

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

July 26, 2007

Committee
Report No.

07-72

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

Chair and Members:

Your Policy Committee, having met on July 3, 2007, makes reference to County Communication No. 07-190, from the Department of the Corporation Counsel, requesting consideration of a proposed resolution entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2 OF THE MONTANA BEACH CONDOMINIUM, FOR PUBLIC PURPOSES".

The purpose of the proposed resolution is to authorize proceedings in eminent domain to acquire Unit 2 of the Montana Beach Condominium (TMK: (2)2-5-005-014-0002), adjacent to and abutting H. A. Baldwin Park, for public purposes.

Your Committee notes that Sections 46-1.5(6), 46-61, and 46-62, Hawaii Revised Statutes (HRS), and Chapter 101, HRS, authorize counties to exercise the power of condemnation by eminent domain when it is in the public interest to do so.

Your Committee notes that matters relating to the Montana Beach Condominium were previously reported through the following:

1. Committee of the Whole Report Nos. 03-62, 04-104, and 04-148, and County Communication No. 05-81, relating to authorizations for special counsel;
2. Committee of the Whole Report No. 04-127, relating to indemnifications of County employees;
3. Committee of the Whole Report No. 05-25, relating to the history of the Montana Beach Condominium complaint and authorizations for special counsel; and

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4. Committee of the Whole Report Nos. 05-49 and 05-83, and County Communication No. 07-97, relating to authorizations for settlement.

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

There was no public testimony.

A Deputy Corporation Counsel provided a brief overview of the case. She noted that condemning the property would limit the timeframe and scope of two ongoing Federal lawsuits related to this matter, which allege civil rights violations and racketeering, but would not negate the lawsuits entirely. She explained that the lawsuit would still apply from the time the original permits were denied until the property was condemned, but would not apply to the period after the property was condemned.

She further noted that the next step in the eminent domain process is to obtain an appraisal of the property, which would be followed by a request by the Department for a budget appropriation.

Your Committee voted to recommend passage of the proposed resolution and filing of the communication.

Your Committee notes that the resolutions authorizing eminent domain proceedings must pass two readings, pursuant to Section 101-13, HRS, by a majority vote of the Council.

Your Policy Committee RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN FOR THE ACQUISITION OF REAL PROPERTY SITUATED AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2 OF THE MONTANA BEACH CONDOMINIUM, FOR PUBLIC PURPOSES", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 07-190 be FILED.

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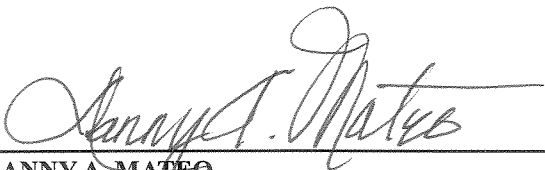
Adoption of this report is respectfully requested.

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GLADYS C. BAISA Member

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Resolution

No. _____

AUTHORIZING PROCEEDINGS IN EMINENT DOMAIN
FOR THE ACQUISITION OF REAL PROPERTY SITUATED
AT PAIA, MAUI, HAWAII, KNOWN AS UNIT 2 OF THE
MONTANA BEACH CONDOMINIUM, FOR PUBLIC PURPOSES

WHEREAS, the three-unit horizontal condominium known as the Montana Beach Condominium is located on the beach and shoreline in Paia, Maui, Hawaii, adjacent to and abutting a public beach park known as H.A. Baldwin Park; and

WHEREAS, the County of Maui is the owner of Unit 1 and Unit 3 of the Montana Beach Condominium, identified, respectively, as Tax Map Key ("TMK") Numbers (2)2-5-005-014-0001 and (2)2-5-005-014-0003; and

WHEREAS, Unit 2 of the Montana Beach Condominium, identified as TMK (2)2-5-005-014-0002, is situated between Unit 1 and Unit 3 and is privately owned; and

WHEREAS, Unit 1, Unit 2, and Unit 3 of the Montana Beach Condominium are designated Park and Open Space in the current Paia-Haiku Community Plan, enacted by Ordinance No. 2415, effective May 17, 1995; and

WHEREAS, pursuant to Sections 46-1.5(6), 46-61, and 46-62, HRS, and Chapter 101, HRS, authorize counties to exercise the power of condemnation by eminent domain when it is in the public interest to do so; and

WHEREAS, pursuant to Section 101-13, HRS, "[w]henver any county deems it advisable or necessary to exercise the right of eminent domain in the furtherance of any governmental power, the proceedings may be instituted . . . after the . . . county council . . . of the county has authorized such suit by resolution duly passed . . ."; and

WHEREAS, Section 101-13, HRS, also provides that the resolution "be published in a newspaper with the eyes and noes, at least one day (Sundays and legal holidays excepted), before final action upon it."; and

Resolution No. _____

WHEREAS, Section 4-2(7), Revised Charter of the County of Maui (1983), as amended, states: "Resolutions authorizing proceedings in eminent domain shall be adopted as provided by law."; now, therefore,

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

1. That, pursuant to Sections 46-1.5(6), 46-61, and 46-62, HRS, and, Chapter 101, HRS, and Section 3.44.015(E) of the Maui County Code, it does hereby find and declare that the acquisition of Unit 2 of the Montana Beach Condominium property, identified as TMK (2)2-5-005-014-0002, by exercise of the powers of eminent domain, is in the public interest and necessary for public purposes, which may include, providing public park and open space; and

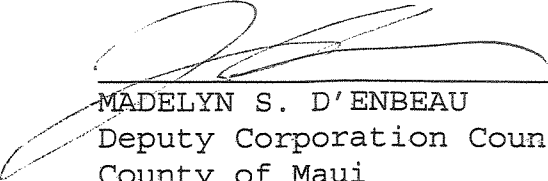
2. That proceedings in eminent domain as provided by law be instituted for acquisition of Unit 2 of the Montana Beach Condominium, identified as TMK (2)2-5-005-014-0002; and

3. That the Corporation Counsel of the County of Maui and such special counsel as may be employed for such purpose pursuant to a duly adopted resolution of this Council are hereby authorized and empowered to proceed in eminent domain for the acquisition in fee simple of Unit 2 of the Montana Beach Condominium; and

4. That the Corporation Counsel is authorized and empowered to negotiate terms of settlement pursuant to Resolution No. 07-40, adopted on March 16, 2007; and

5. 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