

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

October 19, 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 October 3, 2012, makes reference to County Communication 11-30, from Council Chair Danny A. Mateo, regarding litigation matters.

By correspondence dated September 26, 2012, the Department of the Corporation Counsel requested consideration of the possible settlement of William Revis, Anthony Levoy v. Kent R. Smith, et al., Civil 10-1-0672(1); and Kahakuloa Acres Private Water Company, Inc., et al. v. Kent R. Smith, et al., Civil 08-1-0617(3). Attached to the request is a copy of the relevant complaints and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF WILLIAM REVIS, ANTHONY LEVOY V. KENT R. SMITH, ET AL., CIVIL NO. 10-1-0672(1); AND KAHAKULOA ACRES PRIVATE WATER COMPANY, INC. ET AL. V. KENT R. SMITH ET AL.; CIVIL NO. 08-1-0617(3)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the cases, which have been consolidated before the Circuit Court of the Second Circuit.

Your Committee notes that the complaints allege damages arising from the construction and development of a private water system located within the Kahakuloa District.

A Deputy Corporation Counsel provided a brief overview of the cases and requested the opportunity to discuss the matter 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 9-0 to recommend adoption of the proposed resolution to authorize the settlement of the matter under the terms proposed in the

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executive meeting. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Cochran, Couch, Mateo, Pontanilla, Victorino, and White voted "aye".

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.

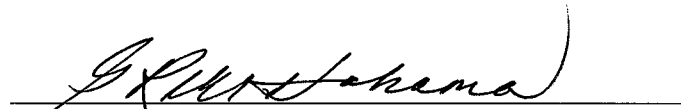
Your Policy Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF WILLIAM REVIS, ANTHONY LEVOY V. KENT R. SMITH, ET AL., CIVIL NO. 10-1-0672(1); AND KAHAKULOA ACRES PRIVATE WATER COMPANY, INC., ET AL. V. KENT R. SMITH, ET AL.; CIVIL NO. 08-1-0617(3)", be ADOPTED.

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



G. RIKI HOKAMA, Chair

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Resolution

No. _____

AUTHORIZING SETTLEMENT OF WILLIAM REVIS, ANTHONY LEVOY
V. KENT R. SMITH, ET AL., CIVIL NO. 10-1-0672(1); AND
KAHAKULOA ACRES PRIVATE WATER COMPANY, INC., ET AL.
V. KENT R. SMITH, ET AL.; CIVIL NO. 08-1-0617(3)

WHEREAS, Plaintiffs William Revis and Anthony Levoy filed a lawsuit in the Circuit Court of the Second Circuit in Civil No. 10-1-0672(1), against various defendants (collectively referred to as "Developer Defendants") and the County of Maui, claiming general, compensatory, consequential, and special damages arising from the construction and development of a private water system located within the Kahakuloa District; and

WHEREAS, Plaintiffs Kahakuloa Acres Private Water Company, Inc. and John Dick filed a lawsuit in the Circuit Court of the Second Circuit in Civil No. 08-1-0617(3), against various defendants (collectively referred to as "Developer Defendants") and the County of Maui, claiming general, compensatory, consequential, and special damages arising from the construction and development of a private water system located within the Kahakuloa District; and

WHEREAS, both civil claim nos. 10-1-0672(1) and 08-1-0617(3) were consolidated by way of a Third Amended Complaint filed on December 21, 2010; and

WHEREAS, Plaintiffs' claims include (1) misrepresentation, (2) constructive fraud, (3) conspiracy, (4) breach of fiduciary duties, (5) negligence, (6) unjust enrichment, (7) breach of

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covenant and/or warranty, (8) unfair and deceptive trade practices, (8) equitable indemnity, (9) punitive damages, and (10) violation of the interstate land sales full disclosure act; and

WHEREAS, the County is the only remaining defendant in this litigation because Plaintiffs entered into a confidential settlement with the various Developer Defendants; 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, the Department of the Corporation Counsel has requested authority to settle these cases under the terms set forth in an executive meeting before the Policy Committee; and

WHEREAS, having reviewed the facts and circumstances regarding these cases and being advised of attempts to reach resolution of these cases 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 these cases under the terms set forth in an executive meeting before the Policy Committee; and


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2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in these cases, 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, the Director of Water Supply, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



MARY ELAINE JOHNSON
Deputy Corporation Counsel
County of Maui

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