. This has gotten to a point where it could've been resolved, I think, but, we are at this point now. And my concern is if we go into executive session it is to get, gather facts as we see it on our side of the issue. Is that correct?

CHAIR HOKAMA: That is your Chair's intent.

VICE-CHAIR COUCH: Okay. Then it would disturb me that Members who have a choice would not want to gather the facts, the facts that we...the only way we can find out is...

CHAIR HOKAMA: Only Mr. Guzman has requested and I've agreed to the conflict and allowed, will allow him to recuse himself. With the example of Mr. White, he can kanalua twice, which is by the rules but he will, his vote will be marked whatever is the majority vote.

VICE-CHAIR COUCH: And then I'm going to ask about procedure. Right now we only need five Members to go into executive session.

CHAIR HOKAMA: That is correct with the seven Members.

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VICE-CHAIR COUCH: With the seven...

CHAIR HOKAMA: Majority currently here.

VICE-CHAIR COUCH: Yeah, but do we need six Members to, to hire special counsel?

CHAIR HOKAMA: Council needs six votes to hire special...

VICE-CHAIR COUCH: Council needs six votes.

CHAIR HOKAMA: Council needs six votes.

VICE-CHAIR COUCH: Okay. I just wanted to see what the procedures are. Make sure everybody's aware...

CHAIR HOKAMA: That is how your Chair has made the previous rulings on the same matter. Council is the required body to have six votes for special counsel.

VICE-CHAIR COUCH: Okay. And lastly, you know, as Mr. Victorino and Mr. Guzman have said that there appears to be no appeal process unless we find out in executive session that there may have been. I don't see why we couldn't find out in open session and that...

CHAIR HOKAMA: Let me just say this to, and I'm sorry to interrupt you, Mr. Couch.

VICE-CHAIR COUCH: Sure.

CHAIR HOKAMA: You know, the Committee has jurisdiction of whether or not to enter into executive session. Once we enter into executive session, if the Committee feels it's not appropriate to remain in executive session or what is being shared is, could be discussed in open session then we'll make that decision and return and have that discussion in open session. Okay. What is public information, even if it's taken into executive session, to me, open...public information is public information. This is already public information, doesn't matter if it's in executive session, it's already part of the public's right to know.

VICE-CHAIR COUCH: Right.

CHAIR HOKAMA: So my thing is the Committee still has the ability to terminate executive session if it feel it's unwarranted or inappropriate, and what is public information is public information for your Chair whether it's in executive session or not. It's open information. I would say the strategy you cannot disclose but what is open information, it's open information. Anybody get access to that right now. So that is how the Chair sees it. I understand your issues. Some of it is very fundamental, Bill of Rights, but nonetheless, we have a request. The Chair still feels it is

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appropriate and warranted for the request and so I'm going to put it out to you and we'll make a decision. Yes, Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And so I guess this document that is public record and all the information in it --

CHAIR HOKAMA: Yes.

COUNCILMEMBER COCHRAN: --you feel isn't, doesn't deem enough information to grant the amount that's being ask of Corporation Counsel for special counsel, basically. So we need to go into this executive session in order to get more.

CHAIR HOKAMA: I going be honest with you. I still believe that the Committee needs to be convinced why we need a special counsel.

COUNCILMEMBER COCHRAN: Okay. Okay.

CHAIR HOKAMA: And I need to hear that --

COUNCILMEMBER COCHRAN: And that's why...

CHAIR HOKAMA: --why we need special counsel.

COUNCILMEMBER COCHRAN: Okay. And that's where we need to do it because Corporation Counsel...

CHAIR HOKAMA: And again, and we'll make the...I'm not sure I'm happy with the 150-figure either.

COUNCILMEMBER COCHRAN: Okay.

CHAIR HOKAMA: But I want to hear their, how they've, their justification, their due diligence, what they vetted out, and how they've arrived here to ask us of this request this morning.

COUNCILMEMBER COCHRAN: Okay. With that understanding, Chair, I mean, I personally would like to vet this out in open, public, you know, as transparent and, you know, out there for everyone in the world to see and follow along, and understand the process we're going through, and how we come to our decision. But, you know, if it needs to go via the route of executive session in order to gather information, as you say, then so be it. But, I too, am not very happy with where we're at. And...

CHAIR HOKAMA: I don't think any of us are.

COUNCILMEMBER COCHRAN: Yeah. So anyways, here we are and we, let's move forward then. Thank you, Chair.

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CHAIR HOKAMA: Okay. I can tell you Chair is not happy to be in this position either. Okay. We got things I would rather we would be working on than this. Okay, Members, the Chair still...you've heard the Chair's comments, you know I'm going to still recommend executive session under 92-5(a)(2) of the Hawaii Revised Statutes.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR HOKAMA: Yes, Ms. Nakata.

MS. NAKATA: Will you also be referencing 92-5(a)(4)?

CHAIR HOKAMA: Yes. Thank you for the reminder. I'm going to cite two sections of the statute, 92-5(a)(2) and 92-5(a)(4) --

UNIDENTIFIED SPEAKER: Thank you.

CHAIR HOKAMA: --for the reasons why we are going to enter into executive session. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. Based on your recommendation I reluctantly move that we go into executive session based on HRS 92-5(a)(2) and 92-5(a)(4).

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion for discussion.

CHAIR HOKAMA: Okay. We have a motion made by Mr. Couch, seconded by Mr. Victorino. We have discussion. Anyone wants to share a point. Okay, if not, all in favor of the motion, please say "aye".

COUNCILMEMBERS: Aye.

CHAIR HOKAMA: Opposed say, "no"?

COUNCILMEMBER WHITE: No.

COUNCILMEMBER VICTORINO: Roll call, Mr. Chair.

CHAIR HOKAMA: Okay, Ms. Crivello.

COUNCILMEMBER CRIVELLO: Aye.

CHAIR HOKAMA: Ms. Cochran.

COUNCILMEMBER COCHRAN: Aye.

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CHAIR HOKAMA: Mr. Couch.

VICE-CHAIR COUCH: Aye.

CHAIR HOKAMA: Mr. White.

COUNCILMEMBER WHITE: No.

CHAIR HOKAMA: Mr. Guzman is recused. Mr. Victorino.

COUNCILMEMBER VICTORINO: No.

CHAIR HOKAMA: And the Chair votes "aye". We have four "ayes" --

MS. FRIAS: Two "noes".

CHAIR HOKAMA: --two "noes"--

MS. FRIAS: One recused.

CHAIR HOKAMA: --and 1 recused, and 2 excused. So the motion fails.

VOTE: AYES: Chair Hokama, Vice-Chair Couch, and Councilmembers Cochran, and Crivello.

NOES: Councilmembers Victorino and White.

EXC.: Councilmembers Baisa and Carroll.

ABSENT: None.

ABSTAIN: Councilmember Guzman.

MOTION FAILED

CHAIR HOKAMA: Okay. We are not, we won't go into executive session. Mr. Wong, is there anything else you can share in open session regarding this case, please.

MR. WONG: To the extent that the complaint alleges that it involves myself and another Deputy which is named in the complaint, Gary Murai, as being part of the investigative inquiry dealing with Mr. Mamuad. Understand that other deputies within the office more than likely will be witnesses in this matter which makes it difficult from a representation standpoint. I will run out of deputies to represent the County when the rest of 'em will become witnesses. The conflict will result, not

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from a conflict of interest wherein I have a personal stake in the matter, but a conflict in being able to represent the County when deputies will become witnesses as to the extent of the investigation, their involvement with internal investigations, and so on. So the request for special counsel is because I have been, and so too has another Deputy of mine been, named in the complaint. If plaintiffs' choose to remove me from the complaint and remove Mr. Murai's name from the complaint then there will be no conflict that exists. We can represent the County in defense of these claims. That's not what's in the complaint, okay. Just because it's in the complaint doesn't mean it's accurate and it's correct. It's a pleading that's one-sided, that I can tell you, we typically, we'll go and are required to, under the rules, to respond to every allegation. And I have never seen a litigated matter where a plaintiff makes an allegation and the defense agrees to every single one of 'em. Quite frankly, therein lies your defense to dispute the allegations made. It's got a lot of allegations. That doesn't mean we're going to admit to all of 'em. There may be a few that may require, under our rules, an admission, but there is others, I can guarantee you, will be denied. And the facts will bear out that the allegations, as alleged, are not accurate. I cannot get into the heart of the substance, again, because it goes to the strategies and the respective liabilities of the County. I'm not sure how further I can go into the conflict that I have concluded in this matter. If the body decides not to engage special counsel, please understand that we have a various deadlines, one of which requires an answer on behalf of the County by April 15th. You know, there was another deadline that has been moved off, but there are deadlines that we're required to comply with under the Federal rules and we would be hard pressed to do that absent special counsel.

CHAIR HOKAMA: Thank you for that, Mr. Wong. Mr. Kushi, any comments?

MR. KUSHI: Yes, Mr. Chair, if I may. Speaking from the management side of our office, I agree with Mr. Wong that it will be, based on the allegations of the complaint the plaintiff has chose, it'd be almost impossible for our office to represent ourselves and especially the boss. It'll involve being deposing my boss, choosing what deputy to depose him, and frankly speaking, and I hope this doesn't happen, I'm surprised Mr. Wong was not named as a party. So you know, it may, it may end up in that, that instance so from a management side in our office, it would be very difficult if not impossible. There's also the question about the Office of Disciplinary Counsel. We would need to get some sort of response from them is it even ethical to represent our own selves. Like I've said before, you know, a lawyer who represents himself has a fool for a client. Again, that being said, and the reference to why can't we do a Chinese wall or a firewall, as you recall, we did separate, initially separate Mr. Wong from any cases from his spouse's office, Krueger, so that's been set initially. That's where that Chinese wall issue came about. The reference or to or comparison to Wailuku Post Office is totally off-base, in my opinion. Our office was not involved, initially we were, then you guys got us out. Then we did separate one attorney to represent this Committee, one attorney to represent, I believe, the Administration. If that investigation went forward, it hasn't, there's been no complaint, et cetera. Right now you have a Federal District Court complaint before you. That's the difference there. We separate ourselves on a daily basis. We're attorneys, some deputies represent the Commission, some represent the Department, and on contested case hearings, that's, you know, we do a separation

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there. But in this case, we are basically, our office is being...it should be named as a party. So this is why the conflict would come about.

CHAIR HOKAMA: Okay. Thank you for informing the Committee of that information, Mr. Kushi. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. And you know, we're going back and forth on whether or not to hire special counsel. Is there...do we have time to defer this matter and strongly suggest that all parties get in a room and hash this out if at all possible in the next week or two and see if something can come of that then the whole point is moot. If it can't then we can go on from there, but that would be the best solution is to get 'em together, see if they can come up with a solution, and maybe drop the whole matter. But I don't know what authority we have to do that other than to say, you know, we're going to put it off 'til next month or, you know, next meeting that we have, and get in the room if you can and work this out before the Courts make you do it, and before everybody else make you do it, let's just end this thing as quickly as possible. I don't know. That would be something that I would like to see happen. Thank you.

CHAIR HOKAMA: I'm sure many of us. Ms. Crivello.

COUNCILMEMBER CRIVELLO: I know my question may be after the fact but I'm curious as to being that Mr. Mamuad is a member of the Liquor Commission, which is part of the County, was he offered Counsel representation or did he qualify for from Corporation Counsel as a member because he was addressed, his disciplinary process was addressed to him as a member of the Commission.

CHAIR HOKAMA: Mr. Wong.

MR. WONG: Councilmember Crivello, thank you for the question. Unfortunately, I cannot answer that question because first of all, I don't have personal knowledge of the investigation itself, and secondly, you know, I don't know that he would have been entitled to counsel. I can suggest to you that what I do know I gleaned from the document itself. From my read of his complaint is that he attended the matter with counsel, two attorneys that are listed in that complaint sat with Mr. Mamuad at that investigation. So whether or not his attorneys were adequate or not, I don't know, you know, but he was there with two attorneys and I'm going to assume that they were there on his behalf.

COUNCILMEMBER CRIVELLO: So the investigation came during the disciplinary process or after the disciplinary process? I guess I go back to where I know when we were under Charter, concerns were brought up about if board members are protected or they have to go outside and retain their own lawyers, so I was, I'm just wondering if he was given the opportunity during his disciplinary process as a member of the Commission if he would have the doors open that he would qualify for County representation.

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MR. WONG: Yeah, again, unfortunately, Councilmember Crivello, I'm unable to answer that question because --

COUNCILMEMBER CRIVELLO: Okay.

MR. WONG: --I'm not familiar with the investigation details, and I don't know if he would have been entitled to one in any event.

COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR HOKAMA: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And in the public document, it's saying that he violated the Violence in the Workplace as a Liquor Commissioner, and then I heard Mr. Guzman state that because of that fact he is not entitled to. Is that correct, Counsel, because they, our Corporation Counsel does not give, not support, but counsel to boards and commissioners that volunteer for the County? Is there such a rule such as that? Maybe I'm misspeaking what I heard from Mr. Guzman.

MR. WONG: I'm not sure I understand it, but if your question is whether or not a commissioner and/or board member in their capacity as a board member is entitled to representation by the Office of the Corporation Counsel, typically, there's a deputy that is assigned to a board and/or commission. And that deputy is assigned out of our section of the Counseling and Drafting portion of our office. The guidance that's provided by that deputy is as it relates to the board in, in its official capacity. If a board member has a question in his official capacity, he could certainly ask that deputy if it related to the matter before that body. So the quick answer to your question is yes, commissioners are afforded legal representation in their capacity for whatever board and/or commission they serve on for the topic area for that board and/or commission. So I'll take that one step further. If Mr. Mamuad had a question about whether or not a matter before the Liquor Commission could be addressed, the deputy assigned to that Commission could provide Mr. Mamuad, in that capacity, an answer to his question; however, Mr. Mamuad, if he was to ask the question about being able to do anything else other than Liquor Commission business, I don't believe the deputy in that scenario would afford him any direction and/or representation but instead direct him to seek advice of private counsel.

MR. KUSHI: Mr. Chair?

COUNCILMEMBER COCHRAN: Mr. Kushi.

MR. KUSHI: Member, Cochran --

COUNCILMEMBER COCHRAN: Yes.

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MR. KUSHI: --I'm the Deputy assigned to Liquor Commission and I glad, I'll be glad to answer your question in executive session.

COUNCILMEMBER COCHRAN: Okay. Thank you, Mr. Kushi. And Chair, I ask the question because on, in Section 76 on Page 22, it was a letter written from Managing Director Keith Regan to Mr. Mamuad that he did a violation in the capacity as a Liquor Commissioner, and then it's questioned how was that so, and as I further read, it doesn't really clarify and give direct answer to that question. So I'm still trying to correlate in my mind as a Liquor Commissioner and this Facebook website, how is that all tied in to one another as a violation of the Violence in the Workplace. So that, Chair, that's and maybe again, can't answer in the open session at this point but that's just one of my questions. But my final, Chair, and this is for you, Chair, my question because the ruling for executive session has failed, I believe there's another item that was brought into that motion. I think the reason why we, it did not pass is because of this particular item, but what about the other item that we were going to discuss? Can that be still worked on in executive, your other two items on your list?

COUNCILMEMBER VICTORINO: Thirty-four and 35 passed already.

UNIDENTIFIED SPEAKER: ...*(Inaudible)*...passed already.

CHAIR HOKAMA: Yeah. Yeah. We'll...

COUNCILMEMBER VICTORINO: ...*(Inaudible)*...passed already.

COUNCILMEMBER COCHRAN: Oh, okay. Sorry.

COUNCILMEMBER VICTORINO: Thirty-six is the discussion matter at this point.

COUNCILMEMBER COCHRAN: Oh, okay, Chair. Just wanted to make sure we didn't X out all others in that one fell swoop.

CHAIR HOKAMA: Yeah. Are you clear, Ms. Cochran?

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair.

CHAIR HOKAMA: Okay, good. No, no, no. I want everybody clear on what we can and won't be doing today. So further questions? Mr. Couch.

VICE-CHAIR COUCH: And again, if you can't answer this in open session I understand that, but, and this is based on some of the complaints on here and what's being said "out there". At this point in time, the County of Maui has not asked that page to go down, right, and we don't care that the page is up or down. We're fine with...

MR. WONG: Maui Watch?

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VICE-CHAIR COUCH: Yeah.

MR. WONG: No, we've never asked him to remove Maui Watch.

VICE-CHAIR COUCH: Okay. So some of the stuff that's going on out there is, is...that we're trying to squash his First Amendment rights by taking down Maui Watch.

MR. WONG: Again, you're getting into the substance of the allegations.

VICE-CHAIR COUCH: Okay.

MR. WONG: And if you, you know, want to do that, I think we should, you know, reconsider executive session.

CHAIR HOKAMA: You okay...

VICE-CHAIR COUCH: Well, Mr. Chair, only three people can request the reconsideration of that vote so.

CHAIR HOKAMA: One, let me ask a question to our Corporation Counsel. The resolution is asking for special counsel for the County of Maui. Lot of the discussion we had was about your office so why wouldn't it be special counsel for the Maui County, Department of Corporation Counsel? Because I'm not willing to just give one blanket approval for anybody under County of Maui.

MR. WONG: I understand, Chair. Unfortunately, the pleading identifies only the County and does not as of yet, define further any additional parties. The request for special counsel was generated based on the allegations contained in the body of the complaint. The caption of the complaint merely identifies the County as the defendant so unless there's a change to the pleading, which is out of my control --

CHAIR HOKAMA: Uh-huh.

MR. WONG: --you know, it would not be a request for special counsel as it relates to my Department, at least not in my opinion.

CHAIR HOKAMA: Okay. I understand what you shared with the Committee, Mr. Wong, and I guess how the plaintiff approached it, you know, I see your rationale, but I have a hard time just giving one blanket County of Maui consideration. Mr. Couch, you have a question on your mind?

VICE-CHAIR COUCH: Yeah, yeah. You know, in other instances when we've had this situation, we, haven't, we hired another county's Corporation Counsel to come in to do this as opposed to hiring some big name firm?

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CHAIR HOKAMA: We'll let Mr. Wong respond. It's a question he's considered, Mr. Couch, but I'll let Mr. Wong respond.

MR. WONG: That's a very good question, Councilmember Couch. Historically, we have engaged the help of sister counties to defend in various types of matters. Our engagement, last of which was with the Big Island, was to deal with representation of a body, a board, in handling a matter where the deputy assigned to that board and the rest of my office was conflicted out. In that scenario the sister county was willing to send a deputy. When the topic moved to litigation, the sister counties have declined accepting litigated matters. They have, in the past I've sent complaints to them for their review with the request that they consider a swap between a deputy here versus a deputy there in order for us to save on the expense, and in those matters they've declined. And if you recall, in the history of my employment here, every case that I've asked for special counsel on has been only when there's a conflict. There's only one matter that I came before you where we asked for special counsel because of the complexity and the engagement of prospective experts. So my office, I believe, has been diligent in representing the County to the extent possible. If you look at our historical approach in comparison to the longevity of this office in this County, and compare the numbers, our numbers on special counsel is, to me, substantially different than before. So I only come to you in the need of special counsel appointment when there's a conflict that I believe my office cannot overcome. Absent that, my inclination is to use every resource in our Department to defend the County as much as possible. I wouldn't be here asking for this appointment if I didn't believe it was necessary. It's incumbent upon me to evaluate those circumstances before I even send it up to you. It's here before you because it's necessary in my view. I agree with you, this is a matter that is unfortunate, it should never have gotten to this extent, and if it could've been cured, it should've been, but I again, I do not direct the plaintiff on how to engage the County. If the County was in every circumstance looking at mediating out of the chute, fine, you know, that is something that we look at all the time. But I cannot, again, impress upon you how difficult it is for me to sit here and hear that I should've done something or we can do something despite the allegations that, in my view, once we're adequately represented and we can defend ourselves, will bear out that they're not accurate. So I don't know how else to do it aside from litigating the matter here, and as you heard your Chair, it's not judge and/or jury, and I would not do that because I would then at that point be putting the County at risk unnecessarily and I know better than that. I know that we shouldn't be doing that. It's my obligation to make sure that we do it right. Quite frankly, we have deadlines before us, if the body decides not to engage special counsel, we're going to have to figure out a way to do it. It may put us at greater risk. I'm going to have to take additional steps to see whether or not I can do it, and the Office of Disciplinary Counsel may respond to it or may not. For all intents and purposes, we have deadlines that need to be met. If you are inclined to instruct my office and me directly in this matter that we should explore mediation, so be it. I don't know if this body will meet again before we're required to answer formally in the Federal Court, April 15th. I have no idea. I also don't know whether or not the plaintiff would come to the table. I don't.

CHAIR HOKAMA: Okay. Thank you for that. Mr. White.

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COUNCILMEMBER WHITE: Thank you, Chair. Can you briefly outline any efforts the County has made to resolve this issue?

MR. WONG: Not at the moment.

COUNCILMEMBER WHITE: Can you verify whether the, whether the County has made any efforts to resolve the issue?

MR. WONG: I would prefer to have that discussion in executive session.

COUNCILMEMBER WHITE: Okay. Thank you. Thank you, Chair.

CHAIR HOKAMA: Okay. Any other questions? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you, Mr. Wong, for your comments. Yeah, we're all in a difficult predicament at this point, but so you said you're not sure if the party would be willing to come to the table, but, on your behalf, can you state that you folks are as Corporation Counsel or whoever's in this matter?

MR. WONG: You know, I prefer...

COUNCILMEMBER COCHRAN: I guess in the mediation standpoint not so much litigation matter, but just as people saying hey, here we are, can we just talk this one out a little bit?

MR. WONG: Well, Councilmember Cochran, there's always opportunity to talk resolution prior to any litigation. Whether or not the parties will be agreeable to meet, I can't, I can't answer for the plaintiffs.

COUNCILMEMBER COCHRAN: Right.

MR. WONG: Quite frankly, if we were in a situation right now to walk out of this Chambers and enter into negotiations, I'd be willing to do that, but that's not something that's before us. I don't know how to describe that the need for special counsel, and that's what the focal point is, is a necessary item. I know that all of you want to try to hash it out in an informal method and that's fine. It doesn't mean that we're going to get to resolution. We can certainly meet and have an informal discussion and agree, and there's rules that can allow us to engage without the concern that the information conveyed will be part of the litigation if the parties agree that it would not. But like I said, I haven't, I haven't personally had that conversation with Mr. Mamuad or with his counsel, and I would not because I see that I'm in a conflict and I would be overstepping my bounds, in my view, if I engaged in that regard without the appropriate representation for the County's interest. So in as much as I'm in, I'm, I'm in more of a quandary than you are because I'm bound by other ethical obligations and it is extremely difficult to be skating the line and not cross it and not expose the County to greater risk by me having this on the record discussion. So I know every one of you want to get into the nuances of process and procedure, and allegations,

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and we can do that, but we can't do it in open session, and we can't do it now. The discussions of the allegations can be had after our answer is filed and after the litigation is over, and we can vet the whole thing in open session once it's fully litigated. But I don't want to get there. I'm like you. I want to try to fix it, but I can't fix it with my hands tied behind my back. And quite frankly, because I'm identified in the, in the complaint, there's nothing to stop the plaintiff from amending over their complaint and naming me in there. And I'm not inviting them to do that but if they choose to do that it's their prerogative. I cannot control that and with that said, I need to ask you to appoint somebody to represent the County in my absence. That is my obligation to protect the County, to identify circumstances wherein I'm at risk and you're at risk. And currently, I would prefer to be giving you my opinion on these allegations, but my prudent side is telling me that I should not, and I should be very careful because whether we like it or not, everything that I said today will be transcribed and will be fodder for plaintiff's counsel in their move forward when they cross examine me based on testimony I provided today and that's what they're going to call it, "testimony", including everything that every Council member has said today, every opinion that you've formed today, it will be part of the record and it will be used for one purpose only, and that is to foster their capacity to prevail in the complaint against the County. So I don't know how else to remind all of you and myself that every time we speak in matters of this nature, we are the County, I am the County, you are the County. There's no hat switching. It's there. So sorry for the lecture. I apologize for my having to respond this way, but you put me here because you want to believe, and I assure you that every analysis to protect the County from my vantage point is what you're entitled to and what you'll get without holding back.

CHAIR HOKAMA: Okay. Thank you for that.

COUNCILMEMBER COCHRAN: Thank you, Mr. Wong.

CHAIR HOKAMA: Any, anything further, Members? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. And I certainly understand Mr. Wong's quandary, but I agree with Mr. Couch and Ms. Cochran that there's another way out of this other than spending 150,000 or somewhere between zero and 150,000 if we, we try to resolve this through mediation or through informal conversations, and I think before, before we take action on approving that kind of an amount of money that we should exhaust the other option. And I realize that there are time constraints but maybe those time constraints can be lifted in return for discussions. There would seem to be no lifting of the time constraint by the County, but I would guess the plaintiff would likely lift the time constraint if there were to be open discussions. I've no idea if that's true or not but it seems to me it would be something that should have happened before we take a vote on expending any more funds.

CHAIR HOKAMA: Well, your Chair is going to say I...I am going to recommend that we push out the resolution with a lower number so that we have an official presence in Court. There's still time before Council meeting if the parties want to get together, that's fine with the Chair. But I'm going --

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COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR HOKAMA: --to go with the hand that I've been dealt with and that's my recommendation.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR HOKAMA: Mr. Victorino.

COUNCILMEMBER VICTORINO: Question of clarification. In this case, and maybe Mr. Wong can answer them or I don't know if you or Mr. Wong can answer it, but let's say in this case we have said "no" to special counsel. And we know that by April 15th we've got to respond. Where does that fall now for you as the attorney? And that's the question I have, what happens on April 15th, what would you do? And I'm not an attorney so I really wouldn't know the answer, but I think the public and I would like to know, if we did nothing, we said "no" to this, and you're recommending something different, and we haven't gotten there yet, but let's say we don't recommend the special counsel, what would happen by, on April 15th out of curiosity?

MR. WONG: Currently, I'll tell you I, that I would engage the Office of Disciplinary Counsel for guidance.

COUNCILMEMBER VICTORINO: Okay. That's good enough for me. Just wanted to have some clarification what would happen, what would be the next step if we do not have special counsel, what would be the next step for Mr. Wong and Corporation Counsel. Thank you, Chair.

CHAIR HOKAMA: Whatever, he's going to have to talk to the insurance carriers because if we end up in Court, that went against legal counsel's advice, we going more likely be on the hook for the full amount and no carrier is going to pay, pay the agreement we currently have.

COUNCILMEMBER VICTORINO: Okay. Thank you for the clarification.

CHAIR HOKAMA: Mr. Guzman.

COUNCILMEMBER GUZMAN: I'm not sure whether I'm permitted to speak. I just was like...it's very odd to me that if all areas were analyzed in the situation, how come Office of Disciplinary Counsel was not called prior to this meeting or prior to even asking \$150,000 of taxpayer money that one element of asking that option, what happens if we don't pass this out was not done or a phone call, easy phone call, the, I know ODC's got a hotline. A simple call or a written opinion was not asked and that's just odd as though this was our only option today was to pass this out. Thank you, Chair.

CHAIR HOKAMA: Mr. Wong.

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MR. WONG: If I may, Chair, thank you. Odd or not, I would suggest to you that I did not, and maybe it's my arrogance in believing that this body would accept our recommendation for special counsel, I did not call at this, up until this date, the Office of Disciplinary Counsel because I didn't fathom that I would have to do that. But now, now, I'm aware that it's a necessary step in every circumstance that we ask for special counsel when there's a prospective conflict.

COUNCILMEMBER GUZMAN: Thank you, Chair. I do appreciate that response.

CHAIR HOKAMA: Okay. Thank you. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. And you know, we're going to be asked to, to come up with even if it's not \$150,000, special counsel without hearing all the facts. I sure would love to hear some of the facts and I'd like to stress to the other Members who prevailed on this executive session that we just...it's hard to make a decision without all the facts, and would like to see if they'd be willing to reconsider that vote on executive session, because it's...we need all the facts and we don't have 'em and we can't get 'em. So I don't know. That's just something that's hard to make a vote without all the facts.

CHAIR HOKAMA: I understand. I understand. So what is the pleasure of the Committee? You heard your Chair's recommendations. We've, we chose not to go into executive session. I said we should go get...pass out a special counsel and buy us time and have legal representation. It's up to you folks.

VICE-CHAIR COUCH: Can we have a short recess? Two minutes.

CHAIR HOKAMA: Two minute recess. . . .(gavel). . .

RECESS: 12:08 p.m.

RECONVENE: 12:15 p.m.

CHAIR HOKAMA: . . .(gavel). . .The Policy Committee shall return to order. We are currently on Item 1(36) under Litigation Matters, Members. We've had lot of discussion on this proposed request from Corporation Counsel. The Chair is open to further discussions or questions. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. And you know, you've made your recommendation and I'm willing to make the motion, but I just have to say, reiterate one more time that without all the facts, I'm disappointed that we're not allowed to get all the facts, and that some of the Members are...I realize everybody's concerned about what's public and what's not, but we've heard from our attorneys that they can't say some things that we really need to know before going into this to see if we need a special counsel. So I'm imploring one more time to have some of the people who prevailed to reconsider the executive session vote. Otherwise, I'm ready to make a motion.

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CHAIR HOKAMA: The Chair would say, one, while each of you have stated your ____ thoughts regarding First Amendment very clearly, in the Chair's estimation, you are not normal people. Okay. You have accepted and taken an oath of office as an officer of this County, and therefore, the Chair expects you as an officer of the County to do your job. This including making decisions we may not always want to make, but it's part of what you accepted when you took that oath. So stating that, you know, with the best of whatever information we have, we are going...the Chair is going to ask you to make a determination on special counsel, and you making it on the best information you have at that point in time. To not provide special counsel is, to me, irresponsible on our part as officers of the County. We may not like the situation. We may not like the reasons for the request, but nonetheless, as officers of the County, our first job is to protect the interests of the County. And I believe the request is a reasonable request in asking for special counsel consideration. I would say, Members, I would say the total compensation not to exceed 50,000. This would be your Chair's recommendation. I prefer that if this moves forward, they return quickly with information to make us better informed if it does get accepted. And then, also, at, that point, the Chair would prefer to further define, if we can, who we are providing special counsel for. I have a problem with just the blanket "County of Maui" and that is the kind of information I wish we had now than later, but I have no problem recommending later to re-scope who we are going to protect and indemnify, if any. I'm not comfortable with just giving a blanket right now and that could cover A to Z, and I'm not too sure why we would give a blanket at this time not knowing the specifics and who's involved. So that's your Chair's recommendation at this time. Mr. Couch.

VICE-CHAIR COUCH: Thank you, Mr. Chair. I move to adopt the resolution authorizing the employment of special counsel Marr Jones and Wang, Limited, A Limited Liability Law Partnership in John Doe v. County of Maui Lodged under Seal in Civil No. CV14-00102 JMS BMK and that the, well, I guess we have to make that amendment after this. Thanks. Thank you, sir.

CHAIR HOKAMA: Okay.

COUNCILMEMBER VICTORINO: Second for discussion.

CHAIR HOKAMA: Thank you. I have a motion made by Mr. Couch that was seconded by Mr. Victorino. Members, with the, if you don't mind, the Chair's going to just say that we are going to consider a revised proposed resolution --

VICE-CHAIR COUCH: Correct.

CHAIR HOKAMA: --'cause now we...the seal has been taken off. We do know the plaintiff so we'll do the appropriate revisions made, nonsubstantive revisions but the appropriate revisions to more accurately present the current status.

MS. NAKATA: Excuse me, Mr. Chair.

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CHAIR HOKAMA: Yes, Ms. Nakata.

MS. NAKATA: The Committee received a revised resolution by correspondence dated March 14, 2014 that calls out the case name.

CHAIR HOKAMA: Okay. Thank you for that. So Members, with no objections, the Chair is going to accept Mr. Couch's motion and Mr. Victorino's second as it relates to the revised proposed resolution that's attached to the March 14th.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GCB, RC; abstained: DSG).

CHAIR HOKAMA: Okay. No objections. Thank you. So that is what's before you, Members. We're going to make changes not to exceed 50,000.

VICE-CHAIR COUCH: Mr. Chair, I move to change the amount from 150,000 to 50,000.

COUNCILMEMBER VICTORINO: You amending it.

VICE-CHAIR COUCH: Yep.

COUNCILMEMBER VICTORINO: Okay. Second for discussion purposes.

CHAIR HOKAMA: Okay. Motion to amend made by Mr. Couch, seconded by Mr. Victorino that on Page 2, number 2, compensation shall not exceed 50,000. Any further discussion, Members? All in favor of the motion, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say "no"?

COUNCILMEMBER WHITE: No.

CHAIR HOKAMA: Motion passes. No, five "ayes", one "no", three excused. One, two, three. No, excuse me. Two excused, one recused.

VOTE: AYES: Chair Hokama, Vice-Chair Couch, and Councilmembers Cochran, Crivello, and Victorino.

NOES: Councilmember White.

EXC.: Councilmembers Baisa and Carroll.

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ABSENT: None.

ABSTAIN: Councilmember Guzman.

MOTION CARRIED

ACTION: APPROVE amendment.

CHAIR HOKAMA: Okay, we back on the main motion as amended. Any further discussion, Members? Mr. Couch.

VICE-CHAIR COUCH: I'm reluctantly going to support this only in that as you said, it would be irresponsible if we didn't have some sort of representation. I'm just disappointed that we're having to do this without all the facts and make sure everybody remembers that, you know, we have the opportunity to get the facts, we should get those facts in order to make a correct decision, in my opinion, a well-educated decision. So thank you.

CHAIR HOKAMA: Okay. Any further discussion? Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. And also jumping way back to when this first started back in August, and I think inquiries or queries asked by the plaintiff and not receiving them led, I think, to this too, had some contributing factor to where we were, are today too. So that needs to be addressed too in future times. But Chair, in regards to your uneasiness about the money, you know, the County of Maui versus identified actual people is you're still looking for that to occur to have the actual list rather than the blanketed COM?

CHAIR HOKAMA: You know, what I'm hoping for is there'll be more clarity and more specifics for the Committee to be able to review, and that's one of the reasons why I've changed the compensation amount 'cause I know they're going to need to return.

COUNCILMEMBER COCHRAN: Uh-huh.

CHAIR HOKAMA: And I think we need to...and at a point we can hopefully get the information to make better decisions.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair. And because our latest correspondence, March 14th, Neldon Mamuad is now listed versus John Doe --

CHAIR HOKAMA: Yes.

COUNCILMEMBER COCHRAN: --so he has stepped up and actually stated his name and, you know, so but then yet we are still County of Maui with no, you know listed, detailed list of names so I understand your point, Chair, and I support you. Thank you.

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CHAIR HOKAMA: Okay. Thank you. Any further discussion, Members? All in favor, please...as, motion as amended, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR HOKAMA: Opposed, say, "no"?

COUNCIL MEMBER WHITE: No.

CHAIR HOKAMA: We have five "ayes", one "no", Mr. White, two excused, and one recused. The motion passes.

VOTE: AYES: Chair Hokama, Vice-Chair Couch, and Councilmembers Cochran, Crivello, and Victorino.

NOES: Councilmember White.

EXC.: Councilmembers Baisa and Carroll.

ABSENT: None.

ABSTAIN: Councilmember Guzman.

MOTION CARRIED

ACTION: Recommending ADOPTION of revised resolution.

ITEM PIA-1(34): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 07-1-0496(3)) (CC 13-41)

ITEM PIA-1(35): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: WILLIAM L. LARSON, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 09-1-0413(2)) (CC 13-41)

CHAIR HOKAMA: We have two items, Members, that we voted for executive session. I am aware of the time. I am aware, too, that Ms. Cochran does have her Committee meeting also scheduled for 1:30. Therefore, Members, the Chair is going to...this is going to take some time also. So I'm going to ask that we defer this item. I will state for the record that we did not enter into executive session as voted upon by this Committee regarding two items, Item 1(34) and Item 1(35) and that the Committee will work with Mr. Rowe and Corporation Counsel to bring it back on a timely basis for Committee review and for Mr. Rowe to be able to communicate with the Court appropriately. Mr. Couch.

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VICE-CHAIR COUCH: Yeah. I was just going to ask you if there's a, or Corp Counsel if there's a time limit on this, if we may need to have a special meeting or not.

CHAIR HOKAMA: If there's a change in the Court's requirements, I'll be talking to Mr. White and explaining the need and justify to him for a special meeting. Yeah. Mr. White and I have had some preliminary discussions should we have those unanticipated but necessary Policy meetings. We'll work with the schedule and Budget Committee.

VICE-CHAIR COUCH: Okay.

CHAIR HOKAMA: Okay. Anything else? So Members, Item 1(34) and 1(35) will be deferred.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: GCB, RC, DSG).

ACTION: DEFER pending further discussion.

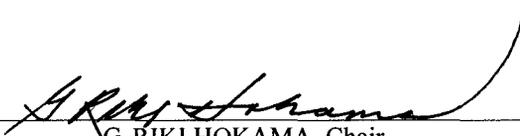
CHAIR HOKAMA: PIA-1(36) we passed, we were going to recommend that resolution as revised but this item shall remain deferred and within the Committee for further review. Any objections?

COUNCIL MEMBERS: No objections.

CHAIR HOKAMA: Thank you. This meeting is adjourned. . . .(gavel). . .

ADJOURN: 12:27 p.m.

APPROVED:



G. RIKI HOKAMA, Chair
Policy and Intergovernmental Affairs Committee

pia:min:140317

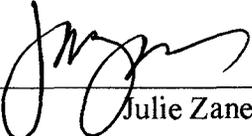
Transcribed by: Julie Zaner

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I, Julie, 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 8th day of April, 2014, in Wailuku, Hawaii.



Julie Zaner