

# GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

## MINUTES

Council Chamber

May 23, 2019

**RECONVENE:** 10:02 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair  
Councilmember Riki Hokama  
Councilmember Tasha Kama  
Councilmember Kelly T. King (excused from 10:09 a.m. to 10:11 a.m.)  
Councilmember Tamara Paltin  
Councilmember Shane M. Sinenci  
Councilmember Yuki Lei K. Sugimura

**EXCUSED:** Councilmember Alice L. Lee

**STAFF:** David Raatz, Supervising Legislative Attorney  
Shelly Espeleta, Legislative Analyst  
John Rapacz, Legislative Attorney  
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci  
Gina Flammer, Executive Assistant to Councilmember Sinenci  
Kate Griffiths, Executive Assistant to Councilmember King

**ADMIN.:** Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department  
of the Corporation Counsel  
Richelle Thomson, Deputy Corporation Counsel, Department of  
the Corporation Counsel  
Eric Nakagawa, Director of Environmental Management  
Sananda Baz, Managing Director, Department of Management  
Brian Bilberry, Deputy Corporation Counsel, Department of the  
Corporation Counsel

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**GET-26      HAWAII WILDLIFE FUND, ET AL. V. COUNTY OF MAUI, CIVIL 12-00198**  
**SOM BMK, U.S. SUPREME COURT DOCKET 18-260 (CC 19-178)**

CHAIR MOLINA: . . . (*gavel*) . . . The Governance, Ethics, and Transparency Committee meeting, recessed meeting of May 20, 2019 is now back in session. It's two minutes after the hour of ten o'clock. Today is Thursday, May 23, 2019. Members, of course we are on GET item 26 which is the Hawaii Wildlife Fund, Et Al. V. County of Maui case, Civil number 12-00198 SOM BMK, U.S. Supreme Court Docket 18-260. On

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

Monday, Members, just recapping, we received public testimony which has now been closed, and then we also received informational briefings from both the plaintiffs and the Administration. Today, the Chair's intent is to consider executive session by this body to further go into detail with regards to the proposed settlement. Before we, the Chair asks for a motion for executive session, I would like to ask the Administration to provide comments on the proposal at this time. Ms. Thomson?

MS. THOMSON: Thank you, Chair. I wanted to just provide a little bit of clarity. There are two new resolutions that we submitted to the body this morning. One of them is simply a replacement of the resolution that relates to the plaintiff's two proposed settlement documents. And I removed...there was some language in there that a couple of Members had some issues with regarding Corp. Counsel's authority over terms and conditions, that's a standard clause that we include in I believe all of our settlement resos, but at any rate, I removed it so that there was no issue with that language. The other resolution involves a proposal that the Mayor's Office is going to present in executive session. Thank you.

CHAIR MOLINA: Thank you, Ms. Thomson. Committee Members, any questions for Corporation Counsel? Okay. Seeing none then, all right. Very good, Members. So, at this point, the Chair will entertain going into executive session. I'll ask for a motion to go into executive session based on Section 92-5(a)(4) of the Hawaii Revised Statutes to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. Chair will ask for a motion for executive session.

COUNCILMEMBER SUGIMURA: So moved, Chair.

CHAIR MOLINA: Moved by Member Sugimura.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Is there a second? Alright, second by Member Kama. Before the Chair calls for a vote, we do need six votes to go into executive session. And prior to that, Members, I should also recognize Staff who's here this morning, Staff Analyst Shelly Espeleta, Committee Secretary Pauline Martins, and also Council Services Director Mr. David Raatz. And of course from Corporation Counsel you heard Ms. Thomson, and we have the Director, newly confirmed Director of the Environmental Management Department, Mr. Nakagawa. And Members that are present here, myself, Councilmember Sinenci, Councilmember King, Councilmember Rawlins-Fernandez, Committee Vice-Chair, and also Councilmember Hokama, Councilmember Paltin, Councilmember Sugimura, and Councilmember Kama. Excused today is Member Lee. So, with that being said any discussion on the motion to go into executive session? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair, and aloha kakahiaka.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: Good morning. Aloha.

VICE-CHAIR RAWLINS-FERNANDEZ: I just wanted clarification on the reason that we're going into executive session.

CHAIR MOLINA: Yes. Alright, I'll just state my reasons from my point of view. There may be some sensitive matters that need to be discussed in executive session so I guess that would be the prudent thing to do. Would you like to get further comment from Corporation Counsel?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes, please.

CHAIR MOLINA: Okay, Ms. Thomson?

MS. THOMSON: Thank you, Chair. So, the primary purpose for this executive session would be to discuss the settlement proposals that are before you, both the two proposals from the plaintiff's groups and then also the proposal from the Mayor's Office today.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Quick question, Chair.

CHAIR MOLINA: Proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Thomson, and good morning. So, the settlements that we discussed on Monday we discussed in open session so really the reason that we'd be going into open [sic] session is to discuss the Mayor's proposal?

CHAIR MOLINA: Proceed, Ms. Thomson.

MS. THOMSON: Thank you. There are issues that would best be discussed in executive session as they relate to the potential liabilities that may not have been covered fully in open session. I realize that both sides shared a significant amount of information so but there are some issues that we'd prefer to discuss with you in executive session.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Thomson. Mahalo, Chair, for that clarification.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. And, Members, for executive session again we need six approvals, two-thirds vote to go into executive session. Chairman King?

COUNCILMEMBER KING: Yeah, I just wanted to get clarification from you on the intent to, of separating out what's not necessary for executive session and what could be discussed in open session?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: You know right now, it's sort of fluid right now what is appropriate, what isn't, but we will look at all options at least from the County's standpoint. Because we are in litigation and for obvious reasons it is the Chair's opinion we need to go into executive session. Because there is...there may be some legal strategies and other matters related to this. So again, it is our responsibility, our charge as elected officials of the County of Maui to hear all points, some which may be deemed sensitive by Corporation Counsel. So again, I will hear...as Ms. Thomson had stated the settlement proposal from the plaintiffs as well as something that is coming from the Corporation Counsel as it relates to a settlement.

COUNCILMEMBER KING: Okay, thank you for that. And then are we...just so we can anticipate, are we also going to have...come back into open session and continue?

CHAIR MOLINA: By all means, and I will --

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: --give you that option to ask questions in open session. It is the Chair's hope we can have a Committee decision made today however long it takes. So, Members, be prepared for a long ride today. We will...Chair intends to break for lunch around maybe 12:30, one o'clock. We may be...have a need to come back into executive session after lunch, so just giving you a look ahead. So, be prepared to go into the afternoon. I'm hoping not into the evening but I am prepared to go into the afternoon, late afternoon if possible. Member Sugimura, you had a question?

COUNCILMEMBER SUGIMURA: No.

CHAIR MOLINA: Okay, thank you.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR MOLINA: Thank you. Member Paltin, followed by Member Rawlins-Fernandez.

COUNCILMEMBER PALTIN: Just double checking, the voting is in open session right?

CHAIR MOLINA: Yes, definitely, by all means, yes. Any votes on this matter will take place in open session. Alright.

COUNCILMEMBER PALTIN: Thanks.

CHAIR MOLINA: Thank you for that reminder. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I just wanted to confirm that anything that can be discussed in open session must be discussed in open session and so we'll all be very mindful of that, yeah?



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: So, Members, and also members in the, of the public --

COUNCILMEMBER PALTIN: Chair?

CHAIR MOLINA: --in the gallery, we will have to prepare --

COUNCILMEMBER PALTIN: Chair?

CHAIR MOLINA: --the Chambers for executive session. Yes?

COUNCILMEMBER PALTIN: You had one more missing.

CHAIR MOLINA: Oh, I'm sorry. I thought...where did Chairman King go? Okay. Well, we'll mark it seven "ayes." So if no objections, we'll restate for the record, it is seven "ayes" for executive session, and two excusals, Member Lee and Chairman King. Okay. Alright, we will, again, Members, Staff will prepare the Chambers for executive session, which means members of the gallery, you have to clear the room, and then we will have members of the Administration to participate with this particular matter. So, we will recess this meeting to prepare the Chambers for executive session. Meeting in recess. . . . *(gavel)* . . .

**RECESS: 10:11 a.m.**

**RECONVENE: 4:17 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of May 20, 2019 is now back in open session. Today is Thursday, May 23<sup>rd</sup>, 4:17 p.m. Members, we have just completed executive session, and what was included in the executive session was a discussion on the proposed settlement, the May 10<sup>th</sup> resolution as well as a proposal from the Administration. At this point before any recommendations are made by the Chair, are there any questions for Corporation Counsel or the Department in open session? I believe, Member Rawlins-Fernandez, you have a couple of questions in open session? Chair recognizes you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, I had a number of questions for open session that I was saving for when we got back to open session so mahalo for this opportunity to ask them in open session. Ms. Thomson, one of the big fears that consistently come up is about what the Ninth Circuit decision means to other groundwater discharges and that in Monday's meeting you mentioned that Department of Health would, you know, enforce. What is the likelihood of Department of Health enforcing and fining our homeowners with cesspools?

CHAIR MOLINA: Ms. Thomson?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

MS. THOMSON: Thank you, Chair. And I was trying to find a, it's a one-page handout that was passed out today and it's two pictures. On the top...thanks. It's this picture here. So, on the top it's a picture of a small resort condominium complex in Massachusetts, and the bottom picture is a picture of the, some of condominiums at Maalaea. And on the back are some excerpts from amicus briefs, and one of them describes a case that is citing to the Ninth Circuit's decision and that's in...it's called Wychmere Shores Condominium Trust. And the entire amicus brief is in Granicus and like I said just the, just this excerpt is printed on the back of that, this document, and it says the controlling version of the Ninth Circuit's test will implicate parties like Wychmere Condominium/Resort and millions of residential septic system owners, and thus will have pervasive adverse effects. So, this is provided in order to let the body know that the Ninth Circuit's decision is currently being used to bring other...to support other complaints on the same type of groundwater that's hydrologically connected to a water of the US.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for the information, it didn't answer my question though. What is the likelihood of Department of Health actually enforcing against our 12,000 cesspools?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Thank you. So, the State Department of Health could bring an enforcement action based upon the Ninth Circuit's test. Citizen groups similar to the ones that sued Maui County could also. As far as the likelihood I cannot predict those percentages.

VICE-CHAIR RAWLINS-FERNANDEZ: 'Cause I met with the head Corporation Counsel yesterday, and she said that as our legal advisors, Corporation Counsel should give us a fair estimation or percentage or possibility, probability of that enforcement happening. I asked Ms. Lutey to be on the floor today, unfortunately she's sick and is not at work. But one of the things that she said she would have said if she were here is that it would be highly unlikely.

CHAIR MOLINA: Ms. Thomson, you care to respond?

MS. THOMSON: Since I wasn't in that conversation, I do not know what was said, but I think that may be a question that you could address to the Department of Health. I didn't...you know in terms of just the likelihood of being sued. I know that earlier this week you brought up, you know, that anyone can sue at any time for any reason so, you know.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. But just factoring in all the realities of how much enforcement we have with Department of Health, the fact that they haven't enforced before, the fact that each cesspool would have to be traced to the ocean, like just it's not going to happen. And that for that fear tactic to be continued to be

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

reiterated is not doing us justice, because it is used, it is being used to scare our residents and that's...it's not going to happen. And so, I would like for, you know, Corporation Counsel as our attorneys to stop doing that and to be more impartial.

CHAIR MOLINA: Okay. Mr. Director, you have a comment or a response to Member Rawlin's inquiry?

MR. NAKAGAWA: Yes, Chair. Thank you. Once again, I am part of the Cesspool Working Group, and in my...I mean are you looking for an opinion? I mean in my opinion they...it's highly likely, because they are already trying to close cesspools by 2050. If this becomes law, that only gives them a reason to all of a sudden implement that immediately.

VICE-CHAIR RAWLINS-FERNANDEZ: And...Chair, a follow up?

CHAIR MOLINA: Proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: And how would it be implemented immediately?

CHAIR MOLINA: Mister...

VICE-CHAIR RAWLINS-FERNANDEZ: You know government doesn't work that fast.

CHAIR MOLINA: Okay, Mr. Nakagawa, if you can give us a non-legal opinion on it, at least just as a perspective of an engineer and your role as the Director?

MR. NAKAGAWA: Alright, thanks, Chair. In my dealings with the Department of Health, in my experience as well as we are a regulating body for grease traps and cesspool...I mean grease traps, is that I don't know exactly how they're going to do it but this is the way we normally do it. And it's that once it becomes law, we are just...have to implement that. And so, what's going to happen is they know the 12,000 who has cesspools, they will issue a letter stating this is the new law and you shall comply by this. Whether that's a permit, whether that's upgrading it, or whatever it is, if you choose not to by that certain timeframe, that's when they implement the fees, penalties, et cetera, and that's just the normal regulatory process that they take. That's kind of what we do. I'm not sure, I guess Miss...you know people who live Upcountry who were already notified, Member Sugimura maybe can enlighten us more, but that is the process in which our understanding is. And so, once it becomes law and you choose not to follow, it becomes negligence. And what our experience with the Department of Health, HIOSH, OSHA, whoever it is, once you know and you become negligent, they throw the full penalties at you. When you try to comply and do that and work with them, the penalties are less and you...but you still need to comply with that law.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

VICE-CHAIR RAWLINS-FERNANDEZ: So, the question is for Corp. Counsel. Wouldn't they need, wouldn't Department of Health need to first develop administrative rules on how they would enforce this?

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: The Ninth Circuit test if it becomes law, that becomes law and would rule...would govern over administrative rules or agency guidance. For example, the EPA issued that statement in April, regarding their current opinion on groundwater connection, and if the Ninth Circuit decision stands, that would overrule that EPA guidance document. So, the Ninth Circuit decision will become the law in the Ninth Circuit, throughout the Ninth Circuit regardless of whether administrative rules are in place or not in place.

VICE-CHAIR RAWLINS-FERNANDEZ: So, even if a homeowner was fined, they would still need to...they would be required to follow the new traceability requirement to trace one individual cesspool to the ocean?

CHAIR MOLINA: Mr. Kushi, you'd like to respond to Member Rawlin's questions?

MR. KUSHI: Mr. Chair, to clarify Member Rawlin's statement. You know we haven't spoken to Moana about your conversation yesterday. I'm not sure why or why she said that, if she did say it, but I can kind of say this also...

VICE-CHAIR RAWLINS-FERNANDEZ: It wasn't something that Moana said to me, Mr. Kushi, it's in the ruling under the traceability test in the Ninth Circuit.

MR. KUSHI: I didn't hear your question but if I may finish, Mr. Chair? The likelihood of Department of Health enforcing the Ninth Circuit opinion if it still stands may not happen in our lifetime, but again, if the Ninth's opinion's...Ninth Circuit opinion stands, it's the law of the land. And again, even if the Department of Health has not instituted a program for cesspools or septic tanks, you know as well as I do regulations are complaint driven. So, you know, anybody can file a complaint against anybody saying you're breaking the law by having the cesspools. What and when the Department of Health will do is up to them. I would imagine if the Ninth Circuit opinion stands, their hands will be full dealing with injection wells first. So, I'll respond in that way.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Kushi, I really appreciate your response. It helps to clarify the presentation that was given by Mr. Nakagawa on Monday that the penalties wouldn't come immediately, because that misinformation is being spread. So, I appreciate that clarification that those types of penalties would probably not happen in our lifetime.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

MS. THOMSON: Thank you. So, a couple of things just to clarify, the Ninth Circuit's test is if pollutants are fairly traceable from a point source which could be an injection well or a cesspool or a septic tank or a impoundment that's not lined. If those pollutants migrate through groundwater and emerge in a water body of the US, in our case the ocean, then we would be in violation of the Ninth Circuit's test. The maximum penalties we've told you. We're not trying to spread fear, that's just Federal law. So, whether or not you would be exposed to the complete, I don't know, it would depend on the circumstance.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Thomson. If other Members have question...I have more questions but if other Members have questions I'll yield the floor.

CHAIR MOLINA: Okay, thank you. Members, before we address more questions for the Administration, we will likely lose two Members at 5:00. Chair is hopeful of a decision making today. So, anyway, if you could again be straight to the point with your questions and consider the five o'clock time of the other Members who may not be here to vote. Chairman King?

COUNCILMEMBER KING: Oh, I didn't...Chair, I didn't have any questions.

CHAIR MOLINA: Oh, I'm sorry.

COUNCILMEMBER KING: If you want me to make a motion, I will.

CHAIR MOLINA: Okay, let me just ask one final time. Any other Members have questions for Administration or Corporation Counsel? If not, I will go back to Ms. Rawlins-Fernandez to complete her line of questions.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Seeing none, proceed, Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I'll try to make it quick. What exactly is the concern about getting an NPDES permit and compliance, and what we would have to do to comply?

CHAIR MOLINA: Ms. Thomson or Mr. Nakagawa? Mr. Nakagawa?

MR. NAKAGAWA: I think I, in my presentation I pretty much covered what the complexity is. The complexity is once again the whole...my understanding of the NPDES permit process, it's a vehicle in which you regulate pollutants to...that go to navigable waters, and in our case it's the ocean. So, once again in our...in my presentation I showed those typical examples on what they are, outfalls and the pipes directly to the ocean. The reason because you know 100 percent what's coming out is from that source,

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

facility, whatever is generated from that point source. So, the complexity is in the injection well once again is that in the Ninth Circuit Court--and Ms. Thomson can clarify if I'm wrong--is that the discharge mixes with groundwater and the groundwater is the conduit to the ocean. However, the complexity is, is that there are many other contributing factors to the groundwater from mauka all the way to makai. So, the complexity is how do you determine what those limits are when you have all of these contributing factors. So, that is the complexity of what the permit, and that's why they say that the NPDES permit is one vehicle for a certain type of pollutant regulation and the UIC permit is a vehicle for another such as the injection wells.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for your response. This is the last question. So, it's my understanding that EPA has implemented this kind of protection against discharges through groundwater in permits across the country and consistently restated in its agency guidance and rulemakings across the years and across political parties. So, it's not like it hasn't been done before.

CHAIR MOLINA: Ms. Thomson?

MS. THOMSON: Is the question whether EPA has changed its stance on groundwater discharges over the decades?

VICE-CHAIR RAWLINS-FERNANDEZ: No, my question is I don't understand the complexities and the hurdles that are being described when these types of things have been done in other places.

MS. THOMSON: To our knowledge the EPA has not issued NPDES permits for UIC wells. In the State of Hawaii, we are not aware of any UIC wells that also have NPDES permits.

VICE-CHAIR RAWLINS-FERNANDEZ: Not in Hawaii but in other places, so we could look to those as models.

MS. THOMSON: I'm not aware across the United States. There are about half a million classified injection wells, and we're not aware that those wells are being permitted under the NPDES program.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, so I guess it's a difference of other people's opinions. Okay. Those are pretty much all my questions, Chair.

CHAIR MOLINA: Thank you very much, Ms. Rawlins-Fernandez. Seeing no other questions for Administration, Chair would like to start off by thanking everyone involved with informing this Committee about the complexities of this very highly...high profile and important case that's being watched nationally, as well as the plaintiffs that joined us for a Committee meeting on Monday. I think that was somewhat maybe unprecedented unless Mr. Hokama who has the most history, I don't recall any litigation proposal or litigation settlement where the plaintiffs were invited to share

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

their thoughts in a Committee meeting. But it was the Chair's feeling that it's important to be as transparent with this proposed case as much as possible and to get all of us up to speed on what we're facing with whatever decision we make. And being that it is a somewhat complex matter and this, I guess the charge for having this meeting at this time from when this consideration was given to us by the Chair back in I guess early May, this month, the Chair will...the Chair of this Committee, myself, will recognize Ms. King for consideration.

COUNCILMEMBER KING: Thank you, Chair. And again, thank you for getting this on your agenda as a special meeting. I honestly had no idea it was going to take this long, this meeting, but you knew. So, I would like to make a motion to...that we approve the resolution dated, in Granicus it's dated, correspondence from Corporate [sic] Counsel dated 5/23/2019, attached to the revised settlement offer, confidential settlement communication FRE 408 in the case of Hawaii Wildlife Fund, Et Al. V. County of Maui, number 18-260 (US. S. Ct.)--I believe--in paren.

CHAIR MOLINA: Madam Chair, if you'll allow me. What's agendized is the May 10<sup>th</sup> resolution and we received that May 23<sup>rd</sup> reso with the adjustments made by Corporation Counsel.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Would you consider maybe withdrawing the motion for the May 23<sup>rd</sup> and maybe the proposed the May 10<sup>th</sup> --

COUNCILMEMBER KING: Just move the --

CHAIR MOLINA: --and we could look at --

COUNCILMEMBER KING: --the agenda. Okay.

CHAIR MOLINA: --a potential amendment to that resolution.

COUNCILMEMBER KING: Okay, we can do that. Yeah, I --

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: --will make the proposal based on the agendized item so that we approve the resolution on the agenda attached to the revised settlement.

CHAIR MOLINA: Okay. Is there a second?

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: Okay, thank you. So, Members, again we're looking at the May 10<sup>th</sup> resolution on your agenda, authorizing settlement in the Hawaii Wildlife Fund, Et Al. V. County of Maui. Member...Chairman King, the floor is now open for amendment considerations.

COUNCILMEMBER KING: Okay. Chair, I have two amendments but I . . . *(inaudible)*. . . take them one at a time. The first amendment would be to, let's see, approve instead the resolution dated 5/23 that was provided to the Committee today, which was a replacement resolution to the Corp. Counsel's earlier resolution. Is that clear enough or do I need to...

CHAIR MOLINA: Yeah. Okay, is there a second for that amendment proposal from --

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: --Chairman King? Okay, Chairman King, if you'll allow me, can we have Corporation Counsel elaborate on what was changed in the May 23<sup>rd</sup> reso?

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Ms. Thomson? Just so the public has a full idea of what was changed by Corporation Counsel.

MS. THOMSON: Sure, thank you, Chair. There was some concern from a couple of Members of the body and some testifiers regarding standard language that we use in our settlement resos that subject to the terms of the settlement agreement approved by the body, the Corporation Counsel is allowed to...it's basically the housekeeping measures, releases of liability and things like that. The way that it's phrased is in such terms and conditions as may be imposed by the Corporation Counsel. So, that language was removed so that there was no discomfort. Thank you.

CHAIR MOLINA: So, Ms. Thomson, these were all language that was removed, nothing was added, right?

MS. THOMSON: Nothing was added.

CHAIR MOLINA: Okay. Can you just reference the...state exactly...read what was taken out? Members, you have a copy in front of you too, but I would just like it read into the record what was taken out.

MS. THOMSON: Thank you, Chair. I have the...I have today's but it's already missing that language. I just need to look for it.

MR. RAATZ: Chair, Staff has the language that was --

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: Okay. Can we have Staff..

MR. RAATZ: --deleted. It was in the second and third be it resolved paragraphs, there was a closing phrase, under such terms and conditions as may be imposed and agreed to by the Corporation Counsel. In the May 23<sup>rd</sup> resolution that has been deleted.

CHAIR MOLINA: Also, the third clause as well, there was also some language deleted.

MR. RAATZ: In the second and third be it resolved --

CHAIR MOLINA: Yeah.

MR. RAATZ: --paragraphs.

CHAIR MOLINA: Okay.

MR. RAATZ: That's correct, Mr. Chair.

CHAIR MOLINA: Alright, and was there another one? I think on the second page, whereas in accordance with Section 3.16.020. Corporation Counsel, can you elaborate on that too? I believe that was...is that being added or taken out?

COUNCILMEMBER KING: I believe that was a paragraph that was added, Chair.

CHAIR MOLINA: Added, okay.

MR. RAATZ: Yeah, the eighth paragraph I believe in the whereas clauses there was a citation to a County Code provision.

CHAIR MOLINA: Which states...

MR. RAATZ: It was added.

CHAIR MOLINA: Yeah, which states, the Department of Corporation Counsel may transmit to Council settlement offers involving claims not specified by the Council pursuant to Section 3.16.020[D], Maui County Code, and. Am I correct?

MS. THOMSON: Thank you, Chair. Yes, that's correct.

CHAIR MOLINA: Okay. Alright, so there you have it, those are the amendments proposed. Member King, would you like to speak to the --

COUNCILMEMBER KING: Thank you.

CHAIR MOLINA: --proposed amendments?



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

group...the community groups further commit that they will not bring Clean Water Act litigation against any end users of recycled water from the LWRF, as long as those...and this is where it changes, as long as those consumers, irrigation methods follow State DOH guidelines, so as not to cause pollution of the waters of the United States.

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Motion was made by Member King, and second by Vice-Chair Rawlins-Fernandez to amend the resolution as stated. Discussion, Member King?

COUNCILMEMBER KING: Yes, Chair. So, it was brought up earlier by Member Paltin that using...or actually I don't know if it was Member Paltin but it was brought up earlier that using the word "irresponsibly" could put the plaintiffs in the position of overseeing that, the use of reuse water. And that...and, you know, the intention was to make sure that it...the responsible use, but that's a very arbitrary word and so Member Paltin asked the question are there guidelines that we use? And I believe our Director Nakagawa said yes, there are State guidelines that we use and they're DOH guidelines. So, putting those guideline...the reference to the guidelines in there clarifies what responsible use is, and it doesn't have to be...we don't have to go back to the plaintiffs to have them define that word. So, that was the intent of that changed language.

CHAIR MOLINA: Okay, thank you, Chairman King. Members, any other discussion related to the amendment? Corporation Counsel?

MS. THOMSON: Just a quick question, is...are you referring to paragraph number six? I thought you might have said paragraph number five.

COUNCILMEMBER KING: Five.

MS. THOMSON: Of the May 9<sup>th</sup> version of the settlement agreement or the...

COUNCILMEMBER KING: I'm looking at the revised one, so we're on...it's the April 26, 2019 is the date of the revised settlement.

MS. THOMSON: And then it was...well, that was the April 26, 2019 was the first one and then it was revised on May 9, 2019, and then the paragraph that you read is currently now paragraph number six.

COUNCILMEMBER KING: Oh, okay. Thank you. I'm sorry about that. I...you're correct. I have a hard copy of it that OCS had given me earlier. So, thank you for correcting that.

CHAIR MOLINA: I guess the numerical change would be noted for the record.



# GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

May 23, 2019

---

hardens/strengthens/sounds out into land. Explanation, in their travels around the Pacific, the Hawaiians would pass by many coral heads which navigators would mark in their memories and pass on to their apprentices. Eventually they would notice these small coral heads would grow into full islands and so comes the advice that we can't expect to be full-blown successes right away, often we start small and over time, like a coral head, we will mature and be successful. In this olelo, there is so much that is being revealed. Let's just do the easy one. Currently, there are coral heads, possibly no more with the continuance of leavings the way it is, the way it has been. Only thing, if we leave things the way it is, it will also allow others, especially dangerous oil and gas operations, to pollute groundwaters that reach the ocean, without a permit. Is this the legacy we want for Maui County? Based on testimony and research, we are aware that treated wastewater injected in the wells in Lahaina is reaching the ocean. In the physical, we know it clearly by noticing with our eyes as we swim and dive, our physical body reaction(s), the decline and change in the ocean habitat. How can we allow this? The decision to settle the case is a big one [sic], and I appreciate your thoughtful questions throughout this process. The Clean Water Act requires an NPDES permit for discharges into the ocean. We simply need to get a permit to allow for our continued discharges. The NPDES permit will outline standards that are applicable to ocean water conditions. The UIC permit was designed for injection into groundwater only, not the ocean. As our injections go into [sic] to the ocean, we need to align ourselves with the proper permit to protect the environment. This does not mean we must stop injecting wastewater. We can continue to use the injection wells while we make others plan to increase recycled water reuse on land, which is the best disposal method for the environment. Other counties have NPDES permits for their sewage discharges into the ocean, because the Clean Water Act requires the NPDES permit for any conveyance of a pollutant into the ocean. The court case and science proves the groundwater is carrying the wastewater to the ocean, so we must obtain an NPDES permit as other counties have done. Please help us settle this case so that our unwillingness to obtain a simple permit does not limit the Clean Water Act's intended protections for the ocean. The act was passed for the purpose of securing the future health and economic viability of the nation's waters. Please help the waters of our nation by voting to settle. So, that pretty much encompasses everything. You know I was going to go into some of the egregious things that are happening under the Trump EPA, the resource extraction, the drilling, the polluting, the fracking, and those kind of things. And all these things are going to be affected by this decision. And so, I think we need to look at what we can do here to fix our problems at home, and we also have to look at what our...how our decisions are affecting the environment across the country. And I will stop there and leave it for the next speaker. Thank you.

CHAIR MOLINA: Thank you, Chairman. Members, the floor is open to the motion as amended by Chairman King. Any comments? Okay. Member Rawlins-Fernandez? If the body feels that we can take the vote, but I see Member Rawlins-Fernandez has something to say.

# GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

May 23, 2019

---

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, I'll make it quick.

CHAIR MOLINA: Proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: 'Cause I'm one of the ones that have to leave at 5:00. So, I'll try to make it as succinct as possible. So, we...a news release was issued today and I believe that it came out already, you know, countering the headline in the one of the newspapers about the fear of the settling would spur more suits. And in response to that and its response to the County doing the right thing, the suit...the Kihei injection well case, the client is offering to settle. And I'll read this for everyone. After over ten years of litigation, the Pukoa O Kama Alliance has agreed to settle its case in exchange for the County's commitment to continue reducing its reliance on injection wells in South Maui. Pukoa O Kama has been monitoring the Lahaina injection well case. We support our island community in moving our County away from the use of injection wells entirely. The County should end the costly and seemingly endless litigation in the Lahaina case and move forward with solutions for our island and our future. We hope the parties in the case can come together in resolution and begin the work of implementing solutions. It is our hope and belief that settling our case will show that resolving lawsuits in good faith will not lead to more litigation. So, I really appreciate the clients, you know, in the Kihei injection well sending that press release out this morning, because it goes to show that these lawsuits are not about money, no one's, you know, trying to get rich off of, you know, suing the County for this. This is...it's...the motivation and the reason behind these cases is to encourage the County to do right by our environment and our planet. You know as I said earlier, I'm not just a child of Molokai, Maui County, Hawaii, I'm a child of this earth and we don't operate in a bubble. Our decision to move forward to the Supreme Court will have serious consequences in a lot of other parts of the world. And that includes fracking fluid, and these things are far worse than, you know, treated sewage, you know, like oil rupturing underground going into the rivers, the like fracking fluid also going into rivers and lakes. Liquid manure from pig factory farms on the East Coast, all that pink ammonia sludge it...I don't want Maui County to be associated with giving those polluters a pass. And I know if we go to the Supreme Court, we're...the County...the Supreme Court will rule in favor of the County, because it's Trump's court right now and that's the reality of it. And so, we cannot make a decision in a vacuum. You know we, like I said we're all children of this planet and we have to consider the consequences of this decision and what will result with even more serious pollution around the world. And three more points, you know, I want to make clear to our residents that we did consider this and I know that enforcement against homeowners with cesspools and septic tanks is not going to happen. And so, I'm not worried about that. Our residents are not...it's too hard of a test. The traceability standard is too hard, it's not going to happen. The NPDES permit for the County to get, there's so many experts and scientists including the plaintiffs in this case that are willing to work with the County and the Department of Health to figure this out. So, for those reasons I'll be voting in favor of the motion. Mahalo, Chair.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

CHAIR MOLINA: Mahalo, Member Rawlins-Fernandez. Members, any other discussion? Councilmember Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. You know the Director earlier said that Kahekili Beach is now a sanctuary and the State has, well pretty much the State has banned subsistence recreational fishing around the area due to, you know, the increased algae growth of the area so that, you know, fishes could try and come back and mitigate the algae blooms. As a subsistence fisherman, you know, for many of the residents we like to rely on fishing to supplement our daily lives and so fishing is important. And when it comes to freshwater springs that come from mauka and underground, these springs are vital for our fisheries, our estuaries, our fishponds that are...that dot the, our coastlines. For the limu, it needs to be at a certain temperature so our limu can thrive. For our juvenile fish that need to rely on those limus. So, the whole system is, relies on this underground springs that come out along the coast. And so, as the environmental chair, you know, I would like to see more stringent policies and rules, regulations as far as continued pollution along our coast. Like some of the Members said it's vital that we...our...we keep our oceans clean, fresh, that our people can still fish, swim, including our visitors. Our visitors have a safe place to vacation and enjoy the ocean as well. So, I'm going to support the settlement at this time, and I hope that our fellow Members, you know, choose aloha aina and the values of malama i ke kai. Mahalo.

CHAIR MOLINA: Mahalo, Member Sinenci. Members, any other discussion as it relates to the motion on the floor?

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Yes, Chairman King for a second final and time for the motion, you have the floor.

COUNCILMEMBER KING: Thank you. I just wanted to make the point that if we can pass this out of Committee, I will make every effort to get something in writing and hopefully get the Department of Health Director to our Council meeting to give us those statements from the State that we've heard today versus the statements that were made earlier. But clear it up one way or the other what their...I believe, I firmly believe there is no way they're going to enforce against cesspools, but, you know, some Members I think want to see that in writing or hear it at the meeting. So, you know, I just hope we can move this along so that we have that opportunity. Thank you.

CHAIR MOLINA: Okay, thank you, Member King. Members, any other discussion before the Chair takes the last privilege to speak? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: I'm going to be voting against the motion as I really believe that we need to clear up this issue of the discrepancies that have happened in I think the Fourth Circuit Court and the Ninth Circuit which are discrepancies in the law and

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

I think that the...what we've been hearing on a factual basis that the Supreme Court has taken this case so that clarity can occur. And the repercussions of the discrepancies is what we're seeing with exactly the information that we received from a community getting, you know, into a battle with government because of them saying that the Ninth Circuit Court which was used against us, using that as a reason why, you know, they're pursuing with this case. So, I think we need to have clarity. I think all of us want to have a clean, pure environment, protect the aina, protect the coral reef, and because of those reasons I think that we need clarity of law. Over the years Congress could have corrected this I suppose, but the Supreme Court has decided to take this case as we heard from one of the testifiers and it is something I think that's very important for the nation, very, very important for Maui in particular and our residents, and I would like us to proceed with the court case of the appeal and go to the Supreme Court. So, I'm going to be voting no against it. Thank you.

CHAIR MOLINA: Thank you, Member Sugimura. Members, any other discussion? Okay, last call then the Chair will make his comments to the motion. First of all, this is a tough one, folks. It's no matter which way you vote, you're going to be loved and condemned at the same time, so for me there's still questions that need to be answered. And Chairman King made a point about getting something in writing, palapala. And I need those assurances especially as it relates to the cesspool. And to say that the EPA or the State Department of Health is not aware of this, my question is why haven't they submitted something in writing? So, in my mind I'm just guessing either they don't care which I don't believe so, it's more like maybe they don't want to take a position. So, does that indicate to me maybe they want guidance from a higher court along with the...we've already heard the rendering of the decisions on Ninth Circuit Court. So, maybe just as an educated guess, it may be just one individual. We had that...those comments from Mr. Anderson, the Director of Department of Health as part of the conversation he had with Member Kama and a staff member and other members of the community. I'm extremely disappointed that, you know, we were not allowed to have someone from the Department of Health participate in these Committee meetings, let alone the EPA. So, it seems to me maybe they don't want to get involved with this too, they're waiting for guidance. And yes, I understand the change in the political climate in Washington D.C. especially as it relates to the Supreme Court. Certainly, I mean that is a valid concern for many. So, it's just an issue of do I make a decision to settle now or wait till we have guidance so to speak from the Supreme Court? I'll just say for on our part, the County of Maui, since this whole matter was brought up I believe in the early 1990s, the County has taken steps to address this issue from prior Councils as well as this Council to provide the Department of Environmental Management the resources needed to stem the runaway train, if you will, of algae bloom and the degradation of the reef. And all of us can agree that because of the former sugar plantation, a lot of that runoff and the brown water had an impact. The question is how much of an impact did that runoff have versus the use of the injection wells? I'll just venture to say they, probably they may have...it may have had more of an impact than the injection wells but that's just my belief. Since then a study was done by I guess an entity that was commissioned by

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

the Department and that study has shown for better or for worse that things have improved but still more work needs to be done. You know so that's how I look at it. I prefer to err on the side of caution. And again, and I'll share it with the public, I did get a call from one of our United States Senators, Senator Schatz who expressed his thoughts on this issue as well. I did not receive a call from Senator Hirono or Representative Case or Representative Gabbard who also are a part of our Congressional delegation in Washington. And we all know they are watching this as well as the rest of the nation. So again, not hearing from that side of the delegation, I haven't heard from the Speaker of the House or any of our State representatives, our State Senator, Senator Agaran, Senator Baker, Representative Yamashita, Representative McKelvey. I believe we did get comments from Representative Wildberger on this. But as far as our other representative, Representative DeCoite, I'm not aware of it. Maybe some of you did but for me I may be wrong but I didn't hear what their position is on this. So, it seems like a majority of folks at least in our State delegation and our Washington delegation are waiting to see what happens, maybe taking a position of neutrality if you will. So, based on those comments, you know, I, it is my belief that I regrettably cannot support the settlement at this time. I believe what was said by some of you, the other Members I have taken that into heart, I've taken that...what was shared with us with Earthjustice, and I can appreciate it. So, there's been a lot of information to digest but a lot of questions that still remain to be answered, and again it comes down to I'm not getting something here today in writing from those two critical entities, the EPA and the Department of Health. And while I appreciate Member King, depending on the outcome of this matter should it go to Council that hopefully they can respond in writing should they choose to do so. So, with that being said the Chair will call for the vote. Staff, I want a roll-call vote please.

MS. ESPELETA: Mr. Chair? Member Sinenci.

COUNCILMEMBER SINENCI: Aye.

MS. ESPELETA: Member King.

COUNCILMEMBER KING: Aye.

MS. ESPELETA: Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aye.

MS. ESPELETA: Member Hokama.

COUNCILMEMBER HOKAMA: No.

MS. ESPELETA: Member Paltin.

COUNCILMEMBER PALTIN: I'm going to go with kanalua.



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

reached out to some of the people, officials that you're hoping that will weigh in, and I think we can get more information from the Members to help them come up...come to a better decision, a more aloha aina decision. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Member Rawlins. Members, any other thoughts? Proposal on the floor is a recommendation to defer.

COUNCILMEMBER SUGIMURA: So moved, Chair.

CHAIR MOLINA: Okay, it's been moved by Member Sugimura. Is there a second for deferral? Mr. Sinenci, do you have a second or is, you want to make a comment? We do have a motion to defer. First of all, is there a second at least for discussion on the deferral?

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: Okay. Okay.

COUNCILMEMBER KING: I'll second the deferral.

CHAIR MOLINA: Okay. It's been second. Okay. Member Sinenci...Member Sugimura, as the maker of the motion, is it okay if I go ahead and recognize Mr. Sinenci with his comments on the deferral?

COUNCILMEMBER SINENCI: I just had a question, so a deferral would adjourn this item?

CHAIR MOLINA: Basically, well, I guess if it...if this the majority of this body to defer then I guess the Chair would eventually bring this back as a Committee discussion. I have no time table yet. I guess Member Rawlins-Fernandez had suggested the deferral to give the Administration the time to discuss any alternative proposals with Earthjustice. That basically is a deferral. If we don't defer then the matter would go on to the full Council if that is the pleasure of the body as well. So, that's --

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: --how I see it. Are there any other considerations? Chairman King?

COUNCILMEMBER KING: So, Chair, if we don't defer, the matter goes on with, just with no recommendation so there would be another vote at the full Council?

CHAIR MOLINA: I believe so.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Can I get clarification from Mr. Raatz or Corporation Counsel on that?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

MR. RAATZ: Thank you, Chair. It would need to be a vote of five Members in the affirmative for some recommendation to the Council. So, the way we get to the Council if there's still a deadlock would be a recommendation to have the Council discharge the Committee from further consideration of this matter. That would be the way to get it back to the Council, but you need five votes affirmatively to get a Committee report generated.

COUNCILMEMBER KING: Okay. So, Chair, what would your...what is your preference as far as keeping it in Committee versus...

CHAIR MOLINA: Personally I'd like to just move it on but again that's your call. I will yield to the body if that's the majority to defer. Again, the Administration I believe would also like to ask for the time to discuss this matter, but realize depending on what happens with that discussion and the Administration and the plaintiffs, more than likely we'd have to rehear this matter in Committee if that is the will of this body and the Chair.

COUNCILMEMBER SUGIMURA: So, Chair?

CHAIR MOLINA: Ms. Sugimura?

COUNCILMEMBER SUGIMURA: So, based upon the discussions that we've had today throughout the entire day, if you could keep this item in your Committee so that we could bring it up and have a full discussion. I think that when we go through to Council and for us to have the kind of discussion we had today which I think it deserves is the wrong place. I think that if we...if you could keep it in your Committee and at the appropriate time, look at whatever is presented by the Administration and the other letters that people are saying they're going to gather then we could have a full discussion, but, you know, keep it...defer the item, keep it in your Committee and we can talk about it at the appropriate time.

CHAIR MOLINA: Alright, thank you very much, Member Sugimura. Any other thoughts? Alright, that's a fair consideration. I guess for me it's like let's address this matter as expediently as we can; however, it's your pleasure to gather additional informational data to have an expanded discussion and also out of consideration for a proposal that the Administration has considered and discussing with the plaintiffs. I'm okay with that.

COUNCILMEMBER KING: Chair? So, I just wanted to ask...can I ask our counsel --

CHAIR MOLINA: Proceed, Chairman.

COUNCILMEMBER KING: --if we...just procedurally, so if we vote down the deferral and we have five votes to discharge it then it goes to Council? But if we don't have enough votes to defer it and then...and not enough votes for discharge it then what happens?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

MR. RAATZ: The default action if there's not five votes to do anything would be deferral.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Alright, so noted. You heard from Staff, so Staff has also concurred with because of the deadlock --

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: --so I guess a --

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: --deferral would be the most --

COUNCILMEMBER KING: So...

CHAIR MOLINA: --appropriate action.

COUNCILMEMBER KING: Okay. So, just based on that I think my preference would be, you know, to follow your recommendation and move into, to Council and have that discussion at Council. And, you know, we can do the same type of meeting, a special Council with just this one item so that it doesn't, you know, drag other items on and on. But, no, I think I'm in agreement with you, let's move it, let's discharge it from Committee and move it on. I don't think there's a whole lot to be gained by keeping it in Committee at this point, but --

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: --leave it up to you.

CHAIR MOLINA: Members, Chair would like to take a recess to consult with Staff on a procedural matter. Meeting in recess subject to the call of the Chair. Members, please don't go anywhere. Meeting in recess. . . . *(gavel)* . . .

**RECESS: 5:13 p.m.**

**RECONVENE: 5:15 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of May 20, 2019 is now back in session. It is about 5:15 p.m. on Thursday, May 23<sup>rd</sup>. What we have on the floor is a motion to defer the matter. There has been comments made by Chairman King about the possibility of discharging the Committee as well as an option for this Committee to consider and then take the matter to the full Council. However, in light of the request

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

to maybe further discuss a settlement with the, between the Administration and the plaintiffs, I am okay with that although like I said I'll put aside my personal, you know, preference for the sake of giving this matter every opportunity to be fully exhausted. And in the meantime we can await hopefully written statements from the EPA, Department of Health. And I too would prefer not to have...the work of any item that's discussed should be done in Committee. And no disrespect to the Council meeting, Madam Chair, you know, I think at Council primarily it's for decision making and not to have it expand into a committee meeting. So, the Chair will support a deferral. So, any other comments before the Chair calls for the vote for deferral? Seeing none, all those in favor of deferral, signify by saying "aye."

COUNCILMEMBER SUGIMURA: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER SINENCI: No.

COUNCILMEMBER KING: No.

CHAIR MOLINA: Okay. Shall we do a roll call? Staff, the motion is to defer item GET-26.

MS. ESPELETA: Member Sinenci.

COUNCILMEMBER SINENCI: No.

MS. ESPELETA: Member King.

COUNCILMEMBER KING: No.

MS. ESPELETA: Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: No.

MS. ESPELETA: Member Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. ESPELETA: Member Paltin.

COUNCILMEMBER PALTIN: No.

MS. ESPELETA: Member Sugimura.

COUNCILMEMBER SUGIMURA: Aye.



**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

VICE-CHAIR RAWLINS-FERNANDEZ: Just a point of clarification, so what Chair King was offering to do with bring it to the Council was to not include it as part of an entire agenda but to put it as like a special item like how we'll have for next week Tuesday's special Council meeting which will be our Budget.

CHAIR MOLINA: Second and final reading.

VICE-CHAIR RAWLINS-FERNANDEZ: Right. So, I believe that...I just wanted to provide that clarification in case Members were not completely clear on that. And I really appreciate that attempt to, you know, I know you have a plateful. So, you know, I think that attempt was to also lighten your burden. The GET Committee has a lot of work to do. So, I think that was the attempt and, you know, and then that way it's less work on you and taking up all this time on one item because I know there's a lot of items that we have to get to. So, I just was hoping that maybe that would provide additional clarification on what the, what that attempt to bring it to Council would do.

CHAIR MOLINA: Thank you for your thoughtful remarks. Member Rawlins-Fernandez, you're a wonderful Vice-Chair. I appreciate it. Nonetheless, we have a split, or a non, no recommendation at four-four for deferral as well as a four-four on the proposed resolution to settle. So, with that being said, I guess we have no choice but to defer this matter since that has been the practice. I believe, is that in our rules as well, Mr. Raatz? That's stated anywhere?

COUNCILMEMBER KING: Chair? Just for the record, can I make a motion to discharge to Council just so we can get that on the record? If that ends up being four-four as well then I think it's an automatic deferral.

CHAIR MOLINA: Okay. We had a motion --

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: --initially to defer. Mr. Hokama?

COUNCILMEMBER HOKAMA: Only Council can discharge, Chairman.

CHAIR MOLINA: Okay. All right. Mr. Hokama, as your experience as the former Council Chair. Any need for, Members, any need for clarification from Mr. Raatz? So, it can only be a motion for discharge can be made at Council?

COUNCILMEMBER KING: Is that...maybe we just get an opinion?

CHAIR MOLINA: Do you want to hear from Mr. Raatz? Mr. Raatz?

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

---

MR. RAATZ: Thank you, Chair. Councilmember Hokama is correct that ultimately it's the Council's call on whether to discharge the Committee from further consideration, but the Committee could make a recommendation to be discharged. So, the Committee report would mention everything that was discussed today and the ultimate recommendation as opposed to adopting the resolution would be to request that the Council discharge the Committee from further consideration. And that...if that discharge request is approved by the Council then the Council would have authority over this matter again.

CHAIR MOLINA: Okay, Members, you heard it. So, the recommendation is to...well, I guess Member King, you had proposed a motion so I take will you withdraw the motion or you still want to put it into play?

COUNCILMEMBER KING: Well, Chair, if yourself, if you're not supportive of it we'll end up with four-four so I'll discharge the...

CHAIR MOLINA: Alright, I guess I can say I'm glutton for more punishment I guess . . .*(inaudible)*. . . Committee work. But thank you. But at least we've been very thorough with this matter and it's certainly a very highly important matter nationwide. So, Members, with that being said, we will defer GET item 26 based on the comments from Council Services as well. So, if there are no objections, we shall adjourn today's meeting. Member Rawlins-Fernandez before we adjourn.

**ACTION: DEFER.**

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I just, I wanted to really thank you for a job really well done. I know it was two full days on this one item and I believe you really gave it the justice that it deserved and fully vetting it and talking through all the issues. So, I just really wanted to commend you for doing a really good job at the today meeting. Thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

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CHAIR MOLINA: And thank you, Member Rawlins-Fernandez. Credit should be shared with everyone. We've all done our part to make our various inquiries on this, but as the old TV saying goes "stay tuned." So, we will address this matter in Committee at some point this year. So, with that being said, the recessed GET meeting of May 20, 2019 is adjourned effective today, May 23, 2019. Meeting adjourned. . . . *(gavel)* . . .

**ADJOURN: 5:22 p.m.**

APPROVED BY:



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MICHAEL J. MOLINA, Chair  
Governance, Ethics, and Transparency  
Committee

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Transcribed by: Daniel Schoenbeck

**GOVERNANCE, ETHICS, AND TRANSPARENCY  
COMMITTEE**

**Council of the County of Maui**

**May 23, 2019**

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CERTIFICATE

I, Daniel Schoenbeck, 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 4<sup>th</sup> day of June, 2019, in Kula, Hawaii



Daniel Schoenbeck