

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

September 16, 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 August 31, 2011, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated August 23, 2011, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING CHARMAINE TAVARES, ROY SILVA, MAHINA MARTIN, JEFFREY K. ENG, AND CLAYTON YOSHIDA IN MOLOKAI VETERANS CARING FOR VETERANS, ET AL. V. COUNTY OF MAUI, ET AL., CV 11-00483 LEK-RLP". The purpose of the proposed resolution is to indemnify Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida, former or current County employees, in this case.

Attached to the request is a copy of the complaint filed on August 8, 2011. Your Committee notes that the complaint alleges damages arising out of permitting issues relating to a proposed veterans' center on the Island of Molokai. Your Committee further notes that this is the second lawsuit arising from these permitting issues that was filed by many of the same plaintiffs. By Resolution 10-60, the Council previously indemnified these defendants in Civil 10-00538 JMS/LEK, also pending before the United States District Court, District of Hawaii.

A Deputy Corporation Counsel provided a brief overview of the case. She noted that this lawsuit restates claims made against parties who were dismissed from the first lawsuit. She advised that the new Director of Water Supply and Mayor Alan Arakawa have not been included in the request for indemnification because they have been sued in their official capacities only. Therefore, claims against the two defendants duplicate claims against the County. The Department is only seeking indemnification for those defendants who have been sued in their individual capacities.

Your Committee notes that the proposed resolution transmitted by the Department of the Corporation Counsel states that, based upon an investigation of this matter, the Department believes there to be a good faith basis for indemnification, and recommends

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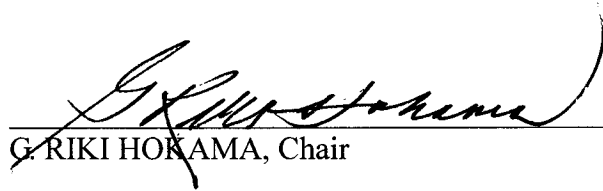
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that the Council indemnify Defendants Tavares, Silva, Martin, Eng, and Yoshida in this lawsuit.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted 7-0 to recommend adoption of the proposed resolution. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Pontanilla, and White voted "aye". Committee members Mateo and Victorino were excused.

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "INDEMNIFYING CHARMAINE TAVARES, ROY SILVA, MAHINA MARTIN, JEFFREY K. ENG, AND CLAYTON YOSHIDA IN MOLOKAI VETERANS CARING FOR VETERANS, ET AL. V. COUNTY OF MAUI, ET AL., CV 11-00483 LEK-RLP" be ADOPTED.

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



G. RIKI HOKAMA, Chair

Resolution

No. _____

INDEMNIFYING CHARMAINE TAVARES, ROY SILVA,
MAHINA MARTIN, JEFFREY K. ENG, AND CLAYTON YOSHIDA
IN MOLOKAI VETERANS CARING FOR VETERANS, ET AL. V.
COUNTY OF MAUI, ET AL., CV 11-00483 LEK-RLP

WHEREAS, Plaintiffs Molokai Veterans Caring for Veterans, et al., filed a complaint against the County of Maui; Charmaine Tavares, personally and as former Mayor of County of Maui; Alan M. Arakawa, as Mayor of County of Maui; Roy Silva, personally and as former Executive Assistant to Mayor Tavares; Mahina Martin, personally and as former County Community Relations and Communications Director, County of Maui; Jeffrey K. Eng, personally and as former Director of Department of Water Supply, County of Maui; Dave Taylor, as Director of Department of Water Supply, County of Maui; Clayton Yoshida, personally and as Administrator, Planning Department, County of Maui, and Does 1 - 5, inclusive in the United States District Court for the District of Hawaii on August 8, 2011, alleging constitutional and civil rights violations and supplemental state law claims arising out of permitting issues pertaining to a proposed veterans' center on the Island of Molokai; and

WHEREAS, the Complaint alleges that Defendants Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton

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Yoshida are being sued in their official and personal capacities;
and

WHEREAS, the Complaint indicates that Defendants Alan M. Arakawa and Dave Taylor are being sued in their official capacities only; and

WHEREAS, the complaint alleges that Defendants Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida acted either intentionally or negligently in withholding permit approvals; and

WHEREAS, the Complaint alleges that Defendants Charmaine Tavares, Roy Silva, and Mahina Martin acted either intentionally or negligently in trying to persuade Plaintiffs to forego certain First Amendment rights; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify Defendants Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida for any damages that may be assessed against them in the above-referenced lawsuit. The damages being requested within the Complaint are general and special damages, and punitive damages, together with costs of suit, attorney's fees, prejudgment and post-judgment interest; and

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WHEREAS, by Resolution No. 10-60, Council of the County of Maui previously indemnified Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida in Molokai Veterans Caring for Veterans, et al. v. County of Maui, et al., CV 10-00538 JMS-LEK, a case in which many of the allegations and claims are identical to those made in CV 11-00483 LEK-RLP; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify Defendants Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida in the above-referenced lawsuit; now, therefore,

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


1. That Charmaine Tavares, Roy Silva, Mahina Martin, Jeffrey K. Eng, and Clayton Yoshida are indemnified by the County of Maui for any damages, including general, special, and/or punitive damages and attorneys' fees, costs, and prejudgment or post-judgment interest that may be assessed against them in the above-referenced lawsuit; and

2. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, the Planning

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Director, the Director of Water Supply, and the Director of Finance.

APPROVED AS TO FORM AND LEGALITY:



JANE E. LOVELL
Deputy Corporation Counsel
County of Maui

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