

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

October 16, 2015

**Committee
Report No.** _____

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

Chair and Members:

Your Committee of the Whole, having met on September 23, 2015, makes reference to County Communication 15-219, from Council Chair Mike White, transmitting the following:

1. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the proposed resolution is to authorize the employment of special counsel to represent Defendant County of Maui and, to the extent consistent with the Hawaii Rules of Professional Conduct, other Defendants in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000.

2. A proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL FOR PATRICK WONG, IN HIS INDIVIDUAL CAPACITY, IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the proposed resolution is to authorize the employment of special counsel to represent Defendant Patrick Wong in his individual capacity in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000.

By correspondence dated September 17, 2015, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. COUNTY OF MAUI, ET AL." The purpose of the revised proposed resolution is to authorize the employment of special counsel to represent certain Defendants in Christopher Salem v. County of Maui, et al., for a total compensation not to exceed \$75,000.

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By correspondence dated September 18, 2015, the Department transmitted a copy of a 125-page complaint labeled "DRAFT ONLY" in Christopher Salem v. County of Maui, et al., received by the Department on August 17, 2015 ("draft complaint"). The draft complaint names the County, various County departments, and in their individual and official capacities, Patrick Wong, David Goode, Milton Arakawa, William Spence, and Jeffrey Hunt, as defendants in the case.

By correspondence dated September 22, 2015, the Department transmitted a copy of the 133-page Complaint filed on September 18, 2015, in Christopher Salem v. Alan Arakawa, et al., Civil 15-1-0496(3) ("Complaint"). The Complaint names the County, various County departments, and in their individual and official capacities, Alan Arakawa, Patrick Wong, Keith Regan, David Goode, Milton Arakawa, William Spence, John Minn (*sic*), and Jeffrey Hunt, as defendants in the case.

Your Committee notes the Complaint alleges Christopher Salem owned Lot 48C of the Mailepai Hui Partition Subdivision along Lower Honoapiilani Road and Hui Road E, Lahaina, Maui, Hawaii, until the property was auctioned for sale on January 20, 2015. The Complaint alleges damages arising from the actions and omissions of Defendants, including a failure to administer and enforce conditions imposed on developers through subdivision agreements for subdivisions involving three lots or less.

In his Complaint, Mr. Salem alleges breach of fiduciary duty, gross negligence, fraud, negligent hiring and retention, civil conspiracy, civil rights violations, breach of public trust, perjury, obstruction of justice, violations of the United States Bankruptcy law, breaches of the Charter and Maui County Code, and other violations of State and Federal law.

Your Committee notes Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), authorizes the Council to retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such

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employment. Section 3-6(6) of the Charter further requires that any such employment specify the compensation, if any, to be paid for the services.

A Deputy Corporation Counsel said the Department is seeking special counsel to represent the named Defendants in their individual capacity.

Your Committee notes the revised proposed resolution does not limit the named Defendants authorized to employ special counsel in the case.

The Deputy advised your Committee that plaintiff's counsel had suggested the parties enter into mediation. He also advised the period to answer or otherwise respond to the Complaint had been extended until the end of October 2015.

Because the case involves ongoing litigation, the Deputy requested the opportunity to convene an executive meeting.

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.

Your Committee recommended the revised proposed resolution be further revised by inserting a new BE IT RESOLVED paragraph to ensure special counsel for the County regularly reports directly to the Council Chair and your Committee on the status of the case and the County's legal strategy.

Your Committee also recommended the title and text of the revised proposed resolution be further revised to refer to the Complaint filed on September 18, 2015, and the assigned case number, and to delete references to the draft complaint and anticipated lawsuit.

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Your Committee voted 5-0 to recommend adoption of the revised proposed resolution, incorporating your Committee's further revisions. Committee Chair Guzman, Vice-Chair Crivello, and members Carroll, Hokama, and White voted "aye." Committee members Baisa, Cochran, Couch, and Victorino were excused.

Your Committee notes that, subsequent to its meeting, the case was removed to the United States District Court for the District of Hawaii and designated as Civil 15-00384 LEK-KSC.

Your Committee is in receipt of a further revised proposed resolution, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL 15-00384 LEK-KSC," incorporating your Committee's recommended revisions and nonsubstantive revisions.


Your Committee of the Whole RECOMMENDS that Resolution _____, as revised herein and attached hereto, entitled "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL., CIVIL 15-00384 LEK-KSC," be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL IN
CHRISTOPHER SALEM V. ALAN ARAKAWA, ET AL.,
CIVIL 15-00384 LEK-KSC

WHEREAS, the Council is authorized to retain or employ special counsel by resolution adopted by a two-thirds vote, pursuant to Section 3-6(6) of the Revised Charter of the County of Maui (1983), as amended; and

WHEREAS, the Council finds that, because of conflicts and potential conflicts of interests, and to the extent consistent with the Hawaii Rules of Professional Conduct, there is a real necessity to retain special counsel to represent certain Defendants in Christopher Salem v. Alan Arakawa, et al., Civil 15-00384 LEK-KSC; and

WHEREAS, based upon a preliminary reading of the Complaint filed in Civil 15-1-0496(3) on September 18, 2015, and removed to Federal Court as Civil 15-00384 LEK-KSC on September 28, 2015, it appears the allegations against individually named Defendants are questionable; and

WHEREAS, in the opinion of the Department of the Corporation Counsel, Charter Section 8-2.3 and Rule 1.7 of the Hawaii Rules of Professional Conduct may require special counsel to represent certain of the Defendants in this case; and

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WHEREAS, to the extent consistent with the Hawaii Rules of Professional Conduct it appears at this time there is a real necessity and it would be in the best interest of the County of Maui to authorize the employment of special counsel to represent certain of the Defendants; and

WHEREAS, special counsel shall be selected in a procedure in compliance with the Hawaii Public Procurement Code; and

WHEREAS, special counsel shall take all possible steps to minimize attorneys' fees and costs; and

WHEREAS, the Department of the Corporation Counsel shall provide necessary support services to special counsel and, if consistent with the Hawaii Rules of Professional Conduct, joint legal representation, along with special counsel; now, therefore,

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

1. That the Council hereby authorizes the employment of special counsel for Christopher Salem v. Alan Arakawa, et al., Civil 15-00384 LEK-KSC; and
2. That total compensation for the employment of all special counsel employed to represent Defendants in this case, pursuant to this resolution, shall not exceed \$75,000; and
3. That the hourly rate of compensation for special counsel shall not exceed \$250; and

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4. That the compensability of costs shall be in general accord with the intent of 28 U.S.C. § 1920; and

5. That the compensable costs shall include: (a) fees for printing and witnesses; (b) fees for copies necessarily obtained for use in the case; (c) fees of the clerk and marshal; (d) fees of the court reporter for necessary transcripts; (e) docket fees; and (f) compensation of court-appointed experts and interpreters; and

6. That the non-compensable costs shall include: (a) telephone calls; (b) facsimile charges; (c) postal charges; (d) messenger charges; (e) fees for computerized legal research; (f) travel, unless justified by extraordinary or compelling circumstances; (g) investigative expenses; and (h) other costs reasonably considered part of a law firm's overhead; and

7. That the expenditures of additional funds or substantial changes to the responsibilities of the parties shall require prior Council approval; and

8. That the special counsel for the County shall regularly report directly to the Council Chair and the Council's Committee of the Whole on the status of the case and the County's legal strategy; and

9. That certified copies of this resolution be transmitted to the Mayor, the Corporation Counsel, and the Director of Finance.

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APPROVED AS TO FORM AND LEGALITY

Brian A. Bilberry
Deputy Corporation Counsel,
County of Maui

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