

COMMITTEE OF THE WHOLE
Council of the County of Maui

MINUTES

November 18, 2016

Council Chamber, 8th Floor

CONVENE: 1:50 p.m.

PRESENT: Councilmember Don S. Guzman, Chair
Councilmember Stacy Crivello, Vice-Chair (out 3:11 p.m.)
Councilmember Robert Carroll
Councilmember Elle Cochran
Councilmember Riki Hokama
Councilmember Michael P. Victorino (out 3:05 p.m.)
Councilmember Mike White (in 1:54 p.m.)

EXCUSED: Councilmember Gladys C. Baisa
Councilmember Don Couch

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

Tina Thompson, Executive Assistant, assisting 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.: Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Brian A. Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: (2) additional attendees

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

CHAIR GUZMAN: . . .(*gavel*). . . The Committee of the Whole shall now convene. I'm Don Guzman, the Chair of the Committee. Before we begin, I'd like to introduce the Members of the Committee starting with our Vice-Chair of the Committee, Stacy Crivello.

VICE-CHAIR CRIVELLO: Aloha and good afternoon, Chair.

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CHAIR GUZMAN: Good afternoon. Bob Carroll.

COUNCILMEMBER CARROLL: Good afternoon, Chair.

CHAIR GUZMAN: Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: Mike Victorino.

COUNCILMEMBER VICTORINO: Aloha and good afternoon, Chair.

CHAIR GUZMAN: And joining us shortly will be Riki Hokama. Good afternoon. Mike White, as well, and I believe Ms. Baisa is excused. For our Committee Staff we have Clarita Balala, which is our Committee Secretary, and Carla Nakata, our Legislative Attorney. I'm gonna go ahead and turn our attention to our District Offices to see if they have checked in. In Hana District Office, are you there?

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

CHAIR GUZMAN: Ms. Lono, is there anyone wishing to testify?

MS. LONO: There is no one waiting to testify.

CHAIR GUZMAN: Thank you. On Lanai District Office?

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

CHAIR GUZMAN: Thank you. In Molokai District Office?

MS. THOMPSON: This is Tina Thompson at the Molokai District Office and there is no one waiting to testify.

CHAIR GUZMAN: Thank you. Turn our attention to the Chamber, is there anyone wishing to testify?

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

CHAIR GUZMAN: Without objections, Members, I'd like to close public testimony.

COUNCILMEMBERS: No objections.

CHAIR GUZMAN: Public testimony is now closed.

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**COW-1(47) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION:
THOMAS N. LIGSAY V. COUNTY OF MAUI; DISABILITY COMPENSATION
DIVISION CASE 7-15-00504) (CC 15-6)**

CHAIR GUZMAN: Turning our attention to the first item on today's agenda, that is COW-1(47). This is the settlement authorization of Thomas N. Ligsay v. County of Maui, Disability Compensation Division Case 7-15-00504, COW-1(47). This is a resolution that was proposed by the Department of Corporation Counsel requesting authorizing settlement of this case. The claim alleges work-related injuries sustained on February 9, 2015. We have from Corporation Counsel, Deputy Corporation Counsel Caleb Rowe, this is his case. So why don't you go ahead and present in open session at this time.

MR. ROWE: Thank you, Chair. This claim involves Mr. Thomas Ligsay. He was a 61-year old groundskeeper who was working at the Waiehu Golf Course when he injured his back. This particular settlement that we're asking for is to wash future medicals as well as future indemnity benefits. He already has been...he already has reached a settlement with the County over the issues of permanent partial disability and that already has been concluded so this is really just to kind of wrap things up and our liability for future medical care and future indemnity benefits. At this time, I would like to ask that we discuss in closed session due to the fact that it involves an ongoing litigation case as well as medical records.

CHAIR GUZMAN: Thank you, Mr. Rowe. Is there any questions that any of the Members would like to pose in open session? Seeing none, there has been a request to enter into executive session. The Chair will entertain a motion to enter into an executive meeting pursuant to Section 92-5(a)(4) of the HRS to consult with legal counsel on questions of liability, privilege, and immunities regarding this County, this Council, and this Committee, as well as 92-5(a)(8) which is also under HRS to deliberate on decisions that are a matter of confidentiality and must be kept confidential pursuant to State law or court order.

VICE-CHAIR CRIVELLO: So moved, Chair.

COUNCILMEMBER VICTORINO: Mr. Chair, I second the motion.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have eight [sic] ayes, one [sic] excused, motion carries.

MS. NAKATA: Excuse me, Mr. Chair. Two excused --

CHAIR GUZMAN: Oh, excused.

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MS. NAKATA: --Members Baisa and Couch.

CHAIR GUZMAN: Oh, yeah, Ms. Baisa. Sorry about that. My vision on that left side is...so two excused. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa and Couch.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next item on the agenda is COW-1(3). The litigation matters of settlement authorization with the Hawaii Wildlife Fund, et al. v. County of Maui, Civil No. 12-00198 SOM-BMK, COW-1(3). I believe this is as indicated in the description of the agenda. This is before us and we have Deputy Corporation Counsel Richelle Thomson to present. The floor is yours, Ms. Thomson. I guess one of the reasons that we are here is that according to Rule 23 of the Council this settlement request would automatically file, oh, excuse me, would automatically be referred to the Council Chair for the 2017-2019 Council term unless the Council affirmatively disposes of it, and could you also elaborate more on what the status of the case is. Thank you.

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

MS. THOMSON: Sure. Thank you, Chair. So as you are all aware the County and the Plaintiff groups in this matter entered into a negotiated settlement agreement which was approved and ordered by the Hawaii District Court in November of 2015. That settlement agreement required that the Plaintiffs' claims for attorneys' fees and costs be negotiated within 30 days of entry of the order. The resolution before you request an authorization for Corporation Counsel's Department to negotiate with the Plaintiffs' attorneys regarding those fees and costs and we were successful. Just as a caveat a note on that, these attorneys' fees and costs will only be payable by the County if we're not successful on the appeal and the appeal is before the Ninth Circuit Court of

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Appeals right now. We don't have a date for oral arguments but we anticipate it to be in the first or second quarter of 2017. As far as the current resolution before you, no further action needs to be taken on it so we recommend that it be filed. Thank you.

CHAIR GUZMAN: So basically, Members, the case that was on the Federal Circuit Court level we had already entered into a settlement agreement and thereafter is now in the appellate court so this lower level court case is pretty much pau in regards to our matters to deal with it. So it will start again. I'm sure we will receive something, a transmittal regarding the appellate court case, but at this point we've already settled the lower court case. At this time, the Chair will entertain a motion to file the correspondence.

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

CHAIR GUZMAN: There's motion on the floor by Ms. Crivello, seconded by Mr. Victorino. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have six ayes, oh, excuse me, seven ayes, no noes, two excused. Motion carries. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa and Couch.

MOTION CARRIED.

ACTION: FILING of correspondence dated December 3, 2015.

CHAIR GUZMAN: Moving on to the next item, Members. This is on your agenda. This is the Litigation Matter, Settlement Authorization, In the Matter of the Tax, excuse me one moment, is Mr. Bilberry present?

MS. NAKATA: Mr. Chair, Mr. Bilberry just indicated he's on his way to the Chamber. He should be here shortly.

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CHAIR GUZMAN: Okay. So I guess we can at this point, Members, if I could take some items out of order as we wait for Deputy Corporation Bilberry. I would like to call up, without objections, out of order, COW-5, as well as COW-6.

COUNCILMEMBERS: No objections.

COW-5 STATUS: CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL.,
CIVIL 15-00384 LEK-KSC

CHAIR GUZMAN: Okay. Members, at this time, in regards to COW-5, the status of Christopher Salem v. Alan Arakawa, et al., Civil No. 15-00384 LEK-KSC, without objections the Chair would like to defer that matter.

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

ACTION: DEFER PENDING FURTHER DISCUSSION.

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))

CHAIR GUZMAN: And in regards to the COW-6, the Proposed Nahiku Community Center Litigation, I believe that the Chair will entertain a motion to recommend that this be referred to the Council Chair for the term beginning January 2, 2017 pursuant to Rule 23 of the Rules of the Council.

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR CRIVELLO: So moved.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. There's seven ayes, no noes, and two excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: **Councilmembers Baisa and Couch.**

MOTION CARRIED.

ACTION: **Recommending REFERRAL of communication to the
 Council Chair for the term beginning January 2,
 2017.**

CHAIR GUZMAN: Members, at the call of the Chair we'll take a brief recess as we wait for Deputy Corporation Brian Bilberry. . . .(gavel). . .

RECESS: **2:02 p.m.**

RECONVENE: **2:05 p.m.**

CHAIR GUZMAN: . . .(gavel). . . Members, the COW Committee, Committee of the Whole shall now reconvene. At this time, I'm going to set...recess for the Chamber to be set for the executive session in the first case which has priority on the agenda and that is the Thomas N. Ligsay v. County of Maui, strike that. I guess we have Mr. Bilberry, he's here, present. Mr. Bilberry, you can come forward please and sit down on the Administration table and we're going to be calling your case momentarily as soon as you're set.

MR. BILBERRY: I'm all set.

CHAIR GUZMAN: Okay. Members, getting back to the agenda at hand. We have the item, COW-1(48). This is the Litigation Matter, Settlement Authorization, In the Matter of the Tax Appeal of Kaheawa Wind Power II, LLC, Tax Appeal 13-1-0313. The Committee is in receipt of the correspondence, dated November 7, 2016, from the Department of Corporation Counsel requesting consideration of the proposed resolution entitled "AUTHORIZING SETTLEMENT OF THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC, TAX APPEAL NO. 13-1-0313." I believe we have Mr. Bilberry here, the Deputy Corporation Counsel who is handling this case

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and will give us an update and as to any disclosures he may have in open session. Thank you, Mr. Bilberry.

COW-1(48) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC; TAX APPEAL 13-1-0313) (CC 15-6)

MR. BILBERRY: Thank you, Chair. This is one of a number of tax court appeals made by Kaheawa Wind Power and this case actually involves Phase II of that wind farm project, Kaheawa Wind Power II, LLC. And it's similar to two tax appeals which the tax court has ruled on, granted a motion for summary judgment in favor of the tax appellant on the principle that the County is estopped from arguing that the wind turbines which are part of the wind farm asset are part of the realty based on rulings made in a previous wind farm appeal back in 2010, which was a number of consolidated cases. And so the County of Maui has appealed those rulings. We have a current pending tax appeal as related to Kaheawa II, which the parties are discussing entering into a stipulated judgment based on the court's rulings and current recent tax appeals. And so I wanted to come here and talk to you about that because it's going to involve some amounts of money and I wanted to discuss our strategy for the pending appeals and this current tax appeal which will be up on appeal with the ICA once the stipulated judgment is entered. That being said, I would ask to go into executive session to discuss the details of the proposed stipulated judgment from the tax appellant.

CHAIR GUZMAN: Thank you, Mr. Bilberry. Members, do you have any questions that you'd like to pose in open session? Seeing none, there's been a request to enter into executive session pursuant to 92-5(a)(4) to consult with our legal counsel regarding privileges, duties, immunities, and liabilities concerning this County, this Council, and this Committee.

VICE-CHAIR CRIVELLO: Chair, so moved.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have seven ayes, no noes, two excused. Motion carries. Thank you, Mr. Bilberry.

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

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmembers Baisa and Couch.**

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on, Members, to the next item on today's agenda. It's a Settlement Authorization of County of Maui v. Kehalani Holdings Company, Inc., et al., Civil No. 11-1-0311(3), COW-1(49). The Committee is in receipt of the correspondence, dated November 10, 2016, from the Department of Corporation Counsel requesting consideration of the proposed resolution therein stated in your agenda and also to discuss any other revisions of the resolution and to consider other related actions. This is also Mr. Bilberry's case as you would have forth. So Mr. Bilberry you are on the floor. You can explain this case in open session.

COW-1(49) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: COUNTY OF MAUI V. KEHALANI HOLDINGS COMPANY, INC., ET AL.; CIVIL 11-1-0311(3)) (CC 15-6)

MR. BILBERRY: Thank you again, Chair. The Kehalani matter involves a piece of property in West Maui [sic] that had been essentially I guess I would say squatted on and inhabited by quite a number of I would say a small population of people. And the County of Maui brought suit and asked for an injunction or in part the removal of the population that was living on the property in addition to seeking collection of a number of fines related to a number of violations due to the habitation of the property, which did not have permits for buildings. There were some health code issues, et cetera, et cetera. Anyway, the owner of the property was eventually able to clear the land. There was a pending third-party claim involving one occupant of the land who countersued the owner of the property who was the Defendant in the case brought by the County of Maui, and that third-party action has since been disposed of by the court and now the Defendant is seeking to settle the primary claims with the County of Maui with respect to what are significant fines and penalties which have been imposed on the landowner pending the clearing of the land and resolution of the third-party claim. And so they presented us with a settlement proposal and I request to go into executive session to discuss that proposal a little more in detail.

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COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR GUZMAN: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: And I apologize, Mr. Bilberry, but you said West Maui and I know for a fact you're talking Piihana right here in Wailuku.

MR. BILBERRY: Yeah, and I'm sorry. I consider. . .

COUNCILMEMBER VICTORINO: Yeah, yeah, I was really confused.

MR. BILBERRY: Yeah, yeah, my mistake.

COUNCILMEMBER VICTORINO: I was like whoa!

MR. BILBERRY: I consider the West Maui mountains all of 'em and the surrounding areas as West Maui, but you're fair, fair enough.

COUNCILMEMBER VICTORINO: Yeah, it's Piihana right here in Wailuku, Mr. Chair.

MR. BILBERRY: Yeah.

COUNCILMEMBER VICTORINO: So I just wanted to correct that so I wasn't looking and reading and thinking I'm in the wrong place.

MR. BILBERRY: No. Thank you for the correction --

COUNCILMEMBER VICTORINO: Thank you.

MR. BILBERRY: --or the specificity.

CHAIR GUZMAN: Okay. Thank you. Members, do you have any questions in open session? Seeing none, there has been a request to enter into executive session pursuant to 92-5(a)(4) to consult with the legal counsel regarding powers, duties, liabilities, immunities, and privileges regarding our County, this Council, and this Committee.

VICE-CHAIR CRIVELLO: I move, Chair.

COUNCILMEMBER VICTORINO: Second, Mr. Chair.

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

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmembers Baisa and Couch.

MOTION CARRIED.

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

CHAIR GUZMAN: Moving on to the next item on today's agenda, is the Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2) and Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 15-1-0435(1) and this is COW-1(2). I believe this is a status update by Mr. Bilberry who is handling this case. If you would like to disclose any information in open session, you may do so now. Thank you.

COW-1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2); OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0435(1))
(CC 15-6)

MR. BILBERRY: Only that...I mean most of you, I think all of you actually are familiar with this case. A number of you have been recently deposed and there are ongoing depositions and ongoing discovery disputes. The case has been reset for trial beginning May 1, 2017. In the interim, the Judge has issued his amended pre-trial order and notice of trial date and has set a settlement conference for January 27. And so I wanted to come here early to start having a discussion about this case and the settlement proposals that we anticipate getting from Ocean Resort Villas and Ocean Resort Villas North in anticipation of the settlement conference which the Judge has set for January 27th, and I would request that we go into executive session to have some further discussion about this case.

CHAIR GUZMAN: Thank you. Members, have any questions in open session? Seeing none, there's been a request to enter into executive session. The Chair will entertain a motion to enter into executive session pursuant to 92-5(a)(4) of the Hawaii...HRS to

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COW-1(47) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: THOMAS N. LIGSAY V. COUNTY OF MAUI; DISABILITY COMPENSATION DIVISION CASE 7-15-00504) (CC 15-6)

CHAIR GUZMAN: Members, after discussion with Corporation Counsel in executive session we will be addressing the following item, this is COW-1(47), Thomas N. Ligsay v. County of Maui, Disability Compensation Division, Case No. 7-15-00504. The Chair will entertain a motion to adopt the proposed resolution entitled "AUTHORIZING SETTLEMENT OF THOMAS N. LIGSAY V. COUNTY OF MAUI, DISABILITY COMPENSATION DIVISION CASE NO. 7-15-00504."

COUNCILMEMBER COCHRAN: Chair, so moved.

CHAIR GUZMAN: Moved by Ms. Cochran --

COUNCILMEMBER WHITE: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, zero noes, and four excused. Motion carries. Thank you.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to dispose the other items on the calendar.

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COW-1(48) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: IN THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC; TAX APPEAL 13-1-0313) (CC 15-6)

CHAIR GUZMAN: We have the Settlement Authorization. This is COW-1(48). After discussion with Corporation Counsel in executive session, the Chair will entertain a motion to adopt the proposed resolution entitled "AUTHORIZING SETTLEMENT OF THE MATTER OF THE TAX APPEAL OF KAHEAWA WIND POWER II, LLC, TAX APPEAL NO. 13-1-0313."

COUNCILMEMBER COCHRAN: Mr. Chair, so moved.

COUNCILMEMBER WHITE: Second.

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

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending ADOPTION of resolution.

CHAIR GUZMAN: Moving on to the next item on the agenda.

COW-1(49) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: COUNTY OF MAUI V. KEHALANI HOLDINGS COMPANY, INC., ET AL.; CIVIL 11-1-0311(3)) (CC 15-6)

CHAIR GUZMAN: COW-1(49), this is the County of Maui v. Kehalani Holdings Company, Inc., et al., Civil No. 11-1-0311(3). Without objections, Members, I'd like to defer this matter.

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

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: The matter is deferred. Thank you. Moving on to the last and final item to be disposed of, oh, I guess we are not.

COW-1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2); OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0435(1))
(CC 15-6)

CHAIR GUZMAN: This is the COW-1(2), this is the Ocean Resort Villas Vacation Owners Association, et al. v. County of Maui, et al., Civil No. 13-1-0848(2) and as well as the Ocean Resort Villas Vacation Owners Association case, Civil No. 15-1-0435(1). Without objections, Members, I'd like to defer this matter.

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

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR GUZMAN: Thank you.

MS. NAKATA: Excuse me, Mr. Chair, could Staff request a brief recess?

CHAIR GUZMAN: We will take a brief recess for Staff. . . .(gavel). . .

RECESS: 3:20 p.m.

RECONVENE: 3:20 p.m.

CHAIR GUZMAN: . . .(gavel). . . We shall now reconvene.

COW-1(49) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: COUNTY OF MAUI V. KEHALANI HOLDINGS COMPANY, INC., ET AL.; CIVIL 11-1-0311(3)) (CC 15-6)

CHAIR GUZMAN: Members, I'd like to recall the matter of County of Maui v. Kehalani Holdings Company, Inc., et al., Civil No. 11-1-0311(3). I would request that this matter be withdrawn on the motion due to the fact that I would be motioning I guess...filing an amended motion...entertaining an amended motion to refer this to the Council Chair for the next term of 2017 through '18 so that this would be carried over to the next Committee of the Whole instead of this being auto-filed.

COUNCILMEMBER COCHRAN: Okay. Chair, so . . .

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UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

COUNCILMEMBER COCHRAN: Deferment, yeah?

CHAIR GUZMAN: Defer.

COUNCILMEMBER COCHRAN: We defer with no objections.

CHAIR GUZMAN: Defer. So if I defer it, it will auto-file, and so I would rather this get carried over. So basically, this would be transferred to the Chair and then the Chair would reassign it back to Committee of the Whole instead of it being auto-filed.

COUNCILMEMBER HOKAMA: Chairman, just so there's no question about the record, I move to reconsider the previous action on COW-1(49).

CHAIR GUZMAN: Moved --

COUNCILMEMBER COCHRAN: Second.

CHAIR GUZMAN: --moved to reconsider by Mr. Hokama, seconded by Ms. Cochran. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, zero noes, and four excused. Motion carries.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending RECONSIDERATION.

CHAIR GUZMAN: So now we have the primary or I guess a new motion to consider which is to defer this.

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COUNCILMEMBER HOKAMA: Chair, yeah, I would make a motion to refer COW-1(49) to the next Council pursuant to Rule 23 of the Rules of the Council.

CHAIR GUZMAN: Thank you.

COUNCILMEMBER COCHRAN: Chair, so moved.

CHAIR GUZMAN: We have a motion by --

COUNCILMEMBER COCHRAN: I mean I second.

CHAIR GUZMAN: --motion by Mr. Hokama, seconded by Ms. Cochran. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

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

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending REFERRAL of communication to the Council Chair for the term beginning January 2, 2017.

CHAIR GUZMAN: As well as for the. . .

COUNCILMEMBER HOKAMA: Chairman, do you need a motion on 1(3)?

CHAIR GUZMAN: Yes. Actually, the 1(3). . .

MS. NAKATA: Excuse me, on 1(3) I believe --

CHAIR GUZMAN: Oh, we already did that one.

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MS. NAKATA: --we already did file.

COUNCILMEMBER HOKAMA: Okay. Thank you, Chair.

CHAIR GUZMAN: We did that when Ms. Thomson was present on the floor and we filed that one.

COUNCILMEMBER HOKAMA: That's right. Thank you, Chairman.

CHAIR GUZMAN: And so we were going to same, I would request a motion to reconsider for Ocean Resort Villas Vacation Owners Association case.

COW-1(2) LITIGATION MATTERS (STATUS: OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2); OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL 15-1-0435(1))
(CC 15-6)

COUNCILMEMBER HOKAMA: I make that motion, Chairman, to reconsider.

COUNCILMEMBER WHITE: Second.

CHAIR GUZMAN: We have a motion for Mr. Hokama for reconsideration and seconded by Mr. White. Any further discussion? Seeing none, all those in favor say aye.

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, zero noes, four excused. Motion to consider [sic] carried. Sorry.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending RECONSIDERATION.

CHAIR GUZMAN: I'd like...the Chair would like to entertain a motion to refer this item to the Council Chair so that the Council Chair would be able to refer it to the next

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Committee of the Whole or any referral that the Chair would prefer during the 2017-2018 term.

COUNCILMEMBER HOKAMA: So moved, Chairman.

COUNCILMEMBER WHITE: Second.

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

COUNCILMEMBERS: Aye.

CHAIR GUZMAN: All those opposed say no. We have five ayes, zero noes, four excused. Motion carries

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Crivello, and Councilmembers Baisa, Couch, and Victorino.

MOTION CARRIED.

ACTION: Recommending REFERRAL of communication to the Council Chair for the term beginning January 2, 2017.

CHAIR GUZMAN: Thank you, Members. This will conclude today's agenda. I appreciate all your patience and have a great weekend. Adjourned. . . .(gavel). . .

ADJOURN: 3:24 p.m.

APPROVED:



DON S. GUZMAN, CHAIR
Committee of the Whole