

BUDGET AND FINANCE COMMITTEE
Council of the County of Maui

MINUTES

May 13, 2008

Council Chamber, 8th floor

CONVENE: 1:34 p.m.

PRESENT: Councilmember Joseph Pontanilla, Chair
Councilmember G. Riki Hokama, Vice-Chair (in 1:47 p.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael J. Molina, Member
Councilmember Michael P. Victorino, Member (out 2:00 p.m.)

EXCUSED: Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member

STAFF: Lance Taguchi, Legislative Analyst
Yvette Bouthillier, Committee Secretary

Leinaala Kihm, Executive Assistant to Councilmember Medeiros

ADMIN.: Fred Pablo, Budget Director, Office of the Mayor
Kalbert L. Young, Director, Department of Finance
Cheryl K. Okuma, Director, Department of Environmental Management (BF-94)
Tracy Takamine, Chief, Solid Waste Division, Department of Environmental
Management (BF-94)
Traci Fujita Villarosa, First Deputy Corporation Counsel, Department of the
Corporation Counsel

PRESS: Akaku: Maui Community Television, Inc.

CHAIR PONTANILLA: . . .(*gavel*). . . The Budget and Finance Committee meeting for May 13, 2008 is now in session. The time is 1:34. The Chair would like to recognize the Members that are here this afternoon. We do have Members Mateo, Johnson, Medeiros, Molina and Member Victorino.

COUNCILMEMBER VICTORINO: Good afternoon, Chair.

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CHAIR PONTANILLA: Good afternoon. Excused at this time are Members Anderson, Baisa and our Council Chair, Mr. Hokama. From the Administration, we do have the Budget Director, Mr. Pablo, as well as the Finance Director, Mr. Young. Supporting the Committee this afternoon we do have Mr. Taguchi, our Leg. Analyst, as well as our Secretary, Yvette Bouthillier. Secretary, do we have anybody signed up for public testimony?

MS. BOUTHILLIER: (nodded no)

CHAIR PONTANILLA: Thank you. No one has signed up for public testimony at this time and the Chair would like to add ask any members in the gallery that wanna provide public testimony at this time? Seeing none coming forward without any objections, the Chair would like to close public testimony.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you. Members, before we move forward, though, I'd like to have the Members put their cell phones to the silent mode or turn it off.

UNIDENTIFIED SPEAKER: . . .*(Inaudible)*. . .

CHAIR PONTANILLA: That way we don't get interrupted and..and the meeting can flow more easily, smoothly.

ITEM NO. 108: AMENDING THE FY 2008 BUDGET (DEPARTMENT OF FINANCE) (C.C. No. 08-106)

CHAIR PONTANILLA: Members, this afternoon we have three items on the agenda. The first item is BF-108, amending the Fiscal Year 2008 Budget. The purpose of the proposed bill is to amend the Fiscal Year 2008 Budget for purposes of the Post-Employment Obligation Fund for Fiscal Year 2008, actuarially, required contribution amount of \$13 million. So at this time the Chair would like to have Mr. Pablo if you do have any comments to make at this time? If not, we'll go and...to the Finance Director, Mr. Kalbert Young for opening comments. And Members, the Director had passed out a handout in regards to the Post-Employment Obligation Fund earlier, prior to the meeting. So, Mr. Young.

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MR. YOUNG: Thank you. Good afternoon, Mr. Chair, Members. Actually, what I passed out was that excerpt from the Budget presentation related to County-wide expenses. It was Slides 16 through 19. So you...already have it and have seen it as part of the Budget construction. But I just made a copy of just those pages so that they're relevant to this discussion for this agenda item.

Back in 2008, with the 2008 Fiscal Year Budget in 2007, the Council established a Post-Employment Obligations Fund as a (*clears throat*) as a means and strategy to deal with our OPEB, which is other Post-Employment Benefits Liability related to both retirement in the ERS system, Employee Retirement System as well as in the EUTF, the Employers Union Trust Fund or health benefits. These benefits are specifically related to retirees and there is a growing concern of unfunded liability related to both of those funds. Recently, the Government Accounting Standards Board (GASB), issued a ruling Number 45 which requires, effective for Fiscal Year '08, that all jurisdictions report on their financial statements that portion of the unfunded liability for other post-employment benefits which is our--in Maui's case--medical insurance coverage for retirees for future retirees.

On March 12, 2008, the State of Hawaii's actuary hired to calculate the unfunded liability for Maui reported that for Fiscal Year '08, the unfunded liability if the County was to pre-fund--meaning pay in advance to address our liability--for the EUTF portion would be \$20.3 million for Fiscal Year '08 across a total liability for the entire EUTF system of about 233 million. And that's on Slides 17 and 18 of the handout I gave you.

For the Fiscal Year '08 Budget, the Council had already appropriated 11.6 million for our anticipated payment in Fiscal Year '08. The 20.3 million that is reported by the State actuary includes that portion which we must pay for current retirees benefit in the existing year which we are estimating to be about 7 point...7 million, 7.3 million, in there. The year is not complete yet. Meaning that we would like...the Department of Finance would like to submit a payment to the EUTF to address our liability for Fiscal Year '08. And that would require this budget amendment which adds funds to the originally budgeted 11.6 million to bring that amount to 13 million. And with the retiree payment for current year being about 7.3 million that would be sufficient for us to pay off the liability for Fiscal Year '08.

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The benefit to the County of Maui is that it would, therefore, remove that liability from our financial statements for year end concluding Fiscal Year '08 and would be a reflection of our fiduciary and financial prudence to anybody or any agencies that read our financial statements. It would also address our growing liability because if this payment is not made before the ending of the Fiscal Year when the State actuaries calculate the liability in the *next* Fiscal Year without reflecting this payment, of course, you know, if you delay one...one year, you're paying interest on top of what you past owed. So with that, Mr. Chair, I respectfully request the Committee's approval to accept...or authorize and accept this proposed budget amendment so that we may effectuate the payment and appropriation of the OPEB from the Post-Employment Obligations Fund. I'm available for any questions, Mr. Chair.

CHAIR PONTANILLA: Thank you. Members, any questions for the Director at this time? Member Johnson.

COUNCILMEMBER JOHNSON: Yes, I just wanted to check to see because on the summary, you know, Fringe is highlighted or underscored, transferred to Post-Employment Obligations Fund is underscored and, of course, the Post-Employment Obligations Fund on, I guess, the third page of the ordinance is underscored. So you're decreasing the appropriation for the fringe benefits. Is that correct?

MR. YOUNG: Correct, Ms. Johnson.

COUNCILMEMBER JOHNSON: Okay. And in essence what does that actually mean? What're we really doing? Is it money that you actually over-anticipated or could you explain that?

MR. YOUNG: Certainly. What...what this amendment is proposing is to reduce the appropriation to Fringe Benefits by 1,000...by \$1,381,640 and by increase...and then, therefore, increasing the amount appropriated to the Post-Employment Obligations Fund by that exact same amount. The category for Fringe Benefit accounts for the budget appropriation to deal with the amount of expenses related to employment of our staff. So things such as...the County's contribution to employees, retirement, Social Security, FICA, employment insurance, all of those compensations other than salary that's attributable to employees, due to the...a number of factors, most notably the number of vacancies in the County, we are confident that there will be a balance—or i.e. carryover—in the Fringe

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Benefit category. And it's from that amount that I am saying to move from Fringe Benefits over to the Post-Employment Obligations Fund.

COUNCILMEMBER JOHNSON: Yeah. And...and...and mainly what I wanted to get at is, obviously, you know, on the Fringe side, we have to pay whatever is required under law. But I believe that you answered the question in the one little section called Vacancies.

MR. YOUNG: Yes.

COUNCILMEMBER JOHNSON: Because that doesn't, of course, incur any cost with regard to Fringe.

MR. YOUNG: Yes.

COUNCILMEMBER JOHNSON: So I really appreciate this and I think it's fiscally responsible. And I'm very pleased to support it.

CHAIR PONTANILLA: Thank you. Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. And...and I...my question was primarily in the same area because I believe even in the current discussion, we did have this similar discussion relative to unfilled positions and the amount of monies that that creates which is why in this request, it's...it's understandable to move, you know, 1.3 from this particular category because, in fact, there is money in this category. My question, Mr. Chairman, was because we are approaching the end of our Fiscal Year, the current '08, what is the possibility of us getting some kind of...a better understanding of what actually exists in this account because there is so much of it? And I believe at one point in the discussion, we talked about in the area of close to \$5 million that could've possibly been available due to unfunded, vacant positions. So this is definitely a source we can look at in terms of meeting our obligations. And even more so, if that kind of money is, in fact, available, we should be applying more money to our post-employment responsibilities because the funds exist. And I would sure as hell prefer the monies going to taking care of this need versus just sitting in limbo waiting for another time with another amendment asking for a transfer. So let's take care of the priorities. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. Mr. Young, can that information be provided to this Committee?

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MR. YOUNG: Yes, Mr. Chair. I was actually going to mention that the Committee should have, if not already, it will—if not already—be receiving the Finance Director's quarterly financial report for the third quarter of the Fiscal Year which is the period concluding March 31. And the...that information is included in that report. I believe it was transmitted down to Council...yesterday or day before yesterday. So it may not have been agenda-ed. But I'm looking at the report right now and, if I may, I'll just mention that on the March report you will see that with 75 percent of the year completed and 25 percent of the year remaining, the balance available in the County-wide fringe benefit is about \$13 million, off of an original appropriation of 44 million which means that there's 30 percent of the budget available with 25 percent of the year remaining. That's a five percent savings which I can estimate. And five percent of 44 million is about 2.2 million. So from that, you know, I was anticipating—obviously I didn't have the March report when we were doing the budget construction but, you know, we are anticipating that there will be approximately 2.2 million. From there I am confident that if you, you know, if we asked for this 1.38 million in this budget amendment that there will be sufficient coverage in the Fringe Benefits category to accommodate the budget amendment before you.

CHAIR PONTANILLA: Thank you. Members, any more questions in regards to the Directors here this afternoon? Member Johnson.

COUNCILMEMBER JOHNSON: Just to clarify, Kalbert. The 2.2 million would then be minus—so, you know, in other words that's not 2.2 million after this deduction. That's 2.2 million approximate before this deduction?

MR. YOUNG: Correct.

COUNCILMEMBER JOHNSON: So the balance that's left, 2.2 minus 1.3 is what we have left approximately?

MR. YOUNG: Yes, correct.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Directors? If not, the Chair would like to recommend to adopt the revised proposed bill and the filing of the County Communication.

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COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR PONTANILLA: Moved by Member Victorino, second by Member Medeiros. Members, any more discussion? If not, all in favor of the motion, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Any opposed? We do have six ayes, three excused, Members Anderson, Baisa and Member Hokama.

VOTE:	AYES:	Councilmember Johnson, Mateo, Medeiros, Molina, Victorino, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Anderson, Baisa, and Vice-Chair Hokama.

MOTION CARRIED.

ACTION: FIRST READING of revised proposed bill; and FILING of communication by C.R.

CHAIR PONTANILLA: Members, if there are no objections, the Chair would like to request your approval to revise the proposed bill prior to First Reading to incorporate any pending budget amendments that may be before the Council and make any non-substantive revisions as required.

COUNCIL MEMBERS: No objections.

ITEM NO. 100: AMENDING APPENDIX A OF THE FY 2008 (DEPARTMENT OF PLANNING – HAWAII OCEAN RESOURCES MANAGEMENT PLAN STUDY) (C.C. No. 08-69)

CHAIR PONTANILLA: Thank you. At this time, the Chair would like to recognize our First Deputy Traci Fujita Villarosa, good afternoon, as well our Council Chair, Mr. Hokama.

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Members, the next item on our agenda is BF-100, amending Appendix A of the Fiscal 2008 Budget. This is Department of Planning, Ocean--Hawaii Ocean Resources Management Plan Study. The purpose of the proposed bill is to add the Hawaii Ocean Resources Management Plan Study grant of \$87,500 to Appendix A of the Fiscal Year 2008 Budget. We don't have anyone here from the Planning Department at this time so at this time I'd like to call on Mr. Pablo for some comments.

MR. PABLO: Thank you, Chair Pontanilla. With regard to...to this budget amendment, it's for a grant which has been requested from the Department of Planning on the Hawaii Ocean Resources Management Plan. I was expecting someone from the Planning Department to be here this afternoon. I've left them a message this...this morning. This is a new grant which is...we will put in the Appendix A for...for Fiscal Year '08 through this budget amendment. We have also included in the Fiscal Year '09 Budget which we just discussed last month and we'll be putting it in for about the same amount, \$90,000.

CHAIR PONTANILLA: Thank you. Members, any questions for the Director in regards to receiving this grant fund for the Planning Department at this time?

VICE-CHAIR HOKAMA: Chairman.

CHAIR PONTANILLA: Member Hokama.

VICE-CHAIR HOKAMA: Just for Mr. Pablo's question...question. By the time Council will make final reading...final decision on final reading on this, we will be pretty much looking at the end of the Fiscal Year. So what is the...actually, you know, what is the true ability of the Department to expend the money before the end of June 30th and the current Fiscal Year? Or has there...or have they already expended monies in anticipation and then this is a reimbursement of sort, Mr. Pablo?

MR. PABLO: At this point, I don't believe the...the Department has expended any of these funds. There is an attachment to the Budget amendment from the Director Jeffery Hunt dated February 19, 2008. And in that attachment he...he explains where he expects to spend this, this money. It will be on Sand Alternative Study, and that goes through five stages. They'll do Phases I - III which will be data collection, and Phase IV and V would be the analysis of data. And because that it's with individuals already on

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board with the County-funded UH Sea Grant Program and Coastal Planning Program, I believe he'll be able to get those...get those individuals working on this project before the end of the year.

VICE-CHAIR HOKAMA: Chairman, if I may, I have a follow-up.

CHAIR PONTANILLA: Mr. Hokama.

VICE-CHAIR HOKAMA: Thank you. So, Mr. Young, as I understand our operations, until we do final reading, you would not be able to certify funds and therefore give recommendations of approval of a contract or a grant to an organization to do the study. So, you know, again are we going through just a perfunctory exercise, Mr. Chairman? And shouldn't we just get this prepared for as a supplemental to the new '09 Budget that takes effect July 1st?

You know, I have not seen documentation that shows a need for us to receive and expend within the current Fiscal Year. And, as such, if the Finance Director is not able to certify and agree to an...recommendation to execute a contract to expend the funds, than obviously it is—or maybe I shouldn't assume anything. Does these funds then become carryover and then automatically roll into the '09 consideration or is there a need for us to recognize and then make a '09 Budget amendment? Mr. Chairman, I don't know if you have some comment or if Mr. Young has some comment too that he can share with us prior to us making a decision on this matter.

CHAIR PONTANILLA: Department?

MR. YOUNG: Thank you, Mr. Chair. Chairman Hokama, I believe that what is being attempted here is that if this grant revenue can be included in Appendix A of the FY '08 Budget, that that will allow for the Department to enter into a contract or a grant arrangement with the State for the State to provide these funds. The expenses don't have to occur in the Fiscal Year but the signatory...the signatory for...to enter into this grant have...has to occur before the end of the Fiscal Year. So I think at the current schedule there'll be just enough time for the Department and the Administration to sign the grant agreement. But whether or not they'll have any expenses before the end of the Fiscal Year, I...I wouldn't know that.

VICE-CHAIR HOKAMA: Well...

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CHAIR PONTANILLA: Corporation Counsel, can you provide some information in regards to...what Mr. Young has just provided to the Committee?

MS. FUJITA-VILLAROSA: Mr. Chair, it's kinda difficult not having the Department here because I think the three of us don't have any of the details. But just looking at the document provided by Planning, I can see that these are State of Hawaii funds and I do know that we've had situations in the past where the State funds had to be encumbered by the end of the Fiscal Year otherwise it lapses on the State end. So I know in the past, we've had to insure that a grant agreement is...is entered into between the County and the State prior to the end of the Fiscal Year so that the State funds don't lapse. So that it could...it could be a same situation here. I'm not sure.

CHAIR PONTANILLA: Thank you. Mr. Hokama.

VICE-CHAIR HOKAMA: Thank you, Chairman. I think what was just shared with us makes sense from a fiscal management side because we do have the same fiscal years and the State will close its book officially on June 30th just as we do. So I can understand why if we don't accept by June 30th, then the potential of possibly lapsing of State funds and not have it being made available to the County will be a concern. You know, I just wanted to know if...as a operational, 'cause the Finance Director needs to go through his due diligence and the requirement of certification that the funds have been accepted and are available for...to be expended through a agreement or a contract. This place...the burden is placed on Mr. Young as our Finance Director so that a document can be executed through Planning Department. Thank you very much, Mr. Chairman, for my ability to ask questions.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Administration? Member Johnson.

COUNCILMEMBER JOHNSON: I think what Traci has explained is what's happening here because also, if you recall, '08 was the year the reef...and the State basically made monies available and tried to, in whatever way they could, expand some of the studies. And one of the things that I got--and this was in an earlier e-mail from Zoe Norcross-Nu`u--is she was very concerned about the sand quantification. You remember the study that we had? The stand...sand resource study? And I believe this is a

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continuation of some of the things that were done, perhaps on Oahu, and looking at maybe some offshore sources of sand replenishment because we are...we're...we're very close to, I'd say, probably another few years. And we will be out because of the exporting of our sand. So I support this. And, you know, it's too bad, again, that Planning couldn't be here but obviously there was some good reason for them not being here. Thank you.

CHAIR PONTANILLA: Thank you. Members, more questions for the Directors? If not, the Chair would like to recommend the adoption of the proposed bill. And the filing of the County Communication.

COUNCILMEMBER VICTORINO: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR PONTANILLA: Moved by Member Victorino, second by Member Molina. Members, any more discussion? If not, all in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

CHAIR PONTANILLA: Any oppose? Seeing none, the motion is carried with seven ayes; two excused, Member Anderson and Member Baisa.

VOTE:	AYES:	Councilmember Johnson, Mateo, Medeiros, Molina, Victorino, Vice-Chair Hokama, and Chair Pontanilla.
	NOES:	None.
	ABSTAIN:	None.
	ABSENT:	None.
	EXC.:	Councilmember Anderson and Baisa.

MOTION CARRIED.

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

CHAIR PONTANILLA: Again, Members, if there are no objections, the Chair would like to request your approval to revise the proposed bill prior to first

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reading to incorporate any pending budget amendments that may be before the Council and make any non-substantive revisions as required.

COUNCIL MEMBERS: No objections.

CHAIR PONTANILLA: Thank you.

**ITEM NO. 94: AMENDING THE FY 2008 BUDGET (LANAI
LANDFILL STORM WATER SYSTEM
RECONSTRUCTION) (C.C. No. 08-36)**

CHAIR PONTANILLA: The final item this afternoon is BF-94, amending the Fiscal Year 2008 Budget, the Lanai Landfill Storm Water System Reconstruction. The purpose of the proposed bill is to appropriate additional funds for the project. Members, due to the higher than...expected bids by the contractor the Department is requesting an additional \$500,000 necessary to provide funds for the project that involves required work to comply with the State Department of Health standards. Members, are you...you are in receipt of a revised proposed bill from the Budget Director dated April 3, 2008. It is noted in this transmittal that this is to replace the previously transmitted bills that were transmitted back in February 1st and as well March 3, 2008. So at this time, the Chair would like to have Director Okuma to provide some comments to the Members this afternoon.

MS. OKUMA: Thank you. Good afternoon, Committee Chairman Pontanilla, Committee Members. With me is also Tracy Takamine, Division Chief of Solid Waste. But basically this amendment would go towards the construction and completion of a State Department of Health required project. It was the outcome...as an enforcement action. And what had happened was because we do not own that property—it's owned by Castle & Cooke—we needed to be able to get the owner's signature authorizing us to go on to the property during construction. Our Corporation Counsel had advised that this would need to be done by a licensed agreement.

Well, what basically happened is a series of discussions and negotiations that boiled down to the County acquiring the landfill property in exchange for waiver of tipping fees for the landfill disposal by Castle & Cooke. And actually, I just wanna mention that these discussions and negotiations along this line actually had a pretty long history, at least eight or more years as far as discussions between the County and Castle & Cooke.

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Ultimately, what happened is this GO bond funding lapsed December 31st because of the stalemate that occurred from the negotiations. And we, of course, because it is an enforcement action, have been keeping the State Department of Health apprised of this situation. Through the efforts of Chair Riki Hokama and the Mayor stepping into the situation, there was finally an understanding that was reached between the County and Castle & Cooke regarding the conveyance of the landfill property in exchange for the waiver of tipping fees and the County obtaining at no cost a cover landfill material which is a necessary...requirement by the State Department of Health. This understanding was basically placed into a series of legal documents. And so this was placed in to the hands of our Corporation Counsel David Galazin who then dealt with Gary Yokoyama, Castle & Cooke's attorney, resulting in a Memorandum of Understanding and a licensed agreement which basically reflects this understanding, that I just mentioned, was reached.

The status of that is the documents were basically commented on by both County and Castle & Cooke and that the Memorandum of Understanding and licensed agreement are on their way to our Department for further...for processing. The conveyance document which is also part of the series of documents is currently being worked on. And my understanding from our Corporation Counsel is that that draft conveyance document has been sent over to Castle & Cooke's attorney for their review and comment. And so we are moving forward in terms of ultimately executing these agreements and in the end, we're basically going to be acquiring this landfill property. Thank you.

CHAIR PONTANILLA: Thank you. Members, any questions for the Director at this time? Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. And Ms. Okuma, thank you very much for that information. And just so that I understand it a lot clearer, the MOA that currently exists between the County of Maui and Castle and Cooke, the end result of that MOA is the landfill is gonna become the property of the County. Does it come with after so many years or is it just right off the bat it becomes our property once we start to invest the monies?

MS. OKUMA: Sure. Thank you for that. Let me just...to clarify, the Memorandum of Understanding has not been executed yet. That is on our...on it's way to us. And that does reflect that indeed the parties are going to use their best efforts to achieve this conveyance of property. The

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last document is this conveyance document which our Corporation Counsel has provided the draft of that to Castle & Cooke's attorney. And our intent is to accomplish that conveyance and acquisition as soon as possible within this year.

COUNCILMEMBER MATEO: Okay. So, Mr. Chair...or perhaps Corporation Counsel, then by us taking action on this today, would that be premature in...in terms of taking action on approving something that is still not yet adopted or approved because it's still in transition at this point?

CHAIR PONTANILLA: Corporation Counsel? . . .*(end of tape 1A)*. . .

MS. FUJITA VILLAROSA: Was there a . . .I'm sorry I'm not that familiar with the details of this transaction. Was there...was there a...like a interim...interim document? Did you say a licensed agreement?

MS. OKUMA: There...the documents that are being worked on today and have not been executed yet is the license agreement, which would allow us to go on to the property to do the construction. And I might just mention that we did actually award a contract to a contractor and they're...they're currently held in place. We're trying to hold that price right now. But in order to complete the project, we will need this funding. So there's really no interim agreement. The agreements I'm speaking of is really the result of this recent understanding as a result of the discussions that Chair Hokama and the Mayor have had with Castle & Cooke representatives. So these documents reflect the outcome of the understanding of that meeting.

COUNCILMEMBER MATEO: Okay. Now and my only reason for questioning it because I support the project because...because of its definite need. My interest is in us acting prematurely. I just don't know what the consequences are if we are premature in acting at this point. Because should the document come in and it is not acceptable for some reason, you know, what happens to this body's action? So I don't want to be caught in that kind of...

MS. OKUMA: Sure. And let me just say that the documents that are really the crux of this understanding has already been—for all practical purposes, it just needs to be executed by us. That's the licensed agreement which would allow this project to go forward, allow us to step foot on the project to have our contractor go forward and then the Memorandum of Understanding which addresses all of the points and the agreements

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between the parties to do the conveyance. So, you know, we are well on our way. Those documents will be executed and the only pending item is the actual conveyance deed. So the...MOU, which is part of this documentation, when we see it, we expect to execute that. And that is the document which reflects that indeed the parties agree on this property conveyance.

COUNCILMEMBER MATEO: Okay. Thank you. And...and for the Corporation—I'm sorry, Mr. Chair, my last question.

CHAIR PONTANILLA: Go ahead.

COUNCILMEMBER MATEO: For the Corporation Counsel, then your legal advice to...to this body would be that action, as being requested, is appropriate in regards to us not having an actual document?

MS. FUJITA VILLAROSA: Yeah, it sounds like the documents are all lined up. The fact that the bond funding...okay. So the fact that that these are bond funds, you know, if something were to go wrong, then it would mean that we wouldn't be able to utilize the bond funds, or at least until the agreements were in...you know, executed. But it sounds like they're pretty much in place. So it...it...it seems safe to move ahead and move forward with this action today.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. Member Johnson.

COUNCILMEMBER JOHNSON: Just...just to make sure I'm clear, too. Basically what you could also do is not issue a Notice to Proceed. You know, like execute the contract with these additional monies but not issue a Notice to Proceed until all the other documentation has been executed.

MS. OKUMA: Well, it...depending on how this...today went, our intent was to...that we could go ahead and issue the Notice to Proceed. We would need this funding that we're talking about today to complete the project. We do have, I believe, '07 or '08 money, I believe, right? We do have some '07 or '08 money already for this project but we would need the funding we're talking today to complete the project.

COUNCILMEMBER JOHNSON: Okay. And because this is in Committee, it still would need reading at the Council level.

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MS. OKUMA: Okay. And just to mention that, you know, we were doing our best to not let these funds lapse and we were doing our best to award the contract, moving forward. And the status right now is we did award that contract. We are trying to hold the contractor to this project. They're very concerned about how much longer this is going to take. It is our desire to be able to issue that Notice to Proceed so they can start. Without that, they...they may—I don't know if they will stick with the project.

COUNCILMEMBER JOHNSON: Yeah. And...and they could change the price again.

MS. OKUMA: Of course. Yes.

COUNCILMEMBER JOHNSON: So you have an assurance, though, that if we do act on this today favorably that...that at least things will continue on as they have been with the increased amount?

MS. OKUMA: I'm sorry, as far as the project?

COUNCILMEMBER JOHNSON: Yes.

MS. OKUMA: We will continue with the project.

COUNCILMEMBER JOHNSON: And the same contractor?

MS. OKUMA: With the same contractor and issue that Notice to Proceed.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR PONTANILLA: Thank you. Members, any more questions? I have one for Mr. Young. Mr. Young, you know, knowing that, you know, we don't have an executed license agreement before us in our hands, would you allow going forward with this particular contract without the...executed license agreement?

MR. YOUNG: Well, Mr...Mr. Chair, I would...I would recommend that the County have all of our access and entitlements rights necessary before we proceed with any contract for work. So I'm confident that as the Department of Environmental Management proceeds along these lines that the contract will be sent to Finance for approval at the appropriate time.

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CHAIR PONTANILLA: Yeah.

MR. YOUNG: And we have been working with the Director's Office, Environmental Management, to ensure that the timing of these...of this work is appropriate and correct.

CHAIR PONTANILLA: Thank you. Director Okuma, do we have a timeline in regards to cleaning up the situation that we have on Lanai?

MS. OKUMA: I'm sorry. The timeline on the...

CHAIR PONTANILLA: Completing the corrective measures that we need to do...

MS. OKUMA: The project? We are already behind the timeline which is what we had originally provided to Department of Health and Department of Health's expectation. We're already behind that schedule. But perhaps I can ask Traci to give you some idea of how...how long that would take once we do issue that NTP.

CHAIR PONTANILLA: Thank you. Mr. Takamine?

MR. TAKAMINE: Yes, Mr. Chair, if we give the Notice to Proceed, I think we estimate this project to be eight...seven to nine months long.

CHAIR PONTANILLA: Thank you. That's a long time from now. Member Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to ask the Department. So the contractor's on hold right now waiting for a response. What's the obligation of the County or the contractor as far as when he can actually pull out? Because you've awarded him the contract right? What's...

MS. OKUMA: Yes. I guess we were really looking at it from the standpoint of how...how long we could hold the contractor--

COUNCILMEMBER MEDEIROS: So there's no...

MS. OKUMA: --and keeping them advised.

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COUNCILMEMBER MEDEIROS: But on the legal documents...it doesn't state the date that he's obligated to as far as--

MS. OKUMA: I...I don't recall. I would have to refer...you know, we don't have that in front of us. I would have to refer to our Corp. Counsel and take a look at the documents. But really, we were really looking at it from the standpoint of trying to hold the contractor to the project and...and moving what we could as quickly as...as we could.

COUNCILMEMBER MEDEIROS: Yeah, yeah. My question...I agree with you what you're trying to do. But my question was do we have a legal means to hold the contractor? Or it's just agreement with him that, okay, I'll hang on for awhile?

MS. FUJITA VILLAROSA: Mr. Chair.

CHAIR PONTANILLA: Corporation Counsel.

MS. FUJITA VILLAROSA: Normally, there isn't a specific date in the bid documents because it's based--the beginning of the contract is based on notice to proceed. So there's not a particular date in there. But this happens every now and then where the project is delayed and then it just becomes a negotiating, you know, with the contractor as far as how long the contractor can hold the bid price.

COUNCILMEMBER MEDEIROS: Right.

MS. FUJITA VILLAROSA: Because it can't be indefinitely. So we just hope that the contractor, you know, can hold as long as possible. If not, then we can try to re-negotiate or they have to go through the bid process again if it's too long.

COUNCILMEMBER MEDEIROS: Because I...I think, you know, all of us want to see the project move forward and stuff, but I think, like Member Mateo said, is there a requirement that these two legal documents you speak about have to be executed before we move ahead? Or it can be executed and have the contractor start before the documents are executed?

MS. OKUMA: We still need to have the license agreement executed and that will be done, I...I think, fairly quickly, actually. Those documents are on their way from Corp. Counsel.

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COUNCILMEMBER MEDEIROS: Right.

MS. OKUMA: So we do need to have that before we can step foot on the property.

COUNCILMEMBER MEDEIROS: And those documents have to be reviewed and approved at Council? Yes or no?

MS. FUJITA VILLAROSA: Not the...

COUNCILMEMBER MEDEIROS: No?

MS. OKUMA: No.

MS. FUJITA VILLAROSA: Not the...not the...

COUNCILMEMBER MEDEIROS: License agreement?

MS. FUJITA VILLAROSA: The interim...the interim document that I was referring to earlier is to me, in my mind, the license agreement because the final document is the conveyance document which would have to come before Council, you know, when the County acquires property.

COUNCILMEMBER MEDEIROS: (inaudible)

MS. FUJITA VILLAROSA: But at least having that license agreement in place, which sounds like it's imminent, would allow the County to use the bond funds. That's why I feel that it is safe for the Council to move ahead at this point because it sounds like the documents are, you know, coming...

COUNCILMEMBER MEDEIROS: Ready to...

MS. FUJITA VILLAROSA: Yeah.

COUNCILMEMBER MEDEIROS: Thank you very much. Mahalo, Mr. Chair.

CHAIR PONTANILLA: Thank you. Member Hokama.

VICE-CHAIR HOKAMA: So what we are told is we awarded a contract prior to receiving funding from Council. Is that...is that the status?

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MS. OKUMA: No. There was...there was--and maybe Tracy can explain--but I believe there were '07 and '08 funds.

MR. TAKAMINE: This project was a '07 project. We started with \$1 million with projected project cost. But after we did an engineering analysis and got the engineer estimate, it came in over...it came in close to 1.7 million so we came back in FY '08 requesting another 1.9 million. So we had a total of \$2.9 million because we...we figured it'd be higher with the cost escalating. So the bids came in and the bid came in at 2.186 million, low bid. On the high...high side was close to \$3 million.

But...but we couldn't write the contract. We had all the money. We could've wrote the contract at end of '07 but during that time frame, there was an issue about--I forget what it was--that we...we couldn't use the 1 million because of something to do with--I guess it was the license agreement. So what happened was the million dollars lapsed.

VICE-CHAIR HOKAMA: Okay.

MR. TAKAMINE: So we wrote the contract because we wanted to hold--the contractor was...was giving us a deadline already because we...the bid open was in November of '07. We're seven months holding this project price so he's...he stretched himself to the limit. And he's held back his staff because they had a project on Lanai that they finished and they been holding for a few months now. And so we wrote the contract with the FY '08 money for 1.87 million. So the bulk of the...the contract and funds are there. It's just that in order to write the contract, we then reduce three line items. So we took the \$300,000 off of his bid price to be able to write the contract. So what we're asking for is we needed \$300,000 and we added 200,000 for change orders because we know we're gonna get change orders, especially on Lanai, and being an outer island. So that's why we're coming back in for \$500,000 just to finish off the contract at the tail end that...that we need to do the 100 percent project.

VICE-CHAIR HOKAMA: Okay. Who's the contractor?

MR. TAKAMINE: M & M Tanks.

VICE-CHAIR HOKAMA: Okay. Because, Mr. Chairman, fellow Members, you know, we...we do know that the environment is changing, the construction and bidding environment. Castle and Cooke Lanai has laid off or shut down its construction division because of lack of work. So,

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you know, for us this afternoon, I think we need to balance off the need to comply with the State Health Department requirements versus the need of the potential .savings through a rebid because we got people that want work, Chairman. And I think it will be. . .there's opportunity for the County to get better bid proposals because of the changing environment out there statewide. Particularly on Lanai, you know, a shutdown of a whole division I've got 20 something employees laid off. So even on Lanai we're feeling the effects of the economy at this time so I just share that with you and the Department. And that I expect our officers of management in, in Environmental Management to balance that off between opportunity of potential savings versus the time requirement of deadlines to comply with other governmental requirements, Chairman. And I don't know if you folks have already done that due diligence and you can tell us this afternoon that you have made a assessment and that this additional money's still the preferred option for the County to proceed on this project?

MS. OKUMA: Yes. We were just conferring, yes.

VICE-CHAIR HOKAMA: Okay. 'Cause I got other uses for half a million dollars, Chairman, you know, not only on Lanai but other areas of the County so if there's a chance for us to save money--'cause I've been touching base, you know, with real property and the numbers at this point in time look horrible. Thank you, Chairman.

CHAIR PONTANILLA: Thank you. Members, any more questions for the Department? If not, the Chair would like to make his recommendation. The Chair is recommending that we adopt the revised proposed bill and the filing of the County Communication.

COUNCILMEMBER JOHNSON: So move.

COUNCILMEMBER MOLINA: Second.

CHAIR PONTANILLA: Moved by Member Johnson, second by Member Molina. Members, any more discussion? All in favor of the motion, please say "aye".

COUNCIL MEMBERS: Aye.

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CHAIR PONTANILLA: Any oppose? Let the record show there are six ayes, three excused, Member Anderson, Baisa, and Member Victorino. Motion is carried.

VOTE: **AYES:** **Councilmember Johnson, Mateo, Medeiros, Molina, Vice-Chair Hokama, and Chair Pontanilla.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Anderson, Baisa, and Victorino.**

MOTION CARRIED.

ACTION: FIRST READING of revised proposed bill; and FILING of communication.

CHAIR PONTANILLA: Members, BF-94 was the last item on the agenda this afternoon. But before I adjourn, again Members, like the previous two items, the Chair would like to request your approval to revise the proposed bill prior to the first reading to incorporate any pending Budget amendments that may be before the Council and make any non-substantive revisions as required.

COUNCILMEMBER MOLINA: No objections.

CHAIR PONTANILLA: Thank you. Members, any more--do you have any announcements to make at this time? Seeing none, the Budget and Finance Committee meeting for March—May 13 is now adjourned. . . .
(gavel). . .

ADJOURN: 2:20 p.m.

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APPROVED:



JOSEPH PONTANILLA, Chair
Budget and Finance Committee

bf:min:080513

Transcribed by: Reinetta L. Kutz

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CERTIFICATE

I, Reinette Kutz, 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 this 28th day of May 2008, in Wailuku, Hawaii.


Reinette L. Kutz