

# **GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE**

**Council of the County of Maui**

## **M I N U T E S**

**Council Chamber**

**February 5, 2019**

**RECONVENE: 9:02 a.m.**

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair  
Councilmember Riki Hokama (arrived at 9:03 a.m.)  
Councilmember Tasha Kama  
Councilmember Kelly T. King  
Councilmember Alice L. Lee  
Councilmember Tamara Paltin  
Councilmember Shane M. Sinenci  
Councilmember Yuki Lei K. Sugimura

**STAFF:** Shelly Espeleta, Legislative Analyst  
Kasie Apo Takayama, Legislative Analyst  
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci  
Gina Flammer, Executive Assistant to Councilmember Sinenci  
Sarah Pajimola, Executive Assistant to Councilmember  
Rawlins-Fernandez

**ADMIN.:** Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department  
of the Corporation Counsel  
Deidre Tegarden, Chief of Staff, Office of the Mayor  
Michele McLean, Acting Director, Department of Planning  
Patrick K. Wong, Acting Corporation Counsel, Department of the  
Corporation Counsel  
Sananda Baz, Managing Director, Department of Management

**OTHERS:** Ka Ipu Kukui fellows  
Saumalu Mataafa  
Daryl Fujiwara  
Zandra Amaral  
Hayden Aluli  
Anthony Ranken  
Plus (17) other people

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**PRESS:**     *Akaku Maui Community Television, Inc.*  
              *Melissa Tanji, The Maui News*  
              *Susan Halas, Maui Time*

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CHAIR MOLINA:     ... *(gavel)* ... The recessed Governance, Ethics, and Transparency Committee meeting of January 23, 2019 is now back in session. Members, today is Tuesday, February 5<sup>th</sup>, just after 9:00 a.m. Thank you very much for enduring this process, Members. We have...the Committee has made decisions on 7 of the 11 nominees of the Mayor thus far. Today we'll be completing the agenda for the January 23<sup>rd</sup> meeting. We still have two nominees to consider this morning and possibly this afternoon and they are, of course, the nominee for the Planning Director, Ms. Michele McLean, and the nominee for Corporation Counsel, Mr. Patrick Wong. For the record, we have eight members in attendance, we have Councilmember Hokama on his way. And Staff, we have veteran Analyst, Shelly Espeleta, as well as veteran Secretary, Pauline Martins, and we are ably joined by one of our new hires for the Legislative Analyst position and that is Ms. Kasie Apo Takayama. Welcome aboard. And, of course, we have from Corporation Counsel, Mr. Ed Kushi, and we have from the Mayor's Office, Chief of Staff, Deidre Tegarden, who will be giving us opening remarks on Ms. McLean as well. And the Committee recognizes Councilmember Hokama's attendance as well. And the Chair would also to recognize in the gallery this morning, we have members of the Ka Ipu Fellows Program observing our proceedings this morning, so welcome. Okay. Ms. Tegarden you have the floor.

**GET-1(8)     APPOINTMENT AND REMOVAL OF ADMINISTRATIVE HEADS OF  
DEPARTMENTS (PLANNING DIRECTOR) (CC 19-1)**

MS. TEGARDEN: Thank you and good morning, Chair and Councilmembers. Aloha. Thank you for all of your work that you have done in this very important review process. Mr. Chairman, your meetings have provided a venue for public input and transparency. And we really want to thank the members of the public who've provided written comments and/or who've come to these Chambers personally to offer their thoughts about who should lead our County departments. This is truly democracy in action. On behalf of Mayor Mike Victorino, we come before you to seek a recommendation for confirmation of Michele McLean as Director of the Department of Planning, and Patrick Wong as Corporation Counsel. Both nominees bring a wealth of experience and a dedication to public service. We know experience is important, because it helps ensure that we can continue delivering a high level of service to our customers, the people of Maui County, the service that they have come to expect and rely upon. And with that, I would like to share a few words about Ms. McLean. Ms. McLean has been in Planning in one form or another since the '90s. She is incredibly knowledgeable about Planning and the rules and regulations that surround it, and just as importantly, she cares. As stated in her answer when asked why she applied, and I quote, "I applied because I care about Maui County's people and I want to help protect and preserve the character and

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lifestyle that make our community so special.” Mayor Victorino has all confidence in Ms. McLean’s ability to lead the Department of Planning and move it forward with the community’s needs at heart, and he asks for your confirmation today. Thank you so much for allowing me to provide some remarks.

CHAIR MOLINA: Thank you very much, Ms. Tegarden. Good morning, Ms. McLean.

MS. McLEAN: Good morning, Chair, Committee Members. Aloha.

CHAIR MOLINA: And thank you for being here. So, I’ll ask you to go ahead and provide some opening remarks for the Committee. Proceed.

MS. McLEAN: Thank you, Chair. I believe the Committee has my resume, and I just wanted to provide a little bit of personal information about my background. I grew up in the Northeast in Connecticut and Pennsylvania in small towns that are part of rural communities very much like Maui. And like Maui, they could get overrun with tourists and there were concerns about losing the sense of community and identity. I went to Vassar College in New York, graduated with a degree in political science in 1987 and moved to Washington, D.C. The first job I was offered was on Capitol Hill. When my boss lost his reelection bid the following year, I shifted to a few offices and then found a great position with the House Republican leadership, yes, the Republican leadership. It’s very different, it was very different then than it is today, though things were starting to change back then. The role of power, the role of politics in governing, and that was in the earlier 1990s, and that was one of the reasons that I left D.C. I was a senior research analyst specializing in social domestic policy issues such as healthcare, juvenile justice, education, social security, Medicare and Medicaid, working with moderates from both parties to find incremental reforms instead of major overhauls that would just have been polarizing and never get anywhere. I’ve said before that I see myself more of an analyst than a planner and that’s identifying a problem, getting the relevant information and perspectives, weighing options, and deciding the course of action. After I left D.C., I eventually moved to Maui in 1994 where my dad and step-mom had been living for more than ten years already since my freshmen year in college. Some of you may be familiar with my dad, Azby Chouteau, who ran for Council in 1998 losing to Alice Lee and he also ran for Mayor in 1990 losing obviously to Mayor Lingle. My stepmother by the way is Kari McCarthy, she’s the publisher of *On Maui*, the magazine for the Maui Arts and Cultural Center, as well as *Art Guide Maui*, and she’s a brilliant, fine artist. Anyway, I had come to visit for the ten years prior to my move including during those campaign seasons, and I waved signs and I met Tom Morrow, who was leaving the Council seat that my dad aimed for and that Alice won. Once I moved here, Tom was back on the Council and let me know about an analyst position with Council Services and by that point, Alice Lee was Chair and she graciously allowed me to be hired. I worked for OCS for about five years from ’95 to ’99, working first for Councilmember Sol Kahoolalahala on what was then the Economic Development, Tourism, and Environment Committee, and through that we worked on the very first B&B ordinance and also the first CORA permits, both of which have been significantly

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overhauled since, and then I staffed the Land Use Committee under him where we did the urban interim rezoning that we talked about last week in Councilmember Paltin's Committee. We did the rural bill and the ag bill to control what were then unrestricted gentleman's estates. And at that time, it was a compromise that worked well and it's worked well for a while but that too needs to be revisited. I left Council Services to start my own consulting business aiming for the little guys. At that time, there were two large consulting firms, what was then Munekiyo & Arakawa, and Chris Hart & Partners. There was no small firm for smaller projects, and so that's what I was aiming for. I did that for a few years on my own and then eventually joined the staff of one of my best clients, Smith Development, whose focus was on gap group and missing middle housing that we haven't really seen much of since. They also did the first wind farm at Kaheawa, which I helped with. I was with them for a few years but realized that the private sector wasn't for me and that I missed public service. By then, Sol Kahoolalahala was the executive director of the Kahoolawe Island Reserve Commission and he brought me on board in 2005 as a policy advisor, and I worked on special projects, then became deputy and helped oversee on-island operations and programs, as well as the budget, procurement, and personnel. That's when I had my first formal management job and that's a very diverse and independent group to manage. When I was asked to join Mayor Arakawa's Administration in 2011, I accepted the Deputy Planning Director position with a condition that I could be the County representative on the KIRC, because I still felt such a strong commitment to the mission and to the people. So, I've been the County's representative on the Kahoolawe Island Reserve Commission ever since and was designated chair of that commission by the Governor. As Deputy Planning Director, I was initially responsible for budget, procurement, spending, and personnel issues, and then grew in my responsibilities to take on other tasks due to Departmental need. When I became Director this past July working with staff teams, we really jammed at the end of the term to accomplish a series of major initiatives, overhauling the Parking Code, adopting the digital zoning map, enacting what we call the Ohana Bill, and amending rules for the Agricultural District. And in Councilmember Paltin's Committee last week, we reviewed some of the details of the Planning Department. We have 70 staff, 4 divisions, and are involved with a broad range of zoning administration, enforcement, permit processing, long-range plans, and plan implementation. Prior initiatives with which I was directly involved includes significant changes to the Commercial Sign Ordinance, amendments to the Historic Districts to clarify and expand the Cultural Resources Commission's authority, clarifying which departments are responsible for which trees, parking lot trees, street trees, parks trees. We worked with the Lanai Planning Commission to amend the SMA boundaries on that island, we created the Plan Implementation Division, we moved all of our personnel to One Main Plaza, before then we were separated with some in the Kalana Pakui Building and others in One Main, and we started an employee recognition program where coworkers recognize each other monthly at our Departmental meetings. Ongoing efforts include working with the Maui Planning Commission on revising their Special Management Area and shoreline rules to incorporate sea level rise. Some future initiatives I'd be interested in pursuing in cooperation with the Council would be to proactively zone Interim-zoned lands where the existing use and community plans are in sync with each other, revisiting the ag bill

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to better regulate ag lands to really protect, promote, and support true ag, and to designate important agricultural lands, talking story with the Council and the community about improving the community plan update process and trying to find consensus on the roles of community plans and zoning, and getting the community plans, Capital Improvement Projects and budget all in line with each other. I received AICP certification in December. That's the American Institute of Certified Planners within the American Planning Association. It's a nationwide independent verification of a planner's qualifications. There are about 70 AICP members in the Hawaii APA Chapter, about 350 APA chapters in Hawaii, 70 AICP. And with that, I'd like to state that I believe I'm qualified and experienced to be the Planning Director. I hope to have your support and I'm happy to answer any questions. Thank you, Chair.

CHAIR MOLINA: Thank you very much, Ms. McLean, and thank you for the trip down memory lane as well. Alright, Members, prior to the Chair opening up the floor for questions, Chair would again like to remind you if you do have a particular issue related to the Director's involvement please be mindful if it does involve litigation the County is currently in or the potential for litigation. Please be cautious of that. I'll be ably assisted by Corporation Counsel if we do walk that line as well. So, please keep that in mind. Alrighty, so, Members, we're ready to go forward. I'd like to recognize the subject Committee Chair person, the West Maui Councilmember Tamara Paltin for opening rounds of questions. Good morning, Ms. Paltin.

COUNCILMEMBER PALTIN: Good morning, Chair. Thank you for your thoughtfulness throughout this process and allowing the subject facilitators to start. As the Chair of the Planning and Sustainable Land Use Committee, I've scrutinized this appointee. I respect her hard work ethic. I agree she is very smart and does have tremendous institutional knowledge. I do have some concerns, and I hope they can be resolved today. My first question, did you send out a Department-wide e-mail requesting testimony be submitted regarding this appointment?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. I sent out a e-mail informing staff that my confirmation was, at that time, I understood it to be doubtful and to inform them and to let them know that they could submit testimony, asking them to submit testimony if they chose to, and I also did that with a couple of dozen colleagues and members of the public.

COUNCILMEMBER PALTIN: If you are confirmed, will there be any negative action against the employees that did not send testimony or sent testimony in opposition as well as any developers who did the same?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Absolutely not. I made clear in the e-mail that it would be entirely their prerogative. I should state that at a senior staff meeting in mid-January, I let my senior

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staff know that I had been contacted by a former Councilmember informing me that I did not have votes to be confirmed and I informed my senior staff of that and they said you have to tell others in the department, people would want to know, don't let this go forward without asking people to testify for you. The Mayor also encouraged his appointees to reach out and request testimony. It's not something I would have done if it wasn't for the contact that I had. And I...in my e-mail, I said I was embarrassed and humbled to have to make the request, but I absolutely understand that's a big thing for a lot of people to do so, and especially to submit testimony in opposition. That's absolutely their right and there will be no repercussions whatsoever.

COUNCILMEMBER PALTIN: Thank you. Did the former Councilmember state what her information was based on?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Yes. On January 9<sup>th</sup>, former Councilmember Elle Cochran came to my office. I was in a closed-door meeting, my secretary knocked on the door to tell me she was there, so I excused myself from my meeting out of courtesy and went into the vacant director's office and sat with her. She told me that she had spoken to Council Chair King that I didn't have five votes in support of my appointment. She said that if she were in my position, she would want to know so that she could be prepared.

COUNCILMEMBER PALTIN: Thank you. So, I have worked for the County long enough to know many of us are underpaid, underappreciated human beings trying to do our best. Can you explain to me the process, the policy, or procedure you follow when serious mistakes are made within the Planning Department?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. The objective would be to find out the reason for the mistake. Was it inadequate training? Was it they didn't have adequate information? Did they misunderstand the information they had? So the...if it's the very first time something like that happened with an employee we'd sit down and talk with them and talk them through what the problem was and figure out how not to repeat it. If it were to be repeated our second effort would probably be to talk with them again and we'd record that on one of the evaluation worksheets that we do quarterly with our employees. And then if the problem were to persist then we could consider discipline, which is progressive and there's a disciplinary policy guideline that we would follow. But the first effort would be to understand why the mistake was made and see how we could correct it.

COUNCILMEMBER PALTIN: Thank you for that response. That wasn't the kind of information I was looking for. More along the lines of, you know, like the impact to the public. Like, say they were going to purchase a land or something and they were told the incorrect

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zoning to do what they wanted to do or, you know, something like that that impacts the resident or, you know what I mean? Sorry.

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Sorry for misunderstanding. We would endeavor to correct the information with the inquirer. There have been cases where we have rescinded permits that we've issued if we found that they were issued improperly with inaccurate information or new information came along. So we would take steps to correct the mistake if...we'd have to consider a number of factors. If, for example, we issued a permit and the project was significantly underway that would turn into a big legal question we'd have to consult with the County attorneys to make sure that we weren't putting the County in greater jeopardy by revoking an action that we found to be incorrect after the fact.

COUNCILMEMBER PALTIN: Can you also in the Committee that you referenced, that I chaired, we went over discretionary and administrative decisions made on the behalf of the directors, and I was wondering if you can go over the process in which you make a discretionary or administrative decision and how when making that decision acting on behalf of the County that you keep personal biases in check?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. Most decisions are made at the staff level, only when an issue becomes complicated or there's a lot of gray area does it come to the director. And so if it's a decision that comes to the director, then I would, I do, I must rely very heavily on the information that staff provides me. I have had to tell good friends no. I've said yes to people who I know are unpopular with others. So, I really don't interject my personal feelings into decisions that get made. Administrative approvals generally don't come to me because those are pretty black and white. That's the nature of those. It's the discretionary ones where there is some judgment that needs to be exercised. An example might be a bed and breakfast permit that meets all the criteria in the Code, but we've gotten various opposition letters that don't bring it to the threshold of triggering Planning Commission review but still make us wonder, okay, what is the impact on the community of this operation gonna be, and that's when I, that kind of instance might be brought to me. I get the information that I can from our staff and I look at all the materials and then work with them to make a decision.

COUNCILMEMBER PALTIN: So, just to clarify that answer, these discretionary decisions that you're making as is your right all come to you, you don't go to them?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Almost completely, yes. Every now and then I will get a direct call from somebody who gets my number from somewhere or I'll get an inquiry from a Councilmember office or from the Mayor's Office saying can you look into this where the

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applicant is already working with staff but have asked, you know, gone outside of that to ask for additional help, and in those cases I follow up and get involved. If that contact hadn't been made with me, it very well could've been handled entirely on the staff level, but I don't go around seeking involvement. It's when things have to be brought to me, then they come to me, or on the occasion that something is brought to my attention, then I'll interject into the process.

COUNCILMEMBER PALTIN: Thank you, Chair. I got more questions, but I don't want to monopolize all the time. So, I'll yield at this time until the second or third round.

CHAIR MOLINA: Thank you, Member Paltin. The Chair appreciates your courtesy to your fellow colleagues. Ms. McLean, prior to recognizing more questionings from the body, I want to dovetail off of one of Member Paltin's questions with regards to personnel. And I've had current and former Planning staff tell me that training supposedly is nonexistent in various divisions within the Department. Upon hiring staff is sometimes given permits to process without formal training or a mentor to guide them. What are you currently doing or plan to do to resolve the lack of formal training offered to new and existing staff?

MS. McLEAN: Thank you, Chair. That's a challenge for us because the kind of training that our staff needs isn't readily available externally because it is very focused on Maui County's rules and regulations. One of our divisions does have some training manuals. They're a bit outdated but they're working on updating those. As a first step, new hires should be given a designated mentor to partner with them for the first month or so that they're on the job so that they're not left to their own devices. We have also talked about the need for the Department to have a strategic plan which we don't have and I don't know that we've ever had and part of that strategic plan would also involve some of those elements of training and educating new hires. It is important and I would agree that we are deficient in that.

CHAIR MOLINA: Okay, thank you. And I hope, should you be confirmed, that the trend towards, you know, improving the training continues. One quick question with regards, Mayor Victorino has stated his emphasis on customer service. What are you doing about that in the Department because I know there've been, you know, concerns from the community about customer service from some of the employees within the division? Any thoughts or suggestions as to how you'll address that?

MS. McLEAN: Yes, thank you, Chair. Toward the end of last year we did have a customer service training session for all staff that were able to participate. I, myself, didn't participate and the feedback that I got was that it wasn't all that helpful or it didn't get much positive feedback from it. I've asked our administrating officer to reach out to DMV, because they've had series of customer service trainings that, my understanding, is that they've been very successful, so I asked her to get information about those trainings because we want to do a few more of those again. So, yes, we are pursuing it.



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CHAIR MOLINA: All right. Thank you. Okay, Chair will recognize the Kahului Councilmember, Ms. Kama for questions for Ms. McLean.

COUNCILMEMBER KAMA: So, Director McLean, what was the morale and the environment like at the Department before you took over?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: It was maybe satisfactory. I wouldn't say it was outstanding. We do have wonderful employees and we did do, or before I was Director, we hadn't done any sort of employee retreat prior to that. Yeah, I wouldn't say it was great. There were frustrations, and I don't think staff, in a lot of circumstances, felt supported by senior management.

COUNCILMEMBER KAMA: So, what condition, and I'm talking in terms of, like, you know, when I move into a new house, I expect it to be nice and clean and so when I move in all my stuff I don't have to reclean the whole thing again. So, when I ask you what condition was the Department in when you took over as Department Director, that's what I'm asking. What was it like?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. Putting it into context, that was with six months remaining in the Administration. At that time, I wasn't certain if I would apply to continue...

CHAIR MOLINA: Mr. Kushi, you all right? Continue, Ms. McLean.

MS. McLEAN: Thank you. At that point, I wasn't certain that I would apply to be a Director and certainly if I applied whether I would get appointed by the Mayor elect and if I would be confirmed. And so, our, my focus was to move forward some initiatives that we had started that were really close to crossing the finish line, and we had staff teams working on those initiatives, so we really wanted to get those accomplished, and we did. And also, we did a staff retreat, the first time we had done one in my eight years here and it was some educational and motivational. A lot of it was a get to know you kind of thing, because we have had a number of new hires in recent years and we did it like speed dating where staff sat across from each other in two rows and you had time to talk with a person before you for just a few minutes and then you'd shift chairs, and people met people they had never met before. When I started as Deputy in 2011, it had been a number of years since I've worked with the Planning Department, and I thought the Department had maybe 30 or 40 people and I was shocked that there were 65 at that time. And I was like, whoa, who are all these people? And so over the course of the first few months that I was there, I set aside at least 30 minutes to sit down with each employee individually and just talk to them a little bit, tell me about yourself, what do you do for fun, what do you like about your job, what don't you like, just for everyone to have a personal connection, and to feel like they can come to talk to me if they wanted

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to or needed to, and I maintained that over the years. I haven't done that for several months. We do have some new hires that I need to sit down with, but I wanted to know everyone just, even if just a little bit, and that's what we accomplished with that retreat with everyone getting to know everybody for just a little bit. And we had, you know, we did some games, we had some fun, we had a motivational speaker, and I think it was really positive for everybody, and that's something that we need to do on an annual basis.

COUNCILMEMBER KAMA: Just one last question, Chair. What kind of collaborative relationship have you had with the previous Director of Planning?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I endeavored to fill the gaps that I thought were left, so if there were issues that weren't being followed up on I'd try to follow up on them where he would take on whatever issues came to him that he wanted to focus on and then I'd try to cover the gaps.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Kama. Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. Welcome, Michele McLean. Thank you very much for doing this tough job, and as we know from Council committees, the Planning Committee as well as the Land Use Committee are probably the toughest because you deal with people, their problems, and do something that's very valuable to them as you deal, as you make decisions about land use and how it affects the community. During the testimonial process, we heard from, I think, it's a group of people and we even, I think, got is it a 60-page document from the attorney who represented this group of people and this is regarding ziplines and I'm not too sure if this can be discussed in open session and but because we had so many testifiers on it I wonder at some time if appropriate with Corp. Counsel and the Chair if that could be discussed. And the thing I think that concerns me is that the testifiers as well as the attorney represented the decisions that were made with this Northshore Zipline, Derek Hoyte organization to be done in secrecy, and so that's the part that's concerning me, because we are a public organization and I'm sure that things that are, decisions that you make are for, you know, because of, you know, the broad strokes that you need to do in terms of encompassing decisions. I will let the Committee know or let the Members know that during my two years of being in office, the prior two years, I've had zipline residents, I guess, would be a proper way of, you know, who came to visit me at the Upcountry Farmer's Market expressing their discontent with having a zipline in their neighborhood where, and I did go to a meeting that was put on by the, by these people that came to, some of them came to testify and were upset about the decision made in secret that they claimed. And you can see the zipline platform from this person's balcony, right, and all day long for the last, I don't know, five years you can hear people

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screaming all day long, bad words, you know, all kinds of, you know, different screams at different octaves, that was difficult for them to live their life in Haiku in this beautiful plantation looking lush green community. So, I wonder if you could make a comment about that or explain to the Committee about that zipline agreement as I always believe that there's two sides to a story and I would love to hear what you have to say because we have received lots of testimony verbal as well as the written.

CHAIR MOLINA: Okay, Ms. McLean, prior to answering that question, again, the Chair as he had stated earlier, I'll leave it up to you and Corp. Counsel to see how you want to answer that question because it is a sensitive issue.

COUNCILMEMBER SUGIMURA: I think there's an appeal right now going.

CHAIR MOLINA: Yes, but my whole point being that it is something that could potentially involve the County in litigation matters, possibly. We're not there yet, but just want to put that little reminder in there. So, if you feel comfortable with answering in open session, proceed, and, of course, Mr. Kushi will be monitoring as well. Mr. Kushi, do you have anything to say prior to Ms. McLean's response?

MR. KUSHI: Mr. Chair, if I may, the zipline case as described by testifiers is in litigation now and an appeal was made to the Board of Variances and Appeals, in essence, appealing the decision that was made in the so called settlement agreement. That being the case, I would advise Ms. McLean that, you know, if she wants to testify generally about the case but not specifics she may do so in open session. The details of the case and the strategy and the process as to where it is right now, on behalf of the Planning Department, that should be discussed in closed session, executive session.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: Okay, Ms. McLean, you have the floor, and as Mr. Kushi stated, you have the vehicle of executive session. We need a minimal of six members to approve going into executive session, but again as the Chair of this Committee, I will make sure questions are pertinent only to the Director's involvement. The Chair will not tolerate any positions on the issue, the pros and cons of it, we need to focus on the Director and nothing else. Ms. McLean?

MS. McLEAN: Thank you, Chair. Prior to entering into the settlement agreement, the zipline matter had two proceedings going on with the Department. First, they had a County Special Use Permit pending with the Maui Planning Commission and they also had an appeal of the violations we had issued against the operation pending with the Board of Variances and Appeals. The BVA process was being handled by a hearing officer and the Maui Planning Commission Special Use Permit process was being considered for the second time by the Planning Commission, because the Planning Commission had previously denied the appeal. The applicant appealed that decision to court and prevailed and the matter was remanded to the Planning Commission for procedural

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problems. The applicant requested the Planning Commission to appoint a hearing officer and the Planning Commission agreed and then appointed themselves as the hearing officer, and then the proceeding continued with the Commission conducting the contested case proceeding. From what I observed during those proceedings and from what I understood to be going on with the BVA proceeding, I was concerned about the County's position and when I say the County, I mean the whole County, the Planning Commission, the BVA, the Planning Department, all involved in these proceedings. To go into detail about my concerns should be done in closed session, but just suffice it to say there were sufficient concerns for me to decide that entering into that agreement was a very prudent course of action. I've said before to some of the neighbors, I've said to individual Councilmembers, I do regret not meeting with the neighbors before entering into that agreement. I don't know that it would've changed my position or change the terms of the agreement, but it was wrong of me to not talk with them and for them to not know that this agreement was happening. The settlement discussion itself, those are typically done confidentially, but certainly it would've been within my authority and would have not been out of line in any way for me to reach out to the neighbors and talk with them and say this is, this could happen, and to let them know because they were surprised and that was not fair to them. But again, I don't believe it would've changed my decision to enter into the agreement.

CHAIR MOLINA: Proceed, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Thank you. So, basically the surprise then came from that they just didn't know and the decision was made so that's where they came, the word secret, I'm sorry, is why they're possibly thinking that. I just wondered, and so basically as the Planning Director and based upon, I'm sure you must have received advice from Corp. Counsel and those that are involved that decision was made. Chair, I'm curious if you think that it's worthy to go into executive session to go further, if you think that's going beyond the scope of her role as a Planning Director, then I yield to you to make that decision, although, I wanted to bring it up just because there were so many testifiers that talked about it, so.

CHAIR MOLINA: Councilmember Sugimura, if you would allow me, I'd like to at least complete the first round of questions --

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: --and then we can consider executive session --

COUNCILMEMBER SUGIMURA: Okay.

CHAIR MOLINA: --if two-thirds of this body feels it necessary we go into closed session to talk about the specifics as it relates to the Director's involvement --

COUNCILMEMBER SUGIMURA: Yeah.

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CHAIR MOLINA: --with this sensitive issue. Members, okay...are you done with your line of question for now?

COUNCILMEMBER SUGIMURA: I have one more question.

CHAIR MOLINA: Go ahead, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: To change off of the ziplines, that I want to commend you because the last term you did really a lot of things or took a lot of actions and I think it was just based upon reading the testimony that we received, written testimony from Department, long term...Long Range Planning, or different staff personnel that came and provided testimony that I commend you for taking, I mean, getting that digital map we heard about it for two years or from the start of in 2016 and then in 2017, you know, you started doing the process and congratulations for getting that done, the digital mapping, the DSSRT project I think it was called, the overhauling the parking plan, working on the signage plan, and trees, you know, all the things that you did. But, and, oh, and the Lanai and Molokai community plans were done too, so congratulations on that. I wanted to just talk about one thing about the Ag District. So, one of the things that happened towards the end of this last term was a change of administrative rules. A hearing was held at Makawao cafeteria, I think, and I couldn't go but my staff person went because we were in Council, you know, doing committee work so I couldn't leave, but I did hear back from it and then the final outcome was that the ag rules were amended and I wanted to know if you could just talk about the farm plan, simplification of the farm plan requirement versus a declaration and, yeah, if you could talk about that.

CHAIR MOLINA: Okay. Ms. McLean?

MS. McLEAN: Thank you, Chair. And thank you for the question. The efforts started a couple of years ago with a staff team looking at our ag rules. So, just to clarify for everybody, we have the Ag zoning district and that is law, then administrative rules are used to clarify and help us administer that law, so administrative rules cannot change the law, it just defines in more detail how we interpret it. And the administrative rules are what previously called for a farm plan. It said, if you're on ag land and you want to build your first dwelling, you have to provide a farm plan that shows at least 50 percent of the usable area of the land is in ag. And then before you get your building permit for your second dwelling on the property we go out and inspect to see that the farm plan is implemented and that's all the rules said previously. Over time we would see a lot of abuses of things in the Ag District. We would see a "barn" that would have four bathrooms and tile floors and we created our own policies for what you could and couldn't have in various ag structures that, oh, you can't have plumbing and electrical in storage. You can't have this and that and those were not codified anywhere. So, initially we sat down with a staff team to put those into the administrative rules, say, okay, what can you have in a barn, what can you have in a shed, what can you have in

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an office, and with the focus on being curbing the abuse. After we were underway with that, I spent some time with the Ag Working Group and gave them examples of the abuses that we've seen and they were right behind us, yeah, you have to control that abuse, and they were like, but wait a minute, I think it would be great to have a shower in the barn so that I could shower before I go into the house. So, we started talking about, well, it's one size fits all. What we establish to curb abusers would also apply to farmers and ranchers, and spending time with the Ag Working Group, we realized the things we were trying to control was going to make it more difficult for them. So, we ended up...we spent a lot of time going through the rules and what would make sense for them and one of the things was focused on the farm plan that the way that we did these farm plans was actually really counterproductive for real farmers and ranchers. It was easy for gentlemen farmers to do the farm plan because it's basically a higher level of landscaping that they would keep all the time, but that's not how it works for real farmers. They change over, they experiment, they leave fields fallow, so we ended up removing the requirement for the farm plan altogether and using what the Big Island and Kauai County use which is a declaration, so the applicant for a building permit on ag land for any kind of building permit has to sign a declaration and the declaration lays out State law and County law relating to ag what you can and cannot do, what the penalties are for violating, and then they have to sign off on that. So, that if we do enforce they cannot say, oh, I didn't know. So, we removed the farm plan requirement replacing it with a declaration. And that was the main focus of the Ag Working Group and that's why we went ahead with those rule changes.

COUNCILMEMBER SUGIMURA: Thank you. Thank you very much for working with the Ag Working Group and the community for two years and holding the public hearing and listening to the concerns of the community, I think that's great leadership, so just thank you very much.

CHAIR MOLINA: Thank you, Member Sugimura. Councilmember Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I don't have many questions. I know Ms. McLean for over 20 years. It was 1997 was my first official working relationship with Ms. McLean, and I think Ms. Lee was around at that time. At the end of '97, I think for that Council that term, one of the key legislations coming out for final votes was sliding scale on agriculture, and I was just reminiscing within myself, Chairman, because of various things that we've been hearing and going through in this process about openness, commitments of decisions before you do the vote. And it's kind of interesting because if you look who was made up of that Council like Kalani English, Wayne Nishiki, Pat Kawano, I'm trying remember all, you know, I'm getting older so my memory is not as clear but eight remaining, but my relationship with Ms. McLean was because she helped me understand the points of that legislation and I was already elected for the new term but by Charter because of the vacancy that Kahoohalahala had created by winning the State seat and upon his effective taking up office for that the Lanai seat became open and then the Council has the appointment capabilities. And, you know, going through this process was kind of interesting because people like

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Mr. Nishiki asked for a commitment to get my confirmation of appointment on a policy question even before I took office, and here we are talking about transparency and everything else, you know. This is 22 years ago, various members of that Council asked me to make a commitment of vote before I even took office and even before I sat in that official meeting to cast a vote. So, I find it unique in that maybe things don't change in 22 years depending on who's asking the question and which side of the issue you are 'cause nobody casted any stones on them at that point in time. So, I just find it interesting, Chairman. My comment or my question more for Ms. McLean is I appreciate your willingness to look at the uniqueness of every district, because every district is, was constructed slightly differently and most of the County is under Interim zoning and therefore there was no general standards more or less. It was, what, Jim Doe decided to build on Lanai and that's what we had as our standards, a walking community with slightly more narrow streets and the current subdivision standards don't really work. So, I'm appreciative of your willingness to look at adjusting the Code and make it more workable and livable for Lanai, Lanaians within our unique infrastructure status regarding rights of ways. You know, the Gay family, old man Monroe if you noticed they planted a lot of trees and most of those trees in the city is in our rights of way now, right, so we have issues. But for Lanai, I would say, are you open to continue to work with our community? And I'm happy to introduce legislation for our appropriate committee to adjust the Code to make our standards fit Lanai instead of the rest of Maui County, and I'm happy to support the other unique components of this County to fit their standards. Because Makawao has their own unique standards, Kaunakakai Town, Molokai has their own uniqueness regarding their streets, sidewalks, just like Wailuku Town, so one size fit all doesn't work for me, yeah. The mentality of urbanization, the '60s of the U.S. Mainland mentality doesn't work in Hawaii. So, any comments you can share with us this morning regarding the uniqueness of our communities and adjusting the standards appropriately?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. Thanks for the question. Yes, of course, I'm happy to work with you in that regard. We already have some degree of that with the design guidelines in the Business Country Town district, so the Code states that the design guidelines prevail if there's a conflict with other provisions of the Code so with street widths and other things like that the design guidelines prevail. Those actually, we took to the Commission quite a while ago and I remember reviewing those with you and we still have to put that package together to transmit it to Council 'cause Council has to adopt those. But those just to apply to B-CT, it doesn't apply to the residential areas and other areas, so we could look at a similar concept for other areas and actually we're moving forward with the rewrite of the Zoning Code and an idea that has been battled around is to have a different Zoning Code for each of our three inhabited islands and that could really make sense to have a separate Zoning Code. There would be a lot of parallels, of course, but that would enable even more focus on some of those unique changes and I would certainly support that approach.

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COUNCILMEMBER HOKAMA: Okay. If I may continue, Chairman?

CHAIR MOLINA: Hokama?

COUNCILMEMBER HOKAMA: Is any of the remaining areas in the County that has Interim status yet an issue for this County?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Yes, it absolutely is.

COUNCILMEMBER HOKAMA: Do you feel that we need a comprehensive zoning ordinance to take Interim completely out? Because that was something, I think what, in the '50s that we should've been out by the '60s but here we are in 2000-almost-'20.

CHAIR MOLINA: Ms. McLean?

COUNCILMEMBER HOKAMA: You think we need comprehensive legislation?

MS. McLEAN: We do. There was an effort in the late '90s focusing on the urban areas, so a lot of the urban areas were rezoned where the use of the property and the community plan matched because you can't zone in conflict with the community plan. But in areas where the use in the community plan didn't match those would still be Interim and so they're really in a limbo. Also areas outside of the Urban District were not the focus of that prior effort from the '90s, so even though a lot of lands got comprehensively zoned with the adoption of the rural bill and the ag bill there are still lands that didn't fall under those comprehensive zoning provisions that remain in Interim. And if the use that's been there for awhile is just continuing then generally it's not problematic but if in order to subdivide, in order to change the use or expand the use then it is difficult. And so, certainly on Lanai and Molokai now that those community plans have been updated, then we're in a great position to look at Interim on those two islands, and then...

COUNCILMEMBER HOKAMA: Lucky Lanai, we almost eliminated it completely.

MS. McLEAN: I think so but I believe there's still some --

COUNCILMEMBER HOKAMA: There may be a few remnant --

MS. McLEAN: --that we can look at. Yeah.

COUNCILMEMBER HOKAMA: --parcels left, but I think we did a pretty good job in over 90-plus percent --

MS. McLEAN: Yeah.



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COUNCILMEMBER HOKAMA: --zoned.

MS. McLEAN: But then looking at other areas where we know that there are challenges, I think we should look at Molokai, absolutely, but now that the community plan's updated that's, that would be the first step, follow it up with zoning where it's appropriate.

COUNCILMEMBER HOKAMA: Okay, thank you. I appreciate your comment. I need to have though those that do inspection to understand when things happen in the areas, okay, 'cause I've had people complaining to me why is this on that person's lot and whatnot and I've said, talk to them about when it occurred because that was under Interim, and that was my issue with some of my so-called new residents that have no history with us that cannot understand, just sees the law as it is but didn't understand the historic under the Interim component and that was allowed and acknowledged by the County. They were not in violation, okay, maybe to the current law now but when it was first done because this one house that is being complained about is two houses from my house. I know exactly when that thing occurred, okay, and that was under the Interim standards and the County acknowledged and granted the placement of that thing. So, I need the inspectors to understand before citing. Learn the facts and the history regarding the situation and then make appropriate comments, offer guidance to you, or to the complainer who usually has no knowledge on our island. Thank you very much, Chairman.

CHAIR MOLINA: Thank you very much, Mr. Hokama. Committee Vice-Chair Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Good morning, Ms. McLean. Mahalo for meeting with me and mahalo for your comments on the Interim zoning for on Molokai. Some...my first questions will be about community plans. The first question is what value do you place on community plans and future, and the future that the community envisions for itself?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. I place a great deal of value on community plans, and we, as I mentioned several years ago, we created the Plan Implementation Division to really focus on implementing our plans and it's a small division with just a few staff members but it's a start, and we are tracking the implementation of the plans, which we've done for about three years now. We do an annual report that we just transmitted that shows all departments progress with implementing plans and then when it comes to Planning Department actions that would be the division involved with seeing the Planning Department initiatives undertaken, so yes, they're very important. I don't believe they've been given the stature that they should at times in the past.

CHAIR MOLINA: Proceed, Ms. Rawlins-Fernandez.

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VICE-CHAIR RAWLINS-FERNANDEZ: A follow up. So, there was an effort to remove the language that community plans would have the force and effect of law. Is that something that you would then be against removing that language?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I don't know where in the Molokai Community Plan update process that discussion...

VICE-CHAIR RAWLINS-FERNANDEZ: It was during the Lanai.

MS. McLEAN: Oh, during Lanai. I'd have to be refreshed on the details of that.

VICE-CHAIR RAWLINS-FERNANDEZ: But for future plans.

MS. McLEAN: The County Code is clear in Chapter 2.80B, when community plan, I'm talking about just about land use designations, when the land use designations have a regulatory role, and I think that's what people mean when they talk about the force and effect of law. Do they have a regulatory role like zoning? Are they on equal footing with zoning? And there are several instances where, yes, absolutely they do. There's no doubt about that. The question comes as to what if it's not those specified areas. So the areas are when you change zoning, you have to be consistent with the community plan. If you are in the SMA and are getting an SMA Permit, you have to be consistent with the community plan. Subdivisions have to be consistent with the community plan. So, other than those instances, if it's a different circumstance, you're just getting a building permit, you're not in the SMA. Let's say you are zoned Single-Family but you're community plan business, should you be able to get a building permit to put an addition on your house? I mean, that's the best, cleanest example. Does that community plan say, no, you cannot do that because you're business and you can't have a home Single-Family zoning or if that were in the SMA, yes. If you're not in the SMA, as the law stands now, as my reading of the law stands now, you can get that building permit to put an addition on your house because that's an administrative, a ministerial permit that's not banned by community plans. If that were to change, you know, that could be codified. It could change to specify that land use, community plan land use designations are regulatory in the same way that zoning is. That would be a very important discussion to have with the Council and with the community, and we need to have that discussion because there is conflict over what they mean. Right now, my belief is that in that scenario I described you should be able to put an addition on your house even if it's community plan Business. So, does the community plan have the force and effect of law in that situation, I would say no, but that's, I mean, that is the fundamental question about community plans and zoning and we've gone around and around with Council. Everyone ends up going into their corners and we don't get anywhere, but let's really talk about that because that is, it's a fundamental question, what do these plans mean beyond all the other visionary statements and aspirational parts of the document.

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When the rubber hits the road, what do they mean, and we need to have that conversation.

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you, Ms. McLean. So, the Molokai Community Plan took about eight years to complete, and part of the reason for such a delayed process was because the community felt like the Planning Department was at odds with our community during the CPAC meetings as a few of the testifiers from Molokai described. Then throughout the Council review, the community felt like the Planning Department was actively working against our community. What kind of assurances can you provide that no other community will experience this that, like, the Molokai community?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you. The process that we're following now for West Maui is, takes a very different approach to community outreach and collaboration. And we were able to, I don't know if you recall, the Mayor Arakawa had us put the community plan update process on hold for a little while, and figure out a better way, and what we're doing now is the result of that effort. We researched how other communities do their community plans and tried to come up with a combination of the best practices that we could find. There were a lot of things that contributed to the contentious way that the Molokai plan went forward, and it really is unfortunate because all of us care about our communities, but Molokai especially is so passionate about their home. In terms of assurances, I can just say we, our long range staff went through the Molokai process and does not want to go through that again, and they're doing everything they can to make sure that it doesn't happen again. We tend to, we being the Planning Department, tend to feel proprietary over the product and we have a different mindset now that what we start with is the CPAC's version. And the CPAC's version, and we start with a Department draft, and that gets transformed into the CPAC version, and then that goes to the Commission, and then there's a Commission version, and that goes to the Council. And we somehow feel proprietary over each of those and we need to step away and just be facilitators. We do have to interject good planning practices. We do have to interject reality. And it's hard for the Council, for us to deliver it to you a big document with all sorts of aspirations in it, because you don't want to be the bad guys and take those things out, but then we end up with these massive plans that have all these things in it that are never gonna get accomplished, but that's not our job to pull those out. It's...our job is to move the plan through each of its steps more as facilitators and we can give our comments along the way.

CHAIR MOLINA: Ms. McLean, I think you've certainly answered that question.

MS. McLEAN: Sorry, Chair.

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CHAIR MOLINA: Ms. Rawlins-Fernandez, another question.

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you, Mr. Chair. So, a follow-up to that is clarification. So, do you believe then that the community plans belong to the communities themselves?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Absolutely. They belong to the communities. They belong to the whole County.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you. During the Council review, the Planning Chair, Kelly King hosted about seven to eight informal meetings on Molokai and invited the Planning Department. For what reason did the Planning Department not take Ms. King up on her offer and come to Molokai and help with this process?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: My input on that decision and it wasn't my decision, it wasn't the final decision, but my input was as I just described, we're the facilitators. We brought this to Council and we took it through CPAC, Commission, and Council, and now it's Council's document. We didn't see that we had a role to play in those outreach meetings, at least that was my understanding was in discussing when that happened. But it was for Council to handle, how Council deemed fit.

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you, Chair. One last question about community plans. So, in the Molokai Community Plan we adopted the seven realms of decision making, which I know you're familiar with because the Planning Department actively tried to remove that from our plan. What are your thoughts on ensuring that it's incorporated into decision making?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Chair, I have to confess I'm not familiar with it. I wasn't involved in it being taken out. I don't recall those discussions, so I can't answer.

CHAIR MOLINA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. I'll yield the floor.

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you, Chair.

CHAIR MOLINA: I appreciate your courtesy to your fellow colleagues. Okay, let's go now to Councilmember Lee.

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COUNCILMEMBER LEE: Thank you, Chair. Good morning, Ms. McLean. My best to your father. You know, I've always admired your positive mental attitude, your tenacity, your honesty, and, of course, your sense of caring for the community and our residents. And I appreciate you putting yourself out for this position, and I think you'd make a great Director again. I'm sorry to hear that someone contacted you and probably scared you about five people already making up their minds to vote against you. I assure you I'm not one of them, but on the positive side of that, it got you to reach out to people that you've worked with, people who know you, and actually I was really, really impressed with the diverse support that you have from farmers and activists and individual homeowners, business people. It was just amazing the kind of support, in fact, I don't think anybody else got that kind of support. So, a bad thing turned into a good thing. My question for you is, do you plan to make affordable housing a priority because it's the Council's priority?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you for the question. Yes, that is the biggest issue facing our community. We did provide the prior Council with a brainstormed list of ideas as to how to tackle that problem. Some low-hanging fruit, some much longer term, and some of those we can pursue just independently as the Department, but other would require either support from the Mayor or initiative from the Council. So, yes, absolutely, there are a lot of ideas and there's not one solution. We need to pursue all of those. It's a very complex problem and we are prepared to help face it.

COUNCILMEMBER LEE: Thank you. And would that list still be available to us?

CHAIR MOLINA: Ms. McLean?

COUNCILMEMBER LEE: Could you send it to me?

MS. McLEAN: Sure. I'd be happy to.

COUNCILMEMBER LEE: Thank you very much. Thank you, Chair.

CHAIR MOLINA: Okay, thank you, Member Lee. Council Chair King?

COUNCILMEMBER KING: Thank you, Chair. I have a lot of questions, but I'll try to make them general. I'm not really looking at individual issues on whether they get solved or not. I'm kind of looking at general performance since I've had some experience as Chair of Planning. And I'm little disturbed about the letter that went out. I've gotten two complaints from employees about you sending out a letter on County e-mail and it could be, regardless of what you say in the letter it could be intimidating to the developers who are waiting for permits, to employees who want to keep in good graces with their boss. And so, I just wonder what...do you think it's, I mean, I understand that you got

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a lot of support, but it was also solicited support and now I don't know if these are people that felt intimidated into supporting you or if they would've done that anyway. And I do have concerns for using County communication like that to gain personal support. So, can you answer to why you did that and if you think it was ethical?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I checked with Corporation Counsel before I sent the e-mail to ask if I could use County e-mail to do it and I was told yes, I could.

COUNCILMEMBER KING: Okay. Well, I guess, the employees didn't quite feel that way, but I also am bothered by the question that Ms. Paltin asked you and then you responded that Elle Cochran had come to you and told you that I said something. Did you ever try to contact me to find out if that was true or if I actually had contributed to that idea?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: No, I did not.

COUNCILMEMBER KING: Right. So, there was no follow-up from you to try to clarify, that's kind of bothers me, and it's been, you know, I'm looking at a text that actually Ms. Cochran had sent to Riki after he started asking the questions of every nominee and basically she says I'm thinking you're referring to having, my having called Pat, Will, Goode, and I physically met Michele, I told each one that word on the street was that they may not have enough votes to confirm because it is a scuttle. But my intent was to give heads-up, I shared with all, if I were in their shoes I would want to know in order to better strategize next steps. I choose to stand up, point out merits of why I ought to be director or resign, walk away and pursue other avenues, all thanked me and actually appreciated the outreach. I came across very clearly that I agree to disagree on many levels with some, they are still human with families and bills to pay. I hope you understand it was done with good intention. So, that, I mean, that kind of explanation came directly from Ms. Cochran, but the fact that you chose to believe a rumor instead of trying to clear it up or get clarification or actually find out the truth really disturbs me, and it's kind of been...you know, when I met with you after you became the new Director, I was actually very hopeful that we would be able to collaborate on a higher level than the previous director. And what I experienced was even though you say things like it's not our job to pull those items out of the plan, you continue to try to pull out the East and West End Policy out of the Molokai Plan, you continue to, you know, push to insert an appendix that the Molokai community came out and testified against and not support the prioritization of the implementation items that they had requested that I worked with them on, and there was no further collaboration, even though you say you support each community. So, I'm worried that there's gonna be more of the same. I haven't...I also saw some very contentious discussion on the floor in my Committee, in the Planning Committee, which I feel was, kind of instigated by the Planning Department, and one of my, probably one of the low points in that Committee was one

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of the Members who had already said he was gonna be absent came to support your point of view, and then after the meeting gave you a high five when your appendix was actually inserted, which I found to be very unprofessional. So...

CHAIR MOLINA: Chairman King, I know you've run through a list of concerns. Can we allow Ms. McLean respond to them?

COUNCILMEMBER KING: Sure.

CHAIR MOLINA: And members in the gallery, please turn off all your cell phones and any noise-making devices. Ms. McLean?

MS. McLEAN: Thank you, Chair. Former Councilmember Cochran came to see my on January 9<sup>th</sup>. Earlier in that week, I had received phone calls from a few people saying that they had heard as she indicated to you in that text that word on the street was that there weren't enough votes to support my nomination. At that time, people were saying that it was because of the zipline settlement agreement and that I should blame the Mayor for it or that I should blame Corp. Counsel for it, which I'm not willing to do because they are not to blame, and so by the time she came to my office I had already heard that. When she told me what she told me to me, either she was not telling the truth, that that didn't occur or that she was telling me the truth and that it did occur, and neither one really mattered to me. It wasn't something I needed to follow up on. It wasn't something I needed to pursue. So, I didn't see a point in following up on it, because I had heard that previously. She wasn't the only one who had conveyed that sentiment to me. I don't believe I was involved at all in the discussions to include or not include the East and West End Policy Statements in the plan. That discussion probably occurred when I was not staffing Planning Committee meetings. I didn't staff all that many of them. I staffed a few and then Deputy Director Joe Alueta staffed them. I was not opposed to your prioritization and I indicated that. What I did say was that I was familiar with a process that the Planning Department was involved in prioritization. We were not familiar with the process that you followed. That was the only statement I made and that it was up to the Council to establish the prioritization. So, I don't believe that I argued against the prioritization that you set up. I don't remember high fiving another Councilmember, so I can't really comment on that. I'm not saying I didn't, but I just don't recall it, and it may not have been about the action that you attribute it to. And in terms of the appendix and the table, that was something that was discussed in the prior community plan. We made our position clear. You and I have talked about this individually, so I don't feel like I need to go into detail about that. I think we have...you and I have a different understanding about how that happened and what our motivations were, so I'll just leave that alone. But it was a contentious relationship, absolutely. The Department had a contentious relationship with your Committee, and I accept the responsibility for how we contributed to that, but we weren't the only parties involved in that. There were a lot of, there was a lot politics involved, and it was, I'll just say, I do accept responsibility for the role that I played in that and that the Department played in that but we were not the only ones to make it that way.

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CHAIR MOLINA: Council Chair?

COUNCILMEMBER KING: Yeah, thank you, Chair. Well, just to answer you, I don't believe on my side there were politics. I've never brought politics into trying to honor the will of the community. And, you know, I'm sorry you see it that way, but I also have issues with some of the, I mean, the claim to be collaborative and yet there were several bills that came up and they weren't all my bills, some of them came up in Land Use that were not, we thought we were working on collaboratively, not myself, but other Councilmembers as well, and then when they came to the floor there were statements by the Planning Department, which and it's the Department that I'm talking about so it wasn't you directly but this is your Department so you are responsible. But the issues that didn't make it through were the sign ordinance, you know, on the first blush, the sand mining, the cluster bill, those are all things that should have had good input from the Planning Department and yet when they came to the floor things were pointed out, and they weren't my bills, but things were pointed out about them that were then derailed the bill and sent them back. And I don't understand why we can't get that good support before bringing something to the floor. And I feel the same exact way about the Molokai Community Plan because, you know, the efforts to...the discussion that you and I had in my office was we should then go back to the, for the appendix that the community didn't want, we should then go back to the land use appendix that came to us from CPAC and you just a few minutes ago made the statement that whatever comes from CPAC is what you deliver but it wasn't. You instill, you tried to insert an appendix that you had inserted in a previous plan, and you insisted on that even though you came to me at one point and you said, let's just go back to the CPAC appendix, let's call it the default because that's how it came to us, and then when we went on the floor there was a big battle, there was an ongoing battle about this appendix. Clearly, the community came out and spoke out against it and every time they were overridden by the Planning Department and the majority of the Committee. So, you know, those are some big issues for me, because if you're going to say that you respect the will of the people and the plan belongs to the community then you have to respect people when they call in and they testify. And, you know, some of those issues are big issues for people and where the insistence of carrying out exactly what the Planning Department wants and giving the Planning Department...one of the big complaints about the process of community planning has been that every step of the way the Planning Department gets its say. The community stakeholder piece is a finite period, the CPAC involvement is a finite period, the Planning Commission is a finite period, and every step of the way the Planning Department is in there making changes. And so, I heard, you know, I met with CPAC people on Molokai, and I heard their complaints about the process and how it was done and I know you weren't involved in it back then, but this seems to be an ongoing issue and...

CHAIR MOLINA: Council Chair, can I have Ms. McLean respond?

COUNCILMEMBER KING: Yeah.



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CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I have to say the Department does not make changes. We had to say that over and over and over again in your Committee meetings. We do not make changes. Once the CPAC version is done, it is done, and we transmit it as it is. We will send along our recommendations along with it, but we do not change it. At that point only Commission can change it. Same thing from Commission, Commission completes its work, we send that to the Council, we do not make changes to it. We send along our recommendations but only, changes can only be made at Council, then when Council has it, only Council makes changes. Throughout the process, we were told the Planning Department keeps making changes and we do not. We do not. So, please let's just make that clear.

COUNCILMEMBER KING: Well, it's true that the Committee approves the changes, but the changes were proposed by the Planning Department. So, there were many changes that were proposed to that plan.

MS. McLEAN: Proposed is very different than making changes.

COUNCILMEMBER KING: Right.

CHAIR MOLINA: Ms. McLean, sorry, and Council Chair, I will not allow a debate to proceed.

COUNCILMEMBER KING: Yeah, okay.

CHAIR MOLINA: Please go on with your next line of question.

COUNCILMEMBER KING: We just have to agree to disagree and the community knows what happened, but the...in the beginning of the term, I met with the Planning Department with Chair White, then our Council Chair at the time, and we spoke about ways to fast track the community plan review because it was taking so long. We...we've...the idea when we left that meeting was to try to leap frog and do simultaneous different actions for plans and one of the things that we discussed was to hire outside consultants to do the community plan engagement piece while the Planning Department because you said you couldn't do two at one time was moving along with one plan, we could start the community engagement through an outside entity. And I actually had meetings with MEDB who had been involved in GPAC with Gladys Baisa who at the time when she was on the Council had proposed that and she said she never got anywhere with it, and then we put...and then, MEDB said that they could do it for less than 100,000, so we put that \$100,000 into your budget and it was never addressed and it was...you insisted that it was going to cost 300,000. Can you explain...did you already have somebody else in mind who was going to charge 300,000?

CHAIR MOLINA: Ms. McLean?

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COUNCILMEMBER KING: Is that...

MS. McLEAN: Thank you, Chair. Contracting just the community engagement phase isn't, it doesn't fit well into the model that we're using now, and so the money that's budgeted for this year for that purpose will not be spent for that purpose. What we are proposing or what we intend to propose for FY '20 is in the ballpark of 300,000 for another entity to take the whole thing through rather than separating out one piece and then the Department taking it from that point forward. In order to have two going at the same time, one we would do in house and the other one we would contract out completely. So, having a contractor do just portions of it doesn't fit well with the model that we're following now.

COUNCILMEMBER KING: Okay. So, you don't have...so, your intention is to not get to the next community plan until the following year and then put it out to bid or is, what's the intention with the South Maui Community Plan?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: If the...if sufficient funding is approved for FY '20, then starting July/September, or July/August, we could create an RFP for an entity to start doing it and it could very well commence this calendar year while we're still pursuing West Maui.

COUNCILMEMBER KING: Okay. So, your intention was that 300,000 would cover the entire process? Is that why you put that in your original proposal?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: That's correct. The part that we...the substantial part of it, we would still work with the contractor but it would predominantly be handled by an outside entity, and yes, that's the amount that we estimated.

COUNCILMEMBER KING: Okay. And did you have anybody in mind already or you just assume that was gonna be . . . *inaudible* . . .

MS. McLEAN: We...there are many firms in Hawaii that could handle a project like that.

COUNCILMEMBER KING: Okay. So, you're confident that that would cover and we would be able to start this year then?

MS. McLEAN: That's our hope, yes.

COUNCILMEMBER KING: Okay, alright. I'll yield for now. Thank you, Chair.

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CHAIR MOLINA: Thank you very much, Council Chair. Mr. Sinenci? And upon the completion of Mr. Sinenci's line of questions, Members, Chair is going to call for a recess. Mr. Sinenci, thank you for being patient. Proceed.

COUNCILMEMBER SINENCI: Yes, thank you, Chair. Thank you, Ms. McLean, for meeting with myself and my staff in the prior month. Couple questions. The Nahiku Community Association sent me a letter. Can you speak to some of the challenges with the Nahiku Community Center?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you, Chair. And there is also litigation related to that so there may be areas that we can't discuss, but what I can say in open session is that the plan that's on the table now required the land use entitlements to change because the area where the center is proposed is designated Ag. It's zoned Ag, State Ag, community plan Ag, and so the Department under former Mayor Arakawa initiated the land use changes for that so that the Parks Department could then go in with their contracting and permitting to build the facility. At the Hana Advisory Committee and then at the Maui Planning Commission there seemed to be a fair amount of contention about it, about the location, about the use of the funds, but nonetheless that's...it went through Planning Commissions and then the next step is to transmit the land use changes to the Council. We are confirming whether this Administration wants to pursue that project and need to determine with the Parks Department and with the Mayor if that's still going forward, and if it is then we would transmit the land use changes.

COUNCILMEMBER SINENCI: Thank you. My second question was in the moku of Hamoa there has been the Gary Stice project, there was the approval of, I believe, a two-story two-house complex right next to the fishpond. Can you explain a little bit about that?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you. I've only become just familiar with that project, that was handled previously by the former Director. I understand that recently we have engaged with the Office of Hawaiian Affairs on a consultation process that didn't occur before, and so a site inspection and meeting with the Hana Advisory Committee had been scheduled but then that got canceled so that we could continue with the consultation process with OHA. And I believe I have a meeting with the staff planner and with some of the community folks either later this week or next week to go through the issues that have been raised.

COUNCILMEMBER SINENCI: Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Members, the Chair is aware of the time, it's time for our morning recess, so the Chair will call for a recess of the January 23, 2019, GET meeting. Let's return to the Chambers at 10:50. Meeting in recess. . . . (gavel) . . .

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**RECESS: 10:33 a.m.**

**RECONVENE: 10:55 a.m.**

CHAIR MOLINA: . . . (*gavel*) . . . The recessed GET meeting of January 23, 2019, is now back in session. Members, it is Tuesday, February 5<sup>th</sup>, 10:55 a.m. We last left off on the first line of questioning for Director of Planning nominee, Michele McLean. Members, it's been brought to my attention during the break that a consideration for the Chair is to go into executive session and at this point the Chair would...let's deal with that and once executive session is over we can continue with the line of questioning that you had initially wanted to express yourselves with that. So, the floor is open. Is there a motion for executive session?

COUNCILMEMBER SUGIMURA: Chair?

CHAIR MOLINA: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, you know, I'm just curious because it was brought up and if the other Members want to go and have executive session to hear Ms. McLean's role in this and if they deem that it would be appropriate so that she could have a say in it so it doesn't shed a dark cloud over her appointment. I will make the motion. I read a lot and I've done a lot of research on this issue, so I'm really fine with it, but if we need to go into executive session, I'll make that motion.

CHAIR MOLINA: Okay. Thank you, Member Sugimura. Members, you do know that...

VICE-CHAIR RAWLINS-FERNANDEZ: I'll second...oh, sorry.

CHAIR MOLINA: Oh, okay. I'm sorry. Before I recognize you, Committee Chair [*sic*] Rawlins-Fernandez, again, it takes six votes to go into executive session, so just for your information and the public's. Okay. So, the Chair will entertain, thus, the Chair will entertain a motion to convene an executive meeting pursuant to Section 92-5(a)(4), of Hawaii Revised Statutes, to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities. The motion, Ms. Sugimura --

COUNCILMEMBER SUGIMURA: Yes.

CHAIR MOLINA: --as the movant. And Ms. Rawlins-Fernandez, you're seconding?

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Okay, Members, any discussion?

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COUNCILMEMBER KING: Chair? Chair? Yeah.

CHAIR MOLINA: Yeah, Council Chair King?

COUNCILMEMBER KING: So, what are the parameters of this executive session, because I think the limiting it to that one issue I would not support it because to me it doesn't rest, you know, the appointment doesn't rise or fall on the one issue and just hearing one person's side without having the other, you know, the community there bothers me. So, I'm not sure what...what is the proposal for the parameters of the executive session?

CHAIR MOLINA: Council Chair King, I'll yield to Corporation Counsel. Mr. Kushi?

MR. KUSHI: Yes, as you most of you know, executive sessions are called for when a legal matter is brought up before it was PEA Committee. In this case, there's nothing on the record about a legal, pending legal matter, but as to the appointment of Ms. McLean, I believe the issue is the Committee would want to know what her involvement is or was in the subject litigation, because it's subject to litigation this is why advise you to go into executive session. Now once in there, I believe the questions will be addressed properly as to what her role was in the subject pending litigation. In terms of the County's strategies, liabilities, immunities in that litigation, I believe, it's not at this point in time because there's no pending resolution, there's no pending item before you, but again, in connection with her role in reviewing her appointment as the Director, which she did play a role in the litigation.

CHAIR MOLINA: Okay, thank you, Mr. Kushi. Members...

MR. KUSHI: So, if you go into executive session, you're not going to make any kind of...there's no discussion about the strategies and the liabilities of the County in that litigation at this time. Okay.

CHAIR MOLINA: Okay. Chairman King, any other comments?

COUNCILMEMBER KING: Yeah, I mean, so you...but you do find it necessary if we wanted to, because I thought she explained her role in it and I'm not sure what extra info...maybe Ms. Sugimura could, you know, expound on the reasons for the executive session. Not sure what the intent of it is.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR MOLINA: Yeah. Hang on, Ms. Sugimura. I know Ms. Paltin had a question and then I'll recognize you right after. Ms. Paltin, your question, is it a question for Corporation Counsel?

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to share that I have questions on other matters pending litigation or in litigation and I don't know if it's helpful to go

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all one time or if you want to go in, go out, go in, go out, but I think there's couple other issues with litigation ongoing and I'm not sure if they want to go into executive session on those but just putting it out there.

CHAIR MOLINA: Okay, Ms. Paltin, if I read you right and for Mr. Kushi to answer, so basically, you're asking if the Committee is allowed the flexibility to discuss more than one issue, for example, on other issues pending litigation besides the issue that Ms. Sugimura brought up? Mr. Kushi, do we have that flexibility?

MR. KUSHI: Yes, Mr. Chair and Member Paltin, yes. I believe it's appropriate if it's pending litigation, but I believe she should identify the issue, the case, so that it can be discussed jointly.

COUNCILMEMBER PALTIN: Yeah...

MR. KUSHI: With respect to Ms. McLean's participation.

COUNCILMEMBER PALTIN: Yeah, I was gonna do that, and I'm not sure that we need to go into executive session for those, you know, I was waiting 'til the second round of questioning to bring up the issues, and I'm not sure if it needs executive session, but I do know that there is litigation ongoing or appealing or whatever you want to call it.

CHAIR MOLINA: Okay. Member Paltin, certainly if you would like to bring that up to get a feel from Corporation Counsel if that's what you want to bring up is more appropriate for open session or executive session that determination can be made. Okay, I'll recognize Councilmember Sugimura for a clarification from Council Chair King.

COUNCILMEMBER SUGIMURA: So, Chair, this item that came up in public testimony as well as a lot of written including the attorney for this group in Haiku also submitted the appeal document, I think it, is what it was. So, we have lots of information from one side and I just thought it would be fair to hear from Ms. McLean, because we're looking at her appointment to become the, you know, the Director of the Planning Department to hear her side and for it has to be in executive session as Corp. Counsel mentioned. I agree that if you want to include other items that if Corp. Counsel thinks that it's appropriate for what Ms. Paltin is saying I will withdraw my motion and wait until the appropriate time, Chair. So, you make that determination. I'm willing to pull my motion until it's appropriate.

CHAIR MOLINA: Well, the Chair's open. You made the motion to consider executive session. We'll leave it to the body to decide. Again, we need six Members to support going into executive session so...

UNIDENTIFIED SPEAKER: Chair?

CHAIR MOLINA: Ms. Sugimura?

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COUNCILMEMBER SUGIMURA: So, will you include hers or are you saying it'll only be on the zipline?

CHAIR MOLINA: Well, let's maybe...Miss...we'll allow Ms. Paltin to bring it up in executive session, which is what I believe we had discussed if it's appropriate to be discussed in executive session and maybe get input from Corp. Counsel, 'cause I would like that flexibility since we're already in executive session then let's just bring up all matters related to the Director's involvement in any particular issue related to litigation. So, rather than going in and out and in and out, so it might be more feasible for us to do it that way time-wise anyway.

COUNCILMEMBER SUGIMURA: So, wouldn't you want her to mention what it is to determine if it needs to be in executive session and not in executive session give us the possible litigation so that it could be as transparent as possible?

CHAIR MOLINA: Okay. Staying on the subject of transparency...

UNIDENTIFIED SPEAKER: Chair?

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Yes, Ms. Council Chair King?

COUNCILMEMBER KING: Chair, just to respond, if we can go into executive session with the understanding that you just stated, any litigation matters that involve the nominee that can't be discussed in open session then that leaves us the flexibility if that's okay to do, Mr. Kushi?

CHAIR MOLINA: Mr. Kushi?

COUNCILMEMBER KING: So, that we're not limited to just to one or two items.

MR. KUSHI: I didn't understand your question. You mean, just a shotgun approach, any litigation?

COUNCILMEMBER KING: Any litigation matters that can't be discussed in public that involve the nominee.

MR. KUSHI: Well, Mr. Chair, you know, for --

COUNCILMEMBER KING: Or do we have to name the exact items?

MR. KUSHI: --you know, for the record, I would suggest that you identify what issue you going go into for executive session. Testimony has it you want to discuss the zipline case

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that's pending before the BVA and that is clearly litigation. Now, if Member Paltin wants to bring up another case pending litigation, which may involve the nominee, I think that should be stated on record.

COUNCILMEMBER KING: Before we go into session?

MR. KUSHI: Correct. If you say any and all, then, you know, we might be here for days.

CHAIR MOLINA: Good point, Mr. Kushi. Alright, Member Paltin and followed by Member Kama had a question. You, Member Paltin, you wanted to state what other County issue that might be, I guess, in litigation currently or could go into litigation that you would like to have discussed in executive session as it relates to the Director's role, or excuse me, the nominee's role. Ms. Paltin?

COUNCILMEMBER PALTIN: You want me to state what the issues are right now?

CHAIR MOLINA: Yeah. I guess, Corp. Counsel had recommended that prior to going...if we're going to discuss other matters besides the matter that Ms. Sugimura brought up it should be stated for the record in open session.

COUNCILMEMBER PALTIN: So, I also wanted to dive a little bit deeper into the Nahiku Community Center issue as well as the Hololani seawall, and I don't think my other one is currently under litigation regarding Wailea Golf LLC. I'm not...I don't think that's under litigation, and then I had some other questions that I don't think has litigation but just those two.

CHAIR MOLINA: Okay, so noted. So, Members, you've heard the issues that Ms. Paltin would like to discuss in executive session as well as the issue that Ms. Sugimura brought up. Member Kama?

COUNCILMEMBER KAMA: At this time, what I was going to ask has already been resolved, so thank you, Chair.

CHAIR MOLINA: Okay, thank you. Member Lee, you had a question or some? No, okay.

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: Yes, Mr. Sinenci?

COUNCILMEMBER SINENCI: Just a question for Corporate [sic] Counsel.

CHAIR MOLINA: Proceed.



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COUNCILMEMBER SINENCI: I also wanted to bring up if there are any pending litigations for Moomuku and anything involved with Paia Inn or that can be outside of executive session?

CHAIR MOLINA: Director or Corporation Counsel, you'd like to respond to Councilmember Sinenci's question?

MS. McLEAN: Thank you, Chair. Paia Inn, yes, that's still in litigation. I'm not familiar with Moomuku.

CHAIR MOLINA: Okay, thank you. Alright, Members, the Chair will call for the vote for executive session. All those in favor of going into executive session, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed? Okay, the Chair will mark it eight "ayes" with one excused, Member Hokama.

**VOTE:       AYES:   Chair Molina, Vice-Chair Rawlins-Fernandez,  
                          Councilmembers Kama, King, Lee, Paltin,  
                          Sinenci, and Sugimura.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmember Hokama.**

**MOTION CARRIED.**

**ACTION:               APPROVE; RECESS open meeting and CONVENE  
                          executive meeting.**

CHAIR MOLINA: Alright, Members, we will recess this meeting to prepare to go into executive session. So, again, just for the public's information, the room must be cleared out. I believe we...only people allowed are Staff and Corporation Counsel and, obviously, of course, the Members. Mr. Kushi?

MR. KUSHI: Mr. Chair, call for a short recess so I can get my deputies down here.

CHAIR MOLINA: Okay, meeting in recess. . . . *(gavel)* . . .

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**RECESS: 11:06 a.m.**

**RECONVENE: 2:07 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of January 23, 2019 is now back in open session, Members. It's about 2:10 p.m. on February 5, 2019. We did have an unexpectedly long morning session and we still have nominee Ms. McLean on board as well as to be followed by the Corporation Counsel nominee Mr. Wong to be followed later. The Chair realizes there is a scheduled recessed meeting for the January 29<sup>th</sup> meeting, which is coming up, so what the Chair will do we will recess the morning session, the January 23<sup>rd</sup> recessed meeting to 3:30 p.m. today and we will see where we're at, so we'll recess this meeting 'til...okay, we'll, yeah, you know what we'll do, we'll just recess this meeting subject to the call of the Chair.

VICE-CHAIR RAWLINS-FERNANDEZ: No objections.

CHAIR MOLINA: Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Meeting in recess. . . . *(gavel)* . . .

**RECESS: 2:08 p.m.**

**RECONVENE: 2:12 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting for January 23, 2019, is now back in open session. Members, today is Tuesday, February 5, 2019, 2:15 p.m. and we currently have the nominee for Planning Director, Ms. Michele McLean, up at the administration desk. The Chair will entertain any final questions for Ms. McLean before the Chair offers a recommendation. So, the floor is now open for any additional questions for Ms. McLean in open session. Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. So, I had a few more questions. One testifier brought up the Wailea Golf LLC, and I was wondering if you in agreement that the County Code only authorizes planned development status one when an owner has development intent?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I would have to look at the Code. I'm not familiar with the specifics of that testimony. I can't give you an accurate answer. I would have to look at the Code before I respond to that. There's some provisions in the Code that I know by heart. That's not one of them, so I would need to look before giving an answer.

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COUNCILMEMBER PALTIN: Okay. So, my concern is just that that's the way I understand it and yet the Planning Department invited the owner of the Wailea Golf Course LLC, to bring this petition before the Planning Committee after an earlier error of swapping Hotel zoning as a way to correct the error instead of bringing it to the public that the error was made that there was an invitation to apply for a PD1 status instead of just fixing the problem when it wasn't, there was no intention to develop.

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: There...the swap in question there was intention to develop one half of the swap. There's not intention to develop the other half of the swap. And so, if you nullify one, you nullify both. What had happened was, and I completely disagree that we didn't take it to the public, we took it to the Planning Commission, which is a public forum and we were forthright with the Commission and in the staff report that an error had been previously made and that error could have been corrected in one of two ways. One way would have been to rescind the decision, and if, or to invalidate, I should say, invalidate a previous Maui Planning Commission decision, and the repercussions of that would have been extensive, because the one site that was already under development with purchasers having contracts. To invalidate that decision when that development is already underway would've been very problematic. Those are things that Corporation Counsel would have to comment on. The alternative was what we recommended, which was to expand the plan development area in order to allow that swap to be lawful and that's what we recommended. Corporation Counsel sits in on those Commission meetings and advises the Commission. I disagree that that wasn't an appropriate way to resolve the problem.

COUNCILMEMBER PALTIN: I don't want to go back into executive session, but other questions. How do you decide when a business gets the certificate of occupancy despite not getting, like say, some of the requirements met? Someone brought to my attention in Paia, you know, the gelato didn't get a certificate of occupancy for eight years because not enough parking, but then when the Ululani's came in they got the certificate of occupancy despite not having the parking. So, that seems like a discretionary decision that's unfair to the gelato folks.

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Okay. This might have to go into executive session actually, but I think there's enough information I can explain in open session. Not specific to that case, certificates of occupancy are issued by the Public Works Department, not by Planning. Public Works will get an applicant, an application for certificate of occupancy and they send it out to various agencies including us. So, we look at things like parking and zoning compliance and we sign off on a CO. If we see...and that, this isn't the case here but just for your information, if we see that there isn't compliance but we find that compliance is achievable, then we will sign off on a temporary CO, so that the business

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can open. In this particular case, the prior occupant, Paia Gelato, was cited for not having a CO, that was a citation that came from Public Works. We were not able to sign off on the CO because of a parking deficiency. That business moved out and a very similar business moved in, and because we had been involved in the prior one not having a CO, we informed the new owner that they needed a CO, and we are now in litigation with that new occupant because they do not have a CO.

CHAIR MOLINA: Ms. Paltin?

COUNCILMEMBER PALTIN: Okay. So, a number of people have come to my office to give oral testimony and this goes to illegal TVRs and B&Bs and such, and I know there's something in the master agenda about trying to get the online carrier to be responsible as opposed to the TVR, the B&B folks. Currently, it is part of the requirement that the permit number be listed on their online advertising unless they forget. Is that correct?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: There is no unless they forget provision. It has to be listed.

COUNCILMEMBER PALTIN: So, I was told by a zoner that they were instructed not to deal with those where they forgot the permit number and the person can understand why because they feel that it would be a slam dunk, it's a black and white, blatant violation if the permit number is missing from the online advertisement.

CHAIR MOLINA: Ms. McLean...Member Paltin, I presume you're asking if with regards to that Planning employee for directive was given by --

COUNCILMEMBER PALTIN: Yes, sorry, that's what I meant.

CHAIR MOLINA: --Ms. McLean? Okay, alright.

COUNCILMEMBER PALTIN: Thanks for interpreting.

CHAIR MOLINA: Chair will give clearance to that response from Director McLean. Proceed.

MS. McLEAN: If there is a permit violation, we pursue it. We have a large volume of enforcement actions to handle. When it comes to prioritizing certainly someone who has a permit and that permit number isn't listed in an ad, we wouldn't consider that a high priority. What often happens is that ads are taken...let's say I operate a B&B and I advertise on Airbnb with my permit number, there are other websites that take ads from other platforms and use them. They don't always post the permit number. That's not something that I, as the operator, even know exists. We find that a lot where we have cited people for advertising without the permit number and the operator isn't even aware that this ad is up there, so they don't have much control over it. It's not, I forgot. I've never heard that come up that somebody has said, I forgot. It's, I had no idea that

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my place was being advertised on this other platform that I've never heard about. So, in those cases, that's, you know, we make the operator get that ad removed or get their permit number added to it.

COUNCILMEMBER PALTIN: How do you account for the hours spent in researching if the person does or does not have a permit and then no violation is registered?

CHAIR MOLINA: Ms. McLean, short answer, if possible.

MS. McLEAN: Our goal is compliance and if we achieve compliance we're, we've done our job.

COUNCILMEMBER PALTIN: Thank you. I also was informed that if you send a notice of warning there's seven days to correct it and then you can put a ban, put the property on a ban list, and sometimes the inspectors can't tell if it's a short-term rental or a B&B if it's not a legal operation, but they've been instructed that they need to choose either short-term rental or B&B. And if the goal is compliance and they're not in compliance currently and the goal is more long-term rentals, why would they need to choose? Why can't they just put it on the ban list for both because they're violating the laws?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: We would have to determine what the operation is. If it's a B&B without a permit or if it's a STRH without a permit, you can't be violating the two at the same time. So, they can't be put on two ban lists. They can only be put on one ban list. So, we...

COUNCILMEMBER PALTIN: And if it's not possible to determine, then you have to choose one.

MS. McLEAN: Correct.

COUNCILMEMBER PALTIN: I've also been informed that on the farm dwelling, no farm plan that you've instructed inspectors that we don't need the farm plan, because if everyone is already not doing it why not just let them do it. Is that true or false?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: That's false.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay, thank you, Member Paltin. Any final questions for Ms. McLean before the Chair offers a recommendation?

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: Chair recognizes Mr. Sinenci.

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COUNCILMEMBER SINENCI: Yeah, one last question. Do you see any conflicts of interest in a Deputy Director that may have had some past experiences as a private consultant?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Certainly the potential is there, yes, and I believe a Board of Ethics opinion is being sought to give guidance on what is and is not appropriate.

COUNCILMEMBER SINENCI: One last question.

CHAIR MOLINA: Proceed, Mr. Sinenci.

COUNCILMEMBER SINENCI: Is the Planning Department proposing to create a new category to classify uses of exemptions?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: You may be...that may be referring to the Special Management Area rules of the Maui Planning Commission, where, right now, the Department can issue exemptions under certain criteria and we're looking to put a lot more detail into the rules to give the staff more guidance on what we can and cannot exempt. So, yes, we are looking at doing that and that would be up to the Planning Commission to adopt.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

COUNCILMEMBER PALTIN: Chair?

CHAIR MOLINA: Thank you, Mr. Sinenci.

COUNCILMEMBER PALTIN: Sorry, one more please, question.

CHAIR MOLINA: Okay. Seeing no others, Member Paltin.

COUNCILMEMBER PALTIN: Thank you. I appreciate earlier in our community plan discussion that you recognize that the community plans are not proprietary. You stated that the community plans belong to the community, and by that I would hope you would mean the residents in that district during the drafting process. We are currently at the community workshop level of the West Maui update whereby the ideas should be coming organically from these residents. Do you believe employees of developers who do not live in the area should be infiltrating those meetings and having a say in community land designations without disclosing who they are and who they work for? I realize and support the importance of having developers hear what our residents have to say, this is totally different than engaging in the process and making suggestions without identifying themselves. Would you agree or disagree?

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CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I would absolutely agree if there's a participant there who is there representing an interest of a company whether it's a developer or any other kind of company that, yes, they should identify themselves and their interest.

COUNCILMEMBER PALTIN: Would that also apply to five to seven developers?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: It would apply to any, yes.

COUNCILMEMBER PALTIN: Okay. So, that's what happened last night.

CHAIR MOLINA: Okay, thank you. Ms. Paltin, are you finished with your line of questioning.

COUNCILMEMBER PALTIN: Yes, thanks.

CHAIR MOLINA: Okay. Alright, Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, so my next line of questions, Ms. McLean, is on STRs. How do you plan to enforce on illegal STRs and after-the-fact permits?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: With STRHs, I think everyone is familiar with the contractor that we have who's helping us to identify ads that we are not able to identify, and we are issuing the first round of notices of warning for those. The enforcement of STRHs continues to be complaint driven. We rely heavily on online ads as our evidence, and as long as we have that evidence we can pursue enforcement. Once those ads get taken down, it's very hard for us to establish whether or not the use is continuing. We continue to look for ads and different ways that the platforms are able to advertise without us finding them, but unless we can find them it is difficult for us to enforce.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, mahalo. Next question, regarding the recently approved Charter amendment for illegal STR penalties, as I understand the language of the Charter amendment was crafted to address the proliferation of illegal vacation rentals. Did the Department suggest to the Council that this amendment could also apply to legal STR operators and then include this new penalty for legal STR operators?

CHAIR MOLINA: Ms. McLean?

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MS. McLEAN: What happened was because the County Code has a limit of \$1,000 on the fines, the County Code is now in conflict with the Charter. And so, we drafted a bill to bring the County Code into alignment with the Charter and that bill was drafted by staff and when it was taken to the Commission I hadn't seen the latest draft until it was presented, and it went far beyond what the Charter calls for. The Charter does just call for those that are operating without a permit and this proposed bill also talked about operators who have permits who are violating their permit conditions, and none of the Commissions liked that language. I should say we haven't completed the review with the Lanai Planning Commission. They wanted to see the revised bill. But the Maui and Molokai Commissions both supported the revised bill with that additional language taken out so that the bill would apply only to those operating without permits. Once we're able to get back to the Lanai Commission assuming that they approve it as well, then we'll be bringing that bill to the Council.

CHAIR MOLINA: Thank you, Ms. McLean. Prior to recognizing Member Rawlins-Fernandez, again, members in the gallery, please turn off any noise-making devices or cell phones so as not to disturb our proceedings. Ms. Rawlins-Fernandez, continue.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So, a follow-up to that is, how can we be assured that you will be able to control what comes out of your Department?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Oh gosh. I don't know that anybody can assure that. I don't know that any director can assure that out of their department. We aim for consistency. We aim for full compliance with all applicable laws. Unfortunately, with Planning, there's a lot of interpretation. I probably wouldn't have a job if we weren't so subject to interpretation. I'll do my best, that's all I can say. I can't give you a guarantee.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you, Chair. My next question is about deferral agreements. How will you address and correct the loophole that allows for unpaid deferral agreements to continue?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Thank you. Yes, that has been a problem for a long time. We have worked with a few attorneys on the wording of conditions on permits to make sure that they have a specific time as to when they take effect that it's specific as to how to determine once the condition has been fulfilled. There's a responsible agency whether it's Planning or Public Works or somebody else that this is the requirement, it has to be fulfilled by this date as determined by somebody else. So, the problems are that in the past the conditions were vague, were open ended, didn't have a set timeframe, and we also didn't track them very well. We have a much better tracking system now for ensuring that those get followed up on.



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CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Thank you. My last question has to do with the farm plan. So, in your opening comments, you stated that one of your priorities is to support real farmers. How does your work with the Ag Working Group support real farming by deleting all farm requirements in your admin rules?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: Farming requirements were not deleted. The requirement for a "farm plan" was deleted. For Ag-zoned properties where the principal use is ag that still has to continue. The farm plan was an effort to ensure that happened, but it wasn't particularly successful and it made it difficult for farmers and ranchers. They were the ones who really advocated for its removal, the Ag Working Group did. Moving forward, there are other changes that they want to see to the Ag zoning district, not the administrative rules, but the Ag zoning district, so that would obviously involve the Council. And we've talked about a number of changes that could be made that would make it stricter on the one hand in terms of what agricultural is, your principal use really means, but then loosening up other components so that it really does support the activities and structures that farmers and ranchers need.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, and just a quick follow-up to that. So, was the farm plan language not successful because there was a lack of enforcement?

CHAIR MOLINA: Ms. McLean?

MS. McLEAN: I don't think it was a lack of enforcement. It was a lack of specificity as to what agriculture is. And for our Department to administer something like a farm plan, when we don't have any training or expertise in agriculture it, we could go and look at a property that had a lot of fruit trees, let's say, and say that, okay, that's legitimate, that's agriculture use. And while that is to a degree agriculture use, that's not a farm. So, it's...the problem is that we, we're reluctant to move land out of agriculture to be developed for other purposes and we need land developed for other purposes, but we have this sort of default category of agriculture that everything happens on it and that doesn't protect agriculture and it leads to abuse. So, it's just trying to find that balance of moving some lands out of ag, so that it can be developed for housing and other things that we need while really making sure that ag lands are used for real ag.

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

CHAIR MOLINA: Okay, thank you very much, Ms. Rawlins-Fernandez. Seeing no other...oh, excuse me, Member Lee, you have any question? Proceed.

COUNCILMEMBER LEE: No questions, thanks.

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CHAIR MOLINA: No? Okay. You were grabbing your mic, I thought you had something ready to go.

COUNCILMEMBER LEE: Just to tell you, I wanted to share that with you.

CHAIR MOLINA: Thank you, Member Lee. It's good to add a few smiles to this very long and arduous process. Members, the Chair is ready to offer a recommendation. I believe we've certainly exhausted Ms. McLean here and thank you for enduring the process. So, Members, with that being said, the Chair, well, he'll give his comments once I give my recommendation. Chair's recommending the adoption of the revised proposed resolution entitled Approving the Mayor's Appointment for Director of Planning; and incorporating any nonsubstantive revisions that may be needed; and the filing of the proposed resolution entitled Disapproving the Mayor's Appointment for Director of Planning.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: Moved by Ms. Lee, seconded by Mr. Hokama. Members, the floor is open for discussion. Member Lee, as the maker of the motion, any opening comments?

COUNCILMEMBER LEE: Thank you, Mr. Chair. Ms. McLean, to me, answered all of the questions, some pertinent, some not, thoroughly and intelligently, and I would like to support her nomination.

CHAIR MOLINA: Thank you, Member Lee.

COUNCILMEMBER LEE: Her confirmation.

CHAIR MOLINA: Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I, one, am happy we've come to this point. We owe this nominee a decision one way or the other. So, I appreciate your moving this forward. But first, I will thank Ms. McLean for putting herself up for public review and be willing to accept a very difficult position in a government sector, especially one that is very difficult, Planning. As I said, I've pretty much have a 22-year experience with Ms. McLean. I can tell you very upfront, Chairman, I've agreed with her at times and we've had our disagreements, but she always had her justification. She was always able to explain very clearly why she disagreed with my position and always she was very professional about it. It was never personal. It was on the merits or disadvantages of the consideration that was before me at that point in time, and her attitude, and again, Chairman, as you well know I have gone through a boat load of directors in Planning, and I'm happy to say that my experience with Ms. McLean in Council Services, in the Planning Department, in those areas that she was the chief person or spokesperson for

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the Department I found her to be always fair. I appreciate and I like her attitude of how she views the uniqueness of Lanai and how we discussed how we are going to move Lanai forward. One, to recognize our unique standards and that is why I've changed it and it's in the Code now. It's not just business town guidelines. It's guidelines and standards, so that it has standing of a regulatory purpose. I can also tell you that at this point in time, she has shown to me, not only her willingness to talk but she has offered suggestions and options how to address our unique challenges. Something that I find refreshing of government to offer solutions, normally it's either yes or no and goodbye and come back later when you think of something else, that is not Ms. McLean. I think it is to our benefit. I think it's currently now to Lanai's benefit that I'm happy to support her to be our next Planning Director. Thank you.

CHAIR MOLINA: Thank you, Mr. Hokama. Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, I, too, want to lend my strong support for her to be our Planning Director. As you can tell, every single tough question given to her she did her best to answer it. I will tell you that I was very impressed the zipline situation that was brought up is a situation that I heard about over a two-year period. We are coming up with some solutions and we'll work with the Department as we hear from, we heard from Member Hokama shall we provide some policy, so I would like to address that and work with the Department and the Members so that we don't run across situations like that. But that to me is a good example of how Director McLean will hear a problem, make the best decision given the advice of those that are involved and really take the problem and be at the front of finding solutions. It takes a lot, you know, of courage to be in that position. I always said being the Planning Director is hard just like being the Land Use...I used to always think of Land Use and Planning Committees to be challenging with what you're doing in terms of affecting people's lives. I was glad to hear that you have one-on-one discussions with your 70 employees and that you will continue until you reach your goal of talking to all of them. I was even more surprised to hear that you had a retreat or you did activities just so that your Department could get closer. I think those kinds of things are just comes from the spirit of who you are that you think it's important and that you appreciate your employees. On appreciation of employees, I went back and looked at all of the testimony that we received and I was gladly...I gladly read from your employees who spoke about you as a problem solver, when there are things that come up you're there for them, and we could see it. At the end of this term, last term, where you came with all these ordinances of trying to fix parking and, you know, signage, and what other kinds of problems I'm sure that came from your Department, employees of trying to, you know, address these land use problems and how you did it. So, I commend you for it. I just want to say, I want you do be our Director. I support you 200 percent, hard job, you have a lot of courage, and that if there's ways that we can help your Department employees make sounder decisions based upon policies that we can help you with please reach out because, you know, we're here for you and it helps our citizens. So, I strongly support you. Thank you very much for going through this process and days after days of waiting for us, so I appreciate it. That's it, Chair, and you can ask the rest.

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CHAIR MOLINA: All right. Thank you very much, Member Sugimura. And you speak of this long process, I believe we're going on close to four-and-a-half hours for Ms. McLean. So, anyway, thank you. Members, any other discussion as it relates to the motion on the floor? Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I have truly struggled with this decision of the Planning Director based on years of watching the Planning Department hearings, hearing oral and written, reading written testimony, for and against Director McLean, and having worked with her personally. This decision takes on more meaning to me as the facilitator of the Planning and Sustainable Land Use Committee since I will be working closely with the Planning Director and Department. Regardless of her confirmation today or not, I'm committed to working with whoever the Planning Director is. I thank Ms. McLean for her hard work ethic, like I stated in the opening, her intelligence and her institutional knowledge I think; however, that's the least that we can expect from anyone in the Director's position and I believe all of our approved directors do have that same qualities, approved directors so far. So, I appreciate the many good things that have been done under her tenure, but there have been a number of red flags brought to my attention. In my first round of questioning, I asked about retaliation and it's come to my attention that an employee that wrote a critical testimony has been suspended twice for non-work related things. It doesn't seem that the policies that she brought up in the original round of questionings were followed as well as issues under her purview, so I'm unable to support the nomination at this time.

CHAIR MOLINA: Thank you, Member Paltin. Members, any other discussion?  
Council Chair King?

COUNCILMEMBER KING: Thank you, Chair. I, too, want to thank Ms. McLean for going through the process. It's been a good process but a long process, and I want to thank the Chair for creating a process for the first time. I know it wasn't easy and there's probably going to be tweaks along the way but I have a lot of the same concerns as Member Paltin and as somebody who actually did chair the Planning Committee and didn't have quite the same experience that was described by some of the other colleagues. I have seen a lot of concern in the community for the ongoing propensity of the Council to appoint folks from the private sector of development to this position, and so there's a limited planning experience in the nominees background, but there is that institutional knowledge. I have...it's really hard to say, but I have found Ms. McLean to be less than sincere in dealing with the community plan process. And I've had experiences where we've had discussions and made some agreements to go forward in a certain way and then coming onto the floor there's a push back against it and without telling me ahead of time and a lack of collaboration with the Council Chair on various proposed bills. My biggest fear is that I haven't seen the change in the culture of the Department from what was mentioned earlier which is an attitude of proprietary ownership of community plans. And so, even though it's the Council that has the final say, there's been a lot of lobbying by this Director Ms. McLean for their new ideas

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inserted into the plans and I worry that we're going forward with the assumption that every plan is going to get this same land use designation into it that was put into the Lanai plan with a lot to do and the Molokai plan against the wishes of the community. I also...I'm very disturbed because I have personally, Chair, a history of collaboration and being able to work with people, but there has to be a mutual trust, and when that trust is broken it's very hard to get back. I've never experienced this before where I felt undermined by somebody in a department and especially when there's opportunity to have meetings and to discuss changes. I understand that people change their minds and new facts come out, but that really should be discussed before coming out on the floor and going in a different direction than you promised. So, I also am worried because I haven't seen a willingness or ability to fast track the community plan reviews that we've been talking about it for two years and now I hear another proposal, but nothing's happened. And I just want to quote from you one of the concerns of one of the employees in one of the, after his statement that he's not in favor of approving Michele McLean as Director to the Planning Department. The first statement is, the Planning Department needs a shaking up and not to be run as status quo. And I truly believe that. I believe that...you know, I thought that we were entering into a new Administration where we're going to see a vision and see true customer service and I still don't know that anybody of the, any of the directors have been given a clear vision of who the customer is, I still haven't heard that. And so, for that reason and the statement of inability to assure that the Department can have consistency or that what's coming out of the Department can be controlled and especially things like exemptions on SMAs. I think that's a really important thing that every director should be over, should at least sign off on every exemption, especially in communities where exemptions have been a problem, coastal communities. So, I don't want to take up any more time, but I will not be supporting this approval. Thank you, Chair.

CHAIR MOLINA: Thank you, Chairman King. Members, further discussion on the motion on the floor, which is to approve as the Director of Planning, Ms. Michele McLean, before the Chair gives his closing comments? Chair will take that privilege, if there are no other Members that would like to comment on the motion, going once. Okay. Vice-Chair Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Ms. McLean, mahalo for enduring this four-and-a-half hour confirmation process. I acknowledge that there have been a handful of concerning matters that have been specifically highlighted during this confirmation process that, to me, do matter, but I'm looking at the bigger picture, and in the totality of your employment time with the County, both in your capacity as Deputy Director and as Director for a frame of reference in my decision making. Our Molokai Office shared with me that she really appreciates the structure and management style that you've brought as the Director. And while there are consistent management skills worth praising there are also several examples of instances where procedurally our guiding documents may have been given the backseat to your personally prescribed discretion where it may have not been appropriate. I am severely concerned that our community plans are considered to have equal footing with County zoning by the

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Department head charged with administering and protecting the sanctity of our community plans. It resonates with me somewhat as a fox guarding the hen house type of situation. It is very important to myself and my community and to others that the sanctity of our community plans, sorry, authority be held up, upheld to its highest standards of practice. I realize that Planning is not an easy job particularly because the Department works so intimately with such diverse sections within our community, but I would be remiss if I did not speak out for the sections within our community that have felt underrepresented by their dealings, by you and your dealings in Department. That being said, I will not be supporting the nomination. Mahalo.

CHAIR MOLINA: Mahalo, Ms. Rawlins-Fernandez. Members, any other comments as it relates to the motion? And certainly, Members, if you choose not to comment on the motion that is your right. But I'm just gonna make it one last offer before the Chair gives his comments. Okay. Mr. Hokama, for the second...

COUNCILMEMBER HOKAMA: Second and final, Chairman.

CHAIR MOLINA: Yes, proceed, Mr. Hokama.

COUNCILMEMBER HOKAMA: I find it interesting that, you know, we want to look at...I try to look at the overall record of the individual and I can appreciate why some Members just want to focus on one or two things because of their involvement with that particular one or two things. But my disappointment on why she should not be supported this afternoon is because she won't make deals with Members before certain things come out to the floor. That is a disturbing point to me, Chairman, okay. So much for transparency if you gotta make a deal with a director before it comes to the floor before the public. Interesting reason why you would down a nominee, Chairman.

CHAIR MOLINA: Thank you, Mr. Hokama.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Council Chair King?

COUNCILMEMBER KING: I'd like to...yeah, I'd like to respond to that because, again, I would ask my colleagues to speak for themselves and not for the rest of us and I don't think deals being made behind closed doors are anything that Mr. Hokama would know about as far as the Planning Committee. There were discussions that were held. I do feel that there were deals being made with other Members of my Committee that when things came to the floor they had already been decided against where the Committee was going. But, Chair, I would just ask Committee Members, you know, speak for yourself. There have been way more than one or two items for each of us Councilmembers we're having this, making this hard decision, and I think we're taking to heart who truly is the community that deserves this decision, that asked for this decision. So, let's have a little respect for each other and for the questions that have been asked and the depth

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of them and the many different, the varied concerns on this floor today. Thank you, Chair.

CHAIR MOLINA: Thank you, Chairman King.

COUNCILMEMBER PALTIN: Chair, second and final.

CHAIR MOLINA: Member Paltin? For a second and final time to the motion, proceed, Ms. Paltin.

COUNCILMEMBER PALTIN: Puunoa one and two, the first to create, creatively repurpose the larger ag remnant piece as a result of the sliding scale refashioned into a 50 percent affordable 201G project; advocating in the lead role and position on behalf of the Administration for a proposal to single handedly decommissioning of the Kahului Community Center complex at the expense of the loss of a park complex to the neighboring community in favor of expansion of a neighboring senior complex; Moomuku Makena is a deer farm, farm plan, and wiliwili grove, legit; Napili Gardens. Over a decade, this Director has been on all sides, development consulting, on staff of a development firm, and as the County's top planner, i.e., Deputy or Planning Director. I think the definition of insanity is doing the same thing over and over again and expecting a different result. Some of us were brought here for change, and I do believe we need a new set of eyes to review things. And as one of my colleagues stated, it's more than one or two issues. Thank you, Chair.

CHAIR MOLINA: Thank you, Ms. Paltin. Member Lee?

COUNCILMEMBER LEE: Thank you, Mr. Chair. I was just thinking that if Ms. McLean is confirmed today, then that would be to me something very gratifying and satisfying so that I don't think that these proceedings are pre-scripted and predetermined. If she's confirmed today, then I will know for sure that this Council is truly independent, authentic, and transparent. I can't help but feel that a lot of what is discussed today is pre-scripted. A lot of it sounds alike, even in previous days, I thought about that. But if Ms. McLean is confirmed today, I would be wrong. I would be happily wrong. Thank you.

CHAIR MOLINA: Thank you, Member Lee. Members?

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: Mr. Sinenci?

COUNCILMEMBER SINENCI: Yeah, thank you, Chair. You know, as a new Member of this Council I am very appreciative of this process, and I would like to recognize those the chance to go through this process. I'm very appreciative. I'm also appreciative of Ms. McLean coming here today and answering all of these questions. You know, her

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confirmation is an important one that will maintain Maui's lifestyle and our overall character and, you know, my concerns is just having that authority. You know, I know it's a hard job, but you're put into this position where you have to make these decisions that will affect not just a few people but everybody, especially those who live in the area. And so, you know, my concern is just having that authority and making those decisions that affect Maui County, Maui nui, and I know that a 25-year mistake is still a 25-year mistake. We still have to deal with those and do damage control. So, I think sometimes...and I agree that some of the laws are left to interpretation and that she has been put into some, you know, where you have to make those decisions on your own, and I, too, I agree, you know, I'm here to help with that process and to make policies that are stringent, that are clear, that will set precedence for the next generation. I think if we take, interpret policy that is open to many different interpretations, then we have this kind of thing where and a few that will put the County at risk. And so, I mean, that is my concerns today. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Members, any other comments before the Chair makes his comments? Councilmember Kama?

COUNCILMEMBER KAMA: You know, I got up early this morning because I knew what we were going to be doing today was going to be very important. That it was going to be very profound. And, you know, the thing that kept going on and on in my head even as I was in the shower, getting dressed, coming here, was this...and I want to share this with you because what's in my head is what I want you to know. So, this is what was in my head, if my people who are called by my name shall humble themselves and pray and turn from their wicked ways, then will I hear from heaven, then I will forgive their sins and heal their land. So, as I've been sitting here all day and all morning praying and praying saying, God, give me wisdom, give me wisdom, because that's what we need in this place. We are not perfect people, we all have made mistakes, and we're all going to continue to make mistakes, I can guarantee you that. But something that Alice said struck me, she says, I will know if there's this thing is not scripted if we get a confirmation today. Well, I want my sister to know this is not scripted. That what our Chair has always told us that we are all independent. She has her views and we have ours too. But we are still free, we are free to make our own choices. So, we don't agree on this thing, but maybe we will on the next. But it's not about always being in agreement about everything. It's really about what's best for our County. So, we've heard Ms. McLean say how her decisions were always about to protect us, to protect our County, to protect our treasury, and sometimes in trying to protect our children we do things that they are not happy with. That's part of all our life, right, doing things because we love them deeply and intensely and even if they fight back at us because of what we have done that they think is not right, we do it because we believe it is and we do it because we love them. So, Mr. Chair, that is my comments for today. Thank you.

CHAIR MOLINA: Thank you, Member Kama. Alrighty, the Chair will take this opportunity to comment. Member Rawlins, go ahead. I'll accord you the second and final privilege to speak on the motion. Go ahead.



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VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair. I'd like to echo Councilmember Kama's thoughts. I'm actually kind of offended by Councilmember Lee's statements, and, you know, that kind of threats isn't going to convince me to change my vote. I walked onto this, the Chamber floor this morning not knowing how I was going to vote. This is hard for me. I asked for a second meeting with Ms. McLean, because I really wanted to approve her. And after today's confirmation process, after everyone asked their questions, and I heard her responses, it wasn't satisfactory for me to be confident about her being in this position. So, you know, I took in all of her responses and factored all of that in. I factored in those who gave up their time to come and testify. I looked at who testified and what it meant. And I factored in all of these things, and like I said, I walked onto this floor not knowing what I was gonna do. This is not scripted, and I stand by my decision. Mahalo, Chair.

CHAIR MOLINA: Thank you. Chair appreciates your comments, Member Rawlins-Fernandez. Any other comments before the Chair has the final say? Seeing none, will let the Chair first start off by thanking Ms. McLean for enduring this, I believe, what we're going on, maybe five-hour process at this point, unprecedented. First, the topic of qualifications, the Chair had mentioned to you from the start of all of these proceedings, the Chair's priority or rationale when making his decision will be to look at the person's qualifications and background, and I believe that was included in Council Chair King's preliminary questionnaire that was sent out to all of the nominees. Ms. McLean, you certainly have that. You have institutional knowledge. You've worked both in the private sector in your field as well as a rather long and extensive career in the County, so I'll give that to you. This position requires thick skin, you certainly will not please everyone with whatever recommendation or decisions you come up with, it's like, I can't think of no tougher job except maybe the Mayor and the seats that the nine of us occupy. It can be a darned if you and a darned if you don't. Sometimes a no-win situation, but you have to stand up and make a decision. So, you have thatchutzpah in you, Ms. McLean, to make the tough calls. And, you've had to be used as a resource at times because of others who in higher authority than you may not have had that background, so people have come to rely on you for background information. And as a former member of the Administration with you with the prior Administration, I have come to rely on you to provide some background information on the field that I worked in and that was related to boards and commissions to get your input. And, like, Mr. Hokama stated, he has not always agreed with your assessment on things, and I'll, I'm that way too, so I'll make that own assessment, but you have, at least, made a decision and you've backed up your decisions. I see one area that needs to be improved, and I believe you know that's, it's related to an issue that's in my district in terms of communication with members of the public. I think that needs to be vastly improved, and not let anything like that again whether it relates this issue or not. I think this goes for all directors, all departments, do not drop the ball with your constituents, with our citizens when it comes to important matters in this community whether by intention or not, because part of this wonderful process that we all appreciate with democracy is hearing the voices of our people, getting their input, their manao before any administrative decisions

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are made. So, for better or for worse, that's just...I'll just state that's my personal opinion on how I observe things. You have also demonstrated a knack for providing a response to all of these questions that have been presented to you. Each one of us, I applaud all of you. We all can look at the same thing but interpret it differently, and we've all had different experiences with the nominee, and I appreciate where all of you are coming from, and this process is certainly excruciating. And I just have nothing but admiration and respect for all of you and some of you got, based your rationale on the technical aspects of the job, whether it'd be SMAs and Environmental Impact Statements to just a simple perspective of that the person on the street like Councilmember Kama and sort of a spiritual analysis of things. I will state I do have reservations but I looked at this Administration and who else do they have to fill this very, very important position? I'm not aware of anyone else that has the experience, has the institutional knowledge that can take the hits for the Administration if necessary. And I've heard in testimony that this is the end, whatever decision we make. I don't quite necessary agree with that because accountability is still held with the Mayor. If Ms. McLean is approved as the Director and if concerns start to come in about her actions, then it's incumbent upon the Mayor to do something about this. So, it's not an end all, so to speak, but we have to make a decision nonetheless. And as I've mentioned earlier, I see it as qualifications, who can best take the hits for the job, and I, you know, we have to take hits. And I know we put you through an excruciating process, Ms. McLean, but it's a choice that you made, and in some ways, I have some admiration for you going through all of this. So, anyway, I'll end my comments there and I will ask staff to do a roll-call vote. Ms. Espeleta?

MS. ESPELETA: Thank you, Mr. Chair. Starting with Councilmember Sinenci.

COUNCILMEMBER SINENCI: No.

MS. ESPELETA: Councilmember King.

COUNCILMEMBER KING: No.

MS. ESPELETA: Councilmember Lee.

COUNCILMEMBER LEE: Aye.

MS. ESPELETA: Councilmember Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. ESPELETA: Councilmember Paltin.

COUNCILMEMBER PALTIN: No.

MS. ESPELETA: Councilmember Sugimura.



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CHAIR MOLINA: Okay, congratulations, Ms. McLean. The...you have been approved and out of Committee by a five-four vote. This matter will go before the full Council in the near future. So, with that being said, Members, the Chair will call for a brief recess. Recess subject to the call of the Chair. . . . *(gavel)* . . .

**RECESS: 3:11 p.m.**

**RECONVENE: 3:14 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of January 23, 2019, is back in session. Members, thank you for that very long, excruciating process that we had with our earlier nominee and Chair appreciates your thoughts. Today is Tuesday, February 5<sup>th</sup>, 17 minutes after the hour of 3:00 p.m.

## **GET-1(2) APPOINTMENT AND REMOVAL OF ADMINISTRATIVE HEADS OF DEPARTMENTS (CORPORATION COUNSEL) (CC 19-1)**

CHAIR MOLINA: We have our next nominee, this time for the Corporation Counsel, Mr. Pat Wong. The Chair is going to ask just for the sake of immediacy to ask for our Chief of Staff to give opening comments on Mr. Wong, then the Chair will ask Mr. Wong to provide some comments and then we will take a recess from this meeting upon the completion of Mr. Wong's opening remarks. Okay, Members, are we aware? Okay, Ms. Tegarden, Chief of Staff from the Mayor's Office, please go ahead and give your opening remarks.

MS. TEGARDEN: Thank you, Chair. And good afternoon and aloha, Councilmembers. Mr. Wong applied to continue serving as Corporation Counsel, because he wants to continue providing public service to Maui County within the legal field and improve the functions of the office to best serve our community. He has over 24 years' experience in law and eight of those years as Corporation Counsel. He is thorough and thoughtful in his work, which is important when dealing with the various items that come to his office. Mr. Wong brings experience, expertise, and dedication to this role as Corporation, as Corp. Counsel. The Mayor asks for your kind confirmation. Thank you.

CHAIR MOLINA: Thank you, Ms. Tegarden. Mr. Wong, you have the floor.

MR. WONG: Thank you, Chair. Thank you, Members. I applaud you for that tough decision and working through the previous directors. It's not an easy thing for you to do, and it's not an easy thing for the appointees to be sitting through that process. I have the benefit of having sat through confirmation. This is my third time. The first time was I think equally excruciating. It took several meetings, and it concluded on the very last day. The second time I went through it was also equally excruciating. I'm looking forward to engaging with you in today's events. There's gonna be tough questions, I understand. I'm not going to probably have the answer to all of them. I can tell you I

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struggled with actually applying for the job. It wasn't until the last day that the Administration called for resumes that I did make a decision to do that. I, too, believe that change is good. I've always believed that, which is why I, throughout my career and throughout my involvement in different boards and commissions, whether I had a leadership role in those boards or not, I also believe that I bring a certain amount to the table. I work with the boards with my involvement and I move on. This was a struggle for me to make the decision to apply again. Honestly, I look back in the last eight years, there are things that I think still can be done and should be done through the Department of the Corporation Counsel. I can tell you that the staff and the attorneys there that I've grown within the last eight years are tremendous people and colleagues. I am very, very, very pleased that they had the courage and the strength to come up here and testify before you. Litigators and attorneys typically are not people that come to testify. I didn't ask them to do that. I never asked my first confirmation for people to do that, the second, or this. They did it on their own accord. Six months prior to the end of the term, I was already preparing for a change, not just in the Administration, but within the office. As you heard one of the members of the staff come up from Risk testified about my pressing them to make sure that when the Administration changes regardless of who was at the helm that there wouldn't be a hiccup in that transition. I still believe that whether I'm confirmed or not. The operation should be able to be maintained properly if the leadership and the direction was sound. And I believe that any one of those deputies could step forward and do my job. I strongly believe that, and I'm not just saying that because they testified on my behalf. I was touched. I really was and I still am. So, regardless of the outcome, I do know that the strength of the Department will continue. I hope to be in the role as leader in that position. I hope to be able to continue to foster the relationships that I have developed over the years, and you heard from one of my strongest critics, it was a very rough road in the very beginning, but I believe that everyone should be measured moving forward regardless of our past. You can put those things to bed, put it to rest, and move on. I, too, received communication by the former Councilmember. I got a phone call, same day that Ms. McLean got a visit. The call that I received I was a little surprised by it. I was surprised because I thought the call was to follow up on the status on pending litigation. So, with my mindset when I returned the call, it was to clarify the current status of litigation pending against that member. To my surprise, it was not. To my surprise, it was to suggest that Council Chair King had spoken to her the day before. Now, this isn't something that I was prepared to receive, but I accepted it and I said, thank you very much, thanks for the heads-up. I didn't know how to take it. I did have an opportunity to speak to Chair King on a flight back from Honolulu, and as I told her then and I'll repeat it that I felt that I had the benefit of having her as my captured audience for 25 minutes on a flight from Honolulu, and I shared with her that I did receive the phone call. I also shared with her what was said, but I didn't harbor any ill will for that. She assured me that the process was going to be fair, that each of you were open to make your own decisions. I strongly believe in the process. I always do. That's what's driven me from an early, early age. If there's a will to do something, then there's a way to do it, and it's a positive thing that I took from an early age up until now. I can tell you about where I'm from and my family members and all that, but it'll take up some time.

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If you want you can ask me, but I'm here to answer your questions, because I applied for a job that I believe I should continue to do and that I can help you through this process. So, with that said, Chair, I'm open to any questions.

CHAIR MOLINA: Thank you very much, Mr. Wong. The Chair will take the privilege since I guess I am the so-called subject matter Chair with the Government [sic], Ethics, and Transparency Committee to ask the first question or two because at 3:30 I'm going to have to recess for a procedural matter. So, Mr. Wong, as you're probably very well aware during the most recent election, the Councilmembers were elected based on a wave of transparency and open government by the public. Can you share with us your goals for this Department in terms of enhancing transparency and open government?

MR. WONG: Thank you, Chair. You know, transparency is a good thing. To the extent that we're able to from a litigation standpoint discuss all issues in open session, we certainly do that. The procedural histories of cases, the claims that are involved, all those things should and can be discussed in open session. In terms of the counseling and drafting section, you know, you, this body deals with most of the attorneys, well, all of the attorneys on a regular and consistent basis. Their opinions are typically formulated in response to questions on the floor. I'm not sure that you can get more transparent than that. It's a tough job to sit here and to receive legal questions and then try to formulate a response without going back to the office and doing the legal research. I think that to the extent that we are able to and we have currently provided as much information as we can to the general public, we already do that. What more can be done from our Department is very, very difficult, because when we deal with liabilities and risks that are involved at the backstop is making sure that we still have the opportunity to properly provide a defense in the County's behalf. So, I'm all in favor of transparency. We've all been able to consistently have an open door, but we have to, I have to draw the line at certain crossroads. So, with that said, I hope that answers your question.

CHAIR MOLINA: Thank you very much, Mr. Wong. One more question before the Chair seeks a brief recess. Mr. Wong, your Department is short staffed from what I understand in certain areas. Provide us a status of bringing this Department up to full staffing because I can only imagine what type of workload you have in that office. Please share your thoughts. And, of course, we got budget coming up, so might be a good time to give us an inkling of what you may be seeking.

MR. WONG: Thank you, Chair. In terms of staffing, we are short one Deputy Corporation Counsel in litigation section due to retirement and two clerical positions, one transferred to another department and another due to retirement. So, I think from a clerical standpoint our office manager has been actively pursuing, filling those roles. I do have, in terms of the deputy position that's available, I've received numerous applications. I've conducted interviews and we're ready to fill it. You know, mind you, I have some pause in offering a position to a deputy in the event that I'm not confirmed, so I'm leaving that open just in case, and there's some changes that I wanted to implement, but I've held off on. In the event that I'm not confirmed, then that should be to my successor's

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job. I would not want to strap an individual with that choice. So, it's left until this is over.

CHAIR MOLINA: Okay, thank you very much, Mr. Wong. Members, as stated, the Chair's going to call a brief recess to address a procedural matter. Meeting in recess. . . . *(gavel)* . . .

**RECESS: 3:27 p.m.**

**RECONVENE: 3:33 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The GET recessed meeting of January 23, 2019, is now back in session. Members, today is Tuesday, February 5, 2019, just past 3:30 p.m. For this portion of the meeting, Chair would like to go for at least a half an hour of Q&A from the body, and then at that point the Chair is looking at conducting another recess to take care of some personal needs. So, at this point, Chair will recognize Councilmember Hokama for questions to Mr. Wong.

COUNCILMEMBER HOKAMA: Thank you very much, Mr. Chairman. I believe, like Mr. Wong, this is my third confirmation hearing with him. I believe I conducted the very first confirmation for Mr. Wong, and I can tell you that the Council...I guess his term was agonizing...

MR. WONG: Excruciating.

COUNCILMEMBER HOKAMA: Excruciating, excuse me, yeah. Well, it was very thorough and it was very lengthy and, again, at that point in time we basically just had the Charter as general guidance. We didn't have any additional ordinance, guidance, or requirements to follow up on, but I can tell you that even at that hearing Mr. Wong was very, very forthright and very clear on the understanding the role between a prosecutor and a Corporation Counsel, which was one of the things that we expected. So, today, Mr. Wong, as a seasoned Corporation Counsel, and I appreciate Chairman Molina's original questions about the transparency component and your responses to his thing, I just want to, again, bring up a few, well, in this point of the meeting with you my areas of questioning. One of the things that I appreciated is your Department's involvement in trying to clean up the issue of our departments, Public Works, Parks and Rec, I don't need to bring up others, regarding the abuse of pCards or purchase cards, the abuse of purchase orders, the abuse of some of those cash point sales and transaction and use of public inventory for personal either outside or even fellow employee benefits that was not, to me, a allowable use of public funds. How can you...can you...what can you tell us this afternoon as how you will continue to strengthen so that this type of abuse gets curtailed to the upmost maximum limits as well as your position? Because I feel that we do not arrest and prosecute properly those that cheat on public assets.

CHAIR MOLINA: Mr. Wong?

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COUNCILMEMBER HOKAMA: Any comments please, Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Hokama, on that, for that question. One of the goals that I set out in my response to the questions and one of the things that I spoke about to Mayor Victorino's selection commission, committee was the creation of a investigative unit moving forward, and that's one of the things that I thought about when I reapplied for this position was the creation of investigative unit the purpose of which could address a lot of the concerns that the general public may have had about departmental issues. You raised two alone, and I can honestly tell you that when those items were brought to my attention, we, meaning my Department, moved relatively quickly to secure and, the evidence and to initiate investigative teams. The Department of the Corporation Counsel has many, many roles. Investigating issues and difficult areas that you just identified as really a role that we inherited based on the lack of any individualized unit to pursue those issues. I've had numerous discussions with the Auditor and with the Department of Personnel Services Director and there's shortfalls and unfortunately it typically fell on, at least during my tenure, the Department of the Corporation Counsel to explore and properly investigate and vet those issues. And internally what occurred was my identifying deputies capable of doing an investigation along with our investigator along with assigned support staff, and then securing that information so that others in the Department would not know, one, that an investigation was being conducted and, two, that, you know, that information could be protected and rightfully so because not all investigations resulted in disciplinary action. In fact, there were few that verified that the employee did not have any wrongdoing and that the employee was properly reinstated as that employee should have been. So, we're very cognizant of how we do these investigations. Creating a separate unit that can receive complaints that can be pursued and investigated with the attachment to the Auditor's Office and also the attachment to the Department of Personnel Services will provide, not just the general public, but also Councilmembers and the Administration a viable unit to be able to explore issue areas without interrupting operations from the departmental standpoint or the Department of the Corporation Counsel. So, I have strongly believed in that pursuit and part of my decision to continue this process is to explore that and hopefully bring it to fruition over the next several fiscal years if given that opportunity. Thank you.

CHAIR MOLINA: Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you. Mr. Wong, Chairman, thank you. One of the things that I agreed with you in the transferring of Risk Management to within your Department. And, you know, most times, risk management, we look at about more personnel type of risk management issues and challenges. Do you see that maybe you would encompass it or broaden the parameters of risk management to also include some of this issues as it regards to the financial component within departments as well, Mr. Wong?



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CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, Member Hokama. Those...that's an excellent question. I...the decision that I made to pursue moving Risk Management into the Department of Corporation Counsel was made back in 2012. And as we have merged and the issue areas have developed, I think, in terms of reviewing case files early on and looking at sensitive areas. I would agree with you that the cash transactions and the risk areas need to be fully evaluated and vetted. We have, as you well know, all the cash handling areas being properly covered by security cameras, but there's other areas that can be and should be explored. I think that the Department of Finance is moving in the right direction by exploring a third-party investment for, to assist with the County's finances. In my viewpoint, that was a area that needed to be explored and still needs to be covered properly. I think we have...I have some concerns about that area, and I've had those concerns that I've raised with the previous Administration, and with the previous two Finance Directors, and I think we can still explore that and we should continue in that direction. Thank you.

COUNCILMEMBER HOKAMA: Thank you, Mr. Wong. Chairman, I'm happy to allow your next Member their turn.

CHAIR MOLINA: Thank you, Mr. Hokama. Chair's going to go, reach out to his far left from Hana representative, Mr. Sinenci. Do you have any questions for Mr. Wong?

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Mr. Wong, for coming today and meeting with myself and my staff in prior month. And, again, I'm just asking a lot of my constituents have some questions, so a lot of 'em is coming from them. And so, the first one was about the 2014 GMO moratorium, and if you could explain your defense of the, well, the decision that was made by the Administration at that time, if you will?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Sinenci. The GMO moratorium, it was a difficult time. I can tell you that the, leading up to the ballot presentation, I know that the Council body struggled over what to do about the ballot measure post the election and the timing to look at enforcement of the moratorium was difficult. The Administration internally did ask all departments to look at what their role would be in terms of implementing the enforcement of that ordinance that passed. I struggled with it, because there were active litigation in other jurisdictions on that topic. I did go to Federal court and watched the presentation on the motions for summary judgment on that topic. I felt that enforcing it, not just from a conflict with Federal and State law, but mind you the ordinance that passed also had a conflict with our Charter. It called for a, if I recall correctly, a \$25,000 penalty. Our Charter limited and continues to limit fines and penalties to \$1,000. And so, in advising this Council and the Administration that there were other conflicts that existed that it would be prudent for us to hold off to see how the Federal court litigation would play out. You know, I expected that the court

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would render a decision one way or the other and it did. Unfortunately, it rendered the ordinance that passed invalid, and that's a decision that the Federal court made. And at that time, I know that there was a lot of people wanting us to enforce the Federal...well, enforce a law that had direct conflicts. I can tell you that as I sit here before you if there is an issue that is in direct conflict, we're gonna struggle with it. We're not going to be able to always agree that despite that some may want us to move forward and it may not be in the best interest of the County overall. And so with that said, I think the decisions made back then were based on a wait-and-see approach, but it was a, I think, a correct decision because the moratorium...I mean, personally, I may have my own beliefs about it, but from a legal standpoint, I think, it was the correct decision. Unfortunately, for most, that's a point of contention and it will continue to be so.

CHAIR MOLINA: Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you. I was gonna check with Corporate Counsel. Are there any litigation, pending litigation that we can't speak to in our questioning?

CHAIR MOLINA: Mr. Sinenci...go ahead, Mr. Wong, if you'd like to comment.

MR. WONG: Chair, if I may, I'm pretty aware of most of the litigation that are pending against the County, and so I think if you raise the question, you know, certainly, you know, Ed can weigh in, but I think I should be able to identify which ones are pending and where we can go with it. So, I'm open for that discussion.

COUNCILMEMBER SINENCI: Okay. My next question was the Lahaina injection well. What are some of the challenges or where are we at this point with that?

CHAIR MOLINA: Okay, Mr. Wong, prior to responding, again, Mr. Sinenci, I'm gonna ask Mr. Wong's involvement in it, because based on what's on the agenda in terms of our qualification procedures for Mr. Wong and our other nominees. So, whatever you feel comfortable with responding in open session, Mr. Wong, I will leave that to you. Proceed.

MR. WONG: Thank you, Chair. And thank you, Member Sinenci, for that question. As I said earlier in terms of transparency, typically we're able to provide a lot of information about the litigation. I can tell you, currently, the injection well litigation is pending the U.S. Supreme Court's Committee review on the 15<sup>th</sup> of this month. That's based on an e-mail that I received this morning. That's a, you know, part of the public docket so anyone can get on the Supreme Court docket and see that information. In terms of the overall litigation itself, you know, Chair, I was involved from the very, very beginning when the County received the notice of intent to sue prior to the complaint being filed by Earth Justice, and so I think I've spoken of this topic in the past. And my effort back in 2012 is the same as it is today and that is to...I reached out to the plaintiff's attorneys with a hope that we could find some resolution. The litigation is driven by the need for the Department of Environmental Management to find, I guess, a more prudent way to dispose of its wastewater. And, ultimately, as we all know, the court, the Federal court

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concluded, Judge Mollway did, that we needed a NPDES permit in order to continue to dispose of wastewater into injection wells. I can tell you that the Department of Environmental Management and the engineering section were hard-pressed in continuing to operate when the Department of Health is, has been unwilling to issue a permit. I don't disagree with the plaintiff's group that we need to protect the environment. I'm a strong believer in that. One of the early discussions that I had with the Department of Health, its engineering, its Wastewater Division, and the Safe Drinking Water Branch was what are our alternatives? Their response was do a deep outfall, run a pipeline from the wastewater treatment plant two miles offshore, and dump. I told them I was not in favor of that, but I would present it to the Council and the Administration, which I think is crazy. Ultimately, I believe that the Department of Health's reasoning for that is it certainly makes their job easier, because if you run a pipe from the treatment plant two miles offshore, it's easier to measure the water as it enters into the deep ocean at that point rather than measuring it at the different seep areas in the near-shore waters over a mile and a half span of beach. I can tell you throughout the entire process of that litigation, I have actively pursued ways to resolve the issues, but also actively pushed the Department of Environmental Management to come up with alternative methods to dispose. And I can tell you that, they have, the engineers have looked at multiple different areas. In the last couple of years, I know that they've been looking at how to do it and asking, will be asking him as a body for money to get those things accomplished. I guess, if you have any other specific questions about the litigation, I can certainly answer that as we move forward.

CHAIR MOLINA: Okay. Mr. Sinenci?

COUNCILMEMBER SINENCI: Follow-up question, what would be the financial responsibilities of the County if it, if the outcome is unfavorable for us?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you for that question, Member Sinenci. The current issues...and I'm not sure if you're fully aware but we do have a settlement agreement with the plaintiff's group that we agreed to some time ago prior to the appeals going up to the 9<sup>th</sup> Circuit. We would be responsible for their attorney's fees. We would be responsible for a, what's called, a supplemental environmental project that has a dollar value to it. That project would be, is subject to the plaintiff's group approving it. And typically, it's a project that's related to the wastewater treatment plant. The outside exposure and concern, and I'm not saying anything that nobody else out there would have thought about, and that is we've capped the exposure up until a certain point. If we lose, there is no cap moving forward. From the point the settlement document was approved by the Department of Justice moving forward we're still at risk. So in the event, either the U.S. Supreme Court rejects the request for cert or the Supreme Court takes it and affirms the District Court's decision, then we're at risk for continued fines and penalties for the period of time that we've operated without a permit despite, again, going back in time the Department asking for, applying for a permit and going through many iterations of

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a requested permit. So, we're in a, I think in a very difficult position and it's not necessary driven by the litigation. It's driven by we don't have alternative methods of disposal. I think if we cured that back in 2011 or 2010 or 2009, we really wouldn't be having that injection litigation discussion today. And my being mindful of Mayor Victorino's want to move away from the continued use of the injection wells and the current Director, or I guess, he still needs to be further confirmed by the full Council, Mike Miyamoto's plans moving forward would, I guess, address the continued use of the injection wells. Now, mind you, it's not just County-driven injection wells and we have a number of them, there's other injection wells throughout the State that are also looking at this litigation and how we deal with it.

CHAIR MOLINA: Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair.

CHAIR MOLINA: Okay, thank you. Members, if you'll indulge the Chair, it's been a long day thus far. You look a bit weary, so am I. I'd like to give you all an opportunity to refresh yourselves. I'm going to call for a recess and let's return to these Chambers at 4:30. The recessed meeting of January 23, 2019, is now in recess until 4:30 p.m., Tuesday, February 5, 2019. Meeting in recess. . . . *(gavel)* . . .

**RECESS: 3:58 p.m.**

**RECONVENE: 4:33 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of January 23, 2019, is now back in session. Members, today is Tuesday, February 5<sup>th</sup>, 4:35 p.m. We're currently in the process of addressing the Mayor's nominee for Corporation Counsel, Mr. Pat Wong, and we're in the Q&A phase at the moment. When we last left off, we had Council Chair King ready to ask some questions; however, she's not here at the moment, so for now we'll go to the Wailuku Councilmember, Ms. Lee, if you have any questions for Mr. Wong.

COUNCILMEMBER LEE: Not at this time. Thank you.

CHAIR MOLINA: Okay. That was quick. Let's move it on down to West Maui Member, Tamara Paltin. Questions for Mr. Wong at this time? Ms. Paltin, do you need more time? I can go to another Member? Okay, we'll stay with you, Ms. Paltin. Oh, I'm sorry. Okay, now we're going...

COUNCILMEMBER SUGIMURA: She's ready now.

CHAIR MOLINA: Okay, she's ready now, alright, let's go.

COUNCILMEMBER PALTIN: Thank you, Chair. Sorry about that.

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CHAIR MOLINA: You're welcome.

COUNCILMEMBER PALTIN: Thank you, Mr. Wong, for being here and for, also for meeting with me in my office. Based on some of the conversations that we had, when I was asking the differences between you and former Corporation Counsel, Mr. Moto, and you said, you know, how you think of saying yes to request how we can do it legally, and I was wondering if you could give examples of that type of creativity, I guess, on how we could do the Styrofoam or the oxybenzone ban legally?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Paltin. You know, I...as I said in our meeting, I never worked for Mr. Moto, so I really cannot comment on him. There's others that are in the Department that did work for him that could certainly comment on his capacity. In terms of, you know, being able to say yes, I guess I should explain and say that typically when we're asked either by the Administration or by the Council or by the different directors to evaluate whether or not an item should move forward or not it's usually from the perspective of when we sign off as to form and legality. In the event that we have areas where there may be a dispute as to form and legality, we will look at it very closely to evaluate whether or not we can. And we will work with as, you know, most of the deputies have worked with either the Administration or the committee to come up with language that can be acceptable and within the confines of what's legal or not. And the legality of it is typically from a perspective of can we defend it in court if we are sued, do we have a defensible position, and whether we get sued or not, you know, it's up to any prospective plaintiff to challenge that. And it's our job, I think, to look at whatever's being presented to determine is it something that we can legally defend. And if we cannot and there's only been a few circumstances where we've been of that opinion, then we have to make that call, and it's not always popular, but legally defensible is the position that we have to take, in most of, well, in all of the circumstances. I hope that answers your question. You know, as specific to the oxybenzone and the sand moratorium or any of the proposed legislation, I can tell you that the deputies assigned would have done thorough research in exploring whether or not it can be using the language being proposed and to come up with alternative language if asked, but on its face if something is submitted and we receive a request for legal service, it is to review what's being proposed and to determine whether or not it's in conflict with any other law and whether or not we can defend it. If we have issues with it from a legal perspective, that's typically expressed to the member or the committee and adjustments are made to the point where we get the bill and/or document to the point where we can sign off on it. So, it's not always, no. It's sometimes no, but here's an alternative.

COUNCILMEMBER PALTIN: So, I was...follow-up was getting, point to what you specifically did for those bills, the sand mining, oxybenzone, Styrofoam, to get it to where you could legally defend it or did you do or, I mean, if there was something?

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CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you for that question. I personally did not get directly involved in the structure of those ordinances. I received information from the deputy assigned, and we did have discussions about providing information back to the body. Unfortunately, I did not wordsmith personally those ordinances, but I stand by the decisions made and the evaluation provided to the body.

COUNCILMEMBER PALTIN: So, also in our conversation together I think you were referring to Section 8-2.3 in the County Charter, powers, duties, and functions, number two, be the chief legal advisor and legal representative of the County of Maui, of the Council, the Mayor, all departments, and my question is how...what is...what do you think makes up the County of Maui?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, Member Paltin. I've...think I've in the past referred to the County of Maui as the body politic as opposed to a individual or the Council or the Administration standing alone. It's a corporation incorporated, which was done years ago by the Council. So, I look at it as the greater component of what you represent and what I represent. So, yeah, it's not just one element in and of itself, it's the entire County. Not necessarily individual constituents, but the County government.

COUNCILMEMBER PALTIN: So, do you still believe in doing what's right by our individual constituents?

MR. WONG: Absolutely.

COUNCILMEMBER PALTIN: So, I'd like to just see what your response is to the testimony submitted to us from Mr. Joel Katz. He felt that unscrupulous tactics was used against him, stalling in a response to properly submitted claim until the statute of limitations ran out with design flaws in a storm drain and the County not maintaining it and that a lowball offer, he felt that the Deputy Corporate Counsel was abusive to her as she also admitted being abusive to you. And then it happened a second time when attempting to make the storm drain design corrections and another claim and now the process has begun again. So, I was wondering, you know, how do we do the right thing by our constituents while also doing the right thing by the County when the County does wrong things?

CHAIR MOLINA: Mr. Wong, are you able to respond?

MR. WONG: Chair, Member Paltin, thank you for the question. I'm vaguely familiar with this factual circumstance and surprised that Mr. Katz, you know, is referencing the deputy involved in dealing with this fact pattern. You know, honestly, we deal with a lot of cases on a daily basis and typically the constituent may have a claim, and we invite

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them to file claims, and we try to work through reviewing and evaluating those claims. As they come in it is internally assigned, usually it's a, a third-party administrator that has the first interaction with the constituent and they will do the investigation and they will provide recommendations, and then internally it is referred to either our lost prevention individuals or one of the deputies depending on the topic area. And when we receive claims and if we have a dispute as to whether or not the County of Maui has any liability there, a lot of times the constituent will send letters and will disagree with us, and they have every right to do so. And they have every right to file their claim. And I've said multiple times that if you have a claim, go ahead and exercise your right to do that, you're within your legal purview to do it, but we're obligated to investigate and defend when we believe that there's a defense. And, you know, I'm not sure what the 30-year history was of this road at Hiahia Place that's identified and there may be other issues that are involved, and so what we typically do is look at or explore it with the Department of Public Works if it's a drainage issue or a design issue, but, you know, we don't ordinarily at the outset admit liability and accept claims. For those that are straightforward and we look at it and it's, there's no dispute, then we do accept those. There's also times when it is in dispute and we encourage them to go get a lawyer and pursue your claim as this individual should do.

COUNCILMEMBER PALTIN: So, stalling a claimant is never an acceptable tactic?

MR. WONG: I don't believe anyone in our Department would stall a claim. You know, every individual that has a claim against the County also has an obligation to exercise their right within a timely fashion. The statute of limitations defense is a defense that every defendant including the County of Maui is entitled to press. If they disagree on our handling of it, then they can file their lawsuit, and actually they should. They should not sit on their rights and I've said that numerous times to individuals. Don't sit on your rights, go exercise your rights. It's not our job to file their claim for them against the County of Maui, I'm sorry, but it's just not the way it works.

COUNCILMEMBER PALTIN: Two more questions, Chair.

CHAIR MOLINA: Proceed.

COUNCILMEMBER PALTIN: I also was, you know, I live in Lahaina, and so I also was I feel like involved in the very beginning of the injection wells back from Tavares Administration when the EPA came, and I was at the Civic Center that day, and I appreciate the Administration actively looking at different ways to dispose of the R-1 water. And my question is, if we are actively looking to solve this problem and I know from the beginning days that was the kind of the impetus for the lawsuit was because at that time Administration wasn't doing, actively looking at different ways to dispose, but now that we are, why would we continue and continue to appeal the case and spend plenty money on mainland lawyers?

CHAIR MOLINA: Mr. Wong?

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MR. WONG: Thank you, Chair and Member Paltin. Very good question. Very simple, we don't have the permit. It hasn't been issued. Absent the permit, there's no place for that water to go. It must still go down the injection wells. And until the Department of Health decides to issue its permit, we're in violation. Hence, the litigation continues. One or the other has to give. The Department of Health has not issued and I will surmise the reason for that is they don't have a mechanism to deal with this issue. They do not have an NPDES permit for an injection well. They never had it. They don't know what one look like, and they don't know how to administer it.

COUNCILMEMBER PALTIN: I guess, wanting to disclose, full disclosure that at last year I was the President of the West Maui Preservation Association, and I was wondering if there was a chance to say we're actively looking, can you stop appealing and just work on this for Maui County if that would be acceptable?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, and Member Paltin. I can tell you that my pursuit for alternative disposal methods started when this litigation started in 2012, when I first became aware that it was an issue. I, with the previous Director of Environmental Management did explore numerous alternatives. The one that I also pitched back in 2012, which most people cringe over, and I even offered it to the plaintiff's attorney, and that is taking R-1 to R-0. The expense is huge. I proposed it to the prior Water Director. I proposed it to the prior, the current Department of Health Supervisor in charge of Safe Drinking Water Branch, they do not have admin rules to adopt R-0 in the State of Hawaii. I've gone to places specifically to look at can we go to R-0. What's the expense? Can it be done? The answer is yes. In the continental U.S., there are states that have actively pursued it, that have convinced their Department of Health that it's the right thing to do and have implemented R-0. It's an educational thing, it's a science thing, it would cure our injection well problem. Unfortunately, I'm only one guy. I'm not in charge of the other departments. I do not run the Department of Health. They've asked us, they've asked me, come up with the administrative rules so that they can administer turning R-1 to R-0. They don't have the manpower to do it. It's a big task, but I'm up for it, and I do know that the current Water Director that you just recently approved is up for it and so, too, is the current Environmental Management Director. They're at least up for having that discussion and exploring what it would take. And on the west side, my understanding is source is an issue, disposal is an issue. If you look at the output and the need for source in the next several years, I think they're about equivalent.

COUNCILMEMBER PALTIN: I agree but I also think irrigation is another option, but I was more referring to 2017-ish, not 2012, 2017-2018, if we could've settled without appealing.



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MR. WONG: So, if I understand your question correctly, your thought process is could we have put a stop to the litigation and explore the alternative disposal methods? In the discussions to resolve the liability issue and the extent of damages issue with the plaintiff's group the one thing that we had to be mindful of and I'm still mindful of is we do not have a permit. So, even if the parties wanted to agree to put a hold to the litigation, the judge's ruling is still in full force and effect and it requires the Department of Environmental Management to secure an NPDES permit. So, functionally, I don't believe we would be able to put the litigation on hold and explore the alternative methods. I think we need to do that simultaneously, which is what I've been pushing for some time. And I can go through all the different proposed projects that I asked the Department of Environmental Management to look at, and it all takes money. He should have proposed those things to this body. I think a lot of time and effort should have been expended prior to 2012 to look at the disposal method, but it was not.

CHAIR MOLINA: Mr. Wong, if I may interrupt, I believe you answered the question appropriately.

MR. WONG: Sure. Thank you, Chair.

CHAIR MOLINA: Ms. Paltin, anymore before I recognize Council Chair King?

COUNCILMEMBER PALTIN: Can I do one more?

CHAIR MOLINA: Well, Chair's been a little...I'll tell you what, we'll come back to you on that one question. I'd like to give other Members a chance, if you don't mind.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Appreciate your indulgence, Ms. Paltin. Council Chair King?

COUNCILMEMBER KING: Thank you, Chair. See I have some kind of broad questions and then a couple of specific ones. But I'm gonna start with a major concern that I've had for a couple of years and it's not just your Department. It's most of the departments understanding of strategic planning and performance measures, and so when you were in the last Budget Session, I believe, your top strategic goal was listed as reducing civil lawsuits by holding, you know, community workshops, and then the measure of that was how many workshops you held. So, were you planning on measuring any reduction in civil lawsuits and is that information forthcoming from your Department because I think you kind of missed the boat there?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Chair King, thank you for the question. You know, honestly, that was one of my goals from 2011, and the difficulty has been providing public interaction on some of these topics. It's very difficult to be able to address the public

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concerns when you're dealing with litigated items, because we just cannot expose the County to greater liability by being out there. And I think it...I should adjust that goal, you know, overall reducing civil liability and civil litigation is an internal goal, and I think that we've been able to do that by responding to the issues before litigation is filed. There's times that we cannot and is filed anyway, and then our obligation is to try to address it and close it as soon as possible. Sometimes litigation can be resolved quickly and sometimes it cannot. Ultimately, we come back to this body on all claims above \$7,500. Maybe you're right on that, maybe I did miss the boat on that. Maybe I should do public presentations. Again, I fall back on my...when I set that maybe I wasn't thinking about the overall exposure to the County and while in the job recognizing that exposing the County to greater liability is not in the best interest of the County.

COUNCILMEMBER KING: Right. But what I was asking for was an overall benchmark of how much the lawsuits, civil lawsuits and liability has been reduced. I wasn't asking for a blow by blow of each case, but if your goal is to reduce civil lawsuits and liability, which I think is a good goal, then there's got to be a way to measure it and we've never really had that information at the Council level. So, to me, measuring the number of workshops that you've done, you know, to inform the community of the laws and of the ramifications, perhaps there's potential litigation isn't the same as actually giving us numbers. You know, we paid out this much last year and the year before. This year we paid out this much, and, you know, giving us a real measure, a benchmark of are you attaining that goal. And that's been one of my frustrations of many departments, not just yours, but to me that...if that's the number one goal then there's gotta be a way to let us know if you're reaching that goal or not.

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair and Chair King, thank you. I believe we provide that data in our budget documents every fiscal year and it does report the amount of complaints received and the amount of claims closed and the periods within which those claims are closed. And I do know that our Risk Manager did, implemented a program adjustment so that there's claims that are dealt with on a fast-track basis. And I do know that the Risk Manager put in a lot of effort in putting that together, and I believe that there's data that shows that those claims are open and closed in a relatively quick fashion, and part of the savings is based on the amounts that are paid out to the third-party administrator and the claims that they handle. So, I'm sorry that I don't have that data on the top of my head, but I do know that the data is captured and is presented.

COUNCILMEMBER KING: Okay. I guess we'll have both go back and look at that because I know under performance measures there were no figures there and there were no...there were just figures of how many workshops you held and how much outreach you did. So, that was what, you know, I look for in the performance benchmarks, and so I really didn't see anything in there, and I really don't know if we've met any goals about reducing civil lawsuits. But I have the same concerns as other Councilmembers about some of these lawsuits that just keep growing and growing without any effort to mitigate

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them earlier or even to reach out. And I don't think that's all your fault, I think that has to do a lot with two different basically heads...you know, you serve two different dragons, you got the Administration and you got the head of the Council, and maybe you've never been encouraged to go into these types of, you know, mediation or discussions on how we can mitigate the problem, because my feeling about the injection wells is that even if we, regardless of whether we win the lawsuit or we lose the lawsuit and have to pay out a bunch of money we have to still fix the problem, so the problem doesn't go away if we win the lawsuit. So, those are kind of pinch points for me, is why we're not going forward but I also wanted to ask you, you know, there's times when you come and represent the Mayor to the Council and you get stuck in between the differences of opinion and the Water Director is one example of that. So, you're representing the Mayor in his desire to fire the Water Director and the Council's telling you no, we're not going to let him do that. So, you know, my question to you is two years ago or roughly two years ago, two years ago in November, there was a Charter amendment that was passed allowing the County Council to access our own legal counsel and for two years I was asking when we're going to get to do that and I kept being told by OCS that the Chair has not authorized the processing of that and there needs to be rules written. Now, I find out after being Chair and going to our OCS, you know, bringing somebody back into the head of the legal department, why, what are the program rules that we have to write? What are the regulations? And I'm told there's no regulations you need, Members can access our own legal counsel. You know, for two years we were never told that. Do you know that that happened and do you know why? I mean, why were we not told that we could do that so we were basically hamstrung for two years?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair and Chair King, thank you very much for the question. I was fully unaware that you were told that and, you know, I don't know how to explain it, but in my point of view, in my review of the Charter and the supporting minutes that associated with that amendment I agree with you that, and I think I said it at the last Council meeting, that the attorneys in the Office of Council Services can serve as your legal advisors. It's up to you as a body to make that determination. It wasn't, as far as I'm concerned, it wasn't something that was left with the Department of Corporation Counsel to decide when to exercise that right. As far as I'm concerned, it really is up to you as an individual Councilmember to make that call. I looked at the Charter and I looked at the rules and I still am of the opinion that from a legal advisor standpoint the Charter's clear and the intent was clear that the attorneys in that department have that capacity. Now, with that said, the component of legal representative, there was a distinction drawn between legal advisor and legal representative and I think that distinction is clear also. You need a two-thirds vote, the same is true for special counsel appointment, and you need the same criteria in order for an attorney in Council Services to represent this body in any legal proceeding. And I offer to you that if the circumstances arise that you explore that. I certainly believe that the attorneys in OCS have great capacity and, you

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know, they can certainly provide you with excellent direction. That's no...I mean, I have no qualms about that whatsoever.

COUNCILMEMBER KING: Well, I'm glad to hear you say that because, you know, I think I asked that once a quarter for two years from our Chair and our legal counsel, and I kept being told, well, we're not, we don't have a process for that yet. So, you know, if we're getting that legal advice and I wasn't happy that to find out, you know, we really never needed that. So, okay, thank you for answering that question. I have a question about the concerns that have come to me, kind of, over the years from the community about the Board of Ethics being under Corp. Counsel, because some people feel like they have issues with Corp. Counsel. And would you support a move to remove the Board of Ethics from the office of the Corp. Counsel and make them independent?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, Chair King. Quick answer, sure. Yes, if you want to do that, mind you, it's up to the body to decide and it'll be a Charter amendment to get that done. You know, there is a deputy in my Department that staffs it, there's clerical support, but, you know, I rarely will sit with that body. I've only done it a couple of times when there was a conflict, but, otherwise, yeah, absolutely, you want to make it independent, great.

COUNCILMEMBER KING: Okay. So, yeah, that was, that's one of the things I think that is kind of makes it intimidating to, you know, to approach the or to make charges in the Board of Ethics is having, you know, a sit-in Corp. Counsel. So, I guess, I have a, kind of, specific question because I know there's been a lot said and I have a newspaper article, it's about some directors in the Administration. Being, you know, kind of sidelining with this American Communications Network business, you know, it's a side business that some of them have and they've been working together on, and I was just wondered if you were involved in that?

MR. WONG: I'm not sure what...

COUNCILMEMBER KING: The ACN.

MR. WONG: Oh, I'm not a business partner or anything like that. I...my personal phone, though, I am a subscriber, so I do have a phone.

COUNCILMEMBER KING: Okay. No, I believe this is sort of like a, described as a pyramid business and, you know, sales and I just wondered if you were part of that.

MR. WONG: I am a subscriber. I have a personal cell phone that I pay every week or every month like everybody else, but I'm not, otherwise, a member.

COUNCILMEMBER KING: You're not an agent of the business?

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MR. WONG: I am not.

COUNCILMEMBER KING: Okay. All right, I'll yield for now. Thank you, Chair.

CHAIR MOLINA: Thank you, Council Chair King.

COUNCILMEMBER KING: Thank you, Mr. Wong.

MR. WONG: Sure.

CHAIR MOLINA: And if I could ask Committee Vice-Chair Rawlins indulgence on this, I believe, after we, when you were not in the room, I didn't recognize Councilmember Sugimura for a line of questioning. So, you'll go ahead and yield? Okay, Councilmember Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair. Okay. So, it's been alluded to and...oh, thank you for being here and thank you for meeting with me. So, my first question is, kind of, what we talked about when we met in my office and it was alluded to in some of the other questions, but I wanted to just make it very clear. Who is your client and who you represent?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, and Member Rawlins-Fernandez. Those are very good questions. You know, our Department, and I'm gonna kinda take a long way to answer this, our Department is set up so that we receive request for legal services, and when that request comes in we can then identify what the issues are and who to respond to. You know, in private practice when somebody comes to your office and wants to explore, engaging you for legal services, you know, rules of professional responsibility dictate that you can consider them the client when they come through your door. You know, for us, it's a little bit, it's not difficult, but we tend to respond to whoever submits a request for legal service. In the Charter, it's spelt out as the County of Maui. And then, you know, I'm not sure if it's in alpha order, I didn't look at when the Charter was originally created and how they came up with the lineup, but it does say, I believe, it says Council and then Mayor and then the rest of the Administration and so on down to employee. So, my perspective is the County of Maui, the body politic, the government is our primarily client.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you. Follow-up to that is how do you maintain a neutral position when your representing conflicting interest in legal matters within the County?

CHAIR MOLINA: Mr. Wong?

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MR. WONG: Thank you, Chair, and Member Rawlins-Fernandez. Good question again. Conflicts of interest happen all the time, you know, as you know, we're governed by the rules of professional responsibility. In government practice, it's a little bit more difficult. There are times when there's issues that arise and we need to make adjustments internally and the process that we have set up is that I would supervise a deputy that represents one viewpoint and Ed would supervise a deputy representing the opposing viewpoint. With that said, internally, there's a screening and a shielding of that information so that there's no overlap and there's no commingling of that information. That's the best way I can answer that question.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you. So, I think you just mentioned about how there, in the Charter there isn't really an order. So, if it did come up and the Administration and the Council were at odds, who do you represent and who would need to seek outside counsel or is there another alternative to that?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, Member Rawlins-Fernandez, actually you have the excellent alternative right in front of you and that is the Office of Council Services attorneys, who by Charter and, I guess, currently, you have the opportunity to explore that. You know, the conflict between the Administration and the Council is not a new thing. It's transcended throughout most administrations going back in time. It's something that also occurs throughout the country in other municipalities. It is a struggle for, you know, the attorneys that are trying to do the best job they can in evaluating what the law is and providing recommendations and/or options to both sides. In scenarios like that I don't believe I would be choosing one way or the other, it would be providing representation for the Council through deputies assigned, as I said again, supervised by Ed and vice versa, which is why it's important to have a First Deputy to be able to do that and have the capacity to be able to supervise other attorneys. So, it's a struggle but we all work through it and we find ways to be able to do it in such a way that it's professional and, mind you, every attorney in the Department are licensed and they're all governed by the same rules that all attorneys are governed by, and the risk is not to offend their boss or the Mayor or the body, but the risk is that they would lose their license and be up for review by the Office of Disciplinary Counsel. And I think that every attorney takes that extremely seriously. It's something that most of, if not all, have worked to acquire and to adhere to. So, we deal with it and if we need assistance from the ODC, then we pursue that. I hope that answers your question.

VICE-CHAIR RAWLINS-FERNANDEZ: It does. Thank you. How would you handle a situation where departments may be putting the County at risk of a lawsuit by not following proper procedure or protocol or has...how has this been handled in the past?

CHAIR MOLINA: Mr. Wong?

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MR. WONG: Thank you, Chair, Member Rawlins-Fernandez. It's a really good question. I can tell you it's a difficult one and most of my counterparts would not appreciate me saying this, but I've said this and I believe it, and that is maybe the directors should have some personal liability and some personal exposure, because if they make a decision that puts the County at risk unnecessarily, and it's not until they personally feel that they're at risk would they think twice about making that kind of decision. I'd offer the same for me individually. I, too, can be sued and I, too, should be able to take on that challenge. Why? Because it's not until the individual feels that they're at risk that they would take on that kind of responsibility. It's a tough thing to do. Internally, one of the things that I've done is strongly recommend that if I'm aware of it that a redirection be made, but I'm not always aware of it and we typically find out about it after the fact, and we typically have to try to figure out a way to still minimize the risk and exposure to the County of Maui. I hope that helps.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Thank you, Mr. Wong and Chair. And I'll yield the floor to Councilmember Sugimura.

CHAIR MOLINA: Thank you very much, Member Rawlins-Fernandez. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. I actually had questions, Mr. Wong, but Mr. Sinenci asked two of 'em and it was about the injection wells as well as the GMO, 'cause those are issues that came up before. I do...I just want to lend our support, I guess, if you have Mr. Pearson in place and Mr. Miyamoto to support you in terms of doing R-1 to R-0, you know, and if there's something that we can do in terms of...well, me, I can't speak for everybody else, but I really like your problem solving attitude and are trying to pursue that from, I think you said, from 2012 that, you know, you were looking for solutions. I do know that you have told us, the Council, when this item came up that the problem is Department of Health will not issue a permit, so even if you wanted to, you know, their, we're kind of stuck in a rock and a hard place of trying to solve this, but I pursue, I support you in just terms of trying to be creative. And I do know from speaking to you that your concern often and always is protecting the County of Maui, and when I've called you on questions up with Upcountry, some of the situations that have gone up there, that has always been the first thing that came out of your mouth to me in terms of advice, so I appreciate you in trying to represent the County as well as looking out for me and my best interest working as a Councilmember. And I don't really have any more questions, because those two were the two that I was gonna ask you about. But I do know in that in 2017, 2018-2019 fiscal year, the Risk Management Division was switched over to you and I just want to thank you because immediately you started checking the cameras here and things happened in the Chambers that maybe didn't happen before, but it looked like proactively you were taking measures, you know, to make sure that there's security, and I'm a firm believer in the safety of our employees, all of them. As you know, my thing is violence in the workplace and let's not have that here, but I just want to encourage you to keep on going forward with that because as you know that's a cost savings too. So, do you have

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any plans for that in terms of further risk management plans for all the departments because I think you touch everybody in that way?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you, Member Sugimura. The security issue, I actually have two very able-bodied individuals in Risk that I met with when we took on that role and responsibility. It wasn't something that we were, I was pursuing but, you know, we got it, and so they have...I charged them with the responsibility of coming up with the five-year plan to be able to provide regardless of who is at the helm that the division should be able to present to this body and to the Administration a five-year plan on how to handle and how to move forward. So, that is in the works and I look forward to being able to represent that to this body or at least the Risk Division being able to present that to this body during the budget cycle.

COUNCILMEMBER SUGIMURA: Thank you for your leadership.

MR. WONG: Sure. Thank you.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: Thank you, Councilmember Sugimura. Councilmember Kama?

COUNCILMEMBER KAMA: Thank you, Chair. I just wanted to read an excerpt from an e-mail that I received. I'm not sure if the other Councilmembers...I was trying to check through all of this paperwork as to what you got and what you didn't get. So, I'm assuming that if your names are in heading then you got it. So, I don't want to review that if you've already done that. And many of the questions have already been asked, but I want to read an excerpt from a testifier that I don't think you all got. And it's entitled Director Wong Violation, and it says, all of my research leads me to the conclusion that when the County Council goes into executive sessions, Corp. Counsel misleads the members of the Council in order to obtain taxpayer funds to continue their long-standing pattern of \_\_\_\_ defending the unlawful acts of politically-appointed public officials. Corp. Counsel obstructs the County Council from investigating the acts of County departments and their directors by asserting that the Councilmembers are Corp. Counsel's clients, too, and must abide by their directives and advice. The Department of the Corp. Counsel will even authorize their administrative clients not to answer questions from Councilmembers, their other purported clients during litigation. So, sir, if you could respond to these statements by this particular person that submitted this e-mail?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair.



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COUNCILMEMBER KAMA: Thank you, Chair.

MR. WONG: Thank you, Member Kama. I'm at a loss as to what the context is within which those statements are made. I would agree that there are times when the deputies and/or myself we'll have department heads or department representatives not respond in open session to particular questions because it may cause greater and further liability to the County, and that in executive session the questions and answers should be tailored to the purpose of going into executive session, and I believe at that moment the body can then fully vet the strategy and the tact taken in any litigated item. I struggle to understand, you know, the negative charges that we would use one tactic to stop investigations or stop exploration. I think that, you know, the Council has the authority to investigate any of the departments for which it authorizes any finances. You are fully aware of that, it's a Charter-mandated responsibility. And I actually, you know, look forward to that when it happens. If I had specifics about a specific case that I was directly involved in, then I can, you know, certainly provide answers to that unless, of course, it's a current, open litigated matter then I'm gonna try to be as careful as I can in responding to it.

COUNCILMEMBER KAMA: Sure.

MR. WONG: I hope that helps.

COUNCILMEMBER KAMA: Thank you. Thank you, sir.

CHAIR MOLINA: Thank you, Member Kama. We have Member Hokama, followed by Member Sugimura.

COUNCILMEMBER HOKAMA: Chairman, did you allow each member their first opportunity, sir?

CHAIR MOLINA: Yes, I believe everybody's been given one opportunity. Proceed.

COUNCILMEMBER HOKAMA: Thank you, Chairman. Just couple of short questions there, Mr. Wong. The first one that I'm kind of interested in because I have issues from a personal...does your Department pay for your deputies' licenses?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Actually, yes. Yes, they do.

COUNCILMEMBER HOKAMA: And the advantage of that is?

MR. WONG: That they have to be licensed.

COUNCILMEMBER HOKAMA: No, I understand that.

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MR. WONG: Yeah.

COUNCILMEMBER HOKAMA: Why isn't that the employer's responsibility to have them licensed, to keep their license?

MR. WONG: Generally speaking...thank you. Generally speaking, in most private law firms and also in other governmental entities, they do that in order to make sure that their attorneys are properly licensed to be able to practice law and be able to represent the body, so that is the advantage.

COUNCILMEMBER HOKAMA: Okay. That makes me kind of, I don't know if that's skeptical or cynical, Chairman. I would think they want to practice they would secure their license. That's like telling me a doctor that wants to practice but is gonna get his license after. Second, because your name and my name has been tossed out a few times about not being responsible with people's money and that's upon tax appeals, so I have a specific thing, but I'll make it general 'cause potential, again, exposure in litigation. You and I both understand the process of tax appeals, real property tax appeals, and as you're aware, and I'm gonna ask you, can you name the steps as you are currently informed about our tax appeal process, what a property owner takes for the County to receive a legitimate appeal, and what do we do as a County upon receipt of the appeal before a decision is made regarding that tax bill?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Hokama. You know, we, the Department of Corporation Counsel picks up the activity from the Tax Appeal Review Board. There is a deputy assigned to that and typically it's in response to a assessment made by the Tax Department. They file their appeal, the proper paperwork is identified, and they're entitled to a review. Thereafter, if there's a further appeal from that it typically goes to the tax court and up the chain to the U.S., excuse me, the Hawaii Supreme Court. Our involvement, again, is to represent, provide guidance to the Tax Appeal Review Board, and then to represent the County's interest should it go further.

COUNCILMEMBER HOKAMA: Okay. Because, again, I have nowhere where the information is out, because we have a lot of people come and testify that, in my opinion, is so uninformed it's kind of pathetic, but is this not the correct case, we have a process in place for tax appeals that is set by, you know, rules and regs within the wonders of the law and that an appeal must be filed in a timely matter before the deadline of expiration to file a tax appeal. Is that not correct?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, Member Hokama, yes, that is accurate and very correct.

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COUNCILMEMBER HOKAMA: Okay. And is it not correct, Mr. Wong, that upon a properly filed tax appeal within the time limit that has not expired, then what the County's normal process is to put 50 percent of the disputed amount in an escrow account until a decision is made and then would make the appropriate payment back to the property owner or would collect the remaining 50 percent that is due to the County, isn't that correct?

MR. WONG: Yes, that, too, is also correct.

COUNCILMEMBER HOKAMA: Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you very much, Mr. Hokama. Members, the Chair is aware of time, as it was stated earlier, the recessed meeting of January 29<sup>th</sup> was earlier recessed to about this time. So, right now, we're on the agenda for January 23, 2019, so for a procedural matter, the Chair will recess this meeting and then we'll open up the January 29<sup>th</sup> meeting and Chair will then make a statement, a comment on that matter. So, this meeting is in recess subject to the call of the Chair. . . . *(gavel)* . . .

**RECESS: 5:28 p.m.**

**RECONVENE: 5:33 p.m.**

CHAIR MOLINA: . . . *(gavel)* . . . The recessed GET meeting of January 23, 2019, is now back in session. Members, it is Tuesday, February 5<sup>th</sup>, it is 5:35 p.m. We are in the Q&A phase or the final stages of the Q&A phase with our nominee for Corporation Counsel, Mr. Wong. So, we will continue with our line of questioning and it is the hope of the Chair that we can wrap things up within the next hour. So, at this point, the Chair left off with Mr. Hokama. I'm trying to decide who had questions, additional questions. I believe, yeah, Ms. Paltin, you stated you had one question from Mr. Wong before we went to the other Members. So, I'll yield the floor to you, Ms. Paltin.

COUNCILMEMBER PALTIN: Thanks. That one question was from the other round, but can I have one more subject just 'cause, you know, the constituents, and I won't go into the background for times' sake?

CHAIR MOLINA: Do your best, Ms. Paltin. Thank you.

COUNCILMEMBER PALTIN: Thank you, Mr. Wong. I was wondering if you disclosed to the Council and the public any personal or professional relationship with the Palama Drive developer's legal counsel, Ron Ogomori, prior to advising the Council to accept Ogomori's settlement?

CHAIR MOLINA: Mr. Wong, are you able to answer that in open session?

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MR. WONG: Sure, Chair. Thank you. Member Paltin, thank you for very much for the question. I'm curious because I have no personal relationship with Ron Ogomori aside from knowing him in law school. When I came to the County and he was involved as part of the developer's group, the Palama Drive litigation was new to me and had already been in full bloom, and so my attempt early on in 2011 was to try to find some resolution of that ongoing litigation. And I don't know that my knowing Mr. Ogomori in law school would have made a difference to me on how this body reacted or didn't react. I can tell you that the first meeting I had with Mr. Ogomori in the Mayor's Chambers also involved multiple people and other lawyers and it was at that meeting that they were proposing some very interesting affordable housing concept. And the one question that I asked that group was were they able to overcome the procurement issues in being able to identify a single affordable housing developer as the beneficiary of that proposed program? I believe Attorney Randy Schmitt was also present, and I also recall Mr. Schmidt not being prepared to answer that question, and so that meeting was terminated, and the proposal on some affordable housing project was never pursued, they never came back.

COUNCILMEMBER PALTIN: Do you know what month that was?

MR. WONG: I do not.

COUNCILMEMBER PALTIN: I have a document here from February 2011 addressing the procurement concerns says, we do not believe that anything in the County Charter or other rules or statutes would require this proposal to be submitted to the RFP process. The affordable housing group has essentially acted as a mediator to arrange for the settlement of a substantial already filed litigation and/or other potential claims in that way this arrangement is quite similar to the settlement of complex consolidated litigation. Second, the land at issue here is currently held by private developers on already approved projects. The land will be transferred to the AHG to complete the development in accordance with the terms and conditions noted in this proposal. This is quite a different situation from one where County land is transferred to a private developer for affordable housing development. So, the question is did you provide the Council with the comprehensive affordable housing settlement proposal from the Anuenue Housing Group as an alternative to paying off the developers to resolve the litigation?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Member Paltin, thank you. I can't off the top recollect. I believe that all that information was provided to the Council. I can tell you that my concern during that time was the pitch from the specific developer was that the County acquire the parcels, the County hire this developer, the County fund everything, and that this developer would be in the position to then reap the benefit of County monies to not just finance the acquisition of the property but also finance the buildout of these affordable housing proposed projects. And my question to the developer was how are

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you, Mr. Developer, any different than the Spencer's that are developing down the street? How are you different than any other developer that walks into the County office and says, I can do this development? Once the County of Maui spends a dime in that that should be properly procured, those services, the evaluation, all of that. And the reason why they never came back is 'cause they could never get over that hump. I agree that at the time that those discussions had occurred those parcels were not owned by the County. It wasn't until later that the County settled those claims and in the process in settling those claims acquired those parcels. You got to remember in the context of the litigation it wasn't just to buy the lots, it was to settle the claims.

COUNCILMEMBER PALTIN: So, I don't believe the Council records reflect any such communication from Corp. Counsel. I'm wondering, did you advise the Council to use their powers to discipline former Director Milton Arakawa who approved the subdivision in violation of the Maui County Code and grading ordinances?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Member Paltin, I don't have a recollection of that issue ever being an issue on whether or not Milton Arakawa should be disciplined or not. I cannot even recall whether or not he was an employee for the County at that time. I just don't remember. When the decision was made on the grading permits, those decisions were done, I believe, in the first Arakawa Administration, which I was not a part of prior to the Tavares Administration. That litigation developed during that time. And if I recall correctly, Judge August presided over that litigation, and one of the things that Judge August was concerned about was the decisions made by the Mayor during that first term that superseded the Director of Planning at the time. So, I'm telling you based on my recollection back in 2011. So, when I came into office those items were already fully litigated and the decisions that were made were based on the definition of, I believe, of height in the ordinance at the time. And one of the ways to address resolution was this Council body specifically changed the definition of height from, I believe, it's from natural grade to finish grade, I think it's 30 feet above finish grade, and the ordinance was tailored to exclude other areas, and so it was specifically made for the Maui Lani project. Be mindful that the entire project district was at risk, and so it was a litigated item that preexisted me that I walked into on day one.

CHAIR MOLINA: Ms. Paltin?

COUNCILMEMBER PALTIN: I believe it was height based on natural grade versus fill height. Can you provide a copy of a legal memorandum to support the rejection of the Anuenue Housing Group's affordable housing settlement proposal that you allegedly withheld from the Council?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. I'm not sure which...what's Anuenue affordable housing?

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COUNCILMEMBER PALTIN: That's the group that was gonna provide the affordable housing in this case, the AHG.

MR. WONG: And you're asking for a memorandum...

COUNCILMEMBER PALTIN: To support your rejection of their settlement proposal.

MR. WONG: I don't believe I did a memorandum to them during that period of time. I really don't believe that it's my obligation to inform parties that are properly represented by their own counsel to do their own legal research.

COUNCILMEMBER PALTIN: So, wondering if you could provide proof from the casinos to support your financial disclosure as this happened immediately after the Palama Drive sand hills situation?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, Member Paltin, thank you. I can assure you and this body that every dime that I received is backed up by a W-2G form from a casino. Those are taxes that I filed back in time. I do not have that paperwork. I can tell you that I have my current paperwork for my current financial disclosure, and every dime that I have received has an associated ticket from a particular casino for a jackpot that I received while on the casino floor. And every one of those, for which I paid my taxes on, I can prove. I can tell you back in time, back then, I don't know where that paperwork is at, but every one of them is backed up by a document.

COUNCILMEMBER PALTIN: Going back to our conversations, the letter that I shared with you and where we didn't disagree the facts were true and that you live in the current realm of the Constitution and the, of the United States and the State of Hawaii. How is it possible for people who live in the real world to live in both realms in your opinion?

CHAIR MOLINA: Mr. Wong, are you able to respond to that or if you could probably if maybe Member Paltin can...I'm trying to see how this ties into Mr. Wong's nomination process here.

MR. WONG: Chair, if I may?

CHAIR MOLINA: Go ahead.

MR. WONG: Member Paltin, thank you very much for the question. You know, as I said to you then and I'll say to you again, in 1992 when I was licensed to practice law, I took an oath to abide by the U.S. and Hawaii Constitution. It's the same oath that you took when you took office and the same oath that the Administration and all the directors have taken to abide by the laws of the State of Hawaii and the U.S. Constitution.

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Unfortunately, you know, there's areas that are difficult when you start thinking about the overthrow and your personal beliefs and how that interacts. I think that we currently have a system that's in place. I agree that the overthrow was wrong, but I'm not able to change that. I think that we can make leaps and bounds in terms of recognizing the issues involved and trying to educate ourselves more about how to work within both realms. I personally have beliefs, but I am also again sworn to uphold the Constitution and until things change at a Federal level, I think, we're gonna have to do the best we can within the system that we have.

COUNCILMEMBER PALTIN: It's my understanding that the U.S. Constitution supersedes the Hawaii State Constitution.

MR. WONG: Generally, yes, it does.

COUNCILMEMBER PALTIN: And isn't it against the U.S. Constitution to administer laws, its laws in an occupied nation?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, if I may, Member Paltin, I'm not, as I told you in our meeting, I'm not an expert on international law. And I think if you have a specific constitutional question in the context of what this body has in terms of jurisdiction, I certainly can answer those questions, but I think I'm kind of at a disadvantage in being able to answer broad, generic questions like that.

COUNCILMEMBER PALTIN: How about the jurisdiction of ceded lands within our County?

CHAIR MOLINA: Mr. Wong?

COUNCILMEMBER PALTIN: Specifically undeveloped ceded lands.

MR. WONG: Chair, Member Paltin, I think I'm ill-equipped to deal with the ceded lands issue. I...my understanding is that it's with the State government to deal with that and, you know, I'm not sure which parcel and where the County government would have jurisdiction over ceded lands. I'm just not competent, I guess, to answer that question.

COUNCILMEMBER PALTIN: Thank you very much for trying.

MR. WONG: Thank you.

CHAIR MOLINA: Thank you, Member Paltin. Members, any final questions for Mr. Wong? We'll have Council Chair King, followed by Councilmember Sinenci.

COUNCILMEMBER KING: Thank you, Chair. Mr. Wong, I want to go over some specific issues that I have with your performance as Corp. Counsel and as the head of Corp. Counsel,

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'cause I'm not sure who, which individuals is, these issues apply to. But the first one is on the Liquor Control audit, and I have a copy of the audit, the performance audit of the Maui Department of Liquor Control. And there are quite a few statements beginning on Page 5 that state things like, inadequate guidance by the Corporation Counsel, that's in the oversight of Liquor Control summary. There's a heading on Page 14 that says, Corporation Counsel not ensuring compliance with State laws and County rules. There's a statement on the next page it says, the findings in section two of this report illustrate that the Commission has not fulfilled all of their mandated duties for several years despite a Corporation Counsel staff member in attendance at all Commission meetings. And these are just, sort of, some...I'm just kind of skimming through some of the highlighted statements, and a statement on Page 31 that says, at this time, the only other entity in place to provide additional safeguards to ensure compliance with County rules and State laws is the Corporation Counsel; however, in this case, the Corporation Counsel did not provide adequate counsel to the Commission to avoid violation of State law. So, there's statements throughout this that, kind of, finger the Corporation Counsel's, you know, your involvement with this, the Liquor Control Commission and the inadequacy of that Commission and I'm not sure of the specific board. But can you speak to why they were not well represented and that came out in this audit?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Thank you, Chair King, for the question. I'm not sure that they were not well represented. I believe that our Department does provide guidance and counsel to the Department whether or not, this is true throughout, whether or not the department heeds the advice and counsel is really up to the Department. To the extent the training is necessary, it is provided. It may not be provided as often as, I believe, the references are made in the audit, but it is provided. I'm fully aware of that. There may be discrepancies on some of the issues and I think the Department of Liquor may take issue with the report itself, but, you know, we're not there at the Department making sure on a daily basis that some of these issues are properly addressed. Unfortunately, we do sit at every commission meeting, every department when they request it, and in those specific set of circumstance I don't have personal knowledge about it, but I do know that efforts were made to provide them with guidance and counsel.

COUNCILMEMBER KING: Right. No, I understand that, but, you know, are you disputing the results of the audit that say that guidance and counsel was inadequate? And they do mention training and say based on an interview with the Corporation Counsel staff this training only provides a high level overview of commission responsibilities and is not a rigorous training on the legal requirements of the Liquor Control Commissioner position, so the recommendation is that the Mayor and County Council should require that the Corporation Counsel provide an in-depth training each year. And it goes on to, each year on or at least, and it's got one, two, three, four, five specific issues that the training should involve. So, did you get a chance to read this audit and answer those concerns?



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CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Chair King, thank you very much. I read the audit and so did others in my Department and also the department itself including the Commission. So, I believe, steps have been taken and have been addressed with the Commission and with the Department to implement changes that have been suggested. I also believe that the Department itself were already in the process of making changes that would've already addressed the concerns raised by the audit. You know, I met with the audit interviewers on one occasion and provided them my personal involvement and interaction with them. I accept full responsibility for how the report is written and, with that said, changes have to be made to recognize the shortfalls as described in the audit. That's why you have audits, in order to provide people with suggestions on how to improve, and I think that Department among other, including ours, improved.

COUNCILMEMBER KING: Okay. So, you don't dispute the findings of the audit?

MR. WONG: Well, I think we issued a brief statement in response to it, and I think that the Department itself also issued a statement in response.

COUNCILMEMBER KING: Dispute...so, are you saying --

MR. WONG: Yes.

COUNCILMEMBER KING: --that you did dispute the statements in here?

MR. WONG: Yeah, I can't recollect off the top what the response was, but I know that one was written.

COUNCILMEMBER KING: Okay. And I wanted to follow up on something that you and I talked about when we met privately regarding this nomination and that was on the, kind of, the general performance of Corp. Counsel during meetings, because I shared with you that I come prepared to meetings and when I see an ordinance on the agenda for discussion and I ask a question about that ordinance, do you ever think it's appropriate for Corp. Counsel to respond, I don't know anything about that bill? 'Cause I've heard that on multiple occasions and I'm thinking if I can come prepared to ask the question, that Corp. Counsel should be, come prepared to answer it. You know as well as I do what's on the agenda and hopefully, you know, your staff looks at it before they come, and I've had this happen several times as a Councilmember on the floor asking a question of Corp. Counsel, so it's a little frustrating. It feels like there's a lack of preparedness and almost and, you know, I felt like on occasion a cavalier attitude about, you know, no shame about being not prepared. So, I mean, I just...is that acceptable to you?

CHAIR MOLINA: Mr. Wong?

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MR. WONG: Chair and Chair King, as I said in our meeting, no, it's not acceptable to me. I did address it with a few deputies since our discussion. I strongly believe that as I prepare for every Council meeting in advance so, too, should the deputies, and I believe that they do. I am, as I told you then, I was unaware that you had those concerns and I would've appreciated being apprised of those concerns as they were happening because I typically will address those rather quickly. So, with that said, and I don't think it's fair to characterize a response to a question that is not agendized and, you know, sometimes, I don't think you can expect every deputy to know everything about the law and the breadth of it. I think that if there's an item on the agenda they should be able to speak to it, but if it's off topic and away from the agenda...

COUNCILMEMBER KING: That wasn't my question. I was specifically speaking about items that were on the agenda, so that was a concern for me. And then I wanted to follow up on a specific item --

CHAIR MOLINA: Proceed.

COUNCILMEMBER KING: --would be Anaergia Project that is now in its third extension and nothing has happened. Were you...did you...were you involved in the last extension that was granted last month before the end of the year, I'm sorry, in December before the end of the year according to Director Miyamoto?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, Chair King, actually I became aware of it after the fact. So, I was not involved in those discussions.

COUNCILMEMBER KING: Okay. So, the Mayor made the decision on his own, just gave them extension even though it wasn't until January.

MR. WONG: I don't know that that's the case. I believe that the previous Director made that decision. I don't know that the Mayor was...I really don't know if the Mayor was involved in that.

COUNCILMEMBER KING: Okay. 'Cause I was really dismayed to find out that, you know, we should have been given the opportunity to make comment on it in January, and it was done by the previous Mayor under the previous Administration on the way out the door. Were you afforded by the Anaergia group after they or before they received their contract, any travel to or accommodations to Italy?

CHAIR MOLINA: Mr. Wong?

MR. WONG: No, I didn't receive anything from the Anaergia Corporation. You know, I...let me back it up a little bit on how I first became aware of their existence. It was back in 2012

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when the injection well litigation was first filed that their existence became brought to my attention. And it was to, and I can describe this project, that never did come to fruition, which was disconcerting to me to say the least. Anaergia had proposed back then with Director Ginoza that they had this plan to take the wastewater uphill and irrigate the side of the mountain with it, but there were other moving parts involved. And I got involved because I wanted to get the Department of Hawaiian Home Lands, which owns that parcel above the wastewater treatment plant to buy into it. And I was looking at it as a method to dispose of the wastewater before all the litigation really took off, and a lot of effort was made to try to get that done. That's how I became aware of who Anaergia was.

COUNCILMEMBER KING: And that was the one where they were given a sole source contract to do that, because it needed to get done quickly?

MR. WONG: There was no...it would've been a sole source contract had one was established, but there was no contract that developed from that. They then morphed into other projects that they wanted to pursue, and I was disappointed that the litigation issue out in the west side could not be dealt with by employing alternative disposal methods.

COUNCILMEMBER KING: And that was after they had been awarded the contract for the landfill?

MR. WONG: I'm not aware or sure of what the timing was.

COUNCILMEMBER KING: Okay.

MR. WONG: I believe that they abandoned that project prior to the other project being...

COUNCILMEMBER KING: Okay. I think it came out afterwards but I have to double check on that. So, are you aware that there was a trip made by Mr. Ginoza with Anaergia?

MR. WONG: Say that again?

COUNCILMEMBER KING: Are you aware there was a trip that was offered in May and taken by Director Ginoza with Anaergia to Europe to supposedly visit one of their projects out there?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. I did attend that trip but it wasn't on Anaergia's dime. It was County money that we were able to pursue that, and the reason why we went there was to look at alternative disposal methods for the wastewater treatment plant and to be able to understand the scope of their capacity. I had to see these projects and be able to understand where they're gonna put the wastewater, how are they gonna deal with the disposal.

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COUNCILMEMBER KING: Why would that be a trip for Corp. Counsel? Why wouldn't that be something that may be determined by our wastewater experts in the County?

MR. WONG: Because I had to tie it into how are we gonna get rid of the disposal issue through the injection well litigation. And, ultimately, this body would be the one to determine whether or not the disposal method would be useful or not.

COUNCILMEMBER KING: Okay. Well, yeah I think the timing is off there 'cause my understanding is it had to do with the landfill contract, but I'll let that go for now. And my last question, Mr. Wong, is what was your...I mean, there's a, I guess...what was your involvement in the zipline issue as far as...were you just, were you advising our Planning Director on that?

CHAIR MOLINA: Mr. Wong?

MR. WONG: No, I had zero involvement in that actually.

COUNCILMEMBER KING: Okay. That was a different Corp. Counsel?

MR. WONG: Correct.

COUNCILMEMBER KING: Okay. But that was...in your opinion, was that a quick decision that was made within a matter of days, the change from supporting the community's position to mitigating, to giving that permit out?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, if I may? If I understand your question correctly, you're asking whether or not the decision to settle those issues in that short timeframe was prudent.

COUNCILMEMBER KING: Was it and was it...I mean, 'cause what we were hearing was it was Corp. Counsel's advice, so, and I don't know if I'm treading on any, you know, executive session material. But, you know, I'm just trying to understand why the community went from thinking that they were completely supported by the County to all of a sudden the permit for the zipline had been given out.

MR. WONG: Chair, if I may?

CHAIR MOLINA: Proceed, Mr. Wong.

MR. WONG: Honestly, I have no personal knowledge of that, but I gotta suggest to you that it is still active litigation that their attorney did visit me on multiple occasions even prior to this confirmation proceeding beginning. After the testimony provided and subsequent to that I did write to him by e-mail and I did tell him that I felt that it's a violation of our

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board of...our rules of ethics for him to continue to try to meet with me on this topic and I refuse to until this is all done. I did not have any personal involvement in that and people who got up there and said that I said certain things, I never did, I never met those people in my life. It's unfortunate, but I'm being confused with one of my deputies. I will stand by what my deputies have done. I haven't reviewed the transcript as Mr. Ranken suggested I do. He's also suggested a number of things. One of which, he wants to meet with our Director to prep her for her presentation. He wants us to withdraw our positions. There's a number of things that he's asked for. We don't litigate that way. And it's unfortunate and I told him this that if he wanted to have the opportunity to engage with our witnesses he can take their deposition.

CHAIR MOLINA: Mr. Wong, the Chair is satisfied with your answer.

MR. WONG: Sure.

CHAIR MOLINA: We may be delving into maybe possibly uncharted waters. Council Chair King, do you have another question?

COUNCILMEMBER KING: So, you...well, I mean, I guess what I'm hearing is you think Anthony Ranken confused you with one of your deputy Corp. Counsel members?

MR. WONG: I know that for a fact. I was not involved in this, in that litigation at all.

COUNCILMEMBER KING: Okay. All right. Thank you, Chair.

CHAIR MOLINA: Thank you, Council Chair. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had one other question, and I apologize if I'm asking, you know, repeated questions --

CHAIR MOLINA: No apologies necessary.

COUNCILMEMBER SINENCI: --but I'm just getting more information to, you know, support. Can you explain in layman's terms, I guess, what the timeshare lawsuit is and how it came about and your decision to go to court and if you are able to speak to that, the court's position?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Sinenci. You know the timeshare litigation is still active litigation. It's pending before the Hawaii Supreme Court. It's also an item that came up at the end of last term as a presentation for prospective settlement that this body discharged. It's still maybe something that this body could consider in terms of resolution. It's a, it's no different in my mind than any other litigated matter that we receive and that we employ the greatest defenses and strategy in defending the

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interest of the County. Some have asked about prospective resolution and I can offer you, Member Sinenci, that we're following the Code and if the body decides to change the Code we will follow that too. We will continue to defend the Department's exercising its judicious employment of the Code. And unfortunately, we don't always receive success at the Circuit Court level, but we believe that if there's a viable, legal argument to pursue then it's our obligation to do that.

COUNCILMEMBER SINENCI: Thank you. Just a follow-up, what would be the dollar amount that the County would need to come up with to, if we need to return this to the property owners?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair, Member Sinenci. I believe that the reimbursements have already been made. The amount in controversy was the amount charged was held in abeyance as Member Hokama described in a trust account, and I believe after Judge Cahill issued his order that the Department did send the reimbursement check for the full amount that was in dispute. As to any future damages, I can't speak to that because that's still an issue that has to be dealt with before the Circuit Court. So, I can't off the top tell you what...it may be zero or it may be greater than zero. I just don't know what that will be.

COUNCILMEMBER SINENCI: Thank you.

CHAIR MOLINA: Thank you, Mr. Sinenci. Prior to the Chair recognizing Committee Vice-Chair Rawlins-Fernandez, Chair opines that, I believe, we have saturated...we've reached the saturation point with regards to the questions asked of Mr. Wong. I think we've asked a lot, a lot of questions. I don't know how much more we can ask, so unless there's a majority of objections the Chair will proceed in this fashion, I will give Ms. Rawlins the last opportunity to ask questions and upon the completion of her line of questioning to Mr. Wong, the Chair will make a recommendation. Any objections?

COUNCILMEMBER LEE: One objection.

CHAIR MOLINA: Yes, Ms. Lee?

COUNCILMEMBER LEE: If Ms. Rawlins doesn't mind, I didn't participate earlier. I just have one question.

VICE-CHAIR RAWLINS-FERNANDEZ: No objection.

CHAIR MOLINA: Chair will allow for it.

COUNCILMEMBER LEE: Thank you, Chair.

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CHAIR MOLINA: Go ahead, Member Lee.

COUNCILMEMBER LEE: Mr. Wong, I only have one question. In my first ten years as Councilmember, we were always discouraged from getting into in-depth conversations with people who are in litigation, have some kind of litigation against the County. So, what would your comments be on people in litigation with the County contacting Councilmembers to persuade them to their point of view?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Lee. You know, honestly, litigants are welcome to explore all the Councilmembers including the Administration. I will offer that my advice in the past has been please listen. Unfortunately, you're an elected official, they're a constituent. I think you should, you know, listen to what they have to say. I would have pause if you offered information that you received within these Chambers. I would also offer to them and their counsel to show up to testify at every Council meeting. I can tell you historically that I've had other attorneys ask can we get time in executive session with the Council, and I've not agreed to that. That is not something that should be explored. I strongly believe that they should be treated like any other general public constituent and sign up to testify like everyone else. There's only been one occasion that I think that I've, kind of, changed that a little bit when Magistrate Kurren came here to these Chambers to discuss a litigated matter, but otherwise, I can't stop you or the other Members from meeting with party litigants. It happens all the time. I would prefer that it not, but it still does and I don't think there's anything that I can say or do to stop that.

COUNCILMEMBER LEE: All right. Thank you.

MR. WONG: Thank you.

CHAIR MOLINA: Thank you, Member Lee. Member Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. I have three sets of questions. Okay. So, Councilmember Sugimura brought up violence in the workplace. Can you share with us how these investigations are handled, the timeframe, records, decisions, the transparency on it?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Thank you, Chair. Thank you, Member Rawlins-Fernandez. Violence in the workplace, the action plan it triggers a lot of issues. We receive numerous requests from either other departments or the Managing Director's Office to conduct these investigations. And, generally speaking, we receive in the request for legal service, we identify which department it comes from, if it can be done relatively quickly then we assign, I typically assign it to our in-house investigator who will start the investigation

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overseen by a deputy. And it's hit or miss on which deputy gets assigned. It really comes down to who's busy and who's not, and we try to do it in such a fashion that it can be done relatively quickly. A report is typically generated and the report will then be given to the specific department and the department is then, will review and then decide what type of action to take, whether it's a...if it's a personnel matter specifically in the violence in the workplace we make sure that the proper letters are out to assure the complainant that there's no retaliatory conduct. And it's...we try to resolve those investigations quickly. It really is based on availability and time. Then they're, again, the reports are given to the department, who then, decides how to administer.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, for clarification, you're the one who assigns the counsel to a violence in the workplace complaint. Are you also the one to follow up and make sure investigations and actions are completed within a timely matter?

MR. WONG: Chair, Member Rawlins-Fernandez, I'm...I share the assignment role with one of litigation deputies and I don't see all the assignments that come in. There's, on occasion, there's times that, you know, let's say a commission supported a department, I usually would take a look at the facts involved and what the potential conflicts may be and then make the assignment. And, yes, I would periodically follow up with the investigator and/or the assigned deputy. If there's a conflict, then we usually go outside and a private investigator is hired to do it, but otherwise, either I would follow up with the specific deputy or they would report back to me on the status of a particular investigation assuming I'm not conflicted out of that matter though.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, conflicted out as in if a complaint is filed against you? So, if a complaint were to be filed against you, who would be the one to assign counsel to that investigated complaint, to investigate the complaint?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you, Member Rawlins-Fernandez. Typically it would be the First Deputy. It would be Mr. Kushi. And so, from start to finish, I would not have any involvement in that.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Thank you for that. So, following up on that question, there have been some allegations that your behavior when in working relationships with those who have conflicting ideals for County issues can become hostile and troublesome. We had one testifier say that while in your office you swore at her and used your size in an intimidating manner. I've also been informed that you have allegedly used derogatory language at County employees and even displayed aggressive behavior by using physical acts to objects around you to display your opposition to things that are being said. And then I've also been told that there was a work, violence in the workplace filed against you. How have these complaints been handled by Corp. Counsel? Is it being...are those currently being held, managed by Mr. Kushi?



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CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, if I may? I'll take the most recent comment. I don't know what the current status of any complaint that may have been made against me directly in the violence in the workplace complaints. It would have been handled, again, by Mr. Kushi. And I don't know, you know, what you described in someone saying that I did something physical or hostile. I'm curious to find out what that may be. I do know that I have been defensive and aggressive when my personal integrity is challenged and when someone comes at me and is hostile towards me. I think I have every right to defend myself and my integrity. I have...in that specific circumstance been accused of being on the take and being in the back pocket of a developer, and I take serious affront to that. My entire life has been to pursue what's right from wrong. I grew up in a public housing where decisions are made to go from left to right and I choose right. I protected that throughout my lifetime. When somebody tells me you're on the take and you're in the back pockets that's my integrity, that's my word, that's all I have. And, yeah, I didn't tell her what she said and there's no way I would've said that to her, but I did swear at her and I did tell her to get out of my office. But it's settled and there was another person in the room who said, wait a minute, let's talk about this, and so I did, we did. I listened to their concerns. I took their concerns in. I gave it to the appropriate deputy to respond to. But I don't think I should sit there and being told that I'm on the take and take it. If that's the case, I don't think I should be here, because I will defend my integrity as I think any of you should. There are times and there has been one other occasion where I disagreed with an individual and that's because that individual was attacking another deputy and accused that deputy of ethical violations incorrectly and improperly. So, I stand by my decision. I stand by my defense of others. I'll continue to defend and that's my automatic reaction is to defend. Unfortunately, some people don't take it the right way. And I think that if she put it in context that she was coming at me I think everybody has a right to sit there and say, you know what, I don't need to sit here and take this from you. But that was...it's unfortunate, but that was in my mind in the pursuit of legal advice. But that's not what it came out to be. She instead wanted to accuse me of taking money, which is crazy.

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Okay, thank you. So, I guess, since we're on the topic, on 2.96.090B(6) says that to prequalify for a loan with the...prequalify for a loan with the applicant's choice of a lender, and there was an ad for the Kamalani Development where the ad stated at the bottom that it would be a developer-approved lender. And in *The Maui News*, it has you quoted saying, based on my review of the agreement and the Code, I did not find anything that would lead me to conclude that the agreement or the materials were in contravention to the Code, which reads, prequalify for a loan with the applicant's choice of lender. Will you please explain how you found no issue with the developers of Kamalani misrepresenting the Maui County Code, which led to buyers not being able to qualify for housing?

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CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you, Member Rawlins-Fernandez. If you don't mind, can I put that in greater context? I have a recollection of being called to the Council Chambers on that specific day. Mind you, I was not aware of what was going on the floor, and I was unaware of what the specific question was. But when I entered those Chamber doors, I was approached by a former Councilmember who at that point accused one of my deputies of providing legal advice to a developer. I wasn't aware of what the context was, so I approached the deputy and I asked during a recess what had occurred, and I was apprised that the developer was asked can you answer the question and the response from the developer representative was, yes, I can answer the question, and so the deputy said, then answer the question. I find suggesting to anyone providing testimony to answer a question far short of providing legal advice to a developer. On the floor, I was then presented with the specific question that you referenced and if I recall correctly, it was that the written material required, from the developer, required that individuals get their prequalification letter from a lender of the developer's selection. I understand that subsequent to that that the developer withdrew that requirement and more recently, if I recall correctly, Member Cochran in the subsequent development raised that issue on this floor again and I told her then that I was unaware of what she was asking but that I would also look into that, which I did. And in follow up to that, the, that specific developer and I believe it was in December of last year has since changed its solicitation material. You know, looking back to that timeframe, I still believe that what they had in the overall context of the document is that an individual would be able to identify and secure their own mortgage from their own lender. And the pre-qual issue is slightly different, and so it's not a contravention...a contraversion of the Code. And I can tell you that that was a very difficult day for everybody on the floor. It was heated and the heated posturing continued into my office after the meeting concluded and despite what was going on, I still made the time to meet and hear them out. So, it's unfortunate that it's put in bad light and it's unfortunate that, you know, it's not given the appropriate context.

CHAIR MOLINA: Ms. Rawlins, prior to your next question, Chair would ask that if you could please conclude soon. Chair would like to offer a recommendation to the body. Proceed.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Two questions. Okay. So, to circle back to...so, that was the context in which the violence in the workplace or where the situation where you swore at a County employee because she asked or, I guess, in her testimony she said that it was, it sounded like you were more representing A&B than the County. So, in responding to her, you know, swearing and, I guess, becoming hostile, would you consider that violence in the workplace?

CHAIR MOLINA: Mr. Wong?

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MR. WONG: Let me correct something, I...we were sitting across a conference table and at no time did I stand over her as she alluded to in her testimony. So, I do not see that as a violence in the workplace type of issue. Mind you, I don't even know if she filed one. If she did, I'd be surprised, because like I said, the issue resolved, she retracted her statement, and we sat and we finished our discussion. So, I'm actually still concerned that if it was such an issue back then, why is it rearing its head today? I offer that it's solely to put me in bad light.

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: My last question. So, there's specific mandates from the Hawaii Constitution to protect Native Hawaiian rights. Are you an expert in this field of law, and if not, is there anyone in your staff that is?

CHAIR MOLINA: Mr. Wong?

MR. WONG: Chair, thank you. Member Rawlins-Fernandez, thank you very much. It's a very good question. I am not an expert on that. I'm looking for any prospective applicants that are highly qualified in that area of law. I can tell you my last engagement really was when I was in law school back in time when the first iteration of the Native Hawaiian Rights Handbook was generated. And those...I took and got an A in the Native Hawaiian Rights class but beyond that my career moved in a different direction. I still keep in contact with those that were involved back then. I still have a passion for it. I am looking for and I'm aware of a, you know, people that have Maui ties that have strong, you know, exposure and undergraduate degrees and a law degree that I think would make a great addition to our Department. So, yeah, I'm looking forward to the opportunity to be able to bring somebody on that has that strong background.

VICE-CHAIR RAWLINS-FERNANDEZ: Follow up to that.

MR. WONG: Sure.

VICE-CHAIR RAWLINS-FERNANDEZ: How long have you been looking?

MR. WONG: How long have I've been looking?

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah.

MR. WONG: You know, we generate the same ads across the boards, and people apply or they don't apply. I haven't personally gone out to seek out individual applicants, but I did become aware of a prospective applicant, relatively recently, and I'm actually excited that that person may become licensed and may have the opportunity to apply in an office like ours.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Thank you, Mr. Wong. Thank you, Chair.

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CHAIR MOLINA: Thank you, Member Rawlins-Fernandez and Mr. Wong. And the Chair apologizes to any of the Members if Chair is trying to cut short any process here as far as the vetting goes, but in the Chair's opinion, I think we've been very, very thorough at least close to three hours' worth. So, Members, with that being said and, of course, the Chair's aware of the time as well where we may have to take a break for procedural matter. In the meantime, the Chair will then offer you all a recommendation. And the Chair's...the Chair will recommend adoption of the revised proposed resolution entitled Approving the Mayor's Appointment for Corporation Counsel; and also incorporating any nonsubstantive revisions that may be needed; along with the filing of the proposed resolution entitled Disapproving the Mayor's Appointment for Corporation Counsel.

COUNCILMEMBER HOKAMA: Motion.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Moved by Member Hokama, seconded by Member Sugimura. Mr. Hokama, you have the floor as the movement.

COUNCILMEMBER HOKAMA: Chairman, thank you. I, Chairman, I am in definitely support of Mr. Wong this evening. As I said, my basic relationship with Mr. Wong is more on a professional basis. Again, this is our, together our third confirmation hearing. I can tell you from the first hearing of the first nomination I had my skepticism. I had some issues about how he would handle certain situations coming from the private sector. He explained his philosophy regarding the phrase "Chinese wall" and how he would make appropriate safeguards within the Department, within the deputies assigned to protect the interest of the appropriate parties. He has followed through on that. I can tell you in watching him through the years of service to our County, there were times when I've disagreed with his opinions. I've agreed with some of his opinions, but I never doubted by his actions that the interest he mainly protected was the County's interest, not the Council's, not the Administration's. Because I have been told by people in Administration that they felt at times he was bias towards the Council, which for us, many of us would say, gee, that's surprising. But I have verified it that Mr. Wong, at times, took on the Administration's position and defended the right of the Council to exercise its powers and duties, and that's the type of Corporation Counsel we needed. Some of the questions I can tell you that were asked were very pertinent, but they were made by the previous Corporation Counsel prior to Mr. Wong, especially about grading height. That was not Mr. Wong, okay, and that was under Arakawa one because I sat through that hearing, sat through the ordinance that we had to change to meet the court order, which I'm still upset about. I can tell you that Mr. Wong in his years of service to the people, I believe has served the people well. He has balanced the needs of both branches of this government. I think he has tried and solicited the best deputies possible with a range of expertise. And I think as one deputy mentioned, she was one of the most critical about the consideration of appointment of Mr. Wong, and, obviously, he passed the test with that deputy. So, for me, Mr. Chairman, I still believe that

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Mr. Wong can serve this County for the next four years as our number one Corporation attorney because he believes and will continue to make the County the top priority. Thank you.

CHAIR MOLINA: Thank you, Mr. Hokama. Member Sugimura, as the person who seconded the motion, you have the floor.

COUNCILMEMBER SUGIMURA: Thank you. Thank you, Chair. Mr. Wong, thank you very much for representing us. I will say that over these last two years during my first term when you would sit before us, I would think, how in the world do you remember all these details. I thought this guy has a photographic memory. When you sat before us and spoke to us about things that were in executive session, the timeshare issues or the injection wells, and your details and recollection, I thought, at that time towards the end of last term, I thought, man, I hope this guy applies for this job because without you we're gonna lose a lot of institutional knowledge that you have gained over the many years that you have represented the Council. I believe also that what Mr. Hokama said about you representing the County, because truly like I said, in my earlier testimony is that when times that I've called you whether it was Saturday or Sunday, which I have done that to you, to ask you questions about constituent concerns, you were very honest, and you also said, you know, about the County of Maui is who you protect. I appreciate that. The last thing I'm gonna say is the reason that I know that you are a leader and that you guide your Department is that if all of us turn around and look who's here all your Corp. Counsel people who came and testified, they're also sitting here waiting to see what this Council will decide as to who's gonna be their leader. And I think just by them being here, I appreciate that. It makes huge statements about your leadership and what they think of you to be, again, the next Corp. Counsel for the County of Maui. So, I stand by you. Thank you very much. And I value the work that you have given us for all these years. So, thank you. Thank you, Mr. Wong.

CHAIR MOLINA: Thank you, Member Sugimura. Members, any other discussion as it relates to the motion on the floor, which is to approve the resolution supporting the nomination of Mr. Wong for Corporation Counsel? Council Chair King or who we're going with? Okay, you yield to Member Paltin.

COUNCILMEMBER PALTIN: So, in my previous work, it was much easier to make decisions. Similarly to this job, people's lives were at stake, but it was always very clear what the right thing to do was. Here in this building, it's not so easy. In a way, I feel like we are cut off from the natural or the real world, climate is controlled, we can't feel what direction or how strong the wind is blowing other than to look out the windows that don't open, at the trees or the flags, and so I must reevaluate my decision making processes and how I will make my decisions. Where I came from, water, whether it was from the sky, the stream, or the ocean was a central focus and it shaped my approach to my work. The thing about water is it takes the shape of whatever container it's put in. We as human beings are made up of about 60 percent water, and so it depends what form we are in, how we will make our decisions. There's a form of mind or ego

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where we think things through and try to make the right decision. I mean, make us look wise, make people like us make the choice that is convenient, or make our lives easier. Then there's the form of harder soul, where irregardless of the opinions of others and your striving to do your best for Maui County as a whole, you make the decision based on your naau, and so, that's what I need to do. Thank you, Chair.

CHAIR MOLINA: Thank you very...for your thoughts, Councilmember Paltin. I believe we had...okay, we'll go to the Wailuku representative, Ms. Lee.

COUNCILMEMBER LEE: Thank you, Mr. Chair. Mr. Wong, thank you for enduring this challenging interview. I really haven't had that much interaction with you, but I do appreciate your thoughtful and thorough responses this evening and the fact that you took on these questions head on and not tried to dance around some of these, the hard questions. I may not know you that well, but I know many of your deputies pretty well. I've...as Director of Housing and Human Concerns and a member of various County committees and commissions, I've gotten to know your deputies. And I was really impressed with their testimony the other day, and I'm glad they're here tonight to remind us about the things that they said about you. And it...so my decision is kind of based on what they had to say about you, because I have a high regard for them. So, I...I'm gonna be voting in...I vote aye for you and I will support you as our Corp. Counsel if you make it, because I really believe that you have our County at heart and that you will be a fighter for all of us. So, thank you.

CHAIR MOLINA: Thank you, Member Lee. Council Chair King?

COUNCILMEMBER KING: Thank you, Chair. Like my colleagues, this is a difficult decision and like I said to Mr. Wong directly, I have some issues with the office, I have a lot of issues with the perception of the office as well, and I think that's a huge component of the decision we're making tonight because there's not a lot of general faith in the public in this office and that needs to be restored, and I feel a great responsibility towards that. There's a lot of specific incidents that are hard to weigh in a session like this because we're still only hearing one side of it. And I am disturbed, I asked you that question about ACN and there are, you know, there are videos that are on the Facebook page of a former DEM director with you at the conference and Mr. Hokama and some other contractors, and so that bothers me that there's that association when I'm hearing that we're all only professionally related. So, I'm just...I'm having a really difficult decision with this because I also have previous experience with your office before and I think a lot of influence of the previous Administration has a lot to do with my decision as well. So, I'm gonna leave it at that and wait 'til the vote, Chair.

CHAIR MOLINA: Thank you, Chairman King. Committee Members...Member Kama?

COUNCILMEMBER KAMA: Can we have a recess?

CHAIR MOLINA: A recess, a brief one, Chair will make a...recess subject to the call of the

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Chair. . . . (*gavel*) . . .

**RECESS:**           **6:45 p.m.**

**RECONVENE:**   **6:48 p.m.**

CHAIR MOLINA: . . . (*gavel*) . . . The recessed GET meeting of January 23, 2019, is now back in session. Members, it is ten minutes to the hour of 7:00 p.m. Today is Tuesday, February 5, 2019. The Chair will recognize that as a point of privilege from Member Kama. We are currently in the motion phase with regards to the final decision as it relates to Mr. Wong as the Corporation Counsel. So, Member Kama, the Chair did recognize you. Do you have any comments on the motion that is before you on the floor?

COUNCILMEMBER KAMA: No comments, sir.

CHAIR MOLINA: Thank you very much, Member Kama. Any other Members that would like to make comments as it relates to the motion? Okay, Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair. And mahalo, Mr. Wong. Your Corp. Counsel team testified in strong support of you as a manager that had an open-door policy, and they're here again tonight and from what I understand from them it would be amazing to have you as a co-counsel and a mentor, but that is one group's experience. It could be argued that the role of the prosecuting attorney for the County of Maui might be the most powerful role established by Charter. The counselor to the Administration as well as to the full Council is an established role where suggestion and advice likely and often leads to the Legislative and the Administrative functions, direction of our entire County's operation. The implications of which can be rewarding or disastrous for our community at large. When placed in open and well intentioned hands, hands that work hard to uphold the values and principles of kakou, all of us, the potential for greatness is vast and advantageous for all. Alternately, if this honor is placed in hands that close themselves off from kakou and hold only certain portions of our communities up it can lead to inequality, feelings of inequity, a lack of trust, morality can falter, and, unfortunately, because of the roles, the role itself is so full of kuleana the foundation begins to crumble and everything supported by that one role will fall. Having knowledge of this kuleana is important. What you choose to do with that kuleana is crucial. Having witnessed alongside our community, the myriad of legal rationale and advice under your direction that frustratingly stifled decision making for great legislation and elongated processes unnecessarily, I am not confident that this kuleana should be led with kakou that has been held in the correct hands. And while that is not an easy thing to say to you, I also know in my naau that it is accurate and that my kuleana is to ensure that this position of great importance and influence is placed in the hands, in the right hands, and for these reasons, I will not be voting to support this confirmation.

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CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. Members, any other discussion as it relates to the floor before the Chair gives his comments? Councilmember Sinenci?

COUNCILMEMBER SINENCI: Aloha. I, too, have a dilemma at...here. You know, I've listened to all the testimony. I've heard a lot of the e-mails and from the other side, and I've also heard your words as well, Mr. Wong, and I appreciate those. And, you know, I don't know if it's a blessing or a curse, but when I hear it, I hear it. And, you know, the, my constituents that have put me here has put me here for a reason. You know there was a lot of effort on their part so that I could be here to make these decisions. And, you know, many of 'em are not corporate people. Many of 'em are not well to do, you know, just like myself, we simple folk. And so, when I come to this place, I represent a lot of the people that don't have a voice. And, but I see, I've been out there for 20 years, so I see and I walk amongst the people. So, I hear them and I see their dilemmas. I see their challenges, especially, in today. And to hear some of the things that they're left out of, you know, I need to be true to myself and true to my constituents who have put me here. And it's, you know, it's nothing to do with you, but it's to do with, you know, what kind of changes that I can do over here to help those people. And I know that, you know, you come with a lot of integrity, you come with a lot of value, and you come with a lot of experience. So, I know whatever happens tonight you will continue to be that kind of a person, and whatever, you know, whatever position that you're in. So, tonight I'm gonna vote, I'm gonna oppose the confirmation. E kala mai iau.

CHAIR MOLINA: Thank you, Councilmember Sinenci. Any other comments as it relates to the motion on the floor before the Chair gives his comments? Seeing none, the Chair will first of all like to thank Mr. Wong for going through this very exhaustive process. It is of the Chair's opinion that you've been very open, you've addressed some of the current concerns that some of the members have shared with you as it relates to your decision making with law, which is certainly a very abstract thing when you look at it. I mean, while one person views law it may be very different from another, but I believe you have done your best to honor the spirit of the law in your capacity as the Corporation Counsel. And the Chair appreciates your enthusiasm with wanting to be considered for this position again. Certainly, no one is perfect. We are...we sometimes make decisions that we wish we could've had back where we could've done better, such as we heard earlier from one of our nominees. And I think this goes for all applicants for directorship positions and positions like Corporation Counsel. You sometimes have to make decisions that may not always be the popular ones, but from where you sit, you have to make the best decisions that you feel is best for this County, because all nine of us, including the Mayor and all of the officers swore to take this oath to do what's best to protect the County of Maui. And granted it may not be always popular with everybody, but again, how do we interpret the people or the County of Maui when you hear things where people say, oh, we have to do this for the people. Well you have to ask yourself what people are we talking about? Do we speak as a whole, the whole County of Maui or do we speak only of a subsection of our community? That's a matter that will be constantly try to be interpreted. It's not easy. And, Mr. Wong, I know you came from humble beginnings, and if memory serves me correct, we had some good questions here



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as it related to Hawaiian issues and the struggles of the Hawaiians. And, Mr. Wong, I believe you're the first Corporation Counsel of Native Hawaiian ancestry, which is certainly something special because you came up in the projects, so to speak, rough beginnings, where, as you stated, you could either go left or right and you chose right, and you worked your way up and look where you're at. So, certainly something to be very proud of, so I've taken all of this into consideration in my decision making, and you have thick skin as the previous nominee had as well. And you're gonna get...I wouldn't want your job for the world, Mr. Wong, and plus you have to manage a whole bunch of attorneys. I don't know how much more tougher it gets, it's like herding cats sometimes, and you have a support staff and you have tremendous demands on your time. So, with that said, Mr. Wong, I will give you my support for this particular job, occupation that you seek. So, if there are no more comments as it relates to the motion on the floor, the Chair will ask Ms. Espeleta to conduct a roll-call vote.

MS. ESPELETA: Thank you, Mr. Chair. Starting with Councilmember Sinenci.

COUNCILMEMBER SINENCI: Oppose.

MS. ESPELETA: Councilmember King.

COUNCILMEMBER KING: No.

MS. ESPELETA: Councilmember Lee.

COUNCILMEMBER LEE: Aye.

MS. ESPELETA: Councilmember Hokama.

COUNCILMEMBER HOKAMA: Aye.

MS. ESPELETA: Councilmember Paltin.

COUNCILMEMBER PALTIN: No.

MS. ESPELETA: Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Yes.

MS. ESPELETA: Councilmember Kama.

COUNCILMEMBER KAMA: No.

MS. ESPELETA: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: No.

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MS. ESPELETA: Chair Molina.

CHAIR MOLINA: Aye.

MS. ESPELETA: The vote is four-five. The motion fails.

**VOTE:**       **AYES:**   **Chair Molina, Councilmembers Hokama, Lee, and Sugimura.**

**NOES:**   **Vice-Chair Rawlins-Fernandez, Councilmembers Kama, King, Paltin, and Sinenci.**

**ABSTAIN:**   **None.**

**ABSENT:**   **None.**

**EXC.:**    **None.**

**MOTION FAILS.**

CHAIR MOLINA: Okay. Members, okay, the Chair will ask now for a motion to recommend adoption of the revised proposed resolution to Disapprove the Mayor's Appointment for Corporation Counsel; which would also include any nonsubstantive revisions; and also the filing of the proposed resolution entitled Approving the Mayor's Appointment for Corporation Counsel. Chair will seek a motion on that.

VICE-CHAIR RAWLINS-FERNANDEZ: So moved.

CHAIR MOLINA: Moved by Vice-Chair Rawlins-Fernandez. Is there a second?

COUNCILMEMBER KING: Second.

CHAIR MOLINA: Seconded by Council Chair King. Discussion, Members? Seeing none, all those in favor...well, let's do this, Ms. Espeleta, let's do a roll call for this motion as well.

MS. ESPELETA: Councilmember Sinenci.

COUNCILMEMBER SINENCI: Yes.

MS. ESPELETA: Councilmember King.

COUNCILMEMBER KING: Aye.

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MS. ESPELETA: Councilmember Lee.

COUNCILMEMBER LEE: No.

MS. ESPELETA: Councilmember Hokama.

COUNCILMEMBER HOKAMA: No.

MS. ESPELETA: Councilmember Paltin.

COUNCILMEMBER PALTIN: Aye.

MS. ESPELETA: Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: No.

MS. ESPELETA: Councilmember Kama.

COUNCILMEMBER KAMA: Yes.

MS. ESPELETA: Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aye.

MS. ESPELETA: Chair Molina.

CHAIR MOLINA: No.

MS. ESPELETA: Vote is five-four, the motion passes.



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CHAIR MOLINA: That is correct. Okay. All right. Everything is clear? All right. So, that being said, it's just after 7:00 p.m., the January 23<sup>rd</sup> recessed meeting of 2019, Government [sic], Ethics, and Transparency meeting, January 23<sup>rd</sup>'s meeting is now adjourned. . . . *(gavel)* . . .

**ADJOURN: 7:01 p.m.**

APPROVED BY:

A handwritten signature in black ink, appearing to read "Michael J. Molina", is written over a horizontal line.

MICHAEL J. MOLINA, Chair  
Governance, Ethics, and Transparency  
Committee

get:min:190205r-1:mb

Transcribed by: Michelle Balala

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**CERTIFICATE**

I, Michelle Balala, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 5<sup>th</sup> day of March, 2019, in Kihei, Hawaii

A handwritten signature in black ink, reading "Michelle Balala", is written over a horizontal line.

Michelle Balala