

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

M I N U T E S

Online Only via BlueJeans Link

June 2, 2020

CONVENE: 9:13 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 (arrived at 9:48 a.m.)

STAFF: Shelly Espeleta, Legislative Analyst
David Raatz, Supervising Legislative Attorney
James Forrest, Legislative Attorney
Richard Mitchell, Legislative Attorney

Kasie Apo Takayama, Legislative Analyst
Pauline Martins, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember King
Lois Whitney, Executive Assistant to Councilmember Kama
Christi Keliikoa, Executive Assistant to Councilmember Paltin
Sarah Pajimola, Executive Assistant to Councilmember
Rawlins-Fernandez

ADMIN.: Gary Murai, Deputy Corporation Counsel, Department of the Corporation
Counsel
Moana M. Lutey, Corporation Counsel, Department of the Corporation
Counsel
Richelle Thomson, First Deputy Corporation Counsel, Department of the
Corporation Counsel
Brian Bilberry, Deputy Corporation Counsel, Department of the
Corporation Counsel
Thomas Kolbe, Deputy Corporation Counsel, Department of the
Corporation Counsel
Eric Nakagawa, Director, Department of Environmental Management

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

Albert Hahn, Mechanical Engineer, Planning and Permitting Section,
Wastewater Reclamation Division, Department of Environmental
Management

Bradford Ventura, Deputy Fire Chief

OTHERS: Mikal Torgerson
Rick Markham
Magdalena Bajan, Attorney for Rick Markham
Rodney Kilborne
Brandon Makaawaawa
Plus (2) other people

PRESS: Akaku Maui Community Television, Inc.

CHAIR MOLINA: . . . *(gavel)* . . . The June 2, 2020 GET Committee meeting is now in session. I am your Chair of the Committee, Mike Molina. And let's take attendance. Let's start off first with our Councilmember out in Hana, Mr. Sinenci. Good morning.

COUNCILMEMBER SINENCI: Aloha kakahiaka kakou my Maui hikina. Nice to see everyone.

CHAIR MOLINA: Aloha, Mr. Sinenci. Thank you. And let's go to our Member from South Maui, Ms. Kelly King.

COUNCILMEMBER KING: Aloha kakahiaka, Chair. It's a beautiful day from my office out here on the 8th floor.

CHAIR MOLINA: All right. A lot of sunshine raining through, huh? Okay. Thank you, Member King. And let's go to Council Chair, Alice Lee. Good morning.

COUNCILMEMBER LEE: Mr. Chair, for all of our friends in Albania. We say, miremengjes and that's good morning in Albania, but we also welcome you to sunny Wailuku.

CHAIR MOLINA: All right. Back at your Madam, Chair. Thank you. And let's go down the line here. I see Member Kama from Kahului. Good morning.

COUNCILMEMBER KAMA: Good morning, Chair. It's a beautiful day in Hawaii nei and I'm calling in from my office in Wailuku.

CHAIR MOLINA: All right. Amen to that. Thank you, Member Kama. And let's go all the way out to Molokai. Good morning Committee Vice-Chair Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Aloha kakahiaka, mai Molokai Pule O`o. It's nice to see everyone in their offices.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Thank you very much. Mahalo. And then also let's go out to West Maui, Member Paltin. Good morning.

COUNCILMEMBER PALTIN: Aloha kakahiaka kakou from my bedroom.

CHAIR MOLINA: All right. You look nice and comfortable out there. Thank you, Member Paltin. All right, let's go across the water and say or see if Mr. Hokama is available. Our Lanai representative, Mr. Hokama. Good morning.

COUNCILMEMBER HOKAMA: Good morning, Mr. Chairman.

CHAIR MOLINA: Good morning, Mr. Hokama. I believe that takes care of everybody as I'm looking at who's who on the screen. Thank you all, Members, for making yourself available and I know this is a little bit out of the ordinary from how we've been practicing our BlueJeans meetings.

COUNCILMEMBER KING: Chair?

CHAIR MOLINA: Yes, Member King.

COUNCILMEMBER KING: I just wondered did we hear from Member Sugimura?

CHAIR MOLINA: Oh yes, yes. I am so sorry. Member Sugimura. I don't see her. Oh, yes. I've just been informed, she is running a little bit late so she'll be joining us with the meeting in progress sometime soon. So, I guess traffic is a little heavy up there in Kula. So, but she is on her way. Thank you for that reminder, Member King. I appreciate that. So, anyway, again thank you for making yourselves available. I apologize for the late start. I encountered some unexpected glitches with my computer, but again thanks to our wonderful technician, computer technician, Bruce, we're online. Joining us today from Administration, Corporation Counsel, we'll have Corporation Counsel, Moana Lutey, as well as Mr. Brian Bilberry, Mr. Tom Kolbe, and also Gary Murai, our Deputy Corporation Counsel. And at a later point also from Administration from Public Works, Director Rowena Dagdag-Andaya. And for the Department of Environmental Management, Director Eric Nakagawa. And from the Fire Department, Assistant Chief Brad Ventura. I'd like to recognize my hard working Committee Staff, Committee Secretary, Pauline Martins. Support staff, Jean Pokipala. Legislative Analyst, Shelly Espeleta. Kasie Apo Takayama and Legislative Attorney, James Forrest, as well as our other Legislative Attorney, Mr. David Raatz. And we do have four items on our agenda for today. It is my hope that we can conclude business by 12 o'clock. We do have a 1:30 EACP meeting under the leadership of Councilmember Sinenci to deal with as well. Lots of good stuff on that agenda as well. So, I'm gonna go ahead and begin with public testimony. Again, oral testimony via phone or video conference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting today via the BlueJeans meeting link, bluejeans.com/551273481 as noted on the agenda. And testifiers wanting to provide audio testimony should have participated via

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

phone conference by dialing 1-408-915-6290 and entering meeting code 551273481, also noted on the agenda. And written testimony is also highly encouraged by sending your comments to get.committee@mauicounty.us. And oral testimony will be limited to three minutes per item today, and if you are still testifying beyond that time, we will kindly ask you to complete your testimony. And when testifying please state your full name for the record and if you are testifying on behalf of an organization or happen to be a paid lobbyist, please inform the Committee of that. And please be mindful of the use of chat during the meeting. Chat should not be used to provide testimony or chatting with other testifiers, and while others are testifying, please be courteous by turning off your video and muting your microphone while waiting for your turn to testify. And participants wishing to view today's meeting only without providing testimony, you can view a live cablecast on *Akaku* Channel 53, or else you can also visit mauicounty.us/agendas to access live and archive meeting videos. So, I do want to again remind Committee Members and Administration and the public to please be patient if we run into any technical issues during the meeting. We're on some uncharted waters today as it relates to the process with executive session meeting as well. So, again I ask for your continued patience, Members, and as well as the members of the public. And the staff has been monitoring individuals joining today's meeting by phone and by video and we will do our best to take each person up in an orderly fashion. So, with that said, I would like to ask staff to please call up our first testifier.

MS. ESPELETA: Thank you, Mr. Chair. Our first testifier signed up for GET-11(10) is Mikal Torgerson followed by Rick Markham.

CHAIR MOLINA: Staff and the testifier, if you could please hang on. I do have a comment from Corporation Counsel, Mr. Brian Bilberry if he's on the line. He did want to make a comment about one of our agenda items prior to testimony. Mr. Bilberry, are you available?

MR. BILBERRY: I believe so.

CHAIR MOLINA: Okay. Please indicate what agenda item you will be making comments on prior to testimony.

MR. BILBERRY: Okay. You can hear me then.

CHAIR MOLINA: We can hear you.

MR. BILBERRY: Okay. Great.

CHAIR MOLINA: Members, can you hear Mr. Bilberry? Okay. Great.

MR. BILBERRY: Yeah. This pertains to the Markham matters. It looks like it's, yeah, I'm looking for—there are two of `em right? Okay. Yeah, it's gonna be GET number 11(10). Okay. And what I wanted to let you guys know is I got a call from the U.S. bankruptcy

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

attorney's lawyer yesterday. And this pertains to North Shore Maui LLC. And he has talked to the U.S. Trustee as he informed me and their position, he advised me their position is that there should not be any discussion . . .

[Note: Ms. Espeleta sneezed.]

MR. BILBERRY: Oops! Is it okay? Can you hear me still? Okay.

CHAIR MOLINA: You're fine.

MR. BILBERRY: Okay. Yeah. I've been advised that the U.S. trustee, and let me just say this, as you all know, North Shore Maui LLC is in bankruptcy following litigation and a trial which that entity lost in Circuit Court and is subject to a pretty substantial judgment. Subsequent to the litigation, North Shore Maui LLC filed for bankruptcy. I'm gonna spare you for the moment the iterations that the entity has gone through in the bankruptcy, but just in sum, the trustee has been appointed by a Circuit Court, or I'm sorry, the bankruptcy judge to take control of that entity. So, the concern is and again pursuant to my call with the U.S. trustee's lawyer yesterday, their position is that any discussions about North Shore Maui LLC and any sort of ostensible or proposed settlement offer from North Shore Maui LLC, will be a violation of the automatic bankruptcy stay. And the reason I needed to let you know this upfront, is because I anticipate you may get some solicitations in the public testimony and I need to caution you that any questions regarding North Shore Maui LLC and, you know, possible settlement solicitations which may be made during that testimony, I would advise you against asking questions about that, because again the U.S. trustee's attorney has advised me their position is that any discussion related to any sort of settlement proposal related to North Shore Maui LLC will be considered a violation of the bankruptcy stay and that they are gonna be prepared to take action if such a violation occurs.

CHAIR MOLINA: Okay. Thank you very much, Mr. Bilberry. Okay. Members, you heard the comments from Mr. Bilberry. So, we'll proceed with public testimony and once we get to the item we can ask more questions of Mr. Bilberry, unless you have something very pressing at this point. Okay, Member Rawlins-Fernandez followed by Member Paltin. Questions for Mr. Bilberry in open session.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Mahalo, Mr. Bilberry. I'm sorry just for clarification, you said, that the Bankruptcy Court will take action against...

MR. BILBERRY: The U.S. trustee, the Bankruptcy Court has a number of trustees and, you know, I'm not sure exactly what their role is under normal circumstances in the Bankruptcy Court. I know they have some administrative functions over debtors. In this case North Shore Maui LLC filed a Chapter 11 Bankruptcy for reorganization. Because of some things that occurred and the U.S. trustee's lawyer has discovered during the course of that bankruptcy, that bankruptcy has been converted to a Chapter

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

7. The entity North Shore Maui LLC has been taken over by the trustee and the trustee's position is they are the ones that have any authority to engage in any sort of settlement negotiations on behalf of that entity. And, their position is that any discussions or settlement negotiations related to that entity without the trustee's participation and authority, will be a violation of the automatic bankruptcy stay and that they're gonna be prepared to take action if that sort of violation occurs. So, I understand Mr. Markham is going to be testifying on two different matters. One is related to North Shore Maui LLC and the other is related to another case that he had with the County and we've discussed it before with this body. If he wants to discuss that case with you, that's fine. That case involves some building permit violations that were made against Mr. Markham in his individual capacity. He is not individually in a bankruptcy proceeding, but any sort of solicitations or proposals or discussions related to the business entity...

VICE-CHAIR RAWLINS-FERNANDEZ: Mr. Bilberry?

MR. BILBERRY: Yes.

CHAIR MOLINA: Mr. Bilberry, I think you've answered Ms. Rawlins-Fernandez's question.

VICE-CHAIR RAWLINS-FERNANDEZ: That second item is not on the agenda today though right?

MR. BILBERRY: No, they both are from what I understand.

MR. RAATZ: Just one.

MR. BILBERRY: Just one? Okay, well I'm not sure which one it is then because I understood that we were...

VICE-CHAIR RAWLINS-FERNANDEZ: GET-11(10) Litigation Matters. So you're talking about the settlement regarding permitting and I think that second one is not on today's agenda.

MR. BILBERRY: Okay. The one related to North Shore Maui LLC is not on the agenda?

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

MR. BILBERRY: All right. Fair enough. Yeah. I thought it was, but just so you know, you still may get solicitations regarding that case.

CHAIR MOLINA: Okay. Thank you, Mr. Bilberry. We have a question from Member Paltin for clarification. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. So, my clarification question is if the North Shore LLC case is not on the agenda and only the permitting shed and deck case is,

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

that one is okay to ask questions if the testifier testifies and we don't understand what he is saying?

MR. BILBERRY: Sure.

COUNCILMEMBER PALTIN: Okay. Got it. Thanks.

CHAIR MOLINA: Okay. Thank you, Member Paltin. Any other questions for Mr. Bilberry before we proceed with public testimony? Okay. We have Member Kama. Question for Mr. Bilberry.

COUNCILMEMBER KAMA: Thank you, Chair. So, Mr. Bilberry, when you mentioned that the trustees of the Bankruptcy Court would take action, who would they take action against, the County or the individual?

MR. BILBERRY: Anybody they perceive was in violation of the bankruptcy stay.

COUNCILMEMBER KAMA: Okay. So, I guess...

MR. BILBERRY: Councilwoman, I believe and I think it's fair for me to say that their concern is not so much with the body as it is with the principal of that entity.

VICE-CHAIR RAWLINS-FERNANDEZ: Point of order. That . . .

CHAIR MOLINA: Your point, Ms. Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: That item is not on the agenda, Chair.

CHAIR MOLINA: I'm sorry. What?

VICE-CHAIR RAWLINS-FERNANDEZ: Just for clarification. Chair, I think Mr. Bilberry is confusing the Members because my understanding is the item agenda, the one that's on the agenda today is not something that we are prevented from discussing. And so, I just wanted to make sure that Mr. Bilberry wasn't confusing Pro Temp Kama right now, because that item that we are prohibited from discussing according to the trustees, is not on the agenda. The one that we can discuss is on the agenda today.

CHAIR MOLINA: Okay. All right. Thank you. Thank you, Member Rawlins-Fernandez.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR MOLINA: Okay. Mr. Bilberry, any other comments or, Member Kama, any other questions for Mr. Bilberry before I recognize Member King?

COUNCILMEMBER KAMA: No, I'm done. Thank you, Chair. Thank you, Mr. Bilberry.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Okay. Thank you, Member Kama.

MR. BILBERRY: Yeah, you're welcome.

CHAIR MOLINA: Member King? Questions for Mr. Bilberry?

COUNCILMEMBER KING: Thank you, Chair. I just wanted to see if we could get in writing the correspondence that Mr. Bilberry is sharing with us from the trustees, because it seems to be trying to alter our interaction with testimony this morning. So, we should really know what has been said in that conversation from the trustee, with the trustees.

MR. BILBERRY: Yeah. No one is trying to alter your interaction and...

COUNCILMEMBER KING: Well, that's why you came on, I mean that's why you came on before testimony. So...

CHAIR MOLINA: All right. Thank you. I'll ask Corporation Counsel to provide a written summarization of Mr. Bilberry's. Mr. Bilberry, if you could provide for us that would that would be great. Okay.

MR. BILBERRY: I provided that, Chair. I provided that.

CHAIR MOLINA: Okay.

MR. BILBERRY: I sent you guys a pretty lengthy memo a couple of weeks ago. I think that explains it.

CHAIR MOLINA: Okay.

MR. BILBERRY: I got a call from the trustee's lawyer yesterday reiterating his concern that any negotiations related to North Shore Maui LLC they would view as a violation of the bankruptcy stay. So, I'm just giving you that caution. This was a verbal conversation. I didn't get anything in writing from the trustee. I have made my caution and my recommendation and you're free to act as you deem fit.

CHAIR MOLINA: Okay. All right. Thank you for that, Mr. Bilberry. So, the Members have been made aware about your comments and the Bankruptcy Court. So, we'll proceed with public testimony on that. All right, Members, seeing no other questions for Mr. Bilberry, we'll proceed with public testimony. Ms. Espeleta again, please restate the name of our first testifier for the record.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

. . . BEGIN PUBLIC TESTIMONY . . .

MS. ESPELETA: Thank you, Mr. Chair. Your first testifier is Mr. Mikal Torgerson followed by Rick Markham. Both are testifying on GET-11(10).

CHAIR MOLINA: Thank you very much, Ms. Espeleta. Good morning, Mr. Torgerson. Please proceed with testimony.

MR. TORGERSON: Good morning, Chair and board Members. Thank you for the opportunity to address you. My name is Mikal Torgerson. I'm an architect and I was the consultant on the item that's before you. I had picked that project up in mid-2018 from Jim Niess, another architect who had begun the back permitting of that project, but I was ultimately the one that took it through completion of those permits. And I just wanted to talk a little bit about that process and give some insight into our efforts to get things permitted in a timely fashion. What we're talking about is a 211 square foot construction shed that was given to Rick Markham and he ultimately moved it to his property and converted it into a tiny house. The permits that we needed were after-the-fact building permits and an associated SMA assessment. And as often is the case, the SMA assessment was the critical path item in order to get these things permitted in order to address the request for service that was open on the property. We had a lot of difficulty getting the SMA assessment approved and that was primarily because although it was...an SMA assessment application was submitted in 2011, when I came on in 2018, I immediately met with all the different departments that had holds on the permits and asked what needed to be addressed in order to do so, so that we could get the permits. The Planning Department was processing the SMA assessment and despite repeated phone calls, e-mails, dropping into their office, I was simply told that it was in a stack and that the planner who was addressing it would get to it when he got to it. After nine months of this, nine months of just hounding them trying to find out what needed to be addressed in that SMA assessment, I was finally told that the assessment that was submitted in 2011 was simply inadequate for some unknown reason and that we should submit a new assessment. I did that within two days and we ultimately did get the SMA exemption approved two weeks later. The reason I wanted to share that with you is it's, the Planning Department who's issuing daily fines on this item is also the same department that held our process of getting these things into compliance and approved. For nine months I was literally just being told it's in a stack of papers and I'll get to it when I get to it and that's the best answer I could get. During those nine months my client was accruing a \$1,000 a day fines and there does seem to be a bit of a conflict there.

. . . (buzzer) . . .

MS. ESPELETA: Three minutes.

CHAIR MOLINA: Sorry, Mr. Torgerson. Please conclude. Your three minutes are up. I'll give you a few more seconds to conclude your statement. Proceed.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

MR. TORGERSON: Okay. In my experience if a consultant is diligently acting to get things approved, fines are typically put in abeyance and we expected that to be the case here, although that didn't happen. And the last point I would make is this building was moved on a trailer and if they had left the trailer under the building and it had wheels under it, none of this would have ever been a problem at all, because tiny houses aren't regulated and literally the fact that...

CHAIR MOLINA: Okay. Thank you very much, Mr. Torgerson. I'm gonna have to stop your testimony there.

MR. TORGERSON: Thank you.

CHAIR MOLINA: Members, anything to clarify Mr. Torgerson's testimony? Okay. Seeing none, thank you. Oh, sorry. Excuse me, Member Paltin has a question for you, Mr. Torgerson. Member Paltin, proceed.

COUNCILMEMBER PALTIN: Thank you. I just wanted to clarify you said that your experience with this is from 2018 forward. You don't have any experience from 2018, 2011 through 2018?

MR. TORGERSON: That is correct. Jim Niess, another architect on island was processing the application prior to my involvement in mid-2018.

COUNCILMEMBER PALTIN: And that was from 2011 to 2018 or you don't know?

MR. TORGERSON: That's my understanding, but I don't have any firsthand knowledge of that.

COUNCILMEMBER PALTIN: Okay. Thank you.

MR. TORGERSON: Thank you.

CHAIR MOLINA: I have a quick question for you, Mr. Torgerson. Did the Director intervene to help push this Planning review process on this matter along or were you just dealing with an employee other than the Director?

MR. TORGERSON: No. We didn't interact with the Director and to my knowledge the Director didn't intervene in any fashion one way or the other.

CHAIR MOLINA: Okay. Thank you for that. Any other need to clarify Mr. Torgerson's testimony? Member King?

COUNCILMEMBER KING: Thank you, Chair. So, Mr. Torgerson, when you came onto the project in 2018, was there already a stack of fines? What was the fine?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

MR. TORGERSON: They don't really give us a running tally and perhaps my client could address the fines more accurately, but I wasn't aware of any running tally at that point. But as I said, it has been my experience that fines are frequently put in abeyance while diligent efforts are being made to gain approval. If for no other reason for the reason that I mentioned, because it's being delayed by the very department that's fining you daily.

COUNCILMEMBER KING: Okay. So, you have no...when you came on in 2018, you had no knowledge of any fines that had been accruing at that point?

MR. TORGERSON: I didn't have any firsthand knowledge. No.

COUNCILMEMBER KING: Okay. Thank you.

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

MR. TORGERSON: Thank you.

CHAIR MOLINA: Ms. Espeleta, continue with public testimony.

MS. ESPELETA: Mr. Chair, your next testifier is Mr. Rick Markham on GET-11(10), followed by Magdalena Bajon on the same item.

CHAIR MOLINA: Okay. Good morning, Mr. Markham. Mr. Markham are you there?

VICE-CHAIR RAWLINS-FERNANDEZ: I think he's muted, Chair.

COUNCILMEMBER KING: I can see him, but I think he's muted.

CHAIR MOLINA: Mr. Mutant [sic], Mr. Markham, can you unmute yourself, if you can hear this? Please confirm if you are ready to go with your testimony. Okay. Members, I'm not hearing anything. What we'll do, we'll go on to the next testifier and come back to Mr. Markham once he's addressed the technical issue. So, Ms. Espeleta, please announce the next testifier after Mr. Markham.

MS. ESPELETA: Thank you, Mr. Chair. Your next testifier is Magdalena Bajon, followed by Rodney Kilborne. Both testifying on GET-11(10).

CHAIR MOLINA: Okay. Good morning, Ms. Bajon. Please proceed with testimony. Hopefully we don't have another technical issue here. Ms. Bajon, can you hear us? Can you unmute yourself? Okay. We seem to be having some technical concerns here.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Ms. Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I can see their video and I saw that Mr. Markham and the current testifier are both speaking. I can see their lips moving and they're trying to speak, but for some reason their audio isn't working. So, perhaps they can try calling in. There's a call-in number and you can use that to call in for both of your testimonies. Mahalo, Chair.

CHAIR MOLINA: Okay. Thank you for that. So, Mr. Markham and Ms. Bajon, that's an option for you if you'd like to call in, we'll accommodate you. In the meantime, what we'll do let's move on to the next testifier after Ms. Bajon. Ms. Espeleta, please announce the testifier again.

MS. ESPELETA: Mr. Chair, that testifier is Rodney Kilborne, followed by Brandon Makaawaawa on GET-19.

CHAIR MOLINA: Okay, good morning. Good morning, Mr. Kilborne.

VICE-CHAIR RAWLINS-FERNANDEZ: Chair? Mr. Kilborne also with Mr. Markham, I can see the three of them are together using the same computer and for some reason their audio is not working. I can see their video. If...so as soon as,...maybe Staff can send the phone number to them. Or do they have it? Do you have it, Mr. Kilborne? Do you have the number?

CHAIR MOLINA: Yeah. Good suggestions.

VICE-CHAIR RAWLINS-FERNANDEZ: Yes. They have the number.

CHAIR MOLINA: So, Mr. Kilborne, Mr. Markham, and Ms. Bajon, please, if you have access to that number, please call us in and we'll do it via phone conference. Okay. All right. In the meantime, let's go to our next testifier, Ms. Espeleta, please restate the name of the testifier after Mr. Kilborne.

MS. ESPELETA: Mr. Chair, for GET-19, Mr. Brandon Makaawaawa.

CHAIR MOLINA: Okay. Thank you very much. Good morning, Mr. Makaawaawa. Thank you for being patient. Please proceed with testimony.

MR. MAKAAWAAWA: Aloha. Good morning. Mahalo, Maui County. Thank you for giving us this opportunity. I'm speaking on behalf of Na Po'e Kokua. Mahalo for taking up this matter and this action, as far as any government body has taken this commitment before. For the last two decades, Bank of America has been able to skate by a Federal Reserve Order to provide \$150 million in loans to DHHL beneficiaries without any ramifications which has sent not only the Hawaiian community back generations, but has also put the State in a perilous situation, as far as affordable housing is concerned.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

Today I'd like you to consider the findings in the report that you will receive and to take action. Not just to bring closure to this open wound which has hurt our people to the core, by not providing much needed housings for thousands of Hawaiian families for over two decades, but we need you to take action to stop the injustice. What Bank of America has done to the Hawaiian people and the State of Hawaii is not right and they need to be held accountable. We cannot let injustice go on. We need Bank of America to do the right thing and if bringing them before a court, we encourage them to do that, then that's what this Council should do. For justice sake, let's hold Bank of America accountable. Mahalo.

CHAIR MOLINA: Okay. Thank you very much, Mr. Makaawaawa, and please forgive me if I mispronounced your name. Members, questions or clarification questions for the testifier? Okay. Mr. Sinenci, proceed.

COUNCILMEMBER SINENCI: Mahalo, Chair, and mahalo, Mr. Makaawaawa, for being here today. Question was, is there anything from the Federal Reserve that has, is there a letter or any type of I guess partnership or a document of partnership with Bank of America?

MR. MAKAAWAAWA: Aloha, Mr. Sinenci. There is a Federal Reserve order that is on public records and we can also share that with you via e-mail or messenger. But yeah, that is all publicly documented.

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

CHAIR MOLINA: Mahalo, Mr. Sinenci. Members, any other need to clarify Mr. Makaawaawa's testimony on this item? Okay. Seeing none, mahalo for your testimony, Mr. Makaawaawa. And forgive me again with the, I'm having a hard time pronouncing names this morning. So, I beg for your forgiveness.

MR. MAKAAWAAWA: No worries. Mahalo. Thank you for your time.

CHAIR MOLINA: Mahalo. Okay. Ms. Espeleta, please announce our next testifier.

MS. ESPELETA: Mr. Chair, your next testifier has joined with the last four digits, 2847. Two, eight, four, seven.

CHAIR MOLINA: Okay. Thank you.

MS. ESPELETA: Can you please press star four to unmute yourself.

CHAIR MOLINA: Okay. Testifier 2847?

MS. ESPELETA: Press star four to unmute yourself?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Please proceed with your testimony. Testifier 2847.

MR. MARKHAM: Hello, good morning.

CHAIR MOLINA: Good morning.

MR. MARKHAM: Hi. This is Rick Markham.

CHAIR MOLINA: Good morning, Mr. Markham. Proceed with your testimony.

MR. MARKHAM: Okay. Good morning. Aloha, everyone. I want to thank you first for your time. My name is Rick Markham. I'm a 33-year resident of Paia Town and I'm a father of three children born and raised in Paia. I'm a residential owner. I'm a business owner, commercial real estate owner. I provide roughly 80 jobs on a daily basis for the town of Paia over the last couple decades. The issue at hand here today is a structure that was given to me years ago in 2005 roughly, for free. It was placed on my property. It's a 200-square-foot structure. I placed it to with the commission of Maui County as a temporary construction shed and I could either remove it or I could permit it with an after-the-fact permit if I chose to keep it. I did choose to keep it. I hired an architect, Jim Niess who was great. I also hired another gentleman to run the permitting process. I...we submitted the application for permits which were successful and the gentleman that was helping me disappeared through the bottom of the financial market. He surfaced a couple years later and said, hey, I can redo that permit and put it through for you. So, we had to restamp it. I paid him again for it. And shortly after he disappeared again. It wasn't until years later, 2017, that I learned the severity of this when it was brought to my attention 'cause all of the correspondence for those previous years were not sent to me. They were sent to Rick Markham at his Haiku address and to him. I had no knowledge of the severity of the situation. Immediately I hired Mikal Torgerson who you just spoke with. We went ahead and were able to obtain the building permit and get into compliance. Once...along the way I was assured that once you're in compliance the standard protocol for Maui County is to largely waive those fines, except for the initial fine and...'cause the fines were there to encourage compliance and not for the County to profit off the fines. Anyway, here I am today in compliance and I'm here to make this right and I'm here in good faith and I do recognize that I'm ultimately responsible for this. It was my responsibility, but between raising young children, a young family and doing business every day in Paia Town, sometimes things just slip through the cracks. There's not enough hours in a day. And but I am here to make it right. So, I do take...

... (buzzer) ...

CHAIR MOLINA: Mr. Markham, I'm sorry, you've reached your three minutes.

MR. MARKHAM: Okay.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: So at this time, I'm going to stop your testimony.

MR. MARKHAM: Can I...

CHAIR MOLINA: Members --

MR. MARKHAM: Can I finish?

CHAIR MOLINA: --any need to clarify Mr. Markham's testimony? Member Paltin.

COUNCILMEMBER PALTIN: Thank you. I wasn't clear on what, who disappeared? When you were saying someone disappeared?

MR. MARKHAM: The gentleman that I had hired to run through the permitting process for me.

COUNCILMEMBER PALTIN: And his name was Rick Markham also?

MR. MARKHAM: No, no, no. I am Rick Markham. No, his name was, it's on that, it's on the exhibit. You can see on the exhibit it was sent to the wrong address.

COUNCILMEMBER PALTIN: I didn't see in the exhibit. I just see that it was sent certified mail to Rick Markham. So...

MR. MARKHAM: Yeah, but it's at the wrong address.

COUNCILMEMBER PALTIN: But, I mean, did he forge your signature that was Rick Markham to get the certified mail?

MR. MARKHAM: I was...I did not...wait let me see. No, Mr. Michael Flemister is the guy that it was sent to, to P.O. Box 827 in Haiku. I live in Paia. So, this correspondence is being sent to Haiku.

COUNCILMEMBER PALTIN: Michael Flemister?

MR. MARKHAM: Yeah, Michael Flemister.

COUNCILMEMBER PALTIN: Okay, but the document said it was sent certified mail, so somebody needs to sign for that. Did he sign Rick Markham?

MR. MARKHAM: I don't know. Not that I am aware of that I signed for it, but it was sent to the address in Haiku, not to my personal address, or not to my Paia mailing address. And I don't even, yeah, I don't know if it's certified either. So...

COUNCILMEMBER PALTIN: Okay. Thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Okay. Thank you very much, Member Paltin. Prior to asking if Members the need to clarify statements from Mr. Markham, Chair would like to recognize Councilmember Sugimura to our proceedings this morning. Good morning, Ms. Sugimura.

COUNCILMEMBER SUGIMURA: Good morning. Sorry for the delay. I couldn't get connected to Internet. So, thank you. I'm in my office.

CHAIR MOLINA: Okay. Thank you.

MR. MARKHAM: Good morning, Yuki.

CHAIR MOLINA: Members, any other need to clarify Mr. Markham's testimony? Seeing none, thank you very much, Mr. Markham, for your testimony. Oh, I'm sorry, Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I don't need to ask the testifier any questions, I just have a suggestion for the next testifier because there are three of them in front of the same computer and I'm guessing they will also be using the same phone number. So, that we can see them as they testify, if Staff would pin their video, RM, then we'll be able to see them and hear them testify. Mahalo, Chair.

CHAIR MOLINA: Okay. All right. Thank you. So, Staff, you got word on that so if it's at all possible. I do see them, I guess Mr. Kilborne and Ms. Bajon on the screen right now. So, okay. Next testifier, I believe that was, sorry again, I have a hard time remembering your last name, is it Bajon? You're gonna testify following Mr. Markham. Okay. And you're going to be on audio by telephone?

MS. BAJON: I apologize, we apologize, and thank you so much for giving us this opportunity.

CHAIR MOLINA: No apologies necessary.

MS. BAJON: Good morning, Chair.

CHAIR MOLINA: Good morning. And please state your full name for the record prior to your testimony.

MS. BAJON: Magdalena Bajon, Attorney for Rick Markham. Once again thank you for this opportunity. Thank you on behalf of my client and us attorneys for participating in this action. I'm here today to facilitate the settlement discussion and provide any information you need and be of resource when it's time for you to decide. As already mentioned by Mr. Torgerson, this case is about a small construction shed that was worthless when placed on the property and would stand out into \$2.5 million in fines. And Mr. Torgerson already briefed us on the permitting difficulties that he had and he

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

already told us what his understanding of the common practice of that Department of Public Works is that usually these fines are abated once the permit is obtained. So, it might not have been the best way for us to get here today in front of you, but my client feels sorry for all the delays that happened and we would very much want to resolve this issue and put this behind, and the County could also be potentially collect some money during these unprecedented times. So, as you can imagine my client's business suffered just like everybody else's, but we truly hope that you will consider our testimony and our offer and willingness to discuss with you any potential settlement and I would also want to ask to be, allowed to be of resource for myself and my client. So, thank you again.

CHAIR MOLINA: Okay. Thank you very much for your testimony. Members, any need to clarify the testimony? Mr. Sinenci?

COUNCILMEMBER SINENCI: Mahalo, Chair. And mahalo for your testimony. My question was, was Mr. Markham able to settle with the, he's willing to settle with the County?

MS. BAJON: That's correct.

COUNCILMEMBER SINENCI: Okay. And on...I know there was questions about another item that is not agendized, but, so....

MS. BAJON: Unfortunately we cannot speak about that other item. This was his intent to be here today and resolve it globally, but today we are here on this shed case item and very much would like to put this behind. Whatever it takes.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you very much, Mr. Sinenci. Member Paltin?

COUNCILMEMBER PALTIN: Thank you, Chair. I just, my question, I guess was regarding Mr. Flemister, you know when you were saying that abeyance as diligently working towards addressing the problem, it seems that between 2011 to 2018, it wasn't diligently working towards the problem because this guy keeps disappearing and even if he disappeared, he hired him again. So, are you pursuing that guy as well?

MS. BAJON: Can you please repeat the last sentence, I couldn't hear what you said. Last sentence.

COUNCILMEMBER PALTIN: If you're pursuing Mr. Flemister. I mean it seems like he's the root of the problem for you guys.

MS. BAJON: We can definitely see it, but Mr. Markham, I'm not sure, I hope that you will have an opportunity to meet him. He's really coming in peace, he's not there to sue people. What happened with Mr. Flemister was that Mr. Markham hired architect James Niess

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

and Mr. Flemister was recommended by James Niess, so there were I believe three permit applications filed by them. One in 2007, one in 2009, 2011 and they kept following up on it while the, and I'm not sure where the disconnect was between what was the Department of Public Works mailing to Mr. Flemister's P.O. Box in Haiku. What was provided to them, but I understand your question about the diligence. That's not something that I can fully address. I know that on Mr. Markham's part, he believed that he hired a professional who will bring it into compliance.

CHAIR MOLINA: Okay. Thank you. Member Paltin, any other need for clarification from the testifier? Seeing none, okay. Thank you.

COUNCILMEMBER PALTIN: No, no. I just wanted to verify it. So, that's okay.

CHAIR MOLINA: Okay. All right. Thank you.

MS. BAJON: And just a little picture of that construction shed. So...

CHAIR MOLINA: Okay. Thank you, Ms. Bajan. We have another question for you from Chairman Lee.

COUNCILMEMBER LEE: Thank you, Mr. Chair. I just had a question about the architect that was hired, was Jim Niess hired to redesign the tool shed? The construction shed?

MS. BAJON: That's correct.

COUNCILMEMBER LEE: You needed an architect to do that?

MS. BAJON: I believe that he inquired with the Department like what's necessary to permit that is the shed, he previously opened and closed many permits and I believe with James Niess. So, he just contacted James Niess because it was his common practice to start with James Niess.

COUNCILMEMBER LEE: Thank you. Thank you.

CHAIR MOLINA: Thank you, Chairman Lee. Members, any other need to clarify the individual's testimony? Seeing none, thank you very much for your testimony, Ms. Bajan.

MS. BAJON: Thank you.

CHAIR MOLINA: Thank you. Ms. Espeleta, please call up our next testifier.

MS. ESPELETA: Mr. Chair, your next testifier on the same item, GET-11(10) is calling from the same number, last four digits, 2847, Mr. Rodney Kilborne.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Okay. Thank you. Good morning, Mr. Kilborne. Please proceed with your testimony.

MR. KILBORNE: Aloha, Chairman Molina and also to Councilmembers and you beautiful u'i wahines out there and the handsome buggahs. Rodney Kilborne again. You know, I know Rick for over 33 years. I was running a wind surfing event at Hookipa back then. And, you know, I seen lot of good people come and a lot of good people go too. And, you know, as for Rick Markham, he was one of the best haole boys around, happy. I can say this, that he's done a lot for the community back in, you know, until today 33 years. I also was a surf coach for Seabury High School and his daughter was one of my surfers from school from Seabury. And, you know what, he also gave back there too. And that's a volunteer job guys. I'm not here knowing about what these GET-11(10) and all these stuff that he's getting fined for and stuff like this, but I'm gonna say this, this guy one outstanding guy and I'd just hate to see a good brother go down bankrupt or bankruptcy because of 2011 or 2018 whenever this thing started the fine, \$1,000 a day and you're talking 200 square feet for 2.5 mil. I mean, even Ray Charles see that fund. You can even ask Stevie Wonder that too. But, you know, I'm here because the reality of this is that, you know, we're in a bad pandemic and you know, this seems to be leash on the leash right now, we should be focusing about our health and life and our family back at home and I just wish that you guys kind of be a little more lenient on this guy and give him one fair opportunity. That's all I ask you. I'm not here to say not to fine him and if he deserves to be fined, then fine the guy. But let's fine him in one way that is practical and reasonable and that's all I'm asking for. I came here to stand up for him, I mean, and talk to you guys. But I miss all you guys and you guys look all beautiful. And you one handsome buggah, Mr. Molina.

CHAIR MOLINA: Thank you very much for your testimony. You are a friend for life, Mr. Kilborne, for that last statement. I don't get that said to me very often, if at any time. But anyway, Members, is there a need to clarify Mr. Kilborne's testimony? Okay. Seeing none, mahalo for your testimony, Mr. Kilborne. Always good to see and hear from you.

MR. KILBORNE: Love you guys. You guys are the best County Council, you guys. Thank you guys for your time. Aloha. A hui ho.

CHAIR MOLINA: Mahalo, Mr. Kilborne. My head getting too big, it cannot fit through the door after those comments. So, thank you.

MR. KILBORNE: Oh, that was long time ago, the head couldn't fit through the door.

CHAIR MOLINA: . . . *(inaudible)* . . . That's much appreciated. Ms. Espeleta, please announce our next testifier.

MR. KILBORNE: Okay, thank you.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

MS. ESPELETA: Mr. Chair, your last testifier is signed in as Guest-2. If you could state your name for the record and the item in which you wish to testify on, Guest-2?

CHAIR MOLINA: Guest-2 please proceed with your testimony. Hello, Guest-2, are you there? I hear a little background noise. Guest-2 again. Another opportunity for you to provide testimony. Unmute yourself if that is, we're not able to hear from you. So, again, Guest-2, calling out for your testimony. Can you call in? I'm not hearing any response from Guest-2.

MS. ESPELETA: Guest-2 has been unmuted on our side.

CHAIR MOLINA: Guest-2, if you can hear us, please proceed with testimony. Otherwise, we'll move forward to the next testifier if there are any. Okay. Seems like we have a technical issue here. And, Ms. Espeleta, you did say there was no other testifiers signed up after Guest-2?

MS. ESPELETA: Mr. Chair, we have a recent individual that joined by the initials ASHAH. Can you please your name for the record and the item you wish to testify on?

CHAIR MOLINA: Okay. Testifier ASHAH, please proceed with testimony. Calling out again for the testifier, ASHAH, please proceed with testimony. Unmute yourself if that is what's causing the problem. We're not hearing from you.

MS. ESPELETA: Mr. Chair, the individual has communicated via chat that he is not here for this item.

CHAIR MOLINA: Okay. So, is the person wanting to testify? Please inform us of that. If he's going to testify on any particular agenda item. Okay. Last call out. Seems like we're having a lot of technical glitches this morning with our testimony. Okay. Members, what I'm gonna do, we can proceed if you have no objections, we can leave it open for public testimony and give our two testifiers one last chance to respond. And I'll leave it open. For the record, Ms. Espeleta, do we also have written testimony for any of our agenda items today?

MS. ESPELETA: Yes, Mr. Chair. We have received written testimony.

CHAIR MOLINA: Okay. Members, any objections to accepting written testimony for our agenda items today?

COUNCILMEMBER LEE: No objections.

VICE-CHAIR RAWLINS-FERNANDEZ: No objections.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: All right. Thank you. Okay. We got two people in waiting, but there's only so long I can wait, because we do have a lot of business to conduct. So, we'll go ahead and touch upon our first...

MS. ESPELETA: Mr. Chair?

CHAIR MOLINA: Yes, Ms. Espeleta.

MS. ESPELETA: Excuse me. The individual ASHAH has responded in chat, response is as a County employee for another item. So, not testifying.

CHAIR MOLINA: Okay. So, they're just basically observing then. So, they don't intend to testify.

MS. ESPELETA: That is correct.

CHAIR MOLINA: Okay. So noted for the record. And the other testifier that we haven't heard from has that person given any indication they still would like to testify?

MS. ESPELETA: I believe we have tried to communicate with that individual Guest-2 via chat and so far no response.

CHAIR MOLINA: Okay. Members, at this point, we are running a little late and we do have a lot of business to conduct. If there are no objections, I'm gonna close public testimony. Now, that individual can submit written testimony if because of the technical glitches I can't hold up the Committee business for one testifier and I apologize. But I do want to move on. So, Members, if there are no objections, I'm gonna close public testimony for our agenda items today.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay. So ordered by the Committee.

. . . END OF PUBLIC TESTIMONY . . .

GET-19 BANK OF AMERICA'S COMMITMENT TO PROVIDE MORTGAGES FOR NATIVE HAWAIIANS ON HAWAIIAN HOME LANDS (CC 19-107, CC 19-108, CC 19-337, CC 19-338)

CHAIR MOLINA: All right. Members, we'll get right into business here with our first agenda item and thank you very much, Members, for your patience today. We encountered a lot of unexpected issues, but thank you for hanging in there. First item is Bank of America's Commitment to Provide Mortgages for Native Hawaiians on Hawaiian Home Lands, GET Item 19. And, Members, if you recall, back in our September 17, 2019

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

meeting, this Committee agreed to the employment of special counsel for this matter and felt it was warranted and discussed the possibility of litigation once the results of the investigation were received. The Council at its meeting on October 4, 2019 recommended adoption of Resolution of 19-171 authorizing Maui County to employ special counsel and through that same resolution, which required special counsel, that they transmit a confidential report to this Committee. And the purpose of today's meeting is allow Councilmembers to review the report in executive session and obtain legal advice in response to this report. So, at this point I would also like to share with you, we're going to have Mr. Raatz, I believe, will give us some remarks in open session. But, I would like to inform you that it's interesting how the timing of things just occurred. The Governor announced the quarantine, the neighbor island quarantine being lifted on June 16th which happens to be my next GET meeting. And I am intent on addressing this item on June 16th again. Because for today's purposes, there's no legislative action being considered. It's just a status update. I do have a proposed resolution waiting in the wings for possible action on June 16th where we can have a more in-depth discussion on this. So, I'd like to, not to reduce the amount of time spent on this, but I'd like to have the status update and then make a commitment to you to have a much more complete discussion on the item. The attorney that we did employ, Ms. Bronster, has indicated to us she can communicate with us via BlueJeans for that meeting or even come to the Chambers to be present to respond to any of your questions. So, that's what's been made available to us. So, I would like to let you know of that. So, again, we can spend a little time on this and then have a more in-depth discussion at my June 16th meeting on this. So, that is the Chair's preference as to proceeding. But I would like to give Mr. Raatz an opportunity if he has something to share with us in open session and if need be we'll consider executive session. So, Mr. Raatz, if you're there, please proceed.

MR. RAATZ: Thank you, Mr. Chair. Just a brief update on what's happened since the Council adopted Resolution 19-171 back on October 4, 2019, as you've mentioned. Subsequently the Office of Council Services assisted the Council Chair in a procurement process to hire the Honolulu law firm of Bronster, Fujichaku and Robbins as special counsel. Pursuant to the Resolution a confidential report by the Bronster firm has been submitted and we have confirmed as of this morning with Ms. Bronster, the founding partner of the firm and the lead author of the report, that with interisland travel now being made available again, she's available to come to Maui on June 16th to meet in executive session with the Committee if that's what the Committee requests and at that time she could go over her recommendations in detail for the body. Because the report is designated confidential, we don't have much more to report at this time. I would be happy to try to answer any questions if the body has any. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you very much, Mr. Raatz. So, that's what we have before us. If you have any general questions in open session that Mr. Raatz is comfortable with responding to we can do that. And, at the same time consider, you know, reducing the amount of time spent on today's matter and spending more time at the June 16th meeting whereas Mr. Raatz stated, Ms. Bronster would be available to go into more detail

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

and we can consider legislative action if we want to pursue matters related to Bank of America. Member King, question for Mr. Raatz.

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, David. So, could we get a copy of, will Councilmembers get a copy of the report to review before the next meeting?

CHAIR MOLINA: Mr. Raatz?

MR. RAATZ: Well, in all candor it's a tricky matter. I welcome the Chair to jump in if he'd like and we can discuss it possibly in executive session if the body wants to, but in general, our procedures for confidential documents include distribution during an executive session and retrieval of the documents before the executive session concludes. So, we don't have a mechanism at this point to actually deliver the document. We do have it available if deemed required by the body as a screen share during an executive session via BlueJeans.

COUNCILMEMBER KING: Okay. 'Cause my, you know, my concern is that we're all elected Councilmembers. There are other people who supposedly have access to this report right now. Probably Corp. Counsel and maybe yourselves. I think, you know, it's kind of been an ongoing thing with me that Councilmembers are not trusted with confidential documents. This is our job and this is what we're hired to do. So, giving us the documents puts the responsibility in our hands of keeping it confidential is my opinion. So, I'm just, yeah, I don't understand I guess why you wouldn't afford Councilmembers the same courtesy as whoever in OCS is able to review the report, whoever possibly, and Corp. Counsel is able to review the report. So, what keeps Councilmembers from having confidential documents?

CHAIR MOLINA: Mr. Raatz?

MR. RAATZ: Well again, it's based on established procedures that we have for dealing with confidential documents. We're not in the practice of distributing confidential documents. If the Chair were to so direct or the body were to so direct, we could try to develop a process, but we don't have one in place right now.

COUNCILMEMBER KING: Okay. But there's nothing illegal about it, about us having confidential documents?

MR. RAATZ: No. As long as the document is maintained securely, there's nothing illegal with providing Councilmembers with access.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member King. Members, any other need for questioning of Mr. Raatz in open session? We have Member Sugimura followed by Member Sinenci and then Member Rawlins-Fernandez and Mr. Hokama. So, Member Sugimura.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

COUNCILMEMBER SUGIMURA: So, Chair this is really not for Mr. Raatz, so I can wait. I just want to support what you are proposing so that we can get Keani here and we can all be . . . *(inaudible)* . . . in the Chambers or in the offices and be and go in executive session and have availability of the documents that you're talking about. So, I support what you're doing and I think that'll then keep us all together and, you know, and allow Keani to travel now which yesterday we didn't know that. So, thank you.

CHAIR MOLINA: Thank you very much, Member Sugimura. We have Mr. Sinenci I believe?

COUNCILMEMBER SINENCI: Thank you, Chair. Just clarification, so we're not hearing it, is Ms. Bronster not available today or we're not hearing it because we're not in the Chambers?

CHAIR MOLINA: No, no, no. If you would...my comments were again, one if you look at the agenda, no legislative action. This is basically a status report. However, it's come to my attention being that the Governor has one, lifted the 14-day quarantine, Ms. Bronster indicated to us she could be here present in the Chambers or participate via BlueJeans, whichever she would want to do, and then we can consider legislative action based on the commitment I've made to you to have this item placed on my June 16th agenda. So, that's the option. So, I mean, yeah we could spend a lot of time discussing the matter today, but again, no legislative action. So, I think based on a limited amount of Committee time I have today, and on top of that, three other items, your Chair's preference would be to kind of spend a minimum amount of time on this and then at the June 16th meeting, we can, we'll have much more time available to us to ask questions of Ms. Bronster and consider any proposed legislation that will be put out which I've indicated.

COUNCILMEMBER SINENCI: Thank you. Thank you, Chair.

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I will not be forced to fly and put my own safety and the safety of my children and my grandma and my mom at risk. I don't care about a travel ban, as the Chair stated before the meeting started. There's no vaccine. There's nothing prepared for any kind of exposure. No one else is being forced to fly right now. I would be the only one that would be risking my health to have to attend this meeting. And so, I think it is so disrespectful for any of the Members to try to force me to have to fly there in order to participate as a Councilmember. Is the reason that we're not taking legislative action because of the travel ban, is that why it is not being proposed today? So as the Chair, your preference is to have a status update, although legislative action by you has already been drafted, but we're gonna hold that until June 16th?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: That is correct. And let me restate I did mention we could, well, Ms. Bronster could participate by BlueJeans, so we all have that option. So, you're not being mandated to come here. I don't think nobody is being forced to come into the Chambers. As a matter of fact we can just operate the way we're doing today or if Members are comfortable at home. So, I just want to make that clear. So, no one is forcing you to travel. That is your own individual choice and I'm not gonna mandate any Member to travel. If you are more comfortable. I may end up staying home myself. So, again that is the option that was presented to us for your consideration. However, I'm fine with operating at home and now that we've resolved the concerns about the screen sharing on this particular app. And also I want you to consider we have that Common Cause that's been keeping an eye on this. As you recall during your Budget Session, they were concerned about you know legislative bodies participating in that fashion. So, that's something we need to be cautious about and I've had to take all this into consideration. But by no means am I gonna mandate you or anyone else to come into the Chambers. Like I said, there's options. We can have Ms. Bronster participate by BlueJeans which may be the best option at this point. But she did offer to come to Maui.

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I really appreciate your consideration. So, my second question was regarding the purchasing of software. I would be more than happy to work with you and with our attorneys and our analysts to find software, because I get confidential information from my bank via online electronically and it's encrypted and I receive it via e-mail. It has a timer on it so it expires and it has a password. It's password protected. And so, only I have the password and only I can access it and I'm also prevented from printing it. You know, before January we were nowhere near meeting online and we have embraced this technology and we have actually taken lead in accepting live oral testimony via video and via audio on phone and I would love to see us continue to trail blaze and show everyone how it can be done. So, I'm happy to work with our staff and with you, Chair, on getting this kind of software that would enable us to continue meeting online. Mahalo.

CHAIR MOLINA: Okay. Well, thank you, Member Rawlins-Fernandez, for this offer, that will certainly be taken into consideration and anything that can help the process is always welcome. Thank you. Okay. I believe we had Member Hokama and I think followed by Member Lee if I'm correct. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I think you were on the previous Council with me when we had issues regarding executive session and potential litigation. We had concerns about, if you remember, the issue was about disclosure to public of information received in executive session by a Councilmember and it became a very big legal thing where Council had to make a decision whether or not we would consider supporting in a special counsel attorney for the Councilmember, alleged Councilmember's infractions. That is one of the reasons why I appreciate Mr. Raatz bringing up the requirements and the procedures we try to ensure the confidentiality of appropriate documents and information until such time either by court order or the case has been resolved appropriately that that information can be shared publicly. So,

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

you know, I appreciate everybody's concern, you know, I know my colleague, Ms. Rawlins-Fernandez has a unique situation and I agree, we shouldn't force anyone to participate in any way. But I am looking forward to see if there is a software. I know, you know, we've used Microsoft Teams and other components, so I'm sure there is a component out there that could assist this Committee's work, Chairman Molina. But I'm like Ms. King, there comes a point where we're gonna need to look at that report to be able to present appropriate questions to Ms. Bronster, and I think, Mr. Raatz, I don't know if you were with us yet, but I believe we have allowed at times past, with appropriate safeguards an enclosed area where the Member would go down, see the Committee's Secretary, sign out the document, review it, and then resign again that you have returned the documents. That works for Members who have access from this island. So, what we need is, how do we present, if I'm on Lanai, or if Ms. Rawlins-Fernandez on Molokai, how does that Member do that. Or even, Mr. Sinenci, the road is shut down, how do then we access that document for decision making. And, to me, that's the technical question, Mr. Raatz, that you guys gotta come with potential solutions. But I see the importance of executive session, Chairman, that's my point and hopefully nine of us can find a way to legally get it done without violating confidentiality of the law that allows us to meet in executive session. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Hokama. Mr. Raatz, any comments in response? I know we did discuss the possibility of even having Staff members, if allowable, to take sealed sensitive document out to the Member wherever they're at, if they're operating at the Council Services Offices in Molokai or Lanai and that was one option considered, and you know prior to a meeting, you know, like the day before. But I appreciate you informing us of the policy that's currently in now. As long as it doesn't seem to be violating the law, I'm, you know, for me I'm comfortable with that option if that can be done. But anyway, your thoughts on, that Mr. Raatz?

MR. RAATZ: Thank you, Chair. The process Councilmember Hokama referenced is still in effect. When a document is distributed in executive session we do retrieve all the copies except one is maintained by the Committee Secretary and there is a process by which a Councilmember can check out the document from the Committee Secretary. So, as referenced that's convenient for the Councilmembers who have easy access to the County Building and not as easy for other Councilmembers. So, yeah, we would of course want to make sure whatever process is established for distribution, is not only secure, but fair to all nine Councilmembers.

CHAIR MOLINA: All right. Thank you, Mr. Raatz. Chairman Lee?

COUNCILMEMBER LEE: Thank you, Mr. Chair. And I agree with all of you pretty much. I think we ought to take up this matter maybe in a chairs meeting, because it doesn't only concern the GET Committee, we could have executive session in other subject matter committees, so that's one issue. I appreciate your openness and willingness to accommodate everybody. I think that we can find common ground and be able to come up with solutions that will satisfy everyone and be fair to everyone. In this day and age,

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

it doesn't seem practical to rely primarily on manual means of getting information out. You may have not been with us when we were chatting earlier before the meeting, but I am and I'm sure everyone is concerned about following the Governor's or the Mayor's advisory with regard to travel because there are a lot more issues here. And the number one concern is everybody's health and safety, and the health and safety of your family members who you are closest to. So, you know, we have to come up with protocols and practices that take that into consideration. So, thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Chairman Lee. Is there anyone else who had a question for Mr. Raatz? Member Sugimura?

COUNCILMEMBER SUGIMURA: I just want to apologize to Keani, I didn't intend to imply where this discussion has gone. I thought when I came in late to this meeting, but based upon yesterday's discussion through my meeting at the end, just talking about what's gonna happen at this meeting and why I totally misunderstood that and you being on Molokai and whatever, but I think we're all in the same place of, you know, safety and health for those that we live with. My husband who is 80 years old and his safety and health, you know, I'm concerned about that too. But, apologies, Keani, I really didn't mean to take a stab at your family and try to imply that you had to come here. I thought you wanted to. So, I apologize for that. But thank you. No questions for Mr. Raatz again. Thank you, everybody.

CHAIR MOLINA: Okay. Thank you very much, Member Sugimura. And, Members, again, if we could keep our questions confined to Mr. Raatz and the update in open session. It would be much appreciated. Because again I'm looking at the time and we've got a lot of work ahead of us and hopefully we can complete our agenda prior to Mr. Sinenci's meeting. And speaking of which, Mr. Sinenci, you have a question.

COUNCILMEMBER SINENCI: Chair, real quick. So, for Mr. Raatz, are we sworn to secrecy on this or can the Members vote to publicize the report or is that not something that we want to do at this point?

CHAIR MOLINA: Mr. Raatz?

MR. RAATZ: Thank you, Chair. As we understand the confidentiality that applies to this document, it belongs to the Council, it's established based on the Council resolution that was adopted last year. The Council could decide to convert the document into a public document by the adoption of another resolution that so specifies.

COUNCILMEMBER SINENCI: Okay. Thank you for that. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Sinenci. Member King?

COUNCILMEMBER KING: Thank you, Chair. So, Mr. Raatz, is there any reason not to make it public?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Mr. Raatz?

MR. RAATZ: Thank you, Chair and Councilmember King. That's a policy and strategic question for the Council. You know, there was I would assume some strategy behind the resolution making the document confidential. So, to release the confidentiality would also involve a strategic choice that would probably be better discussed in executive session.

COUNCILMEMBER KING: Okay. Understood. Thank you. Thank you for that answer.

CHAIR MOLINA: Thank you, Member King. Mr. Raatz, just on the topic of the signing in and signing out of the documents, do you see a problem with us doing that, you know, as long as we return it maybe that very day prior to, you know, the June 16th meeting? 'Cause I can appreciate the stance that Mr. Hokama made because Members may want to formulate questions off that document for Ms. Bronster, whether she's here or via BlueJeans. So, any issues with the law on that? I know it's basically an internal policy of the Council to, you know, that you had mentioned earlier, but with this sign in and sign out of the document, any issues there?

MR. RAATZ: Thank you.

CHAIR MOLINA: Ultimately it's our call I would guess.

MR. RAATZ: Thank you. The issue of ease of access as referenced earlier would be one possible concern, you know, the requirement to come to the Office of Council Services to retrieve the document. When documents are signed out we don't have a specific due date, you know, so the Members can hang onto them as they deem appropriate. Typically the document is made available after its first circulated in an executive session. That's what puts it into that realm of having the Committee Secretary maintain it and set up the sign-out log. So, it's usually after that initial executive session on a document, but we could in light of our current challenges deviate from that somewhat if directed to.

CHAIR MOLINA: Okay. Thank you, Mr. Raatz. I want to ask a question of Chair Lee now. Ultimately it's a call of the body so I'm not sure if maybe we should consider a last-minute Chairs meeting to consider a policy with regards to signing out documents related to executive session. Chair Lee, any thoughts on that?

COUNCILMEMBER LEE: Chair, we could have one this Friday.

CHAIR MOLINA: Okay. And as far as posting issues, no issues with that?

COUNCILMEMBER LEE: I don't think so. It's kind of an informal meeting, but I'll check.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Okay. I'm agreeable to that. I think let's have a Chairs meeting after the Council's meeting to discuss the access of executive session documents especially as it relates to this matter. So, Members, that's where I'm coming from. Like I stated earlier, I made a commitment to have this item heard once again on June 16th where legislative action can be taken into consideration. Also with the participation of Ms. Bronster in this as well. Member King, you had a question?

COUNCILMEMBER KING: Yeah, Chair. So, is your proposal to put this on for the 16th not including, so you want to defer it for today, is that what I'm getting? Okay. Because I do understand what Mr. Raatz was saying that the first discussion of this document should be in executive session so we can decide if it can go open, go public after that because there may be strategies that we may want to hold in executive session as far as going forward with an actual lawsuit. So, I get that part. But, at some point, if you're asking us to review it on the 16th and then make that decision of whether it should be public, we should just allow more time, you know, the time for a lengthy discussion in executive session. That's my thought.

CHAIR MOLINA: That thought is much appreciated and certainly will be worth consideration.

COUNCILMEMBER KING: And then otherwise, you know, if we can do that...

CHAIR MOLINA: We could spend a lot more time in executive session on the 16th to get into the heart of the matter and then the option of legislative action that very day as well.

COUNCILMEMBER KING: Okay.

CHAIR MOLINA: Okay. Members, any other thoughts before the Chair's recommendation? Then if no one has any desire to go into executive session, inform me of that. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I'll support your upcoming recommendation for deferral. I would ask you as our Chair if you would make a contact with Ms. Bronster and have a discussion with her regarding making the report public and if that would jeopardize the County's strategic positioning should we go to court.

CHAIR MOLINA: Okay. Definitely a great consideration, Mr. Hokama.

COUNCILMEMBER HOKAMA: I think that...I mean she's already working for us so I would ask if you would please consider that, Chairman. Thank you.

CHAIR MOLINA: Certainly worthwhile of consideration. Good suggestion. Members, any other discussion before the Chair makes his recommendation for this item? Member Kama, followed by Member Rawlins-Fernandez.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

COUNCILMEMBER KAMA: Just a curiosity question, Chair. Is this Bronster, the Margery Bronster that used to be the Attorney General? Okay. Thank you.

CHAIR MOLINA: You are correct. Okay. Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. Just so after all that discussion just I wanted to just clarify, so what is the plan with the status update with the report that we would get from Ms. Bronster? We're gonna figure that out on Friday. Is that the plan?

CHAIR MOLINA: Let me ask Mr. Raatz if he wants to chime in on the basic components of this status update, and like you have mentioned, we'll discuss how we can get these documents to you prior to the meeting and make a decision as a body at the chairs meeting. Mr. Raatz, any response to Ms. Rawlins' question?

MR. RAATZ: Thank you, Chair. Well, really the main status update is that the report has been in fact received. So, we want to make sure the Members are aware of that. Beyond that, I can't say what the next steps may be, that's gonna be up to the Council to decide.

CHAIR MOLINA: For further discussion at the Chairs meeting this Friday.

MR. RAATZ: Yes.

CHAIR MOLINA: Okay. Any other questions on this matter before the Chair requests a deferral? Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: So, was your initial plan then to give all the reports to us on June 16th or were we gonna have time to review that report before we meet with Ms. Bronster so we'd have our questions prepared?

CHAIR MOLINA: Well, initially my plan was to have you guys look at the report that very day in executive session. However, based upon the discussion that we're having here today, I'm open if it's okay with the whole body if Members would like to get access to that status report from Ms. Bronster prior to the meeting, and like I said, we can discuss this at the Chair's meeting and go forward from there. And again, this would be a decision by the body if we want to proceed in that fashion.

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

CHAIR MOLINA: Thank you very much. And I appreciate the discussion. Good questions. Okay. Members, with that being said, the Chair's recommendation will be to defer this matter and again, I'll repeat for the record, I will take this item up on June 16th where we can have a full discussion and legislative action can be considered as well, and we will have, make the request to have Ms. Bronster join us and she did already make that offer to be here on June 16th via BlueJeans or in the Chambers. So, most likely, I think

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

maybe just getting a feel from the body, you'd prefer that she participate via BlueJeans. Am I, is the Chair getting a feeling for that? Okay. All right. And I'm sure Ms. Bronster may appreciate saving a few dollars as well, but either way. Either way, we'll get her here and I think BlueJeans may be the way to go. So, any objections to deferral?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR MOLINA: Okay, so ordered.

ACTION: DEFER.

CHAIR MOLINA: All right. Thank you very much, Members, and I appreciate the discussion.

GET-11(10)LITIGATION MATTERS (COUNTY OF MAUI V. RICK MARKHAM, ET AL.; CIVIL 17-1-0393(2)) (CC 19-29)

CHAIR MOLINA: Okay. Our next matter getting right to it is GET-11(10), the County of Maui versus Rick Markham, et al., Civil Case 17-1-0393(2). Let's get right to it, Mr. Bilberry, if you're standing by if you could again just give us a brief opening comment. You certainly discussed a lot prior to testimony. At this point I'd like to provide more time for the Members to ask you questions on this in open session. So, Mr. Bilberry, proceed. Mr. Bilberry, are you there? Okay. Maybe Mr. Bilberry might be tied up with a few things right now. Members, what we'll do, I'd like to maybe...well we can if there's no...

MS. ESPELETA: Mr. Chair, he is here. He's just unmuting himself.

CHAIR MOLINA: Okay.

MR. BILBERRY: I'm sorry, Chair. Thank you.

CHAIR MOLINA: All right. Mr. Bilberry, proceed again with some brief comments and I'd like to provide the majority of the time I have allotted for this item for questions from the Members in open session and if there is a desire to request to go into executive session, the Chair will recognize that. Proceed, Mr. Bilberry.

MR. BILBERRY: That's fine, Chair. I'm not gonna make a request to go into executive session. We've been before the body on this matter before. We've been unable to settle the case despite, you know, diligent efforts with Mr. Markham and his lawyers. This case was disposed of in or around August of last year. Recently a 2 point...approximate \$2.5 million judgment has entered against Mr. Markham. I'm happy to answer any questions.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Thank you very much, Mr. Bilberry. Okay. Questions for you in open session. Member Paltin, you have the floor.

COUNCILMEMBER PALTIN: Thank you, Chair. Thank you, Mr. Bilberry. I had questions about the certified letter, what is the purpose of the County sending a certified letter if it's not getting to the person?

MR. BILBERRY: It got to Mr. Markham. He signed it. The signed copy of the return of the certified letter was an exhibit at trial. So, the idea that he didn't get that letter and didn't sign it is incorrect.

COUNCILMEMBER PALTIN: Oh, wow. So...

MR. BILBERRY: But the fact that you were told that he doesn't have a recollection of signing that is not surprising.

COUNCILMEMBER PALTIN: All right. I think that answers majority of my other questions. I don't think I need to ask them. Thanks.

CHAIR MOLINA: Thank you very much, Member Paltin. Members, questions for Mr. Bilberry related to this matter at this point?

MR. BILBERRY: I'm sorry, I didn't mean to cut you off, Councilmember Paltin, but I just needed to let you know that letter was sent to Mr. Markham. That letter was signed by Mr. Markham. He received the violations. I don't remember exactly when they were sent, but you were asking about a timeframe between 2011 and 2018 and I think you were appropriately asking about that period of time which wasn't being discussed during the testimony.

COUNCILMEMBER PALTIN: Well, yeah. I mean, in the item on Granicus it says that certified letters were sent at each step, like February, April, September, notice of warning, notice of violation, and you know, I agree that it's a small matter, but the issue is that if you're getting sent these notice of warnings, you're getting sent these notice of violations over the span of seven years, ten years, whatever it is, and you're not working with it, I don't see how you can be said to be diligently working towards addressing the issues. It seems kind of clear that from 2018 when Mr. Torgerson was hired that they were diligently working toward it, but from 2000...whatever, '05, or '11 or whatever it is to 2018, I mean is it our fault if you hire a guy that disappears and I don't know, but I mean anybody can come up with that sort of argument and say they didn't get the mail or their consultant disappeared and then they rehired them, but I don't, I mean the County has to, can't do business like that, you know.

MR. BILBERRY: Yeah. And let me advise you and everybody else that these arguments and the facts that Mr. Markham and his lawyers are putting forth have already been heard by a Circuit Court judge and disposed of. So, why they're here rehashing all this, I

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

mean, I guess I understand why they're doing it, but the bottom line is if they want to settle this matter, they should make a bona fide settlement offer to us and then we can bring it to you and discuss it. We didn't get that prior to coming here today, so.

COUNCILMEMBER PALTIN: Okay. Thank you. Sorry about the hammering in the background.

COUNCILMEMBER HOKAMA: No problem. Thank you, Member Paltin. All right. Member King, questions for Mr. Bilberry in open session.

COUNCILMEMBER KING: Okay. Thank you. So, I just wanted to clarify something you just said. So, you never got any settlement agreements or proposals from this person?

MR. BILBERRY: Well, we came here last year with a settlement proposal for this body to consider and this body elected not to accept it and we made...

COUNCILMEMBER KING: So, how did you get to the \$2.5 million then?

MR. BILBERRY: Those were the accrued fines and penalties that were not being paid pending the permitting of the structure. Once the structure was permitted, then the fines stopped accruing, but there was still the matter of the outstanding. Go ahead.

COUNCILMEMBER KING: So, there's no settlement agreement. You just decided that the settlement should be \$2.5 million because of the fines?

MR. BILBERRY: No I haven't decided anything and I haven't said that the settlement was going to be any amount. We came here to this body and this body gave us what they believed the settlement amount should be and we proposed that to Mr. Markham and he and his lawyers rejected it. I can tell you that amount was a lot less than \$2.5 million and Mr. Markham is probably looking at it now and regretting that he didn't take it when it was offered to him. And that was a proposal that was authorized by this body. So, we've had this discussion before. Yeah, the \$2.5 million...

COUNCILMEMBER KING: I just wanted to find out why you were saying that there were no settlement proposals having been given.

MR. BILBERRY: Yeah, we went back to Mr. Markham with the amount that was authorized by this body. They rejected it and since that time have not made any credible settlement offer. Any credible counter offer. And then the matter went to a judge. Judge said Mr. Markham you lose and entered a \$2.5 million judgment against him.

CHAIR MOLINA: Mr. Bilberry, if I could interject and, Member King, if you'll excuse me. Yeah, I believe we had that discussion in executive session. So, I just want to caution you Members about not saying, disclosing what occurred in that executive session for

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

obvious reasons. Anyway, Member King, do you have any other questions for Mr. Bilberry related to this matter?

MR. BILBERRY: You know, just to quickly follow up with Ms. King, Councilmember King, I can tell you the amount of the counter offer if nobody has any objections.

COUNCILMEMBER KING: No, I'm just, what...I think that might be for executive session, but what I'm concerned about is when you make a statement that there's no credible offers, then you're making a judgment call and shouldn't that come to the Council to decide if it's a credible offer or not.

MR. BILBERRY: Well, we haven't received one.

COUNCILMEMBER KING: You said, he made no credible counter offers, but the indications he's made some counter offers, but you didn't find them credible.

MR. BILBERRY: Okay. Well, that wasn't...

COUNCILMEMBER KING: So, my question is are you making that decision? And that should be a decision that the Council makes.

MR. BILBERRY: Okay. Let me correct myself. I'm not trying to indicate that we received any settlement offer and I won't go into what happened with respect to communications Mr. Markham purported to have with an Executive Assistant of the Mayor whereby he claims to have settled this case and then went to a judge to try to get the judge to enforce that and the judge said I don't believe this.

COUNCILMEMBER KING: Well, I'm not talking about that, Mr. Bilberry. I just wanted to know, so are you stating that there have been no offers from Mr. Markham's side or are you stating that they made offers and you didn't find them credible?

MR. BILBERRY: Okay. I'm gonna...if you want to go into executive session to have a discussion about what's transpired between our office and Mr. Markham regarding what purport to be settlement offers, we can do that.

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

MR. BILBERRY: But I can tell you that I have not received any settlement offer that would have been appropriate to bring to this body.

CHAIR MOLINA: Okay. Thank you, Mr. Bilberry. I'd like to recognize another Member who has a question. Thank you, Member King, for your inquiry. Member Rawlins-Fernandez?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. This question is for you. What is the proposed action on this item today?

CHAIR MOLINA: Again, that's up to the body. We could consider going into executive session, have a detailed discussion and give direction to Corp. Counsel, if that is the pleasure of this body. Mr. Bilberry has stated that he feels that there's no need for executive session. However, obviously that is ultimately up to us if we'd like to prolong this discussion and go into executive session. So, that's where I'm at. So again, it's the pleasure of the body as to, you know, we can defer and bring this matter back or we can consider going to executive session, you know and I don't want to get into details what we can discuss. But then again, entertain some of the questions that Mr. Bilberry had indicated that may require executive session. So, that's where sort of where I'm at right now.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo, Chair. So, if we don't go into executive session and we don't give Mr. Bilberry direction, what happens then?

CHAIR MOLINA: Well, I'm open to bring...

MR. BILBERRY: I could tell you...

CHAIR MOLINA: Mr. Bilberry, hang on for a second, yeah. Well, from my standpoint as a Chair, you know, I could bring this matter back provided Corp. Counsel has the appropriate information for us to make a decision or latest update on things. So, I'm leaving it open as to bringing it back for further consideration. So, Mr. Bilberry go ahead.

MR. BILBERRY: Yeah, what I was gonna say what could happen is that Mr. Markham and his lawyers if they want to resolve this, they can make a settlement offer to us. I mean, I saw the e-mail that was sent this morning, but you know, I'm not at liberty to discuss that. I mean, we should have gotten that three weeks ago. They've known about this meeting for weeks now and then I get e-mails yesterday desperately asking me to have a conversation with them about trying to resolve this. I mean, you know, they've had time to do this. This is the same pattern that we have seen since those violations were sent out. It's just delay and then at the 11th hour, their emergency becomes everybody else's problem. I'm not closed to trying to resolve this with Mr. Markham, but they need to work through the process like everybody else does.

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

CHAIR MOLINA: Okay. Thank you, Member Rawlins-Fernandez. Members, before I recognize Member Paltin, the Chair again is aware of the time. We do have the last item on our agenda is a time sensitive matter that I would like to address today. So, again, I'm gonna leave it open for more questions in open session on this particular item and if you could consider we can come back to this item later. The item that is extremely time

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

sensitive is GET Item 11(38). So, I'd like to take action on that with the time left that we have allotted. So, I'm not sure if we can maybe consider a recess because of the time sensitivity and amount of time left. So, anyway, proceed with your question, Member Paltin. Oh, I'm sorry, Member Lee, did you have your hand up earlier? . . . *(inaudible)* . . . my apologies.

COUNCILMEMBER LEE: Yes, I did. Mr. Chair. No, no, that's okay. I was just wondering if the next item will require executive session?

CHAIR MOLINA: Yes, Member Lee. Mr. Kolbe who will be representing Corp. Counsel on that matter has indicated a preference to go into executive session.

COUNCILMEMBER LEE: Well, if everybody agrees, maybe we should take several two or three items into executive session at one time. Since we're going in anyway. Yeah.

CHAIR MOLINA: We could do that. But again, yeah, my, I definitely want to address GET Item 11(38) because of the time sensitivity attached to that. Okay. I guess Member Paltin, followed by Member Hokama. Member Paltin?

COUNCILMEMBER PALTIN: You can go to Member Hokama, because I did ask a question already. I don't think he's had a chance.

CHAIR MOLINA: Okay. Mr. Hokama, you have the floor.

COUNCILMEMBER HOKAMA: Thank you, Chair. Thank you, Ms. Paltin. Chairman, my only question is regarding the 11-10, I listened intently to Mr. Bilberry's earlier comments at the start of your meeting this morning. My question is, you know in the documents that we have received from them, it says County of Maui, plaintiff and then the defendants, it lists Mr. Markham's name as an individual but it also says John Doe's, Jane Doe's, Doe's companies, Doe's partnerships, Doe's corporations, and any other Doe entities. So, I was wondering does those other entities now encompass the guidance that Mr. Bilberry gave us earlier regarding the bankruptcy trustees' words of caution?

CHAIR MOLINA: Mr. Bilberry?

MR. BILBERRY: Yeah, no. Those, Councilmember, those, the Doe defendants are just unidentified defendants. That's just a legal formality when you file suit and you may not know who all of the potential defendants are you can name "Doe defendants" and then at some later stage during the litigation through investigation if you discover another party that would need to be added to the lawsuit, you would do it under the rubric of one of those Doe entities.

COUNCILMEMBER HOKAMA: Okay. So, for purposes of this case then, it's just Mr. Markham, individual and no other parties are associated with this item?

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

MR. BILBERRY: Yeah. That is correct. And you guys, I'll ask you to forgive my misunderstanding. I had been requested to submit a request for the other matter and so I assumed it was on the agenda today, but apparently it didn't make the agenda which I think was probably appropriate given the position that I received from the U.S. trustee.

COUNCILMEMBER HOKAMA: Okay. Thank you, Mr. Bilberry. Thank you, Mr. Chairman.

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

COUNCILMEMBER PALTIN: Thank you, Chair. I just was wondering, you know, in the item on Granicus, how come the exhibits aren't attached? Maybe then we would have seen if he signed off on his certified mail. And, I guess that's the first question, I have one other question after that.

CHAIR MOLINA: Okay. Let me consult with Staff on that, or, Mr. Bilberry, go ahead.

MR. BILBERRY: Yeah. We didn't submit them because this was a matter that was disposed of last year. I'm happy to get them and get them to you if you want to see them. We identified them as exhibits for trial. So, I have them and I'm happy to provide them.

COUNCILMEMBER PALTIN: That'll be cool. And then so my other question is so you're saying that the Council authorized a settlement amount, the person said no to the settlement, then he lost in court, wouldn't we just abide by the court's decision in that case?

MR. BILBERRY: Yeah. A judgment entered for \$2.5 million and those are the fines that accrued from the period of when the violations were issued up until the permit was finally obtained for the structure, they have appealed that judgment to the Appellate Court, so there's further litigation that will be had. They can, you know, we can settle that amount and they can, you know, we can compromise that judgment for any amount and they can then issue a satisfaction of judgment.

COUNCILMEMBER PALTIN: Okay. Thank you.

MR. BILBERRY: Yeah. One more thing. Let me mention one more thing in connection with the question somebody had raised earlier about why an architect was hired. We understand that there was a deck built around this shed after it was put on the property. So, that may be what the architect's involvement was. But we do know that there was a deck built around the shed.

COUNCILMEMBER PALTIN: And we wouldn't go back to the same settlement offer that we offered originally since we tried that, and then it was rejected, and it went to court and it was lost, and we wouldn't just automatically go back to that first settlement offer, or we...

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

MR. BILBERRY: You're not obligated, yeah, you're not obligated to do that. The County has a judgment for approximately \$2.5 million in its favor, so you can make an offer from anywhere between zero and \$2.5 million.

COUNCILMEMBER PALTIN: Okay. Thank you. Thank you, Chair.

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

VICE-CHAIR RAWLINS-FERNANDEZ: Mahalo, Chair. I see that it's five minutes to 11:00 and I can feel your sense of urgency and I really appreciate you giving us the flexibility to really discuss these items, but as I've heard you, there's really only one item that has a deadline for us to take action today and that's 11(38). And so, I was thinking that when we go into executive session, you know, we would take that up first so that we can come to a decision on that and then we can discuss the other two items for as long until about, like, you know, like 11:50 or something and then wherever we're at we'll just defer those two and we can continue discussing it at another meeting. That way we can accomplish what you need this Committee to accomplish today. So, I support that. Mahalo, Chair.

CHAIR MOLINA: Thank you, Member Rawlins-Fernandez. The Chair certainly, you know me very well, yeah. And I take responsibility for starting this meeting a little bit late and I apologize for having to really push you guys to address matters, which, normally I don't. But thank you for that, I appreciate it. So, Members, what is the pleasure, do you want...well how I was thinking of proceeding was address our next two items in open session and then maybe do in one sweeping motion a vote to go into executive session if you want 11(10), as well as GET Items 11(34) and 11(38). Any objections to proceeding in that fashion?

COUNCILMEMBERS VOTED NO OBJECTIONS.

GET-11(34) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: HAWAII PACIFIC TRENCHLESS, INC. V. GOODFELLOW BROTHERS, LLC, ET AL., CIVIL 2CC181000436(2)) (CC 19-29)

CHAIR MOLINA: Okay. So, Members we will move on from GET Item 11(10). If Mr. Kolbe is available for opening remarks for GET-11(34). This has to do with the Hawaii Pacific Trenchless, Inc. versus Goodfellow Brothers matter. Mr. Kolbe, if you're there, can you provide us some comments in open session?

MR. KOLBE: Sure. This is a contract dispute regarding a DEM construction project to replace a force main sewer pipe down in Wailea involving about 6,500 feet of piping. And basically the lawsuit is between the County of Maui and Goodfellow Brothers as the general contractor and a company called Hawaii Pacific Trenchless who was the subcontractor on the job. And basically what this project involved was drilling

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

underneath the ground so that they didn't have to break ground. And the project ran into difficulties with underground soil conditions. Something called cobble conditions existed which were not anticipated at the depth of the drilling. And so, a dispute arose on how to compensate the subcontractor for the additional work that was directly attributable to that differing site condition. Trial is set to begin in this matter before Judge Cahill on July 20th about 50 days away. So for a lot of reasons I would request to go into executive session to discuss the strengths and weaknesses of the case and to discuss a potential authority. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Kolbe. Members, any pressing need to ask questions in open session of Mr. Kolbe? And as he had stated he for more detailed discussion he would recommend executive session. Any questions in open session for Mr. Kolbe before we proceed to the next item? Okay. Seeing none, and by the way for that item we will also have Director Nakagawa from Environmental Management to add input on this matter as well.

GET-11(38) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS, HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION) (CC 19-29)

CHAIR MOLINA: Okay. Members, moving on to the next item for discussion in open session. GET Item 11(38) Authorizing the Mayor of the County of Maui to Enter into an Intergovernmental Agreement with the State of Hawaii, Department of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division. We have from Corporation Counsel Lutey to give us opening remarks in open session. Ms. Lutey, proceed.

MS. ESPELETA: Mr. Chair, I do not see Ms. Lutey on the call.

CHAIR MOLINA: I see her. Yeah. Ms. Lutey, can you hear us? Okay. Maybe we're having some technical glitches. Have you unmuted...has she unmuted herself? I did see her on the screen briefly and now I don't see her now.

COUNCILMEMBER PALTIN: . . . (inaudible) . . .

VICE-CHAIR RAWLINS-FERNANDEZ: Staff needs to unmute...

COUNCILMEMBER LEE: There she is.

VICE-CHAIR RAWLINS-FERNANDEZ: Oh there.

GOVERNANCE, ETHICS, AND TRANSPARENCY COMMITTEE

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: There she is. All right. Ms. Lutey, we can hear you fine. Proceed with your opening remarks on this item.

MS. LUTEY: Oh, thank you. Thank you. So, on January 22nd . . . *(inaudible)* . . . the Maui Fire Department was conducting training at the Kihei Boat Ramp on a rescue jet ski. During that training an employee was injured while practicing a high speed bailout. The HIOSH was notified and they conducted an investigation that began in February. It went through April. On April 24th of this year, they issued citations to the Fire Department that totaled \$21,385. I'd like to go into executive session to discuss this, because we have challenged this fine for a number of reasons that we can discuss and so at this point it remains active. And I have Deputy Fire Chief Brad Ventura with me.

CHAIR MOLINA: All right. Thank you very much, Ms. Lutey. Members, any questions for open session for either Ms. Lutey or Deputy Fire Chief Ventura? Okay. Seeing no questions in open session. So as recommended by Ms. Lutey, we will consider, we will definitely take a vote to go into executive session on this matter. So, okay, Members, we have touched upon all three items in open session that we are considering for executive session. Staff has I believe provided you a BlueJeans link to go into executive session. So, please be mindful of that, if you have it, please indicate to the Chair of the executive session link on BlueJeans that you can click into, so which allows you into the virtual Council room if you want to call it that for executive session. So, Members, I'm gonna call for the vote for executive session and again we need six Members to consider for executive session to be approved. So again, referencing Section 92-5(a)(4) of Hawaii Revised Statutes to consult with legal counsel on questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee. Your Chair will ask for a motion to go into an executive session for GET Items 11(10), 11(34), and 11(38). Is there a motion?

VICE-CHAIR RAWLINS-FERNANDEZ: So moved.

COUNCILMEMBER LEE: So moved.

CHAIR MOLINA: Okay. Moved by Member Rawlins-Fernandez, seconded by Member Lee. Any discussion? Seeing none, all those in favor for executive session signify by saying "aye," and by holding your hands up.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay. Chair will mark it unanimous. The vote is 9-0 to go into executive session.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

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.**

CHAIR MOLINA: So, Members, we will now recess and when we do reopen, it will be in executive session, and again, you have been given that code or address to go into executive session. So, the GET meeting is in recess. . . . *(gavel)* . . .

RECESS: **11:02 a.m.**

RECONVENE: **12:39 p.m.**

CHAIR MOLINA. . . *(gavel)* . . . The GET Committee meeting for June 2, 2020 is now back in open session. Thank you for those discussions on the three Committee items that we went into executive session for. The Chair would like to first take action on GET Item 11(38), again, related to the Mayor going in, entering into an Intergovernmental Agreement with the State of Hawaii, Department of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division. The Chair will entertain a motion to pass the revised proposed bill on first reading. Is there a motion?

COUNCILMEMBER KAMA: So moved.

COUNCILMEMBER HOKAMA: Second.

CHAIR MOLINA: Okay. It's been moved by Member Kama, seconded by Member Hokama. Members, any discussion on the motion? Seeing none, all those in favor signify by raising your hands and saying "aye."

COUNCILMEMBERS VOICED AYE.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: Okay. Any "noes?" Okay. Seeing none, the Chair will mark it a unanimous vote - nine "ayes" with zero opposition. This matter will advance to the full Council.

**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: FIRST READING OF REVISED BILL.

CHAIR MOLINA: Thank you very much for that vote on GET Item 11(38).

VICE-CHAIR RAWLINS-FERNANDEZ: Chair, it's really hard to hear you.

CHAIR MOLINA: Oh, okay.

VICE-CHAIR RAWLINS-FERNANDEZ: Sorry, Ms. Martins needs to mute herself because it's really hard to hear you.

CHAIR MOLINA: Okay. Yes, Ms. Martins or whomever's out there, please mute yourself. We're hearing some background noise that's making it difficult for some of the Members to hear. Does that sound better, Member Rawlins-Fernandez?

VICE-CHAIR RAWLINS-FERNANDEZ: Yes.

CHAIR MOLINA: Yeah, I hear less noise now. Thank you for that.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

**GET-11(34) LITIGATION MATTERS (SETTLEMENT AUTHORIZATION: HAWAII PACIFIC
TRENCHLESS, INC. V. GOODFELLOW BROTHERS, LLC, ET AL., CIVIL
2CC181000436(2)) (CC 19-29)**

CHAIR MOLINA: All right, Members, we're going to move onto the next item for consideration of action. And this is GET Item 11(34), Settlement Authorization of Hawaii Pacific Trenchless, Inc. v. Goodfellow Brothers, LLC. Again, the Chair would ask for a motion to adopt the revised proposed resolution.

COUNCILMEMBER KAMA: So moved.

COUNCILMEMBER LEE: Second.

CHAIR MOLINA: Okay. Motion by Member Kama, seconded by Chair Lee. Members, discussion on the motion? Seeing none, the Chair will call for the vote. All those in favor signify by saying "aye" and raising your hands.

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay. We have what appears to be eight "ayes." Okay. All those opposed, raise your hand. Take your position. Member Paltin? Hello, Member Paltin, I just wanted to know where you're at on the vote for GET Item 11(34), support or oppose?

COUNCILMEMBER PALTIN: Support.

CHAIR MOLINA: Support?

COUNCILMEMBER PALTIN: Yes.

CHAIR MOLINA: Okay. All right. Thank you. Okay. Chair will mark it a unanimous vote with nine "ayes" and zero opposition.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

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

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: ADOPTION OF REVISED RESOLUTION.

CHAIR MOLINA: Alright. Thank you very much for that, Members.

**GET-11(10) LITIGATION MATTERS (COUNTY OF MAUI V. RICK MARKHAM,
ET AL.; CIVIL 17-1-0393(2)) (CC 19-29)**

CHAIR MOLINA: And now to the last matter at hand, GET Item 11(10), the County of Maui v. Rick Markham matter. Chair will ask for a motion to file the correspondence.

COUNCILMEMBER LEE: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR MOLINA: Okay. It's been moved by Chair Lee, seconded by Member Sugimura. Members, any discussion on the motion to file? Member King?

COUNCILMEMBER KING: Thank you, Chair. Just wanted to clarify that we're just filing the communication and whatever happens with Corp. Counsel and these folks can go on. Okay.

COUNCILMEMBER LEE: Yes.

CHAIR MOLINA: Good. Yes, thank you for mentioning that. That was the correspondence specifically I believe from Corporation Counsel, Mr. Brian Bilberry that we're considering the filing of. Okay. Any other discussion on the motion to file? If not, please signify by saying "aye" and raising your hands on the motion to file.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

COUNCILMEMBERS VOICED AYE.

CHAIR MOLINA: Okay. All right. Any opposition? Okay, thank you. The Chair will mark it unanimous – nine “ayes” and zero “noes” to file the correspondence.

**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: FILE CORRESPONDENCE.

CHAIR MOLINA: Okay. I believe that takes care of our business today. A rather long and unexpected journey here today, but again I certainly appreciate your hard work and patience as we're dealing with uncharted territory as it relates to executive session and use of the BlueJeans app. So, again, thank you.

COUNCILMEMBER KING: I told you, you jinxed us by saying it was gonna be a quick meeting.

CHAIR MOLINA: Never trust a politician sometimes, you know. You see. We do other things, but anyway, I won't go delve into that. Staff, is there anything else the Chair needs to be made aware of?

MS. ESPELETA: Nothing further, Mr. Chair.

CHAIR MOLINA: Okay. We have questions from Member Paltin and Member Rawlins-Fernandez. First, Member Paltin?

COUNCILMEMBER PALTIN: Oh, not a question, just that there is island-wide rolling blackouts I guess going on. So, hopefully I'll see you at 1:30, but no promises.

CHAIR MOLINA: Good point, Member Paltin and I heard there is some potential power outage in Makawao as well, so it could hamper my ability to participate in the 1:30 EACP Committee Chaired by Mr. Sinenci. Member Rawlins-Fernandez?

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

VICE-CHAIR RAWLINS-FERNANDEZ: I just wanted to clarify or confirm that we took action on all four agenda items?

CHAIR MOLINA: Yes. I believe so. We deferred action on the first item, which will be brought back for legislative action consideration on June 16th, the Bank of America matter.

VICE-CHAIR RAWLINS-FERNANDEZ: Okay. Mahalo.

CHAIR MOLINA: All right. Thank you for that. Mr. Sinenci?

COUNCILMEMBER SINENCI: Thank you, Chair. And yes, we did have an electricity outage here half hour ago, so it depends. We may be on the County generator right now, but so far we're still on for 1:30. So have a quick lunch, come back and listen a report from Dr. Miscovich, Mr. Higashi with the Airports, Dr. Pang, and Dr. Beamer. So, thank you, Chair.

CHAIR MOLINA: All right. Thank you very much for that, Mr. Sinenci. So, Members, I do owe you lunch for dragging this into your lunch hour, but we'll decide on date specific at another time. Okay. All right. So, with no other....

COUNCILMEMBER LEE: Wait, Mama's Fish House. Mama's Fish House.

CHAIR MOLINA: Oh, please.

COUNCILMEMBER KING: I'll second that.

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CHAIR MOLINA: They might be open yeah? So, anyway. Thank you very much, Members, I appreciate your humor and patience with your Committee Chair in dealing with this. So, thank you. So, with no other business to discuss the GET Committee meeting for June 2, 2020 is now adjourned. . . . *(gavel)* . . .

ADJOURN: 12:47 p.m.

APPROVED BY:

Michael J. Molina

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

get:min:200602:ta

Transcribed by: Terianne Arreola

**GOVERNANCE, ETHICS, AND TRANSPARENCY
COMMITTEE**

Council of the County of Maui

June 2, 2020

CERTIFICATE

I, Terianne Arreola, 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 22nd day of June, 2020, in Makawao, Hawai'i


Terianne Arreola