

COMMITTEE OF THE WHOLE

Council of the County of Maui

MINUTES

May 17, 2016

Council Chamber, 8th Floor

CONVENE: 9:10 a.m.

PRESENT: Councilmember Don S. Guzman, Chair (in 9:17 a.m.)
Councilmember Stacy Crivello, Vice-Chair
Councilmember Gladys C. Baisa (out 11:31 a.m.)
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Don Couch
Councilmember Riki Hokama

EXCUSED: Councilmember Michael P. Victorino
Councilmember Mike White

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.: Edward S. Kushi, First Deputy Corporation Counsel, Department of the Corporation Counsel
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
Jerrie L. Sheppard, Deputy Corporation Counsel, Department of the Corporation Counsel
Richelle M. Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel
Robert Halvorson, Chief of Planning and Development, Department of Parks and Recreation

PRESS: Akaku: Maui Community Television, Inc.

VICE-CHAIR CRIVELLO: . . .*(gavel)*. . . Good morning. I would like to, at this time, call the Committee of the Whole meeting to order. Today is Tuesday, May 17, 2016, and it's now about 9:10 a.m. I am Stacy Crivello, Vice-Chair for the Committee of the Whole.

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At this time, I'd like to introduce our Committee Members. Chair Don Guzman is on his way, he's excused for now. And with us, we have Councilmember Gladys Baisa.

COUNCILMEMBER BAISA: Good morning.

VICE-CHAIR CRIVELLO: Councilmember Robert Carroll.

COUNCILMEMBER CARROLL: Good morning, Chair.

VICE-CHAIR CRIVELLO: Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha and good morning.

VICE-CHAIR CRIVELLO: Councilmember Don Couch.

COUNCILMEMBER COUCH: Aloha, good morning, Chair.

VICE-CHAIR CRIVELLO: And Councilmember Riki Hokama. Excused this morning is Mr. Mike . . . Councilmember Mike Victorino and Council Chair Mike White. At this time, I'd like to open the floor for testimony. For individuals testifying in the Chamber please sign up at the desk outside of the Chamber door. If testifying from a remote testimony site, please sign up with District Office staff. Testimony will be limited to the items listed on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. The Chair will also be allowing an additional minute to conclude testimony, and that will be at the discretion upfront if he chooses to. When testifying, please state your name and any organization you may be representing. Do we have any testifiers in the Chamber?

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

VICE-CHAIR CRIVELLO: At this time, I'd like to acknowledge if we have any testifiers from our District Offices. With us from the Lanai Office, Ms. Fernandez?

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

VICE-CHAIR CRIVELLO: Thank you. From our Hana Office, any testifiers, Ms. Lono?

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

VICE-CHAIR CRIVELLO: Thank you. How about our Molokai Office, Ms. Alcon?

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

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VICE-CHAIR CRIVELLO: Thank you. Being that we have no testifiers at this time, if there are no objections, I'd like to close testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

**COW-1(38) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE U.S. ENVIRONMENTAL PROTECTION AGENCY
(MAUI RACEWAY PARK)) (CC 15-6)**

VICE-CHAIR CRIVELLO: Our agenda, first of all, is COW-1(38). It is on Litigation Matters - Settlement Authorization: Authorizing the Mayor to enter into an Intergovernmental Agreement with the U.S. Environmental Protection Agency on the Maui Raceway Park. So the Committee is in receipt of correspondence dated April 28, 2016, from the Department of the Corporation Counsel requesting consideration of 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 ENVIRONMENTAL PROTECTION AGENCY FOR A SETTLEMENT OF ALLEGED VIOLATIONS AT MAUI RACEWAY PARK." The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the United States Environmental Protection Agency to settle alleged violations relating to a large capacity cesspool at the Maui Raceway Park, now known as the Maui Motor Sports Park on a parcel identified for real property tax purposes as tax map key (2) 3-8-008:037 in violation of the Safe Drinking Water Act. The Committee may consider whether to recommend passage of the proposed bill on first reading with or without revisions. The Committee may also consider other related action. Excuse me, Members, but at this time before we go any further, I'd like to introduce members of the Administration and our Corporation Counsel and our Staff people. Sitting in the gallery on behalf of the Director of Parks and Recreation, we have Mr. Hollustrom *[sic]*.

MS. NAKATA: Excuse me, it's Robert Halvorson.

VICE-CHAIR CRIVELLO: Robert Halvorson. Thank you. Thank you, Ms. Nakata. And I'm not sure if we have a representative from the Maui Raceway Park. Not at this time.

MS. NAKATA: No, Madam Chair.

VICE-CHAIR CRIVELLO: And from Corporation Counsel, is Deputy Corporation Council Jerrie Sheppard, and Richelle Thomson, and Deputy Corporation Counsel Brian Bilberry and this is in regards to another agenda item. And with us also is our Deputy Corporation Counsel *[sic]* Ed Kushi. And with us also is Moana Lutey. Thank you. And of course our Committee Staff Clarita Balala; our Legislative Attorney Carla Nakata; and our District Office people we've already met. So, we have four items today and awaiting our COW Chair to join us shortly. I'd like to begin with . . . I'll call for a short recess. . . .*(gavel)*. . .

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RECESS: 9:17 a.m.

RECONVENE: 9:17 a.m.

CHAIR GUZMAN: . . .*(gavel)*. . . Thank you, Members. I apologize for my tardiness and my own Chair Committee. I had an emergency this morning. Anyway, starting with the first item, I believe it's Jerrie Sheppard is the Deputy Corporation Counsel handling this case. Can you please go ahead and give a brief intro or at least some background for the Members?

MS. SHEPPARD: Yes. Thank you, Chair. In 2005, the EPA required that all large capacity cesspools, the EPA (Environmental Protection Agency) required that all large capacity cesspools were to be closed. And they defined those as anything having the capacity to serve more than 20 people, 20 people or more per day. About the same time, there was an Executive Order 4024 that was issued by the State of Hawaii, dated December 4, 2003, setting aside 222.626 acres at the Maui Raceway Park for the purpose of public and recreational use. So we had the 2003 set aside by Executive Order, the 2005 April mandate to close cesspools, and on June 3, 2005, the County accepted the property in the Executive Order 4024 pursuant to Resolution No. 05-88. So we have a sequence of events happening kind of simultaneously and the cesspool at the Maui Raceway Park was not closed on April 5th, 2005. In 2015, EPA wrote a letter to the Parks Department and the County of Maui notifying us that because we had failed to close it in a timely fashion, they would be taking a civil penalty action against the County unless the County entered into settlement negotiations. We promptly entered into those settlement negotiations, we've gone back and forth with EPA a number of times. They've come up with probably what's their best and final offer and we are here today to seek authority to enter a settlement agreement called a Consent and Final Order or a CFO. I can answer any further details about that at this time or if there's anything that might be required to be heard in executive session, I'm available with my colleagues to do that.

CHAIR GUZMAN: Okay, thank you. Ms. Thomson, do you have anything to add? I know that you're very familiar with this act, this Water Act.

MS. THOMSON: Thank you, Chair. I'm not at this time, thank you.

CHAIR GUZMAN: Okay. I have one, maybe a couple of questions. On the Drinking Water Act does it have a per . . . is it a per day fine or is it a per year fine? What was the cumulation of the fines?

MS. SHEPPARD: The maximum cumulation would be \$187,000 as a penalty.

CHAIR GUZMAN: Hundred eighty-seven thousand.

MS. SHEPPARD: Correct.

CHAIR GUZMAN: And you were able to negotiate it down?

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MS. SHEPPARD: Yes.

CHAIR GUZMAN: Members, do you have any questions at this time . . . in open session?
Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I would ask that it would be helpful for this Committee if we have a timeline sequence of when the Executive Order took into account, Federal regulations that brings us to this point this morning. What was the status then? Since we have subleased the property what are the responsibilities of the tenant, if they have any, that would be good for us to be informed, Chairman, so I would just ask if that information is available if we could be provided that. Thank you.

CHAIR GUZMAN: Yeah, I believe that Ms. Thomson, you have a background on the history of this as well as the current tenants in this situation, the status as it is with the liability with our Parks Department, and how they I guess proceeded and possibly may have discovered the issues and been aware of it, and what have they done since then?

MS. THOMSON: Thank you, Chair. Just generally to answer that question, any property that would be owned or controlled whether by lease such as this or the EO that's under County-control or operation, the EPA would hold the violation against the County. So as far as whether or not the cesspool should have been closed prior to, you know, prior to 2005 that EPA regulation is fairly clear. Whether the State should have done it before they transferred it over to the County, possibly so. I think that as Ms. Sheppard said, the timing is such that it most likely escaped notice both with the County at that time and the State. And I think the follow-up question would be could we go back to the State and ask them to pay part of this penalty or seek some kind of redress from them, and it's unlikely we would be successful in that. I think one of the things that the EPA has said to us through this negotiation though is that they have been very pleased with the Parks Department's response. So the Parks Department immediately closed the cesspool and did everything that was required of them. They've been pleased with our response and I think that that is the reason for the current settlement proposal that you'll hear about in executive session. Thank you.

CHAIR GUZMAN: Mr. Hokama, any follow-up?

COUNCILMEMBER HOKAMA: Was it functioning . . . a functioning cesspool per se why we received responsibility of the transfer or was it already not in use and abandoned?

CHAIR GUZMAN: Ms. Sheppard?

MS. SHEPPARD: Yes, that was in use and it was being used primarily on race days. And during races out there the user groups also staged numerous portable restrooms to accommodate the big crowd. We went back and forth and talked about capacity and ability to serve and the State actually, the Department of Health had a little bit different definition a little bit in conflict with the Federal definition. They talk about,

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the State talks about receiving sanitary waste for more than 20 persons per day, but the Federal talk about capacity to serve. Certainly on race days there were more than 20 persons. On other days there may have been far less than 20 persons but they don't do any kind of averaging. It's just the capacity to serve over 20 per day and that definitely fit the definition.

COUNCILMEMBER HOKAMA: Okay. Chairman, thank you.

CHAIR GUZMAN: Thank you. Any other follow-ups? Mr. Couch?

COUNCILMEMBER COUCH: Thank you, Mr. Chair. Was the County or the State given any notices from the EPA after the . . . as you say between the time that we were executive ordered it to when the Council received it was a two-year gap, then they made . . . and in the middle of that they made the initial announcement - A. B. That they at any time between 2005 and two thousand and whatever they started to fine us, did they give us any notice that, hey, what are you guys doing on this? Or did they just say, we're fining you you're done?

CHAIR GUZMAN: Ms. Sheppard?

MS. SHEPPARD: Yes. There was correspondence from 2013 and 2014, and at that point that's when the Parks Department closed the restroom all together and staged permanent portables there at the site so the restroom was locked and closed upon that notification. I think the notification was in 2013. Initially, they asked for some information about the cesspool in 2014. EPA said you're operating this in violation of Federal law and that's when the restroom was shut.

COUNCILMEMBER COUCH: Okay. So they never gave us any . . . other than the May or I mean, April of 2005 broadcast throughout the country saying close large cesspools then they came back to us, oh, too late, you're done.

MS. SHEPPARD: Correct.

COUNCILMEMBER COUCH: No, hey, where are you, what's the progress?

MS. SHEPPARD: Correct.

COUNCILMEMBER COUCH: That's wonderful Federal government, no warnings or anything, just do it.

CHAIR GUZMAN: Well, initially like the overall notice, right, from 2005. What triggered the 2013 inspection?

MS. SHEPPARD: I believe they picked it up during an inspection of other sewage facilities and sites when they were out here and somebody offhandedly mentioned something about that and so then that triggered them to go look at that particular site and then they focused on that very diligently.

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CHAIR GUZMAN: So the notice I guess in 2005 was a County notice or a Statewide notice or national notice?

MS. SHEPPARD: National notice. It was Federal law.

CHAIR GUZMAN: Okay. And then for our Parks Department's side in 2005, is there any documentation that we received that notice or at least acknowledged that we needed to shut down these types of cesspools?

MS. THOMSON: Thank you, Chair. I can handle that. So my understanding is that prior to 2005 so we had some notice that this Federal regulation was going to be . . . the effective date was April 2005, we had some prior notice to that. What I understand is that each department went through and looked at its facilities and identified which cesspools might be considered large capacity under that definition, and there was, at that time, a County-wide sweep to close these cesspools and either put in some different type of facility, like a septic system or if it was able to be connected to the sewer system that went on during that time. The best that we can forensically put together is that this facility escaped that sweep at that time. And the Parks Department by the nature of its operations would have these types of cesspools and operation in the 2005 timeframe. So they did probably the most closures of any department as best we can tell.

CHAIR GUZMAN: Members, any follow up questions? I have a question for the Parks Department. Has there been a current inventory or sweep conducted lately? Are there any other cesspools that we are unaware of in the Department?

MS. THOMSON: Chair, if I could interject. We'd like to stay fairly focused just on the Maui Raceway Park settlement agreement and cesspool closure. I would caution that we should probably handle that type of question in a different form related to CIP matters.

CHAIR GUZMAN: Okay. Actually, we'll ask that question in executive session if this is something that has been I guess notified nationwide in 2005 and we're now taking care of it. Somewhat concerning to see whether if there are other departments as well that we need to take care of. We'll ask those questions in executive session. Any further questions in open session? Mr. Couch?

COUNCILMEMBER COUCH: Yeah, my concern would be the timeline situation because when a piece is executive ordered it doesn't get accepted until Council approves, you know, accepts. So the question is where was the notice given and that kind of thing? So I can see how that kind of would have gotten lost in the works - don't know.

CHAIR GUZMAN: Okay. So let's just ask. When was the executive order for us to take over the property? When was that granted?

MS. SHEPPARD: It was adopted on June 3, 2005.

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CHAIR GUZMAN: 2005.

MS. SHEPPARD: Right.

CHAIR GUZMAN: And then when was the national, uh, Federal I guess law put into place?

MS. SHEPPARD: The closure mandate was for April 5, 2005.

CHAIR GUZMAN: Wow.

MS. SHEPPARD: So there's a difference of a couple of months.

CHAIR GUZMAN: Two month's difference. I guess any time that we take over property via executive order we have to maybe learn from this lesson and make sure that there's no Federal pending issues and property issues or encumbrances on it, which would lead to one of our items in EAR that's coming up this afternoon with the Regional Park.

COUNCILMEMBER COCHRAN: Chair?

CHAIR GUZMAN: Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you. The paper that Ms. Nakata handed out versus what's in our binder I'm trying to cross reference what the difference is. The only thing I see different is the Section 3 in the binder states the copies, certified copies will be given to so and so and so and so, and that is not stated in the handout. So is that the only change? I was just wondering why this was handed out and what the difference is?

CHAIR GUZMAN: Was there an amendment that was presented?

COUNCILMEMBER COCHRAN: Yeah, I'm trying to cross reference.

MS. NAKATA: Excuse me, Mr. Chair?

CHAIR GUZMAN: Staff?

MS. NAKATA: The revised proposed bill that was distributed from you today contains all nonsubstantive revisions with the one exception that in Section 2 Chair had requested deletion of the authority to, um, for the Mayor to make amendments to the agreement.

CHAIR GUZMAN: Oh, yes, very good. Yeah, so I actually made that amendment - deleting the authority of the Mayor to sua sponte we felt basically on his own make amendments without going through the Council. So I deleted that section. And basically if there is an amendment, that needs to come through to the Council. The previous language was basically on the Mayor's own initiative he could make an amendment without having to go back to the Council. So I deleted that language. And that's the only change.

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COUNCILMEMBER COCHRAN: Okay. Thank you. Just wanted clarification on that thing.

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

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"?

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All opposed say no. We have 7 ayes, 2 excused. Motion carries. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Victorino and White.

MOTION CARRIED.

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

**COW-6 PROPOSED NAHIKU COMMUNITY CENTER LITIGATION
(COUNTY OF MAUI V. MAUI KUPONO BUILDERS LLC, ET AL., CIVIL
15-1-0421(1)) (MISC)**

CHAIR GUZMAN: Moving on to the next item. Members, COW-6, this is the proposed Nahiku Community Center litigation. County of Maui v. Maui Kupono Builders LLC, et al., Civil 15-1-0421(1). The Department of the Corporation Counsel is requesting the opportunity to provide a status update of this case. Members, as you can recall,

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this is the case in which the County has filed the complaint, among others, that the contractor in this contract of 5149, as amended, relating to the construction of the proposed Nahiku Community Center failed to 1) submit a construction schedule, 2) commence work on the site, and 3) provide performance bonds as required by the contract. The complaint also alleges that the contractor's bonding agent breached its obligation pursuant to the performance and payment bond on the contract. When we last met, Members, on the matter on April 15, 2016, the Committee requested that Deputy Corporation Counsel, Mr. Bilberry, consider the issue of debarment proceedings. He is here to update us in regards to that issue as well as further matters that he may relate to in open session. Mr. Bilberry, this is your case. You may present.

MR. BILBERRY: Thank you, Chair. As this matter is in litigation . . .

CHAIR GUZMAN: Can you get closer to the mike, please?

MR. BILBERRY: Yeah. As this matter is in litigation, I would request that we be allowed to go into executive session to discuss further the . . . and informally the process for debarment proceedings. I have looked at the Statute and because I will be discussing the proceeding as related to a particular contractor with whom we are currently involved in litigation, I think executive session would be appropriate so that I'm not disclosing attorney work product and strategy in open session.

CHAIR GUZMAN: Members, any questions that you would like to pose in open session? Seeing none. There's been a request to go into executive session pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel regarding questions pertaining to powers, duties, privileges, immunities, and liabilities of this County, the Council, and this Committee.

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"?

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no"? We have seven ayes, no noes, two excused. Motion carries.

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

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Victorino and White.**

MOTION CARRIED.

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

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

**COW-1(26) LITIGATION MATTERS (STATUS AND SETTLEMENT
AUTHORIZATION: DUKIE J. RACADIO V. COUNTY OF MAUI, ET AL.;
CIVIL 14-1-0451(2)) (CC 15-6)**

CHAIR GUZMAN: COW-1(26), Litigation Matters - Status and Settlement Authorization of Dukie J. Racadio v. County of Maui, et al., Civil 14-1-0451(2). Corporation Counsel is requesting consideration of the proposed resolution to authorize settlement of this case. The complaint alleges disability discrimination against the . . . Mr. Racadio's termination as a police officer on or about December 31, 2013. The Committee met on this matter on November 6, 2015 and on January 12, 2016. The Council previously authorized settlement of the case by Resolution 16-2. Apparently, there has been some updates to the negotiations in the settlement matters in which Mr. Bilberry will present to this Committee. Mr. Bilberry, this is your case. You may present in open session.

MR. BILBERRY: Thank you, again, Chair. We were able to have a meeting recently with the mediator and with Mr. Racadio and his attorney to discuss further mediation options and strategy for potential settlement of the case. As the matter is in litigation, I would again request that we go into executive session. I can give you a more detailed projection of what we see with respect to possible settlement of the case and if the case can't settle, where the litigation is going.

CHAIR GUZMAN: Okay. Thank you, Mr. Bilberry. Members, are there any questions that you would like to pose in open session? Seeing none. We have a request to go into executive session. The Chair will entertain a motion to convene executive session pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel pertaining to questions regarding liabilities, duties, privileges and immunities of this County, this Council, and this Committee.

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VICE-CHAIR CRIVELLO: So move, Chair.

COUNCILMEMBER COUCH: Second.

MS. NAKATA: Excuse me, Mr. Chair? Would that also be based on 92-5(a)(8)?

CHAIR GUZMAN: Yes, as well as 92-5(a)(8).

VICE-CHAIR CRIVELLO: So moved, 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"?

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no". Seven ayes, no noes, two excused. Motion carries. Thank you, Members.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Victorino and White.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next item on today's agenda.

COW-1(37) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: NADJA VITAVEC, NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL.; CIVIL 15-1-0181(1)) (CC 15-6)

CHAIR GUZMAN: We have COW-1(37). This is a Settlement Authorization of Nadja Vitavec also known as Nadja Neidhart v. County of Maui, et al.; Civil 15-1-0181(1). Again, the Corporation Counsel, along with their Deputies, has requested consideration of this

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proposed resolution to authorize settlement of the case. Members, you've heard this case previously. This was a personal injury case that occurred on or about May 8, 2013, when a large tree branch fell on the Plaintiff at the Puamana Beach Park in Lahaina, Maui, Hawaii. The Council and this Committee did authorize settlement of this case by Resolution 16-64. There has been an update as to the settlement and more negotiations has occurred. Mr. Bilberry will update the Council or at least this Committee in regards to the changes of the negotiations and settlement. Mr. Bilberry?

MR. BILBERRY: Thank you again, Chair. We were able to proceed in the mediation with retired Judge Joel August. Pursuant to that process the Plaintiff and her attorney issued a new demand to us or revised demand. We've also received a written recommendation from the mediator, which I would like to discuss with you and so I would ask that we be allowed to go into executive session to discuss the status and settlement negotiations.

CHAIR GUZMAN: Okay. Thank you, Mr. Bilberry. Members, any questions that you would like to pose in open session? Seeing none. There's been a request to enter into executive session pursuant to Section 92-5(a)(4) of the HRS to consult with our legal counsel on questions regarding powers, duties, privileges, immunities, and liabilities of this County, this Council, and this Committee.

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"?

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no"? Seven ayes, no noes, two excused. Motion carries. Thank you, Members.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say "no"? We have seven ayes, no noes, two excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Victorino and White.

MOTION CARRIED.

ACTION: Recommending FIRST READING of revised bill.

CHAIR GUZMAN: Thank you.

**COW-6 PROPOSED NAHIKU COMMUNITY CENTER LITIGATION
(COUNTY OF MAUI V. MAUI KUPONO BUILDERS LLC, ET AL., CIVIL
15-1-0421(1)) (MISC)**

CHAIR GUZMAN: Members, moving on to the next item on the agenda is the proposed Nahiku Community Center litigation - County of Maui v. Maui Kupon Builders LLC, et al., Civil 15-1-0421(1). Without objections, Members, I would like to defer that matter.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MPV and MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. Moving on to the next item.

**COW-1(26) LITIGATION MATTERS (STATUS AND SETTLEMENT
AUTHORIZATION: DUKIE J. RACADIO V. COUNTY OF MAUI, ET AL.;
CIVIL 14-1-0451(2)) (CC 15-6)**

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Council of the County of Maui

May 17, 2016

CHAIR GUZMAN: This is COW-1(26), Status and Settlement Authorization of Duke Racadio v. County of Maui, et al., Civil 14-1-0451(2). Without objections, Members, I'd like to defer that matter as well.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MPV and MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you.

COW-1(37) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: NADJA VITAVEC, NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL.; CIVIL 15-1-0181(1)) (CC 15-6)

CHAIR GUZMAN: Moving on to COW-1(37), Nadja Vitavec now known as Nadja Neidhart v. County of Maui, et al., Civil 15-1-0181(1). Without objections, Members, I'd like to defer that matter as well.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MPV and MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you. Members, thank you very much for your attentiveness. Excuse me?

MS. NAKATA: Could staff request a brief recess?

CHAIR GUZMAN: Okay. Brief recess. . . .(gavel). . .

RECESS: 11:31 a.m.

RECONVENE: 11:31 a.m.

CHAIR GUZMAN: . . .(gavel). . . Committee of the Whole shall now reconvene from the recess. Members, I had a mistake on the last item. I'd like to withdraw that deferral, if I may.

COUNCILMEMBER COUCH: No objections.

CHAIR GUZMAN: Thank you. Without objections, withdraw that deferral. Pursuant to our discussions in executive session, the Chair will recommend a . . . entertain a motion to adopt the recommendations and the proposed resolution entitled "AUTHORIZING THE SETTLEMENT OF NADJA VITAVEC NKA NADJA NEIDHART V. COUNTY OF MAUI, ET AL., CIVIL NO. 15-1-0181(1)."

VICE-CHAIR CRIVELLO: So move.

