COUNCIL MEETING

FEBRUARY 25, 2015

The Council Meeting of the Council of the County of Kaua'i was called to order by Council Vice Chair Ross Kagawa at the Council Chambers, 4396 Rice Street, Suite 201, Līhu'e, Kaua'i, on Wednesday, February 25, 2015 at 9:02 a.m., after which the following members answered the call of the roll:

Honorable Mason K. Chock
Honorable Gary L. Hooser
Honorable Ross Kagawa
Honorable JoAnn A. Yukimura

Excused: Honorable Arryl Kaneshiro
Honorable KipuKai Kuali'i
Honorable Mel Rapozo

APPROVAL OF AGENDA.

Councilmember Hooser moved for approval of the agenda as circulated, seconded by Councilmember Yukimura, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

MINUTES of the following meetings of the Council:

January 14, 2015 Council Meeting
January 14, 2015 Public Hearing re: Bill No. 2566, Bill No. 2567, Bill No. 2568, and Bill No. 2569
January 28, 2015 Council Meeting
February 11, 2015 Special Council Meeting
February 11, 2015 Public Hearing re: Bill No. 2570, Bill No. 2571, Bill No. 2572, and Bill No. 2574

JADE K. FOUNTAIN-TANIGAWA, Deputy County Clerk: Chair, we do have one (1) registered speaker regarding the minutes of the February 11, 2015 Public Hearing for Bill No. 2574, which is Gary Pierce.

Council Vice Chair Kagawa: Okay. Can we get a motion to approve the minutes?

Councilmember Hooser moved to approve the Minutes as circulated, seconded by Councilmember Yukimura.

Council Vice Chair Kagawa: Thank you. I will suspend the rules.

There being no objections, the rules were suspended.

GARY PIERCE: Gary Pierce for the record. Good morning, comrades. This is on Bill No. 2574. How dare you approve and not pass the Bill to limit the increase to two hundred fifty dollars ($250)? You have given yourselves thousands in car allowances. How dare you not approve Bill No. 2574 to limit the

increase to two hundred fifty dollars ($250) when the Mayor spends ten thousand dollars ($10,000) on *leis*? How dare you not approve Bill No. 2574 to limit the increase to two hundred fifty dollars ($250) when you approve an appointed position of Ms. Nakamura for over one hundred thousand dollars ($100,000), plus staff, going well-over one hundred fifty thousand dollars ($150,000)? Another appointment, the Department of Finance, with no allegiance to the taxpayer who has constantly brought erroneous information to the Council with no documentations— he said letters were sent out to the taxpayers. The letter I got, along with our tax bills, it was said, and I am going to quote one of the lines is, "Very low income tax credit pending legislation. Owner-occupants that have a combined gross income of thirty-five thousand one hundred dollars ($35,100) or less may be eligible for property tax credit limited to total Real Property Tax (RPT) to three percent (3%) of gross income or minimum tax. You must apply by January 15, 2015 if passed by the Council." The Bill was passed in January, but you had to apply before December 30th. There is no timeline. The timeline does not give you enough credit or anything else.

Council Vice Chair Kagawa: Excuse me, Gary. If you are talking about the Bill in general and your feelings on the Bill, you have to wait until the Bill comes up, and it is on the agenda for today. But if you are talking about anything on the minutes, you may.

Mr. Pierce: Well, I thought that the minutes were open...

Councilmember Yukimura: Point of order?

Council Vice Chair Kagawa: Councilmember Yukimura.

Councilmember Yukimura: If you are talking about the inaccuracy of the minutes that they are not properly describing what happened, then that is appropriate here. But if you are talking about the subject matter, that has to come up...because you cannot influence the decision about the minutes. The minutes are...

Mr. Pierce: The minutes.

Councilmember Yukimura: Yes.

Mr. Pierce: Okay. I understand.

Councilmember Yukimura: Thank you.

Mr. Pierce: I will come back.

Council Vice Chair Kagawa: Okay. Thank you, Gary. Does anybody else from the public want to speak on anything about the minutes? Seeing none, we have a motion and a second to approve.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve the Minutes as circulated was then put, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

Council Vice Chair Kagawa: Next item, please.

CONSENT CALENDAR:

C 2015-72 Communication (02/09/2015) from the Acting Director of Finance, transmitting for Council information, the Period 4 Financial Report – Detailed Budget Report, Statement of Revenues (Estimated and Actual), Statement of Expenditures and Encumbrances, and Revenue Report as of October 31, 2014, pursuant to Section 21 of Ordinance No. B-2014-781, relating to the Operating Budget of the County of Kaua'i, for the Fiscal Year 2014-2015: Councilmember Hooser moved to receive C 2015-72 for the record, seconded by Councilmember Yukimura, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

Council Vice Chair Kagawa: Next item, please.

COMMUNICATION:

C 2015-73 Communication (02/09/2015) from the Housing Director, requesting Council approval for the following:

1. The purchase of 676 Akalei Street, 'Ele'ele, for not more than $375,000, the purchase price is to be based on a fee simple market appraisal obtained through this transaction;

2. The resale of 676 Akalei Street, 'Ele'ele, by leasehold for not more than the leasehold market appraisal, which will be obtained through this transaction; and

3. Authorize the County Clerk to sign legal documents relating to the acquisition and resale transactions.

Councilmember Chock moved to approve C 2015-73, seconded by Councilmember Hooser, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

LEGAL DOCUMENTS:

C 2015-74 Communication (02/03/2015) from the County Engineer, recommending Council approval to renew a Right-of-Entry Agreement with Grove Farm Company, Inc., for gathering data to be used in the preparation of an Environmental Impact Statement (EIS) relating to the development of a new sanitary landfill and resource recovery park situated at Tax Map Key (TMK) No. (4) 3-8-02:001, Kalepa, Kaua'i, Hawai'i; and to indemnify Grove Farm Company, Inc., as stated in the agreement.

- Right-of-Entry Agreement

Councilmember Chock moved to approve C 2015-74, seconded by Councilmember Hooser.

Council Vice Chair Kagawa: Councilmember Yukimura, you have the floor.

Councilmember Yukimura: Could we suspend the rules and have Mr. Dill come up?

Council Vice Chair Kagawa: The rules are suspended. Mr. Dill, can you please state your name? Councilmember Yukimura you may begin.

Councilmember Yukimura: Thank you.

There being no objections, the rules were suspended.

LARRY DILL, P.E., County Engineer: Good morning. For the record, Larry Dill, County Engineer.

Councilmember Yukimura: Good morning, Larry. So is the landfill on State land and is the resource recovery park on Grove Farm land?

Mr. Dill: Actually, the landfill is on State land. There are two (2) alternate locations that are under consideration for the resource recovery park: one on State land and one on Grove Farm land. The two (2) properties abut each other.

Councilmember Yukimura: Why are we looking at two (2) properties?

Mr. Dill: There are pros and cons, I think, to the site being on either of those properties and Grove Farm indicated the willingness to site the resource recovery park in the vicinity of the landfill on their property, so we thought it was in the County's best interest to consider both of them in the Environmental Impact Statement (EIS).

Councilmember Yukimura: Do you have a list of the pros and cons for each property?

Mr. Dill: I do not have a list, no.

Councilmember Yukimura: Okay. I would like to ask for that list.

Mr. Dill: Okay.

Councilmember Yukimura: To me, it would be much, much better to have a public facility on public land, so I am not clear what the benefit would be to have it on private land. Can you explain any benefit?

Mr. Dill: Well, having it on private land— Grove Farm is interested, obviously. They want to help on the waste diversion activities on the island, but being a business, there may be opportunities for them businesswise as well in waste diversion activities. I think having it on their land would assist them in making that happen and it would help the County if there was private investment in some of these waste activities, instead of having the County to fund them all. There are possibilities for a "win-win" there.

Councilmember Yukimura: It would give Grove Farm like a monopoly though on these facilities.

Mr. Dill: I do not think so, not necessarily.

Councilmember Yukimura: Really?

Mr. Dill: It depends how each one is developed. Certainly, if they are the owner of the site, then it might give them an advantage in that regard. But depending on the particular waste diversion activity— these things have not been resolved yet on how each one would flesh out.

Councilmember Yukimura: I am hoping that the Administration is thinking about these issues long-range. It seems like we are doing an EIS for Grove Farm and for their purposes, rather than for ours.

Mr. Dill: No, I would disagree with that. One of the things about siting the resource recovery park on State land is that it takes away from landfill space, so it would behoove us to reserve the landfill capacity on State land while you are having the resource recovery park on Grove Farm land.

Councilmember Yukimura: That is assuming that you need a lot of landfill space, which if the future is eighty percent (80%) recycled or in that direction, the waste stream will be much less, and arguably, you could lower the need for a landfill and the space for a landfill and put a resource recovery where there could be revenues and other benefits to offset County costs.

Mr. Dill: I agree with that, but as you said "if in the future if we reach those goals," and we are certainly working towards those goals and trying to make that happen. But at the end of the day, you still will have twenty percent (20%) residual that needs to be landfill at least. That is what we foresee right now.

Councilmember Yukimura: Correct.

Mr. Dill: We are thinking as long-term as we can. As I have said to the Council before, this, in my eyes, will hopefully be the last landfill that Kaua'i ever has, but I want to make sure that we do everything possible to stretch out the life of that landfill, so that we never have to search for another landfill site.

Councilmember Yukimura: Stretching out the life of the landfill will require a very aggressive resource recovery, right?

Mr. Dill: Absolutely, yes.

Councilmember Yukimura: So why are we not thinking about how we leverage those resources for the public?

Mr. Dill: Absolutely, we are. Part of that leveraging is having private investment participate where it can and where it makes sense to.

Councilmember Yukimura: Okay. I think this is a policy discussion that the Council needs to be involved in and I do not feel as though the Administration has really thought this through and they are going ahead and doing an EIS with taxpayers' money to do it. I would like to request that the Administration come forward with their strategy for how they are planning to do resources, this Solid Waste Management, especially in relation to the Integrated Solid Waste Management Plan. Staff, please make sure that we get that across to the Administration. Thank you.

Council Vice Chair Kagawa: Councilmember Hooser.

Councilmember Hooser: Good morning. The posting said something about...let me just read it here for a second, "Approval to renew a Right-of-Entry Agreement," which says we already have one now, "with Grove Farm for gathering data to be used in the preparation of an Environmental Impact Statement relating to the development of the landfill and the resource recovery park." So we have a Right-of-Entry now?

Mr. Dill: We had one and it has expired.

Councilmember Hooser: Okay. This Right-of-Entry is necessary to develop the landfill?

Mr. Dill: No, it is to help us with the investigation in the fieldwork necessarily for the EIS to support the EIS effort.

Councilmember Hooser: For the landfill?

Mr. Dill: Landfill and resource recovery park.

Councilmember Hooser: So without this, we cannot move forward in the landfill?

Mr. Dill: Well, it would be very difficult.

Councilmember Hooser: So we need Grove Farm's permission to go on their property in order to develop the landfill. Is that what you are saying?

Mr. Dill: Correct.

Councilmember Hooser: And we do not have that permission as we sit here today?

Mr. Dill: Correct. If I may, I will say that even in this "interim period" between that Right-of-Entry that we had expiring, Grove Farm was always cooperative with us. With communicating with them, they have allowed us to come on the property.

Councilmember Hooser: Yes. I am not questioning that, but I appreciate that. It kind of does beg the question of why we did not have a Right-of-Entry sufficient to allow us to develop the landfill in the first place.

Mr. Dill: Yes, excellent question. I guess it had an expiration date on the earlier one. So for this one, we have written it up so that this will last us through the EIS period.

Councilmember Hooser: Okay, because a less cooperative landowner could use something like that to the detriment of the public interest.

Mr. Dill: Yes.

Councilmember Hooser: Do we have an agreement with Grove Farm to use their land for the resource recovery park?

Mr. Dill: I do not believe that is documented.

Councilmember Hooser: So is that a way of saying "no?" We do not have an agreement?

Mr. Dill: We have an "informal agreement." I will put it that way.

Councilmember Hooser: Do we have a price tag on that?

Mr. Dill: No.

Councilmember Hooser: How much are we investing in the EIS to investigate their property for a possible resource recovery park? Do we not know what they are going to charge us for?

Mr. Dill: The overall EIS is...I do not have the exact numbers, but it is probably in the neighborhood of about two million dollars ($2,000,000). How much of that is devoted to the landfill and how much to the resource recovery park— I could not tell you.

Councilmember Hooser: Because my experience with this is that the further we get down the road, we invest "x" millions of dollars on Grove Farm property without an agreement from them, assuming not even going to where Councilmember Yukimura is going where we should not be there, but we just get dragged into it because they then write the terms of the agreement after we have invested all of this money into it. It seems like it would be some kind of tentative agreement or decision. If the decision is going to be to use the Grove Farm property, a tentative decision would need to be made, in my opinion. Then we move forward with doing more due diligence. Has that decision been made or not been made?

Mr. Dill: The decision to use Grove Farm property?

Councilmember Hooser: Yes.

Mr. Dill: No. It is identified as an alternate site.

Councilmember Hooser: Okay. Thank you.

Council Vice Chair Kagawa: Councilmember Chock.

Councilmember Chock: Thank you. We had this discussion a few weeks back about the need for hiring a consultant to help us with the bird situation as well, so I just wanted to understand the difference here or the connectivity to the EIS and if it is applicable. It just seems to me that the EIS would cover some of that mitigation need because it is a concern and has an impact, but is that not true?

Mr. Dill: I am sorry. I am not following your question.

Councilmember Chock: So there is money that we put aside— I forget how much now— for the study of the birds.

Mr. Dill: Yes.

Councilmember Chock: How much? Fifty thousand dollars ($50,000) for a consultant. I am wondering why we could not get that as part of the EIS process.

Mr. Dill: Why we did not get the Wildlife Hazard Assessment identified as part of the EIS process?

Councilmember Chock: Yes.

Mr. Dill: It is part of the EIS process now.

Councilmember Chock: Okay, that is what I was asking.

Mr. Dill: It was not identified up front. We did not have an understanding from the beginning what the Federal Aviation Administration (FAA)/Department of Transportation (DOT) Airports' requirements were going to be for a landfill located in proximity to the airport. We did understand that there will be some mitigation measures required, but it was not until we actually sat down with DOT, Division of Forestry and Wildlife (DOFAW), and other agencies over on O'ahu that we fleshed out this Wildlife Hazard Assessment process, which following that would be the Wildlife Hazard Mitigation Plan or Management Plan.

Councilmember Chock: Okay. When I hear a two million dollar ($2,000,000) figure and fifty thousand dollars ($50,000) that we have already attributed to for something that is very similar, that is where the question arises for me. That is why I am asking.

Mr. Dill: I am sorry— you say it is very similar?

Councilmember Chock: It seems to me that the EIS and the Wildlife Mitigation are connected.

Mr. Dill: Yes. The Wildlife Hazard Assessment and Mitigation are a...I would say a component of the EIS.

Councilmember Chock: Okay. When I think about the two million dollars ($2,000,000) and why that would not cover the fifty thousand dollars ($50,000); is that because we need additional support? I just want to clearly understand why there is extra funding necessary when we have so much money to invest it into this process, and it should cover it.

Mr. Dill: We have a contract with a specific scope of work for a consultant, which did not include that scope of work. We actually have to go out...because of the concerns that were brought up by the airport folks, our consultant had to hire a sub-consultant who has a specialty, who is a Wildlife Biologist and knows about Wildlife Management Plans with respect to landfills and airports. That was a separate procurement that had to happen.

Councilmember Chock: Okay. If you could explain to me, and I am sorry to belabor this, but where does the connection to the EIS reside? Where does it get triggered? It seems to me that there are specific things that come up from the EIS that we have to identify as risks, and then it triggers it. But it seems to me like this came up separately.

Mr. Dill: An EIS process, generally speaking, proclaims to the world what your proposal is and we are supposed to notify anybody and everybody that we think may be impacted or interested in that proposal. In this case, it includes many agencies, including DOT and DOT Airports in particular. There are DOT Highways as well, but we are talking about airports. When they are notified about this, they respond it to us, and gave us in black and white some of their concerns, and they have grave concerns about safety issues related to the landfill and how it would affect the airport. As things got brought up, it is our goal now for the EIS to try to mitigate those concerns, so we work with DOT to address their concerns. The EIS can be an evolutionary process where it turns up these things that may not have been identified as significantly the outset.

Councilmember Chock: I appreciate the clarification. It sounds like they ran separately, so that is why I wanted to see the connection. Thank you.

Council Vice Chair Kagawa: Are there any more questions for Larry? Councilmember Yukimura.

Councilmember Yukimura: So when you hired the consultant, did you not hire a consultant who was an expert in landfills?

Mr. Dill: Yes.

Councilmember Yukimura: Then why would they not have known about the airports issue?

Mr. Dill: As I mentioned, they knew about it, but it was not understood how significant it would be for the airports. If you read the FAA Advisory Circulars, they indicate what applies, what does not apply, and it is through their efforts that we indicate to the DOT that one of those advisory circulars they were pointing out to us actually was not applicable in the situation and other one says that there would be mitigation required, so we knew there would be mitigation required, but until you go through the hazard assessment and mitigation plan, you cannot really identify those things until you get to that process.

Councilmember Yukimura: I would expect that an expert on landfills would know all about that.

Mr. Dill: Well, I agree. That would be best.

Councilmember Yukimura: Okay. Thank you.

Council Vice Chair Kagawa: Are there any more questions for Larry? Seeing none, thank you, Larry. Are there any members from the public who wish to testify? Ken, you may come up.

KEN TAYLOR: Chair and Members of the Council, my name is Ken Taylor. I have a real problem with putting this recovery park on private property for a number of reasons. First of all, we are talking...I think in the past, they said that the new landfill had a potential of something like two hundred sixty (260) years of operation. Under those circumstances, there is absolutely no reason why the recovery park should not be on that land for at least the first one hundred fifty (150) years. It would save a lot of money. Secondly, having the recovery park on private land has a tendency to alleviate the possibility of having multiple bidders

to run the facility. It does not make any sense and I do not believe it is going to be cost effective to move forward with putting the recovery park on private land. I think it has to be considered on the State land and most of the time, our State land lease agreements are pretty reasonable and I do not see how in the world going any other way would be beneficial to the taxpayers of this County. I hope as you move forward with this, you will certainly take this into consideration and let us get on with it. I also have a real concern and problem with continuing to spend money on this with the problems that are coming from the FAA because they are pretty stringent on their recommendations and if we spend a lot of money and time on this, and not looking at least being parallel to another location or another activity, we are going to be in a world of hurt. We already know that the existing landfill is at capacity and we cannot keep delaying and delaying. Something serious has to happen and getting a Materials Recovery Facility (MRF) in place certainly should be the first step of moving forward with solving some of the problems. Thank you.

Council Vice Chair Kagawa: Thank you, Ken. Next speaker.

GLENN MICKENS: Thank you, Ross. For the record, Glenn Mickens. This EIS project keeps being brought up. I just would like some information. Is our County the one getting the EIS done? I bring this up simply because like with this dairy, they keep on talking about the EIS and it is not mandatory; they say the people are (inaudible). Is an EIS a neutral thing to be done? In other words, if a person hires an EIS like hiring an attorney, you get the attorney that is going to be in your favor what they do. That is why I am just wondering whether this EIS project— I just do not quite understand if I hear two million dollars ($2,000,000) for an EIS and who is doing it. If the party is hiring the EIS or have an EIS done, obviously, they are going to have it done for their benefit, but is it not that there is a neutral way of doing this anymore? If our County is doing this EIS now, it should be in the County's favor obviously when going out and getting this thing.

Council Vice Chair Kagawa: Glenn, what I will do is have Larry come up and just briefly answer some of your questions about the EIS process pertaining to this landfill.

Mr. Mickens: Okay. Thank you, Ross.

Council Vice Chair Kagawa: Gary, please state your name.

Mr. Pierce: Gary Pierce for the record. Investing two million dollars ($2,000,000) in private lands and probably a long-term lease agreement going forward; I think there should be a more prudent, financial aspect. I know that the County does not like to do it, but have eminent domain where you take the land that is on open lands where you are not displacing any people, and the County or State will own the land. I think that is really important, again, with our budget constraints. But to take this land, so that we are not investing it in a private party, so there is no collusion between private farms and the State. Using money for that is of the public interest. Eminent domain should be used if it is identified and it is the area that we want to put the site in. I really think that should be considered. Thank you.

Council Vice Chair Kagawa: Thank you. Is there anybody else wishing to speak on this matter? Seeing none, Larry, can you just briefly in a nutshell try and answer some of what Glenn was asking. Generally, he is asking if the EIS is going to allow the public to have input and what the EIS process is going to accomplish.

Mr. Dill: Sure. For the record, County Engineer, Larry Dill. To answer Mr. Mickens' questions, if I understood them correctly, is first of all, to make clear, the County is paying for this EIS. It is our proposal for our project. I do not think anybody else is going to pay for it. The EIS process is designed to make sure that all the cards are put on the table. As I mentioned, we have to notify all of the interested parties and I think there are three (3) formal steps in the process. There is an Environmental Impact Statement Preparation Notice (EISPN), which is the first, and gets posted on the State Office of Environmental Quality Control (OEQC) website, which basically is a description of your proposal, so that the entire public can see what you are proposing to do. What that does is triggers many communications from folks who are interested or have comments either in support, in opposition, or just commenting on the proposal. The point is to gather all of that information and see how that impacts your proposal. You might modify your proposal or you may decide not to move forward with your proposal, but often in moving forward, which is the case for us, we look at all of that, take that information, and do our best then to mitigate and see what sort of mitigation measures we can put in place with our proposal in order to address some of these concerns that have been brought up. Then you get the next milestone, which would be the Draft Environmental Impact Statement (DEIS). That gets posted on the OEQC website, again, for the entire world to see first how you are proposing to address and respond to those mitigation concerns. You continue through that process, and I will mention that it is through this process that we are working with DOT and they requested, in order to address their concerns, that we go through the typical landfill Wildlife Hazard Assessment Process, so that is why we are in this process now as a result of us posting this information on the website. Theoretically, after drafting the Environmental Impact Statement process, you continue to work with any interested parties, address their concerns, fine-tune any mitigation measures, and incorporate those into a final Environmental Impact Statement document that gets posted with OEQC. The system is designed to elicit public input and I will not deny that I guess it would be possible for somebody doing an EIS to do their best to influence that process, but by the nature of the process, it makes you put all of your cards on the table and it may be a factor in the acceptance of the EIS.

Council Vice Chair Kagawa: That was a very good explanation, Larry. Thank you. I think Councilmembers may have some questions. Let us remind ourselves that the agenda item is to approve a Right-of-Entry to be used in the preparation of the EIS. If we really are going to go deep into the County's plans for Ma'alo, then I think we may be going around the Sunshine Law, so let us try to limit it to at least fall under this agenda item. Thank you. Councilmember Yukimura.

Councilmember Yukimura: I just want to observe that you mentioned a typical landfill Wildlife Hazard Mitigation process. To me, that should have been part of the EIS scope; typical landfill Wildlife Hazard Mitigation process. In my opinion, it should have been within those two million dollars ($2,000,000). I have a question about right-of-entry and access. There is a separate access to the landfill site on State land, and that you do not have to go across Grove Farm property, right?

Mr. Dill: I believe that is correct.

Councilmember Yukimura: Okay. So you do not need Grove Farm's permission for right-of-entry with respect to the landfill?

Mr. Dill: We do for the Wildlife Hazard Assessment. We have various monitoring sites all over the area to look at bird migratory and flight patterns. Those flight patterns go all the way from the airport environment, all the way to that broad area past the landfill.

Councilmember Yukimura: Okay, but is it not related at all to the resource recovery site?

Mr. Dill: No, it is.

Councilmember Yukimura: How is it related?

Mr. Dill: Because the EIS is for all of the attractants. It is a landfill Wildlife Hazard Assessment, but DOT Airports folks are interested in anything that may pose as a wildlife attractant hazard, and there is a potential for wildlife to be attracted to the resource recovery park.

Councilmember Yukimura: So why could you not have included that for the MRF?

Mr. Dill: Well, the MRF is not part of this EIS.

Councilmember Yukimura: Well, the MRF is like a resource recovery activity.

Mr. Dill: I am sorry. It is included for...I am sorry, I was thinking of the MRF that we are pursuing at the Kaua'i Resource Center.

Councilmember Yukimura: I am thinking of the MRF that we are pursuing by the airport. It is just like a resource recovery facility that is going to be proposed there.

Mr. Dill: But that is not part of this particular project. It may be that they might want us to do a Wildlife Hazard Assessment for that. I would argue against that.

Councilmember Yukimura: Well, I think I suggested that you include the MRF in your Wildlife Hazardous Contract so we could get— excuse the pun— "Two (2) birds with one (1) stone."

Mr. Dill: I hear you, but in the FAA Advisory Circular, you will find that it says that a MRF, actually by definition, is not something that constitutes a Wildlife Hazard Assessment.

Councilmember Yukimura: How are you distinguishing a MRF from a resource recovery facility?

Mr. Dill: A resource recovery park that we are proposing at Grove Farm includes many waste diversion things like...A MRF does not deal with household hazardous waste, e-waste, construction & demolition (C&D), or green waste. There are many components at the resource recovery park that are not part of a "typical MRF."

Councilmember Yukimura: There are a lot of questions as to whether a hazardous...like a Comprehensive Hazard and Risk Management (CHARM) should be up there, rather than down below where it is more convenient for people and closer to the harbor where you have to ship it from.

Mr. Dill: Ideally, it would be closer to the harbor. I agree.

Councilmember Yukimura: Well, that is why I have questioned forever the decision to just assume that a resource recovery center will be there. You do not have any other alternatives you are looking at except Grove Farm and the State land, although you said throughout the process that you were looking at other alternatives, but in fact, you are not.

Mr. Dill: We did look. We did that Exclusionary Site Criteria Study to look at all opportunities for siting.

Councilmember Yukimura: For a CHARM?

Mr. Dill: No, for a landfill. I am sorry...for a landfill resource recovery park.

Councilmember Yukimura: No, I am talking about resource recovery activities.

Mr. Dill: Yes, we have not seriously looked at siting a CHARM anywhere.

Councilmember Yukimura: Well, this CHARM is in the resource recovery that you are proposing here. You are not looking at alternatives for a CHARM.

Mr. Dill: We have not looked at alternatives for a CHARM. That is correct. We have only looked at a resource recovery park because this is an opportunity to encompass all of those activities. We have not gone separately and looked for a site to look for a CHARM.

Councilmember Yukimura: Well, I am saying that you are flawing the process because you are not looking at the alternatives for the things that you are looking at the in the resource recovery park up there.

Mr. Dill: Well, I disagree with you.

Councilmember Yukimura: Well, that is not a valid answer to just disagree. What is the reason?

Mr. Dill: Do we want to get into this discussion now? Is that what this is about?

Council Vice Chair Kagawa: Well, I do not think this is on the agenda.

Councilmember Yukimura: Okay, then let us reschedule for another time then. Thank you.

Council Vice Chair Kagawa: Yes, let us properly post the item, so that we do not violate the Sunshine Law.

Councilmember Hooser: I just have one question.

Council Vice Chair Kagawa: Councilmember Hooser has a question.

Councilmember Yukimura: I just want to finish up. This is the insert map right here that shows the road and the two (2) properties, I am assuming.

Mr. Dill: No.

Councilmember Yukimura: Do you want to show us what is what on the map? This is the map attached to the Right-of-Entry Agreement.

Mr. Dill: I am sorry, let me pull up my map.

Council Vice Chair Kagawa: Larry, if I may, maybe you could do a ring around the entire map, so that the public and ourselves know where the proposed landfill and all of its related matters. Then maybe point out the two (2) different entries that we have.

Mr. Dill: This map is not real clear. I apologize. Here is Kūhiō Highway and Kapaia Valley. Ma'alo Road ends *mauka* up here. Generally speaking... I believe this is Kālepa Ridge over here. Further *mauka* up here up in this area is the landfill site.

Councilmember Yukimura: Are we showing the complete map or can we pull the map down? Is that the full map?

Council Vice Chair Kagawa: How about we do a five (5) minute recess, so we can get organized with the maps. Do you have it?

Councilmember Yukimura: Larry might want the five (5) minutes.

Council Vice Chair Kagawa: It looks like the same map actually.

Mr. Dill: Now I see. Thank you, Yvette. This line here is the boundary between the State and private lands. The landfill site is up here and the resource recovery park site on Grove Farm land is approximately here. The access to get to the landfill— if you do not want to cross Grove Farm lands, then you have to take Ma'alo Road all the way up to the boundary, and then come back. Generally, Grove Farm has been working with us— I forget the exact route, but I think it is along this alignment, more or less, to get from Ma'alo Road to this juncture across their agricultural roads to get about here to the landfill.

Councilmember Yukimura: So you do want access across Grove Farm's lands to get to the landfill.

Mr. Dill: Yes, it is definitely more convenient. I said you can get there by following Ma'alo Road all the way to the State property, and then coming back down.

Councilmember Yukimura: Okay.

Councilmember Hooser: I have a follow-up.

Council Vice Chair Kagawa: Councilmember Hooser.

Councilmember Hooser: This important issue— so access through Grove Farm lands is or is not required at the end of the day for this landfill.

Mr. Dill: It is. For this Right-of-Entry?

Councilmember Hooser: So ten (10) years from now, we will have a landfill assuming that spot. To get back and forth ingress/egress to that landfill, does the County need to go through Grove Farm lands or does the County intend to go through Grove Farm lands to get there?

Mr. Dill: We have not finalized that yet, but we could do it without Grove Farm by going all the way up Ma'alo Road until we hit State land, which is a public road, and then coming back down State land. To me, that is not the best solution.

Councilmember Hooser: Okay, so it sounds like Grove Farm access is required in order for us to have an efficient, functioning landfill.

Mr. Dill: It is not required, but it would be better. It would be an improvement.

Councilmember Hooser: Okay.

Council Vice Chair Kagawa: Councilmember Yukimura.

Councilmember Yukimura: It is not practical to go all the way up to the public road, and then turn in a "v" to go to the land, right? It is not practical. You are going to have all of these big trucks doing that?

Mr. Dill: Well, you have to drive up some road to get there. I do not understand why you say that. You say turn in a "v"— at this scale, it certainly looks like a "v," but of course we would make intersection improvements or make that so it is accessible to the trucks. Whatever scale this is certainly looks like it is a "v." As I said, it certainly would be more desirable to go across Grove Farm land to access the landfill.

Councilmember Yukimura: I think we are talking about efficiency, feasibility, operational costs, and all of that, so we are not looking for... in fact, if that is what we are looking for, it is required that we go through Grove Farm land. If we want a functional, efficient operation, then we have to go through Grove Farm land. Would you not say that?

Mr. Dill: No, not necessarily.

Councilmember Yukimura: Hopefully the EIS will give us the costs of doing those two (2) alternatives.

Mr. Dill: Yes.

Councilmember Yukimura: How can you say not necessarily unless you know what the costs are?

Mr. Dill: Because we have not gotten to that point in the process yet. It may just not be an option. I do not know. It would be more efficient if we did not have to do a Wildlife Hazard Assessment, but we have to do it. There are certain things that we have to do to mitigate.

Councilmember Yukimura: No, but in the case of access, you have two (2) options, and if you do not have one option, it may not be feasible. This whole problem is that you never did a feasibility study before you did the EIS.

Council Vice Chair Kagawa: Councilmember Hooser.

Councilmember Hooser: I just have a few more questions. We are talking about the Right-of-Entry Agreement, so you showed us where that right-of-entry would go across on Grove Farm land, right?

Mr. Dill: I do not know the exact points that we would access there. This Right-of-Entry is general enough that if we need to get to other areas, it would allow us to do that.

Councilmember Hooser: So the Grove Farm access option that you pointed out to us— is that a paved road or gravel road? If we use that in the long-term, would we have to do major improvements on that road?

Mr. Dill: Ma'alo Road is a paved road right now. I am pretty sure that everything else up there is a dirt road/agricultural road.

Councilmember Hooser: So all of Grove Farm, that line to go, which is theoretically more convenient, is an unimproved road?

Mr. Dill: Correct.

Councilmember Hooser: So the County would then be tasked with the job of bringing that road up to code or standards.

Mr. Dill: Correct. Whatever access that we ultimately end up with here will have to be improved, yes.

Councilmember Hooser: The benefits of that improvement would extend to the land all along the boundary, I suppose to. I would think that would be an item that should be discussed with Grove Farm if that is what we are going to do. It seems like that would be a tremendous benefit to them.

Mr. Dill: You would have to ask them that question.

Councilmember Hooser: No, the Administration would have to ask them that question because the Administration is the one who is working...

Mr. Dill: Ask them which question?

Councilmember Hooser: Pardon?

Mr. Dill: Ask them which question? Whether the road would be a benefit to them?

Councilmember Hooser: Yes, because we are talking about a private landowner and a benefit that we need from them to do our project and the benefit they are receiving from us to do that project. That, I would think, would be a discussion that the Administration would have with the landowner as part of a negotiation is the point I am trying to make.

Mr. Dill: Yes, good point.

Councilmember Hooser: Thank you.

Council Vice Chair Kagawa: Further questions? Seeing none, thank you, Larry.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion to approve C 2015-74 was then put, and failed by a vote of 3*:1:3 *(*Pursuant to Rule No. 5(b) of the Rules of the Council of the County of Kaua'i, Councilmember Hooser was noted as silent, but shall be recorded as an affirmative vote for the motion; Councilmember Yukimura voting no; Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

Council Vice Chair Kagawa: It does not pass, right? We need four (4) ayes, so it would go to the next Council Meeting. Okay, so we will see this one again. Do you have a question, Councilmember Yukimura?

Councilmember Yukimura: I do not think it goes to the next Council Meeting.

Council Vice Chair Kagawa: Clerk, can you clarify please? What happened was that we have a silent vote that goes with a motion and two (2) votes to approve, so we had basically a 3:1 vote; however, I believe at Council Meetings we need four (4) to approve. Because we do not have four (4), let us check for a status as to when this item will show up again.

Councilmember Yukimura: I think it can go back on the agenda, but I do not think that it just passes to the agenda.

Council Vice Chair Kagawa: I just want to check for the Administration and the public so that they know.

Ms. Fountain-Tanigawa: Vice Chair Kagawa, this is Rule No. 5(e), "At a Council Meeting, if members are evenly divided on any main motion or if there are insufficient votes to carry any main motion because of the absence of a member, the item shall be made the special order of the day for the next regular Council meeting."

Council Vice Chair Kagawa: What date would that be?

Ms. Fountain-Tanigawa: March 11th.

Council Vice Chair Kagawa: So it will show up at the March 11th Council Meeting as the first item of the day. Next item, please.

C 2015-75 Communication (02/11/2015) from the Housing Director, recommending Council approval of a conveyance by the County of Kaua'i to Kaua'i Island Utility Cooperative (KIUC) and Hawaiian Telcom, Inc., for the Rice Camp Senior Housing Project, TMK No. (4) 3-6-004:009, Līhu'e, Kaua'i, Hawai'i, for utility improvements for transmission of electricity and telecommunications, maintenance, repair, and operation of lines, and appurtenances.

- Grant of Easement

Councilmember Yukimura moved to approve C 2015-75, seconded by Councilmember Chock, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

Council Vice Chair Kagawa: Thank you. Next item, please.

CLAIM:

C 2015-76 Communication (02/09/2015) from the Deputy County Clerk, transmitting a claim filed against the County of Kaua'i by Judith C. Page, for damage to her property, pursuant to Section 23.06, Charter of the County of Kaua'i: Councilmember Yukimura moved to refer C 2015-76 to the County Attorney's Office for disposition and/or report back to the Council, seconded by Councilmember Hooser.

Council Vice Chair Kagawa: Next item, please.

COMMITTEE REPORTS:

BUDGET & FINANCE COMMITTEE:

A report (No. CR-BF 2015-09) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2570 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND, HIGHWAY FUND, SOLID WASTE FUND, SEWER FUND, AND GOLF FUND *(Full Funding of OPEB Annual Required Contribution (ARC) - $1,503,504)*,"

Councilmember Yukimura moved for approval of the report, seconded by Councilmember Hooser, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

A report (No. CR-BF 2015-10) submitted by the Budget & Finance Committee, recommending that the following be Approved on second and final reading:

"Bill No. 2572 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF

HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND *(Office of the County Attorney, Special Counsel Account - $650,000)*,"

Councilmember Yukimura moved for approval of the report, seconded by Councilmember Hooser, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

A report (No. CR-BF 2015-11) submitted by the Budget & Finance Committee, recommending that the following be Received for the Record:

"Bill No. 2574 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Relief for the 2015 Tax Year)*,"

Councilmember Yukimura moved for approval of the report, seconded by Councilmember Hooser, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

RESOLUTION:

Resolution No. 2015-22 – RESOLUTION CONFIRMING MAYORAL APPOINTMENT TO THE CHARTER REVIEW COMMISSION *(Cheryl A. Stiglmeier)*: Councilmember Chock moved for adoption of Resolution No. 2015-22, seconded by Councilmember Hooser, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Yukimura	TOTAL – 4,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kaneshiro, Kuali'i, Rapozo	TOTAL – 3,
RECUSED & NOT VOTING:	None	TOTAL – 0.

BILLS FOR SECOND READING:

Bill No. 2570 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS ESTIMATED IN THE GENERAL FUND, HIGHWAY FUND, SOLID WASTE FUND, SEWER FUND, AND GOLF FUND *(Full Funding of OPEB Annual Required Contribution (ARC) - $1,503,504)*: Councilmember Chock moved for adoption of Bill No. 2570 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Yukimura, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Yukimura	TOTAL – 4,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kaneshiro, Kuali'i, Rapozo	TOTAL – 3,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Bill No. 2572 – A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. B-2014-781, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAI'I, FOR THE FISCAL YEAR JULY 1, 2014 THROUGH JUNE 30, 2015, BY REVISING THE AMOUNTS

ESTIMATED IN THE GENERAL FUND *(Office of the County Attorney, Special Counsel Account - $650,000)*: Councilmember Chock moved for adoption of Bill No. 2572 on second and final reading, and that it be transmitted to the Mayor for his approval, seconded by Councilmember Hooser.

Council Vice Chair Kagawa: Glenn, did you wish to speak? I will suspend the rules.

There being no objections, the rules were suspended.

Mr. Mickens: Thank you, Ross. For the record, Glenn Mickens. Six hundred fifty thousand dollars ($650,000)— I just have to keep on wondering "Special Counsel." With the Auditor's thing, thirty-three (33) Executive Sessions and we keep on getting Special Counsel. I just have to question these amounts. I have asked for the numbers on it. I think it was in the millions of dollars that we were spending on outside Special Counsel. Is there not some way that we can more efficiently do this? We have what...seven (7) or eight (8) Deputy County Attorneys? Are they not capable of handling some of this load or is that asking too much from them? It just seems ridiculous that the taxpayers are putting out that kind of money for these outside counsels continually. We cannot keep talking about having these Executive Sessions. I remember when Kaipo and Jay was here, and we kept on going over and over these things with are we really getting enough input to find out why we are having these many Executive Sessions, which I guess that is basically where the outside counsels are coming from. Anyway, this is my question. Somehow I think the people deserve to know why we are spending this outrageous amount of money on outside counsels when I think it can somehow be litigated better. Thank you, Ross.

Council Vice Chair Kagawa: Thank you, Glenn. Anybody else from the public wishing to speak on this matter? Seeing none, I am going to call the meeting back to order. Any discussion members? Councilmember Chock.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Chair, I think it is a fair question that the community has and I would ask our County Attorney just to kind of give us a briefing. I know that there has been documentation that went out to us regarding the request. I think it just helps everyone to kind of understand why we have Special Counsel, and in this case, that leads us to Executive Sessions, and in particular how we are spending this money. Thank you.

Council Vice Chair Kagawa: I will suspend the rules. Mauna Kea, Councilmember Chock has asked for a brief response in a nutshell if you can answer why we need another six hundred fifty thousand dollars ($650,000) for Special Counsel.

There being no objections, the rules were suspended.

MAUNA KEA TRASK, County Attorney: For the record, Mauna Kea Trask, County Attorney. Honorable Vice Chair and Members of the County Council. May I have a moment? I am just bringing up the County Charter real fast.

Council Vice Chair Kagawa: If you need time, we can take a short recess. Do you need one?

Mr. Trask: No, I am good.

Council Vice Chair Kagawa: Okay. Go ahead.

Mr. Trask: I caught the tail-end of Mr. Mickens' testimony. Essentially, under the Kaua'i County Charter, Section 8.06, "The Council may by vote of five (5) members"— so the Special Counsel Account and the contracts entered into pursuant that were approved by this body...this body found the following: "The Council, may by vote of five members, authorize the employment of special counsel for any special matter necessitating such employment. Any such authorization shall specify the compensation, if any, to be paid for said services." An inquiry was made by the body regarding these matters and it came over as a confidential request. It was returned to you as such, so you know the answers to this, but under State law, matters of public purchasing are public record; contracts are public record. Without violating the attorney-client privilege, I am going to answer these questions in that frame, without reference specifically to what was given to you, but nonetheless, I believe Councilmember Chock and this body does understand that these are matters of public information. With that caveat, when I say "may cover the same issues," it is not to be construed to destroy the privilege, essentially.

In this case, there are a couple of reasons why the County Attorney's Office gets Special Counsel. It can be understood for three (3) reasons: one, it is a very complex issue beyond the capacity of the talents of the County Attorney's Office at the time. It does not mean that our attorneys are not competent. They are very competent, but some of these matters are so specialized that they necessitate special employment. One of the examples of, and this body agreed, was a contract with the McCorriston firm for the Wailua National Pollutant Discharge Elimination System (NPDES) issue. That is one of the Special Counsel contracts that we entered into. Our money has been going to them. That account is okay for now, but the reason why that was necessary is because what you are dealing with is a marriage of law and technology, wildlife, chemistry, and all that kind of stuff. That is beyond our capacity, so we contract out for that. Another one was the Sheehan condemnation and issues related to that. That is an older case, too. Others that we entered into were capacity issues, which I do not think...those limitations exist. What I mean by capacity is that we just do not have the amount of litigating attorneys to cover the number of County defendants in the case. I do not think moving forward that that is...we can do more and we have done more to prevent that from occurring in the future. One of the issues that came up, for example, was like the recent Ernie Pasion settled case. There were about three (3) or four (4) defendants: the County itself and various officers and employees in their official and individual capacity. At that time, the office did not have the number of litigators to handle that case, so we had to contract out. We changed strategies in our office. Now we have five (5) attorneys that are largely devoted to litigation; it is the litigation team. Since its inception by January 12th of this year, we were actually able to cancel two (2) Special Counsel contracts and take those cases back in-house, saving about seventy thousand dollars ($70,000) and hundreds of thousands of dollars in future Special Counsel costs. We are looking at those capacity issues. That accounts for some of these. Some cases that we identified were necessary because of capacity like the Gausepohl-White case. That was a capacity case. Another case pending, Eric Shibuya versus the County of Kaua'i— we just did not have enough litigators, so that happened. The third and the most expensive are

really policy disputes. Those tend to be the most expensive because when the County is engaged in litigation against itself, or officers or employees are engaged in litigation against itself, especially high-level ones, the County Attorney's Office found it necessary in the past to remove itself from the issue because the path taken to resolve the issue was litigation. So you are looking at, in these cases, the Police Commission versus the Mayor case; the Tim Bynum case; and even other cases where this body has, according to its own accord, thought that you should seek resolution to certain large questions and emotional questions in front of the judicial system in the Judiciary. Those tend to be expensive resolutions. We want to encourage our decision makers to move away from those cases just because it costs a lot of money. If we can do them in-house or if we can get to a resolution in-house, whether via mediation, having the County Attorney opine, and following the County Attorney's advice and/or even compromise. Leadership and politics is the art of compromise, essentially and ultimately. Generally speaking, that is what it is. I believe that in looking at the numbers, and these are necessary expenses; but again, we have implemented strategies that have costs us nothing that we anticipate will significantly reduce the need for Special Counsel. Like everything, we need our client's assistance. When our advice comes in, we encourage it to be followed and to act conservatively and to ultimately make your decisions in this venue because going to court to decide any policy or political disputes is cost prohibitive.

Council Vice Chair Kagawa: Thank you, Mauna Kea. Mason, you still have the floor.

Councilmember Chock: I just have some follow-up. Thank you. I appreciate those conditions that we are bound by for Special Counsel. I just have a couple of follow-up questions. The question is about how many litigating situations that we had...do you have a figure in terms of how much we have had in total that had to go to Special Counsel and how many we have taken on ourselves?

Mr. Trask: Yes, we have those statistics. Currently...

Councilmember Chock: Maybe you do not have it and that is okay.

Mr. Trask: Yes, we are reducing them. We are moving away from them and we are cancelling a lot. With the recent dismissal of Pasion and Tokuda settlement of those cases, we are definitely tearing it down.

Councilmember Chock: Right, so our County Attorney's Office has taken on a portion of them, the ones that we can, just about all of them. Not too many have gone to the second condition, which is capacity.

Mr. Trask: No, not yet. Since December 1st, we have not requested any Special Counsel authorization from you for new contracts and we have actually cancelled on our end, the Administrative side, two (2) cases with Special Counsel and reassigned those defendants to Deputy County Attorneys.

Councilmember Chock: Great. Just to clarify, you folks have put in a request for your litigation team that has not gone through. How many lawyers were you looking to build with that litigation team?

Mr. Trask: Well, we have actually made the change. I, as County Attorney, have reassigned the duties and responsibilities of the office to divide the office for various reasons into an advice and counsel consisting of currently four (4); we are looking to hire a fifth; and litigation, which is five (5), and

then we are taking those now. It is being used now, so we do not need any further money. You will see our budget submittal regarding what we hope will be sufficient Special Counsel funds for next year, but it is significantly less than what we used in the past. We will ask for your assistance in making that enough.

Council Vice Chair Kagawa: Councilmember Yukimura.

Councilmember Yukimura: Mauna Kea, thank you very much for a very comprehensive explanation about how you are dealing with the Special Counsel need. You said that one of the reasons is when we need specialized knowledge like the condemnation case for Hanalei Black Pot. For the public, it would be like needing a medical specialist. You would not go to a generalist if you need a special kind of expertise, knowledge, and skill. Would you say that it is sometimes cheaper to do it by Special Counsel because if we do not have expertise, then we might have to pay more in the end?

Mr. Trask: Definitely.

Councilmember Yukimura: Okay. The amounts that you are asking does not exceed past budgets? I know we dramatically cut in the last budget, in this year's budget. In fact, you are coming back to ask for some.

Mr. Trask: Yes. This request is to deal with existing Special Counsel cases and outstanding legal fees and costs; the "lion's share" is pertaining to one specific case. What we want to do is move forward. It is allocation of resources, so it is time and money. Regardless of how much money this County has, we will never have more time. Time is a big thing in litigation. Like you said, if you have a specialist who can do...because of the years of expertise...I think an hour's worth of work for them is equal to days of work for us because we actually have to get there in order to understand the issue. Those tend to be less, fewer and far between.

Councilmember Yukimura: Okay. In terms of not having enough litigators, is your office about at equity with the Prosecuting Attorney's Office or do you have less or more?

Mr. Trask: We have less, but they get paid some of theirs with grant funds, but I think they have about two (2) or three (3) more attorneys than us.

Councilmember Yukimura: Okay. They focus on criminal cases. Your attorneys have the gamut of County from Water, Finance, Solid Waste, and all of that, and a much bigger advice and counsel portfolio or demand, right?

Mr. Trask: Correct. I started my practice at criminal and I went to court all the time. I went to jury trials. I thought I did everything, so I thought that coming to the County Attorney's Office would be maybe not easier, but just different. What I learned is when I was in criminal, I dealt with Hawai'i Revised Statutes (HRS) Chapters 700 to 853. Now as a County Attorney, I deal with the Federal Constitution, Hawai'i State Constitution, Organic Act, Hawaiian Homes Commission Act, and HRS Chapters 1 through 699, and some of the criminals for restitution. It is more.

Councilmember Yukimura: Right. I thought it was interesting that you brought up when entities within the County sue each other, that is when you have

to have Special Counsel, too, because the County Attorney's Office is in a difficult position. That solution is conceivably in how we choose the leadership of this County, whether it is through elected or appointed leaders. Would you not say that if we do the good job there, in terms of the leaders we elect and the leaders we appoint, that problem should go down?

Mr. Trask: Yes. There is a degree of civic responsibility, but also for the leaders too, the people put them in their positions. We encourage you to work it out and come to an agreement, or if not, some kind of compromise or solution. Within his first couple of months of entering the County, Councilmember Chock floated a Resolution encouraging mediation and resolution between leaders. That is a great idea and great alternative because putting the question to the Fifth Circuit or the Federal Courts is very expensive.

Councilmember Yukimura: Right. The courts should be the last resort and good leaders will generally try to find those other alternatives.

Mr. Trask: If at all. The three (3) branches of government: Executive, Legislative, and Judicial— as the Legislative Branch, you have an authority to answer your own questions and come to your own decisions. To give that authority to the Judiciary is sometimes a good idea, but you are divesting yourself of power. It is up to you.

Councilmember Yukimura: Okay. Thank you very much.

Council Vice Chair Kagawa: Thank you. Are there any more questions for Mauna Kea? Seeing none, I am going to allow Glenn to come and speak again for his second three (3) minutes because he has had his questions answered and has raised his hand.

Mr. Mickens: For the record, Glenn Mickens. I just want to sincerely thank Ross and Mason for hearing the public and bringing people back up. Sometimes we sit here hours, days, months, and years bringing certain issues up. We do not know whether they are even heard, but the courtesy you had for bringing back two (2) people, whether we agree or not agree, that is irrelevant. The point is that you brought people back up to address what we asked and I do appreciate it. I want to thank Mauna Kea. I think he is going to do a great job as our County Attorney. Thank you, Ross and Mason.

Council Vice Chair Kagawa: Thank you, Glenn. Anybody else wishing to speak on this matter? Seeing none, I am going to call the meeting back to order. Any discussion members? Seeing none, roll call, please.

There being no objections, the meeting was called back to order, and proceeded as follows:

The motion for adoption of Bill No. 2572 on second and final reading, and that it be transmitted to the Mayor for his approval was then put, and carried by the following vote:

FOR ADOPTION:	Chock, Hooser, Kagawa, Yukimura	TOTAL – 4,
AGAINST ADOPTION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kaneshiro, Kuali'i, Rapozo	TOTAL – 3,
RECUSED & NOT VOTING:	None	TOTAL – 0.

Council Vice Chair Kagawa: Next item, please.

Bill No. 2574 – A BILL FOR AN ORDINANCE AMENDING CHAPTER 5A, KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO REAL PROPERTY TAXES (*Real Property Tax Relief for the 2015 Tax Year)*

Council Vice Chair Kagawa: I am going to ask for a motion to defer after the public has gotten a chance to speak on this item. The reason why I am going to be asking for a deferral is because I do not foresee a unanimous vote either way by this body today with the four (4) members. In order for our motion to carry, we would need four (4) votes today on any motion, whether it would be to approve or to kill. I personally do not see that happening, so instead of wasting time on a vote, let us push it two (2) weeks from now and we will have all seven (7) members here to vote on that matter. I think that this Bill is important enough where we should have all seven (7) voting on this anyway. Before we have a motion to defer, I will allow members of the public to speak, and if Councilmembers have any "partying shots," we will allow that. The rules are suspended.

Ms. Fountain-Tanigawa: Vice Chair Kagawa, we have one (1) registered speaker, Gary Pierce.

There being no objections, the rules were suspended.

Mr. Pierce: Gary Pierce for the record. How dare you approve and then not pass the Bill to limit the increase to two hundred fifty dollars ($250). I am going to skip some of my testimony. You have another appointed Department Head from the Department of Finance with no allegiance to the taxpayer, who has constantly brought erroneous information to the Council with no documentation. Letters were sent out, "Very low income tax credit pending legislation. Owner-occupants that have a combined gross income of thirty-five thousand one hundred dollars ($35,100) or less may be eligible for property tax credit limited to total Real Property Taxes (RPT) to three percent (3%) of gross income or minimum tax. They must apply by January 15, 2015 if passed by the Council." "Pending legislation"— anyway, we do not even know. The Bill was passed in January, but you had to apply before December 30th. Who are you working for? The taxpayers' votes by two-thirds majority for a cap, and then the Council sues itself to overturn. You need to control the Administration. You have declined your responsibility. It is defer, defer. Is this depraved indifference or just plain negligence? Anyway, the removal of the cap was based on fairness and social justice; code names for "socialism." Two (2) of the biggest proponents were Tim Bynum, and proven perjurer, and Steve Hunt, with ties to large banks. Or was this done to reduce the interest rate increase due to our downgrading of the one hundred eighty-eight million dollars ($188,000,000) in bonds? Again, this is not a reserve. The County received a refinance. What were the fees for this refinancing? Steve said that we can save money on our interest rates, but what was the fee? Originally, it was calculated between eight million dollars ($8,000,000) and twelve million dollars ($12,000,000) just to get this money. When you refinance, it is not cheap. Nobody brought that forward. That is what I am really concerned about. Where were the fees? Friends and associates of the current government got them? It is misinformation by omission. It is nothing more than crony governments sucking the taxpayers. Anyway, Dr. Savage says, "Liberalism is a mental disorder. Mental illnesses are hereditary, progressive, and contagious, and is clearly evident by the (inaudible) of the Council. In my opinion, government is nothing more than a bunch of scum-sucking parasites off the hardworking people of Kaua'i who is only allegiance is to themselves, big businesses, and the donators. Thank you.

Council Vice Chair Kagawa: Gary, I appreciate your enthusiasm, but you have to watch out on the personal attacks in the future, please.

Mr. Pierce: It is a little difficult because we have to tie it in.

Council Vice Chair Kagawa: We do not need to mention names. We can be a little more tasteful in the way that we are saying that we disagree with votes or...

Mr. Pierce: The Administration.

Council Vice Chair Kagawa: Wherever we go, if you can try in the future. It puts me in a predicament as Chair when I think I would be expected to hit the gavel and I am allowing you to voice your personal freedom, so please...

Mr. Pierce: I appreciate that.

Council Vice Chair Kagawa: Thank you.

Mr. Pierce: My whole thing is where are these fees going? That is my biggest concern.

Council Vice Chair Kagawa: Councilmember Yukimura.

Councilmember Yukimura: It is fine if you ask that specific question, but your personal attacks were, in my opinion, very inappropriate. I would like to ask you to supply information that will back up your personal attack on former Councilmember Bynum. I would like to see actual information that shows that he did what you accuse him of doing.

Mr. Pierce: It was dismissed and he got a payoff from the County.

Councilmember Yukimura: That is not a proven perjury. That kind of language without substantial...

Mr. Pierce: I apologize for that, but there are significant misdeeds going on at this point in time.

Council Vice Chair Kagawa: Gary, the point is that that statement just basically did not have to be made on this item, but that is my opinion.

Mr. Pierce: Then I apologize for that then.

Council Vice Chair Kagawa: Thank you for your apology. Councilmember Yukimura, do you have any more questions?

Councilmember Yukimura: I appreciate the apology also.

Council Vice Chair Kagawa: Councilmember Hooser.

Councilmember Hooser: You are symbolizing with your remarks, unfortunately, a community dialogue that has been going in the wrong direction, in

my opinion. I would appreciate it if you and everyone else address the issues and not the personalities. That is the way parliamentary procedure is supposed to work. "Scum-sucking parasites"— accusing us of being that...

Mr. Pierce: No, it was the Administration.

Councilmember Hooser: No, but anyone; any individual. This is not appropriate. It does not teach our children good lessons when they are talking, trying to get things accomplished. Let me finish. People are watching this; people's mothers, grandmothers, and children. We need to look at examples we set for the community. I would hope that our community would get together and have conversations about the issues and respectfully agree or disagree, and not call each other names. I would appreciate if you in the future could just try to focus on that. I know we all get passionate and we get carried away sometimes, but I think it would be really good for all of us and our community if all of our testifiers and people would just think a little bit more about the words that you use because words matter and words can be hurtful. Thank you very much.

Council Vice Chair Kagawa: Thank you. Anyone else from the public wishing to speak on this? Seeing none, discussion members? Councilmember Chock.

There being no objections, the meeting was called back to order, and proceeded as follows:

Councilmember Chock: Thank you, Chair and Councilmembers, for just reiterating what my feelings are as well. I think that a lot of people come with really good information, including Mr. Pierce, of some things that I think are valid and I think the message sometimes get lost when we add some of the negative remarks. I think that we can do it in a different way and a different approach. With that being said, regarding the specific Bill, I am happy for a deferral. As I mentioned before, I would be more considerate of a less drastic measure that perhaps we could look at as a next step in alleviating some of the concerns of people who were unsure will get this next hike that might be unforeseen. My questions to the Administration...our Director of Finance last time said that they would get back to us with some information, so I am looking forward to that to see how we can sort of forecast where we are going with this. The other area was this constant conversation on the need for tax reform and the possibility of creating a Tax Task Force. My interest, as I had mentioned, is really to look at if we are going to move in this direction that has been outlined and identified as tax reform over the past few years, then I am strongly suggesting that we figure out a way to measure its effectiveness, so that we are not blindsided by future unforeseen tax implications. Thank you, Chair.

Council Vice Chair Kagawa: Thank you. Further discussion? Councilmember Yukimura.

Councilmember Yukimura: I have a question for Councilmember Chock because I feel like I agree with this approach. Are you saying that if we form a task force, its first action should be to evaluate what we have in place in terms of its effectiveness to address the various issues that have been raised regarding property taxes?

Council Vice Chair Kagawa: You can answer her question, and then she can continue her discussion.

Councilmember Chock: I know that there is a lot of interest around the table, in terms of tax reform, and that is why I am bringing up this specific subject because I do not want it to get lost in the discussion. That is really just my point. If there is an interest of moving towards this group to look at tax reform, then at the very least, let us balance that with identifying what is working and what is not working currently.

Councilmember Yukimura: I just want to say that with that clarification that I agree totally that we should really look at what we have right now, in terms of what is working and not working. Thank you.

Council Vice Chair Kagawa: Thank you. Councilmember Hooser.

Councilmember Hooser: Thank you. First thing, I am supposed to be off-island on March 11th, so I may not be able to attend that meeting. I do not know if there is another...obviously, I would like to be here when that is discussed, so we can think about that maybe before we conclude the motion, whether it could be a special council meeting or some other meeting. This is not my "parting shots"— I am just joking. You asked earlier if anybody had any parting shots. This is an ongoing discussion in the spirit of what we do. I see this measure as a couple of reasons. It is a way to hold the Administration accountable and to require them to budget with one million dollars ($1,000,000) less of revenue, so it is a preemptive move to get them to budget tighter and without increasing any property taxes on owner-occupied properties. To me, this is the reason it was proposed. It protects homeowners, requires them to do it, and precludes us having to do it during the budget time. Having said that, if this measure was passed, and I would support passing it tied to some kind of measures as proposed by Councilmember Chock in conjunction with that, but at least it is leveraged or it is pressured to say, "Okay, we have to do something about it. In the meantime, we are going to freeze taxes while we figure it out and come to a conclusion." I would support amending it in that way or other amendments, but it is a way to, for a want of a better way to say it, force the Administration to budget tighter and force all of us to not continue to delay the hard look that we need to take on our tax situation. Thank you.

Council Vice Chair Kagawa: Thank you. I just want to say that in response to Councilmember Hooser's request, the best I can do is bring it up to Chair Rapozo prior to the next Council Meeting and we can say that you have requested another deferral. If he, as Chairman, can foresee that the measure is going to be strongly voted against, then I think it is in his purview to say, "Let us just take the item up," and not in disrespect to you, but if there are five (5) or six (6) votes against already, then I think it may be just prudent to take up the measure. I understand you wanting to be there because it is your Bill. Hopefully, for your sake that Council Chair Rapozo will say, "There is not a time rush, so let us defer it for another two (2) weeks." I would be fine with that as well. Councilmember Yukimura has her hand up.

Councilmember Yukimura: I have a suggestion.

Council Vice Chair Kagawa: Go ahead.

Councilmember Yukimura: I understand that Councilmember Hooser will be here next week and I think the other Councilmembers will be back as well. We could do a special council meeting before our Committee Meeting, and we would

have everyone here. Can we not do this, Staff? I feel it is important to have everybody here on this thing.

Council Vice Chair Kagawa: My suggestion would be that we just get it on the next Council Meeting and I will let Councilmember Rapozo know that Councilmember Hooser wanted a two (2) week deferral. I think at the end of the day, the right decision will be made. I would expect that it would be granted.

Councilmember Yukimura: We could also just defer— and I hear the Staff's concern. We have a really frontloaded meeting and some people coming with time specific times, but this matter could be at the end of the agenda or a special council meeting after our Committee agenda. We could defer it to then, instead of the meeting on the 11th.

Council Vice Chair Kagawa: Again, we would need a unanimous vote to do what you are saying and what I am suggesting is different again. Councilmember Hooser.

Councilmember Hooser: A compromise can be that if this item is the first item on the agenda on the 11th, then I will relook at my schedule and it is likely that I can do that.

Council Vice Chair Kagawa: If it was the first item?

Councilmember Hooser: Yes.

Council Vice Chair Kagawa: I will make that request. As Vice Chair, I will approve it going on as the first item or make that request to Council Chair Rapozo.

Councilmember Hooser: I have a flight schedule that I can rearrange.

Council Vice Chair Kagawa: Thank you. Anymore discussion? I just want to wrap up by saying that in response to Gary, I appreciate the enthusiasm when speaking about tax bills because there are a lot of people out in the public that are adamant about our tax system having a lot of problems and a lot of problems with our government spending and a lot of things that you brought up. I would say that my preference is to have the regulars here know where the boundaries are because I think you are the ones that speak the most and I think the people appreciate you coming up and being the "watchdogs," as you would say. By keeping the personal attacks to a minimum or not doing it at all. There is a way to curb your testimony, so that you can get the message across without getting personal because when we are on the "short end of the stick" and being attacked, it does not feel good. It has been said many times by many members that we all have different opinions when it comes to different matters and when you are trying to do your job the best up here and you get attacked as being "self-serving" or what have you, it hurts. Definitely, I think when we run for public office, we just want to do our best up here and do what the voters elected us to do. Sometimes, people do not agree, but we feel like we get personally attacked, it is hurtful. With that, can we have a motion to defer?

Councilmember Hooser moved to defer Bill No. 2574, seconded by Councilmember Yukimura, and carried by a vote of 4:0:3 *(Councilmember Kaneshiro, Councilmember Kuali'i, and Council Chair Rapozo were excused).*

Council Vice Chair Kagawa: Before I adjourn this meeting, I just want to announce that we have a 1:30 p.m. public hearing, so members please be back on time at 1:30 p.m. With that, we will adjourn the meeting.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 10:31 a.m.

Respectfully submitted,

RICKY WATANABE
County Clerk

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