

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

May 10, 2011

Committee
Report No. _____

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

Chair and Members:

Your Policy Committee, having met on April 15, 2011, makes reference to County Communication No. 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated April 6, 2011, the Department of the Corporation Counsel requested consideration of the possible settlement of Cheryl Cabebe, et al. v. New Sand Hills, LLC, et al., Civil No. 09-1-0245(1); and Karen Goo, et al. v. Mayor Charmaine Tavares, et al., Appeal of Civil No. 07-1-0258(1), pending before the Intermediate Court of Appeals as No. 30142. Attached to the request is a copy of the complaint in the Cabebe case and a draft resolution entitled "AUTHORIZING SETTLEMENT OF CHERYL CABEBE AND JOSEPH CABEBE, ET. AL, VS. NEW SAND HILLS, LLC, ET AL, CIVIL NO. 09-1-0245(2); AND, KAREN GOO, ET. AL., VS. MAYOR CHARMAINE TAVARES, ET. AL., ICA NO. 30142". The purpose of the draft resolution is to authorize the Department of the Corporation Counsel to settle the cases (including all cross-claims against the County).

Your Committee notes that, by correspondence dated March 9, 2011, the Department of the Corporation Counsel transmitted a copy of the complaint in the Cabebe case and the Appellants' Opening Brief in the Goo case. The cases relate to height restrictions applicable to properties within the Wailuku-Kahului Project District 1 (Maui Lani).

The Corporation Counsel provided an overview of the cases and requested the opportunity to discuss the cases in an executive meeting, closed to the public.

Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

Following the executive meeting, your Committee reconvened in regular session. Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 6-0 to recommend adoption of the draft

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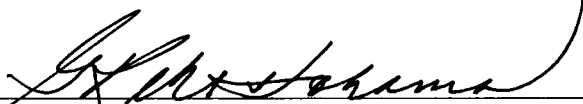
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resolution to authorize the settlement of the cases under the terms proposed in the executive meeting, incorporating nonsubstantive revisions. Committee Chair Hokama, Vice-Chair Carroll, and members Cochran, Couch, Mateo, and White voted “aye”. Committee members Baisa, Pontanilla, and Victorino were excused.

Your Committee is in receipt of a proposed resolution entitled “AUTHORIZING SETTLEMENT OF CHERYL CABEBE AND JOSEPH CABEBE, ET. AL. V. NEW SAND HILLS, LLC, ET. AL., CIVIL NO. 09-1-0245(1); AND KAREN GOO, ET. AL. VS. MAYOR CHARMAINE TAVARES, ET. AL., ICA NO. 30142”, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled “AUTHORIZING SETTLEMENT OF CHERYL CABEBE AND JOSEPH CABEBE, ET. AL. V. NEW SAND HILLS, LLC, ET. AL., CIVIL NO. 09-1-0245(1); AND KAREN GOO, ET. AL. VS. MAYOR CHARMAINE TAVARES, ET. AL., ICA NO. 30142”, be ADOPTED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



G. RIKI HOKAMA, Chair

Resolution

No. _____

AUTHORIZING SETTLEMENT OF CHERYL CABEBE AND JOSEPH CABEBE, ET. AL. V. NEW SAND HILLS, LLC, ET. AL., CIVIL NO. 09-1-0245(1); AND KAREN GOO, ET. AL. VS. MAYOR CHARMAINE TAVARES, ET. AL., ICA NO. 30142.

WHEREAS, the Cabebe Plaintiffs collectively seek from all Defendants, rescission for failure of consideration, breach of purchase agreements, negligent misrepresentation, breach of covenant of good faith and fair dealing, violation of the Hawaii Uniform Land Sales Practices Act, violation of the Interstate Land Sales Full Disclosure Act, violation of Hawaii's Unfair Trade Practices Act, breach of real estate broker's duties, negligence, and unjust enrichment; and

WHEREAS, the other Defendants in the above-referenced Cabebe matter have filed Cross-Claims against the County of Maui; and

WHEREAS, the Goo Plaintiffs collectively seek from the County of Maui declaratory and injunctive relief, alleging that the Sandhills Estates and Fairways subdivisions were illegally approved because they contained excessive fill and would result in homes being constructed in violation of post-1991 Sections 19.04.040 and 19.04.050, Maui County Code; and

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WHEREAS, the Department of the Corporation Counsel has requested authority to settle these matters under the terms set forth in an executive meeting before the Policy Committee; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of a judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of these cases by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, having reviewed the facts and circumstances regarding these cases and being advised of attempts to reach resolution of these cases 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 pursuant to Maui County Code Section 3.16.020, it hereby approves settlement of these matters under the terms set forth in an executive meeting before the Policy Committee; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in these matters,

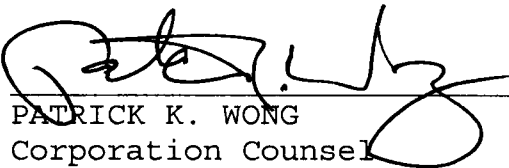
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under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of these cases, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; 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:


PATRICK K. WONG
Corporation Counsel
County of Maui