

M I N U T E S
POLICY COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
COUNCIL CHAMBER, EIGHTH FLOOR
WAILUKU, MAUI, HAWAII
JULY 22, 2008

APPROVED:


Committee Chair

REPORTED BY: Tonya McDade, Hawaii CSR #447
Registered Professional Reporter
Certified Realtime Reporter
Certified Broadcast Captioner

1 CONVENE: 9:06 a.m.

2 PRESENT: Councilmember Danny A. Mateo, Chair
3 Councilmember Riki Hokama, Vice-Chair
4 Councilmember Gladys C. Baisa, Member
5 Councilmember Jo Anne Johnson, Member
6 (In 9:12 a.m.)
7 Councilmember Michael J. Molina, Member
8 Councilmember Joseph Pontanilla, Member
9 Councilmember Michael P. Victorino, Member

10 EXCUSED: Councilmember Michelle Anderson, Member
11 Councilmember Bill Kauakea Medeiros, Member

12 STAFF: Gayle Revels, Legislative Analyst
13 Kirstin Hamman, Legislative Attorney
14 Camille Sakamoto, Committee Secretary
15 Leinaala Kihm, Executive Assistant to
16 Councilmember Bill Kauakea Medeiros

17 ADMIN: Jeffrey Murray, Chief, Department of Fire &
18 Public Safety (Item No. 46)
19 Robert Shimada, Deputy Chief, Department of
20 Fire & Public Safety (Item No. 46)
21 Stephen Orikasa, Sergeant, Department of Police
22 (Item No. 46)
23 Thomas Phillips, Chief, Department of Police
24 (Items Nos. 4(4) and 4(6))
25 Lori Tshako, Deputy Director, Department of
26 Housing and Human Concerns (Item No.
27 48)
28 Mahina Martin, Public Information Officer,
29 Office of the Mayor (Item No. 49)
30 Brian T. Moto, Corporation Counsel, Department
31 of the Corporation Counsel
32 Adrienne N. Heely, Deputy Corporation Counsel,
33 Department of the Corporation Counsel (Item
34 Nos. 46 and 48)
35 Laureen L. Martin, Deputy Corporation Counsel,
36 Department of the Corporation Counsel,
37 (Item Nos. 4(4) and 4(6), and 1(21))
38 Moana M. Lutey, Deputy Corporation Counsel,
39 Department of the Corporation Counsel,
40 (Items Nos. 4(4) and 4(6)

41 SEATED IN THE GALLERY:
42 Lois Bisquera, Assistant Public Information
43 Office, Office of the Mayor (Item No. 49)

1 OTHERS: Marjorie Bronster, Bronster Hoshibata, a Law
 Corporation, (Item No. 49)
2 DeGray Vanderbilt (Item No. 49)
 Three (3) additional attendees

3
4 PRESS: Akaku: Maui Community Television, Inc.
5

6 CHAIR MATEO: ...(gavel)...Policy Committee
7 Meeting for July 22nd, 2008 will come to order.

8 The members present this morning, for the
9 record, the Committee Vice-Chair, Chairman Hokama, Members
10 Baisa, Molina, Pontanilla and Victorino; excused this
11 morning is Ms. Anderson and Mr. Medeiros; Member Johnson
12 will be joining us shortly.

13 Members, we have quite an ambitious agenda
14 today. And we thank you for availing yourself to go
15 through this process with us.

16 At this time, Members, we have no one signed up
17 to testify this morning. The Chair, however, will leave
18 public testimony open a little longer.

19 And with that being said, Members, we will
20 engage with the agenda for today. Moving on to our
21 committee items.

22 And before doing that, the Chair would like to
23 also recognize those individuals that are here with us
24 this morning. From the Corporation Counsel, with us is
25 Deputy Corporation Counsel Adrienne Heely. The Committee

1 Staff with us this morning, we have our Committee
2 Analysts, both Ms. Revels and Ms. Heely, as well as our
3 Committee Secretary, Ms. Sakamoto.

4 ITEM NO. 46: INTERGOVERNMENTAL AGREEMENT/MEMORANDUM OF
5 UNDERSTANDING BETWEEN HALEAKALA NATIONAL
6 PARK/U.S. NATIONAL PARK SERVICE AND THE
7 COUNTY OF MAUI (Firefighting, Law
8 Enforcement, and Emergency Services "Mutual
9 Aid" Relationship) (C.C. No. 08-74)

8 CHAIR MATEO: The first item on our agenda,
9 Members, is Policy Item 46, Intergovernmental
10 Agreement/Memorandum of Understanding Between Haleakala
11 National Park/U.S. National Park Service and the County of
12 Maui, (Firefighting, Law Enforcement and Emergency
13 Services "Mutual Aid" Relationship.)

14 Members, also with us, to provide as additional
15 information resource, is both the Fire Chief Jeff Murray,
16 as well as the Deputy Robert Shimada. And also from the
17 Police Department, Sergeant Stephen Orikasa is also with
18 us.

19 Members, at this particular point in time, what
20 is before us with this particular item is a proposed bill
21 entitled A Bill for an Ordinance Authorizing the Mayor of
22 the County of Maui to Enter into an Intergovernmental
23 Agreement/Memorandum of Understanding to Document a
24 Firefighting, Law Enforcement, and Emergency Services
25 "Mutual Aid" Relationship Between Haleakala National

1 Park/U.S. National Park Services, and the County of Maui,
2 State of Hawaii.

3 And, Members, I am going to ask Ms. Neely [sic]
4 provide this Committee with the additional information
5 prior to opening the floor for questions.

6 Ms. Heely.

7 MS. HEELY: Mahalo, Chair.

8 Good morning, Mr. Chairman, Council Chair Hokama
9 and Council Members. Thank you for the opportunity to
10 comment.

11 Our office reviewed the revised proposed bill
12 for an ordinance authorizing the mayor to enter into an
13 Intergovernmental Agreement/Memorandum of Understanding
14 between Haleakala National Park/U.S. National Park Service
15 and the County of Maui. Our office also reviewed the
16 Memorandum of Understanding, attached as Exhibit 1 to the
17 proposed bill. We also corresponded with the respective
18 representatives from the National Park Service, Maui's
19 Department of Police and Department of Fire and Public
20 Safety, who are also here to answer questions that the
21 Council Members may have.

22 After many correspondences and negotiations
23 between the named agencies, we were able to finalize the
24 proposed Memorandum of Understanding and Agreement and the
25 proposed bill, circulate for signature, and were able to

1 sign off as approved to form and legality.

2 Accordingly, we have no objection to your
3 Committee's passing of said bill.

4 CHAIR MATEO: Thank you, Ms. Heely.

5 The Chair will ask both the Fire Department and
6 the Police Department to also provide comment, if they so
7 choose.

8 MR. MURRAY: No comment.

9 CHAIR MATEO: Thank you.
10 Sergeant.

11 MR. ORIKASA: We reviewed the documents, we no
12 objections or comment at this time.

13 CHAIR MATEO: Thank you.

14 Members, the floor is open for questions.

15 Mr. Hokama.

16 VICE-CHAIR HOKAMA: Chairman, thank you. Good
17 morning.

18 CHAIR MATEO: Good morning.

19 VICE-CHAIR HOKAMA: Two questions that I have,
20 Mr. Chairman.

21 One, I believe you and I have had a very, very
22 informal discussion. On page one, Corporation Counsel --
23 or Exhibit 1, I should say, they define, as far as the
24 Federal Government is concerned, the National Park
25 Service, it says "units," plural, of the National Park

1 Service, Department of Interior, principally Haleakala
2 National Park. So what other national park entities could
3 fall under this Memorandum of Understanding, since they
4 chose to make it a plural designation?

5 CHAIR MATEO: Thank you.

6 Ms. Heely.

7 MS. HEELY: I am looking, also -- mahalo,
8 Mr. Chair. I am also looking at page one, or, if you
9 count it from the cover sheet -- one, two, three -- page
10 three, they also, in parenthesis, put Kalaupapa National
11 Historical Park.

12 This form MOU that was provided to us by the
13 U.S. National Park Service and Haleakala National Park, we
14 worked in conjunction with the signatories on this Exhibit
15 1, Chief Ranger Mark Tanaka-Sanders of Haleakala National
16 Park, as well as the superintendent of Haleakala National
17 Park. I am not sure of the -- and this is the form that
18 they used in previous agreements, but they wanted to
19 update it. I am not sure of the other national parks that
20 they intended to include, but the authority given within
21 this MOU seems to be all encompassing of all U.S. national
22 parks.

23 VICE-CHAIR HOKAMA: Okay. So, Mr. Chairman,
24 one, by Constitution, Kalaupapa is under the County of
25 Kalawao designation; two, it is administered by

1 Constitution by the State Department of Health and is not
2 considered a part of the County of Maui. So by this
3 proposal, are we -- is the County of Maui saying that we
4 will respond to Kalaupapa's request from the Park Service?

5 CHAIR MATEO: Ms. Heely.

6 MS. HEELY: This proposal doesn't preclude the
7 County of Maui from entering into intergovernmental
8 agreement or mutual aid relationship with Kalaupapa
9 National Historical Park. And, historically -- if the
10 Department would want to comment -- I believe they would
11 assist in certain emergency situations, if emergency would
12 arise in Kalaupapa National Park.

13 VICE-CHAIR HOKAMA: What is the current protocol
14 with Kalaupapa, should we get a call from Kalaupapa?

15 CHAIR MATEO: Chief.

16 MR. MURRAY: Thank you, Council Members. Thank
17 you, Chair.

18 It's been historically that the Department
19 responds to situations within the Kalaupapa area, if
20 called, because we are the closest emergency response to
21 that area. So we've done it in the past.

22 Excuse me.

23 VICE-CHAIR HOKAMA: Do we get reimbursement,
24 but, from State to provide services on their behalf?

25 MR. MURRAY: Not to my knowledge.

1 VICE-CHAIR HOKAMA: Well, we need to get that
2 corrected, Chair.

3 CHAIR MATEO: Mr. Hokama, just for your
4 additional information, in a recent newspaper article from
5 the Molokai Dispatch, the front page read "Firefighters
6 leave Kalaupapa, effective July 1st, the Federal Aviation
7 Administration no longer requires the presence of fire
8 personnel at Class 3 airports serving planes carrying less
9 than ten people." So effective on the 1st of July,
10 Kalaupapa does not have firefighter presence at that
11 particular airport.

12 So my concern was the need to know whether or
13 not Kalaupapa is part of the inclusion in the current
14 Memorandum of Understanding that we are going to be --
15 that we are discussing this morning simply because the
16 same issues that you have brought up. And I am a little
17 uncomfortable in not knowing the relationship between the
18 needs to provide the emergency services for Kalaupapa as
19 well as for Haleakala National State Park. I don't know
20 what our requirement is in terms of our responsibilities.
21 Chief.

22 MR. MURRAY: If I may add? That rule was based
23 on the State Airports Division? And that information is
24 based on crash crew, ARFF members that are usually flown
25 into that area so that they can do firefighting. That

1 doesn't consist of the County firefighters. We normally
2 do rescues and emergency services or transport out of that
3 area if we get called. That is not our jurisdiction as
4 far as that airport.

5 CHAIR MATEO: Okay. Mr. Hokama.

6 VICE-CHAIR HOKAMA: Chairman, I would say, you
7 know, obviously on the signatory page, you know, we're
8 missing one party. And that is the appropriate official
9 that can sign from the County of Kalawao, which Kalaupapa
10 is administratively attached to, and, again, by State
11 Constitution.

12 It's not something that we can either amend by
13 state statute or an ordinance. It's something that I
14 think we need to deal with properly since we are talking
15 about another legally-recognized constitutionally-created
16 governmental entity. That is one of my sticking points,
17 Chairman.

18 The other one, I would just say it's interesting
19 that we are being asked to consider an ordinance, but, if
20 you look at termination, it just states that either party
21 gives 60-day notice. I never knew of a 60-day notice that
22 just cancels an ordinance. So if this is the appropriate
23 terminology that we need to use in the termination
24 component, Chairman, that protects the County's right to
25 exercise that option, and I would ask that our appropriate

1 legal people re-review this clause in the proposal.

2 I thank you, Chairman.

3 CHAIR MATEO: Thank you, Mr. Hokama.

4 Ms. Heely, can you just provide comment on
5 Mr. Hokama's comment regarding the signatory page, where
6 there is no actual representative that is a participant
7 with this agreement because Kalaupapa is not part of Maui
8 County? It is a separate county per se, so I don't know
9 whether or not the administration does look at the
10 inclusion of services to Kalaupapa that would not require
11 the State to be a participant signature on this agreement.

12 MS. HEELY: Mahalo, Mr. Chair.

13 I can look into it, whether or not an additional
14 signatory is needed in regards to this.

15 Like I said earlier, this was off a previous
16 form that has been in effect and signed off and approved.

17 And in regards to the choice of ordinance, we
18 were just going by the Maui County Code, 20.020, which
19 requires -- where it states, "Unless authorized by
20 ordinance, the mayor shall not enter into any
21 intergovernmental agreement or any amendment thereto which
22 places a financial obligation upon the county or any
23 department or agency thereof."

24 CHAIR MATEO: Thank you.

25 Mr. Molina, followed by Mr. Victorino.

1 COUNCILMEMBER MOLINA: Thank you, Mr. Chair.
2 Question for clarification to Corporation
3 Counsel. It's about seven pages in on the Memorandum of
4 Agreement, under Letter B, where it states, "The County of
5 Maui agrees." Number two states, "That the" -- County of
6 Maui -- "COM will accept federal prisoners for short-term
7 incarceration." And it goes on to say,
8 "Federally-approved County of Maui holding facility not to
9 exceed seven calendar days, unless otherwise approved by
10 the Chief of Police." And then, "Long-term incarceration
11 shall be the responsibility of the United States National
12 Park Service. The expenses of such incarceration shall be
13 borne by the County of Maui or USNPS, as appropriate."

14 This is where I need clarification. So are we
15 to understand that if we accept this agreement, even
16 though it's a federal prisoner, that the expenses could be
17 borne by the County of Maui, I guess I would assume our
18 Police Department? Even though this -- you know, at least
19 on the surface, one would think it would be the
20 responsibility of the Federal Government paying for the
21 expenses of any federal prisoner in our county facility.
22 Can I get clarification on that?

23 CHAIR MATEO: Ms. Heely.

24 MS. HEELY: Mahalo.

25 Arguably, that is what Paragraph Two of that

1 particular page says, but I was able to negotiate with the
2 respective agencies. Article VIII, on the last page
3 previous to the signatory pages, that in regards to costs,
4 restitution and reimbursement, "Except as otherwise
5 provided herein or as otherwise negotiated on a case by
6 case basis, and/or provided by law, or pursuant to court
7 order, the parties agree that any expenses incurred by
8 either party in satisfaction of this agreement shall be
9 borne by the party incurring such expense."

10 And I think in regards to the clause that you
11 read, the last sentence, the expenses of such
12 incarceration shall be borne by the County of Maui or U.S.
13 National Park Service, as appropriate. So read in
14 conjunction with that other article, VIII, depending on
15 which prisoners are used in such instance or a case by
16 case basis, they would assign the costs appropriately to
17 each agency, either U.S. National Parks or County of Maui.

18 COUNCILMEMBER MOLINA: Okay. Yeah. That, for
19 me, that is where I am sort of on the fence with this.
20 Because I would sure hate to see us get stuck with the
21 bill, you know, in terms of -- I guess I would assume this
22 has to be negotiated, but, you know, please understand my
23 caution with this. Because sometimes when you accept --
24 you know, agree to a deal like this, you may end up
25 getting more than you bargained for. So I just personally

1 feel it wouldn't be fair that our Police Department's
2 budget gets taxed with the cost of a federal prisoner.

3 So, anyway, thank you. Thank you, Chair.

4 CHAIR MATEO: Thank you, Mr. Molina.

5 Mr. Victorino.

6 COUNCILMEMBER VICTORINO: Thank you.

7 In light of what Chief Murray had just informed
8 us of, then I am safe to say that in the peninsula of
9 Kalaupapa, there is no fire protection whatsoever?

10 CHAIR MATEO: Chief.

11 MR. MURRAY: From what I understand, they have a
12 volunteer fire department. And the State is in charge of
13 the airport area. But we normally don't get in there on
14 fire situations unless requested. The majority of the
15 incidents that we have are all rescues.

16 COUNCILMEMBER VICTORINO: Okay. The next
17 question is, so, with that in mind, if there was some sort
18 of action or disaster at the airport, am I safe to say
19 that the State of Hawaii would be the first to respond,
20 not us? Not the County of Maui, I should say.

21 MR. MURRAY: That wouldn't be safe to say. I
22 would say that once the call comes out, we're going to
23 respond and take it from there, and, hopefully, hand it
24 off to them when they do show up. I am not sure if they
25 have, you know, a contingency plan to get in if it shuts

1 down the airport. We might be able to fly them in with
2 our resources, but that would have to be requested from
3 their top people to us.

4 COUNCILMEMBER VICTORINO: Okay. And the other
5 question I have is really for the Corp Counsel.
6 Understanding the National Parks and this agreement
7 specifically saying Kalaupapa -- which Chair Hokama has
8 brought up that issue -- and Haleakala National Park,
9 would this encumber any other outside parks such as
10 Volcano National Park, (inaudible) National Park, or any
11 of the other national parks for assistance, would this
12 also encumber them to help us, should we need help here on
13 Maui?

14 MS. HEELY: Yes, I believe so. It's a
15 reciprocal mutual aid relationship. And on the last page,
16 it also circles Maui County, including Kalaupapa, and
17 notes Kalaupapa. So, arguably, it could encompass all
18 other national parks.

19 COUNCILMEMBER VICTORINO: For mutual aid?

20 MS. HEELY: For mutual aid relationship,
21 emergency responses.

22 COUNCILMEMBER VICTORINO: Then I guess this goes
23 back to the Department. In the past, Chief Murray, have
24 we reciprocated for other areas of the state as far as our
25 firefighters going to the Big Island or Kauai or Oahu for

1 disasters, such as fires and others?

2 MR. MURRAY: Yeah, but not under this MOU.

3 COUNCILMEMBER VICTORINO: Okay.

4 MR. MURRAY: It was under other MOUs.

5 COUNCILMEMBER VICTORINO: So we have other
6 agreements that exist?

7 MR. MURRAY: Yeah, exist for that specific
8 reasons, yeah. But this one is basically for County of
9 Maui.

10 COUNCILMEMBER VICTORINO: Just for the County of
11 Maui.

12 MR. MURRAY: We've had National Park Service
13 come over to help us fight fires here when it's on the
14 boundary. And then they have -- like the Kahikinui fire,
15 for example, they had 40 firefighters that came over from
16 all different jurisdictions in the State of Hawaii and
17 California and helped us with that.

18 COUNCILMEMBER VICTORINO: So not only DLNR, but,
19 also, the Park Services provides additional manpower to
20 what we have?

21 MR. MURRAY: Right. But the only problem with
22 that is the timetable. It's not right away. So, usually,
23 a long progressive fire, then they will show up. It's
24 something that has to be planned out because they take a
25 lot of time to come, over 24 hours.

1 COUNCILMEMBER VICTORINO: You know why, because
2 when we were up at WIR, they talked about mutual aid
3 between county, states, federal and all the different
4 aspects. And one of the questions was raised about
5 Hawaii. And I says, well, by the time you guys fly in and
6 you get here, we either got the fire under control, out of
7 control, it's either/or. But I want to know that we are
8 self-contained and we have these different agreements.

9 So thank you. I appreciate your comments, Chief
10 Murray and Corp Counsel.

11 MR. MURRAY: You're welcome.

12 CHAIR MATEO: Thank you, Mr. Victorino.

13 Mr. Pontanilla -- prior to Mr. Pontanilla
14 starting his question, the Chair would also like to
15 recognize Ms. Johnson for her presence this morning.

16 Thank you.

17 I'm sorry, Mr. Pontanilla. Go ahead.

18 COUNCILMEMBER PONTANILLA: Thank you, Chairman.

19 The first question is for the Chief. You know,
20 I know we do have a first responder team on the island of
21 Molokai whenever things happen. Have you or have the
22 Department, you know, had conversation in regards to -- or
23 with the State Fire and Safety departments in regards to
24 how do we handle, you know, situations in Kalaupapa or
25 someplace remote where jurisdiction is for State of

1 Hawaii, but we do aid? In other words, do we have some
2 kind of an agreement or some kind of a meeting so that
3 everybody understand their role as far as public safety?

4 MR. MURRAY: Well, I know for a fact the
5 airports that we have here on Maui, we have a mutual aid
6 agreement with that. And I would assume -- and we can go
7 back and research that to make sure -- that Kalaupapa is
8 part of that. Because I know Molokai Airport, Kapalua,
9 Hana and Kahului is part of that. So I would imagine that
10 it would be. I specifically didn't see it myself, but we
11 can research that.

12 COUNCILMEMBER PONTANILLA: Thank you.

13 For Sergeant Orikasa, just one question. How
14 many arrests on the average have we done on a yearly
15 basis?

16 MR. ORIKASA: (Inaudible.)

17 CHAIR MATEO: Sergeant, could you use the
18 microphone, please?

19 MR. ORIKASA: Sorry. I don't have any
20 statistical information regarding that, but, just from
21 prior knowledge, from working the receiving desk, I
22 believe maybe two to maybe half a dozen a year.

23 COUNCILMEMBER PONTANILLA: A year. Thank you.

24 Thank you, Mr. Chairman.

25 CHAIR MATEO: Thank you, Mr. Pontanilla.

1 Ms. Johnson.

2 COUNCILMEMBER JOHNSON: Yes. And this is
3 something that Ms. Heely had said. And am I to understand
4 that this is just, I guess, with updates, an extension of
5 an existing MOU that we have had all these years? And how
6 long has that actually been in existence? Because it's
7 not part of the communication.

8 CHAIR MATEO: Ms. Heely.

9 MS. HEELY: Mahalo, Chair.

10 Yes, this is an extension of previous agreements
11 that were in effect, with a few revisions. One, including
12 the limits on liability provision, we included the cost
13 for restitution and reimbursement clause in Article VIII.
14 And a release, we also were able to negotiate with the
15 U.S. National Parks, they shouldn't hold us liable should
16 they do something wrong on their account.

17 And I am not sure how long the previous
18 agreements -- previous years' agreements were in effect,
19 but I know I've reviewed two prior to this.

20 COUNCILMEMBER JOHNSON: And what is generally --
21 you know, because I know that laws change -- and, of
22 course, Homeland Security probably, early on, wasn't a
23 part of this issue -- but now I see that verbiage, you
24 know, contained within this particular MOU. So whenever
25 there is a change within a law that would impact this, do

1 you automatically go in, then, and update it, or is it
2 just, I guess, worded in such a way that it will
3 automatically comply with whatever laws are in effect at
4 that time?

5 MS. HEELY: It depends on which law. And when I
6 am reviewing this contract or the Memorandum of
7 Understanding, all the laws and United States Codes that
8 were cited I was able to pull up. Sometimes when they put
9 "as amended" after the specific section, it recognizes
10 that it will continue with the document. But I always
11 make sure that the laws are up-to-date. And if they
12 aren't, then it's hard to say whether or not we would go
13 ahead and either know about it or go ahead and either
14 amend the document.

15 Like I said, this was a collaborative effort on
16 all the departments and agencies, including the U.S.
17 National Park Service, who wanted to update it with the
18 new administrations that came in.

19 COUNCILMEMBER JOHNSON: Okay. And so then in
20 the absence of this intergovernmental agreement now, does
21 the other one just automatically extend on a
22 month-by-month basis or will this supersede anything that
23 we already have?

24 MS. HEELY: I believe this supersedes the last
25 one. And I am pretty sure that the last one may have

1 expired. So --

2 COUNCILMEMBER JOHNSON: Okay. And I see --

3 MS. HEELY: That is why the need for the update.

4 COUNCILMEMBER JOHNSON: Yeah. And,
5 unfortunately, that is what ends up happening so many
6 times.

7 So it will be in effect for, I guess,
8 termination? And so, you know, is there an end date on
9 it? Because all I see is the termination.

10 CHAIR MATEO: Ms. Heely.

11 MS. HEELY: I'm sorry. Could Councilmember
12 Johnson point me to the termination?

13 COUNCILMEMBER JOHNSON: Well, all it just says
14 is article -- and it's on Exhibit 1, Article VI,
15 Termination, "The parties hereto have caused this
16 agreement to be effective from the date of final signature
17 and will continue in force until terminated by either
18 party by 60 days written notice to the other."

19 So the way I am reading that is there is no end
20 time. It just goes on in perpetuity.

21 MS. HEELY: I'm sorry. I am missing -- my
22 binder is missing -- or let me --

23 COUNCILMEMBER JOHNSON: Article VI.

24 MS. HEELY: -- a page. Okay, Article VI. Yeah,
25 that is the termination paragraph. And the ordinance that

1 we drafted, it's effective upon its approval and there is
2 no termination --

3 COUNCILMEMBER JOHNSON: Right.

4 MS. HEELY: -- provision. So --

5 COUNCILMEMBER JOHNSON: That's what I just
6 wanted to make sure, if there was any span of time. Like
7 because you said the other agreement had expired, I
8 wondered, if that one had an expiration date, then why
9 doesn't this one have an expiration date. I am just
10 questioning.

11 MR. ORIKASA: (Inaudible.)

12 MS. HEELY: I apologize, Councilmember Johnson.
13 I don't have the old agreement or Memorandum of
14 Understanding. But conversations with Department of
15 Police believes that it has not been terminated. But this
16 agreement is to update the Memorandum of Understanding to
17 include more agencies.

18 COUNCILMEMBER JOHNSON: Okay. And so,
19 basically, you know what -- and the wording on Article V,
20 it says, this agreement supersedes all prior agreements
21 between the various parties or any department or division
22 of these agencies. So that verbiage would take care of
23 the other agreement that -- it appears that it's probably
24 still in effect until such time that we actually adopt
25 this and then update it.

1 Okay, thank you.

2 MS. HEELY: Yes.

3 CHAIR MATEO: Thank you, Ms. Johnson.

4 Members, additional questions?

5 Ms. Baisa.

6 COUNCILMEMBER BAISA: Just one very important
7 factor for me. That is, if the police or fire have any
8 concerns that we should be concerned about, or are they
9 comfortable with us signing this agreement?

10 CHAIR MATEO: Thank you.

11 We will start with the Fire Department and ask
12 Chief Murray.

13 MR. MURRAY: Thank you.

14 Yes, we are comfortable with this.

15 COUNCILMEMBER BAISA: Thank you very much. That
16 is very clear.

17 CHAIR MATEO: For the Police Department,
18 Sergeant Orikasa.

19 MR. ORIKASA: Likewise, we're satisfied with the
20 terms within this MOU.

21 COUNCILMEMBER BAISA: Thank you very much.

22 Thank you, Chair.

23 CHAIR MATEO: Thank you, Ms. Baisa.

24 Members, additional questions for Ms. Heely or
25 for the respective departments?

1 Ms. Heely, am I to -- just for the sake of
2 clarification, then, currently, there is an existing
3 agreement that references this intergovernmental
4 relationship, it already exists. What we are addressing
5 at this point is an update to that existing understanding
6 that already exists. There has been specifics added to
7 the language of the existing agreement. And I guess now
8 there's specifications with the reference of Kalaupapa as
9 part of Maui County. And I believe there is still -- as
10 you have heard, the Members have some additional concerns
11 regarding Kalaupapa's inclusion. Some of the Members have
12 additional concerns regarding the existing terms of the
13 agreement, like, for example, an expiration date to this
14 agreement, since there, apparently, is none that is shown.

15 Is this an accurate understanding of this
16 particular request of an already existing agreement?

17 MS. HEELY: Yes, that is an accurate
18 understanding.

19 CHAIR MATEO: Okay. Thank you.

20 Members, are there additional questions for
21 Corporation Counsel or the respective departments?

22 COUNCILMEMBER PONTANILLA: I get one, Chair.

23 CHAIR MATEO: Okay, Mr. Pontanilla.

24 COUNCILMEMBER PONTANILLA: Thank you.

25 As far as the ending date of the agreement, I am

1 looking at the 60-day notice, would that be considered as
2 an agreement date that we can utilize? In other words, if
3 we are not satisfied, we will give them 60 days to
4 terminate the contract or MOU?

5 (Silence.)

6 MS. HEELY: Yes. That is a clause that either
7 party can utilize to terminate this MOU by written notice
8 to the other party.

9 COUNCILMEMBER PONTANILLA: Thank you.

10 Thank you, Chairman.

11 CHAIR MATEO: Thank you.

12 Members, additional questions for Corporation
13 Counsel?

14 COUNCILMEMBER BAISA: No.

15 CHAIR MATEO: Hearing none, Members, if there is
16 no objections -- Ms. Heely, the Chair would like to ask
17 what happens if we do not move this forward at this
18 particular time, because there already is an existing
19 agreement right now?

20 MS. HEELY: That is up to, Mr. Chairman, your
21 Committee.

22 CHAIR MATEO: There is no consequences because
23 an existing agreement already exists. So what -- the
24 actions of Corporation Counsel is asking this body to
25 include the apparent updates into an existing agreement.

1 Members, if there is no objections, the Chair would like
2 to defer this item until my next committee meeting, at
3 which time the Chair will ask Corporation Counsel to
4 provide responses to the questions that this Committee had
5 asked for. That involves the inclusion of Kalaupapa,
6 those concerns, which involves the termination date, and
7 involves the termination agreement of 60 days.

8 Mr. Pontanilla, go ahead.

9 COUNCILMEMBER PONTANILLA: Thank you.

10 The existing agreement, do we have a 60-day
11 notice on that included in the MOU?

12 MS. HEELY: I will have to double-check on that.
13 But in regards to the request, I would need time to
14 negotiate or get in contact with the representatives of
15 Kalaupapa or our State agencies, because that is another
16 party that may be involved in the negotiations. And it
17 may change the terms that were already negotiated upon,
18 including the limitation liability clause, the respective
19 cost provisions and the release that we were able to
20 obtain through -- from the United States National Park
21 Service.

22 COUNCILMEMBER PONTANILLA: So, Ms. Heely,
23 question, the 60-day notice, is it part of the existing
24 agreement?

25 MS. HEELY: Sorry, I --

1 COUNCILMEMBER PONTANILLA: So the agreement can
2 carry on until we give them notice?

3 MS. HEELY: That seems like a standard
4 provision, but I would have to look at the previous
5 agreement.

6 COUNCILMEMBER PONTANILLA: Okay. Thank you.

7 CHAIR MATEO: Thank you, Mr. Pontanilla.
8 Ms. Johnson.

9 COUNCILMEMBER JOHNSON: Yes. And, Ms. Heely, I
10 am assuming that when we discuss this at the next meeting
11 that we will be able to have a copy of that older
12 agreement, too, so we can just see what the changes would
13 be.

14 MS. HEELY: Yes.

15 COUNCILMEMBER JOHNSON: Thank you.

16 MS. HEELY: And, once again, the previous
17 agreements were drafted by the U.S. National Park Service.
18 So I will have to request another copy from them.

19 COUNCILMEMBER JOHNSON: Thank you.

20 MS. HEELY: Thank you.

21 CHAIR MATEO: Thank you.

22 Ms. Heely, at this point, the inclusion of
23 Kalaupapa is just an assumption because the agreement
24 references Haleakala National Park. And there is only an
25 assumption because Kalaupapa -- that circle that has been

1 drawn on the second to the last page cites Kalaupapa. So
2 we are only dealing with an assumption at this point, or
3 is it an actual inclusion in the understanding or the
4 agreement of understanding that we currently have?

5 MS. HEELY: Arguably, it would be an assumption.
6 But Kalaupapa National Historical Park is also mentioned
7 on page three of the agreement --

8 CHAIR MATEO: Okay.

9 MS. HEELY: -- in one of the whereas clauses,
10 not only in the circled diagram in the back.

11 CHAIR MATEO: Thank you.

12 Members, with no objections, the Chair will
13 defer this item to this Committee's next meeting scheduled
14 for August 5th.

15 COUNCIL MEMBERS: No objection.

16 CHAIR MATEO: And at that time we will take
17 action on this particular item.

18 COUNCIL MEMBERS VOICED NO OBJECTIONS. (Excused:
19 MA and BKM)

20 ACTION: DEFER pending further discussion.

21 CHAIR MATEO: Thank you very much, Ms. Heely.
22 Members, we are going to move on to the next
23 item.

24 Chief Murray, Deputy Shimada, and Sergeant
25 Oriksa, thank you very much for joining us this morning.

1 ITEM NO. 48: DONATION TO DEPARTMENT OF HOUSING AND HUMAN
2 CONCERNS, KAUNOA SENIOR SERVICES, (1996
3 JEEP CHEROKEE FROM MARK AND ANNA RAMSEY)
4 (C.C. No. 08-108)

5 CHAIR MATEO: Members, we are going to move
6 right into the Policy 48, Donation to Department of
7 Housing and Human Concerns, Kaunoa Senior Services, a 1996
8 Jeep Cherokee from Mark and Anna Ramsey.

9 Members, what is before us this morning is a
10 revised resolution that will authorize the acceptance of
11 the Jeep Cherokee that was donated to the Department of
12 Housing and Human Concerns for the Kaunoa Senior Service
13 Meals-on-Wheels and Assisted Transportation Program.

14 The Chair will ask the Department to provide
15 additional information to us. And the Chair would also
16 like to recognize, representing the Department, the Deputy
17 Director, Lori Tsuhako.

18 Good morning.

19 MS. TSUHAKO: Good morning, Mr. Chair. Good
20 morning, Members. Thank you for having me this morning.

21 We are here to discuss a donation of a Jeep
22 Cherokee, a very generous donation from Mr. and Mrs.
23 Ramsey.

24 My understanding is that the Ramseys heard about
25 the Meals-on-Wheels Program and, since they purchased a
 new car, they made an offer to donate their old vehicle to

1 the program.

2 The Cherokee is currently being used as a backup
3 vehicle from when one of the regular Meals-on-Wheels --
4 bless you -- cars goes in for service or for repairs.

5 Our Meals-on-Wheels Program has delivered over
6 107,000 meals to frail and elderly in our community. And
7 so this vehicle would join a fleet of 12 others assigned
8 to the Meals-on-Wheels Program.

9 So we are grateful to accept the donation.

10 CHAIR MATEO: Thank you, Ms. Tsuhako.

11 Members, questions for the Department?

12 Mr. Molina.

13 COUNCILMEMBER MOLINA: Thank you, Chair.

14 Good morning, Ms. Tsuhako.

15 Just some additional details on the vehicle
16 itself. Now, you mentioned that it will be used as a
17 backup and not as a primary vehicle. Because I know your
18 Meals-on-Wheels vehicles put on a lot of miles.

19 MS. TSUHAKO: Yes.

20 COUNCILMEMBER MOLINA: So do you know offhand
21 the vitals on this vehicle as far as how many thousands
22 miles it has? It's a 12-year-old vehicle. And, usually,
23 the County's, I guess, vehicle replacement policy, you're
24 looking at 10 years. I just want to make sure we have
25 something that's not going to, you know, immediately break

1 down. Or if we have to do some repairs to it as it is
2 right now, it's -- I presume currently it's in decent
3 running condition.

4 MS. TSUHAKO: I believe it is in current -- is
5 in good running condition right now. As I said -- well, I
6 am guessing that it's not a real high efficiency vehicle.
7 So it's being used as a backup, when one of the other 12
8 fleet vehicles is down. So I don't think they are running
9 it every day. But I am assuming that it's in good shape
10 because they have used it recently.

11 COUNCILMEMBER MOLINA: Okay. Fine. Thank you.
12 I would like to send out my thank yous to the donors as
13 well for this. Thank you.

14 MS. TSUHAKO: Thank you.

15 CHAIR MATEO: Members, additional questions for
16 the Department?

17 Seeing none, Members, the Chair would recommend
18 the adoption of the revised proposed resolution entitled
19 "Authorizing Acceptance of a 1996 Jeep Grand Cherokee from
20 Mark and Anna Ramsey to the Department of Housing and
21 Human Concerns, Kaunoha Senior Services, County of Maui,
22 Pursuant to Chapter 3.56 of the Maui County Code."

23 And, Members, this does include the filing of
24 the communication as well.

25 COUNCILMEMBER VICTORINO: So moved.

1 COUNCILMEMBER MOLINA: Second.

2 CHAIR MATEO: It's been moved by Mr. Victorino,
3 seconded by Mr. Molina.

4 Members, additional discussion with the item?
5 Ms. Johnson.

6 COUNCILMEMBER JOHNSON: I just wanted to know,
7 on the value of the vehicle, is this the Blue Book on it?

8 MS. TSUHAKO: Yes. The Blue Book vehicle -- the
9 Blue Book value is \$10,995.

10 COUNCILMEMBER JOHNSON: \$10,895?

11 MS. TSUHAKO: I show 900. I may be wrong,
12 Councilmember. Hang on a second.

13 \$10,895. Thank you. My eyes are bad.

14 COUNCILMEMBER JOHNSON: Okay. I just wanted to
15 double-check. Thank you.

16 CHAIR MATEO: Thank you, Ms. Johnson.
17 Mr. Hokama.

18 VICE-CHAIR HOKAMA: Chairman, I appreciate the
19 gesture by the donors, Mr. and Mrs. Ramsey, but for me,
20 Chairman, if we are ever going to get our grip on our
21 physical asset inventory, we need to do policies. And if
22 I understand this Administration's goal, one of its goals
23 is on green government. Then accepting the
24 eight-cylinder, 12-year-old vehicle is not in the mode of
25 what I had thought we were trying to get to.

1 So for me, Chairman, it's -- you know, it's very
2 difficult. I appreciate the gesture, but in the
3 long-term, for me, this is not where I want to go. So I
4 won't be supporting the request.

5 Thank you.

6 CHAIR MATEO: Point well-taken, Mr. Hokama.

7 Thank you.

8 Ms. Baisa.

9 COUNCILMEMBER BAISA: I, too, had -- my initial
10 reaction to this was I wanted to know the fuel efficiency
11 of the vehicle. And I think Ms. Tsuhako answered my
12 question by alleging that it was not efficient and so it
13 would be used as a backup and not everyday.

14 But, you know, having come from the nonprofit
15 area, or the arena, when gifts are offered to the
16 nonprofit, you have to look at them very carefully.
17 Because sometimes, you know, the gift may be -- you know,
18 the intentions are wonderful, but it's the maintenance,
19 the upkeep of it.

20 However, I was trying to do some calculations in
21 my head while we were discussing this. And that was how
22 much we would have to spend purchasing fuel to offset the
23 cost of buying a comparable vehicle. If this thing is
24 worth about \$11,000, that is a lot of gas that we would
25 have to buy to come to that. So we are saving some money

1 even though we will spend more money on gas.

2 But, again, we are violating our principle of
3 trying to go to a greener government. So it's a tough
4 call for me.

5 And I certainly don't want to discourage the
6 public from making donations to our programs. But, again,
7 we may want to weigh the gift.

8 Thank you.

9 CHAIR MATEO: Thank you, Ms. Baisa.

10 Mr. Pontanilla.

11 COUNCILMEMBER PONTANILLA: Thank you.

12 Maybe not only for the Department, but the other
13 departments that accept vehicles for use from the public,
14 you know, like donations, like we have here this morning.
15 My question to Lori is, did any of our mechanics take a
16 look at the vehicle prior to accepting it?

17 MS. TSUHAKO: Councilmember, I am not aware that
18 anybody did. I am not -- I won't say "no" to that, but I
19 am not aware of it.

20 COUNCILMEMBER PONTANILLA: Thank you.

21 And I do, you know, share the same concerns like
22 Member Hokama and Member Baisa, but, you know, if this
23 thing is going to be used as a backup -- you know, I don't
24 know how often they will be using this vehicle -- I am
25 ready to support your recommendation, Chairman.

1 CHAIR MATEO: Thank you.

2 Mr. Molina, followed by Mr. Victorino.

3 COUNCILMEMBER MOLINA: Thank you.

4 Mr. Chair, maybe as a request from the
5 Department, if we could get some kind, I guess, of vehicle
6 report on this that could be provided to the Committee or
7 the Council Members. It, I guess, might maybe help ease
8 everybody's concerns, to, I guess, ensure that this
9 vehicle is in, you know, decent running order, and even
10 the so-called fuel efficiency of it. So I would like to
11 just respectfully make that request, Chair.

12 CHAIR MATEO: Thank you, Mr. Molina.

13 Mr. Victorino.

14 COUNCILMEMBER VICTORINO: Thank you.

15 I share the same concerns as others. And that
16 was one of my requests, is a vehicle inspection.

17 And I would hope that somehow, Chair, that we
18 would have some kind of process in place that any time we
19 accept any vehicle as a donation that a thorough
20 inspection would be done. Because if you got faulty
21 brakes or something else, and we accept it, then we become
22 liable. And the world I come from, of insurance, this is
23 one of the keys.

24 The other thing I was very interested in, in my
25 world, a car that is 12 years old usually doesn't have

1 tremendous value. So I just say -- you say this comes
2 from the Blue Book. I am just kind of questioning that
3 aspect.

4 Also, I question the fact that this car must
5 have very low mileage. And you don't have that answer for
6 us, to come up with some kinds of numbers. Because most
7 vehicles, after ten years the Blue Book almost falls to
8 zero. Now, that's not true for everything, got a BMW,
9 Mercedes, what you call collectable vehicles. That is a
10 little different. But most vehicles, after ten years,
11 fall off the chart as far as Blue Book or has very little
12 value.

13 So if a vehicle is 12 years old and has nearly
14 \$11,000 value, I am a little concerned as far as how you
15 determined that. I understand you said Blue Book, but I
16 would question that at this point.

17 But I also understand and I agree with the rest
18 of my colleagues, when the word "free" is given and used
19 in our nonprofit -- because I have been part of many
20 nonprofits -- you know, it's hard to turn down because
21 you're going to have to spend X amount of dollars.
22 Contrary to our policy of going green, this is something
23 that we can utilize in the interim, until we have enough
24 abilities, I should say, to purchase the green vehicles
25 and all the other things we need to convert over to.

1 So I will gladly support your recommendation,
2 Chair, but I do have some concerns in how these numbers
3 were derived and the conclusions that you have stated to
4 us today.

5 So thank you, Chair, for my opportunity.

6 CHAIR MATEO: Thank you, Mr. Victorino.

7 Ms. Baisa.

8 COUNCILMEMBER BAISA: Just one more quick
9 question for my own education. When you give this kind of
10 a gift to a nonprofit, you get a tax writeoff of, you
11 know, some -- that is substantial. Does that apply to
12 when you give to county government? Does anyone know?

13 CHAIR MATEO: Ms. Heely, would you be aware?

14 MS. HEELY: But I am not sure. Maybe I could
15 pose that question to an accountant. But when I -- like
16 when donating a car to -- Kidney cars, for example, I know
17 there's tax write-offs.

18 COUNCILMEMBER BAISA: Right.

19 MS. HEELY: I am not sure if it applies to
20 county governments.

21 COUNCILMEMBER VICTORINO: Chair?

22 CHAIR MATEO: Mr. Victorino.

23 COUNCILMEMBER VICTORINO: I had personal
24 experience in this area. And maybe this will help
25 Ms. Baisa. I donated a car to the University -- I mean --

1 yeah, University of Hawaii System, MCC, about 12, 13 years
2 ago. I donated a car to them, for which they restore.
3 You know the mechanics -- their mechanic's shop, they
4 restored it and they sold it. And I got a, what they
5 call, "government value." It ain't Blue Book. They have
6 their own methodology. So I got X amount of dollars as
7 donated to the State because, actually, it falls under the
8 State.

9 So I am going to say my personal experience,
10 then I would assume this would be part of the factor. But
11 as far as you saying substantial, the IRS has a schedule,
12 has nothing to do with Blue Book. They have a very
13 different schedule in which they determine vehicle value.

14 COUNCILMEMBER BAISA: Yeah, I am familiar with
15 the nonprofit situation. I am not familiar with how
16 government does it.

17 COUNCILMEMBER VICTORINO: Yeah.

18 COUNCILMEMBER BAISA: Thank you.

19 CHAIR MATEO: Thank you, Ms. Baisa. Thank you.
20 Mr. Pontanilla.

21 COUNCILMEMBER PONTANILLA: Thank you.

22 You can rule me out of line if you want to,
23 Chairman --

24 CHAIR MATEO: Don't worry.

25 ALL: (Laughter.)

1 COUNCILMEMBER PONTANILLA: You know, yesterday,
2 we had our Budget and Finance Committee meeting, we did
3 have the Cost of Government representative Mr. Suzuki
4 here. And one of the things that we talked about was
5 vehicle inventory. So, you know, I would like to request
6 from the Department if we could get a physical inventory
7 on the number of vehicles that they have. And maybe this
8 is a start that we can have, you know, to find out how
9 many vehicles we have here in Maui County. So that is my
10 request to the Department, a vehicle inventory list.

11 CHAIR MATEO: Thank you, Mr. Pontanilla.

12 MS. TSUHAKO: For the entire Department?

13 COUNCILMEMBER PONTANILLA: Yes.

14 CHAIR MATEO: Go ahead, Ms. Johnson.

15 COUNCILMEMBER JOHNSON: Yes. And not knowing
16 the mileage, and, also, there's three different models,
17 but even if the vehicle were in excellent condition and it
18 was one of the better models, the Kelly Blue Book, in fair
19 condition, is \$4,040, excellent condition is \$5,000. So,
20 you know, I mean anybody can look this up. And before we
21 put into this resolution what the value of the vehicle is,
22 which is what they will be able to take a tax deduction
23 for, I just want to be accurate. Because, I mean, you
24 just plug in the figures, you put in what is there, and
25 it's right online. So I really would just like that.

1 That is the only thing I am requesting.

2 Thank you.

3 CHAIR MATEO: Okay. Members, Chair will take a
4 brief recess. Committee will stand in recess...(gavel)...

5 RECESS: 9:55 a.m.

6 RECONVENE: 9:58 a.m.

7 CHAIR MATEO: ...(gavel)...Policy Committee for
8 July 22nd, 2008, will reconvene.

9 Members, we have a motion on the floor. The
10 Chair will ask the maker of the motion to withdraw his
11 motion.

12 COUNCILMEMBER VICTORINO: I withdraw it.

13 CHAIR MATEO: The individual who seconded the
14 motion.

15 COUNCILMEMBER MOLINA: Withdraw the second.

16 CHAIR MATEO: Members, with that being taken
17 care of, at this time the Chair, with no objection, is
18 going to defer this item. I am going to ask the
19 Department to address the issues that was brought forward
20 by the Members and provide this Committee a clean
21 resolution so, on August 5th, we are able to limit
22 discussion, work off of a clean resolution, with the
23 specific questions addressed, and move this resolution
24 forward.

25 And additional issues like the specifics that we

1 have discussed, perhaps if someone -- a member of this
2 Committee will provide the written request, we could
3 submit to the appropriate committee to engage in the
4 discussion of acceptance of gifts relative to -- for
5 example, like this vehicle that we have accepted. So we
6 have the specifics that we need in order to accept such
7 vehicles and know exactly what Blue Book value is,
8 condition is, mileage is, et cetera, et cetera. So we can
9 establish guidelines for the acceptance of such.

10 Members, with no objections, the Chair will
11 defer this item.

12 COUNCIL MEMBERS: No objections.

13 CHAIR MATEO: Thank you.

14 COUNCILMEMBERS VOICED NO OBJECTIONS. (excused: MA and
15 BKM)

16 ACTION: DEFER PENDING FURTHER DISCUSSION.

17 CHAIR MATEO: We're going to move on to our next
18 item on the agenda, that is Policy 4(4), Indemnification
19 Authorization, Christopher Grindling v. Sergeant Roy
20 Hirayama, et al., Civil Number CV 05-00694.

21 ITEM NO. 4(4): INDEMNIFICATION AUTHORIZATION (CHRISTOPHER
22 GRINDLING V. SGT. ROY HIRAYAMA, ET AL.,
23 CIVIL NO. CV05-00694 DAE BMK) (C.C. No.
24 07-9)

24 CHAIR MATEO: Members, Corporation Counsel is
25 requesting consideration of a proposed resolution to

1 indemnify Roy Hirayama, a police officer, and transmitted
2 a copy of the complaint. The complaint alleges personal
3 injury, emotional distress, and the deprivation of the
4 plaintiff's rights under the 14th Amendment to the U.S.
5 Constitution, and violations of his rights under 42
6 U.S.C., 1983. In addition, correspondence dated July
7 15th, 2008, Corporation Counsel transmitted a revised
8 proposed resolution to indemnify Roy Hirayama.

9 Deputy Corporation Counsel Moana Lutey will be
10 providing an overview of this indemnification
11 authorization request.

12 Additionally, Members, we do have a request for
13 executive meeting as well.

14 The Chair will ask Ms. Lutey to provide this
15 Committee the additional information.

16 MS. LUTEY: Thank you, Chairman.

17 Good morning.

18 I actually think that this is something that we
19 could probably handle in open session, but it's really
20 going to depend on where the questions go. This is in
21 active litigation. We do have a trial date scheduled for
22 early spring of next year.

23 You have received a copy of the complaint. And
24 the basic facts of that are that, on June 4th, 2004,
25 Sergeant Roy Hirayama was the sergeant on duty at the

1 receiving desk at Maui Police Department when Christopher
2 Grindling was arrested and brought in for Assault in the
3 Second Degree. Mr. Grindling was placed in a mass holding
4 cell with other inmates. And while he was in there, he
5 was agitated and began throwing wet toilet paper at the
6 surveillance camera to cover the lens. He also urinated
7 on the floor of the cell near the entry.

8 The officers on duty, that includes Sergeant Roy
9 Hirayama and former Officer Aaron Won, then moved
10 Mr. Grindling to an isolated cell where he would be unable
11 to obstruct the surveillance camera lens and not interfere
12 with the other prisoners by urinating near them. While
13 there, Mr. Grindling began continuously kicking the
14 plexiglass on the cell doors. That caused a lot of noise.
15 And it's very disruptive. It can also be harmful to the
16 prisoner, they could hurt themselves in there.

17 So at that time Sergeant Hirayama and former
18 Officer Won entered the cell, tried to get Mr. Grindling's
19 compliance, to have him lie still on the bed, so they
20 could handcuff him for his own safety. But he refused and
21 tried to kick former Officer Won. To prevent Grindling
22 from kicking former Officer Won and to gain his
23 compliance, Sergeant Hirayama used his baton to strike
24 Mr. Grindling once.

25 The officers were then able to get one handcuff

1 onto Mr. Grindling's wrist, but the other was loose when
2 Mr. Grindling was able to pull his arm away. Because the
3 officers were concerned that the loose handcuff would be
4 used as a weapon, Sergeant Hirayama used his baton to
5 strike Mr. Grindling one more time, to gain his
6 compliance. Mr. Grindling was then handcuffed to the bed.

7 The Police Commission has determined that
8 Sergeant Hirayama is entitled to representation. And we
9 are requesting that Sergeant Hirayama be indemnified.

10 CHAIR MATEO: Thank you, Ms. Lutey.

11 MS. LUTEY: Thank you.

12 CHAIR MATEO: Members, questions for Corporation
13 Counsel or for Police Chief Phillips?

14 Thank you for joining us, Chief.

15 Also with us, Deputy Corporation Counsel Martin
16 as well.

17 Mr. Hokama.

18 VICE-CHAIR HOKAMA: Chairman, just a quick
19 question, please, for our personnel. Are the resolutions
20 just specifically on Sergeant Hirayama's indemnification,
21 Mr. Chairman? All other documents also state an Officer
22 Aaron Won, which Corp Counsel did make statements, I
23 guess, regarding disposition of relationship to the County
24 of Maui. So at this time is the Committee's understanding
25 that Officer Won is no longer part of this case and that

1 only what is before us is regarding the issue of Sergeant
2 Hirayama?

3 CHAIR MATEO: Yes, Ms. Lutey.

4 MS. LUTEY: Thank you.

5 The only person we are requesting
6 indemnification for is for Sergeant Hirayama.

7 Officer Won -- or former Officer Won has never
8 made a request through the Police Commission for
9 representation. So we can't come here and request
10 indemnification on his behalf.

11 VICE-CHAIR HOKAMA: Is that a separate case,
12 though, that is concurrent with this case, or is that
13 totally not part of this issue?

14 CHAIR MATEO: Ms. Lutey.

15 MS. LUTEY: Thank you.

16 I am not sure exactly what you are asking. He
17 is still a defendant in this particular case, but we have
18 had other matters involving him.

19 VICE-CHAIR HOKAMA: Okay. I am done, Chairman.
20 Thank you very much.

21 CHAIR MATEO: Thank you, Mr. Hokama.

22 Members, additional questions for Corporation
23 Counsel or for Chief Phillips?

24 COUNCILMEMBER MOLINA: Recommendation.

25 COUNCILMEMBER BAISA: Recommendation.

1 CHAIR MATEO: Thank you very much.

2 Members, the Chair's recommendation is to adopt
3 the revised proposed resolution entitled "Indemnifying Roy
4 Hirayama in Christopher Grindling v. Sergeant Roy
5 Hirayama, et al., Civil Number CV 05-00694."

6 COUNCILMEMBER VICTORINO: So moved.

7 COUNCILMEMBER MOLINA: Second.

8 CHAIR MATEO: Moved by Mr. Victorino, seconded
9 by Mr. Molina.

10 Members, discussion?

11 Hearing none, we will call for the question.

12 All those in favor signify by saying "aye."

13 (A chorus of "ayes.")

14 CHAIR MATEO: Those opposed?

15 (Silence.)

16 CHAIR MATEO: Motion is carried. Six ayes and
17 three excused, Ms. Anderson, Mr. Medeiros and Ms. Johnson.

18 Members, thank you very much. Motion is
19 carried.

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1 VOTE: AYES: Councilmembers Baisa, Molina,
2 Pontanilla, Victorino, Vice-Chair
Hokama, and Chair Mateo.

3 NOES: None.

4 ABSTAIN: None

5 ABSENT: None.

6 EXCUSED: Councilmembers Anderson, Johnson and
7 Medeiros

8 MOTION CARRIED.

9 ACTION: Recommending ADOPTION of resolution.

10 CHAIR MATEO: We will move on to the next item
11 on the agenda, Policy Number 4(6), Indemnification
12 Authorization, Lucille R. Tabon v. Samuel C. Gasmen, et
13 al., Civil Number 07-1-0307(3).

14 ITEM NO. 4(6): INDEMNIFICATION AUTHORIZATION (LUCILLE R.
15 TABON V. SAMUEL GASMEN, ET AL., CIVIL NO.
07-1-0307(3) (C.C. No. 07-9)

16 CHAIR MATEO: Members, on May 22nd, 2008,
17 Corporation Counsel transmitted for consideration a
18 proposed resolution entitled "Indemnifying Samuel C.
19 Gasmen in Lucille R. Tabon v. Samuel C. Gasmen, et al,
20 Civil Number 07-1-0307(3)," and transmitted the complaint.

21 The complaint alleges that Samuel C. Gasmen, a
22 police officer, negligently and/or recklessly caused
23 physical injuries and emotional trauma to the plaintiff.
24 The purpose of the resolution is to indemnify Samuel C.
25 Gasmen in this case.

1 Deputy Corporation Counsel Martin will provide
2 additional information on this request for authorization.

3 And once again, Members, there is a request for
4 executive meeting.

5 Ms. Martin.

6 MS. L. MARTIN: Thank you, Chairman Mateo.

7 This is something that I believe can be handled
8 in open session.

9 On February 24th, 2007, Officer Samuel Gasmen
10 was responding to an emergency call. Officer Gasmen was
11 operating a police vehicle, and the sirens and lights were
12 activated. As he approached the intersection of Papa
13 Avenue, he slowed down and noticed vehicles had pulled
14 over and stopped along the roadways. As he passed Papa
15 Avenue, a vehicle operated by Lucille Tabon attempted to
16 proceed from Wahinepio Drive to Papa Avenue.

17 Ms. Tabon admitted to police, after the
18 accident, that she had heard the sirens but proceeded
19 through the intersection nonetheless. Ms. Tabon alleges
20 she was injured as a result of the accident and has filed
21 a lawsuit against the County of Maui and Officer Gasmen.

22 The Police Commission has determined that
23 Officer Gasmen was acting within the course and scope of
24 employment at the time of the accident. We are requesting
25 that Council indemnify Officer Gasmen for the accident of

1 February 24th, 2007.

2 CHAIR MATEO: Chief, any additional comments you
3 would like to provide as well?

4 MR. PHILLIPS: None, other than I would support
5 the request. And we didn't find the officer had violated
6 any policy or procedures in this accident.

7 CHAIR MATEO: Thank you, Chief.

8 Members, floor open for questions to both
9 Corporation Counsel or to Chief Phillips regarding this
10 particular case.

11

12 COUNCILMEMBER PONTANILLA: Chair?

13 CHAIR MATEO: Mr. Pontanilla.

14 COUNCILMEMBER PONTANILLA: Just the location of
15 Wahinepio and South Papa Avenue, am I to assume that
16 that's the road that goes -- or used to go to the old KMVI
17 radio station?

18 MR. PHILLIPS: No. Wahinepio Road is the road
19 that goes to MCC and the MACC. It's a continuation of
20 Papa, actually.

21 COUNCILMEMBER PONTANILLA: Thank you.

22 CHAIR MATEO: Additional questions, Members?

23 Hearing no additional questions, Members, the
24 Chair recommends the adoption of the resolution entitled
25 "Indemnifying Samuel C. Gasmen in Lucille R. Tabon v.

1 Samuel C. Gasmen, et al., Civil Number 07-1-0307(3)."

2 COUNCILMEMBER VICTORINO: So moved.

3 COUNCILMEMBER MOLINA: Second.

4 CHAIR MATEO: It's been moved by Mr. Victorino,
5 seconded by Mr. Molina.

6 Additional discussion, Mr. Victorino?

7 COUNCILMEMBER VICTORINO: None. Thank you,
8 Chair.

9 CHAIR MATEO: Thank you.

10 Chair will call for the question. All those in
11 favor signify by saying "aye."

12 (A chorus of ayes.)

13 CHAIR MATEO: Those opposed?

14 (Silence.)

15 CHAIR MATEO: Thank you, Members. Motion is
16 carried.

17 And, Ms. Johnson, I'm sorry, the Chair did not
18 hear a vote. If you --

19 COUNCILMEMBER JOHNSON: Yeah, I did vote "aye."

20 CHAIR MATEO: Thank you very much.

21 Motion is carried with six -- with seven ayes,
22 and two excused, Members Anderson and Medeiros.

23

24

25

1 VOTE: AYES: Councilmembers Baisa, Johnson, Molina,
2 Pontanilla, Victorino, Vice-Chair
Hokama, and Chair Mateo.

3 NOES: None.

4 ABSTAIN: None

5 ABSENT: None.

6 EXCUSED: Councilmembers Anderson and Medeiros

7 MOTION CARRIED.

8 ACTION: Recommending ADOPTION of resolution.

9 CHAIR MATEO: Thank you very much, Members.
10 We're going to move on to the next item.
11 Chief, thank you very much.
12 Ms. Lutey, thank you very much.

13 ITEM NO. 1(21): SETTLEMENT AUTHORIZATION OF CLAIMS AND
14 LAWSUITS (WAYNE K. YOSHIOKA V. COUNTY OF
MAUI, DEPARTMENT OF ENVIRONMENTAL
15 MANAGEMENT, CASE NOS. AB 2006-477 (M) AND
7-04-01273) (C.C. No. 07-11)

16 CHAIR MATEO: Policy Item 1(21), Settlement
17 Authorization of Claims and Lawsuits, Wayne K. Yoshioka v.
18 County of Maui, Department of Environmental Management,
19 Case Numbers AB 2006-477(M) and 7-04-01273.

20 What is before us is a worker's compensation
21 claim alleging work-related injuries, Members. And for
22 the Committee's consideration is a proposed resolution
23 authorizing settlement.

24 Deputy Corporation Counsel Martin will provide
25 additional information, as appropriate, in open session as

1 there is a request for executive meeting.

2 Ms. Martin.

3 MS. L. MARTIN: Thank you, Chairman Mateo.

4 This matter involves a workers' compensation
5 claim arising out of work-related injuries sustained on
6 April 26, 2004.

7 I am requesting executive session in order to
8 discuss medical and personnel issues.

9 CHAIR MATEO: Members, questions for Corporation
10 Counsel?

11 COUNCILMEMBER VICTORINO: No.

12 CHAIR MATEO: Hearing none, pursuant to Section
13 92-5(a)(4) Hawaii Revised Statutes, HRS, to consult with
14 legal counsel on questions and issues pertaining to the
15 powers, duties, privileges, immunities, and liabilities of
16 the County, the Council, and the Committee; and Section
17 92-5(a)(8), HRS, to deliberate or make a decision upon a
18 matter that requires the consideration of information that
19 must be kept confidential pursuant to a state or federal
20 law, or a court order, the Chair recommends a motion for
21 executive session.

22 COUNCILMEMBER VICTORINO: So moved.

23 COUNCILMEMBER MOLINA: Second.

24 CHAIR MATEO: Moved by Mr. Victorino, seconded
25 by Mr. Motion.

1 Additional discussion?

2 Hearing none, we will call for the question.

3 All those in favor signify by saying "aye."

4 (A chorus of ayes.)

5 CHAIR MATEO: Opposed?

6 (Silence.)

7 CHAIR MATEO: Motion is carried. Seven ayes.

8 VOTE: AYES: Councilmembers Anderson, Baisa, Johnson,
9 Medeiros, Molina, Pontanilla, Victorino
Vice-Chair Hokama, and Chair Mateo.

10 NOES: None.

11 ABSTAIN: None

12 ABSENT: None.

13 EXCUSED: None.

14 MOTION CARRIED.

15 ACTION: APPROVE; RECESS Open Session and CONVENE
16 Executive Session.

17 CHAIR MATEO: Members, at this point the Staff
18 will prepare the Chamber for executive session. The Chair
19 would like to get right into it. Why don't we just go
20 ahead and take a ten-minute break at this point before
21 going into executive session?

22 This Committee stands in recess...(gavel)...

23 RECESS: 10:14 a.m.

24 RECONVENE: 10:44 a.m.

25 CHAIR MATEO: ...(gavel)...Policy Committee

1 Meeting for July 22nd, 2008 will reconvene.

2 Members, are there questions for Corporation
3 Counsel? This is in reference to Policy Item 1(21).

4 Hearing no questions from the Members, the Chair
5 would recommend the adoption of the proposed resolution
6 entitled "Authorizing Settlement of Wayne K. Yoshioka v.
7 County of Maui, Department of Environmental Management,
8 Case Numbers AB 2006-477(M), and 7-04-01273," under the
9 terms set in the executive meeting.

10 COUNCILMEMBER JOHNSON: So moved.

11 COUNCILMEMBER BAISA: Second.

12 CHAIR MATEO: Moved by Ms. Johnson, seconded by
13 Ms. Baisa.

14 Is there additional discussion?

15 Hearing none, we will call for the question.

16 All those in favor signify by saying "aye."

17 (A chorus of ayes.)

18 CHAIR MATEO: Those opposed?

19 (Silence.)

20 CHAIR MATEO: Motion is carried with seven ayes;
21 and two excused, Ms. Johnson -- excuse me -- Ms. Anderson
22 and Mr. Medeiros.

23 Thank you very much, Members. Motion is
24 carried.

25

1 VOTE: AYES: Councilmembers Baisa, Johnson, Molina,
2 Pontanilla, Victorino, Vice-Chair
Hokama, and Chair Mateo.

3 NOES: None.

4 ABSTAIN: None

5 ABSENT: None.

6 EXCUSED: Councilmembers Anderson and Medeiros.

7 MOTION CARRIED.

8 ACTION: Recommending ADOPTION of resolution.

9 CHAIR MATEO: At this time, Members, the Chair
10 left public testimony open earlier in the meeting, the
11 Chair at this point, with no objections, would like to
12 close public testimony.

13 COUNCILMEMBER VICTORINO: No objections.

14 COUNCIL MEMBERS: No objections.

15 CHAIR MATEO: So ordered. Thank you.

16 The final item on our agenda for today is Policy
17 Item Number 49, Announced Closure of Private Water and
18 Wastewater Operations on Molokai.

19 ITEM NO. 49: ANNOUNCED CLOSURE OF PRIVATE WATER AND
20 WASTEWATER OPERATIONS ON MOLOKAI (C.C. Nos.
08-144 and 08-153)

21 CHAIR MATEO: Members, County Communication
22 Number 08-144 transmits the subject matter and a draft
23 proposed resolution entitled "Authorizing the Employment
24 of Special Counsel With Respect to Possible Legal Claims
25 Arising From the Announced Closure of Private Water and

1 Wastewater Operations on Molokai in August 2008."

2 The purpose of the resolution is to authorize
3 the Council -- the Council Chair to select a private
4 attorney or law firm to represent the County in possible
5 legal claims against Molokai Properties, Ltd., the State
6 of Hawaii, and other parties arising from the announced
7 closure of private water and wastewater operations in
8 August 2008.

9 County Communication Number 08-153 further
10 transmitted various correspondence relating to the subject
11 matter as well. In correspondence dated July 14, 2008,
12 from the Department of the Corporation Counsel,
13 transmitting a proposed resolution entitled "Authorizing
14 the Employment of Special Counsel Bronster and Hoshibata
15 With Respect to Possible Legal Claims Relating to Water
16 and Wastewater Utility Services on Molokai."

17 The purpose of the proposed resolution is to
18 authorize the employment of Bronster and Hoshibata as the
19 County's special counsel to represent the County in all
20 legal matters pertaining to Molokai Properties, Ltd., dba
21 Molokai Ranch, Molokai Public Utilities, Inc., Wai'ola O
22 Molokai, Inc., and Mosco, Inc., for a total compensation
23 not to exceed \$100,000.

24 Members, for the last several weeks, the Molokai
25 community has been devastated with major adversities that

1 has left our community frustrated and despaired, to say
2 the least.

3 With the loss of 120 jobs, closure of business,
4 and now the threat of a private utility shutting off water
5 and wastewater services to an estimated 1,200 customers on
6 the island, one has to ask when will the madness end.

7 Molokai Properties, Ltd. and the State of Hawaii
8 is calling for the County to take over the systems that
9 the private operator has mismanaged for years.

10 And you need to be aware of the fact that this
11 so-called turnover of the system is not a turnover in
12 general. It comes with either the recommendation of a
13 lease or purchase of a system.

14 Our struggling community is deserving of the
15 very basic needs that many of us take for granted, like
16 water and sewer services.

17 Recently, Mayor Tavares and I held a town
18 meeting on Molokai to reassure our community that the
19 County stands by the community and will work to see that
20 water and wastewater services will not go -- will be
21 uninterrupted. Excuse me.

22 Believe it or not, this is not only a Molokai
23 issue anymore, but, rather, a statewide issue.

24 The State, in its confused wisdom, is setting
25 the precedent for other private water and wastewater

1 operators around the state to simply walk away from their
2 responsibilities and surrender operations simply because
3 it is not economically feasible for them to continue their
4 operations. And many are closely watching to see how this
5 mess plays out. The message the State is sending out is a
6 dangerous one for all counties.

7 The liability of this private operator will be
8 incurred by the County, and the assets will remain intact.

9 Members, it is the Chair's intent to proceed in
10 the following manner:

11 One, the Chair will have the Mayor's Information
12 Officer, Mahina Martin, provide this Committee an update
13 and an overview of the current situation and status. Much
14 has transpired within the last few weeks, and the Council
15 needs to be kept in the loop.

16 Two, the Chair will ask our Corporation Counsel,
17 Mr. Moto, to provide an overview of the Department of
18 Health complaint and the orders that was received
19 yesterday.

20 And, three, the Committee has two resolutions
21 before us. The Chair will open the floor for discussion
22 on these resolutions prior to the Chair's recommendation.

23 That is our process for this morning.

24 And having said that, Ms. Martin, thank you very
25 much for being here with us.

1 And also present, for the record, is our
2 Corporation Counsel, Mr. Moto.

3 Ms. Martin, go ahead.

4 MS. M. MARTIN: Thank you, Chair Mateo.

5 Aloha, Councilmembers. Good morning.

6 COUNCILMEMBER VICTORINO: Good morning.

7 MS. M. MARTIN: You have before you a few
8 handouts. You are looking at a track record of
9 documentation and correspondence that has gone before many
10 entities in the State and County, or between the State and
11 County.

12 And as you know, for the past 13 weeks, the
13 County of Maui has been embroiled in a situation involving
14 Molokai Ranch. The Administration has joined Council
15 Vice-Chair Mateo in voicing concerns over the Ranch's
16 arbitrary decision to cease its operation of water and
17 wastewater systems that serve over 1,000 of their paying
18 customers.

19 So the trail of correspondence that dates back
20 to an April 23rd, 2008 letter, sent by Mayor Tavares to
21 Governor Lingle, carries through to as recent as
22 yesterday, where we received a response, the first letter
23 we received from Governor Lingle to the Administration.

24 The Mayor in her original -- in her first
25 initial letter cites growing concerns over rumors of an

1 impending shutdown of private water and wastewater
2 systems. The Mayor's letter was initiated in response to
3 what we were beginning to hear from the community, both on
4 Molokai and their concerned family and friends here on
5 Maui.

6 A week later, in April, the Governor then met
7 with the Mayor and other legislators.

8 What is not noted in your handouts are other
9 activities important to the evolution of the issue before
10 us today.

11 On July 8th, Council Vice-Chair Mateo and Mayor
12 Tavares held a town hall meeting for the Molokai community
13 at the Mitchell Pauole Center. Nearly 200 people
14 attended. The frequently asked question sheets were
15 provided. And both Councilmember Mateo and Mayor Tavares
16 fielded comments and questions from the speakers. It was
17 very clear that evening that the community supported the
18 County's position.

19 On July 15th, the Public Utilities Commission
20 conducted a hearing on a temporary rate increase. It's an
21 unprecedented action by the Public Utilities Commission,
22 which took it to respond to the Ranch's claim that it
23 required more revenue to operate.

24 It has been important for the Administration to
25 stay on task with the correspondence; in part, because it

1 provides for concise and consistent information when
2 dealing with a variety of entities. We have been engaged
3 in a variety of ways with four state agencies, the State
4 Administration, Molokai Properties, our county, state
5 legislators, the people of Molokai, as well as their
6 concerned family and friends across the state. It
7 continues to be a very enlightening experience.

8 Thirteen weeks later, we have come to 36
9 involved pieces of correspondence before you. An
10 overwhelming 30 percent of them have been initiated by the
11 Administration, seeking assistance on behalf of Molokai
12 residents affected and to provide clarification.

13 To date, we continue this effort. We remain
14 sensitive to the clock that is ticking. We are confident
15 that we have the support of the community at large.

16 And as you may well know, as it's been in the
17 press, and the final group of information at the end of
18 Volume Two -- what we have finally begun to call Volume
19 Two -- we have been served orders which Corporation
20 Counsel Moto will be speaking about shortly. And our
21 attorneys today are at the hearing in Honolulu.

22 Chairman.

23 CHAIR MATEO: Thank you, Ms. Martin.

24 Members, floor open for questions if there are
25 any questions for Ms. Martin.

1 Hearing none, Mr. Moto.

2 MR. MOTO: Good morning, Mr. Chairman and
3 Members of the Committee.

4 Brian Moto, Corporation Counsel.

5 I will briefly summarize the events that took
6 place yesterday and that are taking place this morning.

7 Yesterday morning, Monday, July 21st, the
8 Department of Health, State of Hawaii, served two orders
9 upon the County of Maui. One of those orders related to
10 wastewater systems in Kaluakoi, Maunaloa and Kualapuu, and
11 the other related to potable water systems in Maunaloa,
12 Kaluakoi, Kualapuu and Kepuhi.

13 In brief, these orders to the County of Maui
14 direct us to immediately assess the operation of the water
15 and wastewater systems within seven days. The orders also
16 direct the County to be prepared to take over the water
17 and wastewater systems if the utilities stopped service.

18 The Department of Health orders essentially
19 threatened that if the County fails to take all these
20 actions as directed, then the County may be in violation
21 of Department of Health rules and will be subject to
22 penalties.

23 By the way, we received no prior notice that
24 these orders were going to be issued. They just showed up
25 on Monday, yesterday.

1 Now, the Department of Health also served two
2 other orders. These orders were served to Molokai
3 Properties and its Molokai Utilities, related utilities.
4 One of those orders related to the water systems run and
5 owned by Molokai Properties and its related entities, and
6 the other order related to their wastewater systems.
7 These orders direct Molokai Properties, Ltd. and the
8 Molokai Utilities to continue operations for at least 90
9 days.

10 CHAIR MATEO: Mr. Moto, if I may.

11 Members, for your information, on the
12 communication dated July 21st, 2008, in your binders are
13 copies of the orders that Mr. Moto is referencing.

14 Thank you, Mr. Moto.

15 MR. MOTO: Thank you, Mr. Chairman.

16 Yes, the documents are available and are of
17 public record.

18 Today, Mr. Chairman, as we speak, there is a
19 hearing being conducted by the Department of Health, in
20 its offices in Honolulu, regarding these orders. Despite
21 having less than 24 hours notice of the hearing,
22 Corporation Counsel attorneys, and in particular Jane
23 Lovell, assisted by Ed Kushi and Madelyn D'Enbeau,
24 researched and wrote briefs, prepared witnesses and
25 assembled exhibits to present at the hearing that is now

1 taking place before the Department of Health.

2 In summary, the County is presenting arguments
3 and testimony to the fact that we believe the Department
4 of Health orders to the County of Maui are essentially
5 illegal, overbroad and are not authorized under state law,
6 and that there is no provision that allows or empowers the
7 Department of Health to order a county, the County of
8 Maui, to manage and take over private water or wastewater
9 systems. Other arguments and facts are also being
10 presented, but that is the gist of the presentation that
11 is ongoing.

12 I do not have a report yet as to how this
13 hearing -- the results of this hearing. I am assuming
14 that it is occurring as we speak.

15 As you can see, therefore, legal matters are
16 moving fast with the County becoming involved in multiple
17 legal proceedings before different agencies. In your
18 binders and in the documents provided by the Public
19 Information Officer, you will see many references to
20 various letters, including actions that are taking place
21 before the Public Utilities Commission.

22 So the County of Maui is essentially involved
23 now in two venues of administrative litigation, litigation
24 before administrative agencies, the PUC and, now, the
25 Department of Health. I anticipate that that litigation

1 will continue.

2 In light of recent events and the ongoing
3 litigation occurring before different agencies, I must
4 inform you that lawsuits in court appear increasingly
5 likely, if not necessary, in order to properly defend and
6 advocate the County's interests and position.

7 For example, if the Department of Health, as a
8 result of the hearing that it is conducting, affirms its
9 orders and continues to require the County to assess and
10 take over the Molokai Ranch systems, an appeal of such
11 orders is almost certain.

12 This concludes my remarks.

13 CHAIR MATEO: Thank you, Mr. Moto.

14 Members, floor open for questions to Mr. Moto.
15 Starting with Mr. Hokama.

16 VICE-CHAIR HOKAMA: Chairman, I am happy to
17 you -- since this is your district, your island, I am
18 happy to yield to you to have questions you wish to pose
19 first before I entertain mine.

20 CHAIR MATEO: The Chair has -- the Chair will
21 gladly let the Members speak. I have had the ear of
22 Mr. Moto for many weeks, and I will continue to have his
23 ear. So I will allow the Members to please proceed.

24 VICE-CHAIR HOKAMA: Then thank you very much,
25 Mr. Chairman.

1 Mr. Moto, you brought up a couple of things that
2 always stir my interest. One is your comment to this
3 Committee regarding the Department of Health's, I guess,
4 prospective order they will be filing to the County
5 regarding an assessment and potential operation of a
6 utility or utilities.

7 So my question to you, if you are able to
8 respond to the Committee this morning, is -- I am trying
9 to understand the request. Because if the State agencies
10 that are involved regarding Molokai, one which is the
11 State Water Resources Commission -- because it is a
12 designated island -- for potable water requirements,
13 drinking water requirements, as well as the PUC rate
14 structure and utility reviews, it interests me that we're
15 being to make an assessment when I would assume these
16 governmental agencies would have been requiring reporting
17 information to already be able to give the County an
18 assessment of what they believe they were told as far as
19 the condition of the water system or sewer system from the
20 PUC's point of view regarding rates. And why now, all of
21 a sudden, is this huge request for a rate increase when
22 you would think, periodically, the Commission would have
23 this type of information, of revenues and expenses, that
24 would indicate that there is some financial concern to the
25 Commission regarding the viability of such a public

1 utility to perform, as well as the amount of monies or
2 resources allocated by its annual budget.

3 And I would assume an independent auditor is
4 confirming these numbers and expenses, that would show how
5 the utility is responding to either the upgrade or
6 maintenance of such a system to take care of the public's
7 trust that is placed in the utility by the governmental
8 authority that gives its approval for this public trust.

9 So here I am wondering, the request -- when I am
10 thinking these people should have all of this information
11 already, and they ought to share it with us, what their
12 understanding of the system is. Do you have any comment
13 on my concern?

14 CHAIR MATEO: Mr. Moto.

15 MR. MOTO: Yes, Mr. Chairman.

16 Let me begin by saying that I realize that I am
17 in an open session. But everything I say in this session
18 is for public consumption, because there is nothing that I
19 am going to say that is not already reflected in public
20 documents or hasn't been said in some meeting or another.

21 Let me first address the first topic mentioned
22 by the Chair which concerns the order. Those Department
23 of Health orders that were issued yesterday are not
24 prospective orders, because this is not a normal
25 situation. In a normal administrative hearing type of

1 situation, there's -- an agency tries to reach a decision,
2 it holds a hearing, and, at the end of that long process,
3 it issues an order.

4 That is not what happened yesterday. What
5 happened yesterday is the Department of Health invoked
6 emergency provisions, emergency provisions within
7 Department of Health rules and state law. Of course,
8 we're maintaining that they are misinterpreting and
9 abusing those privileges. But under the guise of those
10 provisions, the State is saying there is an emergency and,
11 therefore, immediate action is required. And so,
12 therefore, they issued these orders.

13 So technically speaking, we are subject to an
14 order already.

15 And the hearing that is ongoing now is a hearing
16 that is provided under state law where, in an emergency
17 setting, a hearing is called within 24 hours notice. And
18 that is why our deputies are now in Honolulu as we speak.
19 The law says --

20 VICE-CHAIR HOKAMA: Mr. Moto, let me just
21 quickly interject, so that we at least have one thing that
22 we can agree on, then. The Governor has declared an
23 emergency for her departments to now respond in this
24 manner? Because that is my understanding of what is
25 needed to trigger all this departmental proceeding, is a

1 declaration of an emergency, which I have yet to find in a
2 written or a form of communication that verifies this
3 declaration.

4 MR. MOTO: Mr. Chairman, the answer is, no, to
5 my knowledge, the Governor, as governor, has not formally
6 issued a proclamation of emergency.

7 What the Department of Health is doing is
8 invoking emergency provisions within its rules and
9 treating it -- treating this situation as an emergency.
10 The Governor, to my knowledge, has not signed what we
11 would understand to be an emergency proclamation. She
12 could, and that would be under a separate law. But to my
13 understanding, is that DOH is operating under its
14 administrative rules currently.

15 VICE-CHAIR HOKAMA: Well, either we as a
16 government have an emergency or we don't, Mr. Chairman.
17 We can't have some departments making a determination --
18 to them it's an emergency, but to the rest of the state
19 entity, the Governor has not declared such a policy
20 matter.

21 And I appreciate your difficult position,
22 Mr. Moto. And, you know, I am going to -- I want you to
23 think about this. Because, you know, I really would like
24 to be able to strategize in executive session my
25 disappointment in the state government right now.

1 But besides my issue with -- regarding the
2 assessment order -- and I find it very difficult to think
3 that the PUC has not kept up with its due diligence in
4 reviewing rate structures of utilities, that we come to
5 such a situation with this on Molokai. I hope your
6 office -- because I have no problem, if need be, of this
7 County taking the State to court for not doing their
8 responsibilities. We've taken the former mayor, the
9 governor to court, and we have yet to lose whenever we've
10 decided to go to court after due diligence. So I don't
11 have a problem going to court again against the State of
12 Hawaii, if they -- if we believe they have been found to
13 be non-responsive, or they have been negligent in their
14 performance of their duties to a community such as
15 Molokai. And I hope we will consider all legal options,
16 including taking the State to court, if it is such a
17 reasonable and a required option for this Council,
18 Mr. Chairman.

19 I got other things regarding the operation of
20 the utility at the right time, Chairman. And I am happy
21 to relinquish the floor. But I want to just quickly say,
22 Chair, I am here to ensure that my support is to continue
23 the utility operations for the safety and welfare of our
24 Molokai residents. And we will find a way to skin this
25 big cat. But nonetheless, Mr. Chairman, I think we really

1 need to also focus and review whether or not the State has
2 performed in their role as a government entity to provide
3 for the health and welfare that the Constitution of the
4 State requires. And not keep -- you know, I am just
5 overwhelmed at how this -- our leadership is continuing to
6 just do finger pointing.

7 It does not help a resident in need of
8 assistance from the government, with no employment, very
9 little hope for the future, and only being told you will
10 pay a hell of a lot more for your water and your sewer.
11 That is not the situation I hope we would come up out of
12 this meeting today, Mr. Chairman.

13 Thank you.

14 CHAIR MATEO: Thank you, Mr. Hokama.

15 We are going to go right down the row.

16 Ms. Baisa.

17 COUNCILMEMBER BAISA: Thank you very much,
18 Mr. Chair.

19 I am very happy that we are sitting here,
20 finally talking about this, because, you know, it's been
21 top of mind now for quite a few weeks. And this whole
22 issue of an emergency -- while I understand that we don't
23 have a formal declaration by the Governor yet, what I am
24 concerned about is, come August 31st, we may have a very
25 likely emergency when the pipes run dry and the toilets

1 don't flush. And I am very concerned. I want to make
2 sure that when that happens or if that happens that we are
3 prepared to step forward to take care of our residents of
4 Molokai who are our taxpayers and our constituents and
5 people we are responsible for.

6 And it's sad that rather than trying to work on
7 a solution, we're having to go to court. You know, it's
8 sad that we have to get into this us and them situation
9 while the welfare of our residents sits in the balance.

10 However, I agree with Chairman Hokama that if,
11 you know, legal action is required, and we have to go to
12 court, then we should move expeditiously to get going,
13 because the clock is running. And August 31st is not far
14 away.

15 So, Chair, you have been in the middle of this
16 storm with the Mayor. I am ready to support whatever
17 recommendations you are ready to make.

18 CHAIR MATEO: Thank you, Ms. Baisa.

19 Ms. Johnson.

20 COUNCILMEMBER JOHNSON: Yes. And because we're
21 considering, you know, on this particular agenda item the
22 narrower issue at this point, which is retention of
23 counsel so that we can address the problems that are being
24 talked about, so that I understand the scope of Ms. -- I
25 guess it would be Special Counsel Bronster and Hoshibata.

1 And I see Ms. Bronster in the audience. Because she would
2 be representing the County in all legal matters pertaining
3 to Molokai Properties, Molokai Ranch, Molokai Public
4 Utilities, Wai'ola O Molokai, and Mosco, I don't see, I
5 guess -- okay, it does say, in the earlier part, State of
6 Hawaii and other parties. So my assumption is, because
7 the people of Maui County also include the people of
8 Molokai, that she would also be acting on their behalf as
9 well. Is that a correct understanding?

10 CHAIR MATEO: Mr. Moto.

11 MR. MOTO: Yes, Mr. Chairman.

12 If retained, Ms. Bronster, as special counsel,
13 would be representing the County of Maui as a whole.

14 COUNCILMEMBER JOHNSON: In a global --

15 MR. MOTO: Yes, including Molokai and Molokai
16 residents and utility customers.

17 COUNCILMEMBER JOHNSON: Yeah. Because that,
18 Mr. Chair, is what I am most concerned about, similar to
19 the issue being raised by Member Baisa, is, you know, the
20 poor little guys that get left out of the -- you know,
21 they are at the bottom, let's say, of the food chain. And
22 here we are, we're duking it out at a higher level. And I
23 feel really bad, but, perhaps, if they can get some
24 comfort from the fact that they need representation, too,
25 and that Ms. Bronster is not just acting, you know, to

1 protect us or our coffers, but to protect the citizens of
2 Molokai. Because, so far, their voice really hasn't had
3 much of an impact except to get to this point. And I just
4 want to make certain that they know that we are all
5 concerned.

6 We still have the law to deal with. And you
7 can't just go and take over something unless you know what
8 your legal rights, your legal obligation is, and even your
9 authority to gain right of entry. I haven't seen any of
10 those documents yet, that even give us right of entry to
11 go in and examine anything.

12 So I have the utmost confidence in the
13 capability for Ms. Bronster. And I think that the people
14 of Molokai and the people of Maui County will be well
15 represented. So I certainly do endorse and support this
16 recommendation because I feel at this point we have to
17 look out for their interests.

18 And right now, I think Mr. Moto is probably
19 getting grayer by the moment. So I think we do need help
20 in this arena.

21 And I look forward to it being resolved with the
22 people of Molokai not suffering any more than they have
23 already suffered. And I am sure the mental anguish is
24 part of the whole, you know, uncertainty.

25 And I thank the Administration, too, and

1 yourself, for at least trying to do the best to address
2 their fears, their worst fears, and rest assured that the
3 people will be cared for.

4 Thank you.

5 CHAIR MATEO: Thank you, Ms. Johnson.

6 Mr. Molina.

7 COUNCILMEMBER MOLINA: Yeah. Thank you,
8 Mr. Chairman.

9 A lot of the discussion this morning has
10 centered around what is occurring in court and so forth.
11 I would like to, I guess, shape my questions or frame it
12 as to what are our contingency plans. I mean, I know the
13 Department of Health ordered the -- sent the edict to the
14 Molokai Ranch that, okay, you guys got to still operate.
15 But they can refuse, am I not correct? They can refuse.
16 And if I am a Molokai resident, I mean, yes, I am
17 concerned about what is happening in court, but, you know,
18 in a month or so, I may be without water and wastewater,
19 what is the contingency plan? I don't know if Ms. Martin
20 could answer that for us. I mean, what do we have in
21 place in the event this County has to go in there and
22 continue to operate? Because, for me, that is my most
23 biggest concern, what is our plan in the event that we
24 have to take over.

25 CHAIR MATEO: Yeah. Why don't we have Mr. Moto

1 respond to the question, the legal component of the
2 question first.

3 Mr. Moto.

4 MR. MOTO: Thank you, Mr. Chairman.

5 I will just address the legal aspect.

6 Ms. Martin will address the more practical aspects.

7 In terms of the legal aspects, Molokai -- the
8 Molokai utilities are now the subject of basically two
9 orders from two agencies. And the orders also affect the
10 parent company, Molokai Properties.

11 And by the way, Molokai Properties is not happy
12 about being subject to these -- either of these
13 proceedings because the Molokai Properties, the parent
14 company, has -- formerly known as Molokai Ranch, now
15 Molokai Properties, Ltd., their position is, they are
16 exercising the corporate veil, that they are a separate
17 entity from these utilities. Their position is they
18 shouldn't even be a party to these kinds of proceedings.

19 As I was saying, they are now subject to,
20 basically, orders from two agencies. One is from the PUC,
21 which earlier ordered that they continue providing
22 service. And the PUC initiated its own rate-making
23 procedure. And the temporary rates are good only six
24 months. Now, final order on that is anticipated to be
25 filed by the PUC on August 14th.

1 If the utilities were to stop operating, they
2 would be in violation of the PUC order, if they stopped on
3 August 31st. And one would hope that the State and its
4 attorneys would step in immediately to do whatever legally
5 they could to enforce the order. And probably the County
6 would have to consider the same thing, also, where it
7 would be wise to do so.

8 And the same thing could be said regarding the
9 Department of Health orders. Now that the orders have
10 been issued, the Ranch and its subsidiaries are required
11 to continue operating for at least 90 days. If they
12 disobey that order, if they stop on August 31st, then,
13 again, from a legal standpoint, we might file suit. We
14 would hope the State would do whatever it could to enforce
15 those orders.

16 MS. M. MARTIN: With regards to what happens --
17 and I think this might also answer an earlier question
18 about what would happen should all of it, at the end of
19 the day, end up with no water coming out of the faucet.
20 There continues to be concerns about fire and safety as
21 well, you know, with fire hydrants. Parks and schools are
22 affected with the systems that are privately operated.
23 You know, there's going to be two types of emergencies.
24 One, either the Governor declares it -- and as you can see
25 by the final letter in the thicker compilation you have

1 before you, it's the July 21st letter by Governor Lingle,
2 and she clearly is deflecting our request for the
3 declaration or proclamation of emergency for Molokai.

4 So our hope is, yes, there will be an emergency
5 declaration that would allow for, hopefully, subsidy as is
6 done for the homeless issue on Oahu, or special
7 legislative session and laws enacted, as was done for the
8 private business of the Hawaii Superferry. So that was
9 one scenario we had been hoping for.

10 The other, of course, is, should that not come
11 to fruition, then it would be a different type of
12 situation of crisis for Molokai people. At that point the
13 Maui County -- the Administration would look -- and we
14 have begun, so it's not as though -- we just haven't been
15 very up front in public with it -- to look at what would
16 be our response as if it was anywhere else.

17 So if this was East Maui and there was no water
18 or wastewater available, what would the County do. If
19 this was Kula, if this was South Maui, anywhere in our
20 County, what would we do. So that would be before us and
21 that would be our response.

22 And that would be the responsible thing to do,
23 of course, but it is certainly something we have been
24 keeping an eye on and are very active in. And for us in
25 the Administration, this is a daily issue. So it's not

1 gotten too far from us.

2 COUNCILMEMBER MOLINA: One more question, Chair.

3 The MPL has shown some resistance to the County
4 or had been showing some resistance to the County
5 inspecting the facilities. What has transpired?

6 MS. M. MARTIN: You know, that is a bone of
7 contention that's gone back and forth, have you, have you
8 not, have you even bothered to ask. You've seen some
9 media and some press by the company and by the Governor
10 and her staff saying the County hasn't even bothered to
11 ask.

12 Well, quite frankly, the Mayor asserts that, in
13 her meeting, on April 30th, with the Governor, she was
14 instructed to work with and through her designee, which is
15 Mr. Abbey Mayer, who is the Director of Planning and the
16 Chair of the recently formed Molokai Action Team.

17 And through this, there was no explicit
18 instructions to put it in triplicate or in a form letter
19 or in writing. So the Mayor fully expected that the
20 courtesy would be given to honor all requests, written or
21 verbal.

22 And, unfortunately, you also see in your
23 collection of correspondence from Abbey Mayer, you know,
24 literally ten weeks later since we started this whole
25 effort, saying, I am not sure why you're asking me, you

1 know, I am not the one. And, yet, he has forwarded to
2 Molokai Properties, Ltd., by his own letter, by his
3 admission, detailed requests on our behalf. So the
4 information has gone.

5 Our Water Director, you know, has attempted
6 through Mr. Mayer and through contact with Molokai Ranch
7 employees to no avail. Our Department of Environmental
8 Management, in seeing that it was going to be difficult,
9 instead accessed public information records to gain an
10 initial understanding so that we understand how deep this
11 situation was. And I think there is a difference of what
12 the initial -- you know, what the expectation is.

13 This was done as a request from the Governor to
14 the Mayor to get support and assistance from the
15 Administration to begin to look at what situation the
16 Ranch is in, the facilities, just a general idea of it.
17 It was not done with the premise that we were excited and
18 ready to jump in and take over. So I think that was their
19 hope. I think it was maybe a little premature. And it
20 was placed not quite in good faith at the end of the day,
21 13 weeks later.

22 So we have not physically inspected it. We have
23 sought information. It was very apparent to us early on
24 that this was not going to be a clear and easy path to get
25 to.

1 COUNCILMEMBER MOLINA: Thank you.

2 Thank you, Chair.

3 CHAIR MATEO: Thank you, Mr. Molina.

4 Mr. Molina, for your additional information, in
5 the binders, the Chair also forwarded communications to
6 the departments as well. Prior to the transmittal of
7 those letters, the Chair met with the various departments
8 to talk with them about looking at contingency plans for
9 worst case scenarios. So it's not like the County had not
10 started to look at it. The County has in fact been very
11 cognizant of the needs of the Molokai community and has
12 virtually engaged in preparing for the worst case
13 scenarios. So I just wanted to share that.

14 COUNCILMEMBER MOLINA: That is reassuring to
15 know. Thank you, Chair.

16 CHAIR MATEO: Thank you, Mr. Molina.

17 Mr. Pontanilla.

18 COUNCILMEMBER PONTANILLA: Thank you, Chairman.
19 Thank you for, you know, bringing this thing forward in
20 your committee in regards to the hiring of a law firm to
21 take over this situation that is happening on Molokai.

22 And I think Member Molina asked a lot of good
23 questions regarding the existing utilities, both water as
24 well as wastewater. And what is so frightening is that,
25 you know, we do have 90 days to resolve this issue, and

1 will 90 days be enough time for our departments to go over
2 to Molokai, assess the facilities that are out there, not
3 knowing what is required by the County of Maui.

4 You know, it puts us behind the eight ball on
5 this one here, really. And, hopefully, you know, within
6 90 days, our departments can react to the situation. You
7 know, soon as August 31st comes, Molokai Property cease
8 doing their business, and we're ready to take over. So I
9 am hoping that, you know, we do have, like Member Johnson
10 had mentioned about a right of entry, at least a right of
11 entry to go into the property and take a look at the
12 facilities.

13 I'm kind of disappointed in the Public Utilities
14 in the sense that, you know, both the water and as well as
15 wastewater are essential for, you know, public safety, as
16 well as the health and welfare of the people of Molokai,
17 in not taking actions much earlier.

18 In fact, when I had a question to one of your
19 testifiers here about six weeks ago, and, you know, he
20 indicated that, you know, they haven't heard anything from
21 the Public Utilities in regards to this particular matter.
22 So that really concerns me.

23 But, Chair, I will be supporting your
24 recommendation in regards to try and resolve this issue so
25 that, you know, people on Molokai can go on with their

1 lives.

2 Thank you.

3 CHAIR MATEO: Thank you, Mr. Pontanilla.

4 Mr. Victorino, any questions?

5 COUNCILMEMBER VICTORINO: Yeah. Thank you,
6 Chair.

7 First to Corp -- well, no, not to Corp Counsel.
8 Actually, to Mahina. In a letter addressed -- or dated
9 May 27, 2008, a memo was sent from Mr. Dave Taylor to
10 Cheryl Okuma, and all this information about Molokai
11 wastewater treatment facilities, was this ascertained off
12 of public records?

13 MS. M. MARTIN: Yes. Correct.

14 COUNCILMEMBER VICTORINO: Okay. So this is what
15 you're referring to that we have been already in
16 implementation. Then I see there's other correspondence
17 from other departments in regards to the lack of
18 cooperation from the -- from Molokai Ranch or Molokai
19 Properties, or whatever they want to be called now. So
20 that indicates that we have been proactive in that
21 respect.

22 The other parts I see where there's a lot of
23 correspondence between ourselves -- I mean, not ourselves,
24 but our senator and -- Representative Carroll and Senator
25 English with Molokai Properties and the Governor's office,

1 and all the answers are just -- pardon the expression --
2 rhetoric. I mean, I see no substance behind these
3 answers.

4 What seems to be the hangup as far as them
5 wanting to get directly to the point of let's find an
6 answer and let's take the resolve on helping the people on
7 Molokai, especially the west end?

8 MS. M. MARTIN: Thank you, Councilmember,
9 Mr. Chair.

10 That is probably a very good question for us as
11 well.

12 We have not wavered since April 23rd, up through
13 the very explicit letter from the Mayor last week asking
14 for an emergency declaration in the interest of Molokai.
15 So we are quite concerned. We have tried to work directly
16 with the State, with the Administration, and have
17 encountered a huge amount of, you know, boulders and
18 barricades and hurdles through either the company or
19 different state agencies.

20 You know, the important thing for us is that we
21 have been consistent in the way that we have been asking
22 for help, which is why it's so papered, if you will,
23 because we don't want it to be misunderstood, our
24 questions and our intent. And at some point, honestly, we
25 even thought maybe we are not asking the right questions,

1 so we will, you know, ask it again. We went as far as --
2 you can see, we went all the way to Hong Kong and took a
3 shot at writing to the Guoco's executive chairman, and
4 said, hey, maybe, you know, in a goodwill gesture, you may
5 not even know what is going on, on Molokai, with your
6 employees and your company. And it was unfortunate that
7 he chose not to respond and, instead, sent Mr. Nicholas
8 again.

9 So, you know, we are very puzzled. We have
10 asked time and time again for support and assistance. And
11 we have been told time and time again it is the County's
12 responsibility to jump in and save a company in distress.

13 And it's been compared to a similar situation
14 with Del Monte on Molokai where the County stepped in.
15 The major difference is that that company no longer exists
16 there. They filed bankruptcy, I believe, in that
17 situation.

18 In this one, this company will abandon its
19 public utilities, but retain its assets. And is the --
20 you know, its parent company is, as we all know, probably,
21 fairly wealthy. And matter of fact, one of the wealthiest
22 in the world. So it's even more surprising for us that
23 the citizens of Maui County would be asked to rescue this
24 company.

25 So we share your distress. We are just as

1 confused as to why something that we think has been done,
2 where the State Administration has come forward and
3 supported smaller communities and social welfare needs,
4 and has, yet, turned, you know, away from our request for
5 help for Molokai.

6 COUNCILMEMBER VICTORINO: Thank you for that
7 response.

8 Mr. Chair, I will also point out that -- to a
9 letter dated June 5th, 2008, from the State of Hawaii
10 Public Utilities Commission -- and I know you're aware of
11 all of this, so -- but the public may not be aware of some
12 of this -- where, in the second paragraph, it says, The
13 utility has a duty to provide service to their customers;
14 and, as such, are required to provide service unless and
15 until the Commission approves a transfer or surrender of
16 their Certificate of Public Convenience and Necessity, the
17 CPCN. While the Commission is cognizant of the utilities'
18 present financial -- and until the -- financial
19 conditions, it cannot and will not approve the surrender
20 or transfer of the CPCN unless another public or private
21 entity can be found to operate the water and waste
22 treatment system.

23 Now, this is from the Public Utilities.

24 And I go on to the very end. And I am not going
25 to read this whole thing, but there's a closer at the very

1 back of the letter that states this. The utilities shall
2 not cease operations unless or until it has received
3 Commission's approval to surrender or transfer their
4 CPCNs. Failure to do so may be subject to utilities and
5 other parties deemed to be responsible -- I guess that
6 could be Guoco or whoever, yeah -- to investigatory action
7 and penalties authorized by law.

8 So, again, the utility, the public utility is
9 telling them they cannot cease and desist, you know, with
10 all these deadlines being thrown around. I mean, there's
11 letters saying they can't and then I hear deadlines being
12 thrown out.

13 So, Mr. Moto, this is the question, with what I
14 just said and all this other things that are bantered
15 [sic] about, who has the right to shut down, if they have
16 that right, when the Public Utility Commission says they
17 can't until they find someone to take over, public or
18 private? So I ask you, sir, where are we with this?
19 Because that is where all this litigation will lead to,
20 eventually, but your opinion in just that statement only.

21 CHAIR MATEO: Mr. Moto.

22 MR. MOTO: Mr. Chairman, especially in light of
23 the PUC order and the DOH orders, I don't believe that the
24 utilities have the right to shut down unilaterally. Our
25 position is that they -- under their certificates of

1 public necessity and convenience, that they ought to
2 continue providing utility service. And we don't believe
3 there is any law that would allow the State or its
4 agencies to force a county, against its will, to take over
5 or operate a utility, whether wastewater or water.

6 And we also believe that this controversy has
7 very serious implications because there are many, many
8 privately operated and run utility and water utilities in
9 the state and in Maui County. And some of them are run by
10 people who would rather not be in the business of running
11 those utilities. And what would prevent them from simply
12 walking away, also?

13 COUNCILMEMBER VICTORINO: Thank you, Mr. Moto.

14 And, Chair, I know you have worked very
15 diligently in getting this forward to us. And there's a
16 lot to be read. And I apologize that I don't have enough
17 time to go through all of them. But I did make particular
18 note on certain issues. And there will be more that -- I
19 will see if my other colleagues ask questions, if not,
20 then, on my second round, I will bring those questions
21 forward. But thank you, Chair, for all your efforts.

22 And thank you, Mr. Moto and Ms. Mahina, for your
23 answers.

24 CHAIR MATEO: Thank you, Mr. Victorino.

25 Members, at this point the Chair is aware of the

1 time. And we will be losing two members in a little bit
2 who has prior engagements. The option is we can come back
3 at 1:30 to continue the discussion at this point --
4 because I believe we are getting to the point where I
5 believe that we are ready to take a look at the
6 resolutions that is before us. We have two resolutions
7 before us. And if the Members, and this is to your, you
8 know, convenience, it's up to the body, if you would like
9 to return after lunch, at 1:30, to continue the
10 discussion.

11 Members, floor will open for discussion
12 regarding the lunch break.

13 Mr. Hokama.

14 VICE-CHAIR HOKAMA: Chairman, is it your
15 intent -- if you wish the Committee to focus on one or
16 both proposed resolutions, then I would assume -- and if
17 so, the Committee would be dealing with then potential
18 strategies that we would like to have part of this
19 consideration. Would that be executive session?

20 CHAIR MATEO: We do have the option of going
21 into executive session. The concern is at this particular
22 point in time that executive session would be primarily
23 with Mr. Moto because the -- one of the resolutions that
24 recognizes a law firm, until our final approval on the
25 Council meeting, the individual or firm is not yet hired

1 by this body. Therefore, we would not be able to have a
2 solid discussion because the law firm at this point is not
3 privy to a lot of the information and materials that the
4 Corporation Counsel currently has.

5 And, you know, shortly after the hire of
6 corporation -- of the special counsel, it is the Chair's
7 intent to bring the firm back to this body to be able to
8 engage in that specific discussion, once they are provided
9 the information that they will need to be brought up to
10 speed.

11 VICE-CHAIR HOKAMA: Okay. As for the
12 Committee's clarity, Mr. Chairman, your intent regarding a
13 specific special counsel regarding this matter is by the
14 direction of the Council, or is this authorizing the
15 County, which would be Mr. Moto and the Mayor, then would
16 have the oversight of special counsel?

17 CHAIR MATEO: The oversight would be with the
18 Mayor and the Corporation Counsel. And because we are all
19 partners in it, corporation -- the special counsel would
20 also be required to meet and discuss with us as well
21 relative to the issues of water and wastewater.

22 Mr. Moto, am I correct in that assumption?

23 MR. MOTO: Yes, Mr. Chairman. We will do
24 whatever we can to accommodate the Council, should it want
25 to discuss, in the coming weeks, this issue.

1 VICE-CHAIR HOKAMA: Okay, Chairman. Your
2 choice, Chairman. We can finish or we can come back.

3 CHAIR MATEO: I will go right down the line.
4 Mr. Hokama, okay, thank you very much.
5 Ms. Baisa.

6 COUNCILMEMBER BAISA: No questions. Ready to
7 vote.

8 CHAIR MATEO: Ms. Johnson.

9 COUNCILMEMBER JOHNSON: No further questions. I
10 am ready to vote.

11 CHAIR MATEO: Mr. Molina.

12 COUNCILMEMBER MOLINA: Mr. Chairman, I think
13 time is of the essence with this matter. I am ready to
14 take action.

15 CHAIR MATEO: Thank you, Mr. Molina.
16 Mr. Pontanilla.

17 COUNCILMEMBER PONTANILLA: I am ready to move,
18 Chairman.

19 CHAIR MATEO: Mr. Victorino.

20 COUNCILMEMBER VICTORINO: The questions I have
21 can wait until later. I think I am ready to move with
22 your recommendation.

23 CHAIR MATEO: Thank you very much.

24 Members, I am going to cut right to the chase.
25 We're looking at two resolutions at this particular point

1 in time.

2 The Chair would like you to take a look at the
3 resolution transmitted to this Committee on July 14, 2008,
4 from the Department of the Corporation Counsel,
5 authorizing the employment of Special Counsel Bronster and
6 Hoshibata with respect to legal claims relating to water
7 and wastewater utility services on Molokai. The Chair
8 will ask Corporation Counsel, Mr. Moto, to provide us
9 brief comments on this particular resolution as submitted.

10 Mr. Moto, please.

11 MR. MOTO: Yes, Mr. Chairman.

12 We appreciate the Chair's hearing of this
13 particular resolution. When it became apparent to us,
14 especially in our dealings with state agencies, that the
15 issues were becoming increasingly complex and involving
16 multiple agencies and venues, and now that litigation
17 seems almost certain, we do recommend to this body that
18 the Council authorize retention of special counsel
19 pursuant to Chapter 103D of the Hawaii Revised Statutes,
20 the Hawaii Public Procurement Code. Our Department, the
21 Department of the Corporation Counsel, observed the normal
22 procurement process for the selection and review of
23 potential counsel, and the selection committee identified
24 the firm of Bronster and Hoshibata as the top candidate,
25 reviewing their qualifications and experience.

1 In particular, Ms. Bronster is highly qualified,
2 experienced, is available and willing to take on the work,
3 is, of course, a former attorney general of the State of
4 Hawaii and would, therefore, have a unique knowledge and
5 perspective on these types of issues. And we have already
6 done a conflicts check to make sure that her firm could
7 take on this kind of case. And she is able to do that
8 under professional rules.

9 CHAIR MATEO: Thank you, Mr. Moto.

10 Members, the floor is open for questions to
11 Mr. Moto.

12 Okay, Mr. Hokama.

13 VICE-CHAIR HOKAMA: Chairman, so when would you
14 like -- if not today, when would you approach for the
15 Committee to share what we expect out of special counsel?

16 CHAIR MATEO: Mr. Hokama, that will be shortly
17 after the Council makes its final approval of the
18 resolution, when we would be able to ask for a -- call for
19 a meeting with Ms. Bronster or special counsel, whoever it
20 may be. So we may be able to share our concerns directly
21 to her and our expectations of her employ.

22 VICE-CHAIR HOKAMA: Okay. Then I would say we
23 should consider pushing out both resolutions, then,
24 Chairman. Then we would have the maximum options from the
25 Council's perspective of how we may want to move forward.

1 CHAIR MATEO: The only difficulty with that,
2 Mr. Hokama, would be if we look at the other -- the
3 original draft resolution that was submitted to Committee
4 for consideration, that request would have to go through
5 the entire procurement process as is. And with that
6 particular process, our choice of a counsel may or may not
7 be selected in that particular process. Whereas with the
8 other resolution submitted by the Administration, that
9 process is completed and it would be up to this body to
10 adopt, move it out of Committee, send it to Council. And
11 with the Council meeting on August 8, we would be able to
12 initiate that hire. So it's a matter of time, how much
13 time do we want.

14 VICE-CHAIR HOKAMA: No, Chairman, I am not
15 saying that one is better than the other. I am just
16 saying we can consider both resolutions. And while we may
17 be forwarding one with a specific recommendation of a
18 specific firm, I think it doesn't hurt for us to have an
19 additional hammer to hold over everybody's head and feet
20 should we wish to exercise it, which means we can then
21 move independently if we find we are not going in the
22 direction we want to go. That is my point, Chairman.

23 CHAIR MATEO: Okay. We can leave it up to the
24 Members, the Members' choice. If that is the preference
25 of the body, then so be it.

1 The option, Members, would be to move two
2 resolutions forward, that is up for discussion, being
3 recommended by Mr. -- by Chairman Hokama, or we can just
4 look at moving one resolution through. The choice is the
5 body's.

6 COUNCILMEMBER VICTORINO: Mr. Chair, the only
7 question I have, so that I will be clear on this matter,
8 if we put the two resolutions -- put the two resolutions
9 out, one won't be countermanding the other or won't have
10 any conflict, would anything of that nature occur?
11 Because, again, we want to move it with some expediency,
12 but I don't want to have -- and I am not clear on this,
13 how this might have -- if there is any conflicting. So
14 maybe, Chair Hokama, you can clarify on that. If these
15 two resolutions act as separate entities, moving in
16 separate directions, or will there be some overlap that
17 could later on be construed as conflicting? I don't know.
18 So I am asking that question.

19 CHAIR MATEO: Yeah. One resolution is virtually
20 blank. It does not have any indication of a law firm or
21 special counsel attached to it. That particular
22 resolution also lets the Council Chair select the counsel
23 that would be utilized in litigation purposes for Council,
24 whereas the other resolution specifically recognizes the
25 law firm specifically already.

1 COUNCILMEMBER VICTORINO: So, again -- I
2 understanding that -- is there a potential conflict if
3 Chair Hokama said he wanted X, Y, Z, and we've already --
4 or we wanted someone else, could there be a potential
5 conflict? That is all I am asking at this point in time.
6 Because I understand the two work separately in one
7 respect, but could somehow -- I don't know, there would a
8 conflict? So maybe, Mr. Moto, somebody can address that
9 so that it would be clear to myself.

10 VICE-CHAIR HOKAMA: Chairman, if I may please?

11 CHAIR MATEO: Go ahead, Mr. Hokama.

12 VICE-CHAIR HOKAMA: For Mr. Victorino and my
13 fellow Committee Members, Mr. Chairman, is it in conflict?
14 No. Because, one, I would say -- in listening to the
15 discussion this morning -- Mr. Victorino, that for myself
16 as your chief procurement officer considered the second
17 option, which is we will hire another attorney, we would
18 have to come to a understanding that where we currently
19 are going with our first choice is not where we want to
20 go. Second, you know, it's not normal that we would do it
21 this way, by all means. But neither are we in one normal
22 situation.

23 This is just -- for me, if time is of a factor
24 to this Committee, that what we are doing is just placing
25 in position alternative legal options that the Council can

1 choose to utilize if we reach that situation. It is a
2 placement of options for the body to have in place so that
3 timing is -- wouldn't be as much of a factor. If we had
4 to go through complete posting, committee meeting, council
5 meeting, these would be all in place, so that we can
6 eliminate possibly 21 days of regulatory Sunshine Law
7 requirements to get to the same position.

8 That is what I am asking the Committee to
9 consider as an additional option to have in place for its
10 consideration this morning.

11 COUNCILMEMBER VICTORINO: Thank you --

12 CHAIR MATEO: Go ahead, Mr. Victorino.

13 COUNCILMEMBER VICTORINO: Thank you, Chair
14 Hokama. And, Chair, I appreciate that explanation. I
15 will support it. If that is the intent, then I have no
16 problems. Because, again, we're all under the gun as far
17 as time constraints are concerned. And I want to move as
18 swiftly and as expeditiously as we can without getting
19 into any kind of conflict down the road.

20 So thank you for the explanation, Chair Hokama.
21 And thank you, Chair, for allowing me to ask that
22 question.

23 CHAIR MATEO: Thank you, Mr. Victorino.

24 Additionally, Members, that resolution will
25 continue to exist on the Committee's agenda. So at any

1 time, you know, we can call it up in the event that the
2 special counsel is not working or not up to expectation.
3 So we do have multiple options to look at. It's just not
4 one or the other. We have options available to us.

5 Ms. Johnson.

6 COUNCILMEMBER JOHNSON: Yes. At this point in
7 time, because this is a confusing enough situation as it
8 is, I, personally, as one council member, would prefer to
9 just go with one firm. If, failing that, there are some
10 other complications or whatever, I think, as you've
11 stated, Mr. Chair, we could have a special meeting. The
12 item will still be on our agenda. It's not going to be
13 filed. And we could take action very swiftly. Because if
14 procurement laws are involved, anyway, that's not an
15 immediate process.

16 So, you know, for me, I'd just prefer not to
17 confuse it and just move one forward.

18 CHAIR MATEO: Members, additional comments?

19 COUNCILMEMBER VICTORINO: Waiting for your
20 recommendation.

21 CHAIR MATEO: The Chair is going to throw the
22 option on the floor, and leave it up to the body at this
23 point. Because the Chair would recommend the adoption of
24 the resolution authorizing the employment of Special
25 Counsel Bronster and Hoshibata with respect to possible

1 legal claims relating to water and wastewater utility
2 services on Molokai.

3 COUNCILMEMBER VICTORINO: So moved.

4 COUNCILMEMBER BAISA: Second.

5 CHAIR MATEO: Being moved by Mr. Victorino,
6 seconded by Ms. Johnson [sic].

7 Additional discussion, Mr. Victorino?

8 COUNCILMEMBER VICTORINO: No.

9 CHAIR MATEO: Call for the vote. Members, all
10 those in favor signify by saying "aye."

11 (A chorus of ayes.)

12 CHAIR MATEO: Those opposed?

13 (Silence.)

14 CHAIR MATEO: Thank you very much.

15 Members, motion is carried. Seven ayes, two
16 excused members, Anderson and Medeiros.

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1 VOTE: AYES: Councilmembers Baisa, Johnson, Molina,
2 Pontanilla, Victorino, Vice-Chair
Hokama, and Chair Mateo.

3 NOES: None.

4 ABSTAIN: None

5 ABSENT: None.

6 EXCUSED: Councilmembers Anderson and Medeiros.

7 MOTION CARRIED.

8 ACTION: Recommending ADOPTION of proposed
9 resolution entitled "AUTHORIZING THE
10 EMPLOYMENT OF SPECIAL COUNSEL BRONSTER &
11 HOSHIBATA WITH RESPECT TO POSSIBLE LEGAL
CLAIMS RELATING TO WATER AND WASTEWATER
UTILITY SERVICE ON MOLOKAI."

12 CHAIR MATEO: Time has come. Time has come.
13 There is a lot for us to do. And we need to engage that
14 discussion and we need to engage in the action as soon as
15 possible.

16 This County can no longer wait for somebody else
17 to tell us what is right and appropriate for this County
18 to do. We need to take action, we need to protect the
19 safety and the needs of our residents throughout our
20 County.

21 Additional announcements at this point, Members?

22 VICE-CHAIR HOKAMA: Chairman?

23 CHAIR MATEO: Mr. Hokama.

24 VICE-CHAIR HOKAMA: This does not hinder Corp
25 Counsel from doing everything currently until such time as

1 special counsel is approved and contracted?

2 CHAIR MATEO: Correct.

3 VICE-CHAIR HOKAMA: So I am going to make the
4 assumption, Mr. Chairman, this morning, before you
5 adjourn, that some of the appropriate legal options that
6 the County should be considering is already under review
7 and that those options will be put in its proper place
8 even without special counsel.

9 CHAIR MATEO: Correct.

10 VICE-CHAIR HOKAMA: Thank you.

11 CHAIR MATEO: Mr. Hokama, Mr. Moto's ear is very
12 available. I have learned that throughout the last
13 several weeks. If there are specifics that you are
14 interested in, please, by all means, you know, contact
15 Mr. Moto, you know, and be able to share it with you, so
16 it can be in fact considered as options and alternatives
17 to look at.

18 VICE-CHAIR HOKAMA: Chairman, and I am assuming
19 that everything as set forth in your proposal regarding
20 the capping of expenses is what we've agreed to?

21 CHAIR MATEO: Yes.

22 VICE-CHAIR HOKAMA: Are you aware of any
23 budgetary proposals coming down from the Budget Director
24 regarding this specific issue and any appropriate
25 budgetary adjustments Council needs to make for

1 purposes --

2 CHAIR MATEO: I am not, at this point,
3 Mr. Hokama.

4 VICE-CHAIR HOKAMA: Okay. Thank you, Chairman.

5 CHAIR MATEO: Thank you, Mr. Hokama.

6 Members, any additional questions?

7 (Silence.)

8 CHAIR MATEO: Hearing none, thank you very much.

9 COUNCIL MEMBERS VOICED NO OBJECTIONS. (Excused: Members
10 Anderson and Medeiros)

11 ACTION: DEFER pending further discussion.

12 CHAIR MATEO: Members, this concludes our agenda
13 for today. Thank you very much for your participation.

14 Members, the Policy Committee Meeting for July
15 22nd, 2008, is adjourned. ...(gavel)...

16 ADJOURN: 11:51 a.m.

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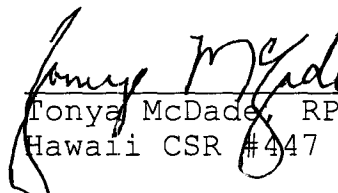
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1 CERTIFICATE
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7 I, TONYA MCDADE, a Court Reporter of the State
8 of Hawaii, do hereby certify that the electronic
9 proceedings contained herein were taken by me in machine
10 shorthand and thereafter was reduced to print by means of
11 computer-aided transcription; that the foregoing
12 represents, to the best of my ability, a true and accurate
13 transcript of the electronic proceedings had in the
14 foregoing matter.

15 I further certify that I am not an attorney for
16 any of the parties hereto, nor in any way concerned with
17 the cause.
18

19 DATED this 5th day of August, 2008.
20

21 
22 Tonya McDade, RPR, CRR, CBC
23 Hawaii CSR #447
24
25