

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

September 23, 2015

Council Chamber, 8th Floor

CONVENE: 1:38 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair
Councilmember Robert Carroll
Councilmember Riki Hokama
Councilmember Mike White

EXCUSED: Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Don Couch
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)

Seated in the gallery:

David Raatz, Director, Office of Council Services

ADMIN.: Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
Kristin K. Tarnstrom, Deputy Corporation Counsel, Department of the Corporation Counsel
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Eric Nakagawa, Wastewater Reclamation Division Chief, Department of Environmental Management
Traci Fujita Villarosa, Deputy Director, Department of Liquor Control

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Seated in the gallery:

Caleb Rowe, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: (4) additional attendees

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

CHAIR GUZMAN: . . .*(gavel)*. . . Good afternoon. I'm Don Guzman, the Chair of the Committee of the Whole. I'd like to introduce our Committee Members that we have today. We have our Vice-Chair of the Committee, Stacy Crivello.

VICE-CHAIR CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: We have Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Riki Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: And our Chair of the Council, Mike White.

COUNCILMEMBER WHITE: Aloha, Chair.

CHAIR GUZMAN: Thank you. Excused is Gladys Baisa, Elle Cochran, and Don Couch, as well as Mike Victorino. We have from our Administration, Eric Nakagawa from the Department of Environmental Management. Traci Villarosa, Deputy Director of Liquor Control, which will be appearing for I believe agenda Item 1(7). We also have Deputy Corporation Counsel Moana Lutey and I will introduce the rest of the Deputy Corporation Counsels as the cases are brought forth or presented. I'd like to check in with our district offices. In Hana Office, Dawn Lono, are you there?

MS. LONO: Yes, good afternoon. This is Dawn Lono at the Hana Office.

CHAIR GUZMAN: Good afternoon. On Lanai District Office, are you there?

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

CHAIR GUZMAN: Good afternoon, Ms. Fernandez. And on Molokai District Office, Ella Alcon, are you there?

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

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CHAIR GUZMAN: Good afternoon. For our Staff, we have Committee Secretary Clarita Balala and our Legislative Attorney Carla Nakata. Members and also the members of the public if you'd like to testify, please sign up at the lobby. Once your name is called you'll have three minutes to testify only to the items listed on today's agenda. Upon testifying, please state your name and/or organization in which you represent. Do we have any testifiers today in the Chamber, Ms. Nakata?

MS. NAKATA: No, Mr. Chair.

CHAIR GUZMAN: None. Thank you. Turning to the district offices, in Hana Office is there anyone wishing to testify?

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

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

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

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

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

CHAIR GUZMAN: Thank you, Ladies. Members, without objections I would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR GUZMAN: Thank you. Turning your attention to the first agenda item on today's agenda, COW-1(22), Litigation Matters, Settlement Authorization, Claim of Douglas Caldito, Claim 2014-2022-21. Today we have our Deputy Corporation Counsel Moana Lutey who will be presenting this matter to the Committee.

**COW-1(22): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
CLAIM OF DOUGLAS CALDITO, CLAIM 2014-2022-21)
(CC 15-6)**

MS. LUTEY: Thank you, Chair. Good afternoon. I believe that this is a matter we can handle in open session because it deals solely with a property damage claim. And the basic facts are that on August 27, 2013, Mr. Caldito discovered water flooding into his garage and washroom of his home in Wailuku and so he contacted a plumber to come out and take a look at it. And when the plumber came out he discovered that in fact there was a problem on the County side so the County was alerted and we sent out a work crew from Environmental Management to take a look at it. And basically what had happened was there was a sinkhole that was caused on the property. There's an allegation that there was a hole drilled into that line. I don't have any information on who may have done that or when, but there may have been sand that had gotten into that contributing to this sinkhole issue and that caused Mr. Caldito's wall to collapse.

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He has provided us with three [sic] estimates. The lowest of them is for the settlement amount that I'm requesting which is \$8851.

CHAIR GUZMAN: Okay. Thank you very much, Ms. Lutey. On the Department side we have Eric Nakagawa. Do you have any opening statements that you would like to share with the Committee?

MR. NAKAGAWA: No, not at this time. Pretty much what Moana said that we just responded to the call to help them out and fix the sewer line.

CHAIR GUZMAN: Thank you. I'll open up the floor to any Members that have any questions for the Department and/or Corporation Counsel.

COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Mr. Hokama.

COUNCILMEMBER HOKAMA: The situation no longer exists, right? Everything is squared away and that the only component that's left is whether or not we agree to the settlement request.

MR. NAKAGAWA: Yes, Chair. Yeah, so basically on the sewer side we're all done. Our crew fixed everything and put everything back. I guess it's a matter of just this settlement.

COUNCILMEMBER HOKAMA: This is the remaining part of the file?

MS. LUTEY: Yeah. This is all that's left.

COUNCILMEMBER HOKAMA: Okay. Thank you very much.

CHAIR GUZMAN: So I had a question for the Department. So at some point it sounds as though there was some leakage and the sinkhole was created or the sinkhole was created prior to the leakage?

MR. NAKAGAWA: Chair, so what typically happens with these laterals when they crack or they get something with roots or whatever kind of causes the integrity of the pipe to be I guess broken. The way normally people find out is grass starts to grow because the wastewater either spills out or what happens in like this case is sand just falls in the hole of the pipe and then slowly just starts to erode causing a void on the top causing the top to sink down. And so we don't know whether or not it was, you know, damaged prior I mean based on what this claim is saying is there was a crack already prior before we got there. So...but we don't know. I mean that's kind of typical of what happens when this type of incident happens.

CHAIR GUZMAN: So in your investigation did you discover how long a period of time there was this leakage going on or?

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MR. NAKAGAWA: From our standpoint all we did was get an emergency call that there was a sinkhole possibly caused from a sewer lateral. So our guys just respond to address making sure that we go and fix the integrity of our system. So it's unknown to where...I mean we won't know like if the hole was there, you know, whether it's a month, a year, a day. We just find out when the complainants call.

CHAIR GUZMAN: So liability is established because it's our pipes or?

MS. LUTEY: Correct. It's because we own and maintain those pipes.

CHAIR GUZMAN: Okay. Thank you. Members, any other questions that you may have? Seeing none, Chair's recommendation. . .

COUNCIL MEMBERS: Recommendation.

CHAIR GUZMAN: We will go ahead and authorize the settlement amount, I believe 8,000 --

MS. LUTEY: Eight hundred and fifty-one dollars.

CHAIR GUZMAN: --and \$851.

VICE-CHAIR CRIVELLO: I so move, Chair.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: So motion made by Ms. Crivello, seconded by Mr. White. All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: I'm sorry. Discussion? All those in favor say aye. All those opposed say no. Five ayes, four excused. Motion carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

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

COW-1(20): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: INTERGOVERNMENTAL AGREEMENTS WITH THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY AND THE LANAI WASTEWATER TREATMENT FACILITY) (CC 15-6)

CHAIR GUZMAN: We have COW-1(20), which is the matter Settlement Authorization of the Intergovernmental Agreements with the U.S. Department of the Interior, Fish and Wildlife Service, for the Settlement of the Alleged Violations at the Wailuku-Kahului Wastewater Reclamation Facility and the Lanai Wastewater Treatment Facility. The Committee is in receipt of the correspondence, dated September 1, 2015, from the Department of Corporation Counsel requesting consideration of the aforementioned matters. Number one, a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY." The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the United States Fish and Wildlife Service to settle alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Migratory Bird Treaty Act at the Wailuku-Kahului Wastewater Reclamation Facility during September 2014.

A proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES

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DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE LANAI WASTEWATER TREATMENT FACILITY.” The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the United States Fish and Wildlife Service to settle alleged violations regarding the take of endangered birds and migratory birds, nests, or eggs in violation of the federal Migratory Bird Treaty Act at the Lanai Wastewater Treatment Facility during February 2012 and September 2014 to January 2015. The Committee may consider whether to recommend passage of the proposed bills on first reading, with or without revisions. The Committee may also consider other related actions.

Members, what we have today...who will be presenting is Richelle Thomson is the Deputy Corporation Counsel assigned to the case. If you would like to present in open session the case. Thank you.

MS. THOMSON: Thank you, Chair. So as you've stated we have two settlement agreements that we feel are very fair and that we have negotiated with the U.S. Fish and Wildlife Service. The actual agreements we'd like to present those in executive session so that you can have the opportunity to go over the terms of...they're fairly modest monetary settlement amounts. As far as the details of the incidents, I'd like to turn that over to the Department to go ahead and go over those details.

CHAIR GUZMAN: Department.

MR. NAKAGAWA: Chair, so on this first instance that happened at the Wailuku-Kahului. . .

CHAIR GUZMAN: Can you get closer to the mic, Mr. Nakagawa?

MR. NAKAGAWA: The first instance what happened to at the Wailuku-Kahului Wastewater Treatment Facility, this was during a construction project where we were installing the revetment along the shoreline. And basically what happened is they had their excavators excavating the sand out of the area along the shoreline so that we can install the wall revetment and I guess they noticed some feathers on one of the scoops. And what happened was it was discovered that these types of birds I guess burrow in from the ocean side so nobody could really see it because we're digging in on our property side. So I guess they burrowed all the way through and that's when they discovered so when they discovered that stuff everything is stopped and then they call U.S. Fish and Wildlife and that's what happened. So I guess there was some kind of takes from that on that particular instance.

The second item is on the island of Lanai at the Wastewater Treatment Facility. What happened with that one is there was...we have basically our treatment system out there is oxidation ponds. And what happened was there's a...one of

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our ponds the liner started to bubble up and what we noticed is...so there was some kind of problem with our liner along that...in that pond. So in order to try and investigate what's going on and try to determine how to fix that we had to drain the pond of the liquid and then figure out what to do with that liner. And what happened I guess when you...my understanding now talking to when I met the United States Fish and Wildlife is when we drain the pond, what happens is you have sludge on the bottom. So what was happening is in the sludge there's some type of maggots that's in the, I guess, that is inside the sludge from flies or whatever. I guess these birds live around the pond, they came in, they took the maggot. One died and then that one has maggots and then the others come in and then they eat those maggots and then they start to die. So that's basically what happened on the two different instances.

CHAIR GUZMAN: Members, do you have any...I'm going to open up the floor to any questions that the Members may have. Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, I'll speak more on the Lanai component of this item, and I'm glad we have our attorneys in case I need to stop. For me, this was an avoidable situation. For me, this is about the level of competence of some of our employees who had bad decision-maker and is now costing this County money. Because this is not the first time we've dealt with our ponds and with this type of situation. And I can say our operations on Lanai knows exactly what should have been done to avoid this situation and yet I gotta deal with an incompetent person on this side who is now making us consider alleged settlement for alleged violations. It disturbs me that that's the kind of employees we get working for this division. And I'm going to be more disappointed if we still keep that kind of employees within the County's employment. Because I don't need this kind of employees who costing us money unnecessarily or what I would call incompetence. Thank you, Chairman.

CHAIR GUZMAN: Thank you, Mr. Hokama. I guess we can...do you have any follow-up answers or response to Mr. Hokama?

MS. THOMSON: Thank you. Just to add a couple of details. The Lanai settlement agreement involves two different incidents. One is 2012 and the other spans a couple of months between the end of 2014, early 2015. Botulism toxin basically lives in the soil and under certain conditions it will be activated. And as Mr. Nakagawa was saying, the birds generally eat maggots or another protein source that is infected with this toxin and they get infected and then die and pass along the cycle. The 2012 incident, you know, the conditions were such that botulism was allowed to...toxic situations were created at the treatment plant. Birds, you know, got sick and did die. They were buried by the operator at the plant at that time and that operator no longer works for the County. It's somewhat a different situation in the 2014, 2015 and that had to do with the pond liner bubbling up. So it was a sequence of response to that incident. So the liner was bubbling up and there was concern that it was methane causing

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the bubbling. So we didn't want to puncture the liner or drain the pond before we determined what was causing the bubbling. So there was also a delay with getting the right equipment, if I understand that right, to pump out the water. So that caused a delay in our response to the botulism event. Although Fish and Wildlife was working with us during that time to address it in the correct manner. So a bit of a different situation there, but those are the two incidents on Lanai that are detailed in that settlement agreement.

CHAIR GUZMAN: Any further questions from the Members?

COUNCILMEMBER HOKAMA: Chairman?

CHAIR GUZMAN: Yes, Mr. Hokama.

COUNCILMEMBER HOKAMA: Wailuku-Kahului, I'm assuming the Division had consultants on this project to do the EA or components of one environmental requirement since public funds was used. Is that a good understanding on this Committee's part, Mr. Nakagawa?

MR. NAKAGAWA: Yes, that's correct. We had consultants.

COUNCILMEMBER HOKAMA: And the consultant not once mentioned potential issues or a concern about migratory or protected birds? It was never part of the report to you and your Division about potential issues that we should be aware of?

MR. NAKAGAWA: Not that I'm aware of.

COUNCILMEMBER HOKAMA: Ms. Thomson, you know if that was part of their contract responsibilities—the consultants?

MS. THOMSON: The Environmental Impact Statement should address concerns of that nature – whether there's endangered or migratory birds or a nesting season to avoid or other issues like that. I know that the EIS...so it was full blown EIS that was done. They did consult. Sent out that EIS for consultation with Fish and Wildlife and received no comments. In my opinion, our consultant should have done a better job. Whether or not we could look to them for some kind of compensation or reimbursement, they probably did what was required, but I think that they could have done a better job.

COUNCILMEMBER HOKAMA: Okay. Has this ever been brought up in other projects in close proximity where those migratory birds, endangered birds, were impacted? Not necessarily our project, but let's say private sector adjacent to the area.

MS. THOMSON: Not that I'm aware of. It's, you know, it's likely though that any projects in that area since it's so close to the Kanaha Wildlife Refuge. You

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know, it seems to me to be a fairly apparent concern that our consultants should have addressed.

COUNCILMEMBER HOKAMA: Okay. And you're going to...are you going to share us the specific details of the proposal in executive session?

MS. THOMSON: Thank you. Yes, we have the details and we can share those in executive session. They're fairly brief settlement agreements and I think they're...the terms are quite reasonable.

COUNCILMEMBER HOKAMA: Okay. Well, I'll look to the Chair's direction on that. Thank you.

CHAIR GUZMAN: Okay. Any other questions from the Members? I have a couple questions. Number one is the Wailuku-Kahului situation. What remedial actions has the Department done so far after discovering the alleged violations?

MR. NAKAGAWA: Yeah, Chair. So basically what happened is...all we did was stop work. We contacted U.S. Fish and Wildlife. They came out and then they did their analysis. What happened with that one is they were able to...I guess couple of the birds was injured so they took it to some kind of rehabilitation housing for birds or whatever. And so on our part what they wanted us to do I guess I met with the gentleman and I forget his name, he came with Paul Chang from the Lanai one, but he was, I don't know, he was real pleased. He worked with our engineers and we addressed all their concerns and the last thing was this price to rehabilitate the two birds.

CHAIR GUZMAN: And then what steps are you implementing to prevent this from happening in the future?

MR. NAKAGAWA: For the birds for the Wailuku-Kahului, basically we can just go ahead and notify whoever is our future consultants this are the instances what happened during this construction project and then they can be like Richelle said a little more thorough I guess in their analysis for that...during the EIS process or EA process. The other instance for the Lanai...what happening with that one is really we're getting a training session from Hawaii Wildlife Services which will take place next month in October. What we're doing with that one is we're going to videotape that and then we're going to have our supervisors over there. And what we can do for that one is we also come up with the Standard Operating Procedure just to...so that whoever is there, whether it's the supervisor, the future supervisor, whoever workers, they kinda already know, okay, once you discover this type of birds, if a bird looks sick, whatever, they can have this Standard Operating Procedure that they can just follow. And then within that Standard Operating Procedures it goes through steps on who to call, where to call, all the different agencies to call, and my understanding from talking to Fish and Wildlife it's really just the promptness of really seeing that first bird. I mean once you get that first bird he says that the problem is

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mitigated after that. Because it's...when that one bird dies and then all the other birds come, then that's kind of what that botu...that's why that thing spread so fast.

CHAIR GUZMAN: Is there more of a better relationship or a firmer relationship between your department and the Fish and Wildlife Department?

MR. NAKAGAWA: Yeah. So I guess in my time here, this is the first time we've dealt with them and they were actually really happy with the response from...with our engineers that were working on those projects. So...and now we've established who you actually I guess putting the face to the name and to the number so now it's a more better relationship with them.

CHAIR GUZMAN: So it's my understanding you didn't have SOPs in the past – Standard Operating Policies or Standards?

MR. NAKAGAWA: Well, my understanding from the past and I don't really know because I wasn't Chief or worked back then as, they had some type of protocol that they used to do and follow but I guess according to these guys, when I talked them, wasn't the right way I guess.

CHAIR GUZMAN: Okay. But you are in the process of creating of standard procedures to identify these type of situations?

MR. NAKAGAWA: Yes. So we already completed that. We developed that in-house with a...we already had a botulism training once this past year. We're going to have it again, but...and we've developed a Standard Operating Procedure. We've already got it reviewed and approved by our Corporation Counsel and we sent it out to U.S. Wildlife...I mean Fish and Wildlife for their review and approval already so, yeah.

CHAIR GUZMAN: Thank you very much. So, Members, we have a request from Corporation Counsel to enter into executive session. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) with the Hawaii Revised Statutes to consult with our legal counsel on questions of liability, powers, duties, and immunities, concerning the County, the Council, and this Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

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COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, motion carries.
Thank you, Members.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next agenda item.

COW-5: SPECIAL COUNSEL AUTHORIZATION: CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL. (CC 15-219)

CHAIR GUZMAN: We have COW-5, Special Counsel Authorization for the Christopher Salem v. County of Maui, et al. The Committee is in receipt of the following: 1) County Communication 15-219, from Council Chair Mike White, transmitting two proposed resolutions to authorize the employment of special counsel in Christopher Salem v. County of Maui, et al.; 2) Correspondence dated September 17, 2015, from the Department of the Corporation Counsel, transmitting a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the revised proposed resolution is to authorize the employment of special counsel to represent the Defendants in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions. The Committee may also consider the filing of County Communication 15-219 and other related actions. Today we have with us Deputy Corporation Counsel Brian Bilberry. Welcome to the floor and he will be presenting to the Committee this case. You have the floor, Mr. Bilberry.

MR. BILBERRY: Thank you, Chair Guzman. Afternoon, Members. This is a matter which was not filed when we originally. . .

CHAIR GUZMAN: Mr. Bilberry, can you get closer to the mic, please.

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MR. BILBERRY: Oh, sure. This was a matter that was submitted to you. We submitted a draft complaint which we were advised would imminently be filed. You've since received that filed version of the complaint since we requested that we be able to come here and talk to you about this, and there are some additional defendants who have been named. There are numerous departments and the Mayor. The case is not easy to describe. It's a 130-some page complaint with more than 550 allegations. I've begun to read the complaint. I've read an affidavit attached to the complaint. I'm beginning to get a sense of what the underlying substance of the case is. I'm not here to talk about that today but there are a number of defendants who have been named individually in the complaint in addition to being named in their official capacity and so the resolution today is to have special counsel appointed for those Directors and the Mayor and Corporation Counsel who have been named in their official capacity and have also been named in their individual capacity. And there is a what I believe is a potential conflict, not necessarily an actual conflict, but as I understand it inherently, a conflict with an individual who's been named in their official capacity and in their individual capacity so we're seeking to have special counsel appointed to represent the Directors and the Mayor and Corporation Counsel who have been named in their individual capacity. Again, the complaint's rather lengthy. I do have a list of the various causes of action which I'm happy to read off if you want to get into that. As I understand it, the crux of the matter is...involves development agreements whereby developers developing subdivisions that involve three lots or less were permitted to defer certain costs associated with those developments to include roadway improvements and drainage. And in this instance my understanding is, is that one of those lots was subsequently transferred and those costs passed on to the purchaser of that lot, and as best as I can figure, that is the central allegation in this case. The complaint goes on to describe developers inappropriately not being assessed costs associated with developments and somehow those costs then being burdened and shouldered by the citizens of the County of Maui. I'm saying this very crudely and rudimentarily, but Mr. Salem who has brought the complaint, the Plaintiff who has filed the complaint, apparently has described in the complaint been victimized by the County's failure to assess costs associated with development of his lot. As I understand it, the Plaintiff claims that he should have been assessed the costs for the development and the improvements associated with those lots so that he could then turn around and collect those costs from the developer pursuant to, well, I guess could be best described as kind of an indemnity agreement or agreement that he be reimbursed for those costs which had an expiration date on it. Apparently, that date came and went. Mr. Salem had never been assessed those costs, and as I understand it to date, has not been assessed those costs, but believes that he has somehow been damaged. Beyond that, you know, getting into the substance of this complaint will be long and drawn out given the length of it, given what appear to be disconnected, and in large part, allegations that are completely irrelevant to what the operative facts of this case are. But some of those allegations suggest that numerous County officials, appointed officials, have engaged in some sort of inappropriate conduct outside of their official capacity. There's an insinuation of that. I don't see any actual allegations which connect the dots to demonstrate that. But in an abundance of

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caution, we do need to have special counsel appointed for those officials who have been sued in their individual capacity. So that's essentially what this request is for.

CHAIR GUZMAN: Thank you, Mr. Bilberry.

MR. BILBERRY: Yeah. I'm happy to answer any questions. But again, as to the substance of the complaint, that is something we're still looking at. We don't believe that there's a lot of merit to it, but given the length of it and the nature of the allegations, it's something that obviously should be taken seriously.

CHAIR GUZMAN: Thank you. Members, do you have any questions that you'd like to pose in open session to Mr. Bilberry? Seeing none, we have a request by our Corporation ...Deputy Corporation Counsel to enter into executive session. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a). . .

MR. BILBERRY: No, no, I haven't made that request.

CHAIR GUZMAN: Oh, excuse me.

MR. BILBERRY: Yeah.

CHAIR GUZMAN: Okay.

MR. BILBERRY: And I'm not making that request.

CHAIR GUZMAN: Okay.

MR. BILBERRY: I mean not at least on the resolution that's before you. At some point if we actually have to get into litigation of this matter, I may make that request.

CHAIR GUZMAN: Okay.

MR. BILBERRY: I'll let you know that I did receive a call yesterday from the attorney representing Mr. Salem, Mr. Gould's office, and they seem, well, more than interested in trying to mediate this matter and I have let them know that I'm not in disagreement with that proposal. We've been able to procure some additional time to address the actual allegations and answer the complaint, which we may or may not need. But the proposal essentially is that if we can get the case into mediation that we might be able to get some of these defendants dismissed as part of that process. In addition to putting over the County's and all the defendants' obligation to actually file an answer to the complaint. But this is all just...these are things that are being discussed and negotiated now. Again, we don't have any disagreement principle to mediation but that's something we're going to have to discuss a little further before we commit.

CHAIR GUZMAN: Okay. Mr. White, do you have any questions?

COUNCILMEMBER WHITE: So are you suggesting that we need not act on this --

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MR. BILBERRY: I'm sorry.

COUNCILMEMBER WHITE: --resolution at this time?

MR. BILBERRY: I'm sorry.

COUNCILMEMBER WHITE: Are you suggesting that we not...we need not act on this resolution at this time?

MR. BILBERRY: Well, I didn't...it wasn't my intention to suggest that. I think you can and it should, but frankly I'm hoping that we can get this into mediation sooner rather than later and maybe address some of the underlying issues that may make this resolution moot, but that's just my thinking on this. I don't know that ultimately the other side is going to agree to this. But in the event that we aren't able to work this out the way that I would hope, we're going to need to have...be ready to have special counsel in place.

COUNCILMEMBER WHITE: It's my understanding that a request for special counsel was based on the fact that the...in addition to the...in addition to Mr. Wong from Corp. Counsel that all deputies were also named in the claim which makes the entire Department defendants, in which case I'm not sure if it's appropriate for you guys to even be in discussion with the Plaintiff's attorney.

MR. BILBERRY: The Department of Corporation Counsel has been named, not individual...not all the individual deputies, and again, without wanting to get too deeply into litigation strategy, any department is not a separate legal entity from the County and there's ample case law in Hawaii and in Federal Court which holds the individual departments are not entities that can be sued. So that's...just to give you a sense of where that's gonna go ultimately we believe. But the allegations do not name all the deputies and I don't believe that by naming the department you disqualify every deputy in the office. By the same token if it was a private firm, if you sue the firm, you don't necessarily disqualify all the lawyers in that firm from being able to step up and appear to defend.

COUNCILMEMBER WHITE: No, I understand that, but the...what was relayed to us a couple of weeks ago was that in fact this was going to involve all deputies individually as well. So if that's not the case, then. . .

MR. BILBERRY: Yeah, that doesn't appear to be the case. We have the filed complaint now and that is in fact not the case. And also, you know, just by way of anecdote, I'm one of the newer deputies and wasn't around when any of this took place so there's less of a concern about there being some allegation that a particular deputy who might have been assigned this case may have been involved with the operative facts underlying the complaint. That's just not going to happen here.

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

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CHAIR GUZMAN: Thank you. Any further questions? Seeing none, at this time the Chair will entertain a motion to recommend adoption of the revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL."

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Mr. Hokama.

COUNCILMEMBER HOKAMA: You know, Chairman, for me this afternoon, I still not convinced that we need special counsel so I'm not ready to support it because I've yet to be convinced that our position is a solid position. I've not been...we have not been told by Corp. Counsel that if talked to individuals that are potentially alleged to be on our side of the aisle, that they've done their due diligence and they're satisfied with those responses. I don't have that confidence or trust yet so I'm not willing to grant them special counsel today.

CHAIR GUZMAN: Ms. Crivello.

VICE-CHAIR CRIVELLO: So, Chair, I was just going back to what Corporation Counsel mentioned that he would like to consider some form of mediation and would that be prior to us to consider special counsel and is this request coming from the Department of the Corporation Counsel for us to? I did not hear that from. . .

MR. BILBERRY: Well, I don't...I don't. . .

CHAIR GUZMAN: Mr. Bilberry.

MR. BILBERRY: Yeah. It's not my understanding that we need to get express authority from the Council to enter into mediation and this is something the Plaintiffs have asked for or Mr. Gould's office, the attorney that represents the Plaintiffs, and I never disagree with that. I mean if we can start having conversation about a case for its potential resolution right up front, I'm all for it.

VICE-CHAIR CRIVELLO: Well, I...Chair?

MR. BILBERRY: And I understand your question because of what I said a moment ago I think. There was some mention and I...they didn't commit to this, but as incentive it was suggested to me that our participation in mediation could potentially lead to some of the Defendants being dismissed from the complaint. And so what I'm hearing there is that we may be able to clean up some of the necessity for special counsel if that is in fact the case. That's just my view. I'm listening...I listened intently to what I was

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being told by Plaintiff's counsel yesterday and they think that there's some concerns here about a conflict across the board. I don't think we agree with them as to all of those concerns, but in this particular instance with regard to the individuals, those who have been named outside of as having somehow been involved in this outside of their official capacity, there does need to be special counsel appointed for them. I don't know if that answered your question. I'm sorry, I didn't mean. . .

VICE-CHAIR CRIVELLO: No, I was, you know, would there be considerations to process your suggestion of mediation before we consider this resolution to its fullest. That was basically what it is.

CHAIR GUZMAN: No, I see where you're coming from, Ms. Crivello. I think the position that I would recommend, or at least my position as the Chair, is out of abundance of caution we explore or pursue both mediation and --

VICE-CHAIR CRIVELLO: I see.

CHAIR GUZMAN: --special counsel --

VICE-CHAIR CRIVELLO: Okay.

CHAIR GUZMAN: --due to the fact that we have 20 days to file an answer. Granted the Plaintiffs have orally agreed to an extension, we're not firm on that so as we sit here presently, the facts that we know is that we have 20 days to respond. There's a possibility of negotiations and mediation, and we are faced with a deadline of...if we don't pass this out of Committee, we delay the opportunity to have the full Council hear this in an appropriate timeframe. So the other issue that I would at least bring up is that the complaint does name certain Department Heads, as well as the Corporation Counsel...the head of the Corporation Counsel, and within that are the deputies that are appointed. We also...I don't want that to be an issue. So right off the bat I want it to be clean wherein a special counsel is appointed and that special counsel is...I'm going to make an amendment to the resolution. That special counsel shall regularly report directly to the Council Chair and the Council's Committee of the Whole on the status of the case and the County's legal strategy so that there will be a bifurcation or a separation between the special counsel and the Corporation Counsel. So it will be worked on as if there's an independent special counsel on board. As I said, there could be a possibility of negotiation so this may not even come to fruition through the full Council. We still have...it's up to Chair White to whether he's going to agendize this matter or not depending on what the mediation brings about. But at least we would have the opportunity to I would say pull the trigger and get special counsel when needed and there would not be a timeframe delay, and that is my position in supporting this resolution.

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

MR. BILBERRY: Yeah, if I may just quickly?

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CHAIR GUZMAN: Yeah.

MR. BILBERRY: We don't want to get caught flat footed. If the negotiations, which haven't even really got off the ground yet, but if they do and then they go flat, we're going to have to move real quickly. I was just thinking about, Mr. Chair, on Councilman Hokama's remarks and suggesting that we go into executive session and actually I would request that we do that to have some more detailed discussion about what is part of our strategy in having special counsel ready to go if things don't work out with respect to negotiations we're hoping to jumpstart. So I would make that request and I think it could be a very brief discussion, but there's some things...I mean I'm having a little difficulty here because this, well it seems like it's not part of the litigation strategy, it kinda really is. And we're getting suggestions from the opposing party again that we're completely conflicted out, we don't agree with that, but you know, that's part of their strategy. I have some responses to that, but I'm kind of hedging talking about them because I don't want to give my strategy away. But with that being said, I will make a request to go into executive session just to clarify a couple of points.

CHAIR GUZMAN: Okay. Thank you, Mr. Bilberry. I'm just gonna go back to procedurally-wise on the main motion. I'm going to be proposing a motion to amend the revised proposed resolution by adding a new be it resolved paragraph eight to read as follows, "that the special counsel for the County shall regularly report directly to the Council Chair and the Council's Committee of the Whole on the status of the case and the County's legal strategy," and renumbering the existing paragraph eight to paragraph nine.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Amendment carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: APPROVE AMENDMENT.

CHAIR GUZMAN: So going back to the main motion would you...I will I guess as a point of privilege request an executive session in this matter if the Members do so move at this time.

MR. BILBERRY: Oh yeah, I thought I made the request.

VICE-CHAIR CRIVELLO: Yeah, so moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. All those...any discussion? All those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, no noes, motion carries. Thank you, Members.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next agenda item.

COW-1(7): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JUSTIN DOBBS V. COUNTY OF MAUI, ET AL., CIVIL 12-1-0812(2)) (CC 13-41)

CHAIR GUZMAN: Members, we have agenda Item COW-1(7), Litigation Matters, Settlement Authorization regarding Justin Dobbs v. County of Maui, et al., Civil No. 12-1-0812(2). This matter is in, excuse me, let me read off the...the Committee is in receipt of the following: 1) Correspondence dated April 4, 2013, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution to authorize settlement of Justin Dobbs v. County of Maui, et al., Civil 12-1-0812(2), and transmitting a copy of the complaint. The complaint alleges, among other things, retaliation against Justin Dobbs, a County employee, for reporting allegedly illegal behavior by the employees of the Department of Liquor Control, constitutional violations, as well as wrongful termination of employment, and damages. The purpose of the proposed resolution is to authorize settlement of the case; 2) Correspondence dated September 1, 2015, from the Department of the Corporation Counsel, requesting consideration of a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF JUSTIN DOBBS V. COUNTY OF MAUI, ET AL., CIVIL NO. 12-1-0812(2)." The revised proposed resolution incorporates nonsubstantive revisions. The Committee may consider whether to recommend adoption of the revised proposed resolution, with or without revisions. The Committee may also consider other related actions. Today we have presenting the case is Deputy Corporation Counsel Tarnstrom who is here today on the floor. If you could please present your case.

MS. TARNSTROM: Thank you, Chair. Just to keep this very brief. This was a lawsuit filed in 2012 by Plaintiff, Justin Dobbs. Mr. Dobbs was with the Department of Liquor Control for ten months before he was terminated in August of 2011. He's alleging that

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he was terminated on wrongful grounds, specifically that he was intending to whistle blow against the Department for, as the Chair said, certain unethical behavior by the Department. The County had two separate grounds to terminate the Plaintiff and we are here to discuss the potential settlement authority going into settlement, and therefore, would request executive session on this.

CHAIR GUZMAN: Members, do you have any questions that you'd like to pose in open session? Do we have any opening statements from the Department of Liquor, Ms. Traci Villarosa?

MS. VILLAROSA: None at this time.

CHAIR GUZMAN: Okay. Members, we have a request to enter into executive session by the Corporation Counsel to consult with Corporation Counsel pursuant to let's see...HRS 92-5(a)(4) of the Hawaii Revised Statutes, regarding issues pertaining to the powers, duties, privileges, immunities, and liabilities and as well as this Council, Committee, and County.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, motion carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

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

CHAIR GUZMAN: At this time we're going to take a recess so that we can set up the Chamber for executive session. . . .(gavel). . .

RECESS: 2:31 p.m.

RECONVENE: 4:03 p.m.

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

COW-1(20): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: INTERGOVERNMENTAL AGREEMENTS WITH THE U.S. DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY AND THE LANAI WASTEWATER TREATMENT FACILITY) (CC 15-6)

CHAIR GUZMAN: Members, going back to our agenda...in open session agenda Item COW-1(20), Litigation Matters, Settlement Authorization of the Intergovernmental Agreements with the U.S. Department of the Interior, Fish and Wildlife Service, for the Settlement of the Alleged Violations at the Wailuku-Kahului Wastewater Reclamation Facility and the Lanai Wastewater Treatment Facility. Pursuant to our discussions and recommendations and suggestions from Corporation Counsel, the Chair will entertain a motion to recommend passage of the proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE WAILUKU-KAHULUI WASTEWATER RECLAMATION FACILITY."

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VICE-CHAIR CRIVELLO: I so move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Discussion? All those...seeing no further discussion, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. I have five ayes, four excused. Motion carries. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

**EXC.: Councilmembers Baisa, Cochran, Couch, and
 Victorino.**

MOTION CARRIED.

ACTION: Recommending FIRST READING of bill.

CHAIR GUZMAN: The Chair will also entertain a motion to recommend passage of the proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNITED STATES DEPARTMENT OF THE INTERIOR, FISH AND WILDLIFE SERVICE, FOR THE SETTLEMENT OF ALLEGED VIOLATIONS AT THE LANAI WASTEWATER TREATMENT FACILITY."

VICE-CHAIR CRIVELLO: I so move, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

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COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending FIRST READING of bill.

CHAIR GUZMAN: Moving on the the next agenda item, Members.

COW-5: SPECIAL COUNSEL AUTHORIZATION: CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL. (CC 15-219)

CHAIR GUZMAN: We have Committee of the Whole-5, Special Counsel Authorization, Christopher Salem v. County of Maui, et al. Pursuant to the executive session we are right now there is a main motion on the floor to adopt the resolution. Also was passed was an amendment to the resolution to add specific language that the special counsel for the County of Maui shall regularly report directly to the Council Chair and the Council's Committee of the Whole on the status of the case and the County's legal strategy. We're still in discussion. At this time the Chair will entertain a motion to amend the title and text of the proposed resolution as appropriate to refer to the complaint filed on September 18, 2015 and assigned case number and to delete references to the draft complaint or anticipated lawsuit.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion?

COUNCILMEMBER HOKAMA: Chairman?

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CHAIR GUZMAN: Yeah, Mr. Hokama.

COUNCILMEMBER HOKAMA: Chairman, just so we may not...to avoid any procedural questions down the road, my understanding is what we are doing is amending the main motion as amended.

CHAIR GUZMAN: Yes. Correct.

COUNCILMEMBER HOKAMA: And I just ask us to recognize that, Chair, so that there's no question where we are procedurally and that we take care of any potential conflicts down the road.

CHAIR GUZMAN: Yes. Thank you very much for stating that. Yes, this is the...what is on the main motion as amended. And so where am I now?

COUNCILMEMBER WHITE: You had one more amendment.

MS. LUTEY: You did the file and you need to give the civil number.

CHAIR GUZMAN: Okay, the civil number, yes. The Chair will entertain a motion to amend the second whereas clause by striking the second sentence which reads, the lawsuit is expected to be filed in the Second Circuit Court for the State of Hawaii alleging fraud and violations of the Charter.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in. . .

MS. NAKATA: Excuse me, excuse me, Chair. I don't believe there was vote on your earlier --

CHAIR GUZMAN: I don't think I voted on the prior.

MS. NAKATA: --I think you had entertained the motion but I don't believe we had a motion and a second. This was on the one to amend the title and text with a case number, et cetera.

CHAIR GUZMAN: Oh, that's correct. Can you strike. . .

COUNCILMEMBER WHITE: We had a motion.

CHAIR GUZMAN: Can you strike the second? If you can withdraw that motion.

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VICE-CHAIR CRIVELLO: I'll withdraw.

CHAIR GUZMAN: Thank you. I will go back to the ancillary motion and the motion to amend the primary amended resolution. The title and text of the proposed resolution as appropriate to refer to the complaint filed on September 18, 2015 and the assigned case number, and to delete references to the draft complaint or anticipated lawsuit.

VICE-CHAIR CRIVELLO: So moved.

CHAIR GUZMAN: So moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. All those...any discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: APPROVE AMENDMENT.

CHAIR GUZMAN: The Chair will also entertain a motion to amend the second whereas clause by striking the second sentence which reads, the lawsuit is expected to be filed in the Second Circuit Court for the State of Hawaii alleging fraud and violations of the Charter.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: So moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

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CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: APPROVE AMENDMENT.

CHAIR GUZMAN: The Chair will entertain a motion to amend the third whereas paragraph in the amended resolution by striking the phrase, draft complaint received by the Department of Corporation Counsel on August 17, 2005 [sic] and inserting in its place the phrase, complaint filed in Civil No. 15-1-0496(3) on September 18, 2015.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: APPROVE AMENDMENT.

CHAIR GUZMAN: That will conclude our items on today's agenda. No—I got one more. Excuse me. We have one and last final agenda item, COW-1(7). . .

COUNCILMEMBER HOKAMA: Chairman?

MS. NAKATA: Excuse me, Chair.

CHAIR GUZMAN: Did I pass that already?

COUNCILMEMBER WHITE: You need to vote on. . .

MS. NAKATA: We're back at the main motion, as amended.

CHAIR GUZMAN: Oh gosh, now I gotta go back to the main motion. That's right. Okay, Members, moving back to the main motion to adopt the amended motion...to adopt the amended resolution stating the adoption of the...authorizing the employment of special counsel in Christopher Salem v. County of Maui, et al.

VICE-CHAIR CRIVELLO: So moved, Chair.

CHAIR GUZMAN: Moved by Ms. Crivello.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: Seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. Five ayes, no noes, four excused. Motion carries.

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VOTE: AYES: Chair Guzman, Vice-Chair Crivello, and Councilmembers Carroll, Hokama, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa, Cochran, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of revised resolution, as amended.

CHAIR GUZMAN: Okay. So thank you, Members. I think we have one more last and final item on the agenda, COW-1(7), Litigation Matters, Settlement Authorization, Justin Dobbs v. County of Maui, et al., Civil No. 12-1-0812(2).

COW-1(7): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: JUSTIN DOBBS V. COUNTY OF MAUI, ET AL., CIVIL 12-1-0812(2)) (CC 13-41)

CHAIR GUZMAN: Members, without objections, the Chair shall defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Exc.: GCB, EC, DC, and MPV)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. Thank you, Members, for the very attentive meeting and for your time. Meeting is now adjourned. Thank you. . . *(gavel)* . . .

ADJOURN: 4:12 p.m.

APPROVED:



DON S. GUZMAN/CHAIR
Committee of the Whole