

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

January 11, 2008

Committee

Report No.

_____ 08-5

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

Chair and Members:

Your Policy Committee, having met on October 16, 2007, November 13, 2007, and December 18, 2007, makes reference to County Communication No. 07-11, from the Council Chair, regarding the settlement of claims and lawsuits.

By correspondence dated October 3, 2007, the Department of the Corporation Counsel requested the opportunity to discuss a settlement offer relating to Apartment B, Lot 2 of the Montana Beach Condominium in Paia, Maui.

By correspondence dated October 8, 2007, the Department of the Corporation Counsel requested consideration of the possible settlement of Asghar R. Sadri v. Maui Planning Commission; Civil No. 04-1-0366(2) (State lawsuit); and Asghar R. Sadri v. Kurt Ulmer, et al.; Civil No. CV06-00430 ACK KSC (first Federal lawsuit). Attached to the request is a proposed resolution entitled "AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)". The purpose of the proposed resolution is to authorize the Department of the Corporation Counsel to settle the cases.

Your Committee notes that the complaints allege constitutional violations arising from the rescission of an exemption for a Special Management Area (SMA) permit for the subject property.

Your Committee further notes that the Council authorized initial settlement of this matter by Resolution No. 07-40.

At its meeting of October 16, 2007, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

Your Committee received public testimony from one individual in support of settling the cases and warning of potential problems on the property.

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The Deputy Corporation Counsel provided a brief overview of the cases. She noted that the Second Circuit Court ruled in favor of the County in the State lawsuit, but that the Plaintiff had appealed the Court's decision to a higher court. The Deputy Corporation Counsel also noted that she is still waiting on an appraisal of the subject property.

She indicated that there has been a significant loss of property due to erosion of the shoreline fronting the property and that a State surveyor observed chunks of concrete and railroad tracks now exposed on the property.

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 (HRS).

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

Following the executive meeting, your Committee reconvened in regular session. Your Committee requested that an update be provided at a later date regarding the status of the Holland house, specifically, whether the Holland house has been sold.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 29, 2007, the Department of the Corporation Counsel requested consideration of the possible settlement of Asghar R. Sadri v. Maui Planning Commission, Civil No. 04-1-0366(2); Asghar R. Sadri v. Kurt Ulmer, et al., Civil No. CV06-00430 ACK KSC; and Asghar R. Sadri v. James H. Apana, et al., Civil No. CV07-00109 SOM BMK (second Federal lawsuit). Attached to the request is a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)". The purpose of the revised proposed resolution is to authorize the Department of the Corporation Counsel to settle the cases.

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Your Committee notes that the complaint in the second Federal lawsuit alleges a conspiracy relating to the SMA exemption and subsequent litigation.

By correspondence dated October 31, 2007, the Department of the Corporation Counsel responded that the Holland house had not been sold and that the Mayor had established a task force to develop a request for proposals to remove the Holland house.

At its meeting of November 13, 2007, your Committee met with a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the cases and 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), HRS.

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

Following the executive meeting, your Committee reconvened in regular session. Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated December 6, 2007, the Department of the Corporation Counsel requested consideration of the possible settlement of Asghar R. Sadri v. Maui Planning Commission, Civil No. 04-1-0366(2); Asghar R. Sadri v. Kurt Ulmer, et al.; Civil No. CV06-00430 ACK KSC; and Asghar R. Sadri v. James H. Apana, et al., Civil No. CV07-00109 SOM BMK. Attached to the request is a revised proposed resolution entitled "AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)". The purpose of the revised proposed resolution is to authorize the Department of the Corporation Counsel to settle the cases.

By correspondence dated December 11, 2007, the Department of the Corporation Counsel transmitted a revised proposed resolution entitled "AUTHORIZING

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SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, ASGHAR R. SADRI V. JAMES H. APANA, ET AL., CIVIL NO. CV07-00109 SOM BMK, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)". The purpose of the revised proposed resolution is to authorize the Department of the Corporation Counsel to settle the cases.

At its meeting of December 18, 2007, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the case and 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), HRS.

At its executive meeting, your Committee met with the Corporation Counsel and 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 to authorize the settlement of the matter under the terms proposed in the executive meeting.

Your Committee is in receipt of a further revised proposed resolution, entitled "AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, ASGHAR R. SADRI V. JAMES H. APANA, ET AL., CIVIL NO. CV07-00109 SOM BMK, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)", incorporating nonsubstantive revisions.

Your Policy Committee RECOMMENDS that Resolution No. _____, attached hereto, entitled "AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, ASGHAR R. SADRI V. JAMES H. APANA, ET AL., CIVIL NO. CV07-00109 SOM BMK, AND

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ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)",
be ADOPTED.

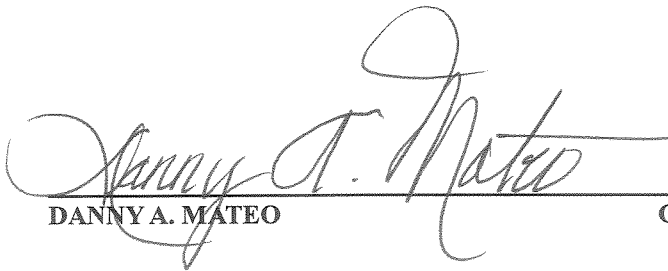
Adoption of this report is respectfully requested.

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GLADYS C. BAISA Member

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JO ANNE JOHNSON Member

Resolution

No. _____

AUTHORIZING SETTLEMENT OF ASGHAR R. SADRI V. KURT ULMER, ET AL., CIVIL NO. CV06-00430 ACK KSC, ASGHAR R. SADRI V. JAMES H. APANA, ET AL., CIVIL NO. CV07-00109 SOM BMK, AND ASGHAR R. SADRI V. MAUI PLANNING COMMISSION, CIVIL NO. 04-1-0366(2)

WHEREAS, the County of Maui, former Planning Director Michael W. Foley, and present and former members of the Maui Planning Commission have been named as defendants in the case of Asghar R. Sadri v. Kurt Ulmer, et al., CV06-00430 ACK KSC (first Federal lawsuit), filed in the United States District Court for the District of Hawaii on August 8, 2006 and set for trial on May 6, 2008; and

WHEREAS, the first Federal lawsuit alleges, among other things, that the rescission of the Special Management Area (SMA) exemption for Apartment B, Lot 2 of the Montana Beach Condominium Project in Paia, Maui, Hawaii, more particularly identified as TMK: (2) 2-5-05:014 ("subject property"), and the subsequent decision by the Maui Planning Commission to uphold the rescission violated Plaintiff's civil rights; and

WHEREAS, James H. Apana, James Takayesu, John Min, Richard Minatoya, Alan Arakawa, and Brian Moto have been named as defendants in the case of Asghar R. Sadri v. James H. Apana, et

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al., CV07-00109 SOM BMK (second federal lawsuit) filed in the United States District Court for the District of Hawaii on March 2, 2007 and set for trial on July 2, 2008; and

WHEREAS, the second federal lawsuit alleges that the Defendants were involved in a conspiracy including rescission of the SMA exemption for the subject property and subsequent involvement in the litigation arising from said rescission that violated Plaintiff's civil rights; and

WHEREAS, the Maui County Council has indemnified said defendants and authorized the hiring of special counsel for each.

WHEREAS, Plaintiff Asghar R. Sadri has appealed the decision of the Second Circuit Court, State of Hawaii, in Asghar R. Sadri v. Maui Planning Commission, Civil No. 04-1-0366(2) (State lawsuit) to uphold the rescission of the SMA exemption to the Intermediate Court of Appeals, State of Hawaii; and

WHEREAS, Christina Hemming and Hui Ala Nui O Makena are parties to Asghar R. Sadri v. Maui Planning Commission, Civil No. 04-1-0366(2); and

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WHEREAS, the subject property is 2.879 acres of vacant oceanfront land located between two County-owned parcels adjoining Baldwin Beach Park; 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 Federal and State lawsuits by way of a negotiated settlement or Offer of Judgment; and

WHEREAS, the Department of the Corporation Counsel recommends an offer to settle the Federal and State lawsuits with Asghar R. Sadri; Kurt Ulmer; Montana Beach LLC; Christina Hemming and Hui Ala Nui O Makena under the terms set forth in an executive meeting before the Policy Committee on December 18, 2007; and

WHEREAS, having reviewed the facts and circumstances regarding the Federal and State lawsuits, and having been advised of attempts to reach resolution by the Department of the Corporation Counsel, the Council wishes to authorize settlement of the Federal and State lawsuits; and

WHEREAS, the Council finds that settlement of the Federal and State lawsuits is in the public interest; now, therefore,

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

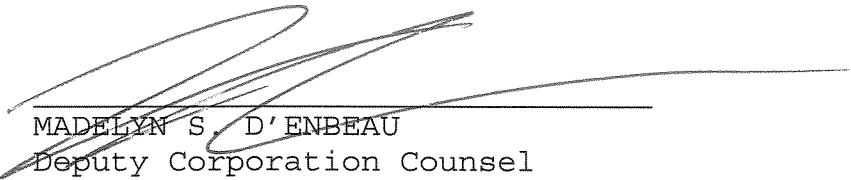
1. That it hereby approves settlement of the Federal and State lawsuits under the terms set forth in the executive meeting before the Policy Committee on December 18, 2007; and

2. That it hereby authorizes the Mayor to execute a Release and Settlement Agreement on behalf of the County in the Federal and State lawsuits, 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 the Federal and State lawsuits, 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:



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