

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

December 11, 2015

Council Chamber, 8th Floor

CONVENE: 9:06 a.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Riki Hokama
Councilmember Michael P. Victorino
Councilmember Mike White (in 9:09 a.m.)

EXCUSED: Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa
Councilmember Robert Carroll

STAFF: Carla Nakata, Legislative Attorney
Clarita Balala, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Rosemary Robbins (COW-1(3))
Mark King

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

CHAIR GUZMAN: . . .*(gavel)*. . . Good morning. Welcome to the Committee of the Whole. I'm Don Guzman, the Chair of the Committee. Before we begin, I'd like to make some brief announcements. Please place your cell phones on the silent mode. Gonna introduce our Members for today's meeting starting with Ms. Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR GUZMAN: Don Couch.

COUNCILMEMBER COUCH: Good morning, Chair.

CHAIR GUZMAN: Riki Hokama.

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COUNCILMEMBER HOKAMA: Chairman.

CHAIR GUZMAN: And Mr. Mike Victorino.

COUNCILMEMBER VICTORINO: Mr. Chair.

CHAIR GUZMAN: Excused is Gladys Baisa, Robert Carroll, as well as Stacy Crivello. Coming in later will be Mr. White. Also, I'd like to introduce our staff members for today. We have Clarita Balala, as well as Carla Nakata for our staff. For our Corporation Counsel, Deputy Corporation Counsel Richelle Thomson.

MS. THOMSON: Good morning, Chair.

CHAIR GUZMAN: Good morning. At this time I'm going to check in with the District Offices. Today, we're...I believe Hana, wait, Lanai will not have a person available to service that office. So we'll go ahead and check in with Hana Office. Are you there?

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

CHAIR GUZMAN: Good morning. And Molokai Office, are you there?

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

CHAIR GUZMAN: Thank you. Do we have any testifiers today in the Chambers?

MS. NAKATA: Yes, Mr. Chair. Rosemary Robbins is the first and only person to have signed up to testify.

CHAIR GUZMAN: Okay. I believe she knows the rules.

MS. NAKATA: She'll be testifying on COW-1(3).

CHAIR GUZMAN: Okay. You'll have up to three minutes to testify on the items on the agenda. Please state your name and/or organization which you represent when you come to the podium. Thank you, Ms. Robinson.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. ROBBINS: Good morning, everybody. If this looks familiar it's because we've been down this road with this particular item for years. The notes from when a concerned citizen testified last on this item was at the time of the fifth increase in money to be given to attorneys to defend the County of Maui from its violation of Federal water regulations that was supposed to be not to exceed \$250,000. Sequence of the dates coming up it was then \$2,250,000. Taxpayers don't have that kind of money. So we went through the dates and the times of the requests and so forth and now we're back living with this again. And something that I would like to just point out is the history of clean air

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and clean water acts. These didn't start yesterday. There was a national environmental policy act that went in on January 1, 1970. The Clean Water Act was a Federal act that went in in 1972. Safe Drinking Water Act, 1974, and then pesticide acts and endangered species acts that were in...that were from the last century. So we're in 2016 fiscal year and we're being hit up one more time in the voice of the public to be heard at the meeting of the Committee of the Whole. If there has been money appropriated from...I just have to tell you somebody came up to me and said why don't they dock the pay of the people who made the violations, and I'm thinking, well, I'm not too sure what their salaries are, but I don't think we could dock it to the point of having them pay for it rather than have the taxpayers. You've got an angry, angry community out there. They're listening. They're listening to this. They're listening to one another saying what is this, this is crazy. They keep taking our money in order to cover their tails, not having done the right thing to begin with, even though we know that the right thing had been identified in the last century again, and again, and again. So I'm encouraging you that the lesson that needs to be taken from this is there needs to be people hired with the will and the skill --

MS. NAKATA: Three minutes.

MS. ROBBINS: --to be able to get the job done and get it done right and not for the taxpayers to be left with the bill. Thank you.

CHAIR GUZMAN: Thank you, Ms. Robinson. Is there any follow-up questions or clarifications from the Members? Seeing none. Thank you very much for your testimony.

MS. ROBBINS: You're welcome.

CHAIR GUZMAN: Is there any other person signed up to testify today?

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

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

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

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

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

CHAIR GUZMAN: Okay. Thank you, Ladies. Have a great weekend. Members, without objections, I will close public testimony.

COUNCIL MEMBERS: No objections.

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CHAIR GUZMAN: Thank you.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR GUZMAN: Members, turning to our agenda that we have before us. Without objections, Members, I would like to call out of order the second matter.

COUNCIL MEMBERS: No objections.

COW-1(19): LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: CLAIM OF MARK A. KING, CLAIM 5-14-00348 (RELATING TO MAUI AIR INCIDENT ON LANAI)) (CC 15-6)

CHAIR GUZMAN: Thank you. So the..in regards to calling your attention to Claim of Mark A. King, Claim 5-14-00348, Relating to the Maui Air Incident on Lanai. The Committee is in receipt of correspondence dated December 3, 2015, from the Department of the Corporation Counsel, requesting the consideration of the proposed resolution, entitled "AUTHORIZING SETTLEMENT OF MARK A. KING V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 5-14-00348." The claim alleges work-related injuries sustained as a result of an air crash on Lanai, Maui, Hawaii, on February 26, 2014. 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 other related action. I believe that we have our Corporation Counsel Deputy here today. Do you have a status in regards to this item?

MS. THOMSON: I don't have information regarding this item. I believe that we needed to handle some additional matters and request deferral at this time.

CHAIR GUZMAN: Okay. It appears that the Corporation Counsel is not prepared to present today and maybe there's some other matters in the case that needs to be worked out. So without objections, Members, I'd like to defer this matter.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: SC, GCB, and RC)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Okay. Thank you. I would also like to recognize the presence of our Council Chair, Mr. Mike White.

COUNCILMEMBER WHITE: Good morning, Chair.

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

CHAIR GUZMAN: Moving on, Members, to the next item on the agenda. The Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK, COW-1(3). The Committee is in receipt of the correspondence dated December 3, 2015, from the Department of Corporation Counsel, requesting consideration of the proposed resolution, entitled "AUTHORIZING THE SETTLEMENT OF PLAINTIFFS' CLAIM FOR ATTORNEYS FEES AND COSTS RELATED TO HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL NO. 12-00198 SOM BMK," and transmitting a copy of the settlement on November 17, 2015, as attached on Exhibit A. The case involves allegations of 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 Plaintiffs' claim for attorneys' fees and costs related to the case. The Committee may consider whether to recommend adoption of the proposed resolution, with or without revisions. The Committee may also consider other matters. Today we have our Corporation Counsel Deputy that has been handling the case, Ms. Richelle Thomson, who will present in open session any of the facts that she can do so at this time. Thank you.

MS. THOMSON: Thank you, Chair. So for clarification we're not currently seeking an increase in the County's Special Counsel fees. As part of the settlement that was entered last month in District Court, the County is required to pay the Plaintiffs' attorneys' fees if we're unsuccessful on appeal. The Plaintiffs have submitted their claim for attorneys' fees which I can present to you in closed session...in executive session as it's confidential. A general update on the case though is that the County intends to file its appeal by next week...by early next week and then we'll take that up to the Ninth Circuit. So today we have as the Chair said, we forwarded a resolution for the Committee's consideration which authorizes our Department to negotiate a settlement of the Plaintiffs' claims for the attorneys' fees. The resolution is in the Committee's binders, as is the settlement agreement, and those are my open session comments. Thank you.

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

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

CHAIR GUZMAN: Moved by Mr. Victorino.

COUNCILMEMBER COUCH: Second.

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

COUNCIL MEMBERS: Aye.

CHAIR GUZMAN: We have seven ayes, two excused.

COUNCILMEMBER VICTORINO: Six.

CHAIR GUZMAN: Six. Excuse me, six ayes, three excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa and Carroll.

MOTION CARRIED.

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

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

RECESS: 9:18 a.m.

RECONVENE: 9:54 a.m.

CHAIR GUZMAN: . . .(gavel). . . Committee of the Whole of December 11, 2015 shall now reconvene in open session. After deliberations and consultation with our Corporation Counsel regarding The Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM BMK, COW-1(3), the Committee without objections will defer this matter.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: SC, GCB, and RC)

ACTION: DEFER PENDING FURTHER DISCUSSION.

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CHAIR GUZMAN: Thank you. Members, this will conclude our meeting for today and I wish everyone a safe and happy weekend. Meeting adjourned. . . .(gavel). . .

ADJOURN: 9:54 a.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole

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Transcribed by: Clarita Balala