

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

June 6, 2008

**Committee
Report No.**

08-65

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

Chair and Members:

Your Policy Committee, having met on May 13, 2008, makes reference to County Communication No. 07-9, from the Council Chair, regarding indemnification authorization.

By correspondence dated May 1, 2008, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING MICHAEL FOLEY IN EVELYN GOO, ET AL. V. THE COUNTY OF MAUI, ET AL., CIVIL NO. CV 08-00172 DAE BMK". Attached to the request is a copy of the Complaint, filed April 17, 2008. The purpose of the proposed resolution is to indemnify Michael Foley, former Planning Director, in the case.

Your Committee notes that the case includes allegations of tortious interference with contractual relations and prospective economic relations, breach of the implied covenant of good faith and fair dealing, and violation of Plaintiff's constitutional rights. Your Committee further notes that the case arises from a land use dispute in West Maui.

By correspondence dated May 6, 2008, the Department of the Corporation Counsel transmitted a revised proposed resolution containing nonsubstantive revisions.

At its meeting, your Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the case. She noted the Plaintiffs assert that former Planning Director Michael Foley unlawfully issued citations and imposed fines for alleged zoning violations. The Deputy Corporation Counsel also noted that Plaintiffs assert that Mr. Foley unlawfully interfered with an attempt to purchase real estate. The Deputy Corporation Counsel requested the opportunity to further discuss the matter in an executive meeting.

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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 a 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 adoption of the revised proposed resolution.

Your Committee is in receipt of a further revised proposed resolution, incorporating further nonsubstantive revisions.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING MICHAEL FOLEY IN EVELYN GOO, ET AL. V. THE COUNTY OF MAUI, ET AL., CIVIL NO. CV 08-00172 DAE BMK" be ADOPTED.

Adoption of this report is respectfully requested.

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Resolution

No. _____

INDEMNIFYING MICHAEL FOLEY
IN EVELYN GOO, ET AL. V. THE COUNTY OF MAUI, ET AL.,
CIVIL NO. CV 08-00172 DAE BMK

WHEREAS, Plaintiffs Evelyn Goo and Maui's Best Gift and Craft LLC filed a Complaint on April 17, 2008 in United States District Court for the District of Hawaii, naming MICHAEL FOLEY, former Planning Director for the County of Maui, as a Defendant, sued in his individual capacity; and

WHEREAS, the Complaint alleges that MICHAEL FOLEY, while Planning Director, tortiously interfered with Plaintiffs' contractual relations and prospective economic advantage, breached the covenant of good faith and fair dealing, and violated her civil rights, pursuant to U.S.C. § 1983; and

WHEREAS, based upon an investigation of this matter, the Department of the Corporation Counsel believes there to be a good faith basis for indemnification and has recommended that the Council indemnify MICHAEL FOLEY for any damages that may be assessed against him in the above-referenced lawsuit, said damages being requested within the Complaint are: general, special, consequential and/or continuing damages, and punitive damages,

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together with costs of suit, attorney's fees, and prejudgment interest; and

WHEREAS, based upon the recommendation of the Department of the Corporation Counsel, it appears at this time that it would be in the best interest of the County of Maui to indemnify this Defendant in the above-referenced lawsuit; now, therefore,

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

1. That MICHAEL FOLEY is indemnified by the County of Maui for any damages that may be assessed against him in the above-referenced lawsuit; and

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

APPROVED AS TO FORM AND LEGALITY:



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

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