



amending Section 31 relating to funds budgeted for salaries, I circulated a memo from Mayor Asing asking that we defer these for one Committee meeting. Can we have a motion to defer?

Ms. Iseri-Carvalho: If there's no discussion and public testimony.

Mr. Kouchi: Any hands? Seeing none, we'll defer these for one meeting. Can we have the motion now?

Upon motion duly made by Councilmember Bynum, seconded Councilmember Iseri-Carvalho, and unanimously carried, Bills Nos. 2268 and 2269 were deferred to the August 6, 2008 Committee meeting.

**CR-W 2008-13:** on Bill No. 2270 AN ORDINANCE AMENDING ORDINANCE NO. B-2008-672, AS AMENDED, RELATING TO THE OPERATING BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (Parks & Recreation Improvement and Maintenance Revolving Fund)  
**[Approved.]**

**CR-W 2008-14:** on Bill No. 2271 A BILL FOR AN ORDINANCE TO AMEND ORDINANCE NO. B-2008-673, AS AMENDED, RELATING TO THE CAPITAL IMPROVEMENTS BUDGET OF THE COUNTY OF KAUA'I, STATE OF HAWAII, FOR THE FISCAL YEAR JULY 1, 2008 THROUGH JUNE 30, 2009, BY REVISING THE SURPLUS AND APPROPRIATIONS ESTIMATED IN THE GENERAL FUND (\$200,000 - Energy Sustainability Study and Plans, Office of Economic Development)  
**[Approved.]**

**ES-347** Pursuant to Haw. Rev. Stat. §§92-4 and 92-5(a)(4), (6) and (8), and Kauai County Charter section 3.07(E), the purpose of this executive session is for the Council to consult with legal counsel regarding claims and/or potential claims and all other claims and/or potential claims relating to the repair, removal, and/or maintenance of the seawall fronting the Pono Kai Resort in Kapa'a and related claims and/or potential claims arising therefrom. 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.  
**[Received for the record.]**

Mr. Kouchi: On ES-347, which was about the Pono Kai Resort, the County Engineer is out sick today, so we won't be dealing with this matter. Before entertaining Councilmember discussion, Glenn, did you still want to address this matter?

(Inaudible.)

Mr. Rapozo: Ron, I have a comment real quick. Because I don't...the executive session is posted to meet with our Attorney, not with Donald. So I wanted to ask the Attorney to come up and find out...I just had some questions for the Attorney in open before we go in because it's not about talking to Donald.

Mr. Kouchi: Oh, okay, I'm sorry.

Mr. Rapozo: It's about talking to our Counsel.

Mr. Kouchi: I misunderstood. Then before we hear from the Attorney, I'll suspend the rules. Glenn.

There being no objections, the rules were suspended.

Mr. Rapozo: But we may very well not go, I just...

Glenn Mickens: Thank you, Ron. You have a copy of my testimony.

Mr. Kouchi: Yes.

Mr. Mickens: I know we're making some headway on this issue slowly, but we take a step forward and in my estimation, we're kind of taking a step backward. Executive meeting 347 is another illustration of the distorted expansion that this Council is attempting to take in its privilege to hold secret meetings. The notice of the meeting, this meeting today is defective in that it does not identify a single claim that has been asserted. It is obvious that the meeting is not proposed to consider any specific claim but rather the gamut of possible legal risks that the County may have as it pursues its intended course of action. While this information may be of value to the Council, it is unnecessary and improper to seek it in a closed session as the public is entitled to it also. Why does the Council continue to act in utter disregard to the public's right to know?

Also, as I stated at the last Council meeting, 3.07(E) has been added to each proposed executive session, certainly a step in the right direction. But why, in the general wording of executive session, is 3.07(E) left out of the reasons for holding the session? Is this an oversight or something that the public is purposely kept from knowing? And since Ken and I have been relentlessly pursuing your acknowledgement of 3.07(E) for months, don't you think that as a courtesy to both of us and to the viewing public someone on this Council would have told us why this body has been advised to do as we have stated for so long? Either this body or our Deputy County Attorney over here. You know, like I said, it's a step in the right direction. At least you're noticing that 3.07(E) is the rationale for going into executive session for one reason and one reason only, for claims, and I just wondered, what, you know, how do, it just all of a sudden started appearing on the agenda, but we never heard anybody come up and say why it's appeared on the agenda.

Mr. Kouchi: Councilmember Yukimura.

Ms. Yukimura: I told you at several meetings ago that it was because we heard what you were saying. That's why we, I'm guessing, but that's, I'm saying listen, you were heard. And also, this thing does say regarding claims and/or potential claims. Now there's a question of how that actually applies...

Mr. Mickens: Ambiguity, yes.

Ms. Yukimura: But the announcement does say that. I thought I heard you say that the announcement doesn't say or the...

Mr. Mickens: (Inaudible) No specific claim. It doesn't, it just says for claims...

Ms. Yukimura: Okay, so your, your position or your statement says that it doesn't...

Mr. Mickens: Exactly.

Ms. Yukimura: ...name a specific claim.

Mr. Mickens: Exactly.

Ms. Yukimura: Okay, thank you.

Mr. Mickens: And, you know, JoAnn, I thought, you know, well, maybe Harrison would come up here and say we've decided to add 3.07(E) to the agenda because...

Ms. Yukimura: What does...

Mr. Mickens: ...we now feel that it's the proper thing to do for whatever reason.

Ms. Yukimura: Well, obviously it's the proper thing to do because it's being done.

Mr. Mickens: Yeah, but I mean, don't you usually, for after four or five or six or seven months, have the courtesy to say we've added it for whatever reason, not just stick it in there and all of a sudden it just appears and that's the reason. I see what you're saying, but, you know, it didn't make that much sense to me, that's all. Anyway, thank you.

Mr. Rapozo: I get one, Ron, real quick question.

Mr. Kouchi: Okay, thank you. Mr. Kawate.

Mr. Rapozo: No, I have a question for Glenn.

Mr. Kouchi: Oh, for Glenn.

Mr. Rapozo: Glenn, you remember the last meeting this came up?

Mr. Mickens: Right.

Mr. Rapozo: And this issue was requested by the County, I mean by the Administration, by Donald wanting to go into executive session.

Mr. Mickens: Yeah.

Mr. Rapozo: It was this Council's questioning of the purpose of going into executive session.

Mr. Mickens: I remember the statement.

Mr. Rapozo: Kind of what you were asking...

Mr. Mickens: Right.

Mr. Rapozo: That's what we did.

Mr. Mickens: Yes.

Mr. Rapozo: We said no. I informed our staff to post an executive session on this item so we can find out from the County Attorney...

Mr. Mickens: Right.

Mr. Rapozo: ...if in fact it warrants an executive session.

Mr. Mickens: Right.

Mr. Rapozo: I said that last meeting, I said that today before the meeting, but you, you make that statement about a secret meeting. No, Donald, at the last meeting, was not willing to expose the purpose live and in public.

Mr. Mickens: Right.

Mr. Rapozo: So, we're gonna do that. I'm gonna ask Mr. Kawate in open session first of all and if it requires us to go in, we'll go in. But like I said at the beginning of this meeting today, if I'm not comfortable that the issues discussed should be in executive session...

Mr. Mickens: Sure.

Mr. Rapozo: I will leave the executive session.

Mr. Mickens: Right, right.

Mr. Rapozo: They need five people to continue an executive session and I hope if in fact it's not executive session material, that somebody else will leave.

Mr. Mickens: Well, I think you and Shaylene both brought that subject up (inaudible)...

Mr. Rapozo: And that's, that's what I'm saying here. Glenn, we are trying to accommodate your request.

Mr. Mickens: Yeah.

Mr. Rapozo: And when we do that, you come up and you criticize us.

Mr. Mickens: Right.

Mr. Rapozo: For try and I, this is, we're doing this because that's what you wanted us to do.

Mr. Mickens: Well...

Mr. Rapozo: I am trying to address your concern and saying...

Mr. Mickens: Right.

Mr. Rapozo: Mr. Mickens, I agree with you.

Mr. Mickens: Yes.

Mr. Rapozo: Let's find out if in fact this is an issue that requires and warrants an executive session. But if Donald...I'm not going to force Donald to expose something...

Mr. Mickens: Yeah.

Mr. Rapozo: ...that may be...

Mr. Mickens: Right.

Mr. Rapozo: ...confidential, privileged information.

Mr. Mickens: Right.

Mr. Rapozo: So, we do it this way.

Mr. Mickens: Yeah.

Mr. Rapozo: And you just gotta have faith in this body that when we go in executive session if in fact it's something that we feel should be there, it'll stay. If not, it'll come right back out. And that's why we have a public posting in my Committee and an executive session posting in the Committee of the Whole.

Mr. Mickens: Right.

Mr. Rapozo: To address your concern.

Mr. Mickens: Right.

Mr. Rapozo: So I was hoping you would come up and say, "Thank you, Mr. Council, for addressing my concerns," but instead you came up here and said you guys are trying to sneak us in, into another secret meeting. That makes no sense and I had to bring that up because...

Mr. Mickens: Sure.

Mr. Rapozo: I am trying to address your concerns...

Mr. Mickens: Right.

Mr. Rapozo: And this Council is trying, so.

Mr. Mickens: Right.

Mr. Rapozo: With that, give us a break. We're gonna have  
Mr. Kawate come up. I'll ask some questions so that you can hear and if in fact it is  
the recommendation, then we'll go.

Mr. Mickens: Well, the only criticism I had today basically wasn't  
what you're saying. It was that I'm saying that I don't see anything that does say  
claim. It says potential...

Mr. Rapozo: And neither do I and that is why I'm asking the  
question.

Mr. Mickens: Right, right and I applaud you for that.

Mr. Rapozo: Thank you.

Mr. Mickens: Thank you.

Mr. Kouchi: Thank you for that violent agreement. Ken.

Ken Taylor: Chair and members of the Council, my name is Ken  
Taylor. I will say thank you for trying to meet the questions that we've been  
raising, but I still have real problems with you continuing to put things like  
92-5(a)(4), (6) and (8) on the agenda. I think it's 92-7(1) makes it very clear. It says  
that if the Charter is more stringent than State law, you will follow the Charter.  
There's nothing in the Charter that sends you back to 92-5(a), (4), (6), or (8). That is  
the issue that continues to come up on this agenda and again you have made it very  
clear to us that you're not prepared to give us an answer to why you are not  
following the State law and the Charter. Thank you.

Mr. Kouchi: Thank you. Mr. Kawate.

Harrison Kawate, First Deputy County Attorney: Aloha Kakahiaka.

Councilmembers: Aloha.

Mr. Kawate: Chair, Councilmembers, Harrison Kawate, Deputy  
County Attorney.

Mr. Rapozo: May I proceed, Mr. Chair? Mr. Kawate.

Mr. Kawate: Yes, sir.

Mr. Rapozo: Have you been in communication with Public  
Works regarding this issue?

Mr. Kawate: I was informed that they had requested a posting  
for executive session and that a previous executive session had been held briefly.  
And that's...

Mr. Rapozo: And that's the extent of your involvement?

Mr. Kawate: The issues that surround Pono Kai seawall, there are some claims and some potential claims that arise from dealing with the reparations and the condition of it right now, and so there are specific issues. However, the range or areas of inquiry that the Council may have, indeed, may not be included, but I cannot speak for the County Engineer at this point.

Mr. Rapozo: Well...

Ms. Iseri-Carvalho: (Inaudible.)

Mr. Kawate: It would be pure speculation at this point.

Mr. Rapozo: Yeah and I guess that was my concern. My request, if in fact if you look at our posting, is really action plan, timeline, and cost. That and granted there may be some issues that raise some concern as far as liability or some kind of claims against the County, I don't know that. I had hoped that you would have been apprised of that situation, that information that we could proceed with our consultation with your office without Mr. Fujimoto here. That should have been done prior to today's meeting so that you would be here prepared, in fact, to answer some of the questions. My biggest concern, what I really wanted from you was what can we discuss in open and what can't we discuss in open based on the posting. And I'm not sure you're prepared...

Mr. Kawate: Correct.

Mr. Rapozo: Correct that you're not prepared?

Mr. Kawate: Correct.

Mr. Rapozo: Then, I guess, Mr. Chair, there's no sense in going into executive session if he's not prepared. But I would ask that before the next executive session that he gets prepared.

Mr. Kawate: Well...

Mr. Rapozo: Because it's, it really, even if Donald was here...

Mr. Kawate: Well, if I may, the executive session may go forward or should go forward with interested parties who may lend insight into the discussion, and unless and until he is present, you know, and how far the inquiry goes and what areas it goes into, then without him being present it's a moot point for us.

Ms. Yukimura: Right.

Mr. Rapozo: Yeah, that was my point. And I guess it's frustrating to me that when he's gone, we cannot have the deputy here or somebody else that may have and it's not directed to you. It's just that it seems that you would have some continuity going forward. And because he went home sick, it should not stop the process and I'm not sure if the deputy has any information regarding this matter. I think if it's, if it rises to the level of requiring an executive session, you would think that there was a little bit more people involved in this project than just Donald and that, in fact, his deputy should be informed at least semi-informed enough to give us some insight for you to help us make a decision what we need to do, but, you know, it is what it is. What are we gonna do?

Mr. Kouchi: And I assume there's a project manager involved.

Mr. Rapozo: Well, I don't know. You know, it's hard when nobody's here.

Mr. Kouchi: But that's just an assumption.

Mr. Rapozo: Yeah and it's, you know, I learned that long ago, Ron, I think from you, never assume. So, you know, I guess, we'll...I guess going into executive session at this point is useless, but when we get back to my Committee, we can have some discussion with that. Thank you.

Mr. Kouchi: Thank you. Ms. Yukimura.

Ms. Yukimura: Yeah, it seems, based on what Mr. Kawate says, it really, there's no basis to go into executive session this time. I have a question, though, if you don't mind.

Mr. Kouchi: And I do have one when the other members are completed, Mr. Kawate.

Mr. Kawate: I'm sorry.

Ms. Yukimura: So, I'm just wanting to be clear about the process the next time and I would guess that if there is an executive session posted, that the attorneys have talked to, they, you have determined either independently because of work you're doing around the issue that there needs to be an executive session or that in the discussion of an open session item there might be some discussion that should be executive session matters and you would then be able to certify that, like you just did, that there could be certain issues and claims around the Pono Kai wall and that that would be legitimate for going into an executive session. But in the executive session, if items come up that are not legitimately executive session matters, you would alert the Council immediately that they would have to be discussed in the open floor, right? Because I mean, I don't know that you can make a determination out in the open before the conversation starts...

Mr. Kawate: Oh, I, I believe...

Ms. Yukimura: ...what's executive and what's not.

Mr. Kawate: I believe at that point, it would be within the prerogative of this Council to take it up in open. I don't believe...

Ms. Yukimura: Mm-hm, mm-hm.

Mr. Kawate: ...because of the nature of advice and counsel, that he can effectively redact one portion from another without...

Ms. Yukimura: I, I...

Mr. Kawate: ...removing the privilege of., in other words, the necessity of going into executive session.

Ms. Yukimura: I totally agree and so as you have in the past, you know, you'll say this is not, in the executive session itself, you'll say this is not an executive session matter, stop the conversation, and we would go out into the open...

Mr. Kawate: Well...

Ms. Yukimura: ...meeting to have a conversation...

Mr. Kawate: Well...

Ms. Yukimura: ...about that particular aspect.

Mr. Kawate: I believe when I made that statement previously, it related to matters that didn't apply to the particular issue and it went beyond the scope of the powers of the Council itself. And that's, that was, I believe, the scope of my statement. So...

Ms. Yukimura: Okay.

Mr. Furfaro: Let me, if I may.

Ms. Yukimura: Sure.

Mr. Furfaro: Let me just share this with you. I think in the future and as Council Chair, I would strongly recommend that if a division head indicates that they believe they have a matter that requires an executive session that I am going to insist that they have a consultation period with your office...

Ms. Yukimura: Mm-hm.

Mr. Furfaro: ...in advance of this meeting. You know, we post it for six days. If they feel it is something that warrants an executive session, perhaps they should initiate on their own to meet with your office and I will strongly recommend that in going forward. Excuse me for being out of line, Mr. Committee Chair.

Mr. Kouchi: No, it's, once you changed the "insist" to "recommend strongly," then you're fine.

Mr. Furfaro: I insist.

Mr. Kouchi: "Strongly recommend" that they do. Any other questions for Mr. Kawate? I guess, the only question I had is that if something, perhaps, would have been more appropriately discussed in executive session but was already discussed publicly, isn't that now a matter of the public record?

Mr. Kawate: Presumably.

Mr. Kouchi: And part of my concern is that we have had several wide-ranging discussions on this matter over the course of the past year or so that year and a half that I've been here, and there are a couple of items that I thought that were more appropriately discussed in executive session relative to this process involving Pono Kai that have been discussed on the floor. And so I don't necessarily

know that it would be appropriate to discuss something that has already been discussed publicly in executive session either, so. That would be one of my concerns...

Mr. Kawate: Noted.

Mr. Kouchi: ...in trying to just appropriately apply what is appropriate for executive session or not, so. Thank you, Mr. Kawate.

Mr. Kawate: Thank you.

Mr. Kouchi: The meeting is called back to order. Can we have a motion to receive ES-347.

There being no objections, the meeting was called back to order.

Mr. Bynum: Move to receive.

Ms. Yukimura: Second.

Mr. Kouchi: Moved and seconded. Discussion? I'll just say the reason for not asking for a deferral is based on the recommendation of the Council Chair and, you know, the discussion with the County Attorney. There is no assurance that this matter would be back unless there is some action taken by the County Engineer or members of that department. And while we can strongly recommend that they do it, should they fail to do it, then we are not required to post anything and we simply can choose not to post it to try and correct the action so that we can have, you know, what we'd like to have take place before we get to the meeting. So, with that, any objections to the motion to receive? Hearing none, so ordered.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Yukimura, and unanimously carried, ES-347 was received for the record.

**CR-W 2008-15:** on C 2008-172 Communication (06/13/2008) from Councilmember Jay Furfaro, requesting agenda time to initiate discussion on a policy for public release of future County Attorney opinions provided to the Council as a body.  
**[Received for the record.]**

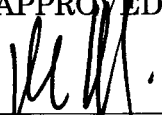
There being no further business, the meeting was adjourned at 12:31 p.m.

Respectfully submitted,



Wilma Akiona  
Secretary

APPROVED at the Committee Meeting held on August 6, 2008:



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RON KOUCHI  
Chair, Committee of the Whole