

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

March 21, 2019

CONVENE: 9:04 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair (arrived at 9:30 a.m.; excused from 10:07 a.m. to 11:18 a.m.)
Councilmember Riki Hokama (left at 12:08 p.m.)
Councilmember Tasha Kama (excused from 10:01 a.m. to 1:34 p.m.)
Councilmember Kelly T. King (arrived at 10:04 a.m.; left at 12:08 p.m.)
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura (arrived at 9:21 a.m.)

EXCUSED: Councilmember Alice L. Lee

STAFF: Shelly Espeleta, Legislative Analyst
Carla Nakata, Legislative Attorney
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci
Gina Flammer, Executive Assistant to Councilmember Sinenci
Kate Griffith, Executive Assistant to Councilmember King

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)

Mavis Medeiros, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Edward S. Kushi, Jr., First Deputy Corporation Counsel, Department of the Corporation Counsel
Gladys Baisa, Executive Assistant I, Office of the Mayor
Moana M. Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
Caleb P. Rowe, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works
John Smith, Chief of Field Operations and Maintenance, Highways Division, Department of Public Works

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Brian Bilberry, Deputy Corporation Counsel, Department of the
Corporation Counsel
Scott Teruya, Director of Finance
Marcy Martin, Senior County Real Property Technical Officer, Real
Property Tax Division, Department of Finance
David Thyne, Chief, Department of Fire and Public Safety
Jeffrey Ueoka, Deputy Corporation Counsel, Department of the
Corporation Counsel
Lydia Toda, Risk Management Officer, Department of the
Corporation Counsel
Donald S. Guzman, Acting Prosecuting Attorney, Department of
the Prosecuting Attorney
Andrew Martin, Deputy Prosecuting Attorney, Department of the
Prosecuting Attorney
Byron Fujieda, Deputy Prosecuting Attorney, Department of the
Prosecuting Attorney
Terence Herndon, Deputy Prosecuting Attorney, Department of the
Prosecuting Attorney
Peter Hanano, Deputy Prosecuting Attorney, Department of the
Prosecuting Attorney
Celia Moniz, Victim/Witness Counselor, Department of the
Prosecuting Attorney
Ana Malafu-Eliesa, Victim/Witness Program Director, Department
of the Prosecuting Attorney
Karen Montalvo, Law Office Manager, Department of the
Prosecuting Attorney
Jeana Kerr, Investigator, Department of the Prosecuting Attorney

OTHERS: Camille Lyons
Isaac Hall
Bridget Mowat
Plus (5) other people

PRESS: Akaku Maui Community Television, Inc.

CHAIR MOLINA: ... (gavel) ... The Governance, Ethics, and Transparency Committee meeting for Thursday, March 21, 2019 will now come to order. It is four minutes after the hour of 9:00 a.m. Good morning, Members. We have bare quorum today. But thank you to those of you who are here so we can begin our meeting. For the record, we have Councilmember Sinenci, Hokama, Paltin, Kama, and Molina for this morning's session. And of course, this is an off week and the Chair certainly appreciates you making the time to address the items that are on our agenda today. For the record, in attendance we have Staff Analyst, Shelly Espeleta; Committee Secretary, Pauline Martins; as well as Analyst Carla Nakata. And we have acting

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Corporation Counsel Mr. Ed Kushi, and from the Mayor's Office, Ms. Gladys Baisa. We do have a couple of signups for testimony this morning here in the Chambers before we get to our agenda items. For the record, Chair would like to go over some ground rules for testimony. You'll have three minutes to testify. As you're up on the podium, at the 30-second mark before your, before the three minutes are up you will see a yellow light flash just giving you an indication you've got 30-seconds to wrap up. And once you see a red light, that means your testimony must come to a close. And please state your full name for the record and if you're representing any organization, as well as if you are a lobbyist please inform the Committee as well via the signup sheet. So, with that being said, it was brought to my attention that we do have an individual from Molokai, or several individuals from Molokai that would like to testify on our agenda items as well. So, with that being said, if there are no objections I would like to proceed first with the public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS

CHAIR MOLINA: Thank you, Members. So, ordered. I'd like to call upon our first testifier this morning, Camille Lyons, who will be testifying on GET item 1, excuse me, make that GET item 11-25. Please approach the podium, Ms. Lyons.

MR. HALL: Chair Molina --

CHAIR MOLINA: Yes?

MR. HALL: --I'm Isaac Hall, not Camille Lyons. But we'd like to testify when the agenda item comes up if that's okay. Or do you want it all now?

CHAIR MOLINA: We'd like to take testimony now.

MR. HALL: Okay.

CHAIR MOLINA: Yes, thank you.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. LYONS: Chairman Molina --

CHAIR MOLINA: Good morning.

MS. LYONS: --Members of the Committee. My name is...good morning, and thank you for letting me speak. My name is Camille Lyons. I am the President and Secretary of the Makawao Cemetery Association. We are a 501(c)(13) nonprofit organization and we have an all-volunteer board. I'd like to first of all say that we, the Makawao Cemetery Association supports the veterans 100 percent. Whatever they want to do on lot two,

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we support fully. It's lot one that we have the issues with and as far as I know, we came to an agreement in our consultation meeting in December 13, 2016 and we would hope that they would honor the agreement that both sides agreed to. The cemetery is descended from the foreign church that occupied the property from 1861 to 1869. It was designed in the rural garden movement that gained popularity in the early 19th Century across Europe and America. These cemeteries were the public parks of the 19th Century where people gathered to enjoy statuary, architecture, and beautifully designed landscapes. There's a rich history of people buried in the Makawao Cemetery, many of whom played an important part of what Maui and our State of Hawaii has become. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Ms. Lyons. Committee Members, any need to clarify Ms. Lyons' testimony? Seeing none, thank you very much for your testimony, Ms. Lyons. Next to testify we have Mr. Isaac Hall who will also be testifying on GET item 11-25. Good morning, Mr. Hall.

MR. HALL: Good morning, Chair Molina, and Members of the Committee. My name is Isaac Hall, and I'm here on behalf of the Makawao Cemetery Association. Besides the President, Mrs. Lyons, also here is the Superintendent of the cemetery, Rick Gannon. I've already submitted a letter for your consideration. Lot one for over 60 years has been shared to provide access and parking for the Makawao Cemetery and the Veterans Cemetery. The MCA for all this time has been a full partner with the veterans and the use of this lot for these purposes. The fee to lot one is now owned by the State. However, the Makawao Cemetery Association has a recorded easement across it, and a deed restriction in its favor, requiring that lot one be used for parking and roadway purposes only. The Makawao Cemetery in lot one have been recognized as historic properties by federal law that must be protected and preserved for their historic integrity and values. We worked hard to protect these areas in the face of the efforts of the Veterans Administration in Washington D.C. to advance their project to elevate the veterans cemetery to shrine status. We had a huge breakthrough when all of the parties met face to face on Maui in December 2016. Then Mayor Arakawa and Public Works Director David Goode attended and provided vital support in achieving many of our goals. We were and are satisfied with the terms agreed to in 2016 and the plot plan agreed to at the time. In deference to this County's support and in support of Maui's veterans, MCA will not stand in the way of committee and Council approval of the memorandum of agreement and the memorandum of understanding. This is not to state that MCA is satisfied with the Section 106 process, or that the two lawsuits in which MCA is the plaintiff have been settled or resolved, they have not. The VA asked for our comments on the MOA and MOU as they existed in February. We made those comments, and we've heard nothing further. Public Works supported our status in the MOA as an invited signatory, the VA wrote back they would respond. There's been no response. Before you is a revised MOA. However, VA has never provided this document to us and it's been watered down. We intend to make sure that the agreements reached in December 2016 are honored and implemented. On the brighter side, the County's approached us and expressed a willingness to enter

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into a side agreement that would remedy some of the deficiencies in the existing documents. I've been negotiating with Kristy Tarnstrom and more recently with Moana Lutey on the contents of this agreement. Our, any ability to settle these two lawsuits is contingent on our ability to reach agreement on that.

CHAIR MOLINA: Okay. Thank you very much, Mr. Hall. Members, any need to clarify Mr. Hall's testimony? Chair just has one question for you, Mr. Hall. With regards to your contact with I guess the State Office, is it still Colonel Han is the contact person on this matter?

MR. HALL: Well, not for me. I have to talk to their lawyers. But he is the lead person at the Office of Veterans' Services, yes.

CHAIR MOLINA: Okay. And you've had no response from them on this proposed amendment?

MR. HALL: Well, when I'm talking about that, I'm talking about this Section 106 process where the lead agency is actually the Veterans Administration in Washington D.C. They're the ones who are obliged to respond, and they're the ones who have not responded.

CHAIR MOLINA: Okay.

MR. HALL: So, this MOA that is before you today, we only saw because it appeared on your agenda. They have never sent that to us. Once it appeared on your agenda, I looked at it and compared it with the earlier one and there were lots of changes in it that we don't agree to.

CHAIR MOLINA: Okay. Alright, thank you for that clarification. Thank you, Members. Thank you, Mr. Hall.

MR. HALL: Thank you.

CHAIR MOLINA: Thank you. Okay. Let's go out to Molokai. And we have Ms. Lindo, I believe we have someone there to testify, Molokai?

MS. LINDO: Yes, aloha Chair, thank you. This is Molokai District Office. We have one testifier, Bridget Mowat, on GET-2(4).

MS. MOWAT: . . . *(speaking Hawaiian)*. . . Chairman Mike Molina and the Councilmembers.

CHAIR MOLINA: Good morning.

MS. MOWAT: I am testifying in support of the GET-2(4), nominating and approving the appointment of Lori Buchanan to the Molokai Planning Commission. So, my name is

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Bridget Mowat, and I'm here to testify. And I thank you for allowing me to testify, and I hope by sharing my manao you may also conclude that Lori is an excellent person for this position. So, I've known Lori for over 40 years now. So, I know firsthand her passion for Molokai Island and people. She's involved in community concerns and spends a lot of time searching the issues and helps with solutions. She dives into studies, does the research, presents her findings, and shares information so that the community is informed and able to make collective decisions. She seeks solutions and ways to present issues that would involve community input. Her support or nonsupport on issues are based on her educated conclusions and not by influence of others. She is up to date on concerns we face today and tomorrow because she looks for facts and resources. She's articulate and she has a quality to speak to all individuals at any level. This is a good quality when receiving and commenting on testimonies from various ethnic groups. Lori will be seen in all Molokai community meetings sitting with mounds of research, notes, clippings, and facts to educate the community. Her bag of information has become part of her persona. She's a good role model and I know I can learn from her. She does not hold grudges, she can agree to disagree, and does not allow decisions to come between friendships or business. She understands her role as a Molokai Planning Commissioner and has not presented herself lofty to any means. She is experienced as she has already served two five-year terms and is currently served one-year term at a resignation of another commissioner. And Lori has much to contribute to the Molokai Planning Commission. She has a reputation of dedication, public service, and carries herself in the highest professional manner. She will continue to be an asset to the Molokai Planning Commission, especially at the time when new appointees are on the board and who'll just be learning about the Maui codes and zones and other things out of the norm. I am asking for your support in the appointment of Lori Buchanan. She is the type of person you need on the Molokai Planning Commission. I thank you very much for your time, and you folks have a good day.

CHAIR MOLINA: Mahalo, Ms. Mowat, for your testimony. Members, any need to clarify Ms. Mowat's testimony? Seeing none, thank you very much for your testimony, Ms. Mowat. You have more testifiers from Molokai?

MS. LINDO: No, Chair, we do not have any more testifiers here at the Molokai District Office at this time.

CHAIR MOLINA: Oh, okay. Mahalo, Ms. Lindo. And, Members, for your information, you've been given roughly in writing letters of support for Ms. Buchanan, roughly about eight individuals have submitted written testimony on her behalf. Do we have any testimony out in Hana?

MS. MEDEIROS: Aloha, Chair. This is Mavis Oliveira-Medeiros from the Hana Office. There is no one here to testify.

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CHAIR MOLINA: Okay. Mahalo, Mavis. How about Lanai, do we have anyone standing by to testify?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez at the Lanai Office, and there is no one waiting to testify.

CHAIR MOLINA: Okay. Mahalo, Denise. Okay. Members, is there anyone else in the Gallery here in Wailuku that would like to testify on our agenda items this morning? Seeing no one approaching the podium, if there are no objections, Members, the Chair will close public testimony for this morning's meeting.

. . . END OF PUBLIC TESTIMONY . . .

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Thank you, Members. So, ordered, testimony is now closed.

GET-2(1) NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (KULA AGRICULTURAL PARK COMMITTEE, MAUI REDEVELOPMENT AGENCY, URBAN DESIGN REVIEW BOARD) (CC 19-24)

CHAIR MOLINA: Let us proceed now with our agenda regarding Nominations to Boards, Committees, and Commissions for the Kula Ag Park, Maui Redevelopment Agency, and the Urban Design Review Board. From the Mayor's Office we have Ms. Baisa. Good morning, Ms. Baisa, and if you could please provide the Committee an overview.

MS. BAISA: Good morning, Mr. Chair, and Members. It's a pleasure to be here with you this morning to try and get through the remaining vacancy, current vacancies we have. And I'll go down the list. The first person that you're looking at is Isla Young, and she's going to be appointed to the, hopefully appointed to the Kula Agricultural Park Committee. Ms. Young would've loved to be here today. Unfortunately, she had to be on Oahu and so, she was not able to come. But she comes highly recommended and she is a staff person with the MEDB, and she works in STEM. And so, I asked her, I said you know, in back job like STEM, what is this passion about agriculture? And she said well, I already work with agriculture. We do ag internships and I work with the Ag in the Schools' program. And she also is becoming involved with Mahi Pono, not totally yet, but she's met with them and talked with them about services that might be available. So, she is a very responsible person. I've talked with people that she works with, and they all think very highly of her. I personally do not know the lady. But she has a wonderful background and is very committed and has definitely made a commitment to attend. You know, we are really seriously now looking at attendance as a very big important thing because when people cannot attend and they take these jobs on, they cause problems of quorum with the boards and the boards

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can't meet, and these boards are very important. So, I hope that you will consider supporting her. I think she'll be an excellent addition to the board.

CHAIR MOLINA: Thank you very much, Ms. Baisa. Members, any questions for Ms. Baisa regarding Ms. Young and her consideration for the Kula Ag Park? Okay. Seeing none, I guess, Members, with no objections we could just, Staff, maybe procedurally wise can we, should we vote on this separately, or can we just...I'll ask Ms. Baisa to give us an overview on the last few nominees and then --

COUNCILMEMBER HOKAMA: Chairman?

CHAIR MOLINA: --we'll move...Mr. Hokama?

COUNCILMEMBER HOKAMA: If I may ask you a question please?

CHAIR MOLINA: Sure.

COUNCILMEMBER HOKAMA: Our documentation that you've handed out to us this morning show two vacancies for this committee. So, I'm going to ask you, the nominee that Ms. Baisa has brought up is for which vacancy, sir?

CHAIR MOLINA: I believe, is that for the general public, Ms. Baisa? If you can confirm that to Mr. Hokama?

MS. BAISA: Thank you, Chair. Yes, there are two vacancies that we are responsible for filling, the Mayor is. And one is this general public vacancy, and the second is the representative of the Mayor. In the past, as we all know that was our ag person, our ag coordinator who Mayor has not filled that slot yet.

COUNCILMEMBER HOKAMA: Okay. So, the intent...if I may, Chairman?

CHAIR MOLINA: Proceed.

COUNCILMEMBER HOKAMA: Then the intent of the Mayor would be to later fill upon the finding of the Agricultural Specialist, I guess, Ms. Baisa, that he would then nominate that person to fill that slot?

CHAIR MOLINA: Ms. Baisa?

MS. BAISA: Yes, Mr. Hokama, that is correct.

COUNCILMEMBER HOKAMA: Okay. Chairman, you've put in your notes to us, Mayor will appoint. So, does that mean he does not come through us?

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CHAIR MOLINA: I believe with the Kula Ag Park we still have to take a vote I believe on that if I'm correct. So, do you...whereas some of the other commissions...

COUNCILMEMBER HOKAMA: I just want the clarification so that all the Members are on the same page, Chairman.

CHAIR MOLINA: Right. And then, also you have a revised resolution that indicates from Ms. Young as far as what capacity she'll be filling for as well, yeah. Okay. Thank you. Thank you for that questions, Mr. Hokama. Members, any other questions as it relates to Ms. Young? Okay. Then what we'll do, Members, I'll go ahead and we'll just take action individually then on all of these members. So, Members, if there's no objections, the Chair would like to insert the name Isla Young, or approve the revised resolution with the name if Isla Young for the Kula Ag Park. The Chair is calling for a motion to approve.

COUNCILMEMBER SUGIMURA: So moved.

CHAIR MOLINA: Okay. Moved by Member Sugimura. Is there a second?

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: Second by Member Hokama. Any discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Any opposed?

**VOTE: AYES: Chair Molina, Councilmembers Hokama, Kama, Paltin,
 Sinenci, and Sugimura.**

NOES: None.

ABSTAIN: None.

ABSENT: None.

**EXC.: Vice-Chair Rawlins-Fernandez, Councilmembers King and
 Lee.**

MOTION CARRIED.

**ACTION: ADOPTION OF RESOLUTION TO APPROVE THE NOMINATION OF
 ISLA YOUNG TO THE KULA AGRICULTURAL PARK COMMITTEE.**

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CHAIR MOLINA: Okay. Seeing none opposed, we'll mark, Chair will mark it six "ayes" with three excusals, Members King, Lee, and Rawlins-Fernandez. Okay. With our next nominee for the MRA I'd like to refer to Ms. Baisa again to give us an overview.

MS. BAISA: Okay. The Mayor's recommendation for the Maui Redevelopment Agency is Jo-Ann Texeira Ridao. And when we had our last meeting there was a question, you folks wanted to ask a few questions of her, but we never got to her until today. She is here today in case you have anything that you want to discuss with her. She has, she was born and raised in Wailuku and is very interested in the work of MRA and development and had, brings a lot of experience. We all know that she served for a long time with Lokahi Pacific from its organizational days, and also from the County of Maui. And she has a tremendous amount of experience, having been the former Director of the Director...of the Department of Housing and Human Concerns. She's also served as a deputy and as an Administrative Assistant in the Mayor's Office. She is involved in our nonprofit community for a long time. She belonged to the Hawaii Nonprofit Directors Association, she's a board member of Arc of Maui, she's done that, and she's been co-coordinator of the Family Life Ministry at Saint Anthony. And so, she brings a wealth of experience and we feel very comfortable in having her on the MRA. It's very good to have people that have the background of living in a town and watching its development. So, the Mayor strongly recommends her.

CHAIR MOLINA: Thank you very much, Ms. Baisa. Prior to any questions, Chair would like to recognize Councilmember Sugimura to our proceedings this morning.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

CHAIR MOLINA: Thank you for being here. Members, any questions for Ms. Baisa as it relates to Ms. Ridao for the MRA? Member Paltin?

COUNCILMEMBER PALTIN: I had some questions, I'm not sure if it relates to Ms. Ridao, but on the paper that you handed out, do they need to, the nominees have to post \$15,000 bond?

CHAIR MOLINA: That's a good question. Maybe Corp. Counsel can clarify that? The requirement I guess for MRA, there was this consideration, I recall this was brought up last term and I can't, I'm trying to recall what it was. But maybe if Mr. Kushi can try to respond to Ms. Paltin's questions about all nominees or individuals serving on the MRA having to post a \$15,000 bond. Mr. Kushi, are you able to respond to it?

MR. KUSHI: Yes, Mr. Chair. Yes, it's by statute that the, State statute, that they are required to be bonded. And my understanding is the Finance Department will bond them.

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CHAIR MOLINA: Yeah, my guess, and so, not individually, it's the County that will bond them yeah?

MR. KUSHI: No, no, no, on behalf of the members, the Finance Department gets these bonds.

COUNCILMEMBER PALTIN: Oh, so, they don't have to put up the money?

MR. KUSHI: No.

COUNCILMEMBER PALTIN: And then, is there a residency requirement? Is that why you put the district?

MR. KUSHI: Like all boards and commissions, they need to be Maui residents.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Paltin. Members, any other questions for Ms. Baisa or Mr. Kushi? Member Sugimura followed by Member Kama.

COUNCILMEMBER SUGIMURA: So, I don't have a question. I just want to say that I think it's, with the expertise that Jo-Ann Ridao brings to the Maui Redevelopment Agency it broadens out the spoke of, spokes of all the jobs and responsibilities that are before them. It's a very exciting time for the MRA. As I worked with them in 1999 to 2002 when I was working in Office of Economic Development, as we went down this path for Wailuku revitalization, Jo-Ann Ridao was there in spirit and force when she was with Lokahi Pacific, and then when she transitioned to be the Director of Housing and Human Concerns at one point. She was very instrumental in keeping the, you know, momentum going of the whole community. But her experience and talent, especially with the building of the Wailuku Civic Complex, is important because when I worked on that project, it was purely a parking structure. Now, it's more than a parking structure, and you need somebody who has and understands the community the way she does, as well as development to be able to help us move this important redevelopment project forward. So, I strongly support her, you know, I'm grateful she's here. It's good to see her. And the amount of community that she supports in many, many different ways, I'm grateful that she still has time to do the MRA. Thanks.

CHAIR MOLINA: Okay. Thank you very much, Member Sugimura. Member Kama?

COUNCILMEMBER KAMA: Well, I am in total support of Ms. Ridao's appointment to the MRA. I just have a question. It says that no more than three members from the same political party. So, I noticed that each of the members who are currently seated have their political party after their names. So, why is that?

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CHAIR MOLINA: Ms. Baisa, or Mr. Kushi?

MS. BAISA: I do know that it's part of the requirement in the Charter. These requirements like gender and distribution, where they live geographically and those kinds of things, and political party is a part of what we have to try and have balance. And that's why it's on the application and we ask them. And when I was a Councilmember, I was very, very concerned about it. And I made a point that I won't accept an application that doesn't fill that in because I think you need to know, and I need to know, everybody needs to know, it's the law.

COUNCILMEMBER KAMA: I realize that. But I'm just realizing that we are nonpartisan Members sitting here. And yet, we're asking an agency of our County to have a political affiliation. It's kind of like doesn't make sense to me. But that's okay 'cause I'm sure I'll be learning something else as I go. Thank you, Chair.

CHAIR MOLINA: Mr. Kushi would like to add some comments on that as well, Ms. Kama.

MR. KUSHI: Yes, Mr. Chair, Member Kama. It's by the Charter requirements Section 13-2, subsection 2, not more than a bare majority of members of any board or commission shall belong to the same political party. So, in this case, I think you have, from the handout, yeah you have two D's, which is Democrats, one N, I don't know what that is, and one I, independent. So, if Ms. Ridao is a Democrat, she would make the majority. But it says no more than a bare majority. I think that's why on the applications we need to know what your affiliation is.

COUNCILMEMBER KAMA: I was just asking the why, and I don't think...

MR. KUSHI: I don't know, it's been there forever.

COUNCILMEMBER KAMA: It's in the Charter. But why is it in the Charter? What was the purpose?

CHAIR MOLINA: Yeah.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Yeah, thank you.

COUNCILMEMBER KAMA: Thank you, Mr. Kushi.

CHAIR MOLINA: Good question. I think we'd have to do some historical research on that, yeah. And I think Member Hokama mentioned balance, that may have been the rationale --

COUNCILMEMBER HOKAMA: Chairman?

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CHAIR MOLINA: --years ago.

COUNCILMEMBER HOKAMA: And then, you also need to look when this was placed in our documents, yeah? This County was political parties until we went nonpartisan. Nonpartisan doesn't mean we're apolitical. Okay. Nonpartisan means we just don't declare our parties, but you can belong to a political philosophy of your choice. And it was mostly about being upfront of your philosophy and that no one party should dominate any board or commission that serves the general good of the public. And that was just a general philosophy that is done Statewide, Chairman.

CHAIR MOLINA: Okay. Thank you for that. Certainly, clarification helps all of us understand why the need on the application for boards and commissions for political affiliations. Ms. Paltin?

COUNCILMEMBER PALTIN: I just was wondering about the other requirement, resident of County three years prior to appointment. Is that, that's kind of unique to this board and commission and it, just wondering the legal of that, like, you know, sometimes for affordable housing you want to say resident for three years, but they said that's not legal. So, just checking in on how that's legal for this requirement.

CHAIR MOLINA: Okay. Let's see if Mr. Kushi has anything he could add or respond to your inquiry. We're keeping you quite busy, Mr. Kushi, so thank you.

MR. KUSHI: Yes unexpectedly. But the Charter doesn't say any durational requirements, you know. By State law, I think all board and commission members shall be residents at the time of appointment. For officers, employees, I believe this, there is a requirement pursuant to State law for department heads there is a requirement pursuant to State law. But for boards and commissions, Maui County, all it is, is residence --

COUNCILMEMBER PALTIN: So, disregard...

MR. KUSHI: --and no long-term, you know, as long as they're a resident at the time of appointment.

COUNCILMEMBER PALTIN: So, disregard what it says about having to be three years resident? Is that not true?

MR. KUSHI: Not for boards and commissions on Maui at this time, yeah.

COUNCILMEMBER PALTIN: Oh, okay.

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MR. KUSHI: And again, your reference to affordable housing, we've ran across this before and that's a durational requirements and we don't see that as being defensible in the right to travel issues. So, but that's another topic.

COUNCILMEMBER PALTIN: So, just cross it out here, that they need to be three years resident?

MR. KUSHI: Again, on the handout, the MRA is, was created through HRS 53-2. And maybe it's a different situation. So, I would have to look at that.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay. And thank you for those questions, Ms. Paltin. Any other questions? Chair also would like to recognize Committee Vice-Chair Rawlins-Fernandez to our proceedings this morning.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha, Chair.

CHAIR MOLINA: Thank you. Okay. Seeing none, Chair is going to offer a recommendation --

COUNCILMEMBER SINENCI: Chair?

CHAIR MOLINA: --and this will be for...oh, I'm sorry, Mr. Sinenci?

COUNCILMEMBER SINENCI: Just a question for clarification. So, is this Ms. Ridao's second term?

CHAIR MOLINA: This is a reappointment. So, her current term will be expiring at, on March 31st. So, she's been nominated by the Mayor I believe for a full term on the MRA. Am I correct with that, Ms. Baisa? Do you need any additional response from Ms. Baisa, Mr. Sinenci?

COUNCILMEMBER SINENCI: Yes, has she...how many terms?

CHAIR MOLINA: Ms. Baisa?

COUNCILMEMBER SINENCI: How many terms?

MS. BAISA: Yes, the record I have before me, she was appointed in July 6, '18 to take the place of a resignation, a person who resigned. So, she only had not even a couple years. So, she's okay to have a full term.

COUNCILMEMBER SINENCI: Thank you.

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CHAIR MOLINA: Thank you, Mr. Sinenci. Any other questions? If not, Chair is going to make a recommendation to approve the revised resolution on, excuse me, not revised but the resolution for Exhibit B for approval of Jo-Ann Ridao to the Maui Redevelopment Agency. Chair is asking for a motion.

COUNCILMEMBER HOKAMA: So moved.

CHAIR MOLINA: Okay. Moved by Member Hokama.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Seconded by Member Sugimura. Any discussion?

COUNCILMEMBER HOKAMA: Chair?

CHAIR MOLINA: Mr. Hokama.

COUNCILMEMBER HOKAMA: I am going to support Ms. Ridao. I think her record proves her worthiness to continue to serve this district. And I appreciate the Members' questions. But part of the three-year so-called residency is to ensure that the agency has people who know the area, understands the makeup of the community, understands its history, understands why we are planning to redevelop under Federal and State laws. So, while the State statute was enabling from the '60's, County still, Council still had to pass a resolution to authorize the creation of Maui's Redevelopment Agency, Chairman. And this is a superagency with capacity to bond projects themselves within the designated area. So, we need people who understand the area. But we need people who understand development and redevelopment, and I think her track record with actually having built houses, affordable houses, or attainable housing, Chairman, is someone that we really need now in this area to help the revitalization happen for our residents' benefit. And so, I'm in strong support of having this lady who doesn't need to, but continues to volunteer her services, her time away from her family to our benefit. I am truly thankful.

CHAIR MOLINA: Okay. Thank you for those comments, Mr. Hokama, the Chair certainly shares your views as well and as many of you know, Ms. Ridao was formerly our Director for the Department of Housing and Human Concerns who retired. But we've certainly been keeping her busy since her retirement. So, we really appreciate you giving your time back to the County in this capacity. Okay. Seeing no other discussion, Chair will call for the vote. All those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed? Okay. Thank...

COUNCILMEMBER PALTIN: No.

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Urban Planning, and a Master of Agriculture. So, we're very, very honored to have him as a nominee. And we certainly ask your support. The Mayor was very delighted to have a person with his background. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, any questions with regards to Mr. Niess? Okay. What I'll do, if there are no objections, I'm going to have Ms. Baisa give an overview on the other nominee, and then we can take both of them up in one motion if there are no objections to proceed in that fashion?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Ms. Baisa, can you give us an overview for Mr. Okimoto?

MS. BAISA: Okay. Darren Okimoto is currently serving. And he is an incredible, again, person. He is an engineer, and we're very desperately looking for engineers. I want to make a commercial while I have a chance, because this may be seen on *Akaku* by lots of people, and we are desperately seeking two more engineers. In fact, yesterday I was in contact with the Hawaii Society of Professional Engineers and I got a lovely e-mail back from the guy saying that yes, he would contact his members. So, we may find them. But he wants to serve on the Urban Design Review Board as an alternate civil engineer, so that he can learn about the various items and matters that the board is responsible for. He's a practical civil engineer and licensed in the State of Hawaii and feels that he has the background to provide and review recommendations. He is a former State President of the Hawaii Society of Professional Engineers, and his experience with us, of course, is the Subdivision Engineering Standards Committee, and the Public Works Committee. So, he has wonderful background, educationally too he has a B.S. in Civil Engineering from Loyola, and an M.S. in Structural Engineering from the University of California at Berkeley. So, again, in reviewing his application, Mayor is very grateful to have him. You know, we're lucky that we have great volunteers on Maui who will come forward and give us all of this time. So, I ask for your support.

CHAIR MOLINA: Okay. Thank you very much, Ms. Baisa. Members, any questions as it relates to the two nominees for the Urban Design Review Board? Ms. Paltin?

COUNCILMEMBER PALTIN: I just had a question. Is, Mr. Okimoto is filling the number nine vacant, or he's filling out an alternate position?

MS. BAISA: He's filling an alternate.

COUNCILMEMBER PALTIN: Oh, but there's...

MS. BAISA: Oh, I'm sorry, Okimoto is fulfilling a position. Wait, let me... okay.

CHAIR MOLINA: Ms. Baisa, if I'm correct, he's being elevated from alternate to a --

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MS. BAISA: That's correct.

CHAIR MOLINA: --full-time member, right?

MS. BAISA: That's correct. We needed a full-time member. And because he had the experience, we pushed, asked him if he would take the full-time position and he said yes. And I'm desperately seeking to fill his alternate position.

COUNCILMEMBER PALTIN: Got it, thank you.

CHAIR MOLINA: Okay. Thank you. And I believe for this commission there's no time deadline that's been placed on the Administration like our other boards and commissions. So, okay, any other questions for Ms. Baisa as it relates to the two nominees for the Urban Design Review Board? Seeing none, then --

COUNCILMEMBER SINENCI: Yes.

CHAIR MOLINA: --the Chair will make a recommendation --

COUNCILMEMBER SINENCI: I have one, Chair?

CHAIR MOLINA: Oh, I'm sorry. Mr. Sinenci, and I apologize again, you're on the far outer reaches of the Council floor. But thank you, go ahead, Mr. Sinenci.

COUNCILMEMBER SINENCI: So, for Mr. Niess would be on the alternate list, or he would be vacant number eight --

COUNCILMEMBER SUGIMURA: Number eight.

COUNCILMEMBER SINENCI: --serving as the landscape architect?

CHAIR MOLINA: Ms. Baisa?

MS. BAISA: From my information, Peter is going to be on the, as an architect, a regular member, and so is Mr. Okimoto. Niess was, wanted to be an alternate. But he's not going to be an alternate, he's going to be a regular member. That's why his application says alternate. And he agreed, I spoke with him this morning.

COUNCILMEMBER SINENCI: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci.

MS. BAISA: Chair, if I might? There's one more thing --

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CHAIR MOLINA: Ms. Baisa?

MS. BAISA: --I'd like to tell you is that all of these applicants wanted to be here today. And it's just serendipitous that three of them had to be on Oahu. It's just a bad day.

CHAIR MOLINA: Okay. Thank you. The life of engineers and architects, quite busy. We're certainly appreciative that they are willing to make time to serve our County in this capacity. Ms. Paltin, or Ms. Sugimura, who wants it go ahead.

COUNCILMEMBER PALTIN: I just was wanting to clarify, he, Mr. Niess is a landscape architect?

MS. BAISA: No, he is an architect. If you're, let me read the requirements to you. It was very confusing to me too. It says, the Code requires that you have two architects, one land architect, two civil engineers, and four related areas. And so, he's not a land architect, he's an architect. But that's okay because we have the land architect, yeah.

COUNCILMEMBER PALTIN: Got it, thank you, sorry.

CHAIR MOLINA: Okay. Thank you.

MS. BAISA: It's very confusing. I had a lot to learn, and I'm still learning every day about how this works.

CHAIR MOLINA: Yeah, well, I certainly know what you're going through, Ms. Baisa, and I appreciate it. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: I guess I'll wait for your motion.

CHAIR MOLINA: Oh, okay.

COUNCILMEMBER SUGIMURA: So, yeah.

CHAIR MOLINA: Alrighty, okay, seeing no other questions for the Administration or Corporation Counsel, Chair is going to make a recommendation to approve the resolution for Peter Niess to serve on the Urban Design Review Board as in a full-time capacity, and also, for Darren Okimoto it is for a revised resolution, the revision was related to the date. So, just for your information, it's dated March 5th. So, again, the name of Darren Okimoto for approval to the Urban Design Review Board. Chair will call a motion for both of these individuals.

COUNCILMEMBER HOKAMA: So moved.

CHAIR MOLINA: Okay. Motion by Member Hokama.

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COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Seconded by Member Sugimura. Discussion? Okay. Member Sugimura?

COUNCILMEMBER SUGIMURA: Oh, Mr. Hokama first?

CHAIR MOLINA: I guess he's kind of relinquished his --

COUNCILMEMBER SUGIMURA: Oh, okay.

CHAIR MOLINA: --opportunity for you.

COUNCILMEMBER SUGIMURA: So, I just wanted to speak in support of Peter Niess. I guess we did get to talk more about Darren Okimoto. But if you remember, Peter Niess came forward and has testified before us on several issues, one of it which is more in his field was when he came to support the revisions that Shane Sinenci made in his Committee regarding the energy, I think, codes that we just adopted. So, he's out there, he's, he definitely cares about the community. I think he was also part of that Blue-ribbon committee for selection of directors for the new Administration. But I want to put a plug in is that being community driven is really in his blood 'cause his father is architect, an architect also and has really contributed a lot to this whole Wailuku revitalization was my experience when I first met Jim Niess. And then, so, when I met his son, I thought wow, this is really good 'cause it's in their family genes, basically, to give back to the community. So, I know he'll do a really good job. So, thank you very much for really both of them because I know it takes a lot to give up of your professional time to help in projects like this. Thank you.

CHAIR MOLINA: Thank you very much, Member Sugimura. And you read my mind, I was thinking of Jim as well.

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR MOLINA: I appreciate Jim Niess' contribution to our community as an architect as well. Thankfully, his son is continuing that tradition. Okay. Any other discussion before the Chair calls for the vote on these two individuals? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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was called. And shortly after, the community asked the Chair of the Molokai Planning Commission at the time to resign, and he did at a subsequent meeting. Immediately after, almost half of the other Molokai Planning Commission Members also resigned. She brings with her such integrity that she singlehandedly restored faith and confidence back into the Planning Commission. She raises the bar by doing all the work. There's tons of reading involved, and she reads them all. She knows the laws, she understands the process, and in her actions, she teaches other members what it is to look for in the applications and the meeting materials they are given, and how to ask the right questions. She is always there, she's reliable because attendance unfortunately has really been a problem with the Molokai Planning Commission as well. And with her we know that it is a priority and she will be there for the community. She also introduced and continues to introduce policy that will better serve our community on the Planning Commission, such as a stronger attendance policy. She is really a go-getter with strong vision, and most of all, she truly loves our community, and that is obviously reciprocated as you can see by the number of testimony in strong support of her confirmation. So, mahalo for allowing me to share a bit about Ms. Lori Buchanan, and I hope the Members will agree and support to vote for her. Mahalo.

CHAIR MOLINA: Okay. Thank you very much, Member Rawlins. I appreciate your insight and efforts to find someone to fill this vacancy. Members, any other comments as it relates to the nominee for the Molokai Planning Commission prior to the Chair making a recommendation?

COUNCILMEMBER SUGIMURA: Recommendation?

CHAIR MOLINA: Okay. Seeing none, Chair recommends approval of the appointment of Lori Buchanan to the Molokai Planning Commission on the proposed revised resolution. A motion?

COUNCILMEMBER SINENCI: So moved.

CHAIR MOLINA: Okay. Moved by Member Sinenci.

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Seconded by Member Rawlins-Fernandez. Discussion? Seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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MS. LUTEY: Good morning, everyone.

UNIDENTIFIED SPEAKER: Good morning.

MS. LUTEY: There we go. I'm on. You got a little bit of a taste of why I'm here this morning from the testifiers Isaac Hall and the President I believe it was of the Makawao Cemetery. We're in active litigation. So, I am going to need to ask for executive session. But before I get there, I just wanted to explain that the reason I'm here today is to request that this body authorize the Mayor to sign the MOA and the MOU that will allow the State to receive about \$6 million from the Federal government to expand the Makawao Veterans Cemetery. They are running out of space, although currently there is space for additional burials. But the reason the County's involved in this is because it will be our obligation to maintain the cemetery at shrine status. So, there's all kinds of different things like how long the grass can be, the types of curbs, and so forth. And so, that's why we're actually involved. And as Mr. Hall told you, the Makawao Veterans Cemetery, sorry, Makawao Cemetery Association is interested, obviously in continuing to be updated, and that's something we're working on separately. But I would like to ask for further discussion of this in executive session.

CHAIR MOLINA: Okay. Thank you very much, Ms. Lutey. Members, before we consider executive session on this item, Staff has just informed me with regards to the previous item on a procedural matter.

**GET-2(4) NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (MOLOKAI
PLANNING COMMISSION) (CC 19-24)**

CHAIR MOLINA: Because we won't have enough time to get a committee report prior to the expiration of our deadline for the approval of Ms. Buchanan, I'm going to ask for reconsideration of the motion. The appropriate action that I should have taken was to just defer the item and have the action taken at Council tomorrow. So, I'd like to vote.

COUNCILMEMBER HOKAMA: Move to reconsider.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Yeah, okay. Motion to reconsider by Mr. Hokama, seconded by Member Kama. We're voting on the reconsideration of the Molokai item. Seeing no discussion, all in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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CHAIR MOLINA: Okay. Thank you, I think it's a reasonable question to respond to in open session. Ms. Lutey?

MS. LUTEY: Thank you. I might need some help from John Smith who's also here because it's his group that will be handling it up in Makawao. But as Exhibit 3, there's a plan in there that we've attached that's been publicly filed. And it describes what we'll need to do. So, it's...

CHAIR MOLINA: And Mr. Smith is from the Public Works Department?

MS. LUTEY: Public Works.

CHAIR MOLINA: Thank you for being here, Mr. Smith. If you could also add to the response to Mr. Hokama's question it would be very helpful.

MS. LUTEY: Mr. Smith is the Highways Division Chief. And so, I know that part of the requirements for this plan is just a number of things, we have to have periodic inspections of the grass, the grounds, the cook pine tree root system in the front area, and then there's other costs and so forth that we can get reimbursed for, for burials and so forth. And then, on Page 3 there's daily tasks that we'll need to do, restrooms have to be inspected, cleaned, properly supplied, taking care of trash, and then there's on Page 4, all of the monthly tasks such as making sure that we're pruning trees, hedges, we're cleaning the equipment, leaf pickup, and so forth. So, it's basically making sure that it looks nice, clean, and appropriately respectful for a veteran's cemetery. But this goes through by every month. So, on Page 4 it starts with January, and you can see that all of the requests on there. I'm not sure, Member Hokama, if you want me to go more detailed on what those are, or if that's sufficient?

COUNCILMEMBER HOKAMA: I'm just trying to figure out what are we going to be doing, what we're today, so, what are we going to be doing tomorrow if we agree to this? Okay.

MS. LUTEY: Sure.

COUNCILMEMBER HOKAMA: Because this is a discretionary decision. We have not agreed to anything yet.

MS. LUTEY: Correct, yeah.

COUNCILMEMBER HOKAMA: So, what is the change and how much is it going to cost us?

MS. LUTEY: The, in terms of shrine status, we don't need to bring the Veterans Cemetery up to shrine status. That's the responsibility of the State. And, but we need to maintain it at shrine status.

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COUNCILMEMBER HOKAMA: Okay. 'Cause you said that this County has an obligation, yeah, I need to know what is this obligation. But you just said that it's the State's responsibility to --

MS. LUTEY: Right.

COUNCILMEMBER HOKAMA: --keep the shrine status?

MS. LUTEY: No, the State needs to bring the cemetery up to shrine status. It's not currently considered shrine status. But to get that Federal money, the \$6 million, they need to bring it up. And my understanding is it's like length of grass, and all these minute types of details in order to make it I'm assuming look uniform with other types of veterans cemeteries. But once they get it to shrine status level, then we would be required to maintain that. So, it's my understanding from Mr. Smith that we have a special mower that mows it to a, I think it's, is it an inch, John? Yeah, one inch. And there's a, an equipment building...

COUNCILMEMBER HOKAMA: So, are you telling me that the City and County of Honolulu maintains the National Cemetery of the Pacific?

MS. LUTEY: I'm not sure. Do you know? I don't know that question...answer.

MS. DAGDAG-ANDAYA: Chair?

UNIDENTIFIED SPEAKER: Ms. Dagdag?

MS. DAGDAG-ANDAYA: Chair, no, I, to my knowledge not the City and County of Honolulu. They probably have their own staff. However, there is HRS, there is already Hawaii Revised Statutes that delegates the authority. And then, our County Code in Chapter 13 also provides the information, or the, you know, it's the enabling legislation that requires, or outlines the responsibilities of the County in maintaining the Cemetery, the Veterans Cemetery. At this point, because of, you know, with previous budgets we were able to add resources to the Makawao Veterans Cemetery. We added another caretaker position there, or actually a working supervisor. And then, we also added a clerk position to handle all of the administrative functions which involve scheduling of burials, talking with the families, and then coordinating all the paperwork that needs to be turned in. Right now, we were just notified that we do get about \$800 per burial whenever someone, or a veteran is buried at the cemetery then the County receives an amount that gets put into the General Fund. And then, the monies are then...we don't see the monies, it doesn't pass through us, it goes directly to the County's. But in terms of maintaining shrine status, my understanding in, you know, looking up previous documents, the Veterans Office did a report card, or an evaluation I believe back in 2016. At the time, we only had one staff person, and gave us a 53 percent rating. As Moana had mentioned earlier, there will be periodic

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checks made to see if we still can maintain that shrine status. And I think the threshold is to get like an 80 percent rating. And with the addition of the working supervisor and the administrative staff, I think we would be able to, I think it's achievable. We'd be able to work towards maintaining that status. My understanding is even if we don't meet the shrine status, it's not, there's nothing punitive. But that's something that we would continue to be working with the Office of Veterans Affairs, and all of the other agencies who are charges with the oversight of the veteran cemeteries. Additionally, Councilmember, we do not do the capital improvement projects on the cemetery. That's the function of the State. So, any kind of CIP does not, is not under our jurisdiction. We only, again, do the maintenance of the cemetery.

COUNCILMEMBER HOKAMA: So, the \$6 million you shared with us, this Committee this morning, that is for the State of Hawaii? Nothing comes to the County of Maui?

MS. DAGDAG-ANDAYA: Chair?

CHAIR MOLINA: Go ahead, Ms. Dagdag.

MS. DAGDAG-ANDAYA: Yeah, the \$6 million I believe that's just for the CIP. But it's not necessarily for the maintenance.

COUNCILMEMBER HOKAMA: When you say CIP, that is for land acquisition?

MS. DAGDAG-ANDAYA: Chair?

CHAIR MOLINA: Go ahead, Ms. Dagdag.

MS. DAGDAG-ANDAYA: It could be either land acquisition, or just the structural or infrastructural improvements there at the cemetery.

COUNCILMEMBER HOKAMA: So, County funds is only for the Department of Public Works to maintain?

MS. DAGDAG-ANDAYA: Chair?

CHAIR MOLINA: Director?

MS. DAGDAG-ANDAYA: That's correct, just for the maintenance.

COUNCILMEMBER HOKAMA: Okay.

MS. DAGDAG-ANDAYA: And that includes the staff and we also utilize County equipment to maintain the cemetery, assist with the burials.

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COUNCILMEMBER HOKAMA: Well, I'm sure with my colleague to my right we'll be reviewing those numbers in Budget, so.

MS. DAGDAG-ANDAYA: Yes.

COUNCILMEMBER HOKAMA: It's kind of interesting though this setup. So, it's on County land, it's a County Cemetery, a Veterans Cemetery, but the State's going to do the work, and we have to do whatever the feds tell us?

MS. DAGDAG-ANDAYA: Chair?

CHAIR MOLINA: Director?

MS. DAGDAG-ANDAYA: The area is, I believe it's State land. It's also under...so, State also does all the CIP. However, there is an order for the County to maintain the cemetery. On the Big Island...

COUNCILMEMBER HOKAMA: We use County funds from Lanai Veterans Cemetery though.

MS. DAGDAG-ANDAYA: We use County, yes, Councilmember, we do. And we utilize County staff to maintain the cemetery on Molokai, I mean, Lanai, as well as Molokai.

COUNCILMEMBER HOKAMA: As well as Molokai. I find some inconsistencies in the application of our veterans cemeteries because, you know, while I honor, and my father is buried at Makawao, I still hold my Lanai and Molokai veterans in the same standards and how I view them. They gave us, they sacrificed for this country, this County. So, I expect some fairness in services to any veteran cemetery. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I just wanted to recognize even without the shrine status, I think that the County takes good care of the Veterans Cemetery. But my question was, if you could summarize how this is different from the December 13, 2016 agreement referenced by a couple testifiers and how it would affect the Makawao Cemetery Association's recorded easement and deed restriction and historic properties?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: Thank you, Chair. I have to give you a disclaimer, and that is that this is not my case. I'm here because the attorney that handles it is on FMLA leave and in the mainland currently. But it's my understanding that back at that time, because she gave me a whole binder. So, I've read through all of it and then we have been in communication quite a bit because she was concerned about some of these questions,

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is that there was some negotiations done back then. And the Federal guidelines from my understanding over this money are very strict. And so, over the last few years, Kristy Tarnstrom, who's the attorney assigned to this has been trying to negotiate with the Makawao Cemetery Association through their attorney, Mr. Hall, to sort of give them a say on some of what's going on, or at least keep them in the loop. So, to me, what my understanding is of the biggest sticking issue is the fact that the Makawao Cemetery Association is interested in having a signatory of one type, and that's something that is not able to be done under the shrine status. But I think we would need to complete that discussion in executive.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Thank you, Member Paltin. Members, any other questions in open session for Corporation Counsel or Public Works? Okay. Members, seeing none, then the Chair is going to make a motion to convene in executive session, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

VICE-CHAIR RAWLINS-FERNANDEZ: So, moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: Okay. Motion by Member Rawlins-Fernandez, seconded by Member Hokama to go into executive session. For the record, we do need at least six votes to go into executive session. And also, Chair, would like to recognize Chairman King to our proceedings this morning.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR MOLINA: Good morning.

COUNCILMEMBER KING: Aloha.

CHAIR MOLINA: Okay. Members, the Chair is ready to call for the vote for executive session. All those in favor signify by saying, aye.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

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COUNCILMEMBER HOKAMA: Thank you, Chairman.

CHAIR MOLINA: Okay. And thank you for that consideration as well.

COUNCILMEMBER SUGIMURA: Chair?

CHAIR MOLINA: Member Sugimura?

COUNCILMEMBER SUGIMURA: So, you know, before we go into executive session, I just want to disclose, it's really not like I had any financial interest. But when I represented Senator Mazie Hirono, I was in communication with the cemetery associations. And, you know, not that anybody could use me for any kind of negotiation or value, but kind of as a conduit to speak to the Senator's office. So, I have some knowledge about this. I'm not at all part of any, you know, financial gains. But I just wanted to disclose that, you know, I do have some interest because I'm a, you know, advocate for veterans, and I would like to see this resolved. So, I just wanted to...

CHAIR MOLINA: Thank you for sharing that with us, Member Sugimura. And speaking of disclosure, I know I have some type of personal connection to all of this. My parents are interned in the private cemetery which is and thank you to the Makawao Cemetery Association. And I am a veteran, and when the good Lord calls me home someday, I presume I'll be interned there as well. So, anyway, just my thoughts. Alright, Members, we're going to take a recess to...yes, Staff?

UNIDENTIFIED SPEAKER: ... *(inaudible)* ...

CHAIR MOLINA: Yes, I was about to do that. Thank you. We'll take a short recess to clear the Chambers and go into executive session. And once we reconvene, we will be reconvening in executive session. So, Members, brief recess. ... *(gavel)* ...

RECESS: 10:08 a.m.

RECONVENE: 11:13 a.m.

CHAIR MOLINA: ... *(gavel)* ... The Governance, Ethics, and Transparency Committee meeting for Thursday, March 21, 2019, is now back in open session. It's 11:13 a.m. Members, we left on items GET-11(25) as it relates to the Mayor of the County of Maui entering into an intergovernmental agreement, and to approve a grounds management and maintenance plan relating to the Maui Veterans Cemetery in Makawao. Based on discussions in executive session, therefore, the Chair will recommend support or a motion to support a bill, a revised proposed bill to allow the Mayor to enter into this intergovernmental agreement with the various agencies that's listed on your agenda. The Chair will ask for a motion.

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COUNCILMEMBER HOKAMA: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Moved by Member Hokama, seconded by Member Sugimura. Any discussion as it relates to the motion? Member Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I believe your Committee has provided the Department and our Corporation Counsel with sufficient comment that we look forward to their follow-through and see if there can be appropriate adjustments for all parties' benefit. I believe this Committee is very aware of the physical constraints and situations that are currently occurring at our Makawao area, whether it's the community cemetery or our veterans cemetery. And we hope that moving forward, Chairman, that all parties will continue to work together. We believe it's in the best interest of our residents. But we still look forward to appropriate adjustments, particularly in the reimbursements of cost to our Department, that they at least get, try and get full reimbursements. And, Chairman, if there's an appropriate way, whether you have Staff start a PAF, I would hope that the monies that are being reimbursed by the State we can then appropriately earmark and ensure our community that it will be placed back in the Makawao Veterans Cemetery Operational and Maintenance Fund. I think that would be appropriate. We can track it, we can account for it, and we can explain to the community and the Veterans Association how we are providing our services as provided by law. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Members, any other discussion? Member Sugimura?

COUNCILMEMBER SUGIMURA: I like that idea, so, that we can actually see, you know, the support given from the veterans, you know \$800 per burial, and then, what it costs, and then and to go into a fund. I also would like to say that if there's a, if there is a need, I guess, that the County needs to talk to the State veterans people about looking at those costs and making sure there's some equitable answers, I think, from what was discussed for the maintenance and let us know. I mean, you know, we're right there with our legislators and would be willing to have that discussion also. I just also want to say in open discussion that I want to thank the Makawao Community Association organization for their many years because I was, I really worked on this quite a few years ago. But for them to stick it through and make sure that, you know, the both sides have worked out some of the differences I think is really important and that's what makes our communities very special. And the people who are at the forefront of this are true community leaders on, you know, both sides. So, I just wanted to openly thank everyone. I support this, Chair, to go through.

CHAIR MOLINA: Thank you, Member Sugimura. Member Paltin?

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CHAIR MOLINA: Okay, thank you. The item has been filed. I believe this is under my assumption, Staff, this is also to include any non-substantive revisions that need to be made as well?

COUNCILMEMBER HOKAMA: No objections.

CHAIR MOLINA: Okay, thank you. No objections to that. Thank you, Members. All right. Thank you very much, Corporation Counsel and the Public Works Department. I appreciate it.

**GET-11(2) LITIGATION MATTERS (STATUS AND SETTLEMENT AUTHORIZATION:
OCEAN RESORT VILLAS VACATION OWNERS ASSOCIATION, ET AL. V.
COUNTY OF MAUI, ET AL., CIVIL 13-1-0848(2)) (CC 15-6)**

CHAIR MOLINA: Now, we have our next item which relates to a, settling an authorization for the Ocean Resort Villas Vacation Owners Association. Members, the Chair want to make this clear that the, there's no intention to consider any settlement proposal or anything. This is more informational at this point. And we have from Corporation Counsel's Office, Mr. Bilberry, who will give us a PowerPoint presentation. Mr. Bilberry, do you need a minute or two to setup? Would you require us to consider a recess, a brief recess?

MR. BILBERRY: . . . *(inaudible)* . . .

CHAIR MOLINA: Okay. Alrighty,

MR. BILBERRY: . . . *(inaudible)* . . .

CHAIR MOLINA: Right, that is correct, this is not. Mr. Bilberry, if you want to have a seat, Mr. Bilberry, you can speak in the mic to us. Members, let's do this, let's take a one minute, let's take a recess subject to the call of the Chair. . . . *(gavel)* . . .

RECESS: 11:21 a.m.

RECONVENE: 11:22 a.m.

CHAIR MOLINA: . . . *(gavel)* . . . The Governance, Ethics, and Transparency Committee meeting for March 21, Thursday 2019 is now back in session. Members, we're on item GET-11(2), which relates to the Ocean Resort Villas matter. As I mentioned earlier, we have Mr. Bilberry from Corporation Counsel to give us a brief slide presentation. And again, the Chair's intent, there's no, nothing on the table yet as far as a proposed settlement. This is more informational, especially for our new Members to give them an update in open session on what has transpired thus far as it relates to this matter.

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And Staff is currently handing out a, I guess the hard copy of the slide presentation to all of you for your own individual review. So, with that being said, I'd like to recognize Mr. Bilberry to walk us through this presentation. And also, I'm sorry, we have from Finance Department Ms. Marcy Martin, and in the Gallery, we have Director Teruya, and Deputy Director Alibin as well for resource. Go ahead, Mr. Bilberry.

MR. BILBERRY: Thank you very much, Chair. As the Chair indicated, the reason we are here today is we wanted to present this case and give some background to the case. There are some, I know some of you are new here and may not have gotten information about this case. But let me just start by saying that, you know, in 2016, well let me, I'll quickly preface what the litigation's about. This is a lawsuit brought by two timeshares over on the west side of Maui, Kaanapali Ocean Resort Villas, and there are two timeshare associations over there, there's Ocean Resort Villas, and Ocean Resort Villas North. And there are two timeshare homeowners' associations. They filed a lawsuit in 2013 to contest the Maui County Council's classification, and it's actually the County's classification, Real Property Tax classification for Timeshare. And their claim is, is that the classification is somehow unconstitutional and that it violates equal protection and due process. Basically, what they want to do, is they want to undo the classification and have timeshares put back in Hotel for taxation purposes because the Hotel tax rate is less than the Timeshare tax rate. Quite frankly I'll be blunt. We see this lawsuit as an attack on the Maui County's constitutional authority and this Council's constitutional authority over the real property taxation. And we also see it as a threat to the County's potential fiscal security going forward. I'm going to explain why we're concerned about the lawsuit in that regard in connection with the PowerPoint but just quickly give you the background of the suit. So, again, our purpose here is we wanted to give you information about the case, again, 'cause certain of the Members have not been privy to our presentation of this case. We understand that there has been a significant step up in the lobbying efforts by the timeshares to try to resolve this case. We are certainly not upset about that. If we could resolve this case, that would potentially be beneficial to everybody. But I'll be frank with you, it's a pretty complicated case at this juncture, and a resolution is going to be difficult. But we certainly remain open to that. And so, it is kind of our duty to come here and give you a consultation about this matter if we do end up somehow coming up with a settlement proposal with these two plaintiffs, again, which I think is going to be difficult but certainly not impossible, we don't want to be coming here for the first time asking you to sign off on a settlement document when some of you have not been presented with this case and know what it's about. It's not fair to you, and quite frankly, that would be a violation of our professional obligation as lawyers to give you consultation and keep you advised of cases, and that is a professional responsibility requirement. So, just going quickly to the PowerPoint, I've given you each a hard copy of this, what I'm going to do is just go through the background of the case, give you some information that is relevant, and discuss facts. If anybody has any questions, feel free to stop me at any time. I will try to answer your questions to the best of my ability. There's a lot of information in this case, but I think we can get through it fairly quickly. I've prepared a summary, and but I have

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made references to State statutes, to Code provisions, to specific cases that are relevant, and even Council minutes. So, the document that I've handed you, which is just a copy of the PowerPoint is meant to be an informational document for your future reference, and also has information for you to follow up if you so desire to learn more about the underlying law, the facts, and the status of this case. And you are always free to contact our office for information and we're happy to share with you what we know and what we're doing. So, I want to start by pointing out that in 1978, the State of Hawaii held a Constitutional Convention. And this was to amend provisions of the Hawaii State Constitution. There was a Committee on Local Government, which was part of that convention. The convention was made up of like 109 delegates, I believe your colleague, Mr. Hokama, was part of that delegation. And so, he's familiar with some of this. But at that convention, the Hawaii State Constitution was revised and amended, and this provision that's going to be relevant to what we're talking about today in this lawsuit is Article VIII, Section 3. And what Article VIII, Section 3 did when they amended it at the 1978 Constitutional Convention was delegate all functions, powers, and duties relating to the taxation of real property to the counties. And it made clear that the counties would have exclusive authority and jurisdiction over the real property tax. Prior to that, the State was responsible for real property taxation and the counties were responsible for just the rate. But the intent of the delegates at the 1978 Constitutional Convention was to give all the authority over the real property taxation function to the counties. And ultimately, that falls to this body, and that includes...well that's the next slide. But just to reiterate, the Hawaii Supreme Court made it very clear in the case, the Gardens at West Maui Vacation Club v. County of Maui that the intent of the delegates was clearly to give the counties the whole subject of the real property tax power, and that that grant of authority to the counties, per the Constitution, was a complete delegation of that authority. So, the State is no longer involved in anything having to do with real property taxation. The counties define what real property means, the counties make, create the classifications for property, and the counties set the rates. And just as an anecdote, most recently, some of you may be aware, the Hawaii Supreme Court invalidated a ballot measure which the State Legislature was trying to have passed because that ballot measure in part sought to infringe on the counties' real property tax authority. The State was attempting to create a provision that would allow them to assess what they were calling investment property, and part of the reason the Supreme Court of Hawaii invalidated that ballot measure was because that is a County function, the taxation, the assessment, taxation, and defining what constitutes real property. And so, in that case in part, they reiterated the County's authority over this particular area. So, in 2004, Maui County Council created a real property tax classification for timeshare. Mr. Hokama was around when that classification was created, and I believe Mr. Molina was. The County Budget and Finance Committee meeting minutes for that period reflect that some of the concerns by the Council when they created this classification was that timeshares were receiving favorable tax treatment as compared to hotels. They were also concerned about hotels converting to timeshares to take advantage of that favorable tax treatment. And I'm sorry, Councilmember Paltin, did you have a question?

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CHAIR MOLINA: Yes, if, you can go ahead, Member Paltin.

COUNCILMEMBER PALTIN: Thank you, Chair. Can you go in more depth about how timeshares were receiving favorable tax treatment as compared to hotels? I don't understand.

MR. BILBERRY: Sure, sure. So, at that time, timeshares were paying a, what was called a transient occupancy tax. And that was a percentage of the annual maintenance fee that an owner of a timeshare pays, right? And hotels were paying what was called a transient accommodation tax, and that's the fee that's put on your hotel bill, right? I don't remember what the difference in the rates were, but the hotel lobby was a little concerned because they saw that it was, from a tax perspective, more lucrative to operate a timeshare because apparently, the TAT tax was not on par with what the hotels were paying in transient accommodation tax. And again, that was one of the incentives, well, the difference, that differential was one of the incentives that was at that time raising a concern that we have hotels that are now converting to timeshares. And so, the overall tax that was being collected was diminishing, potentially. Does that make sense?

COUNCILMEMBER PALTIN: Yeah, I just was wondering why the, why wouldn't the solution be to make the transient occupancy tax the same as the transient accommodation tax?

MR. BILBERRY: Those are both taxes levied by the State. So, that's not a question we can answer.

COUNCILMEMBER PALTIN: Okay. Thanks.

CHAIR MOLINA: Okay. Proceed, Mr. Bilberry. Members, just out of consideration for time, I know Mr. Bilberry offered to answer questions during his presentation, if there's no objections, I'd like him to complete his presentation, and then if you can save your questions until after if that's okay with the body. Any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. Proceed, Mr. Bilberry, and you can do your best to summarize it so we can give the Members an opportunity to ask questions. Go ahead.

MR. BILBERRY: Okay. Thank you, Chair. Another concern was the loss of hotel room inventory because of potential timeshare to hotel conversions. And as I understand it from reading the minutes, that concern arises because, you know, the hotel and the visitor industry is a large part of Maui's economy, and there's a difference in the revenues that are going to come in to the County of Maui if you're operating a, or if you're a hotel industry, or you're a resort, or visitor industry is made up of hotels

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versus an industry that is mostly timeshares or hotels converting to timeshares. I mean, it affects your economy. There was also concern about loss of jobs because the timeshares were believed not to employ the same number of people to maintain premises as hotels do. And as a matter of fact, one of your, well, former colleagues will attest to that. She advised us that she worked at a timeshare over on the west side and lost her job when it converted to, or I'm sorry, she worked at a hotel and lost her job when it converted to timeshare. Another concern was the shifting tax burdens on the local residents who are having to pay for infrastructure increasingly impacted by growing in heavy timeshare use. And the bottom line is the concern was to make sure that timeshares were paying their fair share of taxes for the impacts that they indisputably were having on infrastructure, use of parks, roads, et cetera. And so, the Council at that time raised, you know, were made aware of these concerns. There was at some point a panel that was set up that one of the Councilmembers participated on where research was done, and information was gathered and then brought back to the Council and discussed. And so, the Council decided to create this separate classification for timeshare, did have the Director of the Department of Finance at that time who was Kalbert Young provide calculations to help determine what the rate should be for timeshare to make sure that again, they were paying a fair share for the impacts that the residents of timeshares were having, proportional to what people who come and stay in the hotels have and the local residents. So, the bottom line was this was a very considered item. It wasn't just done willy-nilly. There was a lot of discussion. We've cited to, or I've cited to the Committee meeting minutes here in this particular slide. So, if anybody wants to go look at those minutes and read the discussions that were going on, that information is available to you. Here is just a slide which just points out that Hawaii Revised Statutes recognizes timeshares different from a hotel. I don't want to spend a lot of time here. But I just, this is just a quote from Hawaii Revised Statute, Section 514E, which defines what constitutes a timeshare and distinguishes it from hotel. But you can look at that at your leisure. And if anybody has any questions about that, again, I'll be happy to address them. The Supreme Court of Hawaii has made some other relevant rulings related to the County of Maui's taxation authority and, or I'm sorry, these are rulings relevant because, again, what was, what this lawsuit has been directed towards doing in part is attacking the decision made by the Council as a Legislative body to create this classification. And the lawsuit alleges on the one hand that the Council did not have the authority to do that, and on the other hand, that the classification doesn't have a rational basis. And under constitutional law, any Legislative statute or Code provision, in this instance, the Timeshare classification, has to have a rational basis. And it's a pretty liberal standard under the law. And you can see the Supreme Court has said that under the rational basis test, any stated facts that can reasonably sustain the classification makes it rational. And quite frankly, the law goes on further to state that even if the Legislative body doesn't put forth a reason, if the court can see any reason that the classification has a rational basis, it is constitutional. So, that's part of the attack that was made on the classification, the Code provision that the Council promulgated in 2004 is that somehow, it's not rational. And just to circle back to Councilmember Paltin's question, the argument that was being made is that

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the reason it's not rational is because the Council was trying to impose a transient accommodation tax on timeshares, disguised as a real property tax, which is a questionable assertion. And the plaintiffs in this case made that argument to the judge, they filed a motion and asked that judge to summarily rule that the classification was illegal because the County was actually trying to impose a transient accommodation tax and deceptively calling it a real property tax. The court rejected that motion and denied it. This case is in front of the Supreme Court now, and that argument is irrelevant to this appeal. It had been rejected by the lower court, and the reason the lower court ultimately invalidated the classification does not have to do with that argument. And we'll get into that momentarily. And it's on this slide, so, here is what the Second Circuit Court has ruled in this litigation. He said because the County created the Timeshare real property tax classification based on considerations other than any distinction in actual use of timeshare and hotel property, that the County somehow violated its own Code provisions, and that the classification was therefore, illegal and void from its inception. And then, he reiterated that in his, this next statement where he says the point is, is that it was not the sole reason the County acted in separating hotels from timeshare. In other words, what the judge has ruled in this case, is that because the Council in 2004 when it created the Timeshare classification had concerns to warrant that classification other than some actual, you know, distinction in the actual use of hotel and timeshare, makes the classification invalid. In other words, you're not allowed to consider anything except what the actual use of a hotel is, and what the actual use of a timeshare is, and if they are, if there's anything else you consider in distinguishing the two, then you don't have the authority to create the classification. That ruling is extremely troubling and problematic on multiple levels. And we'll get into that in a minute too. And I'm sorry to have to put this here in red for you, but because this is an argument that the timeshares are now trying to raise again, as I understand it, but it's not part of the appeal. It's not the basis of the court's ruling. That is somehow that this classification was created as a disguised transient accommodation tax. And the argument is being made to try to suggest that the County was infringing on the State's authority, which is just honestly absurd, it's absurd. And the court didn't rule that. Here are some information I want to give you that refutes what the court ruled. First of all, the court specifically stated that the constitution of the State of Hawaii and the Statutes of Hawaii and Maui's Code provisions only allow actual use to be considered. There is no identifiable constitutional statutory or code provision restricting this body's authority to classify real property as based solely on actual use for assessment and tax purposes, absolutely none. So, that ruling has no basis whatsoever. I also want to point out that when the State of Hawaii at the Constitutional Convention in 1998 [sic] created, or rather delegated complete and exclusive authority over the real property tax to the counties, they made it clear and found that that authority included basic policies for defining what real property means, the formulation of basic policies, and utilizing the real property tax as an instrument of land and economic policy, land use and economic policy. And those are, those, the committee reports related to the findings of the convention are part of the proceedings of the Constitutional Convention of Hawaii of 1978. We have excerpted copies of that if anybody wants to receive that

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we're happy to give it to you. Let me also point out that both the Maui County Council and the County, City and County of Honolulu's ordinances provide for considerations other than actual use to be considered, including highest and best use, which is an appraisal concept which has to be part of the equation in considering classification of real property for purposes of assessment and taxation. So, the idea that somehow real property can only be classified and distinguished based on its actual use, it's just incorrect. Also, let me point out Honolulu has a revised ordinance which is 8, Section 8-7.1C which was recently being contested before the Tax Appeal Court, that resolution, or that classification that Honolulu uses actually classifies, or created a class of real property that would be taxed differently based on its value. And that would be any land and building assessed with a value of greater than \$1 million would be taxed at a different rate than that valued at less than \$1 million. That has absolutely nothing to do with use and the Tax Appeal Court upheld that. Actually, the Tax Appeal Court first said it was unconstitutional, and then changed its mind and upheld that classification. And then, finally, I want to point out, the Tax Foundation of Hawaii, which has been filing amicus briefs in a number of cases that we've been involved in, including the case on the ballot measure, has filed an amicus brief on the appeal in this case, and they have themselves agreed with the County and argued that if the rule were that property tax could only be based only on use, the property systems of all counties would be thrown into turmoil. And that is because you've got several other real property classifications that were created not solely based on use, but on other things like highest and best use and your policy prerogatives. So, the ruling we do not believe is going to survive an appeal. It really would be quite problematic, not only for Maui County, but the classification systems in every county in the State. Oops, I'm sorry, I went backwards. A bigger problem that the Circuit Court may have in this case is that, yeah, it's our position he didn't have, that the Circuit Court didn't even have jurisdiction to rule over this case in the first place. And we raised that early on in the case and we repeated it throughout. Tax disputes are the exclusive jurisdiction of the Tax Appeal Court on Oahu. And for a Circuit Court to take a tax appeal, what is essentially a tax appeal, and proceed to make rulings on it is outside its jurisdiction. The tax appeal matters are the special and exclusive jurisdiction of the Tax Appeal Court. A Circuit Court is a court of general jurisdiction and has no authority or jurisdiction to consider tax cases like this. And that becomes extremely poignant when you consider that what the timeshares are asking for in this case is somewhere in the neighborhood of \$34 million in real property taxes for assessments that were done dating back each year to 2006. And this is despite them never having filed timely tax appeals from their assessments for any of those years. There is a reason why taxpayers are required to file their taxes, or file their, any contest of their assessments annually, and that is because when they pay that...when they make that contest, they have to pay their money into the County's, well it goes into a litigated fund so that the County knows what its potential exposure is, and bringing a tax, a claim for tax refunds 12 to 14 years later is a problem because you have not put the County on notice as you are required to do under the Code that you're contesting the amount so that the County can put that money in a litigated account and protect its security. And so, the notion that, and this is why the case is

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on appeal now, because basically, after making some rulings and the, you know, finally being confronted with the fact that the timeshares were actually asking for 12 to 14 years of tax refunds, the judge said, you know what, maybe I'd better let the Appellate Court take a look at this before I rule that they're entitled to that money because this is problematic. And here I've just cited you some of the law that supports the proposition that the tax disputes, tax appeals are the exclusive jurisdiction of the Tax Appeal Court. So, in this case, we believe the Hawaii Supreme Court could just rule that there's no jurisdiction, send it back to the Circuit Court, and tell that court to vacate its orders and dismiss this case in its entirety. And then, the plaintiffs can go to the Tax Appeal Court for the remedies they seek. The Tax Appeal, or the Tax Foundation of Hawaii does not disagree with us on this point either. And they have pointed out that allowing the Circuit Court to in effect order a refund of taxes as "damages," would subvert the prescribed tax appeal process and would raise genuine concerns and catastrophic revenue loss to the County. The next slide is just Kincaid v. Board of Review. This is a case that discuss, this is why the process for tax appeals has to go through the Tax Appeal Court, or first to boards of review, the County's boards of review, then to Tax Appeal Court, and why they have to be made in a timely manner. And it discusses the exclusive jurisdiction of the Tax Appeal Court. And they point out that allowing plaintiffs, or claimants to not go through the tax appeal process would deprive the State and the counties of any meaningful opportunity to secure their financial position during the pendency of appeal. And that's because you've got to put the money into an account, a litigated account, pending the appeal. So, if the Tax Appeal Court rules in favor of the taxpayer, the money is there to give back to them. If they rule in favor of the County, then the money goes to the General Fund. These are just some interesting fact that I wanted to give you. We learned these numbers, learned some of this during the litigation because it seems that the other position that the timeshares are taking is that they are somehow being unfairly taxed. But they don't want to tell you what is actually going on with how their members are being assessed for these real property taxes, and what they're actually paying. That is just not something they want to discuss. So, as a first point of order, it needs to be understood that a owner of, or an owner of a timeshare interval at the Ocean Resort Villas does not even pay a real property tax. They pay what is a common interest assessment. Basically, the taxes are paid in the aggregate by the two timeshare associations. Then, they allocate that amount to their members based on a formula that only they know but is somehow divvying up the amount as a common interest assessment. And from what we can tell, by the time that assessment gets to the owners of the timeshares, it is in the form of a regressive tax. Those who own the most expensive units at these timeshares are paying property taxes on par with those who have the lesser expensive units at this resort because of the way these assessments are being allocated. That is not the County's prerogative. And it is very clear from the record and the evidence in this case that the individual timeshare owner is not getting a...and the County doesn't assess individual timeshare intervals. It assesses condominium units, which are being used for timeshare purposes. And then again, those monies, or those amounts are allocated to the timeshare interval owners by the associations. This second fact to me is pretty revealing. In 2015, and

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we know this from an operating budget that we were able to obtain in the lawsuit from the timeshares, in 2015, the owner of a \$71,653.10 week long timeshare interval was estimated to pay \$366.59 in annual, you know, annually in the common interest assessment for real property tax. So, I'll let you make of that number what you will. But that's arguably not over taxation. It's a luxury item, 71-, \$72,000 luxury item, you're paying less than \$400 a year in taxes on that. I don't see how that is somehow onerous or unfair. And I would venture to say that if you do the math and you calculate...well, strike that, I'll talk about that maybe later. We've done some calculations. We had real property, the Real Property Assessment Division do calculations just to give you a sense of what the magnitude of the, well not magnitude, but the amounts of revenue that come in as taxes collected from timeshares. So, in 2018, the total revenue from real property taxes collected from all timeshares on Maui was \$34,777,567. If those timeshares had remained, or were put back into the Hotel classification, that would've been a revenue loss to the County for that year, 2018, of 13 million, 631 dollars, I'm sorry, \$13,631,181 or negative 39 percent of the revenues that were collected from timeshares. So, that's not an insignificant number for your annual budget. And again, well, I confess to being something of an advocate, but that's because I'm defending the County in this lawsuit. But it seems to me that \$366.59 on a \$71,653.10 week-long timeshare interval is not an onerous tax. Okay. Finally, this is where the case gets a little bit complicated, but maybe not so. In 2015, and this was shortly after I started working for the County and got this case, we called the Real Property Assessment Division and said hey, we've got this case, we need to defend against this. And the Real Property Assessment Division did some research into the tax history of these two particular plaintiffs which would be expected because we've got to again, get information to defend the lawsuit. And so, it was in doing this research that the Real Property Tax Department, or Real Property Assessment Division discovered that in the years 2006, 2007, and 2008, these particular timeshares escaped having to pay taxes assessed against their condominium units. And what we're talking about here is the difference between an assessment of the land and the building value, and the assessment of individual condominium units, each of which is a separate parcel for purposes of real property taxation. And the way it works as I understand it is during construction of a condominium unit until the building is occupied as signified by a certificate of occupancy, the tax on the property will be the land and the building. Once the building is complete and the, it's condominiumized, and it has its occupancy, its certificate of occupancy, then those condominium units are by law required to be assessed individually. In this case, for the tax years 2006, 2007, 2008, the County missed putting completed condominium units and structures on its tax rolls. This was discovered in 2015 when the Real Property Assessment Division was asked to go do the research because we've got to defend this tax appeal and they're asking for refunds going back 12 years. So, in doing that research, the Real Property Assessment Division discovered this. So, we're in a lawsuit, and so, we decided rather than...well, I'll have to talk about that in executive session, but as a matter of record, what I can talk about is the County decided to try to set off the \$34 million in claims that the timeshares were trying to make for 12 years of tax returns with the amount of taxes that they escaped having to pay because their

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condominiums were omitted from the tax rolls. So, we brought that claim in a second lawsuit that the timeshares filed as a claim in setoff. In other words, the timeshares avoided having to pay, well they didn't avoid it, the County, I'll be, you know, the County missed it. They weren't on the assessment rolls, so, they did not have to pay \$10 million, approximately \$10 million in taxes for the assessment years 2006, 2007, 2008, which were fiscal years 2007, 2008, and 2009. But yet, they were seeking to collect tax refunds for those years. So, in fairness, we, you know, they should have to, there should be at least an entitlement to set off that \$34 million that they were claiming with the \$10 million that they didn't have to pay. So, we raised that claim in a second lawsuit that they filed. And the timeshares disputed that and basically argued that the only way the County could seek to set off their belated claims for \$34 million was to actually assess them for the amounts. So, that's what happened. They were assessed for the amounts. They were vociferous about getting rid of that counterclaim and essentially saying that the County was not entitled to seek to set off the amounts that they were trying to collect as late tax refunds until it actually assessed them for the amounts that were omitted, or the condominium property that was omitted in 2006, 2007. So, that happened and then they turned and said well now you're retaliating against us. And this last slide we'll discuss that. I hardly think that that constitutes retaliation. And under the law, a finding of retaliation would require that the facts show that the County sought to assess and levy the tax as a response to the lawsuit. In other words, to try to well, retaliate against the timeshares. In this instance, it can be argued that but for the lawsuit, the Maui, the Real Property Assessment Division would not have discovered the omitted property. But it cannot be argued that but for the lawsuit, the omitted property would not have been assessed because Maui County has historically issued retroactive assessments on condominium units when they were for whatever reason omitted from the property rolls. So, in fact, these timeshares are not being treated differently than any other condominium regime whose property was left off of the assessment rolls. And the assessments would have issued even in the absence of the lawsuit. And we have produced evidence that shows that, including lists of condominium units that were omitted from the time roll, or the assessment rolls during the same period of time that these timeshares were omitted from the rolls and that were actually retroactively assessed. That's pretty much all I want to talk about in open session. We're going to be happy to answer questions. We understand that the timeshares are still seeking to negotiate. We are certainly open to that. We don't have a settlement demand at this time. There was a demand made that we presented to the Council in October of 2018. That demand was rejected, and I believe by motion was rejected. So, we are, if we are going to continue to have negotiations with the timeshares, it would be I think incumbent upon them to give us a demand that we can bring to the Council and discuss or potentially work out with them some sort of mutual proposal that we could bring to the County to discuss. But that has not happened yet. It may be happening very soon. But again, we needed to make sure that you folks were aware of this lawsuit, some of the history and the background, before bringing such a proposal to you to discuss and potentially, you know, try to resolve this case because there's just

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a lot going on here. And again, we're prepared to answer any questions during open session or in executive session if necessary.

CHAIR MOLINA: Thank you, Mr. Bilberry, and you've certainly given this Committee a very thorough and extensive update. Again, the Chair's intent was more to educate, or get up to speed fast-time Members with this matter. And as Mr. Bilberry had eluded to, myself and Mr. Hokama were involved in this on, well my previous tenure on the Council. Members, Chair's aware of the time. I would like to give you the opportunity to refresh yourselves. What I'd like to do is we'll take a break and we'll return at 1:30 and ask the Department to, or Corporation Counsel and Finance to come back to respond to any questions. Mr. Hokama, you have a, just a quick brief question or statement?

COUNCILMEMBER HOKAMA: Just a brief comment, Chair, 'cause I have a commitment from noon I have to take care of. But I would just say, this is a pretty accurate historic recant of the issue that Mr. Bilberry has presented for the Committee. I can tell you that it was very clear of the Convention, since I was one of the 102 delegates and I was one of the co-authors of the constitutional language to transfer real property to the counties, that it for me, it's very black and white. We are within the constitutional authority provided and ratified by the people of Hawaii, ratified okay. I don't need a court to try and re-legislate what is constitutional. Okay. So, for me, I'm not that open to a settlement. I think we have solid grounds to go to court and win in court basically. Because I think that the counties, and we have as well as Honolulu, have stated sufficient grounds to substantiate our policy through taxation. And that is one of the things that the Constitution allows us in our exercise of formulation of policy and how we, and the options and tools we have at our level of governance to implement and ensure the public's benefit. So, I just wanted to say that, and that for Mr. Bilberry, I think the big thing that, you know, because I've been accused of being fiscally irresponsible as well as the Corporation Counsel. Okay. But we follow the law. And if those that have brought up this points of fiscal responsibility would read the law before they make their comments, especially about timely filing of appeals, if they were done, we would have done what the law requires of us. We would have placed sufficient funds in an escrow account to ensure that if the County did not prevail in the appeal, we have sufficient funds already placed in that escrow to take care of the financial requirements of this County. Okay. We do that all the time, Chairman. Okay. Because we follow the law. And it's interesting that the plaintiff who didn't follow the law is now asking us for either resolution or a settlement. And my last comment is, Chairman, I believe that our basic grounds on this suit is that I am disappointed the Circuit Court did not fully understand or appreciate the role of the Tax Appeals Court that this State requires. 'Cause you are undermining the Judiciary internally. And I think the Chief Justice and the fellow judges on the Supreme Court level understands that integrated structural requirement of governance that is determined by our State Constitution. Thank you, Chairman.

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CHAIR MOLINA: Thank you, Mr. Hokama, points well taken, and I appreciate the history lesson as it relates to this matter and the State Constitution. So, what we're going to do, Members, we're going to ahead, take our break. We'll come back at 1:30. I'll ask the Department to respond to any questions. I'll give first privilege to the newer Members if you have any need for clarification on this. And as you know, on the agenda, Members, we have three Budget presentations to follow. Chair is under some time constraints himself. I will have to most likely leave around 3:00-ish today. So, we'll see what we can get done in the time given. So, Members, this meeting is in recess until 1:30 pm today. . . . *(gavel)* . . .

RECESS: 12:08 p.m.

RECONVENE: 1:34 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The Governance, Ethics, and Transparency Committee meeting for Thursday, March 21, 2019 is now back in session. Members, thank you for that break. And we are, we last left off on item number GET-11(2). A presentation from Mr. Bilberry from Corporation Counsel related to the Ocean Resort Villas matter was given to us prior to our break. At this point, the Chair did inform you that I have some time constraints myself with three o'clock today I'm hoping to terminate. However, if Ms. Rawlins-Fernandez is prepared to take over past three o'clock, I'm sure she'll...but I'd like to just reserve maybe 10 to 15 minutes at the most for questions. You're certainly welcome to, on your own consult with Mr. Bilberry if you have any other questions related to this matter, primarily the goal here for today was just to get the first-time Members up to speed on this very important matter. So, with that being said, I'm going to recognize, from Hana, Mr. Sinenci, if you have any general questions, and again, Members, if you could keep it with one question with a follow-up and we'll go from there. Mr. Sinenci?

COUNCILMEMBER SINENCI: Yes, thank you, Chair. Just one question. Are there other timeshares involved in the case, or just these two?

MR. BILBERRY: Just these two, Councilmember, yeah. There was actually interestingly another timeshare represented by the same law firm filed a tax appeal in Tax Appeal Court I think it was last year. And they tried to argue in Tax Appeal Court that the Circuit Court's rulings should somehow influence the Tax Appeal Court's decision. We filed a motion in that case, and they withdrew that appeal. So...

COUNCILMEMBER SINENCI: A follow-up, Chair? And so, is the entire building being assessed? Or is each unit assessed separately?

MR. BILBERRY: Each condominium unit is assessed separately.

COUNCILMEMBER SINENCI: Okay. Alright, thank you. Thank you, Chair.

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CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I actually asked a lot of my questions over the break. But I guess I'll just share a comment, not a question, that I feel that we have good standing to win the case and I would second the comments that Mr. Hokama made before the break that I hope we don't settle. I think that this is a really important issue that we make clear as far as our constitutional power in setting rates as a County. Okay. Mahalo.

CHAIR MOLINA: Okay. Thank you, Ms. Rawlins-Fernandez. And I'll go to Ms. Kama, I know Ms. Kama wasn't able to be here in the morning. And thank you for returning for the afternoon session. Do you have any, I know you have a hard copy of the presentation, I'm not sure if you had a chance to review it. But do you have any general questions at this point for Mr. Bilberry or the Department, Finance Department?

COUNCILMEMBER KAMA: . . . *(inaudible)*. . . Oh, I'm sorry. I think what I'm going to do is probably call Mr. Bilberry myself and have a discussion with him. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Ms. Kama. And, Ms. Paltin?

COUNCILMEMBER PALTIN: Oh, thank you, Chair. I just was wondering on this page where it says jurisdictional problems with Circuit Court Rulings and Orders, is there a reason that 2009 and 2010 aren't on the list of the years?

CHAIR MOLINA: Mr. Bilberry?

MR. BILBERRY: Okay.

COUNCILMEMBER PALTIN: In the first paragraph.

MR. BILBERRY: I gave out my last copy.

CHAIR MOLINA: Oh, okay. Which page would that be, Ms. Paltin? Is that the third, second page, third page of the hard copy? Thank you, Member Sugimura.

COUNCILMEMBER PALTIN: They're not numbered, but one, two, it's the fourth paper in the front.

VICE-CHAIR RAWLINS-FERNANDEZ: It's the seventh slide.

CHAIR MOLINA: Okay. Slide number seven. It's titled, Jurisdictional Problems with Circuit, yeah, Court --

COUNCILMEMBER PALTIN: Yeah, yeah.

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CHAIR MOLINA: --that's what you're referring to?

COUNCILMEMBER PALTIN: And then, it said, I think in your presentation you said that the tax bracket was made in '04. So, I was wondering, did they not have any problems with '04, '05, 2009, and 2010?

MR. BILBERRY: Okay. I'm sorry, which page are you on?

COUNCILMEMBER PALTIN: The fourth page --

CHAIR MOLINA: It's...

COUNCILMEMBER PALTIN: --the seventh slide, I think.

MR. BILBERRY: Is that the one that starts off, the timeshares are asking for as much as 34?

COUNCILMEMBER PALTIN: Yeah.

MR. BILBERRY: Okay. And, where are you?

COUNCILMEMBER PALTIN: When it says, Maui County's Board of Review and the Tax Appeal Court for each of the assessment years, and then it has 2006, 2007, 2008, '11, '12, '13, '14 --

MR. BILBERRY: Right. Okay.

COUNCILMEMBER PALTIN: --but it leaves out like 2009, 2010, 2015, 2004, and 2005. I was wondering why it's not...

CHAIR MOLINA: For clarification?

COUNCILMEMBER PALTIN: Yeah, for clarification.

MR. BILBERRY: Yeah, the rate did not become effective until Fiscal Year 2006. So --

COUNCILMEMBER PALTIN: Okay.

MR. BILBERRY: --and then, the reason 2009 and 2010, Fiscal Year 2009 and 2010 are omitted there is the timeshares did file appeals with the Board of Review in 2009 and 2010. And those appeals were settled.

COUNCILMEMBER PALTIN: Oh, and 2015 as well?

MR. BILBERRY: Yeah, there was an appeal filed in 2015 pending the lawsuit. And that appeal was just withdrawn with no explanation.

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COUNCILMEMBER PALTIN: And then, can you share with us what the settlement was in 2009 and '10?

MR. BILBERRY: I don't have that here at my fingertips. I kind of generally know what it's about. I'm kind of a little reluctant to get into it now. But I'd be happy to discuss that...

COUNCILMEMBER PALTIN: In private?

MR. BILBERRY: I'd be happy to discuss it in open session the next time we come back. But yeah, if you want to give me a call, I'd be happy to discuss that with you. I believe we actually have the settlement documents, we could also probably, yeah, we could get you copies of those too.

COUNCILMEMBER PALTIN: Okay.

MR. BILBERRY: Yeah.

COUNCILMEMBER PALTIN: Cool, thanks.

MR. BILBERRY: Yeah.

CHAIR MOLINA: Thank you, Ms. Paltin. Anyone else with questions for either Mr. Bilberry or Ms. Martin from the Finance Department? Seeing none, okay, thank you very much, Members. And I appreciate the Corporation Counsel's Office, as well as Finance being here today to update, especially the first-time Members, with this very important issue. And I'm sure we will see this matter again someday with a possible proposal. And that may be the more appropriate time to consider executive session as it relates to the matter. So...

MR. BILBERRY: Thank you very much, Chair, and, Members, thank you all for your patience. I know that was a lot of information.

CHAIR MOLINA: Yeah, thank you. Okay. Members, if there are no objections, Chair's going to defer item number GET-11(2).

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused AL, RH, KK)

ACTION: DEFER.

CHAIR MOLINA: Okay. Thank you, deferral so noted.

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GET-18(4) PRE-BUDGET SESSION PRESENTATION (DEPARTMENT OF FIRE AND PUBLIC SAFETY) (Rule 7B)

CHAIR MOLINA: Moving to our next matter, we will start our, the first of our three presentations today. We have the Fire Department, I believe it was, if we're going to go back to the agenda as stated. I'm just wondering, does the Department need time to, you have a slide presentation if I'm correct? We have hard copies? Okay. Thank you. Alright, Members, you have hard copies before you from the Fire Department. We have Chief Thyne who's here who will just basically, I know it's quite a lengthy document, I've asked the Chief to just basically summarize through it in as fast as he possibly can, or as thorough as he can in the amount of time allotted. And then, at that point, Members, we'll, I'll give you one round of one question with one follow-up and so, we can get to our other presentations. Good afternoon, Mr. Thyne.

MR. THYNE: Good afternoon, Chair, and good afternoon, Members. And thank you for allowing us to be here and we know we adjusted our schedule a bit, well you adjusted our schedule a bit based on our previous date we were scheduled. So, we thank you, and we've been before you, so, we thank you for the amendments we've had of late. And you've learned a lot about our Department. I think we've come in four times since you've taken office. And so, we've had to explain a few things to you already. But we do thank you for the opportunity to give an overview of our Department in a little bit more detail. I'll preface this by saying that, you know, we have a very dedicated professional staff that works what some people would say behind the scenes. We all know those folks that come responding up on the yellow fire trucks with the red lights, and you know, our Ocean Safety Officers that do heroic deeds in the ocean rescuing people and whatnot. And we definitely, that is the heart and soul of our Department. But the dedicated professionals that we have working in the clerical staff, in payroll, you know, all those different folks that don't necessarily get the credit we want to acknowledge them as well. And so, as you go through your presentation, or your handout, you'll see kind of a description of our programs. It starts off basically, you know, with our mission statement and that's important to us. That's our driver, and that's our foundation, and that's dedication, dedicated to protecting and preserving life, environment, and property. And it used to be kind of switched around a bit. It was life, property, and then the environment. And then, we made a change in 2007 because we felt it was important that, you know, property is in itself very important to all of us. But the environment, we can't reverse the effects of that. So, you know, wildfires, things of that nature, you know, we decided to put that upfront a little bit more. And so, that's why that was changed. But we do feel that that's important. So, kind of an overview of our Ocean Safety Program. You see our two org charts there as well as our current vacancies. We're running at about 19, that's due to retirements. We do have a mechanic that's in the middle of giving his two-weeks' notice. He's already gone through the vetting process to be hired by us. So, that'll drop down to 18. And again, that's primarily the Ocean Safety Bureau and firefighter positions due to retirements or folks that left, yeah. We, as you know, probably don't have any problem with recruiting. And we have a very robust training program for both of our

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bureaus, our Fire Ops Bureau, and our Ocean Safety Bureau. So, there is a timeline involved with getting those positions filled. But we put them through a very extensive training, and they come out ready to basically hit the streets and go to work, or waves if you will, not just streets. So, strategies, you see, those are our strategies. This is from our strategic plan. I just kind of copied and pasted those from our strategic plan. We've had a strategic plan in our agency from 2002. We brought in a national-level consultant in 2002. I happened to have the privilege of being on that panel as a young Captain at the time. And so, I've seen our strategic plan evolve over the past 16, 17 years to where we're currently at. We're scheduled for an update this upcoming year which is actually perfect timing, having a new Council, having a new Mayor, myself as the new Fire Chief. So, it's great to be able to work collectively with our, you know, I guess political entities representing our communities, as well as our Mayor representing, you know, the Administration on that side of the house. So, we look forward to that. You see our core values there. Again, this is all out of our strategic plan. And then, the second one, additional values as you see as you leaf through there. There's more related to, we had folks come in from the mainland and they helped us with those original values, and then, the second page and additional values, that's kind of more localized. You know, we respect our culture, our culture values, our dedication, and our compassion, and of course family, our ohana, yeah. So, that was important I thought, and I included that in there. As we go through our programs now, and I'm rambling so, you know, if I'm talking too fast, throw something at me, please, because I know we're under a time crunch here. But so, Administration, that's primarily our chief staff, our office staff, as well as some of the folks that work within our supply folks and things of that nature, meaning our supply, our warehouse if you will. It goes right into our Training Bureau. We have a dedicated staff of training personnel that manage our records primarily. They develop our program budgets with our individual cadres. You'll see in the back as we get to that point, our program cadres are currently at about 19. That's 19 program specific trainings that we do. So, everything from confined space rescue to hazardous materials response, ocean safety training, all of those types of things, EMR, CPR is a common one we all know. There's 19 specific disciplines we have to train and certify in. So, it's very intensive and our Training Bureau helps us to keep that on track. Our Health and Safety Bureau, obviously things like medical supplies, 60 percent of our call volume is medical. Traditionally and historically, over the past many years we're considered firefighters and we take pride in that fact and we train very hard to be the best firefighters we can be. But six out of ten of our calls are related to medical incidents. And so, that's very important to us as well, and we train to national standards in that area. So, health and safety also is the ones that help us with our respiratory protection. That's an act, that's what we have to be in compliance with. That consists of fit testing and flow testing of all of our breathing apparatus' and those types of things. And those folks in there help us with that, as well as our rehab. At emergency scenes we have to take blood pressures, pulse, make sure our firefighters and response personnel can get back in the game, if you will, after a brief respite, or rest period. And so, before we just used to, you know, drink a bottle of water, you know, put on a new t-shirt, throw your jacket back on, and get back in there. Now, we check their blood pressures, their

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heart rate, things of that nature to make sure that we're not compromising our personnel safety if they have any medical-related issues. So, 'cause it's a very taxing occupation as you know. Operations again, we've been before you in the past couple of months on a few of our Budget amendments and whatnot. So, you know a lot about our Fire Ops side of it. I don't think I have to go into detail there. You know, we deal with hazmat's, rescues, you know, all of those types of things. Our Prevention Bureau, a lot of work for those folks on preliminary inspections, okaying off on subdivisions, making sure they have the adequate turning radius' and fire protection installed, those types of things, as well as school inspections, and also the public side. So, they're a busy group too. And if you can prevent fires, well heck, that's a good thing, right? That's what we'd rather do is prevent them from happening. So, we invest what we can into that program. And then, lastly is our Ocean Safety Program. And that's our 63.5 lifeguards and ocean safety personnel, right? So, we have the, you know, ongoing, I guess, concern from both your side of the desk, if you will, and our side, and that's that Makena, you know, grant funding that we get. And we're trying to, you know, keep that up and on pace with the collective bargaining agreements and whatnot. Last year we had less funding that we needed from them. And that puts us in a position to come to talk to you folks about that. The good news is, is that's our, as far as a beach it's our least expensive beach because we do get that grant funding. And we do have a lot of locals that go there. Of course, it's a State beach, so, that's a, you know, discussion we always have with this body. And we have written several letters to the agencies that supply us with that grant. And we will continue to do so, at least, at the very least making them aware of the shortage in funding based on what they allot us, and what the actual services cost. So, that's the Ocean Safety Program. And I know Member Paltin is very blessed with knowledge on that program should you have any questions. So, in the back offices, I mean, I'll answer them up here, okay. Just a quick note on the CIPs, and again, I'm trying to rush, we do have the Lanai Station. We are consolidating two properties and basically then looking forward to expanding our station. The limitation right now, just for some brief background, is there's two properties adjacent to one another. We can't build anymore on to the back of our property to house support apparatus' and relief apparatus'. So, Palama Lanai has been gracious enough to basically give us the other property. Then, we'll consolidate it, make it into one big lot, if you will, and then, we'll be able to build and add on to the station. So, I know Member Hokama will be happy to hear that, I believe. He's not here, I'll speak for him if I could 'cause we've talked about it. But we're hoping to get that really moving along as quickly as possible. And so, that's the current status of it there, as well as Pukoo Fire Station for Member Rawlins-Fernandez. So, that's been a project we started working on. We're looking forward to moving ahead with that and to actually get a dedicated fire station facility. We're currently on a month-to-month lease, rent, from the Department of Health and a very ramshackle, if you will, facility there. So, not good, we're looking forward to that actually becoming an actual physical fire station. So, Kaunakakai, just a brief note there, we're gonna build an EOC room which will also double as a training room when it's not being used in emergency operations center. So, that's exciting. And then, the transfer switches we've talked about with you before, having our generators upgraded,

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or not the generators I should say, the transfer switches which allows whatever the generator can power, it runs that transfer switch, will move it to the various circuits. It was wired wrong in the old days, so it only lights up three lights and one refrigerator type of thing. So, we're able to upgrade that, so, that's a good thing. Lahaina parking lot you see, and then Wailuku perimeter fencing. And then, I did include the training programs there, Chair, and that was regarded to what I mentioned earlier. Our 19, excuse me, discipline specific training cadres that we have. And that's dedicated folks. They take the continuing education, they go to instructor classes, and they provide that training in house to our folks to get in compliance with these various NFPA guidelines and what. And this body, years ago, allowed us to do that. We went away from having mainland folks come in and teach 20 guys at a time, and we have almost 400 personnel. And so, that's very hard to do, and a very cost, not cost efficient. And so, the opposite of that is having our people train, you know, up on the mainland or wherever that may be, and then getting the train the trainer certification to be able to train folks in house. And that's proven to be very successful for us. And the last thing I just included just because one of our big-ticket items is typically our fire trucks. And this was a, basically a few pages out of the audit, that the third-party audit that was actually funded by this body was conducted, I believe it was two years ago now. And this was a kind of a cut and paste of what their recommendations were regarding to our replacements of our fire vehicles. The only thing I'd like to add on, Chair, just in closing is that we also validate this plan, the ten-year replacement plan by what we call a scoring matrix. We work with our mechanics and our chief officer staff to assess the vehicle. It's not only because it's ten-years old we're looking to replace it. We go out there and we have about five criteria, or six criteria, including its current working condition, its pump hours, its mileage, anticipated repairs, and things of that nature. That gets a grading score, and then it's determined if it should go up for actual replacement, or if it can be sustained on a frontline type of apparatus status. So, I know I talked really fast. So, I'm trying to meet your needs, Chair.

CHAIR MOLINA: Thank you, Chief, I much appreciate it. I mean, you really went through this thing, what looks like about a 50-page document with a plethora of information. But you did a great job without even catching your breath too.

MR. THYNE: I know.

CHAIR MOLINA: You guys must have a great conditioning program in that Department. So, well, thank you very much, Chief. Alright, Members, Chair did mention one round of questions, one question with a follow-up question because, again, we do have a couple of other departments with presentations. And of course, with this hard copy document provided to us by the Chief, we will certainly use this to maybe ask more questions once we enter the formal phase of our Budget Session under the leadership of Councilmember Rawlins-Fernandez. So, let me go ahead and start with Member Kama, if you have a question or two for the Chief?

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COUNCILMEMBER KAMA: Yes, one question. So, Chief, do you, is this the budget that you're going to be submitting to the Mayor, or have you already done that?

MR. THYNE: Yeah, we just actually met with the Mayor two days ago I believe it is, oh no I'm sorry, it was aloha Friday 'cause we got scolding for not wearing our uniform --

COUNCILMEMBER KAMA: Okay.

MR. THYNE: --which I apologize to him because I didn't realize he was serious when he said whenever you meet with me wear a uniform, I figured it's aloha Friday. So, I went up and apologized after he saw me this morning, I went up and then said I apologize because I didn't think he was serious 'cause he kind of jokes around a lot. So, I felt bad about that. So, anyway, it was Friday we did discuss with the Mayor. And I know we're looking forward to hearing what his budget as it comes down on the 25th I believe so.

COUNCILMEMBER KAMA: Okay. Thank you, Chair.

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

COUNCILMEMBER SUGIMURA: Time is limited, but the \$250,000 that you got to implement the audit things, is some of it included in here, or are you planning on spending it all?

MR. THYNE: Chair?

CHAIR MOLINA: Chief?

MR. THYNE: Yeah, so we, well, what happened after that, Member Sugimura, is we had to submit a list to Chair at the time, Hokama, of what we were going to use the funding for, and we did. And those purchases and procurements are ongoing. The only last kind of items that we're finalizing are the relief vehicles. We had a balance after the other items that we submitted to Member Hokama, of about 96,000 out of the 250,000. And so, we're trying to outfit as best we can the relief vehicles with that balance that's remaining. So, that was our ongoing purchases right now.

COUNCILMEMBER SUGIMURA: Very good.

MR. THYNE: Thank you.

COUNCILMEMBER SUGIMURA: Thank you.

MR. THYNE: No, thank you for giving us the funding. We appreciate it.

CHAIR MOLINA: Thank you, Member Sugimura. Member Paltin?

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COUNCILMEMBER PALTIN: Thank you, Chair. No questions at this time.

CHAIR MOLINA: Okay. Well, that was fast. I'm sure once the session hits we'll have some questions for you. Thank you, Member Paltin. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, Chief Thyne, for this very thorough presentation and for going through it really quickly and not reading every line. So, you came back, the Department came back to us for a shortfall in salaries. And I understand that last year was pretty unprecedented with the fires and the hurricanes and a lot of the rescuing that you folks did and very much appreciated of course. I was wondering if that helped to inform the budget for salaries this coming year?

CHAIR MOLINA: Chief?

MR. THYNE: Chair, thank you. And thank you, Vice-Chair Rawlins-Fernandez. Yes, I, you know, the Budget Director right now, and of course the Managing Director being the former Budget Director are well in the know of our historical shortfalls. And I've actually had numerous conversations with now Mayor Victorino when he sat I believe it was right here as then, Councilmember Victorino, and I always asked him, I said is there an emergency fund, or is there a process that will allow us to, you know, keep our budget, you know, kind of tight and without any sort of perceived fluff or anything. But if we do have the large-scale incidents, we are able to access that emergency funding, for lack of a better description. And I know he was working on that at some point in time. And I don't know that it ever became a reality. And he may not even remember these conversations. But I do because I was always concerned, you know, an average large fire, when I used to do a lot of the payroll and budgeting and reimbursements, was about \$300,000 in cost for us. Some of that is salary, some of that's helicopters, of course, heavy equipment. So, it's really hard to say are we going to have two of those a year, three of those a year? And so, we, so, you figure if it's \$300,000 on an average, three of those major incidents, we're at \$1 million over the cost of what we can anticipate, you know. So, it's very difficult. So, but I now that this particular Mayor and the staff that he has with the Budget Director, you know, Yoshimura, and Managing Director Baz, they've taken our concerns, and from what we hear at least preliminarily, we'll see again, when his budget comes down to you folks. And they're aware, and they're in support of what we've been putting forward as projections on what we anticipate our budget needs to be. So, we'll hope for the best.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chief Thyne. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Ms. Rawlins-Fernandez. And, Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I don't have any questions at this time. But thank you, Chief Thyne, for being here today. Mahalo.

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CHAIR MOLINA: Thank you, Mr. Sinenci. I've just got one question. It's more, I'm going to steal some of the thunder from my West Maui colleague. It relates to ocean safety and something I saw in the news just the other day related to a lawsuit that was settled with City and County, and I guess the fireman who lost his life related to going out there doing a, I guess it was a training run. And as far as your training program here for ocean safety, you folks are adequately funded? Or is that something that this Council will maybe have to consider during the Budget Session or maybe upgrades to the training program, for equipment, or for as it relates to ocean safety or instructional classes or so forth? Any comments on that?

MR. THYNE: You know, Chair, thank you, and I really cannot say, you know, right now specifics about any sort of underfunding of any of our programs and/or of our training. But I can tell you that we diligently look at all of our programs. And I know Member Paltin will probably attest to the fact that, you know, the staff that's working in the office in the Ocean Safety Bureau take their jobs very seriously. The Training Captain, you know, Kekai, the Ops Manager, Cary Kayama, and of course, Battalion Chief McAfee currently, I know that they look at all different sides of what they do. I know that our Training Bureau on the Fire Side that supports them with whatever resources they need, and whatever help they need, take their jobs very seriously. And so, I can tell you that we are, and I'm not insinuating that the folks in Honolulu didn't do that as well, it was a tragic accident that happened to, and I happened to know that member personally, and he was a very senior member as some of you may have read. He was actually, he had competed in triathlons and so, he was obviously a very fit gentleman. And it was very tragic. And I don't know what negligence, I haven't read the lawsuit. I'm not sure what was perceived and/or proven, yeah, well, I guess proven because they got a settlement. But, you know, for us, I know that we always take our safety of our firefighters as paramount. And it's the same thing with our ocean safety folks. And so, I can assure you that we will do our best not to overlook any safety concerns, especially regarding the training of our personnel. I can promise you that.

CHAIR MOLINA: Okay. Thank you very much, Chief, for that response. Alright, Members, so, that will conclude the presentation from Chief Thyne and the Fire Department. I want to thank you, Chief, for making the time to give us an overview and a taste of what we may be looking at come the Budget Session. So, thank you very much.

MR. THYNE: Thank you, Chair, and thank you, Members. Have a good day.

CHAIR MOLINA: Thank you. Members, with no objections, the Chair will defer item number GET-18(4) Presentation of the Fire Department and Public Safety.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused AL, RH, KK)

ACTION: DEFER.

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CHAIR MOLINA: So, ordered. Thank you.

**GET-18(3) PRE-BUDGET SESSION PRESENTATION (DEPARTMENT OF THE
CORPORATION COUNSEL) (Rule 7B)**

CHAIR MOLINA: Next, we have from Corporation Counsel, GET item 18(3) a Pre-Budget session presentation from Mr. Jeff Ueoka from the Corporation Counsel's Office. And I believe you gave us a summary for your review, Members. Not quite as large as the Fire Department's, but certainly much appreciated. And as with the Fire Department, Mr. Ueoka, if you could just summarize that document for us, and then, the Chair will open the floor for questions. And also, being, accompanying Mr. Ueoka, we have Ms. Lydia Toda as well from Risk Management. Thank you for being here.

MR. UEOKA: Thank you, Chair. Good afternoon, Councilmembers. I'll be presenting today on behalf of the entire Department and can take questions in regards to the legal side. The County's Risk Management Officer, Ms. Lydia Toda is here, and she can respond to any questions relating to Risk Management. As Chair said, we did receive some questions, and we provided written answers on February 25th. I know you guys don't want me to read all of that. So, if you have any questions of course. Just to start off, the Corporation Counsel's charged per the Charter is to be the chief legal advisor and legal representative of the County of Maui, the Council, the Mayor, all departments, and all boards and commissions, and of all officers, employees, and matters relating to their official duties. We have taken this to mean that we first and foremost must act in the best interest of the County of Maui as the entity. We represent and advise the Council and Administration. And I hope you understand that we are ethically bound to observe and interpret the law. This is not to say there won't be differences of opinion at times. However, again, we are advisors and representatives, and we do not dictate policy. The Risk Management section's primary duty is to oversee our County's Insurance Program. Ancillary to this is management of our Workers' Compensation Program, the processing of general liability claims, safety training, and building security. In our Department, we have 37.5 equivalent personnel. We have four sections, the litigation section, counseling and drafting, clerical, and risk management. I think you guys are all pretty familiar with what goes on in our office. And as of right now as you can tell from our February 25th response, we do have a couple of vacancies. But we are in the process of filling them. Going on to our budget, about 90 percent of our budget is salaries. So, it's pretty much a fixed cost and we have virtually no equipment costs. For our FY '19 Budget, we were given an appropriation of \$556,000 for County facility security. We encumbered a portion of it this year, and we don't anticipate using the full amount in the remainder of this fiscal year. And I believe we're okay with the rest lapsing. In FY '19, we also had \$100,000 appropriation for collective bargaining negotiation operations. However, at this point, we have not needed to use any of the funds. We would like to have these funds again next year in case we do need to hire anyone because a bunch of the bargaining unit

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negotiations have not been completed, and they probably won't be completed by July, or June 30th, so, we may need funds in Fiscal Year '20, starting July 1st. So, just heads-up, that's a, traditionally we need the money and it's a cost sharing with the other jurisdictions in the State to hiring experts. Chair, I believe that's about it. So, if you guys have any questions, thank you.

CHAIR MOLINA: Okay. Thank you very much. Ms. Toda, any comments from Risk Management you'd like to offer before I open the floor to questions?

MS. TODA: No thanks, Chair.

CHAIR MOLINA: Okay. Thank you very much. Okay. Members, let's start this time with Mr. Sinenci, any questions for Corporation Counsel?

COUNCILMEMBER SINENCI: Not at this time, Chair. Thank you.

CHAIR MOLINA: Okay. Thank you. Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Ueoka. Mahalo for your quick presentation, I appreciate it. On Page 4 of the questionnaire that you responded to for this Committee it says that there's \$232,771 that were not encumbered. Is, was this allocation for the, what was this allocation for?

CHAIR MOLINA: Mr. Ueoka?

MR. UEOKA: Thank you, Chair. That was for the Countywide facility security. It was added by the Council during the FY '19 Budget deliberations to I guess do some security increases to the building. I guess they wanted it to be more secure.

VICE-CHAIR RAWLINS-FERNANDEZ: Like the metal detectors?

MR. UEOKA: I'll let, it's under Risk Management more than the legal side. So, I'll let Ms. Toda respond.

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

CHAIR MOLINA: Ms. Toda?

MS. TODA: Thank you, Chair. Yes, the monies that were encumbered were, are for hardening the area for this building, downstairs specifically we plan to have badges and metal detectors, things of that sort, in order to enter the building. And so, we have spent about half of the money that was allotted to us, but expect to have the full amount, the full 500,000 or so expended by the end of this fiscal year.

VICE-CHAIR RAWLINS-FERNANDEZ: You do expect to spend?

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MS. TODA: Yes, we do.

VICE-CHAIR RAWLINS-FERNANDEZ: As in purchasing the metal detector?

MS. TODA: I believe we've already purchased them. And so, it's just a matter of implementation. We're in the process of coming up with policies and procedures, you know, how to, training for all personnel in order to enter the building. So, that's in the works right now.

VICE-CHAIR RAWLINS-FERNANDEZ: Quick follow-up, Chair?

CHAIR MOLINA: Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: So, the metal detectors are going to be on floor one and two?

MS. TODA: I believe just on floor two, for the general public to come into the building.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Okay. They can still get in on one. But, okay, alright. Mahalo.

CHAIR MOLINA: Okay.

MR. UEOKA: Chair, if can?

CHAIR MOLINA: Mr. Ueoka, proceed.

MR. UEOKA: My understanding is one will be badge access only, you know, from downstairs in the basement area will be badge access only. Two will be the only open for general public and you'll need to go through the metal detectors and security screening. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo for that clarification. Mahalo, Chair.

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

COUNCILMEMBER PALTIN: So, I just was following up on my colleague's question. The enhanced security measures is mainly directed at external threats and not internal?

CHAIR MOLINA: Ms. Toda?

MS. TODA: I would say so, yes.

COUNCILMEMBER PALTIN: Okay. Just checking.

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CHAIR MOLINA: Okay. Thank you very much, Ms. Paltin. Ms. Sugimura?

COUNCILMEMBER SUGIMURA: No question, Ueoka did a great job.

CHAIR MOLINA: Alright, and, Ms. Kama? Okay. Thank you. The Chair just has one question related to the February 25, 2019 document, second page, administrative management and clerical services section. You mentioned there's two vacant positions and you've listed all the positions there, Admin Assistant II, two Law Technicians II, six Law Technicians I, and one Legal Clerk. Can you specify which of these two vacancies are specified to which of these positions?

MR. UEOKA: Thank you, Chair. Just for clarification, we really need all of them and we're trying really hard to fill them. So, please don't delete the vacancies in this year's budget. But I believe it's one Law Technician I, and one Law Technician II, I'm sorry, yes, and we might have, that was as January 2. I believe we might have a couple more vacancies right now as of today. But we are working diligently to try and get more staff. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Ueoka. And I can only imagine how many documents and the amount of paperwork your Department has to deal with. So, where are we as far, are you really backlogged a lot, or is it you're still I guess getting these requests and documents in a, done in a timely manner, or responses I should say?

MR. UEOKA: Thank you, Chair. Fortunately for us, we have very capable staff in the administrative management and clerical services section. Everyone has stepped up tremendously to fill the void by the vacancies. It would be nice if we could get the positions filled and people trained so, you know, we don't want to burn anybody out. But everyone has stepped up. So, we're not experiencing a backlog right now. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you very much. Alright, Members, I believe this concludes the presentation from the Corporation Counsel's Office. And again, during the Budget Session if you have any additional pressing questions for this Department, you certainly have that privilege to do so. So, I want to thank Mr. Toda, and Miss, excuse me, Ms. Toda and Mr. Ueoka for being her today. Thank you. We're moving right along here, Members. And if there are no objections, Chair would like to defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused AL, RH, KK)

ACTION: DEFER.

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CHAIR MOLINA: Thank you.

**GET-18(6) PRE-BUDGET SESSION PRESENTATION (DEPARTMENT OF THE
PROSECUTING ATTORNEY) (Rule 7B)**

CHAIR MOLINA: And now we're on our last presentation for today, GET item 18(6) which is a Pre-Budget presentation from the Department of the Prosecuting Attorney's Office. And I believe this will be a slide presentation. Am I correct? Do we need a recess to set up, Ms. Espeleta? Can we proceed? Okay. Mr. Guzman, long time no see. We'll...please get seated comfortable, and also Mr. Martin. Mr. Fujieda, thank you. Thank you. Prior to hearing Mr. Guzman, the Chair would like to thank the remaining Members here today. I know this was your off day and thank you for being here for, to conclude and complete this agenda today, Mr. Sinenci, Ms. Rawlins-Fernandez, Ms. Paltin, Ms. Sugimura, and Ms. Kama. Okay. Mr. Guzman, you have the floor.

MR. GUZMAN: Thank you, Chair. Thank you for allowing us to present our current budget and some of our proposed budgets. Again, before I begin, I'd like to introduce to you the Members, our management team, and I know that most of you don't know, and we've over the years haven't presented, we haven't seen from the Prosecutor's Office who's behind the shield and who's behind the court desk. And so, I just wanted to take an opportunity to introduce my management team. First of all, we have Circuit Court Division Supervisor, Andy Martin. If you guys could raise your hand to identify yourself. We have Felony Screening Division Head is Byron Fujieda.

MR. FUJIEDA: Aloha.

MR. GUZMAN: We have District Court Division Terence Herndon. He's in the gallery. And we have our Investigator Service Head, Jeana Kerr, and currently representing our Victim Witness Services is Celia Moniz, and she is the head of that, the Director is Ana Malafu. Also, as part of our management team that is not present on the floor is Robert Rivera, First Deputy, and also Wendy Nobriga, Administrative Officer, and we have Karen Montalvo, who's our Law Office Manager. So, thank you. Just currently, as we proceed before I start the presentation, Members, just to give a brief overlook of our current budget. Currently, we have a total funding of 70, no sorry, 85 E/Ps, those are employees, 33 of those are attorneys. We also have a salaries and wages of approximately \$6,547,965. For our Operations Budget we have \$472,919. And for our equipment is 15,500. Our office is divided into two separate programs. The first one is the Administration Program. So, of those total that I just mentioned, the program total for the administrative side is \$922,975. And for the Prosecution side which is all the attorneys and the various divisions, we have a salary and wages of I believe \$5,939,159, and Operations is 165,250, and equipment is 9,000. So, that total program is 6,113,409. Moving on to what we have submitted to the Council, or at least this Committee, I have asked the secretaries to hand out our biweekly report that we are required to submit to the Managing Director's Office, and it will show you an

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update as to, and this is the, excuse me, Members, just to reference index codes. So, the document that has the index codes coversheet thereafter, you can see the biweekly report. And the biweekly report will indicate number one on our budget, which actually shows our salaries in the Administration Division of, or at least the Administration Program we are a working budget of 608,806, and our expenses to date is indicated as well, and then, you can see the balance. The next code that you'll see is the Operations of the Administration Program and you can see our working budget as well as our expenses today, and the balance remaining that will get us through to June 30th of the end of the fiscal year. The next code that you'll see is 906016C, and that's also Administration. These are the leases that we lease Xerox copies for. We have two Xerox machines and we have a working budget of 7,611. So, you can see the remaining balance is there. The next code that you'll see is our General Prosecution Program and these are the salaries and wages and you can see what's remaining on the balance that will get us through to June 30 as well as the next code, you'll see General Prosecution Operations. So, that is our balance remaining that will get us through to June 30th, 70,000. And so, basically the next code is also leases of our Xerox copies, and that would conclude our summary in terms of our expenses and what we have in balance present. You can see the next section here is our personnel. We've got our Legal Clerk III that we are actually requesting that position, and also will transfer one of the positions into a Legal Clerk as an incumbent. So, you can basically read through the other personnel changes and requirements that we are trying to seek to fill some of these vacancies that we have presented. So, moving on to number three, we have no public complaints as of recorded. We also have number four, which is some of our damage that we've I guess experienced at our building which is the flooding in the basement. And so, that's part of some of the repairs that will be happening and it's, we're really at a disadvantage because we use that basement for our conferences, as well as our training sessions. Number five would be our goals. These are goals that had been always set in the previous Administration, our performance goals and how they're determined and rated. And you can go through those, those were actually in the last 2019 Budget. And some of those numbers look good, and some of those numbers actually need improvement, and definitely we will be looking at other means and ways to I guess adjust or record our performances. Currently, looking at these, some of them are based on surveys. So, we definitely need a better way to measure performances. Okay. And then, moving forward, in terms of our proposals for the 2020 year, fiscal year, we've submitted to the Budget, to the Chair Molina several of the questions that were answered by our Department, number one being what are the top three goals that we have moving forward. And one of them, as I mentioned during my proceedings, my confirmation proceedings, the Maui County Children's Peace Center is one of our most priorities that we have. That was basically in our last CIP budget. So, we were able to purchase the building, and now, we're going to be moving forward to basically have a co-location of various entities that would address our children's abuse, as well as our sexual assaults. We'll also locate our Children's Justice Center there, as well as have a Forensic Medical Examiner based out of that building as well. It would be the first of its kind. And so, we definitely want to move forward into 2020 Fiscal Year to get that accomplished.

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Number two would be having a proactive recruitment for qualified Deputy Prosecuting Attorneys. We do have currently I believe five positions that will be vacant at the end of this month. And so, just like Corporation Counsel, we definitely need the manpower and please don't cut any positions at this stage. We definitely are looking forward to filling those positions and create an active recruitment program. Number three would be a Statewide Victim Witness Advocacy Academy. And we were chosen by the Attorney General's Office to spearhead a Victim Witness Advocacy Training Program. So, Statewide, they would be sending them here to train. And currently, I've come to the understanding that the Attorney General's Office will, I guess, give us most of the, I would say the substantial amount of money would be coming from the Attorney General's Office. There was at one point a matching. But we're still in negotiations for the Attorney General's Office to flip the entire funding. So, that's very promising. So, those items are proposals, or CIPs that we would like to see in 2020. I can't give you the numbers, I'm not authorized to go any further than that. But I can now go ahead and start the presentation and so, that you, Members, could actually know more about our Department. So...

CHAIR MOLINA: Mr. Guzman, I'm going to stop you right there. Members, prior to the slide presentation, any quick clarifications you'd need from Mr. Guzman with the information that was given to you? Or would you prefer to wait --

COUNCILMEMBER SUGIMURA: We'll wait.

CHAIR MOLINA: --until after the presentation?

COUNCILMEMBER SUGIMURA: Wait until after the presentation.

CHAIR MOLINA: Okay. Mr. Guzman, as best you can if you can run through this presentation for us so we can give the Members a little bit more time to respond or ask some questions. Proceed, Mr. Guzman.

MR. GUZMAN: Oh, thank you, Chair. So, first of all, we've always, the last two Budgets we've seen a mission statement of, to serve...to seek justice. So, when I got onboard, we reworded it and went back to our original mission statement from when the Head Prosecutor was Rick Bissen and we adopted that. And so, basically, our mission now, is to seek justice through competent leadership and integrity, the Prosecuting Attorney ensures that the pursuit of justice is done in a fair, effective, efficient manner through victim-centered approach in prosecution. And this all comes down to the quality of life. If we're doing our jobs and we're making sure our communities are safe, then that means each and every individual within our community has a better quality of life. So, moving on, and you could read more into the details. I'm going to try to go as fast as I can so that the Members can leave for the day. Our prosecutorial functions are basically to prosecute criminal and traffic laws or rules and regulations. We cover all the State laws, the County ordinances. We also take to trial regulations under the Department of Land and Natural Resources, as well as adjudicating and moving

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forward the Department of Liquor Control administrative rules and regulations. I have submitted to the Committee our organizational chart. And so, you can see how extensive it is and how the divisions basically are bifurcated and then turn into other units. We have several units of leadership and duties. Moving on to the powers and duties and functions under the Maui Charter, and basically, Members, this is all in our Charter. And this actually enables our office to do our job based off of the Charter and the Hawaii State Constitution. So, moving on, these are the types of offenses that we prosecute. We do misdemeanors, petty misdemeanors, and violations, as well as, just an explanation, misdemeanors are punishable up to one year in jail, petty misdemeanors are 30 days in jail, and violations and those could be criminal and civil cases as well. The felonies, we cover A, B, and C, and murder cases. And you can see the various maximum penalties that we have listed here. So, moving on, for our Administration, like I had mentioned earlier, we have an Administration Program and a General Prosecution Program. So, in terms of our Administration Program, it's our essential duty to make sure that we support and provide enough funding and create goals and objectives for our Prosecution, General Prosecution Division Program, excuse me, and making sure that everyone carries out their duties in an efficient manner. Moving on, as I introduced Mr. Fujieda, Byron, he is the Division Head for the Felony Screening Division. Under that Division, we have five deputies and four staff. This Division actually screens the felony cases. These felony cases come from, usually from the Maui Police Department. And from that point, they are screened, further investigation is set forth if needed, and then, those cases are charged and brought forth through the court system. Moving on, we have a Circuit Court Division, and that is led by Andy Martin. We have seven deputies and as well as four staff that support the Circuit Court Division. And in the Circuit Court Division, most of the cases are felony, adult family court offenses, and jury demands, as well as misdemeanor trial cases. Most of these are at the C, B, and A felony type status, as well as other very heinous other serious crimes that go along. They, this Division actually works very closely with the community, as well as the Maui Police Department. They're also in charge of any wealth or fraud cases, and also investigations that are referred to by the Department of Human Services, pursuant to an agreement that we have with the State. Okay. Moving on, we have a Drug Unit, and the felony drug team is led by team leader Tracy Jones. Under that team we have four deputies and two staff. That unit is very special due to the fact that it's a collaboration with the Maui Police Department's Vice Division, as well as at the Federal level and State level, wherein they work together as a team to enforce a lot of the regulations that the Drug Enforcement Agency dictates and helps coordinate. So, this is basically the first of its kind in the State. And a lot of the other prosecutor offices in the State looked to our office as a model. And we are one of the first to have done the wiretapping type cases. So, very impressive. Moving on, we have a Sexual Assault Unit, and this Sexual Assault Unit consists of currently three deputies, two are active and one is the first deputy. This also deals with all of the children assaults, adults, as well as, let's see, we also have cooperation with the Children's Justice Center, the Child Welfare Services, Child and Family Services, and Sexual Assault Forensic Medical Examiners, and also MPD. So, all of these, this network of team, or

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this unit, works cohesively together to make sure that these cases are handled in the proper manner and very efficiently. Thank you. Moving on to the District Court, we have Terry Herndon, and he is the supervisor for our District Court Division. There are seven deputies under him, as well as eight staff. This Division actually deals with all the misdemeanor cases and petty misdemeanor cases, traffic offenses, as well as covers the five district courts which is in Wailuku, Lahaina, Hana, Molokai, and Lanai. They travel to Molokai, they travel to Lanai to assure that people there and the contingency in the community is best served with justice and the protection of health and safety. They also are in charge of making sure that they work with, and help cases be generated and prosecuted through the County Parks Division, the Maui Humane Society, and the State of Hawaii Department of Land and Natural Resources, and the Airport Department of Transportation Divisions. Okay. Moving on to the Family Court Division, we have our team leader, and that is Shelly De Mattos, and she isn't currently here on the floor. And we also have a Juvenile Court Prosecutor who's in charge of all the Juvenile cases and his name is Brandon Peredes. I know that most of you know him. We have four deputies in the Family Court Division, and four staff. This Family Court Division deals with all of the family abuse cases, as well as domestic violence cases, and kidnapping cases as well. Most of their funding is, excuse me, they have a investigator assigned to that Division who is funded, that position is funded by I believe the Women Against Violence Act. So, that's been an ongoing funded position. We have the Appellate Division which Peter Hanano is the team leader there and he's in the Gallery. There are three deputies that are assigned to the Appellate Division, and one staff. The Appellate Division covers all of the briefing and appeal work that goes on in our office. Most of them are legislative-type work. However, oh excuse me, strike that, one portion of that is tracking legislation, as well as the Appellate Division work is filing appeals and responding to those as well. We also, they also cover the asset forfeitures, and the administration services regarding our Liquor Control Division. So, under our Charter, we are responsible for the Liquor adjudication and prosecution of these administrative liquor laws. Okay. Moving on, we have the Victim Witness Division, and this, the Victim Witness Division has eight counselors. Again, its Ms. Malafu that is, Ana Malafu is the Director. And they have two staff, as well as they are located at the current new building, which is on Wells Street, and will be later designated as the Maui County Children's Peace Center. The purpose of this Division is to make sure that the victims and the witnesses are treated with compassion, dignity and understanding, and respect throughout the criminal justice system. This Division also helps with family support and for those who are seeking help in terms of restitution. And they'll walk them through that process as well. It's a great program. We want to expand this eventually so that we can spearhead the State Academy for victim witness counseling. So, eventually I will be coming to the Council for more monies for, to fill in more positions in that Division. We have our Investigation Division and we have four investigators there. And again, as I had mentioned earlier, one of the investigators is funded by the Violence Against Women Act. And so, this Division is very helpful in terms of making sure that we, at the Prosecutor's Office, generate the evidence that we need, and they assist the other law enforcement agencies to serve subpoenas, conduct background

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investigations, and for specialized purposes so that we can move forward on a lot of these criminal cases. The case load for this Division is very, very voluminous with the attorney-to-investigator ratio is approximately seven attorneys to one investigator. And they respond to about 4,700 requests for services and that was dated back in Fiscal Year '18. So, where do we get most of the cases that come to our office? Ninety-nine point five percent come from the Maui Police Department. Most of those are traffic violations, petty misdemeanors, misdemeanors, and felonies. We also receive cases from the Department of Land and Natural Resources, and those cases mostly involve fish, game laws, cases involving undersized fish or octopus, and also spearing of lobsters out of season. These are mostly misdemeanors. We also receive cases from the Maui Humane Society regarding leash law violations and cruelty to animals. We also, like I had said earlier, we also are in charge of prosecuting the liquor law violations, and most of these are form over service and serving minors under 21, working with the MPD for our decoys to come in and ask for IDs and making sure that these are brought forward to the Liquor Board. We also have conflict cases which other prosecutor offices and agencies find a conflict of interest and would ask our office to handle that particular case. Okay. In terms of our vacancies, as I had mentioned, we have 85 E/Ps and hopefully we can fill the vacancies that we currently have. As I mentioned, we have at the end of the month, we'll have five deputy prosecutors that need to be, those positions need to be filled. We also have for the Administration Program one vacancy, excuse me, two vacancies, as well as our, a Law Clerk, we have two vacancies for a Law Clerk as well as an Office Operations Assistant II. And we will have another two vacancies in our Victim Witness Counselor Division. So, that's it in a nutshell, Members. If you have any questions or detailed questions, I do have my management team here to answer any further detailed questions. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Guzman. That's a lot of good information for this Committee to consider. And, you know, I guess one that I, one issue that I found interesting was it relates to DLNR and cases that, you know, occur on the shoreline or in the water yet it's the County prosecutors that, you know, handle matters like that. I was just thinking where does the State, you know, State attorneys if they, you know, how is that jurisdiction matter handled. So, anyway, just, I thought I found it somewhat interesting. We'll go ahead and open up the floor for questions, Members. Again, just due to our time constraints, one round with one question, and a follow-up. So, we'll go ahead and start with Member Kama.

COUNCILMEMBER KAMA: What...thank you, Chair. What percent of your budget is covered by grants and outside of the County funding?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Currently...thank you for the question, Councilmember Kama. Currently, for our percentage of our grants that we receive for various programs, I would like to estimate at least 10 percent of the programs that we have out there are covered by the

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grants that are provided. I know that we have various deputies that are in charge of various specific grants, and I might at this time ask maybe Mr. Fujieda if he could maybe address whether or not we have x amount of monies within the grants to cover the various programs that we use for training. And if you don't mind, Ms. Kama?

MR. FUJIEDA: Thank you. Can you hear me?

COUNCILMEMBER KAMA: Yes.

MR. FUJIEDA: Alright, so, specifically, the grants that I look at is related to the District Court training of District Court deputies. And that grants involve traffic records type of situations, and OUI, operating a vehicle under the influence of intoxicants. So, basically DUI type of laws involving alcohol and drugs. Those grant monies kind of fluctuate from year to year, but it's approximately I think \$50,000 we get to train our District Court deputies to be on top of new trends of defenses that are occurring within the nation. And we send, we get grants from the Department of Transportation for those monies.

MR. GUZMAN: Just to further add to that, Councilmember Kama, that approximately we have 680,000 of grant money for our Special Needs Advocacy Programs. And so, in addition to that, I think we also have investigator type grant money as well, if you'd like to share that information as well.

MS. KERR: Yes, we have one of five investigators...

CHAIR MOLINA: Oh, I'm sorry, could you --

MR. GUZMAN: Is the mic on?

CHAIR MOLINA: --your microphone? Yeah. There you go.

MS. KERR: Are you able to hear me now?

MR. GUZMAN: Yeah, maybe you can...yeah.

MS. KERR: This?

MR. GUZMAN: Yeah, there you go.

MS. KERR: Hello, Members. Okay.

CHAIR MOLINA: There you go.

MS. KERR: Yeah, currently we have one full-time investigator funded through VAWA grants. That investigator works solely on domestic violence type cases, violence against

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women cases. And that funds an Investigator III level position. So, the County has been supplementing that funding for a bit.

MR. GUZMAN: And we also have about 30,000 in addition on a VOCA grant, which is Violence Against Children Act. And that, we plan to use that 30,000 to help supplement and get started the Maui County Children's Peace Center. And so, I also believe Mr. Martin may have some further information on the grants for the, our Circuit Court Divisions.

MR. MARTIN: Well, I just think as an overall, perhaps, to answer your questions, I think that 10 percent number is pretty accurate. It might actually be a little higher than that. We fund, partially fund a career criminal unit prosecutor, our domestic violence prosecutor, several of our victim witness staff members are fully funded by grants. So, I think that 10 percent number is roughly accurate. As I said, I think it might be slightly more than that as Mr. Guzman pointed out, the SNAP grant alone is approximately \$680,000.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

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

COUNCILMEMBER SUGIMURA: Great numbers. So, you know, just listening to, going through your confirmation and today, that I noticed that the office has your AG recognition for the State Academy Victims Witness Counseling, something with the Drug Unit you mentioned, what did you do? Something with the Drug Unit, you have --

MR. GUZMAN: Oh yeah.

COUNCILMEMBER SUGIMURA: --some kind of State recognition or...

MR. MARTIN: Yeah, so, I think what's unique about our drug unit is we are really the leaders in the state in terms of our use of wire taps. We have a listening post here on the island of Maui that we utilize in conjunction with our Federal law enforcement partners and the Attorney General's Office. We've been very active in utilizing that particular investigative tool. And so, along with the Attorney General's Office, we've been the leaders in the State I think for that particular tool and it's use particularly over the last several years.

COUNCILMEMBER SUGIMURA: Terrific, and then, you have the Maui County Child Peace Center, right, which is being established? I just want to say that I don't ever remember the Department bragging about this in the past. And I think the first time I heard about it was truly last week. Of course, we did know about the, what was the former Ueoka Building 'cause we went through the purchase of that. I like the name, the Maui County Children Peace Center as we saw the Children's Justice Center, or

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different organizations that came to testify when this was, the purchase was being approved. But I want to commend the Department. I really didn't know of truly all of you that are here, that you did the first two items, or had that recognition. The question is, then there, to do the AG recognition of your State academy for victims witness counseling, will that then require more personnel? 'Cause you do have some vacancies. And tied to that is, are your compensation for your 33 attorneys, is it tied to a schedule or a set rate like the Corp. Counsel does where attorneys are a certain level, so you can't negotiate up or down? But I would imagine that you're talking about special talents, or levels of personnel if you're going to be doing this kind of counseling. But congratulations first of all, and then, how do you, how many people will you be needing and how do you promote these, or promote this and then get the proper staffing that you need if you're going to be doing Statewide training? Is that what it is?

MR. GUZMAN: Yes, thank you for the question, Councilmember Sugimura. You're absolutely correct. If we're going to shoot for the stars, we definitely need the bodies and the personnel to do it. And our negotiations with the Attorney General's Office is very positive and it's looking as though we may get that. And then, negotiations further is if we do get it and they're going to be funding it, we're going to need on our part to fund the bodies that we need. We currently have eight positions for the counsel services, I mean excuse me, victim services, the victim services, and two of those positions are vacant. So, we definitely need to start doing more active recruitment and training. And definitely if we're going to do this, we got to do it right. And so, number one, I'm sure you'll see that we will be asking for bodies in the Victim Witness Counseling Division. And in terms of the pay scale of our deputies, they're all set under ordinance, under I believe the salary ordinances. And we are comparable to, oh, the same as the Corporation Counsel deputies. And I believe that we recently received a 3 percent increase for all deputies. But it just, again, it goes by the years of licensure, and you can either go 18 percent below or 18 percent above the average on those. And you're very familiar with what I'm talking about --

COUNCILMEMBER SUGIMURA: Yeah.

MR. GUZMAN: --in the ordinances, yeah.

COUNCILMEMBER SUGIMURA: The steps.

MR. GUZMAN: Yeah, the steps.

COUNCILMEMBER SUGIMURA: So, you're looking at possibly having some personnel increases to fulfill this, this counseling group?

MR. GUZMAN: Yes.

COUNCILMEMBER SUGIMURA: Plus, you have to fill your vacancies?

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MR. GUZMAN: Plus, we have to fill our vacancies.

COUNCILMEMBER SUGIMURA: Okay.

MR. GUZMAN: And so, I definitely, coming in, you know, only being in there for two weeks or so, I know that we have to get a recruiting program on its way and created. There is no recruiting program. So, I've already assigned two deputies to start looking into advertising and going into subscriptions on to a lot of the employment, employee sites and even at the bare minimum, placing notices into the various attorney court jackets at the judiciary. So, slowly but surely, we got to get the wheels moving. Thank you.

COUNCILMEMBER SUGIMURA: But congratulations on this level of recognition Statewide, I mean, truly, right? So, congratulations, all of you. I did not know.

CHAIR MOLINA: Alrighty, thank you . . . *(inaudible)* . . .

COUNCILMEMBER SUGIMURA: Anyway, thank you.

MR. GUZMAN: Thank you. Thank you.

CHAIR MOLINA: Thank you. Member Paltin?

COUNCILMEMBER PALTIN: Well, thank you, Chair. I just was wondering, 'cause I didn't see it in the slides and, I guess, similar to the Chair's question about the DLNR, is that in, tried in Environmental Court? Did that come through?

MR. GUZMAN: There is an Environmental Court. However, the DLNR cases that we handle are under the regulations of the DLNR like for instance, the size of the catch, using a different netting that is inappropriate, those type of cases come to us. Of course, we have DLNR enforcement, and they generate the reports, and those reports are sent forward to our office and are screened. And then are at that point set for, you know, arraignment and plea, and it could go on to trial. But in terms of our Environmental Court, maybe Mr. Martin could answer in more detail.

MR. MARTIN: Yeah, and this is, these cases typically come under our District Court Division with Mr. Herndon. But, basically DLNR has its own set of certainly administrative rules and then ordinances that cover violations of the DLNR statutes. Those are criminal violations going up to the misdemeanor level which then are prosecuted at the, in the District Court.

COUNCILMEMBER PALTIN: So, you guys don't try cases in the Environmental Court?

MR. GUZMAN: As far as I know, I'm not aware of our office handling the Environmental Court cases. I think, Mr. Fujieda, you'd like to add some points to it?

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MR. FUJIEDA: Yes, I believe the Environmental Court was established a couple years ago. I was really heavily involved with that at that time for the protection of our resources obviously. Those cases that come in through DLNR involving natural resource type of violations or criminal offenses do go to the Conservation Court. And they are in front of one judge, I believe, that is knowledgeable about that type of cases. And so, we can fairly prosecute and get the, you know, fair resolutions for those type of cases.

MR. GUZMAN: Yeah, in terms of our structure, our organizational structure, we don't have in a specific set unit to cover it. So, I believe, Mr. Fujieda, could you explain who covers those type of cases?

MR. FUJIEDA: With those type of cases, they come into individual type of a courtroom. So, there's no really set deputy that is currently assigned to handle all the conservation type of court cases. Say an incident happens out in Hana, that deputy who's assigned to that court room will be dealing with those type of cases. So, they don't actually just come into like Wailuku proper to have all those cases heard, they're heard in each jurisdiction, and each deputy assigned to those cases will handle those cases appropriately.

COUNCILMEMBER PALTIN: One follow-up?

CHAIR MOLINA: Go ahead.

COUNCILMEMBER PALTIN: Thank you. So, I just was wondering, you know, if sometimes in the natural resources realm, situations arise that aren't necessarily currently against the law like, you know, over harvesting of lole, or when Kahoma Stream was running they were introducing the aquatic life, the oopu and things like that, and people seeing these being reintroduced and kind of starting to flourish are really overharvesting to the point where they just got reestablished and its questionable moving forward if they will still be available for future generations. And I was wondering, do you guys get involved in like to craft future laws to protect those resources? Or is that more on the State side of things?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Thank you, Chair. Thank you for the question, Councilmember Paltin. Our office isn't, in that certain circumstances, we're not engaged in the enforcement, or at least the on-the-ground enforcement of those particular issues. We basically wait and see whether or not the DLNR officer does a citation and then we would work up the case to see whether or not we have enough evidence. But in terms of whether or not there should be designated areas that should be left to flourish and grow more, I think that's the State level. And it could be even a County ordinance, depending on whether or not we have jurisdiction over that open space. And you could probably set forth a certain time period where that area or land has time to rejuvenate and grow, and then

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push that legislation, or at least a provision of that would revert back to the State and say, okay, now you have jurisdiction. There are a lot of executive ordered lands that we own as a County that we would have jurisdiction over to do that. They're technically titled under the State. But we have jurisdiction over it because it's executive ordered to us. So, you have within your powers at Council to go ahead and regulate and create regulations in those lands.

COUNCILMEMBER PALTIN: Right on, thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo for your presentation, Mr. Guzman. On Page 2 of the document that you provided us with the codes, under General Prosecuting, what's it called, General Salaries --

MR. GUZMAN: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: --working budget 5.9 million, expenses 3.3, and a balance of 2.6 million.

MR. GUZMAN: Yes, yes, I see that --

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MR. GUZMAN: --Councilmember Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Would you provide a little more detail about this? I'm understanding it to mean that as of the date of this it was 3.3 million was encumbered, and 2.6 is outstanding or unencumbered.

MR. GUZMAN: Yes, just to further explain or clarify, the monies that has already been expended is up to this date and time for salaries. And so, the remaining balance of 2,632,077 should get us through to June 30th, which is the end of our fiscal year.

VICE-CHAIR RAWLINS-FERNANDEZ: Two million six hundred thirty-two thousand seventy-seven dollar zero cents?

MR. GUZMAN: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. That should take you, what is that, March --

MR. GUZMAN: To June 30th.

VICE-CHAIR RAWLINS-FERNANDEZ: --April, May, June --

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MR. GUZMAN: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: --three more months.

MR. GUZMAN: Three more months.

VICE-CHAIR RAWLINS-FERNANDEZ: But in the, what, nine months it was only 3.3 million? So, in nine months on salaries it was 3.3 million, and in the next three months you anticipate spending 2.6 million on salaries?

MR. GUZMAN: Yeah, and we would have cost savings for that. We may need it, or we may not, depending on the vacancies that we have. So...

VICE-CHAIR RAWLINS-FERNANDEZ: The five vacancies?

MR. GUZMAN: Yes, the five vacancies. So, at full operations we would most likely use it all up, or if we don't fill those vacancies, definitely that monies could be utilized probably for subsequent overtime that we have. And I do have a report that I just got generated and currently we have a hundred and, excuse me, may I pull that report? From the start of the fiscal year of July to current, we have about 105,000, 746,000 in overtime.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Another question? So, on Page 3, number three, it says public complaints or compliments, none. The Department received no public complaints?

CHAIR MOLINA: Mr. Guzman?

MR. GUZMAN: Yeah, thank you for the question, Ms. Fernandez. And to tell you the truth, Councilmember, I, this particular number three was already filled in when I arrived two weeks ago. So, I didn't have the opportunity to go back through the records, or request from our staff the verification whether or not we ever received a complaint during the fiscal year. So, I get it, it seems kind of strange that no, this, like any Department would get no complaints at all. So, I get it, and I definitely will look into it. But again, I'm just coming in and I was able to verify the numbers. But some of this, like the performance measures I question because they seem kind of, I don't know, not practical. And so, definitely I'm, you know, I'm new, I'm going to make sure that we conduct and create better performance measures and track complaints, 'cause we won't be able to solve these, or come up with resolutions if we don't know what the complaints are. So, I completely understand where you're coming from. And thank you very much for the question.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Mr. Guzman. Mahalo, Chair.

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez. And finally, Mr. Sinenci?

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COUNCILMEMBER SINENCI: Thank you, Chair. I just had a follow-up question on some of the DLNR questions from some of the other Members. In your experience, has there been any situations where the DLNR policies were either concurrent or against State Constitution where you guys found --

MR. GUZMAN: Thank you...

COUNCILMEMBER SINENCI: --some discrepancies between the two?

MR. GUZMAN: Thank you for the question, and a very, very thought out kind of question. I would like to refer that question to one of our deputies if one of you could answer that. I believe Terrence, Terry, if you could come down? Yes, please. Do we also, Peter, can you come down in terms of the Appellate section? There could be conflicts in law that you may be able to answer. Thank you.

MR. HERNDON: Okay. Thank you. As mentioned before, we do have Environmental Court that is in the District Court Wailuku, as well as the various circuits. This Environmental Court is held I believe twice a month, I believe Thursdays in a certain courtroom in Wailuku. In the other various district courts, Lanai, Molokai, Lahaina, Hana, they're also held, they're not held on a regular day because we meet so infrequently. But we do get the DLNR cases on a regular basis. We see a lot of overfishing, undersized fish, various DLNR under the HAR, Hawaii Administrative Rules that are violated. So, we have a dedicated Environmental Court in Wailuku and with a judge, Judge Kawano, who normally presides over those cases. As far as being in that situation regarding, I believe if you could just rephrase, or repeat the question?

COUNCILMEMBER SINENCI: Maybe specific to State Constitution Article 12 Section 7 for customary gathering rights, you know, if there were any discrepancies, or where a State law would, you know, supersede some of the policies concerning customary gathering rights?

MR. GUZMAN: I would like to request our Appellate Division Senior Deputy if he would respond if he is aware of any discrepancies, or contradictions, or conflicts in law in regards to our Constitution and DLNR regulations if you have come across any conflicts of law. And the question is, which one would supersede?

CHAIR MOLINA: Mr. Hanano?

MR. HANANO: Thank you. I'm not aware of any at this point. But to the question of whether, you know, you have a County ordinance and versus a State ordinance that are inconsistent, the State will control. I'm not aware of any that have that kind of situation. But if we did, the State law would supersede the County law.

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MR. GUZMAN: And I believe Mr. Hanano is also referring to our State Constitution as being the law. So, definitely, the State Constitution would trump any type of ordinance we would create in this Chambers.

COUNCILMEMBER SINENCI: You would think that the DLNR would represent the State, the State's mandates, yeah?

MR. GUZMAN: Yes, the DLNR would, is actually the enforcement branch of enforcing those regulations, and whatever the regulations are set forth in the HRS, or even administratively, administrative rules and regs, DLNR actually goes and enforces those. And then, if it rises to a level of charging, then those cases would come to us. But whether or not those regulations are in conflict of the Constitution, the State Constitution, that is an issue that needs to be brought forth by whoever's the defendant, or whoever is party to that case. Honestly, it's unlikely that the DLNR would subject themselves to their own, you know, violation of the Constitution. So, that's something you would probably raise in our Environmental Court system. And it may, you may have standing in it, I'm not sure. But we can look into that.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair. One real quick question. You know, our Council Chair, she's kind of, she stressed a lot of strategic planning for our departments and you mentioned earlier about performance measures. Do you have any plans to...and I appreciate all the descriptions of each of the units, are there any plans to create goals and objectives for the different units so that you can measure some of the, you know, the, some of the volume of the cases? Or so that, I mean, for me, you know looking at those numbers from year to year would really help just to see some of the progress that the Department has, and I guess just to, you know, keep the integrity of the Department.

MR. GUZMAN: Thank you, Councilmember Sinenci, for the question. As I stated on the floor last Friday, I can tell you this much that our cases that are pending, or at least screening, that have been screened for our drug cases, our felony cases, we have 248 in office, we have for our juvenile cases 30, misdemeanor 41, also a sexual assault adult victims felonies 49, juvenile assault, sexual assault victims cases two, as well as misdemeanors we have eight. Let's see, hold on, I apologize, the family adult cases, we have 133, felony cases 679, juvenile cases 182, misdemeanor cases 319, as well as traffic of 32. I agree completely with you, Councilmember. In starting this job, I realized that we need to have a team approach. And I know that we have such talented workers and very dedicated workers in this Department. You don't become a career prosecutor unless you are passionate in what you do, and we have career prosecutors in this Department, we have career clerks, we have career secretaries, and they all want to do their very best for the community. But what I've seen so far is that they're hungry for leadership. And if I can provide that leadership and have an organizational structure where each division, each unit, each team unit has meetings on a regular basis to open up the dialogue and figure out where we want to go, short term, long term, that simple process right off the bat will, it actually will do wonders

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for a department. And so, that's what I'm bringing in, is that making sure that each of the divisions and each of the units start this process of communication and meetings. You can't run a department without meetings and communication. So, that's one of my priorities.

COUNCILMEMBER SINENCI: Thank you. Thank you, Director Guzman. I look forward to the work at the Department. Mahalo. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Alrighty, Members, we've reached the so called zero hour. I want to thank the Department, Mr. Guzman, and your team of attorneys and staff for --

VICE-CHAIR RAWLINS-FERNANDEZ: Chair?

CHAIR MOLINA: --being here.

VICE-CHAIR RAWLINS-FERNANDEZ: Before you dismiss --

CHAIR MOLINA: Yes, Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: --the Department. May I ask a report be submitted to the Economic Development and Budget Committee on the \$700,000 in outstanding overtime that you mentioned in my questioning?

MR. GUZMAN: Yes, I do have a report.

VICE-CHAIR RAWLINS-FERNANDEZ: I appreciate that, thank you.

MR. GUZMAN: I do have a report, yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MR. GUZMAN: I can submit that.

VICE-CHAIR RAWLINS-FERNANDEZ: Alright, thank you. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez, for that consideration. So, again, thank you all for your hard work. I certainly don't envy the work and matters that you sometimes have to deal with out of that office in terms of representing our County. So, it's much appreciated for all what you folks do there, and to all of our other departments as well. So, Members, with no objections, the Chair is going to defer this item.

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COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused AL, RH, KK)

ACTION: DEFER.

CHAIR MOLINA: Okay. Thank you. So, again, Members, thank you very much for attending this meeting on your off week. And it was a very big and busy agenda, but a very productive day indeed. So, with that being said, Members, it is 11 minutes after the hour of three o'clock for Thursday, March 21, 2019. This GET meeting is now adjourned. . . . *(gavel)* . . .

ADJOURN: 3:11 p.m.

APPROVED BY:



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

get:min:190321:mt

Transcribed by: Marie Tesoro

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CERTIFICATE

I, Marie Tesoro, 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 12th day of April 2019, in Wailuku, Hawaii

A handwritten signature in cursive script, appearing to read "Marie Tesoro", is written over a horizontal line.

Marie Tesoro