

# MINUTES

of the

## COUNCIL OF THE COUNTY OF MAUI

MAY 28, 2019

THE SPECIAL MEETING OF THE COUNCIL OF THE COUNTY OF MAUI, STATE OF HAWAII, WAS HELD IN THE COUNCIL CHAMBER, KALANA O MAUI BUILDING, WAILUKU, HAWAII, ON TUESDAY, MAY 28, 2019, BEGINNING AT 10:01 A.M., WITH CHAIR KELLY KING PRESIDING.

CHAIR KING: Good morning. I'm calling to order, I'm Kelly King, the Chair of the Maui County Council, calling to order the Maui County Council Special Council Meeting of May 28, 2019, at ten o'clock in the morning.

And, I will go directly to our Clerk for roll call, please

### ROLL CALL

PRESENT: COUNCILMEMBERS NATALIE A. KAMA, ALICE L. LEE, MICHAEL J. MOLINA, TAMARA A.M. PALTIN, SHANE M. SINENCI, YUKI LEI K. SUGIMURA, VICE-CHAIR KEANI N.W. RAWLINS-FERNANDEZ AND CHAIR KELLY T. KING.

EXCUSED: COUNCILMEMBER G. RIKI HOKAMA.

(Councilmember Hokama was not present when the roll was called; however, he arrived at 10:05 a.m.)

COUNTY CLERK JOSIAH K. NISHITA: Madam Chair, that's eight Members present and one Member absent. A quorum is present to conduct the business of the Council.

CHAIR KING: Okay. Thank you, Mr. Clerk. And before we proceed, may I, will you please request all Members in the chambers, anybody in the chambers to silence your cell phones or other noise making devices and we will maintain decorum at all times.

Alright, I'm going to, we have a ceremonial resolution, Mr. Clerk, do you want to go ahead and read the proceedings.

COUNTY CLERK: Madam Chair, proceeding with the presentation of testimony on ceremonial resolutions. Currently we have no testifiers signed up from our Council chambers or at the District Offices wishing to provide testimony on the ceremonial resolutions.

CHAIR KING: Okay, so I will, if there are no objections, close testimony on ceremonial resolutions.

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Testimony is closed and we're going to take just a one or 30-second break so that we can, I can bring our Vice-Chair up here and we can change places for this item.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:02 A.M., AND WAS RECONVENED AT 10:03 A.M., WITH ALL MEMBERS PRESENT, EXCEPT FOR COUNCILMEMBER HOKAMA, EXCUSED.)

VICE-CHAIR RAWLINS-FERNANDEZ: Calling to order, calling back to order, our full Council, it's 10:03 on May 28.

Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with ceremonial resolutions.

## CEREMONIAL RESOLUTIONS

RESOLUTION  
NO. 19-106

CONGRATULATING JESSALYN LOPEZ FOR  
WINNING THE 2019 HAWAII HIGH SCHOOL  
ATHLETIC ASSOCIATION STATE TENNIS  
CHAMPIONSHIP GIRLS SINGLES TITLE

VICE-CHAIR RAWLINS-FERNANDEZ: Chair King.

CHAIR KING: Thank you, Chair, Acting Chair.

MADAM VICE-CHAIR, I MOVE TO ADOPT THE CEREMONIAL RESOLUTION ENTITLED "CONGRATULATING JESSALYN LOPEZ FOR WINNING THE 2019 HAWAII HIGH SCHOOL ATHLETIC ASSOCIATION STATE TENNIS CHAMPIONSHIP GIRLS SINGLE TITLE".

COUNCILMEMBER SINENCI:

SECOND.

CHAIR KING: Madam Chair, may I please request that the Clerk read the resolution in its entirety?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Moved by Chair King, seconded by Member Sinenci.

Mr. Clerk.

*(The resolution was read in its entirety.)*

(Councilmember Hokama arrived at the meeting 10:05 a.m.)

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Clerk.

And before I call on Chair King, I'll recognize Member Riki Hokama, joining us this morning.

COUNCILMEMBER HOKAMA: Chairman.

VICE-CHAIR RAWLINS-FERNANDEZ: Good morning.

Chair King.

CHAIR KING: Thank you, Chair. I want to congratulate Jessalyn Lopez for winning this title as a tennis player. And as a South Maui District Member of the County Council, I was pleasantly surprised, I was really excited to read in the paper when this happened, and not only because last year she lead her Maui High School tennis team to win their first ever girls team title while she was in the MIL singles tennis championship for the second time.

This is the first year that Kihei Charter School has actually fielded its own tennis team, so that is really exciting for the school, for the community and I think the whole island that if, it is growing its own extra-curricular program and that we can have this kind of success in the first year.

Still only a junior, this year she won the MIL championship for the third time in a row and went on to win the State championship. She is the first female to bring the State championship home to Maui since Kari Luna of Baldwin who won 25 years ago in 1994. Jessalyn Lopez was down 3 to 5 in the first set but put in the hard work and came back to win the tie breaker over Maile Brilhante of Waiakea. Jessalyn was undefeated this season going above and beyond and already plans to train really hard over the summer for her senior year.

And I'll ask my fellow Councilmembers to support this amazing feat, and even if you don't play tennis, I think you can appreciate what a great honor she's brought to the school for the very first year that it had its tennis team. Thank you, Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair King.

Members. Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Yes, I would gladly want to support Ms. Lopez today and congratulate her. As a former teacher, I had the opportunity to coach in Hana, the tennis team, although we just had a couple of students. So I can understand the dedication, the hard work, and the competitive spirit that is needed to win at this level. So, congratulations Jessalyn.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Sinenci.

Member Molina:

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair. Congratulations to Ms. Lopez, as well on the State Championship, first time in 25 years and her previous titles in the MIL. This young lady certainly has a very high ceiling as it relates not only to her sports but also for higher education and career goals. And you know, sports teaches you some very important values, things such as cooperation, respect, teamwork, hard work, and dedication. And judge by her accomplishments already, you can already see she possess these intangibles which will make her a success in life in whatever career endeavors she undertakes. So, congratulations to her and her parents and also her coaches and everyone else. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Molina.

Member Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I would like to add my congratulations to Ms. Lopez and her achievements. I'm not a tennis player, but it does run in my family. My father was a champion for all 16-year olds on Maui at one time. I know it takes a lot of effort, discipline and a lot of support from family and friends. So, I wish her tremendous luck in the future.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Lee.

Okay, seeing no other comments, I'll just add my congratulations to Ms. Lopez, her coach, her family. You really make our community proud. Mahalo.

Okay, Chair King.

CHAIR KING: Thank you, Chair, Vice-Chair. May I request that the recipient of the ceremonial resolution be called down to the podium to receive her lei and bring, I was going to say coach, but that happens to be my sister, and she's relinquished her position for the lei to the Headmaster of the school so if you could come down and AJ you can come down too.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair King would you like to vote on it, before?

CHAIR KING: We need to vote on the resolution, I'm sorry, got too excited.

VICE-CHAIR RAWLINS-FERNANDEZ: Understandably.

All those in favor please say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

VICE-CHAIR RAWLINS-FERNANDEZ: Any opposed.

NOES: NONE.

VICE-CHAIR RAWLINS-FERNANDEZ: Motion passes unanimously.

CHAIR KING: Thank you, Madam Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Please come down and join us. Would you like to go on the mic, please?

MS. RACHEL CHRISTOPHER: Hi, my name is Rachel Christopher. I'm the assistant coach of the Kihei Charter High School Tennis team and this is our first year, like you said you guys pretty much summed it up several times about her accomplishments. And Jessalyn has just been, she's just a firecracker out there on the court and she gives it her all and I do believe that it's a great, it's a great trait to have for her future. And I think you're going to go far with that. Whether it's in tennis or anything else. But I just think she's added so much to our team and next year's going to be even better, so look for her in the paper next year too. Congratulations.

MS. ELLEN FEDEROFF: Good morning, I'm Ellen Federoff, I'm the Dean of Students at Kihei Charter High School. We couldn't be more proud of her and the way she represents. Brought us our first championship to our school which is just a huge feat. So, we just look forward to watching her grow another year and bringing home another championship next season. Mahalo.

MS. JESSALYN LOPEZ: Aloha, I'm Jessalyn Lopez. I want to say thank you to everyone that's supported me, my parents, my coaches, my school for always supporting me. And I appreciate everyone here that made this possible. I really appreciate it. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, Members, if there's no objections we will now take a quick recess at the call of the Chair to take some photos. The Council of the County of Maui is now in recess. It's 10:14 a.m.

(THE MEETING WAS RECESSED BY THE VICE-CHAIR AT 10:14 A.M., AND WAS RECONVENED AT 10:17 A.M., WITH ALL MEMBERS PRESENT.)

CHAIR KING: The Special Council Meeting of the Maui County Council for May 28 is now back in session, 10:17 a.m., and Mr. Clerk proceeding with testimony.

COUNTY CLERK: Thank you, Madam Chair. For the record, Resolution 19-106.

Madam Chair, proceeding with the presentation of testimony on agenda items for the public, for the Council meeting.

We have established limited interactive communication that enables individuals from Hana, Lanai, and Molokai to provide testimony from our District Offices.

Individuals who wish to offer testimony from Hana, Lanai, and Molokai, should now sign up with District Office staff. Individuals who wish to offer testimony in the chamber, please sign up at the desk located in the eighth-floor lobby just outside the chamber door. Testimony at all locations is limited to the items listed on today's agenda.

When testifying, please state your name and the name of any organization you represent. Please also identify to the Council if you are a paid lobbyist.

Currently, we have no testifiers waiting at our District Offices, we have six individuals who have signed up to testify in the Council chamber.

The first person to testify in the Chamber is Tom Blackburn-Rodriguez, testifying on Bill 36. To be followed by Jonathan Starr.

### PRESENTATION OF WRITTEN OR ORAL TESTIMONY

#### MR. TOM BLACKBURN-RODRIGUEZ [testifying on Bill No. 36 (2019)]:

Good morning, Chair, Members of the Council. All I can say is look out Serena Williams. Thank you for the opportunity to testify. I know you have a long meeting today, I want to be brief with my remarks.

And basically, on behalf of Go Maui, and I'm a registered lobbyist for Go Maui, we want to thank this Council for what I think are revolutionary steps that we're taking to support affordable housing and to deal with the problem of homelessness in our community. All of the previous Councils' have taken efforts and have been strong supporters of affordable housing. This Council has moved leaps and bounds, and I think that the responsibility we now have of carrying out the opportunities you have presented to us and to the community, now that's our responsibility to work with you.

So just to sum up, as you know, a budget is not dry statistics or numbers on a page. It is a statement about our values, it's a pathway to the future and its recognition of the effort that's gone on before you.

On behalf of Go Maui and of the thousands of people who are crying out for affordable housing, I would like to thank you and pledge our support to ensure that your efforts will be successful as we work in a partnership together in a civil dialogue as you have outlined in your leadership and for which we are extremely grateful. Mahalo.

CHAIR KING: Mahalo, Mr. Blackburn-Rodriguez.

Any questions for the testifier? I will just say I look forward to working in tandem with you and the community. Thank you.

MR. BLACKBURN-RODRIGUEZ: Thank you very much. Have a great day.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Jonathan Starr, testifying on Bill 36. To be followed by Thomas Croly.

MR. JONATHAN STARR [testifying of Bill No. 36 (2019)]:

Good morning, Chair King, Vice-Chair Rawlins-Fernandez, Honorable Councilmembers, hardworking staff.

My name is Jonathan Starr, I'm here as a board member representing the Kaupo Community Association, and I wish to thank you for the hard work and also the real attempt to provide clarity and to provide policy-based, thoughtful deliberations on budget issues. I think this year come a long way in a good direction and you know, I just want to compliment kind of the bravery and the energy that it took, and you know, I'm sure it will continue moving forward as an improved process.

I also, especially want to thank the help that has come to our rural communities and especially in East Maui where I live, and Kaupo where you know my true heart and energies go in terms of trying to provide infrastructure of community to places that are, need, such things are needed.

So, thank you very much and just wishes of aloha and appreciation. Thank you.

CHAIR KING: Mahalo, Mr. Starr. Any questions? No questions. Seeing none, next testifier.

COUNTY CLERK: Next testifier is Thomas Croly, testifying on County Communication 19-231, Bill 29 and Bill 36. To be followed by Eric Poulsen.



MR. THOMAS CROLY [testifying on County Communication No. 19-231, Bill No. 29 (2019), and Bill No. 36 (2019)]:

Aloha, Chair. Aloha, Council. First, I want to thank you all for your work on the budget and I recognize that any remarks I make today aren't going to change that. We're at second and final reading on the budget and it is going to be what it's going to be. But nevertheless, I'd like to provide some observations and hopefully give you something to think about next year and help you in your overall thoughts about this.

First, on County Communications 19-230, *[sic]* I think it was with respect to the definition of Biodiesel Blend. I think that this is just a housekeeping measure to be able to make clear what we mean by blend, so that someone can't put 1% biodiesel into, into something and then get the benefit of this lower tax and I certainly support that.

I also support the idea of waiving taxes on pure biodiesel, the 100% biodiesel. That's fine by me because of the environmental benefits; however, I do want to make very clear that I think that it is a huge mistake to be reducing the tax on the diesel that is blended with the biodiesel. In other words, to burn one gallon of biodiesel at a 20% blend, you're going to burn four gallons of regular diesel. And by reducing the tax to six cents per gallon essentially, you're subsidizing the biodiesel by reducing the tax on the regular diesel. That's not correct in any way, shape, or form, and it's a major mistake that this Council made in previous years and a major mistake you're making again this year.

If biodiesel provides a benefit to the environment or to the County by, by not having the grease put into our landfills and so forth, then the producers of this biodiesel should come forward and ask for a grant from the County. That would be the proper way of going about this. Waiving the tax or reducing the tax on the regular diesel that's blended with this biodiesel, that's just wrong. It's wrong in every single sense that I can think of. You're saying this diesel that we're burning, we're not going to tax and we're not going to, to have the users of this diesel pay for their portion of using the roads, because we blended it with some amount of biodiesel. It is what it is, I don't expect you to change it, but I want you to think about it for next year. Thank you, Chair.

Bill 29. Bill 29 is setting up a study of the cost associated with planning and whether there should be a cost-recovery system designed in that. I don't think that, that's necessarily a good idea, the idea of cost-recovery and planning. Planning's efforts in general, are to benefit the community at large. The cost associated with planning, are almost, I shouldn't say exclusively, but a big part of them are getting the input of the community on a project or on a zoning change or on what our, our future plans are.

Those are things that should be paid for by the General Fund. They don't benefit the developer or the person seeking the permit in any way, shape, or form. The person seeking a permit from Planning is trying to meet all of the government requirements that are put forward. Meeting those government requirements, in and of itself is costly. And, but we want those to be met. That's, that's what we want, but raising the cost of getting through the planning process to the applicant, only discourages compliance.

And I think we all know that there is a lack of compliance with many, many building things that take place. In fact, I was just down at the Planning Commission where they're dealing with some of the lack of compliance when someone didn't properly get a permit when they should have. So, I don't think we ever want to do something that would discourage the compliance with what Planning is supposed to do and I think raising the cost because of the inefficiencies that just go along with engaging the public into the process is not a good idea. Now, you're going to pass this, there's going to be a study, but I wanted to get that on the record right now. That's all my comments on Bill 29.

On Bill 36, I have to say again that I'm very disappointed that this Council found the need to increase real property taxes by \$36.8 million. That's the largest increase in Maui history. Ninety percent of this increase is being borne by visitor accommodations, so that makes it easy on you guys because the voters, the people who live on the island, they're not going to see the increases about this, it's the visitor's accommodations, and that's nothing new.

It has been the short-term rentals who have been carrying the load of Maui's property taxes for years and years and years. But the increase that you assess to the short-term rental folks was 21% this year, so they already were carrying the load at a rate of about five times what the residents were and then you threw another 21% on that. I don't know when that camel's back will break, but I don't think that it was responsible to load all of this increase, the largest increase in history on just this one group. I do want to point out kind of historically what's happened with our taxes and this Council, in and of itself is not responsible for this, but I want you to just understand this historically.

Twenty years ago, in 1999, the total of Maui's real property taxes was \$82.4 million. Adjusting for the 56% inflation that's taken place in the last twenty years and adjusting for the 40% increase in resident population and visitor population that has taken place in that time, would say if we were at that same level we would be at \$177,000 in real property taxes, but the reality is we are at \$355 million. So the Council in general and this building and Maui County in general has doubled in size, doubled at a faster than the rate of inflation over the past 20 years. Again, I'm accounting for the growth in the

island, I'm accounting for the inflation that took place, and I'm saying real property taxes have still outpaced that by two times. So, I really ask this Council to take a closer look at where we are spending our money and where we could save some money.

Finally, I, real property tax issues, I know that you formed a committee to deal with that, I think that's good. I think there are a lot of issues related to real property tax fairness that go way beyond just the rates. They go into the various different uses that are allowed but not taxed in some cases, but are taxed to heavily in other cases. And I hope that you guys will, you know do the work so that next year we do have a more fair real property tax system in place. Thank you, Chair.

CHAIR KING: Thank you, Mr. Croly. We have a question for you.

Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Croly for being here. I appreciate your perspective as it covered some things that I didn't consider.

My question is for your testimony on Bill 29. And, I just was wondering, it says "A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE, TO ESTABLISH A COST-RECOVERY POLICY FOR THE DEPARTMENT OF PLANNING". Is it not your understanding that the policy could be that it's not 100% cost-recovery but to set a policy of what the person or how it goes? Is that not your understanding?

MR. CROLY: Well, I guess what I'm saying is, I don't think we should be aiming for a result there. This seems to say, we're aiming for a result of cost-recovery or in some way recovering more of the cost than we are right now. And I'm saying, I don't think that's a good idea, I don't, I think it's flawed just from the premise. Now it's going to move on and we're going to do the study, and I'll give testimony when the study is done and so forth. But I don't think that it makes sense that its necessarily the best policy to say, those who have to go through Planning in order to get permits in some way, shape, or form should bear the full cost of processing those permits within Maui County government.

COUNCILMEMBER PALTIN: Yeah, I wasn't thinking that that's how it was. I thought it was just to establish a policy, like to do a study to figure out what the policy would be. Not to do a 100%, so then I would feel like we're doing our due diligence to not do what you're saying, not--

MR. CROLY: Maybe the study will come out and say it shouldn't be a 100%, it should be 20% or whatever. Your right--

COUNCILMEMBER PALTIN: --yeah, that's the way that I had--

MR. CROLY: --it could be that and maybe that's fine. But at this moment my point is that that shouldn't bear on what we, what you do set in the rates. What you set in the rates should be what makes the best sense for compliance.

COUNCILMEMBER PALTIN: Yeah.

CHAIR KING: Thank you.

COUNCILMEMBER PALTIN: So that's what I understood, that's why we're trying to create a policy so that we don't just shoot from the hip, right?

MR. CROLY: Okay.

COUNCILMEMBER PALTIN: Okay. Thanks. Sorry, thanks for the clarification.

CHAIR KING: Thank you, Ms. Paltin.

Okay, Mr. Clerk.

COUNTY CLERK: Next testifier is Eric Poulsen, testifying on Committee Report 19-52. To be followed by Pamela Tumpap.

MR. ERIC POULSEN (testifying on Committee Report No. 19-52):

Good morning, Chair. Good morning, Council.

CHAIR KING: Good morning.

MR. POULSEN: My name is Eric Poulsen. You know, at a gathering in West Maui, I overheard a developer boasting about his multimillion-dollar subdivision that was no longer required to install roadway subdivision improvements or even pay one dime towards a County initiated capital improvement project. As I found out, this happened through deceptive legislation adopted through the Upcountry Water Bill. Developer subdivisions island-wide continue to be granted exemptions from installing roadway frontage infrastructure improvements.

At the same time, this Council was dealing with the decades of abuse by County attorneys surrounding the thousands of uncollected developer infrastructure deferral

agreements. Our own County attorneys Kushi and Oana were conspiring with Goode to find another way to shift developer financial obligations on to the backs of taxpayers.

The change to the Upcountry Water Bill was written in the last minute without proper public notice. Corporation Counsel Deputy Attorney Jennifer Oana approved it. This, despite the fact that both Kushi and Oana emphatically stated in their own testimony that infrastructure exemptions could not be allowed island-wide for commercial use through this Upcountry Water Bill legislation.

All of this baloney that is giving developers freebies will somehow result in affordable housing is completely crazy. It just increases their financial rewards at our expense. I state this fact with County records, which now show what type of developments have taken advantage of this ordinance. For example, 1,200 acres in Central Maui and a retail commercial development in West Maui. Everyone on the Council at the time admits they were fooled by Kushi, Oana, and Goode. The Mayor admits he was not aware of the language that was slipped into the ordinance. So too does Don Guzman and Elle Cochran.

During his confirmation hearing with Kushi by his side, Goode stated litigation surrounding these violations is dead. Acting Director Lutey is aware this is a blatant lie. Anyone can go to the courthouse and see this legislation is not dead. I'm not dead and will not accept any longer this abuse by the County Attorneys. Why not ask Ms. Lutey today why she feels she is allowed to continue to defend her staff attorneys who have lied and deceived the citizens and this Council. Why are the citizens put in this place of having to uphold the law?

Through a County Charter amendment, we gave this Council the rights to retain their own attorney when conflicts arise with County attorneys. Mayor Victorino voted for this and supports this Charter amendment. Ms. Lutey's name is now on a recent court filing for a case that was called dead, but it's not, and won't be if action is not taken by this Council.

I want no part of litigation. Today to end this burden on my family and the waste of public resources, I'm offering a settlement to the Council: 1) Repeal the language from Title 18 that Councilmember Paltin has submitted; 2) Acknowledge the violations by Kushi and Oana and request the Mayor to remove them; and 3) Deny Moana Lutey's appointment today for her violations of her duties to serve and protect the citizens of Maui County. Thank you.

CHAIR KING: Thank you, Mr. Poulsen. Any questions for the testifier? Mr. Poulsen did you submit it in writing?

MR. POULSEN: No, I haven't.

CHAIR KING: Okay. I guess my question to you would be what, you talked about your personal, how it's affected you personally? Could you describe how--

MR. POULSEN: Yes, mam. Yeah, I'm in a lawsuit with Elle Cochran over non-performed obligations. It was dismissed recently by Judge Loo. So, yeah, this has been going on, this isn't my first time in front of the Council as you may remember. So, yeah, it's time for the Council to step up and stop it, I hope.

CHAIR KING: Alright, thank you.

MR. POULSEN: Thank you.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Pamela Tumpap testifying on Bill 36 and Committee Report 19-52. To be followed by Christopher Fishkin.

MS. PAMELA TUMPAP, MAUI CHAMBER OF COMMERCE [testifying on Bill No. 36 (2019) and Committee Report No. 19-52]:

Good morning and aloha, Chair King and Members--

CHAIR KING: Good morning.

MS. TUMPAP: --of the County Council. I'm Pamela Tumpap, President of the Maui Chamber of Commerce, and advocacy and lobbying is one of my many duties. I just wanted to thank you so much and appreciate the opportunity to be here again with you today for the work you've done with this year's budget. I know it's a lot of effort and many of you were learning the process. And so I just want to thank you for the way that you've looked at the budget and how you've been looking at investing everybody in the budget process that we're looking at shared responsibilities.

And I think that was really key even though we were looking at some tax increases for the business sector too. I think everybody wants to pay their fair share. So, while we have some concerns about some of the categories that I know we ran up against timing issues on and we know you are going to revisit that. We also appreciate that you're going to take a more in-dept look at the real property taxes, overall as a system and re-evaluate that. So, we're excited to hear about that.

We also want to thank you for your tremendous investment in economic development, and when it comes to the Made in Maui County Council, excuse me, Made in Maui Chamber of Commerce. When we're looking at the Made in Maui County Festival, we're excited about the investment that you're continuing to make in this because this is a tremendous economic development effort with a very strong return on investment.

One of the things that we're also really thrilled about is that there's going to be strong investment in affordable housing and rental development. This is community-wide issue, the Council is a strong champion of this effort, the business sector is a strong champion of this effort and we look forward to partnering with you on this.

One of the things that we're hearing though is, there is a lot of money that is coming up, new generated money with these tax increases and other efforts, \$42 million increase. And what the public isn't quite aware of is where all that money is going to go. And in the past, we had a really excellent tool when Riki Hokama was Budget Chair, there was a chart that showed all of the money coming in and where all of that money was going to be spent.

And it used to be an attachment and it usually came to the Councilmembers far earlier in the process. We haven't seen that, so if it exists we'd love to get a copy of it, maybe we're just not sure where to find it, but we haven't seen it. But it helps to answer some of those questions that people wonder with the increased money that's being raised, where is that money going to go, and how does it, what pot of money is it coming from and where does it go. And then they can better see of the increased money and the investment they're making, what they're going to get as a return? They can see the programs that money goes to. So, we just would like to advocate, hopefully that's coming, or it exists and we just don't know where it is, but we'd like to see that happen.

And then again, you know we really are excited about this time. We're excited that you took a bold move on shared investments, we want to work with you to come together and we're extremely excited about trying to address affordable housing and rentals. Thank you so much.

And just, real quickly, I would like to support the appointment of Moana Lutey for Corporation Counsel. With her great breath of experience as Deputy Corporation Counsel and work as a Deputy Prosecuting Attorney for the County, we think she would be an ideal candidate for that position. Thank you.

CHAIR KING: Thank you, Ms. Tumpap. Any questions? We do have written testimony from Ms. Tumpap as well. Your very identifiable pink and black testimony.

MS. TUMPAP: With that pink, bright pink logo. Thank you.

CHAIR KING: Thank you.

MS. TUMPAP: Which is Maui's island color.

CHAIR KING: Right. Thank you, Ms. Tumpap.

MS. TUMPAP: Thank you. Aloha.

CHAIR KING: Mr. Clerk.

COUNTY CLERK: Next testifier is Christopher Fishkin, testifying on Committee Report No. 19-52. To be followed by Sam Small.

MR. CHRISTOPHER FISHKIN (testifying on Committee Report No. 19-52):

Aloha, Chair. Aloha, Councilmembers. I'm here today to present to the Council an official request for a criminal investigation of Acting Director Corporation Counsel Moana Lutey and five of her deputies. I'm leaving this for the County Clerk, and you've all received a copy. This request has been made of the Prosecuting Attorney's Office, the State Attorney General's Office, and Michael Wheat of the DOJ, who has been addressing the corruption of the Honolulu Prosecuting Attorney's Office, Corp. Counsel and the H.P.D. very successfully in Honolulu.

There are already 75 County residents since yesterday who have signed a new petition in support of this investigation and that number is growing and I expect to grow. A 264-page affidavit and evidentiary support with over 40 exhibits has been provided to the Council prior to this hearing today. There's also new evidence in support that's being made available as well to the authorities.

I have personally been subjected to intimidation and retaliation by Ms. Lutey and her deputy associates in my efforts to expose the cover-up of unlawful and unethical acts by her department. Ms. Lutey testified she's a team player, a litigator who becomes so invested in her case she would rather win than settle, and she has bonded with her associates, no in-fighting. She has demonstrated this by working with her deputies to cover-up wrong doings set forth in the evidence and in the record that I have presented and am presenting.

She is a textbook case of cronyism which is the fertile soil of corruption in this County. She said she wants to improve relationship between the Council and Administration and she's close with her clients. Is that why she attempted to usurp all the authority of



both the Council and the Mayor in the settlement resolution that was proposed regarding the injection wells, which she was forced to remove the language which is not only unlawful and violated legal norms, violates the Hawaii Rules of Professional Responsibility. It's taking power from the client to settle a case, going against the Mayor and the Council at the same time, which is rather interesting.

She is presently involved in an extortion to get a whistleblower who's presently in a position of bringing forth tremendous recovery to this County, trying to get 'em to sign a letter that basically doesn't protect the County, it covers up the Department of Corp. Counsel's own misdeeds and wrongdoing which cover up previous County officials' unlawful activities. She's also been presented recently with a notice of a false ledger that was provided by an engineer in Public Works which has government liens infringing unlawfully on five private properties in a three lot or less subdivision.

She refuses to remove the liens, she refuses to enforce the SMA permit, and she, in a court case she says it's over, which is still pending, there were FOIA requests made which she claimed that day, she only had to give if they were in her possession. She claimed in court documents they were not in her possession. Those documents were found in the public KIVA system by Chairwoman Kelly King's executive assistant at that time and Don Guzman's executive assistant, right out of the KIVA system. But hey, Moana Lutey said in court documents that those documents do not exist, and we do not have to present them.

It would be irresponsible--

CHAIR KING: Please conclude.

MR. FISHKIN: May I just finish--

CHAIR KING: Please conclude.

MR. FISHKIN: --with 30 seconds, I can finish. Thank you.

CHAIR KING: Can you conclude in--

MR. FISHKIN: Thank you, Chair. Pending investigation, it would be irresponsible in my opinion to solidify her power and control over the Department of Corp Counsel, which asserts tremendous power right now over this County in advising you, in advising the Mayor. And they're in a position, if they're not being ethical to cover up their own misdeeds and I have set those forth in this investigation which will go forward. Thank you so much for your time and consideration.

CHAIR KING: Thank you, Mr. Fishkin.

MR. FISHKIN: Aloha.

CHAIR KING: Seeing no questions. Mr. Clerk, next testifier.

COUNTY CLERK: Next testifier is Sam Small, testifying on Committee Report 19-52. To be followed by Christopher Carroll.

MR. SAM SMALL (testifying on Committee Report No. 19-52):

Good morning, Council Chair, Councilmembers. As always, it's an honor to be participating in the democratic process.

Very similar comments to Mr. Fishkin. I have here a copy of the petition that we just floated yesterday that calls for a request of a criminal investigation of Acting Corporation Counsel Moana Lutey, Deputy Corporation Counsel Michael Hopper, Caleb Rowe, Brian Bilberry, Jennifer Oana and Ed Kushi. They are, in less than 24 hours we've got 75 local signatures, people who live on Maui who have signed this petition. That's less than 24 hours, there will be plenty more signatures to come. This issue is not going away, this online position.

These self-described dinosaurs are a team of litigators led by now Ms. Lutey who have all been around long enough to be professionally compromised while serving past Mayors Alan Arakawa and James Apana. By their dirty acts over the years, these lawyers are now so personally and professionally conflicted that they can no longer possibly serve the public's best interest. These dinosaur lawyers are actively blocking enforcement of SMA permits that protect our shoreline in violation of the U.S. Coastal Zone Management Act. These dinosaur lawyers wrote secret developer deferral agreements to shift financial burdens onto residents and are still actively blocking collection of over probably \$100 million of developer's funds by withholding and falsifying public records.

Ms. Lutey came to Corp. Counsel in 1999, when this Council acted to stop the deceitful repetitive application of overlapping three lot or less deferral agreements, that was used to circumvent the four lot or more ordinance where roadway improvements must be performed. Ms. Lutey was part of the active violation of this Council's intent by continuing to write serial overlapping agreements. Ms. Lutey was also part of Corp. Counsel in 2001, when the whistle was blown that there was absolutely no mechanisms in place to collect on any of the agreements and yet Corp. Counsel continued to write new agreements, until this body forced them to stop in 2007.

In 2015, Maui's dinosaur lawyers again secretly violated the intent of this Council in order to create a new way to shift financial burdens from developers to residents through their blatant manipulation of the Upcountry Water Bill. They've manufactured a fake real estate tax to use as a weapon in litigation in a timeshare group. Their arrogant abuse of authority will end up costing the County millions of dollars.

Just this month, Ms. Lutey inserted language into the injection well resolution that would have given herself final say of County policy, superseding the authority of both the Mayor, if I may just have 30 seconds for me to continue--

CHAIR KING: Please conclude. Please conclude.

MR. SMALL: --I will conclude. Superseding the authority of both the Mayor and the County Council, she deserves to be removed for that alone. When Don Guzman was campaigning for Mayor, he said it was a mistake to have a career litigator as director of Corporation Counsel. Instead we need a skilled negotiator, probably from the mainland to avoid conflicts of interests with local businesses.

Thank you very much for your time and consideration.

CHAIR KING: Thank you, Mr. Small. Any questions? No questions. Thank you for your testimony.

MR. SMALL: There are dozens of questions that I have submitted in writing that you may please use to question Ms. Lutey, to drill into any of these issues and you'll quickly see that she's deeply conflicted.

CHAIR KING: Thank you, Mr. Small.

Mr. Clerk.

COUNTY CLERK: Next testifier is Christopher Carroll, testifying on Committee Report 19-52. Mr. Carroll is the last individual who signed up to testify in the Council Chamber or at the District Offices.

MR. CHRISTOPHER CARROLL (testifying on Committee Report No. 19-52):

Good morning, Chairman, Chair, citizens of Maui. I have not prepared formal, a presentation this morning. I'm going to speak extemporaneously, I hope you'll permit this.

This is regarding Ms. Lutey's character in litigation regarding her duties to defend the County of Maui in police brutality case. One of them involved me in a tasing in my home in 2011. The case became unsuccessful, to my understanding because Ms. Lutey was willing to forward a police supervisor with a document claiming that a police officer who was on top of me, beating me after my tasing, simply wasn't at the scene. And my lawyers became disillusioned with her arrogance and with her power in this matter and the case failed.

I need to point out that shows to me that there is a vast conflict of interest between Ms. Lutey and the Police Department in favor of, instead of seeking justice, but protecting the illegal and brutality acts of police which have increased in our County to an alarming extent and have caused enormous pain and suffering to the victims. This was caused by a militarization of our police force and by the arrogance of the lawyers of the County in protecting their illegal acts in the desperate acts of winning at all costs.

Mr. Guzman has pointed this out in his new position as a Deputy Prosecutor and I welcome his entry into this. But Ms. Lutey appears to be willing to compromise ethical and professional standards in order to achieve a win at the cost of the violence upon Maui citizens and myself and my son were both beaten and injured during this incident. The cases they were based upon were based upon a adult protective officer who was later found by a jury in this County in 2016 of intentionally causing intentional infliction of emotional distress by malicious and intentional acts. These are the kinds of people that Ms. Lutey protects, are the government position people that forward frivolous lawsuits in order to improve their careers or to protect their reputations.

I hope you'll take a serious look at Ms. Lutey in the light of my comments, and I stand ready to answer any questions.

CHAIR KING: Thank you, Mr. Carroll. Any questions, Councilmembers? Seeing none. Thank you for your testimony.

Mr. Clerk.

COUNTY CLERK: Madam Chair, there are no other individuals in the District Offices nor the chamber who wish to offer testimony and we have received written testimony for this meeting.

CHAIR KING: Okay. I'll just ask one more time if anybody in the chambers wishes to testify? Seeing no testimony, no testifiers. Any objections to receiving written testimony into the record?

MEMBERS VOICED NO OBJECTION.

THERE BEING NO OBJECTION, WRITTEN TESTIMONY RECEIVED FROM THE FOLLOWING WERE MADE A PART OF THE RECORD OF THIS MEETING:

1. Eric Poulsen;
2. Pamela Tumpap, Maui Chamber of Commerce;
3. Christopher Fishkin;
4. Samuel Small;
5. Joseph D. Pluta, West Maui Taxpayers Association;
6. Melanie and Keith Hyde;
7. Nina Manuel-Schoel;
8. ILWU Local 142;
9. Linda and George Kiyohara; and
10. Chris Salem.

CHAIR KING: Okay, thank you, so ordered. And seeing no further testimony. We've checked with our, our District Offices? Okay, if there are no objections, we'll close public testimony.

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay, public testimony is closed.

Mr. Clerk.

COUNTY CLERK: Madam Chair, proceeding with county communications.

### COUNTY COMMUNICATIONS

NO. 19-229 - KEANI RAWLINS-FERNANDEZ, CHAIR, ECONOMIC DEVELOPMENT AND BUDGET COMMITTEE, (dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), for the Section 8 Housing Program.

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Madam Chair, if there are no objections, may I request County Communications 19-229 through 19-232 be moved to the end of the agenda and called up just prior to taking up Bill 36 on second and final reading?

CHAIR KING: Okay, any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay. So, bills 19, or County Communications 19-229, 230, 231 and 232 will be moved to the beginning of Committee Reports, before the operating bill, is that the request?

VICE-CHAIR RAWLINS-FERNANDEZ: Right before taking up Bill 36.

CHAIR KING: Okay, right before Bill 36. Alright, so ordered.

Mr. Clerk.

(COUNTY COMMUNICATION NOS. 19-229, 19-230, 19-231,  
AND 19-232 WERE FILED LATER IN THIS MEETING. See  
pages 49 through 69 for discussion and action.)

COUNTY CLERK: Madam Chair, proceeding with committee reports.

## COMMITTEE REPORTS

COMMITTEE REPORT  
NO. 19-52 - GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Recommending the following:

1. That Resolution 19-107, entitled "APPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL," be ADOPTED; and
2. That the proposed resolution, entitled "DISAPPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL," be FILED.

CHAIR KING: Mr., Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair.

MOVE TO ADOPT THE RECOMMENDATIONS IN COMMITTEE  
REPORT 19-52.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, we have a motion by Councilmember Molina, second by Councilmember Lee.

Mr. Kushi, do we have Ms. Lutey in the Chambers or is she expected to be?

DEPUTY CORPORATION COUNSEL: . . .

CHAIR KING: Okay, Councilmembers, would you like to take a recess? We've actually passed our morning recess time, so we take a recess, 15 minute recess and return at 11:10. Alright. Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay, the meeting of the, the Special meeting of the Maui County Council is now in recess, 10:55 a.m.

(THE MEETING WAS RECESSED BY THE CHAIR AT 10:55 A.M., AND WAS RECONVENED AT 11:11 A.M., WITH ALL MEMBERS PRESENT; EXCEPT COUNCILMEMBERS PALTIN, SINENCI, AND VICE-CHAIR RAWLINS-FERNANDEZ EXUSED )

CHAIR KING: Okay, reconvening the Special Council meeting of May 28, 2019, it's eleven minutes after eleven and we have, we're now considering Committee Report 19-52 from the GET committee. Right now, we have one, two, three, four, five, six Councilmembers in attendance with one on his way, I think we'll get the rest of them coming in soon. But meanwhile we'll go ahead to Councilmember Molina and let you go ahead and speak to the motion.

(Councilmember Sinenci returned to the meeting at 11:12 a.m.)

CHAIR KING: We have a motion on the floor to "APPROVE THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL"; and that the proposed resolution entitled, "DISAPPROVING THE MAYOR'S APPOINTMENT OF MOANA M. LUTEY FOR CORPORATION COUNSEL" be filed.

(Councilmember Paltin returned to the meeting at 11:12 a.m.)

CHAIR KING: Mr. Molina.

COUNCILMEMBER MOLINA: Yes. Thank you very much, Madam Chair. Just wanted to elaborate on the motion a little bit.

At the Committee's meeting of May 2, 2019 your Governance, Ethics, and Transparency Committee met with Ms. Lutey. Ms. Lutey served as a Deputy Corporation Counsel for the County from January 11, 1999 to February 2000 and again from February 2000 to until the Mayor's April 2019 appointment as Acting Corporation Counsel.

Your Committee addressed many of the questions that was asked of Ms. Lutey. And for that particular issue the sixty-day deadline for the Council to confirm or deny the appointment of Ms. Lutey as Corporation Counsel happens to be June 10. And after all of the questions and answer session was done, your Committee voted 8-0 to recommend adoption of the proposed resolution to approve the appointment along with the filing of the resolution to disapprove the appointment and ask for the Members support of Ms. Lutey. Thank you.

CHAIR KING: Okay, thank you, Mr. Molina. And I think we have our Acting Corporation Counsel in the chambers. So, I will ask Ms. Lutey if you can come down in case there are any additional questions? Thank you for being here.

Okay, Councilmembers the floor is open for questions right now. We're just in question mode, we're not deliberating yet. So, if you have a question for Ms. Lutey or Mr. Kushi please, now is the time to ask. No questions?

(Vice-Chair Rawlins-Fernandez returned to the meeting at 11:14 a.m.)

CHAIR KING: Okay, I guess I have a question, Ms. Lutey regarding the, the recent resolution that came with the settlement agreement for the injection wells. And I was a little disappointed that you weren't here for a lot of that deliberation because I know your name is on the brief. And I had some issues with the, what I was told by our attorneys in, in Office of Council Services is anomaly, not normal standard wording which the



phrase that gave Corporation Counsel the final authority over that settlement agreement, said with final approval of Corporation Counsel. So can you speak to why that was put in there?

ACTING CORPORATION COUNSEL MOANA LUTEY: Thank you, Chair. Sorry, I've got an upper respiratory infection, so I cough a lot.

In terms of that language, my understanding is that, that's pretty standard. But the reason I normally would put that in, and I didn't sign that one, but when I do is because, it controls, we're not trying to usurp anyone's authority, it's really control over the language of the release agreement that we formulate and have signed off by opposing counsel.

CHAIR KING: Okay, but is there an understanding in Corp. Counsel that the clients, I mean, you basically have two clients, you have the County Council and the Mayor. So should that not be the ultimate authority that signs off with the, you know we get, we get input from the Council, I mean from Corp. Counsel and then Council makes the ultimate decision on spending. So I haven't seen that before in legislation for any of the settlements that we've done but maybe you can share more about how often you use that phrase or is it just for certain types of legislation?

ACTING CORPORATION COUNSEL: Thank you, Chair. Actually, for the most part we just do forms. So, in terms of releases and so forth and that type of language in a reso, we don't reinvent the wheel so I'm not sure off hand how many times I've used it or that it's been used in my office. But I can certainly go back and see, I mean from claims and so forth but it's not as though I look at one case and add it in and look at another and take it out. It's really more of a form.

CHAIR KING: Okay, thank you. Any other questions? That was sort of the main question.

Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Lutey. So, we had some testifiers this morning join us and they allege some serious claims today. These include false statements, tampering, and concealing documents and other accusations of corruption. How do you respond to these accusations?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you, Chair. Well, there's, in terms of what they're actually complaining about, I can only talk to the cases that I've handled with them.

So, in regard to Mr. Fishkin, I believe that he was assisting Chris Salem in a lawsuit that I handled briefly. I think that case may have been alive for a month or two and I won it by a motion for summary judgement after the court reviewed all of the documents that were presented. And it was specific to a UIPA request, not a FOIA request and that case was dismissed by the court.

After that case was granted, as Mr. Bilberry and I walked down the hallway, Mr. Fishkin walked behind us screaming at first Mr. Bilberry and then me about how we were corrupt, and he'd take our jobs, which eventually resulted in a restraining order against Mr. Fishkin on behalf of Mr. Bilberry, and I was the witness in that case. And I certainly never committed fraud. We produced everything we had in that docket.

In terms of Mr. Carroll, he sued us in Federal Court alleging excessive force after kicking a police officer who then tasered him. And likewise we went through depositions and so forth, all of the discovery and Judge Watson granted my motion for summary judgement and dismissed his case finding that the force was justified based on the kick which was admitted by Mr. Carroll.

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair. How do you as Director, Director, how do you plan to require staff to maintain neutrality on issues that they represent? It's clear that right now, and under previous leadership this has not been required and we have seen that behavior recently with the injection well lawsuit.

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you, Chair. That's something that we had a bit of a discussion on, on the day before and unfortunately, I just was too sick to attend the following day. But in terms of that, it's really hard sometimes when you're in the middle of the battle to see things clearly. And so we discuss handling in a manner where we advise all of you to the best of our ability and that's going to include things that, the way I explain it is we tell you the good, the bad, and the ugly so that there's never any question if we end up getting hit hard on something or hit at all.

In other words, an adverse judgement, well you would say gosh, you never told us that that was a possible issue because we told you, and so, I don't want it to be perceived as though maybe someone isn't completely neutral. Sometimes it's kind of hard to be completely neutral when you've had cases for years, but we do try that. We have to tell you everything and sometimes it's going to just be things that you'll probably not going to want to hear from us.

CHAIR KING: Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So, we met before, you and I met in my office before the second day of the GET Committee meeting and we spoke about, you know, your leadership in encouraging your deputies to try to share more of the broader picture. What's possible? What's probable? And what's more than likely not going to happen. Did you get an opportunity to speak with your deputies after we met? Because you weren't there on the floor, I was hoping you were going to be on the floor that day to ensure that that type of information was provided to the Council. Because it wasn't being provided to the Council and we understand that you were sick, but I'm wondering if you had an opportunity to meet with them to provide that guidance.

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. After we met, I went straight down, and we discussed, discussed all of that.

VICE-CHAR RAWLINS-FERNANDEZ: Cause, that that next meeting, Mr. Kushi said he didn't, he wasn't aware of a meeting that you and I had.

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: I remember it.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, last question, Chair. As the Director of Corporation Counsel would you allow the department to go to the Supreme Court for a win on paper if it meant putting our community and our natural resources at risk and opening the County to further litigation?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. In terms of the decision on that, it's not our call. So, it's going to be dependent on the body, I certainly would not want to see this home that I've grown up in be decimated by pollution or otherwise, but at the end of the day, our job is only to advise you. And this body and/or the Mayor combined would need to make that call and we will support that.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Last follow-up, sorry.

CHAIR KING: It's okay.

VICE-CHAIR RAWLINS-FERNANDEZ: So, the role of Corporation Counsel is to advise like you said. I felt like I was fighting with Corporation Counsel my points. I didn't feel like at the last meetings we were being advised. I felt like we were being influenced. And we discussed in our meeting that, you know, sometimes when you're in the trenches, it's difficult to remove yourself from being before the Council and not being before a judge where you're trying to persuade the judge. Being before the Council, you're advising on both sides of any legal issue and again, I felt that we were being persuaded to vote for a side. And I was hoping that, you know, your discussion with your deputies the next day or that day would have resulted in a more impartial deliverance of information to the Council. So, do you have any comments about the role of advising versus influencing?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. In terms of advising as opposed to influencing, there's been times and it comes up somewhat often, where the body wants us to weigh in on what the best route is. And so, typically what we try to do is say, well here's the pros and cons of if you do this, and here's the pros and cons of if you don't. And, I mean it's not always going to be balanced because sometimes the cons of not doing something or doing it may outweigh the opposite. But in terms of our role in advising, that's really my goal is to make sure that we're advising . . . but advising fully on all the pros and cons and not trying to force you into a position.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Ms. Lutey.

Mahalo, Chair.

CHAIR KING: Okay. Mahalo, Ms. Rawlins-Fernandez.

Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Lutey for being here today. I just was, and thank you for meeting in my office previously. I think your committee confirmation came like the day right after we met and so I had some additional questions now that it's been sometime later and a lot of things have happened regarding what we discussed previous to the committee hearing. And I was wondering if you had had a chance to be up with the subject matter from my committee hearing and some of the additional resources?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. Are you talking about the presentation?

COUNCILMEMBER PALTIN: Yeah.

ACTING CORPORATION COUNSEL: Actually, I haven't had a chance to watch it yet, but and I thought in terms of our conversation I found it actually really mentally stimulating. Cause I haven't had a conversation on these topics in years since honestly, I was in law school. But I haven't had a chance to watch the presentation although I do intend to, it's just--

COUNCILMEMBER PALTIN: How's about the NEA articles?

ACTING CORPORATION COUNSEL: The ones that you, I read those.

COUNCILMEMBER PALTIN: And any thoughts as to those?

ACTING CORPORATION COUNSEL: Same thing. I think they're really mentally stimulating. I'm not sure in terms of, like I totally understand where you're coming from and the concerns that you've got. There's a Supreme Court case out of Hawaii that I then read after I'd read the articles where they basically say that there's no route that way but I, it's really a topic of discussion I think, more than anything else at this point. Which I hope you keep having, like I said it was like one of the most stimulating conversations, not to offend anybody else, that I've had on this topic in a very long time.

COUNCILMEMBER PALTIN: Okay. Thank you. And also, do you know of any reason the County should not enforce SMA permit that the Mayor agreed to?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. I'm not sure what that one's about. I have really no idea. If you gave me a specific, I could go figure that out, but I haven't been involved in any SMA's or been consulted on it. So, I'm just not sure what that issue is about.

COUNCILMEMBER PALTIN: Okay, thanks.

ACTING CORPORATION COUNSEL: Thank you.

CHAIR KING: Okay, Councilmember Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Moana for being here and for meeting with my staff and myself. In our meeting, we did ask about, you know Corporation Counsel and when they're so invested in a case like the injection well case,

you know, upwards of seven years. I mean is it possible for the staff to kind of step back and look at it from a different perspective having invested so much time, you know, on one side of the case?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: Thank you. That's something I remember us having a pretty good discussion about. My thought on it is this, if this body wants to work towards resolution of it, then I'm not sure that the parties who are currently, who have been invested for seven years, can necessarily sit at the same table because they're entrenched. But that doesn't mean we'd exclude them, I just think maybe sometimes you need to get a fresh voice in and have someone either mediate it, I don't think this is an arbitration type case, but maybe try and get us all to middle ground, because I think ultimately we all have the same goal, which is protection of the environment. So, at least we have a starting point, but sometimes when you've been involved for so long that's really difficult.

COUNCILMEMBER SINENCI: Okay. Follow-up. Just a clarification, was the SMA permit case, was that Mr. Salem's case?

CHAIR KING: Ms. Lutey.

COUNCILMEMBER SINENCI: You were referring to earlier.

ACTING CORPORATION COUNSEL: The, I didn't have a case. My case with Mr. Salem was over UIPA. It was a UIPA request where he had asked for some documents in the KIVA system that he attached to his complaint and that I also produced to him. They just looked different because depending on what screen and access you have to it according to our IT, it comes out looking differently. But I wasn't involved in any SMA issues with him. It was over a lot that he owned out in Napili, I think it was, Lahaina side.

COUNCILMEMBER SINENCI: And that case has since been?

ACTING CORPORATION COUNSEL: It got dismissed by the court.

COUNCILMEMBER SINENCI: You know if he has appealed the case?

CHAIR KING: Ms. Lutey.

ACTING CORPORATION COUNSEL: No. There's been no appeal of that case. He had another case with my co-worker, Brian Bilberry. I'm not sure if that's SMA or not, it's a

little foggy this morning. But, that has also been dismissed by the Ninth Circuit Court of Appeals, he, Mr. Salem could choose to ask for writ of certiorari the U.S. Supreme Court and he's got a year to do that. He's run out some of that time, but he could still do that. It's just that would, I don't think there's much likelihood they'd take it, but he could. But it's currently not active.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR KING: Thank you, Mr. Sinenci. Okay, any other questions? Second round of questions and then we'll just go, I'm just going to go down on deliberations.

We'll start with Ms. on this side, Councilmember Kama, you have, any questions or comments? And it's okay to say no.

COUNCILMEMBER KAMA: I have no questions or comments, Chair. Thank you.

CHAIR KING: Okay, thank you.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Ready for the question, Chair.

CHAIR KING: Okay. Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I'm ready as well.

CHAIR KING: Okay. Councilmember Hokama.

Council Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I met with Ms. Lutey a few times now, through budget meetings the last few months, we had a chance to see what direction Ms. Lutey would take Corporation Counsel as director. While I respect Ms. Lutey as a professional, I'm not confident in her ability to lead the department in the direction that it needs to go. Our community has lost faith in our Corporation Counsel and I do not see the change in leadership since Ms. Lutey has been acting director. I believe I was voted onto the Council for change and I promised that I would fight for that change. I feel that this department needs a serious revamp and unfortunately, I do not feel that that will happen under her leadership.

When I met with Ms. Lutey to express my concerns, and she assured me that she would address them, and I put my faith in her leadership to make that appropriate

adjustments with her deputies to be more impartial, to not present information which obviously advocates for a side, unfortunately that didn't happen. So, while I know that she likely has the votes to be approved anyways, I do not feel that it is important, I do feel that this is important to be said. We as a County owe our community better. We need serious change and we need it fast.

I hope that if Ms. Lutey is approved, that she takes a serious look at the reputation of Corporation Counsel within this community and work hard to change the culture within the department to start working on behalf of the County rather than individuals and special interests with that community. Mahalo, Chair.

CHAIR KING: Mahalo, Vice-Chair Rawlins-Fernandez.

Councilmember Lee.

COUNCILMEMBER LEE: Madam Chair, I support Ms. Lutey and I am ready to vote.

CHAIR KING: Okay. Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. For my second and last time on the motion. You now, it's funny how the climate has changed since the Committee meeting regarding Ms. Lutey's appointment, 8-0 and it was stated like, I believe some Members that, you know, first female Corporation Counsel, person of Hawaiian ancestry. I've worked with Ms. Lutey before on my first go around on the Council and I found her to be responsive.

And but this position by nature, Madam Chair, it's one where you're going to get disagreement from members of the public on whatever decision you make. It's sort of like us as elected officials, we're going to have to make some tough decisions and it's a darn if you do, darn if you don't. So it's somewhat similar to what any position, anyone who heads a department, a very high profile department like Corporation Counsel where disagreement is part of the job. And you know I certainly respect people's opinions about their concerns with the appointment.

And I, there are mechanisms in our Charter where if a person whether it be an elected official or an appointed official, if there are any perceived or evidence of malfeasance of decision making, there's a process for removal. Also, if the Mayor decides to upon hearing many, many complaints and if there is evidence to back that up, the Mayor has the option of coming to this Council to ask for removal or simply you can just ask his director to step down, as we've seen with one of our recent nominees.



So, I believe that we should just focus on the individual's qualifications, she's certainly met that, and I'm willing to stick my neck out like some of us will to, to support Ms. Lutey and give her that opportunity, and to address some of these concerns if some right, wrongs need, perceived wrongs need to be made right, then so be it. I believe she has the integrity to go ahead and do that, so I'm putting my faith in her and so I will support Ms. Lutey. And it's not an easy position and you're going to get slammed no matter which way you go, like we do in our capacities as Councilmembers. So, I ask for the Member's consideration for Ms. Lutey. Thank you.

CHAIR KING: Thank you, Mr. Molina.

Councilmember Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. You know, looking back in, in previous Councils, I'm just, it's just been five months here and so at previous Councils and Administrations we understand that it was a very litigious Administration and a lot of high-profile cases, some of which I'm just, you know, still coming, stepping into and trying to understand. So, you know, and I don't, you know it's from past Administration, your past boss and past directors, so I would, would want to see that change at the Corporation Counsel, where, where we're not always jumping into litigations but maybe looking at other options, like legislation, something that I would be more pervious too.

Again, looking at settlement options and how we can work together with our community. Many of our testifiers through this process supported gender equality especially in some of the leadership roles that the County has. I'm not a judge or a jury, I'm just part of a nine-member board that gets to vote, and if there are any litigations to, to go through, you know, I would rather it not come through us or, but through, through the court system.

So I'm going to give Moana a chance. I'm going to support her today with reservations just so that we can, we look, look forward to working together and, and like some other Members said, change some of the Corporation Counsel's previous stances. Thank you, Chair.

CHAIR KING: Thank you, Mr. Sinenci. Okay, if there are no other comments, I'll make my comments. And you know, I have been hoping for a change in Corporate Counsel as well, and that is why I voted no on our previous Corp. Counsel. Unfortunately he made it through and then we found out that some of us who had some concerns were, you know, those concerns were materialized.

And I had been hoping for a change in our new Corp. Counsel and that was one of the reasons I voted in committee but one of my biggest concerns in that committee was

the question I asked about whether, whether being a litigator was going to hamper our Corp. Counsel's ability to serve, to serve the Mayor and then to serve the County Council objectively. And what I, my big disappointment in the last couple of weeks has been Ms. Lutey's absence in the injection well case, because I think to me that is one of the, the most important issues we are going to deal with this year and maybe in this complete term as a County Council.

I haven't seen any representation on consequences if we do go ahead and we win this case, but I've seen a lot of one sided arguments for us going to Supreme Court appeal and a lot of what I call hysteria about the cesspool issue. And I believe that that was one of the things we were told by our Vice-Chair, that was going to be discussed the next day and you know, mitigated by Ms. Lutey and of course she wasn't able to make it.

But I just have a lot of reservations about the way that Corp. Counsel, it seems to be continuing to influence the Council unduly and so I, I think there are the votes to install Ms. Lutey, but I think it also, I agree with our Vice-Chair that it needs to be said and there needs to be this, this point of view of the public. The public has been aware for a very long time that there are problems with Corp. Counsel and that's why the, that's why the Charter amendment passed, allowing the Council its own legal counsel.

Unfortunately, it was really not clarified, and I don't think it helped any that the, the interpretation of it is that we need six votes because that really doesn't allow us and if there is a split down the middle. And sometimes our hands, our hands are tied but, going to, having a difference of opinion especially about this issue of whether Corp. Counsel, whether it's standard language for Corp. Counsel to insert its own final approval in a resolution regarding a settlement, that was a big turning point for me in my decision. And I didn't like hearing the difference in opinion that this is standard language and sometimes it's put in there and sometimes it's not, because to me it doesn't feel very standard. I've never seen it before in my, in my term, but I am not going to support this appointment and I am still looking for a change in Corp. Counsel, I just have not seen it yet and that's what I was hoping to see before today.

So, I'm going to go ahead and call for the question and we'll do it by voice vote first.

CHAIR KING: All those in favor, seeing no other comments. All those in favor of the motion on the floor say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, AND SUGIMURA.

CHAIR KING: All those opposed?

NOES: VICE-CHAIR RAWLINS-FERNANDEZ, AND CHAIR  
KING.

CHAIR KING: Okay, so the, the "ayes" have it. Seven "ayes" and two "noes"; Vice-Chair Rawlins-Fernandez and the Chair and the measure passes. Okay. Congratulations, Ms. Lutey.

Mr. Clerk.

COUNTY CLERK: For the record, RESOLUTION 19-107.

Madam Chair proceeding with ordinances, second and final reading.

### ORDINANCES

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 28 (2019)

A BILL FOR AN ORDINANCE TO ESTABLISH THE EXPERIMENTAL AND  
DEMONSTRATION HOUSING PROJECTS FUND

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

May I request the Clerk also call up Bills 29 through 32 at this time?

CHAIR KING: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay, Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 29 (2019)

A BILL FOR AN ORDINANCE AMENDING TITLE 3, MAUI COUNTY CODE,  
TO ESTABLISH A COST-RECOVERY POLICY FOR THE DEPARTMENT OF  
PLANNING

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 30 (2019)

A BILL FOR AN ORDINANCE AMENDING SECTION 2.44.015,  
MAUI COUNTY CODE, RELATING TO SALARIES OF DEPUTIES  
CORPORATION COUNSEL AND DEPUTIES PROSECUTING ATTORNEY

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 31 (2019)

A BILL FOR AN ORDINANCE RELATING TO SALARIES OF EMPLOYEES OF  
THE LEGISLATIVE BRANCH

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 32 (2019)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE  
COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL  
AGREEMENT FOR A LOAN FROM THE STATE OF HAWAII'S WATER  
POLLUTION CONTROL REVOLVING FUND FOR THE WEST MAUI  
RECYCLED WATER SYSTEM EXPANSION,  
FISCAL YEAR 2020 BUDGET ORDINANCE

CHAIR KING: Okay, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE THAT BILLS 28 THROUGH 32 PASS SECOND AND  
FINAL READING.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay. Moved by Vice-Chair Rawlins-Fernandez, seconded by  
Councilmember Lee.

Ms. Rawlins-Fernandez, speak to the motion.

VICE-CHAIR RAWLINS-FERNANDEZ: No discussion.

CHAIR KING: Okay. No discussion. Any other comments or questions?

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Chair, I understand the motion on the floor of consolidating certain bills therefore I will be voting "no". I have a disagreement on final reading for Bill No. 30 and 31; therefore, I'll exercise my non-support by voting "no". Thank you.

CHAIR KING: Okay. Any other comments? If not, I'll call for the questions. All those in favor of the motion on the floor say "aye".

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, SUGIMURA VICE-CHAIR  
RAWLINS-FERNANDEZ, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: COUNCILMEMBER HOKAMA.

CHAIR KING: Okay, motion passes. Eight "ayes", one "no"; Councilmember Hokama.

Vice-Chair Rawlins-Fernandez. I'm sorry, Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 33 (2019)

A BILL FOR AN ORDINANCE DETERMINING THAT PART OF  
THE PROCEEDS OF GENERAL OBLIGATION BONDS OF THE  
COUNTY OF MAUI HERETOFORE ISSUED IS IN EXCESS  
OF THE AMOUNTS REQUIRED FOR THE PURPOSES FOR WHICH  
SUCH BONDS WERE INITIALLY ISSUED, OR MAY OR SHOULD  
NOT BE APPLIED TO THOSE PURPOSES, AND DIRECTING  
SUCH PROCEEDS TO OTHER PUBLIC IMPROVEMENTS  
OR AUTHORIZED PURPOSES OF THE COUNTY OF MAUI

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

May I request the Clerk also call up Bill 34 and 35 at this time?

CHAIR KING: Any objections?

MEMBERS VOICED NO OBJECTION.

CHAIR KING: Okay, Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 34 (2019)

A BILL FOR AN ORDINANCE AUTHORIZING THE  
ISSUANCE OF FIFTY-ONE MILLION, THREE HUNDRED NINETY-  
FOUR THOUSAND DOLLARS (\$51,394,000) AGGREGATE  
PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS OF THE  
COUNTY OF MAUI FOR THE PURPOSE OF PROVIDING FUNDS TO  
PAY ALL OR A PART OF THE COST OF APPROPRIATIONS FOR  
PUBLIC IMPROVEMENTS OF AND FOR THE COUNTY OF MAUI;  
FIXING THE FORM, DENOMINATIONS AND CERTAIN OTHER  
FEATURES OF SUCH BONDS AND PROVIDING FOR THEIR SALE;  
AUTHORIZING THE DIRECTOR OF FINANCE TO DETERMINE  
CERTAIN DETAILS OF THE BONDS; AUTHORIZING THE  
ISSUANCE AND SALE OF A LIKE PRINCIPAL AMOUNT OF  
GENERAL OBLIGATION BOND ANTICIPATION NOTES IN  
ANTICIPATION OF THE ISSUANCE AND SALE OF SUCH BONDS;  
AUTHORIZING THE ISSUANCE OF REFUNDING GENERAL  
OBLIGATION BONDS OF THE COUNTY; AND PROVIDING FOR  
OTHER ACTIONS RELATED TO THE ISSUANCE, SALE AND  
DELIVERY OF SAID BONDS

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 35 (2019)

A BILL FOR AN ORDINANCE RELATING TO THE  
CAPITAL PROGRAM FOR THE FISCAL YEAR ENDING JUNE 30, 2020

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE THAT BILLS 33 THROUGH 35 PASS SECOND AND  
FINAL READING.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, motion by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: No discussion, Chair.

CHAIR KING: Okay, any other discussion or comments.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Kind of on a related side note, but Councilmember Hokama sent a letter to--

CHAIR KING: We're on the motion.

COUNCILMEMBER SUGIMURA: --to Committee.

CHAIR KING: Is this relating to the motion?

COUNCILMEMBER SUGIMURA: Its related, about answers to his questions, like I think it came out in the Maui News--

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, point of order.

That's going to be the next one, Bill 36.

COUNCILMEMBER SUGIMURA: About the whole--

VICE-CHAIR RAWLINS-FERNANDEZ: You're talking about the budget bill yeah?

CHAIR KING: The budget bill is Bill 36.

COUNCILMEMBER SUGIMURA: But these are all related. So, are we going to answer Mr. Hokama's questions?

CHAIR KING: Well, you're welcome to ask a question, if you have a question related to the motion on the floor?

COUNCILMEMBER SUGIMURA: So, Mr. Hokama's questions are related to all the items in the bill?

CHAIR KING: Do you have the questions? Do you want to read them out?

COUNCILMEMBER SUGIMURA: You want me to read his whole letter?

CHAIR KING: Well, this is your--

COUNCILMEMBER SUGIMURA: I will.

CHAIR KING: --this is your question, so you need to put it in context.

COUNCILMEMBER SUGIMURA: Okay. May 23, 2019 to the Budget Chair regarding Fiscal Year 2020 Budget.

A detailed list of all changes from the Mayor's proposed budget to the Council proposed budget, with an explanation of each change.

2. All calculations for each category of estimated revenues, including assumptions used to determine the increase or decrease in revenue.
3. Provided the rationale for supplemental transfers from the General Fund to the Highway Fund and the Sewer Fund rather than making the necessary adjustments within the Special Funds to maintain self-sufficiency of the Fund.
4. As it relates to Supplemental Transfers in the General Fund, provide the justification for the decrease to the Environmental and Sustainability Fund and the increase to the Solid Waste Management Fund.
5. Additional personnel were added to the Wastewater Operations, Solid Waste Operations, and Highway Operations, which should result in adjustments to Fringe Benefits and Administrative Overhead cost. Were these costs included in the Countywide Fringe Benefits?



Furthermore, there were reductions in the salaries of the Liquor Fund, which should result in a decrease of Administrative Overhead costs. If so, explain why there were no adjustments to the Overhead Reimbursement and Fringe Benefits Reimbursements under Countywide Costs.

6. Provided a breakdown of the increase, provide a breakdown of the increase of Countywide Fringe Benefits, by position.
- 7 Provide a breakdown of the Interfund Transfer under Countywide Costs.

I would appreciate a response prior to the final reading on May 28.

CHAIR KING: So, which ones do, apply, which of those questions apply to Bill No. 33, 34, and 35?

COUNCILMEMBER SUGIMURA: I believe that all of these are talking about the problems between the Mayor's budget versus what we went through so, all of the above.

CHAIR KING: So, all of those apply to the bill for determining the proceeds of general obligation funds?

COUNCILMEMBER SUGIMURA: Yes.

CHAIR KING: Okay. I'm not going to answer that because that letter was not, I was not requested--

COUNCILMEMBER SUGIMURA: So, is the budget--

CHAIR KING: --to, um--

COUNCILMEMBER SUGIMURA: Maybe, Mr. Hokama--

CHAIR KING: --to answer that question. So, if you want to, you know, have those questions answered or have your vote affected by whether or not they have been answered, that's up to you but that was a communication that we were copied on, but it was a communication between two Councilmembers.

COUNCILMEMBER SUGIMURA: Two Councilmembers.

CHAIR KING: Right, it was from Councilmember Hokama to Councilmember Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: It was to the Committee and I think all of us are on the committee.

CHAIR KING: It was directed to Councilmember Rawlins-Fernandez.

COUNCILMEMBER SUGIMURA: Economic Development and Budget Committee.

CHAIR KING: Chair, the Chair was named in that letter.

COUNCILMEMBER SUGIMURA: Okay, I've read this, and I wonder if there's answers? These are pertinent questions.

CHAIR KING: Well, we don't have any, I don't know who we would ask. I could, I could. Councilmember Rawlins-Fernandez are you able to respond?

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, I don't believe this is appropriate time because Member Sugimura cannot even say which questions are in accordance with which bill. I think these questions belong more with Bill 36, as I recommended earlier. So, first, so I don't know if you feel that it's appropriate at this time, Chair. If you would like me to go ahead, although it's not relating to the Bills that we are voting on at this time.

CHAIR KING: I just will leave it up to you since you're, as Budget Chair if you would like to respond to--

VICE-CHAIR RAWLINS-FERNANDEZ: Sure.

CHAIR KING: --those questions and if, if the person who wrote the letter, Councilmember Hokama has specific questions for Bill No. 34, 33, 34 and 35, we're happy to entertain that as well since that letter came from you, so. Do you have any other comments Ms. Sugimura.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, Chair. So, this letter was addressed to myself, from Member Hokama and it copied all the Members of the Economic Development and Budget Committee which, and I was advised by OIP not to respond outside of an open session meeting because that would be a violation of the Sunshine Law.

So, to the seven questions that Member Hokama asks, (1) and (2) sounds like it's from the process that Member Hokama conducted when he was Chair which is an attachment to the committee report referred to as Exhibit "1". We have a different process this year. All the information that is asked in (1) and (2) can be found in the budget documents that we have before us.

(3) and (4) were policy decisions made by the EDB Committee at the time to transfer General Funds to the special funds to accommodate the big, larger projects that the Council wanted the departments to carry out.

(5), answer is yes. And that it, the adjustment was made to the revenues to reflect the decrease in the administrative cost, so that we defunded three positions in the Liquor Commission.

(6) and (7), also refer to an attachment that was from the older process, Mr. Hokama's process, which was, would have been found in Exhibit "1", which wasn't part of the process that I had for our budget session this year.

CHAIR KING: Okay. Thank you for that explanation. Do you have any other questions, Ms. Sugimura?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

COUNCILMEMBER SUGIMURA: So, the Office of Information Practices, December 2018 had a change of their policy. So, if information, I think this was a Civil Beat lawsuit that went up all the way to the Hawaii Supreme Court, regarding transfer of information requested for transparency during the budget process. It was a lawsuit with City and County of Honolulu, and by reviewing the lawsuit, I think that Mr. Hokama's questions that he has basically brings out that transparency that he was requesting for and he put it all in that letter which I stand by that we need to get more information.

Yes, Exhibit "1" was what we got that last two budget sessions when he was Budget Chair and it provided us a clear information of what was happening in the budget process. And the reason why that I'm concerned about this and I'm glad Mr. Hokama put this in writing is because, for my, one thing when I was trying to figure out where that \$25,000 went for the Liquor Department and I think our floor discussion with Mr. Molina's changes in the E.P.'s there, where he deleted some and the discussion was that money would come from category A to pay for category B, the \$25,000 in the liquor study. I did ask staff, two staff people about where that was, and one person said it's there in category B, the other person was not, which told me that there's a discrepancy. So that was my little window into thinking that there's maybe more information needed.

I respect the new process that was taken but that in my, you know, in this it told me that there were problems and the first, one of the motions that are being, will be made today regarding the Section 8 Housing, that's another to me display of--

CHAIR KING: Okay. We're not there yet.

COUNCILMEMBER SUGIMURA: --discrepancies.

CHAIR KING: So, if you have--

COUNCILMEMBER SUGIMURA: This is part of the explanation.

CHAIR KING: I understand that but what you're describing to me is operating budget issues and we aren't on the operating budget yet.

COUNCILMEMBER SUGIMURA: Okay. I will, I will--

CHAIR KING: So, if you want to.

COUNCILMEMBER SUGIMURA: --I was just trying to answer what Ms. Rawlins was talking about, so.

CHAIR KING: Thank you. Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I think Mr. Hokama's memo brings up some very valid points and Ms. Sugimura brings up some good arguments. However, considering that this information was transmitted after first reading, it makes me believe that this, perhaps should have been brought up sooner during committee meetings and certainly during first reading if anything. As you know, second reading is almost a routine type of procedure and not conducive to long, involved relitigating various issues that were already considered in committee and at first reading. I really don't believe this suits the timing of the day, and I think we need to move forward with moving these, these issues either up or down at this point rather than go through long detailed discussions at this time.

CHAIR KING: Thank you, Ms. Lee.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. Gosh, interesting what a little piece of paper generated. I, I would state that my intent was to wait till after, to see exactly what Council passed for first reading, because I knew there was being proposed for that meeting. And I will be upfront, I was not in attendance, but I understood there were amendments that were being considered and that was adopted by the Council during first reading. So, I withheld my ability to give comments not knowing what form the proposal would end up for us to decide this morning, Chair. So that was one of the reasons.

Whether it's late or not in the process, it is still responsible to ask the question because the question to the community is still out there. What did we approve? How much is it really going to cost us? And, what are we going to get in return? Okay, those are the questions I get asked and I am unable to give them definite, specific responses currently. And that was part of my letter to Ms. Rawlins-Fernandez, as the Chair of our standing committee.

I cc'd all the Committee Members because one, I'm not asking any of you for anything. Did I ask you for a vote? No. Did I ask you any question? No. I just sent you a copy of a question I sent our Committee Chair to check with the appropriate staff, Committee staff, Council Services staff to see if we can have some responses that I believe the general community deserves. Okay, it's not for me. I've been doing budgets for forty years. I think those are people who are trying to understand our actions, that trying to understand what all this percentages, borrowing, non-authorization, cash consideration, what does this mean to the them on a day-to-day basis with their life, their family, and their own personal budgets?

So, I would say as far as this motion is concerned Chair, I think there's portions I would agree with Ms. Sugimura in general. The portions that impact the CIP portion is how we're going to look at countywide interfund transfers and how those balances then impact the cash flow. Cause as I've brought it up, maybe not forcefully enough during Committee and in other discussions chaired by my colleague, I think I've tried to express the concern that eventually, 1) I don't think this is a sustainable way of financing; 2) are we really going to take the amount of time to reauthorize certain projects we giving departments large infusion of borrowed moneys with no specific project in mind?

Okay, cause if I recall our Charter correctly, I don't think we can appropriate money to projects that don't really exist. So, the first question is, is there a specific project that we are funding? I know we have the general subject matter. Wastewater, drainage, but do we have a project from point A to point B for planning, design, and construction to achieve this mark? I'm not sure. But why, I, we ask these questions, Chair and colleagues, is one, to give reassurance to the community that what we are taxing and what we are planning to do is very clear to them.

I don't understand how we're going to do certain transfers when I'm not sure the project will actually go forward. I've done it before. This County Council is considering again holding back certain reauthorizations. When you look at the amount of the reauthorization being withheld, is that a fair amount with the Administration for them to move forward? Because we're going to blink our eye and this term will be over and we will see no project constructed, is my experience.

So, Chair, yeah, I believe we should have some answers. I would hope that Committee staff could assist us because when we agreed to non-substantive changes, you know, I still believe that is appropriate consideration by Council.

But like with OPEB we went from a minimum or a, what do you call that, arc number of \$15 million, we looked at 17 from the Mayor. I agreed with our Committee Chair that we should have been aggressive, we went up to 20 and the next thing at first reading it's \$23 million.

I would have hoped we would have been told we had this kind of cash situation, and is this the still the priority place for us to place this money. Why wouldn't we have looked at reducing borrowing to reduce that load, if we had such cash revenues available. Why would we have not then reaffirm the fee structure of various special funds to know that there is no need for a General Fund transfer and make the appropriate adjustment. I think these are questions that I would like to give a community that ask me, and I would be able to respond.

I disagree, and we use the word a lot about transparency. Yeah, the old process took a lot of hours to make happen. Took a lot of meetings, took a lot of communications, but I believe the community following had a sense of how we went from A to Z. There was this long process, yes, but it was very open. We had documents to share with the community, how we've made those adjustments. We have able ability to show the formulas and numbers of how we arrive at the final calculations to not only provide for the Committee Members and this Council, but for the community that we basically with the numbers provided of estimated revenues, with the expenses known, we have a, what is required a balanced budget. We have not used that term a lot in this process. And that is my concern. If we are questioned by the community, can we explain, and assure that we have a balanced budget. I'm not sure.

I'll give additional comments because I agree with my colleague from Molokai, the next bill is a critical bill and I have my concerns. But on this part of the CIP and companion legislation, these are my concerns, Chair. I fault no one. This is a requirement we need to do. There's a lot of details. It's a lot of work, but at the end of the day I need the businesses, the residents, the retirees to know exactly how we've assessed them to make this government work for them. Because unlike some of the testimony, I think for those of us that have longevity, have experience, we have the sweat and bones into this land. I think we are ma'a enough to know what is right. Thank you, Chair.

CHAIR KING: Okay. Thank you, Mr. Hokama.

Councilmember Lee.

**COUNCILMEMBER LEE:** Thank you, Madam Chair. I know we're not done yet, but I will be after this. You know, we did not pour over all the information and deliberate for an inordinate amount of hours line by line by line, project by project by project. And you know what, we didn't do this in a vacuum, we didn't do this without the constant cooperation and collaboration of the Administration. And, luckily for us the director, the Budget Director, was the director for the Council in previous budget deliberations. So, we had a tremendous working group going over every single detail.

And if you want to check the other counties, believe it or not, we increased our budget less than everybody else. One thing that I came into this session looking at was, because I've been here before, you know, trying to achieve a flat budget may have been a great thing in the past, but it's no longer true and it's no longer relevant because our needs vastly outweigh our resources and our revenues, and we had to do something about it. And we had to take courageous steps forward.

You know, our housing, infrastructure, programs, services, etc. are terribly lacking and the best we could do was try to figure out ways to diversify and increase our revenue base, and we're not done yet with that. We will have a TIG which will, you know, scrutinize that area. But I just want everybody to know that, we worked, we worked really hard and we worked as a group, you know, we didn't do things behind closed doors or anything, everything was totally out in the open. And we fought over this and that, and we came to a conclusion which we thought was the right conclusions which I believe is the right conclusion.

So, in spite of the questions, and you know, and we're all answerable to the public, it's not just one person, we're all. We, we tried very hard to take care of those who are disadvantaged. You know, we, we're criticized every single year because we have the lowest homeowner's rate in the world, and we tried to keep it like that again. So we again, we tried to look at the whole picture, we didn't want one particular sector to carry the entire burden, but we are trying to change things to shift the burden to where it belongs. So, I'm hoping going forward that we look at approving the rest of the bills and the entire budget with that mindset. Thank you, Madam Chair.

**CHAIR KING:** Thank you, Councilmember Lee.

Okay. Seeing no other comments or questions, call for the question which is the approval of Bill No.33, Bill No. 34, and Bill No.35. All those in favor say "aye".

**AYES:** COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, VICE-CHAIR RAWLINS-  
FERNANDEZ, AND CHAIR KING.

CHAIR KING: Any opposed.

NOES: COUNCILMEMBER HOKAMA and SUGIMURA.

CHAIR KING: Okay, measure passes seven "ayes", two "noes"; Mr. Hokama and Ms. Sugimura.

Mr. Clerk.

ORDINANCE NO. \_\_\_\_\_  
BILL NO. 36 (2019)

A BILL FOR AN ORDINANCE RELATING TO THE  
OPERATING BUDGET FOR THE COUNTY OF MAUI  
FOR THE FISCAL YEAR JULY 1, 2019 TO JUNE 30, 2020

CHAIR KING: Vice-Chair Rawlins-Fernandez.

COUNTY CLERK: And Madam Chair, just for the record the Council now has before it the four county communications that were deferred from earlier in the agenda.

CHAIR KING: Okay. Were those, was the intention to take those up first?

VICE-CHAIR RAWLINS-FERNANDEZ: It was, yeah, those were supposed to go before Bill 36.

CHAIR KING: Okay, I think the intention was to take up those county communications first, Mr. Clerk before Bill No. 36.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR KING: Okay. If you can read from the county communications, Mr. Clerk.

COUNTY CLERK: Yeah, we will do so Madam Chair. Just for the record though, the, each of the four communications make amendments to Bill 36, so when these are taken up we will need a motion, a main motion on Bill No. 36 prior to taking amendments to it.

CHAIR KING: Okay.



COUNTY CLERK: But at this time, we will call up the additional four county communications.

### COUNTY COMMUNICATIONS

NO. 19-229 - KEANI RAWLINS-FERNANDEZ, CHAIR, ECONOMIC DEVELOPMENT AND BUDGET COMMITTEE, (dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), for the Section 8 Housing Program.

CHAIR KING: Vice-Chair, I'm sorry, Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. May I request the Clerk also call up County Communications 19-230 through 19-232 at this time?

CHAIR KING: Would you want to do 231 since you've got to switch in places for 232?

VICE-CHAIR RAWLINS-FERNANDEZ: I'm sorry. 230, 231 and 232.

CHAIR KING: Okay. So, you're going to speak to that one?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

CHAIR KING: Okay, any objections?

COUNCILMEMBER HOKAMA: Objections.

COUNCILMEMBER LEE: No objections.

CHAIR KING: Mr. Hokama, you have an objection?

COUNCILMEMBER HOKAMA: Yes, Chair, cause I support couple of the proposals and I don't on two of them.

CHAIR KING: Okay. So, we can, we can take them up one at a time if that's the--

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

CHAIR KING: So, we'll start with County Communication 19-229.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ:

CHAIR, I MOVE THAT, I'M CONFUSED, SORRY, CAN WE,  
CAN I CALL FOR A QUICK RECESS?

CHAIR KING: Okay, recess at the call of the Chair. Don't move.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:12 P.M., AND WAS  
RECONVENED AT 12:13 P.M., WITH ALL MEMBERS PRESENT.)

CHAIR KING: Okay, reconvening the Special Council Meeting of May 28.

So, Members, we are, we're going to, we're back to actually Bill No. 36. The County Communications that were referred to later on in the agenda are actually amendments, so they're not referrals. So, Ms., Vice-Chair Rawlins-Fernandez, would you like to make a motion?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

I MOVE THAT WE MOVE, I MOVE THAT WE PASS BILL 36 ON  
SECOND AND FINAL READING.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee. And okay, now we can take the amendments up one at a time.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

May I request the Clerk call up County Communications 19-229?

CHAIR KING: Mr. Clerk.

NO. 19-229 - KEANI RAWLINS-FERNANDEZ, CHAIR, ECONOMIC DEVELOPMENT  
AND BUDGET COMMITTEE, (dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), for the Section 8 Housing Program.

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

County Communications the Clerk read into the record is a proposed housing keeping amendment to Bill 36 based on additional clarifying information received after first reading on the budget on May 17.

CHAIR KING: Vice-Chair Rawlins-Fernandez, can we get the motion first and then you can speak to it?

VICE-CHAIR RAWLINS-FERNANDEZ:

THEREFORE, I MOVE THAT BILL, THAT COUNTY COMMUNICATION 229, THE AMENDMENT IN COUNTY COMMUNICATION 229 BE PASSED.

COUNCILMEMBER LEE:

THAT'S A SECOND TO AMENDING THE MAIN MOTION.

CHAIR KING: Okay. So, moved by Councilmember Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez, speak to the amendment.

VICE-CHAIR RAWLINS-FERNANDEZ:

Yes, I move to amend Bill, I move to amend Bill 36, by adding a proviso under Department of Finance, Countywide Costs, Fringe Benefits, page 7 relating to fringe cost for the Section 8 Housing Program, and on page 50 reverting to the total grant amount for the program as originally proposed by the Mayor, and to file County Communication 19-229.

The proviso under the Department of Finance, Countywide Costs, Fringe Benefits read, or would read "(a) Provided, that \$302,272 shall be for fringe costs for Section 8 Housing Program". The total grant amount on page 50 of Bill 36, Appendix A, Part II *[sic]* would be corrected to read, "\$25,813,932". The marked up copies attached to the Amendment Summary Form will show the Ramseyer format and the rationale.

We recently received clarifying information from the Budget Director and the Director of Housing and Human Concerns confirming that the total grant amount already includes \$250,000 in fringe costs that the program can bear. Adding a proviso under the Countywide Costs will merely show how the remaining fringe cost for the Section 8 Housing Program will be paid. The total amount of the budget remains unchanged as the \$302,272 in fringe costs were already appropriated under Countywide Costs. Again, we are merely adding a proviso.

CHAIR KING: Okay, thank you, Vice-Chair Rawlins-Fernandez.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. I'm going to vote against this amendment. I appreciate my colleague's motion. My objection is that I believe it's not the general fund's burden to pay for these benefits. This is part of the Federal grant requirements, and that we use Federal grant moneys to pay for those positions including benefits. That is the purpose of Federal funds for Federal temporary positions. The County should not assume, or the department, I should say, shouldn't making an assumption that the County General Fund should be paying for something that the grant funds were automatically earmarked for into requiring how to do the operations and reporting of this program.

I find the department taking this approach to be slightly insulting to the Council, making an assumption that the General Fund should be funding temporary positions of this nature. We have enough hard time paying in our General Funds for our permanent positions that the department can make this type of assumption. I find it inappropriate to ask this body for General Fund use, and therefore I will be voting no. Thank you.

CHAIR KING: Thank you, Mr. Hokama.

Councilmember Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. I just kind of remembered it a little bit differently. I kind of remember asking the Department that, you know, how can we help as housing, affordable housing was, you know, one of the biggest subjects and

issues of the past election on which we were voted into office and us wanting to from the very beginning have it a high priority of creating housing for people.

Having discussions with the Director and the Deputy Director of what we could do to create more opportunities for our citizens to have more housing, and by covering the fringe benefits out of the Countywide or the General Fund that would allow more of their money to be used for, for the Section 8 Housing Program. And so I mean, I don't feel like the department assumed that. I felt like we as Councilmembers wanting to desperately address this crisis in housing for our people asked them what we could do to allow for more, and that was one of the feedbacks we got, and so I gladly and willingly support. Thank you.

CHAIR KING: Thank you, Member Paltin.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. That was the discussion and I think if this, this whole issue, this is going to be our third time we're trying to correct this. And it really brings to light the need to have more information so that we can make the right decisions. And again, as I was starting to say, and Chair corrected me that it wasn't on the, at the right time. This issue as we were trying to correct the General Fund versus the grant funding to cover the fringes, the verbiage that I got and made the motion at the first reading, it came from staff.

And then here we are today making another correction which tells me that there's disparities and information that is available through what we called "Exhibit 1" in the past, but that would provide clear information so we don't have to make all these motions. We wouldn't be in this position if we had the correct information. So I, it just adds to, you know, Mr. Hokama's questions that I brought up earlier, and that I support this because that's what I was trying to correct along with Tamara Paltin as we were going through our, even before it passed out of committee. And my motion came at first reading, and here we are at second and final trying to still correct the same thing.

So, it brings to light that we have a problem in just the transfer of information within staff because that's who gave me the information and who's trying to make this correction now. So, thank you.

CHAIR KING: Thank you, Ms. Sugimura.

Any other questions or comments? Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to correct the statement that was made. "Exhibit 1" would not have corrected this. Yes, this was a motion that Member Sugimura made during first reading based on the information at the time from the Budget Director and the Director of Housing and Human Concerns. After that first reading when Member Sugimura made this amendment, additional clarifying information was received correcting that proposal that was made at first reading. So, "Exhibit 1" wouldn't have prevented this from happening. This is just based on the information that everyone received.

You know, we also have a new Mayor, a new Budget Director, a new Director of Housing and Human Concerns. Everyone is trying their best and I don't think it's fair to throw anyone under the bus. Mahalo, Chair.

CHAIR KING: Thank you, Vice-Chair Rawlins-Fernandez.

I thank Councilmember Paltin for clarifying the reason for this. The money is actually in there, we're just, we're just stating that that's what it's for. And we did have a very full discussion about what would happen with the Section 8 Housing if we, if they had to also pay for their own fringe benefits, so this is a way of making more money go directly to the Section 8 vouchers. And you know, agree with Member Paltin that we had a long discussion about it and we decided this is how we can help in that program.

And so, but there are, there are some issues that will probably even come up after as in our previous budget. You know, we realize there were some things that we didn't fix in the budget, like some of the park fee issues and the definition of a student bus pass. We had to go back in and fix those things and this happens every time.

When we got the budget from the Mayor's Office, there were multiple mistakes in it, errors in it and you know, like you said, it was the first time that the Budget Director who worked on the Council side had been working on the Mayor's side and had presented the full Mayor's budget for the first time.

So we worked on a lot of these issues together with the Budget Director and we were able to, to correct some of those mistakes, and we're correcting mistakes as we go along or, or omissions. And so, I think it's going to be an ongoing thing, you know, there may be something we find out in a month that we didn't clarify that we need to pass an ordinance to clarify, or we need to correct an ordinance, so I think this is a fairly benign issue and so that's my position. I will be supporting it.

Member Kama, you have comment?

COUNCILMEMBER KAMA: Thank you, Chair. My sense of this new process and all the new people that are here, including us is that there's nothing that we can't fix. There's nothing that we can't fix. We're the power brokers in this place. If in two months, we look at it, we say, oh my gosh, I forgot this? Remember the discussion? Yes, I remember the discussion, so let's fix it. So, I think if we remember that, that as we go along throughout the course of the year and next year, that whatever comes up, we can fix it. And we'll fix it, because we all have good memories, right? Thank you, Chair.

CHAIR KING: Thank you, Councilmember Kama. And if we don't remember we have Akaku's record of it, so.

If there are no other questions or comments, I'll call for the question before us, which is the amendment proposed by Budget Chair Rawlins-Fernandez. All those in favor say, oh, I'm sorry, Mr. Clerk.

COUNTY CLERK: I apologize, Madam Chair. Just for clarification, in the motion made by Vice-Chair Rawlins-Fernandez was to amend Bill 36 and then in her comments it included the filing of the communication. Just wanted clarification on the vote that's going to be taken if it also will include the filing?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes. Thank you.

CHAIR KING: Okay and second, Councilmember Lee, good with that. Okay. Alright. All those in favor of the motion say "aye".

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, SUGIMURA, VICE-CHAIR  
RAWLINS-FERNANDEZ, AND CHAIR KING.

CHAIR KING: Any opposed.

NOES: COUNCILMEMBER HOKAMA.

CHAIR KING: Okay, motion passes eight "ayes", one "no"; Member Hokama.

Mr. Clerk.

NO. 19-230 - KEANI RAWLINS-FERNANDEZ, COUNCIL VICE-CHAIR,  
(dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), relating to the Experimental and Demonstration Housing Projects Fund.

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

I MOVE TO AMEND BILL 36, BY AMENDING PAGE 8 OF BILL 36 TO REFLECT AN APPROPRIATION OF \$1 MILLION FROM THE DEPARTMENT FINANCE, COUNTYWIDE COST, TO FUND THE NEWLY CREATED EXPERIMENTAL AND DEMONSTRATION HOUSING PROJECTS FUND, THAT WOULD SUPPORT THE COUNCIL'S INTENT TO PROVIDE HOUSING OPPORTUNITIES FOR OUR RESIDENTS, AND TO FILE COUNTY COMMUNICATION 19-230.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, motion by Council Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I move to insert an appropriation of \$1 million under the Department of Finance, Countywide Cost on page 8 of Bill 36. I further move to reduce Department of Finance, Countywide Cost, Post-Employment Obligations, by the same amount. The Experimental and Demonstration Housing Projects Fund is listed on page 60 of Special Purpose Revenues. The markup copies attached to the ASF will show the Ramseyer format and the rationale.

CHAIR KING: Okay. Thank you, Councilmember Rawlins-Fernandez.

Any questions or comments? Okay, I'll just make the comment for, for the folks listening that this was a fund that follows the experimental and demonstration zoning that we have on the books which has actually never been applied before. And the intent is to try to start using this to do, to think outside the box and do projects like tiny homes and things like that, that have not been done before.



And, I think there's a general movement not just among our County, but in the State and even beyond the State to try and come up with more creative ways of housing people and addressing the homeless and the affordable housing issues. And so I support this as a way of moving into this, something a little bit outside the box and allowing some of our developers to, to utilize this, this type of zoning to address our housing crunch right now.

So any, Member Hokama.

COUNCILMEMBER HOKAMA: I'll be speaking in support of this proposal this morning. A couple things, one, the County did utilize this. This is the legislation that assisted Molokai in the 60's. This is about Kualapuu, okay, for those of us that know what occurred in our County. So, this is a tool that Council, or the old Board of Supervisors utilized years ago in coming up how to address that islands unique situation with the leaving of maybe almost all four corporate ag produce, operations on the island.

So, this is something that was done, mixed blessings in hindsight after 50 years of it. I believe it can work. It's something we should be looking at. My only concern is how we funding this? I would have thought that, you know, through funds we already have by Charter would have just yanked money from the Affordable Housing Fund for this, and reduce again, what I feel is the overburden now of the General Fund and the tax rates. So that's my only concern, but as far as intent and where we want to go, I'm in support of this proposal. Thank you.

CHAIR KING: Thank you, Mr. Hokama.

And I stand corrected, I was told by our previous Director of Housing that we hadn't used this before, but perhaps he was just talking about the island of Maui and not the County.

Councilmember Lee.

COUNCILMEMBER LEE: Well, actually it was used on Maui too, in Haiku.

CHAIR KING: Okay, then he was wrong.

COUNCILMEMBER LEE: Yeah, they're all wrong. Okay, I just actually wanted to say thank you to Mr. Hokama because I really appreciate, especially when he's helpful with information because he is, he is an asset to our Council. Thank you.

CHAIR KING: Thank you, Councilmember Lee.

I agree. Okay, if there's no other, oh, Councilmember Kama.

COUNCILMEMBER KAMA: Thank you, Chair. No, I just want to thank this Council for having the courage to be able to put that money into a fund for an experimental project. Because you have no idea what we're going to experiment on. You have some ideas. So, don't be surprised with what we come out with, but I thank you none the less for funding it. Mahalo, Chair.

CHAIR KING: Mahalo, Member Kama.

Okay, if that's all the comments. All those in favor of the motion on the floor, say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ, AND  
CHAIR KING.

CHAIR KING: Any opposed.

NONE.

CHAIR KING: Measure passes nine to zero. Unanimous.

Okay, Mr. Clerk.

NO. 19-231 - KEANI RAWLINS-FERNANDEZ, COUNCIL VICE-CHAIR,  
(dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), for definition of "Biodiesel Blend (other than B100)".

CHAIR KING: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

FOR MY LAST AMENDMENT AS NOTED IN COUNTY COMMUNICATION 19-231, I MOVE TO AMEND BILL 36 BY ADDING THE FOLLOWING LANGUAGE ON PAGE 41 OF THE "GENERAL BUDGET PROVISIONS" TO FURTHER DEFINE "BIODIESEL BLEND", AND TO FILE COUNTY COMMUNICATION 19-231.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, moved by Vice-Chair Rawlins-Fernandez, seconded by Councilmember Lee.

Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. The language would read as follows: "SECTION 25. Definition. As used in Resolution 19-100 and Appendix B of this ordinance, "Biodiesel Blend (other than B 100)" means mixtures containing 20 percent up to 99 percent by volume of biodiesel with diesel and other fuels." The markup copies attached to the ASF will show the Ramseyer format and the rationale. The amendment ensures consistency that the Council's intent and Chapter 243, "Fuel Tax Law", Hawaii Revised Statutes.

CHAIR KING: Thank you. Any questions?

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: So, I pulled up information--

I WANT TO MAKE AN AMENDMENT TO CHANGE THAT 20% TO 5%. I PULLED UP INFORMATION FOR ALLIANCE AUTOMOBILE MANUFACTURERS, AND THEY BASICALLY RECOMMEND FOR PEOPLE WHO ARE BLENDERS WHO PRODUCE AND USE 100% BIODIESEL AND DIESEL FUEL BLENDSTOCKS TO MAKE FINISH 5% BIODIESEL BLEND, SO NOT 20% BUT 5%, SO THAT'S MY AMENDMENT TO CHANGE 5% TO 20%, I'M SORRY, 20% TO 5% UP TO 99% BY VOLUME OF BIODIESEL WITH DIESELS AND OTHER FUELS.

CHAIR KING: Is there a second?

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Okay, do you need to speak to it further?

**COUNCILMEMBER SUGIMURA:** So, I pulled up information just to understand more about, you know, people who drive cars, what kind of fuel you want to put in your car? And this Alliance members is comprised of BMW, the same kind of car that you have, Chrysler, Ford Motor Company, General Motors, Jaguar, Mazda, Mercedes-Benz US, Mitsubishi, Porsche Cars North American, Toyota, Volkswagen, there's a whole slew of actual automobile makers that support this 5%. And so I just thought well maybe it should be 5% up to 99% by volume of diesel with diesel and other fuels to be more realistic.

**CHAIR KING:** Okay. Would you like to speak to that, Vice-Chair Rawlins-Fernandez?

**VICE-CHAIR RAWLINS-FERNANDEZ:** Mahalo, Chair. I will be speaking against the amendment to the main motion because the intent of the EDB Committee when making this, in creating this tax wasn't to allow those that would blend only 5%, and then that way they can drop their tax from 23 cents to 6 cents and we would lose a lot of revenue that way. The intent was for an actual blend and not just to circumvent paying the taxes that they should be paying with the 23 tax, the 23 cent tax for diesel. Cause I don't think it was the intent of the EDB Committee for it only be 5% for those selling diesel to get a heavy discount from 23 cents to 6 cents. So that's why I'll be speaking against the amendment.

**CHAIR KING:** Okay, so just to, just to confirm what Vice-Chair Rawlins-Fernandez was talking about, I actually thought about it later on after the bill passed our first reading and I thought well anyone blending less than 20% under that, or any, you know, small blends, could actually reduce their tax. The tax on diesel is 23 cents and if they went down to 6 cents, we will be losing 17 cents a gallon on all those, all those gallons less than 20% biodiesel.

In my calculations when I looked at the fuel, what the fuel tax was bringing in, that was somewhere around \$850,000 that the County might lose. So, I was the one that contacted Vice Chair Rawlins-Fernandez and said, you know you need to clarify that cause the way it's worded right now, we could actually lose a lot of money from people just splashing a few percent into their diesel and then lowering their tax rate to 6 cents.

I mean, I appreciate what you're doing and what you're doing is like, is kind of in line with what the biodiesel industry wants, but it would, it would, it would not be the intent of the Committee, and it would cost, it could potentially cost the County of Maui hundreds of thousands of dollars.

**COUNCILMEMBER SUGIMURA:** But we're not, we're not changing the diesel, excuse me, Chair. We're not changing the diesel 23 cents per gallon, we're talking about the biodiesel.

CHAIR KING: Right—

COUNCILMEMBER SUGIMURA: Correct?

CHAIR KING: So, if you put a blend of biodiesel —

COUNCILMEMBER SUGIMURA: --so, then you're saying that they can just add some of your biodiesel into their diesel and then get charged only 6%?

CHAIR KING: Well it doesn't have to be mine, it can be any biodiesel that they could put in it, but that would drop the tax, the way you're proposing it, it would drop the tax from 23 cents down to 6 cents a gallon.

COUNCILMEMBER SUGIMURA: For biodiesel I'm talking only about. I'm not talking about.

CHAIR KING: Well, you're talking about the blends.

COUNCILMEMBER SUGIMURA: --I'm talking about the blends.

CHAIR KING: So, yeah, so the amount that was proposed was the amount for the blend.

COUNCILMEMBER SUGIMURA: Correct.

CHAIR KING: And that was the total gallon. So, what you're proposing would drop the tax on the total gallon under 20% biodiesel down to 6 cents. So I think this kind of speaks to the need to actually have a discussion, a Committee discussion on renewable fuels and what they're being charged because there's a lot of issues with all kinds of fuels. Like we don't know how much of the electricity is made with petroleum and we don't know how much of it is being made with solar.

And we don't, you know, these kinds of issues come up when we don't have a full discussion in Committee. And that's, that's, I didn't think about it until I was, after a few days after the Committee, I was driving home from somewhere and I thought, well wait, the way it's worded would, we would actually be at risk of losing hundreds of thousands dollars in tax revenue. So, does that kind of explain. Okay.

Councilmember Lee.

COUNCILMEMBER LEE: Okay, we forgive you, Madam Chair.

CHAIR KING: It wasn't my proposal.

COUNCILMEMBER LEE: No, for thinking of it later and talking to her about it.

CHAIR KING: Oh. Yeah, I wish I had, well it's kind of, you know, that's why I was saying we should try to have a full discussion.

COUNCILMEMBER LEE: It's cutting into our lunch time. But anyway, maybe we should think of having more TIG's on fees, you know, I think that would be helpful.

CHAIR KING: Right, right. I think that's a really good idea.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Chair, thank you. Taking a cue from a returning Member Lee, again, I agree. We are limited in what we can do this afternoon as far as options on second and final reading. But my thing for Mr. Kushi as the sitting representative for Corporation Counsel, isn't the proposal, I know the proposal is to amend the ordinance or the code. Wouldn't it be just easier for us to use the fuel tax resolution and put the definition in there as part of either the "RESOLVE" or "WHEREAS" clauses to help support the proposed highway fuel tax rates?

CHAIR KING: Mr. Kushi.

DEPUTY CORPORATION COUNSEL: Madam Chair. The question is, this proposal is to amend the ordinance?

COUNCILMEMBER HOKAMA: Yes--

DEPUTY CORPORATION COUNSEL: So, you're saying to--

COUNCILMEMBER HOKAMA: --what I'm saying, wouldn't it be more appropriate and better to include it as part of the fuel tax resolution, where we set the rates?

You know because this year we have is B 100 specifically and then other than B 100, you know we added those specific lines yeah. But maybe we put in the appropriate verbiage to help explain and define what was those adjustments we made to the tax rates, fuel tax rates, this is what I'm asking.

CHAIR KING: I thought that's what was being proposed. Mr. Kushi. Can we, can we just get a, can we get a--

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, point of clarification, real quick.

CHAIR KING: --a point of information from our Vice-Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Point of information. We adopted the resolution, cause I would totally agree with that. But we adopted the resolution already.

COUNCILMEMBER HOKAMA: No, yeah, I know--

VICE-CHAIR RAWLINS-FERNANDEZ: Oh, okay.

COUNCILMEMBER HOKAMA: --I understand what my colleague is saying and I agree. Why I'm asking that is because for me, I'm thinking of maybe we should just, I mean, I understand what Ms. Sugimura is saying; I understand what Ms. King is saying, but my point is where we at is kind of stuck here because my point was we should be supporting B 100 and tax everybody else accordingly. I don't know why we even giving Biodiesel Blend one break, since they're a blend, okay. So, I don't know why we giving additional breaks, because that's not where we what to be. So--

DEPUTY CORPORATION COUNSEL: Well, I won't speak to the merits, you know that's, that's up to you.

COUNCILMEMBER HOKAMA: No, I, I agree.

DEPUTY CORPORATION COUNSEL: But in terms of technicalities--

COUNCILMEMBER HOKAMA: Yeah.

DEPUTY CORPORATION COUNSEL: --the proposal before you is to amend the ordinance. Now again, it's a last minute amendment, but it was posted. Your Rules say you can pass it today. If you, you're going to take up another amendment, which is not posted to amend the resolution, you may run into a problem with your own Rules. But I leave that--

COUNCILMEMBER HOKAMA: I can waive, we can waive the Rules, right, Mr. Kushi.

DEPUTY CORPORATION COUNSEL: Well, I don't know, that's something for Mr. Raatz to answer, not me.

COUNCILMEMBER HOKAMA: Well we're the, we, only the body deals with procedure, not staff, not attorneys. Only the body does procedures. No, okay, no I understand what your response, Mr. Kushi. I just thought that would have been, as my colleague, that

we both agree on this, that maybe that would have been the better way if we had time and more options. So, I thank you, Chair. I thank you.

CHAIR KING: Okay. Thank you, Mr. Hokama.

Okay, so Ms., Councilmember Lee.

COUNCILMEMBER LEE: I withdraw my second to the motion to Ms. Sugimura's.

CHAIR KING: Okay. Alright, will you withdraw your amendment?

COUNCILMEMBER LEE: It's just easier that way.

CHAIR KING: Okay. Will you withdraw your amendment?

COUNCILMEMBER SUGIMURA: Sure.

CHAIR KING: Okay. It's really trying to help the County, not lose that revenue.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: I would agree, though that a, we've got a lot of work after today's meeting, yeah, whether it be with property tax review, which is timely since Planning is going to do zoning; category review; and additional revenue source reviews. I would say that's appropriate. So, yeah, we got a lot of work--

CHAIR KING: Yep.

COUNCILMEMBER HOKAMA: --before next budget. So, I look forward to that challenge. Thank you.

CHAIR KING: As do I. Thank you, Mr. Hokama.

And, we've been, and we, you know, we talk a lot about it during budget, but we got to remember to start the work after budget passes as well.

Okay, any other comments? If not, all those in favor of the motion say "aye".

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, SUGIMURA, AND VICE-CHAIR  
RAWLINS-FERNANDEZ.



CHAIR KING: Any opposed.

NOES: COUNCILMEMBER HOKAMA.

EXCUSED: CHAIR KING.

CHAIR KING: Okay, measure passes, oh, I'm sorry. I have to withdraw my, I have to recuse my vote. So, measure passes seven "ayes"; one "no", Mr. Hokama; and one "recusal", Chair.

Okay, Mr. Clerk.

NO. 19-232 - KELLY T. KING, COUNCIL CHAIR,  
(dated May 22, 2019)

Transmitting a proposed amendment to Bill 36 (2019), for Sunday operations at the Central Maui Landfill.

CHAIR KING: Okay. Members, Council Vice-Chair Rawlins-Fernandez has asked me to, to propose this. You still want me to propose this?

Okay, so we, we'll just take a one or 30-second recess to switch places. Recess.

(THE MEETING WAS RECESSED BY THE CHAIR AT 12:43 P.M., AND WAS RECONVENED AT 12:44 P.M., WITH ALL MEMBERS PRESENT.)

VICE-CHAIR RAWLINS-FERNANDEZ: The Council please return to order. It's 12:44 on May 28. We are on the last amendment to Bill 36.

Chair King.

CHAIR KING: Okay, thank you, Chair.

I MOVE TO AMEND PAGES 4 AND 5 OF BILL 36 (2019), DEPARTMENT OF ENVIRONMENT MANAGEMENT, SOLID WASTE ADMINISTRATION PROGRAM, SOLID WASTE MANAGEMENT FUND BY REDUCING THE CONTRIBUTION TO GENERAL FUND - ERS AND FICA BY \$2,129; REDUCING THE CONTRIBUTION TO GENERAL FUND - EUTF BY \$1,263; REDUCING THE CONTRIBUTION TO GENERAL FUND - OPEB

BY \$643; AND REDUCING ADMINISTRATIVE OVERHEAD  
CHARGE BY \$2384.

COUNCILMEMBER SINENCI:

SECOND.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Moved by Chair King, seconded by Member Sinenci.

Chair King.

CHAIR KING: Okay, thank you. Under the Department of Environmental Management Solid Waste Operations Program, Solid Waste Management Fund, page 5 of Bill 36, oh, I'm sorry, I didn't finish the motion, I forgot--

I MOVE TO REDUCE CATEGORY "A" SALARIES BY AN ADDITIONAL \$7,179 AND CATEGORY "B" OPERATIONS BY \$102,141 AND ADJUSTING THE TOTAL ACCORDINGLY. ON PAGE 7 OF BILL 36, DEPARTMENT OF FINANCE, COUNTYWIDE COST, DECREASE THE, I MOVE TO DECREASE THE SUPPLEMENTAL TRANSFER TO THE SOLID WASTE MANAGEMENT FUND BY \$102,141 AND ADJUST THE TOTALS ACCORDINGLY. ON PAGE 8 OF BILL 36, DEPARTMENT OF FINANCE, COUNTYWIDE COST, POST-EMPLOYMENT OBLIGATIONS, I FURTHER MOVE TO INCREASE THIS AMOUNT BY \$102,141. ON PAGE 1 OF BILL 36, I MOVE TO DECREASE THE INTERFUND TRANSFER BY \$102,141 AND ADJUST THE TOTALS ACCORDINGLY. ON PAGE 40 OF BILL 36, ADJUST THE TOTALS APPROPRIATIONS ACCORDINGLY. THE MARKED-UP COPIES ATTACHED TO THE ASF WILL SHOW THE RAMSEYER FORMAT AND THE RATIONALE. THE AMENDMENTS INCLUDE ADDITIONAL DELETIONS TO OPERATIONS, AS WELL AS TO ACCOUNT FOR NINE MONTHS OF SALARY FOR THE RETAINED POSITIONS INSTEAD OF THE FULL YEAR. INCREASES FOR ITEMS THAT WERE REDUCED OR DELETED BUT WERE INTENDED TO REMAIN ARE ALSO PART OF THE AMENDMENT. THE AMENDMENTS IN TOTAL WILL RESULT IN \$441,396 IN SAVINGS BY LIMITING THE SUNDAY LANDFILL OPERATIONS TO GREEN WASTE ONLY. THE

AMENDMENTS ARE BASED ON ADDITIONAL INFORMATION RECEIVED FROM THE DEPARTMENT THAT SHOULD HAVE BEEN INCORPORATED AT FIRST READING AND ARE CONSISTENT WITH THE COUNCIL'S INTENT. OKAY, NOW I'LL ASK FOR A SECOND.

VICE-CHAIR RAWLINS-FERNANDEZ: Moved by Chair King, seconded by Member Sinenci.

CHAIR KING: Okay, so as noted in the County Communication 19-232, by incorporating these additional adjustments relating to Sunday operations at the Central Maui Landfill, which was discussed in the first reading of the bill, we would save four positions. We would, we would not, either way we would not be bringing in any additional revenue per the Department because their presentation to me was that it would just take the Saturday, the folks that come in Saturday, split them between Saturday and Sunday so there wouldn't be any additional revenue either way. But the way they felt we could actually save a lot of the expense of being open one Sunday a month was to, just to reduce it to green waste only and then there were additional decreases in some of the other expenses.

So that's the motion before us. It just, it basically just adds the appropriate and reduces the appropriate amounts of money in those different pots of money. So, I can answer any questions on the actual amounts in the, in the Department's proposal if there's questions about that.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, mahalo, Chair King.

Member Molina.

COUNCILMEMBER MOLINA: Thank you very much, Madam Vice-Chair, Budget Chair and Chairman down on the floor right now. Playing musical chairs this morning. But just more of a general question and as Members know, during the Budget Committee session, I introduced the proposed amendment, since modified today back in Committee on behalf of Chairman King.

If I may ask Chairman King, I know you mentioned in Committee that it was Mr. Ratte that you had spoken from Solid Waste. Has the Director, Mr. Nakagawa weighed in on these deletions as well since the proposal? I know we've kept Mr. Nakagawa quite busy with other matters so if I can ask Chairman King--

CHAIR KING: Sure. Yeah, originally it was Mr.--

VICE-CHAIR RAWLINS-FERNANDEZ: Chair King.

CHAIR KING: Thank you, Chair. Mr. Ratte who is the head of Solid Waste Division who came to see me about these issues and he, he was acting on his own accord as the, as the Director of the Solid Waste Division and of the landfill. And then we followed up, my office followed up with the director, Director Nakagawa on these expenses. And the, when you, the expenses that you read off, the page 5-67, tires and tubes was not translated into the bill correctly, it was suppose to retain \$500 but it, it got dropped and then the, the page 5-68, the services and contracts was also not incorporated. And those were items that were supposed to be left in.

But if you look at the amounts for the two employees that will be retained versus the six, they are, one of them, well actually those positions are a little bit higher than the normal position and that was an attempt to look at a higher level like a mechanic type of person. And it was shared with me that they, their contract is over \$200,000 for mechanical repairs, and if they had somebody on staff who had that capability, they could save over \$200,000.

So, I think this is a good plan that they came up with and it will allow them to save some money in other areas as well with these two employees, but it will not be the overkill that we originally were looking at with the six employees with just to keep the landfill open one day a month extra. So, thank you for the question.

COUNCILMEMBER MOLINA: Thank you, Chair and thank you, Madam Vice-Chair.

So, yeah, I can, I guess this is one of the, I don't want to say few moments where we're looking at cost cutting with proposals. I appreciate the Mayor's intent to open up the landfill on Sunday. So, this proposal is more like taking baby steps with this. I guess this is an experiment to see how much people will come out on Sundays, just at least for green fill, green waste, I guess so to speak and maybe depending on how it goes, next budget session, then maybe we can implement additional positions to take care of other solid waste matters. So I'll go ahead and support this, Madam Chair. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Molina.

Member Hokama.

COUNCILMEMBER HOKAMA: I appreciate the amendment being considered by us at this point, Chair. Either you or maybe Ms. King, unlike Mr. Molina, I think there's some additional cost because I'm thinking now we got to increase the contract for ECO since we are just going to do green waste. So, I'm wondering if there was a calculation on the adjustment for the ECO contract, Chair?

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, Chair King.

CHAIR KING: Thank you, Chair. There was no adjustment because the, that was figured into the original cost of leaving the landfill open so they're still going to have that cost. That won't change but they will only be taking green waste. Before they were going to be taking green waste and everything else, so they still had to have ECO out there to handle the green waste portion. So, there was, the report I got from, from Director Nakagawa was that it was no difference.

VICE-CHAIR RAWLINS-FERNANDEZ: Member Hokama.

COUNCILMEMBER HOKAMA: If they can make that happen, I'd be doing cartwheels, Chair. But I don't think they can do it, in my 20 years of watching this program. So I'd be waiting and watching because I think they should have made a, I don't know, I still think there's additional cost and that, you know, eventually we got to make an adjustment to EP&S fund appropriately. Thank you, Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Member Hokama.

Members, any other discussion? Okay, seeing none, I'll call for the question. All those in favor of the amendments made in the ASF and the filing of the communication, please say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE,  
MOLINA, PALTIN, SINENCI, SUGIMURA,  
VICE-CHAIR RAWLINS-FERNANDEZ AND CHAIR  
KING.

VICE-CHAIR RAWLINS-FERNANDEZ: All those who oppose, please say "no".

NOES: NONE.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, the motion passes, nine "ayes"; zero "noes"; and zero "excused". Okay. Mahalo. We're going to take a quick recess to swap back, Chair King?

CHAIR KING: Chair, you can, you can adjourn the meeting if you'd like? I think that was the final--

COUNCILMEMBER HOKAMA: No, we haven't voted yet.

VICE-CHAIR RAWLINS-FERNANDEZ: We have to vote on Bill 36. Okay. Real quick. A quick recess, it's 12:54. We'll take a brief recess at the call of the Chair.

(THE MEETING WAS RECESSED BY THE VICE-CHAIR AT 12:54 P.M., AND WAS RECONVENED AT 12:55 P.M., WITH ALL MEMBERS PRESENT)

CHAIR KING: Okay, Members it's 12:55, we're reconvening the Special Council meeting of the Maui County Council on May 28, and we have one item before us, it is the main motion for Bill 36 as amended. And I will turn the floor over to Vice-Chair Rawlins-Fernandez to speak to the motion as amended.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, I'm going to heed the advice of my neighbor, Member Lee and make this short.

Basically, this year's budget was such a collaborative effort. We addressed a lot of the needs of our residents, needs of our environment, and planning well into the future such as climate change and sea level rise. I think a lot of the, a lot of the larger expenditures that increased our budget was for housing, \$4.2 million more into the Affordable Housing Fund; \$400,000 more for Affordable Rental Housing Assistance; \$5 million more for Post-Employment Obligations. We put in \$7.5 million for Kihei-Makena Sewer Expansion; \$1 million for Upcountry Sewer System Upgrades; \$1 million for Experimental Demonstration Housing Project Fund; \$500,000 for Countywide Master Plan Shoreline Retreat Phase I; \$400,000 more for Miconia, Coqui Frog, and Little Fire Ant Eradication; \$9.5 million for the potential purchase of Wailuku Water Company; and \$3.5 million for the Lanai Youth Center and Skate Park.

I'm so proud to be part of this Council that has the foresight and courage to, you know, really address the needs of our community without continuing to kick the can down the road. You know, this Council has really taken it head on and like I said, I'm just, I'm really proud to be part of this Council with such a progressive budget. Mahalo, Chair.

CHAIR KING: Mahalo, Vice-Chair Rawlins-Fernandez. I think what I'll do is just go down and let everybody give their comments and I'm confident we can keep it to five minutes or less without doing the timer thing, that was started with the budget. And we'll start with Member Sinenci.

COUNCILMEMBER SINENCI: Thank you, Chair. Yes, I would like to support Bill 36, with the amendments that we made today. Mahalo, for, for this process, albeit a new one. It was very refreshing to be working, collaboration with the newcomers, as well as the, the more senior, our senior Members, experienced ones, there you go. And so, looking forward to implementing and following through with all of the, our proposals and our provisos. And again, thank you for this process. Mahalo.

CHAIR KING: Mahalo, Member Sinenci.

Councilmember Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. You know, no budget is ever perfect. I'm not sure if ever there was a perfect budget. But I see this budget as reflecting two things. Responding to the needs of our community in terms of areas such as affordable housing. I think this Council has stepped up with that. Addressing infrastructure concerns, and also the invasive species matters, to go along with many, many other things.

And as Member Lee alluded to earlier, I'm going to use some of this time, so hopefully she doesn't, you know, get mad at me for taking too much time. But, I think she hit on a good point earlier, all of our sister counties, there's been increases in their budget proposals versus their respective Mayor's proposal. And ours was the lowest of all three counties. But, none the less, it's still more, but it's the combination of addressing these needs that we have heard from our communities throughout our budget's hearings and meetings; and also, it's about the matter of cost of doing business.

Yes, we want our parks fixed; our roads and everything else, and also the impacts of our visitor industry, but it does cost us more money. Everybody knows the cost for shipping of materials and labor always goes up. And one important aspect is the need for our emergency services. That is a common thread that crosses all lines with the needs of our residents and our visitors. I mean, look at what's been happening in the news lately with all the rescues and all of the ocean safety rescues and the hike, hiking and everything else. That above all else should always be funded to the maximum need with equipment and so forth.

But it cost money and no, none of us here goes into, went into taking this job with loving to raise taxes, but there are times when you have to. And the entities that did experience tax adjustment from this body, the hotels and our short-term rentals, there have been impacts, and the short-term rentals have proliferated, if I'm naming one particular industry. But the consequences of that, less inventory for our long-term renters. So, there's a difficult balancing act that we have to find and that's why we've been entrusted to make some very tough decisions as it relates to that.

So, you know, I'll support the budget and I appreciate Member Hokama's thoughts too which should be something that needs to be taken into consideration. But above all it was a, you know, a very interesting process and I commend Budget Chair Rawlins-Fernandez for doing yeoman like work and it certainly, as I said, the most toughest committee to undertake. So, thank you very much and I will support the budget. Thank you.

CHAIR KING: Mahalo, Councilmember Molina.

Councilmember Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. I agree with Councilmember Molina. I give kudos to our Chair here, our Budget Chair. Being a probie and all, you know, rookie, you did an outstanding job. It's incredible. I just, can't help but admire the work that you have accomplished and, and how you were able to move this group of people.

You know, we're so different, yet I think in a way you were kind of lucky that you had the experience of Mr. Molina and Mr., in particular, Mr. Hokama; little bit of me. And then we had some experience from our Council Chair and Ms. Sugimura and then you have the fresh ideas of Ms. Tasha Kama and Tamara Paltin and our friend from Hana, Mr. Sinenci. You know, we, so, funny how we all came together and we all made it work and, in the process, we had a lot fun. Yeah? We had a good time. Once in a while, it got testy, but for the most part it was very productive and I'm very proud to have been a part of this. Thank you.

CHAIR KING: Mahalo, Member Lee.

Councilmember Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. One thing for sure, this group I can say is independent in a sense. We seem to have areas of consensus in agreement, and we have areas of consensus of disagreement. So I would say it's been a group that I've enjoyed one, because I have yet to find the differences to be of a personal nature. I find the differences to be about the specific issue or item that we have disagreed on, but we haven't disagreed as people on personal matters, so I appreciate that.

With respect to my colleague, again, it's not an easy chair that she has assumed, but I won't be supporting the final reading of this budget for couple of concerns that I'll quickly mention. One is again, my inability to explain certain things. And it makes me uncomfortable not to be able to respond to our community, to our residents about how we did taxation.

So, stating that, again, it's been a unique time of the State. Three of four counties went through major impact, financial impact on disasters. We were the fortunate County, so I expected our budget to be very different from our three sister counties. Okay, Honolulu, Kauai, and Big Island went through major natural disasters. Floods, volcano, tsunami, you name it, they got it, hurricanes. Okay, we were a little bit more fortunate.



But one of the things that I will agree on, and again, we have no control over contracts, that is something we deal with by requirements. But some of my concerns again though regarding how we've approached this budget is can we continue to have it on a more sustainable basis? Cause I'm looking at borrowing for the next 20 years to get this whole County of three populated islands in a position to address our natural phenomenon, whatever you want to call it. Climate warming, sea level rise, we have challenges that we cannot ignore.

So, my thing has been, how do we prepare the County on a financial plan that we can sustain, pay off our debts and still provide for a community that we hope will be growing, will provide jobs for our youth, as well as the housing for our citizenry. Takes a lot of money. Takes a lot of planning, Chair.

For me, part of my concern this afternoon is again, with this last one, I don't know how we've made the adjustments on Countywide categories with these type of adjustments we've made. You look at operations which this bill will cover; Fire, we gave them in Admin. another \$800,000. I don't know what they requested for that, but I know we provided it, and I just wanted to figure out what was that money for, because we've already made the adjustments for contract adjustments.

Stating that, also, when I look at the, again, this is my calculations; I did my calculations on transfers from specific funds from the General Fund; concern about a Highway Fund transfer because we made adjustments. We made transfers from our Sewer Fund; we made, we reversed transfer, or reduced our transfer from Solid Waste. And we also made under liquor, we reduced revenues to offset certain expenses.

And that's fine, but when I look under Countywide, where is the appropriate adjustments to offset what it shows on other pages? That is my concern, Chair. I don't need Administration to come down and tell us we have an unbalanced budget. I don't need them for tell us that they want to consider using the Mayor's budget to implement the Fiscal Year 2020 program. My concern is about implementing the Council's version of the budget and what it takes to ensure that the Council's version gets implemented.

So that's my concerns within the time we are going to use for final reading today, Chair. I know we can do better, I pledge my assistance to make it happen, but I thank the Members for doing what we could within this new adjusted format. We, did certain things better, I believe. There're certain things we can do better, I believe. But that's the nature of our business. So, with that I appreciate my opportunity to speak. Thank you.

CHAIR KING: Thank you, Mr. Hokama.

Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair for the opportunity to speak. I'm, you know, very proud of my community for being able to weather the natural disasters of fire and flood. We're a part of Maui County and you know, there was significant cost associated with that and the Fire Department was the one that pulled through and saved all of Lahaina. There was a very real possibility that, you know, Lahainaluna Road, the whole town could have been burnt down. And I think that the Councilmembers that did come out to my community after the disaster of the fire and the flood realized that we were hit by a natural disaster.

So, I'm proud that we were able to right size Ocean Safety after over a decade of providing 911 service for free. And I'm very thankful for the work of Council Vice-Chair Rawlins-Fernandez in her chairing of the EDB Committee. I think, you know, she was definitely the right person for the job and despite push back, I think that her initial approach helped those of us that had never been through this process become more familiar than the previous process would have. And in a very fair way, I feel like it kind of leveled the playing field and, and all of us being able to, or not all of us but, the more senior Members being able to adapt is a tribute to them and their knowledge and abilities.

And I think it's kind of funny when my Council, my colleague from East Maui said, senior, and in this setting it feels not as good as it has felt in the, all of the commencement ceremonies that I went through this past couple weeks. You know, to be a senior in that setting, it was different, I guess intention.

But I also want to recognize that at the point where we needed more information faster, that Council Vice-Chair Rawlins-Fernandez pulled back and adapted as well and let us have a hybrid version of speaking with the directors of the various departments. And I think that the whole process that we went through will only make the future process next year be that much more better for having gone through this previous process. And I think that, you know, only god is perfect. So, good job everybody. I'll support it.

CHAIR KING: Thank you, Member Paltin.

Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Thank you, I am, I think I said enough during deliberations throughout today. I'm not going to be supporting this, as I was hoping then that we

could get some of the answers that were asked. Cause I think there were good answers that'll provide valuable information that really the community is asking.

Over the weekend, I ran into Joe Pluta who, I'm glad he provided this testimony, and he basically is asking where's the money being spent. I got a phone call from Danny from Mama Ding's asking, what are you all doing by increasing our taxes and what is it for? So those questions that were being asked by the community and I guess also by the Chamber, I wish we could have had more transparency and, so that when we went along the steps that we took, that we would've had the supporting documents to make decisions to take us to, you know, the answers that are being asked today.

So, I appreciate everyone's hard work. I agree that Ms. Rawlins-Fernandez did a, you know, great job. It was grueling; it was fun; it was different and, but we came to conclusions that I think what we're sitting with today is, what are they and how do we explain it in the future if we need to? And that's the questions that are being asked by Mr. Pluta and the Maui Chamber of Commerce, the voice of business, and I think even the ILWU submitted something. So, thank you very much.

CHAIR KING: Thank you, Councilmember Sugimura.

Councilmember Kama.

COUNCILMEMBER KAMA: Thank you, Chair. You know, one of the things I've grown accustomed to over the years is that whenever I do a program or a project, I always debrief with the people that work with me. We always ask the same questions all the time, what did we do good; what did we not do good; and what can we do better next time? So, I think maybe that's something to begin our next budget process with, in evaluating what we just went through and be honest about what we did, what we could have done better, and what we'll do next time.

But, I'm just happy I will tell you, I'm as happy as a lark because you all allowed me to get all my housing priorities online, onboard, and then extra. So, I'm happy so I thank you all for doing that for our people, for our family, cause that's who it is.

So, thank you all for a job well done. Thank you, Chair and so, definitely next year we're going to have to debrief. Thank you, Chair.

CHAIR KING: Thank you, Councilmember Kama.

Okay, well I will give my closing remarks as your Chair. I agree with pretty much everything that everybody said, and I wanted to kind of note the idea of and I thank Mr. Hokama for bringing up the fact that we haven't had as many natural disasters, we

have had some, and Member Paltin pointed that out, and it does, I think what we're doing is learning from what has happened on the other islands.

I went to, last year I attended a workshop on the Big Island called "The Economic Impacts of Invasive Species", and I saw things that I never want to see on Maui. And same thing for affordable housing and the same thing for climate change issues.

And so, I think what we did this year and we've heard it from, in the Chambers from people who came forward and thanked us for this budget, for being bold enough to fund the things we need to fund for; to take care of the people that need housing and our people are homeless and to take care of issues like invasive species and infrastructure that are affecting commerce and are affecting our daily lives. So, you know, to me, I feel really good about this budget. I know it's a large increase, but like it was said earlier, not as large as the other islands as far as percentages have gone.

And we are addressing, I think it was pretty clear in that article, I thought the article was really good because it had the two perspectives in the paper today. And you know, just laying out what did we fund? We funded affordable housing; we funded solutions for homelessness. We funded solutions for climate change which we know is coming and we all, I think everyone in this Council supports issues for mitigating that. We funded a lot of infrastructure and projects that some of the folks in the audience today have been trying to get funded for a long time and finally saw that happen.

We got funding for the non-profits, and I really feel like this year the non-profits didn't have to spend as many hours in our audience as they normally do. And, and, you know, we were able to start to institutionalize which of those services that we want to fund without you know, hearing from dozens, and dozens of people every month. We funded emergency services and we funded, we funded prevention. So, we're moving forward.

I'm really happy that we're moving forward with the idea of, we need to discuss some of these items. We've already created a TIG at the EDB Committee, we need, you know, for real property tax reform. We also need to look at, as it was brought up today, revenue, revenues and fees structure. We're going to be looking at planning fees and we need to look at where, these are the things that tell us where we're going, and these are the things that will inform the next budget session so that we're not in budget and trying to decide these things while we're in the budget session.

So, I think, Mr. Hokama is right, we have a lot of work ahead of us. And I'm happy that we all recognize that and we're willing to do that work as we've shown, you know, with our discussions throughout the budget sessions. So, I thank everybody. I want to really thank our Economic Development and Budget Chair Keani Rawlins-Fernandez,

who I agree with everybody, she did a fantastic job this year and you know, for the first time. This is an evolving process and it will continue to evolve so I look forward to that, and as we go through the year, having input into the next year's budget process. And I fully support this body, the work that came out of this body from first hearing and I'm thrilled that people came out and supported our budget and thanked us for taking these bold steps. So, with that, I will call for the question.

All those in favor of the, passing the budget with amendments, Bill No. 36, say "aye":

AYES: COUNCILMEMBERS KAMA, LEE, MOLINA,  
PALTIN, SINENCI, VICE-CHAIR RAWLINS-  
FERNANDEZ, AND CHAIR KING.

CHAIR KING: Any opposed?

NOES: COUNCILMEMBERS HOKAMA AND SUGIMURA.

CHAIR KING: Okay, measure passes seven "ayes"; two "noes", Councilmember Hokama and Member Sugimura.

VICE CHAIR RAWLINS-FERNANDEZ: Chair.

CHAIR KING: Councilmember.

VICE CHAIR RAWLINS-FERNANDEZ: I just wanted to say thank you to everyone for their hard work, and as one of the testifiers said earlier, this budget is really a statement of our values on a pathway forward. So, mahalo, Mr. Blackburn-Rodriguez for that statement, that really resonated. And mahalo again everyone for your support with this budget. Mahalo, Chair.

CHAIR KING: Okay, well we gave our accolades in the first hearing, but I'm sure they all stand. So with no further business before us, we will have a motion to adjourn.

COUNCILMEMBER KAMA:

SO MOVED.

COUNCILMEMBER LEE:

SECOND.

CHAIR KING: Moved by Member Kama, seconded by Member Lee. And all those in favor, say "aye".

AYES: COUNCILMEMBERS HOKAMA, KAMA, LEE, MOLINA, PALTIN, SINENCI, SUGIMURA, VICE-CHAIR RAWLINS-FERNANDEZ and CHAIR KING.

CHAIR KING: Thank you. Good work.

### ADJOURNMENT

The Special Council Meeting of *MAY 28, 2019*, was adjourned by the Chair at 1:20 p.m.



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JOSIAH K. NISHITA, COUNTY CLERK  
COUNTY OF MAUI, STATE OF HAWAII

ERIC POULSEN  
298.9125

TESTIMONY – MAY 28, 2019

My name is Eric Poulsen. At ~~the~~<sup>A</sup> gathering in West Maui, I overheard a developer boasting about how his multi-million-dollar subdivision was no longer required to install roadway subdivision improvements or even pay one dime towards a County initiated capital improvement project.

As I found out, this happened through deceptive legislation adopted through ~~and the~~<sup>the</sup> Upcountry Water Bill. Developer's subdivisions "island-wide" continue to be granted exemptions from installing roadway frontage infrastructure improvements. At the same time, this Council was dealing with the decades of abuse by County attorneys surrounding the thousands of uncollected developer infrastructure deferral agreements, our own County attorneys Kushi and Oana were conspiring with Goode to find another way to shift developers financial obligations onto the backs of taxpayers. ✕

The change to the UpCounty Water Bill was written at the last minute without proper public notice. Corporation Counsel Deputy attorney Jennifer Oana approved it. / This, despite the fact that both Kushi and Oana emphatically stated in their own testimony that infrastructure exemptions could not be allowed island wide for commercial use through this Upcountry Water Bill legislation.

All of this baloney that giving developers freebees will somehow result in affordable housing is completely crazy. It just increases their financial rewards at our expense. I state this fact with County records, which now show what type of developments have taken advantage of this ordinance. For example, 1200 acres in central Maui and retail commercial development in West Maui.

Everyone on the Council at the time admits they were fooled by Kushi, Oana, and Goode. The Mayor admits he was not aware of language that was slipped into the ordinance. So too, does Don Guzman, and Elle Cochran.

During his confirmation hearings, with Kushi by his side, Goode stated the litigation surrounding these violations is dead. Acting Director Lutey is aware this is blatant lie. Anyone can go to Court house and see this litigation is not dead. I am not dead and will not accept any longer this abuse by these County attorneys. Ask Ms. Lutey today why she feels she is allowed to continuing to defend her own staff attorneys who have lied and deceived the citizens and this Council. Why are citizens put in this place of having to uphold the laws? Through a County Charter amendment, we gave this Council the rights to retain their own attorney when conflicts arise with County attorneys. Mayor Victorino voted for and supports this Charter amendment.

Ms, Lutey's name is now on recent Court filings for a case that was called dead, but is not and won't be if action is not taken by this Council. I want no part of litigation. Today, to end this burden on my family and waste of public resources, I am offering a settlement to this Council.

1. Repeal the language from Title 18 that Council Member Paltin has submitted.

2. Acknowledge the violations by Kushi and Oana, and request the Mayor remove them.
3. Deny Moana Lutey's appointment today for her violations of her duties to serve and protect citizens of Maui County.

Thank You





**MAUI**  
CHAMBER OF COMMERCE  
VOICE OF BUSINESS

**Testimony on CR 19-52  
Approving the Appointment of Moana Lutey  
Tuesday, May 28, 2019**

Dear Chair King, Vice-Chair Rawlins-Fernandez and  
Members of the Maui County Council,

Aloha and thank you for the opportunity to provide testimony on this matter.

We support the appointment of Moana Lutey to Corporation Counsel. With her breadth of experience as Deputy Corporation Counsel preceded by her work as Deputy Prosecuting Attorney for the County of Maui, she is a great fit for the position.

We ask that you please support approving her appointment to Corporation Counsel.

Mahalo for the opportunity to provide testimony.

Sincerely,

*Pamela Tumpap*

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.



# MAUI

CHAMBER OF COMMERCE

VOICE OF BUSINESS

**Testimony on Second Reading of the FY20 Budget  
Bill 36  
Maui County Council  
Tuesday, May 28, 2019**

Dear Chair King, Vice-Chair Rawlins-Fernandez and  
Members of the Maui County Council,

Mahalo for the opportunity to provide testimony on the Second Reading of the budget. We recognize and thank you for all of your hard work this year on the budget.

We deeply appreciate the \$100,000 line item grant for the Made in Maui County Festival included in this year's budget. This funding helps us to continue this event and economic development initiative and keeps the vendor booth fees low and the ticket fee to attend affordable for residents and visitors. We know this was a new process for all of you and for some, this was your first time working on the County budget. One of the things we would encourage you to address is to share with the public the clear plan for the increased funding. You have asked us as a community to come together and share in the investment of improving Maui County. Through this budget process, we are seeing tax increases and a strong affordable housing and rental program planned (which we support). However, many businesses have asked us how the \$42M increase will be spent and what results the community can expect to receive from that investment.

In the past, Councilmember Hokama as the Budget Chair would complete a chart (from FY19, document 316 "Revised Exhibit 1 – Fiscal Year 2019 Budget from Committee Chair 04-30-2018) that provided transparency in the process and helped the public understand where the revenue was derived from and how it would be spent. We haven't seen that form used yet this year and it was previously published before the budget committee report went before the full council. Will it be published soon so the public has clarity on where the extra funding was allocated?

We appreciate the opportunity to provide testimony on the budget.

Sincerely,

Pamela Tumpap  
President

To advance and promote a healthy economic environment for business, advocating for a responsive government and quality education, while preserving Maui's unique community characteristics.

Friday May 24<sup>th</sup>, 2019

Prosecuting Attorney, Don Guzman  
150 S. High St. Wailuku, HI 96793

Attorney General, Clare E. Connors  
Department of the Attorney General  
425 High St. Honolulu, HI 96813

United States Department of Justice, Michael Wheat  
United States Attorney Office  
Central District of California  
312 North Spring St. Suite 1200  
Los Angeles, California 90012

**Re: Request for Criminal Investigation of Acting Corporation Counsel Moana Lutey, Deputy Corporation Counsels' Michael Hopper, Caleb Rowe, Brian Bilberry, Jennifer Oana, and Edward Kushi of The Department of the Corporation Counsel, County of Maui, State of Hawai'i.**

Dear Mr Guzman, Ms. Connors, and Mr. Wheat,

This letter is to request the opening of a criminal investigation of the above-mentioned individuals of the Department of the Corporation Counsel, County of Maui. Substantial documentary evidence now clearly shows that the actions of Ms. Lutey and her deputies appear to constitute a criminal conspiracy to cover-up unlawful actions by County Officials on behalf of private developers and their associates.

There has been, and continues to be, an ongoing pattern of deceit and false representations, having been made in court pleadings, by these government attorneys', to the Maui County Council, as well as to Mayor Victorino, regarding the same.

Moreover, public records show that Acting Director Lutey, and the above-named Deputies, have misused their power and privilege with the judiciary, the Council and the Mayor, to intentionally and knowingly withhold county records, obstruct investigations, violate County Ordinances, State Environmental and Federal Law, and intimidate and discredit whistleblowers.

One of the whistleblowers, who has exposed thousands of developer agreements administered unlawfully and in contravention of County Ordinance for years, under the advise and at the direction of the Department of the Corporation Counsel, is presently being unlawfully obstructed in his County employment by Acting Director Moana Lutey and Deputy Corporation Counsel Brian Bilberry. His work with two successive Mayors has exposed multiple layers of fraud which Ms. Lutey continues to conceal. The whistleblower is aiding the County in bringing forth significant recovery through highly credentialed professional consultants; which work Acting Director Lutey and Mr. Bilberry are actively obstructing.

They have been trying to extort a contract from this individual in order to secure his employment with the Mayor's Office, in exchange for him no longer pursuing the enforcement of a private developer's SMA permit obligations, which are in non-compliance, and which enforcement exposes fraud by engineering and land planning firms presently and historically benefiting from contracts with the County of Maui. The Partner of one of these firms is a former Director and Deputy Director of the Department of Public Works for the County of Maui.

In addition to an Affidavit of over 260 pages with 41 Exhibits in support, there is new evidence of the above-mentioned fraud by County Official(s) presently being covered-up and not being acted upon by Ms. Lutey. This includes a false ledger provided by an Engineer in the Department of Planning, which reveals the creation of unlawful government liens on five private properties.

Additionally, In furtherance of covering-up wrong doing by County Officials; Acting Director Lutey wrote a legal memorandum advising the Mayor not to enforce the above-referenced SMA permit, (which is required under the County administration of the Federal Zone Management Act). Ms. Lutey and her deputies have been fully aware and intentionally covered up this developer's non-compliance for years.

Asserted in this letter is also a serious pattern of "abuse of power" which exists and is pervasive within the Department of the Corporation Counsel, and, specifically, has occurred by the above-named individuals. An example of such abuse is evidenced by Acting Director Moana Lutey who recently attempted to appropriate the power of the Maui County Council and the Mayor to themselves i.e. their department, for settlement authorization. This just took place in a case presently before the United States Supreme Court which impacts both Maui County and the mainland United States regarding the Clean Water Act. The legal letter by the Department of the Corporation Counsel was clearly and flagrantly written in contravention of legal norms, powers, and rules represented in both the Maui County Charter and the Hawaii Rules of Professional Responsibility as adopted by the Hawaii State Supreme Court.

Due to exposure and intense pressure and scrutiny which occurred in public testimony before the Maui County Council on May 20<sup>th</sup>, 2019, the Department of the Corporation Counsel was compelled to remove the unlawful and unprecedented language included in the proposed authorization for settlement. This attempt to appropriate power and the subsequent removal of said language, is characteristic of the behavior demonstrated by these above-named individual government attorneys.

I assert that there is pattern and practice of both allegedly unlawful and unethical behavior, existing under both Patrick Wong, Ms. Lutey's predecessor, and now continues unabated and with fresh vigor under Acting Director Moana Lutey.

There is a plethora of documentary evidence, in support of the above allegations, justifying this request for investigation.

The citizens of Maui County deserve a transparent government which has law abiding and ethical government attorneys who serve the public interest with integrity. The Department of the Corporation Counsel claim both the Maui County Council and the Mayor as their clients. The record shows that Acting Director Moana Lutey and the deputies named herein, have been, and continue to be involved in

a criminal conspiracy which defrauds the County and its taxpaying residents. These government attorneys' facilitate and then cover-up their own and other County Officials' unlawful acts, to the benefit of private developers and their associates.

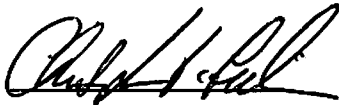
The health and well-being of a County government in the second wealthiest island in Hawai'i, and one of the top tourist destination spots in the world, require a thorough investigation into these well documented allegations of unlawful and unethical acts and criminal conspiracy by the Acting Director, Moana Lutey of the department of the Corporation Counsel and the numerous deputies named above.

It should be noted that I, too, have also been made a victim of Ms. Lutey, Mr. Bilberry and Mr. Rowe's abuse of power and intimidation in seeking to expose this corruption.

Public Records in evidentiary support will be made available to law enforcement and the Hawaii Supreme Court upon request.

Thank you for your immediate attention to this matter.

Sincerely,



Christopher P. Fishkin

Founder

Maui Citizens for Clean Government

cc. Chief Justice Mark E. Recktenwald, Hawaii Supreme Court



County Clerk

---

**From:** Gary Saldana  
**Sent:** Tuesday, May 28, 2019 8:20 AM  
**To:** County Clerk  
**Cc:** Stacy N. Takahashi; Maria C. Ornellas; Mike J. Molina; info@mauicauses.org  
**Subject:** FW: Questions for Moana Lutey

**From:** Samuel Small <info@mauicauses.org>

**Sent:** Tuesday, May 28, 2019 12:23 AM

**To:** Tasha A. Kama <Tasha.Kama@mauicounty.us>; Mike J. Molina <Mike.Molina@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Kelly King <Kelly.King@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Riki Hokama <Riki.Hokama@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Michael.Wheat@usdoj.gov; Joel D. (HN) (FBI) Rudow <jdrudow@fbi.gov>; Donald S. Guzman <donald.guzman@mauicounty.us>; michael.victorino@mauicounty.us; chiefjustice@courts.hawaii.gov

**Subject:** Questions for Moana Lutey

Questions for Moana Lutey:

### **Developer's Deferral Agreements**

How familiar are you with the thousands of developer deferral agreements for three-lot-or-less subdivisions that your department wrote from 1974 to 2007 in conjunction with the Department of Public Works?

Why do you think the Department of the Corporation Counsel continued to write developer deferral agreements in violation of Title 18 for six years after it was well known that there was absolutely no mechanism in place to actually track and collect on the debts?

What have you done, or plan to do to collect on these outstanding debts?

Do you have any intention to resolve the non-specific financial liens that continue to exist on thousands of citizen's properties?

Didn't David Goode acknowledge that the "multiple overlapping subdivisions were getting crazy"?

Did the "Craziness" Goode was referring to lead to any litigation for the county?

In 1999 the council clarified the deferral program in Title 18 to specify that such agreements were to be a one time thing, no parcel so divided and receiving a deferral shall be divided again. Are you aware that Corporation Counsel wrote multiple, over-lapping agreements so that, for instance, there are now 5, 9 or even more parcels, all with deferral agreements that resulted from one original set of three?

Does is concern you that these agreements so applied circumvented another County Ordinance that mandates that a subdivision of 4 lots or more must perform and pay for their own roadway improvements?

Are you actively engaged now in any litigation resulting from these overlapping deferral agreements?

Do you anticipate that the County's Independent Auditor will come back with an evaluation that could possibly open the door to future litigation around these agreements?

Hui Road F for instance has properties with deferral agreements on them, how would like to see them dealt with as the Council moves to resolve some of the roadway issues on Hui Road F and other Hui roads?

### **Known False Government Records**

You are aware that recently an Engineer in the Dept Public Works verified that a public ledger shows that false government liens were placed and continue to exist on FIVE private properties that are part of the same THREE-lot-or-less subdivision?

Did not Mayor Victorino share with you the existence of this false government record?

What have done to remedy this acknowledged false government record?

---

### **Injection Wells Settlement**

Do you commonly communicate legal positions to the council without the Mayor being apprised of your position?

Was the mayor aware of the unusual language you inserted in the settlement proposal regarding the Injection Wells, specifically in paragraphs 2 and 3 which appropriated final settlement authorization to you and your department superseding the authority of both the Mayor and the County Council?

A citizen testified that that language, I believe he said, it was "in violation of legal norms, the County Charter and the Rules for Lawyers in Hawaii."

Is that an accurate characterization of that language?

Who does Corporation Counsel work for, who are your clients?

Are attorneys supposed to have final settlement authority, above and beyond the wishes of their clients?

What was the origin of the language of those two clauses?

Why were you willing to remove that language?

---

### **SMA cases:**

On May 8, 2019 you wrote a letter to this Council regarding a settlement offer proffered to the County by Chis Salem. Is that correct?

Did the Mayor get to read that letter and your legal opinion before you sent it to the Council?

In your letter you stated "There is no pending litigation that could be dismissed in exchange for the property requested, nor is there any future litigation. As such, there is nothing for the parties to exchange. Instead, Mr. Salem's letter would simply be construed as a request that does not require review."

Is that correct?

And so you have not forwarded Mr Salem's Settlement proposal on to this Council? (She may say that Salem sent it to the council directly) Please get her to say that she did not send it.

You state "There is no pending litigation that could be dismissed in exchange for the property requested, nor is there any future litigation."

How can you state "nor is there any future litigation."? Can you see into the future?

Are you unaware of ongoing litigation at the Intermediate Court of Appeals regarding an associated case generated by Mr Salem wherein Director of Planning William Spence and Deputy CC Brian Bilberry claimed that an SMA permit was closed the day it was open? Doesn't that constitute ongoing litigation?

Are you not the attorney of record for County of Maui in Mr. Salem's ongoing case before the ICA?

As Deputy Director of The Department of Corporation Counsel, were you not a witness to the fact that government records relating to Developer Lot 48A, LLC environmental studies were concealed and tampered with by former Public Works Director Milton Arakawa?

Did you not documented as such in a correspondence written to the staff attorneys with the State of Hawaii Office of Information Practices?

Are you aware that Mayor Victorino has stated that he is aware that environmental studies contained in an SMA permit application were concealed and tampered with by former Public Works Director Milton Arakawa?

Have you ever seen the Order of Magnitude Estimates for this SMA permit?

Has Corp Counsel or the Planning Dept ever actually make the Order of Magnitude Estimate for this permit available to Mr. Salem at any time during all his many FOIA requests?

So if there is indeed ongoing litigation between the County and Mr Salem why did you say there is not?

Are you not required to forward Mr. Salem's settlement proposal onto this Council for consideration?

What other public documents do you simply choose to withhold from this council?

Did you ever inform this Council that a settlement agreement, signed, in part, by Mayor Victorino has already been reached in which Mr. Salem agreed to release the County from all past and future liability in consideration for the County issuing a notice of NonCompliance on a previously unenforced SMA permit?

In the document the Mayor signed does he not agree to enforce an unfulfilled SMA permit awarded to "Developer Lot 48A, LLC"?

Issuing a Notice of Noncompliance is what the county eventually did at Oluwala,10 years after the fact? Correct?

That Notice of Noncompliance was the result of a citizen complaint was it not?

Are you currently advising the Mayor that the County should not issue a notice of non-compliance to a "Developer Lot 48A, LLC" for their unfulfilled SMA permit, the way that the County did eventually do 10 years after the fact at Oluwala?

Are you then advising the Mayor to violate the agreement he signed with Chris Salem to enforce that SMA permit?

Do you acknowledge that if the Mayor does violate the agreement he signed with Mr Salem that that would likely lead to new future litigation?

So how do you reconcile that understanding with your stated foreknowledge that there is " no future litigation" that would justify a settlement?

Is that SMA permit issued to "Developer Lot 48A, LLC" in non-compliance?

Did the developer complete their obligations pursuant to the terms of the permit?

Was not your department made aware, years ago, that the same permit was in non-compliance?

---

### **Upcountry Water Bill legislation which amended Title 18 unlawfully**

What is your position on Deputy Oana approving an Ordinance amending Title 18 which allowed the Department of Public Works to waive roadway frontage improvements on 2 lot subdivisions on any properties island wide?

Follow up: Ms. Lutey, are you aware that the Council only intended, by that Ordinance, to assist qualified County residents with those exemptions who were on the Upcountry Water Meter List?

If she says she IS UNFAMILIAR, then ask: You are unfamiliar with litigation presently pending in court before Judge Loo?

Follow up: Are you aware that Deputy Oana approved to legal form and content language of an ordinance which even directly contravened her own testimony about the purpose of the Ordinance, during public testimony?



If she says that she cannot talk about pending litigation, then ask: This Council is liable for the legal positions your department takes before the Court. We are your client and we have a legal right to fully understand your position. (She may say she can explain in Executive Session, and then you should bookmark this question for Exec Session)

If she IS familiar, then ask: Why would you, or Jennifer Oana, or Edward Kushi not act to correct the mistake once you were aware of it?

Please explain why the amended Title 18 did not violate Council Rule 4(D) which requires a second public hearing if substantial change to an ordinance is being made to an ordinance which was not noticed for discussion in the previous public hearing.

Ms. Oana testified to the water committee that the action being proposed was NOT exempting commercial properties, that it was only meant for residential subdivisions made possible for Upcountry residents on the water meter wait list who eventually do receive new water meters.

The final language approved by Ms. Oana amended Title 18 Island Wide for two-lot subdivisions. Why was there no mention of Upcountry families on the water meter wait list?

---

Questions regarding Christopher Fishkin's Request for Criminal Investigation.  
Mr. Fishkin has been subjected to a variety of intimidation tactics by Corp Counsel.

- 1) Did you ever refer to Mr. Fishkin's personal financial status in your communication with him?
  - 2) Did either you or Deputy Bilberry refer Mr. Fishkin to Criminal Investigation Division as a suspect in the puncturing of the county cars' tires ?
  - 3) Did Mr. Fishkin ever complain to the Police about Deputy Bilberry?
  - 3a) Was Deputy Bilberry mirandized in your office as a result?
  - 4) Did Deputy Bilberry seek a TRO against Mr. Fishkin immediately after Mr. Bilberry was mirandized by the Police?
  - 5) Ms. Lutey, did Deputy/Director Milton Arakawa unlawfully approve a subdivision without the developer's required terms being met for subdivision approval? This is the same subdivision which includes the out-of-compliance SMA permit.
    - a) If she claims she is not familiar with the case then ask: That's funny because you were familiar enough with the SMA permit to write a letter to the Mayor about it, and so many deputies you work with daily are all familiar with this matter like Deputy Hopper, Caleb Rowe, Brian Bilberry, formerly Patrick Wong going back years in your department and yet you still maintain you are unaware?
  - 6) Ms. Lutey what have you done about the false ledger in the Department of Public Works given to the Mayor, which shows that false government liens were placed and continue to exist on private properties in the same subdivision we have been discussing? (She is aware of the ledger which was provided by an Engineer in the Dept Public Works and was given to the Mayor who provided it to CC
  - 7) Ms. Lutey was Milton Arakawa a County Official? Is he a partner in a Land Planning Firm in Maui County which has had and continues to have contracts with the County of Maui?
  - 8) Ms. Lutey, is the developer who is subject of this non-compliant SMA permit also a client of Mr. Arakawa's Land Planning Firm?
- 
-

# Request for Criminal Investigation of Acting Corporation Counsel Moana Lutey, Deputy Corporation Counsels Michael Hopper, Caleb Rowe, Brian Bilberry, Jennifer Oana, and Edward Kushi



To be delivered to Federal Bureau of Investigations, Clare E. Connors, Attorney General, State of Hawaii, Michael Wheat, U.S. Prosecuting Attorney, Donald Guzman, Prosecuting Attorney, Maui County, Kelly King, Maui County Council Chair, Keani Rawlins-Fernandez, Tasha Kama, Riki Hokama, Alice Lee, Mike Molina, Tamara Paltin, Shane Sinenci, Yukilei Sugimura

The self-described "Dinosaurs" of Maui's Corporation Counsel are a team of litigators led by Moana Lutey who have been around long enough to be professionally compromised while serving past Mayors Alan Arakawa and James Apana.

By their dirty acts over the years, these lawyers are now so personally and professionally conflicted that they can no longer possibly serve the public's best interest.

We citizens call for an investigation into Racketeering by these "Dinosaurs" and, at the very least, demand their removal from Maui's Office of Corporation Counsel.

73 signatures. NEW goal - We need 100!

MOST RECENT SIGNERS >

## SIGN THIS PETITION

Welcome back Maui!

(Not Maui? [Click here.](#))

Mobile

555-555-5555

Comment (Optional)

**SIGN THE PETITION**

Note: By signing, you agree to receive email messages from MoveOn.org Civic Action and MoveOn.org Political Action. You may unsubscribe at any time.

[See Privacy Policy >](#)

Dear Federal Bureau of Investigations, Clare E. Connors, Attorney General, State of Hawaii, Michael Wheat, U.S. Prosecuting Attorney, Donald Guzman, Prosecuting Attorney, Maui County, Kelly King, Maui County Council Chair, Keani Rawlins-Fernandez, Tasha Kama, Riki Hokama, Alice Lee, Mike Molina, Tamara Paltin, Shane Sinenci, and Yukilei Sugimura,

We are pleased to present you with this petition affirming this statement:

**"The self-described "Dinosaurs" of Maui's Corporation Counsel are a team of litigators led by Moana Lutey who have been around long enough to be professionally compromised while serving past Mayors Alan Arakawa and James Apana.**

**By their dirty acts over the years, these lawyers are now so personally and professionally conflicted that they can no longer possibly serve the public's best interest.**

**We citizens call for an investigation into Racketeering by these "Dinosaurs" and, at the very least, demand their removal from Maui's Office of Corporation Counsel. "**

Attached is a list of individuals who have added their names to this petition, as well as additional comments written by the petition signers themselves.

Sincerely,  
Maui Causes

**This online petition posted less than 24 hours ago has over 70 signatures already, requesting a criminal investigation and removal of Acting Corporation Counsel Moana Lutey, Deputy Corporation Counsels Michael Hopper, Caleb Rowe, Brian Bilberry, Jennifer Oana, and Edward Kushi**

**These self-described “Dinosaurs” are a team of litigators led by Moana Lutey who have all been around long enough to be professionally compromised while serving past Mayors Alan Arakawa and James Apana.**

**By their dirty acts over the years, these lawyers are now so personally and professionally conflicted that they can no longer possibly serve the public’s best interest.**

**Maui’s “Dinosaur Lawyers”**

**Are actively blocking enforcement of SMA Permits that protect our shoreline, in violation of the U.S. Coastal Zone Management Act.**

**Wrote secret developer deferral agreements to shift financial burdens onto residents and are still actively blocking collection of over \$100 million from developers by withholding and falsifying public records.**

**Ms Lutey came to Corp Counsel in 1999 when this Council acted to stop the deceitful repetitive application of 3 lot or less**

deferral agreements, used to circumvent the 4 lots or more ordinance where roadway improvements must be performed.

Ms Lutey was part of the active violation of this Council's intent by continuing to write serial, overlapping agreements.

Ms Lutey was also part of Corp Counsel in 2001 when the whistle was blown that there were absolutely no mechanisms in place to collect the debts and yet Corp Counsel continued to write new agreements until this body forced them to stop in 2007.

In 2015 Maui's "Dinosaur Lawyers" again Secretly violated the intent of this Council in order to create a new way to shift financial burdens from developers to residents through their blatant manipulation of the Upcounty water bill.

Maui's "Dinosaur Lawyers" Manufactured a fake RE tax to use as a weapon in litigation against a timeshare group. Their arrogant abuse of authority will end up costing the county millions.

Just this month Ms Lutey inserted language into the Injection Well resolution that would have given herself final say of county policy, superceding the authority of both the Mayor and the County Council. She deserves to be removed for that alone.

Maui's "Dinosaur Lawyers" are wasting millions for our tax dollars to the benefit of off-island corporate interests by taking the

**Injection Well case to the Supreme Court, regardless of the fact that such regulatory changes to EPA rules belong in the legislature, not the courts.**

**They are wasting many millions more in a whole series of frivolous litigations where we citizens are footing the bill for them to defend bad acts by themselves and past directors whom you saw fit to fire.**

**When Don Guzman was campaigning for Mayor he said it is a mistake to have a career litigator as Director of Corporation Counsel, instead we need a Skilled Negotiator probably from the mainland to avoid conflicts of interest with local businesses.**

**What an awful legacy the corrupt "Dinosaurs" of Maui's Corporation Counsel are dumping on us.**

**We need to flush them out.**



# WEST MAUI TAXPAYERS ASSOCIATION

## Advocating For You!

email: [wmta@maui.net](mailto:wmta@maui.net) home page: [www.westmaui.org](http://www.westmaui.org)

mailing address: PO Box 10338, Lahaina, HI 96761 phone: 808-661-7990 fax: 808-661-7992

### Board of Directors

#### Officers:

Joseph D Pluta, *President*  
Treasurer & *President Emeritus*

#### Directors:

Lee Chamberlain  
Richard Jarman  
Gregg Nelson  
Jess "Joe" Park  
Rick Nava  
John Seebart  
Feresteh Tali

WMTA is a non profit 501 c 4. WMTA, as a dedicated Lobbyist organization, has a mission for our West Maui Community. The objectives of this Organization are to associate the interests, concerns, and efforts of residents and taxpayers of the West Maui area, and others interested in the orderly development and improvement of the area, in a cooperative effort. whether provided by, or to be provided by, the State or County governments, or by others.

May 20, 2019

[county.clerk@mauicounty.us](mailto:county.clerk@mauicounty.us)

Re: Testimony on County Council Proposed Budget 2020

Aloha Council Chair-Kelly King and Council Members

We are writing in strong opposition to the Proposed Council Amendments to the Mayor's proposed budget for 2020.

The Council's proposed Budget calls for \$40 Million more than what the Mayor requested. There has not been clearly described areas where the \$40 M total is needed and as such, it fails to justify this phenomenal and unprecedented increase.

Nearly all of this added revenue is pegged to come from short term rental vacation properties and hotel and time share/vacation club properties. As such, it seems these increases are more punitive than anything else. While we have many "crises" declarations, it seems this extra money does far too little to address meaningful urgent attention to needed workforce housing, hunger and homelessness, emergency planning preparedness, shoreline erosion, water resource development and access to emergency care in West Maui.

We sincerely regret that there seems to be a huge gap in the amount of extra monies demanded from the transient industry and prudently identifiable justifications for doing so.

We hope that the Mayor veto's this proposed budget if the council fails to designate and explain the identifiable cures to any of our myriad of crises this extra money would correct appropriately.

Respectfully submitted,

Joseph D Pluta, President

Cc: Mayor Mike Victorino

RECEIVED  
2019 MAY 23 AM 8:19  
OFFICE OF THE  
COUNTY CLERK

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**From:** EDB Committee  
**Sent:** Tuesday, May 21, 2019 3:25 PM  
**To:** County Clerk  
**Subject:** FW: Increase to tax rates for short term rental

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COUNTY CLERK

-----Original Message-----

**From:** Melanie Hyde <mhyde@shaw.ca>  
**Sent:** Tuesday, May 21, 2019 2:35 PM  
**To:** EDB Committee <EDB.Committee@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>  
**Cc:** Kelly King <Kelly.King@mauicounty.us>; Riki Hokama <Riki.Hokama@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Mike J. Molina <Mike.Molina@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>  
**Subject:** Increase to tax rates for short term rental

I am writing to ask you to reconsider your proposed increase of 66% for properties used for short term rental.

Our property is categorized as this type and such a huge increase will cause us severe hardship. We do rent out our unit for some of the year, but we are not a large business like a hotel or time share. This is our second home which we visit ourselves as often as we can and then we rent it out to make it financially viable for us to own on Maui. We have not made a profit on our unit for the 9 years we have owned it. We try to keep our rates affordable for the people who stay with us. They are a crucial part of Maui's economy, spending a lot of money while they are on island.

We already pay much higher taxes than anyone who just lives in their unit, which is challenging for us though some may say it's understandable, but this increase would be completely out of keeping with the payment scheme for other types of properties. Asking us and our guests, over other types of visitors, to pay for such a huge increase is completely unfair and wrong. We are not a big business that can accommodate such a big increase. We don't have anyone else to lobby for us. We are just a couple who loves Maui, and are happy to share it with our guests. Please consider asking ALL property owners to pay their fair share not just a select few who are an easy target.

Thank you for being fair to all property owners.

Best,

Melanie and Keith Hyde



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**From:** EDB Committee  
**Sent:** Tuesday, May 21, 2019 3:24 PM  
**To:** County Clerk  
**Subject:** FW: Oppose Hotel Property Tax Increase

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**From:** Kelly King  
**Sent:** Monday, May 20, 2019 4:14 PM  
**To:** EDB Committee <EDB.Committee@mauicounty.us>  
**Subject:** FW: Oppose Hotel Property Tax Increase

RECEIVED  
2019 MAY 23 AM 8:20  
OFFICE OF THE  
COUNTY CLERK

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**From:** Nina Manuel-Schoel <noreply@jotform.com>  
**Sent:** Monday, May 20, 2019 3:51 PM  
**To:** Kelly King <Kelly.King@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Riki Hokama <Riki.Hokama@mauicounty.us>; Alice L. Lee <Alice.Lee@mauicounty.us>; Mike J. Molina <Mike.Molina@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>; Yukilei Sugimura <Yukilei.Sugimura@mauicounty.us>  
**Subject:** Oppose Hotel Property Tax Increase

Aloha Councilmembers:

As a Maui resident and voter, I appreciate the efforts made to the proposed 2020 budget but still have concerns regarding the suggested real property tax increases – particularly the hotel & resort increase which could potentially lead to unintended consequences for many Maui hotel workers.

While I applaud the Council for listening to our early concerns regarding a massive 60 percent tax increase, I still cannot in good conscience support the suggested large property tax increase to the hotel industry. As many of you know, a significant number of Maui residents work in the visitor/hospitality industry which consists of a substantial percentage of the entire private sector workforce on Maui. In fact, the private sector workforce on Maui accounts for nearly 25,000 jobs in accommodation, hospitality, and food services according to the Department of Labor and Industrial Relations – and these jobs rely heavily on the tourism industry – directly and indirectly.

Further, with the loss of sugar and pineapple jobs on Maui including other agricultural jobs, more and more Maui residents are relying on jobs that rely vastly on tourism spending. With such a large property tax increase, hotels may be forced to either lay off workers who rely on these jobs or pass along the tax increase to visitors who will reach a breaking point and stop visiting Maui altogether or reduce spending. Additional revenue may be generated by the increased hotel property tax rate, but a loss of revenue will occur as visitor arrivals decline and workers are laid off resulting in less consumer spending and ultimately less tax revenue.

While I understand the need to generate revenue for a successful operating budget it should however be done in a fair and reasonable manner – the current proposed 2020 budget will likely have negative consequences that could potentially result in job losses and less revenue generated defeating the purpose of raising the rate in the first

place. Until Maui's economy expands to other sectors that provide good paying jobs – attacking the one sector that does is ill-advised.

I strongly urge the Council to support the Mayor's proposal for the real property tax rates which won't result in unintended consequences.

**Mahalo.**

Maui County Council  
Kalana O Maui Building, 8<sup>th</sup> Floor  
Councilmember Kelly King, Chair  
Councilmember Keani Rawlins-Fernandez, Vice Chair  
Tuesday, May 28, 2019

RECEIVED

2019 MAY 28 AM 7: 58

OFFICE OF THE  
COUNTY CLERK

**STATEMENT OF THE ILWU LOCAL 142 ON BILL NUMBER 36 – RELATING TO THE OPERATING BUDGET**

The ILWU Local 142 appreciates the efforts made to the proposed 2020 budget but has serious concerns and reservations regarding the various proposed real property tax increases – particularly the hotel & resort increase of over 17 percent from \$9.37 to \$11.00.

While we applaud the Council for reducing the original proposed tax rate increase of \$15.41 to \$11.00, we still cannot in good conscience support such a large property tax increase to the hotel industry. As many of you know, a majority of ILWU Local 142 members on Maui work in the visitor/hospitality industry consisting of a significant percentage of the entire private sector workforce on Maui. In fact, the private sector workforce on Maui accounts for nearly 25,000 jobs or nearly 30 percent of Maui's entire private sector workforce in accommodation, hospitality, and food services according to the Department of Labor and Industrial Relations – and these jobs rely heavily on the tourism industry – directly and indirectly.

A vibrant hotel and hospitality industry are vital to a successful economy on Maui. Unlike Oahu, Maui has far fewer job opportunities and a less diversified economy. With over 25,000 jobs in the hospitality industry, many Maui residents profoundly rely on tourism remaining healthy and robust. Large tax increases have the potential of harming the economy on Maui which may result in job losses and limited opportunities elsewhere. At the end of the day, a paycheck, health benefits, retirement plans and peace of mind are of the utmost importance to many Maui workers.

Additionally, it should be noted that most hotels receive annual increases in property tax payments due to their increased property values assessed by Maui County. This happens year-to-year as property values normally always increase. This means, Maui County receives additional revenue every year from the hotel industry regardless if the property taxes increase or not and some of these values increase significantly resulting in a substantial higher property tax payment.

Moreover, the hotel industry is widely known to give back to the community every year. Just this year, the visitor industry charity walk raised over \$2.5 million for local charities and continues to provide back to the community as often as they can. Last year, the visitor industry raised a record \$2.7 million which directly helps many Hawaii residents in need.

As mentioned above – Maui has a limited diversified economy and with the loss of sugar and pineapple on Maui including other agricultural jobs, more and more Maui residents are relying on jobs that rely vastly on tourism spending. With such a large property tax increase, hotels will be forced to either lay off workers who rely on these jobs or pass along the tax increase to visitors who will reach a breaking point and stop visiting Maui altogether or reduce spending elsewhere. Additional revenue may be generated by the increased hotel property tax rate, but a loss of revenue will occur as visitor arrivals decline and workers are laid off resulting in less consumer spending and

ultimately less tax revenue.

The ILWU Local 142 understands the need to generate revenue for a successful operating budget – but unfortunately the proposed 2020 budget will have dire consequences that could potentially result in job losses and less revenue generated defeating the purpose of raising the rate in the first place. Until Maui’s economy expands to other sectors that provide good paying jobs – attacking the one sector that does is ill-advised.

The ILWU Local 142 urges the Maui Council to adopt the Mayor’s proposed real property tax rate for the hotel & resort industry rate which won’t result in unintended consequences. Thank you for the opportunity to testify.

RECEIVED

**From:** EDB Committee  
**Sent:** Tuesday, May 28, 2019 7:54 AM  
**To:** County Clerk  
**Subject:** FW: Maui Property Tax Hike

2019 MAY 28 AM 7: 58

OFFICE OF THE  
COUNTY CLERK

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**From:** Linda Kiyohara <lmkiyohara@outlook.com>  
**Sent:** Friday, May 24, 2019 1:04 PM  
**To:** EDB Committee <EDB.Committee@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>;  
mayors.office@co.maui.hi.us  
**Cc:** George Kiyohara <kiyohara1g@outlook.com>  
**Subject:** Maui Property Tax Hike

To: Maui County Council

We have owned and rented our condo unit at the Kaanapali Alii since 1997. In each of those past 22 years we have diligently collected and paid General Excise Tax and Transit Tax averaging over \$11,000 per year. Along with these two taxes we have also paid property taxes well above residential rates averaging over \$17,000 per year.

We are opposed and feel the new tax increase is unfair to owners such as ourselves, who have paid more than their fair share of taxes. We think a better solution for Maui County would be to collect taxes from property owners who rent without paying GE or TA taxes and have hidden their correct property category from the County.

Sincerely,

Linda and George Kiyohara

Kaanapali Alii Unit 124

50 Nohea Kai Drive

Lahaina, Maui, Hawai'i 96761

775-530-2329

County Clerk

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**From:** Gary Saldana  
**Sent:** Tuesday, May 28, 2019 8:20 AM  
**To:** County Clerk  
**Cc:** Stacy N. Takahashi; Maria C. Ornellas; Mike J. Molina  
**Subject:** FW: WRITTEN TESTIMONY - MAY 28, 2019 - LUTEY LIED TO THE COUNCIL  
**Attachments:** Testimony GET May 28 2019.pdf; Lutey to Council False Letter.pdf; Reply to Lutey Answer Brief.pdf; Lutey Answering Brief SMA Records.pdf

**From:** Chris Salem <chrissalem8@yahoo.com>  
**Sent:** Tuesday, May 28, 2019 7:11 AM  
**To:** Mike J. Molina <Mike.Molina@mauicounty.us>; Gary Saldana <g.saldana@mauicounty.us>  
**Cc:** David M. Raatz <David.Raatz@mauicounty.us>; Kelly King <Kelly.King@mauicounty.us>; Keani N. Rawlins <Keani.Rawlins@mauicounty.us>; Tamara A. Paltin <Tamara.Paltin@mauicounty.us>; Tasha A. Kama <Tasha.Kama@mauicounty.us>; Shane M. Sinenci <Shane.Sinenci@mauicounty.us>  
**Subject:** WRITTEN TESTIMONY - MAY 28, 2019 - LUTEY LIED TO THE COUNCIL

Council Member Molina;

Please present copies of my written testimony to the Members of the Maui County Council for the meeting today. The following quote is from pleadings presented to the 2nd Circuit Court by Deputy Moana Lutey.

Acting Director Lutey is the **attorney of record** in an active case involving concealment of government records relating to the Planning Department's duty to track and keep public records of private developers compliance with issued SMA Permits.

***"Most courts which have considered the question have concluded that the FOIA is only directed at requiring agencies to disclose those "agency records" for which they have chosen to retain possession or control. See also NLRB v. Robbins Tire & Rubber Co., 437 U.S. 214, 221 (1978)***

Deputy Lutey lied to members of the Maui County Council in a letter dated May 8, 2019 when she stated ***"There is no pending litigation that could be dismissed.."*** Further, the allegation that the County can "choose" what records to retain is false.

Please ask Deputy Lutey if she reviewed the May 8, 2019 letter with Mayor Victorino prior to sending and whether the conclusions are true and accurate.

Sincerely;

Chris Salem

**WRITTEN TESTIMONY - GET COMMITTEE – MAY 28, 2019**

**Reason to Deny the Appointment of Corporation Counsel Director Moana Lutey**

May 24, 2019

Maui County Council  
Attention: Chair of the Council Kelly King

Dear Honorable Chair Kelly King;

As I prepare to lead 24 student athletes to travel Oahu this morning for a 4 day tournament, my ability to focus is challenged by the dark clouds of deception being cast upon the citizens of Maui County and the members of the Maui County Council by Acting Director of Corporation Counsel Moana Lutey.

A full list of violations of the professional attorney rules adopted by the Supreme Court shall be provided to the members of the Maui County Council to assist in their decision making. That said, here is a current example which is just cause to deny Deputy Lutey's request for appointment as the Director of the The Department of Corporation Counsel.

**Moana Lutey's Recent Violations**

**False Statement by Acting Director Lutey (See Attached Letter to Chair King - May 8, 2019)**

*"There is no pending litigation that could be dismissed in exchange for the property requested, nor is there any future litigation. As such, there is nothing for the parties to exchange. Instead, Mr. Salem's letter would simply be construed as a request that does not require review.*

**The Truth**

Deputy Lutey is the attorney of record for County of Maui for the ongoing case before the ICA.

CAAP-18-0000105 - IN THE INTERMEDIATE COURT OF APPEALS STATE OF HAWAII

**The Facts in the Case (See Attached)**

"The County of Maui is engaged in an active and ongoing cover-up of government records which demonstrate conclusively and unambiguously that the subject matter SMA permit # 2000/ 0042 was never closed and is expired with unfulfilled developer obligations.

The Permit Summary and the additional public records made available by Council member Kelly King's Office were maintained by Director Spence's own Department of Planning. Those public records show two extensions granted to the developer, Hugh Farrington, to complete the terms & obligations of said SMA permit.

It is therefore impossible for the Director of Planning who both has access to his own records and who is completely knowledgeable about SMA permits and their terms and conditions as well as the procedure(s) for granting extensions for the same, to state in a Declaration that he believes that the permit was closed the day it was opened. Spence's own Department of Planning government records, as stated above, contradict his representation."



**Acting Director Lutey's Professional and Ethical Violations**

As Deputy Director of The Department of Corporation Counsel, Moana Lutey is a witness to the fact government records relating to Developer Lot 48A, LLC environmental studies were concealed and tampered with by former Public Works Director Milton Arakawa.

This fact is documented in correspondence written by Deputy Lutey to the staff attorneys with the State of Hawaii Office of Information Practices. Mayor Victorino is also a witness to this fact.

Acting Director Lutey is aware the County of Maui provides notices to citizens requesting public records, tampering with government records is a crime. Further, Director Lutey has misled the Council members in regards to current and future litigation by failing to inform the members that Mayor Victorino has entered into a signed agreement to enforce Developer Lot 48A, LLC's unfulfilled oceanfront SMA Permit.

**Conclusion**

Acting Director Moana Lutey is leading the County of Maui down the path of further litigation by advising Mayor Victorino to breach the contractual agreement to uphold the adopted laws and ordinances of Maui County.

For this violation and others to be presented to the members of the Maui County Council, we pray to the members of the Maui County Council to deny Moana Lutey's request for employment as the Director of Corporation Counsel.

With respect;

*Chris Salem*

**Relevant Authorities**

**Maui County Charter §Section 10-1**

Declaration of Policy. Elected and appointed officers and employees shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government.

**Maui County Charter - Section § 9-12**

**Maui County Charter - Penalties.**

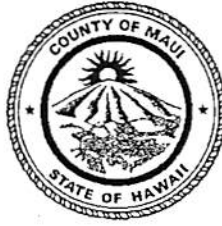
- (a) Any person who intentionally violates this chapter or any rules adopted pursuant to this chapter shall be guilty of a misdemeanor and shall be;
- (1) Subject to removal from office
  - (2) Liable to the State or the appropriate county for any sum paid by it in connection with the violation, and that sum, together with interest and costs, shall be recoverable by the State or county; and
  - (3) Subject to imposition of an administrative fine under subsection (b

MICHAEL P. VICTORINO  
Mayor

MOANA M. LUTEY  
Acting Corporation Counsel

EDWARD S. KUSHI, JR.  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
Fax No. (808) 270-1761



DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

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May 8, 2019

Honorable Kelly T. King, Chair  
Maui County Council  
200 South High Street  
Wailuku, HI 96793

For transmittal to Councilmembers:

Riki Hokama  
Tasha Kama  
Alice Lee  
Mike Molina  
Tamara Paltin  
Keani Rawlins-Fernandez  
Shane Sinenci  
Yuki Lei Sugimura

**SUBJECT: Settlement Demand by Christopher Salem dated April 17,  
2019**

Dear Chair King:

Thank you for informing me of telephone calls being made by Mr. Salem to yourself and other council members related to a settlement demand. This memo is to address why no resolution has been sent to Council related to this demand.

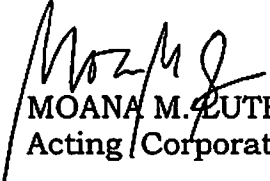
Kelly King, Chair  
May 8, 2019  
Page | 2

On April 17, 2018, Mr. Salem sent what he would classify as a settlement demand. Mr. Salem offered to dismiss any pending litigation and prospective further litigation in exchange for two parcels of property in Wailuku that are owned by the County of Maui.

This matter has not been sent to the GET Committee because it is not a settlement demand. In order for a settlement to be reached between parties, there would need to be "consideration" (something that can be exchanged). In this case, Mr. Salem has failed to offer the County any consideration for settlement. There is no pending litigation that could be dismissed in exchange for the property requested, nor is there any future litigation. As such, there is nothing for the parties to exchange. Instead, Mr. Salem's letter would simply be construed as a request that does not require review.

I am happy to discuss this matter further, if necessary. Thank you for your time.

Best,

  
MOANA M. LUTEY  
Acting Corporation Counsel

No. CAAP-18-0000105

IN THE INTERMEDIATE COURT OF APPEALS  
STATE OF HAWAII

Electronically Filed  
Intermediate Court of Appeals  
CAAP-18-0000105  
[17:20:32] 20 SEP 2018  
11:45 PM  
Circuit Court of the Second Circuit

CHRISTOPHER SALEM  
Requester/Appellant,

[17:20:32] 20 SEP 2018  
11:45 PM  
Circuit Court of the Second Circuit

APPELLANT'S REPLY BRIEF

vs.

THE COUNY OF MAUI; THE COUNTY  
OF MAUI by and through WILLIAM  
SPENCE, as DIRECTOR OF PLANNING,  
and BRIAN BILBERRY, DEPUTY THE  
CORPORATION COUNSEL WITH THE  
DEPARTMENT OF CORPORATION  
Defendants/Appellees.

**CHRISTOPHER SALEM REQUESTER/APPELLANT'S REPLY BRIEF  
CERTIFICATE OF SERVICE**

Christopher Salem, Pro-se  
5100 Lower Honoapiilani Road  
Lahaina, HI 96761  
Telephone: (808) 280-6050  
Email: [chrissalem8@yahoo.com](mailto:chrissalem8@yahoo.com)

Comes now Requester/Appellant Christopher Salem (hereinafter "Appellant", or "Appellant Salem") and for his Reply Brief states as follows:

In their Answer Appellees County of Maui, William Spence and Brian Bilberry (hereinafter "Appellees") re-assert that in their Motion to Dismiss the underlying case, the record Appellant sought did not exist "as Salem had been told many times". (Answer pg. 1)

Contrary to Appellees misrepresentation, Appellant only agreed to dismiss the Complaint because in response to his Complaint, Appellees produced a Declaration wherein the Planning Director represented that he believed the subject matter SMA permit was closed the same day it was opened. Appellant Salem was suffering from a medical issue, and emailed Appellee's counsel, accepting this *new* government record, produced only after a Complaint for Documents, as responsive to his request (ROA pg 323).

However, once those KIVA records were located, and sent to Appellant by Councilmember Kelly King's Office, it was clear that Appellees had, in their possession, additional records which were clearly responsive to Appellant Salem's request. The statement by Appellee William Spence, made pursuant to the law of perjury, in light of those newly discovered public records, is a blatant lie by a Director of Planning. It is a technical impossibility, on its face, which contradicts not only the exhibit he attached to his own Declaration, but the KIVA records maintained by his own department as well as set forth by Exhibit in Appellant's Motion for Reconsideration.

It is also inaccurate for Appellees to claim that these newly discovered public records were just "reformatted". The records in Appellant's Exhibit H do not contain all the same information, contained in the newly discovered records. All the information may be derived from the same source file at the County of Maui; however, different information appears on different documents produced from this source and, so, must constitute separate, individual, public records. Appellant Salem does not have access to the source file the County IT tech refers

to. Separate and distinct records are clearly produced from the source file of all the information maintained and possessed by the County. So, despite Appellees disingenuous representations, the government public records obtained with the assistance of both Councilmember Don Guzman's Office and Councilmember Kelly King's Office, are not the same identical records as the Permit Summary in Exhibit "H". The additional public records include additional information which reveal two extensions granted to the developer to complete his obligations pursuant to that SMA permit.

Therefore, Appellees attempt to conflate and misrepresent the new evidence. Appellant received after the Complaint was filed, and after the hearing on Appellees Motion to Dismiss, with the Public Government County Record SMA Permit Summary document ("Permit Summary") Exhibit "H" attached to Salem's Complaint.

Appellees then also speculate as to why the Court denied Appellant Salem's Motion for Reconsideration despite there being no Findings of Facts and Conclusions of Law to the Court that were never made in the Court's denial of Appellant's Motion for Reconsideration.

In the Answering Brief, Appellees state:

*"The County provided the lower court with a declaration from William R. Spence, the former Planning Director, confirming that the County did not have the documents requested by Salem. ROA p. 3 Declaration of William Spence"*

With respect to this Honorable Appellate Court, William Spence's Declaration did not "confirm that the County did not have the documents requested by Salem".

Respondent/Appellee Director of Planning William Spence's (hereinafter "Spence") Declaration demonstrated that:

1) the County of Maui is engaged in an active and ongoing cover-up of government records which demonstrate conclusively and unambiguously that the subject matter SMA permit # 2000.00042 was never closed and is expired with unfulfilled developer obligations. The Permit Summary and the additional public records made available by Councilmember Kelly King's Office were maintained by Director Spence's own Department of Planning. Those public records show two extensions granted to the developer, Hugh Farrington, to complete the terms/obligations of said SMA permit. It is therefore impossible for the Director of Planning who both has access to his own records and who is completely knowledgeable about SMA permits and their terms and conditions as well as the procedure(s) for granting extensions for the same, to state in a Declaration that he believes that the permit was closed the day it was opened. Spence's own Department of Planning government records, as stated above, contradict his representation.

There is simply no factual basis to support his claim and, to the contrary, there is only a factual basis to support the exact opposite i.e. that the permit was not closed on the day it was opened. Furthermore, as there is evidence in his own dept. public records (see ROA....) of two extensions being granted, and no evidence in the records, or representation in any form that the developer's obligations (terms of the SMA permit) were fulfilled.

The letter to Hugh Farrington, which is an exhibit to Spence's Declaration, is also a government record which itself reveals that there were conditions required of Mr. Farrington to fulfill the SMA permit's requirements, so the permit, under no circumstance, could be closed on the day it was opened, and Director William Spence is fully aware of this fact.

Then, to make this conclusion complete and verified; the additional government records produced by Councilmember Kelly King's Office reveal the two extensions granted to give Mr. Farrington additional time to complete his SMA permit requirements.

- 2) Additionally, the Office of Information Practices (OIP) represents to Appellant in correspondence that Spence's Declaration itself constitutes a new government record itself. As such, Director Spence is creating a new government record which Appellant and the public are intended to rely. And, it's false.

*"In addition, the County provided the Court with evidence supporting its argument that Salem had been provided with all material in the County's possession. ROA p. 3, Declaration of William R. Spence and Declaration of Brian A. Bilberry"*

This is clearly a false statement since the records, and certain of their substantive contents, which were located by Councilmember King, and then others by a private citizen searching the KIVA system, were never in Appellant Salem's Possession.

Further, Appellees, insinuate, strangely, that Appellant has the records responsive to his request, by stating that he provided Exhibit H and that he had all the "material in the County's possession", while simultaneously asserting they don't exist and that they have no obligation to maintain them.

*The County submitted evidence that Salem's alleged newly discovered evidence was not new. ROA pp. 26 and 27.*



Appellant Salem has discussed above, in his Reply, that the newly discovered evidence (which was not alleged, but contained in an Exhibit to his Motion for Reconsideration) is new.

On page 5 of Appellees Answering Brief, Appellees state:

*Salem's second piece of "new evidence" was the permit summary. The information contained in that permit summary, although formatted differently, was an exhibit Salem attached to his complaint as Exhibit "H". That exhibit was printed on July 31, 2009 at 11:15 a.m., which means that Salem had that information well before he filed the underlying lawsuit. ROA p. 26. Therefore, that was not new evidence. The County had its IT manager, Jacob Verkerke, explain why the formatting appeared differently in his declaration. ROA p. 27. As Mr. Verkerke explained, Salem simply received a compilation of information presented as "new evidence" while Exhibit "H" was a computer screenshot. The information contained in both exhibits was identical. ROA pp. 26 and 27, Declaration of Jacob W. Verkerke*

Appellees on page 5 also state:

*"Salem's baseless allegations regarding alleged impropriety did not require Court attention. It was not an abuse of discretion for the Court to ignore such a frivolous allegation. I*

*I Salem has been making allegations of corruption, grand conspiracy and conflicts of interest for years. ROA p. 3, Declaration of Brian A. Bilberry at ¶ 18.*

First, Appellant has indeed been making allegations of corruption, conspiracy and conflicts of interest for years which doesn't make those allegations any less true. Appellant has endured years of abuse, obstruction and frivolous defenses and attacks from Appellees and their counsel.

Appellant worked as an Executive Assistant to a Council Member of the Maui County Council and was tasked, because of his extensive knowledge in the area of development of

affordable housing, to investigate and help to develop legislation to resolve over 45 years of unassessed and uncollected developer deferral agreements by the Department of Public Works. In that process Appellant discovered fraud and collusion which has recently resulted in an audit being proposed by Councilmember Don Guzman, referred to the County Auditor in a unanimous vote by the County Council, (against the recommendation of the Corporation Counsel present at that hearing), which audit has now been accepted by the County Auditor for 2019.

Appellant asserts that the fraud also involves SMA permits being misused as a Planning tool. Appellant asserts that he has been obstructed in this task for years by the very department of the Corporation Counsel which has, also, *for years*, defended unlawful County Administrator Director decisions. This frivolous defense has resulted in years of litigation with defendants and millions of dollars in unnecessary and unwarranted settlements. The current Mayor of this administration was previously determined by Judge August of the Second Circuit to have abused his authority allowing his Director of Public Works, Milton Arakawa, to willfully violate the County grading Ordinance on behalf of a developer at Palama Drive. County Officials failed to enforce SMA laws at Olowalu and Montana Beach resulting in costly litigation and massive settlements with the County of Maui after the County and The Corporation Counsel unsuccessfully and frivolously defended these unlawful actions. And, of course there is The Corporation Counsel's well known defense of the County's violation of law pertaining to injection wells in Maui County as well.

Appellant's allegations are neither baseless or frivolous in this matter. It is well documented, in this appeal and underlying case, that the Director of Planning is lying, under penalty of perjury, in a Declaration to the Second Circuit Court. His relevant statement in that Declaration is baseless and frivolous and seeks to cover-up an expired and unfulfilled SMA

permit. Should the County issue a Notice of non-compliance to that developer; fraud in the developer's Order of Magnitude Estimates as well as the fact that the subdivision itself was approved unlawfully, would come to light. In other words, the same requirements which are unfulfilled for the SMA permit were required for subdivision approval, and the same County Official, Milton Arakawa, referred to above, approved that subdivision without those explicitly required conditions being met.

Appellees are trying to discredit Appellant Salem precisely because his claims have merit.

Appellees clearly maintained public records, responsive to Appellant's RFS request, which Appellant Salem was able to obtain from the public KIVA system only after the filing of his Complaint and the hearing on Appellees Motion to Dismiss. Nonetheless, Appellees continue to assert, quite inexplicably that the records responsive to Appellant's request do not exist and are not in the possession of the County.

Appellant is entitled to have his Complaint for Documents dismissed in his favor and with costs for the filing of the suit granted to him.

Respectfully submitted,

Dated: Sept 20<sup>th</sup>, 2018  
Lahaina, Hawaii

Christopher Salem, Pro-se  
Christopher Salem, Appellant Pro-se

CAAP-18-0000105

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

Electronically Filed  
Intermediate Court of Appeals  
CAAP-18-0000105

CHRISTOPHER SALEM,

Requestor,

vs.

THE COUNTY OF MAUI; THE  
COUNTY OF MAUI, by and through  
WILLIAM SPENCE, as DIRECTOR  
OF PLANNING, and BRIAN  
BILBERRY, DEPUTY THE  
CORPORATION COUNSEL WITH  
THE DEPARTMENT OF  
CORPORATION COUNSEL,

Defendants.

Civil No.: 17-

06-SEP-2018  
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APPEAL FROM NOTICE OF ENTRY OF  
JUDGMENT, FILED JANUARY 24, 2018

CIRCUIT COURT OF THE SECOND  
CIRCUIT, STATE OF HAWAII

HONORABLE RHONDA I. L. LOO  
JUDGE

**DEFENDANTS-APPELLEES THE COUNTY OF MAUI, WILLIAM SPENCE AND  
BRIAN BILBERRY'S ANSWERING BRIEF**

**CERTIFICATE OF SERVICE**

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and BRIAN BILBERRY

CAAP-18-0000105

IN THE INTERMEDIATE COURT OF APPEALS

STATE OF HAWAII

CHRISTOPHER SALEM,

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vs.

THE COUNTY OF MAUI; THE  
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WILLIAM SPENCE, as DIRECTOR  
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CORPORATION COUNSEL WITH  
THE DEPARTMENT OF  
CORPORATION COUNSEL,

Defendants.

Civil No.: 17-1-0208 (1)

APPEAL FROM NOTICE OF ENTRY OF  
JUDGMENT, FILED JANUARY 24, 2018

CIRCUIT COURT OF THE SECOND  
CIRCUIT, STATE OF HAWAII

HONORABLE RHONDA I. L. LOO  
JUDGE

**DEFENDANTS–APPELLEES COUNTY OF MAUI,  
WILLIAM SPENCE AND BRIAN BILBERRY’S ANSWERING BRIEF**

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**DEFENDANTS-APPELLEES COUNTY OF MAUI,  
WILLIAM SPENCE AND BRIAN BILBERRY'S ANSWERING BRIEF**

Defendants-Appellees County of Maui, William Spence and Brian Bilberry (collectively referred to as "County"), by and through their attorneys, Patrick K. Wong, Corporation Counsel, Moana M. Lutey and Christie M. Trenholme, Deputies Corporation Counsel, hereby submit their Answering Brief in the above-referenced case.

**I. CONCISE STATEMENT OF THE CASE**

**A. NATURE OF THE CASE**

On May 19, 2017, Plaintiff-Appellant, Christopher Salem ("Salem") filed a complaint against the County of Maui, William Spence, the Director of Planning and Brian Bilberry, a deputy with the Department of the Corporation Counsel. Salem alleged that the County denied him access to a public record. Under H.R.S. § 92F-15, judicial enforcement is allowed after ". . . denial of access to a government record . . .". ROA p. 1.

The County filed a Motion to Dismiss or, in the Alternative, Summary Judgment on the basis that it did not deny Salem access to any government record. Instead, the record sought simply did not exist as Salem had been told many times. ROA p. 3, Declarations of William R. Spence and Brian A. Bilberry. Interestingly, Salem agreed to the dismissal of his lawsuit in this case. ROA p. 9, Exh. 6.

Once the Court granted the County's motion, however, Salem alleged he had newly discovered evidence from a councilmember's office and a letter from OIP that warranted reconsideration of the Court's order. ROA p. 7. The "newly discovered" evidence from the councilmember's office did not meet the standard for reconsideration because the "new evidence" was not new (it was attached to Salem's Complaint). ROA pp. 1 and 20. The second piece of



“new evidence” was a letter from OIP that was not evidence. As such, the underlying court properly denied reconsideration of its Order granting the County’s motion. ROA p. 23.

**B. STATEMENT OF THE ISSUES**

1. Whether the Trial Court erred in granting the County’s Motion to Dismiss with Prejudice for Failure to State a Claim.

2. Whether the Trial Court erred when it did not consider Salem’s motion for reconsideration.

**C. STANDARD OF REVIEW**

The proper standard of review on a district court’s grant of a motion to dismiss for failure to state a claim is de novo. *Kealoha v. Machado*, 131 Hawai’i 62, 315 P.3d 213 (2013).

The standard of review on the ruling of a motion for reconsideration is whether the lower court abused its discretion. *Amfac, Inc. v. Waikiki Beachcomber Inv. Co.*, 74 Haw. 85, 839 P.2d 10 (1992).

**D. FACTS MATERIAL TO QUESTIONS PRESENTED**

The County provided the lower court with a declaration from William R. Spence, the former Planning Director, confirming that the County did not have the documents requested by Salem. ROA p. 3, Declaration of William R. Spence. In addition, the County provided the Court with evidence supporting its argument that Salem had been provided with all material in the County’s possession. ROA p. 3, Declaration of William R. Spence and Declaration of Brian A. Bilberry.

The County submitted evidence that Salem’s alleged newly discovered evidence was not new. ROA pp. 26 and 27.

## II. ARGUMENT

### A. SALEM'S LAWSUIT FAILED TO STATE A PLAUSIBLE CLAIM

The County did not deny Salem access to any government record. Instead, the record sought by Salem does not exist. ROA p. 3, Declarations of William R. Spence and Brian A. Bilberry. Dismissal was, therefore, warranted under Rule 12(b)(6) of the Hawaii Rules of Civil Procedure ("HRCP") because there was no relief that the Court could provide.

A complaint may be dismissed if it appears beyond a doubt that plaintiff can prove no set of facts entitling plaintiff to relief. *Bertelmann v. Taas Assocs.*, 69 Haw. 95, 735 P.2d 930 (1987).

Dismissal pursuant to Rule 12(b)(6) is warranted only if the claim is:

. . . clearly without any merit; and this want of merit may consist in an absence of law to support a claim of the sort made, or of facts sufficient to make a good claim, or in the disclosure of some fact which will necessarily defeat the claim.

*Rosa v. CWJ Contractors, Ltd.*, 4 Haw. App. 210, 664 P.2d 745 (1983).

In the case at bar, the Court could not order the County to produce a record that it did not have and, as such, did not fail to disclose. The UIPA requires agencies to provide access to those records that are actually maintained, but nowhere imposes an affirmative obligation to maintain records. *State of Hawaii Organization of Police Officers v. Society of Professional Journalists*, 83 Hawai'i 378, 401, 927 P.2d 386, 393 (1996). The United States Supreme Court, interpreting the Freedom of Information Act ("FOIA") in *Kissinger v. Reporters Comm. for Freedom of the Press*, 445 U.S. 136 (1980), reached the same conclusion. Therefore, there was no violation of the UIPA.

Most courts which have considered the question have concluded that the FOIA is only directed at requiring agencies to disclose those "agency records" for which they have chosen to retain possession or control. *See also NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 221 (1978) (describing the Act as reaching "records and material in the possession of federal

agencies....”). The conclusion that possession or control is a prerequisite to FOIA disclosure duties is reinforced by an examination of the purposes of the Act. The Act does not obligate agencies to create or retain documents; it only obligates them to provide access to those documents which it in fact has created and retained. *Kissinger, supra*, at 151–52. The purpose of the UIPA is identical to FOIA in regard to possession or control.

In the absence of the County’s possession of the requested record, the Court properly granted the County’s motion.

**B. THE COURT DID NOT ERR WHEN IT DENIED RECONSIDERATION OF ITS ORDER**

In order to succeed, Salem is required to prove an abuse of discretion by the lower court when it denied reconsideration of its order granting the County’s motion. To meet this standard, Salem would need to show that the court “. . . clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party litigant.” *Amfac, Inc., supra*, 74 Haw. at 88. He is unable to meet that burden.

In his appeal, Salem argues that the Court should have reconsidered its ruling for the following reasons:

1. The Court granted County’s motion to dismiss in spite of an abundance of evidence provided by Salem’s Motion for Reconsideration;
2. The Court should have addressed alleged inconsistencies between the government records and William R. Spence’s declaration; and
3. The Court should have issued findings based concerning the evidence Salem presented, including allegations about the appearance of impropriety.

*See Salem’s Opening Brief, Section V.*

All of Salem's allegations lack merit. In the case at bar, Salem's Motion for Reconsideration failed to present any new evidence. The alleged "new evidence" consisted of two items: 1). a letter from the Office of Information Practices ("OIP"); and 2). a permit summary. Neither exhibit was new evidence.

The OIP letter was not new evidence. It was simply a letter from OIP to Salem explaining that the County was only required to produce records it maintained. ROA p. 26. That was not evidence that the Court needed to consider as it affirmed the County's arguments. There was, therefore, no abuse of discretion by the lower court when it did not grant Salem's motion for reconsideration.

Salem's second piece of "new evidence" was the permit summary. The information contained in that permit summary, although formatted differently, was an exhibit Salem attached to his complaint as Exhibit "H". That exhibit was printed on July 31, 2009 at 11:15 a.m., which means that Salem had that information well before he filed the underlying lawsuit. ROA p. 26. Therefore, that was not new evidence. The County had its IT manager, Jacob Verkerke, explain why the formatting appeared differently in his declaration. ROA p. 27. As Mr. Verkerke explained, Salem simply received a compilation of information presented as "new evidence" while Exhibit "H" was a computer screenshot. The information contained in both exhibits was identical. ROA pp. 26 and 27, Declaration of Jacob W. Verkerke.

Salem's baseless allegations regarding alleged impropriety did not require Court attention. It was not an abuse of discretion for the Court to ignore such a frivolous allegation.<sup>1</sup>

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<sup>1</sup> Salem has been making allegations of corruption, grand conspiracy and conflicts of interest for years. ROA p. 3, Declaration of Brian A. Bilberry at ¶ 18.

Based on all of the records contained here, the lower court did not abuse its discretion in denying Salem's motion for reconsideration.

### III. CONCLUSION

Based on the record of this case, there is no basis to overturn the lower court's rulings. Therefore, the lower court's Orders should be affirmed.

DATED: Wailuku, Maui, Hawaii, September 6, 2018.

PATRICK K. WONG  
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THE COUNTY OF MAUI, WILLIAM SPENCE  
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By /s/ Moana M. Lutey  
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