

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 4, 2008

**Committee
Report No.**

08-53

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

Chair and Members:

Your Policy Committee, having met on March 11, 2008, makes reference to County Communication No. 07-9, from the Council Chair, regarding indemnification authorization.

By correspondence dated February 29, 2008, the Department of the Corporation Counsel requested consideration of a proposed resolution entitled "INDEMNIFYING TAMMY OSURMAN IN LOTHAR KUSTER V. MICHAEL W. FOLEY ET AL., CIVIL NO. CV 07-00264 SOM BMK". Attached to the request is a copy of the complaint, filed May 18, 2007. The purpose of the proposed resolution is to indemnify County employee Tammy Osurman, a Zoning Inspector, in Lothar Kuster v. Michael W. Foley, et al., Civil No. CV 07 00264 SOM BMK.

Your Committee notes that this case includes allegations of violations of plaintiff's rights under 42 U.S.C. §1983 and the 4th, 5th, and 14th Amendments to the U.S. Constitution, relating to the plaintiff's 4.5-acre property in Haiku, Maui.

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 stated that the County employee was working within the scope of her employment; therefore, indemnification is appropriate.

The Deputy Corporation Counsel noted that the Council has already indemnified other County defendants in the case. Tammy Osurman was not indemnified previously because her name was not known by the plaintiff until recently. The Deputy Corporation Counsel explained that, in general, when a person files a lawsuit and the name of an alleged defendant is not known at the time of the filing, the alleged defendant can be named as a "Jane Doe" or "John Doe" until the name of the defendant is discovered, as occurred in this case.

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

April 4, 2008
Page 2

Committee
Report No. 08-53

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "INDEMNIFYING TAMMY OSURMAN IN LOTHAR KUSTER V. MICHAEL W. FOLEY ET AL., CIVIL NO. CV 07-00264 SOM BMK" be ADOPTED.

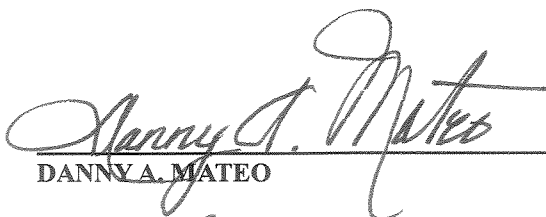
Adoption of this report is respectfully requested.

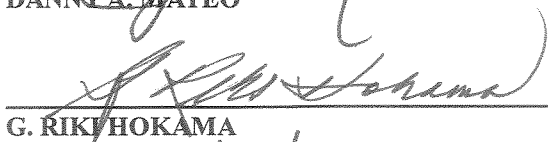
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COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE


April 4, 2008
Page 3

Committee
Report No. 08-53


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Resolution

No. _____

INDEMNIFYING TAMMY OSURMAN
IN LOTHAR KUSTER V. MICHAEL W. FOLEY
ET AL., CIVIL NO. CV 07-00264 SOM BMK

WHEREAS, Plaintiff Lothar Kuster filed a Complaint on May 18, 2007 in U.S. District Court for the District of Hawaii, naming "JANE DOE, Zoning Inspector for the County of Maui" as a defendant, sued in her individual capacity; and

WHEREAS, the Complaint alleges that the Zoning Inspector and other County Defendants violated and conspired to violate Plaintiff's constitutional rights; that the Defendants discriminated against Plaintiff on the basis of his race; that the Defendants illegally searched Plaintiff's property in Haiku; and also alleges entitlement to injunctive and declaratory relief in connection with Plaintiff's application for a building permit; and

WHEREAS, Plaintiff has advised he intends to substitute TAMMY OSURMAN's name for the Jane Doe Zoning Inspector as a party defendant sued in her individual capacity in the above case;

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 to the Council that the body act to indemnify TAMMY OSURMAN for any damages that

Resolution No. _____

may be assessed against her in the above-referenced lawsuit, said damages being requested within the Complaint are: general, special, consequential and/or continuing damages, and punitive damages, 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 TAMMY OSURMAN is indemnified by the County of Maui for any damages that may be assessed against her in the above-referenced lawsuit; and

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