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MINUTES
POLICY COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
COUNCIL CHAMBER, EIGHTH FLOOR
WAILUKU, MAUI, HAWAII
NOVEMBER 18, 2008

APPROVED:

Committee Chair

REPORTED BY: JEANNETTE W. IWADO, Hawaii CSR #135
Registered Professional Reporter
Certified Shorthand Reporter

1 CONVENE: 1:34 p.m.

2 PRESENT: Councilmember Danny A. Mateo, Chair
3 Councilmember G. Riki Hokama, Vice-Chair (In 1:42 p.m.)
4 Councilmember Michelle Anderson, Member (In 1:41 p.m.)
5 Councilmember Gladys C. Baisa, Member
6 Councilmember Jo Anne Johnson, Member
7 Councilmember Bill Kauakea Medeiros, Member (In 1:39 p.m.)
8 Councilmember Michael J. Molina, Member
9 Councilmember Joseph Pontanilla, Member

10

11 EXCUSED: Councilmember Michael P. Victorino, Member

12

13 STAFF: Gayle Revels, Legislative Analyst (Item No. 2(16))
14 Kirstin Hamman, Legislative Attorney (Item Nos. 2(26),
15 5(8), and 26)
16 Camille Sakamoto, Committee Secretary

17

18 ADMIN.: Marian Feenstra, Executive Assistant, Office of the
19 Mayor (Item No. 2(16))
20 Laureen L. Martin, Deputy Corporation Counsel, Department
21 of the Corporation Counsel (Item No. 5(8))
22 Moana M. Lutey, Deputy Corporation Counsel, Department
23 of the Corporation Counsel (Item No. 5(8))
24 Charmaine Tavares, Mayor (Item No. 26)
25 Traci Fujita Villarosa, First Deputy Corporation Counsel,
 Department of the Corporation Counsel (Item No. 2(16))

26

27 SEATED IN THE GALLERY:
28 Kuhea Paracuelles, Executive Assistant, Office of the
29 Mayor (Item No. 26)
30 Mahina Martin, Public Information Officer, Office of the
31 Mayor (Item No. 26)

32

33 OTHERS: David Kapaku (Item No. 26)
34 Tom Blackburn-Rodrigues (Item No. 26)
35 Dick Mayer (Item No. 26)
36 George Lavenson (Item No. 26)
37 Teri Freitas Gorman, Vice President, Corporate Communications,
38 Maui Land and Pineapple Company, Ltd. (Item No. 26)
39 Richard Moon
40 Kai Nishiki
41 Fifteen (15) additional unidentified attendees

42

43 PRESS: Akaku Maui Community Television, Inc.
44 Timothy Hurley, The Maui News
45 Chris Hamilton, The Maui News

1 CHAIR MATEO: ...(gavel)... The Policy Committee
2 Meeting for November 18th, 2008 will come to order. For the
3 record, the Members present with us this afternoon, we have
4 Members Baisa, Johnson, Molina, and Pontanilla. Excused
5 this afternoon from the Policy Meeting is Member Victorino,
6 and joining us later this afternoon will be Members Medeiros
7 and Member Hokama. And excuse me, Member Anderson is also
8 excused this afternoon.

9 Members, we have three items on our agenda today,
10 but before getting into those agenda items we have two
11 individuals signed up to testify on our items this
12 afternoon. We will go ahead and start with our testimony.

13 And before calling the first individual up, the
14 Chair would also like to recognize the presence this
15 afternoon of the -- of both our Deputy Corporation Counsel,
16 Ms. Fujita Villarosa, and also from the Mayor's office, the
17 executive assistant, we have Ms. Feenstra with us this
18 afternoon. From the committee staff we have both our
19 analysts, we have Ms. Hamman and Ms. Revels, and our
20 secretary, Ms. Sakamoto.

21 Members, the first individual signed up to testify
22 this afternoon -- and both these individuals will be
23 testifying on committee Item 26 -- Kahu David Kapaku, and to
24 be followed by Tom Blackburn-Rodrigues.

25 Just for housekeeping purposes, please, when you

1 get up to the podium recognize -- tell us your name and let
2 us know whether you represent a group, an organization, or
3 yourself, and you will be allowed three minutes to provide
4 testimony and a minute to conclude.

5 Go ahead, Kahu.

6 MR. KAPAKU: I am Kahu Kapaku. I am from
7 Honokohau Valley. I represent the Save Honolua Coalition
8 and also the Honolua Advisory Council.

9 And so aloha no kakou. Greetings to Chairperson
10 Danny Mateo, Members of the Policy Committee. Thank you
11 also to the community, the County Administration, Maui Land
12 and Pineapple Company, as we work diligently together to
13 bring this day to fruition.

14 Today represents the culmination of our efforts,
15 the efforts of the community, the County, Administration,
16 Maui Land and Pineapple Company. We have collaborated and
17 agree that Honolua's health, public access, and open spaces
18 must be protected and preserved.

19 The Save Honolua Coalition and Advisory Council,
20 two community groups, feel that Maui Land and Pineapple
21 Company's compromise for conservation is an acceptable
22 position from which to initiate negotiations with the County
23 Administration, knowing full well that modifications to
24 their proposal may or will occur during the process. And
25 through the -- and though negotiations between the County

1 Administration and landowner will transpire, the community
2 will actively participate in the process.

3 We're passionate about our mission because we love
4 Honolua. The world loves Honolua. More than 16,000 people
5 have signed the petition to save Honolua. Therefore, we the
6 community, the County and the company must do everything in
7 our power to save and protect her. For her sake, please
8 help us.

9 I'm going to ask the community that's represented
10 here in the gallery, are you in favor of the County
11 Administration to begin the process of negotiation with Maui
12 Land and Pineapple Company, knowing full well that changes
13 may or will occur during the course of action? If so,
14 please raise your hand.

15 (A show of hands)

16 And you can stand too, if you want. I've got
17 three minutes.

18 (A show of standing)

19 Mahalo, you may be seated.

20 To the Policy Committee, you have seen the
21 affirmation by the community. Please allow the process to
22 begin.

23 CHAIR MATEO: Thank you very much, Kahu.

24 Members, questions for Kahu?

25 Seeing none, thank you very much.

1 Tom Blackburn-Rodrigues.

2 MR. BLACKBURN-RODRIGUES: Thank you, Mr. Chair.

3 May I proceed?

4 CHAIR MATEO: Thank you.

5 MR. BLACKBURN-RODRIGUES: Thank you. My name is
6 Tom Blackburn-Rodrigues, and I am testifying today as an
7 individual, although many of you know that I have been
8 involved and had at one point in time been president of the
9 Maui Coastal Land Trust. I have a great deal of interest in
10 the preservation of open places, conservation, and also
11 being able to have those spaces be accessible to the local
12 population for them to use.

13 And I would just like to speak briefly today in
14 support of the resolution to go forward for the acquisition
15 of the property. And my only comment on it, to add to the
16 remarks that have been already given this morning, is that I
17 hope that in those negotiations we do not allow an
18 artificial deadline of December 31st to either put the wind
19 at our sails or to slow us down. This is an important
20 acquisition, it sets an important principle for the County,
21 and it is a complicated process -- any time land is
22 transferred -- and there are many moving parts.

23 So I would encourage the passage of the
24 resolution. I would also encourage all parties, including
25 Maui Land and Pine, not to set a firm deadline by which if

1 you don't make a decision on every point in the document
2 that the entire document becomes dead. I think that might
3 put undue pressure on negotiations, which could in fact turn
4 out to be negative.

5 So those are my only comments, Mr. Chairman. I do
6 support the passage of the resolution, and I urge that we
7 not set artificial deadlines, but that we move towards a
8 positive conclusion. Aloha.

9 CHAIR MATEO: Thank you, Mr. Blackburn-Rodrigues.
10 Members, questions for the testifier?

11 Thank you very much, Mr. Rodrigues. And just a
12 comment though on the artificial deadline. Artificial
13 becomes very real when Mr. David Cole sends you a
14 communication telling you specifically the deadline is
15 December 31st. So it becomes a very real target that we
16 must look at as well.

17 MR. BLACKBURN-RODRIGUES: Perhaps we will have a
18 Happy New Year card from Mr. Cole and will change his mind.

19 CHAIR MATEO: Absolutely, absolutely. Thank you
20 very much.

21 MR. BLACKBURN-RODRIGUES: Thank you, sir.

22 CHAIR MATEO: Members, Mr. Rodrigues was the last
23 individual signed up to testify this afternoon. The Chair
24 will make a call to those in the gallery wishing to provide
25 public testimony, you're welcome to do so at this time.

1 Please come down to the podium and sign your little
2 testimony card after you're done.

3 Again, please state your name for the record,
4 advise us whether you represent a group or organization.

5 MR. MAYER: Thank you very much. My name is Dick
6 Mayer and I'm not representing any group today, I'm speaking
7 on my own behalf. And I want to make very clear I'm not
8 representing the GPAC.

9 I had a chance to look at the agreement that was
10 sort of put together by the various parties, and there's one
11 element of it that really disturbs me, and I'm hoping that
12 in the negotiations that go forth, or in any recommendation
13 that you make to the Administration in negotiating it, and
14 that is regarding the vacation rental component.

15 I'm concerned that the units that Kapalua Mauka
16 would get, they already have 600-plus units that they are
17 allowed to put on that property. If they're allowed to put
18 vacation rentals into those units, it would extremely affect
19 the West Maui traffic situation, not to mention perhaps
20 putting extra pressure on water and sewage.

21 Let me explain why. If it's a resident who's
22 living there who may be there much of the year and only part
23 of the year, that's one thing. If it's a tourist who is in
24 there almost every day of the year as a vacation rental, it
25 would add tremendously to the traffic, impact on Holu -- on

1 Honolulu, on the bay, it would impact the whole traffic situation
2 in West Maui as the person goes back and forth between the
3 airport and that area on the highway on the west, on the
4 Lahaina traffic, et cetera.

5 Now, take that a step further. That's not just
6 600 vacation rentals. If vacation rentals are allowed
7 there, and you folks last week or earlier this week passed
8 the bread and breakfast ordinance which allows six units per
9 rental, what is to stop the owners of a house there to say,
10 "I'm going to put six bedrooms in there" and have six
11 separate vacation groups staying in their home? You could
12 conceivably have six times 600; 3,600-plus units out there.

13 And it's operated by, as it usually is in a
14 vacation rental situation, by an owner of part of the
15 property. That could be Maui Land and Pine. At that time
16 they could be managing 3,600 units. It's like putting up a
17 3,600 unit hotel out there at that site with tremendous
18 impacts on water, on traffic, et cetera.

19 And I'd be very concerned if the County gave that
20 right to the owner, not to mention the windfall profits that Maui
21 Pine would get by being able to sell these units as vacation
22 rentals as opposed to residences. Because as vacation
23 rentals each of those units then, the owner of it then would
24 be able to write off all their expenses, their insurance,
25 their fire, their landscaper, everything else, and I'd be

1 very concerned.

2 So I hope the County is very careful in giving
3 away that right to the owners of that land, and I would urge
4 the County to get this piece of property, buy it by eminent
5 domain or some other way, because it's a very important
6 piece of land to get. But I would not like to see all of
7 West Maui impacted at the expense of getting that area.
8 Thank you.

9 CHAIR MATEO: Thank you.

10 Members, questions for the testifier?

11 Seeing none, thank you very much.

12 MR. MAYER: Thank you very much.

13 CHAIR MATEO: Last call. Anyone wishing to
14 testify, you're welcome to. Please come up to the podium.
15 The Chair will not ask another time, this is it.

16 MR. LAVENSON: Well, thank you very much. I'm
17 George Lavenson, I live on the west side. And I'm speaking
18 for myself, though I am on the board of Maui Unite.

19 But I would like to agree with what Dick Mayer has
20 said. There are many of us -- I think almost everybody
21 wants to save Lipoa Point, Honolua Bay, but there are many
22 of us that do not want in doing that to continue the
23 over-development on the west side.

24 We would hope that there was another way that
25 could be accomplished for the end we all want without

1 jumping GPAC, not listening to the long-range plan, allowing
2 all this over-development and the TVRs. So I hope that
3 there will be some open end, some looking at the other
4 options and the ways of doing it.

5 The TVRs really kind of, I think, will put a sour
6 taste in many peoples' mouths, because at the same time that
7 everyday people can't rent TVRs and can't rent -- either
8 rent them to others or to get them themselves, it's hampered
9 our world class windsurfing on the north side. Many
10 businesses have had to close.

11 It's really been -- I think has a very adverse
12 affect on Maui, the limiting of the TVRs for normal everyday
13 people, and then to allow them 600 for the rich and famous
14 in this one area. I think that puts kind of a bad taste in
15 many peoples' mouths.

16 So once again, I hope that we can listen to the
17 GPAC, the long-range plan, have sensible forward planning,
18 not allow all this over-development for this good end, and
19 find another way of reaching it. Thank you very much.

20 CHAIR MATEO: Thank you.

21 Members, questions for the testifier?

22 I believe the Chair just needs to make it real
23 clear that the only item relative to POL-26 that is before
24 this committee today is a resolution urging the
25 Administration to actually start the dialogue with Maui Land

1 and Pine. There is nothing else that's before this
2 committee in terms of TVRs, in terms of any kind of
3 trade-offs that the compromise agreement is being -- has
4 recommended.

5 So this Committee will not be dealing with those
6 issues. And if we do, it will be when the Administration
7 actually sends it down to us for consideration. But today
8 none of that is on this Committee's agenda.

9 MR. LAVENSON: Okay, well, thank you very much.
10 And I kind of wanted to get those thoughts in early on. But
11 thank you.

12 CHAIR MATEO: Thank you very much.

13 Members, this was the last individual to testify
14 this afternoon. If there are no objections, the Chair would
15 like to close public testimony at this time.

16 COUNCILMEMBER BAISA: No objection.

17 CHAIR MATEO: Thank you.

18 ...END OF PUBLIC TESTIMONY...

19 CHAIR MATEO: The Chair would also like to
20 recognize the presence of both Chairman Hokama and Member
21 Medeiros to our meeting this afternoon. Thank you,
22 gentlemen.

23 ITEM NO. 2(16): NOMINATIONS TO BOARDS, COMMITTEES, AND

24 COMMISSIONS (VARIOUS) (C.C. No. 07-7)

25

1 CHAIR MATEO: Members, we're going to just get
2 right into our agenda. The first item is POL-2(16),
3 nominations to boards, committees, and commissions.

4 Members, a communication dated October 22nd from
5 the Mayor is requesting consideration of the following
6 nominees: To the Commission on Culture and the Arts, Kevin
7 Block, replacing Scott Obley, for a term expiring on March
8 31st, 2011.

9 To the Council on Aging, Rhonda Mary Fosbinder,
10 replacing Nalani Archibeque, for a term expiring March 31st,
11 2010; Saundra Gaskey, replacing Nancy Leano, for a term
12 expiring on March 31, 2011; Brent Stricker, replacing Branch
13 Isole, for a term expiring on March 31st, 2012.

14 To the Salary Commission, Jeremiah Savage, for a
15 term expiring on March 31st, 2013.

16 And to the Subdivision Engineering Standards
17 Committee, Karl Bossert, replacing Ty Takeno, for a term
18 expiring on March 31st, 2012.

19 Members, we have with us, from the Administration
20 we have Ms. Feenstra, who is able to provide additional
21 information or respond to questions that any of the Members
22 may have on any of the nominees.

23 I would like to state that we had just one request
24 for an interview, and unfortunately it requires three
25 Members to request the individual to be present for an

1 interview, therefore today no one is going to be interviewed
2 this afternoon. So should you have specific questions, you
3 may direct them to the Mayor's representative.

4 Ms. Feenstra, would you like to provide additional
5 comment?

6 MS. FEENSTRA: Good afternoon, Chair and Council
7 Members. I'd just like to thank you for considering Mayor's
8 nominations, and we would also like to thank all of those
9 that volunteered to provide voluntary service on these
10 boards and commissions today. And to those who have
11 recently resigned vacating these positions, she would like
12 to thank them also.

13 CHAIR MATEO: Thank you, Ms. Feenstra.

14 Members, questions for the Administration?

15 Seeing none, Members, the Chair recommends
16 approval of the following nominees: To the Commission on
17 Culture and the Arts, Kevin Block, replacing Scott Obley,
18 for a term expiring March 31st, 2011.

19 To the Council on Aging, Rhonda Mary Fosbinder,
20 replacing Nalani Archibeque, for a term expiring March 31st,
21 2010; Saundra Gaskey replacing Nancy Leano for a term
22 expiring on March 31st, 2011; Brent Stricker, replacing
23 Branch Isole, for a term expiring March 31st, 2012.

24 To the Salary Commission, Jeremiah Savage, for a
25 term expiring March 31st, 2013. And to the Engineering,

1 Subdivision Engineering Standards Committee, Karl Bossert,
2 replacing Ty Takeno, for a term expiring on March 31st,
3 2012.

4 The Chair will entertain a motion to approve.

5 COUNCILMEMBER JOHNSON: So moved.

6 COUNCILMEMBER MEDEIROS: Second.

7 CHAIR MATEO: It's been moved by Ms. Johnson,
8 second by Mr. Medeiros. Any additional discussion, Members?

9 Seeing none, Chair will call for the question.

10 All those in favor, signify by saying "aye."

COUNCIL MEMBERS: Aye.

CHAIR MATEO: Those opposed? Motion is carried.

11 VOTE: AYES: Councilmembers Anderson, Baisa, Johnson,
12 Medeiros, Molina, Pontanilla, Vice-Chair Hokama
13 and Chair Mateo.

14 NOES: None.

15 ABSTAIN: None.

16 ABSENT: None.

17 EXCUSED: Councilmember Victorino.

18 MOTION CARRIED.

19 ACTION: Recommending APPROVE nominations and TRANSMITTAL
20 of copy of committee report to the Mayor.

21 CHAIR MATEO: Thank very much, Members.

22 ITEM NO. 5(8): SPECIAL COUNSEL AUTHORIZATION (Sheri Gail
23 Durham, Individually and as Next Friend of
24 Jessica Haley Durham and Marisa Uma Lama Durham,
25 both minors, and as the Administrator of the
Estate of Mark Allen Durham, deceased v. County
of Maui, et al., Civil No. 08-00342 JMS LEK)
(C.C. No. 07-12)

1 CHAIR MATEO: We're going to move on to POL-5(8),
2 and with POL-5(8) we also have changing of the guard.

3 POL-5(8), Members, Special Counsel Authorization,
4 Sheri Gail Durham, individually, and as Next Friend of
5 Jessica Haley Durham and Marisa Uma Lama Durham, both
6 minors, and as the Administrator of the Estate of Mark Allen
7 Durham, deceased, versus County of Maui, et al, Civil Number
8 08-00342.

9 We have with us, Members, this afternoon the
10 Deputy Corporation Counsel. We have Laureen Martin as well
11 as Ms. Lutey, and also with us the Director of Public Works,
12 Mr. Arakawa.

13 Thank you for -- thank you for joining us this
14 afternoon.

15 And at this time the Chair will just allow the
16 Deputy Corporation Counsel to provide us with the additional
17 information on this particular item.

18 MS. MARTIN: Thank you, Chairman Mateo. On July
19 26, 2006, Mark Durham was driving down Pulehu Road in a 2004
20 Ford Focus which he had rented from Maui Windsurfing Vans.
21 When he reached Hansen Road he failed to stop at the stop
22 sign and struck a vehicle being driven by Patty Conte. She
23 was traveling along Hansen Road.

24 Mr. Durham died as a result of the collision. His
25 two daughters, Jessica and Marisa Durham were also in the

1 vehicle. One of the daughters sustained serious injuries,
2 which included a severe fracture to her leg, and required
3 multiple surgeries. Unfortunately, the treatment of her leg
4 was unsuccessful and her leg was later amputated.

5 Plaintiffs filed law -- filed this suit against
6 the County of Maui alleging a roadway defect. Plaintiffs
7 claim the stop sign is improperly positioned and therefore
8 Mr. Durham was unaware he needed to stop at the
9 intersection.

10 The lawsuit also has named several other
11 defendants, including the other driver, Patty Conte, Maui
12 Windsurfing Vans, Ford Motor Company, and several medical
13 providers.

14 According to the autopsy results, Mr. Durham was
15 under the influence of marijuana at the time of the
16 accident. We are seeking to have Kenneth Robbins retained
17 as Special Counsel in order to assist our office in the
18 trial of this matter. Although the County disputes any
19 liability, there is a potential for a large jury award.

20 Although we recommend retaining Kenneth Robbins,
21 our office would still perform significant work on the case,
22 and would also second chair the case at trial. Retaining
23 Kenneth Robbins in the current matter will permit the County
24 to control the direction of the litigation and settlement
25 negotiations while limiting our exposure.

1 The cost of \$150,000 is a flat fee agreement and
2 will be the entire amount paid for the attorney's fees to
3 take this case through trial. Therefore, we recommend that
4 Council approve retaining Kenneth Robbins on this matter.

5 CHAIR MATEO: Thank you, Ms. Martin.

6 Members, the item before us this afternoon, the
7 Corporation Counsel is requesting consideration of a
8 proposed resolution entitled Authorizing the Employment of
9 Special Counsel Robbins and Associates, Attorney At Law, A
10 Law Corporation, in Sheri Gail Durham, individually, and as
11 next friend of Jessica Haley Durham and Maria [sic] Uma Lama
12 Durham, both minors, and as the administrator of the estate
13 of Mark Allen Durham, deceased, versus County of Maui, et
14 al, Civil Number 08-00342.

15 And as Ms. Martin indicated, this comes with a
16 total request of compensation for \$150,000 in the securing
17 of Special Counsel.

18 Members, the floor is open for questions to
19 Corporation Counsel regarding this matter.

20 Ms. Anderson?

21 COUNCILMEMBER ANDERSON: Thank you, Chair. Hi.

22 When you described the case did you say that
23 Mr. Durham ran the red light or ran the stop sign?

24 MS. MARTIN: Yes, I did. The police estimated his
25 speed was around 30 miles an hour at the time of impact, so

1 he did not stop or come to a near stop at that stop sign.

2 COUNCILMEMBER ANDERSON: Okay. And then one other
3 question. Patty Conte, the person he hit, did she sustain
4 injuries?

5 MS. MARTIN: Yes, she did, and she's filed a
6 counterclaim.

7 COUNCILMEMBER ANDERSON: The extent of her
8 injuries, can you say?

9 MS. MARTIN: I don't know her -- what the extent
10 of her injuries are at this point.

11 COUNCILMEMBER ANDERSON: Okay, thank you,
12 Chairman.

13 CHAIR MATEO: Members, we also have the option of
14 executive session should any of you feel the need for
15 additional or more in-depth information.

16 Additional questions for Corporation Counsel?

17 Mr. Hokama?

18 VICE-CHAIR HOKAMA: We've used this firm in the
19 past, so I'm sure Corporation Counsel is very familiar. So
20 what is so special that you can tell us in this session,
21 unless you need to really talk to us in executive, that we
22 need to hire this firm?

23 I'm assuming our attorneys have been working with
24 this firm for many years, and you folks have picked up some
25 of the tools and benefitted from the experiences of this

1 very successful litigation firm. So, you know, people, I
2 really could use the \$150,000 in other areas right now, if
3 not needed in this area.

4 MS. MARTIN: Sure, I understand that. Because of
5 the amount of damages at risk in this particular case, it
6 being a wrongful death, and this young girl having these
7 tragic injuries, we really do need to get this type of
8 litigator involved in the case, otherwise it could
9 jeopardize our insurance.

10 Even though we have retained Mr. Robbins in the
11 past and he is, I believe, one of the best trial attorneys
12 in the State, we have not been taking -- we have not yet
13 taken a case to trial with him. So most of the cases have
14 resolved one way or the other.

15 VICE-CHAIR HOKAMA: You know, in part of your
16 comment you just shared with the Committee, Corporation
17 Counsel, is there something you're not able to tell us in
18 open session? Because I'm feeling there's something else
19 besides what you just told us.

20 MS. MARTIN: No, not at this time. I -- I stated
21 the facts that I believe are relevant for this decision.
22 There isn't anything that I feel Council needs to hear in
23 executive session.

24 VICE-CHAIR HOKAMA: So it's 150 regardless of
25 whether we go to trial or not, whether he works one day or

1 30, it's \$150,000?

2 MS. MARTIN: No. I can provide a few more details
3 for that, if you'd like.

4 VICE-CHAIR HOKAMA: Chairman?

5 CHAIR MATEO: Please.

6 VICE-CHAIR HOKAMA: Under your direction.

7 CHAIR MATEO: Go ahead.

8 MS. MARTIN: Okay. A nonrefundable retainer of
9 \$15,000 will be payable at the time of retention. A
10 nonrefundable retainer of \$35,000 payable monthly in the
11 amount of \$5,000 per month on the first of the month for
12 each of the seven months immediately preceding the trial
13 date. The trial is set in May 2010.

14 A nonrefundable trial preparation retainer of
15 \$45,000 payable one month in advance of the trial date. And
16 then the balance, which is \$55,000, would be payable on the
17 day the case is called for trial.

18 VICE-CHAIR HOKAMA: Gee, I thought he was going to
19 guarantee us one win with that kind of request.

20 So we are just looking at getting to trial with
21 this amount, and then you're going to ask us for more money
22 if we go to trial?

23 MS. MARTIN: No, this is for the trial. This is
24 from beginning to end. It would be 150, not more than
25 \$150,000. If we were able to get out of the case either by

1 settlement or dismissal, summary judgment, that kind of
2 thing, then it would probably be less.

3 VICE-CHAIR HOKAMA: Chairman, thank you very much.

4 CHAIR MATEO: Thank you, Mr. Hokama.

5 Members, additional questions for Corporation
6 Counsel? Also with us this afternoon is Director Arakawa.

7 Director Arakawa, would you like to provide any
8 comments on this particular item?

9 MR. ARAKAWA: Mr. Chairman, I have no further
10 comments on the case, unless the Committee has specific
11 questions.

12 CHAIR MATEO: Members, any questions for Director
13 Arakawa?

14 Mr. Medeiros?

15 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

16 What I wanted to ask, and it's part of the
17 description maybe compromising to the case, so I'd let
18 Corporation Counsel. I wanted to ask things about the
19 complaint other than just the County is libel for the
20 defective design, structure and maintenance of the
21 intersection. Should that be in executive session?

22 MS. MARTIN: It doesn't have to be at this point,
23 just because we're very early in the case and I don't have
24 much information. The only information I have really is in
25 the complaint itself. So I can just talk about their

1 allegations. I have no information to provide whether to
2 some extent as to how accurate those allegations may be.

3 COUNCILMEMBER MEDEIROS: In posing my questions
4 though to the Director of Public Works, would it somehow
5 compromise if you do go to trial?

6 MS. MARTIN: It could. Perhaps you could ask the
7 question, and then if I feel that it should be in executive
9 I could let you know.

10 COUNCILMEMBER MEDEIROS: Okay. May I continue?

11 CHAIR MATEO: Go ahead.

12 COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman.

13 Director, has there been other cases in that
14 intersection -- and, you know, this may be a question for
15 the police -- but to your knowledge, about accidents at that
16 intersection?

17 MR. ARAKAWA: Councilmember Medeiros, that
18 intersection is not on our list of high traffic accident
19 incidences. The State DOT provides us that data, and that
20 intersection is not one of them.

21 COUNCILMEMBER MEDEIROS: Okay. My next question
22 would be then, is the both Pulehu Road and Hansen Road under
23 the jurisdiction of the County or is it a shared
24 jurisdiction with the State?

25 MR. ARAKAWA: No, both roadways are under the

1 County jurisdiction.

2 COUNCILMEMBER MEDEIROS: County jurisdiction. And
3 if you can refresh my memory, is that intersection a two-way
4 stop or a four-way stop?

5 MR. ARAKAWA: I believe there are stop signs at
6 Pulehu Road approaches --

7 COUNCILMEMBER MEDEIROS: On, on both sides of the
8 intersection --

9 MR. ARAKAWA: -- on Hansen and then a through
10 movement.

11 COUNCILMEMBER MEDEIROS: Okay. And Hansen Road is
12 a straight through?

13 MR. ARAKAWA: Yes.

14 COUNCILMEMBER MEDEIROS: Okay. Thank you,
15 Director.

16 CHAIR MATEO: Members, additional questions for
17 the Department or for Corporation Counsel?

18 Mr. Hokama?

19 VICE-CHAIR HOKAMA: I just wanted to clarify,
20 Chairman.

21 This is for scheduled trial in 2010?

22 MS. MARTIN: That's correct.

23 VICE-CHAIR HOKAMA: Is this a normal type of
24 year-end, year-plus scheduling?

25 MS. MARTIN: Actually it's not, but in this

1 particular case because of the number of defendants and the
2 difference in the claims, because they have medical
3 malpractice claims, product liability claims, as well as
4 ours, the court surprisingly let the parties agree to that
5 trial date.

6 VICE-CHAIR HOKAMA: Okay, thank you very much.

7 CHAIR MATEO: Thank you, Mr. Hokama.

8 Additional questions, Members?

9 Ms. Anderson?

10 COUNCILMEMBER ANDERSON: Director Arakawa, can you
11 tell us how far back from the intersection the stop sign is
12 located on Pulehu?

13 CHAIR MATEO: Mr. Director?

14 MR. ARAKAWA: Councilmember Anderson, the stop
15 sign is located four feet from the edge of the travelway,
16 the Hansen Road travelway.

17 COUNCILMEMBER ANDERSON: Okay, thank you.

18 Thank you, Chairman.

19 CHAIR MATEO: Thank you. Additional questions?

20 Seeing none, Members, the Chair recommends the
21 adoption of the proposed resolution entitled Authorizing the
22 Employment of Special Counsel Robbins and Associates,
23 Attorneys At Law, A Law Corporation, in Sheri Gail Durham,
24 individually, and as Next Friend of Jessica Haley Durham and
25 Maria [sic] Uma Lama Durham, both minors, and as the

1 Administrator of the Estate of Mark Allen Durham, deceased,
2 versus County of Maui, et al, Civil Number 08-00342.

3 The Chair will entertain a motion to adopt.

4 COUNCILMEMBER PONTANILLA: So moved.

5 COUNCILMEMBER MOLINA: Second.

6 CHAIR MATEO: It's been moved by Mr. Pontanilla,
7 second by Mr. Pontanilla. Any -- excuse me, moved by Mr.
8 Pontanilla, second by Mr. Molina.

9 Members, any additional discussion?

10 Hearing none, we will call for the question. All
11 those in favor signify by saying "aye."

12 COUNCIL MEMBERS: Aye.

13 CHAIR MATEO: Those opposed? Motion is carried.

14 VOTE: AYES: Councilmembers Anderson, Baisa,
15 Johnson, Medeiros, Molina, Pontanilla,
16 Vice-Chair Hokama, and Chair Mateo.

17 NOES: None.

18 ABSTAIN: None

19 ABSENT: None.

20 EXCUSED: Councilmember Victorino.

21 MOTION CARRIED.

22 ACTION: Recommending ADOPTION of proposed
23 resolution.

24 CHAIR MATEO: I'm just so excited to move on
25 to POL-26 (laughter).

1 ALL: (Laughter).

2 ITEM NO. 26: ACQUISITION OF LAND AT LIPOA POINT (C.C. No. 07-128)

3 CHAIR MATEO: So thank you very much, Members, and
4 we're going to move on to POL-26, Acquisition of Land at
5 Lipoa Point.

6 And at this time we also have changing of the
7 guards in the front. We also -- we have with us this
8 afternoon from the Corporation Counsel, Deputy Jeffrey
9 Ueoka. And just a little bit ago I saw from the Mayor's
10 office, there was either Mahina Martin or Kuhea.

11 Kuhea, do you want to come up front and join us in
12 the front, or you're just going to -- if there's a need
13 you'll come up? Thank you.

14 Okay, Members, POL-26, County Communication Number
15 07-128 from Member Johnson transmits a proposed resolution
16 urging the Administration to negotiate for the County's
17 acquisition at Lipoa Point, West Maui.

18 On November 12, 2008 your Committee Chair
19 transmitted a proposed resolution urging the Administration
20 to negotiate for the presentation -- preservation of Honolua
21 Bay and Lipoa Point for park, open space, and conservation
22 purposes.

23 Members, since January 2008, the Administration
24 has been working closely with the Save Honolua Coalition and
25 the Honolua Advisory Council, two community groups concerned

1 about the preservation of the Honolua area of West Maui.

2 The landowner of this area is Maui Land and
3 Pineapple Company, who crafted a compromise for a
4 conservation plan for the community groups to consider, and
5 a series of public meetings were held to discuss this
6 compromise.

7 To give up its plans to develop the Honolua lands,
8 Maui Land and Pine is asking to expand on the uses allowed
9 in Kapalua Mauka, including allowing 630 residential units
10 to be used as short-term vacation rentals, with no units to
11 be added to the Kapalua Mauka project district. Zoning to
12 build a 60 room boutique hotel, and 1,200 County park
13 credits.

14 There has been so much misinformation that has
15 taken place prior to this meeting that we need to rightfully
16 forward this task and responsibility to its appropriate
17 place. There is nothing before this Committee that was
18 submitted by Administration to us to consider today.

19 I ask, well, at this point, Members, I also see we
20 have joining us this afternoon, we have Mayor Tavares.

21 Thank you very much, Ma'am, for joining us this
22 afternoon.

23 And as you had heard, we have had several
24 individuals come up to testify. And just to set the record,
25 these two individuals that initially stepped up first are

1 representative of many individuals from West Maui who share
2 the same concerns and issues regarding the preservation of
3 this specific area.

4 The Chair will first allow Member Johnson to
5 provide comment on this particular item. And following Ms.
6 Johnson, the Chair will ask Mayor Tavares to provide
7 additional comment.

8 Ms. Johnson?

9 COUNCILMEMBER ANDERSON: Thank very much,
10 Mr. Chair. I know this has been a long time coming, and I
11 really want to thank the community, representatives of Maui
12 Land and Pine, yourself, Mr. Chair, first of all for hearing
13 this, because I know we're running short of time.

14 And I want to thank the Administration for helping
15 to be a facilitator and try to bring different community
16 interests together for the benefit of saving an area that is
17 so important and so special to all of us.

18 I was thinking very hard about when this first got
19 proposed, and I know that Maui Land and Pine had introduced
20 their plans for that whole area. And it's like people could
21 not believe that that was going to be lost. They could not
22 imagine their beautiful beloved Honolua Bay and Lipoa Point
23 going, and that was what drove them to do a grass roots
24 effort to form the Save Honolua Coalition. And it's also
25 what I believe drove Maui Land and Pine, in the face of such

1 community opposition, to withdraw its plans for development
2 of that area.

3 And that really is a testament to both parties,
4 because many times a developer will just continue on and go,
5 "Well, you know, whether you like it or not, unless you can
6 buy it, we're going to develop it." And that has happened
7 in many other cases.

8 I also thought about how far we've come with the
9 community meetings. About all the things that we're facing
10 now, and particularly the meltdown in our global economic
11 future for all of us.

12 This may not be the best time for either Maui Land
13 and Pine, its employees, or the County to be thinking of,
14 you know, if we have to set substantial money aside or if we
15 have to preserve the area, do whatever we have to, to keep
16 this in permanent preservation forever and always. But you
17 know what, there's never going to be an ideal time.

18 So I'm -- it's really important though that we
19 understand that I believe this Council, because we've in two
20 separate budgets set aside money, you know, for -- it's not
21 different money, it's just moving it forward as a proviso.
22 But in two separate situations it's been that important to
23 the Council that I really applaud my fellow Members for
24 setting aside that \$1 million to keep the door open, to keep
25 that possibility alive.

1 And I also think about North Beach. When I was a
2 community activist and there were \$17 million set aside to
3 purchase 45 acres at North Beach, and it was lost because we
4 failed to act. I wasn't on the Council then, but the
5 members of that Council at that time, the community had not
6 come together and spoken perhaps with one voice because
7 there were other areas where we might get more acreage.

8 But during that discussion it all went. And all
9 of the holdings too, along with Amfac, many of their
10 holdings went to a private developer. We lost
11 opportunities. I do not want to see that happen in this
12 case, this is too important.

13 And so I just urge you that whatever it takes, we
14 need to do it. If this resolution moving forward in its
15 present form is fine with the Administration to at least
16 move things along, that's fine with me.

17 I took your proposal and I, you know, I guess I
18 made it, in my view, maybe a little bit softer that I can
19 hand out. I don't expect -- it's no, it's not casting any
20 stones in your direction, Mr. Chair, but I think it's just
21 my style may be a little bit different.

22 But whatever we can do to assure Maui Land and
23 Pine that we will meet their deadline, that we will move
24 this forward, we should do it. Because we have lost too
25 many opportunities in the past, and I don't want to see that

1 happen again.

2 So that's why I am urging every one of my
3 Councilmembers, as well as Maui Land and Pine, that we work
4 hand-in-hand with support for the efforts of the community
5 to really make this something of a legacy.

6 This is the 50th anniversary of, you know, the
7 State. And to me, I think this would be a fitting legacy
8 that even Colin Cameron, were he alive today, would really,
9 really support, because it's something that I think would
10 have been a part of his bigger vision.

11 So I want to thank you, Mr. Chair. And I
12 especially want to thank Mayor Tavares, because she didn't
13 mind that I called her on the cell phone when we were
14 having, you know, some I guess procedural kind of questions
15 about who is going to do what. And I really thank her for
16 being so open to working with us.

17 And I thank my fellow Councilmembers. And
18 particularly I thank my community, because they really have
19 stood really together, and if it hadn't been for their
20 efforts I don't think we'd even be having this conversation.

21 So thank you very much, Mr. Chair.

22 CHAIR MATEO: Thank you, Ms. Johnson.

23 And the Chair would like to also provide the
24 opportunity for comment, and obviously we're always very
25 glad to welcome the Mayor whenever you come down and join

1 us. It's always a pleasure. So please, the floor is yours.

2 MAYOR TAVARES: Thank you, Mr. Chair, and good
3 afternoon Members of the Council.

4 You know I'm not down here very often, so when I
5 do come down here it's because it is a very important issue,
6 and this is a very important issue for all of us here in
7 Maui County, and particularly for the folks on the west side
8 who have worked very, very hard on coming to an agreement
9 that most can buy into as far as what they would like to see
10 in the area.

11 I want to thank the members of the two groups who
12 did come together to have one plan, one focus, and present
13 that to and work with Maui Land and Pine. Having those
14 exchanges to come up with something that they could all kind
15 of agree with.

16 And then also for them taking that plan to other
17 parts of Maui besides just West Maui. They had a meeting in
18 Kihei and they also had a meeting in Spreckelsville to share
19 the plan with others, because that area doesn't just belong
20 to West Maui, it belongs to all of us.

21 And widespread concern and interest in this
22 particular area has been evident through the years. And I
23 think that given the opportunity for folks to work together,
24 we came up with a plan that I think will work.

25 You've seen the material as far as what's included

1 in the plan and what the conservation compromise proposal
2 has been for Maui Land and Pine. And, you know, one of the
3 outstanding things in this is that if this all goes through
4 as planned it will become the largest preserve in the State
5 of Hawaii. And an area not just out where nobody cares
6 about it, you know, "So what, you know, give it to
7 whomevers," but this is an area that means a lot to people.
8 And so it's significant in that sense.

9 So I am here poised ready to follow up and follow
10 through with coming up with a more solidified plan. And,
11 you know, I'm sorry that there has been confusion about
12 negotiation, the word "negotiation", and who does what, but
13 there are portions of the agreement that will require
14 discussions with the County Council. The whole proposal I
15 would like to discuss with the County Council. There are
16 some portions that would require perhaps legislation to
17 enact. So that part of the negotiation has one meaning of
18 it.

19 The negotiations that normally we talk about
20 happens between the administrative branch and whatever other
21 entity, outside entity there is, I do not want to do these
22 things in a vacuum. I want the Council to be updated and
23 apprised of what's going on along the way so that there are
24 no surprises. Because I sat there for ten years and hated
25 it when something came up, and it was like the first time

1 I'm hearing about it is when it gets, you know, posted on an
2 agenda.

3 So that was not my intention at all. So I'm very,
4 very grateful that you all have scheduled it and that we can
5 have some good discussions today, this afternoon.

6 So thank you very much, Chair Mateo.

7 CHAIR MATEO: Thank you, Mayor Tavares.

8 Members, the floor is open for questions to both
9 Mayor Tavares as well as Deputy Corporation Counsel. Any
10 questions?

11 Ms. Anderson?

12 COUNCILMEMBER ANDERSON: Thank you, Chair.

13 Thank you, Mayor, for being here. You know, I
14 know that what's on our agenda is this resolution, but this
15 resolution is to urge you to negotiate an agreement, and the
16 agreement apparently is the conservation compromise.

17 And when you look at the portion of what Maui Land
18 and Pine is asking for in return for the lands in question,
19 it's kind of vague. It says zoning enhancements in
20 currently designated resort area, Kapalua Mauka, to allow
21 transient vacation rental use and allowance for a 60 room
22 boutique hotel, without increasing the total number of units
23 in the project. And then also park credits from the County
24 of Maui.

25 Did I hear you read something more definitive than

1 that, Mr. Chairman, just a few minutes ago?

2 CHAIR MATEO: Essentially it was the same thing.

3 COUNCILMEMBER ANDERSON: Okay. So what I'm
4 wondering is two things. You know, I'd like to know what
5 the last -- last time we discussed this, or I don't know if
6 we've ever discussed it, but when I have seen this agreement
7 previously, not this version of it, they were more specific
8 about what they wanted, 1200 park credits.

9 So I don't know if that's still the amount that
10 you are negotiating, but what I would like to see is what
11 the monetary value they're asking for these I guess
12 enhancements to them in exchange for the land, and hopefully
13 that it's close to an even exchange of some kind.

14 I know it's going to be hard to evaluate the
15 monetary value of vacation rental use, but I guess that
16 could be easily enough estimated, especially since it's
17 high-end units. And we do have some examples of what their
18 nightly rentals are. And then I guess a 60 room hotel.

19 But I just think that, you know, we need to know
20 what the monetary value we're giving in exchange for this,
21 because currently the Kapalua Mauka project does not allow
22 for transient vacation rentals. So they're going to have to
23 require that this body do a zoning amendment to the Kapalua
24 Mauka ordinance. And if this body does that, I certainly
25 would want to know the exchange value of what we're doing.

1 And then the other thing I have a concern for,
2 Madam Mayor, is we have in here a November 18th letter from
3 David Cole, who still says that, "Our offer expires on
4 December 31st, 2008."

5 So in your discussions, what does that deadline
6 entail, a commitment to work something out, the actual
7 amendment to the zoning ordinance and an agreement signed
8 that says we're going to give them 1,200 park credits. And,
9 you know, how are we going to get -- if that's the case,
10 how are we going to get this done by December 31st if it has
11 to go to Committee and first and second reading?

12 MAYOR TAVARES: Thank you, Ms. Anderson. I think
13 that we need to clarify that with Maui Land and Pine as to
14 what are the details of what needs to be completed by the
15 December 31st deadline, and whether or not the adoption of
16 the resolution urging me to continue or to enter into the
17 negotiation mode to come up with a proposal is sufficient.
18 So that would have to be clarified with Maui Land and Pine.

19 Because I think realistically everyone understands
20 that this, all of these things cannot happen by the end of
21 December, especially when we're talking about an ordinance
22 amendment, a possible ordinance amendment. So I don't know
23 if there is a representative from Maui Land and Pine that is
24 able to answer that question or not, but if there is not one
25 here present, I can always find that out.

1 COUNCILMEMBER ANDERSON: "We remain ready to
2 negotiate and conclude an agreement with the County that we
3 reiterate that our offer expires on December 31st, 2008."

4 So I guess we just go forward the best as we can
5 at this time, in adopting this resolution. At least that
6 shows the intent. And especially, Mr. Chair, since Mr. Cole
7 will not be around after December 31st, somebody else will
8 be in charge, and hopefully that person will see the value
9 in continuing this until resolution comes forward.

10 CHAIR MATEO: Thank you, Ms. Anderson.

11 Mr. Molina?

12 COUNCILMEMBER MOLINA: Thank you, Mr. Chair. Good
13 afternoon, Mayor.

14 MAYOR TAVARES: Good afternoon.

15 COUNCILMEMBER MOLINA: Just for general
16 information purposes, who makes up your negotiating team
17 with regards to this matter, and who are you -- who are the
18 principals of Maui Land and Pine you're negotiating with at
19 this point in time?

20 MAYOR TAVARES: We really haven't had a
21 negotiating team set up yet, it's been discussions with
22 various members of Maui Land and Pine. I did have a meeting
23 with David Cole early on to kind of lay out what his
24 intention was as far as being willing to work with the
25 community. And also he had assigned various members of his

1 staff to meet with the community groups. And also I met
2 with them from time to time, especially when it looked like
3 the groups were going farther and farther apart, I knew we
4 weren't getting anywhere, and this wasn't going to help
5 anybody. And I did meet with them, arranged for
6 facilitators to help the two groups sort of find a common
7 ground on what they, both groups could kind of hang their
8 hats on. So that part of it. But as far as getting into
9 hard negotiations or discussions regarding each of the
10 components of the proposal, we've not gotten that far.

11 I can share with you that the discussion about
12 park assessment, and as you well know, whenever we talk
13 about park assessment it's a snapshot in time and then that
14 time when you freeze everything you're freezing land values
15 and you're freezing whatever monetary amount or the cash in
16 lieu of land, because that changes every year based on what
17 the real property, you know, that convoluted formula that we
18 use. Not convoluted, that complex formula that we use in
19 order to arrive at park assessment cash for each community
20 plan region.

21 So whenever we're doing this we have to do it at
22 one time, this is the picture, these are the land values or
23 the assessment of -- the appraisals of the land at the time,
24 this is the value of park credits at the time, and then go
25 from there. But to just talk about 1,200 park credits when

1 we don't know the cost of it, it will depend on when we're
2 going to look at this. And in the agreement, you know, if
3 we say, okay, it's park credits but it's not going to be
4 realized until such and such a date, we need to sort of look
5 at that and project that out also.

6 COUNCILMEMBER MOLINA: Well, thank you. I want to
7 commend you for helping facilitate the I guess some of the
8 disagreements between the two groups and that now both
9 groups are on the -- seem to be at this point on the same
10 wavelength, if you will.

11 MAYOR TAVARES: They weren't that far apart, you
12 know. That was the interesting part, was that they all had
13 the same goal, the same mission in mind, and it was some of
14 the little extraneous details which can be worked out much
15 later in the process that were hanging up kind of the
16 discussion. So it was bringing it back to the main focus,
17 which there was a tremendous amount of agreement right when
18 they got back to the main focus.

19 COUNCILMEMBER MOLINA: Okay. And one final question.
20 Any comments with regards to the proposed deadline for
21 Mr. Cole, have you been given any indication as far as some
22 flexibility with that specific date?

23 MAYOR TAVARES: Not flexibility with the date,
24 it's just what needed to be done by that date. I think that
25 now we have a little bit of nebulosness about what exactly

1 needs to be accomplished by that end-of-the-year deadline.

2 COUNCILMEMBER MOLINA: Thank you. Thank you,
3 Chair.

4 CHAIR MATEO: Members, with us this afternoon,
5 and the Chair is going to ask her to approach the podium, we
6 have Terry Freitas Gorman. She's the Vice-President with
7 -- for Corporate Communications, is it?

8 MS. GORMAN: Right.

9 CHAIR MATEO: And she was quoted in the newspaper
10 in referencing the deadline, and she was quoted as saying,
11 "Don't read anything into it."

12 Ms. Gorman, we're going to ask you about that
13 comment. Can you shed some light on it, please?

14 MS. GORMAN: Yes. Thank you, Chairman Mateo.
15 Actually, that quote was taken somewhat out of context. We
16 told the media that we would be submitting written testimony
17 today, and the media asked, "Would that testimony say that
18 Maui Land and Pine was no longer willing to observe the
19 deadline?" And I said, "Don't read anything into the fact
20 that we're submitting written testimony."

21 CHAIR MATEO: Ah, okay, I'm not surprised.

22 Well, you've heard the ongoing discussion?

23 MS. GORMAN: I have.

24 CHAIR MATEO: Can you provide additional comments
25 on that?

1 MS. GORMAN: Yes. We recently had a board
2 meeting, and I can confirm to everybody here today that
3 there is no flexibility with the deadline. I know that
4 there was some discussion about exactly what needs to be --
5 what needs to occur by the deadline.

6 Certainly we don't anticipate that we would have a
7 change in the law or any kind of a legislative action that
8 would occur by the end of the year, but what we would
9 require is a resolution that's supported by the
10 Administration and the County Council that would include the
11 terms of our compromise for conservation so that our board
12 could be at ease that we could move forward with those
13 plans.

14 CHAIR MATEO: Mayor Tavares, would you like to
15 comment on what she has just stated?

16 MAYOR TAVARES: Well, now that we know what
17 specifically needs to be in that resolution, that helps a
18 lot, because that's not what's in the resolutions before us
19 today. The resolutions today -- and as a matter of fact, I
20 don't know which resolution you're going to be talking
21 about.

22 CHAIR MATEO: The November resolution.

23 MAYOR TAVARES: Your resolution, Mr. Chair?

24 CHAIR MATEO: Yes.

25 MAYOR TAVARES: Okay. That only talks about

1 urging me to enter into talks with Maui Land and Pine. So,
2 you know, perhaps a resolution can come back here prior to
3 the end of the year that would have some of the components,
4 and we can have the discussion about the components in the
5 Council Chamber.

6 CHAIR MATEO: You know, that's a pretty hefty
7 consideration, considering we're kind of approaching the end
8 of term. And to, you know, at this point the resolution
9 leaving this Committee is essentially just supporting the
10 Administration's effort to engage in the negotiation
11 process. That is not this Council's responsibility, to
12 engage in that part of the negotiations.

13 So we would be very supportive of the
14 Administration, you know, not missing an opportunity, but we
15 also share the concern that has been expressed not only from
16 the public but from the Members themselves on some of the
17 points that Maui Land and Pine seem to include in their
18 points of consideration, like the 1,200 parks credits that
19 was reported in the Maui News to be of a proposed value of
20 32-point-somewhat million dollars for 1,200 parks credits.
21 So we do share some concerns.

22 So, you know, you've got a tough task. And
23 unfortunately, you have been engaged in the discussions with
24 both groups since January of this year, and it's unfortunate
25 that we're now at the end of the year and we're being forced

1 to look at a deadline of rather large proportion really for
2 this one, for this one development company.

3 So the Chair has some concerns with it, but I
4 also, you know, support the need of this County moving
5 forward and engaging in the discussion with Maui Land and
6 Pine to see how we can preserve Honolua Bay as well as Lipoa
7 Point.

8 So Members, questions? Ms. Anderson.

9 COUNCILMEMBER ANDERSON: Has -- well, I'm sure
10 Kapalua Mauka folks must know this, Maui Land and Pine, but
11 has the Administration done a review of the land involved to
12 get the current assessed valuation as far as property tax
13 goes? I mean I think that that gives us a fair value.

14 MAYOR TAVARES: No, we haven't done that part. That's
15 why I talked about the snapshot in time. We want to look at
16 a certain date, like right now, what is it. We could do
17 that. So we're not that far off because, you know, \$32
18 million in park credits, that's based on park assessment
19 right now.

20 COUNCILMEMBER ANDERSON: Right. So you'd want to
21 look at assessed valuation right now.

22 MAYOR TAVARES: Yes.

23 COUNCILMEMBER ANDERSON: And being that it is
24 mostly Ag and Conservation land, I would think that the
25 assessed valuation would be very low. And I would hate for

1 us to look at this as appraised value based on potential
2 future development rights.

3 MAYOR TAVARES: Right.

4 COUNCILMEMBER ANDERSON: Because there are no
5 development rights aside from maybe the sliding scale for
6 maybe a few ag lots. So I just want us to see that the
7 County and the community is getting a fair deal out of this.
8 And I hope that we can move expeditiously on this, because I
9 think that you're going to want to get this done in this
10 term with these Members here, because first of all, a
11 resolution is not binding.

12 There's no legal authority as far as a resolution.
13 And I don't believe that this body can bind a future Council
14 to making decisions that this Council passes a resolution
15 on, because they're going to have to get an amendment to the
16 Kapalua Mauka Project District Zoning ordinance in order to
17 allow TVRs. They're also going to have to get an amendment
18 to the Kapalua Mauka Project District Zoning ordinance in
19 order to build a hotel. There's no Hotel zoning in that
20 ordinance.

21 So -- and those two enhancements carry value with
22 them, monetary value, and I think that we need to know what
23 that value is. And in today's dollars I think we're looking
24 at way beyond \$32 million. So I want to make sure we're
25 getting a fair trade here. Because I certainly, you know,

1 support the acquisition of the land, but there's no
2 development rights on the land right now, and they would
3 have to do an awful lot of work and get an awful lot of
4 approvals in order to have development rights beyond a few
5 ag lots.

6 So let's get the whole picture and let's get it
7 together as quick as we can so that we can -- so that this
8 body, Mr. Chairman, in this term can deal with this.

9 CHAIR MATEO: Thank you, Ms. Anderson.

10 Members, additional comments?

11 Ms. Johnson, followed by Mr. Hokama.

12 COUNCILMEMBER JOHNSON: I just had a question of
13 Ms. Gorman, if she wouldn't mind. Because you're familiar,
14 of course, with a lot of the things that we're talking about
15 because you deal with the industry and you deal with a lot
16 of land sales and valuations, would you be able to assist us
17 and this Committee and the Mayor to come up with I guess
18 just showing how you would construct those values -- you
19 know what you're getting taxed on and what the worth of that
20 would be?

21 MS. GORMAN: That's outside of the scope of my job
22 responsibility, Councilmember.

23 COUNCILMEMBER JOHNSON: I don't mean right now,
24 but I mean someone within Maui Land and Pine.

25 MS. GORMAN: There may be somebody within our

1 company who could.

2 COUNCILMEMBER JOHNSON: Yes, because I think
3 that's one of the challenges we have, and I understand that
4 everybody just wants to be up front with this.

5 And then the other thing, if the Council, because
6 we do have the authority apart from the Administration to
7 initiate land use changes, a change in zoning or whatever,
8 and in the past when I have done land use changes for I
9 think it was Maui Preparatory Academy and also the land use
10 change for the hospital zoning for West Maui, I was assisted
11 by, of course, Maui Land and Pine in the one case with Maui
12 Prep Academy, and then by the West Maui Taxpayer's
13 Association or the West Maui Improvement Foundation for the
14 hospital zoning.

15 So would you be able, if we all want to see this
16 become a reality, would you be able to assist us in a
17 similar way, or your corporate, so that because if we're
18 going to do some of these things it's got to take place in a
19 relatively compressed period of time. And if we begin that
20 process it would be extremely helpful if you could help us
21 put it together. So do you think you would be able to
22 manage?

23 MS. GORMAN: I'm sure we have the talent within
24 our company to take this forward, but I think we will need
25 to have a completed resolution before the end of the year,

1 similar to the one that was presented by Councilman
2 Victorino last month.

3 COUNCILMEMBER JOHNSON: Okay, great. Thank you
4 very much, I really appreciate that.

5 CHAIR MATEO: Thank you, Ms. Johnson.
6 Mr. Hokama?

7 VICE-CHAIR HOKAMA: Chairman, certain things are
8 just problematic, where we have only limited days left in
9 the term. So I'll say that. But unless there's other
10 Members that would like to ask a question now, I would like
11 to ask for a recess, please.

12 CHAIR MATEO: Sure.

13 Members, any additional questions prior for us
14 calling for a short -- well, we will take our afternoon
15 break, okay?

16 Hearing no additional questions, Members, we're
17 going to take a 10-minute break, and we will be back at 5
18 minutes to 3. This Committee will stand in recess ...(gavel)...

19 RECESS: 2:42 p.m.

20 RECONVENE: 3:03 p.m.

21 CHAIR MATEO. ...(gavel)... The Policy Committee
22 Meeting for November 18, 2008 will reconvene.

23 Members, thank you for the extended break. The
24 Chair appreciated the leeway and the additional time.

25 Members, are there any additional questions you

1 may have for the Administration?

2 Members if there's no additional questions -- I'm
3 sorry, Ms. Anderson, go ahead.

4 COUNCILMEMBER ANDERSON: Yeah, Mr. Chair, my
5 office last year looked up the assessed valuation of the
6 lands in question, and for the 269.9 acres at Lipoa Point,
7 under that TMK, the assessed valuation is in the
8 neighborhood of \$16.8 million. For the 13.5 acres of the
9 Bay property under a single TMK, the assessed valuation is
10 \$7.9 million.

11 For the 306 acres known as Honolua Mauka, which is
12 just mauka of Lipoa Point, I just divided the assessed value
13 into the larger TMK, which is around 5,375 acres, and got a
14 value per acre of \$10,315. And you multiply that by the 306
15 acres as part of the plan, and you get \$3,156,466.

16 And all those assessed values for those properties
17 I mentioned come up to \$27,975 -- 975 dollars -- 975,846 dollars.
18 So we're looking at \$27.9 million in assessed valuation for
19 these properties in question.

20 Now, I do know that they're throwing in 3,000-some
21 acres of Conservation land that, you know, basically it's
22 wet, it's watershed land. And I don't know that the County
23 needs to take over ownership of watershed land that is
24 already zoned Conservation.

25 And it's unbuildable in that it is -- well, I

1 guess that's debatable, because a lot of it is shoreline
2 land, and the Board of Land and Natural Resources has been
3 allowing people to build on shoreline land. However, it's
4 very steep land. So I don't think it's buildable.

5 So my point is that, you know, for the really
6 important lands that need to be saved from development,
7 we're looking at an assessed valuation of \$27.9 million.
8 And, you know, they have enjoyed a low tax on these lands
9 for decades, and I don't think because we're in the
10 situation we're in right now that they should now, you know,
11 benefit from a higher valuation of the lands. They should be
12 getting the value that they've been paying taxes on all
13 these years.

14 And personally myself, I don't know what you're
15 going to be recommending, Mr. Chair, but, you know, if we
16 don't get a good trade-off when we look at the monetary
17 value of what they're asking for, I mean 32 million in park
18 credits exceeds this 27.9. So I'd just as soon see us
19 condemn the land and get a bond or something if they're not
20 willing to negotiate a fair price. Thank you, Chair.

21 CHAIR MATEO: Thank you, Ms. Anderson.

22 Members, additional questions for Administration?

23 Members, if there's no additional questions, then
24 the Chair will recommend the adoption of the proposed
25 resolution entitled "Urging the Administration to Negotiate

1 For the Preservation of Honolua Bay and Lipoa Point For
2 Park, Open Space, and Conservation Purposes."

3 The Chair will entertain such a motion.

4 COUNCILMEMBER JOHNSON: So moved.

5 COUNCILMEMBER MEDEIROS: Second.

6 CHAIR MATEO: It's been moved by Ms. Johnson,
7 second by Mr. Medeiros.

8 Are there any additional comments?

9 Ms. Johnson?

10 COUNCILMEMBER JOHNSON: I believe Kirstin has an
11 amendment. I don't know if it's appropriate, because I
12 amended quite a bit of, you know, the resolution. It's sort
13 of an amended version. And I'm willing at this point,
14 because I don't want to get into a lot of the details, I'm
15 willing to just pass the resolution that you've sent
16 forward, Mr. Chair.

17 And then I wanted the Members, though, as well as
18 Maui Land and Pine, to take a look at some of the changes I
19 made, because I included some of the references to their
20 compromise for conservation in there, and plus would have
21 attached an exhibit.

22 But because the Members haven't had an opportunity
23 to look at this, I thought it might be one way to satisfy
24 both Maui Land and Pine as well as give the Mayor some time
25 to move forward.

1 So anyway, that is being passed out. And I
2 really -- I'm not going to move to amend at this point,
3 because I think that it probably just needs a little bit of
4 work and consideration.

5 But some of the things, Mr. Chair, that I actually
6 took out and, you know, may not be exactly perfect because I
7 did it rather late in the evening, but the section with
8 regard to procedure, and that's the section that's outlined,
9 it's in black, and I bracketed that out mainly because I
10 think it was an educational thing.

11 I think it was good, Mr. Chair, for you to
12 include, for the benefit of the public in the passage of
13 this resolution, what the actual procedure and the
14 ordinances behind what our areas of responsibility are. But
15 for purposes I guess of satisfying perhaps Maui Land and
16 Pine and moving this along and making our deadline, I took
17 that section out, and then I added in some additional
18 wording.

19 So I would really look forward when this does come
20 forward, assuming and hopefully it will pass, that I would
21 look forward to comments both from Maui Land and Pine as
22 well as the community and the Members of the Council,
23 because this is just way too important to have come this far
24 and not see something happen.

25 So that's my comment, Mr. Chair, and I thank the

1 Mayor, yourself, Maui Land and Pine, and the working group
2 as well as all of the people, the 16,000 people that signed
3 the petition to help preserve this area.

4 And, you know, I just say we move on it as
5 expeditiously as possible. In fact, that's one of my little
6 sentences, that we urge the Administration to immediately
7 enter into negotiations to preserve the Honolua area, Lipoa
8 Point, and adjacent shoreline areas using the compromise for
9 conservation offering from Maui Land and Pine as a starting
10 point.

11 So Madam Mayor, good luck and good luck to us, and
12 we've got a lot of work to do between now and December 31st.
13 But I thank you. And I know it's coming on the holidays,
14 but I just thank the Members who are here to really support
15 the work that has been done, because I know there's a lot of
16 other things. And particularly following the election, a
17 lot of people took time off. And I'm not saying it wasn't
18 well deserved, because a lot of it is, but I really
19 appreciate people coming forward.

20 Thank you, thank you so much.

21 CHAIR MATEO: Thank you, Ms. Johnson, and thank
22 you for not presenting this as an amendment. Thank you very
23 much.

24 COUNCILMEMBER JOHNSON: I was trying to be gentle,
25 Mr. Chair. And I thought better of it, and I said well,

1 because of that Sunshine opinion we got, too, I said no, no, it's
2 not the time.

3 CHAIR MATEO: But I'm sure, you know, we have all
4 had the opportunity to take a look at your recommendations,
5 and we appreciate them. And the Mayor definitely is going
6 through your recommendations as well. So thank you very
7 much.

8 Members, are there any additional comments you'd
9 like to make? Ms. Baisa?

10 COUNCILMEMBER BAISA: Yes, thank you, Chair, just
11 a very brief comment. I'd like to say that I will be very
12 gladly supporting the resolution. This is a very important
14 matter for our community, and I think we're putting it in
15 the right hands. So thank you for the opportunity.

16 CHAIR MATEO: Thank you, Ms. Baisa.

17 Members, additional?

18 Mr. Pontanilla?

19 COUNCILMEMBER PONTANILLA: Thank you, Chairman,
20 and thank you for moving forward on this resolution.

21 You know, in the last two years we have
22 appropriated a million dollars to save Lipoa Point, and that
23 shows our commitment as Council Members, this sitting Council
24 Members for the last two years. Thank you.

25 CHAIR MATEO: Thank you very much.

1 Mr. Molina?

2 COUNCILMEMBER MOLINA: Thank you very much,
3 Mr. Chair. I will wholeheartedly support the resolution. I
4 want to thank Member Johnson for introducing this
5 resolution, and yourself too as well, and also the groups
6 that were involved in this whole matter, Kahu Kapaku and
7 also the Mayor's team for helping to facilitate and I guess
8 bridge the gap that I guess had separated the two groups on
9 this matter. I think that was really an important step in
10 getting to where we are here today.

11 So I wish the Mayor and her negotiating team God
12 Speed on this, and I'm hopeful that we can reach a very good
13 resolution for the community on this. Thank you.

14 CHAIR MATEO: Thank you, Mr. Molina.

15 Members, additional comments?

16 Ms. Anderson, followed by Mr. Medeiros.

17 COUNCILMEMBER ANDERSON: Thank you, Chairman.
18 Thank you for bringing this resolution forward, and I thank
19 the Mayor for coming down today and being a part of this
20 meeting. We really welcome her involvement. And it's
21 encouraging that she's here, it shows her commitment to work
22 forward to a resolution.

23 And, you know, I just want to thank all the people
24 who have -- the community members who have put so much time
25 and heart and soul into seeing this come forward. It's been

1 a long haul. And I don't think that there could be a better
2 time for this to come to a head, given the economic
3 situation that we're facing right now.

4 So hopefully the Administration will be able to
5 come to a reasonable agreement with the landowner, and we
6 can secure these lands for all future generations, as they
7 should be. Thank you, Chairman.

8 CHAIR MATEO: Thank you, Ms. Anderson.

9 Members, additional comments?

10 I'm sorry. I'm sorry, Mr. Medeiros, go ahead.

11 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

12 Yes, I too would like to thank Member Johnson for this
13 resolution, and to you, Mr. Chairman, for putting it on your
14 agenda.

15 I'm, you know, glad to see that we're trying to
16 preserve this special area of Honolua and Lipoa Point. We
17 are fortunate in East Maui to have preserved many of our
18 coastal areas, including Makaalai, Muolea Point, Nuu, Kaupo,
19 some lo'i in Keanae. So it's really important when we have
20 an opportunity to preserve these special places, especially
21 along our coastlines, that we give it our best effort to do
22 so.

23 So I want to thank the Mayor for being present
24 here today, and for her efforts to going into discussions
25 with Maui Land and Pine, and to represent the County in our

1 efforts to preserve this area.

2 Mahalo, Mr. Chairman.

3 CHAIR MATEO: Thank you, Mr. Medeiros.

4 Members, before the Chair calls for the question,
5 the Chair would also like to share my two cents worth, for
6 whatever it's worth.

7 In the last couple of weeks I've had the
8 opportunity of working both with the Save Honolua Coalition
9 as well as the Advisory Council. That, for me, was -- the
10 engagement of dialogue was rewarding for myself in the
11 pursuit of what had, you know, their objectives and where we
12 are today.

13 I'm a little disappointed in understanding that I
14 believe in our discussions I believe the important part of
15 what we were to do was to move this resolution forward to
16 the next step, and that as long as we had moved the
17 resolution to the next step it signaled to Maui Land and
18 Pine that we are sincere and earnest in wanting to pursue
19 the dialogue.

20 I hear from the representative from Maui Land and
21 Pine when she came to the podium the window is closed. That
22 offers very little hope for us. But the resolution needs to
23 go forward from this body, because the Administration has
24 been involved since the beginning of this year trying to
25 come up with a resolve, and trying her best in seeing that

1 both these areas are in fact preserved.

2 This is a viable and a valuable part of Maui, and
3 we need to do all we can to preserve and protect it. And
4 I'm hoping that by this body moving a resolution forward and
5 urging the Mayor to engage in the dialogue with Maui Land
6 and Pine, that there is ample considerations at this point
7 to Maui Land and Pine to be open, to be responsive, and to
8 be able to sit down now with our administrator, with our
9 Mayor, and see what kind of terms can be negotiated at this
10 point.

11 The gives and the takes are quite alarming and,
12 Madam Mayor, you have a huge task before you. We wish you
13 well in this endeavor. Buckle your seatbelt, I guess it's
14 going to get rough.

15 But to all of you Members, thank you for being
16 here, and thank you for your supporting this resolution.

17 Mr. Hokama?

18 VICE-CHAIR HOKAMA: Chairman, I would just ask,
19 and I'll make it a motion to amend. I would like to amend
20 the main motion by including on the third "Be It Resolved"
21 clause that we also include either Mr. Walter Dods as the
22 current, the Chairman of the Board, or Mr. Warren Haruki,
23 the incoming Chairman of the Board, as someone who will also
24 receive a copy of the resolution.

25 COUNCILMEMBER ANDERSON: So moved, or seconded.

1 CHAIR MATEO: Okay. We've got, moved by Mr. Hokama to
2 include in the "Be It Resolved", item number 3, we're adding
3 Mr. Dods and Mr. Haruki.

4 VICE-CHAIR HOKAMA: Haruki.

5 CHAIR MATEO: Haruki, Board of Directors with
6 Maui Land and Pine.

7 Any objection? Well, I guess I'll call for the
8 vote, made a motion.

9 All those in favor, signify by saying "aye."

10 COUNCIL MEMBERS: Aye.

11 CHAIR MATEO: Those opposed?

12 VOTE: AYES: Councilmembers Anderson, Baisa,
13 Johnson, Medeiros, Molina, Pontanilla,
14 Vice-Chair Hokama, and Chair Mateo.

15 NOES: None.

16 ABSTAIN: None.

17 ABSENT: None

18 EXCUSED: Councilmember Victorino.

19 MOTION CARRIED.

20 ACTION: APPROVE amendment to main motion.

21 CHAIR MATEO: Motion is carried. Thank you, Mr. Hokama.

22 VICE-CHAIR HOKAMA: Chairman?

23 CHAIR MATEO: Go ahead.

24 VICE-CHAIR HOKAMA: If I can speak now to the main
25 motion as amended?

1 CHAIR MATEO: Go ahead.

2 VICE-CHAIR HOKAMA: I thank you for your efforts.
3 I think the Committee brought us some very good points this
4 afternoon, including what is realistically be able to be done
5 by Council before December 31st, well, officially January
6 2nd, 2009.

7 I appreciate the Committee Members bringing up the
8 points of that there are other components to the existing
9 zoning ordinance impacts this area, by including the
10 potential need of revising a unilateral agreement, Members.

11 So there's many components in a complex -- this
12 complex issue regarding many different types of documents
13 involved in entitlements, including the consideration of
14 Honolua/Lipoa Point for Conservation/Open Space
15 considerations.

16 I know the Mayor is very well aware of the many
17 different components, but I would say that in my opinion,
18 this is a very strong signal of our willingness to continue
19 to move this issue forward for a beneficial resolution and
20 outcome.

21 But I would ask that Maui Land and Pine needs to
22 be realistic on what government can do within our
23 requirements of posting, Sunshine Law adherence, public
24 participation, as well as if there are other budgetary
25 requirements, other agreement amendments, filings with Land

1 Court of conveyances, appraisals. I think the Mayor is very
2 well aware there are a lot of detailed components of this
3 consideration that I believe it's been healthy for us to
4 talk about against a December 31st deadline. And I'm hoping
5 that Maui Land and Pine will see this as a very good faith
6 effort on our part, and that they in return will reciprocate
7 with continuing to move forward in good faith also,
8 Chairman. Thank you.

9 CHAIR MATEO: Thank you, Mr. Hokama.

10 Additional comments? Members, we will go back to
11 the main motion as amended. Call for the vote. All those
12 in favor signify by saying "aye."

13 COUNCIL MEMBERS: Aye.

14 COUNCIL MATEO: Opposed? Motion is carried.

15 VOTE: AYES: Councilmembers Anderson, Baisa,
16 Johnson, Medeiros, Molina, Pontanilla,
17 Vice-Chair Hokama, and Chair Mateo.

18 NOES: None.

19 ABSTAIN: None.

20 ABSENT: None.

21 EXCUSED: Councilmember Victorino.

22 MOTION CARRIED.

23 ACTION: Recommending ADOPTION of revised
24 resolution.

25 CHAIR MATEO: Members, thank you very much. That
25 concludes the business on today's agenda.

1 Members, are there any announcements for
2 today?

3 Mr. Molina?

4 COUNCILMEMBER MOLINA: Thank you, Mr. Chairman.
5 Just a point of procedural, state, the record the vote, the
6 vote count was it -- I think we have eight. Yeah, we're
7 missing one member.

8 CHAIR MATEO: Oh, sorry, yes.

9 COUNCILMEMBER MOLINA: Just for the record.

10 CHAIR MATEO: We have eight members present and
11 one excused, Mr. Victorino.

12 COUNCILMEMBER MOLINA: Thank you.

13 CHAIR MATEO: Thank you very much, Mr. Molina.
14 Go ahead.

15 VICE-CHAIR HOKAMA: Yes, I'd like to inform my
16 colleagues. On Lana'i we have a very serious situation, we
17 have very high winds, we have a major fire in our basin,
18 Palawai; that's moving straight to Four Seasons Manele Bay
19 Hotel, potential impact to our small boat harbor, which is a
20 major gateway to the island; as well as with shifting winds
21 its potential impact on Maui Electric's generation for the
22 entire island.

23 So I know that the Fire Department is well on it
24 with our Police Department personnel assisting for the
25 island's safety, but I would just ask that we keep our

1 sister island residents in mind during this difficult time
2 for our entire island.

3 Mr. Chairman, thank you.

4 CHAIR MATEO: Thank you, Mr. Hokama.

5 Members, with no additional announcements, this
6 Policy Committee Meeting for November, what is it, November
7 18, 2008 is now adjourned. ...(gavel)...

8 ADJOURN: 3:24 p.m.

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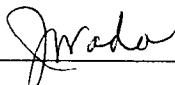
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C E R T I F I C A T I O N

I, JEANNETTE W. IWADO, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

Dated the 2nd day of December, 2008



NOTARY PUBLIC, State of Hawaii
My commission expires 2/5/08