

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

June 20, 2008

Committee
Report No.

08-67

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

Chair and Members:

Your Policy Committee having met on June 3, 2008, makes reference to County Communication No. 07-11, from the Council Chair, regarding the settlement of claims and lawsuits.

By correspondence dated May 16, 2008, the Department of the Corporation Counsel requested consideration of the possible settlement of Daniel K. Kanahale, et al. v. Maui County Council, et al.; Civil No. 08-1-0115(3). Attached to the request is a copy of the complaint and a proposed resolution entitled "AUTHORIZING SETTLEMENT OF DANIEL K. KANAHELE, ET AL. VS. MAUI COUNTY COUNCIL, ET AL.; CIVIL NO. 08-1-0115(3), SECOND CIRCUIT COURT, STATE OF HAWAII". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

At its meeting, your Committee met with the Corporation Counsel and two Deputy Corporation Counsel.

Your Committee received public testimony from four individuals.

Charlie Jencks, Owner's Representative, Honua'ula Partners, LLC (Honua'ula), asked your Committee to defer a decision on the settlement offer until the Council members have had a chance to review the Court's written order granting Plaintiffs' Motion for Preliminary Injunction, which has not yet been filed.

Lucienne deNaie testified about the importance of public participation in government proceedings.

B. Martin Luna, Attorney for Honua'ula, asked your Committee to consult with the Office of Information Practices (OIP) to determine whether or not the Council's procedures adhere to OIP's advice before deciding whether or not to accept Plaintiffs' settlement offer. Mr. Luna pointed out that the Department of the Corporation Counsel

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and the OIP have previously approved the Council's practice of recessing and reconvening meetings.

Lastly, Lance Collins, Attorney for Plaintiffs, testified that he was available for any questions the members may have pertaining to the lawsuit.

A Deputy Corporation Counsel gave a brief overview of the case. She noted that the complaint alleges the Council violated the State Sunshine Law when it and its Land Use Committee (Committee) considered the Honua'ula land use application. The two primary allegations are, first, that the Council and the Committee improperly recessed and reconvened meetings; and secondly, that Council members improperly distributed memoranda to other members outside of the Council meetings.

A Deputy Corporation Counsel indicated that she has been in contact with the OIP about the allegations contained in the complaint; however, she noted that the OIP will not issue a written opinion about the case while litigation is pending.

Your Committee notes that the OIP is an advisory agency, and that it is the courts, not the OIP, that has jurisdiction to decide the merits of the case.

The Deputy Corporation Counsel noted that on April 23, 2008, the Honorable Joseph E. Cardoza, Judge of the Second Circuit Court, granted Plaintiffs' Motion for Preliminary Injunction enjoining the County from taking any further action on the Honua'ula application. She further explained that Judge Cardoza has not yet issued a written order, and she does not know when he will do so.

Your Committee notes that the Court allowed Honua'ula to join the lawsuit as an intervenor-defendant. Your Committee further notes that a hearing is scheduled for June 18, 2008, on Plaintiffs' Motion for Summary Judgment. A Deputy Corporation Counsel explained that in their Motion for Summary Judgment, the Plaintiffs are asking the Court to enter judgment in their favor. The Deputy Corporation Counsel requested the opportunity to discuss the matter in an executive meeting.

Your Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

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At its executive meeting, your Committee met with the Corporation Counsel and two Deputy Corporation Counsel.

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 to recommend disapproval of the proposed resolution to authorize settlement of the matter.

Your Policy Committee **RECOMMENDS** that the correspondence dated May 16, 2008, attached hereto, be FILED.


Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

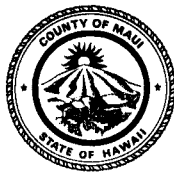
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GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

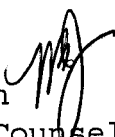
DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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May 16, 2008

MEMORANDUM

MEMO TO: Danny A. Mateo, Chair
Policy Committee

FROM: Mary Blaine Johnston 
Deputy Corporation Counsel

OFFICE OF THE
COUNTY COUNCIL

08 MAY 19 A 7:05

SUBJECT: SETTLEMENT AUTHORIZATION
Kanahele et al v. Maui County Council and County
of Maui, Civil No. 08-1-0115(3); Second Circuit Court
[POL-1]

I request that this correspondence and the attached proposed resolution be placed on the agenda for the next Policy Committee meeting.

I am also enclosing a copy of the Complaint that was filed on March 5, 2008.

County has received an offer to settle this case that expires on June 30, 2008. Therefore, we request this matter be heard at the June 3, 2008 meeting of the Policy Committee.

Thank you for your consideration in this matter.

MBJ
Enclosures

Resolution

No. _____

AUTHORIZING SETTLEMENT OF DANIEL K. KANAHELE, ET AL.
VS. MAUI COUNTY COUNCIL, ET AL.; CIVIL NO. 08-1-0115(3),
SECOND CIRCUIT COURT, STATE OF HAWAII

WHEREAS, the Maui County Council and County of Maui have been named as defendants in the case of Daniel K. Kanahele, et al. vs. Maui County Council, et al.; Civil No. 08-1-0115(3), filed in the Circuit Court of the Second Circuit on March 5, 2008; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of judicial determination of the parties' respective rights and liabilities, will attempt to reach a resolution of the lawsuit by way of a negotiated settlement; and

WHEREAS, the Department of the Corporation Counsel received an offer to settle the litigation dated May 14, 2008, which terms were discussed in an executive meeting of the Policy Committee of June 3, 2008; and

WHEREAS, having reviewed the facts and circumstances regarding this case and being advised of attempts to reach resolution by the Department of the Corporation Counsel, the Council wishes to authorize settlement of this lawsuit; and

WHEREAS, the Council finds that settlement of this lawsuit is in the public interest; now, therefore,

Resolution No. _____

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

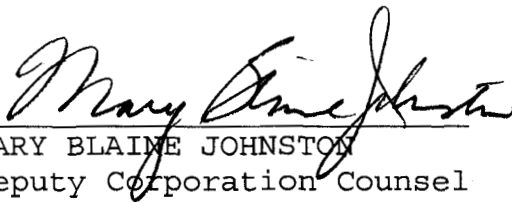
1. That it hereby approves settlement of this lawsuit on the terms discussed in an executive meeting of the Policy Committee of June 3, 2008; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in this lawsuit, 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 to satisfy said settlement of this lawsuit, 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 Maui County Council, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:



MARY BLAINE JOHNSTON
Deputy Corporation Counsel
County of Maui