

## COUNCIL MEETING

September 29, 2010

The Council Meeting of the Council of the County of Kaua'i was called to order by the Council Chair at the Council Chambers, 3371-A Wilcox Road, Līhu'e, Kaua'i, on Wednesday, September 29, 2010 at 9:06 a.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Dickie Chang  
Honorable Jay Furfaro  
Honorable Daryl W. Kaneshiro  
Honorable Lani T. Kawahara  
Honorable Derek S.K. Kawakami  
Honorable Bill "Kaipo" Asing, Council Chair

Chair Asing: Can we have the first item please?

PETER A. NAKAMURA, County Clerk: First item is approval of the Agenda.

### APPROVAL OF AGENDA.

Mr. Furfaro moved for approval of the agenda as circulated, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter is approval of the Minutes of the following meeting of the Council.

### MINUTES of the following meeting of the Council:

Council Meeting of September 15, 2010

Mr. Furfaro moved for approval of the minutes as circulated, seconded by Mr. Chang, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter on...next matters on page one of the Council's agenda are Communications for approval, communication C 2010-247, communication C 2010-248, communication C 2010-249, and communication C 2010-250.

### COMMUNICATIONS:

C 2010-247 Communication (08/31/2010) from the Chief of the Engineering Division, Department of Public Works, requesting Council consideration of a traffic resolution establishing 15 mile-per-hour, 20 mile-per-hour, and 25 mile-per-hour speed limits within the Konohiki Estates Subdivision.

C 2010-248 Communication (09/01/2010) from the Chief of the Engineering Division, Department of Public Works, requesting Council consideration of a traffic resolution establishing stop signs and stop lines within the Puhi Self Help Housing Subdivision.

C 2010-249 Communication (09/01/2010) from the Chief of the Engineering Division, Department of Public Works, requesting Council consideration of a traffic resolution establishing a 25 mile-per-hour speed limit for the roadways within the Puhī Self Help Housing Subdivision.

C 2010-250 Communication (09/02/2010) from the Chief of the Building Division, Department of Public Works, transmitting for Council information, the Building Permit Reports for August 2010:

- 1) Building Permit Processing Report
- 2) Building Permit Estimated Value Summary
- 3) Building Permits Tracking Report
- 4) Building Permits Status

Chair Asing: Motion to receive please.

Mr. Chang: Excuse me, the clerk said it was a motion to approve. This is a motion to receive.

Mr. Nakamura: My apology it's a motion to receive these communications on page one.

Mr. Chang: Move to receive.

Mr. Bynum: Second.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried.

Mr. Chang moved to receive for the record items C 2010-247, C 2010-248, C 2010-249, and C 2010-250, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for receipt at the top of page two of the Council's agenda is communication C 2010-251.

C 2010-251 Communication (09/23/2010) from Councilmember Derek S.K. Kawakami, requesting Council consideration of an amendment to Chapter 9 of the Kaua'i County Code 1987, as amended, relating to the Subdivision Ordinance, which would clarify the extent to which County agencies impose off-site infrastructure requirements and would allow subdivisions that create no additional lots or additional residential density, or place an increased demand on public infrastructure to proceed without unwarranted conditions or requirements.

Mr. Chang: Move to receive.

Chair Asing: Can I have a second please?

Mr. Bynum: Second.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Motion carried. Next item please.

Mr. Chang moved to receive C 2010-251 for the record, seconded by Mr. Bynum, and carried by a vote of 6-0-0-1 (Councilmember Kaneshiro recused and not voting).

Chair Asing: Next item please.

Mr. Nakamura: Council Chair, just for the record, we have circulated a letter from Councilmember Kaneshiro stating a potential conflict of interest on this. So the vote will be recorded without Councilmember Kaneshiro's vote. So it's 6-1 to receive.

Mr. Nakamura: Next matters for approval, first communication for approval is communication C 2010-252.

C 2010-252 Communication (09/01/2010) from the County Engineer, requesting Council approval to accept a donation of recycled glass products (estimated value \$21,645.00) from Last Chance Glass, Inc., the former recycled glass manufacturer at Kaua'i Resource Center, to be used for public prizes and giveaways through the County Recycling Office.

Mr. Bynum: Move to approve.

Mr. Furfaro: If we add the appropriate thank-you letter with that move to approve, second.

Chair Asing: Thank you. Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Next item please.

Mr. Bynum moved to approve C 2010-252 with a thank-you letter to follow, seconded by Mr. Furfaro, and unanimously carried.

Mr. Nakamura: Next matter for approval is communication C 2010-253.

C 2010-253 Communication (09/07/2010) from the Director of Housing, recommending Council approval of the following: (1) to decline the repurchase of Unit No. 201 at Hookena at Puhi, located at 2080 Manawalea Street, Lihu'e, Hawai'i 96766, and (2) to issue the owner a one-year waiver of the County's repurchase right effective the date of the Council's decision, thus providing the owner the ability to sell the unit on the open market for a period of one year.

Mr. Chang: Move to approve.

Chair Asing: Can I have a second, please?

Mr. Kaneshiro: Second.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Next item please.

Mr. Chang moved to approve C 2010-253, seconded by Mr. Kaneshiro, and unanimously carried.

Mr. Nakamura: Next matter for approval on page two is communication C 2010-254.

C 2010-254 Communication (09/08/2010) from the Prosecuting Attorney, requesting Council approval to expend \$10,000.00 from the State Asset Forfeiture Fund for the purchase of two (2) laptop computers and two (2) desktop computers to replace several computers purchased in 2005 and 2006. IT will not be able to support the older computers after the warranties expire: Mr. Chang moved to approve C 2010-254, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter for approval is communication C 2010-255.

C 2010-255 Communication (09/09/2010) from the Director of Parks and Recreation, requesting Council approval to accept a donation of eighty (80) tons of sand (valued at \$17,000.00) from TOMCO Corp. to be used at the Wailua Golf Course.

Mr. Bynum: Move to approve.

Mr. Chang: Move to approve, second it with a follow-up, appropriate thank-you letter, please.

Chair Asing: Okay, was that the second?

Mr. Chang: Yes.

Chair Asing: Thank you. With that, any discussion? (*Silence.*)  
If not, all those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Next item please.

Mr. Bynum moved to approve C 2010-255 with a thank-you letter to follow, seconded by Mr. Chang, and unanimously carried.

Mr. Nakamura: Next matter for approval is communication C 2010-256.

C 2010-256 Communication (09/16/2010) from the Environmental Services Management Engineer, requesting Council approval to execute the Application and Permit for the Occupancy and Use of State Highway Right-of-Way with its indemnification provision, in order to remove a derelict vehicle in Wainiha which will require the closure of the State highway for approximately one (1) hour: Mr. Chang moved to approve C 2010-256, seconded by Mr. Bynum.

Chair Asing: Any discussion?

Mr. Furfaro: Yes.

Chair Asing: Yes, go ahead.

Mr. Furfaro: I just want to make sure that the Public Works Department coordinates the hour which this highway will be closed as well as the fact that it is communicated to the residents in the area. Thank you.

Chair Asing: Thank you. Why don't we just send a communication to that effect.

Mr. Furfaro: Thank you, Mr. Chair.

Chair Asing: Thank you. Any further discussion? (*Silence.*) If not, all those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Next item please.

The motion to approve C 2010-256 was then put and unanimously carried.

Mr. Nakamura: Next matter at the bottom of page two is communication C 2010-257. Mr. Chair, if we could have this moved to the end of the agenda until after the executive session briefing.

C 2010-257 Request (09/21/2010) from the Office of the County Attorney for authorization to expend funds up to \$50,000.00 to engage special counsel to represent the County defendants in James T. Jasper II v. County of Kaua'i, et al. and related matters.

Mr. Furfaro: So moved.

Chair Asing: Thank you.

Mr. Kaneshiro: Second it.

Mr. Furfaro moved to defer C 2010-257 to the end of the agenda after ES-468, seconded by Mr. Kaneshiro.

Chair Asing: We'll move it. We have someone who wants to speak on the item first. The rules are suspended. Mr. Mickens.

There being no objection, the rules were suspended.

GLENN MICKENS: Thank you, Kaipo, for the record Glenn Mickens. You have a copy...

*Mr. Furfaro:* Glenn, your mike.

*Mr. Mickens:* Thank you. You have a copy of my short testimony regarding this issue. I was going to have it now instead of wait till the executive session. Here again, as I've asked in the past, why aren't our in-house deputy county attorneys capable of handling these cases because again we're spending another \$50,000 here, and I certainly ask this question with all due respect to our hardworking, dedicated deputies, not pointing the finger at anyone. I particularly compliment Mona for her latest opinion on the Planning Department issue, which has been ongoing for at least six months. I thought she did a fine job on that. When Al was sworn in as our county attorney, and most of you people were sitting here at that time, he said he would check into why we were spending hundreds of thousands of dollars or more each year for outside legal counsel. We probably spent over a million dollars on ES-177, fighting the case that OIP said should be made public. Do we have figures showing expenditures...I've never been able to see these figures because they don't publish them or anything...showing legal counsel before Al was appointed the county attorney and what we have spent in that same time period since he became county attorney? Since we never see these numbers, it may well be that Al has corrected this problem, if in fact it is a proven problem, and I will be the first to congratulate him. Anyway, I don't know...Jay, I don't know if any of you have figures on that showing what we spent prior to the time that Al took office and that part of the time after he became our attorney.

*Chair Asing:* Thank you. Councilmember Furfaro.

*Mr. Furfaro:* I would like to say that when you see on the Council's agenda item, the actual statement of accounts, it is available to be reviewed before it goes on the agenda. Because it is a large document, we can actually get a year-to-date number there and at your convenience, I'd be glad to show you that sheet and you can actually look at it as a public document, what the spending to date is for a particular budget year. It is available now.

*Mr. Mickens:* Do you have any idea what the figures have been since Al took office?

*Mr. Furfaro:* I really prefer not to...

*Mr. Mickens:* Okay.

*Mr. Furfaro:* ...comment at this time.

*Mr. Mickens:* But you can give me those figures, okay.

*Mr. Furfaro:* I can let you look at them, certainly, and I just want to also thank you for your compliment that Al is doing...and his deputies are doing a much improved job on managing that number.

*Mr. Mickens:* Yes.

*Mr. Furfaro:* But at your convenience, I'll be glad to show it to you.

*Mr. Mickens:* Thank you, Jay.

*Chair Asing:* Glenn, Glenn.

Mr. Mickens: Thank you, Kaipo.

Chair Asing: For your information, those kinds of information are public information and we get it; it's public, so...

Mr. Mickens: I go to where? The Finance Office to get them or who do I go to to...

Mr. Furfaro: No, you can come here.

Chair Asing: County Attorney's Office.

Mr. Mickens: Oh, here or the County Attorney's Office. Okay, thank you, Kaipo.

Chair Asing: Thank you.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Chair Asing: I'd like to call the meeting back to order, and we have a motion to approve.

Mr. Nakamura: Actually Council Chair, it's a motion to move this to the end of the agenda until after the executive session.

Chair Asing: Yes.

Mr. Furfaro: That motion was made and seconded, so.

Chair Asing: Okay, any further discussion? (*Silence.*) If not, all those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Next item please.

The motion to defer C 2010-257 to the end of the agenda after ES-468 was then put, and unanimously carried.

Mr. Nakamura: Next matters for approval on page five of the Council's agen...page three of the Council's agenda, I'm sorry, are Legal Documents. First legal document is attached to communication C 2010-258.

#### LEGAL DOCUMENTS:

C 2010-258 Communication (08/26/2010) from the Mayor, recommending approval of the following from K D Kapule LLC, a Hawai'i limited liability company:

- Dedication Deed conveying roadway Lot 1-B (S-2010-03, KD Kapule LLC) at Kalapakī, Lihu'e, Kaua'i, Hawai'i, to the County for road widening improvements.

Mr. Chang moved to approve the legal document attached to communication C 2010-258, seconded by Mr. Furfaro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next legal document for approval is attached to communication C 2010-259.

C 2010-259 Communication (08/30/2010) from the Director of Housing, requesting Council approval of the modified Housing Agreement (Allowable Density for Subdivision No. S-2008-21), Princeville Prince Golf Course, LLC, that properly identifies the lots by their new Tax Map Key numbers.

•Housing Agreement (Allowable Density for Subdivision No. S-2008-21), Tax Map Key (4) 5-3-006:001 and 026 through 045.

Chair Asing: Can I have a motion to approve?

Mr. Chang moved to approve the document attached to communication C 2010-259, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: Next item please.

Mr. Nakamura: Next matter is a Claim, communication C 2010-260.

CLAIM:

C 2010-260 Communication (09/13/2010) from the County Clerk, transmitting a claim filed against the County of Kaua'i by Garden Isle Disposal, Inc., for damage to their vehicle, pursuant to Section 23.06, Charter of the County of Kaua'i.

Mr. Furfaro: I'd like to refer this to the County Attorney to review and its disposition and if necessary come back to the Council.

Chair Asing: Can I have a second please?

Mr. Chang: Second it.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. (*Silence.*) Motioned carried. Next item please.

Mr. Furfaro moved to refer C 2010-260 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Mr. Chang, and unanimously carried.

Mr. Nakamura: Next matter for approval is a Committee Report.

COMMITTEE REPORT:

A report (No. CR-PL 2010-15) submitted by the Planning Committee, recommending that the following be approved on second and final reading:

“Bill No. 2366 A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUA'I COUNTY CODE 1987 RELATING TO VISITOR DESTINATION AREA DESIGNATION FOR WAIPOULI, KAPA'A, KAUA'I HAWAI'I (Kaua'i Kai Associates, Applicant),”

Mr. Bynum moved for approval of the report, seconded by Mr. Kaneshiro, and unanimously carried. (See later for Bill No. 2366)

Chair Asing: Next item please.

Mr. Nakamura: Next matters for approval are Resolutions. First resolution is Resolution No. 2010-49.

RESOLUTIONS:

Resolution No. 2010-49, RESOLUTION ESTABLISHING SPEED LIMITS WITHIN KONOHIKI ESTATES SUBDIVISION, KOLOA DISTRICT, COUNTY OF KAUA'I: Mr. Bynum moved to adopt Resolution No. 2010-49, seconded by Mr. Furfaro, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Chair Asing: Thank you. Next item please.

Mr. Nakamura: Next resolution for approval is Resolution No. 2010-50.

Resolution No. 2010-50, RESOLUTION ESTABLISHING STOP SIGNS AND STOP LINES ON COUNTY ROADWAYS WITHIN PUHI SELF HELP HOUSING SUBDIVISION LIHU'E DISTRICT, COUNTY OF KAUA'I: Mr. Furfaro moved to adopt Resolution No. 2010-50, seconded by Mr. Bynum, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Chair Asing: Carried. Next item please.

Mr. Nakamura: Next resolution for approval is Resolution No. 2010-51.

Resolution No. 2010-51, RESOLUTION ESTABLISHING SPEED LIMIT RESTRICTIONS WITHIN PUHI SELF HELP HOUSING SUBDIVISION LIHU'E DISTRICT, COUNTY OF KAUA'I: Mr. Furfaro moved to adopt Resolution No. 2010-51, seconded by Mr. Bynum, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Chair Asing: Thank you. Next item please.

Mr. Nakamura: Next matter is a Bill for First Reading, which is Proposed Draft Bill (No. 2380).

BILL FOR FIRST READING:

Proposed Draft Bill (No. 2380) – A BILL FOR AN ORDINANCE TO AMEND CHAPTER 9, KAUAI COUNTY CODE 1987, AS AMENDED, RELATING TO THE SUBDIVISION ORDINANCE

Chair Asing: Councilmember Kaneshiro.

Mr. Kaneshiro: For the record, Mr. Chair and Members of the Council, I would like to recuse myself at this time.

Chair Asing: Thank you, with that, Councilmember Furfaro.

Mr. Kaneshiro was noted as recused from this matter and left Council Chambers at 9:20 a.m.

Mr. Furfaro: Yes, I'd like to refer this item to the Planning Commission as it's required under the Charter that all subdivision ordinances be reviewed by the Planning Commission.

Chair Asing: Thank you. Can I have a second?

Mr. Bynum: Second.

Mr. Furfaro moved to refer Proposed Draft Bill (No. 2380) to the Planning Commission for recommendation, seconded by Mr. Bynum.

Chair Asing: Any discussion? Hang on. We have someone who wants to speak. Mr. Mickens. The rules are suspended.

There being no objection, the rules were suspended.

GLENN MICKENS: Thank you again, Kaipo, for the record Glenn Mickens. You have a copy of my testimony. I'll read it for the record, please. I have read Bill 2380, but I still don't fully understand it nor do I completely agree with the parts that I do understand. Section 1 (g) states, "Conditions requiring infrastructure improvements that are normally applied to subdivisions resulting in an increase in density and places additional demands on the existing public infrastructure, should not apply to consolidations and re-subdivisions where no additional density or demands on the public infrastructure are created." Section 9-2.13 under Section 2 states, under the amendment, "Consolidation involving not more than four (4) existing lots or parcels of record and re-subdivision where no additional lots or density are created by the resultant properties, shall not be required to provide any off-site county infrastructure improvements." My question, when it says consolidation involving not more than four lots, how big is that lot? Is

it or can it be CPR'd and why doesn't the restriction pertain to added density rather than number of lots? The density should be the determining factor and not the number of lots in my opinion.

Within a block of where I live, there have been two subdivisions built and are being built. One is the 290-acre Kulana Subdivision that you councilmembers are familiar with because Kaipo, you brought it up before, and it has been in limbo for seven years with no dwelling being built as yet. The only impact requirement that this development was required to do was pave one or two lanes...one of two lanes of Olohena Road. The county paid to repave the other half and for me, there was no reason not to make Kulana do the entire road. For development of this size that will have a huge impact on infrastructure, why weren't more impact fees demanded?

The other just being built called Hauiki Agricultural Subdivision and I'm sure it's not being done for agricultural work is about 32 lots with...32 acres with 8 lots and I've yet to hear of any infrastructure improvements they're required to do for the surrounding community.

Hauiki Road was repaved in late 2008 not according to HAPI (Hawaiian Asphalt Paving Industry) standards and although our neighborhood tried to get Public Works to widen it to at least 20 feet, it is 18. It wasn't done. Three school buses use this road daily and for safety purposes, a bus and a car going in opposite directions cannot stay on the road at the same time. The developer of this subdivision should be made to widen the road. Since this new development will cause more traffic on Hauiki, isn't this the least that should be expected? In my opinion, if these developers have money to build these subdivisions, then they should certainly have the funds to contribute more to our infrastructure, to our roads, sidewalks, parks and recreation areas, or whatever these people will impact.

So, you know, my basic point is I just don't think we're getting big enough impact fees and I do understand there are...rules and regulations of what you can and can't do, but it just seems, you know, I look around and see that we're giving away these properties. And with these subdivisions, it just appears that there's not really any restrictions to them. The CPRing and things like that are, you know, state and...

Mr. Nakamura: Three minutes, Mr. Chair.

Mr. Mickens: ...like you said Kaipo, you can't do a heck of a lot about that. But these particular things, it just seems that we could demand more impact fees, more things to be done by these people who want to go out and take these lands.

Chair Asing: Thank you, Glenn. Councilmember Kawakami.

Mr. Kawakami: Thank you, Mr. Chair, and I don't have any particular questions for Mr. Mickens, but I can address some of these concerns once we get into discussion, so.

Chair Asing: Sure.

Mr. Kawakami: Yeah.

Chair Asing: With that, thank you, Glenn.

Mr. Mickens: Thank you, Kaipo.

Chair Asing: I'd like to call the meeting back to order. Any further discussion.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Mr. Kawakami: Yes, sir.

Chair Asing: Councilmember Kawakami.

Mr. Kawakami: Thank you, Mr. Chair, and I appreciate the testimony and the questions. One of the questions is why four lots. Well, we chose four because it's consistent with Section 8-3.7 of the CZO, which allows up to four houses to be served by a driveway without the requirement of a county standard road. So anything above and beyond four lots or houses, they'd be automatically triggered to improve up to a county standard road. So it's consistent.

As far as the gist of the bill...well, let me break it down simply so that it's less complicated. But there are, in certain scenarios, kuleana lands, people that have kuleana lands, and if you're familiar with kuleana lands, oftentimes they are sitting on a bigger parcel of land and they are out in the middle of nowhere, very far from the infrastructure. These are usually lots of small size, less than an acre, and you usually can build only one house on them. And so there are some local families that own these kuleana lands that don't necessarily have the resources to go and build a 1200-square foot road or to run a waterline that far up, so they wish to move and...move their kuleana lot closer to the infrastructure so that building can be more feasible for the family. What has happened in the past is that they have attempted to move closer to the infrastructure and certain agencies in our government have tacked on extra requirements that make it...that now make the project unfeasible. So they're tapping into more requirements that the landowner has to comply with. Now they're not adding any more additional stress to the infrastructure because they're not adding any additional density to the project, so this is a matter of just fairness. I mean is it fair that if you're just moving and not creating any additional burden on our infrastructure, if you're not adding any additional lots or density, is it fair to be required to do these, to me above and beyond, infrastructure improvements that are off-site? So, that is the gist of it.

As far as these other two subdivisions, you know, we're talking about small projects, you know, anything four or less. When you talk about Kulana, that's a 290-acre subdivision. When you talk about this Hauiki one, that's another big subdivision. So it's not comparing similar projects, in my opinion. If Councilmembers have any other questions, I'll attempt to field them. Thank you.

Chair Asing: Any further discussion?

Ms. Kawahara: I'm going to have questions for Planning when it goes through them and I'm hoping for a really comprehensive report. I understand that it's a...focused at small lots, but I am concerned about what the effect might be if there's...the lots are larger and if they're big land masses and for also any kind of impact on big landowners and whether or not it will allow them to get out of the infrastructure requirements. Thanks.

Chair Asing: Thank you, any further discussion?  
Councilmember Bynum.

Mr. Bynum: Yeah, I'll just point out that this bill's being referred to Planning. They will do a staff report. There'll be lots of opportunities for the public to, you know, make comment, for councilmembers to get the whole Planning Department's perspective on the bill. So this is the beginning of a public process that allows for lots of scrutiny.

Regarding some of the other things that Mr. Mickens brought up, they really don't apply to this bill, but they're good questions about impact fees and so for instance since Kulana, this council has passed laws that would...if it was a new subdivision would have different requirements. And we still have some work to do on other impact fee issues in the future, but those are good questions, but I don't think they pertain to this particular bill, and we're at the beginning of a public process, so. Thank you.

Chair Asing: Thank you, any further discussion?

Mr. Furfaro: I would just like to restate my motion. This is a first reading. The Charter requires us to send it to the Planning Commission for review and public comment, so my motion is still on the table. I have no more to add at this point.

Chair Asing: Thank you and I...

Mr. Bynum: I think I...second.

Mr. Furfaro: Oh, you did? Oh okay, very good.

Chair Asing: Yes, I just want to add that I think councilmembers bring up good points in the sense that it's first reading. It goes to the Planning Department and it goes through the process and it is the start of the process and everything will be looked at. The legal issues will be handled by the County Attorney's Office. And so it's a process and it's a good process.

With that, any further discussion? (*Silence.*) If not, roll call please.

Mr. Nakamura: Just a voice vote on the motion to refer it to the Planning Commission.

Chair Asing: All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Motion carried. Next item please.

The motion to refer Proposed Draft Bill (No. 2380) to the Planning Commission for recommendation was then put, and carried by a vote of 6-0-0-1 (Mr. Kaneshiro recused and not voting).

Mr. Nakamura: Next matter on page four of the Council's agenda is a Bill for Second Reading. This is Bill No. 2366.

#### BILL FOR SECOND READING:

Bill No. 2366 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 8, KAUAI COUNTY CODE 1987, RELATING TO VISITOR DESTINATION AREA DESIGNATION FOR WAIPOULI, KAPA'A, KAUAI, HAWAII (Kaua'i Kai Associates, Applicant)

Mr. Kaneshiro was noted to return to Council Chambers at 9:30 a.m.

Chair Asing: Thank you. Can I have a motion to approve?

Mr. Furfaro: Move to approve.

Chair Asing: Can I have a second.

Mr. Chang: Second it.

Chair Asing: Thank you. Any discussion? (*Silence.*) If not, roll call please.

Mr. Furfaro moved to adopt Bill No. 2366, seconded by Mr. Chang, and carried by the following vote:

FOR ADOPTION: Bynum, Chang, Furfaro, Kaneshiro, Kawahara, Kawakami, Asing	TOTAL – 7,
AGAINST ADOPTION: None	TOTAL – 0,
EXCUSED & NOT VOTING: None	TOTAL – 0.

Mr. Nakamura: Seven ayes, Mr. Chair.

Chair Asing: Thank you. Next item please. County Attorney?

There being no objection, the rules were suspended.

ALFRED B. CASTILLO, JR., County Attorney: Council Chair, Councilmembers, good morning, Al Castillo, County Attorney. ES-468 and ES-469.

ES-468 Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4) and (8), and Kaua'i County Charter section 3.07(E), the Office of the County Attorney requests an executive session with the Council to provide the Council a briefing on James T. Jasper II v. County of Kaua'i, et al., Civ. No. 10-1-0187, (Fifth Circuit Court) and related matters. The briefing and consultation involves consideration of the powers, duties, privileges, immunities, and/or liabilities of the Council and the County as they relate to this agenda item.

ES-469 Pursuant to Hawai'i Revised Statutes Sections 92-4 and 92 5(a)(4), and Kaua'i County Charter Section 3.07(E), the Office of the County Attorney requests an executive session with the Council to discuss legal issues pertaining to the implementation of Ordinance 885. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Asing: Thank you. Hang on, Al. Go ahead...

Mr. Chang: Mr. Chair, can I ask for a recess, please?

Chair Asing: Sure.

Mr. Chang: Thank you.

Chair Asing: Okay. We'll have a short recess. Thank you.

Mr. Nakamura: Sammy...

Mr. Furfaro: Let's take the caption break.

Chair Asing: We're in caption break.

There being no objection, the meeting was recessed at 9:32 a.m.

The meeting was called back to order at 9:58 a.m., and proceeded as follows:

Chair Asing: The meeting is now called back to order. Before I call for the motion to move into executive session, is there anyone in the public who wants to speak? I believe, Pat, you signed up.

Mr. Furfaro: Excuse me, Mr. Chair. I had questions for the County Attorney while he was up here. I did not realize he was going to go back and sit down.

Chair Asing: Okay, that's not a problem. County Attorney, please.

Mr. Nakamura: Council Chair, if the discussion is going to be related to ES-469, we do have a recusal letter for Councilmember Kawakami. So, I think we should ask him to leave.

Mr. Kawakami: You guys want me to leave now or later, I'm going to recuse, but you guys going to bucket these things together? I can...

Mr. Furfaro: My question is going to be on item 469, so I'd like to separate the items.

Mr. Nakamura: If that's the case, Council Chair, I think Councilmember Kawakami should recuse at this time.

Mr. Kawakami: Thank you.

Chair Asing: Okay, thank you.

Mr. Kawakami was noted as recused on this matter and left Council Chambers at 9:59 a.m.

There being no objection, the rules were suspended.

Mr. Furfaro: So, Mr. Chair...

Chair Asing: Yes.

Mr. Furfaro: May I ask, I...as stated by the county attorney, he's asking to go into executive session on both 468 and 469. I would like to have a little more justification on item 469 before we actually go into session. Clearly as I recall this piece, we had members from our Public Works Committee who did not understand the original standard that we referenced, which was the European Standard for this definition of the use of plastic bags. And it still came out with this modification that referenced in the bill no polymers, which nobody seemed to actually acknowledge as still being a derivative of a fossil fuel. So...and it works as the catalyst. So, I'm not sure, you know, why we're requesting an executive session based on the intent when at that time Public Works could not give us a clear understanding on the difference between the European standard of production of a

recyclable plastic bag versus just going with the similarities of the Maui bill. So, we have that covered in the ordinance that deals with, you know, the options of selling recyclable bags or going to paper. They're in the bill. If we don't have a clear definition of the use of polymers in plastic, then they have those two other options to implement on the 11<sup>th</sup> of January. So, I'm not sure in the definition of what might be the legal terminology that, you know, the verbiage that Public Works advised us on they were not familiar with, but the amendment was changed to meet their criteria and the Council thought we had enough professional input to agree that this could be implemented. I don't understand the potential liability here and so I may not vote to go into executive session. The bill can still be implemented with the other two fractions being plastic not acceptable at this time until a polymer is defined or they have the option of buying recyclable bags or going to paper, just like the Maui bill.

Mr. Castillo: And let me answer your question, Chairperson Furfaro. Basically, yes, the...what you, the legislature, intended on the bill and what the outcome...the legal outcome is...is the exact subject matter for the executive session. The...back then...you know, and you're comparing the Maui standard. There was mention before of the European standard. This Council promulgated a standard. Now there is an American standard. The conflict between...the subject matter for the executive session is the conflict between legislative intent and the legality of the bill. I cannot describe more without breaching my duty as your county attorney. But because of this conflict and you raised the issues that I would like to discuss in executive session and you do have a question on how does this involve liability, we do have answers for this Council. But it is the conflict between the legislative intent and the bill itself, the legality of the bill regarding legislative intent that I would like to discuss in executive session.

Mr. Furfaro: Okay and I guess what I'm suggesting is perhaps before we go into executive session, we should vote on the two items independently because we have options in the bill. We have opportunities to amend the bill if we do it rather quickly before the deadline of January 11. But, you know, I'm not sure...I'm not sure I clearly understand the potential liability expressed...you're expressing to us when in fact there are other options in the bill.

Mr. Castillo: I understand. There are options in the bill.

Chair Asing: With that, Councilmember Bynum.

Mr. Bynum: Thank you, Mr. Castillo. I also have some concerns about executive session for this matter because I don't want to have public policy discussions in executive session. And so, you know, my understanding of the intent...I think the bill in all its iterations was clear that we didn't want to allow a bag into the environment that had significant amounts of fossil fuels. You know, at one point I amended the bill to put in a European standard which had, you know, consensus had come to. At the time the U.S. standards were in flux; they were in debate; there wasn't any U.S. standards. There is now that are consistent with the European standards. But the legislative intent, to me, was clear that we don't...that...and one of the purposes of the bill was to reduce dependency on fossil fuels, to not put fossil fuel polymers into the environment, and we wrote, you know, a standard that says if there's a bag that meets this criteria with not a significant amount of fossil fuels in it, then it's an alternative. And in our due diligence I think we've discovered that a bag like that doesn't exist right now. And so under the legislation, the alternative can be paper. And I think the bill is fine the way it is and I think the message has to be that our efforts to look at an alternative plastic of corn starch, it turns out those have significant amounts of petroleum product in them, and under the bill and the intent was to not have bags that have petroleum

content. So, I'm struggling. I don't mind us discussing liability issues, but I don't want us to have a policy discussion and I agree with Mr. Furfaro that the bill's intent is clear; it can be implemented under that intent, and that would make it consistent with our neighbor island Maui in that the alternative is paper or the preference of bring your own bag, bring a reusable bag, so.

Mr. Castillo: Well...and that's the...the request for executive session purely is a legal one that came from our office and the position that I was put in was whether or not...what is my understanding of the legislative intent regarding this bill. And I wanted an executive session to clear up the exact legislative intent should there be a challenge to this bill later on. The...what my understanding is is that as the...this bill went through the process is that there was a bill...I mean the bill contemplated that there would be a plastic bag out there that establishments could purchase that would comply with the law. So that is my understanding of the legislative intent. My understanding of the legislative intent is that this legislature, this council did not come in for a total ban of plastic bags. In essence, what happened along the way is that it's almost...that's what the result of this bill really is, a ban on plastic bags. Or it could be maybe not a total ban of plastic bags if somewhere in the future a plastic bag could be made that has this amount of polymer or petroleum-based polymer. Right now, it is my understanding that we do not have that type of bag at this point in time. So my request is for this council to clarify for the legal department what the legislative intent is. Is the legislative intent to totally ban plastic bags or is the legislative intent and as we...I go in the past and I review the records, to me what was...what my understanding was there should have been a plastic bag in place that would qualify. That isn't happening. I am not the policymaker. I am your legal counsel. So, that's the reason for the executive session. Had the language tracked Maui's language, then we would be able to implement some sort of rules that would give guidance to establishments out there as to what bags comply. Right now if an establishment or a retail store or any store, the ques...the answer to that question is right now is I don't know or there is no bag that can meet that criteria.

Mr. Bynum: Okay, if I...

Mr. Castillo: Whether or not that's fair or not fair is not for the legal, you know, it's for the policymakers to decide.

Mr. Bynum: So I understand that and I just want to respond to what you said. The...I believe the legislative intent and the public record is very clear that it was the council's intention that we not allow a bag that contains significant amount of fossil fuels. The first...draft one said you have to meet this European standard and the bag cannot contain significant amounts of fossil-based fuel polymers. That was amended to take out the European standard, but even have stricter language about no polymers derived from fossil fuels. And so I think the intent was very clear. If there's a bag that meets that criteria, great. It turns out there isn't, so the alternatives are paper. And to me, the bill's good to go.

Chair Asing: Any further questions for the county attorney? Go ahead, Councilmember Kawahara.

Ms. Kawahara: So, I'm just wondering...we're not saying that there's not ever going to be a bag that meets that criteria. So it's just at this time you would have to say that there is not one that can be purchased by retailers. So the other option is paper. So we're not saying that there aren't...is never going to be...

Mr. Castillo: Okay.

Ms. Kawahara: So wouldn't that change the whole issue of saying...because you're saying we'd be banning plastic bags, but...

Mr. Castillo: I'm sorry. You know, what you're saying is...you know, I agree with what you're saying regarding...but I cannot speculate as to whether or not there will be a bag of such nature in the future. And I want...

Ms. Kawahara: But there...

Mr. Castillo: And based on what this legislature says...besides, I wanted to explain to the council the liabilities involved which has to be done in executive session.

Ms. Kawahara: Thanks for answering.

Chair Asing:  
Councilmember Chang. Thank you, any further discussion? Any questions?

Mr. Chang: Thank you, Chair. I guess, Al, I just wanted to say that, you know, I was one of the ones that...one of the councilmembers that supported the banning...of the bill itself. So, you know, it was a victory, I believe, for the majority of the people and everyone was extremely excited. I felt that we were going to get in line and we are going to get in line with Maui on January 11 of 2011, but it just kind of baffles me that I believe the bill passed in September and I guess what really...what I struggle with is that if there was a question or red flag coming down the pipe, it should seem that the red flag would have...I mean it would have been nice to have found out in maybe October or November or maybe January or March, but now we're, you know, we're just a few months away. That to me, you know, it's...you know, I struggle because I understand and I've always wanted to lawfully agree with executive sessions because I understand what goes on, but I really don't see why we need to go in executive session. I just think that's my...so maybe you might want to fill us in on why...why, you know, why the last minute request.

Mr. Castillo: Well, I guess...talking about the last minute request, you know, you're talking to a legal guy and maybe for this council it might be a last minute request in the situation we're in right now. But as far as I'm concerned on the legal side, I wanted to present this to the council based on what is discussed in executive session, then we could correct it before January 11. And as far as I'm concerned in terms of timing, this is the end of September. We have October, November, December. So, for me as your legal guy, we're way ahead of time, you know, to tell you that this is what we discovered. And since the passing of this bill and as Councilmember Bynum just said, you know, at that time we didn't even have the American standard and you know, the question to the office...you know, I'm not going to tell you when this matter was presented to me, but it was presented to me ahead of time whereby we did our research, we did our due diligence, we tried to figure out whether or not we could come up with administrative rules to...to implement something that...what we thought this legislature decided regarding what the legislative intent was at the time. Again the legislative intent, as my understanding, is different from what this bill does and that's what I need from this council, a clarification and you...and whatever is clarified in executive session, then we'll go with that if...and that's all I can say. I...you know, timing may be bad for all of you and, you know, but in terms of the legality, in terms of the process, we have three months to do what we need to do on the legal side. And personally I don't see three months being...January 2011 is when this bill is going to take effect. Us coming to you three months in advance, to

me it's a lot of time. You know and I understand all of your positions right now and...but, you know, if...to me, as far as I'm concerned, during our research when the matter was presented to me, trying to do administrative rules to correct it, and now I've come to you asking...I'm telling you I cannot do the administrative rules because it interferes with the legislative process. You know, I'm not an island on my own. I'm not a dictator. You know, I could just very well say this is what the legislature intended and let it fly, but it's...to me it's not.

Mr. Chang: I understand, thank you, Al.

Chair Asing: Thank you. Councilmember Kawahara and then Councilmember Bynum.

Ms. Kawahara: So, if we tell you what the legislative intent of the bill was when we passed it as we understood it right here on the floor, it doesn't...it's not worth the same as if we do it in executive session and then come back out here and do it again?

Mr. Castillo: I have to defer to the Council Chair and, you know, I don't run...me, I'm the county attorney. I don't run the council and I cannot speak for the council. Whatever the body tells me is what the body tells me. Whatever the body tells me in executive session, I will abide by.

Ms. Kawahara: Or...or...

Mr. Castillo: In terms of the debate that is in public, you have every right to state your position. But whether or not your position is the legislative intent, I cannot say so and I cannot speculate.

Ms. Kawahara: So we have the body here in front of you and if the body says that the legislative intent was this on this floor right now in public, you're saying that you can't decide and the Chair has to decide...

Mr. Castillo: No, no, no, I...

Ms. Kawahara: ...whether or not that's acceptable.

Mr. Castillo: No, that's not what I'm saying, I'm sorry.

Ms. Kawahara: Okay.

Mr. Castillo: What I'm saying is the Chair decides how this matter is resolved, you know, and I'm asking for executive session to talk about the entire issues surrounding this issue, not only the legislative intent – the conflicts, but the liability and the legal aspect of this. So I think, to me it would be more prudent and more diligent for all of you to at least listen to what we have to say and if whatever we say doesn't change your minds on anything, then...then you vote. So I...but to me it would be more prudent to be well informed, fully informed. Then you can make your decision as best as you can.

Ms. Kawahara: So is the only conflict, in the county attorney's eyes, what is the legislative intent of the bill? Is that the only conflict?

Mr. Castillo: No, I'd like to go into executive session to talk to you about...

Ms. Kawahara: May I ask one more thing?

Mr. Castillo: Sure.

Ms. Kawahara: Who made this matter something that you brought up now? Did anybody in particular bring it up? It didn't come from administration, they back it.

Mr. Castillo: No, you know, when the subject matter was presented to me...you know, I...

Ms. Kawahara: I...

Mr. Castillo: ...when...it doesn't matter who...

Ms. Kawahara: Okay.

Mr. Castillo: All...when I receive information that this ordinance may be problematic for this county, then it's my...with my due diligence...it's my due diligence to go and do the research and do my fact finding. And to me is...the question that presented itself to me is...the decision that I had to make was, do I as county attorney implement my own legislation and say this is what the legislature meant and I thought that it's not my kuleana. To me there's a conflict and I just wanted to explain to the council the conflict. And it's my recognition of the ordinance itself. How I feel about the ordinance, yea or nay, is of no relevance to me. To me what's relevant is I inform the council of a problem that I encountered.

Ms. Kawahara: Okay, so if you're saying that there...I won't vote for executive session if you're saying that the only issue that's in conflict is whether or not this body, the people that are actually here right now, the same people, what the intent of the bill was and it's not acceptable for us to do it...just that to meet your concerns on the public floor to say our intent was blah, blah, blah. And that if that's not enough and you're saying there's other issues...

Mr. Castillo: Yes, there are other issues and the issues that I would like to talk to you about are the liabilities with this bill.

Ms. Kawahara: Beyond...beyond what we all believe the legislative intent was that we could tell you here in public.

Mr. Castillo: You know, we, meaning...I don't know if you could speak for everyone...

Ms. Kawahara: No.

Mr. Castillo: ...and who is we all believe, but...

Ms. Kawahara: Okay, okay, thanks.

Chair Asing: Councilmember Bynum.

Mr. Bynum: Thank you for your patience, Al, and I very much appreciate the role that you play and how meticulous your office has been on many issues, that's very good and including this one. But, you know, and I'm glad we had the chance to have this dialogue because I would have been really uncomfortable if we went into executive session and didn't have some dialogue about it because the public, in my mind, deserves to know that policy discussions happen in open session. And so, you know, I want to hear your concerns, but I do think time is

important because retailers need lead time and they need a clear message from this county of what their alternatives are. I think they got it today. Under the current legislation, we didn't find an alternative plastic, a bio-plastic that didn't contain large...you know, a significant amount of petroleum, so the options are paper and I hope that the administration can communicate that very clearly shortly for the benefit of the retailers so they know what the options are because I believe you're correct. If that is very clear to the retailers, then they have plenty of time to order, you know, paper bags in bulk, get them here on the ship, you know, but my guess is their lead time, you know, is several months. And so...and I just want to reiterate for myself my reading of the public record is very clear that...and I think it was consistent throughout. We didn't want to authorize a bag that had significant amounts of petroleum. If we could find an alternative that didn't, we were open to that. But we didn't, so paper. But, you know, and we also had testimony during that time that I agree with that any disposable bag is not the best alternative. Reusable bags was the intent of this legislation and...but we wanted to offer an alternative that was less environmentally harmful. So, paper, bring your own bags, hopefully that gets communicated right away. Thank you.

Chair Asing: Okay, any other questions, councilmembers? If not, thank you, Al. I'd like to open it up to the public first. Pat.

PAT GEGEN: Thank you, Council Chair, Councilmembers, and County Attorney Castillo for clarifying some of those things. I would especially like to thank Vice Chair Furfaro, Councilmembers Bynum, Kawahara and Chang for questioning the need to go into this executive session. I'm very concerned about this becoming an executive session issue because to me it is quite clear as we have heard some of the councilmembers mention today. When you talk about what is the legislative intent, what I would generally do is I actually take a look at the bill. If I read the second and the beginning of the third paragraph of Section 1 of Ordinance No. 885, which has been signed into law, it says, "The Council of the County of Kaua'i finds and declares that to preserve the health, safety, welfare and scenic beauty of Kaua'i, the distribution of plastic bags should be regulated and prohibited." My nine-year-old who came and testified in front of this body supporting the bag bill, I think, could understand that statement. If we go on to the third paragraph, it quite clearly articulates what the legislation is. "The purpose of this legislation (*to me that would indicate intent*)...the purpose of this legislation is to encourage customers to bring their own reusable bags when shopping." To me the intent of this bill is quite clear.

When we have had almost a year to work on this bill, I do feel that we are behind the eight-ball as far as timing. We keep referencing the Maui bag bill. Maui in January, February and March of this year had public hearings regarding the rules that they were going to establish for their bag bill. They also definitively ended it in August so that retailers would have enough time to bulk order the things that they needed. To me, an executive session, if the item is regarding, which I am hearing, the definition of what a plastic bag is, we're talking about the polymers, we're talking about what is allowed, what isn't, the bill...actually the ordinance is quite clear. It's very clear on what's available, okay. I do not think that we need an executive session and I believe that if we are talking about that definition that is a public policy issue; that is not a legal issue, okay.

At this point in time, I would urge the council to not change this bill as it is at all, to go ahead and implement it. I do not think there are any more liabilities in this bill than there are on the cell phone ban. I don't think the county was liable if I missed a call that was a million-dollar sale. I couldn't hold the county liable, it was a rule. If a person has to take a paper bag or establishment has to buy paper bags

or bring a reusable one that is what is established in this ordinance. I see no problem legally with that. If there is a legal issue, I would like to understand it and I know other people in the community would also like to understand it.

The last thing I'm going to talk about is and it does have to do with the executive session idea...

Mr. Nakamura: Three minutes, Mr. Chair.

Mr. Gegen: May I please have my additional three.

Chair Asing: Go ahead, yes.

Mr. Gegen: Thank you, Chair...does have to do a little bit with the transparency of the council and, you know, in this case the need to not go into executive session, I believe. For me to get this ordinance I had to come down here and I'm told there is a charge for the ordinance, to get a copy of it. You know what? I wanted to find out what Maui wrote, all it took was a few clicks, printed it out on my own paper and I have all of the information that Maui has as far as what they were doing with their bag bill. It's very clear, it's there, it's present. If anybody wants to see what the Maui bag bill definition is regarding plastic, it's very clear. It says no plastic or compostable plastic. That's kind of the same stance we're at right now. There is not a biodegradable plastic out there that does not allow polymers. In essence, our bill is exactly the same as Maui, so. Again, I thank you for this discussion. I do appreciate the fact that we are questioning going into an executive session, myself and other community members do, and I again thank you very much, all of you councilmembers, for the good discussion we've had regarding this as well as yourself, Mr. County Attorney. Thank you.

Chair Asing: Thank you, any questions, comments? If not, thank you, Pat.

Mr. Gegen: Thank you.

Chair Asing: Is there anyone else?

BRAD PARSONS: Councilmembers, Chair and County Attorney and attorney staff, my name is Brad Parsons. I didn't come here prepared with any remarks. I only learned about these prospective proceedings yesterday, but I have been following this issue closely for almost a year and a half maybe it has been. There are a few things that have been said here today that are misrepresentations or slightly inaccurate and I...because Pat here I think just said everything I would want to say, I don't necessarily want to repeat what he said, but a few points. First of all when you all passed this ordinance, I believe you were about the 11<sup>th</sup> jurisdiction...local jurisdiction in the nation that passed this. And I would be willing to wager that there's no more than 20 or 25 jurisdictions that have passed something like this ordinance. By the way this is...somebody referred to it earlier as a bill, this is an ordinance, you already voted on this. But somebody has been saying, it's been repeated twice by two people, that there's a national standard. There is no national standard. That's a ruse, okay. When you only have 20 jurisdictions, it's not a standard yet. You guys are on the forefront with this, along with Maui. But what you actually passed almost a year and a half ago, that was good legislation.

Another thing that's been said is talking about legislative intent. Well, if you recall the history of this was, you actually deferred this for an extra like two weeks so that the county attorney could review this. And then when it came back, the

final version, you had this final version of the bill, nobody else gave you testimony on the final version of the bill because we were handed it right before you voted on it, except for one person. One person gave you testimony on this and that person actually read through what is here "contains no polymers derived from fossil fuels" and paused a moment and said, "well, that's actually maybe a little bit stronger standard than the European standard" and a lot of you...you all shook your heads and you recognized that, that was testimony. So it was known then and the points that...by the way, that Pat read out of your...regarding legislative intent, they make it clear. You know that you didn't want any pol...any fossil fuel polymers in this bag. That's what you voted on 4-2.

There isn't a question about legislative intent, but the further point about this was that you referred this to the county attorney. This new language about the polymers came in right after you referred it. So where did that new language come from? Is it one of yours or was it the county attorney's language? Whoever's the language it was, was the research, due diligence done then on it?

And then a follow-up to that is the timing. It's been talked about a couple of times here, but I actually about six months ago I started wondering in the back of my mind, the public works is supposed to start having hearings on this and setting the rule making. How come I haven't heard anything from anybody? I actually called one of the councilmembers here and asked him. He said, no, there hasn't been any hearings. I was thinking, you know, these retailers, they're going to...they have to order these bags in large bulk, I mean they're going to need a few months' notice on this and they're still not doing the rule making. And then I find out yesterday...I assumed it had been done. I thought these were like kind of quiet rule making proceedings and that I just hadn't heard about it and then yesterday we find out the rules haven't even been finalized yet. So this is...this has been delayed. This has been put off. I'm sorry, is that the two minutes there?

Chair Asing:                    Yeah, go ahead.

Mr. Parsons:                    Okay.

Chair Asing:                    Finish up.

Mr. Parsons:                    You know the thing is, you had almost a year and a half to do this and now three months before we're saying, oh, we haven't finished it yet, we haven't even really started on the rule making yet. That's unacceptable. The way the bill is now it's clear what the intent would--I'm sorry, I even made the mistake—ordinance, the way the ordinance is now, it's clear what the intent was. Everybody knew what it was when it was voted on. There is no need for executive session and I don't believe there's any liability here either. There's two or three options that retailers and customers have for this. They're not obligated to a certain thing that's going to cost them money. In fact if anything, the problem would be is if you don't finish the rule making and then you come down with a rule like a month before the deadline when these retailers then cannot react to it, then you maybe have some outstanding liability. Right now as it is, there's not liability in this bill.

Personally I think that the way this is sort of being handled is again what Pat was saying, it's systematic of how a number of ordinances and bills have been handled over the past two years. But in this case, it should be clear-cut. This doesn't require an executive session.

At a minimum I agree with Jay that this should not go into...this should be voted on separately. You should vote on whether you go into executive session for the other item you have on the agenda and this one separately and that's all I'd like to say. Thank you very much.

Chair Asing: Thank you. Any questions, any comments? If not, thank you. With that, Glenn.

GLENN MICKENS: Thank you, Kaipo, for the record Glenn Mickens. I just want to say I completely agree with the previous speakers. You...this body passed this ordinance 4-2. If there was a question at that time, if there was a legal question at the time, I believe it should have been addressed then, not wait till the 11<sup>th</sup> hour and then all of a sudden decide well, we better do some modifications or something with it. And I also completely agree that I think it's public information with Jay and the rest of you that have said I don't think there should be an executive session. I don't see anything that's illegal about sitting here and talking about the thing the way you're doing at this stage of the game. Anyway, basically I just want to completely agree with Pat in his testimony. Thank you, Kaipo.

Chair Asing; Thank you. Mr. Taylor.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. I too agree with the previous speakers and applaud Jay for asking to separate this out for consideration as to whether you go into closed session or not. I appreciate the comments from other council members asking questions of the county attorney and I really do believe that we're talking about a policy that you've adopted. There's absolutely no reason why those...the issue...discussing that cannot be done here on the floor. I don't really believe that there is any concerns and if there are some concerns, let the attorney sit here and put it on the table in front of the community. Show us at least an itemized list of where the concerns are so that if you do decide to go into closed session, that we understand better what and why you're doing...moving forward with that (inaudible). There's...there's absolutely, in my mind, no reason at all that this can't be discussed right here in front of the public so that the public knows and understands what this rule has...the intent of this rule was. I think it's been made very clear and I think that there's absolutely no reason for it not to be discussed here. Thank you.

Mr. Furfaro: Mr. Chair, since the...

Chair Asing: Yes.

(Inaudible.)

Mr. Furfaro; Since the rules are suspended, can I ask the county attorney to come back again?

Chair Asing: Sure.

Mr. Furfaro: Thank you.

Chair Asing: With that, county attorney, please?

Mr. Castillo: Good morning again.

Mr. Furfaro: Thank you, Al. Al, I just...when we were working on these conditions, the ordinance was really a bill.

Mr. Castillo: Yeah.

Mr. Furfaro: It's a bill before it becomes an ordinance.

Mr. Castillo: Yeah, yeah.

Mr. Furfaro: So we might have been talking, some of us, in the past tense during the time of the bill. To amend this ordinance, we would amend it with another bill. But I want to ask, in compliance with the ordinance under (c) Section...page three as introduced by Mr. Bynum and Kawahara, sorry Ms. Kawahara, it says, the county engineer or his designee must afford the retail establishment the opportunity for hearings before a hearings officer under Hawai'i Revised Statutes Chapter 91. Did that occur?

Mr. Castillo: No.

Mr. Furfaro: That's all I have.

Chair Asing: Thank you.

Mr. Bynum: May I follow up on that?

Chair Asing: Yes, go ahead.

Mr. Bynum: That's about if there's fines, right? That section is about if there's fines under the law.

Mr. Furfaro: Understood, but I mean did we initiate a hearing for retailers to...

Mr. Bynum: That's under the Enforcement and Penalty Section, but earlier it says that the county attorney...I'm sorry, the Department of Public Works shall promulgate rules.

Mr. Castillo: I'm sorry, where are you reading from?

Mr. Bynum: He was...I was reading from the...

Mr. Furfaro: Reading from page three item (c) under Enforcement.

Mr. Bynum: So if we took enforcement action, somebody could have...

Mr. Castillo: Yeah, um...

Mr. Furfaro: But how can we take enforcement action...

Mr. Castillo: No, no, I was wondering where Councilman Bynum...Councilmember Bynum was talk...I believe you were talking about...

Mr. Furfaro: My question is how could we take enforcement action if we didn't have a hearing about the rules and the consequences from that? I'm directing that to the county attorney. How would that occur? Wouldn't it have been prudent for us to have done that?

Mr. Castillo: Wait, wait, exactly where were you reading from Council...

Chair Asing: It's on page three...

Mr. Kaneshiro: Section (c).

Chair Asing: And it's the second paragraph under (c). Look at page three, top of the page...

Mr. Castillo: Yeah.

Chair Asing: ...and item (c).

Mr. Castillo: The county attorney may seek legal, injunctive or other equitable relief to enforce this article?

Mr. Chang: No.

Mr. Furfaro; It comes under Section 22 Enforcement and Penalties, item (a), (b) and then (c).

Mr. Castillo: Okay.

Mr. Furfaro: Item (c) appears as the second paragraph on page three.

Mr. Castillo: Okay, wait, I'm sorry.

Mr. Furfaro: But I'm just saying, would it not have been good management or best management practices to at least have initiated some dialogue with the retail community?

Mr. Castillo: I'm sorry, I want to read exactly where you're reading from. You're reading from article 19, plastic bag reduction, page three, subsection (c), the county engineer or designee must afford the retail establishment the opportunity for hearing before a hearings officer. But that's...where did Councilman Furfaro...

Mr. Furfaro: I'm sorry.

Mr. Castillo: No, I was looking for you. You disappeared.

Mr. Furfaro: No, I'm sorry, but what I'm saying is...

Mr. Castillo: No, but...

Mr. Furfaro: ...wouldn't it have been our best management practices to have initiated that communication with the retailer establishments?

Mr. Castillo: No, this would be only if there was a violation.

Mr. Furfaro: I understand, but it's kind of like the chicken and the egg. You're saying that this is what you need to do, but without having that public action, you're never finalizing what the consequences are. I mean if somebody violated the ordinance, you would want to make sure that they clearly understood what the consequences were. That's my opinion.

Mr. Castillo: Okay.

Mr. Furfaro: But you've answered my question.

Mr. Castillo: Okay.

Mr. Furfaro: We didn't have that public input about fines and penalties.

Chair Asing: Okay, Councilmember Kaneshiro and then Councilmember Bynum.

Mr. Kaneshiro: I'm a little confused here because basically that section only applies once the law is in force...

Mr. Castillo: Yes.

Mr. Kaneshiro: ...and it takes effect...

Mr. Castillo: Yes.

Mr. Kaneshiro: ...and which doesn't take effect until January of next year, then you can implement that if there is a violation. Isn't that my understanding?

Mr. Castillo: Yes, that is, but...I'm sorry, Councilman Furfaro, because this section was kind of like taken out of context.

Mr. Furfaro: Okay, the law says it would be implemented January of 2011. Some interpretation is once the law goes into effect, you coordinate these public hearings. I'm saying wouldn't it be best practices so that people know the consequences when...the day the bill goes into effect and we didn't have that hearing yet.

Mr. Castillo: That is correct.

Chair Asing: Yeah, I believe Councilmember Furfaro has the right idea, but I think in this particular case the reference that you point out is under enforcement and penalties. But I agree with you that it should have been (inaudible).

Mr. Furfaro: I would have thought we had it before the law became law.

Chair Asing: Yes, okay.

Mr. Castillo: I guess what you're saying and excuse me for...and I'm trying to understand where you're coming from regarding the question, but I'm sure what you're saying is, I guess, establishments should know whether or not they were...how would they be able to know that they're in violation if there's no set rules to establish what a violation is, okay.

Mr. Furfaro: That's what I'm getting at. I mean, this section deals with fines and penalties.

Mr. Castillo: Yes.

Mr. Furfaro; How do you penalize somebody without knowing what the consequences would have been. A \$250 fine, a \$50 fine and that the retail merchant community are fully entitled to having some public input on this before the ordinance is implemented. I mean, how do you cite somebody and not know what the consequences are?

Chair Asing: Thank you, with that, Councilmember Kaneshiro and then...

Mr. Kaneshiro: I'm fine.

Chair Asing: Councilmember Bynum.

Mr. Bynum: Hi, Al.

Mr. Castillo: Now I got the correct ordinance in front of me.

Mr. Bynum: So I'm just going to ask a few questions. I mean, to me this is...I don't think it's that complicated personally, but...because there's a definition of a biodegradable bag, it says contains no polymers derived from fossil fuels. The same section says, the Department of Public Works shall promulgate rules identifying bags that meet this definition, and it goes on to say that a retailer can submit a bag for determination. That's all the law, okay. You've already told us that in our due diligence we didn't find any bags that meet the criteria contains no polymers derived from fossil fuels. So, the Public Works, have they promulgated rules?

Mr. Castillo: No.

Mr. Bynum: Because it seems simple to me. They say under the rules, there are no bags that meet this definition. It's simple.

Mr. Castillo: You know...

Mr. Bynum: Then further in the law, it says a retailer can offer only as checkout bags recyclable paper bags, which we know exist, and biodegradable bags, which we now know we don't have one available that we're aware of that meets that criteria. If a retailer's aware, they can submit it. They can submit it, and reusable bags. So, you know, we've done our due diligence, thank you, and we have two alternatives, reusable bags and paper bags. And if a manufacturer...a retailer can find something that meets our established legal criteria, they can submit it for consideration. So, that's where I'm at with this.

Mr. Castillo: Okay, no, I...I understand your questions and I understand the testimony, okay. But on the other side of the coin, the questions that the councilmembers are asking, much of it deals with exposure to the county. We have answers for all of the questions that you asked, which does touch upon the liabilities of the county. If you don't want to hear what the county attorney has to say in our request to advise all of you...all of these, you have questions, it touches upon liabilities, we have answers for you. You talk about the rules, we have answers for you. And I'm just here, you know, I'm just here...it was presented to me that there is a concern that I should present to this council. If you don't want to go into executive session, that's your prerogative. I'm only here to protect the county.

Mr. Bynum: Thank you.

Chair Asing: Thank you, any further questions for the county attorney? If not, I'll...thank you, county attorney. I'll call the meeting back to order.

There being no further questions for the county attorney, the meeting was called back to order, and proceeded as follows:

Chair Asing: You want to speak one more time? Go ahead, come up. Now, I'm going to...

There being no objection, the rules were suspended.

Mr. Parsons: I appreciate...

Chair Asing: ...actually bend the rules...

Mr. Parsons: I understand, Chair.

Chair Asing: ...only because I think this is an important issue and you've already had your six minutes...

Mr. Parsons: I appreciate it, Chair.

Chair Asing: ...but I'm going to allow it.

Mr. Parsons: This is just a brief point to that point that was just questioned.

Chair Asing: Okay, go ahead.

Mr. Parsons: In...Mr. Bynum did point out the original question was about an enforcement...

Mr. Chang: Why don't you introduce yourself.

Mr. Parsons: Sorry, Brad Parsons. Thank you, Dickie.

Chair Asing: Go ahead, Brad.

Mr. Parsons: The original question was about enforcement. There's no enforcement yet because it's not in effect. But the point that was raised—it was a good one—and that is that there is foreseen in this bill an interaction in the rule making process with the community, which presumably would definitely include the retailers. And that was what I was wondering about six months ago. Why isn't this rule-making taking place by the Department of Public Works? But in addition, what I want to point out here is that...so there should be some sort of hearings or at least the rule-making going on with Public Works that needs to go on soon. And then there needs to be an application that they work out, that Public Works works out, that then retailers can fill out and submit. This is to make it consistent with the ordinance, the law that's passed. There needs to be an application for the merchants, they can submit it back. Now they'll be able to...they'll submit all these plastic bags and they'll basically probably all get rejected, right? And that's the process that's laid out in this bill. That still needs to be done and that can be reasonably done probably in the next three months. But if you start changing up all the ordinance and the rules and laws and everything, then you're not going to give the merchants enough time to react. The

way it is now, it's fine, but there still are a few things that...by the way, whoever's responsible for...for seeing that Public Works starts acting upon the content of this ordinance, they needed to have put a little more pressure on Public Works to do this rule-making. But there's still time for them to do the rule-making and put out an application that the merchants can use. That's what there is time for. And that's all I need to say. I appreciate the extra time.

Chair Asing: Thank you, Brad. Okay, I'd like to call the meeting back to order and why don't we take the motion to move into executive session on the first item, which is ES-468, first.

There being no one else wishing to speak on this matter, the meeting was called back to order, and proceeded as follows:

Mr. Chang: Move to approve.

Mr. Bynum: Second.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Motion carried. We're going to move into executive session on item ES-468.

I'd like to have some discussion now on executive session item ES-469 on whether or not we want to go into executive session. Is there any discussion councilmembers? Yes.

Mr. Furfaro: Mr. Chair, based on a portion of the ordinance that I read, I would encourage the complete action that was intended in the ordinance for Public Works to move on some public hearing and until such time, I would not support an executive session. I want to give the retailers and the public an opportunity to give feedback according to the way the ordinance was laid out, so I want to disclose that. I will not be supporting an executive session on that item.

Chair Asing: Thank you, any further discussion?  
Councilmember Bynum.

Mr. Bynum: Thank you, Mr. Chair. I'm glad we were able to have this dialogue with the county attorney because it's important that the issues be discussed publicly and we had that opportunity because...and I've already...I won't restate what I said, but I think we went through a public process. I've read all of the transcripts; I think our intent was very clear. We didn't want bags in the Kaua'i environment that contain fossil fuels. And somebody observed that after the county attorney reviewed and the language came in that took out the European standard, it came back even stronger and the council voted for contains no polymers derived from fossil fuels. So I strongly encourage the Public Works Department to do what the law requires and promulgate rules identifying bags that meet this definition. We heard today that we don't...those bags appear not to be available. So that's simple. We have paper and we have reusable bags as an alternative and oh, that's consistent with our neighbor island Maui's rules that are already published, so. Hopefully we will give guidance to retailers very quickly.

Chair Asing: Thank you. Hang on, Jay.

Mr. Kaneshiro: Thank you, Mr. Chair.

Chair Asing: Councilmember Kaneshiro and then  
Councilmember Furfaro.

Mr. Kaneshiro: Yeah, I...you know, I don't have a big debate about whether the bill we crafted is a legal bill or whatever, but what I'm hearing from the county attorney is that there are some liability issues. And as an elected official, when things are pointed out like that to me by the county attorney, you know, it's only my duty to at least listen to some of the liability issues. Now whether we change the bill or not is not the issue at this point. I think what I heard on the floor is that there are some liability issues before, you know, they can start implementing or even coming up with some rules and promulgations of this bill. So, you know, I'm not hearing about changing the bill or changing this or changing the ordinance. What I'm hearing is about some liability issues. And I think for me it's important that we spend some time in executive session to hear about those issues. That's all I'm saying. So, you know, I intend to support going into executive session for that matter.

Chair Asing: Thank you, any further discussion?  
Councilmember Chang.

Mr. Chang: Thank you, Mr. Chair. You know, when the...when we had discussion and the bill passed, our county purchased 25,000 reusable bags and we made it available to all the supermarkets and the grocery stores, and there was a great, great campaign. And I remember many people, including Connie Claussen and you know, Pat, your daughter Emily, and their class. I remember everyone would stack up 10 or 12 reusable bags and I think most of us have 5, 6, 7, 8, 9, 10 or 12 of those bags. So I think we did very, very good public education and I know that everybody's ready when the law is implemented to use those we hope as their use of reusable bags. You know I have...I understand the testimony and I understand that the public really cannot understand why we would go into executive session. But I have been consistent in supporting the fact that we all took our oath to protect our county and when our attorney is telling us that we need to understand the legal sides of this issue, I think it's just our own...I think we owe it to the community that when we need to answer questions once we understand the reasoning behind this, I think it's in my best interest to support going into an executive session because for myself I do want to learn the legal issues and again, we all took an oath to protect our county. So I feel that it is my responsibility to make our attorney available to enlighten us with what's actually going on. So I am going to be supporting going into executive session. Thank you.

Chair Asing: Councilmember Bynum.

Mr. Bynum: I agree that it...I think today may be the first time that I ever didn't vote to go into executive session when recommended by our county attorney because I agree with Councilmember Chang, what you just said in most every instance. But I know that the public record will reflect that this council, members have voted not to go into executive session when the county attorney was recommending it. I don't recall if I have ever have, but I am today because I agree with Councilmember Furfaro it's premature. I think I understand what the legal issues are without having to go into a private session to discuss it and I would be open to an executive session in the future. But at this point, the administration needs to promulgate these rules as they're required to by law. So, yeah, I don't think I'm going to vote to do that today. It doesn't mean I won't do it in the future.

(Inaudible.)

Chair Asing: Councilmember Kawahara.

Ms. Kawahara: So, what happens if we go into executive session? When we come out, are we going to be able to say this is what's happening in...

Chair Asing: No. We will not be able to... Councilmember Kawahara, we will not be able to have any of the discussions that were held in executive session be made public, and I think it's the law and its intent was the confidentiality of the attorney-client privilege for one thing, and the law on executive session items are kept in executive session. That's the way it's structured. The rules are structured in that manner.

Ms. Kawahara: So...so the public wouldn't know whether or not we're going to be revising an ordinance until a revised ordinance came up on the agenda.

Chair Asing: I believe that the county attorney will give us his reasons why he feels that the legalities of the bill is in his opinion at the present time my interpretation is that there is or could be a liability to the county and what the county attorney wants to do is notify us of that potential liability. I don't know what it is. I sure would like to hear it. Like Councilmember Chang, I think we have an obligation to at least listen to the county attorney who is asking the council for the opportunity to present what he sees as a liability to the county. To not afford him that opportunity, I believe, is not in the best interest of this council. It is my opinion.

Ms. Kawahara: Okay, if I may address Councilmembers Furfaro and Bynum?

Chair Asing: Sure.

Ms. Kawahara: Could you please go again into why...what you said that you won't be supporting it and then after that Councilmember Bynum.

Mr. Furfaro: I'm going to ask Councilmember Bynum, because we have until noon tomorrow to post an agenda item in committee, that agenda item is...I'm going to ask that as chairman of Public Works, Mr. Bynum would send over correspondence asking the Public Works Department their intent of having a plan setting for rules that the retail merchants can, in fact, participate in along with the public. And I think at minimum, we should ask them to make a presentation in the Public Works Committee as to how they're going to manage having a hearings officer and getting some feedback and looking at some optional samples as Mr. Bynum himself has pointed out and I think that's my next step after I hear from Public Works. I may, you know, revisit having an executive session.

Ms. Kawahara: Okay, thank you.

Mr. Bynum: I just want to let you know that I've already sent that memo requesting...requesting of staff to make that memo available, you know.

Mr. Furfaro: So you'll have an agenda item in Public Works...

Mr. Bynum: I've made that request.

Mr. Furfaro: Okay.

Ms. Kawahara: My question is though...

Mr. Bynum: And, you know, perhaps we should set an agenda item, in case, for an executive session next week after that. I mean that's an option. That'd be up to the Chair. But I'd rather have that dialogue in the public forum and ask where the administration is at on their responsibility to promulgate these rules.

Mr. Furfaro: So you can see my intent?

Mr. Bynum: Yes.

Chair Asing: I have a question.

Ms. Kawahara: So I didn't get my question answered...

Chair Asing: Go ahead, sure.

Ms. Kawahara: ...because I had Councilmember Furfaro... Councilmember Bynum, you were saying that you believe that it was premature and if you could just reiterate to me again what it was.

Mr. Bynum: Premature to go into an executive session...

Ms. Kawahara: Yes.

Mr. Bynum: ...until we have more of these answers that Mr. Furfaro's discussing. And my question of the Chair would be, you know, can we post that for next week and use it if necessary? Does that answer your question?

Ms. Kawahara: Yes, yeah, okay, so thank you for that time and thank you to my fellow councilmembers. I am concerned about the fact that if we go into executive session, there is no way of knowing...the public knowing what's going to happen with this ordinance. I'm concerned that...that there would be policy making decisions being made in an executive session that should be public. So, in this instance if we're going to have, that's my belief, so if there is going to be the option of having an executive session if we get more information from Public Works, I'm most likely to hold off on voting for and supporting an executive session on the matter because I think the crux of the matter was that...I heard the attorney say was that he wasn't sure about what the legislative intent was, and I with the other councilmembers that voted for the bill are pretty clear, I think, on what the legislative intent of the bill was. Thank you.

Chair Asing: Councilmember Kaneshiro.

Mr. Kaneshiro: I just want to state for the record again, Mr. Chair and members of this committee, is that...you know, Members of the Council, was that what I heard was there are some liability issues. Now, I did not hear whether there were some policy issues we're going to call in executive session. Policy issues should be called on the table, should be introduced by members of the council or committees, the various committees, and you know, it's unfair to hear that we were going into executive session to make policy decisions. So I just want to clear it for myself, for the record, the public needs to know that I have some concerns because the attorney stated there were concerns on liability issues that the county and the people of Kaua'i could face.

Chair Asing: Thank you, any further discussion? Then I just want to say I'd like to support and will support to move to go into executive session.

My reasons are very, very simple. The county attorney is asking the council for a period of time to discuss potential liabilities of the county and are we going to say, no, we do not want to listen to potential liabilities. I think that it is not in this council's best interest to not at least listen to the county attorney on what are these liabilities. I don't even know the liabilities, but apparently the county attorney feels that there are liabilities. I read the bill, I don't know the liabilities. But the county attorney evidently sees liabilities. So I'd like to ask for the council to move into executive session. I do not believe that the votes are here today by the expressions of councilmembers, and I will, you know, abide by the wishes of the council. But I also hear from Councilman Furfaro and Councilmember Bynum that they would want to move into executive session maybe at a later time after more information is gathered. Am I correct?

Mr. Bynum: I'd like to leave that option open.

Chair Asing: Yes.

Mr. Furfaro: I would as well after I hear the strategic plan from Public Works.

Chair Asing: I would say with that, I am not going to ask for a motion to move into executive session and I believe we have an understanding here on the table that that option is open in the future by comments raised by all councilmembers that in the future we could ask for executive session with the County Attorney's Office. Am I correct? Am I...is my interpretation of councilmembers' statements correct?

Mr. Bynum: Yeah, if we can post next week for an executive session and then make that determination at that time.

Chair Asing: Okay.

Mr. Furfaro: I want to clarify that, as long as we have an agenda item for Public Works to discuss how they plan to move and have interaction with the merchants as well as with the public what their plan is, and what some of the hurdles are.

Chair Asing: Yes, Councilmember Kaneshiro.

Mr. Kaneshiro: Okay, hearing that...Mr. Chair, I want to make a correction to ES-468. I believe the motion on the floor was to approve, but I...the motion that we needed to carry for ES-468 was to go into executive session...

Chair Asing: Yes.

Mr. Kaneshiro: ...rather than a motion to approve.

Chair Asing: Right.

Mr. Kaneshiro: If I could make that. Okay, then I guess we're done.

Chair Asing: I believe...

Mr. Nakamura: Council Chair, I think...my apologies, I think Councilmember Kaneshiro is correct, but if we could...before we go back to correct the motion on 468 and also to call Councilmember Kawakami back in...

Mr. Kaneshiro: Oh, sorry.

Mr. Nakamura: ...because he was not recused on this item. Why don't...if the council could...if we could ask that the council deal with ES-469 first and then we'll go back and...

Mr. Furfaro: Would that be a move to receive?

Chair Asing: Yes, why...why don't we receive ES-469 and clear that first.

Mr. Nakamura: Council Chair, just one clarification, I think the motion should be to receive without convening executive session.

Chair Asing: Yes, to make it clearer. So the motion would be to receive without going into executive session. Can we have that?

Mr. Furfaro: So moved.

Mr. Nakamura: One second, Council Chair, I'm...my apologies. The county attorney is asking...he could also withdraw the request. So either way, we get to the same place.

There being no objection, the rules were suspended.

Mr. Castillo: Council Chair, you know in light of the discussion and knowing what...how the council works, you know, I could...I would like to withdraw ES-469 because it's going to come up anyway.

There being no further statement by the county attorney, the meeting was called back to order, and proceeded as follows:

Chair Asing: With that said, the county attorney is withdrawing ES-469, so we do not need to take any action on ES-469.

Mr. Nakamura: I think the cleanest way is...based on the county attorney's request to withdraw is to receive it without convening into executive session, just based on his motion to withdraw the request.

Chair Asing: So would it be cleaner to just receive?

Mr. Nakamura: Based on the county attorney's request to withdraw.

Chair Asing: Based on the county attorney's comments, okay. With that, could we have a motion to that effect?

Mr. Furfaro: Yes, move to receive item ES-469.

Mr. Bynum: Second.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Mr. Furfaro moved to receive ES-469 for the record, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Opposed, say no. (*Silence.*) Motion carried. Okay that's done. We're through with ES-469. We're now on ES-468. Can I have a motion to move into...

Mr. Nakamura: Council Chair, I think there was already a motion made without Councilmember Kawakami being back in the room. So if I could ask for a motion to reconsider ES-468.

Ms. Kawahara: Move to reconsider ES-468.

Mr. Bynum: Second?

Chair Asing: Can I have a second?

Mr. Bynum: Second.

Chair Asing: All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Motion carried.

Ms. Kawahara moved to reconsider ES-468, seconded by Mr. Bynum, and unanimously carried.

Chair Asing: Okay, with that...

Mr. Nakamura: And if we just wait for Councilmember Kawakami.

Chair Asing: Let's wait for Councilmember Kawakami.

Councilmember Kawakami was noted present at 11:12 a.m.

Chair Asing: Now that we have Councilmember Kawakami back, can we have a motion to move into executive session on ES-468?

Mr. Bynum: So moved.

Mr. Chang: Seconded.

Chair Asing: Any discussion? (*Silence.*) All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Motion carried. We're going to move into executive session on ES-468. Thank you.

Mr. Bynum moved to convene in executive session for ES-468 at 11:13 a.m., seconded by Mr. Chang, and unanimously carried.

There being no objection, the meeting was recessed.

The meeting was reconvened at 11:58 a.m., and proceeded as follows:

Chair Asing: This council meeting is now called back to order. With that, Mr. Clerk, can you read the last item, I believe, we have on the agenda?

Mr. Nakamura: We're on page two of the council's agenda, Mr. Chair, on communication C 2010-257.

C 2010-257 Request (09/21/2010) from the Office of the County Attorney for authorization to expend funds up to \$50,000.00 to engage special counsel to represent the County defendants in James T. Jasper II v. County of Kaua'i, et al. and related matters.

Chair Asing: Can I have a motion to approve.

Mr. Chang: Move to approve.

Mr. Kaneshiro: Second.

Chair Asing: Any discussion? *(Silence.)* All those in favor, say aye.

Councilmembers: Aye.

Chair Asing: Opposed, say no. *(Silence.)* Motion carried.

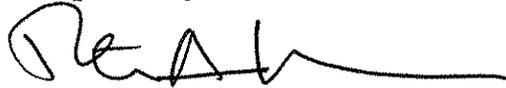
Mr. Chang moved to approve C 2010-257, seconded by Mr. Kaneshiro, and unanimously carried.

Chair Asing: There being no other items on the agenda, the meeting is adjourned. Thank you.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 11:59 a.m.

Respectfully submitted,



PETER A. NAKAMURA  
County Clerk

/wa