

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Council Chamber

August 6, 2019

CONVENE: 9:04 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Keani N.W. Rawlins-Fernandez, Vice-Chair
Councilmember Riki Hokama
Councilmember Tasha Kama
Councilmember Kelly T. King
Councilmember Alice L. Lee
Councilmember Tamara Paltin
Councilmember Shane M. Sinenci
Councilmember Yuki Lei K. Sugimura

STAFF: Shelly Espeleta, Legislative Analyst
David Raatz, Supervising Legislative Attorney
Carla Nakata, 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.: Moana M. Lutey, Corporation Counsel, Department of the Corporation Counsel
Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel
Peter Hanano, Deputy Corporation Counsel, Department of the Corporation Counsel
Thomas Kolbe, Deputy Corporation Counsel, Department of the Corporation Counsel
Karla Peters, Director, Department of Parks and Recreation
Robert Halvorson, Planning and Development Chief, Department of Parks and Recreation

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

OTHERS: Jobie M. K. Masagatani, Executive Assistant, William Aila Jr., Hawaiian Homes Commission Chairman, Department of Hawaiian Home Lands
Ian Chan Hodges, Consultant, Na Po'e Kokua
Ivan Lui-Kwan, Esq., Starn O'Toole Marcus & Fisher, Law Corporation
Kehau Filimoeatu, Na Po'e Kokua
Brandon Maka'awa'awa, Vice President, Na Po'e Kokua
Bumpy Kanahele
Plus (5) other people

PRESS: *Akaku Maui Community Television, Inc.*

CHAIR MOLINA: . . . *(gavel)* . . . The Governance, Ethics, and Transparency Committee for August 6, 2019 meeting is now in session. Good morning, Members.

COUNCILMEMBER KAMA: Good morning.

CHAIR MOLINA: And we have a full slate of Members here this morning. We'll start first with our Member from Hana, Mr. Sinenci, good morning.

COUNCILMEMBER SINENCI: Hey, mahalo, Chair. Aloha, good morning.

CHAIR MOLINA: Aloha to you too. Aloha. And Council Chair King.

COUNCILMEMBER KING: Aloha, ohayo gozaimasu.

CHAIR MOLINA: Thank you for the greeting. And Councilmember Lee.

COUNCILMEMBER LEE: Good morning, Mr. Chair. Give me a second I have to get use to my Filipino, you know, dialect maayong buntag.

CHAIR MOLINA: Oh awesome.

COUNCILMEMBER LEE: I hope we don't have any Filipinos in the audience.

CHAIR MOLINA: Okay.

COUNCILMEMBER LEE: Sorry, sorry if I mispronounced it.

CHAIR MOLINA: Well, we certainly consistently promoting cultural relations here in these --

COUNCILMEMBER LEE: Yes.

CHAIR MOLINA: --Chambers. That's much appreciated. And my wonderful Vice-Chair, Ms. Rawlins-Fernandez, good morning.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair, you're looking good this morning.

CHAIR MOLINA: Thank you so much, get brownie points already. Thank you. And we have Councilmember Hokama.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR MOLINA: Good morning. And, Councilmember Paltin, good morning.

COUNCILMEMBER PALTIN: Aloha kakahiaka.

CHAIR MOLINA: Aloha kakahiaka to you too. And Councilmember Sugimura.

COUNCILMEMBER SUGIMURA: Good morning.

CHAIR MOLINA: Good morning. And of course, Councilmember Kama from the Central Maui District.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair.

CHAIR MOLINA: Aloha. Thank you. And we're also accompanied this morning by a plethora of attorneys from our Corporation Counsel's Office led by Corporation Counsel, Moana Lutey as well as Deputy Corporation Counsel, Peter Hanano, and also Corporation Counsel, Ms. Richelle Thomson. Good morning. And from Staff we have our Analyst, Shelly Espeleta as well as our wonderful Secretary, Ms. Pauline Martins, good morning. Members, we have two items on our agenda this morning, our first item will certainly be...will get much discussion, but before that Chair will entertain public testimony. Before we do that the Chair would like to check in with our sister offices to see if we do have testimony there. First, let's go out to the Molokai office, Ms. Lindo, do we have any testifiers from Molokai? Are we online here? Okay. We've been having some difficulty with our phone transmittals this morning.

UNIDENTIFIED SPEAKER: Mavis, are you with us?

CHAIR MOLINA: Maybe what we'll do, we'll go out to our Lanai Office, Lanai Office?

UNIDENTIFIED SPEAKER: Hello, Denise.

CHAIR MOLINA: By the way we're doing this by cell phone I believe as well. If not, Hana Office? Maybe what we'll do, we'll come back to our sister offices and then just take public testimony here first. Okay, we're having some minor technical difficulties here, Members, so what the Chair will do...we'll go ahead and entertain...we have three individuals signed up for public testimony in the Chambers here in Wailuku so we'll start with that first. Those of you testifying, the rules for testimony is you'll be given up

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

to three minutes to testify. Please state your full name for the record and any organizations that you may be representing, and if you are a registered lobbyist please inform the Council of that as well. So, what I'd like to do first is call up our first testifier who will be testifying on GET Item 19, that's Brandon Maka'awa'awa. Mr. Maka'awa'awa?

MR. MAKAWA'AWA: I think Auntie Kehau goes first. I'll go second.

CHAIR MOLINA: Oh, okay. Well, I have you listed as first. Sorry. Well, it's okay if you want to. We'll certainly allow Ms. Filimoeatu.

MR. MAKAWA'AWA: . . . *(inaudible)* . . . kupuna.

MS. FILIMOEATU: . . . *(inaudible)* . . . you guys too.

CHAIR MOLINA: Okay. Forgive the background effects here folks. But we have Ms. Filimoeatu who will be testifying on Item GET-19 to be followed by Mr. Maka'awa'awa. Good morning, Ms. Filimoeatu. Okay, we're having a recess subject to the call of the Chair. . . . *(gavel)* . . .

RECESS: 9:09 a.m.

RECONVENE: 9:09 a.m.

CHAIR MOLINA: . . . *(gavel)* . . . The GET meeting for Tuesday, August 6, is now in session. Thank you for that brief recess, Members, to address technical difficulties with our phone system. We last left off with Ms. Filimoeatu, to give testimony on GET-19. Ms. Filimoeatu, you have the floor.

. . . BEGIN PUBLIC TESTIMONY . . .

MS. FILIMOEATU: Mahalo. And we're all ready now? So, school is in session, right? Okay. My name is Renee May Kehaulani Lum Ho Filimoeatu, born and raised on Maui. I'm a D2, District 2, constituent, one of your constituents as well. Okay. So, this is GET, I call this the get go team right. And what we...what I'm thinking about when we come to testify usually there are issues. I mean we all have issues, I have three, my kids. And what happens those issues stay with you forever and sometimes when we're looking at different issues we want to know what it means to us and sometimes it's only an issue if has something to do with us. And for you all who are public servants, you know, you got a lot of issues. The kuleana of being a parent, a nurturer, as well as a server, and especially a civil servant never really diminishes. Even decades of issues that have started long ago really never diminish especially when as a Hawaiian you become...it becomes your kuleana and then what happens is you tend to have to really malama that throughout your tenure or your life or your term. I am the president of Na Po'e

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

Kokua. I'm born and raised again here on Maui and this is where I depend...I decide or will be resting. If you have questions, ask, and I think this is kind of bass ackwards because you've got a lot of information that is part of the team here today and we would have liked to have looked or listened to them first 'cause maybe our concerns would be probably answered. So, if you have questions you can ask me if you like. This initiative that we're pondering on right now will never diminish, for us it has been a decade's work of lifetime initiatives and wanting to promote things, but always know that as a kupuna, especially, the kuleana never diminishes and it's a long process and what happens is we hope that, that continues on in what we look at our issues, that we'll take the issues forward. I want to mahalo you get go team and realize that in this room I can see that there is a team that can win with all of us in first place. Mahalo.

CHAIR MOLINA: Mahalo, Ms. Filimoeatu. Members, any questions? Councilmember Paltin? I'm sorry, Ms. Filimoeatu, we have a question from one of our Members. Ms. Paltin?

MS. FILIMOEATU: Yes, Tamara.

COUNCILMEMBER PALTIN: Good morning, thank you for coming and thank you for your service. I was...I just had a question based on the agenda item what kind of expectations are you having for an outcome for today?

MS. FILIMOEATU: Well, I would like for you to certainly jump on that initiative wholeheartedly and in trying to get the necessary processes set so that we can come to an initiative solution. Be it meaning...getting a natural or necessary parties together to get there and so far I you've got a...you've done a good job 'cause we've got all the local teams here and the Members here that can come together and try to mitigate whatever.

COUNCILMEMBER PALTIN: I was wondering like specifically what a solution...what you're envisioning a solution looks like?

MS. FILIMOEATU: The solution looks like getting millions, maybe billions of dollars coming into the communities of Hawaii Nei to help with issues such as housing, discriminatory lending, and other things that our people can benefit from.

COUNCILMEMBER PALTIN: And you wanted that in the form of grant, low-interest loan, regular loan?

MS. FILIMOEATU: Either or. You need to know that beyond just the B of A there are other initiatives that have...are considered spinoffs of all of the stuff that we have worked thus far for and what we're looking for is a greater impact or greater, how can I say, you know, I'm trying to...

COUNCILMEMBER PALTIN: You wanted to like leverage the money on the infrastructure or you wanted it...

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

MS. FILIMOEATU: Whatever it is and you can help us with whatever you can. So, we want to partner not only with the County of Maui, but we have with already the State of Hawaii and other agencies as well.

COUNCILMEMBER PALTIN: Okay. Thank you.

MS. FILIMOEATU: Thanks, Tamara.

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

MS. FILIMOEATU: Yes, Keani.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, Ms. Filimoeatu. Mahalo for taking the time to come in to testify this morning. So, I wanted to dovetail off of Member Paltin's questions. So, specifically there are two resolutions on today's agenda, did you get an opportunity to review them and are you in support of them?

MS. FILIMOEATU: Yeah, I am. I was looking at that, about the special counsel and stuff like that. I think you should realize that we can do that and the thing is there's no reason for you not to be able to jump on that, that bandwagon. 'Cause they have proven that it has been done already so why wouldn't we want to be the same as Florida and be there? And I again mahalo, you know, for that.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay mahalo and so...

MS. FILIMOEATU: There's two others over here yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: Yeah so, one resolution is encouraging the State Attorney General to employee outside counsel to pursue --

MS. FILIMOEATU: Right.

VICE-CHAIR RAWLINS-FERNANDEZ: --legal remedies --

MS. FILIMOEATU: Right.

VICE-CHAIR RAWLINS-FERNANDEZ: --for fraudulent banking activity and the second resolution is authorizing the employment of special counsel --

MS. FILIMOEATU: Correct.

VICE-CHAIR RAWLINS-FERNANDEZ: --to pursue sanctions and other remedies for --

MS. FILIMOEATU: Right

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

VICE-CHAIR RAWLINS-FERNANDEZ: --fraudulent foreclosures --

MS. FILIMOEATU: Yeah.

VICE-CHAIR RAWLINS-FERNANDEZ: --and both of which you've reviewed and...

MS. FILIMOEATU: Yeah, right.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay.

MS. FILIMOEATU: Totally. We gotta imua and get go.

CHAIR MOLINA: Thank you. Chairman King?

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

CHAIR MOLINA: Thank you.

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Kehau. So, I just wanted to clarify because there are two schools of thought on this. I think everybody wants to go ahead, go forward with this trying to get the restitution from Bank of America, but there's the idea of Maui taking the lead which at one point we thought we would have to do because it didn't look like anyone else was getting on board and now we're looking at the State taking the lead. So, do you know if we've gotten...I know that Big Island passed a resolution first, do you know if we've gotten all the other counties on board so that... 'cause I think it would be stronger if the State took the lead.

MS. FILIMOEATU: Yeah I know that Honolulu is doing theirs this week and then Ian can more accurately tell you exactly how the process has gone.

COUNCILMEMBER KING: Okay. Great. All right, thank you.

CHAIR MOLINA: Thank you. Members, any other need for clarification from Ms. Filimoeatu? Seeing none, thank you very much for your testimony.

MS. FILIMOEATU: Mahalo.

CHAIR MOLINA: Next to testify we have Brandon Maka`awa`awa who will also be testifying on GET Item 19.

MR. MAKAWA`AWA: Aloha, good morning. My name is Brandon Maka`awa`awa. I represent Na Po`e Kokua. I'm the Vice President. I also represent the nation of Hawaii as a Deputy Head of State. I'm a Waimanalo Hawaiian homesteader so, this issue means a lot to me. We've heard a lot about the rule of law recently when it comes to TMT's so called right to build when it wants, what it wants on our mauna. But when it comes to big

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

banks what Hawaiians have learned over the past quarter century is that the rule of law does not always apply to us and it is selectively enforced. The three-page timeline that Chairman Molina provided in County Communication 19-107 makes this very clear. Bank of America believes it is above the law and the government often supports that belief. Yesterday, I sent a chart to the GET Committee, which adds more detail to Chair Molina's timeline from 2003. Does everyone have a copy?

CHAIR MOLINA: Was that distributed? It should be in the Members' Granicus. Continue.

MR. MAKAWA`AWA: Okay. Take a look at the third box down to the right of the Bank of America logo, I'll read it. In March of 2003, Micah Kane, who at the time was Chair of the Department of Hawaiian Home Lands, meets with Bank of America executives three weeks after Hawaiian Home Lands beneficiaries are forcibly evicted by 80 law enforcement officers as a matter of principle over \$250,000 in overdue mortgages. This is what I mean by selective enforcement of the law. Despite the fact that Bank of America admits in writing that it completed only 2 percent of its commitment by the deadline, the Lingle Administration was eager to work things out with Bank of America. Hawaiian Home Lands' beneficiaries, including kupuna and moopuna, didn't receive the same treatment and were forcibly evicted in an early morning raid for a manini amount of money. When you look over the rest of the chart you don't need to be a lawyer to understand that the Lingle Administration continually put Bank of America's corporate agenda before the urgent needs of the Hawaiian people repeatedly. And we're not even looking at what happened in the later years, particularly in 2007. But I only have three minutes. Today the second resolution you are considering is entitled authorizing the employment of special counsel. I'm not a lawyer, but my fiancé is; she specializes in housing discrimination law and I've learned a few things from her. First, lawyers like my fiancé who fight discrimination and injustice work for the people are somewhat rare because the odds are stacked against them and banks and other corporations pay better. Second, there was an article published on law.com six weeks ago with the headline, Maui County Officials Consider Recruiting Miami Litigator Bruce Jacobs in Affordable Housing Fight. An early draft of this resolution you are considering today was included with the article and considered authorizing the employment of Bruce Jacob's firm. Third, I have spoken directly with Bruce Jacobs and I believe him to be the type of lawyer who is committed to ensuring that even a corporation as powerful as Bank of America with more than \$2 trillion in assets needs to be held accountable to the rule of law.

CHAIR MOLINA: Mr. Makawa`awa, I'm sorry, your three minutes are up.

MR. MAKAWA`AWA: Okay.

CHAIR MOLINA: If you have a final sentence, you want to wrap up.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

MR. MAKĀ`AWA`AWA: Finally, this is the Governance, Ethics and Transparency Committee, I would ask that you keep deliberations on the special counsel transparent and not close them off to the public by denying the public's access. Mahalo.

CHAIR MOLINA: Mahalo, Mr. Maka`awa`awa. Committee Members, questions for the testifier to clarify his testimony? Chairman King?

COUNCILMEMBER KING: Thank you. Thank you for being here. So, you are here from Oahu?

MR. MAKĀ`AWA`AWA: Right.

COUNCILMEMBER KING: And that...the first resolution you referred to is the one entitled Encouraging the State Attorney General to...

MR. MAKĀ`AWA`AWA: Right.

COUNCILMEMBER KING: So, we're not actually authorizing, we're just encouraging the State to --

MR. MAKĀ`AWA`AWA: Right.

COUNCILMEMBER KING: --go ahead with this. Okay. And if they do that process will go through the State Attorney General's Office, not...this Council will not have control over that process, but...

MR. MAKĀ`AWA`AWA: Right.

COUNCILMEMBER KING: So, are you advocating that we actually...that Maui takes control and goes back to the previous resolution where we are hiring special counsel? Because that would just solidify it on Maui.

MR. MAKĀ`AWA`AWA: Right, yeah.

COUNCILMEMBER KING: And we really want to join forces, I think, with the rest of the State.

MR. MAKĀ`AWA`AWA: Right. We would like to do that, we just going with whatever is presented, but we would have liked for Maui Council to take the initiative and hire Bruce Jacobs because, you know, these banks they can get real dirty and if we don't know how to deal with them like how Bruce has already in Miami where he's already brought in charges against Bank of America. I think it's maybe wise to hire somebody with that type of expertise.

COUNCILMEMBER KING: Okay. So, you would like to at some point be involved if it does go to the State level.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

MR. MAKA`AWA`AWA: Right.

COUNCILMEMBER KING: Be involved in that just to make sure that, that process is open --

MR. MAKA`AWA`AWA: Yeah.

COUNCILMEMBER KING: --because a lot of time because we got no response from Corp. Counsel on that.

MR. MAKA`AWA`AWA: Right.

COUNCILMEMBER KING: We got nothing in writing back.

MR. MAKA`AWA`AWA: Right.

COUNCILMEMBER KING: Despite sending them a revised version that took the name out I also got no response in writing back from Corp. Counsel.

MR. MAKA`AWA`AWA: I appreciate that.

COUNCILMEMBER KING: So, I've been trying to get, you know, to open up and make this process transparent, I don't know what we can do at the State level, but I encourage you to stay involved.

MR. MAKA`AWA`AWA: Thank you.

COUNCILMEMBER KING: All right. Thank you.

CHAIR MOLINA: Okay. Thank you, Chair King. Any other questions to clarify from the testifier? Seeing none, mahalo for your testimony.

MR. MAKA`AWA`AWA: Thank you.

CHAIR MOLINA: Thank you. Next to testify on GET Item 19, we have Mr. Bumpy Kanahele.

MR. KANAHELE: Aloha and good morning. My name is Dennis Bumpy Kanahele. I'm also a homesteader; 50 years Waimanalo Homestead. I'm the Head of State for the nation of Hawaii, I'm the CEO for Aloha First, our 501(c)(3) non-profit organization that was directly involved with the BOA, Bank of America unfulfilled commitment. I want to just real quickly run right through history. Now, it is important that this Council move everything forward for the Hawaiian people and why is because it originated from Maui. Na Po'e Kokua and all of that was originated from Maui with kupuna, I mean hundreds of kupunas supported this. And it was in 1999 after the Bank of America did not fulfill their commitment, four-year commitment of when interest was added on, lost cost opportunities and all that stuff and it made available not only for mortgages now, but

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

that extra interest was used to create a first Hawaiian owned and controlled bank. That is what's missing out of this whole thing and that is what was scaring a lot of people, came from your island. Mr. Hodges over there taught us, I went to underwriting training San Francisco Federal Reserve. Kehau Filimoeatu she went training in Charlotte, North Carolina for banking. They were turned down about five or six times. Now, that was 1999, since then we've seen well besides 26 years, 5 governors and over 12, you know, DLNR Chair people like that going through this whole thing, and the real problem is the failure of BOA not recognizing that Micah Kane's letter in 2007 was overturned by the next Administration, which was Abercrombie. 2012, Alapaki Nahale-a, the Chairperson for Hawaiian Homes, overturned that because it wasn't completed, it was unfulfilled, there was not enough FHA 247 loans made. And so, in that duration of the Lingle Administration, Micah actually changed the order behind the commission's...he tried to change what was between the Federal Reserve and the Hawaiian people, he tried to change that and that's how it included all different kinds of loans and not just FHA 247. So, I just gonna end there to say that we have more information. I know that, you know, we cannot do everything in a few minutes, but Maui is important, the Council here is important, I think stronger than the State because of the funding and how long it was. Thank you. Thank you.

CHAIR MOLINA: Okay, mahalo, Mr. Kanahele. Members, questions? Member Lee?

COUNCILMEMBER LEE: Thank you, Mr. Chair. Mr. Kanahele, welcome to Maui.

MR. KANAHELE: Yeah, thank you.

COUNCILMEMBER LEE: Okay are we in agreement that the original amount that is owed, that was owed by Bank of America is \$150 million?

MR. KANAHELE: Well, that was the commitment to the Native Hawaiian people --

COUNCILMEMBER LEE: Okay --

MR. KANAHELE: --the \$150 million.

COUNCILMEMBER LEE: --so everybody agrees on that amount. So, the dispute follows that, in other words Bank of Hawaii is saying...not...Bank of American is saying that they owe less today because of they paid, they made payments towards other I guess housing projects or initiatives.

MR. KANAHELE: Yeah, but it's still like, you know, you opening up another loan and then all of a sudden you got two loans to pay, right.? In our case, BOA had no option out of paying a lost cost opportunity and fulfilling the mortgage lending. So, it's two pronged now. Imagine housing very important because lot of people lost, you know, if you look at \$150 million that's a thousand mortgages at a \$150,000 a piece in 1994. Why wasn't that done? Today only 3 million can be accounted for FHA 247, but that is because

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

Micah Kane went behind the closed doors with Bank of America and worked out a deal that could break up the FHA 247 loans that was specifically ordered by the Federal Reserve. So, it's a real in-depth thing, but there's no question that they owe us money, they owe the Hawaiian community money and it's a late payment fee that's been climbing on it. If they had done everything in 1999, \$4.5 million today the Hawaiian would have a bank, in 1999. So, this is 20 years later, you know, and we still talking about this 26 years later. They have no out, they're sitting on Micah Kane's 2007 letter, you know, after that, Alapaki and then after that, Governor Ige himself signed. Bring everybody to the table, right, but as long as they keep denying we gonna have to keep coming back. Real simple we'd like to work with them, pay up, pay up so that we, the local people stuck back here, the Council and all of us don't fight with each other.

COUNCILMEMBER LEE: Okay. So, was it really the initiative of Governor Ige that propelled this forward?

MR. KANAHELE: Yeah it just, Governor Ige put in his signature to this whole unfulfilled commitment.

COUNCILMEMBER LEE: And what is the balance? What do you think the balance is then?

MR. KANAHELE: Oh well figure out a lost cost opportunity for the last...since 1999 on a \$150,000 million, figure that out. That's, you know, up to Mr. Kwan and BOA now. You know we didn't want to throw Hawaiians under the bus and because we gotta come out in the open to really explain that, you know, all these numbers and all that it don't mean nothing, they just did not fulfill the commitment. And so, the numbers are...can run anywhere from 3, 400 million to over a billion dollars--

COUNCILMEMBER LEE: Okay. Thank you very much.

MR. KANAHELE: --of which would go to the people.

COUNCILMEMBER LEE: Thank you.

MR. KANAHELE: Right?

CHAIR MOLINA: Thank you, Member Lee. Members any other questions for Mr. Kanahele? Chair King?

COUNCILMEMBER KING: Chair, no I just wanted to find out because I think there's a lot of institutional knowledge if Mr. Kanahele is willing to stay if we could ask him to be a resource for this Committee when we get into discussion.

MR. KANAHELE: Oh yeah. No problem.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

CHAIR MOLINA: Members, any objections to having Mr. Kanahele stay here as a resource? Of course, Mr. Kanahele, no problem with you staying?

MR. KANAHELE: Yeah. Yeah.

CHAIR MOLINA: Okay.

COUNCILMEMBER KING: And then we can continue....

CHAIR MOLINA: Alright.

MR. KANAHELE: Okay. Thank you.

CHAIR MOLINA: Thank you, so ordered by the Members. Okay. Seeing no other testifiers, thank you very much, Mr. Kanahele. Let's go out to our sister offices see if we have any testifiers on any of our agenda items today. Let's start off first with Molokai and go out to Ms. Lindo, do we have any testifiers from Molokai?

MS. LINDO: Good morning, Chair. This is Zhan from the Molokai Office and there are no testifiers.

CHAIR MOLINA: Okay. Mahalo. Let's go out to Lanai and Ms. Fernandez.

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

CHAIR MOLINA: Mahalo. Let's go out to our good friend Mavis out in Hana, do we have any testifiers this morning?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. There is nobody here to testify. Sorry, this is Mavis in Hana.

CHAIR MOLINA: Aloha, Mavis. Thank you. Okay, do we have anyone else in the gallery that would like to testify on any of our two agenda items today? Please make it be known. Okay, seeing none, Members, if there are objections, Chair would like to close public testimony on our agenda items.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, so ordered. Thank you very much, Members.

. . . END OF PUBLIC TESTIMONY . . .

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

**GET-19 BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES FOR
NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS (CC 19-107, CC 19-108)**

CHAIR MOLINA: Okay, Members, we'll start first with our one item which is Bank of America's Commitment to Provide Mortgages for Native Hawaiians on Hawaiian Home Lands, otherwise known as GET-19. Member Kama, you have a quick question before I proceed?

COUNCILMEMBER KAMA: Chair, I don't have a question, I just have a comment if I may.

CHAIR MOLINA: Okay. Go ahead.

COUNCILMEMBER KAMA: I just wanted to put on the record my relationship with everybody in this room. So beginning with Na Po'e Kokua, I was the founder and first president of Na Po'e Kokua, along with Kehau Filimoeatu, and at that time we had hired Ian Chan Hodges as our consultant. In the interim, I am a homestead beneficiary of the Keokea farm lots, of which Jobie Masagatani happened to be the chair of the department at that and time that I was...I also belonged to an organization called the Sovereign Councils of Hawaiian Homestead Associations, which is led by 27 Native Hawaiian homestead associations across the State, of which we, Ivan Kwan, was part of that board and I just wanted to kinda like lay it out there that my past life, these are all the people that have come with me and we are here today. So, thank you, Chair.

CHAIR MOLINA: Thank you, Member Kama, for disclosing all that information. Corporation Counsel, any comments, any...see any potential conflicts here at this point? Ms. Lutey, any thoughts or, Ms. Thomson?

MS. THOMSON: Thank you, Chair. No, we don't see any conflicts and have advised Member Kama that, you know, once and if we get to a decision making meeting that she might want to seek a Board of Ethics opinion if there are any financial ties that might be questionable. Thanks.

CHAIR MOLINA: Okay. So ordered.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Alright. Thank you very much. Chairman King?

COUNCILMEMBER KING: Just a question, a point of information, do we have anybody from the State of Hawaii here? Since we have...

CHAIR MOLINA: Well, we have, Miss...

COUNCILMEMBER KING: But I mean that would actually be from the State government. I don't know if you considered, if the Hawaiian Home Lands is considered would be the

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

one that would be taking the lead if we were to address this resolution asking the State to hire special counsel, so we have nobody from the State that would actually speak to this.

CHAIR MOLINA: Not at this point, but we did receive an e-mail from the State Attorney General's Office that I believe should be in your Granicus from Deputy Attorney General Ryan Kanaka'ole for your review and we can get to that discussion at a later point.

COUNCILMEMBER KING: Okay. Do you know what the date is on that because I don't see it Granicus?

CHAIR MOLINA: Okay. Staff, maybe if you can help direct Chairman King. In the meantime, I'd like to get started with our panel discussion first. The panel members, thank you very much for being here. We have from the Bank of America, Mr. Ivan Lui-Kwan and then we have Ms. Jobie...forgive me if I mess up your name there, Jobie, Masagatani and she's from the DHHL, and of course we have Mr. Ian Chan Hodges whose...who'll be...I guess consultant. So, Chair would like to proceed in this fashion, we'll give each of our panel members up to seven minutes for a...to point out their stance on this matter and then once we're...we've completed our...our panelist have completed their presentations then I'll open up the floors for questions. Okay. So, Ms. Espeleta, are we ready to set the timer? Okay. Just give me the signal when we're ready to go, and we'll start off first with Mr. Chan Hodges. So, are we ready, set go? Okay, Mr. Chan Hodges, you have the floor.

MR. CHAN HODGES: Thank you. Can everybody hear me okay? Okay, I want to start off by actually linking these different agenda items together because we do have...the items I believe that I'm correct that the Council here is actually considering to make a decision on are the items that relate to hiring the special counsel and also I think it says, encouraging, yeah, encouraging the State Attorney General to actually employ outside counsel as well. So, I wanted to actually talk a little bit about the connection between that, both of these obviously have to with Bank of America. But the other connection, a little bit of background on that, and someone had mentioned Bruce Jacobs before, is that back last year, when the previous Council --and some of you were on the previous Council --the previous Council passed a resolution supporting the...Governor Ige's letter to Bank of America asking Bank of America to show up to meet with Kehau Filimoeatu, which they still have not done. That around that time last fall, there was an article that appeared in CNBC, from two investigative reporters from CNBC, that I happened to see on the internet and the article actually talked about Bruce Jacobs, who is a Florida attorney, his...he's a Florida foreclosure defense attorney and it talked about his work trying to hold Bank of America accountable and trying to defend people who are being foreclosed on. And specifically what the article talked about was that in his actions on defending people who are being foreclosed on by Bank of America, he actually had a bunch of discovery and basically what happened was, and here's sort of the main connection, is in 2010, which was around the time that the OCC had a consent decree with Bank of America and other banks for what was called robo signing, and about two

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

years after that, there was a \$25 billion settlement that Hawaii actually got a part of for robo signing scandal. And basically, what that was, was that was when banks they...when banks actually...when somebody has a mortgage they actually have to have endorsements as the mortgage passes from the person that actually issues the mortgage to whoever the servicer is to the trust that actually has the mortgage under securitize mortgages. They have...just like you do with a check if you sign your check over to somebody you have to actually endorse it. So, there has to be a process of paperwork that shows that the mortgage actually transfers from one group to another. And when you want to foreclose on somebody you actually have to demonstrate you have the standing to foreclose. So, that was one of the issues that Bruce Jacobs is looking at. And right after the OCC had a consent decree with Bank of America, Cathy Bessant who's mentioned in the Governor's letter and I think we've all seen her name because she was the one Bank of America executive who came out to Hawaii to meet with Kehau Filimoeatu and a bunch of other people when...1998 at the end of Bank of America's commitment and agreed at that time to a late fee of \$4½ million because Bank of America hadn't fulfilled their commitment. In January 2010, Cathy Bessant was named as head of operations in charge of documents and 100,000 people at Bank of America. Shortly after that the OCC issued their consent decree and in April of 2010 Bank of America issued...went into a contract with a group called Source Corp and this is where it gets to the article that was in CNBC because basically what happened when Bruce Jacobs was defending people and different mortgages he actually discovered that there was this group called Source Corp and actually asked for a subpoena on Source Corp in January 2016 and in February 2016 Source Corp turned over a copy of their contract with Bank of America. And Jacobs in his article if you look it up he said he was stunned to learn the discovery that Bank of America had ordered Source Corp to purge all these records and basically what happened was...there's lots of details to this, but basically Bank of America ordered Source Corp to purge 1.8 billion records that actually deal with mortgages and the purge actually happened shortly after the court actually issued a subpoena to Source Corp to actually get all this information. So, what the cases are that Bruce Jacobs is pursuing in Florida, also every state that has judicial foreclosures which Hawaii is one, this kind of fraud happened where Bank of America was actually foreclosing on people without the proper documentation. And what they did with Source Corp is they put Source Corp was part of their kind of forgery mill where they basically created these documents and signed them afterwards and that's actually what Bruce Jacobs is actually looking at. And part of the issue when we're talking about foreclosure fraud that's what we're talking about. The...there's a little bit of misunderstanding I think in the memo that Corporation Counsel put together on this of what this would actually involve and basically there not be...and I'm a lawyer so I'll go very quickly into this, but basically this is based on a kind of precedent that a Federal judge, Federal bankruptcy judge, Judge Klein in Southern California set. Where he basically...there was a case he had before them, Bank of America once he got to the point where there's going to be discovery Bank of America wanted to settle and what happened was Judge Klein decided that Bank of America should actually pay about \$40 million in sanctions because they lied so much to courts. And he in his ruling he talks about Bank of America in 2012 agreeing to pay \$11.82 billion, paying \$100 million in to settle

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

something in 2013 and basically they keep paying these fines because they keep actually defrauding the courts. And the idea here is to actually go...I actually just talked to Bruce Jacobs this morning on the phone, he's actually in Israel, he's Jewish and his son is having his Bar Mitzvah in Israel. But basically, what the case would actually be is to go to the courts in Hawaii and ask for sanctions for the fact that Bank of America's actions defrauded the courts over years. And then the sanctions because the \$25 million settlement apparently wasn't enough, the sanctions would actually have to go...rise to the level of the boardroom where the boardroom would actually have to look at it which would require at least a 1½ percent of Bank of America's assets which are over \$2 trillion. Thank you.

CHAIR MOLINA: Okay. Thank you very much, Mr. Chan Hodges. Okay, let's reset the timer now. I'm gonna go to, Mr. Lui-Kwan for his statements with regards to GET-19. Mr. Lui-Kwan?

MR. LUI-KWAN: Mahalo nui loa, Chair Molina and Members of the Committee. My name is Ivan Lui-Kwan, I represent Bank of America. I submitted a written testimony yesterday with the hope that I would not have to speak too much. And so, I would invite you to take a look at this written testimony if you haven't already. What this written testimony includes are correspondence among DHHL, Bank of America, and the Federal Reserve Bank of Richmond and what the correspondence indicates are a number of things. One is that there was a modification of the \$150 million commitment to provide for initiatives besides residential mortgage loans to be counted towards the \$150 million commitment. Also, what that correspondence indicates is an agreement among the parties that as of that date, December 15, 2003, that the DHHL and Bank of America agreed as to the amount of the \$150 million that had been satisfied and the amount that needed to be satisfied, and that amount as shown in the correspondence was that still outstanding was \$80,608,327, and what had been counted and applied to the \$150 million commitment was \$69,391,573. So, that was the second thing that the parties agreed to. The third thing that parties agreed to was very important is that what they would do is set up a working, a moving forward structure where DHHL would appoint staff, Bank of America would appoint staff and together they would work towards the satisfaction of the \$80,608,327 towards the \$150 million commitment. So, there was an on-going relationship between DHHL and Bank of America towards satisfying that commitment. And so, that was in that correspondence and if you look at the letter that I submitted as written testimony I'll try to make it clear where in those letters these different commitments and agreements were contained. And so, if you look at the color code references to correspondence among DHHL, Bank of America and the Federal Reserve Bank of Richmond you'll see in yellow, so if you were to look at the letter and you look in yellow what'll you see is that Bank of America and DHHL agreed to a modification of the lending commitment to allow other initiatives to be signed to residential mortgages loans to be counted towards the Bank of America's \$150 million commitment. If you look at the green what you will see is that as of November 6, 2003 as reflected in the letter of December 15, 2003 Bank of America and DHHL agreed that the \$69,391,573 would be counted towards the \$150 million commitment and still

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

outstanding would be \$80,608,327. If you look at the orange in the correspondence the agreement shows that there was an establishment of a going forward relationship structure with DHHL for Bank of America to satisfy the remaining \$80 million of the \$150 million commitment. If you look at the blue what you will see is the reference to Ben Henderson. Ben Henderson was an integral part of this whole process. If you were to talk to DHHL, Micah Kane at that time, he would say that clearly Ben Henderson and he were a team, they were working together, they were representing the commission and clearly he was part of this process. The pink shows that the Department of Hawaiian Home Lands agreed that the \$150 million commitment had been satisfied as shown in the letter dated October 3, 2007 from DHHL to Bank of America. And so, what I'd like to do is to read for you recent, certain portions of a recent letter that was sent by the Hawaiian Community Assets of March 6 this year and the letter says on Page 2 and it's part of the attachment to my letter. On Page 2 it says Bank of America activities in conjunction with the Hawaiian Community Assets, in August 2000 HC approached Bank of America to determine whether the bank would be interested in capitalizing the Hawaii Community Asset proposed mortgage broker arm, Hawaii Community Lending, to enable HCA to originate FHA 247 and other mortgage loans on Hawaiian homes. In return for capitalizing the mortgage program HCA proposed that Bank of America be entitled to count the loans for its credit against the \$150 million commitment. Bank of America expressed an interest provided DHHL approve the arrangement. On the bottom of that Page 2 the second to the last paragraph what it reads is that in 2006, Mr. Wagele welcomed Bank of America to Hawaii and the Annual Native Hawaiian Convention to honor them for their great support for training and technical assistance provided to HCA. The grant support made it possible for HCA to be handed over to a Native Hawaiian leader, Michelle Kauhane. Ms. Kauhane went on to lead HCA by renegotiating the organization's debt with the Bank of America Community Development Corporation from a 9 percent interest rate to a 1 percent per annum interest only payment with a balloon payment due February 2017. This helped our organization dedicate its financial resources toward originating \$45 million in FHA 247 mortgage loans that were counted towards Bank of America's \$150 million Hawaiian Home Lands lending commitment. In 2010, with the passing of the SAFE Act, HCA could no longer house...

CHAIR MOLINA: Go ahead and conclude your last sentence or two.

MR. LUI-KWAN: Thank you. Could no longer house HCL [sic] as its mortgage brokerage arm under its existing business structure. The mortgage brokerage arm had been producing 50 percent of the organizations' annual revenue prior to the SAFE Act and served as the main vehicle for not only fulfilling Bank of America's \$150 million Hawaiian Home Lands lending commitment but also for HCA loan repayment to Bank of America Community Development Corporation.

CHAIR MOLINA: Okay. Thank you very much, Mr. Lui-Kwan. And finally, let's go to the Department of Hawaiian Home Lands representative, Ms. Jobie Masagatani.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

MS. MASAGATANI: Aloha mai kakou. I did not expect to have to present remarks but let me just go ahead and do so. My name is Jobie Masagatani, I serve as the Executive Assistant to Chair William Aila. I also at one time was the Deputy to the Chairman under Kali Watson and Ray Soon, that was during the Cayetano Administration and then most recently was the chair of the Hawaiian Homes Commission under Governor Abercrombie and Governor Ige's first term. So, I do have a little bit of history with DHHL. I think perhaps as I listen to the conversation I hope my remarks can bring some clarity to this kind of complex situation. The first thing is the \$150 million commitment or that was made by Bank of America was as Bumpy had mentioned, was for mortgage lending through the, what's called the FHA 247 primarily program. DHHL is very unique in the kind of lending you can put on Hawaiian Home Lands from...with outside lending institutions like Bank of America they're primarily two forms of lending, FHA 247 which was the primary vehicle we had at that time and more recently 184A both through HUD. So, when you talk about the original \$150 million commitment it was to mortgage lending. Subsequent to that commitment, Bank of America left this market so to be able to place that level of lending on the home lands was challenging for the bank because they no longer were in the market. And that commitment still remained and Hawaii Fair Lending Coalition which Ian Chan Hodges has been a part of I believe from the beginning was the entity separate and apart from DHHL along with other individuals that have testified out of Maui that wanted to hold Bank of America accountable for this 150 million lending. Now, it's important that although the lending is on the home lands and the amount of lending is driven by the development that the department does so we are involved in that conversation, that was not something that the department was involved with in terms of holding the bank accountable as it related to the regulatory institutions. Hawaii Fair Lending Coalition, Na Po'e Kokua, Hawaiian Community Assets are all organizations outside of DHHL. So, however, the bank did, you know, during the time that I was the deputy and let me just say that, Ben Henderson who I worked with served as the executive assistant to Hoaliku Drake, to Kali Watson, to Ray Soon and then served as the deputy to the chairman under Micah Kane and went on to become the head of the QLCC. So, he is a very capable and competent individual and he would not have signed any kind of letter if he didn't believe he had the authority so that's the first thing I just wanted to say. So, the bank did come to the department during the time, during Ray Soon and Kali Watson's time to try to see how this commitment could be addressed given that they were no longer in the market to place loans. They were also interested in seeing the level of production happening on the home lands because FHA 247 is just like regular FHA, it's primarily takeout financing, you go to the bank, you borrow the money, you purchase the unit on the home lands. So, you know, at that time the conversation was beginning to see if there were other alternatives to place lending on DHHL lands and that conversation was...did involve to a certain extent although it was very informal the parties that were holding the bank accountable. So, when I came on board in 2012 the files unfortunately were very sparse as it relates to this correspondence prior to 2000 and, you know, 2012 the only documentation that we actually had in the file was the commission action that was taken in 2012 under Alapaki Nahale-a and primarily that documentation indicated that there was authorized the chair to send a letter in support of the efforts of Hawaii Fair

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

Lending I believe and to raise the issue with Bank of America and also indicated that Ben Henderson as a deputy to the chair had taken an action beyond the commission's authority. Now, understand that in 2012 the action happened five years earlier under 2007, right, the letter that was signed by Deputy to the Chairman Ben Henderson, and the administrative rules of Hawaiian Home Lands do authorize the chairman to act in the capacity on all matters that are administrative in nature and Micah Kane has the ability as the chair to delegate that responsibility in his absence to the deputy, if the chair's not...the rules allow for the deputy to sign in the absence of the chair. So, similar to council boards and executive administration, what is deemed administrative in nature changes from one commission to the next. The commission that served with Micah might have been much more focused on policy and delegated a lot more willingness to the chair to exercise his responsibilities in administering the Hawaiian Home Lands' program. That was not the case that served the commission that served with commissioner Nahale-a, Chair Nahale-a because I worked with that commission and they were much more, wanted to retain much more of the authority at the commission level, so what the chair had authority to do was very limited. So, as it relates to whether or not deputy chair, deputy to the chairman Ben Henderson when he said yes you've fulfilled the commitment, I believe he was acting within his authority and that it was deemed administrative in nature. Now, there's a number of documents that Mr. Lui-Kwan in his file provided to the State Legislature in their testimony that was missing from our files and so when you...and I don't know whether that was made available to you, I can discuss it further if you would like in walking through that, but at this time I'll just yield my time back to the Chair.

CHAIR MOLINA: Okay. Thank you very much, Ms. Masagatani. Members, I know you're foaming at the mouth to ask questions. Chair will exercise his privilege to ask the first set of questions. First for Mr. Lui-Kwan, in your correspondence dated March 28, 2019 to the Committee on Hawaiian Affairs, correspondence dated October 2007 from Mr. Henderson from DHHL that the \$150 million commitment has been met. But there was a letter dated May 2012 from DHHL Chair Alapaki Nahale-a that the Henderson letter was not appropriate because it was signed by a deputy without approval of the commission itself. Can you respond to that?

MR. LUI-KWAN: Yes, I will. Thank you. Thank you very much for that question. To me it's very clear as validated by Ms. Masagatani's testimony with respect to the rules. But even aside from those administrative rules of DHHL to me it's pretty clear...clearly the record indicates that there was an agreement in 2006 to work towards satisfying that this \$80 million, clearly the record was that DHHL and Bank of America worked in that regard, and also that in July 2007 there was a report that was submitted to DHHL and what the letter that Ms. Masagatani, Director Masagatani is indicating was a letter dated October 3, 2007 from DHHL signed by Ben Henderson saying we've looked at the record, we've looked at the report dated July 2007, we agree Bank of America has satisfied its obligation, has satisfied its \$150 million commitment. And so, that was 2007, five years later when you have a new administration, Albert Alapaki Nahale-a who is under the administration now of Linda Lingle...I'm sorry, Abercrombie, sends a letter not to the

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

Bank of America but to some community organization saying that Ben Henderson never had that authority. It's clear to me that Ben Henderson did have the authority not only pursuant to the rules but one of the things that I've attached to the...my testimony, my written testimony is a case called Burmeister versus County of Kauai, which was decided by the US District Court in 2018 and the...what that decision said is that when you have a private party dealing with the County department, in the case the Planning Director and the Corporation Counsel and there is an agreement that's reached, that it's the...under the law that is binding, that the parties can rely on that representation, on that agreement. Having said that, what's really clear to me is that I think it's really just is not right that you would have...if you imagine you as a private citizen reach an agreement, signed, worked out with an agency of the government, whether it's the County which is the case the Burmeister case, whether it's with the State which was when the case Bank of America dealing with DHHL or whether it was the Federal government or the State government. You should be able to rely on the promises made in writing particularly by the governmental agency.

CHAIR MOLINA: Mr. Lui-Kwan, thank you, I think you've certainly answered that question --

MR. LUI-KWAN: Thank you.

CHAIR MOLINA: --very thoroughly. Okay, my next question I'm going ask Ms. Masagatani, in a correspondence dated, August 5th, Members, I think you should have that from the State Attorney General, Deputy Attorney General which just arrived yesterday, hopefully it's in your Granicus. A response from you, Ms. Masagatani, from the Deputy AG, it states that the commission's position on October 2007 stands. I take it are you in agreement with this statement from Mr. Kanaka'ole?

MS. MASAGATANI: So, okay so let me answer the question this way. The Deputy Attorney General serves at the pleasure of the Attorney General but they also have State clients and in this case Ryan Kanaka'ole is...serves as Deputy Attorney General to the Department of Hawaiian Home Lands. As it relates to matters with regard to Bank of America, those instructions have been coming directly from the Attorney General and the Governor's Office. So, his first statement as relates to no changes in our position, that is not DHHL's position, that is the position he's representing as the Deputy Attorney General. Our position officially on the record was last commission action that was taken in 2012 which was to support the letter based on the evidence in correspondence that we had to date. Let me just say again the decision of Bank of America to work with DHHL specifically as it relates to the \$150 million, that was a decision that the bank made. The issues didn't only involve...although the lending happened on Hawaiian Home Lands and we probably were the best entity to be able to verify what was spent on the home lands, the original complaint or concern was initiated by Hawaii Fair Lending and Na Po'e Kokua, that's an organization outside of Hawaiian Home Lands. So, I just want to say that first statement that Ryan is making is not on behalf of the commission or DHHL, it's on behalf of the Attorney General's Office I believe in terms of

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

not changing its position in a legal basis for the State to pursue Bank of America, that's not DHHL.

CHAIR MOLINA: Okay. Alright, thank you very much, Ms. Masagatani. And my last question for now is for Mr. Chan Hodges. In the Governor's letter that was dated April 18, 2018 he invited Bank of America representatives to meet with Na Po'e Kokua to discuss a possible settlement. First of all, from your experience, Mr. Chan Hodges, did these talks take place and if the talks did not occur why in your opinion did the State or hasn't the State filed a claim against Bank of America?

MR. CHAN HODGES: Thank you, Chair. The talks with Bank of America and Na Po'e Kokua have not taken place. My understanding is that Bank of America actually did send some executives out to meet with the Governor which is referenced in, I think in Mr. Lui-Kwan's testimony before the State Senate. So, the talks have not taken place, but they did send somebody out to meet with the Governor. I think, I'm just reading this e-mail from the Deputy Attorney General for the first time here so but I did want to actually...so I actually don't fully understand it yet. But I did want to just take a second if it's okay, Chair, to respond to what Mr. Lui-Kwan said. So, the issue if you look at the chart that I think Brandon referred to that's on your Granicus, there's actually...and this is also referencing what Jobie said, that we're talking about whether or not the commission actually had authority to, you know, needed to be involved in this, and if you look at the agenda items during that time for the commission and I think, you know, the commissions change over time but if you look at the kind of items the commission took up they actually were pretty relatively manini items, they get involved in all kinds of stuff, this is a \$150 million. And what...under this chart one thing that it says is that on December 15, 2003 Micah Kane writes to the Federal Reserve stating that the commission requests reconsideration of comments in connection with the proposed merger with FleetBoston among other assertions in the commission's name, Micah Kane states that the B of A and DHHL agree to a modification of the commitment. So, he wrote this letter and actually said he was writing on behalf of the commission. On that same day at a community meeting of the Hawaiian Homes Commission, commissioners stated that they did not have knowledge of or approve of any agenda item related to Bank of America's \$150 million commitment. So, and also during this time a number of members of the group Hawaii Fair Lending Coalition were actually interacting with DHHL and other people. On November 23, 2003 which is also listed in that chart, Bumpy Kanahele whose here wrote an op-ed asking why is Linda Lingle trying to let Bank of America off the hook because at that time it became pretty clear to people working with the Administration that they were actually actively trying to let Bank of America off the hook.

CHAIR MOLINA: Okay. Mr. Chan, okay I think you've answered my initial question so I appreciate the historical background.

MR. CHAN HODGES: Thank you.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

CHAIR MOLINA: Chair has more questions at a later point; however, we'll turn matters over to you for questions. We'll start first with Member Kama and work our way down the line. Member Kama?

COUNCILMEMBER KAMA: Thank you, Chair. So, I just want to ask and anybody can answer the question. When you...it's a credit card question, when you pay your credit card late what do you get charged for that? Anybody can answer.

CHAIR MOLINA: Panelist any?

COUNCILMEMBER KAMA: Yeah, what is the interest they charge you when you pay your credit card late 30 days? Let's just say 30 days. What's the percentage? Ian, do you know?

MR. CHAN HODGES: I think Bank of America charges it's in the high 20s or low 30s user rates.

COUNCILMEMBER KAMA: Right so, you pay your credit card 30 days late and you get charged 20 percent. So, I just want you to just think about that when you think about that the Federal Reserve order said in 19--what-94 I think, right, the order came out that you had to do this in five years, right? Four years, four years, okay, so here we are in 1999 and it hadn't been done, but you know what they said that in 2007 we are paid in full. So, if you are going to go back and go do all of that math what's the math, I'm not a great math student but so what does that look like?

CHAIR MOLINA: Panelist, like to take a shot at that one?

MR. CHAN HODGES: Actually, Councilmember Kama, brings up a good point which is that the question is if you're...in the banking business and we actually had a conversation with Bank of America executives about this over time, in the banking business it's all about the time and value of money. And the reason why, Cathy Bessant came out here in 1998 is because they were ready to...they were in the process of merging or acquiring...NationsBank was acquiring Bank of America and they knew this was actually an issue and so that's why they actually agreed to a late fee at that time of \$4½ million. And when Mr. Lui-Kwan mentioned Jim Wagele who is part of Hawaiian Community Assets part of that late fee was Jim Wagele was head of community investment for Bank of America and Bank of America loaned him to Hawaiian Community Assets to sort of start this process. And so, they recognized...Cathy Bessant at that time recognized that there is a time value of money and if you're late, you know, assuming that it's, you can say that, you know, 2007 that's all kosher that's all okay, you're still late. So, I think that's a very good question, and actually at one point and we said this sort of half-jokingly, but at one point we were on the phone with Bank of America I think maybe Kehau was on the phone too and this is when all these Bank of America's credit card rates were in the like the high 20s, 30s and people go bankrupt over it and we basically said to them half-seriously we'll actually walk away from this if

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

you agree to actually agree to lower your credit card rates for everybody in the country because that would be worth it, that would be worth it to Hawaiians, it would be worth it to everybody...

CHAIR MOLINA: Mr. Hodges, as I understand the question from Member Kama, she was asking for some specific numbers. Can you get to the numbers if you can answer that please?

MR. CHAN HODGES: I gave you the numbers, the numbers were --

CHAIR MOLINA: Okay.

MR. CHAN HODGES: --basically high 20s low 30s.

CHAIR MOLINA: Okay. Thank you. Member Kama, additional questions?

COUNCILMEMBER KAMA: So, then my next question is so if we're to do the math on that from 1999 I guess to 2007, what would that be? If they...what they would owe us if they...we charged their interest rates on what we considered they owed us back then?

CHAIR MOLINA: Panel members? Maybe, Mr. Lui-Kwan from Bank of America, if you could chime in with a guesstimate?

MR. LUI-KWAN: No. I...we haven't done that estimate only because we don't think it's applicable. Let me just say also that I noticed in some of the write-ups and just now referenced again by Mr. Hodges that it was promised by Cathy Bessant for to agree to a late fee of \$4.5 million. Let me say for the record that there was no agreement to pay a \$4.5 million late fee, there's nothing in the record, there was no agreement and so I just want to make that clear. And so, the, you know, this whole analysis about calculating so-called amounts owing or damages, we don't think is appropriate because we believe that the, you know, that the commitment had been satisfied, they had done what they said they were gonna do.

CHAIR MOLINA: Okay. Thank you, Mr. Lui-Kwan. Member Kama, any other questions?

COUNCILMEMBER KAMA: Chair, I yield my time to the rest of my Members. Thank you.

COUNCILMEMBER LEE: Mr. Chair?

CHAIR MOLINA: Yes, Member Lee?

COUNCILMEMBER LEE: Point of order. I would ask that the panelists not debate amongst themselves because we're just trying to get clarification, and just answer the questions and don't have to embellish it or expound on them. Okay, thank you.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

CHAIR MOLINA: So noted. Thank you for that comment and we'll try our best to monitor things. If you believe the Chair is not facilitating this meeting in an appropriate manner please make the Chair known and Chair will give you a response whether he feels he's in agreement with your comments. Okay. Member Sugimura?

COUNCILMEMBER SUGIMURA: I really appreciate Jobie's comments for trying to kind of wrap up the order that you did it in I appreciate that. So, just for my clarification, Ben Henderson seems to be a critical member of the discussion for everybody and basically, if I can understand what you said, when he signed in behalf of the commission as a deputy, another...in future years a...the commission then said it was not authorized, is that what happened?

MS. MASAGATANI: Yes. So, our administrative rules allow for any matters that are administrative in nature to be delegated to the chair who also serves as the director of the department. So, that is where, you know, what is administrative in nature from one administration may be different than the next administration. When we looked at the files there was no clear delegation of authority from the commission to the chair and therefore then to the deputy, but knowing Ben Henderson very well and working with him he would not have signed a document that he didn't feel he had the authority or the knowledge of the chair to do. So, what I didn't get to finish and I just if --

COUNCILMEMBER SUGIMURA: If you please.

MS. MASAGATANI: --I may as it's related is the correspondence that is in Mr. Lui-Kwan's file from the department I think helps to kind of fill in the gaps. And the first was as Mr. Lui-Kwan was indicating there was a I guess an attempt to try to or a renegotiation of the commitment with DHHL. Now, whether that should have only been DHHL or involved Hawaii Fair Lending and the other parties, you know, I mean we can look back with 20/20 hindsight. Nevertheless, there was this renegotiation, I believe you have a copy of the correspondence, and then there was a subsequent letter from Bank of America indicating how they had met that commitment to the \$150 million and then you have Ben's letter just sort of verifying that yes we've looked at your documentation and we agree that you have met the \$150 million of lending on DHHL lands. So, in that context you can understand that that letter would have been seen more as ministerial of a confirmation of a document that had been sent by the party. Those two earlier documents we no longer had in our file and I think part of that is because as far as I can tell this was being handled at the chair's level, often when you have chairs move from one administration to the next the files don't always move with them.

COUNCILMEMBER SUGIMURA: And when that happened, who was the chair again?

MS. MASAGATANI: So, when...Ben's letter, that was under Micah Kane's administration, Ben served as a deputy to the chairman. And then the subsequent 2012 action by the commission to support Hawaii Fair Lending's letter that happened in 2012, that was Alapaki's administration, you know, so it's, you know, future administrations may look

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

on actions we took and if there wasn't an explicit delegation may indicate that, you know, historically you did not have the authority. So...

COUNCILMEMBER SUGIMURA: I just want to make a statement then I'll pass it on to the other Members, but I remember in history and maybe not enough close detail like you are. But I remember Micah Kane, to me my memory of him is thank you he finally opened up and provided housing for the Native Hawaiian people who have been waiting on the list for generations. So, I value that his name is connected to this because I think he had the right spirit at heart and I could be totally wrong but this is from reading the newspapers just in his contribution to the greater Hawaiian community of the people who were...who have been waiting a long until he kind of opened up, you know, development and provided homes for the Hawaiian people. That's kind of my memory of him so for him to take, to have his deputy look into this and give it that detail, I value because it kind of goes hand in hand, the greater public, so that's it. Thank you.

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

COUNCILMEMBER PALTIN: Thank you, Chair. Kind of a confusing thing, I might have a lot of questions, if you can keep your answers tight to what the question is so that I can ask more questions, that would be helpful to me. First one for Ms. Masagatani, what does it mean when you said they left the market? I don't understand what that is.

MS. MASAGATANI: So, it meant that the bank was no longer doing lending, they didn't have branches in Hawaii and so, you know, if you wanted to get a Bank of America mortgage you couldn't walk into a storefront and get it and at that time in the '90s we were nowhere near as technology advanced as we are now.

COUNCILMEMBER PALTIN: So, it would have been hard to meet their commitment 'cause they didn't have a storefront --

MS. MASAGATANI: Yes.

COUNCILMEMBER PALTIN: --to walk in and get...okay. And then in the yellow of Mr. Lui-Kwan's thing it says Bank of America and DHHL agreed to modification of BOA's lending commitment to allow other initiatives. I was wondering if it was not DHHL that had the original complaint, it was Na Po'e Kokua and Fair Hawaii Lending why is this third party allowed to modify the commitment? Like why aren't you working with the complainant parties?

MR. LUI-KWAN: The Bank of America's position has been consistently from the beginning that it was dealing with the State government which was...and DHHL was the State government.

COUNCILMEMBER PALTIN: Yeah I mean guarantee you would have to work with the State government 'cause it's on DHHL lands but they weren't the ones that filed the thing so

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

I mean, you would have to, in my opinion, work with all the entities, especially the ones bringing the case forward right? I mean why are you not gonna work with them and just work with the third party that didn't bring the complaint?

MR. LUI-KWAN: Well, again you asked me to be brief, and I'm gonna be brief, and the brief answer is that there...whenever they engage in these kinds of activities they deal with a government and so in this case they were dealing with the government.

COUNCILMEMBER PALTIN: Okay. And then I guess my next one would be for Mr. Chan Hodges, the modification and then the commitment that they say they fulfilled in the 2007, is that not...why is that not acceptable to you guys?

MR. CHAN HODGES: That's a good question, thank you. So, basically if you look at the materials that they sent to sort of show that they finished the commitment which were, apparently were lost or Micah took them home, the materials were actually a page-and-a-half spreadsheet. So, if you actually think of this Council, if someone came to you and said we're reporting back on the \$150 million or we're reporting back on \$10 million and they say oh what did you guys do, here's a page-and-a-half spreadsheet with no documentation and that's what they've showed. So, that...number one, that's number one. Number two is the order was actually from the Federal Reserve that they do a \$150 million so Mr. Lui-Kwan is correct it is the government but it's the Federal Reserve regulators that actually ordered them to do this. So, basically that order was to do FHA 247 loans and what the...when you look at the spreadsheet it includes money for a Maui developer who actually has an office right here in Wailuku, it includes money for all the other things, but not for FHA 247 loans. And it also didn't include any late fee which Member Kama talked about.

COUNCILMEMBER PALTIN: May I follow up, Chair?

CHAIR MOLINA: Proceed.

COUNCILMEMBER PALTIN: So, who is the enforcement or the accountability arm for the Federal Reserve in their order I guess or whatever you call it?

MR. CHAN HODGES: That's a good question. One of the things that you see here in the...that I was just reading from the Deputy Attorney General, he talks about the FOIA that the Governor did. So, one of the reasons why the Governor did the FOIA was to try to find out what was happening at the Federal Reserve. I do not believe that he's finished with the FOIA, he's still appealing it. But with the Federal Reserve, the...I don't know if any of you were here when Brian Schatz was on island a couple of weeks ago, but the question, Kehau Filimoeatu asked him a question about this and his office is actually looking into this and he's on the banking committee and he basically said that...well first of all he said Bank of America lied, they didn't fulfill their commitment, that's what he said. The second thing he said was that his office is actually looking into the lack of enforcement for Bank of America by the Federal Reserve.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

COUNCILMEMBER PALTIN: Maybe can I swing the question to Ms. Lutey? Do you know who is responsible for enforcing a Federal Reserve order?

CHAIR MOLINA: Ms. Lutey?

MS. LUTEY: Thank you, Chair. I haven't researched this issue, but if it's at the Federal level typically that would be at the Federal level as well for the prosecution.

COUNCILMEMBER PALTIN: And do they usually enforce and hold folks accountable or is this how it works? Like they just issue an order and maybe it gets followed or not.

MS. LUTEY: Chair? Thank you. I'm not sure because typically like our prosecutor level is like State level for us, a complaint can be made, they can choose to prosecute it or not, if there's an order that hasn't been fulfilled the court can sua sponte or by itself ask for it to come back and see if it's been enforced. But typically, they would need a motion or some other method of learning this because they don't typically track it unless they maintain jurisdiction for a prolonged period of time and ask for a status conferences.

COUNCILMEMBER PALTIN: So, can County pursue legal means to enforce Federal decrees?

MS. LUTEY: That I don't believe is true, but I could research that and get back to you.

COUNCILMEMBER PALTIN: Only...can State do it?

MS. LUTEY: I believe it would have to be at the Federal level actually because we're all different tiers of government.

COUNCILMEMBER PALTIN: And I guess, Mr. Chan Hodges, what was the basis that you think that the \$4.5 million interest or whatever was committed and that he says is not?

MR. CHAN HODGES: We actually in terms the agreement was made there was people in this room who were with Cathy Bessant when she was here so we all talked to her about that agreement. So, he can say it's not true, but it is true. But the basis of...

COUNCILMEMBER PALTIN: So, it's only verbal and didn't have anything in writing?

MR. CHAN HODGES: There was something in writing also. There was also a joint press release that appeared in *American Banker* and other publications. And anyway if I can answer your question also about the \$4½ million, that was basically calculated by determining if you're paying off your mortgage between...if all the mortgages were issued between 1994 and 1998, and this was in 1998, or just right at the end, so if...there were sort of an increasing level of mortgages issued and you're paying off your mortgage increasing your, you know, your sort of equity, what would sort of the lost opportunity cost be for doing that? Right, you're increasing equity, you actually have wealth, you're increasing wealth and of course because of the way interest rates work that's why it actually rapidly

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

accelerates over time as you pay off more of your interest and you have more equity right. So, it was based on basically this lost opportunity cost for Native Hawaiians and actually was pretty generous to Bank of America. If they charged their 18, you know, their 22 percent it'd be a lot more.

CHAIR MOLINA: Member Paltin, prior to your next question, I know we have Mr. Hokama waiting. Just a friendly reminder to our panelist as was mentioned by Member Lee again if we could refrain from any debate amongst yourselves, let's just kind of agree to disagree respectfully. Okay. Just trying to keep a tab on things but the Chair certainly appreciates your responses. Member Paltin, continue.

COUNCILMEMBER PALTIN: Okay, last question for this round. You know for Mr. Lui-Kwan, what was the reason that the Bank of America didn't just give all the FHA 247 loans like the original agreement was? I mean what was the purpose of spending the money on other things or why was the...why didn't you just do what the original commitment from the Federal Reserve was and why would you modify it with a different agency than what put the requirement on you?

MR. LUI-KWAN: If you look at the December 15, 2003 letter it talks about that in a very vague way. They say that there were different reasons, you know, I wasn't there obviously so all I can do is go to what was in the record and that's in the letter, they said there was a lot of different reasons. In my discussions with Micah Kane he said there was just not, you know, they...there weren't lots available or there wasn't a market and so if Bank of America is in the business of making loans if they, you know, they make money by making loans, if there were a market they would have made loans. And so, since there were not loans they were looking for some other way to satisfy this obligation.

COUNCILMEMBER PALTIN: Mr. Chan Hodges, do you agree with that statement to me only I guess?

MR. CHAN HODGES: So, if you look at the...there's a FOIA done on all the FHA 247 loans between 1994 and last summer and if you look at...talking about there wasn't a market and that was part of their argument, is that if you look at the number of FHA 247 loans that were done in that four-year period Bank of America had a very small percentage of the market. So, in other words there was a market, they just didn't compete for it and didn't bother.

COUNCILMEMBER PALTIN: Okay. Thank you.

CHAIR MOLINA: Thank you, Member Paltin. Members, it's getting close to our normal break time, Mr. Hokama, would you like to proceed with your line of questioning or would you like to wait till after the break? I know there's a lot of information, a lot of history behind this, so.

COUNCILMEMBER HOKAMA: Chair, if you don't mind I would like to do my questions --

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

CHAIR MOLINA: Proceed.

COUNCILMEMBER HOKAMA: --now please.

CHAIR MOLINA: Go ahead.

COUNCILMEMBER HOKAMA: Thank you, and I'm aware of the time also, Chair. So, I'll be as concise as possible. So, for our attorneys and one of the things I'm reading in the documents is and we're talking about of course our Native Hawaiian community, but in Hawaii it was the Native Hawaiian and Filipino communities, yeah, that the bank was trying to address so including our Filipino components, not only our Native Hawaiians was being impacted. So, saying that and reading how the Reserve got involved in the discussions regarding the consolidation of acquisition for Bank of America in early '90s, part of the rhetoric or the print is that things didn't happen in Hawaii because of reorganization of their operations and program. So, that was before the 2007, I guess, 'cause this was in '90s, so I'm just wondering was it already pre-planned to fail this program? Because they already knew in the '90s how the reorganization they were gonna change the operations in Hawaii and that was part of the discussion of the Reserve board.

CHAIR MOLINA: Corporation Counsel?

MS. LUTEY: Thank you, Chair. I'm not sure, Mr. Hokama.

COUNCILMEMBER HOKAMA: Okay. I would ask our Hawaiian Homes representative this morning, are we only dealing with your homesteaders regarding this suit or is all Native Hawaiians that had applied for a loan from Bank of America?

MS. MASAGATANI: As I understand the \$150 million commitment was specific to lending on the home lands.

COUNCILMEMBER HOKAMA: Only on home lands.

MS. MASAGATANI: Yes.

COUNCILMEMBER HOKAMA: Okay. So, I understand the other gentleman's comments about dealing with government, the government. So, reading this and again I'm trying to understand Maui County's potential role, yeah, in any movement forward and potential litigation. If one of the parties felt aggrieved from what I'm hearing, especially the government, the State, why wouldn't they go for debarment? 'Cause that's what I'm thinking. Worse come to worse, I'll ask to debar Bank of America in Maui County.

CHAIR MOLINA: Corporation Counsel?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

MS. LUTEY: Thank you. I'm aware that there was a process for that, Mr. Hokama, and I think that is something we could discuss.

COUNCILMEMBER HOKAMA: 'Cause I think debarment is an option.

MS. LUTEY: Yes.

COUNCILMEMBER HOKAMA: And I don't know why we haven't had earlier comments about debarment. Okay. The Attorney General of New York, with California I believe, assisted...well we joined in because of, again, the issue regarding student loan payments, Chair, if you recall with that issue the borrowing and the interest, of course the bigger states attorney generals took them to court. Maui County's position, well we were ready to debar the entity and then all of a sudden we got a settlement offer. Okay. Because I think entities or the Members need to understand what debarment means in Hawaii, it means that you can't do any government work for at least a minimum of five years in this State. It's a powerful tool if we believe we are justified in exercising it, Chairman. So, I don't have a problem looking at the banks or any institution for debarment if it's a reasonable legal option regarding impacts to this community and County. So, saying that also, Chairman, my other question for our attorneys is...you know what, Chair, I won't ask that question. I will just say that yeah, Chair, part of my frustration this morning is the continual dysfunction of Hawaii Home Lands. Okay, this is not the only issue with the department, okay, our County is facing a financial issue with the department also, okay, regarding RPT, so for me there's a lot more to this case than just this. It's about the attitude of the department, the dysfunction between the directors and the trustees and that is why a lot of our beneficiaries are suffering especially in this County, Molokai particularly, 'cause I have a soft spot for Molokai. And I bring that up and that's all I'll say for now, Chair, but this cancer we got to cut it out because it ain't good for our Native Hawaiians, it's not good for the Filipinos, it's not good for anybody in this kind of corporate attitude. Thank you, Chairman.

CHAIR MOLINA: Thank you very much, Mr. Hokama, your words are well taken. Members, prior to going into break, the Chair's intention as to how we proceed before we terminate our meeting today, we do have another legal item that's on the agenda that the Chair would hopefully like to get to preferably between 11:15 and 11:30. Of course once we're done with our Q&A for the panel we will then discuss the two proposed resolutions, and again it depends on how far we go, we could make a decision or defer this matter. So anyway, just an FYI for you. Members, let's take a break and return to the Chambers at 10:45 a.m. GET meeting for August 6, 2019 in recess. . . . *(gavel)* . . .

RECESS: 10:34 a.m.

RECONVENE: 10:52 a.m.

CHAIR MOLINA: . . . *(gavel)* . . . The GET meeting for Tuesday, August 6, 2019 is now back in session, it is 8 minutes to the hour of 11:00 a.m. Members, thank you for your

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

questions and the panel for your responses. Members, Chair's intent as I stated earlier is to hopefully wrap up our fact finding here today by 11:15-ish or 11:30 because we do have a pending legal matter that awaits. And as you can tell already there's a lot of questions, a lot of history behind this. The Chair's intent is not to act on any of the resolutions today because I think you need to be fully informed about the history of this. This is...there's a lot of things that even the Chair was not aware of. So, but the Chair will bring this matter back at a future GET meeting before the end of the year for further discussion and hopefully some action on either of these resolutions before you. So, we'll continue with our line of questions and fact finding here today for our panel. We last left off on Committee Vice-Chair Rawlins-Fernandez, you have the floor.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, I think a lot of my questions were asked and answered by my colleagues, but it sounds like to me at the crux of this issue is the 2007 letter signed by Mr. Ben Henderson on behalf of the chair at the time, Micah Kane, basically affirming that the Bank of America satisfied its commitment to the Hawaiian people and the Filipino community as well. And since we're kind of discussing memories of the credibility of the former chair, Micah Kane, I wanted to add to this conversation and for consideration my memory of him violating the Organic Act and the State's responsibility to appropriate sufficient sums to DHHL and in the Nelson case the judge ruled that Mr. Kane's chair at the time, Kane's decision to decline any funding from the Legislature was a violation and the Legislature is responsible for funding DHHL sufficient sums. And so, I don't have a whole lot of trust in, you know, the decision that former chair Micah Kane, you know, made in 2007. I don't know whether he authorized Mr. Henderson to sign on his behalf or not, it sounds like we don't have any evidence in writing. So, there were a couple questions, but I think I'm just gonna kind of provide comments instead. Yeah, so that's basically where I'm at, so if that's what it is, is his letter then I, you know, I don't put a whole lot of faith in that being a responsible action on behalf of the Hawaiian community in this commitment. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you for your comments, Member Rawlins-Fernandez. Councilmember Lee?

COUNCILMEMBER LEE: Thank you, Mr. Chair. My questions are for Ms. Masagatani. Okay. Can you tell me when the commitment by the Bank of Hawaii...I keep saying Bank of Hawaii, Bank of America began?

MS. MASAGATANI: So, I don't know the exact date when that happened, but because I believe that it was a commitment that Bank of America made sort of in the general when it came in to Hawaii and its commitment to do a \$150 million worth of lending. But I know that it's referenced with regard to the Federal Reserve when the bank sought to purchase Liberty Bank in 1994.

COUNCILMEMBER LEE: Okay. So, this commitment was based on like a penalty?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

MS. MASAGATANI: No. It was a commitment that the bank made on its own to try to, I believe, you know, address lending to underserved communities including Native Hawaiians and Filipinos, and so the commitment, you know, I believe to do lending on Hawaiian home lands because only Native Hawaiians can take a homestead lease makes clear that there's lending happening to a underserved community.

COUNCILMEMBER LEE: No, I'm just trying to figure out how this commitment came about, period. I mean...so if it's not a result of a court order or anything like that, it was a unilateral thing on behalf of Bank of America.

MS. MASAGATANI: So, they made that commitment and then when they sought regulatory approval by the Federal Reserve of the Liberty Bank purchase in 1994, the Federal Reserve makes mention of this commitment. So, it's a reiteration of the commitment that Bank of America had made, basically holding the bank to its commitment to do the lending to Native Hawaiians on the home lands. That's how I recall or at least...

COUNCILMEMBER LEE: What about other lenders, didn't you have other lenders? Did you follow some kind of procurement process or you just happen to just accept their offer?

MS. MASAGATANI: So, yes...the answer is yes, we have other lenders. Anyone that does an FHA 247 so for example our biggest lenders right now are HomeStreet Bank, Bank of Hawaii, Guild Mortgage does some, you know, so there are other lenders who do FHA 247. We do not procure their services, they choose to participate in the program because it is a Federal program under HUD.

COUNCILMEMBER LEE: Okay. You don't procure other...these services; however, there was some kind of written commitment with Bank of America?

MS. MASAGATANI: The commitment wasn't made by us, yeah? The commitment was made by Bank of America and when they sought the approval, I believe, of the purchase of Liberty Bank for...from the Federal Reserve, that reiteration of that commitment, you know, then was, I guess the bank was held accountable to that commitment that was made.

COUNCILMEMBER LEE: So, essentially the commitment was made with the Federal Reserve?

MS. MASAGATANI: I think the Federal Reserve was holding the bank accountable for its commitment of 150 million.

COUNCILMEMBER LEE: So, if someone violates that commitment who enforces it? The Federal Reserve?

MS. MASAGATANI: Yes. I believe the Federal Reserve enforces it.

COUNCILMEMBER LEE: So, how are they involved in this process right now?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

MS. MASAGATANI: So, my understanding is that the correspondence again as I mentioned our file is a little sparse, but the correspondence that Mr. Lui-Kwan provided from Chair Kane was to the Federal Reserve to indicate the discussions that were ongoing at the time between DHHL and the Bank of America. But, you know, there were other, I think there was other engagement by the other organizations such as Hawaii Fair Lending and Na Po'e Kokua also with the Federal Reserve. So, frankly, Ian probably knows the intricacies of this conversation with Federal Reserve better than I do because he has tracked this issue for probably two decades at least, maybe three.

COUNCILMEMBER LEE: Okay. I understand that and I certainly appreciate all that he's done, but I'm asking you.

MS. MASAGATANI: Okay, that's fine.

COUNCILMEMBER LEE: Okay. Now...oh you just distracted me.

MS. MASAGATANI: I'm sorry. I apologize for that.

COUNCILMEMBER LEE: Okay. Getting back to the Federal Reserve. How can if it's like a court order or government order, this commitment, how can like with...for lack of a better word how can a grantee dissolve it? Say okay, it's fulfilled. How can that happen?

MS. MASAGATANI: So, as I recall or understand based on the documentation and my recollection of what occurred when I was there as deputy so and I was there as deputy at Hawaiian Homes between 1995 and 2002. So, the commitment was made by the bank when they entered the market sort of in a general sense. Then they sought and I don't know at what point Bank of America came into Hawaii to do mortgage lending, I don't know that, when that occurred, but in 1994 when they sought the Federal Reserve's approval of their purchase of Liberty Bank...

COUNCILMEMBER LEE: Okay. I got all that already.

MS. MASAGATANI: Okay. So, we...the only reason why DHHL was involved in this discussion was because the lending was happening on the home lands. And so, the bank was working with the department because any lending that happens on the home lands, especially mortgage lending or any kind of development activity involves DHHL.

COUNCILMEMBER LEE: Okay. I can see DHHL was the beneficiary of this commitment right? Well, the people who benefited from it, this commitment. Okay, so as that...having that status, how did DHHL all of a sudden become a person of with legal standing with the Federal Reserve to say I no longer need or want this commitment?

MS. MASAGATANI: I don't think that that's what occurred, when...what occurred was...now keep in mind this is the conversations that were happening between DHHL and Bank of America, there is a whole other group of organizations that may or may not have been

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

involved in these discussions that I can't speak to which includes Hawaii Fair Lending and Na Po'e Kokua. But as it relates to Hawaiian Homes and DHHL, I think by the time the 2003 letter between Micah Kane and to the Federal Reserve, at that time the amount of mortgage lending that had occurred on the home lands was not anywhere near the \$150 million commitment. So, and as I recall it was because Bank of America was no longer here to...for someone to walk...

COUNCILMEMBER LEE: Yeah. It seems that that's one thing that they were no longer present --

MS. MASAGATANI: Yes.

COUNCILMEMBER LEE: --in Hawaii.

MS. MASAGATANI: Yes.

COUNCILMEMBER LEE: And that the other thing is that --

MS. MASAGATANI: I mean that's my recollection.

COUNCILMEMBER LEE: --people said that there were no homes for which...

MS. MASAGATANI: That's also...so, the production may not have been at the pace that Bank of America needed it to be in order to meet the commitment in the time frames that they're looking at. So...

COUNCILMEMBER LEE: Okay. So, in the interest of time let me just... 'cause we really need to talk about this a lot longer than to 11:15 yeah. So, but other colleagues need to have their time for questions. Can we get verification that there were...there was no market for homes at that time? Can we get some kind of information?

MS. MASAGATANI: We can give you an idea of the projects that were completed and the leases that were given, that information I believe is public.

COUNCILMEMBER LEE: Okay.

MS. MASAGATANI: We can get that information for the Council.

COUNCILMEMBER LEE: Okay. And secondly how long was this commitment for?

MS. MASAGATANI: So, my understanding was that it was for five years.

UNIDENTIFIED SPEAKER: Four years.

MS. MASAGATANI: Four years.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

COUNCILMEMBER LEE: Oh, four years.

MS. MASAGATANI: Yeah.

COUNCILMEMBER LEE: Okay. And do we have that document, that commitment? We do? Okay. Alright thank you, thank you very much.

CHAIR MOLINA: Okay thank you very much, Member Lee. Chairman King?

COUNCILMEMBER KING: Thank you, Chair. You know a lot of the questions that were just asked by my colleague are in this resolution by the County of Hawaii and this is one that was already passed by our colleagues in the County of Hawaii by their County Council. I made copies of it for everybody at the request of my colleague Tasha Kama. And there's not a lot of meat to the where...the therefores in this, but if you read this resolution it does say that this was created...this whole situation was created by Na Po'e Kokua establishing the Hawaii Fair Lending Coalition and I wanted...I think Member Paltin brought up probably one of the most important points of today which is they're the ones that this agreement is with and for the Hawaiian Home Lands, Hawaiian Home Lands cannot absolve the Bank of America from this agreement when it was made with this other entity. But if you look at the resolution, the second whereas says HFLC which is the Hawaii Fair Lending Coalition discovered that Bank of America was conducting discriminatory lending practices in the form of red lining the practice of denying services to residents of certain areas based on the racial, ethnic composition of those areas by not providing mortgages on Hawaiian Home Lands. And then the next whereas uses the word ordered, so I'm not sure why we're saying out of the goodness of their heart they made this commitment because it says whereas in May, 1994 as a result of HFLC's efforts and as a condition of Bank of America acquisition of Liberty Bank the Federal Reserve system and Office of Thrift Supervision ordered Bank of America to make a \$150 million in Federal Housing Administration Section 247 mortgages available on Hawaiian Home Lands by 1998. So, I have to dispute the idea...and I think this was very well researched knowing my colleagues on the Council on the Big Island. And then in the resolution and this came up earlier is like what would the interest on this be, if you look at Page 2 at the bottom be it further resolved and it does state that in addition to providing mortgages on Hawaiian Home Lands as ordered by the Federal Reserve, Bank of America is requested to address Hawaii Fair Lending Coalition's claims of \$360,600,000 in opportunity costs for Native Hawaiians on Hawaiian Home Lands. So, that's opportunity lost and a \$4.5 million late fee for failing to fulfill its required commitment. So, I'm assuming that late fee was agreed to or was ordered or asked for in some form and I actually wanted to ask Mr. Chan Hodges if that documentation of the late fee and this request for...where that information exists. Because if the County of Hawaii could find it we should be able to find it as well and I don't think they make up this information, so where would we find that claim of \$360,600,000 in the opportunity costs which to me is opportunity lost actually and \$4.5 million in late fee?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

MR. CHAN HODGES: So, the \$360 million is a calculation that was using sort of the same formula was done to come up with the \$4½ million back in 1998. And it's kind of like what I was talking about before it's basically...

COUNCILMEMBER KING: No, I understand that, but where would we find the documentation of that, that amount, you know, them calculating that amount, asking for that amount
--

MR. CHAN HODGES: So, I...so...

COUNCILMEMBER KING: --and the documentation of the late fee?

MR. CHAN HODGES: I understand. So, Hawaii Fair Lending Coalition actually calculated that using the same formula that was used to come up with the \$4.5 million. So, we can get you the spreadsheet.

COUNCILMEMBER KING: Okay. So, yeah because if they're saying that that was never agreed to and you're saying there is, there should be some hard evidence that document it one way or the other. I'm hearing a lot of, you know, and I, you know, I respect the fact that Hawaiian Home Lands has...is a major stakeholder, but I'm hearing a lot of, you know, from Ms. Masagatani, that I think and I believe and, you know, what we have to operate on here is hard documentation. So, to say well I believe that he took the authority because he was given it, if there's no documentation that Ben Henderson had the authority to even write that letter or authorize that letter then it's non-existent, we can't operate on what we believe or what we think somebody's memory back then, we have to operate on hard documentation. And so, you know, I'm glad we're having this hearing, but to me it's pretty obvious that we have to take the lead in the County of Maui, Chair, because the e-mail that you just, you handed us at the beginning of this meeting from the State of Hawaii which is dated 5th is from the Deputy Attorney General Ryan Kanaka'ole and he states there are no legal basis for the State to pursue Bank of America on its past pronouncements regarding loans to Native Hawaiians. So, that's pretty clear that the State is not gonna go ahead with this. Maui County needs to take the lead and the only resolution that's on this, you know, on this agenda right now is the one dated 6/28/2019 from myself, that is a revised agenda, the original, I mean revised resolution, the original resolution did name an attorney. We heard by e-mail from Corp. Counsel that they were not comfortable with that because it was sole sourcing so we took those names out, we made it a, basically a procurement resolution to hire outside counsel. We got nothing back from Corp. Counsel despite a letter that was attached to that reso saying it was a top priority and it was dated back in June. So, I'm a little sketchy on where Corp. Counsel is on this because they refused to sign it, but I'm pretty convinced at this point that Maui County has to take the lead. I don't think that the State of Hawaii is going to take the lead, they've already said by e-mail they're not. And it would be nice to have somebody from the Attorney General's Office at our hearing if they intended otherwise. But I don't think we want to spend a lot of time fantasizing or urging the State to do something that they clearly told us they don't

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

think they have a basis to do. And we need to...this thing has been sitting around for 25 years, the date of 1998 was the date it was supposed to have been fulfilled. So, if we believe there are egregious negligence here then we need to go ahead...the only way we're gonna get there is to go ahead as a County of Maui not to sue the Federal Reserve but to bring action against Bank of America and that's what that resolution is about. So, with that I kind of wanted...well, I know were at a deadline and we're probably gonna put this off again, but I'm hoping that the...that we can kind of start narrowing it down to what actions we're looking at because I don't want to have this whole thing repeat itself.

CHAIR MOLINA: Yeah. It's...I appreciate that, Chair King, 'cause today I think is more fact finding at this point because of the complexity of this matter, there's a long history and a lot of questions. I've got some but obviously with the time left we're not gonna get to those questions. I'd like to give Member Sinenci the opportunity to ask any questions for our panel.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR MOLINA: Thank you.

COUNCILMEMBER KING: And just to let everybody know that I've got this, I've also got if we get there at some point in the future an amendment to the revised resolution.

CHAIR MOLINA: So noted. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. I just had a couple questions. For one, you know, we talked about the Federal Reserve, is there a copy of the Federal Reserve order that can be presented to us for us to look at? Does anybody know as far as that, you know, we talk about HUD loans with the FHA 247 loans through the Reserve, is there anything between the Bank of Hawaii, I mean excuse me, Bank of America and the Federal Reserve that they have to --

CHAIR MOLINA: Let's ask Mr. Chan Hodges, are you able to respond?

COUNCILMEMBER SINENCI: --commit to that?

MR. CHAN HODGES: Yes. So, we can...there's...the thing that would be actually really helpful I think is that, there's and I can actually send this to the Committee, but this is part of the testimony for Senate Concurrent Resolution 45 before the Senate, so there's all this testimony together . . . *(inaudible)* . . .but I can send you that. But yes, we can get you a copy of the Federal Reserve order. The other document that I'll mention really quickly, and this goes to the question that Councilmember Lee was asking, is when the commitment was actually made was on May 16, 1994. The commitment was made from Bank of America to the Federal Reserve. Because the Federal Reserve was asking what are you going to do about this and they had a phone conference and then Bank of

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

America actually wrote back and said this is what we're gonna do. They said development of DHHL lots go hand in hand with \$150 million FHA 247 programs, see attachment, and I won't read the whole thing 'cause we don't have time, but that was...so, May 16, 1994 it was made. It was made to the Federal Reserve.

CHAIR MOLINA: Okay, Mr. Sinenci, you have another question?

COUNCILMEMBER SINENCI: Yeah. Thank you. Yeah, because I'm reading this and for HFA [sic] loans, you know, there's some of the benefits are low down payments, minimum of 3.5 percent, down payments can come as a gift, low closing costs, flexible credit qualifying so these are some of the things that you get from a FHA loan. And so, in Granicus there's a letter from Bank of Hawaii [sic] James Fields saying that they had already, you know, did their commitment of over a \$150 million, but how many of...there's a list on this to...how much of this is actually going towards those HFA [sic] loans 'cause some of 'em I see there's some training, there's some other things besides mortgages that are on this list and I don't know how much maybe Bank of America had benefit from the Federal Reserve as far as not fulfilling all the \$150 million in HFA [sic] loans. Mr. Kwan, can you speak to that?

MR. LUI-KWAN: Thank you for the question. As I indicated in my written testimony and in my oral testimony, because of different reasons what the Federal Reserve, DHHL, Bank of America agreed in that correspondence as part of my written testimony of December 15, 2003, they agreed that they would do other kinds of financing, not just mortgage loans because there were just...there were different reasons, but the Federal Reserve...that's the reason that DHHL sent the letter from Micah Kane to the Federal Reserve Bank of Richmond. And so, there was this three-party agreement Federal Reserve, Bank of America, DHHL that they would modify that, what that commitment was made of.

COUNCILMEMBER SINENCI: Do we have that, that letter or that commitment?

MR. LUI-KWAN: Yes. That is in my written testimony.

COUNCILMEMBER SINENCI: No. The actual agreement between all three parties?

MR. LUI-KWAN: Well, that...

COUNCILMEMBER SINENCI: I mean we want to kind of see if that supersedes the original agreement with the Federal Reserve and Bank of America. You know, we're just...

MR. LUI-KWAN: What I understood....

COUNCILMEMBER SINENCI: It'd be great to see all of the...all of these agreements.

MR. LUI-KWAN: What I understood is that they had meetings and that the...those letters

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

codified those meetings and so those letters are the agreement.

COUNCILMEMBER SINENCI: Okay. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Members, Chair is aware of the time I'll exercise the Chair's privilege with just one last question now. For DHHL, Ms. Masagatani, you noted that Na Po'e Kokua and Hawaii Fair Lending are the entities requesting the Bank of America commitment to be fulfilled which are for loans on DHHL lands. May I ask why isn't...at least from my vantage point it seems like DHHL is not taking a more active role in the Bank of America meeting with their commitment if these loans are for Hawaiian Home Lands and I know you're the executive assistant to the director, but at least from your viewpoint? 'Cause I mean just from where I stand it just...I would prefer a little bit more aggressive action from DHHL or more participation, I should correct that. Comments on that question, Ms. Masagatani?

MS. MASAGATANI: So, the department or the commission's position is at least officially was the last action that was taken in 2012. And, you know, that in terms of supporting the letter and also indicating that the deputy did not apparently have the commission's authorization or the chair did not have the authorization to act on behalf of...the commission had not delegated the authority to the chair and then therefore the deputy did not have the authority to sign the letter. That's the last official position. The reason why the department has...and I cannot speak to the current chair 'cause he and I have not had the conversation, there may be a difference in position moving forward. But because I was the former chair the reason why there hasn't been as much of a aggressive engagement by DHHL is because the issue is so complicated to begin with and so I think DHHL's or the commission's position is in the last 2012 the dialogue between Na Po'e Kokua and Hawaii Fair Lending, you know, in terms of getting clarification to a greater level of the commitment, I mean I think the department in Ben's letter verified the lending that was done on the home lands in these other programmatic activities that did not include mortgage lending. And as Ian has represented, that was not sufficient for the parties under Hawaii Fair Lending and/or Na Po'e Kokua. So, for us to engage any further I think would have complicated the situation even more. So, I believe the last position was the 2012, that's the last commission action that would be our official position unless the commission chose to take a different direction going forward. At this point under the Ige administration the Governor had as you have all indicated sent a letter to try to encourage dialogue between Na Po'e Kokua and Bank of...or Hawaii Fair Lending and Bank of America. Our participation has just been to verify the facts of that letter and at this point it's really been with the administration, the Governor's Office and the Attorney General and we have not been as engaged because the issue is complex enough.

CHAIR MOLINA: Thank you very much, Ms. Masagatani. Well, Members, I want to thank first of all our panelists here today for shedding light on this issue because this is where it starts, communication. I think this is one of the few times we have a rare opportunity to get most if not all of the parties in discussion with a governing body to discuss this

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

August 6, 2019

very sensitive and important issue. At the next meeting I'm not...I don't have a date certain for you just yet, the Chair will pursue getting someone from the Governor's Office as Ms. Masagatani had mentioned about the governor's involvement, obviously someone from his office to respond to any questions you may have and it is my hope that whenever this next meeting occurs that some form of action can be taken by this Committee. And I want to thank Member Kama for first bringing this issue to light, to the Chair's attention and which is one reason why we have this meeting here today. Member Kama, any closing comments before the --

COUNCILMEMBER KAMA: Yes.

CHAIR MOLINA: --Chair makes recommendation?

COUNCILMEMBER KAMA: Yes, Chair. Thank you. So, today we had asked Mr. Kanahele to be a resource, will he continue to be a resource at the forthcoming meeting?

CHAIR MOLINA: If no objections I'll ask Mr. Kanahele for consideration when we do come up with that date certain. If you could also provide us an address we can forward you an agenda as well too. Okay.

MR. KANAHELE: No problem.

CHAIR MOLINA: Alright. Thank you.

COUNCILMEMBER KAMA: Thank you, Chair.

CHAIR MOLINA: Alright, Members, the Chair's recommendation is to defer this item any objections?

COUNCILMEMBERS VOICED NO OBJECTIONS

ACTION: DEFER.

CHAIR MOLINA: So ordered. Thank you very much, this item has been deferred. Alright, Members...

COUNCILMEMBER KING: Chair, just point of information.

CHAIR MOLINA: Yes, Ms. King?

COUNCILMEMBER KING: Is your...do you have a timeframe for this, that you intend to bring it back?

CHAIR MOLINA: Not at this point but I'll just say simply either this year or next year. Okay.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

COUNCILMEMBER KING: Next year?

CHAIR MOLINA: Well, we'd like to get as much information so we're prepared, but I don't have a date certain yet but we will certainly take a look at this matter once again. 'Cause this is...there's a long history involved and I want to make sure that when we take action which is my hope at our next meeting that we get as much information as possible with the appropriate resources as well. Okay. Thank you.

**GET-11(15) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: KAMOKU
CONTRACTING, LLC V. COUNTY OF MAUI; CIVIL 18-1-0180(2))**

CHAIR MOLINA: Alright let's look at our next matter, which is GET Item 11(15) which is a proposed settlement authorization, Kamoku Contracting, LLC versus County of Maui, Civil Case number 18-1-0180(2). And we have from Corporation Counsel Mr. Kolbe as well as the Parks Director Ms. Peters to address this matter in open session. My understanding this matter will most likely require an executive session as I see Mr. Kolbe nodding his head. Mr. Kolbe, I'll ask you to give some opening remarks in open session on this issue.

MR. KOLBE: Is it on?

CHAIR MOLINA: Yeah.

MR. KOLBE: Okay. Thank you. Good morning. I am here on the Kamoku versus County of Maui case. This is a Circuit Court complaint alleging breach of contract against the County and it involves a contract at the Papohaku Park for the replacement...well actually for the demolition, removal and replacement of a fence and a backstop. In the course of this particular project differing site conditions were identified in the form of some cement footings that the parties didn't know were there. This led to a dispute about the value of the work in question and that's what the lawsuit's about. We're currently set for trial on August 26, 2019 and during our meet and confer, the County and opposing counsel discussed this case and a possible settlement. The County's received an offer that would settle all matters and I'm requesting that we go into executive session so I can provide you with my analysis of the strengths and weaknesses of this case as well as to discuss potential settlement. Thank you.

CHAIR MOLINA: Thank you, Mr. Kolbe.

MR. KOLBE: I also have Karla Peters from the Department of Parks and Recreation with me.

CHAIR MOLINA: Thank you. Director Peters, any comments in open session?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

August 6, 2019

MS. PETERS: Thank you, Chair. Thank you, Committee. I'm just here to be a resource and answer any of your questions.

CHAIR MOLINA: Okay. Thank you very much, Ms. Peters. Members, any questions in open session for either Corporation Counsel or the Director of Parks? Okay. Seeing none, then, Members, as suggested by Corporation Counsel this matter further, should be further discussed in executive session. So, at this point the Chair will entertain a motion to go into executive session based on HRS 92-5(a) with the consideration of legal counsel for questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. Chair will ask for a motion

COUNCILMEMBER SUGIMURA: So moved.

COUNCILMEMBER KAMA: Second.

CHAIR MOLINA: Moved by Member Sugimura, seconded by Member Kama. Members, and discussion? Seeing none, all those in favor of executive session, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

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

August 6, 2019

CHAIR MOLINA: Members we're gonna take a brief recess to secure the Chambers for executive session so please remain seated. GET meeting for August 6, 2016 stands in recess and we shall reconvene in executive session to discuss the item just mention earlier. Meeting in recess. . . . *(gavel)* . . .

RECESS: 11:26 a.m.

RECONVENE: 12:18 p.m.

CHAIR MOLINA: . . . *(gavel)* . . . The GET Committee meeting for Tuesday, August 6, 2019 is now back in session 17 minutes after the hour of 12 o'clock. Members, we're on our last item of discussion, GET Item 11(1)5, regarding the Kamoku contracting matter versus the County of Maui. Chair's going to offer you a recommendation. The recommendation is to authorize the Corp. Counsel to proceed with a settlement matter with regards to this issue. Is there a motion on the floor to proceed? As discussed in executive session.

COUNCILMEMBER KAMA: So moved.

VICE-CHAIR RAWLINS-FERNANDEZ: Second.

CHAIR MOLINA: Okay. Motion has been made by Member Kama to approve the resolution, and seconded by Committee Vice-Chair Rawlins-Fernandez. Any discussion?

MS. NAKATA: Excuse me, Chair?

CHAIR MOLINA: Yes.

MS. NAKATA: Staff would just note there is a revised version of the resolution.

CHAIR MOLINA: Yes. Okay, let me make that clear it is a revised proposed resolution for the record. Okay. Seeing no discussion, all those in favor, signify by saying "aye."

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed? Thank you. Chari marks it unanimous. Nine zero.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

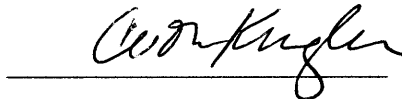
Council of the County of Maui

August 6, 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 27th day of August, 2019, in Kihei, Hawaii

A handwritten signature in cursive script, appearing to read "Cheryl von Kugler", is written over a horizontal line.

Cheryl von Kugler