

# **BUDGET AND FINANCE COMMITTEE**

**Council of the County of Maui**

## **MINUTES**

**September 4, 2018**

### **Council Chamber**

**CONVENE:** 9:04 a.m.

**PRESENT:** Councilmember Riki Hokama, Chair  
Councilmember Mike White, Vice-Chair  
Councilmember Alika Atay, Member  
Councilmember Elle Cochran, Member (out 11:37 a.m.)  
Councilmember Stacy Crivello, Member  
Councilmember Kelly T. King, Member (in 9:05 a.m., out 11:55 a.m.)  
Councilmember Yuki Lei K. Sugimura, Member

**EXCUSED:** VOTING MEMBERS:  
Councilmember Robert Carroll, Member  
Councilmember Don S. Guzman, Member

**STAFF:** Michele Yoshimura, Legislative Analyst  
Yvette Bouthillier, 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.:** Sananda Baz, Budget Director, Office of the Mayor  
David Goode, Director, Department of Public Works (BF-163)  
Kristilee Ono, Civil Engineer V, Department of Public Works (BF-163)  
Lionel Montalvo, Deputy Fire Chief, Department of Fire and Public Safety (BF-164)  
Walter Pacheco, Communications Director, Department of Police (BF-164)  
Scott Teruya, Real Property Tax Administrator, Department of Finance (BF-159)  
Patrick K. Wong, Corporation Counsel, Department of the Corporation Counsel (BF-159)  
Brian Bilberry, Deputy Corporation Counsel, Department of the Corporation Counsel (BF-159)  
Alan M. Arakawa, Mayor, Office of the Mayor (BF-159)  
Josiah Nishita, Deputy County Clerk, Office of the County Clerk (BF-159)  
Jeffrey T. Ueoka, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Lawrence Carnicelli, Government Affairs Director, Realtors® Association of Maui, Inc. (BF-159)

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Jacob Verkerke, Chief Technology Officer, Department of Management  
(BF-164)  
Zandra Amaral Crouse (BR-159)  
Others (5)

Nani Shimabuku, Project Manager, United States of America Corps of  
Engineers, Honolulu District (BF-163)

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

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CHAIR HOKAMA: Okay, this meeting shall come to order. This is the regular meeting of September 4<sup>th</sup>, 2018. This is the Council's Committee on Budget and Finance. This morning, we have our Vice-Chairman, Mr. White, joining us.

VICE-CHAIR WHITE: Good morning, Chair.

CHAIR HOKAMA: Good morning. We have Members Ms. Cochran.

COUNCILMEMBER COCHRAN: Aloha, good morning, Chair.

CHAIR HOKAMA: Aloha. Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

CHAIR HOKAMA: Mr. Atay.

COUNCILMEMBER ATAY: Good morning, Chair.

CHAIR HOKAMA: And Ms. Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR HOKAMA: Excused are Mr. Carroll, Ms. King, and Mr. Guzman. We have a variety . . . we welcome Ms. King.

COUNCILMEMBER KING: Good morning, Chair.

CHAIR HOKAMA: We have a variety of items we will be going through this morning, Members. Before that, we shall take public testimony. By this Committee's rule, each person is allowed three minutes, three minutes only to speak on any item agendized for today's meeting. Those that would like to speak will come forward when your name is called, state your name, your organization if you represent such. You shall address your comments to the Chair, not the gallery. We shall assist you with your time. At two minutes 30 seconds the yellow light shall go on. At three minutes, the red light goes on and you shall stop giving comments at that point in time. Members are allowed to ask

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questions for clarification purposes only. With that, we'll start with Mr. Lawrence Carnicelli. If you will please come forward and join us, please.

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

MR. CARNICELLI: Good morning, Chair.

CHAIR HOKAMA: Good morning.

MR. CARNICELLI: Members, Lawrence Carnicelli speaking on behalf of the Realtors Association of Maui on BF-159, which is the proposed Constitutional amendment to allow a surcharge on real property to fund public education. What I'm going to do is I'm not going to necessarily cover the same things that I did, you know, previously. You asked me for some numbers and I normally don't go straight to numbers, Chair, but what I figure I'll do is just kind of touch on a few things here. One is, you know, there's conversation that this is for properties over a million dollars. Well that was in . . . that language was actually in the original bill and was removed. So, if the intent of the Legislature was to do that, they would have left that language in. So, that was actually taken out. The other thing is, there is no definition for investment property in this. And so that's . . . it gets a little bit difficult to do numbers when you don't know what it is that they're going to tax. So, the first thing I did is, is I just said, okay, if we're looking at just investment properties over a million dollars in the State, there's 19,043 of them. So, rather than getting . . . roughly 19,000 of 'em. And if they're trying to raise \$500 million, the math is they would have to raise taxes \$26,000 per year per property. Twenty-six thousand dollars per year per property. As much as we might say, okay, that's what our intent is, it's just not realistic. Not going to happen. Currently, the total tax burden in the State of Hawaii is about 11 and a half percent, we're just shy of New York. So, this is actually going to affect everything. But . . . so, then what I did I just said, okay, \$500 million prevailing interest rates today how much money is that going to take out of the economy - over two and a half million dollars per year, I'm sorry, per month. Sorry, two and a half million dollars per month gets siphoned out of the economy so that's goods and services, that's going to be your groceries, that's going to be everything. So, you know, just those two numbers alone the \$26,000 per year per property, two and a half million dollars, over two and a half million dollars per month. Then, you know, in the last 30 seconds here - Special Funds, there's 234 "special funds". I don't need to go in to you guys with TAT and what's happened. Originally, 5 percent was a temporary tax; it's now 10.25 percent and a permanent tax. The barrel tax was originally \$.05, it's now \$1.05 and only \$.45 out of every \$1.05 is actually earmarked for energy and independence. So, and there's a whole list in my, you know, in my written testimony of all the different special funds that's there and where it goes, and actually how much money they take from special funds and actually just put it into the General Fund. So, thank you, Chair.

CHAIR HOKAMA: Thank you, Mr. Carnicelli. And we appreciate your attachment that you submitted to the Committee. So, again, Members, you have his written . . . also written testimony that he provides you with information. Any questions or clarification for the gentleman? Mr. White?

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VICE-CHAIR WHITE: Thank you, Chair. How do you get to your \$2.5 million income drop?

MR. CARNICELLI: I did the . . . what the mortgage payment would be at four and a half percent. It's roughly what mortgage rates are right now it's roughly four and a half percent. So, if you take 500 million at four and a half percent, that's 2.5 per month roughly is what the payment on \$500 million would be.

VICE-CHAIR WHITE: Okay. But the 500 million is actually coming out of revenues.

MR. CARNICELLI: Correct.

VICE-CHAIR WHITE: So, why are you using the percentage interest rate? To me, if you're having to come up with 500 million, that's about \$41 million per month is going to come out of anybody's income or any investment income.

MR. CARNICELLI: Then I did my math wrong. If I'm going to think about my math versus your math, I'm going with your math all day long 'cause you're way better at that thing than I am.

VICE-CHAIR WHITE: Well, no, I'm not sure I am in this particular instance, but I just wanted to clarify.

MR. CARNICELLI: That sounds more realistic though 'cause two and a half doesn't sound like a whole lot but.

VICE-CHAIR WHITE: Yeah.

MR. CARNICELLI: Yeah.

VICE-CHAIR WHITE: Okay. Thank you.

MR. CARNICELLI: Uh-huh

VICE-CHAIR WHITE: Thank you, Chair.

CHAIR HOKAMA: Thank you. Members, any other questions of clarification at this time for Mr. Carnicelli? Thank you for your testimony. Jacob Verkerke, please? Following Mr. Verkerke will be Ms. Amaral Crouse.

MR. VERKERKE: Good morning, Chair.

CHAIR HOKAMA: Good morning.

MR. VERKERKE: Good morning, Members. It's been a while since I've been here. Good to see you again. I'm here to talk about BF-164, specifically the item amending the project description for the Department of Management, Countywide, Police Safety Radio System

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Replacement project. And I'm not so much here to talk specifically about the details of the project as to highlight the partnership that over the years we've been built, that has been built between the Police Radio Shop and IT. Their work, especially Mr. Pacheco's work and his vision over the years has been a tremendous boom to IT because we have been able to share the networking infrastructure that he's built and that we've been able to build to augment each other's capabilities, augment each other's resiliency. It's been very, very beneficial. And in all fairness, it's been more beneficial to me than it has been to the Radio Shop because he's helped us out tremendously. So, I'm here to support his request. What I've learned over the years is that he's very good at adjusting projects when circumstances intervene and interfere with his ability to follow the original plan. This is evidence of that flexibility and finding ways to make things move forward in spite of obstacles that come along. So, I hope you will support his request, and everybody will be better for it. So, thank you very much.

CHAIR HOKAMA: Thank you, Mr. Verkerke. Members, any questions of clarification for testimony provided? Okay. None. Mr. Verkerke, thank you.

MR. VERKERKE: Thank you.

CHAIR HOKAMA: Ms. Amaral Crouse, please?

MS. AMARAL CROUSE: Good morning, Committee Chair --

CHAIR HOKAMA: Good morning.

MS. AMARAL CROUSE: --Riki Hokama and Councilmembers that are present. Thank you for having us. I will read from this agenda item only because I cannot word it any better than your Committee . . . worded it when Committee Chair Yuki Lei Sugimura brought this on the floor and I was present at that. Thank you. And for the record what I'm about to read from -- Councilmember White, Carroll, Atay, Cochran, Crivello, Guzman, Hokama, and Sugimura voted in favor in what I'm reading. Unfortunately, one excused herself. Let me read . . . and I won't read the whole thing. Your Committee noted that the Constitutional amendment, if approved by voters in the General Election in November, would give the State the power to create an investment real property surcharge. Your Committee learned of many obscurities with the proposed legislation which fails to clearly define investment properties or identify caps or limits on funds generated. It is also unclear whether the additional funds can be earmarked for educational purposes and what the impact would be on the County's bond rating and borrowing for the capital improvement projects. Questions also remains as to how to handle property valuations, circuit breakers and minimum tax, which differ among the counties. Your Committee agreed the public should be educated on impacts of this legislation. Your Committee noted a proviso of \$50,000 in the Office of Civil Services [sic] Fiscal Year Budget 2019. As Lawrence had very eloquently pointed out, investment properties has not been defined. And many of us having been born and raised here, and many of us who moved here with our families, see people building ohanas for their kupuna so that the grandchildren can move in or they can move in, so the young can take care of the old. And I see these unintended consequences impacting the very people

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we're here to protect, and that's our youth, our working class foremost, our most vulnerable disabled, and kupunas. Mahalo.

CHAIR HOKAMA: Thank you very much for your testimony this morning. Members, any questions needed for clarification purposes, please? Thank you for your testimony this morning. I want to ask our District Offices if they have anyone wishing to provide testimony. Hana, Ms. Lono, anyone wishing to provide testimony, please?

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

CHAIR HOKAMA: Thank you. Ms. Fernandez, anyone on Lanai?

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

CHAIR HOKAMA: Thank you. Ms. Alcon, anyone on Molokai, please?

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

CHAIR HOKAMA: Thank you. Members, with no further request for testimony, we shall close testimony for today's meeting.

COUNCILMEMBERS: No objections.

CHAIR HOKAMA: Thank you, Members. So ordered.

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

**ITEM 163:           AMENDING THE FISCAL YEAR 2019 BUDGET:  
DEPARTMENT OF PUBLIC WORKS (IAO STREAM FLOOD  
CONTROL) (CC 18-300)**

CHAIR HOKAMA: May I direct you to the first item of business for us this morning that is under BF-163. The title of the heading is *AMENDING THE FISCAL YEAR 2019 BUDGET: specifically, DEPARTMENT OF PUBLIC WORKS subheading (IAO STREAM FLOOD CONTROL)*. We are in receipt of a Communication 18-300 with a proposed bill for an ordinance whereby, basically, it's requesting an appropriation of \$600,000 from the General Fund for the Iao Stream Project Control . . . Flood Control Project as well as adjusting all totals accordingly. There is also another bill for an ordinance to amend Appendix C also to effectuate the \$600,000 request; and a third bill for an ordinance to authorize the Mayor to enter into intergovernmental agreement with the United States Department of the Army regarding the Feasibility Cost Sharing Agreement (FCSA) for the Iao Stream, Maui, Hawaii - Flood Risk Management. We also have from the Administration a Certification of Revenues for \$600,000 in the General Fund request.

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This morning we have, first, Mr. Baz, any opening comments from the Budget Office. Mr. Baz?

MR. BAZ: Good morning, Mr. Chair. So, I'm presenting this budget amendment for your review in consideration regarding the Iao Flood Stream Project. We do have our Director of Public Works, Mr. David Goode, and others here to present information and provide a presentation. I'll be here to answer any questions after that as well. Thank you, Mr. Chair.

CHAIR HOKAMA: Okay. Thank you. Members, any questions for Mr. Baz at this time? Okay, with none, we'll go to Mr. Goode as our Director of the Department of Public Works. And he will also introduce our other two guests this morning. Mr. Goode?

MR. GOODE: Thank you, Chair. Morning, Members. David Goode here, Director of the Department of Public Works. We'll be giving a short presentation today talking about some proposed improvements to our . . . still gotta call it Iao Stream Flood Control since I think that's the original name of the project, even though of course we now call it the Wailuku River. Joining me today is Nani Shimabuku. She's from the Army Corps of Engineers in the Honolulu District. And also, Kristi Ono, from our Engineering Division. She's an Engineer V in our Design Section. They've been working on all the details of this. I'm going to leave a large amount of these details to the two very capable folks to my right. But I can say that the area that we're going to be talking about today is the online section starting the portion below the Imi Kala Bridge. And, as you know, in our September 2016 storms, two years ago, that area suffered a lot of damage. And it's probably safe to say that some of that damage was caused by some of the issues that we're trying to deal with today and looking forward. So, the Corps has been looking at this for close to 20 years, you think? Gone through a variety of environmental assessments and Ms. Shimabuku will be able to describe kind of their process and where they are in the next stage and kind of what they're looking at, and why we need funding support from you folks as well as entering into an intergovernmental agreement. So, with that general overview, Chair, I'd like to turn it over to the presenters.

CHAIR HOKAMA: Okay. Thank you very much, Director Goode. Ms. Shimabuku, if you would start your presentation or Ms. Ono?

MS. ONO: Hi, I'm Kristi Ono. As David mentioned, I'm with Public Works Engineering and this is Nani Shimabuku and she's with the Corps of Engineers. She came from Honolulu to support the County's request and she'll be assisting me with the presentation, and we'll be available to answer questions afterward.

CHAIR HOKAMA: So, Ms. Shimabuku, you're from the District or the Division?

MS. SHIMABUKU: I'm from the District Office.

CHAIR HOKAMA: District Office?

MS. SHIMABUKU: Yes.

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CHAIR HOKAMA: Okay. And the current District Commander is . . .

MS. SHIMABUKU: Lieutenant Colonel Sanborn.

CHAIR HOKAMA: Okay.

MS. SHIMABUKU: She just came on board this summer.

MS. ONO: In order to adequately explain the budget amendment request before you today, we're going to provide a brief project history and status. So, the Iao Stream Flood Control Project was authorized under Section 203 of the Flood Control Act of 1968. The Corps of Engineers completed construction in 1981 with the County of Maui as the local sponsor. Shortly after construction, repairs were needed to address erosion. The Corps of Engineers completed repairs in 1983 and more recently this year in response to the September 2016 flood event. The County of Maui owns and maintains the Flood Control Project. So, in describing the original 1981 Flood Control Project, it's about two and a half miles and begins at the debris basin near Mokuhau Park. It passes through Market Street and outlets below Waiehu Beach Road. There is numerous levees, channel improvements, and a designated floodplain at the left bank area . . . left bank Piihana area. So, if you look at this image on the screen, the floodplain is that open area below Piihana Road, below the dash yellow line. And a floodplain is an area designated for stream overflow and flooding. So, this image shows the areas protected by the Flood Control Project. And the shades of blue represent different storm recurrence intervals. So, as you can see, some of the areas of reduced flood risk include Wailuku Parkside, the Wailuku Industrial area, and parts of Happy Valley. So, currently, we are focused on a modification project, which will address the existing deficiencies. And Nani will be describing this project in more detail.

MS. SHIMABUKU: Good morning, Chair --

CHAIR HOKAMA: Good morning.

MS. SHIMABUKU: --and Committee Members. Again, I'm Nani Shimabuku of the Corps of Engineers, Honolulu District. So, work to date, in the mid-1990s the Corps identified project deficiencies that resulted in significant erosion to the levee tow and channel bottom, and this is followed by valuation of various alternatives. In 2009, a draft EA (Environmental Assessment) was released for public review and comment, and a public informational meeting was held. As a result of the comments that we had received, the Corps developed what is now called "Alternative F" that would address the design deficiencies and thereby reducing the impact to the environment. I'll discuss Alternative F later on in this presentation. In 2015, a new draft EA was released for public review and comment. And in 2016, a significant flood event had hit Maui. In 2017, based on our analysis, the Corps of Engineers Headquarters requested a reevaluation of the alternatives. The final EA was later published in July 2017. And then earlier this year, as Kristi mentioned, the Corps completed repairs to flood damages of the September 2016 event. Earlier this summer, the Corps received approval of



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Federal funds to conduct its reevaluation of the Iao Stream Flood Control Project to address the design deficiency. Under the prior investigations, the criteria was used . . . the criteria that was used to develop various alternatives and will continue to be used includes reducing the loss of life and reducing property damages; correcting the design deficiency; being cost effective; and increasing environmental functionality to include the recharge of the groundwater, reduce sediment conveyance, and improve aquatic organism passage. So, this is a list of the various alternatives that the Corps has previously investigated. Alternative F [sic], which is a no action alternative, would retain all existing project features essentially a do nothing alternative. Alternative B would be to remove all of the improvements that were previously done, and this does not meet the County's needs. Alternative C would include a roller compacted concrete and low flow channel replacing the existing channel. Alternative D also includes the roller compacted concrete low flow channel and would include kind of a 50-50 hardening of the pseudo natural and hardening with the design features that mimic a natural stream and its components. Alternative E, which would include the roller compacted concrete and grade control structures, it will be fully-lined but includes low flow channel and pools. And finally, Alternative F, which is the floodplain reconnection that retains existing project features and diverts flows to the floodplain and reduces damaging flows within the main channel. All these alternatives that we examined range in cost from a do nothing to approximately \$50 million. Ultimately, the recommended alternative was Alternative F, the floodplain reconnection. Features of the floodplain reconnection include an overflow channel to the floodplain, and that's highlighted in the blue looking box on the left-side of the stream. Also, includes a weir, raised berms, bank stabilization, new maintenance road, and an outflow area to go back into the . . . connect the floodplain back into the mainstream channel. So, this is a rendering of what Alternative F would look like. And this is just downstream of Imi Kala Street bridge where on the left side is the floodplain and on the right side you have the community area. The intent of Alternative F is to reconnect the main channel with the existing floodplain by means of an overflow channel and reducing damaging flows within the main channel through the weir and along the right bank levees with flows reconnecting with the main channel at the downstream end. The weir structure would have an opening that would allow for daily flows and during a flood event the weir would limit the water flowing downstream of the channel and diverting it over into the overflow channel and floodplain. Alternative F was determined to be the least environmentally damaging practicable alternative with minimal impact to the surrounding area. The Corps of Engineers Headquarters considers Alternative F to be a substantial change from the original project. And, therefore, Headquarters is requiring additional analysis through a General Reevaluation Report that be conducted prior to our Headquarters' final review and budgeting. In order to enter into the next phase of the analysis, a Cooperation Agreement between both the County and Corps will need to be executed. And the Cooperation Agreement will identify the responsibilities of both parties. So, under the General Reevaluation Report or GRR, the analysis will provide an opportunity to reevaluate the original design and address the flood risk of Wailuku River. The GRR will analyze various alternatives and identify a recommended action, and it will be the decision document to be reviewed and used for budgetary approval at Corps Headquarters. The GRR typically evaluates such things as engineering, cost, economics, environmental impacts, sustainability, public views, political support, and

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sponsor acceptability. The GRR is estimated to be \$1.2 million. The Water Resources Development Act of 1986 requires that the County and Corps cost share the project. For the GRR, cost share will be equal 50-50. The Cooperation Agreement will be executed in order to receive both Federal and non-Federal funds. And as I mentioned earlier, the Federal funding has already been approved. Future phases that would include the design phase and construction phase would be cost shared as well with the Corps cost sharing 65 percent and the County 35 percent.

MS. ONO: So, today, we are requesting the County's 50 percent share of the General Reevaluation Report, which is 600,000. Other than County staff time, the County has not contributed funds toward this Federal modification project. We have two contracts, which were created for surveying and land appraisal that are tied to CBS-1053. And the second contract with Controlpoint has been disencumbered. So, looking ahead, the General Reevaluation Report is expected to take about two years, and we would be heading into the design phase in 2021 at which point the County would need to enter into a new agreement with the Corps of Engineers. As Nani mentioned, it's a 65-35 cost share. And construction would take place in 2022 to about 2024. So, this concludes our presentation and we're available to answer any questions. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you very much, ladies, for your assistance this morning. So, just real quickly before the Committee is open for your . . . to question and give comments to you. This 65-35 that's a new formula?

MS. SHIMABUKU: No, it's not a new formula.

CHAIR HOKAMA: That's been in existence, so we've been . . . that's what the County's been putting up – 35 percent?

MS. SHIMABUKU: To date, the County has not provided any funds yet. But when we go forward and move forward in the future phases, it will become 65-35. But for this upcoming in order to do the General Reevaluation Report, the cost share is matching it will be 50-50. When we move forward into design and then another opportunity for construction, then it will be reduced to, it'll change to 65-35.

CHAIR HOKAMA: We didn't put out money ten years ago under Mayor Tavares?

MS. SHIMABUKU: No.

CHAIR HOKAMA: For the lower portion on the redesign that the Corps . . .

MS. SHIMABUKU: No, no money. We have not entered into a cost share agreement. We've entered into a local Cooperation Agreement and no funds were transferred.

CHAIR HOKAMA: Okay. Thank you for that. Mr. White, questions on this request at this time?

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VICE-CHAIR WHITE: Thank you, Chair. The question I had was is the \$124,000 expenditure through Controlpoint seen as part of our match and would that reduce the \$600,000 request?

CHAIR HOKAMA: Who's going to answer? Ms. Ono?

MS. ONO: Chair, so the 124,000 has been spent to hire Controlpoint Surveying to basically evaluate our boundaries at the Iao Stream Flood Control Project. So, I believe that would not be able to contribute to the cost share as its already been spent.

VICE-CHAIR WHITE: Okay. So, the total request is 600,000 not 600,000 less the amounts already spent?

CHAIR HOKAMA: Ms. Ono?

MS. ONO: The total request today is 600,000.

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

CHAIR HOKAMA: Okay. Ms. Cochran, questions?

COUNCILMEMBER COCHRAN: Thank you, Chair. So, this entire project was built in 1981 and then in 19, between 1995 to '97 deficiencies were identified meaning deficiencies as in just wear and tear on the project or the way it was originally built?

MS. SHIMABUKU: The way it was originally built.

COUNCILMEMBER COCHRAN: Which was built by U.S. Army Corps?

MS. SHIMABUKU: That's correct.

COUNCILMEMBER COCHRAN: And so, now we need to kick in to fix these deficiencies, the County?

MS. SHIMABUKU: Yes, that's correct. In accordance with the Water Resources Development Act of 1986 local sponsors are now required to cost share projects. And so, because of that law, moving forward the Federal government doesn't have sufficient funds to fully fund all these projects anymore. And so, what's been outlined and it's pretty much standard across the board it is in the feasibility or what we're moving forward with the general reevaluation it would be cost shared equally and then moving forward after that then it would be adjusted to 65-35.

COUNCILMEMBER COCHRAN: Okay. I don't quite agree, but I guess that's the way it is. So, and lastly, Chair, so in your consultation process have you incorporated the Aha Moku people, you know, people who have traditional generational knowledge within this area who know about the natural flow and things of that nature? Because I don't really see any of that type of background or entities consulted. So . . .

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MS. SHIMABUKU: In accordance with, I'm sorry.

COUNCILMEMBER COCHRAN: Go.

MS. SHIMABUKU: In accordance with Section 106 of the Cultural Resources, we have consulted with Native Hawaiian organizations and that's been included in our Environmental Assessment that was completed earlier. And so, if there's anything further that needs to be done, when we move forward we will amend the EA and defer the consultation, if needed.

COUNCILMEMBER COCHRAN: Okay. And any sedimentation, erosion-type control efforts being brought into this discussion?

MS. SHIMABUKU: Yes. And so, that's why we looked at the overflow channel. If flows were to continue to go down through the main channel, it will continue with the high velocity flows, the steep channels that's what's been resulting in the undermining of the levees. The channel bottom has been severely eroded. And so, we have looked at when we divert the flows over when it goes into the existing floodplain the flows are going to slow down, sediment will be able to settle and, thereby, hopefully not . . . the idea is that not as much sediment will pass off into the ocean.

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

CHAIR HOKAMA: Thank you. Ms. Sugimura, questions?

COUNCILMEMBER SUGIMURA: I just . . . I think we remember the September 2016 rainfall that created this huge flood, the 100-year flood. So, just wondering in relationship to that and what you're doing now, I think that was purely act of God. It was just amazingly heavy rains; I remember that night specifically. But could any of that been avoided if this had been done differently with your current plans?

MS. SHIMABUKU: I think what the project did do was actually reduce the amount of damages that could have happened in particularly to the right bank or where . . . the urbanized area. So, if the project had not been . . . the existing project had not been there or . . . I don't think any of these I guess what's currently there, what the existing project is performing, it performed as it was supposed to. What's not happening is that we are not able to utilize the existing floodplain. I don't know if you've noticed, but on the left bank where I believe you have a lot of open lands and it's farmlands, over the years the bank has actually risen higher. I think farmers . . . I'm not sure who, but the lands they kind of pushed the land up, and so the bank itself is higher, the right bank where the urbanized areas is actually lower. So, what could happen . . . what we wanted to happen is that water coming down, we wanted it to flow over into the left area. And that's not going to happen if the way things are right now. So, what we plan to do is to cut down the left bank and so that...and putting the weir just downstream of where we're cutting the bank and, thereby, when the flows get high enough then it can overflow into the designated floodplain. If anything . . . I'm sorry, you asked if it would, if this

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project moving forward could have reduced. So, maybe some of the damages would have been reduced too within the co-existing stream channel and water would have been able to just slow down and go down slowly in the floodplain. So, maybe possibly some of the damages could have been reduced. Sorry, I got to it in kind of an around about way.

COUNCILMEMBER SUGIMURA: Yeah, thank you. That definitely is good to know and that your original design helped so that the damage could have been worse, I guess, but it was pretty memorable. So, thank you.

CHAIR HOKAMA: Mr. Atay, any questions at this time?

COUNCILMEMBER ATAY: No questions, Chair.

CHAIR HOKAMA: Okay. Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Not so much of questions, but I see where you started identifying deficiencies early on. But my question is, did you just recognize or do an re-evaluation or what have you as the result of the flood in 2016? Or was this . . . (*inaudible*) . . .

MS. SHIMABUKU: I'm sorry, could you repeat? You're saying, did we . . .

COUNCILMEMBER CRIVELLO: What you're presenting here today and with your wanting us to do, was this coming out of from the flood of 2016 or . . .

MS. SHIMABUKU: No, it was not.

COUNCILMEMBER CRIVELLO: Or you were preparing for this anyway?

MS. SHIMABUKU: We've been . . . and as you can see, we have been analyzing this for a while. That was just something that I think maybe made our, hopefully, made our case even stronger to demonstrate that, you know, we do need to do something to address these design deficiencies.

COUNCILMEMBER CRIVELLO: Right. Okay. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Yeah, I was just having a, I had a meeting with Michael Reyes about the Central Maui Soil and Water Conservation District, and we had a whole conversation about floodplains, and why our ditches in Kihei are not working properly because we don't have those floodplains anymore. So, it was really interesting to hear the design being expanded to utilize the floodplains. And I guess one of my questions about that is will it be affected or have you made any consideration about how the sea level rise, the expected sea level rise is going to affect that now that we have a report out that was published in December of last year from the State of Hawaii? And

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I have . . . you know I just had dinner with a friend of mine who is on island right now who works in very high-level energy with the Navy and she works at the Pentagon. She's been telling me that 3.2 . . . the 3.2 feet that we are all counting on via this report is actually a very low conservative number that it's probably going to be at least double that. So, it's really concerning, but I'm just wondering if we're looking at, at least that report and integrating that into the GRR that you guys are going to be working on.

MS. SHIMABUKU: Being that, that report was just published, it's something that moving forward we would definitely be including that in our future analysis.

COUNCILMEMBER KING: Okay. 'Cause I think that's going to be really telling and it may turn the direction that you're going as well. But my other question was just basically, personally, are you . . . have you been working on the whole time with Colonel Sanborn?

MS. SHIMABUKU: Colonel Sanborn she just came on board just this summer.

COUNCILMEMBER KING: Oh, okay.

MS. SHIMABUKU: So, prior to, actually our Commanders change every, typically every two years.

COUNCILMEMBER KING: Oh, okay.

MS. SHIMABUKU: So, I have been working on it. I've been the Project Manager since I think for at least, for the last 15 years or so.

COUNCILMEMBER KING: Oh, okay.

MS. SHIMABUKU: So, I, I . . . there is some project continuity and moving forward on this and . . .

COUNCILMEMBER KING: You said she?

MS. SHIMABUKU: Our Lieutenant Colonel is our first female Commander.

COUNCILMEMBER KING: Oh, okay, because I worked with Harold Sanborn on some projects a few years ago on the bio-fuel projects. So, I don't know if they're related, but it was . . . actually I had . . . that was my first experience working with the military and it was a real positive experience. I didn't expect to be working with the Corps of Engineers, but they brought that division in to kind of sponsor our bio-fuel crop project, and so I thought maybe it was related or the same person.

MS. SHIMABUKU: Not that I'm aware of.

COUNCILMEMBER KING: Oh, okay. All right, but so this would start when? You said it was going to be two years. Would it start immediately if we make this approval?

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MS. SHIMABUKU: So, what we're looking at is trying to get this cost share agreement executed as soon as possible. In order . . . we need to enter into a cost share agreement or cooperation agreement so that it spells out what the responsibilities of both parties are. And once we execute that and we receive the County's funds, then we can start spending money and moving forward with the analysis. Right now, I'm not able to move forward in the analysis until we receive matching County funds.

COUNCILMEMBER KING: Okay. But you would expect shortly after so . . . hopefully before the end of the year if we approve this?

MS. SHIMABUKU: If we get the funds in a timely manner, definitely yes. So, as soon as . . . I'm trying to line my team up so that we can get started as soon as possible. And so, yes, once we get that then we'll move forward and begin the investigation.

COUNCILMEMBER KING: Okay. Great. All right, thank you, Chair.

CHAIR HOKAMA: Thank you, Ms. King. So, if we give you the money today, we look at four years to start?

MS. SHIMABUKU: Construction, correct. And that's a, I think a . . . if no other issues come up. So, we're looking at approximately two years to complete the GRR and then another two years to do the design and then we would start construction.

CHAIR HOKAMA: You're going to have a new District Commander, you're going to have new Divisional Commander by then? 'Cause I worked on a Corps project. I went through 12 District Commanders and six Divisional Commanders, okay, to get the job done.

MS. SHIMABUKU: Yes. So, correct. And, for the most part, I don't recall any issues with this project or any other project up to the support of the project itself. I think it's . . .

CHAIR HOKAMA: Where is this in priority with other big flood control projects for the Corps in Hawaii? Is this one top project?

MS. SHIMABUKU: I would have to say that Ala Wai is our top project. However, that's done by someone else. I'm the Project Manager for this one.

CHAIR HOKAMA: For this project?

MS. SHIMABUKU: Yes. And so, that wouldn't be affecting the priority.

CHAIR HOKAMA: No, I just want to know what we're competing for funds and priority. So, Ala Wai, I can appreciate the Ala Wai's issues. For this project to work, I know you did the Controlpoint . . . they do a lot of work in this County. So, is there land acquisition required for this project in your anticipation?

MS. SHIMABUKU: If we were to go solely off of Alternative F?

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CHAIR HOKAMA: Yes.

MS. SHIMABUKU: Minimal.

CHAIR HOKAMA: Minimal land acquisition?

MS. SHIMABUKU: Yes.

CHAIR HOKAMA: Is this Native Hawaiian properties, cultural areas or is this just part of an old plantation ag land?

MS. SHIMABUKU: I think it might be just plantation ag land.

CHAIR HOKAMA: Okay. So, when we look at your floodplain reconnection page, the blue, that you show us on the left side, okay, 'cause I spent lot of time in my youth Piihaha Road, so I know this area really well, the old Wailuku Sugar cannery. So, this area, you know that for some projects they're looking at putting one road through this stuff, one by-pass road. So, how does this by-pass road that should be a traffic reliever for Waihee-Waiehu for those with concerns of Paukukalo if there's a major shut down on the makai side? This would be an alternative site. So, what happens to this potential alternative if this project moves forward?

MS. SHIMABUKU: So, we're gonna have to work with you, the County, as to what kind of improvements are going in so we would take that into consideration.

CHAIR HOKAMA: Okay. So, Mr. Goode, so this would impact that as well as the Mission Street improvements and the bridge . . . Wailuku Bridge project, Waiale areas?

MR. GOODE: Yes, Chair. So, basically, it the Imi Kala bridge which would be just mauka of where these proposed improvements are, would be.

CHAIR HOKAMA: Uh-huh.

MR. GOODE: And anytime we put any improvements in the floodplain, it's gotta meet not only the Corps' standards, but also various floodplain standards. So, the design would be critical to making sure that would happen. But I'm not aware of anything that would actually stop it from happening, which have to be carefully analyzed.

CHAIR HOKAMA: Okay.

MS. SHIMABUKU: Can I add in?

CHAIR HOKAMA: Yes, please.

MS. SHIMABUKU: I guess if that Imi Kala Street bridge, I understand, you know, they're looking at modifying that and putting that as an extended road. They also have to take



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into consideration though, you know, they have to coordinate and it's not just one way. So, it does go both ways.

CHAIR HOKAMA: Uh-huh. No, no, I just was wondering if you folks were taking that into account with your alternative choices.

MS. SHIMABUKU: Uh-huh. We did even with the repair project which was, you know, the floods were unexpected, and it wasn't part of Alternative F. One of the features that we were looking at was say repairing of a certain area, but I understand that area was repaired that got completed in January. So, when we do move forward we look at what the existing conditions are and evaluate it based on that.

CHAIR HOKAMA: Okay. Are you also this project where would it actually start? Would it start where the County has our . . . where Mr. Goode and his Parks . . . our Parks Department, is it going to start from inside Iao and then coming down all the way to makai to the ocean? Or are you guys starting by Happy Valley bridge? So, again, I mean, you know, we just want to be fair because the blue is Imi Kala.

MS. SHIMABUKU: Well, . . .

CHAIR HOKAMA: Yeah, that street you show on your mapping, Imi Kala-Eha intersection. So, that's further down. I just want to know how much up are you going mauka?

MS. SHIMABUKU: So, what we were currently looking at . . . and this is based off of Alternative F. When we move forward we're gonna have to go back and look at it at a more holistic view, and look at where the issues are so that's yet to be determined.

CHAIR HOKAMA: Uh-huh.

MS. SHIMABUKU: However, what we were looking at under Alternative F with the map that's up right now, the area it's kind of really tiny, the area in red it's just upstream of Imi Kala --

CHAIR HOKAMA: Right.

MS. SHIMABUKU: --there's a . . . what building is that, do you know?

MS. ONO: Chair, so if you were to drive to the Wailuku Post Office and keep driving down Imi Kala, there's an old bridge there.

CHAIR HOKAMA: Uh-huh.

MS. ONO: So, the project begins just upstream of that bridge, upstream just in that immediate Millyard area.

CHAIR HOKAMA: Right. Right.

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MS. ONO: And it extends down along the Wailuku Parkside and Wailuku Industrial area.

CHAIR HOKAMA: So, nothing above the Happy Valley bridge, right?

MS. SHIMABUKU: I believe that's Market, is that Market Street?

CHAIR HOKAMA: Market.

MS. SHIMABUKU: No, it will not begin upstream of that. It will be downstream of there. So, it's just up above Imi Kala. So, why we're looking at that area it's just to stabilize the bank area on the right.

CHAIR HOKAMA: Okay. No, no, I'm just curious 'cause, I mean, I've seen water come down from the way inside the park. So, I'm just wondering where you're starting, your starting point was. Okay. No, I don't really get it, but I'm looking at the parameters. My family's been there forever so. Mr. Atay, any questions you'd like to pose regarding this project, this area?

COUNCILMEMBER ATAY: Thank you, Chair. Thank you for some of the . . . you asked some of the questions I was asking about if it would involve any purchasing of real estate I think on the left bank side.

CHAIR HOKAMA: Right. Because we know Piihana --

COUNCILMEMBER ATAY: Yeah.

CHAIR HOKAMA: --has the cultural right-of-way, yeah.

COUNCILMEMBER ATAY: And I can see the plan, the Alternative F, the intention would be to shore up going down the right side, so the flooding will not go to the right because it has a greater economic impact with all those businesses on the right side. And so, you're gonna . . . to do that, to direct the flooding to go to the left, you're gonna go and cut the banks down.

MS. SHIMABUKU: That's correct.

COUNCILMEMBER ATAY: And so, the farmers there will also run the risk of being flooded out.

CHAIR HOKAMA: Flooded.

MS. SHIMABUKU: Yes, that's correct.

COUNCILMEMBER ATAY: Okay.

MS. SHIMABUKU: So, the cut that we're doing it's not the whole left bank by any means. It's just what we have in blue.

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COUNCILMEMBER ATAY: Uh-huh.

MS. SHIMABUKU: And so, that would be lowering it where you see the . . . it's almost like a polygon, it's only three sides right now. But that side that's not, you can imagine it connecting that's the left bank itself. But what that outlines is the area that we would cut down so that the flows could come in through there. Further downstream there's a light blue area on the left bank and that's where we would have to raise the berm because the rest of it I guess is high enough, --

COUNCILMEMBER ATAY: Right.

MS. SHIMABUKU: --but we would raise that in order to contain the flows within the floodplain. And then further downstream in the purple area --

COUNCILMEMBER ATAY: Uh-huh.

MS. SHIMABUKU: --we would . . . that's kind of where we would divert the flows back into the channel.

COUNCILMEMBER ATAY: Okay. And so, the project is 1.2 million. Six hundred thousand is coming from the County.

MS. SHIMABUKU: Yes.

COUNCILMEMBER ATAY: And should you have to purchase any real estate that's already going to be inclusive out of that? You're not going to come back and ask us for more money?

MS. SHIMABUKU: So, the 1.2 million right now is for the upcoming phase. That would be to analyze various alternatives and come up with a recommended plan. Moving forward after that, when we go into the . . . I'm sorry, in what's the GRR phase, we would look at the real estate in there and advise the County in the future of what properties have to be purchased. This project is owned and operated by the County. Previously, lands were purchased by the County for this project. And so, when we move forward if any lands have to be purchased, it would be done by the County and it wouldn't be done until prior to construction. So, after this phase, if we have a recommended project, we will move into design phase, additional funds will be requested to do the design, and then when we move into construction phase then additional funds will have to be cost shared at that time.

COUNCILMEMBER ATAY: Okay.

MS. SHIMABUKU: And the lands purchased will be worked towards the County's cost share.

COUNCILMEMBER ATAY: Okay. Chair, I have no further questions. I, I . . . initially, I was kind of puzzled because from the storm of 2016 I know we had already expended some money and I was kind of going, well, we already paid for this, but thank you for

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explaining the whole project going all the way back to '81. But I'm still kind of puzzled because if we did it in '81, you saw problems in '83, and now we're making corrections but you're still coming back and asking us for money when I think that was your problem that was created but, you know, it is what it is.

CHAIR HOKAMA: Yeah, yeah. Again, Members, Congress has changed the parameters for where the funds or what is development. So, we gotta look in the Farm Bill, we're going to need to look at the weather bill, and the water bill for various potential pots of where we may look for support. Okay. The Corps is military, they take orders. Okay. You know, the Commanding General I don't know who is the new Commanding General, but they're soldiers, they take orders. So, we just need to make sure this project is in the right place so we're going to need Congressional team support to get this in the appropriate venue. But I'm looking at it, Members, to be honest down the road. Maybe at least another five million minimum. We gotta con . . . , it's not even construction yet. This is not even land acquisition. It's not even paying for the plans yet. So, we are going to commit seven digits real fast for this. But, again, it's something we gotta do, yeah. Ms. Crivello, questions you'd like to pose at this time?

COUNCILMEMBER CRIVELLO: Not at this time, Chair. Thank you.

CHAIR HOKAMA: Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. I just . . . just listening to the conversations, I just wonder if you can, you know, just clarify. We have a recommended pathway, which is this Alternative F, but we're reevaluating their recommended pathway, which is going to take 1.2 million. So, if you can just kind of clarify for us where is this money going to be spent? If we have an idea, what do we need to do and why? Why do we need to put another two years and 1.2 million into this?

MS. SHIMABUKU: Okay.

CHAIR HOKAMA: Corps? That's you.

MS. SHIMABUKU: Oh, okay. So, we were previously investigating this under what we call an engineering documentation report. When we presented Alternative F to our Headquarters they said this is a substantially different project than what was originally authorized back in the '70s. And so, because of that they wanted to take a step back and look at this as a more holistic view. When we move into the General Reevaluation Report, what I would like to do is to . . . Alternative F will be one of the alternatives that we're looking at. I'd . . . but and we're going to be using a lot of the previous analysis. However, our Headquarters said that in order to be I guess budgetable, we need to produce this GRR, which is a decision document. They're saying that what we previously provided because it's different, we're looking at putting a weir, this concrete structure that's that red area in the map, and also I guess the floodplain reconnection is what we identified, they're saying it's substantially different. And so, they are requiring that we do like alternatives. This will be one of the alternatives we move forward and then we'll look at various other alternatives as well.

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COUNCILMEMBER KING: Okay. And then, my last question, Chair, if I can follow up. Just looking at that floodplain looks like there's trying to see through it there's properties under there that are going to be affected, and are you or have you done outreach to these properties, to the property owners?

MS. SHIMABUKU: We've made our, we've conducted public meetings and we published the draft EA, opened it up for public review and comment. We've received comments from some of them and we've addressed it . . . *(inaudible)* . . .

COUNCILMEMBER KING: That was back in 2009, right?

MS. SHIMABUKU: 2009 and then prior to that we had a public meeting in 2015.

COUNCILMEMBER KING: So, will you be doing that again in this new because . . .

MS. SHIMABUKU: If it warrants having another public meeting, yes, we will.

COUNCILMEMBER KING: Okay. All right, thank you, Chair.

CHAIR HOKAMA: Thank you, Ms. King. Mr. White . . . oh, I'm sorry, Mr. Goode, comments?

MR. GOODE: Yeah, I just want to add one . . . further note to the comments regarding the floodplain. We actually have a floodplain easement over the vast majority of the area already. So, that was part of the original project. So, those properties, for the most part, are encumbered already by a floodplain easement. So, any property owner would know that basically have the right to bring the flood waters over there already.

COUNCILMEMBER KING: Okay. That's already in there when they purchased the property.

MR. GOODE: The existing, right. But it may be expanded as part of this work. It might be some of the land acquisitions that she conferred.

COUNCILMEMBER KING: Well, that's good to know because in just my conversation with Michael Reyes a couple days ago, about how floodplains are a natural the way some of our waterways handle the overflow, and we've lost some of those in Kihei because of our developments. So, it's good to see following a natural path of what's supposed to be happening. Thank you.

CHAIR HOKAMA: Okay. Thank you. Mr. White?

VICE-CHAIR WHITE: No further questions. Thank you.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. Just following the timeline from the work to date and it does seem like things got exacerbated from that flood in '16 because from

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April 2009 you had a public meeting then you came up with this Alternative F all the way down into 2015. So, it took, you know, six years to come up with Alternative F and so you presented that out there in mid-2015. The flood happened in September of 2016 as we see on the monitor. So, jumping down to this year January 2018 completion of repair projects that address that September '16 flood, so now you're saying after that's said and done, you folks are back to the drawing board, so to speak, to see if . . . to re-evaluate now where are we and how do we prevent such occurrences from repeating?

MS. SHIMABUKU: So, really, what we show on the two slides of work-to-date, it really is just more of a just separate milestone. Some of these are unrelated. The storm happened and then we had repairs to it. And so, separately, because this is an existing flood control project, we performed those repairs. I believe it was cost shared. I was not the project manager on that one, but as an Operations and Maintenance Program Manager I kind of oversee it, and so whenever there is any kind of flood event, if the project is in good standings, the County of Maui DPW they've done a great job in performing their maintenance and doing the best that they can given the design deficiencies that we've identified. The project was eligible for Federal funds to help repair that project. And so, that's what the January 2018 when we completed the addressing the repair of the damages. So, we put all these dates out here, some are related and some are not related in the sense of how it moves forward, but what I guess it's specific to what I'm trying to do here today, we would be looking at, yes, we had the public meeting back in June 2015, July 2015, and then we were completing our engineering analysis. And as part of that, when we went back up to Headquarters for their review, they came back in May 2017 to tell us that they didn't agree with our alternative and wanted us to pretty much go back to the drawing board and re-evaluate it, look at it at a more holistic view. And so following that, we were working to complete the current analysis at the time, and that's when we completed the final EA. And since September 2017, when we completed what was called the Engineering documentation report, the EA was Appendices to that report to support the report. Our final recommendation based off of what Headquarters had told us was that we need to further analyze this. And so, since September 2017, I've been pushing to get additional funds to move into what they wanted us to do and further re-evaluate the alternatives. And so, that's when earlier this summer we got the approval for the Federal funds to move forward.

COUNCILMEMBER COCHRAN: Okay. And when you say that this County never put any money into this Federal project, that has no bearing then and all the monies that we expended out of emergency funds due to that flooding into this control, flood control area that's a separate issue and you're talking about the actual building out of it or, you know, maintenance or what part of we have not expended any money for this? What does that mean?

MS. SHIMABUKU: So, . . . yes, the County has put in a lot of funds to it, but when we're working, you know, to move forward on this Federal project, no dollars have been passed. In the beginning, the County did purchase lands that was part of our agreement, our local Cooperation Agreement, but no dollars were exchanged. And then anything that the County as your folk's responsibility being owners of the project being responsible for maintenance, those are the funds that have gone into it separately. And

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so, when we go in to this Cooperation Agreement, what we're going to identify is, again, what our responsibilities are on both sides. This may include some work in-kind if the County would like to do some of the . . . part of the analysis that we move forward with. But what we've identified right now is that it will be equal, 50-50, 600-600 cost shared.

COUNCILMEMBER COCHRAN: Okay. All right. Well, thank you for coming all this way with us. Thank you, Chair.

CHAIR HOKAMA: Thank you. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No further questions.

CHAIR HOKAMA: Okay. Again, this is our briefing and status of our . . . this project is currently with the Corps. The County, again, is local-sponsored under projects with the Feds., we have some responsibility as local sponsor. But your Chair has reviewed the request and the documents. At this time, the Chair is going to recommend to Council that the proposed bills for an ordinance as presented to you in Communication 18-300 pass first reading, be ordered to print, allowing Staff to make any non-substantive adjustments, and filing of any appropriate communications.

VICE-CHAIR WHITE: So move, Chair.

COUNCILMEMBER KING: Second.

CHAIR HOKAMA: Okay. I have a motion made by Mr. White, seconded by Ms. King. Is there further discussion on the motion before you, Members? Again, this project is gonna where it's sent back before Council Committees again. Again, we're looking at a four-year construction timeline in 2022, October so it's four years from now. No further discussion, Members?

COUNCILMEMBER COCHRAN: Chair? Sorry, Chair.

CHAIR HOKAMA: Ms. Cochran?

COUNCILMEMBER COCHRAN: Sorry. This is actually in the budgetary portion because I guess this fund, this 600,000 is coming out of Carryover?

CHAIR HOKAMA: Correct.

COUNCILMEMBER COCHRAN: So, that's been certified and how . . .

CHAIR HOKAMA: We have a letter from Administration dated August 16<sup>th</sup> for 600,000 from the General Fund. We have that Certification as part of the request to us.

COUNCILMEMBER COCHRAN: For the . . . okay.

CHAIR HOKAMA: For our share.

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COUNCILMEMBER COCHRAN: I'm just wondering where they dug it up from. Is it in particular out of Public Works or is it just a --

CHAIR HOKAMA: Mr. Baz?

COUNCILMEMBER COCHRAN: --consortium of different . . . areas?

MR. BAZ: Sure. Thank you, Mr. Chair. Member Cochran, thank you. The Carryover/Savings that was certified by the Finance Department is based on preliminary information that they are producing. Basically, we've garnered more income revenue than we expected and, in general, the General Fund expenditures are less than expected. So, we haven't pinned down a complete final number yet, but they were comfortable enough to certify the \$600,000.

COUNCILMEMBER COCHRAN: Okay. And I, Chair, the actual Budget Detail book could be, I guess, finalized ending of this month. Is that where all those numbers will be --

MR. BAZ: No.

COUNCILMEMBER COCHRAN: --defined, I guess?

CHAIR HOKAMA: Mr. Baz?

MR. BAZ: Mr. Chair, thank you. No, the numbers will be defined completely once the CAFR is done, the Consolidated Annual Financial Report, that is the one that the auditors are currently reviewing all of our documentation and reports and will produce . . . that'll have the fund balances that allow us to report what the true fund balances were in Carryover/Savings, you know, the unassigned fund balances where the root number we get for our Carryover/Savings. So, that actually won't be finished until December.

COUNCILMEMBER COCHRAN: Okay, all right. Thank you, Chair.

CHAIR HOKAMA: Okay, thank you. Any other discussion, Members, on the motion before us? Okay, all in favor of the motion please say "aye."

COUNCILMEMBERS: Aye.

CHAIR HOKAMA: Oppose say "no." Motion passes with seven ayes, two excused.

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

**NOES:**       **None.**



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**ABSTAIN:           None.**

**ABSENT:           None.**

**EXC.:              Councilmembers Carroll and Guzman.**

**MOTION CARRIED.**

**ACTION:       FIRST READING** of bills and **FILING** of communication by  
C.R.

CHAIR HOKAMA: Director, thank you for being here. Ms. Ono, Ms. Shimabuku, thank you for very much --

UNIDENTIFIED SPEAKER: Thank you.

CHAIR HOKAMA: --for being here. Okay, Members, we're gonna take a five-minute recess and then we got things to pound through. So, we'll see you in five-minutes. . . .*(gavel)*. . .

**RECESS:           10:11 a.m.**

**RECONVENE:       10:26 a.m.**

**ITEM 164:        AMENDING THE FISCAL YEAR 2019 BUDGET: APPENDIX C**  
**– CAPITAL IMPROVEMENT PROJECTS (DEPARTMENT OF**  
**FINANCE, DEPARTMENT OF MANAGEMENT) (CC 18-301)**

CHAIR HOKAMA: . . .*(gavel)*. . .We're back to order. Members, may I direct you to BF-164. This is regarding amending the Fiscal Year 2019 Budget, Appendix C under CIP. We have two departments with requests today, Department of Finance and Management. We have a Communication 18-301, from Mr. Baz, with a proposed bill for an ordinance regarding one, Department of Finance, Countywide, Countywide Equipment; Department of Management, Countywide, Public Safety Radio System Replacement is number one. And then there is also one regarding . . . Fire under Countywide Equipment. This is regarding a Pumper that was originally scheduled, assigned to Wailuku and recommendation is to station it in Kihei District. Mr. Baz, any opening comments?

MR. BAZ: Thank you, Mr. Chair. So, during the deliberations for the Fiscal Year 2019 Budget there was discussion on pumper trucks that were needed for the Department of Fire and Public Safety. The ordinance mentioned Napili and Kihei, but the Appendix C mentioned Napili and Wailuku. So, the two trucks that they needed to replace are Napili and Kihei. And so, this is just a housekeeping measure, Mr. Chair, to change Appendix C to reflect what the ordinance, Budget ordinance says there. And so, they

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will be changing the language from Napili and Wailuku to Napili and Kihei. Thank you, Mr. Chair. We have our Deputy Chief of Fire and Public Safety, Mr. Lionel Montalvo, here to answer any questions and providing information if you need.

CHAIR HOKAMA: Okay. Thank you. Chief Montalvo, any comments on the request from your Department?

MR. MONTALVO: No comments. Thanks, Chair. Other than the fact we appreciate the, you know, the funding to replace the pumpers that you provided. Thank you.

CHAIR HOKAMA: Okay. Thank you. Mr. White, questions?

VICE-CHAIR WHITE: No questions.

CHAIR HOKAMA: Thank you. Ms. King, any question? Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Not at this time, Chair.

CHAIR HOKAMA: Thank you. Mr. Atay?

COUNCILMEMBER ATAY: No questions.

CHAIR HOKAMA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No questions.

CHAIR HOKAMA: Ms. Cochran? Okay. Gosh, Chief, that was the best one yet for Fire Department in couple years.

MR. MONTALVO: Thank you. Thank you, Council. Thank you, Chair.

CHAIR HOKAMA: Okay. We'll move to the second half of the request, which is related to our Radio System – Public Safety Radio System Project under Mr. Pacheco. Mr. Pacheco, comments please on your request?

MR. PACHECO: Thank you, Mr. Chair. The request was actually to try and expedite the construction of a facility in West Maui. However, very recently the estimate came back significantly higher than the funds available, so we'd like to go back to the original but also include the ability to use some of the funds to close out a project at Waiakeakua on Lanai, which had a few unexpected expenses recently, and then to move forward on other aspects of this. This is construction of facilities, also the replacement of infrastructure electronics, which is the microwave project already on the books.

CHAIR HOKAMA: Okay. Thank you for that, Mr. Pacheco. Let's see, that's under you . . . Ms. Sugimura, questions for Mr. Pacheco?

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COUNCILMEMBER SUGIMURA: I am always by working with him during Legislative session and seeing the work that he does, which is way above my knowledge of the kind of details that you have but . . . So, the work that you're doing is basically to improve the communication systems and then what happened on Lanai? Or what did you say about Lanai?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: Okay. One of the projects, earlier projects was the construction of a new facility much needed on the Monroe Trail or the ridge line of Lanai, which will service Lanai as well as West Maui and into Upcountry and Kihei. In . . . this project has taken some time, and in that time we've had some things that have come up that we just need to add a little more cash to finish the project. The bulk of it, the replacement of the microwave equipment is to begin the replacement of equipment that is reaching end of life, actually, end of support. We have another couple, another year actually, another fiscal cycle before the equipment is completely unsupported by the manufacture and we're moving quickly to try and get that done. We had brought this forward in a couple of cycles that this was coming. It's coming. We're here and this will take care of a large portion of that.

COUNCILMEMBER SUGIMURA: Chair, so I hope Mr. Pacheco has somebody in training so that your knowledge can be carried forward. But thank you very much. You do excellent work. Thank you.

CHAIR HOKAMA: You know, Police has shown us so far, a very good practice of . . . Captain Amaral and Mr. Pacheco. It's been a very team coordinated efforts. So, yeah, I believe they embrace your thoughts, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR HOKAMA: Mr. Atay, questions?

COUNCILMEMBER ATAY: Thank you, Chair. Just want to get some clarification. So, you mentioned earlier that the cost was . . . came in much higher. What was the difference?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: Okay. Our preliminary estimate on the facility was about a million dollars. The most recent estimate that came back just about a week and a half ago came in about 2.2 so, I needed to go back and revisit that rather than try and push something out and be significantly underfunded.

COUNCILMEMBER ATAY: Okay. Thank you. Because I think for Fiscal '19 we allocated 1.2 million so that's about a million way over. And so, then now you're calling an audible instead of moving in that direction your recommendation is to utilize this 1.2 million for these other projects that also need upgrade?

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MR. PACHECO: Yes, sir.

COUNCILMEMBER ATAY: Okay. Thank you.

CHAIR HOKAMA: Thank you. Ms. Crivello? Thank you. Ms. King?

COUNCILMEMBER KING: Thank you, Chair. Just . . . I'm curious of about the additional work that's added in the description and the amount is the same. So, you haven't changed the 1.2 million, but you've added on construction of radio site at Makila and the additional work on Lanai.

MR. BAZ: Mr. Chair.

CHAIR HOKAMA: Mr. Baz?

COUNCILMEMBER KING: Can you clarify that?

MR. BAZ: Thank you. So, Member King, if you look, there is a bracket out starting at the word "replacement of" so all of that language has been deleted. So, the Fiscal Year 2019 scope to include: will read now, only read construction of radio site at Makila and microwave radio link radio equipment . . . excuse me, microwave link radio equipment and completion of additional work at Waiakeakua on Lanai. And now, Mr. Pacheco has stated that the Makila project is going to be not be able to utilize these funds because its bid came in significantly higher. So, the only project that he'll readily be using these funds for in Fiscal Year '19 is the Waiakeakua . . .

COUNCILMEMBER KING: So, we need to take that . . . are you proposing to take that out of this description or just leave it in there for next time and just show it as incomplete . . . that project?

MR. BAZ: So, yeah. This was submitted before the information about Makila came out and so this is the budget amendment that's before you. Either way . . . we could leave it in and if he has anything he can spend money on Makila then that's possible. If we take it out, then he will completely be restricted to the microwave link radio equipment and completion of additional work at Waiakeakua.

COUNCILMEMBER KING: Okay. But the radio equipment for Lanai is not expected to take the whole 1.2 million?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: No. The work is just some electrical work and some additional testing that had to been done because of the conditions there. That can be handled within this amount and we can still move forward on beginning to replace these microwave links that we need to get in place.

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COUNCILMEMBER KING: Okay. So, your preference is just to leave the other one in there and you can do some of the work on that. The total amount came out higher, too high?

MR. PACHECO: We would have to come back to you folks at another time for that.

COUNCILMEMBER KING: Okay.

MR. PACHECO: It was an opportunity for us to take care of what we see as a critical need. And the events of this passed storm that came where Lahaina was, again, cut off – 2010, 2016 and again this year, that's a recurring issue. It's going to continue to happen. What we would do is by creating this facility we can land something there. In a previous fiscal year, we actually had to lapse funds because we were in process of developing a facility in the Mahinahina area to bring that type of communications resources in; however, as we got towards the development, we discovered that there was no easement available to be able to construct so we had to give that money back.

COUNCILMEMBER KING: Okay. No, I understand that. I understand the need. I'm just saying if you don't have enough in this 1.2 million to do the entire project, are there things you can do that will make a difference with whatever is left over after? So, you want to leave that description in there and you can still go ahead and start, or do you just need to not even start it until you get the . . . *(inaudible)* . . . ?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: At this point, we can leave it out. There's nothing more I can do in that direction. We have a very good plan in place on what we need to do. And as we get closer to the time to run this project, we'll come back to you folks and start forecasting that.

COUNCILMEMBER KING: Okay. So, what is the amount that you need for the Waiakeakua Project?

MR. PACHECO: It's about \$12,000.

COUNCILMEMBER KING: Twelve thousand, that's all?

MR. PACHECO: Yeah.

COUNCILMEMBER KING: Okay.

MR. PACHECO: The project actually is winding down and have not requested funds to supplement it and we are over by about 12 to \$14,000.

COUNCILMEMBER KING: Okay. So, but right now you have 1.2 million in here so.

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MR. PACHECO: Correct. And what we will be doing is we'll be replacing microwave equipment, which our last estimate was about two and half to three million dollars to replace the entire fleet of microwave equipment.

COUNCILMEMBER KING: Okay. That's what I was asking, so you are going to use some of this for that?

MR. PACHECO: Absolutely.

COUNCILMEMBER KING: Okay. That's what I was . . . I think I understand now. Thanks, Chair.

CHAIR HOKAMA: Okay. Thank you. There's no new monies, Members. We're doing a narrative adjustment. Mr. White, questions?

VICE-CHAIR WHITE: No.

CHAIR HOKAMA: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. So, yeah, having the occurrences that, you know, fire, hurricane, all that for West Maui, I'm wondering . . . 'cause part of the bracketed areas is saying links to provide secure and reliable communications so that's bracketed out, which for me is something that as you just said we were cut off, and we will continue to be cut off. And that's a really, really scary prospect for West Maui to hear and to live with. So, I'm just wondering where in this can we be rest assured that improvements are being made that, you know, we are going to be protected and we'll have that type of communications when these emergencies occur. As it is, the end of the island that I live, you know, out past Kapalua area it's always been lack of. And I have one of those little radio transmitters from Civil, from Emergency Management and all I catch is a station coming out of Molokai. You know, people in Kaupo their radio and connection is off North Kohala area. So, I think we have a lot of disconnected areas in our County and I hate to see any things being deleted out especially in . . . I'll speak for my area that we are in dire, you know, we were in dire straits. So, where here can this end of the world be rest assured that we're not, you know, foregoing some important work that's needed for further down the road, you know, instead of right here right now, which after the fires I think things have gotten damaged and what have you perhaps but if you have comment on that, Chair?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: Thank you. I am not forgetting West Maui. We are moving forward as best we can. This was an opportunity to execute something to resolve that. That has always been an objective of ours to get this communications' resources protected into West Maui. That was originally with a project at the Mahinahina water plant. That's a project that last year we had to let go of because we were unable to obtain an easement because of the land owners in the area and the Water Department needed to work some things out. I understand that's well on its way now, that they're very close to an

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agreement. And at the point that they have it, I can come back to you and ask for that facility, which is the right facility to take care of this. Makila was an opportunity . . . much lower cost opportunity to do the same thing. Not in an ideal location, but at least to resolve that need. We are not forgetting it. It is still very much on our road map, and we're moving there as soon as our partner agency is able to secure the agreements that we need to have in place.

COUNCILMEMBER COCHRAN: Okay. No, I mean, that's good. Yeah, I think the easement issues are being, as you said, resolved so, hopefully, sooner rather than later and we can get that up and going. All right. Thank you. Thank you for the work you do. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Ms. Sugimura, anything else?

COUNCILMEMBER SUGIMURA: I'm fine.

CHAIR HOKAMA: Any other questions? Mr. Atay?

COUNCILMEMBER ATAY: Thank you, Chair. So, I'm just trying to get clear. Going back to the original project what we're short or what you would . . . if we wanted to do the original project, what we're short is one million?

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: We're short an additional million to make this go from this point forward the . . . given no opportunity at Mahinahina. With the Mahinahina its situation coming to rest, and the County being in a better position, that is the better solution. It'll just take us a little more time, but that gives us the most benefit for the entire area. So, we will be back to you in the budget cycles with the request again for that facility. Makila will be added as a backup, an alternate, but what we really need to do is the Mahinahina facility.

COUNCILMEMBER ATAY: Yeah, I would agree with that because my concern would be more number one public safety. And, you know, going through the last experience, I would put that very high. And if it is a million that we are away from ensuring increase level of public safety, I would look at ways of how we could find that million to get there. But if you're saying it's timing on the easement then, I mean, we just have to wait for that opportunity to be there, but with concern of having public safety addressed.

CHAIR HOKAMA: Mr. Pacheco?

MR. PACHECO: Thank you. And the public safety communications – the Police, Fire, that was not interrupted in this whole process. It's a matter of the community being able to reach out and being able to . . . the County being able to get its information in and out of the area. That is the benefit that these will bring this project that we're trying to do in Makila and as well as Mahinahina that's what this brings to the County as a whole. So, people were saved. The Police and Fire were able to do their jobs; it's a matter of just

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extending that to the rest of the County services to provide more information, more resources to those people in the area.

COUNCILMEMBER ATAY: Okay. Thank you. No questions.

CHAIR HOKAMA: Okay. Thank you, Mr. Atay. Anyone else has questions for Fire, Police or Budget Office, Members, on this request? Again, this is a narrative adjustment, amendment. No additional funding being requested. Okay. If not, the Chair will recommend a motion for Council to pass first reading, be ordered to print the proposed bill for an ordinance amending Fiscal Year 2019 Budget for the County of Maui as it pertains to Appendix C – Capital Improvement Projects, Department of Finance, Countywide, Countywide Equipment, Department of Management, Countywide, Public Safety Radio System Replacement, and allowing Staff to make nonsubstantive adjustments, and filing of appropriate communications.

VICE-CHAIR WHITE: So move.

COUNCILMEMBER SUGIMURA: Second.

CHAIR HOKAMA: Motion by Mr. White, seconded by Ms. Sugimura. Members, is there further discussion on the motion before us? If not, all in favor of the motion please say “aye”.

COUNCILMEMBERS: Aye.

CHAIR HOKAMA: Opposed say “no”. Motion passes with seven ayes, two excused. Mr. Pacheco, Mr. Baz, thank you very much. Thank you, Chief.

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

**NOES:           None.**

**ABSTAIN:       None.**

**ABSENT:        None.**

**EXC.:           Councilmembers Carroll and Guzman.**

**MOTION CARRIED.**

**ACTION:        FIRST READING** of bill and **FILING** of communication by C.R.



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**ITEM 159: PROPOSED CONSTITUTIONAL AMENDMENT TO ALLOW A SURCHARGE ON INVESTMENT REAL PROPERTY TO FUND PUBLIC EDUCATION (MISC)**

CHAIR HOKAMA: Okay, we're going to bring up BF-159 at this time. This is under the proposed Constitutional amendment to allow a surcharge on investment real property to fund public education. We have a communication dated August 6, 2018, from the County Clerk's Office, referring this matter. Historically, you know that Ms. Sugimura's standing Committee did have a discussion on this and had it referred to this Committee for additional comments or considerations. This morning, let's see, we do have Mr. Teruya, our Real Property Tax Administrator joining us. We also have Mr. Bilberry present. So, before we start with Mr. Teruya, I'm going to ask Mr. Bilberry to come join us. I believe he as well as maybe Mr. Wong, okay, Staff will be handing out copies of information for you, Members. The Staff I have asked to hand out copies of the Amended Motion that is filed with Circuit Court that originated with the City and County of Honolulu. Not all counties are part of it as well as a copy of an *Amicus* Brief that was also filed in support of the County's position that Staff is handing out to you. Okay. So, Mr. Wong, you or Mr. Bilberry, if you would give us some opening comments please on this item?

MR. BILBERRY: Okay. So, we had a conference call last week with Corp. Counsel for the City and County of Honolulu and they had advised us that they were going to be filing a lawsuit against the State of Hawaii and I believe you have the caption there. Number of other agents of the State have been identified as Defendants in their lawsuit. The concern in the suit address a Constitutional amendment that's being proposed by the State Legislature to Article VIII, Section 3 of the Hawaii Constitution, which will allow the Legislature to charge a what they're calling a surcharge on investment property. Some of you may know from litigation that we've had and the issue coming up in the 1978 date Hawaii State Constitution was amended to transfer all real property tax authority to the counties. This is the amendment that is now being proposed for amendment and the State, again, is seeking to be able to levy a court surcharge on investment property. The exact language of the amendment would be . . . and I'll read you the Constitutional provision as it currently exists and then let you know when I get to the proposed amendment. But it basically reads, and this is *Article VIII, Section 3, the taxing powers shall be reserved to the State except so much thereof as may be delegated by the Legislature to the political subdivisions and accepted all functions powers and duties relating to the taxation of real properties shall be exercised exclusively by the Counties with the exception of the County of Kalawao.* The amendment would then read "*provided that the Legislature may establish as provided by law a surcharge on investment property.*" The concern is that . . . there are two things: surcharge is vague, not clear what that means. And we're not clear what's meant by investment property. This is actually going to be printed on a ballot, the proposed amendment, for this coming General Election. And there is currently a Motion, which I believe is the Motion that has been passed out to you before the First Circuit Court, seeking to enjoin the State from putting this proposed amendment on the ballot because the language is in the Counties' view vague. From what I can tell, the State's position is the ballots already printed and we can't take it off the ballot, so this may very well get on the ballot

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in which case then the dispute I presume would continue as to whether this will actually be allowed to be voted on by the public. Currently, the ballot reads: *Shall the Legislature be authorized to establish, as provided by law, a surcharge on investment property to be used to support public education.* So, the same concerns are there with the lack of definition of the term “surcharge investment property.” Again, it does not look to me like the language is going to be removed from the ballot because from what I’ve read in the State’s opposition their position is these things are already pretty much printed, and there’s no way we cannot get the ballot out for the General Election, or no way we can get the ballot out for the General Election without this language on there. So, currently, there is a hearing before the Judge. It’s Judge Crabtree on Oahu, and that’s set for Friday, the day the ballots are supposed to be finalized. We will be attending that hearing and we’ll see what the Judge does. There are concerns that we have with the language, in addition to the ambiguity of what is meant by a surcharge and by investment property, and that is what it sounds like is another level of taxation on top of the assessed real property taxes that the County already levies and sends to each of its residents. Though that’s not clearly discernable from the Constitutional language that’s being proposed. I will just give you quickly some of what I heard on Hawaii Public radio last week and this was from the Hawaii State Teachers Association. Their President has said that the lawsuit is frivolous and that the amendment intends to tax “second homes over a million dollars to fund our schools”, which is again not clearly stated in the language though once if the amendment gets passed, the State would promulgate, presumably promulgate regulations enabling it to actually effectuate the Constitutional provision which may be more specific and more definitive. But at this juncture we don’t know that. So, we don’t know what surcharge means. It sounds like an additional real property tax. And we don’t know what investment property means. And quite frankly, that could mean just about any property, including property subject to homeowner’s exemptions. So, this is kind of a central concern of the lawsuit. Where it goes from here is, you know, I guess anybody’s guess but that’s the status of the legal stuff.

CHAIR HOKAMA: Thank you. Thank you for that comments. Mr. Wong, any additional comments at this time?

MR. WONG: Thank you, Chair. As you can see from the caption, all the counties have gathered. We, as Corp. Counsel from the different counties, have all discussed this topic and we’re pretty much all on the same page. City and County of Honolulu took the lead on it. They actually filed the initial complaint couple of weeks ago and then reached out to us on the topic. We’ve had discussions about it and we collectively, I guess, decided at least from our part to join in the lawsuit rather than filing our own in the Second Circuit on Maui. And part of the reasoning for that is, you know, we want one court to issue a decision. So, we may not . . . we don’t want to have to deal with different circuits having different opinions. It will be easier for us to deal with it on appeal if we need to. So, the decision was made that we would join and file and fly over on Friday and argue. So, that’s essentially why it’s written the way it is.

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CHAIR HOKAMA: Okay. Thank you very much for that, Mr. Wong. Mr. Teruya, thank you for being here as our RPT Administrator. I know you gave a presentation to Ms. Sugimura's standing Committee. Is there additional comments you can share with us this morning?

MR. TERUYA: Thank you, Chair and Members. The only other thing that I'd like to point out is maybe . . . there's a response by Tom Yamachika of the Tax Foundation of Hawaii, who also pointed out that nothing in Senate Bill 2922 will guarantee the Legislature allocated more money for public schools. So, that's a comment that he already made. So, that's all I have, Chair.

CHAIR HOKAMA: Okay. Thank you very much. Members, I'll allow you to ask questions at this time. We'll go through another round so you can share your other comments, and maybe positions. But Mr. White, any questions at this time?

VICE-CHAIR WHITE: Thank you, Chair. Yeah, I think the issue that bothers me the most is the fact that there's no guarantee that the monies is going to go to education, and yet, that's the . . . that's the published rationale for passing this amendment in the first place. I guess my question I guess to either Mr. Teruya or Mr. Bilberry is to what degree can a homeowner's residence be considered as under the definition of investment property because it is the largest investment that families make?

MR. BILBERRY: I think you just accent the general, the concern, which is that the definition can be applied pretty broadly if given the current language. Now, again, that's constitutional language. I'm sure their argument, in part, will be that, you know, the Constitution is broad brush strokes. Once that gets enabled then we would go in and pass more specific Statutes which would define what these terms mean. But in the interim I, you know, there's . . . it doesn't bring much comfort to the counties precisely for the reason you state, in part is that . . . I don't think you can really without more statutory language answer that question because your question being to what extent a residential property subject to homeowner's exemption could be considered an investment property because it is the most significant investment for most residential homeowners so why wouldn't it be considered an investment property?

VICE-CHAIR WHITE: Okay.

MR. BILBERRY: Barring any more specific statutory language which might could theoretically exclude or provide another level of exemption to residential homeowners.

VICE-CHAIR WHITE: And then I guess the other question I had was, you know, we've been considering from time to time whether or not to do something similar to what Oahu did with the Residential A classification at a higher tax rate. And it would seem to me that if the investment properties are seen as second homes or rental homes that this bill would simply make it much more difficult for us to justify using that method because the State would have already taken the money. Is that a reasonable concern?

CHAIR HOKAMA: Mr. Bilberry?

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MR. BILBERRY: I think this gets into the second concern with the language what's meant by a surcharge.

VICE-CHAIR WHITE: Right.

MR. BILBERRY: I don't know what that means. You know, the statement by the HSTA that this would be something that would be intending to tax second homes over a million dollars. I mean, I don't know where that information is sourced from, but it sounds more like a public relations statement more than anything else. But, again, and I hate to . . . I don't want to sound like I'm evading your question, but I think the problem is, is that the language is so vague. What is meant by a surcharge? So, I don't know. A surcharge and I went and, you know, my trusted source Google, I went and googled surcharge, and it comes up as a one-time tax on some sort of commodity or goods. So, I'm not clear what's meant by surcharge, but the fact that it's being put in a Constitutional provision that deals with taxation and finance leads me to believe that that means a real property tax.

VICE-CHAIR WHITE: Right.

MR. BILBERRY: So, again, I'm sorry. I don't know that we have an answer for your specific question. And I'm not sure what the status of Honolulu's current provision is that allows for that. I know it was determined by the Tax Appeal Court as constitutional and was not appealed. So, I don't know that there's anything prohibiting Maui from doing that and engaging that, you know, passing a similar provision for Maui's tax code. I mean, what the effect of this would be on that is anybody's guess and I'm sorry for not having something more definitive for you

VICE-CHAIR WHITE: No, I . . . I don't expect anything that we can bank on in any way because I think that it was specifically drafted in a way that it gives the Legislature a blank check to come after County funds and use them not only for education, but for whatever else they choose to use it for. And, you know, of course, I was . . . I'm old enough to have been around when the TAT was initially pitched by the Legislature at 2 percent, and by the end of the first session after the Hotel Associations said, yeah, well, we'll go along with that for the purpose of building the Convention Center. By the end of, well, the commitment was 2 percent earmarked for the Convention Center. By the end of session, there was a 5 percent tax and there was no earmarking. And that's now grown from that original 5 percent up to 10 and a quarter and about 16 million of that new tax level is going from Maui County's economy to pay for rail in Honolulu. So, I'm not at all comfortable with this measure because it's so ill-defined and my recollection is that million-dollar investment property was probably a part of the bill at one point, but I think it was removed or was part of the testimony or something but now it's an open . . . it's open field for the Legislature. And nothing but bad news for the counties.

MR. BILBERRY: Yeah, I think we've discussed this just kind of briefly. I think one of the things that could very well be possible would be an increase in the number of real property tax appeals. Because now people are being hit with potentially . . . I mean again, we don't know where this is going yet, but people are being hit with taxes a

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second . . . potentially a second tax on their homes and logically that might lead to more appeals at the County level. I mean, now I guess if the State is going to be imposing a real property tax, but we don't know if that's the case, but if they are, I'm assuming that they would also have a process in place for adjudication of tax appeals or maybe that gets left to the counties. But either way, I think when people are looking at more taxes, we're looking at more real property tax appeals.

VICE-CHAIR WHITE: Right. Thank you. Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. And again, Mr. White forgot TAT was enacted as a temporary tax, okay, in '85 or '86, but that was my understanding temporary to build the Center, Convention Center. It was the whole primary point of that legislation, temporary legislation.

VICE-CHAIR WHITE: And it was initially given on, given 95 percent to the counties and now we're down to a much, much smaller percentage.

CHAIR HOKAMA: Uh-huh. Yeah, and again, surcharge to Mr. Webster is to just simply two things – gouge or soak. Okay. That's Mr. Webster's simple synonym. You can try to gouge somebody or soak somebody in addition to. Ms. King, any questions at this time?

COUNCILMEMBER KING: Yeah, I do. Thank you, Chair.

CHAIR HOKAMA: Okay. One main one and a follow up, and then, you know, I'll let everybody have your opportunities, Members. And then we'll do additional rounds if need be. Ms. King?

COUNCILMEMBER KING: Yeah, thank you, Chair. I just want to preface it by saying, you know, I poured my heart and soul into education back in the '80s and '90s when my kids were growing up and I was . . . and I sat on the State Board of Education for four years. So, I don't think there's too many people around that doubt that I care about public education. But I have all the same concerns that were brought up by Mr. Carnicelli and you just brought up. And one of my concerns is the . . . even if they do define, you know, this idea that all of our homes are an investment for us. And if they do define, even if they put in that one-million-dollar threshold, so many of us that purchased homes . . . I mean, I've been in my home over 30 years, and back in the '80s I think we spent \$85,000 for land and the original structure. Now, it's up around, the value is up is being estimated around 800,000. So, a lot of people are going to have homes in that million-dollar range who obviously didn't buy their homes for a million dollars, but with the increase in values that is a danger to many more people than originally thought I think but . . . so, you know, I'm glad that they did this lawsuit is concerning with the timeline, and so I wanted to ask you if we do get the judgment that we're looking for as a collective of counties, and it still is on the ballot, is there a way . . . are they planning to nullify that question even though it appears on our ballot? So, how does that, how would that work if we do get the judgment we're looking for since it's too late to take that off the ballot?

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CHAIR HOKAMA: Corp. Counsel?

MR. BILBERRY: Yeah, if I'm understanding your question, it is assuming that this stays on the ballot there's still, you know, the election is not till November is there still an opportunity to dispute this? And I mean, the way I see it is, I mean, just because it's on the ballot doesn't mean that it's something that has to be voted on if hypothetically the counties were able to convince the judge that it's too vague, the language is too vague. Is that kind of along the lines of what you're asking?

COUNCILMEMBER KING: Yeah, I mean, it's going to be on the ballot so then is there a way for the State and, or the counties to inform the voting public that that question is null and void?

MR. BILBERRY: You know, theoretically, given the more . . . if there's more time before November, theoretically if the judge was to determine, yeah, I find the language is too vague and it has a kind of, you know, inclination to mislead, it could mislead people so I'm not going to allow this and I mean just let it out--right?--I would assume. I mean, like when somebody is running for an office and they get caught in a scandal and they withdraw from the race, but they may still be on the ballot, you know what I mean?

COUNCILMEMBER KING: Yeah. That's why I was wondering.

MR. BILBERRY: Just because it's on the ballot, yeah. And that's . . . yeah, I mean, put it simply, it seems to me just because it's on the ballot it doesn't mean that it will necessarily have to be voted on if a court were to determine again that the language is too vague and that he's not going to let it go forward. Yeah, I think that's . . . it's not an easy case.

COUNCILMEMBER KING: Okay. Well, you know, I mean, 'cause if we're not even going to be heard until the day that the ballots are printed. So, I just wanted to hear that from you.

MR. BILBERRY: We will be heard after that day too though. The lawsuit, I don't believe, will go away just because the language gets printed on the ballot. And again, the election is not till November.

COUNCILMEMBER KING: Okay. And then, Chair, if I may, I just wanted to find out if we're going to have an update today on the, you know, we all voted in favor of that \$50,000 I think appropriation for the budget to educate the public on this topic. So, are we going to also have an update on that in this meeting today or is that ready?

CHAIR HOKAMA: That would be . . . I would leave that up to Mr. White, as Chief Administrative Officer of the Council, since it's part of the Council's budget and he has the Administrative duties to put out an RFP on the Council's behalf to do such work. So, at the right time we'll have Mr. White give comment --

COUNCILMEMBER KING: Okay.

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CHAIR HOKAMA: -- on that.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR HOKAMA: Okay. Thank you. Shucks, I forgot which side I was going. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. I don't know if Mr. Teruya or somebody can answer this, but I've often heard a comment that this will have a major impact on our bond rating. Can somebody explain to me how does this impact on our bond ratings?

CHAIR HOKAMA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. I'll take a shot at it. I'm not an expert on it by any means, but generally speaking, because this will be an additional surcharge which is being . . . which is really a tax I think, but it will decrease the amount of taxability we have on the people of Maui County. When the bond raters are looking at us, basically they see all of the real property on Maui, the valuation, the amount of our current real property taxes. So, by adding on an additional tax, bond raters will now see, oh, wait, if we lend the County money and they need to tax more to repay us the lenders that ability is diminished a little bit due to this additional tax. Therefore, we, likely, wouldn't be as an attractive, you know, based on credit score probably go down in a sense, you know, on a personal basis. But 'cause you have more costs out there. So, that's the general idea behind it that it's an additional tax, therefore, the County has less taxation power in a sense or ability to tax, so it will affect your bond rating most likely. Thank you, Chair.

COUNCILMEMBER CRIVELLO: So, Mr. Ueoka, so we're saying that the County has no level of intervention with this kind of tax increase, and that's . . . as --

CHAIR HOKAMA: Mr. Ueoka?

COUNCILMEMBER CRIVELLO: --detrimental to our credit rating?

MR. UEOKA: I'm sure the fact that the County can't touch it at all also would factor in, but the underlying principle as being that it's an additional burden on the taxpayers on Maui, therefore, the County would have less ability to levy taxes.

COUNCILMEMBER CRIVELLO: I see.

MR. UEOKA: Because you're not capped, but the people can only pay so much. And I think the bond raters realize that so, therefore, you probably be a little less attractive as a, you know, a credit risk. Thank you, Chair.

CHAIR HOKAMA: Thank you. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Also, within this suit is there any questionings as to how much revenues or how much more funding does the Department of Education need? What

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are their revenue needs? I mean, does it state anywhere? Mr. Teruya, I guess is raising his hands.

MR. TERUYA: Chair?

CHAIR HOKAMA: Mr. Teruya?

MR. TERUYA: My understanding is that the State, the DOE is looking to generate 500 million additional funds for their programs.

COUNCILMEMBER CRIVELLO: So, that is what they're requesting, and this is why the State Legislature is saying this is the only way we can bring in these revenues for you?

MR. TERUYA: Chairman?

CHAIR HOKAMA: Mr. Teruya?

MR. TERUYA: My understanding is that's the reason why the question changed from a million dollars and above is because that they wasn't going to produce any rev..., a lot of revenue that they expected so, therefore, changing the language to be more inclusive of more properties and that's why I think they put investment properties there. As far as, when we . . . and I'm just going to generalize numbers. It's very hard to say on average how much everybody would go up but 500 million is really . . . Maui County needs to go up about 25 percent. That's how much additional funds you're going to need. And for a homeowner, that doesn't mean you're going to get an exemption either. It's going off of your value. So, that's very different from what we're offering. So, you know, on average, I would say 25 percent is what . . . you know what we, what we generate and what additional funds is going to need to come from Maui County. And like I said it's a very simple math type of thing. I cannot guarantee how much more per property, but when you're only applying a rate to per million, it's going to affect everybody equally. So, I would say on average, Chairman, don't quote me on that, but generally about 25 percent more per revenue for Maui County.

COUNCILMEMBER CRIVELLO: Thank you, Chair.

CHAIR HOKAMA: Okay. Thank you. Mr. Atay?

COUNCILMEMBER ATAY: Thank you, Chair. First off, I was just trying to get clear. So, we're currently involved in a multi-County lawsuit?

CHAIR HOKAMA: Mr. Wong?

MR. WONG: Yes, that's correct.

COUNCILMEMBER ATAY: Okay. So, we're here . . . this meeting is what, just to get a Council approval to be there or no need?



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CHAIR HOKAMA: No, no, no. This meeting is just a discussion in review of this proposal that the State is putting forth on the ballot. We're here to 1) bring clarification on what is being really asked of the County's residents; and 2) to provide detailed information since the State chooses not to give our people adequate information to make the best decision possible.

COUNCILMEMBER ATAY: Thank you.

CHAIR HOKAMA: So, that's what we're doing.

COUNCILMEMBER ATAY: I think in our previous Committee meeting in Policy, Economic Development, and Agriculture Committee meeting we discussed this. I expressed my position --

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER ATAY: --of where we, the County, you know, rely according to Constitutional law is that we collect our taxes, real property taxes for the County. A bigger chunk I think 70 percent or more is where we get it from. And this is an opportunity of a raid coming from the State, which I look at the Department of Education, it already receives a big chunk of our State's budget. I think it was 14 percent, something like 2.1 billion as compared to Department of Agriculture being only .4 percent, not even a half of a percent. I had also requested along this item is that suggestions of auditing the management of the Department of Education, and looking at positions above a principal and higher, and leaving the principals and teachers untouched. But see where, I believe, you'll find your 500 million, you know. But we need to do that, and I strongly still stand what was discussed in Committee is this is a raid and using hindsight of what they did to us or have done to us with the TAT, yeah. What started as one thing has gone to the other thing and these are funds lacking of services. For example, we got the men, the firefighters, you know, I said public safety responses which, you know, when we respond to Black Rock, you know, it involves a lifeguard, a fireman, a police, and someone wrapping it up. That's all County expenses that is happening in State jurisdiction waters and it's not even a County property and we're spending the money. So, I'm saying, using that hindsight of what the State has done with the TAT, this is telling us that more so not to trust this move especially when they don't even define what they're going to collect and they're telling us this is for education. I've had proponents from the Department of Education say, oh, if anything, support preschool education. And I said, we already do. We already fund the Head Start Programs. We are already committed to preschool education, which is supposedly that's their other funding that they'll cover. But can you guarantee me that? Can you guarantee me that 100 percent that you collect from this will return 100 percent back to Maui County? You know, from what we're seeing hindsight from the TAT that's not going to be the example. So, I still stand what I shared in my vote in the PEA Committee, and I further want us to position ourselves to utilize that education funding of educating our voters so that they understand where the County's position is coming from. Thank you, Chair.

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CHAIR HOKAMA: Thank you, Mr. Atay. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, thank you. I'm glad that we're discussing this, and I've been reading on the news about the lawsuits and I'm grateful that there's been action taken as a unit, all the counties. I will say that this discussion has come up when I'm talking to people in the community, and when I try to explain it it's so complicated. And what I finally ended up saying is this is double taxation folks. If you own real property, this is double taxation. And they go, oh, then we don't want it. So, that's my simplistic way of explaining that. I think during HSAC we had a panel of which Corey Rosenlee, who is in charge of HSTA, was present and the most insulting thing he said, I don't know if you guys remember this, but he said that the reason why our education system is so bad, and I don't think he's from here, but the most insulting thing he said was that because the Big Five didn't want their workers to be educated. I mean, that is so insulting. I mean, from then we have Governor Burns, you know, all the Governors and the State of Hawaii who made sure that we took care of everybody. So, I'm not too sure where he's from or where he got educated from, but get your facts correct. That's one thing. The other thing is that like what Mr. Atay is talking about that I think what I heard from the HSAC meeting, which was very good with all the panelists and Mr. Hokama represented us because Mr. Teruya was not in state, but that there was comments about we should do an audit of the entire DOE and see where the money is spent before they try to take more money. And when I'm out there talking to people in the community and they're teachers, this is not a to take money away from them. It's to try to figure out where the money is going right now before they try to double tax our citizens. So, there's a lot more discussion that needs to happen. One of the documents that you passed out, Chair, is from Thomas Yamachika, who is a Tax Foundation of Hawaii Attorney, and what he says on there is that he is part of this, he is a movant who's interested in assuring that voters are not misled by a ballot summary and a ballot question that do not once mention "tax" or "taxation" when the substantive effect of the measure is a grant sweeping new powers to the State Legislature relating to the real property taxation of Hawaii. So scary, you know. So, I just tell people vote no on the Constitutional amendment and not because we don't support teachers or students, but it's because we support them. What's happening to the money now? Where is it going? And why are they trying to take, you know, more money from our residents who work so hard every day. So, . . . this is not a question. It's more of a frustration. So, thanks, Chair, for letting me speak.

CHAIR HOKAMA: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And I really cannot add any more to everyone's comments from Ms. King's opening statements in, you know, relation to supporting schools and our children and education. That's our future, you know, and that's the foundation that get laid for our future. So, that's truly not the issue here, but what the issue is and what everybody mentioned, and I do recall, Chair, you mentioned the 2.2 billion or some odd dollars that are given to DOE, and the prospect of an audit of sorts to find out exactly where is all that money going if it's being not going to where it's needed and they need to tap into all of us then something is, you know, amiss here. So, I'm very much in support of somehow going down that path so not sure if

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Corporation Counsel has that type of thought pattern in place to maybe look in that direction at all or that's just a whole separate, you know, issue and concern.

CHAIR HOKAMA: Corporation Counsel?

MR. WONG: Chair, if I may. That, that Ms. Cochran would be a separate and distinct concern.

COUNCILMEMBER COCHRAN: Okay.

MR. WONG: Separate from this lawsuit.

COUNCILMEMBER COCHRAN: Okay. But I'm very much in favor of all of us banning together to fight this issue. And the other, I think Ms. King brought up the ballot question, and that they're already printed and, you know, I'm surprised that they are, I don't know how that works, but I figure in the end once everything, all the numbers are brought in then those just won't be counted. Whether someone checked it off or not, then I guess you simply just wouldn't take it into consideration because, you know, it will be null and void whether the words around that piece of paper are not. So, I think that's pretty simple fix in that essence, but overall this is, yeah, I think a huge, a very huge issue and I'm looking forward to your folks work and fight and for us to prevail in this case. So, thank you for bringing this forward and educating us to where we are in the process. Thank you, Chair.

CHAIR HOKAMA: Thank you, Ms. Cochran. Well, I appreciate all the Members questions and comments on this item. I do believe you folks made some accurate accounts. This could be considered an additional tax on a tax, so it could be double taxation and then it comes where does representation come into this new form of taxation. I think it would be concern for me as a taxing authority on how another governance entity can place additional burden on something that is within our current total purview so that would be my issue. You know, I don't know if the Legislature or HSTA has really thought this out, Members, okay, because they bring up the article that is part of the lawsuit that gives the counties full authority of real property taxation. Okay. And if HSTA as educators read their information, they know that only Hawaii's counties has unique standing. Only we have Constitutional standing compared to the other 3,000 plus counties in the country. Okay. And we don't fund education the way the other counties do. We are not the other counties of the country. Okay. So, I don't know why the keep bringing it up of how others are doing it because others like West Virginia don't do roads. Okay. We do roads. We do a lot of other things that others don't do in exchange for just taking care of certain educational components. So, I wish they would be honest about what other counties do and what they can and cannot do by State law. Their Legislatures provide them with restrictions and caps, okay, which we don't currently have. But the key thing that, for me, and I don't know if it was part of your discussion, Mr. Wong and Mr. Bilberry, is for me Article 13 of the State Constitution because I don't know if these people are aware of what they're doing to Article 13. Okay. And for those that haven't written, and I speak from one of the 102 delegates that help write this Constitution. I was there in '78. So, Article 13, Section 2, gives public employees the right of collective bargaining. What is HSTA bringing up before the tax base - pay,

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retention, facility requirements, basic supplies, that's all collective bargaining issues that should be done on the table. You had a Governor that had support for educational through the first lady, okay. The teachers agreed to a contract. Are they telling us collective bargaining doesn't work and they have to come now to the tax base? Then what good is Article 13, Section 2 of the Constitution then? Okay. The Legislature better be upfront with the tax base because the question of whether a Constitutional Convention will be held on or not is before the voters too. And this is the kind of questions the voters is going to think about. Are we going to continue to allow collective bargaining in the State, or are we going to go right to work? Okay. Unfortunately, this public union is jeopardizing to me the status of collective bargaining in the State, and I don't think they even get it what they're jeopardizing. Are we gonna take collective bargaining to the public and take it off the bargaining table and negotiate? Is that what HSTA promoting? Then I would say they failed their membership as a collective bargaining agent. What purpose and what good do they serve their membership if gotta come to the tax base and the voters? That is not collective bargaining, people. And I hope the other unions are watching this because they may be somehow adversely impacted by this one union's approach to this. Is that something that you folks have considered, Mr. Bilberry, as part of the position of the counties that they have collective bargaining and they should have settled this on the table?

MR. BILBERRY: Again, we . . . this has come up kind of suddenly so that hasn't been part of the discussion. I certainly be happy to have discussion further with you after this to get a little more of what your perspective is and . . .

CHAIR HOKAMA: I'm just saying what's in the Constitution, Article 13, Section 1, gives private employers and employees the right to contract and collect. And Section 2 is public employees, okay, that we supported and ratified in '78. So, I don't know what this union is asking us now they're coming to the tax base and ballots instead of on a contract. You folks have any legal comment to give us today?

MR. WONG: Chair, if I may?

CHAIR HOKAMA: Mr. Wong?

MR. WONG: Chair, you raise a very valid point in the overall application of this Constitutional amendment. I do not believe though that the analysis that you are suggesting has been made by the State or by the teachers' union. I do not believe that they fully understand the breath of what they're asking. And so, in the analysis of this litigation, I think if this ballot measure passes, that question will become front and center because it is at that point that the definition of their values are going to be identified, and your question of whether or not it impedes and intrudes upon collective bargaining, I think would be a very valid point in that stage in the game. I think currently it may be premature based on how the complaint is drafted and the focal point of the complaint itself.

CHAIR HOKAMA: Okay. You know I asked Mr. Ueoka to see if he could give us comment, Members, this morning because I have been made confused by the State on their response to how this ballot question is going to be viewing blank votes versus the

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question of a Constitutional Convention and how they view blank votes for that. So, one of the things this Committee will do is give the best accurate information to our residence voters out there on what is and what does it mean when you cast a blank vote. Mr. Ueoka, are you ready to give us some comment today?

MR. UEOKA: Just generally speaking, Chair, a blank vote doesn't necessarily . . . well, I'm sorry, I should say, "yes" votes are what they count; however, it's . . . it varies because I believe it has to meet two tests. "Yes" votes receive a majority of votes tallying excluding blank and over votes. And the second test is, "yes" votes receive at least 50 percent of total votes cast, including blank and over votes. So, it's two counts that it has to meet so but, essentially, voting "yes" is the important one; however, by not voting "no" I believe the blank votes are still counted in the, for percentages, because you need a majority and 50 percent. So, if you're against it, I would recommend just voting . . . well, I shouldn't say recommend or anything like that, but the "yes" votes is what counts and it's out of a majority of excluding blank and over votes for the first test and including blank and over votes, so the denominator would increase or decrease depending on the blank votes. Thank you, Chair.

CHAIR HOKAMA: Okay. I know we're not being . . . all may be all clear on what Mr. Ueoka just said so, again, we will . . . the Chair will, with no objections, we'll try and put this in a memo form that we can use to show their community. I just want them to be clear what a blank means. 'Cause somebody said, I left mine blank, how did this thing pass? You know, there were so many blanks how can it pass? Nobody actually said yes. Well, we just want to make sure we're all clear on what blank really means so that people understand the choice of "no" vote or blank does have an impact, okay, on the final decision. So, we'll provide that to the Committee members and for your general use regarding the blanks, on what the blank really means. Okay.

COUNCILMEMBER SUGIMURA: Mr. Chair?

CHAIR HOKAMA: Yes, Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, the blank means it's yes or the blank means it's no according to what he just said?

CHAIR HOKAMA: Mr. Ueoka?

MR. UEOKA: Okay. A blank is not a "yes", and I'll say the only thing the Office of Elections what they hand out is they tally "yes" votes when looking for whether a Constitutional amendment passes or not. However, this is where it gets complicated though, again, there's two tests and . . . so the "yes" votes receive a majority of votes tallied. So, that's pretty common sense excluding blank and over votes. So, when they count the majority for the first test, they're going to say not counting or majority will be 50 percent plus one of the total votes tallied, not counting blank and over votes. So, if you had a thousand votes cast --

CHAIR HOKAMA: Use 100. Make it just simple.

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MR. UEOKA: Okay, 100 votes cast, and there were 20 blank and over votes. So, they count 80 as the denominator there. Out of the 80 votes that were cast, let's say 50 of them were "yes", so it would be 50 out of 80, therefore, it meets that test. The second test is, "yes" votes received at least 50 percent of the total votes cast—of course this had to include—blank and over votes. So, I believe the example was 50 and then we said there were 100 total votes cast, and it's including blank and over votes. So, 50 out of 100 still meets 50. So, it's 50 out of 100 they would go "yes," "yes". If you switch it around and say it was 40 "yes" votes and 40 "no" votes, 20 blank and over votes, you'd meet the first test because you'd be . . . well, let's say 41 for . . . so then you . . . but then; however, so it would be 41 out of 80 so you'd meet the majority. "Yes" votes received were at least 50 percent for the second test, but you'd only have 41 out of 100 because the . . . for the second test the blank and over votes were counted. So, 41 out of 100 votes, however, is not 50 percent. It's 41 percent. Therefore, it wouldn't pass. Of course, that's my understanding and I am not the Office of Elections, so they are the ultimate vote counters on all of this, but that's how I read this and there are a couple examples on their website so don't listen to me, you know. You might want to check that out, but that is my reading of it right now. Thank you, Chair.

CHAIR HOKAMA: We'll verify with the Office of Elections and the Attorney General's Office on how the blank votes will be viewed in the upcoming election and what it means to the voters. We just want to be clear what a blank really means. Mr. White, you have a question?

VICE-CHAIR WHITE: I think I did but I forgot it in the meantime.

CHAIR HOKAMA: Okay. Yes, Ms. King?

COUNCILMEMBER KING: I have a question. Why are there two tests? Why don't they just go with the one that's the more difficult one to meet?

CHAIR HOKAMA: Mr. Ueoka?

MR. UEOKA: I don't know. It's the State Office of Elections and probably State law somewhere.

COUNCILMEMBER KING: Because if you meet the second test, whether you meet it or not, determines whether it passes or not, is that correct? Or are there some instances where you only need to meet the first test?

MR. UEOKA: I believe . . . the last example I gave you, you met the first one, but you didn't meet the second one.

COUNCILMEMBER KING: Yeah, but I mean why even have the first one?

MR. UEOKA: I don't know. It's . . . and you have to meet both of them. I'm sure there's some mathematical reason where it could work one way but not the other and vice versa that's why they have both tests, but I don't know. Thank you.

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COUNCILMEMBER KING: Okay.

CHAIR HOKAMA: We'll verify, Ms. King, for all the Members of the Committee. Again, what they say on the phone and what they may put in writing may be two different things, so we'll make them sign something for us. Mayor Arakawa is with us. Mayor, I'll give you a few moments if you wish to share a few comments as regards to the Conference of Mayors and the actions of your colleagues as it regards to this subject matter on the Constitutional amendment.

MR. ARAKAWA: Thank you, and I apologize. I didn't get the call down because we were busy in a meeting. The reality is all four Mayors completely disagree with this entire bill. We have a real problem with the way that it's been constructed. It doesn't have limitations on what it can do with the County taxes. It also does not guarantee that one penny of increase will go to the Department of Education. It says that this tax will go to the Department of Education, but they could very well just remove money that they're currently giving to the Department of Education and replace it with our money. This tax, and when we look at our bond rating and our ability to be able to keep the County viable, can destroy our bond rating because everything that we do to be able to assure the bond, the people that we buy the bonds from, they will be able to repay, requires us to be able to have flexibility in how we're doing our financing. And if we can't guarantee that we're going to have control of our taxing ability, then we have no way of guaranteeing what we're going to be able to provide a security for people who are giving us money from bonds. So, it could destroy our very basic economic system. It's a horrible bill that just allows the State to be able to pirate [sic] what has been the only major real resource that the counties has had, which is property tax. Yes, we have TAT but that's such a small part compared to this property tax. The security of property tax for the County is an absolute must. If the State can start in and go, well, we're going to be doing this for education, then the next step can be, well, we're going to do this because we need money for this or we need money for that. There's no guarantee for an end once they get into this thing. And again, I defy any of the Members of the State Legislature looking at this law to guarantee even one penny increase goes to Department of Education. This is a red herring appearance simple. It's one of those . . . it sounds really good because it's going to be able to help our children. But in reality, it does none of that. And all four Mayors are in agreement with that. So, thank you, Chair.

CHAIR HOKAMA: Okay. Thank you for that, Mr. Mayor. Any questions Members would like to ask the Mayor on the position of the Council of Mayors? Okay. Mayor, we appreciate you being present. We appreciate that the County has been part of the coalition per se. I know there's other entities that are adjoining this discussion on this proposal before us. So, we appreciate your efforts and the other Mayors on this matter. Anyone needs the County Clerk? I have Mr., the Deputy Clerk available?

MR. ARAKAWA: Mr. Chairman?

CHAIR HOKAMA: Yes, Mr. Mayor.

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MR. ARAKAWA: I'd just like to thank all of you Councilmembers as well for the support against this bill. And I've been reading some of the commentary that's been coming up. We all need to really work really hard to defeat this bill. This is probably one of the largest challenges to County independence that we've had in decades. And this is really a terrible bill. So, thank you very much.

CHAIR HOKAMA: Thank you for that, Mr. Mayor. We appreciate it. Okay, the Clerk's Office has made us aware that the Clerk is available if you have questions for him. We have been informed that as of today this County has not moved forward and printed any ballots for the General Election as of today. The Clerks has not moved forward on printing ballots. Okay. Anything else on this item, Members? Any requests to the Chair that the Chair may secure prior to another meeting? Okay. Mr. Teruya, any comments as far as what we may not be aware of as far as impacts on real property? What would it take because more than likely the State is going to say that the County has to go perform this additional requirement of theirs so, what is your potential forecast of requirements if we need to implement? You need positions, you need . . . what do you need?

MR. TERUYA: Chairman, first, the most difficult thing is to identify what are investment properties? And then after that is defined then we're going to have to probably modify our system because we're going to have different tax rates for different properties. We need to identify those properties. It's very difficult to understand the dynamics and the amount of personnel without knowing what the problem is, which is to define what properties are going to be affected.

CHAIR HOKAMA: Okay. Thank you for that. One thing though I think all of us can do is also share with our community how much the County currently supports the State and education. Okay. Wells Park – the park behind Wailuku El and the parking lot, that's all County facilities the DOE uses, okay, at no charge, right. Wailuku Gym and the pool, the tennis courts, okay, Iao School uses that that we don't charge. War Memorial Complex, okay, Lanai athletic fields, Lanai Gym, the County supports education in a lot of ways through the current property taxation we ask our people to pay. And another six State Departments whether it's Tropical Ag, Nursing Program, DLNR, DOT, our property tax people of this County has been gracious to allow us to appropriate County funds to seven State Departments already, okay. So, it's not like this County does not assist or put forth our people's real property revenue to support what they have told us was important either for their health care or their educational needs. We have shown through appropriate we have supported this community, and I would hope the State can recognize that we have appropriated County money to support their Departments because of their lack of support from the Legislature. So, my thing is, you know, let's be fair and let's show the record that this County has anted up. We help carry the Nurses Program for how many years at MCC. Tropical Ag, how much money we give for protea, and all those other specialties. Made in Maui for support business development. I mean if they want to talk where we put property tax, I think we can show them how we supported the State by their lack of support to make sure that Maui continues to grow and give our people opportunities. Yes, Mr. White?



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VICE-CHAIR WHITE: Thank you, Chair. You know, I took the \$500 million that they wanted to raise, and I just calculated what Maui's share would be based on the overall valuations of property valuations. Oahu is about 226 billion; Maui is about 48.9. So, of the State total, Maui represents 15 percent of that valuation. So, if you assume that they're going to go after each County in relationship to what their share of the valuation is, which I think is reasonable, that means that Maui will be expected to come up with 75 million out of the 500 million target. So, my recollection is that's about 25 percent. That must be where you got the 25 percent from because that's about 25 percent about what we're generating now. So, that's a significant property tax increase. So, thank you, Chair.

CHAIR HOKAMA: Thank you for that. Any other Member has a request or anything before we defer this item? Yes, Mr. White?

VICE-CHAIR WHITE: Just one last thing. I'm open to suggestions on how to make use, how to make the best use of our funds. I don't know whether HSAC is going to be doing a coordinated campaign.

CHAIR HOKAMA: I'll let Ms. Crivello give maybe a update on the discussions at the State level with all sister counties. Ms. Crivello?

COUNCILMEMBER CRIVELLO: HSAC has made a commitment to educate the public. And we've outsourced a communication - Becker Communication and they are working on what approach they'll be using.

VICE-CHAIR WHITE: I guess the question then is, is HSAC counting on our \$50,000?

COUNCILMEMBER CRIVELLO: That was never mentioned. It's part of our PR or . . . it's part of our communication funds but we may . . . hopefully, the other counties may consider, you know, throwing in some monies too. But at this point, we're just starting off with HSAC.

VICE-CHAIR WHITE: Thank you.

CHAIR HOKAMA: Okay.

VICE-CHAIR WHITE: I'm open to suggestions.

CHAIR HOKAMA: So, just for the Committee's understanding, Mr. White, you have not put out any request for services or there's no parameters at this time --

VICE-CHAIR WHITE: No, not at this time.

CHAIR HOKAMA: --on how we expend the Council's appropriation?

VICE-CHAIR WHITE: Correct.

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CHAIR HOKAMA: Okay. You hear the . . . Mr. White. He's open to your suggestions. My main thing is let's go faster than later.

COUNCILMEMBER KING: Chair?

CHAIR HOKAMA: The sooner we can provide information. Yes, Ms. King?

COUNCILMEMBER KING: Just a question on that. If we are looking at putting out an RFP, if we're under the same parameters as other RFPs, I mean, we only really have less than two months left to make a difference with this fund because . . . and probably less than two months because the . . . I believe the mail-out ballots go out in 9<sup>th</sup> and 10<sup>th</sup> so mid-October, you know, we learned that over half the people are voting with the mail-out ballots.

CHAIR HOKAMA: Uh-huh.

COUNCILMEMBER KING: So, we really need to do something quickly if we're going to have an effect.

CHAIR HOKAMA: Understood, yeah, yeah. We're burning sunshine. You're right. So, okay, any recommendations, please, quickly to Mr. White so we can get the monies utilized in an educational informative way. We have the Clerk here. So, Mr. Clerk, why don't you come down real quickly. Thanks for joining us, Josiah. Yeah, thank you, Mr. Mayor. Okay, Mr. Nishita is from, of course, our . . . from our Clerks Office. Any comments you'd like to share as regards to your office's efforts in regarding this question?

MR. NISHITA: No, just really if the Members have any questions. I heard some things raised earlier about the printing of the ballots. There was a comment mentioned that sounded like that the ballots had already been printed, and they have not been as of this point. The first ballots to be printed, I believe, are going to be next week so just to clarify that.

CHAIR HOKAMA: Thank you for that. And you may have heard Mr. Ueoka respond to the Committee's query to understand what blank votes mean. Were you able to hear his response?

MR. NISHITA: Yes, Mr. Chair, . . .

CHAIR HOKAMA: Any comments?

MR. NISHITA: Yeah. Deputy Ueoka gave a good summary of what that meant, maybe not in layman's terms, but definitely clearly what the law says. But essentially casting a or leaving it blank gets counted the same as if you were voting against the measure. And Deputy Ueoka summarized that in the second test in that a blank vote is tallied as part of the "no" votes and over votes in determining whether a "yes" vote received the majority of the votes. So, in layman's terms a blank vote would fall into the same category as essentially voting against the measure.

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CHAIR HOKAMA: Okay. Thank you for that. Members, we have the Clerk here, any questions you'd like to pose to the Clerk at this time regarding the responsibility within his office either with the ballots or the blank votes? Ms. King?

COUNCILMEMBER KING: Yeah, so is it the same for our--excuse me--for the Constitutional amendment as it is for our Charter amendment votes? So, you look at the total number of votes cast and then "yes" has to be the majority of that?

CHAIR HOKAMA: Mr. Clerk?

MR. NISHITA: Thank you, Mr. Chair. Yeah, that's one point that tends to kind of confuse some people and we are trying to prepare some information to further educate voters. But there is a difference in the way it's determined whether a Constitutional amendment passes or versus whether a Charter amendment passes. So, for a Charter amendment and there's a Corporation Counsel opinion on this, I believe it's 2012-12 and it also references HRS Section 50. But essentially for Charter amendments more "yes" votes have to be received than "no" votes. And blank votes and over votes aren't included as a part of that.

COUNCILMEMBER KING: Are not?

MR. NISHITA: Are not included as a part of that calculation. So, basically, if there's one more "yes" vote than "no" votes, then the Charter amendment passes, whereas the Constitutional amendment questions the blank and over votes are included, lumped in together with the "no" votes to determine whether enough "yes" votes have prevailed.

COUNCILMEMBER KING: Okay. I think that's going to be very important to let the public know since we do have a number of Charter amendments on the ballot as well. They're gonna . . . *(inaudible)* . . .

CHAIR HOKAMA: This part of it is to clear up as much of the confusion that . . . because we are different levels of governance we are approaching it differently. So, something for the appropriate committee to consider whether we should standardize how we look at certain votes.

COUNCILMEMBER KING: Is . . . Chair, if can I follow up? Is that going to be printed on the ballot, the information of the difference between the State Constitutional amendment and the County Charter amendment on how they're . . . *(inaudible)* . . .

CHAIR HOKAMA: Mr. Clerk?

MR. NISHITA: Thank you, Mr. Chair. If you're asking is it going to be printed in terms of how the amendment is determined whether to be passed or not, then the answer is no. On election night, the Chief Election Officer does give a variety of either press releases or interviews via the media and we also released some information to like *Akaku* and *Maui News* and whatnot about this. But, no, there's nothing printed on the ballot that says . . .

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COUNCILMEMBER KING: 'Cause you know it's too late by election night, most people have voted. So, we need to make sure that folks understand the difference in how their blank votes are counted.

CHAIR HOKAMA: I think we are one group that is making the effort to make it clear 'cause you notice there's nothing coming out of the State to clarify anything regarding this question. Nothing. And so, they may want the confusion, who knows. They don't surprise me anymore.

COUNCILMEMBER KING: Okay. That would be one thing to use this money for – this 50,000.

CHAIR HOKAMA: Yes, no, I agree.

COUNCILMEMBER KING: Okay. Thank you, Chair.

CHAIR HOKAMA: Okay. Anything else in this? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. So, if I could ask the Clerk then if the ballots have not been printed for Maui County and this lawsuit is happening, is there a time period that something needs to happen so that it doesn't get printed? Or you think the lawsuit would be too long and you need to just proceed, or do you have any kind of discussions going on from Elections?

CHAIR HOKAMA: Answer what you can, Mr. Clerk?

MR. NISHITA: Thank you, Mr. Chair. Yeah, I'm not aware of all the details of the litigation. I'm assuming that there's something related to the litigation in terms of like an injunction or restraining order on that, so I can't really speak to that. The court is aware of any time restraints or constraints that our office is faced, and so they do try to make decisions in a timely and prompt manner to accommodate those, you know, deadlines that we have. I think that's about as much as I can say.

CHAIR HOKAMA: No, that's fine.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR HOKAMA: Okay, thank you. Anyone else has anything for resource at this time? If not, the Chair will, with no objections, defer Item BF-159.

COUNCILMEMBERS: No objections.

CHAIR HOKAMA: Okay. So ordered. We'll defer it.

**ACTION: DEFER pending further discussion.**

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**ITEM 83:           MAKENA LIFEGUARD SERVICES (CC 17-349 and CC 17-350)**

CHAIR HOKAMA: I apologize to the Department of Fire and Public Safety regarding BF-83. I'm going to defer this item, Members, and let you know and the Department it's going to be on the very next agenda. So, we'll give it priority for the next meeting, Chief. So, I apologize for that.

**ACTION:       DEFER, NO DISCUSSION.**

**ITEM 110:       FUNDING, IMPLEMENTATION, AND STATUS OF PROGRAMS**  
**UNDER THE RISK MANAGEMENT DIVISION (CC 17-445)**

CHAIR HOKAMA: Also, Members, BF-110, I wanted . . . we will have a discussion regarding Risk Management and some of the programs that is under the direction of Mr. Wong, but we're going to defer this and bring this up on the next meeting.

**ACTION:       DEFER, NO DISCUSSION.**

CHAIR HOKAMA: Okay, Members, so with no objections, we're deferring 83 and 110.

COUNCILMEMBERS: No objections.

CHAIR HOKAMA: So ordered and, therefore, with no further business before this Committee, we are adjourned. . . . *(gavel)* . . .

**ADJOURN:   11:56 a.m.**

APPROVED:



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RIKI HOKAMA, Chair  
Budget and Finance Committee

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Transcribed by: Jo-Ann Sato

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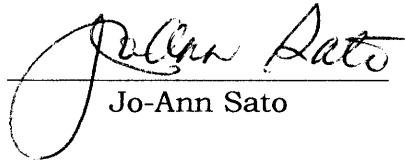
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CERTIFICATE

I, Jo-Ann Sato, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 22<sup>nd</sup> day of September, 2018, in Pukalani, Hawaii

  
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Jo-Ann Sato