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M I N U T E S
COMMITTEE OF THE WHOLE
Council of the County of Maui
Council Chamber
November 19, 2003

APPROVED:

Committee Chair

1 **CONVENE:** 4:05 p.m.

2 **PRESENT:** Councilmember Robert Carroll, Chair
Councilmember Dain P. Kane, Vice-Chair
3 (arr. at 4:07 p.m.)
Councilmember G. Riki Hokama, Member
4 (arr. at 4:20 p.m.)
Councilmember Jo Anne Johnson, Member
5 Councilmember Danny A. Mateo, Member
Councilmember Michael J. Molina, Member
6 Councilmember Joseph Pontanilla, Member
Councilmember Charmaine Tavares, Member

7 **EXCUSED:** Councilmember Wayne K. Nishiki, Member

8 **STAFF:** Carla Nakata, Legislative Attorney
9 Pauline Martins, Committee Secretary

10 **ADMIN.:** Gregory Garneau, First Deputy Corporation
Counsel, Department of the Corporation
11 Counsel
Gilbert Coloma-Agaran, Director, Department of
12 Public Works and Environmental Management
(Item No. 1(4))
13 Keith Regan, Director, Department of Finance
(Item Nos. 1(4) & 1(9))
14 Carmelito Vila, Motor Vehicle and Licensing
Manager, Department of Finance
15 (Item Nos. 1(4) & 1(9))
Gary Gates, Risk Manager, Department of
16 Finance (Item Nos. 1(4) & 1(9))
Laureen Martin, Deputy Corporation Counsel,
17 Department of the Corporation Counsel
(Item Nos. 1(4) & 1(9))
18 Carl Kaupalolo, Fire Chief, Department of
Fire and Public Safety (Item No. 1(9))

19 **OTHERS:** Christina Hemming
20 Plus (2) other people

21 **PRESS:** None.

22

23 **CHAIR CARROLL:** (Gavel). Committee of the Whole meeting
24 of November 19th, 2003 will come to order. Good
25 morning, Members.

1 COUNCILMEMBER TAVARES: Afternoon.

2 CHAIR CARROLL: Afternoon. We feel rested today, so it
3 feels like morning to us. With us this morning we
4 have Councilmembers Jo Anne Johnson, Danny Mateo,
5 Michael Molina, Joseph Pontanilla, and Charmaine
6 Tavares. Excused are Vice-Chair Kane, Riki Hokama,
7 and Mr. Wayne Nishiki. Also with us this morning we
8 have Greg Garneau, our Corporation Counsel. We have
9 Carla Nakata, our Committee Analyst, and Pauline
10 Martins, our Committee Secretary.

11 This morning we have three items on the
12 agenda. Thank you for coming in the afternoon,
13 since these things are time sensitive. We have one
14 testifier this morning, and we will begin with
15 public testimony. And we have Christina Hemmings.
16 Christina, you know you have three minutes, and if
17 you can't finish in three, I'll give you three more,
18 since you're the only testifier.

19 COUNCILMEMBER TAVARES: Oh, no.

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

21 MS. HEMMING: Good afternoon, County Council. I'm here on
22 the never-ending saga with Baldwin Beach and the
23 Montana Beach Condominium project, and most
24 specifically Dennis Holland's lawsuit against the
25 County for selective enforcement, so to speak, of

1 the non-occupancy agreements issued and -- issued by
2 Public Works under Charlie Jencks and David Goode in
3 relation to the plan review waiver that the Hollands
4 signed.

5 I understand that already \$20,000 has been
6 appropriated to Mr. Green. Funny enough, after
7 taking a long trip I hopped on a plane, inter-island
8 flight about a month ago, and I had been traveling
9 for two and a half days and who was in the front
10 class section, but Mr. Green, and so I ended up
11 having a little chat with him and he told me that if
12 the Circuit Court accepts this case, it's going to
13 be a very, very long and expensive case to -- to go
14 through.

15 So with that in mind, my understanding is
16 that at this point the County has filed a motion to
17 dismiss the case from Circuit Court, and Mr. Green
18 and Mr. Nakamura, who represent Mr. Apana and
19 Mr. Takayesu, have been working with the County
20 to -- to dismiss the case. So in that relation, I
21 support this -- this appropriation of more money for
22 the case, but I do insist on a few things.

23 I had just recorded about 1,000 pages of
24 Bates stamped information into the computer, and
25 there are a lot of issues that I have going on with

1 this case. The first thing I really must insist on
2 is that with tying in with this appropriation of new
3 money you must launch a counter suit against the
4 Hollands. They did sign a no occupancy agreement
5 and it was notarized. They signed a plan review
6 waiver and it was notarized. And it's those
7 signatures of theirs with a full agreement that
8 until all rules, Federal, State, and County, were
9 complied with and fulfilled that they could not move
10 into their house.

11 So what's the problem? They say the rules
12 don't apply to us. You can't selectively enforce
13 us. Well, actually, it wasn't just them. The
14 Cameron house in Makena-Wailea also had a no
15 occupancy violation or occupancy violation issued
16 towards them. Same lawyer, Tom Welch of Mancini,
17 Rowland & Welch. These are some of the issues that
18 I think that the County could use in counter suing
19 against the Hollands to have them drop their
20 lawsuits and to stop wasting the precious County tax
21 base money that they are wasting.

22 First of all, improper applications on all
23 the building permits, wrong square footages, square
24 footages left out, improper information on the
25 zoning -- on the building permits issued by Public

1 Works. The community plan designation on their SM-2
2 for the Planning Department was wrong. It said it
3 was Ag when it was Park/Open Space. They have
4 violations citing them for boulders --

5 MS. NAKATA: Three minutes.

6 MS. HEMMING: -- boulders on the Paia Beach side and
7 violations from DLNR cited for them for their berm.
8 They weren't supposed to place soil within the
9 75-foot setback, and of course they did and they
10 planted it. Those have not been cleared up. They
11 still to this day have not gotten a certified
12 shoreline. Now, Randy Hashimoto came to try to
13 certify the shoreline, but all the boulders that had
14 been placed on the property on the Paia side, he
15 said he looked at the old picture, looked at the new
16 one, and was like, well, this is obviously an
17 encroachment upon conservation lands. They still
18 haven't cleared that up. Tom Welch wrote a letter
19 saying that it had all been cleared up with Roger
20 Thorson but nothing had ever been done.

21 The Bates stamped letter from Mr. Goode,
22 Bates stamp 0005838, was a Public Works letter to
23 Clay Sutherland, who was at that point the Hollands'
24 attorney, this says we cannot allow occupancy
25 because it flies in the face of the nature of the

1 agreement of the non-occupancy agreement that you --
2 that you signed, and this was in response to a
3 letter that requested from the Public Works that
4 releases them from their non-occupancy agreement.

5 I can go on and on. I have so much to share,
6 but I don't want to take up your whole day. First
7 of all, I just want to let you know that the -- the
8 house that the Hollands claim is a single family
9 dwelling was originally an ohana permit, 800 square
10 feet, and then they wrote a letter to the County
11 saying, hey, guess what, we're the new owners of
12 this lot and -- and we want to like extend our
13 building permit and reapply. And then they
14 reapplied for a -- they didn't fill out the square
15 footage but they -- it was 48 by 56 and that ended
16 up being 2,200 square feet, and so, you know, that
17 was how they kind of roped the County into it.

18 Now, on the fact that the CPR itself is
19 illegal -- they are claiming that the CPR is
20 illegal. The CPR, being the Condominium Project
21 Regime, is illegal, and under Mr. Fosbinder's
22 post-hearing document he says the CPR was consistent
23 with State SMA law, particularly given the mandates
24 of the applicable CPA -- CPR law under which
25 residences -- our residences were lawfully planned.

1 CPR condominium rules say you have to take out a
2 storage building permit. You have to build the
3 storage building. You have to close -- you have to
4 have it finalized and the permit has to be closed.
5 Then you can apply for the Condominium Project
6 Regime, and on top of those building permits for the
7 storage units then those can become apartments.
8 They took out the storage building permits, never
9 built the storage building permits.

10 MS. NAKATA: Six minutes.

11 MS. HEMMING: To this time they are still open. So their
12 condominium actually is not even legal. Thank you
13 very much, and of course they did get the SMA waiver
14 for four few associated subdivisions with no
15 associated construction activities. That was given
16 to A&B with the historical review attached as that
17 condition for the original subdivision of lands, and
18 so I they cannot use that same plan review waiver
19 for subdivisions, so...

20 CHAIR CARROLL: Thank you. Any questions for the
21 testifier? Ms. Johnson.

22 COUNCILMEMBER JOHNSON: Yes, Christina, I'm assuming that
23 all the information that you're giving us, are you
24 able to share that with Corporation Counsel?

25 MS. HEMMING: Corporation Counsel knows all of this

1 information.

2 COUNCILMEMBER JOHNSON: Okay.

3 MS. HEMMING: And I know it would be a first step for the
4 County to actually counter sue someone who was suing
5 them possibly, but this County -- from everything
6 I've been reading, this County is actually pretty
7 nice to people. So I know it's kind of an
8 aggressive tactic, but at this point I feel like
9 they're being fairly aggressive with the County.
10 And Corporation Counsel has all this information.

11 COUNCILMEMBER JOHNSON: Okay, thank you very much,
12 Christina.

13 MS. HEMMING: Thank you.

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

15 CHAIR CARROLL: Any further questions? If not, thank you,
16 Christina.

17 Is there anybody else who wishes to give
18 testimony at this time? Hearing none, if there's no
19 objection, we'll close public testimony.

20 COUNCIL MEMBERS VOICED NO OBJECTIONS.

21 CHAIR CARROLL: Public testimony is now closed, and we
22 have with us Mr. Kane, our Vice-Chair.

23 All right, Members, again I appreciate you
24 meeting this afternoon. We will move right along.

25

1 COW-2(2) SPECIAL COUNSEL (CASES RELATING TO THE
2 MONTANA BEACH CONDOMINIUM PROJECT IN PAIA,
MAUI) (C.C. No. 03-20)

3 CHAIR CARROLL: The first item we will hear is special
4 counsel cases relating to Montana Beach Condominium
5 Project in Paia, Maui, Committee of the Whole Item
6 2(2). Mr. Garneau.

7 MR. GARNEAU: Yes, thank you very much, Mr. Chair. The
8 resolution that you have before you is actually
9 only -- doesn't relate generally to the lime kiln
10 cases, but rather the specific request from our
11 office for additional compensation for Mr. Michael
12 Green, who, as you remember, I'm certain, the
13 Council had previously approved retaining him as
14 counsel for former Mayor Apana, who was a witness in
15 these two cases, the administrative appeals before
16 the Maui Planning Commission and the Holland -- what
17 we call the Holland enforcement action in State
18 court.

19 And so far Mr. Green and his office have done
20 quite a lot of work. They had to prepare Mr. Apana
21 to appear in the Montana Beach administrative
22 hearing. That work is done. And they also had to
23 prepare and attend him in a deposition, as well as
24 in the State enforcement action there was a
25 deposition, is my understanding. So the attorney

1 from our office that's assigned to handle these
2 cases, as you know, is Ms. D'Enbeau, Madelyn
3 D'Enbeau, and she couldn't be here today because
4 she's in a deposition, but I understand from talking
5 with her that the administrative appeals have gone
6 now to the hearings officer, and so there should not
7 be additional work at this time for Mr. Green.

8 But in the State Court enforcement action we
9 may still require the assistance of his client in
10 the way of preparing affidavits, or even if the
11 matter does go to trial and Mr. Apana is a witness,
12 he may need to be represented there. So if for that
13 reason, then we're asking for the compensation for
14 this item to be increased to \$20,000. It was
15 previously \$10,000.

16 CHAIR CARROLL: Thank you. And, Members -- Mr. Kane.

17 VICE-CHAIR KANE: I didn't mean to interrupt you, Chair.

18 I just was going to ask if you were going to allow
19 questions?

20 CHAIR CARROLL: Pardon?

21 VICE-CHAIR KANE: Can I -- can I go ahead and ask
22 questions to Mr. Garneau?

23 CHAIR CARROLL: Yes, you can, and I just was going to say
24 we also, if there is a request, we can have
25 Mr. Green on the speakerphone. Proceed.

1 VICE-CHAIR KANE: Thank you. Mr. Garneau, have we gotten
2 billed for the first \$10,000? What's the status of
3 the billing?

4 MR. GARNEAU: Yes, that's correct. We have gotten billed
5 up to the \$10,000, and so that's why we're here to
6 ask for additional.

7 VICE-CHAIR KANE: Has the billing exceeded the \$10,000?

8 MR. GARNEAU: I believe it has, and the invoice has gone
9 over.

10 VICE-CHAIR KANE: Can you share with this Committee how
11 much over?

12 MR. GARNEAU: Yeah, I'm -- I know I have an invoice. Just
13 one moment. I have an invoice that's from August
14 19th to September, and it's in the amount of
15 approximately \$2,000. So that invoice has not been
16 paid.

17 VICE-CHAIR KANE: And Mr. Green is fully aware that it's a
18 risk for him at this point that because he's gone
19 over the compensation -- approved compensation limit
20 that -- that he may or may not get paid anything
21 over and above the 10,000? He's aware of that.

22 MR. GARNEAU: I'm certain he understands that. I mean
23 his -- this has not been processed for payment, and
24 I think that once the invoice came in that's why we
25 sent down the request to let you folks decide what

1 you'd like to do.

2 VICE-CHAIR KANE: Okay. And in your opinion you believe
3 the additional 10,000 is going to be utilized for
4 the purposes that you've stated in your opening
5 comments?

6 MR. GARNEAU: Yes. And as I look through there, without
7 going through all the invoices, I did look over the
8 invoices and it seems to me, as when any attorney
9 gets involved in a case, there's a little bit of a
10 learning curve in the beginning. We sent over quite
11 a number of documents from Corporation Counsel and
12 he had to have different conversations with us to
13 get up to speed, and so it's -- to me it seems like
14 a reasonable amount. But as I said, Ms. D'Enbeau
15 had indicated that at least the administrative
16 appeal, that contested case portion, is pau and so
17 it's with the hearings officer. There shouldn't be
18 additional monies needed for that, and he's also
19 worked quite a bit in the enforcement action, so
20 there may -- there may be a little bit more, but I
21 wouldn't think a whole -- a whole lot more, at least
22 that's my best estimate at this time.

23 VICE-CHAIR KANE: And finally, Mr. Chair, just a passing
24 question, and included in that billing there was
25 nothing that showed he was flying first class on the

1 County's dime? Since public testimony gave us the
2 impression that he was sitting up front. I don't
3 know if that was in front of the plane or in a
4 particular section that we're not willing to pay
5 for.

6 MR. GARNEAU: No, there are airfare, but it's the standard
7 coach airfare.

8 VICE-CHAIR KANE: Thank you. Thank you. I just thought
9 I'd ask, since we may have gotten the impression
10 that he may have been sitting in first class.

11 MR. GARNEAU: I don't know what date Ms. Hemmings was
12 talking about, but --

13 VICE-CHAIR KANE: Thank you. Thank you.

14 MR. GARNEAU: Okay.

15 CHAIR CARROLL: Thank you.

16 VICE-CHAIR KANE: Thank you, Mr. Chair. Thank you.

17 CHAIR CARROLL: Thank you, Mr. Kane. Let the record show
18 that we have -- Mr. Hokama has now joined us.

19 Members, any other questions for Corporation
20 Counsel at this moment?

21 VICE-CHAIR KANE: Mr. Chair.

22 CHAIR CARROLL: Yes.

23 VICE-CHAIR KANE: Are you requesting to go into executive
24 session or is that going to be a request on your
25 part, Mr. Garneau?

1 MR. GARNEAU: I was not, Councilmember Kane, unless the
2 body would like to do that, but I'm not requesting
3 it at this time.

4 VICE-CHAIR KANE: Thank you.

5 CHAIR CARROLL: All right. If there are no questions for
6 our Corporation Counsel, is there any request, we
7 have the speakerphone, and Mr. Green, we can make
8 him available if anybody would like to question him.
9 Is there any request from any member to speak to
10 Mr. Green? Hearing none.

11 VICE-CHAIR KANE: Your recommendation, Chair.

12 CHAIR CARROLL: Hearing no further discussion, the Chair
13 will entertain a motion to adopt proposed resolution
14 entitled authorizing additional compensations for
15 special counsel Law Offices of Michael Jay Green for
16 James H. Apana, Junior, former Mayor, in County of
17 Maui versus Holland, Civil No. 01-1-0642(3), and in
18 the matter of those appeals before the Maui Planning
19 Commission relating to the Montana Beach Condominium
20 project, Paia, Maui, Hawaii, Docket No. Appeals
21 01-0001 through 01-0006.

22 VICE-CHAIR KANE: So moved.

23 COUNCILMEMBER MOLINA: Second.

24 CHAIR CARROLL: Been moved by Mr. Kane. Seconded by
25 Mr. Molina. Mr. Kane.

1 VICE-CHAIR KANE: Thank you, Mr. Chair, and all I ask is
2 that Mr. Garneau come right out and let Mr. Green
3 know that if he does send billings to us that are in
4 excess of what the appropriated or approved amount
5 is that he -- he understands that -- that we won't
6 be obligated to pay anything over and above and that
7 that's clearly stated to him. Other than that, I
8 support the motion.

9 CHAIR CARROLL: Thank you. Any further discussion?
10 Ms. Johnson.

11 COUNCILMEMBER JOHNSON: I just wanted to find out from
12 Mr. Garneau if he knows when Ms. D'Enbeau would be
13 able to update us on this particular case. I know
14 she's out today, so -- or were you not intending to
15 give any update?

16 CHAIR CARROLL: Mr. Garneau.

17 MR. GARNEAU: Mr. Chair, thank you. Councilmember
18 Johnson, that would be something we probably should
19 bring up as a separate -- as an item. You want a
20 status update? I'll let her know and we can try to
21 schedule that for you.

22 COUNCILMEMBER JOHNSON: And the only reason, Mr. Chair,
23 that I bring that up is because if -- if this is
24 going to be a long and protracted battle, then I
25 think that Ms. Hemming's testimony today and any

1 documentation that she has provided to Corporation
 2 Counsel which may strengthen any case that we might
 3 have, I think we have to explore all the
 4 possibilities at this point in time. Thank you.

5 CHAIR CARROLL: Thank you. Any further discussion?

6 Hearing none, all those in favor of the motion,
 7 signify by saying "aye."

8 COUNCIL MEMBERS VOICED AYE.

9 CHAIR CARROLL: Opposed?

10 **VOTE: AYES:** Chair Carroll, Vice-Chair Kane,
 11 Councilmembers Hokama, Johnson, Mateo,
 12 Molina, Pontanilla, and Tavares.
 13 **NOES:** None.
 14 **ABSTAIN:** None.
 15 **ABSENT:** None.
 16 **EXC.:** Councilmember Nishiki.

17 **MOTION CARRIED.**

18 **ACTION: ADOPT RESOLUTION.**

19 CHAIR CARROLL: Motion carried unanimously. Thank you.

20 **COW-1(4) SETTLEMENT AUTHORIZATION OF CLAIMS AND**
 21 **LAWSUITS (MICHAEL FELICILDA V. COUNTY OF**
 22 **MAUI, CASE NO. 7-99-00168) (C.C. No. 03-19)**

23 CHAIR CARROLL: Moving right along, our next agenda item,
 24 Settlement of Authorization of Claims and Lawsuits,
 25 Committee of the Whole Item 1(4), Michael Felicilda
 versus County of Maui, Case No. 7-99-00168, and
 joining us we have our Risk Manager, Gary Gates, and
 Laureen Martin, for our Corporation Counsel.
 Ms. Martin.

1 MS. MARTIN: Thank you, Chairman Carroll. This is a
2 workers' compensation claim arising out of
3 work-related injuries sustained on January 7th,
4 1999. This injury occurred as a result of a motor
5 vehicle accident. I am requesting executive session
6 in order to discuss medical and personnel issues.

7 All right, Members, beginning with any
8 questions for Ms. Martin? All right, and for
9 executive session, I believe this and the next item
10 were both going to have a request for executive
11 session. So if there's no further discussion at
12 this time --

13 VICE-CHAIR KANE: Mr. Chair.

14 CHAIR CARROLL: Yes. If there's no discussion on Item
15 1(4) perhaps Corp. Counsel can, with your
16 recommendation, provide -- provide us with some
17 comments on Committee of the Whole Item 1(9) with
18 the intention of going into executive session for
19 both items.

20 COW-1(9) SETTLEMENT AUTHORIZATION OF CLAIMS AND
21 LAWSUITS (RONALD DAVIS V. COUNTY OF
MAUI, CASE NO. 7-99-02989) (C.C. No. 03-19)

22 CHAIR CARROLL: If there's no objection, we will hear
23 Corporation Counsel's -- one moment. If there's no
24 objection, we can hear Corporation Counsel's
25 comments on Committee of the Whole Item 1(9),

1 Settlement Authorization of Claims and Lawsuits,
2 Ronald Davis versus County of Maui, Case No.
3 7-99-02989. Ms. Martin.

4 MS. MARTIN: Thank you, Chairman Carroll. This is a
5 workers' compensation claim arising out of
6 work-related injuries sustained on September 5th,
7 1999. This injury occurred while rescuing stranded
8 hikers. I am requesting executive session in order
9 to discuss medical and personnel issues.

10 CHAIR CARROLL: Members, any questions about this
11 Committee of the Whole item? Hearing none.

12 VICE-CHAIR KANE: Mr. Chair.

13 CHAIR CARROLL: Mr. Kane.

14 VICE-CHAIR KANE: Thank you, Mr. Chair. I move to allow
15 this Committee to convene in executive session for
16 two separate executive session meetings, one for COW
17 No. 1(4), as well as COW 1(9) with respects to --
18 pursuant to Section 92-5(a)(4) HRS.

19 CHAIR CARROLL: Do I hear a second?

20 COUNCILMEMBER PONTANILLA: Second.

21 COUNCILMEMBER MOLINA: Second.

22 CHAIR CARROLL: Seconded by Mr. Pontanilla. Discussion?
23 Hearing none. All in favor of the motion, signify
24 by saying "aye."

25 COUNCIL MEMBERS VOICED AYE.

1 CHAIR CARROLL: Opposed?

2 VOTE: AYES: Chair Carroll, Vice-Chair Kane,
3 Councilmembers Hokama, Johnson, Mateo,
Molina, Pontanilla, and Tavares.

4 NOES: None.

5 ABSTAIN: None.

6 ABSENT: None.

7 EXC.: Councilmember Nishiki.

8 MOTION CARRIED.

9 ACTION: EXECUTIVE SESSION.

10 CHAIR CARROLL: Motion carried unanimously. We will go
11 into recess and we will then convene in the first
12 executive session. This meeting now stands in
13 recess. (Gavel).

14 RECESS: 4:28 p.m.

15 (THE COMMITTEE OF THE WHOLE MEETING ENTERED INTO EXECUTIVE
16 SESSION AT 4:32 P.M. AND ENDED AT 5:18 P.M.)

17 RECONVENE: 5:23 p.m.

18 CHAIR CARROLL: (Gavel). Committee of the Whole meeting
19 of November 19th, 2003 is now back in session.

20 COW-1(4) SETTLEMENT AUTHORIZATION OF CLAIMS AND
21 LAWSUITS (MICHAEL FELICILDA V. COUNTY OF
22 MAUI, CASE NO. 7-99-00168) (C.C. No. 03-19)

23 Members, we have before us Committee of the Whole
24 Item 1(4), Settlement Authorization of Claims and
25 Lawsuits, Michael Felicilda versus County of Maui,
Case No. 7-99-00168. Corporation Counsel have
anything further to add?

MS. MARTIN: Chairman, no, I don't have anything to add.

- 1 CHAIR CARROLL: Members, questions? Comments? If not,
2 the Chair will give his recommendation. I would
3 accept a motion authorizing settlement of the --
4 to -- excuse me, to adopt the proposed resolution
5 entitled Authorizing Settlement of Michael Felicilda
6 versus County of Maui, Case No. 7-99-00168.
- 7 COUNCILMEMBER TAVARES: So moved.
- 8 COUNCILMEMBER MATEO: Second.
- 9 VICE-CHAIR KANE: Oh, so moved. Oh, done already. It's
10 been moved and seconded.
- 11 CHAIR CARROLL: Been moved by Ms. Tavares and seconded by
12 Ms. -- Mr. Mateo. Thank you. Discussion?
13 Mr. Kane.
- 14 VICE-CHAIR KANE: Thank you, Chair. And that resolution
15 includes the amount that was discussed and
16 proposed -- the amount discussed in executive
17 session.
- 18 CHAIR CARROLL: Thank you.
- 19 VICE-CHAIR KANE: Thank you.
- 20 CHAIR CARROLL: Any further discussion? Mr. Hokama.
- 21 COUNCILMEMBER HOKAMA: Chair. I appreciate the efforts of
22 Corporation Counsel to look at the possibility of
23 recapturing some of the settlement amounts to the
24 third party, and I appreciate the Department of
25 Finance assisting Corporation Counsel in particular

1 with this specific case, Chairman. So I appreciate
2 the work that they're doing on behalf of the
3 taxpayers of this County.

4 CHAIR CARROLL: Any further discussion? Hearing none, all
5 in favor of the motion, signify by saying "aye."

6 COUNCIL MEMBERS VOICED AYE.

7 CHAIR CARROLL: Opposed?

8 VOTE: AYES: Chair Carroll, Vice-Chair Kane,
9 Councilmembers Hokama, Johnson, Mateo,
10 NOES: None.
11 ABSTAIN: None.
12 ABSENT: None.
13 EXC.: Councilmember Nishiki.

14 MOTION CARRIED.

15 ACTION: ADOPT RESOLUTION.

16 CHAIR CARROLL: Motion carried unanimously. Thank you.

17 COW-1(9) SETTLEMENT AUTHORIZATION OF CLAIMS AND
18 LAWSUITS (RONALD DAVIS V. COUNTY OF
19 MAUI, CASE NO. 7-99-02989) (C.C. No. 03-19)

20 CHAIR CARROLL: We'll now move on to Committee of the
21 Whole Item 1(9), Settlement Authorization of Claims
22 and Lawsuits, Ronald Davis versus County of Maui,
23 Case No. 7-99-02989.

24 Corporation Counsel, you have anything
25 further to add?

MS. MARTIN: Chairman, I have nothing to add.

CHAIR CARROLL: Members, any discussion? If not, the
Chair will give his recommendation. I would ask for

1 a motion to adopt the proposed resolution
2 Authorizing Settlement of Ronald Davis versus County
3 of Maui, Case No. 7-99-02989, and the amount that
4 was decided a settlement in executive session.

5 COUNCILMEMBER TAVARES: So moved.

6 COUNCILMEMBER PONTANILLA: Second.

7 COUNCILMEMBER MOLINA: Second.

8 CHAIR CARROLL: Been moved by Ms. Tavares, seconded by --
9 who seconded that motion? Mr. Pontanilla.

10 COUNCILMEMBER TAVARES: I think Mike.

11 CHAIR CARROLL: Thank you, Discussion? Ms. Tavares.

12 COUNCILMEMBER TAVARES: No discussion.

13 CHAIR CARROLL: Hearing none, all those --

14 COUNCILMEMBER HOKAMA: Chairman.

15 CHAIR CARROLL: Mr. Hokama.

16 COUNCILMEMBER HOKAMA: Thank you. This specific case
17 definitely I think needs some discussion in open
18 session, Mr. Chairman. One, I believe Mr. Gates did
19 remind the members of improvements that the State
20 legislature has enacted to reduce the liability of
21 State and local government regarding injuries
22 sustained on public property, in particular the
23 example of the Sacred Falls case.

24 What I have -- I would like to bring on the
25 record at this time is I would hope our

1 Administration will look at alternative options for
2 us, whether they need to be an enactment of
3 legislation or to utilize tools already on the State
4 statutes or otherwise to see if we can recapture
5 some of the costs, particularly from commercial
6 entities, that put their clients, I guess would be a
7 term, into potentially very hazardous and dangerous
8 situations, whether it be going into flood zones,
9 walking into lava tubes, going to the edge of a lava
10 pit, whatever it be, Chairman, when a rescue is
11 required, our employees, the fire fighters, the
12 police, the emergency personnel that are first
13 responders are also placed in that very same
14 hazardous and dangerous situation. And only because
15 of proper training and equipment being provided are
16 they able to do their job.

17 But I think that we should look at ways when
18 it is reasonable to try and recapture some of the
19 funds that we put out to settle these claims, and I
20 think it is an option in the future to make people
21 aware that, you know, you're going to need to be
22 more responsible if you're inviting people into a
23 dangerous situation, that you will or may have the
24 potential to repay whatever it takes after a
25 response for an emergency. Thank you.

1 CHAIR CARROLL: Thank you, Mr. Hokama.

2 COUNCILMEMBER PONTANILLA: Mr. Chair.

3 CHAIR CARROLL: Mr. Pontanilla.

4 COUNCILMEMBER PONTANILLA: Thank you, Mr. Chair. As far
5 as ocean rescues, you know, we should take a look at
6 that too, because we do a lot of ocean rescues in
7 regards to ocean activities, similar to what
8 Mr. Hokama has just said for, you know, rescues in
9 caves and valleys, if that could be included, or all
10 type of rescues that we do in trying to meet public
11 safety.

12 CHAIR CARROLL: Thank you. Anything further? Mr. Molina.

13 COUNCILMEMBER MOLINA: Thank you, Mr. Chairman. I think I
14 echo the sentiments of my colleagues, Members Hokama
15 and Pontanilla, and I guess what came to mind was
16 just recently there was the event on Oahu, the
17 Waikiki Rough Water Swim, I guess when that I guess
18 organization decided to have the swim, knowing that
19 the surf conditions were rough, and it ended up I
20 guess the Honolulu City & County Fire Department,
21 they had to do a lot of rescues and something like
22 that could have been avoided had the organizers of
23 the event had decided not to have it, but it
24 endangered a lot of the lives of the personnel as
25 well. So I can concur with what was said by my

1 colleagues as it relates to this issue. Thank you.

2 CHAIR CARROLL: Thank you. Anything further? Hearing

3 none. All in favor of the motion, signify by saying

4 "aye."

5 COUNCIL MEMBERS VOICED AYE.

6 CHAIR CARROLL: Opposed?

7 VOTE: AYES: Chair Carroll, Vice-Chair Kane,
 Councilmembers Hokama, Johnson, Mateo,
8 Molina, Pontanilla, and Tavares.

9 NOES: None.

10 ABSTAIN: None.

 ABSENT: None.

 EXC.: Councilmember Nishiki.

11 MOTION CARRIED.

12 ACTION: ADOPT RESOLUTION.

13 CHAIR CARROLL: Motion carried.

14 Members, thank you for this late meeting.

15 It's appreciated by the Chair. Is there anything

16 further, Staff? If not, this meeting stands

17 adjourned. (Gavel).

18 ADJOURN: 5:32 p.m.

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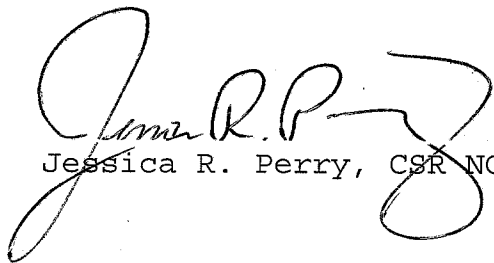
C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF MAUI)

I, Jessica R. Perry, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

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

DATED this 16th day of December, 2003, in Honolulu, Hawaii.


Jessica R. Perry, CSR NO. 404