

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

November 7, 2014

**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 October 27, 2014, makes reference to County Communication 13-41, from Council Chair Gladys C. Baisa, regarding litigation matters.

By correspondence dated October 20, 2014, the Department of the Corporation Counsel requested consideration of the possible settlement of Douglas Leone, et al. v. County of Maui, et al., Civil 07-1-0496(3) (“Leone case”); and William L. Larson, et al. v. County of Maui, et al., Civil 09-1-0413(2) (“Larson case”), which have been consolidated. Attached to the request is a proposed resolution, entitled “AUTHORIZING SETTLEMENT OF DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 07-1-0496(3), AND WILLIAM L. LARSON, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0413(2)”, and a copy of the complaints.

The complaints allege inverse condemnation, denial of substantive due process rights, and denial of equal protection, and demand damages, including punitive damages. The claims arise out of a dispute concerning the plaintiffs’ proposals to construct a single-family residence on each of their properties, located along a sandy beach in Makena known as “Palaua Beach.” The Leone complaint involves property located at 4492 Makena Keoneoio Road, Makena, Hawaii, consisting of approximately 20,343 square feet. The Larson complaint involves properties located at 4500 Makena Keoneoio Road, Makena, Hawaii, consisting of approximately 24,829 square feet, and 4508 Makena Keoneoio Road, Makena, Hawaii, consisting of approximately 19,166 square feet. The purpose of the proposed resolution is to authorize settlement of the consolidated cases.

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

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Your Committee further notes the Council previously authorized settlement of the Leone case by Resolution 14-93, and the Larson case by Resolution 14-94, both adopted on August 19, 2014.

The Corporation Counsel noted a settlement conference is set for November 21, 2014. He requested the opportunity to discuss the proposed settlement in an executive meeting.

Your Committee voted to convene an executive meeting on the consolidated cases, 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 consolidated cases under the terms proposed in the executive meeting. Committee Chair Hokama, Vice-Chair Couch, and members Baisa, Carroll, Cochran, Crivello, Guzman, Victorino, and White voted "aye".


Your Policy and Intergovernmental Affairs Committee RECOMMENDS that Resolution _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 07-1-0496(3), AND WILLIAM L. LARSON, ET AL. V. COUNTY OF MAUI, ET AL., CIVIL NO. 09-1-0413(2)", 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
DOUGLAS LEONE, ET AL. V. COUNTY OF MAUI, ET AL.,
CIVIL NO. 07-1-0496(3), AND
WILLIAM L. LARSON, ET AL. V. COUNTY OF MAUI,
ET AL., CIVIL NO. 09-1-0413(2)

WHEREAS, Plaintiffs DOUGLAS LEONE and PATRICIA A. PERKINS-LEONE filed a lawsuit in the Circuit Court of the Second Circuit of the State of Hawaii, Civil No. 07-1-0496(3), against the County of Maui, on November 19, 2007, asserting claims of inverse condemnation of their property, denial of substantive due process rights, and denial of equal protection, and demanding damages including punitive damages; and

WHEREAS, Plaintiffs WILLIAM L. LARSON and NANCY H. LARSON filed a lawsuit in the Circuit Court of the Second Circuit of the State of Hawaii, Civil No. 09-1-0413(2), against the County of Maui, on June 1, 2009, asserting claims of inverse condemnation of their property, denial of substantive due process rights, and denial of equal protection, and demanding damages including punitive damages; and

WHEREAS, the two cases were consolidated by Stipulation and Order to Consolidate Civil Nos. 07-1-0496(3) and 09-1-0413(2) for Trial, on June 9, 2014; and

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WHEREAS, by Resolution No. 14-93, the Council previously approved settlement of the *Leone* case; and

WHEREAS, by Resolution No. 14-94, the Council previously approved settlement of the *Larson* 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 consolidated 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 consolidated 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 consolidated cases and being advised of attempts to reach resolution of these consolidated cases by way of a negotiated settlement or Offer of Judgment by the Department of the Corporation Counsel, the Council wishes to discuss the opposing side's settlement offer; now, therefore,

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

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1. That it hereby approves settlement of these consolidated 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 consolidated 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 consolidated 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 Planning Director, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



BRIAN A. BILBERRY
Deputy Corporation Counsel
County of Maui