

**PARKS, RECREATION, ENERGY, AND LEGAL  
AFFAIRS COMMITTEE  
Council of the County of Maui**

**M I N U T E S**

**Council Chamber**

**August 21, 2018**

**CONVENE:** 1:30 p.m.

**PRESENT:** Councilmember Don S. Guzman, Chair  
Councilmember Kelly T. King, Vice-Chair  
Councilmember Alika Atay (arrived at 1:35 p.m.)  
Councilmember Elle Cochran (left at 2:38 p.m.)  
Councilmember Stacy Crivello  
Councilmember Riki Hokama (arrived at 1:43 p.m.)  
Councilmember Yuki Lei K. Sugimura

**EXCUSED:** Councilmember Robert Carroll  
Councilmember Mike White

**STAFF:** Carla Nakata, Legislative Attorney  
Pauline Martins, 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.:** Moana M. Lutey, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
John Holiona, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
Edward S. Kushi, Jr., First Deputy Corporation Counsel,  
Department of the Corporation Counsel  
Eric Nakagawa, Wastewater Reclamation Division Chief,  
Department of Environmental Management  
Mark Walker, Director, Department of Finance  
Marcy Sato, Accounting Systems Administrator, Department of  
Finance  
Rowena Dagdag-Andaya, Deputy Director, Department of Public  
Works

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

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CHAIR GUZMAN: . . . *(gavel)* . . . Good afternoon. I'm Don Guzman, Chair of the Parks, Recreation, Energy, and Legal Affairs Committee. Welcome. I'd like to introduce our Members that we have for today's meeting. We have our Vice-Chair of the Committee Kelly King. Good afternoon.

VICE-CHAIR KING: Good afternoon, Chair.

CHAIR GUZMAN: We have Elle Cochran, good afternoon.

COUNCILMEMBER COCHRAN: Aloha, Chair.

CHAIR GUZMAN: Ms. Yuki Sugimura, good afternoon.

COUNCILMEMBER SUGIMURA: Aloha, Chair.

CHAIR GUZMAN: And Stacy Crivello, good afternoon.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR GUZMAN: Okay. So we'll go ahead and check in with our District Offices. And just to let you know, Hana Office is closed today. So we will just bypass them and we'll go straight into Molokai District Office, are you there?

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

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

CHAIR GUZMAN: Thank you very much. Lanai District Office, are you there Ms. Fernandez?

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

CHAIR GUZMAN: Thank you. Turning our attention to the Chambers, is there anyone signed up to testify?

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

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

CHAIR GUZMAN: Okay, thank you. Members, at this time, no one has signed up to testify. I will close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

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CHAIR GUZMAN: Thank you. Moving on to our first item on today's agenda.

**PRL-1(42) SETTLEMENT AUTHORIZATION: CASSANDRA MARTIN; CLAIM  
30180290038-0001 (MISC)**

CHAIR GUZMAN: It is PRL-1(42), this is the Litigation Matters Settlement Authorization: Cassandra Martin; Claim 30180290038-0001, CC 17-6. And apparently, we have the Committee is in receipt of the correspondence dated July 31<sup>st</sup> from the Department of Corporation Counsel requesting consideration of the proposed resolution entitled authorizing settlement of claim as stated, and transmitting a copy of the claim and related documents. The purpose of the proposed resolution is to settle authorize the claim for \$8,309.07. The claim alleges damages to Ms. Martin's vehicle caused by discharge of sulfuric acid from an exhaust fan at the Department of Environmental Management's wastewater reclamation facility lab building in Kihei between March 19, 2018 and March 23, 2018. The Committee may consider whether to recommend adoption of the proposed resolution with or without revisions and also consider filing of the correspondence and other related actions. I believe that we have Ms. Lutey here to represent the Corporation Counsel. And this is your case Ms. Lutey, if you can present in open session. And if need be, please notify us if you need to enter into executive session. Thank you.

MS. LUTEY: Thank you, Chair. Good afternoon. So in this matter, I believe it's something that we can handle in open session. It's a straight property damage claim, and I think the summation given by the Chair is pretty much all the information that we have. It's basically between March 19<sup>th</sup> and the 23<sup>rd</sup>, 2018, Ms. Martin, who's a County employee, discovered that there were dark stain marks on her vehicle, and there were a few other vehicles as well that had these dark stains, and I believe at that point, they realized that there may be sulfuric acid coming out from the vents that caused the damage to her vehicle, and so she went out and got some estimates. The lowest of the three that she obtained was \$8,309.07, which is what I am requesting authority for. And it's my understanding that at this point, the Kihei baseyard has moved the parking for the employees away from where the wind blows in this area to prevent any future potential damage to vehicles. This is off Piilani Highway on the mauka side of their baseyard. So there's not really anything else surrounding that it could damage, but based on these facts and circumstances, the liability appears to be on the County, and so I am requesting settlement authority.

CHAIR GUZMAN: Thank you. Members, do you have any questions? Anyone?

VICE-CHAIR KING: Chair?

CHAIR GUZMAN: Okay. Ms. King followed by Ms. Sugimura.

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VICE-CHAIR KING: Thank you. It sounds pretty cut and dry, but my biggest question is “why is there sulfuric acid coming from an exhaust fan?”

MR. NAKAGAWA: Chair?

CHAIR GUZMAN: Yes, go ahead.

MR. NAKAGAWA: Yeah. So this, we have basically it's, this is the Kihei treatment plant, and we have our central laboratory trailer that's in that facility. There's three parking stalls right next to that lab, and part of the lab procedures, they use various chemicals, and I guess it's found to be sulfuric acid coming out. It must have solidified. I guess that's the claim. We have exhausts, three exhausts, and it was raining that day, and somehow it attached itself to the rain, and the wind blew on top of their cars.

VICE-CHAIR KING: So this is normal for it just to . . . that the exhaust, that sulfuric acid go out through the exhaust?

MR. NAKAGAWA: Yeah. So, we're looking into, we trying to find a, I guess a certified laboratory vendor. That's what we're trying to do. This is the first time we've ever experienced this in our 30 years, so we're trying to figure out what I guess what happened and what went wrong.

VICE-CHAIR KING: Okay. So we're admitting that something did go wrong. This is not normal procedure? Because you know . . .

MR. NAKAGAWA: Yeah, so . . .

VICE-CHAIR KING: My business has a certified lab, and I can't imagine blowing something like this out the exhaust. If that had been a person there, instead of a car, where would we be? So you know, I just want to make sure that this is recognized as something that shouldn't have happened. It's not normal procedure. It's not just that the car was too close. It was just, this was something that shouldn't have happened.

MR. NAKAGAWA: Yeah.

CHAIR GUZMAN: Department?

MR. NAKAGAWA: Yeah. I think there's, yeah. I mean to answer your question, yeah. This is the first time it's ever happened.

VICE-CHAIR KING: Okay.

MR. NAKAGAWA: So it's not normal.

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VICE-CHAIR KING: Okay. Yeah. I mean when you read the report, Chair, it makes it look like the problem was the car was too close, and not the problem was that there's sulfuric acid coming out of this exhaust vent. So I just want to make sure we recognize that that's really what the issue is.

CHAIR GUZMAN: I guess the follow-up question is, what is the proximity of the vehicle to the exhaust? And was it a one-time occurrence, or was this parked consistently at that location?

MR. NAKAGAWA: Yeah, sure. So the three parking stalls are directly on the side, one foot away from the trailer. It's just our normal parking stalls. So people have been parking there for like I said over 20 years, and so this is the first time we've ever experienced this circumstance, I guess. If you want to call it that. And then, so those parking stalls are no longer useable, used by the employees or anybody. And then, once again, yeah, we're just trying to contact the, a certified vendor that will help us to resolve the problem.

CHAIR GUZMAN: And the certified vendor, what is the process? Right now, what is the status of that? Have you, has it gone out to bid, or what is?

MR. NAKAGAWA: Yeah, Chair. So right now, we basically are researching who actually does it, and we haven't found actually a certified vendor yet. So, it's kind of in that process of just getting a person and then coming over to assess what's wrong.

VICE-CHAIR KING: What kind of certified vendor? What kind of a vendor are you looking for? Like a HAZMAT? Do we have a HAZMAT person on staff?

CHAIR GUZMAN: Department?

MR. NAKAGAWA: Not that I'm aware of. Anytime we ever deal with HAZMAT, we always contact the Fire Department for us. So as far as our side and DM or in Wastewater, we don't have.

VICE-CHAIR KING: Okay. But I mean is that something we could do is contact the Fire Department, and have them come over and take a look at it and give us their expertise? I mean they already work for the County.

CHAIR GUZMAN: Department?

MR. NAKAGAWA: Yeah. We could do that, but I think the real thing is really trying to figure out how. We can get their opinions on how it happened. I mean they're more of a, you know, we utilize them when the actual spill or whatever HAZMAT has happened. They come out. They know the protocol on how to clean it, disinfect it, how to make sure everything follows after. But we're trying to figure out how to resolve the actual exhaust side, the actual equipment side so that it doesn't happen again.

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VICE-CHAIR KING: So you're looking for an exhaust vendor to tell you how that happened?

MR. NAKAGAWA: So it's more on the equipment side versus the cleanup.

VICE-CHAIR KING: So you don't think it was more on the operator's side possibly? I mean that's the first thing that you would do like with a HAZMAT examination too, is you would go in and you'd look at the procedure that was used, and possible operator error.

CHAIR GUZMAN: Department?

MR. NAKAGAWA: Yeah. I mean I can find out from our lab person. I don't think there's anything different that we haven't done in our test and procedures. So but we do have a couple new laboratory chemists so we can find out. I'll ask the supervisor if possibly it was a chemist error.

VICE-CHAIR KING: Okay. Because I think there's, you know, that's the root of the problem. It's not the fact that the car was parked too close. It's how did that happen? And you know, how can we put a stop, how can we make sure it doesn't happen again? That's my concern. Thank you, Chair.

CHAIR GUZMAN: Thank you. Ms. Sugimura.

COUNCILMEMBER SUGIMURA: I think the Department is basically trying to solve the problem and it sounds just through this conversation that that was basically what I wanted to know. They're mitigating, so that's good. Very good!

CHAIR GUZMAN: I would like to recognize the presence of Mr. Atay. Welcome. Is there any other questions?

COUNCILMEMBER COCHRAN: Chair?

CHAIR GUZMAN: Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair. So I'm just wondering if this, I know you said that this has never occurred—thank God—in 30 whatever some odd years. But is there a potential or maybe worthy of looking into some of the other facilities that something like this to look into to make sure that it's prevented at other facilities if there may be a chance it could occur that we look at the other places too?

MR. NAKAGAWA: Yeah, Chair. Yeah. We can look at the other facilities, but this is from our main central lab so they do the different tests than what our operators do on a day-to-day basis.

COUNCILMEMBER COCHRAN: Okay.



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MS. MARTINS: Six “ayes.”

CHAIR GUZMAN: Oh, sorry. Six “ayes,” no “noes,” and four excused—**three** excused. Motion carries. Thank you.

**PRL-1(44) SPECIAL COUNSEL AUTHORIZATION: COUNTY OF MAUI REQUEST  
FOR RETENTION OF TAX COUNSEL (MISC)**

CHAIR GUZMAN: Moving on to the next item, which would be PRL-1(44). We have our Finance Director Mark Walker and Marcy Sato joining us. The Deputy Prosecutor [sic]—I mean the Deputy Corporation Counsel I believe is John, oh, Ms. Moana Lutey. Sorry. And the description of this is the—let’s see—County of Maui’s request for retention of the tax counsel. The Committee’s in receipt of the correspondence dated August 14, 2018, from the Department of Corporation Counsel requesting consideration of the proposed resolution, entitled “AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL CHUN KERR LLP, A LIMITED LIABILITY LAW PARTNERSHIP, TO REPRESENT THE COUNTY OF MAUI BEFORE STATE AND FEDERAL TAXING AUTHORITIES AND IN ANTICIPATION OF RELATED LITIGATION,” and transmitting a copy of Ray Kamikawa’s resume. The purpose of the proposed resolution is to authorize the employment of said firm regarding the anticipation of litigation, for a total compensation not to exceed a flat fee of \$150,000. The Committee may consider whether or not to recommend the adoption of the proposed resolution with or without revisions and also consider the filing of the correspondence. I would also like to recognize Mr. Hokama on the floor. Ms. Lutey this is your case if you would like to present in open session, and please notify us if you need to go into executive session.

MS. LUTEY: Thank you, Chair. I will be requesting executive session in this matter because of the sensitive nature of this potential litigation. We do not have any litigation in front of us currently, but what I can tell you publicly is that about a month ago our office was advised by the Finance Department of potential litigation related to some tax matters. These matters are complicated and beyond the expertise of our office, which is why we are seeking the authority to retain special counsel. We did seek a number of, or we just sought solicitations from various firms that specialize in tax matters involving municipalities, and then our internal special counsel Committee reviewed the resumes from firms that expressed an interest, and then selected Mr. Kamikawa. I’ve provided you with his resume so that you can see what his background is. You will notice that he does have a background in government work. One thing I need to correct, and I apologize Chair, but I inadvertently in the first round of the resolution, said that it would be a flat fee. That is not accurate, so I submitted a revised version just asking for “up to” basically \$150,000. It’s not a flat-fee agreement. So with that, I would like to request executive session.



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CHAIR GUZMAN: Okay. So Members, we're talking about the revised resolution that indicates that it's not a flat fee of \$150,000. And according to Corporation Counsel, they are requesting, oh. Before I go into that motion, is there any questions that we have in open session for this item?

VICE-CHAIR KING: Chair?

CHAIR GUZMAN: Ms. King.

VICE-CHAIR KING: Yeah, I just . . . I didn't see in my materials anywhere. You said there was a resume?

MS. LUTEY: Yes.

CHAIR GUZMAN: Staff, did we hand out the resume?

MS. NAKATA: Mr. Chair, the resume of Ray Kamikawa is attached to the correspondence dated August 14<sup>th</sup> from the Department. The revised resolution that Ms. Lutey was referring to is under correspondence dated August 20.

VICE-CHAIR KING: Okay, I see it.

CHAIR GUZMAN: Got it?

VICE-CHAIR KING: Thank you.

CHAIR GUZMAN: Okay. Any other questions in open session? Seeing none, there has been a request to enter into executive session. The Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the HRS, to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities and liabilities to this County, the Council, and the Committee.

VICE-CHAIR KING: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR GUZMAN: Moved by Ms. King, seconded by Ms. Sugimura. Any further discussion? Seeing none, all those in favor, say "aye."

COUNCIL MEMBERS VOICED AYE.

CHAIR GUZMAN: All those opposed, say "no".

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**VOTE:           AYES:   Chair Guzman, Vice-Chair King, Councilmembers  
Atay, Cochran, Crivello, Hokama, and Sugimura.**

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmembers Carroll and White.**

**MOTION CARRIED.**

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

CHAIR GUZMAN: We have seven “ayes,” zero “noes,” and two excused. Motion carries. Thank you.

**PRL-1(43) SETTLEMENT AUTHORIZATION: JEANNE M. BERRY V. KILOHANA  
WAENA CORPORATION, ET AL.; CIVIL 17-1-0175(2)**

CHAIR GUZMAN: Members, moving on to the next item on the agenda, is the Settlement Authorization for Jeanne M. Berry v. Kilohana Waena Corporation, et al.; Civil 17-1-0175(2), PRL-1(43). As indicated on the description of the agenda wherein correspondence receipt of dated August 13, 2018 from the Department of the Corporation Counsel requesting authorization of the settlement. Also, this is a complaint alleging a first amendment complaint. It also involves damages to the property located at 60 Hoolapa Place in Kihei, Maui, Hawaii, resulting from flooding that occurred on December 11, 2016 and June 11, 2017 as it related to claims against the County. The complaint also alleges that the County failed to maintain a drainage easement and owns and operates an improperly designed drainage system which were factors in the flooding. The Committee may consider whether to recommend adoption of the proposed resolution without revisions and also consider other related actions. I believe this is the—let’s see, Mr. John Holiona’s case. You may present in open session if you can.

MR. HOLIONA: Thank you, Chair. This is John Holiona, Deputy Corporation Counsel. To my right is Rowena Dagdag-Andaya from the Public Works Department here. I do ask because some of the terms of the settlement or proposed settlement are confidential that I ask for executive session, unless there’s any questions I can answer in open session. At this point, I’d be more than happy to.

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CHAIR GUZMAN: Members, do you have any questions in open session that you would like to pose to Corporation Counsel? Ms. King.

VICE-CHAIR KING: Are we going to have Corp Counsel just go over what they can go over in open session?

CHAIR GUZMAN: Did you want to do a factual basis?

MR. HOLIONA: Sure. Real quick, the facts are there was a flooding in December of 2016, where runoff water through an easement drainageway that abuts mauka of the plaintiff's property, is . . . the County is the easement holder of that drainageway. Mauka of that is a drainageway that the County is the landowner. To give you some perspective, this is the area where the Wailea Fire Station is located, off of Kilohana, Kauhale Streets. There's a natural swale that the County is the owner of. And as a result of the debris from water runoff in that swale goes under Kauhale through a 36-inch drainage pipe, into an easement drainageway, which we are the easement holders. It goes down and there's another drainage pipe underneath the plaintiff's property, which is not owned by the County, but is owned by the association. They were also named as one of the defendants in this matter. And as a result of the flooding, the drainageway that goes underneath the plaintiff's property was backed up from debris such that it caused a backflow so that it went around the drainage culvert area onto her property, into her house, and that is the basic facts of why we were named as a defendant in this case because of the drainageway. And as the Chair had mentioned, you know, they're alleged that we are one of the negligent parties for this case. And also the, after the lawsuit was filed, some discovery has been, written discovery was done. It was suggested that the parties enter into mediation to try and come to some resolution before litigation continues further because mine anticipation would be if this proceeds to for litigation and trial, the County would need to retain experts, not only for the drainageway, but hydrologist and other sort. And that alone is a costly, as I was aware, it is a costly matter to just retain one expert. This will probably be for the County maybe two or three, and that's not including the plaintiff's side also, which again, trying to depose that. So in coming to this mediation, a proposed figure was presented. They did advise all counsel that it's, you know, you can propose it, but it's up to the counties itself, the Council, to approve or not approve. So that's where we are today—to present this to be presented in front of the full Council.

VICE-CHAIR KING: Okay, thank you.

CHAIR GUZMAN: Any other questions from the Members in open session? Seeing none, the Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4) of the HRS, to consult with legal counsel regarding questions pertaining to powers, duties, limitations, privileges, and immunities of this County, Committee, and this Council.

VICE-CHAIR KING: So moved.





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**PRL-1(43) SETTLEMENT AUTHORIZATION: JEANNE M. BERRY V. KILOHANA  
WAENA CORPORATION, ET AL.; CIVIL 17-1-0175(2)**

CHAIR GUZMAN: In regards to PRL-1(43), After a consultation discussion with our Corporation Counsel in executive session, the Chair shall defer this matter.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

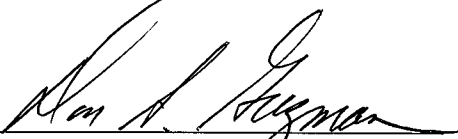
CHAIR GUZMAN: No objections noted. Thank you. That item is now deferred.

**ACTION: DEFER.**

CHAIR GUZMAN: Thank you very much, Members, for your attention and your patience in today's meeting. Adjourned. . . . *(gavel)* . . .

**ADJOURN: 3:12 p.m.**

APPROVED BY:



DON S. GUZMAN, Chair  
Parks, Recreation, Energy, and Legal  
Affairs Committee

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Transcribed by: Pauline Martins