

COUNCIL OF THE COUNTY OF MAUI  
**POLICY COMMITTEE**

May 9, 2008

**Committee**

**Report No.**

08-58

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

Chair and Members:

Your Policy Committee, having met on April 30, 2008, makes reference to County Communication No. 07-11, from the Council Chair, regarding the settlement of claims and lawsuits.

By correspondence dated April 1, 2008, the Chair of your Committee acknowledged receipt of an attorney-client privilege communication dated March 28, 2008, from the Department of the Corporation Counsel.

By correspondence dated April 2, 2008, the Department of the Corporation Counsel requested consideration of the possible settlement of Hanohano, LLC. v. County of Maui, et al., Civil No. 06-1-0148(1).

Your Committee notes that the complaint alleges declaratory, injunctive, and other relief stemming from a County zoning decision affecting lands comprising the Pukalani residential community, including two parcels of land owned by Plaintiff Hanohano, LLC, consisting of approximately 28.695 acres situated at Keahua, Kula, Maui, Hawaii.

By correspondence dated April 9, 2008, the Department of the Corporation Counsel requested consideration of the possible settlement of the case. Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF HANOHANO, LLC V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0148(1)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the case.

Your Committee notes that it previously reported on this matter through Committee Report No. 08-55. In that report, your Committee recommended that a proposed resolution entitled "AUTHORIZING SETTLEMENT OF HANOHANO, LLC V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0148(1)" be adopted. At its meeting of April 4, 2008, the Council adopted Committee Report No. 08-55 and Resolution No. 08-30.

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At its meeting, your Committee met with the Planning Director, the Corporation Counsel, and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the case. She explained that Plaintiff Hanohano, LLC, rejected the settlement terms authorized by Committee Report No. 08-55 and Resolution No. 08-30 and made a counteroffer. The Deputy Corporation Counsel requested the opportunity to discuss the counteroffer 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.

At its executive meeting, your Committee met with the Planning Director; a Planner, Zoning Administration and Enforcement Division, Department of Planning; the Assistant Engineering Program Manager, Development Services Administration Division, Department of Public Works; the Corporation Counsel; and a Deputy Corporation Counsel.

Following the executive meeting, your Committee reconvened in regular session. Your Committee recommended that the proposed resolution be revised to incorporate nonsubstantive revisions.

Based on the information received and the recommendation of the Department of the Corporation Counsel, your Committee voted to recommend adoption of the revised proposed resolution to authorize the settlement of the matter under the terms proposed in the executive meeting.

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 No. \_\_\_\_\_, attached hereto, entitled "AUTHORIZING SETTLEMENT OF HANOHANO, LLC V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0148(1)" be ADOPTED.

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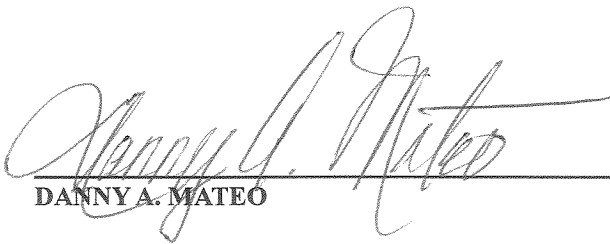
Adoption of this report is respectfully requested.

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DANNY A. MATEO Chair

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BILL KAUAKEA MEDEIROS Member

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G. RIKI HOKAMA Vice-Chair

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JOSEPH PONTANILLA Member

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MICHAEL P. VICTORINO Member

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JO ANNE JOHNSON Member

# Resolution

No. \_\_\_\_\_

AUTHORIZING SETTLEMENT OF HANOHANO, LLC  
V. COUNTY OF MAUI, ET AL., CIVIL NO. 06-1-0148(1)

WHEREAS, the County of Maui, Public Works Director Milton M. Arakawa, and former Director of the Planning Department Michael Foley have been named as defendants in the case of Hanohano, LLC vs. County of Maui, et al., Civil No. 06-1-0148(1), filed in the Circuit Court of the Second Circuit on April 25, 2006 that is set for trial on June 30, 2008; and

WHEREAS, the County of Maui, to avoid incurring expenses and the uncertainty of judicial determinations 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 a counter-offer to settle the litigation dated March 26, 2008, which terms were discussed in an executive meeting before the Policy Committee of April 30, 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

**Resolution No. \_\_\_\_\_**

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

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

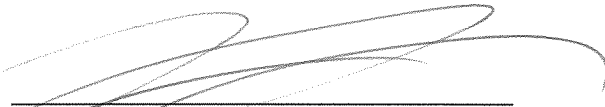
1. That it hereby approves settlement of this lawsuit on the terms discussed in an executive meeting before the Policy Committee of April 30, 2008; and

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, and the Corporation Counsel.

APPROVED AS TO FORM AND LEGALITY:

  
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MADELYN S. D'ENBEAU  
Deputy Corporation Counsel  
County of Maui