

COUNCIL OF THE COUNTY OF MAUI

POLICY AND INTERGOVERNMENTAL AFFAIRS COMMITTEE

February 15, 2013

**Committee
Report No.** _____

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

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on January 28, 2013, makes reference to County Communication 13-41, from the Council Chair, regarding litigation matters.

By correspondence dated January 18, 2013, 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 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.

By correspondence dated January 25, 2013, the Department of the Corporation Counsel transmitted a copy of the complaint alleging damages arising from the construction and development of a private water system located within the area commonly known as Kahakuloa.

Your Committee notes that Section 3.16.020(B), Maui County Code, requires Council authorization for any settlement in excess of \$7,500.

Your Committee further notes that the Council previously authorized settlement of the cases by Resolution 12-110.

A Deputy Corporation Counsel provided an overview of the cases, noting that the cases were not settled after the Council adopted Resolution 12-110. She requested the opportunity to discuss the matter in an executive meeting, closed to the public.

COUNCIL OF THE COUNTY OF MAUI
**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

Page 2

**Committee
Report No.** _____

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 proposed resolution. Committee Chair Hokama, Vice-Chair Couch, and members Carroll, Cochran, Crivello, and Guzman voted "aye". Committee members Baisa, Victorino, and White were excused.

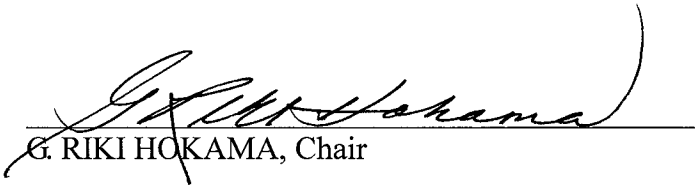
Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF WILLIAM REVIS, ANTHONY LEVOY V. KENT R. SMITH, ET AL., CIVIL NO. 10-1-0672(1); AND KAHAKULOA ACRES PRIVATE WATER COMPANY, INC., ET AL. V. KENT R. SMITH, ET AL.; CIVIL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

COUNCIL OF THE COUNTY OF MAUI
**POLICY AND INTERGOVERNMENTAL
AFFAIRS COMMITTEE**

Page 3

Committee
Report No. _____

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


G. RIKI HOKAMA, Chair

pia:cr:13001(4)aa:kmh

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

Resolution No. _____

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, by Resolution No. 12-110, the Council approved settlement of this case; 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 and Intergovernmental Affairs 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:

Resolution No. _____

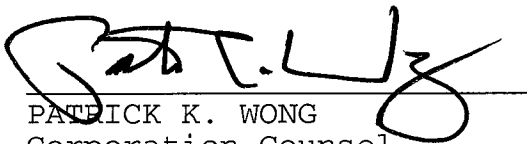
1. That it hereby approves settlement of these cases under the terms set forth in an executive meeting before the Policy and Intergovernmental Affairs Committee; and

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:



PATRICK K. WONG
Corporation Counsel
County of Maui

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