

# COMMITTEE OF THE WHOLE

Council of the County of Maui

## MINUTES

August 7, 2015

Council Chamber, 8<sup>th</sup> Floor

**CONVENE:** 1:35 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Stacy Crivello, Vice-Chair  
Councilmember Gladys C. Baisa  
Councilmember Robert Carroll  
Councilmember Don Couch  
Councilmember Mike White (in 2:00 p.m.)

**EXCUSED:** Councilmember Elle Cochran  
Councilmember Riki Hokama  
Councilmember Michael P. Victorino

**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  
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel  
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel  
Kyle Ginoza, Director, Department of Environmental Management

*Seated in the gallery:*

Christie M. Trenholme, Deputy Corporation Counsel,  
Department of the Corporation Counsel

**OTHERS:** Rosemary Robbins  
Colleen P. Doyle, Esq., Hunton and Williams LLP

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

---

CHAIR GUZMAN: . . .(*gavel*). . . Good afternoon. Welcome to the Committee of the Whole. The date is August 7, 2015. The time is 1:35 p.m. I'm the Chair, Don Guzman, of the

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

Committee. Before we begin, I may ask all the Members and those in the gallery to please turn off your cell phones or put it in silence mode. I'd like to introduce our Members for today . . . this afternoon. Mr. Carroll, good afternoon.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Ms. Baisa, good afternoon.

COUNCILMEMBER BAISA: Good afternoon.

CHAIR GUZMAN: Mr. Couch, good afternoon.

COUNCILMEMBER COUCH: Good afternoon, Chair.

CHAIR GUZMAN: And our Vice-Chair of the Committee, Ms. Crivello.

VICE-CHAIR CRIVELLO: Good afternoon, Chair.

CHAIR GUZMAN: Good afternoon. And for our Staff, we have Carla Nakata our Legislative Attorney, and our Secretary is Clarita Balala. For Administration, we have Richelle . . . is Mr. Wong going to join us later? And we have Richelle Thomson, we have Moana Lutey, and Colleen Doyle, and from our Department of Environmental Management, Kyle Ginoza, welcome. Members, before I begin, I'm going to make a short announcement. For those who'd like to testify, please sign up in the lobby. When you come down to the, please state your name and/or organization in which you represent. You'll have about three minutes to testify. You'll be notified upon the last minute to conclude your statements. I'm going to go ahead and check in with our District Offices to see if they're online. Hana Office, can you please identify yourself?

MS. LONO: Good afternoon, this Dawn Lono at the Hana Office.

CHAIR GUZMAN: Good afternoon. Lanai Office, are you there, can you please identify yourself?

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

CHAIR GUZMAN: Good afternoon, Ms. Fernandez. Also on Molokai Office, are you there?

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

CHAIR GUZMAN: Good afternoon, Ms. Alcon. Thank you very much District Offices. Now, we're going to turn on our Chambers. Please call on the first testifier.

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

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

**. . .BEGIN PUBLIC TESTIMONY. . .**

MS. ROBBINS: Good afternoon, everybody. Rosemary Robbins, concerned citizen. Could I request that this item be read by a staff member so it doesn't come out of my brief three minutes?

CHAIR GUZMAN: Uh, which item are you talking about?

MS. ROBBINS: We're talking about COW-1(3).

CHAIR GUZMAN: You wanted a brief description of it? I don't think we . . .

MS. ROBBINS: No. I'm asking if what's on your agenda can be read by a Staff member so it doesn't come out of my three minutes?

CHAIR GUZMAN: Oh, we always do read it prior to the subject matter being presented on the floor.

MS. ROBBINS: I understand that but that doesn't affect my three minutes? I'm asking if that could be done now so that the hearing public will know what we're talking about?

CHAIR GUZMAN: I think we're . . . we're already going to do that so I don't believe that it's necessary at this point. So you can go ahead and testify.

MS. ROBBINS: Okay, so the answer is no then. Okay, so at the end of the week and the end of the day, two days before the trial is due to begin in Honolulu unless we've had a delay and I haven't heard about it. This was filed by environmentalists. I'm not part of the groups that did that but I don't disagree with them that we need to really watch out for people's health. And it has to do with the injection wells up on the West Side that turned out to be proven carrying contaminants into the ocean. This has been going on for years. It was filed by those folks in April of 2012. The docket shows that the County made no written response until 2014. And since that has gotten on the Federal trial list, there's been plenty of action. Most of it saying we need more money in order to hire more people in order to defend us against violations proven and the County has acknowledged them that had to do with contaminating water. Wow. Huge. So couple of things . . . I just would like to say quickly reminds me of the story of the youngster that went into the confessional. Bless me Father for I have sinned, I stole a rope. Never mentioned the cow at the end of the rope. Huge ramifications going on. Huge ramifications in terms of people's health and all we seem to be talking about is money. How much money it's going to cost us to continue repeated requests for upping the ante for the lawyers that we hired from outside of the County. Wow, nobody is talking about health. Nobody is talking about the well-being. The damage that's being done has been done. So I would ask that we take a look at the mentality that's coming up also on the State level we had a scathing report --

MS. NAKATA: Three minutes.

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

MS. ROBBINS: --earlier this week about problems with no oversight for jobs that should be done that are now affecting people's health. Please don't keep upping the ante. This is a terrible precedent to being set. You're asking for the sixth up the ante today.

CHAIR GUZMAN: Okay. Thank you very much, Ms. Robbins. Any further questions for our testifier? Seeing none. Thank you very much for your testimony.

MS. ROBBINS: You're welcome.

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

CHAIR GUZMAN: Okay. We'll check in with our District Offices. In Hana Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay. Thank you. On Molokai, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay. Thank you. On Lanai District Office, is there anyone wishing to testify?

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

CHAIR GUZMAN: Okay. Very good. Thank you, Ladies. Have a good week and afternoon.

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

CHAIR GUZMAN: Members, I'm going to go ahead and turn your attention to agenda Item COW-1(3): Litigation Matters – Settlement Authorization of Hawaii Wildlife Fund, et al. v. County of Maui; Civil No. 12-00198 SOM BMK. The Committee is in receipt of the following - correspondence dated July 21, 2015, from the Department of the Corporation Counsel, requesting consideration of the proposed . . . oh, I apologize, Members, uh, without objections I would like to close public testimony.

COUNCILMEMBERS: No objections.

**. . .END OF PUBLIC TESTIMONY. . .**

CHAIR GUZMAN: Thank you. Correspondence dated July 21, 2015, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING SETTLEMENT IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK." The First Amended Complaint alleges violations under the Federal Water Pollution Control Act, also known as the Clean Water Act,

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

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. We also have correspondence dated July 29, 2015, from the Department of the Corporation Counsel, transmitting a proposed resolution entitled "AUTHORIZING AN INCREASE IN FUNDING RELATED TO THE EMPLOYMENT OF SPECIAL COUNSEL HUNTON & WILLIAMS LLP, IN HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK." The purpose of the proposed resolution is to authorize \$500,000 in additional compensation to the Hunton & Williams LLP as special counsel in the case, for a total compensation not to exceed \$2,750,000. I would also note to our Members that previously we did authorize a settlement of the case by Resolution 15-75, adopted on July 7, 2015. I would like to ask our Corporation Counsel Mr. Wong, and either the Deputy Corporation Counsel Ms. Thomson or Special Counsel Ms. Doyle to provide any comments on the proposed settlement, and any other request from the additional compensation that may be made in open session. So Mr. Wong, it's your floor.

MR. WONG: Thank you, Chair. I just have a few opening remarks that we can say in open session. With all due respect to the testimony that this body has just heard, I'd like to provide some insight into some of the actual factual information. First of all, so we're clear the trial is not set for next week. It's been continued to November. And the purpose of that was to allow us to further negotiate the prospect of resolution with the Plaintiffs that you and your Committee has authorized our Department to pursue. Secondly, let us recall that the lawsuit that was filed against the County was primarily for, solely for us to seek and acquire the discharge permit, an NPDES Permit. It was not about what was being discharged, it was the fact that we did not have one. And we still have a fundamental disagreement about the application of the Clean Water Act to our injection wells and part of that is going to be dealt with as we move forward in this litigation as part of our issues on appeal. So there is no cow at the end of any rope here, and I'd like to clarify again that we're very close to resolution of this claim. You've authorized us, we've engaged it, and I want to be able to present the final terms and conditions to you in executive session, which just so we all are on the same page, we were not able to get to this point of resolution absent the assistance and capable litigation skills of our Special Counsel Colleen Doyle. In the abundance of caution, I would allow our other Members here to speak but I would prefer to have the rest of the discussion in executive session. Thank you.

CHAIR GUZMAN: Thank you. Members, go ahead and feel free to ask questions and Corporation Counsel will indicate whether he can answer those questions in open session or not. So, Members, seeing any questions in open session? Okay, seeing none. There has been a request to enter into executive session. The Chair will 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 pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and/or this Committee.

VICE-CHAIR CRIVELLO: So move, Chair.



**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

of sexual assault and other related offenses, including kidnapping and was sentenced to 20 years in prison. In 2011, the Hawaii Innocence Project, on his behalf, filed a motion for a new trial and the court granted that. And the basis for granting that new trial was that there was newly discovered DNA evidence that was found on a fabric that the victim had been raped on. The evidence is basically mucus and it did not match the Plaintiff's DNA. The Plaintiff later filed the lawsuit against the State of Hawaii, the estate of Antonio Funes, and the County of Maui, and the claims are really primarily a malicious prosecution type of claim. The State is no longer in this lawsuit. The estate of Antonio Funes, likewise, is not in this lawsuit, and the only Defendant currently is the County of Maui. We did have a settlement discussion with the court earlier this year, it was about February of this year, and we are here to present some information on that settlement conference and to discuss with you some of the issues related to that.

CHAIR GUZMAN: Members, are there any questions that you would like to present in open session? Mr. Couch?

COUNCILMEMBER COUCH: If this can be answered in open session --

MS. LUTEY: Sure.

COUNCILMEMBER COUCH: --why is the State no longer a member . . . party of the suit nor the other estate?

MS. LUTEY: The State was sued because the allegation was that the imprisonment was unlawful, however, it was pursuant to a court order, a mittimus issued ordering the State to hold him. So the State basically got out without needing to file a motion once they provided the Plaintiff's counsel some case law and so forth, on that they let him out. The estate of Antonio Funes doesn't exist. It was disbanded years ago. He died I think in the end of '90 somewhere around there, and so there is nothing left of that estate and that's why he was dismissed. But in any event, he was our employee at the time of the investigation of the sexual assault case.

COUNCILMEMBER COUCH: Thank you, Chair.

CHAIR GUZMAN: Thank you. Any other questions? Okay. Seeing none. I have a question. Procedurally-wise where are we in the case?

MS. LUTEY: We are currently just pending settlement discussions with this body. There are no trial dates before us. We just had that settlement discussion with the court in February and he's waiting to hear what this body would like to convey to it.

CHAIR GUZMAN: Okay. Thank you. Any other questions from the Members? Seeing none. We have a request to enter into executive session. The Chair will entertain a motion to convene executive meeting pursuant to Section 92-5(a)(8), 5(a)(4) of HRS, to consult with legal counsel on questions pertaining to powers, duties, privileges, immunities, and liabilities of the County, Council and this Committee.

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER COUCH: Second.

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

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. There's five ayes, no noes, four excused. Motion carries. Thank you, Members.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Cochran, Hokama, Victorino, and White.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: I'm going to take a recess so that we may reset the Chambers for executive session. . . .(gavel). . .

**RECESS:           1:50 p.m.**

**RECONVENE:       3:16 p.m.**

CHAIR GUZMAN: . . .(gavel). . . Committee of the Whole shall now reconvene in open session.

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

CHAIR GUZMAN: Pursuant to our discussions in executive session, we will be calling up the Item No. COW-1(3), Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK. This is in regards to the authorization of settlement in Hawaii Wildlife Fund, et al. v. County of Maui. At this time, without objections, Members, I would like to defer that matter.



**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: EC, RH, and MPV)

**ACTION: DEFER SETTLEMENT RESOLUTION PENDING FURTHER DISCUSSION.**

CHAIR GUZMAN: Thank you. In regards to the second item which is the authorization in increase in funding related to the appointment of special counsel Hunt & William LLP in Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK . . . the entitled resolution. I would like to entertain a motion for adoption of said resolution.

COUNCILMEMBER CARROLL: So moved.

VICE-CHAIR CRIVELLO: I so move.

CHAIR GUZMAN: Moved by Mr. Carroll --

VICE-CHAIR CRIVELLO: Second.

CHAIR GUZMAN: --seconded by Ms. Crivello. Any further discussion? Seeing none, we have five...oh, sorry.

COUNCILMEMBER COUCH: You have to take a vote.

CHAIR GUZMAN: . . .*(laughter)*. . . I apologize. No further discussion, all those in favor say "aye"?

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: Got six ayes, three excused. Motion carries. No noes, three excused. Motion carries. Thank you, Members.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Cochran, Hokama, and Victorino.**

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of resolution relating to special counsel compensation.**

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

**August 7, 2015**

---

**COW-1(8):      LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: ALVIN F. JARDINE, III V. STATE OF HAWAII, ET AL., CIVIL 13-1-0062(2))**  
(CC 15-6)

CHAIR GUZMAN: Moving on to the next agenda item – COW-1(8), Litigation Matters – Settlement Authorization, Alvin F. Jardine, III v. State of Hawaii, et al., Civil No. 13-1-0062(2), pursuant to our discussions in executive session. I would like to entertain a motion to file this resolution.

VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER COUCH: Second.

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

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Six ayes, no noes, three excused. Motion carries.

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

**NOES:          None.**

**ABSTAIN:      None.**

**ABSENT:       None.**

**EXC.:          Councilmembers Cochran, Hokama, and Victorino.**

**MOTION CARRIED.**

**ACTION:        Recommending FILING of correspondence dated February 25, 2015.**

**COMMITTEE OF THE WHOLE MINUTES**  
Council of the County of Maui

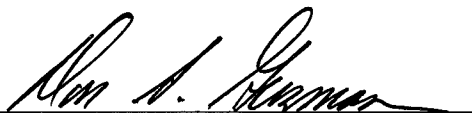
**August 7, 2015**

---

CHAIR GUZMAN: That will conclude today's agenda items, Members, and thank you very much, and this shall conclude our meeting. Meeting adjourned. Thank you.  
...*(gavel)*...

**ADJOURN:** 3:19 p.m.

APPROVED:



---

DON S. GUZMAN, CHAIR  
Committee of the Whole

cow:min:150807

Transcribed by: Jo-Ann Sato