

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

February 2, 2012

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 January 24, 2012, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated January 13, 2012, the Department of the Corporation Counsel requested consideration of the possible settlement of Stacey Pounder v. County of Maui, et al., Civil 09-1-0202(1). Attached to the request is a copy of the Amended Complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF STACEY POUNDER V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case for a greater amount than was previously authorized.

Your Committee notes that the complaint alleges that on September 12, 2008, Ms. Pounder suffered injuries as a result of the County's failure to maintain, in a reasonably safe manner, a metal-plate-covered concrete water meter junction box, located at the Eddie Tam Memorial Center, Makawao, Maui, Hawaii.

Your Committee further notes that the Council previously authorized settlement of the case by Resolution 10-76. By correspondence dated April 4, 2011, the Department of the Corporation Counsel transmitted a request for additional settlement authority, which the Council denied (Policy Committee Report 11-43). By further correspondence dated August 8, 2011, the Department of the Corporation Counsel transmitted a request for additional settlement authority, which the Council again denied (Policy Committee Report 11-115).

A Deputy Corporation Counsel provided an overview of the case. He advised your Committee of an upcoming status conference with the court and additional information that he wanted to convey. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting, closed to the public.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

February 2, 2012
Page 2

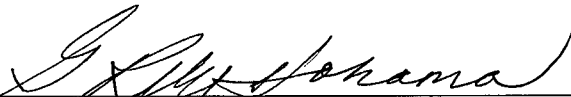
Committee
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Your Committee voted to convene an executive meeting, closed to the public, to consult with legal counsel pursuant to Section 92-5(a)(4), Hawaii Revised Statutes (“HRS”); and to deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential under a State or Federal law, or a court order, pursuant to Section 92-5(a)(8), HRS.

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 7-0 to recommend adoption of the proposed resolution. Committee Chair Hokama and members Baisa, Couch, Mateo, Pontanilla, Victorino, and White voted “aye”. Committee Vice-Chair Carroll and member Cochran were excused.

Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled “AUTHORIZING SETTLEMENT OF STACEY POUNDER V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0202(1)”, 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
STACEY POUNDER V. COUNTY OF MAUI, ET AL.,
CIVIL NO. 09-1-0202(1)

WHEREAS, Plaintiff Stacey Pounder filed a lawsuit in the Circuit Court of the Second Circuit of the State of Hawaii on December 9, 2009, Civil No. 09-1-0202(1), against the County of Maui and the County of Maui, Department of Water Supply claiming damages for injuries she suffered as a result of her trip and fall over a metal-plate covered concrete water meter junction box located at the Eddie Tam Memorial Center; and

WHEREAS, on December 3, 2010, the Council adopted Resolution No. 10-76 authorizing the Department of the Corporation Counsel to settle this litigation under the terms set forth in an executive meeting before the Committee of the Whole; 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 this case by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel has requested authority to settle this litigation for an additional amount to be disclosed in executive session; and

Resolution No. _____

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution of this case by way of a negotiated settlement or Offer of Judgment 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 case under the terms set forth in an executive meeting before the Policy Committee; and

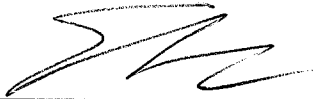
2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this case, under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and

3. That it hereby authorizes the Director of Finance of the County of Maui to satisfy said settlement of this case, 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, the Director of the Department of Water Supply, the Director of Parks and Recreation, and the Corporation Counsel.

Resolution No. _____

APPROVED AS TO FORM AND LEGALITY:



THOMAS KOLBE
Deputy Corporation Counsel
County of Maui

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