

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

September 3, 2010

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Committee of the Whole, having met on August 19, 2010, makes reference to County Communication No. 09-14, from Michael J. Molina, Chair of your Committee, regarding litigation matters submitted by the Department of the Corporation Counsel.

By correspondence dated July 27, 2010, the Department of the Corporation Counsel requested consideration of the possible settlement of County of Maui v. Molokai Properties, Ltd., et al., Civil No. 08-1-0493(1). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MOLOKAI PROPERTIES, LTD., ET AL., CIVIL NO. 08-1-0493(1) AND AUTHORIZING THE PURCHASE AND LEASE OF CERTAIN REAL PROPERTY PURSUANT TO SAID SETTLEMENT". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that the complaint alleges breach of various agreements and breach of the implied duty of good faith and fair dealing.

A Deputy Corporation Counsel and Special Counsel Margery Bronster provided a brief overview of the case, and noted that proposed settlement terms would require that Molokai Properties, Ltd., continue to comply with all obligations relating to wastewater and water services; cease and desist from asking that the County take over wastewater and water services; pay the County \$250,000; convey to the County, for the sum of \$1, the Kualapu'u Park and Community Center; and extend, for five years, two leases of park land in Kaunakakai for \$1 per year each lease.

The Deputy Corporation Counsel and Special Counsel Bronster requested the opportunity to discuss the matter in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting for the purposes of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

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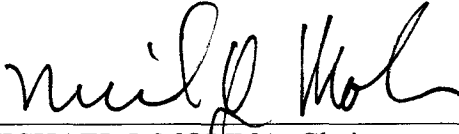
Following the executive meeting, your Committee reconvened in regular session. In regular session, the Department of the Corporation Counsel distributed a document entitled "TERM SHEET" that details the essential settlement terms agreed to by the parties, subject to the approval of the Council. The Deputy Corporation Counsel explained that a final settlement agreement has not been completed yet, and that there are some non-essential terms that are still under discussion.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 6-1 to recommend adoption of the proposed resolution. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Pontanilla, and Victorino voted "aye". Committee member Nishiki voted "no". Committee members Medeiros and Kaho'ohalahala were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions and attaching the document entitled "TERM SHEET".

Your Committee of the Whole RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MOLOKAI PROPERTIES, LTD., ET AL., CIVIL NO. 08-1-0493(1) AND AUTHORIZING THE PURCHASE AND LEASE OF CERTAIN REAL PROPERTY PURSUANT TO SAID SETTLEMENT" be ADOPTED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



MICHAEL J. MOLINA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF COUNTY OF MAUI V. MOLOKAI PROPERTIES,
LTD., ET AL., CIVIL NO. 08-1-0493(1) AND AUTHORIZING
THE PURCHASE AND LEASE OF CERTAIN REAL PROPERTY
PURSUANT TO SAID SETTLEMENT

WHEREAS, on August 29, 2008, the County of Maui filed a lawsuit in the Second Circuit Court against Molokai Properties, Ltd., formerly known as Molokai Ranch, Ltd.; Wai`ola o Molokai, Inc.; Molokai Public Utilities, Inc.; Kaluakoi Water, LLC; Kaluakoi Land, LLC; MOSCO, Inc.; Kaluakoi Sewer, LLC; Cooke Land Company, Inc.; John Does 1-10; Jane Does 1-10; Doe Entities 1-10; Doe Partnerships 1-10; and Doe Governmental Units 1-10, Civil No. 08-1-0493(1), seeking declaratory and injunctive relief, attorneys' fees, and damages resulting from Molokai Properties, Ltd.'s threat to shut down its wholly-owned utilities that provide water and wastewater service to certain areas of Molokai, and from Molokai Properties, Ltd.'s demand to the County that the County take over and operate the utilities; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this matter under the terms set forth in Exhibit "A"; and

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WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, has met with representatives of the defendants and has reached a tentative resolution of the case, subject to approval by the Council of the County of Maui; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of the tentative resolution of this case by the Department of the Corporation Counsel, the Council wishes to authorize the settlement; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby approves settlement of this matter under the terms set forth in Exhibit "A"; and

2. That it hereby authorizes the Mayor to execute a Settlement Agreement on behalf of the County in these matters, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

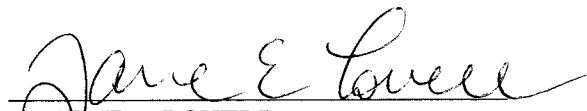
3. That as a part of the settlement and pursuant to Maui County Code Section 3.44.015, it hereby authorizes the purchase of approximately 6.773 acres of land in Kualapu`u as more fully

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described in Exhibit "A" for the sum of ONE DOLLAR (\$1.00), and further authorizes a five-year extension of two leases of park land in Kaunakakai, as more fully described in Exhibit "A", at a cost of ONE DOLLAR (\$1.00) per year for each park; and

4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

TERM SHEET

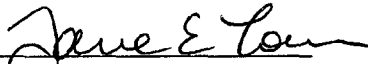
Re SETTLEMENT OF COUNTY OF MAUI V. MOLOKAI PROPERTIES, LIMITED
Et Al. Civil No. 08-1-0493 (Second Circuit)

Subject to approval by the County Council and Mayor, and with the understanding and agreement of the parties that counsel for all parties recommend these terms, and the Court having reviewed the record and the positions and submissions of the parties and having concluded that the settlement terms set out below are fair and equitable to all parties, the terms of the agreement are as follows:


1. Defendants shall pay the County the sum of \$250,000, payable in two equal installments of \$125,000, the first payment to be paid within 10 days after the last required County approval of this settlement and the second installment no later than six months thereafter;
2. Defendants shall convey to the County for the sum of \$1 the Kualapu'u Park and Community Center (TMK 5-2-028-098), all closing costs paid by the County;
3. Defendants shall extend the leases to the County for a period of 5 years from August 1, 2010 at \$1 per year per park for two parks: (a) (Tennis Court parcel and Skate Park & Soccer Field (TMK 5-3-002-167) and (b) Little League and High School Ballfields (TMKs 5-3-002-097, 5-3-002-094, 5-3-002-105) Any ambiguity or uncertainty with respect to the property descriptions of what is intended to be conveyed or leased by paragraphs 2 and 3 shall be resolved by further agreement under the auspices of Judge August if necessary;
4. The parties agree to meet to discuss issues of mutual concern between the County and Defendants. The meetings will take place at the request of Defendants at a mutually agreeable time and place not less than or more than once every six months unless the parties otherwise agree, for a period of five years from August 1, 2010. Each party shall be represented in the meetings by appropriate personnel and/or officials based on the topic or topics to be discussed;
5. Defendants shall continue to comply with all obligations relating to wastewater and water services in accordance with the contracts attached to the First Amended Complaint in Civil No. 08-1-0493, which are adopted and incorporated into this settlement by reference and may be enforced by the County through a motion before the Court to enforce settlement, without a jury. Defendants further reiterate and agree that they shall not request that the County take over or operate any Molokai water or wastewater utility service;
6. Upon final execution of the settlement agreement, the lawsuit shall be dismissed with prejudice with the Court to retain jurisdiction to enforce the settlement;
7. This term sheet shall be memorialized in a more detailed written agreement consistent with the terms and conditions set forth above, which all parties shall execute upon or before final approval by the County, with County attorneys to generate a first draft by August 6, 2010, and Defendants to provide comments and revisions by August 13, 2010, with final agreement as to form no later than

August 23, 2010. Any disagreements over the language or form of the final agreement shall be submitted to Judge August for binding resolution;

8. With the approval of the Court, discovery, pretrial motions and all other pretrial deadlines are stayed pending execution by all parties of the final agreement, however, the case shall remain set for trial on October 25, 2010, unless and until the final settlement is signed by all parties. The County's attorneys shall request that the settlement approval be placed on the agenda of the Committee of the Whole at the earliest practicable time.


JANE E. LOVELL
Deputy Corporation Counsel
COUNTY OF MAUI

Date: 7/23/2010


PETER NICHOLAS
Executive Director,
MOLOKAI PROPERTIES, LIMITED

Date: July 23, 2010