

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

July 6, 2015

Council Chamber, 8th Floor

CONVENE: 9:07 a.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll
Councilmember Elle Cochran (in 9:09 a.m.)
Councilmember Don Couch
Councilmember Michael P. Victorino
Councilmember Mike White (in 9:24 a.m.)

EXCUSED: Councilmember Riki Hokama

STAFF: Carla Nakata, Legislative Attorney
Clarita Balala, 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.: Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel (Item 1(3))
Richard B. Rost, Deputy Corporation Counsel, Department of the Corporation Counsel (Items 1(11), 1(13), & 1(24))
Thomas Walter Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel (Item 1(13))
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel (Item 1(3))
Tivoli Faaumu, Chief of Police, Department of Police
Danilo Agsalog, Director, Department of Finance (Items 1(11) & 1(24))
Scott Teruya, County Real Property Tax Administrator, Department of Finance (Items 1(11) & 1(24))
Marcy Martin, Senior County Real Property Technical Officer, Department of Finance (Items 1(11) & 1(24))

Seated in the gallery:

Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Rosemary Robbins (Item 1(3))

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Gwen Hiraga, Senior Advisor, Munekiyo & Hiraga Inc.
Colleen P. Doyle, Esq., Hunton and Williams LLP (Item 1(3))
(2) additional attendees

PRESS: Akaku: Maui Community Television, Inc.

CHAIR GUZMAN: . . .(gavel). . . Good morning. The Committee of the Whole shall now come to order. I'm Don Guzman. I'm the Chair of the Committee. Before we begin, I'd like to ask anybody in the gallery or on the floor to please silence your cell phones. I'll introduce our Members for today's meeting. For the Vice-Chair of the Council [sic], Stacy Crivello.

VICE-CHAIR CRIVELLO: Vice-Chair of COW. Thank you.

CHAIR GUZMAN: Thank you. Of the Committee, sorry. The . . .(laughter). . .

COUNCILMEMBER VICTORINO: You heard that.

COUNCILMEMBER BAISA: Something I missed? Something I missed?

COUNCILMEMBER VICTORINO: I said, oh wait, cut his job.

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

CHAIR GUZMAN: Good morning. I'm sorry I didn't drink my coffee yet. Mr. Carroll, good morning.

COUNCILMEMBER CARROLL: Good morning, Chair.

CHAIR GUZMAN: Ms. Baisa, good morning.

COUNCILMEMBER BAISA: Good morning.

CHAIR GUZMAN: Don Couch, good morning.

COUNCILMEMBER COUCH: Good morning.

CHAIR GUZMAN: And Mr. Victorino, good morning.

COUNCILMEMBER VICTORINO: Good morning, Chair.

CHAIR GUZMAN: And today from our Administration, we have Deputy Corporation Counsel Tom Kolbe as well as Richard Rost. For our Staff, we have Committee Secretary Clarita Balala and our Legislative Attorney Carla Nakata. Before we begin, I'd like to remind anyone who would like to testify to please sign up in the lobby area. Once you've testified please limit your testimony to today's agenda as well as when you come to the podium please identify yourself and/or the organization in which you represent. I'm going to go

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ahead and check in with our District Offices to see if they are present. Hana Office, are you present?

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office.

CHAIR GUZMAN: Good morning, Ms. Lono. Lanai Office, are you present?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai.

CHAIR GUZMAN: Good morning, Ms. Fernandez. And Molokai Office, are you present?

MS. ALCON: Good morning, Chair. This is Ella Alcon on Molokai.

CHAIR GUZMAN: Good morning, Ms. Alcon. Thank you, District Office and we will come back to you upon testimony. At this time, I'm going to ask staff to call on their first testifier. Before that, I'd like to recognize the presence of our Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Good morning, Chair. Aloha.

CHAIR GUZMAN: Thank you. Good morning.

MS. NAKATA: Mr. Chair, your first testifier is Rosemary Robbins. She'll be testifying on COW-1(3).

. . . BEGIN PUBLIC TESTIMONY. . .

MS. ROBBINS: Good morning, everybody. Rosemary Robbins. Hope everybody had a good 4th. You looked good on that horse up there, sir. Testifying one more time on what had been previously and previous to that referred on issue of Committee of the Whole 1(3), Litigation Matters: Settlement Authorization in the Wildlife Fund and others v. the County of Maui. That's been before this Council and before committees and believe me around in the community. Quick history, again, in 1972 the Federal Clean Air and Clean Water Acts were passed 44 years ago Fiscal Year 2016 that we began last week here. In all that amount of time, this has not been a smooth operation for the folks here in Maui who have been subjected to poor practices in terms of clean water and in terms of clear air situations that are precipitous to people's health. This should not just be a money issue. It has grown to be a huge one . . . hiring to a tune of over \$2 million in extra attorneys to be able to defend that failure to behave appropriately according to those health considering legislation. And that Clean Air Act from '72 didn't stop the folks here in this County who were taking the easy road out which was a non-healthy road out in putting injection wells up on West Maui putting them into the land doing what water does moving out to the shore. The shore lines have been identified as having been negatively impacted in that on the Committee of the Whole meeting last week, the 30th of June right here. It was again announced that liability has been established for that. It is due to be heard in Federal court in a trial on the 11th of August 2015, a month from now. It's taken all that time and imagine the danger and in some cases obviously

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death that have happened from our having been put in a place of unsafe water. So please --

MS. NAKATA: Three minutes.

MS. ROBBINS: --we need to get a grip and do this right. We need to make sure that this doesn't become the person that is followed and followed the way it has been followed and followed.

CHAIR GUZMAN: Okay, Ms. Robbins. Members, do you have any follow up questions for the testifier? Seeing none. Thank you very much for your testimony.

MS. ROBBINS: You're welcome.

MS. NAKATA: Mr. Chair, there is no one else who has signed up to testify in the Chamber.

CHAIR GUZMAN: Thank you. I'm going to turn to our District Offices. In Hana, is there anyone wishing to testify?

MS. LONO: The Hana Office has no one waiting to testify.

CHAIR GUZMAN: Thank you. In Lanai, is there anyone wishing to testify?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR GUZMAN: Our Molokai Office, is there anyone wishing to testify?

MS. ALCON: There is no one here on Molokai waiting to testify.

CHAIR GUZMAN: Thank you, ladies. At this time, Members, I have one more call to the gallery, is there anyone wishing to testify? Seeing none. At this time, without objection, I would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. Public testimony shall now be closed.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR GUZMAN: Moving on to today's agenda, Members.

COW-1(13): **LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF MARVIN KALANI MILES, AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE M-2012-004; AND MARVIN KALANI**

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**MILES V. MAUI POLICE CHIEF GARY YABUTA, ET AL., CIVIL
14-1-0345(2)) (CC 15-6)**

CHAIR GUZMAN: We're starting out with COW-1(13), and this is the Litigation Matters for the Settlement Authorization in the matter of the Grievance Arbitration between the State of Hawaii Organization of Police Officers, on behalf of Marvin Kalani Miles, and the County of Maui, Maui Police Department, SHOPO Case M-2012-004; and Marvin Kalani Miles v. Maui Police Chief Gary Yabuta, et al., Civil 14-1-0345(2). The Committee is in receipt of the correspondence dated June 16, 2015, from the Department of the Corporation Counsel, requesting consideration for a proposed resolution "AUTHORIZING SETTLEMENT OF IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF MARVIN KALANI MILES AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE NO. M-2012-004; AND OF MARVIN KALANI MILES VS. MAUI POLICE CHIEF GARY YABUTA, ET AL., CIVIL NO. 14-1-0345(2)", and transmitting a copy of the Circuit Court complaint. The complaint alleges general and special damages related to Mr. Miles' termination of employment with the Department of Police on May 31, 2012. The purpose of the proposed resolution is to authorize settlement of the SHOPO grievance and the Circuit Court case. The Committee may consider whether to recommend adoption of the proposed resolution with or without revisions, and may also consider other related actions. Today, we have presenting the case is Deputy Corporation Counsel Tom Kolbe. If you could please present the case in open session, any comments or any opening remarks, you may do so now. Thank you, Mr. Kolbe.

MR. KOLBE: Okay, thank you. Good morning, Mr. Chair. This case involves really two cases. One is in arbitration and is currently pending hearing and that is the SHOPO Arbitration regarding the officer's termination. The other matter is a civil action filed in Circuit Court, and in essence, it alleges that the County improperly terminated Officer Miles. The basis for both actions occurred in September of 2011, and resulted in a termination on May 2012. Because this matter is currently pending arbitration at this time I'm going to request that any analysis and discussion about the strengths or weaknesses of either of the cases as well as discussion of settlement be handled in executive session. So I would make that request before I provide further comments and information to the Council.

CHAIR GUZMAN: Thank you. And Chief, do you have any opening comments that you would like to present to the Committee in open session?

MR. FAAUMU: Not at this time, Mr. Chairman.

CHAIR GUZMAN: Thank you. Members, do you have any questions that you would like to present in open session? Seeing none. At this time, we have a request to enter into executive session. I would like to entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the Council, the County, and the Committee.

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VICE-CHAIR CRIVELLO: So moved.

CHAIR GUZMAN: Moved by Stacy Crivello --

COUNCILMEMBER VICTORINO: Second that, Mr. Chair.

CHAIR GUZMAN: --seconded by Mr. Victorino. Is there any further discussion? Seeing none. All those in favor say “aye”?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say “no”. We have eight ayes, sorry, excuse me, seven ayes and zero noes, two excused – Mr. White, I believe, is going to join us later and Mr. Hokama is excused. Thank you. Motion carries.

**VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and
 Councilmembers Baisa, Carroll, Cochran, Couch, and
 Victorino.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and White.

MOTION CARRIED.

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

CHAIR GUZMAN: We will be entering into executive session thereafter we present the other cases in open session. So if you would please stay in the gallery.

MR. KOLBE: I will.

CHAIR GUZMAN: Thank you. Members, moving on to the next item on the agenda.

**COW-1(11): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE
 MATTER OF THE TAX APPEAL OF AUWAHI WIND ENERGY, LLC;
 TAX APPEAL 13-1-0302) (CC 15-6)**

CHAIR GUZMAN: We have COW-1(11), Litigation Matters in the matter of the Tax Appeal of Auwahi Wind Energy, LLC; Tax Appeal 13-1-0302. The Committee is in receipt of the correspondence dated June 1, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution entitled “AUTHORIZING

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SETTLEMENT OF AUWAHI WIND ENERGY, LLC V. COUNTY OF MAUI, TAX APPEAL CASE NO. 13-1-0302”, and transmitting a copy of the notice of tax appeal for tax year 2013. In its tax appeal, Auwahi Wind Energy LLC alleges the County of Maui improperly assessed the value of the real property it leases, identified for the real property tax purposes as Tax Map Key (2) 1-9-001:006, for tax year 2013. The purpose of the proposed resolution is to authorize settlement of the tax appeal. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider other matters that are related to this. Deputy Corporation Counsel Richard Rost is presenting the case. If you could present opening remarks and/or share any information in open session at this time.

MR. ROST: Thank you, Mr. Chair. This is a tax appeal, one of two separate cases, related to taxation of windmills as real property. This case was stayed pending the outcome of the other case, the Kaheawa case, which had been appealed to the Intermediate Court of Appeals. The Intermediate Court of Appeals ruled against us in Kaheawa. They found that under the old County Code provisions we were not permitted to tax the windmills. So with that adverse ruling, we now have to deal with the Auwahi case and the case is no longer staying. We need to proceed with dealing with the Auwahi matter. Because the case is still in litigation and some of the discussions have been ongoing, we would request executive session to go into the specifics of what the proposals are. We have, with me here is Mr. Danny Agsalog, Director of Finance; and also Scott Teruya and Marcy Martin from the Real Property Tax Division who can address any specific questions the Committee may have.

CHAIR GUZMAN: Thank you. Is there any opening statements from the Department of Finance, the Director Mr. Agsalog?

MR. AGSALOG: Thank you, Mr. Chairman. No, we defer in this case to the Corporation Counsel since it already went through our process. We are now just here to answer more specific questions that you might have.

CHAIR GUZMAN: Okay. Members, are there any questions that you like to pose to the Department or Corporation Counsel in open session?

COUNCILMEMBER VICTORINO: Wait for executive session.

CHAIR GUZMAN: Okay. Seeing none. Thank you, gentlemen. I believe at this time we have a request to enter into executive session for this matter. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

CHAIR GUZMAN: Moved by Ms. Crivello.

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COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". Seven ayes, two excused, no opposition. Motion carries.

CHAIR GUZMAN: Thank you, gentlemen. And you can stay in the gallery once we enter into executive session.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Baisa, Carroll, Cochran, Couch, and Victorino.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Hokama and White.

MOTION CARRIED.

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

CHAIR GUZMAN: Members, moving on.

COW-1(24): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEALS OF KAHEAWA WIND POWER, LLC; TAX APPEAL 10-1-1246) (CC 15-6)

CHAIR GUZMAN: The next item, COW-1(24), Litigation Matters. The Committee is in receipt of the following: Correspondence dated May 18, 2012, from the Department of the Corporation Counsel, requesting consideration of the proposed resolution to authorize settlement of the tax appeals of Kaheawa Wind Power, LLC, for the tax years 2007, 2008, 2009, 2010, and 2011, which appeals have been considered under Tax Appeal 10-1-1246. The correspondence also transmits a copy of each of the notice of the appeal. In its tax appeals, alleges the County of Maui improperly assessed the value of its real property located at 3000 Honoapiilani Highway. Correspondence dated June 25, 2015, from the Department of the Corporation Counsel, requesting consideration of a revised proposed resolution therein mentioned and stated on the record. The purpose of the revised resolution is to authorize settlement of the referenced consolidated tax appeals.

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The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions or consider other related matters. Today, we also have Richard Rost who is going to be presenting this case. Do you have any other further comments in open session regarding this matter?

MR. ROST: Thank you, Mr. Chair. This is the other wind farm's tax appeals. There's actually five tax years that were all consolidated together into a single case. This is the case that the Tax Court initially ruled against us finding that under the prior County Code we were not permitted to tax the windmills. We appealed to the Intermediate Court of Appeals who ruled against us on that issue and then we petitioned the Hawaii Supreme Court for certiorari which they denied. So as far as these five tax years go, we are in a difficult position. We essentially need to settle them. There's been a proposal from Kaheawa to settle, which because the case is still active we would like to discuss in executive session. So we request executive session at this time.

CHAIR GUZMAN: The Finance Director, Mr. Agsalog, do you have any opening statements that you would like to share in open session?

MR. AGSALOG: Mr. Chairman, thank you, and again the same we defer to the Corporation Counsel but we will answer any specific questions you might have with regards to this issue in our assessment.

CHAIR GUZMAN: Members, do you have any questions that you would like to ask the Department or Corporation Counsel at this time? Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. I'm not sure, just let me know, is it appropriate to ask right now in open session what the Department, their justification for feeling this was an appropriate taxation to consider it real property?

CHAIR GUZMAN: Yeah . . .

COUNCILMEMBER COCHRAN: Or is that in closed . . .

CHAIR GUZMAN: No, no, I would like the Members ask whatever questions that you feel may or may not be appropriate. Just ask the questions. It's up to the Corporation Counsel whether they will respond in open session or not. If they cannot respond in open session, they will then indicate that they cannot respond and would have to do so in executive session. So did you understand the question, either the Department or Corporation Counsel?

MR. ROST: I think we understand the question. I think that's probably best left for executive session.

COUNCILMEMBER COCHRAN: Okay. Okay, very good. Thank you.

CHAIR GUZMAN: Thank you. Any other questions that you would like to ask in open session? Seeing none. At this time, we have a request to enter into executive session pursuant

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to 92-5(a)(4) of the Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: I so move.

CHAIR GUZMAN: So move by Ms. Crivello.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Seconded by Mr. Victorino. Any further discussion? Seeing none. At this time, I'd like to recognize our Council Chair, Mr. Mike White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR GUZMAN: Good morning. All those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". We have eight ayes, one excused, and no noes. Motion carries. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Hokama.

MOTION CARRIED.

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

CHAIR GUZMAN: So at this time, Members, I'm going to go ahead and recess the open session for us to allow . . .

COUNCILMEMBER VICTORINO: Mr. Chair, what about COW-1(3)?

CHAIR GUZMAN: We will go back to open session after executive session. Our Special Counsel Ms. Doyle is not here as well as Mr. Wong.

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COUNCILMEMBER VICTORINO: Oh, okay.

CHAIR GUZMAN: They will be arriving around 10:30. So it should be just about the same time we will be adjourning the executive sessions on the other matters.

COUNCILMEMBER VICTORINO: Thank you for that clarification, Mr. Chair.

CHAIR GUZMAN: Thank you. So at this time we're going to take a recess so that the Chambers can be set up for executive session. . . .(gavel). . .

RECESS: 9:29 a.m.

RECONVENE: 10:57 a.m.

CHAIR GUZMAN: . . .(gavel). . . Good afternoon. Committee of the Whole shall now reconvene in open session. Due to time constraints, we were not able to enter into executive session for Items COW-1(11) and COW-1(24).

COW-1(3): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK)

CHAIR GUZMAN: At this time, I will bring up on the agenda the next item in open session COW-1(13), Litigation Matters of the Grievance, uh, I believe . . . hold on . . . Litigation Matters of Wildlife Fund, et al. v. County of Maui. The Committee is in receipt of the correspondence dated April 20, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled AUTHORIZING THE SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL., and this is on your agenda it's COW-1(3). The First Amended Complaint, transmitted by correspondence dated January 27, 2015, alleges violations under the Federal Water Pollution Control Act, also known as the Clean Water Act caused by the discharge of wastewater into the ocean from injection wells operated by the County at the Lahaina Wastewater Reclamation Facility. The purpose of the proposed resolution is to authorize settlement of the case. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider related actions. At this time, I'm going to allow our Corporation Counsel Patrick Wong to present any opening comments or presentation of the case in the open session. Mr. Wong?

MR. WONG: Thank you, Chair, Members. Last week you had a meeting that partially discussed the concepts of the proposed resolution. Between last week and today, I can tell you that I did have an in-depth conversation with Plaintiff's attorney last week and the entire discussion dealt with concepts of settlement and resolution. So, I'd like to present those items to you in executive session.

CHAIR GUZMAN: Okay, Members, do you have any . . . wait, hold on, is there any opening statements for Corp. Counsel or Ms. Rochelle Thomson?

MS. THOMSON: No, there's not.

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CHAIR GUZMAN: Thank you. Members, any questions you would like to present in open session?

COUNCILMEMBER VICTORINO: Go to executive session.

CHAIR GUZMAN: Members, there's been a request from Corporation Counsel to enter into executive session. I would like to entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4), Hawaii Revised Statutes, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER VICTORINO: Second.

CHAIR GUZMAN: Moved by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none. All those in favor say "aye"?

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: That's eight ayes, no noes, one excused. Motion carries.

MS. NAKATA: Excuse me, Chair.

CHAIR GUZMAN: Sorry, is there seven? Oh, Mr. Carroll is gone. Okay, correction, seven ayes, no noes. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Carroll and Hokama.

MOTION CARRIED.

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

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CHAIR GUZMAN: At this time, Members, I'm going to recess this open session at this time and enter into executive session.

RECESS: 11:01 a.m.

RECONVENE: 11:51 a.m.

CHAIR GUZMAN: . . . (*gavel*) . . . Committee of the Whole shall now reconvene in open session. The date is July 6, 2015.

COW-1(13): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE GRIEVANCE ARBITRATION BETWEEN STATE OF HAWAII ORGANIZATION OF POLICE OFFICERS, ON BEHALF OF MARVIN KALANI MILES, AND COUNTY OF MAUI, MAUI POLICE DEPARTMENT, SHOPO CASE M-2012-004; AND MARVIN KALANI MILES V. MAUI POLICE CHIEF GARY YABUTA, ET AL., CIVIL 14-1-0345(2)) (CC 15-6)

CHAIR GUZMAN: At this time, pursuant to our executive session discussion, I would like to recommend or request a . . . for the matter concerning COW-1(13), this is the matter of the Grievance Arbitration between State of Hawaii Organization of Police Officers on behalf of Marvin Kalani Miles and Count of Maui, Maui Police Department, SHOPO case M-2012-004; and Marvin Kalani Miles v, Maui Police Chief Gary Yabuta, et al., Civil 14-1-0345(2) COW-1(13). At this time, I would entertain a motion to adopt the Chair's recommendation for the proposed settlement.

COUNCILMEMBER COUCH: Mr. Chair, I move to adopt the resolution as you read.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: Moved by Mr. Couch, seconded by Mr. Victorino. Further discussion? Seeing none. All those in favor say "aye"?

COUNCILMEMBER COUCH: Aye.

COUNCILMEMBER VICTORINO: Aye.

CHAIR GUZMAN: All those opposed say no.

COUNCILMEMBER WHITE: No.

VICE-CHAIR CRIVELLO: No.

COUNCILMEMBER VICTORINO: Roll call.

CHAIR GUZMAN: Roll call, please.

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MS. NAKATA: Committee Vice-Chair Crivello?

VICE-CHAIR CRIVELLO: No.

MS. NAKATA: Councilmember Robert Carroll?

CHAIR GUZMAN: Mr. Carroll?

COUNCILMEMBER CARROLL: Aye.

MS. NAKATA: Councilmember Gladys Baisa?

COUNCILMEMBER BAISA: Aye.

MS. NAKATA: Councilmember Elle Cochran?

COUNCILMEMBER COCHRAN: Aye.

MS. NAKATA: Councilmember Don Couch?

COUNCILMEMBER COUCH: Aye.

MS. NAKATA: Councilmember Mike White?

COUNCILMEMBER WHITE: No.

MS. NAKATA: Councilmember Michael P. Victorino?

COUNCILMEMBER VICTORINO: Aye.

MS. NAKATA: Mr. Chair, you have six ayes, oh, excuse me, and Committee Chair Guzman?

CHAIR GUZMAN: Aye. Thank you.

MS. NAKATA: You have six ayes, two noes, one excused – Member Hokama.

CHAIR GUZMAN: Okay. Motion carries. Thank you.

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VOTE: **AYES:** **Chair Guzman, and Councilmembers Baisa, Carroll, Cochran, Couch, and Victorino.**

NOES: **Vice-Chair Crivello and Councilmember White.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Hokama.**

MOTION CARRIED.

ACTION: **Recommending ADOPTION of resolution.**

CHAIR GUZMAN: Members, moving on to the next agenda item.

COW-1(11): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEAL OF AUWAHI WIND ENERGY, LLC; TAX APPEAL 13-1-0302) (CC 15-6)

COW-1(24): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEALS OF KAHEAWA WIND POWER, LLC; TAX APPEAL 10-1-1246) (CC 15-6)

CHAIR GUZMAN: Number COW-1(11) – these are litigation matters regarding the tax appeal. This matter as well as COW-1(24), regarding also the matters of the tax appeals, without any objections, due to time frames I will defer these matters.

COUNCILMEMBERS: No objections.

COUNCILMEMBER COUCH: That's 1(24), Mr. Chair?

CHAIR GUZMAN: I'm getting to that, Mr. Couch.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: RH)

ACTION: **DEFER PENDING FURTHER DISCUSSION.**

COW-1(3): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI; CIVIL 12-00198 SOM BMK) (CC 15-6)

CHAIR GUZMAN: In regards to COW-1(3), I am going to defer that matter as indicated in executive session for those purposes.

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COUNCILMEMBER VICTORINO: No objections.

COUNCILMEMBER COUCH: No objections.

COUNCILMEMBER BAISA: No objections.

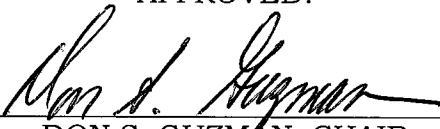
COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: RH)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Members, that is the end of our agenda. I thank you for all your patience and your input for today's meeting, and this COW meeting is now adjourned. Thank you. . . .(gavel). . .

ADJOURN: 11:54 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

cow:min:150706

Transcribed by: Jo-Ann Sato