

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

October 15, 2019

CONVENE: 9:03 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair
Councilmember Riki Hokama (arrived at 9:04 a.m./left at 11:33 a.m.)
Councilmember Tasha Kama (arrived at 9:03 a.m.)
Councilmember Kelly T. King
Councilmember Alice L. Lee
Councilmember Tamara Paltin (left at 11:35 a.m.)
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura (arrived at 9:06 a.m.)

STAFF: Shelly Espeleta, Legislative Analyst
James Forrest, Legislative Attorney
Pauline Martins, Committee Secretary

Don Atay, Executive Assistant to Councilmember Sinenci

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

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

Mavis Oliveira-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, Office of the Mayor
Lori Tshako, Director, Department of Housing and Human Concerns
Vicky Belluomini, Program Specialist, Office on Aging, Department of Housing and Human Concerns
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
Dean M. Rickard, Deputy Chief, Department of Police
Moana M. Lutey, Corporation Counsel, Department of the Corporation Counsel

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

Peter Hanano, Deputy Corporation Counsel, Department of the
Corporation Counsel

OTHERS: J. Nalani Kaninau
George Chyz
Anthony Ranken
Nicholas James Drance
Chris Fishkin
Sam Small
Lucienne deNaie
Plus (4) other people

PRESS: Akaku Maui Community Television, Inc.

CHAIR MOLINA: . . . *(gavel)* . . . The Governance Ethics and Transparency Committee meeting for Tuesday, October 15, 2019 is now called to order. Good morning, Members. You can say good morning.

COUNCILMEMBER SINENCI: Good morning.

CHAIR MOLINA: All right. I'm your Chair Mike Molina. I'd like to recognize the Members in attendance here. We have from Hana Mr. Sinenci.

COUNCILMEMBER SINENCI: Aloha and good morning, Chair.

CHAIR MOLINA: Good morning, sir. And we have Council Chair King.

COUNCILMEMBER KING: Aloha kakahiaka, Chair.

CHAIR MOLINA: Aloha kakahiaka back to you, Madam Chair.

COUNCILMEMBER LEE: Mr. Chair --

CHAIR MOLINA: Member Lee?

COUNCILMEMBER LEE: --how are you? Buon giorno, from Italy.

UNIDENTIFIED SPEAKER: Buon giorno.

CHAIR MOLINA: Buon giorno, thank you. That's a very creative way of saying good morning. Mahalo. And we have my wonderful Committee Vice-Chair Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair. Pehea oe?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Aloha kakahiaka. Maikai fine.

VICE-CHAIR RAWLINS-FERNANDEZ: Maikai.

CHAIR MOLINA: And we have excused is Councilmember Hokama from Lanai, and from West Maui we have Ms. Paltin.

COUNCILMEMBER PALTIN: Aloha kakahiaka, Chair.

CHAIR MOLINA: Aloha kakahiaka. And we have Councilmember Sugimura who's currently excused and, we now have our representative from Kahului, Ms. Kama in attendance.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair.

CHAIR MOLINA: Aloha kakahiaka. And joining us for the proceedings this morning we have Councilmember Hokama, and we have a very big agenda today, Members, but before we address that Chair would like to recognize in attendance from the Administration we have Deputy Corporation Counsel Mr. Ed Kushi and also from the Mayor's Office we have Ms. Gladys Baisa.

MS. BAISA: Bon dia.

CHAIR MOLINA: Same to you, Ms. Baisa. Thank you. And then we have my great Committee Staff Analyst, Ms. Espeleta and our wonderful Secretary, Ms. Pauline Martins joining us this morning. We have testimony, first we have three individuals that have signed up this morning in the Chambers and just a quick overview of the rules of testimony. You'll be given three minutes to testify, please start off by stating your full name for the record, and please indicate to the Committee if you represent any particular organization or if you are a lobbyist as well. So, with that said and we have been informed that currently there is no one signed up in Molokai, Lanai and Hana, but we will get out to those areas to check in. But first let's start off with testimony here in the Chambers in Wailuku. Let's call up Mr. George Chyz who'll be testifying on GET Item 11(28) and Mr. Chyz will be followed by Anthony Ranken.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. CHYZ: Thank you. First of all, I offer my sincere thanks to all the Councilmembers who listened to the holy spirit that resides in their hearts and voted to settle the injection well lawsuit so that the County can begin fixing this tragic pollution problem. By having a conscious and doing what you know in your heart is right you have aligned with righteousness. Thank you very much. Secondly, I am here to give Tasha Kama the shame-on-you award for being the most two-faced traitor on this Council.

UNIDENTIFIED SPEAKER: Point of Order.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MR. CHYZ: You are clearly the opposite...

CHAIR MOLINA: Mr. Chyz, sorry if you could please hold off on the name calling and certainly we appreciate your opinion as far as disagreeing with Councilmembers but if we could . . . *(inaudible)* . . . name calling.

MR. CHYZ: I didn't use a name.

CHAIR MOLINA: Yeah.

MR. CHYZ: I just said shame on you.

CHAIR MOLINA: No. Yeah but the terms like two-faced...

MR. CHYZ: Oh, traitor. Oh, two-faced traitor. Okay.

CHAIR MOLINA: Yeah. Thank you. Let's keep things respectful. Go ahead and continue.

MR. CHYZ: Clearly I won't use those names. You are clearly the opposite of what you claimed to be during your election. I'm so deeply disappointed by your voting record in which you voted in two Corporation Counsel lawyers, you voted in two despicable Corporation Counsel lawyers and then voted against protecting the magnificent national treasure called Maui and the great Pacific Ocean. I feel sorry for your children who must live with the legacy of having a mother who voted to allow corporations throughout the United States to continue polluting the great oceans and other waterways of the world. I sincerely hope you will wake up, wipe the shame from your eyes and begin doing the right thing for the entire world, the County of Maui voters who gave you the privilege of being a Councilmember and your own children. Thirdly, I want to point out that Hawaii means air and water are important. Ha is breath which implies air, wai is fresh water, the okina I at the end means important thus Hawaii means air and water are important. As we all know our lives depend on having clean air and water. These are the most important factors for health and happiness. Finally, it has become very clear that Moana Lutey is providing poor legal advice that would allow environmental destructive corporations throughout USA to continue to pollute the water that is so important to all life. I encourage this Council to retain a lawyer who is known to be aligned with taking care of the environment. I also want to support the settlement of the case involving Tommy Russo. In closing, I want to thank all the people who took time to come to this meeting to support clean water for life. Thank you and aloha.

CHAIR MOLINA: Thank you, Mr. Chyz. Committee members, any need to clarify the testimony from Mr. Chyz? Seeing none, thank you for your testimony, Mr. Chyz. Chair would like to recognize Councilmember Sugimura to our proceedings this morning as well.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Thank you. Next to testify we have Mr. Anthony Ranken followed by Mr. Nicholas Drance. And again, members of the public, anyone out there who intends to testify just for the sake of decorum if you could certainly express your opinions whether agreeable or not with any decisions made by the Councilmembers or Administration but to just keep things respectful as far as any potential terms that could be looked at as being derogatory. So, anyway that's just the Chair's request. Good morning, Mr. Ranken.

MR. RANKEN: Good morning, Mr. Chair. Good morning, Members of the Council. I share the Chair's sentiment that you all are deserving of our respect and I know that you're all trying to do the right thing in your votes on the issue of the injection well lawsuit and I'm testifying on that item but from a very different point of view from the last speaker. I don't think that this is about the injection wells at this point. I want to approach it from a different angle and urge your support for this resolution whether or not you voted to support the injection well settlement. It makes me sad and as an attorney it makes me very angry to see that the County is billed...has been billed \$4.2 million on a case that didn't even go to trial, it's inconceivable, I'd like to see those billings. And I can promise you that if you get an attorney, an appropriate attorney from this community with all the work that's been done already it should only cost about \$20,000 to litigate this...the matter that's now the conflict between the Mayor and the Council. The whole problem apparently could have been fixed for around \$2½ million so, it's a shame that, you know, the years have gone by and this is...the County has just doubled down again and again on the injection wells, but that's water under the bridge and I know at this point there are considerations on both sides of moving forward with the appeal versus settling the lawsuit. But we now have a different issue, we now have a conflict between this Council's authority and the authority of the Mayor's Office and Corporation Counsel. And I think that much like what's going on, on the national level now with Congress, with the President of the United States asserting that he's a dictator and he can do whatever he wants regardless of the prerogatives that Congress has, we have a quite similar issue in the sort of constitutional crisis or Charter crisis here now and I hope that this Council will assert that prerogative to...well, assert its power to control litigation. And I've studied the legal issues thoroughly, I see there's arguments on both sides but I think that this Council's position is correct that it should be able to settle litigation. I don't have time in the 22 seconds that remain to delve into the legal issues anymore but it's been briefed to some extent and a lot more work can be done but I think that's the correct result. And I wanted to say also that there will be a...this is information for you all...there will be a private lawsuit filed in the coming days. May I have another 30 seconds please, Mr. Chair?

CHAIR MOLINA: Mr. Ranken.

MR. RANKEN: There will be a private lawsuit filed in the coming days by individuals from the community and from West Maui to enforce...to try to enforce the settlement, and then I want this Council to think ahead and maybe, you know, the Corp. Counsel, Mr. Kushi in advising the Mayor to think ahead of what will happen when it's time to answer that.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

Corporation Counsel has obtained an opinion, legal opinion that they cannot represent the Mayor or the Council in that matter. So, there will come before you a request for special counsel. I think it would be better if the special counsel is appointed on both sides of this dispute so that this can be properly aired in court between the real parties in interest, the Council and the Mayor's Office and reach a resolution of this very important issue.

CHAIR MOLINA: Okay. Mr. Ranken?

MR. RANKEN: It will come again.

CHAIR MOLINA: Thank you, sir. I have to end your testimony there. Committee Members any questions for Mr. Ranken to clarify his testimony as it relates to the item? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Ranken. So, I just wanted to clarify in the resolution which, you know, was kind of interesting 'cause it was put on...it was...I thought it was sent down from Corp. Council but it's got my name on it. But this was actually written by Corp. Council and it says that the total, in the resolve that the total compensation from employment special counsel shall not exceed \$100,000 but your testimony is that we should be able to do this for around \$20,000 or less?

MR. RANKEN: That's what I would estimate if I were handling it. This is not...first of all there's been a lot of legal research and writing done on it already by both sides, we don't have to reinvent the wheel, any attorneys that step in don't have to start from scratch. Technically there's not going to be a trial, there's not going to be any type of evidentiary hearing or witnesses that's what takes a lot of time and money, depositions and so forth. It's all just pretty much analysis of the law and motion for summary judgment material.

COUNCILMEMBER KING: Okay. Thank you. And then you were mentioning that there would likely be a resolution coming before us for a special counsel for the Mayor that we would also, you're encouraging us to pass as well and is that kind of the same realm you think? Is that like, you know, we're talking about \$20,000 there or so?

MR. RANKEN: I would think so. Maybe you can, you know, be fair to both sides and build in a little cushion say appropriate \$30,000. I would hope then neither side would have to come back for more unless, you know, it goes up on appeal which is possible as well, but even so we might stay within that budget more or less.

COUNCILMEMBER KING: Okay. Thank you, Chair.

CHAIR MOLINA: Thank you, Chair King. Members, any other need to clarify Mr. Ranken's testimony? Ms. Rawlins-Fernandez?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Ranken, mahalo for your testimony. You said that there was an opinion that Corp. Counsel cannot represent the Mayor or the Council in this conflict. Do you know where that opinion came from?

MR. RANKEN: Office of Information Practices, I'm not sure maybe ask Mr. Kushi. I know that it came...the word came from Corp. Counsel that they had obtained the opinion. I have not seen it.

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

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

COUNCILMEMBER PALTIN: Thank you, Chair. My question was just like in regular people terms you're suggesting we hire two lawyers and put them against each other?

MR. RANKEN: Yeah, I guess that's how it would be but at this point the resolution is just to hire, to authorize the retention of special counsel to bring the lawsuit or it could be a what is called a writ of mandamus to the Supreme Court where you go directly to the Supreme Court of Hawaii and ask them to instruct the Mayor to, you know, sign off on the settlement agreement which is even a quicker and simpler process than going to the Circuit Court. Either route is feasible. At this point all that's before you of course is hiring a special counsel. I was thinking perhaps that Members of the Council who support this could speak on the record today and essentially promise that, you know, what's good for the goose is good for the gander and indicate that they would support, you know, support legal counsel for the other side of this question than they happen to be on. But again I see this has gone beyond the injection well question so I would hope that we're no longer saying well five of us are on one side and four on the other because now it's really a broader question of the Council authority that should be resolved.

COUNCILMEMBER PALTIN: So, just to know the answer is what you're saying for clarity?

MR. RANKEN: Yeah. The answer is eventually at some point in the coming weeks or months when a lawsuit is filed, when this Council authorizes a lawsuit, and legal action is filed then the Mayor will presumably come to you and say hey, I need a lawyer too and Corp. Counsel can't represent me so will you guys approve special counsel for me as well?

COUNCILMEMBER PALTIN: Okay, got it. Thank you.

CHAIR MOLINA: Thank you, Ms. Paltin. Members, any other need to clarify Mr. Ranken's testimony? Seeing none, thank you very much for your testimony, Mr. Ranken.

MR. RANKEN: Thank you.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Next to testify we have Nicholas Drance and Mr. Drance will be testifying on GET Items 11(19) and 11(28). Good morning.

MR. DRANCE: Good morning, Chair. Hola. That's bonjour. Good morning. If I could steal a minute from one resolution and borrow that to the other one I'd appreciate it. What an interesting day we have today. We get to talk about four cases of litigation, one in which Corporation Counsel has worked for years to destroy a man in his words, break his back by questioning his journalistic integrity, inflicting that financial and emotional and professional cost on he and his family. Tommy Russo is one of the most loved people on the island, he's publisher of *Maui Time* which probably has double/triple the circulation of *The Maui News* which I read as well. So, that's a case of Corporation Counsel versus this man. The other case which I don't really want to talk about the injection well case specifically because it's not germane to be a resolution but it's germane to another point that I want to make. Where Corporation Counsel...so, now we're in litigation before the United States of America Supreme Court and the Supreme Court of the State of Hawaii simultaneously. One case has corporations across the United States on...anxiously waiting to find out can they continue fracking or doing this or drilling or that and other people here on the island that are concerned about inadequately, incompletely injecting wastewater into the land. So, that's that case, then there's the ocean resort timeshare owner's case. The one has billions of dollars before the United States Supreme Court, the other one is hundreds of millions of dollars and you have copies of court minutes from that case where the judge says it's worth hundreds of millions. Sandy Baz and Mr. Terudo [sic] humiliated the County, humiliated us by going before that judge and saying we can't possibly suffer the consequences, the financial consequences of losing this settlement that the judge warned the plaintiffs and the defendants and they said basically we'd bankrupt the County and they're there begging and pleading for an affirmative finding because we can't suffer the consequences and the judge says that is irrelevant to this case and then he says...he laughs basically at them for doing that. Last thing is the...now I'll touch on 28 specifically. The integrity of your legislative authority granted to you by the County Charter must be assured, it must not be diminished by the kind of precedent this resolution proposes to address. If you didn't see it before in 128...

CHAIR MOLINA: Go ahead, Mr. Drance, we'll give you a little bit more time.

MR. DRANCE: Corporation Counsel acted like a separate and equal branch of government in many cases whose power usurps not only yours but the Executive Branch. The hundred grand is a drop in the bucket compared to the millions that this gentleman Mr. Ranken referred to. I made a formal complaint to GET, Board of Ethics and ODC a couple of weeks ago. I revised the most recent one to ODC Bradley Tamm. You have a copy of that correspondence there where I specifically talk about the behavior, the arrogant behavior of Corporation Counsel to not settle these cases which never should have even come to litigation in the first place. So, as far as I'm concerned Corporation Counsel is a renegade branch of this government that doesn't represent you, the Executive Branch, or the people. We would never gamble with these hundreds of millions of dollars,

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

ordinary citizens would never gamble with these stakes this high and they have no right to do it. Lastly, I'll wrap up talking about self-righteous arrogance and hubris. I happen to have had a conversation with Moana Lutey and one of the directors at the South County Budget meeting. I was stunned at the arrogance of this one individual who came up with all the numbers that you were given that represent the consequences of this other litigation, fake numbers, you know, what that individual actually said to me? I said have you objectively looked at all the scientific evidence from all the sources, credible, Bruce Anderson from DOH who wants this thing to go away. I mentioned the name of somebody on this island also much loved, more highly credentialed than this department director who gave those figures, more highly credentialed, properly credentialed and he laughed. He laughed when I mentioned that individual's name and, you know what he said, I get my numbers and facts and figures from my people and you get your number and facts and figures from your people and I don't agree with them and they have no credibility. Now what kind of professional is that? You all have to be objective, not subjective, your personal opinions and personalities have absolutely no bearing on any decision or judgment that you make and that goes for everybody in this building. This is business, personal feelings have nothing to do with it. This gentleman and Corporation Counsel I submit makes these judgments and decisions and courses of action based on their own subjective bias points of view. Now I resent that and that's unprofessional and I am furious about it. The four cases, the two at the Supreme Court, Tommy Russo, trying to destroy your own power here if it wasn't so absolutely disgusting it would be laughable.

CHAIR MOLINA: Okay. Thank you for your testimony, Mr. Drance. Committee Members, questions for Mr. Drance to clarify his testimony? Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Drance. I just was wondering about this written testimony that you handed out, the second stapled one. It wasn't, on this one that I have it wasn't signed and dated and I was wondered if you turned it in...

MR. DRANCE: Is that...yeah that's for Bradley Tamm ODC.

COUNCILMEMBER PALTIN: Yeah.

MR. DRANCE: Yeah, I signed the original but I didn't scan the signed original, I sent that by registered mail a few days ago.

COUNCILMEMBER PALTIN: And so, you haven't...

MR. DRANCE: The copy that you have is not signed but the copy I sent in was signed.

COUNCILMEMBER PALTIN: Have you gotten a response?

MR. DRANCE: I have not gotten a response to that one and now that you mentioned it actually I haven't gotten the registered receipt showing that it was received but I got a receipt

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

from the post office because I sent it by registered mail, but now that you mentioned it maybe it's in today's mail.

COUNCILMEMBER PALTIN: Thank you.

CHAIR MOLINA: Okay, thank you very much, Member Paltin. Members, any other need to clarify Mr. Drance's testimony? Seeing none, thank you very much for your testimony, Mr. Drance.

MR. DRANCE: Mahalo.

CHAIR MOLINA: Thank you. Next to testify on GET Items 11(28) and 11(20) we have Chris Fishkin to be followed by Sam Small.

MR. FISHKIN: Good morning, Councilmembers. Good morning, Chair. Sorry about my hat, I'm having a bad hair day. I just wanted in regards to the injection wells special counsel I want to echo what attorney Ranken said. It's absolutely necessary to obtain special counsel at this point and as a good faith offering I think it's really important that the Mayor also gets to have special counsel, so I do believe that, that should be included in the Members who, you know, don't feel like its they're getting...what's the word backed up on, I think it's fair to have both sides played out. The problem is if you don't authorize the special counsel today as the resolution states I believe that Councilmembers that don't do that are going to be held grossly negligent for not allowing the Council to have counsel because right now the Council has no counsel. And what Corp. Counsel did Moana Lutey I've been telling you folks this for years now and it's coming down, it's really coming down to it now. Everything Nick Drance said is absolutely correct, I've been saying this for years you're gonna find Lutey has seriously abused her power. The O...I believe it was an ODC informal opinion that was given to Lutey that she cannot, Corp. Counsel cannot represent either of them the Mayor or the Council in resolving this crisis with the Charter right now. And then she has the audacity and abuse of power to write to the Supreme Court a letter saying basically that this should go forward, she's representing the County but not the Council. She's representing the Mayor but not the Council, that's an egregious abuse of authority. I think you're gonna find that she's...it's just an amazing cause for disciplinary action and that will be brought to the ODC's attention along with many others in terms of her violations of professional responsibility. She is absolutely usurped like Mr. Drance said the power of both the Council and the Mayor in this case. And I understand that there's certain Councilmembers that believe the vote should have gone the other way, I respect that but with that said you both need counsel now. The Council needs special counsel and so does the Mayor. So, I want to support that, and we need to prioritize the integrity of government over any one issue now and the integrity of government is at stake, we're having a major crisis, and the people don't necessarily understand it or can relate to it but it's happening. And I'm just going to move on to Mr. Russo, I had a private phone...

CHAIR MOLINA: Hang on, Mr. Fishkin.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MR. FISHKIN: I'm sorry.

CHAIR MOLINA: Members, any need to clarify Mr. Fishkin's testimony --

MR. FISHKIN: Sorry about that.

CHAIR MOLINA: --for the previous item he just spoke of? Okay go ahead, Mr. Fishkin, on your next item.

MR. FISHKIN: Thank you very much. And as regards, the settlement regarding Tommy Russo. I had a personal conversation with Tommy about his case, like Corp. Counsel Lutey has not given this Council other settlement proposals over periods of time that have been brought to the attention of Corp. Counsel pursuant to protocol. She also didn't bring Tommy Russo's...and matter of fact Tommy Russo had to go to the Federal Court judge to demand that Ms. Lutey follow the rules of professional conduct and provide the settlement that you have now before you. She had not done it and she was unwilling to do it till a Federal Court judge made her do so in a conference with Tommy Russo and Ms. Lutey. And I had that private conversation with Mr. Russo directly so that's, you know, that's from my own personal experience of him talking to me and what he said. So, Ms. Lutey is demonstrating over and over and over again a pattern of misconduct that needs to be brought to the ODC's attention and usurping the power of both the Council and the Mayor to do their own will. And finally, I just want to say, Ms. Sugimura, you made a statement that you were voting to send it to the Supreme Court--going back one second--because the...you wanted clarity, well right now we need special counsel for the same reason just to get clarity on whether or not the power of the Council and the resolution pursuant to Section 2.2 which I believe gives this Council resolution authority should go forward or not but it's a matter of clarity, special counsel. It's not a matter of taking sides, it's a matter of having a just decision made in the matter. So, I thank you for your time and consideration. Aloha.

CHAIR MOLINA: Thank you very much, Mr. Fishkin. Members, questions related to GET Item 11(19)? Member Rawlins-Fernandez followed by Member Paltin and Chair King.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Fishkin, mahalo for your testimony.

MR. FISHKIN: Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: So, you said in a conversation with Mr. Russo, Mr. Russo's attorney proposed a settlement offer to Corp. Counsel and they didn't bring it to the Council, do you know what year that was?

MR. FISHKIN: I can't tell you the year.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MR. FISHKIN: I know he was blocked from having his settlement, according to Mr. Russo he was blocked from having his settlement provided to the Council, his proposal. I can't tell you any further details on that because I don't, I don't know but I know he had...he stated he had a...had to have a conference with a Federal Court judge that was hearing the case to force Ms. Lutey to present the proposal you now have before you to this Council.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo.

MR. FISHKIN: You're welcome. Thank you.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

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

COUNCILMEMBER PALTIN: I kind of had the same question 'cause this says 2012 and then all that time --

MR. FISHKIN: Well it's...

COUNCILMEMBER PALTIN: --had Pat Wong and then had Lutey.

MR. FISHKIN: I have personal knowledge having been a paralegal to a lawyer in a separate case where Pat Wong did not, would not give the settlement proposal --

COUNCILMEMBER PALTIN: I mean I guess my question --

MR. FISHKIN: --to the Council.

COUNCILMEMBER PALTIN: --was like how come if you don't know the year that the settlement was offered how come you know it's --

MR. FISHKIN: I'm...

COUNCILMEMBER PALTIN: --on Lutey versus Wong because Wong was here from like that whole time period, you know, what I'm saying?

MR. FISHKIN: Because I was told specifically by Mr. Russo that the matter concerned the Federal Court judge requiring Lutey to issue this settlement proposal that you have now before you to this Council because it hadn't been presented prior and she was refusing to do it in her tenure.

COUNCILMEMBER PALTIN: Oh, okay. Thanks.

MR. FISHKIN: Yeah.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Thank you, Member Paltin. And we have Chair King followed by Member Kama.

COUNCILMEMBER KING: Chair, that was my question so it's been answered. Thank you.

CHAIR MOLINA: Okay. Thank you Chair. Ms. Kama?

COUNCILMEMBER KAMA: So, Chris, can you tell me where does it say that when Ms. Lutey wrote the letter to the Supreme Court that she was not acting in her professional capacity?

CHAIR MOLINA: Sorry, Member Kama, you're asking...I know earlier I offered the Members a chance to clarify, this is related to the Special Counsel?

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: Okay. Members, any objections to Ms. Kama's question related to the previous one? Okay. You want to go ahead and restate your question to Mr. Fishkin.

COUNCILMEMBER KAMA: I just wanted to ask him how does he know or what...where is it written that what Ms. Lutey had done was wrong in her capacity?

MR. FISHKIN: Okay. Thank you, Ms. Kama.

COUNCILMEMBER KAMA: Thank you.

MR. FISHKIN: Basically, it's...not everything has to be written, it's an implication based upon the opinion that was given by the ODC to Ms. Lutey that she cannot represent either the Mayor or the Council to settle and resolve the issue pertaining to this crisis of Charter as to who has the power to settle the case. And so, for her then to after being given that, that verbal opinion by the ODC to write a letter to the Supreme Court saying I'm the Corporation Counsel, I am the sole person that represents the County and then to further say that I am directing you to proceed with the case means that she's actually taking sides at that point in that disagreement, in that unresolved matter and she is actually telling the court to go forward because Ms. King does not have the power to do that and she does. That's a complete violation of...in my opinion and I think you'll find out in the ODC's opinion later of her being, abusing her power because she's already acknowledged and it's been acknowledged that there is an unresolved matter pertaining to the powers and now she's going and representing one party and claiming she's representing the County which does not include this Council. 'Cause whether you voted for or against the injection well settlement the Council voted --

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

MR. FISHKIN: --to actually --

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Okay. Mr. Fishkin --

MR. FISHKIN: --execute that settlement.

CHAIR MOLINA: --thank you. You've answered Ms. Kama's questions.

MR. FISHKIN: Okay.

CHAIR MOLINA: Okay. And seeing no other need to clarify Mr. Fishkin's testimony, thank you very much, Mr. Fishkin --

MR. FISHKIN: Thank you very much.

CHAIR MOLINA: --appreciate it.

MR. FISHKIN: Thank you, Chair.

CHAIR MOLINA: Okay we've got two more testifiers signed up here but in the meantime, Chair if there's no objections, would like to go out to our District Offices to check in and see if we have testifiers? Let's go out to Molokai first, Ms. Lindo out on Molokai do we have any testifiers on any of our agenda items today? Ms. Lindo? We're having some technical difficulties with our connection. Okay I guess we're still on. Okay while we await to hear from Molokai let's go out to Lanai and, Ms. Fernandez, do we have anyone who would like to testify on our agenda items today?

MR. FERNANDEZ: Good morning, Chair. This is Denise Fernandez at the Lanai Office and there are no testifiers.

CHAIR MOLINA: Okay. Mahalo. And let's go out to Hana, Ms. Oliveira-Medeiros, do we have any testifiers today? Mavis, are you out there in Hana?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. this is Mavis Oliveira-Medeiros from the Hana Office and there's nobody here waiting to testify.

CHAIR MOLINA: Okay. Mahalo. If we do...we'll try to establish a connection with Molokai and go back to them to see if we have any testifiers while we try to correct any technical difficulties that we may possibly have. In the meantime, let's come back here to the Chambers, we have Sam Small who'll be testifying on three items today, GET Items 11(19), 11(20), and 11(28). Good morning, Mr. Small.

MR. SMALL: Good morning, Chair Molina. Thank you as always it's an honor to be a part of the democratic process, thank you for allowing me to speak today. I'm going to try to stay on my script 'cause I've got a lot, it's, some of it is represented by this volume that I have in my hand here which is an affidavit that I've written that documents with supporting documents that documents many of the claims and assertions that I'll be

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

making of professional malpractice on the part of Corporation Counsel. Mr. Victorino admitted last week that he personally didn't know the facts on the injection well case well enough to have testified in front of this Council without looking like a fool. Well, I get that, it really goes without saying that Mike didn't write the press releases that he put his name on filled with all those fabricated, heavy duty, let me tell you what's going to happen, doom and gloom, sure thing, possibilities. The Mayor doesn't actually know about any of this stuff himself, he has just let the oil and gas industry lawyers from Hunter [sic] Andrews and Kurth make all this up. It is fear mongering, Mr. Mayor, and deceitful and not at all in line with Christian or local values. Just the same way Moana Lutey is now simply fabricating out of thin air an opinion that gives the Mayor authority over your legitimate vote. How does it feel, Councilmembers, to be on the short end of that stick? Are you pissed off? You should be. Our Charter explicitly gives this Council the authority to prevail over any disagreement with the Mayor just by voting on an ordinance on behalf of all of us. You already did that and these enormously well-funded outside interests want to take your authority away. This is no longer just about the injection well case, Corp. Counsel, the Mayor and others have so allowed themselves to be influenced by industry forces that are hell bent on their own national agenda that they have thrust upon all of us a manufactured Charter crisis that does absolutely no good for the people of Maui, our economy, or our environment. What they are doing is destabilizing, divisive and will have lasting negative impacts on this Council. After hearing so much about wanting to go to the Supreme Court to gain certainty how can they possibly justify manufacturing a Charter crisis that only creates uncertainty. Nothing good will come from what Corp. Counsel and the Mayor have been coerced to do if they are successful doing it. It is actually a huge opportunity for the future of Maui County in terms of accountability, transparency and fairness...they all kind of blend over so if you'll roll me in.

CHAIR MOLINA: Okay. Thank you, Mr. Small. Members, any need to clarify Mr. Small's testimony on GET Item 11(28)? I'm sorry, Chair King?

COUNCILMEMBER KING: I have a question, thank you, Chair. So, thanks for being here, Mr. Small. You said in the beginning of your testimony that the Mayor said he didn't know enough facts on the injection well case, what, can you point to where he said that?

MR. SMALL: That's what he said to his staff in staff meetings. He openly said that in an open room of his employees last week that he didn't want to be cross examined, he couldn't stand up to being cross examined on these issues.

COUNCILMEMBER KING: Okay. And then somebody told you?

MR. SMALL: That's correct.

COUNCILMEMBER KING: Okay. I didn't know if that was printed somewhere. Okay. Thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER SUGIMURA: Chair?

CHAIR MOLINA: Thank you, Chair King. Member Sugimura?

COUNCILMEMBER SUGIMURA: That's interesting, I was going to ask the same question. So, who is that person that you got this information, an employee of the Mayor's Office?

MR. SMALL: An employee of the Mayor's Office yeah.

COUNCILMEMBER SUGIMURA: Who is it?

MR. SMALL: You know, I think that employee probably is somewhat fearful for their employment. So, I decline to...

COUNCILMEMBER SUGIMURA: Can you say what day...date that happened...around?

MR. SMALL: I think it was early last week at one of the Mayor's --

COUNCILMEMBER SUGIMURA: Staff meetings?

MR. SMALL: --engagements with his staff.

COUNCILMEMBER SUGIMURA: Thank you.

MR. SMALL: Yeah.

CHAIR MOLINA: Thank you, Member Sugimura. Any other need to clarify...

MR. SMALL: I don't think the Mayor would deny it.

CHAIR MOLINA: Hang on, Mr. Small, hang on. Okay. Any other need to clarify Mr. Small's testimony on 11(28)? If not, Mr. Small, go ahead and testify on your next...sorry, Member Kama?

COUNCILMEMBER KAMA: Can you define what a manufactured Charter crisis is?

MR. SMALL: Well, sure. Corp. Counsel has referred to State Court in Georgia, a ruling made in a different state and has tried to apply it to our Charter. They've taken the Honolulu Charter, something in the Honolulu Charter and assert that Maui has the same language in its Charter and we don't. And they've used those two things to justify their position as to why Lutey can represent to the Supreme Court the Mayor's position but not yours.

COUNCILMEMBER KAMA: Thank you. Thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Thank you, Member Kama.

MR. SMALL: And those...that is manufacturing.

CHAIR MOLINA: Alright. Thank you, Mr. Small. Members, any other need to clarify Mr. Small's testimony on this item? If not, Mr. Small, go ahead and testify on your next agenda item.

MR. SMALL: Thanks, I appreciate it. This is actually a huge opportunity for our future in terms of accountability, transparency and fairness for this Council and the citizens you represent. If you nine rise to the challenge to do what no other Council has had the guavas to do and that is to purge Corporation Counsel of those lawyers who are so professionally conflicted by their protection of past corruption that they can no longer possibly serve the best interests of the people. There's just so much direct evidence of wrong doing by Corp. Counsel that you just have to get your own lawyers, they will help you see through this mess, you just have to. It's not that...it's not just the injection well case, it's the time share tax manufactured as a weapon, it's the intentional six-month delay in filing the judge's ruling in Eric Poulsen's Upcountry water bill suit designed to deny Mr. Poulsen...

CHAIR MOLINA: Mr. Small?

MR. SMALL: Yeah?

CHAIR MOLINA: If you could kind of lay off of those subjects which are not quite on the agenda, so thank you.

MR. SMALL: It's withholding Tommy Russo's agreement which I...which you just heard about. It's the Upcountry water bill itself and the bogus language that Corporate Counsel inserted to secretly manufacture a giveaway to developers Countywide at the taxpayer's expense. It's the safety and comfort, the arrogance that Mr. Drance spoke to, that they feel that they can do these really wrong things and get away with it so well that they even have the lawyer who wrote the bogus language of the Upcountry water bill advising you on how to fix what she intentionally broke and it was intentional because the Council killed the three lots or less deferral.

CHAIR MOLINA: Mr. Small, again no more on the water bill please, keep it focused on Mr. Russo's matter.

MR. SMALL: Yeah. None of you I think can possibly say you're serving the best interest of the people if you don't agree that this Council needs its own legal representation. You know, it all dovetails because you can't really be taking advice from Ms. Lutey, she lied to you in her confirmation hearings. The two sentences that she tried to insert into injection well authorization ordinance were not at all common, she absolutely did try to usurp yours and the Mayor's authority. And had we not called her on it we actually wouldn't,

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

they wouldn't have had to bother conjuring up this Charter crisis. And on the flip side if their claim of authority, this manufactured claim of authority that they're making out was actually real then Lutey never would have had to have tried to usurp anything in the beginning. It's not real, it's fake. You could expect Corp. Counsel and their hired guns are not gonna role over here, they will hit you with everything they have. They have essentially unlimited funds and believe it is their professional obligation to do everything, including lying to the court in order to prevail for their clients who it is now obvious are not this Council.

CHAIR MOLINA: Okay. Thank you, Mr. Small. Committee Members, any questions for Mr. Small related to GET Item 11(19)? Seeing none, Mr. Small, go ahead and testify on your last item which is GET Item 11(20).

MR. SMALL: Thank you for allowing the overlap. I guarantee you the next battle after you do vote as early as Friday because you can move this forward today. As early as Friday to procure an independent counsel, Ms. Lutey is going to demand that she gets to pick the lawyer that gets hired and to manage that relationship. You can't allow that to happen, I don't even think you can go into executive session with Ms. Lutey today on Russo's settlement or anything else. Lutey's relationship to this Council is so conflicted you should be looking at the old lies that she told in her confirmation hearing and there are more and use them to impeach her. The Mayor also needs to get free of Moana Lutey's conflicted manipulation so as you procure counsel and representation for this Council...

CHAIR MOLINA: Mr. Small, again could you confine your testimony to the GET Item 11(20) related to the legal and Legal Aid Society of Hawaii, the need for special counsel? If you could again craft it towards that please.

MR. SMALL: My apologies. Legal Aid Society was...is not on my agenda.

CHAIR MOLINA: Oh, okay. You had it listed as 11(20) as one of your agenda items.

MR. SMALL: I must apologize.

CHAIR MOLINA: Okay.

MR. SMALL: I read through that...

CHAIR MOLINA: All right well thank you, so I'll have to stop your testimony. Any other need...

MR. SMALL: If I could have 30 more seconds to wrap up, we don't have that many people here today?

CHAIR MOLINA: Members, objections to allowing Mr. Small 30 more seconds? Okay, Mr. Small.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MR. SMALL: Thank you so much. The Mayor also needs to get free of Moana Lutey's conflicted manipulation so if you procure counsel and representation for this Council, please also procure independent counsel and representation for the Mayor too. And to the Mayor, Mike, please come to your senses, you're embarrassing yourself and Maui too. Trump's EPA already has other cases that will achieve their goals of allowing polluters to pollute more, they don't really need Maui's injection well case to go to the Supreme Court to do their dirty work. Why sell out...

CHAIR MOLINA: Mr. Small, thank you, you've reached the 30 seconds.

MR. SMALL: Yeah.

CHAIR MOLINA: Members, any other need to clarify Mr. Small's testimony? Okay. Thank you very much, Sam. Okay we have one more testifier here in the Chambers and I've just been informed that on Molokai they do not have any testifiers. Yeah, we have next to testify Lucienne de Naie.

MR. SMALL: The written...I've also submitted written documentation and that includes an affidavit from Joanne Johnson Winer who was a past Councilmember which I hope that you will all read, it is explosive --

CHAIR MOLINA: Okay.

MR. SMALL: --and in her condemnation of the actions of Corp. Counsel.

CHAIR MOLINA: Thank you very much we've received that.

MR. SMALL: And from Matson Kelly an attorney on the same issues.

CHAIR MOLINA: Thank you.

MR. SMALL: Thank you.

CHAIR MOLINA: Thank you. We have Ms. Lucienne de Naie who will be testifying on GET Items 11(19) and GET Item 11(28). Good morning, Ms. deNaie.

MS. de NAIE: Good morning, Chair Molina and Members of the GET Committee. Thank you for this opportunity to testify. First on the matter of Tommy Russo and the settlement I'm glad that this is finally like hitting your guys' desk because what a crazy situation here in our little Maui. And I've known Tommy for years since he was in his 20's and he's a great citizen, he's a real important part of our business community and I think he did, you know, a good service to bring to light how sometimes our police get over zealous and if citizens aren't giving us feedback we can't know what we need to improve in our system. So, if there's a reasonable settlement I think it should be made and we go on. Onto the next item.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Members, any need to clarify Ms. de Naie's testimony on GET Item 11(19)? Seeing none, go ahead, Lucienne, for your next item.

MS. de NAIE: I'm not privileged to that settlement, you know, I just know the Russo family. On the matter of the special counsel for the settlement of the injection well case, you know, I've been attending Council meetings here for I don't know 20-some years and I've seen a number of occasions when the Council did elect to appoint a special counsel and they were all very justified. Sometimes it had to do with the fact that it was a matter of expertise that was just beyond the general _____ of our Corp. Counsels and quite often it was a matter like we have here where you have the Mayor going in one direction and the Council going in another and you really do need clarity and the best way to get that clarity is to have a special counsel who is not beholden to either side basically, who can be brought in with a fresh perspective and who can fully represent each side. So, the Council really deserves in this case to have their own voice and, you know, so does the Mayor if that is what he believes. But I remember back when Mayor Lingle wanted to make some deal with Amfac for the North Beach site and she was kind of making secret deals and the Council didn't even know what was going on and they asked for special counsel, it was Joanne Johnson a Councilmember representing West Maui who brought that to the Council's attention and they definitely supported her. And they got a special counsel and they got in there and they made it a deal that was actually going to benefit the people and not just some sort of private arrangement between the Mayor and some people who came into her office which, you know, sometimes happens. So, I'm not saying that's happening here, but when there are areas that are in the gray I think we need to shine some light on them so please approve this request. Thank you.

CHAIR MOLINA: Thank you, Ms. De Naie. Before I open up the floor for questions for your testimony, congratulations on your award over the weekend from the Surfrider Foundation --

MS. de NAIE: Thank you very much.

CHAIR MOLINA: --just wanted to throw that in there. Okay questions to clarify Ms. de Naie's testimony? Ms. Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. de Naie, for being here. I was wondering if you could clarify what you meant by beholden to either side 'cause like if you...isn't the lawyer beholden to the person that pays them?

MS. de NAIE: Well, the lawyer who represents the County tends to drift more towards the Mayor's side of things, and we have two branches of government because they provide balance. And so, if you then are getting legal advice and it can sometimes be really more weighed in the direction of one branch of that government then it is not impartial. If you hire your own attorney they will tell your story, will they be beholden to you? Well, yes, but they won't be beholden in a way where it's institutional, in other word's they'll be hired to do a job and to provide you with good legal advice. You need good legal

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

advice and the Mayor needs good legal advice and the Corp. Counsels are kind of caught in the middle, they're supposed to serve both sides so if both sides are saying different things it's very hard for them to serve both sides.

COUNCILMEMBER PALTIN: Got it. Thanks.

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

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Ms. de Naie, for being here. You know, the County has hired special counsel to represent us at the Supreme Court and I believe that was from the last Administration.

MS. de NAIE: That's true, yes.

COUNCILMEMBER SINENCI: So, the Administration had hired that special counsel.

MS. de NAIE: And that falls under the category of special expertise, that's another category of hiring special counsel when special expertise is needed, I believe that's why the Mayor reached out to people who had the depth of experience or so it was portrayed in Clean Water Act violations which, you know, you can't really expect your average Corp. Counsel that works here in Maui County they're, you know, they're generalists, they're good at everything but they don't like dive in on these complex federal laws. So, but that Corp. Counsel...that special counsel, the Council at the time voted to authorize them but you have a different Council now, it's, I'm not sure if this Council would authorize that same special counsel. You know, we all live with an ongoing thread of decisions made by those who come before us.

COUNCILMEMBER SINENCI: All right. Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Sinenci. Okay, seeing no other need to clarify...sorry, Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for being here, Lucienne, and I think your...you got two awards in the last week that I've seen you so you got this walk of fame thing going with *Akaku* too so congratulations on that as well.

MS. de NAIE: Thank you. It's very humbling. Guess you get old enough and they run out of people and they need to give you an award.

COUNCILMEMBER KING: Well, we really, I think the whole community appreciates your involvement and your expertise. So, I just wanted to clarify something that you just said earlier about the previous Council hiring special counsel for expertise in the clean water arena 'cause I wasn't on the Council back then but --

MS. de NAIE: Right.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER KING: --my understanding was that they hired them because they had the experience of going to the Supreme Court, but in your opinion they also have expertise in the Clean Water Act?

MS. de NAIE: Well, I was deposed by them and they asked a lot of very specific questions about Clean Water Act and related things. So, I think that they looked for someone who had expertise at the Supreme Court and also knew Federal law, perhaps it's not just Clean Water Act perhaps they were conversant in a variety of Federal laws.

COUNCILMEMBER KING: Okay.

MS. de NAIE: They did seem to know, you know, they were conversant with the Clean Water Act.

COUNCILMEMBER KING: Okay well that's good to know. But is it also your opinion that they're conflicted out, that if Corp. Counsel is conflicted out that special counsel is also conflicted out?

MS. de NAIE: Well, I'm not an attorney, but I think that opinion is already been given that, you know, they're already heading in one direction and a new direction is being suggested and they don't seem open to switching gears and being in that new direction.

COUNCILMEMBER KING: Okay. All right, thank you.

CHAIR MOLINA: Thank you, Chair King. Seeing no other request to clarify Ms. de Naie's testimony, thank you, Lucienne, for your thoughts today on the item. Ms. de Naie is the last individual to have signed up for testimony here, seeing no one approaching the gallery or any signal for additional testimony, Members, any objection to closing public testimony for our agenda today?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Thank you, so ordered.

. . . END OF PUBLIC TESTIMONY . . .

CHAIR MOLINA: Alright, Members, let's go ahead and just delve into our agenda. Members, Chair has a request to make of you, we do have first on the agenda GET Item 2(23), I've been informed that the second matter from our Department of Housing Human Services, they do I guess have some matters to take care of as soon as possible. If there are no objections I'd like to address that matter first and then we'll go back to GET Item 2(23), any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Okay, so ordered. So, we'll ask Department of Housing Human Concerns Director Ms. Tsuhako to come up to the front.

GET-11(20) (SPECIAL COUNSEL AUTHORIZATION: LEGAL AID SOCIETY OF HAWAII AS SPECIAL COUNSEL FOR LEGAL SERVICES ADMINISTERED THROUGH THE OFFICE ON AGING) (CC 19-342)

CHAIR MOLINA: This particular item relates to Special Counsel Authorization: Legal Aid Society of Hawaii as Special Counsel for Legal Services Administered Through the Office on Aging, and I guess who would like to go first to give their thoughts on this? Ms. Tsuhako or would you prefer Corp. Counsel? Would you like the privilege of...

MS. TSUHAKE: I'll go first.

CHAIR MOLINA: Go ahead, Ms. Tsuhako.

MS. TSUHAKE: Thank you. Good morning, Mr. Chair. Good morning, Members. I'm here this morning with Vicky Belluomini who's a Program Specialist at the Office on Aging. We're here to ask for your consent to enter into agreement with the Legal Aid Society of Hawaii. Our Office on Aging is a designated area agency on aging, its designation allows it to receive Federal funding through the Title 3 Older Americans Act for a variety of services geared specifically to our kupuna population. One of the funding streams that comes through the Office on Aging is for legal services specifically to seniors and other elders for issues that they deal with including those who raise grandchildren because of their family's particular circumstance. So, this agreement would allow the Office on Aging to engage in a contract with the Legal Aid Society so that those legal services can continue to be performed. So, we ask for your support. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Tsuhako. Any other comments from Ms. Vicky Belluomini to add to the director's, you have anything else you'd like to add?

MS. BELLUOMINI: Thank you, Council. We actually don't do any...Legal Aid Society doesn't do any criminal work for us, they do basic landlord-tenant stuff, they also do advance health care directives, power of attorney kind of things, so it's totally outside of what our Corp. Counsel does so it's a total separate thing. And it is required under the Older Americans Act that we use a certain percentage of our funds for legal services to seniors. Thank you.

CHAIR MOLINA: Okay. Thank you very much. Members, the floor is now open for questions for the Department of Corporation Counsel. Member Hokama followed by Member Kama.

COUNCILMEMBER HOKAMA: Chairman, I thank you. I'm just curious, do you need State approval since this is a State program?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. BELLUOMINI: The money comes from the State.

COUNCILMEMBER HOKAMA: . . .*(inaudible)*. . . that's right and this is a State jurisdiction...

MS. BELLUOMINI: Yes, and it is required by the Federal government as well as the State government for us to procure those services.

COUNCILMEMBER HOKAMA: So, what's the answer to my question?

MS. BELLUOMINI: Oh...you want to...

MS. TSUHAKE: Thank you, Mr. Hokama. The answer is no, we don't need State approval. The State's Executive Office on Aging is a pass-through agency for the funding from the Federal Government. So, the Office on Aging receives the funding through the Executive Office on Aging and then we proceed with the contracting with Legal Aid Society.

COUNCILMEMBER HOKAMA: Okay. Is this contract till the funds expire or there's a clock ticking?

MS. TSUHAKE: The funding is allocated from the Federal government, I think there's a two-year contract that gets executed with the Office on Aging and Legal Aid Society but that's the way they're...that's the way the Office on Aging's procurement has been to allow for a two-year contract with this particular vendor.

COUNCILMEMBER HOKAMA: So, already...we already have in our budget a component to execute the agreement once completed?

MS. TSUHAKE: Correct.

COUNCILMEMBER HOKAMA: Okay.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Ms. Kama?

COUNCILMEMBER KAMA: Thank you. So, what are the some of the services that Legal Aid would be providing to our seniors? What are some of the examples that you would provide in terms of...

MS. BELLUOMINI: The ones I mentioned, the advance health care directives are done quite frequently, powers of attorney, they do a lot of landlord-tenant kind of issues when there's evictions that shouldn't really be happening and that kind of stuff. So, they do a lot of advocacy and public education as well.

COUNCILMEMBER KAMA: And when you say seniors how old do you have to be?

MS. BELLUOMINI: Sixty.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER KAMA: Okay. So, but you would...but the way the seniors would come to you would be have to go through the Office of Aging, not necessarily call Legal Aid Society themselves?

MS. BELLUOMINI: It can go both ways because we have the contract with them and it's specific for the senior population. They...we do referrals to the office as well as they can call the Legal Aid intake line and be referred if they meet the specifications for a contract.

COUNCILMEMBER KAMA: So, is your Legal Aid intake line here on Maui or is it on Oahu?

MS. BELLUOMINI: It's on Oahu, I believe. There is a...they have a couple other lines here but the main intake line is on Oahu.

COUNCILMEMBER KAMA: Oh, okay. Thank you. Thank you, Chair.

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. Aloha, mahalo for being here. So, who...what...is there an entity that is currently providing legal services to the Office of Aging?

MS. BELLUOMINI: Yes, Legal Aid Society has provided these services for decades.

VICE-CHAIR RAWLINS-FERNANDEZ: For decades?

MS. BELLUOMINI: Yes.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. BELLUOMINI: To other islands as well as Maui.

VICE-CHAIR RAWLINS-FERNANDEZ: So, every two years we can expect...is that how it's been?

MS. BELLUOMINI: Yes. It's just...but it's...so that's only happened and actually Corp. Counsel Gary Murai could probably speak better on that because he wrote the resolution but I think it's been only the last two or three contract cycles that actually we had to come through Council, prior we didn't. So, I'm not really sure what changed and I'm...and Mr. Murai may, so.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, for the past six years-ish --

MS. BELLUOMINI: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: --you've been coming before the Council to get approval on this contract?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. BELLUOMINI: Yes.

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

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez. Seeing no other...oh I'm sorry, go ahead, Member Sugimura.

COUNCILMEMBER SUGIMURA: Yeah thank you. Very good I support this. So, I'm on the, Councilperson to the Council on Aging Commission and I hear their needs and the plea of the seniors so I support this. And if you look at the hourly rate it's, you know, it's a nice hourly rate in comparison to what it could be out there. And I wonder if you may know if Legal Aid does some community outreach? There's a lot of senior groups or that MEO has that president's group that meets once a month so I wondered if they do community outreach as part of this contract.

MS. BELLUOMINI: Yes, absolutely. Well, outreach isn't part of the contract but public education is. But they do a tremendous amount of outreach all over the island and also all over the County, Molokai and Lanai as well, and Hana.

COUNCILMEMBER SUGIMURA: Oh great. Thank you. Thank you very much.

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. So, regarding the amount, so \$77,617 per year for two years, when does this start and is this enough?

MS. BELLUOMINI: It has been enough but we are getting quite the influx of seniors, you guys have probably all heard of the silver tsunami. But that is how much they proposed when they wrote in for our request for proposal, that's the amount that they wrote in so, that's the amount I believe that Corp. Counsel had to put into the resolution. And whether or not it's enough it...only time will tell, I mean we really, I mean it has been, over the last couple of years that has been enough but they did increase it a little bit because they know that there's the influx happening as well.

VICE-CHAIR RAWLINS-FERNANDEZ: Do you know how that amount was determined?

MS. BELLUOMINI: I don't. Do you know?

MS. TSUHAKO: No but, you know, all of the agencies generally who apply for funding through the Department no matter the division have their own way of figuring out what it is they need and they base that on their historical use as well as what they anticipate their staffing patterns may be. So, I trust that they know what they needed.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, the Office of Aging proposed this amount?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. TSUHAKE: No. The Legal Aid Society proposed the amount.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh Legal Aid, okay. Mahalo. And then when does this contract start you said?

MS. BELLUOMINI: It's supposed to have started October 1st.

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

CHAIR MOLINA: Okay. Thank you, Ms. Rawlins-Fernandez. All right, Members, Chair's about ready to offer a recommendation on this. And just for the record as it reads on the agenda the intent of the proposed resolution is to authorize the employment of Legal Aid Society of Hawaii as special counsel to provide legal services to qualified individuals as administered to the Maui County Office on Aging and the Older Americans Act for a total compensation not to exceed \$77,617 per year and \$155,234 total for two years. So, therefore your Chair's recommendation is to, for the adoption of the proposed resolution.

VICE-CHAIR RAWLINS-FERNANDEZ: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Okay. Moved by Committee Vice-Chair Rawlins-Fernandez, seconded by Member Kama. Any discussion? Okay, seeing none, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed. Thank you, Chair will mark it nine-zero unanimous.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. TSUHAKE: Thank you, Mr. Chair.

CHAIR MOLINA: Thank you very much, Ms. Tsuhako and Ms. Belluomini, I appreciate your insight on this.

GET-2(23) NOMINATIONS TO BOARDS, COMMITTEES, AND COMMISSIONS (BOARD OF WATER SUPPLY) (CC 19-24)

CHAIR MOLINA: Moving right along to, now, we'll go back to our first agenda item which was listed, and I want to thank Ms. Baisa from the Mayor's Office for her patience. And this particular item relates to the appointment of J. Nalani Kaninau to the Board of Water Supply for the County of Maui and this will be for a term expiring on March 31, 2022 to fill a vacancy due to the resignation of Michael Nakashima. Ms. Baisa, you have the floor.

MS. BAISA: Mr. Chair, thank you very much, and good morning, Members. Not a matter of patience, I'm really happy that my applicant was able to stay with us. I looked at the agenda and I told her you better be prepared to be here a while. Anyway, it's my honor today on behalf of the Mayor to present our Water Board nominee and that is Nalani Kaninau. I'm very excited to have her. When we had the unexpected vacancy I went to my files, I tell everybody I have files of people who have applied and Nalani had been patiently waiting from when she first applied which was a couple of years ago and so I went to the file, her name was there and I checked her out, discussed it with the Mayor and we gave her a call. And of course she was totally delighted and didn't expect that this call was coming 'cause it had been a while and she is from Kihei which is very exciting for me, we do not have a member from Kihei on the Water Board. Also, we are definitely trying to do gender balance and this would bring another woman to the Board so that's another positive. She is very interested in government and I was so happy in talking with her to find out that she has been following *Akaku*. She's one of those people who like myself watches the meetings and is very aware of what's happening and is very familiar with the Water Board and what is happening there. So, those are all very positive. She is a local person and has tremendous experience in working with people and I think that that's really an important skill if you're going on a board like this. She has been involved in community, she's been board member and president of the Kihei Canoe Club and has belonged to halau Hula Na Maile Ku Honua. She was born in Honolulu and lived on the mainland for awhile but returned here and has been here for a long time since in the '80s. So, I'm not going to try and tell you a whole lot about her because I know she has very well prepared herself for today and is just dying to tell you what she wants to share with you.

CHAIR MOLINA: Okay. Thank you, Ms. Baisa. And also, much appreciation for the Administration respecting the concerns of Council in the past about getting more geographic and gender balance for our boards and commissions. So, thank you for that. And good morning, Ms. Kaninau, appreciate you taking the time out to be here to

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

respond to any questions from the Members, but before we do that do you have quick opening remarks you'd like to express to the Committee?

MS. KANINAU: Yes. Mahalo, Chair, and mahalo, Gladys. I really wanted to start by saying how grateful I am to the Council and their patience and diligence and hard work in making the decisions that shape our community. I really can't tell you how grateful I am. So, I...my name is Nalani Kaninau, I've lived on Maui for 40 years and I've never been political in my life other than, you know, voting diligently and I'm very honored and humbled to be considered for this position, you know, I believe ka wai ola, water is life. And so, it started I know after 2016, you know, big sugar was going away and, you know, I realized that, you know, Maui is coming into a very pivotal point in the direction of our community and so I read about an EIS scoping meeting for the Nahiku, Keanae, Honomanu, and Huelo licenses and so I decided to go to the meeting and I had no idea what I was going to say, but in the process I learned a lot and I do watch *Akaku* almost every day and I've been watching specifically the Water and Infrastructure Committee meetings. I'm so impressed with the knowledge of the people that are serving the community to provide information so that you can make good decisions. And I'm finding that I'm learning a whole new language, I had to Google like what surface water, what's groundwater, what's a aquifer and learning language, government language like what RPs are, and but I tried to Google CWRM and Google doesn't know what CWRM is and I still don't either yet but I'm sure that I'll learn and I, you know, I don't know a lot but I'm committed to learning. I'm...my forte is I am a listener, I'm an observer and, you know, I pick my battles very carefully, you know, before I start opening up my mouth about things. So, again I'm just very honored to even be considered to be part of contributing to the community. So, thank you.

CHAIR MOLINA: Thank you very much, Ms. Kaninau, for your opening remarks, and, Members, before we open the floor for questions for Ms. Kaninau I've been informed by my very astute analyst Ms. Espeleta that regarding our first motion to approve GET-11(20) the Chair did not include in that motion the filing of County Communication 19-342. Any objections to including that friendly amendment?

COUNCILMEMBERS: No objections.

CHAIR MOLINA: Okay. So, ordered.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: FILE COMMUNICATION 19-342.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: And, Ms. Kaninau, thank you for your comments as far as watching *Akaku* diligently every day and getting yourself up to speed, that's much appreciated and, you know, the, you spoke of the experience and knowledge of the Members of this body and our Chair for that Committee Ms. Lee. I'd like to extend her the first opportunity to ask you questions related to your interest in serving on the Board of Water Supply. Ms. Lee?

COUNCILMEMBER LEE: Well, thank you for that introduction, I actually didn't have any questions. I'm glad that you have applied, it's great to have people from South Maui and of the female persuasion for a change because we tend to have all these old men come on, you know, so now we have these bright young women and I appreciate seeing you here and I wish you all the luck. I know for anyone becoming a new member of any committee, you know, it's always a new experience. I don't have expectations of you knowing the subject matter entirely, you know, that's what you're going to learn and you're going to learn how to work with other people and things change. So, I love your attitude and I wish you the best on the committee.

MS. KANINAU: Thank you.

CHAIR MOLINA: Thank you, Ms. Lee. Members, questions for Ms. Kaninau? Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here and for your willingness to serve and especially from South Maui, that's my resident area so I'm always happy to see South Maui represented. And I...you actually answered a lot of my questions with your opening remarks but I did want to...I see that you applied for seven different boards or commissions and I wondered why for you Board of Water Supply rose to the top?

MS. KANINAU: You know, again water is life and I think with the change in, you know, sugar going away I think it's really important that we make good choices for the future in how we use our precious resources.

COUNCILMEMBER KING: Okay and are you aware right now that we...there's a draft EIS out for the A&B/Mahi Pono request for water from CWRM which is the Commission on Water Resource Management? That's what that stands for.

MS. KANINAU: Commission on Water Resource...

COUNCILMEMBER KING: But it's out for comment right now so that's I think one of the issues you probably be dealing with on the Board of Water Supply and just...

MS. KANINAU: I have some awareness, I know that the comment ends on November 7th and so it's critical I think to get comment in. I have not done a lot of diligence around that quite yet.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER KING: Okay. That's fair enough, I'm not expecting you to like to come in to knowing everything, I just wanted to...I think my thing is just you have a comfort level with something that might be a hot topic that you're going to have to deal with as a public, you know representative of the Mayor's Office basically and a public servant and I always appreciate when people step up to volunteer because it's not easy sometimes but it is necessary. So, thank you for putting yourself out there for this. And then I will go ahead and ask the question about like attendance that you've checked into the schedule of the Board of Water Supply meetings and have that open and available on your...

MS. KANINAU: Yes, I'm a freelancer, I'm an independent --

COUNCILMEMBER KING: Oh.

MS. KANINAU: --contractor so I have the ability to adjust my schedule. I'm also trying to sort of retire.

COUNCILMEMBER KING: Oh okay.

MS. KANINAU: But I do have a lot of leeway in shaping my schedule and negotiating with employers if there is a conflict.

COUNCILMEMBER KING: Okay.

MS. KANINAU: Yeah.

COUNCILMEMBER KING: Great. Well, thank you very much, appreciate it.

CHAIR MOLINA: Thank you, Chair King. I believe I saw Member Kama's light on, did you have any questions for the nominee?

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: Okay. Proceed.

COUNCILMEMBER KAMA: Thank you, Chair. So, thank you for being here. I just wanted to ask you that if you are able to would you consider looking at the EIS that Mahi Pono is wanting us to look at that what Chair King was alluding to earlier would you be able to do that? You don't have to read the whole 2,700 pages but, you know, there is an index there and you just choose whatever thing that's you're passion'd about and just take that out and read that. Would you be able to do that?

MS. KANINAU: Absolutely. I was a little daunted by the 2,700-page idea but no I certainly would be very interested in looking at that.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER KAMA: Great. Thank you. Thank you, Chair.

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

COUNCILMEMBER SINENCI: Thank you, Chair. Thank you, Ms. Kaninau, for stepping up and your willingness to serve. As some of our duties here on the Council it's approving some of the housing projects that come up for review and one of the projects was the Waikapu project and in this particular project there was an effort to maybe recharge some of the watershed and put some funding back into the whole hydrological cycle from mauka to makai. Do you think this is important for future development on Maui?

MS. KANINAU: Yeah, I'm not very familiar with the Waikapu issue but I do think that we need to do whatever it takes to protect our resource, you know, it's finite resource and I think that, you know, listening to the one gentleman, I think he was a hydrologist and so I find that the whole process of water and how we get our water is fascinating. So, I, you know, again I don't know a lot to say definitively, you know, what I support or don't. But I do believe that protecting our resources and whatever it takes to do that is important.

COUNCILMEMBER SINENCI: Thank you. One last question, Chair.

CHAIR MOLINA: Okay, Mr. Sinenci, go ahead.

COUNCILMEMBER SINENCI: The second question was in the draft EIS for the A&B 30-year lease they're waiting on two...there's two different important things that needs to be done before issuing the lease and one of them is watershed management plan and the second one is also for a Department of Hawaiian Home Lands to weigh in so that they could for I guess Hawaiian rights as far as kalo farming. What do you feel as far as our native populations when it comes to kalo cultivation and having those rights to those waters as well?

CHAIR MOLINA: Ms. Kaninau, before you respond to the question, again, Members, we need to be real careful about delving into the specifics of certain issues that's not on the agenda. The...we should be definitely be focused on the application and maybe the member's availability for time for serving and try to be very cautious about delving into any specific water issues, especially things that are still pending. And I know, Mr. Sinenci, you have that item coming up at in your 1:30 agenda so rather than maybe taking a position, Ms. Kaninau, at this point because you are still under consideration for the Water Board I'd like to caution you on how you respond to that if anything...

COUNCILMEMBER SINENCI: Sorry, Chair, I just --

CHAIR MOLINA: Yeah.

COUNCILMEMBER SINENCI: --was, just wanted to get her manao on how water --

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Yeah. I'll give her the option but...

COUNCILMEMBER SINENCI: --management should be.

CHAIR MOLINA: Yeah. But I don't want her to say something on the record that could potentially jeopardize her or maybe a complaint, you know, before she's even approved that she's sort of taking a position on something that's currently being litigated. So, or a topic like that may be deemed controversial by the community so I'll just mention that for the record if you want that option to respond to taking a position on an item Chair would be feel more comfortable if we don't even delve into the specifics of an item but I'll leave it up to you, Ms. Kaninau, if you feel comfortable sharing your thoughts on it, if not the Chair is fine.

COUNCILMEMBER SINENCI: Thank you, Chair.

MS. KANINAU: Well as a Native Hawaiian of course I'm interested in all areas that affect Native Hawaiians. But I'll defer to the Chair and maybe not make any further comments.

CHAIR MOLINA: Okay. Thank you, Ms. Kaninau. Members, any other questions as it relates to Ms. Kaninau's nomination related to what's on the application and her time availability? Hang on, Ms. Baisa. I have Mr. Hokama.

COUNCILMEMBER HOKAMA: Thank you. Ms. Kaninau, kind of more maybe broad perspective and the Board of Water Supply deals with the County's water system yeah and this County has a lot of private water systems. But we still draw from the same mountains, we draw from the same aquifers. So, my question to you this morning is how do you see the water in general, yeah, regardless whether it's the County's system or private systems regarding the water use plans? Do you know the role that the water use development plans and the Department plays and the role you would play regarding that and how we approach water overall, our philosophy?

MS. KANINAU: I'm somewhat familiar. I know that since I began this process I know that I'll never turn my faucet on ever again without, you know...

COUNCILMEMBER HOKAMA: I'll make it easier. Lanai and Molokai we very unique yeah, Lanai we're on a private system that serves the public which means they come under the PUC which means they are a government-regulated entity. And so, for Lanai, you know, my concern would be how do, would you view Lanai's water separate although private part of your responsibility of overall public policy?

MS. KANINAU: I don't know that I'm prepared to answer that quite at this time.

COUNCILMEMBER HOKAMA: Okay. No, no, no I appreciate the candor because you're very upfront and honest and I appreciate that so much, so thank you. Okay.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Thank you, Mr. Hokama. Members, any other questions for Ms. Kaninau? Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Ms. Kaninau, for your willingness to serve. Just a few questions, are you aware that water is a public trust resource?

MS. KANINAU: Yes.

COUNCILMEMBER PALTIN: What does that mean to you?

MS. KANINAU: Well, I know that the, you know, part of the water and paying for our water bills that, you know, we're not paying for the water but we're paying for the transmission of water. So, I guess that falls under public trust and availability to our community.

COUNCILMEMBER PALTIN: And are you familiar with the terms like riparian rights and appurtenant rights?

MS. KANINAU: No.

COUNCILMEMBER PALTIN: So, where would you look to say after this meeting to get your information on things that you don't know?

MS. KANINAU: I have been watching a lot of *Akaku* video of meetings and looking at different committee minutes, and things like that I'm thinking is as well as from other Members of the Committee that could help me.

COUNCILMEMBER PALTIN: I have a question for...does...do the Board of Water Supply Members have an opportunity like the other ones to go to that Native Hawaiian legal training, the water rights Ola I Ka Wai?

CHAIR MOLINA: Ms. Baisa, can you respond to Ms. Paltin's?

MS. BAISA: Oh yes. Thank you, Ms. Paltin, for the question, I think it's a good question. The members on Planning Commission are required but I don't believe anybody else is. And that is why on certain commissions we have members that are required to be Hawaiian experts because they then fill in that role, but knowing Ms. Kaninau and what I've learned about her in the last month she is a person who's thirsty for knowledge and I suspect that when this workshop is offered that she would want to be there and be more than willing to go.

COUNCILMEMBER PALTIN: We as the Council make it available to her that we think like the Planning Commission if she would like to go that we can make it happen or invite her?

MS. BAISA: The Council of course has the ability to decide what you want to put in the budget, what you want to require and, you know, that's your prerogative. But, you know, I'm

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

beginning to think that because of the situation we're in that making people understand Native Hawaiian law is very basic, it's becoming more and more important. I also wanted to share while I have the opportunity is that she was really great this morning, I handed her the executive summary of the EIS and of course she was thrilled to take a look at it like I'd given her a gift of gold and I know she's going to read it, probably not 2,700 pages but definitely the summary.

COUNCILMEMBER PALTIN: Thank you. Would you care to attend the Native Hawaiian legal training if it was available?

MS. KANINAU: Absolutely.

COUNCILMEMBER PALTIN: Would you like to do it if we didn't put money in the budget yet?

MS. KANINAU: Absolutely.

COUNCILMEMBER PALTIN: Okay. Thank you.

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. And mahalo, Ms. Baisa, for looking at gender balance and geographic diversity, so important, I appreciate that. Okay. So, aloha, Ms. Kaninau, mahalo for your willingness to step up and volunteer to serve our community. I can feel your heart, I can tell you really want to, you know, provide that, you know, your...to contribute to the community. So, my question is how do you plan to contribute...or I should start first with...okay, so I understand that you watch *Akaku*, what is your experience specifically to the Water Board? Like what do you...what is your understanding?

MS. KANINAU: Other than watching the one meeting, it was a September 19th meeting, I've not had any experience, I know it's an advisory committee.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo. How do you see yourself contributing to this board?

MS. KANINAU: Again, I am someone that listens and observes for quite a while before I'll start jumping into...yeah, picking my battles very carefully, so I want to be sure that, you know, decisions that we're making in our community regarding water which is so precious are the right ones. And so, I'm just hoping that I would add my manao to that process.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo. Do you...have you checked out or do you know of the Water Use and Development Plan?

MS. KANINAU: No.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. KANINAU: Not yet.

VICE-CHAIR RAWLINS-FERNANDEZ: So, as you stated water is like gold, it's such an important issue and I know at the...at CWRM which is the State Commission on Water Resource Management it's a highly competitive to be on that commission and you have, you know, the applicants have like a ton of experience specifically to water because it's such an important issue. My naau is telling me that perhaps your experience and expertise would be better served on a different board or commission. My concern is that knowing what CWRM is, is kind of one of the basic things I think to serve on the on this board because it's such an important board. And I attended one of the Board of Ethics meetings and I saw how members of the Board of Ethics perhaps, you know, didn't come to that board with too much experience and they relied far too heavily on Corp. Counsel's advice and that was really scary to me. And I don't want to see that at the boards and commissions, I want to see those who volunteer to serve on the boards and commissions stand on their own as much as possible and rely on their own expertise and experience to make decisions in the best interest of our community. And so, for that reason I won't be supporting your nomination but I...so mahalo nui.

CHAIR MOLINA: Thank you, Ms. Rawlins-Fernandez. Ms. Kama followed by Ms. Sugimura.

COUNCILMEMBER KAMA: Thank you, Chair. So, have you always been nice and how would you describe yourself as, how would you describe your character?

MS. KANINAU: I am nice, I think it's important to be thoughtful and respectful and I work in the visitor industry so it's a helpful asset. I am also wanting...something that people don't know is that, you know, sometimes people mistake my niceness for, you know, being someone that they can push over. But that's not...they'll...I'm nice until I'm not.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

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

COUNCILMEMBER SUGIMURA: Yeah thank you, Chair. Thank you very much for taking all of our questions. I just wanted to find out because it's related to what Ms. Paltin's question is, how often does that Native Hawaiian training come to Maui or is it only on Oahu?

CHAIR MOLINA: Ms. Baisa?

MS. BAISA: Yes.

COUNCILMEMBER SUGIMURA: Or do we know?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. BAISA: Thank you, Chair. And thank you for the question. It comes...it doesn't normally come to Maui, usually you go to Oahu for it but they are talking about possibly extending it or possibly having a session. So, we watch very closely and when the invitation comes I as well as Michele McLean who's in charge of the Planning Commission making sure that they get to go. They all get invitations and know about it so we would know. But it isn't like something that you can just go to any time. But I believe that there is a lot of information available that people can research, can look, there are people we can ask who are experts on it and so it isn't like information is not available. If you get involved, you'll find it.

COUNCILMEMBER SUGIMURA: Okay I'm just concerned because she so graciously agreed to go to this session and it's really going to cost money to get there 'cause if it's on another island and I don't want to put her in that situation where you didn't have that information probably before when you agreed so we should consider that before we, you know, say go. I think we should pay for it if you're gonna go and it would be on your own personal time which is appreciated but maybe Ms. Baisa can keep her informed when it does come to Maui.

MS. BAISA: Yes, I will.

COUNCILMEMBER SUGIMURA: Yeah.

MS. BAISA: I will.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR MOLINA: All right thank you, Member Sugimura. There...seeing no any other requests for questions for Ms. Kaninau, I want to thank you very much for making yourself available to respond to questions from the Committee.

MS. KANINAU: Thank you.

CHAIR MOLINA: Mahalo and thank you for your service also on the Committee on the Status of Women as well. I heard many good things about you. Okay, Members, Chair is ready to offer a recommendation on GET Item 2(23). Chair's recommendation is to support the appointment of J. Nalani Kaninau to the Board of Water Supply for the County of Maui for a term expiring on March 31, 2022.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Okay. Moved by Member Lee, seconded by Member Kama. Members, any discussion? Seeing none, all those in favor, signify by saying "aye."

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed, say "no."

VICE-CHAIR RAWLINS-FERNANDEZ: No.

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

NOES: Vice-Chair Rawlins-Fernandez.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION.

CHAIR MOLINA: Okay we have eight "ayes" and one "no," Member Rawlins-Fernandez. Thank you very much, Members, for the vote, and congratulations to you, Ms. Kaninau, your matter will go to the full Council at a future date.

**GET-11(19) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: TOMMY RUSSO
V. COUNTY OF MAUI, ET AL.; CIVIL 14-00515 JMS-KSC) (CC 19-29)**

CHAIR MOLINA: Members, we have another item I'd like to address, I know we got, coming close to our recess time, but very briefly like to address Item GET-11(19) which relates to a proposed authorized settlement of Tommy Russo versus County of Maui, et al; Civil Case Number 14-00515 JMS-KSC. Purpose of the revised proposed resolution is to authorize settlement of the case and I believe we'll have Ms. Lutey and Mr. Hanano to give opening comments. I believe further discussion on this will likely require a vote for executive session if I'm correct. So, as our Corporation Counsel gets settled in please provide whatever necessary information you feel is appropriate for open session. Ms. Lutey?

MS. LUTEY: Thank you. Good morning, everyone. I am here for settlement authority today and I just want to be very clear that this is the only settlement demand that I've ever received from plaintiff's counsel and I received it on June 14, 2019. This case has been around for quite some time, as you can see it started on November 20, 2012 when police arrested Mr. Russo and charged him I think initially it was obstructing a traffic stop, it

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

was later amended by the prosecutors for disorderly conduct and failing to comply with a lawful order. By motion it was dismissed at the District Court level, it was then appealed by the prosecution and went to the Intermediate Court of Appeals which vacated the dismissal and sent the case back to the District Court. And then subsequently there was a petition for cert to the Hawaii Supreme Court which then affirmed the dismissals, reversed the ICA's opinion and sent it back. So, that order from the Supreme Court was on December 14, 2017. This lawsuit was filed in 2015 I believe and during that time it was stayed by stipulation in the Federal Court pending the outcome of the Hawaii Supreme Court order and the first conference that we've had in this case was on June 7th of this year. The court, Judge Trader who's a magistrate in Federal Court had an early settlement conference with the parties. So, this case is in active litigation, there's been no discovery done, but...hello...switch...okay I'm back. And so, I'm here to present the plaintiff's settlement demand and because this is in active litigation I will be requesting executive session.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Members, any questions in open session? And of course Corporation Counsel will inform you if any question you may ask in open session is deemed for executive session you'll be informed of that. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for the explanation, Ms. Lutey, what date did you transmit the settlement offer that's dated June 14, 2019 to the Committee?

MS. LUTEY: June 27, 2019.

COUNCILMEMBER KING: Okay. So, it's been in Committee for, since June 27th?

MS. LUTEY: Yes.

COUNCILMEMBER KING: Okay.

MS. LUTEY: There were requests for some revisions made by Ms. Nakata in August, we made those revisions and got them up in less than a week.

COUNCILMEMBER KING: Okay. And then, so we've had it for several months and then I just, you know, just reading over maybe you can comment and if we need to go into executive session but if you can comment on the testimony we got from attorney Philip Lowenthal where he says that in this case it's been affirmed with finality by the Hawaii Supreme Court that the observation recording and recording of police activities performed in public is conduct protected by the first amendment. But you said it was dismissed by the Hawaii Supreme Court?

MS. LUTEY: No. It was dismissed by the District Court across the street --

COUNCILMEMBER KING: Right.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

MS. LUTEY: --the State District.

COUNCILMEMBER KING: So, this went to the Hawaii Supreme Court?

MS. LUTEY: Yes.

COUNCILMEMBER KING: Okay and then it was upheld or is that the case...I mean I'm just confused with the statement that it's been finalized.

MS. LUTEY: Oh. It's done in terms of the criminal aspect of it, but the civil case is now active.

COUNCILMEMBER KING: Okay. So, is that true that it's been affirmed by the Supreme Court that observation and recording of police activities performed in public is conduct protected by the first amendment?

MS. LUTEY: That's part of it.

COUNCILMEMBER KING: Is that...that's true?

MS. LUTEY: Yes.

COUNCILMEMBER KING: Okay. I just wanted to...I wanted to make sure there's no conflict between what you're telling us. So, we're...so, the case as far as the criminality has been settled and there's no criminality and now we're in a civil lawsuit?

MS. LUTEY: The case was dismissed in the criminal court and we're now active in civil.

COUNCILMEMBER KING: Okay. But if it was dismissed then how did they get the finality affirmation from the Supreme Court?

MS. LUTEY: The Supreme Court issued an order affirming the dismissal by the District Court. So, that's separate from us, I'm sorry. That's criminal and now we're in civil.

COUNCILMEMBER KING: Okay, but I'm just...and I'm confused 'cause I'm not an attorney but...

CHAIR MOLINA: Chair King, sorry before you go on, is that in our Granicus what your referencing?

COUNCILMEMBER KING: It's in the testimony that was given to us --

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: --when we sat down.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: The testimony from...

COUNCILMEMBER KING: I think everybody...

CHAIR MOLINA: The testimony from, whom for the record the testimony was...

UNIDENTIFIED SPEAKER: Phil Lowenthal.

COUNCILMEMBER KING: Yeah, Phil Lowenthal.

CHAIR MOLINA: Okay, Mr. Lowenthal. Okay thank you

COUNCILMEMBER KING: So, he's the attorney.

CHAIR MOLINA: Go ahead, proceed.

COUNCILMEMBER KING: So, it's on what's...and the pages are a little bit...I think it was something that was printed, it was a letter that was reprinted so the pages are a little bit off but this is under the heading that says Page 6 and there's a...I'm trying to figure out how the Supreme Court if they dismissed the case made that affirmation.

MS. LUTEY: Right. Chair?

COUNCILMEMBER KING: So, what's the process that I'm missing?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: It's that it got appealed. So, the District Court found in plaintiff's favor and then the prosecution appealed it and the Intermediate Court of Appeals addressed it and reversed the District Court's ruling and sent it back to the District Court. And then the plaintiff in this case, his legal counsel then filed a writ for cert or certiorari to the Hawaii Supreme Court so it went back up on appeal.

COUNCILMEMBER KING: Okay.

MS. LUTEY: And then that court reversed the ICA court's findings and I didn't have a chance to read Mr. Lowenthal's letter but I'm certain that he would accurately quote the opinion because it's also...

COUNCILMEMBER KING: Okay. No, I was just confused about all the back and forth and how...so, there was an opinion issued from the Hawaii Supreme Court --

MS. LUTEY: Right.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER KING: --that there was no criminality basically? Is that true 'cause that's what's it's kind of...

MS. LUTEY: Yeah...it's a little more complex than that.

COUNCILMEMBER KING: Yeah.

MS. LUTEY: They made specific rulings on the issues that were presented to them.

COUNCILMEMBER KING: Okay. But there was an opinion by the Hawaii Supreme Court?

MS. LUTEY: Yes.

COUNCILMEMBER KING: Okay. I'm sorry, I was getting a little confused about all the back and forth and who was dismissing what, and so I think that's all for now. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Chair. Members, any other questions in open session? Committee Vice-Chair Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Lutey. Okay. So, in response to...oh no I guess it was in response to the testimony, you said you didn't receive a settlement offer from Mr. Russo's attorney. Did you receive a settlement offer from Mr. Russo, himself?

MS. LUTEY: Mr. Russo has been represented by Phil Lowenthal throughout this litigation so I would not have received a separate...I've never seen a represented plaintiff send me a correspondence directly.

VICE-CHAIR RAWLINS-FERNANDEZ: So...

MS. LUTEY: So, I don't recall ever getting anything from Mr. Russo.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, Corporation Counsel as a whole never received anything, any settlement offer from Mr. Russo?

MS. LUTEY: Not that I recall. But it's...this is my case so it should have come to me. If he sent a demand which is what you're referring to as an offer it should have come to me. But I'd spoken to Mr. Lowenthal over the years about this case as it was pending but he never put anything in writing until June 7th.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo.

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez. Okay seeing no other requests for...sorry, Ms. Paltin?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

October 15, 2019

COUNCILMEMBER PALTIN: Thank you, Chair. Sorry, you know, that beginning part that you said, the opening, I was wondering if you could say it in less lawyer terms, more laymen's, like I'm not sure what is the order of the courts, which guy is the plaintiff and like you can summarize it but more understandable.

MS. LUTEY: Sure. So, Tommy Russo got charged with criminal offenses and then there was a motion which is basically requesting the court to rule in your favor on a specific issue and the issue at that time was...there are two, first amendment and probable cause and the District Court which was Judge Kawano said there was no...

COUNCILMEMBER PALTIN: What was...what does probable cause mean?

MS. LUTEY: It's where you have a belief, a reasonable belief that a crime is occurring and so police officers need that in order to make contact with you and for an arrest. So, I mean they can do, in certain instances they could do other types of stop just to talk to you but for an arrest you need probable cause. They need to have an understanding that you've committed an offense, a criminal offense. So, in this case they believed that Mr. Russo was disobeying their orders to stay away from them as they were citing vehicles on Haleakala Highway and he was videotaping. That is what the arrest was for. When it went to the District Court across the street, the State District Court, Judge Kawano heard plaintiff's motion on whether or not that action of videotaping was protected by the first amendment under the Constitution and also whether or not there was probable cause. He found that there was...that this was an improper arrest and he dismissed the criminal cases against him. And so the prosecution which represents the State appealed it to the Intermediate Court of Appeals which is our first level of Appellate Court in the State realm 'cause we have State and Fed and Intermediate Court of Appeals disagreed with Judge Kawano, they said no there was probable cause and this doesn't fall under protection of first amendment because there's probable cause for the arrest basically. And I may have slaughtered that a little bit but the opinion is out there. Then Mr. Russo's attorney said wait a minute, don't agree with the Intermediate Court of Appeals so we want our Supreme Court to weigh in on that and in that opinion that court, our highest court in this State said no this is first amendment protected rights and there was no probable cause or reasonable suspicion for Mr. Russo's arrest. So, that was the criminal side. At the same time sort of simultaneously in 2015 we have the civil case, you have to sue us civilly topically within two years with very limited exceptions. So, the lawsuit in civil case gets filed and that's filed in Federal Court and the reason it gets filed in the Federal Court is because there's some Federal claims. If you file under us with 1983 or constitutional, Federal constitutional issues it typically goes to the Federal Court for jurisdiction. While it was there I spoke to Mr. Russo's attorney Mr. Lowenthal and we agreed that because a finding by the Supreme Court if it ruled that there was probable cause in this case that, that would basically eliminate any claims Mr. Russo has in his civil Federal Court case, we'd call it dispositive that means it would end it. We decided to stay it which means it just sat on hold waiting for the Hawaii Supreme Court to issue an order saying yes or no or sometimes they can rule on other things as well but in this one they were pretty specific. And then...

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: Ms. Lutey, I think you've given us quite a dissertation or history. Member Paltin, do you have another question in open session?

COUNCILMEMBER PALTIN: So, we're not looking at criminal things, that's all pau and we're only looking at civil things?

MS. LUTEY: Yes.

COUNCILMEMBER PALTIN: And what...I don't understand what is the civil is like you pay money?

MS. LUTEY: Yes.

COUNCILMEMBER PALTIN: But, you don't go to jail?

MS. LUTEY: Right. Criminal is only jail, restitution...

COUNCILMEMBER PALTIN: So, like fines?

MS. LUTEY: Yes, fines, community service. Civil is only money.

COUNCILMEMBER PALTIN: And it's not clear --

MS. LUTEY: In this case.

COUNCILMEMBER PALTIN: --yet because the Supreme Court dismissed it?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: These are separate.

COUNCILMEMBER PALTIN: Oh.

MS. LUTEY: So, you can sue us civilly based on a criminal matter but it doesn't...

COUNCILMEMBER PALTIN: If the Supreme Court had ruled the other way would the civil case be more clear cut?

MS. LUTEY: Yes.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Members, Chair is going to hold off on questions in open session at this point due to time and availability of the Members. The Chair is going to recommend executive session to further discuss the proposed

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

settlement as it relates to this case. So, therefore the Chair will ask for executive session based on Hawaii Revised Statutes 92-5(a)(4) 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. And as a reminder six votes are needed to go into executive session. Chair will entertain a motion for executive session.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Member Lee, seconded by Member Kama. Any discussion? Seeing none, Chair will call for the vote all those in favor of executive session, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed. Okay. Chair will mark it unanimous.

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

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

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: We will go into executive session. Members, it is 10:52 a.m., as we prepare the Chambers for executive session please take care of your personal needs and return to the Chambers at...is 11:05 sufficient time, Members, for you to take care of your needs? Okay once you return into the Chambers we'll be in executive session so please return here by 11:05. The GET Committee meeting for October 15, 2019 is now in recess. . . . *(gavel)* . . .

RECESS: 10:52 a.m.

RECONVENE: 12:22 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The GET Committee meeting for Tuesday, October 15, 2019 is now back in executive session. We are on GET Item 11(19), excuse me, now back in open session excuse me, we just concluded executive session. Thank you for that clarification, what a great Staff. So, we're now back in open session and we have, currently on the matter of GET Item 11(19) related to the Tommy Russo versus County of Maui case. Based on discussions in executive session the Chair is going to recommend authorizing settlement of this matter. Chair will ask for a motion, and, Members, before we take the vote again reminder is we need six votes for this measure to pass.

COUNCILMEMBER KAMA: So moved.

CHAIR MOLINA: Okay. We have a motion from Member Kama, is there a second?

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Seconded by Member Sugimura. Ms. Paltin, you had a question on the motion?

COUNCILMEMBER PALTIN: Oh, I just was wondering if you wanted me to do that in open session?

CHAIR MOLINA: Oh, yes, yes, yes. Thank you. You wanted to make a disclosure in open session. Proceed, Ms. Paltin.

COUNCILMEMBER PALTIN: In an abundance of caution I wanted to disclose that I was voted *Maui Times* Best Councilmember for 2019 of which Tommy Russo is associated but it was a reader's poll so he didn't make the decision himself but it wouldn't affect my judgment today.

CHAIR MOLINA: Okay. Thank you for that disclosure, Member Paltin.

COUNCILMEMBER KING: Chair?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CHAIR MOLINA: And the Chair has no problems with disclosure.

COUNCILMEMBER KING: Chair, point of order.

CHAIR MOLINA: Ms. King?

COUNCILMEMBER KING: I was under the impression that it only takes five votes, you said six and when you said that I saw two faces look really strange over here so can we clarify the...

CHAIR MOLINA: Okay. Is it five or...now this is authorizing settlement, for this type of matter it's just five. Now, other matters sometimes it takes six, okay, well we'll delve into that. Okay. All right just a simple majority of five votes for this measure to pass. Any discussion on the motion to approve authorizing settlement? Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay I wanted to first get clarification from Ms. Lutey and I believe it can be stated in open session because my question in open session before we went into closed session was whether she received an offer from Mr. Russo or if Corporation Counsel in general received an offer to settle and she answered no. And then in open...sorry, in closed session it sounded like it...there was a different answer to that question where Ms. Lutey said that Mr. Wong may have blocked an opportunity to provide settlement and so I wanted that clarified in open session from Ms. Lutey.

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: Thank you, my answer stands.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. So, in 2018 you said that there was an attempt to have a settlement conference and that Corporation Counsel blocked that opportunity to have that and that was when Mr. Wong was on, Corporation Counsel head.

MS. LUTEY: No, you've completely misconstrued what I've said. I said I never negotiated with Mr. Russo directly because he was represented by counsel, that'd be a violation of our rules of ethics. I don't recall ever having any communication over settlement in this matter other than the letter I received that you have. And there was another matter involving Mr. Russo that I was not initially involved in that settled years ago that I don't know if they ever contacted Mr. Wong.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Because in closed session you said that there was another case that it could have been but you weren't sure.

MS. LUTEY: Right.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

VICE-CHAIR RAWLINS-FERNANDEZ: So, that there was a block in trying to meet to settle but there was two cases and you're not sure if it was this case or if it was the other case.

MS. LUTEY: You know, Chair, I just point out that discussions in executive session really shouldn't be on the floor.

CHAIR MOLINA: Okay.

MS. LUTEY: But I stand by earlier answer that I just reiterated for you.

VICE-CHAIR RAWLINS-FERNANDEZ: That was not privileged information, that I can share that I was told by my attorney that I can as a Councilmember because that's not part of the privileged statements that were made in closed session. Okay. Mahalo, Chair, and then I will be voting against the motion. I value the role of the press and I also value protecting our community's individual constitutional rights. And, you know, the press does...it has an important role in our community in providing transparency for our...for the public and to hold government accountable and I fully support that and I, furthermore I do not support wasting money on litigation. And so, for those reasons I will be voting against the motion. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you, Ms. Rawlins-Fernandez. Members, any other discussion on the motion on the floor which is to authorize settlement? Seeing none, Chair will call for the vote. All those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed.

VICE-CHAIR RAWLINS-FERNANDEZ: No.

CHAIR MOLINA: Okay. For the record Chair will mark seven "ayes" and one "no," Member Rawlins-Fernandez and one excused Mr. Hokama.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

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

NOES: **Vice-Chair Rawlins-Fernandez.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Hokama.**

MOTION CARRIED.

ACTION: ADOPTION OF RESOLUTION.

CHAIR MOLINA: Thank you very much, Members, and this matter will go on to the full Council at a future date. We do have one last item on our agenda today; however, we do have a 1:30 EAC [sic] meeting under the leadership of Mr. Sinenci and seeing that you guys have all worked so hard I certainly...you deserve a lunch break. So, the Chair has proposed a recess date and time for your consideration to address the last Committee item on our agenda which is GET Item 11(28). Chair has proposed a recess date of tomorrow, Wednesday October 16th at 1:30 p.m. right here back in the Chambers. Members, any...your comments, is this agreeable to all? Do we...I believe we have it was reported to our Committee Ms. Espeleta I believe six Members responded their availability potential to be here if that is the case. So, let me ask for the record again.

COUNCILMEMBER KING: A show of hands?

CHAIR MOLINA: Show of hands who can be here tomorrow at 1:30 p.m.? Okay, Ms. Rawlins-Fernandez, Ms. King, Mr. Sinenci, Ms. Lee, Ms. Paltin, Ms. Sugimura, I know, Ms. Kama, you have some other matter that you...okay and we don't have Mr. Hokama.

COUNCILMEMBER SUGIMURA: We couldn't get...we couldn't meet tonight? I thought those were one of the dates that I had heard.

CHAIR MOLINA: Yeah there was but I believe there was not enough Members to establish a quorum; however, I can ask again. The Chair is open if you wanted to meet after Mr. Sinenci's meeting. Mr. Sinenci, any time estimation as to when your meeting may end today or is it pretty hard, at least till 4:30 potentially right we're looking at? Okay well let's just say you'll throw out 5:00 p.m. tonight as a alternative recess date? Any thoughts? Chair is unavailable...well I take that back, Chair would be available if need, if that is the majority of the Members. Comments, Members, on the...tonight...

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER PALTIN: I have a commitment at UHMC at 6:00 so I could be available for 45.

CHAIR MOLINA: A short time. Okay.

VICE-CHAIR RAWLINS-FERNANDEZ: I cannot make it.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: I'm out.

CHAIR MOLINA: Okay. Alright, Members, then the proposed recess date is tomorrow October 16th 1:30 p.m. Member Paltin? And I know you do have a Land Use, Planning and Land Use Meeting at 9:00 in the morning.

COUNCILMEMBER PALTIN: Yeah. I'll try and make it brief hopefully, cross your fingers, but I do have a meeting at three o'clock tomorrow but I...if it's really getting important maybe I can reschedule or push it back a little bit.

CHAIR MOLINA: Okay.

COUNCILMEMBER PALTIN: But hopefully we can be pau by 3:00 right?

CHAIR MOLINA: Okay. The Chair's guesstimation is 7:00 at this point, now Member Kama's out, Member Hokama I believe just guessing is not available tomorrow, so at least seven at this point for tomorrow. Okay. Member Lee?

COUNCILMEMBER LEE: Mr. Chair, are you planning to...what are you planning to do with this item?

CHAIR MOLINA: Just have the initial discussion and then we cannot...the Chair's intent is not to vote tomorrow because...the Chair's intent is to discuss and then discharge and the final vote or the one and only vote will take place at Council on October 18th. That is Chair's intent.

COUNCILMEMBER LEE: October 18?

CHAIR MOLINA: This Friday, at this Friday's Council meeting.

COUNCILMEMBER PALTIN: So, we're recessing?

CHAIR MOLINA: Today we're recessing and then tomorrow just discussion and the Chair will discharge to Council. Recommendation should be to discharge unless the body feels otherwise. Ms. Sugimura?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

COUNCILMEMBER SUGIMURA: How many votes do you need for...or does Council need to pass this out?

CHAIR MOLINA: Well, right now we're not officially on the item yet, Member Sugimura, I prefer to have that determination made tomorrow at the recess date. So, unless the Members want, I feel it's more appropriate we make that determination at the meeting, we're not exactly on the agenda item right now we're discussing the recess date to address this item. Ms. Lee?

COUNCILMEMBER LEE: Yeah. I know you don't want to discuss it but I think it's kind of important for people like me who have to rearrange schedules thinking that if you, honestly if you don't have the six votes tomorrow then it wouldn't go to the Council on Friday?

CHAIR MOLINA: Yeah, the intent is just to discuss and discharge. So, as long as we have a quorum to discuss 'cause no votes will be taken tomorrow.

COUNCILMEMBER LEE: And then we're going to discuss the whole thing again on Friday?

CHAIR MOLINA: I would hope not, this is where the work needs to be done, it's in committees and I know under Chairman King's leadership will minimize questioning and just take the vote.

COUNCILMEMBER LEE: I don't think you can limit people from, you know, discussing the same old thing from the day before. That's my concern.

CHAIR MOLINA: That would be the Chair...yeah that would be the Chairman's call on that day.

COUNCILMEMBER KING: So, if I can, Member Lee, so the idea is to try to get all the discussion to happen in Committee and then take the vote in the full Council. And that...and with the intent of not having that discussion at the full Council.

CHAIR MOLINA: Minimize further discussion on it because just like Chair said this is where all the work and comments and everything needs to take place as much as possible.

COUNCILMEMBER LEE: Well, is it possible to take the vote tomorrow?

COUNCILMEMBER KING: No.

COUNCILMEMBER LEE: In the Committee meeting?

CHAIR MOLINA: It would require a committee report, then it would go...if we were to do that tomorrow, take the vote and then it would require a Committee report and then it would

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

not be ready in time for the October 18th Council agenda. When is the next scheduled Council meeting after October 18th, would that fall on November 1st I believe?

COUNCILMEMBER KING: No it would be November 8th.

CHAIR MOLINA: November 8th. Okay.

COUNCILMEMBER KING: In the afternoon.

CHAIR MOLINA: Unless the Chair calls for a special Council meeting...if we were to go that route.

COUNCILMEMBER KING: Yeah. Chair, I tried to actually reschedule the November 8th to November 1st but I wasn't getting a good response from Councilmembers because I think there's a senior luncheon or something on that date that everybody committed to. So, it would have to be the 8th. On the 8th we have two Councilmembers, one being myself who won't be here because I'll be on vacation and Councilmember Hokama will be at a conference.

UNIDENTIFIED SPEAKER: When?

COUNCILMEMBER KING: The 8th.

CHAIR MOLINA: So, Members, well we can make the decision tomorrow I mean it's --

COUNCILMEMBER KING: Yeah.

CHAIR MOLINA: --you're the body, I'm just the Chair and depending on who shows up and if the proposal is to call for the vote, if the majority of Members want to call for the vote so be it, if not the again the Chair's recommendation have the discussion and then take the vote, hash out the discussion and questions and take the vote and not get into more of a Committee meeting-like setting at the Council level as much as possible. So, that's where your Chair is at on this item without getting into more details 'cause we're not formally on the item right now. Member Lee?

COUNCILMEMBER LEE: Yeah, I just wanted to make sure that we have it agendize as there's a possibility of voting on it tomorrow.

CHAIR MOLINA: Yeah. And that is why we will call for a recess so we're not adjourning the meeting

COUNCILMEMBER LEE: Oh okay.

CHAIR MOLINA: So, it is agendize. Yeah.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

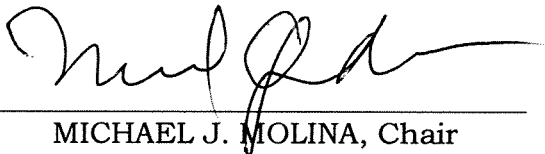
October 15, 2019

COUNCILMEMBER LEE: Then I'm fine with that. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Lee. Chair appreciates your thoughts. So, with that being said it is 12:34 the GET meeting for October 15, 2019 is now in recess until Wednesday, October 16 tomorrow 1:30 p.m. right here in the Chambers. All clear, Staff, we're good? Okay this meeting is in recess. . . . *(gavel)* . . .

RECESS: 12:35 p.m.

APPROVED BY:

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

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

get:min:191015:ck

Transcribed by: Cheryl von Kugler

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

October 15, 2019

CERTIFICATE

I, Cheryl von Kugler, 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 6th day of November, 2019, in Kihei, Hawaii

A handwritten signature in black ink, reading "C von Kugler", written over a horizontal line.

Cheryl von Kugler